#### $\mathbf{X}$ : D

#### A

Bsolute warrandice. See Warrandice. Acceptance defined, 1st, 195.

Accessory. Accessorium sequitur principale, 1st, 240. 241. 242.

Actions or causes of an extraordinary nature were originally appropriated to the King and council, 1ft, 4.

Action on a foreign covenant, 2d, 320.

Action denied unless the pursuer can show an interest, 1st, 56. 2d, 61.

Action upon the case, 1st, 147.

Action, penal, in what time it prescribes, 1st, 367;

Action of mails and duties, 2d, 172.

Actio negotiorum gestorum, its equitable foundation; ist, 10. 179. Inferior courts competent to this action, 1st, 33.

Actio in factum, 1st, 147.

Actio de in rem verso, 1st, 148. 2d, 144.

Actio redhibitoria, 1st, 270.

Actio quanti minoris, 1st, 271.

Acts contra bonos mores, 2d, 81.

Acts contra utilitatem publicam, 2d, 89.

Acts repressed because of their bad tendency; 2d, 82.

Acts of parliament explained. That concerning conditions in bonds of borrowed money, 1st, 74. 3 B 2 - Acts

## 380 I N D E X.

- Acts enacting an irritancy ob non folutum canonem, 1st, 363.
- concerning cautioners, 1st, 365.
- for making effectual the debts of heirs who die in apparency, 1st, 365.
- Regulations 1695, concerning decreets-arbitral, 1st, 365.
- authorifing an apparent heir to fell the estate of his predecessor, 1st, 370.
- concerning the creditors of the predecessor, 1st, 371.
- for preventing the frauds of heirs-apparent, 1st,
- concerning gaming, 1st, 366.
- concerning executions of a fummons, 1st, 384.
- concerning the triennial prescription, 1st, 390.
- concerning expences of process, 2d, 157.
- concerning bankruptcy, 2d, 212. 222.
- ranking apprifers pari passu, 2d, 228.
- about falvage, 2d, 368.
- Acts of federunt explained. Concerning irritant clauses, 1st, 74.
- concerning the creditors of a defunct doing diligence within fix months, 2d, 230.
- ranking arrefters pari passu in the case of bankruptcy, 2d, 231.
- Power of the court of session to make acts of sederunt, 2d, 217.
- Adjudication, during the legal, is a pignus prætorium, 1st, 376. 2d, 29. 172. Its nature and effect after expiry of the legal, 1st, 375. Adjudication of a moveable debt, 2d, 5. Adjudication in implement, 2d, 12. Adjudication declaratory, 2d, 12. What effect has pluris petitio upon an adjudication, 2d, 26. It renders the subject litigious,

gious, 2d, 185. Forms dispensed with in order to give an adjudication the benefit of the act 1661 ranking apprisings pari passu, 2d, 233.

Adultery. Does it deprive a wife of her legal provisions, 2d, 51.

Æmulatio vicini, 1st, 56. 136.

Alien, incapable to inherit land in Scotland, 2d,

Alii per alium non acquiritur obligatio, 2d, 62.

Alii per alium non acquiritur exceptio, 2d, 77.

Ambiguity in the words of a deed or covenant, 1st, 205. In the words of a statute, 1st, 362.

Apprifing. See Adjudication.

Approbate and reprobate, 1st, 317.

Arbiter. Arbiters named without bearing jointly, 2d, 288.

Arbitrium boni viri, 1st, 207. 237.

Arrestee, 2d, 173.

Arrestment, what remedy where the debtor is dead, and no person in whose hands to arrest, 2d, 5. What claims are preferred before an arrestment, 2d, 17. Different kinds of arrestment, 2d, 172. Arrestments of debts or moveables, its nature and effect, 2d, 173. Arrestment bars not poinding, 2d, 176. Arrestment makes a nexus realis: this proposition explained, 2d, 176. Competition between an arrester and an assignee, 2d, 182. Intimation of an arrestment, 2d, 183. How far arrestment makes the subject litigious, 2d, 184. Ranking of arrestments in the case of bankruptcy, Arrestment jurisdictionis fundanda gra-2d, 231 tia, 2d, 10. Arrestment of a delinquent, 2d, 304.

Affignment, what right it confers without intimation, 1st, 57. The cautioner paying the debt is intitled

# 382 I N D E X.

intitled to an affignment, 1st, 114. Secondary creditor intitled to an affignment from the catholic creditor, 1st, 121. An affignment of a debt implies a conveyance of what execution is done upon it, 1st, 240. Effect of an affignment intimated, 1st, 403. Affignment originally but a procuratory in rem fuam, now a cessio in jure, 1st, 405. Affignment by a foreign creditor, 2d, 346. Cedent's oath not good against the affignee, 2d, 351.

#### B

Bankrupt. An infolvent person purchasing goods without having a prospect of making payment, 2d, 17. Powers of a court of equity with relation to bankrupts, 2d, 195. Curator bonis, in the case of bankruptcy, 2d, 208. Disposition omnium bonorum by a bankrupt to trustees for his creditors, 2d, 262. Statutes of bankruptcy in England, what effect they have here, 2d, 359. A reduction upon the head of bankruptcy, whether good against purchasers, 2d, 258. Bankruptstatute 1772, 2d, 264.

Barbarius Philippus, 2d, 113.

Bargain, of hazard with a young heir, 1st, 82. Inequality not regarded intermajores, scientes, et prudentes, 1st, 103. But redressed where made with one weak or facile, 1st, 103.

Bastard, has not the privilege of making a testament; 2d, 335.

Beneficium competentia, 2d, 25.

Benevolence as a virtue diffinguished from benevolence as a duty, 1st, 109. In the progress of society benevolence becomes a duty in many cases formerly formerly disregarded, 1st, 9. Duty of benevolence, how limited, 1st, 109. Duty of benevolence to children, 1st, 109. Connections that make benevolence a duty when not prejudicial to our interest, 1st, 114. Connections that make benevolence a duty even against our interest, 1st, 136.

Bona fide purchaser, 2d, 41.

Bona fide possession rei aliena, has a claim for meliorations, 1st, 145. 2d, 152. Is not accountable for the rents levied and confumed by him, 2d, 111. 137; unless he be locupletion, 2d, 144. Will rents levied by the bona fide possession impute in payment of a debt due to him, 2d, 147.

Bona fides. How far bona fide transactions with a putative proprietor are supported in equity, 2d, 109. How far the acts of a putative judge or magistrate are supported in equity, 2d, 113.

Bona fides contractus, 1st, 337.

Bona fide payment, 2d, 105.

Bond fecluding executors, by what legal execution it is attachable, 2d, 3. Bond of provision, cannot be claimed if the child die before the term of payment, 2d, 164. Rigorous and oppressive conditions in a bond of borrowed money, 1st, 70.

Bonos mores. Acts contra bonos mores repressed by equity, 1st, 17. 2d, 81.

Book. Exclusive privilege of printing books given to their authors and their affigns, 1st, 352.

Bribery in elections, 2d, 50.

Brieve, 1st, 146.

Burden. A fum with which a disposition of land is burdened, by what legal execution it is attachable, 2d, 3.

Catholic

### 384 INDEX.

C

Catholic creditor, his duty with respect to the secondary creditors, 1st, 122. Catholic creditor purchasing one of the secondary debts, 1st, 126.

Cautioner, making payment, is intitled to have an affignment from the creditor, 1st, 114. In what terms ought this affignment to be granted, 1st, 119. Mutual relief between co-cautioners, 1st, 117. How far is a cautioner bound to communicate eases, 1st, 162.

Cess, is debitum fructuum, 1st, 130.

Cessio bonorum, 2d, 26.

Chance disgustful, 1st, 144.

Charity, why it is not supported by law, 1st, 23.

Children. Duty of parents to children, how far extended, 1st, 109.

Citation, at the market-cross of Edinburgh, pier and shore of Leith, 2d, 9. Citation at the head borough, when the debtor cannot be found, 2d, 11.

College of justice, its members prohibited to purchase law-fuits, under a penalty, 1st, 352.

Combinations, unlawful, 2d, 89.

Common law, 1st, 1. Common law farther extended in Scotland than in England, 1st, 7. Whether common law and equity ought to be committed to the same court, 1st, 27. A court of common law cannot decree specific performance of a covenant, 1st, 320. Limited nature of a court of common law, 1st, 2.339. 2d, 9. Powers of a court of common law with respect to statutes, 1st, 345.358. Limitation of common

law.

law with respect to covenants, 2d, 61. Common law strictly territorial, 2d, 313.

Commissioners of bankruptcy, 2d, 210.

Compensation, its equitable foundation, 1st, 11. Injustice of common law with respect to compensation, 1st, 395. Equitable rules with respect to compensation, 1st, 396. Whether compensation be good against an assignee, 1st, 403.

Competition between two affignees to the fame debt, 1st, 158. 2d, 347. Between a reduction upon the head of fraud and an arrestment, 2d, 17. Between a purchaser by a minute of sale and an adjudger, 2d, 19. Between an arrester and an affignee, 2d, 182. Competition among powers and faculties. See the chapter, Powers and Faculties.

Condictio ob injustam causam, 1st, 81.

Condictio indebiti, 1st, 307.

Condictio causa data causa non secuta, 1st, 201.

Condictio ex pænitentia, 1st, 201.

Condition. Conditional bonds and grants, 1st, 230. Conditions distinguished into suspensive and resolutive, 1st, 230. Implied condition. See Implied.

Connections that make benevolence a duty, when not prejudicial to our interest, 1st, 114. Connections that make benevolence a duty even against our interest, 1st, 136. Connections that intitle a man to have his loss made up out of my gain, 1st, 137. Connections that intitle a man who is not a loser to partake of my gain, 1st, 168. Connections that intitle one who is a loser to a recompence from one who is not a gainer, 1st, 179. What connections ought to be disinterested, 2d, 86.

Vol. II.

3 C

Consensual.

## 386 I N D E X.

Confenfual penalty in a bond of borrowed money;

Consequential damage, 1st, 96. Who liable for confequential damage, 1st, 98.

Conftable and Marischal court, instituted for foreign matters, 2d, 315.

Contracts, bona fide and stricti juris, defined, 1st, 199. See Covenant.

Conveyance. Difference between a voluntary and legal conveyance, 2d, 361.

Correctory statutes, whether they can be extended by the court of session, 2d, 120.

Correi debendi, 1ft, 121.

Costs of suit, upon what principle founded, 2d, 158. Court of equity diffinguished from a court of common law, 1st, 4. Jurisdiction of courts of common law, 1st, 2. Court of equity, must be governed by general rules, 1st, 19. 75. 112. 2d, 132. Whether the same court ought to judge both of equity and of common law, 1st, 27. Powers of a court of equity with respect to a deed or covenant, where writing is an effential folemnity, 1st, 218. A court of equity cannot overturn law, 1st, 219. Powers of a court of equity with respect to statutes, 1st, 339. Its powers with respect to matters of utility, 2d, 84. A court of equity cannot overturn a statute; but is not bound by any argument drawn from a statute, 1st, 378. Has power to extend statutes that are preventive of wrong, 2d, 116. Has power to prevent harm even to a fingle person, 2d, 114.

Court of chancery, 1st, 5.

Court of justiciary, its jurisdiction, 2d, 326.

Court of law. To make effectual an unlawful act is inconfiftent with the nature of a court of law, 1st,

355.

355. 357. 2d, 78. Courts of law were originally confined to pecuniary matters, 2d, 55. Promifes and covenants were not regarded originally in courts of law, 2d, 61. Jurisdiction of courts of law, 2d, 312.

Court of session, is a court of equity as well as of common law, 1st, 31, 74. Was originally confidered as a court of common law only, 2d, 216. Various executions, unknown in common law, introduced by the court of fession, 2d, 3. Is the proper court for matters that are not pecuniary, 2d, 56. Trust-rights appropriated to the court of fession, 2d, 70. Is a court of review with respect to matters of police, 2d, 96. By what power doth this court name factors for infants who are destitute of tutors; and give authority for felling the land-estate of a person under age, 2d, 114. Privilege of this court to make acts of sederunt, 2d, 217. Cannot alter a writ of the common law, 2d, 187. Jurisdiction of the court of fession with respect to foreign matters, 2d, 310. Its different jurifdictions, 2d, 317.

Courtefy. A tenant by courtefy is bound to extinguish the current burdens, 1st, 132.

Covenant defined, 1st, 195. Words in a covenant how interpreted. See Words. Was not enforced by an action in our law, 1st, 3. 2d, 61. Equity with respect to covenants, 1st, 12. Use of covenants, 1st, 194. A covenant implies two persons, 1st, 195. Is a mean employed to bring about some end or event, 1st, 197. Where a covenant tends not to bring about the purposed end, 1st, 259. Equity with respect to a deed providing for an event that now can never happen, 1st, 272. Where there is a failure in personmance,

3 C 2

11

### 388 I N D E X.

1st, 320. Specific performance, 1st, 320. Where the failure is partial only, 1st, 329. Indirect means employed to evade performance, 1st, 337. In what covenants is repentance permitted, 1st, 201. A covenant occasioned by error, 1st, 275. Lesio ultra duplum, 1st, 281. Covenant in favour of a third person, 2d, 58.

Creditor taking benefit beyond the interest of the money lent, 1st, 74. Creditor obtaining payment from the cautioner must assign, 1st, 114. In what terms ought this affignment to be granted, 1st, Mutual duties between creditors fecured upon the same subject, 1st, 122. See Catholic creditor. Creditors of the predeceffor preferred before those of the heir, 1st, 371. ought to have the benefit of every privilege competent to their debtor, in order to make their claims effectual, 1st, 371. 2d, 4. Creditor ought to abstain from attaching by legal execution a Subject that the debtor stands bound to make over to another, 2d, 17. In England the heir is not liable to the personal creditors, nor the executor to the real creditors, 2d, 8.

Crime committed abroad, 2d, 326.

Cujus commodum ejus debet esse incommodum, 1st, 289.

Curators, what if some refuse to accept, or die after acceptance, 2d, 290. A foreigner may be a curator, 2d, 325.

Curator bonis, in the case of bankruptcy, 2d, 208. Curator bonorum, 1st, 18.

Curtefy. See Courtefy.

Damage

D

Damage occasioned by a fault without intention to do mischief, 1st, 62. How far a man is liable for damage done by his fervants and cattle, 1st, 63. Damage distinguished into direct and consequential, 1st, 96. In estimating damage arising from a culpable act, power of a court of equity, 1st, Is there room for pretium affectionis, 1st, 101. Loco facti impræstabilis succedit damnum et interesse, 1st, 324. Whether in awarding damages from breach of contract there be any difference between a court of equity and of common law, 1st, 324. What damage is a creditor intitled to upon the escape of his debtor from prison, 1st, 326. Damage against a messenger who neglects to put a caption in execution, 1st, 326. Damage from failing to obey a statute, 1st, 345. Damage from transgressing a prohibitory statute, 1st, 345.

Deathbed. Reduction upon that head, in what manner attachable by creditors, 2d, 4. In what cases can a reserved power of faculty be exercised on deathbed, 2d, 282.

Debitur non præsumitur donare, 1st, 212.

Debts, by what law regulated, 2d, 341.

Deceit, 1st, 86. Deceit distinguished from fraud, 1st, 88. Examples of deceit, 1st, 88.

Declarator of expiry of the legal, its nature and effect, 1st, 380.

Declaratory Adjudication, 2d, 12.

Decreet-arbitral, how far supported in equity against legal objections, 1st, 312. Decreet-arbitral ultra vires, 1st, 313. Objections against a decreet-arbitral, 1st, 365.

Decreet

# 590 INDEX

Decreet of mails and duties, 2d, 172.

Deed, is of two kinds, 1st, 197. A deed is a mean employed to bring about some end or event, 1st, 197. Imply'd will in a deed, 1st, 238. Where a deed tends not to bring about the purposed end, 1st, 259. Where an event happens, which, had it been foreseen, would have prevented the deed from being made, 1st, 272. Where the intendment of the granter is clear, the deed will be supported in equity against defects in form, 1st, 253. Deed ultra vires, 1st, 309. A deed occasioned by error, 1st, 275.

Delivery. Subjects are transferred from the dead to the living without delivery, 2d, 71. 167.

Dies cedit etsi non venerit, 2d, 169.

Dies incertus conditionem in testamento facit, 2d, 169.

Dies nec cedit nec venit, 2d, 169.

Discharge. In a discharge of a debt accessories are understood to be comprehended, ist, 242.

Disposition omnium bonorum to trustees for behoof of creditors. See Bankrupt.

Donatio inter virum et uxorem, 1st, 166.

Donatio mortis caufa, 1ft, 272.

#### E

Ease. Who are bound to communicate eases, 1st, 158. 161.

Electio est debitoris, 1st, 408.

Elegit, refembles an adjudication, 2d, 11.

Entail. A tenant in tail bound to extinguish the annual burdens arising during his possession, 1st, 130. The rents of an entailed estate are the property of the heir in possession, no less than if it were a fee simple, 1st, 131. Irritancies in an entail,

tail, 1st, 228. Notwithstanding clauses irritant and resolutive, the full property is in the tenant in tail, 2d, 73. An entail is of the nature of a sidecommissary settlement, 2d, 73. Whether an entail, after being completed by infestment, can be altered or annulled, 2d, 73. What right is acquired to the substitutes in an entail, 2d, 73.

Equity. Difference between law and equity, 1st, 1.6. No precise boundaries between common law and equity, 1st, 7. 2d, 72. Progress of equity, 1st, 8. 15. Acts contra bonos mores repressed by equity, 1st, 17. 2d, 81. A court of equity ought to be governed by general rules, Ift, 20. He who demands equity must give equity, 1st, 73. One cannot claim equity who fuffers by his own fault, 1st, 156. Equity with respect to a deed or covenant, where writing is an effential folemnity, 1st, 218. Equity yields to utility, 2d, Equity with respect to compensation, 1st, 399. Equity with respect to indefinite payment. 1st, 408. Equity with respect to indefinite intromission, 1st, 418. Equity with respect to legal execution, 2d, 1. 17. Equitable title, 2d, 346.

Equity of redemption with respect to a wadset, 1st, 71. Why there is not the same equity with respect to an adjudication after the legal is expired, 1st, 375. No equity of redemption with respect to a poinding, 1st, 375.

Erroneous payment, 1st, 303. 2d, 105.

Error. How far one is permitted to take advantage of another's error, 1st, 142. 278. 2d, 27. A deed occasioned by error, 1st, 276. Error in a contract of sale, 1st, 280. Error in substantialiabus, 1st, 282.

Eviction,

## 392 - I N D E X.

Eviction, 1st, 177. 283.

Evidence. Equity with regard to evidence, 1st, 392. Evidence of fraud in the case of bankruptcy, 2d, 218. 236.

Exceptio doli mali, 1st, 426.

Exceptio rei judicata, 2d, 366.

Exceptions, intrinsic and extrinsic, 2d, 29.

Execution. Imperfections of com on law with refpect to legal execution, 2d, 1. Injustice of common law with respect to legal execution, 2d, 15. Legal execution is of three kinds, 2d, 171. The creditors privilege to attach any particular subject for his payment, and the debtor's obligation to surrender that subject to his creditor, make the foundation of execution, 2d, 178. No subject ought to be attached by execution that the debtor is bound to convey to another, 2d, 16.

Executor, may pay himself at short hand, without a decreet, 1st, 421. Next of kin preferred before the creditors of the executor, 2d, 21. Nomination of executor by will sustained in every country, 2d, 335. 344. In England, the executor not liable for real debts, 2d, 8.

Expence, laid out by one upon a common subject, 1st, 169. Liquidate expences in case of failzie, 2d, 155. Expences of process, who liable for them, 2d, 158.

Extortion, in a bond of borrowed money, 1st, 69. In a contract of marriage, 1st, 77. In other matters, 1st, 81.

Extract of a decree implies a passing from any claim for costs of suit, 1st. 242.

Extrinsic exception or objection, 2d, 28.

Facility

F

Facility and lesion, 1st, 103.

Factor. Conftituent preferred before the creditors of the factor, 2d, 19. Factor applying his conftituent's money to purchase goods in his own name, 2d, 19. Factors prohibited from purchasing their conftituents debts, 2d, 88.

Factum infectum fieri nequit, 1st, 96.

Faculty. Powers and faculties, 2d, 265.

Feu-duties, are debita fructuum, 1st, 130.

Fideicommissum. Nature of fideicommissary settlements among the Romans, 2d, 68.

Fieri facias. Is not a good title for demanding payament of a debt in Scotland, 2d, 377.

Foreign. The King and council originally was the only court for foreign matters, 2d, 313. In Scotland foreign matters are appropriated to the court of fession; in England, to the courts of common law, 2d, 314. Personal actions founded on foreign covenants, deeds, or facts, 2d, 320. pursuit upon a foreign bond, what interest ought to be awarded, 2d, 321. A foreigner may be chosen a curator, 2d, 325. A crime committed in a foreign country cannot be tried in Scotland, 2d, 326. Reparation arising from a foreign delinquency, 2d, 326. Foreign covenants and deeds respecting land, 2d, 328. Moveables domestic and foreign, 2d, 332. Foreign covenants and deeds respecting debts, 2d, 341. Foreign evidence, 2d, 348. Foreign writs, how far a good title to fue in this country, 2d, 348. Foreign bond, with a clause for registration in Scotland, 2d, 349. Foreign statutes, 2d, 352. Vol. II. pre394

### INDEX.

prescription, 2d, 353. Statutes of bankruptcy in England, 2d, 359. Foreign decrees, 2d, 365. Formulæ actionum, 1st, 146.

Forthcoming. Process for making moveables forthcoming, its nature and effect, 2d, 171. Decreet of forthcoming is a security only, not payment, 2d, 172.

Fraud, 1st, 86. A covenant procured by fraud will be set aside, 1st, 87. Fraud distinguished from deceit, 1st, 88. How far the maxim obtains, Quod nemo debet locupletari aliena jactura, in the case of fraud, 1st, 164. Fraus facta contractui, 1st, 337. Fraudulent purchase of goods where the purchaser has no prospect of making payment, 2d, 17.

Freight, due pro rata itineris, 1st, 331.

Fructus percepti et pendentes, 2d, 141.

Frustra petis quod mox es restituturus, 2d, 104.

Furnishers, have they any preference upon the house they contributed to raise, 1st, 152.

 $\hat{\mathbf{G}}$ 

Gaming, laws prohibiting gaming extended by a court of equity, 2d, 116.

Guardian, not intitled to any recompence for his labour, 2d, 86.

Gift of marriage or of ward taken for the superior's behoof, 1st, 176.

Glebe. Is the present minister liable for the expence of meliorations laid out by his predecessor, 1st, 171.

Government. Duty of submitting to a regular government, upon what founded, 1st, 340.

Gratitude

Gratitude, is a duty in the actio negotiorum gestorum, 1st, 180. Punishment of ingratitude, 1st, 317. 2d, 37.

#### H

Harmony between our internal and external conftitution, 1st, 144.

Harm done in exercifing a right or privilege, 1st,

Hazard, bargain of, 1st, 82.

Heir, bound to communicate eases, 1st, 161. An heir who serves while there is a nearer heir in possibility, is only a conditional proprietor, 2d, 112. An heir cum beneficio intitled to sell the estate, 1st, 370. Heir-apparent acquiring right to debts due by his predecessor, 1st, 372. What privileges descend to heirs, 2d, 76. Is an heir liable for the debts of the interjected apparent heir, when he possesses only without infestment, 2d, 121. What obligations transmit to heirs, 2d, 162. Every obligation transmits to the heir when his predecessor survives the term of payment, 2d, 163. The heir liable to sulfil the will and purpose of his predecessor, 2d, 268. The heir in England not liable to the personal creditors, 2d, 8.

Horning, charge of, makes not the subject litigious, 2d, 185.

#### I

Jailor, how far liable when he fuffers a prisoner to escape, 1st, 326.

Imbecility, 1st, 102.

Implied will explained, 1st, 238.

3 D 2

Indefinite

## 396 INDEX.

Indefinite intromission, injustice of common law with respect to it, 1st, 418.

Indefinite payment, injustice of common law with refpect to it, 1st, 407.

Inferior courts, confined to common law, 1st, 32. Competent to an action for recompence, and to the actio negotiorum gestorum, 1st, 33.

Ingratitude. See Gratitude.

Inhibition, its nature and effect, 2d, 186.

Infurance. Policy of infurance affords not an action at common law, 1st, 327.

Intention is what determines an action to be right or wrong, 1st, 55. 166.

Interdiction, 2d, 185.

Interest. The pursuer must show an interest, otherwise his process will not be sustained, 1st, 56.

Interest, in a pursuit upon a foreign bond, what interest ought to be awarded, 2d, 321.

Intimation of an affignment, 1st, 57. Of an arrestment, 2d, 183.

Intrinsic exception or objection, 2d, 29.

Irritancy in a bond of borrowed money, 1st, 70. Irritancies in entails voiding the contravener's right ipso sate, 1st, 228. Irritancy ob non solutum cannonem, 1st, 230. 363.

Jurisdiction with respect to foreign matters, 2d, 310. A crime committed in a foreign country cannot be tried in Scotland, 2d, 326. Jurisdiction of the court of justiciary, 2d, 326. Jurisdiction of the court of session; see Court of session. Jurisdiction of courts of law, 2d, 326.

Jus quasitum tertio, 2d, 65. What right is acquire red to the substitutes in an entail, 2d, 75.

King

K

King and council originally the supreme court, 1st,

L

Latent infufficiency of goods purchased, 1st, 266. What if the goods be delivered and the property transferred, 1st, 269.

Latter will defined, 1st, 195.

Laws. Every voluntary transgression of municipal law is a moral wrong, 1st, 344. 2d, 352. Laws originally personal without regard to place, became territorial without regard to persons, 2d, 311. Laws have no authority extra territorium, 2d, 311. What matters are regulated by municipal law, 2d, 328.

Lease. A lease of land must imply a power to remove tenants, 1st, 238. How far sterility will relieve against the tack-duty, 1st, 333.

Lectus agritudinis, 1st, 106.

Legacy. A verbal legacy may be proved by witnesses to the extent of L. 100, 1st, 312. Different kinds of legacies, 2d, 71. What action competent for making them effectual, 2d, 71. In what cases legacies transmit to heirs, 2d, 167.

Legal execution. See Execution.

Legatum rei alienæ, 1st, 259.

Legitimation, 2d, 324.

Lesion, 1st, 103. Læsio ultra duplum, 1st, 270. 281. 2d, 131.

Leffee, what claim he has for meliorations, 1st,

Letters

398

### INDEX

Letters of administration in England, not a good title here, 2d, 335.

Levari facies, 2d, 173.

Lex aquilia, 1st, 60.

Lex commissaria in pignoribus, 1st, 70. 380.

Lex Rhodia de jastu, its equitable foundation, 1st, 11. 184. Whether the goods faved ought to contribute according to their weight, or according to their value, 1st, 186.

Liberty of the subject, 2d, 91.

Liquidate expences in case of failzie. See Expence.

Litigious. Inchoated execution renders the subject litigious, 2d, 43. 179. 182. A subject is not rendered litigious with respect to third parties, unless there be a public notification, 2d, 183.

Locus poenitentia, 1st, 202.

Lunatic. Guardian to a lunatic, 2d, 325. Named by the chancellor in England is not intitled to fue for debts in Scotland, 2d, 348.

Lyon-court, 2d, 56.

#### M

Magisterial powers of the court of session, 2d, 114. Magistrate acting extra territorium, 2d, 299.

Malevolence, 1st, 55.

Man. His internal conftitution adapted to his external circumftances, 1st, 142.

Mails and duties, process of, its nature and tendency, 2d, 172.

March-fence, a neighbour who takes the benefit of it not liable for a recompence, 1st, 175.

Marriage, celebrated according to the lex laci, 2d, 324. See Gift of marriage.

Meditatio fuga, 2d, 14.

Melio-

Meliorations. What claim a lessee has for meliorations, 1st, 171.

Members of the college of justice discharged to purchase a subject controverted in a law-suit, 1st, 352.

Messenger, how far liable when he neglects to put a caption in execution, 1st, 326.

Minority, is excepted from the prescription of forty years, 1st, 387.

Minority and lesion, 1st, 103. Reduction upon this head, how attachable by creditors, 2d, 4.

Minute of fale of land, in what manner attachable by creditors, 2d, 5.

Missio in possessionem, in the case of bankruptcy, 2d, 208.

Mobilia non habent sequelam, 2d, 333.

Monopoly, of printing certain books, 1st, 352. Monopoly repugnant to the public interest, 2d, 97. Statutes introducing monopolies cannot be extended by the court of session, 2d, 126.

Mora in performing a covenant, 1st, 321.

Moveables have a local fituation, 2d, 333. Moveables permanent and transfent, 2d, 336. Moveables domestic and foreign, 2d, 332.

Municipal law. See Law. What matters are regulated by municipal law, 2d, 328. 332.

#### N

Negative prescription. See Prescription.

Ne immittas in alienum, 1st, 49.

Neighbourhood, how far it bars a man from exercifing his property, 1st, 49.

Nemo debet locupletari aliena jactura, 'analysed, 1st, 140. 331. 2d, 145. 204. 205. 248.

Nexus

## 400 INDEX

Nexus realis. See Arrestment.

Notary figning for a party, 1st, 311.

Nuisance, 1st, 49.

Nuncupative testament or legacy, may be proved by witnesses to the extent of L. 100, 1st, 312.

#### O

Objection extrinsic and intrinsic, 2d, 28.

Obligation ad factum prastandum, 1st, 330. What obligations transmit to heirs, 2d, 162. What if the creditor survive the term of payment, 2d, 163.

Objection personal. See Personal objection.

Obligor and obligee, defined, 1st, 195. Obligor may be bound without an obligee, 2d, 60.

Occasional benefit affords not any claim against the person benefited, 1st, 174.

Offer defined, 1st, 195.

Officer. Power that officers of the law have to act extra territorium, 2d, 299.

#### Þ

Pastum contra bonos mores, 1st, 17. Contra utilitatem publicam, 2d, 89. Pastum contra fidem tabularum nuptialium, 1st, 77. Pastum liberatorium, 2d, 77. Must be effectual even in a court of common law, 2d, 78. Pasta illicita, 2d, 81. 86. Pastum de quota litis, for what reason prohibited, 1st, 17. 2d, 87.

Parent. Duty of parents to children, how far extended, 1st, 100.

Payment. A debtor who knows privately of an affigument, making payment to the cedent, 1st, 58.

Erro

Erroneous payment, 1st, 303. Indefinite payment, 1st, 407. Payment made by a third person without a mandate from the debtor, 2d, 79. Bona fide payment, 2d, 105. Payment analysed, 2d, 149. Payment of money in England, how proved, 2d, 350.

Penalty. Penal clauses in a bond of borrowed money, 1st, 70. A court can order a thing to be done under a penalty, 1st, 348. 2d, 57. Statutory prohibitions under a penalty, 1st, 349. Whether it be in the power of a judge to inslict any penalty beyond what is enacted, 1st, 350. A penalty cannot be extended beyond the words, but it may be limited within the words, 2d, 52. Bona fides with respect to penalties, 2d, 53. A penal statute cannot be extended by the court of session, 2d, 127. Powers of a court of equity with respect to conventional penalties, 2d, 153.

Personal objection, 1st, 426. 2d, 37. 40. 48.

Pignus prætorium, 2d, 29.

Pleas of the crown, 1st, 5.

Pluris petitio, what effect it has with respect to legal execution, 2d, 27.

Poinding, nature of this execution, 2d, 171. 172. Whether barred by an arrestment, 2d, 176. 182. Competition of a poinder with an affignee, 2d, 192. Admits not an equity of redemption, 1st, 375. Effects extra territorium not carried by a poinding, 2d, 377.

Police, 2d, 96.

Policy of Insurance, affords not an action at common law, 1st, 327. Where fraudulent is set aside by a court of equity, 1st, 88.

Popular action, 1st, 366.

Positive prescription. See Prescription.

Vol. II.

3 E

Posities:

### INDEX.

Positus in conditione non censetur positus in institutione, 1st, 243.

Possession, retention of, till debts due to the possession be paid, 2d, 103.

Potior est conditio possidentis, 1st, 356.

Powers and faculties, 2d, 265. Powers given to a plurality, 2d, 286. Power to act jointly, 2d, 287. To act extra territorium, 2d, 299.

Prætium affectionis, 1st, 101.

Prescription. Positive prescription protects not against burdens that naturally affect property, 1st, 54. Prescription of penal actions, 1st, 366. Runs not against persons under age, 1st, 387. Triennial prescription, 1st, 390. English prescription of six years, 1st, 387. What effect it has in this country, 2d, 354. The statute 1617, introducing the positive prescription, explained, 2d, 117. Extended to similar cases by the court of session, 2d, 119. The statutes introducing the negative prescription of forty years extended, 2d, 119.

Prior tempore potior jure, 2d, 199.

Privileges, how attachable by creditors, 2d, 4.

Process, for payment before the term of payment, 2d, 5. Of forthcoming before the term of payment, 2d, 7. Of poinding the ground before the term of payment, 2d, 7. Process of forthcoming. See Forthcoming.

Procuratory in rem fuam, 1st, 405.

Promise defined, 1st, 195. How far binding by the law of nature, 2d, 58. A promise to give a man a sum not to rob me, is not binding, 1st, 81. Advantage of promises, 1st, 194. A promise implies two persons, an obligor and obligee, 1st, 195. Promise in favour of a third person, 2d, 59. Impersection

perfection of common law with respect to promises, 2d, 61.

Property. A man ought not to exercise his property in amulationem vicini, 1st, 56. 136. He may fence his bank against the increachments of a river, 1st, 48. Must not throw any thing into a neighbouring field that may do mischief, 1st, 49. How far the use of a river may be intercepted from inferior proprietors, 1st, 50. Mutual duties between conterminous land proprietors, 1st, 134. In what cases law permits me to act within my neighbour's property, 1st, 134. No man can be deprived of his property who is guilty of no fault, 2d, 24. 44. 184. 192. 203. 226. Though the transference of property be ruled by the will of the vender, it depends on the will of the purchaser whether to accept delivery for his own behoof, or for behoof of another, 2d, 22. Property transferred from the dead to the living without delivery, 2d, 71. 167.

Proprietor. Transactions with a putative proprietor, how far good in equity, 2d, 109.

Punishment. An act without intention to do mischief, is not the subject of punishment, 1st, 62. The transgression of a prohibitory statute may be punished by a court of common law, 1st, 350. Powers of a court of equity with respect to punishment, 2d, 35. The proper place of punishment is where the crime was committed, 2d, 326.

Pupil. The fale of a pupil's lands for payment of debt, 1st, 18. 2d. 115.

Purchase. It is fraudulent to purchase without a prospect of making payment, 1st, 90. Purchaser not bound to receive the subject if insufficient, 1st, 2 E 2 266.

### 404 I N D E X.

266. But after it is delivered to him he has no remedy, 1st, 269. Effect of a purchase made bona fide, 2d, 42. Effect of a purchase made with the knowledge of a prior right, 2d, 41. Effect of a purchase made with the knowledge of execution inchoated upon the subject purchased, 2d, 43. A creditor accepting a security upon a subject which he knows was formerly disponed to another, 2d,

Putative proprietor, 2d, 109.

Q

Quastio voluntatis, 1st, 205. Quasi contracts explained, 1st, 181. 340. Quorum, of curators, 2d, 291. Of tutors, 2d, 293.

#### R

Ransom. Where a ship is ransomed, who are liable for the ransom, 1st, 151. 184. What if the cargo be lost after it is ransomed, 1st, 184.

Reasons. Instances of inept reasoning, 2d, 49.

Recompence, 1st, 181. A person who benefits another without hurting himself has no claim for a recompence, 1st, 174. A person is not liable who takes the benefit of a march-sence made by his neighbour, 1st, 175.

Redemption. Equity of redemption with respect to a wadset, 1st, 375. Whether there ought not to be the same equity with respect to an adjudication after the legal is expired, 1st, 381.

Relief. Mutual relief between co-cautioners, 1st,

Rem versum, 1st, 148. 2d, 144.

Rent-

Rent-charge, 2d, 272.

Reparation, to those who are hurt in their rights or privileges, 1st, 95. There can be no claim for reparation if the action was innocent, whatever be the mischief, 2d, 143. 158. In what cases a man is liable for reparation where he acts in prosecuting a right or privilege, 1st, 45. In what cases when he acts without having in view to prosecute a right or privilege, 1st, 59. How far is reparation extended at common law, 1st, 60. Who are liable to repair consequential damage, 1st, 97.

Repentance, in what covenants permitted, 1st, 201.

Representation in moveables, 2d, 346.

Refignation, made by one who hath no right, but having the proprietor's confent, 2d, 267

Res judicata pro veritate habetur, 2d, 366.

Retention, its equitable foundation, 2d, 100. 130. Retention of possession till every debt due to the possession be satisfied, 2d, 105.

Reversion, by what legal execution it is attachable, 2d, 3.

Right. Why equitable rights are reckoned less steady and permanent than those of common law, 1st, 24. In exercising a right the harming others must be avoided, 1st, 45. A right exercised intentionally to hurt others, 1st, 56.

Rigorous conditions in a bond of borrowed money, 1st, 70. 74.

River, how far the use of it can be intercepted from inferior proprietors, 1st, 50.

Sale,

### INDEX.

8

Sale. A power of redemption in a bargain of fale within a limited time cannot be extended in equity, 1st, 73. Sale of an infant's estate fine decreto, 2d, 115.

Salvage. The foundation of this claim, 1st, 10. Who liable for falvage, 1st, 172, 2d, 368.

Satum folo cedit folo, 2d, 141.

Sequestration, 2d, 173.

Sine quo non in a nomination of tutors and curators, 2d, 295.

Smuggling prohibited goods, a crime against the law of nature, 1st, 343. 356.

Society. Unlawful societies, 2d, 89.

Solatium. Reparation in falatium, 2d, 40.

Solutio indebiti, 1st, 303.

Specific performance of a covenant, 1st, 320.

Sponsio ludicra, 1st, 34.

Statute. Statutes are binding in conscience, 1st, 340. &c. Statutes distinguished into different kinds, 1st, 344. Statutes prohibitory without being inforced by a penalty, 1st, 346. Neglect in obeying a compulsory statute how redressed, 1st, 345. A statute that gives remedy for a wrong shall be taken by equity, 1st, 361. What is the remedy where the will of the legislature is not rightly expressed in the statute, 1st, 362. Where the means enacted fall short of the end purposed by the legislature, 1st, 368. Where the means enacted reach unwarily beyond the end purposed by the legislature, 1st, 383. Statute of limitation in England, 1st, 387. Statutes preventive of wrong extended by a court of equity, 2d, 116.

Stellionate,

Stellionate, 2d, 40.

Sterility, how far it will relieve from paying the tack-duty, 1st, 333.

Subjects that cannot be attached by execution at common law, 2d, 3.

Submission, 1st, 336.

Substitute in an entail. See Entail.

Superior, acquiring right to the gift of his own ward, is bound to communicate the same to his vassals, 1st, 176. The same as to a gift of marriage, 1st, 177.

Surrogatum, 2d, 21.

Suspension, in what cases is compensation a ground of suspension, 1st, 398.

#### Ť

Tack. See Leafe.

Teinds are debita fructuum, 1st, 130.

Tenant in tail, bound to extinguish the annual burdens arising during his possession, 1st, 130.

Territorium, power to act extra territorium, 2d, 299. Testament, 1st, 195.

Title. It is pars judicis to deny action where the title is imperfect, 1st, 429. What effect an equitable title has in a competition, 2d, 346.

Town. How far neighbourhood in a town bars a man from exercifing his property, 1st, 49.

Transaction. Error in a transaction, 1st, 279. Inequality not regarded in a transaction, 1st, 280. 2d, 131.

Transient moveables, 2d, 336.

Triennial prescription, 1st, 390.

Trust-right, nature and effect of, 2d, 12.71. Truftee prohibited to make profit, 2d, 87.

Turpis

## 408 I N D E X.

Turpis causa, 1st, 262. In turpi causa potior est conditio possidentis, 2d, 40.

Tutor, how far, by converting moveable debts into heritable, or, e contra, he can regulate his pupil's possession, 1st, 166. In what cases death or non-acceptance voids a nomination of tutors, 2d, 291. A tutor barred from making any profit to himself in managing his pupil's affairs, 2d, 87. Selling his pupil's land sine decreto, 2d. 115.

#### U

\* Usucapio. The Roman usucapio differs from our pofitive prescription of forty years, 2d, 117.

Usury prohibited under a penalty, 1st, 351. The most lucrative wadset is not usury, 1st, 75. Laws prohibiting usury may be extended by a court of equity, 2d, 117.

Utility, 1st, 17. Equity yields to it, 2d, 129. Matters of utility belong to the court of equity, 2d, 84. Acts and covenants repressed as contra utilitatem publicam, 2d, 89. &c. opposed to equity, 2d, 131.

Utilis actio, 2d, 68.

#### **T**/

Vassal, may claim the benefit of a gift of the superperior's ward when taken for the superior's behoof, 1st, 176. The same as to a gift of marriage, 1st, 177.

Vergens ad inopiam, 2d, 8.

Vicious intromission, 2d, 327.

Vigilantibus non dormientibus jura subveniunt, 2d, 199. Violent profits, 1st, 98.

Wadset

2

## Í N D E X.

409

#### W

Wadset, where the power of redemption is limited within a certain time, 1st, 72. Even the most lucrative wadset is not usury, 1st, 75. Nor can it be reformed by equity, 1st, 75.

Wager. Whether a wager ought to be inforced by an action at law, 1st, 34.

Wages. Mariners wages due pro rata itineris, 1st,

Ward. See Gift of Ward.

Warrandice, how far extended, 1st, 177. Warrandice in a fale of land, 1st, 284. In the conveyance of claims or debts, 1st, 293.

Will. In what cases will has the effect to transfer property without delivery, 2d, 71. 167. A man's will ought to bind his heir, 2d, 268. Implied will. See Implied.

Witness. Payment of money may in England be proved by witnesses, 2d, 350.

Words. Where the words of a deed or covenant are imperfect, what remedy there is in equity, 1st, 203. Words cannot bind without consent, 1st, 219. Defective words cannot be supplied where the writing is an essential solemnity, 1st, 219. Where the words of a statute are imperfect, 1st, 362. Words the best evidence of will, but not the only evidence, 1st, 204.

Writ, defective as not being duly figned by notaries, fupported to the extent of L. 100, 1st, 312. Cafes where writ is an effential folemnity. 1st, 218.

Vol. II.

3 I