[7 R. 465. If the tenant removes or sells the sequestrated effects, he is liable to imprisonment on a summary petition for breach of sequestration. See *Kippen*, 30 June 1846, 8 D. 957.] See *Bell on Leases*, i. 369, 389; ii. 30, 318; *Hunter's Landlord and Tenant*, ii. 415; [*Ersk.* B. ii. tit. 6, § 60; *Bell's Princ.* § 1244; *Rankine on Leases*, 352; *M'Glashan's Sher. Court Prac.* § 2184; *Dove Wilson's Sher. Court Prac.* 492; *Lees' Small Debt Handbook*, 36.] See *Hypothec.*

SERANTERIÆ; was, according to Skene, a tenure common in England. "Grande seriantye" was where a man held his lands of the King, with the *reddendo* of passing with him in his host, or bearing his banner with him in his wars, or leading his host or army. "Petit seriantye" was when one held his lands of the King, paying a knife or buckler, a sheaf of arrows, or the like service; 18 Edw. I.; *Skene, h. t.*

SERIANT; according to Skene, serjeant is he who, at the command of the magistrate, encloses or locks in prison guilty persons delated, or suspected of any crime. *Seriandus curiæ*, the serjeant of the court, the officer or executor of letters or summonses; *Skene, h. t.* See *Recordum.*

SERJEANTS-AT-LAW; in England, [barristers of a superior degree, to which they are called by writ under the Great Seal. Formerly they were supposed to serve the Crown; hence their name, serjeants or *servientes ad legem.* Until the act 9 & 10 Vict. c. 54, the serjeants-at-law enjoyed the exclusive privilege of practising in the Court of Common Pleas; and until the Judicature Act of 1873 (§ 8), every judge of a common law court required to have the degree of serjeant-at-law. Of late years this degree has been gradually supplanted by that of Queen's Counsel, and the extinction of the order of serjeants is merely a question of time. *Sweet's Law Dict.*]

SERPLATH; in the old Scottish computation of weights and measures, contained fourscore stones, a term chiefly used in the accounts of merchants and shipmasters (skippers). A "sek" (sack) of wool contained 24 stones, and by the daily calculation of merchants, 40 stones Troy, although this was not invariable. Each stone Troy contained 16 pounds Troy, and each pound 16 ounces. Each "tunne" contained 6 cwt. Troy, and each cwt. fivescore pounds, or 6¼ stones Troy. "A last of gudes fured hame" (imported), commonly contained 12 barrels, or half a serplath. A last was two packs, and each pack was as great as half a sack of wool-skins, and contained in weight 36 "Sprusse" stones. A Sprusse stone contained 28 pounds Troy. For every last of wax imported by strangers there were 14 ship pounds, and imported by Scotch shipmasters, 12 ship pounds. There were 12 great or 13 small barrels for the last of tar, pitch, and such like wares. By strangers 24, and by Scotch "skippers," 18 barrels of rye-meal were imported for the last; and a last of rye was sometimes 18 and sometimes 19 bolls in measure. Ten packs of wool made a last of wool. Ten hides made a daiker, and 20 daikers made a last; 12 dozen of gloves or "ledder poyntes" made a gross, and a great gross contained 12 single gross. Ten stones of brass made a barrel. Six barrels of English drinking beer made a tun. Twelve barrels of salmon were bought for the last; but in "furing" them over the sea, skippers counted only 9 barrels for the last. The fidder of lead contained nearly 6 score and 8 stones. A "schip pound" contained 16½ stones of Scotch Troy weight. Six-score skins or ells of woollen cloth were counted to the hundred. *Skene, h. t.* See *Weights and Measures.*

SERVANT; is one who hires his service at a certain rate. See *Location. Master and Servant.* [*Workman.*]

SERVANTS' WAGES. See *Wages.*

SERVICE OF AN HEIR. Before an heir can regularly acquire a right to the estate of his ancestor, he ought to be served heir. Such service is one of the old forms of the law of Scotland, which proceeded, [until recently,] upon a brieve, and included in it the verdict of a jury, fixing the right and character of the heir to succeed to the estate of the ancestor. An heir before his entry is termed apparent heir, and as such possesses certain rights; [but see] *Apparent Heir.* The heir, who desires to complete his title, may either proceed by a service, or he may, on satisfying the superior of his propinquity, and of his right to receive an entry, obtain from him a writ of *clare constat*, infeftment on which will complete the heir's title. See *Clare Constat.* Or the heir may grant a trust-bond to a confidential friend, who, having charged him, as his debtor, to enter, may adjudge, and in that way acquire a title by an adjudication, which will enable the heir, by means of his trustee, and without incurring a representation, to try the effect of any right the ancestor may have given. And if the

estate be in this way cleared of any claims, the confidential adjudger may transfer to the heir the whole right under the adjudication. See *Adjudication on Trust-Bond.*

Where the title is to be completed by service, the form of the procedure will be affected by circumstances. Where the ancestor has died feudally vested in the estate, the heir must complete his title by a special service; and on this special service, he must be infeft; for if he should die after being served heir in special, but without being infeft, the whole procedure falls, and the next heir who enters disregards the special service, and enters to the person last infeft, as if no such service had been expede by the person who died uninfeft. Where, again, the ancestor was not infeft, but held personal rights to the subject, as dispositions with unexecuted procuratories or precepts, the heir, in place of a special service, expedes a general service, in virtue of which he acquires a complete right to the unexecuted procuratories and precepts, and may be forthwith infeft on them, precisely as his predecessor might have been. And should he die without being infeft, still the personal rights are thus completely transferred to him, and will pass to his own heir-at-law, who, in order to acquire right to the unexecuted procuratories and precepts, must be served heir in general to him, and not to the former proprietor. [The mode of service originally in use was altered by the Service of Heirs Act, 1847 (10 & 11 Vict. c. 47); and it is therefore necessary to consider separately the procedure before and after the date of that act.

[1. *Procedure prior to* 1847.]

The general service proceeded on a brieve issuing from Chancery. A note was given in to Chancery stating the nature of the brieve required; that it must be a brieve directed to such a judge ordinary (and any judge ordinary was competent in the general service), for serving the claimant heir in general to his ancestor—care being taken to describe the heir in his proper character. A brieve was then issued from Chancery and delivered to the claimant's agent, containing all the heads of the brieve in a special service, for there was no distinction in the terms of the brieve, farther than in the character of the heir, as described in the brieve. This brieve was proclaimed and published at the head burgh of the jurisdiction within which the heir was to be served, which superseded the necessity of any personal service. It was not necessary to summon a jury; any fifteen persons (the number of which the jury consists) who might be in court, or who might be selected by the claimant's agent, were allowed to act as jurors. See *Inquest.* At the distance of fifteen days after the publication, the service proceeded before the judge. The inquest were sworn by the judge to act faithfully. The heir, or one acting for him, then produced his claim, which stated his relationship, and claimed that he might be served heir under the character stated in the brieve. Evidence was also produced in support of the claim. Under the general service there were only two of the heads of the brieve inquired into, viz., 1. Whether the deceased died at the faith and peace of the Queen, which was presumed, unless the contrary were asserted; and 2. Whether the claimant were the real and lawful heir. The propinquity required to be proved; but where a degree of propinquity was proved, it was presumed to be the nearest; and, in the same way, the person was presumed a lawful heir, unless the contrary were asserted. The jury, if satisfied on these heads with the evidence laid before them, served the claimant, and their sentence was attested by the judge and retoured to the Chancery, whence the brieve issued. From the Chancery a certified copy was given out which was called a retour. A general service established the right of the person served to the character of heir, and also vested those rights which did not require infeftment.

The special service, in like manner, proceeded on a brieve issued from Chancery, but directed, not to any judge ordinary, as in the former case, but to the sheriff of the county within whose territory the lands lay, to which the heir was to be served. The brieve was published at the head burgh of the jurisdiction, and the service might proceed fifteen days after the publication. The jury, consisting of the same number (fifteen), were selected or taken *ex astantibus*, in the same manner as in the general service; and the claim was made, and the evidence in like manner laid before this jury or inquest. The heads of the brieve in the special service were—1. That the deceased died at the faith and peace of the Queen: this was presumed. That he died infeft: this was proved by production of the investiture of the estate. The precise period of the death required also to be proved, to show how long the lands had been in nonentry. 2. That the claimant was the next and lawful heir: this was proved by parole

evidence, the testimony even of the jurymen being admitted; and propinquity being proved, the degree was presumed to be the nearest in existence; but where the propinquity was remote, ancient deeds, specifying the relationship, were received in evidence. 3. Of whom the lands are held: this was proved by the ancestor's charter. 4. By what tenure they were held: this was also proved by the charter. 5. What was the extent of the lands, old and new: this was proved by the production of a former retour; or, where there was none, by the report of an accountant, stating the extent at the same rate with the neighbouring lands in the same county, in proportion to the valued rents of the said lands. 6. That the claimant was of lawful age: this was affirmed by the jury, whatever the age of the claimant might be. 7. In whose hands the fee had been since the death of the ancestor: this was no further answered than to prove liferents where they existed, as they excluded non-entry, while they lasted. These heads being proved, the jury served the heir, and the judge retoured the service to Chancery; an extract from which, as in the case of the general service, was called the *retour* of the heir's service.

The general service was completed as soon as it was retoured; and all the right which a general service could give was thenceforward vested in the person served. The special service, as already observed, carried no right to the heir served, until his title was completed by sasine. Where the lands held of the Crown, the heir applied to the Chancery; and, upon production of his retour, a precept was issued of course, directed to the sheriff of the county, requiring him to infeft the heir, and to take security for the non-entry and relief duties; and the precept required to be executed before the next term, or it could not be executed at all, and a new one had to be applied for. On this precept the heir was infeft, and his title to the estate of his ancestor thereby completed. See *Post Proximum Terminum.* Where the lands held of a subject, the heir might obtain a precept of *clare constat* from the superior, proceeding on a narrative of his special retour; and infeftment on that precept completed his title; but if the superior refused, the heir might, under 20 Geo. II. c. 50, upon production of his special retour to the Court of Session, obtain a warrant to charge the superior to receive him within fifteen days; and on payment of the non-entry and relief duties, and production of the ancient titles, the superior was bound to give his precept in terms of the ancient rights. See *Charge to Enter. Charter.* But if the superior still delayed, a precept might be obtained from Chancery for infefting the heir. Where the superior was unentered, in place of being charged under the 20 Geo. II., he was charged to enter himself heir, and thus to complete his title to the superiority, in terms of the act 1494, c. 58, within forty days, that he might be in a situation to receive his vassal's heir; and if he failed so to do, he lost the casualties which he might have claimed. But he did not lose the feu-duties; these remained due to the immediate superior; and the heir proceeded against the higher superiors, successively, on their respective refusals, until he arrived at the Crown, from whom a precept was obtained without the necessity of a charge. In one or other of these ways was the title of the heir holding of a subject-superior completed.

[2. *Procedure since* 1847.

[The new and simpler procedure, with regard to the service of heirs, introduced by the Service of Heirs Act, 1847, was reenacted with alterations, by the Consolidation Act, 1868; and the provisions of §§ 27 to 58 of the latter act, read along with certain amendments made by the Conveyancing Act, 1874, constitute the existing code of regulations on this subject. By § 27 of the act of 1868 the old procedure by brieve of inquest from Chancery is declared incompetent, and it is provided that "every person desirous of being served heir to a person deceased, whether in general or in special, and in whatsoever character, ... shall present a petition of service to the sheriff," in manner set forth in the act. By § 28, "in every case in which a general service only is intended to be carried through, such petition shall be presented to the sheriff of the county within which the deceased had at the time of his death his ordinary or principal domicile, or, in the option of the petitioner, to the sheriff of Chancery, and if the deceased had at the time of his death no domicile within Scotland, then in every such case to the sheriff of Chancery; and in every case in which a special service is intended to be carried through, such petition shall be presented to the sheriff within whose jurisdiction the lands or the burgh containing the lands in which the deceased person died last vest and seised are situated, or, in the option of

[the petitioner, to the sheriff of Chancery; and in the event of the lands being situated in more counties than one, or in more burghs than one, if such burghs are in different counties, then in every such case to the sheriff of Chancery."

[The petition must be subscribed by the petitioner himself, or by a mandatory specially authorised; § 29. Forms of petitions of general and special service are prescribed (scheds. (P) and (Q)); and the same particulars are set forth therein as were set forth in a claim under a brieve of inquest according to the old procedure, with the exceptions contained in the following proviso:— "Provided always that it shall not be necessary in such petition to set forth in any case the value of the lands either according to new or old extent, or the valued rent thereof, or of whom the lands are held, or by what service or tenure they are held, or in whose hands the same have been since the death of the ancestor, or whether or how long the same have been in non-entry, or that the petitioner is of lawful age, or that the ancestor died at the faith and peace of the Sovereign; but that in setting forth the death of the ancestor, there shall also be set forth the date at or about which the said death took place, and in cases of general service" (except when the petition is presented ten years after the death of the deceased, and his last domicile is unknown, § 34), "the county or place in which the deceased at the time of his death had his ordinary or principal domicile, and that in every case in which the petitioner claims to be served heir of provision, or of taillie and provision, whether in general or special, the deed or deeds under which he so claims shall be distinctly specified;" § 29.

[By §§ 30, 31, provision is made for the general publication of all services before being proceeded with, and for special intimation to any one lodging a caveat. The procedure and mode of proof are regulated by §§ 33–36. The *inducie* are fifteen days in the ordinary case, but twenty days are required when the publication is to be made in Orkney or Shetland, or when the petition is presented to the sheriff of these islands; and thirty days when the deceased died abroad. The petition of service is equivalent in effect to a brieve and claim in the old form; § 32; and an extract decree of service is equivalent to an extract retour; § 37. A record of services is provided for by § 38, an index or abridgment of which is to be published annually. By § 40, no person is entitled to oppose a service, who could not [have appeared against a brieve of inquest by the former law. No person, therefore, can now oppose, unless he has himself presented a petition for service. In case of competing petitions, any of the parties may remove the proceedings to the Court of Session by note of appeal, and if the court judge proper, the cause is tried by jury, and a remit is made to the sheriff to pronounce decree in terms of the finding of the court or the verdict of the jury; § 41. See *Campbell*, 26 June 1866, 4 Macph. 867; *Mackintosh*, 30 May 1873, 11 Macph. 636; 7 Dec. 1875, 3 R. 232. The judgment of the sheriff may be brought under review of the Court of Session by note of appeal, presented within fifteen days (or twenty days in the case of Orkney and Shetland); § 42. Procedure in reduction of a decree of service is regulated by § 43. By § 46, every decree of special service, on being recorded in Chancery and extracted, has the effect of a disposition from the deceased to the heir served, and his successors and assignees, who may complete a feudal title by recording the extracted decree in the Register of Sasines. If the person served be not infeft, his heirs and assignees may complete their title as if the extracted decree were an unrecorded conveyance. By § 9 of the act of 1874, a personal right to land vests in the heir without any service, by his mere survivance of the deceased. See *Personal Rights*. By § 11 of the same act, it is no objection to any decree of service, whether general or special, that the character in which an heir is entitled to succeed is erroneously stated therein, provided such heir was in truth entitled to succeed as heir to the lands specified in the decree; but see *Begg's Conv. Code*, 340, note (*d*). By 1695, c. 24, when an heir wished to avoid incurring universal liability for the debts of the deceased, he might be served *cum beneficio inventarii; i.e.*, if he gave up and recorded, within the *annus deliberandi*, an inventory of the estate, his liability was limited to the amount of the inventory. See *Beneficium Inventarii*. A simpler mode of securing a limited passive representation was provided by § 49 of the act of 1868, viz., by annexing a specification to the petition for general service. But the necessity for any such procedure has been removed by § 12 of the act of 1874, which provides that "an heir shall not be liable for the debts of his ancestor, beyond the value of the estate of such ancestor to which he succeeds." By § 31 of the same

[act, a decree of general service to a proprietor infeft, in favour of the heir of investiture, is equivalent to a *mortis causa* general disposition by the deceased, to the effect of enabling the heir, or those deriving right from him, to expede and record all notarial instruments competent to a general disponee, under the acts of 1868 and 1874. A general service by the heir of one so served, or by the heir of a general disponee, has the same effect as a transmission of the right to the lands; and such services (like general dispositions) are sufficient links in the series of titles for connecting the person expeding a notarial instrument with the person last infeft. By § 57 of the act of 1874, the sheriff need not hold a court for the disposal of any unopposed petition for service.]

See *Ersk.* B. iii. tit. 8, § 59; *Stair*, B. iii. tit. 5, § 28; [*More's Notes*, cccxxiii.;] *Bank.* B. iii. tit. 5, § 14; *Bell's Com.* i. 703; *Bell's Princ.* §§ 779, 1824; [*Menzies' Conv.* 792; *M. Bell's Conv.* ii. 1082; *M'Laren on Wills*, i. §§ 204, 1189; *Craigie's Digest* (Herit.), 117; *Jurid. Styles*, i. 300. See *Retour. Succession. Clare Constat. Apparent Heir. Chancery, Sheriff of.*]

SERVICES, PERSONAL. See *Personal Services.*

SERVIENS CURIÆ. See *Seriant.*

SERVIENT TENEMENT; is the tenement over which a servitude has been granted or acquired in favour of a dominant tenement. See *Servitude.*

SERVITUDE; [is defined by Erskine to be "a burden affecting lands or other heritable subjects by which the proprietor is either restrained from the full use of his property, or is obliged to suffer another to do certain acts upon it, which, were it not for that burden, would be competent solely to the owner."] Servitudes are either predial or personal. A predial servitude is a servitude constituted over one subject or tenement, in favour of the proprietor of another subject or tenement. It is only in virtue of his property that a person enjoys a predial servitude; and when he transfers the property to another, the servitude passes along with it. The tenement over which a predial servitude is constituted is called the servient tenement, and its proprietor the servient proprietor: that in favour of which the servitude is constituted is called the dominant tenement, and its proprietor the dominant proprietor. Personal servitudes are those constituted over a subject in favour of a person, without reference to his possession of another subject. In the Roman law there were four classes of personal servitudes—*usufructus*, *usus*, *habitatio* and *operæ servorum*. In Scotland the only rights which have been classed under personal servitudes are the different kinds of usufruct: liferent, by reservation or constitution, terce, and courtesy. See *Liferent. Terce. Courtesy.* And it has been doubted whether liferent would not with more propriety be considered as limited property than as a servitude. Those who adhere to the Roman law classification maintain that servitude is the category to which liferents are most conveniently referred. But this is merely a matter of arrangement. Predial servitudes are either rural or urban. This distinction has no reference to the circumstance of the tenements being within or beyond the limits of a town. A rural servitude is a servitude which does not affect houses or other edifices, but which is constituted over fields, inclosures, &c., though in a town: to this class belong the servitudes of passage, road, way, pasture, feal and divot, aqueduct, watering, or *aquæhaustus*, thirlage. An urban servitude is in some way connected with houses: to this class belong the servitudes *oneris ferendi*, *tigni immittendi*, *stillicidii*, *fluminis*, *altius tollendi*, light, prospect. See these articles; [also *Support.*] Predial servitudes are either positive or negative. A positive servitude is one in virtue of which the dominant proprietor is entitled to perform some act affecting the servient tenement, which, but for the servitude, the servient proprietor would be entitled to prohibit: thus, a proprietor is not entitled to rest his house upon another proprietor's pillar; but if the servitude *oneris ferendi* be constituted in his favour, he may do so. A negative servitude is one in virtue of which a servient proprietor is prohibited from performing some act, which, but for the servitude, he would be entitled to perform. Thus a proprietor is entitled to build his house as high as he chooses; but if the servitude *altius non tollendi* be constituted in favour of a neighbouring tenement, he will be restricted from building it higher than it is when the servitude is constituted.

A positive servitude is constituted either by grant or by prescription. [The grant must be constituted by writing, holograph or tested,] and must be followed by possession, either actual, as by use, or civil, by the recording of a sasine containing the grant. Charter and sasine in the dominant

subject, with use of the servitude for forty years, complete the right to a positive servitude. See *Prescription.* [The grant is in certain circumstances implied. If, for example, there is a severance of two adjoining properties which had previously been held by the same owner, the one being conveyed away and the other being retained, or both being conveyed to different persons, whatever servitude over the one is necessary for the enjoyment of the other, is granted by implication. Thus when a man sells a piece of his ground, to which the only access is through another portion of ground which he reserves, the right of access is implied. See *Walton*, 20 July 1876, 3 R. 1130; *M'Laren*, 10 July 1878, 5 R. 1042. Even when the servitude is not absolutely necessary, but only necessary for the convenient and comfortable enjoyment of the property, the grant may be implied; *Cochrane* v. *Ewart*, 22 March 1861, 4 Macq. 117. But in order to pass by implication, the servitude must be apparent, *i.e.*, such as may be seen or known on a careful inspection by a person ordinarily conversant with the subject; *Pyer*, 1 H. & N. 916. And it must also, in general, be continuous; *Polden*, L.R. 1 Q.B. 156; *Watts*, L.R. 6 Ch. 166. But a way of access, though not in the ordinary sense continuous, may pass by implication, if it is so necessary for the convenient enjoyment of the property that a purchaser would not, as a reasonable man, have bought it without such access. See *Gow's Trs.* 28 May 1875, 2 R. 729; *Walton, supra; Union Herit. Securities Co.* 3 March 1886, 13 R. 670; and other cases in *Rankine*, 361–2. The English decisions in this branch of law indicate much fluctuation; but the following statement by Lord Justice Thesiger, in *Wheeldon*, 1879, 12 Ch. D. 31, is now generally accepted:—"Two propositions may be stated as the general rules governing cases of this kind. The first of these rules is that, on the grant by the owner of a tenement of part of that tenement, as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean *quasi* easements),* or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and [which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. The second proposition is that, if the granter intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant. Those are the general rules governing cases of this kind, but the second of those rules is subject to certain exceptions. One of those exceptions is the well-known exception which attaches to what are called ways of necessity; and I do not dispute for a moment that there may be, and probably are certain other exceptions. . . . . Both of the general rules which I have mentioned are founded upon a maxim which is as well established by authority as it is consonant to reason and common sense, viz., that a grantor shall not derogate from his grant." See also *Suffield*, 33 L.J. Ch. 249; *Russell*, 1885, 10 App. Ca. 590; *Thomson*, 1887, 20 Q.B.D. 225.] A negative servitude can only be constituted by grant; [see *Dundas*, 12 March 1886, 13 R. 759. In *Heron*, 27 Nov. 1880, 8 R. 155, the court appeared to affirm the constitution of a negative servitude by implied grant; but in *Dundas*, Lord Pres. Inglis observed that the principle of *Heron's* case was a principle of the law of tenement, not of servitude.] A negative servitude does not admit of possession, and therefore cannot be acquired by prescription. For the same reason, the grant alone, without use, is sufficient for its constitution.

[A servitude, when properly constituted, is effectual against a singular successor, though not followed by infeftment. But this applies only to such servitudes as are well known and recognised by law or custom, and such as a purchaser might reasonably inquire after. See *Nominate and Innominate.* All other burdens, unless made real by entering the infeftment, are of the nature of personal agreements, effectual against the granter and his heirs, but not against singular successors. This limitation is strictly observed in regard to negative servitudes. Positive servitudes being less likely to escape detection, a few instances of an anomalous nature have been sustained, on proof of long usage; *e.g.*, a servitude of bleaching, in *St Clair*, 1779, M. 14549, 2 Pat. 554; see also *Home*, 18 Dec. 1846, 9 D. 286; *Rattray*, 26 June 1867, 5 Macph. 944. But a servitude of walking and recreation was negatived in *Dyce*, 28 May 1852, 1 Macq. 305; as was also a servitude of trout-fish-

* "Those uses which, if the two tenements had been separately owned, would have been easements or servitudes, are, during unity of ownership, called *quasi* easements or *quasi* servitudes;" *Rankine*, 362.

[ing, in *Ferguson*, 18 July 1844, 6 D. 1363, and *Patrick*, 28 March 1867, 5 Macph. 683; and of curling and skating, in *Harvey*, 23 June 1853, 15 D. 768. A right of golfing over links was called a servitude in *Mags. of Earlsferry*, 12 June 1829, 7 S. 755; see also Sheriff Mackay, in *St Andrews Ladies Golf Club*, 13 May 1887, 14 R. 686, 692. But the propriety of so styling this right has been questioned; see *Rankine*, 349; *Sanderson*, 22 June 1859, 22 D. 24. See also, as to golf, *Dempster*, 1805, M. 16141, 2 Dow, 40; *Kelly*, 1812, in Lord Cuninghame's Note in *Home*, *supra*, 9 D. 293; *Paterson*, 27 July 1881, 8 R. (H.L.) 118; *St Andrews Ladies Golf Club*, *supra*.]

Servitudes are extinguished, 1. *Confusione;* that is, by the dominant and servient tenements becoming the property of the same person. Professor Bell's doubt, whether such extinction is permanent, has been stated in the article *Res sua nemini servit*. 2. By renunciation; [*Mags. of Rutherglen*, 10 March 1886, 13 R. 745.] 3. By the extinction of either the dominant or servient tenement; or by a change of circumstances rendering the servitude no longer available. Sometimes, however, where such change is only temporary, the servitude may be merely suspended until matters are restored to their former state. 4. By prescription; and this applies both to positive and negative servitudes. A servitude only creates an obligation *ad patiendum;* and therefore the servient proprietor cannot be called on to do anything, such as to repair his wall for the purpose of giving better support for the dominant proprietor's roof. A stipulation that the servient proprietor be bound *ad agendum*, imposes merely a personal obligation. A servitude is intended for the benefit of the dominant tenement; and the dominant proprietor, therefore, is not entitled to exercise his right merely to distress the servient proprietor, where it is productive of no benefit to himself. The benefit is confined entirely to the dominant tenement. The servient proprietor must do nothing to diminish the use or convenience of the servitude. [But the servitude must be exercised *civiliter*, and in the way least burdensome to the servient tenement. The dominant proprietor is entitled to access for performing, at his own expense, all operations necessary for preserving and making use of the servitude; but the servient proprietor will be protected against improper or nimious use of this privilege; *Weir*, 7 April 1854, 7 W. & S. [244.] See *Ersk.* B. ii. tit. 9; *Bank.* ii. tit. 6 and 7; *Stair*, B. ii. tit. 7; B. iv. tit. 45, § 17; *More's Notes*, ccxx.; *Bell's Princ.* § 979; [*Rankine on Land-Ownership*, 343, 474; *Gale on Easements; Duff's Feudal Conv.* 136; *Jurid. Styles*, i. 47.]

SESSION, COURT OF. The Court of Session is the supreme civil court of Scotland, and was instituted in the year 1532. This court formerly consisted of fifteen judges, who sat all in one court. But by 48 Geo. III. c. 151, the judges were required to sit in two Divisions; and by 1 Will. IV. c. 69, their number was reduced to thirteen—the Lord President, the Lord Justice-Clerk, and eleven Ordinary Lords. The Lord President and three Ordinary Lords form the First Division, and the Lord Justice-Clerk and other three Ordinary Lords the Second Division; [and the remaining five Lords Ordinary constitute the Outer House.] The judges of the Court of Session hold their office *ad vitam aut culpam*. Their nomination and appointment is in the Crown. [See *College of Justice. Judges.*] For the quorum of the court, and of each Division, see *Quorum*. Upon a vacancy occurring in the Inner House of either Division, any one of the Inner House judges of the other Division may, if he desire it, be removed to the Division in which the vacancy has occurred; and the vacancy thus created in the Division which the judge has left is supplied by the senior permanent Lord Ordinary. If no Inner House judge desires to be transferred, the vacancy is supplied by the senior Lord Ordinary; [59 Geo. III. c. 45, § 1. In case of indisposition or necessary absence of any judge, the Lord President may nominate another judge to officiate in his room; 31 & 32 Vict. c. 100, § 12. See also 2 Will. IV. c. 5, § 12. The provisions made by statute for the case of equal division of opinion in either Division of the court are explained in the article *Consultation of Judges*. The ordinary class of actions are brought in the first instance before any one of the Lords Ordinary in the Outer House; whence they may be carried to the Inner House by reclaiming note against the judgment of the Lord Ordinary. See *Reclaiming Note*. Some actions, however, are appropriated to the Inner House, and some must be originated in the Bill-Chamber. See *Inner House. Bill-Chamber*. To the Junior Lord Ordinary are appropriated all summary petitions and applications not incident to actions actually depending; 20

[& 21 Vict. c. 56, § 4. He acts also as Lord Ordinary on the Bills during session, the other judges, not being judges in the Court of Justiciary, officiating in rotation during vacation; 2 & 3 Vict. c. 36, § 7. See *Bill-Chamber*. The second Junior Lord Ordinary officiates in teind causes; 1 & 2 Vict. c. 188, § 2. Another Lord Ordinary, usually the third junior, is specially appointed by the Crown to act in Exchequer causes; 19 & 20 Vict. c. 56, § 2. With regard to the absorption into the Court of Session of the Court of Commissioners of Teinds, the Courts of Admiralty and Exchequer, and the Consistorial Court of the Commissaries, see *Teind Court. Admiralty. Exchequer. Commissaries.* By § 8 of the Court of Session Act, 1868, the court was empowered to appoint any four Lords Ordinary to meet as a court for hearing and disposing of such causes as might be remitted to them. This power was exercised once, by A.S. 14 Oct. 1868; but the experiment has not since been repeated. Other courts, consisting of judges of the Court of Session, are appointed from time to time, under statutory powers, for special purposes. See *Valuation of Lands. Election Law*, pp. 330, 336.]

The jurisdiction and other powers of the Court of Session are necessarily treated of in many separate articles throughout this work. [As a general rule, the Court of Session has original jurisdiction in all civil causes, and appellate jurisdiction over all inferior civil courts, unless such jurisdiction, original or appellate, is expressly excluded by statute.] It has a privative jurisdiction in competitions relative to heritage and declarators of the right to it. [But this rule is subject to qualifications, which are explained in the article *Sheriff*. In particular, the Sheriff Courts Act, 1877 (40 & 41 Vict. c. 50, § 8), confers on the sheriff jurisdiction in actions relating to heritage, when the value of the subject in dispute does not exceed £50 by the year, or £1000 value. The Court of Session has also exclusive jurisdiction in all actions affecting rights of status, including consistorial actions; although matters of interim regulation, such as interim aliment, may be competently entertained by the sheriff. Declaratory actions are peculiar to the Court of Session, with the exception mentioned above in regard to heritable rights, and with the further exception of questions relating to moveable rights, where the value of the subject in dispute does not exceed £1000; 40 & 41 Vict. c. 50, § 8. [Actions of reduction and of adjudication are proper to the supreme court; as are also suspensions, unless the sum charged for is under £25. These rules, with their qualifications, are more particularly explained in the article *Sheriff*. For the peculiar equitable jurisdiction of the Court of Session, see *Nobile Officium*. See also *Jurisdiction. Forum Competens.*] Its jurisdiction as a court of review is treated of in the articles *Appeal. Suspension.* In cases where the power of review is excluded, the Court of Session may nevertheless interfere wherever any inferior court exceeds its powers or deviates from statutory regulations. [Appeals from the sheriff court are brought directly to one of the Divisions of the Inner House; 31 & 32 Vict. c. 100, § 65. In causes not exceeding £25 in value, the original jurisdiction of the court is excluded by 50 Geo. III. c. 112, § 28; except where the defender is not subject to the jurisdiction of an inferior court, or where there are defenders who are not subject to the jurisdiction of the same sheriff court; or where the sheriff himself is a party, and therefore disqualified from judging; see *Mackay's Prac.* i. 266. The appellate jurisdiction of the court is also excluded when the value of the cause is not above £25; 16 & 17 Vict. c. 80, § 22. But this does not apply to actions relating to heritage raised in the sheriff court under 40 & 41 Vict. c. 50, § 8; see § 9. Some points decided with reference to the estimation of the value of a cause are noticed in the article *Appeal to the Court of Session.* With regard to the review of judgments of the Court of Session by the House of Lords, see *Appeal to the House of Lords.*] The court has a criminal jurisdiction (which, however, is seldom exercised) in certain cases in which the civil question at issue implies crime in one of the parties. See *Fraudulent Bankruptcy. Forgery.* [*Criminal Prosecution.* As to the exclusion of its jurisdiction in ecclesiastical causes, see *Church Judicatories.*] The court has power to punish contempts of its authority, and to control the conduct of the members of the College of Justice. [See *Contempt of Court. Breach of Interdict. Petition and Complaint.*] They have the right of passing Acts of Sederunt for the regulation of judicial procedure. See *Acts of Sederunt.* On the subject of this article, and for a history of the origin of the Court of Session, the following authorities may be consulted: *Laing's Scotland*, i. 446; *Robertson's Scotland*, i. 45; *Tytler's Scot-*

land, iii. 241; v. 24, 237; [*Burton's Scotland*, iv. 100; *Kames' Hist. Law Tracts*, 207;] *Stair*, B. iv. tit. 1; *Ersk.* B. i. tit. 3; *Bank.* ii. 508; *Ivory's Forms of Process*, i. 3–80; *Beveridge, in Introduction;* [*Shand's Prac.* i. 1; *Mackay's Prac.* i. 1.] See *College of Justice.*

SET-OFF; is the English law term corresponding to compensation. Where there are mutual debts due by the plaintiff and defendant, the debts may be set off against each other; that is, they may be allowed to extinguish each other. *Wharton's Lex. h. t.; Bell's Com.* ii. 118; *Bell's Princ.* § 572. See *Compensation.*

SETT, ACTION OF. Where the owners of a ship disagree as to the manner in which the vessel is to be employed, or where one of the owners is desirous to sell his share, he usually offers it at a certain price to the other owners; and failing an extrajudicial arrangement, an action of sett is competent. This action is an Admiralty process. It is directed by the owner who wishes to be free against the other owners; and the conclusions of the summons are that the defenders shall be decreed either to take his share at a certain price, or to let him have their shares at the same rate; or otherwise, that the vessel shall be sold by public roup, and the price divided amongst the owners according to their respective shares. If, when the action comes into court, either of the parties agree to take the shares of the others at the price put on them, an interlocutor is pronounced decerning and adjudging accordingly; but if not, a judicial sale is ordered, and the price divided, in terms of the conclusions of the summons. The jurisdiction in this matter, formerly exercised by the High Court of Admiralty, was transferred to the Court of Session and to the sheriff courts, by 1 Will. IV. c. 69, whereby the High Court of Admiralty was abolished. See *Ersk.* B. iii. tit. 3, § 56; *Bank.* B. i. tit. 22, § 21; *Boyd's Judicial Proceedings*, 26; *Stair*, B. i. tit. 16, § 4; *Smith's Maritime Prac.* 48; [*Shand's Prac.* i. 417; *Neill's Forms in Maritime Causes*, 174; *Jurid. Styles*, iii. 180.] See *Common Property.* [*Shipping Law.*]

SETT OF A BURGH; is its constitution. The setts are either established by immemorial usage, or were at some time or other modelled by the Convention of Burghs. There is an instance of a new sett being granted to the burgh of Montrose by royal warrant; *Mill*, 28 June 1825, 1 W. & S. 570. See *Ersk.* B. i. tit. 4, § 20; [tit. 1, § 45;] *Bank.* B. iv. tit. 19, § 4; [3 & 4 Will. IV. cc. 76, 77; *Kidd*, 17 Dec. 1852, 15 D. 257. See *Burgh, Royal.*]

SETTERDAYIS SLOP; according to Skene, is a space of time within which it is not leasum to take salmon fish, *i.e.*, from the time of "even-sang" after noone on Setterday, until the rising of the sun on Mononday. *Skene, h. t.* See *Cruive.*

SETTLEMENT. [In Scotland a settlement is an instrument of the nature of a will, or *mortis causa* deed, settling the affairs of a person deceased. See *Will. Testament. Disposition and Settlement.* In England, the word more commonly denotes a deed *inter vivos* (*e.g.*, a settlement in contemplation of marriage), by which any property, real or personal, is settled for certain specified purposes. See *Robertson on Personal Succession*, 98, note (*q*).]

SETTLEMENT OF POOR. See *Poor.*

SETTLEMENT WITH CREDITORS. See *Composition by a Bankrupt.* [*Insolvency. Sequestration.*]

SHARES. See *Joint Stock Company.*

SHEEP. According to Professor Bell, the circumstances which constitute delivery of sheep, sufficient to pass the property, depend entirely on usage. *Bell's Com.* i. 187.

SHERIFF; the chief local judge of a county. According to Skene, the name is derived from his jurisdiction, extending over a "schire, that is, a cutting or section, like as we say, a pair of scheirs, quair-with claith is cutted;" *Skene*, voce *Schireff.* The institution of this office is very ancient. The first notice of it appears in the beginning of the twelfth century in the reign of Alexander I. But the institution was at that time but imperfect; regular sheriffdoms having been established somewhat later. The appointment of sheriffs properly belonged to the Crown; but the great barons frequently assumed the right of naming them. The term "schire" was anciently given to districts of much smaller extent than the sheriffdoms of the present day, each of which, however, had not a sheriff. Previous to the year 1296, these smaller divisions had disappeared; and the enactments of Edward I. give an exact enumeration of thirty-four sheriffdoms, over most of which a separate sheriff had jurisdiction. The jurisdiction of this judge, civil as well as criminal, was anciently very extensive, and within his own district nearly as unlimited as that of the great justiciars throughout the kingdom. See *Tytler's Hist. of Scotland*, ii. 244. In Skene, *De verborum significatione*, voce

Schireff, a full account is given of the institution of the office of sheriff, and the purposes it was intended to serve. According to him the sheriff had for his fee of the escheat, ten pounds, paid when he accounted to the Exchequer for his intromissions. He was bound to have a good and sufficient bailie, for whom he was answerable. He was obliged to hold a sheriff court for the execution of justice after every forty days; and afterwards, all sheriffs, stewards, and bailies, were bound to hold three head courts in the year "by themselves in proper person, at which all barons and freeholders who owed suit and presence in the said courts compeared personally." The sheriff had no jurisdiction beyond his own sheriffdom, in which he was bound to take all means to have the laws proclaimed, that no one might pretend ignorance. It was his duty also to be present in all courts of bishops, abbots, earls, barons, and freeholders, who could not hold their courts unless the sheriff or his deputes were present, or had been summoned. [At the present day, the sheriff-depute is the judge, the principal sheriffship being a mere nominal office. But the sheriff-depute is generally denominated sheriff, or sheriff-principal; see 9 Geo. IV. c. 29, § 22.] By 20 Geo. II. c. 43, § 29, the sheriff must be an advocate of at least three years' standing at the bar. He is disqualified to act as counsel in any cause from the county of which he is sheriff. He holds the office *ad vitam aut culpam*, except when nominated merely *pro tempore* by the Court of Session, in the event of a vacancy, [or when nominated by the Secretary for Scotland as *interim* sheriff in place of a sheriff who has obtained leave of absence, under 39 & 40 Vict. c. 70, § 51;] and he may be removed for misconduct in his office, on a complaint presented by the Lord Advocate, or by four freeholders of the county, to the Court of Session. [By 1 & 2 Vict. c. 119, § 2, a sheriff must have been, at the time of his appointment, in practice before, and in habitual attendance upon, the Court of Session, or acting as a sheriff-substitute. The sheriffs of Midlothian and Lanarkshire must reside within six miles of Edinburgh and Glasgow respectively; 3 Geo. IV. c. 49. The other sheriffs were required to be in habitual attendance upon the Court of Session, by 1 & 2 Vict. c. 119, § 2; but this enactment was repealed by 33 & 34 Vict. c. 86, § 13. By 16 & 17 Vict. c. 92, and 33 & 34 Vict. c. 86, the number of sheriffs was greatly diminished, by uniting several [counties under the jurisdiction of one sheriff.] The Crown may still appoint a high-sheriff, but he must not (by the foresaid act, 20 Geo. II. c. 43, §§ 5, 30) be appointed heritably, or for life, or for any longer time than for one year, and cannot judge in virtue of such appointment.

The civil jurisdiction of the sheriff extends to all personal actions on contract, bond, or obligation, to the greatest extent; to actions for rent—furthcomings—poindings of the ground—and even adjudications, though that is now little more than a nominal jurisdiction, as actions of adjudication are seldom brought before the sheriff. In all possessory actions, as removings and spuilzies, &c.; in all brieves issuing from Chancery, as of inquest, terce, division, tutory, &c.; and generally in all civil matters not specially committed to other courts, the sheriff may judge. [His jurisdiction is privative and final in causes under the value of £25; 1672, c. 16, § 16; 50 Geo. III. c. 112, § 28; 1 Will. IV. c. 69, § 21; 13 & 14 Vict. c. 36, § 17; 16 & 17 Vict. c. 80, § 48. See *Appeal to Court of Session.*] By 1 Vict. c. 41, [amended by 16 & 17 Vict. c. 80, § 26,] he has a summary jurisdiction in all causes not exceeding [£12] sterling, exclusive of expenses and extracts. See *Small Debts.* The jurisdiction of the sheriff has been extended to *cessio bonorum*, and certain Admiralty cases. See *Cessio Bonorum. Admiralty.* [Questions affecting status are beyond the jurisdiction of the sheriff. See *Benson*, 14 Feb. 1854, 16 D. 557; *Wright*, 16 Jan. 1880, 7 R. 460. Thus he cannot decide as to legitimacy, though he may decide as to obligation to aliment, even when filiation is incidentally involved. But only interim aliment can be awarded in an action by a wife against her husband; *Hay*, 24 Feb. 1882, 9 R. 667. Till recently, the sheriff had no power to deal with the permanent custody of children, though in cases of emergency, he might regulate the interim custody; see *Fraser on Parent and Child*, 81. But applications for orders as to custody and access, and other proceedings under the Guardianship of Infants Act, 1886 (except removal of guardians and appointment of others in their place), are competent in "the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside," subject to appeal or removal to the Court of Session, as provided by the act; 49 & 50 Vict. c. 27, § 9. See *Parent and Child*, p. 764. As to competency in sheriff court

[of an application by a mother for custody of a bastard, see *Brand*, 24 Feb. 1888, 15 R. 449. In questions affecting heritable right, the sheriff had, until recent legislation, no jurisdiction. But he could always regulate interim possession (see *Possessory Judgment*); and, by 1 & 2 Vict. c. 119, § 15, he may judge in actions relating to nuisance, or to the constitution or exercise of servitudes. He cannot pronounce decree of irritancy *ob non solutum canonem*, except where the subject does not exceed £25 in yearly value; 16 & 17 Vict. c. 80, § 32. All declarators (with the above-mentioned statutory exceptions) were incompetent in the sheriff court; *Stobbs*, 14 March 1873, 11 Macph. 530; *Wilson*, 21 Oct. 1885, 13 R. 21. Reductions were, and still are, incompetent; see *Reduction*. See also *Suspension*. A petition to interdict the use of inhibition is competent in the sheriff court; *Beattie*, 20 July 1880, 7 R. 1171. An important extension of the sheriff's jurisdiction was effected by 40 & 41 Vict. c. 50, § 8, whereby the following actions were made competent in the sheriff court, viz.:—"(1) All actions (including actions of declarator, but excluding actions of adjudication, save in so far as now competent, and excluding actions of reduction) relating to a question of heritable right or title, where the value of the subject in dispute does not exceed the sum of £50 by the year, or £1000 value (see *Bowie*, 18 March 1887, 14 R. 649); (2) actions of declarator for the purpose of determining any question relating to the property in, or right of succession to, moveables, where the value of the subject in dispute does not exceed the sum of £1000; (3) actions of division of commonty, and division, or division and sale, of common property, where the value of the subjects in dispute does not exceed the sum of £50 by the year, or £1000, value, provided that the act 1695 intituled 'Act concerning the dividing of Commonties,' shall for the purposes of this act, and subject to the limitations hereof, be read and construed as if it conferred jurisdiction upon sheriffs and sheriffs-substitute in the same manner as it confers jurisdiction on the Court of Session; (4) any action against a foreigner, provided (*a*) that such action would be competent in a sheriff court against a Scotsman subject to the jurisdiction thereof; and (*b*) that a ship or other vessel belonging to such foreigner, or of which he is part owner or master, shall have been arrested within the sheriffdom." The same section [further provides that "actions relating to questions of heritable right or title, or to division of commonties, or division, or division and sale, of common property, raised in a sheriff court, shall be raised in the sheriff court of the] county in which the property forming the subject in dispute is situated, and all parties against whom any such action may be brought shall be subject in such actions to the jurisdiction of the sheriff and sheriff-substitute of such county." By § 9 of the same act, it is provided in regard to every action brought under the preceding section in the sheriff court,—(1) That if a defender shall, at any time before closing the record, or within six days thereafter, lodge a note praying that the process may be transmitted to the Court of Session, the process shall be so transmitted, and shall proceed as if raised before the Court of Session; (2) that the Court of Session, or either Division, or any Lord Ordinary, if of opinion that the action might have been properly tried in the sheriff court, may allow the defender (if successful) such expenses only as he would have been entitled to in the sheriff court; (3) that the statutory exclusion of appeal in respect of the value of the cause shall not apply to such actions. By § 10, provision is made for ascertainment of the value of the cause, and its transmission to the Court of Session, in case of the value exceeding the amount specified by the act. By § 11, "when in any action competent in the sheriff court, a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof; provided always, that if any objection to a liquid document of debt, now maintainable only by way of reduction, shall be maintained by way of exception, the objector shall find such caution, or make such consignation, as the sheriff or sheriff-substitute may direct." By 39 & 40 Vict. c. 70, § 46, a person carrying on business, and having a place of business, within a county, is subject to the jurisdiction of the sheriff thereof in any action, notwithstanding that he has his domicile in another county, provided he is cited either personally or at his place of business; but the sheriff may remit the action to the court of the defender's domicile. In *M'Bey*, 22 Nov. 1879, 7 R. 255, ownership of heritage in a county, and joint-tenancy of a farm therein, were held insufficient grounds of jurisdiction. See also *Ferguson*, 25 Feb. 1882, 9 R. 671;

[*Jack*, 2 June 1885, 12 R. 1029. The fact that confirmation of an estate has been taken out in the sheriff court of the deceased's domicile does not subject the executors to the jurisdiction of that court, none of them being resident within that jurisdiction; *Halliday's Exr.* 17 Dec. 1886, 14 R. 251.] The judgments of the sheriff in civil causes are reviewable by the Court of Session only; except that, where the case embraces matters partly civil and partly criminal, the Court of Justiciary is the proper court of review; and in civil causes, where the sum in dispute does not exceed £25, there is a statutory appeal to the Circuit Court; and in small debts, an appeal to the Circuit Court is made competent in certain circumstances. See *Small Debts. Appeal to Circuit Court.*

The sheriff's criminal jurisdiction extends, generally speaking, to the trial of all crimes which do not infer death, or banishment from Scotland, and also to murder (though seldom thus prosecuted), bigamy, sedition, theft, robbery (if not from the person); and he may fine, imprison, banish from the county, and, in the general case, even inflict corporal pains, without a jury. Of late, however, the criminal jurisdiction of the sheriff without a jury has been considerably restricted; and a prosecutor who proceeds without a jury may be made liable in damages. See *Jury.* [By 50 & 51 Vict. c. 35, § 56, the sheriff's jurisdiction was extended to prosecutions for uttering a forged document, for robbery of any kind, for wilful fire-raising, and for aggravated night poaching. The same act gives the sheriff jurisdiction to conduct the first diet in cases which are ultimately to be tried by the Court of Justiciary, or by another sheriff; see *Criminal Prosecution*, pp. 261–2. Practically, the sheriff may try all crimes inferring arbitrary punishment; but he cannot inflict sentence of penal servitude. As to perjury, see *Marr*, 4 Feb. 1881, 8 R. (J.C.) 21; *Roberts*, 25 Oct. 1882, 10 R. (J.C.) 5; and as to statutory offences, see *Clark*, 8 June 1886, 13 R. (J.C.) 86.] He may take cognisance of theft, either at the instance of the private prosecutor or by indictment; and all offences against the police are cognisable before the sheriff. [He may try small cases summarily, inflicting sentences not exceeding a fine of £10, or imprisonment for sixty days; see 11 Geo. IV. & 1 Will. IV. c. 37, § 4; 9 Geo. IV. c. 29, § 19; 27 & 28 Vict. c. 53, § 29. See *Summary Prosecutions.*] He likewise possesses a cumulative jurisdiction with the justices of peace in all riots and breaches of the peace; [*Mackenzie*, 25 Oct. 1882, 10 R. (J.C.) 1. He has jurisdiction to punish, summarily and without a complaint, for contempt of court or prevarication upon oath; *Macleod*, 10 March 1804, 11 R. (J.C.) 26.] He is authorised to apprehend rebels and offenders; and where it is necessary, in prosecution of this duty, he may call out the *posse comitatus*, or force of the county, to his assistance. He may give warrant to arrest for any crime, even treason. He has the charge of taking all precognitions; is answerable for the accuracy of the copies served on panels; he had the charge of the Porteous Roll for the Circuit Court under the old practice; and he is bound to attend on the judges, and to answer to any complaint made against him there. His decision may be appealed from to the Court of Justiciary. [An account of criminal procedure in the sheriff court is given in *Moncreiff's Review in Criminal Cases*, 2 *et seq.*] See also *Hume*, i. 409; ii. 22, 58, 141, 248; *Alison's Prac.* 35. See *Precognition. Criminal Prosecution. Procurator-Fiscal.*

Sheriffs act also ministerially in returning juries to serve on trials. They execute all writs from Exchequer; and for the blanch and feu-duties, and other casualties due to the Crown, they are bound to account in Exchequer; and they annually, in the month of February, strike the fiars, with the assistance of a jury. Writs for electing members of Parliament are directed to the sheriffs to be executed and returned to the Crown Office.

The procedure in sheriff courts is treated of in separate articles throughout this book. [It is now regulated by 39 & 40 Vict. c. 70. In taking proof, the sheriff may, on the motion of any party, and if he sees fit, cause the evidence to be taken down and recorded in short-hand, provided that the sheriff shall himself dictate to the short-hand writer the evidence which he is to record; 37 & 38 Vict. c. 64, § 4. See *Roberts*, *supra.* See on this subject generally, *Ersk.* B. i. tit. 4, § 1; *Bank.* ii. 551; *Swint. Abridg. h. t.; Kames' Stat. Law Abridg. h. t.; Maclaurin's*, [*M'Glashan's*, and *Dove Wilson's Treatises on Sheriff Court Process; Lewis's Manual; Mackay's Prac.* i. 190, 204 *et seq.*, 227, 263. See also *Appeal. Service. Commissaries. Delegated Jurisdiction.*]

SHERIFF-CLERK; is clerk to the sheriff's court. He alone could be notary

in those sasines which were given by the sheriff, proceeding on precepts for infefting heirs holding of the Crown. [The sheriff-clerk is appointed by the Crown, and holds office *ad vitam aut culpam*. He is bound to discharge personally the duties of his office, but may appoint deputes to assist him, for whom he is answerable; 6 Geo. IV. c. 23, § 6; *Heddle*, 1 March 1827, 5 S. 503. See also *Watt*, 21 April 1874, 1 R. (H.L.) 21. He may not practise before his own court; A.S. 10 July 1839, § 160; A.S. 6 March 1783. And if he is personally interested in a suit, another (not his depute) must be appointed clerk in the cause; *Manson*, 8 Feb. 1871, 9 Macph. 492; *Macbeth*, 8 Feb. 1873, 11 Macph. 404.] See *Maclaurin's Sheriff Prac.* 59, 322; *Skene*, voce *Schireff*; [*M'Glashan*, § 408; *Dove Wilson*, 44. See *Criminal Prosecution*.]

SHERIFF IN THAT PART; is a person appointed by the Queen, in signet letters, to supply the place of the sheriff. He was termed the sheriff in that part from being appointed to execute a particular duty, which previously had been in use to be performed by the sheriff. By uniform and immemorial custom, all the diligences of the law are directed to "messengers-at-arms, as sheriffs in that part." *Stair*, B. ii. tit. 38, § 10; *Ersk.* B. i. tit. 4, § 38; *Ross's Lect.* i. 286, 418. See *Adjudication. Poinding.*

SHERIFF; in England, an officer appointed by the Crown to execute process, preserve the peace, and give assistance to justices and others in doing so. [He has also charge of parliamentary elections, of summoning jurors, and of seizing escheated lands.] During his office, he is the first man in his county. The sheriffs of London and Middlesex are chosen by the citizens of London. See *Tomlins' Dict.*; [*Sweet's Dict.*]

[**SHERIFF OF CHANCERY**. See *Chancery, Sheriff of.*]

[**SHERIFF-OFFICERS**; the persons by whom writs are usually served and executions carried out in the sheriff courts. They are appointed by the sheriff, during pleasure, after being examined as to their qualifications, and having found caution for the due performance of their office. See *M'Glashan's Sher. Court Prac.* § 466; *Dove Wilson's Sher. Court Prac.* 50; *Darling on Messengers-at-Arms*, &c., 198; *Office of a Sheriff-Officer*, 1821 (Bell & Bradfute); *Sellar's Forms*, i. 334.]

[**SHERIFF-SUBSTITUTE**. The sheriff-substitute is the resident judge ordinary of the county. As a general rule, he discharges and exercises all the duties and powers of the sheriff-principal; *Fleming*, 19 Dec. 1852, 1 Macph. 188. The sheriff-substitute was formerly appointed by the sheriff-principal; but by 40 & 41 Vict. c. 50, § 3, the right of appointment was transferred to the Crown. The office may be held by any advocate or law-agent of not less than five years' standing; *ib.* 4. At one time, his commission was terminable at the pleasure of the sheriff who appointed him, and expired at his death; but greater security of tenure was conferred by 1 & 2 Vict. c. 119, §§ 3, 4; and the sheriff-substitute is now removable only by a secretary of state, for inability or misbehaviour, upon a report by the Lord President and the Lord Justice-Clerk; 40 & 41 Vict. c. 50, § 5. The sheriff-substitute must reside within his sheriffdom, and cannot act as agent in any legal, banking, or other business, or as conveyancer, factor, or chamberlain, except for the Crown, or hold any office, except such as may be by statute attached to the office of sheriff-substitute; 1 & 2 Vict. c. 119, § 5. His judgment is in most cases subject to review by the sheriff-principal; see *Appeal to the Sheriff*. Besides the salaried sheriff-substitute, there are one or more honorary sheriff-substitutes in each sheriffdom, appointed by the sheriff, who act for the sheriff-substitute in his absence. See *M'Glashan's Sher. Court Prac.* § 15; *Dove Wilson's Sher. Court Prac.* 41.]

SHEWERS; in jury causes, are the persons named by the court, usually on the suggestion of the parties, to accompany the six jurors when a view is allowed. See *View*.

SHEWING OF HOLDING; an action formerly competent to the superior, to have a deed granted to his vassal judicially exhibited to him, that its validity or import might be ascertained. It is now long since this action was laid aside; but its purpose is answered by an action of reduction-improbation. *Ersk.* B. ii. tit. 5, § 3; *Bank.* i. 616; *Kames' Stat. Law Abridg. h. t.*

[**SHIPPING LAW**. Under the term *ship* are included all sea-going vessels, except such as are propelled solely by oars. To regulate the rights and to define the obligations attaching to ships employed in the merchant service, the Merchant Shipping Acts, 1854 to 1889, have been enacted; the leading statute being the act of 1854 (17 & 18 Vict. c. 104). Ships are moveable property, and descend to the executors of a deceased owner. They are subject

[to the diligence of arrestment, whether they are in the possession of the owner or not. British ships can only be owned by (1) natural born British subjects, who have not taken the oath of allegiance to any foreign sovereign or state; (2) naturalised British subjects; (3) bodies corporate, subject to the laws of, or having their principal place of business in, the Queen's dominions, and all British ships excepting certain small vessels, must be registered; act 1854, §§ 18 and 19. The register is a register of title and not of deeds, and is kept by registrars, who are the principal officers of customs at the various ports; § 30. Property in British ships can be acquired—(1) by building or causing to be built; (2) by transfer from the owner; (3) by transmission on his death, &c.; (4) by sale by the master in case of absolute necessity; (5) by sale under warrant of an Admiralty Court; (6) by capture and condemnation by a competent court. (1) When a ship has been built, the builder grants a certificate, containing certain particulars as to its build, &c., which, along with a declaration of ownership by the owner, is produced to the registrar, and at the same time there is delivered to him a certificate of survey by a person appointed under the act; §§ 36 and 40. The registrar thereupon enters in the register the name of the ship, &c., and grants a certificate of the registry of the ship; § 44. This certificate is not a document of title, but is required for the navigation of the ship, and is *prima facie* evidence of the ownership, &c.; §§ 19, 107. It is usual, but not necessary, when a ship is purchased from the builder, before registration, to execute a bill of sale. (2) Where a registered ship, or a share of such ship, is transferred to persons qualified to be owners of British ships, a bill of sale in the form provided by the Commissioners of Customs is executed; §§ 55 and 96; which, with a declaration of ownership by the transferee, is produced to the registrar, who enters the name of the transferee in the register book, and indorses on the bill of sale a note of the registration; § 57. The master of the ship at the same time delivers the certificate of registry to the registrar, who indorses thereon the change of ownership; § 45. Where a British ship is transferred to a foreigner, the certificate of registry is transmitted to the registrar, and notice is given to him of the change of ownership, and he then closes the register, and the ship ceases to be a British ship; § 53. The registered [owner may grant a certificate of sale to any one, authorising him to sell the ship for him. The certificate must bear a note from the register certifying the ownership; §§ 76–79. Where a sale is thus made by the owner's attorney, the former register is closed; § 81. (3) Persons to whom the property in a ship is transmitted by the death, bankruptcy, or marriage of the owner, make a declaration of ownership; § 58; and produce it to the registrar, with the legal evidence of such transmission, *e.g.*, extract of the register of the marriage. (4) The master of a ship is only entitled to sell the ship when in a foreign port, and in a case of extreme necessity; and the courts of law require the clearest evidence of such necessity. (5) Where a ship has been arrested, or been retained under a lien, she may be sold by warrant of an Admiralty Court—in Scotland the Court of Session and sheriff courts—and on an extract of the decree adjudging the ship to the purchaser being produced to the registrar, the purchaser is registered as owner. (6) The owner may also be divested by the capture of the ship in time of war, followed by its condemnation, *i.e.*, its adjudication to the captor, pronounced by an Admiralty Court. The condemnation must be by a court sitting in the country of the captor, and not in a neutral country, but the captured ship may be lying at the time of condemnation in a neutral port, to which it has been carried by the captor. The Admiralty Courts of Scotland have no prize jurisdiction, that having been transferred to the English High Court of Admiralty by the Act of Union. See *Certificate of Registry. Prize.*

A British ship must also comply with the following statutory requirements—(1) Her name, port of registry, number, tonnage, and draught of water must be marked on her; 36 & 37 Vict. c. 85, § 3. (2) She must also have deck and load lines marked in terms of 39 & 40 Vict. c. 80, §§ 25 and 26. It is not now necessary that a British ship should be navigated by a British master, or that even a portion of the crew should be British subjects. The privileges of a monopoly of the coasting trade, and of being the sole importers of goods into this country, which, subject to some exceptions, were conferred by various acts of parliament, have now been abolished. See *Navigation Laws.*

Owners.—A British subject may own either the whole or a part of a British ship, but not more than five persons may be

[registered as joint-owners of a ship, or a share of a ship; 1854, § 37. The property in a ship is divided into sixty-four shares, which may be held by sixty-four different persons; 43 & 44 Vict. c. 18; but joint-owners are for this purpose reckoned as one person; 1854, § 37. The registered owner has absolute powers of disposal, and no notice of any trust can be entered on the register; § 43; but beneficiaries, who must not be foreigners, have the ordinary remedies against a registered owner who holds in trust for them, and can claim the shares in competition with the registered owner's trustee in bankruptcy. Where the transferee under a bill of sale does not enter the transfer on the register, the registered owner holds in trust for him. Part owners are not partners, but *pro indiviso* proprietors. In the case of a dispute between part owners as to the employment of a ship, any owner may bring an action of *sett* and *sale*, in which he concludes for decree that the other owners should take his share at a price fixed by him, or give him theirs at the same rate, or that the ship should be sold. See *Sett*. In England the majority are entitled to employ the ship as they think fit, on finding security against any loss to the minority. As to power of the majority to bind the minority by a resolution in regard to ship's-husband's commission, see *Manners*, 6 June 1884, 11 R. 899. In the case of joint-owners the right to the ship or shares passes to the survivor. The owners must name one of their number as managing owner, or failing their doing so, must entrust the management of the ship to a ship's husband. In either case the name must be registered, and the person so registered is liable in the penalties for failure to comply with various statutory requirements; 39 & 40 Vict. c. 80, § 36. Owners are liable for necessary repairs and furnishings, unless these were supplied on the authority and credit of some one not appointed by them; and for such purposes the master is their agent, except when in the port where the owners reside, or where they have an agent. They are also liable *singuli in solidum* on contracts made by the managing owner or ship's husband, within the sphere of his mandate, and any one can be sued without calling the others. If, however, part owners make a contract by themselves, they must all be called as defenders, each being liable for his share. The purchaser of a share in a ship is not liable for repairs and furnishings previously [made, these not having been on his credit; *Carswell*, 8 July 1887, 14 R. 903. Owners are liable for the negligence of their servants. Their liability in the case of injury to goods by fire, and of loss by robbery, embezzlement, or making away with of gold, &c., unless the nature and value are declared, is excluded by 1854, § 303. In the case of damage to life or property, happening without the actual fault of the owners, their responsibility is limited to an amount not exceeding £15 a ton in respect of loss of life or personal injury, accompanied or not by loss of property, and £8 a ton in respect of loss or damage to property; 25 & 26 Vict. c. 63, § 54. Ship-owners are not liable as common carriers, unless their ships ply on a definite route, and are loaded as general ships. In most cases the liability of the owner is limited by the charter party or bill of lading; *Nugent*, 1 C.P.D. 429. See *Carriers. Master of Ship. Ship's Husband.*

Securities over Ships.—(*a*) *Mortgages.*—A registered ship, or any share therein, may be made a security for a loan, or other valuable consideration, including an account current, the balance due under which can only be ascertained at some future time; 1854, § 66. Mortgages must be in the forms sanctioned by the Commissioners for Customs, and must be presented to the registrar of the port of the ship's registry for registration. He also notes on the mortgage the date and hour of recording; § 67. Mortgages rank according to the date of recording. They are assignable by indorsation in the prescribed form. A mortgagee is not deemed to be owner by reason of his mortgage, and the mortgagor remains owner except so far as may be necessary for making the ship available as a security. See *Laming & Co.* 21 June 1889, 16 R. 828. A mortgagee has power absolutely to dispose of the ship, and to give receipts for the price, but no subsequent mortgagee can sell without consent of all prior mortgagees, or under order of court. In England a mortgagee can enter into possession of the ship, and employ it, drawing the freight and becoming liable for the current expenses, until such time as he has disposed of the ship. In Scotland he cannot enter into possession of his own accord, but may be permitted by the owner to do so. If the mortgagee desires to realise his security, he can arrest the ship, and sell under his statutory power, or he can sell without arresting, and the purchaser will, on his title being completed by regis-

[tration, be entitled to enforce delivery of the vessel to himself. The mortgagee is bound, in selling by public roup or private bargain, to act as a prudent man would, in disposing of his property. The owner may obtain from the registrar a certificate of mortgage, authorising the person named therein to grant mortgages over the vessel, at certain named places, or anywhere if so specified, and within a limited time; §§ 76 and 77. No mortgage can be granted in virtue of the powers in such certificate, in the United Kingdom, if the ship is registered there, or in any British possession where the ship is registered; § 78. (*b*) *Bottomry* (see article on this head). (*c*) *Liens.*—Shipwrights have a common law lien over the ship for repairs effected by them, which they must assert by retaining possession, but if they have effected the repairs on the vessel while lying in an open roadstead, they have no possession and therefore no lien. Maritime liens differ from common liens in not requiring possession. The rule of the maritime law is that the last maritime lien must be satisfied before any other of the same class out of the proceeds of the ship. The following maritime liens rank in the following order:—(1) Salvage claims if last in point of date. (2) Collision claims, but the first lien for damage arising out of a collision ranks before any other subsequent collision claim. (3) Sailors' wages. (4) Master's wages, unless he has personally bound himself so as to prevent him asserting his claim in preference to bottomry bondholders or other creditors. (5) Pilotage and towage charges. (6) Average claims. Maritime liens may be lost by undue delay in asserting them, but if not discharged or lost, they affect the ship in the hands of *bona fide* purchasers, who have had no notice of their existence. As to arrestment of a ship, see *Arrestment*, p. 67.

Employment.—Ships are employed in the home and foreign carrying and passenger trade, under several distinct classes of contract. The ship may be let by the owner to a merchant, either for a fixed term under a time charter, or for a fixed purpose, *e.g.*, to be employed in a search expedition. She may be leased by herself under a contract of *locatio navis*, or along with the services of the master and crew, *locatio navis et operarum magistri*. In the former case the charterer is treated as the owner, except of course as regards the sale or mortgage of the vessel; in the second case, where he takes the manage-[ment and control of the crew, and of the vessel, and the direction of the voyage, and receives the freight, the possession is held to be in the charterer, as owner *pro hac vice*, and the shipowner is not entitled to sue subfreighters for freight. If, however, the direction of the ship and crew continue with the owner, the contract is a contract of carriage. Where the contract is for the carriage of goods either under a charter, or under bills of lading, as in the case of a general ship, the contract is one for carriage of goods and not for a lease of the vessel. See *Charter-Party. Bill of Lading. Demurrage. Master of Ship. Ship's Husband.* For the restrictions on the carrying of dangerous goods, see 36 & 37 Vict. c. 85, §§ 23–28, and 38 & 39 Vict. c. 17. The contract for the carriage of passengers differs from that for the carriage of goods. There is in such contract no absolute undertaking that the ship shall be seaworthy, but merely that the owner will not be guilty of negligence, either by omitting necessary repairs, or by failing to engage a competent crew. The edict *Nautæ caupones* does not apply to the carriage of passengers, and the shipowner is not responsible for failure to land them safely, if he and his servants have taken due care, and exercised ordinary skill and foresight. A passenger is entitled to fairly good food, the quality of which varies as he is a cabin or steerage passenger. Passengers are subject to the authority of the master, who in extreme cases, *e.g.*, inciting the crew to mutiny, or interfering with the navigation of the ship, may arrest a passenger and confine him to his berth. Passengers are also liable in penalties if they commit the offences specified in 25 & 26 Vict. c. 63, §§ 35 and 36, and the master of the ship may at his own hand arrest such offenders and convey them before a justice of the peace; § 37. The master may also in case of necessity call on the passengers to assist in the navigation of the vessel, but not to perform dangerous services. He may also call on them to assist in the defence of the vessel, if attacked by pirates, or hostile men of war. Passengers are bound to obey the ship's rules, and particularly the rules for the preservation of health laid down by the Board of Trade; see Order in Council, 7 Jan. 1864, referring to emigrants. For the various regulations with which the owners of passenger vessels must comply, see the Passenger Acts, 1855, 1863, 1870, and 1889 (18 & 19 Vict. c. 119, 26 & 27

[Vict. c. 51, 33 & 34 Vict. c. 95, and 52 & 53 Vict. c. 29).

Passenger steamers must be specially surveyed; 1854, §§ 301–321; and cannot proceed to sea without a certificate; § 318; but if the certificate be wrongfully refused, an appeal to the Court of Survey of the district is competent; 39 & 40 Vict. c. 80, § 14. The shipowner, if a common carrier, is liable for passengers' luggage, but may protect himself by notice to the passenger; *Henderson*, 1 June 1875, 2 R. (H.L.) 71. If not a common carrier, the shipowner's liability depends either on the conditions expressed in the contract with the passengers, or on the common law obligation to use reasonable care. See *Carrier*.

Navigation.—In order to secure the safety of goods and passengers, shipowners are by maritime law bound to take certain precautions, which have been defined and supplemented by statutory enactment; and charter-parties undertake that the vessel shall be seaworthy, but this clause does not add to the common law responsibility of shipowners, who must answer to the owners of goods, if they be lost through the ship being unseaworthy, either through defect in equipment or overloading. In every contract of service between the owner and the master or seamen, there is now implied an obligation to use all reasonable means to insure the seaworthiness of the ship at the commencement of the voyage, and to keep her seaworthy during the voyage, but there may be special circumstances which justify the sending a ship to sea in an unseaworthy state, and then the old law applies, under which an owner was not responsible to the crew for the want of seaworthiness; 39 & 40 Vict. c. 80, § 5. Sending an unseaworthy ship to sea, except in special circumstances, is now a criminal offence; § 4. To prevent unseaworthy ships putting to sea the Board of Trade has power to detain ships; § 6. And from their orders of detention an appeal lies to a Court of Survey, consisting of a judge and two assessors; §§ 7 and 8. If the detention was without reasonable and probable cause, the owner is entitled to compensation; § 10. Foreign vessels loading in British ports are liable to be detained if unseaworthy, owing to overloading, or improper loading; § 13. Certain precautions must be taken in regard to the loading of grain cargoes; § 22; and deck loads of timber must not be carried in winter; § 23. The chains, cables, and anchors must be tested, as required by 37 & 38 Vict. c. 51; and the [ship must be provided with boats and life-buoys; 1854, § 292; 18 & 19 Vict. c. 119, § 27, and 36 & 37 Vict. c. 85, § 15. Sea-going passenger steamers and emigrant ships must be provided with the means of making signals of distress; 36 & 37 Vict. c. 85, § 18, and 39 & 40 Vict. c. 80, § 21. Lastly, to make a ship seaworthy she must be provided with a competent master and a sufficient crew. See *Seaworthiness*. As to unseaworthiness in relation to policies of insurance, see *Insurance*, p. 559. When the ship is ready to sail, the master must procure the necessary clearance from the officers of the customs. The master must also carry with the ship the certificate of registry, the agreement and account of the crew, the official log book, the manifest, and the charter-party and bills of lading. He must then proceed to the port of destination without deviating and without delay, unless stress of weather or fear of capture compel him to put into an intermediate port, or to take a longer course. It is not a deviation in a long voyage to call at intermediate ports to obtain water or provisions. See *Deviation*. The master may, and in some cases must, employ pilots; see *Pilots*, and, in addition to the statutes there cited, the act 52 & 53 Vict. c. 68. The ship must be navigated in accordance with the rules of good seamanship, and the regulations for preventing collisions at sea issued by Order of Council, under the powers contained in 25 & 26 Vict. c. 63, § 25. These regulations, which have been adopted by most of the maritime countries, deal with the lights to be carried, fog signals, and steering and sailing rules. See the Orders of Council presently in force, in *Guthrie Smith on Damages*, 411. Infringement of the statutory rules raises a presumption of fault on the part of the infringing ship, unless it be shown that the circumstances of the case rendered a departure from the rule necessary; 36 & 37 Vict. c. 85, § 17; or that the infringement was not connected with the collision. See *Collisions*. The master must do no act which will render the ship liable to arrest or forfeiture, and on the completion of the voyage, he must moor or anchor his vessel with all due precaution, report his ship and crew, and deliver his manifest and other papers, according to the custom of the port. The officers of customs are entitled to board ships, and remain on board till the cargo has been discharged. The master must report the cargo, and is liable to heavy penalties if he permit smuggling, which may even entail

[forfeiture of the ship. See the Customs Laws Consolidation Act, 39 & 40 Vict. c. 36. In order to provide for the safe navigation of the coasts of the United Kingdom, the superintendence and management of all lighthouses, buoys, and beacons, is vested in England in the Trinity House, in Scotland in the Commissioners of Northern Lights, and in Ireland in the Commissioners of Irish Lights; 1854, § 389. The said general lighthouse authorities have power, with the sanction of the Board of Trade, to compel local lighthouse authorities to lay down buoys, to remove or discontinue lighthouses or beacons, or to vary the lights, and no local authority can erect a new lighthouse, or make any change in the lights, &c., without the sanction of the general lighthouse authority; § 394. Each general lighthouse authority must inspect all lighthouses, buoys, and beacons within their jurisdiction; 25 & 26 Vict. c. 63, § 43; and may erect new lighthouses, lay down buoys, &c., subject to the approval of the Trinity House, and the sanction of the Board of Trade; 1854, §§ 404–407. The authorities have also power to levy dues, which are subject to revision by the Queen in Council, and they may, with consent of the Queen in Council, exempt any ships or classes of ships from the payment of light dues, alter time, place, and mode of payment, and substitute other rates for any ships or classes of ships; §§ 396–398. The owner, master, and consignee or agent of the ship in her port of arrival or discharge are liable in payment of the light dues; 25 & 26 Vict. c. 63, § 44; which, with exception of local light dues, are paid to the Commissioners, and accounted for by them to the Paymaster-General; 1854, § 402. Injuring lighthouses, buoys, &c., is punishable by a fine, in addition to a liability to make good the damage; § 414; and the lighthouse authority may prohibit any fire or light, which is liable to be mistaken for a light proceeding from a lighthouse; § 415. Lighthouse keepers are exempt from the obligation to serve on juries; 32 & 33 Vict. c. 36, § 1.

Wreck of Ship.—When a ship is sunk, or materially damaged, she becomes a wreck, but she does not cease to be the property of her owner, so long as there is hope of saving her, or until he abandons her. As to what constitutes total loss under policies of insurance, see *Insurance*, p. 560. Whenever a ship has been lost, abandoned, or materially damaged on the [coasts of the United Kingdom, or has caused damage to another ship, or has been stranded on these coasts, or anywhere if a British ship; or if a British ship has been lost or supposed to be lost, and any evidence can be obtained in the United Kingdom, an inquiry may be held; 1854, §§ 432, 433; 39 & 40 Vict. c. 80, § 32; and if a formal investigation is thought expedient, it takes place before the sheriff, or before two justices. The master or mate of the ship, the loss of which is the subject of inquiry, may be required to deliver their certificates to the sheriff or justices, who at the conclusion of the inquiry either return the same, or, if they think there has been fault, forward the certificates with a report to the Board of Trade, in order that, if the Board think fit, the certificates may be cancelled or suspended. The Wreck Commissioner appointed under 39 & 40 Vict. c. 80, § 29, along with the sheriff or justices, holds these investigations with the assistance of two assessors; 39 & 40 Vict. c. 80, § 30. Receivers of wreck are appointed by the Board of Trade, whose duty it is, immediately on learning of the stranding of a ship or boat, or of its being in distress within their districts, to proceed to the spot, and there take command of all persons present, and issue directions for the saving of the ship and the lives of the persons belonging thereto. A penalty is imposed on disobedience, but the receiver is not entitled, unless requested by the master, to interfere between him and the crew, so far as the management of the ship is concerned; 1854, § 441. He may also summon such number of men as he thinks necessary to assist him, and requisition the crews and boats of any ship that may be near, and any waggon, cart, or horses; § 442. He takes possession of all cargo and wreckage, and may even do so by force, from any person refusing to deliver it to him; § 443. He has power to suppress plunder and disorder by force; § 444. For the purpose of rendering assistance to a ship in distress, or of saving the lives of those on board or the cargo, any persons may pass over any ground with or without carriages or horses, without the consent of the owner, who is liable to a penalty if he prevents their doing so; § 447. So soon as convenient, the receiver examines upon oath any persons who can give him information regarding the vessel, the occasion of its distress, and the services rendered, and then sends a

[copy of the examination to the Board of Trade, and another to Lloyd's secretary in London; § 448. If the owner of a wreck afterwards find it, or a part thereof, he must send notice to the receiver of wreck for the district, stating that he has found, or taken possession of it, and detailing the marks by which it is distinguished. If the person finding or taking possession is not the owner, he must deliver it to the receiver of wreck, and failure to do so is punished by a penalty, forfeiture of all claim to salvage, and double the value of the wreck, payable either to the owner, or, if unclaimed, to the person having right to wreck; § 450. The receiver is entitled to seize concealed wreck; § 451; and is bound to give notice at the nearest custom house of all wreck in his possession, and (if of more value than £20) to transmit notice to Lloyd's secretary; § 452. If the goods saved be of small value or perishable, the receiver may sell the same; § 453. Wreck claimed by the owner within a year is deliverable to him on payment of salvage and charges. If not claimed, it then belongs to the Crown, unless some private person who has a right to the wreckage on the shore of his estate claims it. Wrecked goods are liable to the same duties as similar goods are; § 499. See *Wrecks. Salvage.*

If any registered ship is either actually or constructively lost, taken by the enemy, burnt, or broken up, notice must be given to the registrar, and the certificate, if not lost or destroyed, delivered by the master to the registrar of the port where he arrives, or to the British consul there. The ship's register is then closed; 1854, § 53.

Mercantile Marine Fund.—The various fees, rates, and dues receivable under parts iii., iv., vi., and viii. of the 1854 act, are carried to an account called the Mercantile Marine Fund, from which provision is made for the payment of salaries, light-house expenses, maintenance of lifeboats, &c.; 1854, §§ 417–429.

See on this subject, *Stair*, B. ii. tit. 1, § 42; tit. 2, § 20; *More's Notes*, cclxxxvii.; *Brodie's Supp.* 94; *Ersk.* B. iii. tit. 1, § 34; tit. 6, § 3; *Bank.* i. 86, 220, 448; iii. 26; *Bell's Com.* i. 146–175, 551–555, 567–584, 602–604; ii. 63, 92, 94, 98, 99; *Bell's Princ.* §§ 447, 1322–1332; *Brown on Sale*, 55; *Jurid. Styles*, ii. 748; *Abbott on Shipping; Maclachlan on Shipping; Maude & Pollock on Shipping; Parsons on Shipping; Omond's Merchant Shipping Acts; Boyd's Merchant Shipping Laws; Neill's Forms in Maritime Proceedings;* [*Menzies' Conv.* 466; *M. Bell's Conv.* i. 438; *Smith's Merc. Law*, 172.]

SHIP'S-HUSBAND; the person whose duty it is to arrange everything for the outfit and repair of the ship, to enter into the contract of affreightment and superintend the papers of the ship. The ship's-husband cannot, as such, bind the owners to the expenses of a law-suit; *Campbell*, 1818, 6 Dow, 116. He cannot delegate his authority. See *Bell's Com.* i. 552; *Bell's Princ.* § 449; *Brodie's Supp. to Stair*, 969; *Brown's Synop.* 2262; [*Abbott on Shipping*, 61.]

SHIPMASTER. See *Master of a Ship.*

SHOOTING OR STABBING; with intent to murder, or to injure, is a statutory offence. See *Attempt at Murder.*

[**SHOOTINGS.** See *Game Laws. Valuation.*]

SHOP. The person who has the management of a shop, sells and receives the price, or buys articles in the course of the trade, so as to bind his master. *Bell's Com.* i. 510; *Bell's Princ.* § 231. [See *Institor.*] As to the landlord's hypothec over goods in shops, see *Hypothec.*

SHORE. See *Sea and Sea-Shore.*

SHORT-ENTRY; of a bill in a banker's books, is done by stating the amount in an inner column, and carrying it out into the account between the parties, only when the bill is paid. Such an entry forms the best evidence that the banker has got the bills merely as an agent to recover payment, subject to a lien for his indemnity against his own acceptances. *Bell's Com.* i. 290; *Thomson on Bills*, 552.

SHORT-HAND NOTES. Notes taken by a short-hand writer, when sworn to by himself, are considered the best evidence of what occurred at a former trial. A party himself is the best evidence of what he said in a speech; but failing him, any short-hand writer who was present, and took notes, may be adduced. The evidence of witnesses at a former trial can be proved only by themselves; but where the witnesses are dead, or where their evidence is otherwise unattainable, their previous evidence may be proved by the notes of a short-hand writer, or of the judge, or from the bill of exceptions, when the evidence has been engrossed in it from the judge's notes. *Macfarlane's Jury Prac.* 180, 282; [*Dickson on Evidence*, § 1805. A short-hand entry made by a witness in a day-book was allowed to be referred to in a criminal trial; *Gibb*, 3 May 1871, 2 Coup. 35.] See *Evidence.* [*Proof. Sheriff.*]

SICK BILL. See *Bill of Health*.

SIDE BAR; the name [formerly] given to the bar in the Outer Parliament House, at which the Lords Ordinary were in use to call their hand-rolls. *Bank.* ii. 510. See *Rolls of Court*.

SIDE-SCRIPTION. Before the introduction of the present system of writing deeds "book-wise," the sheets were pasted together at length; and in order to authenticate them, the party was required to sign his name at each junction, half on the one sheet and half on the other. This was called side-scription. [See *Deeds, Execution of*.]

SIGNATURES. A signature was a writing prepared and presented by a writer to the signet to the Baron of Exchequer, as the ground of a royal grant to the person in whose name it was presented; which having, in the case of an original charter, the sign-manual of the Sovereign, and in other cases the cachet appointed by the Act of Union for Scotland attached to it, became the warrant of a conveyance, under one or other of the seals, according to the nature of the subject or the object in view. Every Crown charter was formerly preceded by a signature containing the principal clauses of the charter, and specifying the seal or seals through which it was to pass, and which required to be revised and authorised by the Baron of Exchequer. [But signatures, as preliminary to the granting of charters, were abolished by 10 & 11 Vict. c. 5, § 1; and in place thereof a draft of the proposed charter was directed to be lodged with the Presenter of Signatures (now with the Sheriff of Chancery). See 31 & 32 Vict. c. 101, §§ 63 *et seq.*; 37 & 38 Vict. c. 94, § 57.] See *Ersk.* B. ii. tit. 5, § 82; *Bank.* B. iv. tit. 4, § 10; tit. 11, §§ 12, 13; [*Menzies' Conv.* 825; *M. Bell's Conv.* ii. 757. See *Charters from the Crown. Seals. Presenter of Signatures.*]

SIGNET; the seal by which the Sovereign's letters for diligence are authenticated. See *Seals.* [*Bills. Writer to the Signet.*]

SILVER AND GOLD PLATE. The act 6 & 7 Will. IV. c. 69, fixes the standard qualities of gold and silver plate in Scotland, and provides for the assaying and marking of it. Goldsmiths and silversmiths must not work plate inferior to certain standards specified in the act; § 1. Persons following the trade of silversmith, goldsmith, or plateworker, before sending their names, descriptions, and marks to the Goldsmiths' Incorporation of Edinburgh, or the Goldsmiths' Company of Glasgow, forfeit £100; § 2. Goldsmiths, &c., must strike their mark on the plate, and send it to the assay-office to be assayed, where, if it is found to be standard, it is marked with certain marks; § 3. Assayers are empowered to levy specified rates upon plate sent to be assayed; § 4. Plate of objectionable manufacture is returned without assay; but if it is found unobjectionable, a few grains are scraped from it to be assayed; § 5. If the assayer suspects that too great a quantity of base metal, or solder, is contained or concealed in the plate, he must test; but if it is found that his suspicions are groundless, compensation must be made for the damage done the plate in testing. Disputes are settled by two justices or magistrates; § 6. The scrapings are assayed, and if found inferior to the standard, the plate is defaced; if equal to standard, it is marked; § 7. The assayer weighs and sells the scrapings for the behoof of the assay office; § 8. Provision is made for the accuracy and faithful administration of the assayers, &c.; §§ 10 to 15. Certain small gold and silver articles require no marks or stamp, such as rings, chains, necklace beads, filigree work, pencil cases, &c.; §§ 16 and 17. Selling or exporting plate not duly marked, subjects the offender to a penalty; § 18. Forging or imitating dies or marks, stamping with forged dies, &c., or fraudulently using the lawful dies, is felony; § 19. Members of the incorporation or company are competent witnesses in prosecutions; § 23. The act is declared not to affect the act 59 Geo. III. c. 28, for establishing an assay office in Glasgow, except in so far as alterations are expressly made upon it, nor to affect any other acts for granting duties on plate, or on dealers' licences; § 24.

SIMINELLUS; white bread or "maine" bread. *Skene, h. t.*

SIMONY; an unlawful contract, for the presenting of a clergyman to a benefice, or procuring him a presentation; so called from its supposed resemblance to the offence of Simon Magus. Simoniacal practices afford a ground for deposing a clergyman who has been guilty of them, or for depriving a probationer of his licence; and the same penalty is imposed where clergymen or probationers do not divulge such practices to the presbytery of the bounds, as soon as they come to their knowledge. By the canon law, the party who took benefit by a simoniacal paction, even without his knowledge, was declared incapable of holding that or any other benefice. *Bank.* B.

iv. tit. 8, § 2; *Act of Assembly*, 30 May 1759; *Stair*, B. ii. tit. 8, § 35; B. iv. tit. 1, § 30; *More's Notes*, lxv.; *Kames' Stat. Law Abridg. h. t.; Connell on Parishes*, 538; *Hill's Theol. Inst.* 442; [*Bell's Princ.* § 41; *Dunlop's Parochial Law*, 269; *Duncan's Par. Eccl. Law*, 116.] See *Deposition.* [*Pactum Illicitum.*]

SIMPLE CONTRACT. In England, a debt by simple contract is where the contract is ascertained neither by matter of record, nor by deed or special instrument, but by mere oral evidence, or notes unsealed. *Tomlins' Dict. h. t.*

SINE QUO NON. It frequently happens, that in nominations of curators, tutors, trustees, and the like, one of the nominees is named *sine quo non;* and the legal construction of such a nomination is, that by the death or non-acceptance of the *sine quo non* the nomination falls; [*Drumore*, 1742, M. 14703.] So also the *sine quo non* has a negative on the acts of the rest. [With regard to trusts, Lord M'Laren, disputing the proposition that the non-acceptance of a *sine quo non* nullifies the appointment *in toto*, says—"The more correct view appears to be that the right of veto is a personal privilege conferred on the trustee in case of his acceptance, whence it follows that, if he decline, the trust may be administered by a quorum of the other trustees in the ordinary way." It has also been held that, if all the other nominees fail, except the *sine quo non*, the appointment falls, because a *sine quo non* implies the existence of others with less powers; *Primrose*, 1715, M. 16335. But the soundness of this view has with good reason been questioned. See *Ersk.* B. i. tit. 7, § 30; B. iii. tit. 1, § 32; *Bell's Princ.* §§ 1993, 2074; *Fraser on Parent and Child*, 179, 383; *M'Laren on Wills*, ii. § 1729.] See *Curatory. Quorum.* [*Trust.*]

[**SINGLE BILLS.** See *Rolls of Court.*]

SINGLE COMBAT. See *Combat.*

SINGLE ESCHEAT. See *Escheat.*

SINGULAR SUCCESSOR. A purchaser, or other disponee, or acquirer by titles, whether judicial or voluntary, is called a singular successor, in contradistinction to the heir, who succeeds by a general title of succession or universal representation. A singular successor, on the other hand, acquires right solely by the singular title acquired from the former proprietor. *Ersk.* B. iii. tit. 8, § 1; *Bell's Com.* i. 22; *Bell's Princ.* §§ 719, 722, 783–6, 990. See *Heir.* [*Composition.*]

SI SINE LIBERIS. See *Conditio si sine Liberis.*

SIST ON A SUSPENSION; is the order or injunction of the Lord Ordinary prohibiting diligence to proceed, where relevant grounds of suspension have been stated in the bill of suspension. *Stair*, B. iv. tit. 52; *Ersk.* B. iv. tit. 3, § 18; *Bank.* iii. 9; [*Mackay's Prac.* ii. 177.] See *Suspension.*

[**SISTING PARTIES TO A PROCESS.** See *Pursuer. Defender. Interest.*]

[**SISTING PROCESS.** "Where both parties, or either, desire to stop the progress of a cause, the proper course is to move to have it sisted for a definite time, or until the occurrence of some event, which will enable it to be more summarily or effectually brought to a conclusion." See *Mackay's Prac.* i. 506, where the cases in which such motions have been granted or refused are digested.]

SKAT-LAND. See *Udal Rights.*

SKELETON BILLS; signed blank papers stamped with a bill stamp. [See § 20 of the Bills of Exchange Act, 1882, quoted under *Bill of Exchange*, p. 111.]

SLAINS, LETTERS OF; were letters subscribed by the relations of a person who had been slain, declaring that they had received an assythment, and concurring in an application to the Crown for a pardon to the offender. These or other evidences of concurrence were necessary to found the application; 1457, c. 74, and 1528, c. 7; 1592, c. 155, No. 1; 1593, c. 174; so far at least as to prevent a pardon from being pleaded without them. *Hume*, i. 285; ii. 496; *Ersk.* B. iv. tit. 4, § 105; *Bank.* i. 247. See *Assythment. Pardon.*

[**SLANDER.** See *Defamation.*]

[**SLANDER OF TITLE**; a false and malicious statement, written or oral, affecting a man's title to property or goods belonging to him; *e.g.*, where one impeaches the validity of a patent. The term is also used of untrue statements, disparaging goods manufactured or sold by another. Malice and special damage must be proved to support an action for slander of title. See *Folkard on Slander and Libel*, 127; *Odgers on Libel and Slander*, 138; *Guthrie Smith on Damages*, 241.]

SLAVERY; the condition of human beings, when, without their consent, they are subjected to the will of another human being, whom they are in all things compelled to obey. In the Roman law, slaves were things, not persons; and at first they were placed entirely at the disposal of their masters, who had the power of life and death over them. By the later law, how-

ever, many regulations were made to protect them from the cruelty or caprice of their masters. Slavery existed in Scotland at an early period, as indeed it did in all the nations of Europe. See *Nativi. Colliers and Salters. Adscripti Glebæ.* The general character of slavery was different among the Romans and under the feudal system. Almost all the Roman artificers and domestics were slaves; while the bondsmen of the feudal ages were labourers perpetually attached to the soil which they cultivated. [The right of property in human beings is not recognised by the laws of Britain;] hence a slave is free whenever he touches British ground, or goes on board a ship belonging to the British navy; [*Knight*, 1778, M. 14545; *Sommersett*, 1771, 20 Howell's State Trials, 1; *Forbes*, 1824, 2 B. & C. 448.] But if the slave [voluntarily] return to the country of his former master, he may be reclaimed; [*Slave Grace*, 1827, 2 Hagg. Adm. Rep. 94. The system of slavery was abolished throughout the British Colonies in 1833, by 3 & 4 Will. IV. c. 73. Since then several treaties have been made, and acts passed for carrying them into effect, with a view to the general suppression of the slave trade. These acts were consolidated by 36 & 37 Vict. c. 88. See *Ersk.* B. i. tit. 7, § 62; *Bell's Princ.* § 41; *Pollock on Contract*, 297, 370; *Stephen's Com.* i. 108; ii. 242; *Story's Conflict of Laws*, § 96; *Guthrie's Savigny's Priv. Internat. Law*, 85.]

SLEEPING PARTNERS; are partners of a company, not proclaimed or known as such. There may be dormant partners where the trade is apparently carried on either by one individual, or by fewer individuals than the company consists of. Dormant partners differ in no respect from ordinary partners; they are equally liable for the debts of the company. The steps to be taken for discovering and proceeding against the latent partners in a sequestration of a company are suggested in *Bell's Com.* ii. 562. See also *Ib.* 411, 533; *Bell's Princ.* § 359; *Thomson on Bills*, 167. [See *Partnership.*]

SLEEPING OF PROCESS. In the judicial procedure of the Court of Session, a process in the Outer House is said to be asleep when a year and day have elapsed without any judicial order or interlocutor having been pronounced therein. See *Wakening.*

SLIP. In the contract of insurance, the policy is preceded by a note of the contract, made out for the purpose of asking the consent of underwriters to the proposed policy. This is called a *slip.* It is merely a jotting or short memorandum of the terms, to which the underwriters subscribe their initials, with the sums for which they are willing to engage. It has no force as a contract of insurance; [30 Vict. c. 23, § 7. But it may be referred to as evidence of the intention of the parties; *Ionides*, L.R. 6 Q.B. 674; L.R. 7 Q.B. 517. After the slip has been initialed, material facts subsequently coming to the knowledge of the insured need not be communicated; *Cory*, L.R. 7 Q.B. 304; L.R. 9 Q.B. 577.] The form of a slip will be found in *Jurid. Styles*, ii. 823. See also *Bell's Com.* i. 649; *Bell's Princ.* § 465; [*Arnould on Marine Insurance*, i. 194, 259.] See *Insurance. Policy.*

SMALL DEBTS. [The Small Debt Courts are simple and inexpensive tribunals for the summary and final determination of claims of small pecuniary amount. They are of two kinds, the Justice of Peace Court, and the Sheriff's Small Debt Court.]

I. JUSTICE OF PEACE SMALL DEBT COURT.

The statute 39 & 40 Geo. III. c. 46, commonly called the Small Debt Act, conferred a summary civil jurisdiction on justices of the peace in small debt causes. This statute was superseded by 6 Geo. IV. c. 48, [which has been amended by 12 & 13 Vict. c. 34.] The following are the principal provisions:—It is made competent for any two or more justices of the peace to hear and determine all causes and complaints brought before them concerning the recovery of debts, or the making any demand effectual, provided the debt or demand do not exceed £5 sterling, exclusive of expenses; § 2. All such causes proceed upon a complaint, [signed by the clerk or depute-clerk of the peace, according to a prescribed form; and a copy of the complaint, with citation thereon, and also copy of the account, document of debt, or state of the demand, being delivered by a constable to the defender personally, or left at his dwelling-place, or, in the case of a company, at its ordinary place of business, six days at least before the diet of court mentioned in the complaint, are good and effectual to all intents and purposes, without a second citation.] The constable must in all cases return an execution of citation signed by him, or appear and make oath that he cited the defender in manner foresaid; 6 Geo. IV. c. 48 § 2: [12 & 13 Vict. c. 34, § 1.] Where

a constable is required by either party to cite witnesses, he must lodge in the clerk's hands a written execution of every such citation at or before the diet to which the defender is cited, or otherwise verify in court the execution of citation, as the justices see fit. And if the witnesses cited do not appear, a new warrant may be obtained to compel their attendance at next stated or adjourned meeting, under a penalty not exceeding 20s., to be awarded by the justices, in case a sufficent excuse be not offered and sustained. This penalty is payable to the party at whose instance the witness was cited, and may be recovered in the same manner as other small debts. Or, in the option of the justices, the witness failing to appear, without a sustained excuse, may be imprisoned for any time in the county jail not exceeding ten days. But the penalty is not exigible, nor the witness liable to imprisonment, unless the second citation have been given, not later than the sixth day before the diet of court to which he has been cited; 6 Geo. IV. c. 48, § 4. When the parties appear, the justices hear them *viva voce*, and examine witnesses upon oath, and also the parties by declaration or upon oath; but no practitioners of the law are allowed to plead for them either *viva voce* or in writing; and the pleadings must not be taken down in writing or entered on record; § 5. If a defender, who has been duly cited anyhow, do not appear by himself, or a substitute not a prac titioner, he is held as confessed, unless he send an excuse by one of his family, satisfying the justices that delay ought to be granted; in which case, or for some other good reason, the justices may adjourn the cause to the next stated meeting, or other day to be specially appointed; § 6. A pursuer or defender, if the justices see cause, may be heard by one of his family; or if the pursuer be not resident within twenty miles of the place where the court is held, the justices, if they see fit, may hear him by a person holding a written mandate for that purpose, the said mandatory not being a legal practitioner; § 7. Where decree has been pronounced in absence of the defender, he may, upon consigning the sum decerned for in the clerk's hands, obtain warrant under the clerk's hands at any time before the days of the charge are expired, sisting execution until the next court day, and containing an authority to cite the pursuer and witnesses. This warrant being served on the pursuer in the manner already pointed out, is an authority for having the matter reheard at next court day, provided it be not sooner than the sixth day after personal citation, or the citation left at his dwelling-place, or, if so, at the next court day thereafter. The justices may delay such rehearing to such time as may be thought fit. In like manner, where decree of absolvitor has passed in absence of the pursuer, he may at any time, within one calendar month thereafter, upon consigning two shillings and sixpence to be paid to the defender, obtain a warrant for citing the defender and witnesses; which being served on the defender in manner foresaid, is an authority for having the matter reheard, as is pointed out in the case of a rehearing at the defender's instance; § 8. [Where a decree has been pronounced in absence of the defender, or where absolvitor has passed in absence of the pursuer, a copy of the warrant for rehearing being served upon the other party personally, or left at his dwelling-place, in the manner and upon the *inducie* prescribed regarding service of a complaint, is authority for rehearing the cause; 12 & 13 Vict. c. 34, § 2.] The constable, in the event of his returning a false execution, or otherwise neglecting his duty, is punishable by fine not exceeding 20s., or imprisonment for not more than ten days. Recourse against the constable at common law is reserved to the party injured; 6 Geo. IV. c. 48, § 9. The clerk must keep a book in which must be entered the names and designations of the parties, and whether present or absent at the calling of the cause—the nature and amount of the claim and date of in-giving—the mode of citation—the several interlocutors of the justices—and the decree dated and signed by the justices or by the preses, if more than two, agreeably to the form annexed to the act. A copy of the decree, containing warrant for arresting, or poinding, or for imprisonment, together with a note of the expenses awarded, is annexed to the complaint. And this copy of decree, signed and delivered, is a warrant for execution after ten free days from the date of pronouncing the decree, if the party against whom it has been given was present, by himself or family, when it was pronounced; or if he was not present, execution only proceeds after a charge of ten free days given in common form by the constable; § 10. The justices, if they see fit, may direct sums found due to be paid by instalments; § 11. The execution of the poinding by the constable is summary, by carrying the poinded effects to the nearest market town, kirk

town, or village in the parish; and after their being appraised, and after one hour's notice, selling them by auction at the cross, or other most public place, between the hours of eleven and one, or any other later hour fixed by the justices. The overplus of the price, after payment of the debt and expenses of process, if any, and of the expense of carrying the poinding into execution, is delivered to the owner; or the effects, if not sold, delivered to the creditor at the appraised value, to the amount of his debt, &c. If the place of sale is not a market town, but only a kirk town or village, two days' previous notice must be given at the parish church door on Sunday after the forenoon service; § 12. [A warrant or decree may be enforced by a constable either in the county in which it was issued, or in any other county or counties, on being indorsed by the clerk or depute clerk of the peace in such other county; 12 & 13 Vict. c. 34, § 3.] In all cases of execution by poinding or imprisonment, the constable employed must, on or before the next court day thereafter, make a return, either verbally or in writing, to the clerk, of the date and manner of the execution, the number of assistants employed, and the sum, if any, recovered; and, in the case of a poinding, stating further the value at which the goods were appraised—the time and place of sale—the charges paid for conveying or warehousing goods, where such have been incurred—and the price for which the goods sold where a sale was made. If the execution was by imprisonment, he must state the jail in which the debtor was incarcerated. These particulars are entered by the clerk in the procedure book, or other book kept for the purpose, and laid before the justices at next meeting, and exhibited to any person desiring inspection of them; 6 Geo. IV. c. 48, § 13. Decrees pronounced by the justices under authority of this act are not subject to advocation, suspension, appeal, or other stay of execution, except in the case of consignation for a rehearing, as before provided; nor can they be set aside by reduction before the Court of Session, except on the ground of malice and oppression on the part of the justices. Even such reduction is incompetent unless brought within a year after the date of the decree of the justices; § 14. When a reduction is brought, the pursuer must, before the summons of reduction is called, find caution for the expenses which may be awarded against him; § 15. One justice, in case no more be present, may hold a court for the purpose of calling the roll of causes—of pronouncing decrees in absence—receiving returns of execution of citations—and granting warrants of citation *de novo*, but for no other purpose; § 16. Provision is made respecting the fees payable to the clerk, the officers or constables, and the crier; § 17. An abstract of the table of fees must be printed on the complaint, and a copy thereof for service; and a copy of the table, signed by two justices and the clerk, is hung up in the court-room and the clerk's office. The fees are subject to modification by the justices; § 18. Where the clerk or other officer of court exacts any fee not authorised by the act, the person so offending shall be liable to a penalty not exceeding, if he is a clerk or depute-clerk, £5; if a constable or other officer, 20s. for each offence. These penalties are awarded by the justices on complaint from the party aggrieved, and satisfactory proof; and are paid to the party complaining, or to the poor, or partly to both, as the justices see fit. The justices may further punish their officers by suspension or dismissal for this and other offences; § 19. An account must be kept by the clerk of all court fines awarded by the justices, which, where not otherwise provided for by the act, are paid to the poor as the justices direct; § 20. The justices of each county are empowered, at quarter sessions, to make suitable divisions of the county into districts, or to alter the divisions already made; within which they are directed to meet at such time and place as they may fix at quarter sessions, in order to carry the purposes of the act into execution. These meetings may be adjourned to any other lawful day at the same place. Of these divisions into districts, and of the stated times and places of meetings so to be appointed, or of the alterations of such divisions or stated meetings, the justices, at their quarter sessions, must order due notice to be given, by advertisement at the church doors of every parish in the county, at least two Sundays previous to the first stated meeting so appointed or altered; § 21. Where the clerk fails to attend personally, or by depute, at any of the district meetings of which he has had due notice, the justices present at the meeting may name an interim clerk, who may be removed by subsequent quarter sessions, and another clerk appointed from time to time; § 22. The justices are empowered, at their quarter sessions, to make from time to time such

rules and orders as may be thought necessary for carrying the provisions of the act into effect; such rules not being inconsistent with the conditions of the act itself or contrary to law. These rules and orders remain in force until repealed by the justices at their quarter sessions, or by the Court of Session or Justiciary at Edinburgh, or by the Circuit Court of Justiciary, on the application of two or more justices; § 23. No person is exempt from the jurisdiction of the court under this act, on account of privilege, as being a member of any other court; § 24. The act does not extend to any debt where the title to land or other heritable right is in question, nor to any debt or matter arising upon or concerning the validity of wills or contracts of marriage, although such debts do not amount to £5; nor to gaming debts, or debts contracted for spirituous liquors; § 25. The constables or officers of the peace are declared exempt from the penalties for selling goods or effects under authority of the decree and warrants of the justices by public sale or auction, although such constables or officers be not licensed auctioneers; § 26. Solicitors or procurators in inferior courts, or the partners of such solicitors or procurators, are prohibited from acting as justices of the peace while they continue to be legal practitioners; § 27. [See *Barclay's Digest; Lees' Small Debt Handbook*, 145.]

II. Sheriff's Small Debt Court.

The sheriff's exclusive jurisdiction in small debts was introduced by 6 Geo. IV. c. 24. This was repealed by 10 Geo. IV. c. 55, which has in its turn been repealed by the existing act, 1 Vict. c. 41. [The small debt jurisdiction of the sheriff was limited by that act to causes not exceeding £100 Scots, or £8, 6s. 8d. sterling, in value; but this limit was extended to £12 by 16 & 17 Vict. c. 80, § 26; and by § 23, causes above the value of £12 may be tried in the summary way provided by the Small Debt Act, if the parties lodge a minute of agreement to that effect. Further amendments, by 52 & 53 Vict. c. 26, are noted *infra.*] The chief provisions of the act 1 Vict. c. 41, [amended as above in regard to the value of the cause,] are the following:—Sheriffs are empowered to determine civil causes, prosecutions for statutory penalties, and maritime civil causes, where the debt, demand, or penalty [in question] does not exceed the value of [£12,] exclusive of expenses and fees of extract, the pursuer or prosecutor being held to have passed from all claim beyond the sum concluded for; § 2. [See *Nixon*, 1 June 1876, 3 R. (J.C.) 31; *Strang*, 21 Feb. 1882, 4 Coup. 563.] All such causes, unless otherwise provided in the act, proceed upon summons or complaint, according to the form in schedule (A) annexed to the act, and containing warrant to arrest upon the depending action, stating shortly the origin of debt or ground of action, and concluding against the defender. This summons or complaint being signed by the sheriff-clerk, is a warrant to a sheriff's officer [or to any enrolled law agent, 45 & 46 Vict. c. 77, § 3,] to summon the defender to appear at the time and place mentioned in it; not being sooner than upon the sixth day after the citation; and the same, or the copy thereof, served on the defender, is a sufficient warrant for summoning such witnesses and havers as either party requires. A copy of the summons or complaint, with the citation annexed, and also a copy of the account, if any, must be served at the same time on the defender, personally, or at his dwelling-place, or in case of a company, at their ordinary place of business. The summoning officer must, in all cases under the act, return a signed execution of citation, or appear and give evidence on oath of the citation having been duly made; and citations given by an officer alone, without witnesses, and executions subscribed by the officer, are good and effectual; § 3. [See *Citation.*] Any cause before the sheriff's ordinary court, in which the debt, &c., did not originally exceed [£12,] or in which, by an interim decree or otherwise, it has, previous to the closing of the record, been reduced to that sum, may, with the pursuer's consent, be remitted to the small debt roll by the sheriff, either *ex proprio motu*, or on the motion of a party. If the pursuer do not consent, the provisions of the act (§ 36) as to the fees or expenses to be allowed in causes below [£12,] brought not according to the summary form provided in the act, are applied to such causes subsequent to the proposition for remit, if the sheriff think fit so to modify the expenses. When a case has been remitted by the sheriff-substitute from the ordinary court to the small debt court, an appeal is competent to the sheriff against the remit, but no reclaiming petition is allowed against the remit; § 4. The sheriff may try, in his small debt court, in the above summary way, applications by landlords or others, having

right to the rents and hypothec, for sequestration and sale of a tenant's effects for recovery of rent, provided the rent or balance claimed do not exceed [£12.] The summons and warrant of sequestration and procedure must be according to the forms directed in schedule (B). Provision is made respecting the appraisement, the inventory, and other procedure, in carrying the sequestration into effect; § 5. [This provision was extended by 16 & 17 Vict. c. 80, § 28, to all sequestrations applied for *currente termino*, or in security. See *Sequestration for Rent.*] The pursuer of any civil cause may use arrestment, on the dependence of the action, of any money or effects to the amount of [£12,] owing or belonging to the defender, in the hands of any third party. The arrestment ceases by the mere lapse of three months, unless it be renewed by a special order or warrant intimated to the arrestee, in which case it continues in force for the like period and under the same conditions; or unless an action of furthcoming or multiplepoinding have been raised before the end of the three months, in which case the arrestment continues in force until the termination of the action; § 6. Wages of labourers and manufacturers, so far as necessary for their subsistence, are deemed alimentary, and, in like manner as servants' fees and other alimentary funds, not liable to arrestment; § 7. [But see *Wages.*] Arrestment may be loosed, on the defender's lodging with the sheriff-clerk a bond of caution by one or more sufficient cautioners, to the satisfaction of the sheriff-clerk, agreeably to the form in schedule (C); or on his consigning in the hands of the clerk the amount of the debt or demand, with 5s. or 10s. for expenses, according as the action was for a sum above or below £5; or on his producing evidence of having obtained decree of absolvitor, or having paid or consigned the debt. A certificate of the sheriff-clerk operates as a warrant of loosing the arrestment; § 8. Provision is made for rendering arrestment effectual by furthcoming summarily, and the forms of the summons and complaint are given in schedule (D); § 9. An action of multiplepoinding may be raised in the same summary way, in name of the holder of a fund not exceeding [£12;] § 10, and relative schedule. Where the defender intends to plead a counter account or claim against the debt, he must serve a copy of such counter account or claim, by an officer, on the pursuer, in the form set forth in schedule (A), or to the like effect, at least one free day before the day of appearance, otherwise it cannot be heard except with the pursuer's consent, but action is reserved for it; § 11. Provision is made for compelling the attendance of witnesses, by imposing penalties in case of their neglect; § 12. When the parties appear, the sheriff hears them *viva voce*, and examines witnesses or havers upon oath. He may also examine the parties, and put them or any of them upon oath, in case of oath in supplement being required, or a reference made; and if he see cause, he may remit to persons of skill to report, or to any person competent to take and report in writing the evidence of witnesses or havers unable to attend, upon special cause shown. Such cause must, in all cases, be entered in the book of causes kept by the sheriff-clerk. Due notice is given of the examination to both parties. Thereupon the sheriff may pronounce judgment. The decree, stating the amount of expenses (if any) found due to any party (which may include personal charges if the sheriff think fit), and containing warrant for arrestment, and for poinding and imprisonment, when competent, is directed to be annexed to the summons or complaint; and on the same paper with it, agreeably to the form in schedule (A), or to the like effect. The decree and warrant being signed by the clerk, are a sufficient authority for instant arrestment, and also for poinding and sale and imprisonment, where imprisonment is competent, after the lapse of ten free days from the date of the decree, if the party against whom it has been given was personally present when it was pronounced; but, if he was not present, poinding and sale and imprisonment can only proceed after a charge of ten free days, by serving a copy of the complaint and decree on the party personally or at his dwelling-place. If any decree be not enforced by poinding or imprisonment within a year from its date, or from a charge for payment given upon it, the decree cannot be enforced without a new charge given as aforesaid; § 13. [See *Shiell*, 7 Nov. 1871, 10 Macph. 58.] No procurator, solicitor, or legal practitioner was allowed to appear or plead for any party without leave of the court, on special cause shown; § 14; [but this has been altered by 52 & 53 Vict. c. 26, § 8 (*infra*).] Nor can any of the pleadings be reduced to writing, or entered on any record, unless with leave of the court, obtained in consequence of any difficulty in point of law, or of the special

circumstances of any particular case. When the sheriff orders pleadings to be reduced to writing, the case is thenceforth conducted according to the ordinary forms and proceedings in civil causes, and in prosecutions for statutory penalties; 1 Vict. c. 41, § 14. A defender not appearing personally or by one of his family, or by such person, not being an officer of court, as the sheriff shall allow, is held as confessed, and the other party obtains decree against him. In like manner, if the pursuer fail to appear, personally or otherwise, the defender obtains decree of *absolvitor;* unless, in either case, a sufficient excuse for delay be stated; on which account, or on account of the absence of witnesses, or any other good reason, the sheriff may adjourn any case to the next or any other court-day, and ordain the parties and witnesses then to attend; § 15. Where a decree has been pronounced in absence of a defender, he may, on consigning the expenses decerned for, and the sum of 10s. to meet further expenses, in the hands of the clerk, at any time before a charge is given, or in the event of charge being given before implement of the decree has followed on it (provided, in the latter case, the period from the date of the charge does not exceed three months), obtain from the clerk a warrant, signed by him, sisting execution to the next court-day, or to any subsequent court-day to which the same may be adjourned, and containing authority for citing the other party, and witnesses and havers for both parties; and such warrant being served upon the other party, is an authority for hearing the cause. In like manner, where absolvitor has passed in absence of the pursuer or prosecutor, he may, at any time within one calendar month, on consigning in the hands of the clerk the sum awarded by the sheriff, as the expenses of the defender and his witnesses, with 5s. to meet further expenses, obtain a warrant, signed by the clerk, for citing the defender and witnesses for both parties; and this warrant, being served upon the defender, is an authority for hearing the cause. The sum of expenses awarded by the sheriff, and consigned as aforesaid, is in every case paid over to the other party, unless the contrary be specially ordered by the court. All such warrants for hearing are in force, and may be served by any sheriff-officer [or enrolled law agent] in any county, without indorsation, or other authority than this act; § 16. [See *Worrall & Co.* 29 Aug. 1885, 13 R. (J.C.) 4.] The sheriff-clerk is directed to keep a book, in which must be entered all causes conducted under the authority of the act, &c.; § 17. The sheriff may, if he think proper, direct the sums found due to be paid by instalments weekly, monthly, or quarterly, according to the circumstances of the party found liable, and under such conditions and qualifications as he thinks fit to annex; § 18. A decree may be enforced in any other county besides that in which it is issued, provided it, or an extract of it, be indorsed by the sheriff-clerk of such other county; § 19. Provision is made, in detail, for carrying into effect the sequestration, or poinding and sale, in a summary way, by appraisement, &c.; § 20. In all charges and arrestments, and executions of charges and arrestments under this act, one witness is sufficient; § 21. [See 52 & 53 Vict. c. 26, § 11, *infra.*] Actions of damages for loss or injury by riots, authorised by 3 Geo. IV. c. 33, where the sum concluded for does not exceed [£12,] may be heard and determined in the summary way provided by this act; as likewise actions for recovery of assessments, by virtue of 9 Geo. IV. c. 39, although the amount of the assessments exceeds [£12;] 1 Vict. c. 41, § 22. The sheriffs must, in addition to their ordinary small-debt courts, by themselves or their substitutes, hold circuit courts for the purposes of the act. Provision is made for the times and places at which such courts shall be held, the attendance of sheriff-clerks, by themselves or deputes, &c.; §§ 23, 24, 25. [See also 16 & 17 Vict. c. 80, § 46.] The sheriff is directed, three months before holding a circuit court, to apportion the parishes to be within the jurisdiction of the court. And all causes are brought before the ordinary small debt court, or any circuit court within the jurisdiction of which the defender resides, or to the jurisdiction of which he is amenable. [See *Steuart*, 23 Sept. 1868, 1 Coup. 92.] But if there be more defenders than one, in one cause of action, amenable to the jurisdiction of different courts, or if, from any other cause, the sheriff think it just, he may, on summary application in writing, made by or for any pursuer, lodged with the sheriff-clerk, or on verbal application made by or for the pursuer in open court, order a summons or complaint to be issued, and the cause to be brought before his ordinary small debt court, or any of his circuit courts; § 26. [See also 33 & 34 Vict. c. 86, § 12.] The sheriff may adjourn causes from one court to another; 1 Vict. c. 41, § 27. No decree given by any

sheriff, in any cause decided under authority of this act, is subject to reduction, advocation, suspension, or appeal, or any other form of review, or stay of execution, other than provided by this act, either on account of any omission or irregularity, or informality in the citation or proceedings, or on the merits, or on any other ground; § 30. Any one thinking himself aggrieved by a decree of a sheriff under this act, may bring the case by appeal before the next Circuit Court of Justiciary, or, where there are no circuit courts, before the High Court of Justiciary at Edinburgh, in the manner directed by 20 Geo. II. except in so far as altered by this act. (For this mode of appeal, see the article *Appeal to Circuit Court.*) Such appeal is only competent when founded on the ground of malice and oppression on the part of the sheriff; or on such deviations, in point of form, from the statutory enactments, as the court may think took place wilfully, or as have prevented substantial justice from having been done; or on incompetency, including defect of jurisdiction of the sheriff. Such appeals are heard and determined in open court; and the court may correct such deviation in point of form, or remit the cause to the sheriff, with instructions, or for rehearing generally. It is not competent to produce or found upon any document, as evidence on the merits of the original cause, which was not produced to the sheriff when the cause was heard, and to which his signature or initials were not then affixed, which he only does if required; not to found upon or refer to the testimony of any witness not examined before the sheriff, and whose name is not written by him, when the case is heard, upon the record copy of the summons; which he does when specially required to that effect. No sist or stay of the process and decree, and no certificate of appeal can be issued by the sheriff-clerk, except upon consignation of the whole sum, if any, decerned for by the decree, and expenses if any, and security found for the whole expenses which may be incurred and found due under the appeal; § 31. Provision is made for the fees payable under this act to the clerk, officer, and crier; § 32; and a copy of section 32, containing the fees, is printed on each summons or complaint, and on each service copy, and hung up in every sheriff-clerk's office, and in every sheriff-court place, &c.; § 33. Provision is made for fining officers who neglect their duty, reserving all further claim of damages against them; § 34. No person is exempt from the jurisdiction of the sheriff in any cause raised under this act, on account of privilege, as being a member of the College of Justice, or otherwise; § 35. In all causes and prosecutions in which the demand or penalty does not exceed [£12,] brought before any court not according to the summary form provided in this act, it is made lawful to the judge to allow no other or higher fees or expenses to be taken or paid than those above mentioned; § 36.

[The following are the leading provisions of the Small Debt Amendment Act, 1889 (52 & 53 Vict. c. 26):—Where a party claims to be owner, or to be entitled to the possession, of any corporeal moveables; the value of which shall be proved to the satisfaction of the sheriff not to exceed £12, and which are wrongfully withheld from him, he may apply in the small debt court for an order for delivery thereof, and the sheriff may grant such order accordingly; and the application therefor and the extract of the decree, if granted, to follow thereon shall be as nearly as may be in the form of schedules (A) and (B) respectively; but in other respects the procedure shall be conform as nearly as may be to the provisions of the act 1 Vict. c. 41 (*supra*), so far as agreeable hereto: provided always, that if delivery of any of the subjects sued for shall have become impossible, or if their value be alternatively concluded for, the sheriff may give decree for their value to an amount not exceeding £12; § 2. Where the summons in any small debt cause concludes against two or more defenders, and such defenders reside in different counties of Scotland, the sheriff of any county in which one or more of such defenders reside may, on the motion of the pursuer and on being satisfied that such course is expedient, grant warrant for the summons to be issued against any or all of the defenders to appear and answer at such time and place as he shall appoint; and thereafter the cause shall proceed in like manner as if all such defenders were amenable to his jurisdiction, and they shall thereon be amenable to such jurisdiction accordingly; § 3. Where the pursuer of a small debt cause dies, or assigns his right to pursue the same, or is divested of his estates under the bankruptcy or cessio acts, his representatives, assignee, or trustee, may, if the sheriff shall see fit, be sisted in his stead, on a verbal application to that effect being made in court by or on behalf of such representatives, assignee, or trustee, and the sheriff may

[thereupon write on the original summons the names and designations of such representatives, assignee, or trustee, and the character in which he or they are sisted; and where a defender dies or is divested of his estates under the bankruptcy or cessio acts his representatives or trustee may, in like manner, be sisted in his stead; § 4. By § 5, certain enactments relating to procedure in the ordinary sheriff courts were made applicable to the small debt court, viz.:—Section 5 of the Sheriff Courts Act, 1876, by which summonses, pleadings, &c., may be written or printed, or partly written and partly printed; section 9 of same act, by which sheriff's warrants, &c., may be executed edictally; section 11 of same act, allowing the proving of lost summonses or other pleadings; section 12 of same act, as to service of writs; section 13 of same act, allowing amendment of summonses in undefended causes; section 24 of same act, allowing amendment of record in defended actions; section 46 of same act, by which a person carrying on a trade or business, and having a place of business within a county, is subject to the sheriff's jurisdiction, though his domicile be in another county, if he be cited either personally or at his place of business; and section 12 of the Personal Diligence Act, 1838, as to execution at the instance of a person acquiring right to an extract decree. Where the officer executing, or charged with executing, a sale of a tenant's effects under a decree for rent obtained in the small debt court shall report to the court that the premises for the payment of the rent of which the sale took place, or warrant for sale was granted, are displenished, the landlord may obtain from the sheriff warrant to eject the tenant and relet the premises; but such warrant shall not be granted unless notice of the diet appointed by the sheriff for hearing the application be given to the tenant forty-eight hours beforehand, which notice may be given by registered letter addressed to the tenant's last known address; and the sheriff may at such or any adjourned diet pronounce such order as to ejection, reletting, security, expenses, or otherwise as he shall think just; and if warrant to relet be granted, the rent accruing thereafter shall not be exigible from the tenant except for such period as he shall continue to occupy the premises; 52 & 53 Vict. c. 26, § 6. All warrants to sequestrate and inventory for rent, and all warrants to sell, eject, or relet, and all decrees granted or pronounced in any small debt cause under this or the [before-recited acts, shall be held to include authority to open, if need be, shut and lockfast places for the purpose of carrying such warrants and decrees into lawful execution; § 7. Any party may appear by or with a duly qualified agent, and where such agent appears and the sheriff is of opinion that his employment was necessary in the circumstances, then it shall be lawful to include his reasonable remuneration in the expenses of the cause to such an amount, not exceeding five shillings per hour, as the sheriff shall by an act of court or in the decree allow; § 8. Where the debt or demand in question is such that if sued for in the ordinary sheriff court, decision could competently have been pronounced for instalments to become due, it shall be lawful for the sheriff to make the like decerniture in the small debt court in the cause before him for any period not exceeding twelve months; § 9. Where the sheriff finds it expedient to make avizandum with the cause he may pronounce decree in usual form, either on such day as he shall appoint, though any or all of the parties fail to attend, or on such day not later than seven days from the hearing of the cause, as he shall think fit, without requiring any party to attend; and any sheriff of the county or sheriffdom may, at the request of the sheriff who heard the cause, pronounce such decree as he may direct; and it shall not be competent for any sist of diligence on any decree pronounced under the provisions of this section to be issued; § 10. A charge on a decree pronounced under this act or 1 Vict. c. 41, or 16 & 17 Vict. c. 80, may be validly executed by a sheriff officer alone without a witness, and all warrants granted under this or the said other acts may be executed by any sheriff officer of any county without the necessity of any indorsation or warrant of concurrence: provided always, that where no sheriff officer resides within a distance of twelve miles of the place where the warrant is to be served, the full travelling expenses of the sheriff officer residing nearest to such place shall be allowed against the party upon whom the warrant is served, anything contained in § 10 of the act 1 & 2 Vict. c. 119, notwithstanding; § 11. Any party to a cause, or any claimant in a multiplepoinding, or the agent of any such party or claimant, may, on payment of a fee of one shilling, obtain from the clerk of court an extract of the decree pronounced in the cause to the extent of his interest therein; and the sheriff may, if he shall think fit, on the

[application of the agent of any party to whom expenses may be awarded, made at or before the time of the decree in the cause being pronounced, decern in his favour for the expenses of the cause to the extent of his interest therein; § 12. The extract hereby authorised may be written either on the copy of the principal summons or separately in the form, as nearly as may be, of schedule (C), and for the purpose of enforcing the decree or the part thereof contained in the extract, such extract shall have the like force and effect as if it had been made on the principal summons; § 13.

[See *Dove Wilson's Sher. Court Prac.* 505, 758; *Lees' Small Debt Handbook; Lees' Small Debt Amendment Act*, 1889.]

SMALL STIPENDS. By 50 Geo. III. c. 84, and 5 Geo. IV. c. 72, the *minimum* stipend to be modified to ministers having a right to stipend from the teinds of their parishes is fixed at £150 per annum, with £8, 6s. 8d. for communion elements; and where there is not a sufficient amount of teinds in the parish, the sum is to be made up by a payment from Exchequer. In addition to their stipend, these ministers have right to a manse and glebe, or a provision of £50 per annum, in lieu of both. Under these statutes the Teind Court has a ministerial jurisdiction; *Beveridge*, ii. 739. [See *Duncan's Par. Eccl. Law*, 309; *Buchanan on Teinds*, 466.] See *Teind Court.* [*Stipends.*] As to what are called Government or Parliamentary churches in the Highlands of Scotland, and the stipend and accommodations of the ministers, [see *Parliamentary Churches.*]

SMITH'S FORGE. The right of forges is given by the clause in the Crown charter, *cum fabrilibus*, &c. Anciently the right to have a forge for making plough-irons, or shoeing horses, could not exist in the vassal's person without a special clause in his grant; but modern practice has rendered this unnecessary. *Ersk.* B. ii. tit. 6, § 8.

SMUGGLING; is the making, transferring, importing, or exporting, of goods without paying the duties to Government, and with the intention of defrauding the revenue. If a merchant sells smuggled goods, knowing them to be so, he cannot sue for payment of their price, in a transaction entered into in this country; and no action lies for delivery of them, if purchased as such; the maxim as to all illegal contracts being, *Potior est conditio possidentis et defendentis.* Where an action is brought for the price of smuggled goods by a foreign merchant, the determination seems to depend a good deal on the question, whether the foreign merchant was accessory to, and aiding in, the plan of smuggling the goods into this country; for where he has had no accession to the fraud, but merely sells the goods, and the merchant in this country takes upon himself all the risk of importing them contrary to the revenue laws of this country, an action may competently be brought by the foreign merchant in the courts of this country. A bill for smuggled goods cannot be charged on by one aware of its character. Many statutes have been passed with a view to prevent smuggling. [See the Customs Consolidation Act (39 & 40 Vict. c. 36). Any person who, with any other two persons, assembles in order to, or, having so assembled, does unship, land run, carry, convey, or conceal, any spirits tobacco, or prohibited, restricted, or uncustomed goods, is guilty of a misdemeanour, and liable to a fine of not more than £500, nor less than £100. If any person engaged in any of the said offences is armed with fire-arms, or other offensive weapons, or, whether so armed or not, is disguised in any way, or, being so armed or disguised, is found within five miles of the sea coast or of any tidal river with any goods liable to forfeiture under this or any other act relating to the customs, he is liable to imprisonment with or without hard labour for a term not exceeding three years. Any person procuring, or hiring, or deputing or authorising any other person to procure or hire, any person or persons to assemble for the purpose of being concerned in the landing or unshipping, or carrying, conveying, or concealing any goods which are prohibited to be imported, or the duties for which have not been paid or secured, is liable to imprisonment for twelve months; §§ 188, 189; *Stephen's Digest of Crim. Law*, art. 76.] See *Ersk.* B. iii. tit. 3, § 3; *Kames' Eluc. Art.* 23; *Bell's Com.* i. 326; ii. 479; *Stair*, B. ii. tit. 2, § 9; *More's Notes*, lxiv.; *Bank.* i. 94; *Bell's Princ.* §§ 42, 460; *Kames' Princ. of Equity*, 223, 231 (1825); *Brown on Sale*, 131. See *Contraband Goods. Excise. Defrauding Revenue. Pactum Illicitum.*

SOCCAGE; an ancient tenure, under which the vassal performed exclusively agricultural services to the superior in the lands which the vassal occupied, a tenure which is said to have prevailed at one time in Scotland, but which is now unknown. It would appear that in soccage tenures,

the right of primogeniture did not originally hold; on the contrary, all the children succeeded equally, according to the principles of the civil law. *Bank.* B. iii. tit. 4, § 17; *Ersk.* B. i. tit. 1, § 35; B. ii. tit. 4, § 5; *Ross's Lect.* ii. 322; *Kames' Stat. Law, h. t.* [In England, the tenure of free and common soccage is the ordinary tenure of an estate in fee simple; see *Williams on Real Property*, 145; *Sweet's Law Dict.*]

SOCIETY. [See *Partnership. Joint Stock Companies. Friendly Society. Building Societies. Club. Church Judicatories.*]

SOCIUS CRIMINIS; an accomplice or associate in the commission of a crime. See *Accomplice. Evidence. King's Evidence.*

SODOMY; the crime of carnal copulation against nature. [This offence was, till 50 & 51 Vict. c. 35, § 56, capital; though the practice had long been to restrict the pains of law.] See *Hume*, i. 469; *Alison's Princ.* 566; [*Macdonald*, 200.]

SOK (*secta de hominibus suis, in curia, secundum consuetudinem regni*); was an old word used in charters and infeftments. According to Skene, he who was infeft with sok or soyt had the right of holding courts within his own barony or lands at which "*homines sui*," or his vassals, gave "soyt," according to the tenor of their infeftments. *Skene, h. t.* See *Heritable Jurisdictions. Furca et Fossa.*

SOKMANRIA; or soccage, according to Skene, was a kind of holding of lands, when any man was infeft freely without any service, ward, relief, or marriage, and paid to his master the duty called "*petit seriantie.*" *Skene, h. t.* See *Soccage. Seranteriæ.*

SOLATIUM. It is a principle of the law of Scotland, not recognised in English law, that one who injures another is bound, not only to repair the actual loss suffered, but also to give a *solatium* for wounded feelings. Thus *solatium* for wounded feelings is allowed in cases of breach of promise of marriage. And where a father, husband, or near relative is killed through negligence, a *solatium* will be given even where the death of the sufferer might be regarded as a benefit instead of a loss to his family. *Ersk.* B. iii. tit. 1, § 14; *Kames' Equity*, 305. See *Damages. Defamation.*

SOLDIERS; all persons in her Majesty's land forces, except militia, yeomanry, or volunteers, if these be not expressly included. Soldiers are liable to trial by the ordinary courts, for crimes or offences not of a military kind; and when accused of such offences, their officers must aid in delivering them up to the civil power. See *Ersk.* B. i. tit. 2, § 21; tit. 3, § 36; B. iv. tit. 4, § 29; *Bell's Com.* ii. 454; *Alison's Princ.* 39; *Alison's Prac.* 3, 13. See *Mutiny. Desertion. Furlough. Court Martial. Enlistment.* [*Army.*] *Meditatio Fugæ.*

SOLICITOR GENERAL, *of Scotland*; one of the Crown counsel, next in dignity and importance to the Lord Advocate, to whom he gives his aid in protecting the interests of the Crown, in conducting prosecutions, &c. Like the Lord Advocate, the Solicitor General has precedency and the privilege of pleading within the bar. [This right, however, does not belong to him by statute, as it does to the Lord Advocate. The Solicitor's right was recognised by the court in A.S. 28 Feb. 1662, but was disowned in instructions issued by the court on 16 Dec. 1686. The Crown, on the appointment of Mr Charles Erskine as sole Solicitor in 1725, directed by special letter that he should be admitted within the bar; and since then the privilege has been recognised as belonging to the office. See Report of a Committee of the Faculty of Advocates on silk gowns and pleading within the bar (1859).] The Solicitor has been held not to be a *calumniator publicus;* he cannot therefore concur in or authorise a complaint as such, except in his character of advocate-depute; *Kelties*, 1775, Tait's Cases, Brown's Supp. v. 602. [But by 50 & 51 Vict. c. 35, § 3, in the event of death or removal of a Lord Advocate, indictments may be raised in name of the Solicitor General till the vacant office is filled. See *Mackay's Prac.* i. 119.]

SOLICITOR GENERAL, *of England*; is one of the officers of the Crown, next in rank to the Attorney General. *Tomlins' Dict. h. t.*

SOLICITORS IN THE SUPREME COURTS. The solicitors or agents practising before the supreme court of Scotland were formed into a society in the year 1784, and incorporated by royal charter in 1797, with the usual powers, [and of new incorporated by 34 & 35 Vict. c. 107 (local). The office-bearers of the society consist of a president, vice-president, treasurer, secretary, librarian, fiscal, and collector; who, along with seven other members, form the council of the society. By §§ 22–26 of last-mentioned act, rules are made with reference to the qualifications of apprentices, and the admission of members.

[By resolution dated 25 June 1874, the society, in virtue of the powers conferred by § 19 of the Law Agents Acts, 1873, resolved that enrolled law agents, admitted as such after an examination by the court, or by the examiners appointed by the court under the said act, should, on application, and subject to the recommendation of the council, be *de plano* admitted members of the society, on payment of the dues of admission.] The society possess a library and a widows' fund. They are members of the College of Justice; *Bruce*, 24 Jan. 1833, 11 S. 313. See *Swint. Abridg. h. t.; Kames' Stat. Law, h. t.;* [*Shand's Prac.* i. 61; *Mackay's Prac.* i. 30; *Begg on Law Agents*, 10, 374. See *Law Agent. Agent and Client.*]

[**SOLICITORS OF THE SUPREME COURTS**, *in England.* This is the title now given, by the Judicature Act, 1873, § 87, to all attorneys, solicitors, and proctors. *Wharton's Lex.*]

SOLICITORS AT LAW; a society of law agents in Edinburgh, incorporated by royal charter, and entitled to practise before the sheriff court of Edinburgh, and other inferior courts. [See *Begg on Law Agents*, 14, 382. See *Law Agents.*]

SOLIDUM. To be bound *in solidum* is to be bound for the whole debt, although only one of several obligants. In order to constitute an obligation of this kind, the person must be taken bound, conjunctly and severally, with the others, or as principal and full debtor; except in bills of exchange, where simple acceptance by one of several acceptors imports a joint and several liability. [See *Co-obligant.*]

SORNERS. A person is guilty of sorning who takes meat and drink from others by force or menaces, without paying for it. This practice had formerly prevailed to such an extent in Scotland, that the most vigorous measures were requisite for its suppression; in so much, that the offence was punishable with the severest penalties, and at one period with death. Robert II. c. 12; 1449, c. 22; 1455, c. 45; 1477, c. 77; *Hume*, i. 475; *Ersk.* B. iv. tit. 4, § 64; *Bank.* i. 274; *Hutch. Justice*, ii. 75.

[**SOVEREIGN.** See *King.*]

SOWMING AND ROWMING; are two old law terms, now applied to the action whereby the number of cattle to be brought upon a common, by the persons respectively having a servitude of pasturage, may be ascertained. The criterion is the number of cattle which each of the dominant proprietors is able to fodder during winter. This action (which is competent before the judge ordinary) lies against such of the claimants on the common as have had indefinite promiscuous possession for forty years; such possession being contrary to the nature of the right, and calculated to injure the other parties interested. But the action does not lie with the proprietor of the servient tenement himself, who, it is presumed, will not overstock his property so as to impoverish it. A sowm of land is as much as will pasture one cow or ten sheep (*Hutchison*, ii. 412); and strictly speaking, to *sowm* the common, is to ascertain the several sowms it may hold; and to *rowm* it, is to portion it out amongst the dominant proprietors. But to such apportionment the parties interested cannot be compelled by this particular process, which is confined to the ascertainment of the numbers each may pasture. *Ersk.* B. ii. tit. 9, § 15; *Stair*, B. ii. tit. 7, § 14; *Bank.* B. ii. tit. 7, § 32; [*Shand's Prac.* ii. 845; *Innes' Legal Antiquities*, 269; *Rankine on Land-Ownership*, 378.] See *Pasture. Commonty.*

SPECIAL CASE. In civil jury causes, a special case differs from a special verdict only in this, that the special verdict is returned by the jury, whereas the special case is adjusted by the parties themselves, or by their counsel, and sets forth the special fact on which they are agreed, without the evidence. On the case thus adjusted, the court decides the points of law raised by the facts as admitted. [When parties agree on a special case, the order for trial is discharged, or the jury, if empanelled, is discharged without returning a verdict; and the special case has the like force and effect as a special verdict; 31 & 32 Vict. c. 100, § 38.] See *Macfarlane's Jury Prac.* 243; [*Mackay's Prac.* ii. 57. In Exchequer causes, commenced by *subpœna*, when the parties are agreed upon the facts, they may lodge a special case, which shall be equivalent to a special verdict finding such facts, and raising a question of law for the judgment of the Lord Ordinary; 19 & 20 Vict. c. 56, § 8.] See *Special Verdict.* [*Jury Trial. Case.*

[A useful mode of procedure in questions of law, by special case, was introduced by § 63 of the Court of Session Act, 1868, which provided that "where any parties interested, whether personally or in some fiduciary or official character, in the decision of a question of law, shall be agreed upon the facts, and shall dispute only on the law applicable thereto, it shall be competent

[for them, without raising any action or proceeding, or at any stage of an action or proceeding, to present to one of the Divisions of the court a special case, signed by their counsel, setting forth the facts upon which they are so agreed, and the question of law thence arising upon which they desire to obtain the opinion of the court; and which case may set forth alternatively the terms in which the parties agree that judgment shall be pronounced according to the opinion of the court upon the question of law aforesaid." Such special cases, unless otherwise directed, are heard in the ordinary course of the rolls of the Division to which they belong; A.S. 9 June 1870. The judgments of the court are liable to review by the House of Lords, unless review is excluded by consent of all parties. But in order to obtain a judgment which may be extracted and appealed, parties must ask for a judgment, not merely an opinion of the court; *Macdougall*, 4 July 1869, 7 Macph. 976. See also *Halliday*, 9 Nov. 1869, 8 Macph. 117. Special cases ought to be signed by the counsel by whom they have been adjusted, not by other counsel for them; *Hope*, 15 March 1870, 8 Macph. 699. A special case may be dismissed as incompetent, if all the persons interested are not parties; *Mackie's Trs.* 18 March 1875, 2 R. 621. Persons incapable of contracting cannot enter into a special case, which is a contract fixing the parties to a certain statement of facts; *Park's Trs.* 15 June 1876, 3 R. 850. When one of the parties dies, and his representative wishes to be sisted as a party in his stead, the proper course is for the representative or his counsel to sign the case as a party taking up the contract thereby constituted; *Beattie*, 9 Jan. 1884, 11 R. 405. Questions cannot be tried by special case, which could not, from want of jurisdiction or any other cause, have been competently brought before the court in some other known form of process; see *Morton*, 24 Feb. 1871, 9 Macph. 548; *Par. Board of Bothwell*, 6 Feb. 1873, 11 Macph. 399. See *Mackay's Prac.* ii. 243.]

SPECIAL CHARGE. Letters of special charge were letters passing under the signet, charging the heir of one who had died infeft in lands, to enter heir to him, under certification that, if no entry took place, the complainer should have the same execution against the lands as if the heir had entered. See *Charge. Adjudication. Hæreditas Jacens. Annus Deliberandi.*

SPECIAL JURY BOOK; a book kept by the sheriff, and prepared by copying from the general jury book the names of those qualified to serve as special jurors, *i.e.*, persons [paying cess upon £100 of valued rent or upwards, or assessed taxes on a house rented at £30 yearly or upwards,] or possessed of heritable property yielding £100 of yearly rent, or personal property to the amount of £1000. 6 Geo. IV. c. 22, § 4; 7 Geo. IV. c. 8; *Alison's Prac.* 377. See *Jury.*

SPECIAL SERVICE; is that form of service by which an heir is served to his ancestor in a special feudal subject, and under a special character. See *Service of Heirs. Succession. Brieve.*

SPECIAL VERDICT. In civil causes tried by jury, where it happens that the facts proved raise difficult questions of law, a special verdict may be returned by the jury, under direction of the judge at the trial. ["A special verdict is where the jury, instead of finding the affirmative or negative of the issues, return special findings in fact, and, without a general finding in favour of either party, find alternatively for that party in whose favour the court shall determine a question of law;" *Mackay's Prac.* ii. 57.] The usual course is for the judge to state the facts in detail to the jury, and to ask them how they find as to each of them; and the facts so found having been taken down by the clerk of court, the special verdict is afterwards transmitted to the Division of the court to which the cause belongs, in order to have the law applied. It is also competent for the judge to retire, and draw up the special verdict, and afterwards to return to court and read it to the jury for their assent, subject to the observation of the counsel in the cause. Or the counsel may themselves agree on the special findings in point of fact, and lead evidence only as to those facts with respect to which they are not agreed. The special verdict must be confined to specific findings of fact, with no detail of the evidence on which the verdict rests. ["When a special verdict is to be found, such finding may, by consent of parties, be settled out of court by the notes of the judge who tried the issue, or otherwise; but if the parties do not consent to that mode of settling the special verdict, the different parts of the evidence shall be stated to the jury, in order that they may find the facts which are to constitute the special verdict;" A.S. 16 Feb. 1841, § 31. "When a special verdict has been found by the jury in a cause, as aforesaid, the same shall be adjusted at the sight of

[the judge who presided, and signed by the clerk who officiated at the trial; and when so adjusted and signed, the cause shall be moved before the court, and a day fixed for hearing counsel thereon;" *ib.* § 40. See *Macfarlane*, 19 Dec. 1865, 4 Macph. 257; *Murray*, 29 Nov. 1870, 9 Macph. 198.] See also *Adam's Jury Trial*, 378; *Macfarlane's Jury Prac.* 242, 349; [*Mackay's Prac.* ii. 56.] See *Jury Trial.*

SPECIAL VERDICT, *in a criminal trial;* is a return of certain facts or circumstances as proved, without any general conclusion from them as to the panel's guilt; the conclusion being left to be made by the judge, according to his opinion of the lawful construction of the facts so laid before him. *Hume*, ii. 439; *Alison's Prac.* 647; [*Macdonald*, 520.] See *Verdict.*

SPECIFICATION; is the formation of a new property from materials belonging to another. In this manner of creating property, a transference of the right, with indemnification, however, to the owner of the materials, is made wherever the materials cannot be reduced to their original state. Thus, wine, as it cannot be again reduced into grapes, belongs to the maker. But silver plate, formed from bullion, may be reduced to its original state, and therefore still belongs to the person to whom the bullion belonged. [See *Wylie & Lochhead*, 17 Feb. 1870, 8 Macph. 552.] See *Ersk.* B. ii. tit. 1, § 16; *Bell's Com.* i. 294; *Stair*, B. ii. tit. 1, § 41; *Bell's Princ.* § 1298. See *Adjunction. Contexture. Commixtion.*

[**SPECIFICATION**; a particular and detailed statement. See *Patents. Commission for Recovery of Writings.*]

SPEI EMPTIO; the sale of the hope or chance of a thing's existence; *e.g.*, the draught of a net, or the hope of a succession. Differently from the sale of a *res futura*, such a sale is good though the thing never exist. *Brown on Sale*, 111; *Bell's Princ.* § 91. See *Res Futuræ. Goodwill.*

SPES SUCCESSIONIS; the right or hope of succession. By the law of Scotland, a *spes successionis* may be sold, but it cannot be adjudged; *Beaton*, 7 June 1821, 1 S. 49. In rights taken to parent and child, unless very strong terms are used to limit the father's right to a mere liferent, he is understood to have the fee, and the child's right is merely a *spes successionis.* See *Ersk.* B. iii. tit. 8, § 22; *Bell's Com.* i. 55; *Bell's Princ.* §§ 1954, 1960. See *Pactum de Hæreditate Viventis.* [*Jus Crediti. Contract of Marriage.*]

SPIRITUALITY OF BENEFICES; the tithes of all lands; used in contradistinction to the *temporality* of benefices, which consisted of the property of such lands as had been gifted to the Church. See *Teinds.*

SPLITTING OF SUPERIORITY. A superior cannot split the superiority into parts, where there is one fee and one *reddendo*, so as to compel the vassal to seek his entry from more than one superior; *Bell's Princ.* § 859. See *Superiority.*

SPOLIATUS ANTE OMNIA RESTITUENDUS; a maxim importing that spuilzied goods must be restored, immediately on the pursuer proving that he was in lawful possession of them, and that the allegation of a preferable right, though instantly verified, will not be received as an answer to this demand. *Ersk.* B. iv. tit. 1, § 15; *Bank.* B. i. tit. 10, § 148. See *Spuilzie.*

SPONSALIA. See *Espousals.*

SPONSIO LUDICRA; an agreement, in which the contracting parties are held not to be serious in their intention of binding themselves. *Kames' Equity*, 22; *Brown's Synop.* 1438. See *Gaming. Wager. Pactum Illicitum.*

SPRING-GUNS; and similar engines, are thought to be justifiable when employed to ward off attacks on houses. Their legality is very doubtful when placed in enclosed grounds, even with notice; and they are certainly illegal when employed to protect unenclosed grounds. It was thought unnecessary to extend to Scotland the English statute 7 & 8 Geo. IV. c. 18, prohibiting such engines, as the evil was already provided for by the common law. [The modern English enactment is 24 & 25 Vict. c. 100, § 31; and the exception from the enactment, of spring-guns or other engines set in a dwelling-house, for protection thereof, between sunset and sunrise, seems to correspond with the law of Scotland.] See *Bell's Princ.* § 961; [*Hume*, i. 219; *Rankine on Land-Ownership*, 125.]

SPUILZIE; corresponding to ejection and intrusion in heritage, may be defined, the taking away of moveable goods in the possession of another, against the declared will of the person, or without the order of law. In consequence of this unlawful act, an action lies not only for restoring the goods, but for all the profits which it was possible for the owner to have made of the goods, as these profits shall be proved by his oath *in litem*, which, by 1503, c. 65, the sheriff may administer. This action

must be brought within three years, in order to entitle the pursuer to the violent profits, and will be elided by any probable ground of excuse, or by the spoliator's voluntary restitution *de recenti*. But an action for recovery of the goods carried off illegally, and for ordinary damages, may be brought at any time within forty years, not against the spoliator alone, but against all abettors, who are liable *singuli in solidum*, and against his heirs, who are liable in violent profits also, if litiscontestation took place with the ancestor. The spuilzied property may be evicted from *bona fide* purchasers, for spuilzie *inurit labem realem*. *Stair*, B. i. tit. 9, § 16; *Ersk.* B. iv. tit. 1, § 15; B. iii. tit. 7, § 16; *More's Notes to Stair*, lxi.; *Bank.* i. 274; *Kames' Stat. Law Abridg. h. t.* See *Violent Profits*.

SQUALOR CARCERIS. This term means merely the strictness of imprisonment which a creditor is entitled to enforce, with the view of compelling the debtor to pay the debt, or disclose any funds which he may have concealed. It does not imply (as it did with the ancient churchmen, from whom the term is derived) anything loathsome or unhealthy in the imprisonment in Scotland, which is indeed less close than in England. *Squalor carceris* is not necessary in imprisonment on *meditatio fugæ* warrant, security being all that is required in such cases. See *Stair*, B. iv. tit. 47, § 22; *Bell's Com.* ii. 439, 456; [*Ersk.* B. iv. tit. 3, § 14.] See *Imprisonment*.

STABBING; is indictable at common law, as a species of assault; and nothing will excuse such intentional stabbing but the plea of self-defence, not *ultra moderamen inculpatæ tutelæ*, in any affray not begun by the individual accused; for if the affray was begun by him, he will hardly be exculpated even on that plea. The punishment is [arbitrary.] See *Hume*, i. 328. See *Assault*. With regard to [the statutory offence of] cutting or stabbing with intent to murder or injure, see *Attempt at Murder*. [See *Macdonald*, 144, 158.]

STABLERS; are liable under the edict *Nautæ, Caupones*. See *Innkeeper. Nautæ, Caupones*.

STAFF AND BATON. These were the usual symbols of resignation when the vassal resigned his feu into the hands of his superior, either *ad remanentiam* or *in favorem*. A.S. 11 Feb. 1708; *Ersk.* B. ii. tit. 3, § 36; *Ross's Lect.* ii. 216, 229; *Bell on Completing Titles*, 136. See *Resignation*.

STAGE-COACHES. The owners and drivers of stage-coaches are liable for the safety of the passengers and goods, as has been explained in the articles *Public Carriages*. [*Carriers. Damages.* Various provisions have been enacted regulating the conduct of stage-coaches, and the duties payable on them. See 2 & 3 Will. IV. c. 120; 3 & 4 Will. IV. c. 48; 32 & 33 Vict. c. 14. See *Barclay's Digest, h. t.*]

[**STAGNUM**; a pond or pool of water with no perennial course. The owner of the ground on which it lies may make what use of it he pleases, provided he do not by artificial means flood or pollute his neighbour's ground therewith. See *Mags. of Linlithgow*, 1768, M. 12805, 5 Brown's Sup. 935; *Rankine on Land-Ownership*, 427. See *Lake*.]

STAKE-NETS. See *Salmon-Fishing*.

STALLANGIATORES; according to Skene, were persons who, in a market or fair within burgh, kept stalls, for which they paid duty. *Skene, h. t.*

STAMP LAWS. These are laws enacted with a view to provide a revenue to the Crown, by requiring that all contracts, bills of exchange, bonds, deeds, and many other writings of a similar nature, should be written upon stamped paper, a duty being payable to the Crown on every stamp. The stamp laws, in addition to serving the purpose for which they were enacted, have been of considerable use in checking fraud, and rendering forgery difficult, and supplying means of detecting the one or the other. The revenue collected in this way was first granted to the Crown by 5 Will. and Mary, c. 21. By several acts of the same and of the subsequent reign, these duties were continued; extended to various articles not included in the above act; and by 1 Geo. I. c. 12, they were made perpetual. The duties imposed for England did not apply to Scotland previous to the union of the kingdoms. By the 10th article of the Act of Union, it was stipulated that Scotland should not be charged with the duties on stamped paper, &c., granted by the acts then in force, in England. But, by 8 Anne, c. 5, the stamp duties then payable in England were expressly extended to the whole kingdom; and since that time Scotland has been subject, in common with England, to the several charges and regulations imposed by the various acts of Parliament relating to this branch of revenue, unless when specially exempted. [The existing act is the Stamp Act, 1870 (33 & 34 Vict. c. 97), which consolidates the law relating to

[stamp duties. The act sets forth in a schedule, in alphabetical order, the various deeds and instruments liable to stamp duty, and the amount payable on each. In some cases the duty is fixed, in others it is graduated *ad valorem*. A new stamp duty on accounts was imposed by 44 Vict. c. 12, § 39; and alterations were made on various duties by 51 Vict. c. 8. See also 45 & 46 Vict. c. 72, §§ 8–17; 52 Vict. c. 7, §§ 5–9, 16–17; 52 & 53 Vict. c. 42, §§ 15–20. The stamp must appear on the face of the instrument; and if more than one instrument be written on the same piece of material, each must be separately stamped; Stamp Act, § 7. An instrument relating to several distinct matters is chargeable in respect of each; § 8. But if there be only one transaction, there may be several obligations and several co-obligants, without the necessity of more than a single stamp duty; *Johnston*, 1801, M. App. Writ. No. 5; *Brown*, 3 Dec. 1830, 9 S. 136. A stamp appropriated to any particular description of instrument is not available for any other kind of instrument; § 9. All the facts and circumstances affecting the liability of an instrument to *ad valorem* duty, or the amount chargeable, must be fully and truly set forth in the instrument, under a penalty of £10; § 10. In the absence of express statutory provision to the contrary, any unstamped or insufficiently stamped instrument may be stamped after execution, on payment of the unpaid duty and a penalty of £10, and also by way of further penalty, where the unpaid duty exceeds £10, of interest on the duty at 5 per cent. from the date of execution to the time when the interest equals the unpaid duties; § 15. But the Commissioners of Inland Revenue may remit the penalties, or part thereof, at any time within three months after execution; and if the instrument was first executed abroad, it may be stamped, at any time within 30 days after it has been first received in the United Kingdom, on payment of the unpaid duty only; § 15, as amended by 51 Vict. c. 8, § 18 (2). As a general rule, the Commissioners do not exact penalties when an instrument executed in the United Kingdom is duly stamped within two months; but in the case of agreements, the practice is to allow only a period of fourteen days, after which penalties are exacted; *M. Bell's Conv.* i. 207. Some instruments, such as bills of exchange and promissory notes, cannot be afterstamped; Stamp Act, § 53; *Tennent*, 12 Jan. 1878, 5 R. 433; *Vallance*, 27 June 1879, 6 R. 1099. When an instrument liable to stamp duty is produced as evidence in any civil court, the officer whose duty it is to read the instrument is directed to call the attention of the judge to any omission or insufficiency of stamp; and if the instrument is one which may legally be afterstamped, it may be received in evidence on payment of the unpaid duty, the penalty payable by law, and a further sum of £1; § 16. By 44 & 45 Vict. c. 12, § 44, this provision was made applicable to proceedings before an arbitrator. Save as aforesaid, no instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall, except in criminal proceedings, be pleaded or given in evidence, unless duly stamped in accordance with the law in force at the time when it was first executed; Stamp Act, § 17. See *Broddelius*, 4 March 1887, 14 R. 536. Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions: (*a*) Whether it is chargeable with any duty; (*b*) With what amount of duty it is chargeable. If the Commissioners are of opinion that the instrument is not chargeable, or on payment of the duty with which it is in their opinion chargeable, the instrument may be stamped with a stamp denoting that it is not chargeable, or that it is duly stamped; after which it cannot be objected to on the ground of stamp duty; § 18. Appeal is competent against the deliverance of the Commissioners, within twenty-one days, to the Court of Session (as Court of Exchequer), and the Commissioners may for that purpose be required to state and sign a case; § 19. See *Maxwell*, 20 July 1866, 4 Macph. 1121. Except where express provision is made to the contrary, all duties are to be denoted by impressed stamps only; § 23. When an instrument is stamped with an adhesive stamp, it is not deemed to be duly stamped unless the person required by law to cancel such stamp cancels it by writing on or across the stamp his name or initials, with the date, or unless it is otherwise proved that the stamp appearing on the instrument was affixed at the proper time. A penalty of £10 is incurred by any one required by law to cancel an adhesive stamp refusing

[to do so in manner aforesaid; and a penalty of £50, by any one who practises fraud in connection with adhesive stamps; §§ 24–25. By 45 & 46 Vict. c. 72, § 13, any stamp duties of an amount not exceeding 2s. 6d., which may legally be denoted by adhesive stamps not appropriated by any words on the face of them to any particular description of instrument, and any postage duties to the like amount, may be denoted by the same adhesive stamps. By § 14 of same act, where two or more adhesive stamps are used to denote a stamp duty upon an instrument, such instrument is not to be deemed duly stamped unless the person upon whom the duty of cancellation is by law imposed cancels each or every stamp by writing his name or initials or the name or initials of his firm, together with the true date of his so writing, so that both or all and every of the stamps may be effectually cancelled and rendered incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamps appearing on the instrument were affixed thereto at the proper time. The subsequent sections of the Stamp Act contain special regulations in regard to various descriptions of deeds, which cannot be detailed here. See *Insurance*, pp. 556 *b*, 564 *a*, 570. *Lease. Receipt. Broker. Bill of Exchange.* The act 51 Vict. c. 8, § 18, enacts in regard to instruments chargeable with *ad valorem* duty, as specified in the schedule, and mentioned *infra*, (1) that the instrument, unless written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of 30 days after it is first executed, or first received in the United Kingdom if executed abroad, unless the opinion of the Commissioners with respect to the amount of duty has been required before such expiration; (2) that in case the opinion of the Commissioners has been required, the instrument shall be stamped in accordance with their assessment within 14 days after notice thereof; (3) that if any such instrument is not duly stamped in accordance with these provisions, the person on that behalf specified in the schedule shall forfeit the sum of £10, and in addition to the penalty payable by law on stamping the instrument there shall be paid an additional penalty equivalent to the stamp duty thereon, unless a reasonable excuse for the delay, or omission, or insufficiency be afforded to the satisfaction of the Commissioners, or of the court or referee before whom it is produced. The instruments to [which these rules apply are the following: —(*a*) bond, covenant, or instrument of any kind whatsoever; (*b*) conveyance or transfer on sale; (*c*) lease or tack (including an agreement for a lease or tack for any term not exceeding 35 years); (*d*) mortgage, bond, debenture, covenant and warrant of attorney to confess and enter up judgment; (*e*) equitable mortgage; (*f*) settlement. The person liable to the said penalty of £10 is the person in whose favour the instrument operates, or in the case of a settlement, the settlor; sched. By § 20 of the same act, every condition of sale framed with the view of precluding objection or requisition on the ground of absence or insufficiency of stamp, and every contract, arrangement, or undertaking for assuming the liability on account of such absence or insufficiency, or indemnifying against it, shall be void. The following decided points may be noted:—In *Anderson*, 19 Oct. 1878, 6 R. 56, a deed which was merely a conveyance to vest the feudal title in a person having the radical right to the property, was held liable only to the ordinary 10s. deed-stamp, not to the *ad valorem* stamp exigible for a conveyance on sale. In general, stamp duty is assessed, not on a critical construction of the terms of a conveyance or other deed, but in accordance with its real substance and effect. See *Belch*, 24 Feb. 1877, 4 R. 592; *Gibb*, 24 Nov. 1880, 8 R. 120; *M'Leod*, 3 June 1885, 12 R. 1045; *Glasgow & S.W. Railway*, 20 May 1887, 14 R. (H.L.) 33. Where a heritable property was conveyed in payment of a debt, but subject to a bond over the property, it was held that, under § 73 of the act, the consideration on which *ad valorem* duty fell to be paid was the debt due by the disponer *plus* the amount of the burden; *Commrs. of Inland Revenue*, 15 Jan. 1881, 8 R. 389. In general, when a mutual deed is founded on by one of the parties, and being unstamped requires to be afterstamped at his expense, he is entitled afterwards to recover half of the expense from the other party; *Neil*, 19 March 1867, 5 Macph. 634; *M'Douall*, 19 July 1870, 8 Macph. 1012; but see *Hislop*, 20 March 1878, 5 R. 794. Afterstamping, where competent, has retrospective effect; *Wood*, 13 Nov. 1838, 1 D. 14; *Mories*, 24 Nov. 1843, 6 D. 97. Though an unstamped document is inadmissible as a deed to instruct a right, it may be used as evidence of collateral facts; *Matheson*, 27 March 1849, 6 Bell's App. 374; *Bannatyne*, 13 Dec. 1855, 18 D. 230. The court does

[not take notice of the stamp laws of other countries; *Stewart*, 19 July 1871, 9 Macph. 1057. By the Stamp Duties Management Act (33 & 34 Vict. c. 98), the duties are put under the management of the Commissioners of Inland Revenue; regulations are made as to licences to deal in stamps, allowance to be made for spoiled or unused stamps, &c.; penalties are enacted for unauthorised dealing in stamps, defacement of adhesive stamps, &c.; and the following acts, viz., forging a die or stamp; impressing any material with a forged die; fraudulently removing, mutilating, or otherwise tampering with a stamp; selling or using a forged stamp; knowingly and without excuse having in possession any forged die or stamp, or any stamp that has been fraudulently tampered with—are made criminal offences, punishable by penal servitude or imprisonment. See on this subject, *Ersk.* B. iii. tit. 2, § 21; *Bell's Princ.* § 22; *Dickson on Evidence*, § 965; *Menzies' Conv.* 86; *M. Bell's Conv.* i. 199; *Tilsley on Stamp Laws; Griffith's Stamp Digest; Addison on Contracts*, 1052.]

STANDING ORDERS; are the orders made by either House of Parliament respecting the manner in which business shall be conducted in it. The orders of the General Assembly, respecting the management of business there, have also been called standing orders; *Church Law Styles*, 270. Clerks of the peace and others are, by express statute, ordered to take the custody of documents directed to be deposited with them under the standing orders of either House of Parliament; 1 Vict. c. 83. [See *May's Parly. Prac.* 193, 769, 876.] See *Parliament. Private Bills.*

[**STANNARIES**; a district of England including parts of Devon and Cornwall, where tin mines are in operation. Civil actions in respect of matters arising within the Stannaries may be brought in the Stannary Court, before the Vice-Warden of the Stannaries. Formerly, an appeal lay to the Lord Warden of the Stannaries, and from him to the Privy Council, but this jurisdiction has been transferred to the Court of Appeal. *Sweet's Law Dict.*]

STATUS; a Roman law term, signifying a quality attaching to persons, in virtue of which they differed in the eye of the law. Thus a Roman citizen differed in *status* from a stranger, a *paterfamilias* from a *filiusfamilias*. A change of *status* was called *capitis diminutio;* which was called *maxima*, *media*, or *minima*, according to the rights lost or acquired. See *Heinec. Elem.* §§ 76 and 224; *Bank.* i. 45.

STATUTE LABOUR; is the amount of work [formerly] appointed by law to be furnished annually for the repair of highways not turnpike. The persons liable to give statute labour were tenants, cottars, and labourers, including inhabitants of royal burghs, artificers, &c. [Statute labour is now universally converted into a money assessment. See 8 & 9 Vict. c. 41; *Kilmalcolm Road Trs.* 22 June 1865, 3 Macph. (H.L.) 84. See *Road, Public.*]

STATUTE LAW. [The statute law of the kingdom is the whole body of subsisting acts of Parliament.] An act of Parliament is a law passed by all the three branches of the legislature: the King (or Queen), the Lords Spiritual and Temporal, and the Commons, in Parliament assembled. This is the highest legal authority known in the constitution; and a statute so enacted cannot be altered, repealed, or suspended, except by the same authority, or (in Scotland) by a long course of contrary usage or disuse; for, by the law of Scotland, a statute may, by disuse, cease to be obligatory. [See *Desuetude.*] The proper statute law of Scotland commences with those acts which were passed in the reign of James I. of Scotland, continuing from that period down to the Union of the kingdoms. After the Union, the Scotch statute law is to be found in those British statutes which extend to Scotland. The ancient acts of the Scotch Parliament were proclaimed in all the county towns, boroughs, and even in the baron courts. This mode of promulgation, however, was gradually dropped, as the use of printing became common; and, by 1581, c. 128, publication at the market-cross of Edinburgh was declared to be sufficient. British statutes are held to be published by being printed and circulated. [Statutes are either public or private; and of private acts some are local, as affecting particular places only, others personal, as confined to particular persons. According to the nature of their object or provisions, statutes are classified as declaratory, penal, or remedial; enlarging or restraining; enabling or disabling.] A statute may be subdivided into the rubric or title; the preamble, which states the reasons and grounds on which the new enactment has been made, and the other statutes to which it refers; and the statutory part, by which the enactment is actually made. [The rubric is not properly part of the statute, and affords no aid in its interpretation; see

[*Rubric.* The preamble may be argued from in construing the statutory part, if the terms of the latter are capable of more than one meaning. If unambiguous, the enactment must receive effect, irrespective of the preamble. Many statutes contain an interpretation clause, defining the sense in which certain words are used. But "an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term, where the circumstances require that it should be so comprehended;" *R.* v. *Cambridgeshire*, 7 A. & E. 491.] In explaining the statutory part of a law, the following rules are received: That there is place for interpretation only where the words admit of two different meanings: That where they do not admit of a double meaning, the words must be explained in that sense only which they can bear, whatever hardship may be the consequence: That the interpretation of laws, where they admit of it, ought not to depend on critical refinement or subtle distinctions; since, being directed to the great body of the people, they ought to be interpreted in that sense which the words most obviously bear: That, when a law term of known legal signification occurs in a statute, it is to be understood, not in its popular, but in its legal sense: That private statutes are not to be applied at large: That, when the words of a statute are obscure, their meaning may be sought in a comparison of them with other parts of the same statute, or by a reference to former statutes, or by the usage of the country: That doubtful laws ought to receive that interpretation which suits best with the avowed intention of the legislature; and that restrictive statutes are always to be strictly interpreted: [That "where powers are conferred in a statute for the public benefit, they must be exercised, and the enactment is imperative;" *per* Lord J. C. Inglis, in *Walkinshaw*, 28 Jan. 1860, 22 D. 627.] Until the year 1793, all acts of the same session of Parliament were held to commence their operation on the same day; and as, in ancient times, the royal assent was reserved till the end of the session, the whole enactments of each session were considered as one statute. The Chancery enrolment of acts specified no date except that of the commencement of the session, and accordingly all acts were, in legal construction, held to have been in force from that day. The inconvenience and injustice of this construction, which made every statute an *ex post facto* law, led to the act 33 Geo. III. c. 13, directing the clerk of Parliament to indorse on every act the date when it receives the royal assent, and declaring that this indorsement shall be taken to be a part of the act, and the date of its commencement, where no other commencement is provided therein. Since that time, the date of the royal assent is printed under the title of every act. By 48 Geo. III. c. 106, when a bill is introduced for the continuance of any act expiring within the session, and such act expires before the continuing bill has received the royal assent, the continuing act takes effect from the date of the expiration of the act intended to be continued.

[The Interpretation Act, 1889 (52 & 53 Vict. c. 63), consolidates previous enactments relating to the construction of statutes, and makes further provision for shortening the language used therein. In all acts passed since 1850, words importing the masculine gender include females; words in the singular include the plural, and words in the plural include the singular; § 1. The word "person," in all future acts, shall include any body of persons corporate or unincorporate, unless the contrary intention appears; § 19. In construing enactments relating to offences punishable on indictment or on summary conviction, the above rules are to be observed in all acts, past or future; §§ 1, 2. In acts passed since 1850, "month" means calendar month; "land" includes messuages, tenements, and hereditaments, houses, and buildings of any tenure; "oath" and "affidavit," in the case of persons allowed by law to affirm or declare instead of swearing, include affirmation and declaration; § 3. In all acts, expressions referring to writing include references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form, unless the contrary intention appears; § 20. When any future act authorises or requires any document to be served by post, whether the expression "serve," or "give," or "send," or any other expression is used, then unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post; § 26. In future acts, as respects Scotland, unless the contrary appears, "sheriff" shall

[include sheriff substitute, "felony" shall mean a high crime and offence, and "misdemeanour" an offence; § 28. Various official and judicial definitions are contained in §§ 12, 13. Every act passed since 1850 is a public act, and shall be judicially noticed as such, unless the contrary is expressly provided; § 9. In future acts, unless the contrary intention appears, powers conferred and duties imposed may be exercised or performed from time to time as occasion requires; if conferred or imposed on the holder of an office, they may be exercised or performed by the holder for the time being; and power to make rules, regulations, or bye-laws includes power to rescind, revoke, amend, or vary the same; § 32. Where an act or omission constitutes an offence under two or more acts, or both under an act and at common law, prosecution may be under either or any of those acts, or at common law; § 33. Distances, in future acts, unless the contrary intention appears, are to be measured in a straight line on a horizontal plane; § 34. The commencement of an act means the time at which it comes into operation; and when, in future, any act, or any order, warrant, scheme, letters-patent, rules, or bye-laws made under power conferred by such act, are expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day; § 36; but provision is made by § 37 for the exercise of statutory powers between the passing and commencement of the act. Where any act passed after 1850 repeals a repealing enactment, it does not revive any enactment previously repealed, unless words are added reviving that enactment; and where such act substitutes provisions for an enactment which it repeals, the repealed enactment remains in force until the substituted provisions come into operation; § 11. Further provisions in regard to the effect of repeal, but applicable only to future acts, are made by § 38, viz.:—(1) Where an act repeals and re-enacts, with or without modification, any provisions of a former act, references in any other act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. (2) Where an act repeals another enactment, the repeal shall not, unless the contrary intention appears, (*a*) revive anything not in force or existing at the time at which the repeal takes effect; or (*b*) affect the previous operation [of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or (*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or (*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or (*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid.]

See *Ersk.* B. i. tit. 1, §§ 37, 49; *Bank.* B. i. tit. 24, § 60; *Stair*, B. i. tit. 1, § 16; *Bell's Princ.* § 2208; *Kames' Equity*, 220, 235, 250; [*Dickson on Evidence*, § 1105; *Stephen's Com.* i. 68; *Dwarris on Statutes; Maxwell on Interpretation of Statutes; Hardcastle on Statutory Law; Wilberforce on Statutes.* See *Parliament. Assent, Royal.*]

[**STATUTE OF FRAUDS**; the English act 29 Car. II. c. 3 (1676). This famous statute, of which Lord Nottingham said that every line was worth a subsidy, was passed in order to remove the facilities for fraud and the temptation to perjury which arose in verbal obligations. Its principal enactments are:—Parole conveyances, leases, &c., of land, unless put in writing and signed by the parties making the same, or their agents lawfully authorised by writing, shall have the effect of leases at will only, except in the case of a lease for not more than three years, reserving as a rent two-thirds of the annual value; §§ 1, 2. Grants and surrenders shall be by deed or writing signed by the party granting or surrendering, or his agents authorised by writing; § 3. No action shall be brought to charge an executor or administrator upon any special promise to answer damages out of his own estate; or to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, or any interest in or concerning them; or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, is in writing and signed by the party to be charged, or some other person thereunto by him lawfully authorised; § 4. All declarations and creations of trust of lands shall be in writing, except trusts

[arising by implication or construction of law; §§ 7, 8. Grants and assignments of trusts shall be in writing; § 9. Lands shall be liable to the judgment, &c., of the *cestui que trust*, and held free from incumbrances of the trustees; and trusts in fee simple, shall be assets in the hands of the heirs of the *cestui que trust;* § 11. Writs of execution shall bind the property of goods only from the time of their delivery to the sheriff; § 16. No contract for the sale of any goods, wares, and merchandise for the price of £10 or upwards shall be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by the contract, or their agents thereunto lawfully authorised; § 17. Some of these provisions have been modified by subsequent enactments. See *Agnew on Statute of Frauds; Addison on Contracts*, 159; *Wharton's Lex.; Sweet's Law Dict.*]

STEAM-POWER, *Lease of*. See *Manufactories*.

STEELBOW GOODS; consist in corn, cattle, straw, and implements of husbandry delivered by the landlord to his tenant, by means of which the tenant is enabled to stock and labour the farm, and in consideration of which he becomes bound to return articles equal in quantity and quality at the expiration of the lease. [The contract of steelbow is said by the institutional writers to be of the nature of *mutuum*, but is classed under location by Mr Hunter. In *Butter*, 1764, M. 6208, 5 Br. Sup. 899, a tenant having died bankrupt, and a competition for the steelbow goods having arisen between the landlord and the general creditors, the former was preferred. Mr Bell, however, points out that this decision was based chiefly on the principle of hypothec; *Princ.* § 1264, *Illust.* ii. 211. The usual agreements as to straw, dung, &c., in the last year of a lease, rest on the principle of steelbow; but otherwise steelbow leases are now practically unknown. Mr Hunter, however, mentions instances of so recent date as 1848 and 1850. The etymology of steelbow is illustrated by the corresponding terms in other languages, *e.g. Bestia ferri* (*i.e.*, "*quæ domino non perit*," see *Ducange, h. t.*); *Cheptel de fer* (see *Code Nap.* § 1821); *Eisenviehvertrag* (see *Holzendorff's Rechtslexicon, h. t.*). See also *Jamieson's Scot. Dict.* and *Supp.*, *voce* [*Steelbow;* and *Cosmo Innes' Legal Antiquities*, 245, *note.*] See *Stair*, B. i. tit. 11, § 4; B. ii. tit. 3, § 81; B. iii. tit. 8, § 58; *More's Notes*, ccii.; *Ersk.* B. ii. tit. 6, § 12; B. iii. tit. 1, § 18; *Bank.* i. 355; *Bell's Princ.* § 1264; *Bell on Leases*, i. 335; *Hunter's Landlord and Tenant*, i. 62, 325; ii. 368; [*Rankine on Leases*, 256;] *Brown's Synop. h. t.* See *Lease*.

STELLIONATE; is a term applied, in the law of Scotland, either to any crime which, though indictable, goes under no general denomination, and is punishable arbitrarily, or to any civil delinquency of which fraud is an ingredient. Those, *e.g.*, who grant double conveyances of the same subject, are guilty of this crime; 1540, c. 105; 1592, c. 140; and are punishable arbitrarily in their persons and goods, besides becoming infamous. [The term stellionate, in any sense, has for many years been practically obsolete.] See *Ersk.* B. iv. tit. 4, § 79; *Hume*, i. 328; *Alison's Princ.* 624; *Bell's Com.* i. 308; *Kames' Stat. Law, h. t.;* [*Macdonald*, 162].

STENT *and* **STENTMASTERS**. Stent is an old word for a tax, impost, or duty, and a stentmaster is a person named to allocate the stent on the persons liable. [See *Winter*, 21 Dec. 1837, 16 S. 276;] and cases in *Brown's Synop.* 302–3, 2023.

STERILITY; [as a ground for abatement of rent. See *Lease*, p. 646.]

STERLINGUS; a kind of weight, containing thirty-two corns or grains of wheat. According to Skene, the expression "sterling," as applied to money, comes from the weighing a certain number of grains; the sterling penny in England having weighed thirty-two grains. *Skene, h. t.* [But the more probable derivation is from *Esterlings* (easterlings), by which name the Hanse traders in London were known about the time of Henry III. *Skeat's Etym. Dict.*]

STEWARD—STEWARD OF SCOTLAND. The steward was an officer appointed by the King, with jurisdiction over Crown lands, and with the same power as that of a lord of regality; 1540, c. 97. His jurisdiction, which varied with circumstances, was generally heritable, until the 20 Geo. II. c. 43, which abolished all minor stewartries, and annexed the remainder. The judicial office of steward is the same in everything but name with that of sheriff. It is declared by express statute that the words sheriff, sheriff-clerk, &c., in any existing or future statute, shall be held to apply to steward, steward-clerk, &c.; 1 Vict. c. 39. The *Steward of*

Scotland was an officer of the highest dignity and trust. He administered the Crown revenues, superintended the affairs of the household, and possessed the privilege of holding the first place in the army next to the king in the day of battle. From this office the royal house of *Stewart* took its surname. But the office was sunk on their advancement to the throne, and has never since been revived. *Bank.* ii. tit. 3, § 18; B. iv. tit. 14, § 4; B. iv. tit. 15, § 2; B. iii. tit. 10, § 28; *Ersk.* B. i. tit. 4, §§ 7, 10, 11.

STILLICIDII SERVITUS. See *Eaves-Drop.*

STINGISDINT; a "dint or straike with a sting or batton." *Skene, h. t.*

STIPEND. The stipend is the provision made for the support of the parochial ministers of the Church of Scotland. It consists of payments in money or grain, or both, varying in amount according to the extent of the parish and the state of the free teinds, or of any other fund specially set apart for the purpose. See *Teinds.* The exclusive powers of the Court of Session, as Commissioners of Teinds, in assigning, modifying, and localling stipends, are not infringed by the Judicature Act. All stipends which come short of £150 per annum are made up to that sum from Government funds; 50 Geo. III. c. 84; and the act 5 Geo. IV. c. 72, allows to those clergymen of town parishes who have neither manse nor glebe, nor allowance for them, £50 per annum; to those who have no manse, £30; and to those who have no glebe, £30 per annum; to be paid by Exchequer, according to a schedule. The Commission of Teinds cannot decern for a stipend where there are no teinds, as in burghs, or exhausted teinds; or in parishes where a second church is required; a stipend being, in these cases, derived either from royal or parliamentary grant, or from voluntary burgh or private contributions. By 48 Geo. III. c. 138, no augmentation can be applied for within twenty years after the last augmentation. See *Augmentation.* Whitsunday and Michaelmas are the two terms at which the stipend is held to fall due to incumbents. Where the incumbent is admitted before Whitsunday, he is entitled to the whole year's stipend, because his entry is considered as prior to the sowing of the corn; and, for the same reason, if his interest has ceased before that term, he has right to no part of the fruits of that year. If he has been admitted after Whitsunday, and before Michaelmas, he is entitled to the half of that year's stipend; and in the same way the incumbent, whose interest ends before Michaelmas, has a right to the half-year's stipend. The reason why Michaelmas is taken in preference to Martinmas is, that all stipends are held to come in place of the tithes, which were due at the separation of the crop from the ground. These are the terms by which the interests of the executors are regulated, as regards stipend due to the minister at the time of his death. See *Ann.* Ministers' stipends prescribe in five years. As to the disposal of stipends during a vacancy, see *Vacant Stipend.* See *Ersk.* B. i. tit. 5, §§ 13, 14, 21; B. ii. tit. 10, § 46; B. iii. tit. 7, § 20; *Bank.* B. ii. tit. 8, §§ 138, 165; *Stair,* B. ii. tit. 8, § 29; *Bell's Com.* i. 124; ii. 483; *Bell's Princ.* §§ 634, 836, 1162–4; *Connell on Parishes,* 120, 129, 149, 182; [*Duncan's Par. Eccl. Law,* 291; *Black's Par. Eccl. Law,* 126.]

STIPULATIO; a Roman form of agreement, attended with solemnities, unknown with us. *Stair,* B. i. tit. 10, § 9; *Bank.* i. 329.

STIRPES, *Succession per*; succession by the right of representation, so called because the *hæreditas,* instead of being divided among the individuals, is divided among the different stocks or *stirpes. Ersk.* B. iii. tit. 8, § 12. See *Representation. Capita.*

[**STOP ORDER.** In English chancery practice, when a fund is in court in a cause or proceeding, any person claiming an interest in it may apply to the court for a stop order, to prevent it from being paid out, or otherwise dealt with, without notice to the applicant. *Sweet's Law Dict.*]

STOPPAGE IN TRANSITU. The right to stop *in transitu* is possessed by the seller of goods who has committed them to some middleman, such as a carrier, shipmaster, &c., to be conveyed to the buyer. As long as they are in the hands of the middleman, if the buyer becomes insolvent and unable to pay the price, the seller may remand them, and retain them in security. The doctrine of stoppage *in transitu* is the same in its practical operation in the laws of England and Scotland. [It was introduced into Scots law by the judgment of the House of Lords in *Allan, Steuart & Co.* 1790, 3 Paton, 191. As to the nature of the remedy, see *Bell's Com.* i. 229 (editor's note); and for its history, see *Gibson,* 8 M. & W. 339 (Lord Abinger).] Goods are *in transitu* not only while in possession of

the carrier, by water or land, but also while in any place of deposit connected with their transmission and delivery, until they come into the consignee's possession. [See *Black*, 13 Dec. 1867, 6 Macph. 136; *Adamson & Co.* 28 June 1867, 6 Macph. 347; *M'Leod & Co.* 7 Dec. 1880, 8 R. 227.] The *transitus* is terminated not only by delivery into the buyer's own hand or repositories, or, as it is called, by his actual possession, but also by his constructive possession of them. The *transitus* is ended by the goods arriving in the warehouse of a wharfinger, packer, &c., which the buyer is in the habit of using as his own. The *transitus* is terminated by the goods being deposited in a warehouse which the buyer's agent has hired for the purpose, and by the buyer exercising any act of ownership upon them, though it is intended that they shall afterwards be forwarded from the first place of deposit to the buyer's abode. When goods have been delivered to the buyer's agent at a seaport, with whom they are to remain until the buyer sends orders for shipping them to a foreign country, the transit is at an end, and does not recommence on the goods being sent on their new destination. Delivery into a general ship, or into a ship chartered for the voyage wholly by the buyer, does not end the transit; but it would appear, that a ship hired on time by the buyer, and fitted out by him, is held as his own, and that delivery into it ends the transit. [See *Schotsmans*, L.R. 2 Ch. App. 332; *Berndston*, L.R. 3 Ch. App. 588; *Kendal*, 11 Q.B.D. 356; *Isaacs*, 15 Q.B.D. 39; *Bethell*, 2 Q.B.D. 615.] Where goods are ordered to be sent by sea from a distance, if the shipmaster give a receipt to the buyer, bearing that the goods are received from him, the right of stoppage is lost to the seller. The right of stoppage may be lost through certain acts of the buyer, while the goods are still *in transitu*. Thus, where goods are sent by sea, and an indorsed bill of lading has been transmitted to the buyer, the seller loses his right of stoppage, if, before he exercises it, the bill of lading has been assigned to a *bona fide* onerous indorsee. [See *Lickbarrow*, 2 T.R. 63; *Morton & Co.* 8 Jan. 1858, 20 D. 362. But the same effect is not produced by indorsation of a delivery order, which is not a negotiable instrument; *M'Ewan & Co.* 20 March 1849, 6 Bell's App. 340.] After the seller, by notice to the carrier, has stopped the goods *in transitu*, his right is not injured by the goods being delivered by mistake. In such a case, he may not only bring an action against the carrier, but may also recover the goods from the buyer. The right of stoppage *in transitu* may be made effectual by any means short of actual violence; [but the proper mode is by judicial warrant.] Actual repossession is not necessary to cause the property to revert to the seller. Thus, a claim made to wine lodged in the king's cellar was held to be a sufficient stoppage. It is settled in the law of England that the mere bankruptcy of the buyer does not of itself operate as a countermand of his previous order, without some act of stoppage on the seller's part. But Professor Bell says that there is "in Scotland at least a bias toward an opposite rule;" *Bell's Princ.* § 1309; *Com.* i. 248. [It appears to be settled, contrary to the opinion of Professor Bell (*Com.* i. 250–3), that stoppage *in transitu* does not rescind the contract, but leaves the seller's other remedies entire; *Stoppel*, 15 Nov. 1850, 13 D. 61; also *Schotsmans*, *supra;* and *Kemp*, 7 App. Ca. 581.] See generally, *Ersk.* B. iii. tit. 3, § 8; *Bell's Com.* i. 223; *Brown on Sale*, 432–537; *More's Notes on Stair*, lxxxix.; *Brodie's Supp.* 859; *Bell's Princ.* § 1307; [*Ersk. Princ.* (17th ed.) 374; *Goudy on Bankruptcy*, 272; *Addison on Contracts*, 956; *Smith's Merc. Law*, 549; *Benjamin on Sale*, 843; *Blackburn on Sale*, 311; *Smith's L.C.* i. 737; *Paton on Stoppage in Transitu; Houston on Stoppage in Transitu.* See *Sale. Delivery. Retention. Rejection in Transitu.*]

STOUTHRIEF; masterful theft or depredation. The term is usually applied to cases in which robbery is committed within a dwelling-house. *Hume*, i. 104; *Alison's Princ.* i. 227; *Ersk.* B. iv. tit. 4, § 64, *Kames' Stat. Law, h. t.;* [*Macdonald*, 53.] See *Robbery.*

STOWAGE. Under the contract of affreightment, the shipmaster, and the owners, as his constituents, are bound to make up the damage arising to goods from unskilful stowage. [See *Mackill & Co.* 18 Dec. 1888, 16 R. (H.L.) 1.] In insurance, the damage occasioned by bad stowage does not fall on the underwriter. See *Ersk.* B. iii. tit. 1, § 28; *Bell's Com.* i. 596; *Brodie's Supp. to Stair*, 985; [*Maclachlan on Shipping*, 414.] See *Loading. Shipping Law.* [*Charter-Party. Insurance.*]

STRAIGHTING OF MARCHES. This is a power given to sheriffs by the act 1669, c. 17. See *Marches.*

STRANDING OF SHIPS. Under the contract of insurance, questions have frequently arisen as to whether or not a ship has been stranded. A ship is stranded, in the sense of an insurance policy, when, by accident or unforeseen event, and not in ordinary circumstances to be expected from the nature of the voyage, the ship is rendered immoveable on the strand. Several English cases, illustrative of this principle, will be found abridged in *Bell's Illust.* § 489. [See also *Thomson*, 8 June 1844, 6 D. 1120; *Letchford*, L.R. 5 Q.B. 538; and other English cases cited in the authorities *infra.*] The statute 12 Anne, stat. 2, c. 18, [otherwise 13 Anne, c. 21,] required all sheriffs, justices, &c., on application from those in danger of being, or who had actually been, stranded or run on shore, to call together as many men as might be necessary, and demand aid from the Queen's ships, or those of her subjects in the neighbourhood, under a penalty of £100 on the superior officer who refused to obey the call. [But that act was repealed by 17 & 18 Vict. c. 120, § 4.] See *Ersk.* B. ii. tit. 1, § 13; B. iv. tit. 4, § 65; *Bell's Com.* i. 641; *Bell's Princ.* §§ 472, 489; [*Addison on Contracts*, 722; *Abbott on Shipping*, 500, 506; *Arnould on Marine Insurance*, ii. 793; *Lees on Shipping and Insurance*, 242, 445.] See *Shipping Law. Insurance. Wrecks.*

STRATAGEM; a *dolus bonus*, allowed by the law of nations. See *Dolus Malus.*

STRAW. See *Fodder and Straw. Dung.*

[**STRAYS.** In the case of strayed or waif cattle, the owner loses not his property in them immediately on their straying; and therefore he who has laid hold on them is held as a thief, if he neglect to acquaint the sheriff forthwith, that he may cause proclaim them at the market-cross of the county-town, and at the parish church where they were found. But if the true owner shall fail to appear and claim the property of them within a year after such notice, they are considered as *res nullius*, and consequently belong to the sovereign or his donatory, unless the proprietor on whose lands they are found have an express grant of strays in his charter. In most burghs, the Police Acts make special provision for the disposal of waifs and strays. The usual practice, in the case of strayed cattle, is to sell them under warrant, and apply the price in payment of their keep and expenses. Inanimate strays may be vindicated at any time by their owner. [See *Stair*, B. i. tit. 7, § 3; B. ii. tit. 1, § 5; *Ersk.* B. ii. tit. 1, § 12; *Bank.* B. i. tit. 8, § 2; *Bell's Princ.* § 1294. See *Lost. Poinding of Stray Cattle. Winter Herding.*]

STREETS. The streets of burghs are held by the magistrates for the public behoof, and under burden of the public use. The magistrate who has more particular jurisdiction with regard to the streets is the Dean of Guild. The Dean of Guild Court has the regulation of all buildings within the royalty, and the power of preventing obstructions in the streets, and of removing old and ruinous tenements. See *Dean of Guild.* The streets of burghs cannot be encroached on by individuals, nor can they be appropriated by the magistrates either for public buildings or by feuing. Private property cannot be encroached on for the purpose of widening or otherwise improving the streets, without the authority of Parliament; and even when power is given under police acts to regulate the line of houses about to be rebuilt, full indemnification must be made for the damage thereby occasioned to individuals. The passage between the kennel of the street and the houses is part of the street or highway; and it was found that a house, the bounds of which were the highway, could not be built so as to encroach on this passage. Although the magistrates have no power to encroach on the street, yet in some cases they have been found entitled to exercise discretion in allowing one street to be shut up, on condition that another, equally or more commodious for the public, should be opened. Thus, on the petition of an individual in Dunbar, the magistrates of that town, by act of council, allowed the petitioner to shut up a narrow street or lane, on his becoming bound to open a new and more commodious street in another direction, and it was found that they had not exceeded their powers. So also the magistrates of a town, where the inhabitants are supplied with water by means of public wells in the streets, have a discretionary power to place these wells in such parts of the streets as are best suited for the accommodation of the public. [See the General Police Acts, 13 & 14 Vict. c. 33, and 25 & 26 Vict. c. 101; also *Campbell*, 28 Feb. 1870, 8 Macph. (H.L.) 31; *Millar's Trs.* 19 July 1873, 11 Macph. 932; *Hill*, 28 May 1874, 1 R. (J.C.) 13; *Dundee Police Commrs.* 3 June 1876, 3 R. 762; *Johnstone Police Commrs.* 3 Feb. 1882, 9 R. 613.] See

Bell's Princ. § 660; *Brown's Synop.* 2039, 2099; [*Ersk.* B. i. tit. 4, § 24; B. ii. tit. 6, § 17. See *Road. Burgh.*] *Dean of Guild. Jedge and Warrant. Houses. Nuisance. Property.*

STYLE; is the particular form of expression and arrangement necessary to be observed in formal deeds and instruments. See *Deed. Conveyancing.*

STYLE, *New and Old.* See *Calendar.*

SUBALTERN RIGHTS. See *Base Rights.*

SUBINFEUDATION. See *Infeftment. Base Rights.*

SUBMISSION; is a deed by which parties agree to submit a disputed point to arbitration. See *Arbitration.*

SUBMISSION *and Surrender of Tithes.* See *Teinds.*

SUBORNATION OF PERJURY; is the successful tampering with those who are to give their evidence on oath, in any way causing, or inducing, or directing them to perjure themselves. This crime is, by the act 1555, c. 47, punishable in the same way with perjury itself, [now arbitrarily,] and may, in some cases, be summarily tried, in the course of proceedings, either on complaint or *ex proprio motu* of the court. The attempt to suborn, and even all practices for the obtaining of false evidence and the preventing of a fair trial, are indictable. *Hume*, i. 381; *Alison's Princ.* 486; *Ersk.* B. iv. tit. 4, § 75; [*Macdonald*, 211.] See *Perjury.*

SUBPŒNA; in English law, a writ [commanding attendance in court, under a penalty.] Such are the *subpœna ad testificandum* for calling a witness to bear evidence; and the *subpœna duces tecum*, where the witness is required to bring with him books or writings, to be produced *in modum probationis.* The witness is called to appear *sub pœna centum librorum* (under penalty of £100); hence the use of the word. [The name was also applied to a writ whereby all persons under the rank of peerage were called upon to appear and answer to a bill in Chancery. But this writ was abolished by 15 & 16 Vict. c. 86; *Wharton's Lex.* In Scotland, Exchequer causes are frequently commenced by *subpœna*, which is served and called in court in the same way as a summons; 19 & 20 Vict. c. 56, §§ 5, 6.]

SUBREPTION; the obtaining gifts of escheat, &c., by concealing the truth. *Obreption*, obtaining them by telling a falsehood. *Bank.* ii. 39; [*Ersk.* B. ii. tit. 5, § 86.]

[**SUBROGATION.** See *Insurance*, p. 561 *b.*]

SUBSCRIPTION OF DEEDS. [See *Deeds, Execution of.*]

SUBSIDY; a casualty now unknown, which the king or other superior levied for his eldest daughter's portion. *Reg. Maj.* i. 2, c. 73; *Craig*, lib. ii. dieg. 11, § 22.

SUBSTANTIALIA; those parts of a deed which are essential to its validity as a formal instrument. See *Deed.* [*Essentialia.*]

SUBSTITUTES IN AN ENTAIL; are those heirs who are called failing the institute, whether disponee or grantee. All the substitutes, even the most remote, have an interest in supporting the entail, and will be allowed to apply for having it recorded, and to take other steps requisite to defend themselves against either the institute or third parties. See *Entail.*

SUBSTITUTION. A substitution is an enumeration of a series of heirs described in proper technical language. The substitution may be either simple, calling certain heirs in their order, which the person in possession may at any time put an end to, even by a gratuitous deed; or it may be a substitution with prohibitory clauses, which will have the effect of guarding the destination against the gratuitous deeds of the person in possession, but will not defend it against his onerous deeds; or, lastly, the substitution may be guarded by irritant and resolutive clauses, whereby it becomes a statutory entail, which, being completed by sasine and by registration, secures the estate against even the onerous debts or deeds of the person in possession. [See *Entail.*] Questions of great nicety have arisen as to whether or not the party called, or named in a destination, is to be considered as a substitute or as a conditional institute. ["Thus a destination to A.B., in the event that the disponer should die without heirs of his body, would be a case of conditional institution; while a destination to the heirs of the disponer's body, whom failing to A.B., would, according to the course of the late decisions, be a case of substitution in favour of A.B., even though the disponer never had any heirs of his body; and yet the difference between these two cases seems extremely slight. In the one case, however, the deed would entirely fall, if the disponer should die leaving heirs of his body, and these heirs must make up their title to their predecessor *ab intestato;* while in the other case, the deed

[would subsist in favour of these heirs, who might serve as heirs of provision under it, and to whom the substitute A.B. might, in the event of their death at any time, and before they had altered the destination, serve under the deed as substitute. The distinction, therefore, between substitution and conditional institution seems to turn upon this, whether under the deed any person could possibly intervene between the granter and the person who is *nominatim* called; because the mere possibility of such intervention seems to be held sufficient to create a case of substitution. Where there is a proper conditional institution, the deed will entirely fall and be evacuated, if the condition should not be purified; but where there is a substitution, the deed subsists, and the substitute may claim under it at any time, till the destination in his favour shall be altered;" *More's Notes to Stair*, cccxxvii. See also *Conditional Institute.* An ordinary destination of heritable estate to several persons in succession is presumed to import a substitution. But every substitution includes a conditional institution, in the event of the institute and prior substitutes predeceasing the granter; and the substitute next called is in such case entitled to use the unexecuted warrants contained in the deed without either declarator of failure or service to the parties predeceasing. See *Fogo*, 18 Aug. 1843, 2 Bell's App. 195; *Main*, 10 March 1880, 7 R. 688. "When one by *mortis causa* conveyance in the ordinary form dispones to the heirs of his body, or the heirs-male of his body, whom failing to a person named, the person so named (there being no heirs of his body then existing) is conditional institute; and if no heirs of the body of the granter come into existence, or, existing, predecease him, the condition is purified, and the person named is, on the death of the granter, without qualification or condition, disponee, and as such is entitled to use the executory clauses of the disposition for the purpose of feudalising his right as disponee without service or declarator;" *per curiam* in *Hutchison*, 20 Dec. 1872, 11 Macph. 229. The presumption in favour of substitution, which usually exists in heritable succession, has been extended to destinations in trust-deeds, the main object of which is the settlement of heritable estate; *Ramsay*, 23 Nov. 1838, 1 D. 83. Generally, however, in destinations of moveables, the presumption is for conditional institution; *Brown*, 1792, M. 14863; *Greig*, 1 July [1833, 6 W. & S. 406. But when trustees are appointed to administer a fund for behoof of a legatee and substitutes in succession, there is a proper substitution; *Duncan*, 27 June 1809, F.C.; *Dyer*, 27 May 1874, 1 R. 943. And in ordinary language, when a legacy is given to A., whom failing, to B., the latter is said to be a substitute.] Substitutions in bonds of provision, legacies, &c., receive effect in the general case only in so far as not defeated by the deeds of the person in possession; for he may, by discharging the debt, or assigning the claim, or receiving and disposing of the subject in whole or in part, to that extent exclude the substitution. [See *Fyffe*, 13 July 1841, 3 D. 1207; *Buchanan's Trs.* 28 Feb. 1868, 6 Macph. 536; *Davidson*, 27 May 1870, 8 Macph. 807; *Dyer*, *supra*; *Maclean's Trs.* 19 July 1889, 16 R. 1095.] On substitution generally, see *Ersk.* B. iii. tit. 3, § 44; *Bank.* B. ii. tit. 3, § 130; B. iii. tit. 5, § 87; *Stair*, B. ii. tit. 3, § 43; B. iii. tit. 5, §§ 5, 16, 50; *More's Notes*, cccxxvii., cccxlix.; *Bell's Princ.* §§ 1693–4, 1704, 1838, 1879; *Sandford on Entails*, 6, 9, 12, 15; [*Menzies' Conv.* 459, 500, 795; *M. Bell's Conv.* ii. 847, 922, 998, 1111; *M'Laren on Wills*, i. §§ 961, 1212.] See *Heir. Legacy. Destination.* [*Clause of Return.*]

SUBSTITUTION; in the Roman law, was of two kinds. The one, called vulgar substitution, was where the testator apprehended that his heir would not be able to enter, from death or other disqualification, and named another to enter in default of his heir. The other was properly a *fideicommissum*, by which the testator directed that the inheritance should be transferred from one to another in a certain order. See *Fideicommissum.* Pupillary substitution, which was allied to both of these kinds, was where the testator had a pupil son, and named another to succeed if the son should not be able or inclined to do so, or should die before he came of age to make a testament. The substitute had no right of succession if the child survived the age of puberty, even though he did not make a testament. *Inst. of Just.* B. ii. tit. 15 and 16; *Heinec. Elem.* § 550; [*Mackenzie's Roman Law*, 284; *Hunter's Roman Law*, 788.] The Roman law doctrine of substitution was taken notice of in the case of *Morton*, 11 Feb. 1813, F.C.

SUBSUMPTION OF LIBEL; is a narrative of the alleged criminal act, [constituting the minor proposition in the syllogistic form of indictment which was in use prior

[to the Criminal Procedure Act, 1887.] The subsumption, to be good, required to narrate facts amounting to the crime charged. It specified the manner, time, and place of the crime libelled, the person injured, &c. See *Hume*, ii. 192; [*Macdonald*, 298. See *Indictment.*]

SUB-VASSAL. See *Vassal. Superior.*

SUCCESSION; is the term applied to the taking of property by one party in the place of another. Where this happens in consequence of a conveyance from the proprietor, the acquirer is said to be a *singular successor*, because he takes what he acquires in virtue of the single title by which he holds. But where a person dies intestate, his heir succeeds to the whole of his heritage by the *universal* title of heir. In the law of Scotland a proprietor is allowed to dispose both of his heritage and of his moveables by gratuitous deeds, under certain restrictions, resulting from the interests of his widow or children. See *Jus Relictæ. Terce. Legitim.* But when the proprietor has neglected to use this privilege, the law supplies his omission, and disposes of his estate and effects in the way in which it is presumed that he would have himself disposed of them; and the rule being once established as law, the presumption is strengthened where a person has executed no settlement, since that is equivalent to a declaration that he means to allow the law to take effect. It becomes, therefore, important to know what those rules of law are, according to which the property of a person dying intestate will descend; and this leads to a necessary distinction in regard to succession in heritage and succession in moveables.

1. *Of the Succession in Heritage.*—1. In heritable succession, the law of Scotland gives the preference to descendants, giving the succession to the eldest son, to the exclusion of all the other sons; and failing him or his issue, to the next eldest son; and so on in succession to the other sons, in the order of seniority. Failing the sons, the succession opens to daughters, all the daughters succeeding equally as heirs-portioners, the eldest only enjoying the advantage over her sisters of possessing the mansion-house, garden, and orchard, as her *præcipuum.* See *Præcipuum. Heirs-Portioners.* 2. Where there are no descendants, collaterals succeed: thus the brothers and sisters of the deceased, if by the same father, although they be by different mothers, succeed; the brothers succeeding each by himself, in a certain order; and the sisters, failing the brothers, succeed as heirs-portioners. The order in which brothers succeed, though corresponding in principle, does not correspond in appearance with that which is followed in the succession of sons; for among sons, the succession descends in the order of seniority; while among brothers, although, where the succession is that of an eldest brother, it follows the same order, yet, where the deceased leaves brothers both older and younger than himself, the succession goes to the next younger brother, and not to the eldest, according to the maxim, that *heritage descends.* If, again, the deceased happens to be the youngest brother, the succession goes to his immediately elder brother, that it may deviate as little as possible from the descending line. 3. There being neither descendants nor collaterals, the succession opens to ascendants; but in this succession, as in every other, the mother is excluded; so that the father alone succeeds as the nearest to the deceased in the ascending line; failing him, the uncles and aunts in their order (that is, the father's collateral line of succession) come in; and failing them, the paternal grandfather, and then his collateral line of succession, succeed, and so on upwards as far as propinquity can be traced; and failing of any proof of propinquity, the Crown succeeds as *ultimus hæres.* [When an ascendant succeeds *ab intestato* and completes his title, it is not defeasible by the subsequent birth of a nearer heir, unless the latter was *in utero* at the opening of the succession; *Grant*, 2 Dec. 1859, 22 D. 53. This is contrary to the rule in testate succession; *Stewart*, 2 Dec. 1859, 22 D. 72; *Ersk.* B. iii. tit. 8, § 76. See also *Preston Bruce*, 6 March 1874, 1 R. 740.] These are the lines of succession in heritage; but they are modified by circumstances, to which it is necessary to advert more minutely. (1) In heritable succession there is a right of representation, by which the children of any deceased heir in the above lines of succession take, in their order, the share of their parents, to the exclusion of heirs in the line in which their parents stood, and therefore of all ulterior heirs also. This succession, so taken up, passes to the children of the deceased heir, under the same rules by which the original succession of descendants is regulated. (2) The mother, and of course all who can claim through her, are excluded by the law of Scotland, though her children succeed to her and through her. (3) Brothers and sisters

consanguinean (that is, by the father only) succeed after brothers and sisters german, in the same order as above explained, and in preference to the full blood of a more remote line of succession. But brothers and sisters uterine (that is, children by the same mother, but not by the same father) do not succeed at all, there being no succession through the mother. See *Half-Blood*. 4. In collateral succession, there was [formerly] a distinction between the property which the deceased inherited, and that which he had acquired by conquest, *i.e.*, by a singular title, as by purchase, or by donation, or even by excambion. As to all heritage which has descended to the deceased as heir, the above rules take place; but in conquest, a different rule was followed—which had place, however, only in the case where a *middle* brother deceasing had acquired an estate by conquest. On his death, his estate by inheritance descended to his next younger brother; but his estate by conquest, on the contrary, ascended to his immediate elder brother, as heir of conquest. The distinction between heritage and conquest had no practical application when the property, the succession to which had opened, was vested in a youngest brother deceased; for then the immediate elder brother was both heir of conquest and heir of line; and the rule itself had no place in the succession of heirs-portioners. [The distinction was abolished, in regard to successions opening after 1st Oct. 1874, by § 37 of the Conveyancing Act of that year.] See *Conquest*. The heirs who succeed under these rules succeed only where there has been no valid conveyance by the proprietor; for his conveyance may alter the legal line of succession. They are termed *heirs-at-law*, or often *heirs* simply, because they are heirs who, by law, are called to the succession, in contradistinction to disponees. They are also termed *heirs of line*, because they succeed in certain known lines of propinquity; *heirs-general*, because they may enter by a general service, as nearest and lawful heirs to the deceased, whom they represent generally; and *heirs whomsoever*, in contradistinction to *special heirs*, called by a particular destination. The heir in heritage had [formerly,] in certain circumstances, the right to heirship moveables; [but this right was abolished by § 160 of the Consolidation Act of 1868.] See *Heirship Moveables*.

2. *Of the Succession in Moveables.*—The order of succession in moveables is the same as in heritage; first, descendants; failing them, collaterals; and last of all, ascendants succeeding. The executors, or *hæredes in mobilibus*, are the whole next of kin of the defunct; *i.e.*, all the nearest in degree of blood; for, although an only child is both heir and executor to his or her father, yet, if there be two or more children, or, failing children, if there be two or more equally near in degree, they succeed *ab intestato* to equal portions of the moveable estate, without regard to primogeniture, and with no preference of males to females, except where a person dies, leaving both heritage and moveables. In that case, where one of the next of kin (*e.g.*, the eldest son) is heir to the heritage, he is not entitled to any share of the moveable succession, unless he choose to exercise the privilege of collation; that is, to mass his heritage with the moveable property, and allow an equal division of the whole to take place amongst all the nearest in kin. See *Collation*. Heiresses-portioners who succeed *ab intestato* to equal portions, *pro indiviso*, of the heritable estate, are all equally entitled, as next of kin, to shares in the moveable succession. Hence, although the eldest sister should take the heritable estate *destinatione* of her father, or under an entail, she is not thereby deprived of her share of the moveables, which she may claim without collation. [Important changes were made in the law of intestate moveable succession by the act of 1855, the provisions of which are narrated *infra*. Before the passing of that statute,] the *jus repræsentationis* had no place in moveable succession. Thus, the defunct's surviving children were his next of kin or executors, to the exclusion of a grandchild by a son or daughter who had predeceased the defunct. In like manner, if one died without issue, leaving two sisters, and a nephew or niece by a third sister, deceased, the two surviving sisters succeeded to the whole moveable estate, to the exclusion of the child of the sister who had predeceased her father. But it is of importance to attend to a distinction in the case of full and half blood. In the line of ascendants and descendants, all are said to be full blood; that is, all the defunct's lawful children, though by different mothers, are, with respect to their father's moveable succession, his next of kin. But in the collateral line the rule is different; for in that succession children by the same father and mother, or brothers and sisters german, and their issue, are accounted nearer in

degree than their brothers and sisters by the half blood. Hence, in moveable as well as heritable succession, the full blood excludes the half blood in the same line of succession. Thus, if the deceased leave a sister-consanguinean, *i.e.*, by the father's side, and a nephew by a sister-german who has predeceased the defunct, the nephew will succeed to his uncle's moveable estate, to the entire exclusion of the sister by the half blood. Failing descendants both by the full and by the half blood, ascendants succeed; the rule being [formerly, though now altered as to the father,] that the father and his brothers, and other kindred in the ascending line, never succeed *ab intestato*, while any of the father's children or their issue exist. Where the father succeeds as his child's next of kin, he succeeds to the entire exclusion of the mother; who was in no case, [by the former law,] accounted as of kin, to the effect of succeeding *ab intestato* to her children, even although the property should have come originally from her. And, upon the same principle, all persons related through the mother, including brothers and sisters uterine, were excluded.

[The Intestate Moveable Succession Act, 1855 (18 Vict. c. 23), made the following alterations in the law:—By § 1, "in all cases of intestate moveable succession in Scotland accruing after the passing of this act, where any person who, had he survived the intestate, would have been among his next of kin, shall have predeceased such intestate, the lawful child or children of such person so predeceasing shall come in the place of such person, and the issue of any such child or children, or of any descendant of such child or children who may in like manner have predeceased the intestate, shall come in the place of his or their parent predeceasing, and shall respectively have right to the share of the moveable estate of the intestate to which the parent of such child or children or of such issue, if he had survived the intestate, would have been entitled: provided always, that no representation shall be admitted among collaterals after brothers' and sisters' descendants, and that the surviving next of kin of the intestate claiming the office of executor shall have exclusive right thereto, in preference to the children or other descendants of any predeceasing next of kin, but that such children or descendants shall be entitled to confirmation when no next of kin shall compete for said office." The representation in moveables introduced by this enactment applies only to the case [where some of the next of kin have predeceased the intestate, leaving issue, who, but for the act, would have been excluded. See *Turner*, 27 Nov. 1869, 8 Macph. 222; in which it was held that when nephews and nieces are the nearest surviving relations, the intestate succession falls to be divided among them in their own right as next of kin *per capita*, and not as representatives of their deceased parents *per stirpes*. On the construction of the proviso as to collaterals, see *Ormiston*, 11 Nov. 1862, 1 Macph. 10. The second section, which relates to collation by the issue of a predeceasing heir, is quoted *sub voce Collation*. By § 3, "where any person dying intestate shall predecease his father without leaving issue, his father shall have right to one-half of his moveable estate, in preference to any brothers or sisters or their descendants who may have survived such intestate." See *Webster*, 25 Oct. 1878, 6 R. 102. By § 4, "where an intestate dying without leaving issue, whose father has predeceased him, shall be survived by his mother, she shall have right to one-third of his moveable estate, in preference to his brothers and sisters or their descendants, or other next of kin of such intestate." See *Muir*, 3 Nov. 1876, 4 R. 74. And by § 5, "where an intestate dying without leaving issue, whose father and mother have both predeceased him, shall not leave any brother or sister german or consanguinean, nor any descendant of a brother or sister german or consanguinean, but shall leave brothers and sisters uterine, or a brother or sister uterine, or any descendant of a brother or sister uterine, such brothers and sisters uterine and such descendants in place of their predeceasing parent shall have right to one-half of his moveable estate." Indirectly, the statute has affected questions of testate succession, in regard to the construction of such terms as "heirs," "successors," "next of kin," "executors," &c. These words are construed in conformity with the law as altered, in wills coming into force, or in contracts executed, after the date of the act. See *Nimmo*, 3 June 1864, 2 Macph. 1144; *Maxwell*, 24 Dec. 1864, 3 Macph. 318; *Young's Trs.* 10 Dec. 1880, 8 R. 242; *Haldane's Trs.* 15 Dec. 1881, 9 R. 269; *Tronsons*, 21 Nov. 1884, 12 R. 155; *Gregory's Trs.* 8 April 1889, 16 R. (H.L.) 10 (which overrules *Haldane's Trs.*).

[For the rules of international law in regard to intestate succession, see *Guthrie's Savigny's Private Internat. Law.* 272;

[*M'Laren on Wills*, i. § 35, and authorities there cited. The main principles are that the succession to heritage is governed by the *lex rei sitæ*, and that the succession to moveables is ruled by the law of the domicile of the intestate. See *Domicile*.]

On succession generally, see *Stair*, B. iii. tit. 4–8; *Ersk.* B. iii. tit. 8–10; *Bank.* B. iii. tit. 4; *More's Notes to Stair*, viii., cxlvii., cccxii., cccxxxviii.; *Bell's Princ.* §§ 1637, 1860; *Sandford on Heritable Succession; Robertson on Personal Succession;* [*M'Laren on Wills and Succession.*] See also *Heir. Executor. Legacy. Testament.* [*Contract of Marriage. Bastard. Alien. Passive Titles.*]

[**SUCCESSION DUTY.** By the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), duties are made payable upon successions to property. Every disposition of property through which any person becomes beneficially entitled to any property, or the income thereof, upon the death of any person, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation; and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person, to any other person, in possession or expectancy—are deemed to confer on the person entitled by reason of such disposition or devolution a "succession," in the sense of the act; § 2. Joint tenants, taking by survivorship, are deemed successors; and successions are also conferred by the following, viz.:—Powers of appointment, when executed (*Charlton*, 4 App. Ca. 438); extinction of determinable charges, such as dower, widow's jointure, rent charges, annuities, and other charges, whether of income or principal (*Macdonald*, 28 May 1862, 24 D. 1175); dispositions accompanied by a reservation of a benefit to the maker; dispositions to take effect at periods dependent on death, or made with an engagement, secret trust, or arrangement, or made for evading duty; §§ 3–8. The duties are under the management of the Commissioners of Inland Revenue; § 9. The rates vary according to the nearness of relationship between the successor and the predecessor. Lineal issue or lineal ancestors of the predecessor pay 1½ per cent. Brothers and sisters of the predecessor, or their descendants, pay 4½ per cent. Brothers and sisters of the father or mother of the predecessor, or their descendants, pay 6½ per cent. Brothers and sisters of a grandfather or grandmother of the predecessor, or their descendants, pay 7½ per cent. Persons of more remote consanguinity, or strangers in blood, pay 11½ per cent.; § 10, amended by 51 Vict. c. 8, § 21. Prior to the latter act, *i.e.*, in respect of successions opening on any death before 1 July 1888, the rates were the same as those payable in respect of legacy duty (see *Legacy Duties*); and the additional duty imposed by that act is not payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereof duty is payable under 44 & 45 Vict. c. 12, § 38. The act of 1853, being applicable to the United Kingdom, is to be interpreted according to the ordinary meaning of its terms, irrespective of technical peculiarities of English or Scotch law, and so as to produce, as far as possible, a corresponding incidence of the tax in both countries. Hence the term "disposition" is not to be construed in its restricted technical sense; *Roberts' Trs.* 24 Feb. 1857, 20 D. 449. The question whether an heir of entail is to be taxed as the successor of the maker of the entail, by "disposition," or as the successor of the last heir in possession, by "devolution of law," has been discussed in several cases; see *L. Saltoun*, 7 June 1860, 3 Macq. 659; *Gordon*, 19 July 1872, 10 Macph. 1015; *E. Zetland*, 12 Feb. 1878, 5 R. (H.L.) 51. The rule established by these cases is that "wherever a party takes under an entail according to the forms of the law of Scotland, either as the institute, or as a *nominatim* substitute, or as the head of a new or fresh *stirps*, or class of heirs, he is held to take by gift or disposition; on the other hand, any one who takes simply as the member of a *stirps* or class takes by devolution of law;" *per* Lord J. C. Moncreiff, in *E. Zetland* (4 R. 205). See also *E. Breadalbane*, 9 June 1870, 8 Macph. 835; *Constable*, 4 June 1880, 7 R. 855; *Graham*, 12 Dec. 1884, 12 R. 318; *Jamieson*, 9 March 1886, 13 R. 737. As to what constitutes a beneficial interest in the sense of § 2, contrast *E. Fife*, 6 Feb. 1864, 3 Macph. 1172, and *Stevenson*, 25 Feb. 1869, 7 Macph. (H.L.) 1. Succession duty is not payable on property passing under the will of a person domiciled abroad; *Wallace*, L.R. 1 Ch. App. 1; but contrast *Littledale's Trs.* 24 Nov. 1882, 10 R. 224; *Duncan's Tr.* 4 Nov. 1887, 15 R. 638. When the spouse of a successor is of nearer consanguinity to the predecessor than the successor is, duty is charged according

[to the nearer degree; 1853, § 11. Provision is made by §§ 12–16 as to the duties payable on succession under a disposition made by the successor, succession derived from more predecessors than one, transmitted successions, transferred interests, succession subject to trusts for charitable or public purposes. A policy of life insurance does not make the assured a successor; and a bond or contract made by any person *bona fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, does not create the relation of predecessor and successor between the parties; § 17. See *Sidgwick*, 6 June 1877, 4 R. 815; *E. Fife*, 4 Dec. 1883, 11 R. 222. By § 18, the following successions are exempt from duty:—(1) where the whole succession or successions derived from the same predecessor, and passing upon death to any person or persons, do not amount in money or principal value to £100; (2) any moneys applied to the payment of the duty on any succession according to any trust for that purpose; (3) any succession which, if it were a legacy bequeathed to the successor by the predecessor would be exempted from legacy duty; (4) any property subject to legacy duty. To these exemptions must be added the following provisions of 44 Vict. c. 12, viz., that where the whole personal estate does not exceed £300, the payment of 30s. (being the fixed inventory duty payable in such case) shall be in full satisfaction of succession duty; §§ 34, 36; and that in all cases, where duty has been paid, in conformity with the act, on the affidavit or inventory or account in respect of a succession, the one per cent. succession duty (on property passing to lineal descendants or ancestors) shall not be payable; § 41. By 1853, § 18 (2), successions under £20 in value were also exempt; but this exemption was taken away by 52 Vict. c. 7, § 10 (2). The point of time when the duty becomes payable, in the general case, is when the successor becomes entitled in possession to his succession, or to the receipt of the income; 1853, § 20. The interest of a successor in real property is considered as an annuity, and tables are annexed to the act for valuing such annuity; § 21. Unlet shootings are included in the value; *D. Buccleuch*, 26 Jan. 1888, 15 R. 333. The duty chargeable in respect of such interest, considered as an annuity, is payable by eight equal half-yearly instalments, or, in the option of the [successor, by two equal moieties, as directed; 51 Vict. c. 8, § 22. As to valuation of lands, timber, and other real property of fluctuating yearly income, see 1853, §§ 22–26; *M. Ailsa*, 28 Oct. 1881, 9 R. 40. As to allowance in respect of incumbrances, see §§ 34–35; *E. Fife*, 11 Dec. 1866, 5 Macph. 138; *E. Glasgow*, 15 Jan. 1875, 2 R. 317. The duty is calculated without regard to contingencies; but it may be returned in the event of the property passing to another person; § 36. Where any successor upon taking a succession is bound to relinquish or be deprived of any other property, the commissioners shall make such allowance as seems just; § 38. But this allowance shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person; 52 Vict. c. 7, § 10 (1). The duty is a first charge on the interest of the successor in the property; 1853, § 42. Trustees, guardians, and husbands, vested with the management of property liable to the duty, and persons to whom it may have passed by alienation or other derivative title, are personally accountable for the duty; § 44. Successors and all other persons accountable must give notice of any succession to the commissioners, with a full and true account thereof; and this must be done, in the case of personal property, when payment or satisfaction of any part thereof is first made, and in the case of real property, when any duty in respect thereof first becomes payable, under heavy penalties; §§ 45–46. If the commissioners are dissatisfied with the account and estimate so delivered, they may assess the duty on the footing of such account and upon such estimate as they may place thereon; 52 Vict. c. 7, § 10 (3). Appeal is competent against the assessment of the commissioners to the Court of Session, or (when the sum in dispute does not exceed £50) to the sheriff court; 1853, § 50. As to proceedings for recovery of duty, see 24 & 25 Vict. c. 92, and 31 & 32 Vict. c. 124, § 9. Under the latter, interest at 4 per cent. is added on all duties in arrear. The commissioners have power to commute for a present payment the duty presumptively payable on any interest in expectancy; 43 Vict. c. 14, § 11. As to legacy and succession duties on property *in manibus curiæ*, see A.S. 1 March 1878. By 52 Vict. c. 7, §§ 12–15, a limitation, to six or twelve years according to circumstances, is enacted

[with reference to claims for succession duty against purchasers or mortgagees. As to "estate" duty, chargeable in respect of successions exceeding £10,000, see §§ 6–9 of same act. As to "account-stamp" duty, see 44 Vict. c. 12, § 38; 52 Vict. c. 7, § 11. And as to duty on property of corporate and unincorporate bodies, see 48 & 49 Vict. c. 51, §§ 11–20. See *Guthrie's Bell's Princ.* § 1898 B; *Griffith's Digest of Stamp Duties*, 148, 245, 283; *Trevor's Taxes on Succession*, 146; *Hanson* and *Shelford on Probate, Legacy, and Succession Duty Acts.*]

SUCKEN. The sucken consists of the whole lands which are astricted to a mill. The possessors of these lands, *quoad* the mill, are termed the suckeners. See *Thirlage.* [*Multure.*]

SUICIDE. Self-murder draws after it the falling of the single escheat, whereby the whole moveable estate of the deceased falls to the Crown; and a proof of the self-murder may be brought in an action before the Court of Session at the instance of the Queen's donatory against the executors of the deceased. Insanity, however, is, if proved as the cause of suicide, sufficient to prevent the escheat. In proving the cause of death, it is sometimes difficult to determine whether the deceased was killed by some one else, or laid violent hands upon himself. The wounds inflicted by a suicide upon himself are usually in the front, and in an oblique direction, from right to left. The wounds made by an assassin are generally in the back; but when in the front, from left to right. *Hume*, i. 300; *Steele*, 94; *Ersk.* B. iv. tit. 4, § 46; [*Taylor's Med. Jurisp.* i. 482, 486, 674; ii. 494 *et seq.* See *Insurance*, p. 570 *a.*]

SUMMARY ACTIONS. See *Petition.* [*Bill-Chamber.*]

[**SUMMARY PROSECUTIONS.** Summary prosecutions in the inferior courts are regulated by the Summary Procedure Act, 1864 (27 & 28 Vict. c. 53), as amended by the Summary Jurisdiction Act, 1881 (44 & 45 Vict. c. 33). The leading act, the purpose of which is "to make provision for uniformity of process," is declared (§ 3) to apply to the following classes of cases:—

1. All proceedings before any sheriff, justice, or magistrate, in virtue of the summary jurisdiction conferred upon them in relation to the trial of offences and recovery of penalties under the following acts: (1) 9 Geo. IV. c. 29 (Sir W. Rae's Act), which authorises (§§ 19, 20) summary prosecution before the sheriff where the prosecutor concludes for (*a*) a fine not exceeding £10, with expenses, or (*b*) imprisonment not exceeding sixty days, with caution for good behaviour, or to keep the peace for six months, under a penalty not exceeding £20; (2) 11 Geo. IV. & 1 Will. IV. c. 37, which makes further provisions in regard to the same kind of prosecutions; (3) 19 & 20 Vict. c. 48, which authorises prosecutions for offences before magistrates of royal burghs, and justices of peace where the prosecutor concludes for (*a*) a fine not exceeding £5, exclusive of costs, or (*b*) imprisonment not exceeding thirty days, with caution for good behaviour, or to keep the peace for a period not exceeding three months, under a penalty not exceeding £10; and (4) 1 Vict. c. 41 (Small Debt Act), which, as amended by 16 & 17 Vict. c. 80, § 26, authorises prosecutions for statutory penalties before the sheriff, when the penalty does not exceed the value of £12, exclusive of expenses and fees of extract. See *Bute*, 24 Nov. 1870, 1 Coup. 495.

2. All proceedings before any sheriff, justice, or magistrate, for the prosecution of any person charged with having committed any offence or act for which, under the provisions of any act of Parliament, he is liable, on summary conviction before any sheriff, magistrate, or justice, to be imprisoned or fined, or otherwise punished, or to be ordered to do or perform any act, and to be imprisoned in default of performance. This subsection relates to "proceedings for the prosecution and punishment of offences created by statute, and directed by the same statute to be summarily prosecuted to conviction;" *per* Lord Justice General Inglis, in *Bute*, *supra.*

3. All proceedings for the recovery of any penalty, or sum of money in the nature of a penalty, which, under the provisions of any act of Parliament, may be recovered by summary complaint or information, or by poinding or distress and sale, or other summary process or diligence of the like nature, before any sheriff, justice, or magistrate. See *Robertson*, 25 Oct. 1869, 1 Coup. 348.

4. All proceedings for the trial or prosecution of any offence, or for the recovery of any penalty, under any act of Parliament by which it shall be provided that offences committed in contravention thereof, or penalties thereby imposed, shall be prosecuted or recovered under the provisions of this act.

By § 32 of the act of 1864, the prosecutor had an option either to use the forms prescribed by that act, or the forms of any special act applicable to the particular offence;

[but the act of 1881 (§ 3) takes away that option, and enacts that the provisions of the acts of 1864 and 1881 shall apply to all summary proceedings of the nature above described and all proceedings of the like nature which by any future act are directed or authorised to be taken summarily. See *Glasgow City & District Railway*, 20 March 1884, 11 R. (J.C.) 43; *Fletcher*, 13 Nov. 1886, 14 R. (J.C.) 9; *Nicol*, 13 July 1887, 14 R. (J.C.) 47.

Proceedings are commenced by a complaint, a form of which is given in sched. A. appended to the leading act. The offence may be described in the manner authorised by the Criminal Procedure Act, 1887 (50 & 51 Vict. c. 35), the provisions of which (so far as appropriate) are by § 71 made applicable to summary prosecutions. See *Indictment. Criminal Prosecution.* And as to amendment of complaint, see *Amendment of Libel.* Complaints must be brought within six months from the time when the matter complained of arose; 1864, § 24. On a complaint being laid before the court, the respondent may be cited to appear on *inducice* of 48 hours, or if the court think fit, he may be apprehended on a warrant; § 6. See *Gallacher*, 28 May 1886, 13 R. (J.C.) 56. See also Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24). If he is brought before the court on a warrant of apprehension, he is entitled to require a copy of the complaint, and also that the hearing be adjourned for 48 hours; 1864, § 11. See *Pyper*, 10 July 1885, 12 R. (J.C.) 47. For the rules of procedure, reference must be made to the acts, and the Digests of decisions. A sheriff, justice, or magistrate, sitting as a judge of police, in cases where his powers are not specially defined by statute, may sentence to a fine not exceeding £5, or to imprisonment for not more than 60 days, and also adjudge the prisoner to find caution to keep the peace under a further penalty of £10, and in default of such caution being found, to imprisonment for 30 days extra; 1864, § 29. A procurator-fiscal or other person prosecuting in the public interest by complaint under the act, cannot be found liable by any court in a greater sum than £5 as damages in respect of the proceedings taken, unless malice and want of probable cause are proved; § 30. No conviction or judgment in pursuance of this act, and no warrant of imprisonment, or for poinding and sale, and no extract of judgment, shall be quashed or held void for want of form, if [it be mentioned therein, or can be inferred therefrom, that it is founded or has proceeded on a conviction or judgment, and there be a conviction or judgment to sustain the same; § 34. See *Mackay*, 25 Oct. 1882, 10 R. (J.C.) 10. In all summary prosecutions, the court has power to mitigate the statutory penalties; § 6 of Summary Jurisdiction Act, 1881; and the same power is conferred by § 7 on the sheriff, in prosecutions tried before him, with a jury, on criminal libel, but which might have been tried on a summary complaint.

Appeal.—By the Summary Prosecutions Appeals Act, 1875 (38 & 39 Vict. c. 62), § 3, as amended by § 9 of the Summary Jurisdiction Act, 1881, either party, if dissatisfied with the judge's determination as erroneous in point of law, may appeal to the High Court of Justiciary at Edinburgh or on circuit. A judgment, to be appealable, must be a final determination; *Lee*, 2 Nov. 1883, 11 R. (J.C.) 1. And the question appealed must be one of law, not of fact; *Grant*, 31 May 1876, 3 R. (J.C.) 28; *Campbell*, 23 Feb. 1877, 4 R. (J.C.) 17; *Dykes*, 7 Feb. 1885, 12 R. (J.C.) 17; *Fairbairn*, 27 Oct. 1885, 13 R. 81; *Dickson*, 1 June 1888, 15 R. (J.C.) 76. The appellant must apply in writing to the inferior judge, within three days after the judgment, to state and sign a case setting forth the facts and the grounds of judgment, for the opinion of the superior court. The appellant must at the same time find caution that he will abide by the judgment and pay costs if awarded against him, or otherwise, in the discretion of the inferior judge, he must consign a sum sufficient to meet the penalty and costs. He must also pay the fees of the clerk of court for preparing the case. As to computation of time for appealing, see *Charleson*, 10 June 1881, 8 R. (J.C.) 34; *Hutton*, 13 June 1883, 10 R. (J.C.) 60. See also *Thom*, 12 Nov. 1886, 14 R. (J.C.) 5; *M'Gregor*, 3 Nov. 1887, 15 R. (J.C.) 10. Within five days after such caution or consignation and payment being found or made, the clerk of court shall submit the case in draft to the parties or their agents. If the parties fail to agree as to its terms, these are settled by the inferior judge. Within three days after receiving the case, signed by the inferior judge, the appellant must give notice of appeal in writing to the respondent, with a copy of the case, and lodge the same with the clerk of the superior court, along with a certificate of intimation

[to the respondent. The case is then laid before a judge of the superior court, and if the appellant is in custody, the judge may grant interim liberation, on such terms as are usual in cases of suspension and liberation, and may also sist execution, upon or without caution, or make such other interim order as is just. The case is heard without written pleadings, and the superior court may affirm, reverse, or amend the judgment of the inferior judge (see *Macbeath*, 20 Nov. 1886, 14 R. (J.C.) 16); or remit the case to him with the opinion of the court thereon; or make such other order in relation to the matter and the costs of appeal as they see fit; or cause the case to be sent back to the inferior judge to be amended as they may direct (see *Nelson*, 13 Nov. 1884, 12 R. (J.C.) 15). The superior court has also power to amend the case; § 9 of Summary Jurisdiction Act, 1881. The appellant may not raise on the facts stated in the case any question of law to which he has not specially directed the attention of the inferior judge in requiring the case to be stated; *Macdougall*, 18 Feb. 1887, 14 R. (J.C.) 17. No inferior judge who states and signs a case is liable in any costs in respect of the appeal; § 3 of act of 1875. If the inferior judge considers an application for a case to be frivolous, he may refuse it, giving to the applicant a certificate of such refusal; unless the application is made on behalf of the Lord Advocate, or by a procurator-fiscal prosecuting for the public interest. Such public prosecutor is exempted from the requirements as to caution above mentioned; § 4. If a case is refused, the appellant may apply by written note, within three days, to the superior court for an order on the inferior judge and on the other party to show cause why a case should not be stated. The note must be accompanied by the certificate of refusal, and by a statement of the nature of the cause and the facts therein, and of the appellant's reasons in support of his application. The note, having been intimated to the inferior judge and to the other party, may be disposed of in a summary way by any judge of the superior court, and his judgment is final; § 5. In order to appeal under this act, either party may require the sheriff or sheriff-substitute, or (where the cause depends before any other inferior judge) the clerk of court, to take and preserve a note of any objections to the admissibility of evidence sustained or repelled; § 6. A person appealing under the provisions of this act is barred [from appealing in any other way which might otherwise have been competent to him; § 9. See *Kay*, 30 June 1876, 3 R. (J.C.) 40. If the appellant has been sentenced to imprisonment, and had interim liberation granted, he must appear personally at the hearing in the superior court, failing which he is held to have abandoned his appeal, and the court may grant warrant to apprehend and imprison him for the unexpired period of his sentence; § 10. Forms of cases are given in schedules.

See *Moncreiff's Review in Criminal Cases* (where the acts of 1864 and 1875 are annotated); *Renton on Summary Criminal Procedure and Appeal; Macdonald's Crim. Law*, 529; *Fraser on Master and Servant*, 486, 715, 744, 751; *Lewis' Sher. Court Procedure*, 123; *Irons' Police Law*, 598; *Barclay's Digest.*]

SUMMING UP THE EVIDENCE. Before the jury enter on the consideration of their verdict, the presiding judge sums up the evidence which has been adduced, accompanied with an exposition of the law where it appears necessary; an exposition intended not to control but to instruct the jury, and to correct the exaggerated representations of parties. 1587, c. 92; *Steele*, 13. [See *Criminal Prosecution. Jury Trial.*]

SUMMONS. A summons in the Court of Session is a writ in the Sovereign's name, signed by a writer to the signet, and passing the signet, setting forth the conclusions of an action, and containing the royal warrant or mandate to messengers-at-arms to cite the defender to appear in court to answer the demand; with certification, that if he fail to appear, the court will pronounce decree in the terms concluded for in the summons. [The summons formerly stated also the grounds of action; but these are now set forth in a separate condescendence, which, together with a note of the pursuer's pleas in law, is annexed to the summons, and is held to constitute part thereof; 13 & 14 Vict. c. 36, § 1. See *Condescendence. Pleas in Law.* The style of an ordinary petitory summons for payment is as follows, according to the form prescribed by 13 & 14 Vict. c. 36, sched. (A):—"Victoria," &c. (being the address to the messengers-at-arms), "Whereas it is humbly meant and shown to us by our lovite A. (insert name and designation)—*Pursuer;* against B. (insert name and designation)—*Defender*, in terms of the condescendence and note of pleas in law hereunto annexed; Therefore the defender ought and should be

[decerned and ordained, by decree of the Lords of our Council and Session, to make payment to the pursuer of the sum of sterling, with the legal interest thereof from the day of until payment, together with the sum of sterling, or such other sum as our said Lords shall modify, as the expenses of the process to follow hereon, conform to the laws and daily practice of Scotland used and observed in like cases, as is alleged; Our will is herefore," &c. (being the *will* or command of the Sovereign to the messengers-at-arms to cite the defender to answer in court at the instance of the pursuer). See *Pursuer. Defender. Will of a Summons.* Where any liquid document of debt is libelled on, it is briefly set forth, being described merely by its date, and the names of the parties by and to whom granted. If, instead of payment, delivery or implement is sued for, or if the action is not petitory, but declaratory, or any other kind of action, the style is varied accordingly. See *Parker's Styles of Summonses; Jurid. Styles*, vol. iii.; *M'Kechnie & Lyell's Styles.* Different conclusions are often combined in the same summons, as in actions of declarator and interdict, or of count, reckoning, and payment; and alternative conclusions are frequently inserted, as for implement, or, failing implement, for damages; or for declarator of marriage, or, failing marriage being established, for damages for seduction or breach of promise. A summons may be prepared and signed by any agent entitled to practise before the Court of Session; provided it is signed on the last page by a writer to the signet, in testimony of its being written to the signet; 31 & 32 Vict. c. 100, § 13. See *Writer to the Signet.* But teind summonses are still signed by the teind clerk; *Matheson*, 5 Feb. 1862, 24 D. 436; and consistorial summonses may be signed either by a clerk of court or a writer to the signet; 13 & 14 Vict. c. 36, § 15. An action in the sheriff court is commenced, not by summons, but by petition; 39 & 40 Vict. c. 70, § 6. See *Sheriff.* A warrant to arrest may be inserted in the will of a Court of Session summons; 1 & 2 Vict. c. 114, §§ 16, 17; as may also a warrant to inhibit; 31 & 32 Vict. c. 100, § 18. See *Arrestment. Inhibition.* The date of the commencement of an action is the date of the execution (not the signeting) of a summons; *Alston*, 18 Nov. 1887, 15 R. 78. The signeting of a summons is not a judicial act, and the question of jurisdiction [does not arise till the person cited appears before the court; *Walls' Trs.* 1 Feb. 1888, 15 R. 359. As to the effect of misnomer in a summons, contrast *Spalding*, 4 July 1883, 10 R. 1092; and *Cruickshank*, 25 Jan. 1888, 15 R. 326; with *Brown*, 13 Dec. 1884, 12 R. 340. As to amendment of the summons, whether by restricting its conclusions or otherwise, see *Amendment of the Record;* and *Laming & Co.* 21 June 1889, 16 R. 828; *Turnbull*, 18 July 1889, 16 R. 1079. In *Morley*, 9 Nov. 1888, 16 R. 78, the opinion was expressed that, if a summons as served is bad for want of jurisdiction, it cannot be made good by subsequent alterations. See also *Supplementary Summons.*] See *Stair*, B. iv. tit. 3, § 7; *Ersk.* B. iv. tit. 1, § 4; *Bank.* ii. 599; [*Shand's Prac.* i. 209; *Mackay's Prac.* i. 372. See *Calling of Summons. Citation. Execution. Inducie. Repeating a Summons. Privileged Summons. Pluris Petitio.*]

SUMPTUARY LAWS; are laws passed with a view to regulate the expenses of individuals and private families. Various laws were passed by the ancient Scotch legislature for this purpose. Attempts were made to regulate the dress of the ladies, to save the purses of the "puir gentlemen," their fathers and husbands. Coming to kirk or market with the face muffled in a veil was strictly prohibited. Statutes were passed against superfluous banqueting, and the inordinate use of foreign spices "brocht from the parts beyond sea, and sauld at dear prices to monie folk that are very unabill to sustain that coaste." Such statutes, which betray an ignorance of the spirit of society, were but ill observed, and have long been in desuetude. For these laws, see *Kames' Stat. Law, h. t.; Hutch. Justice*, ii. 3.

SUNDAY. Several statutes of the Scottish Parliaments enjoin the due observance of the Sabbath, and impose fines or corporal punishment on account of its profanation. [The act 1579, c. 70, enacts "That na handie-labouring, nor woorking, be used on the Sabboth-day;" and the act 1661, c. 18, prohibits the "using any sorts of merchandize on the said day, and all other prophanation thereof whatsoever," under the penalty of £10 Scots for every ordinary offence. The other acts are 1503, c. 83; 1591, c. 122; 1593, c. 63; 1594, c. 198; 1663, c. 19; 1672, c. 22; 1690, c. 5 (ratifying the Confession of Faith); 1690, c. 25; 1693, c. 40; 1696, c. 31; 1701, c. 11. See also 10 Anne, c. 10, § 8. In *Phillips*, 20 Feb. 1837, 2 S. & M'L. 456,

[it was held by the House of Lords that a barber's apprentice, under an indenture which bound him "not to absent himself from his master's business, holiday or week-day, late hours or early, without leave first asked and obtained," could not be required to attend his master's shop on Sunday mornings for the purpose of shaving customers, in respect such employment inferred a violation of the act 1579, c. 70, and other statutes for enforcing the observance of the Sabbath, and did not fall under the exception of "duties of necessity and mercy," introduced by the act 1690, c. 5. In *Bute*, 24 Nov. 1870, 1 Coup. 495, a conviction, obtained under these acts, of the offence of keeping open shop, and selling confectionery, on Sunday, was quashed, on the ground that the offence had been tried under the Summary Procedure Act, which was inapplicable. But the plea of desuetude was repelled; and the Sabbath Profanation Acts were held to be still in force, in so far as they declare the keeping open shop on Sunday to be an offence by the law of Scotland. The Lord Justice General (Inglis) observed that, in order to establish the plea of desuetude, "it must be shown that the offence prohibited is not only practised without being checked, but is no longer considered or dealt with in this country as an offence against the law. Now it is hardly necessary to say that the specific act charged in this complaint is an offence perfectly well known to the law of this country, not practised openly, and certainly not recognised as a legal or proper proceeding. On the contrary, the practice of this country undoubtedly is not to keep open shop on Sunday for any ordinary purposes; and therefore it seems to me that the plea of desuetude is one that cannot be listened to." See also *Jobson*, 29 Nov. 1828, 7 S. 83; *Jennings*, 18 Dec. 1850, 1 Irv. 115; *Nicol*, 13 July 1887, 14 R. (J.C.) 47; *Journ. of Jurisp.* xxxii. 310. By 1696, c. 31, sheriffs and magistrates are ordained to put the above laws "to due and full execution, at the instance of any person whatsoever, who shall pursue the same." But in *Bute*, *supra*, the Court of Justiciary declined to express any opinion as to whether a prosecution might now be brought at the instance of a common informer, without concurrence of the public prosecutor. The English act enjoining observance of Sunday is 29 Car. II. c. 7; but prosecutions under that act can only be instituted by or with consent of the chief officer of police, or with the consent of two [justices of the peace, or a stipendiary magistrate; 34 & 35 Vict. c. 87. The employment of young persons under the age of eighteen years, and of women, in factories and workshops, on Sunday, is prohibited, with certain specified modifications, by 41 Vict. c. 16, § 21.

[No judicial acts can legally be performed on Sunday. Diligence executed on Sunday is therefore null; from which rule, however, warrants against persons *in meditatione fugæ* are excepted *ex necessitate; Kempt*, 1786, M. 8554. But the voluntary acts of private parties are binding, though dated on Sunday; *Duncan*, 1684, M. 15003; *Elliot*, 20 Jan. 1844, 6 D. 411.

[See, on this subject, *Stair*, B. iii. tit. 1, § 37; tit. 3, § 11; B. iv. tit. 47, § 27; *Ersk.* B. iii. tit. 2, § 33; B. iv. tit. 4, § 17; *Bank.* i. 360, 456; iii. 31; *Hume*, i. 573; *Bell's Com.* ii. 460; *Bell's Princ.* § 44; *Menzies' Conv.* 64; *M. Bell's Conv.* i. 66; *Macdonald's Crim. Law*, 204; *Blair's Justice of Peace*, voce *Profanity; Stephen's Com.* iv. 244. See *Profanity. Holidays. Days of Grace. Terms.*]

SUPERCARGO; that officer in a vessel whose duty it is to superintend the trade for which the voyage is undertaken. Constituents have been found liable to pay money borrowed by their supercargo, though his commission bore no express power to borrow money, and though the money was not applied to their behoof; *Rogers*, 1732, M. 3954. [See *Ersk.* B. iii. tit. 3, § 44; *Bell's Princ.* § 219.]

SUPERINDUCTION; of letters or words *in substantialibus* of deeds vitiates them. *Stair*, B. iv. tit. 42, § 19; *More's Notes*, ccccvii.; *Bank.* ii. 633. See *Deed.*

SUPERINTENDENTS OF THE CHURCH; were persons chosen immediately after the Reformation to watch over the conduct of the parochial clergy, and to attend to the affairs of the church; thus coming in place of the bishops, whose continuance was inconsistent with the forms of presbyterian church government. *Ersk.* B. i. tit. 5, § 5.

SUPERIOR; is one who has made an original grant of heritable property, under the condition that the grantee shall annually pay to him a certain sum of money, or perform certain services. The grantee is termed the vassal. The interest of the granter is termed the *dominium directum*, that of the vassal the *dominium utile*. The superior has right to the feu-duties and other services stipulated in the grant, with the casualties which are by law given to a

superior; while the vassal enjoys, in the absence of any limitation in the grant, every other right attaching to the subjects, such as fruits, woods, mines and minerals, and the rights of alteration and disposal at pleasure. [All agreements for completion of the vassal's title by the superior's agent, or securing to the latter any privilege or monopoly, are declared null by 37 & 38 Vict. c. 94, § 22. The superior is entitled to challenge all encroachments and operations of third parties injurious to the feu, whether the vassal interfere or not; *M. Breadalbane*, 12 Feb. 1851, 13 D. 647. The superior, not being a heritor in the sense of 1663, c. 21, is not liable in ordinary parochial burdens; *Dundas*, 1778, M. 8511; *Murray*, 1794, M. 15092.] See *Ersk.* B. ii. tit. 3, § 10; *Ross's Lect.* ii. 119. [See *Superiority.*]

SUPERIORITY. The superiority, or *dominium directum*, is the right which the Crown, as overlord of all Scotland, or subject superiors as intermediate overlords, enjoy in the land held by their vassals. It is not a right of use of the lands, but only a right to the civil rights of feu-duty, &c., and to the casualties. (See *preceding article.*) The right of superiority is held by the Crown, or by individuals, as a consequence of their having been formerly vested, in their own person or that of their ancestors or authors, in the property of the land; and they continue to hold a complete title, not only to the superiority, but to the lands themselves, this title being qualified in its effects by the feu-charter which the vassal holds, and in virtue of which he enjoys the *dominium utile* of the lands. When, therefore, a superior wishes to convey his right to another, the regular form is, not to dispone the superiority only, but to dispone the lands themselves, excepting from the grant the right of feu which the vassal possesses. The form of such a conveyance will be found in *Jurid. Styles*, i. 124, 125, and *Bell's System of Deeds*, i. 306, where it will be seen that the granter dispones "all and whole the lands," but in the clause of warrandice excepts the feu-rights and titles granted to a third party, or previously disponed to the grantee. Though this is the only regular mode of conveying a superiority, it was at one time common to dispone the superiority only, sometimes with the view of avoiding the irritancy under 20 Geo. II. c. 50, sometimes to serve electioneering purposes, by conferring on the disponee the elective franchise without any right of property in the land. This conveyance, which has been censured by Stair (B. ii. tit. 4, § 1), as proceeding from "the ignorance of writers," has received various effects, according to the rights claimed upon it. It has been found effectual to confer the freehold qualification, and a title to pursue a removing, [or a declarator of non-entry;] *Lagg*, 1624, M. 13787; *Hamilton*, 23 Feb. 1819, F.C.; [*Gardner*, 9 Feb. 1841, 3 D. 534; *Ross's L.C.* i. 22.] A disposition of the feu-duties and casualties of superiority also affords a sufficient title to pursue a declarator of non-entry; *Douglas*, 1671, M. 9306. Infeftment in the superiority or *dominium directum* of lands, being in truth infeftment in the lands themselves, forms a sufficient title for prescription, and, followed by forty years' possession, vests the superior in the property of the lands. From the terms in which one case is reported, it is left doubtful whether or not the conveyance to the superiority only, above described, forms a good title for prescription; *Dunmore*, 1774, F.C., 5 Br. Sup. 614. But it has been thought that in that case the infeftment must have been in the lands, and that, without such infeftment, there can be no prescription; *Bell's Illust.* ii. 17 (note). There are certain inherent rights of superiority which law supports, and renders efficient against every man; such is the superior's title to the feu-duty and services specified in the grant. These do not require infeftment to secure them to the superior; he holds them as his inherent right, with which he has never parted, and of which he cannot be deprived either by any act of the vassal, or by the right of the vassal's heir or singular successor, or by prescription. So completely, indeed, are those rights inherent in the superior, that it has been made a question whether he can separate them from the superiority by renouncing them, so as to deprive a singular successor in the superiority of the power of demanding them from the vassal; and although the court held that the rights of superiority might be renounced, yet they regarded the point as a difficult one. [See *Nasmyth*, 1748, M. 5722; *Macvicars*, 1746, M. 4180, 10251; *Learmonth*, 15 Feb. 1854, 16 D. 580. As to redemption and commutation of casualties, see *Casualties.*] There are other rights, however, such as an obligation on the vassal not to sub-feu, or that he shall, before selling, give an offer to the superior at a certain price, called a clause of pre-emption. These are mere personal obligations on the vassal, and

will be effectual against purchasers of the property, and other third parties, only where they are engrossed in the infeftment, so as to enter the record. See *Conditions in Feudal Grants. Burdens. Clause of Pre-emption.* The vassal is liable for the feu-duty from the time of accepting the right; and he continues bound for it to the superior, even after he has sold the feu, [until notice of the change of ownership of the feu has been given to the superior; 37 & 38 Vict. c. 94, § 4 (2). See *Feu-Duties.*] Where the right of property has been separated from the superiority, [the two rights may be consolidated by the superior and the proprietor executing and recording a minute in specified form; 37 & 38 Vict. c. 94, § 6.] See *Consolidation.* A superior cannot interpose a superior between himself and his vassal [without consent of the latter; *Hotchkis*, 6 Dec. 1822, 2 S. 70.] Neither can a superiority be split, [without the vassal's consent,] to the effect of making him hold of more than one superior, and thus become liable in more than one set of prestations; [*D. Montrose*, 1781, M. 8822, 6 Pat. 805; *Stewart*, 14 May 1823, 2 S. 300; *Mure*, 18 May 1824, 3 S. 17; *Graham*, 23 May 1826, 4 S. 615. But if two superiorities, held under separate titles, and not blended into one single estate, accrue to one individual, he may convey them separately; *Dreghorn*, 1774, M. 15015; *Lamont*, 1819, 6 Pat. 410. It is not a multiplication of superiors to convey a superiority to two persons *pro indiviso; Cargill*, 21 Jan. 1837, 15 S. 408.] The superior's arrears and current feu-duties, and his casualties also, form both personal claims and *debita fundi*, preferable to all the vassal's other heritable debts, ranked first in judicial proceedings on bankruptcy, and to be made effectual by poinding of the ground and adjudication. [See *Feu-Duties. Casualties.* In former times, difficulty was frequently caused by superiors refusing to complete their own titles, in order to give a valid entry to their vassals. The old remedy for this inconvenience was that provided by the act 1474, c. 58, whereby the vassal charged the superior to obtain himself infeft within forty days, under certification that he would "tyne his superiority." See *Tinsel of Superiority.* This remedy, however, being cumbrous and expensive, was superseded by the Conveyancing Acts of 1847 and 1858, which provide for the forfeiture, temporary or permanent, or the relinquishment, by judicial minute or voluntary deed, of rights of superiority, [whether the superior's title is complete or not. See these enactments consolidated in 31 & 32 Vict. c. 101, §§ 104–112. But the object of these provisions being to facilitate the obtaining of an entry by the vassal, they are now in turn superseded by the Conveyancing Act of 1874, which abolished formal entry with the superior; 37 & 38 Vict. c. 94, § 4 (2).] See *Bell's Com.* i. 21 *et seq.*, 711, 723; ii. 26; *Ersk.* B. ii. tit. 5; B. iii. tit. 8, § 79; *Stair*, B. ii. tit. 3, §§ 29, 41, 51; tit. 4; tit. 11, § 8; B. iii. tit. 2; *More's Notes*, lx., clxxvi., cxcii., ccii.; *Bank.* B. ii. tit. 4, § 1; tit. 11, § 1; B. iii. tit. 2, § 56; tit. 5; *Bell's Princ.* §§ 675, 855, 2009, 2017; *Ross's Lect.* ii. 222, 292; [*Duff's Feudal Conv.* 55; *Menzies' Conv.* 597, 667; *M. Bell's Conv.* i. 562, 622; ii. 741, 753, 787, 1140.] See *Holding. Feu-Duty. Casualty. Composition. Entry. Clare Constat*, &c.

SUPERSEDEAS; in English law, a writ to stay some ordinary proceedings at law, on good cause shown. *Tomlins, h. t.*

SUPERSEDERE; is either a private agreement amongst creditors, under a trust-deed and accession, that they will supersede or sist diligence for a certain period, or a judicial act, by which the court, where they see cause, grant a debtor protection against diligence, without consent of the creditors. A creditor who commits a breach of supersedere is liable to the debtor in damages. See *Bell's Com.* ii. 397, 465, 489; *Bank.* B. iv. tit. 38, § 23; *Ersk.* B. iv. tit. 3, § 24. See *Sequestration. Bankruptcy. Protection.*

SUPPLEMENT. [Formerly,] where a party was to be sued before an inferior court *ratione rei sitæ*, and did not reside within its jurisdiction, letters of supplement were obtained on a warrant from the Court of Session, and in virtue of these he was cited to appear before the inferior judge. [But letters of supplement are no longer necessary for this purpose; 1 & 2 Vict. c. 119, § 24; 39 & 40 Vict. c. 70, §§ 9, 12. See *Sheriff.* Letters of supplement are still used for intimating an assignation of a bond at the Register Office, the debtor being abroad; or for intimating a resignation of trustees. See *Jurid. Styles*, iii. 381; *Campbell on Citation*, 130 *et seq.*] See also *Ersk.* B. i. tit. 2, § 17; *Ross's Lect.* i. 282; ii. 531.

SUPPLEMENT, OATH IN. See *Evidence*, pp. 418–9. [*Semiplena Probatio.*]

SUPPLEMENTARY SUMMONS. Where all the parties interested have not been called, [or where, for any reason, it is

[desired to bring in a new defender, or where a new pursuer is to be added,] a supplementary or auxiliary summons is necessary. [Before the Court of Session Act, 1868, amendment of the summons, otherwise than by restricting the conclusions, was incompetent in undefended causes; and in defended causes the power of amendment was comparatively limited. The largely increased facilities of amendment which that act introduced, have rendered supplementary summonses less frequent than formerly. See *Amendment of Record*. A supplementary summons, however, would probably be required, if the proposed amendment would make the action substantially a new one. Even for the purpose of restricting the conclusions, if the restrictions are complex, a supplementary summons is recommended. See *White*, 13 May 1863, 1 Macph. 786.] But where the original action is null, such a summons is inadmissible; [*M'Indoe*, 7 Dec. 1826, 5 S. 85.] It may be used, however, to bring forward additional grounds of action; the conclusions of both summonses being the same. In those actions which must be raised within a certain limited time, defects in the original summons cannot be remedied by a supplementary summons, if the limited period for raising the original action has elapsed before the supplementary summons is raised; [*Paul*, 20 Jan. 1824, 2 S. 533. A proper supplementary action (*e.g.*, one raised for the purpose of bringing another defender into court) cannot be maintained as a substantive and independent action after the original action has been dismissed; *Young*, 12 June 1874, 1 R. 1011. But a supplementary action raised for the purpose of making an additional claim, which might have been the subject of a separate action, may go on independently of the original action; *Roy*, 15 Feb. 1868, 6 Macph. 422. See *Shand's Prac.* i. 499; *Mackay's Prac.* i. 387; *M'Glashan's Sher. Court Prac.* 300. See *Summons. Pursuer. Defender.*]

SUPPLY, COMMISSIONERS OF. See *Commissioners of Supply.*

SUPPORT; the urban servitude of support. The servitudes *oneris ferendi* and *tigni immittendi* of the Roman law entitled the owner of the dominant tenement to rest the whole or part of a building, or of a beam, on the house, wall, or property of the servient tenement. By the Roman law, in the particular servitude *oneris ferendi*, the proprietor of the servient tenement became bound to preserve it in a state to answer the purposes of the servitude, or to abandon the property entirely. But by the law of Scotland, where a servitude of support is constituted by writing, it would seem that the servient proprietor is not bound to keep the servient tenement in repair, unless there be a special stipulation to that effect in the deed constituting the burden; and where it is merely a prescriptive servitude of this kind, the dominant proprietor may repair the servient tenement for his own use if so inclined; but there is no obligation, in that case, on the servient proprietor to repair, unless he has contracted an express obligation, servitudes being *strictissimi juris*, and not to be extended by implication. See a learned argument on this subject in *Murray*, 1715, M. 14521. [An owner of surface land is entitled, as of common right, to a continuance of that natural support to his land which is furnished by the subjacent *strata* and the adjacent soil, and which protects the surface from subsidence; *Humphries*, 11 Q.B. 744; *White's Trs.* 10 March 1887, 14 R. 597. But this right may be conveyed away either expressly, or by plain implication; *Andrew*, 10 March 1873, 11 Macph. (H.L.) 13; *White*, 19 March 1883, 10 R. (H.L.) 45. In *Balds*, 30 May 1854, 16 D. 870, subsidence due to the withdrawal of water which filled up a worked out mine was held to give right of action. But subsequent English cases throw doubt on that decision; *Popplewell*, L.R. 4 Ex. 248; *Rankine on Land-Ownership*, 408. When land is built on, and the lateral pressure on the adjacent soil thereby increased, there is no longer a natural right of support to the increased weight, but this right may be acquired as a servitude, by grant express or implied. Such grant can only be implied when there is a severance of two subjects previously held by the same owner; see *Servitude*. And it is implied in so far as the ground conveyed or retained is already built on, or is conveyed for the purpose of being built on; *Caledonian Railway*, 16 June 1856, 2 Macq. 449. In the leading case of *Dalton* v. *Angus*, 1881, 6 App. Ca. 740, it was held that a right to lateral support from the adjoining land may be acquired for a building by twenty years' uninterrupted enjoyment; provided such enjoyment was peaceable and without fraud or concealment. In that case both Lord Chanc. Selborne and Lord Watson held that the right of support to a building, whether lateral or vertical, is a positive easement; Lord Watson adverting to the fact that the decision would otherwise be an unsatis-

[factory precedent in Scotland, where positive servitudes alone are capable of being acquired by prescription. The last editor of *Gale on Easements*, however, regards the question whether this easement is positive or negative, as an open one, the balance of authority being rather in favour of the latter view, (p. 354).] See *Ersk.* B. ii. tit. 9, §§ 7, 8; *Stair*, B. ii. tit. 7, § 6; *Bank.* B. ii. tit. 7, § 6; *Bell's Princ.* § 1003; [*Rankine on Land-Ownership*, 403; *Gale on Easements*, 328.] See *Common Interest. Servitude.*

SUPPORTATION; was any assistance rendered to enable one, otherwise incapable, to go to kirk or market, so as to validate a conveyance of heritage made within sixty days before death. See *Deathbed.*

SUPREMACY. See *Oaths.*

SURETY. See *Cautionry. Lawburrows. Bail.*

SUR-REJOINDER; in English law, the plaintiff's answer to the defendant's rejoinder. *Tomlins' Dict. h. t.*

SURRENDER; in English law, the yielding up of an estate, for life or years, to him that has the immediate estate in reversion or remainder. *Tomlins' Dict. h. t.* See *Remainder.* [Surrender is the appropriate mode of aliening a copyhold estate. See *Copyhold.*]

SURRENDER OF TITHES; the submission of tithes made to the Crown. It got the name of surrender of tithes, because the submission contained in it a surrender of the tithes into the hands of the king. See *Teinds. Locality.*

SURROGATE; in English law, a substitute, a person appointed to act for another, as by a bishop, chancellor, judge, &c. *Tomlins' Dict. h. t.*

SURROGATUM; that which comes in place of something else. The price is the *surrogatum* of an estate, and is so called because, while it is distinguishable from other funds, the burdens which fell upon the estate will in some cases be transferred to the price received for it. [For illustration of the maxim, *Surrogatum sapit naturam rei in cujus loco surrogatur*, see *Stainton's Trs.* 17 Jan. 1868, 6 Macph. 240; also *Nisbet's Trs.* 5 Dec. 1851, 14 D. 145; *Heron*, 3 June 1856, 18 D. 917; *Davidson's Trs.* 15 July 1871, 9 Macph. 995; *Traquair*, 1 Nov. 1872, 11 Macph. 22; *Johnston*, 20 July 1875, 2 R. 986. Under the Lands Clauses Act (8 Vict. c. 19, §§ 67 *et seq.*), and the Entail Amendment Acts of 1848 and 1853 (11 & 12 Vict. c. 36, §§ 25 *et seq.*, 16 & 17 Vict. c. 94, § 8), funds [destined to be laid out in the purchase of lands to be entailed, and funds obtained by the sale or surrender of entailed lands, are treated as *surrogata* of the lands.] See *Stair*, B. ii. tit. 2, § 14; *Kames' Equity*, 293; *Brown's Synop. h. t.* [See *Approbate and Reprobate.*]

SURVIVORSHIP. [The effect of an ordinary clause of survivorship in a will or bequest is that the legatees are reciprocally substituted to one another in the event of failure by death; and the period to which words of survivorship are to be referred is, as a general rule, the period of payment or distribution of the bequest. A clause of survivorship has usually, therefore, the effect of suspending vesting until that period; *Young*, 14 Feb. 1862, 4 Macq. 314. "If a testator gives a life estate in a sum of money or in the residue of his estate, and at the expiration of that life estate directs the money to be paid or the residue to be divided among a number of objects, and then refers to the possibility of some one or more of those persons dying, without specifying the time, and directs in that event the payment or distribution to be made among the survivors, it is understood by the law that he means the contingency to extend over the whole period of time that must elapse before the payment or distribution takes place;" *per* Lord Westbury. See the chapter on Survivorships, in *M'Laren on Wills*, i. §§ 1297 *et seq.* See also *Vesting.* As to presumptions of survivorship, see *Presumption of Survivorship.*]

SUSPENSION; is the general name given to a process in the supreme civil, or criminal court, whereby execution or diligence on a sentence or decree is stayed until the judgment of the supreme court is obtained on the point. [The present article relates exclusively to suspension as a stay of diligence; suspension, as a mode of review, and suspension in criminal procedure, being explained in the following articles.] The party complaining commences proceedings [by lodging in the Bill-Chamber a note of suspension, signed by an agent in the Court of Session, setting forth the charge, or threatened charge, which is sought to be suspended, and praying for the relief craved. To the note is annexed an articulate statement of the facts on which the suspension is founded, together with a note of pleas in law; 1 & 2 Vict. c. 86, § 6. A form of note of suspension is prescribed by A.S. 24 Dec. 1838, § 16. It must contain either an offer of

[caution or consignation of the sum charged for, or a crave that, in the circumstances of the case, caution be dispensed with, or juratory caution accepted.] This [note] is presented to the Lord Ordinary on the Bills; and if he think that the complainer has made out a sufficient *prima facie* case, he pronounces an interlocutor sisting execution in the meanwhile, and appointing the [note] of suspension to be answered. [But if a caveat have been lodged, the Lord Ordinary pronounces no deliverance until the respondent has had an opportunity of being heard. See *Caveat*. When there is no caveat, the note and interlocutor thereon must be served on the opposite party by a messenger-at-arms; 1 & 2 Vict. c. 86, § 6; see *Anderson*, 22 Nov. 1862, 1 Macph. 46. When caution is offered, it must be found within fourteen days from the date of presenting the note, unless a prorogation is obtained. See *Caution in a Suspension. Attestor. Juratory Caution.* The clerk's certificate of no caution or consignation is equivalent to an interlocutor refusing the note; A.S. 14 June 1799, § 1; 11 July 1828, § 12; 24 Dec. 1838, § 9. When the requirements as to caution or consignation are complied with,] the Lord Ordinary on the Bills resumes consideration of the [note] along with the answers (if lodged); and if that pleading does not satisfy him that the objection to the diligence or execution is groundless, he passes the [note] of suspension, whereby the cause is brought formally into the Court of Session in order to be discussed; and pending the discussion, the execution is stayed or suspended. If, on the other hand, the Lord Ordinary on the Bills be of opinion, either on considering the [note] itself, or on resuming consideration of it, with answers, that there is no just ground of complaint, he refuses the [note,] upon which a certificate of refusal will be issued, and the diligence or execution complained of will proceed precisely as if no [note] of suspension had been presented. [The giving out of a certificate by the clerk of the bills, passing or refusing the note, is equivalent to extract in its effect, as the termination of the cause in the Bill-Chamber. But a certificate of refusal may not be issued till forty-eight hours after entry thereof in the minute-book; and when a note is passed, the interlocutor does not take effect until forty-eight hours after it has been entered in the minute-book, except as a continuance of sist. Further, if caution is to be found after the passing of the note, the interlocutor does not take effect till caution has been found; A.S. 24 Dec. 1838, § 8.] The judgment of the Lord Ordinary on the Bills, whether refusing or passing the [note,] is subject to the review of the Court of Session, [by reclaiming note; and on special cause shown, the Lord Ordinary may prohibit the issue of the certificate until the reclaiming note is advised; A.S. 24 Dec. 1838, § 5. Another mode of review, formerly common, was by a second note of suspension; but this mode is now only competent when a note has been refused for want of caution, or upon any ground not on the merits; *ib.* §§ 5, 7. In the older practice, when the Lord Ordinary held that the decree on which the charge proceeded was defective in point of form, though the debt due to the charger might be just, he "turned the charge into a libel;" which, in order to save the expense of a new action, was held equivalent to citation upon a summons; *Ersk.* B. iv. tit. 3, § 22; *Shand's Prac.* i. 474. This procedure is in disuse, though still competent at any time before closing the record on the passed note in the Court of Session. On the note being passed, the cause was formerly called and enrolled before a Lord Ordinary; but it is enacted by § 90 of the Court of Session Act, 1868, that, "in all proceedings in the Bill-Chamber, as soon as an interlocutor passing the note has become final, and caution has been found or consignation has been made, in the event of caution or consignation having been ordered, the cause shall become for all purposes an action depending in the Court of Session, and may immediately be enrolled by either party in the motion roll of the Lord Ordinary to whom it is marked. . . . . And it shall not be necessary that any such process should appear in the calling lists." By 1 & 2 Vict. c. 119, § 19, charges on registered bonds and protests and other decrees of registration, for sums not exceeding £25, may be suspended in the sheriff court. See also A.S. 10 July 1839, § 116; and *Thom*, 8 June 1848, 10 D. 1254.] See *Stair*, B. iv. tit. 52; *More's Notes*, ccccxxi.; *Ersk.* B. iv. tit. 3, § 18; *Bell's Princ.* §§ 68, 276; *Ivory's Form of Process*, i. 99, 251; *Ross's Lect.* i. 360; [*Shand's Prac.* i. 440; *Mackay's Prac.* ii. 16; *Dove Wilson's Sher. Court Prac.* 498.]

[**SUSPENSION**, *as a mode of review.* The preceding article describes suspension as a stay of diligence. It is also a process of review, either of decrees in absence of the Court of Session, or of decrees, whether

[in absence or *in foro*, of inferior courts. "Where through the lapse of time a party can neither be reponed against a Court of Session decree, nor appeal against an inferior court decree, his remedy is either reduction or suspension. Reduction operates neither to stop extract nor to stay diligence; where, therefore, a charge on a decree is competent, and has been given or is anticipated, suspension is the appropriate remedy, and, as a general rule, it is only in such cases that it is used;" *Mackay's Prac.* ii. 474. Suspensions of such decrees are regulated by 1 & 2 Vict. c. 86, §§ 4, 5, and forms of notes are prescribed by A.S. 24 Dec. 1838, § 16. They have the effect of an interim sist of diligence. By § 24 of the Court of Session Act, 1868, certain decrees in absence are made equivalent to decrees *in foro*, and these cannot be suspended; see *Absence*. In sheriff court cases, suspension is generally competent when appeal is excluded, after extract and before implement of the decrees. See *Scoular*, 29 March 1864, 2 Macph. 955. See also *Appeal*. See *Ersk.* B. iv. tit. 2, § 39; tit. 3, § 18; *Shand's Prac.* i. 308; *Mackay's Prac.* ii. 473; *Dove Wilson's Sher. Court Prac.* 581.]

[**SUSPENSION**, *in criminal procedure*. Illegal warrants or irregular convictions obtained in an inferior court are brought under review of the High Court of Justiciary by means of a bill of suspension. See *Collins*, 3 Nov. 1887, 15 R. (J.C.) 7. If the complainer is in prison, and prays for liberation, the bill is called a bill of suspension and liberation. Only an actually existing warrant, judgment, or conviction can be suspended; see *Jupp*, 9 March 1863, 4 Irv. 355. But it is not necessarily an objection to a suspension that the warrant or sentence complained of has already been executed; see *Russell*, 24 Nov. 1845, 2 Broun, 572.] It is no good reason of suspension that the verdict of a jury is not warranted by the evidence; the only ground on which a verdict can be brought under review in this form being that the inferior judge has admitted unlawful evidence, or has improperly circumscribed the proof; for these and similar grounds of complaint do not affect the jury, but the judge, who has not afforded the legal materials for coming to a correct verdict. The Court of Justiciary, on the same principle, will judge of all objections which appear on the face of the verdict, or which arise from irregular proceedings on the part of the jury. [See *Clendinnen*, 2 Dec. 1875, 3 R. (J.C.) 3; *M'Garth*, 15 May 1860, 1 Coup. 260; *Milne*, 28 April 1874, 2 Coup. 562. It is no ground of suspension that a sheriff laid down bad law in charging a jury, and refused to note an objection thereto; *Quarns*, 4 June 1866, 5 Irv. 251. The competent grounds of review are considered and illustrated in *Moncreiff on Review in Crim. Cases*, 308 *et seq.* The procedure in suspensions is described in *Moncreiff*, 173 *et seq.* If the suspender has obtained *interim* liberation, he must appear personally at the hearing and disposal of the case, under penalty of being held to have abandoned his suspension; and if he is absent, the court may issue a warrant for his apprehension and imprisonment during the period of his sentence which remains unexpired; 38 & 39 Vict. c. 62, § 10. See *Nathan*, 9 Nov. 1881, 9 R. (J.C.) 3. A quorum of the court is necessary for the disposal of the suspension. See *Hume*, ii. 511; *Alison's Prac.* 27; *Macdonald*, 538–543; *Moncreiff on Review*, 169, 342. See *Criminal Prosecution. Justiciary Court. Advocation. Summary Procedure.*]

SUSPENSION AND INTERDICT. [See *Interdict.*]

SUSPENSION AND LIBERATION. Where a debtor has been incarcerated in consequence of diligence on a decree, or on any other warrant of incarceration, he may apply, in the Bill-Chamber, for redress by a [note] of suspension and liberation; and if he can satisfy the Lord Ordinary on the Bills that his imprisonment has been wrongful or illegal, the [note] of suspension and liberation, after it has been answered, will be passed. The procedure is analogous to that in ordinary suspensions. [*Mackay's Prac.* ii. 239. See *Liberation*. See also *Suspension, in criminal procedure.*]

SUSPENSIVE CONDITIONS; conditions precedent, or conditions without the purification of which the contract cannot be completed. *Bell's Com.* i. 258; *Bell's Princ.* § 109; *Brown on Sale*, 32–42. See *Conditional Obligation. Resolutive Conditions. Sale.*

SWANS. According to Stair, swans are *inter regalia*; but Erskine says, "Nothing appears, either in our statutes, lawbooks, or practice, in support of the opinion that swans were ever accounted *inter regalia*." See *Stair*, B. ii. tit. 3, § 60; *Ersk.* B. ii. tit. 6, § 15; *Bank.* i. 593; *Bell's Princ.* § 1290.

SWINDLING. [See *Fraud.*]

SYLVA CÆDUA; is a wood, which, on

being cut, stoles out again for another cutting, so as, by proper management, to yield a yearly profit, which may be turned to account by a temporary usufructuary, as a liferenter or wadsetter on a good title, but not by a mere tenant, unless his lease expressly so provide. *Stair*, B. ii. tit. 3, §§ 74 *et seq.*; *Bank.* i. 658; *Hunter's Landlord and Tenant*, i. 122, 126–27, 275. See *Liferent. Wood. Trees. Timber.*

SYMBOLS. Heritable property was formerly transferred by the delivery of symbols. Thus lands were resigned by a vassal to his superior by the symbol of staff and baton; and in giving sasine, the symbols were varied according to the nature of the subject. In giving sasine of lands, the symbols were *earth and stone* of the lands; of an annual rent out of lands, *earth and stone, with a penny money;* of fishings, *net and coble;* of mills, *clap and happer;* of houses within burgh, *hasp and staple;* of patronage teinds, *a sheaf of corn;* of patronage, *a psalm-book and the keys of the church;* of jurisdictions, *the book of court. Ersk.* B. ii. tit. 3, § 36; *Stair*, B. ii. tit. 1, § 15; tit. 3, §§ 17, 44; B. iii. tit. 2, § 6; *More's Notes*, clxi.; *Bank.* i. 509, 549; ii. 209; *Bell's Princ.* §§ 769, 794, 844; *Ross's Lect.* ii. 87, 196, 216, 374. See *Delivery. Resignation. Sasine.*

SYNOD. See *Church Judicatories.*

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TABLING OF A SUMMONS. At the institution of the College of Justice (1537), there was appointed a table, in which were set down all summonses, to be called in their turns; those from each quarter into which Scotland was divided, having a particular quarter of the year allotted to them. *Stair*, B. iv. tit. 2, § 5; *Bank.* B. iv. tit. 23, § 27; *Kames' Stat. Law, h. t.* See *Calling of a Summons.*

TABULÆ; the twelve tables upon which the laws of Rome were first inscribed for public inspection.

TABULÆ. Deeds *contra fidem tabularum* are all private covenants, whether before or after a contract of marriage, whereby the interests of the bride or bridegroom are injured, and which are held fraudulent and void on this account. *Bank.* B. i. tit. 5, § 21.

TACIT RELOCATION. See *Relocation.*

TACITURNITY; a mode of extinguishing an obligation in a shorter period than by the forty years' prescription. This manner of extinguishing obligations is by the silence of the creditor, and arises from a presumption, that in the relative situations of himself and his debtor, he would not have been so long silent, if the debt had not been paid, or the obligation implemented. ["In order to found the plea, the relation of the parties, and the whole surrounding circumstances, must be considered, and unless these, coupled with silence, are sufficient to infer a presumption of payment, satisfaction, or abandonment, there is no ground for the plea;" *per* Lord J. C. Inglis, in *Moncrieff*, 11 Jan. 1859, 21 D. 216. Contrast *Cullen*, 16 [Nov. 1838, 1 D. 32; *Thomson*, 6 Dec. 1849, 12 D. 276; *Robson*, 19 March 1870, 8 Macph. 757; and *Spence*, 24 Oct. 1873, 1 R. 46; in which the plea was admitted; with *Seath*, 21 Jan. 1848, 10 D. 377; and *Allan*, 24 June 1851, 13 D. 1220; in which it was repelled.] See *Ersk.* B. iii. tit. 7, § 29; *Brown's Synop.* p. 1694. See *Acquiescence.* [*Mora.*] *Presumption. Prescription. Evidence.*

TACK. See *Lease.*

TAILZIE. [See *Entail.*]

[TAXATION OF ACCOUNTS. See *Expenses. Auditor.*]

TAXED WARD AND MARRIAGE. See *Tenure. Casualty. Marriage.*

TAXES; are supplies granted by the House of Commons, and confirmed by acts of Parliament, constituting the extraordinary revenue of the Crown, and paid yearly towards the expenses of Government. [See Taxes Management Act, 1880 (43 & 44 Vict. c. 19). See also *Property and Income Tax. Legacy Duty. Inventory Duty. Succession Duty.*] *Stamp Laws. Land-Tax. Public Burdens.* Taxes and the arrears of taxes are Crown debts. See *Crown Debt.* As to the supposed power of the magistrates of royal burghs to impose taxes with consent of the majority of burgesses, see *Ersk.* B. i. tit. 4, § 22.

TEIND COURT; *or Commissioners of Teinds.* Several expedients to provide the reformed clergy with proper stipends having failed, a commission of Parliament was appointed by the act 1617, c. 3, to plant churches and modify stipends out of the tithes of every parish within the kingdom. Other commissions were afterwards granted,