

accused party, in order to justify the act, must show that he confined himself to the just measure of resistance, and that he entertained a reasonable apprehension of danger; and he must not have been in any degree the cause of the fatal strife. *Hume*, i. 195; *Alison's Princ.* 105, 127; [*Mac-*

donald, 140.] See *Homicide. Moderamen inculpatæ tutelæ.*

JUSTIFICATION; according to the English law definition, is a maintaining or showing good reason in court why one did the act or deed for which he is called to answer. *Tomlins' Dict. h. t.*

K

KAIN; derived from *canum*, a word used in ancient grants to signify the fowls or animals deliverable by the vassal to the superior, as part of the *reddendo*. In modern practice, the term is applied to the poultry, eggs, &c., deliverable by a tenant to his landlord in terms of his lease. Where kain forms part of the rent, the court, in estimating the value of property, sold according to a rental, allow such as is convertible into money at the option of the lessor, but disallow such as is not convertible. There is no such distinction, however, as between the lessee and a singular successor. *Ersk. B. ii. tit. 10, § 32*; *Hunter's Landlord and Tenant*, i. 386; ii. 297; *Bell on Leases*, i. 226; ii. 40; *Ross's Lect.* ii. 236, 405; [*Bell's Princ.* § 696.]

KELP. The introduction of the use of this article in the manufacture of glass gave rise to several questions as to the right to make it. These questions are either as between the neighbouring proprietors and the Crown, or as between landlord and tenant. It has been found that the taking of kelp is not one of the uses for which the shore is held by the Crown in trust for the public, and consequently the right is not inalienable by the Crown, but is transferred to the grantee, where land is granted bounded by the sea or sea-shore. In *E. Morton*, 1760, M. 13,528, the defender's lands lay in a continued stretch along the sea-shore of Orkney, and the pursuer's were behind them, a little farther from the sea, except a small part which touched the shore. On the introduction of kelp as a manufacture, the pursuer claimed right to the ware of the whole coast, as *inter regalia*, and under his charter of the earldom of Orkney. But it was held that he had no right to the ware on the shore of the defender's lands. The designation of a glebe is a bounding charter; and where shores are not mentioned, although the glebe may be contiguous to the shore, the minister has no right to kelp; [*L. Reay*, 1781, M. 5151.] The right of kelp-ware is not a pertinent of

an agricultural or pastoral farm, but may be let independently of, or along with, the lands upon the shores of which the kelp grows, under the denomination of the kelp-shores. In the Highlands and Islands, it is the practice for the proprietor to retain the shores in his own possession, and employ the tenants and cottars in manufacturing the kelp. See *More's Notes on Stair*, clxxii; *Bell's Princ.* §§ 647, 1226; *Bell on Leases*, i. 357; *Hunter's Landlord and Tenant*, i. 284; ii. 210; [*Rankine on Land-Ownership*, 219, 349.] See *Sea*. [*Ware*.]

KENNING TO A TERCE. The kenning of a widow to her terce is the judicial act of the sheriff of the shire within which the lands lie. The widow is first served to her terce by the verdict of a jury, proceeding on a brieve from Chancery. By this verdict it is ascertained that the claimant is the widow of the deceased, and that certain lands are the lands in which her husband died infert. The next step is for the sheriff to ascertain the just proportion of the husband's lands which belong to the widow in virtue of her terce, and this is what is termed kenning her to her terce. It is done by the sheriff setting off two acres for the heir, and one for the widow alternately, through the whole property, beginning on the east or west of the property by lot. But as the object of kenning the widow to her terce is to separate the interests of the heir and of the widow, in order that each may possess independently of the other, an object not likely to be attained by this mode of division, it often happens that, in place of it, the parties agree to divide the estate into farms, or larger portions of the property, which division is then judicially authorised by the sheriff, and made the rule of his division. After the division is made by the sheriff, a procurator appears for the widow, sasine is given by delivery of earth and stone, and instruments are taken in the hands of a notary-public, on which an instrument is made out. ["But both these modes of

[division may now be considered rather as matters of history than of practice; now the general course is for the widow and the heir to enter into a submission to some competent person, to whose award they refer the whole matter. According as the parties wish it, he either sets aside a compact portion of the estate as the widow's third, leaving the rest to the heir, or he decerns in her favour for a certain sum out of the aggregate rents corresponding to the terce;" *Fraser on Husb. and Wife*, ii. 1104.] The widow being thus kened to her terce, her title to her legal liferent is held as complete, and she may remove tenants from her terce lands, and possess them by herself or by her tenants. She may recover the rent of the lands, and exercise the other rights and privileges of a liferentrix. In this respect, a widow kened to her terce is in a different situation from a widow entitled to a jointure from the estate of her deceased husband. Where the jointure has not been recovered out of certain lands set apart to her, she may have recourse on the other lands of her husband. But a widow kened to her terce is the proprietor of the rents; and if they are lost, they are lost to herself, without any recourse on the separate estate of her deceased husband. See *Ersk. B. ii. tit. 9, § 50*; *Bank. i. 661*; *Bell's Com. i. 59*; *Bell's Princ. § 1603*; [*Stair, B. ii. tit. 6, § 13*; *Fraser on Husb. and Wife*, ii. 1103.] See *Terce*.

KEY, DELIVERY OF. In a sale of merchandise deposited in a cellar or warehouse, the delivery of the key of the place in which the goods are deposited, is held to be equivalent to the actual delivery of the articles to the purchaser. Nor does it seem to alter the case where the seller possesses a master key, or where the particular warehouse of which the key is delivered is within an outer gate, the property of the seller. See *Maxwell*, 4 April 1831, 5 W. & S. 269. See also *Ersk. B. ii. tit. i. § 19*; *Bank. i. 509*; [*Bell's Com. i. 186, 193, 230*]; *Bell's Princ. §§ 1302, 1306*. See *Delivery*.

KIDNAPPING. The forcible abduction and conveying away of a person from his own country, and sending him to another, is an offence at common law. [Kidnapping is in England a statutory offence, under 24 & 25 Vict. c. 100, § 56. As to kidnapping Pacific Islanders, see 35 & 36 Vict. c. 19. See *Stephen's Digest of Crim. Law*, art. 117 A, 263.] See *Abduction*. [*Plagium*.]

KILLING. See *Homicide*.

KILN. Although a kiln be let as part

of, or along with, a mill, and although the suckeners resort to the kiln, it does not form part of the thirl, and the suckeners are not astricted to it. A proprietor has been found entitled to build a draw-kiln for burning lime, upon the very extremity of his grounds, although it made his neighbour's dwelling very unpleasant; *Dewar*, 1767, M. 12,803, Hailes, 177. But a brick-kiln, situated on the extremity of one's property, having done real damage to another by scorching the garden, was ordered to be removed so far as necessary to prevent such damage; *Ralston*, 1768, M. 12,808. See *Bell's Princ. § 966*; *Hunter's Landlord and Tenant*, i. 269. [See *Thirlage*.] *Nuisance*.

KINDLY TENANT, or RENTALLER.

A rental right, (which is now almost unknown in practice,) was a lease granted by the landlord for a low and favourable tack-duty, to those who were either presumed to be lineal descendants of the ancient possessors of the land, or who were persons whom the landlord wished to favour. Such lessees were denominated rentallers, or kindly tenants. Originally, the entering of the rentaller's name in the landlord's, or the King's steward's rental-book, was held to be a sufficient title to him in all questions with the proprietor or his heirs; but the right was not effectual against singular successors, unless the rentaller could show a rental right, followed by possession. Where the rental right specified a certain period of endurance, it received effect for the specified period. If no period of endurance was expressed, it was held to create a liferent right in favour of the tenant; or where it was given to the tenant and his heirs, it created a right which descended to the first heir of the tenant. The rentallers of Lochmaben, however, who were formerly servants to the Scottish kings, have a perpetual right, which may be transferred to strangers. See *Lochmaben*. See *Ersk. B. ii. tit. 6, § 47 et seq.*; *Bell on Leases*, i. 88; *Bell's Princ. § 1279*; *Hunter's Landlord and Tenant*, i. 423; ii. 240; *Ross's Lect. ii. 478*.

KIN, NEXT OF. See *Executors. Confirmation. Inventory*.

KINDRED, or CONSANGUINITY.

Consanguinity is either lineal or collateral. Lineal is either ascending, as to the father, grandfather, and so upwards; or descending, as to the son, grandson, &c. Collateral consanguinity includes those descending from the same stock, but not each from the other, as for example, brothers, and

the children of different brothers. See *Consanguinity*. In reckoning the degrees of kindred, the rule of the canon law is followed, which differs from that of the Roman law. In both, however, the degrees of consanguinity in the ascending or descending lines correspond; and each generation is reckoned a degree, as father and son one degree, father and grandson two degrees, and the same in the ascending line of kindred. But in reckoning the collateral degrees of consanguinity, the rules established in the two laws are very different. In the canon law, the degree of consanguinity between two persons descended from the same stock is reckoned according to their distance from the common ancestor; or where one is further removed from the common ancestor than the other, the number of degrees is reckoned by the distance of the one furthest removed. Thus brothers and sisters are related in the first degree, because from their father, the common ancestor, there is only one remove; a nephew and uncle are related in the second degree, because there are two degrees between the nephew and the common ancestor; and cousins-german are related in the same degree, because there are two degrees between them and the grandfather, who is the common ancestor. But in the Roman law, one degree is reckoned for each ascending generation, and one for each descending one, in the connection between collateral kindred. Thus uncle and nephew are counted three degrees, the uncle being one degree removed from the common stock, and the nephew two degrees removed from the same common ancestor, making together three degrees. In the same way cousins-german stand related to each other in the fourth degree, the grandfather, who is the common stock, being removed two degrees from each; and the degrees, both ascending and descending, being reckoned, they are held to be related in the fourth degree. See *Ersk. B. i. tit. 6, § 8*; *Bell's Princ. § 1527*; [*Fraser on Husb. and Wife, i. 104.*] See *Succession. Degrees of Kindred.*

KING; the person in whom the supreme executive power of the State is vested. It is not the object of this work to do more than explain the rights and privileges of the Sovereign as recognised in the municipal law of Scotland. In this view, these rights may be considered in relation to property, or as they come in competition with the rights of subjects, or in regard to the Sovereign's paternal power, or his

right of succession. The public right, which, as applicable to Scotland, is of chief importance, relates to the Sovereign's connection with the established Church of Scotland. Under the articles *Church Judicatories—Church of Scotland—and Commissioner*—the constitution of the Church of Scotland is shortly explained; and with a general reference to these articles, it may be observed that as, by the constitution of the Church, no change can be made in its faith or doctrines but by acts of the General Assembly, and as the deliberations of that body are, to a certain extent, conducted under the superintendence of the Sovereign, no change of any political moment can ever be effected on the constitution or principles of the Church of Scotland without the intervention of the proper and constitutional guarantees against usurpation on either side.

1. *The King's rights in relation to Property.*—In regard to landed property the law considers the whole land rights as having emanated from the Sovereign; and, therefore, as to land rights, the rule is, that whatever has no proprietor belongs to the King—*Quod nullius est fit domini regis*. The possession of land confers no right without a title in writing. In order to constitute a right in land, there must either be a direct title in writing, or the possessor must hold it as part and pertinent of other lands which have been conveyed to him, with parts and pertinents, in the title-deeds. Possession, if not founded on one or other of those titles, confers no right to land; and hence, in absence of such a written title, the land may be claimed by the King or by his donatory. So also moveables which have once had an owner, who is now unknown, or treasures which have been hidden, and are discovered, belong to the King. The King's right in regard to land is constituted *jure coronæ*; no sasine is necessary, nor indeed competent, since a sasine implies a superior, by whom the possession may be given, while, upon feudal principles, the King has no superior. It follows that, when lands which held of the Crown fall to the King by forfeiture, they become virtually consolidated with the superiority; and, in the same manner, when the King succeeds as heir to one of his subjects, although a service as heir is necessary, yet no sasine follows; the right vests in the King without sasine. The property belonging to the Crown was anciently very ex-

tensive, and constituted the principal means by which the Sovereign supported the expenses of his court. The act 1455, c. 41, may be consulted as explanatory, not only of the extent of the royal domains at that time, but as descriptive of the consequences which flowed from the liberality or profusion of our monarchs. See *Annexation*. At present the Crown lands in Scotland, *i.e.*, the lands belonging in property to the Crown, are of very insignificant extent; and the feu-duties due from the lands formerly granted in feu-farms under acts of Parliament, the casualties of the Crown superiorities, the rights arising from forfeiture, or under the right of *ultimus hæres*, or of bastardy, are all that truly constitute the revenue of the Crown in Scotland. See *Crown Lands*. Lest the King, in the transference of the property thus vested in the Crown, might be involved in questions arising from the inattention of his officers, in royal grants, warrandice is not inferred. [A doubt is expressed by *Erskine* (B. iii. tit. 7, § 31), whether the negative prescription runs against the Crown. But the doubt appears to be founded on a misapprehension of a passage in *Stair* (B. ii. tit. 3, § 33); and it is negated by the decisions in the *E. Fife's Trs.* 28 Feb. 1849, 11 D. 889, and *Deans of Chapel Royal*, 18 March 1869, 7 Macph. (H.L.) 19. See *Mackenzie's Obs. on stat.* 1600, c. 14; *Napier on Prescription*, 654.] A right of property also competent to the King is that of escheat. See *Escheat*. But independently of the property enjoyed by the King, there are certain rights which he holds, termed *regalia*, the principal of which is jurisdiction; and there are other regalia which the Crown may or may not transfer to individuals. Thus, 1. A right of forestry may be conferred on an individual; but where lands are conveyed within which a forestry is locally situated, the property of it is not carried without a special clause in the grant. See *Forestry*. 2. Salmon-fishings fall under the regalia, and may be conferred on a subject. See *Salmon-Fishing*. 3. Gold and silver mines belong to the King. See *Mines*. 4. Rivers, ports, and highways, are *inter regalia*. A ferry or free port must be the subject of a special grant from the King. See *Highways*. *Rivers*. *Ports*. *Ferry*. 5. The sea and sea-shores are in like manner held to be *inter regalia*. See *Sea and Sea-Shore*.

2. *The King's paternal power*.—In virtue of this power, and as *pater patriæ*,

where no tutors have been named by the father, or where those named refuse to accept, and the tutor-at-law does not undertake the office, the King may appoint a tutor-dative. This appointment may be obtained by presenting a signature of tutory in Exchequer, after calling the nearest of kin on the father and mother's side; and if such nearest of kin have no good objection to state to the appointment, a gift of tutory-dative will be made. The gift following on this signature passes the quarter-seal. See *Tutor*.

3. *The King's right as ultimus hæres*.—Where lands are taken to a person and his heirs whomsoever, and he dies without having made a settlement and leaving no person who can legally claim the succession, the lands go to the King as *ultimus hæres*; and the same rule applies to the defunct's moveable estate. See *Last Heir*.

As to the rights of the King in competition with the subject, see *Crown Debts*. And as to the powers and prerogatives of the King as connected with the public and constitutional law of Great Britain, see [*Stephen's Com.* ii. 424, 492; *Anson on the Constitution*, i. 245;] *Tomlins' Dict. h. t.*

KING'S ADVOCATE. See *Advocate, Lord*.

KING'S (QUEEN'S) BENCH; was the supreme court of common law in England. It was so called because the King used formerly to sit in court in person. During the reign of a Queen, it was called Queen's Bench; and during Cromwell's Usurpation, it was called the Upper Bench. The court consisted of a Chief Justice, and four *puisne* judges. It was at one time ambulatory. The jurisdiction of the court was very high. It had a superintending control over all inferior jurisdictions; superintended all civil corporations; commanded magistrates to do their duty; protected the liberty of the subject by summary interposition; and took cognisance of criminal as well as civil causes; the former, in what was called the Crown side or office; the latter, in the plea side of the court. Its criminal jurisdiction extended from high treason to the most trivial misdemeanour or breach of the peace. Indictments from all inferior courts might also be removed into the Court of Queen's Bench by *certiorari*. The judges of this court were the supreme coroners of the kingdom; and the court itself was the principal court of criminal jurisdiction in England. *Tomlins, h. t.*

[By the Judicature Act, 1873, the Courts of Queen's Bench, Common Pleas, and Exchequer became Divisions of the High Court of Justice; and by Order in Council, dated 16 Dec. 1880, these Divisions were consolidated and merged in one, called the Queen's Bench Division, presided over by the Lord Chief Justice. *Broom's Common Law*, 29; *Stephen's Com.* iii. 347. See *High Court of Justice*.]

KING'S EASE. See *Teinds*.

KING'S (QUEEN'S) EVIDENCE. In England, it has been usual with justices of peace, by whom prisoners are committed, to admit some one of their accomplices to become a witness, or, as it is generally termed, *King's evidence*, against his fellows, upon an implied confidence that, if such accomplice makes a full and complete discovery of that and of all other crimes with regard to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not be punished for that offence. This discretionary power exercised by justices of peace is founded on practice only, and cannot at all events exempt the accomplice from being prosecuted. In England, the admission of an accomplice to be a witness against his associates amounts to a promise of a recommendation to mercy, upon condition of his making, at the trial, a full and fair disclosure of all the circumstances of the crime. Upon failure on his part to fulfil this condition, he forfeits all claim to protection. In Scotland, such bargains have seldom been made without the permission of the public prosecutor, even by sheriffs, still seldomer by justices of peace. And it seems to be now established in Scotland that it is only the public prosecutor who is invested with the uncontrolled power of tying up the hands of justice, by calling one of the accomplices in a crime as a witness for the prosecution. Inferior magistrates or jailors have no power to promise pardon to certain prisoners in the event of their being taken as King's evidence; and if they do so without authority from the Crown counsel, they exceed the limits of their duty; and the prisoner from whom these confessions have been thus obtained may, nevertheless, be brought to trial; [*Miller*, 3 Jan. 1850, *J. Shaw*, 288.] A declaration, however, emitted by the culprit, upon the faith of his being admitted to be King's evidence, cannot be used or libelled on against him, should the public prosecutor bring him to trial. By the mere act of

calling an accomplice as a witness, the prosecutor discharges all title to molest him for the future concerning the crime in question. [Whether this protection extends to a witness whom the prosecutor has called without suspecting his complicity, and with whom therefore no agreement has been made, seems to be an unsettled question. See 4 *Irvine*, *Appx.* Where it exists,] this privilege is absolute, and is not, as in England, merely a right to a recommendation to mercy, nor is it at all dependent on the witness making a full and fair disclosure. The only remedy, in case of a witness retracting his previous disclosures, or refusing to make any confession after he is put into the box, is committal of the witness for contempt or prevarication, or indicting him for perjury, if there are sufficient grounds for any of these proceedings. Even where the witness was originally called by the Crown, the protection is absolute against a prosecution, not only at the instance of the public prosecutor, but also of the private party who has suffered from the offence; [*Hare*, 2 Feb. 1829, *Syme*, 373. See *Hume*, ii. 367; *Bell's Notes*, 260; *Ersk.* B. iv. tit. 4, § 96;] *Alison's Prac.* 453; [*Macdonald*, 463, 516; *Dickson on Evidence*, § 1560; *Stephen's Com.* iv. 406.] See *Accomplice. Evidence*.

KING'S (QUEEN'S) FREEMEN. This name was applied to certain persons who, on account of their own service, or that of their fathers or husbands, in the army, navy, &c., had a statutory right to exercise trades as freemen, without entering with the corporation of the particular trade which they exercised. [The exclusive privileges of burgh incorporations were, however, abolished by 9 Vict. c. 19.] See *Burgh. Exclusive Privilege*.

[KING'S REMEMBRANCER. See *Remembrancer, Queen's*.]

KING'S (QUEEN'S) TRADESMEN. The Queen's tradesmen, holding commissions under the Privy Seal, with a clause of exemption, are not liable in assessment for the poor or other burghal prestations; but the privilege does not extend to persons holding appointments from the officers of the household; [*Mags. of Edinburgh*, 18 Feb. 1830, 8 S. 554.] The right of the Sovereign to appoint tradesmen, and thereby to exempt them from taxation, is limited to one of each craft or occupation. See the acts 1592, c. 155; 1594, c. 225; 1597, c. 279. See also *Dunlop's Par. Law*, 434.

KIRK OR MARKET. See *Deathbed*.

KIRK-SESSION. See *Church Judicatories*.

KNAVESHIP; is one of the sequels of thirlage. The multure is the quantity of grain paid to the proprietor, or his tacksman, of the mill to which the lands are astricted. The knaveship is that quantity of the grain which, by the practice of the particular mill, is given to the mill servant by whom the work is performed. *Stair*, B. ii. tit. 7, § 21; *Ersk.* B. ii. tit. 9, § 19; *Bank.* i. 684; *Bell's Princ.* § 1018; *Ross's Lect.* ii. 170. See *Thirlage*.

KNIGHT; a title of dignity next in order to nobility. Knightship is the highest rank of a commoner; but a knight is still a commoner, and may sit as a jurymen on any commoner, as his peer. See *Tomlins' Dict. h. t.*; *Bank.* i. 53.

KNIGHTS BACHELORS; *Bas Cheva-*

lier. It is a personal distinction, not hereditary. *Tomlins, h. t.*

KNIGHTS BANNERETS; were created on the field of battle by the King under the royal banner; now in desuetude. *Bank.* i. 54.

KNIGHTS BARONETS; the only hereditary knights in Scotland. They were first created for encouraging settlements in Nova Scotia; now without regard to any such object. *Bank.* i. 54. See *Baronet*.

KNIGHT'S FEE; in England, was so much inheritance as is sufficient yearly to maintain a knight with convenient revenue. *Tomlins' Dict. h. t.* See *Hide*.

KNIGHTS OF THE SHIRE; two knights returned to Parliament from every county in England. Anciently, they were required to be real knights girt with the sword; but now notable esquires may be chosen. *Tomlins' Dict. h. t.* See *Parliament*.

L

LABES REALIS, or *vitium reale*; an inherent vice or defect in a right; in the title by which it has been acquired; or in the voucher, or written obligation on which it is founded; the effect of which is, that the right or voucher is null into whose hands soever it may come. Thus, theft, spuilzie, forgery, fraudulent vitiation of a bill, and the like, import a *vitium reale*. It has been now clearly established, that fraud is not an inherent vice, and that a *bona fide* purchaser from a fraudulent acquirer of a right is entitled to maintain his right even against the defrauded party. It has been made a question, whether or not force and fear constitute *labes realis*. See *Fraud. Force and Fear*. But a distinction is to be taken between rights acquired by fraud, fear, or the like, in which the disponent has a title of property to the goods, however liable it may be to be set aside; and another class of cases, in which the disponent never possessed any title to the property, as, for example, where the goods were stolen, or were possessed on some inferior title, as pledge, loan, or deposit. Here, the want of a title is a *vitium reale*, since no one can transfer to another a right which he himself does not possess; *Nemo plus juris ad alium transferre potest quam ipse habet*. The true owner is entitled to follow the right wherever it may be taken, and to

plead the maxim, *Id quod nostrum est, sine facto nostro ad alium transferri non potest*. In England, indeed, a contrary rule has been adopted where the stolen goods have been sold in open market; but this is admitted to be an exception to the ordinary rule even of the English law, and has no place in the law of Scotland. See *Market Overt*. Theft does not attach as a *vitium reale* to a bill of exchange, indorsation carrying the bill discharged of all latent exceptions. See *Stair*, B. i. tit. 9, § 15; B. ii. tit. 1, § 38; B. iv. tit. 35, § 20; tit. 40, §§ 21, 28; *More's Notes*, xlviii., cli.; *Ersk.* B. iii. tit. 3, § 8; *Bank.* i. 320; *Bell's Com.* i. 299; *Bell's Princ.* §§ 527, 1318; *Brown on Sale*, 15, 418. See *Lost Bill of Exchange. Theft. Forgery*.

LABORES; a term applied to the lands cultivated by the monks themselves, which were exempted from payment of tithes. This privilege ceased whenever the lands were given to be cultivated by others. It was afterwards confined to three religious orders, Cistercians, Hospitallers, and Templars. See *More's Notes on Stair*, ccxxxix.; *Connell on Tithes*, ii. 6. See *Teinds. Decimæ Inclusæ. Novalia*.

LACHES; slackness or negligence. In England, laches of entry means neglect in the heir to enter. A person is said to be guilty of laches when he has unduly delayed any proceeding. Thus, in the case

of a bill of exchange, he who delays notifying the dishonour, is guilty of laches, and loses his recourse. *Tomlins' Dict. h. t.*; *Thomson on Bills*, 367. See *Mora*.

LADING, BILL OF. See *Bill of Lading*.

LADY-DAY; the 25th of March.

LADY'S GOWN; the present sometimes made by the purchaser to a wife, on the occasion of her renouncing a liferent over her husband's lands. The lady's gown is recognised as a *peculium separatum*, part of the *paraphernalia*, and not attachable by the husband's creditors. See *Ersk. B. i. tit. 6, § 15*; *Bell's Princ.* § 1560. See *Paraphernalia*.

LÆSIO ULTRA DUPLUM. In the Roman law there was said to be *læsio ultra duplum* when the price of a thing sold was more than double its value. In that case, fraud was presumed, and the buyer was held entitled to set aside the sale, and to demand repetition of the price. There is no such rule in the law of Scotland, no action being competent for setting aside sales on account of the disproportion, however great, of the price to the value of the commodity. See *L. 2, C. de rescind. vend.*; *Stair, B. i. tit. 9, § 10*; *tit. 10, § 14*; *Ersk. B. iii. tit. 3, § 10*. See *Sale. Quanti Minoris. Acto Redhibitoria. Warranty. Fault*.

[**LAIR.** See *Burying-Place*.]

LAITY; as opposed to clergy, comprehends all persons not ecclesiastical. *Ersk. B. i. tit. 5, § 1*.

LAKES. In infeftments of land, woods and lochs are frequently specified; but if not specified, they are carried by the expression "parts and pertinents." The proprietor has right not only to the water of a loch entirely surrounded by his land, but also to the *solum*, for every purpose to which it may be turned. If the loch be not entirely within the property disposed, but partly within or adjacent to another property, the loch, unless it be otherwise provided in the deed, will be allocated among the proprietors whose lands front or surround it. Although, however, lochs surrounded by the lands of different proprietors are thus common property, they are not commonities within the meaning of the act 1695, c. 38, nor can they be divided otherwise than by consent or by special act of Parliament. [But any proprietor, having such joint right and common property in the loch, may validly convey the share belonging to him, provided the rights of the other co-owners

[are not infringed; *Menzies*, 10 June 1856, 2 Macq. 463. See also *Mackenzie*, 27 June 1878, 5 R. (H.L.) 192. A grant of lands adjacent to an inland loch with pertinents carries a joint right of property in the loch, and will not be prejudiced by a subsequent express grant of the loch, unless the latter is followed by exclusive possession; *Stewart's Trs.* 6 Jan. 1874, 1 R. 334. See also *Scott*, 11 June 1869, 7 Macph. (H.L.) 35.] Lakes, which are the permanent sources to rivers, cannot be drained by the owner of the ground in which they are situated. But if the lake do not supply a stream, it is entirely within the power of the owner of the ground, provided there be no servitude over it in favour of water-gangs for mills or other works. Lakes, although navigable, are not, generally speaking, *inter regalia*, like navigable rivers. But it becomes a doubtful question when such lakes form great channels of communication in a district of country, whether their navigable character does not involve a trust vested in the Crown for the public benefit, which cannot be defeated by any grant, and which may be vindicated the moment the lake is laid open to public use. See *McDonnell* (Caledonian Canal), 5 June 1830, 8 S. 881. See *Stair, B. ii. tit. 3, § 73*; *Bank. i. 593*; *Bell's Princ.* §§ 651, 1110; [*Ersk. B. ii. tit. 1, § 5*; *Rankine on Land-Ownership*, 167.] See *Regalia. Rivers. Common Property. Sea*.

LAMMAS-DAY; the 1st of August. *Tomlins' Dict. h. t.*

LANDED MEN. In criminal trials, when the panel is a landed proprietor, he is entitled to have a jury the majority of whom are composed of landed men. The eldest son or apparent heir of a landed proprietor cannot claim this privilege, nor any one infeft in security or relief only, or on any inferior title to that of property. If the panel mean to avail himself of his privilege, he must allege and prove it by immediate production of his infeftment; 6 Geo. IV. c. 22, § 12. See *Alison's Prac.* 387; [*Hume*, ii. 311; *Macdonald*, 469.]

LANDLORD; in reference to the contract of lease, is the proprietor of the ground, or granter of a lease. See *Lease. Hypothec*.

[LANDS CLAUSES ACT.] The Lands Clauses Consolidation (Scotland) Act (8 & 9 Vict. c. 19, amended by 23 & 24 Vict. c. 106, and 32 & 33 Vict. c. 18) consolidates in one act certain provisions usually inserted in acts authorising the

[taking of lands for undertakings of a public nature. Its object is to provide legislative clauses in a form convenient for incorporation by reference, so as to avoid repetition, and ensure uniformity. See the act annotated in *Rankine on Land-Ownership*, 300, 812. See also *Bell's Princ.* § 960; treatises on Railways by *Hodges, Shelford, Godefroid & Shortt, Browne, and Theobald*; and treatises on Compensation by *Ingram, Lloyd, and Woolf & Middleton*. See *Railway*.]

LAND-TAX. The land-tax of Scotland, or cess, is a permanent tax fixed at £47,954 per annum, to be levied out of the land rent of Scotland for ever, subject, however, to a power of redemption. [See 38 Geo. III. c. 5 and c. 60; 42 Geo. III. c. 116.] This burden on the land rent is payable partly from burghs and partly from shires; the inhabitants of burghs being assessed according to their rents and income, by stentmasters; and the inhabitants of counties, according to the yearly revenue of their land and other heritage, by the commissioners of supply. Although this be a tax which attaches to the land into whose hands soever it may come, it is still no more than a personal claim against the present proprietor, not properly a *debitum fundi*. It is a tax, however, which accompanies the land, the owner of the land for the time being liable for the tax as it falls due. But the arrears do not affect singular successors. In general, the valuation is put upon the vassal in possession. The proceedings of the commissioners of supply are subject to the review of the Court of Session; *Wight on Elections*, 182. The cess bears interest after it has been six months due, though no horning or other diligence has been used against the debtor; 1686, c. 2. [The collection of the tax is regulated by the Taxes Management Act, 1880 (43 & 44 Vict. c. 19). Collectors are appointed by the Treasury (§ 81); and payment is enforced by poinding and sale (§ 97). Redemption of the land-tax is provided for by 42 Geo. III. c. 116, as amended by 53 Geo. III. c. 123; 57 Geo. III. c. 100; 16 & 17 Vict. c. 74, 90, and 117. By the last-mentioned act the power to redeem is restricted to persons having an interest in the property.] The following are the steps directed to be taken for redemption of the land-tax. Application must be made to two commissioners of supply to have the proportion of land-tax adjusted to the lands for which the exemption is to be

purchased, and a certificate granted to that effect. The sale is then bargained for, and when it is completed, the owner of the land is exempt from payment of land-tax already imposed, but subject to any future imposition. The commissioners must continue, even after the exemption of any particular lands, to state in the certificate of assessment the land-tax charged on the parish, till all be redeemed; and they receive from the commissioner of taxes a certificate of the redeemed portion. The act gives power to sell lands under entail, or to borrow money upon the security of the lands, for the purpose of redeeming the land-tax of the entailed estate. Unfairness, such as a collusive lease affecting the price, is a ground for reducing the sale; but an error of judgment in the court in executing the act, will not annul the sale. Land-tax, when paid by the tenant, constitutes a part of the rent paid by him for the land, and is to be considered part of the income for which the owner votes. [The provisions of the acts relating to redemption of land-tax do not apply to burghs; *Renfrew*, 8 Feb. 1861, 23 D. 505 (the report of which contains much information). See *Ersk. B. i. tit. 4, § 31*; *B. iii. tit. 8, § 33*; *Bell's Com. i. 739*; *Bell's Princ. § 1123*; [*Barclay's Digest*; *Rankine on Land-Ownership*, 689.] See *Commissioners of Supply. Extent*. [*Entail. Valuation*.]

LAPSED LEGACY. A legacy is said to lapse, that is, to fall, and not to be demandable by any one, where the legatee has predeceased the testator. In that case, where it is not otherwise directed in the testament or settlement, the lapsed legacy falls into, and becomes part of, the residue of the estate. See *Ersk. B. iii. tit. 9, § 9*; *Bell's Princ. § 1881*; [*M'Laren on Wills, i. § 947*]. See *Legacy*. [*Vesting*.]

LARCENY; in English law, a theft or felony of another's goods, in his absence. Simple larceny is plain unaggravated theft; compound or mixed, is theft aggravated by taking the article stolen from one's house or person. [See 24 & 25 Vict. c. 96.] *Tomlins' Dict. h. t.*; [*Stephen's Digest of Crim. Law, art. 295, 325*.]

[LAST CRIMINAL LETTERS. See *Criminal Letters. Criminal Prosecution*.]

LAST HEIR. The Sovereign, in the character of last heir, is entitled to the property, both heritable and moveable, of any one who dies intestate, and without lawful heirs entitled to take up his succession. In like manner, the Sovereign succeeds to a bastard who dies intestate

and without lawful heirs of his body, since a bastard, as having no father in the eye of the law, can have no heirs but his own children. In either case, where the heritable property holds of the Crown, there is an *ipso jure* consolidation; though, where it is given to a donatory, he must obtain a decree of declarator of *ultimus hæres* or of bastardy, and then present a signature to Exchequer, on which he obtains a warrant of infetment. Where the property holds of a subject superior, it is necessary to interpose a donatory, as the Crown cannot hold of a subject. The donatory must obtain a declarator, and complete his title holding of the subject superior. The declaratory action is executed against all and sundry; and where there is a widow she must be cited. Then a letter passes the quarter seal, charging the superior to give infetment to the donatory, to be held in the same manner and for the same duties and services as the deceased held. The widow of a bastard is entitled to terce and *jus relictæ*. As the Sovereign succeeds as heir, a deed done on deathbed hurtful to the Crown's right may be reduced, *ex capite lecti*; [*Goldie*, 1753, M. 3138. But the Crown cannot succeed as conditional institute, under a destination to "heirs;" *Torrie*, 31 May 1832, 10 S. 597.] When the Crown succeeds as *ultimus hæres*, whether to a bastard or to a person lawfully born, the Sovereign or the donatory must pay the debts of the deceased so far as the value of the estate goes, but no farther; and the creditors of the deceased may attach the estate by proper diligence, calling as parties the Officers of State as representing the Crown. See *Stair*, B. iii. tit. 3, §§ 43, 47; [B. iv. tit. 12, § 2;] *More's Notes*, xxxiii.; *Ersk.* B. iii. tit. 10, § 1; *Bank.* B. iii. tit. 3, § 91; *Bell's Princ.* §§ 1669, 1937; *Kames' Stat. Law Abridg. voce Ultimus Hæres*; *Hunter's Landlord and Tenant*, i. 222; [*M'Laren on Wills*, i. § 135;] *Jurid. Styles*, iii. 126, 170. See *Succession. Bastard. King.*

LAST WILL; synonymous with testament. See *Will*.

LATENT. Rights which remain unknown and concealed are ineffectual against creditors, when in the person of relatives and confidants. See *Conjunct and Confident. Bankrupt. Reputed Ownership.*

LATENT FAULT. See *Fault. War-randice.*

LAW; in the sense in which it is to be considered here, applies to the different systems of rules by which the subjects in

this country are associated; by which they conduct themselves in their intercourse with other nations; or by which the conduct of individuals is regulated, or their rights and interests in property ascertained. Hence, law is subdivided into departments, little connected with each other; and a change in one department may be made without at all affecting the others.

Constitutional Law.—The law of the State is that by which the reciprocal obligations of the governors and governed to each other are regulated.

The Law of Nations—regulates the intercourse of one nation with another. This code is composed of written as well as of unwritten law; the one depending on the principles of natural reason and European usages; the other arising out of the subsisting treaties. By those the rights of the respective nations in peace and war are regulated. See *International Law*.

The Municipal Law.—The municipal law of a country is divided into the civil and criminal departments; the former ascertaining private property, and regulating the rights and interests of individuals; the latter prescribing a rule of conduct to each individual, in relation to himself, to his neighbour, to the public, and to religion; these rules being fitted for all stations, adapted to all circumstances, and enforced by punishment proportioned to the extent of the crime, or to the nature of the offence.

The Criminal Law of Scotland.—The criminal law of Scotland is founded on ancient usage, on acts of Parliament, on the Roman law, and also on the Jewish law; for all of those have contributed to the completion of our criminal code. Hence, an important distinction has arisen between the criminal law of Scotland and that of England. In England, the offence, before it can be comprehended under the legal description of a crime, must be declared to be so by statute, and the degree of punishment prescribed. In Scotland, the supreme criminal court has an inherent power to take cognisance, to a certain extent, of new offences, and is authorised by usage to inflict an arbitrary punishment; that is, a punishment not affecting the life of the offender; and, generally speaking, and in the ordinary state of society, and for all practical purposes, this system is attended with great advantages. *Hume*, i. 12. We have differences equally remarkable in the forms of our criminal trials, to which the same observations are applicable, viz., that, in

the ordinary state of society, and for the repressing of common crimes, our forms are more humane, and much more effective than those of England. Thus the law of Scotland requires the evidence of two witnesses to prove a criminal act, while the English law holds the evidence of a single witness sufficient. In Scotland, the libel, and lists of the names of the witnesses and of the jurors, are served upon the accused fifteen days before he is brought to trial, and he is allowed to be heard by counsel; whereas, in England, the accused is brought to the bar without enjoying the same advantages; and until the passing of the act 6 & 7 Will. IV. c. 114, except in cases of treason, the accused in England were not allowed to be heard by counsel. *Hume*, i. 11. See *Criminal Prosecution. Bail.*

The Civil Law of Scotland.—The civil or municipal law includes the rules by which property is preserved or vindicated, and the rights and interests of individuals ascertained. Without speculating on the origin of the municipal code of Scotland, or attempting to trace the share which the aboriginal customs of the people, or the canon law, under the influence of the clergy, or the Roman and feudal laws, respectively had in producing the complex system by which our civil rights are now regulated, it is sufficient for all the purposes of the present sketch to observe, that institutional writers divide the existing law of Scotland into *written* and *unwritten*; the former consisting of the rules prescribed in acts of Parliament; and the latter being the consuetudinary law, either founded on immemorial custom, or adopted into our system from the Roman law, or from the canon, or from the feudal law. The statutory law of Scotland commences with the acts of the Parliament of James I. of Scotland, in 1424; one peculiarity of the acts of the Scotch Parliaments being, that they may fall into desuetude, or may be abrogated by a contrary usage. See *Desuetude*. In this way it has happened that the Scotch statutes now in observance are not numerous. The Acts of Sederunt, which are the acts or ordinances of the Court of Session, have no proper legislative force beyond what relates to the form of administering justice in that court. Where they go farther, as they do in some instances, they are to be considered rather as declaratory judgments, or declarations of the opinion of the court on points of law, and a certification to the public of the judgment

which will be pronounced when the case provided for occurs. But the court may decide differently, or the House of Lords may disregard such declaratory acts, except when (as now frequently happens) a special enactment in a statute confers powers on the court to make effectual and binding regulations by Act of Sederunt. See *Act of Sederunt*. The unwritten law consists of certain legal rules, such as the law of primogeniture, the law of deathbed [now abolished,] the *terce*, the *courtesy*, the *legitim*, and some others, established by immemorial custom. The decisions of the Court of Session, or of the House of Lords, where they have been uniform on the same point, have been held as proving our consuetudinary law; but it is as affording evidence of the custom, rather than as possessing any power in themselves, that with us adjudged cases have been regarded as forming part of the law. See *Decisions*.

The private law of a country may be regarded in two aspects: *first*, as it operates on those living under it; and, *secondly*, as it relates to foreigners. In regard to those under it, the security of property is chiefly to be considered; and in no country is property better secured than in Scotland. Our system of records gives a degree of security to the transmission of landed property which is peculiar to Scotland. The law regulating the rights of debtor and creditor exposes every species of property belonging to the debtor to the attachment of the creditor; while, on a surrender of his property, a debtor whose misfortunes have been innocent may secure his personal liberty. In regard to strangers, the point of chief importance relates to the recovery of debts; with respect to which they enjoy, in common with domiciled Scotchmen, the full right of attaching every species of property belonging to their debtor; while those laws by which diligence is equalised, and the property of a debtor fairly distributed amongst his creditors, give an opportunity to distant creditors to claim and draw their shares along with those upon the spot. In particular, the Scottish system of mercantile sequestration is directed to the distribution of the whole estate of the debtor, and to the fair and legal ranking of every creditor, foreign or domestic. In fine, the law of Scotland, whether regard be had to security in the possession and transmission of property, or to the ready means afforded for the recovery of debts, or to the respect uniformly shown for the personal liberty of

the subject, need not fear a comparison with any existing municipal code. The practical application of its principles is besides, generally speaking, rational and intelligible, and peculiarly free from the fictions and technicalities which, to a certain extent, conceal the merits of other systems from unprofessional inquirers.

[*The Law Merchant*.—The law merchant, or general custom of merchants, is part of the common law. "The affairs of commerce are regulated by a law of their own, called the law merchant, or *lex mercatoria*, which all nations agree in, and take notice of; and in particular, it is held to be part of the law of England, which decides the causes of merchants by the general rules which obtain in all commercial countries; and that often even in matters relating to domestic trade, as for instance with regard to the drawing, the acceptance, and the transfer of inland bills of exchange;" *Blackstone's Com.* (5th edit.) i. 273. For the most part the law merchant is settled by decisions of the courts; but where doubtful it may be ascertained by evidence; *Edie*, 2 Burr. 1216. See also *Crouch*, L.R. 8 Q.B. 386; *Goodwin*, L.R. 10 Ex. 337, 1 App. Ca. 476; *Smith's L.C.* i. 606; note by reporter in 8 C.B. 967; *Stephen's Com.* i. 61.]

The Law of Arms—is that law which regulates the proclamation of war; the making and observing of leagues and treaties; assaults on and encounters with an enemy; and the punishment of offenders in camp, &c. *Tomlins' Dict. h. t.* See *International Law*. [*Martial Law*.]

[**LAW AGENT.** By the Law Agents Act, 1873 (36 & 37 Vict. c. 63), a uniform standard of qualification was established for law agents throughout the country, and exclusive privileges of practising in particular courts were abolished. The term law agent under that act includes writers to the signet, solicitors in the supreme courts, procurators in any sheriff court, and every person entitled to practise as an agent in a court of law in Scotland; but since the passing of the act, no one is admitted as a law agent in Scotland except in accordance with its provisions (§§ 1, 2). The act establishes a register of law agents, which is kept at the Register House by one of the assistant clerks of Session; and any enrolled law agent may obtain a certificate of his enrolment in the register, on payment of two shillings and sixpence (§ 11). Rolls are also kept of agents practising in the Court of Session, and of those practis-

[ing in the sheriff courts (§§ 12–14); and no one is entitled to practise before either of those courts, unless he has subscribed the roll of agents practising before it (§ 16). An enrolled law agent who has paid the stamp-duty applicable to the sheriff court is qualified to sign the roll of agents practising in the Court of Session, on paying the difference between the duty he has paid and that chargeable on admission to practise in the Court of Session (§ 17). (As to the stamp-duty, see 33 & 34 Vict. c. 97, §§ 29, 30.) Subject to these provisions, every enrolled law agent is entitled to practise in any court of law in Scotland (§ 2); but in order to entitle him to borrow a process depending before any supreme court sitting in Edinburgh, he must have a place of business in Edinburgh or Leith (§ 15). With respect to the present qualifications for admission as law agents, the following provisions were enacted by § 5:—

(1) An applicant for admission must be twenty-one years of age, and must, except in the cases after mentioned, have served an apprenticeship of five years with a practising law agent, or with a sheriff clerk in office at the passing of the act. (2) The apprenticeship must be served under indenture, which must be recorded in the register of probative writs of the county in which it is entered into, and intimated to the registrar within six months from the date fixed for the commencement of the apprenticeship; and any assignation of the indenture must be intimated to the registrar within six months of its date. (3) When from necessary or reasonable cause the whole period of apprenticeship cannot be completed with the master named in the indenture, the remainder of the period may be served with another qualified master. (4) A master may permit his apprentice to serve any part of his term, not exceeding two years, with another qualified master. (5) For any of the following persons an apprenticeship of three years is sufficient, viz.:—(a) one who has been for five years a clerk to, and engaged under the superintendence of, a practising law agent, in such business as is usually transacted by law agents; (b) one holding a degree in law or in arts of any university in Great Britain or Ireland, granted after examination; (c) a member of the Faculty of Advocates; (d) one called to the degree of Utter Barrister in England; (e) one admitted and enrolled as an attorney or solicitor in England. The mode of admission is by petition to

[the Court of Session, which may be presented to any judge officiating as Ordinary (including the Lord Ordinary on the Bills in vacation). The judge then remits the applicant to examiners appointed by the court, under § 8 of the act, and A.S. 6 Nov. 1873. Subjects and rules for examination in law and general knowledge, and also for entrance examination of apprentices, are prescribed by A.S. 20 Dec. 1873, as altered by A.S. 28 Jan. 1874, 20 July 1878, and 4 Nov. 1886. On the court being satisfied, by the certificate of the examiners, that the applicant is duly qualified, he is admitted and enrolled as a law agent; the admission being in writing, signed by the judge, and duly stamped (§ 7 of the act). The court is in the practice of accepting the examinations of the writers to the signet as qualifying for admission as law agents, and applicants who have passed these examinations are not remitted for further examination (see *Mackay's Prac.* i. 130, note a). Any enrolled law agent may, on application to the court, and on paying the proper stamp-duty, be admitted a notary public, without finding caution (§ 18 of the act). Agreements between law agents acting for the same client to share fees or profit are declared to be lawful, and a law agent authorised and acting for a client whom he discloses is declared to incur no liability to any other law agent employed by him, except such as he expressly undertakes in writing (§ 21). The law as to agents in relation to their clients is treated of under *Agent and Client*. The fees and charges of enrolled law agents practising before the supreme courts are regulated by A.S. 15 July 1876. As to fees of agents practising in the sheriff's courts, see A.S. 4 Dec. 1878 (*Adam's Acts of Sederunt*, 102). See *Begg on Law Agents*; *Mackay's Prac.* i. 123. See *Writers to the Signet. Solicitors in the Supreme Courts.*]

LAWBURROWS; letters passing under the signet, running in the Sovereign's name, and obtained at the instance of one who had, or thought he had, reason to apprehend danger to his person or property from the acts of another. These letters commanded the person complained of to give security that the person at whose instance the letters issued should be free from every violence to be done by the person against whom they were directed, or those depending on him, under a penalty fixed by 1593, c. 166. That statute, in the case of an earl or lord, imposed a

penalty of £2000 Scots; for a great baron, £1000 Scots; for a freeholder, 1000 merks; for a feuar, 500 merks; for a yeoman, 100 merks; for every gentleman unlanded, 200 merks; for each person summoned on an assize, 100 merks. These penalties were [latterly] either increased or diminished by the judge at passing the bill on which the letters proceeded, and the sum was always specified in the judge's deliverance. The person at whose instance the letters were obtained required to bring proof of his cause of alarm, or swear that he dreads harm; and this oath was administered by the messenger before he executed the letters. Lawburrows were not granted to one spouse against the other, nor to a father against his child, unless on proof of the cause of dread, nor until application had been first served on the opposite party. When the letters were executed, the person against whom they were directed required to find caution to the extent required, within the days specified in the letters; which caution was lodged with the clerk in the Bill-Chamber, who issued a certificate of the fact. When these letters were taken out maliciously, and without probable cause, they might be suspended, and damages awarded; but where there was reason for them, if the person did not find caution within the time specified, the letters might be denounced and registered, and a caption raised thereon, which became a warrant for imprisoning the person who had neglected to find caution. When the letters had been taken out, and caution found, they gave rise (in case the person did any violence to the complainer or any of his family) to an action of contravention of lawburrows, which followed on the letters of lawburrows and bond of caution; and of course decree was given against both the offender and cautioner. Contravention of lawburrows inferred liability in the party complained of, whether he had found security or not. This action might properly be brought before the justices of the peace, when one of them had exacted the security. The fiscal required to concur with the private complainer; but could not prosecute alone, unless for ordinary punishment of the act as a breach of the peace; and in such a case, a fine imposed on the offender did not free him from an action of contravention. The fiscal might insist criminally, where the private party's right to prosecute for contravention was barred, by remission expressed or implied. By the tenor of the bond of caution, the obligants bound them-

selves that the complainer, his wife, bairns, servants, &c., should be kept skaithless; but, unless these several parties had concurred in the application, an action of contravention for injury done to them did not lie at their instance, but only at the instance of the complainer himself. This action, being penal, was not incurred merely by the uttering of reproachful words, where they were not accompanied with violence, or at least with a real injury. The amount of the penalty was properly that stated on the bond; but sometimes, when the contravention was trifling, less was awarded, and occasionally no more was awarded than the actual damage. In this last instance, the amount levied went to the party injured; but in other cases the penalty was equally divided between the complainer and the fisk. [See *Brock*, 5 June 1874, 1 R. 991.]

[The law as to lawburrows was amended by the Civil Imprisonment Act, 1882 (45 & 46 Vict. c. 42), § 6, which enacted as follows:—(1) It shall not be competent to issue letters of lawburrows under the signet in the Court of Session or Court of Justiciary: (2) Upon an application for lawburrows being presented, the sheriff or sheriff-substitute or justice of the peace shall immediately, and without taking the oath of the applicant, order the petition to be served upon the person complained against, and shall at the same time grant warrant to both parties to cite witnesses: (3) At the diet of proof appointed, or at any adjourned diet, the application shall be disposed of summarily under the provisions of the Summary Jurisdiction Acts, and without any written pleadings or record of the evidence being kept, and expenses may be awarded against either party if and as it shall seem just: (4) In every application for lawburrows the parties shall be competent witnesses, and the sheriff or sheriff-substitute, or justice of the peace, may grant the prayer of the petition upon the sworn testimony of one credible witness, although such witness may be a party: (5) In the event of the sheriff or sheriff-substitute, or justice of the peace, ordering caution to be found, the amount of caution shall be in his discretion: (6) The sheriff or sheriff-substitute, or justice of the peace, may, in the event of his ordering caution to be found, further order that the party complained against shall, failing his finding caution, be imprisoned for a period not exceeding six months, if the order be made by a sheriff or sheriff-substitute, and not exceeding fourteen days, if the order be

[made by a justice of the peace: (7) It shall be in the power of the sheriff or sheriff-substitute, or justice of the peace, to order the party complained against to grant his own bond without caution for duly implementing the terms of the order, and failing such bond being granted within the time limited by the order, such order may farther direct that the party failing shall be imprisoned for such periods as aforesaid: (8) The applicant shall not be bound to aliment or contribute to the aliment of the person complained against when incarcerated; but the person so incarcerated shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of court. Provided always, that except in so far as expressly altered by this section, nothing in this act shall affect the existing law and practice in regard to the process of lawburrows.]

See *Ersk.* B. iv. tit. 1, § 16; *Stair*, B. i. tit. 9, § 30; B. iv. tit. 48; *Bank.* i. 282; *Kames' Stat. Law Abridg. h. t.*; *Jurid. Styles*, ii. 427; [*Barclay's Digest, h. t.*; *Mackay's Prac.* i. 70; *Dove Wilson's Sher. Court Prac.* 450.] For other kinds of surety, see *Bail. Cautionry*.

LAY DAY. See *Charter-Party*.

LEADING A WITNESS. [See *Evidence*, p. 413 b.]

LEASE, CONTRACT OF; is a mutual contract between the proprietor or lessor of lands, houses, mills, fishings, or the like, and a tenant or lessee to whom the temporary possession of the subject and its fruits or profits is given for a certain stipulated rent or annual payment, in money, grain, or services. The lease was originally in the form of a grant from the lessor; but as agriculture improved, it became necessary to introduce a variety of conditions obligatory on both parties. Hence it assumed the form of a mutual contract. As this contract affects heritage, the right to which is regulated by charter and sasine, and by a system of records, it became necessary for the legislature to interfere, and to render the tenant's right real, so as to prevent him from being dispossessed by a purchaser or other singular successor. This was done by the act 1449, c. 18, which declares, "It is ordained, for the safety and favour of the poor people that labours the ground, that they and all others that has taken or shall take lands, in time to come, free lords, and has terms and years thereof, that suppose the lords sell or anailzie that land or lands, the takers shall remain with their

tacks until the issue of their terms, whose hands that ever the lands come to, for sic like mail as they took them for." In this manner has the lease not only of lands, but of houses, fishings, mills, &c., been secured during their currency against singular successors; but to entitle a lease to the protection of the act, it must be a written lease—it must have a stipulated rent—the term of its endurance must be specified,—and possession must have followed on the lease. It is thus that a lease, though properly a personal contract, is made effectual against a singular successor. But against the granter and his heirs, a perpetual lease, or a lease where no rent is stipulated, or where the accruing rents are appropriated prospectively to the payment of a debt due to the tenant, will be effectual. [See *E. Hopetoun*, 27 May 1864, 2 Macph. (H.L.) 35; 13 June 1865, 3 Macph. (H.L.) 50 (4 Macq. 729, 972). Whether a lease with a term so prolonged as to be equivalent to a perpetuity is protected by the old act, has not been settled; but the question is now of little consequence, as under the Registration of Leases Act (*infra*, p. 648 *b*), leases for more than thirty-one years, on being registered, are effectual against singular successors. See *Bell's Princ.* § 1195; *Hunter on Landlord and Tenant*, i. 466; *Rankine on Leases*, 127; also *Campbell*, 4 April 1870, 8 Macph. (H.L.) 40. In *Dunlop & Co.* 27 Nov. 1879, 7 R. 283, a lease without an ish was held void.]

I. *Of the Constitution and Effects of the Contract.*—In the constitution of the lease there are several matters worthy of attention; as,—1. By whom a lease may be granted. 2. Powers reserved by the granter. 3. To whom it may be given. 4. Conditions of the lease. 5. Forms necessary for a binding lease. [6. Stamp duty.]

1. *By whom a Lease may be granted.*—To entitle a person to grant a formal lease, he ought to be infeft in the subject; for, although the subsequent infeftment of the lessor will validate the lease by accretion, provided there be no mid-impediment, yet, should he die uninfeft, the lease may be defeated by a stranger coming into the feudal right, who does not represent the lessor, such as a purchaser, a stranger substitute in an entail, or an adjudging creditor. But the heir of the granter of the lease, taking the land as his representative, is bound by the contract; [*Weir*, 17 July 1861, 23 D. 1293.] When the lessor is infeft, although he may be married, or even have given a locality to his widow, there is

nothing to prevent him, in the exercise of his right of administration, from granting a lease; nor will his widow be permitted, on the right opening to her, to set aside the lease; [*Hunter*, i. 124; *Fraser on Husb. and Wife*, ii. 1424.] Even leases of the wife's estate may be granted by the husband, which will be effectual to the tenant without the consent of the wife, and will continue effectual during the lifetime of the lessor; [*Fraser*, i. 812. And this law is not affected by § 2 of the Married Women's Property Act, 1881, which excludes only rents and produce from the operation of the *jus mariti* and right of administration; see *Marriage*. But where both *jus mariti* and right of administration are excluded, either by antenuptial contract, or under the provisions of § 4 of the said act of 1881, the wife may grant leases without the husband's consent; *ib.* 814. Tutors-at-law and tutors-dative can obtain special powers to grant leases to endure beyond their own term of office, under the Pupils Protection Act (12 & 13 Vict. c. 51, §§ 7, 25); *Kincaid*, 5 July 1856, 18 D. 1208. See *Judicial Factor*. By the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), § 12, "tutors being administrators-in-law, tutors nominate, and guardians appointed or acting in terms of this act who shall, by virtue of their office, administer the estate of any pupil, shall be deemed to be tutors within the meaning of" the Pupils Protection Act; see *Tutor*. Prior to the act of 1886, the court was in use to authorise tutors-nominate to grant leases to endure for 19 years, when satisfied that they were for the pupil's benefit; *Brown's Tutors*, 16 July 1867, 5 Macph. 1046.] A minor *pubes* may, with the consent of his curator, let a lease, though it will be liable to reduction on the head of lesion, if lesion can be proved. A proprietor is not prevented from exercising the common acts of administration, by having granted an heritable bond, which, as being merely a right in security, leaves the right of property unaffected in the person of the debtor; [*Abbott*, 25 May 1870, 8 Macph. 791.] A proprietor, therefore, after granting heritable securities, may grant a valid lease; but the effect of real diligence is to circumscribe the proprietor's power of administration; and, accordingly, our law has introduced what has been denominated litigiousity, by which, from the time that a summons of adjudication is executed and published, a lien is created over the subject, which exposes to challenge a sale made or a lease

granted by a party against whom such diligence has been commenced. So also, a mercantile sequestration, which deprives the proprietor of the power of administration, will have the same effect. [Inhibition does not bar the power to grant leases, provided they are according to the course of ordinary administration; *Gordon*, 1780, M. 7008; *E. Breadalbane*, 1802, Hume's Dec. 242.] The law of deathbed, [now abolished,] exposed to challenge, *ex capite lecti*, a lease to the prejudice of the heir, if the lease was an extraordinary act of administration; but not where it was a lease of ordinary endurance, and at an adequate rent; *Semple*, 1 June 1813, F.C. An entail, in like manner, circumscribes the powers of a proprietor; see *Entail*, pp. 396-7. *Grassum*. Where a liferenter grants a lease, it can endure only during his lifetime. [A fiar, burdened with a liferent, has no power to grant leases without consent of the liferenter; see *Liferent*. See also *Crown. Manse. Glebe. Trustee*.]

2. *The Powers reserved by the Granter independently of stipulation*.—Under this implied reservation are included,—(1.) The mines and minerals, and the power of working them on payment of surface damage. (2.) The trees and wood on the farm; the tenant having a right merely to the annual crops which the soil produces. (3.) In virtue of his inherent right of property, the landlord may also hunt on the farm. (4.) The landlord, independently of stipulation, has a right of hypothec, in security of his rent. This right gives the landlord a security over the crop of each year, for the rent of that year of which it is the crop; and over the cattle and stocking on the farm for the current year's rent, which last right endures for three months after the last conventional term of payment of the year's rent. [This right, however, in so far as applicable to the rent of lands let for agriculture or pasture, and exceeding two acres in extent, was abolished by 43 Vict. c. 12. But the act does not affect rights under leases current at its commencement (11 Nov. 1881).] See *Hypothec*. [*Sequestration for Rent*.]

3. *To whom a Lease may be given*.—This depends entirely on the convention of the parties; and all that is to be considered is, the extent of the right conferred by the terms used in describing the tenant. Where a lease is given simply to a tenant by name, it will go to his heirs on his death, if he dies before the expiration of the lease, although heirs be not mentioned. Where

the lease is given to two persons, or to joint tenants, as they are termed, the interest of one of the tenants, on his death, will go to his heirs, and not to the surviving tenant.

Where the lease is given to two and to the longest liver, and to their heirs, each of the original tenants has a joint right; but on the death of any one of them, the heir of the deceased has no right, the whole belonging to the surviving tenant; [*Macalister*, 22 Feb. 1859, 21 D. 560; contrast *Burns*, 14 Feb. 1887, 14 R. (H.L.) 20.] Where, again, a lease is given to a company, [the lease terminates] on dissolution of the company. This point, however, ought to be settled by an express stipulation in the lease. It ought to be declared, whether the lease is to be thereby terminated, or whether a power of assigning or of subsetting is intended to be given; and the company ought to subscribe and to bind themselves, not by the firm of the company, but in their individual names, and as taking burden for the company. When a lease is given to a tenant and to his heirs, it is the heir-at-law who is understood to be meant; and therefore care ought to be taken, either to give to the tenant a power of assigning or of subsetting, or at least a power of naming a successor in place of the heir-at-law; a precaution useful both to landlord and tenant, as the heir may be unfit or disinclined to take the management, or the tenant may be succeeded by heirs-portioners. Power ought also to be given by the lease to the tenant to appoint a manager of the farm for his heir, in case the tenant should die leaving his heir in minority, or otherwise incapable of managing for himself—the manager so appointed being taken bound to perform the obligations incumbent on the tenant by the lease.

4. *The Conditions of the Lease*.—The usual conditions of this deed are, on the part of the landlord, warrandice, which, whether expressed or implied, binds him, unless the contrary be expressly stipulated, to warrant to the tenant undisturbed possession during the continuance of the lease, and to protect him against all encroachments on his right. [But no obligation is implied, on the part of the landlord, to restore the subjects if destroyed by inevitable accident; *Bayne*, 3 July 1815, 3 Dow, 233, 6 Pat. 217. In an urban lease, the landlord is bound to uphold the house in tenantable condition; *Reid*, 13 Dec. 1876, 4 R. 234. If he fail in this obligation, the tenant is entitled to damages, or in some cases to abandon the lease; see *infra*, p. 650 *a*. But where a tenant continues

[to inhabit a house which he believes to be dangerous to health through the fault of the landlord, he cannot hold the latter responsible; *Henderson*, 7 July 1888, 15 R. 859. In *Craig*, 20 July 1888, 15 R. 1005, where a lodging-house was let for seven years, it was held that there was no implied obligation on the part of the landlord not to set up a rival establishment. Where a tenant of an urban tenement sues his landlord for damages in respect that his rights as occupant have been encroached on by operations carried on by the proprietor of a neighbouring tenement, he must aver, in order to found a relevant action, that he has applied to his landlord to have his rights protected, and that the landlord, in breach of his duty, has refused, or unduly delayed, to protect them; *Menzies*, 29 Feb. 1888, 15 R. 470.] On the part of the tenant, [in an agricultural lease,] the implied obligations are, that he shall stock and labour his farm according to the rules of good husbandry; that he shall regularly pay his rent; shall keep and leave the houses and inclosures on the farm in repair; and that he shall remove from the farm at the expiration of the lease. Under the lease, the tenant has a right to the annual fruits, and to the use and possession of the subject. Hence, where the subject of the lease is rendered unfit for the purposes for which it was let, overblown with sand, inundated, or otherwise destroyed, there must be a proportional diminution, and, in extreme cases, a total discharge of the rent. Where, from the inclemency of the season, a degree of sterility has been produced, such as to yield the tenant no more than seed and labour, cases have occurred in which the rent has been held not to be demandable. [A tenant is not bound to pay the full rent if, during possession, through no fault of his own, he loses the beneficial enjoyment of part of the subject let; and his claim for abatement may be stated by way of defence to an action for the full rent; *Muir*, 4 Feb. 1887, 14 R. 470; see also *Munro*, 15 Nov. 1888, 16 R. 93; and contrast *Fleeming*, 18 March 1871, 9 Macph. 730; *Gowans*, 14 Feb. 1873, 11 Macph. (H.L.) 1; *Allan*, 21 Dec. 1882, 10 R. 383; *Stewart*, 19 Jan. 1889, 16 R. 346. In *Allan*, Lord Shand observed:—"The destruction of a part of the subject of a lease will not release the tenant, unless the part be essential for the purpose for which the premises were let; and in determining the question whether the subject was either entirely or in a material part so destroyed as to make it

[unfit for the purposes for which it was let, a case of destruction is not made out by showing that the premises have been made uncomfortable, and unsuitable for the purpose of the lease for a short time. . . . When such a calamity as a fire, affecting both parties, has accidentally occurred, a tenant may reasonably be called on to submit to considerable inconvenience as the natural and often necessary consequence; and if the injury to the premises be short of destruction, and the damage may be repaired within such a time that the term 'considerable inconvenience' would fairly describe all that the tenant has to undergo, he is not entitled to throw up his lease, but is bound to give his landlord an opportunity of having the damage repaired, insisting, as he is no doubt entitled to do, that no time shall be lost in having the premises restored to their former condition." In any case, a tenant loses his remedy by failure to give due notice to the landlord; *Thomson*, 18 March 1869, 7 Macph. 687. See *Bell's Princ.* § 1208; *Hunter*, ii. 451; *Rankine*, 206. An agricultural tenant has no right, at common law, to kill game; but he is entitled to claim damages from the landlord, where the latter has increased the game on the farm beyond a fair average stock. For statutory provisions, see *Game Laws*. A tenant has no right, without express stipulation, to fish with rod or net on streams or ponds within his farm; *Maxwell*, 28 Feb. 1871, 9 Macph. (H.L.) 1; *D. Richmond*, 14 Jan. 1861, 4 Irv. 10. A tenant is not entitled, without the landlord's consent, to invert the use for which the subject was let; *D. Argyll*, 28 June 1861, 23 D. 1236; *Reid*, 16 June 1870, 8 Macph. (H.L.) 110; *Hunter*, i. 244; ii. 473, 506. "It is implied in the contract of lease, that any buildings, fences, or improvements which the tenant may spontaneously make, are made in contemplation of his interest, and for his own use only;" *Bell's Princ.* § 1255. At common law, therefore, and without special stipulation, a tenant has no claim for such meliorations at the end of his lease. But right to compensation has been conferred on an outgoing tenant, subject to certain conditions and qualifications, and only in holdings which are agricultural, or pastoral, or market gardens, by the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 62). See *supra*, pp. 32-5; also *Meliorations. Repairs. Fences. Fixtures.*] These, with obligations on the parties to perform their respective parts of the agreement, under a

certain penalty, are the common and ordinary conditions of the lease. But there may be an infinite variety of others, applicable to the special circumstances of the particular lease or the nature of the farm. In particular, it is common to prescribe positive rules as to the mode of labouring and managing the farm; though that practice is not now so prevalent as it once was, the most approved course being to prohibit an injurious rotation, or to prescribe a particular rotation for the last four or five years only of the lease, leaving the choice of a rotation consistent with good husbandry entirely to the tenant. These conditions may be enforced, by exacting or stipulating for a higher or additional rent for such parts of the farm as shall be laboured differently. [See *Rankine*, 364. As to a restriction against sale of spirits, see *L. Macdonald*, 27 Feb. 1889, 16 R. 540.]

5. *The Forms necessary for a Binding Lease*.—A lease merely verbal, to endure for more than one year, will not bind the parties. To produce this effect, writing must intervene. Even where possession has followed on a verbal lease, that is not sufficient; it may be resiled from, and terminated at the expiration of the current year, though stipulated to continue for a tract of time. In the case where money has been expended, or an engagement come under on the faith of the lease, although a breach of the verbal agreement may found a claim of damages, yet the verbal agreement will not be taken as a ground for giving effect to the lease. A verbal lease may, indeed, be made effectual against the grantor and his heirs, by *rei interventus*, provided such *rei interventus* shall distinctly apply to a right of longer duration than a single year; [and the verbal agreement may be proved by writ or oath; *Walker*, 20 Feb. 1863, 1 Macph. 417; *Gowans*, 18 July 1862, 24 D. 1382; *Fowlie*, 18 Jan. 1868, 6 Macph. 254; *Sutherland's Tr.* 19 Oct. 1888, 16 R. 10.] But a written obligation to grant a lease is equivalent to an actual lease; and any writing, however informal, if followed by possession, will be as effectual as a formal written lease, not only against the grantor and his heirs, but against singular successors, provided such writing contain *in gremio* the essentials of a lease under the statute 1449, c. 18, viz., a rent and a definite period of endurance, and that the writing is followed by possession referable to it; [*Bathie*, 6 March 1873, 11 Macph.

[490; *D. Hamilton*, 8 March 1878, 5 R. (H.L.) 69.]

[6. *Stamp Duty*.—Under the Stamp Act of 1870 (33 & 34 Vict. c. 97, sched.), leases are subject to the following stamp duties:—If the term is definite, and does not exceed 35 years, or is indefinite, the duty amounts (roughly) to 5s. for every £50 of yearly value. If the term, being definite, exceeds 35 years but not 100 years, the duty is at the rate of £1, 10s. for every £50. And if the term, being definite, exceeds 100 years, the duty is at the rate of £3 for every £50. No lease, or agreement for a lease, of any dwelling-house or tenement, or part thereof, for a definite term not exceeding a year, at a rent not exceeding £10, is chargeable with a higher duty than one penny; § 98 (5). When a furnished dwelling-house or apartments are let for a definite term less than a year, at a rent exceeding £25, the duty is 2s. 6d.; sched. An agreement for a lease, or with respect to the letting of any lands, &c., for any term not exceeding 35 years, is chargeable as if it were an actual lease; but a lease subsequently made in conformity with such agreement is charged with the duty of sixpence only; § 96. The duty payable on a lease, when the consideration for which it is granted is payable in kind, is regulated by § 97. An instrument whereby the rent reserved by any other instrument, duly stamped as a lease, is increased, is chargeable only in respect of the additional rent thereby made payable; 39 Vict. c. 16, § 11. The Customs and Inland Revenue Act, 1888 (51 Vict. c. 8, § 18, and sched. 1), enacted as follows in regard to instruments chargeable with *ad valorem* duty, including leases or tacks, and agreements for lease or tack for any term not exceeding 35 years:—(a) The instrument, unless written on duly stamped material, must be 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 of Inland Revenue with respect to the amount of duty has been required under § 18 of the Stamp Act. (b) In case the opinion of the Commissioners has been required, the instrument must be stamped within 14 days after notice of their assessment. (c) If any such lease, or agreement for lease, is not duly stamped in conformity with these provisions, the lessee shall forfeit the sum of £10, and in addition to the penalty pay-

[able 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 in stamping, or for the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioners, or of the court, judge, arbitrator, or referee before whom it is produced. An unstamped lease cannot be produced in evidence, nor founded on in an action. As to the conditions on which after-stamping is allowed, see *Stamp Laws*.]

II. *Of the Transmission of the Lease.*—The lease may be transmitted by assignation, or the right of possessing under the principal tacksman may be given by a sublease. A power of assigning or of subsetting, however, is not implied in a lease of the ordinary endurance of nineteen [or twenty-one] years. In such leases, therefore, an express authority to assign or sublet must be given. Where the lease [is for a period of thirty-seven years or longer,] or where it is given for a liferent, a power of assigning and subsetting is implied, unless expressly excluded; [*Rankine*, 158.] In the case of an urban tenement, whether the lease be long or short, the tenant may assign or sublet, if not prohibited by the lease. [Mr Bell's opinion (*Princ.* § 1274) that this power is possessed even by a tenant for a single year in urban subjects, is generally accepted as correct; but see *Gordon*, 15 June 1825, 4 S. 95. The tenant of a furnished house appears to have no power to assign or sublet; the contract as to the furniture being one of pure location, with *delectus personæ*; *Hunter*, i. 246–7.] Although an express power of assigning or subsetting be required, in order to authorise a tenant voluntarily to assign or sublet a lease of the ordinary endurance of nineteen years, yet such a lease is adjudgeable by a creditor of the tenant, unless it contain an express exclusion of assignees and subtenants, in which case both voluntary and judicial assignees are inadmissible. When a sublease is given, the principal tenant, in the ordinary case, remains bound; [but when an assignation is completed, the cedent's liability ceases; *Hunter*, ii. 170 (correcting *Ersk.* B. ii. tit. 6, § 34, and other older authors); *L. Elphinstone*, 29 June 1876, 13 R. (H.L.) 96.] Both the sublease and assignation are completed by possession; [*Clark*, 30 June 1882, 9 R. 1017.] But it may happen that a lease is assigned which has been previously

sublet; so that the assignee does not enter into the natural possession of the subject, but draws the rents only, and that is equivalent to natural possession. Where, again, it is necessary to complete the transference more immediately than can be done in this way, the assignation must be intimated to the subtenant or person in possession. On this point, which is attended with many practical difficulties, see *Assignation*, pp. 73–4, [and authorities there cited.]

[*Registration of Long Leases.*—The Registration of Leases Act, 1857 (20 & 21 Vict. c. 26) was passed mainly with the view of giving facilities to tenants in making their interests under long leases available as funds of credit. By that act, probative leases for thirty-one or more years may be recorded in the general register of sasines, (or, if the subject were, prior to the Conveyancing Act of 1874, held by burgage tenure, in the burgh register); § 1. By the same section, assignations and translations of such leases, and, by § 17, leases containing an obligation on the granter to renew the same from time to time at fixed periods, or on the termination of a life or lives, or otherwise, provided they are renewable so as to endure for thirty-one years or upwards, may be recorded in the same way. Leases so recorded are effectual against singular successors infest subsequent to the date of registration; § 2. Recorded leases may be assigned in whole or in part; and the recording of the assignation vests the assignee with the right of the granter, but without prejudice to the landlord's hypothec and other rights; § 3. Such leases may also be assigned in security for payment of borrowed money, or of annuities, or of provisions to wives or children, or in security of cash credits or other legal debt or obligation; and such assignation in security, when recorded, constitutes a real security over the lease; § 4. In default of payment of the capital sum for which such assignation in security has been granted, or of a term's interest or annuity, for six months after the same has fallen due, the creditor may obtain from the sheriff a warrant to enter on possession of the subjects, to uplift rents, and to sublet; but he is not liable to the landlord in any of the obligations of the lease, unless and until he enter into possession; § 6. Under § 20, the creditor may sell the lease in payment of his debt. By §§ 7–11, provision is made for completing title to leases or assignations in security by heirs, dis-

[ponees, &c. By § 12, leases, assignments, &c., under the act, are preferable *inter se* according to their dates of recording. By §§ 13, 14, renunciations, discharges, and decrees of reduction, are to be recorded. By § 15, the mode of registering is prescribed. By § 16, registration is equivalent to possession, to the effect of establishing a preference in favour of the grantee; see *Rodger*, 9 Nov. 1867, 6 Macph. 24. By § 18, no lease of lands (other than burgage), executed after passing of the act, unless in terms of an obligation to renew contained in a prior lease, renewable as under § 17, is registerable under the act, unless it sets forth the name and (except in case of mines or minerals) the extent of such lands, and unless the extent does not exceed fifty acres. By § 19, extracts may be registered, where the leases were recorded before passing of the act. Forms of assignments, translations, &c., are given in schedules. This act (along with an unimportant amendment act, 40 & 41 Vict. c. 36), is annotated in *Begg's Conv. Code*, 432; see also *Rankine*, 172.

[*Bequest of Lease*.—By § 29 of the Agricultural Holdings Act, 1883, it is enacted that a tenant may, by will or other testamentary writing, bequeath his lease to any person, subject to the following provisions:—The legatee shall intimate the bequest to the landlord or his known agent within 21 days after the death of the tenant, unless prevented unavoidably. Such intimation imports acceptance by the legatee. Within one month after receiving intimation, the landlord may intimate objection to receive the legatee, failing which the lease shall be binding on him and the legatee as landlord and tenant as from the death of the deceased tenant. If objection is taken, the matter is determined by the sheriff, without appeal. Pending proceedings, the legatee shall have possession, unless the sheriff direct otherwise, on cause shown. If the bequest is not accepted by the legatee, or is declared to be null by the sheriff, the lease shall descend to the heir of the tenant in the same manner as if no bequest had been made. This act applies, as already mentioned, only to holdings that are agricultural, or pastoral, or market gardens; see *Agricultural Holdings Act*. See also *Crofters Holdings Act*.]

III. *Of the Termination of the Lease*.—When the term of the lease is expired, it is in the power of the landlord and tenant to continue the lease from year to year by tacit relocation; that is, to continue the pos-

session from year to year on the old terms. The consequence of this is, that a warning is understood to be requisite in order to break the implied agreement. See *Relocation, Tacit*. Formerly, this warning was regulated by the act 1555, c. 39, under which removing proceeded on a precept in the landlord's name. But the A.S. 14 Dec. 1756, greatly simplified the process, by requiring, in place of the statutory and cumbrous form of removing, the mere calling of the tenant in an action of removing before the judge ordinary forty days before the Whitsunday of the year in which the lease is to expire. Where there is a regular lease, it generally contains an obligation to remove at the expiration of the term, and a warrant for letters of horning is given; in which case letters of horning may be raised and executed forty days before the Whitsunday of the year of removal—a charge on which the A.S. declares to be sufficient to entitle the landlord to obtain a warrant of ejection. [The process of removing was further simplified by the Sheriff Court Act of 1853 (16 & 17 Vict. c. 80, §§ 30, 31); which also enacted (§ 29) that a summons of removing may be raised at any time, provided there be an interval of forty days between the execution of the summons and the term of removal. And the Agricultural Holdings Act, 1883, made a longer notice than 40 days requisite, in the case of holdings to which that act applies. See *Removing of Tenants*.] The lease may be prematurely terminated by the tenant's desertion. In such a case, the safe course for the landlord seems to be to apply to the judge ordinary, stating the circumstances, and praying for judicial authority to dispose of the unexpired period of the lease by public roup, under a reservation of all claims against the tenant who has deserted. Where a subtenant has deserted, the same course may be pursued by the principal tacksman. [See *Desertion*. Leases are also terminated by the operation of irritancies, legal or conventional. See *Irritancy*.] A current written lease may also be brought to a close, during its currency, by a voluntary renunciation by the tenant, provided the landlord agrees to accept of it; and, upon principle, it would seem that such a renunciation must be in writing. If so, all agreements on the part either of the landlord or of the tenant, having in view the termination of a current written lease, may be resiled from, unless writing have intervened. It has been said that where the lease is informal, the re-

nunciation may be so likewise; but in that case there must be circumstances corroborative of the renunciation, to counterbalance the *rei interventus* on the lease. There is no particular form of renunciation required; but there must be a clear and explicit notice to the right party forty days before Whitsunday. [The landlord's acceptance of a renunciation implies a discharge of all claims under the lease; *Lyons*, 25 June 1886, 13 R. 1020; *Walker's Trs.* 17 July 1886, 13 R. 1198.] See *Renunciation*. [A house tenant may abandon his lease, if his house proves to be uninhabitable on account of defective drainage; *Scot. Herit. Security Co.* 28 Jan. 1881, 8 R. 459; or from being infested with vermin; *Kippen*, 13 Dec. 1847, 10 D. 242. For examples of abandonment on account of injury through fire, see *Drummond*, 12 Jan. 1869, 7 Macph. 347; *Duff*, 18 May 1870, 8 Macph. 769; with which contrast *Allan*, *supra*, p. 646 *a* (and see Lord Shand's opinion there quoted).]

On the subject of this article, see *Bell on Leases*; *Hunter's Landlord and Tenant*; *Ersk. B. ii. tit. 6, § 20*; *Stair, B. ii. tit. 9*; *More's Notes*, lxvi., lxxx., cxxviii., clxxx., ccxlviii.; *Bell's Com. i. 63*; *Bank. ii. 94*; *Bell's Princ. § 1177*; *Sandford's Herit. Succession*, i. 34, 138; *Ross's Lect. ii. 456*; [*Rankine on Leases*; *Dunsmore's Agricultural Tenants*, &c.; *Menzies' Conv.* 864; *M. Bell's Conv. ii. 1197*; *Jurid. Styles*, i. 565.] Consult also the following articles:—*Bona Fides*. [*Bowing*.] *Chalking the Door*. *Cropping*. *Currente Termino*. *Delectus Personæ*. *Dung*. *Ejection*. *Ejection and Intrusion*. *Fallow*. *Fire*. *Fodder*. *Forehand Rent*. *Furniture*. *Grass*. *Grassum*. *Growing Corn*. *Hypothec*. *Improving Lease*. *Invecta et Illata*. *Irritancy*. *Ish*. *Kain*. *Kelp*. *Kindly Tenants*. *Lochmaben*. *Manufactories*. *Marches*. *Minerals*. *Plough Goods*. *Poinding*. *Removing*. *Rent*. *Sequestration for Rent*. *Steelbow*. *Terms*, *Legal and Conventional*. *Violent Profits*. *Waygoing Crop*.

LEASE AND RELEASE; in English law, a conveyance of the fee-simple right or interest in lands or tenements, under the statute of uses, 27 Hen. VIII. c. 10; giving first the possession, and afterwards the interests in the estate conveyed. *Tomlins' Dict. h. t.*; [*Williams on Real Property*, 215.]

LEASING-MAKING; or verbal sedition, as it is also termed, consists, according to the language of the old statutes, in "slandrous and untrue speeches, to the disdain, reproach, and contempt of his

Majesty, his council and proceedings, or to the dishonour, hurt, or prejudice of his Highness, his parents and progenitors," &c.; 1584, c. 134. By this act, and by 1585, c. 10, and others of a still older date, this crime is made punishable with death. But this having been declared a grievance in the claim of right, the punishment of the offenders was, by 1703, c. 4, declared to be an arbitrary one; and the punishment was still further mitigated by 6 Geo. IV. c. 47, by which it was provided, that persons convicted of leasing-making, sedition, or blasphemy, should be liable to be punished only by fine and imprisonment, or both, at the discretion of the court; or on a second conviction in the same way, by banishment. So much of this act as regards the punishment by banishment is repealed by 7 Will. IV. c. 5; [and leasing-making is not prosecuted in modern times as a crime *per se*.] See *Ersk. B. iv. tit. 4, § 29*; *Hume*, i. 344; *Kames' Stat. Law Abridg. h. t.*; [*Macdonald*, 228.] See *Blasphemy*. *Sedition*. *Libel*.

LECTURES. See *Copyright*.

LECTUS ÆGRITUDINIS. The weakness occasioned by extreme illness, such as childbirth pains, is a relevant ground for reducing a bond or a discharge. *Brown's Syn.* 950; *Kames' Equity*, 69. See *Fraud*. *Deathbed*. [*Reduction*.]

LEGACY; is a bequest or donation of a sum of money, or of a moveable subject, to be paid or delivered to the legatee by the executor of a deceased person, out of the moveable estate of the defunct. Legacies are usually bequeathed by a testament by which the testator appoints an executor, and directs him, against a certain time (usually the first term of Whitsunday or Martinmas after the testator's death), to pay the legacies to the legatee. Where the legacy consists of an article which is to be delivered, it is understood, unless otherwise directed, that the delivery is to take place immediately after the testator's death. The legacy is personal to the legatee to whom it is given; and were he to die before the testator, the legacy would lapse, and not be demandable by the heir of the legatee. If, therefore, it be meant to give a legacy to a person, and, in the event of his predeceasing the testator, to confer it on his heir, the bequest must be so expressed; in which case (should the legatee predecease the testator) a right to the legacy will vest in the heir, and, in the event of his death, the legacy will go to the heir of the testator, in preference to any other heir of the

legatee. A legacy may be contained in a general disposition as well as in a testament. The legacy may be either general, or special, or universal. A *general* legacy is that where a certain sum of money, as £100, or a certain amount of property of any kind, is bequeathed in general terms; and this is payable out of the moveable estate of the testator. If there be a shortcoming in the moveable estate, or any subsequent loss, it falls proportionally on all the general legacies. But if a sum be bequeathed for a special purpose, in making the abatement necessary on account of the shortcoming, where otherwise practicable, enough must be left to execute the purpose of the bequest. The legacy is said to be *special*, where a particular subject or debt is bequeathed to the legatee; in which case the legatee must bear any loss arising from the bankruptcy or inability of the debtor. But, on the other hand, he gets the subject or debt such as it is, and suffers no share of any loss which may fall upon general legatees in consequence of a shortcoming in the testator's fund for general legacies. Neither special nor general legacies, however, can be paid to the prejudice of the rights of the onerous creditors of the deceased. But where creditors take a particular subject to the exclusion of a special legatee, they must assign their debts to him. A special legacy has the effect of an assignation *mortis causa* to the particular thing, the right to which is completed by the testator's death; and, consequently, such a legatee has his action directly against the possessor of the fund or subject, the executor being called as a party; while a general legacy confers on the legatee only a personal right of action against the executor. Where a particular debt is bequeathed, should it have been paid up during the lifetime of the testator, the legacy is at an end. [See *infra*, as to ademption of legacies.] A *universal* legacy comprehends all the testator's estate, or the reversion or residue, after satisfying expenses, debts, and other legacies. [Although the amount of residue may depend on the vesting or lapsing of contingent bequests, yet the residuary legatee is not a conditional institute; he takes the residue as an original gift, subject merely to contingent burdens, which fly off in the event of lapse; *Storie's Trs.* 29 May 1874, 1 R. 953.] A *verbal* legacy is ineffectual to any greater extent than to the sum of £100 Scots (£8, 6s. 8d.); [*Forsyth's Trs.* 18 Jan. 1854, 16 D. 343.]

If no term be appointed for the payment of a legacy, it is due at the testator's death, from which time it bears interest [at 5 per cent.; *Kirkpatrick*, 15 Nov. 1878, 6 R. (H.L.) 4.] But payment cannot be enforced till six months thereafter. If a day be fixed, or if an event, certain to arrive, be expressed, on the arrival of which the legacy is to become due, the legacy vests from the testator's death; but is not payable, nor does interest begin to run upon it, until the arrival of the specified time or event. [See *Vesting*.] A possible condition in a legacy receives effect; an impossible condition is held *pro non scripto*. [See *Conditions*.] When the testator bequeaths a subject belonging to another, which he believes to be his own, the legacy is ineffectual; but if he knows that it is not his own, the subject must be purchased, or the legatee otherwise satisfied out of the executry. [When two legacies of the same amount are left to the same person in two different testamentary writings, both writings must have effect, unless a contrary intention is clearly shown; *Edinr. Royal Infirmary*, 16 Dec. 1881, 9 R. 352; *Arres' Trs.* 10 Nov. 1881, 9 R. 107; with which contrast *Free Church Trs.* 14 Jan. 1887, 14 R. 333. In judging as to the testator's intention, the court is entitled to have regard to his circumstances at the dates of the writings, but not to indications gathered from jottings or memoranda; *Free Church Trs.* When a legacy is given to a plurality of persons, named or sufficiently described for identification, "equally among them," or "in equal shares," or "share and share alike," or in any other language of the same import, there is (in the absence of contrary expression) no room for accretion in the event of the predecease of one or more of the legatees, and this, whether the gift is in *liferent* or in *fee* to the whole equally, or whether the subject of the gift be residue, or a sum of fixed amount, or corporeal moveables; *Paxton's Trs.* 16 July 1886, 13 R. 1191; *Stobie's Trs.* 27 Jan. 1888, 15 R. 340. For the innumerable questions that have arisen in regard to the construction of legacies, reference must be made to the Digests, and to the authorities cited *infra*; also to the following articles in this Dictionary:—*Testament. Will. Executor. Vesting. Conditional Institution. Substitution. Destination. Conjunct Rights. Fee and Liferent. Conditio si sine. Falsa Demonstratio. Donatio Mortis Causa. Residuary Legatee. Survivorship. Surrogatum.*

[*Ademption of Legacies.*—The doctrine of the ademption, or implied revocation, of legacies is derived from the civil law of Rome. According to that law, if the subject of a specific bequest ceased to exist before the testator's death, the legacy was held to have been adeemed. When the subject did not cease to exist, but a change was made in its condition, by conversion or alienation, the question whether the bequest stood or fell depended mainly on the intention of the testator. The doctrine of ademption of specific legacies has been adopted by the English law; but according to that system, the element of intention is rejected as irrelevant; *Ashburner*, 2 Br. C. Ca. 108; *Stanley*, 2 Cox, 180. In the latter of these cases Lord Thurlow observed :—"The idea of proceeding on the *animus adimendi* has introduced a degree of confusion into the cases which is inexplicable, and I can make out no precise rule from them upon that ground. . . . It will be a safer and clearer way to adhere to the plain rule before mentioned, which is to inquire whether the specific thing given remains or not." See *Tudor's L.C.* ii. 246. The more recent Scotch decisions appear to have been influenced by the English view. In *Pagan*, 26 Jan. 1838, 16 S. 383, a legacy of the "sum of £1000, lent on bond to E. and I.," was held to be evacuated in consequence of the debtor having voluntarily paid up the bond, two years before the testator's death. And in *Chalmers*, 19 Nov. 1851, 14 D. 57, a testator having directed four houses to be conveyed to his four nephews respectively, and one of these houses having been acquired by a railway company under statutory powers, before the testator's death, it was held that the nephew to whom it was destined had no claim for its value. In *Anderson*, 17 July 1877, 4 R. 1101, the judges held themselves bound to follow these precedents, but Lord J. C. Moncreiff and Lord Gifford protested against them as "utterly at variance with any principle of jurisprudence." See *Journ. of Jurisp.* xxii. 63; *M'Laren on Wills*, i. § 508.]

See on this subject, *Ersk.* B. iii. tit. 9, § 6; *Stair*, B. iii. tit. 8, § 20; *More's Notes*, ccxli.; *Bank.* ii. 388; *Bell's Com.* i. 137; *Bell's Princ.* § 1873; *Thomson on Bills*, 19, 126, 258; [*M'Laren on Wills*, i. §§ 736, 860, 897; ii. § 1391; *Menzies' Conv.* 490; *M. Bell's Conv.* ii. 983; *Dickson on Evidence*, §§ 631, 1073, 1085; *Roper on Legacies*; *Jarman on Wills*; *Williams on Executors*.]

LEGACY AND RESIDUE DUTIES.

For purposes of revenue, legacies are subject to certain duties, the rates of which vary from one to ten per cent. on the sum bequeathed; the duty rising in amount according to the remoteness of the relationship of the legatee, and reaching its *maximum* where he is not related to the testator; [36 Geo. III. c. 52; 55 Geo. III. c. 184.] The husband and wife are not subject to the duty on legacies, annuities, and residues, bequeathed to each other. Lawful children of the testator and their descendants, the father, mother, or any lineal ancestor of the testator, pay 1 per cent. Brothers and sisters, and their descendants, pay 3 per cent. Brothers and sisters of a father or mother, and their descendants, pay 5 per cent. Brothers and sisters of a grandfather or grandmother, and their descendants, pay 6 per cent. Strangers in blood, persons in any other degree of collateral consanguinity, and illegitimate children, pay 10 per cent. [If the legatee's husband or wife is of nearer consanguinity than the legatee, duty is payable according to such nearer relationship; 16 & 17 Vict. c. 51, § 11. The exemption of legacies of less than £20 was abolished by 44 Vict. c. 12, § 42, with regard to all persons dying after 1 June 1881. But where the whole personal estate is under £100, no legacy duty is chargeable; 43 Vict. c. 14, § 13. Where the whole personal estate is under £300, the payment of thirty shillings (being the fixed inventory duty payable in such case) is deemed to be in full satisfaction of any claim to legacy duty; 44 Vict. c. 12, §§ 34, 36. And where duty has been paid, in conformity with the act, on the affidavit or inventory or account, in respect of any legacy or residue, the 1 per cent. legacy duty is not payable; *ib.* § 41. By 43 Vict. c. 14, § 11, the Commissioners of Inland Revenue have power to commute for a present payment the legacy duty presumptively payable on any interest in expectancy; and by 44 Vict. c. 12, § 43, they have power to accept a composition for legacy duty under a will. Interest at 4 per cent. is payable on arrears of duty; 31 & 32 Vict. c. 124. The act 39 Geo. III. c. 73, § 1, exempts from duty any legacy consisting of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles given or bequeathed to or in trust for any body corporate, aggregate or sole, or any endowed school, in order to be kept and preserved by such body corporate or school, and not for the purposes of sale. And the act 26 &

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[27 Vict. c. 87, § 41, exempts from duty any legacy or residue bequeathed out of the estate of a deceased depositor in any savings bank, where the whole of such estate does not exceed £50. The term *legacy*, as defined, for the purposes of the revenue acts, by 8 & 9 Vict. c. 76, § 4, includes every gift by any will or testamentary instrument which by virtue of such will or instrument is payable out of personal or moveable estate of which the testator had power to dispose; or is charged upon real or heritable estate, or the rents or profits thereof, which he had any right to charge with the payment of money; or is payable out of moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate; whether such gift be by way of annuity or in any other form; and also every donation *mortis causa*. But the same section provides that no money which by any marriage settlement is subjected to a limited power of appointment for the benefit of any person therein specially named or described as the object of the power, or for the benefit of the issue of any such person, shall be liable to duty under the will containing the appointment in exercise of such limited power. See further as to definition of a legacy, *Ramsay's Trs.* 1823, 2 C. M. & R. 229, note; *Trotter*, 12 Nov. 1847, 10 D. 56; *Reid's Exrs.* 21 Jan. 1880, 7 R. 483.]

A donation made *intuitu mortis*, while the testator is still in life, and in order to evade the duty, is not accounted an illegal evasion; [*Brown*, 28 June 1852, 1 Macq. 79.] The duty is payable by the legatee, unless the will shall otherwise direct; [36 Geo. III. c. 52, § 21;] and if the first legatee is exempted from the duty, his substitutes are also, *in dubio*, held to be exempted. [But if there is no residue, and no fund from which duty can be paid, the legatee is liable on the amount which he receives; *Miller's Trs.* 4 July 1884, 11 R. 1046.] Before executors or trustees can legally retain the residue of the defunct's personal estate, or any part of it, they must deliver to the Stamp Office, or to the stamp distributor in whose district they reside, an account in duplicate of the particulars of such residue, with its amount, and the moneys arising from the sale or burdening of real estate, or the value of the real estate, if not sold, when it is directed by the deceased to be sold, and of all payments made out of it. The duty must be paid within fourteen days after the commissioners have assessed it, under

a penalty of treble the amount of duty. The duplicate accounts must also be accompanied with an extract or copy of any will or testamentary instrument executed by the deceased, and all other documents necessary for ascertaining the duties exigible from the estate. The duties on legacies must be paid when the legacies are discharged; but if the legacies are retained by the executors for the use of legatees who, from infancy, absence, or any other cause, cannot yet receive them, the duties must be accounted for when the legacies are so retained. Where the legacy is payable at a future period, the duty must be paid immediately, if the interest of the legacy is directed by the will to be applied for the benefit of the legatee until that period arrive. All rents of heritable estates directed to be sold, and all dividends, interests, and profits arising from the personal estate of the deceased, subsequent to the time of his or her death, with all accumulations of such profits, down to the time of the executors or trustees delivering the accounts, and offering to pay the duty on the residue, are considered as part of the deceased's personal estate, and must be accounted for accordingly; *Cavendish*, 1810, Wightwick, 82. Effects not consisting of money, or securities for money, are valued at the time the account is rendered, when inventories and proper valuations are required to be produced. Money in the public funds is valued at the medium price of stocks on the day on which the account is dated. The values of annuities are calculated by the tables annexed to [16 & 17 Vict. c. 51.] Special circumstances attending a case may be introduced into the account, or stated in a separate paper annexed to it. Where the residue of the personal estate is given to one for life, a distinct account must be given of the profits which have accrued subsequent to the testator's death, and of the payments made for interest of legacies and of the testator's debts, so that the balance due to the residuary legatee for life may appear. Notwithstanding insolvency, an account must be rendered, to satisfy the commissioners that the estate is not chargeable with duty. Persons paying or receiving any legacy or residue liable to duty, without taking or signing a proper receipt, in which the duty is expressed to have been deducted, are subject to a penalty of 10 per cent. on the amount of such legacy or residue. Every legacy receipt must be dated on the day of the signing, and the duty paid within twenty-one days from the

date, under a penalty of 10 per cent. on the amount of the duty; and if the duty is not paid within three months from the date of the receipt, a penalty will then be incurred of 10 per cent. on the amount of the legacy. *The preceding summary has been abridged from the printed directions issued by the Solicitor of Legacy Duties in Scotland.*

[Liability to legacy duty depends on the testator's domicile at his death; *Thomson*, 18 Feb. 1845, 4 Bell's App. 1; *Gordon's Exrs.* 4 Feb. 1850, 12 D. 657. Duty is payable on real estate converted by a direction to sell; and an express direction is not necessary, if power of sale is given, and conversion into money is the fair meaning of the deed; *Blackburn's Trs.* 27 Nov. 1847, 10 D. 166. When an executor did not pay residue at the time of giving in his inventory, but waited till a contingent and uncertain interest had been realised, he was held bound to pay duty on the amount actually realised, although before giving up his inventory he had sold it at a lower price; *Pringle*, 12 June 1878, 5 R. 912. See also cases in *Shaw's Digest*, 1654; and *Paterson's Trs.* 17 May 1879, 6 R. 906. See *Bell's Princ.* § 1887; *Griffith's Stamp Digest*, 137, 236, 278; *Trevor's Taxes on Succession*, 49; *Hanson on Probate, Legacy, and Succession Duties*, 9, 39. See *Inventory Duty. Succession Duty. Revenue.*]

LEGAL, or LEGAL REVERSION.

This is the period within which a debtor whose heritage has been adjudged is entitled to redeem the subject; *i.e.*, to disencumber it of the adjudication, by paying the debt adjudged for. Or rather, it is the period on the expiration of which the adjudger may convert his judicial security into an irredeemable right of property, by obtaining decree of declarator of expiry of the legal. For the debtor may redeem the lands at any time before decree of declarator of expiry, or before forty years' possession has run on charter of adjudication and sasine. The legal of the special adjudication is five years; 1672, c. 19; of the general adjudication, ten years; 1661, c. 62, and 1672, c. 19; and of the adjudication *contra hereditatem jacentem*, seven years; 1621, c. 7. See *Stair*, B. iii. tit. 2, § 29; B. iv. tit. 3, § 2; tit. 23, § 7; tit. 36, § 2; *More's Notes*, cccv.; *Ersk. B.* ii. tit. 12, §§ 10, 22, 39, 49; *Bell's Com.* i. 743; *Bell's Princ.* § 829; *Jurid. Styles*, iii. 112, 137; [*Parker on Adjudication*, 58; *Shand's Prac.* ii. 715, 731; *Mackay's Prac.* ii. 337.] See *Adjudication for Debt.*

LEGATE; an ambassador or pope's nuncio. *Tomlins' Dict. h. t.*

LEGATEE, or LEGATARY; is the person to whom a legacy is payable. [See *Legacy.*]

LEGITIM, or BAIRNS' PART OF GEAR; is the legal share of the father's free moveable property due on his death to his children. Where a father dies leaving a widow and children, his free moveable estate suffers a division into three equal parts; one-third part is divided equally amongst all the children, whether of his last, or of any former marriage, as *legitim*; another third goes to his widow, as her *jus relictæ*; and the remaining third is what is called *dead's part*, which the father may dispose of as he pleases, by testament or otherwise. Where he has made no testamentary or other destination of the dead's part, it goes to his children, as his executors. Where the father leaves children, but no widow, or where the widow, in her contract of marriage, has renounced the *jus relictæ*, one-half of his free moveable property is legitim, the other dead's part. [According to Lord Fraser, the right to legitim is "not a right of succession, nor a right to share in the division of a *communio bonorum*," but "a claim of the character of a debt against the husband's executor for a third or half, according to circumstances, of the father's moveable estate, after the payment of other debts" (*Husb. and Wife*, ii. 974, 994). But the right to legitim was extended by the Married Women's Property Act, 1881 (44 & 45 Vict. c. 21), § 7, which provided that after 18 July 1881, "the children of any woman who may die domiciled in Scotland shall have the same right of legitim in regard to her moveable estate which they have according to the law and practice of Scotland in regard to the moveable estate of their deceased father, subject always to the same rules of law in relation to the character and extent of the said right, and to the exclusion, discharge, and satisfaction thereof, as the case may be."] The children of a deceased child are not entitled to claim any part of their grandfather's moveable estate, as the legitim to which their parent would have been entitled. [The representation in moveables introduced by the Intestate Succession Act of 1855 (18 Vict. c. 23) does not apply to legitim; for the "moveable estate" to which the act applies is limited by the interpretation clause to such estate as the deceased might have tested on.] It is the children alive [or in

[*utero*] at the time of the father's death, to whom alone the right of legitim belongs. [But the right vests on the child's survivance, and transmits to his executors, though not claimed by the child during his life; *M'Murray*, 17 July 1852, 14 D. 1048. See also Lord Cottenham, in *Fisher*, 6 April 1843, 2 Bell's App. 63.]

The claim of legitim may be excluded by giving the children a provision in an antenuptial contract of marriage, in lieu of legitim; [and the exclusion is effectual, however small may be the provision so made; *Maitland*, 14 Dec. 1843, 6 D. 244. The provision must, in general, be expressly declared to be in full of legitim; but where the *universitas* of the estate is settled by antenuptial contract on the children, their claim to legitim is discharged by implication; *Home*, 1757, 5 Br. Sup. 330. And where the whole funds were settled on the wife in liferent, and the children in fee, the claim of the latter to legitim was refused; *Fisher's Trs.* 19 Nov. 1844, 7 D. 129. Where, in the antenuptial marriage-contract of an heir of entail in possession, provisions were made for the children of the marriage other than the next heir of entail, which provisions were declared to be in full satisfaction of legitim, it was held that, as these provisions conferred no benefit on the eldest son, the clause did not affect his right to legitim; *E. Kintore*, 29 June 1886, 13 R. (H.L.) 93. No provision in a post-nuptial contract, if not accepted by the children, can exclude their right to legitim.] The father, in the exercise of his uncontrolled power of administration during his life, may, by converting moveable into heritable property, or even by a *de presenti* and completed conveyance of his whole moveable property, diminish or entirely defeat the claim of legitim; *Hog*, [1804, 4 Pat. 581. But the effect might be different, if the father's deed were fraudulently contrived, in order to disappoint the children, without touching his own right during his life; *Bell's Princ.* § 1584; *Fraser on Husb. and Wife*, ii. 1008; *Buchanan*, 7 March 1876, 3 R. 556.] The legitim cannot be diminished or affected by a deathbed deed, [but see *Deathbed*,] nor by a testamentary, or *mortis causa*, or revocable deed of any kind; the dead's part alone being disposable in this way. [See *Collie*, 22 Jan. 1851, 13 D. 506; *Little*, 28 Feb. 1856, 18 D. 701; *Nicolson's Assignees*, 2 March 1841, F.C. 3 D. 675. But in *Lawrie*, 1816, Hume's Dec. 291, the legitim was found to be lessened by a

[just and reasonable addition to a widow's conventional provision; *Fraser on Husb. and Wife*, 1011.] No deed or settlement of the father, regulating the succession to the legitim, is effectual, even where the child is a bankrupt, a pupil, or an idiot.

Where a child has expressly discharged his claim of legitim, either gratuitously or on receiving an equivalent, during his father's life, he is said to be forisfamiated. But the discharge must be express. [When a sum is given by a father in his child's marriage-contract, and there is no specific statement that that sum is to be accepted in full of all legal claims, the child may both accept the provision and claim legitim. Thus, where a lady, by her marriage-contract, accepted a sum as her "portion or fortune," she was found still entitled to claim legitim; *Breadalbane's Trs.* 16 Aug. 1836, 2 S. & M'L. 377; *Trevelyan*, 11 March 1873, 11 Macph. 516; *Somerville's Trs.* 3 June 1887, 14 R. 770.] The effect of a discharge of legitim is not to augment the dead's part; nor does it make the slightest alteration on the general amount of the legitim, which still continues to be a half or a third of the free moveables at the time of the father's death, the share of the forisfamiated child going merely to increase the fund for division amongst the remaining children entitled to legitim; [*Hog*, 1792, 3 Pat. 247.] A discharge of the legitim by all the children leaves the moveable estate to be equally divided between the husband and wife; or, if the wife be already dead, it converts the whole into dead's part. And a discharge by one or all, *after* the father's death, makes the legitim accrue to the person entitled to the residuary right of succession; [*Fisher*, 6 April 1843, 2 Bell's App. 63. "When the father, by transaction in his lifetime, extinguishes the claim for legitim which his child would, in the event of survivance, have been entitled to make against the succession, the effect of that transaction is to relieve the succession from the eventual claim of that child, just as if the child had died, or been forisfamiated. That relief to the succession is what the father acquires by the transaction; but the succession so relieved becomes, on the death of the father, subject to the operation of the law, and must undergo the division which the law has appointed in regard to the moveable estate and succession of every man. Whereas, when no transaction binding on the child has taken place during the father's lifetime, and when by the father's death the

[right to legitim has opened to and become fully vested in the child, and such child agrees to take in lieu thereof a provision which the father had put in his option,—that is a transaction, not with the father, but with the representatives, who in that way satisfy the claim, and are entitled to the benefit of the relief so obtained;” *per* Lord Pres. M’Neill, in *L. Panmure*, 29 Feb. 1856, 18 D. 703. When a provision is given to a child in liferent, and to his issue in fee, the latter are not excluded from their right to the fee by the immediate child rejecting the provision, and having recourse to his legal rights; *Fisher*, 1 July 1833, 6 W. & S. 431; *Monteith*, 28 June 1882, 9 R. 982; *Suodys Trs.* 9 Feb. 1883, 10 R. 599. Where the father has made a total settlement of his estate, a child cannot claim both legitim, and also a provision given him by the settlement, even though the provision be not expressly declared to be in full of legitim; *Henderson*, 1782, M. 8191; *Fisher*, 6 July 1841, 3 D. 1181; *Breadalbane’s Trs.* 5 March 1840, 2 D. 731; *Davidson*, 15 July 1871, 9 Macph. 995. Where, under a general settlement of a father’s estate, a provision is expressly given to a child in satisfaction of legitim, legitim cannot be claimed either in whole or in part without a complete surrender of the provision. But where the provision is not stated to be in full of legitim, and there is no express condition or declaration of forfeiture, the child’s claiming and receiving legitim will not infer entire forfeiture of the testamentary provision, but only equitable compensation to those prejudiced by his claim; *Macfarlane’s Trs.* 20 July 1882, 9 R. 1138. See *Appropriate and Reprobate*. Children are bound to make their election at once, on being called on by the trustees, and on being supplied with proper information as to the estate; *Keith’s Trs.* 17 July 1857, 19 D. 1040.]

The child claiming legitim must collate any separate provision received from the father, unless such separate provision shall appear to have been intended by the father as a *præcipuum*. All sums of money advanced for the child must also be collated; but neither the expense of education, nor inconsiderable presents, nor any advances which bear to be made over and above the legitim, are to be taken into computation. The heir in heritage is excluded from a share of the legitim, unless he choose to collate the heritage with the younger children. The heir-male and of

line, succeeding in the character of heir-male to an entailed estate in which the deceased had been infeft under an entail executed by a predecessor in favour of heirs-male, is not entitled to claim a share of the executry without collating his life interest in the entailed estates; *Anstruther*, [16 Aug. 1836, 2 S. & M’L. 369.] But where the heir is an only child, [or where the right of the other children has been discharged or satisfied,] the heir is entitled to legitim; *Kennedy*, 1622, M. 8163; [*L. Panmure*, *supra*. When the heir collates, he is not bound to convey the property over *pro indiviso*. It is sufficient if he pay into the common fund the value of the interest which he actually acquires by succession. See *Fisher’s Trs.* 5 Dec. 1850, 13 D. 245. If the heir dies without collating, his representatives cannot claim a share of the moveables; *Newbigging’s Trs.* 20 Feb. 1873, 11 Macph. 411.] The legitim vests in the children *ipso jure* without confirmation; but it does not constitute a *jus crediti* in them sufficient to entitle them to claim, or to rank in competition with the creditors of the defunct. See *Stair*, B. iii. tit. 8, § 44; *More’s Notes*, cccxlvii.—li.; *Ersk.* B. iii. tit. 9, § 17; *Bank.* B. iii. tit. 8, § 15; *Bell’s Com.* i. 678; *Bell’s Princ.* §§ 1582, 1949; [*Fraser on Husb. and Wife*, ii. 974, 993; *M’Laren on Wills*, i. §§ 244, 266; *Menzies’ Conv.* 443, 478; *M. Bell’s Conv.* ii. 855, 905; *Robertson on Personal Succession*.] See *Forisfamiliation. Jus Relictæ. Dead’s Part. Executry. Succession. Collation.*

LEGITIMACY. A child is said to be legitimate which has been lawfully procreated in marriage, or legitimated by the subsequent intermarriage of its parents. All children born of a mother who, at the time of conception, was lawfully married, are presumed to have been begotten by him to whom at the time the mother was married; nor can this presumption be defeated, except by clear evidence that the husband of the mother could not have been the father of the child. Thus, if it can be proved that the husband is impotent, or that he was absent from his wife at the time of conception, the presumption of legitimacy ceases. It seems to be fixed in our practice, that the period of absence necessary to elide the legal presumption must have commenced at least ten months before, and that it must have continued until within six lunar months of the birth of the child. [It is not necessary to prove absolute physical impossibility of access, in order to over-

[come the presumption. The court "may decide the question of paternity, by attending to the relative situation of the parties, their habits of life, the evidence of conduct, and of declarations connected with conduct; and to every induction which reason suggests;" *Fraser on Parent and Child*, 6. See *Sandy*, 4 July 1823, 2 S. 453; *Innes*, 20 Feb. 1837, 2 S. & M.L. 417; *Mackay*, 24 Feb. 1855, 17 D. 494; *Brodie*, 29 Nov. 1872, 11 Macph. 142; *Reid*, 8 Feb. 1879, 6 R. 659; *Montgomery*, 21 Jan. 1881, 8 R. 403; *Steedman*, 20 July 1887, 14 R. 1066. The Canonists held that illegitimacy was sufficiently proved by the concurring testimonies of the mother and her husband; and this doctrine was adopted by Craig and Stair. Such testimonies, however, are not now regarded as conclusive; though full weight is given to them, when corroborated by the facts and circumstances of the case. See *Fraser*, 15; also *Mackay*, *supra*; *Walker*, 23 Jan. 1857, 19 D. 290; *Beattie*, 15 Jan. 1863, 1 Macph. 273; *Smith*, 20 Oct. 1869, 8 Macph. 31. In *Gardner*, 17 May 1877, 4 R. (H.L.) 56, the presumption of legitimacy, being supported by the actings of the parties, and in particular by the fact that the husband had married the mother in the knowledge of her pregnancy, was held not to be rebutted by the concurring testimonies of both parents.] Where a marriage is celebrated between parties, one of whom is already married to a person still alive, it appears that *bona fides* on the part of one or both the parents will make the issue of the second marriage legitimate; see *Bell's Case of a putative marriage*; [*Kerr*, 6 March 1840, 2 D. 778 (Lord Jeffrey); also *Balfour's Practicks*, 112; *Fraser*, 22. But it would seem that, in order to save the legitimacy of the children, such putative marriage must be a regular one; see *Lapsley*, 17 April 1848, 1 Cl. & Fin. (N.S.) 498; *Swinton*, 20 March 1862, 24 D. 833.] See *Ersk. B. i. tit. 6, § 49*; *Bank. i. 46, 133*; *Bell's Princ. § 1624*; [*Stair*, B. iii. tit. 3, § 42; *Fraser on Parent and Child*, 1; *Riddell's Peerage and Consist. Law*; *Nicholas on Bastardy*.] See *Bastard. Filiation. [Parent and Child.]*

LEGITIMATION; is the act whereby children, born bastards, are made lawful children, or by which certain of the privileges of lawful children are conferred on bastards. This may be accomplished—

1. *By the subsequent intermarriage of the parents.* This sort of legitimation [was formerly held to] proceed on the fiction of law, that the marriage was contracted at

the time when the bastard was begotten. [But it is now held that the law is based on no legal fiction, but solely on views of expediency and morality; *Kerr*, 6 March 1840, 2 D. 752. Its origin is in the later Roman law, into which it is supposed to have been introduced by Constantine, at the instigation of the Christian clergy; *Fraser on Parent and Child*, 32.] If, however, either of the parents was married to another person at the time of the birth, the child will not be legitimated by the subsequent marriage. [According to many authorities, the time of conception, not that of birth, must be looked to; but Lord Fraser (p. 36) holds that the date of birth, if more favourable to legitimation, should be the criterion.] When, again, another marriage has intervened between the date of the birth and the marriage of the parent, it has been doubted whether legitimation takes place; Voet holding that it does to all effects; while Erskine lays down the doctrine, that although the second marriage may legitimate the bastard in questions with his brothers of the full blood, yet the intervening marriage is so far a mid-impediment, that the children born of it are not prejudiced by the legitimation; *Ersk. B. i. tit. 6, § 2*. [In *Kerr*, *supra*, it was decided by a bare majority of the whole court, that an intervening marriage is no impediment to legitimation *per subsequens matrimonium*. It was not necessary, in that case, to determine the rights of children so legitimated, in competition with the children of the intervening marriage; but the judges were all of opinion that the rights of the latter could not be prejudiced. The old law of Scotland required that the subsequent marriage should be public and solemn, in order to effect legitimation; but this was altered by the decision in *Walker*, 1813, 1 Dow, 148; see also *Cunninghame*, 1814, 2 Dow, 482.] The effect of legitimation seems to follow, although the bastard should have died before the marriage, so as to confer on his descendants all the rights which belong to the children of one lawfully born; [see *Fraser*, 40. In *Lauderdale Peerage*, 10 App. Ca. 692, legitimation was effected by marriage on deathbed.

[The law of legitimation *per subsequens matrimonium* is not recognised in England, nor in some of the United States of America; and difficult questions of international law have arisen from the conflict on this matter. The leading fact to be ascertained is the domicile of the father;

[for by the law of that domicile the status of the children is regulated.] Parties domiciled and having bastard children in a country where legitimation *per subsequens matrimonium* is not recognised, cannot legitimate their children by marrying in that country, to the effect of entitling them to succeed to a landed estate in Scotland; *Sheddan*, 2 March 1808, [5 Pat. 194; 15 May 1854, 1 Macq. 535; *Strathmore Peerage*, 1821, 4 W. & S. Appx. 89, 6 Pat. 645. Although both the birth and the subsequent marriage take place in Scotland, yet if the father's domicile is English, legitimation does not take place; *Rose*, 16 July 1830, 4 W. & S. 289. On the other hand, if the father's domicile is Scotch, the fact of the birth or the marriage, or both of them, being in England, will not prevent legitimation; *Munro*, 10 Aug. 1840, 1 Rob. 492; *M'Douall*, 10 Aug. 1840, 1 Rob. 475; 18 Feb. 1852, 14 D. 525; *Aikman*, 12 March 1861, 3 Macq. 854. If the father should change his domicile between the birth of the child and the subsequent marriage, it is not settled whether the domicile at the date of the birth or the domicile at the date of the marriage would regulate the child's status. In *Munro*, *supra*, the judges of the Court of Session were of opinion that the period of the marriage ought to prevail; *Fraser*, 52. But weighty authority may be cited in support of the contrary view; *Burge*, *Com.* i. 104; *Savigny's Priv. Internat. Law*, *infra cit.* See also *Udny*, 3 June 1869, 7 Macph. (H.L.) 89; *Shaw*, L.R. 3 Eng. & Ir. App. 55. The status of legitimacy, when once established by the *lex domicilii*, is unchangeable, and is recognised, *ex comitate*, all the world over. But it is an exception to this rule that, if the legitimacy is derived from a foreign marriage which our law considers to be incestuous or contrary to public policy, the status of legitimacy will not be recognised in Scotland; *Fenton*, 15 July 1859, 3 Macq. 497. A child legitimated *per subsequens matrimonium* in Scotland cannot succeed to lands in England; for the descent of real estate is regulated by the *lex rei sitæ*; *Birtwhistle*, 10 Aug. 1840, 1 Rob. 627, 7 Cl. & Fin. 895.]

2. *Per rescriptum principis*. So far as the rights of the Crown are concerned, bastards may be legitimated by letters of legitimation from the Sovereign, which generally empower the bastard, where he has no lawful children, to dispose of his heritage or moveables at any time during

his life, and to make a testament. These privileges, however, he now enjoys without letters of legitimation. See *Bastard*. Letters of legitimation cannot affect the rights either of the bastard's lawful children or of third parties; nor can they give the bastard any right to legitim, or any other legal right of succession to his father or mother, or any other of his relations, as if he had been a lawful child. But letters of legitimation may confer a right to succeed *ab intestato* to the bastard, on any one who would have been his heir, had the bastard been a lawful child; for by conferring this privilege, the Crown only gives that which would otherwise have belonged to itself.

See on this subject, *Stair*, B. iii. tit. 3, § 45; *Ersk.* B. i. tit. 6, § 52; B. iii. tit. 10, § 7; *More's Notes to Stair*, xxxii.; *Bank.* i. 121; ii. 278; *Bell's Princ.* §§ 1627, 2064; [*Fraser on Parent and Child*, 32; *Savigny's Priv. Internat. Law* (transl. Guthrie), 284, 301, 308; *Story's Conflict of Laws*, § 93.] See *King. Bastard. Last Heir. Domicile*.

LENOCINIUM; is the husband's connivance at his wife's adultery, and his participation in the profits of her prostitution, or his lending himself in any way, directly or indirectly, to his own and her disgrace. It affords the wife an available defence against an action of divorce for adultery. The plea was found relevant in a case in which the husband had "caused, prompted, or hounded" the party with whom his wife had committed adultery to attempt to debauch her, although the pursuer averred that he merely intended a trial of her chastity. It has even been found a competent defence to a wife that her husband committed such indecencies towards her as invited others to seduce her. [See *Mackenzie*, 1745, M. 333; *Wemyss*, 20 March 1866, 4 Macph. 660; *Munro*, 25 Jan. 1877, 4 R. 332; *Marshall*, 20 May 1881, 8 R. 702; *Hunter*, 21 Dec. 1883, 11 R. 359.] See *Ersk.* B. i. tit. 6, § 45; *Lothian's Consistorial Prac.* 165; *Bell's Princ.* § 1532; [*Fraser on Husb. and Wife*, ii. 1184; *Mackay's Prac.* ii. 271.] See *Divorce*.

LEONINA SOCIETAS; a partnership in which one partner has all the loss, and another all the gain. *Stair*, B. i. tit. 1, § 3. See *Partnership*.

LESEMAJESTY. See *Leasing-Making*.

LESION; is the degree of harm or injury sustained by a minor, or by a person of weak capacity, necessary to entitle him to reduce the deed by which he has suf-

ferred. See *Kames' Equity*, 66, 167, 182, 363; [*Ersk. B. i. tit. 7, § 34.*] See *Minor. Idiot. Facility. Fraud.*

LESSOR and LESSEE; the parties to a lease. The former is the landlord or grantor of the lease; the latter the tenant in whose favour it is granted. *Ersk. B. iii. tit. 3, §§ 15, 16.* See *Lease. [Location.]*

LETHAL WEAPON. In ordinary language, this term seems to import some such weapon as a sword, knife, or pistol; but, in cases of homicide, the law holds every weapon to be lethal by which a human being has died. [It was formerly usual to charge the use of lethal weapons as an aggravation of an assault; but this is not now customary.] See *Hume, i. 260; Alison's Princ. 7, 181; [Macdonald, 180.]*

LETTERS. Our ancient deeds were in the form of letters addressed to all and sundry, or to certain descriptions of persons, according to the nature of the subject; and more formal deeds, as the charter and judicial writs under the signet, bear still the form of letters. *Signet Letters* are writs for enforcing the decrees of courts, or for attaching the property of debtors, or for citing defenders or other parties in actions before the Court of Session. These run in name of the Sovereign, and are authenticated by the signet. [See *Seal. Bill. Diligence.*] *Letters of Four Forms* were warrants for successive charges to debtors to pay before the penalty of rebellion was incurred; now abolished. *Stair, B. iii. tit. 2, § 22; Bank. ii. 260.* [For other kinds of letters, see the articles next following, and also *Administration, Letters of. Criminal Letters. Denizen. Diligence. Ejection. Exculpation. Legitimation. Missives. Regress. Relaxation. Supplement.*]

LETTER OF ATTORNEY; in English law, a writing, authorising another person, who, in such case, is called the attorney of the party appointing him, to do any lawful act in the stead of another; as to give sasine of lands, receive debts, or sue a third person, &c. *Tomlins' Dict. h. t.* See *Mandate. [Power of Attorney.]*

LETTERS CONFORM. The letters issued by the supreme court in aid of the decrees of inferior judicatures, and authorising execution in terms of those decrees, were anciently termed *letters conform.* They were granted by the Court of Session upon second summonses, calling the parties to the Court of Session to hear and see the letters granted, or show cause on the contrary; and the sentence pronounced on

that occasion was called a *decreet conform.* See *Decree Conform. Bills. Diligence.*

LETTERS OF CORRESPONDENCE.

In criminal trials, letters of correspondence may be produced in evidence against the panel. A letter of a third party found in the panel's possession is not of itself evidence of its contents against him, since it may have been sent through mistake or malice. But a letter from the panel is evidence against him. See *Hume, ii. 395; Alison's Prac. 611; [Macdonald, 513.]* Such letters may also be given in evidence in civil causes. See *Production. Evidence.* [In England, epistolary correspondence (apart from the mere paper on which it is written) is held to be the property, not of the receiver, but of the writer of the letter. Consequently, the receiver may retain a letter for his own use, but he cannot publish it without permission of the writer or his heirs. In Scotland the same protection is given, but not so much on the ground of copyright, as of right on the part of the writer to have his reputation and his privacy protected; *Dodsley, 1775, M. App. Lit. Property, No. 1; Cadell, 1804, ib. No. 4, 5 Pat. 493; Trial of Madeleine Smith (Irvine), 93, 305; White, 5 July 1881, 8 R. 896.* A letter sent to a newspaper for publication does not become the property of the editor, and the latter is not entitled to publish it, if the writer intimate his wish to withdraw it; *Davis, 28 July 1855, 17 D. 1166.* See *Ersk. B. ii. tit. 1, § 16; Bell's Com. i. 111; Bell's Princ. § 1357; Dickson on Evidence, §§ 303-4, 311, 365, 368.* See *Copyright. Defamation. Offer.*]

LETTER OF CREDIT; a letter written by one merchant or correspondent to another, requesting him to credit the bearer, or a particular person named, with a certain sum of money, or to furnish him with goods. It was at one time held that no action would lie on a letter of credit, unless intimation were made of the furnishings, or advances made on the faith of it; but it is now fixed that no such intimation is necessary, and that the writer of every such letter is bound to understand that it may have been acted upon to its full extent. The terms of every letter of credit must be strictly complied with, otherwise no claim will arise against the writer; and a letter of credit addressed to one person cannot be transferred to another, so as to bind the writer. In the case of a proper or simple letter of credit, the debt constituted by its being complied with is between the writer

and the person addressed; but the letter may be conceived in such terms as to raise a debt also against the person who is supplied by the mandatory. Where the letter is purchased with money, or for some other onerous consideration, by a person wishing for credit on a merchant at a distance or abroad, the holder of the letter incurs no debt by the letter being complied with. Where, again, the letter is not paid for, and merely contains an engagement to see the advances furnished to the holder made good, it becomes a written guarantee, and raises a debt against the person accredited in the first instance, and then against the writer of the letter, as his cautioner. [Letters of credit must be stamped with a penny stamp; 33 & 34 Vict. c. 97, § 48; *Waterston*, 19 Feb. 1858, 20 D. 642. See *Orr*, 7 Aug. 1854, 1 Macq. 513; *Struthers*, 27 Jan. 1842, 4 D. 460; *Agra & Masterman's Bank*, L.R. 2 Ch. App. 391; *Maitland*, 38 L.J. Ch. 363.] See *Stair*, B. i. tit. 11, § 7; *More's Notes*, lxxii.; *Bank*. i. 367; *Bell's Com.* i. 388; [*Bell's Princ.* § 279; *Ersk.* B. iii. tit. 3, § 61; *Thorburn's Bills of Exchange Act* (Introd.); *Grant on Bankers*, 94; *Cavanagh on Money Securities*, 82. See *Guarantee. Recommendation.*]

LETTER OF GUARANTEE; an undertaking, in writing, to answer for the payment of a debt, or the performance of some engagement, in case of the failure of another person liable in the first instance. See *Cautionary. Guarantee.*

LETTERS OF MARQUE; are warrants for reprisal, when British subjects are injured in their persons or goods by the subjects of foreign countries who refuse redress. *Stair*, B. ii. tit. 2, § 1; *More's Notes*, cliii.; *Bank*. i. 520. [They are properly issued by the Crown, the prerogative of granting them being nearly related to that of making war. Letters of *marque* and *reprisal*—the latter word signifying strictly, taking in return, the former, passing the frontiers in order to such taking—authorise the seizing (wherever they may be found) of the bodies and goods of the subjects of the offending state, until satisfaction be made. At the present day the term is generally used in a more restricted sense, to denote a commission granted in time of war by the Lords of the Admiralty (empowered thereto by act of Parliament or by proclamation of the Queen in Council) to owners of private vessels, authorising them to capture the enemy's ships, and to divide the spoil among the owners, the captains, and the

[crews. *Stephen's Com.* ii. 520. See *Reprisals.*]

LETTER STEALING. See *Post-Office Offences.*

LEVANT AND COUCHANT; in English law, a legal term for cattle that have been so long on the ground of another as to have lain down and risen again to feed. *Tomlins' Dict. h. t.*

LEVARI FACIAS; in English law, a writ of execution directed to the sheriff for levying a sum of money upon a man's lands and tenements, goods and chattels, who has forfeited his recognisance. *Tomlins' Dict. h. t.*; *Kames' Equity*, 390.

[LEWD, INDECENT, AND LIBIDINOUS. See *Indecent Practices.*]

LEX APPARENS; according to the definition of Skene, is the law concerning single combat. *Skene, h. t.*

LEX LOCI CONTRACTUS. In questions as to obligations contracted in one country of which implement is sued for in another, the law of the country where the obligation was contracted is called *lex loci contractus*, and governs everything which relates to the nature of the obligation, *ad valorem contractus*; while the *lex fori*, or law of the country to whose courts the application is made for performance, or for damages, regulates whatever relates to the remedy, by suits, to compel performance, or by action for a breach *ad decisionem litis*. See *Foreign. Jurisdiction.*

LEX RHODIA. See *Contribution.*

LEX TALIONIS; a rule of the judicial law of Moses, directing the punishment to be analogous to the crime;—an eye for an eye, and a tooth for a tooth. Thus, if one swore falsely that another was guilty of a capital crime, the swearer was himself punished capitally. This law does not seem ever to have been established in any civilised state. It was at one time attempted to introduce the *lex talionis* into England in the case of malicious accusations; it being enacted, by 37 Ed. III. c. 18, that such as preferred any suggestions to the King's Great Council should put in sureties of taliation. But, after one year's trial, this punishment of taliation was rejected, and imprisonment adopted in its stead. *Deut.* xix. 16 *et seq.*; *Stair*, B. i. tit. 9, § 2; *Ersk.* B. iv. tit. 4, § 75; *Tomlins' Dict. h. t.*

LIBEL. This term, in the law of Scotland, is used in different significations; it is applied to the form of the complaint, or the ground of the charge on which either a civil or criminal prosecution takes

place. It is also applied to scandal reduced into writing.

Criminal Libel.—For an account of the criminal libel, see *Indictment. Criminal Letters. Criminal Prosecution. Amendment of the Libel.*

Libel in a Civil Action.—The libel in the supreme civil court is contained in letters passing under the signet, called a summons, addressed to messengers-at-arms as sheriffs in that part. See *Summons. Amendment of Record.*

Libel.—Scandal reduced into writing, and published or circulated, is, of all others, the most public and permanent, and ought, therefore, to be punished with greater severity than where the scandal is merely spoken; the *animus injuriandi* is likewise more clearly evinced. This offence may be the foundation of a criminal prosecution, or of a civil action for reparation, or of a combination of both actions. The offence consists either in turning the person into ridicule or in blackening his moral character; and the punishment will be proportioned to the nature of the offence, and the malignity of the disposition which the offender may have discovered. See *Defamation.*

LIBERATION. Where a debtor is imprisoned under letters of horning and caption of non-payment of a debt, he is considered, not only as indebted to his creditor, but as guilty of civil rebellion. Hence, formerly, the mere payment of the debt was not sufficient to entitle the debtor to his release; it was further incumbent on him to present a bill of suspension and liberation, stating the fact that he had paid the debt, and praying to be liberated from prison. The expense with which this was attended seems to have moved the court to take the situation of debtors into consideration; and accordingly, by A.S. 5 Dec. 1675, they authorised jailors to set debtors in small sums at liberty without the necessity of the form of a suspension and liberation. And, by the present practice, the mere payment of the sum for which the debtor is booked in the jail books entitles him to be immediately liberated—a suspension and charge to set at liberty being in no case necessary where a person incarcerated for non-payment of a civil debt, or for non-performance of a civil obligation, pays the debt or performs the obligation. [By § 75 of the Bankruptcy Act (19 & 20 Vict. c. 79), the Lord Ordinary or the sheriff by whom sequestration was awarded may, on application by the debtor, grant warrant for his

[liberation, if in prison, on such conditions as seem just. See *Bruce*, 20 Sept. 1878, 6 R. 894; *M'Gregor*, 12 April 1879, 6 R. 895. Since the general abolition of imprisonment for debt by the Debtors Act, 1880, the above provisions are of little practical importance.] See *Ersk. B. iv. tit. 3, § 15; Bell's Com. ii. 436; Bank. i. 64; iii. 8; Ross's Lect. i. 346.* See *Imprisonment. [Protection. Cessio. Suspension and Liberation.* As to liberation of persons committed on a criminal charge, see *Criminal Prosecution*, pp. 264–5. *Bail.*]

LIBERATIO; according to Skene, is a livery or fee given to a servant or officer. *Skene, h. t.*

LIBERUM TENEMENTUM; according to Skene, commonly and properly called frank tenement or liferent; sometimes also used for the property, fee, or heritage. *Skene, h. t.*

LIBERTY. Every one is held to have a right to the enjoyment of absolute personal freedom, until he forfeits that right by committing crime or incurring debt; and, in order to prevent the abuse of these legal restraints on freedom, statutes have been passed, both in England and Scotland, for the purpose of providing against illegal imprisonment. In England there is the *habeas corpus* act; in Scotland, the act of 1701, c. 6. [See *Stephen's Com. i. 144; ii. 494; Dicey on the Constitution, 219; Paterson on Liberty of the Subject.*] See *Habeas Corpus. Wrongous Imprisonment. [Liberation.]*

LIBRARIES. On the principle, that no effectual entail can be made of property upon which infestment cannot follow, a library, or paintings, or other personal effects, though sometimes included in deeds of entail, are nevertheless liable to be attached by the diligence of the creditors of the heir in possession. *More's Notes on Stair*, clxxx. [As to public libraries, see 50 & 51 Vict. c. 42; 52 & 53 Vict. c. 9.]

LICENCE; a power or authority given to a man to do some lawful act. It is personal to the party on whom it is conferred; and cannot be assigned, unless it bear to be given to a man and his assignees. [See *Game Licence. Gun Licence. Public House.*]

LICENCE TO PREACH. After the applicant for a licence to preach has been subjected to his trials, the presbytery pronounce their judgment. If dissatisfied, they remand the student to his studies, or appoint new trials for him to undergo, or

refuse altogether to license him. If their judgment is favourable, certain questions are put, and when the student has given satisfactory answers, he subscribes the formula in which the substance of the questions is embodied. The act against simony is then read to him in presence of the presbytery; the moderator is appointed to license him to preach the gospel; and the clerk is ordered to furnish him with an extract of his licence. A licence to preach, obtained without the bounds of the Church of Scotland, disqualifies a presentee to a parish. *Hill's Church Prac.* 48, 51, 69; [*Cook's Styles*, 63;] *Gillan's Acts of Assembly*, *vocibus Probationers. Ordination.*

LICENCE TO PURSUE; is an authority given by the commissaries to an executor, which entitles him to pursue the debtors of the deceased, but not to take decree. *Ersk. B. iii. tit. 9, § 39; Stair, B. iii. tit. 8, § 56; Bank. ii. 395; [Kames' Elucidations, 185.]* See *Confirmation. Executor.*

LICKING OF THUMBS; a symbolical mode of indicating that a bargain has been concluded, [formerly] practised in bargains of minor importance amongst the lower classes. *Ersk. B. iii. tit. 3, § 5.*

LIEGES. The Queen's subjects.

LIEGE POUSTIE; is that state of health which gives a person full power to dispose *mortis causa*, or otherwise, of his heritable property. The term, according to our institutional writers, is derived from the words *legitima potestas*, signifying the lawful power of disposing of property at pleasure. It is used in contradistinction to *deathbed*—a *liege poustie* conveyance being a conveyance not challengeable on the head of deathbed; see *Ersk. B. iii. tit. 8, § 95.* The tests of *liege poustie*, opposed to the presumption of deathbed, are survivance during sixty days, and going to kirk or market unsupported. See *Deathbed.*

LIEN; in English law, an obligation, tie, or claim annexed to, or attaching upon, any property, without satisfying which, such property cannot be demanded by its owner. Before the introduction of the term *lien* into Scotch legal phraseology, the right to retain the property of a debtor was recognised under the name of the right of *retention*; but of late, it has become general to employ the terms *lien* and *retention* indifferently to signify the same right. Mr More, indeed, draws a distinction between the two, holding that the right of retention was originally much wider in its operation than *lien*, being

borrowed from the Roman law, and having been recognised and acted upon, before compensation was allowed to be pleaded by way of exception or defence. The right of retention he holds to have been a necessary counterpart of the diligence of arrestment in security. It would be a strange anomaly, he observes, if a third party could, by arrestment, compel the holder of any fund or article belonging to their common debtor, to retain it in security of his debt, while the holder himself could not retain it in security of a similar debt due to himself. In England, no right of retention at common law is recognised; and the *lien* of the English law is rather of the nature of an equitable encroachment upon the common law, proceeding upon the principle of implied agreement; *More's Notes on Stair*, cxxxi. Whatever may have been the extent to which retention was originally permitted in the law of Scotland, it would rather appear that such a general right as that here spoken of, comprehending all cases where there is legitimate possession and a debt due to the possessor, is now no longer recognised; *Bell's Princ.* § 1431. The practical results of the English *lien* and the Scotch retention being now nearly assimilated, they will both be considered under the general head *Retention.*

LIEUTENANT; an officer who supplies the place and discharges the office of a superior in his absence. The *Lords-Lieutenant* of counties are officers appointed by the Crown, who, upon any invasion or rebellion, have power to raise the militia, and to give commissions to colonels and other officers of that force, and to arm and form them into regiments, troops, and companies. Under the lords-lieutenant are deputy lieutenants, who are appointed by the lord-lieutenant, and presented to the Sovereign for approbation. A deputy lieutenant must be seised or possessed of an estate in property, either in his own right or in right of his wife, of four hundred pounds Scots of valued rent in Scotland, or be heir-apparent of some person seised or possessed of a like estate. And those who, being unqualified, or who, without delivering in their qualifications, act as deputy lieutenants, are liable to a penalty of £100. The duty of the courts of lieutenancy is to superintend the balloting for the militia, and to make regulations concerning the volunteer forces. Regulations have been enacted by various statutes for the granting commissions in the

militia by the lord-lieutenant, and carrying on the other business connected with the militia. The militia acts passed previously to 42 Geo. III. c. 91, were consolidated and superseded by that statute, which, although followed by other enactments, continues the groundwork of our militia law. At present, while the services of the militia are not required, an annual act is passed suspending the operation of the militia statutes. But when these acts are in operation, a general meeting of the lieutenantancy of every county, stewartry, city and place is directed to be held at least once a year. These general meetings consist of the lieutenant, together with two deputy lieutenants at the least; or on the death or removal, or in the absence of the lieutenant, then of three deputy lieutenants at the least. At this annual meeting the lieutenant and two deputy lieutenants, or the three deputy lieutenants, may summon other general meetings on any days they may fix upon. Sub-division meetings consist of two deputy lieutenants at the least, or one deputy and a justice of peace. In questions arising out of the proceedings of courts of lieutenantancy under the militia statutes, the Court of Session, before holding it competent to interfere, have required very strong *prima facie* evidence of excess of powers. In one case, a bill of advocacy or suspension was held to be incompetent, although there was reason for thinking that the commissioners had exceeded their statutory powers; [*Chivas*, 11 July 1804, F.C.] And in another case, it was held to be settled that the excess of power must be flagrant before the Court of Session can be warranted to interfere, and stop or impede ministerial acts, conducted under colour at least of parliamentary authority, on which the general safety may depend; [*Imray*, 2 March 1811, F.C.] See *Ersk. B. i. tit. 2, § 7*; *Hutch. Justice of Peace*, 59; *Kames' Stat. Law. Abridg. voce Lord-Lieutenant*. See *Militia*.

LIFE. [See *Presumption of Life*.]

LIFE ESTATES; in English law, estates of freehold, not of inheritance, analogous to the Scotch liferents. *Tomlins, h. t.*

[LIFE INSURANCE. See *Insurance*, p. 565.]

LIFERENT. A liferent right entitles the liferenter to use and enjoy the subject of the liferent during life, without destroying or wasting its substance, or *salva rei substantia*, according to the expression of the Roman law. The proprietor of the subject, which is either a sum of money

or an heritable subject, is called the *fiar*; and the person in possession the liferenter. The legal liferents of the Scotch law are the *terce* and the *courtesy*. See *Terce. Courtesy*.

Conventional liferents of heritage are divided into simple liferents, and liferents by reservation. The former are constituted by a grant, [which must be completed by infeftment,] in order to render the right effectual against the creditors and singular successors of the grantor. This right is regulated by the terms of the grant; and although the profits of it may be conveyed to another by assignation, the continuance of the right depends entirely on the life of the original grantee. A liferenter by reservation is more like a limited *fiar* than a mere liferenter. Such a liferenter must have originally possessed the whole property under his own *sasine*; and therefore, when he conveys the fee, reserving his own liferent, that reserved right rests on his original *sasine*, and requires no new infeftment for its constitution. Hence a liferenter by reservation, who has previously been infeft in the lands, is permitted to enter vassals; which a liferenter by constitution, or a liferenter by reservation, whose right was merely personal, cannot do, [unless such power is expressly conferred by the deed of constitution; *Gibson-Craig*, 23 Sept. 1841, 2 Rob. 446.] See *Ersk. B. ii. tit. 9, § 42*.

Liferenters are entitled to the fruits and annual produce of the subject liferented; and they may possess by themselves, their servants or tenants; but the trees planted for ornament cannot be cut down by the *fiar* during the currency of the liferent. The liferenter must leave the subject in as good condition as that in which it was at the commencement of the liferent; [*Rogers*, 19 July 1867, 5 Macph. 1078. In general, he has no right to cut growing timber, even though planted by himself. But there are exceptions to this rule in the case of (1) underwood, and ordinary (but not extraordinary) windfalls; (2) timber required for the maintenance of the estate; (3) *sylva caedua*, or coppice-wood, which is cut periodically, when it comes to maturity. See the judgment in *Macalister's Trs.* 27 June 1851, 13 D. 1239; the import of which is given under the head *Timber*.] A liferenter has no right to the mines or minerals; and where a right to coal is given, he cannot increase the average quantity which has been usually brought up. [But these rules may be

[modified in cases where the intention of the granter is the decisive element; *Guild's Trs.* 29 June 1872, 10 Macph. 911; *Wardlaw*, 23 Jan. 1875, 2 R. 368; *Ferguson*, 23 Feb. 1877, 4 R. 532. A widow or other person to whom a trust has given a universal liferent of an estate, is not entitled to mineral rents unless the minerals have been wrought in the trustor's lifetime; *Campbell*, 6 July 1883, 10 R. (H.L.) 65.] The obligation not to waste the subject exposes a liferenter to an action, at the instance of those interested in the estate, to find caution that he shall preserve the subject in the same condition in which it stood at the time of his entry; 1491, c. 25; and should he refuse to find caution, he may, under 1535, c. 15, be excluded from possession until he complies. [See also 1594, c. 226. But in modern practice such caution is not required, unless reasonable cause is shown to apprehend waste or neglect on the part of the liferenter; *Ralston*, 1803, Hume's Dec. 293.] The liferenter of a house is bound to make the usual and necessary repairs; but if the house, from natural decay, becomes untenable in the course of the liferent, the liferenter is not bound to repair it, neither is the fiar. But should the liferenter be at this expense, he should do it under warrant of the judge ordinary; and, in that case, the expense incurred may form a burden on the fiar on the expiration of the liferent. Or, should the repair be made by the fiar, he will be entitled to claim from the liferenter the interest of the money expended in repairing the subject. See *Houses*. As to the liferent of furniture, see *Furniture*. [Where a liferenter expends money in improving the subject of his liferent, he is presumed to do so for his own benefit. But this presumption may be overcome; and when a liferenter made improvements in the erroneous belief that he was fiar, he was held entitled to recompense; *Morrison's*, 14 July 1886, 13 R. 1157.] Liferenters are liable in the burdens affecting the subject liferented, as feu-duties, minister's stipends, and taxations; but not to occasional burdens, such as the building or repairing of churches or manses. The liferenter of a landed estate is also said by institutional writers to be burdened with the support of the heir, when he has no other fund of subsistence, though this does not take place in liferents of sums of money. And even in the case of a landed estate, such a claim would not now be listened to with

much favour, and would not in any view be extended so as to deprive a liferentrix under a marriage-contract of any part of what is requisite for her own support. Nor does this claim affect the creditors of a liferenter. See *Aliment*. A liferent right is extinguished by the death of the liferenter; and the interest of his executors in competition with the fiar depends on the precise time of his death, and the state of the liferented subject. Where the subject of the liferent is in the natural possession of the liferenter, the executors have right to the crop of such parts of the lands as have been sown by the liferenter, but to no more. But the liferents of fishings, collieries, salt-works, and other subjects, the profits of which arise from continual daily labour, are computed *de die in diem* until the liferenter's death. [According to the former law,] where the subject was let to tenants, the liferenter's executors, if he survived the term of Whitsunday, had right to one-half of that year's rent; if he survived the term of Martinmas, his executors had right to the whole year's rent; and that although the conventional terms of payment of the rent might fall much later. Where a liferenter died on the term-day of Martinmas or Whitsunday, the rent of that term was transmitted to his executors. [But this was altered by the Apportionment Acts of 1834 and 1870 (4 & 5 Will. IV. c. 22, and 33 & 34 Vict. c. 35); and rents and other periodical payments are now considered as accruing from day to day, like interest on money lent, and are apportionable in respect of time accordingly. See *Heir and Executor*, and cases there cited. *Terms, Legal and Conventional*.] The same rules which regulate the termination of a liferent right regulate also its commencement, where that depends on the death of a person in possession. A liferenter of a superiority has right to the feu-duties, but not to the casualties, unless he be a liferenter by reservation; [*Ewing*, 20 March 1872, 10 Macph. 678.] The liferenter gets the dividends or interest of bank stock, and the interest on a bonus, but not the bonus itself; [*Rollo*, 1803, 4 Pat. 521; but see *Bonus*.] Liferenters are not entitled, in the absence of express stipulation, to grant feus or leases effectual beyond the liferent. [A liferenter is entitled to the parliamentary franchise, to the exclusion of the fiar; see *Election Law*, p. 370.] Liferent is extinguished not only by the death of the liferenter, but also by renunciation without recording; [*Pretty*, 2 March

[1854, 16 D. 667.] See *Ersk.* B. ii. tit. 9, § 40; *Stair*, B. ii. tit. 3, § 74; tit. 6; B. iii. tit. 1, § 16; *More's Notes*, ccxii.; *Bell's Com.* i. 52; *Bell's Princ.* § 1037; *Bank.* i. 657; *Kames' Stat. Law Abridg.* h. t.; *Hunter's Landlord and Tenant*, i. 124, 193; ii. 59; *Bell on Leases*, i. 186, 216, 223; ii. 102; *Sandford's Heritable Succession*, ii. 117, 120; *Bell on Purchaser's Title*, 92; *Ross's Lect.* ii. 484; [*Rankine on Land-Ownership*, 599; *Rankine on Leases*, 71; *Menzies' Conv.* 869.] See *Conjunct Fee. Fee and Liferent. Fiar.* [*Destination. Contract of Marriage.*]

LIFERENT ESCHEAT. See *Escheat.*

LIGANTIA; according to Skene, is a league, bond, or obligation. *Homagium ligium*, is homage without any exception; *homagium non ligium*, is homage made to an over-lord, with reservation of the fidelity due to the King or an elder over-lord. *Skene, h. t.*

LIGHT. The servitudes of *light* and of *prospect* are servitudes whereby the servient proprietor is restrained from building or planting on his own grounds, or from otherwise exercising his right of property, so as to intercept the light or prospect of the dominant tenement. There is no such implied restraint on the use of property. On the contrary, every proprietor is entitled to make any use he pleases of his property, however detrimental to his neighbour's lights or prospect, provided such use is not wanton and emulous, or objectionable under the law of nuisance. This servitude from its nature seems to require writing towards its constitution; the exercise of a conterminous proprietor's right to intercept, being what is called *res meræ facultatis*, i.e., a right which he may exercise or not at pleasure, and which he will not lose *non utendo* for any period, however long. But a restraint on the free exercise of this right may be imposed by an express permission, or tolerance, of a certain number of windows looking into the adjoining property; [*Forbes*, 1724, M. 14505.] It would also appear that a servitude of light does not imply a servitude of prospect also, an ell's distance having in one case been held sufficient for light, where there was no servitude of prospect; [*Ogilvy*, 1678, M. 14534.] In connection with this subject it may be observed, that although a conterminous proprietor may strike out windows, so as to overlook his neighbour's grounds or garden, yet a restraint on this use of property, of the nature of a servitude, may also be created; [*Forbes, supra.*] or the party so

looked in upon (if his neighbour has no servitude *non officiendi luminibus*), may raise a screen or wall for the express purpose of obstructing the view from such windows, and securing his privacy; [*Glassford*, 1808, M. App. Property, No. 7. See also *Boswell*, 19 July 1881, 8 R. 986; *Russell*, 24 Feb. 1882, 9 R. 660.] See *Ersk.* B. ii. tit. 9, § 10; *Bell's Princ.* § 1005; *Stair*, B. ii. tit. 7, § 9; [*Rankine on Land-Ownership*, 380.] See *Æmulatio Vicini.* [*Servitude.*]

LIMITATION; in English law, a certain time, assigned by statute, within which an action must be brought. This matter is regulated by certain acts of Parliament, called statutes of limitation. [*Wharton, h. t.*] An impression has long been prevalent, that the limitation of the English corresponds exactly to the prescription of the Scotch law. But this seems to be a mistake, arising from the term prescription being applied to two distinct modes in which obligations are extinguished by lapse of time. In some cases where a certain period is elapsed from the time when the obligation was contracted, the *jus crediti* is presumed to be abandoned, or the obligation is presumed to be satisfied, and so extinguished. In other cases, after the lapse of a certain time, action is denied on an instrument or document of debt, without regard to the actual subsistence of debt. It is this latter mode which has been considered analogous to the English limitation; and, accordingly, recent authors have applied to it the term limitation, and confined the term prescription to the former mode, i.e., to the absolute extinction of the debt. In this sense bonds of caution are said to be limited to seven years, bills and notes to six, and holograph writings to twenty; that is to say, they are, on the lapse of these respective periods, of themselves incompetent grounds of action or of summary diligence; although the debt which they contain may be established by other proof. But when a debt is extinguished by the lapse of forty years, the obligation is said to be prescribed, not limited. The distinction is important, and recourse is frequently had to it in argument; but the custom has been so long established of classing all these modes of dissolving obligations under one name, that it would not be advisable, in a practical work like the present, to separate them. They are therefore all treated of in the article *Prescription.*

[LIMITED LIABILITY. See *Joint Stock Companies.*]

LINEN MANUFACTURE. [See 1661, c. 42; 1681, c. 12;] 1693, c. 29; 13 Geo. I. c. 26; 18 Geo. II. c. 24; 24 Geo. II. c. 31; [4 Geo. IV. c. 40.]

LINING, BRIEVE OF. This was one of the briefes not retourable. It was directed to the provost and bailies for settling the boundaries of disputed property within burgh,—“*lineari faciatis tenementum terræ de B.*”—“*et sic ut dictum tenementum per dictos limitores liniatum fuerit, ita illud de cæteris firmiter faciatis observari.*” The formal issuing of such briefes is now almost entirely in desuetude, the dean of guild and his council being judges in all such matters. [But see *Jack*, 1 April 1835, 1 S. & M'L. 77.] See *Stair*, B. iv. tit. 3, § 13; *Jurid. Styles*, i. 419. See *Dean of Guild*. *Dean of Guild Court*.

LIQUID. A liquid debt is a debt the amount of which is ascertained and constituted against the debtor, either by a written obligation or by the decree of a court. *Stair*, B. i. tit. 18, § 6; *Ersk.* B. iii. tit. 4, § 16; *Bank*. i. 492. See *Compensation*.

LIQUIDATOR; an officer appointed to conduct the winding-up of a company. He is appointed by the company in case of a voluntary winding-up, and by the court in case of a winding-up by, or under supervision of, the court. See *Joint Stock Companies*.

LIS PENDENS; an action depending in court. It is a defence in an action that the same claim is the subject of a *lis alibi pendens*. The defence of *lis pendens* between the parties, in a foreign court of competent jurisdiction, is no bar to a similar action being tried in Scotland. [See *Cochrane*, 2 Dec. 1857, 20 D. 178.] A distinction has been drawn between the case where the defender has deserted the foreign law-suit, and has retired to Scotland, and the case where he has found caution in the foreign country, and is going on with the suit there; and it is observed that in the latter case, *lis alibi pendens* is a good defence, though not in the former; [*More's Notes*, *infra cit.*] The English courts observe the same rule of rejecting the defence of *lis pendens* in Scotch courts. An action is depending whenever the summons is executed, and no other action can be raised till it is discharged; [*Aitken*, 7 July 1863, 1 Macph. 1038; *Kennedy*, 12 June 1875, 3 R. 813.] But the *lis pendens* must be regular, and the very same matter must be depending before another court. It is no bar to an action of reduc-

tion and declarator against the creditors of a person deceased, to have it found that the pursuers do not represent their parents, that an action against them, on the ground of representation, is in dependence before the sheriff. A party cannot resort to an action of damages in the supreme court, after having instituted a similar action on the same *species facti* in another court. Where an action is depending in an inferior court, and one on similar grounds is brought in the Court of Session, the plea of *lis alibi* cannot be competently obviated by [appealing] the former *ob contingentiam*; [*Greig*, 7 March 1835, 13 S. 635. The plea of *lis alibi* should be disposed of before the record is closed; *Renton*, 19 Nov. 1864, 3 Macph. 76. See also *Roy*, 15 Feb. 1868, 6 Macph. 422; *Nelson*, 26 June 1874, 1 R. 1093; *M'Aulay*, 13 Dec. 1873, 1 R. 307; *Wallace*, 20 July 1875, 2 R. 999; *Mags. of Arbroath*, 13 March 1883, 10 R. 767.] See *More's Notes to Stair*, xi.; *Bell's Com.* ii. 144; *Macfarlane's Jury Prac.* 54; *MacLaurin's Sheriff Process*, 78; *Brown's Synop. voce Lis alibi*; [*Ersk.* B. iv. tit. 1, § 63 (Nicolson's note); *Shand's Prac.* i. 200.] See *Defences*. *Exceptions*.

LITERARY PROPERTY. [See *Copyright*.]

LITIGIOSITY; is a tacit legal prohibition of alienation, to the disappointment of a begun or inchoate action or diligence, the object of which is to attain the possession, or to acquire the property of a particular subject, or to attach it in security of debt. Without this, or some similar legal provision, whenever a creditor proceeded to do diligence for attaching or securing the property of his debtor in payment of his debt, the debtor might instantly, and before the completion of diligence, dispose of his property and defeat the object of the creditor. [Lands are rendered litigious by inhibition, but only from the date of registration of the inhibition, or of a statutory notice thereof; 31 & 32 Vict. c. 101, § 155. And in like manner, a summons of reduction, of constitution, of adjudication, or of constitution and adjudication combined, creates litigiosity from the date of registration of a statutory notice of such summons; *ib.* § 159.] Litigiosity does not affect the terce; nor does it operate against deeds executed in virtue of previous obligations, but only against voluntary deeds; and, where there is undue delay or *mora* in proceeding with the action, or in completing the diligence, the litigiosity ceases to operate as a protection. See *Ersk.* B. ii. tit. 11, § 7;

tit. 12, §§ 16, 41, 65; [B. iii. tit. 6, § 11;] *Stair*, B. iii. tit. 1, § 18; *Bell's Com.* ii. 144, 185; *Bank.* iii. 41; *Bell on Purchaser's Title*, 368-70; [*Shand's Prac.* 276, 604, 692; *Kames' Eluc.* 121;] *Kames' Equity*, 307, 395. See *Adjudication*. [*Inhibition. Arrestment. Search of Incumbrances.*] *Diligence*.

LITISCONTESTATION; was a term applied, in the Roman law, to the case where both the parties to a suit had stated their pleas judicially. It was held as a species of contract between them, that they should abide by the decision of the judge on the facts as proved. By the earlier practice of the Court of Session, after the parties had stated their respective pleas, the court, after settling the relevancy, granted a warrant for proving the conflicting allegations, which was termed an act of litiscontestatation. Before litiscontestatation, and while no peremptory defence has been pleaded, the defender may withdraw, and allow decree to go out against him, which will be held to be a decree in absence; but after litiscontestatation, the defender cannot pass from his appearance, and the decree is held to be a decree *in foro contentioso*. In virtue of the judicial contract implied in litiscontestatation, the action, even though penal, is, after litiscontestatation, transmissible to heirs; for the parties, by an act of litiscontestatation, are held bound, as if by a contract (*quasi ex contractu*), to acquiesce in the decision founded on the proof that may be brought of the points stated in the act of litiscontestatation. [Litiscontestatation is now constituted by lodging defences; see 1672, c. 16, § 19.] See *Ersk.* B. iv. tit. 1, §§ 69, 70; *Stair*, B. iv. tit. 39; *Bank.* ii. 625; iii. 92; [*Shand's Prac.* ii. 542; *Mackay's Prac.* i. 442; ii. 16.] See *Abandoning an Action*.

LIVERY; in English law, is a delivery of lands, tenements, and hereditaments, unto him who has a right to the same; *Tomlins' Dict. h. t.* The corresponding term in Scotch law is *infestment*, or *sasine*.

LOADING. Under the contract of affreightment, the shipmaster and owners are bound to see that due preparation is made, and care taken of the goods in loading and unloading. Tackling must be supplied sufficient to guard against injury. The ship must be capable of receiving the sort of cargo for which she is engaged, and must not be overloaded, but room left for her own furniture, and the provisions of the crew, and the proper working of the vessel. A failure in any of these respects grounds

a claim against the estate of the owners and master. Thus, if a cask be accidentally staved in letting it down into the hold of the ship, a claim lies for the loss; or if a ship is freighted to go to America for timber, and, owing to the small size of her port-holes, she cannot take in the large timber of that country, a claim of damage will arise to the merchant, on the warranty that there shall be no obstruction to the loading. In receiving goods on the quay, or in sending his own boats for them, the master is responsible for them from the moment of delivery. In the timber trade, if it is the custom to float down the timber in rafts by the merchant's servants, the responsibility of the shipowners and master begins only with delivery into the ship. But if the master send his crew to float down the timber, he incurs the risk from the moment the timber is delivered to them. See *Bell's Com.* i. 596; *Brodie's Supp. to Stair*, 985; *Bell's Princ.* § 408. See *Shipping Law. Charter-Party. Warranty. Stowage*.

LOAN. In its general acceptation, this word signifies the agreement by which the use of anything is given, under condition of its being returned to the owner. But as some articles, as provisions, must be destroyed in their use, or given away, as money, a distinction was made in the Roman law between *mutuum* and *commodate*; the former term being applied to the loan of fungibles, or such articles as perish in the use; the latter to the loan of those subjects which must be individually returned to the owner, and which subjects must therefore be of a nature capable of being used without destruction or alienation. In *mutuum*, the property of the subject is transferred; and if the subject be destroyed, the borrower to whom the property is transferred suffers the loss; but in *commodate*, as the property remains with the lender, and the use merely is given to the borrower, any loss befalling the subject must be borne by the lender. [A loan of money beyond £100 Scots (£8, 6s. 8d. sterling) can only be proved by writ or oath of the alleged borrower. Even where the sum advanced is under £100 Scots, it is doubtful whether parole evidence is in all cases admissible in proof of loan; *Annand's Trs.* 6 Feb. 1869, 7 Macph. 526. A written acknowledgment of receipt of money, in the hands of the lender, infers an obligation to repay. But a mere signature on the back of a cheque or a deposit-receipt is not a writing sufficient to establish loan, nor even to render parole evidence admissible to prove the footing on which the

[money changed hands; *Haldane*, 7 March 1872, 10 Macph. 537; *Nimmo*, 22 Feb. 1873, 11 Macph. 446; *Anderson's Trs.* 23 Oct. 1883, 11 R. 35; *Neilson's Trs.* 17 Nov. 1883, 11 R. 119; *Robb*, 4 June 1884, 11 R. 881; *Welsh's Trs.* 18 March 1885, 12 R. 851; *Laidlaw*, 5 March 1886, 13 R. 724. See *Stair*, B. iv. tit. 43, § 4; *Ersk.* B. iii. tit. 1, § 18; [B. iv. tit. 2, § 20;] *Bell's Com.* i. 275; *Bell's Princ.* §§ 194, 2257; *Bank.* i. 354; *Ross's Lect.* i. 67; [*Dickson on Evidence*, § 594; *Kirkpatrick's Digest*, § 143; *Addison on Contracts*, 346. See *Commodate. Mutuum. Deposit. Deposit-Receipt. I.O.U. Horse.*]

LOANING; a way of passage and pasture for cattle, from one field or farm to another. See *Jamieson's Dict.*; *Ersk.* B. ii. tit. 9, § 12; *Rankine on Land-Ownership*, 374; *Chatto*, 1790, Hume's Dec. 734; *Malcolm*, 4 Feb. 1886, 13 R. 512, 514.]

LOBSTERS. In Scotland, the taking of lobsters is forbidden from 1st June to 1st September, under a penalty of £5 for each offence. Two justices may try such a cause summarily, and the penalty goes to the prosecutor; 9 Geo. II. c. 33, § 4. [It is doubtful whether a general grant of fishings, even followed by exclusive possession of lobster-fishings for 40 years, could confer on the grantee an exclusive right to the latter; *D. Portland*, 15 Nov. 1832, 11 S. 14. Probably such a right is incapable of appropriation. See 40 & 41 Vict. c. 42. See *Bell's Princ.* § 646; *Stewart on Fishing*, 69; *Rankine on Land-Ownership*, 228. See *Sea-Fisheries.*]

LOCALITY. The decree of the Teind Court, modifying a stipend to a minister from the teinds of the parish, is called a decree of *modification*; and the adjustment or apportionment of the aggregate stipend amongst the several heritors liable to pay it, is called a *locality*. This allocation of the stipend is made according to certain rules; and the decree of the court, approving of the allocation, is called a decree of locality; and, after such a decree has been pronounced, no heritor is liable in more than the proportion fixed by the decree. After the stipend is modified, and before a decree of locality has been pronounced, the minister may select any heritor he pleases, who will be liable in the first instance for the whole stipend, or at least as far as such heritor's teinds extend, although that should exceed his due proportion—the heritor so selected having, however, a claim of relief *pro rata* against the other heritors liable in the stipend; *Ersk.* B. ii.

tit. 10, § 47. [In practice, however, the payments of heritors are regulated by interim schemes of locality, subject to their right of relief when the final scheme is approved.] According to the present form of process, after an augmentation has been granted by the Teind Court (as explained *voce Augmentation*), the cause is remitted to the [Lord Ordinary on Teinds,] and the judicial process of locality then commences. The cause is enrolled before the Lord Ordinary; the minister selecting the Division of the court to which he chooses that the process shall belong. In this process, one of the first steps is to have a common agent appointed in the manner described *voce Common Agent*; and, at the same time, the heritors are ordained to produce their rights to the teinds within a time limited by the Lord Ordinary, under certification that, failing their doing so, a remit will be made to the teind-clerk to prepare a scheme of locality, either according to the proven rental or according to the rights and interests produced. This scheme, when prepared, is approved of by the Lord Ordinary as an *interim scheme*, according to which the stipend is paid, until a *final scheme* of locality is settled; and in the meantime, the minister is furnished by the common agent, at the expense of the heritors, with an extracted decree, approving of the interim scheme. The duty of the common agent is to obtain a full production of the heritors' rights to the teinds, and their decreets of valuation, if there be any; and thereafter to prepare a *State of the teinds*, classifying and arranging the various rights of the heritors. The order in which the teinds of the parish are allocated upon is explained *voce Teinds*; and, in practice, the final scheme of locality, with which the process is closed, as well as the interim scheme, is framed by the teind-clerk; the parties interested being allowed judicially to see and object to the scheme, and to their respective rights and valuations. This is, in general, a long protracted process; and during its dependence, the interests of the minister are regulated by the interim decree of locality. The judgment of the Lord Ordinary on the questions raised in the course of the process of locality, whether between the minister and heritors, or among the heritors *inter se*, is final in the Outer House, but subject to the review of the Division to which the cause belongs, by reclaiming note, lodged within twenty-one days after the date of the judgment. [See A.S. 22 June 1687, 9 July 1809, and

[12 Nov. 1825. Where, under an interim locality, the minister is unable, through surrender of teinds, or other causes affecting its efficacy, to operate payment to any considerable extent of the stipend awarded, the Lord Ordinary may appoint a new interim scheme of locality and state of arrears to be made up; A.S. 20 June 1838, § 1. Any heritor also, the state of whose teinds has been materially altered by decreets of valuation, or other circumstances, occurring subsequent to the approval of an interim scheme, may apply for a rectification of the locality; *ib.* § 2. The Lord Ordinary is empowered to lay the expense of such proceedings on the heritors whose action may have rendered them necessary; *ib.* § 3. The form of extracts of decreets of locality, and of warrants to charge thereon, is regulated by A.S. 4 March 1840. "Where payments of stipend are made under interim decreets of locality, there is an implied judicial contract among all the parties, that when the legal obligations of the heritors shall be determined by decret, their several interests shall be adjusted from the commencement of the process or processes, according to the true state of their rights and obligations, and that the claims of relief thus arising cannot be affected by the length of time during which the settlement of a final locality may have been delayed;" *per* Lord Moncreiff, in *Weatherstone*, 12 Nov. 1833, 12 S. 1. See also *Campbell's Trs.* 15 April 1878, 5 R. (H.L.) 119; and *E. Fife*, 23 Dec. 1887, 15 R. 238 (and observations there on case of *Campbell's Trs.*, as affecting the earlier case of *Weatherstone*). A judgment in one locality, on a point fairly contested, and having a material bearing in the process, is *res judicata* in a subsequent locality in the same parish; *Bonar*, 3 Nov. 1870, 9 Macph. 58; *Thomson*, 21 June 1872, 10 Macph. 849; *Dundas*, 27 Feb. 1880, 7 R. (H.L.) 19; *MacLachlan*, 13 June 1885, 12 R. 1107.] See *Ersk. B. ii. tit. 10, § 47*; *Ivory's Forms of Process*, ii. 444; *More's Notes on Stair*, ccxxxviii.; *Bank. ii. 60*; *Bell's Princ.* § 1162; [*Connell on Tithes*, i. 462; *Buchanan on Teinds*, 247.] See *Augmentation. Teinds. Proven Rental*.

LOCALITY OF A WIDOW. The lands liferented by a widow under a contract of marriage are called her locality lands. Where lands are given in this way, the widow has the profits of the lands, whatever they may be; and should any loss arise from the bankruptcy of tenants or

otherwise, she must bear the loss, without recourse on any other part of the husband's estate. Where power is given by deed of entail to provide wives, by way of locality, to a certain limited amount of yearly rent, it has been held that the rent payable at the date of the wife's infertment is the rule, and not that which may be payable from the lands given in locality at the period when the wife succeeds; [*Agnew*, 12 Dec. 1810, F.C.] And where a deed of entail allowed the heir in possession to provide his widow with a suitable liferent, "by way of locality, not exceeding the half of the present rent for the time," it was decided, that a locality which, at its date, did not exceed the half of the rent then payable, could not afterwards be restricted, though it came greatly to exceed the half of the free rents, and was alleged to be more than a suitable provision; [*Malcolm*, 21 Nov. 1823, 2 S. 514.] Leases of lands, over which a locality has been constituted in favour of a wife, granted *stante matrimonio* by her husband in the fair exercise of his right of administration, are effectual, notwithstanding his decease. But it is usual in marriage-contracts to insert a power to grant leases of such lands. See *More's Notes on Stair*, clxxxviii.; *Bell's Com.* i. 54, 682; *Bell's Princ.* § 1947; *Hunter's Landlord and Tenant*, i. 124; *Jurid. Styles*, i. 198; [*Fraser on Husb. and Wife*, ii. 1425.] See *Jointure. Contract of Marriage*. [*Terce.*]

LOCATION. The contract of location is that by which the use of any moveable subject is agreed to be given for hire; or by which a person gives his work or services on the same condition. He who lets his work, or the use of his property, is called the *lessor* or *locator*, and the hirer is called the *conductor* or *lessee*. The lessee is entitled to the mere use of the subject let, which subject must be restored to the owner at the stipulated time. The lessor is bound to procure for, and to continue the use and enjoyment of the subject to, the lessee; but if by some fatality, not imputable to himself, he shall not be able to put the lessee into possession, he cannot be sued *ex locato* for damages; and, on the other hand, he has no claim for hire. But if the lessee should be excluded by any fault or act of the lessor, the implied warrandice of the contract would render him liable in damages. The lessee is bound to put the subject to no other use than that for which it is let—to preserve it in good condition during the lease—to restore it to the lessor

—and to pay the rent or hire agreed upon. The risk of the property let to hire remains with the owner, who is at all times liable for the loss or injury it may sustain; unless where he can prove that the loss has occurred through the negligence, fraud, or fault of the lessee. Where a workman, who lets his labour for hire, from carelessness or want of skill, neglects or destroys the work, he is liable to his employer in damages; but if through no fault of his the work has not been performed, he is entitled to the full stipulated wages. A servant, who is hired to a precise day or time, is entitled to his full wages, though he should, by sickness, be disabled for service for part of that time. But if the inability should continue long, and a substitute should be required, the master will be discharged from his obligation to pay wages; and if the servant die before the term be elapsed, his wages are due only for the time he served. If the master should die, or if he turn off a servant without a reasonable cause, the servant has a right to full wages, and also to his maintenance for the term agreed on. But should the servant desert his service, he forfeits his wages and maintenance, and is farther liable in damages. See *Ersk. B. iii. tit. 3, §§ 14, 15, 16*; *Stair, B. i. tit. 15*; *More's Notes, xcv.*; *Bell's Com. i. 275, 481*; *Bank. i. 429*; *Bell's Princ. § 133*; *Ross's Lect. ii. 456*. See *Lease. Workman. [Master and Servant.]*

LOCH. See *Lake*.

LOCHMABEN. The small property called the *four towns of Lochmaben* is held by a tenure peculiar to itself. The proprietors are enrolled as *kindly tenants* in the rental book of the proprietor of the barony; and this constitutes a title of property which has been judicially recognised. [These tenants have been found to have such a right of property in the lands that they cannot be removed, and may dispose their rights to extraneous persons; *Kindly Tenants of Lochmaben*, 1726, M. 15195.] And although those rights have not been feudalised, yet they may be feudalised by the rentaller, of which there is an example in a case where an heritable bond by a rentaller was sustained as a good title, though the rentaller's own right had not been feudalised; *Irving*, 1795, M. 10316, Bell's Folio Cases, 145; see also *Mounsey*, 30 Nov. 1808, F.C. See *Ersk. B. ii. tit. 6, § 38*; *Hunter's Landlord and Tenant, i. 423*; *Bell on Leases, i. 89*; *Connell on Parishes*, 389. See *Kindly Tenants*.

LOCK or GOWPIN; is the perquisite of the servant in a mill, and consists of a small quantity of meal regulated by the custom of the mill. This is one of the sequels, or small services, as the multure is the payment due to the proprietor of the mill, in right of the thirlage. *Ersk. B. ii. tit. 9, § 19*; *Hunter's Landlord and Tenant, i. 263*; *Ross's Lect. ii. 171*. See *Thirlage*.

LOCKFAST PLACES. The opening of lockfast places is an aggravation of theft, and, when combined with house-breaking, is of a very serious nature. It is immaterial how the security has been overcome, provided the place was locked, and the key was not in the lock. *Alison's Princ. 296*; [*Macdonald, 36.*] As to the mode of obtaining access to lockfast places in order to execute diligence or the like, see *Open Doors*.

[LOCOMOTIVES.] The use of locomotives on public highways is regulated by 24 & 25 Vict. c. 70, 28 & 29 Vict. c. 83, and 41 & 42 Vict. c. 58. See *Smith*, 6 Dec. 1882, 10 R. (J.C.) 31; *Crichton*, 20 July 1886, 13 R. (J.C.) 99; *Cadenhead*, 14 July 1887, 14 R. (J.C.) 58.]

LOCUS DELICTI. It is necessary in criminal libels to specify the place where the crime was committed with as much precision as the circumstances will allow, and so as not to embarrass or perplex the panel. But in crimes the nature of which makes the place immaterial, this rule is relaxed; as well as when the place cannot be known to the prosecutor with certainty. [See *Indictment*, p. 525 b.] To warrant conviction, the place must be proved as set forth in the libel; but what amounts to such proof will depend entirely on the specialties of the case. See *Ersk. B. i. tit. 2, § 23*; *Hume, ii. 207*; *Alison's Prac. 257*; [*Macdonald, 301.*] See *Alibi*.

LOCUS PŒNITENTIÆ; a power of resiling from a bargain, before any act has been done to confirm it in law. It depends entirely upon the nature of the contract, what are the requisites of final and conclusive engagement in the particular case; but it is a general rule that, until final engagement, there is always a privilege to either party to retract his intention of becoming bound, however strongly expressed. Thus, in consensual contracts, if one make an offer of such a nature that an express acceptance of it is expected, he may withdraw the offer at any time before acceptance. The rule, however, is different where the offer is of a gratuitous nature, and acceptance being presumed is not ex-

pected to be expressed. In such a case there is no *locus poenitentiae*, since, as soon as the offer reaches the party to whom it is made, there is a *consensus in idem placitum*. There may be circumstances, however, in which even a gratuitous offer may be withdrawn, as when the person making it has intimated his desire that he should be informed whether or not it is accepted. Where there is an engagement among several individuals, each has *locus poenitentiae* until the consent of the last has been given. The parties have *locus poenitentiae* where writing is legally requisite, or has been stipulated, and has not yet been authentically executed; such is the case in a verbal agreement about heritage. But sometimes the parties may be bound by a present agreement, although it is their intention subsequently to complete the transfer in a more formal manner. And whenever there has been *rei interventus*, following upon an informal agreement, the *locus poenitentiae* is barred. [See *Smeaton*, 20 March 1871, 9 Macph. (H.L.) 24; *Allan*, 10 March 1875, 2 R. 587 (and cases there commented on).] See *Ersk.* B. iii. tit. 2, §§ 2, 3; *Stair*, B. i. tit. 10, § 9; B. ii. tit. 9, § 20; *More's Notes*, lxxv., xcvi.; *Bell's Com.* i. 345; *Bell's Princ.* § 25; *Hunter's Landlord and Tenant*, i. 362; *Kames' Equity*, 132. See *Rei Interventus. Homologation. Offer. Promise. Obligation. Contract.*

[LOCUS STANDI; the right of a party to appear and be heard in any question before a tribunal. The term is most frequently used in parliamentary practice, in reference to the appearance of a party who objects to the passing of a private bill. The question whether such a party has *locus standi* is decided by a court of referees, consisting of the Chairman of Ways and Means, and not less than three other persons appointed by the Speaker. See *May's Parl. Prac.* 812, 817; *Smethurst on Locus Standi*; *Clifford & Stephen's Practice and Reports*; *Clifford & Rickard's Reports*. See *Railway*.]

LODGERS. [See *Election Law*, pp. 368, 371.]

LODGING-HOUSES. It seems formerly to have been laid down, that the keepers of lodging-houses were, like innkeepers, &c., liable under the edict *Nautæ, caupones*, for the safety of goods and luggage brought into the house by lodgers; *May*, 1694, M. 9236. But there has been no recent decision to support the old precedent. And in *Walling*, 10 June 1825, 4 S. 83, "the Lords wished it to be distinctly understood

that they did not mean to decide the question, whether or not the keepers of lodgings fell under the edict." [See also *Scott*, 1800, Hume's Dec. 207.] The landlord's hypothec does not extend over the effects of lodgers in a lodging-house. See *More's Notes on Stair*, lvii.; *Bell's Com.* i. 498; *Bell's Princ.* § 236; *Hunter's Landlord and Tenant*, ii. 376. See *Nautæ, Caupones. Innkeepers. Furniture. [Hypothec.]*

LODGING OF PAPERS. See *Record. [Productions.]*

LOG-BOOK. The log-book of a ship is a book into which the contents of the log board are daily copied at noon, together with every circumstance deserving notice which happens to the ship, either at sea or in harbour. In the contract of insurance, as proof of loss, the log-book and protests taken on occasion of the loss, are expected to be furnished to the underwriters, to direct their inquiries; but they are not proofs on which the loss can be rested, unless they become so by the inevitable loss of other evidence. They may be used to contradict the evidence of the master or mate, whose statements they are; and the log-book, unless there be evidence of its loss, must be produced, as a check on the proceedings of the voyage. The log-book of a ship of war proves the time when her convoy sailed, or when a ship became part of her convoy. [See 17 & 18 Vict. c. 104, §§ 280-7.] See *Bell's Com.* i. 658; *Bell's Princ.* § 496; *Tait on Evidence*, 52; [*Dickson on Evidence*, §§ 1210, 1777; *Abbott on Shipping*, 129, 700, 953.] See *Evidence*.

LOOSING OF ARRESTMENT. An arrestment may be loosed on caution, wherever it is laid on for securing an illiquid debt; but in every case where the debt is constituted by the decree of a court, or where there is a decree of registration, it can be loosed only on consignation of the debt. From this rule, however, there are the following exceptions:—1. When the time of paying of the debt is not arrived, although the arrestment proceed on a decree, the arrestment may be loosed on caution. 2. An arrestment founded on a mutual contract may be loosed on caution. 3. So may an arrestment on a decree which has been suspended or turned into a libel. Arrestments *ad fundandam jurisdictionem*, are loosed upon the debtor's giving security *judicio sisti*; and where an arrestment appears to be nimious and oppressive, the Court of Session will grant warrant for loosing

arrestment, without caution or consignation. A letter from an arrester passing from arrestment, or holding it as recalled, is equivalent to a discharge, or to a loosing of the arrestment. A discharge granted by an arresting creditor to an arrestee does not discharge the common debtor of the remainder of the debt, the arrestee having been discharged only as such. [As to the distinction between the positions of a cautioner in a general loosing of arrestment, and of a cautioner in a special loosing, see *Macdougall's Tr.* 18 Nov. 1864, 3 Macph. 68. "In a special loosing the obligation is that a fund, attached in the hands of a particular arrestee, shall be forthcoming as soon as the arrester shall be in a position to demand payment from the common debtor. In short, the cautioner in a special loosing can state no objection that is not equally open to an arrestee, and of course an arrestee could never be heard to say that the claim of the arrester against the common debtor was not well founded. Nobody has any interest to say that but the common debtor himself. But in a general loosing the rights of parties are altogether different. A general loosing applies to no particular fund, to no particular arrestment, and to no particular arrestee. Its object is to set aside all arrestments used, or which may be used, by a creditor holding a warrant of arrestment; and it is quite obvious that the caution required in such a loosing must be different from that which is required in a special loosing. In a general loosing there is no means of imposing an obligation to make a particular fund forthcoming. The obligation required is a simple obligation *judicatum solvi*, and the bond of caution is framed accordingly;" *per* Lord J. C. Inglis.] See *Ersk.* B. iii. tit. 6, § 12; *Stair*, B. iii. tit. 1, § 34; *More's Notes*, ccxc. i.; *Bank.* ii. 199; [*Bell's Com.* ii. 66;] *Bell's Princ.* § 2279; [*Jurid. Styles*, iii. 314, and A.S. 11 July 1826, there quoted.] See *Arrestment*.

LORD'S DAY. See *Sunday*.

LORD; a title of honour given to a peer of the realm. It is applied also by courtesy to all the sons of a duke, and to the eldest son of an earl. See *Tomlins' Dict. h. t.* It is also used to the judges of the Court of Session, and to other persons honourable by their offices. The *Lord President* is the presiding judge in the Court of Session. See *Session, Court of. College of Justice*. See also *Justice-General. Justice-Clerk. Justiciary Court. Advocate,*

Lord. Articles, Lords of. Erection, Lords of. Regality.

[LORD CLERK REGISTER. The Lord Clerk Register is one of the officers of state for Scotland. He was at one time a judge in the Court of Session. He is Principal Keeper of the Signet, and has the right of appointing a deputy keeper and other officers in the Signet office. He officiates, with the assistance of one of the Principal Clerks of Session, at the election of representative peers for Scotland. See *Election Law*, p. 355. Prior to the recent statute mentioned below, the Lord Clerk Register had the custody and superintendence of the registers of all deeds and judicial proceedings kept in the Register House at Edinburgh (except those of the Justiciary Court), as well as of the ancient records there deposited. He had also a general superintendence of the registers of deeds and protests kept by the town-clerks, and of deeds, probative writs, and protests kept by the sheriff-clerks. Books for these registers were issued by him, and returns made yearly of their state, under 49 Geo. III. c. 42.

[By the statute 42 & 43 Vict. c. 44, important changes were made in the office of Lord Clerk Register. The office is now an honorary one, with no salary or emoluments attached to it; § 1. The Lord Clerk Register has the same status and precedence as formerly: he continues to be Keeper of the Signet, and has the same privileges and duties as before, in connection with the election of peers; §§ 2-4. But his rights and duties in regard to the public registers, records, and rolls of Scotland, and the keepers and other officers thereof, are transferred to the *Deputy Clerk Register*; who must be an advocate of ten years' standing, and is appointed by the Crown, with a salary of £1200; §§ 5, 6. The Deputy Clerk Register holds likewise, without special appointment or additional salary, the office of Registrar-General of Births, Deaths, and Marriages in Scotland; § 7. He may act in place of the Lord Clerk Register, in the event of his necessary absence, or of a vacancy in the office, at the election of representative peers; § 4. Judicial orders for production or exhibition of writs in public custody may be made upon the Deputy Clerk Register, instead of the Lord Clerk Register, as formerly; § 10. See *Mackay's Prac.* i. 147.]

LORDS, HOUSE OF. The House of Lords is the second branch of the Legislature, consisting of the Lords Spiritual

and Temporal, assembled in one house. The nobility of Scotland in the Imperial Parliament is represented by sixteen noblemen, chosen from the body of the Scotch nobility. See *Election Law. Parliament. [Peer. Appeal to House of Lords.]*

LOST. Things lost (other than strays and waifs, regarding which there are certain peculiarities elsewhere noticed) may, after all means have been taken to advertise them, be possessed by the finder without fault; and if not claimed he may dispose of them if they cannot be conveniently preserved without hazard. [The finder of lost property is entitled to it against all the world except the real owner; *Bridges*, 21 L.J.Q.B. 75; *Guthrie's Sher. Court Cases*, 438; *American Reports*, xxiii. 528; xxvi. 380; xxxv. 664; xlii. 600. But to appropriate articles found, even on the highway, knowing who is the owner, is theft; *Smith*, 1838, 2 Swint. 28.] The loser has a right to restitution on identifying his property, at any time within the long prescription; and if the finder sell the subject to a third party, that third party must, if called upon, restore it to the owner, and take his recourse under the warrandice against the seller. The effect of a personal exception raised against the owner, in consequence of neglect implying dereliction, must depend upon specialties and the degree of care with which the finder advertised. The possession of moveables presumes the right of property, and when the alleged true owner comes to vindicate his property, from a person in whose possession it is found, it is not sufficient for him to prove that it once belonged to him; he must also prove that he lost the possession, either by the fraud of some other party, or upon some footing which did not deprive him of the ownership. When title-deeds are lost, the remedy provided is an action of proving the tenor. See *Proving of the Tenor*. [When a summons, petition, or other original writ or pleading in an action is lost or destroyed, a copy thereof, proved and authenticated to the satisfaction of the court before whom the cause is depending at the time, is held equivalent to the original for the purposes of the action; 31 & 32 Vict. c. 100, § 15. But for other purposes, a proving of the tenor is still necessary. See *Couper*, 20 July 1869, 7 Macph. 1130; *Cofton*, 13 March 1875, 2 R. 599.] Should the finder of a bill transfer it to another party for value, the acquirer has, under certain modifications, a full right to it.

But an action lies to recover the document or its value from one proved to have found it. Bankers incautiously changing lost or stolen notes have, in several cases, been found liable for the amount; but this is a question necessarily depending upon specialties—the suspicious circumstances in which the bank-note was offered—the unusually large amount—the notices given of the loss or robbery, and the like. Although a bill or note should be lost or destroyed, even while in the drawee's hands, the creditor must protest it for non-acceptance and non-payment, as if it were extant, and must give due notice of its dishonour to all the previous parties, otherwise he will lose his recourse against them. The protest, in such a case, may be made on a copy of the bill or note. In Scotland, the tenor of a lost bill may be established by a process for proving the tenor, in which the pursuer must first prove the *casus amissionis*, and he will then be entitled to prove the tenor, in the same manner as is usually done in such processes. [See further, as to lost bills, the Bills of Exchange Act, 1882, §§ 69, 70, quoted *supra*, p. 120;] also *Thomson on Bills*, 202. See *Stair*, B. i. tit. 7, § 3; tit. 11, § 2; *More's Notes*, xlviii., cli.; *Ersk.* B. ii. tit. 1, § 12; *Bank. B. i. tit. 8, § 4*; [*Bell's Princ.* § 1291.] See *Dereliction. [Strays.]*

LOTTERY. State lotteries are a kind of public game at hazard, resorted to by Government in order to raise money for the service of the State. In Britain, these lotteries were sanctioned by Parliament, and managed by Commissioners named by the Lords of the Treasury for that purpose. In the reign of Queen Anne, it was thought necessary to suppress lotteries as public nuisances; but after that time, they were licensed by act of Parliament, under various regulations. The act passed in 1778 restrains any person from keeping an office for the sale of tickets, shares or chances, or for buying, selling, insuring or registering, without a licence. The act also contains certain regulations for the prevention of fraud, prohibits the division of tickets into more than sixteen shares, and provides for the transacting of business in the lottery offices. A supplementary act was passed in 1793 to prevent the frauds committed by insuring tickets; but at length, state lotteries, which had been found to be highly prejudicial to public morals, were abated by a Treasury minute, which provided, that from and after 18th October 1886,

they should cease and determine; and this abolition was accompanied with a prohibitory declaration against all attempts on the part of individuals to revive or continue them in any mode or form whatsoever. [See 4 Geo. IV. c. 60; *M'Allister*, 20 March 1878, 5 R. (J.C.) 30; *Sykes*, 11 Ch. D. 170; *Taylor*, 11 Q.B.D. 207.] In the year 1831, a private act of Parliament (1 & 2 Will. IV. c. 8) was passed, under colour of which certain street property in Glasgow was disposed of by way of lottery; but it is now well understood that this act was passed *per incuriam*, and in ignorance of its true purport, and that any future attempt of a similar description would be unsuccessful. See 4 & 5 Will. IV. c. 37, by which the Glasgow street-lottery was brought to an end. It would rather appear that private lotteries may be removed as a nuisance at common law, but the point has not been decided. By 6 & 7 Will. IV. c. 66, [amended by 8 & 9 Vict. c. 74,] the advertisement in Britain of foreign and other illegal lotteries is prohibited, under a penalty of £50. [In the case of art unions, the legislature has authorised the distribution by lottery of works of art; 7 & 8 Vict. c. 109; 8 & 9 Vict. c. 57; 9 & 10 Vict. c. 48; 21 & 22 Vict. c. 102. Except in such cases as are covered by these acts, the court will not enforce delivery of a subject won in a lottery; *Christison*, 25 Oct. 1881, 9 R. 34. See *Stephen's Com.* iv. 256.]

LUCRATIVE SUCCESSION. The passive title of *præceptio hæreditatis* is that whereby, [according to the former law,] an heir-apparent who accepted gratuitously of a grant from his ancestor of any part, however small, of the estate to which he was to succeed *qua* heir, was thereby subjected to the payment of all the debts of the ancestor contracted prior to the grant. But the heir, before he incurred this passive title, required to be successor *titulo lucrativo*, by a lucrative title; that is, he required to have received the grant gratuitously; for wherever an heir had made a *bona fide* purchase from his ancestor, not struck at by any of the bankrupt statutes, he did not incur any passive representation. Where, however, as in this case, the transaction was *inter conjunctas personas*, the mere recital of onerous causes in the deed was not held sufficient proof of onerosity. If the price paid by the heir came near the value of the property which he had thus acquired, he escaped the penal consequences of this

passive title; but prior creditors of the ancestor might set aside the right under the act 1621, c. 18, in so far as it appeared to be gratuitous—the heir being in that case liable only in *quantum lucratus*. [But, by 37 & 38 Vict. c. 94, § 12, an heir is not now liable for the debts of his ancestor beyond the value of the estate of such ancestor to which he succeeds.] See *Ersk.* B. iii. tit. 7, §§ 87–89; *Stair*, B. iii. tit. 7; *More's Notes*, cccxxviii.; *Bank.* ii. 374. See *Conjunct and Confident. Passive Titles.* [*Behaviour as Heir.*]

LUGGAGE. [Carriers and innkeepers are liable for the safety of the luggage of travellers, as explained in the articles *Carriers.* *Innkeepers.*]

[LUNATIC] is one who is seized with periodical fits of frenzy. The treatment of lunatics is regulated by the act 20 & 21 Vict. c. 71, as amended by 25 & 26 Vict. c. 54, 29 & 30 Vict. c. 51, and 34 & 35 Vict. c. 55. The word lunatic is defined by the leading act (§ 3) to mean “any mad or furious or fatuous person, or person so diseased or affected in mind as to render him unfit in the opinion of competent medical persons to be at large, either as regards his own personal safety and conduct, or the safety of the persons and property of others or of the public.” The same act (§§ 4–21) instituted a general Board of Lunacy for Scotland; which was at first appointed for five years, but was permanently established by 25 & 26 Vict. c. 54, § 25. The Board consists of five commissioners, two paid and three unpaid, with a secretary. They have the superintendence and management of all lunatic asylums, public and private, with power to make and enforce regulations, and to grant or refuse licences to proprietors of private asylums. The two paid commissioners are directed to visit twice a year all public, private, and district asylums, and every house in which any lunatic is detained by order of a sheriff, and to record and communicate to the Board the particulars of their inspection. The licensing of private asylums is regulated by §§ 27–33 of the leading act, and by §§ 3 *et seq.* of 25 & 26 Vict. c. 54. A system of district asylums was instituted by §§ 49 *et seq.* of the leading act. These district asylums are vested in district Boards of Lunacy, the constitution of which is now regulated by 40 & 41 Vict. c. 53, § 61. Provision is made for altering the lunacy districts, by 50 & 51 Vict. c. 39. The admission of lunatics to asylums is regulated by 25 & 26 Vict. c.

[54, § 14, and 29 & 30 Vict. c. 51, § 4. An order of the sheriff of the county in which the lunatic resides, or in which the asylum is situated, may be obtained on presenting a petition, in form prescribed, along with two certificates, bearing date within fourteen clear days preceding the date of the petition, by medical men having no immediate or pecuniary interest in the asylum. No superintendent of an asylum may receive or detain any person as a lunatic, without production of an order by the sheriff, dated within fourteen clear days prior to the reception (or twenty-one days, if granted by the sheriff of Orkney and Shetland); except that a lunatic may be detained for three days, without a sheriff's order, if his case is certified to be one of emergency by one medical man, who may be the medical attendant of the asylum. The case of persons voluntarily entering an asylum is provided for by 29 & 30 Vict. c. 51, § 15. Any person may, with the consent in writing of one of the Commissioners in Lunacy, be entertained in an asylum as a boarder; but no such boarder may be detained for more than three days after giving notice of his desire to leave the asylum, unless on certificates of insanity and a sheriff's order. With regard to pauper lunatics, see 20 & 21 Vict. c. 71, §§ 73-79, 95, 112; 25 & 26 Vict. c. 54, § 8; and 29 & 30 Vict. c. 51, §§ 8-11. Provisions with respect to the property of lunatics are contained in 20 & 21 Vict. c. 71, §§ 81-84, and 29 & 30 Vict. c. 51, § 17. The liberation of lunatics is provided for by 20 & 21 Vict. c. 71, §§ 92-94; 25 & 26 Vict. c. 54, § 16; and 29 & 30 Vict. c. 51, §§ 9-12. Dangerous and criminal lunatics are dealt with by 25 & 26 Vict. c. 54, § 15; 29 & 30 Vict. c. 51, §§ 12, 19; 34 & 35 Vict. c. 55. The Lunacy Acts are printed together in the Appx. to *Reid's Poor Law Digest*, p. 482. See *Insanity*.]

LYON-KING-AT-ARMS. This officer

takes his title of Lyon from the armorial bearing of the Scottish kings, the lion rampant. The officers serving under him are heralds, pursuivants, and messengers. The ancient duty of this officer was to carry public messages to foreign states; and it is still the practice of the heralds to make all royal proclamations at the cross of Edinburgh. The jurisdiction given to the Lyon-King-of-Arms by the acts 1592, c. 127, and 1672, c. 21, empowers him to inspect the arms and ensigns-armorial of all the noblemen and gentlemen in the kingdom, to distinguish the arms of the younger branches of families, and to give proper arms to virtuous and well-deserving persons; to matriculate such arms; and to fine those who use arms which are not matriculated, in £100 Scots, with the forfeiture of the goods and furniture on which the arms are represented. The Lyon-King-at-Arms may deprive or suspend messengers by the advice of the Court of Session; and he may fine them to the extent of the sum for which, at their admission to the office, they found caution. [The Court of Session may deprive the Lyon-King-at-Arms of office by its own authority; A.S. 4 Nov. 1738.] It has also the power of reviewing the decision of the Lyon Court, as to the matriculation of arms; [see *Hunter*, 31 Jan. 1882, 9 R. 492.] But a reduction of a matriculation of arms is incompetent at the instance of a party who does not claim right to the arms in question; [*Macdonell*, 20 Jan. 1826, 4 S. 371; *Cuninghame*, 13 June 1849, 11 D. 1139. The Lyon-King-at-Arms is now required to discharge his duties personally, and not by deputy; and his office and emoluments are further regulated by 30 Vict. c. 17.] See *Ersk. B. i. tit. 4, § 32*; *More's Notes on Stair*, cccxx.; *Bank. ii. 507*; *Kames' Equity*, 316; [*Mackay's Prac. i. 233, 270.*] See *Arms. Messengers-at-Arms*.

M

MACER. The mace-bearers are officers attending on the Courts of Session, Teinds, and Justiciary. They are nominated by the Crown, or by a person deriving right from the Crown; and, properly speaking, they are the servants of the courts, and the attendants on the judges on the bench. It is the duty of the macers to preserve silence in the court, to execute the orders

of the judges, to call the rolls of court, and to execute such warrants for the apprehension of delinquents, &c., as are addressed to them. When processes, after being borrowed, are not returned in proper time, they, as well as messengers-at-arms, may execute the captions issued against the borrowers to force them back. See *Caption, Process*. The fixed salary of each