G

GABLE. The builder of a mutual gable was found to have, at common law, a preferable claim upon the estate of the conterminous proprietor, who had become bankrupt without paying his portion of the expense; *Wallace*, [1808, M. App. Personal and Real, No. 4. According to this case (which has ruled several subsequent decisions), when one of two conterminous feuars builds a mutual gable, resting partly on the unbuilt *solum* of the adjacent ground, the gable becomes the sole property of the builder, with power, however, to the adjoining feuar to acquire a *pro indiviso* right in the gable, on paying one-half of the expense of its erection. Until such payment, the builder has a right to prevent the adjoining feuar from using the gable, or adjecting to it any building. This right in the builder is a real right, which transmits, without special assignation, to a singular successor in the property of the tenement; *Hunter*, 2 June 1846, 8 D. 787. In like manner, the obligation to pay the price transmits against a singular successor in the adjoining feu, and exists as a ground of liability from the time the mutual gable was erected, though the term of payment does not arrive, until use is made of the gable by building on the adjoining ground; *Law*, 30 Nov. 1855, 18 D. 125. The precise nature and extent of the rights of parties in a mutual gable have been discussed in several recent cases, and may admit, in some aspects, of still further elucidation. See *Rodger*, 10 June 1873, 11 Macph. 671; *Lamont*, 11 June 1875, 2 R. 784; *Begg*, 26 Oct. 1875, 3 R. 35; *Sinclair*, 17 Oct. 1882, 10 R. 45; and other cases in the *Digest*. See also *Bell's Princ.* § 1078; *Rankine on Land-Ownership*, 530. See *Common Property*.]

GALENES; a kind of amends, assythment, or satisfaction for slaughter. *Skene*, *h. t.*

GAME LAWS. Under the title *game* are comprehended wild beasts and fowls, which are the object of the chase or of hunting. The property of game is acquired by occupation alone; for while it is free, and in a state of nature, it can belong to none. But game originally wild may be deprived of their natural liberty, and thus become the property of the person who has brought them under his power. [See *Wilson*, 2 Feb. 1872, 10 Macph. 444, 2 Couper, [183.] The right of hunting or of killing game is regulated by various laws; but, independently of those laws, the property of game belongs to the person who shall first kill or apprehend it; and those laws, even although enforced by penalties, do not deprive the person of the property of the game, unless where such deprivation is part of the penalty annexed to the offence. [See *Scott*, 18 Jan. 1853, 15 D. 288.]

The game laws are a system of positive regulations introduced and confirmed by several statutes, the provisions of which ascertain and establish certain qualifications to kill game, and impose penalties as well on such qualified persons, for irregularities in killing game, as on unqualified persons, for hunting or killing game at all. In *Pollock, Gilmour & Co.* 5 June 1828, 6 S. 913, the Bench recognised it as the law of Scotland, that the right of killing game, considered as a real right, is an incident of landed property. A proprietor possesses it on his own estate, [at common law, to the exclusion of all others.] Or he may possess it on the estate of another person by virtue of a servitude, his own estate being the dominant tenement. [But a statutory qualification was introduced by 1621, c. 13, viz.,] the possession of a ploughgate of land within Scotland; and this still subsists; so that one who is not himself qualified, may not kill game beyond the estate of a qualified proprietor who gives him authority. [See *Trotter*, 8 July 1809, F.C. The occupation of land as tenant, even under a 999 years' lease, does not qualify under the statute; *E. Hopetoun*, 17 Jan. 1810, F.C.; *Welwood*, 11 Feb. 1874, 1 R. 507. But "by the constant usage of Scotland, a qualified person may grant permission to shoot over his own lands to a person who is not himself qualified;" *Trotter*, *supra*. The right may be conveyed either in lease or in feu-right, or it may be reserved in a disposition of land; *E. Aboyne*, 10 July 1819, 6 Pat. 380, 444. In *Pollock, Gilmour & Co.*, *supra*, it was held that a lease of game is a mere personal privilege, and not protected by the act 1449, c. 18. See also *Birkbeck*, 22 Dec. 1865, 4 Macph. 272 (Lord Barcaple). But it has been repeatedly held that rent derived, or derivable, from shootings is to be included in estimating the value of an estate; *Macpherson*, 13 Aug. 1846, 5 Bell's App. 280;

[*Menzies*, 10 March 1852, 14 D. 651; *Leith*, 10 June 1862, 24 D. 1059; *Stewart*, 14 Jan. 1881, 8 R. 381. The tenancy of shootings has even been held to confer the parliamentary franchise; *Paterson*, 12 Nov. 1879, 7 R. 17. The right is now regarded, not as a mere personal privilege, but as a right of occupation; see Lord Pres. Inglis, in *Stewart*, *supra*.

In addition to the qualification required by the act of 1621, any one intending to use means for taking or killing game, must previously pay a certain annual tax or licence duty. (See next article.) The taking out the licence does not supersede the necessity for the above qualification; and the possessor of both is not entitled to pursue game upon other ground than his own, or that of one who gives him authority. By 13 Geo. III. c. 54, an unqualified person having in his possession at any season, without leave of a qualified individual, any hares, heathfowl, muirfowl, partridges, pheasants, quails, snipes, or ptarmigan, shall forfeit £1 for a first, and £2 for any subsequent offence. [See *Downs*, 28 Feb. 1882, 9 R. (J.C.) 11.] Whoever takes, kills, uses, or has in his possession, game-birds during close time, forfeits £5 for each bird; but pheasants [or partridges] taken in lawful time, and kept afterwards in a mew or breeding-place, are excepted. [Dealers are allowed to possess for ten days after close time begins; 1 & 2 Will. IV. c. 32, § 4, applied to Scotland by 23 & 24 Vict. c. 90, § 13.] For muirfowl or ptarmigan, the close time is from 10th December to 12th August; for heathfowl, from 10th December to 20th August; for partridges, from 1st February to 1st September; for pheasants, from 1st February to 1st October. [Prosecutions under the act of Geo. III. must be commenced within six months after the offence; *Farquharson*, 3 Feb. 1886, 13 R. (J.C.) 29. They may be brought before the sheriff; 40 & 41 Vict. c. 28; who may modify the penalties; 44 & 45 Vict. c. 33, § 6.] The buying and selling of game is now lawful, to the extent that a qualified person may buy and sell, and an unqualified person may buy from, and sell to, a qualified person. A tenant cannot hinder his landlord, or those having his leave, from shooting or hunting over his farm, at least if they do not go through standing corn, or where injury may be anticipated; but he has a claim against such persons for actual damage done. [And a tenant may be entitled to claim damages from the landlord, where the latter has increased the game on the farm beyond a fair average stock; *Wemyss*, 2 Dec. 1847, 10 D. 194; *Morton*, 30 Nov. 1867, 6 Macph. 71; *Inglis*, 7 Dec. 1871, 10 Macph. 204; *Cadzow*, 10 July 1875, 2 R. 928; *Byrne*, 16 Dec. 1875, 3 R. 255. "The true ground of damage seems to be, not that the game is abundant, but that its abundance has been materially increased since the date of the lease, in consequence either of the active measures of the landlord, or of his failure to keep down the burden; which last circumstance must be held as equivalent to his act, as the right so to keep it down is one expressly withheld from the tenant;" *per* Lord Fullerton, in *Wemyss*, *supra*. See act of 1877, narrated *infra*.

[The various statutes give different enumerations of the animals deemed to be game. "A collation of the older statutes seems to point at these—deer of all sorts, hares, grouse, black game, partridges, ptarmigan, and perhaps capercailzie and pheasants (only mentioned in 1594, c. 214);" *Rankine on Land-Ownership*, 131, note. But in construing modern acts, such as the Game Licence Act, which give no special definition of game, the enumeration contained in the English Game Act (1 & 2 Will. IV. c. 32, § 2), and the Night Poaching Act (6 Geo. IV. c. 69, § 13), would probably be adopted, viz.:—hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. Rabbits are not game; *Moncrieff*, 13 Feb. 1828, 6 S. 530; *Gosling*, 9 March 1878, 5 R. 755.] Foxes may be pursued as vermin, even upon the grounds of others. See *Foxes*. Deer-stalkers, who were at one time punishable with death and the confiscation of moveables, are, by 1587, c. 59, ratified by 1597, c. 270, declared to incur the punishment of theft. [For the statutory provisions against night-poaching and trespassing by day in pursuit of game, see *Poaching*.

[*The Acts of* 1877 *and* 1880.—These have introduced certain modifications of the law, in favour of occupiers of land, with a view to their protection against injury to their crops from game. The Game Laws Amendment Act, 1877 (40 & 41 Vict. c. 28), provides as follows:—Where under any lease made subsequently to the commencement of this act, or where by presumption of common law upon any land occupied under a lease made subsequently to the commencement of this act, the lessor shall reserve or retain the sole right of hunting, killing, or taking rabbits, [hares, or other game, or any of them, the lessee shall be entitled to compensation for the damage done to his crops in each year by the rabbits and hares or other game to which the lessor may have reserved or retained the sole right, in excess of such sum as may have been set forth in the lease, as the amount of annual damage for which it is agreed no compensation shall be due; and if no such sum shall be set forth in the lease, then in excess of the sum of forty shillings. During the currency of any lease the parties thereto may from time to time, by any agreement in writing, increase or diminish the estimated amount of the annual damage aforesaid; § 4. In the event of a lessee in occupation of land under a lease made subsequently to the commencement of this act being of opinion that the damage done to his crops by rabbits or hares or other game to which the lessor may have reserved or retained the sole right, in any one year during the lease, such year being reckoned from Whitsunday to Whitsunday, has exceeded the sum named in the lease, or if no sum is therein named, the sum of forty shillings, he shall intimate this opinion to the lessor in writing, stating at the same time that it is his intention, failing agreement as to the amount of such excess of damage, or a reference to arbiters to settle the same, to take steps to recover the amount of such excess of damage in the form and manner hereinafter provided; § 5. When a lessor and lessee agree in writing to refer to arbitration any claim of damage arising under this act, or have agreed so to do in any lease made subsequently to the passing of this act, the following provisions shall have effect:—(1) Either party having in writing named an arbiter, and given notice of the nomination to the other party, and called on him to name an arbiter, and the other party having for fourteen days after such call failed to comply therewith in writing, the arbiter nominated may settle the claim as if he had been appointed by both parties, and his award shall be final. The office of every such arbiter shall be held to endure until the term of Whitsunday next following the date of his appointment, and thereafter until he shall have given his award or awards with reference to all claims for any damages as aforesaid arising during the year ended at the same term: (2) Where two arbiters are named by the parties the arbiters shall, before proceeding to the arbitration, name in writing an oversman or umpire who shall be en-[titled finally to decide on the claim in case of their disagreement: (3) The reference, the claim, the nomination of an arbiter or oversman, and the award, may be validly made by any writing, however informal, admitted or proved to be genuine: (4) No proceedings under this section shall be void for want of form. In an arbitration under this section the course of the procedure and the inquiry shall be such as the person or persons acting therein shall direct, and the award therein shall be final, and though informal may be enforced by action in any court of law, according to the true construction and tenor thereof: (5) Any notice under this section shall be in writing, and may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in Scotland, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course, and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice to be served; § 6. With regard to actions for the recovery of damages under this act, the following provisions shall have effect: (1) No such action at the instance of a lessee against a lessor shall be competent unless the lessee shall have given to the lessor notice in writing of his intention to bring the same, in the case of damage done to growing crop, except grass for pasture, at least three weeks before the crop is reaped or raised, and in the case of damage done to crop reaped or raised, at least one week before it is removed from the land, and in the case of damage done to grass for pasture at least fourteen days before any person to be called as a witness by the lessee to value the damage shall inspect the crop with a view of valuing such damage: (2) Any such action may be brought in the sheriff's small debt court of the county within which the lands or any part thereof are situated, without regard to the amount sued for in name of damage, provided that such amount shall not exceed the sum of £50 sterling, exclusive of expenses and fees of extracts, and all the provisions of the Small Debt Acts shall apply to any such action so brought in the same manner as if such action were brought for a sum not exceeding £12 sterling: provided always, that the sheriff-substitute [shall, whenever required to do so by either party, take and record the evidence led before him, in which case an appeal shall lie to the sheriff, whose judgment shall be final: (3) Where the amount sued for exceeds the sum of £50 the action shall be brought in the ordinary sheriff court; § 7. From and after the commencement of this act, it shall be lawful for any lessee, being in the actual occupation of lands and having the right of killing hares thereon, by himself or by any person directed or authorised by him in writing according to the form in schedule annexed, or to the like effect, to pursue, take, kill, or destroy any hare then being in or upon any such land without obtaining any game certificate; § 8. (See next article.) Provided always, and be it enacted, that no lessee shall be authorised to grant or continue, under the provisions of this act, authority to more than one person at one and the same time to kill hares upon the land occupied by him within any one parish: provided also, that the lessee shall intimate to the lessor of the said lands, or his factor, or any one to whom he may have instructed the lessee to transmit such intimation, the name of the person so authorised by the lessee; § 9. From and after the commencement of this act, all offences against the Game Acts shall be prosecuted subject to the following provisions; that is to say, (1) Any prosecution which is at present competent either before the sheriff or the justices of the peace for the county shall, from and after the passing of this act, be competent only before the sheriff: (2) Any prosecution which is at present competent only before the justices of the peace for the county shall, from and after the passing of this act, be competent only before the sheriff, who shall have all jurisdiction, authority, and power necessary for entertaining and determining the same; and all forms, procedure, and provisions applicable to prosecutions before justices of the peace shall, except as hereinafter provided, be applicable, *mutatis mutandis*, to prosecutions before the sheriff as aforesaid: (3) Where in any county there is more than one resident sheriff-substitute any prosecution under the Game Acts shall be brought before the court of a sheriff-substitute within whose district the offence is alleged to have been committed, or before the sheriff sitting in such court: (4) Offences which are now cognisable only by the Court of Justiciary shall hereafter be prosecuted only before such court; § 10. [From and after the commencement of this act, any person who has been or shall be prosecuted for any act or acts as constituting an offence under any one or more of the Game Acts, shall not be liable to be again prosecuted for the same act or acts as constituting an offence under any other of the Game Acts: provided always, that nothing in this section shall apply to any prosecution under any enactment relating to the Inland Revenue; § 11. This act shall not prejudice or affect any lease of land or any lease or agreement about game existing at the date of the commencement of this act; § 12. The word "game," in this act, "is interpreted in such a way as to include bustards, grouse, black game, landrail, partridges, pheasants, quail, snipe, wild duck, woodcock, deer, hares, and rabbits;" § 3 and sched. I.; *Rankine on Leases*, 426.

[The Ground Game Act, 1880 (43 & 44 Vict. c. 47), provides as follows:—Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land: provided that the right conferred on the occupier by this section shall be subject to the following limitations: (1) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing (but see *Jack*, 18 Feb. 1887, 14 R. (J.C.) 20). (*a*) The occupier himself and one other person authorised in writing by such occupier shall be the only persons entitled under this act to kill ground game with fire-arms; (*b*) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such lands, and any one other person *bona fide* employed by him for reward, in the taking and destruction of ground game (see *Stuart*, 13 Nov. 1884, 12 R. (J.C.) 9; *Niven*, 10 Feb. 1888, 15 R. (J.C.) 42); (*c*) Every person so authorised by the occupier, on demand by any person having a concurrent right to take and kill ground game on the land of any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and in default he shall not be deemed to be an authorised person. (2) A person shall not be deemed to be an occupier of land for the purposes of this act by reason of his having [a right of common over such lands; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months. (3) In the case of moorlands, and uninclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise the rights conferred by this section only from the 11th day of December in one year until the 31st day of March in the next year, both inclusive; but this provision shall not apply to detached portions of moorlands or uninclosed lands adjoining arable lands, where such detached portions of moorlands or uninclosed lands are less than twenty-five acres in extent; § 1. Where the occupier of land is entitled otherwise than in pursuance of this act to kill and take ground game thereon, if he shall give to any other persons a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by § 1 of this act. Save as aforesaid, but subject as in § 6 hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this act had not passed; § 2. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void; § 3. The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorised by him, as if he had a licence to kill game; provided that nothing in this act contained shall exempt any persons from the provisions of the Gun Licence Act, 1870; § 4. Where at the date of the passing of this act the right to kill and take ground game on any land vested by lease, contract of tenancy, or other contract *bona fide* made for valuable consideration, in some person other than the occupier, the occupier shall not be entitled under this act, until the determination of that contract, to kill and take ground game on such land. And in Scotland, when the right to kill and take ground game is vested by operation of law or otherwise in some person other than the occupier, the occupier shall not be entitled by virtue of this act to kill or take ground game during the currency of any lease or contract of tenancy under which he holds at the passing of this act, or during the currency of any contract made *bona fide* for valuable consideration before the passing of this act whereby any other person is entitled to take and kill ground game on the land. For the purposes of this act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this act. Nothing in this act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this act by virtue of any franchise, charter, or act of Parliament; § 5. No person having a right of killing ground game under this act or otherwise shall use any fire-arms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding £2; § 6. See *Brown*, 20 July 1882, 9 R. 1183; *Fraser*, 21 Dec. 1882, 10 R. 396. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any act authorising the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this act; § 7. See *Ferguson*, 12 June 1885, 12 R. 1083. For the purposes of the act, the words "ground game" mean hares and rabbits; § 8. It is further provided that a person acting in accordance with the act shall not thereby be subject to any proceedings or penalties in pursuance

[of any law or statute; and that nothing in the act shall authorise the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any statute in force at the date of the act; §§ 9, 10.]

On this subject, see *Craig*, B. ii. dieg. 8, § 13; *Stair*, B. ii. tit. 3, §§ 68, 76; *Ersk.* B. ii. tit. 6, § 6; *Bank.* i. 593; ii. 571; *Bell's Princ.* § 948; *Bell on Leases*, i. 434; ii. 395; *Hunter's Landlord and Tenant*, i. 331; ii. 190, 210; *Hutch. Just. of Peace*, ii. 546; *Tait's Just. of Peace, h. t.; Blair's Just. of Peace, h. t.; Tomlins' Dict. h. t.; Watson's Stat. Law, h. t.;* [*Ness on the Game Laws; Irvine on the Game Laws; Rankine on Land-Ownership*, 128, 727; *Rankine on Leases*, 412; *Barclay's Digest;* and English treatises by *Locke*, *Oke*, and *Paterson.*] See *Muirburn.*

[**GAME LICENCE.** The duties payable for licences and certificates to take or kill game, and licences to deal in game, are regulated by the Game Licence Act (23 & 24 Vict. c. 90). These duties are as follows (§ 2):—"For a licence in Great Britain or a certificate in Ireland to be taken out by every person who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or any deer, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever, of any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer: If such licence or certificate shall be taken out after 5th April, and before 1st November, to expire on 5th April in the following year, £3; to expire on 31st October in the same year in which the licence or certificate shall be taken out, £2: If such licence or certificate shall be taken out on or after 1st November, to expire on 5th April following, £2: Provided always, that any person having the right to kill game on any lands in England or Scotland shall be entitled to take out a licence to authorise any servant for whom he shall be chargeable to the duty of assessed taxes as a gamekeeper, to kill game upon the same lands, upon payment of the duty of £2: And for every licence to deal in game in England, Scotland, or Ireland, to be granted under this act, £2." These duties are under the management of the Commissioners of Inland Revenue, and are deemed to be Excise duties (§ 3). A penalty of £20 is imposed by § 4 on every person who shall "take, kill, or pursue, or aid or assist in any manner in the taking, killing, or pursuing, by any means whatever, or use any dog, gun, net, or other engine for the purpose of taking, killing, or pursuing any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer," without taking out a proper licence. By § 5, the following acts are excepted from the provisions of the statute:—"(1) The taking of woodcocks and snipes with nets or springes in Great Britain: (2) The taking or destroying of conies in Great Britain by the proprietors of any warren, or of any enclosed ground whatever, or by the tenant of lands, either by himself or by his direction or permission: (3) The pursuing and killing of hares respectively by coursing with greyhounds or by hunting with beagles or other hounds: (4) The pursuing and killing of deer by hunting with hounds: (5) The taking and killing of deer in any enclosed lands by the owner or occupier of such lands, or by his direction or permission." And the following persons are exempted from the requirements of the act: "(1) Any of the Royal Family: (2) Any person appointed a gamekeeper on behalf of Her Majesty by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, under the authority of any act of Parliament relating to the land revenues of the Crown: (3) Any person aiding or assisting in the taking or killing of any game, or any woodcock, snipe, quail, landrail, or coney, or any deer, in the company or presence, and for the use of another person who shall have duly obtained, according to the directions of this act, and in his own right, a licence to kill game, and who shall by virtue of such licence then and there use his own dog, gun, net, or other engine for the taking or killing of such game, woodcock, snipe, quail, landrail, coney, or deer, and who shall not act therein by virtue of any deputation or appointment:" And (4), as regards the killing of hares only, all persons who, under the provisions of the act 11 & 12 Vict. c. 30 (see *infra*), are authorised to kill hares without obtaining an annual game certificate. By § 7 of the Game Licence Act, a licence may be taken out on behalf of any assessed servant acting as gamekeeper for a person having right to kill game, or under a deputation from the lord of a manor, on payment of the duty of £2 for the year ending on 5th April; and such servant is not in that case required to obtain a licence for himself.

[On change of gamekeeper, or revocation of deputation, such licence may be renewed to his successor for the remainder of the year, without payment of further duty; § 8. But such licence is not available to a gamekeeper for any act done on land on which his master had not a right to kill game; § 9. By § 10, a person doing any act requiring a licence to kill game may be asked by "any officer of Inland Revenue, or by any lord or gamekeeper of the manor, royalty, or lands wherein such person shall then be, or by any person having duly taken out a proper licence to kill game under this act, or by the owner, landlord, lessee, or occupier of the land on which such person shall then be," to produce his licence to kill game, and to allow it to be read and copied; or, failing production of licence, such person may be required to declare his name and place of residence, and the place at which he has taken out a licence. In case of refusal, or of giving false information, a penalty of £20 is incurred. By § 11, if a person is convicted of any offence under the English Game Act (1 & 2 Will. IV. c. 32), or the Day Trespass Act (2 & 3 Will. IV. c. 68), his licence becomes void. By § 12, the Commissioners are directed to publish lists of persons licensed to kill game. Licences to deal in game are regulated by §§ 13–15. A licence taken out by or on behalf of any person in his own right, and not as a gamekeeper or servant, is available for the killing game in any part of the United Kingdom; § 18. See the act annotated in *Rankine on Land-Ownership*, 741. By 11 & 12 Vict. c. 30, it was made lawful for any person having a right to kill hares in Scotland to do so himself, or by any person permitted, directed, or commanded by him by any writing under his hand, without obtaining an annual game certificate; provided that such hares shall be found and killed in or upon his own land; and provided also that no person permitted, directed, or commanded as aforesaid shall have power to authorise any other person whatever to take or destroy any hare. See also as to hares, §§ 5 (3), 6, of the Game Licence Act, and § 8 of the Game Laws Amendment Act of 1877, quoted in the preceding article. See the authorities cited there. See *Gun Licence*.]

GAMING AND BETTING. By 1621, c. 14, playing in taverns is prohibited under a pecuniary penalty for the first offence, and a loss of licence for the second. Playing in private houses is also forbidden if the master do not play; and if any one, in the course of twenty-four hours, win more than 100 merks, the surplus goes to the poor of the parish; [a provision which seems not to be in desuetude; *Maxwell*, 1774, M. 9522; *O'Connell*, 25 Nov. 1864, 3 Macph. 89 (Lord Deas).] By 9 Anne, c. 19, all notes, bonds, and other securities for the payment of a gaming debt (including money lent at the time to play withal), are void, and mortgages of land made upon the same consideration, revert to the heir of the mortgagor. [But by 5 & 6 Will. IV. c. 41, this provision is repealed, and it is declared that such documents shall be held to have been given for an illegal consideration; and any person who grants such a document, and pays the amount of it to an indorsee or holder, has an action of repetition against the party to whom it was given on such illegal consideration. The effect of this statute seems to be to render such documents effectual to a *bona fide* onerous indorsee or holder. See *Thomson on Bills*, 782; *Don*, 16 June 1858, 20 D. 1138.] In England, bets or wagers were once, by common law, legal contracts; [but by 8 & 9 Vict. c. 109, § 18, all contracts by way of gaming are declared to be null and void.] In Scotland, bets are considered *sponsiones ludicræ;* and no action can be maintained for the recovery of sums won in that way; [*Bruce*, 3 Pat. 107; *Wordsworth*, 1799, M. 9524; *O'Connell*, *supra; Paterson*, 17 March 1866, 4 Macph. 602.] But injuries resulting from such transactions may found an action of damages; [and competitions may arise as to the prize in a gaming contract, involving questions of law which fall properly within the province of the court; *Graham*, 5 Feb. 1848, 10 D. 646; *Calder*, 20 July 1871, 9 Macph. 1074. In *Foulds*, 10 June 1857, 19 D. 803, it was held that speculative transactions in stocks are not gaming and wagering. See also *Mollison*, 24 Jan. 1889, 16 R. 350. As to liability of principal for bets made by agent, see *Read*, 13 Q.B.D. 779; *Cohen*, 22 Q.B.D. 680; *Story on Agency*, §§ 222, 330. But note that the act 8 & 9 Vict. c. 109, probably does not apply to Scotland; see *Foulds*, *M'Connell* and *Calder*, *supra*. The act 32 & 33 Vict. c. 87, provides for the prevention of card-sharping and other unlawful gaming in public places; and the provisions of the English act for the suppression of betting-houses (16 & 17 Vict. c. 119) are extended to Scotland by 37 Vict. c. 15. See *Henretty*, 17 Dec. 1885, [13 R. (J.C.) 9; *Hoggan*, 18 July 1889. See also §§ 341, 342 of the Police and Improvement Act (25 & 26 Vict. c. 101); and § 284 of the Edinburgh Municipal and Police Act, 1879 (42 & 43 Vict. c. 132). In *Greenhuff*, 19 Dec. 1838, 2 Swint. 236, keeping a common gaming-house for playing games of chance for money was held to be indictable at common law. See *Ersk.* B. iii. tit. 1, § 10;] *Bell's Com.* i. 319; [*Bell's Princ.* § 36 (4), 325;] *Stair*, B. i. tit. 10, § 3, and note by *Brodie; Thomson on Bills*, 80; [*Menzies' Conv.* 50; *M. Bell's Conv.* i. 156; *Macdonald's Crim. Law*, 205; *Iron's Police Law*, 169, 256.] See *Pactum Illicitum. Lottery. Wager.* [*Wager Policy.*]

GARBA SAGITTARUM: a sheaf of arrows, containing twenty-four. *Skene, h. t.*

GARBALES DECIMÆ. *Garba* signifies a sheaf or handful of corn; and the term *decimæ garbales* means the tithes of corn. They were also termed *decimæ rectoriæ*, from *rector*, a parson; or parsonage tithes. These tithes extend, by the practice of this country, to the tithes of wheat, barley, oats, pease, &c., and are exigible from all the lands in Scotland. In this respect they differ from the lesser or vicarage tithes, which are due only where they have been in use to be paid. *Ersk.* B. ii. tit. 10, § 13. See *Teinds.*

GARCIFER: *garçon;* from the French, a mill-servant,—a mill-knave. *Skene, h. t.*

GARGIATORES; in ancient law language, those who marked with the mark of their office the cloth, bread, or barrels before they were sold, or who tried and examined all weights and measures. *Skene, h. t.*

[**GARNISHEE**; in English law, a person in whose hands a debt has been attached. An order for the attachment of debts is called a garnishee order. Garnishment (Norman French *garnir*, to warn) seems to have originally meant any kind of notice to the opposite party in a proceeding. *Sweet's Law Dict.*]

GAVELKIND. In Kent, and certain other counties in England, lands and tenements are, by immemorial custom, held in gavelkind; that is to say, all the male issue inherit equally. *Tomlins, h. t.; Bank.* ii. 317; *Stair*, B. iii. tit. 4, § 22.

GAZETTE. Royal proclamations, and the like, printed in the Gazette, are probative, without production of the proclamations. [See 31 & 32 Vict. c. 37.] But gazettes are not evidence of private titles or interests, such as presentations or grants to individuals. As to the question, whether publication in the Gazette is a sufficient notice of dissolution of partnership, to free the partners from debts afterwards contracted in name of the company, it has been decided that it is not alone sufficient against such as were formerly in the habit of dealing with the house. With regard to parties dealing with the company for the first time, there is a difference between the English and Scotch law. In the former, it is doubted whether notice in the Gazette is sufficient, in all cases, even against strangers. While, in the latter, it is held that persons contracting for the first time with a company are bound to inquire into its existing condition, and notice, even in a provincial newspaper, is sufficient. But all reasonable means ought to be taken to publish the dissolution. Under the Bankrupt Act and some other statutes, certain notices required by the statutes are directed to be given by publication in the Gazette. [See *Bell's Princ.* §§ 384, 385, 2209; *Dickson on Evidence*, § 1112. See *Bankruptcy. Partnership. Evidence.*]

GENERAL ASSEMBLY. The General Assembly of the Church of Scotland is the highest ecclesiastical court. As to its constitution and powers, see *Church Judicatories. Commissioner.* [*Acts of Assembly.*]

GENERAL CHARGE. See *Charge to Enter Heir.*

[**GENERAL DISPOSITION.** In the sense of the conveyancing statutes, a general disposition is "a deed intended to operate as a conveyance, but which, owing to certain wants, is not a sufficient warrant for obtaining, in the ordinary way, infeftment in the lands intended to be conveyed. The wants referred to are—the want of a proper description of the lands, the want of the executorial or feudal clauses formerly required, and the want of words importing a conveyance *de præsenti;*" *Begg's Conv. Code*, 60; *Studd*, 8 May 1883, 10 R. (H.L.) 53, 59 (Lord Watson). Under § 19 of the Consolidation Act, 1868, a general disponee may make his right real by expeding and recording a notarial instrument in form prescribed. When such notarial instrument is expede by a person other than the original disponee, it must set forth the series of titles by which he acquired his right; and when two or more general dispositions are links in the series, it is no objection to the title that any of them does not contain a clause of assignation of writs; § 29 of the Conveyancing Act, 1874. A form of notarial instrument, adapted to the completion by a general disponee of a title to heritable securities, is provided by § 53 of the act of 1874. On the question (generally [one of presumed intention) whether subjects held under a special destination are to be held as included in a subsequent general conveyance, see *Thoms*, 30 March 1868, 6 Macph. 604; *Catton*, 19 July 1870, 8 Macph. 1049; *Glendonwyn*, 19 May 1873, 11 Macph. (H.L.) 33; *Gray*, 24 May 1878, 5 R. 820; *Walker's Exr.* 19 June 1878, 5 R. 965; *Campbell*, 8 July 1880, 7 R. (H.L.) 100; *Farquharson*, 19 July 1883, 10 R. 1253. See *Bell's Princ.* §§ 1692, 1892; *M. Bell's Conv.* ii. 938.]

GENERAL JURY BOOK; a book kept by the sheriff, containing the names of all persons within the county liable to serve as jurors. On a notice or requisition from the clerk of the court where the trial is to take place, the sheriff makes up a list of jurors from the general jury book, taken in the order in which they stand, containing, as nearly as possible, a third of special jurors, and if not, the deficiency is supplied from the *Special Jury Book*. 6 Geo. IV. c. 22, §§ 3, 7, 8, and 9. See *Jury*.

GENERAL LETTERS OF HORNING. These were letters formerly in use, running in the King's name, directed at the instance of the bishop, and charging all concerned with the executry of a deceased person to confirm; and in case of their failing to confirm, the bishop appointed his own fiscal to be executor, who, as such, had right to the whole of the dead's part; but this was put an end to by 1690, c. 26, which prohibited those general letters. *Ersk.* B. iii. tit. 9, § 33; *Stair*, B. iii. tit. 3, § 11; B. iv. tit. 3, § 25; tit. 47, § 4; *More's Notes*, cccxi.; *Bell's Com.* ii. 159; *Bank.* iii. 4, 10. See *Executor. Confirmation.*

GENERAL SERVICE. This form of service is intended to vest the heir with such heritable rights belonging to the ancestor as do not require sasine, or to which the ancestor had merely personal rights (*e.g.*, unexecuted procuratories of resignation of precepts of sasine). *Ersk.* B. iii. tit. 8, § 63; *Bell's Princ.* §§ 781, 1848. See *Service.*

[**GENERAL SHIP.** When the masters or owners of a ship engage with separate merchants to convey their goods to the place of her destination, the contract is said to be for conveyance in a general ship, as distinguished from affreightment by charter-party, by which an entire ship, or some principal part thereof, is let to a merchant. *Smith's Merc. Law*, 296. See *Charter-Party. Carrier.*]

GENERAL VERDICT. See *Verdict. Special Verdict.*

GERMAN. Those born or descended of the same father or mother are said to be connected in full blood, or german. *Bell's Princ.* § 1651. See *Succession. Half-Blood.*

GESTIO PRO HÆREDE. See *Behaviour as Heir.*

GIFT; is synonymous with donation; see *Donation*; but the term, in Scotch law, is sometimes applied in particular to royal gifts—*e.g.*, gifts of non-entry, escheat, bastardy, forfeiture, *ultimus hæres*, all of which are royal grants proceeding on signatures, and passing the Privy Seal, Quarter Seal, or Great Seal, according as they convey rights of greater or less consequence. Thus, all gifts of casualties of superiority pass under the Privy Seal; gifts of bastardy, of forfeiture, or of *ultimus hæres*, pass the Quarter Seal, where the lands hold of a subject superior; but where they hold of the Crown, the gift passes the Great Seal. According to the present practice, the first step taken by a party soliciting such a gift is to present an application to the Lords of the Treasury, stating the circumstances under which he applies. A remit is then made by the Lords of the Treasury to the Officers of Exchequer in Scotland; and the applicant must give notice of his application in certain newspapers appointed by those officers. At the end of a twelvemonth the application is taken into consideration, and a gift made or refused according to the report of the Exchequer officers. If the gift be made, it is chargeable with a stamp-duty of £30 (55 Geo. III. c. 184, schedule, *voce Grant*); in addition to which, there are certain fees exigible by the officers of Exchequer. *Brown's Synop. h. t.* See *Donatory. Escheat. Exchequer. Bastardy.*

GILDA; a society and company of merchants. In the old British laws, "*gilder* signifies the order of society of religious men, or of craftsmen." *Skene, h. t.*

GIRTH AND SANCTUARY; was an asylum given to murderers, where the murder was committed without any previous design, and in *chaud melle*, or heat of passion. At the Reformation, the privilege of sanctuary in criminal matters was abolished, and the protection of girth and sanctuary could, of course, be no longer claimed. *Hume*, i. 241; *Ersk.* B. iv. tit. 4, § 40; *Bank.* iii. 14, 1; *Ross's Lect.* i. 331. See *Chaud Melle.*

GIRTHOLL; girth, sanctuary, asylum. *Skene, h. t.*

GLEANING. It is said that, by the

law of England, the poor may enter and glean upon another's ground after harvest; [but this view, though countenanced by Blackstone (vol. iii. p. 213), seems to be based on a *dictum* of Sir Matthew Hale, and was negatived in *Steel*, 1788, 1 H. Bl. 51.] In Scotland, it has been established by repeated decisions, that the poor possess no such right, at least while the sheaves remain on the ground, and that the farmer may exclude them. *Hutch. Just. of Peace*, ii. 47; *Dunlop's Parish Law*, 403; [*Barclay's Digest*, *h. t.*]

GLEBE; the portion of land to which, generally speaking, every parish minister in Scotland is entitled, in addition to his stipend. From this rule are excepted the ministers in royal burghs proper, who cannot claim a glebe unless there be a landward district annexed; and, even in that case, where there are two ministers, it is only the first who has the claim. In the case of disjunction of a parish also, the decree sometimes provides that the minister of the portion disjoined and erected into a new parish, shall not be entitled to a manse or glebe. By 5 Geo. IV. c. 72, provision is made for payment out of the public revenue of an allowance or additional stipend, in lieu of manse and glebe, to such ministers, whose stipends do not exceed £200, as may not be entitled thereto. Where there are arable lands, the glebe must consist of four acres; where there is no arable land, the minister is entitled to sixteen soums of grass next adjacent to the church,—a soum of land being as much as will pasture ten sheep or one cow. But this matter may be affected by local custom. It was formerly the rule, that the glebe should be designed out of church lands; but the act 1644, c. 31, authorised the designation of temporal lands, where there were no church lands; and by 1649, c. 45, it was enacted that, where glebes were inconveniently distant from the manses, they might be changed, and new glebes designed within a quarter of a mile of the manse, "villages and incorporate aikers" being the only lands excepted. These acts having been passed during the Usurpation, were afterwards rescinded; but the act 1663, c. 21, though it does not specially renew their provisions, has been held in a general way to revive them; and it has always been assumed, that where there are no church lands, temporal lands should be designed. [But see *Cumming*, 7 July 1883, 20 S.L.R. 781. Temporal lands cannot be designed for a glebe while there are church lands in the parish, though Sir John Connell (*Parishes*, 370) expresses a contrary view. See *Bell's Princ.* § 1173; *Minister of Kingsbarns*, 1794, M. 5140, Bell's Cases, 27; *Hay*, 1799, M. App. Glebe, No. 2; *Mags. of Montrose*, 20 Jan. 1832, 10 S. 211.] The reviving statute, 1663, continues to exempt "incorporate acres in village or town, where the heritor hath houses and gardens, he always giving other lands nearest the kirk." It has been held that lands are liable to be designed for a glebe as church lands, although the superiority of them only had belonged to the church for a long period before the Reformation; and when, at the time of designing a glebe, there are lands in a parish held of the Crown in right of a priory, others held by the Crown in right of a bishop, and others held by a university in right of a priory, the first are primarily liable, the bishop's lands in the second place, and the others only *ultimo loco*, whatever may have been the description of the lands at the Reformation, or at the date of the act 1593; *Minister of Kingsbarns, supra.* In this question, temple lands—*i.e.*, lands which formerly belonged to the knights-templars—are not held to be church lands; *Bank.* B. ii. tit. 8, § 22. The glebe must be taken as near the manse, and as commodious for the minister as possible,—a provision intended for the benefit of the heritors as well as of the minister, so that the latter is not entitled to pick and choose remote lands merely on account of the superiority of the soil. Where there is no manse, vicinity to the church is taken as the criterion. Where a glebe has once been designed, and possessed as such, a new designation will not be allowed on the ground of inconvenience of situation, inferior quality of soil, or deficiency in extent. In this last case, however, as much may be designed as will make up the deficiency. By the rescinded statute, 1644, c. 31, it was provided that, where a glebe has become unprofitable by inundation or other extraordinary accident, a new one might be designed. This provision has not been specially revived, but it is believed that such a course would be adopted were the destruction complete. The heritor whose lands are designed as a glebe, has recourse against the other heritors of the parish; [but if only church lands are designed, there is no claim against the owners of temporal lands; *Mags. of Montrose, supra.*] This right of relief does not form a *debitum fundi;* it lies against the heritors for the time only, and their heirs. The presbytery possess the power of designing a glebe, and giving warrant for letters charging the heritor from whose property the glebe is designed, to carry the designation of the presbytery into execution. [The proceedings of the presbytery are subject to the review of the sheriff, with an appeal to the Lord Ordinary in Teind causes, whose decree is final; 31 & 32 Vict. c. 96; *Mags. of Arbroath*, 13 March 1883, 10 R. 767. See *Manse.*] By 1572, c. 48, a glebe cannot be alienated by the incumbent. [But by the Glebe Lands Act, 1866 (29 & 30 Vict. c. 71), a lease of the glebe, excepting five acres nearest to the manse, may be granted by the minister, with consent of the heritors and presbytery, for a term not exceeding eleven years (§ 3); and he may also, under authority of the Teind Court, obtained on summary petition, as provided by the act, feu his glebe, or grant building leases thereon for any term not exceeding ninety-nine years (§ 5 *et seq.*). See this act annotated in *Begg's Conveyancing Code*, 470.] Upon the transportation of a church to a new site, the court have authorised a sale or excambion of the glebe. Excambions of glebes must be sanctioned by the presbytery. [But the consent of heritors is not necessary; *Bain*, 15 July 1887, 14 R. 939.] The minerals of a glebe are worked at sight of the heritors and presbytery, and the proceeds are placed under their management for behoof of the incumbent for the time. Trees growing on the glebe have been thought to belong to the minister. [Glebe lands, if regularly designed according to law, are teind-free; 1578, c. 62; 1621, c. 10; *Wilson*, 1 Feb. 1831, 9 S. 357.] See *Ersk.* B. ii. tit. 10, § 59; *Stair*, B. ii. tit. 3, §§ 4, 40; tit. 8, § 7; *More's Notes*, clxxii., cxcii.; *Bank.* ii. 46, 119; 78, 217; *Bell's Princ.* § 1172; *Hill's Church Prac.* 141; *Connell on Parishes*, 337; *Dunlop's Parochial Law*, 115, 174; *Hunter's Landlord and Tenant*, i. 136; [*Duncan's Par. Eccl. Law*, 474; *Black's Par. Eccl. Law*, 100; *Mair's Church Laws*, 294; *Rankine on Land-Ownership*, 639; *Elliot on Erection of Parishes quoad sacra and Feuing of Glebes.*] See *Dilapidation of Benefices. Grass of Ministers.* [*Manse.*]

GOD, OFFENCE AGAINST. Although every crime is an offence against God, the offence to which this expression is specially applied in criminal law is that of blasphemy. See *Blasphemy. Cursing.*

GOLD MINES. [Gold mines are, by 1424, c. 12, declared to belong to the king [without limitation.] But, by an unprinted act (1592), gold mines may be demanded in feu from the Crown, by the proprietor of the ground in which the mines are, on payment of one-tenth part of the produce, not deducting charges. And should mines be found and not wrought by the proprietor of the ground, the Sovereign is then at liberty to work them or set them in feu to others. *Ersk.* B. ii. tit. 6, § 16; *Stair*, B. ii. tit. 3, § 60; *Bank.* i. 573, 109; *Bell's Princ.* § 669.

GOLD PLATE. See *Silver Plate.*

[**GOLF.** See *Servitude.*]

GOOD FRIDAY. [See *Holidays.*]

GOODS IN COMMUNION; are the moveable subjects belonging in common to husband and wife. They comprehend all the moveable property belonging to either of the parties, except such effects as have been given to the wife, expressly excluding the *jus mariti*, and the wife's paraphernalia, as to which there is an implied exclusion of the *jus mariti*. A personal bond, bearing interest, does not fall under this description of goods; 1661, c. 32. The husband, during the subsistence of the marriage, has the uncontrolled administration of the goods in communion; [and though the goods are nominally in communion, the wife has no real right of property during the subsistence of the marriage. See *Shearer*, 18 Nov. 1842, 5 D. 132. The history of the law of *communio bonorum* is investigated in *Fraser on Husb. and Wife*, i. 648; and the learned author concludes that the term is illusory, and a mere name. In *Muirhead*, 6 Dec. 1867, 6 Macph. 95, it was observed that though the phrase "goods in communion" is occasionally employed by the institutional writers as if signifying the whole personal estate of the husband, it really applies only to that part of his moveable property which is capable of actual enjoyment by the spouses *stante matrimonio*, and of being expended *ad matrimonii onera sustinenda*. Formerly,] if the marriage was dissolved within year and day without a living child, the common stock returned to the husband and wife, or their representatives, in the proportions in which it was contributed. [But by 18 & 19 Vict. c. 23, § 7, dissolution before year and day has the same effect as if the marriage had subsisted for a longer period. The same act (§ 6) abolished the claim which the representatives of a predeceasing wife had to her share of the goods in communion, *i.e.*, to a third or a half (according as there were children or [not) of the husband's moveable estate as at the wife's death. This subject is more fully treated under *Marriage*. See *Stair*, B. i. tit. 4, § 9; *Ersk*. B. i. tit. 6, § 12; *Bell's Princ*. § 1546; *M. Bell's Conv*. ii. 855; *Fraser on Husb. and Wife*, i. 648; ii. 1528.] See also *Legitim*. *Jus Relictæ*.

GOODWILL; the custom of any trade or business. It may be the subject of contract. In England the specific performance of an agreement to sell the goodwill of a trade has been decreed; but it has been doubted whether, when a goodwill forms the principal part of a contract, performance will be decreed. [As to how far a separate value can be attributed to goodwill of a business, see *Bain*, 10 Jan. 1878, 5 R. 416; *Bell's Tr*. 8 Nov. 1884, 12 R. 85. "When a company or firm is dissolved, the general rule appears to be that, in the absence of special agreement, the goodwill of the business must, like other company property, be sold for behoof of all concerned. To this rule, however, there are exceptions. If weight is to be given to the English authorities, it would appear that a distinction must be made between professional and mercantile firms. In the former, the goodwill is almost personal to the partners, and therefore cannot be made the subject of a compulsory sale; for an attorney, a surgeon, or a skilled artisan, cannot be forced into an agreement that he shall not prosecute his business within a certain area. In the latter, the goodwill often depends on the fitness of the stock or the premises, or on the possession of a patent; and in such cases it represents a tangible interest which may be valued and sold;" *Clark on Partnership*, i. 430; ii. 676.] See *Bell's Princ*. §§ 91, 379; [*Smith's Merc. Law*, 193; *Lindley on Partnership*, 439; *Pollock on Partnership*, art. 57; *Sebastian on Trade Marks*, 268. See *Partnership*. *Newspaper*.]

GOVERNMENT. By this term is meant the constitution of the country, as vested in the Sovereign and Parliament. Its great powers are the legislative and the executive—the former making the laws which the people have to obey, and by which their rights and privileges are to be regulated—the latter enforcing those laws, making peace, or declaring war, and performing the other great executive functions of the state. The legislative power of the British Government is placed in the Sovereign and the three estates of Parliament—viz., the lords spiritual, the lords temporal, and the representatives of the people in the Commons House of Parliament. See *Parliament*. *Election Law*.

GRACE. See *Act of Grace*. *Days of Grace*.

GRANDFATHER; is the second in the line of ascendants; and, where the father fails, he is bound to support his indigent grandchildren; but he is not bound to support his grandchildren by his daughter, unless the father and paternal grandfather of such children be unable; in which case the burden will fall on the maternal grandfather. *Ersk*. B. i. tit. 6, § 56; *More's Notes to Stair*, xxix. See also *Ascendants*. *Aliment*. *Succession*.

GRANDCHILDREN; have a claim for aliment while they are unable to maintain themselves, and where their father is unable to aliment them, against their paternal grandfather; and, where he also is unable, against their maternal grandfather, in the manner explained in the preceding article. *Ersk. ibid*.

GRAND JURY; in England, the jury of twenty-four good and lawful men, which finds bills of indictment before justices of peace, and gaol-delivery, or of *Oyer* and *Terminer*, &c. Their duty is only to hear witnesses for the Crown; and to find a bill on probable evidence; *Tomlins' Dict. h. t.* There is no such institution in Scotland, the duties of the grand jury being there discharged by the Lord Advocate, except in cases of treason, when, the English and Scotch treason laws being the same, a true bill must be found precisely as in the English practice. See *Oyer and Terminer*. *Treason*. *Advocate, Lord*. *Criminal Prosecution*. *Ignoramus*.

GRANT. Technically speaking, the term *grant* is not applied to a deed by which either lands or moveables are conveyed. Our deeds of conveyance are charters, by which lands are originally conveyed—or charters by progress, by which the superior continues the right to the heirs or creditors of the vassal, or the purchasers from him—or dispositions, by which the vassal himself transfers his property to those to whom he has occasion to convey it. The term *disposition* is used even in the conveyance of moveables, where writing is required. But the term *grant*, though not employed to denote the deed of conveyance, is used in original rights of land, and in gratuitous conveyances, as a term of conveyance. Thus, in granting a feu-right, the superior uses the expressions, I GIVE, GRANT, AND DISPONE. In a settlement, the granter employs the same words; whereas, in a sale, the expressions are, I SELL, ALIENATE, AND DISPONE. These are words of style; and the distinction between give, grant, and dispone, and sell, alienate, and dispone, has been thought to mark the difference between onerous and gratuitous deeds. *Ersk.* B. ii. tit. 3, § 22; *Stair*, B. ii. tit. 7, § 6; *Bank.* ii. 259, 39; *Bell's Com.* i. 21. [See *Charter. Disposition.*]

GRANT: in English law, a conveyance in writing of incorporeal things which cannot pass by word only, as of reversions, advowsons in gross, tithes, rents, services, common in gross, &c. The term is, in a wider acceptation, used for a gift of whatever kind. *Tomlins' Dict. h. t.*

GRASS. Grass, whether natural or industrial, is considered a pertinent of the soil, and passes to purchasers. In questions between heir and executor, natural grass is held to be heritable. Even when the grass seeds have been sown down with corn, executors have been held not entitled to the crop of hay produced in the succeeding year, but merely to the first year's pasturage after cutting down the white crop; [*Sinclair*, 1744, M. 5421; *Wright*, 1796, M. 5446; *M. Tweeddale*, 19 Nov. 1816, F.C. But these cases are now considered to be of doubtful authority, after the decision in *Keith*, 3 Dec. 1825, 4 S. 267. In that case, the terms of removal under an improving lease were Whitsunday as to the grass, and separation of the crop as to the arable land. It was held that the tenant was bound to remove at Whitsunday from all grass, whether growing on arable or pasture land; but that under grass was not to be included land sown for a crop of hay, to be reaped in the year of removal, because that crop was not natural, but industrial. This decision was confirmed by the subsequent case of *Lyall*, 27 Nov. 1832, 11 S. 96; and it is thought that if the question should again arise between heir and executor, the claim of the latter would now be favourably regarded. See *Ersk.* B. ii. tit. 2, § 4 (*editor's notes*); *Hunter's Landlord and Tenant*, ii. 486.] In grass farms, the landlord's hypothec extends over the grass-mail, if the fields are let out to pasture, but not over the cattle of others grazing there, [except to the extent of the grass-mail, so long as that is unpaid, as provided by 30 & 31 Vict. c. 42, § 5 (see *Hypothec*);] nor over grass cut for sale. The proprietor or principal tenant of the pasture has a lien or right of retention over the cattle, in security of the grass-mail. The doctrine of tacit relocation has no application to grass fields let from year to year, and the tenant is not entitled, without a new bargain, to possess for a day after the stipulated term of removal has arrived; [*MacHarg*, 9 March 1805, F.C. See *Hunter's Landlord and Tenant*, ii. 54; *Rankine on Leases*, 301, 304, 307, 368;] *Bell's Com.* ii. 29, 100; *Bell's Princ.* §§ 1235, 1262; *Bell on Leases*, i. 398. [See *Lease.*]

GRASS, OF MINISTERS. By the act 1663, c. 21, the minister of a parish has right (over and above his glebe), to grass for a horse and two cows. This grass should be taken out of the nearest church lands; and, where there are no church lands in the parish, [there would seem to be no claim in respect of grass.] But where the church lands are either at a distance, or not grass lands, the minister is entitled to £20 Scots as an equivalent; and this equivalent is paid to him by the heritor of the nearest church lands, who has his recourse for proportional relief against the heritors of the other church lands in the parish. Grass may be designed, although the glebe contains more than four arable acres or sixteen soums of pasture. *Ersk.* B. ii. tit. 10, § 62; *More's Notes to Stair*, clxxiii.; *Bell's Princ.* § 1175; *Hill's Church Prac.* 143; *Dunlop's Parochial Law*, 128; [*Duncan's Par. Eccl. Law*, 547; *Black's Par. Eccl. Law*, 120; *Rankine on Land-Ownership*, 640.] See *Glebe*.

GRASSUM; an anticipation of rent in a gross or slump sum, or a fine paid in consideration of a lease for a term of years. In questions with singular successors there is no limitation of the power to take grassums, only the rent must not be thereby diminished so as to be altogether elusory. In regard, however, to lands under entail, the heir in possession must administer the estate *secundum bonum et æquum*, taking no more of the annually accruing rents and profits than he leaves to descend to his successors. Hence grassums, as being, in effect, anticipations of the future rents, to the prejudice of succeeding heirs, are held to be struck at by the prohibition against alienation. [See 11 & 12 Vict. c. 36, § 24.] See also *Stair*, B. iv. tit. 9, § 20; *More's Notes*, clxxxv.; *Ersk.* B. iii. tit. 8, § 29, *note by Ivory; Bell's Princ.* §§ 1228, 1752; *Bell's Com.* i. 69; *Bank.* ii. 104; *Hunter's Landlord and Tenant*, i. 111; [*Rankine on Leases*, 55;] *Bell on Leases*, i. 126, 141, 229, 290; *Ross's Lect.* ii. 494; *Queensberry Leases*, 1819, 1 Bligh, 339.

GRATUITOUS DEED. A gratuitous deed is one which has been granted without any value being given for it; and although a person may dispose of his own property as he pleases, yet the law does not permit a person to dispose of his property to the prejudice of his creditors, or of those to whom he is under legal obligations, or, in certain cases, even to the prejudice of his own rights. In regard to donations by which the rights of creditors may be affected, the statute 1621, c. 18, has provided, that all alienations granted after the contracting of lawful debts, in favour of conjunct or confident persons, without true, just, and necessary causes, shall be void and null. But whatever may be inferred from the words of the statute, practice has so explained them, that a donation, even to the nearest relation, is not voidable at the instance of a prior creditor, provided the granter was solvent at the time of making the donation, though he should afterwards have failed, and been unable to pay his debts. In like manner, where a gratuitous right in favour of a conjunct and confident person has been transferred by him, for value, to a third party, who is ignorant of the fraud, it will not be challengeable in the person of the *bona fide* onerous holder. See *Conjunct and Confident. Bankrupt.* [A simple substitution of an heir may be defeated by a gratuitous deed. But a distinction has been taken in regard to a clause of return, as to which see *Clause of Return.*] Where the deed is gratuitous, and constitutes an obligation to be afterwards implemented, if the granter shall, before implement, fall into poverty, he may, at least where the deed is in favour of children or grandchildren, retain sufficient for his own subsistence. But our law does not seem in this particular to follow the Roman law, by extending the rule to cases where the donation is made to strangers. See *Beneficium Competentiæ.* The warrandice of gratuitous deeds extends only to future donations; and merely warrants the right as it stands to the donee, to be free of farther or greater burdens than those with which it is charged at the time of making the donation. *Ersk.* B. ii. tit. 3, § 25; *Bell's Com.* i. 331; ii. 170; *Bell's Princ.* §§ 64, 2324; *Ross's Lect.* ii. 494; *Jurid. Styles*, i. 109

GRAVE-STONES. The heritors have the right to refuse or grant permission to place tombstones over the graves in the parish churchyard, and to determine the manner in which they shall be placed, as upright or flat; and it is thought that, if necessary, the heritors may cause such grave-stones to be removed. *Dunlop's Par. Law*, 72. See *Churchyard. Burying-Place.*

GREAT AVIZANDUM. In the judicial procedure of the Court of Session, great avizandum is avizandum from a judge in the Outer-House to the judges in the Inner-House. See *Avizandum.*

GREAT SEAL. See *Seals.*

GROUND-ANNUAL; a kind of estate, intermediate between that of the superior and that of the vassal, of the nature of a perpetual annuity. It is of two kinds; the one arising out of church property, as affected by the Reformation; the other originating in the great demand in modern times for building-ground in towns.

1. At the Reformation, the church property was parcelled out in lordships erected by the Crown; and to restrain such erections for the future, several acts of annexation were passed. See *Annexation.* In the beginning of the seventeenth century, the Lords of Erection resigned their superiorities to the Crown, with the exception of the feu-duties, which the Crown had power to redeem on payment of a certain consideration. The consideration never having been paid, the power of redemption was renounced, and the feu-duty thus perpetually payable to the successor of a Lord of Erection is called a ground-annual. It has been usually conveyed by resignation and infeftment only. [*Bell's Princ.* § 884. See *Teinds.*]

2. The other kind of ground-annual has originated thus: Where sub-feus are prohibited, those who speculate in building-ground, by taking land in feu, with the intention of again disposing of small portions to builders, stipulate for an annual-rent from the builder, rather than a price payable at once. This is accomplished by the creation of a ground-annual. The disposition is granted to be held public, in compliance with the condition of the feu-charter; but the subject is charged with an annual payment to the disponer, and his heirs and assignees; and either a burden or annuity is reserved, which is declared a real burden; or a bond and disposition, in security of the annuity, is granted by the purchaser, on which infeftment is taken. [In more modern practice, a contract of ground-annual is the ordinary mode of constituting this security. According to the usual style, the seller, in consideration of the ground-annual, which is made a real burden on the lands, and of the obligations

[undertaken by the purchaser, sells and dispones to him the lands. The purchaser, on the other hand, binds and obliges himself personally for payment of the ground-annual, and also sells and dispones the lands themselves to the seller in security thereof. This contract being recorded, the seller not only has his real security completed, but he has an active title, by virtue of the personal obligation and security granted by the purchaser. He can not only poind the ground, but also raise an action of maills and duties against tenants, and enter into possession, in the same way as the creditor in an annuity secured by bond of annuity and disposition in security. Even after a subsequent transfer of the lands, the personal obligation subsists against the original disponee and his heirs. Subsequent disponees are not personally liable, but of course the real burden affects the lands into whosesoever hands they may come. See *Small*, 17 March 1853, 1 Macq. 345; *Gardyne*, 13 May 1853, 1 Macq. 358; *Brown's Trustees*, 26 March 1855, 2 Macq. 40; *Marshall's Tr.* 19 June 1888, 15 R. 762; *Ross's L. C.*, iii. 69, 108. A ground-annual, like an ordinary real burden, passes to an heir by general service, and to a purchaser by assignation. By § 30 of the Conveyancing Act, 1874 (37 & 38 Vict. c. 94), "securities by way of ground-annual, whether redeemable or irredeemable, shall continue to be heritable as regards the succession of the persons in right thereof." Ground-annuals are thereby excepted from the general declaration, in the same section, that real burdens, like all heritable securities, are moveable as regards the succession of the creditor. The other provisions of that section, as to completing titles to, transferring, and extinguishing, real burdens, seem to be applicable to ground-annuals. See *Burdens.*] See *Ersk.* B. ii. tit. 3, § 52; *Bell's Com.* i. 29; *Bell's Princ.* § 887; *Ross's Lect.* ii. 326, 392; *Skene, voce Annual;* [*Menzies' Conv.* 843; *M. Bell's Conv.* ii. 1155; *Jurid. Styles*, i. 132.] See *Annualrent Right. Top-Annual.*

GROUNDS AND WARRANTS. In an action of reduction, the grounds of debt on which a decree proceeds may be called for, even after the lapse of the long prescription. The warrants of a decree, whether extant or not, cannot be called for after twenty years; but within that time, it has been held that the defender must produce them, although in *publica custodia.* Among warrants are included the various steps of process which remain in the clerk's hands, and also letters of general and special charge. See *Stair*, B. iv. tit. 20, § 21; [*Ersk.* B. ii. tit. 12, § 35; B. iii. tit. 7, § 26; B. iv. tit. 1, § 22; *Shand's Prac.* ii. 635, 719.]

GROWING CORN; is poindable, but the poinding is not completed till the corn is cut down and measured. The landlord, in virtue of his hypothec, has a preference over creditors poinding growing corn. [But see *Hypothec.*] A symbolical delivery of growing corn has been held good to exclude creditors. See *Bell's Com.* i. 187; *Hunter's Landlord and Tenant*, i. 258; ii. 609; [*Rankine on Leases*, 534;] *Ersk.* B. iii. tit. 6, § 22; *Ross's Lect.* i. 441, 481. [See *Poinding. Thirlage.*]

GUARANTEE, MERCANTILE. A guarantee is an obligation, by which one engages himself for another in some particular transaction, or prospectively in a course of dealing. It is either continuous or limited. A guarantee is continuous if one engages for another to a certain amount in any dealing. [See *Caledonian Bank*, 15 June 1870, 8 Macph. 862.] It is limited when restricted to a particular transaction, person, or time. Such engagements and their limitations are *strictissimi juris.* There is some difficulty in distinguishing between a guarantee and a mere letter of recommendation. When a recommendation is not spontaneous, but given in reply to inquiries, the presumption is against its being a guarantee, unless the giver is aware that the person so recommended is unworthy of credit, in which case he is liable for the loss which he has fraudulently occasioned by his recommendation. A recommendation, even when spontaneously given, is not held to be a guarantee, unless it refers to a particular transaction, and contains assurance of safety in entering into it. [As to the distinction between guarantee and caution, see *Wilson*, 21 July 1840, 1 Rob. 137, 150. By 19 & 20 Vict. c. 60, § 6, "all guarantees, securities, or cautionary obligations made or granted by any person for any other person, and all representations and assurances as to the character, conduct, credit, ability, trade, or dealings of any person, made or granted to the effect or for the purpose of enabling such person to obtain credit, money, goods, or postponement of payment of debt, or of any other obligation demandable from him, shall be in writing, and shall be subscribed by the person undertaking such guarantee, security, [or cautionary obligation, or making such representations and assurances, or by some person duly authorised by him or them, otherwise the same shall have no effect."] See *Brodie's Supp. to Stair*, 921; *Ersk.* B. iii. tit. 3, § 61; *Bell's Princ.* §§ 282, 340; *Bell's Com.* i. 388; *Thomson on Bills*, 275, 285, 363; [*Robertson's Bankers' Law*, 82; *Smith's Merc. Law*, 460; *De Colyar on Guarantees.* See *Cautionry. Warranty. Letter of Credit. Recommendation, Letters of.*]

GUARDIAN; one who has the charge or custody of any person or thing; but, generally, one who has the custody and education of such persons as are not of sufficient discretion to guide themselves and their own affairs, as children and idiots. See *Tutor. Curator. Minor. Judicial Factor.*

[**GUARDIANSHIP OF INFANTS ACT**; 49 & 50 Vict. c. 27. See *Tutor. Parent and Child.*]

GUILD; a fraternity or company; so called, because each member was bound *gildare—i.e.*, to pay something towards the charge and support of the company. *Tomlins' Dict. h. t.* See *Gilda. Dean of Guild.* [*Incorporation. Exclusive Privilege.*]

[**GUN LICENCE.** By the Gun Licence Act, 1870 (33 & 34 Vict. c. 57), a duty of excise was granted on licences to use guns. In the act, the term "gun" includes a fire-arm of any description, and an air gun or any other kind of gun from which any shot, bullet, or other missile can be discharged; § 2. A licence must be taken out yearly by every person using or carrying a gun in the United Kingdom; and the sum of 10s. is payable in respect of every such licence; § 3. The duty and licence are under the management of the Commissioners of Inland Revenue; § 4. The licence expires on the 31st July next following its date, and is not transferable; § 5 (as amended by 40 Vict. c. 10, § 6). Any person using or carrying a gun without a licence, elsewhere than in a dwelling-house or the curtilage thereof, incurs a penalty of £10; § 7. (See *Curtilage.*) But a proviso exempts the following persons:—(1) Any person in the naval, military, or volunteer service, or in the constabulary or other police force, using or carrying any gun in the performance of his duty, or when engaged in target practice; (2) Any person having in force a licence or certificate to kill game granted to him under the laws of excise in that behalf; (3) Any person carrying a gun belonging to a person having in force a licence or certificate to kill game, or a licence to use a gun, and by order of such licensed or certificated person, and for the use of such licensed or certificated person only, if the person carrying the gun shall, upon the request of any officer of Inland Revenue or constabulary, or any constable, or owner or occupier of the land on which such gun shall be used or carried, give his true name and address, and also the true name and address of his employer; (4) The occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands, or any person using or carrying a gun for the purpose only of scaring birds or of killing vermin on any lands by order of the occupier thereof, who shall have in force a licence or certificate to kill game, or a licence to use a gun; (5) Any gunsmith or his servant carrying a gun in the ordinary course of the trade of a gunsmith, or using a gun by way of testing or regulating its strength or quality in a place specially set apart for the purpose; (6) Any person carrying a gun in the ordinary course of his trade or business as a common carrier. Rabbits are vermin in the sense of sub-section (4); *Gosling*, 9 March 1878, 5 R. 755. In any information for recovery of the above penalty, it is sufficient to allege that the defendant used or carried a gun without having a licence in force under the act, and it lies upon the defendant to prove that he is a person exempted under the above proviso; § 7. Where a gun is carried in parts by two or more persons in company, each and every one of such persons is deemed to carry the gun; § 8. Any officer of Inland Revenue, or any officer of constabulary, or any constable, may demand production of his licence from any person using or carrying a gun (not being a person in the naval, military, or volunteer service of Her Majesty, or in the constabulary or other police force, using or carrying his gun in the performance of his duty); and if such person do not produce either a gun licence or a game licence, and permit it to be read, the officer or constable may require him to declare his name and address. In case of refusal, he incurs a penalty of £10, over and above any other penalty to which he may be liable under this or any other act; and he may be arrested by the officer or constable, and brought before a justice of the peace; and such justice is directed, upon confession or due proof of the offence, to convict such person in the penalty afore-

[said, or in some mitigated portion thereof, not being less than one-fourth; and failing immediate payment, the justice is directed to commit the offender to hard labour in the proper house of correction for any period not exceeding one month, nor less than seven days, or until the penalty shall be sooner paid; § 9. Any officer of Inland Revenue, officer of constabulary, or constable, who may see any person using or carrying a gun, may enter and remain, so long as may be necessary, upon any lands, or upon any premises (other than a dwelling-house or the curtilage thereof), for the purpose of making the demand specified above; § 10. If a person is convicted of any offence under the English Game Act (1 & 2 Will. IV. c. 32), or the Day Trespass Act (2 & 3 Will. IV. c. 68), his licence becomes void; § 11. See the act annotated in *Rankine on Land-Ownership*, 750; also *Oke on Game Laws*, 106. See *Game Licence*.]

GYPSIES. See *Egyptians*.

GYSARUM; in old law language, a hand-axe. By the *Leg. Forest.* all possessing forty shilling land were enjoined to provide themselves with a *gysarum*. *Skene*, *h. t.*

H

HABEAS CORPUS ACT. In England, the act 31 Car. II. c. 2, which generally goes under the name of the *Habeas Corpus* Act, and which provides a remedy for illegal imprisonment, has been considered, politically, of such importance as to be reckoned a second *Magna Charta*. There are various writs of *habeas corpus*. [The only one which is now of practical importance is the writ of] *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, with a specification of the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum;* to do, submit to, and receive, whatever the judge or court awarding such writs shall adjudge. [The act 56 Geo. III. c. 100, provides for the issue and return of a *habeas corpus* in vacation as well as in term, and for examining into the truth of the facts stated in any return to a *habeas corpus*. By 25 & 26 Vict. c. 20, no *habeas corpus* may issue out of England into any colony or foreign dominion of the Crown, where there is a court having authority to issue the writ. The following species of *habeas corpus* have been superseded by more modern methods of procedure:] the *habeas corpus ad respondendum*, issued when a man had a cause of action against one who was confined by the process of some inferior court, in order to remove the prisoner, and charge him with this new action in the court above; the writ *ad satisfaciendum*, when the plaintiff was desirous to bring up a prisoner who had had judgment pronounced against him, to some superior court, to charge him with the process of execution; the writs *ad prosequendum, testificandum, deliberandum*, when it was necessary to remove a prisoner in order to prosecute or bear testimony in any court, or to be tried in the proper jurisdiction in which the fact had been committed; the writ *ad faciendum et recipiendum*, when a person was sued in some inferior jurisdiction, and was desirous to remove the action into the superior court. [See *Sweet's Law Dict.; Stephen's Com.* i. 145; iii. 651.] The Scotch act corresponding to the English *habeas corpus* act is 1701, c. 6. See *Wrongous Imprisonment*.

HABIT AND REPUTE. This expression is applied, in the law of Scotland, to whatever is held and reputed, or generally received as matter of fact. The legal effect of habit and repute is sometimes very serious. Thus, marriage may be constituted by habit and repute; where the parties cohabit, and are at the same time held and reputed as man and wife; 1503, c. 77; *Ersk.* B. i. tit. 6, § 6. [See *Marriage*.] So also, it is an aggravation of a special act of theft, if the person committing it be habit and repute a thief—*i.e.*, one who notoriously makes or helps his livelihood by thieving. It would appear, that in order to constitute habit and repute, in criminal law, the panel must have borne the character for at least [a year. The habit and repute must be continuous, and must extend down to the time of trial. The period between apprehension and trial is, of course, not to be reckoned in the year; and, if the panel has been in jail during part of the year previous to apprehension, the period of imprisonment will also be deducted, but does not prevent the [periods before and after imprisonment from being added together.] *Hume*, i. 90; *Alison's Princ.* 296; [*Macdonald*, 48.]

HABITATIO; in the Roman law, was a personal servitude, or usufruct of a house, limited to the extent that it could be used in no other way than as a dwelling-house. This right could be conveyed by sale, and the house might be let. *Stair*, B. ii. tit. 6, § 1; *Bank.* i. 657.

[**HABITUAL DRUNKARDS.** See *Drunkards.*]

HACKNEY COACHMEN: are not responsible under the edict *Nautæ, caupones*, unless when employed as carriers and paid for carriage. [But a cabman accepting luggage for conveyance is liable for its loss through his negligence; *Ross*, 2 C.B. 877.] Hackney coachmen, in Edinburgh, cannot ply without a licence from the magistrates, who are likewise empowered to pass such regulations as they think fit for ascertaining their fares, &c.; and they are amenable to the magistrates in case of overcharges or other misconduct. *Bell's Princ.* § 236; *Bell's Com.* i. 497; [*Browne on Carriers*, 430; *Macnamara on Carriers*, 16, 507; *Irons' Police Law*, 174, 236; 25 & 26 Vict. c. 101, § 278; 42 & 43 Vict. c. 132, § 299.]

HÆREDITAS JACENS. An estate is said to be in *hæreditate jacente*, when, after the ancestor's death, no title to it has been made up in the person of his heir. When a creditor of the ancestor desired to attach such an estate, in payment or in security of his debt, he [formerly] charged the heir to enter first in general, and then in special, in the manner explained under *Charge.* [Such charges were abolished in 1847. Citation on, and execution of, a summons of constitution was made equivalent to a general charge; and citation on, and execution of, a summons of adjudication, following on a decree of constitution, was made equivalent to a special, or a general special charge, according as the circumstances might require; see 31 & 32 Vict. c. 101, § 60.] If the heir enters, of course he lies under the same obligation to pay the debt that his ancestor did. If he fails to appear and to renounce in answer to the charge, or in the relative action, the creditor will be entitled to decree and execution against his person and estate, as if he had been actually served and entered heir. But if the heir answers the general charge to enter, by renouncing the succession, he cannot properly be charged to enter in special to the estate which he renounced; neither can his person nor his own estate be taken in execution for the debt of the ancestor whose succession he has so renounced. [The creditor, however, is allowed to obtain decree, *cognitionis causa tantum*, in the action of constitution; and in the action of adjudication,] decree is obtained, not against the heir, who is assoilzied in respect of his renunciation, but against the *hæreditas jacens* of the deceased, which is thereby subjected to the creditor's diligence. [These actions may be combined, and the decrees may be pronounced in one interlocutor.] See *Ersk.* B. ii. tit. 12, §§ 12, 47; *Bell's Com.* i. 751. See also *Charge. Adjudication for Debt.* [*Adjudication contra hæreditatem jacentem.*] *Cognitionis causa.*

HAIMHALDARE; in old law language, to repeat and seek restitution of proper goods and gear, and bring the same home again; *Skene, h. t.*

HAIMSUKEN; "is when any person violently, without licence, and contrair the King's peace, enters within a man's house, or seeks him at the same, or assails his house;" *Skene, h. t.*

[**HAINING.** See *Haning.*]

HALF-BLOOD. The connection by half-blood is of two kinds, consanguinean and uterine. Consanguinean relations are such as are descended from the same father, but not from the same mother. Uterine relations are such as are descended from the same mother, but not from the same father. In collateral succession, the half-blood consanguinean succeeds after the full-blood—*e.g.*, if a man die, leaving a son and daughter by his first marriage, and a son by a second marriage; and if the son of the first marriage take up the succession and die without issue, being survived by his full sister and half-brother consanguinean, his sister by the full-blood will succeed as *her brother's* heir-at-law. Observe, however, that if the eldest son of the first marriage had predeceased his father, the son of the second marriage would have succeeded as *his father's* heir-at-law, to the exclusion of the daughter of the first marriage. The half-blood uterine was [formerly] excluded, [being considered by the law of Scotland to be incapable of succession, either in heritage or in moveables. But, with regard to moveable succession, an alteration was made by 18 & 19 Vict. c. 23, § 5, which provides that, if an intestate shall die without issue, and leaving no surviving parent, and no brother or sister german or consanguinean, nor any descendant of them, [his brothers and sisters uterine, if any, or their descendants, shall have right to one-half of his moveable estate. In English law, half-blood was formerly an impediment to succession in lands; but now, by 3 & 4 Will. IV. c. 106, a kinsman of the half-blood inherits next after a kinsman in the same degree of the whole blood. In the distribution of an intestate's personal estate in England, no preference is given to the whole blood over the half-blood.] See *Ersk.* B. iii. tit. 8, § 8; [tit. 9, § 2; *Bell's Princ.* §§ 1650, 1665, 1861; *Fraser on Husb. and Wife*, i. 131; *M'Laren on Wills*, §§ 123, 224; *Sandford on Herit. Succession*, 4; *Robertson on Personal Succession*, 378.] See *Heir. Succession. Uterine.* [*Consanguinean.*]

HAMESUCKEN; is the offence of feloniously beating or assaulting a person in his own house or dwelling-place. In this sense, the house must be the place where the person resides. A shop, whether adjoining to the house or not, is not reckoned a man's house. Hamesucken is not committed anywhere but within the dwelling-house; an assault, therefore, made in the precincts, or in the courtyard or offices, is not hamesucken. A hired apartment in a lodging-house will be held, *quoad hoc*, to constitute a man's house, even although the assault be committed by the owner of the house; but an inn, or a friend's house, at which a person occasionally resides, is not in this sense a man's house. Neither is a playhouse, to this effect, accounted the dwelling-place of an actor. See *Comedian.* A ship, which is the proper residence of the master or crew, is considered as a dwelling-place. Aiming a blow, or offering to strike, though no blow be actually given, has been held to infer the crime of hamesucken. [But the injury done or intended must be serious and material; mere insulting conduct, though amounting to assault, will not constitute hamesucken.] The premeditated design of committing personal violence in the house, is essential to the crime; and no outrage will amount to it which a person suffers in his own house, in consequence of a quarrel taken up at the moment. When the injury was of an aggravated nature, [hamesucken was formerly a capital crime.] See *Hume*, i. 312; *Alison's Princ.* 199; [*Macdonald*, 164.]

HANAPER OFFICE; an office in the Court of Chancery of England. Writs relating to the subject were formerly kept in a hamper, those relating to the Crown in a little bag, and hence the respective offices still continue to be called the *Hanaper* and the *Petty-bag* office. *Tomlins' Dict. h. t.*

HANDWRITING. The strongest direct proof of a certain individual having executed a writing, is his own acknowledgment, where he is a competent witness; or, where he is disqualified, the evidence of others who saw the writing executed. The best indirect evidence is that of persons who are acquainted with the handwriting of the individual, and declare their belief that the writing is his. Proof of this kind, when the knowledge of the party's handwriting is acquired by correspondence only, though it may in certain cases be more satisfactory than when the knowledge is acquired by having seen him write, is not *per se* sufficient, in criminal cases. The weakest proof of all is the comparison of the writing with the acknowledged genuine writing of the party. For this purpose, the writings are sometimes submitted to those who are to judge of the evidence; sometimes to engravers and others skilled in writing; but this latter mode is now rather discountenanced, though still competent. *Comparatio literarum* is not of itself sufficient even in criminal cases. [See *Dickson on Evidence*, §§ 402, 762;] *Macfarlane's Jury Practice*, 225. See *Evidence. Comparatio Literarum. Holograph Writings.*

[**HANING**; hedges, enclosures, to save the produce of the fields. By 1535, c. 10, it was ordained that "euerie man spirituall and temporall, within this realme, hauand ane hundreth pund land of new extent be yeir,—plant wod and forest, and mak hedgeis and *haning* for himself, extending to thre akers of land, and abone or vnder, as his heretage is mair or les." And by 1535, c. 11, "all destroyaris of grene wod,—and sic like of all new *haningis*," are to be prosecuted and punished. See *Jamieson's Dict.*]

HARA PORCORUM; a "swine's cruife." *Skene, h. t.*

HARBOURS. See *Ports and Harbours.*

HARES. By 1707, c. 13, the shooting of hares was prohibited under a penalty of £20 Scots, *toties quoties*; but this penalty seems never to have been exacted of any but unqualified persons, although the act is equally levelled at qualified persons. The act was repealed by 48 Geo. III. c. 94, and there is now no distinction between hares and other game as to the right of shooting. [By 11 & 12 Vict. c. 31, persons having a right to kill hares may do so, [either themselves, or by other persons authorised by them in writing, without obtaining a game licence. And by 43 & 44 Vict. c. 47, every occupier of land has the right to kill hares thereon, as incident to and inseparable from his occupation of the land. See *Irvine on Game Laws*, 13.] See *Game Laws*. [*Game Licence*.]

HASP AND STAPLE; was the form of entering an heir in a burgage subject. The same practice prevailed in some burghs of regality, and appears to have been connected with very ancient forms. The bailie, the town-clerk, and the claimant appeared on the premises, when the claimant alleged his title, and proved it by witnesses; on which the bailie declared him to be heir, and made him take hold of the hasp and staple of the door as a symbol of possession, and then enter the house and bolt himself in. On his coming out, the transaction was noted and registered. *Stair*, B. ii. tit. 3, § 19; B. iii. tit. 5, § 27; *Bank.* ii. 354; *Bell's Princ.* § 845; *Sandford on Heritable Succession*, ii. 7. See *Cognition and Sasine*. *Burgage-Holding*.

HAT-MONEY; or primage; is a small sum of money paid along with the freight, to the master of a ship for his care. It is entirely regulated by usage. [See *Howitt*, 15 Dec. 1877, 5 R. 321.] See *Bell's Com.* i. 614; *Bell's Princ.* § 420; *Brodie's Supp. to Stair*, 1001.

HAVER; the holder of a deed or writing, called on to produce it judicially, *in modum probationis*, or for inspection, in the course of a process. See *Commission*. *Diligence*. *Incident Diligence*. *Exhibition*.

HAWBERT; a term, in old law language, for the tenure of ward and relief, so called, *quasi* "*feodum hauberticum*," or "*feodum loricatum*," because it was given upon condition that the vassal, possessor thereof, should come to the host and army with jack and arms. *Skene*, *h. t.*

[**HAWKER**. See *Pedlar*. *Vagabond*.]

HAWKS. In England, the stealing of a hawk, or concealing it after proclamation made by the sheriff, was, by certain ancient statutes, declared to be felony with clergy. An action of trover and conversion lay for a hawk reclaimed. *Tomlins' Dict. h. t.*

HEAD BOROUGH. Each shire has a head borough, where the sheriff court is held, and jurisdiction exercised, and letters of inhibition, interdiction, &c., published and registered. Where the shire is divided into lesser districts or wards, each district has a head borough of its own. *Ersk.* B. i. tit. 4, § 5.

HEAD-COURTS. There were formerly three head-courts in the year, at which all the freeholders, who owed suit and presence, in default of attendance were fined. Where the freeholder owed suit only, his personal presence was dispensed with, provided he sent a proxy. Those head-courts were afterwards reduced to one, called the Michaelmas head-court; and, at last, by the act 20 Geo. II. c. 50, the fines on account of non-attendance at head-courts were abolished. *Ersk.* B. i. tit. 4, § 5. See *Election Law*.

HEALTH, BILL OF. See *Bill of Health*.

HEARING IN PRESENCE. See *Consultation of Judges*.

HEARSAY EVIDENCE; evidence repeated at second-hand, by one who heard the actual witness relate, or admit, what he knew of the transaction or fact in question. Such evidence is, in the ordinary case, inadmissible, but may be received in the following cases: 1. When the person from whom the account was received, and who would himself have been a competent witness, is dead, [or insane. See *Lauderdale Peerage*, 10 App. Ca. 692; *Lovat Peerage*, 10 App. Ca. 763.] In cases of assault, even when the assaulted person has not died, the account given by him to a third party, of the injury, if given shortly after receiving it, may be adduced to confirm what he has previously sworn to before the jury. 2. When what the witness heard was substantially part of the fact or transaction, or of the *res gestæ* which the witness himself heard and saw; but this, obviously, is not properly hearsay evidence, but evidence in chief. There are several other cases in which hearsay is received; see *Alison's Prac.* 511. In all cases of deponing to conversations, the witness must give the whole words, if he can recollect them; if not, the substance. He is not allowed to give his own impressions of the result, unconnected with either the words or substance. *Hume*, ii. 406; *Burnett*, 600; *Alison's Princ.* 225; *Alison's Prac.* 510; *Syme*, 121; *Shaw*, 237; *Trials for Treason in Scotland*, ii. 71, 226, 518; *Steele*, 30; [*Macdonald*, 493; *Dickson on Evidence*, § 244; *Kirkpatrick*, § 35; *Stephen's Digest*, arts. 14 *et seq.*] See *Evidence*.

HEATH. See *Muirburn*.

HEIR. The term heir does not mean merely the heir-at-law; it means also the heir by destination; neither does it mean the heir in heritage only; it is likewise applied to the person who succeeds to the moveable estate. In short, it is a flexible term, which is to be understood according to the circumstances in which it is used. By the law of Scotland, however, it is not competent, merely by nominating a party to be the testator's heir, to confer on him any right of succession. In order to displace the legal heir in any particular subject or estate, the testator must convey that estate or subject to the party, other than the heir therein, whom he wishes to favour; and he may also call to the succession a series of strangers. But in all such cases, it is with reference to the conveyance of the property that parties other than the heirs-at-law succeed, and not as being named heirs, the brocard of the Scotch law being, that "it belongs to God and not to man to make an heir." See *Destination. Disposition. Settlement. Testament. Executors.*

The Heir-at-law.—The heir-at-law is the person who succeeds to the property of a person deceased, including moveables as well as heritage. The succession of heritage and of moveables is regulated by different rules. Heritage, which includes land, and all property connected with land, goes to males in preference to females; and where there are more than one male in the same degree of relationship to the deceased, the succession goes to the eldest male; the others receive the moveables equally amongst them, and are termed the nearest of kin, or executors of the deceased. Where there are more than one female in the same degree of relationship to the deceased, or the descendants of such female, according to the *jus repræsentationis,* the heritage does not go to the eldest female, as happens in the case of males, but it goes to all the females in the same degree of relationship, and their issue, equally, who are termed heirs-portioners. But there is a certain order in which the heirs succeed. The succession opens first in favour of descendants, that is, of sons and daughters in the above mentioned order; failing them, it goes to collaterals, that is, to brothers and sisters; whom failing it goes to ascendants, that is, to the father; then collaterally to his brothers and sisters; then to the grandfather, and so on as far as relationship can be traced; but no succession passes through the mother. In these questions, full-blood is always preferred to half-blood; and there is a right of representation in heritable succession by which the son succeeds to that heritable property to which his father or mother would have had right had either been alive. Thus, the son of an eldest son, in competition with his uncles, the younger brothers of his father, will be preferred to them on the estate which would have fallen to his father, the eldest son, had he been alive. See *Succession. Executors. Collation. Half-Blood.* The heir above described is termed heir-at-law, because he succeeds according to the disposition of the law; he is also termed heir-of-line, because he succeeds according to certain recognised lines of propinquity; he is called heir-general, because he represents the deceased generally; and whichever of those expressions is used, the person so succeeding is the person who would, by the disposition of the law itself, have succeeded. What has been stated above relates to the succession of heritage which has come to the predecessor, by descent from his predecessor. [Until recently, a different rule regulated the succession of heritable property which had been purchased by the immediate predecessor.] Such property was termed conquest, and went to the heir of conquest, who in all competitions amongst brothers or uncles, or their descendants, was not the next immediate younger brother or uncle, but the immediate elder brother or uncle. [But, by 37 & 38 Vict. c. 94, § 37, the distinction between fees of conquest and fees of heritage was abolished with respect to successions opening after 1st October 1874; and fees of conquest now descend to the same persons, and in the same manner as fees of heritage.] See *Conquest.* The moveable succession goes to the relation nearest in degree of blood to the defunct; and, where there are more than one equally near, the succession goes to all those relations equally, whether male or female. There was [formerly] no right of representation in moveable succession; [but this was altered by 18 & 19 Vict. c. 23, § 1.] Those succeeding are termed next-of-kin, or heirs in moveables. See *Succession.*

The Heir by Destination.—The heir by destination is the person who is called to succeed, failing the person to whom an estate is disponed. In calling a series of heirs, sometimes general terms are used, as to A. B., and the heirs-male of his body; at other times, the heirs-male or sons of A. B. are called *nominatim,* and in their order. The former method is more concise; and, if the conveyancer be fully acquainted with the legal import of the terms he makes use of, it is the best manner of expressing the destination; but the other will probably give more satisfaction to the granter, if he be unacquainted with the meaning of the general terms employed. See the different forms of expressing destinations explained under the article *Destination.*

Title of the Heir.—This has reference to the form by which an heir completes a title in his own person to the estate which has previously been vested in the person of his ancestor. This form varies according to circumstances. Thus, where the ancestor has been infeft, a special service is required; and that service must be followed by infeftment in favour of the heir. Where, again, the ancestor was not infeft, a general service is sufficient; and this service, without any farther step, carries to the heir all that was in the person of the ancestor. In the case of lands held of a subject-superior, the heir may be entered without a service, on a precept [or writ] of *clare constat*, which is a warrant for infefting the heir in the lands as heir to the ancestor. See *Service. Clare Constat. Entry of an Heir.* Burgage subjects were [formerly] carried to an heir by the form of hasp and staple; [but heirs in burgage subjects now complete their titles in the same way as if the tenure had been feudal; 37 & 38 Vict. c. 94, § 25. See *Burgage-Holding.*] There is still another method equivalent to a service, by which the heir may complete a title; he may grant a trust-bond to a confidential friend, and that friend may charge the heir to enter and adjudge the lands. See *Adjudication on Trust-Bond. Beneficium Inventarii.* [*Annus Deliberandi.*]

Rights of Heir.—After an heir has completed his title, every right possessed by his predecessor is vested in him. Before completing his title, an apparent heir has a right of deliberating as to the propriety of taking up the succession which has opened to him; and for this purpose a year and day [now six months] after the death of the ancestor are allowed him. During that period he cannot be compelled to enter; and, the better to enable him to deliberate, he may judicially enforce exhibition of his ancestor's title-deeds. See *Annus Deliberandi. Exhibition.* [By the Conveyancing Act, 1874, § 9, a personal right to every estate in land descendible to heirs vests in the heir, without service or other procedure, by his mere survivance. This right supersedes the privileges pertaining to apparent heirs by the former law of Scotland.] See *Apparent Heir.*

Burdens affecting the Heir.—Heirs are all liable for the debts of their ancestor; but they are liable in a certain order. Thus, the heir of line is primarily liable in the debts of the ancestor—next to him is the heir of conquest—then follows the heir-male—next to these is the heir by destination—and, last of all, the heir under a marriage-contract. It is in this order that those heirs must be discussed. See *Discussion.* Where a disponer burdens a disposition with the payment of his debts generally, this is held to be a provision in favour of his creditors, which does not prevent the disponee from claiming relief from the heir of the disponer. In order to render the disponee liable, a declaration to that effect, in very precise terms, is required. See *Stair*, B. iii. tit. 5; *More's Notes*, cccxix.; *Bank.* ii. 322; *Ersk.* B. iii. tit. 8, § 47; *Bell's Princ.* § 1637; *Bell's Com.* i. 79, 94, 138, 702, 747; *Hunter's Landlord and Tenant*, i. 218; ii. 14, 144, 165; *Sandford on Heritable Succession*, ii. 68; *Kames' Equity*, 104, 241, 327, 352, 384, 454; *Ross's Lect.* i. 56, 73, 497; ii. 507; [*Menzies' Conv.* 539, 677; *M. Bell's Conv.* i. 253; ii. 1074; *M'Laren on Wills*, i. §§ 122, 177, 1142; ii. § 2226.]

HEIR AND EXECUTOR. The heir is entitled to all the heritage, and the executor to all the moveables of the deceased, with the exception [formerly] of heirship moveables. But, where the heir and executors are equally near in kin to the ancestor, it is competent to the heir to insist that the whole estate, heritable and moveable, shall be massed *in cumulo*, and distributed share and share alike amongst the whole next of kin. See *Collation.* In the division of the rents of land between an heir and executor, the executor has right to the rents due at the death of the ancestor, the heir to what was not at that time due; and a rule was [formerly] received in practice for regulating what part of the rents were, and what part were not held to be due. Thus, the terms of Whitsunday and Martinmas were held as the legal terms by which these interests were regulated, whatever the conventional terms of payment might be. If, therefore, the landlord had survived Whitsunday, his executor had right to one-half of that year's rent; if, again, he survived Martinmas, he had right to the whole of that year's rent. But a different rule was adopted where the lands had been in the natural possession of the proprietor; for there, whatever had been sown by the proprietor was reaped by the executor; and where the ground had been prepared but not sown, the expense of labour was a claim competent to the executor. In the case of a tenant, the rights of his heir and executor were regulated by the same rules; but the executor paid a proportion of the rent corresponding to the part of the farm under crop. The heirs and executors of liferenters had their rights ascertained by the same rules. The interest of heritable bonds was, in like manner, divided between the heir and executors of the creditor, according to the rules observed in regard to the rents of lands. But the interest arising on a personal bond was due *de die in diem*. Hence, the executors of the liferenter of a personal bond drew the interest down to the day of the death of the liferenter. [These rules were altered by the Apportionment Act, 1834 (4 & 5 Will. IV. c. 22), which provided that all rents, annuities, and other payments due at fixed periods should be apportioned, "so that on the termination, by death or otherwise, of the interest of the person entitled thereto, he or his executors shall be entitled to a proportion of the payment due in respect of the current termly period corresponding to the time which shall elapse from the date of the last termly payment, such proportion to be recovered by the executor from the person entitled to the reversion;" *M'Laren on Wills*, i. § 403. It was decided that this act applied to Scotland, in *Bridges*, 23 Feb. 1847, 6 Bell's App. 1. It did not apply to the executors of fee-simple proprietors; *Bannatyne's Trs.* 12 Jan. 1872, 10 Macph. 319. See also, as to construction of the act, *Campbell*, 18 July 1849, 11 D. 1426; *Blaikie*, 18 July 1849, 11 D. 1456; *Baillie*, 23 April 1855, 2 Macq. 258; *Paul*, 15 Feb. 1864, 2 Macph. (H.L.) 1; *E. Dalhousie*, 26 March 1868, 6 Macph. 659. The law was again altered by the Apportionment Act, 1870 (33 & 34 Vict. c. 35), which is now the governing statute. All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise), are considered as accruing from day to day, like interest on money lent, and are apportionable in respect of time accordingly; § 2. The apportioned part of such rent, &c., is payable only when the next entire portion has become due; § 3. Parties have the same remedies for recovering apportioned parts as for entire portions, allowing proportionate parts of all just allowances; § 4. The act does not apply to policies of assurance, nor where stipulation is made to the contrary; [§§ 6, 7. See *L. Herries*, 6 Feb. 1873, 11 Macph. 396; *Cameron's Factor*, 15 Oct. 1873, 1 R. 21; *Maxwell's Trs.* 5 Nov. 1873, 1 R. 122; *Latta*, 30 Nov. 1877, 5 R. 266; *Learmonth*, 23 Jan. 1878, 5 R. 548.] See on this subject, *Ersk.* B. ii. tit. 9, § 64; *Bell on Leases*, i. 475; *Bank.* i. 218; *Bell's Com.* i. 786; ii. 7; *Sandford on Herit. Success.* ii. 240; *Hunter's Landlord and Tenant*, ii. 326, 336; [*Bell's Princ.* §§ 1047, 1497; *M'Laren on Wills*, i. § 389; *Rankine on Land-Ownership*, 77, 615; *Rankine on Leases*, 304.] See also *Discussion. Terms Legal and Conventional.* [*Annuities.*]

[**HEIR-APPARENT**; "he whose right of inheritance is indefeasible, provided he outlive the ancestor; as the eldest son, who must by the course of the common law be heir to his father on his death;" *Wharton's Lex.* The term is not known to the common law of Scotland, but it was introduced by the Rutherfurd Act (11 & 12 Vict. c. 36), and there defined in terms similar to the above (§ 52); see *Entail*, p. 395 *a; Forbes*, 29 June 1888, 15 R. 797. See also *Apparent Heir*—a term which has a quite different meaning. A *presumptive* heir is one who is nearest heir at the time, but whose prospect of succeeding is liable to be defeated by the birth of a nearer heir.]

HEIR-FEMALE. See *Destination.*

[**HEIRLOOMS**; in English law, such goods and personal chattels as, contrary to the nature of chattels, go by special custom to the heir or devisee of the owner, along with the inheritance, and not to his executor. Heirlooms in the strict sense are rare. When personal property is left by will, or settled so as to descend like a proper heirloom as far as the rules of law allow, it is called an heirloom by devise or settlement, or a *quasi*-heirloom. *Sweet's Law Dict.; Goodeve's Real Property*, 7. In Scotland, an entail of moveables is not binding even *inter heredes; Rankine on Land-Ownership*, 117–8; see *Entail*, p. 392 *a*.]

HEIRS AND BAIRNS. The expression "heirs and bairns," or "heirs and children," of a marriage, in the destination of an heritable estate in a contract of marriage, carries the estate to the heir-at-law, and not to all the children of the marriage, share and share alike; whereas, the expression "bairns of the marriage," or "children of the marriage," omitting the word "heirs," carries the property to all the children of the marriage equally. *Bell's Princ.* § 1963. See *Destination. Bairns of a Marriage.*

HEIRSHIP MOVEABLES; were the moveables to which the heir in heritage was, [till recently,] entitled, in order that he might not succeed to a house and land completely dismantled. They consisted of the best of certain kinds of moveable goods belonging to the heir's predecessor, such as furniture, horses, cows, oxen, farming utensils, &c., but not including fungibles. See a full list of heirship moveables given in *Hope's Minor Prac.* 538, edit. 1734. Heirship moveables were due only to the heir of a baron or of a burgess. In this sense, a person infeft in lands, or even in an annualrent of lands, is held to be a baron; but he must have been infeft, and the burgess must be an actual trading burgess in a royal burgh, not merely an honorary one. It was the heir of line only who had a right to claim heirship moveables, and of this right he could not be deprived by any testamentary or death-bed deed of the ancestor's. [Heirs-portioners (contrary to *Ersk.* B. iii. tit. 8, § 13) divided the heirship moveables.] The title to heirship moveables required no service to complete it; possession was sufficient. But, if the heir died without attaining possession, heirship moveables, on his death, did not descend to his executors, but to the heir of the first deceased. [The right to heirship moveables was abolished by 31 & 32 Vict. 101, § 160.] See *Stair*, B. iii. tit. 5, § 7; *More's Notes*, cccxxx.; [*Ersk.* B. iii. tit. 8, §§ 17, 18, 77;] *Bank.* ii. 292, 328; *Bell's Princ.* § 1903; *Sandford on Herit. Success.* i. 17, 36.

HEIRS-PORTIONERS. Failing the male issue and their issue, the succession opens in favour of the female issue. The heritage does not go to the eldest female alone, but to all the females in the same degree of relationship, who inherit equally and *pro indiviso* as heirs-portioners. In this succession the *jus repræsentationis* prevails. Thus, if the deceased be survived by two daughters, and by grandsons or granddaughters by a deceased daughter, the eldest grandson, as his mother's heir-at-law, will succeed to her share of the ancestor's heritage, to the exclusion of his [brothers and] sisters; or if the deceased daughter has been survived by daughters only, they will succeed as heiresses-portioners to their mother's share of their grandfather's succession. The eldest heir-portioner by legal succession, but not by provision, has right to the mansion-house of an estate in the country, as a *præcipuum*, without compensation to her sisters. [But she has no such right to a house in town, or a country villa.] She is also entitled to such peerages, dignities, and titles of honour, as are not otherwise limited. [Superiorities yielding substantial feu-duties are to be divided; but the eldest heir-portioner is entitled to a blench superiority as a *præcipuum*, without making any recompense to the others; *Rae*, 30 Nov. 1809, Hume's Dec. 764; *M'Neight*, 30 Nov. 1843, 6 D. 128. Heirs-portioners hold *pro indiviso*, while the subjects are undivided; but each has a title in herself to her own part or share, which she may alienate or burden by her own separate act; *Cargill*, 21 Jan. 1837, 15 S. 408. Any of the heirs-portioners may insist on having the subjects divided, and in such division the eldest has the portion next the mansion-house; the others cast lots for their choice.] *Stair*, B. iii. tit. 5, § 11; *More's Notes*, cxx., cccxxix.; *Ersk.* B. iii. tit. 8, § 13; *Sandford on Herit. Success.* i. 3–33; *Bell's Princ.* § 1659; [*M'Laren on Wills*, § 159.] See *Brieve of Division.* [*Succession.*]

HERALD; is an officer serving under the lyon king at arms. [The heralds were formerly six in number, but were reduced to three by 30 Vict. c. 17, § 7. Their principal duties are now attendance on royal proclamations and other public solemnities.] *Ersk.* B. i. tit. 4, § 32. See *Lyon King at Arms.* [*Arms.*]

[**HEREDITAMENTS**. In English law, whatsoever may be inherited is a hereditament: in other words, when a right is of such a nature that on the death of its owner intestate it descends to his heir, it is a hereditament. The term includes a few rights unconnected with land, but it is generally used as the widest expression for real property of all kinds, and is therefore employed in conveyances after the words "lands" and "tenements" to include everything of the nature of realty which they do not cover. Hereditaments are corporeal or incorporeal; real, personal, or mixed. *Sweet's Law Dict.*; *Goodeve's Real Property*, 6.]

HERESY; among Protestants, a false opinion repugnant to some point of Scriptural doctrine, and either absolutely essential to the Christian faith, or at least of high importance. *Tomlins' Dict. h. t.*

HEREZELD; was the best horse, ox, or cow, belonging to a tenant, which, on his death, was due to the landlord. See *Skene, h. t.* This exaction has been long unknown in practice, although, in charters by progress from superiors, the word is occasionally met with; and sometimes, in striking a composition, the value of the herezeld is stated against the vassal in money at a low conversion. *Stair*, B. ii. tit. 3, § 80; [*Ersk.* B. ii. tit. 6, § 10;] *Bank.* i. 596; ii. 116; *Ross's Lect.* ii. 175; *Hunter's Landlord and Tenant*, ii. 302.

HERIOT; the English law term corresponding to the Scotch word herezeld. It signified originally a tribute given to the lord of a manor, for his better preparation for war; and is now taken for the best beast, whether it be horse, ox, or cow, which the tenant dies possessed of, due and payable to the lord of the manor. In some manors, it is the best goods, piece of plate, &c. *Tomlins' Dict. h. t.*

HERITABLE AND MOVEABLE. In the Roman law, things were divided into corporeal and incorporeal; and the former class was subdivided into moveable and immoveable. But this classification has, in the law of Scotland, given place to the distinction between heritable and moveable rights, a distinction resting more on the legal rights of the heir and of the executor, than on the nature of the subjects themselves. Generally, all rights in, or connected with, land, are heritable. Whatever moves itself, or can be moved without injury to itself, or the subject with which it is connected, and whatever is not united to land, is moveable. But these general rules are subject to exceptions and modifications. Things, in themselves moveable, may become heritable by accession. Whatever has been by art annexed to land, or other heritable subject, so that it cannot be removed without injury or change of nature, is heritable, by accession. See *Fixtures.* Whatever is by growth connected with the soil is heritable, under certain exceptions. See *Grass.* Things, in their nature heritable, may become moveable by being made part of a moveable *universitas.* Thus, a share of heritable subjects forming part of the stock of a trading company is moveable; [*Corse*, 1802, M. App. Herit. and Mov. No. 2; *Murrays*, 1805, *ib.* No. 4.] Things become heritable by destination, by being made to descend to the heir, or otherwise. Thus materials prepared for completing any part of a house are heritable; [*Johnston*, 1783, M. 5443. And when a person died in the course of erecting a house, the funds required to complete it, according to the plans adopted, were held to be heritable *destinatione; Malloch*, 29 Jan. 1867, 5 Macph. 335. But see *Robson*, 2 Feb. 1861, 23 D. 429.] Books and furniture may be made heritable in succession; [*Veitch*, 1808, M. App. Serv. and Conf. No. 4.] Destination, although it rules succession, operates no change on subjects, in respect to diligence; [*Forbes*, 1772, 5 B. Sup. 583.] Debts secured upon land are heritable, [except as modified by the Consolidation Act of 1868, *ut infra.*] But simple personal debts and engagements, shares of companies, public or private, bank stock, and government stock, are moveable. Arrears of heritable debts, of rents and feu-duties, of the interests of heritable bonds, &c., are moveable. Personal bonds, [with clause of interest,] were formerly heritable after the term of payment, [or the first term of payment of interest,] was past; they were made moveable by 1661, c. 32, but continue heritable as to the fisk, and *jus relictæ*, and the other rights of husband and wife. [See *Gray*, 11 March 1859, 21 D. 709; *Downie*, 14 July 1866, 4 Macph. 1067.] Rights in their nature moveable, but having a tract of future time, are heritable. [See *Annuities.* But see *Hill*, 21 Dec. 1872, 11 Macph. 247.] Titles of honour and offices continuing after the holder's death are heritable. [Leases of land are heritable as to succession, both as bearing a tract of future time, and as being temporary rights affecting land, to which the legislature has given, in certain respects, the effect of real rights of land; yet leases have always been moveable as to the fisk. Copyrights are moveable property; 5 & 6 Vict. c. 45, § 25. And so also are patents, being destined to executors; 46 & 47 Vict. c. 57, sched. I. form D; and subject to legacy duty; *Adv. Gen.* v. *Oswald*, 20 May 1848, 10 D. 969.] Securities, whether by heritable bond or disposition in security, or by real burden, or by adjudication, [were till recently] heritable, though infeftment had not been taken. [By the Consolidation Act of 1868, however, all heritable securities are made moveable as regards the succession of the creditor, unless executors are expressly excluded; but they remain heritable in questions between husband and wife, in computing legitim, and with regard to the fisk; 31 & 32 Vict. c. 101, § 117. See *Heritable Securities.*] Excluding executors in a bond makes the bond heritable. [See *Ross*, 4 July 1809, F.C.; 31 & 32 Vict. c. 101, § 117. The *jus crediti* under a trust is heritable, if the trust be for vesting heritable subjects in trustees, with a right in others to demand delivery or conveyance; *Durie*, 1791, M. 4624, Ross's L. C. i. 524. But if the *jus crediti* under the trust be merely to demand a sum of money, or share of the general [trust-fund, it is moveable; *Grierson*, 1780, M. 759.] Sums directed to be laid out by trustees on heritable subjects, are heritable; [*E. Stair*, 19 June 1827, 2 W. & S. 614. Sums directed to be invested on heritable security were never *necessarily* heritable; *Carfrae*, 3 Feb. 1842, 4 D. 605; *M'Laren on Wills*, i. § 421; and since the act of 1868, there seems to be now no ground for regarding such sums as otherwise than moveable.] A trust and instruction to sell heritable subjects, and convert them into money, make an heritable debt moveable; and hence the claim against the trustees, at the instance of the parties beneficially interested in the proceeds of the trust-estate, is moveable, and may be arrested. [And the conversion is held to take effect from the time when the direction became binding on the trustee, without regard to the period of its actual execution; *Angus*, 6 Dec. 1825, 4 S. 279, Ross's L. C. i. 529. An implied direction to sell also operates conversion; but not a mere power of sale. "If the right to sell is made to depend on the discretion or will of the trustees; or is to arise only in case of necessity; or is limited to particular purposes, as, for example, to pay debts; or is not indispensable to the execution of the trust; then, in any of these cases, until the discretion is exercised, or the necessity arises and is acted on, or after the particular purposes are answered, or if the sale is not indispensable, there is no change in the quality of the property;" *per* Lord Chanc. Westbury, in *Buchanan*, 15 May 1862, 4 Macq. 374. See also *Auld*, 8 Dec. 1876, 4 R. 211; *Hogg*, 7 June 1877, 4 R. 845; *Aitken*, 6 July 1883, 10 R. 1097; *Sheppard's Tr.* 2 July 1885, 12 R. 1193; *Rossborough's Trs.* 28 Nov. 1888, 16 R. 157. A direction to divide the trust estate among a large number of objects has been recognised as practically necessitating sale, and thus inferring conversion; *Weir*, 22 June 1865, 3 Macph. 1007; *Fotheringham's Trs.* 2 July 1873, 11 Macph. 848. On the other hand, if the whole residue of the estate is to be paid over to one beneficiary, conversion will not be so readily inferred; *Speirs*, 21 Nov. 1850, 13 D. 81; *Grindlay*, 8 Nov. 1823, 16 D. 27. *Reconversion* is said to take place, when a beneficiary, under a trust which directs a sale of heritage, elects to take the trust estate in its actual condition, rather than in the character impressed upon it by the trust. See *Grindlay*, *supra*; *Hogg*, *supra*; *M'Laren on Wills*, i. § 432 *et seq.* The price of lands sold is moveable, [when the sale is by the owner; but not when the sale is by an apparent heir,—the price in this last case coming in place of the lands, as a *surrogatum*; *Emslie*, 1817, Hume's Dec. 197. Where lands had been taken by a railway company, under statutory powers, and the price had been fixed by arbitration and consigned, but the proprietor had died before receiving payment, it was held that the price was moveable, and was not to be treated as a *surrogatum* for the lands; *Heron*, 3 June 1856, 18 D. 917. See also *Moncrieff*, 16 July 1856, 18 D. 1286. In bankruptcy, the transference of the heritable estate to the trustee does not affect the succession to creditors who have claimed in the sequestration; 19 & 20 Vict. c. 79, § 102.] See *Stair*, B. ii. tit. 3; B. iii. tit. 1, § 25; *More's Notes*, cxxxviii.; *Ersk.* B. ii. tit. 2, § 2; *Bell's Com.* ii. 1; *Bank.* i. 514; ii. 198; *Bell's Princ.* § 1470; *Sandford on Heritable Succession*, ii. 206; *Brown's Synop. h. t.*; *Ross's Lect.* i. 41, 76; [*Menzies' Conv.* 188, 709; *M. Bell's Conv.* i. 251; ii. 960; *M'Laren on Wills*, i. § 368. See *Heir and Executor. Terms Legal and Conventional.*]

HERITABLE BOND; is a bond for a sum of money, to which is joined, for the creditor's farther security, a conveyance of land or of heritage, to be held by the creditor in security of the debt. *Ross's Lect.* i. 76; ii. 324; *Bell's Princ.* § 910. [See *Redeemable Rights. Heritable Securities.*]

HERITABLE JURISDICTIONS; were grants of criminal jurisdiction bestowed on great families, with a view to the more easy and expeditious administration of justice. These jurisdictions, with other powers possessed by landed proprietors, were abolished after the rebellion of 1745, by 20 Geo. II. c. 43, and compensation given to those who suffered patrimonially by the operation of that statute. *Ersk.* B. i. tit. 2, § 11.

HERITABLE SECURITIES. There are various ways in which heritable estates may be made the means of security to creditors. The creditor may either lead an adjudication against the land, or it may be secured exclusively for his benefit by inhibition, or a burden may be created entitling the creditor to appropriate the rents and uses of the land until the debts shall be paid. Real securities may be created or dissolved without touching the radical right to the estate or the progress of titles; and they are discharged by the extinction of the debt, without any feudal form of reconveyance. Heritable securities are either constituted by infeftment in favour of the creditors, or they depend on the force of a condition qualifying the right of property. Of the first class are wadset; infeftment of annualrent; heritable bond; disposition in security, and absolute disposition with back-bond. Of the second class are reserved burdens and faculties to burden. [Heritable securities are now usually constituted by bond and disposition in security. See *Redeemable Rights*. "While the wadset contained much of the nature of an absolute transference in its external form, and was allowed in some respects to receive the effect of such a transference; and the heritable bond, on the other hand, conferred the right only of a real creditor for the annualrent; the bond and disposition in security has been so devised as to impart to the lender all the benefits derivable from these previous forms of the security, as well as from the real burden, in so far as such benefits properly belong to his position as a creditor. The grantee of a bond and disposition in security has the position of one infeft in the lands themselves for security of principal, interest, and penalty; and he may at any time take possession of the lands or of the rents, in order to operate payment;" *Menzies' Conv.* 849. The grantee has two remedies: he may both charge on the personal obligation contained in the bond, and he may exercise the power of sale which is contained in every bond and disposition in security; *M'Whirter*, 9 July 1887, 14 R. 918; *M'Nab*, 16 March 1889, 16 R. 610. A statutory form of bond and disposition in security is provided by § 118 of the Consolidation Act of 1868 (31 & 32 Vict. c. 101). The import of its various clauses is explained by § 119; and the forms to be observed in carrying out a power of sale are prescribed by the same section. Payment must have been demanded notarially three months previously, and the subjects must have been advertised for sale, as prescribed. The subjects are sold by public roup, and an absolute disposition is granted to the purchaser by the creditor. By § 120, heritable securities may be registered in the appropriate register of sasines at any time during the life of the grantee, and are preferable according to the date of registration. By § 121 a valid title is given to purchasers of lands sold under a power of sale in a heritable security. Creditors selling must count and reckon for the surplus of the price, and consign the same in bank; after which the lands are disencumbered of the security; §§ 122, 123. When there is no surplus, a certificate by a notary public must be recorded along with the disposition, in order to disencumber the lands; § 48 of the Conveyancing Act of 1874 (37 & 38 Vict. c. 94). The creditor sells as mandatory for the true owner; *Park*, 24 Jan. 1880, 7 R. 546; see *Power of Sale*. He has also a duty to guard the rights of postponed security-holders; *Stewart*, 17 Nov. 1882, 10 R. 192; *Kerr*, 23 Dec. 1848, 11 D. 301. He is not entitled to be the purchaser of subjects sold under his bond; *Taylor*, 20 Jan. 1846, 8 D. 400; but contrast *Cruikshank*, 15 Feb. 1848, 11 D. 614. A postponed heritable creditor is entitled, on payment of the first heritable debt, to demand an assignation thereof, if it is necessary in order to enable him to recover his own debt; *Cunningham's Trs.* 18 Dec. 1847, 10 D. 307. By § 117 of the act of 1868, heritable securities are made moveable as regards the succession of the creditor, unless executors are expressly excluded. They remain heritable, however, in questions between husband and wife, in computing legitim, and *quoad fiscum;* and the enactment does not affect the succession of the debtor. See *Hodge*, 22 Nov. 1879, 7 R. 259; *Guthrie*, 23 Oct. 1880, 8 R. 34. By § 124 of the same act, a simple form of assignation of a heritable security is provided, registration of which completes the transference; or a notarial instrument may be recorded, where the conveyance of the heritable security is included in a general deed of conveyance, the whole of which it is not desired to record. Provision is made by §§ 125–130 for completion of title by an executor nominate, a disponee, or a legatee of a heritable security; by an heir, when executors are excluded; by an executor, when the creditor has died intestate; by an adjudger; and by the representatives of a creditor who has not taken infeftment. Note, however, that in place of §§ 125, 127, and 129 of the act of 1868 are to be read the amended provisions of §§ 63, 64, and 65, respectively, of the Conveyancing Act of 1874. By §§ 132 and 133 of the act of 1868, short forms of deeds are provided, for renouncing, discharging, or restricting heritable securities. By § 47 of the act of 1874, a heritable security, together with any personal obligation for payment contained therein, transmits against anyone acquiring the lands by succession, gift, or bequest, or by a conveyance containing an agreement to that effect. But when the lands are taken by succession, [the heir's liability is limited to the value of the estate to which he succeeds. In the case of transmission of the lands by conveyance, an obligation of relief in the conveyance does not import an agreement in the sense of the enactment; *Carrick*, 3 Dec. 1881, 9 R. 242; *Ritchie*, 16 Dec. 1881, 9 R. 358. When the liability transmits to a purchaser in consequence of an agreement in the conveyance, the seller still remains liable to the creditor, unless he was a party to the agreement; *University of Glasgow*, 10 Feb. 1882, 9 R. 643.

[By 1696, c. 5, all dispositions and other rights granted for relief or security of debts to be contracted for the future, are of no force as to any debts contracted after the infeftment following on such disposition or right. Hence an infeftment in security covers only the sum actually advanced at the date of the infeftment, unless at the same date an absolute obligation has been granted for the balance of the whole sum secured; *Dempster*, 1750, M. 10,290; *Fulton*, 22 June 1826, 4 S. 747; *Dunbar's Crs.* 1789, M. 1156; *Ross's L. C.* ii. 632 *et seq.* An infeftment in security cannot be granted for an indefinite or contingent sum; *Pickering*, 1788, M. 1155; *Stein's Crs.* 1789, M. 1158; *Tod*, 13 Dec. 1838, 1 D. 231; *Smith Sligo*, 17 March 1885, 12 R. 907. But see *Bank Credit. Absolute Disposition.*] See on this subject, *Stair*, B. iii. tit. 4, § 33; tit. 5, §§ 6, 25; B. iv. tit. 25, § 24; *More's Notes*, ccx.; *Elchies' Notes on Stair*, 136; *Ersk.* B. ii. tit. 8; *Bell's Com.* i. 715; ii. 192; *Bell's Princ.* § 896; [*Duff's Feudal Conv.* 257; *Menzies' Conv.* 842; *M. Bell's Conv.* ii. 1151; *Craigie's Digest* (*Herit.*), 139. See also *Burdens.*]

HERITOR; in its original acceptation, signified the proprietor of an heritable subject; but in connection with parochial law, the term is confined to such proprietors of lands or houses as are liable in payment of public burdens. ["The term is equivalent to 'owner in fee of corporeal heritable property.' It includes corporations, such as railway companies, and burghs, as represented by the magistrates and council in parishes partly burgal, parly landward. It excludes liferenters, or at least liferenters by constitution—who are therefore not even liable in the expense of ordinary repairs, or in interest accruing during their tenure on assessments paid by the fiar for rebuilding or extraordinary repairs—titulars, and superiors. Tenants—even though for purposes of valuation certain holders of long leases are to be taken as 'proprietors' in the sense of the Valuation Act of 1854—and persons who are merely seatholders in the parish church on some other tenure than as landowners in the parish, are still more distinctly outside the category;" *Rankine on Land-Ownership*, 628. See *Macfarlane*, 29 Jan. 1864, 2 Macph. 519; *Highland Railway*, 15 June 1870, 8 Macph. 858; *M'Laren*, 28 May 1868, 6 Macph. (H.L.) 81. As to meetings of heritors, see *Rankine*, 643.] See also *Ersk.* B. ii. tit. 10, §§ 57, 63; *Bell's Princ.* §§ 1136, 1164, 1171; *Dunlop's Parochial Law*, 447; *Duncan's Par. Eccl. Law.* 571; *Black's Par. Eccl. Law*, 23. See *Parish. Poor Law. Church. Manse. Schools.*]

HERMAPHRODITE. In the English law, a person partaking of both sexes may give, grant, or inherit as either man or woman; *Tomlins' Dict. h. t.* Forbes, in his Institute, divides the sexes into male, female, and "hermaphrodite—*i.e.*, both male and female, which is esteemed to be of that sex which is most prevailing in the person." *Forbes, Inst.* B. i. c. 1.

HERSHIP; the crime (formerly prevalent in this country) of carrying off cattle by force. It is described as "the masterful driving off of cattle from a proprietor's grounds." *Hume*, i. 197.

HIDE; an old English land measure, the extent of which is not quite certain, being, according to some, 100, according to others, 120 acres. Coke says that it contains no determinate number of acres. Eight hides made a knight's fee. *Tomlins' Dict. h. t.*

[**HIGH COURT OF JUSTICE.** Under the judicial system established in England by the Judicature Acts of 1873 and 1875 (36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77), the various courts formerly exercising separate jurisdiction were consolidated into one Supreme Court of Judicature, consisting of two permanent Divisions, viz., the High Court of Justice, exercising mainly original jurisdiction, and the Court of Appeal, exercising mainly appellate jurisdiction. The High Court of Justice was divided into five Divisions, representing respectively the courts whose jurisdiction was transferred to the High Court, viz., the Chancery, the Queen's Bench, the Common Pleas, the Exchequer, and the Probate, Divorce, and Admiralty Divisions. The act of 1873, however, gave power to the Queen in Council to reduce or increase the number of Divisions or the number of [judges attached to each Division (§ 32); and by Order in Council dated 16 Dec. 1880, which came into force on 26 Feb. 1881, the Common Pleas and Exchequer Divisions were merged in the Queen's Bench Division; so that there are now three Divisions. See *Wharton's Lex.; Broom's Common Law*, 34.]

HIGHWAYS; are *inter regalia*, being vested in the Crown, for the benefit of the people. [The term highway denotes either a corporeal heritable subject—"the soil trodden by the public, and all below as well as above its surface;" or an incorporeal right—"a right of passage in general to all the King's subjects, without distinction." The latter definition is that of the English law. See *Rankine on Land-Ownership*, 273. For the law of highways, see *Road, Public.*]

HILDA TERRÆ; *hida terræ;* a "pleuch of land." *Skene, h. t.*

HINC INDE; a technical expression used in Scotch legal phraseology, to signify on either side, or on this side and the other, as connected with a particular process, account, or transaction. Thus the claims of the parties *hinc inde*, signify their reciprocal claims against each other, as at a particular time, or in a particular process or suit.

[**HIRING**. See *Location.*]

HISTORIES; how far evidence. See *Evidence*, p. 408*b*.

HOLDINGS. The holding is a term used in feudal law to signify the tenure or nature of the right given by the superior to the vassal. It expresses the services due to the superior, and ascertains, by a single word, as by the word *feu*, or *blench*, the state of the connection between the superior and vassal. When it is said that a person holds feu, it is equivalent to saying that he holds his lands for payment of a sum of money yearly, or for a yearly payment in grain; and blench means a mere elusory duty, as a penny Scots. There are, besides, certain rights incident to all holdings, which are explained under other articles. Two species of holdings formerly known are now extinct—viz., wardholding and mortification. Wardholding was the military tenure of this country. The ward and marriage of the heir, which were two of its casualties, were of the most oppressive nature. See *Ward. Marriage. Avail.* And recognition, by which the feu fell back to the superior on the vassal's giving out more than one-half of the feu, was an impediment in the transmission of land holding ward, which, previous to the abolition of wardholding, occasioned the most serious inconvenience. [See *Recognition.*] Wardholding was abolished by the 20 Geo. II. c. 50. And where the lands held in ward of the Crown or of the Prince, they were converted into blench-holdings; when they held of a subject-superior, they were converted into feu-holding, and rules were laid down for fixing the feu-duties to be paid. This statute was one of the results of the Rebellion of 1745, and was meant to lessen the influence of superiors with their vassals. Mortification, which is the other species of holding that has fallen into disuse, was the tenure by which churches or religious societies held land for charitable purposes, or for prayers and masses for the souls of the dead. This tenure fell at the Reformation; and where lands are now destined for a charitable purpose, they are given out to be held either in feu or in blench, according to circumstances. The modern holdings therefore are either feu or blench. The feu-holdings are those which hold of the Crown or of a subject-superior, in consequence of original feu-rights; or they are rights which formerly held ward of a subject, and are now converted into feu, under the act 20 Geo. II. c. 50. The blench-holdings, again, are either originally blench, and are held either of the Crown or of a subject-superior; or they were formerly wardholdings held of the Crown or Prince, and converted into blench-holdings under the statute. The feu-holding has a *reddendo*, as it is called, or rent in money or in grain, payable yearly, at terms specified; and besides this fixed duty, there are certain casualties, as non-entry, relief, escheat, disclamation, and purpresture. See *Casualties.* The blench-holding has the same casualties, and its fixed duties (as already observed) are an elusory annual duty, as a penny money, a hawk, a rose, *nomine albæ firmæ.* When the words *si petatur tantum* are added, it is held to be discharged, if not demanded within the year; and where those words are not added, still, if the duty be of yearly growth, it ought to be demanded within the year. The only other holding is *burgage*, which relates to property within burgh. See *Burgage.* See *Ersk.* B. ii. tit. 4; *Bank.* i. 529; *Bell's Com.* i. 721; *Bell's Princ.* § 680; *Ross's Lect.* ii. 106. As to the distinction between base and public holdings or rights, see [*Conveyancing.*] *Base Rights. Confirmation. Consolidation. Charter. Superiority.*

HOLIDAY. [Bank holidays in Scotland

[are New Year's day, Christmas day (or the following Mondays, if these fall on Sundays), Good Friday, and the first Mondays of May and August. In England, Christmas and Good Friday are treated as if they were Sundays (7 & 8 Geo. IV. c. 15); and the statutory bank holidays are Easter Monday, the Monday in Whitsun week, the first Monday in August, and the 26th December (or the following Monday if it falls on a Sunday). 34 & 35 Vict. c. 17; 38 Vict. c. 13.] See *Sunday*.

HOLOGRAPH DEED. A holograph deed is a deed written, [wholly, or in the essential parts,] with the granter's own hand, which on account of the difficulty with which the forgery of such a document can be accomplished, is held to be valid in law without witnesses. Where it is mentioned in the deed to have been written by the granter, the presumption is, that the deed is truly holograph, though the contrary may be proved; [*Robertson*, 20 Dec. 1844, 7 D. 236.] But where the deed does not bear to have been written by the granter, still it may be proved to have been of his handwriting, either by a comparison of the handwriting, or by the evidence of those who saw it written; [*Turnbull*, 29 Feb. 1844, 6 D. 896. An improbative writ may be validated by the holograph and signed memorandum of a party, if the intention to adopt be clearly expressed; see *M'Intyre*, 1 March 1821, F.C.; *Christie's Trs.* 1 Feb. 1870, 8 Macph. 461; *Gavine's Tr.* 12 Jan. 1883, 10 R. 448; and contrast these with *Alexander*, 26 Feb. 1830, 8 S. 602; *Maitland's Trs.* 10 Nov. 1871, 10 Macph. 79. A letter written and signed by one of the partners of a company in the firm's name is holograph of the firm; *Nisbet*, 20 July 1869, 7 Macph. 1097.] A holograph deed without witnesses does not prove the date that may be given to it, where the date is of consequence, as in questions under the law of deathbed, or in competitions; but the date may be proved, *aliunde*, by adminicles, or by two unexceptionable witnesses. [But, by 37 & 38 Vict. c. 94, § 40, every holograph writing of a testamentary character is deemed, in the absence of contrary evidence, to have been executed of the date it bears.] And *in re mercatoria*, holograph writings will prove their date, to the effect at least of throwing the *onus probandi* on the objector. Holograph missive letters, and holograph bonds and subscriptions in count books, if not sued on within twenty years, prescribe, unless the pursuer offer to prove, by the defender's oath, the verity of such writings; 1669, c. 9; [*Mowat*, 1 July 1856, 18 D. 1093.] See *Ersk.* B. iii. tit. 2, § 22; [tit. 7, § 26;] *Stair*, B. ii. tit. 12, § 35; B. iv. tit. 42, § 6; *More's Notes*, cclxx; *Bank.* i. 333; ii. 172; *Bell's Com.* i. 341, 346; *Bell's Princ.* §§ 20, 590; [*Dickson on Evidence*, § 754; *Menzies' Conv.* 135; *M. Bell's Conv.* i. 78.] See *Deed. Evidence.*

HOLYROOD HOUSE. See *Sanctuary. Abbey.*

HOMAGIUM; a band of manrent, when any person promises to serve another in sik sort, that he shall be friend to all his friends, and foe to all his foes, against all deadly. The following curious style may be quoted from *Skene, de Significatione Verborum*:—"I become zour man, my liege King, in land, lith, life, and limb, warldlie honour, homage, fealtie and lawzie, against all that live and die; zour counsell conceiland that ze schaw me; the best counsell schawand, gif ye charge me; zour skaith and dishonour not to hear and see, bot I sall let it all my gudlie power and warn zou theirof; swa help me God." *Skene, h. t.* See *Manrent.*

HOMICIDE; is the killing of any human creature. It may be *justifiable*, as committed under some unavoidable necessity; or *excusable*, as where a person engaged in a lawful act is, without intention, the occasion of another's death; or it may be *culpable*; and of this there are several kinds; as where, although accidental, it has proceeded from carelessness, or where it proceeds from an unlawful act, or where it is done with an intention to do harm, though the intention does not amount to that of killing the person; or where the person intends to kill, but commits the act on a sudden, from resentment excited by real and great injuries, but without any previous malice or hatred to the deceased; and, last of all, where the homicide is committed from malice and forethought, which amounts to the crime of murder. *Hume*, i. 179; *Alison's Princ.* 145; *Steele*, 70; [*Macdonald*, 120.] See *Murder. Chaud Melle.* [*Culpable Homicide. Justifiable Homicide.*]

HOMINE REFLEGIANDO; in English law, a writ to bail a man out of prison. *Tomlins' Dict. h. t.*

HOMOLOGATION; is a technical expression, signifying an act by which a person approves of a deed; the effect of such approbatory act being to render that deed, though itself defective, binding upon the person by whom it is homologated.

All deeds, informal or defective, may be homologated; that is, all deeds exposed to the statutory nullities arising from the regulations established for the regular execution of deeds, or deeds granted by a person capable of consent, though the deed be defective at the time from the want of the consent of those whose concurrence the law requires, in order to give validity to the deed; as, for example, a deed by a married woman without the consent of her husband, or by a minor without the consent of his curators. And in general, any irregular or informal deed may be homologated by the parties, after they are capable by themselves of executing a deed; that is, by the woman after the death of her husband, or by the minor after attaining majority, or by the party entitled, but for the homologation, to found upon the irregularity. Homologation is to be inferred only from an act which clearly and expressly implies a knowledge and approbation of the deed. Thus, the paying of interest, or the performing of any obligation come under in the deed, will be accounted homologation; but an act which does not infer a knowledge of the contents of the deed, even the subscribing as a witness, if there be no other proof of the person's knowledge of the contents, will not infer homologation; unless the person so signing as witness is connected in such a way with the principal parties to the deed, that his approval must be presumed. Thus, a brother was, by signing as witness, found to have homologated his sister's marriage-contract, to the effect of preventing him from reducing a bond therein assigned. The effect of homologation on the person homologating is to render the deed as effectual against him and his heirs as if it had been a formal and regular deed from the first; but against third parties, who do not represent the person homologating, the deed is exposed to all the objections originally competent against it. *Ersk.* B. iii. tit. 3, § 47; *Stair*, B. i. tit. 10, § 11; B. iv. tit. 40, § 29; *More*, lxvii.; *Sandford on Heritable Succession*, i. 150; *Bell's Com.* i. 93, 139; *Bell's Princ.* § 27; [*Dickson on Evidence*, § 850; *Menzies' Conv.* 182; *M. Bell's Conv.* i. 189.]

HONORARIUM. This word, in the Roman law, was applied to a fee not paid as a remuneration for labour, for which the labourer could exact a recompense; but rather as a species of present, made as an acknowledgment for trouble gratuitously taken; and, in an acceptation nearly similar, the word has been adopted in our law. In this sense, the fee paid to a law-agent, a physician, or a surgeon, is not an honorary, since any of them may maintain action for its recovery. But the fee of a counsel or barrister is properly an honorary, because he cannot sue his client for payment. It is true that it has been decided, that where a law-agent has received money from the client to fee counsel, and has not paid the fees, the counsel may sue the agent for the money; [*Keay*, 7 March 1837, 15 S. 748, 9 Sc. Jur. 353.] The same rule, however, would apply to the case of any mere donation transmitted by the hands of a third party, and not duly delivered to the donee. According to one authority, the word honorary signifies a fee paid in return for the exercise of the mental faculties, in contradistinction to *hire* in the contract of *locatio operis.* But this distinction is not well grounded. In the special case where a Scotch advocate agrees, for a certain sum, to go to London to attend an appeal to the House of Lords, he becomes a proper *locator operis*, and might maintain an action for the stipulated sum. As a general rule, the fees of physicians (except during the deathbed sickness), and of lawyers, are presumed to have been paid. [But see *Flint*, 1795, M. 11422. See *Ersk.* B. iii. tit. 3, § 32; tit. 7, § 17;] *More's Notes on Stair*, cxxiv.; *Bell's Com.* ii. 148; *Bell's Princ.* § 568. [See *Counsel.*]

HONOUR, ACCEPTANCE FOR. See *Acceptance.*

HONOUR; in English law, a noble sort of seignorie, on which other inferior honours or lordships depend. *Tomlins' Dict. h. t.*

HONOURS. Honours, or titles of dignity, descend to the series of heirs pointed out by the grant. They require no service, but vest *jure sanguinis*, and by the mere force of the grant. See *Dignities.*

HORNING, LETTERS OF; are letters running in the Sovereign's name, and passing the signet. They are directed to messengers-at-arms, as sheriffs in that part, who are ordered to charge the person against whom the letters are directed, to pay or perform in terms of the will of the letters, which must be consistent with the warrant on which the letters proceed. The warrant on which letters of horning proceed is either a decree of the Court of Session, or the decree of the magistrates of burghs, of sheriffs, stewards, admirals, commissaries, or of the commission of tithes, or, in some cases, the decree of justices of the peace. [By 31 & 32 Vict. c. 101, § 138, the short clause of consent to registration for execu-

[tion, provided by the act, when occurring in any document, imports, unless specially qualified, that letters of horning, and all necessary execution, shall pass thereon, upon six days' charge, on a decree to be interponed thereto in common form.] Decrees of registration also may be the warrant of letters of horning. See *Decree of Registration.* But where the decree, which is the warrant of the letters, is the decree of an inferior court, a bill must be presented to the Bill-Chamber of the Court of Session, stating the nature of the decree, and the terms of the decerniture, and praying warrant for letters of horning and poinding. This warrant is obtained of course; so that, properly speaking, letters of horning and poinding pass on the warrants of the Court of Session only. By special statute, letters of horning are authorised to pass, [upon six days' charge,] on bills of exchange, the protest on which has been recorded in any competent court. [See *Bill of Exchange.*] See the nature of the warrants for letters of horning more fully explained under the articles *Bill. Bill-Chamber. Diligence.* [*Decree. Decreet. Conform.*] The letters of horning narrate the ground of debt, and the terms of the decree by which the judge orders payment or performance; and in the will, the officers are ordered to command and charge the debtor to pay or perform in terms of the warrant stated in the recital, within a certain number of days. In virtue of the will of the letters, the debtors are charged to pay or perform, under the pain of rebellion, and of being put to the horn. The letters also contain a warrant for poinding the effects of the debtor, and applying them in payment of the debt, and for arresting his funds and effects. For the further procedure in enforcing obedience to the letters, see *Poinding. Denunciation. Caption. Imprisonment.* [Letters of horning have been superseded by the simpler forms of diligence introduced by 1 & 2 Vict. c. 114 (see *Diligence*); but the older forms are still competent, though the additional expense which they involve will not be allowed except on special grounds.] See *Stair*, B. ii. tit. 3, § 22; tit. 4, § 60; B. iv. tit. 47, § 7; [*Ersk.* B. ii. tit. 5, § 55;] B. iv. tit. 3, § 9; *Bell's Com.* ii. 7; ii. 159, 435; *Bell's Princ.* § 2311; *Jurid. Styles*, iii. 343; *Ross's Lect.* i. 237; [*Campbell on Citation and Diligence*, 179.]

HORSES. [Before the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 60), where a horse was sold at full value, there was implied warrandice that he was sound. But by § 5 of that act, a seller of goods (under which term horses are included), if at the time of the sale he is ignorant that they are defective or of bad quality, is not held to have warranted their quality or sufficiency, unless he have given an express warranty, or unless the goods have been expressly sold for a specified and particular purpose. See *Young*, 4 Dec. 1858, 21 D. 87; *Robeson*, 30 Oct. 1874, 2 R. 63; *Mackie*, 28 Nov. 1874, 2 R. 115. In *Rough*, 5 March 1875, 2 R. 529, a horse was sold by auction, described as having been "driven regularly in double and single harness." In an action for the price, it was proved that the horse was not fit to be so driven, and that the seller was aware of its unfitness. It was therefore held that the seller was not entitled to recover, in respect of the implied warrandice at common law, he not having been ignorant of the defect, and thus not being protected by the act; and also in respect of the warrandice implied, under the act, in the fact that the horse had been sold as fit for a particular purpose. A general warranty of soundness is an engagement of difficult construction.] It seems to comprehend all constitutional diseases, and all accidental injuries affecting the life of the horse; all diseases and accidents inducing lameness or throwing the horse prematurely out of work; all defects or bad habits, indicating a disease amounting to unsoundness. There is much difference of opinion whether the warranty is contravened by faults of a slighter nature, or temporary in their continuance. Bad corns have been held unsoundness; also running thrush; roaring, when it proceeds from organic defect, but not when it has been occasioned by neglect in the bringing up. [A cough or cold does not of itself amount to unsoundness; *Dykes*, 20 July 1860, 22 D. 1523; but see *Gardiner*, 24 Feb. 1880, 7 R. 612; *Newlands*, 13 March 1885, 12 R. 820.] Under a warranty that a horse was free from fault, the court found the buyer entitled to repetition of the price, it being proved that the horse was a crib-biter and wind-sucker; [*Deuchars*, 17 May 1833, 11 S. 612.] In England, it was held that crib-biting is not included in a general warranty, [not being in itself an unsoundness; but it is a vice within the meaning of a warranty "sound and free from vice." See cases in *Oliphant on Horses*, 84.] It has been held in England, that a seller's general warranty was not contravened, on its turning out that the horse's age was greater than that set down in the pedigree, it being shown that the seller received that pedigree when he bought the horse, and that he had no other means of ascertaining its age. Faults in temper, steadiness, courage, utility, &c., which, however important, do not amount to unsoundness, must be guarded against by express stipulation; and it is a question of evidence, whether such engagement has been undertaken, and how far it has been complied with. A horse, in which a defect, struck at by the seller's engagement, has been discovered, must be returned immediately, or as soon as the fault is discovered; but effect will be given to a stipulation limiting the time within which, if objected to, the horse must be returned. [If the seller refuses to take back the horse, it should be placed in neutral custody; *M'Bey*, 22 June 1858, 20 D. 1151; but see *Caledonian Railway Co.* 1 Nov. 1882, 10 R. 63. If the seller uses a horse so returned as his own, he is barred from suing for the price; *Croan*, 18 May 1881, 8 R. 700. When a hired horse dies from injury received while in the hirer's custody, the *onus* lies on him to show that he is not responsible; *Wilson*, 22 Nov. 1879, 7 R. 266; *Seton*, 9 Dec. 1880, 8 R. 236; *Bain*, 6 Dec. 1888, 16 R. 186.] See *Brown on Sale*, 286; *Bell's Princ.* § 129; [*Addison on Contracts*, 348, 982; *Oliphant on Horses; Hanover on Horses.*] See *Warranty.* [*Sale.*]

[**HOTCHPOT.** In England, where property is settled on the members of a class (*e.g.*, the children of a marriage), subject to a power of appointment among them, and part of it is appointed to one, that one is nevertheless not excluded by law from taking an equal share with the others in the part which remains unappointed, and thus obtaining a larger share than any of the others. This is usually prevented by the insertion of a clause called a hotchpot clause, which declares that no appointee shall take any share in the unappointed part without bringing his appointed share into hotchpot; that is, without adding it for the purpose of computation to the unappointed part, when the whole is divided equally. *Sweet's Law Dict.* See *Collation.*]

HOUGHING OF CATTLE. This offence is, by 1606, c. 5, punishable as theft, and with death; *Hume*, i. 121.

HOUSE OF COMMONS. See *Commons, House of.*

[**HOUSE OF LORDS.** See *Lords, House of.*]

HOUSES. The act 1663, c. 6, provides that ruinous houses within burgh, which have been uninhabited for the space of three years, may be rebuilt; and with this view, the magistrates are directed to warn the proprietors to rebuild, within a year; and if the proprietors fail to comply, the houses are to be valued and to be put up to sale, and the price which they bring, after deducting expenses, is directed to be given to the proprietors. [See *Pollock*, 16 Feb. 1861, 23 D. 555.] If no purchasers appear, the magistrates may rebuild them, on consigning the appraised value for the use of the proprietors. The case of liferenters of lands within burgh, who decline to repair the houses liferented by them, is provided for by 1594, c. 226, which declares, that the magistrates "sall, at the instance of the heritoures of the landes within the samin, upon citation of the partie, take summar cognition of the estaite of the landes, houses, or tenements within the burgh, be ane condigne inquest of the nichtboures thereof; and gif the samin be found aulde, decayed and ruinous in ruife, sclaites, dures, windowes, fluiring, loftis, timmer-work and walles, or onie of them, and ane land biggit of aulde, and throw long time decayed, in sik sort that it be already unhabitable, or that within short time may become unhabitable, in that case to decerne that the conjunct fiar or liferenter sall repair the said landes and tenements in the partes thereof decayed, as sall be found be the said inquest, within the space of zeire and day nixt after they be required thereto be the heritours; and failzing thereof, declaires that it sall be frie to the said heritour to enter to the possession of the same, to have the setting, raising, using, and disponing threupon in all time cumming, as gif there war no liferent or conjunct fee standing thairof: Providing alwaies, that sufficient security in the burgh quhair the landes or tenementes lyes, be tane for termlie payment to the conjunct fiars or liferenters theirof, enduring their lifetime, or sic mail and dewtie as the samine presentlie gives the time of the said cognition, or might reasonably give on that estaite, in case it be not presentlie set, deducand alwaies the annuales and uther burding lyand theirupon, and this to be extended to all burnt and waist lands, and against all conjunct fiars present and to cum within burgh." See *Bell's Com.* i. 785; *Ross's Lect.* ii. 497, 505; [*Ersk.* B. i. tit. 4, § 21; B. ii. tit. 9, § 60; *Rankine on Land-Ownership*, 621.] See *Jedge and Warrant. Edinburgh.* For the law as to agricultural houses, see *Fences. Fixtures. Meliorations;*

also *Bayne*, 3 Dow, 233. [As to artizans' and labourers' dwellings, see 18 & 19 Vict. c. 88; 38 & 39 Vict. c. 49; 43 Vict. c. 2; 48 & 49 Vict. c. 72.]

HOUSEBREAKING; is the worst aggravation of theft. It is committed, if the natural security of the house has been overcome, although it may not have been broken or forced open; [if, for example, entrance is effected by raising a closed or even a partly open window, or by the use of a false key, or the unauthorised use of a true key.] But it is not committed when the thief enters in consequence of some of the securities being removed; as if he should enter by an open window, so close to the ground that he did not require to climb or to receive external assistance, or by a door standing on the latch. Where the entry is effected by concert or connivance with a servant or other person within, the crime is housebreaking in all concerned. Every dwelling-house, however mean and fragile, and every shut and fast building, though not a dwelling-house, as a counting-house, a dairy, a stable, a school-house, &c., is protected by the law against housebreaking. Housebreaking, with intent to steal, is an indictable offence. Theft by housebreaking is capital; but the punishment is now mitigated. See *Hume*, i. 98; *Alison's Princ.* 282; [*Macdonald*, 29, 73.] See *Theft*.

HOUSE-RENTS; suffer a triennial prescription by the act 1597, c. 83. Under this act, house-rents, after three years, prescribe, and each year's rent runs a separate course of prescription. A demand, therefore, for house-rents is restricted to the three years immediately preceding the citation. *Ersk.* B. iii. tit. 7, § 17; *Stair*, B. ii. tit. 12, § 30; *More's Notes*, cclxxiv.; *Bank.* ii. 103. See *Prescription*.

HUE AND CRY; in English law, is the procedure taken by a person robbed or otherwise injured, to pursue and get possession of the culprit's person. At common law, a private person who has been robbed, or who knows that a felony has been committed, is bound to raise hue and cry under pain of fine and imprisonment. The regular mode of raising hue and cry is, for the party to go to the constable of the next town and declare the fact, and describe the offender and the way he is gone, on which the constable raises the town and searches for the offender. If he does not find him, he sends the like notice to the constables of the neighbouring towns. *Tomlins' Dict. h. t.*

HUESIUM; *Hoyestum;* from the French, a cry formerly used in proclamations, inviting the attention of the people. *Skene, h. t.* See *Oyess*.

HUNDRED; in England, a part or division of a shire.

HUNTING. See *Game Laws*.

HUSBAND. See *Marriage. Jus Mariti.* [*Administration, Right of.*]

HUSBANDLAND; contains commonly six acres of sok and syith land—*i. e.*, of such land as may be tilled with a plough or may be mowed with a scythe. *Skene, h. t.*

HYPOTHEC; is a security established by law in favour of a creditor over a subject belonging to his debtor, while the subject continues in the debtor's possession. The Roman law recognised many hypothecs over moveables; but the law of Scotland, having regard to the inexpediency of such liens in a commercial and trading country, admits of but few hypothecs. Hypothec may be considered as either *Hypothec for Rents*, *Maritime Hypothec*, [*Agent's Hypothec*, or *Hypothec for Feu-Duties.*]

I. Hypothec for Rents.

The landlord's hypothec over the crop and stocking of his tenant is a tacit legal hypothec, existing independently of any special agreement or stipulation between the landlord and tenant. It gives a security to the landlord over the crop of each year for the rent of that year, and over the cattle and stocking on the farm for the current year's rent. [This hypothec exists only where there is an actual lease, not where the transaction is really a security in the form of an *ex facie* absolute disposition by the borrower and a lease by the lender; *Herit. Securities Investment Assn.*, 8 July 1880, 7 R. 1094. The landlord's hypothec was modified in several important particulars by the Hypothec Amendment Act, 1867 (30 & 31 Vict. c. 42), as is explained *infra*. And it was abolished—though with certain reservations, and only in regard to rural subjects—by the Hypothec Abolition Act, 1880 (43 Vict. c. 11). That act provides, by § 1, that, from and after the commencement of the act (11 Nov. 1881), "the landlord's right of hypothec for the rent of land, including the rent of any buildings thereon, exceeding two acres in extent, let for agriculture or pasture, shall cease and determine; provided that nothing herein contained shall apply to any claim for rent due or which may hereafter become due under any lease, writing, or bargain current at the date of the commencement of this act." By § 2, the act provided

[certain remedies to the landlord in lieu of hypothec; but that section was repealed, and other provisions substituted, by § 27 of the Agricultural Holdings Act, 1883; for the terms of which see *Irritancy*.]

Hypothec over the Crop.—The rule in regard to the crop [was formerly in regard to all leases, and is still in regard to leases of farms of less than two acres in extent, and leases contracted prior to Martinmas 1881,] that each crop, so long as extant, and the property of the tenant, is hypothecated to the landlord for the rent of that year of which it is the crop, although the landlord should delay to exercise his right for years. But the crop of the current year cannot be hypothecated for the rent of the preceding year; although all the corn on the farm at that time may be retained as a security to the landlord for the rent of the current crop. This right of hypothec is necessarily attended with a right of retention, since, without this right, it would be of little value. [If the rent is due, the landlord is entitled to detain on the ground the full value of the rent. If it is not yet payable, the landlord may insist that the whole crop and stock shall remain subject to his claim, even though the tenant is not in arrear, nor *vergens ad inopiam; Preston*, 26 June 1845, 7 D. 942.] Previous to the term of payment of the rent, the landlord is entitled to demand from a poinding creditor either consignation of the rent, or caution that it shall be paid. After the term of payment, he can insist for no more than that enough of the crop be left to answer his right of hypothec. [Prior to the act of 1867,] the landlord was entitled *de recenti* to vindicate the corn grown on the farm, even against *bona fide* purchasers, unless sold in bulk in public market; *E. Dalhousie*, 7 Dec. 1830, 4 W. & S. 420; [*Barns*, 1 June 1864, 2 Macph. 1119.]

The Cattle and Stocking on the Farm.—The cattle differ from the crop in this respect, that they stand hypothecated for the current year's rent only; and as some time after the term of the payment of the rent is required for rendering this right effectual, practice has allowed three months after the last conventional term of payment for that purpose. Where the cattle have been carried off within that period, the landlord must bring his action against the poinder before the expiration of the three months, in order to preserve his right of hypothec. It is proper to observe, however, that this right of hypothec over cattle is general over the whole, and does not prevent the sale of one or more of a stock for a fair price, unless the landlord has attached the cattle by a sequestration, which has the effect of giving the landlord a lien over each of them. But although the sale of the cattle is not prohibited prior to a sequestration of the stocking, the landlord's right of hypothec over the cattle is sufficient, without sequestration, to prevent a creditor from poinding them during the currency of the period for which the hypothec remains, that is, until the expiration of the three months after the last conventional term of payment. Where lands are subset, the right of hypothec is affected by the situation of the subtenant. If a power has been given to subset, or if the landlord has known of the subset, a payment by the subtenant, at the proper term of payment, to the principal tenant, frees the crop from the claim of the landlord, provided the subtenant has not been legally interpelled by the landlord from making payment. Unless, however, the subtenant stand in this favourable situation, there is a great chance that he may be forced to pay over again; that is, that his crop may stand hypothecated for the rent due by the principal tenant.

[The act of 1867, the application of which is restricted by § 2 to "farms or land, with the buildings thereon occupied for farming purposes," made the following alterations on the law:—By § 3, agricultural produce *bona fide* purchased, delivered, removed from the farm, and paid for, or *bona fide* purchased at an auction, after seven days' notice given to the landlord or those representing him, without sequestration having been obtained and registered, is free from the landlord's hypothec. But this provision does not apply to any produce which the tenant is not entitled legally, or by the terms of his lease, to sell or carry off the lands, or which has been sequestrated after the notice above referred to. By § 4, the right of hypothec ceases, if the landord fails to make it effectual by sequestration within three months after the term of payment of the rent. By § 5, stock of a third party, taken on a farm to graze or feed, for a *bona fide* payment equal to the just value of such grazing or feeding, is liable to the landlord's hypothec to the extent of such payment only. By § 6, the hypothec does not extend over an agricultural tenant's furniture or implements; nor over any manure, lime, drain tiles, feeding stuffs or other materials,

[not being the produce of or made upon the farm or lands, and not at the time incorporated with the soil, or consumed, or otherwise applied to the purposes for which such material may have been procured.]

Hypothec on the Invecta et Illata, [*in Urban Subjects.*—This hypothec is not affected by the acts of 1867 and 1880; see *Clark*, 25 Feb. 1888, 15 R. 458. It extends over household furniture, plate, paintings, books,] and over the goods in shops, and the instruments of manufacture necessary for the different branches of business carried on in mills, warehouses, &c. [The hypothec rests on the presumption that moveables in the tenant's house belong to him. But hired furniture is also subject to the hypothec, "in consideration of the landlord's right to have the house furnished, and the presumed consent of the hirer that the furniture let shall supply the requisite security;" *Bell's Princ.* § 1276. The fact that the furniture was lent gratuitously does not of itself prevent the hypothec; *Bell's Princ. ib.* (*Bell's Com.* ii. 30, *contra*). See also *Wilson*, 17 Dec. 1813, F.C.; *Adam*, 3 Nov. 1863, 2 Macph. 6; *Hunter*, ii. 377; *Rankine*, 330. The question whether single articles, usually hired separately, such as a pianoforte or a sewing-machine, fall under the hypothec, is not conclusively settled. The affirmative was held in *Penson*, 6 June 1820, F.C. But the authority of that case has been thought to be shaken by *dicta* of the judges in *Adam, supra; Nelmes*, 23 Nov. 1883, 11 R. 193; and *Bell*, 22 May 1885, 12 R. 961; and a contrary decision has been pronounced in several sheriff court cases. See reports in *Journ. of Jurisp.* xxviii. 277, 498, 658. The authority of *Penson* was, however, upheld in a recent case in the sheriff court of Fifeshire, reported in *Journ. of Jurisp.* xxx. 658. A pianoforte belonging to a tenant's daughter, who was minor, and lived in family with her father, was held exempt from the hypothec; *Bell, supra.* This hypothec does not extend to articles sent to a commission agent for exhibition as samples; *Pulsometer Engineering Co.* 14 Jan. 1887, 14 R. 316. As to whether it affects goods in the tenant's possession under a contract of "sale or return," see *Macdonald*, 19 July 1888, 15 R. 988.] This hypothec is necessarily general, and must be made special by a sequestration [within three months after the term.] All purchases in a shop may be safely paid for by the purchaser, without any risk of a claim of restitution, or of the purchaser's being made liable to pay the price a second time.

A cautioner for rent may, on paying the rent to the landlord, insist for an assignation to the hypothec. But the landlord will not lose his recourse on the cautioner by neglecting to enforce his hypothec, [provided he does not give time to the tenant.] The landlord is not entitled to a preference over the superior claiming his feu-duties, nor over farm servants' wages, nor over funeral expenses, nor over the Crown. See *Crown Debts. Privileged Debts.* See *Stair*, B. i. tit. 13, § 15; B. iv. tit. 25; *More's Notes*, lxxx.; *Ersk.* B. ii. tit. 6, § 56; *Bell's Com.* ii. 27; *Bell's Princ.* §§ 1233, 1276; *Bell on Leases*, i. 360; *Hunter on Landlord and Tenant*, ii. 355; [*Rankine on Leases*, 322; *Goudy on Bankruptcy*, 514; *Kames' Eluc.* art. 10. See *Lease. Sequestration for Rent.*]

II. Maritime Hypothec.

The seamen have a tacit hypothec, in security of their wages, over the freight due to the owners of the ship. They have also a hypothec over the ship itself, or rather a lien or *jus retinendi et insistendi* in relation to it, in virtue of which, although the seamen may lose his personal action if the owners earn no freight, he will have his claim against the ship to her last plank. The shipowner has a tacit hypothec over the cargo for the freight of that cargo, [which is also more properly a right of lien or retention.] And there is likewise a hypothec to freighters, which gives security over the ship to the owners of the goods, for loss by improper interruption of the voyage; or for damage done by improper stowage, &c. There is no hypothec for the price of a ship; but the repairers of a ship have an hypothec over the ship for the repairs. This, however, has latterly been confined to such repairs as have been made in a foreign port; *Hamilton*, 1789, 3 Pat. 148. [See also *Wood & Co.* 31 Jan. 1810, F.C.; *Ross & Duncan*, 13 Nov. 1885, 13 R. 185.] See *Ersk.* B. iii. tit. 1, § 34; *Bell's Com.* i. 573; ii. 38; *Bell's Princ.* § 1397; *Brodie's Supp.* 953; [*Goudy on Bankruptcy*, 517.] See *Bottomry. Respondentia.*

III. Agent's Hypothec.

The right which a law-agent has to retain his employer's writs and title-deeds, in security of his professional account, is sometimes, although incorrectly, called a right of hypothec. It is more properly a mere right of retention, or general lien, depending upon the possession of the writs retained. This right does not entitle the agent to retain, in security of advances unconnected with the particular employment in which he has been engaged. [See *Rennie*, 8 Feb. 1847, 9 D. 619.] But, even as so limited, the right has been carried so far as, in the opinion of some lawyers, unduly to encroach on real rights constituted in favour of parties who have trusted to the records. A country agent's right of hypothec on his employer's title-deeds, covers the account of the Edinburgh agent employed by him for his client; *Walker*, 8 June 1831, 9 S. 691. In another case, the creditors of an ancestor, holding heritable bonds with powers of sale, and a law-agent holding the title-deeds hypothecated, having offered to the trustee on the bankrupt estate of the heir (who had made up no title), to give him either full inspection of the title-deeds, or actual delivery of them, on payment or caution for their debts, were found not bound to deliver them up on any other condition; *Dobie*, 19 May 1831, 9 S. 609. This right of retention does not stop prescription of the debt in security of which it is exercised. A right more properly of the nature of hypothec, is the preference which a law-agent enjoys for the costs of suit, over the costs recovered by his client from the adverse party. This is a right which does not depend on the agent's possession of the document of debt, or of the decree. This preference does not extend over the principal debt decerned for in a decree in favour of the client, as to which the agent is in no better situation than an ordinary creditor; [*Alison's Trs.* 29 Nov. 1808, F.C.; *Cullen*, 20 Nov. 1845, 8 D. 77. Compensation cannot be pleaded against the client so as to deprive the agent of his security, except to the extent of setting off expenses previously found due to the opposite party; *Miller*, 22 June 1848, 10 D. 1384; *Warburton*, 30 May 1826, 4 S. 631. And when expenses have been found due, or must necessarily follow on the decree, the client may not defeat the agent's preferable claim for the expenses by any extrajudicial arrangement; *Sloss*, 28 May 1823, 2 S. 302. See *Ersk.* B. iii. tit. 4, § 21; *Bell's Com.* ii. 348; *Bell's Princ.* § 1388; *Begg on Law-Agents*, 190, 209; *Goudy on Bankruptcy*, 516, 535. See *Expenses. Agent. Retention.*]

IV. Hypothec for Feu-Duties.

[A superior has also a hypothec for security and satisfaction of the last or current feu-duty over the crop, and *invecta et illata*, similar but preferable to the hypothec of a landlord; *Yuille*, 24 Jan. 1823, 2 S. 155. See *Ersk.* B. ii. tit. 6, § 63; *Bell's Com.* ii. 26; *Bell's Princ.* § 698.]

I

IDIOTS. An idiot, or fatuous person, is one "entirely deprived of the faculty of reason, having an uniform stupidity and inattention in his manner, and a childishness in his speech, which distinguishes him from other men." [See *Insanity. Imbecility. Lunatic.*] In England, an idiot is one who has had no understanding from his nativity, and is by the law presumed likely never to attain any. A lunatic is one who has had understanding, but by disease, grief, or accident, has lost the use of his reason. Indeed, a lunatic is properly one who has lucid intervals. But the general term, *non compos mentis*, as contradistinguished from idiot, comprises lunatics, persons under phrenzies, those who lose their intellects by disease, and those who become deaf, dumb, and blind. The Sovereign is guardian both of idiots and of persons *non compos;* standing, however, with regard to the latter, in the relation of a mere trustee, since their recovery is never despaired of. *Tomlins' Dict. h. t.*

ID TANTUM POSSUMUS QUOD DE JURE POSSUMUS; a maxim applied by Stair to conditions in contracts impossible, because illegal. *Stair*, B. i. tit. 3, § 7; *Bank.* i. 63. See *Condition.*

IGNORAMUS. In the criminal law of England, *ignoramus* was the word formerly written on a bill of indictment, by the grand jury, when they rejected the evidence for the prosecution as [insufficient.] The words now are, *Not a true bill*, or *Not found*, and such a deliverance stays proceedings, and the prisoner is liberated without further