

[but also in a technical sense to denote that a person has acquired land by the lawful act of himself or another, *e.g.*, by conveyance, gift, or devise, as opposed to title by act of the law, such as descent, dower, curtesy, &c., and to title by wrong, as in the case of disseisin. *Sweet's Law Dict.*]

PURCHASER; the buyer or onerous acquirer of a subject, whether heritable or moveable. See *Sale. Singular Successor.*

PURE OBLIGATION; an unconditional obligation. A condition is said to be purified when it is fulfilled. See *Obligation. Conditional Obligation.*

PURGING AN IRRITANCY. Where a penal irritancy is incurred by the performance of a prohibited act, or by the failure to perform some act which is enjoined, an action of declarator of the irritancy must be raised; and when the action comes into court, the defender may appear at the bar, and pay or perform in terms of his obligation, whereby he will avoid the irritancy. This is called *purging the irritancy*. [A conventional irritancy cannot be purged.] See *Stair, B. i. tit. 17, § 16; More's Notes, exc.; Ersk. B. ii. tit. 5, § 27; tit. 6, § 44; Ross's Lect. ii. 497; Hunter's Landlord and Tenant, ii. 137; [Bell's Princ. § 701; Rankine on Land-Ownership, 576; Rankine on Leases, 464, 472.]* See *Irritancy.*

PURPRESTURE; is a feudal delinquency, [now obsolete,] inferring a total forfeiture of the fee. It was incurred by the vassal encroaching on the streets, highways, or commons belonging to the superior. *Ersk. B. ii. tit. 5, § 52; tit. 6, § 17; Stair, B. ii. tit. 11, § 30; Bank. ii. 149; Bell's Princ. § 730; Kames' Stat. Law, h. t.; Brown's Synop. h. t.*

Purpresture, or *purprison*; according to Skene, is the wrongous usurpation, taking, or occupation of another man's lands. There are three kinds. The first affects the King,—as unjustly occupying any part of his domains, stopping the highway or King's causeway, diverting the course of a running stream, &c.; the second kind affects the interest of the offender's superior;

and the third, those of any other besides the King or the superior. *Skene, h. t.*

PURSUER; the party who institutes and insists in an ordinary action. Except in the case of copartnerships, the general rule is, that two or more persons cannot sue in the same summons for enforcement or vindication of their separate rights, or for sums due to them severally. But they may sue jointly, when they have been injured by the same act, or have a joint interest in the matter libelled. Where an action has been improperly raised by several pursuers, it is not *funditus* void, but may be held good as the summons of one of them, for his particular interest. [See *Douglas*, 22 Oct. 1884, 12 R. 10. An additional and independent pursuer cannot be sisted without the defender's consent; *Morison*, 1 Nov. 1873, 1 R. 117; *Hislop*, 23 June 1881, 8 R. (H.L.) 95, 106 (*per* Lord Watson). But new pursuers, whose title has emerged since the action was raised, such as newly assumed trustees, may be sisted. One of two joint-owners of a ship was not allowed to be added as a pursuer by amendment of the summons; *Andersen*, 12 Dec. 1871, 10 Macph. 217. The heir, executor, assignee, or other proper representative or guardian of a pursuer, can be sisted without consent of the defender. See *Shand's Prac. i. 203; Mackay's Prac. i. 292, 299, 496.*] See *Defender. Title to Pursue. [Interest. Dominus Litis. Summons. Supplementary Summons.]*

PURSUIVANTS; are officers under the Lyon King-at-Arms, by whose authority they are appointed. *Ersk. B. i. tit. 4, § 32.* See *Lyon King-at-Arms.*

PURVIEW; the body, or that part of an act of Parliament which begins with "Be it enacted." *Tomlins' Dict. h. t.*

PUT AWAY; in deeds of entail is equivalent to "alienate." *Hunter's Landlord and Tenant, i. 106.* See *Entail.*

PUTAGIUM; whoredom or fornication. This offence was anciently, in a female unmarried or without children, punished with forfeiture of her heritage. *Skene, h. t.*

Q

QUADRIENNIUM UTILE; is the four years allowed after majority, within which an action of reduction of any deed done to the prejudice of a minor may be instituted. *Ersk. B. i. tit. 7, § 35; Stair, B. i. tit. 6, § 44; B. ii. tit. 12, § 31; More's Notes,*

xlvi.; *Bank. i. 184; Bell's Com. i. 130 Bell's Princ. § 2099.* See *Minor.*

QUÆQUIDEM. In charters [of resignation] the clause which immediately followed the dispositive clause was called the *quæquidem*, from the words with which it

commenced, when written in Latin. [This clause expressed the *modus vacandi*, i.e., how it was, and for what purpose, that the fee, having been formerly given out by the superior, was again in his hands. It bore that the lands had pertained heritably to the former vassal, holden by him of the granter of the charter as immediate lawful superior thereof, and had been resigned by him into the superior's hands, in virtue of the procuratory of resignation contained in the disposition granted by him to the new vassal. The *quæquidem* clause occurred also in a disposition by a vassal to his superior, in which case its office was to deduce the title of the lands, and connect the right of the granter with that of the vassal to whom the superior had given out the feu.] See *Ersk. B. ii. tit. 3, § 24*; *Bell's Princ. § 799*; *Bull. on Completing Titles*, 278; *Ross's Lect. ii. 288*; [*Menzies' Conv. 627*; *M. Bell's Conv. ii. 738, 764*. See *Charter. Resignation.*]

QUAKERS. Quakers, in consequence of religious scruples, are permitted, when examined as witnesses in civil or criminal cases, instead of taking an oath, to make a solemn affirmation in these terms: "I do solemnly, sincerely, and truly declare and affirm." [This privilege is now extended to all persons having conscientious objections to take the oath. See *Oath. Affirmation.*]

QUALIFICATION TO VOTE. [See *Election Law.*]

QUALIFIED OATH; is the oath of a party on reference, where circumstances are stated which must necessarily be taken as part of the oath, and which therefore qualify the admission or denial. See *Evidence*, p. 416.

QUANTI MINORIS ACTIO; was a Roman law action, by which, when the buyer discovered a shortcoming of no great importance in the subject purchased, he sued for repetition of as much of the price as exceeded what he might have reasonably given for the subject, had he been previously aware of the deficiency. It would appear that the *actio quanti minoris* is not admitted in the law of Scotland. At all events, where there has been no fraud on the part of the seller, and where the purchaser receives all the land which he actually purchased, it has been found that he can claim no abatement because the number of acres is found to fall short of what was stated in the description; *Hannay*, 1785, M. 13334; *Inglis*, 1788, M. 13334; *Gray*, 1801, M. App. Sale, No. 2. Where, however, he does not receive all that he

actually purchased, he is entitled either to have abatement or to have the contract reduced; and generally, wherever there is *error in essentialibus*, the sale may be reduced. See *Error*. It may be doubted, supposing land were sold as containing so many acres, at so much per acre, and it turned out that there were not as many acres as had been stated, whether the purchaser would not be entitled to refuse payment beyond the price of the actual number of acres at the specified price per acre. A case something similar to this, but in which the advertised fell short of the actual measurement, has been decided. In that case, which was a judicial sale by an apparent heir, the lands exposed were limited by a specification of their proven rental to $2\frac{1}{2}$ acres, and the upset price was fixed accordingly. After the sale, however, it having been discovered that the lands specially enumerated extended to 7 acres, it was held that no more was sold than $2\frac{1}{2}$ acres, but that the purchaser might either hold or reject the sale; *Hepburn*, 1781, M. 14168. In another case, where lands formerly burdened with a feu-duty, but which feu-duty had been redeemed, were sold as if still burdened, the purchaser claimed to possess the lands free of the feu-duty. It was held that the purchaser must either give up the purchase of the lands, or pay an additional price, corresponding to the value of the feu-duty; *Blair*, 1790, *Bell's Com. ii. 263*. This question was again discussed in another case. There a tenant took a lease of a farm, which was represented as containing a few acres more than it actually contained. He brought a reduction of the lease on the ground of fraud, which he failed to prove. The case was appealed, and the Lord Chancellor (Brougham) was inclined to restrict the lease to the actual number of acres; but finding some difficulties from the objection that this would sanction the *actio quanti minoris*, he recommended a settlement, which was accordingly effected on the principle suggested by the Lord Chancellor; the counsel for the parties having directed an abatement proportioned to the deficiency; *Balmer*, 11 March 1830, 8 S. 715, 10 S. 862. See also *Gordon*, 25 March 1819, 1 Bligh, 287; [*Brownlie*, 10 June 1880, 7 R. (H.L.) 66; *Critchley*, 1 Feb. 1884, 11 R. 475.] See *Measurement*. The cases already noticed refer only to land; [but it is equally settled in the case of moveables that the *actio quanti minoris* is rejected by our law. When goods delivered are dis-

[conform to contract, the purchaser's remedy is to return the goods at once, and claim damages for breach of contract; *M'Cormick*, 3 June 1869, 7 Macph. 854. Where fraud on the part of the seller is proved, it has been held, but does not seem to be regarded as settled, that the purchaser has the optional remedy of retaining the goods, and claiming abatement of price in respect of the fraudulent misrepresentation; *Amaan*, 11 Feb. 1865, 3 Macph. 526; *Dobbie*, 18 June 1872, 10 Macph. 810. See also *Fraud*.] See *Stair*, B. ii. tit. 9, § 10; tit. 10, § 15; *Ersk.* B. iii. tit. 3, § 10; *Bank*. B. i. tit. 19, § 3; *Brown on Sale*, 287, 316 *et seq.*; *Kames' Equity*, 175. See *Actio Redhibitoria*. [*Warranty*.]

QUANTUM MERUIT. If one employs another to do work for him, without any certain agreement, there is an implied obligation on the employer to pay the person who has performed the work as much as he deserves, or can reasonably ask for his services. See *Tomlins' Dict. h. t.*; [*Bell's Princ.* § 149.]

QUARANTINE; the term of forty days, during which persons coming from parts infected with the plague are not permitted to land or come on shore. The regulations on this subject in former acts have been superseded by those of 6 Geo. IV. c. 78. It fixes what vessels are liable to quarantine. Masters of vessels liable to quarantine must make signals on meeting other vessels at sea, or being within two leagues of the United Kingdom, under a penalty of £100; § 8. And they must, under the same penalty, hoist certain signals when there is plague or infectious disease on board; § 9. Masters of vessels may be interrogated by the principal officer of the customs at the port to which they are going, with a view to ascertain whether they are liable to quarantine; and if they refuse to answer such interrogatories, they forfeit £200; § 14. Vessels subject to quarantine arriving at any port other than that at which it ought to be performed, may be forced to repair to the appointed place; § 15. Masters quitting ships liable to quarantine, or permitting persons to quit them, or not conveying them to the appointed places, forfeit £400; § 17. Persons quitting vessels liable to perform quarantine may be seized; § 19. The act makes various other regulations to carry its purpose into effect. [See also 30 & 31 Vict. c. 101, § 56; *Stephen's Com.* iii. 176.]

QUARENTENA VIDUARUM; according to Skene, a space of forty days, during

which a widow might tarry and remain in the chief dwelling-place of her husband, and be sustained upon the profits of the heritage until her dowry be assigned to her. *Skene, h. t.*

QUARTER SEAL. See *Seals*.

QUARTER SESSIONS OF JUSTICES OF THE PEACE. By 1661, c. 38, the justices of the peace are directed to meet four times in the year, at the county town—that is, on the first Tuesdays of May, August, and March, and the last Tuesday of October; with power to adjourn these quarterly meetings to any other day or place they may judge proper. At these quarterly courts the justices have the power of reviewing the sentences pronounced at the occasional meetings of justices, called special or petty sessions, when the sentence is of a nature subject to review. [See *Muckersie*, 11 Dec. 1874, 2 R. (J.C.) 12; *Sumner*, 6 June 1878, 5 R. 863; *Wilson*, 19 July 1878, 5 R. 1097. So long as this appeal is competent, appeal to the Court of Session is excluded; *Alexander*, 2 Dec. 1828, 7 S. 117; *Anderson*, 22 April 1872, 2 Coup. 225; unless the justices have exceeded their jurisdiction; *Sim*, 24 Feb. 1831, 9 S. 507.] See *Justice of Peace*.

QUASI-CONTRACT. A quasi-contract differs from a proper contract in this, that it is not constituted by express consent, but *ex re*—that is, by one of the parties doing deeds which import an obligation on him in favour of the other party, or *vice versa*. Thus, a person contracts a quasi-contract, which infers an obligation to account, by entering on the office of tutory; from serving heir; from *negotiorum gestio*; *jactus mercium*, and the like. A quasi-delict is a term applied to that degree of culpable negligence, amounting almost to crime, and inferring an obligation to repair the injury, although there may be no ground for a criminal prosecution. *Ersk.* B. iii. tit. 3, § 51; *Bell's Princ.* §§ 525, 531–8–9, 553. See *Delict. Damages*.

QUEEN. The Queen of England is either Queen-Regnant, Queen-Consort, or Queen-Dowager. The Queen-Regnant is she who holds the Crown in her own right, and with the same powers, prerogatives, rights, dignities, and duties which belong to the Sovereign. The Queen-Consort is the wife of the reigning King; and, by virtue of her marriage, she possesses various prerogatives. Thus, she is a public person, distinct from the King, with power to acquire land by purchase, and to convey it, and the like, without her husband's concurrence.

She has a separate court, and officers distinct from the King's. She may sue and be sued alone; and in England, her Attorney and Solicitor General (there are no such officers in Scotland) are entitled to places within the bar, as King's counsel. The Queen-Consort has also some minor immunities. Thus she pays no toll; nor is she liable to any americiament in any court. But, in general, unless where expressly exempted, she is on the same footing with other subjects of the King; for she is to all intents and purposes the King's subject, and not his equal. Yet it is high treason to compass or imagine her death. The husband of a Queen-Regnant is her subject, and may be guilty of high treason against her. See *Tomlins' Dict. h. t.* See *Dowager, Queen.* [King.]

QUEEN'S BENCH. See *King's Bench.*

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

QUERELA INOFFICIOSI TESTAMENTI; an action given by the Roman law to such as were disinherited on just grounds, falsely alleged. This action was given on the assumption that the testator was of unsound mind at the date of the testament. *Inst. of Just. B. ii. tit. 18; Heinec. Elem. § 579; Stair, B. iii. tit. 4, § 15; B. iii. tit. 8, § 10; Bank. ii. 301, 384; [Hunter's Roman Law, 780.]*

QUHATECUS; a kind of bread. *Skene, h. t.*

QUI TACET, CONSENTIRE VIDETUR; silence implies consent. See *Taciturnity.* [*Acquiescence.*]

QUI TAM. In England, the plaintiff in a penal action describes himself as one who sues *as well* for himself as for the Queen, for any penalty half of which is given to the Crown and half to the informer. Hence such actions are called *qui tam*; scil., "*Qui tam pro seipso quam pro Dom. Reg.*" &c. *Tomlins' Dict. h. t.*

QUIA EMPTORES. The English statute, West. 3, 18 Ed. I. st. 1, is so called from the introductory words. Its intention was to put a stop to subinfeudations, by declaring that a vassal might sell his lands, provided he sold them to be held of his superior by the tenure and services due. This statute was at one time thought to have been introduced into Scotland by Robert I. stat. 2, c. 24, § 2; and there have been speculations as to the causes of its not having produced the same effect in Scotland as in England, where feudal forms were, by the statute, rendered no longer necessary. But it is very doubtful whether

the statute ever was really enacted or in observance in Scotland—the general understanding of modern lawyers being, that the *Regiam Majestatem* is not an authentic collection of our ancient laws. See *Regiam Majestatem.* A quotation, however, of part of the *Regiam Majestatem*, containing a *verbatim* transcript of the English statute, will be found in *Bell on Purchaser's Title*, 282. (See also pp. 8, 377). See *Tomlins' Dict. h. t.; Bell's Princ. §§ 675, 806; [M. Bell's Conv. 682, 1155.]*

QUINQUENNIAL PRESCRIPTION.

See *Prescription*, p. 841.

[QUOAD SACRA. See *Parish.*]

QUO WARRANTO; in English law, a writ brought against any person, or corporation, usurping a franchise or liberty against the Sovereign, calling on the usurper to show by what right or title he holds or claims such franchise or liberty. This writ has now fallen into disuse; but its purpose is served by the Attorney General filing an information in the nature of a *quo warranto.* *Tomlins' Dict. h. t.*

QUOD FIERI NON DEBET, FACTUM VALET. In a few instances in the law of Scotland, contrary to the rule of the Roman law, an act done contrary to law has been found not to be null. [*Broom's Legal Maxims*, 175, 289. See *Factum de Quota Litis.*]

QUONIAM ATTACHIAMENTA; one of the old books of the law of Scotland. *Ersk. B. i. tit. 1, § 36.* See *Regiam Majestatem.*

QUORUM. A quorum, strictly speaking, is that number of the judges of a court, consisting of a plurality of judges, before whom the judicial business may be competently transacted. But the term is also applied to that number of a nomination of persons (*e.g.*, tutors or curators, or interdictors, or trustees, or the like) who are authorised, by the deed of nomination, to exercise the functions vested generally in the nominees. The quorum of the Court of Session, in all cases where meetings of the judges are necessary for passing Acts of Sederunt or the like, consists of nine judges; 1587, c. 44. The quorum of each Division of the court is three—50 Geo. III. c. 112, § 32; [but four judges are required in questions relative to interim possession and execution pending appeal; 48 Geo. III. c. 151, § 17. See *Pater-son's Trs.* 5 July 1828, 6 S. 1086. It has been held that] if the quorum be present, the judgment of the court will be valid, although some of the judges compos-

ing the quorum should decline to vote; *Robertson*, 21 June 1809, F.C. [But see *Mackay's Prac.* i. 51.] In the Court of Justiciary, three judges constitute a quorum; 1681, c. 22; 23 Geo. III. c. 45. [The quorum of the Court of Commissioners for Teinds is five; 31 & 32 Vict. c. 100, § 9.] Two justices of the peace are a quorum, both under the small-debt acts and for ordinary judicial business; *Ersk.* B. i. tit. 3, §§ 16, 26, and tit. 4, § 18. In every case where the performance of a duty or the exercise of a power is committed to several persons, a quorum consisting of a majority ought to be nominated, in order to prevent the possibility of a subdivision into two parties, each claiming the power of the whole nomination. Where a quorum is named, the concurrence of the quorum is necessary; and in no case ought a quorum to be appointed consisting of a smaller number than the majority of the nominees, unless where one is declared *sine quo non*, otherwise it might be in the power of the majority not concurring to overrule the former proceedings of the minority. [By 24 & 25 Vict. c. 84, § 1, all trusts constituted by virtue of any deed or local act of Parliament, under which gratuitous trustees are nominated, are held, unless the contrary be expressed, to include a provision that the majority of the trustees accepting and

[surviving shall be a quorum.] Generally speaking, where the quorum fails by death or otherwise, the nomination falls. See *Ersk.* B. i. tit. 7, § 15; *Bank.* B. i. tit. 7, §§ 21, '63, 132; *Stair*, B. iv. tit. 20, § 31; *Kames' Equity*, 468; [*Bell's Princ.* § 1993 (5); *M'Laren on Wills*, ii. § 1739.] See *Curatory. Tutor. Interdiction. Justice of Peace. Sine quo non.*

QUOT; was the proportion of the moveable estate of a deceased person due to the bishop of the diocese within which the person resided. This quot was a twentieth part of the moveables without deducting the debts, even where the effects were not more than sufficient to answer the debts, and consequently the quot was paid to the injury of the creditors. This injustice was remedied by 1669, c. 19, which gave the quot from the free estate only; and at last, by 1701, c. 14, the quot was prohibited. Still, however, certain compositions continued to be exacted by the commissaries, varying according to the extent of the sums confirmed. But by 4 Geo. IV. c. 97, § 1, all compositions in respect of confirmation, and all fees termed consignment and fee and sentence money, were abolished, and certain other regulations substituted. See *Ersk.* B. iii. tit. 9, § 28; *Bank.* ii. 388; *Ross's Lect.* i. 185; *Kames' Stat. Law*, h. t. See *Confirmation. Executor.*

R

RABBITS. It is usual in charters of landed estates to convey to the vassal the right of rabbits and rabbit warrens. Craig is of opinion that warrens require to be enclosed, in order to protect the fields of neighbouring proprietors; but Erskine maintains a contrary doctrine, founding on the act 1503, c. 74, which enjoins proprietors to make warrens; although cases may easily be figured in which this power would require to be exercised with some degree of caution; *Ersk.* B. ii. tit. 6, § 7. Under special statutes of the Scotch Parliament, it is accounted theft to take rabbits from a warren, or to shoot them without the proprietor's consent; *Hume*, i. 82. In a farm where rabbits were numerous, the tenant was found entitled to destroy them in order to preserve the crops, and an interdict was refused to the landlord, rabbits not being game; *Moncrieff*, 13 Feb. 1828, 6 S. 530. Devastation committed by rabbits, encouraged by the landlord,

has been held relevant to entitle the tenant to abandon his farm, where he alleged that in consequence the crop did not yield sufficient to pay seed and labour; *Richmond*, 27 May 1829, 7 S. 664. [Rabbits have been held to be vermin in the sense of the clause exempting occupiers of lands killing vermin thereon from the gun licence duty; 33 & 34 Vict. c. 57, § 7 (4); *Gosling*, 9 March 1878, 5 R. 755. By 43 & 44 Vict. c. 47, every occupier of land has the right to kill rabbits thereon, as incident to and inseparable from his occupation of the land. See *Game Laws. Poaching.*] See also *Hunter's Landlord and Tenant*, ii. 192, 216; *Hutch. Justice*, ii. 537, 546; *Tait's Justice*, vocibus *Pigeons, Theft*; *Blair's Justice*, h. t.

RACHETUM; "from the French, ransom." *Skene*, h. t.

RACK-RENT; is a term of English law, and means the full yearly value of land let on lease. *Tomlins' Dict.* h. t.

RAG-FAUGH; applied to cropping under a lease; signifies ploughing the ground twice or thrice after cutting hay. *Wood's Parish of Cramond*, 102.

RAILWAY. Railways are generally projected and executed by joint stock companies; and in order to incorporate the company and to enable it to acquire, if necessary by compulsory purchases, the requisite ground along the line of the railway, and otherwise to facilitate the progress of the work, as well as to provide for the management of the railway and the levying of dues after its completion, a private act of Parliament is required. The details of the act will depend on the special circumstances of the particular case; but as to private acts of Parliament generally, see *Private Bills*. [Certain provisions usually inserted in railway acts are consolidated by the Railways Clauses Acts, (8 & 9 Vict. c. 33, and 26 & 27 Vict. c. 92); and these acts are generally incorporated in railway acts. See also the Companies Clauses Acts (8 Vict. c. 17, and 26 & 27 Vict. c. 118); and the Lands Clauses Act (8 Vict. c. 19).]

[*Railway and Canal Commission.*—A new Commission was instituted by the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), consisting of two appointed, and three *ex officio* Commissioners. The former, one of whom must be experienced in railway business, are appointed by the Crown on the recommendation of the Board of Trade. They must not be interested in railway or canal stock; § 3. The three *ex officio* Commissioners are judges of superior courts (*i.e.*, the High Court of Justice in England or Ireland, or the Court of Session in Scotland); one being nominated for England by the Lord Chancellor, one for Scotland by the Lord President of the Court of Session, and one for Ireland by the Lord Chancellor of Ireland; § 4. The Commission may sit in any part of the United Kingdom, the central office being in London. Not less than three Commissioners shall attend at the hearing of any case. The *ex officio* Commissioner shall preside, and his opinion upon any question which in the opinion of the Commissioners is a question of law shall prevail; § 5. An *ex officio* Commissioner is not required to attend out of the part of the United Kingdom for which he is nominated; and he is not required to perform his ordinary duties as judge of the superior court to which he belongs, when his attendance on the Commission is required; §§ 4, 5.

[Provision is made by § 5 for temporary appointments, in the event of a commissioner being unable to attend. The Commission has a wide jurisdiction to decide matters relating to traffic facilities, undue preferences, tolls and rates, &c.; §§ 8–11. Where the Commissioners have jurisdiction to determine any matter, they may, in addition to, or in substitution for, any other relief, award damages to an aggrieved party, if he complains within one year after the discovery of the matter; and such award shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which the party might otherwise have had; § 12. The amount of damages may be ascertained either by trial before the Commissioners, or by inquiry taken before one or more of them, or some officer of their court; *ib.* Damages cannot be awarded in respect of undue preference, if the rates complained of have been duly published as required (see *infra*), until a remedy has been unsuccessfully sought from the railway company; § 13. Any harbour board, or conservancy authority, or town council, or representative county body, or justices in quarter sessions assembled, or commissioners of supply, or urban or rural sanitary authority, may complain to the Commissioners without proof of being aggrieved, or oppose any complaint which the Commissioners think may affect them; and the same *locus standi* is given to any such association of traders or freighters, or chamber of commerce or agriculture as may obtain a certificate from the Board of Trade that it is a proper body to make complaint; such certificate to continue in force for twelve months, unless withdrawn; § 7. The decision of the Commissioners is final on all questions of fact, or regarding the *locus standi* of a complainant; but in other respects there is an appeal to a superior court of appeal (*i.e.*, in Scotland to the Inner House of the Court of Session, and in England or Ireland to the Court of Appeal), who may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and may make such orders as seem just; § 17. There is no appeal to the House of Lords, except in the case of difference of opinion between two superior courts of appeal; *ib.* The Commission has the full powers of a superior court in regard to attendance and examination of witnesses, enforcement of orders, &c.; but no person may be

[punished for contempt of court, except with consent of an *ex officio* Commissioner; § 18.

[*Traffic and Rates*.—The classification of traffic and publication of rates are dealt with by §§ 24–35 of the act of 1888. The Board of Trade has power, subject to Parliament, to revise the classification of merchandise traffic (including goods, cattle, live stock, and animals of all descriptions, § 55), and the schedule of rates and charges applicable thereto, in the case of every railway company. By 17 & 18 Vict. c. 31, § 2, every railway company is enjoined to afford all reasonable facilities for the receiving and forwarding and delivering of traffic, giving no undue preference to any person or company or description of traffic; and further provisions are made on this subject by the act of 1888.

[For the law relating to railway companies as carriers of passengers, animals, or goods, see *Carriers*, and authorities there cited.

[See *Deas on Railways*; *Ferguson on Railway Rights and Duties*; English treatises by *Shelford*, *Hodges*, *Godefroi & Shortt*, and *Brown & Theobald*; *Stephen's Com.* iii. 188; *Guthrie Smith on Damages*, 154.]

[**RANKING**. See *Bankruptcy*, pp. 96–7. *Insolvency*, pp. 547, 550–1. *Sequestration*, pp. 982–4, 989–91, 997.]

RANKING AND SALE. The action of ranking and sale is the process whereby the heritable property of an insolvent person is judicially sold, and the price divided among his creditors, according to their several rights and preferences. This is the most complex and comprehensive process known in the law of Scotland. [It has been practically superseded by the simpler procedure provided by the Bankruptcy Act; but it is still competent; *Cannon's Trs.* 9 June 1883, 21 S.L.R. 101.] The pursuer must be either a creditor holding a real security over the debtor's estate, or the debtor's apparent heir; 1695, c. 24. The debtor, and all his real creditors in the known actual possession of his estate, by labouring the ground or uplifting the rents, must be called in the action; and there must also be an edictal citation of all the creditors, and of all others having or pretending interest. [Ranking and sale is an Inner House action, final decree being pronounced by the Inner House, on report by the Lord Ordinary. The form of action is regulated by 13 & 14 Vict. c. 36, and A.S. 31 Oct. 1850. See also 1681, c. 17; 19 & 20 Vict. c. 91, § 2. For a full account of

[this process, reference is made to former editions (1838 or 1861) of this Dictionary.] See also *Bell's Com.* ii. 232; *Stair*, B. iii. tit. 2, § 55; B. iv. tit. 35, § 26; tit. 36, § 2; tit. 51, § 4; *More's Notes*, cccvi.; *Ersk.* B. ii. tit. 12, § 59; *Bank.* iii. 37; *Bell's Princ.* §§ 2263, 2419, 1486; *Jurid. Styles*, iii. 189; *Ivory's Form of Process*, i. 317–43; *Beveridge's Form of Process*, ii. 513–48; [*Shand's Prac.* ii. 528; *Mackay's Prac.* i. 362; *M. Bell's Conv.* ii. 823; *Goudy on Bankruptcy*, 488. See *Bankruptcy*, p. 96 b.] *Judicial Sale. Division, Scheme of.*

RANKING AND SALE, by an *Apparent Heir*. This action, which is in almost all respects analogous to the action of ranking and sale at the instance of creditors, is founded on the act 1695, c. 24, which declares that an apparent heir may bring the estate of his ancestor to roup, whether it be bankrupt or not. It is no good objection to the heir's title to sue this action that he has behaved as heir, and thereby incurred a passive title, or even that he has been served heir in general, *cum beneficio inventarii*; provided that his title has not been feudally completed. Neither is it any objection that the heir has renounced, in an action of constitution. [An heir to whom a succession has opened, but who has not completed his title, is not now called an apparent heir, but is absolute proprietor on a personal right; 37 & 38 Vict. c. 94, § 9. See *Apparent Heir*.] See *Ivory's Form of Process*, i. 343; *Beveridge*, ii. 548–51; [*Shand's Prac.* ii. 931; *M. Bell's Conv.* ii. 830; *Jurid. Styles*, iii. 191.] See *Cognition and Sale*.

RANSOM; a sum of money paid for redeeming any capture. Average is leviable on the goods in a ransomed ship, for the sum paid as ransom; and if any one belonging to the ship be detained as a hostage for payment of the ransom, he must be set free at the joint expense of the owners of the ship and cargo. See *Tomlins' Dict. h. t.*; *Ersk.* B. iii. tit. 3, § 55; *Kames' Equity*, 99, 120; *Brown's Synop.* 319, 2082. See *Captive. Average. Contribution*.

RAPE; one of the four pleas of the Crown. It consists in carnal knowledge of a woman's person against her will, and by force. Forcible abduction is no longer, as it once was, essential to the crime. The crime is the same whatever the age of the female may be, and whether she be maid, wife, or widow. A rape may even be committed on a strumpet; though in such a case, the presumption of the woman's

assent will require to be overcome by very clear proof of violence. The crime is not altered although the woman's resistance has ceased through violence, threats, or the effect of stupefying drugs. [It has been held not to be rape to obtain possession of a woman's person by personating her husband in the dark, or by taking advantage of her while asleep, though the offence in either case is criminal; *Fraser*, 11 July 1847, Arkley, 280; *Sweeney*, 18 June 1858, 3 Irv. 109. But by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), § 4, it is declared that a man who induces a married woman to permit him to have connection with her by personating her husband is guilty of rape.] In the case of females under twelve years of age, rape is committed though actual violence has not been used. [An idiot is in the same position as a child, being equally incapable of consent; and weakness of mind, short of idiocy, lessens the amount of resistance required to disprove consent. To complete the crime, there must be penetration; but nothing more need be proved.] All those who assist in subduing the sufferer, or who are present at the time, and approve of the deed, are held equally guilty with the principal perpetrator. The chief witness in such cases, usually, is the injured female herself; but her testimony must in all cases be corroborated as to the using of violence, which will be best done by the signs of injury on her person; the circumstances and situation in which the alleged offence took place; the testimony of those who heard her cries for help; and evidence of her subsequent disclosure of the crime to her relations, or to the public authorities. It is not now, as formerly, the law, that the prosecution cannot be carried on unless the complaint is made the same day on which the crime is committed; see *Shene, voce Raptus*. [Rape was formerly punished by death; and it continued to be a capital offence, though it had long been customary to restrict the pains of law, until the act 50 & 51 Vict. c. 35, § 56. Penal servitude for life or for a long period of years is the usual sentence. Under an indictment for rape, the accused may be convicted of an attempt to ravish (50 & 51 Vict. c. 35, § 61), or of an indecent assault, or of a minor offence under 48 & 49 Vict. c. 69; see *Criminal Law Amendment Act*.] See *Hume*, i. 301; *Ersk.* B. iv. tit. 4, § 55; *Burnet*, 103; *Alison's Princ.* 208; [*Macdonald*, 167.] See *Abduction*.

RATIFICATION BY A MINOR. A ratification by a minor, made after majority, has the effect of discharging all claim of restitution on lesion; but ratification during minority has no such effect, and the act 1681, c. 19, declares those who persuade minors to ratify their engagements by oath infamous. *Ersk.* B. i. tit. 7, § 39; *Bell's Com.* i. 138; *Bank.* i. 182.

RATIFICATION BY AN HEIR; bars him from challenging his ancestor's settlement, on the ground of its being reducible *ex capite lecti* or otherwise, provided the heir be of age, and in such circumstances that the ratification cannot be ascribed to his peculiar situation. *Ersk.* B. iii. tit. 8, § 99; *Bell's Com.* i. 138.

RATIFICATION BY A WIFE. This is a declaration on oath, made by a wife, in presence of a judge (her husband being absent), that the deed she has executed has been made freely, and that she has not been induced to make it by her husband through force or fear. [Formerly] there were also present a notary-public and two witnesses; instruments were taken on what passed by the attorney of the person receiving the right; and the whole was reduced to the form of a notarial act, and attested by the subscription of the wife, the judge, the notary and witnesses. [But in modern practice, it is enough if the wife appear before any justice of peace at his private residence, and the ratification is attested by the simple subscription of the wife and the justice.] The ratification is indorsed on the deed. The use of this ratification is, to bar actions of reduction at the instance of the wife, on the pretence that she had been compelled by her husband to execute the deed. But the want of a ratification by the wife does not render the deed null; although, where it has not been ratified, it may be reduced on special proof of force or fear, or of undue influence on the part of the husband; *Buchan*, 1 March 1834, 12 S. 511. [The ratification has been held to be an absolute bar against reduction on the ground of violence on the part of the husband, even though the wife offer to prove compulsion in regard to the ratification, as well as the deed ratified; *Grant*, 1642, M. 16483. *Erskine*, however (B. i. tit. 6, § 34), impugns this decision, holding that the law would reject such ratifications as should appear upon positive evidence to have been extorted *ex vi aut metu*. See also, to the same effect, *Tait's Justice of Peace, voce Marriage*; *Menzies' Conv.* 40; *M. Bell's Conv.* i.

[135; *McNeill*, 8 Dec. 1829, 8 S. 210. But the decision in *Grant* is supported by *Bell's Com.* i. 138, and by *Fraser on Husb. and Wife*, i. 822, as well as by *Craig*, *Mackenzie*, and *Bankton*, as cited by Lord Fraser. The wife's ratification, however, does not bar her from challenging the deed on the ground of fraud, or on any other plea than force and fear. Nor does it bar reduction on the ground of violence used by any other than the husband.] By special statute, ratifications by married women are excepted from the operation of the statute cited in the article *Oath*, which substitutes declarations for oaths and affidavits; and it is provided that such ratifications be taken on oath as heretofore; but all ratifications taken by declaration instead of oath, since the passing of that act, are declared to be valid, and of the same force and effect as if they had been taken on oath; 6 & 7 Will. IV. c. 43. See *Ersk.* B. i. tit. 6, § 33; *Bank.* i. 132; *Bell's Com.* i. 138; *Bell's Princ.* § 1615; [*Fraser on Husb. and Wife*, i. 819. See *Marriage*.]

RATIO DECIDENDI; the reason or ground on which a judgment is rested.

READING OF DEEDS. A deed ought to be read over in the presence of the granter, or, at all events, some means should be taken to make him acquainted with its contents before he subscribes it. If, however, the deed be regularly subscribed and executed, it will not, in the ordinary case, be necessary for the party maintaining the validity of the deed to show that it was read over, or that the subscriber was acquainted with its contents. The *onus*, on the contrary, will lie upon the opposite party, to show that the subscriber was ignorant of the contents, and was deceived in the execution of the writing which he signed. As it is not a necessary solemnity that the deed should be read over to the granter at all, so neither is it indispensable that the witnesses should be present when it is read; but if it can conveniently be done, it would be prudent to have them present, as they will then be ready, in case fraud be alleged, to prove that the subscriber knew what was in the deed. In reducing a will, it is frequently an important element in the proof of fraud that the testament was not read to the testator. See *Stair*, B. i. tit. 9, § 11; *More's Notes*, cccxl.; *Ersk.* B. iii. tit. 2, § 9; *Ross's Lect.* i. 150, 201, 408; ii. 183; [*Dickson on Evidence*, § 689.] See *Deed. Testing Clause*.

REAL ACTION. A real action is founded on a right of property in a subject, the object of the action being the recovery of the property. It is so termed in contradistinction to a personal action, which is founded only on a personal obligation, and the object of which is to enforce implement of the obligation. *Stair*, B. iii. tit. 4, § 32; tit. 5, § 24; B. iv. tit. 3, § 45; *Ersk.* B. iv. tit. 1, § 10; *Bell's Com.* ii. 144; [*Mackay's Prac.* i. 367.] See *Actions*.

REAL BURDEN. See *Burdens. Incumbrances. Search of Incumbrances*.

REAL RIGHT; means a right of property in a subject, or, as it is termed, a *jus in re*, in virtue of which the person vested with the real right may pursue for possession of the subject; whereas a personal right, or *jus ad rem*, entitles the person merely to an action for performance of the obligation. *Ersk.* B. iii. tit. 1, § 2. See *Real Action. Jus in Re*.

REALTY. See *Personalty and Realty*.

REAPERS. Even though hired by the day or week, reapers, like other farm-servants, have a preference for their wages over the crop raised or secured by their labour. Their claim is preferable to the hypothec of the landlord. *Hunter's Landlord and Tenant*, ii. 407. See *Hypothec. [Wages]*.

REASONABLE CAUSE. A reasonable cause for granting a deed, according to Erskine, is one which is a good ground for executing the deed, though not one which could have been used to compel the granter to execute it. See *Consideration*.

REBELLION; a levying of war, or forcible opposition made by a subject against his Sovereign. A debtor who disobeys a charge on letters of horning, to pay or perform in terms of his obligation is accounted in law a rebel, in respect of his disobedience to the Sovereign's command, contained in the will of the letters; and it is upon this basis that imprisonment for civil debt in Scotland chiefly rests—the act of warding in royal burghs, and the statutory authority given to justices under the small-debt acts, being the only exceptions. This disobedience to the royal command is termed *civil rebellion*; and denunciation on letters of horning was formerly followed with the penal consequences of actual rebellion. Thus, the debtor's single escheat fell, burdened, however, with the debt on which the horning proceeded; and the rebel was in many other respects put beyond the protection of

the law. These highly penal consequences were taken away by the act abolishing ward-holding (20 Geo. II. c. 50). [A registered execution of charge, under the Personal Diligence Act (1 & 2 Vict. c. 114, § 5), has the same effect as if the debtor had been denounced a rebel, in virtue of letters of horning.] See *Ersk.* B. ii. tit. 5, § 60; *Bank.* ii. 260; *Bell's Princ.* § 730; *Ross's Lect.* i. 242, 273-9, 323. See *Denunciation. Escheat. [Diligence.]* As to the effect of denunciation on account of crimes, see *Fugitation*. See also *Act of Warding. Small Debts.*

RECEIPT; [a written acknowledgment of the payment of money. A penny stamp duty is imposed by the Stamp Act, 33 & 34 Vict. c. 97, on every receipt as defined by § 120, viz., "any note, memorandum, or writing whatsoever whereby any money amounting to £2 or upwards, or any bill of exchange or promissory note for money amounting to £2 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of £2 or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person." See *Welsh's Trs.* 18 March 1885, 12 R. 851. The duty on a receipt may be denoted by an adhesive stamp, to be cancelled before delivery; § 121. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following—(1) within 14 days after it has been given, on payment of the duty and a penalty of £5; (2) after 14 days, but within one month after it has been given, on payment of the duty and a penalty of £10; and shall not in any other case be stamped with an impressed stamp; § 122. A penalty of £10 is incurred by any person who (1) gives any receipt liable to duty, and not duly stamped; (2) in any case where a receipt would be liable to duty refuses to give a receipt duly stamped; (3) upon a payment to the amount of £2 or upwards gives a receipt for a sum not amounting to £2, or separates or divides the amount paid, with intent to evade the duty; § 123. Exemptions are created in favour of bankers' deposit receipts, and others, as to which see schedule.]

[Informal but signed receipts are in many cases accepted as sufficient proof of payment, *e.g.*, in reference to payment of rents

[or feu-duties, or *in re mercatoria*. See *M'Laren*, 6 Nov. 1869, 8 Macph. 106 (receipt for a legacy). But a receipt is not always conclusive evidence of payment: in *Henry*, 18 March 1884, 11 R. 713, where a receipt for a half-year's rent was produced in answer to an action for payment, proof was allowed *prout de jure* that it was sent as a reminder that the rent was due, and not as acknowledgment of payment. See *Bell's Princ.* §§ 21, 565; *Dickson on Evidence*, §§ 784-8.] See *Discharge. Evidence. Insurance.*

[RECEIVER, in English law. In an action in the High Court, a receiver is a person appointed by the court, on application, to receive the rents and profits of real estate, or to get in and collect personal property affected by the proceedings, where it appears desirable that he should do so in lieu of the person then having the control of the property, or where the latter is incompetent to do so, as in the case of an infant. The object is to protect the property until the rights of parties have been ascertained; thus, in an action for the dissolution of a partnership, a receiver is frequently appointed to get in or realise the partnership assets. A receiver is an officer of the court, and generally has to give security for the due performance of his duties. *Sweet's Law Dict.*; *Kerr on Receivers*. The office is similar to that of *judicial factor* in Scots law.]

RECEIVING STOLEN GOODS; the English term for reset of theft. [It is punishable with penal servitude or imprisonment; 25 & 26 Vict. c. 96, § 91. *Wharton's Lex.*] See *Reset of Theft*.

RECESS. See *Christmas Recess*.

RECLAIMING DAYS. The period within which all interlocutors of a Lord Ordinary might [formerly] be submitted to review of the Inner House was twenty-one days; 6 Geo. IV. c. 120, § 18. [But in regard to various classes of interlocutors, this period has been altered by subsequent statutory regulations.]

[1. Interlocutors disposing wholly of the merits of a cause are still regulated by the above statute, and may be reclaimed against within twenty-one days from the date of the interlocutor. See *Walker's Tr.* 20 Feb. 1878, 5 R. 678; *Harris School Board*, 21 Dec. 1881, 9 R. 371; *M'Larens*, 3 July 1883, 10 R. 1067.]

[2. Interlocutors disposing in part only of the merits of a cause require the leave of the Lord Ordinary before they can be reclaimed against (see *Reclaiming Note*);

[and the reclaiming note must be lodged (1) within twenty-one days from the date of the interlocutor reclaimed against, and (2) within ten days from the date of the interlocutor granting leave to reclaim; 6 Geo. IV. c. 120, § 118; 13 & 14 Vict. c. 36, § 10; 31 & 32 Vict. c. 100, § 54. See *Bannatine's Trs.* 25 May 1869, 7 Macph. 813; *Fraser*, 30 Jan. 1872, 10 Macph. 420.

[3. Interlocutors which do not dispose of any part of the merits, require the leave of the Lord Ordinary, and must be reclaimed against within ten days of their own date, and also within ten days of the interlocutor granting leave to reclaim; 13 & 14 Vict. c. 36, § 11; 31 & 32 Vict. c. 100, § 54. This class includes all interlocutors deciding questions of procedure, other than the mode of proof; and interlocutors as to expenses, except where, these having been reserved, such an interlocutor is necessary to complete the decision of the whole cause. See *Couper*, 19 Jan. 1872, 10 Macph. 353; *Baird*, 22 June 1882, 9 R. 970.

[4. Interlocutors importing an appointment of proof, or a refusal or postponement of the same, must be reclaimed against within six days of their date; 31 & 32 Vict. c. 100, § 28; A.S. 10 March 1872, § 2. No leave is required. See *Stewart*, 4 March 1871, 9 Macph. 616; *Clark*, 6 June 1876, 3 R. 780; *Mason*, 21 Feb. 1877, 4 R. 513; *Little*, 4 July 1877, 4 R. 980; *Bain*, 29 Feb. 1884, 11 R. 650; *Quin*, 22 June 1888, 15 R. 776.

[5. Interlocutors in the Bill-Chamber must be reclaimed against within fourteen days; A.S. 11 July 1828, § 15; 24 Dec. 1838, § 5.

[6. Reclaiming notes in sequestrations must likewise be presented within fourteen days; 19 & 20 Vict. c. 79, § 171. See *M'George*, 25 June 1887, 14 R. 841.

[7. In summary petitions before the junior Lord Ordinary, reclaiming notes, when competent, must be presented within eight days; 20 & 21 Vict. c. 56, § 6. The rule applies to interlocutors pronounced by the Lord Ordinary on the Bills during vacation; *Stair*, 21 May 1875, 2 R. 701.

[8. In petitions to recall or restrict arrestments, reclaiming notes must be lodged within ten days; 1 & 2 Vict. c. 114, § 20.

[By § 94 of the Court of Session Act, 1868, which empowers Lords Ordinary to sign in vacation interlocutors in causes heard in session, or at extended sittings, or

[at trials by jury or by proof, it is provided that when any such interlocutor is dated at or prior to the first box-day in vacation, the same may be reclaimed against on the second box-day, and when the interlocutor is dated after the first box-day, then on the first sederunt day ensuing, or within such number of days from the date of such interlocutor as may be competent in the case of a reclaiming note against such interlocutor dated and signed during session. This provision applies to petitions under the entail acts; *Suttie's Tutors*, 16 Oct. 1883, 11 R. 3.

[When the twenty-one days, allowed for reclaiming notes by 6 Geo. IV. c. 120, expire during vacation, the reclaiming days continue open until the first ensuing box-day or sederunt day; A.S. 11 July 1828, § 79. The same rule applies to the ten days allowed by 13 & 14 Vict. c. 36; A.S. 20 July 1853; and it has been extended to all interlocutors pronounced in vacation by 31 & 32 Vict. c. 100, § 94. It has been held to apply also, in reference to interlocutors pronounced in session, to the fourteen days allowed for reclaiming in sequestrations; *Joel*, 11 Jan. 1860, 22 D. 357; but not to the ten days allowed in petitions to recall arrestments, under 1 & 2 Vict. c. 114; *Lockhart*, 27 May 1851, 13 D. 996. When the reclaiming days expire on a Sunday, the note may be lodged on the Monday following; *Russell*, 12 Nov. 1874, 2 R. 82; and when the time expires on a day when the clerk's office is not open, the note is timeously lodged on the first day thereafter on which it is open; *Henderson*, 17 Oct. 1888, 16 R. 5. Where the reclaiming days have been allowed to expire through "mistake or inadvertency," a reclaiming note is still competent, with leave of the Lord Ordinary, and on payment of expenses; 48 Geo. III. c. 151, § 16. See *Reponing*. See *Ersk.* B. iv. tit. 3, § 5; *Shand's Prac.* ii. 945; *Mackay's Prac.* i. 556; *Coldstream's Manual of Procedure*, 234 *et seq.*]

RECLAIMING NOTE. The judgment of a Lord Ordinary in the Court of Session, either in the preparation or final decision of a cause, has all the efficacy of a judgment of either Division of the court. But the Lord Ordinary's judgments or interlocutors are subject to the review of the Division of the court to which the cause belongs; and such review is prayed for by a *reclaiming note*, the requisites of which are partly statutory and partly regulated by Act of Sederunt. The [original]

statutory rule is that, when either of the parties is dissatisfied, he may apply for review of the interlocutor, provided that, within twenty-one days from the date of the interlocutor, he prints and puts into the boxes for receiving the papers, to be perused by the judges, a note reciting the Lord Ordinary's interlocutor, and praying the court to alter the same in whole or in part; 6 Geo. IV. c. 120, § 18. [The changes made by subsequent statutes, with regard to the times for reclaiming, are explained in the preceding article. The reclaiming note does not now contain any prayer, but merely bears in general terms that the prefixed interlocutor is submitted to review; 31 & 32 Vict. c. 100, § 5. A print of the record must be appended to the note, unless it has been boxed within two years previously, in which case it may be simply referred to; A.S. 11 July 1828, § 77; 24 Dec. 1838, § 12. See *Miller*, 9 Dec. 1863, 2 Macph. 225; *M'Queen*, 17 Feb. 1866, 4 Macph. 464; *Muir*, 17 Oct. 1874, 2 R. 26. The whole interlocutors in the cause, other than that prefixed to the note, are also appended; as well as any documents to be referred to in argument; and where the interlocutor reclaimed against proceeds upon a proof, the claimer must print the proof. All interlocutors which do not finally dispose of the whole merits of the cause, with the exception of interlocutors settling the mode of proof, require the leave of the Lord Ordinary before they can be reclaimed against; 13 & 14 Vict. c. 36, § 11; 31 & 32 Vict. c. 100, § 54. See *Lamond's Trs.* 14 May 1872, 10 Macph. 692; *Kennedy*, 14 May 1873, 11 Macph. 603; *Kirkwood*, 14 July 1874, 1 R. 1190. When leave is granted, the reclaiming note does not remove the cause from the Outer House, nor stay procedure before the Lord Ordinary, nor excuse obedience to or implement of the interlocutor reclaimed against, unless the Lord Ordinary shall otherwise direct; 31 & 32 Vict. c. 100, § 54. In petitions before the junior Lord Ordinary, under 20 & 21 Vict. c. 56, interlocutors pronounced with a view to investigation and inquiry merely, and not finally disposing of the merits, cannot be reclaimed against at all; § 6. See *Sharp*, 20 Nov. 1860, 23 D. 38; *M'Nab*, 21 Dec. 1871, 10 Macph. 248. Nor can an interlocutor merely approving of the auditor's report on the expenses (no objections thereto having been lodged), and decerning for the taxed amount, be reclaimed against; *Stirling Maxwell's Trs.* 16 Oct.

[1883, 11 R. 1. A reclaiming note, on being presented, must be intimated to the opposite party by delivery of six copies to his known agent; 6 Geo. IV. c. 120, § 18. Delivery of the copies at any time before calling of the case, even on the morning of its appearing in the Single Bills, has been held sufficient; *Campbell*, 7 March 1868, 6 Macph. 563; but see *Taylor*, 10 March 1844, 6 D. 637. With regard to the effect of a reclaiming note, it is provided by 31 & 32 Vict. c. 100, § 52, that "every reclaiming note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary, of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the court to do complete justice, without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary, and without the necessity of any counter reclaiming note; and after a reclaiming note has been presented, the claimer shall not be at liberty to withdraw it without the consent of the other parties as aforesaid; and if he shall not insist therein, any other party in the cause may do so, in the same way as if it had been presented at his own instance." See *Bannatine's Trs.* 12 Jan. 1872, 10 Macph. 317; *Stirling Maxwell's Exrs.* 17 March 1886, 13 R. 854. But if an interlocutor has been acted upon, it cannot be brought under review by reclaiming against a subsequent interlocutor; *N.B. Railway*, 26 June 1872, 10 Macph. 870. See also *Duncan's Factor*, 3 June 1874, 1 R. 964. The court, however, in recalling or altering an interim decree or interlocutor, may order repayment of money paid in implement thereof, or may make any order that may be necessary, to give effect to such recall or alteration; § 57 of same act.] Reclaiming notes, after being boxed, are set down and moved in what is called the roll of *Single Bills* of the Division to which they are presented; and (except in the case of [reclaiming] notes against decrees by default, which are disposed of in that roll) are forthwith ordered to the Long or to the Summar Roll, as the case may be. And when they afterwards appear in this roll, the counsel for the claimer and respondent must be mutually prepared to argue the

case; after which it will be disposed of by the court, either by affirming or altering the interlocutor reclaimed against, or by ordering cases or minutes of debate, or making such other order as the justice of the case requires; 6 Geo. IV. c. 120, §§ 18, 46; A.S. 11 July 1828, §§ 77, 78. [See *Ersk. B. iv. tit. 3, § 5*; *Shand's Prac.* 945; *Mackay's Prac. i.* 548, 569; *ii.* 543; *Coldstream's Procedure*, 233.]

RECLAIMING PETITION. Reclaiming petitions were, prior to the Judicature Act, 1825, a well known mode of submitting the interlocutors of Lords Ordinary to the review of the Inner House, and also of submitting the interlocutors of the Inner House to their own review. In the Court of Session, this form of process is now unknown; but it still [exists] in the sheriff and other inferior courts. The reclaiming petition recites *verbatim* the interlocutor reclaimed against, and, after a written argument, concludes with a prayer for the recall or alteration of the interlocutor in whole or in part. [It is to be drawn "without quotation from the interlocutors, notes thereto, proof, or process, except when such quotation is indispensable;" 39 & 40 Vict. c. 70, § 30. See *Dove Wilson's Sher. Court Prac.* 324. See *Appeal to Sheriff Principal*.]

RECOGNITION; according to Skene, derives its name from the superior, who is presumed formerly to have been proprietor of the lands, recognising them once more as his property, when they fall to him by the fault of the vassal. In this sense, recognition may be taken generally for any return of the feu, from whatever ground of eviction that has happened. But the term was formerly applied specially to a casualty abolished along with ward-holding, by which, when any vassal or free tenant, holding his lands by the tenure of ward, sold and "annallied all and hail his landes, with their pertinents, or the maist part thereof, without license, consent, or confirmation of his overlord," the lands, both those which had been alienated and those which the vassal had retained, fell to the superior as a satisfaction for the contempt shown him, and to prevent vassals from impoverishing themselves, and so rendering themselves unfit to perform their feudal services. *Skene, h. t.*; *Stair, B. ii. tit. 11, § 10*; *B. iv. tit. 14*; *Ersk. B. ii. tit. 5, §§ 10-17*; *Bank. ii. 148*; *Bell's Princ. § 730*; *Kames' Stat. Law Abridg. h. t.*; *Brown's Synop.* 360, 2074; *Ross's Lect. ii. 255*. [See *Holdings. Casualties*.]

RECOGNISANCE; is an English law term, [signifying an obligation of record, which a man enters into before some court of record, or magistrate duly authorised, with condition to do some particular act, as to appear at the assizes, to keep the peace, to pay a debt, or the like. It is in most respects like another bond; the difference being chiefly this, that the bond is the creation of a fresh debt, or obligation *de novo*; the recognisance is an acknowledgment of a former debt upon record, the form whereof is "That A.B. doth acknowledge to owe to our lord the king, to the plaintiff, to C.D., or the like, the sum of £10," with condition to be void on performance of the thing stipulated. *Tomlins' Dict. h. t.*]

RECOMMENDATION, LETTERS OF; letters recommending a third party to the favour or notice of the party addressed. Amongst merchants such letters may be attended with serious consequences to the writer. Thus, if a man spontaneously give letters of recommendation to another, and if in them he convey any assurance of pecuniary safety to his correspondent in his mercantile dealings with the party recommended, he thereby incurs an obligation of the nature of guarantee; [*Rankine, 15 May 1812, F.C.*; *Johnston, 15 July 1845, 7 D. 1046*.] But if one's opinion of another be asked, and if in reply a mere *bona fide* recommendation for general respectability and good conduct be given, this is no letter of credit, and infers no responsibility against the writer. [In case, however, of wilful misrepresentation or concealment, the writer is responsible; *Parks, 6 June 1851, 13 D. 1049*.] See *Bell's Com. i. 388*; *Ersk. B. iii. tit. 3, § 61*; *Brodie's Sup. to Stair, 924*; *Bell's Princ. § 280*; [*Ersk. Princ. (17th ed.) 400*.] See *Guarantee. [Letter of Credit]*.

RECOMPENSATION. Where one pursues for a debt and the defender pleads compensation, to which the pursuer replies by pleading compensation also, this is termed recompensation. The different conditions under which recompensation may occur have been stated and resolved by Stair. He says,—1. Where A. contracts a debt to B., and subsequently at different times B. contracts two debts to A.: If B. pursue for the second of these two, and is answered by the plea of compensation with the debt which he owes, he is entitled to plead recompensation with the first debt due to himself. But, on the other hand, if he pursue for the first debt, he is

not entitled to answer the plea of compensation by pleading recompensation with the second. A case occurred in which the first debt due to A. was secured on the debtor's liferent escheat; he subsequently purchased other debts due by B., for which he had no other security than B.'s other creditors had. The other creditors, to diminish A.'s credit upon the escheat, pleaded compensation on a debt due by A. to B., anterior to both of B.'s debts to A.; A. pleaded recompensation on the last of B.'s debts to him, and the court found generally that he might recompense on any other debts in his person prior to the proponing of the compensation; *Maxwell*, 1739, Elchies, *voce* Compensation, No. 6, M. 2550. This doctrine is contrary to that laid down by Stair. 2. If the debt due by A. be posterior to both the debts due by B., the concurrence takes place between the second debt due by B. and the debt due by A.; but on the ground that compensation, as pleaded by B. in such a case, would be a kind of indefinite payment which he might ascribe to either of the debts he chose, A., whether he insist on his first or second debt, cannot recompense with the other. 3. If the debt due by A. be in the middle between the two debts due by B., A., insisting on the last debt, may plead recompensation on the first; but if he insist for the first, he cannot plead recompensation on the last. These two last rules are laid down by Stair; but there seems to have been no decision where the debts were in such relative positions as to time. It would appear, however, that the doctrine laid down in the case of *Maxwell*, *supra*, is not limited in its application, but would embrace these cases likewise. If such be the case, the operation of the compensation does not depend upon the situation of the debts when contracted; but a creditor pursuing for a debt may answer the plea of compensation by pleading recompensation "on any other debts in his person prior to the proponing of the compensation." Indeed, the whole course of decisions runs counter to the notion that compensation operates *ipso jure*, on which Stair's rules are founded. It has been found a good answer to the plea of compensation on a sum due by bill, that the debtor in that sum was cautioner for the creditor, and might therefore retain the sum in relief although not yet distressed; and thus the debt due to the cautioner was left uncompensated; *Irvine*, 1711, M. 2686. Compensation being pleaded against an assignee, he may recompense by debts

due to his cedent, though not assigned to him; *Kinsterie's Crs.* 1742, Elchies, Compensation, No. 8, M. 2563. [See also *Thomson*, 10 March 1855, 17 D. 739.] See *Stair*, B. ii. tit. 3, § 20; *Ersk.* B. iii. tit. 4, § 19; *Bank.* i. 494. See *Compensation*.

RECOMPENSE; equivalent remuneration. This is due by one who has been made richer by another, without the purpose of donation. ["The obligation is founded on the consideration that the party making the demand has been put to some expense or some disadvantage, and by reason of that expense or disadvantage there has been a benefit created to the party from whom he makes the demand of such a kind that it cannot be undone;" *per* Lord Pres. Inglis, in *Stewart*, 8 Nov. 1878, 6 R. 145.] Thus, where one builds upon another's ground in the belief that it is his own, the property of the builder goes to the proprietor of the ground; but he is liable in recompense so far as *lucratus*. [See *York Buildings Co.* 1797, 3 Pat. 378, 579, 1 Macq. 481; *Douglas*, 20 July 1864, 2 Macph. 1379; *Duff, Ross & Co.* 14 Jan. 1871, 8 S.L.R. 299. One building *mala fide* on another's ground has no such right of recompense; *Barbour*, 3 July 1840, 2 D. 1279 (correcting *Stair*, B. i. tit. 8, § 6); also *D. Hamilton*, 4 Feb. 1877, 14 S.L.R. 98. A *bona fide* possessor's claim for recompense gives him no right to retain the property in security of the amount, at least as against a singular successor; *Beattie*, 27 May 1831, 9 S. 639. The true owner is liable only in *quantum lucratus*, whatever may have been the sum actually expended; *Douglas*, *supra*; *Buchanan*, 10 Nov. 1874, 2 R. 78.] One possessing a subject temporarily is presumed to improve it for his own convenience, and is not entitled to recompense [unless his right is secured by stipulation or by statute; see *Meliorations*. It has been held that a husband, who improves his wife's property, has no claim of recompense against the heir for the amount to which he is thereby *lucratus*; *Reedie*, 17 July 1875, 12 S.L.R. 625. See also *Paterson*, 18 July 1862, 24 D. 1370 (claim by mother for meliorations on her son's property); *Fernie*, 19 Jan. 1871, 9 Macph. 437 (claim for reimbursement by a mere *negotiorum gestor*); *Nelson*, 26 June 1874, 1 R. 1093 (claim by a creditor with an *ex facie* absolute disposition).] See *Stair*, B. i. tit. 8; *More's Notes*, liv.; *Ersk.* B. iii. tit. 1, § 11; *Bank.* i. 226; *Bell's Princ.* §§ 538, 937; *Kames' Equity*

(1825), 113-4-7; [*Rankine on Land-Ownership*, 78.] See *Negotiorum Gestor. Contribution. Adjunction. Commixtion.*

RECONVENTION. Where an action is brought in Scotland by a foreigner, over whom the courts of this country have otherwise no jurisdiction, his adversary in the suit is entitled by *reconvention* to sue the foreigner on a counter claim, in compensation or extinction of the demand. The principle of this is, that a party is not entitled to avail himself of the jurisdiction of the Scotch courts, without subjecting himself in these courts to all incidental claims. In such cases the foreigner himself, and not his mandatary merely, must be cited, and the actions must be between the same parties, or connected with each other; for the raising of the action by the foreigner does not subject him generally to the jurisdiction of our courts. [The dependence of an action for debt does not found jurisdiction *reconvention* in an action of damages for assault; *Thomson*, 25 Jan. 1862, 24 D. 331. In that case Lord J. C. Inglis observed: "It appears to me, on a review of the cases, that the law of Scotland, like the law of Rome, permits reconvention out of favour to a defender, that he may not be condemned to pay, without his having at the same time an opportunity of enforcing his demand against his pursuer; that, like the law of Rome, it restricts the defender's privilege to those cases where the subject-matter of the two claims is of the same nature, where they can conveniently be tried at the same time and in the same court, and can be brought to a conclusion by one judgment (as in conjoined actions), or by two separate but contemporaneous, or nearly contemporaneous judgments; that, subject to these restrictions and conditions, the law of Scotland, like the law of Rome, will admit reconvention, not only where the two claims arise *in eodem negotio*, but also where they arise *ex diversis causis*, provided they be claims which can fairly be set against one another, without violating some other rule of pleading or principle of equity; that the law of Scotland, like the law of Rome, will never allow reconvention to operate so as to give a judge jurisdiction over a subject-matter to which he is not otherwise competent, or indeed so as directly to confer or create jurisdiction in any case; and that, in all matters of detail, the right of reconvention will be limited or enlarged by a reference to the broad principle of equity on which it is based, in

[its bearing on the circumstances of each particular case." See also *Morison*, 8 Dec. 1866, 5 Macph. 130; *Barr*, 18 Nov. 1879, 7 R. 247; *California Redwood Co.* 20 July 1886, 13 R. 1202. The dependence of an incidental petition for recall of arrestments does not support a plea of reconvention; *Goodwin*, 8 Dec. 1871, 10 Macph. 214. See *Ersk. B. i. tit. 2, § 20*; *Shand's Prac. i.* 165; *Mackay's Prac. i.* 177; *Dove Wilson's Sher. Court Prac.* 86. See *Jurisdiction.*]

RECORD. [The record in an ordinary action is made up by condescendence and defences; 13 & 14 Vict. c. 36, § 1. The following are the provisions of the Court of Session Act, 1868, with regard to the revisal, adjustment, and closing of the record:—"Neither party shall be entitled as matter of right to ask for a revisal of his pleadings; but it shall be competent for the Lord Ordinary to allow or to order a revisal of the pleadings upon just cause shown;" § 25. "If no motion for revisal is made as above provided, or if such motion is refused, or after the lapse of the period within which the revised pleadings fall to be lodged where a revisal has been allowed or ordered, the pursuer shall cause the pleadings which are to form the record to be printed, and shall within eight days from the lodging of the defences or revised pleadings, as the case may be, deliver two printer's proofs thereof to the agent or to each of the agents of the other parties, and also to the clerk to the process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the cause to be put to the roll for a day, not less than four and not more than six days thereafter: and upon such day the Lord Ordinary shall require the parties then to adjust their pleadings, and shall close the record: provided that if the pursuer shall fail to deliver the printer's proofs as aforesaid the defender may enrol the cause, and move for decree of absolvitor by default, which decree the Lord Ordinary shall grant unless the pursuer shall show good cause to the contrary: provided also, that it shall not be competent of consent of parties to prorogate the time for complying with any statutory enactment or order of the court, whether with reference to the making up and closing of the record or otherwise;" § 26. At closing the record, the Lord Ordinary requires the parties to state whether they renounce probation; and (1) If they do so, the cause is sent to the debate roll for discussion; (2) If

[parties are agreed that proof is necessary, and as to the mode of proof, the Lord Ordinary, if himself satisfied of the propriety of the proof proposed, appoints the same to be taken; (3) If the parties are at variance as to whether there shall be proof, or as to what proof ought to be allowed, or if it is maintained that any of the pleas stated on record should be disposed of before determining on the matter of proof, the cause is sent to the procedure roll (or, if the Lord Ordinary thinks right, to the debate roll); and after hearing parties there, the Lord Ordinary either appoints proof to be taken, or disposes of such pleas as he thinks ought to be disposed of at that stage; see A.S. 10 March 1870, § 1, which alters the provisions of § 27 of the act of 1868. The procedure in the sheriff court, at closing the record, is similar; see 39 & 40 Vict. c. 70, §§ 18, 23. See *Ersk. B. iv. tit. 1, § 68*; *Shand's Prac. i. 333*; *Mackay's Prac. i. 444*; *M'Glashan's Sher. Court Prac. §§ 798, 1075, 1101*; *Dove Wilson's Sher. Court Prac. 151*. See *Amendment of Record. Condescendence. Pleas in Law. Defences. Rolls of Court.*]

RECORD. In England, courts of record are the Sovereign's courts, in right of the crown and royal dignity. A court not of record is the court of a private person. None but courts of record have authority to fine or imprison. *Tomlins' Dict. h. t.*

RECORDER. In English cities or towns corporate, the recorder is a person whom the mayor and other magistrates, having jurisdiction, associate with them for their direction in matters of law and justice. The recorder of London is one of the justices of Oyer and Terminer, and a justice of peace of the quorum for putting the laws in execution for preservation of the peace and government of the city. Being the mouth of the city, he delivers the sentences and judgments of the courts in it, and certifies and records the city customs, &c. He is chosen by the Lord Mayor and Aldermen. [In other cities and boroughs the recorder is appointed by the Crown; 5 & 6 Will. IV. c. 76, § 103.] *Tomlins' Dict. h. t.* This office seems to be somewhat analogous to that of assessors in Scotland. See *Assessors*.

RECORDER OF THE GREAT ROLL. See *Clerk of the Pipe*.

RECORDS; the contents of any register. In Scotch law language the term is usually applied to the public register for deeds, instruments, and probative writings of every kind. The Scottish system of public re-

cords and registration merits particular attention, as affording the means whereby publicity is given to the state of the titles to heritable property, and as being productive of other important practical benefits. The subject may be digested as follows:—

1. *Decrees of Court.*—The proceedings in the different courts are preserved by the clerks of court, and become the warrants of the decrees which are issued, and which contain a warrant for the diligence or execution of the law to enforce the decree of the judge. See *Evidence. Decree. Diligence*.

2. *Of Deeds.*—All deeds may be recorded in virtue of the clause of registration, whereby the granter consents to the deed being registered, and to judicial authority being interponed, as if a decree in terms of the deed had actually been pronounced. Even where a deed does not contain a clause of registration, as it is called, it may be recorded as a probative writ, under authority of the act 1698, c. 4. [See *Registration for Preservation and Execution*; and cases there cited, as to production of recorded deeds.]

3. *Of Diligence.*—The diligence of the law may be directed against the heritage or the person of the debtor. In the former case it is necessary to show the burdens affecting land; and accordingly the diligences affecting that species of property are carefully recorded, and the validity of the diligence made to depend on the regularity of the registration. The adjudication is recorded in what is termed the Register of Abbreviates. See *Abbreviate*. The inhibition has a register peculiar to itself. Personal diligence is also recorded, because formerly the escheat fell on denunciation; and the form is still continued, although the principal reason no longer exists. See *Diligence. Adjudication. Inhibition. Horning. Denunciation*.

4. *Of Heritable Rights.*—The registration of heritable rights was, after several unsuccessful attempts, at last established by the act 1617, c. 16, which provides for the registration of “reversions, sasines, and other writs.” [For an account of the provisions of that and subsequent statutes, see *Registration for Publication*.]

5. *Of Entails.*—Deeds of Entail are by the act 1685, c. 22, ordered to be recorded in a special register, at the sight of the Court of Session, who are to interpose their authority; and this recording is necessary in order that the deed may have the benefit of the statute. A new register was accord-

ingly established, in which the whole deed of entail, with all its conditions and restrictions, is ordered to be engrossed. There is no time prescribed within which this registration must be made; but without such registration, the deed has not the privilege of an entail; and the most remote heir in the substitution is allowed to insist for having the deed recorded. See *Entail*.

RECORDUM; *recordatio*; according to Skene, a report. "*Recorda summonitionis* signifies the rehearse, report, or testification of the execution of the summons, brieve, or other precept, which execution is now called indorsation. *Recordum curie* signifies the report, rehearsal, or minute of that which is done in court, or the interlocutor of the court." Skene, *h. t.*

RECOURSE; is the right competent to an assignee or disponee, under the warrantice of the transaction, to recur on the vendor or cedent for relief, in case of eviction or of defects inferring warrantice. See *Warrantice. Actio Redhibitoria. Excambion*. The term recourse is also applied to the right which the holder of a bill of exchange has to recur on the drawer and indorsers, should the drawee fail to make payment. See *Bill of Exchange*.

RECOVERY. In the English law, a recovery is the effect of a sentence by which, in a suit instituted for the recovery of an estate claimed by the party, judgment is given that he shall recover it according to his claim. This was an expedient formerly resorted to in England, in order to get rid of the fetters of an entail. A fictitious process was instituted against a tenant in tail, in which the demandant or recoverer obtained judgment for the lands, upon a secret confidence that, on the recovery being completed, he would reconvey them to the party in fee-simple. By 3 & 4 Will. IV. c. 74, fines and feigned recoveries were abolished, and tenants in tail were enabled to make an effectual alienation by any deed to be enrolled in Chancery, by which a tenant in fee can convey. See *Tomlins' Dict. h. t.; Sandford on Entails*, 28. See *Fine*.

RECRIMINATION. Bankton, B. i. tit. 5, § 128, and Balfour in his *Practicks*, hold the plea of recrimination—viz., that the pursuer also has been guilty of adultery—to be a good defence against an action of divorce for adultery; but the contrary doctrine is now established in the law of Scotland. Recrimination, however, may be made the ground of a counter

action, in which case it only affects patrimonial interests. The court, before pronouncing judgment, generally allows the defender a reasonable time for insisting in a counter action, when an act of adultery is alleged to have been committed by the pursuer. When both parties are found guilty, both are divorced; but there is no such thing as allowing the guilt of the one party to stand as a compensation for that of the other. *Ersk. B. i. tit. 6, § 45; Bell's Princ. § 1535; Lothian's Consistorial Prac.* 166; [*Fraser on Husb. and Wife*, ii. 1196.] See *Divorce*.

RECTOR; in the Episcopal Church, one who has the charge and cure of a parish church. *Ersk. B. i. tit. 5, § 9; Tomlins' Dict. h. t.*

[RECTORIÆ DECIMÆ]. See *Garbales Decimæ*.

REDDENDO; is the technical name of a clause indispensable to an original charter, and usually inserted in charters by progress. It takes its name from the first word of the clause in the Latin charter, *Reddendo inde annuatim*, &c.; and it specifies the feuduty or other services which have been stipulated to be paid or performed by the vassal to his superior. [See 31 & 32 Vict. c. 101, §§ 5, 100.] *Ersk. B. ii. tit. 3, § 24; Stair, B. ii. tit. 3, §§ 15, 29; tit. 4, § 7; Bank. i. 548; Bell's Princ. § 762; Ross's Lect. ii. 160, 290; [Menzies' Conv. 552; M. Bell's Conv. i. 632. See Charter. Disposition. Feuduty. Personal Services.]*

REDEEMABLE RIGHTS; are those conveyances, in property or in security, which contain a clause, whereby the granter or any other person therein named, may, on payment of a certain sum, redeem the lands or subjects conveyed. It is in this form that securities for debt are usually given. Prior to the Reformation, at which time the taking of interest was unlawful, all loans of money, and the like transactions, were conceived in the form of temporary sales of land, or purchases of rent; the former were termed *wadsets*, the latter *annualrent rights*. The wadset was a fair exchange of the estate for the use of the money; and where the estate and the money advanced were commensurate in value, and the creditor took the lands in return for the advance, it was termed a proper wadset. Where, again, the creditor was secured in the full amount of his debt, whatever the return of the estate might be, it was termed an improper wadset. The proprietor, during the possession of the wadsetter, was feudally divested; and his

only way of returning to his possession was by redeeming the wadset, in terms of the clause of redemption which the deed contained. This form of security is now hardly known in practice. See *Wadset*. The annualrent right was a sale of a certain annualrent out of the estate, secured by sasine; in which last respect chiefly it differed from the English rent charge. It was redeemable on payment of a certain sum. See *Annualrent Right*. After the Reformation, when the taking of interest was made lawful, a personal obligation was inserted in the annualrent right, and, in security of the debt, the creditor was infeft in an annualrent. This led to the introduction of the heritable bond, consisting of a personal obligation of an annualrent right, and of an infeftment in security of the principal sum, interest, and penalty. Under the annualrent right nothing could be drawn from the estate but the interest of the debt, while the heritable bond covered not only the interest, but all the remainder of the rents, in payment of the principal. Hence, the annualrent right was superseded in practice by the heritable bond. ["By and bye there was added a dispositive clause, the deed then becoming an *heritable bond and disposition in security*, containing obligation to pay as before, and disposition of the annualrent and lands in security, with obligation to infeft, and relative clauses, whereby the right of the creditor was removed from the anomalous position of being founded on a mere obligation to infeft. In other respects the deed was similar to the simple heritable bond, but as the security really consisted of the lands, and the right of annualrent, when given along with the lands, was of no particular use, the heritable bond and disposition in security came gradually to be in great measure superseded by the *bond and disposition in security*, which contained an obligation for payment, and, in security, a disposition of the lands, with assignation to the rents, and ample powers as to possession, but without any right of annualrent. Still creditors were often unable to recover payment except by the tedious, responsible, and very unpleasant process of taking possession and applying the surplus rents to extinction of their debt; and, to remove this inconvenience, a power to sell the lands held in security, after due notice to the debtor and also public advertisement, was added to the bond and disposition in security, and securities for loans came to be almost uni-

[versally framed in this last-mentioned form, with the power of sale;" *Jurid. Styles*, i. 593. As to the constitution, transmission, and extinction of such rights, see *Heritable Securities*.] See *Stair*, B. ii. tit. 3, § 22; *Ersk.* B. ii. tit. 8; *Bank.* ii. 122; *Bell's Com.* i. 712; *Bell's Princ.* § 900; [*Kames' Hist. Law Tracts*, 155; *Menzies' Conv.* 842; *Duff's Feudal Conv.* 257. See *Reversion. Adjudication*.]

REDEMPTION. [See *Adjudication. Legal. Wadset. Premonition*.]

REDHIBITORIA ACTIO. See *Actio Redhibitoria*.

REDUCTION, and REDUCTION-IMPROBATION. The action of simple reduction and the action of reduction-improbatation are the two varieties of the rescissory actions of the law of Scotland. The object of this class of actions, which are peculiar to the Court of Session, and cannot be competently sued in an inferior court, is to reduce and set aside deeds, services, decrees, and rights, whether heritable or moveable, against which the pursuer of the action can allege and instruct sufficient legal grounds of reduction. In the simple reduction the summons, like all rescissory summonses, commences with the Will, whereby the messenger-at-arms is authorised to summon the defender to appear in court at the instance of the pursuer, and to bring with him the deed, writing, or decree sought to be reduced, in order to its being set aside by a decree of the court. The conclusions of the summons are that, for the reasons stated [in the condescendence and pleas annexed to the summons,] and for others to be proponed at the discussion, the document called for ought to be reduced and declared, by decree of the court, to have been *ab initio*, and to be now, and in all time coming, void and null, and that the pursuer should be restored thereagainst *in integrum*. The summons in the ordinary case also contains the proper petitory conclusion consequent on success in the reductive conclusions—*e.g.*, repetition of sums intromitted with in virtue of the reduced deed; or maills and duties of lands wrongfully possessed; or count and reckoning, or the like. And the certification is, that if the defender fail, the court will reduce, decern, and declare in conformity with the conclusions of the summons. [See 13 & 14 Vict. c. 36, sched. (A) No. 4.] The summons of reduction-improbatation, in its general structure does not differ essentially from a simple reduction. But the action being

appropriated to cases where falsehood and forgery are alleged against the deed or document called for, and the conclusion in point of form being not only that the writ should be reduced and "improven" as false and forged, but that the forgers and users thereof should be punished, the action [formerly] required the Lord Advocate's concurrence, which was obtained as a matter of course. [This is not now necessary; 31 & 32 Vict. c. 100, § 17.] See *Concourse*. [Where falsehood and forgery are the real ground of action, a reduction-improbation is necessary. A combined action of reduction-improbation and declarator of non-entry was frequently used by superiors, as a means of enforcing the conditions of a feu-right. But this has fallen into disuse, since the abolition of the casualty of non-entry by § 4 of the Conveyancing Act, 1874. Formerly, in the reduction-improbation, a decree of certification could hardly be recalled, even although pronounced in absence. "But now a decree of certification in absence would be set aside on the same grounds as any other decree in absence;" *Muckay's Prac.* ii. 163. "At one time, when the defender was absent, decree of certification *contra non producta* was not pronounced until the case had been continued for a week and again enrolled, and extract of such decree was delayed for four weeks; but these delays, which were grounded upon the greater effect allowed to decrees in reduction-improbation, are no longer allowed;" *ib.* 164.] The rules as to abiding by a deed against which forgery is proposed, are explained under the articles *Abiding by*, and *Articles Improbatory*.

There is nothing peculiar in the *induciae* or execution of the summons, either of simple reduction or of reduction-improbation. According to the former practice, actions of this class were what were called Inner House processes; and hence, as soon as the writ or document called for was judicially produced, the Lord Ordinary made great avizandum with the process to the Inner House. [But now reductions are disposed of by any Lord Ordinary; 6 Geo. IV. c. 120, § 27; 1 & 2 Vict. c. 118, § 2. Defences must be lodged within ten days, as in ordinary actions. By 13 & 14 Vict. c. 36, § 7, where, in a process of reduction, the defender is to object to the title of the pursuer, or to plead on an exclusive title (see *Title to Exclude*), or to state any other objection against satisfying the production, he shall, "in the first

[instance lodge defences confined to these points; and the form of such defences, and the procedure thereon, shall be the same as in the case of peremptory defences in an ordinary action; and if the defences so lodged shall be repelled, the defender, after the production has been satisfied, shall give in defences applicable to the grounds of reduction, and upon the merits of the reduction, and a record may be made up thereafter, as in any ordinary action." A defender, however, is not debarred from insisting in a preliminary plea, such as incompetency, along with his defence on the merits; *Mackintosh*, 28 May 1868, 6 Macph. (H.L.) 141. When preliminary defences are pleaded, they may be reserved for consideration along with the merits; A.S. 11 July 1828, § 36; *United College of St Andrews*, 4 March 1864, 2 Macph. 810.] In the case where no preliminary defences have been returned, it shall then "be held, unless in the particular cases where the pursuer himself must produce the writs called for, that the defender is to satisfy the production; and he shall be bound to take a day to satisfy accordingly, unless he shall be reponed by the court on producing his (preliminary) defences; and as soon as the production is satisfied, the Lord Ordinary shall prepare the cause for disposing of the reasons of reduction, by appointing defences, after which the record shall be made up as in the case of an ordinary action; and if the pursuer finds it necessary to add any further reasons of reduction to those contained in the libel, it shall be competent for him, before the record is made up, to state the same as an amendment of the libel; but in that case he shall furnish the opposite party with a copy of the amendment forty-eight hours before giving it into process, and pay such expenses as the Lord Ordinary shall think reasonable, and the defender shall give in defences applicable to the said amendment;" A.S. 11 July 1828, § 51. [When defences, preliminary or on the merits, are not lodged on the tenth day after calling, the case may be immediately enrolled to obtain an order for satisfying the production; 31 & 32 Vict. c. 100, § 22. If the pursuer, on the other hand, fails, within twelve days after calling, to enrol the cause, the defender may enrol for dismissal of the action, or other competent procedure; A.S. 14 Oct. 1868, § 12.]

Some practical points connected with actions of reduction deserve attention.

(1.) As to the *title to pursue*, it seems to be settled that a pursuer cannot call for production and reduction of any writings except those flowing from himself, or from his predecessors or authors with whom he can connect a title; although it is not invariably necessary that he should be served heir. Apparency [was] a sufficient title to pursue an action of reduction on the head of deathbed, whether the pursuer were heir of line, or heir-male, or heir of tailzie or provision; and apparency was also a good title, where, from the nature of the subject, there could be no general service. The creditors of an apparent heir might also pursue a reduction on the head of deathbed, and even, as it would seem, without previously adjudging the right to reduce. The Crown's donator, as *ultimus hæres*, was also entitled to pursue such a reduction; but it has been held that the creditors of a defunct cannot pursue a reduction of a discharge granted by the deceased debtor on the ground of fraud and circumvention, without having first vested themselves with the *jus actionis* competent to the deceased; *Rodger*, 2 June 1831, 9 S. 671. See the cases on this subject digested in [*Shand's Prac.* ii. 619.] See also *Adjudication on Trust-Bond*. (2.) It is sometimes difficult to determine in what cases an action of reduction is necessary; as to which the only general rule seems to be that, where the deed is *ipso jure* null, that nullity may be pleaded by way of exception, as in the case of a deed by a pupil, or by a minor having curators without their consent, or where the deed of the minor is in favour of his curator, who cannot be *auctor in rem suam*. On the other hand, where there is no *ipso jure* nullity, but where the deed is merely voidable, an action of reduction is necessary; as, for example, in the case of all deeds executed by a minor, even with consent of his curators, which, within the *quadrimum utile*, are reducible on the head of minority and lesion. So also the deeds of an interdicted or inhibited party, or deeds flowing *a non habente potestatem*, or deeds voidable as frauds against creditors under the bankrupt statutes or at common law, all require to be reduced. And, generally speaking, all deeds, writings, instruments, or executions *ex facie* formal and regular, must be set aside by way of reduction, however pregnant the proof of error may be. In the case, however, of informal executions and the like, where the objection is apparent *ex facie* of the docu-

ment, it is pleadable by way of exception. [But "in many cases in which a reduction would formerly have been necessary, it is now of consent of parties, or on the suggestion of the court, dispensed with in order to avoid multiplying actions. On the other hand, in some cases in which reduction is not absolutely necessary, the writing to be reduced being *ipso jure* null, it has been found expedient to resort to it in order to have the writing set aside in a more solemn manner and by a decree which has more stringent effects;" *Mackay's Prac.* ii. 121.] (3.) It is now a settled rule, that the pursuer of an action of reduction, or of reduction-improbation, is entitled to sue the party in possession under, or availing himself of, the deed or right under reduction, without calling his author, "leaving it to the defenders to cite their authors, or to intimate to them their distress, as they think fit;" A.S. 15 Feb. 1723, made perpetual by A.S. 19 Feb. 1742. See *Elliot*, 9 Feb. 1825, F.C. (4.) Certain actions of reduction are appropriated for trial by jury; such are, reductions on the head of furiosity and idiotey, of facility and lesion, or of force and fear; 6 Geo. IV. c. 120, § 28. (5.) As to satisfying the production, the general rule is, that the defender must produce the writings called for; but to this rule there is an exception, where the defender has not and never had the writings, and where he does not represent one bound to have produced them. Where, again, the writings are in *publica custodia*—e.g., of the court itself—the defender is required to do no more than lodge a note of the dates of the decrees, or of recording the writs. He is not bound to procure extracts at his own expense; but if the defender be in possession of an extract of the deed or decree called for, the production of such extract will satisfy the production, even in a reduction-improbation. If, however, the deed has not been recorded until after the raising of the action, an extract, although sufficient in a simple reduction, will not suffice in a reduction-improbation; and if the original deeds be required from the record, it is the duty of the pursuer to make the requisite application to the court to have them transmitted, although, in a simple reduction, such an application will not be granted *in initio litis*; *Alison*, 5 March 1829, 7 S. 552. Where the deed is recorded in the books of an inferior court, an extract does not satisfy the production. Indeed, it is only where the

deeds are recorded in the Books of Council and Session that an extract or note of the dates of recording will satisfy the production. The register of the great seal, or of Chancery, has no such privilege; and if the deed be recorded in the register of probative writs merely, the original, which in that record is not retained by the keeper, but returned to the party, must be produced to satisfy the production. The warrants of a decree cannot be called for after twenty years; but within that time the defender must produce these warrants, even although *in publica custodia*. These warrants consist of the various steps of process which remain in the clerk's hands, and letters of general and special charge, where such have been required. See *Grounds and Warrants*. A decree of proving the tenor obtained *in foro* will satisfy the production; and it appears formerly to have been the practice to allow actions of proving the tenor to be repeated *incidenter*, in order to stop decree of certification. Where, from the nature of the case, there is actually no production to satisfy; *e.g.*, where a reduction is brought of a transaction which has been carried through verbally, the defender satisfies the production by lodging an inventory, giving a short narrative of the transaction sought to be set aside; *Beveridge*, i. 396. And where the reduction is of a service, in which the question is whether the inquest did right in serving the defender, it is competent to him to lead evidence in addition to the *ex parte* evidence originally laid before the inquest; *Cochrane*, 17 Dec. 1824, 3 S. 411. [See *Shand's Prac.* ii. 632.] (6.) Where a reduction is to be insisted in by one of the parties to a depending litigation against the other, in aid of a plea in the suit, it is sufficient to repeat a reduction *incidenter* by lodging a signeted summons of reduction in the depending process. But a summons thus repeated *incidenter* can go no farther than to affect the claim of the party in the particular action in reference to which it has been repeated; [*Shand's Prac.* ii. 652.] See *Repeating a Summons*. (7.) The effect of a decree of reduction is, that the deed thereby reduced ceases to be of any effect against the party who has obtained it. But no party not in right of the party who has obtained the decree can found on it. Hence, where, either in a simple reduction or in a reduction-improbation, a deed has been found null, the court will not order it to be cancelled. Where, however, it has

been found false or forged, it is cut down to all intents and purposes, and will be ordained to be destroyed, as soon as the forger or user has been tried and convicted; [*Shand's Prac.* ii. 654.] (8.) Inferior courts can only judge incidentally, in the improbation of writs or executions, in processes there depending; and that only where the objection is pleaded by way of exception or reply. And even to this extent, it is only where the writings are challenged by direct proof, that inferior courts can entertain the exception of improbation. Indirect proof is the proper subject of an action in the supreme civil or criminal court; [and procedure should be insisted in the inferior court, that such action may be raised; see *MacLaren*, 13 Nov. 1857, 20 D. 48. But by 19 & 20 Vict. c. 79, § 10, and 20 & 21 Vict. c. 19, § 9, "all alienations of property by a party insolvent or notour bankrupt, which are voidable by statute or at common law, may be set aside either by way of action or exception," and that "in the ordinary court of the sheriff." And by 40 & 41 Vict. c. 50, § 11, "when, in any action competent in the sheriff court, a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof; provided always, that if any objection to a liquid document of debt now maintainable only by way of reduction shall be maintained by way of exception, the objector shall find such caution or make such consignation as the sheriff or sheriff-substitute may direct." These provisions obviate the necessity of a reduction, where they apply, but do not make reduction competent in the sheriff court; *Dickson*, 7 Nov. 1866, 4 Macph. 797; *Moroney*, 5 Nov. 1867, 6 Macph. 7; *Nivison*, 22 Nov. 1883, 11 R. 182. As to reduction of decrees of the Court of Session and other superior courts, see *Mackay's Prac.* ii. 494; and as to reduction of inferior court decrees, see *ib.* 515. See also *Absence. Default. Res Noviter*.] See on the subject generally, *Stair*, B. iv. tit. 20, App. § 8; *More's Notes*, xlv., cccxiii.-xxiii.-lxxx.; *Ersk.* B. iv. tit. 1, § 19; *Bank.* ii. 637; *Bell's Com.* i. 130; ii. 235; *Kames' Stat. Law Abridg. h. t.*; *Macfarlane's Jury Prac.* 26, 72; *Jurid. Styles*, iii. 76; *Ross's Lect.* i. 488; [*Dickson on Evidence*, §§ 1307, 1325, 1357; *Shand's Prac.* ii. 612; *Mackay's Prac.* i. 205, 358, 623; ii. 120, 156; *Dove Wilson's Sher. Court Prac.* 66, 583.]

REDUCTION REDUCTIVE. An action of reduction reductive, is an action in which a decree of reduction, which has been erroneously or improperly obtained, is sought to be reduced. In such actions, the decree of reduction and its grounds and warrants are usually called for, in order that, when the decree of reduction reductive has been pronounced, the parties "may join issue upon the original proceedings, just as if the decree reduced had never been pronounced or extracted." The procedure in such actions is in all respects similar to that in ordinary actions of reduction. *Beveridge's Form of Process*, i. 393; [*Shand's Prac.* ii. 654.] See *Reduction*.

RE-EXCHANGE. See *Exchange*.

[REFEREE, in parliamentary practice. See *Locus Standi*.]

REFERENCE. See *Arbitration*. [*Judicial Reference*.]

[REFERENCE TO OATH. See *Evidence*, p. 415.]

REFORM ACT. [See *Election Law*.]

REFORMATION. The change in the religious establishment of the country from Popery to the Protestant Church took place in Scotland in 1560; and, by the act 1567, c. 2, the papal jurisdiction was abolished, and the Reformed Church legally established. *Ersk. B. i. tit. 5, § 5*.

[REFORMATORY SCHOOLS. See *Schools*.]

REGALIA; are the rights enjoyed by the Sovereign. They are divided into *majora* and *minora*. Under the former are included the several branches of the royal prerogative which are absolutely incommunicable to a subject; the latter are those which the Queen may convey to any person at pleasure, as rights arising from forfeitures, bastardy, or feudal casualties. There are also certain *regalia* connected with the right of land, as forests, salmon-fishings, gold and silver mines, navigable rivers, &c. [These do not, however, pass as pertinents, without express grant from the Crown. But a right of ferry, which is one of the *regalia minora*, was held to have been effectually acquired by prescriptive possession on a charter of barony with a clause of parts and pertinents; *D. Montrose*, 10 March 1848, 10 D. 896. See also *Salmon-Fishings*.] See *Ersk. B. ii. tit. 6, § 13*; *tit. 1, § 6*; *Stair, B. ii. tit. 1, § 5*; *tit. 3, § 60*; *More's Notes*, cci.; *Bank. i. 546, 566*; *Bell's Princ. § 748*; *Brown's Synop. h. t.*, and p. 1624; [*Menzies' Conv. 527, 547*; *M. Bell's Conv.*

[i. 606; *Rankine on Land-Ownership*, 211.] See *Dereliction. King. Crown Lands*.

REGALIA. The crown, sceptre with the cross, sceptre with the dove, St Edward's staff, four several swords, the globe, the orb with the cross, and other articles used at the coronation of the kings of Great Britain, are called the *regalia*; *Tomlins' Dict. h. t.* The *regalia* of Scotland, consisting of the crown used by the Scottish kings, the sceptre, the sword of state, and a mace, supposed to have been the treasurer's mace, are deposited within the Crown Room in the Castle of Edinburgh, where they have remained ever since the union of the kingdoms of England and Scotland. They are under the charge of certain of the Officers of State appointed by the Sovereign as commissioners for keeping the *Regalia. Kames' Stat. Law, h. t.*

REGALITY; was originally a territorial jurisdiction conferred by the King. The lands were said to be given *in liberam regalitatem*; and the persons receiving the right were termed *Lords of Regality*. The civil jurisdiction of a lord of regality was equal to that of the sheriff; but his criminal jurisdiction was much more extensive, as he was competent to judge in the four pleas of the Crown, and possessed the same criminal jurisdiction with the Justiciary, excepting in the case of treason. An offender amenable to a court of regality might have been repledged from the sheriff, or even from the Court of Justiciary. Their jurisdictions were abolished by the 20 Geo. II. c. 50. *Ersk. B. i. tit. 4, § 7*; *Bank. i. 569*; *Bell's Princ. §§ 749, 2174*; *Kames' Stat. Law, h. t.*; *Brown's Synop. 1144*.

REGIAM MAJESTATEM; the title given to a collection of ancient laws, bearing to have been compiled by the order of David I., King of Scotland. There has been a controversy about the authenticity of this work. By some it is held to be a mere compilation from the *Regiam Potestatem*, or a collection of the old laws of England, by Glanville—Craig and Stair denying that it is of Scottish origin, while Erskine differs from them; and Ross, again, maintains its authenticity. Sir Walter Scott characterises it as a treatise "compiled with the artful design of palming upon the Scotch Parliament, under the pretence of reviving their ancient jurisprudence, a system as nearly as possible resembling that of England." And the prevailing opinion among legal

antiquaries seems now to be, that as a Scottish compilation it is spurious; and that the artifice was devised by Edward I. in furtherance of his design to assimilate the laws of the two countries, and so to facilitate his conquest of Scotland. See, in connection with this subject, *Ersk. B. i. tit. 1, § 32*; *Stair, B. i. tit. 1, § 16*; *B. iii. tit. 4, § 27*; *Craig, l. i. dieg. 8, § 11*; *Hailes' Annals, iii. 275*; *Ross's Lect. ii. 60*; *Scott's Border Antiquities, Prose Works, vii. 30*; *Thomson's Reports on the Records, &c.*; [*Preface (by Prof. Cosmo Innes) to the first vol. of the Acts of the Parliaments of Scotland.*]

REGISTRAR OF FRIENDLY SOCIETIES. See *Friendly Societies.*

REGISTRATION. [This subject is most conveniently treated of under two separate heads, viz.—1. *Registration for preservation and execution.* 2. *Registration for publication.*

I. REGISTRATION FOR PRESERVATION AND EXECUTION.

[Registration in order to execution, *i.e.*, to enforce performance of obligations, is of higher antiquity than registration either for preservation or for publication; from both of which it differs also in this respect, that, whereas these were created by statute, registration for execution grew naturally and by degrees out of the ordinary forms of judicial procedure. Even before the Reformation, the foundation of the modern clause of registration had been laid by the churchmen; who, in order to bring causes arising out of contract under the cognisance of the church courts, procured the insertion in obligations of a solemn oath of performance, and consent to excommunication in the event of failure. The modern clause proceeds on the same principle of obvious utility, whereby the admission and consent of the debtor, as embodied in his deed, become in themselves, and without legal process, the warrants of judicial enforcement of the obligation. By the clause of registration, as contained in the form of personal bond given in Dallas' Styles, the debtor consents that "thir presents be insert and registrat in the Books of Council and Session, or others competent, to have the strength of an decret of the Lords or Judges thereof interponed thereto, that letters of horning on six days, and others necessar, in form as effeirs, may be direct hereupon; and to that effect constitutes our procurators &c." On the deed

[being recorded, an extract is given out as matter of course; and such extract is equivalent to a sentence on which immediate execution may follow. In older times, as appears from various acts of Parliament, such deeds required to be received and registered in presence of a judge. See 1584, c. 4; 1597, c. 269. And long after the form of appearing in presence of a judge had been dispensed with, the express consent of a procurator was necessary, before an extract could be given out. But by A.S. 19 Dec. 1670, the Lords authorised the Lord Clerk Register and Clerks of Session to register bonds, contracts, and other writs, and insert the consent of advocates as procurators to the registration, and to give out extracts thereof, notwithstanding that the advocates do not subscribe their consent. A clause of registration, being a personal mandate, fell by the death of the debtor in the obligation, who was mandant. It fell also by the death of the creditor, because a decree of registration could not pass at the instance of an *actor* who was dead; *Channel, 1693, M. 839*. But this inconvenience was remedied by the acts 1693, c. 15, and 1696, c. 39, which authorised the registration of writs as well after as before the death either of the creditor or of the debtor. The English warrant of attorney, which is analogous to our clause of registration, is still held revoked by the death of either party. See *Warrant of Attorney*. By special statutes, the privileges of registration in order to diligence are extended to bills and promissory notes, the acceptance and subscription of which implies a consent to registration for execution. See *Bill of Exchange*. And, by 19 & 20 Vict. c. 56, § 38, bonds to Her Majesty may be registered for execution, though containing no clause of registration. As the system of public registration developed, its advantages came to be realised as available not only for the purpose of execution, but also for *preservation*; and the act 1698, c. 4, declared it lawful to register for conservation, in any public authentic register that is competent, all probative writs, though wanting a clause of registration; the extract to make entire faith, in the same manner as if the writs had been registered by virtue of a clause of registration, except in case of improbation. The same act ordained that the principal writs should be given back to parties registering; but these now remain in the custody of the Keepers of the Registers,

[in the same way as writs registered in virtue of a clause of registration; 31 & 32 Vict. c. 34, § 2. A short clause of registration has been introduced by recent conveyancing acts, in these words:—"And I consent to registration hereof for preservation (or for preservation and execution);" which is declared to import, in any deed or writing whatsoever, "a consent to registration and a procuratory of registration in the Books of Council and Session, or other judge's books competent, therein to remain for preservation; and also, if for execution, 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;" 31 & 32 Vict. c. 101, §§ 8, 138. The records now available for the registration of deeds for preservation or execution are these:—(1) The Register of the Great Seal, for writs passing that seal; but this is available for preservation only. (2) The Books of Council and Session, for all deeds and probative writs. (3) The books of any sheriff court, for all deeds and probative writs, except charters by subject-superiors, which can be registered in the Books of Council and Session only; 1693, c. 35. Decree of registration, however, has effect only within the jurisdiction of the court granting it. (4) The books of royal burghs, for instruments of protest on bills or notes; deeds relating exclusively to subjects held by burgage tenure, and within burgh; or deeds, all the parties to which are burgesses, or have a legal domicile within the burgh at the date of presentment for registration; 49 Geo. III. c. 42, § 1. And (5) the General Register of Sasines, for deeds that are recorded for preservation or for preservation and execution, as well as for publication; 31 & 32 Vict. c. 64, § 12. The volumes in which the deeds are booked, and which form the registers, must be marked and issued by the Depute Clerk Register, to whom were transferred, by 42 & 43 Vict. c. 44, the functions formerly exercised by the Lord Clerk Register, in connection with the public registers. The Books of Council and Session are kept in the General Register House in Edinburgh, and are transmitted to the Depute Clerk Register for custody, as they are completed. The records of the sheriff and burgh courts remain permanently in their respective localities. By 1685, c. 38, a writ given in to be recorded in the Books of Council and Session, must be booked within twelve months from the date of ingiving. The

[same act gave power to borrow up such deed, if not booked within six months from ingiving. See *M'Leod*, 13 Aug. 1846, 5 Bell's App. 210. But this privilege was taken away by 31 & 32 Vict. c. 34, § 1, which prohibits the Keepers of Registers from giving up any writ, either before or after booking, except under authority of the Court of Session. See *Caldwell*, 17 Nov. 1871, 10 Macph. 99, in which the authority of the court was granted, in order that an omission in the testing-clause of a deed might be supplied. In cases of necessity, the court will authorise a deed to be taken from the record and produced elsewhere, under custody of an officer of court; and when production is required at a distance, a deed will be given up, on security for its return within a specified time. See A.S. 16 July 1859; *Adam's Acts of Sederunt*, 31. But if an extract or office copy would serve the purpose, the principal will not be given up. See *Macdonald*, 3 Nov. 1877, 5 R. 44, and cases there cited; *Kennedy*, 13 July 1880, 7 R. 1129; *Mags. of Elgin*, 18 June 1885, 12 R. 1136. If access to foreign registers, or proof of entries therein, is desired, the proper course is to cite the registrar as a witness; *Maitland*, 20 March 1885, 12 R. 899. Lords Ordinary are empowered to grant warrant for production of registered deeds in processes depending before themselves, by A.S. 24 Dec. 1838, § 15; 8 June 1850, § 2. See *Mackay's Prac.* i. 451; ii. 42. See also *Ersk. B. ii.* tit. 5, § 54; B. iv. tit. 1, § 63; *Bell's Com.* i. 4; *Bell's Princ.* §§ 86, 2217; *Ross's Lect.* i. 92; *Menzies' Conv.* 160; *M. Bell's Conv.* i. 220; *Jurid. Styles*, i. 60. See *Decree of Registration. Records. Lord Clerk Register.*

II. REGISTRATION FOR PUBLICATION.

[This applies chiefly to writs connected with heritable rights; and its design is, that the condition of all heritable property, as regards its ownership and incumbrances, may be made public and ascertainable by any person at any time. It is beyond the scope of this work to trace the history of registration of land rights, for which reference must be made to the lectures of *Ross* and *Menzies*, as cited *infra*. The basis of the present system is the statute 1617, c. 16. That act, after reciting the great hurt sustained by the lieges through fraudulent concealment of latent rights affecting lands, appointed a public register to be kept, in which instruments of sasine,

[as well as reversions and other writs employed in creating, assigning, discharging, and renouncing redeemable rights affecting heritable property, should be registered within sixty days of their date. Deeds not so registered were decreed to make no faith in judgment in prejudice of a third party acquiring a just and lawful right to the subjects. The register was placed under the charge of the Lord Clerk Register; but the duties of that functionary, in this connection, were, by 42 & 43 Vict. c. 44, § 5, transferred to the Depute Clerk Register. Besides the General Register in Edinburgh, the act established particular or local registers throughout the kingdom; and deeds might be registered either in the General Register or in the appropriate particular register. The keepers of the registers were enjoined to record each deed within forty-eight hours after presentation, the whole body of the writ being engrossed in the register; and to re-deliver the deed, marked with the date of registration, and the number of the leaf of the book in which it was recorded. Official extracts from the registers were declared equally probative with the principal writs, except in case of improbation. Burgh registers of sasines were not established until the act 1681, c. 11. Great abuse having arisen through neglect of the keepers to engross the writs, as ordained by the act, a remedy was attempted by 1686, c. 19, by which the keeper's attestation that a deed had been registered was declared to be sufficient for the party's security, although the deed had not been booked. This remedy, however, was found incompatible with the publicity which was the main object of the act of 1617; and accordingly the act of 1686 was rescinded by 1696, c. 18, which re-asserted the principle that no sasine or other writ should be of force against any but the granter and his heirs, unless duly booked in the register. By A.S. 17 Jan. 1756, the notary's docquet, as well as the body of the sasine, was ordained to be engrossed in the register. Two important acts, passed together in 1693, greatly enhanced the practical efficiency of the system. By 1693, c. 13, all sasines were declared preferable according to the date and priority of registration. And by 1693, c. 14, it was enacted that minute-books should be kept, expressing the day and hour when, and the names and designations of the persons by whom, the writs were presented; that the minutes should be immediately signed by the pre-

[senter of the writ and by the keeper; and that registration should be made exactly conform to the order of the minute-book. The system of registration, thus established and perfected, continued in operation, without material change, for a century and a half after the date of the last-mentioned statutes. During that period the conviction had grown, that for practical purposes registration was the one vital and essential element in the completion of title by a vassal or disponee; and that, if registration were properly guarded and secured, the ceremonies requisite to infeftment, and the instrument of sasine itself, might with advantage be dispensed with. The accomplishment of this change was accordingly the main object of the recent series of conveyancing statutes, including the acts of 1845, 1858, and 1860, which were consolidated by the Consolidation Act of 1868 (31 & 32 Vict. c. 101). The Infeftment Act of 1845 (8 & 9 Vict. c. 35) dispensed with the ceremony of sasine on the lands, but retained the instrument in an abbreviated form, which might be recorded at any time during the grantee's life; the date of presentment and entry set forth in such instrument being held to be the date of infeftment. By the Titles to Land Acts of 1858 and 1860 (21 & 22 Vict. c. 76, and 23 & 24 Vict. c. 143), the further step was taken of dispensing with the instrument of sasine; and the recording of the conveyance itself, with warrant of registration thereon, now constitutes infeftment, to the same effect as if an instrument of sasine had been expedite and recorded at the date of recording the conveyance. Deeds may be recorded at any time during the life of the person on whose behalf they are presented for registration, the date of entry in the minute-book being held the date of registration. Two or more writs transmitted by post to the keeper of the register, if received by him at the same time, are deemed to be presented and registered contemporaneously. See these provisions in 31 & 32 Vict. c. 101, §§ 15, 142. Every deed presented for registration must have a warrant indorsed thereon, specifying the person on whose behalf it is presented, and signed by him or his agent; *ib.* § 141; 37 & 38 Vict. c. 94, § 33. Registration operates as infeftment only in favour of the party expressed by the warrant. When it is not desired to record the whole of a deed, a notarial instrument may be expedite and recorded, setting forth generally the nature of the deed, and

[containing at length those portions which relate to the particular right or rights which it is desired to make real by infeftment; 31 & 32 Vict. c. 101, § 17. See *Notarial Instrument*. The granter of a deed is also authorised to insert before the testing clause, a clause of direction, in form prescribed, specifying the part or parts of the deed which he desires to be recorded; *ib.* § 12. In case of any error or defect in the infeftment, a new registration is authorised by § 141 of the same act. And by §§ 22 and 23, provision is made for the completion of his title by the assignee of an unrecorded conveyance. By the Lands Registers Act, 1868 (31 & 32 Vict. c. 64), the particular registers of sasines were abolished, and the General Register is directed to be so kept that the writs applicable to each county are separately entered; §§ 3, 8. Notwithstanding the abolition, by the Conveyancing Act of 1874, of the distinction between feudal and burgage tenure, writs affecting land formerly held burgage must still be recorded in the burgh register of sasines; 37 & 38 Vict. c. 94, § 25. See *Stair*, B. ii. tit. 3, § 20; *More's Notes*, clxiv.; *Ersk.* B. ii. tit. 3, § 39; *Ross's Lect.* ii. 201; *Bell's Com.* i. 717; *Bell's Princ.* § 772; *Menzies' Conv.* 166, 580; *M. Bell's Conv.* i. 662; *Duff's Feudal Conv.* 119; *Jurid. Styles*, i. 54. See *Infeftment. Search of Incumbrances. Burgage. Erasures. Inhibition. Adjudication. Entails. Lease.*

[REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.] The modern system of registration of births, deaths, and marriages consists of the provisions of the acts 17 & 18 Vict. c. 80, 18 Vict. c. 29, and 23 & 24 Vict. c. 85; the first of these being the leading act. By § 2 thereof, the office of Registrar-General was instituted; which office is now held by the Deputy Clerk Register; 42 & 43 Vict. c. 44, § 7. See *Lord Clerk Register*. Registrars are appointed in rural parishes by the parochial boards, and in burghs by the town councils; see 17 & 18 Vict. c. 80, §§ 8-17; 18 Vict. c. 29, §§ 2, 4; *Laurie*, 23 Jan. 1874, 1 R. 402.

[Births.]—The registrar is required to inform himself of every birth and death happening within the parish, and to register the particulars thereof; 17 & 18 Vict. c. 80, § 26. Parents, or persons in charge of any child born, must give information of such birth within twenty-one days thereafter, and sign the register, under a penalty not exceeding twenty

[shillings; § 27. Any person finding a new-born child, living or dead, must give intimation thereof to the registrar, or the inspector of poor, or the district constable, under a penalty of forty shillings; § 29. The registration of children born at sea is provided for by § 30. After three months from the birth of a child, the registrar may not register the birth until the parent or other guardian has made a declaration in writing before the sheriff of the particulars required to be registered; § 31. A name given in baptism after registration may be registered within six months, or if beyond that time, then only with the written authority of the sheriff; a certificate of baptism, signed by the minister, being delivered to the registrar, along with a fee of one shilling; § 32; see also 24 & 25 Vict. c. 85, §§ 12, 13. Similar provision is made, by § 33 of the leading act, for the case of a name given without baptism after registration. A minister baptising a child, if no certificate of registration of the birth is produced to him, is required to send notice to the registrar; § 34. The name of the father of an illegitimate child is not to be entered, unless at the request of both father and mother; but if the paternity or legitimacy of a child is fixed by judicial decree, the clerk of court is required to notify the same to the registrar; § 35; see also 18 Vict. c. 29, § 5; 24 & 25 Vict. c. 85, § 13. By § 37 of the leading act, provision is made for correction of registration of children legitimated *per subsequens matrimonium*. When a birth is entered, the registrar is bound to give or transmit by post an extract thereof to the informant, without fee; § 37.

[Deaths.]—The nearest relatives present at the death of any person, and the occupier of the house in which the death took place, or, if the occupier be the person who has died, his nearest relatives and the inmates of the house, are required, within eight days after the death, to give information to the registrar of the particulars thereof, as specified in a schedule, and to sign the register, under a penalty not exceeding twenty shillings. In the event of failure, such persons, and any other person having knowledge of the particulars, may be required, within fourteen days after the death, to attend and give information, under a penalty not exceeding forty shillings; 17 & 18 Vict. c. 80, § 38. In the event of a person dying not in a house, the occupier of the house in which he was residing at the time, or, if the deceased was the occupier,

[then the inmates, are required to give notice to the registrar, within twenty-four hours after receiving information, under a penalty not exceeding forty shillings; and if it is not known where the deceased resided, any person present at the death or finding of the body, or to whom it shall be brought, must give like notice to the registrar, under the same penalty; § 39. The medical man in attendance at a death is required, within seven days, to transmit to the registrar particulars thereof, according to a schedule; § 41; 23 & 24 Vict. c. 85, § 14. Deaths occurring at sea are registered in terms of § 43 of the leading act. The registrar is bound to give a certificate of registration of death, for the use of the undertaker; who is bound to deliver the same to the person in charge of the place of interment, under a penalty of ten pounds; and if any body is buried for which no certificate is so delivered, the person in charge of the place of interment is required to give notice thereof to the registrar; § 44. The registrar may require parties to attend him to give information; § 45.

[*Marriages*.—The leading provisions in regard to registration of marriages are narrated under *Marriage*, pp. 690, 693; and it is only necessary to notice in addition the provision that the registrar is bound, when required by the parties, to attend the solemnisation of a marriage, and make entry thereof in his book; for which he is entitled to a fee of twenty shillings; § 47 of leading act. The same fee is due to the registrar for registration of an irregular marriage after conviction, or after decree of declarator; § 48.

[A half-yearly account of the number of births, deaths, and marriages is to be made out by the registrar; § 50. Registers are to be kept in duplicate; and indexes thereof are to be kept at the General Registry office, where they may be searched; §§ 53–57. Certified extracts of entries are admissible as evidence; § 54. See *Dickson on Evidence*, § 1305. The offence of knowingly giving false information to be entered in a register, and the offence of destroying or falsifying a register, are made punishable by penal servitude or imprisonment; §§ 60, 62. By 23 & 24 Vict. c. 85, § 10, a “foreign register” was instituted, of the births, deaths, and marriages of Scottish subjects occurring in foreign countries. See on this subject, *Dickson on Evidence*, § 1168; *Fraser on Husb. and Wife*, i. 477; ii. 1575; *Seton’s Analysis*.]

[**REGISTRATION OF VOTERS**. See *Election Law*, p. 374.]

REGIUS PROFESSORSHIP; in a university, is a professorship founded by the Crown.

REGRATERIS; those who buy any merchandise or other thing, and take “unlesumlie” greater price for the same afterwards. *Skene, h. t.*

REGRATING. See *Forestalling*. *Engrosser*.

REGRESS; re-entry. Letters of regress were granted by the superior of a wadset to the reverser. By the wadset, the reverser was completely divested, and, when he redeemed the subject, he claimed an entry from the superior as a stranger—the superior being no more bound to receive the reverser than he could have been to receive any third party. To remedy this, letters of regress were granted by the superior, under which he became bound to re-admit the reverser at any time when he should demand an entry. [But under the act 20 Geo. II. c. 50, the necessity of such an express obligation was superseded, and the wadsetter’s conveyance on redemption entitled the reverser to enter on paying a year’s rent. Letters of regress came to be used only for the purpose of forcing the superior to enter the reverser as vassal without composition; and even singular successors in the superiority required so to enter the reverser, if letters of regress had been granted and recorded in the Register of Sasines. Wadsets and letters of regress are now practically obsolete.] See *Ersk. B. ii. tit. 8, § 18*; *Stair, B. ii. tit. 10, § 12*; *Bank. ii. 134*; *Bell’s Princ. § 904*; *Jurid. Styles*, 2d. edit. iii. 123; *Brown’s Synop.* 1557; *Ross’s Lect. ii. 334*; [*Menzies’ Conv.* 848.] See *Wadset*.

[**REGULATION ROLL**. See *Calling a Summons*.]

REHABILITATION; *recapacitation*; the restoration of a power or capacity to a person who had been previously denuded. Thus, *infamia juris* formerly disqualified a person for being admitted as a witness; but a pardon from the King rehabilitated him in so far as concerned his admissibility. See *Infamy*. So also one who has been outlawed has no *persona standi in judicio*; but the reponing of him against the sentence of outlawry rehabilitates him in all the rights and privileges of a free subject, including the right to have a fair trial. *Hume*, ii. 272, 356; *Bank. ii. 275*. See *Fugitation*. *Evidence*.

REIF; or robbery, is one of the four pleas of the Crown. Robbery, according to Skene, is when a man lies by the King's highway, passing to market towns, in woods, ditches, or any other secret place where people pass, and robs and spuilzies them; and "albeit he take away but the valour of a penny or less, it is felonie; for the malapartness of the deed, breaking of the King's peace, and the danger in the quhilk a man is of his life, causes the offence to be greater than gif the geeir so robbed or spuilzied had been thieftuously stolen." *Skene, h. t.* See *Robbery*.

RE-INSURANCE. An insurer or underwriter is entitled to protect himself against the dangers of his own engagement, by what is termed a re-assurance, in which he insures himself against the risk he runs by his own original insurance. In this transaction, in the event of the original insurer's insolvency, the person originally insured has no interest, and he cannot recover from the last insurer in any other way than in common with the other creditors of the first insurer. A double insurance differs from re-insurance in this, that it is made not by the insurer but by the insured. Its effect is not to give a double indemnification to the insured, who can claim his actual loss only, but to give him a claim for this loss against all the underwriters on both policies, to the extent of the sums for which each is bound. The underwriters, on the other hand, are entitled to a recourse against each other, whereby the loss is allocated proportionally on the whole underwriters in both policies. [By 19 Geo. II. c. 37, § 4, re-insurances were prohibited, except in case of insolvency or death of the original insurer; but the prohibition was repealed by 27 & 28 Vict. c. 56, § 1; and both these enactments having been repealed by 30 Vict. c. 23, §§ 3, 4, sched. D, re-insurance is legal in virtue of the common law. See *Mackenzie*, 1 Ex. D. 36; *Uzielli*, 15 Q.B.D. 11. See *Marshall on Marine Insurance*, 101; *Arnould on Marine Insurance*, i. 102; *Bell's Illust.* § 503, Nos. 8 and 9; *Bunyon on Life Insurance*, 57; *Porter on Insurance*, 259; *May on Insurance*, 9. See *Insurance*.]

REI INTERVENTUS; is the occurrence of some circumstance on the faith of a bargain, such as the performance of an act in implement of the bargain, or the non-performance of an act which, but for the bargain, one or other of the parties would have performed, whereby matters do not remain entire—i.e., as they were before the

bargain was made—in consequence of which the law holds that neither party is entitled to resile. To give *rei interventus* these effects, it must be known to the party against whom it is pleaded, [or at least it must be such an act as he must be presumed to have contemplated,] and it must have been permitted by him as flowing from the contract. [See *Ballantine*, 21 Jan. 1842, 4 D. 419; *Johnston*, 28 Feb. 1844, 6 D. 875; *Gardner*, 8 Feb. 1878, 5 R. 638; *Kirkpatrick*, 17 Dec. 1880, 8 R. 327; *Stuart & Co.* 20 Nov. 1885, 13 R. 221.] See *Ersk. B. ii. tit. 6, § 21*; *B. iii. tit. 2, § 3*; *Bell's Com. i. 346*; *Bell's Princ. §§ 26, 889, 946, 1189, 2257*; *Bell on Leases, i. 285*; *Hunter's Landlord and Tenant, i. 369, 429*; [*Dickson on Evidence, § 815*; *Rankine on Leases, 112.*] See *Homologation. Lease. [Locus Poenitentiae.]*

REJECTION IN TRANSITU. A buyer of goods who finds himself unable to pay the price, but is not yet a bankrupt, has the power, and ought, to reject goods offered to him by a carrier or other person to whom they have been delivered for transmission; and such rejection will have the effect of restoring the goods to the seller, provided he agree to rescind the contract. The buyer, in contemplation of bankruptcy, cannot reject the goods after they have ceased to be *in transitu*, and are identified with his stock. Re-delivery, in such circumstances, would be a fraudulent preference of the seller over the purchaser's other creditors. What shall amount to delivery, to the effect of completing the transit, depends a good deal upon circumstances. It is not delivery, if the goods are still on the carts at the buyer's cellar-door. It has even been decided that the buyer may take the goods into his warehouse *custodiæ causa*, and yet validly reject them, by writing to the seller that they have been taken in for his behoof. If the goods be taken only by a clerk, without special authority, they may still be rejected by his principal. It has been decided in England that an actual bankrupt has no power of rejecting goods even *in transitu*; but in Scotland it has been repeatedly said from the bench that a bankrupt may reject goods *in transitu*, and that it would be fraud in the bankrupt and his creditors to take delivery of such goods. [See *Inglis*, 27 Jan. 1842, 4 D. 478; *Booker & Co.* 20 Dec. 1870, 9 Macph. 314; *Mitchell*, 10 Feb. 1871, 9 Macph. 516.] See also *Ersk. B. iii. tit. 3, § 8*; *Bell's Com. i. 253*; *Bell's Princ. § 1310*; [*Brodie's Supp. to Stair*,

[888; *Brown on Sale*, 548, 571; *Goudy on Bankruptcy*, 277; *Benjamin on Sale*, 881.] See *Stoppage in Transitu. Delivery.*

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

RELATIONSHIP. See *Consanguinity. Cognate. Agnate.* [*Kindred. Evidence*, p. 410.]

RELAXATION, LETTERS OF; were letters passing the signet, whereby a debtor was relaxed from the horn, that is, from personal diligence. They proceeded either upon errors in the diligence or on the consent of the creditor. But the necessity of letters of relaxation is superseded, as to civil debts, by the act 20 Geo. II. c. 50. In criminal prosecutions, one who has been outlawed may apply to the Court of Justiciary for letters of relaxation, reponing him against the sentence. *Ersk. B. ii. tit. 5, § 65; Hume, ii. 272; Stair, B. iii. tit. 2, § 14; B. iv. tit. 47, § 10; tit. 32, § 22; Bank. i. 633; ii. 259; iii. 3; Ross's Lect. i. 346.* See *Denunciation. Escheat. Outlaw.*

RELEASE; the gift or discharge of a right or action which any one has, or claims, against another or his land. See *Tomlins' Dict. h. t.* [In the English law of real property, a release is where a person having a right, title or claim in or to land, gives it up to some one else who has an interest in the land of such a nature as to qualify him for taking the right so relinquished. *Sweet's Law Dict.*] The term is also applied to liberation from prison. See *Liberation. Bail.*

RELEVANCY; fitness and pertinency. The relevancy of the libel is the justice and sufficiency of the matters therein stated to warrant a decree in the terms asked. The relevancy of the defence is the justice of allegation therein made to elide the conclusion of the libel, and to warrant a decree of absolvitor. In criminal trials, [any objections to the relevancy of the libel must be disposed of] before the facts charged are admitted to proof before the jury. [See *Criminal Prosecution.*] In civil cases the rule is different, it being frequently necessary in such cases to have the facts in question ascertained *before answer*, as it is technically expressed—that is, before determining as to the relevancy of the respective averments of the parties. [See *Millar*, 31 Jan. 1856, 18 D. 402; *Gillespie*, 22 July 1859, 3 Macq. 757; *Pringle*, 6 May 1867, 5 Macph. (H.L.) 55.] See *Stair, B. iv. tit. 39, § 4; Bank. B. iv. tit. 25, § 4; Ersk. B. iv. tit. 1, § 69; tit. 4, § 91; Macfar-*

lane's Prac. 47; [Dickson on Evidence, §§ 1 et seq.; Shand's Prac. i. 215; Mackay's Prac. i. 437; ii. 15. See Before Answer. Evidence.]

RELEVIVUM; according to Skene, is a French word from the Latin *relevare*, to relieve or take up that which is fallen. For it is given by the tenant or vassal, being of perfect age, after the expiring of his ward, to his overlord, of whom he holds his lands by knight service—that is, by ward and relief; and by payment thereof he relieves, and as it were raises up again, his lands after they were fallen down in his superior's hands by reason of ward. *Skene, h. t. See Relief.*

RELICT; a widow. A widow has a claim against the representatives of a husband for aliment corresponding to her husband's rank and fortune from the first day of her viduity to the first term at which her legal or conventional provisions are payable. She may also claim from her husband's representatives the expense of suitable mournings, and the expense attending the birth and baptism of a posthumous child. But these claims for aliment, mournings, &c., are postponed to the claims of the husband's creditors. See *Ersk. B. i. tit. 6, § 41, and B. ii. tit. 9, § 45; Stair, B. iii. tit. 11, § 24; tit. 8, §§ 43 and 47; More's Notes, cxv., cxxv.; Bank. ii. 379; Bell's Com. i. 678. See Marriage. Jus Relictæ. Terce. Contract of Marriage. Entail. Divorce. [Ann. Aliment. Liferent.]*

RELIEF; has in the law of Scotland various acceptations; as 1. *The Casualty of Relief*; 2. *Relief of Cautioners*; and, 3. *Relief between Heir and Executor.*

1. The *casualty of relief* is a sum exigible from an heir on his entry with the superior. It has been doubted whether this casualty be exigible from an heir in a feu-holding. But Erskine shows it to be a casualty common to every feudal tenure. The term "relief" is applied to this exaction, because the feu is thereby relieved or recovered from the superior by the entry of the heir. And it is the established practice to hold the heir, both in feu and blench holdings, liable in relief-duty equal to one year's feu or blench duty over and above the ordinary annual duty. [This casualty is now abolished as to all feus created after 1st October 1874; 37 & 38 Vict. c. 94, § 23; see *Casualties.*] See *Ersk. B. ii. tit. 5, § 47; Stair, B. ii. tit. 4, § 26; More's Notes, ccviii.; Bank. i. 628; Bell's Princ. §§ 715–16; [M. Bell's Conv. i. 623.] See Relevium. Composition.*

2. *Relief of Cautioners and of Obligants generally.*—The cases in which a cautioner is entitled to sue his principal for relief are stated in the article *Cautionry*. The cautioner may be infeft in relief of his obligation, but he is not entitled to enter into possession till he either pay the debt or be distressed for payment. An infeftment in relief, or any other security, granted to the cautioner, accresces to the creditor, so that he may demand the benefit of it for the payment of his debt. A cautioner's claim of relief has been held a good warrant for arrestment. It may be stated as a general rule, that any one who warrantably takes upon himself the fulfilment of another's obligation is entitled to relief from the party for whom he interposes. Thus, if one of two co-obligants, bound only *pro rata*, pay the whole debt, he is entitled to be relieved to the extent of the other's share. And where both are bound *in solidum* as regards the creditor, they are entitled to proportional relief *inter se*. The obligation to relieve holds in those cases likewise where a party is rendered liable to pay expenses or damages through the negligence, fault, or delict of a third party. For it frequently happens that, although the injured party may be entitled to come against the principal in the first instance, yet the principal is not bound to suffer for another's fault. See *Stair*, B. i. tit. 8, § 9; tit. 15, § 8; tit. 17, § 13; *More's Notes*, cxiii.; *Brodie's Supp.* 944; *Ersk.* B. iii. tit. 3, § 65; *Bank.* i. 463–4; *Bell's Com.* i. 364; *Bell's Princ.* §§ 62, 255, 269; *Kames' Princ. of Equity* (1825), 75; *Ross's Lect.* i. 77, 161, 171. See *Beneficium Divisionis*. *Discussion. Bond of Relief. Co-obligant.* As to relief of public burdens, see *Public Burdens*.]

3. *Relief between Heir and Executor.*—This claim of relief arises where either the heir pays a debt legally payable by the executor or where the executor pays a debt in which the heir is the proper debtor. Thus, if the heir pay a personal debt, he has relief against the executor; and should the executor have paid an heritable debt, he has relief against the heir. This reciprocal relief is not affected although the last will or other settlement of the deceased should contain a clause burdening the heir or executor with certain debts; unless such appear clearly to have been the intention of the testator, and that he has taken the legal means of expressing his intention. Otherwise, such a clause is understood to have been introduced merely in favour of

the creditor, but as in no shape intended to affect the mutual rights of heir and executor. [See *Douglas's Trs.* 17 Jan. 1868, 6 Macph. 223; *Duncan*, 22 June 1883, 10 R. 1042; *Bell's Trs.* 8 Nov. 1884, 12 R. 85; *Ramsay*, 15 Nov. 1887, 15 R. 25.] See *Ersk.* B. iii. tit. 9, § 48; *Stair*, B. iii. tit. 5, § 13; tit. 8, § 65; B. iv. tit. 23, § 22; *More's Notes*, ccclix.; *Bank.* ii. 293; *Bell's Princ.* § 1936; [*M'Laren on Wills*, ii. § 2301;] *Jurid. Styles*, iii. 28. See *Discussion. [Heir and Executor. Heritable and Moveable.]*

RELIGION. Courts of justice cannot take notice of religious opinions, in order to decide whether they are right or wrong; but they may take cognisance of them as facts, with a view to determine the ownership of property, [or protect some civil right. See *Church Judicatories*.] All persons are now admissible as witnesses, whatever their religious principles may be, provided they believe in a God and a future state of retribution. *Ersk.* B. iv. tit. 2, § 23. See *Blasphemy. Violating Sepulchres. [Evidence. Atheism.]*

RELOCATION, TACIT; is the tacit or implied renewal of a lease, inferred where the landlord, instead of warning the tenant to remove at the stipulated expiration of the lease, has allowed him to continue without making any new agreement. This renewal is held to be for one year; and either party may put an end to the tacit relocation by taking the requisite steps [in due time before the term] at which he desires to bring the contract to a termination. [See *Removing*; also *M'Intyre*, 8 July 1831, 5 W. & S. 299; *Blain*, 8 Feb. 1840, 2 D. 546; *Bett*, 14 Feb. 1845, 7 D. 447; *Sutherland's Tr.* 19 Oct. 1888, 16 R. 10. The doctrine of tacit relocation has been applied also to the contract of service, on the analogy of the contract of lease. But the rule depends wholly on custom, and applies only to specific classes of servants; *Lennox*, 26 Oct. 1880, 8 R. 38. The term "tacit relocation" was applied, but with less obvious propriety, to the continuance of a partnership after expiry of the original contract, by Lord Watson, in *Neilson*, 4 March 1886, 13 R. (H.L.) 50.] See *Ersk.* B. ii. tit. 6, § 35; *Bell on Leases*, ii. 132; *Bank.* ii. 103, 112; *Bell's Princ.* §§ 173, 1265; *Hunter's Landlord and Tenant*, i. 523; *Ross's Lect.* ii. 641; [*Rankine on Leases*, 509; *Fraser on Master and Servant*, 58. See *Lease. Removing. Master and Servant*.]

REMAINDER. In English law, an

estate in remainder is an estate limited to take effect and be enjoyed after another estate is determined. Thus, if lands be granted to A. for twenty years, and after that term to B. and his heirs for ever, A. is tenant for years, *remainder* to B. in fee; *Tomlins' Dict. h. t.* The distinction is somewhat analogous to that which exists between fee and liferent in the law of Scotland. See *Fee and Liferent*.

REMEMBRANCERS; officers of the Exchequer, whose duty it is to remind the Lord Treasurer and Court of Exchequer of such things as are to be called on, and dealt in, for the Queen's benefit. *Tomlins' Dict. h. t.*

REMEMBRANCER, QUEEN'S AND LORD TREASURER'S. In the Court of Exchequer, as constituted under 6 Anne, c. 26, the Queen's Remembrancer was the principal clerk of court and first officer of Exchequer under the Barons; and the office of Lord Treasurer's Remembrancer was a separate office, also established by the act of Queen Anne. These offices were united, under the provisions of 3 & 4 Will. IV. c. 13, by Treasury Minute dated 26 August 1836. As explained in the article *Exchequer, Court of*, the ministerial functions of that court had previously, by 3 & 4 Will. IV. c. 13, and 5 & 6 Will. IV. c. 58, been transferred to the Commissioners of the Treasury; and those changes in its judicial administration had already commenced, which ended, in 1856, in its abolition as a separate court. The Queen's and Lord Treasurer's Remembrancer is the general administrator of the Crown revenues in Scotland, and represents the ancient ministerial functions of the Court of Exchequer. He also discharges the duties of several offices, connected with the Treasury, which have from time to time been abolished, *e.g.*, the offices of Receiver-General and Paymaster of the Civil Establishment (abolished in 1833); Recorder of the Great Roll, or Clerk of the Pipe (abolished in 1835); Almoner (abolished in 1835); Solicitor and Marshall of Exchequer (abolished in 1837); Auditor of Exchequer (abolished in 1848). All estates falling to the Crown by means of bastardy and *ultimus hæres*, and of escheat, are recovered by the Remembrancer, who gives directions for the safe custody of the moneys and for the management of the estates, when consisting of heritable property, during the competitions of parties for gifts, and carries out the instructions of the Commissioners of the Treasury as to

[the disposal of the estates. As Almoner, he reports to the Treasury, half-yearly, the state of the roll of Her Majesty's charities and bounties, fills up vacancies under direction of the Commissioners, and distributes the money annually voted by Parliament. He investigates the claims of officers for compensation for loss of emoluments under the provisions of acts of Parliament, and for superannuation allowances. He also reports upon applications from judicial officers for increase of salaries, and upon applications from professors for retiring allowances. All commissions to judges, officers of law courts, and others receiving public salaries, are recorded in books kept by the Remembrancer. He makes up annual estimates of civil services, and prepares quarterly schedules of salaries, pensions, &c. The accounts of the sheriffs are audited and passed by the Remembrancer; who also pays the imprests allowed to the sheriffs by authority of the Treasury. He examines likewise the accounts of the Crown Agent, and of various other officials. Judicial fines and forfeitures are recovered by the Remembrancer, and applications for their remission or mitigation are disposed of by him, under guidance of the Treasury. As Auditor of Exchequer, the Remembrancer aids the Sheriff of Chancery in ascertaining and fixing the amount of composition or other duties payable to the Crown, on granting any Crown writ; 31 & 32 Vict. c. 101, § 69. Crown charters of *novodamus* are lodged with the Remembrancer, and transmitted by him for the sign-manual of Her Majesty; *ib.* § 88. The Remembrancer recovers and reports to the Treasury all treasure-trove. See *Parliamentary Blue-Book*, 1867, vol. xxxix. No. 531 (Exchequer and Audit Departments Act), p. 48; *Clerk and Scrope's Court of Exchequer*, 275.]

RE MERCATORIA, *Writings in*; are privileged in so far as that they do not require to be authenticated with all the solemnities of a formal deed. *Bell's Com.* i. 342. See *Deed. Evidence. Privileged Deeds*.

REMISSIO INJURIE. In an action of divorce for adultery, the plea of *remissio injurie*—*i.e.*, that the pursuer has already forgiven the injury—affords, when established, a good defence. Forgiveness may be declared expressly, or by fact and deed—*e.g.*, by the injured party cohabiting with the defender after his or her guilt was known. In order to support this defence, it is necessary to aver and to

instruct that the specific guilt libelled was known to the pursuer, and that it was pardoned. [See *Ralston*, 13 Jan. 1881, 8 R. 371.] Mere suspicion will not be sufficient; there must be a complete and perfect belief derived from what is considered satisfactory evidence of the guilt. If the *remissio* occurred during the course of the process, the oath *de calumnia* is complete evidence of the belief of the guilt libelled, whether it actually existed or not. The raising of the process, or the giving of instructions to counsel to prepare the summons, is also complete evidence. Personal detection or confession, or the conducting of a precognition, in consequence of which the spouses separate, affords direct evidence of the belief. Facts inferential of belief may be established *prout de jure*. A written pardon by either husband or wife is sufficient. The requisite circumstances implying pardon must be stronger on the part of the woman than of the man. Being *solus cum sola*, or open cohabitation as man and wife, after belief in the guilt, infers forgiveness, unless the pursuer can show that the belief was destroyed by false or fraudulent representations on the part of the defender. [Condonation may also be inferred from long delay of the action importing acquiescence; *A. v. B.*, 20 July 1853, 15 D. 976.] The plea of *remissio* is not incompatible with that of innocence. It is also competent to creditors to urge this plea. [Condonation of adultery, followed by cohabitation, is absolute and irrevocable, and conditions attached thereto are ineffectual; *Collins*, 18 Feb. 1884, 11 R. (H.L.) 19. The condoned acts, however, may competently be used as evidence explanatory of subsequent acts of alleged misconduct; *ib.*; but not as evidence that such alleged acts took place; *Robertson*, 19 July 1888, 15 R. 1001. Condonation of cruelty is on a different footing. "Cruelty is cumulative, admitting of degrees, and augmenting by addition, so that it may be condoned and even forgiven for a time and up to a certain point, without any bar in sense or reason to bringing it forward when the continuance of it has rendered it longer condonable;" *per* Lord Young, in *Collins*, 10 R. 262; see also *Macfarlane*, 7 Feb. 1849, 11 D. 533; *Graham*, 19 July 1878, 5 R. 1093.] See *Ersk.* B. i. tit. 6, § 45; *Bell's Princ.* § 1531; *Lothian's Consistorial Prac.* 157; [*Fraser on Husb. and Wife*, ii. 901, 1176; *Mackay's Prac.* ii. 269.] See *Divorce*.

REMISSION. A crime may be extin-

guished by a pardon or remission from the Sovereign, or it may be extinguished by an act of indemnity given by Parliament. These remissions do not prevent a private party from pursuing for damages. *Ersk.* B. iv. tit. 4, § 105; *Stair*, B. i. tit. 9, § 7; *Bank.* i. 247; ii. 275; *Kames' Stat. Law*, h. t. See *Pardon*.

REMIT. In judicial procedure, the term remit is applied to an interlocutor or judgment transferring a cause, either totally or partially, or for some specific purpose, from one tribunal or judge to another, or to a judicial nominee, to execute the purposes of the remit. Such remits are made under various circumstances: *e.g.*, on the ground of contingency, a cause may be remitted by one Division of the Court of Session to the other, or by one Lord Ordinary to another, before whom the contingent process is in dependence. See *Contingency*. [A cause may also be remitted by the Inner House to a Lord Ordinary for further procedure; but such remits are not now so frequent as formerly. In the case of a reclaiming note against an interlocutor settling the mode of proof, the cause is usually remitted to the Lord Ordinary, after the Inner House has decided on the mode of proof. But when a cause is taken to the Inner House after final judgment in the Outer House, a remit back to the Outer House is now in no case necessary, and the cause is directed to remain in the Inner House until final decision, unless special circumstances render a remit expedient; 31 & 32 Vict. c. 100, § 56. And by § 62 of the same act, when proof is ordered by one of the Divisions, it is now taken before one of the judges of the Division, and it is no longer competent to remit to a Lord Ordinary to take such proof.]

In addition to these remits, there are, in practice, various incidental remits made in the course of a process; such are remits to accountants to prepare states of accounts, in actions of count and reckoning, and other processes involving accountings between the parties; remits to persons of science, or of skill, to report on disputed matters of science, or as to the usage in particular trades and professions, the execution of work, and so forth; remits in rankings and sales, in multiplepointings, in teind processes, and the like, to the common agent, or to the clerk of court, and in some cases to accountants, to prepare states of ranking and schemes of division, or of locality; remits to the auditor of court to tax accounts of expenses; remits

to a commissioner to examine witnesses or havers; and, finally, remits to a judicial referee, mutually chosen by the parties, to determine the whole matters in dispute, and to report his opinion to the court, in order that decree may be pronounced in terms of his award. In the inferior courts, as well as in the Court of Session, remits, particularly to accountants, and to persons of science or skill, are frequent; and with respect to all such remits, whether in the supreme or in inferior courts, [it is usual that the record be closed before the remit is made. But it is in the discretion of the court, on cause shown, to remit before closing; *Mackintosh*, 6 March 1830, 8 S. 668.] Remits to scientific or skilled persons are frequently made on the joint nomination or suggestion of the parties; and in such cases, or where the parties make no objection to the judge's nominee, or where such objections are overruled, the report obtained on the disputed point will be held almost tantamount to the award of a judicial referee, and will not be opened up unless the objector can instruct specific errors or irregularities. [See observations on the practice of the court in making remits to men of skill, in *Quin*, 22 June 1888, 15 R. 776. In the case of a remit to an accountant, the court may request the accountant to attend in court, and assist in settling the terms of the remit; and when his report has been given in, he may be required by the court, or by either of the parties, to attend at the debate on his report; 31 & 32 Vict. c. 100, §§ 81, 87. Power is given to the accountant to compel production of documents, and attendance of witnesses; to proceed *ex parte*, in case of default; or to apply to the court for special direction; §§ 82-84. With leave of the accountant, parties may appeal against any interim order or proceeding, or move the court for special direction; § 35. The accountant is directed to report his findings in the form of a certificate, and any necessary explanations are to be appended in the form of a note; § 86. As to lodging objections to an accountant's report, and as to the expenses of such report, see *Report*. See *Mackay's Prac.* i. 525; *Dove Wilson's Sher. Court Prac.* 273.]

REMOVING OF TENANTS. After the expiration of the stipulated endurance of a lease, the tenant is notwithstanding entitled to continue his possession on tacit relocation from year to year, until legally removed by the landlord. In order to

authorise judicial removing, the tenant, where the lease does not provide otherwise, must be warned by the landlord to remove. [Prior to the alteration made by the Sheriff Court Act of 1853, and noted *infra*,] the warning or notice to quit required to be given forty days before the term of Whitsunday at which the removal was to take place; or, if the term of removal was any other than Whitsunday, then forty days preceding the term of Whitsunday of that year in which the term of removal occurred. The form of the warning, and the manner of ejecting the tenant, are regulated by the statute 1555, c. 39, and by A.S. 14 Dec. 1756, [as modified by the Sheriff Court Act of 1853.] Warning and removal under the statute 1555 are effected by a succession of cumbersome forms, commencing with a precept of warning, executed forty days before Whitsunday, against the tenant personally, or at his dwelling-place, and on the grounds of the land, and published at the parish church; which is followed by an action and decree of removing. But this form of removal is in practice superseded by the forms prescribed by A.S. 14 Dec. 1756, which, where the lease contains no obligation on the tenant to remove, authorises citation to be given in an action of removing, raised before the judge ordinary; which is sufficient warrant for a decree of removing and ejection, provided such action be called in the inferior court forty days preceding the term of Whitsunday of the year in which the removal is to take place. Where, on the other hand, the lease contains an obligation on the tenant to remove, the A.S. holds a charge on letters of horning on the registered lease, given in like manner forty days preceding Whitsunday, to be sufficient to authorise ejection within six days after the term of removal in the tack. These forms of removing are proper, according to the statute, against tenants of "lands, mills, fishings, and possessions whatsoever." But, under these expressions, urban tenements, houses in the country to which no land is attached, coal-works, mines, &c., and grass parks let from year to year, are not included—as to all of which the agreement of parties, or common law, qualified to a certain extent by consuetude, as to reasonable notice, affords the rule. [See *Robb*, 20 Jan. 1859, 21 D. 277. By the Sheriff Court Act of 1853 (16 & 17 Vict. c. 80), the following provisions were enacted:—By § 29, a summons of removing may be raised at any time, provided there be an interval of at

[least forty days between execution of the summons and the term of removal, or, where there is a separate ish as regards land and houses or otherwise, between execution of the summons and the ish which is first in date. See *Granger*, 16 July 1857, 19 D. 1010. By § 30, a probative lease, specifying a term of endurance, is equivalent to an extract decree of removing; provided notice be given, in form prescribed, to the party in possession forty days before the term (or, if more than one, the first term), and a certificate or acknowledgment of such notice be indorsed on the lease; and provided also that no removal or ejection shall be competent under this enactment after six weeks have elapsed from the expiration of the term (or, if more than one, the last term). By § 31, the same effect is given to a letter of removal granted by the tenant, in form prescribed, and either holograph, or attested by one witness. By § 32, an irritancy, on the ground of two years' arrears of rent, is enacted in regard to certain leases; as to which, and as to the provisions of A.S. 14 Dec. 1756, in regard to irritancy for non-payment of rent, see *Irritancy*.

[By the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 62, § 28), a longer period was substituted for the forty days' notice previously requisite. That act provides that "notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end—(a) In the case of leases for three years and upwards, not less than one year, nor more than two years, before the termination of the lease: (b) In the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease. Failing such notice by either party the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year. Notice by the landlord to the tenant under this section shall be given in the form and manner prescribed by the Sheriff Courts (Scotland) Act, 1853, and shall come in place of the notice required by the said act. Provided that nothing contained in this section shall affect the right of the landlord to remove a tenant who has been sequestrated under the Bankruptcy (Scotland) Act, 1856, or who by failure to pay rent or otherwise has incurred any irritancy of his lease, or

[other liability to be removed. The provisions relative to notice herein contained shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes, or to subjects let for any period less than a year." As to this enactment, see *Rankine on Leases*, 480; also *L. Macdonald*, 6 Dec. 1884, 12 R. 228. Its application is limited to holdings that are agricultural, or pastoral, or market gardens; see *Agricultural Holdings Act*.

[A decree of removing may be extracted within forty-eight hours; A.S. 10 Jan. 1839, § 113; and the extract orders the tenant to remove on a charge of forty-eight hours; A.S. 27 Jan. 1830. An application for summary removing, without any warning, is competent before the judge ordinary, against persons who have no legal title, or against precarious possessors. But a petition for summary ejection which contains no allegation of vicious or precarious possession without title is incompetent. See *Nisbet*, 12 Jan. 1866, 4 Macph. 284; *Halley*, 26 June 1867, 5 Macph. 951; *Scot. Provincial Investment Co.* 31 May 1881, 8 R. 737. By 1 & 2 Vict. 119, §§ 8–14, special regulations were made with regard to removings from houses or other heritable subjects let for any shorter period than a year, at a rent not exceeding £30 per annum. See *Shotts Iron Co.* 28 May 1857, 19 D. 755. Where a house, other than a dwelling-house or building let along with land for agricultural purposes, is let for a period not exceeding four months, notice of removal must, in the absence of express stipulation, be given as many days before the date of ish as are equivalent to at least one-third of the full period of duration of the lease; and notice of removal from such house is sufficiently given by registered letter; 49 & 50 Vict. c. 50, §§ 5, 6. The enactment, by the same statute, of uniform term days for removing from houses, is noticed in the article *Terms, Legal and Conventional*. Excepting the statutory notice by registered letter, the mode of warning and removing from houses is generally regulated by local custom. See *Chalking of Door*; *Robb*, 20 Jan. 1859, 21 D. 277. Removings under the A.S. 1756 are appropriated to the sheriff court; but they may be brought under review of the Court of Session by suspension, at any time before extract; 6 Geo. IV. c. 120, § 44; 1 & 2 Vict. c. 81, § 4; *Greig & Scott*, 14 Dec. 1827, 6 S. 251; *Graham*, 16 June 1843, 5 D. 1207. Removings

[under the Sheriff Court Act of 1853 may also be brought under review by suspension. As to whether a sheriff has jurisdiction to grant warrant for the summary ejection of the tenant of an agricultural subject on account of failure to stock, see *Macdonald*, 30 Nov. 1888, 16 R. 168. In summary removings under 1 & 2 Vict. c. 119, the sheriff's jurisdiction is final. By A.S. 11 July 1839, § 34, "in actions of removing and in summary applications for ejection, the defender shall come prepared with a cautioner for violent profits at giving in his defences or answers, unless he instantly verify a defence excluding the action." See *Violent Profits*. A lessee deriving his right from the pursuer of a removing cannot question his title to sue; but when the lessee's right flows from another than the pursuer, the latter must instruct a title; *Sinclair*, 9 June 1887, 14 R. 792. Under a disposition, infetment seems to be necessary to give a title to sue; *Rankine*, 442; *Trail*, 25 Oct. 1863, 1 R. 61. In the case of an apparent heir, it is sufficient if infetment be taken in the course of the procedure; *Mackintosh*, 22 Nov. 1854, 17 D. 99. As to the power of a creditor infet on bond and disposition in security to remove tenants, see *Forsyth*, 13 Dec. 1853, 16 D. 197; *Blair*, 21 Dec. 1853, 16 D. 291; *Hunter*, ii. 571. In an action of damages for illegal ejection, the pursuer must set forth his title to possess; *Macdonald*, 4 July 1883, 10 R. 1079.] See as to removings, *Ersk.* B. ii. tit. 6, § 45; *Stair*, B. ii. tit. 9, § 38; B. iv. tit. 26; *More's Notes*, cclvi.; *Bank.* ii. 111; *Bell's Princ.* §§ 1267, 1278; *Kames' Stat. Law Abridg. h.t.*; *Hunter's Landlord and Tenant*, ii. 1; *Bell on Leases*, i. 259-65; ii. 51-128, 333-52; *Ross's Lect.* ii. 509; [*Ross on Removing*; *Rankine on Leases*, 439, 474; *Shand's Prac.* ii. 554; *Mackay's Prac.* i. 271; *McGlashan's Sher. Court Prac.* §§ 225, 2387; *Dove Wilson's Sher. Court Prac.* 481; *Lees' Sher. Court Styles*, 295.] See *Ejection. Lease*.

REMUNERATION. See *Recompense*.

RENCOUNTER; RENCONTRE; a meeting. The term is applied, however, chiefly to a hostile meeting between two individuals. Erskine distinguishes a rencounter from a duel; holding the former to be a meeting without a previous challenge, which is not accounted a capital offence unless death ensues; whereas, prior to the statute 59 Geo. III. c. 70, the offence of fighting a duel on a previous challenge, although death did not follow,

was accounted a capital crime. *Ersk.* B. iv. tit. 4, § 49. See *Duelling. Challenge*.

RENT; the consideration given to the landlord by a tenant for the use of the lands or subjects which he possesses under lease. See *Lease*. Where rents are assigned, if by a simple assignation, due intimation, or a decree of maills and duties following thereon, renders the right effectual against singular successors; and if by disposition or heritable bond, the sasine completes the creditor's right to the rents as an accessory to the real right to the lands. A decree of adjudication, even without a sasine on a charter of adjudication, as being a judicial disposition, carries right to the rents falling due after its date; and like a judicial conveyance, it requires no intimation. But no right to rents alone, however complete, can compete with the right to the rents as an accessory to a real right in the lands. See *Bell's Com.* i. 68; ii. 7; *More's Notes to Stair*, cxxxix., cclxvi., cclxxiv.; *Ersk.* B. ii. tit. 6, §§ 40-1-3; tit. 9, § 64; B. iii. tit. 2, § 23; tit. 5, § 5; tit. 6, § 9; tit. 7, §§ 12 and 20; *Bank.* i. 386; ii. 101, 198, 324; *Bell's Princ.* §§ 634, 1047, 1197, 1227, 1479-84-99; *Bell on Leases*, i. 20, 35, 87, 125, 219, 232, 253, 263, 403; ii. 45, 51, 276; *Hunter's Landlord and Tenant*, i. 386, 479; ii. 168, 276, 326, 440, 496; [*Rankine on Leases*, 273;] *Bell on Purchaser's Title*, 64, 70; *Ross's Lect.* i. 454; ii. 235, 381, 437, 453, 494. See *Terms, Legal and Conventional. [Assignment of Rents. Hypothec. Sequestration for Rent. Maills and Duties. Grassum. Heir and Executor. Prescription.]*

RENTAL BOLLS; were a stated quantity of corn paid yearly by the heritors to the titular of tithes, who accepted of them in place of drawing the teinds. The quantity was regulated either by a written rent-roll, or by mere use of payment. When this mode of payment was once established, it could be interrupted on the part of the titular only by inhibition of tithes, and on the part of the heritor only on his offering the tithes in kind. *Ersk.* B. ii. tit. 10, § 25; *Bank.* ii. 57; *Bell's Princ.* § 1157. See *Teinds. Inhibition*.

RENTAL RIGHT. See *Kindly Tenant. [Lochmaben.]*

RENUNCIATION. See *Discharge. Implied Discharge*.

RENUNCIATION; the act of renouncing a right. It may be considered under the following heads:—1. *Renunciation by*

an Heir. 2. *Renunciation of Redeemable Rights.* 3. *Renunciation of a Lease.*

1. *Renunciation by an Heir.*—Where an heir is charged to enter, he must either renounce, or he will be rendered personally liable for the debt. If it be a debt of the ancestor, decree *cognitionis causa*, as it is termed, is pronounced, for the purpose of enabling the creditor to attach the estate. Where the debt is due by the heir himself, the estate to which he has succeeded may be attached by the heir's creditors, whether the heir renounce his ancestor's succession or not. [See 37 & 38 Vict. c. 94, § 12.] See also *Ersk.* B. ii. tit. 12, §§ 13, 14; *Stair*, B. iii. tit. 2, § 45; tit. 5, § 24; B. iv. tit. 51, § 10; *Bank.* ii. 232, 357; *Bell's Com.* i. 748-751. See *Heir. Apparent Heir.* [*Adjudication for Debt.*] *Adjudication contra hereditatem jacentem.*

2. *Renunciation of Redeemable Rights.*—Redeemable rights may confer either a right of property or a right in security. Where the deed conveys a right of property, as in wadsets, a renunciation of the right is not sufficient unless the right has remained personal, on which no sasine has followed; for in that case a renunciation will sufficiently extinguish the right. Where, again, the deed conveys a right in security only, as in the case of an heritable bond, a simple discharge and renunciation is sufficient to extinguish the creditor's sasine. See *Ersk.* B. ii. tit. 8, §§ 17, 18, and 34 *et seq.*; *Stair*, B. ii. tit. 10, § 13; *Bank.* ii. 132; *Ross's Lect.* ii. 259, 378, 389. [See *Heritable Securities.*]

3. *Renunciation of a Lease.*—This renunciation may either be verbal or by a written deed. In the former case it may be resiled from; in the latter it cannot. But it requires acceptance by the landlord to give it effect; and it [was at one time] usual to take a notarial instrument on the acceptance in evidence of the fact. It would seem that the voluntary renunciation of a current written lease must be in writing; and hence, that a mere verbal renunciation of such a lease may be resiled from. But on the other hand, there are several decisions which go to support the doctrine that a verbal renunciation is binding, and may be proved by oath of party. Yet it would rather appear that these decisions were pronounced in cases where the stipulated term of removal had expired, and the tenant was in possession on tacit relocation. See *Stair*, B. ii. tit. 9, § 35; *Bank.* B. ii. tit. 9, § 37; *Ersk.* B. ii. tit. 6, § 44;

Tait on Evidence, 325; *Balfour's Practicks, voce Probation by Writ*; *Bell's Princ.* § 1271; *Bell on Leases*, i. 172, 272, 524; *Ross's Lect.* ii. 506, 523; *Hunter's Landlord and Tenant*, ii. 25, 108; [*Rankine on Leases*, 448;] *Jurid. Styles*, i. 711. See *Lease.*

REPAIRS OF A SHIP, *Hypothec for.* See *Hypothec.*

REPAIRS BY A TENANT. The general doctrine of the liability for meliorations and repairs is stated in the article *Meliorations*. Independently of stipulation, the landlord is bound to make all necessary repairs; and in default of his doing so, the tenant may make them himself, and deduct the amount from his rent. In tenements within a royal burgh, where a considerable sum is required for the necessary repairs, which the landlord is unwilling to grant, it is customary for the tenant to apply to the Dean of Guild, whose warrant, proceeding on the estimate of tradesmen, is evidence both of the necessity and amount of the expense of repairing. The tenant must repair injuries occasioned by his own fault or negligence; the landlord must repair injuries occasioned by any extraordinary cause, even where, by the lease, the tenant is allowed a sum for preservation. See *Ersk.* B. ii. tit. 6, § 43; *Bank.* i. 430; *Bell on Leases*, i. 74; *Hunter's Landlord and Tenant*, ii. 219, 222, 255; [*Rankine on Leases*, 218; *Bell's Princ.* § 1253.] See *Dean of Guild.* [*Lease. Fences.*]

REPARATION; indemnification. The obligation to repair a damage is a necessary consequence of the rule, *alterum non ledere*; and damage may arise from positive acts of trespass, or from blameable omission or neglect of duty. *Ersk.* B. iii. tit. 1, § 12. See *Damages. Delict. Relief.*

REPEATING A SUMMONS. This expression is applied to the case where it is necessary to support a defence by a counter action, at the instance of the defender against the pursuer. In such cases, instead of raising and executing a summons, and sisting the other action until the counter action comes into court, and then having it remitted *ob contingentiam*, and conjoined with the former process, the signeted counter summons is produced, and an interlocutor pronounced, holding it as repeated. This is called repeating a summons *incidenter*. But it is not competent to a third party to appear in a depending action as a pursuer, and to get a separate action at his instance repeated; [*Reming-*

[*ton*, 2 June 1829, 7 S. 629. A summons cannot be repeated without consent of the opposite party; *Ivory* and *Mackay*, *infra*; this, however, is doubted in *Darling's Prac.* i. 312 (followed by *Shand*, *infra*.)] A summons repeated operates merely as a defence against the original action, and if it is intended to have any further effect, the regular forms must be gone through; [*Weir*, 1747, M. 4134; *Bridges*, 5 March 1822, 1 S. 351. The necessity for repeating a summons is now frequently obviated by the pursuer not pressing the objection to the defence being pleaded as such. See *Ivory's Forms of Process*, ii. 60; *Shand's Prac.* i. 503; *Muckay's Prac.* i. 386.]

REPETITION; repayment of money erroneously paid. See *Condictio Indebiti*.

REPETUNDARUM CRIMEN; the crime of receiving a bribe to pervert judgment. *Ersk.* B. iv. tit. 4, § 30. See *Baratry*.

REPLEDGING; a power formerly competent to certain private jurisdictions to demand judicially the person of an offender accused before another tribunal, on the ground that the alleged offence had been committed within the replerder's jurisdiction. *Ersk.* B. i. tit. 4, § 8; *Stair*, B. iv. tit. 37, § 4; *Bank.* i. 570.

REPLEGIARE; in old law language, to repledge; that is, "when any man, by virtue of his own jurisdiction, brings back again, or reduces to his own court, his own man, from any other man's court, and leaves a pledge or cautioner behind him for administration of justice." *Skene*, *h. t.*

REPLEVIN; in English law, [is the remedy which may be adopted by a person in almost all cases in which chattels are unlawfully taken from him; but it is not often adopted, except in cases of wrongful distress for rent, when it is brought for the purpose of trying the legality of the distress. It may also be used to decide a question of title to land or other hereditaments. *Sweet's Law Dict.*]

REPLICATION; in English law, an exception or answer made by a plaintiff to a defendant's plea. *Tomlins' Dict. h. t.*

REPONING. Under the form of process in the Court of Session prior to the passing of the Judicature Act, 1825, if the reclaiming or representing days, against an interlocutor of a Lord Ordinary, had, from mistake or inadvertence, expired without a petition or representation, it was competent, with the leave of the Lord Ordinary, to submit the interlocutor to review of the

court by petition, on condition of the petitioner paying to the other party the whole expenses previously incurred by him in the process; 48 Geo. III. c. 151, § 16; and this enactment seems to be still in force. [See *Steedman*, 19 March 1887, 14 R. 682. The form of a reclaiming note is now used. In *Mags. of Leith*, 23 Nov. 1875, 3 R. 152, the Court questioned the competency of interfering with the discretion of the Lord Ordinary, in granting or refusing leave. Reponing notes against decrees in absence were abolished by 31 & 32 Vict. c. 100, § 23, and a simpler procedure substituted; see *Absence*. Reponing notes against decrees by default are still competent, but are now expressed in the ordinary form of reclaiming notes; *Anderson*, 16 Dec. 1875, 3 R. 254. See *Default*. An appeal from the sheriff court, asking to be reponed, was refused in *Anderson*, 12 May 1885, 12 R. 923. As to reponing against protestation for not calling, see *Protestation*. See *Shand's Prac.* 327, 482, 961; *Mackay's Prac.* i. 554.]

REPORT; in judicial procedure, is usually applied to the report or return made by a judge or a judicial nominee, to whom a remit has been made. [It is competent for a Lord Ordinary at any time, after hearing parties on a closed record, to take the whole cause to report to the Inner House; 6 Geo. IV. c. 120, § 20; 13 & 14 Vict. c. 36, § 14.] And where an incidental point of difficulty arises before a Lord Ordinary, he may report it [summarily by simple verbal report, to the Inner House; see 6 Geo. IV. c. 120, § 19; A.S. 11 July 1828, § 66; 13 & 14 Vict. c. 36, § 51.] An interlocutor pronounced, after so advising with the court, is accounted the interlocutor of the Lord Ordinary merely. But in Bill-Chamber cases, where the Lord Ordinary on the Bills takes a case to report to the Inner House, the interlocutor then pronounced is considered as a judgment of the Inner House, and signed by the Lord President of the Division accordingly; A.S. 11 July 1828, § 76. [But see *Farrell*, 10 Feb. 1849, 11 D. 565. In petitions and applications before the Junior Lord Ordinary under 20 & 21 Vict. c. 56, he may "in special cases, if he see cause, report such petition or application to the court, who may thereupon dispose of the same, or give such instructions thereanent to the Lord Ordinary as they may deem proper" (§ 5). In actions which are appropriated

[to the Inner House, such as provings of the tenor, and divisions of commony, the Lord Ordinary, after preparing the cause up to a certain stage, makes great avizandum with it to the Inner House. See *Inner House. Avizandum. Proving Tenor.*] With regard to other reports made on judicial remits, the most important are the reports of accountants, as to which the regulation of the Act of Sederunt is, that "when, in any cause, a report has been obtained from an accountant or other professional person, and the parties, or either of them, shall be dissatisfied with the report, the same shall be enrolled before the Lord Ordinary for debate on the report, and a note of the objections shall be furnished to the opposite party forty-eight hours before the enrolment, and at the time of enrolling the cause a copy of the note of objections shall be furnished to the Lord Ordinary's clerk for his Lordship's use;" A.S. 11 July 1828, § 67. With respect to the fees due to accountants and other reporters, [the agents of the parties are not liable, without special agreement; A.S. 15 July 1876.] The parties to the suit, however, are conjunctly and severally liable to the accountant or other reporter for his whole fees; and he is not bound to wait the issue of the cause, but as soon as his report is lodged, he may enrol the case, and ask decree for his fees against either or both parties, leaving the question of relief to be afterwards adjusted between them, and without prejudice, of course, to the right of the court or of the Lord Ordinary to lay the expense of the report, along with the other expenses of the process, on either of the parties, as they may think just; with which, however, the reporter has no concern. It has been further held that an accountant is entitled to retain the documents which have been put into his hands under the remit, until the fees of his report are paid; *Stewart*, 23 Feb. 1828, 6 S. 591. [See also *Sutherland*, 24 Feb. 1855, 17 D. 509. As to the powers of an accountant under a judicial remit, the form of his report, &c., see *Remit*. As to reports of commissions for examination of witnesses or havers, see *Commission. Prorogation.*] In jury trials, reports are not held as evidence of the facts therein set forth, although admissible to prove that, *de facto*, such reports were made. See *Macfarlane's Jury Prac.* 182; [*Dickson on Evidence*, §§ 1717, 1779; *Shand's Prac.* 340, 407, 510, 963; *Mackay's Prac.* i. 529, 576.]

REPRESENTATION. Whatever infers

the substitution of one person in the room and place of another, so as to identify the rights and obligations of the person substituted with those of the principal, falls under the general denomination of representation; but the term in the law of Scotland is usually applied to the obligation incurred by an heir to pay the debts and perform the obligations incumbent upon his predecessor. See *Passive Titles*. In the law of heritable succession, the term representation is applied not only to the above identification of the heir-at-law with his predecessor, but in a peculiar manner to the *jus representationis*, whereby a grandson by an elder son deceased, as representative of his father, succeeds as heir-at-law to his grandfather in preference to all the grandfather's immediate descendants. [Representation in moveables was introduced, with certain limitations, by the Intestate Moveable Succession Act, 1855 (18 Vict. c. 23). See *Succession.*] See *Stair*, B. iii. tit. 4, § 4; tit. 8, § 32; *Ersk.* B. iii. tit. 8, §§ 12, 50; *Bank.* ii. 294; *Bell's Princ.* § 1660; *Kames' Princ. of Equity* (1825), 505; *Sandford's Herit. Succes.* i. 2; [*McLaren on Wills*, i. § 233.]

REPRESENTATION, in contracts. See *Insurance. Warranty. [Sale.]*

REPRIEVE. See *Remission. Pardon.*

REPRISALS; letters of marque granted by princes or states to seize upon the goods of all persons under the dominion of any foreign state which refuses satisfaction for injuries done by its subjects to the subjects of the state issuing the reprisals. ["The mode of making reprisals seems to extend to every species of forcible means for procuring redress, short of actual war (including embargo and retorsion). Reprisals are *negative*, when a state refuses to fulfil a perfect obligation which it has contracted, or to permit another nation to enjoy a right which it claims. They are *positive*, when they consist in seizing the persons and effects belonging to the other nations, in order to obtain satisfaction;" *Dana's Wheaton*, 369. At the present time, reprisals are almost exclusively confined to the issuing of letters of marque, commissioning the owners of private vessels to seize ships and cargoes of subjects of an offending state, for indemnification of their private injuries. See *Stair*, B. ii. tit. 2; *Phillimore's Internat. Law*, iii. 18; *Manning's Law of Nations*, 145; *Hall's Internat. Law*, 335, 380.] See *Letters of Marque. Capture. Prize Law. Privateer.*

REPROBATOR. When a witness was

offered, to whose admissibility there were objections which could not be immediately verified, it was formerly the practice for the party making the objection to protest for reprobator before the examination of the witness was proceeded with—*i.e.*, to protest that it should be afterwards competent for him, in an action of reprobator, to prove that the witness was liable to the objections of agency, enmity, partial counsel, or the like. This action, latterly, was not admitted where reprobator had not been previously protested for; but when such a protest had been made, the action was competent even after decree in the principal cause, although the decision in the principal cause was usually superseded until the action of reprobator should be disposed of. The concurrence of the Lord Advocate was required in this action, because the libel concluded that the witness was guilty of perjury; hence it was necessary that the alleged inhable witness should be made a party to the suit. The ground of reprobator might have been proved by the oath of the party who had adduced the witness objected to, and by the testimony of other witnesses *omni exceptione majores*. There is no recent example of an action of reprobator. The objections which were formerly the subject of this action were, [by the later practice,] allowed to be proved by the testimony of witnesses adduced when the objectionable witness was tendered. [Mr Dickson (*infra cit.*) says that incidental reprobaters, though falling into desuetude, are still competent, provided decree in the cause has not been pronounced. They are incompetent in jury trials; *Mackay*, 12 July 1827, 4 Mur. 285.] See *Ersk.* B. iv. tit. 2, § 29; *Bank.* B. iv. tit. 31; [*Dickson on Evidence*, § 1634. See *Evidence*.]

REPUTATION, INJURIES TO. See *Defamation. Libel.*

REPUTE. See *Habit and Repute.*

REPUTED OWNERSHIP. The false credit raised by a person exercising all the rights of ownership over a subject not his own has led to the adoption of the rule, that the creditors of the apparent or reputed owner may take the subject as if it were his own. In England this rule is enacted by statute; 21 James I. c. 19; 6 Geo. IV. c. 16, § 72; [46 & 47 Vict. c. 52, § 44.] In Scotland it has been supposed to exist at common law. It is necessary to the creditors having this right that the reputed owner should appear to be uncontrolled in the disposal of the subject. Reputed ownership from possession properly applies

only to moveables, and not to heritable estates. The presumption of collusion is much stronger when the reputed owner has been left in possession of the subject than when he has acquired it on what is asserted to be another title than that of ownership. Indeed, by the law of Scotland, where there has been no delivery, it would be unnecessary to allege collusion, since the buyer would be merely a creditor for the delivery. It is only where possession is retained after the ownership is said to be passed by constructive delivery or otherwise, that recourse must be had to the doctrine of reputed ownership. [Hence the provision of § 1 of the Mercantile Law Amendment Act, relating to goods sold, but not delivered, does not affect this doctrine. See *Sale*; and cases of *Sim* (24 D. 1033), and *M'Bain* (8 R. (H.L.) 106), there cited.] In a case where goods were conveyed merely in security, but the possession of them was retained by the debtor, another creditor doing diligence against them was preferred to him to whom they were conveyed; *Boigs*, 1708, M. 11587. In like manner, an assignation to a trustee for behoof of creditors, *retenta possessione*, is no bar to the diligence of creditors; *Borthwick*, 17 Feb. 1829, 7 S. 420; *Fraser*, 26 June 1830, 8 S. 982. An assignation in security of a lease intimated to the landlord, and followed by a sublease by the assignee to the cedent, was found ineffectual against creditors; *Brock*, 23 Sept. 1831, 5 W. & S. 476. See *Assignment*. A conveyance in relief of a cautionary obligation is ineffectual if possession be retained. In cases of temporary possession, if the thing be of a kind usually let out and held separately from the ownership, such usage may be admitted to counteract the reputed ownership. But the presumption is very strong for ownership in the case of furniture or implements of trade. There are certain contracts possession in virtue of which is held to raise no credit—such as commodate; location; deposit; pledge; factory, where the principal's and factor's goods are distinguishable; sale and return; consignment for advances and sale. The liferenter of furniture does not, by possession in virtue of his liferent, subject it to the diligence of his creditors on the ground of reputed ownership; *Scott*, 13 May 1837, 15 S. 916. [See *Furniture*. The doctrine of reputed ownership is to be distinguished from the presumption of property arising from possession. The latter is a mere *prima facie* presumption,

[yielding at once to contrary evidence of true ownership in another party. The doctrine of reputed ownership, on the other hand, starting on the hypothesis that the possessor and the true owner are different parties, bars the latter from making good his title against the creditors of the former. See *Bell's Com.* i. 305, and Lord M'Laren's note. In *Anderson*, 22 Dec. 1848, 11 D. 270, a friend of a bankrupt bought his furniture from the trustee in the sequestration, but allowed the bankrupt to retain the uncontrolled possession and use of it. After six years the furniture was pointed by a creditor of the bankrupt, for a debt incurred subsequent to the sequestration. In a suspension and interdict at the instance of the purchaser, a majority of the court held that the long-continued possession on the part of the bankrupt inferred ownership, and that the furniture was therefore liable to be affected by the creditor's diligence. The judgment depended on the ordinary rule of law as to possession of moveables, and not on the doctrine of reputed ownership. Lord Moncreiff, who dissented, held that the property of the furniture having been transferred to the purchaser, reputed ownership was the only ground on which the pointing could be sustained; but in the circumstances, he held this doctrine to be inapplicable, there being no evidence of fraud or collusion, which he insisted on as essential elements of reputed ownership. This view is supported by some passages in *Bell's Com.*; but, as was remarked by Lord J. C. Hope in the same case, "the doctrine of alleged fraud and collusion, as the foundation of reputed ownership, is nowhere consistently stated" in the institutional writers. In *Edmond*, 4 Nov. 1868, 7 Macph. 59, where there was no suggestion of fraud or collusion, reputed ownership was the ground of judgment; from which it would appear that mere permission on the part of the true owner, leading to the mistaken but reasonable belief that the possessor is also owner, is a sufficient foundation for the doctrine of reputed ownership. The judgment in *Anderson* has been questioned, and Lord Moncreiff's exposition of the law has been approved, in several subsequent cases. See *Orr's Trustee*, 2 July 1870, 8 Macph. 936; *Marston*, 13 May 1879, 6 R. 898; *Robertsons*, 17 March 1882, 9 R. 772; *Hogarth*, 16 June 1882, 9 R. 964. These cases have established that when goods are possessed *bona fide* on any definite title, short of ownership,

[there is no room for the doctrine of reputed ownership. The doctrine is therefore one of diminished importance. But where there has really been a sale, the court will not sanction any agreement whereby the seller attempts to retain a security over the thing sold; *Cropper*, 8 July 1880, 7 R. 1108. As to hotel furniture, see *Duncanson*, 4 March 1881, 8 R. 563; *Crawcour*, 18 Ch. D. 30.] See *Bell's Com.* i. 269, 305; *More's Notes on Stair*, xlviii.; *Brodie's Sup.* 850, 896; *Brown on Sale*, 19, 537; *Bell's Princ.* § 1315; [*Ersk. B. ii. tit. 1, § 24*; *B. iii. tit. 5, § 5*; *Campbell's Merc. Law*, 90; *Goudy on Bankruptcy*, 291; *Smith's Merc. Law*, 665.] See *Possession. Delivery. Sale.*

REQUISITION; a demand made by a creditor that a debt be paid or an obligation fulfilled. In certain cases, requisition is necessary to put the debtor in *mora*, and then the proper way of proving requisition is by a notarial instrument. It is competent, however, to prove requisition by writ or oath of party, but not by witnesses. In the case of a wadset, if the reverser, after requisition, fail to pay the wadset sum, the wadsetter may proceed to adjudge the right of reversion. [See *Wadset*.] An analogous proceeding takes place where the creditor in an heritable bond or disposition in security demands payment, usually in contemplation of exercising a power of sale. See *Power of Sale*. [A form of requisition of payment under a bond and disposition in security will be found in *Jurid. Styles*, i. 750.] See *Stair*, B. ii. tit. 1, § 4; tit. 10, § 22; *Ersk. B. ii. tit. 2, § 16*; [tit. 8, § 25;] *Bank. i. 515*; ii. 218, 380; *Tait on Evidence*, 314; *Ross's Lect. ii. 348, 358*.

RES ALIENÆ. By the Roman law there might be a valid sale by one person to another of what belonged to a third, and the seller was bound to procure and deliver the subject or pay damages. *Brown on Sale*, 111. As to *legatum alieni*, see *Legacy*.

RES COMMUNES; are things which are in their nature incapable of appropriation, as the light, the air, running water *Ersk. B. ii. tit. 1, §§ 5, 6*.

RES FURTIVÆ; things stolen, and thereby tainted with a *vitium reale*, which attaches to them in all their transmissions until they are restored to their rightful owner, who is entitled to reclaim them at any time within the period of the long prescription, even from a *bona fide* possessor who may have paid a full price for them.

Ersk. B. iii. tit. 7, § 14; Brown's Synop. 292. See *Lost. Labes Realis*.

RES FUTURÆ. There may be a sale of a thing which may exist at a future time; and if the thing does not come into existence, the contract falls. *Brown on Sale*, 111. But see *Spei Emptio. Sale*.

[RES GESTÆ; the whole circumstances connected with an occurrence or transaction. Statements, which would otherwise be excluded as hearsay, may be proved when they form part of the *res gestæ*. See *Dickson on Evidence*, §§ 254 et seq.; *Hume*, ii. 406; *Alison's Prac.* 517; *Macdonald*, 488. See *Evidence. Hearsay.*]

RES INTER ALIOS ACTA, ALIIS NEQUE NOCET, NEQUE PRODEST; a maxim of very general application in the law of Scotland. In conformity with this maxim, acts and decrees of court cannot be adduced against persons who were not parties to the suit. Interruptions of prescription by protestation, or even *via juris*, by process not followed forth to a sentence, are of no avail to any other person than him who uses them. The writ or oath of one obligant in a bill will not infer the liability of another for the debt, although the latter do not allege payment; *Hannay's Trs.* 31 Jan. 1823, 2 S. 174. See *Stair*, B. iv. tit. 42, § 13; [tit. 44, § 8; *Ersk. B. ii. tit. 11, § 14;*] *B. iii. tit. 3, § 69;* tit. 7, § 42; [B. iv. tit. 2, § 10;] *Bank. ii. 626;* [*Trayner's Latin Maxims;* *Broom's Legal Maxims*, 954.] See *Res Judicata*.

RES JUDICATA. *Res judicata* is pleadable by a party who has formerly had the matter in controversy judicially determined by a competent tribunal, in a question with the same parties, or with parties in the same interest, and proceeding on the same *medium concludendi*, or cause of action. [The requisites of this plea are:—(1) A previous *judicium*, or proper judicial determination of the subject in question; hence decree of absolvitor pronounced in terms of a compromise does not constitute *res judicata*; *Jenkins*, 5 April 1867, 5 Macph. (H.L.) 27. (2) Identity of parties, or at least representation of identical interests; see *Gray*, 4 June 1862, 24 D. 1043; *Jenkins, supra*; *Macfie*, 14 July 1884, 11 R. 1094. In teind causes, a judgment against the common agent in a locality is *res judicata* against all the heritors; *D. Buccleuch*, 10 Nov. 1868, 7 Macph. 95. General questions fairly contested and decided in one locality regulate future localities; *Elder*, 8 Jan. 1869, 7 Macph. 341; *Bonar*, 3 Nov. 1870, 9 Macph. 58; *Thom-*

son, 21 June 1872, 10 Macph. 849; *Dundas*, 27 Feb. 1880, 7 R. (H.L.) 19. A judgment against an heir of entail is *res judicata* against succeeding heirs; *E. Leven*, 12 June 1861, 23 D. 1038; *Padwick*, 4 March 1874, 1 R. 697. (3) Identity of subject-matter; see *Gardiner*, 12 March 1866, 4 Macph. (H.L.) 14; *Lockyer*, 6 March 1877, 4 R. (H.L.) 32. (4) Identity of *media concludendi*; *Gillespie*, 22 July 1859, 3 Macq. 757; *E. Perth*, 13 Dec. 1877, 5 R. (H.L.) 26; *Scott*, 13 June 1885, 12 R. 1123.] When decree is pronounced in terms of the libel, the whole conclusions of the libel are held to be *res judicata*, even although some of them have never been adverted to or discussed; *Glen-dinning*, 1699, Fount. ii. 76. Where a party has been condemned by a sentence of a competent foreign court, which sentence has received full execution, he cannot lawfully raise an action in this country in order to obtain what may be, in effect, a reversal of the foreign decree. The *exceptio rei judicate* might be successfully pleaded against such an action; for the defender may legally found on the sentence recovered by him in the foreign court as a defence against a new action, on the same grounds, in this country; to admit which, would be virtually to confer on the courts of this country a right to review the sentences of foreign courts. [See *Watson*, 1792, Bell's 8vo Cases, 107; *Brown*, 3 March 1830, 4 W. & S. 28; *Don*, 26 May 1837, 2 S. & M'L. 744; *Baird*, 14 July 1854, 16 D. 1088. A judgment in the sheriff court, if not appealed or reduced, seems to constitute *res judicata*; but not a judgment in the small debt court; see *Robertson*, 24 Feb. 1860, 22 D. 893; *Crawford*, 12 May 1860, 22 D. 1064.] See *Ersk. B. iv. tit. 3, §§ 1, 4, 7;* *Stair*, B. iv. tit. 40, § 16; *App. § 8;* [*Kames' Eluc.* 173; *Dickson on Evidence*, § 385; *Mackay's Prac. i. 586.*] See *Competent and Omitted. Res Noviter Veniens*.

[RES JUDICATA, in criminal cases. *Res judicata*, either as to the relevancy of the libel, or as to the evidence of the crime, may be pleaded in bar of trial. With regard to the libel, the judgment of the sheriff-substitute on the relevancy is conclusive in the sheriff court, and renders incompetent a new trial before the sheriff, on a libel in the same terms; *Longmuir*, 29 Nov. 1858, 3 Irv. 287. But a judgment of the sheriff cannot be pleaded in the Court of Justiciary; *Fleming*, 13 Sept. 1866, 5 Irv. 289. As applied to the proof of the

[crime, this plea is usually termed the plea of having "tholed an assize." A man cannot be tried twice on the same charge; see *Fraser's*, 12 July 1852, 1 Irv. 66; *Dorward*, 29 Jan. 1870, 1 Couper 392. But to make good this plea, the first trial must have been regularly conducted; and the *corpus delicti* charged in the second indictment must be the same as that which had been the subject of the former trial; *Galloway*, 5 Oct. 1863, 4 Irv. 444. If the nature of the crime is changed by an event transpiring after the trial,—if, for instance, what was charged as an assault turns out, by the death of the victim, to have been murder or culpable homicide,—the plea of *res judicata* will not avail in bar of a new trial on the higher charge; *Cobb*, 21 Nov. 1836, 1 Swin. 354; *O'Connor*, 27 Dec. 1882, 10 R. (J.C.) 40. See *Hume*, ii. 465; *Ersk.* B. iv. tit. 4, § 104; *Alison's Prac.* 615; *Macdonald*, 461. See *Criminal Prosecution. Plea in Bar.*]

[**RES MERÆ FACULTATIS**; a right which may be exercised or not at pleasure, and which cannot be extinguished by non-use for any length of time. Such is the right to build upon one's own property, to use a navigable river, &c. See *Bell's Princ.* §§ 999, 2017. See *Prescription.*]

RES NOVITER VENIENS AD NOTITIAM. In judicial procedure, this phrase is applied to matters of fact, pertinent to the cause, of which the party acquires the knowledge pending the process, which he was unavoidably ignorant of before, and which, by due previous investigation or inquiry, could not have come to his knowledge. The rule of the Judicature Act was, that it should be competent to either party, in the course of a cause, to state matter of fact *noviter veniens ad notitiam*, or emerging since the commencement of the action, if, on cause shown, leave were obtained from the Lord Ordinary or the court; the party always paying such expenses as the Lord Ordinary or the court might deem reasonable. If leave was granted, the new matter was stated in a condescendence, accompanied by a corresponding plea in law, to be answered by the other party, and made part of the record; 6 Geo. IV. c. 120, § 10. See also A.S. 11 July 1828, §§ 55, 59. [The enlarged powers of amendment of record, conferred by the Court of Session Act, 1868, have superseded the necessity of the condescendence of *res noviter*. See *Amendment of the Record.*] In jury causes, *res noviter veniens ad notitiam* is a relevant ground for an application for a new trial;

but the new trial will not be granted if it appear that, by due preparation and proper inquiries, the new matter could have been made available at the trial. An application for a new trial on this ground is [generally] supported by affidavit. See *Macfarlane's Jury Prac.* 267; *Maclaurin's Form of Process*, 272; *Bell's Com.* ii. 259, 267; [*Ersk.* B. iv. tit. 3, § 3; *Shand's Prac.* i. 485; *Mackay's Prac.* i. 449, 482; ii. 68, 503; *Dove Wilson's Sher. Court Prac.* 254.]

RES NULLIUS; things in which no one can have any property, as sacred things dedicated to the service of God. See *Res Sacre*.

RES PERIT SUO DOMINO; a maxim importing that the owner of a subject must bear the loss, if it perish, unless its destruction can be ascribed to another's fault. In the House of Lords this maxim was explained to mean, that the interest which each has in a subject perishes to the *dominus* of that interest, as well as the corporeal thing to its *dominus*; *Bayne*, 3 July 1815, 3 Dow, 233. [A statutory modification of this rule was introduced by 19 & 20 Vict. c. 60, § 17, which enacts that carriers must bear the loss of goods destroyed or damaged by accidental fire, while under their charge.] See *Ersk.* B. iii. tit. 1, § 19; *Bell on Leases*, i. 240, note; *Hunter's Landlord and Tenant*, ii. 260; [*Bell's Princ.* § 1253.] See *Periculum*.

RES PUBLICÆ; are things exempted from commerce, and which belong to the public, or to the Sovereign as trustee for the community, as navigable rivers, highways, harbours, bridges. *Ersk.* B. ii. tit. 1, §§ 5, 6; *Bell's Princ.* § 638; *Brown on Sale*, 115. See *Regalia*.

RES SACRÆ; by the Roman law, were the property of none. By the law of Scotland, things appropriated to the service of God, as churches, church-bells, communion-cups, &c., may be disposed of or sold on proper occasions, and others substituted in their room. *Ersk.* B. ii. tit. 1, § 8; *Bank.* i. 84; *Brown on Sale*, 113. See *Church. Churchyard. Burying-Place. Gravestone*.

RES SUA NEMINI SERVIT; a maxim importing that no one can have a servitude over his own property, since every use to which he applies the subject may be ascribed to his paramount right of property. Accordingly, when the proprietor of the dominant becomes proprietor also of the servient tenement, the servitude is said to be extinguished *confusione*. Professor Bell

objects to this doctrine being adopted without limit, and says, "If, in the exercise of the right or otherwise, the owner has indicated no intention of extinguishing the servitude, it would, on separation of the tenements, revive;" *Bell's Princ.* § 997. [See *Donaldson's Trs.* 1 Feb. 1839, 1 D. 449; *Walton*, 20 July 1876, 3 R. 1130 (Lord Pres. Inglis); and *Rankine on Land-Ownership*, 368.] See also *Ersk.* B. ii. tit. 9, § 36; *Stair*, B. iv. tit. 15, § 3; *Bank.* i. 684; *Stewart's Answers to Dirleton*, voce *Servitude*, p. 383. [See *Servitude*.]

RES UNIVERSITATIS; are things belonging to a corporate body. *Ersk.* B. ii. tit. 1, § 7. See *Community*.

RESCISSORY ACTION. Rescissory actions are those actions whereby deeds, &c., are declared void. Under this class are included actions of improbation, actions of reduction, and actions of reduction-improbation; all of which are competent only before the Court of Session. *Ersk.* B. i. tit. 3, § 19; [*Mackay's Prac.* i. 358.] See *Reduction*.

RESCUE. The rescuer or recapturer of vessels or goods is entitled to salvage. See *Salvage*. See also *Deformement*. [*Escape*.]

RESEANTISA; sickness or infirmity. *Skene, h. t.*

RESERVED POWER. Reserved powers are of different sorts; as a reserved power to burden a property or to revoke or recall a settlement or other deed. See *Burdens*. *Delivery. Faculty*.

RESET OF THEFT; is the offence of receiving and keeping goods, knowing them to be [dishonestly appropriated,] and with an intention to conceal and withhold them from the owner. [Under the Criminal Procedure Act, 1887 (50 & 51 Vict. c. 35), § 58, this crime is not limited to the receiving of property taken by theft or robbery, but extends to the receiving of property appropriated by breach of trust and embezzlement, and by falsehood, fraud, and wilful imposition. The details of the crime by which the dishonest appropriation was accomplished need not be set forth in the indictment. It is sufficient to set forth that the accused received the property, it having been dishonestly appropriated by one or other of the crimes above mentioned. Under an indictment for any one of these crimes, the accused may be convicted of reset; § 59. Where proceedings are taken against any person for reset, or for having in his possession stolen property, evidence may be given at any stage of the proceed-

[ings that there was found in his possession other property stolen within the preceding 12 months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen; Prevention of Crime Act (34 & 35 Vict. c. 112), § 19.] It is immaterial how short the offender's possession may have been; or whether it was only for the sake of temporary concealment. Harboursing a thief with stolen goods in his custody does not constitute reset, unless the goods are in some way committed to the entertainer's care. It is of no consequence on what footing the goods are received, and whether immediately from the thief, or from one who received them from the thief. But it is believed that the receiving of goods sold by way of decoy by the thief, at the instigation of the officers of law who apprehended him, will not constitute reset. [It is not enough to infer guilt of reset against a married woman, that she concealed stolen goods, in order to screen her husband; *Hamilton*, 2 Jan. 1849, Shaw, 149. Reset is a *crimen continuum*; *Gracie*, 22 Feb. 1884, 11 R. (J.C.) 22. If the receiver was cognisant of the intention to appropriate dishonestly, he is not a resetter, but art and part in the crime of dishonest appropriation. The punishment of reset is imprisonment or penal servitude, according to circumstances.] See *Hume*, i. 113; *Alison's Princ.* 328; *Ersk.* B. iv. tit. 4, § 33; [*Macdonald*, 60. See *Prevention of Crime Act*.]

RESIDUARY LEGATEE; is he to whom a testator bequeaths the residue of his moveable estate, after the legal claims thereon and other legacies have been paid. Where the *universitas* of the moveable estate is conveyed to one by a settlement or general disposition, the donee is usually called universal legatee or legatory, or general donee; and where his universal right is burdened with the payment of debts and legacies to others, he is in effect a residuary legatee, since he is entitled to the whole estate after paying the testator's debts and legacies. [When a testament contains a conditional bequest and a bequest of residue, the residuary legatee does not, on the lapse of the conditional legacy, take the subject as a conditional institute, but the conditional bequest is a mere burden on the gift of residue, which flies off upon the lapse; *Storie's Trs.* 29 May 1874, 1 R. 953. A general residuary legatee has no title to sue a debtor of the testator; *Hinton*, 6 July 1883, 10 R. 1110.] See

Ersk. B. iii. tit. 9, § 6; Jurid. Styles, ii. 570; [McLaren on Wills, i. § 777.] See Legacy. Disposition, General.

RESIDUE DUTIES. See *Legacy and Residue Duties.*

RESIGNATION; was the form by which, [prior to the Conveyancing Act of 1874,] a vassal returned the fee into the hands of a superior. It was of two kinds—resignation *ad remanentiam*, and resignation *in favorem*. Resignation *ad remanentiam* was made where it was intended to return the property permanently to the superior; it was then resigned into his hands *ad perpetuam remanentiam*, and for the purpose of consolidating the property and superiority. Resignation *in favorem*, again, was the form where the object was to transfer the property to a third party; in which case the resignation was made in favour and for new infeftment to be given to the new disponee. Resignation was made in virtue of a *procuratory of resignation*; under which warrant a procurator for the resigner, with a notary-public and two witnesses, appeared in presence of the superior or of his commissioners, and, in virtue of the procuratory, made the resignation. [See *Procuratory of Resignation.*] Where it was a resignation *in favorem*, the procurator also acted for the disponee, and received the symbols by which he was invested; and on this procedure instruments were taken in the hands of the notary-public. Where the resignation was *ad remanentiam*, a notarial instrument was drawn up, and attested by the notary and witnesses; and that being a transmission of property to the superior, it required to be recorded in the Register of Sasines within sixty days; 1669, c. 3. [By 21 & 22 Vict. c. 76, § 4, instruments of resignation *ad remanentiam* were made unnecessary, and in place thereof the conveyance in favour of the superior, with warrant of registration thereon, might be recorded. The instrument, however, still remained competent, and a new statutory form was provided by 31 & 32 Vict. c. 101, § 18. Under the Conveyancing Act of 1874, resignation *ad remanentiam*, though not expressly abolished, was practically superseded by the simple method provided for effecting consolidation of superiority and property, viz., by the superior and proprietor executing a minute in specified form, which, being recorded, has the same effect as consolidation by resignation *ad remanentiam*; 37 & 38 Vict. c. 94, § 6. See *Consolidation.*] Where the resignation was *in favorem*, the act of

resignation was recited in the charter of resignation, which was granted by the superior to the new vassal, in virtue of the resignation *in favorem*, on which charter infeftment followed, and completed the right of the disponee. [See *Charter.*] And as the instrument of sasine following on the charter of resignation was of course recorded in the Register of Sasines within sixty days after the date of the infeftment, the requisite publicity was given to the transfer, and the requisite evidence of it preserved, without the necessity of an instrument of resignation, which in practice was not used in the case of resignations *in favorem*, [and was ultimately abolished by 8 & 9 Vict. c. 35, § 9. The ceremony of resignation, in the case of Crown rights, was abolished by 10 & 11 Vict. c. 51, § 17. In the case of rights from subject-superiors, it had long previously fallen into disuse. By 20 Geo. II. c. 50, any purchaser, holding a procuratory of resignation from the last-entered vassal, might compel the superior to grant a charter of resignation, on payment of all fees and casualties due by law. And by 31 & 32 Vict. c. 101, §§ 81, 99, a person entitled to entry by resignation might require the superior, instead of granting a charter, to indorse on the conveyance a writ of resignation, in form prescribed. By the Conveyancing Act of 1874, all charters and writs by progress were declared to be unnecessary and incompetent, and entry with the superior is implied in the case of every registered conveyance; 37 & 38 Vict. c. 94, § 4.] See *Ersk. B. ii. tit. 7, § 17; Stair, B. ii. tit. 3, § 21; tit. 11, §§ 1-7; B. iii. tit. 2, § 8; More's Notes, cxvii., cclxiii., ccxciv.; Bank. ii. 143-4; Bell's Princ. § 786; Bell on Purchaser's Title, 255; Ross's Lect. ii. 79, 215; [Duff's Feudal Conv. 225, 492; Menzies' Conv. 614; M. Bell's Conv. 737, 764, 777, 781. See Disposition. Conveyancing. Burgage.]*

[RESIGNATION AND CONFIRMATION. See *Charter.*]

RESOLUTIVE CLAUSE. See *Clauses Irritant and Resolutive. Irritant Clause. Entail.*

RESOLUTIVE CONDITION; a condition in a sale, which does not suspend the completion of the contract, but which resolves the sale, if the condition be purified at the time specified. *Ersk. B. iii. tit. 3, § 11; Bell's Com. i. 260. See Pactum Legis Commissoriae. Suspensive Condition. [Sale.]*

RESPIRE OF SENTENCE; is the delay of a capital punishment; as in the

case of a pregnant woman who has been condemned, and pleads her pregnancy, the court, for the sake of the child, are in use to respite the sentence. See *Pregnancy*.

RESPONDE BOOK, IN EXCHEQUER; was a book kept by the Directors of Chancery, in which were entered all non-entry and relief duties payable by heirs who took precepts from Chancery. Those duties were payable by the heir, although he might not have used the precept; and the Crown might compel him, by an action, to pay, as the sheriff, if he had paid the duties, had his action of relief against the heir. *Ersk. B. ii. tit. 5, § 50; Stair, B. ii. tit. 4, § 28; Bank. ii. 497; Kames' Stat. Law, h. t.; Skene, h. t.*

RESPONDENTIA; a loan upon the cargo of a ship, made in contemplation of a particular voyage, on the condition that, if the subject on which the money is advanced be lost by sea risk, or superior force of the enemy, the lender shall lose his money; and that if the voyage be successful, the sum advanced shall be repaid with a greater than ordinary rate of interest, called marine interest, in consideration of the risk incurred by the lender who ventures on the voyage. If the ship be lost under any of the risks which would render an insurer liable, the claim of the lender is extinguished. In foreign countries, the contract of *respondentia* creates a real security over the cargo; but in this country it for the most part affords personal security only to the lender. [See *Anderston Foundry Co. 28 May 1869, 7 Macph. 836. See Ersk. B. iii. tit. 3, § 17; Bell's Com. i. 578; Bell's Princ. § 452; [M. Bell's Conv. i. 444; Smith's Merc. Law, 413. See Bottomry.]*

RESTITUTION; is an obligation incumbent on the person in possession of a moveable, where that moveable is truly the property of another, even although the possessor should have obtained it by purchase, [in open market, and for full value;] nor will the owner, in that case, be bound to pay the price which the holder may have given. Where a person has had an article of this kind in his possession, but has sold, [or otherwise *bona fide* ceased to possess it,] before any demand has been made by the true owner, he is liable no farther than as he has received more than he paid for it; [for *nemo debet ex alieno damno lucrari*. But if he have fraudulently parted with the possession, he remains liable in restitution, according to the maxim, *qui dolo desit possidere, pro possessore habetur*. And, in certain circum-

[stances, want of due care and caution have been held equivalent to dolo; *Faulds, 5 Feb. 1861, 23 D. 437*. There is a further exception to the general obligation of restitution, in the case of money, bank-notes, and bills payable to the bearer, or blank indorsed, which cannot be vindicated against one who acquires them *bona fide* in the course of trade. The property of such negotiable instruments passes with the possession. But, by 19 & 20 Vict. c. 60, § 15, the holder of a bill which has been lost, stolen, or fraudulently obtained, must prove that he has given value for it.] An action lies for restitution of money paid through mistake or ignorance, or of money paid in contemplation of an event which, through the fault of the receiver, has not happened. See *Stair, B. i. tit. 7; More's Notes, xlvi.;* [Ersk. B. iii. tit. 1, § 10;] *Bank. i. 208; Bell's Com. i. 127; Bell's Princ. §§ 526, 1320. See Condictio Indebiti. Condictio Causa Data. [Lost.]*

RESTITUTION OF MINORS. See *Minor. Quadriennium Utile. Curatory.*

[RESULT. In English law, a thing is said to result, when, after having been ineffectually or only partially disposed of, it comes back to its former owner or his representatives. Thus, if A. conveys land to B. and his heirs to the use of C. for life, on C.'s death the use results to A., that is, A. or his heirs again become the owners of the land, because no disposition is made beyond C.'s life. This is a resulting use. A resulting trust is similar. *Sweet's Law Dict.*]

[RETAINER. Certain rules of practice have been laid down with regard to counsel's retaining fees. A special retainer of £1, 1s. is given with reference to a particular cause, and gives the client a right to the services of the counsel throughout the whole progress of the cause. But if the counsel retained is not employed in any step of the cause, in which, according to ordinary practice, he would be employed, the retainer falls, and the counsel is bound to accept employment, if offered, from the opposite side. While the case is not in dependence before the court, the special retainer endures only for one year. Special retainer is implied by instructing counsel to draw or revise a pleading, or to appear in court, for a party; but not by mere consultation. A general retainer of £5, 5s. secures the services of a counsel in all cases in which the client may be engaged as a party on the record. If, however, in any subsequent action to which the client is a party,

[he does not employ the counsel who holds his general retainer, the retainer falls *eo ipso*, not merely as regards the particular case, but absolutely and to all effects. If a special retainer be offered to a counsel (or such instructions as imply special retainer), against a party for whom he holds a general retainer, it is the duty of his clerk forthwith to intimate this to the agent of the party for whom he is retained in general, who may then send a special retainer applicable to the particular case, and is in that event entitled to preference. General retainers are preferable according to their dates; but the party having the preferable right must, on receiving notice of a competing claim, send a special retainer applicable to the particular case. A general retainer binds counsel accepting it to appear for the party in every court of law in Scotland, civil or criminal, in which his client is interested; but it does not apply to appeals to the House of Lords, nor to arbitrations, nor to courts in which counsel are not expected to attend, *e.g.*, police courts or licensing courts of justices. See *MacKay's Prac.* ii. Appx. clxxxix.]

RETENTION. The distinction supposed to exist between the lien of the English and the retention of the Scotch law, has been already noticed in the article *Lien*. As a real distinction, however, between these rights, it deserves attention, that the right of retention may be exercised over a subject which is the retainer's own property, but which, were it not for the right of retention, he would be bound to deliver to another, as in the case of goods sold, but not delivered, which remain the property of the seller; whereas it is an essential characteristic of lien, that the subject over which it extends is the property of another. Retention is a right of withholding a debt, or retaining moveable property, until a debt due to the person claiming the right of retention shall be paid. The right of retention differs from hypothec in this, that retention depends entirely upon possession, while the right of hypothec may exist over a subject not in the possession of him who has the right. Thus, an agent has a right of *hypothec* over the expenses in which the opposite party is found liable; he has a right to *retain* the title-deeds, &c., of his own client in security of his account. See *Hypothec*.

It would appear, as stated in the article *Lien*, that there is not in the law of Scotland any general right of retaining, in all circumstances, whatever belongs to a debtor

in security of his debt. [This was decided by a majority of the whole court in *Harper*, 1791, M. 2666, Bell's 8vo Cases, 440; and, though the soundness of the decision has been impugned, it can hardly now be questioned, having been ratified by several subsequent decisions, and by the authority of Professor Bell. See *Bell, infra cit.*; *Brown*, 13 July 1844, 6 D. 1267; *Laurie*, 17 Feb. 1853, 15 D. 404.] In the ordinary case, therefore, there must be something to connect the thing retained with the debt in security of which it is retained, so as to give room for the presumption of an express or implied agreement that the creditor should have such security for his debt. Thus, a ship may be retained in security for repairs, whether at home or abroad, [unless made in a public dock or roadstead; *Barr*, 26 Feb. 1875, 2 R. (H.L.) 14; *Ross & Duncan*, 13 Nov. 1885, 13 R. 185.] There is also a right of retention over goods aboard ship, for the freight and passage-money; [but not if the owners have parted with possession of the ship, by hiring it on time, and at the disposal of the freighter.] A similar lien exists over goods in land carriages, and over the goods, horses, and carriages of travellers, for their entertainment in inns. Retention is also competent to workmen of the articles put into their hands to make or to repair, for the price of the article made, or the expense of repairs. [An accountant or factor, in whose hands papers have been placed to enable him to collect debts, has been held entitled to retain the documents on the ground of implied contract; *Meikle*, 6 Nov. 1880, 8 R. 69; *Robertson*, 17 Nov. 1887, 15 R. 67.]

There is a kind of retention, which has been called general retention, in which the right extends not only over the individual article on which the debt has been contracted, but also over other articles of the same kind, sent in regularly in a course of dealing. [In the bleaching trade, for example, where one parcel of goods is sent in after another, and accounts are settled once a year, any parcel of goods may be retained for the account of that year; *Anderson's Tr.* 17 March 1871, 9 Macph. 718; and cases in *Bell's Com.* ii. 104, note 7. And in certain cases a general right of retention is admitted, in respect of any debt which happens to be due by the owner of the thing retained, to him who has custody. This does not proceed, like special retention, on the reciprocal rights of the particular contract out of which the

[possession arises, but is founded wholly on agreement, either express or implied. Such agreement may be inferred from advertisement, provided it be clear and explicit, and known to the party, so as to be equal to a contract. But see *Scot. Central Railway Co.* 27 Feb. 1864, 2 Macph. 781. It may also be implied from a general and recognised usage of trade; but this ground of retention is not easily admitted in new branches of industry. It has been denied to storekeepers and scourers; *Laurie*, 17 Feb. 1853, 15 D. 404; *Smiths*, 24 Dec. 1859, 22 D. 344. But it has been recognised in the case of calenderers and packers; *Strong*, 16 March 1878, 5 R. 770. See also *Miller*, 16 Feb. 1881, 8 R. 489 (auctioneers).] There are also classes of individuals, exercising certain professions or trades, who have a right, [by known and established rule of law,] to retain, in security of their general balance, the goods and effects of their debtor which have come into their hands in their professional character. The law-agent's right of retention has been considered under the article *Hypothec*. The factor's lien entitles him to retain, in security of his advances, the property of the principal which has come into his hands as factor. When he has sold the goods, he is not entitled to retain them against the purchaser, on account of the balance due by the principal; but his lien in such a case extends over the price of the goods when paid to him. Specific appropriation excludes the factor's lien. [The factor's lien covers all claims for salary, commission, expenses, guarantees, or advances of cash, subsequent to the commencement of his factory, and coming within the scope of his actings as factor; *Sibbald*, 11 Dec. 1852, 15 D. 217; *Gairdner*, 13 Feb. 1858, 20 D. 565. See *Factor. Principal and Agent*.] A banker has a right of retention, in security of the general balance, over unappropriated paper belonging to customers, but not over bills discounted, or appropriated. [See *Banker*.] A policy-broker's lien entitles him, on his principal's bankruptcy, to retain the policy and sums paid to him for a loss. A trustee has a right of retention over the trust-property in security of his advances, and in relief of his responsibility—that is, he may refuse to reconvey until such claims are satisfied. But if the subject be heritage, no one can retain it against the owner without a written title of possession; [*Beattie*, 27 May 1831, 9 S. 639.] A cautioner may retain, in order to secure

his relief, the goods or money of his principal, whether acquired before or after his becoming bound. [A limited company, incorporated under the Companies Acts, has at common law a right of retention over the shares of a partner in security of debts due by him to the company; *Bell's Tr.* 17 Dec. 1886, 14 R. 246. Any one possessing on an unlimited title, such as property, has a right of general retention; *Hamilton*, 13 Dec. 1856, 19 D. 152; *National Bank*, 3 Dec. 1858, 21 D. 79. Thus, at common law, a seller, even after payment of the price, is entitled to retain, till every debt due to him by the purchaser is paid; *Mein*, 17 Jan. 1828, 6 S. 360; *Melrose*, 7 March 1851, 13 D. 880. But this right has been modified by the Mercantile Law Amendment Act, which provides that, if a purchaser sell to a sub-purchaser, and he intimate the sub-purchase to the original seller, the latter cannot plead his right of retention for any separate debt due by the first purchaser; 19 & 20 Vict. c. 60, § 2; *Wyper*, 27 Feb. 1861, 23 D. 606; *Fleming*, 26 Feb. 1881, 8 R. 548. See *Sale*, pp. 935-6.]

Possession is necessary to every right of retention. And the possession must be lawful and actual possession, not civil, nor confidential, nor for a specific purpose. The right of retention ceases on the loss of possession (unless possession has been lost by mistake), and does not revive on recovery of possession. According to Professor Bell, the factor's lien forms an exception to this rule, and “the regaining of possession by fair means, in the course of the factory, will restore the lien;” *Bell's Princ.* § 1449. [Retention may be waived by agreement made before possession begins, or implied from the custom of dealing; and it may be discharged either expressly, or by any agreement inconsistent with the subsistence of retention. Where the subject of a right of retention would lose its value if not converted into money, a sale may be directed, the proceeds to remain subject to the lien; *Parker*, 22 June 1878, 5 R. 979.] See *Stair*, B. i. tit. 18, § 7; B. ii. tit. 3, § 27; *More's Notes*, lxx., lxxvii., cxxxi., ccxlv.; *Brodie's Sup.* 913; *Ersk.* B. iii. tit. 4, § 20; *Bell's Com.* ii. 87; *Bell's Princ.* § 1411; *Illust. ib.*, where several English cases are cited; *Bank.* i. 388; *Brown on Sale*, 13, 210, 436, 452-60; *Ross's Lect.* ii. 414; *Kames' Equity*, 344, 563; [*Goudy on Bankruptcy*, 531; *Smith's Merc. Law*, 559. See *Lease. Shipping Law*.]

RETOUR. This name was given to an

extract from Chancery of the service of an heir to his ancestor. [By the former practice,] the brieve of inquest, after the jury had pronounced their verdict, was retourable to Chancery, whence it issued; and it was the duty of the judge to whom it was directed to return it, nor was the service complete until this had been done. The extract or copy of the retour to Chancery was in practice termed the retour. [This mode of procedure was superseded by the Service of Heirs Act, 1847 (10 & 11 Vict. c. 47). See *Service*.] See *Ersk. B. iii. tit. 8, § 61*; *Stair, B. iii. tit. 5, § 42*; *B. iv. tit. 3, § 5*; *More's Notes, cclxxi.*; *Bank. ii. 327*; *Bell's Princ. §§ 1831, 1847, 2024*; *Kames' Stat. Law Abridg. h. t.* See *Brievs. Prescription, Vicennial*.

RETOURED DUTIES. The retoured duty is the new extent which is inserted in retours, and by which the non-entry duties before citation are regulated. Blanch-holdings, substituted for ward-holdings by 20 Geo. II. c. 50, are liable in a retour duty of one per cent. of the valued rent according to which the land-tax is paid. Feu-holdings are retoured to the feu-duties specified in the charter; and thus, in a feu-holding, the non-entry duties are the feu-duties, so that the superior claims nothing *eo nomine* before citation which he would not be entitled to claim under the *reddendo* of his charter. Where there is no retour of lands, and no means of proving their retoured duties, the superior is entitled to the valued rent before citation. In tithes, when they are held blanch, the superior is entitled to the fifth part of the retoured duty of the lands; but where they are held in feu, the superior is entitled to feu-duty payable for them as their non-entry duties. Infestments of annualrent are, by the act 1692, c. 42, retoured to the blanch, or other duty contained in the infestment. There is, besides, a clause in the heritable bond obliging the debtor, when the right is held of him, to assign all the casualties, and to give an entry gratis. *Ersk. B. ii. tit. 5, §§ 36-38*; *Stair, B. ii. tit. 4, § 21*; *B. iv. tit. 8, § 3*; *Bank. ii. 332*. See *Non-Entry*.

RETRACTUS FEUDALIS; is the power which a superior formerly exercised of paying off a debt due to an adjudging creditor, and taking a conveyance to the adjudication. Where the amount of the debt exceeded the value of the estate, the superior was bound to pay only to the extent of the value. No such power is now exercised by superiors. *Ersk. B. ii.*

tit. 12, § 27; *Bank. ii. 235*; *Kames' Stat. Law, voce Jus Retractus*.

RETROCESSION; a term signifying the reconveyance of any right by an assignee back into the person of the cedent, who thus recovers his former right by becoming the assignee of his own assignee. [A retrocession requires intimation in the same way as other assignations; but an unintimated retrocession has been found to evacuate an assignation, also unintimated; *Craig, 1674, M. 838*. The retrocession may be in the form authorised by the Transmission of Moveable Property Act, 1862 (25 & 26 Vict. 85).] See *Ersk. B. iii. tit. 5, § 1*; *Bank, ii. 192*; *Jurid. Styles, ii. 723*; [*Menzies' Conv. 267*; *M. Bell's Conv. i. 335*.] See *Assignation*.

RETURN; the certificate of a sheriff to whom a writ, warrant, or precept is directed, setting forth what has been done by virtue of such writ, precept, or warrant; *Tomlins' Dict. h. t.* As to the returns to writs of election, see *Election Law. Clerk of Crown*.

RETURN, CLAUSE OF. See *Clause of Return*.

RETURN PREMIUMS. In insurance, return premiums are due where the contract is voided—as where the risk has never been begun; or sometimes in consequence of express stipulation—as in the event of a ship's sailing with convoy, of her arriving safe, or the like. See *Insurance*.

REVENUE. [See *Exchequer. Customs. Excise. Smuggling. Defrauding Revenue*.]

REVERSER. The reverser is the proprietor of an estate who has granted a wadset of his lands, and who has a right, on repayment of the money advanced to him, to be replaced in his right. See *Wadset*.

REVERSION; as applied to heritage, is a right of redemption, and is either legal or conventional. The legal reversion is that which is provided by the operation of the law itself; as in an adjudication, where the law gives a power to the debtor to redeem within the legal. The conventional reversion is that of a wadset, or of an heritable bond, where the reverser or the debtor in the heritable bond is entitled to disencumber the estate, or to redeem it under the clause of reversion in the deed. Rights of reversion must be exercised within forty years from the term at which the proprietor is allowed to redeem; unless the right of reversion enters the sasine as a qualification of the right of property. This power has been used to complete the right of an heir. When, for example, one number of a series of heirs has disappeared,

and it is uncertain whether he be still in life, in place of inserting his name in the destination, a power of redeeming may be given to him, in the event of the succession opening to the heir he is meant to precede; and by this means the confusion and uncertainty which would arise, were he called in as an heir, is avoided. *Stair*, B. i. tit. 14, § 3; B. ii. tit. 10, § 3; *Ersk.* B. ii. tit. 8, §§ 2 *et seq.*; *Bank.* i. 416; ii. 128; *Bell's Com.* i. 793; *Bell's Princ.* § 902; *Kames' Princ. of Equity* (1825), 281; *Bell on Purchaser's Title*, 158, 374; *Ross's Lect.* ii. 331, 351. See *Redeemable Rights. Legal. Adjudication. Wadset.*

[REVERSIONARY INTEREST.] In Scotland, a reversionary interest in a succession may be lawfully sold, and is a recognised subject of commerce; *Aikenhead*, 1630, M. 9491; *Ragg*, 1708, M. 9492; *E. Buchan*, 16 Dec. 1837, 16 S. 238. By the Roman law, all contracts *super hereditate viventis* were *pacta illicita*; see *Pactum Illicitum*. In England, though such a contract is not absolutely illegal, yet it may be set aside in respect of an inadequacy of price, such as would not suffice to void any other lawful contract; *Gwynne*, 1 Brown's Ch. Rep. 9. In this country, however, no ground of challenge will avail, which would not be equally valid in the case of any other contract; *M'Kirdy*, 31 May 1839, 1 D. 855. See *Stair*, B. i. tit. 10, § 8; B. iii. tit. 8, § 28; *Ersk.* B. iii. tit. 3, § 84; *Menzies' Conv.* 49; *M. Bell's Conv.* i. 158. As to reversions of trust-estates, see *Bell's Princ.* § 1997; *M. Bell's Conv.* i. 326; *M'Laren on Wills*, ii. § 1479. See *Post-Obit.*

REVIEW; revision. In the phraseology of the law of Scotland, this term is chiefly applied to the reviewing of any interlocutor, or decree, or sentence against which a party has reclaimed or appealed. See *Appeal. Reclaiming Note. Suspension.*

[REVISING BARRISTERS, in *England*; barristers appointed to revise the lists of voters for parliamentary elections. They decide disputed claims to the right of voting, subject to appeal to the High Court. *Sweet's Law Dict.*]

REVOCAION; is a deed recalling some former deed; or a clause of revocation may form part of another deed; as where it is introduced into a settlement for the purpose of recalling a former settlement. Where a donation between husband and wife, or a deed executed during minority, is meant to be recalled, it is usually done by an express revocation, although,

where the power to revoke is indisputable, revocation may also be inferred from posterior deeds irreconcilable with the subsistence of the former. But on the principle that rights are dissolved in the same manner in which they are constituted, where a donation between husband and wife has been constituted by writing, it must be revoked either expressly or by implication, by a written deed—*e.g.*, a posterior deed defeating the effect of the former by a new gift. [The consent or knowledge of the other spouse is not requisite; and it has even been held that the posterior contraction of debt by the husband is tantamount to a revocation of a previous donation to his wife, when he has no other fund of payment.] See *Donatio inter Virum et Uxorem*. Where, again, a minor means to recall a deed executed during minority, it is by an action in a court, and by reducing the objectionable deed, that he accomplishes his object. The action of reduction may be preceded by a revocation; but this is not indispensable as a preliminary, nor will a revocation within the four years after majority supply the want of an action within that time. [See *Minor*. With regard to revocation of testamentary writings, see *Will. Mutual Testament*. See also *Mandate*.] See *More's Notes on Stair*, xcxi.; *Ersk.* B. iii. tit. 3, § 90; [tit. 9, § 5;] *Bank.* i. 180, 240, 468; *Bell's Princ.* §§ 1617, 1866; [*Menzies' Conv.* 481; *M. Bell's Conv.* ii. 970; *M'Laren on Wills*, i. § 485.]

RHIND MART; a word which sometimes occurs in the *reddendo* of charters in the north of Scotland. It is applied to any species of horned cattle—*e.g.*, oxen, cows, &c., given at Martinmas as a *reddendo*.

RHODIA LEX DE JACTU. See *Contribution*.

RIDER. See *Traveller*.

RIDING INTERESTS. Where any of the claimants in an action of multipointing, or in a process of ranking and sale, have creditors, these creditors may claim to be ranked on the fund set aside for their debtor; and such claims are called *riding interests*. If there be more than one rider claiming upon the share of a single claimant, and that share is insufficient to pay them all, a competition may incidentally ensue among these riders without any separate process of multipointing in the name of the claimant whose share is thus *in medio*. [An illiquid claim cannot be admitted as a rider;

[*Royal Bank*, 4 Dec. 1849, 12 D. 250.] See *Beveridge*, i. 384; ii. 545; [*Shand's Prac.* ii. 602, 908; *Mackay's Prac.* ii. 110; *McGlashan's Sher. Court Prac.* § 2016.] See *Multiplepointing*.

RIEF; an obsolete term, synonymous with robbery; hence *Rievers* (1477, c. 78). *Stouthrief* is a term still known in criminal law, and importing masterful theft or depredation; *Hume*, i. 104. See *Robbery*. *Stouthrief*.

[RIGHT OF WAY. See *Road*.]

RIGHTS; properly speaking, may be opposed to *things* or *subjects*, as rights of property, of possession, of servitude, &c. But the distinction between corporeal and incorporeal things (to the latter of which divisions rights more properly belong) has been absorbed in the division into heritable and moveable; *Ersk.* B. ii. tit. 1. See *Corporeal and Incorporeal. Heritable and Moveable. Jus in re and ad rem. Obligation. Jus Crediti*.

RIOT. See *Mobbing*. [*Breach of Peace*.]

[RISK. See *Periculum*.]

RIVERS. Navigable rivers are *inter regalia*, and are held by the Sovereign, as trustee for the community; but the river, including the *alveus* or bed, and the banks (for the purpose of tracking or of navigation), is public property. [A distinction, however, must be made between a navigable river where the tide ebbs and flows, and a proper fresh-water river. Where the tide ebbs and flows, the *alveus* of the river is the property of the Crown for behoof of the public; navigability is presumed without proof of use; and the Crown is entitled to deepen the channel, or perform any other operation on the *alveus* that may improve the navigation. See *Hamilton*, 12 March 1852, 1 Macq. 46; *Colquhoun's Trs.* 30 July 1877, 4 R. (H.L.) 116; *Bowie*, 18 March 1887, 14 R. 649. Beyond the tidal influence, whether the river be navigable or not,] the *alveus* belongs to the proprietor through whose grounds the river runs; and where it divides adjoining properties, one-half of it belongs to each. [The banks also belong to the riparian proprietor; and the public has no right, unless by prescription, to use the bank as a towing-path; see *Rankine*, 239. Where the river is navigable, the interest of the public is of the nature of a right of way or passage; and any interference with free navigation may be interdicted.] Rivers may be private property, in so far as the use of the water belongs to those through whose property the stream passes; but although a pro-

prietor may employ the water while it is within his own grounds, he must allow it to pass onwards to the inferior heritors, in its original channel, and cannot alter its level, either where it enters or leaves his property. Where a river divides two properties, neither proprietor can carry off any part of the stream from the bed of the river without the consent of the opposite heritor; nor can he obstruct or dam it up so as to cause the water to regurgitate on the lands of the superior or upper heritor; [*Filshill*, 10 March 1887, 14 R. 592.] It is in the power of a proprietor, either in a public or a private river to protect his banks by bulwarks; but he can construct them only for defence, and not in such a manner as to throw the stream on the opposite banks; [*Menzies*, 4 July 1828, 3 W. & S. 235; *Jackson*, 4 July 1872, 10 Macph. 913. "Where a running water is the boundary which divides between two tenements belonging to different proprietors, the one cannot divert the course of it without consent of the other, though that other should not allege any prejudice by it to himself but the depriving him of the pleasure of trouting, and the chance that he may have occasion for the water at some future time;" *Ersk.* B. ii. tit. 9, § 13. See the leading case of *Morris v. Bicket*, 13 July 1866, 4 Macph. (H.L.) 44. In *Colquhoun's Trs. supra*, the same principle was held to apply where the complaining party is not a proprietor *ex adverso*, but an inferior riparian proprietor, whose land is situated so near that the natural flow of water thereon is affected by an erection made by the superior proprietor (*per Lord Blackburn*, 4 R. (H.L.) 126). See *Murdoch*, 28 June 1881, 8 R. 855, and remarks thereon in *Rankine*, 454. Apart, however, from injury to the proprietary rights of neighbouring riparian owners, an erection *in alveo* of a river is not *per se* illegal. Where the river is navigable, the public have a right of free passage on the river, but no right of property; and the proprietors are entitled to erect buildings on the banks, provided they do not interfere with or obstruct the navigation; *Colquhoun's Trs.* A superior heritor, withdrawing from its natural channel water passing through his land, is bound to return it within his own land, except as far as consumed for primary purposes; *Hood*, 8 Feb. 1861, 23 D. 496; *Hunter & Aikenhead*, 23 Jan. 1880, 7 R. 510; *Heggie*, 8 March 1882, 9 R. 704. And he must send down the water unimpaired in quality, as well as undimin-

[ished in quantity; *D. Buccleuch*, 21 Dec. 1866, 5 Macph. 214 (Lord J. C. Inglis); also same case, reported 2 Macph. 653, 4 Macph. 475, 11 Macph. 675, 4 R. (H.L.) 14; *Rigby & Beardmore*, 8 March 1872, 10 Macph. 568; *Moncreiffe*, 4 June 1886, 13 R. 921 (tidal navigable river). "In every question of river-pollution at common law the real question of fact is, whether there has been any material increase of pollution beyond that which is natural to the particular stream, or beyond that which had existed there for the prescriptive period;" *Rankine*, 466. The common law on this matter has been reinforced by the Rivers Pollution Act, 1876 (39 & 40 Vict. c. 75), which is printed, with notes, in *Rankine*, 866; see *Mags. of Portobello*, 9 Nov. 1882, 10 R. 130. See also the Public Health Act, 1867 (30 & 31 Vict. c. 101), §§ 16 (b), 24, 25, 27, 71 *et seq.*] See *Ersk. B. ii. tit. 1, § 5*; [tit. 6, § 17; tit. 9, § 13;] *Bank. i. 507*; *Bell's Princ. §§ 648-50, 968-71, 1100 et seq.*; *Kames' Princ. of Equity* (1825), 33; [*Stair, B. ii. tit. 7, § 12*; *Rankine on Land-Ownership*, 235, 439.] See *Property. Lakes. Salmon-Fishing.*

ROAD OR WAY; as a servitude. The rural servitude of *passage* or *way*, is (like the Roman law servitudes, *iter, actus, et via*) of three degrees—*foot road, horse road, and cart or carriage road*; and to these may be added the servitude of a way or loaning, or *drove road* for cattle. In the Roman law, the servitude *iter* gave right to a horse or foot passage; but in Scotland, a servitude of a foot road does not comprehend a horse road. This class of servitudes imports no obligation on the servient proprietor to maintain the road. He is not even prevented from changing the direction of the road, provided the new one be equally convenient for the dominant proprietor, [and provided the precise line of the road be not defined by contract; *Hill*, 19 July 1879, 6 R. 1363;] and, on a foot road, he may place gates or stiles of easy access, and on a cart road, swing-gates. One important distinction between servitude roads and public roads is, that a public road may be used by all the Queen's subjects, whereas a servitude road can be legally used only by the dominant proprietor and his family, and the tenants in the dominant lands. The right to a servitude road, eighteen feet wide, subject to be used for carts and led cattle, implies a right of driving loose cattle along it; *Swan*, 21 Jan. 1834, 11 S. 316; [*Cooper*

[& *M'Leod*, 18 July 1876, 3 R. 1106. The use of a servitude road by cars or sleds during the prescriptive period gives it the character of a cart or carriage road; *Malcolm*, 4 Feb. 1886, 13 R. 512.] See *Ersk. B. ii. tit. 9, § 12*; *Stair, B. ii. tit. 17, § 10*; *Bell's Princ. § 1010*; [*Rankine on Land-Ownership*, 371. See next article; also *Servitude. Prescription.*] *Drove Road. Church Road. Iter. Actus. Via.*

ROAD, PUBLIC. [This subject will be considered under two heads—(1) *Public rights of way*, and (2) *Statutory highways*. The latter are called statutory, because they exist by statutory authority; there being no obligation to make or maintain roads by the common law of this country. A public road, or road over which the public has a right of way, differs from a highway in being maintained by no public fund. In either case, the ownership of the *solum* does not appear to be affected by the use to which it is dedicated. "The presumption is, that the *solum* of a public road belongs to the owner of the lands through which it runs. If the road forms the march between two estates, each estate is presumed to extend *ad medium filum*;" see *Rankine on Land-Ownership*, 274, and cases there cited. Highways are regarded by the institutional writers as *inter regalia*; but see *Rankine*, 275, where a right of highway is distinguished from other *regalia*; such as harbours, ferries, sea-shore, &c., as well as from servitudes of way. Some marks of distinction between public roads (not highways) and servitude roads have been noted in the preceding article; see also Lord Deas and Lord Curriehill, in *Thomson*, 21 May 1862, 24 D. 975.

I. PUBLIC RIGHTS OF WAY.

[Such rights are generally acquired by possession for the prescriptive period of forty years, or for time immemorial; see *Prescription*; also *Hozier*, 19 March 1884, 11 R. 766; *Mann*, 4 May 1885, 12 R. (H.L.) 52; *Macpherson*, 14 May 1888, 15 R. (H.L.) 68. The possession must be as of right, not by tolerance; *Jenkins*, 12 June 1866, 4 Macph. 1046; *Mackintosh*, 28 Feb. 1871, 9 Macph. 574; and it must be uninterrupted; *Mags. of Elgin*, 17 Jan. 1862, 24 D. 301. But symbolical interruption, or ineffectual obstruction, does not stop the course of prescription. The right of way does not mean an indiscriminate right of promenading within the grounds

[of the owner: there must be a definite road or path between two public places; *Outhbertson*, 24 Feb. 1854, 1 Macq. 455; *Mackintosh*, *supra*; *Winans*, 10 March 1888, 15 R. 540. The *terminus a quo* and the *terminus ad quem* must be "places to which the public resort for some definite and intelligible purpose;" *Darrie*, 10 Feb. 1865, 3 Macph. 496; *Duncan*, 20 June 1871, 9 Macph. 274, 855. A public right of way may be vindicated by any member of the public, no patrimonial or local interest being required; *Torrie*, 4 June 1852, 1 Macq. 65. As to when caution for expenses will be required, contrast *Jenkins*, 20 March 1869, 7 Macph. 739, with *Potter*, 19 July 1870, 8 Macph. 1064. As to *res judicata* in such actions, see *Torrie* and *Potter*, *supra*; *Jenkins*, 5 April 1867, 5 Macph. (H.L.) 27; and *Macfie*, 14 July 1884, 11 R. 1094, where it was held that decree against the "Scottish Rights of Way and Recreation Society (Limited)" would be *res judicata* in a question with the public. In a declarator of right of way, a verdict for the pursuer determines the direction of the road in question, but the court may fix its precise line; *Mackintosh*, 2 March 1872, 10 Macph. 517. The proprietor of lands through which a public footpath runs, is entitled to put swing wicket-gates across the path, as in the case of a servitude road; *Sutherland*, 29 Feb. 1876, 3 R. 485. The mere existence of a public road does not imply that it may be used by the public for all purposes. Before a road can be set up as a cart road, it must be capable of being traversed by carts from one end to the other, without engineering operations; *Mackenzie*, 19 June 1868, 6 Macph. 936.

II. STATUTORY HIGHWAYS.

[The highway system of Scotland has been consolidated by the Roads and Bridges Act, 1878 (41 & 42 Vict. c. 51). There were formerly two main classes of roads, viz., statute-labour and turnpike. Statute-labour roads were intended for local communication between the various parishes, and were maintained originally by the personal services of tenants and cottars, though latterly, by 8 & 9 Vict. c. 41, the statute-service was commuted into a money payment. The early acts as to these roads are 1617, c. 8; 1661, cc. 38 and 41; 1669, c. 16; 1670, c. 9; 1685, c. 39. Turnpike roads constituted the main line of com-

munication through the country, and were maintained by tolls. They were regulated by special acts and by the General Turnpike Act, 1831 (1 & 2 Will. IV. c. 43). There were also military and parliamentary roads in the Highlands, which were at one time maintained to a large extent by public money, but the burden of which was, by 25 & 26 Vict. c. 105, laid on the counties in which they were situated. Prior to the act of 1878 several counties had obtained local acts, putting all the roads in the county under one system of management, abolishing statute-labour, commutation money, and tolls, and substituting a rate upon lands and heritages. The extension to the whole of Scotland of this system of uniform administration and of local rates is the main object of the act of 1878 (see §§ 32, 33). The act was at first permissive, but on 1st June 1883, it became compulsory in all those counties in which tolls and statute-labour had not been abolished, either under local acts, or by the county having voluntarily adopted the act of 1878; §§ 4, 5. A very brief summary of the leading provisions of the act is all that can be given here.

[*Road Authorities*.—In counties, the management and maintenance of roads and bridges are by the act vested in the county road trustees, and in the burghs they are vested in the town council or commissioners of police; § 11. Under the act, the term "burgh" includes royal and parliamentary burghs, and populous places having more than 5000 inhabitants, which have adopted the provisions of the General Police Acts of 1850 or 1862; and the term "police burgh" includes such populous places as have not more than 5000 inhabitants; § 3. The body of road trustees in each county consists of (1) all the commissioners of supply of the county, except such as are qualified only by property in burgh; factors being entitled to act only in absence of their principals; (2) one nominee of each corporation assessed as owners under the act on an annual value of £800; (3) trustees elected every three years from their own number by the ratepayers in each parish situated wholly or partly in the county—two to be elected where the number of ratepayers is less than 500, three where it is less than 1000, four where it is more than 1000; (4) two persons elected from their own number by the police commissioners of any police burgh wholly or partly within the county; § 12. Burghs of not more than 10,000 inhabitants

[are empowered to devolve their functions under the act on the trustees of the county to which the burgh belongs, on such terms as may be agreed on; and where this has been done, the chief magistrate and one councillor or commissioner are added to the number of county road trustees, and are deemed, along with the third and fourth classes of trustees mentioned above, to be "elected trustees;" §§ 12, 47. The mode of election of trustees by the ratepayers, which is by open voting, is prescribed by § 13. The trustees of each county are a body corporate; § 14. They appoint a "County Road Board," consisting of not more than thirty of their own number—not less than one-third nor more than one-half being chosen from the elected trustees. The chairman of the trustees is member *ex officio* and chairman of the board. The board may exercise all the powers of the trustees, except that of assessment, but are subject to the instructions of the trustees; § 15. Provision is also made for the division of counties into districts, and the appointment of district committees of the trustees; §§ 16–18. The meetings of trustees, boards, and committees, and the appointment of officers, are regulated by §§ 21–31. The trustees may make by-laws with respect to any highways within their jurisdiction; § 104.

[*Assessment, &c.*—Assessments are levied in both counties and burghs for three purposes, (1) maintenance and management of existing roads; (2) construction of new roads; and (3) payment of debts. In counties, assessments for maintenance, &c., of roads are imposed by the trustees at a uniform rate on all lands and heritages within each district, or (in the option of the trustees) within each parish of the district, or (where the county is not divided into districts) within the county. The assessment is payable one-half by the owner, and one-half by the occupier, except that where the subjects are of no greater annual value than £4, the whole assessment may be levied from the owner, who may recover the half from the occupier. Outgoing have relief against incoming tenants or occupiers for the proportion of the assessment applicable to the period of the year remaining unexpired at their removal; § 52. See *Russell*, 9 Dec. 1884, 12 R. 298. In burghs, this assessment is levied by the local authorities on all lands and heritages within the burgh, and is payable one-half by the owner and one-half by the occupier, except that where

[the latter does not appear on the valuation roll, the whole may be levied from the owner, who may recover the half from the occupier; § 54. See *Govan Police Commrs.* 3 Feb. 1887, 14 R. 461. But existing modes of assessment in burghs may be retained, any maximum limit being raised so as to satisfy the requirements of the act; § 55. In burghs in which causeway mail (as defined in § 3) was formerly leviable, the magistrates and council may levy from occupiers in lieu thereof, either separately or along with any police or burgh assessment, an equivalent rate, provided it does not exceed threepence in the pound; § 34. Sums levied by assessment for "maintaining and repairing" roads, cannot be expended in lighting them; *Lanarkshire Road Trs.* 12 Nov. 1886, 14 R. (H.L.) 18. Assessment for the construction of new roads and bridges is regulated by § 58. It is imposed, in counties and burghs, on proprietors, and must not extend over a longer period than fifty years. The power to assess is extended by 51 Vict. c. 9, so as to apply to the widening or otherwise permanently improving streets, roads, or bridges within burgh. The valuation and allocation of road debts, and the appointment of Debts Commissioners for that purpose, are regulated by §§ 59–70 of the principal act; and provision is made for the payment of such debts by §§ 71–81. As to duties of a Debts Commissioner, see *D. Hamilton*, 9 July 1885, 12 R. 1249. Certain road debts may be charged on entailed estates by bond and disposition in security; § 70; see also 31 & 32 Vict. c. 84, § 11; 43 Vict. c. 7. Assessment is imposed and levied annually, in counties and burghs, on proprietors only, at such rates as to provide a sum equal to one-fiftieth part of the total valued and allocated debt, and the yearly interest thereon at five per cent.; § 74. Power is given to borrow on the security of the assessments for payment of debt. By §§ 82–87, provision is made for the collection, payment, and recovery of assessments. Occupiers of lands under £4 annual value may be relieved on the ground of poverty.]

See on this subject, *Ersk.* B. i. tit. 4, § 14; B. ii. tit. 6, § 17; tit. 9, § 12; *Stair*, B. ii. tit. 1, § 7; tit. 7, § 10; *Bank.* i. 679; ii. 150; *Bell's Princ.* §§ 659, 1010; *Kames' Stat. Law Abridg.* voce *Highways*; [*Barclay on Highways*; *Barclay's Digest*, voce *Highways*; *Rankine on Land-Ownership*, 273, 371, 682, 792; *Goudy and Smith on Local Government*, 75. See *Highways*.]

[**ROAD, RULE OF THE.** The rules of the road, which are judicially recognised, are these:—"In *meeting* a carriage or horse, &c., to keep to the left hand; in *passing*, to keep to the right, the foremost bearing to left; in *crossing*, to bear to the left, and pass behind the other carriage;" *Bell's Princ.* § 170. By the Roads and Bridges Act (41 & 42 Vict. c. 51, § 123, incorporating in sched. C. § 97 of 1 & 2 Will. IV. c. 43), "if the driver of any sort of carriage shall not keep to the left or near side of such (turnpike) road on meeting or on being overtaken by any other carriage or any rider," he incurs a penalty of £10. Where tramway cars are in use, the practice in passing is altered, the rule in such case being that when a carriage is coming up behind a tramway car, and the car stops, the driver of the other vehicle shall pass upon the left-hand side; *Jardine*, 24 June 1887, 14 R. 839; *Ramsay*, 17 Nov. 1881, 9 R. 140. These rules apply to saddle-horses as well as to carriages; *Turley*, 8 C. & P. 103. They are not inflexible, and circumstances may warrant deviation; *Wayde*, 2 D. & R. 255. Passengers are entitled to walk upon any part of the road, though there may be a footpath; and drivers of vehicles are bound to keep clear of them; *McKechnie*, 20 Jan. 1887, 14 R. 345; *Gibson*, 20 Dec. 1879, 6 R. 890; *Anderson*, 16 Dec. 1885, 13 R. 443. See *Guthrie Smith on Damages*, 135; *Beven on Negligence*, 955; *Taylor on Evidence*, 7. As to the rule of the road for preventing collisions at sea, see Regulations in *Marsden on Collisions*, 296; also *Holt's Rule of the Road*; *Guthrie Smith*, 166, 411.]

ROBBERY. The crime of depriving a person of his property by violence offered to his person. By this violence is meant any over-masterful constraining of the person's will to whom it is offered; and wherever this sort of intimidation is resorted to, whether by the mere show of weapons, or by the actual employment of them, or by blows or threats, followed by the taking of the property, the crime is completed. It is not necessary that the property taken be taken from the person of the man invaded. If it be taken from under his immediate charge or custody—*e.g.*, a horse which he leads, or a packet from his cart—it constitutes robbery. The crime is perfected by the carrying away of the thing taken, however trifling its value may be; and provided it has been thus taken, and in the robber's complete and exclusive possession for however short a period, the robbery is

held to be fully perpetrated. This crime is one of the four pleas of the Crown, [having been formerly punishable capitally. Under an indictment for robbery, the accused may be convicted of theft or of reset; 50 & 51 Vict. c. 35, § 59.] See *Hume*, i. 104; *Ersk.* B. iv. tit. 4, § 64; *Alison's Princ.* 227; *Bank.* i. 274; *Bell's Com.* i. 499; [*Macdonald*, 53.] See *Theft. Stouthrief. [Previous Conviction.]*

[**ROBES.** The following information regarding official and professional robes or costume is taken from a Report of a Committee of the Faculty of Advocates in 1859:—So early as 1455 (long before the institution of the Court of Session), the Scottish Parliament enacted, "That all men of law that are forespeakers for the cost (hired advocates) have habits of *green* of the fashion of a tunnykill, and the sleeves to be open as a tabart;" 1455, c. 12; 2 Thomson's Acts, 43. The matter remained without any further regulation for nearly 200 years. In 1609, it appears that judges even wore no professional costume, and the same may be inferred as to advocates. By 1609, c. 8, the whole matter was referred to King James VI. by the Scottish Parliament; thus—"And because a comelie, decent, and orderlie habite and apparrell in the judges of the land is not onely ane ornament to themselves (being a badge and marke for distinguishing them from the vulgar sort), but the same also breeds in common people that reverence and regard that is due and proper for men in these places. And this being a custome universallie observed almaist through all Europe, the want whereof is greatlie censured by strangers resorting in these parts. The saides Estaites, therefore, upon infinite proves they have of his Majestie's maist singulare wisdom in all his directions, and of his gracious love and affection to this his native kingdom, have, in all humilitie, referred to his Highness' awne appoyntment the assigning of any sik severall sort of habite and vestement as shall be in his Majestie's judgment maist meet and proper, as well for Lords of Session, being the supreme judges in civill actions, as for all other inferior judges of the lyke causes. As also for the criminal and ecclesiasticall judges, and for advocats, lawyers, and all others living by law and practice thereof, that sa every ane of these people may be knawn and dignosced in their place, calling, and function, and may be accordinglie regarded and respected. Attour, his Majestie and Estaites foresaids, considering

[what slander and contempt has arisen to the ecclesiasticall estate of this kingdome by the occasion of the light and undecent apparell used by some of that profession, and cheeflie those having vote in Parliament: It is therefore statute that everie preacher of God's word shall hereafter wear black, grave, and comelie apparell beseeeming men of their estate and profession; as lykewyse that all priors, abbots, and prelates, having vot in Parliament, and especially bishops, shall weare grave and decent apparrell agreeable to their function, and as appertaines to men of their rank, dignitie, and place. And because the haill Estaites humble and thankfullie acknowledges that God of his great mercy has made the people and subjects of this countrie sa happie as to have a King raigne over us wha is maist godlie, wyse, and religious, hating all erronious and vaine superstition, just in government, and of lang experience therein, knowing better than any king living what apperteins and is convenient for every estate in their behaviour and duetie: Therefore it is agreed and consented to by the said Estaites, that what order soever his Majestie in his great wisdom shall think meet to prescribe for the apparrell of kirk-men, agreeable to their estate and moyen, the same being sent in writ by his Majestie to his Clerk of Register, shall be a sufficient warrant to him for inserting thereof in the buikes of Parliament, to have the strength and effect of ane act thereof.]

[Following up this statute, the King sent a letter to the Privy Council, dated 16 Jan. 1610, which will be found printed in the first volume of the "Miscellany of the Maitland Club," p. 149. A proclamation was thereafter issued, dated 30 Jan. 1610, which acknowledges the King's "singular wisdom in all his princelie directionis, and his gracious love to this his antient and native kingdome," in reference to the apparel, "alswele for the Lordis of Sessioun, being the supreme judgis in civile actionis, as for all utheris inferiour judgeis in the lyke causes, as also for the criminal ecclesiastical judgeis, and for advocats, lawyris, and all utheris leving by law and practize thairof, as also for church men." His Majesty, it was stated, had sent certain directions, but reserved to himself to add thereto on more due consideration, and when he had more leisure. * The directions as to the lawyers were—"That the President and remanent ordinarie Lordis of Sessioun sall weare a purpour (purple) cloath gowne, faced all about with red

[crimson satyne, with a hood of purple lyned with crimson satyne also, according the model and forme of a gowne send downe be his Majestie to be a pattern for all gownes of ordinarie sessionaris, onlie the Presidentis gowne sall be faced with red crimson velvet, and the hood lynit with red crimson velvet." This seems to be the gown at present worn by the judges. With regard to the bar, clerks of session and writers to the signet, the regulation was, "that the advocatis, clerkis of the sessioun and signet, shall haif their gowns of black lyned with some grave kind of lyning or furring.

[Regulations are also made as to the gowns of the Justiciary judges; but these were ultimately settled by the subsequent act 1672, c. 16, which enacts, "That for the splendour of that court, all the judges sit in red robes faced with white—that of the Justice-General's being lined with ermine for distinction from the red."

[The gown of the advocate was to be lined. An idea of what it was may be obtained from drawings in the Lyon Office, representing the order of the funeral of the Chancellor Rothes in 1681. Representations are given in the drawings of all who attended in their robes. The gowns of the judges appear to have been the same then as now. The Lord Advocate also appears in the same full dress gown as worn by him, on important occasions, at present. The Dean of Faculty and Solicitor General are not distinguished as wearing any different gowns from the ordinary bar; and at what time this latter officer assumed a silk gown cannot be ascertained. The gowns of the outer bar are represented in the drawings as having ornaments down the front, very much like the braiding on the gown of the Lord Advocate. The whole bar wore bands and full-bottomed wigs. The bands went out of general use in the course of the succeeding half-century; and in the Faculty minutes on 19 June 1766, there appears a notice of motion to this effect, "That for the more decent habite and apparel of the advocates, and to distinguish them from others who wear either the same apparel or very little different from it, that it should be resolved that the advocates shall wear bands as a part of their formalities; that the Dean and his council shall wait on the Lord President and lay before his Lordship this motion, and pray his Lordship's and the court's approbation. The Faculty delayed the consideration of this affair till some after meeting." Nothing farther was

[done in the matter by the Faculty, and the delayed motion has yet to be taken up. At what time bands were entirely given up cannot be traced. In Crosbie's picture, which hangs in the library entrance, he is represented as wearing bands. And at present, when a member of the Outer Bar pleads before the House of Lords, the bands are resumed. The only body that seem to have worn, at the funeral of the Chancellor, the plain stuff gown now worn by advocates, were the Professors in the University; and it is probable that convenience and considerations of economy may have recommended it to the bar in later times.]

ROGUE. See *Vagabond*.]

ROGUE-MONEY. [An assessment formerly levied on every county in Scotland,] for defraying the expense of apprehending offenders, subsisting them in jail, and prosecuting them. [Rogue-money was abolished by 31 & 32 Vict. c. 82; and in lieu thereof, power was conferred on the Commissioners of Supply to levy a "County General Assessment."] See 11 Geo. I. c. 26, § 12; *Kames' Stat. Law*, voce *Delinquency*; *Hutch. Justice*, ii. 257. [See *Commissioners of Supply*.]

ROLLS, MASTER OF. The Master of the Rolls is a patent officer for life, who has the custody of the rolls and patents which pass the great seal, and of the records of the Chancery. In the absence of the Lord Chancellor or Lord Keeper, he [formerly] sat as judge in the Court of Chancery, and is by Coke called his "assistant." At other times he heard causes in the Rolls' Chapel and made orders and decrees. He was also the first of the Masters of Chancery, and had their assistance at the rolls; but all hearings before him were appealable to the Lord Chancellor; *Tomlins' Dict. h. t.* [Under the Judicature Acts, 1873 and 1875, the Master of the Rolls was the second judge of the Chancery Division of the High Court of Justice, and an *ex officio* judge of the Court of Appeal. Before these acts, he differed from other judges in being eligible as a member of the House of Commons. By the Judicature Act, 1881, § 2, the Master of the Rolls sits in the Appeal Court only. *Wharton's Lex.*; *Stephen's Com.* iii. 346.]

ROLLS OF COURT. [The Rolls of the Court of Session are published daily during session, under authority and direction of the court; A.S. 14 Oct. 1868, § 7.] They are divided generally into the Inner and the Outer House Rolls. [The calling list

[and roll of undefended causes are prefixed to the Outer House Rolls; 31 & 32 Vict. c. 100, § 22; A.S. 14 Oct. 1868, § 13. See *Calling a Summons. Undefended Cause*. Besides these, the rolls of the Lords Ordinary consist of:—(1) The *Motion Roll*, containing enrolments made by the Lord Ordinary's clerk, at the instance of the agent in the cause, or by order of the Lord Ordinary. This roll includes cases put out for adjustment of record, or for adjustment of issues. A Clerks' Motion Roll, for unopposed motions of a formal character, to be disposed of by the clerks to the processes, was introduced by the act of 1868, but soon fell into disuse; 31 & 32 Vict. c. 100, § 31; A.S. 14 Oct. 1868, § 19. (2) The *Procedure Roll*, or roll of summary debates; containing cases in which preliminary or dilatory pleas are to be disposed of, or in which there is to be discussion as to the mode of proof; see A.S. 10 March 1870, § 1; see also *Record*. (3) The *Debate Roll*, to which those cases are put, in which parties renounce probation at closing the record; see A.S. 10 March 1870, § 1; A.S. 2 Nov. 1872, § 5; A.S. 15 July 1865, § 7. (4) *Proofs and Jury Trials*. Besides these rolls, the Lords Ordinary to whom Bill-Chamber, Teind, and Exchequer causes are appropriated, have separate rolls for these causes respectively.] The ordinary Inner House rolls of the Court of Session are.—1st, the Single Bill Roll; 2^d, The Summar or Summary Roll; 3^d, The Long Roll; and 4th, The Short Roll. In the *Single Bill Roll* [all proceedings, of whatever nature, coming before a Division of the court, are in the first instance enrolled. Simple motions, opposed or unopposed, are disposed of in this roll. Other cases are sent from it to the Short Roll or the Summar Roll.] The *Summar Roll* is appropriated to such causes as require despatch. ["Such are Bill-Chamber cases, petitions, whether originally presented to the Inner House, or brought there by reclaiming note, bankruptcy cases, reclaiming notes in the course of the preparation of the cause, motions for the adjustment of issues, and some others;" *Mackay's Prac.* i. 496.] And in addition to these, any case which, on special grounds, can be shown to the court to require despatch, will be enrolled with the leave of the court in this roll. The *Long Roll* is the roll for all Inner House causes, which, after having come into the Inner House [by reclaiming note, appeal, or otherwise,] are not appropriated to the Summar Roll. This

long roll is put up only at the end of the session, and exhibits the entire list of causes depending in either Division of the Inner House. The *Short Roll*, again, is merely a section of the long roll, [or of the causes which have come into the Division since the commencement of the session, and have not been sent to the Summar Roll. The President of the Division usually puts out twice a week as many causes in this roll as it is probable the court may dispose of. The *teind* roll and calling list of teind causes are printed in the daily rolls, under direction of the teind clerk; A.S. 14 Oct. 1868, § 15. See on this subject, *Ivory's Process*, i. 81; *Beveridge's Process*, i. 78, 274; ii. 727; *Shand's Prac.* i. 291; ii. 752; *Mackay's Prac.* i. 408, 545.]

ROMAN CATHOLICS. Very severe laws were formerly in force against Roman Catholics. By the act 1706, c. 3, which ratified and revived several previous regulations, papists were disabled from purchasing land by voluntary disposition, either in their own name or through a trustee. Every grant in breach of the statute was declared void, and the property ordered to remain with the seller, without subjecting him in any action for recovery of the price. By the same act, all who profess the Popish religion were declared incapable of succeeding to heritage, if they refused to renounce Popery and sign the formula. The same statute farther enacts that any person labouring under the repute of being a Jesuit priest or trafficking priest, and being called on to purge himself of the suspicion of Popery, according to a form prescribed by the statute, and refusing to do so, may be banished forth of the realm, never to return, under pain of death, while he continues a Papist. But, by 31 Geo. III. c. 32 (applied to Scotland by 33 Geo. III. c. 44), all the severe restrictions and penalties of the former laws were removed from those Roman Catholics who should make and subscribe a declaration of their professing the Roman Catholic religion, and take an oath of allegiance to the Sovereign, abjuration of the Pretender, renunciation of the Pope's civil power, and abhorrence of the doctrine imputed to them, of destroying and not keeping faith with heretics, and deposing or murdering princes excommunicated by the See of Rome. But the most important measure of relief to the Catholics was the statute 10 Geo. IV. c. 7, commonly called the Catholic Emancipation Act, [by which they were restored to the full enjoyment of civil

[rights. All enactments, by which any declaration against transubstantiation, invocation of saints, or the sacrifice of the mass, was required as a qualification for sitting in Parliament, were repealed; and persons professing the Roman Catholic religion, on taking and subscribing the oath prescribed by the act, were relieved from all penalties and disabilities, and made competent to sit in Parliament, to vote at parliamentary elections, to be members of lay corporations, and to exercise any franchise or civil right except that of presenting to benefices. But no Roman Catholic priest can sit in the House of Commons; and a Roman Catholic may not hold the office of guardian or regent of the United Kingdom; of Lord Chancellor or Keeper of the Great Seal; of Lord Lieutenant, deputy or chief governor of Ireland; nor any office in the church or ecclesiastical courts. But a Roman Catholic may now be Lord Chancellor of Ireland; 30 & 31 Vict. c. 76. See also 7 & 8 Vict. c. 102, and 9 & 10 Vict. c. 59. As to the oaths now to be taken by Roman Catholics, see the Parliamentary Oaths Act, 1866 (29 & 30 Vict. c. 19), and the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72). See *Oaths*. With regard to the Pope's jurisdiction in Scotland, it is enacted by 1567, c. 2 (ratifying an act of 1560), that "the bishop of Rome, called the Pape, have na jurisdiction nor authoritie within this realme in ony time cumming; and that nane of our said Sovereigne's subjects, in ony time heirafter, sute or desire title or richt of the said bishop of Rome, or his sect, to onything within the realme, and that na bishop nor other prelat of this realme use ony jurisdiction in time cumming, be the said bishop of Rome's authoritie." On the question whether this enactment is still law, or whether it was repealed by 9 & 10 Vict. c. 59, see *Journ. of Jurisp.* xxii. 225. See on this subject generally, *Ersk.* B. ii. tit. 3, § 16; *More's Notes to Stair*, xlv.; *Bank.* i. 49; *Kames' Stat. Law Abridg.* h. t.; *Stephen's Com.* ii. 741.]

ROMAN LAW. The Roman law, the principles of which are so remarkably incorporated with those of the law of Scotland, was founded originally upon the constitutions of the ancient kings of Rome; next upon the twelve tables of the decemviri; then upon the laws or statutes enacted by the senate or by the people; the edicts of the prætor and the *responsa prudentum* or the opinions of learned lawyers; and lastly, upon the imperial decrees, or consti-

tutions of the emperors. Authority was also given in the Roman, as in most other systems, to what is called customary or unwritten law. Those materials were first reduced into a *Code* by the order of the Emperor Theodosius, A.D. 438, which, under the name of the *Theodosian Code*, continued for several centuries to be the only authoritative compilation recognised in the western part of the empire. Justinian's body of the Roman law, the authority of which was confined to the eastern division of the empire, was compiled and finished by Tribonian about the year 533. It consists, 1. Of the *Institutes*, containing the elements or first principles of the Roman law, in four books. 2. Of the *Digest* or *Pandects*, in fifty books, containing the opinions and writings of eminent lawyers. 3. Of a new *Code*, or collection of imperial constitutions, in twelve books—the Theodosian Code having been, by the lapse of a century, rendered imperfect. 4. Of the *Novels*, or new constitutions posterior in time to the other books, being a supplement to the Code containing the new decrees of successive emperors. These form the *Corpus Juris Civilis*, as published about the time of Justinian, and which soon afterwards fell into oblivion, until about the year 1130, when a copy of the Pandects is said to have been found at Amalfi, in Italy; after which the study and authority of the Roman law was revived and adopted as the foundation of most of the European codes. The story of the finding of the Pandects at Amalfi, however, is considered a mere romance, or, at all events, quite inadequate to account for the revival of the civil law after it had been altogether extinguished. The opinion now generally adopted is, that the Roman law was never altogether extinguished, and that the extraordinary influence which it has exerted over every system of jurisprudence in Europe is to be accounted for not only by its wisdom and general agreement with the law of nature, but also by the systematic manner in which the Romans completed their conquests, and communicated their arts, language, and manners to their new subjects. The *Digest* or *Pandects* is divided into seven parts: the first containing the elements of law, as what is justice, right, &c.; the second part treats of judges and judgments; the third, of personal actions, &c.; the fourth, of contracts, pledges, &c.; the fifth, of wills and testaments, &c.; the sixth, of the possession of goods; and the seventh, of obligations, crimes, punish-

ments, &c. The *Institutes* are an epitome of the Digest, divided into four books, correcting the Digest in some respects, and arranged more systematically. The *Novels* were published at several times, without any method. They are also termed *Authentics*, as having been authentically translated from Greek into Latin; and they are divided into nine collations, constitutions, or sections; and these again into 168 Novels, which are distributed into certain chapters. The first collation relates to heirs, executors, &c.; the second to the state of the Church; the third is against bawds; the fourth concerns marriage, &c.; the fifth forbids the alienation of the possessions of the Church; the sixth treats of the legitimacy of children, &c.; the seventh of witnesses; the eighth ordains wills to be good, although imperfect; and the ninth relates to succession in goods, &c. To this body of the civil or Roman law is added the Book of the *Feus*, explanatory of the customs and services due by subjects or vassals to princes or superiors, for feus held of them. The *Constitutions* of the emperors were promulgated either by *rescript*, which was the letter of the Emperor in answer to those who inquired the law of him; or by *edict* which the Emperor issued of his own accord; or by *decree*, which was pronounced judicially in a particular cause. The Emperor possessed the power of issuing rescripts, edicts, and decrees, under the *lex regia*, which not only empowered him to make laws, but exempted him individually from their coercive power. See on the subject of this article, *Blackst.* i. 80; *Ersk.* B. i. tit. 1, § 27; *Stair*, B. i. tit. 1, § 12; *Gibbon's Decline and Fall of the Roman Empire*, vol. vii. c. 44; [*Hunter's Roman Law*; *Mackenzie's Roman Law*; *Muirhead's Roman Law*; *Sandar's Institutes*. See also *Law. Civil Law.*]

ROOD. See *Particata*.

ROOF. In Edinburgh and other towns in Scotland, where there are numerous tenements or *lands* (as they are called), consisting of several storeys or floors, belonging to different proprietors, questions sometimes arise as to the burden of supporting the roof, which in one sense may be said to be common to the whole tenement. This burden is usually regulated by an express clause in the title-deeds of the several parties interested; but in absence of such special covenant, the burden of supporting and upholding the roof lies *de jure* on the proprietor of the garret or upper floor. *Ersk.* B. ii. tit. 9, § 11; *Nicholson*, 1708,

M. 14516; *Luke*, 1690, Br. Sup. iv. 258. See *Common Interest*.

ROTATION OF CROPS. See *Cropping*.

ROUP. See *Auction*.

ROYAL BURGHS. A royal burgh is an incorporation created by a royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. See *Burgh, Royal. Burghage-Holding*.

[ROYALTY; payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised. *Wharton's Lex.*]

RUBRIC OF A STATUTE. The rubric of a statute is its title, so termed because anciently it was written in red letters. [The rubric is properly no part of the statute, and cannot be resorted to in construing it. See *Farquharson*, 3 Feb. 1886, 13 R. (J.C.) 29; also *Maxwell on Statutes*, 49; *Wilberforce on Statutes*, 272; *May's Parl. Prac.* 525, 566, 583;] *Ersk. B. i. tit. 1, § 49.* See *Statute*.

RUNNING DAYS; a term in the contract of charter-party used in contradistinction to working days, and referring to the ship's lay days, or days of demurrage. In computing by running days, they are reckoned as days in a bill of exchange;

while in computing by working days, all Sundays and Custom-house holidays are excluded. *Bell's Com. i. 623.* See *Charter-Party. Demurrage*.

RUNNING LETTERS. [See *Criminal Prosecution*, p. 264 b.]

RUNNING SHIP; a vessel which in time of war does not sail with convoy, is technically said to *run* the voyage. In an insurance on a running ship, if the underwriters are given to understand that there is even a chance of convoy, while the owners have already resolved to run, the contract is void. *Bell's Com. i. 667.* See *Convoy. Insurance*.

RUNRIG LANDS; are lands where the alternate ridges of a field belong to different proprietors. By 1695, c. 23, a division of such lands was authorised to be made between the different proprietors according to their respective interests, with the exception of lands belonging to burghs or incorporations. This division may be insisted in before the judge ordinary or justices of the peace. Under the description of runrig lands are comprehended lands where the portions consist not of ridges only, but of alternate portions of several acres each. [See *Bs. Gray*, 29 June 1877, 4 R. (H.L.) 76;] also *Ersk. B. iii. tit. 3, § 59*; *Bank. i. 220*; *Bell's Princ. § 1098*; *Kames' Stat. Law Abridg. h. t.*; [*Rankine on Land-Ownership*, 505.] See *Burgh Acre*.

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SABBATH. See *Sunday*.

SACRAMENTS. The act 1617, c. 6, lays the burden of providing necessaries for the administration of the sacraments upon the parishioners. But this has been interpreted to mean the heritors. In practice the expense of providing communion elements falls on the teinds, and the Court of Session have always been in use, in augmentations, to decern for a special sum for this purpose. When this burden is laid on the titular, he is entitled to have the amount allocated on the proprietors of the several lands over which his titularity extends. [When the population of a parish does not exceed 2000, the court will not allow more than £10 for communion elements; *Minister of Logie*, 4 Dec. 1867, 6 Macph. 82. In that case, the population being about 4000, the court awarded £12. In large city parishes the amount is increased.] See *Ersk. B. ii. tit. 10,*

§ 50; *Bank. ii. 69*; *Dunlop's Parochial Law*, 289; [*Duncan's Par. Eccl. Law*, 702; *Black's Par. Eccl. Law*, 137.]

SACREBORGH; or sickerborgh, a "sicker, sure, sufficient cautioner, a kind of caution found more especially in actions or pleyes." *Skene, h. t.*

SACRILEGE; is any violation of things dedicated to the offices of religion. Theft becomes more heinous when sacred things are its subjects; but in Scotland there is no express enactment which declares the punishment more severe. There are instances, however, of capital punishment having been formerly inflicted on persons convicted of stealing chalices, priests' ornaments, and the like; *Hume i. 110.* See *Dead Body*.

SAK; in old law language, the unlaw or americiament paid by him "who denies that thing which is proven against him to be true, or affirms that thing whereof the contrary is of verity." *Skene, h. t.*