**POPE.** The Pope, before the abolition of popery in Scotland, exercised an absolute jurisdiction over churchmen, independently altogether of the civil magistrate. In order to check a disposition on the part of the Protestant clergy to claim a similar independence of the Crown, the stat. 1584, c. 129, posterior to the Reformation, declared that the King's authority extended over all the estates, and that he, by himself and his council, should be judge competent to all persons, spiritual and temporal, in all matters on which they might be charged. *Ersk.* B. i. tit. 5, § 6; *Bank.* i. 12; *Kames' Stat. Law Abridg. h. t.*

**POPULAR ACTION.** In the Roman law there were certain actions which might have been insisted in by any person. Hence, an action of this description was termed an *actio popularis.* [An action for vindication of a public right of way is that which, in our procedure, most nearly resembles the Roman *actio popularis.* See *Road.*] There are other actions arising *ex delicto*, where statutory penalties are incurred, which, under special statutes, may be prosecuted by any person, the person availing himself of that privilege being usually called a common informer; to whom a certain share of the penalty is generally allowed by the statute under which the action is laid. *Hume*, ii. 118; *Bank.* B. iv. tit. 24, § 10; *Ersk.* B. iv. tit. 1, § 17; *Kames' Equity*, 237.

**PORTEOUS ROLL.** This was a roll of the names of offenders, which, by the old practice of the Justiciary Court, was prepared by the Justice-Clerk from the informations of crimes furnished to him or his deputies, by the local authorities, in the different districts comprehended within the circuits. The Justice-Clerk in former times seems also to have prepared the indictments, and to have taken the other steps necessary for bringing offenders to justice. See 1487, c. 99. This practice was altered by 8 Anne, c. 16, §§ 3, 4, [and again by 9 Geo. IV. c. 29, § 5.] See *Hume*, ii. 24; *Ersk.* B. iv. tit. 4, § 86; *Kames' Stat. Law*, voce *Dittay; Skene, h. t., and* voce *Traistis.* See *Dittay. Criminal Prosecution. Traistis.*

**PORTEUR OF A BILL**; the payee or holder of a bill of exchange. *Ersk.* B. iii. tit. 2, § 25. See *Bill of Exchange.*

**PORTIONER**; is the proprietor of a small feu or portion of land.

**PORTIONERS, HEIRS.** See *Heirs-Portioners.*

**PORTS AND HARBOURS.** Free ports are *inter regalia*, or *in patrimonio principis.* The sole right of erecting or of holding public ports and harbours is vested in the Crown; unless when this right is limited by royal or parliamentary grants to communities or subjects. One who obtains a grant of a harbour is bound to keep it in sufficient repair, and is entitled to levy harbour dues for that purpose. Such dues are leviable as are warranted by immemorial usage. The grantee is not bound to repair or improve the harbour out of his own means; neither is he entitled, without authority of parliament, to exact additional dues, in order to indemnify himself for any extraordinary expenditure or improvements; [*Stirling*, 9 June 1814, Hume's Dec. 557; *Christie*, 16 May 1828, 6 S. 813. So far, however, as the means afforded by the dues and revenues extend, he is bound to keep the port and harbour and its appurtenances in a proper state of repair, and to furnish all such accommodation to the parties resorting thereto, as is proper and suitable to the nature and extent of the harbour in its present state; but he is not bound to extend it; *Offrs. of State* v. *Christie*, 2 Feb. 1854, 16 D. 454. The right to levy dues at a particular place may be lost by an uninterrupted practice for forty years to land goods at that place without paying dues; *Dundee Harbour Trs.* 22 March 1852, 1 Macq. 317, 1 Stuart, 660. A right of free port may be constituted by prescription upon a charter from a subject superior expressly granting such right; *ibid.;* or upon a charter of royal burgh; *Macpherson*, 21 May 1881, 8 R. 706. Public harbours and their revenues are not (as was at one time held) exempt from assessment for poor-rates; *Leith Dock Comrs.* 12 March 1866, 4 Macph. (H.L.) 14. See 10 & 11 Vict. c. 27; 25 & 26 Vict. c. 69. As to a right of private pier, see *Colquhoun*, 15 Dec. 1853, 16 D. 206; 17 July 1859, 21 D. 996. A proprietor who has no grant of harbour, but who has built a pier across the foreshore, has no right to exact dues in respect of the use thereof; *E. Stair*, 2 Dec. 1880, 8 R. 183. See *Ersk.* B. ii. tit. 6, § 17; *Stair*, B. ii. tit. 1, § 5; *Brodie's Supp.* 949; *Bank.* i. 83; *Bell's Com.* i. 575; *Bell's Princ.* § 654; [*Sir Matthew Hale, De Jure Maris*, c. 6, and *De Portu Maris* (*Hargrave's Tracts*); *Rankine on Land-Ownership*, 241. See also *Insurance*, p. 556 *a.*]

**POSSE COMITATUS**; the power or force of the county, which the sheriff has a right to call out for the enforcement of the diligence of the law.

**POSSESSION**; [is "detention, with the design or *animus* of holding the subject as the property of the holder. It differs from custody, which is conditional and limited possession, held not for the custodier, but for another;" *Bell's Princ.* § 1311.] Possession is accounted the chief test of property; but there is a distinction between the effect of possession in heritable and in moveable property. The title to heritable property must be instructed *scripto*, and regularly by charter and sasine. Without such evidence, possession of heritage will not confer property; neither will the want of possession deprive a person of his property, whose title is founded on charter and sasine; unless prescriptive possession on an adverse title has taken place. Mere possession without a written title confers no right in heritage. The possession of moveables, again, is regulated by a different rule; for where things have never belonged to any one, (*e.g.*, pearls or pebbles found on the seashore, or wild fowl, or beasts of the chase,) the possession or occupancy of them creates property. In things, again, which have had an owner, possession has the effect of raising a presumption in favour of the holder, which will require from the former proprietor not only evidence that they were his, but also of the manner in which he came to lose his possession. Hence, where a disputed article has been taken out of the possession of the holder *vi aut clam*—that is, by force or fraud—the judge will first of all restore it to the person who was in possession of it, before he decides the point of right. On this subject see *Bona Fides* and *Mala Fides*. Possession is divided into natural and civil. *Natural possession* is where the proprietor is himself actually in possession, as of lands by cultivation, and by sowing and reaping the crops; of a house, by inhabiting it; of moveables, by having them in his hand or in his custody. *Civil possession*, on the other hand, is the owner's possession, not by himself, but by another in his name, or for his behoof, as of lands by a tenant, the rents of which are drawn by the proprietor or his factor, or of property by a trustee or by a liferenter, or of a pledge by the creditor. There is a further division of possession, into that which is acquired lawfully and that which is acquired *vi aut clam*. But a distinction is taken between force and fraud. Possession attempted to be acquired by force may be resisted by force; but possession, being once obtained in this way, must be reclaimed by the true owner judicially; the party who has ceased to possess being bound to trust to the protection of the law for restitution, and not to the strength of his own arm. In the case of fraud, there can be no appeal to force; and where possession has been acquired by either of these means, it is the duty of the judge to restore it to him from whom it has been taken, without waiting to settle the question of right. [As to the sheriff's power to regulate possession of heritage, see *Sheriff;* and as to his power to regulate interim possession pending appeal, see *Appeal to Court of Session.*] See *Ersk.* B. ii. tit. 1, § 20; *Stair*, B. ii. tit. 1, § 8; *More's Notes*, cl.; *Bank.* i. 510; *Bell's Com.* i. 269; [*Bell's Princ.* § 1311;] *Hunter's Landlord and Tenant*, i. 373, 429; ii. 178; *Brown on Sale*, 18, 20–4–6, 537; *Ross's Lect.* ii. 81–8, 383, 488, 506; [*Rankine on Land-Ownership*, 1; *Rankine on Leases*, 121, 184; *Pollock on Possession.*] See *Delivery. Reputed Ownership. Lease.* [*Prescription. Interim Possession.*]

**POSSESSIONE RETENTA.** See *Reputed Ownership. Assignation.*

**POSSESSION, INSTRUMENT OF.** See *Disposition of Moveables.*]

**POSSESSORY ACTION.** A possessory action is one in which the point of right is not directly concerned, but barely that of possession. Such actions are competent either for attaining, retaining, or recovering possession. An action of molestation, by which a proprietor of heritage complains of being disturbed in his possession, is an instance of this form of action. [But the simpler process of interdict is now generally resorted to in determining rights of possession. Actions of removing and of maills and duties are also possessory actions.] See *Ersk.* B. iv. tit. 1, § 47; *Stair*, B. iv. tit. 26; *Bank.* ii. 619; *Ross's Lect.* ii. 279; [*Mackay's Prac.* i. 359.] See *Ejection and Intrusion. Molestation.* [*Interdict. Removing. Maills and Duties.*]

**POSSESSORY JUDGMENT.** A possessory judgment is one which entitles a person, who has been in uninterrupted possession [on a written title] for seven years, to continue his possession until the question of right shall be decided in due course of law. Thus, for example, a tenant who has been in peaceable possession of lands for seven years under a written lease of a longer endurance than seven years, is entitled to the benefit of a possessory judgment, whereby he will be maintained in possession until his title, if it be defective, is regularly reduced and set aside in the proper action. It has been held that a party may be entitled to the benefit of a possessory judgment regarding a servitude of ish and entry to a plot of ground, though he held the ground under a bounding charter making no reference to such servitude, and containing no clause of parts and pertinents; *Liston*, 3 Dec. 1836, 14 S. 97. [See also *M'Donald*, 15 Nov. 1871, 10 Macph. 94; *Galloway*, 30 Jan. 1885, 12 R. 578.] But a party who possessed a piece of ground from 1821 to 1828, under a disposition reserving a servitude of road in favour of a third party, having then got a new disposition from his author (whom he guaranteed against the consequences), omitting the clause of servitude, and having burnt the prior disposition, was found not entitled, in 1831, to a possessory judgment, in a question with the party in whose favour the servitude was reserved; *Ross*, 28 Feb. 1833, 11 S. 467. [As to the necessity of the seven years' possession being based upon some written title, see *Neilson*, 10 Dec. 1828, 7 S. 182; *Carson*, 13 March 1863, 1 Macph. 604; *Dickson*, 18 July 1863, 1 Macph. 1157.] The origin of this right, according to Erskine, is supposed to have been, that where there are subaltern rights of the same lands granted to vassals, and by them to sub-vassals, the vassal or sub-vassal not being master of the original title-deeds, which commonly remain with the highest superior, might be turned out of his possession by one who, though he had no good right at bottom, might yet produce a title prior to any in the hands of the possessor himself. This remedy relieves the proprietor from all risk of being deprived of his possession by one who has no title to his property. If he is dispossessed, it must be by one who, in law, is truly vested with a preferable right. [A possessory judgment may be obtained in the sheriff court; *Johnstone*, 5 March 1862, 24 D. 709.] See *Ersk.* B. iv. tit. 1, § 50; B. ii. tit. 6, § 28; *Stair*, B. ii. tit. 1, § 25; tit. 3, § 73; tit. 8, § 29; B. iv. tit. 23, § 16; *Bank.* i. 513; *Hunter's Landlord and Tenant*, ii. 193; [*Rankine on Land-Ownership*, 8; *Mackay's Prac.* i. 200, 360; *Dove Wilson's Sher. Court Prac.* 55.]

[**POST OBIT BOND**; in English law, a bond executed by a person on the receipt of money from another, whereby the borrower binds himself to pay to the lender a sum exceeding the sum so received, and ordinary interest thereof, on the death of a person, upon whose decease he (the borrower) expects to become entitled to some property. Such bonds are liable to be set aside, in so far as the stipulated payment is more than a just indemnity for the hazard incurred. See *Mozley and Whiteley's Dict.*; *Story's Equity Jurisp.* §§ 342 *et seq.*; *Cavanagh on Money Securities*, 108. See *Reversionary Interest.*]

**POST PROXIMUM TERMINUM MINIME VALITURUS.** Precepts from Chancery for infefting the heir of a deceased Crown vassal required to be executed before the lapse of the first term of Whitsunday or Martinmas after the date of the precept, under the sanction of nullity. Such precepts were directed to the sheriff of the county; the sheriff-clerk only (except under special circumstances) could officiate as notary at giving infeftment; and the limitation of the precept in point of time was thus expressed: "*Post proximum terminum minime valiturus.*" The reason assigned for this limitation is, that the casualties were not calculated beyond the term preceding the special service of the heir; and if another term had been suffered to elapse before executing the precept, a new precept and an additional calculation of the casualties would have been necessary. [It would seem that an infeftment, taken on such a precept after the lapse of the next term, would be null.] See 1540, c. 77; 1606, c. 15; A.S. 15 Feb. 1678; *Dallas' Styles*, folio ed. 883; 4th edit. ii. 583; *Jurid. Styles*, i. 351, 2d edit.; *Mackay*, 13 Jan. 1835, 13 S. 246, not reported on this point, but see it argued in the papers. [See 31 & 32 Vict. c. 101, § 86. See also *Menzies' Conv.* 830; *M. Bell's Conv.* i. 671; ii. 1087. See *Charters from the Crown.*]

**POSTHUMOUS CHILD**; is a child born after the death of the father. This does not make any difference in the legal rights of the child. A posthumous child cannot be charged to enter heir till a year after his birth; *Livingstoun*, 1628, M. 6870; *Brown's Supp.* i. 375. A bond of provision in favour of two daughters, as the granter's younger children, and executed in virtue of a power given by an entail to provide for younger children, was extended to a posthumous child; *Oliphant*, 1794, Bell's Cases, 125; *Brown's Supp.* v. 648. [See *Bell's Princ.* §§ 1629, 1642, 1779; *Fraser on Parent and Child*, 162.] See *Conditio si sine Liberis.* [*Pregnancy.*]

**POSTLIMINII JUS.** By the Roman law, when one was taken in war, and made a slave, his rights as a freeman were not entirely destroyed: they were only suspended—and if he made his escape, they *eo ipso* revived; so that he could not be reclaimed, unless again enslaved in the regular way. This right which such slaves enjoyed was called *jus postliminii;* and the term has been employed, in modern times, in questions respecting the right to retake a ship which has been captured and made its escape. *Inst. of Just.* B. i. tit. 12, § 5; [*Kent's Abdy's Internat. Law*, 255.]

**POSTNATUS FILIUS**; a second son. *Skene, h. t.*

**POSTNUPTIAL CONTRACT.** See *Contract of Marriage.*

**POST-OFFICE**; the office for the conveyance of letters through the kingdom, both from foreign countries, and from place to place within Great Britain. [The leading statutes regarding the post-office are 7 Will. IV. & 1 Vict. c. 33 (regulating its management); 3 & 4 Vict. c. 96, and 10 & 11 Vict. c. 85 (establishing the penny postage); 33 & 34 Vict. c. 79, and 38 & 39 Vict. c. 22 (duties); 33 & 34 Vict. c. 79, and 44 & 45 Vict. c. 19 (newspapers); 23 & 24 Vict. c. 111, 44 & 45 Vict. c. 12, § 47, and 45 & 46 Vict. c. 72, §§ 13, 15 (stamps); 33 & 34 Vict. c. 79, and 45 & 46 Vict. c. 2 (post cards); 3 & 4 Vict. c. 96, 11 & 12 Vict. c. 88, 43 & 44 Vict. c. 33, and 46 & 47 Vict. c. 58 (money orders). See also *Telegraph. Savings Bank.* With regard to the post-office as an agent for parties contracting by letter, see *Offer*, and cases there cited. See *Stephen's Com.* ii. 597; *Wharton's Lex.*]

**POST-OFFICE OFFENCES.** The following are the leading provisions of 1 Vict. c. 36, consolidating the laws relative to offences against the post-office of the United Kingdom. Sending or conveying, or assisting in conveying unexempted letters otherwise than by post, or collecting exempted letters to send otherwise than by post, subjects the offender to a penalty of £5 for each letter; and if a practice is made of it, to a penalty of £100 during each week that the practice is kept up. These penalties are incurred whether the letter is sent singly or with anything else, and the *onus* of proving compliance with the post-office laws lies upon the person prosecuted; § 2. Any one sending writings, letters, or other communications under a newspaper cover, or putting any mark upon it besides the name of the person to whom the newspaper is sent, forfeits treble postage; or he may, at the option of the postmaster-general, be prosecuted for a misdemeanour, except in those cases where there are only marks; § 5. Persons employed in conveying bags or mails of letters, &c., convicted of carelessness, negligence, or other misconduct, whereby the safety of a bag or letter is endangered; or of conveying a letter otherwise than in the ordinary course of post, &c., forfeit £20; § 7. Any one employed by the post-office opening or delaying a letter, unless he has an express warrant so to do under the hand of one of the Principal Secretaries of State, or of the Lord-Lieutenant of Ireland, or unless such letter is one returned for want of a true direction, or because the person to whom it is directed is dead, or cannot be found, is, in England or Ireland, guilty of a misdemeanour; and, in Scotland, of a crime and offence punishable with fine and imprisonment; § 25. Embezzlement, &c., of a letter or packet is felony, or a high crime and offence, punishable with seven years' [penal servitude,] or imprisonment for not more than three years; and if the letter contain money or other chattels, with [penal servitude] for life; § 26. Stealing money or other chattel from a letter, is punishable with [penal servitude] for life; § 27. Any person who steals a post letter-bag, or a post letter from a post letter-bag, or from a post-office, or from a post-officer, or from a mail, or who stops a mail with intent to rob or search it, is liable to [penal servitude] for life; § 28. [See *Mackay*, 24 Sept. 1861, 4 Irv. 88.] Stealing post letters or bags sent by packet, is punishable with penal servitude for fourteen years; § 29. Receivers of property sent by the post, and stolen or embezzled, may be tried either as accessories after the fact, or for a substantial felony; and in the latter case, whether the principal has been previously convicted, or is amenable to justice or not. The punishment is [penal servitude] for life; § 30. Fraudulently retaining, after delivery thereof by mistake, any letter or packet, or wilfully secreting and detaining letters, &c., that have been lost, is punishable by fine and imprisonment; § 31. Stealing, embezzling, detaining, &c., any printed notes or proceedings in Parliament, newspapers or other printed paper, is punishable by fine and imprisonment; § 32. Accessories after the fact (except receivers of things stolen, see *supra*, § 30), to any such felony, as also persons endeavouring to procure the commission of a felony or misdemeanour, are liable to imprisonment for not more than two years; §§ 35, 36. In Scotland, high crimes or offences under this act are not bailable, unless with consent of the public prosecutor; in which case, the bail is such as he agrees to, or unless the judges of Justiciary, or the sheriff, or substitute, shall deem it consistent with the ends of justice; in which case the bail shall be such as the judge thinks necessary; § 38. [See *Holmes and Lockyer*, 25 Oct. 1869, 1 Couper, 376; also *Alison's Princ.* 342; *Macdonald*, 70.

[The act 47 & 48 Vict. c. 76, penalises the following offences:—placing injurious or noxious substances in or against post-office letter-boxes; sending by post explosive, inflammable, or deleterious substances, or indecent prints, &c.; affixing placards, notices, &c., on post-office or letter-box; imitation of post-office stamps, envelopes, forms, or marks; making, possessing, or using fictitious stamps or instruments for making them; having or placing any false notice as to reception of letters; obstructing officers of post-office, &c. See also *Telegraph.*]

**POTESTATIVE CONDITION.** See *Conditional Obligation.*

**POTIOR EST CONDITIO POSSIDENTIS, VEL DEFENDENTIS.** See *Pactum Illicitum.*

**POUND**; in England, an inclosed place of strength, in which cattle distrained for rent or for damage feasant are kept until they are redeemed or replevied. *Tomlins' Dict. h. t.*

**POWER OF ATTORNEY**; is a power given by one man to another to act for him. This is properly an English term: the Scotch deed is called a factory or commission. [But when the deed is to be used in England or abroad, or when its purpose is to authorise the buying or selling of stocks or shares, the "power of attorney" is usually employed.] For the form of a power of attorney, see *Jurid. Styles*, ii. 63. [See *Menzies' Conv.* 472; *M. Bell's Conv.* i. 446; *Sweet's Law Dict.*] See *Principal and Agent. Factor. Procurator. Mandate.*

**POWER OF SALE.** In heritable securities for debt, whether in the form of heritable bonds, or of bonds and dispositions in security, a clause is inserted, conferring on the creditor a power to sell the heritable subject of the security, in the event of the debt not being paid within a certain time, commonly [three] months, after a formal demand of payment. [The import of the clause granting power of sale, in the statutory form of bond and disposition in security, is fully explained in § 119 of the Consolidation Act of 1868.] The power of sale is held to be so far of the nature of a mandate; but *quoad* the creditor, the debtor is, as it were, *procurator in rem suam;* and hence the mandate is not revocable by the debtor, nor does it expire either by his death or bankruptcy. Neither can the creditor, when exercising a power of sale regularly and fairly, be interrupted by a process of ranking and sale at the instance of the other creditors of the debtor, or by a mercantile sequestration of his estates. [See *Beveridge*, 17 Jan. 1829, 7 S. 279; *Simson*, 25 Nov. 1831, 10 S. 66.] But the precautions which are necessary to secure a fair sale, at an adequate price, must be punctually observed; and the Court of Session, at the suit of any party having interest, will interpose and order all reasonable precautions to be taken. The creditor with a power of sale is, to a certain extent, held to be a trustee for the debtor, bound to act with due regard to his reversionary interest; and hence the court holds that it can competently interfere *ex æquitate*, where the creditor is proceeding nimiously, or with undue selfishness, in the exercise of the power of sale. [See *Bell's Com.* ii. 270; *Bell's Princ.* § 891; *Menzies' Conv.* 851; *M. Bell's Conv.* ii. 1164. See *Heritable Securities.*]

**PRACTICKS.** The reported decisions of the Court of Session were anciently called *Practicks*, on account of their authority in fixing and proving the practice and consuetudinary rules of law. See *Decisions.*

**PRÆCEPTIO HÆREDITATIS.** See *Passive Titles.*

**PRÆCIPUUM.** See *Heirs-Portioners.*

**PRÆDIAL SERVITUDES**; are real servitudes, affecting heritage, and taking the name from *prædium*, a tenement of land or houses. See *Servitudes.*

**PRÆDIAL TITHES**; are tithes arising from land, in contradistinction to the tithes arising from animals. See *Teinds.*

**PRÆMUNIRE**; is the forfeiture of lands and tenements, goods and chattels, and imprisonment during the Sovereign's pleasure. The term is derived from *præmunire*, an ancient English writ, introduced for the purpose of repressing the papal encroachments on the power of the Crown. It was authorised by statutes passed with a view to extinguish that power; and from the first words of the writ, *præmunire facias*, both the writ and the punishment received the name of a *præmunire*. Persons who, by preaching, teaching, or advisedly speaking, maintain that any person has right to the Crown of these realms, otherwise than according to the Act of Settlement, or that the King (or Queen) of this realm, with the authority of Parliament, is not competent to make laws to bind the Crown and the descent thereof, subject themselves to the penalties of *præmunire;* 6 Anne, c. 7. And by c. 23, it is declared to be a *præmunire* for the Peers of Scotland, assembled to elect their representatives, to presume to treat of any matter but the election. [The word is said to be a corruption of *præmoneri; Ducange, sub voce.*] See *Hume*, i. 531; *Tomlins' Dict. h. t.;* [*Stephen's Com.* iv. 187.] See *Election Law*.

**PRÆPOSITOR.** See *Institor*.

**PRÆPOSITURA OF A WIFE.** Where a wife is *præposita negotiis* by her husband—that is, intrusted with the management either of a particular branch, or of his whole affairs—all the contracts she enters into, and even the debts due by her for goods, though not constituted by writing, but arising from furnishings made to her, are effectual against the husband, though not against herself; for she acts for her husband. This power given to the wife may be constituted either by a written factory, or tacitly by use, where the husband has seen and approved of her actings. The wife, in domestic matters, is presumed, while she resides with her husband, to be *præposita negotiis domesticis* —that is, invested with the management of the family—in which character she may purchase whatever the family requires; and the husband will be liable for the price, though the article may have been otherwise applied, or although the husband may have given his wife money for the purchase. [In *Hamilton*, 22 Feb. 1825, 3 S. 572, the contracts of a daughter, who managed her father's household, were sustained against the father, and the same rule would hold with regard to any other housekeeper; see *Fraser on Husb. and Wife*, i. 605. Only such goods and articles as can be considered necessary for the aliment of the family, come within the *præpositura;* the word "aliment," however, must be taken in a comprehensive sense, including food, clothing, medicine, medical attendance, and furniture; *Fraser*, i. 607. The wife is entitled, in virtue of the *præpositura*, to hire domestic servants; [*ib.* 619. The furnishings to the wife must be such as are suitable to the condition and circumstances of the husband; the latter is not liable for any excess, unless he have assented, expressly or by implication, to the contraction of the debt. The wife's separate estate is not liable for debts falling within the *præpositura*, even though the husband be bankrupt; *Sandilands*, 30 May 1833, 11 S. 665.] When money is borrowed by the wife in the character of *præposita negotiis*, the lender must show both that it was needed at the time, and expended on necessary furnishings. The wife's presumed right to superintend her husband's family ceases if she abandon her family, and may be put an end to at the pleasure of the husband by inhibition, [or by private notice to individual tradesmen; *Buie*, 23 Feb. 1827, 5 S. 464. The constitution of a debt may competently be referred to the oath of a wife as *præposita;* but it has been said that the resting owing must be referred to the oath of the husband; *per* Lord Young, in *Mitchells*, 16 Dec. 1882, 10 R. 378. The contrary, however, was found in *Young & Co.* 1802, M. 12486; see *Guthrie's Bell's Princ.* § 1566.] See *Ersk.* B. i. tit. 6, § 26; *Stair*, B. i. tit. 4, § 17; *More's Notes*, xxii.; *Bell's Com.* i. 50; *Bell's Princ.* § 1565; [*Fraser on Husband and Wife*, i. 604. See *Inhibition against a Wife. Marriage.*]

**PRÆPOSITUS**; was the head of a collegiate church, under whom were canons or prebendaries, so called because they had a stated portion or *præbenda*, each according to his degree in the church. *Ersk.* B. i. tit. 5, § 3.

**PRÆVENTO TERMINO**; an obsolete form of action, formerly in use in the Court of Session, and resorted to by a charger against whom a bill of suspension had been presented. The object of this action was to defeat a device sometimes fallen upon by the suspender, who, in order to obtain delay, got a distant day of compearance assigned in the deliverance on the bill of suspension; and as the suspender could not insist to get the reasons of suspension discussed until the day of compearance specified in the deliverance had arrived, the object of the action *prævento termino* was to accelerate the term for discussing the suspension or advocation, by getting an earlier day fixed. The present forms of the Bill-Chamber supersede the necessity of such an action, and it has been long disused. *Ersk.* B. iv. tit. 3, § 21; *Bank.* ii. 623. See *Suspension*.

**PREAMBLE** *of a statute;* is the narrative, which recites the inconveniences which it is the object of the new enactment to remedy. [In the event of ambiguity in the enacting clauses, but not otherwise, the terms of the preamble may be looked to for aid in construction.] See *Ersk.* B. i. tit. 1, § 49; *Stair*, B. iv. tit. 45, § 13; [*Dwarris on Statutes*, 503; *Maxwell on Statutes*, 52; *Wilberforce on Statutes*, 277.] See *Statute.*

**PREBEND**; in the Episcopal Church, is a benefice appropriated for the maintenance of a clerk, or member of a collegiate or cathedral church. The *prebendary* is the clerk or clergyman, and is one of the chapter or council of the dean who enjoys the benefice. *Stair*, B. ii. tit. 8, § 15; *Ersk.* B. i. tit. 5, § 3; *Bank.* i. 558; ii. 6.

**PRECARIÆ**; were agreements by which proprietors yielded up their lands to the Church, and received them back on payment of a rent, which varied according to circumstances. The form of a *precaria* is given in *Bell on Leases*, i. 7. See also *Hunter's Landlord and Tenant*, i. 38.

**PRECARIUM**. The contract of *precarium* is a gratuitous loan, in which the lender gives the use of the subject in express words, revocable at pleasure. In such a loan, the lender is entitled to demand back the subject lent at any time; and as the borrower is thus at all times bound to redeliver it, he is liable for its preservation only *de dolo et culpa lata*—that is, for gross omissions or culpable negligence. But if, after the subject has been demanded, the borrower delays to return it, he must make it good, should it be destroyed even by accident. On the death of the borrower the loan terminates, and his heir must account for the profits while the subject of the loan continues in his possession. But the death of the lender does not put an end to the loan, nor does it terminate until the article is demanded by the heir of the lender. *Ersk.* B. iii. tit. 1, § 25; *Stair*, B. i. tit. 11, § 10; *Bank.* i. 327; *Bell's Princ.* § 195. See *Loan. Mutuum. Commodate.*

**PRECEPT OF ARRESTMENT**; is a warrant issued by the judge of an inferior court, authorising the officers of court to arrest for the amount of the debt contained in the decree to which the precept refers, in the hand of any person residing within the jurisdiction of the judge. See *Arrestment.*

**PRECEPT OF CLARE CONSTAT.** See *Clare Constat.*

**PRECEPT OF POINDING.** See *Poinding.*

**PRECEPT OF SASINE.** A precept of sasine is the order of a superior to his bailie to give infeftment of certain lands to his vassal. Prior to the act 1672, c. 7, the precept of sasine was a separate deed from the grant or charter; but that act required that in all Crown charters the precept should be inserted before the conclusion of the charter; and thenceforward the practice prevailed, of inserting the precept immediately before the testing clause of the charter or other deed in which the grant or conveyance is made. The precept is in the form of a mandate authorising a mandatory, whose name is left blank, and who is appointed bailie in that part, to give infeftment to the vassal in the lands described in the deed. But, as such mandates fell by the death of either the granter or receiver, that great practical inconvenience was removed by the act 1693, c. 35, which declares a precept of sasine to be a sufficient warrant for giving sasine as well after as before the death either of the granter or grantee, or both, provided the sasine taken after the death of either party deduce the title of those in whose favour the sasine is given. The unexecuted precept of sasine may be assigned. Precepts of sasine are contained not only in original charters and charters by progress, but in dispositions by sellers to purchasers, even though it is not meant that the purchaser should be the vassal of the seller; but this peculiarity in our practice has been explained under the articles *Disposition. Charter. Confirmation. Consolidation.* [The precept of sasine is now unnecessary in any charter or conveyance; 31 & 32 Vict. c. 101, § 5. If it should still be inserted, a short statutory form is provided by 8 & 9 Vict. c. 35. The modern changes in the law as to infeftment are explained in the articles *Infeftment. Sasine. Registration.*] See *Ersk.* B. ii. tit. 3, § 33; *Stair, App.* § 1; *Bell's Com.* i. 716, 735; *Bell's Princ.* §§ 764, 876; *Kames' Stat. Law Abridg. h. t.; Bell on Purchaser's Title*, 71–4; *Ross's Lect.* ii. 131, 161; [*Menzies' Conv.* 559; *M. Bell's Conv.* i. 577, 646, 692; *Duff's Feudal Conv.* 96.]

**PRECEPT OF WARNING AND REMOVING.** See *Warning. Removing.*

**PRECOGNITION**; in criminal law, is an examination by the judge ordinary or justices of peace, usually conducted under the superintendence of the procurator-fiscal, where any crime has been committed, in order that the facts connected with the offence may be ascertained, and full and perfect information given to the public prosecutor, to enable him to prepare the libel and carry on the prosecution. In this investigation, which is entirely *ex parte*, the witnesses are not usually put upon oath, and they must be examined separately; nor is the accused, or any person on his behalf, admitted to be present when the precognition is taken. [In practice, unless a witness is to be put on oath, the precognition is generally taken by the procurator-fiscal alone.] The precognition should be reduced to writing, and signed by the witnesses, according to their usual mode of spelling; and their correct and full designation should be inserted at the commencement of their declaration. [The statement, on precognition, of a deceased witness cannot be proved by the evidence of the procurator-fiscal; *Kenny or Lynch*, 13 Sept. 1866, 5 Irv. 300. In *Robertson*, 3 Nov. 1873, 2 Coup. 495, the prosecutor was allowed to cross-examine a witness for the defence as to whether he had made a different statement in precognition from that which he had made on oath at the trial. But in general it is incompetent to contradict a witness by what he said in precognition. See *Hume*, ii. 81, 376; *Alison's Prac.* 134; *Ersk.* B. iv. tit. 4, § 86; *Macdonald*, 279, 483; *Dickson on Evidence*, §§ 271, 321, 1590, 1654; *Kirkpatrick's Digest*, §§ 38, 189.] See *Procurator-Fiscal. Criminal Prosecution.*

In precognoscing witnesses preparatory to a jury trial [or a proof] in a civil cause, the agent ought to avoid everything likely to raise objections against their admissibility. He should confine himself to the asking of questions, and ought not to give or read to the proposed witnesses any parts of the process, or communicate to them any version of facts of his own, or state to them the nature of the action, the views of it favourable to his client, or the respective pleas of the parties. If the precognition is reduced into writing, it should not be subscribed by or read to the witness, or given him to read. Affidavits should not be taken from witnesses, nor should they be precognosced upon oath. Neither ought one witness to be present at the precognition of another. But it was held not to be a good objection to a witness, that she had been precognosced in presence of her husband, who was also a witness, it having appeared that his presence was accidental; [*Kerrs*, 1830, 5 Murray, 145. [Precognition after citation was formerly a ground of exclusion of a witness; *Hinshaw*, 12 Dec. 1846, 9 D. 251. But this was altered by 15 Vict. c. 27, § 1. It is not competent to contradict a witness by proof of what he said on precognition; see *Emslie*, 20 Dec. 1862, 1 Macph. 209. Notes of the precognition of a deceased person are not receivable as evidence; *Graham*, 8 March 1865, 3 Macph. 617.] See *Macfarlane's Jury Prac.* 114; [*Ersk.* B. iv. tit. 2, § 25; *Dickson on Evidence*, §§ 1589, 1628.] See *Evidence.*

**PRE-EMPTION, CLAUSE OF.** See *Clause of Pre-emption.*

**PREFERENCES**; take place in the different competitions of titles and diligences, as adjudications, inhibitions, arrestments and poindings, which are regulated by certain laws peculiar to each, and by which their priority is determined. See *Competition. Hypothec. Privileged Debt. Bankruptcy. Conjunct and Confident.*

**PREGNANCY.** A woman who conceals her pregnancy, and does not call for help in the birth, and whose child is amissing, was held under the act 1690, c. 21, to be guilty of murder. [But that act was repealed, and the punishment of the offence of concealment was greatly modified, by 49 Geo. III. c. 14.] See *Concealment of Pregnancy.* Where a pregnant woman is convicted of a capital crime, sentence will be delayed; or, if sentence have been pronounced, the execution of it may be suspended until after the birth of the child; *Hume*, ii. 452. Pregnancy, where the child, if born, would be the heir to an estate, will stop a service by a remoter heir; and the child *in utero* will not only be presumed to be in life, but will be presumed to be a male. *Ersk.* B. iii. tit. 8, § 76. See *Posthumous Child. Service.*

**PRELACY.** See *Episcopacy.*

**PRELIMINARY DEFENCES.** See *Defences Reduction.*

**PREMISES**; is properly an English law term, and is said to be "that part in the beginning of a deed the office of which is to express the granter and grantee, and the land or thing granted." It is further said, that no person not named in the premises can take any "thing by the deed, though he be afterward named in the *habendum.*" This term has no such acceptation in the law of Scotland; but, with us, the term *premises* is applied generally to the subject-matter of the deed, and sometimes it is used to signify the lands or houses which are the subject of the right or conveyance. See *Tomlins' Dict. h. t.; Ross's Lect.* ii. 141, 231, 344.

**PREMIUM OF INSURANCE.** See *Insurance.*

**PREMONITION**; the first step, [according to the old practice,] in the order of redemption against a wadsetter or heritable creditor. The premonition was an act of the law, whereby the reverser or his procurator gave notice to the wadsetter, under form of instrument, to appear at the time and place pointed out by the clause of redemption, and then and there to receive payment of the debt. *Ersk.* B. ii. tit. 8, § 17; *Stair*, B. ii. tit. 10, §§ 15, 17; B. iv. tit. 5, § 1; *Bank.* ii. 226; *Ross's Lect.* ii. 362. See *Wadset.*

**PREROGATIVE.** The royal prerogative, in a large acceptation, includes all those rights of which by law, the Sovereign (as exercising the executive powers of government) is possessed. The Sovereign, by virtue of the prerogative, is exempted from all taxes collected personally from the subject, and not mingled with the price of the commodity before it is known by whom it is to be used. Hence, an express sent on Government service is not liable to pay post-horse duty. In like manner, in virtue of the royal prerogative, royal palaces are privileged against the intrusion of the officers of the law, to execute civil process against the effects of persons having the use of apartments therein. *Tomlins' Dict. h.t.; Bank.* ii. 666; [*Stephen's Com.* ii. 492.] See *King. Government. Sanctuary.*

**PREROGATIVE PROCESS.** See *Crown Debt. Extent.*

**PREROGATIVE COURTS**; [the courts of the provinces of Canterbury and York, presided over by judges appointed by the respective archbishops. These courts had testamentary jurisdiction in cases where the deceased had *bona notabilia* (or goods above the value of £5) in each of two or more different dioceses. The jurisdiction of these courts has become practically obsolete since, by the Probate Act of 1857 (20 & 21 Vict. c. 77), the testamentary jurisdiction of the ecclesiastical courts was transferred to the Court of Probate. *Mozley & Whiteley's Dict. h. t.; Stephen's Com.* ii. 206.]

**PRESBYTERY**; one of the judicatories of the Church of Scotland. A presbytery includes a number of parishes, the number varying according to circumstances. The General Assembly has power to disjoin and erect presbyteries at pleasure. In order to get a new presbytery erected, or to have one or more parishes disjoined from one presbytery and annexed to another, a petition is presented to the General Assembly, or a representation is made to it, setting forth the circumstances which make these objects desirable. The Assembly makes the necessary inquiries, and judges accordingly. There are at present [eighty-four] presbyteries in the Church of Scotland. Each parish within a presbytery sends a minister and a lay elder to the presbytery; and the professors of divinity (if ministers) in any university within the bounds of the presbytery, are also members. A moderator of the presbytery, who must be a minister, is chosen twice a year, at which times the roll is made up. The functions of the presbytery are, to judge in the references for advice, and the complaints and appeals which come from the kirk-sessions within the bounds; to grant licences to preach the gospel, and to judge of the qualifications of those who apply for them. It also belongs to presbyteries to receive and investigate charges against the characters of ministers. See *Fama Clamosa.* [And when a libel has been found relevant against a minister, the presbytery may require him to abstain from the discharge of his functions, until the case is finally disposed of; 26 & 27 Vict. c. 47, § 1. The same act empowers a presbytery to appoint an assistant to discharge the duties of any minister who may have become insane, or have been suspended from the discharge of his office (§§ 2, 3). By 37 & 38 Vict. c. 82, § 7, if, on the occasion of a vacancy in any parish, no appointment of a minister is made by the congregation within six months after the vacancy has occurred, the right of appointment devolves upon the presbytery. See *Patronage.* Presbyteries had formerly the superintendence of the parochial and other schools of the district; but this function was transferred to the school boards by the Education Act, 1872 (35 & 36 Vict. c. 62, § 23). See *Schools.*] Presbyteries have the power of meeting when they please; but it is necessary, before the meeting is closed, to resolve when the next meeting is to be held, and to enter this resolution in the minutes. [Should this be omitted, a special meeting of the whole presbytery must be called by the moderator, on the requisition of three or more members; and if a quorum then assemble, a day may be fixed for the next ordinary meeting; Act x. Ass. 1863.] A *pro re nata* meeting of presbytery is called by the moderator either *ex proprio motu*, when anything has occurred which appears to him to require the assembling of the presbytery before the time of the ordinary meeting, or on application made to him by some of the members of presbytery, with a statement of the grounds on which the application is made. No other business but that for which the *pro re nata* meeting has been called can be transacted at such meeting. The clerk and officer of the presbytery are of its own appointment. [As to the title by which a presbytery sues and is sued, see *Buist*, 14 Feb. 1856, 18 D. 596; *Clark*, 14 Jan. 1839, 1 D. 595.] See *Hill's Theological Institute*, 214; *Hill's Church Prac.* 40; *Gillan's Acts of Assembly*, 209; *Ersk.* B. i. tit. 5, § 24; *Connell on Parishes*, 249, 253; [*Cook's Styles*, 52; *Duncan's Par. Eccl. Law*, 604; *Black's Par. Eccl. Law*, 150; *Mair's Church Laws*, 89; *Rankine on Land-Ownership*, 644.] See *Church Judicatories. Manse. Glebe. Designation. Deposition.*

**PRESCRIPTION.** Prescription has been said by lawyers to be a method both of acquiring and of losing a right. Hence it has been divided into *positive* and *negative;* the former being the mode of acquiring property, or rather of protecting the right from further challenge, by reason of the possessor's having continued his possession for the legal period: the latter, which is the converse of the former, is the loss of a right by neglecting to follow it forth, or use it during the whole time limited by law. In the article *Limitation*, the distinction drawn by some writers between the loss of rights by prescription, properly so called, and the loss by limitation, has been adverted to. In the present article it will be sufficient, with reference to each particular prescription, to state whether it is classed as a prescription proper or a limitation. The subject will be briefly considered here under the following arrangement :—

I. Of the Positive Prescription.
II. Of the Negative Prescription.
III. Of the Lesser Prescriptions; as
1. *Of the Vicennial Prescription.*
2. *Of the Decennial Prescription.*
3. *Of the Septennial Prescription.*
4. *Of the Sexennial Prescription.*
5. *Of the Quinquennial Prescription.*
6. *Of the Triennial Prescription.*
IV. Of the Currency of Prescription, and of its Interruption.

### I. Of the Positive Prescription.

The positive prescription was introduced by the act 1617, c. 12, which, on the preamble of the inconveniences arising from the loss of titles, and the danger of forgery, after the means of improbation are lost by the lapse of time, and the numerous lawsuits which are thus engendered, enacts that whatever heritages the lieges, their predecessors and authors, have possessed by themselves, or others in their names, lands, annualrents or other heritages, peaceably, in virtue of infeftments, for the space of forty years, continually and together, from the date of their said infeftments, and without any lawful interruption therein, during the said space, such persons, their heirs and successors, shall never be troubled, pursued, nor inquieted in the heritable right and property of the said heritages, by their superiors or others pretending right to the same by virtue of prior infeftments, or any other ground except forgery; provided they be able to show a charter of the said lands preceding the said forty years, with the instrument of sasine following thereon; or where there is no charter extant, that they show instruments of sasine, one or more, continued and standing together for the said space of forty years, either proceeding upon retours, or upon precepts of *clare constat;* which rights (being clad with forty years' continual and peaceable possession without interruption) shall be valid and sufficient rights for enjoying the said heritages. Such is the nature of the enactment on which the positive prescription is founded. [" Under the statute, as it has been interpreted by decisions, forty years' possession on the requisite titles recorded in the appropriate register is sufficient, in the first place, to secure an owner against any one alleging a better title; secondly, to determine the extent of the estate where a question arises either as to what is comprehended under a general or particular description as distinct from a description by boundaries and measurements, or as to whether a specific piece of property has been carried under a clause of parts and pertinents; and, thirdly, to merge a title of property in the higher title of superiority;" *per* Lord Shand, in *Buchanan and Geils*, 20 July 1882, 9 R. 1218, 1234. Uninterrupted and exclusive possession of lands for forty years under a charter and sasine containing a description which can be so construed as to embrace the whole lands, [though it may also be construed so as to embrace part of them only, is sufficient to exclude all inquiry, and to protect the person in possession against any one holding even an express title, prior in date, to the whole or any part of the lands; *Auld*, 5 March 1880, 7 R. 663.] The positive prescription extends to all heritable subjects, even to tacks and servitudes, which do not require nor admit of sasine; and as to those rights which do not require sasine, forty years' possession is by itself sufficient. The possession must, by the words of the statute, be continued from the date of the infeftments; but practice has explained this to mean possession as far back as memory can go; for where there is evidence of possession, consistently with the terms of a sasine, as far back as memory goes, without evidence of any interruption, the presumption of law is, that it must have reached to the date of the sasine. See *Immemorial*. In this question, the possession of the liferenter is that of the fiar; *Neilson*, 26 Feb. 1823, 2 S. 247; [*Shepherd's Trs.* 21 July 1847, 6 Bell's App. 153.] It seems to have been the idea at one time, that the possession must have stood during the whole space of the forty years on infeftments; but that has been explained more consistently with the expressions of the statute in the case of *Caitcheon*, 1791, M. 10810, in which it was held that possession by an apparent heir uninfeft was possession under the sasine of the ancestor, within the meaning of the statute, and therefore was to be computed as part of the forty years, contrary to the former opinion on that point; *Ersk.* B. iii. tit. 7, § 5; [see also *Neilson, supra; E. Glasgow*, 28 Jan. 1887, 14 R. 419.] The possession must be uninterrupted; there must be neither an instrument of protest nor an attempt on the part of those claiming the subject to enter into possession; this is expressly required by the act. [The possession must be co-extensive with the right claimed; *tantum præscriptum, quantum possessum; L. Lovat*, 27 Feb. 1880, 7 R. (H.L.) 122; *Merchant Co. of Edinr.* 14 Dec. 1883, 11 R. 320.] With regard to the titles to be produced, a distinction is made between the case of an heir and of a purchaser. The purchaser must produce not only a sasine, but the disposition in his own favour, or in favour of his author, on which it proceeds, dated previously to the forty years' possession; the heir is required to produce only sasines, one or more. The forty years being elapsed, it is only requisite that the charter and sasine, or, in the case of an heir, the sasine alone, shall be regular and valid deeds. Whether the title of the granter was good, or whether a preferable title is not now in competition, are questions which will not be entertained. It is sufficient that the title of possession is *ex facie* regular, and that it has been followed by forty years' possession, to silence all possible objections, save that of fraud in the titles; for where the titles have been forged or fabricated, they cannot be the ground of prescription. [As to whether prescription could be founded on a deed signed by one instead of two notaries, see contrary opinions in *Glen*, 15 Dec. 1881, 9 R. 317.] An adjudication with sasine is a good title to ground prescription; and if followed by forty years' possession, it confers an effectual and irredeemable right. It is not competent, after forty years' possession has followed upon a title *ex facie* absolute, to allege that the right originally flowed from a title qualified with a power of redemption. See *Adjudication*. A clause of part and pertinent may form a prescriptive title to a subject not specially named in the charter. And titles to a barony form a sufficient title on which to acquire by prescription a right of property in an island situated in a river opposite to it, as part and pertinent, though the island be included *per expressum* as a separate tenement in the titles of a third party; *Mags. of Perth*, 19 Nov. 1829, 8 S. 82. See also *E. Fife's Trs.* 16 Jan. 1830, 8 S. 326, and 25 Jan. 1831, 9 S. 336. See *Part and Pertinent*.

[The Conveyancing Act, 1874 (37 & 38 Vict. c. 94, § 34), simplified the title necessary for prescription by declaring that "any *ex facie* valid irredeemable title to an estate in land recorded in the appropriate register of sasines shall be sufficient foundation for prescription;" and shortened the prescriptive period by enacting that "possession following on such recorded title for the space of twenty years continually and together, and that peaceably, without any lawful interruption made during the said space of twenty years, shall, for all the purposes of the act 1617, c. 12, be equivalent to possession for forty years by virtue of heritable infeftments, for which charters and instruments of sasine or other sufficient titles are shown and produced, according to the provisions of the said act." The same section further enacts that if such possession following on such [recorded title have continued for thirty years, no deduction is to be made on account of minority or legal incapacity of any person against whom prescription is used or objected. The provisions of this section, however, are declared not to apply to or affect "the existing law relating to the character or period of the possession, use, or enjoyment necessary to constitute or prove the existence of any servitude or of any public right of way or other public right." The effect of this enactment is to substitute twenty for the forty years required by the act 1617, c. 12, for all the purposes of the latter act, as interpreted by the decisions; *per curiam* in *Buchanan and Geils*, 20 July 1882, 9 R. 1219. An adjudication, even when followed by decree of declarator of expiry of the legal, is not an "irredeemable title," and therefore requires forty years, as formerly, for prescription; *Hinton*, 6 July 1883, 10 R. 1110. In counting the years of possession with reference to the plea of minority, only those years are to be deducted during which the minor was *verus dominus*, with a vested interest; *Black*, 18 Feb. 1881, 8 R. 497. The plea of *non valens agere* has no application to the positive prescription, save in the case of prescription upon double titles (*infra*); *M'Neill*, 4 March 1858, 20 D. 735 (correcting *Bell's Princ.* § 2023).]

When one has more than one title in his person, it is sometimes of importance to determine on which title he is to be held as having possessed during the years of prescription. This question depends very much upon the circumstances of the case, as whether the holder of two titles is under any obligation to adopt either of them in preference to the other,—whether he has shown an obvious intention to possess upon one title rather than upon the other,—which of the titles is more beneficial, &c. A person having more than one title in his person is to be held as possessing on them all, to the effect of preserving his own right. [Where the titles are equally beneficial, he is presumed to possess on that which he is under an obligation to adopt. Where one title is more beneficial than another, possession *in dubio* is to be ascribed to the more beneficial title. Hence when a party having right to lands under two different titles, the one limited (by entail) and the other absolute, completed his title under the latter and possessed upon it for forty years, the former, though the preferable and governing title, was extinguished by the negative, and the absolute title was established by the positive prescription; *M'Dougal* (Mackerston), 1739, M. 10,947; "the reason being, that any one of the substitutes might have stopped the possession on the absolute title, by calling upon the possessor to make up titles under the limited investiture;" *Rankine on Land-Ownership*, 57. See also *E. Glasgow*, *supra*, 14 R. 419. But where a person having a similar double right, did not complete his title under either, but possessed on apparency for forty years, his possession was ascribed to the entail, that being the *lex feudi*, and the only title on which he could lawfully possess; *Welch-Maxwell*, 1808, M. App. Prescription, No. 8. Where both titles are unlimited, but they contain different destinations, one being the last investiture and the other a personal title, and the heir neglects the latter and completes his title under the investiture, the personal remains the governing title, because prescription is impossible; *Smith & Bogle*, 1752, M. 10803.] It has been already observed that prescription runs in favour of heritable rights, though not feudal. A party holding a fee-simple assignation of a lease in his own favour, and being also institute under an entailed assignation, granted by the same party of the same lease, and having enjoyed possession of the subjects for forty years, and done certain acts, referring his possession to the fee-simple assignation, was held to have acquired a prescriptive fee-simple right, the entailed assignation being held extinguished. The same party having right in fee-simple, as heir of his father, to the lease of another subject, and also as institute under an entailed assignation made by his father, and having possessed for more than forty years, his possession was imputed to the entailed assignation, and he was held not to have acquired a prescriptive right under the fee-simple title; *Maule*, 4 March 1829, 7 S. 527, and App. [As to prescription on double titles,] see *Bell's Princ.* § 2019; *Ersk.* B. iii. tit. 7, § 6; [*Ersk. Princ.* (17th ed.), 475; *Rankine*, *supra cit.*; *Ross's L.C.* ii. 577; iii. 510.] And on positive prescription generally, see *Ersk.* B. iii. tit. 7, § 2; *Stair*, B. ii. tit. 12, § 19; *More's Notes*, cclxxvi.; *Bank.* ii. 159; *Bell's Princ.* § 2002; *Kames' Princ. of Equity* (1825), 35, 355–6; *Kames' Stat. Law Abridg. h. t.* 239; *Sandford's Heritable Succession*, ii. 124–174; [*Napier on Prescription*; *Rankine on Land-Ownership*, 23.]

II. Of the Negative Prescription.

The negative prescription of obligations, by the lapse of forty years, was first introduced by the statute 1469, c. 29 [or 28,] which declares that the person having interest in an obligation shall follow the same within the space of forty years, and take document thereupon; and if he does not, that it shall prescribe and be of no avail. This enactment was repeated and enforced by the act 1474, c. 55 [or 54.] These acts were at first confined to simple obligations. Practice, however, extended this prescription to mutual obligations; and the act 1617, c. 12, included heritable bonds and other heritable rights. The act 1617, c. 12, ordains "that all actions competent by law upon heritable bonds, reversions, contracts, or others whatsoever, either already made or to be made, after the date hereof, shall be pursued within the space of forty years after the date of the same, except the said reversions be incorporate within the body of the infeftments produced by the possessor of the lands, for his title of the same, or registered in the Clerk Registrator's books; in which case, seeing all suspicion of falsehood ceases, the actions on the said reversions should be perpetual, excepting actions of warrandice, which shall not prescribe from the date of the bond or infeftment, but only from the date of the eviction, from which date the forty years shall run." And it is further declared, "That in the course of the forty years' prescription, the years of minority and less-age shall in nowise be counted, but only the years during which the parties against whom the prescription is used and objected were majors, and past twenty-one years of age." The principle of this prescription is grounded on the same salutary reasons on which the positive prescription is founded; and the object of both is to free parties from the effect of rights which may evict property, and from claims of debt, after such a lapse of time as, from the age of the title or of the voucher, may be likely to introduce fraud or forgery; or where, although the debt may have once existed, yet it may have been discharged, and all traces of the discharge of it lost. The negative prescription does even more; for it not only presumes the debt to have been extinguished, but considers the silence for forty years as a dereliction of the debt on the part of the creditor, and refuses to raise it up, even were the debtor to acknowledge that it never had been paid; or that he did not know whether it had been paid or not. The lapse of the forty years, in short, raises a *præsumptio juris et de jure* against the existence of the debt tantamount to the most formal discharge. The act declares, that the years of prescription shall commence from the date of the obligation; but on the principle that the loss of the debt is the penalty of the creditor's negligence, practice has made the currency of the prescription commence from the term of payment as the period at which the negligence of the creditor commences; and the payment of interest, or even a partial payment of the debt, interrupts this prescription. See *Partial Payment.* In the case of obligations, this produces no difficulty; the debtor is entitled to plead the negative prescription. But as this prescription has been extended so as to strike against actions competent on heritable securities, and other claims on heritage not sued within the forty years, questions of nicety have arisen as to what persons are entitled to plead the prescription.

[The correlation of the doctrines of positive and negative prescription has been obscured by confused and misleading *dicta* in the institutional writers (*e.g.*, *Ersk.* B. iii. tit. 7, § 8; *Bell's Princ.* § 2017). The following passages from opinions by Lord Corehouse and Lord Pres. Hope are generally accepted as clear and accurate statements of the law:—"There is no proposition better established than that the negative prescription cannot be pleaded directly against a right of heritable property. If it was otherwise, possession alone, without infeftment, would complete the right, contrary to the statute 1617, which requires a title as well as possession. I may possess a hundred years, but, if not infeft, any competitor who has neglected his right for that time, may competently establish it, if his right is better than mine. What is the result? Not that the person who brings the challenge shall succeed because the negative prescription cannot be objected. But that both parties must produce their respective progresses, and compete upon them. . . . The negative prescription is of use, not in being objected directly against an heritable right of ownership, but in trying the validity of the competing progresses, and in getting rid of various objections which might otherwise have been competent. For example, A disposes to B, B to C, and so on. One of these dispositions is objected [to on the ground of forgery, or because it was impetrated by force or fraud. Now, all these objections are cut off by the negative prescription. For, although exceptions founded on *ex facie* nullities,—for example, that the deed is not subscribed, or that it is tested by only one witness, and the like, —are not barred, yet all objections not appearing *ex facie* on the deed are effectually cut off by the negative prescription;" *per* Lord Corehouse, in *Cubbison*, 29 Nov. 1837, 16 S. 112. "It has been frequently said that no man can plead the negative prescription, as affecting an heritable right, who cannot also plead the positive. But this is too loose; and the correct statement of the doctrine appears to be, that the negative prescription can be pleaded by any party to whom the positive prescription, if it had run, would have afforded a good title;" *per* Lord Pres. Hope, in *E. Dundonald*, 12 May 1836, 14 S. 737. See also *Chisholm*, 9 Dec. 1864, 3 Macph. 202 (Lord Deas, p. 225); *Kermack*, 27 Nov. 1874, 2 R. 156. This subject is carefully examined in *Napier*, chap. 3. An objection to a deed in respect of an erasure *in essentialibus* was held not to be affected by the negative prescription; *Shepperd*, 21 July 1847, 6 Bell's App. 153. As to loss of a right of patronage *non utendo*, see *Macdonell*, 26 Feb. 1828, 6 S. 600.]

Certain rights are not affected by the negative prescription; such as powers which one may or may not exercise, as he pleases (*res meræ facultatis*, as they are called), as a power or faculty to burden lands—the power of building on one's own property—a right of reversion when not limited in point of time, provided it appears in the original infeftment, or has been put on record. [See *Smith*, 13 June 1884, 11 R. 921.] Neither is the right of blood or title as an heir lost by not using it; and the heir may enter heir forty years after the right has opened to him. See *Jus Sanguinis*. The right to exact feuduties and casualties of superiority cannot be lost, though all arrears beyond forty years may be lost by silence during that time. A servitude may be lost by the lapse of the forty years. With regard to tithes, vicarage and parsonage tithes are not in similar circumstances: the smaller vicarage tithes are not universally due; the right to exact them is established by usage, and may be lost by contrary usage; and therefore they fall under the negative prescription. But parsonage tithes, which are due by law, cannot be lost by a neglect to demand them for any length of time, though the demand, when it is made, cannot extend to arrears beyond the forty years. In the same way, the right to an annuity, whether for life or for a certain period, will not be lost by the negative prescription, though each year's annuity will run the course of the negative prescription. [The negative prescription cannot run *contra non valentem agere;* hence, in reckoning the forty years, there must be deducted not only the years of minority, as above stated, but also any years during which the creditor may have been in a state of personal disability (not merely of difficulty), or of legal incapacity to sue. See *Graham*, 21 July 1846, 5 Bell's App. 172. It seems now to be settled, notwithstanding a doubt expressed by *Erskine* (B. iii. tit. 7, § 31), that the negative prescription runs against the Crown; *E. Fife's Trs.* 28 Feb. 1849, 11 D. 889; *Deans of Chapel Royal*, 18 March 1869, 7 Macph. (H.L.) 19. See *King*.] On the negative prescription, see *Ersk.* B. iii. tit. 7, §§ 8–15; *Stair*, B. ii. tit. 12, § 12; *More's Notes*, cclxv.; *Bank.* ii. 165; *Bell's Com.* i. 352; *Bell's Princ.* § 605; *Kames' Princ. of Equity*, 356; *Kames' Stat. Law Abridg. h. t.; Sandford's Herit. Succession*, ii. 124, 177 to 186; [*Napier on Prescription.*]

### III. Of the Lesser Prescriptions.

One distinction between the positive and negative prescriptions of forty years and the lesser prescriptions is, that the long prescription is intended to give stability to heritable rights, and to put an end to all questions resulting from obscure and antiquated claims, as well as to sopite all claims which have been neglected for such a length of time; and therefore the principle on which those prescriptions rest is perfectly reconcileable with the idea of a better claim existing in the claimant than in the possessor. The long negative prescription operates as an extinction of the claim, without regard to any offer of proof that the claim is still undischarged. But in the shorter prescriptions, a different rule prevails; and where the existence of the debt or claim can be proved by the writ or by the oath of the debtor, the debtor will be bound. The object of the shorter prescriptions, in truth, is, generally speaking, to protect parties against the consequences of negligence in the preservation of vouchers; and, after the expiration of the period of the prescription, to change the *onus probandi*, and to restrict the mode of proof. But in no case has this been carried so far as to sopite a debt justly due, provided the prescribed mode of proof is followed. [See *Dickson on Evidence*, §§ 412 *et seq.*]

### 1. *Of the Vicennial Prescription.*

(1.) *Of Retours.*—By the act 1617, c. 13, a vicennial prescription of retours was introduced. Previous to that period, in consequence of the act 1449, c. 57, the right of an heir to reduce an erroneous retour was foreclosed by the lapse of three years; but, by this act (1617), the lawful heir is allowed to bring an action for setting aside an erroneous retour at any time within twenty years after the date of the retour. The words of the act are, "If the saids summonds of reduction be not intented, executed and pursued, before the expiring of the saids twenty years, that the said action of reduction of the said retour and service shall prescrive in the selfe, and no party be heard thereafter to pursue the same reduction." The previous act 1494 is continued, by 1617, c. 13, in so far as it affects the inquest, it being declared, that "hereafter it shall noways be lawful to pursue the persons of inquest for wilful error, except they be sued therefor within the space of three years next after the date of the said retour and service." It would appear that the lapse of the vicennial prescription does not protect the true heir against irregularities which may have occurred in his service; *Drummond*, 1793, M. 6936. If the person served heir be styled the second son, the prescription can be of no avail, since the retour is itself a mere nullity, proving *ex facie* that the person retoured cannot be the right heir; *Fullerton* (Bargany), 20 June 1825, 1 W. & S. 410. The vicennial prescription will not free one retoured as heir from his obligation to denude in favour of a nearer heir who subsequently comes into existence; *Mackinnons*, 1765, M. 5279. It has no operation against the heir himself; for when he finds it necessary to reduce his own retour, on the head of minority and lesion, he may insist in the reduction after the expiration of the twenty years; *Edinglassy*, 1700, M. 10989. In a more recent case, it was pleaded that the vicennial prescription is no bar to a reduction by a nearer heir, even although he was in existence at the time of the service; but it was found that the act establishes an absolute protection of retours against challenge by parties alleging themselves to be the true heirs, after the lapse of twenty years; *Neilson*, [19 March 1840 1 Rob. 94. See also *Campbell*, 26 Jan. 1848, 10 D. 461, where this prescription was held to apply to heirs of provision as well as of line; and *Rocca*, 2 Nov. 1876, 4 R. 70. In the Bargany case, the majority of the judges in the Court of Session expressed the opinion that the right to the character of heir, conferred by a service fortified by the vicennial prescription, is merely personal, and does not transmit any privilege to the heirs of the person served, nor affect the right of the true heir, after the death of the prescriber. But later authorities are contrary to this view, and it seems now to be settled that a singular successor may plead this prescription after the death of his author; *Neilson* and *Rocca*, *supra*. The object of the statute has been said to be "to secure the service from all challenge on the ground of error, from whatever source that error, *qua* error, arose;" *per* Lord Fullerton, in *Shedden*, 11 March 1852, 14 D. 721, 727. In contrasting and reconciling the provisions of this act (1617, c. 13), with those of the immediately preceding act (1617, c. 12), which established the general positive prescription, Lord Chanc. Cottenham, in *Neilson*, *supra*, after pointing out that under the 12th chapter there must be not only a possession of forty years, but a possession with an ostensible ground of title, observed:—"The provisions of the 13th chapter seem to me to be quite consistent with that title being good against all the world. By the 13th chapter it is only provided that the party served heir shall not be disturbed in his right as heir after twenty years, by any action brought by another person claiming only to be heir. But the heir may be disturbed by any person who comes in with a stronger title than that of mere heirship. It is quite consistent that those two parties, as between themselves, may be precluded from disputing as to their title after twenty years have elapsed, and yet that another party, should not by means of possession adversely acquire a title against all the world till the expiration of forty years. The statute in chapter 13 only provides that *quoad* the heirship, the service and retour of one party *qua* heir shall not be disputed by another party who merely comes in *qua* heir."

[This prescription is equally applicable to an extract decree of service, which is the modern equivalent of a retour; 10 & 11 Vict. c. 47, § 13; 31 & 32 Vict. c. 101, § 37. And in reference to the transmission, by § 9 of the Conveyancing Act of 1874, of a personal right to lands by the mere survivance of the heir entitled to succeed, it is provided by the same act that the right of any person to an estate in land acquired after 1st Oct. 1874 can only be challenged within twenty years after his infeftment as heir and his entering into possession; the date of infeftment being assumed, in the absence of contrary evidence, to be the date of entering into possession; § 13. See *Ersk.* B. iii. tit. 7, § 19; *Stair*, B. ii. tit. 12, § 35; *More's Notes*, cclxxi.; *Mackenzie's Works*, i. 378, 443; *Sandford on Heritable Succession*, ii. 37; *Bell's Princ.* § 2024; *Napier*, 857; *Rankine on Land-Ownership*, 63.]

(2.) *Of Holograph Writings.*—This is properly a limitation. By the act 1669, c. 9, bonds or other deeds in the handwriting of the obligant, to which no witnesses are adhibited, as also holograph missives, or books of accounts, prescribe in twenty years from their dates. [The act applies to any holograph writing on which an obligation can be founded; *Mowat*, 1 July 1856, 18 D. 1093.] But, under this statute, the pursuer may competently refer to the debtor's oath, in order to prove that the writing is holograph, and the subscription genuine; and, on his swearing in the affirmative, the obligation will be declared effectual, unless the debtor can prove that it was discharged. The verity of the handwriting may be referred even to the heir of the granter; but the oath of the debtor is the only mode of proof admissible. This prescription runs from the date of the writing, and does not run against minors. [It is a privilege of the defender, and must be pleaded; therefore, if he joins issue on a proof *prout de jure*, he will be bound by the result; *Wyse*, 2 July 1847, 9 D. 1405.] Some lawyers extend the vicennial prescription to obligations without witnesses below £100 Scots. Actions raised within the twenty years are, by 1685, c. 14, declared to fall if not awakened within five years from the time of their falling asleep; and these wakenings must be renewed every five years thereafter. *Ersk.* B. iii. tit. 7, §§ 26, 27; [*More's Notes*, cclxx.; *Bell's Com.* i. 346; *Bell's Princ.* § 590; *Napier*, 866; *Dickson on Evidence*, § 421.]

(3.) *Of Crimes.*—Where no sentence of fugitation has been pronounced, and no step has been taken to bring the offender to trial within twenty years after the commission of the crime, it would appear that the right to prosecute falls. See *Hume*, ii. 136; [*Napier*, 867.]

2. *Of Decennial Prescription.*

By the act 1696, c. 9, prescription of ten years was introduced in favour of tutors and curators; by which act it is declared, that all actions competent to minors against their tutors and curators, or to them against the minor, shall fall if not prosecuted within ten years from the expiration of the office, whether it has terminated by the majority or by the death of the minor. A curator neglecting to make up inventories does not forfeit the benefit of the decennial prescription; and an extrajudicial consent, after the years of prescription, to afford information respecting the affairs of a curatory, does not bar the plea of prescription; *Gowans*, 6 Dec. 1831, 10 S. 144. See *Ersk.* B. iii. tit. 7, § 25; *Stair*, B. ii. tit. 12, § 34; *More's Notes*, xliv., cclxxii.; *Bell's Princ.* § 635; [*Napier*, 854.]

3. *Of Septennial Prescription.*

This prescription applies—1. To the case of cautioners, [as to which see *Cautionry*;] and, 2. To the interruption of prescription. By 1669, c. 10, all citations used for the purpose of interrupting the prescription, either of real or of personal rights, must be renewed every seven years, otherwise they prescribe. This applies to mere citations; for, where the action is called in court and parties appear, the action continues in force for forty years, unless it be otherwise ordered by act of Parliament. The executions for interrupting prescription must be made by a messenger-at-arms; and by 1696, c. 19, all summonses for interrupting the prescription of real rights pass on a bill, stating all the grounds on which they proceed, and are registered within sixty days in a register kept at Edinburgh [now in the General Register of Sasines; 31 & 32 Vict. c. 64, § 15;] and no interruption of the prescription of real rights *via facti* is of force unless an instrument be taken on it, and the same be recorded in the same register, and within the same period. See *Ersk.* B. iii. tit. 7, § 44.

4. *Of Sexennial Prescription.*

This, which is properly a limitation, extends to bills and promissory-notes only, and was introduced by 12 Geo. III. c. 72, rendered perpetual by 23 Geo. III. c. 18, § 55. By these statutes it is declared that bills and promissory-notes shall not be effectual to produce diligence or even action, unless the same shall have commenced or been executed within six years from and after the term of payment of the bills or notes. From this enactment there is an exception of bank notes and post-bills. [The limitation does not affect the claim of recourse of one who signs an accommodation bill for another, nor to any claim of relief not rested on the obligation in the bill itself; *Jolly*, 28 May 1829, 7 S. 666; *Roy*, 14 June 1850, 12 D. 1028; *Buchanan*, 15 July 1840, 2 D. 1444.] After the expiration of the six years the creditor is permitted to prove the existence, [*i.e.*, both the constitution and the resting-owning,] of the debt by the writ or oath of the debtor, [and action ought then to be libelled upon the debt itself, as established by other proofs than the bill; *Stirling*, 4 March 1830, 8 S. 638. See also *Darnley*, 6 March 1845, 7 D. 595; *Kerr's Trs.* 16 Nov. 1883, 11 R. 108.] The years of the minority of the creditors are not computed in the six years. [The sexennial period is not interrupted by admissions of the debt nor by anything occurring during its currency, unless it amounts to something like a reconstitution of the debt; *Easton*, 16 Oct. 1873, 1 R. 23.] The six years of prescription run from the date at which the bill or note is exigible; that is, when the bill is payable at a fixed term, the last day of grace. When the bill is payable on demand, the prescription runs from its date; [and under the Bills of Exchange Act, 1882, (§ 10), a bill payable at sight or on presentation is a bill payable on demand. When a bill is payable at a certain period after demand or notice, the six years run from the expiry of that period; *Broddelius*, 4 March 1887, 14 R. 536.] See *Ersk.* B. iii. tit. 7, § 29; *More's Notes to Stair*, cccxxiii.; *Bell's Com.* i. 418; *Bell's Princ.* § 594; *Thomson on Bills*, 457; [*Napier*, 822; *Dickson on Evidence*, § 433; *Thorburn's Bills of Exchange Act*, 221.] See *Bill of Exchange.*

5. *Of the Quinquennial Prescription.*

This prescription is extended to the following cases:—

(1.) Arrears of rent in an agricultural lease prescribe within five years from the time of the tenant's removal from the lands; multures prescribe in five years after they become due; so do ministers' stipends; and the same rule is extended to the case of vacant stipend. All bargains concerning moveables, which may be proved by witnesses, as sales, locations, and other consensual contracts, to the constitution of which writing is not necessary, prescribe in five years. But these, even after the five years, may be proved by the writ or oath of the party. These prescriptions were introduced by the act 1669, c. 9. See *Ersk.* B. iii. tit. 7, § 20; *Stair*, B. ii. tit. 12, § 32; *More's Notes*, cclxxiii.; *Bell's Com.* i. 347; *Bell's Princ.* §§ 593, 634; *Hunter's Landlord and Tenant*, ii. 464; *Ross's Lect.* ii. 549; [*Napier*, 813; *Dickson*, § 472.] See *Arrestment.*

(2.) The right of appeal to the House of Lords formerly prescribed in five years from the time of signing, enrolling, or extracting of the decree, and the end of fourteen days, to be computed from the first day of the meeting of Parliament next ensuing the said five years. This is founded on a standing order of the House of Lords, of date March 24, 1725. But by 6 Geo. IV. c. 120, § 25, the time within which an appeal to the House of Lords may be entered is limited to two years from the day of signing the last interlocutor appealed from, and fourteen days as above. See *Appeal to House of Lords.*

[(3.) Inhibitions prescribe now in five years; 37 & 38 Vict. c. 94, § 42. See *Inhibition.*]

6. *Of the Triennial Prescription.*

This prescription extends to several cases, as—(1.) The act 1579, c. 81, has introduced a triennial prescription in actions of spuilzie, which is restricted to the violent profits proveable by the oath of the pursuer; for, in so far as the action concludes for mere restitution, it may be brought at any time within the forty years. By this act, actions of ejection at the instance of the person violently dispossessed, and other actions founded on acts of violence, where the damages may be proved by the pursuer's oath *in litem*, are subjected to the same short prescription. *Ersk.* B. iii. tit. 7, § 16; [*Napier*, 710.]

(2.) By 1579, c. 83, [it is enacted that "all actions of debt for house mails, men's ordinars, servants' fees, merchants' compts, [and other the like debts, that are not founded upon written obligations, be pursued within three years, otherwise the creditor shall have no action except he either prove by writ or by oath of his party."] Under this description are comprehended debts due to artificers or tradesmen for their work or wages, accounts to writers, agents, surgeons. [The act does not apply to proper accounts current between merchants; *M'Kinlay*, 11 Dec. 1851, 14 D. 162; *M'Kinlay*, 18 Nov. 1885, 13 R. 210. Claims in respect of aliment furnished under a contract fall under the act; but not claims in respect of aliment due *ex debito naturali; Ligertwood*, 21 June 1872, 10 Macph. 832; *Thomson*, 26 Feb. 1842, 4 D. 833. As to what constitutes a "written obligation," excluding the application of the statute, see *Chalmers*, 19 Nov. 1878, 6 R. 199; *Chisholm*, 10 March 1883, 10 R. 760; *N. Brit. Railway*, 20 Dec. 1873, 1 R. 309. A pursuer is not barred by this prescription when his failure to sue timeously is due to the conduct of the defender; *Caled. Railway*, 17 March 1886, 13 R. 773. See enumeration of the kinds of debts which have been found to fall under the statute, in *Guthrie's Bell's Princ.* § 629, and *Dickson, infra cit.*] A distinction arises between house-rents, [servants' wages,] &c., and accounts. Each [term's rent or wage] runs a separate course of prescription; but in accounts the prescription does not begin to run till the date of the last article of the account, [provided it has not been made up by contrivance to elude the prescription; *Stewart*, 28 Feb. 1844, 6 D. 889; *Aytoun*, 4 Feb. 1882, 9 R. 631.] Those debts may be proved at any time after the expiration of the three years, by the oath of the debtor, or by any writing signed by him, acknowledging the debt, but not by partial payments. Proof is required, not only of the constitution, but also of the subsistence of the debt; [*Alcock*, 20 Dec. 1842, 5 D. 356. And this doctrine holds equally when the action is brought against the debtor's heir, whether the original debtor died before or after the three years had expired; *Cullen*, 12 July 1853, 15 D. 868 (overruling *Auld*, 7 July 1842, 4 D. 1487, and earlier cases). See also *Cowbrough*, 18 July 1879, 6 R. 1301. The act has been liberally interpreted in regard to proof by writ; *Macandrew*, 13 June 1851, 13 D. 1151; but contrast *Mitchell*, 16 Dec. 1882, 10 R. 378. A prescribed debt cannot be proved by the oath of a manager [for the defender; *Bertram*, 19 Dec. 1874, 2 R. 255. Difficult questions often occur, when the debtor's oath is qualified; as to which see *Evidence*, p. 416. See *Ersk.* B. iii. tit. 7, § 17; *Bell's Com.* i. 348; *Bell's Princ.* § 628; *Dickson on Evidence*, § 484; *Kirkpatrick on Evidence*, § 146; *Napier*, 714.]

(3.) By the act 1573, c. 82, actions of removing prescribe within three years from the term at which the tenant has been warned to remove.

(4.) By 1663, c. 6, where houses within a royal burgh have gone to ruin, and been uninhabited for three years, the magistrates may warn the proprietors to rebuild or repair them within a year; and on failure, the magistrates may value them by sworn appraisers, sell them by public roup, and deliver the price to the proprietors. [See *Ersk.* B. iii. tit. 7, § 18.]

(5.) By 1701, c. 6, no person can be prosecuted for wrongous imprisonment after three years, computed from the last day of the prisoner's confinement. See *Hume*, ii. 116.

(6.) By 7 Will. III. c. 3, § 5, high treason committed within the Queen's dominions suffers a triennial prescription, if indictment be not found against the offender by a grand jury within that time; *Ersk.* B. iv. tit. 4, § 110; [*Hume*, i. 545.]

[(7.) By 1669, c. 9, arrestments were made to prescribe in five years; and the period was reduced to three years by 1 & 2 Vict. c. 114, § 22. See *Jameson*, 18 March 1887, 14 R. 643. Arrestments used on a future or contingent debt prescribe in three years from the time when the debt becomes due and the contingency is purified. See also 30 & 31 Vict. c. 96, § 5. *Ersk.* B. iii. tit. 7, § 20. See *Arrestment.*]

### IV. Of the Currency of Prescription, and of its Interruption.

Prescription runs continually from its commencement to its close, disregarding holidays and times when there is no court sitting. Even those times when, from public disorder, there is a total surcease of justice, will not be deducted from the years of prescription, unless under the authority of a particular statute. The whole period of the prescription must have elapsed in order to give it effect. Hence, an interruption on the last day of the forty years will be effectual. From the currency of the long positive and negative prescriptions, the years of minority are deducted; but, with regard to the lesser prescriptions, the years of minority form no exception, unless where this is expressed in the act constituting the prescription. A remote heir-substitute under an entail is not entitled to have his minority deducted during the part of the prescriptive period during which he had no immediate right to the estate; *Maule*, 4 March 1829, 7 S. 527, and App. As the loss arising from the currency of prescription is considered as the penalty of negligence, the period of prescription does not run against one under a legal incapacity to sue, neither can prescription have its course against one who can, at the time, have no benefit by the suit. The currency of prescription may be interrupted in various ways; as by any act by which a proprietor asserts his right to property in the possession of another, or by which a creditor prosecutes for payment of a debt due to him, or where the debtor promises payment. It is interrupted by citation on an action, or by charge on letters of horning, and by every diligence used on the debt. In the same manner partial payments interrupt the long prescription, which proceeds on a presumed dereliction of the debt, which is not reconcileable with a partial payment; [and payment of interest on a bond (which is not proveable by parole) is on the same footing as partial payment of the principal; *Kermack*, 27 Nov. 1874, 2 R. 156.] But partial payments strengthen the shorter prescriptions, which proceed on a presumption of payment, which is strengthened instead of being weakened by the partial payment. Independently of these interruptions, there is an interruption termed civil interruption because it is attended with no violence. It is also called interruption *via facti*, because founded on the extrajudicial deed of him who interrupts. This interruption is made by a protest or notarial instrument, where the person protests that the possession shall not hurt the interest of the protestor. But prescription is not interrupted by the registration of an obligation, nor by its transmission from one hand to another: even intimation does not interrupt the prescription. Where possession has been abandoned by the person claiming on a prescriptive title, or where possession has been taken from him, although he has a second time acquired possession, he cannot connect the two periods; his prescriptive possession must run a new course. Formerly, all citations on actions had the effect of interrupting the course of prescription; but, by the act 1669, c. 10, citations for this purpose must be renewed every seven years; and, by 1696, c. 19, they must be recorded. This applies to citations only; for where the parties have appeared in court, or where any judicial act has been performed, the process becomes a depending action, which may be wakened at any time within forty years, if the particular action be not otherwise limited. A submission applicable to the claim in question will operate as an interruption; *Vans*, 14 June 1816, F.C.; [*Dunn*, 14 June 1854, 16 D. 944.] The septennial limitation of cautionary engagements is not affected by a mere citation. See *Cautionry*. [In bankruptcy, the presenting of, or concurring in a petition for sequestration, or lodging a claim in the hands of the trustee, or of the sheriff, or the preses at any meeting of creditors, interrupts prescription; 19 & 20 Vict. c. 79, § 109.] The same effect is given to the lodging of a claim in a process of ranking and sale, [or in a multiplepoinding. By 31 & 32 Vict. c. 64, § 15, the register of interruptions of prescriptions was discontinued as a separate record, and writs appropriate thereto were directed to be registered in the General Register of Sasines.] The effect of an interruption of prescription is to make it begin a new course, commencing from the date of the interruption in the negative prescription, and from that of the recovering of possession in the positive. Where diligence is done within the forty years against one of two co-obligants, that is, where two or more are bound jointly and severally, or as co-obligants, it saves the obligation against the whole. But where the right of the creditor is divided, either by succession or assignation, the obligation may be prescribed as to one part of the debt in the person of the one creditor, while it may be effectual as to the other part of the debt in the person of the other creditor. See *Ersk.* B. iii. tit. 7, § 38; [*Stair*, B. ii. tit. 3, §§ 22, 73; tit. 12, § 56; B. iv. tit. 35, § 14; *Bell's Princ.* §§ 615, 2007; *Napier*, 656. See *Interruption. Citation.*]

**PRESENTATION**; the act by which, [under the former law,] the patron of a church appointed the minister, and presented him to the presbytery for induction. [By 37 & 38 Vict. c. 83, the right of appointing ministers was transferred to the congregations. See *Patronage*.]

**PRESENTATION, BOND OF.** See *Bond of Presentation*.

[**PRESENTER OF SIGNATURES.** Under the old system of obtaining charters

[from the Crown, the party seeking the grant lodged a signature, or writing containing the substance of the proposed charter, with the Presenter of Signatures; and that officer subsequently presented such signature to the Barons of Exchequer for their revisal. Under the system introduced by the Crown Charters Act, 1847, signatures were no longer used, but the office of Presenter of Signatures remained; his duties being to revise the drafts of Crown Charters, fix the amount of duties payable, &c. See 31 & 32 Vict. c. 101, §§ 63–96. This office, however, was abolished by 37 & 38 Vict. c. 94, § 57, and its duties transferred to the Sheriff of Chancery. See *Clerk and Scrope's Court of Exchequer*, 286; *Menzies' Conv.* 827; *Mackay's Prac.* i. 196. See *Charters from the Crown. Signatures. Exchequer, Court of.*]

**PRESENTMENT OF BILLS.** See *Bill of Exchange.*

**PRESES OF MEETING.** The business of a meeting of creditors cannot proceed without a preses; and although the person first elected cannot dissolve the meeting by leaving the chair, the creditors must elect another preses, to make their further proceedings valid; *Anderson*, 12 Dec. 1827, 6 S. 235. The preses has no power beyond that of constituting the meeting, and preserving order in it. His vote is only that of a single creditor. This rule is not confined to meetings of creditors; it has been held to be a general rule, that the preses of an ordinary meeting is not entitled to a double vote; *Campbell*, 1816, 6 Pat. 238. [See 19 & 20 Vict. c. 79, § 68; *Goudy on Bankruptcy*, 227.]

**PRESTATION;** payment, performance.

**PRESUMED PAYMENT.** See *Payment.*

**PRESUMPTION OF LIFE.** [By the common law of Scotland, it has been said that] human life is presumed to last until the age of 100 years; to the effect of laying the burden of proving the death on him who alleges it. The *onus probandi* is transferred to the other party where the alleged deceased, if alive, must be upwards of 100 years of age. [The limitation to 100 years seems to rest on the authority of Bankton alone; and, though this period was recognised by Lord Deas, in *Bruce*, 24 Nov. 1871, 10 Macph. 130, the court has not latterly been disposed to admit any precise limit to the presumption. "We have fortunately no rule founded on presumptions derived from the lapse of any fixed period of time, and every case which I have ever seen shows how unwise it would be to attach any such weight merely to the lapse of a certain number of years, without regard to the age and character of the party, and his condition in life, and the character of the country in which he was last resident;" *per* Lord J. C. Hope, in *Fife*, 16 June 1855, 17 D. 951. Each case has therefore been decided according to its own circumstances; the presumption of life, like every other *præsumptio juris*, yielding to contrary evidence or to a stronger counter presumption arising from the facts of the case. See *Reid*, 14 Jan. 1834, 12 S. 278; *Bruce*, 25 Feb. 1834, 12 S. 486; *Lapsley*, 19 Nov. 1845, 8 D. 34; *Fife, supra; Barstow*, 14 March 1862, 24 D. 790; in which the presumption in favour of life was held not to be overcome; *Campbell's Trs.* 1 Feb. 1834, 12 S. 382; *Fairholme*, 18 March 1858, 20 D. 813; *Bruce*, 24 Nov. 1871, 10 Macph. 130; in which it was held to be sufficiently rebutted; and *Ashburton*, 7 Feb. 1811, F.C.; *Garland*, 12 Nov. 1841, 4 D. 1; *Murray*, 16 March 1870, 8 Macph. 722; in which the court required parties claiming succession to find caution for repetition in the event of the reappearance of the alleged deceased. In England, at common law, the presumption of life ceases after seven years' absence without being heard of. See on this subject, *Stair*, B. iv. tit. 45, § 17 (19thly); *Ersk.* B. iv. tit. 2, § 36; *Bank.* ii. 668; *Bell's Princ.* § 1640; *Dickson on Evidence*, § 116; *M'Laren on Wills and Succession*, i. § 112.

[The want of any limitation to the presumption of life in Scotland having been deemed to be productive of hardship, the act 44 & 45 Vict. c. 47, was passed "to amend the law as regards the presumption of life in persons long absent from Scotland." The act provides as follows:— By § 1, in the case of any person who has been absent from Scotland, or who has disappeared, for a period of seven years or upwards, and who has not been heard of for seven years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable or moveable estate in Scotland, or who has become entitled to such estate in Scotland, it shall be competent to any person entitled to succeed to an absent person in such estate to present a petition to the court setting forth the said facts, and after proof of the said facts, and of the petitioner's being entitled as aforesaid, and after such procedure and [inquiry, by advertisement or otherwise, as the court may direct, the court may grant authority to the petitioner to uplift and enjoy the yearly income of the heritable or moveable estate of such absent person, as the case may be, and to grant all requisite discharges for the same, as if the said absent person were dead; or the court may sequestrate the estate, and appoint a judicial factor thereon with the usual powers, and with authority to pay over the free yearly income of the estate to the petitioner, whose discharge shall be as valid and effectual as if granted by the absent person. By § 2, it shall be competent to the petitioner upon whose petition a deliverance has been granted in terms of the preceding section, authorising him to uplift and enjoy the yearly income of moveable estate, or to the heir or representative of such petitioner, to present another petition to the court after the lapse of seven years from the date of said deliverance, setting forth that during that further period the said absent person has not been heard of, and after proof of the facts stated in the petition, and such procedure and inquiry, by advertisement or otherwise, as the court may direct, the court may grant authority to the petitioner to make up a title to, and thereupon to receive and discharge, possess and enjoy, the fee or capital of the said moveable estate of the said absent person in the same manner as if the said absent person were dead. By § 3, similar provision is made for the disposal of the income of heritable estate thirteen years after the date of the deliverance. By § 4, in the case of any person who has been absent from Scotland, or who has disappeared, for a period of fourteen years or upwards, and who has not been heard of for fourteen years, and who at the time of his leaving or disappearance was possessed of or entitled to moveable estate in Scotland, or who has since become entitled to moveable estate there, it shall be competent to any person entitled to succeed to the said absent person in such moveable estate to present a petition to the court setting forth the said facts; and after proof of the said facts, and of the petitioner's being entitled as aforesaid, and after such procedure and inquiry, by advertisement or otherwise, as the court may direct, the court may grant authority to the petitioner to make up a title to, receive and discharge, possess and enjoy, sell or dispose of the said moveable estate in the same manner as if the said absent person were dead. By § 5, similar provision is made for the disposal of heritable estate after twenty years' absence. By § 6, where the absent person shall have been one of two or more *pro indiviso* proprietors of heritable estate in Scotland, and he shall not have been heard of for seven years or upwards after his leaving Scotland or disappearance, and where the other *pro indiviso* proprietor or proprietors shall desire to sell the said estate, it shall be competent to such other *pro indiviso* proprietor or proprietors to present a petition to the court setting forth the said facts, and after such procedure and inquiry, by advertisement or otherwise, as the court may direct, the court may grant authority to the petitioner or petitioners to sell the said estate by public roup or private bargain, as the court may think fit, and the title granted by the said *pro indiviso* proprietor or proprietors under such authority shall be as good and valid to the purchaser as if the absent person had been a party to the sale and conveyance, and in the case of such a sale the share of the price belonging to the absent person shall be paid into bank for behoof of such absent person, and shall be deemed to be heritable estate of the said absent person, and, as such, shall be subject to the provisions of §§ 1, 3, and 5 hereof. By § 7, in the event of the absent person having right to heritable or moveable estate in Scotland as aforesaid, or of any person entitled to succeed to or take by title derived from him preferably to the person who has obtained possession of the heritable or moveable estate under any of the preceding sections of this act, appearing and establishing his right thereto, he shall be entitled to demand and receive the fee or capital of the said estate, heritable or moveable, where extant in the hands of the person or persons who has or have obtained possession thereof as aforesaid, or of any one taking from him by gratuitous title (subject to a claim for the value of any meliorations made thereupon by such person), or to demand and receive the price obtained for the said property, where the same has been sold, unless a period of thirteen years has elapsed since possession of the fee of such estate was obtained under the other provisions of this act, and after the expiry of such period of thirteen years all claim by the absent person, or those entitled to succeed or deriving right from him as aforesaid, shall be barred. In no case shall any person who has uplifted the income of [property under any of the provisions of this act, or the income of the price obtained therefor, prior to the absent person or those in his right as aforesaid appearing and intimating their claim, be liable to account for or pay to the absent person or those in his right the income received as aforesaid prior to the intimation of such claim. By § 8, for the purposes of this act, in all cases where a person has left Scotland, or has disappeared, and where no presumption arises from the facts that he died at any definite date, he shall be presumed to have died on the day which will complete a period of seven years from the time of his last being heard of, at or after such leaving or disappearance. By § 9, any number of persons entitled to succeed as aforesaid may be conjoined in one petition relating to the estate of the same absent person; and any person having a limited right of succession may appear as petitioner to the effect of having such right made effectual subject to the provisions of this act. By § 10, nothing in this act contained shall be held to prejudice or affect the right of third parties, having right to the estate or any part of it, preferable to the right of the absent person, or to the right of his representatives derived from him. By § 11, the act shall not apply to any claim under a policy of assurance upon the life of any person who has been absent from Scotland, or who has disappeared, but the person or persons claiming under such policy shall be required to prove the death of the person whose life is assured, in the same manner as if the act had not been passed. By § 12, for the purposes of the act, "the court" shall mean and include—(1.) in all cases one of the Divisions of the Court of Session: (2.) in all cases where the estate of the absent person in Scotland does not exceed £150 in amount or value, the sheriff court of the county in which said estate or the greater part thereof is situate; the value of heritable estate to be ascertained in terms of the provisions of 40 & 41 Vict. c. 50 (see *Sheriff*).

[This act was intended only for the benefit of persons belonging to Scotland, and does not apply in the case of disappearance of a person who had never been in Scotland; *Rainham*, 2 Dec. 1881, 9 R. 207. Nor does it apply to a person the effect of whose death would be to open up, not a right of succession to him, but a right under the will of another person; *Minty*, 24 Dec. 1887, 15 R. 262. A fiar is not a successor to a liferenter, so as to be able to petition under § 1; *Peterhead School Board*, 11 March 1883, 10 R. 763. In *Craig*, 20 Jan. 1882, 9 R. 434, a petition under § 4, by the next of kin of a man who had not been heard of for thirty years, to make up a title to and divide his share of a succession which opened twenty-three years after his disappearance, was refused, in respect that, in terms of § 8, he must be held to have died seven years after he was last heard of, and so to have predeceased the opening of the succession. In reference to § 8, to exclude the statutory presumption of death on the day completing the seven years, the presumption arising from the facts must be such as would have been sufficient to overcome the presumption of life at common law; *Williamson*, 10 Dec. 1886, 14 R. 226.]

**PRESUMPTION OF SURVIVORSHIP.** When two or more persons have died within a very short period of each other, and no witnesses have been present to note the exact instant of dissolution, it is necessary to have recourse to presumptions, in order to determine which of them survived the others. Writers on medical jurisprudence lay it down, that the presumption of survivorship is with the mother, where she dies in childbed, and her child is also found dead. By the Roman law, where two persons above the age of puberty perished by the same accident or fatality, the younger was presumed to have been the survivor; but if one was under the age of puberty, the other was presumed to have been the survivor; *Digest*, B. 34, tit. 5, §§ 9, 22, and 23. The rules of the Code Napoleon (now the civil code), which have been considered very equitable, are,—"1. If those who perished together were under fifteen years of age, the eldest shall be presumed to have been survivor. 2. If they were all above sixty years the youngest shall be presumed to have been survivor. 3. If some were under fifteen, and others above sixty, the former shall be presumed to have been the survivors. 4. If those who have perished together had completed the age of fifteen, and were under sixty, the male shall be presumed to have been the survivor, where the ages are equal, or where the difference does not exceed one year. 5. If they were of the same sex, that presumption shall be admitted which opens the succession in the order of nature—of course, the younger shall be considered to have survived the elder;" *Civil Code*, §§ 720–1–2. To these rules, although in general founded on correct physiological principles, two objections have been made: 1*st*, That the third is imperfect, since a man, even although above sixty years of age, must be held to have survived a mere infant; and, 2*d*, That no provision is made for the case of persons under fifteen years of age, and under sixty, perishing together. [There is no direct authority on the subject in our law, but the court would probably disregard all special presumptions, and proceed on the ordinary principle that the fact of survivance must be proved by any party founding a claim thereon. This rule was established in England by the decision in *Wing*, 1860, 8 H.L. Ca. 183. In applying it to special questions of indeterminate survivance, Lord M'Laren (§ 120) deduces the following consequences:—"1. Where two persons stand in the relation of granter and grantee under a will or *mortis causa* deed, and the heirs of the grantee are unable to prove that he survived the granter, it will be held that the subject of the gift did not vest in the grantee, but passed to the next institute, or to the granter's heir-at-law. 2. Where the party alleged to be the survivor would have had right to a share of the intestate moveable succession of the other, then, unless his survivance is proved, the right will not be taken to have vested in him so as to be transmitted to his heirs. It is very doubtful whether his issue would be entitled to the succession by representation; for, under the statute (18 Vict. c. 23, § 1), their claim only arises in case the parent has 'predeceased' the intestate; and in the case supposed it cannot be known with certainty which of the parties predeceased the other. 3. Where the one party is heir-at-law of the other, the result is the same in relation to such heritages as vest without service, except that the difficulty with regard to persons taking by representation does not arise. 4. Where the parties are nominated in succession as institutes or substitutes under the same deed, and one of them was in possession at the time of his death, no right vests in the other, unless he is proved to be the survivor. 5. Where the parties are respectively the heirs, representatives, or legatees of each other, and neither can be shown to have survived, they are not held to have succeeded to each other, and the nearest surviving heirs of either will have right to the succession of his ancestor." See *Bell's Princ.* § 1640; *Dickson on Evidence*, § 130; *M'Laren on Wills and Succession*, i. § 117; *Beck's Med. Jurisprudence*, 389. See *Presumption of Life. Evidence.*]

**PRESUMPTIONS.** Presumptions are either *juris et de jure*, or *juris*, or *hominis vel judicis*. (1) The *præsumptio juris et de jure* is that where law or custom assumes the fact to be so, on a presumption which cannot be traversed by contrary evidence. Such a presumption may be more correctly characterised as a legal doctrine, resting on an unchallengeable assumption of fact. Such is the presumption that a pupil is incapable of managing his affairs, which presumption cannot be redargued by proof, however strong, of his ability. The presumed incapacity on which the law of deathbed [was] founded, and the presumed fraud, which the act 1696, c. 5, is intended to guard against, are presumptions of the same kind. See *Deathbed. Bankruptcy.* (2) The *præsumptio juris* is a presumption established in law, until the contrary be proved; as the presumption that the possessor of moveables is their proprietor—that he who pays interest is due a capital corresponding to it—that the child born of a marriage is legitimate—in criminal law, the presumption of innocence until guilt be proved; and the like. These, and every presumption of the same kind, of which there are many, may be elided by contrary proof. ["A *præsumptio juris* may be introduced either by statute or custom; it may have its origin in some strong natural probability, assented to by the general voice of mankind, or in some usage of trade, drawing uniformly the same inference from a certain fact or combination of facts; but before it can have the authority of a proper *præsumptio juris*, it must be recognised, and take its place as a part of the system to which it belongs. Till it has been so recognised, it is fact and not law;" *Miller*, 17 Feb. 1860, 22 D. 833.] (3) The *præsumptio hominis vel judicis* is no more than an inference or bias arising from the particular circumstances of the case, and the ordinary conduct of mankind; such as the trite presumption that a man will not voluntarily do a deed to injure himself; all which presumptions of course must yield to positive proof, or stronger presumptions the other way. See *Ersk.* B. iv. tit. 2, § 35; *Stair*, B. iv. tit. 45, § 9; *Bank.* ii. 667–9; *Bell's Princ.* § 2260; [*Dickson on Evidence*, § 109; *Kirkpatrick's Digest*, § 8. See *Evidence.*]

[**PRESUMPTIVE HEIR.** See *Heir Apparent.*]

**PRETIUM AFFECTIONIS**; is the

imaginary value put upon a subject by the fancy of the owner, or by the regard in which he held it. Damage is never estimated by this standard, when the injury has been done without fraud or dole. *Stair*, B. i. tit. 9, § 4; *Ersk.* B. iii. tit. 1, § 14; *Bank.* i. 408; *Kames' Equity*, 65. See *Price. Damages.*

**PREVARICATION.** Prevarication upon oath is the wilful concealment or misrepresentation of truth, by giving evasive and equivocating evidence. It is in practice dealt with as a contempt of court, and is cognisable summarily by any judge before whom it is committed. The proper punishment is imprisonment. [See *Macleod*, 18 March 1884, 11 R. (J.C.) 26; *Soutar*, 26 May 1888, 15 R. (J.C.) 62.] See *Stair*, B. iv. tit. 86, § 8; *Hume*, i. 380; *Alison's Princ.* 484; *Alison's Prac.* 549; [*Macdonald*, 264, 456. See *Contempt of Court. Perjury.*]

**PREVENTION.** See *Jus Præventionis.*

[**PREVENTION OF CRIME ACT**; 34 & 35 Vict. c. 112. Any constable may arrest without warrant, if authorised by the chief officer of police, any convict holding a licence, if he believes him to be getting his livelihood by dishonest means; and if it appears to a court of summary jurisdiction that there are reasonable grounds for such belief, the convict is guilty of an offence against this act, and forfeits his licence; § 3. Penalties are imposed, by §§ 4, 5, on convicts out on licence breaking the conditions of their licence, failing to notify their residence to the chief officer of police, or failing to report themselves (if male convicts) once in each month. To facilitate identification, registers of criminals are appointed to be kept, and regulations for photographing them are authorised to be made; § 6. A person twice convicted may, in addition to any other punishment, be subjected to police supervision for seven years after expiry of the last sentence; § 8. Such a person is also, by § 7, guilty of a punishable offence, if at any time within seven years after expiry of his last sentence, he gives reasonable grounds for believing that he is getting his livelihood by dishonest means; or if, on being charged with any offence, he refuses to give his name and address ot the court, or gives a false name or address; or if he is found in such circumstances as to satisfy the court that he was about to commit an offence, or was waiting for an opportunity to do so; or if he is found in or on any house, or building or premises attached thereto, or in or on any shop or place of business, or in any garden or pleasure ground, and is unable to account to the satisfaction of the court for his being there. Penalties are also imposed for harbouring thieves, assaulting police, &c.; §§ 10–13. As to assaulting police, see *Constable.* For the provisions of §§ 14 and 15 respectively, as to sending the children of a woman twice convicted to an industrial school, and as to vagrancy, see *Schools. Vagabond.* Any chief officer of police may give authority to search for stolen property, when the premises to be searched (1) are, or have been within the preceding 12 months, in the occupation of any person who has been convicted of reset or of harbouring thieves, or (2) are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty, and punishable by penal servitude or imprisonment; and he may do so without specifying any particular property, if he has reason to believe generally that the premises are being made a receptacle for stolen goods; and any constable, with such authority in writing from the chief constable, may enter any shop, warehouse, yard, or other premises, and search and seize and secure any property he may believe to have been stolen, as if he had a search warrant applicable to the property seized; and the person on whose premises the property is when seized, or the person from whom it is taken if other than the person on whose premises it is, shall, unless previously charged with resetting the same, be summoned before a court of summary jurisdiction to account for his possession of such property; and the court may make such order as to the disposal of the property, and may award such costs, as the justice of the case may require; § 16. See also *Reset. Previous Conviction. Criminal Prosecution.* See *Irons' Police Law*, 549.]

[**PREVIOUS CONVICTION.** A previous conviction of a similar offence is an aggravation of a crime, to be considered in awarding punishment. Previous convictions charged against a prisoner are not now, as formerly, set forth in the indictment, but are entered in the list of productions to be used at the trial; Criminal Procedure Act, 1887 (50 & 51 Vict. c. 35), § 19. Extracts of previous convictions, obtained in any part of the United Kingdom, of robbery, theft, stouthrief, reset, forgery, and uttering forged documents, falsehood, fraud and wilful imposition, housebreaking with intent to steal, assault with intent to rob, breach of trust and embezzlement, burglary,

[larceny, obtaining goods or money by false pretences, swindling, cardsharping, and of attempts to commit any of these crimes, and of crimes, statutory or at common law, relating to the coinage, or inferring dishonest appropriation by post-office officials, or of attempts to commit such crimes, and of all other crimes inferring dishonest appropriation of property by a person not the owner thereof, or attempts to commit such crimes, may be lawfully put in evidence as aggravations against any person accused on indictment of any of the crimes or attempts to commit crimes, above set forth; and any aggravation of the crime or attempt which such extract conviction bears to have been found proven, may be lawfully used in evidence to the like effect; § 63. Extracts of previous convictions, obtained in any part of the United Kingdom, of any crime inferring personal violence, or of any crime inferring lewd, indecent, or libidinous conduct may be lawfully put in evidence as aggravations of any crime inferring personal violence or of lewd, indecent, or libidinous character respectively, and any aggravations set forth in such extract convictions may be lawfully used in evidence to the like effect; §§ 64–5. An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction shall be received in evidence without being sworn to by witnesses; and such conviction shall be held to apply to the person accused to whom notice is given in the list of productions that it is to be used against him, unless he shall give written notice to the procurator-fiscal of the district of the second diet, or to the Crown Agent in High Court cases, at least five clear days before the date fixed for the second diet or any date to which it may be adjourned or postponed, or, where the accused proposes to plead guilty at the first diet, then not less than two clear days before the first diet, that such extract conviction is not under the hand of the proper officer, or that it does not apply to the accused, or of any other objection to its validity or admissibility; § 66. Where such notice is given, the conviction, or any facts relevant to its admissibility, may be proved by witnesses, though these are not included in the list served, and the accused is entitled to examine witnesses in regard thereto; and an official of any prison in which the accused may have been confined on such conviction is a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which the extract conviction relates; *ib.* Previous convictions shall not be laid before the jury, nor referred to in their presence before the verdict is returned, except where they are competent evidence to support the substantive charge, or where the accused leads evidence to prove character; § 67. When a person is convicted of any crime and also of an aggravation by previous conviction, the clerk of the court in which sentence is pronounced shall enter in the record of the trial a particular statement of the contents of any extract conviction that is put in evidence; and if the same person is again tried for an offence in regard to which such conviction may be competently used as an aggravation, a duly certified extract of the conviction, setting forth the particulars of previous conviction as above, shall be admissible and sufficient as evidence to prove against him all the previous convictions and aggravations set forth; *ib.* As to special offences by persons twice convicted, see *Prevention of Crime Act.* See *Criminal Prosecution. Indictment. Productions.*]

**PRICE**; the equivalent paid for a thing purchased. A price is an essential of the contract of sale; *sine pretio nulla venditio est.* The price must be an onerous price, and not merely elusory. If the buyer is, by the contract of sale itself, discharged from paying the price, it is no sale. The same rule holds if the price bear no reasonable proportion to the value of the thing sold, as if a valuable estate should be sold for a crown. But it is not necessary, by the law of Scotland, as it was by the Roman law, that the price should be just, that is, that it should correspond with the value of the thing sold. Where the form of a sale has been gone through, without a price being exigible, or with a merely elusory price, the contract resolves into a donation. The price must be certain—*i.e.*, it must either be fixed at a certain sum, or it must be referred to a certain standard, or to the judgment of referees, so that it may be capable of being ascertained; *certum est quod certum reddi potest.* The price must consist of current money. The price of land sold may be retained until the seller is ready to give a good title. *Stair*, B. i. tit. 9, § 11; tit. 14, §§ 1 *et seq.; More's Notes*, lxxxiv.; *Ersk.* B. iii. tit. 3, § 4; *Bank.* i. 407; *Bell's Com.* i. 461; *Bell's*

*Princ.* §§ 11, 92, 100, 103, 127; *Brown on Sale,* 147; *Bell on Completing Titles,* 30, 86, 93, 149, 175. See *Excambion.* [*Sale. Periculum.*]

**PRIMAGE.** See *Hat-Money.*

**PRIMATE.** During the times of Episcopacy there were two Archbishops: the Archbishop of St Andrews, who had the title of the *Primate of all Scotland;* and the Archbishop of Glasgow, who was styled the *Primate of Scotland. Ersk.* B. i. tit. 5, § 7.

**PRIMOGENITURE**; is the name given to the rule of law, whereby the eldest son is preferred to the younger ones in the succession to heritage. This rule was introduced by the feudal law. It does not appear to have been the rule in soccage land; neither does it take place in female succession to heritage, nor in the succession to moveables. In all of those the rule of the Roman law prevails, and an equal succession amongst those in an equal degree of relationship takes place. *Ersk.* B. iii. tit. 8, § 6; *Stair,* B. iii. tit. 4, § 22; *Bank.* ii. 293; *Sandford on Entails,* 18. See *Succession. Executors. Heir.*

**PRIMUS ACTUS JUDICII EST JUDICIS APPROBATORIUS**; a maxim importing, that if one take any judicial proceeding before a judge, such as proponing defences, he will not afterwards be entitled to decline the jurisdiction of the judge. If, however, the declinature be proponed simultaneously with other defences, the judge's jurisdiction will not be thereby prorogated. *Stair,* B. iv. tit. 37, § 12; [*Mackay's Prac.* i. 434.]

**PRINCE OF SCOTLAND**; was the title given to the eldest son of the king of Scotland. *Ersk.* B. i. tit. 4, § 12. [See *Charters from the Crown.*]

**PRINCIPAL AND ACCESSORY.** See *Accessory.*

**PRINCIPAL AND AGENT.** Under this title are classed the various questions which occur between mercantile agents and their employers, as to the extent of their duties and responsibilities. Indeed, all cases of delegated powers, as well in mercantile as in other matters, may be included under this general head. [Some of the principles which govern the relation of principal and agent, in regard to its constitution, termination, and legal consequences, have already been considered in the articles *Mandate. Factor. Broker.*

[*Constitution of Agency. General and Special.*—The relation is constituted by contract, express or implied. But a person [who is incapable of contracting for himself, such as a minor or a married woman, may yet be agent for another, and as such may make a binding contract between the principal and a third party. Such an agent, however, can acquire no personal rights or liabilities under the contract. "No one can become the agent of another person except by the will of that other person. His will may be manifested in writing or orally, or simply by placing another in a situation in which according to ordinary rules of law or according to the ordinary usages of mankind that other is understood to represent and act for the person who has so placed him;" *per* Lord Cranworth, in *Pole,* 33 L.J. Ch. 155. Thus if one sends goods to an auctioneer, or broker, or other person whose business it is to sell, he is presumed to authorise that person to sell for him. See *Pickering,* 15 East, 38. A presumption of agency may be created by a habitual course of conduct: thus if one repeatedly recognises the authority of another to draw and indorse bills for him, or to order goods upon his credit, he is barred from disputing the agency, unless he has taken some step to prevent others from relying on its continuance. A servant readily acquires the right to bind the master by purchases made on his credit; see *Master and Servant,* p. 704 *b.* And the presumption is stronger in the case of a wife; see *Præpositura.* Partners are always agents for each other, in so far as the partnership business is concerned. In exceptional circumstances, the law recognises an agency from necessity, as when a shipmaster on emergency pledges the owner's credit for repairs, or sells the ship or cargo. Agency may also be constituted by subsequent ratification of an act done originally without authority; see as to the limitations of this rule, *Anson on Contract,* 339–42. A special agent is one whose authority is limited to a particular transaction; and such an agent cannot bind the principal beyond the precise terms of his commission. A general agent represents his principal in all transactions incident to a particular line of business, according to the usage of trade; and the principal, who holds him out to the public as so representing him, is bound by his actings in all such transactions, and that notwithstanding any private restrictions which the principal may have imposed, but of which the party dealing with the agent is not made aware.

[*Rights and Powers of Agent.*—The authority given to a general agent implies [power to do all that is necessary, according to ordinary commercial usage, to carry out the intention of the principal. But it does not, as a rule, imply power to borrow money; *Ross, Skolfeld & Co.* 17 Nov. 1875, 3 R. 134; *Sinclair*, 4 June 1880, 7 R. 874; nor to incur gratuitous or cautionary obligations; *Colvin*, 15 March 1867, 5 Macph. 603; *Hamilton*, 29 Oct. 1873, 1 R. 72. As to signing bills per procuration, see *Procuration to Subscribe Bills*. The relation of agency implies *delectus personæ;* hence an agent cannot, in general, delegate his authority—*Delegatus non potest delegare*. But exceptions from this rule are allowed, for the sake of convenience, in certain lines of business: thus, a law agent is entitled to employ an auctioneer in carrying out a sale of his client's effects; an architect may employ a surveyor or measurer, &c.; *Black*, 24 Jan. 1879, 6 R. 581. It follows also from the fiduciary character of the relation, that an agent is not entitled to take any personal benefit, beyond his stipulated commission, from the execution of his office, nor to do anything which may involve a conflict between his personal interest and his duty as agent. And if the agent makes any private stipulation for profit to himself, the principal is entitled either to set aside the bargain, or to compel the agent to make over the profit to him. See *Pender*, 31 March 1864, 2 Macph. 1428; *Huntington Copper Co.* 29 Nov. 1877, 5 R. (H.L.) 1. The agent, however, is entitled to be indemnified by the principal for expenses incurred in carrying on the agency, and to be relieved of obligations undertaken on behalf of the principal; and the agent has a lien over the effects of the principal in his hands, to the effect of securing such indemnity, as well as for payment of his commission. See *Retention*. So long as the principal's goods in the hands of an agent are distinguishable from the agent's private effects, they form no part of the agent's estate, but may be followed by the principal, and recovered from the agent or his creditors. See *Macadam*, 5 Nov. 1872, 11 Macph. 33; *Bell's Com.* i. 286–7. See the provisions of the Factors Acts, narrated under *Factor*.

[*Rights and Liabilities with reference to Third Parties of Principal and Agent respectively.*—The question whether principal, or agent, or both, have acquired rights, or incurred liabilities under a contract with a third party is one of intention, viz., to whom was credit really given? [The general rules here given are, for the most part, according to the classification adopted in *Pollock on Contract*, 96 *et seq.*

[1. *Where the Agent is known to be an Agent.*—In this case, a contract is made with the principal, on which the latter is the proper person to sue and to be sued. (1) When the principal is named at the time, there is *prima facie* no contract with the agent. But this rule is subject to exception in the case of an agent for a foreign principal. With regard to such an agent, it seems to be settled in England, on the ground of mercantile usage and convenience, that, without evidence of express authority to that effect, he cannot pledge his foreign constituent's credit, and therefore contracts in person; *Elbinger Actien-Gesellschaft*, L.R. 8 Q.B. 313; *Hutton*, L.R. 9 Q.B. 572; see also *Maspons*, 9 Q.B.D. 530. This is in accordance with Prof. Bell's opinion (*Com.* i. 539), but is opposed to the view taken by a majority of the whole judges of the Court of Session in *Millar*, 17 Feb. 1860, 22 D. 833. (2) When the principal is not named, then *prima facie* the agent binds himself personally, as well as his principal, when disclosed. An agent, however, may free himself from personal liability either by signing as agent, or by using in the body of the contract words clearly importing agency; *Gadd*, 1 Ex. D. 357. But even one signing as agent may be liable by the usage of a particular trade; *Fleet*, L.R. 5 Q.B. 131; *Southwell*, 1 C.P.D. 374. If a person buys goods from an agent, knowing him to be such, though he does not know who is the principal, he cannot, when sued by the principal, set off a debt due to him by the agent; *Semenza*, 34 L.J.C.P. 161; *Lavaggi*, 11 Jan. 1872, 10 Macph. 312; *Matthews*, 20 Feb. 1873, 1 R. 1224. In a contract of sale, where both seller and buyer were represented by agents, the knowledge of the buyer's agent that the seller's agent was an agent, was held equivalent to such knowledge on the part of the buyer himself; to the effect of precluding the buyer from setting off against the principal seller a debt due to him by the seller's agent; *Dresser*, 17 C.B.N.S. 466.

[2. *Where the Agent is not known to be such.*—When a contract is made with a person who is really acting for another, but whom the other party does not know to be an agent, the undisclosed principal is generally bound by the contract and entitled to enforce it, as well as the agent with whom the contract is made. But in such a case, [the person who deals with the agent must be put in the same position as if he had been dealing with the real principal, and consequently he has the same right of set-off which he would have had against the agent; *Rabone*, 7 T.R. 360; *Dixon*, 4 Ch. D. 133. Conversely, it has been held that the third party's right of recourse against the principal may be lost, if the principal have paid the agent, or if the state of accounts between them have been altered so as to make it unjust that the principal should be called on; *Armstrong*, L.R. 7 Q.B. 598. But this doctrine has been modified by a more recent decision (*Irvine*, 5 Q.B.D. 414); according to which "the principal is discharged as against the other party by payment to his own agent, only if that party has by his conduct led the principal to believe that he has settled with the agent, or, perhaps, if the principal has in good faith paid the agent at a time when the other party still gave credit to the agent alone, and would naturally, from some peculiar character of the business or otherwise, be supposed by the principal to do so;" *Pollock*, 101. See *Newcastle Chemical Manure Co.* 15 Nov. 1881, 9 R. 110; *Macphail & Son*, 16 Nov. 1887, 15 R. 47. The third party may elect to sue either the principal or the agent. He may commence proceedings against both, but may only sue one of them to judgment; for a judgment obtained against one is a bar to an action against the other. See *Priestly*, 34 L.J. Ex. 173; *Curtis*, L.R. 10 Q.B. 57; *Ferrier*, 23 Feb. 1865, 3 Macph. 561; *Meier & Co.* 17 March 1881, 8 R. 642.

[3. *Where a pretended Agent has no responsible Principal.*—(1) When a party to a contract holds himself out as the agent of another, who in fact has given him no authority to act as his agent, but who might be responsible, if he chose to authorise or ratify the contract, the pretended agent has neither the rights nor the liabilities of a principal. See *Bickerton*, 5 M. & S. 383; *Rayner*, 15 M. & W. 359; *Lewis*, L.R. 18 Q.B. 503. He is liable, however, on an implied warranty of his authority to bind the principal; *Collen*, 8 E. & B. 647. (2) When a person professes to contract as agent for another, who at the time is legally incapable of authorising the contract, the former is held personally liable. Under this head are reckoned contracts made by pretended agents on behalf of persons either fictitious or incapable of contracting, or of proposed companies which have not yet acquired a legal existence. [In such cases, subsequent ratification is legally impossible; and the contract is construed "*ut res magis valeat quam pereat.*" See *Kelner*, L.R. 2 C.P. 174; *Scott*, L.R. 2 C.P. 255.

[A principal is liable to third parties for the fraud or misconduct of his agent while acting in the principal's business and within the scope of his authority. And he cannot avail himself of what has been obtained by the agent's fraud, unless he is not only innocent of the fraud, but has given valuable consideration. See cases under *Fraud*.

[*Termination of Agency.*—Death of the principal operates *ipso jure* as a recall of the agent's authority; and his bankruptcy has a like effect; *Broughton*, 17 Dec. 1814, F.C. So, also, has the marriage of a female principal. But insanity of the principal does not appear to terminate the agency; *Pollock*, 10 Dec. 1811, F.C.; *Wink*, 8 March 1849, 11 D. 995; *Drew*, 4 Q.B.D. 661. Revocation by the principal terminates the agent's authority, as between themselves, so soon as it is communicated to the agent; and as to the rights of third parties, so soon as it is made known to them. See § 2 of the Factors Act, 1877, quoted under *Factor*. But notwithstanding revocation, an agent is allowed to extricate himself from transactions already begun; and notwithstanding the death or bankruptcy of the principal, transactions entered into by the agent in good faith, before hearing of the death or bankruptcy, are binding on the principal or his representatives.]

See on this subject, *Ersk.* B. iii. tit. 3, § 34; *Bank.* i. 392; *Bell's Com.* i. 526, 530–1, 537–40, 544; ii. 125; *Bell's Princ.* §§ 216, 573, 1445; *Brown on Sale*, 184; *Thomson on Bills*, 147; [*Campbell's Merc. Law*, 117; *Smith's Merc. Law*, 104; *Addison on Contracts*, 40; *Pollock on Contract*, 94; *Anson on Contract*, 334; *Leake on Contracts*, 464; *Story on Agency; Wharton on Agency; Paley on Principal and Agent; Evans on Principal and Agent; Ross's L.C.* iii. 1; *Smith's L.C.* ii. 378.] See *Procurator. Mandatary. Del Credere. Trust. Agent and Client.*

**PRINCIPALITY.** The principality or appanage of the Prince of Scotland consisted of lands in the shires of Ayr, Renfrew, and Ross, which had been erected into a principality so early as the reign of Robert III. Lands holding of the Prince afforded, under the old election law, a freehold qualification, in the same manner with lands held of the Crown; and as the right of the Prince, on his succession to the Crown, continues to be vested in him until the birth of a son, the vassals during those intervals may be said to hold of the Crown; and the rents of the principality are then levied for the use of the Sovereign. *Ersk.* B. i. tit. 4, § 12; *Bank.* i. 539; ii. 430; *Bell's Princ.* § 674; *Swint. Abridg. h. t.*; *Kames' Stat. Law, h. t.*

**PRINTERS.** A printer has no right to publish a work in his hands. He has, however, a lien on the printed sheets for the price of his labour, and on the last sheets undelivered for the price of the whole. It has even been decided in England, that his lien extends over subsequent volumes or numbers for the price of those which have already been printed and delivered. *Bell's Com.* i. 13; ii. 100. [See *Retention.* The act 32 & 33 Vict. c. 24, repeals previous enactments (enumerated in sched. 1) relating to printers, with the exception of the following among other provisions (enumerated in sched. 2), which are still in force:—Printers are required, under a penalty of £20, to keep a copy of every paper they print, to be shown to any justice of the peace who may require to see it within six months; and to write thereon the name and abode of their employers; 39 Geo. III. c. 79, § 29. They are also required to print their names and places of abode or business on the first and last leaves of every paper or book to be published; failing which the printer cannot sue for the price of printing, and both printer and publisher are liable to a penalty of £5 for every copy published; 2 & 3 Vict. c. 12, § 2.] Certain papers are exempted from these regulations, such as papers printed for the use of Parliament by their authority; or by authority of any public board or officer; or law proceedings, [bank-notes, bills of exchange, promissory notes,] receipts, securities for money, policies of insurance, letters of attorney, deeds of agreement, bills of lading, impressions of engravings, advertisements of tradesmen, or of sales, &c.; [39 Geo. III. c. 79, §§ 28, 31; 51 Geo. III. c. 65, § 3. See *Bell's Princ.* § 36 (7); *Addison on Contracts*, 1164.]

**PRIOR.** The prior under the Popish system had the charge of the monastery in the absence of the abbot (who was the head or governor), or while the office of the abbot was vacant. *Ersk.* B. i. tit. 5, § 4.

**PRIOR TEMPORE POTIOR JURE**; a maxim, importing generally, that priority in time or in date affords the criterion of preference in competitions. *Stair*, B. iv. tit. 35, § 8; *Bank.* iii. 37.

**PRISAE**; a French word, signifying caption, poinding, distress, or moveable goods taken for execution of a decreet. *Skene, h. t.*

**PRISON.** [The obligation to maintain prisons, which, under the old law, lay on the magistrates of burghs, and which under 2 & 3 Vict. c. 42, and 23 & 24 Vict. c. 105, devolved on county boards, has now been transferred to the Secretary of State. The following are the leading provisions of the Prisons Act, 1877 (40 & 41 Vict. c. 53):—By § 4, prisons and prisoners are to be maintained out of the public funds. By § 5, prisons are vested in the Secretary of State, as well as the appointment of prison-officers, and the control and safe custody of prisoners. By §§ 7–13, provision is made for the appointment, by the Crown, of a body of Prison Commissioners, not exceeding three, of whom two may be salaried. The sheriff of Perthshire and the Crown Agent for Scotland are also to be commissioners *ex officio.* The general superintendence of prisons is vested in the commissioners, subject to the control of the Secretary of State; and inspectors, officers, and servants, are appointed to assist them. An annual report by the Prison Commissioners, with respect to every prison within their jurisdiction, is laid before both Houses of Parliament; and it is directed that the report shall contain particulars as to the various manufacturing processes carried on in each of the prisons. A yearly return is also made by the commissioners to Parliament of all punishments inflicted within each prison. By §§ 14–16 provision is made for the annual appointment of a visiting committee for every ordinary prison, consisting of commissioners of supply or justices of the peace of counties and magistrates of burghs, who report on any abuses, repairs required, or other matters of urgency. Any sheriff or justice of the peace, having jurisdiction in the place where a prison is situate, or where an offence was committed in respect of which a prisoner is confined, may enter the prison, and examine the condition of the prisoners (if not under sentence of death), and enter his observations in a visitor's book to be kept by the governor. By § 17, all local obligation to maintain prisons is terminated. Sections 27–32 deal with the classification and commitment of [prisoners, and the legalising by the Secretary of State of police cells as places of detention for short periods. Where a term of imprisonment expires on Sunday, the prisoner is to be discharged on the previous Saturday; § 33. Certificates may be granted to Prisoners Aid Societies; and discharged prisoners may be provided with the means of returning home, or with sums of money not exceeding £2, on recommendation of the visiting committee or otherwise; §§ 34–36. The act does not affect the jurisdiction or responsibility of the magistrates of burghs in respect of prisoners under sentence of death; § 38. The discontinuance of prisons is provided for by §§ 39–40. By § 45, the Secretary of State is directed to make special rules as to the treatment of persons unconvicted, and presumably innocent, during their detention for safe custody only, so as to make their confinement as little as possible oppressive. These rules are to provide for (1) the retention by a prisoner of books or papers, so far as not required to be taken from him for the purposes of justice; (2) communications between a prisoner, his solicitor, and friends, as unrestricted and private as may be possible, consistently with due precaution against tampering with evidence, or plans for escape; and (3) arrangements whereby prisoners may provide themselves with articles of diet, or be furnished with sufficient wholesome food, and may be protected from performing unaccustomed tasks or offices. The duties of the medical officer are prescribed by § 49; and those of the governor by §§ 50–52. The procurator-fiscal is directed to hold a public inquiry on any prisoner dying within prison; § 53. Sections 72–75 of the Prisons Act of 1860 (23 & 24 Vict. c. 105), are excepted from the general repeal of that act. These sections provide for the removal to hospitals of prisoners diseased or in danger of life; the making of rules as to prisoners sentenced to hard labour; the punishment of male juvenile offenders by private whipping; and penalties for introducing prohibited articles into prison. By § 10 of the Debtors Act, 1880 (43 & 44 Vict. c. 34), a periodical report is to be made by the governor of every prison, with regard to civil prisoners, as to which see *Imprisonment*. See also the Prison Officers Superannuation Acts, 41 & 42 Vict. c. 63, 49 & 50 Vict. c. 9, and 50 & 51 Vict. c. 60. See *Ersk.* B. iv. tit. 3, § 14; *Bell's Com.* ii. 439. See *Breaking of Prison. Liberation. Escape.*]

**PRIVATE ACTS OF PARLIAMENT.** The private acts of the Scotch Parliament were not, properly speaking, laws; but might have been reduced in the Court of Session at the instance of any third party whose interest suffered from them. Indeed, posterior to the year 1606, there was passed at the end of each session of Parliament an act, *salvo jure cujuslibet*, for the purpose of saving third parties against the effect of these private acts of Parliament. *Ersk.* B. i. tit. 1, § 39.

**PRIVATE BILLS OR ACTS OF PARLIAMENT.** Under this title are comprehended those measures in their progress through Parliament which relate to private and personal interests, such as naturalisation, restitution of honours, change of a family name and arms, and the like; or to private or public local interests, such as making, maintaining, or repairing roads, bridges, canals, railways, gaols, harbours, and similar objects of a public, local, or municipal nature. Of the bills for these objects, some originate in the House of Lords, and some in the House of Commons, exclusively. [In passing private bills, Parliament exercises judicial as well as legislative functions; and its procedure is similar in many respects to that of a court of justice. The promoters of the bill appear as suitors; and any one showing an adverse interest is admitted as a party to oppose its passing; see *Locus Standi.* See the procedure described in *May's Parl. Prac.* 745; *Anson on the Constitution*, i. 239; also the Standing Orders. After a private bill has been passed into an act, its efficacy is not affected by previous failure to give notice to an interested party; see *Edinr. & Dalkeith Railway Co.* 22 March 1842, 1 Bell's App. 252. By 13 & 14 Vict. c. 21, § 7, every act is deemed to be a public act, and is to be judicially taken notice of as such, unless the contrary is expressly declared. See *Parliament.*]

**PRIVATEERS**; private ships of war commissioned by the Admiralty, and fitted out by the owners at their own expense. Instead of receiving pay, the owners are allowed to keep what they take from the enemy, giving the Admiral his share. Privateers must find caution for good behaviour to the amount of £1500, or £3000 if the crew exceed fifty men. Besides these private commissions, there are special commissions for privateers, granted to commanders of ships, who take pay, and are under marine discipline. [By the Treaty of Paris, 1856, the countries who were [parties to that treaty agreed that privateering should be abolished; and all other civilised states, except the United States, Mexico, and Spain, have since become signataries of the Declaration of Paris. Privateers can still be employed by the signatary states when at war with a state which has not become a party to the Declaration.] See *Stair*, B. ii. tit. 2, § 4; *Bank.* i. 524; [*Abdy's Kent's Internat. Law*, 227; *Hall's Internat. Law*, 485.] See *Prize-Law. Letters of Marque.* [*Declaration of Paris.*]

**PRIVATIVE JURISDICTION.** A court is said to have privative jurisdiction in a particular class of causes, when it is the only court entitled to adjudicate in such causes. *Ersk.* B. i. tit. 2, § 7.

**PRIVIES**; in English law, those who partake or have an interest in any action or thing: thus, every heir in tail is privy to recover the land entailed. There are five kinds of privies: of blood, as the heir to the ancestor; in representation, as executors or administrators to the deceased; in estate, between donor and donee, lessor or lessee; in respect of contract; and on account of estate and contract. There is another division—into privies in estate, in blood and in law. *Tomlins' Dict. h. t.* [See *Privity.*]

**PRIVILEGE, PERSONAL.** [See *Protection against Personal Diligence.*]

**PRIVILEGE OF SPEECH.** See *Defamation.*

**PRIVILEGED DEBTS**; are those which humanity has rendered preferable on the funds of a deceased person, and which an executor may pay without decree; as—1. Sickbed and funeral expenses, consisting of physicians' fees, medicines, and surgeons' accounts, with the expense of such decorations and state in the funeral as the rank and circumstances of the deceased warrant. 2. Mournings for the widow and such of the children as are present at the funeral. 3. [The wages of domestic and farm servants for the current term; see *Wages.* Erskine and Bell, on the authority of *Dunipace*, 1750, M. 11852, include a year's rent of the house among privileged debts; but it is doubtful whether a landlord would now be held entitled to such preference, apart from his hypothec. See *More's Notes to Stair*, ccclxii.; *Goudy on Bankruptcy*, 508. The Crown has a preference in respect of assessed taxes, land tax, and property and income tax; 43 & 44 Vict. c. 19, § 88. Poor-rates are also preferable to private debts; 8 & 9 Vict. c. 83, § 88. There are several other statutory preferences, as in the case of debts due to a friendly society or savings bank by office-bearers dying or becoming bankrupt; 38 & 39 Vict. c. 60, § 15 (7); 26 & 27 Vict. c. 87, § 14. As to preferential payments in bankruptcy, and the winding up of companies, see 51 & 52 Vict. c. 62 (the terminology of which, however, can have no practicable application to Scottish sequestrations). See *Ersk.* B. iii. tit. 9, § 43; *Bank.* ii. 399; *Bell's Com.* ii. 147; *Bell's Princ.* § 1402; *Goudy on Bankruptcy*, 503.] See *Executor. Mournings. Funeral Expenses. Friendly Society.*

**PRIVILEGED DEEDS.** A legal deed requires certain statutory solemnities; but from this rule exceptions have been made in favour of certain deeds and writings on grounds of necessity or expediency. Of those exceptions the following are examples:—(1.) *Holograph deeds*, which are deeds in the handwriting of the granter, do not require witnesses, on account of the difficulty in forging the handwriting of a whole deed. But such deeds do not prove their own dates; *Ersk.* B. iii. tit. 2, § 22. See *Holograph Deeds.* (2.) *A deed subscribed by a number of persons* has been sustained, though wanting witnesses. If this decision be an authoritative precedent, it ought to apply only in the case where all the parties have signed the deed at one and the same time, and in presence of each other; *Ersk. ib.* § 23. [But it may be regarded as settled that witnesses are necessary, however numerous the parties subscribing may be; *Miller*, 29 May 1835, 13 S. 838; *Dickson on Evidence*, § 693; *Menzies' Conv.* 139; *M. Bell's Conv.* i. 51.] (3.) *Testaments.*—Where the testator cannot himself execute the deed, one notary and two witnesses are sufficient to authenticate it, whatever extent of property may be conveyed by it, [though in ordinary deeds, till recently, two notaries and four witnesses were required. See *Deeds, Execution of.*] (4.) *Receipts and discharges to tenants* for rent need not be signed in the presence of witnesses. See *Discharge.* (5.) *Missive letters in re mercatoria* are valid though not holograph; and mercantile commissions are effectual though they want witnesses. (6.) *Accounts amongst merchants* may be effectually docqueted, though neither the writer's name be mentioned, nor witnesses adhibited; *Ersk.* B. iii. tit. 2, § 24. (7.) *Bills and promissory notes* neither require witnesses nor that they should be holograph; *Ersk.*

*ib.* See *Bill of Exchange.* See generally, *Ersk. ut supra; More's Notes on Stair,* ccccv.; *Bell's Princ.* § 21; [*Dickson on Evidence,* § 751; *Kirkpatrick on Evidence,* § 104. See *Deeds, Execution of. Evidence.*]

**PRIVILEGED SUMMONSES.** This name is given to a class of summonses in which, from the nature of the cause of action, the ordinary *induciæ* are shortened. [The following summonses are privileged, by A.S. 21 June 1672, viz.:—] summonses of removing, recent spuilzies, and recent ejections (where the summons is executed within fifteen days after committing the deed), intrusions, and succeeding in the vice, causes alimentary, exhibitions, summonses for making arrested goods forthcoming, transferences, poindings of the ground, wakenings, special declarators, suspensions, preventors, and transumpts. By 6 Geo. IV. c. 120, § 53, privileged summonses against defenders within Scotland proceed on a diet of six days. See *Stair,* B. iv. tit. 3, §§ 4, 32; *Ersk.* B. iv. tit. 1, § 6; *Ross's Lect.* ii. 519; [*Shand's Prac.* i. 230; *Mackay's Prac.* i. 62; *Campbell on Citation,* 17. See *Induciæ. Summons. Citation.*]

[**PRIVITY,** *in English law.* Originally, "privy" signified a friend or acquaintance, as opposed to a stranger; and hence privity means knowledge. In its secondary sense, privity denotes a peculiar relation in which a person stands, either to a transaction or to some other person. Privity of contract is the relation which subsists between the immediate parties to a contract, and is necessary in order to enable one person to sue another on a contract. Thus, if A. agrees with B. that he will pay C. £100, C. cannot bring an action against A. on the contract, for want of privity between them. (See *Jus Quæsitum.*) Privity of estate is that which exists between lessor and lessee, tenant for life and remainderman or reversioner, &c. It makes the assignee of a lease liable to the rent and covenants contained in it, although there is no privity of contract between him and the lessor. *Sweet's Law Dict.*]

**PRIVY COUNCIL.** The Privy Council of Scotland was so termed, in contradistinction to the Parliament, which was the King's Great Council. The Privy Council consisted of persons chosen by the King to advise with in matters of government and police. They had also a supreme jurisdiction in all questions of wrong which were found to be beyond the cognisance of the courts of common law, and in all cases where the public peace was concerned. These powers remained with the Scotch Privy Council until, by the act 6 Anne, c. 6, that council was absorbed in the British Privy Council, who are by that act declared to have no other or higher powers than were possessed by the English Privy Council at the time of the Union. See *Ersk.* B. i. tit. 3, § 9; *Kames' Stat. Law, h. t.;* [*Register of Privy Council,* Edinburgh, 1877 (with Introduction by Dr Hill Burton).]

**PRIVY COUNCIL** *of Great Britain;* the principal council of the Queen, the members of which are chosen at her pleasure. It is from them that the Ministers of State forming the Cabinet are selected. They hold their offices for life, but are subject to removal at the Queen's pleasure. The Privy Council has power to inquire into all offences against the Government, and to commit the offenders to prison, to be dealt with according to law. [The Privy Council has also, in certain cases, the judicial authority of a court of justice: viz., in colonial appeals; in appeals from the ecclesiastical or maritime courts; in applications for confirmation or extension of patents; and in certain cases arising out of the copyright acts. This judicial authority is exercised by the Judicial Committee of the Privy Council; who, after hearing parties, report to her Majesty in Council, by whom judgment is given. The Judicial Committee includes the Lord President of the Council, the Lord Chancellor, and all Privy Councillors who hold or have held high judicial office. See 3 & 4 Will. IV. c. 41; 14 & 15 Vict. c. 83; 34 & 35 Vict. c. 91; 44 Vict. c. 3; 50 & 51 Vict. c. 70, §§ 3, 4. There are other committees of the Privy Council, the principal being the Education Committee and the Board of Trade. See *Stephen's Com.* ii. 485; *Wharton's Lex.; Macpherson's Privy Council Prac.*]

**PRIVY SEAL.** See *Seals.*

**PRIZE-LAW.** The jurisdiction of all matters relative to prize and capture in war is now vested exclusively in the High Court of Admiralty of England, [now the High Court of Justice. See 27 & 28 Vict. c. 25 (Naval Prize Act). As to booty of war, see *Banda and Kirwee Booty,* L.R. 1 Adm. & Eccl. 109.] See *Stair,* B. ii. tit. 2; *More's Notes,* clii.; *Bank.* i. 520–3; *Bell's Princ.* § 1295; *Brown's Synop. h. t.,* and 483; [*Phillimore's Internat. Law,* iii. 648–769; *Halleck's Internat. Law,* ii. 411.] See *Capture. Letters of Marque. Privateers.*

**PRIZE-MONEY.** The payment of army

prize-money has been the subject of several statutory enactments. These are consolidated and amended by 2 Will. IV. c. 53. It is provided that all captures made by the army shall be disposed of as the Sovereign thinks fit. Deserters are not entitled to prize-money. Provision is made for the sale of prizes, for the assignment of shares, &c., for the details of which reference is made to the act itself. See *Soldier*.

**PRO CONFESSO.** Where a party in a cause is cited to appear and give his oath on the reference of his adversary, or where the judge, *ex officio*, has required his oath, it is under certification that, if he fail to appear and depone, he will be held as confessed, and decree pronounced as if he had admitted the fact referred to his oath. [See *Murray*, 12 Feb. 1839, 1 D. 484; *M'Kellar*, 8 Feb. 1862, 24 D. 499.] Against this certification the party will be reponed, upon his showing good reason why he did not appear. If there was any irregularity in the citation, the party is said to be reponed *ex justitia*, and the effect of the holding as confessed is then as completely at an end as if it never had been pronounced. But where the party is reponed *ex gratia*, and dies without having deponed on the reference, his heir will not be relieved from the holding as confessed. *Ersk.* B. iv. tit. 2, § 17; [*Stair*, B. iv. tit. 44, § 21; *Dickson on Evidence*, §§ 1410, 1529; *Shand's Prac.* i. 388. See *Evidence. Admission.*]

[**PRO INDIVISO.** See *Common Property.*]

**PRO RATA.** See *Solidum et Pro Rata.*

**PRO RE NATA.** A *pro re nata* meeting or proceeding is a meeting called or a proceeding taken on the emergence of some occurrence or circumstance requiring it. As to *pro re nata* meetings of presbytery, see *Presbytery.*

**PROBABILIS CAUSA.** See *Poor's Roll.*

**PROBABLE CAUSE.** In actions of defamation, the justification, or plea in defence, that the defender had probable cause for what he stated, is founded on the necessity which sometimes exists, that persons should, in the exercise of official, professional, or personal duty, give information, or state facts not yet absolutely certain. In such circumstances it will be a sufficient justification if the defender be able to show that he had probable cause for believing and making his accusation. This defence is not competent in cases of ordinary or popular scandal, where nothing short of *veritas convicii*, and sometimes not even that, affords a defence. But a statement made by an advocate at the bar, by a master in giving the character of a servant, or by any one in the performance of a duty in a like privileged situation, may be justified by the defence of probable cause. Probable cause is auxiliary to the defence of privilege. Even in a privileged situation, if the accusation turn out to be false, malice will be presumed, or, at all events, the defence of privilege will be neutralised, and the malice will be doubtful. But the allegation and proof of probable cause removes the presumption of an intention to defame. Probable cause may be proved either upon a separate issue taken by the defender, or upon the general issue. In practice, a separate issue is seldom taken. *Borthwick on Libel*, 311; *Macfarlane's Jury Prac.* 222. See *Defamation.*

**PROBATE OF TESTAMENTS**; [in English law, official proof of a will. This is obtained by the executor in the Probate Branch of the High Court of Justice, and is either *in common form*, where the will is undisputed and quite regular, or *per testes*, in solemn form of law, where it is disputed or irregular. When the will is so proved, the original must be deposited in the registry of the court, and a copy thereof on parchment is made out under its seal, and delivered to the executors, together with a certificate of its having been proved; all which together is usually styled the *probate*. See *Wharton's Lex. h. t.*; *Stephen's Com.* ii. 204. See *High Court of Justice.* As to probate duty, see *Inventory Duty.*]

**PROBATIO PROBATA**; proof which is not permitted to be impugned or redargued. The verdict of a jury is in some cases not liable to review, and it is then called *probatio probata*. *Ersk.* B. iv. tit. 2, § 33.

**PROBATION.** See *Evidence. Proof.*

**PROBATIONERS.** See *Licence to Preach.*

**PROCESS.** Stair defines a process to be "an action sustained by a judge, that thereupon either an act or definite sentence may follow;" and he adds, that an action not sustained is no process. (*Stair*, B. iv. tit. 3, § 21.) But under this term, in a larger acceptation, may be comprehended all those writs, forms, and pleadings, whereby an action or a prosecution, whether criminal or civil, is brought under judicial cognisance, including all that takes place from the first step down to the final decree in a civil action, and to the conviction or acquittal in a criminal prosecution. *Bank.* ii. 598; *Kames' Stat. Law, h. t.* This comprehensive subject is necessarily treated of in a variety of separate articles in this Dictionary. Thus, under the articles *Criminal Prosecution—Criminal Letters — Indictment — Concourse — Advocate, Lord — Justiciary Court — Circuit Court—Bail*—and some others, all that relates to criminal process, in so far as thought suitable for the present work, will be found. In regard to civil process, in like manner, the following articles may be consulted: *Actions—Summons—Privileged Summons—Calling of a Summons—Defences—Exceptions—Citation—Diet—Suspension — Wakening — Transference — Condescendence—Pleas in Law—Record—Diligence—Hearing — Cases — Interlocutor — Prorogation — Decree — Protestation — Appeal—Jury Trial—Issues—Evidence—New Trial—Exceptions, Bill of—Session, Court of — Bill-Chamber — College of Justice—Advocate — Counsel — Writer to the Signet — Reduction — Adjudication — Multiplepoinding — Divorce — Desertion — Teind Court—Augmentation—Locality—Commissary Court—Sheriff—Justice of Peace—Dean of Guild—Registration—Diligence — Caption — Hypothec — Sequestration.* These articles, if read in their order, and others which will readily suggest themselves, will convey to the reader some idea of the course of procedure, and of the multifarious details of a suit or process.

**PROCHEIN AMI.** [See *Next Friend.*]

[**PROCLAMATION OF BANNS.** See *Banns.*]

**PROCURATION TO SUBSCRIBE BILLS.** A party is said to draw, indorse, or accept a bill by procuration, when it is done by his agent acting under his authority. Procuration may be constituted by a written mandate, [or letter of procuration;] or by delivering to any person a blank bill-stamp subscribed, which may be considered as a mandate to fill up the blank in any way he pleases; or *rebus ipsis et factis*, as it is expressed—that is, by acts of the principal, implying his authority, such as allowing a person to sign instruments habitually for him, or in his name, though his approbation should not be directly proved, [or placing a person in a position, with reference to a particular business, in which power to draw or accept bills is necessary, according to the custom of trade, for conducting the business; see *Edmunds*, L.R. 1 Q.B. 98;] or by subsequent assent to the agent's subscription; [*Davidson*, 1815, 3 Dow, 218. But mere silence does not, in all circumstances, imply adoption of an unauthorised signature; *Mackenzie*, 11 Feb. 1881, 8 R. (H.L.) 8.] Procuration may also be conferred by an express factory, either general, or implying the power of signing bills. The procurator does not bind his principal, unless he write his principal's name *per* his procuration, or sign his name as agent for the principal, or in some other way indicate his character of agent. When the principal is bound, the agent is not personally liable; but he may be liable when the principal is not bound. Thus, one who subscribes *per* procuration, without authority from the principal, is personally liable. [A signature *per* procuration is a warning that the bill is granted under limited authority; and the receiver of a bill so signed is bound to use all reasonable caution, to guard against the abuse of such authority; *Stagg*, 31 L.J.C.P. 260; *Union Bank*, 7 March 1873, 11 Macph. 499; *N. Scotland Bank*, 21 Jan. 1881, 8 R. 423.] Policies of insurance are sometimes subscribed by procuration. See *Bell's Com.* i. 424, 509, 653; *Bell's Princ.* § 321; *Thomson on Bills*, 147, 181, 406; *Campbell's Merc. Law*, 127; *Byles on Bills*, 41; *Chitty on Bills*, 26. See *Principal and Agent. Mandate. Bill of Exchange.*]

**PROCURATOR**; a general term for a person who acts for or instead of another, and under his authority. Thus, the person whom the vassal directs to make resignation in the hands of the superior is termed his procurator. Agents practising before the inferior courts are also called procurators. [The Procurators Act, 1865 (28 & 29 Vict. c. 85), was passed in order to secure a uniform standard for admission of procurators in the various sheriff courts, and to provide for the incorporation of societies of procurators. This act, however, was repealed by the Law Agents Act, 1873 (36 & 37 Vict. c. 63), which prescribed uniformity in the admission and privileges of agents in all the law courts of Scotland; but the privileges of societies incorporated under the act of 1865 were preserved.] See *Stair*, B. i. tit. 12, § 12; *Ersk.* B. iii. tit. 3, § 33; *Bank.* ii. 492; *Ross's Lect.* ii. 136, 245; [*M'Glashan's Sher. Court. Prac.* § 430; *Dove Wilson's Sher. Court Prac.* 47; *Begg on Law Agents*, 11 *et seq.*, 383.] See *Agent and Client.* [*Law Agent.*]

[**PROCURATOR IN REM SUAM.** An

[agent or mandatory, acting under a power in his mandate or procuratory for his own behoof, is called a *procurator in rem suam.* Such a power, coupled with an interest, cannot be revoked; *Broughton*, 17 Dec. 1814, F.C. See *Stair*, B. iii. tit. 1, §§ 2 *et seq.; Ersk.* B. iii. tit. 5, § 2; *Bell's Com.* ii. 16; *Bell's Princ.* §§ 228, 1459; *Wharton on Agency*, § 95.]

**PROCURATOR-FISCAL**; is the officer at whose instance criminal proceedings are carried on. [The appointment of procurators-fiscal is made by the sheriff, with the approval of one of the principal Secretaries of State; but it does not fall by reason of the sheriff ceasing to hold office; 40 & 41 Vict. c. 50, § 6. A procurator-fiscal is not removable from office, except by one of the principal Secretaries of State, for inability or misbehaviour upon a report by the Lord President and the Lord Justice-Clerk; § 5. He may appoint a depute, with consent of the Lord Advocate and sheriff; § 7.] The procurator-fiscal may prosecute in his own name, and for the public interest, all crimes which such tribunals may competently try; but where he has reason to suspect that any complaint made to him tends more to vindicate the private than the public interest, his duty is to decline giving his instance and to offer his concurrence. This last he is bound to give to all applications or libels, at the instance of the private party aggrieved; every party being, by the law of Scotland, entitled to sue not only for his private interest, whether to the effect of restitution of his stolen property or reparation of damage sustained by any crime committed against him, but also for the public interest, to repress crime by punishment of the delinquent. And to this effect the procurator-fiscal's concourse must be given, if the complaint be regularly drawn. Where the procurator-fiscal gives his concurrence, and even acts as the informer's agent, he is not liable to an action for malicious prosecution; *Arbuckle*, 27 April 1815, 3 Dow, 160. [A procurator-fiscal is not liable in damages for the apprehension of a party, on the ground that the warrant was obtained without probable cause, unless malice be proved; *Munro*, 25 Feb. 1845, 7 D. 500; *Mains*, 9 July 1861, 23 D. 1258; *Rae*, 20 March 1875, 2 R. 669. He is not so protected, however, if he acts under a warrant which is in itself illegal or *ultra vires; M'Crone*, 10 Feb. 1835, 13 S. 443; *Bell*, 28 June 1866, 3 Macph. 1026. But in statutory complaints, under the Summary Jurisdiction Acts, his liability is limited to £5, unless malice and want of probable cause be proved; 27 & 28 Vict. c. 53, § 30. The validity of a procurator-fiscal's appointment cannot be questioned in a suspension of a conviction obtained at his instance; *Hill*, 13 June 1883, 10 R. (J.C.) 66. See also *Macrae*, 10 Feb. 1882, 9 R. (J.C.) 11.] All precognitions as to persons accused of crimes are now taken by the procurator-fiscal, [either alone, which is the ordinary practice, if the witness is not to be put on oath, or] before the sheriffs or sheriffs-substitute, or the magistrates of the different counties. But when declarations of accused parties are taken before the justices of peace, the proccedings should be remitted to the sheriff, and completed by the procurator-fiscal in that judge's court. By the Jurisdiction Act, which abolishes the mode of taking precognitions by the Porteous Roll clerk, sheriffs, exclusively, are required to exercise the duty, when crimes are committed, or reported to them. The sheriff and his procurator-fiscal, therefore, should immediately, or as soon as the exigency of the case permits, take and report precognitions. In all cases where information as to any crime has been lodged with the procurator-fiscal, it is his duty immediately to ascertain the truth or falsehood of the information given; to obtain correct evidence; to secure the accused; to prevent the oppression of the innocent, and the escape of the guilty; to preserve from corruption the sources of evidence; and to make a true report to the judge, and the officers of the Crown. There being no coroner in Scotland, it is the duty of the sheriff and his procurator-fiscal in cases where there is reason to suspect that any individual has met his death by violence, or from other than natural causes, immediately to have the body examined by medical men, and to take a precognition regarding the circumstances of the case. And where murder, fire-raising or any of the greater crimes have been committed, these officers frequently repair to the spot, for the purpose of better ascertaining, and of being able to report upon the different circumstances and appearances which the case may exhibit. [In criminal prosecutions before the sheriff, the procurator-fiscal generally acts as prosecutor. See *Criminal Prosecution.*] Although appointed by the sheriffs, the procurators-fiscal of counties, from their cumulative and extensive jurisdiction over the whole county, are accountable to the Crown counsel for the proper discharge of the criminal duties; and in all cases of difficulty, it is their duty to communicate with the Crown Agent, for the advice of the Crown counsel; all the correspondence of the fiscals being through the Crown Agent. All the fines imposed by the court as punishments are payable to the fiscal, who is bound to account for them to the Exchequer in cases which have been reported to the Crown counsel; and to the county and sheriff in other cases. [See articles in *Journ. of Jurisp.*, vols. xxi. and xxii. See also *Bank.* ii. 492; *Hume*, ii. 134; *Alison's Prac.* 92; *Macdonald*, 313; *M'Glashan's Sher. Court Prac.* § 461; *Barclay's Digest*, *h. t.*]

**PROCURATORY OF RESIGNATION.** A procuratory of resignation is a written mandate or authority, granted by a vassal, whereby he authorises his feu to be returned to his superior, either to remain with the superior as his property—in which case it is said to be a resignation *ad remanentiam*—or for the purpose of the superior's giving out the feu to a new vassal, or to the former vassal, and a new series of heirs; which is termed a resignation *in favorem*. The procuratory of resignation was usually inserted as a clause in the deed of conveyance; or, with the addition of a testing clause, a procuratory of resignation might constitute the entire deed. The procuratory authorises a certain person or persons (the name being left blank) to appear in presence of the superior, or of his commissioners, authorised to receive resignation, and there, as procurators for the granter of the procuratory, to resign the subject into the hands of the superior, by delivery of staff and baton, and that either *ad remanentiam*, or *in favorem*, and for new infeftment to be given in favour of the disponee, or of the vassal himself and a new series of heirs. Hence, entails were frequently executed in the form of procuratories of resignation. The procuratory of resignation was the warrant to the superior to give out of new the property of the vassal. On the death of the vassal, the superior might voluntarily renew the right in favour of the heir of investiture by a precept of *clare constat;* or, under statutory authority, he might be required to grant a charter of adjudication, or a charter of sale. But, with those exceptions, the resignation made under authority of the procuratory of resignation was the only form by which the superior was vested with any title to give out a new right. Prior to the passing of the act 1695, c. 35, procuratories of resignation, as being mandates to the procurators of the vassal, fell by the death either of the granter or receiver. But by that statute, it was declared that the procuratory of resignation might be the warrant of resignation, after the death either of the granter or of the receiver. The procuratory of resignation necessarily formed part of the disposition of sale, because it was requisite that the purchaser should be enabled to enter with the seller's superior by resignation. It was inserted also in a disposition by a superior to his vassal; and in a disposition of the feu by a vassal in favour of his superior, the procuratory of resignation was the regular form by which the restoration of the property to the superior was authorised. [By 10 & 11 Vict. c. 48, § 3, a short clause in these terms,—"And I assign the said lands and others for new infeftment,"—was declared to be equivalent to a procuratory in the form previously in use. But since the Conveyancing Act of 1874, every disponee infeft is deemed to be entered with his superior by force of statute; charters and writs of resignation are incompetent; and procuratories of resignation are therefore no longer in use.] See *Ersk.* B. ii. tit. 7, §§ 17 *et seq.;* B. iii. tit. 3, § 42; *Bell's Princ.* § 787; *Bell on Purchaser's Title*, 35, 42; *Ross's Lect.* ii. 223, 234, 245; [*Menzies' Conv.* 617, 624, 643; *M. Bell's Conv.* i. 688; ii. 781.] See *Resignation. Charter. Conveyancing.*

**PRODIGALS**; are those of a profuse and facile disposition—the fit subjects of voluntary, or of legal interdiction. See *Interdiction. Curatory.*

**PRODUCTION.** In judicial proceedings, written documents produced in process *in modum probationis*, or in support of the action or defence, are technically called productions. So also in an action of reduction, the writ, or deed, or decree, called for in order to its being judicially set aside or reduced, is called the production; which, unless the defender have a good objection to the pursuer's title, or some other valid preliminary defence, he must *satisfy* (as it is expressed), that is, judicially produce. See the practical rules on this point explained, *voce Reduction.* [By 6 Geo. IV. c. 120, § 3, the parties to an action are directed to produce, along with the summons or defences, the deeds or writings on which they found, so far as the same are in their custody or within their power. See also A.S. 11

[July 1828, §§ 54, 55. But by § 99 of the Court of Session Act, 1868, it is no longer competent to object to the production of any document after a record has been closed, on the ground that it was in the possession or under the control of the party producing it at the time when the record was closed; but the court may attach such conditions, as to expenses or otherwise, to the receiving of such documents as they think proper. In cases to be tried by jury, documents to be used in evidence must be lodged at the Register House eight days before the trial, and notice thereof given at the same time to the opposite party; but it is competent to the court to admit writings not timeously lodged, if it be shown that they could not have been lodged before the period of their actual production, and that notice had been duly given to the opposite party; A.S. 16 Feb. 1841, §§ 18, 19. See *Cameron*, 21 Dec. 1850, 13 D. 412. See *Shand's Prac.* 266, 365; *Mackay's Prac.* i. 448; ii. 40; *Dickson on Evidence*, § 1361. See *Evidence. Jury Trial.*]

**PRODUCTION** *of Articles at Criminal Trial.* Writings and other articles, such as the forged writings, the stolen goods, the instruments of murder, &c., produced at a trial, do not constitute evidence, unless authenticated by the testimony of witnesses. In theft, the goods stolen ought to be described by the owner before being put into his hands to be sworn to by him; and he must state his reasons for certain knowledge, if he identify the goods absolutely. It must likewise be proved that the goods produced were found upon the prisoner. Where the articles are of such a nature that they cannot be produced, the question of identity must rest on the description given by the owner and witnesses, of the property said to have been stolen, and of that found on the prisoner. In forgery, the forged writing must be produced, if in existence. If destroyed by the panel, the trial may proceed, proof, of course, being rendered more difficult. If lost, or destroyed, but not by the panel's fault, it is a question undecided, whether the trial may proceed; but it is settled, that the trial cannot proceed if the non-production is in any way owing to the prosecutor. A witness, to illustrate his evidence, may produce an article unnoticed in the libel; but such an article cannot be left to become part of the process, and to be sworn to by the other witnesses. [For the rules as to lodging productions by the prosecutor or the accused, see *Criminal Prosecution*, pp. 260–2.] See *Hume*, ii. 83, 240, 387, *et seq.; Burnett*, 200, 506, 558; *Alison's Prac.* 588; [*Macdonald*, 452, 500; *Dickson on Evidence*, § 1816.]

**PROFANITY.** The profanation of the Sabbath by any occupation of labour, business, or sport, or other secular employment, has been prohibited by several statutes, from 1503, c. 83, to [1701, c. 11. Disturbing divine service is made criminal by 1587, c. 27; and the statutory penalty of escheat of moveables was enforced in *Fraser*, 19 Sept. 1839, 2 Swint. 436. In *Dougall*, 18 Nov. 1861, 4 Irv. 101, the offence was dealt with as a breach of the peace. See *Hume*, i. 572; *Macdonald*, 204.] See *Blasphemy. Sunday.*

**PROFITS, VIOLENT.** See *Violent Profits.*

**PROGRESS OF TITLES.** A progress of titles, in its most ordinary acceptation, signifies such a series of the title-deeds of a landed estate, or other heritable subject, as is sufficient in law to constitute a valid and effectual feudal title thereto. In the case of a sale at a full price, the seller is bound, unless it be otherwise stipulated, to give the purchaser not only a disposition, or other effectual deed of conveyance, but also to give him a sufficient progress of titles. And in practice, the seller usually comes under an express obligation to that effect; the legal import of which is, that he must deliver to the purchaser, along with his disposition, a progress of deeds, showing that the seller has in his person, by inheritance or otherwise, an unimpeachable feudal title. But where the seller is able to show an unencumbered title complete in his person, and that of his predecessors or authors, extending backwards for forty years, and standing on charter, or disposition, and sasine, the purchaser is bound to accept of this as a sufficient progress, unless he can point out specific objections; [1617, c. 12. And since 1st Jan. 1879, continuous uninterrupted possession for twenty years, following upon any *ex facie* valid irredeemable title to an estate in land, recorded in the appropriate register of sasines, is equivalent to forty years' possession on charter and sasine under the act 1617; and the same possession continued for thirty years is a sufficient bar to all pleas of minority or *non valens agere;* 37 & 38 Vict. c. 94, § 34.] Where, however, the title rests mainly on mere possession for forty years, such a progress will not amount to implement of the seller's obligation. Thus, where a seller had possessed during the long prescription but there were the following objections to his title:—that a charter confirmed by the superior was wanting in the progress; that some charters had no sasines following on them; while the warrants of certain sasines were awanting; it was held that this was a title which a purchaser was not bound to accept; *Nairn*, 1676, M. 14169. Where the exposer in articles of roup has taken the purchaser bound to satisfy himself with the progress, but, at the same time has bound himself to give a "valid disposition," it seems to be settled that the purchaser is not barred from pleading that the title offered is legally objectionable; *Waddell*, 19 June 1828, 6 S. 990. But see *Rowand*, 1769, M. 14178; *Hay*, 1783, M. 14183; *Anderson*, 4 Dec. 1818, F.C.; *Carruthers*, 26 May 1825, 4 S. 34; *Dick*, 12 Dec. 1826, 2 W. & S. 522. See *Stair*, B. iv. tit. 38, § 19; *Ersk.* B. ii. tit. 3, § 20; *Bank.* ii. 218, 688; *Bell on Completing Titles*, 154; *Ross's Lect.* ii. 296; [*Menzies' Conv.* 881; *M. Bell's Conv.* ii. 702.] See *Disposition. Sale. Search of Incumbrances.* [*Prescription.*]

**PROHIBITION**. See *Entail.*

**PROMISE AND OFFER**. An offer is a proposal made by the offerer to the person to whom the offer is addressed, to give or to do something, either gratuitously, or for an onerous consideration. A promise is an offer, with this addition, that the promiser, from the nature of his proposal, thinks it unnecessary to wait for the other party's assent, which he takes it for granted will be given as soon as the offer is known. In the case of an offer, therefore, there is no *consensus in idem placitum* until the offer is expressly agreed to. But as soon as a promise is made, there is *consensus in idem placitum* implied, although not expressed. An offerer is not bound until his offer is accepted. A promiser is bound as soon as the promise reaches the party to whom it is made. According to Stair, the necessity of acceptance in the one case and not in the other is to be accounted for in this way—that an offer accepted is the deed of two, while a promise is but the deed of one, and has not implied in it, "as a condition," the acceptance of another; *Stair*, B. i. tit. 10, §§ 3 and 4. Whatever supposition is adopted, the practical result is the same; but it seems more in accordance with the general doctrine of agreements to hold, that obligation can only spring from consent; and that this consent exists in the case of a promise, as well as of an accepted offer. The presumption does not always hold, that a person in whose favour a proposal is made to give or to do something gratuitously, is willing to accede to that proposal. And when the proposer expresses any doubt upon this point, he is not bound, unless by the express acceptance of the other party. Thus, a person offered by letter to become debtor for a sum due by his mother, but requested to know whether the creditor agreed to this. The creditor did not expressly accept the offer, and the offerer was held, after his mother's death, not bound to implement it; *Allan*, 1664, M. 9428. But a letter, in which a brother promised to give a bond of provision in favour of his sisters, and two bonds for £250 each in favour of his brother, was held binding; *Maclachlan*, 1 June 1821, 1 S. 45. A promise does not require writing for its constitution: it may be either verbal or by letter. It cannot, however, [unless followed by *rei interventus*,] be proved by witnesses: the writ or oath of the debtor is necessary. [See *Ersk.* B. iii. tit. 2, § 1; tit. 3, § 88; *Bell's Princ.* §§ 8, 9; *Dickson on Evidence*, § 596; *Anson on Contract*, 293. See *Offer.*]

[**PROMISE OF MARRIAGE**. See *Espousals. Marriage*, p. 693.]

**PROMISSORY NOTE**. [The law relating to promissory notes is codified in Part IV. (§§ 83 to 89) of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61). The act provides as follows:—

[*Promissory note defined.*—(1.) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer. (2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker. (3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. (4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands, is an inland note. Any other note is a foreign note; § 83. See *Vallance*, 27 June 1879, 6 R. 1099; *Blyth*, 6 R. 1102.

[*Delivery necessary.*—A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer; § 84.

[*Joint and several notes.*—(1.) A promissory note may be made by two or more [makers, and they may be liable thereon jointly, or jointly and severally, according to its tenour. (2.) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note; § 85.

[*Note payable on demand.*—(1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented, the indorser is discharged. (2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. (3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue; § 86.

[*Presentment of note for payment.*—(1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. (2.) Presentment for payment is necessary in order to render the indorser of a note liable. (3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice; § 87.

[*Liability of maker.*—The maker of a promissory note by making it—(1.) engages that he will pay it according to its tenour; (2.) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse; § 88.

[*Application of Part II. to notes.*—(1.) Subject to the provisions in this part and, except as by this section provided, the provisions of this act relating to bills of exchange apply, with the necessary modifications, to promissory notes. (See *Bill of Exchange.*) (2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. [(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—(*a.*) presentment for acceptance; (*b.*) acceptance; (*c.*) acceptance *supra* protest; (*d.*) bills in a set. (4.) Where a foreign note is dishonoured, protest thereof is unnecessary; § 89. See *Leeds Bank*, 1883, 11 Q.B.D. 84. See *Thomson on Bills*, 1, 4, 6; *Bell's Princ.* § 307; and authorities noted under *Bill of Exchange.* For the form, see *Jurid. Styles*, ii. 9; and as to the sexennial limitation, see *Prescription.*]

**PROMULGATION.** The acts of the Scottish Parliament were promulgated by proclamation in all the county towns in the kingdom. They were afterwards ordered to be printed; 1540, c. 127; and the proclamation of them fell into disuse. But, by 1581, c. 128, they were ordered to be published at the market-cross of Edinburgh. British statutes come into operation from the date of their receiving the royal assent, unless it be otherwise provided in the act. *Ersk.* B. i. tit. 1, § 37; 33 Geo. III. c. 13. [See *Statute.*]

**PROMUTUUM.** One is said to have a *quasi* loan, or *promutuum*, of a sum which has been paid to him when it was not due, and which he is therefore bound to restore. *Stair*, B. i. tit. 7, § 9; tit. 2, § 5. See *Condictio Indebiti.*

**PROOF.** [When the record in an action is closed, if parties do not renounce probation, or if they do not agree as to the mode in which proof is to be taken, the further procedure is determined by the Lord Ordinary, in accordance with the provisions of A.S. 10 March 1870, § 1; or by the sheriff in accordance with 39 & 40 Vict. c. 70, § 23. Proof may be taken (1) before a judge and jury, (2) before a judge alone, or (3) before a commissioner. The cases appropriated to jury trial are described *sub voce Jury Trial;* and the cases in which evidence may be taken by commission are mentioned *sub voce Commission.* In other cases, in the Court of Session, proof is taken by the Lord Ordinary himself, under the Evidence Act, 1866 (29 & 30 Vict. c. 112, § 1); or by a judge of the Inner House, when the proof is ordered by the Inner House, under § 62 of the Court of Session Act, 1868. See *Main*, 30 June 1881, 8 R. 880. The provisions of the Evidence Act supersede those of § 13 of the Conjugal Rights Act, 1861 (which directed that proof in consistorial causes should be led before the Lord Ordinary), and of § 48 of the Court [of Session Act, 1850 (by which special questions of fact might be tried by the Lord Ordinary). By § 46 of the latter act, a trial of issues of consent, by the Lord Ordinary, was allowed; but this provision has scarcely ever been put into practice. The diet of proof, under the Evidence Act, may be fixed, in the discretion of the Lord Ordinary, either during the sitting of the court, or in vacation; but all causes ready for proof at the end of a session are to be tried at sittings to be held during the ensuing vacation; 31 & 32 Vict. c. 100, § 33. In proofs before a Lord Ordinary, "no adjournment shall be allowed, except on special cause stated in an interlocutor, and the evidence shall be summed up by one counsel on each side at the conclusion of the examination of the witnesses, as in the case of jury trials;" *ib.* § 32. But "when the case is complex, or the proof of such a nature that it would be difficult for the Lord Ordinary or for counsel to digest it on the spot," an adjournment is advisable; see *Birrell*, 15 Feb. 1867, 6 Macph. 421. By § 1 of the Evidence Act, "the Lord Ordinary shall cause the evidence to be taken down and recorded in shorthand by a writer skilled in shorthand writing, to whom the oath *de fideli administratione officii* shall be administered; and the Lord Ordinary may, if he think fit, dictate to the shorthand writer the evidence which he is to record; and the shorthand writer shall afterwards write out the evidence so taken by him; and the extended notes of such shorthand writer, certified by the presiding judge to be correct, shall be the record of the oral evidence in the cause." As alternatives to this mode of recording the evidence, it is provided by the same section that the Lord Ordinary may "write down with his own hand the oral evidence, in which case it shall be read over to the witness by the judge in open court, and shall be signed by the witness, if he can write; or the Lord Ordinary shall record the evidence by dictating it to a clerk, in which case it shall also be read over to, and signed by the witness;" but these modes are never adopted in practice. The same section provides that "the Lord Ordinary shall himself take or dictate to his clerk or shorthand writer a note of the documents adduced;" but in practice, the documents are put in, along with an inventory, by the counsel on each side, at the close of his proof. The following observations by Lord J. C. Inglis on the proper form of interlocutor, where a proof is allowed to both parties of their respective averments, may be quoted:—"When a proof is allowed in cases in which no averments are made by the defender, the proper interlocutor is 'Allow the pursuer a proof of his averments, and to the defender a conjunct probation;' but when the defender makes averments, and both parties are allowed a proof, a form of interlocutor not unusual in such a case, viz., to allow both parties a proof, and to either party a conjunct probation, is erroneous and misleading. In such cases the proper form of interlocutor is, 'Allow both parties a proof of their respective averments, and to the pursuer a conjunct probation,' because the defender is bound to lead his conjunct probation when he leads his proof in chief. After the pursuer has led his proof in chief, and the defender his conjunct probation and proof in chief, the pursuer is entitled to a probation conjunct to the defender's proof in chief; but after that the defender is entitled to no further proof, unless he can show that proof has been led in the pursuer's conjunct proof of such a nature as entitles him to a proof in replication, in which case he must apply to the court for leave to lead such proof in replication, and must show special cause why it should be granted;" *Mags. of Edinburgh*, 11 Nov. 1862, 1 Macph. 13. See also, as to when proof in replication will be allowed, *Strang*, 15 May 1862, 24 D. 955; *Gairdner*, 10 Dec. 1874, 2 R. 173. As to proof in the sheriff court, which is regulated, for the most part, in the same way as proof in the Court of Session, see 16 & 17 Vict. c. 80, § 10; 37 & 38 Vict. c. 64, § 4; 39 & 40 Vict. c. 70, § 23. See *Mackay's Prac.* ii. 3, 24; *Dove Wilson's Sher. Court Prac.* 165. See *Before Answer*. *Evidence.*]

**PROPER JURISDICTION.** Proper jurisdiction, as contradistinguished from delegated jurisdiction, is that which belongs to the judge or magistrate himself, in virtue of his office; whereas delegated jurisdiction is that which is communicated by a judge to another who acts in his name, called a depute or deputy; *Ersk.* B. i. tit. 2, § 13. See *Delegated Jurisdiction.*

**PROPERTY**; is the exclusive right of using and disposing of a subject as one's own. Hence, the proprietor of a subject, whether heritable or moveable, may give it away or sell, or burden, or pledge it, or create a servitude over it. So also the same subject may belong to two equally, which is termed *joint property*, or *common property*. Moveable property once vested in a person must remain his until it ceases to be so by his voluntary act, by delinquency, or by dereliction. But heritable property is not lost by dereliction alone. In order to give effect to the dereliction of heritage, there must be a title in another founded on the positive prescription. See *Dereliction. Prescription.* Occupancy is admitted by the law of Scotland as a mode of acquiring property as to those subjects only which have continued in their original state unappropriated, whether the subject be animate or inanimate, as precious stones which never have had an owner, wild beasts, fowls, or fishes. [See *Occupancy.*] But with this exception, property, both heritable and moveable, is regulated by the rules of law in its constitution and transmission. [See *Accession. Specification. Commixtion. Tradition. Delivery.*] Difficult questions sometimes occur as to the right of conterminous proprietors to make alterations upon their own property, which may affect the property of their neighbours. Some of these questions have been already considered under the articles *Common Property*, and *Common Interest.* A proprietor has the exclusive right to the occupation and use of his property, *a cœlo usque ad centrum.* He may therefore prevent any encroachment, however inoffensive, and on whatever pretence. Every proprietor may do what he likes with his own, provided that he does not thereby injure the property of another; the remedy to the sufferer being damages for an injury inflicted, and interdict against any injury threatened. [See *Nuisance.*] Neither is a proprietor entitled to exercise his right of property solely for the purpose of incommoding his neighbour. See *Æmulatio vicini.* But one cannot be restrained in the beneficial or legal use of his property, merely because inconvenience may result to a neighbour. A proprietor may build to the very verge of his ground, even though he should stop all his neighbour's lights. See *Light.* Land locally inferior must receive the water of the superior land; but the inferior proprietor is not entitled to dam up the water so as to send it back upon the higher ground. [See *River.*] A proprietor may dig his ground and remove the earth to the very verge of his property; but if his operations injure a neighbouring property, or remove the support from a neighbouring tenement so as to cause it to fall, or put it in danger of falling, he may be interdicted from proceeding, or made liable for the loss. This matter must necessarily depend upon the circumstances of each particular case. A proprietor who, in digging up an old wall, went lower than the foundation of his neighbour's house, which was thereby injured, was found liable for damages; *Robertson*, 12 May 1825, 4 S. 6. Damages were awarded in the Jury Court for injury done to a house by improperly excavating the foundation of an adjoining one; *Callender*, 19 July 1826, 4 Mur. 108; *Douglas*, 19 Sept. 1826, 4 Mur. 130. A person who had purchased a building-stance adjoining a tenement which had no sunk storey, intimated his intention of excavating his ground for the purpose of having a sunk storey. This was resisted, and interdict against it granted, on the ground that the excavation would endanger the safety of the neighbouring tenement, and that the buildings in that street all wanted sunk areas; *Murray*, 4 Dec. 1834, 13 S. 119. [In an action raised against the proprietor of a ferry, who had erected a bridge in place of the ferry, and thus united a line of public road, the pursuers maintained that the bridge, being erected in a public way, was dedicated to the public use; but the court held that such dedication of private property was unknown in the law of Scotland; *Cumming*, 18 June 1852, 14 D. 885. See *Stair*, B. ii. tit. 1, § 28;] *Ersk.* B. ii. tit. 1, § 1; *Bell's Princ.* §§ 938, 1283; *Bank.* i. 10, 84, 504, 529; iii. 51; [*Rankine on Land-Ownership*, 86, 119.] See *Jus in Re.* [*Possession. Trespass. Game. Strays. Accretion.*]

**PROPERTY AND INCOME TAX.** The income or property tax was first imposed by 39 Geo. III. c. 13 (9th Jan. 1799); and having been the subject of various statutes, it expired on 5th April 1816. [It was revived, however, by the Income Tax Act, 1842 (5 & 6 Vict. c. 35), and has been levied ever since, the rates being fixed from year to year. For the purpose of classification and assessment, the subjects in respect of which this tax is payable are described in five schedules, appended to the Income Tax Act, 1853 (16 & 17 Vict. c. 34), which took the place of similar schedules (only not applicable to Ireland) appended to the principal act of 1842. Under sched. (A), the duty is charged in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, so much for every twenty shillings of the annual [value thereof: Under sched. (B), it is charged in respect of the occupation of all such lands, &c., so much for every twenty shillings of the value thereof: Under sched. (C), it is charged in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable to any person, body politic or corporate, company or society, whether corporate or not corporate, out of any public revenue, so much for every twenty shillings of the annual amount thereof: Under sched. (D), the duty is charged in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom, from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and from any profession, trade, employment, or vocation, whether carried on in the United Kingdom or elsewhere, so much for every twenty shillings of the annual amount of such profits and gains; and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or from any profession, trade, employment, or vocation exercised within the United Kingdom, so much for every twenty shillings of the annual amount of such profits and gains; and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of the other schedules, so much for every twenty shillings of the annual amount thereof: and under sched. (E), the duty is charged in respect of every public office or employment of profit, and upon every annuity, pension, or stipend, payable by Her Majesty or out of the public revenue of the United Kingdom, except annuities charged under sched. (C), so much for every twenty shillings of the annual amount thereof. Rules are given in the principal act for the assessment of the duties under the respective schedules; see §§ 60–146. The income tax duties are under the general management of the Commissioners of Inland Revenue; 1842, § 3, as altered by 12 Vict. c. 1, § 3; see also Taxes Management Act, 1880 (43 & 44 Vict. c. 19), §§ 12 *et seq.* The local management is entrusted to commissioners for general purposes, appointed under the act of 1842; §§ 4–22; see also Taxes Act, § 28. Commissioners for special purposes are also appointed under the act, whose functions are described in § 23 of the principal act. Assessors of income tax are appointed by the commissioners for general purposes; § 36. The persons liable to assessment are described in §§ 39–45. Among them are included temporary absentees, residents for more than six months in one year, corporations, trustees, factors, agents, and married women acting as sole traders, or having separate property chargeable. Mariners, whose dwelling-place is in the United Kingdom, are assessable though absent during the whole fiscal year; *Young*, 10 July 1875, 2 R. 925; *Rogers*, 28 June 1879, 6 R. 1109; *Lloyd*, 12 March 1884, 11 R. 687. The assessors are directed to serve notices on all persons liable to assessment, both by fixing general notices on church doors, &c., and by particular delivery of notice at the dwelling-houses of such persons, requiring them to make out and deliver the necessary lists, declarations, or statements, within twenty-one days; §§ 47–49. As to the statements required, and penalties for neglect to deliver the same, see §§ 52–56. The assessors then make their assessments, and deliver them, with the returns, to the commissioners for general purposes, by whom they are examined, and, on being approved, are notified to the taxpayers; the day for hearing appeals (being at least fourteen days thereafter) being notified at the same time; §§ 74–80. Immediately on the determination of an appeal by the commissioners for general or special purposes, the appellant or the surveyor may, if dissatisfied with the determination as being erroneous in point of law, declare such dissatisfaction, and may, within twenty-one days thereafter, require the commissioners to state and sign a case for the opinion of the Court of Exchequer in Scotland; Taxes Act, § 59 (which prescribes rules of procedure). See also A.S. 8 Jan. 1875; and *Caled. Railway*, 18 Nov. 1880, 8 R. 89; where it was held that the commissioners' decision is final on questions of fact, and observations were made on the form of cases. Appeal to the House of Lords is competent; Taxes Act, § 59.

[A total exemption from income tax is allowed to persons whose whole annual income is less than £150; and persons whose income is less than £400 are entitled to be relieved of so much duty as an assessment on £120 would amount to; 39 Vict. c. 16, § 8. Deduction is allowed, when claimed, of any annual premium (not exceeding one-sixth part of the claimant's whole income) paid for insurance, or deferred annuity, on the [claimant's own or his wife's life, to any insurance company in existence on 1st Nov. 1844, or registered pursuant to the act 7 & 8 Vict. c. 110; or of any annual payment made under act of parliament to any widows' or children's fund; 16 & 17 Vict. c. 34, § 54. Persons occupying land for the purposes of husbandry only are entitled to an abatement proportionate to the deficiency of their profits or gains; 14 & 15 Vict. c. 12, § 3; 16 & 17 Vict. c. 34, § 46; 43 & 44 Vict. c. 20, § 52. Such persons may also elect to be assessed under sched. D instead of sched. B; 50 & 51 Vict. c. 15, § 18.

[The statutory rules with regard to assessment under the various schedules are too numerous for insertion here. But some of the points that have been elucidated by judicial decision since 1874, when, by 37 Vict. c. 16, § 9, appeal from the commissioners was first allowed in the form of a case for opinion of the court, may be noted. The mode of valuation of lands provided by the principal act, for assessment under sched. (A), is not affected by the provisions of the Lands Valuation Act of 1854, which relates only to local assessment, not to imperial taxation; *Menzies*, 18 Jan. 1878, 5 R. 531. The lessee of a deer forest is assessable as occupier, under sched. (B), to the full extent of the rent actually paid; *Middleton*, 16 March 1876, 3 R. 599. The sum mentioned as rent in a lease was allowed to be proved to be partly a price payable in respect of moveables; and assessment was limited to what was really rent; *Campbell*, 25 Oct. 1879, 7 R. 82. The commissioners of supply of a county were held not to be exempt from assessment as owners and occupants of police stations; *Clerk*, 16 July 1880, 7 R. 1157; but this decision was disapproved of by the House of Lords in *Coomber*, 9 App. Ca. 61. With regard to sched. (D), by the first rule under § 100 of the leading act, duties charged in respect of trades and professions are to be computed on a sum not less than the full balance of profits upon a fair and just average of the three years immediately preceding; see *Miller*, 29 Nov. 1878, 6 R. 270. By the third rule under the same section, no deduction may be made on account of any sum employed as capital; see *Addie*, 16 Feb. 1875, 2 R. 431; *Coltness Iron Co.* 7 April 1881, 8 R. (H.L.) 67. Deduction may be made for diminished value by wear and tear of machinery or plant used in any trade, &c.; 41 Vict. c. 15, § 12; *Caled.* [*Railway*, 18 Nov. 1880, 8 R. 89. As to whether surplus revenue, derived from rates levied by a public corporation, is assessable as profits, contrast *Glasgow Water Commrs.* 26 May 1875, 2 R. 708, with *Glasgow Gas Commrs.* 20 June 1876, 3 R. 857. By § 103 of the principal act, all agreements for payment of any interest, rent, or other annual payment, in full, without allowing deduction of income tax, are void; but a bequest of a sum of money, free of income tax, is not struck at by this provision; see *Kinloch's Trs.* 24 Feb. 1880, 7 R. 596, and cases there commented on. By § 52 of the act of 1853, any minister may deduct from his profits any sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duties as minister; but this was held not to apply to a sum paid to an assistant by voluntary arrangement between the minister and his congregation; *Macrae*, 12 Dec. 1884, 12 R. 336. In *Brown*, 20 Feb. 1886, 13 R. 590, a seedsman who occupied a farm for producing seeds claimed, under § 101 of the principal act, to set his losses on the farm against his profits on his seed business, and to be assessed on the balance only; but this claim was negatived, the assessment on the farm being, according to the rules of sched. (B), on the rent, while the assessment on the profits of his business was regulated by sched. (D). As to assessment on interest received from foreign investments, see *Scot. Mortgage and Land Investment Co. of New Mexico*, 19 Nov. 1886, 14 R. 98; *Smiles*, 31 May 1887, 14 R. 734; contrasted with *Smiles*, 12 July 1888, 15 R. 872; also *Colquhoun* (H.L.), 9 Aug. 1889, 5 T.L.R. 728. Where bank premises were partly occupied for residence by officers of the bank, and the bank paid income tax under sched. (A) on the whole premises, it was held that the bank were entitled to deduct from their profits, before returning them for assessment under sched. (D), the annual value of the whole premises; and the opinion was expressed that officers occupying bank premises for residence are liable under sched. (E); *Town and County Bank*, 26 April 1888, 15 R. (H.L.) 51. Certain exemptions are enacted in favour of "charitable purposes;" but these words do not cover religious or benevolent purposes; *Baird's Trs.* 1 June 1888, 15 R. 682. Interest upon a loan by a banker to a customer for a period of less than a year is within the words "any yearly interest of money or any annuity or other annual [payment," in respect of which deduction is allowed by § 40 of the act of 1853; and if such deduction is not made by the customer, the banker is not liable to pay income tax on such interest; *Goslings & Sharpe*, 22 Q.B.D. 153. In regard to assessment on the profits of a company carrying on the businesses both of life and fire insurance, it was held, in *Scot. Union and National Insurance Co.* 8 Feb. 1889, 16 R. 461, (1) that the nett profits and gains from the two branches of the business must be massed together as one undivided income assessable under the first case of sched. (D); (2) that in estimating profits and gains there fell to be taken into account interest on investments which had not suffered deduction of income tax at its source; (3) that as fire insurance policies are contracts for one year only, the premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period, and ordinary expenses, may be fairly taken as the profits and gains of the company without making any allowance for the balance of annual risks unexpired at the end of the financial year; (4) that the profits or gains upon the life business could be ascertained by actuarial calculation only, which might be obtained by taking the result of the periodical investigation required by statute, or by an investigation covering the three years prescribed by sched. (D); and (5) that where a gain is made by the company, within the year of assessment or the three years prescribed by sched. (D), by realising an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the company. See *Jurid. Review*, i. 259; also *Last*, 10 App. Ca. 438; *Clerical, Medical, and General Life Ass. Society*, 22 Q.B.D. 444. In *Last*, which was the case of a proprietary insurance company, it was decided that *bonuses*, being a portion of profits distributed among policyholders, were assessable for income tax. But in the case of a mutual insurance company, whose policyholders constitute its membership, contributions returned to them under the name of bonus are not assessable as profits; *N. York Life Ins. Co.* (H.L.), 1 July 1889, 5 T.L.R. 621.

[See on this subject, *Dowell on Income Tax Laws; Senior on Income Tax; Pratt on Income Tax; Rankine on Land-Ownership*, 705, 9-3.]

**PROPINQUITY.** See *Kindred. Succession. Executors.*

**PROPONED AND REPELLED.** Pleas proponed and repelled are those pleas which have been stated in a court and repelled previous to decree being given; and in the Court of Session no reduction of a decree on such grounds will be allowed. *Stair*, B. iii. tit. 1, § 46; tit. 52, § 7; *Ersk.* B. iv. tit. 3, § 3; *Bank.* ii. 679. See *Competent and Omitted. Decree.* [*Res Judicata.*]

**PROPORCITAS**; *proportatio assisæ*; "the proport, report, declaration, deliverance, verdict, or suithsaying of an assize." *Skene, h. t.*

[**PROPULSION.** An heir of entail in possession may propel the estate to the next heir *alioquin successurus*; the effect being the same as if the heir in possession had died, or renounced. See *Halket Craigie*, 4 Dec. 1817, F.C.; *Padwick*, 4 March 1874, 1 R. 697. But propulsion of part only of the estate appears to be incompetent; *V. Dupplin*, 15 Nov. 1871, 10 Macph. 89; *Skeete*, 8 Nov. 1879, 7 R. 15. Propulsion of the succession, under reservation of the liferent, has no effect upon applications made under the Entail Amendment Acts of 1848 and 1853; 16 & 17 Vict. c. 94, § 22. Such applications may be made in name either of the liferenter or of the fiar; and during the life of the latter, the same consents only are required, which would have been required if the estate had not been propelled; 31 & 32 Vict. c. 84, § 13. See *Entail.*]

**PROROGATION.** In judicial proceedings, a prorogation is a prolongation of the time appointed for reporting a diligence, lodging a paper, or obtempering any other judicial order. [By § 26 of the Court of Session Act, 1868, it is not 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 or closing of the record or otherwise. See *Mackay's Prac.* i. 471, 571.]

**PROROGATION OF JURISDICTION**; is that jurisdiction which is, by the consent of the parties, conferred on a judge otherwise incompetent. The consent may be either express or implied, as by proponing defences *in causa*, or the like. But a clause consenting to registration in a particular judge's court-books, does not imply a prorogation of that judge's authority as to questions afterwards arising concerning the legal import of the writing so registered; and in general, in order to render prorogation effectual, the judge must have a jurisdiction susceptible of prorogation. Thus, it is inadmissible where his jurisdiction is excluded by statute; or when the judge's judicial commission is vacated or has expired; or where he is acting *extra territorium;* [*Forrest*, 25 April 1845, 4 Bell's App. 197; *Ringer*, 15 Jan. 1840, 2 D. 307.] A defender, however, whose domicile is beyond a particular judge's territory, may, if cited within that territory, subject himself to the jurisdiction by appearing in court and offering peremptory defences; [*White*, 30 June 1846, 8 D. 952; *Longmuir*, 21 May 1850, 12 D. 926; *Bank of Scotland*, 8 Dec. 1886, 14 R. 213.] Prorogation of jurisdiction from causes of one description to those of a totally different description is inadmissible. Yet, where the cause is of the same nature with those to which the judge is competent, prorogation is admitted. Thus, where the proper jurisdiction of the judge is confined to causes amounting to a certain value, parties may prorogate the jurisdiction to causes above that value, unless the statute conferring the jurisdiction prohibits it, or expressly limits the jurisdiction. [There may be prorogation of jurisdiction when arbitration is provided by statute, if not made compulsory; *Dundee Provident Co.* 6 Feb. 1884, 11 R. 537.] Prorogation is not admitted in the Queen's causes, lest the Crown should suffer by the negligence of its officers. See *Ersk.* B. i. tit. 2, § 27; *Bank.* ii. 471; [*Mackay's Prac.* i. 178; *Dove Wilson's Sher. Court Prac.* 84. See *Jurisdiction.*] *Declinature.*

**PROROGATION OF A LEASE**; is the extension of it. In strict phraseology, a prorogation has been said to differ from a renewal in this, that the former is simply an extension of the lease which has expired, and which it ought to recite; while a renewal commences prior to the expiration of the old lease, and makes some alteration on it. This distinction has not been observed in practice; and prorogation and renewal are used indiscriminately. The same legal requisites are necessary to constitute a prorogation as to constitute the original lease. [It would appear that a prorogation of a tack, during its currency, is not effectual against a singular successor, unless it is clear that possession began on the new lease from the date of prorogation; *Birkbeck*, 22 Dec. 1865, 4 Macph. 272; *Pratt*, 18 Nov. 1858, 21 D. 19.] See *Stair*, B. ii. tit. 8, § 12; *More's Notes*, ccxlv.; *Ersk.* B. ii. tit. 6, § 25; *Bank.* ii. 52, 64, 72; *Bell's Com.* i. 65: *Ross's Lect.* ii. 500; *Bell on Leases*, i. 55, 60, 88, 117, 284; *Hunter's Landlord and Tenant*, i. 442, 488; [*Rankine on Leases*, 133; *Bell's Princ.* § 1210.] See *Lease.*

**PROROGUE.** The Parliament is said to stand prorogued when it is continued from one session to another. The prorogation is made by the royal authority, either by royal commissioners, who, in the Sovereign's name, prorogue the Parliament, or the prorogation may be made by royal proclamation. See *Parliament.*

**PROSECUTION.** See *Criminal Prosecution.*

**PROSPECT.** See *Light.*

**PROTECTION AGAINST PERSONAL DILIGENCE.** This is given by the law in the following cases:—1. The persons of peers, and of the widows of peers, are exempted from diligence. 2. Members of Parliament are protected against personal execution by privilege of Parliament; [see *Parliament.*] 3. Married women for civil debts; [see *Marriage.*] 4. Minors under the age of pupillarity; [1696, c. 41.] The Palace of Holyroodhouse and its precincts afford a sanctuary to debtors; [see *Sanctuary.*] Besides the protection against arrest for civil debt thus obtained, the execution of a caption may be stayed by the judge, whenever it is necessary to call the person against whom such a diligence has issued or may issue to give his evidence in a cause. For this purpose the judge may, under the acts 1663, c. 4, and 1681, c. 9, grant a personal protection for such time as may be requisite —the same not exceeding a month; and as a safeguard against fraud, the party calling the witness must, by 1681, c. 9, make oath that he believes the witness to be a material one, and the creditor must also be called to object to the protection if he sees proper. [See *Paton*, 8 March 1836, 14 S. 679.] Under the Bankrupt Statute, a warrant of protection may be given by the court when awarding sequestration until a meeting of creditors, and a majority in number and value of the creditors may afterwards renew the protection; [19 & 20 Vict. c. 79, §§ 44, 77. See *M'Gregor*, 12 April 1879, 6 R. 895. But since the general abolition of imprisonment for debt by the Debtors Act, 1880, such protection orders are practically obsolete. See *Imprisonment.*] Decree in an action of *cessio bonorum* [formerly operated mainly] as a protection to the debtor until his circumstances improved. [But see *Cessio.*] See *Ersk.* B. iv. tit. 3,

§§ 24–25; *Ross's Lect.* i. 329; [*Goudy on Bankruptcy*, 161.]

[**PROTECTION ORDER,** *under Conjugal Rights Act.* See *Desertion of Married Persons.*]

**PROTEST, NOTARIAL.** Requisitions and intimations are often made under form of notarial instrument; in which the notary protests that the party against whom it is directed shall be liable to certain effects set forth in the instrument; but all those notarial instruments which are not held in law to be requisite as legal solemnities require to be supported by the parole evidence of the notary and witnesses present. [See *Ersk.* B. iv. tit. 2, § 5; *Dickson on Evidence*, § 1233.] See *Evidence.* [*Notarial Instrument.*]

**PROTESTATION.** Where a pursuer, after having raised an action, fails to insist in it, his opponent, by means of protestation, may compel him either to proceed or to suffer the action to fall. After the lapse of the *induciæ* of a summons, if the pursuer does not proceed to call it [on one of the first three sederunt days next ensuing,] the defender, if he pleases, may put up protestation, which is done by delivering to one of the Outer House clerks a note for insertion in the Minute-book of the Court of Session, specifying the names of the parties and the date of the summons, with the names of the defender's counsel and agent; [31 & 32 Vict. c. 100, § 22; A.S. 13 Feb. 1787.] This note, which is called a protestation, and which must be dated on a sederunt day, is then inserted in the Minute-book by the keeper, and thus published or notified to the profession. If, within nine free days after its date, a certificate is produced to the Minute-book keeper, from a depute-clerk of Session or his assistant, that the summons has been duly lodged with him for calling, the Minute-book keeper is bound to *score* the protestation, as it is expressed, and the clerk issuing the certificate is bound to call the summons regularly and immediately; [A.S. 11 July 1828, § 30.] But if no such certificate is produced within the nine days, the Minute-book keeper, on the application of the party putting up the protestation, will give it out to be extracted, after which it cannot be scored. [The extract of a protestation for not calling contains a decerniture for £3, 3s. of protestation money, as expenses; 13 & 14 Vict. c. 36, § 23. A pursuer may, however, be reponed against such protestation at any time not later than ten days after it has been given out for extract (whether extract has been issued or not), by lodging with the clerk, in order to calling, the summons or other writ, with the relative documents, accompanied by the receipt of the agent for the defender of the sum of £3, 3s. of protestation money, or consigning the money itself in the hands of the clerk for the use of the defender's agent, and payable to him on demand; *ib.* After extract has been issued, if there has been no reponing within ten days,] the action is at an end, and the defender cannot be called on to answer till cited on a new summons, unless the defender chooses voluntarily to pass from his protestation. [Protestation was also formerly used, after the summons had been called, for not enrolling and insisting. This appears to be still competent; but has been superseded by the provisions of the act of 1868, whereby (§ 26) the pursuer is bound to print the pleadings within eight days from the lodging of defences, or otherwise the defender is empowered to enrol the cause and move for absolvitor by default. Protestation in the sheriff court is regulated by A.S. 10 July 1839, § 23.] See *Ersk.* B. iv. tit. 1, § 7; tit. 3, § 21; *Bank.* ii. 615; *Ivory's Form of Process*, 185; [*Beveridge's Form of Process*, i. 270; *Shand's Prac.* i. 172; *Mackay's Prac.* i. 423; *M'Glashan's Sher. Court Prac.* 185; *Dove Wilson's Sher. Court Prac.* 145. See *Calling a Summons. Suspension.*]

**PROTESTING OF BILLS.** The protest of a bill is the notarial evidence of a demand for payment having been made, by a notary, in presence of witnesses, at the place where the bill is payable, [and of the debtor's refusal. For the rules as to protesting bills, reference is made to §§ 51, 52, 93, 94 of the Bills of Exchange Act, 1882, quoted in the article *Bill of Exchange*, pp. 117, 121. Protest was formerly required in all cases, even for the mere purpose of preserving the holder's recourse against the drawer and indorsers; but in the case of inland bills, the Mercantile Law Amendment Act, 1856 (§ 13), made it sufficient, for this purpose, to prove presentment and dishonour by other competent evidence, either written or parole. Foreign bills must still be protested in case of dishonour; § 51 of act of 1882; and even in the case of inland bills, protest is necessary—(1) before being accepted or paid for honour; §§ 65 (1), 68 (1); (2) before being presented for payment to the acceptor for honour, or referee [in case of need; § 67 (1); (3) where the bill is dishonoured by the acceptor for honour; § 67 (4); (4) in order to warrant summary diligence; § 98; (5) where the bill is drawn after sight, in order to fix the maturity of the bill; § 14 (3). See *Thorburn on Bills of Exchange Act*, 123.] As against the drawer and indorsers, [for the purposes of summary diligence, the bill must be noted or protested] on the last day of grace. [See *Days of Grace. Noting a Bill.*] But as against the acceptor, the bill may be protested at any time within six months [from the date of the bill in case of non-acceptance, or six months from the term of payment in case of non-payment. The extended protest must be recorded within the six months; and an extract of the registered protest contains a warrant authorising summary diligence under the Personal Diligence Act. But though after six months such a protest cannot serve for diligence, an instrument of protest, if compiled from authentic materials at any time within the prescriptive period, is valid as proof of the protest; see *Alexander*, 28 Nov. 1827, 6 S. 150; *Menzies' Conv.* 367. See *Ersk.* B. iii. tit. 2, § 33; *Bell's Princ.* § 338; *Thomson on Bills*, 306, 403, 423; *Byles on Bills*, 211; *Chitty on Bills*, 234, 338; *Jurid. Styles*, ii. 19; *M. Bell's Conv.* i. 495.] See *Decree of Registration. Diligence.*

**PROTOCOL.** On the admission of a notary, he receives from the clerk-register a book, marked by the clerk, called a protocol, in which the notary is directed to insert copies of all the instruments he may have occasion to execute, to be there preserved as in a record. These protocols were at one time attempted to be made serviceable as records of sasines; but this, from many causes, failed, and their principal use was to supply the loss of any instrument, which they were allowed to do where the protocol had been regularly kept; but the protocol was seldom regularly kept, and is now entirely in disuse. *Ersk.* B. ii. tit. 3, § 39; *Ross's Lect.* ii. 201; *Stair*, B. ii. tit. 3, § 25; *Bank.* ii. 501. See *Notary-Public.* [The word is derived from πρῶτος, first, and κόλλη, glue—the pieces first glued together—hence the original draft of any writing. In diplomacy, a protocol is the original copy of a despatch, treaty, or other document; a document serving as a preliminary to, or opening of, any diplomatic transaction; also, a friendly diplomatic document or minute of proceedings, signed by friendly powers, in order to secure certain political ends peacefully. *Imperial Dict.*]

**PRO-TUTOR.** Pro-tutors and pro-curators are those who act as tutors or curators to a minor without having a regular title to the office. By A.S. 10 June 1665, such persons are declared liable not only for their actual intromissions as tutors or curators, but for what they ought to have intromitted with; and they may at any time be called to account by the minor. Those acting with them, or making payment to them, of the minor's money, do so at their peril, and are not released by such payment, unless in so far as the money has been *in rem versum* of the minor—*i.e.*, profitably expended for his use. And the same principle regulates the claim of a pro-tutor or pro-curator against the minor for reimbursement of money expended for the minor. It must have been profitably expended, otherwise no action lies for reimbursement. [As to what intromissions infer liability as pro-tutor, see *Fulton*, 21 March 1864, 2 Macph. 893.] See *Ersk.* B. i. tit. 7, § 28; *Stair*, B. i. tit. 6, § 12; *More's Notes*, xliv.; *Bank.* i. 168; *Bell's Princ.* § 2102; [*Fraser on Parent and Child*, 450.] See *Curatory.*

**PROUT DE JURE.** A proof *prout de jure* is a proof by all the legal means of probation—viz.: writ, witnesses, and oath of party; although, in practice, the phrase is usually applied to a proof of facts and circumstances by parole, in contradistinction to a proof limited to writ or oath of party. *Ersk.* B. iv. tit. 2, § 1. See *Evidence.*

**PROVEN RENTAL.** When the heritors, in a process of augmentation, do not admit the accuracy of the minister's rental, and prove the actual rental of their several lands, the scheme of the rental, prepared under a judicial remit from the Lord Ordinary, according to the proof which has been led, and the certificates of rental and decrees of valuation produced, is called the proven rental; A.S. 5 July 1809, § 4. See *Augmentation.* So also the rental of the subjects of a judicial sale, [proved in a process of ranking and sale, as explained in *Shand's Prac.* ii. 875,] is called the proven rental.

**PROVING OF THE TENOR.** The terms of a deed which has been lost, or [wholly or partially] destroyed, may be proved in an action peculiar to the Court of Session, [and the Court of Teinds, in cases of lost valuations of teinds,] called an action of proving the tenor. [It is an

[Inner House action. The summons is called and enrolled in the Outer House; but the Lord Ordinary, at the next enrolment, makes great avizandum to the Inner House, to which the cause thereafter belongs; *Inch's Trs.* 8 July 1855, 17 D. 1138. If proof is allowed, commission is usually granted to the Lord Ordinary to take the evidence, and great avizandum is again made to the Inner House. In this action it is necessary not only to prove the tenor of the deed in question, as it originally existed, but also to satisfy the court that its destruction or loss took place in such a manner as implied no extinction of the right of which it was the evident. Hence the pursuer must prove the *casus amissionis*, or accident by which the deed came to be lost, before the tenor of it is admitted to proof. "Such *casus amissionis* requires to be supported by much stronger evidence in some cases than in others. For example, if the writing be a disposition of land, of which the tenor is satisfactorily established, and which was followed by infeftment and long and uninterrupted possession, and the instrument of sasine on which is produced, a comparatively slight proof of the *casus amissionis* may be sufficient. But if it be such a writing as is usually cancelled or destroyed, when it has served its purpose,—as, for example, a bill of exchange or promissory note, or a personal bond; and if it has been destroyed, or has been found in the hands or in the repositories of the granter actually cancelled, the presumption is that the right of which it had originally been the evident no longer subsists; and very clear evidence is requisite to overcome the presumption;" *Winchester*, 20 March 1863, 1 Macph. 685; *Smith*, 31 May 1882, 9 R. 866. There is a peculiar delicacy in regard to the *casus* to be proved in the case of testamentary and other revocable deeds; there being a strong presumption that the destruction or cancellation of such writings took place in the exercise of the granter's power of revocation; see *Dow*, 30 June 1848, 10 D. 1465. When it is alleged that a deed was destroyed by a depositary in conformity with the granter's directions, decree of proving the tenor will be pronounced, in order that matters may be restored to the state in which they were before the *casus amissionis;* the parties prejudiced by the deed being entitled to show in another process that it ought not to be enforced; *Falconer*, 12 July 1849, 11 D. 1338. See also *Bonthrone*, 15 March 1883, 10 R. 779; *Leckie*, 12 July 1884, 11 R. 1088.] The tenor of the deed must be proved to the court by writing, or by the oath of the granter, or by witnesses; but where parole proof is resorted to, there must be adminicles in the general case—that is, relative writings. [See *Adminicles.*] Where, from the circumstances of the case, no adminicle is to be expected, the court will give to the evidence that degree of credit to which it may appear to be entitled; [*Winton*, 10 June 1862, 24 D. 1094.] As drafts or scrolls are received as adminicles, it is proper for every man of business to preserve the drafts of the deeds he may have prepared, as well as to mark on the draft the date of the execution of the deed, and the circumstances attending it. He ought also to fill up the testing clause in the draft as it is actually filled up in the engrossed deed. The carelessness of practitioners in this respect, and where they make copies of deeds, cannot be too severely reprobated. A very common practice, in copying a deed, is to stop short at the testing clause, and thereby, in the event of the loss or accidental destruction of the principal deed, to deprive the party of very valuable evidence, in case a proving of the tenor should become necessary. This action is chiefly necessary where the deed to be proved is part of a progress of title-deeds. [In certain cases, as where a deed is set up by way of exception, and not as the foundation of the original suit, or where, without any such deed, the matter in question might be shown otherwise, the tenor of the deed may be proved incidentally, in the course of a process, without a separate action of proving the tenor; *Drummond*, 31 Aug. 1835, 7 W. & S. 564.] See *Ersk.* B. i. tit. 3, § 19; B. iv. tit. 1, § 54; *Bank.* ii. 641; *Bell's Princ.* § 883; *Thomson on Bills*, 204; *Jurid. Styles*, iii. 73; [*Stair*, B. iv. tit. 32, § 4; *More's Notes*, ccclxxxvi.; *Dickson on Evidence*, § 1328; *Shand's Prac.* ii. 828; *Mackay's Prac.* i. 361, 580; ii. 318.] See *Lost.*

**PROVISIONS TO WIDOWS, HUSBANDS, AND CHILDREN.** On this subject, the following articles in this work may be consulted:—*Contract of Marriage. Terce. Courtesy. Jus Relictæ. Legitim. Conjunct Rights. Conditio si sine liberis. Conditional Obligation. Donation. Destination. Entail.*

**PROVOST.** The chief magistrate of a royal burgh; *Bell's Princ.* § 2164. As to the election of the provost, see *Burgh*, *Royal.* [The provosts of Edinburgh and Glasgow are entitled to the designation, "Lord Provost." The claim of Perth to this title was to some extent recognised by the Court of Justiciary in the case of *Mags. of Perth*, 12 March 1836, 1 Swint. 66; but it has never been authoritatively sanctioned. See *Synod of Aberdeen*, 25 Feb. 1847, 9 D. 745 (note); in which case the claim of Aberdeen to the same title was expressly disallowed.]

**PROVOSTS OF THE CHURCH.** Before the Reformation, when a collegiate church was founded and endowed, the head of the collegiate church was termed *præpositus*, or provost. *Ersk.* B. i. tit. 5, § 3; *Stair*, B. ii. tit. 8, § 15.

**PROXY.** Members of the House of Lords, and the electors of the sixteen representative peers of Scotland, may vote by proxy. See *Election Law*, pp. 355–6; *Parliament*, p. 767. [But, by Standing Order of 31 March 1868, the House of Lords discontinued the practice of calling for proxies on a division; *May's Parl. Prac.* 417.] Neither members of the House of Commons nor their electors can vote by proxy. [At meetings of shareholders under the Companies Act, 1862, members may vote by proxy. The appointment of such proxy must be by written instrument, in form prescribed, and stamped with a 1d. stamp, and must be lodged at the office of the company at least 72 hours before the time fixed for the meeting. No person can be a proxy who is not a member of the company; 25 & 26 Vict. c. 89, sched. I (48–51). Creditors in a sequestration may vote by proxy or mandate; 19 & 20 Vict. c. 79, § 63; *Goudy on Bankruptcy*, 196. See *Sequestration.* As to voting by proxy at meetings of parochial boards, see *Laurie*, 23 Jan. 1874, 1 R. 402; *Muir*, 28 Feb. 1876, 3 R. (H.L.) 1. See *Mandate.*]

**PUBERTY**; is the interval between the age of fourteen years in males, and of twelve years in females, and majority. In questions as to crime, the age of puberty in females as well as males is fourteen; *Ersk.* B. i. tit. 7, § 1. See *Infants. Minor. Crime.*

**PUBLIC BURDENS.** Public burdens affecting land may be defined generally as all taxations or assessments imposed in respect of the property or possession of land, including the land tax or cess, minister's stipend, manse and glebe assessments, school-rates, poor-rates, road and bridge assessments, and other the like public and county burdens. Feu and blench duties, though sometimes erroneously so described, are not public burdens. In the disposition to a purchaser, a clause is usually inserted, binding the seller to pay the feu-duty and the public burdens up to a certain date (generally the term of entry), and the purchaser to pay them thenceforward; [see *infra.*] Independently of stipulation, [the incidence of public burdens on landlord or tenant, owner or occupier, is generally determined by the statute imposing the assessment.] A stipulation is sometimes introduced into a lease, declaring the lessor or the lessee liable for the public burdens. If the landlord be bound to pay them, and if the tenant pay them in the first instance, he may claim a corresponding deduction from the rent. The tenant ought to deliver the receipts; and the discharge for the rent ought to specify that so much was paid in money, and so much accounted for by those receipts. Under an agreement between a landlord and tenant, that the latter should pay public burdens, the income tax, as having been a personal tax, was held not to be included; *Wilson*, 15 Feb. 1828, 6 S. 551. A general clause of exemption from taxation in favour of heritors does not embrace an exemption from the burden of manse and glebe; *Nicol*, 27 Feb. 1829, 7 S. 479. [See also *Brown*, 11 July 1839, 1 D. 1237; *Crawford*, 24 Feb. 1849, 11 D. 714.] A public burden must be constituted either by a statute or an uninterrupted uniform practice for a sufficient time; *Scott*, 4 Feb. 1829, 5 Mur. 57; [*Traill*, 21 Feb. 1870, 8 Macph. 579.] By 42 Geo. III. c. 150, § 33, no one shall, in virtue of any diligence, take away the goods of another, unless he pay, or see paid, all the public taxes to which the proprietor of the goods is liable. Conveyancers usually employ the expression "public and parochial burdens," but the general expression "public burdens," is sufficient to cover local as well as general taxes and assessments; although it does not follow that the expression "parochial burdens," includes general or national taxations and assessments.

[A short clause of relief, in a disposition of lands, is prescribed by 31 & 32 Vict. c. 101, §§ 5, 7; which is declared by § 8 to import an obligation to relieve the disponee of all feu-duties, or other duties or services or casualties, payable or prestable to the superior (see *Straiton Co.* 16 Dec. 1880, 8 R. 299), and of all public, parochial, and [local burdens due from or on account of the lands conveyed prior to the date of entry. Such an obligation does not afford relief from burdens imposed subsequently by supervenient laws; and this rule may operate in either of two ways:—"There may be a burden existing at the date of the contract; and subsequently the incidence of that burden may be so altered that, although the burden *in specie* remains the same—the same in name and the same in application—still a change subsequently made by law in the incidence of the burden may be such that it becomes, with reference to a contract of this kind, a new burden, and is no longer covered by the contract. Or, on the other hand, the incidence of the burden may remain the same, and yet the application of the burden may be so entirely different that the burden will become, although the same in name, yet a different burden *in specie*, and no longer be covered by the contract;" *per* Lord Chanc. Cairns, in *Dunbar's Trs.* 12 July 1878, 5 R. (H.L.) 221. In that case it was held that a clause of relief covered poor-rates imposed by the Poor Law Act of 1845, and that the obligation of relief was not limited to the amount of the feu-duty; but that the clause of relief did not cover road assessments imposed by subsequent local acts. In *Stewart*, 1 March 1876, 3 R. 518, it was held that an obligation to relieve of schoolmaster's salary did not apply to school-rates subsequently imposed by the Education Act of 1872. See also *Scott*, 25 June 1850, 12 D. 1077; *Hunter*, 16 July 1858, 20 D. 1311; *Preston*, 4 Feb. 1870, 8 Macph. 502; *Jopp's Trs.* 11 Jan. 1888, 15 R. 271. The obligation to relieve extends to burdens in respect of buildings on the lands, as well as in respect of the lands themselves; *Paterson's Trs.* 10 Dec. 1863, 2 Macph. 234; *Nisbet*, 15 June 1869, 7 Macph. 881. When the obligation is contained in an original feu charter, it transmits with the lands in favour of singular successors, without special assignation, by reason of the supposed privity of contract; *Lennox*, 14 July 1843, 5 D. 1357; *Stewart*, 27 March 1863, 4 Macq. 499. But where the original granter and grantee of the obligation are not superior and vassal, it does not pass to singular successors without special assignation; *Horne*, 21 Feb. 1842, 1 Bell's App. 1; *Spottiswoode*, 2 March 1853, 15 D. 458. The obligation is binding on the superior's successors in the superiority, but not on his general representatives; [*Stewart*, 17 Feb. 1870, 8 Macph. (H.L.) 1. By the Conveyancing Act, 1874, § 50, a form is prescribed (sched. M) for assignations or conveyances of obligations or rights of relief.] See *Stair*, B. ii. tit. 6, § 20; *Ersk.* B. ii. tit. 3, § 29; tit. 6, § 42; *Bank.* i. 666; ii. 576; *Bell's Com.* i. 739; ii. 39; [*Bell's Princ.* §§ 895, 1122;] *Kames' Stat. Law, h. t.; Bell on Leases*, i. 321; ii. 129; *Hunter's Landlord and Tenant*, ii. 304; *Ross's Lect.* ii. 495; *Bell on Completing Titles*, 61; *Brown's Synop, h. t.*, and p. 1185; [*Duff's Feudal Conv.* 89; *Menzies' Conv.* 606; *M. Bell's Conv.* i. 641; ii. 1201; *Rankine on Land-Ownership*, 715.] See *Land-Tax*. [*Warrandice.*]

**PUBLIC CARRIAGES.** The responsibility of persons engaging to carry goods for hire is treated of under the article *Carrier*. Under the present article will be considered the obligations of such as engage to convey passengers by land or water. The proprietors of [railways,] stage-coaches, hackney-coaches, or post-chaises, and all masters and owners of ships, ferrymen, bargemen, and other carriers by water, are liable for any injury which passengers sustain from the insufficiency of the vehicle, or the carelessness or unskilfulness of the driver or other person employed. With regard to the vehicle, it will exonerate the owner if it can be proved to have been sufficient, so far as the human eye could discover. Yet in one English case, where an iron axletree was so imbedded in wood that it could not be inspected without removing certain iron clamps, the proprietor was held liable, the axletree having been defective in the part which was hidden, and having broken on the journey. By the nature of the contract, ordinary care must be bestowed by those employed. But in the case of stage-coaches, the responsibility extends to accidents arising even from the slightest fault; neglect of the rules of the road; going too near any obstruction, or the edge of the road; want of skill in driving; racing against other coaches; taking up more passengers than the law allows, where the injury arises from overloading—will all make the principals responsible for injury sustained by any accident thereby occasioned. But, strict as the responsibility is, it differs from the liability of carriers of goods under the edict *Nautæ Caupones*, in not being absolute. It requires some fault, however slight; and an accident which human care and foresight could not have prevented will not subject the owner. A passenger getting alarmed and leaping from the coach when truly there was no danger, has no claim for damages against the coach proprietor. But if such a step was a natural and prudent precaution against real danger, the owner is liable. A shipmaster has been found to have a lien for passage-money, not on the passenger or his wearing apparel, but on his luggage; and it is thought that a similar lien would be admitted for the fare of a land passenger. See *Bell's Com.* i. 471; ii. 97; *Bell's Princ.* § 170; [*Guthrie Smith on Damages*, 138, 160. See *Carriers. Railways. Stage-Coaches. Collision.*]

[**PUBLIC HEALTH ACT**. The statute law relating to public health was consolidated by the act 30 & 31 Vict. c. 101; which has been amended by 34 & 35 Vict. c. 38; 38 & 39 Vict. c. 74; 42 & 43 Vict. c. 15; and 45 Vict. c. 11. The objects of these acts are the removal of nuisances, the regulation of lodging houses, the introduction of proper water-supply and drainage, and the adoption of other measures for the prevention and mitigation of disease. The execution of these purposes is entrusted to the local authorities, subject to the Board of Supervision; and power is given to enforce bye-laws, levy assessments, &c. But in county districts the whole powers and duties of the local authorities under the Public Health Acts have been transferred to the county councils; 52 & 53 Vict. c. 50, § 11. For questions decided under the Public Health Act, see Digest, *h. t.* See also *Monro's Public Health Act; Guthrie Smith's Poor Law*, 359; *Reid's Digest of Poor Law Decisions*, &c. i. 403, 599; ii. 43; *Rankine on Land-Ownership*, 653; *Goudy and Smith on Local Government*, 47.]

[**PUBLIC-HOUSE ACTS**. The statutes which regulate public-houses in Scotland are the Home-Drummond Act (9 Geo. IV. c. 58); the Forbes Mackenzie Act (16 & 17 Vict. c. 67); the Public-Houses Acts Amendment Act (25 & 26 Vict. c. 35); the Publicans Certificates Act (39 & 40 Vict. c. 26); 43 & 44 Vict. c. 20, §§ 40–46 (excise licences); and 50 & 51 Vict. c. 38 (hours of closing). See *Barclay's Public-Houses Statutes; Iron's Manual of Public-Houses Acts.*]

**PUBLIC MARKET**. See *Market Overt.*

**PUBLIC PROPERTY**; consists of such things as belong to the State, as navigable rivers, with their banks, in so far as navigation is concerned, highways, bridges, harbours, the sea-shore, in as far as it can be of service to trade and navigation. *Ersk.* B. ii. tit. 1, § 5. See *Regalia. Sea. Highways.*

**PUBLIC RIGHT**; is the technical name given in feudal law to an heritable right granted by a vassal to be held not of himself but of his superior. *Ersk.* B. ii. tit. 7, § 9; *Ross's Lect.* ii. 259. See *Base Rights. Charter. Disposition. Confirmation. Consolidation.*

**PUFFER**. See *White-Bonnet.*

[**PUISNÉ**, *in English law.* While the old common law courts existed, all the judges of each court, except the chiefs, were called puisné justices or puisné barons. As applied to incumbrances, puisné denotes subsequent in date. The word means literally "later born." *Sweet's Law Dict.*]

**PUNISHMENT**. The punishment of crimes is intended not only as a penalty on the transgressor, but to operate so as to deter others from committing the like crimes. Punishment is either capital, which reaches the life of the criminal, or it consists in imprisonment, [penal servitude,] whipping, or fine. [Transportation, as a mode of punishment, was abolished by 16 & 17 Vict. c. 99. See *Penal Servitude.*] The extent of the punishment is sometimes regulated by statute; at other times the punishment is what is termed arbitrary —that is, in the discretion of the judge. But an arbitrary punishment can never reach the life of the criminal—it is in no case a capital punishment. It is a necessary consequence of a capital conviction and sentence, that the single escheat of the criminal falls. See *Escheat.* See *Ersk.* B. iv. tit. 4, § 2; *Alison's Prac.* 664; *Bank.* i. 242; *Kames' Equity*, 40, 227, 302, 491. See *Criminal Prosecution.*

**PUPILLARITY**; is the interval between the birth and the age of fourteen in males and twelve in females. [Pupillarity is, in contemplation of the law, a state of absolute incapacity. No act done by the pupil, or action raised in his name, has any effect, without the interposition of a guardian; while a decree in an action against him, without the appearance of his tutors, is a decree in absence, and as such reducible, but not null and void. The guardianship is either that of the father or that of a tutor. *Bell's Princ.* § 2067.] See *Tutor. Minor. Curatory.*

[**PUPILS PROTECTION ACT**. See *Judicial Factor. Tutor. Curator.*]

[**PURCHASE**; is used in English law not only in the popular sense of buying,

[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*, cxc.; *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 commonties 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 *purprision*; 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*, xlvii.; *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