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A

LAW DICTIONARY,

ADAPTED TO THE

CONSTITUTION AND LAWS

OF THE

UNITED STATES OF AMERICA,

AND OF THE

SEVERAL STATES OF THE AMERICAN UNION;

WITH

REFERENCES

TO

THE CIVIL AND OTHER SYSTEMS

OF

FOREIGN LAW.

By JOHN BOUVIER.

IN TWO VOLUMES.—VOL. I.

PHILADELPHIA:

T. & J. W. JOHNSON, LAW BOOKSELLERS,

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TO THE HONOURABLE

JOSEPH STORY, L. L. D.,

ONE OF THE JUDGES OF THE SUPREME COURT
OF THE UNITED STATES,

THIS WORK

IS,

WITH HIS PERMISSION,

MOST RESPECTFULLY DEDICATED,

AS A TOKEN

OF THE GREAT REGARD ENTERTAINED FOR HIS TALENTS,
LEARNING AND CHARACTER,

BY

THE AUTHOR.

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PREFACE.

To the difficulties which the author experienced on his admission to the bar, the present publication is to be attributed. His endeavours to get forward in his profession were constantly obstructed, and his efforts for a long time frustrated, for want of that knowledge which his elder brethren of the bar seemed to possess. To find among the reports and the various treatises on the law the object of his inquiry, was a difficult task; he was in a labyrinth without a guide, and much of the time which was spent in finding his way out, might, with the friendly assistance of one who was acquainted with the construction of the edifice, have been saved, and more profitably employed. He applied to law dictionaries and digests within his reach, in the hope of being directed to the source whence they derived their learning, but he was too often disappointed; they seldom pointed out the authorities where the object of his inquiry might be found. It is true such works contain a great mass of information, but from the manner in which they have been compiled, they sometimes embarrassed him more than if he had not consulted them. They were written for another country possessing laws different from our own, and it became a question how far they were or were not applicable here. Besides, most of the matter in the English law dictionaries will be found to have been written while the feudal law was in its full vigour, and not fitted to the present times, or calculated for present use, even in England.* And there is a great portion which, though useful to an English lawyer, is almost

* As proof of this, it may be mentioned that the *first twenty* articles of the most modern English Law Dictionary, will be found to be the following:

Ab, Abacot, Abactors, Abacus, Abacista, Aballaba, Abandum, Abarnare, Abatamentum, To Abate, Abatement, Abator, Abatuda, Abbacy, Abbandunum, Abbas, Abbat, Abbatis, Abreviate of Adjudication, Abbroachment.

In the place of these the following will be found in this work:

A, A mensa et thoro, A prendre, A rendre, A vinculo matrimonii, Ab initio, Ab irato, Abandonment, *Fr. law*, Abandonment, *contracts*, Abandonment, *mar. law*, Abandonment, *torts*, Abatement, *contracts*, Abatement of a legacy, Abatement of a nuisance, Abatement, *pleading*, Abatement of a freehold, Abator.

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useless to the American student. What, for example, have we to do with those laws of Great Britain which relate to the person of their king, their nobility, their clergy, their navy, their army; with their game laws; their local statutes, such as regulate their banks, their canals, their exchequer, their marriages, their births, their burials, their beer and ale houses, and a variety of similar subjects?

The most modern law dictionaries are compilations from the more ancient, with some modifications and alterations; and, in many instances, they are servile copies, without the slightest alteration. In the mean time the law has undergone a great change. Formerly the principal object of the law seemed to be to regulate real property, in all its various artificial modifications, while little or no attention was bestowed upon the rules which govern personal property and rights. The mercantile law has since arisen, like a bright pyramid, amid the gloom of the feudal law, and is now far more important in practice, than that which refers to real estate. The law of real property, too, has changed, particularly in this country.

The English law dictionaries would be very unsatisfactory guides, even in pointing out where the laws relating to the acquisition and transfer of real estate, or the laws of descent in the United States, are to be found. And the student who seeks to find in the Dictionaries of Cowell, Manley, Jacobs, Tomlins, Cunningham, Burn, Montefiore, Pott, Whishaw, Willams, the Termes de la Ley, or any similar compilation, any satisfactory account in relation to international law, to trade and commerce, to maritime law, to medical jurisprudence, or to natural law, will probably not be fully gratified. He cannot, of course, expect to find in them any thing in relation to our government, our constitutions, or our political or civil institutions.

It occurred to the author that a law dictionary, written entirely anew, and calculated to remedy those defects, would be useful to the profession. Probably overrating his strength, he resolved to undertake the task, and if he should not fully succeed, he will have the consolation to know, that his effort may induce some more gifted individual, and better qualified by his learning, to undertake such a task, and to render the American bar an important service. Upon an examination of the constitution and laws of the United States, and of the several states of the American Union, he perceived many technical expressions and much valuable information which he would be able to incorporate in his work. Many of these laws, although local in their nature, will be found useful to every lawyer, particularly those engaged in mercantile practice. As instances of such laws the reader is referred to the articles, *Acknowledgment*, *Descent*, *Divorce*,

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Letters of administration, and *Limitation*. It is within the plan of this work to explain such technical expressions as relate to the legislative, executive, or judicial departments of the government; the political and the civil rights and duties of the citizens; the rights and duties of persons, particularly such as are peculiar to our institutions, as, the rights of descent and administration; of the mode of acquiring and transferring property; to the criminal law, and its administration. It has also been an object with the author to embody in his work such decisions of the courts as appeared to him to be important, either because they differed from former judgments, or because they related to some point which was before either obscure or unsettled. He does not profess to have examined or even referred to all the American cases; it is a part of the plan, however, to refer to authorities generally, which will lead the student to nearly all the cases.

The author was induced to believe, that an occasional comparison of the civil, canon, and other systems of foreign law, would be useful to the profession, and illustrate many articles which, without such aid, would not appear very clear; and also to introduce many terms from foreign laws, which may supply a deficiency in our own. The articles *Condonation*, *Extradiction* and *Novation*, are of this sort. He was induced to adopt this course because the civil law has been considered, perhaps not without justice, the best system of written reason, and as all laws are or ought to be founded in reason, it seemed peculiarly proper to have recourse to this fountain of wisdom: but another motive influenced this decision; one of the states of the Union derives most of its civil regulations from the civil law; and there seemed a peculiar propriety, therefore, in introducing it into an American law dictionary. He also had the example of a Story, a Kent, Mr. Angell, and others, who have ornamented their works from the same source. And he here takes the opportunity to acknowledge the benefits which he has derived from the learned labours of these gentlemen, and of those of Judge Sergeant, Judge Swift, Judge Gould, Mr. Rawle, and other writers on American law and jurisprudence.

In the execution of his plan, the author has, in the first place, defined and explained the various words and phrases, by giving their most enlarged meaning, and then all the shades of signification of which they are susceptible; secondly, he has divided the subject in the manner which to him appeared the most natural, and laid down such principles and rules as belong to it; in these cases he has generally been careful to give an illustration, by citing a case whenever the subject seemed to require it, and referring to others supporting the same point; thirdly, whenever the article admitted of it, he has compared it with the laws of other countries

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within his reach, and pointed out their concord or disagreement; and, fourthly, he has referred to the authorities, the abridgments, digests, and the ancient and modern treatises, where the subject is to be found, in order to facilitate the researches of the student. He desires not to be understood as professing to cite cases always exactly in point; on the contrary, in many instances the authorities will probably be found to be but distantly connected with the subject under examination, but still connected with it, and they have been added in order to lead the student to matter of which he may possibly be in pursuit.

At the suggestion of a judicious friend, in order to make this work as complete as possible, and useful to the inquiring practitioner, as well as to the student, an appendix has been added, containing Kelham's Norman Law Dictionary.

To those who are aware of the difficulties of the task, the author deems it unnecessary to make any apology for the imperfections which may be found in the work. His object has been to be useful; if that has been accomplished in any degree, he will be amply rewarded for his labour; and he relies upon the generous liberality of the members of the profession to overlook the errors which may have been committed in his endeavours to serve them.

Philadelphia, September, 1839.

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A

LAW DICTIONARY.

A, The first letter of the English and most other alphabets, is frequently used as an abbreviation, (q. v.) and also in the marks of schedules or papers, as schedule A, B, C, &c.

A MENSA ET THORO, from bed and board. A divorce *a mensa et thoro*, is rather a separation of the parties by act of law, than a dissolution of the marriage. It may be granted for causes of extreme cruelty or desertion of the wife by the husband. 2 Eccl. Rep. 208. This kind of divorce does not affect the legitimacy of children, nor authorize a second marriage. V. *A vinculo matrimonii*, *Cruelty*, *Divorce*.

A PRENDRE, French, to take, to sieze, *in contracts*, as profits a prendre. Ham. N. P. 184.

A RENDRE, French, to render, to yield, *in contracts*. *Profits a rendre;* under this term are comprehended rents and services. Ham. N. P. 192.

A VINCULO MATRIMONII, from the bonds of marriage. A marriage may be dissolved *a vinculo*, in many states, as in Pennsylvania, on the ground of canonical disabilities before marriage, as that one of the parties was legally married to a person who was then living; impotence, (q. v.), and the like; adultery; cruelty; and malicious desertion for two years or more. In New York a sentence of imprisonment for life is also a ground for a divorce *a vinculo*. When the marriage is dissolved *a vinculo*, the parties may marry again, but when the cause is adultery, the guilty party cannot marry his or her paramour.

AB INITIO, from the beginning. 1. Where a man makes a lawful entry, and subsequently abuses an authority *in law* to enter, as to distrain or the like, he becomes a trespasser *ab initio*. Bac. Ab. Trespass, B.; 8 Coke, 146; 2 Bl. Rep. 1218; Clayt. 44. And if an officer neglect to remove goods attached within a reasonable time and continue in possession, his entry becomes a trespass *ab initio*. 2 Bl Rep. 1218. See also as to other cases, 2 Stra. 717; 1 H. Bl. 13; 11 East, 395; 2 Camp. 115; 2 Johns. 191; 10 Johns. 253; Ibid. 369.—2. But in case of an authority *in fact*, to enter, an abuse of such authority will not, in general, subject the party to an action of trespass. Lane, 90; Bac. Ab. Trespass, B.; 2 T. R. 166. See generally 1 Chit. Pl. 140, 169, 180.

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AB IRATO, *civil law.* A latin phrase which signifies *by a man in anger.* It is applied to bequests or gifts, which a man makes adverse to the interest of his heir, in consequence of anger or hatred against him. Thus a devise made under these circumstances is called a testament *ab irato.* And the suit which the heirs institute to annul this will is called an *action ab irato.* Merlin, Répert, mots, *Ab irato.*

ABANDONMENT, *contracts.* In the French law the act by which a debtor surrenders his property for the benefit of his creditors. Merl. Rép. Mot, Abandonment.

ABANDONMENT, *contracts.*— In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured. No particular form is required for an abandonment, nor need it be in writing; but it must be explicit and absolute, and must set forth the reasons upon which it is founded. It must also be made in reasonable time after the loss. It is not in every case of loss that the insured can abandon. In the following cases an abandonment may be made; when there is a total loss; when the voyage is lost or not worth pursuing, by reason of a peril insured against; or if the cargo be so damaged as to be of little or no value; or where the salvage is very high, and further expense be necessary, and the insurer will not engage to bear it; or if what is saved is of less value than the freight; or where the damage exceeds one-half of the value of the goods insured; or where the property is captured, or even detained by an indefinite embargo, and in cases of a like nature. The abandonment, when legally made, transfers from the insured to the insurer the property in the thing insured, and obliges him to pay to the insured what he promised him by the contract of insurance. 3 Kent Com. 265; 2 Marsh. Ins. 559; Pard. Dr. Com. n. 836 et seq. Boulay Paty, Dr. Com. Maritime, tit. 11, tom. 4, p. 215.

ABANDONMENT. *In maritime contracts in the civil law,* principals are generally held indefinitely responsible for the obligations which their agents have contracted relative to the concern of their commission; but with regard to ship owners there is a remarkable peculiarity; they are bound by the contract of the master only to the amount of their interest in the ship, and can be discharged from their responsibility by abandoning the ship and freight. Poth. Chartes-part. s. 2, art. 3, § 51; Ord. de la Mar. des proprietaires, art. 2; Code de Com. l. 2, t. 3, art. 216.

ABANDONMENT *for torts,* a term used in civil law. By the Roman law, when the master was sued for the tort of his slave, or the owner for a trespass committed by his animal, he might abandon them to the person injured, and thereby save himself from further responsibility. Similar provisions have been adopted in Louisiana. It is enacted by the civil code that the master shall be answerable for all the damages occasioned by an offence or quasi offence committed by his slave. He may, however, discharge himself from such responsibility by abandoning the slave to the person injured; in which case such person shall sell such slave at public auction in the usual form, to obtain payment of the damages and costs; and the balance, if any, shall be returned to the master of the slave, who shall be completely discharged, although the price of the slave should not be sufficient to pay the whole amount of the damages and costs; provided that the master shall make abandonment within three days after the

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judgment awarding such damages shall have been rendered; provided also that it shall not be proved that the crime or offence was committed by his order; for in such cases the master shall be answerable for all damages resulting therefrom, whatever be the amount, without being admitted to the benefit of abandonment. Art 180, 181.

The owner of an animal is answerable for the damages he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury, except where the master has turned loose a dangerous or noxious animal, for then he must pay for all the harm he has done, without being allowed to make the abandonment. Ib. art. 2301.

ABATEMENT, *contracts*, is a reduction made by the creditor, for the prompt payment of a debt due by the payor or debtor. Wesk. on Ins. 7.

ABATEMENT OF LEGACIES, is the reduction of legacies for the purpose of paying the testator's debts. When the estate is short of paying the debts and legacies, and there are general legacies and specific legacies, the rule is that the general legatees must abate proportionably in order to pay the debts; a specific legacy is not abated unless the general legacies cannot pay all the debts; in that case what remains to be paid must be paid by the specific legatees, who must, where there are several, abate their legacies proportionably. 2 Bl. Com. 513; 2 Ves. Sen. 561 to 564; 1 P. Wms. 680; 2 P. Wms. 383. See 2 Bro. C. C. 19; Bac. Abr. Legacies, H; Rop. on Leg. 253, 284.

ABATEMENT OF NUISANCES is the prostration or removal of a nuisance. 3 Bl. Com. 5. 1. Who may abate a nuisance; 2, The manner of abating it.

§ 1. *Who may abate a nuisance.* 1. Any person may abate a public nuisance. 2 Salk. 458; 9 Co. 454.—2. The injured party may abate a private nuisance, which is created by an act of *commission*, without notice to the person who has committed it; but there is no case which sanctions the abatement by an individual of nuisances from *omission*, except that of cutting branches of trees which overhang a public road, or the private property of the person who cuts them.

§ 2. *The manner of abating it.* 1. A public nuisance may be abated without notice, 2 Salk. 458; and so may a private nuisance which arises by an act of commission. And, when the security of lives or property may require so speedy a remedy as not to allow time to call on the person on whose property the mischief has arisen to remedy it, an individual would be justified in abating a nuisance from omission without notice. 2 Barn. & Cres. 311; 3 Dowl. & R. 556.—2. In the abatement of a public nuisance, the abator need not observe particular care in abating it, so as to prevent injury to the materials. And though a gate illegally fastened, might have been opened without cutting it down, yet the cutting would be lawful. However, it is a general rule that the abatement must be limited by its necessity, and no wanton or unnecessary injury must be committed. 2 Salk. 458. — 3. As to private nuisances, it has been held, that if a man in his own soil erect a thing which is a nuisance to another, as by stopping a rivulet, and so diminishing the water used by the latter for his cattle, the party injured may enter on the soil of the other, and abate the nuisance and justify the trespass; and this right of abate-

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ment is not confined merely to a house, mill or land. 2 Smith's Rep. 9; 2 Roll. Abr. 565; 2 Leon. 202; Com. Dig. Pleader, 3 M. 42; 3 Lev. 92; 1 Brownl. 212.—4. The abator of a private nuisance cannot remove the materials further than necessary, nor convert them to his own use. Dalt. c. 50. And so much only of the thing as causes the nuisance should be removed; as if a house be built too high, so much only as is too high should be pulled down. 9 Co. 53; God. 221; 2 Str. 686.—5. If the nuisance can be removed without destruction and delivered to a magistrate, it is advisable to do so; as in the case of a libellous print or paper affecting an individual, but still it may be destroyed. 5 Co. 125, b.; 2 Campb. 511. See, as to cutting down trees, Roll. Rep. 394; 3 Buls. 198; Vin. Abr. tit. Trees, E, and Nuisance, W.

ABATEMENT, *pleading*, is the overthrow of an action in consequence of some error committed in bringing or conducting it, when the plaintiff is not forever barred from bringing another action. 1 Chit. Pl. 434; Pleas in abatement will be considered as relating, 1, to the jurisdiction of the court; 2, to the person of the plaintiff; 3, to that of the defendant; 4, to the writ; 5, to the qualities of such pleas; 6, to the form of such pleas; 7, to the affidavit of the truth of pleas in abatement.

§ 1. As to pleas relating to the jurisdiction of the court, see article Jurisdiction, and Arch. Civ. Pl. 290; 1 Chit. Pl. Index, tit. Jurisdiction.

§ 2. *Relating to the person of the plaintiff.* 1. The defendant may plead to the person of the plaintiff that there never was any such person in *rerum natura*. Bro. Brief, 25; 19 Johns. 308; Com. Dig. Abatement, E 16; And if one of several plaintiffs be a fictitious person, it abates the writ. Com. Dig. Abatement, E 16; 1 Chit. Pl. 435; Arch. Civ. Pl. 304.—2. The defendant may plead that the plaintiff is a feme covert. Co. Lit. 132, b; or that she is his own wife. 1 Brown. Ent. 63; and see 3 T. R. 631; 6 T. R. 265; Com. Dig. Abatement, E 6; 1 Chit. Pl. 437; Arch. Civ. Pl. 302. Coverture occurring after suit brought is a plea in abatement which cannot be pleaded after a plea in bar, unless the matter arose after the plea in bar, but in that case the defendant must not suffer a continuance to intervene between the happening of this new matter, or its coming to his knowledge and pleading it. 4 S. & R. 238; Bac. Abr. Abatement, G. —3. That the plaintiff, (unless he sue with others as executor) is an infant and has declared by attorney. 1 Chit. Pl. 436; Arch. Civ. Pl. 301; Arch. Pr. B. R. 143; 2 Saund. 212, a, n. 5; 1 Wentw. 58, 62.—4. A suit brought by a lunatic, under guardianship, shall abate. Brayt. 18.—5. Death of plaintiff before the purchase of the original writ, may be pleaded in abatement. 1 Arch. Civ. Pl. 304, 5; Com. Dig. Abatement, E 17. Death of plaintiff pending the writ might have been pleaded since the last continuance, Com. Dig. Abatement, H 32; 4 Hen. & Munf. 410; 3 Mass. 296; Cam. & Nor. 72. But in some states, as in Pennsylvania, the death of the plaintiff does not abate the writ; in such case the executor or administrator is substituted. 6. Alienage, or that the plaintiff is an alien enemy. 1 Bac. Abr. 4; 6 Binn. 241; 10 Johns. 183; 9 Mass. 363; Id. 377; 11 Mass. 119; 12 Mass. 8; 3 M. & S. 533; 2 John. Ch. R. 508; 15 East, 260; Com. Dig. Abatement, E 4; Id. Alien, c. 5; 1 S. & R. 310; 1 Ch. Pl. 435; Arch. Civ. Pl. 3. 301. —7. Misnomer of plaintiff may also be pleaded in abatement. Arch. Civ. Pl. 305; 1 Chit. Pl. Index, tit. Mis-

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nomer. Com. Dig. Abatement, E 19, E 20, E 21, E 22; 1 Mass. 76; 1 Bac. Abr. 9.—8. If one of several joint tenants, sue in action ex contractu, Co. Lit. 180, b; Bac. Abr. Joint-tenants, K; 1 B. & P. 73; one of several joint contractors, Arch. Civ. Pl. 48—51, 53; one of several partners, Gow on Part. 150; one of several joint executors who have proved the will, or even if they have not proved the will, 1 Chit. Pl. 12, 13; one of several joint administrators, Ibid. 13; the defendant may plead the non-joinder in abatement. Arch. Civ. Pl. 304; see Com. Dig. Abatement, E 9, E 12, E 13, E 14.—9. If persons join as plaintiffs in an action who should not, the defendant may plead the misjoinder in abatement. Arch. Civ. Pl. 304; Com. Dig. Abatement, E 15.

§ 3. *Relating to the person of the defendant.* 1. In an action against two or more, one may plead in abatement that there never was such a person in *rerum natura* as A, who is named as defendant with him. Arch. Civ. Pl. 312.—2. If the defendant be a married woman, she may in general plead her coverture in abatement, 8 T. R. 545; Com. Dig. Abatement, F 2. The exceptions to this rule arise when the coverture is suspended. Com. Dig. Abatement, F 2, § 3; Co. Lit. 132, b; 2 Bl. R. 1197; Co. B. L. 43.—3. The death of the defendant abates the writ at common law, and in some cases it does still abate the action, see Com. Dig. Abatement, H 34; 1 Hayw. 500; 2 Binn. 1; 1 Gilm. 145.—4. The misnomer of the defendant may be pleaded in abatement, but one defendant cannot plead the misnomer of another. Com. Dig. Abatement, F 18; Lutw. 36; 1 Chit. Pl. 440; Arch. Civ. Pl. 312. See form of a plea in abatement for a misnomer of the defendant in 3 Saund. 209, b. and see further, 1 Show. 394; Carth. 307; Comb. 188; 1 Lutw. 10; 5 T. R. 487.—5. When one joint tenant, Com. Dig. Abatement, F 5; or one tenant in common in cases where they ought to be joined, Ibid. F. 6, is sued alone, he may plead in abatement. And in actions upon contracts if the plaintiff do not sue all the contractors, the defendant may plead the non-joinder in abatement. Ibid. F. 8, a; 1 Wash. 9; 18 Johns. 459; 2 Johns. Cas. 382; 3 Caine's Rep. 99; Arch. Civ. Pl. 309; 1 Chit. Pl. 441. When husband and wife should be sued jointly, and one is sued alone, the non-joinder may be pleaded in abatement. Arch. Civ. Pl. 309. The non-joinder of all the executors, who have proved the will; and the non-joinder of all the administrators of the deceased, may be pleaded in abatement. Com. Dig. Abatement, F 10.—6. In a real action if brought against several persons, they may plead several tenancy, that is that they hold in severalty and not jointly, Com. Dig. Abatement, F 12; or one of them may take the entire tenancy on himself, and pray judgment of the writ. Id. F 13. But mis-joinder of defendant in a personal action is not the subject of a plea in abatement. Arch. Civ. Pl. 68, 310.—7. In cases where the defendant may plead non-tenure, see Arch. Civ. Pl. 310; Cro. El. 559.—8. Where he may plead a disclaimer, see Arch. Civ. Pl. 311; Com. Dig. Abatement, F 15.—9. A defendant may plead his privilege of not being sued in abatement. Bac. Ab. Abridgment C; see this Dict. tit. *Privilege.*

§ 4. *Plea in abatement to the writ.* 1. Pleas in abatement to the writ or bill are so termed rather from their effect, than from their being strictly such pleas, for as oyer of the writ can no longer be craved, no objection can be taken to matter which is merely contained in the writ, 3 B. &

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P. 399; 1 B. & P. 645—648; but if a mistake in the writ be carried into the declaration, or rather if the declaration, which is presumed to correspond with the writ or bill, be incorrect in respect of some extrinsic matter, it is then open to the defendant to plead in abatement to the writ or bill, 1 B. & P. 648; 10 Mod. 210; and there is no plea to the declaration alone but in bar; 10 Mod. 210; 2 Saund. 209, d.—2. Pleas in abatement to the writ or bill and to the form or to the action. Com. Dig. Abatement, H 1, 17.—3. Those of the first description were formerly either matter apparent on the face of the writ, Com. Dig. Abatement, H 1, or matters dehors. Id. H 17.—4. Formerly very trifling errors were pleadable in abatement, 1 Lutw. 25; Lilly's Ent. 5; 2 Rich. C. P. 5, 8; 1 Stra. 556; Ld. Raym. 1541; 2 Inst. 668; 3 B. & P. 395. But as oyer of the writ can no longer be had, an omission in the defendant's decla- of the defendant's addition, which is not necessary to be stated in a declaration can in no case be pleaded in abatement. 1 Saund. 318, n. 3; 3 B. & P. 395; 7 East, 383.—5. Pleas in abatement to the form of the writ, are therefore now principally for matters dehors, Com. Dig. Abatement, H 17; Gilb. C. P. 51, existing at the time of suing out the writ, or arising afterwards, such as misnomer of the plaintiff or defendant in Christian or surname.—6. Pleas in abatement to the action of the writ, and that the action is misconceived, as it is in case where it ought to have been trespass, Com. Dig. Abatement, G 5; or that it was prematurely brought, Ibid. Abatement, G 6, and tit. Action, E; but as these matters are grounds of demurrer or nonsuit, it is now very unusual to plead them in abatement. It may also be pleaded that there is another action pending. See tit. Autre action pendant. Com. Dig. Abatement, H 24; Bac. Ab. Abatement, M; 1 Chitty's Pl. 443.

§ 5. *Qualities of pleas in abatement.* 1. A writ is divisible, and may be abated in part, and remain good for the residue; and the defendant may plead in abatement to part, and demur or plead in bar to the residue of the declaration. 1 Chit. Pl. 444; 2 Saund. 210, n.—2. As these pleas delay the trial of the merits of the action, the greatest accuracy and precision are required in framing them; they should be certain to every intent, and be pleaded without any repugnancy. 3 T. R. 186; Willes, 42; 2 Bl. R. 1096; 2 Saund. 298, b. n. 1; Com. Dig. I 11; Co. Lit. 393; Cro. Jac. 82; and must in general give the plaintiff a better writ. This is the true criterion to distinguish a plea in abatement from a plea in bar. 8 T. R. 515; Bromal. 139; 1 Saund. 274, n. 4; 284 n. 4; 2 B. &. P. 125; 4 T. R. 227; 6 East, 600; Com. Dig. Abatement, J 1, 2; 1 Day. 28; 3 Mass. 24; 5 Mass. 362. 1 Hayw. 501; 2 Ld. Raym. 1178; 1 East, 634. Great accuracy is also necessary in the form of the plea as to the commencement and conclusion, which is said to make the plea. Latch. 178; 2 Saund. 209, c. d; 3 T. R. 186.

§ 6. *Form of pleas in abatement.* 1. As to the form of pleas in abatement, see 1 Chit. Pl. 447; Com. Dig. Abatement, I 19; 2 Saund. 1, n. 2.

§ 7. *Of the affidavit of truth.* 1. All pleas in abatement must be sworn to be true, 4 Ann, c. 16, s. 11. The affidavit may be made by the defendant or a third person, Barnes, 344, and must be positive as to the truth of every fact contained in the plea, and should leave nothing to be collected by inference; Sayer's Rep. 293; it should be stated that the plea is true in substance and fact, and not merely that the plea is a true plea. 2 Str. 705; Lill. Ent. 1; 2 Chit. Pl.

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412, 417; 1 Browne's Rep. 77; see 2 Dall. 184; 1 Yeates, 185.

See further on the subject of abatement of actions Vin. Ab. tit. Abatement; Bac. Abr. tit. Abatement; Nelson's Abr. tit. Abatement; American Dig. tit. Abatement; Story's Pl. 1 to 70; 1 Chit. Pl. 425 to 458; Whart. Dig. tit. Pleading, F. (b). Penna. Pract. Index, h. t; Tidd's Pr. Index, h. t; Arch. Civ. Pl. Index, h. t; Arch. Pract. Index, h. t.

ABATEMENT OF A FREEHOLD. The entry of a stranger after the death of the ancestor, and before the heir or devisee takes possession, by which the rightful possession of the heir or devisee is defeated. 3 Bl. Com. 167; Co. Lit. 277, a; Finch's Law, 195; Arch. Civ. Pl. 11.

ABATOR is, 1st, he who abates or prostrates a nuisance; 2, he who having no right of entry, gets possession of the freehold to the prejudice of an heir or devisee, after the time when the ancestor died, and before the heir or devisee enters. See article Abatement. As to the consequence of an abator dying in possession, see Adams's Eject. 43.

ABAVUS, *civil law*, is the great grandfather, or fourth male ascendant. Abavia, is the great grandmother, or fourth female ascendant.

ABBREVIATION, *practice.*—The omission of some words or letters in writing; as when fi. fa. is written for fieri facias. In writing contracts it is the better practice to make no abbreviations; but in recognizances and many other contracts they are used; as John Doe tent to prosecute, &c. Richard Roe tent to appear, &c. When the recognizances are used, they are drawn out *in extenso*. See 4 Ca. & P. 51; S. C. 19 E. C. L. R. 268. In the following list of abbreviations are given the titles of many books. This being thought the most convenient place to introduce such matter.

A, a, the first letter of the alphabet, is sometimes used in the ancient law books to denote that the paging is the first of that number in the book. As an abbreviation, A is used for anonymous.

A. B. Anonymous Reports, printed at the end of Bendloe's Reports.

A. D. Anno Domini; in the year of our Lord.

Ab. or *Abr.* Abridgment.

Abr. Ca. Eq. Abridgment of Cases in Equity.

Ab. Sh. Abbott on Shipping.

Acc. Accord or agrees.

Act. Acton's Reports. Reports of Cases argued and adjudged before the Most Noble and right Honourable the Lords Commissioners of Appeals in Prize Causes; also on Appeals before the King's most excellent Majesty in council, from May 1809, to July, 1810; with an Appendix containing Orders in Council, Instructions, &c. to 1810. 2 Vols. 8vo.

Ad. Eject. Adams on Ejectment. A Treatise on the Law of Ejectment, &c. 1 vol. This is a very able work. 10 Serg. & Rawle, 221.

Addams's R. Addams's Ecclesiastical Reports. In E. Eccl. Rep.

Addis. R. Addison's Reports.

Admr. Administrator.

Aiken's R. Aiken's Reports.

Al. Aleyn's Cases.

Al. Alinea. *Al. et.* Et alii, and others.

Ala. R. Alabama Reports.

Alln. Part. Allnat on Partition.

Amb. Ambler's Reports. Reports of cases argued and determined in the High Court of Chancery, with some few in other courts. By Charles Ambler. 1 vol. fol.

Am. & Fer. on Fixt. Amos and Ferard on Fixtures.

Amer. Dig. American Digest.

Amer. Jur. American Jurist.

And. Anderson's Reports. Reports in the Common Pleas, chiefly in the reign of Queen Elizabeth, 2 parts. By Sir Edm. Anderson.

Andr. Andrews's Reports. Reports of cases argued and adjudged in the Court of King's Bench in the 11th and 12th years of the reign of King George II. By George Andrews. 1 vol. 8vo.

Ang. on Adv. Enj. Angell's Inquiry into the rule of law which creates a right to an incorporeal hereditament, by an adverse enjoyment of twenty years.

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Ang. on Ass. Angell's Practical Summary of the Law of Assignments in trust for creditors.

Ang. on Corp. Angell on the Law of Private Corporations.

Ang. on Limit. Angell's Treatise on the Limitation of Actions at Law, and Suits in Equity.

Ang. on Tide Wat. Angell on the right of property in Tide Waters.

Ang. on Water Courses. Angell on the common law in relation to Water Courses.

Anna. Annaly's Reports. Cases during the time of Lord Hardwicke in the King's Bench, 7, 8, 9 and 10 K. George II. to which are added some determinations of the late Lord C. J. Lee; and also two equity cases by Lord Chancellor Hardwicke, 1 vol. This book is usually cited, Cas. Temp. Hardw.

Anstr. Anstruther's Reports. Reports of cases argued and determined in the Court of Exchequer, from Easter Term, 32 Geo. III. 1792, to Trinity Term, 37 Geo. III. 1797. 3 vol. 8vo. By George Anstruther.

Anth. N. P. C. Anthon's Nisi Prius Cases.

App. Apposition.

Arch. Archbold. *Arch. Civ. Pl.* Archbold's Civil Pleadings. *Arch. Cr. Pl.* Archbold's Criminal Pleadings. *Arch. Pr.* Archbold's Practice.

Ashmead's R. Ashmead's Reports.

Ass. or Lib. Ass. Liber Assisarium, or Pleas of the Crown.

Ast. Ent. Aston's Entries.

Atherl. on Mar. Atherley on the Law of Marriage and other Family Settlements.

Atk. Atkyn's Reports.

Atk. P. T. Atkyn's Parliamentary Tracts.

Ats. in practice, is an abbreviation for the words *at suit of*, and is used when the defendant files any pleadings; for example: when the defendant enters a plea he puts his name before that of the plaintiff, reversing the order in which they are on the record. C. D. (the defendant), *ats.* A. B. (the plaintiff.)

Ayl. Ayliff's Pandect. New Pandect of the Roman Civil Law, with many useful observations thereon, shewing wherein that law differs from the municipal law of Great Britain and from the Canon law in general, &c. 1 vol. fol.

Ayl. Parerg. Ayliff's Parergon juris canonici Anglicani.

B, b, is used to point out that a number used at the head of a page to denote the folio, is the second number of the same volume.

B. B. Bail Bond.

B. & A. Barnwall & Alderson's Reports. Reports of Cases argued and determined in the court of King's Bench. By R. V. Barnwall and E. H. Alderson. 4 vol. 8vo. These reports commence Michaelmas Term, 58 Geo. III. (1817) and end with Trinity Term, 2 Geo. IV. (1821.) In E. C. L. R.

B. & B.—Ball & Beatty's Reports.

B. C.—Brown's Chancery Reports.

B. Eccl. L. Burn's Ecclesiastical Law. 4 vols. 8vo.

B. Just. Burn's Justice. 4 vol. 8vo.

B. N. C. Brooke's New Cases. Vide Bellew. Post.

B. P. C. Bro. Parl. Cas. Brown's Parliamentary Cases.

B. & P. or Bos. & Pull. Bosanquet & Puller's Reports. Reports in the Courts of Common Pleas and Exchequer Chamber, and in the House of Lords, from Easter Term, 36 Geo. III. 1796, to Hilary Term, 44 Geo. III. 1804. By J. B. Bosanquet and Chr. Puller. 5 vols. 8vo. The last two volumes form a new series and come down to 1807, and are cited 1 and 2 New Reports, more frequently than 4 and 5 B. & P. These reports are continued by W. P. Taunton, Esq.

B. R. or K. B. King's Bench.

Bab. on Auct. Babington on the law of auctions.

Bac. Abr. Bacon's Abridgment. A new Abridgment of the Law. By Matthew Bacon. With considerable additions by Henry Gwillim; and with the additions of the later English and the American decisions. By Bird Wilson. In 7 vols. 8 vo. This book is generally cited by the page and sometimes by the title.

Bac. Uses. Bacon's Reading on the statute of Uses. This is printed in his Law Tracts.

Bail. R. Bailey's Reports.

Baldw. R. Baldwin's Circuit Court Reports.

Ball & Beat. Ball and Beatty's Reports. Reports of Cases in the High Court of Chancery in Ireland during the time of Lord Manners, from 1807 to 1815. 1 vol. 8vo.

Ballan. Lim. Ballantine on Limitations.

Banc. Sup. Upper Bench.

Barn. C. Barnardiston's Chancery Reports. Reports of Cases in Chancery. By Thomas Barnardiston. 1 vol. Lord Mansfield absolutely forbid the citing of this book, for it would be only misleading students to put them upon reading it. 2 Burr. 1142, in margin.

Barn. Barnardiston's K. B. Reports.—Reports of Cases in the King's Bench, from 12 George I, to Trinity term 7 George 2, 2 vols. This book is said to be "not of much

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authority," Dougl. 333, n.; "of still less authority than 10 Mod." Doug. 689, n; "a bad reporter." 1 East, 642, n.

Barn. & Ald. Barnewall and Alderson's Reports, vide B. & A. In E. C. L. R.

Barn. & Adolp. Barnwall and Adolphus's Reports. In E. C. L. R.

Barn. & Cress. Barnewall and Cresswell's Reports. In E. C. L. R.

Barnes. Barnes's Notes of Practice. Notes of Cases of Practice taken in Common Pleas, from Michaelmas, 1732, to Hilary, 1756, inclusive, to which is added a continuation of cases to the end of the reign of George II. 1 vol. 8vo.

Barr. Obs. Stat. Barrington's Observations on the more ancient statutes.

Batty's R. Batty's Reports of cases determined in the K. B. Ireland.

Bay's R. Bay's Reports.

Bayl. Bills. Bayley on Bills.

Bayl. Ch. Pr. Bayley's Chamber Practice.

Beam. Ne Exeat. Brief view of the writ of *Ne Exeat Regno*, as an equitable process, by J. Beames.

Beam. Eq. Beames on Equity Pleading.

Beat. R. Beatty's Reports determined in the High Court of Chancery in Ireland.

Beawes. Beawes's Lex Mercatoria.

Beck's Med. Jur. Beck's Medical Jurisprudence.

Bee's R. Bee's Reports.

Bell's Comm. Bell's Commentaries on the Laws of Scotland, and on the Principles of Mercantile Jurisprudence.

Bell's Med. Jur. Bell's Medical Jurisprudence. 2 vols.

Bellew. Bellewe's Cases in the time of K. Richard II. Bellewe's cases in the time of Henry VIII., Edw. VI., and Q. Mary, collected out of Brooke's Abridgment, and arranged under years, with a table, are cited Brooke's New Cases.

Belt's Sup. Belt's Supplement. Supplement to the Reports in Chancery of Francis Vesey, Senior, Esq. during the time of Lord Ch. J. Hardwicke.

Benl. Benloe & Dalison's Reports. Reports and Pleadings in Common Pleas, in the reigns of K. Henry VII. Henry VIII. Edward VI. and Queens Mary and Elizabeth. By William Benloe and William Dalison. See *New Benl.*

Benth. Ev. Bentham's Treatise on Judicial Evidence.

Bett's Adm. Pr. Bett's Admiralty Practice.

Bing. Bingham. *Bing. Inf.* Bingham on Infancy. *Bing. on Judg.* Bingham on Judgments and Executions. *Bing. L. & T.* Bingham on the Law of Landlord and Tenant. *Bing. R.* Bingham's Reports. In E. C. L. R.

Binn. Reports of Cases adjudged in the Supreme Court of Pennsylvania. By Horace Binney. 6 vols. 8vo.

Biret, De l'Abs. Traité de l'Absence et de ses effects, par M. Biret.

Bl. Blount's Law Dictionary and Glossary.

Bl. Com. or *Comm.* Commentaries on the Laws of England, by Sir William Blackstone, 4 vols. Lord Redesdale said he was sorry to hear this book cited *as an authority*; the author would have been sorry to have heard the book so cited; Lord Redesdale did not consider it such. 1 Sch. & Lef. 327.

Bl. Rep. Sir Wm. Blackstone's Reports. Reports of cases determined in the several courts of Westminster Hall, from 1746 to to 1779. By Sir William Blackstone. 2 vols. 8vo. These reports are said not to be very accurate. Per Ld. Mansfield, Doug. 92, n.

Bl. H. Henry Blackstone's Reports, sometimes cited *H. Bl.*

Blackf. R. Blackford's Reports.

Blak. Ch. Pr. Blake's Practice of the Court of Chancery of the state of New York.

Bland's Ch. R. Bland's Chancery Reports.

Blansh. Lim. Blanshard on Limitations.

Bligh, R. Bligh's Reports of cases decided in the House of Lords. There are two series of these reports, the first contains three volumes, and the last, ten; and is still continued.

Bo. R. Act. Booth on Real Actions.

Boote. Boote's Ch. Pr. Boote's Chancery Practice. *Boote's S. L.* Boote's Suit at Law.

Booth's R. A. Booth on Real Actions.

Bos. & Pull. Bosanquet and Puller's Reports. Vide *B. & P.*

Bosc. on Conv. Boscowen on Convictions.

Bott. Bott's Poor Laws. 3 vols. 8vo.

Boulay Paty, Dr. Com. Cours de Droit Commercial Maritime, par P. S. Boulay Paty.

Bowl. on Lib. Bowles on Libels.

Br. or *Brownl.* Brownlow's Reports.

Br. or *Br. Ab.* Brooke's Abridgment.

Bra. Brady's History of the succession of the Crown of England, &c.

Brac. Bracton's Treatise on the Laws and Customs of England. Vide as to character of this book, Fortesc. 419; Jones on Bailm. 75; 1 Show. 121; Fitz. Ab. Gard. 71.

Bradb. Bradby on Distresses.

Brayt. R. Brayton's Reports.

Breese's R. Breese's Reports.

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Brid. Bridgman's Reports. Reports from 12 to 19 K. James. By Sir John Bridgman.

Britton. Treatise on the ancient pleas of the Crown.

Bro. Brownl. Brownlow's Reports. Reports in Common Pleas in the reigns of Queen Elizabeth and K. James I. in two parts. By Richard Brownlow and John Goldesborough. Cited 1 Bro. 2 Bro.

Bro. Ab. Brooke's Abridgment.

Bro. A. C. L. Brown's Admiralty Civil Law. This book, though far too brief, deserves to be popular. Coop. Just. 670.

Bro. C. C. Brown's Chancery Cases. Reports in Chancery from 18 Geo. III. 1788, to 34 Geo. III. 1794. By William Brown. 4 vols. 8vo.

Bro. P. C. Brown's Parliamentary Cases. Reports of Cases upon Appeals and Writs of Error in the High Court of Parliament. By Josiah Brown. 8 vols. 8vo.

Bro. V. M. Brown's Vade Mecum.

Brock. R. Brockenbrough's Reports of Chief Justice Marshall's Decisions.

Brod. & Bing. Broderip and Bingham's Reports. In E. C. L. R.

Brownl. Rediv. or *Brownl. Ent.* Brownlow Redivivus.

Buck's Ca. Buck's Cases. Cases in Bankruptcy in 1817, 1818. By J. W. Buck.

Bull. or *Bull. N. P.* Buller's Nisi Prius. When Buller wrote his N. P. he was a young man and intended his book to carry with him on the circuit, for his own use. 10 Serg. & R. 49.

Bulst. Bulstrode's Reports. Reports in K. B. in the reigns of King James I. and Charles I. in 3 parts. By Edward Bulstrode.

Bunb. Bunbury's Reports. Lord Mansfield says, "Mr. Bunbury never meant that those cases should be published; they are very loose notes." 5 Burr. 2658.

Burr. Burrow's Reports.

C. Codex, the Code of Justinian. *C. Code.* *C.* Chancellor.

C. B. Communi Banco, or Common Bench.

C. C. Cepi Corpus. *C. C.* and *B. B.* Cepi Corpus and Bail Bond.

C. C. or *Ch. Cas.* Cases in Chancery, in three parts. Most of these cases, in 2 C. C. are grossly misreported, said per Lord Loughborough, 1 H. Bl. 332.

C. C. C. or *Cr. Cir. Com.* Crown Circuit Companion.

C. C. E. or *Cain. Cas.* Caine's Cases in Error.

C. D. or *Com. Dig.* Comyn's Digest. This book is cited in this manner. Com. Dig. Arbitrament, (A 2), which signifies Comyn's Digest, title Arbitrament, division (A 2). Sometimes the volume and page are cited as follows; 2 Com. Dig. 100.

C. J. Chief Justice.

C. & J. Crompton and Jervis's Exchequer Reports.

C. P. Common Pleas.

C. R. or *Ch. Rep.* Chancery Reports.

C. & P. or *Car. & Pain.* Carrington & Paine's Reports. In E. C. L. R.

Ca. Case or placitum.

Ca. sa. in practice, is the abbreviation of *capias ad satisfaciendum.*

Caines's R. Caines's Term Reports.

Caines's Cas. Caines's Cases, in error.

Caines's Pr. Caines's Practice.

Cald. R. Caldecot's Reports.

Caldw. Arbit. Caldwell on Arbitration.

Call. on Sew. Callis on the Law relating to Sewers.

Call's R. Call's Reports.

Cam. & Norw. Cameron and Norwood's Reports.

Campb. Campbell's Reports. Reports of cases argued and ruled at Nisi Prius in the courts of K. B. and C. P. from 1807 to 1816. By John Campbell. 4 vols. 8vo.

Cap. Capitulo, chapter.

Carr. Cr. L. Carrington's Criminal Law.

Cart. Carter's Reports. Reports in C. P. in 16, 17, 18 and 19, Charles II.

Carth. Carthew's Reports. Reports in K. B. from 3 James II. 1688, to 12 Wm. III. 1700. By Thomas Carthew.—Carthew and Comberbach are said by Ld. Thurlow to be equally bad authority, 1 Bro. C. C. 97; but Ld. Kenyon says Carthew is, in general, a good reporter.

Cary. Cary's Reports. Reports in Chancery, whereunto is annexed the King's Order and Decree in Chancery for a rule to be observed in that Court.

Cary on Partn. Cary on the law of partnership.

Cas. L. Eq. Cases and opinions in Law, Equity and Conveyancing. 2 vols. 8vo.

Cas. of Pr. Cases of Practice in the Court of the King's Bench, from the reign of Eliz. to the 14 Geo. 3.

Cas. Temp. Hardw. Cases during the time of Lord Hardwicke.

Cas. Temp. Talb. Cases during the time of Lord Talbot.

Ch. Chancellor.

Ch. Pr. Precedents in Chancery.

Ch. R. Reports in Chancery.

Chamb. L. & T. Chambers on the law of Landlord and Tenant.

Charlt. Charlton. *T. U. P. Charlt.* T. U. P. Charlton's Reports. *R. M. Charlt.* R. M. Charlton's Reports.

Chipm. R. Chipman's Reports. *D. Chipm.* D. Chipman's Reports.

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Chipm. Contr. Essay on the Law of Contracts for the payment of Specific Articles. By Daniel Chipman.

Ch. Contr. A practical treatise on the Law of Contracts, not under seal, and upon the usual defences to actions thereon. By Joseph Chitty, Jr. 1 vol. 8vo. Cited Chit. on Contr.

Chit. Comm. L. Chitty's Treatise on Commercial Law.

Chit. Cr. L. Chitty's Criminal Law.

Chit. on Des. Chitty on the Law of Descents.

Chit. Med. Jur. Chitty on Medical Jurisprudence.

Chit. Rep. Chitty's Reports. In E. C. L. R.

Chit. Pl. A Practical Treatise on Pleading. "No person competent to appreciate the difficulty of the task performed in compiling this work, can ever peruse it, without high admiration of the learning, talent and industry of the author." Steph. on Pl. iv. Mr. Lawes in his valuable treatise on Pleading in Assumpsit bears the same testimony to the merits of the author. p. 55.

Chit. Pr. Chitty's General Practice. A most excellent and practical work.

Cl. Ass. Clerk's Assistant.

Clan. H. & W. Clancy on the Rights, Duties and Liabilities of Husband and Wife.

Clay. Clayton's Reports. Reports of Pleas of Assize at York, with some precedents useful for pleaders, in English. 1 vol. 12mo.

Clift. Clift's Entries.

Co. A particle used before other words to imply that the person spoken of possesses the same character as other persons whose character is mentioned, as co-executors, an executor with others; co-heir, an heir with others; co-partner, a partner with others, &c.—*Co.* is also an abbreviation for company, as John Smith & Co.—When so abbreviated it also represents county.

Co. Coke's Reports. Reports of Resolutions, &c. in the several courts, of cases never resolved or adjudged before; and the reasons and causes of the resolutions, &c. from 14 Q. Eliz. (1572,) to 13 K. James, (1616,) 13 parts, with references to all the books of the common law, the pleadings in English, and many additional notes and references by G. Wilson, Esq. Cited sometimes *Rep.* See 1 Bl. Com. 72.

Co. or *Co. Rep.* Coke's Reports.

Co. Ent. Coke's Entries.

Co. B. L. Cooke's Bankrupt Law, in 2 vols. 8vo.

Co. on Counts. Coke on Counts; 4th Institute. See *Inst.* below, and 1 Bl. Com. 73.

Co. Litt. Coke on Littleton. See *Inst.* As to the character of this book see 1 Bl. Com. 73.

Co. M. C. Coke's Magna Charta; 2d Institute. See *Inst.* and 1 Bl. Com. 73.

Co. P. C. Coke's Pleas of the Crown. See *Inst.* and 1 Bl. Com. 73.

Col. & Cai. Cas. Coleman and Caines's Cases.

Coll. Rep. Colle's Reports. Reports of Cases upon Appeals and writs of Error in the High Courts of Parliament from 1697 to 1709, being a supplementary volume to Brown's Cases in Parliament. By Richard Colle. 1 vol. 8 vo.

Com. or *Com. Rep.* Comyn's Reports.

Com. Dig. Comyn's Digest. A Digest of the Laws of England, by the Right Honourable Sir John Comyns, Knight, with additions by Anthony Hammond, Esq. and notes of American Decisions, by Thomas Day, Esq. in 8 vols. This is an excellent digest, 4 Dall. 327.

Com. L. & T. Comyn on the Law of Landlord and Tenant.

Com. Law Rep. Common Law Reports edited by Sergeant and Lowber. Vide E C. L. R.

Comb. Comberbach's Reports. Reports in K. B. from 1 K. James II. (1685,) to 10 K. William III. (1698.) By Roger Comberbach.—Comberbach is said by Lord Thurlow to be bad authority. 1 Bro. C. C. 97.

Comm. Blackstone's Commentaries.

Cond. Condensed.

Cond. Ch. R.—Condensed Chancery Reports.

This is a series of Chancery Reports, reprinted in this country. For the sake of convenient reference here is added a list of the volumes published, and the contents of each.

Vol. 1.	Simons & Stuart, vols.	1 & 2.
" 2.	Simons,	"	1 & 2.
" 3.	Russell,	"	2, 3, 4.
" 4.	Russell & Mylne,		1.
	Jacob vol. 1.		
" 5.	Simons,	"	3.
	Tamlyn,	"	1.
	Simons,	"	4 & 5.
" 6.	Russell & Mylne,		2.
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Cond. Ex. R. Condensed Exchequer Reports.

These are a reprint of English Exchequer

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Reports. The following is a list of the volumes reprinted in this country.

Vol. 1. Price's Reports, vols. 1, 2, 3.
" 2. do. do. " 4, 5, 6.
" 3. do. do. " 7, 8.
" 4. do. do. " 9, 10.
Daniel's do. " 1.
" 5. Price's do. " 11, 12.
" 6. do. do. " 10 Pt. 3 & vol. 13.

M'Clelland's do.
Wightwick's do.

Cong. Congress.

Conn. R. Connecticut Reports.

Const. Ct. R. Constitutional Court Reports.

Coop. Eq. R. Cooper's Equity Reports.

Coop. Cas. Cases in the High Court of Chancery during the time of Lord Chancellor Eldon, in Hilary, Easter, and Trinity Terms, 55 Geo. III. 1815, with a few cases of an earlier period. By George Cooper. 1 vol. 8vo. These reports are a continuation of those by Vesey and Beames, and are continued by Merivale.

Coop. Eq. Pl. Cooper's Equity Pleading.

Coop. Just. Cooper's Justinian's Institutes.

Coop. Med. Jur. Cooper's Medical Jurisprudence.

Cont. Contra.

Corn. on Uses. Cornish on Uses.

Cot. Abr. Cotton's Abridgment of Reports.

Coup. Cowper's Reports. Reports in K. B. from Hilary Term 14 Geo. III. 1774, to Trinity Term 18 Geo. III. 1778, both inclusive. By Henry Cowper. 2 vols. 8vo.

Cow. R. Cowen's Reports, N. Y.

Cox's Cas. Cox's Cases. Cases determined in the Courts of Equity from 1783 to 1796 inclusive.

Coxe's R. Coxe's Reports.

Crabb's C. L. Crabb's Common Law. A History of the English Law; or an attempt to trace the rise, progress, and changes of the Common Law. By George Crabb.

Cranch R. Cranch's Reports.

Cresswe. R. Cresswell's Reports of cases decided in the Court for the relief of insolvent debtors.

Crim. Con. Criminal conversation; adultery.

Cro. Croke's Reports. *Cro. Eliz.* Croke's Reports, during the time of Queen Elizabeth, also cited as 1 Cro. *Cro. Jac.* Croke's Reports, during the time of King James I., also cited as 2 Cro. *Cro. Car.* Croke's Reports, during the time of Charles I., also cited as 3 Cro.

Crompt. Ex. Rep. Crompton's Exchequer Reports.

Cru. Dig. or *Cruise's Dig.* Cruise's Digest of the Law of Real Property.

Cul. culpabilis, guilty; *non cul.* not guilty; a plea entered in actions of trespass. *Cul. prit*, commonly written culprit; cul., as above mentioned, means culpabilis, or culpable; and prit, which is a corruption of prêt, and signifies ready, 1 Chitty Cr. Law, 416.

Cun. Cunningham's Reports. Reports in K. B. in 7, 8, 9 and 10 George II., to which is prefixed a proposal for rendering the laws of England clear and certain, humbly offered to the consideration of both Houses of Parliament. By Tim. Cunningham.

Cunn. Dict. Cunningham's Dictionary. A new and complete Law Dictionary, or General Abridgment of the Law, &c. By T. Cunningham. 2 vols, folio.

Cur. adv. vult. Curia advisere vult. Vide *Ampliation.*

D. dictum; *D.* Digest of Justinian.

D. & E. Durnford and East's Reports. This book is also cited as Term Reports, abbreviated T. R.

D. & R. Dowling and Ryland's Reports of cases decided in the Court of the King's Bench. In E. C. L. R.

D. & R. N. P. C. Dowling and Ryland's Reports of cases decided at Nisi Prius. In E. C. L. R.

D. & S. Doctor and Student.

D'Aguesseau, Œuvres. Œuvres complètes du Chancellier D'Agueseau, 15 vols.

Dal. Dalison's Reports. See *Benl.*

Dall. Dallas's Reports.

Dall. L. Dallas's Laws of Pennsylvania.

Dalt. Just. Dalton's Justice.

Dalt. Sh. Dalton's Sheriff.

D'Anv. D'Anvers's Abridgment.

Dan. Rep. Daniell's Reports. Reports on the Equity side of the Exchequer, before the Lord Chief Baron, commencing in the sittings before Trinity Term, 57 Geo. III., 1817, to the end of Hilary Term, 58 Geo. III., 1818.

Dan. & Ll. Danson & Lloyd's Reports.

Dana's R. Dana's Reports.

Dane's Ab. Dane's Abridgment of American Law.

Dav. Davy's Reports. Reports of cases in the King's Courts in Ireland, 2 to 9 James, (1604 to 1611,) with a learned preface dedicated to Lord Chancellor Ellesmere, &c., translated into English. By Sir John Davys.

Dessaus. R. Dessaussure's Chancery Reports.

Dev. R. Devereux's Reports.

Dev. Ch. R. Devereux's Chancery Reports.

Dev. & Bat. Devereux and Battle's Reports.

Dick. Dicken's Reports. Reports of Cases in the High Court of Chancery. By John Dicken. Revised by John Wyatt Esq. 2 vols. 8vo.—" Mr. Dicken was a

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very attentive and diligent register; but his notes being rather loose, were not to be considered as of very high authority." Per Lord Redesdale, 1 Sch. & Lef. 240. Vide also, Sug. Vend. 146.

Dig. Digest of writs. *Dig.* The Pandects or Digest of the civil law, cited Dig. 1, 2, 5, 6, for Digest, book 1, tit. 2, law 5, section 6.

Doct. & Stu. Doctor and Student.

Doct. Pl. Doctrina Placitendi.

Dods. R. Dodson's Reports.

Dom. Domat, Lois Civilles.

Dom. Proc. House of Lords.

Domat. Lois Civilles dans leur ordre naturel. Par M. Domat.

Dougl. Douglas's Reports. vols 3 and 4. In E. C. L. R.

Dow. or *Dow. P. C.* Dow's Parliamentary Cases.

Dowl & Ry. Dowling and Ryland's Reports of cases decided in the Court of the King's Bench. In E. C. L. R.

Dub. Dubitatur.

Dunl. Pr. Dunlap's Practice.

Dunl. Adm. Pr. Dunlap's Admiralty Practice.

Durnf. & East. Durnford and East's Reports, also cited D. & E. or T. R.

Dy. Dyer's Reports.

E. Easter Term.

E. East's Reports.

E. C. L. R. English Common Law Reports, sometimes cited Eng. Com. Law Rep. (q. v.)

E. P. C., or *East, P. C.* East's Pleas of the Crown.

East, P. C. East's Pleas of the Crown.

Eccl. Ecclesiastical.

Eccl. Law. Ecclesiastical Law.

Eccl. Rep. Ecclesiastical Reports. Vide *Eng. Eccl. R.*

Ed. Edition.

Ed. Inj. Eden on Injunction.

Ed. Eq. Reps. Eden's Equity Reports.

Ed. Princ. Pen. Law. Eden's Principles of Penal Law.

Ellis on D. and Cr. Ellis on the Law relating to Debtor and Creditor.

Eng. Ch. R. English Chancery Reports. Vide Cond. Ch. R.

Eng. Com. Law Reps. English Common Law Reports. This is the most extensive collection of Reports published in a series of volumes. It is a reprint of the *regular* and *authoritative* series of Reports in the English Courts of Common Law, from the year 1813 to the present time; and is regularly continued. 33 vols. are now published. For the sake of convenient reference, the following list, showing the contents of each volume, is here given.

Vol. 1.	Taunton's Reports,	C. P. vol. 5 and 6.
2.	" Reports,	7.
	Starkie's "	N. P. 1.
3.	Starkie's "	N. P. 2.
	Holt's "	N. P. 1 vol.
4.	Taunton's "	C. P. vol. 8.
	Marshall's "	C. P. 2 vols.
	Moore's "	C. P. 3 vols.
5.	Broderip & Bingham,	C. P. vol. 1.
	Barnewall & Alderson,	K. B. 3.
	Gow's Reports,	N. P. 1, part 1.
6.	Broderip & Bingham,	C. P. 2.
	Barnewall & Alderson,	K. B. 4.
7.	Broderip & Bingham,	C. P. 3.
	Barnewall & Alderson,	K. B. 5.
8.	Bingham's Reports,	C. P. 1.
	Barnewall & Cresswell,	K. B. 1.
9.	" "	2.
	Bingham's Reports,	C. P. 2.
10.	Barnewall & Cresswell,	K. B. 3 and 4.
11.	" "	K. B. vol. 5, parts 1 and 2.
	Bingham's Reports,	C. P. 3, parts 1 and 2.
	Carrington & Payne,	N. P. 1.
12.	Barnewall & Cresswell,	K. B. 5, parts 3 and 4.
	Carrington & Payne,	N. P. 2.
13.	Bingham's Reports,	C. P. 3, parts 3 and 4.
	" "	4, parts 1 and 2.
	Barnewall & Cresswell,	K. B. 6.
14.	" "	7.
	Carrington & Payne,	N. P. 3.
	Starkie,	N. P. 3, part 1.
15.	Barnewall & Cresswell,	K. B. 8.

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Eng. Com. Law Reps.

Bingham,	C. P. 4, parts 3 and 4.
"	C. P. 5.
16. Dowland & Ryland,	K. B. & N. P. 8 vols.
Moore,	C. P. & E. C. vols. 4 and 5.
17. Moore,	C. P. & E. C. vols. 6 to 10.
Moore & Payne,	" " 2 vols.
Manning & Ryland,	K. B. 2 vols.
Barnewall & Cresswell,	K. B. vol. 9.
18. Chitty,	K. B. 2 vols.
19. Bingham,	C. P. vol. 6.
Carrington & Payne,	N. P. 4.
20. Bingham,	C. P. 7.
Barnewall & Adolphus,	K. B. 1.
21. Bingham,	C. P. 8.
Barnewall & Cresswell,	K. B. 10.
Ryan & Moody,	N. P. 1 vol.
22. Barnewall & Adolphus,	K. B. vol. 2.
Moody & Malkin,	N. P. 1.
Dowland & Ryland,	K. B. 9.
Manning & Ryland,	K. B. vols. 3 and 4.
Moore,	C. P. & E. C. vols. 11 and 12.
23. Barnewall & Adolphus,	K. B. vol. 3.
Bingham,	C. P. 9.
24. Barnewall & Adolphus,	K. B. 4.
Carrington & Payne,	N. P. 5.
25. Bingham,	C. P. vol. 10.
Carrington & Payne,	N. P. 6.
26. Douglas, by Roscoe,	K. B. 3 and 4.
27. Barnewall & Adolphus,	K. B. vol. 5.
Bingham, New Cases,	C. P. 1.
28. Adolphus & Ellis,	K. B. 1.
Moore & Scott,	C. P. 1 & 2.
Neville & Manning,	K. B. 1—3.
29. Adolphus & Ellis,	K. B. 2.
Bingham's New Cases,	C. P. 2.
30. Adolphus & Ellis,	K. B. 3.
Moore & Scott,	C. P. 3 and 4.
Neville & Manning,	K. B. 4.
Scott's Reports,	C. P. 2.
31. Adolphus & Ellis,	K. B. 4 & 5.
32. Bingham's New Cases,	C. P. 3.
Carrington & Payne,	N. P. 7.
33. Bingham's New Cases,	C. P. 4.
Adolphus & Ellis,	K. B. 6.

Eng. Ecc. R. English Ecclesiastical Reports.

This is a reprint of Ecclesiastical Reports. For the sake of convenient reference, a list of those published is here given.

Five volumes of this work are published, furnishing a series of decisions in the Ecclesiastical Courts of England and Scotland, from 1790 to 1832, and contain as follows:—

Vol. 1. Phillimore's Ecclesiastical Reports, 3 vols.
2. Addams's " 3 vols.
3. Haggard's " Vol. 1
Fergusson's Scotch Consistorial Reports, 1 vol.
4. Haggard's Ecclesiastical Reports, Vol. 2.
Haggard's Consistorial Reports, 2 vols.
5. Haggard's Ecclesiastical Reports, Vol 3.
Lee's " " Vol. 1.

This series is regularly continued.

Eq. Ca. Ab. Equity Cases Abridged.

Ersk. Inst. Erskine's Institute of the Law of Scotland. *Ersk. Prin. of Laws of Scotl.* Erskine's Principles of the Laws of Scotland.

Esp. N. P. Espinasse's Nisi Prius.

Esp. N. P. R. Espinasse's Nisi Prius Reports.

Eunom. Eunomus, or Doctor and Student.

Ex. or *Exor.* Executor. *Execx.* Executrix.

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Exch. Rep. Exchequer Reports. Vide Cond. Exch. Rep.

Exec. Execution.

F. Fitzherbert's Abridgment.

F. N. B. Fitzherbert's Natura Brevium.

Fairf. R. Fairfield's Reports.

Farr's Med. Jur. Farr's Elements of Medical Jurisprudence.

Fearn. on Rem. Fearne on Remainders.

Fell on Mer. Guar. Fell on Mercantile Guaranties.

Ferg. R. Fergusson's Reports of the Consistorial Court of Scotland.

Ff. or *ff.* Pandects of Justinian, this is a careless way of writing the Greek π.

Finch. Finch's Law; or a Discourse thereof in five books. *Finch's Pr.* Finch's Precedents in Chancery.

Fitz-G. Fitz-Gibbon's cases in the Courts of the K. B., Chancery, C. P., and Exch. vide 3 Atk. 306.

Fitzh. Fitzherbert's Abridgment. *Fitzh. Nat. Bre.* Fitzherbert's Natura Brevium.

Fl. or *Fleta.* A commentary on the English Law written by an anonymous author, in the time of Edward I., while a prisoner in the Fleet.

Fletch. on Trusts. Fletcher on the Estates of Trustees.

Fonb. Fonblanque on Equity. *Fonb. Med. Jur.* Fonblanque on Medical Jurisprudence.

Forr. Forrester's Cases during the time of Ld. Talbot, commonly cited Cas. Temp. Talb.

Fortesc. Fortescue, De Laudibus Legum Angeliæ. *Fortesc. R.* Fortescue's Reports, temp. Wm. III. and Anne.

Fost. or *Fost. C. L.* Foster's Crown Law.

Fra. or *Fra. Max.* Francis's Maxims.

Fred. Co. Frederician Code.

Freem. Freeman's Reports. *Freem. C. C.* Freeman's Cases in Chancery.

Gall. or *Gall. Rep.* Gallison's Reports.

Gilb. R. Gilbert's Reports. *Gilb. Ev.* Gilbert's Evidence, by Lofft. *Gilb. U. & T.* Gilbert on Uses and Trusts. *Gilb. Ten.* Gilbert on Tenures. *Gilb. on Rents.* Gilbert on Rents. *Gilb. on Rep.* Gilbert on Replevin.

Gill & John. Gill and Johnson's Reports.

Gilm. R. Gilmer's Reports.

Gilp. R. Gilpin's Circuit Court Reports.

Glanv. Glanville's treatise of the laws and customs of England. See 8 Co. Rep. Preface; Plowd. 368; 1 Show. 121; Mador's Exch. 123; 2 Reeve's Eng. Law, page v. and 283.

Glyn & Jam. Glyn and Jameson's Reports of cases in Bankruptcy.

Godb. Godbolt's Reports.

Goldesb. Goldesborough's Reports. See *Bro. Brownl.*

Godolph. Godolphin's Orphan's Legacy.

Gods. on Pat. Godson's treatise on the Law of Patents.

Golds. Goldsborough's Reports.

Gould on Pl. Gould on the principles of Pleading in Civil Actions.

Gow on Partn. Gow on Partnership.

Grah. Pr. Graham's Practice. *Grah. N. T.* Graham on New Trials.

Green's R. Green's Reports.

Greenl. R. Greenleaf's Reports.

Gres. Eq. Ev. Gresley's Equity Evidence.

Griff. Reg. Griffith's Law Register.

Grimk. on Ex. Grimké on the duty of Executors and Administrators.

Grot. Grotius de Jure Bellum.

H. Hilary term.

H. Bl. Henry Blackstone's Reports. Reports in Common Pleas and Exchequer from Easter 28 Geo. III. 1788, to Hilary 36 Geo. III. 1796. By Henry Blackstone. 2 vols. 8vo

H. H. C. L. Hale's History of the Common Law.

H. & M. Henning and Munford's Reports.

H. & M'H. or *Harr. & M'Hen.* Harris and M'Henry's Reports.

H. P. C. Hale's Pleas of the Crown.

H. t. usually put in small letters *h. t.* hoc titulo.

Hagg. Ad. R. Haggard's Admiralty Reports. *Hagg. Eccl. R.* Haggard's Ecclesiastical Reports. In E. E. R.

Hale, P. C. Hale's Pleas of the Crown. *Hale's Hist. C. L.* Hale's History of the Common Law.

Halif. Civ. Law. Halifax's Analysis of the civil law.

Hall's R. Hall's Reports of Cases decided in the Superior Court of the city of New York.

Halst. R. Halstead's Reports.

Hamm. N. P. Hammond's Nisi Prius.

Hamm. on Part. Hammond on Parties to actions.

Han. Hansard's Entries.

Hand's Cr. Pr. Hand's Crown Practice.

Hand on Pat. Hand on Patents.

Hard. Hardress's Reports.

Hardin's R. Hardin's Reports.

Harg. Coll. Hargrave's Juridical Arguments and collection.

Harg. St. Tr. Hargrave's State Trials.

Harp. L. R. Harper's Law Reports.

Harp. Eq. R. Harper's Equity Reports.

Harr. Ch. Harrison's Chancery Practice.

Harr. & Gill. Harris and Gill's Reports.

Harr. & John. Harris and Johnson's Reports.

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Harringt. R. Harrington's Reports.

Hawk. P. C. Hawkins's Pleas of the Crown.

Hawk's R. Hawk's Reports.

Hays on R. P. Hays on Real Property.

Hen. & Munf. Henning and Munford's Reports.

Het. Hetley's Reports.

Heyw. (N. C.) R. Heywood's North Carolina Reports.

Heyw. (Tenn.) R. Heywood's Tennessee Reports.

High. Highmore. *High. on Bail.* Highmore on Bail. *High. on Lun.* Highmore on Lunacy. *High. on Mortm.* Highmore on Mortmain.

Hill. Ab. Hilliard's Abridgment of the Law of Real Property.

Hill's R. Hill's Reports.

Hill's Ch. R. Hill's Chancery Reports.

Hob. Hobart's Reports.

Hodg. R. Hodge's Reports.

Holt on Lib. Holt on the law of Libels.

Holt on Nav. Holt on Navigation.

Holt, R. Holt's Reports.

Holt on Sh. Holt on the law of Shipping.

Hopk. R. Hopkins's Chancery Reports.

Hopk. Adm. Dec. Hopkinson's Admiralty Decisions.

Hough C. M. Hough on Courts Martial.

How. St. Tr. Howell's State Trials.

Hugh. on Wills. Hughes on Wills.

Hugh. R. Hughes's Reports.

Hull. on Costs. Hullock on the law of costs.

Hult. on Conv. Hulton on Convictions.

Hut. Hutton's Reports.

I., The Institutes of Justinian (q. v.) are sometimes cited, I. 1, 3, 4.

Ib. Ibidem.

Id. Idem.

Imp. Pr. C. P. Impey's Practice in the Common Pleas. *Imp. Pr. K. B.* Impey's Practice in the King's Bench. *Imp. Pl.* Impey's Modern Pleader. *Imp. Sh.* Impey's office of Sheriff.

Ing. Dig. Ingersoll's Digest of the Laws of the United States.

Ins. Insurance.

Inst. Coke on Littleton, is cited Co. Lit. or 1 Inst., for First Institute. Coke's Magna Charta, is cited Co. M. C. or 2d Inst., for Second Institute. Co. P. C. Coke's Pleas of the Crown is cited 3 Inst., for Third Institute. Co. on Courts. Coke on Courts is cited 4 Inst., for Fourth Institute. There is but little reason for calling these books institutes, as they have little of the institutional method to warrant such title. The first is a very extensive comment upon a little excellent treatise of tenures compiled by Judge Littleton, in the reign of Edward the Fourth. This comment is a rich store of common law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. The second volume is a comment upon old acts of parliament, without any systematical order; the third, a more methodical treatise of the pleas of the crown; and the fourth, an account of the several species of courts. 1 Bl. Com. 73.

Inst. Institutes. When the Institutes of Justinian are cited, the citation is made thus; Inst. 4, 2, 1; or Inst. lib. 4, tit. 2, l. 1; to signify Institutes, book 4 title 2, law 1. Coke's Institutes are cited, the first, either, Co. Lit., or 1 Inst. and the others 2 Inst., 3 Inst. and 4 Inst.

Introd. Introduction.

J., Justice; as Story, J.

Jac. & Walk. Jacob and Walker's Chancery Reports.

Jeff. Rep. Thomas Jefferson's Reports.

Jenk. Jenkins's Eight Centuries of Reports; or eight hundred cases solemnly adjudged in the Exchequer Chamber, or upon Writs of Error, from K. Henry III. to 21 K. James I.

Jer. Jeremy. *Jer. on Carr.* Jeremy's Law of Carriers. *Jer. Eq. Jur.* Jeremy on the Equity Jurisdiction of the High Court of Chancery.

John. Cas. Johnson's Cases.

John. R. Johnson's Reports.

John. Ch. R. Johnson's Chancery Reports.

Jon. Sir Wm. Jones's Reports.

Jon. T. Thomas Jones's Reports.

Jon. on Bailm. Jones's Law of Bailments.

Judg. Judgments, as they were, upon solemn arguments, given in the Upper Bench and Common Pleas, upon the most difficult points, in all manner of actions.

Jur. Mar. Molloy's Jure Maritimo. Sometimes cited *Molloy.*

Just. Inst. Justinian's Institutes.

K. B. King's Bench.

K. C. R. Reports in the time of Chancellor King.

Keb. Keble's Reports.

Keil. or *Keilw.* Keilway's Reports.

Kel. Sir John Kelyng's Reports. *Kel.* 1, 2, or *W. Kel.* William Kelyng's Reports, two parts.

Kent. Com. Kent's Commentaries on American Law.

Kit. or *Kitch.* Kitchen on Courts.

Kyd. on Aw. Kyd on the Law of Awards.

Kyd on Bills. Kyd on the Law relating to Bills of Exchange.

Kyd on Corp. Kyd on the Law of Corporations.

L, in citation means *law*, as L. 1, 33

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Furtum, ff de Furtis, i. e. law 1, section or paragraph beginning with the word Furtum, ff, signifies the Digest, and the words *de Furtis* denote the title. L signifies also liber, book.

L. S. Locus sigili.

L. R. Louisiana Reports.

La. Lane's Reports.

Lalaure, des Ser. Traité des Servitudes réelles, par M. Lalaure.

Lat. Latch's Reports.

Law. on Chart. Part. Lawes on the law of Charter Parties.

Law. Pl. Lawes's Elementary Treatise on Pleading in Civil Actions.

Law. Pl. in Ass. Lawes's Treatise on Pleading in Assumpsit.

Leach. Leach's Cases in Crown Law.

Lee on Capt. Lee's Treatise of Captures in war.

Lee's Dict. Lee's Dictionary of Practice, 2 volumes.

Leg. Legibus.

Leigh & Dal. on Conv. Leigh and Dalzell on Conversion of property.

Leigh's R. Leigh's Reports.

Leigh's N. P. Leigh's Nisi Prius.

Leo. or *Leon.* Leonard's Reports.

Lev. Levinz's Reports.

Lib. Liber, book.

Lex Mer. Lex Mercatoria. *Lex Mer. Am.* Lex Mercatoria Americana.

Lex Parl. Lex Parliamentaria.

Ley. Ley's Reports.

Lib. Ass. Liber Assisarum.

Lib. Feud. Liber Feudorum.

Lib. Intr. Liber intrationum; or Old Book of Entries.

Lib. Pl. Liber Placitandi.

Lib. Ten. Liberum tenementum.

Lill. Entr. Lilly's Entries. *Lill. Reg.* Lilly's Register.

Litt. s. Littleton, section.

Litt. R. Littell's Reports. *Litt. R.* Littleton's Reports.

Litt. Ten. Littleton's Tenures.

Liv. Livre, book.

Liv. on Ag. Livermore on the law of Principal and Agent, 2 vols.

Llo. & Welsb. Lloyd and Welsby's Reports of cases relating to Commerce, Manufactures, &c. determined in the Courts of Common Law.

Lofft. Lofft's Reports.

Lois des Bâtim. Lois des Bâtimens. See 3 Kent, Com. 350, n. for the character of this work.

Louis. R. Louisiana Reports.

Lovel. on Wills. Lovelass on Wills.

Lown. Leg. Lowndes on the law of Legacies.

Lutw. Lutwytch's Reports.

M. Michaelmas Term.

M. & M., or *Mo. & Malk. Rep.* Moody & Malkin's Nisi Prius Reports. In E. C. L. R.

M. R. Master of the Rolls.

M. R. Martin's Reports of the Supreme Court of the State of Louisiana.

M. & R. Manning & Ryland's Reports. In E. C. L. R.

M. & S. Maule and Selwyn's Reports.

M. & Y., or *Mart. & Yerg.* Martin and Yerger's Reports.

M'Arth. C. M. M'Arthur on Courts Martial.

M'Cl. & Yo. M'Clelland and Younge's Exchequer Reports.

M'Clel. E. R. M'Clelland's Exchequer Reports.

M'Cord's Ch. R. M'Cord's Chancery Reports.

M'Cord's R. M'Cord's Reports.

M'Naght. C. M. M'Naghten on Courts Martial.

Macnal. Ev. Macnally's Rules of Evidence on Pleas of the Crown.

Madd. Madd. R. Maddock's Chancery Reports. *Madd. Pr.* or *Madd. Ch.* Maddock's Chancery Practice.

Mal. Malyne's Lex Mercatoria.

Man. Manuscript.

Man. & Ry. Manning and Ryland's Reports. In E. C. L. R.

Mar. Mar. N. C. March's New Cases. *Mar. R.* March's Reports.

Marr. Adm. Dec. Marriott's Admiralty Decisions.

Marsh. Marshall's Reports in the Court of Common Pleas. In E. C. L. R. *A Marsh.* Marshall's (Kty.) Reports. *J. J. Marsh.* J. J. Marshall's Reports. *Marsh. Ins.* Marshall on the Law of Insurance.

Marsh. Decis. Brockenbrough's Reports of Chief Justice Marshall's Decisions.

Mart. Law Nat. Marten's Law of Nations.

Mart. (N. C.) R. Martin's North Carolina Reports.

Mart. (Lo.) R. Martin's Louisiana Reports.

Mason R. Mason's Circuit Court Reports.

Mass. R. Massachusetts Reports.

Math. on Pres. Mathew on the doctrine of Presumption and Presumptive Evidence.

Max. Maxims.

Maxw. on Mar. L. Maxwell's Spirit of the Marine Laws.

Mayn. Maynard's Reports. See Year Books in the body of the work. The first part of the Y. B. is sometimes so cited.

Mer. R. Merivale's Reports.

Miles's R. Miles's Reports.

Mitf. Pl. Mitford's Pleadings in Equity. Also cited *Redesd. Pl.* Redesdale's Pleadings.

Mo. Sir Francis Moore's Reports in the

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reign of K. Henry VIII., Q. Elizabeth, and K. James.

Mod. or *Mod. R.* Modern Reports.

Mod. C. L. & E. Modern cases in law and equity. The 8 & 9 Modern Reports are sometimes so cited; the 8th cited as the 1st, and the 9th as the 2d.

Mol. Molloy, De jure Maritimo.

Monr. R. Monroe's Reports.

Mont. on Comp. Montagu on the law of Composition. *Mont. B. L.* Montagu on the Bankrupt Laws. *Mont. on Set-off.* Montagu on Set-off.

Mont. & Mac. Montagu and Macarthur's Reports.

Montesq. Montesquieu, Esprit des Lois.

Mo. & Malk. Moody and Malkin's Reports. In E. C. L. R.

Mo. C. C. Moody's Crown Cases.

Moore, R. J. B. Moore's Reports of Cases decided in the Court of Common Pleas. In E. C. L. R.

Mos. Moseley's Reports.

Mun. Municipal.

Munf. R. Munford's Reports.

Murph. R. Murphey's Reports.

N. Number. *N.* or *Nov.* Novellæ: the novels.

N. A. Non allocatur.

N. C. Law Rep. North Carolina Law Repository.

N. E. I. Non est inventus.

N. H. Rep. New Hampshire Reports.

N. L. Nelson's edition of Lutwyche's Reports.

N. L. Non liquet. Vide *Ampliation.*

N & M'C. Nott and M'Cord's Reports.

N. P. Nisi Prius.

N. R. or *New R.* New Reports; the new series, or 4 & 5 Bos. & Pull. Reports are usually cited N. R.

N. S. New Series of the Reports of the Supreme Court of Louisiana.

Nels. Ab. Nelson's Abridgment.

Nels. R. Nelson's Reports.

Nem. con. Nemine contradicente, (q. v.)

Nem. dis. Nemine dissentiente.

New Benl. Benloe's Reports. Reports in the reign of Henry VIII., Edw. VI., Phil. and Mary, and Elizabeth, and other cases in the times of James and Charles. By William Benloe. See *Benl.*

New Rep. New Reports. A continuation of Bosanquet & Puller's Reports. See B. & P.

Newl. Contr. Newland's Treatise on Contracts.

Newl. Ch. Pr. Newland's Chancery Practice.

Newn. Conv. Newnam on Conveyancing.

Nient cul. Nient culpable, old French, not guilty.

Nol. R. Nolan's Reports of cases relative to the duty and office of a justice of the peace.

Nol. P. L. Nolan's Poor Laws.

Non cul. Non culpabilis, not guilty.

Nov. Rec. Novisima Recopilacion de las Leyes de España.

Noy. Noy's Max. Noy's Maxims. *Noy's R.* Noy's Reports.

O. Benl. Old Benloe.

O. C. Old Code, so is denominated the Civil Code of Louisiana of 1808.

O. Ni. These letters, which are an abbreviation for *oneratur nisi habent sufficientem exonerationem*, are according to the practice of the English Exchequer, marked upon each head of a sheriff's account for issues, amerciaments and mean profits. 4 Inst. 116.

Oblig. Obligations.

Observ. Observations.

Off. Off. Br. Officina Brevium. *Off. Ex.* Wentworth's office of Executors.

Ohio R. Ohio Reports.

Onsl. N. P. Onslow's Nisi Prius.

Ord on Us. Ord, on the law of usury.

Orig. Original.

Ought. Oughton's Ordo Judiciorum.

Overt. R. Overton's Reports.

Ow. Owen's Reports.

P. page. *Pp.* Pages.

P. Paschalis, Easter term.

P. C. Pleas of the crown.

P. R. or *P. R. C. P.* Practical Register in the Common Pleas.

P. Wms. Peere Williams's Reports.

Paige's R. Paige's Chancery Reports.

Paine's Rep. Paine's Reports.

Pal. Palmer's Reports.

Pal. Conv. Paley on Convictions.

Pal. Ag. Paley on the Law of Principal and Agent.

Pand. Pandects. Vide *Dig.*

Par. & Fonb. M. J. Paris and Fonblanque on Medical Jurisprudence.

Pardess. Pardessus, Cours de Droit Commercial. In this work Pardessus is cited in several ways, namely; Pardes. Dr. Com. part 3, tit. 1, c. 2, s. 3, n. 286, or 2 Pardes. n. 286, which is the same reference.

Park, Ins. Park on Insurance.

Park. R. Sir Thomas Parker's Reports of cases concerning the revenue, in the Exchequer.

Patch on Mortg. Patch's Treatise on the law of Mortgages.

Peak. Add. Cas. Peake's Additional Cases.

Peak. C. N. P. Peake's cases determined at Nisi Prius, in the K. B.

Peake, Ev. Peake on the Law of Evidence.

Peck, R. Peck's Reports.

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Penn. R. Pennington's Reports. The Pennsylvania Reports are sometimes cited *Penn. R.*, but more properly, for the sake of distinction, *Penna. R.*

Penna. Pr. Pennsylvania Practice; also cited Tro. & Hal. Pr. Troubat and Haly's Practice.

Penna. R. Pennsylvania Reports.

Perk. Perkins on Conveyancing.

Pet. Ab. Petersdorff's Abridgment.

Pet. Adm. Dec. Peters's Admiralty Decisions.

Pet. on Bail, or *Petersd. on Bail.* Petersdorff on the law of Bail.

Pet. R. Peters's Supreme Court Reports.

Pet. C. C. R. Peters's Circuit Court Reports.

Phil. Ev. Phillips's Evidence.

Phil. Ins. Phillips on Insurance.

Phillim. or *Phillim. E. R.* Phillimore's Ecclesiastical Reports. This forms a part of the Eng. Ecclesiastical Reports.

Pick. R. Pickering's Reports.

Pig. Pigot on Recoveries.

Pl. Placitum or plea. *Pl.* or *Plow.* or *Pl. Com.* Plowden's Commentaries, or Reports.

Platt on Cov. Platt on the Law of Covenants.

Pol. Pollexfen's Reports.

Poph. Popham's Reports. The cases at the end of Popham's Reports are cited 2 Poph.

Port. R. Porter's Reports.

Poth. Pothier. The numerous works of Pothier are cited by abbreviating his name *Poth.* and then adding the name of the treatise, the figures generally refer to the number; as *Poth. Ob. n.* 100; which signifies Pothier's treatise on the law of Obligations, number 100. *Poth. du Mar.* Pothier du Marriage; *Poth. Vente*, Pothier Traité de Vente, &c. His Pandects in 24 vols. are cited *Poth. Pand.* with the book, title, law, &c.

Pow. Pow. Contr. Powell on Contracts. *Pow. Dev.* Powell on Devises. *Pow. Mortg.* Powell on Mortgages. *Pow. Powers.* Powell on Powers.

Poyn. on M. & D. Poynter on the law of Marriage and Divorce.

Pr. Ex. Rep. or *Price's E. R.* Price's Exchequer Reports.

Pr. Reg. Cha. Practical Register in Chancery.

Pr. St. Private Statute.

Prat. on H. & W. Prater on the Law of Husband and Wife.

Pref. Preface.

Prel. Préliminaire.

Prest. Prest. on Est. Preston on Estates. *Prest. Abs. Tit.* Preston's Essay on Abstracts of Title. *Prest. on Conv.* Preston's Treatise on Conveyancing. Vide 4 Kent Com. 101, note.

Puff. Puffendorff's Law of Nature.

Q. Warr. Quo Warranto; (q. v.) The letters (q. v.) *quod vide*, which see, refer to the article mentioned immediately before them.

Quest. Questions.

Quinti Quinto. Year-book, 5 Henry V.

R. resolved, ruled, or repealed.

R. M. Charlt. R. M. Charlton's Reports.

R. S. L. Reading on Statute Law.

Ram on Judgm. Ram on the Law relating to Legal Judgments.

Rand. R. Randolph's Reports.

Rast. Rastall's Entries.

Rawle's R. Rawle's Reports.

Rawle, Const. Rawle on the Constitution.

Raym. or, more usually, *Ld. Raym.* Lord Raymond's Reports. *T. Raym.* Sir Thomas Raymond's Reports.

Rec. Recopilacion.

Reeves's H. E. L. Reeves's History of the English Law. *Reeves on Ship.* Reeves on the Law of Shipping and Navigation.

Reg. Regula, rule. *Reg.* Register.

Reg. Brev. Registrum Brevium, or Register of Writs.

Reg. Jud. Registrum Judiciale.

Reg. Pl. Regula Placitandi.

Renouard, des Brev. d'Inv. Traité des Brevets d'Invention, de Perfectionnement, et d'Importation, par Augustin Charles Renouard.

Rep. The Reports of Lord Coke are frequently cited 1 Rep., 2 Rep., &c. and sometimes they are cited Co.

Rép. Répertoire.

Rep. Eq. Gilbert's Reports in Equity.

Rep. Q. A. Reports of cases during the time of Queen Anne.

Rep. T. Hard. Reports during the time of Lord Hardwicke.

Rep. T. Talb. Reports of cases decided during the time of Lord Talbot.

Res. Resolution. The cases reported in Coke's Reports, are divided into resolutions on the different points of the case, and are cited 1 Res. &c.

Rey, des Inst. de l'Anglet. Des Institutions Judiciaries de l'Angleterre comparées avec celles de la France. Par Joseph Rey.

Rob. Cas. Robertson's cases in Parliament, from Scotland.

Rob. Adm. Rep. Robinson's Admiralty Reports.

Rob. on *Fr.* Roberts on Frauds.

Rob. on Fraud. Conv. Roberts on Fraudulent Conveyances.

Rob. on Wills. Roberts's Treatise on the Law of Wills and Codicils.

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Rog. Rec. Rogers's City Hall Recorder.
Roll. Rolle's Abridgment. *Roll. R.* Rolle's Reports.
Rop. H. & W. A Treatise on the Law of Property, arising from the relation between Husband and Wife. By R. S. Donnison Roper. 2 vols. 8vo.
Rop. Leg. Roper on Legacies.
Rosc. Roscoe. *Rosc. on Act.* Roscoe on Actions relating to Real Property. *Rosc. Civ. Ev.* Roscoe's Digest of the Law of Evidence on the trial of actions at Nisi Prius. *Rosc. Cr. Ev.* Roscoe on Criminal Evidence. *Rosc. on Bills.* Roscoe's Treatise on the law relating to Bills of Exchange, Promissory Notes, Bankers' Checks, &c.
Rose's R. Rose's Reports of cases in Bankruptcy.
Ross on V. & P. Ross on the Law of Vendors and Purchasers.
Ruffh. Ruffhead's Statutes at large.
Ruffin's R. Ruffin's Reports.
Runn. Ej. Runnington on Ejectments.
Runn. Stat. Runnington's Statutes at large.
Russ. Cr. Russell on Crimes and Misdemeanors.
Russ. & Myl. Russell and Mylne's Reports of cases in Chancery.
Russ. R. Russell's Reports of cases in Chancery.
Russ. & Ry. Russell and Ryan's Crown Cases.
Rutherf. Inst. Rutherford's Institutes of Natural Law.
Ry. F. Rymer's Fœdera.
Ry. and Mo. Ryan and Moody's Nisi Prius Reports. In E. C. L. R. *Ry. & Mo. C. C.* Ryan and Moody's Crown Cases.
Ry. Med. Jur. Ryan on Medical Jurisprudence.
S. §, section.
S. B. Upper Bench.
S. C. Same Case.
S. C. C. Select cases in Chancery.
S. P. Same Point.
S. & R. Sergeant and Rawle's Reports.
S. & S. Simon and Stuart's Chancery Reports. In Con. C. R.
Sadl. St. Pap. Sadler's State Papers.
Salk. Salkeld's Reports.
Sand. U. & T. Sanders on Uses and Trusts.
Saund. Saunders's Reports.
Saund. Pl. & Ev. Saunders's Treatise on the Law of Pleading and Evidence.
Sav. Saville's Reports.
Say. Sayer's Reports. *Say. Costs.* Sayer's law of Costs.
Sch. & Lef. Schoale and Lefroy's Reports.
Schul. Aq. R. Schultes on Aquatic Rights.
Seat. F. Ch. Seaton's Forms in Chancery. By Henry Wilmot Seaton.
Sec. Section.
Sel. Ca. Chan. Select cases in Chancery. Vide S. C. C.
Sell. Pr. Sellon's Practice in K. B. and C. P.
Selw. N. P. Selwyn's Nisi Prius. *Selw. R.* Selwyn's Reports. These Reports are usually cited M. & S. Maule and Selwyn's Reports.
Sem. or *Semb.* Semble, it seems.
Seq. Sequentia.
Serg. on Att. Sergeant on the law of Attachment.
Serg. Const. Law. Sergeant on Constitutional Law.
Serg. on Land L. Sergeant on the Land Laws of Pennsylvania.
Serg. & Rawle. Reports of Cases adjudged in the Supreme Court of Pennsylvania. By Thomas Sergeant and William Rawle, Jun. 17 vols. 8vo.
Sess. Ca. Sessions Cases in K. B., chiefly touching settlements.
Shelf. on *R. Pr.* Shelford on Real Property.
Shelf. on Mort. Shelford on the Law of Mortmain.
Shep. To. Shepherd's Touchstone.
Shepl. R. Shepley's Reports.
Show. P. C. Shower's Parliamentary Cases. *Show. R.* Shower's Reports in the Court of King's Bench.
Sid. Siderfin's Reports.
Sim. Simons's Chancery Reports. In Con. C. R.
Sim. & Stu. Simon and Stuart's Chancery Reports. In Con. C. R.
Skin. Skinner's Reports.
Sm. Ch. Pr. Smith's Chancery Practice.
Sm. on Pat. Smith on the Law of Patents.
Smith's R. Smith's Reports in K. B., together with cases in the court of Chancery, from 44 to 46 Geo. III.
South. R. Southard's Reports.
Spel. Gl. Spelman's Glossary.
St. Cas. Stillingfleet's Cases.
St. Tr. State Trials.
Stark. Starkie's Ev. Starkie on the law of Evidence. *Stark. Cr. Pl.* Starkie's Criminal Pleadings. *Stark. R.* Starkie's Reports. In E. C. L. R. *Stark. on Sl.* Starkie on Slander and Libel.
Stat. Statutes.
Stat. Wes. Statute of Westminster.
Stath. Statham's Abridgment.
Staunf. or *Staunf. P. C.* Staunford's Pleas of the Crown.
Steph. Steph. Cr. Law. Stephen on Criminal Law. *Steph. Pl.* Stephen on

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Pleading. *Steph. Proc.* Stephen on Procurations.

Stew. R. Stewart's Reports.

Stew. & Port. Stewart and Porter's Reports.

Story on Bail. Story's Commentaries on the Law of Bailments.

Story on Const. Story on the Constitution of the United States.

Story on Eq. Story's Commentaries on Equity Jurisprudence.

Story's L. U. S. Story's edition of the Laws of the United States, in 3 vols. The 4th volume is a continuation of the same work by George Sharswood, Esq.

Story on Pl. Story on Pleading.

Str. Strange's Reports.

Sty. Styles's Reports.

Sugd. Sugd. Pow. Sugden on Powers. *Sugd. Vend.* Sugden on Vendors. *Sugd. Lett.* Sugden's Letters.

Sull. Lect. Sullivan's Lectures on the Feudal Law, and the Constitution and Laws of England.

Sull. on Land Tit. Sullivan's History of Land Titles in Massachusetts.

Sumn. R. Sumner's Circuit Court Reports.

Supp. Supplement. *Supp. to Ves. Jr.* Supplement to Vesey, Junior's Reports. This is an excellent collection of notes on the points decided in the Reports.

Swan on Eccl. Cts. Swan on the Jurisdiction of Ecclesiastical Courts.

Swanst. Swanston's Reports.

Swift. Swift's Ev. Swift's Evidence.

Swift's Sys. Swift's System of the Laws of Connecticut. *Swift's Dig.* Swift's Digest of the Laws of Connecticut.

Swinb. Swinburn on the Law of Wills and Testaments. This work is generally cited by reference to the part, book, chapter, &c.

Swinb. on Desc. Swinburn on the Law of Descents.

T. Jo. Sir Thomas Jones's Reports.

T. L. Termes de la Ley, or Terms of the Law.

T. R. Term Reports. Ridgway's Reports are sometimes cited *Irish T. R.*

T. R. Teste Rege.

T. R. E. or *T. E. R.* Tempore Regis Edwardi. This abbreviation is frequently used in Domesday Book, and in the more ancient law writers. See Tyrrel's Hist. Eng., Introd. v. iii. p. 49. See also Co. Inst. 86, a., where in a quotation from Domesday Book, this abbreviation is interpreted Terra Regis Edwardi; but in Cowell's Dict. verb. Reveland, it is said to be wrong.

T. Raym. Sir Thomas Raymond's Reports.

T. U. P. Charlt. T. U. P. Charlton's Reports.

Taml. R. Tamlyn's Reports decided in Chancery.

Taml. T. Y. Tamlyn on Terms for Years.

Taunt. Taunton's Reports. 16 E. C. L. R.

Tayl. Civ. L. Taylor's Civil Law.

Tayl. R. Taylor's Reports.

Th. Br. Thesaurus Brevium.

Th. Dig. Thelvall's Digest.

Tho. Co. Litt. Coke upon Littleton; newly arranged on the plan of Sir Matthew Hale's Analysis. By J. H. Thomas, Esq.

Tidd's Pr. Tidd's Practice.

Tit. Title.

Toll. Ex. Toller's Executors.

Toth. Tothill's Reports.

Touchs. Shepherd's Touchstone.

Toull. Le Droit Civil Français suivant l'ordre du Code; ouvrage dans lequel on a taché de réunir la theorie à la practique. Par M. C. B. M. Toullier. This work is sometimes cited Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 6; at other times, 3 Toull. n. 86, which latter signifies vol. 3 of Toullier's work, No. 86.

Tr. Eq. Treatise of Equity; the same as Fonblanque on Equity.

Treb. Jur. de la Méd. Jurisprudence de la Médecine, de la Chirurgie, et de la Pharmacie. Par Adolphe Trebuchets.

Trem. Tremaine's Pleas of the Crown.

Tri. per Pays. Trials per Pays.

Trin. Trinity term.

Turn. R. Turner's Reports of cases determined in Chancery.

Tyl. R. Tyler's Reports.

Tyt. Mil. Law. Essay on Military Law and the practice of Military Courts Martial.

Tyrw. Tyrwhitt's Exchequer Reports.

Umfrev. Off. of Cor. Umfreville's Office of Coroner.

Under Sher. Under Sheriff, containing the office and duty of High Sheriffs, Under Sheriffs, and Bailiffs.

Ux. et. Et uxor, et uxorem, and wife.

V. vide, see.

V. & B. Vesey and Beames's Reports.

Vatt. or *Vattel.* Vattel's Law of Nations.

Vaug. Vaughan's Reports.

Ventr. Ventris's Reports.

Verm. R. Vermont Judge's Reports.

Vern. Vernon's Reports.

Ves. Vesey Senior's Reports.

Ves. Jr. Vesey Junior's Reports.

Ves. & Bea. Vesey & Beames's Reports.

Vid. Vidian's Entries.

Vin. Ab. Viner's Abridgment.

Vinn. Vinnius.

Vs. Versus.

W. 1, W. 2. Statutes of Westminster, 1, and 2.

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W. C. C. R. Washington's Circuit Court Reports.
W. Jo. Sir William Jones's Reports.
W. Kel. William Kelynge's Reports.
Walk. Am. L. or *Walk. Introd.* Walker's Introduction to American Law.
Walk. R. Walker's Reports.
Wall. R. Wallace's Circuit Court Reports.
Watk. Conv. Watkins's Principles of Conveyancing.
Wats. on Arb. Watson on the Law of Arbitrations and Awards.
Wats. on Partn. Watson on the Law of Partnerships.
Wats. on Sher. Watson on the Law relating to the office and duty of Sheriff.
Watts's R. Watts's Reports.
Wend. R. Wendell's Reports.
Wentw. Wentworth. *Wentw. Off. Ex.* Wentworth's Office of Executor. *Wentw. Pl.* Wentworth's System of Pleading, in 10 vols.
Wesk. Ins. Weskett on the Law of Insurance.
West's Rep. West's Reports of Lord Chancellor Hardwicke.
Whart. Dig. Wharton's Digest.
Whart. R. Wharton's Reports.
Wheat. Wheaton. *Wheat. R.* Wheaton's Reports. *Wheat. on Capt.* Wheaton's Digest of the Law of Maritime Captures and Prizes.
Wheel. Cr. Cas. Wheeler's Criminal Cases.
Wilc. on Mun. Cor. Wilcock on Municipal Corporations.
Whit. on Liens. Whitaker on the Law of Liens.
Wightw. Wightwich's Reports in the Exchequer.
Wilk. on Lim. Wilkinson on Limitations.
Wilk. on Repl. Wilkinson on the Law of Replevin.
Will. on Eq. Pl. Willis's Treatise on Equity Pleadings.
Willes's R. Willes's Reports.
Wilm. on Mortg. Wilmot on Mortgages.
Wilm. Judg. Wilmot's Notes of Opinions and Judgments.
Wils. on Arb. Wilson on Arbitrations.
Wils. R. Wilson's Reports.
Win. Winch's Entries. *Win. R.* Winch's Reports.
Wing. Max. Wingate's Maxims.
Wood's Inst., or *Wood's Inst. Com. L.* Wood's Institutes of the Common Law of England. *Wood's Inst. Civ. Law.* Wood's Institutes of the Civil Law.
Woodes. Woodeson. *Woodes. El. Jur.* Woodeson's Elements of Jurisprudence. *Woodes. Lect.* Woodeson's Vinerian Lectures.
Woodf. L. & T. Woodfall on the Law of Landlord and Tenant.
Wool. L. W. Woolrych's Law of Waters.
Wool. on Ways. Woolrych on Ways.
Wright's R. Wright's Reports.
Wright, Fr. Soc. Wright on Friendly Societies.
Wright, Ten. Sir Martin Wright's Law of Tenures.
X. The Decretals of Gregory the Ninth, are denoted by the letter X, thus, X.
Y. B. Year Books, (q. v.)
Y. & J. Younge and Jervis's Exchequer Reports.
Yeates, R. Yeates's Reports.
Yelv. Yelverton's Reports.
Yerg. R. Yerger's Reports.
Yo. Rep. Younge's Reports.
Yo. & Jer. Younge and Jervis's Reports.
Zouch's Adm. Zouch's Jurisdiction of the Admiralty of England, asserted.

ABDICATION, *government.* 1. A simple renunciation of an office, generally understood of a supreme office. James II. of England; Charles V. of Germany; and Christiana, queen of Sweden, are said to have abdicated.—2. When inferior magistrates decline their offices, they are said to make a resignation. (q. v.)

ABDUCTION, *crim. law*, the carrying away of any person by force or fraud. This is a misdemeanor punishable by indictment. 1 East, P. C. 458; 1 Russell, 569; the civil remedies are recaption, (q. v.) 3 Inst. 134; Hal. Anal. 46; 3 Bl. Com. 4; by writ of habeas corpus; and an action of trespass, Fitz. N. B. 89; 3 Bl. Com. 139, n. 27; Roscoe, Cr. Ev. 193.

TO ABET, *crim. law.* To encourage or set another on to commit a crime. This word is always taken in a bad sense. To abet another to commit a murder, is to command, procure, or counsel him to commit it. Old Nat. Brev. 21; Co. Litt. 475.

ABETTOR, *crim. law*, is one who encourages or incites, encourages or sets another on to commit

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a crime. Such a person is either a principal or an accessary to the crime. When present aiding where a felony is committed, he is guilty as principal in the second degree; when absent, he is merely an accessary. 1 Russell, 21; 1 Leach, 66; Foster, 428.

ABEYANCE, *estates*, from the French *aboyer*, which in a figurative sense means *to expect, to look for, to desire*. When there is no person *in esse* in whom the freehold is vested, it is said to be in *abeyance*, that is in expectation, remembrance and contemplation of law. The law requires, however, that the freehold should never, if possible, be in *abeyance*. Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance. Thus, if an estate be limited to A for life, remainder to the right heirs of B, the fee simple is in abeyance during the life of B, because it is a maxim of law, that *nemo est hæres viventis*. 2 Bl. Com. 107; 1 Cruise, 67—70; 1 Inst. 342; Merlin, Répertoire, mot Abayance; 1 Com. Dig. 175; 1 Vin. Abr. 104.

ABIDING BY PLEA, in the English law. A defendant who pleads a frivolous plea, or a plea merely for the purpose of delaying the suit; or who, for the same purpose, shall file a similar demurrer, may be compelled by rule in term time, or by a judge's order in vacation, either to abide by that plea, or by that demurrer, or to plead peremptorily on the morrow; or if near the end of the term, and in order to afford time for notice of trial, the motion may be made in court for rule to abide or plead instanter; that is within twenty-four hours after rule served, Imp. B. R. 340, provided that the regular time for pleading be expired. If the defendant when ruled, do not abide, he can only plead the general issue. 1 T. R. 693, but he may add notice of set-off. Ib. 694, n. See 1 Chit. Rep. 565, n.

ABJURATION. A renunciation of a country by oath. 1. The act of Congress of the 14th of April, 1802, 2 Story's Laws U. S. 850, requires that when an alien shall apply to be admitted a citizen of the United States, he shall declare on oath or affirmation before the court where the application shall be made, inter alia, that he doth absolutely and entirely renounce and *abjure* all allegiance and fidelity which he owes to any foreign prince, &c., and particularly, by name, the prince, &c., whereof he was before a citizen or subject. Rawle on the Const. 98.—2. In England *the oath of abjuration* is an oath by which an Englishman binds himself not to acknowledge any right in the pretender to the throne of England.—3. It signifies also according to 25 Car. II., an oath abjuring to certain doctrines of the church of Rome.—4. In the ancient English law it was a renunciation of one country and taking an oath of perpetual banishment. A man who had committed a felony, and for the safety of his life flew to a sanctuary, might within forty days confess the fact and take the oath of abjuration and perpetual banishment, he was then transported. This was abolished by stat. 1 Jac. 1, c. 25. Ayl. Parerg. 14.

ABLEGATI, *diplomacy*. Papal ambassadors of the second rank, who are sent with a less extensive commission, to a court where there are no nuncios. This title is equivalent to *envoy*. (q. v.)

ABNEPOS, in the civil law, is the grandson of the grandson or grand-daughter, or fourth descendant.—Abneptis, is the grand-daughter of the grandson or grand-daughter.

ABOLITION, is the act by

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which a thing is extinguished, abrogated or annihilated. Merl. Répert. h. t., as the abolition of slavery is the destruction of slavery. In the French law abolition is used nearly synonymously with pardon, remission, grace. There is, however, this difference; *grace* is the generic term; *pardon*, according to that law, is the clemency which the prince extends to a man who has participated in a crime, without being the principal or accomplice; ***remission*** is made in cases of involuntary homicides, and self-defence. ***Abolition*** is different; it is applied when the crime exists which cannot be remitted. The prince then may by letters of abolition remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. Encycl. de d'Alembert, h. t. The term abolition is used in the German law in the sense it is used in the French law. Encycl. Amer. h. t.

ABORTION, *med. jur.* and *criminal law*. The expulsion of the fœtus before the seventh month of utero-gestation, or before it is ***viable***. (q. v.) The causes of this accident are referable either to the mother, and particularly to the uterus; or to the fœtus and its dependencies. The causes in the mother may be: extreme nervous susceptibility, great debility, plethora, faulty conformation, and the like; and it is frequently induced immediately by intense mental emotion, violent exercise, &c. The causes seated in the fœtus are its death, rupture of the membranes, &c. It most frequently occurs between the 8th and 12th weeks of gestation. When abortion is produced with a malicious design, it becomes a misdemeanor, at common law, 1 Russell, 553, and the party causing it may be indicted and punished. The criminal means resorted to for the purpose of destroying the fœtus may be divided into general and local. To the first belong venesection, emetics, cathartics, diuretics, emmenagogues, &c. The second embraces all kinds of violence directly applied. When, in consequence of the means used to produce abortion, the death of the woman ensues, the crime is murder. By statute a distinction is made between a woman ***quick with child***, (q. v.) and one who though pregnant is not so, 1 Bl. Com. 129. Physiologists, perhaps with reason, think that the child is a living being from the moment of conception. 1 Beck, Med. Jur. 291.—General references. 1 Beck, 288 to 331; Roscoe, Cr. Ev. 190; 1 Russ. 553; Vilanova y Mañes, Materia Criminal Forense, Obs. 11, c. 7, n. 15—18.

TO ABRIDGE, *practice*, is to make shorter in words, so as to retain the sense or substance. In law it signifies particularly the making a declaration or count shorter, by taking or severing away some of the substance from it. Brook, tit. Abridgment; Com. Dig. Abridgment; 1 Vin. Ab. 109.

ABROGATION, *in the civil law*, ***legislation***, is the destruction or annulling of a former law, by an act of the legislative power, or by usage. A law may be abrogated or only derogated from; it is abrogated when it is totally annulled; it is derogated from when only a part is abrogated: ***derogatur legi, cum pars detrahitur; abrogatur legi, cùm prorsùs tollitur.*** Dig. lib. 50, t. 17, l. 102. Abrogation is express or implied; it is express when it is literally pronounced by the new law, either in general terms, as when a final clause abrogates all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates such and such preceding laws which are named. Abrogation is implied when the new law con-

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tains provisions which are positively contrary to the ancient laws, without expressly abrogating such laws: for it is a maxim, *posteriora derogant prioribus*. It is also implied when the order of things for which the law had been made no longer exists, and hence the motives which had caused its enactment have ceased to operate: *ratione leges omnino cessante cessat lex*. Touller, Droit Civil Francais, tit. prel. § 11, n. 151. Merlin, mot Abrogation.

ABSENTEE. One who is away from his domicil, or usual place of residence. After an absence of seven years without being heard from, the presumption of death arises. 2 Campb. R. 113; Hardin's R. 479; 18 Johns. R. 141; 15 Mass. R. 305; Peake's Ev. c. 14, s. 1; 2 Stark. Ev. 457, 8; 4 Barn. & A. 433; 1 Stark. c. 121; Park on Ins. 433; 1 Bl. R. 404. In Louisiana when a person possessed of either moveable or immoveable property within the state, without having appointed somebody to take care of his estate, or when the person thus appointed dies, or is either unable or unwilling to continue to administer that estate, then and in that case, the judge of the place where the estate is situated, shall appoint a curator to administer the same. Civ. Code of Lo. art. 50. In the appointment of this curator the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to other relations, the relations to strangers, and creditors to those who are not otherwise interested, provided, however, that such persons be possessed of the necessary qualifications. Ib. art. 51. For the French law on this subject, vide Biret, de l'Absence; Code Civil, liv. 1, tit. 4; Fouss. lib. 1, tit. 4, n. 379-487; Merl. Rép. h. t; and see also Ayl. Pand. 269; Dig. 50, 16, 198; Ib. 50, 16, 173; Ib. 3, 3, 5; Code, 7, 33, 12.

ABSOLUTE, signifies without any condition or encumbrance, as an "absolute bond," *simplex obligatio*, in distinction from a conditional bond; an absolute estate, one that is free from all manner of condition or encumbrance. A rule is said to be absolute, when, on the hearing, it is confirmed. As to the effect of an absolute conveyance, see 1 Pow. Mortg. 125; in relation to absolute rights, 1 Chitty, Pl. 364; 1 Chitty, Pr. 32.

ABSOLUTION, a definite sentence whereby a man accused of any crime is acquitted.

ABSQUE HOC, *pleading*, when the pleadings were in Latin, these words were employed in a traverse. *Without this, that* (q. v.) are now used for the same purpose.

ABUSE, every thing which is contrary to good order established by usage. Merl. Rép. h. t.

ABUTTALS. The buttings and boundings of land, on the north or south, east or west, showing on what other lands, rivers, highways, or other places it does abut. More properly, it is said, the sides of land are *adjoining*, and the ends *abutting* to the thing contiguous. Vide *Boundaries*, and Cro. Jac. 184.

ACCEDAS AD CURIAM, that you go to court, *in practice in the English law*, is an original writ, issuing out of chancery, now of course, returnable in K. B. or C. P. for the removal of a replevin sued by plaint in court of any lord, other than the county before the sheriff. See F. N. B. 18; Dyer 169.

ACCEPTANCE of *a bill of exchange*, is the act by which the drawee or other person evinces his consent and intention to comply with, and be bound by, the request contained in a bill of exchange to pay

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the same; or in other words, it is an engagement to pay the bill when due; 4 East, 72; this engagement is made by the drawee of the bill, or by some other person supra protest, to the drawer or some of the other parties, either before the bill is drawn or afterwards, and it may be verbal or in writing; and is either absolute, partial or conditional, and when made after the drawing of the bill, is according to or varying from its tenor.

The acceptance ought to be made by the drawee himself, but it may be made by an agent, Chit. Bills, 30; Beawes, pl. 87, page 462; 1 Esp. Rep. 116; Ib. 269. On presentment of a foreign or inland bill for acceptance, the holder has a right to insist upon such an acceptance by the drawee as will subject him at all events to the payment of the bill according to the tenor of it; and consequently such drawee must have capacity to contract, and to bind himself to pay the amount of the bill, or it may be treated as dishonoured. Marius, 22.

The drawee must accept the bill within twenty four hours after presentment, or it should be treated as dishonoured. Chit. Bills, 212, 213, in notes. On the refusal to accept, even within the twenty-four hours, the bill should be protested. Ib. By the laws of the state of New York every person upon whom a bill of exchange is drawn, to whom the same is delivered for acceptance, who shall destroy such bill or refuse within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted, shall be deemed to have accepted the same. An acceptance of a bill may be made *before* a bill is drawn, 3 Mass. 1; but in that case, it must be in *writing*. See 1 Gall. R. 630; 10 Johns. R. 207; 11 Mass. R. 54; 5 Mass. R. 11; 2 Gall. R. 233; 2 Wheat. R. 66; 15 Johns. R. 6; 1 Hall's Law Journ. 486; 1 East, 105; 4 Campb. R. 393; 1 Holt's C. N. P. 181; Burr. 1633; Cowp. 573; 2 W. C. C. R. 133; or, it may be made *after* the bill is drawn, and before it becomes due; or *after* the time appointed by the bill for payment, 1 H. Bl. 313, and even after refusal to accept, so as to bind the acceptor.

As to the form of the acceptance, it is clearly established that it may be in writing on the bill itself, or on another paper, 4 East, 91; or it may be verbal, 4 East, 67; 10 Johns. R. 207; 3 Mass. R. 1.

An acceptance, in regard to its extent or effect, may be either absolute, conditional, or partial. An *absolute* acceptance is an engagement to pay the bill according to its tenor, and is usually made by writing on the bill "accepted," and subscribing the drawee's name; or by writing "accepted" only; or by merely writing the name either at the bottom or across the bill. Comb. 401; Vin. Abr. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. An acceptance which will subject the drawer to the payment of the money only on a contingency, is a *conditional* acceptance. Bayl. 83, 4, 5; Chit. Bills, 234. The holder is not *bound* to receive such an acceptance, but if he do receive it, he must observe its terms. 4 M. & Selw. 466; 1 Campb. 425; 2 Wash. C. C. R. 485. A *partial* acceptance varies from the tenor of the bill; as where it is made to pay part of the sum for which the bill is drawn, 1 Str. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, B. 2, c. 10, s. 20; or place, 4 Ma. & Selw. 462.

ACCEPTANCE, *contracts*, an agreement to receive something which has been offered. This subject is considered under the articles *Assent* and *Offer*, (q. v.)

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ACCEPTANCE, EXPRESS,—*contracts.* An agreement in direct and express terms to pay a bill of exchange by the party on whom it is drawn, or some other person, for the honour of some of the parties. It is usually in the words *accepted or accepts*, but other express words showing an engagement to pay the bill will be equally binding.

ACCEPTANCE, IMPLIED, *contracts.* An agreement to pay a bill, not by direct and express terms, but by such acts of the parties from which an express agreement may be inferred; for example, if the drawee write on it "seen," "presented," or any other thing upon it, (as the day on which it becomes due,) this, unless explained by other circumstances, will constitute an acceptance.

ACCEPTANCE, PARTIAL, *contracts.* An agreement to pay a bill of exchange, according to the tenor of the acceptance, and this may vary from the bill with respect to *sum*, *time* and *place:* it may also vary from the tenor in which the acceptor undertakes to pay.

ACCEPTANCE, VERBAL,—*contracts.* A verbal agreement by the drawee to pay a bill of exchange. This is equally binding with a written acceptance. Holt, 297; Burr. 1669.

ACCEPTANCE SUPRA PROTEST, is the acceptance of the bill, after protest for non acceptance by the drawee, for the honour of the drawer, or of a particular endorser. When a bill has been accepted supra protest for the honour of one party to the bill, it may be accepted *supra protest* by another individual, for the honour of another. Beawes, tit. Bills of Exchange, pl. 42; 5 Campb. R. 447.

ACCEPTILATION, *contracts.* In the civil law, is a release made by a creditor to his debtor of his debt, without receiving any consideration. Ayl. Pand. tit. 26, p. 570; it is a species of donation, but not subject to the forms of the latter, and is valid, unless in fraud of creditors. Merlin, Répert de Jurisp. h. t.

ACCEPTOR, *contracts.* The person who agrees to pay a bill of exchange drawn upon him. The acceptor of a bill is the principal debtor, and the drawer the surety. He is bound, though he accepted without consideration, and for the sole accommodation of the drawer. By his acceptance he admits the drawer's handwriting, for before acceptance it was incumbent upon him to inquire into the genuineness of the drawer's handwriting. 3 Burr. 1354; 1 Bla. Rep. 390, S. C.; 4 Dall. 234; 1 Binn. 27, S. C. When once made the obligation of the acceptor is irrevocable. As to what amounts to an acceptance, see ante *Acceptance*; Chitty on Bills, 242, et seq.; 3 Kent, Com. 55, 6; Pothier, Traité du Contrat de Change, première part. n. 44.

The liability of the acceptor cannot in general be released or discharged, otherwise than by payment or by express release or waiver, or by the act of limitations. Dougl. R. 247. What amounts to a waiver and discharge of the acceptor's liability, must depend on the circumstances of each particular case. Dougl. 236, 248; Bayl. on Bills, 90; Chitty on Bills, 249.

ACCEPTOR SUPRA PROTEST, in contracts, is a third person who, after protest for non-acceptance by the drawee, accepts the bill for the honour of the drawer, or of the particular endorser. By this acceptance he subjects himself to the same obligations as if the bill had been directed to him. An acceptor supra protest

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has his remedy against the person for whose honour he accepted, and against all persons who stand prior to that person. If he takes up the bill for the honour of the endorser, he stands in the light of an endorsee paying full value for the bill, and has the same remedies to which an endorsee would be entitled against all prior parties, and he can, of course sue the drawer and endorser. 1 Ld. Raym. 574; 1 Esp. N. P. Rep. 112; Bayley on Bills, 209; 3 Kent, Com. 57; Chitty on Bills, 312.

ACCESS, *persons*, the means or power of approaching. In this sense a man who can readily be in company with his wife, is said to have access to her, and in that case her issue are presumed to be his issue. Parents are not allowed to prove non access for the purpose of bastardizing the issue of the wife, nor will their declarations after their deaths be received to prove the want of access, with a like intent. 1 P. A. Bro. R. App. xlviii.; Rep. tem. Hard. 79; Bull. N. P. 113; Cowp. R. 592; 8 East R. 203; 11 East, R. 133.

ACCESSARY, *criminal law*. He who is not the chief actor in the perpetration of the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed. *An accessary before the fact*, is one who being absent at the time of the crime committed, yet procures, counsels, or commands another to commit it. 1 Hale, P. C. 615. *An accessary after the fact*, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. 4 Bl. Com. 37. No one who is a principal (q. v.) can be an accessary. In certain crimes, there can be no accessaries, all who are concerned are principal whether they were present or absent at the time of their commission. These are treason, and all offences below the degree of felony. 1 Russ. 21, et seq.; 4 Bl. Com. 35 to 40; 1 Hale, P. C. 615; 1 Vin. Abr. 113; Hawk. P. C. b. 2, c. 29, s. 16; such is the English Law. But whether it is law in the United States appears not to be determined as regards the cases of persons assisting traitors. Serg. Const. Law, 382; 4 Cranch, R. 472, 501; United States v. Fries, Pamphl. 199.

ACCESSION. The ownership of a thing, whether it be real or personal, moveable or immoveable carries with it the right to all that the thing produces, and to all that becomes united to it, either naturally or artificially; this is called the right of accession. 1. The doctrine of property arising from accession is grounded on the right of occupancy.—2. The original owner of any thing which receives an accession by natural or artificial means, as by the growth of vegetables, the pregnancy of animals; Louis. Code, art. 491; the embroidering of cloth, or the conversion of wood or metal into vessels or utensils, is entitled by his right of possession to the property of it, under such its state of improvement; 5 H. 7, 15; 12 H. 8, 10; Bro. Ab. Propertie, 23; Moor, 20; Poph. 38. But the owner must be able to prove the identity of the original materials, for, if wine, oil, or bread, be made out of another man's grapes, olives, or wheat, they belong to the new operator, who is bound to make satisfaction to the former proprietor for the materials which he has so converted. 2 Bl. Com. 404. See *Adjunction*. *Confusion of Goods*.

See Generally, Louis. Code, tit. 2, c. 2 and 3.

ACCESSORY, *property*. Every thing which is joined to another thing, as an ornament or to render it more perfect, is an accessory

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and belongs to the owner of the principal thing. Vide *Accession. Adjunction. Appurtenances.*

ACCIDENT. The happening of an event without the concurrence of the will of the person by whose agency it was caused; or the happening of an event without any human agency; the burning of a house in consequence of a fire being made for the ordinary purpose of cooking or warming the house, which is an accident of the first kind; the burning of the same house by lightening would have been an accident of the second kind. 1 Fonbl. Eq. 374, 5, note. It frequently happens that a lessee covenants to repair, in which case he is bound to do so, although the premises be burned down without his fault. 1 Hill Ab. c. 15, s. 75. But if a penalty be annexed to the covenant, inevitable accident will excuse the former, though not the latter. 1 Dyer, 33, a. In New Jersey, by statute, no action lies against any person on the ground that a fire began in a house or room occupied by him, if accidental. But this does not affect any covenant. 1 N. J. Rev. C. 210.

ACCIDENT, *practice.* This term in chancery practice, signifies such unforeseen events, misfortunes, losses, acts or omissions, as are not the result of any negligence or misconduct in the party. Francis's Max. M. 120, p. 87; 1 Story on Eq. § 78. Jeremy defines it as used in courts of equity, to be "an occurrence in relation to a contract, which was not anticipated by the parties, when the same was entered into, and which gives an undue advantage to one of them over the other in a court of law." Jer. on Eq. 358. This definition is objected to, because as accidents may arise in relation to other things besides contracts, it is inaccurate in confining accidents to contracts; besides it does not exclude cases of unanticipated occurrences, resulting from the negligence or misconduct of the party seeking relief. 1 Story on Eq. § 78 note 1. In general, courts of equity will relieve a party who cannot obtain justice in consequence of an accident which will justify the interposition of a court of equity. The jurisdiction being concurrent, will be maintained only, first, when a court of law cannot grant suitable relief; and, secondly, when the party has a conscientious title to relief. There are many accidents supplied in a court of law; as loss of deeds, mistakes in receipts and accounts, wrong payments, death, which makes it impossible to perform a condition literally, and a multitude of other contingencies; and many cannot be redressed even in a court of equity; as if by accident a recovery is ill suffered, a contingent remainder destroyed, or a power of leasing omitted in a family settlement. 3 Bl. Com. 431. Vide, generally, Com. Dig. Chancery, 3, F 8; 1 Fonb. Eq. B. 1, c. 3, s. 7; Coop. Eq. Pl. 129; 1 Chit. Pr. 408; Harr. Ch. Index, h. t.; Dane's Ab. h. t.; Wheat. Dig. 48; Milf. Pl. Index, h. t.; 1 Madd. Ch. Pr. 23; 10 Mod. R. 1, 3; 3 Chit. Bl. Com. 426, n.

ACCOMENDA, *mar. law.* In Italy is a contract which takes place when an individual entrusts personal property with the master of a vessel to be sold for their joint account. In such case two contracts take place, first, the contract called *mandatum*, by which the owner of the property gives the master power to dispose of it, and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital, the other his labour. If the sale produces no more than first cost, the owner takes all the proceeds; it is only the

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profits which are to be divided. Emer. on Mar. Loans, s. 5.

ACCOMMODATION, *common law.* That which is done by one merchant or other person for the convenience of some other, by accepting or endorsing his paper, or by lending him his notes or bills. In general the parties who have drawn, endorsed or accepted bills or other commercial paper for the accommodation of others, are while in the hands of a holder who received them before they became due, other than the person for whom the accommodation was given, responsible as if they had received full value, Chit. Bills, 90, 91.

ACCOMMODATION, *contracts.* An amicable agreement or composition between two contending parties. It differs from *accord and satisfaction*, which may take place without any difference having existed between the parties.

ACCOMPLICE, *crim. law.* This term includes in its meaning all persons who have been concerned in the commission of a crime, all the *participeps criminis*, whether they are considered in strict legal propriety, as principals in the first or second degree, or merely as accessaries before or after the fact, Foster, 341; 1 Russell, 21; 4 Bl. Com. 331; 1 Phil. Ev. 28; Merlin Répertoire, mot Complice.

ACCORD, *in contracts*, is a satisfaction agreed upon between the party injuring and the party injured, which when performed is a bar to all actions upon this account. 3 Bl. Com. 15; Bac. Abr. Accord. In order to make a good accord it is essential:—

1. That the accord be *legal.* An agreement to drop a criminal prosecution as a satisfaction for an assault and imprisonment, is void. 5 East, 294. See 2 Wils. 341; Cro. Eliz. 541.

2. It must be *advantageous* to the contracting party; hence restoring to the plaintiff his chattels, or his land, of which the defendant has wrongfully dispossessed him, will not be any consideration to support a promise by the plaintiff not to sue him for those injuries. Bac. Abr. A; Perk. s. 749; Dyer, 75.

3. It must be *certain*, hence an agreement that the defendant shall relinquish the possession of a house in satisfaction, &c. is not valid, unless it is also agreed at what time it shall be relinquished. Yelv. 125. See 4 Mod. 88; 2 Johns. R. 342; 3 Lev. 189.

4. The defendant must be *privy* to the contract. If therefore the consideration for the promise not to sue proceeds from another, the defendant is a stranger to the agreement, and the circumstance that the promise has been made to him will be of no avail. Str. 592.

5. The accord must be *executed.* 5 Johns. R. 386; 3 Johns. Cas. 243; Com. Dig. Accord, B 4.

See in general *Discharge of Obligations.*

ACCOUNT, *remedies.* This is the name of a writ or action more properly called *account render.* It lies against a bailiff or receiver, who by reason of his employment or business is to render an account to another, and refuses or neglects to do it. It is also the proper remedy by one partner against another. In this action if the plaintiff succeeds, there are two judgments the first that the defendant do account, *quod computet*, before anditors appointed by the court; the second that the plaintiff recover the amount to which he is found to be entitled. In those states where they have courts of chancery, this action is nearly superseded, by the better remedy which is given by a bill in equity by which the complainant can elicit a discovery of the

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facts from the defendant under his oath, instead of relying merely on the evidence he may be able to produce. When an account has once been stated, the plaintiff may recover in action of assumpsit. 3 Bl. Com. 162; 8 Com. Dig. 7; 1 Com. Dig. 180; 2 Ib. 468; 1 Vin. Ab. 135; 1 Bac. Ab. 31; Doct. Pl. 26; Yelv. 202; 1 Supp. to Ves. Jr. 117; 2 Ib. 48, 136.

ACCOUNT, *practice.* A statement of the receipts and payments of an executor, administrator, or other trustee, of the estate confided to him. Every one who administers the affairs of another is required at the end of his administration to render an account of his management of the same. Trustees of every description can generally be compelled through the courts of chancery, and where there are no courts of chancery, as Pennsylvania, the courts of common pleas possess this equitable power. When a party has had the property of another as his agent, he may be compelled in some states to account by an action of account render. An account is also the statement of two merchants or others who have dealt together, showing the debits and credits between them.

ACCOUNT IN BANK, *comm. law.* 1. A fund which merchants traders and others have deposited into the common cash of some bank, to be drawn out by checks from time to time as the owner or depositor may require. 2. The statement of the amount deposited and drawn, which is kept in duplicate, one in the depositor's bank book and the other in the books of the bank.

ACCOUNT STATED. The settlement of an account between the parties, by which a balance is struck in favour of one of them is called an account stated. It is proposed to consider, 1st, By whom an account may be stated; 2, The manner of stating the account; 3, The declaration upon such an account; 4, The evidence.

1. An account may be stated by a man and his wife of the one part and another person, and unless there is an express promise to pay by the husband, Foster v. Allanson, 2 T. R. 483, the action must be brought against husband and wife. Drue v. Thorne, Aleyn, 72. A plaintiff cannot recover against a defendant upon an account stated by him, partly as administrator and partly in his own private capacity. Herrenden v. Palmer, Hob. 88. Persons wanting a legal capacity to make a contract cannot, in general state an account; as infants, Truman v. Hurst, 1 T. R. 40; and persons non compos mentis.

A plaintiff may recover on an account stated with the defendant including debts due from the defendant alone, and from the defendant, and a deceased partner jointly. Richards v. Heather, 1 B. & A. 29, and see Peake's Ev. 257. A settlement between partners and striking a balance will enable the plaintiff to maintain an action on such stated account for the balance due him, Ozeas v. Johnson, 4 Dall. 434; S. C. 1 Binn. 191; S. P. Andrews v. Allen, 9 S. & R. 241; and see Lamalere v. Caze, 1 W. C. C. R. 435.

2. It is sufficient although the account be stated of that which is due to the plaintiff only, without making any deduction for any counter-claim for the defendant, Styart v. Rowland, 1 Show. 215. It is not essential that there should be cross demands between the parties, or that the defendant's acknowledgment that a certain sum was due from him to the plaintiff should relate to more than a single debt or transaction. 5 Maule & Selw. 65; Knowles et al. v. Michel et al. 13 East, 249. The acknowledgment by the defendant that a certain sum is due, creates an implied

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promise to pay the amount. Milward v. Ingraham, 2 Mod. 44; Foster v. Allanson, 2 T. R. 480.

3. A count on an account stated is almost invariably inserted in declarations in assumpsit for the recovery of a pecuniary demand. See form 1 Chit. Pl. 336. It is advisable, generally, to insert such count, Milward v. Ingraham, 2 Mod. 44; Truman v. Hurst, 1 T. R. 42; unless the action be against persons who are incapable in law to state an account. It is not necessary to set forth the subject-matter of the original debt, Milward v. Ingraham, 2 Mod. 44; nor is the sum alleged to be due material, Rolls v. Barnes, 1 Bla. Rep. 65; S. C. 1 Burr. 9.

4. The count, upon *an account stated*, is supported by evidence of an acknowledgment on the part of the defendant of money due to the plaintiff, upon an account between them. But the account must have been stated between the parties; it is not sufficient that the balance may be deduced from partnership books, Andrews v. Allen, 9 S. & R. 241. It is unnecessary to prove the items of which the account consists, but sufficient to prove some existing antecedent debt or demand between the parties respecting which an account was stated, 5 Moore, 105; 4 B. & C. 235, 242; 6 D. & R. 306; and that a balance was struck and agreed upon. Bartlet v. Emery, 1 T. R. 42, n; for the stating of the account is the consideration of the promise. Bull. N. P. 129. An account stated does not alter the original debt, Aleyn, 72; and it seems not to be conclusive evidence against the party admitting the balance against him, 1 T. R. 42. He would probably be allowed to show a gross error or mistake in the account, if he could adduce clear evidence to that effect. See 1 Esp. R. 159. And see generally tit. Partners, Chit. Contr. 197; 2 Stark. Ev. 123; 1 Chit. Pl. 343.

ACCOUNT OF SALES, *comm. law*. An account delivered by one merchant or tradesman to another, or by a factor to his principal, of the disposal, charges, commissions and net proceeds of certain merchandize consigned to such merchant, tradesman or factor to be sold.

ACCOUNTANT. This word has several significations: 1. One who is versed in accounts; 2. A person or officer appointed to keep the accounts of a public company; 3. He who renders to another or to a court a just and detailed statement of the administration of property which he holds as trustee, executor, administrator or guardian. Vide 16 Vin. Ab. 155

ACCOUPLE. To accouple, is to marry. See *Ne unques accouple*.

ACCUSATION, *crim. law*. A charge made to a competent officer against one who has committed a crime or misdemeanor so that he may be brought to justice and punishment. A neglect to accuse may in some cases be considered a misdemeanor, or misprision. (q. v.) 1 Bro. Civ. Law, 247; 2 Id. 389; Inst. lib. 4, tit. 18.

ACCUSER, one who makes an accusation.

ACHAT. This French word signifies a purchase. It is used in some of our law books, as well as *achetor*, a purchaser, which in some ancient states means purveyor. Stat. 36 Edw. III.

ACKNOWLEDGMENT, *conveyancing*, is the act of the grantor going before a competent officer, and declaring the instrument to be his act and deed, and desiring the same to be recorded as such. The certificate of the officer on the instrument that such a declaration has been made to him, is also called an

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acknowledgment. The acknowledgment is indispensable before the instrument can be put upon record. Below will be found the law of the several states relating to the officer before whom the acknowledgment must be made. Justice requires that credit should be here given for the valuable information which has been derived on this subject from Mr. Hilliard's Abridgment of the the American Law of Real Property, and from Griffith's Register.

Alabama. Before a judge of the Superior court or a justice of the county court for the county where the land lies. When the grantor lives in another state or territory, the acknowledgment may be before a judge of the supreme or district court of the United States, or a judge of the supreme or superior court of any territory or state. When the witness lives in a foreign state, it may be before a court of law, or the chief magistrate of a city, borough, or corporation. These provisions apply to a feme covert, who is to be examined separately from her husband. 2 Hill. Ab. 446, 7; Griff. Reg. h. t.

Connecticut. Before a justice of the peace, a judge of the United States, or a judge of the supreme or superior court, or the court of common pleas, or county court of any state, or commissioner of the school fund, or notary public, or before an officer commissioned for this purpose. Deeds made abroad may be acknowledged before a consul, notary public or justice of the peace; if in another state, acknowledged and proved before a commissioner appointed by the governor. 1 Hill. Ab. c. 34, s. 82.

Delaware. Before the supreme court, or the court of common pleas of any county, or a judge of either court, or the chancellor, or two justices of the peace of the same county. The certificate of an acknowledgment in court must be under the seal of the court. A feme covert may also make her acknowledgment before the same officers, who are to examine her separately from her husband. An acknowledgment out of the state may be made before a judge of any court of the United States, the chancellor or judge of a court of record, or the said court itself, or the chief officer of a city or borough, the certificate to be under the official seal; if by a judge, the seal to be affixed to his certificate, or to that of the clerk or keeper of the seal. Commissioners appointed in other states may also take acknowledgments. 2 Hill. Ab. 441; Griff. Reg. h. t.

Georgia. Before a justice of the peace, the chief justice, or an assistant justice. A feme covert interested by dower or otherwise, executing a deed *before lawful evidence*, and making private acknowledgment before the chief justice, or a justice of the peace, is barred of *dower*. The governor may appoint commissioners in other states to take acknowledgments. 2 Hill. Ab. 446; Griff. Reg. h. t.

Indiana. Before the recorder of the county where the land lies, one judge of the supreme or circuit court, or a justice of the peace of such county; when a conveyance is made by husband and wife, the officer shall examine the wife as to her free consent, and read or make known to her the contents of the deed; and her admission that she acts freely is sufficient. The officer shall certify the acknowledgment under his hand and seal by an endorsement on the deed. Ind. Rev. L. 270, 272. A judge of the supreme or circuit court, or justice of the peace of any county, may take the acknowledgment, but in

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that case it must be certified by the clerk of the circuit court, of the county where the officer belongs and attested by the court, that he is an officer, Ib. When the acknowledgment is made out of the state, it may be before any judge or justice of the peace, of the proper county where it is executed, and certified under the county seal by the proper officer. Ib.; 2 Hill. Ab. 452; Grift. Reg. h. t.

Illinois. Before a judge or justice of the supreme or district courts of the United States, a commissioner authorized to take acknowledgments, a judge or justice of the supreme, superior or district court of any of the United States or territories, a justice of the peace, the clerk of a court of record, mayor of a city, or notary public; the last three shall give a certificate under their official seal. The certificate must state that the party is known to the officer, or that his identity has been proved by a credible witness, naming him. When the acknowledgment is taken by a justice of the peace of the state, residing in the county where the lands lie, no other certificate is required than his own; when he resides in another county, there shall be a certificate of the clerk of the county commissioners' court of the *proper county*, under seal, to his official capacity. When the justice of the peace taking the acknowledgment resides out of the state, there shall be added to the deed a certificate of the *proper clerk*, that the person officiating is a justice of the peace. The deed of a feme covert is acknowledged before the same officers. The certificate must state that she is known to the officer, or that her identity has been proved by a witness who must be named; that the officer informed her of the contents of the deed; that she was separately examined; that she acknowledged the execution and release to be made freely, voluntarily, and without the compulsion of her husband. When the husband and wife reside in the state, and the latter is over eighteen years of age, she may convey her lands, with formalities substantially the same as those used in a release of dower; she acknowledges the instrument *to be her act and deed*, and that *she does not wish to retract.* When she resides out of the state, if over eighteen, she may join her husband in any writing relating to lands in the state, in which case her acknowledgment is the same as if she were a feme sole. Ill. Rev. L. 135–8; 2 Hill. Ab. 455, 6.

Kentucky. The acknowledgment must be made in open court, before the recording clerk. When out of the state, before a court, or the chief magistrate of a city, town, or corporation, of the country where the grantor dwells, and certified in the usual manner. A feme covert must be separately examined, and the acknowledgment must be before a judge of the court. When the parties reside in the United States, in another state or territory, the acknowledgment is to be before two justices of the peace of their county, commissioned by the recording clerk; their commission is to be returned with a certificate under seal. When the parties reside out of the United States, a similar commission issues to two judges or justices of a court, or the chief magistrate of any city, &c. of the country, to be returned with a certificate in the usual form, and under the seal of the officer if he has one; when he has none, this fact should be mentioned. 2 Hill. Ab. 460; Griff. Reg. h. t. But by the act of 1831, an acknowledgment out of the state, may be made by husband and wife, the latter being separately examined, before a judge of the place where the

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parties reside; the judge's certificate is to be accompanied by one from the clerk as to the official character of the judge. Aldermen may also take acknowledgments in their official character to be certified by the recorder or other proper officer. When out of the U. S. a consul of the U. S., a mayor or the chief magistrate of the state, &c. may also take acknowledgments.

Maine. Before a justice of the peace in the state, or a justice or magistrate in any other of the United States, or in a foreign state, kingdom, &c., where the grantor may reside. 2 Hill. Ab. c. 34, s. 54.

Maryland. Before two justices of the peace of the county where the lands lie, or where the grantor lives, or a judge of the county court of the former county, or mayor of Annapolis for Anne Arundel county; when the acknowledgment is made in another county than that in which the lands are situated, and in which the party lives, the clerk of the court must certify under the court seal, the official capacity of the acting justices or judge. When the grantor resides out of the state, a commission issues on application of the purchaser, and with the written consent of the grantor, from the clerk of the county court where the land lies, to two or more commissioners at the grantee's residence; any two of whom may take the acknowledgment, and shall certify it under seal, and return the commission to be recorded with the deed; or the grantor may empower an attorney in the state to acknowledge for him, the power to be incorporated in the deed, or annexed to it, and proved by a subscribing witness before the county court, or two justices of the peace where the land lies, or a district judge, or the governor, or a mayor, notary public, court or judge thereof, of the place where it is executed; in each case the certificate to be under an official seal. By the acts of 1825, c. 58, and 1830, c. 164, the acknowledgment in another state may be before a judge of the U. S. or a judge of a court of record of the state and county where the grantor may be, the clerk to certify under seal the official character of the magistrate. The act of 1831, c. 205, requires that the officer shall certify his knowledge of the parties. The acknowledgment of a feme covert must be made separate and apart from her husband. 2 Hill. Ab. 442; Griff. Reg. h. t. See, also, 7 Gill. & J. 480; 2 Gill. & J. 173; 6 Harr. & J. 336; 3 Harr. & J. 371; 1 Harr. & J. 178; 4 Harr. & M'H. 222.

Massachusetts. Before a justice of the peace or magistrate out of the state. Held an American consul at a foreign port was a magistrate. 13 Pick. R. 523. An acknowledgment by one of two grantors has been held sufficient to authorize the registration of a deed; and a wife need not, therefore, acknowledge the conveyance when she joins with her husband. 2 Hill. Ab. c. 34, s. 45.

Michigan. Before any court of record, or notary public, or justice of the peace, in the state, the United States, or abroad, or any minister or consul of the United States abroad. In the case of a feme covert, a private examination is required, and her acknowledgment that she acts freely, without fear or compulsion of her husband. Mich. Rev. St. 257, 262; 2 Hill. Ab. 253; Griff. R. h. t.

Mississippi. Before a judge of the supreme court, or a justice of the county court, a justice of the peace, or notary public, of the county where the land lies; when the grantor resides in another state or territory of the Union, the deed

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must be acknowlegded before a judge of the supreme or district court of the United States, or the judge or justice of the supreme or superior court of any state or territory of the Union; when the acknowledgment is to be made in a foreign country, it must be before a court of law, or the chief magistrate of a city, borough or corporation in the country, and certified "as such acts are usually authenticated by them or him." These provisions are applicable to acknowledgments of deeds "with relinquishment of dower," made by femes covert. Missi. R. C. 455; 2 Hill. Ab. 448; Griff. Reg. h. t.

Missouri. In the state, before some court having a seal, or some judge, justice or clerk thereof, or a justice of the peace in the county where the land lies. Out of the state and in the United States, before any court of the United States, or of any state or territory, having a seal, or the clerk thereof. Out of the United States, before any court of any state, kingdom or empire having a seal, or the mayor of any city having an official seal. Every court or officer taking the acknowledgment of such instrument or relinquishment of dower or the deed of the wife of the husband's land, shall endorse a certificate thereof upon the instrument; when made before a court, the certificate shall be under its seal; if by a clerk, under his hand and the seal of the court; when before an officer having an official seal, under his hand and seal; when by an officer having no seal, under his hand. The certificate must state that the party was personally known to the judge or other officer as the signer, or proved to be such by two credible witnesses. Misso. St. 120—122; 2 Hill. Ab. 453; Griff. h. t. When the acknowledgment is made by a feme covert, releasing her dower, the certificate must state that she is personally known to one judge of the court, or the officer before whom the deed is acknowledged, or that her identity was proved by two credible witnesses; it must also state that she was informed of the contents of the deed; that it was acknowledged separate and apart from her husband; that she releases her dower freely without compulsion or under influence of her husband. Ib. In the conveyance of her own lands, the acknowledgment may be made before any court authorized to take acknowledgments. It must be done as in the cases of release of dower, and have a similar certificate. Ib.

New Hampshire. Before a justice of the peace or notary public: and the acknowledgment of a deed before a notary public in another state is good. 2 N. H. Rep. 420; 2 Hill. Ab. c. 34, s. 61.

New Jersey. Before any judge of the supreme or district court of the United States, a judge or justice of the supreme or superior court, or court of common pleas, of any state or territory, or the chief magistrate of any city, certified under the seal thereof. When either party to an instrument resides in another state, it may also be acknowledged or proved before a commissioner regularly appointed there for this purpose. When the party is in a foreign kingdom or state, the acknowledgment may be before any court of law, or the chief magistrate of any city, borough or corporation therein, with a certificate in the form usually practised there. The last two provisions apply to femes covert. A feme covert of the age of twenty-one years or upwards, may execute a deed; she is to be privately examined, must acknowledge that she

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freely executed the same, without fear or compulsion of her husband, which shall be stated in the certificate. 1 N. J. Rev. C. 458—460, 747; 1 Hill. Ab. c. 34, s. 95.

North Carolina. Before a judge of the supreme or superior court, or the court of the county where the land lies; when the acknowledgment is to be made out of the state, but within the United States, it may be before a judge of supreme jurisdiction, or a judge of the superior courts of law, or circuit courts of superior jurisdiction, the certificate of the officer must be accompanied by one of the governor of the state, or, if in the District of Columbia, of the secretary of state of the United States, to the official character of such judge. Acknowledgments may also be before a commissioner appointed by the governor of this state; when made in a foreign state, it may be before an ambassador, public minister, consul or commercial agent of the United States, and certified under an official seal, or before any chief magistrate, of any city, town or corporation in such country. The court of pleas of the county where the land lies may also empower one or more commissioners in a foreign country to take the acknowledgment. When a feme covert is a party to the deed she must be examined privately. 2 Hill. Ab. 450; Griff. Reg. h. t.

New York. Before the chancellor, or justice of the supreme court, circuit judge, supreme court commissioner, judge of the county court, mayor or recorder of a city, or commissioner of deeds; a county judge or commissioner of deeds for a city or county, not to act out of the same. When the party resides in another state, before a judge of the United States, or a judge or justice of the supreme, superior or circuit court of any state or territory of the United States, within his own jurisdiction. When the party is in Europe or other parts of America, before a resident minister or chargé des affaires of the United States; in France, before the United States' consul at Paris; in Russia, before the same officer at St. Petersburg; in the British dominions, before the Lord Mayor of London, the chief magistrate of Dublin, Edinburg or Liverpool, or the United States' consul at London. The certificate to be under the hand and official seal of such officer. It may also be made before any person specially authorized by the court of chancery of this state. The officer must in all cases be satisfied of the identity of the party, either from his own knowledge or from the oath or affirmation of a witness, who is to be named in the certificate. A feme covert must be privately examined; but if out of the state this is unnecessary. 2 Hill. Ab. 434; Griff. Reg. h. t.

Ohio. Before a judge of the supreme court or court of common pleas, a justice of the peace, notary public, or presiding officer of any incorporated town or city, who shall certify the acknowledgment on the same sheet with the deed, and also that he is satisfied from his personal knowledge, or the testimony of a witness named, that the parties are what they represent themselves; and sign the certificate. When the wife joins her husband in a deed of her lands or releases her dower, the same acknowledgment must be made, and the officer must certify that he read or made known to her the contents of the deed; that she was examined apart from her husband; that she remained satisfied; and also certify the husband's acknowledgment as in case of other deeds. Ohio St. 1831, 346—9; 2 Hill. Ab. 457. When a deed of land in the state is acknow-

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ledged out of it, it is valid if conformable to the laws of either state. 1 Ohio R. 12.

Pennsylvania. Before a judge of the supreme court, the courts of common pleas, the district courts, or the court of criminal sessions for the city and county of Philadelphia, or before any mayor or alderman, or justice of the peace of the commonwealth, or before the recorder of the city of Philadelphia. When made out of the state, and within the United States, the acknowledgment may be before one of the judges of the supreme or district courts of the United States, or before any one of the judges or justices of the supreme or superior courts, or courts of common pleas of any state or territory within the United States; and so certified under the hand of the said judge, and the seal of the court. Commissioners appointed by the governor, residing in either of the United States or the District of Columbia, are also authorised to take acknowledgment of deeds. When made out of the United States, the acknowledgment may be before any consul or vice-consul of the United States, duly appointed for and exercising consular functions in the state, kingdom, country or place where such an acknowledgment may be made, and certified under the public or official seal of such consul or vice-consul of the United States. Act of January, 16, 1827. By the act May 27th, 1715, s. 4, deeds made out of the province [state] may be proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province [state], or before any mayor or chief magistrate or officer of the cities, towns or places, where such deed or conveyances are so proved. But by construction it is now established that a deed *acknowledged* before such officer is valid, although the act declares it shall be *proved*. 1 Pet. R. 433. The certificate of the acknowledgment of a feme covert must state, 1, that she is of full age; 2, that the contents of the instrument have been made known to her; 3, that she has been examined separate and apart from her husband; and, 4, that she executed the deed of her own free will and accord, without any coercion or compulsion of her husband. It is the constant practice of making the certificate under seal, though if it be merely under the hand of the officer, it will be sufficient. Act of Feb. 19, 1835.

Rhode Island. Before any senator, judge, justice of the peace, or town clerk. When the acknowledgment is made in another state or country, it must be before a judge, justice, mayor or notary public therein, and certified under his hand and seal. A wife releasing dower need not acknowledge the deed; but to a conveyance an acknowledgment and private examination are necessary. 2 Hill. Ab. c. 34, s. 94.

South Carolina. Before a judge of the supreme court. A feme covert may release her dower or convey her own estate, by joining her husband in a deed, and being privately examined, in the latter case, seven days afterwards, before a judge of law or equity, or a justice of the quorum; she may also release dower by a separate deed. The certificate of the officer is under seal and signed by the woman. Deeds may be proved upon the oath of one witness before a magistrate, and this is said to be the general practice. When the deed is to be executed out of the state, the justices of the county where the land lies, or a judge of the court of common pleas, may by *dedimus* empower two or more justices of the county where the grantor resides to take his acknowledgment

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upon the oath of two witnesses to the execution. 2 Hill. Ab. 448, 9; Griff. Reg. h. t.

Tennessee. A deed or power of attorney to convey land must be acknowledged or proved by two subscribing witnesses, in the court of the county, or the court of the district where the land lies. The certificate of acknowledgment must be endorsed upon the deed by the clerk of the court. The acknowledgment of a feme covert is made before a court of record in the state, or, if the parties live out of it, before a court of record in another state or territory; and if the wife is unable to attend court, the acknowledgment may be before commissioners empowered by the court of the county in which the husband acknowledges —the commission to be returned certified with the court seal, and recorded. In all these cases the certificate must state that the wife has been privately examined. The seal of the court is to be annexed when the deed is to be used out of the state, when made in it, and *vice versa*; in which case there is to be a seal, and a certificate of the presiding judge or justice to the official station of the clerk, and the due formality of the attestation. By the statute of 1820, the acknowledgment in other states may be conformable to the laws of the state, in which the grantor resides. The officer must certify that he is acquainted with the grantor and that he is an inhabitant of the state. There must also be a certificate of the governor or secretary, under the great seal, or a judge of the superior court that the acknowledgment is in due form. Griff. Reg. h. t.; 2 Hill. Ab. 458.

Vermont. Before a justice of the peace, or the judge of some court of law; a feme covert is privately examined. When the grantor is out of the state or dead, the deed may be proved by an attesting witness before any *councillor* or judge of the supreme or county court. Acknowledgment or proof out of the state must conform to the law of the place where it is made; if in another of the United States, it may be before commissioners appointed by the governor, if in a foreign state, before a minister, chargé des affaires, or consul, or chief magistrate of a place in or near which the grantor resides, or a commissioner appointed by the governor or supreme court of Vermont. 1 Verm. L. 167—71; 2 Ib. 34—6; 2 Hill. Ab. c. 34, s. 66.

Virginia. Before the general court, or the court of the district, county, city, or corporation where some part of the land lies; when the party lives out of the state or of the district or county where the land lies, the acknowledgment must be before any court of law, or the chief magistrate of any city, town, or corporation of the country where the party resides, and certified by him in the usual form. When a married woman executes the deed, she appears in court and is examined privately by one of the judges, as to her freely signing the instrument, and continuing satisfied with it,—the deed being shown and explained to her. She acknowledges the deed before the court, or else before two justices of the county where she dwells, or the magistrate of a corporate town, if she lives within the United States, these officers being empowered by a commission from the clerk of the court where the deed is to be recorded, to examine her and to take her acknowledgment. If she is out of the United States, the commission authorises two judges or justices of any court of law, or the chief magistrate of any city, town or corporation, in her county, and is executed as by two justices in the United States. The certificate

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is to be authenticated in the usual form. 2 Hill. Ab. 444, 5; Griff. Reg. h. t.; 2 Leigh's R. 186; 2 Call, R. 103; 1 Wash. R. 319.

ACQUETS, *estates, in the civil law.* Property which has been acquired by purchase, gift, or otherwise than by succession. Merlin Rép. h. t., confines acquets to immoveable property. In Louisiana they embrace the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labour of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Civ. Code, art. 2371. This applies to all marriages contracted in that state, or out of it, when the parties afterwards go there to live, as to acquets afterwards made there. Ib. art. 2370. The acquets are divided into two equal portions between the husband and wife, or between their heirs at the dissolution of the marriage. Ib. art. 2375. The parties may however lawfully stipulate there shall be no community of profits or gains. Ib. art. 2369. But the parties have no right to agree that they shall be governed by the laws of another country. 3 Martin's Rep. 581. Vide 17 Martin's Rep. 571; 2 Kent's Com. 153, note.

ACQUIESCENCE, *contracts*, is the consent which is impliedly given by one or both parties, to a proposition, a clause, a condition, a judgment, or to any act whatever. When a party is bound to elect between a paramount right and a testamentary disposition, his acquiescence in a state of things which indicates an election, when he was aware of his rights, will be *primâ facie* evidence of such election. Vide 2 Ves. Jr. 371; 12 Ves. 136; 1 Ves. Jr. 335; 3 P. Wms. 315; 2 Rop. Leg. 439. The acts of acquiescence which constitute an implied election, must be decided rather by the circumstances of each case than by any general principle. 1 Swanst. R. 382, note, and the numerous cases there cited. Acquiescence in the acts of an agent, or one who has assumed that character will be equivalent to an express authority. 2 Kent, Com. 478. Acquiescence differs from assent. (q. v.)

ACQUISITION, *property, contracts, descent.* It is the act by which a person procures the property of a thing. The thing acquired, particularly when spoken of real estate, is also called an acquisition. An acquisition may be temporary or perpetual, and be procured either for a valuable consideration, for example, by buying the same; or without consideration, as by gift or descent. Acquisition may be divided into original and derivative. Original acquisition is procured by occupancy, 2 Kent, Com. 289; Menestr. Leç. du Dr. Civ. Rom. § 344; by accession, 2 Kent. Com. 293; by intellectual labour, namely, for inventions, which are secured by patent rights; and for the authorship of books, maps, and charts, which is protected by copyrights. Derivative acquisitions are those which are procured from others, either by act of law, or by act of the parties. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy. And by act of the par-

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ties, by gift or sale. Property may be acquired by a man himself, or by those who are in his power, for him; as by his children while minors, 1 N. Hamps. R. 28; 1 United States Law Journ. 513; by his apprentices or his slaves. Vide Ruth. Inst. ch. 6 & 7; Dig. 41, 1, 53; Inst. 2, 9; Ib. 2, 9, 3.

ACQUITTAL, *crim. law, practice*, is the absolution of a party charged with a crime or misdemeanor. Acquittal is of two kinds, in fact and in law. The former takes place when the jury upon trial find a verdict of not guilty; the latter when a man is charged merely as an accessary, and the principal has been acquitted. 2 Inst. 384. An acquittal is a bar to any future prosecution for the same offence as that contained in the first indictment.

ACQUITTANCE, *contracts*, is an agreement in writing to discharge a party from an engagement to pay a sum of money; it is evidence of payment. It differs from a release in this, that the latter must be under seal, while an acquittance is not under seal. Poth. Oblig. n. 781. In Pennsylvania, a receipt (q. v.) though not under seal, has nearly the same effect as a release. 1 Rawle R. 391. Vide 3 Salk. 298, pl. 2; Off. of Ex. 217.

TO ACQUIRE, *descents, contracts*. To make property one's own. Title to property is acquired in two ways, by descent, (q. v.) and by purchase, (q. v.) Acquisition by purchase is either by,—1. Escheat. 2. Occupancy. 3. Prescription. 4. Forfeiture. 5. Alienation, which is either by deed or by matter of record. Things which cannot be sold, or which are in commerce, cannot be acquired.

ACRE, *measures*, is a quantity of land containing in length forty perches, and four in breadth, or one hundred and sixty square perches, of whatever shape may be the land. Serg. Land Laws of Penn. 185.

ACT, *contracts, in the civil law*. Any writing which proves something, and which establishes the principal foundation of a cause. Acts are either public or private. *Public acts* usually denominated *authentic*, are those which have a public authority, and which have been made before public officers, are authorised by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records. *Acts under private signature* are those which have been made by private individuals, under their hands. *Private acts* are those made by private persons, as registers in relation to their receipts and expenditures, schedules, acquittances, and the like. Nov. 73, c. 2; Code, lib. 7, tit. 32, l. 6; lib. 4, t. 21; Dig. lib. 22, tit. 4; Civ. Code of Louis. art. 2231 to 2254; Toull. Dr. Civ. Français, tom. 8, p. 94.

ACT, *legislation*, is a statute or law made by a legislative body; as, an act of congress is a law by the Congress of the United States; an act of assembly, is a law made by a legislative assembly. Acts are *general* or *special; public* or *private*. A general or public act is a universal rule which binds the whole community; of which the courts are bound to take notice *ex officio*. Private or special acts are rather exceptions than rules, being those which operate only upon particular persons and private concerns; of these the courts are not bound to take notice, unless they are pleaded. 1 Bl. Com. 85, 6.

ACT OF GRACE, in the Scotch law, is the name by which the statute which provides for the aliment of prisoners, confined for civil debts,

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is usually known. This statute provides that where a prisoner for debt declares upon oath, before the magistrate of the jurisdiction, that he has not wherewith to maintain himself, the magistrate may set him at liberty, if the creditor, in consequence of whose diligence he was imprisoned, does not aliment him within ten days after intimation for that purpose, 1696, c. 32; Ersk. Pr. L. Scot. 4, 3, 14. This is somewhat similar to a provision in the insolvent act of Pennsylvania.

ACT OF GOD, in *contracts*. This phrase denotes those accidents which arise from physical causes, and which cannot be prevented.

Where the law casts a *duty* on a party, the performance shall be excused, if it be rendered impossible by the act of God; but where the party, *by his own contract*, engages to do an act, it is deemed to be his own fault and folly that he did not thereby provide against contingencies, and exempt himself from responsibilities in certain events; and in such case, therefore, that is, in the instance of an absolute general contract, the performance is not excused by an inevitable accident, or other contingency, although not foreseen by, or within the control of the party. Chitty on Contr. 272, 3; Aleyn, 27, cited by Lawrence, J. in 8 T. R. 267; Com. Dig. Action upon the Case upon Assumpsit, G; 6 T. R. 650; 8 T. R. 259; 3 M. & S. 267; 7 Mass. 325; 13 Mass. 94; Co. Litt. 206; Com. Dig. Condition, D 1; L 13; 2 Black. Com. 340.

Special bail are discharged when the defendant dies, Tidd, 243; but if the defendant die after the return of the *ca. sa.*, and before it is filed, the bail are fixed, 6 T. R. 284; 5 Binn. 332, 338. It is however no ground for an exoneratur, that the defendant has become deranged since suit was brought, and is confined in a hospital. 2 Wash. C. C. R. 464; 6 T. R. 133; 2 Bos. & Pull. 362; Tidd, 184. Vide 8 Mass. Rep. 264; 3 Yeates, 37; 2 Dall. 317; 16 Mass. Rep. 218.

See generally, *Fortuitous Event; Perils of the Sea*.

ACT OF LAW, those events which occur in consequence of some principle of law. If, for example, land out of which a rent charge has been granted, be recovered by an elder title, and thereby the rent charge becomes avoided; yet the grantee shall have a writ of annuity, because the rent charge is made void by due course or act of law, it being a maxim *actus legis nemini est damnosus*. 2 Inst. 287.

ACT OF MAN. Every man of sound mind and discretion is bound by his own acts, and the law does not permit him to do any thing against it; and all acts are construed most strongly against him who does them. Plowd. 140. A man is not only bound by his own acts, but by those of others who act or are presumed to act by his authority, and is responsible civilly in all such cases; and, in some cases, even when there is but a presumption of authority, he may be made responsible criminally; for example, a bookseller may be indicted for publishing a libel which has been sold in his store, by his regular salesman, although he may possibly have had no knowledge of it.

ACTIO NON, *pleading*. After stating the appearance and defence special pleas begin with this allegation, "that the said plaintiff ought not to have or maintain his aforesaid action thereof against him," *actio non debere habet*. This is technically termed the *actio non*. 1 Ch. Plead. 531; 2 Ch. Plead. 421; Steph. Plead. 394.

ACTIO PERSONALIS MORI-

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TUR CUM PERSONA. That a personal action dies with the person is an ancient and uncontested maxim. But the term *personal action*, requires explanation. In a large sense all actions except those for the recovery of real property may be called *personal*. This definition would include contracts for the payment of money, which never were supposed to die with the person. The maxim must therefore be taken in a more restricted meaning. It extends to all wrongs attended with *actual force*, whether they affect the person or property; and to all injuries to the person only, though without actual force. Thus stood originally the common law, in which an alteration was made by the statute 4 Ed. 3, c. 7, which gave an action to an executor for an injury done to the personal property of his testator in his lifetime, which was extended to the executor of an executor, by statute of 25 Ed. 3, c. 5. And by statute 31 Ed. 3, c. 11, administrators have the same remedy as executors. These statutes received a liberal construction from the judges, but they do not extend to injuries to the *person* of the deceased, nor to his *freehold*. So that no action lies by an executor or administrator for an assault and battery of the deceased, or trespass *vi et armis* on his land, or for slander, because it is merely a personal injury. Neither do they extend to actions against executors or administrators for wrongs committed by the deceased. 13 S. & R. 184; Cowp. 376; 1 Saund. 216, 217, n. 1 Com. Dig. 241, B 13; 1 Salk. 252; 6 S. & R. 272; W. Jones, 215. Assumpsit may be maintained by executors or administrators, in those cases where an injury has been done to the personal property of the deceased, and he might in his lifetime have waived the tort, and sued in assumpsit. 1 Bay's R. 61; Cowp. 374. An action for a breach of promise of marriage cannot be maintained by an executor, 2 M. & S. 408; nor against him, 13 S. & R. 183; 1 Picker. 71; unless, perhaps, in cases where the plaintiff's testator sustained special damages. 13 S. & R. 185. See further 1 Day's Cas. 180; 2 Bac. Abr. 439, 440; 11 Vin. Abr. 123; 1 Salk. 314; 2 Ld. Raym. 971; 1 Salk. 12; Id. 295; Cro. Eliz. 377, 8; 1 Str. 60; Went. Ex. 65; 1 Vent. 176; Id. 30; 7 Serg. & R. 183; 7 East, 134-6; 1 Saund. 216, a, n. 1; 6 Mass. 394; 2 Johns. 227; 1 Boss. & Pull. 330, n. a.; 1 Chit. Pl. 56; this Dictionary, tit. *Death*, *Parties to Actions*, *Survivor*, *Actions*.

ACTION OF A WRIT. This phrase is used when one pleads some matter by which he shows that the plaintiff had no cause to have the writ which he brought, and yet he may have a writ or action for the same matter. Such plea is called a plea to the action of the writ, whereas if by the plea it should appear that the plaintiff has no cause to have an action for the thing demanded, then it is called a plea to the action. Termes de la ley.

ACTION, *in practice*. Actions are divided into criminal and civil. Bac. Abr. Actions, A.

§ 1. A criminal action is a prosecution in a competent court of justice, in the name of the government, against one or more individuals who are accused of having committed a crime. See 1 Chitty's Cr. Law.

§ 2. A civil action is a legal demand of one's right, or it is the form of a suit given by law for the recovery of that which is due. Co. Litt. 285; 3 Bl. Com. 116; Domat, Supp. des Lois Civiles, liv. 4, tit. 1, No. 1; Poth. Introd. générale aux

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Coutumes 109; 1 Sell. Pr. Introd. s. 4, p. 73. Ersk. Princ. of Scot. Law, B. 4, t. 1, § 1. Civil actions are divided into real, personal and mixed.

1. Real actions are those brought for the specific recovery of lands, tenements or hereditaments. Steph. Pl. 3. They are either *droitural*, when the demandant seeks to recover the *property*; or *possessory*, when he endeavours to obtain the *possession*. Finch's Law, 257, 8. See Bac. Abr. Actions, A, contra. Real actions are, 1st, Writs of right; 2dly, Writs of entry, which lie in the *per*, the *per et cui*, or the *post*, upon *desseisin*, *intrusion*, or *alienation*; 3dly, Writs auncestrel possessory, as *Mort d'ancester*, *aiel*, *besaiel cosinage*, or *Nuper obiit*. Com. Dig. Actions, D 2. By these actions formerly all disputes concerning real estate, were decided; but now they are pretty generally laid aside in practice, upon account of the great nicety required in their management, and the inconvenient length of their process; a much more expeditious method of trying titles being since introduced by other actions personal and mixed. 3 Bl. Com. 118. See Booth on Real Actions.

2. Personal actions are those brought for the specific recovery of goods and chattels; or for damages or other redress for breach of contract, or other injuries, of whatever description; the specific recovery of lands, tenements, and hereditaments only excepted. Steph. Pl. 3 Com. Dig. Actions, D 3. Personal actions arise either upon contracts, or for wrongs independently of contracts. The former are account, assumpsit, covenant, debt, and detinue; see these several words. In Connecticut there is an action used which is peculiar to that state, called the action of *book debt*, 2 Swift's Syst. Ch. 15. The actions arising for wrongs, injuries, or torts, are case, replevin, trespass, trover. See these several words, and see *Actio personalis moritur cum persona*.

3. Mixed actions are such as appertain, in some degree, to both the former classes, and, therefore, are properly reducible to neither of them, being brought for the specific recovery of lands, tenements or hereditaments, and for damages for injury sustained in respect of such property. Steph. Pl. 3; Co. Litt. 284, 6; Com. Dig. Actions, D 4. Of this kind are ejectment and partition.

Actions are also divided into those which are *local*, and such as are *transitory*.

1. A *local* action is one in which the venue must still be laid in the county, in which the cause of action actually arose. The present locality of actions is founded in some cases, on common law principles, and in others on positive enactments of statute law. Of those which continue local, by the common law, are, 1st, all actions in which the *subject* or *thing* to be recovered is in its nature local. Of this class are real actions, actions of waste, when brought on the statute of Gloucester, (6 Edw. 1,) to recover with the damages, the *locus in quo*, or place wasted; and actions of ejectment. Bac. Abr. Actions Local, &c. A, (a); Com. Dig. Actions, N 1; 7 Co. 2 b; 2 Bl. Rep. 1070. All these are local, because they are brought to recover the seisin or possession of lands or tenements, which are local subjects. 2dly. Various actions which do not seek the direct recovery of lands or tenements, are also local, by the common law; because they arise out of some local subject, or the violation of some local right or interest. For example the action of *quare impedit* is local, inasmuch as the benefice, in

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the right of presentation to which the plaintiff complains of being obstructed, is so. 7 Co. 3 a; 1 Chit. Pl. 271; Com. Dig. Actions, N 4. Within this class of cases are also many actions in which only pecuniary damages are recoverable. Such are the common law action of *waste*, and trespass *quare clausum fregit*; as likewise trespass on the case for injuries affecting things real, as for nuisances to houses or lands; disturbance of rights of way or of common; obstruction or diversion of ancient water courses, &c. 1 Chit. Pl. 271; Gould on Pl. ch. 3, § 105, 106, 107. The action of replevin also, though it lies for damages only, and does not arise out of the violation of any local right, is nevertheless local. 1 Saund. 347, (n 1.) The reason of its locality appears to be the necessity of giving a local description of the taking complained of. Gould on Pl. ch. 3, § 111.

2. Personal actions which seek nothing more than the recovery of money or personal chattels, of any kind, are in most cases *transitory*, whether they sound in tort or in contract; Com. Dig. Actions, N 12; 1 Chit. Pl. 273; because actions of this class are, in most instances, founded on the violation of rights which, in contemplation of law, have no locality. And it will be found true, as a general position, that actions *ex delicto*, in which a mere personalty is recoverable, are, by the common law, transitory; except when founded upon, or arising out of some *local* subject. Gould on Pl. ch. 3, § 112. The venue in a transitory action may be laid in any county which the plaintiff may prefer. Bac. Abr. Actions Local, &c. A. (a).

In the civil law actions are divided into real, personal, and mixed.

A real action, according to the civil law, is that which he who is the owner of a thing, or has a right in it, has against him who is in possession of it, to compel him to give up such thing to the plaintiff, or to permit him to enjoy the right he has in it. It is a right which a person has in a thing, follows the thing, and may be instituted against him who possesses it; and this whether the thing be movable or immovable, and, in the sense of the common law, whether the thing be real or personal. See Domat, Supp. des Lois Civiles, Liv. 4, tit. 1, No. 5; Pothier, Introd. Générale aux Coutumes, 110; Ersk. Pr. Scot. Law, B. 4, t. 1, § 2.

A personal action is that a creditor has against his debtor, to compel him to fulfil his engagement. Pothier, Ib. Personal actions are divided into civil actions and criminal actions. The former are those which are instituted to compel the payment or to do some other thing purely civil; the latter are those by which the plaintiff asks the reparation of a tort or injury which he or those who belong to him have sustained. Sometimes these two kinds of actions are united, when they assume the name of mixed personal actions. Domat, Supp. des Lois Civiles, Liv. 4, tit. No. 4; 1 Brown's Civ. Law. 440.

Mixed actions participate both of personal and real actions. Such are the actions of partition and to compel the parties to put down landmarks or boundaries. *Domat, ubi supra.*

ACTIONS RESCISSORY, in the Scotch law, are divided into, 1, Actions of proper improbation; 2. Actions of reduction-improbation; 3. Actions of simple reduction. Ersk. Pr. L. Scot. 4, 1, 5.

1. Proper improbation is an action brought for declaring writing false or forged.

2. Reduction-improbation is an action whereby a person who may be hurt, or affected by a writing, insists for producing or exhibiting it

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in court, in order to have it set aside or its effects ascertained, under the certification, that the writing if not produced, shall be declared false and forged.

3. In an action of simple reduction, the certification is only temporary, declaring the writings called for null until they be produced; so that they recover their full force after their production. Ib. 4, 1, 8.

ACTION, REDHIBITORY,—*civil law.* An action instituted to avoid a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed the buyer would not have purchased it, had he known of the vice. Civ. Code of Louis. art. 2496.

ACTIONS, ORDINARY, in the Scotch law; by this term is understood all actions not rescissory. Ersk. Pr. L. Scot. 4, 1, 5.

ACTON BURNELL, statute of, vide *De Mercatoribus;* Cruise, Dig. tit. 14, s. 6.

ACTOR, *practice*, 1. A plaintiff or complainant. 2. He on whom the burden of proof lies. In actions of replevin both parties are said to be actors. The proctor or advocate in the courts of the civil law, was called actor.

ACTS OF SEDERUNT, in the laws of Scotland, are ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have a delegated power from the legislature for that purpose. Ersk. Pr. L. Scot. B. 1, t. 1, s. 14.

ACTUARY, is a clerk in some corporations vested with various powers. In the ecclesiastical law he is a clerk who registers the acts and constitutions of the convocation.

AD DAMNUM, *pleading*, to the damages. In all personal and mixed actions, with the exception of actions of debt *qui tam*, where the plaintiff has sustained no damages, the declaration concludes *ad damnum*. Archb. Civ. Pl. 169.

AD LARGUM, at large, as title at large, assize at large. See Dane's Abr. ch. 144, a, 16, § 7.

AD VITAM AUT CULPAM, an office to be so held as to determine only by the death or delinquency of the possessor; in other words it is held *quam diu se bene gesserit.*

AD INQUIRENDUM, *practice*, a judicial writ commanding inquiry to be made of any thing relating to a cause depending in court.

ADDITION, whatever is added to a man's name by way of title, as additions of estate, mystery, or place. *Additions of an estate or quality* are esquire, gentleman, and the like; these titles can however be claimed by none, and may be assumed by any one. *Additions of mystery* are such as scrivener, painter, printer, manufacturer, &c. *Additions of places* are of Philadelphia, New York, Cincinnati and the like. See 4 Bac. 753; Doct. Pl. 71; 2 Vin. Abr. 77; 1 Lilly's Reg. 39.

ADDITIONALES, *in contracts*, additional terms or propositions to be added to a former agreement.

ADDRESS, *legislation*. In Pennsylvania it is a resolution of both branches of the legislature, two-thirds of each house concurring, requesting the governor to remove a judge from office. The constitution of that state, art. 5, s. 2, directs that "for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them [the judges], on the address of two-thirds of each branch of the legislature." The mode of removal by address is

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unknown to the constitution of the United States, but it is recognized in those of thirteen of the respective states. In some of these constitutions the language is imperative; the governor when thus addressed *shall* remove; in others it is left to his discretion, he *may* remove. The relative proportion of each house that must join in the address, varies also in different states. In some a bare majority is sufficient; in others, two-thirds are requisite; and in others three-fourths. 1 Journ. of Law, 154.

ADEMPTION, *wills*, is a taking away or revocation of a legacy by the testator. It is either express or implied. It is the former when revoked in express terms by a later will; it is implied when by the acts of the testator it is manifestly his intention to revoke it; for example, when a specific legacy of a chattel is made, and afterwards the testator sells it; or if a father makes provision for a child by his will and afterwards gives to such child, if a daughter, a portion in marriage; or, if a son, a sum of money to establish him in life, provided such portion or sum of money be equal to or greater than the legacy. 2 Fonbl. 368 et seq.; Toll. Ex. 320; 1 Vern. R. by Raithby, 85 n. and the cases there cited. 1 Roper Leg. 237, 256, for the distinction between specific and general legacies.

ADHERENCE, *action of*, in the Scotch law, is an action competent to a husband or wife to compel either party to adhere in case of desertion.

ADJOURNMENT, is the dismissal by some court, legislative assembly, or properly authorised officer, of the business before them, either finally, which is called an adjournment *sine die*, without day; or, to meet again at another time which is appointed and ascertained, which is called a temporary adjournment. The constitution of the United States, art. 1, s. 5, n. 4, directs that "neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two houses shall be sitting." Vide Com. Dig. h. t.; Vin. Ab. h. t.; Dict. de Jur. h. t.

ADJOURNMENT-DAY IN ERROR, in practice in the English courts, is a day appointed some days before the end of the term, at which matters left undone on the affirmance day are finished. 2 Tidd, 1224.

ADJOURNMENT-DAY, in English practice, is a day so called from its being a further day appointed by the judges at the regular sittings, to try causes at nisi prius.

ADJUDICATIONS, *in the Scotch law*, are certain proceedings against debtors, by way of actions, before the court of session; and are of two kinds; special and general.

1. By statute 1672, c. 19, such part only of the debtor's lands is to be adjudged as is adjudged to the principal sum and interest of the debt, with the compositions due to the superior, and expenses of infeftment, and a fifth-part more, in respect the creditor is obliged to take lands for his money; but without penalties or sheriff-fees. The debtor must deliver to the creditor a valid right to the lands to be adjudged, or transumpts thereof, renounce the possession in his favour, and ratify the decree of adjudication: and the law considers the rent of the lands as precisely commensurate to the interest of the debt. In this, which is called a special adjudication, the time allowed the debtor to redeem the lands adjudged, (called the legal reversion or the legal,) is declared to be five years.

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Where the debtor does not produce a sufficient right to the lands, or is not willing to renounce the possession and ratify the decree, the statute makes it lawful for the creditor to adjudge all right belonging to the debtor, in the same manner, and under the same reversion of ten years. In this kind, which is called a general adjudication, the creditor must limit his claim to the principal sum, interest and penalty without demanding a fifth part more. See Act 26 Feb. 1684; Ersk. Pr. L. Scot. B. 2, t. 12, s. 15, 16. See *Diligences.*

ADJUDICATION, *in practice*, is the giving or pronouncing a judgment in a cause; a judgment.

ADJUNCTION, *in the civil law*, takes place when the thing belonging to one person is attached or united to that which belongs to another, whether this union is caused by *inclusion*, as if one man's diamond be enchassed in another's ring; by *solding*, as if one's guard be solded on another's sword; by *sewing*, as by employing the silk of one to make the coat of another; by *construction*, as by building on another's land; by *writing*, as when one writes on another's parchment; or by *painting*, when one paints a picture on another's canvass. In these cases as a general rule the accessary follows the principal; hence those things which are attached to the things of another become the property of the latter. The only exception which the civilians made was in the case of a picture, which although an accession, drew to itself the canvass, on account of the importance which was attached to it. Inst. lib. 2, t. 1, § 34; Dig. lib. 41, t. 1, l. 9, § 2. See *Accession*, and 2 Bl. Com. 404; Bro. Ab. Propertie; Com. Dig. Pleader, M 28; Bac. Abr. Trespass, E 2.

ADJUSTMENT, *in maritime law;* the adjustment of a loss is the settling and ascertaining the amount of the indemnity which the insured, after all proper allowances and deductions have been made, is entitled to receive, and the proportion of this, which each underwriter is liable to pay, under the policy. Marsh. Ins. B. 1, c. 14, p. 617; or it is a written admission of the amounts of the loss as settled between the parties to a policy of insurance. 3 Stark. Ev. 1167, 8.

In adjusting a loss, the first thing to be considered is, how the *quantity* of damages for which the underwriters are liable, shall be ascertained. When a loss is a total loss, and the insured decides to abandon, he must give notice of this to the underwriters in a reasonable time, otherwise he will waive his right to abandon, and must be content to claim only for a partial loss. Marsh. Ins. B. 1, c. 13, s. 2; 15 East, 559; 1 T. R. 608; 9 East, 283; 13 East, 304; 6 Taunt. 383. When the loss is admitted to be total, and the policy is a valued one, the insured is entitled to receive the whole sum insured, subject to such deductions as may have been agreed by the policy to be made in case of loss.

The quantity of damages being known, the next point to be settled is by what rule this shall be appreciated. The price of a thing does not always afford a true criterion to ascertain its true value. It may have been bought very dear or very cheap. The circumstance of time and place cause a continual variation in the price of things. For this reason, in cases of general average, the things saved contribute not according to prime cost, but according to the price for which they may be sold at the time of settling the average. Marsh. Ins. B. 1, c. 14, s. 2,

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p. 621; Laws of Wisbuy, art. 20; Laws of Oleron, art. 8; this Dict. tit. *Price*. And see 4 Dall. 430; 1 Caines's R. 80; 2 S. & R. 229; 2 S. & R. 257, 258.

An adjustment being endorsed on the policy, and signed by the underwriters, with the promise to pay in a given time, is *prima facie* evidence against them, and amounts to an admission of all the facts necessary to be proved by the insured to entitle him to recover in an action on the policy. It is like a note of hand, and being proved the insured has no occasion to go into proof of any other circumstances. Marsh. Ins. B. 1, c. 14, s. 3, p. 632; 3 Stark. Ev. 1167, 8; Park, ch. 4; Wesk. Ins. 8; Beaw. Lex Mer. 310; Com. Dig. Merchant, E 9; Abbott on Shipp. 346 to 348.

ADMEASUREMENT OF DOWER, *remedies*. This remedy is now nearly obsolete, even in England; the following account of it is given by Chief Baron Gilbert. "The writ of admeasurement of dower lieth where the heir, when he is within age, and endoweth the wife of more than she ought to have dower of, or if the guardian [in chivalry, for the guardian in socage cannot assign dower,] endoweth the wife of more than one-third part of the land of which she ought to have dower, then the heir, at full age, may sue out this writ against the wife; and thereby she shall be admeasured, and the surplusage she hath in dower shall be restored to the heir; but in such case there shall not be assigned anew any lands to hold to dower, but to take from her so much of the lands as surpasseth the third part whereof she ought to be endowed; and he need not set forth of whose assignment she holds." Gilb. on Uses, 379; and see F. N. B. 148.

ADMINICLE. 1. A term, in the Scotch and French law, for any writing or deed referred to by a party, in an action at law for proving his allegations. 2. An ancient term for aid or support. 3. A term in the civil law for imperfect proof. Techn. Dict. Merl. Répert. mot Adminicule.

ADMINISTRATION, *trusts*, is the management of the estate of an intestate, a minor, a lunatic, a habitual drunkard, or other person who is incapable of managing his own affairs, entrusted to an administrator or other trustee by authority of law. In a more confined sense, and in which it will be used in this article, administration is the management of an intestate's estate, or of the estate of a testator who at the time administration was granted had no executor. Administration is granted by a public officer duly authorised to delegate the trust; he is sometimes called surrogate, judge of probate, register of wills and for granting letters of administration. It is to be granted to such persons as the statutory provisions of the several states direct. There are several kinds of administrations besides the usual kind which gives to the administrator the management of all the personal estate of the deceased for an unlimited time. Administration *durante minori ætate* is granted during the minority of an executor, and ceases on his coming of age. Administration *durante absentia* is granted to some person during the absence of the next of kin. Administration *pendente lite* is granted pending a suit commenced to test the validity of a paper purporting to be a will. Administration *de bonis non*, is where an executor or administrator is dead, and no one is left to administer the goods remaining unadministered. Adminis-

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tration *cum testamento annexo* is one which is granted with the will annexed.

ADMINISTRATION, *government*, is the management of the affairs of the government; this word is also applied to the persons in power who manage public affairs; as Washington's administration was always wise. That part of the public authority which is exercised by the mayor and other public officers is also called administration; as, this is the administration of the law in Pennsylvania.

ADMINISTRATOR, *trusts*. An administrator is a person lawfully appointed to manage and settle the estate of a deceased person who has left no executor. By the grant of letters of administration, the administrator is vested with full and ample power to take possession of all the personal estate of the deceased and sell it; and to collect the debts due to him: he represents him in all matters which relate to his personal property. He is authorised to pay the debts of the intestate in the order directed by law; and for his trouble he is generally entitled to a compensation which is allowed him as commissions on the amount which passes through his hands. He is responsible for his neglect or mismanagement of the estate or for a devastavit (q. v.) When two or more administrators join in the administration of the estate, it seems to be settled, 16 Serg. & Rawle, 340, that like executors, the act of each one of them, which relates to the delivery, gift, sale, payment, possession or release of the testator's goods, is considered as of equal validity as the act of all, for they have a joint power and authority over the whole. 3 Bac. Ab. 30; 11 Vin. Ab. 358; Com. Dig. Administration, B 12; 2 Litt. R. 315; 1 Dane's Ab. 383. On the death of one of several joint administrators, the whole authority is vested in the survivor or survivors. Vide *Letters of Administration*.

ADMIRAL, *officer*, in some countries is the commander in chief of the naval forces. This office does not exist in the United States.

ADMIRALTY, is the name of a jurisdiction which takes cognizance of suits or actions which arise in consequence of acts done upon or relating to the sea; or, in other words, of all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. 2 Gall. R. 468. In the great maritime nations of Europe, the term "admiralty jurisdiction," is uniformly applied to courts exercising jurisdiction over maritime contracts and concerns. It is familiarly known among the jurists of Scotland, France, Holland and Spain, as of England, and applied to their own courts, possessing substantially the same jurisdiction as the English Admiralty in the reign of Edward the third. Ibid., and the authorities there cited; and see also Merl. Répert. h. t.; Encyclopédie, h. t. The Constitution of the United States, has delegated to the courts of the national government cognizance "of all cases of admiralty and maritime jurisdiction;" and the act of September 24, 1789, ch. 20, s. 9, has given the district court "cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of imposts, navigation or trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons burthen; within their respective districts as well as upon the high seas. It is not within the plan of this work to enlarge upon this subject. The reader is referred

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to the article *Courts of the United States*, where he will find all which it has been thought necessary to say upon the subject. Vide, generally, Dunlap's Adm. Practice; Bett's Adm. Practice; 1 Kent's Com. 353 to 380; Serg. Const. Law, Index, h. t.; 2 Gall. R. 398 to 476; 2 Chit. Pr. 508; 2 Bac. Ab. 175; 6 Vin. Ab. 505; Dane's Ab. Index, h. t.; 2 Bro. Civ. and Adm. Law; Wheat. Dig. 1; 1 Story L. U. S. 56, 60; 2 Id. 905; 3 Id. 1564, 1696; 4 Sharsw. cont. of Story's L. U. S. 2262; Clerke's Praxis; Collectanea Maritima.

ADMISSIONS, *in pleading*.—Where one party means to take advantage of or rely upon some matter alleged by his adversary, and to make it part of his case, he ought to admit such matter in his own pleadings; as if either party states the title under which his adversary claims, in which instances it is directly opposite in its nature to a protestation. See *Protestando*. But where the party wishes to prevent the application of his pleading to some matter contained in the pleading of his adversary, and therefore makes an express admission of such matter (which is sometimes the case,) in order to exclude it from the issue taken, or the like, it is somewhat similar in operation and effect, to a protestation. The usual mode of making an express admission in pleading is, after saying that the plaintiff ought not to have or maintain his action, &c. to proceed thus, "*Because he says that although it be true that*," &c. repeating such of the allegations of the adverse party as are meant to be admitted. Express admissions are only of matters of fact alleged in the pleadings; it never being necessary expressly to admit their legal sufficiency, which is always taken for granted, unless some objection be made to them. Lawes Civ. Pl. 143, 144. See 1 Chit. Pl. 600; Archb. Civ. Pl. 215.

ADMISSION, *in corporations or companies*, is the act of the corporation or company by which an individual acquires the rights of a member of such corporation or company. In trading and joint stock corporations no vote of admission is requisite; for any person who owns stock therein, either by original subscription or by conveyance, is in general entitled to and cannot be refused, the rights and privileges of a member. 3 Mass. R. 364; Doug. 524; 1 Man. & Ry. 529. All that can be required of the person demanding a transfer on the books, is to prove to the corporation his right to the property. See 8 Pick. 90. In a mutual insurance company, it has been held, that a person may become a member by insuring his property, paying the premium and deposit-money, and rendering himself liable to be assessed according to the rules of the corporation. 2 Mass. R. 315.

ADMISSIONS, *in evidence*, are the declarations which a party, by himself or those who act under his authority, makes of the existence of certain facts. These admissions are generally evidence of those facts, when the admissions themselves are proved.

The admissibility and effect of evidence of this description will be considered generally, with respect to the nature and manner of the admission itself; and, secondly, with respect to the parties to be affected by it.

In the first place, as to the nature and manner of the admission; it is either made, first, expressly with a view to evidence; or, secondly, with a view to induce others to act upon the representation; or thirdly, it is an unconnected and casual representation. 1. As an instance of

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an admission made with a view to evidence may be mentioned the case where a party has solemnly admitted a fact under his hand and seal, in which case he is estopped not only from disputing the deed itself, but every fact which it recites. B. N. P. 298; 1 Salk. 186; Com. Dig. Estoppel, B 5; Stark. Ev. pt. 4, p. 31.—2. Instances of this second class of admissions which have induced others to act upon them, are those where a man has cohabited with a woman, and treated her in the face of the world as his wife, 2 Esp. 637; and where he has held himself out to the world in a particular character, Ib.; 1 Camp. 245; he cannot in the one case deny her to be his wife when sued by a creditor who has supplied her with goods as such, nor in the other can he divest himself of the character he has assumed.—3. Where the admission or declaration is quite foreign to the question pending, although admissible, it is not in general conclusive evidence; and though a party may by falsifying his former declaration or oath, show that he has acted illegally and immorally, yet if he is not guilty of any breach of good faith in the existing transaction, and has not induced others to act upon his admission or declaration, nor derived any benefit from it against his adversary, he is not bound by it; the evidence in such cases is merely presumptive, and liable to be rebutted.

Secondly, with respect to the parties to be affected by it.—1. By a party to a suit, 1 Phil. Ev. 74; 7 T. R. 663; 1 Dall. 65. The admissions of the party really interested, although he is no party to the suit, are evidence, 1 Wils. 257.—2. The admissions of a partner during the existence of the partnership, are evidence against both, 1 Taunt. 104; Peake's C. 203; 1 Stark. C. 81. See 10 Johns. R. 66; Ib. 216; 1 M. & Selw. 249. As to admissions made *after* the dissolution of the partnership, see 3 Johns. R. 536; 15 Johns. R. 424; 1 Marsh. (Kentucky) R. 189.—3. By one of several persons who have a community of interest, Stark. Ev. pt. 4, p. 47; 3 Serg. & R. 9.—4. By an agent, 1 Phil. Ev. 77–82; Paley Ag. 203–207.—5. By an attorney, 4 Camp. 133; by wife, Paley Ag. 139, n. 2; Whart. Dig. tit. Evidence, O; 7 T. R. 112; Nott & M'C. 374.

Admissions are express or implied. An express admission is one made in direct terms. An admission may be implied from the silence of the party, and may be presumed. As for instance, where the existence of the debt, or of the particular right has been asserted in his presence, and he has not contradicted it. And an acquiescence and endurance, when acts are done by another, which, if wrongfully done, are encroachments, and call for resistance and opposition, are evidence, as a tacit admission that such acts could not be legally resisted. See 2 Stark. C. 471.

See, generally, Stark. Ev. part 4, tit. Admissions; 1 Phil. Ev. part 1, c. 5, s. 4; 2 Evans's Pothier, 319; 8 East, 549, n. 1; Com. Dig. Testemoigne, Addenda, vol. 7, p. 434; Vin. Abr. Evidence, A. b. 2; A. b. 23; Ib. Confessions; this Dict. tit. *Confessions, Examination;* Bac. Abr. Evidence, L.; Touillér, Droit Civil Français, tome 10, p. 375, 450.

ADMISSION, *of attorneys and counsellors.* To entitle counsellors and attorneys to practice in court, they must be admitted by the court to practice there. Different statutes and rules have been made to regulate their admission; they generally require a previous qualification by study under the care of some practising counsellor or attorney. See

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1 Troub. & Haly's Pr. 18; 1 Arch. Pr. 16; Blake's Pr. 30.

ADMISSIONS, *in practice.* It frequently occurs in practice, that in order to save expense as to mere formal proofs, the attorneys on each side consent to admit, reciprocally, certain facts in the cause without calling for proof of them. These are usually reduced to writing, and the attorneys shortly add to this effect, namely, "We agree that the above facts shall on the trial of this cause be admitted, and taken as proved on each side;" and signing two copies now called "admissions" in the cause, each attorney takes one.

ADMONITION, is a reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, Répert. h. t. The admonition was authorised by the civil law, as a species of punishment for slight misdemeanors.

ADOLESCENCE, *persons*, is that age which follows puberty and precedes majority; it commences for males at fourteen and for females at twelve years completed, and continues till twenty-one years complete.

ADOPTION, *civil law*, the act by which a person chooses another from a strange family, to have all the rights of his own child. Merl. Répert, h. t. By art. 232, of the civil code of Louisiana, it is abolished in that state. It never was in use in any other of the United States.

ADULT, *in the civil law*, is an infant who, if a boy, has attained his full age of fourteen years, and if a girl her full age of twelve. Domat, Liv. Prel. t. 2, s. 2, n. 8. In the common law an adult is considered one of full age. 1 Swanst. R. 553.

ADULTERATION, *in criminal law*, is a general term for rendering the public coin of less value than it ought to be; which comprehends *debasing* the coin, by the admixture of improper metals, or the use of any undue alloy, &c. and *counterfeiting* the coin, which is forging a stamp to resemble the true coin upon baser metal. This is always done with a fraudulent purpose and is punishable by fine and imprisonment.

ADULTERINE, a term used in the civil law to denote the issue of an adulterous intercourse. See Nicholas on Adulterine Bastardy.

ADULTERY, *in criminal law*, from *ad* and *alter* another person; a criminal conversation, between two married persons, or a married and unmarried person. The married person is guilty of adultery, the unmarried of fornication, (q. v.) The punishment of adultery in the United States generally is fine and imprisonment. In England it is left to the feeble hands of the ecclesiastical courts to punish this offence. Adultery in one of the married persons is good cause for obtaining a divorce by the innocent partner.

ADVANCEMENT, is that which is given by a parent to his child or presumptive heir, by anticipation of what he might inherit. There is, generally, in the statute laws of the several states, provisions relative to real and personal estates, similar to that which exists in the English statute of distribution, concerning an advancement to a child. If any child of the intestate has been advanced by him by settlement, either out of the real or personal estate, or both, equal or superior to the amount in value of the share of such child which would be due from the real

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and personal estate, if no such advancement had been made, then such child and his descendants, are excluded from any share in the real or personal estate of the intestate. But if the advancement be not equal, then such child, and in case of his death, his descendants, are entitled to receive, from the real and personal estate, sufficient to make up the deficiency, and no more. The advancement is either express or implied. As to what is an implied advancement see 2 Fonb. Eq. 121; 1 Supp. to Ves. Jr. 84; 2 Ib. 57; 1 Vern. by Raithby, 88, 108, 216; 5 Ves. 421; 3 Bac. Ab. 76; 4 Kent, Com. 173.

ADVANCES, *contracts*, are said to take place when a factor or agent pays to his principal a sum of money on the credit of goods belonging to the principal, which are placed, or are to be placed, in the possession of the factor or agent, in order to reimburse himself out of the proceeds of the sale. In such case the factor or agent has a lien to the amount of his claim. Cowp. R. 251; 2 Burr. R. 931; Liverm. on Ag. 38; Journ. of Law, 146.

ADVENTITIOUS, *adventitius*, from advenio: what comes incidentally; as adventitia bona, goods that fall to a man otherwise than by inheritance; or adventitia dos, a dowry or portion given by some other friend beside the parent.

ADVENTURE, *bill of*, a writing signed by a merchant, to testify that the goods shipped on board a certain vessel are at the venture of another person, he himself being answerable only for the produce. Techn. Dict.

ADVERSE POSSESSION, *title to lands*, is the enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and continued, under an assertion of right on the part of the possessor. 3 East, R. 394; 1 Pick. Rep. 466; 1 Dall. R. 67; 2 Serg. & Rawle, 527; when the possession has been adverse for twenty years, of which the jury are to judge from the circumstances, the law raises the presumption of a grant. Ang. on Wat. Courses, 85, et seq.

ADVICE, *comm. law*, a letter containing information of any circumstances unknown to the person to whom it is written: when goods are forwarded by sea or land, the letter transmitted to inform the consignee of the fact, is termed advice of goods, or letter of advice. When one merchant draws upon another, he generally advises him of the fact. These letters are intended to give notice of the facts they contain.

ADVICE, *practice*, is the opinion given by counsel to their clients; this should never be done but upon mature deliberation to the best of the counsel's ability; and without regard to the fact that it will affect the client favourably or unfavourably.

ADVOCATE, *in the civil and ecclesiastical law*. 1. An officer who maintains or defends the rights of his client in the same manner as the counsellor does in the common law.—*Lord Advocate*, an officer of state in Scotland, appointed by the king, to advise about the making and executing the law, to prosecute capital crimes, &c.—*College* or *faculty of advocates*, a college consisting of 180 persons appointed to plead in all actions before the lords of sessions.—*Church* or *ecclesiastical advocates*, pleaders appointed by the church to maintain its rights. —2. A patron who has the advowson or presentation to a church. Techn. Dict.; Ayl. Per. 53; Dane Ab. ch. 31, § 20.

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ADVOCATION, *in the Scotch law.* A writing drawn up in the form of a petition, called a *bill of advocation*, by which a party in an action applies to the supreme court to advocate its cause and to call the action out of an inferior court to itself. *Letters of advocation*, are the decree or warrant of the supreme court or court of sessions, discharging the inferior tribunal from all further proceedings in the matter, and advocating the action to itself. This proceeding is similar to a certiorari (q. v.) issuing out of the supreme court for the removal of a cause from an inferior tribunal.

ADVOWSON, *in ecclesiastical law*, from advow, or advocare, a right of presentation to a church or benefice. He who possesses this right is called the patron or advocate; (q. v.) when there is no patron or he neglects to exercise his right within six months, it is called a *lapse*, i. e. a title given to the ordinary to collate to a church; when a presentation is made by one who has no right it is called a *usurpation*. Advowsons are of different kinds, as—*Advowson appendant*, when it depends upon a manor, &c.—*Advowson in gross*, when it belongs to a person and not to a manor.—*Advowson presentative*, where the patron presents to the bishop.—*Advowson donative*, where the king or patron puts the clerk into possession without presentation.—*Advowson of the moiety of the church*, where there are two several patrons and two incumbents in the same church.—*A moiety of advowson*, where two must join in the presentation of one incumbent.—*Advowson of religious houses*, that which is vested in any person who founded such a house. Techn. Dict; 2 Bl. Com. 21.

AFFECTION, *in contracts*, the making over, pawning, or mortgaging a thing to assure the payment of a sum of money, or the discharge of some other duty or service. Techn. Dict.

AFFEERERS, *in the English law;* those who upon oath settle and moderate fines in courts leet. Hawk. l. 2, ch. 112.

TO AFFERE, *in the English law*, signifies either "to affere an amercement," i. e. to mitigate the rigour of a fine; or "to affere an account," that is to confirm it on oath in the exchequer.

AFFIANCE, *in contracts*, from *affidare* or *dare fidem*, to give a pledge; a plighting of troth between a man and woman. Litt. s. 39; Pothier, Traité du Mariage, n. 24, defines it to be an agreement by which a man and a woman promise each other that they will marry together.

AFFIDARE. To plight one's faith, or give fealty, i. e. fidelity by making oath, &c. Cunn. Dict. h. t.

AFFIDATUS. A tenant by fealty. Cunn. Dict. h. t.

AFFIDAVIT, *in practice:* an oath or affirmation reduced to writing, sworn or affirmed to before some officer who has authority to administer it. *Affidavit to hold to bail*, is in many cases required before the defendant can be arrested; such affidavit must be made by a person who is acquainted with the fact, whether he be plaintiff or not, and must state, 1st, an indebtedness from the defendant to the plaintiff; 2dly, show a distinct cause of action; 3dly, the whole must be clearly and certainly expressed. Sell. Pr. 104; 1 Chit. R. 165; S. C. 18 Com. Law R. 59, note; Id. 99.—*An affidavit of defence*, is made by a defendant or a person knowing the facts, in which must be stated a positive ground of defence on the merits. 1 Ashm. R. 4, 19, n.

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AFFINITY, is a connexion formed by marriage which places the husband in the same degree of nominal propinquity to the relations of the wife, as that in which she herself stands towards them, and gives to the wife the same reciprocal connexion with the relations of the husband. It is used in contradistinction to consanguinity, (q. v.) It is no real kindred. A person cannot, by legal succession, receive an inheritance from a relation by affinity; neither does it extend to the nearest relations of husband and wife, so as to create a mutual relation between them. The degrees of affinity are computed in the same way as those of consanguinity. See Pothier, Traité du Mariage, part 3, ch. 3, art. 2; and see article *Marriage*.

TO AFFIRM, *practice*, 1. To ratify or confirm a former law or judgment; as the supreme court affirmed the judgment of the court of common pleas. 2. To make an affirmation, or to testify under an affirmation.

AFFIRMANCE-DAY, GENERAL, in the English Court of Exchequer, is a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. 2 Tidd, 1091.

AFFIRMATION, *practice*, a solemn declaration and asseveration, which a witness makes before an officer competent to administer an oath in a like case, to tell the truth as if he had been sworn. In the United States, generally, all witnesses who declare themselves conscientiously scrupulous against taking a corporal oath are permitted to make a solemn affirmation, and this in all cases, as well criminal as civil. For the violation of the truth in such case, the witness is subject to the punishment of perjury as if he had been sworn.

AFFIRMATIVE PREGNANT, *pleading*. An affirmative allegation, implying some *negative*, in favour of the adverse party: for example, if to an action of assumpsit, which is barred by the act of limitations in *six* years, the defendant pleads that he did not undertake, &c. within *ten* years, a replication that he did undertake, &c. within ten years would be an affirmative pregnant; since it would impliedly admit that the defendant had not promised within six years. As no proper issue could be tendered upon such plea, the plaintiff should, for that reason, demur to it. Gould, Pl. c. 6, § 29, 37; Steph. Pl. 381; Lawes, Civ. Pl. 113; Bac. Ab. Pleas, N 6.

AFFIRMANT, *practice*, one who makes affirmation instead of making oath that the evidence which he is about to give shall be the truth, as if he had been sworn. He is liable to all the pains and penalty of perjury if he shall be guilty of wilfully and maliciously violating his affirmation.

AFFRAY, *criminal law*, is the fighting of two or more persons in some public place to the terror of the people. To constitute this offence there must be, 1st, a fighting; 2d, the fighting must be between two or more persons; 3d, it must be in some public place; 4th, it must be to the terror of the people. It differs from a riot in not being premeditated; for if any persons meet together upon any lawful or innocent occasion, and happen on a sudden to engage in fighting, they are not guilty of a riot but an affray only; and in that case none are guilty except those actually engaged in it. Hawk. b. 1, c. 65, s. 3; 4 Bl. Com. 146; 1 Russell, 271.

AFORETHOUGHT, *crim. law*, premeditated, prepense; the length

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of time during which the accused has entertained the thought of committing the offence is not very material, provided in fact he has entertained such thought; he is thereby rendered criminal in a greater degree than if he had committed the offence without premeditation. Vide *Malice Aforethought;* 2 Chit. Cr. 785; 4 Bl. Com. 199; Fost. 132, 291, 292; Cro. Car. 131; Palm. 545; W. Jones, 198; 4 Dall. R. 146; 1 P. A. Bro. R. App. xviii.; Addis. R. 148; 1 Ashm. R. 289.

AGAINST THE WILL, *pleadings.* In indictments for robbery from the person, the words "feloniously and against the will," must be introduced; no other word or phrase will sufficiently charge the offence. 1 Chit. Cr. *244.

AGAINST THE FORM OF THE STATUTE.—See *Contra formam statuti.*

AGE, the time when the law allows persons to do acts, which, for want of years, they were prohibited from doing before. For *males*, before they arrive at fourteen years they are said not to be of discretion, at that age they may consent to marriage and choose a guardian; and twenty-one years is full age for all private purposes, and they may then exercise their rights as citizens by voting for public officers; and are eligible to all offices, unless otherwise provided for in the constitution. At 25 a man may be elected a representative in congress; at 30, a senator; and at 35 he may be chosen president of the United States. He is liable to serve in the militia from 18 till 45 inclusive, unless exempted for some particular reason.—As to *females*, at 12 they arrive at years of discretion and may consent to marriage; at 14 may choose a guardian; and 21, as in males, is full age, when they may exercise all the rights which are inherent to their sex. This is the law of England as far as applicable. There no one can be chosen member of parliament till he has attained 21 years, ordained a priest till he is 24, nor made a bishop till he has completed his 30th year. The age of serving in the militia is from 16 to 45 years. By the laws of France many provisions are made in respect to age, among which are the following. To be a member of the legislative body the person must have attained 40 years; 25 to be a judge of a tribunal de premiére instance; 27 to be its president or to be judge or clerk of a cour royale; 30 to be its president or procureur général; 25 to be a justice of the peace; 30 to be judge of a tribunal of commerce, and 35 to be its president; 25 to be a notary public; 21 to be a testamentary witness; 30 to be a juror; at 16 a minor may devise one half of his property as if he were a major; the male cannot contract marriage till after the 18th year, nor the female before full 15 years. At 21 both males and females are capable to perform all the acts of civil life. Toull. Dr. Civ. Fr. Liv. 1, Intr. n. 188. In the civil law, the age of man was divided as follows; namely, infancy as it regards males extended till the full accomplishment of the 14th year; at 14 he entered the age of puberty, and was said to have acquired full puberty at 18 years accomplished, and was major on completing his 25th year. The female was an infant until 7 years, at 12 she entered puberty, and acquired full puberty at 14; she became of full age on completing her 25th year. Leçons Elem. du Dr. Civ. Rom. 222. See Com. Dig. Baron and Feme, (B 5.) Dower, (A 3.) Enfant, (C 9, 10, 11, D 3.) Pleader, (2 G 3.—2 W. 22.—2 Y 8.) Bac. Ab. Infancy and Age; 2 Vin. Ab. 131; Constitution of the

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United States; Domat, Lois Civ. tom. 1, p. 10; Merlin, Répert. de Jurisp. mot, Age; Ayl. Pand. 62; 1 Coke Inst. 78; 1 Bl. Com. 463.

AGE-PRAYER, *in the English law, in practice.* When an action is brought against an infant for lands which he had by descent, he may show this to the court, and pray *quod loquela remaneat* until he shall become of age; which is called his age-prayer. Upon this being ascertained the proceedings are stayed accordingly. When the lands did not descend, he is not allowed this privilege. 1 Lilly's Reg. 54.

AGENCY, *contracts*, is an agreement, express or implied, by which one of the parties, called the principal, confides to the other denominated the agent, the management of some business, to be transacted in his name, or on his account, and by which the agent assumes to do the business and to render an account of it. When the agency is express it is created either by deed, or in writing not by deed, or verbally without writing. 3 Chit. Com. Law, 104; 9 Ves. 250; 11 Mass. Rep. 27; Ib. 97, 288; 1 Binn. R. 450. When the agency is not express, it may be inferred from the relation of the parties and the nature of the employment, without any proof of any express appointment. 1 Wash. R. 19; 15 East, R. 400; 5 Day's R. 556. The agency must be antecedently given, or subsequently adopted; and in the latter case there must be an act of recognition, or an acquiescence in the act of the agent, from which a recognition may be fairly implied. 2 Kent, Com. 478; Paley on Agency; Livermore on Agency.

AGENT, *practice*; an agent is an attorney who transacts the business of another attorney. The agent owes to his principal the unremitted exertions of his skill and ability, and that all his transactions in that character, shall be distinguished by punctuality, honour and integrity. Lee's Dict. of Practice. The rules of the supreme court of the state of New York require that every attorney shall have an agent in such place where there is a clerk's office, except in the city or town where such attorney keeps his office; such agent must be an attorney of the court, or deputy clerk in the clerk's office. Rule 7; Graham's Pr. 34.

AGENT, *contracts.* One who undertakes to manage some affair to be transacted for another on account of the latter, who is called the *principal*, and to render an account of it. There are various descriptions of agents, to whom different appellations are given according to the nature of their employments; as brokers, factors, supercargoes, attorneys and the like; they are all included in this general term. The authority is created either by deed, by simple writing, by parol, or by mere employment, according to the capacity of the parties, or the nature of the act to be done. It is said to be *general* or *special* with reference to its object, i. e. according as it is confined to a single act, or is extended to all acts connected with a particular employment. With reference to the manner of its execution, it is either *limited* or *unlimited*, i. e. the agent is bound by precise instructions (q. v.), or left to pursue his own discretion. It is the duty of an agent, 1, To perform what he has undertaken in relation to his agency. 2, To use all necessary care. 3, To render an account. Pothier, Tr. du Contrat de Mandat, *passim;* Paley, Agency, 1 and 2; 1 Liverm. Agency, 2; 1 Suppl. to Ves. Jr. 67, 97, 409; 2 Id. 153, 165, 240; 4 Bac. Abr. 582; 1 Ves. Jr. R. 317. Vide Smith on Merc. Law, ch. 3, p. 43,

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et seq.; and the articles *Agency*, *Authority*, and *Principal*.

AGGRAVATION, *in pleading*, is the introduction of matter in the declaration which only tends to increase the amount of damages, and does not concern the right of action itself. Steph. Pl. 257; 12 Mod. 597. An example of which is found in the case where a plaintiff declares in trespass for entering his house, and breaking his close, and tossing his goods about, the entry of the house is the principal ground and foundation of the action, and the rest is only stated by way of aggravation, 3 Wils. R. 294; and this matter need not be proved by the plaintiff or answered by the defendant.

AGGRESSOR, *crim. law*. He who has begun a quarrel or dispute, either by threatening or striking another. No man is justified to strike another because he has threatened, or in consequence of the use of any words. He is to seek his redress for such abuse by an appeal to the law, and not by a violation of it.

AGISTAGE, *in contracts*, 1. The taking of other men's cattle on one's own ground at a certain rate. 2 Inst. 643.—2. The profit from such feeding or pasturage.

AGISTMENT, *contracts*, is the taking of other person's cattle into one's own ground to be fed for a consideration to be paid by the owner. The person who receives the cattle is called an agister. As this is an interested bailment, the agister is bound to ordinary diligence, and of course responsible for losses by ordinary negligence; but he does not insure the safety of the cattle agisted. Jones, Bailm. 91; 1 Bell's Com. 458; Holt's N. P. Rep. 547; Story, Bailm. § 443.

AGNATES, in the sense of the Roman law, were those whose propinquity was connected by males only; in the relation of cognates, one or more females were interposed. By the Scotch law, agnates are all those who are related by the father, even though females intervene; cognates are those who are related by the mother. Ersk. L. Scot. B. 1, t. 7, s. 4.

AGNATI, *in descents*. Relations on the father's side; they are different from the *cognati*, they being relations on the mother's side, affines, who are allied by marriage, and the *propinqui*, or relations in general. 2 Bl. Com. 235; Toull. Dr. Civ. Fr. tome 1, p. 139; Poth. Pand. tom. 22, p. 27.

AGNATION, *in descents*. The relation by blood which exists between such males as are descended from the same father; in distinction from cognation or consanguinity, which includes the descendants from females. This term is principally used in the civil law.

AGREEMENT, *contract*, is the consent of two or more persons concurring, respecting the transmission of some property, right or benefit, with a view of contracting an obligation. Bac. Ab. h. t.; Com. Dig. h. t.; Vin. Ab. h. t.; Plowd. 17; 1 Com. Contr. 2; 5 East's R. 16. To render an agreement complete, six things must concur; there must be, 1, a person able to contract; 2, a person able to be contracted with; 3, a thing to be contracted for; 4, a lawful consideration, or *quid pro quo*; 5, clear and explicit words to express the agreement; 6, the assent of the contracting parties. Plowd. 161; Co. Litt. 35, b. As to their form, agreements are of two kinds, 1, by parol, or in writing as contradistinguished from specialties; 2, by specialty or under seal. In relation to their performance, agreements are *executed* or *executory*. An agreement is executed,

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when one party has given the other the consideration for it; as if the buyer pay the price of the thing purchased. It is also executed when he performs the act required and the party afterwards agrees to it. An agreement is executory, when it is to be performed in future. Agreements are also *conditional* and *unconditional*. They are conditional when some condition must be fulfilled before they can have any effect; as if A. B. agrees to buy the house of C. D. at such a price as shall be fixed on it by E. F., there is no agreement until E. F. shall fix the price; they are unconditional when there is no condition attached.

The writing or instrument containing an agreement is also called an agreement, and sometimes articles of agreement.

AGRI. Arable land in the common fields. Cunn. Dict. h. t.

AID PRAYER, *English law*, is a petition to the court calling in help from another person who has an interest in the matter in dispute. For example, a tenant for life, by the courtesy or for years, being impleaded, may pray in aid of him in reversion; that is, desire the court that he may be called by writ to allege what he thinks proper for the maintenance of the right of the person calling him, and of his own. F. N. B. 50.

AIDERS, *crim. law*. Those who assist aid or abet the principal, and who are principals in the second degree. 1 Russell, 21.

AILE or AYLE, *domestic relations*. This is a corruption of the French word *aïeul*, grandfather, *avus*. 3 Bl. Com. 186.

ALABAMA. The name of one of the new states of the United States of America. This state was admitted into the Union by the resolution of congress, approved December 14th, 1819, 3 Sto. L. U. S. 1804, by which it is resolved that the state of Alabama shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever. The convention which framed the constitution in this state, assembled at the town of Huntsville, on Monday the fifth day of July, 1819, and continued in session by adjournment, until the 2d day of August, 1819, when the constitution was adopted. The powers of the government are divided by the constitution into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial to another. Art. 2, s. 1.—1st. The *legislative* power of the state is vested in two distinct branches; the one styled the senate, the other the house of representatives, and both together, the general assembly of the state of Alabama. 1. The *senate* is never to be less than one-fourth, nor more than one-third of the number, of the whole number of representatives. Senators are chosen by the qualified electors for the term of three years, at the same time, in the same manner, and at the same place, where they vote for members of the house of representatives; one-third of the whole number of senators are elected every year. Art. 3, s. 12.—2. The *house of representatives* is to consist of not less than forty-four nor more than sixty members, until the number of white inhabitants shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred. Art. 3, s. 9. The members of the house of representa-

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tives are chosen by the qualified electors, for the term of one year, from the commencement of the general election, and no longer. 2d. The supreme *executive* power is vested in a chief magistrate, styled the governor of the state of Alabama. He is elected by the qualified electors, at the time and places when they respectively vote for representatives; he holds his office for the term of two years from the time of his installation, and until a successor is duly qualified; and is not eligible more than four years in any term of six years. Art. 4. He is invested, among other things, with the veto power. Ib. s. 16. In cases of vacancies, the president of the senate acts as governor, Art. 4, s. 18.—3d. The *judicial* power is vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time direct, ordain and establish. Art. 5, s. 1.

ALDERMAN, is an officer, generally appointed or elected in towns corporate or cities, possessing various powers in different places. The aldermen of the cities of Pennsylvania, possess all the powers and jurisdictions, civil and criminal, of justices of the peace. They are besides, in conjunction with the respective mayors or recorders, judges of the mayors' courts.

ALEATORY CONTRACTS, *civil law.* A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties, or to some of them, depend on an uncertain event. Civ. Code of Louis. art. 2951. These contracts are of two kinds; namely, 1. When one of the parties exposes himself to lose something which will be a profit to the other, in consideration of a sum of money which the latter pays for the risk. Such is the contract of insurance, the insurer takes all the risk of the sea, and the assured pays a premium to the former for the risk which he runs.—2. In the second kind, each runs a risk which is the consideration of the engagement of the other; for example, when a person buys an annuity, he runs the risk of losing the consideration, in case of his death soon after, but he may live so as to receive three times the amount of the price he paid for it. Merlin, Répert. mot. Aléatoire.

ALER SANS JOUR or *aller sans jour, in practice.* A French phrase which means *go without day;* and is used to signify that the case has been finally dismissed the court, because there is no further day assigned for appearance. Kitch. 146.

ALIAS, *practice.* This word is prefixed to the name of a second writ of the same kind issued in the same cause; as, when a summons has been issued and it is returned by the sheriff, nihil, and *another* is issued, this is called an alias summons. The term is used to all kinds of writs, as alias fi. fa., alias vend. exp. and the like. *Alias dictus,* otherwise called, a description of the defendant by an addition to his real name of that by which he is bound in the writing; or when a man is indicted and his name is uncertain he may be indicted as A B, alias dictus C D.

ALIBI, *in evidence,* is that proof which a party who is accused of having committed a crime or other offence or done any act at a particular place, produces to show that when the crime or offence was committed or act done, he was *at another place.* If the proof is made out it is clear he did not commit the crime or offence or do the act. It must be admitted that mere alibi evidence

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lies under a great and general prejudice, and ought to be heard with uncommon caution; but if it appears to be founded in truth, it is the best negative evidence that can be offered; it is really positive evidence, which in the nature of things necessarily implies a negative, and in many cases, it is the only evidence which an innocent man can offer.

ALIEN, *persons*, is one born out of the jurisdiction of the United States, who has not since been naturalized under their constitution and laws. To this there are some exceptions, as the children of the ministers of the United States at foreign courts. Aliens are subject to *disabilities*, have *rights*, and are bound to perform *duties*, which will be briefly considered. 1. *Disabilities.* An alien cannot in general acquire title to real estate by the descent or by other mere operation of law; and if he purchase land, he may be divested of the fee, upon an inquest of office found. To this general rule there are statutory exceptions in some of the states; in Pennsylvania, Ohio and Louisiana the disability is entirely removed; and in North Carolina and Vermont by constitutional provision, and in South Carolina, Indiana, Illinois and Missouri, by statutory provision, it is partly so. An alien even after being naturalized cannot at any time be president of the United States, or in some states, as in New York, governor; he cannot be a member of congress, till the expiration of seven years after that event. 2. An alien has a *right* to acquire personal estate, make and enforce contracts in relation to the same, he is protected from injuries and wrongs, to his person and property, his relative rights and character; he may sue and be sued. 3. He owes a temporary local allegiance, and his property is liable to taxation. Aliens are either alien friends or alien enemies. It is only alien friends who have the rights above enumerated, alien enemies are incapable during the existence of war to sue and may be ordered out of the country. See generally 2 Kent, Com. 43 to 63; 1 Vin. Ab. 257; 13 Vin. Ab. 414; 1 Bac. Ab. 126; 7 Bac. Ab. 389; 1 Saund. 8 n. 2. Wheat. Dig. h. t.

TO ALIENATE, *estates, titles.* This is a generic term applicable to all those modes of parting with property by which the direct object is to deprive the heirs of the substantial interest in the estate; modes, which it is impossible to enumerate, and which must vary and multiply with the ingenuity of practitioners, and the progress of society. It was, therefore, held, that under a prohibition to alienate, long leases were comprehended. 2 Dow's Rep. 210.

ALIENATION, *in contracts*, is the act whereby an estate is voluntarily resigned by one person, and accepted by another. Co. Litt. 118 b; Cruise Real Prop. tit. 32, c. 1, s. 1.

ALIENATION OFFICE, *in the English law*, is an office to which all writs of covenants and entries are carried for the recovery of fines levied thereon.

TO ALIENE, *in contracts.* To convey the property of a thing to another. *To aliene in fee*, is to convey the fee simple. *To aliene in mortmain*, to make over lands or tenements to a religious house or body politic.

ALIMENTS. In the French law, this word signifies the food, and other things necessary to the support of life, as a dwelling, clothing and the like. The same name is given to the money allowed for aliments. By the common law parents and children reciprocally owe each other aliments or maintenance, (q. v.) Vide 1 Bl. Com. 447; Merl. Rép. h. t; Dig. 25, 3, 5. In the common law the word alimony (q. v.) is used. Vide *Allowance to a Prisoner.*

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ALIMONY, is the maintenance or support which a husband is bound to give to his wife upon a separation from her; or the support which either father or mother is bound to give to his or her children, though this is more usually called maintenance. In Louisiana by alimony is meant the nourishment, lodging and support of the person who claims it. It includes education when the person to whom alimony is due is a minor. Civil Code of L. 246. Alimony is granted in proportion to the wants of the person requiring it, and the circumstances of those who are to pay it. By the common law parents and children owe each other alimony. 1 Black. Comm. 447; 2 Com. Dig. 498; 3 Ves. 358; 4 Vin. Ab. 175; Ayl. Parerg. 58; Dane's Ab. Index, h. t.; Dig. 34, 1, 6.

ALMANAC. A table or calendar, in which are set down the revolutions of the seasons, the rising and setting of the sun, the phases of the moon, the most remarkable conjunctions, positions and phenomena of the heavenly bodies, the month of the year, the days of the month and week, and a variety of other matter. The courts will take judicial notice of the almanac, for example, whether a certain day of the month was on a Sunday or not. Vin. Ab. h. t.; 6 Mod. 41; Cro. Eliz. 227, pl. 12; Vin. Ab. Evidence (Ab. 4.) In dating instruments some sects, the Quakers, for example, instead of writing January, February, March, &c., use the terms, first month, second month, third month, &c., and these are equally valid in such writings. Vide 1 Smith's Laws of Pennsylvania, 217.

ALMS. In its most extensive sense this term comprehends every species of relief bestowed upon the poor, and, therefore, including all charities. In a more limited sense it signifies what is given by public authority for the relief of the poor. Shelford on Mortmain, 802, note (*x*); 1 Dougl. Election Cas. 370; 2 Id. 107; Heywood on Elections, 263.

ALLIANCE, *relationship*, is the union or connexion of two persons or families by marriage, which is also called affinity. This word is derived from the Latin preposition *ad* and *ligare*, to bind.

ALLIANCE, *international law*, is a contract, treaty, or league, between two sovereigns or states, made to insure their safety and common defence. Alliances made for warlike purposes are divided in general into defensive and offensive; in the former the nation only engages to defend her ally in case he be attacked; in the latter, she unites with him for the purpose of making an attack, or jointly waging the war against another nation. Some alliances are both offensive and defensive, and there seldom is an offensive alliance which is not also a defensive one. Vattel, B. 3, c. 6, § 79.

ALLEGATION, *in the English ecclesiastical law*; according to the practice of the prerogative court, the facts intended to be relied on in support of any contested suit are set forth in the plea, which is termed an allegation; this is submitted to the inspection of the counsel of the adverse party, and, if it appear to them objectionable in form or substance, they oppose the admission of it. If the opposition goes to the substance of the allegation, and is held to be well founded, the court rejects it; by which mode of proceeding, the suit is terminated without going into any proof of the facts. 1 Phill. 1, n.; 1 Eccl. Rep. 11, n. S. C. See 1 Brown's Civ. Law, 472, 3, n.

ALLEGATION, *in the common*

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law, is the declaration or statement of a party of what he can prove.

ALLEGATION, *in the civil law*, is the citation or reference to a voucher to support a proposition. Dict. de Jurisp.; Encyclopédie, mot, Allegation; 1 Brown's Civ. Law, 473, n.

ALLEGIANCE, is the tie or ligament which binds the citizen to the government, in return for the protection which the government affords him. It is natural, acquired, or local. Natural allegiance is such as is due from all men born within the United States; acquired allegiance is that which is due by a naturalized citizen: it has never been decided whether a citizen can, by expatriation, divest himself absolutely of that character, 2 Cranch, 64; 1 Peters's C. C. Rep. 159; 7 Wheat. R. 283; 9 Mass. R. 461. It seems, however, that he cannot renounce his allegiance to the United States without the permission of the government to be declared by law. But for commercial purposes he may acquire the rights of a citizen of another country, and the place of his domicil determines the character of a party as to trade. 1 Kent, Com. 71; Com. Rep. 677; 2 Kent, Com. 42. Local allegiance is that which is due from an alien, while resident in the United States, for the protection which the government affords him. 1 Bl. Com. 366, 372; Com. Dig. h. t.; Dane's Ab. Index, h. t.

ALLOCATUR, *practice*, is the allowance of a writ; e. g. when a writ of *habeas corpus* is prayed for, the judge directs it to be done, by writing the word allowed, and signing his name, this is called the allocatur. In the English courts this word is used to indicate the master or prothonotary's allowance of a sum referred for his consideration, whether touching costs, damages, or matter of account. Lee's Dict. h. t.

ALLODIUM, *estates*, signifies an absolute estate of inheritance in contradistinction to a feud. In this country the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 390. Vide Cruise, Prel. Des. c. 1, § 13; 2 Bl. Com. 45. For the etymology of this word vide 3 Kent, Com. 398, note.

ALLOTMENT. Distribution by lot; partition; Merl. Rép. h. t.

ALLOWANCE TO A PRISONER. By the insolvent laws of, it is believed, all the states, when a poor debtor is in arrest in a civil suit, the plaintiff is compelled to pay an allowance regulated by law, for his maintenance and support, and in default of such payment, at the time required, the prisoner is discharged. It is scarcely possible to ascertain what sum is allowed in each state, and it will not, therefore, be attempted to state it; in the city and county of Philadelphia, the plaintiff is bound to pay to the gaoler one dollar and twenty-six cents on the Monday of every week. Notice must be given the plaintiff before the defendant can be discharged.

ALLOY, is an inferior metal used with gold and silver in making coin or public money. The act of congress of 2d of April, 1792, sect. 12, directs that the standard for all gold coins of the United States, shall be eleven parts fine to one part alloy; and sect. 13, that the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine, to one hundred and seventy-nine parts alloy. 1 Story's L. U. S. 230.

ALLUVION is the additions made to land by the washing of the sea or rivers. The characteristic of alluvion is its imperceptible increase, so that it cannot be perceived how

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much is added in each moment of time. What is taken from one side is usually carried on the opposite bank; in cases where the change is so gradual as not to be perceived in any one moment of time, the proprietor whose bank on the river is increased is entitled to the addition. Alluvion differs from avulsion, (q. v.) in the latter the change is sudden and perceptible. See 2 Bl. Com. 262, and note by Chitty; 1 Swift's Dig. 111; Coop. Just. lib. 2, t. 1; Angell on Water Courses, 219; 3 Mass. R. 352; 1 Gill & Johns. R. 249; Schultes on Aq. Rights, 116; 2 Amer. Law Journ. 282, 393; Angell on Tide Waters, 213.

ALLUVIAL, belonging to a deluge or alluvion; as *alluvial soil*, i. e. soil that has been brought to other lands by means of floods.

ALLY, *international law*, is a power which has entered into an alliance with another power. A citizen or subject of one of the powers in alliance is sometimes called an ally; for example, the rule which renders it unlawful for a citizen of the United States to trade or carry on commerce with an enemy, also precludes an ally from similar intercourse. 4 Rob. Rep. 251; 6 Rob. Rep. 405; Dane's Ab. Index, h. t.

ALTERNATIVE. Vide *Election; Obligation, alternative.*

ALTIUS NON TOLLENDI, *civil law*, is the name of a servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4, and l. 12, 17, 25.

ALTO ET BASSO, high and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, alto et basso, to arbitration.

AMBASSADOR, *international law*, is a public minister sent abroad by some sovereign state or prince, with a legal commission and authority to transact business on behalf of his country with the government to which he is sent. He is a minister of the highest rank, and represents the person of his sovereign. The United States have always been represented by ministers plenipotentiary, never having sent a person of the rank of an ambassador in the diplomatic sense, 1 Kent's Com. 39, n. Ambassadors, when acknowledged as such, are exempted absolutely from all allegiance, and from all responsibility to the laws. If, however, they should be so regardless of their duty, and of the object of their privilege, as to insult or openly to attack the laws of the government, their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall, or they may be dismissed, and required to depart within a reasonable time. By fiction of law, an ambassador is considered as if he were out of the territory of the foreign power; and it is an implied agreement among nations, that the ambassador, while he resides in the foreign state, shall be considered as a member of his own country, and the government he represents has exclusive cognizance of his conduct and control of his person. The attendants of the ambassador are attached to his person, and the effects in his use are under his protection and privilege, and, generally, equally exempt from foreign jurisdiction.

The act of Congress of April 30th 1790, s. 25, makes void any writ or process sued forth or prosecuted against any ambassador authorised and received by the president of the United States, or any domestic servant of such ambassador; and the 25th section of the same act punishes any person who shall sue forth or prosecute such writ or process, and all attorneys and solicitors prosecut-

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ing or soliciting in such case, and all officers executing such writ or process with an imprisonment not exceeding three years, and a fine at the discretion of the court. The act provides that citizens or inhabitants of the United States who were indebted when they went into the service of an ambassador, shall not be protected as to such debt; and it requires also that the names of such servants shall be registered in the office of the secretary of state. The 16th section imposes the like punishment on any person offering violence to the person of an ambassador or other minister. Vide 1 Kent, Com. 14, 38, 182; Rutherf. Inst. b. 2, c. 9; Vatt. b. 4, c. 8, s. 113; 2 Wash. C. C. R. 435; Ayl. Pand. 245; 1 Bl. Com. 253; 1 Bac. Ab. 141; 2 Vin. Ab. 286; Grot. lib. 2, c. 8, s. 1, 3; 1 Whart. Dig. 382; 2 Id. 314; Dig. l. 50, t. 7; Code, l. 10, t. 63, l. 4.

AMBIDEXTER. It is intended by this Latin word to designate one who plays on both sides; in a legal sense it is taken for a juror or embraceor who takes money from the parties for giving his verdict. This is seldom or never done in the United States.

AMBIGUITY, *contracts, construction.* When an expression has been used in an instrument of writing which may be understood in more than one sense, it is said there is an ambiguity. There are two sorts of ambiguities of words, *ambiguitas latens* and *ambiguitas patens.* The first occurs where the deed or instrument is sufficiently certain and free from ambiguity, but the ambiguity is produced by something extrinsic, or some collateral matter out of the instrument; for example, if a man devise property to his cousin A B, and he has two cousins of that name, in such case parol evidence will be received to explain the ambiguity. The second or patent ambiguity occurs when a clause in a deed, will, or other instrument, is so defectively expressed, that a court of law, which has to put a construction on the instrument, is unable to collect the intention of the party. In such case evidence of the declaration of the party cannot be admitted to explain his intention, and the clause will be void for its uncertainty. In Pennsylvania this rule is somewhat qualified. 3 Binn. 587; 4 Binn. 482. Vide generally, Bac. Max. Reg. 23; 1 Phil. Ev. 410 to 420; 3 Stark. Ev. 1021; 1 Com. Dig. 575. The civil law on this subject will be found in Dig. lib. 50, t. 17, l. 67; lib. 45, t. 1, l. 8; and lib. 22, t. 1, l. 4.

AMBULATORIA VOLUNTAS, a phrase used to designate that a man has the power to alter his will or testament as long as he lives.

AMENABLE. Responsible; subject to answer in a court of justice; liable to punishment.

AMENDE HONOURABLE, *in the old English law.* A penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offence, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck, and a torch in the hand, and begging the pardon of God or the king, or any private individual for some delinquency. A punishment somewhat similar to this, and which bore the same name, was common in France; it was abolished by the law of the 25th of September, 1791. Merlin, Rép. de Jur. h. t.

AMENDMENT, *practice,* is the correction by the court of an error committed in the progress of a cause. Amendments at common law, independently of any statutory provision

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on the subject, are in all cases in the discretion of the court, for the furtherance of justice; they may be made while the proceedings are in paper, that is, until judgment is signed, and during the term in which it is signed; for until the end of the term the proceedings are considered only in *fieri*, and consequently subject to the control of the court; 2 Burr. 756; 3 Bl. Com. 407; 1 Salk. 47; 2 Salk. 566; 3 Salk. 31; Co. Litt. 260; and even after judgment is signed, and up to the latest period of the action, amendment is, in most cases, allowable at the discretion of the court, under certain statutes passed for allowing amendments of the record; and in late times the judges have been much more liberal than formerly, in the exercise of this discretion. Amendments are, however, always limited by due consideration of the rights of the opposite party; and, when by the amendment he would be prejudiced or exposed to unreasonable delay, it is not allowed. Vide Bac. Ab. h. t.; Com. Dig. h. t.; Viner's Ab. h. t.; 2 Arch. Pr. 230; Grah. Pr. 524; Steph. Pl. 97; 2 Sell. Pr. 453; 3 Bl. Com. 406.

AMENDS is a satisfaction given by a wrong doer to the party injured for a wrong committed. 1 Lilly's Reg. 81. Upon being notified of an intended suit against them, justices of the peace, and some other officers, may make a tender of amends, and if the plaintiff recover no more than the amount tendered, he shall pay the costs.

AMERCEMENT, *in practice.* Formerly if the sheriff failed in obeying the writs, rules, or orders of the court, he might be amerced; but this practice has been superseded by attachment.

AMERCIAMENT, or AMERCEMENT, *in the English law.* A pecuniary punishment arbitrarily imposed by some lord or count, in distinction from a fine, which is expressed according to the statute. Kitch. 78.—*Amerciament royal*, when the amerciament is made by the sheriff, or any other officer of the king. 4 Bl. Com. 372.

AMICABLE ACTION, *in Pennsylvania practice*, is an action entered by agreement of parties on the dockets of the courts; when entered such action is considered as if it had been adversely commenced, and the defendant had been regularly summoned.

AMICUS CURIÆ, *a friend of the court, in practice.* One who as a stander by, when a judge is doubtful or mistaken in a matter of law, may inform the court. 2 Inst. 178; 2 Vin. Abr. 475; and any one, as *amicus curiæ*, may make an application to the court in favour of an infant, though he be no relation, 1 Ves. Sen. 313.

AMNESTY, *government*, is an act of oblivion of past offences, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period. An amnesty is either express or implied; it is express when so declared in direct terms, and it is implied when a treaty of peace is made between contending parties. Vide Vattel, liv. 4, c. 2, § 20, 21, 22; Encyclop. Amer. h. t.

AMOTION, in corporations and companies, is the act of removing an officer from his office; it differs from disfranchisement which is applicable to *members* as such. Willc. on Corp. n. 708. The power of amotion is incident to a corporation, 2 Str. 819; 1 Burr. 539. In Rex v. Richardson, Lord Mansfield specified three sorts of offences for which an officer might be discharged; first, such as have no immediate relation

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to the office, but are in themselves of so infamous a nature, as to render the offender unfit to execute any public franchise; secondly, such as are only against his oath, and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his office; thirdly, the third offence is of a mixed nature; as being an offence not only against the duty of his office, but also a matter indictable at common law. And Lord Mansfield considered the law as settled, that though a corporation has express power of amotion, yet for the first sort of offences, there must be a previous indictment and conviction; and that there was no authority since Bagg's Case, 11 Rep. 99, which says that the power of trial as well as of amotion, for the second offence is not incident to every corporation. He also observed: "We think that from the reason of the thing, from the nature of the corporation, and for the sake of order and good government, this power is incident as much as the power of making by-laws." Doug. 149.

See generally, Willcock on Mun. Corp. 268; 6 Conn. Rep. 532; 6 Mass. R. 462; Ang. & Am. on Corpor. 246.

AMOTION, *tort.* An amotion of possession from an estate is an ouster which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined. 3 Bl. Com. 198, 199. Amotion is also applied to personal chattels where they are taken unlawfully out of the possession of the owner, or of one who has a special property in them.

AMORTIZATION, *contracts, in the English law.* An alienation of lands or tenements in mortmain, 2 stat. Ed. 1.

AMORTISE, *in contracts*: to alien lands in mortmain.

AMPLIATION, *civil law.* A deferring of judgment until the cause is further examined. In this case the judges pronounced the word *amplius*, or by writing the letters N. L. for *non liquet*, signifying that the cause was not clear. In practice it is usual in the courts, when time is taken to form a judgment to enter a *curia advisere vult, cur. adv. vult*, (q. v.)

AMY or *ami*, a French word signifying *friend. Prochain amy*, (q. v.) the next friend. *Alien amy*, a foreigner, citizen or subject to some friendly power or prince.

ANALOGY, *construction*, is the similitude of relations which exist between things compared; it is the induction made from a known fact. To reason analogically is to draw conclusions based on this similitude of relations, on the resemblance, on the connexion which is perceived between the objects compared. "It is this guide" says Toullier, "which leads the lawgiver like other men, without his observing it. It is analogy which induces us with reason to suppose that following the example of the Creator of the universe, the lawgiver has established general and uniform laws, which it is unnecessary to repeat in all analogous cases." Dr. Civ. Fr. liv. 3, t. 1, c. 1. Vide Ang. on Adv. Enjoym. 30, 31; Hale's Com. Law, 141.

ANATOCISM, *in the civil law*, is usury which consists in taking interest on interest, or receiving compound interest. This is forbidden. Code, lib. 4, t. 32, l. 30.

Courts of equity have considered contracts for compounding interest illegal and within the statute of usury. Cas. T. Talbot, 40; et vide Com. Rep. 349; Mass. 247; 1 Ch. Cas. 129; 2 Ch. Cas. 35. And contra 1 Vern. 190. But when the interest has once accrued, and a balance has been settled between the parties, they

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may lawfully agree to turn such interest into principal, so as to carry interest *in futuro*. Com. on Usury, ch. 2, s. 14, p. 146 et seq.

ANCESTOR, *descents*, one who has preceded another in a direct line of descent; an ascendant. It differs from the word predecessor, for ancestor is applied to natural persons while predecessor refers to a body corporate. Vide 2 Black. Com. 209; 3 Bac. Ab. 448; 1 Ayl. Pand. 58.

ANCESTREL. What relates to or has been done by one's ancestors, as homage ancestrel, and the like.

ANCHORAGE, *mer. law*. A toll paid for every anchor cast from a ship into a river, and sometimes a toll bearing this name is paid although there be no anchor cast. This toll is said to be incident in almost every port. 1 Wm. Bl. 413; 2 Chit. Com. Law, 16.

ANCIENT DEMESNE, *Engl. law*, are those lands which either were reserved to the crown at the original distribution of landed property, or such as came to it afterwards, by forfeiture or other means. 1 Salk. 57; Hob. 88; 4 Inst. 264; 1 Bl. Com. 286.

ANCIENT LIGHTS, *estates*, are windows which have been opened for twenty years and enjoyed without molestation by the owner of the house. It is proposed to consider, 1, How the right of an ancient light is gained. 2, What amounts to interruption of an ancient light. 3, The remedy for obstructing an ancient light.

§ 1. How the right of opening or keeping a window open is gained. 1. By grant.—2. By lapse of time. Formerly it was holden that a party could not maintain an action for a nuisance to an ancient light, unless he had gained a right to the window by prescription. 1 Leon. 188; Cro. Eliz. 118. But the modern doctrine is, that upon proof of an adverse enjoyment of lights for twenty years or upwards, unexplained, a jury may be directed to presume a right by grant, or otherwise, 2 Saund. 175, a; 12 Mass. 159; 1 Esp. R. 148. See also 1 Bos. & Pull. 400; 3 East, 299; Phil. Ev. 126; 11 East, 372; Esp. Dig. 636. But if the window was opened during the seisin of a mere tenant for life, or a tenancy for years, and the owner in fee did not acquiesce in, or know of the use of the light, he would not be bound. 11 East, 372; 3 Campb. 444; 4 Campb. 616. If the owner of a close builds a house upon one half of it, with a window lighted from the other half, he cannot obstruct lights on the premises granted by him; and in such case no lapse of time is necessary to confirm the grantee's right to enjoy them. 1 Vent. 237, 289; 1 Lev. 122; 1 Keb. 553; Sid. 167, 227; L. Raym. 87; 6 Mod. 116; 1 Price, 27; 12 Mass. 159; Rep. 24; 2 Saund. 114, n. 4; Hamm. N. P. 202; Selw. N. P. 1090; Com. Dig. Action on the case for a nuisance, A. Where a building has been used twenty years to one purpose, (as a malt house,) and it is converted to another (as a dwelling-house,) it is entitled in its new state only to the same degree of light which was necessary in its former state. 1 Campb. 322; and see 3 Campb. 80.

§ 2. What amounts to an interruption of an ancient light. Where a window has been completely blocked up for twenty years, it loses its privilege. 3 Campb. 514.

§ 3. Of the remedy for interrupting an ancient light. 1. An action on the case will lie against a person who obstructs an ancient light. 9 Co. 58; 2 Roll's Abr. 140, l.; Nusans, G. 10. And see 1 Bac. Ab. 85; Carth. 454; Comb. 481; 6 Mod. 116.—2. Total deprivation of

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light is not necessary to sustain this action, and if the party cannot enjoy the light in so free and ample a manner as he did before, he may sustain the action, but there should be some sensible diminution of the light and air, 4 Esp. R. 69.—3. The building a wall which merely obstructs the sight is not actionable, 9 Co. 58, b; 1 Mod. 55.—4. Nor is the opening windows and destroying the privacy of the adjoining property; but such new window may be immediately obstructed to prevent a right to it being acquired by twenty years' use. 3 Campb. 82.

See generally on this subject, 1 Nels. Abr. 56, 7; 16 Vin. Abr. 26.

ANCIENTLY, *in the English law*, a term for eldership or seniority used in the statute of Ireland, 14 Hen. 8.

ANCIENTS, *in the English law*. A term for gentlemen in the Inns of Courts who are of a certain standing. In the middle temple all who have passed their readings are termed ancients. In Gray's Inn, the ancients are the oldest barristers; besides which the society consists of benchers, barristers and students. In the Inns of Chancery, it consists of ancients, and students or clerks.

ANIENS. In some of our law books signifies void, of no force. F. N. B. 214.

ANIMAL, *property*. A name given to every animated being provided with digestive organs. In law it signifies all animals except those of the human species. Animals have the power of locomotion, or they are deprived of that faculty. Those which possess the locomotive power, are distinguished into such as are *domitæ*, and such as are *feræ naturæ*. It is laid down, that in tame or domestic animals, such as horses, kine, sheep, poultry, and the like, a man may have an absolute property, because they continue perpetually in his possession, and occupation, and will not stray from his house and person unless by accident or fraudulent enticement, in either of which cases the owner doesnot lose his property. 2 Bl. Com. 390; 2 Mod. 319. But in animals *fere naturæ*, a man can have no absolute property; his property in them is qualified; they belong to him only while they continue in his keeping or actual possession; for if at any time they regain their natural liberty, his property instantly ceases, unless they have *animum revertendi*, which is only to be known by their usual habit of returning. 2 Bl. Com. 396; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, (F); 7 Co. 17 b; 1 Ch. Pr. 87; Inst. 2, 1, 15.

The owner of a mischievous animal, known to him to have this vice, is responsible, when he permits him to go at large and do mischief, for the damages he may occasion, 2 Esp. Cas. 482; 4 Campb. 198; 1 Starkie's Cas. 285; 1 Holt, 617; and any person may justify the killing of such ferocious animal, 9 Johns. 233; 10 Johns. 365; 13 Johns. 312. The owner of such an animal may be indicted for a common nuisance, 1 Russ. Cr. 303; Ch. Cr. Law, 643; Burn's Just., Nuisance, 1. In Louisiana, the owner of an animal is answerable for the damage he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury; except where the master has turned loose a dangerous or noxious animal; for then he must pay all the harm done, without being allowed to make the abandonment. Civ. Code, a 2301.

ANIMALS OF A BASE NATURE, are such animals, which though they may be reclaimed, are not such that at common law a lar-

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ceny may be committed of them, by reason of the baseness of their nature. Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature, and oftener reclaimed by art and industry, clearly fall within the same rule; as, bears, foxes, apes, monkeys, polecats, ferrets, and the like, 3 Inst. 109; 1 Hale, P. C. 511, 512; 1 Hawk. P. C. c. 33, s. 36; 4 Bl. Com. 236; 2 East, P. C. 614.

ANIMO FURANDI, *crim. law*, with an intention to steal. In order to constitute larceny, (q. v.) the thief must take the property *animo furandi*, but this is expressed in the definition of larceny by the word felonious, 3 Inst. 107; Hale, 503; 4 Bl. Com. 229. Vide 2 Russ. on Cr. 96; 2 Tyler's R. 272. When the taking of property is lawful, although it may afterwards be converted, *animo furandi*, to the taker's use, it is not larceny, 3 Inst. 108; Bac. Ab. Felony, (C); 14 Johns. R. 294; Ry. & Mood. C. C. 160; Ib. 137.

ANIMO REVERTENDI, with an intention of returning. A man retains his domicil, if he leaves it animo revertendi, 3 Rawle R. 312; 1 Ashm. R. 126; Fost. 97; 4 Bl. Com. 225; 2 Russ. on Cr. 18; Pop. 42, 52; 4 Co. 40.

ANIMUS, the intent, the mind with which a thing is done, as animus cancellandi, the intention of cancelling; animus furandi, the intention of stealing; animus manendi, the intention of remaining; animus morandi, the intention or purpose of delaying. Contracts are valid, when legal in other respects, when the parties intended to bind themselves, but when such an intention was absent, they are not binding. Whether the act of a man, when in appearance criminal, is so or not, depends upon the intention with which it was done.

ANN, or more properly, *An.* This is a French word used by some of our old law writers. It signifies year. Vide Com. Dig. h. t.

ANNATES, *eccl. law.* First fruits paid out of spiritual benefices to the pope, being the value of one year's profit.

ANNEXATION, *property*, is the union of one thing to another. In the law relating to fixtures, (q. v.) annexation is actual or constructive. By actual annexation is understood every mode by which a chattel can be joined or united to the freehold. By constructive annexation is understood the union of such things as have been held parcel of the realty, but which are not actually annexed, fixed, or fastened to the freehold, for example, deeds, or chattels which relate to the title of the "inheritance." Shep. Touch. 469. Vide Amos & Fer. on Fixtures, 2.

ANNI NUBILES, the age a girl becomes by law fit for marriage, which is twelve.

ANNIENTED, from the French *aneantir;* abrogated or made null. Litt. sect. 741.

ANNO DOMINI, *in the year of our Lord*, abbreviated A. D. the computation of time from the incarnation of our Saviour, which is used as the date of all public deeds in the United States and Christian countries, on which account it is called the "Vulgar æra."

ANNUAL PENSION, *Annual rent*, in the Scotch law, a yearly profit due to a creditor by way of interest for a given sum of money. *Right of annual rent*, the original right of burdening land with a yearly payment for the payment of money.

ANNUITY, *in contracts.* An annuity is a yearly sum of money granted by one party to another in fee for life or years, charging the person of the grantor only. Co.

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Litt. 144; 1 Lilly's Reg. 89; 2 Bl. Com. 40. An annuity is an incorporeal hereditament. It is different from a rent charge, with which it is frequently confounded, in this; a rent charge is a burden imposed upon and issuing out of *lands*, whereas an annuity is chargeable only upon the *person*, of the grantee. Bac. Abr. Annuity, A. See for many regulations in England relating to annuities, the stat. 17 Geo. 3, c. 26.

An annuity may be created by contract, or by will.

The first payment of an annuity is to be made at the time appointed in the instrument creating it. In cases where a testator directs the annuity to be paid at the end of the first quarter, or other period before the expiration of the first year after his death, it is then due; but in fact it is not payable by the executor till the end of the year; 3 Mad. Ch. R. 167. When the time is not appointed, as frequently happens in wills, the following distinction is presumed to exist. If the bequest be merely in the form of an annuity, as a gift to a man of "an annuity of one hundred dollars for life," the first payment will be due at the end of the year after the testator's death. But if the disposition be of a sum of money, and the interest to be given as an annuity to the same man for life, the first payment will not accrue before the expiration of the second year after the testator's death. This distinction, though stated from the bench, does not appear to have been sanctioned by express decision. 7 Ves. 96, 97.

The Civil Code of Louisiana makes the following provisions in relation to annuities; namely. The contract of annuity is that by which one party delivers to another a sum of money, and agrees not to reclaim it, so long as the receiver pays the rent agreed upon, art. 2764. This annuity may be perpetual or for life, art. 2765. The amount of the annuity for life can in no case exceed the double of the conventional interest. The amount of the perpetual annuity cannot exceed the double of the conventional interest, art. 2766. Constituted annuity is essentially redeemable, art. 2767. The debtor of a constituted annuity may be compelled to redeem the same: 1, If he ceases fulfilling his obligation during three years; 2, If he does not give the lender the securities promised by the contract, art. 2768. If the debtor should fail, or be in a state of insolvency, the capital of the constituted annuity becomes exigible, but only up to the amount at which it is rated, according to the order of contribution amongst the creditors, art. 2769. A similar rule to that contained in the last article has been adopted in England. See stat. 6 Geo. 4, c. 16, s. 54 and 108; note to Ex parte James, 5 Ves. 708, 1 Sup. to Ves. Jr. 431; note to Franks v. Cooper, 4 Ves. 763; 1 Supp. to Ves. Jr. 368. The debtor, continues the code, may be compelled by his security to redeem the annuity within the time which has been fixed in the contract, if any time has been fixed, or after ten years if no mention be made of the time in the act, art. 2770. The interest of the sums lent, and the arrears of constituted and life annuity, cannot bear interest but from the day a judicial demand of the same has been made by the creditor, and when the interest is due for at least one whole year. The parties may only agree that the same shall not be redeemed prior to a time which cannot exceed ten years, or without having warned the creditor a time before, which they shall limit. Art. 2771.

See generally, Vin. Abr. Annuity;

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Bac. Abr. Annuity and Rent; Com. Dig. Annuity; 8 Com. Dig. 909; Doct. Plac. 84; 1 Rop. on Leg. 588; Dict. de Jurisp. aux mots Rentes viageres, Tontine.

ANONYMOUS. Without name. This word is applied to such books, letters, or papers which are published without the author's name. No man is bound to publish his name in connexion with a book or paper he has published, but if the publication is libellous, he is equally responsible as if his name were published.

ANSWER, *pleading in equity*, is a defence in writing made by a defendant, to the charges contained in a bill or information, filed in a court of equity by the plaintiff against him. As a defendant is called by a bill or information to make a discovery of the several charges it contains, he must do so, unless he is protected either by a demurrer, a plea or disclaimer. It may be laid down as an invariable rule that whatever part of a bill or information is not covered by one of these must be defended by answer. Redesd. Tr. Ch. Pl. 244. In *form* it usually begins, 1st, with its title, specifying which of the defendants it is the answer of, and the names of the plaintiffs in the cause in which it is filed as answer; 2d, it reserves to the defendant all advantages which might be taken by exception to the bill; 3d, the substance of the answer, according to the defendant's knowledge, remembrance, information and belief, then follows, in which the matter of the bill, with the interrogatories founded thereon, are answered, one after the other, together with such additional matter as the defendant thinks necessary to bring forward in his defence, either for the purpose of qualifying, or adding to, the case made by the bill, or to state a new case on his own behalf; 4th, this is followed by a general traverse or denial of all unlawful combinations charged in the bill, and of all other matters therein contained; 5th, the answer is always upon oath or affirmation, except in the case of a corporation, in which case it is under the corporate seal. In *substance* the answer ought to contain, 1st, a statement of facts and not arguments; 2d, a confession and avoidance, or traverse and denial of the material parts of the bill; 3d, its language ought to be direct and without evasion. Vide generally as to answers, Redes. Tr. Ch. Pl. 244 to 254; Coop. Pl. Eq. 312 to 327; Beames Pl. Eq. 34 et seq. For an historical account of this instrument, see 2 Bro. Civ. Law, 371, n.

ANTENATI. Born before. This term is applied to those who were born or resided within the United States before or at the time of the declaration of independence. These had all the rights of citizens. 2 Kent, Com. 51, et seq.

ANTEDATE. To put a date to an instrument of a time before the time it was written. Vide *Date*.

ANTHETARIUS, *obsolete*.—When a man was accused of an offence, and he endeavoured to discharge himself of the fact by recriminating and charging the accuser with the same fact, he was called antithetarius. Jacob.

ANTICHRESIS, *in contracts*. A word used in the civil law to denote the contract by which a creditor acquires the right of reaping the fruit or other revenues of the immoveables given to him in pledge, on condition of deducting annually their proceeds from the interest, if any is due to him, and afterwards from the principal of his debt. Louis. Code, art. 3143; Dict. de Juris. Antichrèse, Mortgage; Code Civ. 2085.

ANTINOMY. A term used in the civil law to signify the real or apparent contradiction between two

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laws or two decisions. Merl. Répert. h. t.

ANTITHETARIUS, *old English law.* The name given to a man who endeavours to discharge himself of the crime of which he is accused by retorting the charge on the accuser. He differs from an approver (q. v.) in this, that the latter does not charge the accuser but others.

APPARATOR or APPARITOR, *eccles. law.* An officer or messenger employed to serve the process of the spiritual courts in England.

APPARLEMENT. Resemblance. It is said to be derived from pareillement, French, in like manner. Cunn. Dict. h. t.

APPEAL, *Eng. crim. law.* Is the accusation, in a legal form, of a person for a crime by him committed; or, it is the lawful declaration of another man's crime, before a competent judge, by one who sets his name to the declaration, and undertakes to prove it, upon the penalty which may ensue thereon. Vide Co. Litt. 123, b. 287, b.

APPEAL, *practice*, is the act by which a party submits to the decision of a superior court, a cause which has been tried in an inferior tribunal. The appeal generally annuls the judgment of the inferior court, so far that no action can be taken upon it until after the final decision of the cause. Its object is to review the whole case, and to secure a just judgment upon the merits. An appeal differs from proceedings in error, under which the errors committed in the proceedings are examined, and if any have been committed the first judgment is reversed; because in the appeal the whole case is examined and tried as if it had not been tried before. Vide Dane's Ab. h. t; Serg. Const. Law, Index, h. t; and article *Courts of the United States.*

APPEARANCE, *in practice*, signifies the filing common or special bail to an action. The appearance of the parties is no longer (as formerly) by the actual presence in court, either of themselves or their attorneys. It is to be observed, however, that an appearance of this kind is still supposed; and exists in fiction or contemplation of law. But in fact the appearance is effected on the part of the defendant (where he is not arrested) by making certain formal entries in the proper office of the court, expressing his appearance, or, in case of arrest, it may be considered as effected by giving bail to the action. On the part of the plaintiff, no formality expressive of appearance is observed, but upon the appearance of the defendant, effected in the manner above described, both parties are considered as in court. Impey's Pr. 215. The appearance of either party may in general purport to be either in his own person or by attorney, but when he appears by attorney, there ought regularly, and there is always supposed to be, a warrant in writing executed by him for that purpose. There are certain persons, namely, *infants*, *married women* (when sued without their husbands,) and *idiots*, who are incapable of appointing an attorney, to appear for them in court. The appearance and pleadings of such persons must consequently not purport to be by attorney, nor be so entered on record, whether an attorney in fact be employed or not. See 1 Tidd, Pr. 68, 75; 1 Arch. Pr. 22. The appearance, in common with all other subsequent proceedings supposed to take place in court, should (in accordance with the ancient practice) purport to be in term time. It is to be observed, however, that though the proceedings are expressed as if occurring in term time, yet much business is now, in fact, done during the periods of vacation.

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APPELLANT, *practice*, he who makes an appeal from one jurisdiction to another.

APPELLEE, *practice*. The party in a cause on which an appeal has been made, who is not the appellant.

APPENDANT, is an inheritance belonging to another inheritance. Land cannot be appendant to land; Co. Litt. 121; 4 Co. 86; an incorporeal hereditament may be appendant to land, as a right of way. Appendant differs from appurtenance in this, that the former always arise from prescription, whereas an appurtenance may be created at any time. 1 Tho. Co. Litt. 206; Wood's Inst. 121; Dane's Ab. Index, h. t; 2 Vin. Ab. 594; Com. Dig. h. t.

APPENDITIA, from *appendo*, to hang at or on; the appendages or pertinencies of an estate; the appurtenances to a dwelling, &c.; thus *pent-houses* are the *appenditia domus*, &c.

APPOINTMENT, *in chancery practice*, is the act of a person authorised by a will or other instrument to direct how trust property shall be disposed of, directing such disposition agreeably to the general directions of the trust. The appointment must be made in such a manner as to come within the spirit of the power. And although at law the rule only requires that some allotment, however small, shall be given to each person, when the power is to appoint to and among several persons; the rule in equity differs, and requires a real and substantial portion to each, and a mere nominal allotment to one is deemed illusory and fraudulent. When the distribution is left to discretion, without any prescribed rule, as to *such* of the children as the trustee shall think proper, he may appoint to one only, 5 Ves. 857; but if the words be, *amongst* the children as he should think proper, each must have a share, and the doctrine of illusory appointment applies, 4 Ves. 771; Prec. Ch. 256; 2 Vern. 513. Vide, generally, 1 Supp. to Ves. Jr. 40, 95, 201, 235, 237; 2 Id. 127; 1 Vern. 67, n.; 1 Ves. Jr. 310, n.; 4 Kent, Com. 337; Sugd. on Pow. Index, h. t.; 2 Hill. Ab. Index, h. t.

APPOINTMENT, *government, wills*. The act by which a person is selected and invested with an office; as the appointment of a judge, of which the making out of his commission is conclusive evidence, 1 Cranch, 137, 155. The appointment of an executor, which is done by nominating him as such in a will or testament.

APPORTIONMENT, *contracts*. Lord Coke defines it to be a division or partition of a rent, common, or the like, or the making it into parts. Co. Litt. 147. This definition seems incomplete. Apportionment frequently denotes, not division but distribution; and in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed. 1 Swanst. C. 338, n. Apportionment may be considered in two points of view; 1, when it can take place in relation to the subject-matter of the contract; 2, when there are two or more persons claiming the peformance of the contract, and each of whom is entitled to a proportion; and, 3, when rents can be apportioned as to time.

1. When there is a special contract between the parties, generally speaking according to the rules of the common law, no compensation can be recovered, unless the contract has been entirely fulfilled; the subject of the contract being a complex event, constituted by the performance of various acts, the imperfect completion of the event, by the per-

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formance of some only of those acts, cannot by virtue of that contract of which it is not the subject, afford a title to the whole, or any part of the stipulated benefit. See in support of this principle, 1 Swanst. c. 338, n. and the cases there cited; Story, Bailm. § 441; Chitty, Contr. 168; 3 Watts, R. 331; 2 Mass. R. 147; 2 Id. 436; 3 Hen. & Munf. R. 407; 2 John. Cas. 17.

2. When there is but one debtor and one creditor, neither can apportion the obligation without the consent of the other. In such case the creditor cannot force his debtor to pay him a part of the debt only, and leave the other unpaid, nor can the debtor compel his creditor to receive a part only of what is due him, on account of his claim. But when there is a subsisting obligation to pay a rent, the reversioner may sell his estate in different parts, to as many persons as he may deem proper, and the lessee or tenant will be bound to pay to each a proportion of the rent, 3 Watts, R. 404. By stat. 11 Geo. 2, c. 19, s. 15, the rent due by a tenant for life, who dies during the currency of a quarter of a year, or other division of time at which the rent was made payable, shall be apportioned to the day of his death. Vide 2 Bro. C. C. 662; 8 Ves. 311. See generally, 3 Watts, R. 394; 17 Serg. & Rawle, 171; 3 Vin. Ab. 4; 1 Chitty, Bl. 324; 2 Supp. to Ves. Jun. 237; 6 Bac. Ab. 47; 1 Am. Dig. 267; for the doctrine of the civil law on this subject, see Dumoulin, de dividuo et individuo, 2e part, n. 6 & 7; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 750 et seq. Vide, generally, Stark. Ev. part 4, p. 1622; 1 Taunt. R. 430; 3 Chitty's Comm. Law, 129; Com. Dig. Chancery, 2 E and 4 N 5; 6 T. R. 320; Chitty on Contr. 273; Newl. Contr. 159; Hall's Dig. 63; Long on Sales, 108; 16 Vin. Ab. 138; 22 Vin. Ab. 13, pl. 21; 8 Serg. & Rawle, 299.

3. At common law, there could be no apportionment of rent as to time, either in law or equity. Hence when a lessor, tenant for life, died before the rent day, the rent was lost; the statute 11 Geo. 2, c. 19, was passed to remedy this defect. The states of New York, New Jersey, Missouri, and Delaware, have enacted that if a tenant for life, lessor, die on the rent day, his executors may recover the whole rent; if before, a proportional part of it. In Missouri, Delaware, Kentucky, and New York, when one is entitled to rents depending on the life of another, he may recover them notwithstanding the death of the latter. In Delaware, Virginia, Missouri and Kentucky, it is specially provided, that a husband, after the death of his wife, may recover the rents of her lands, 1 Hill. Ab. c. 16, § 50.

APPOSAL OF SHERIFFS, *in the English law.* The charging them with money received upon account of the Exchequer, 22 Car. 2.

APPOSER, *in the English law.* An officer of the Court of Exchequer, called the foreign apposer.

APPOSTILLE, *French law.* In general this means an addition or annotation made in the margin of an act, [contract in writing,] or of some writing. Merlin, Répertoire.

APPRAISEMENT is a just valuation of property. Appraisements are required to be made of the property of decedents, insolvents and others; an inventory (q. v.) and description (q. v.) of the articles ought to be made and a just valuation put upon them. When property real or personal is taken for public use, an appraisement of it must be made so that the owner may be paid its value.

APPRAISER, *practice.* A per-

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son appointed by competent authority to appraise or value goods; as in cases of the death of a person an appraisement and inventory must be made of the goods of which he died possessed, or was entitled to: appraisers are sometimes appointed to value damages done to property, as when such property is taken for public use, it must be paid for at the appraisement made of it.

APPREHENSION, *practice.*—The capture or arrest of a person.

APPRENTICE, *person, contracts,* is a minor who is bound in due form of law to a master, and who is to learn from him his art, trade or business, and to serve him during the time of his apprenticeship, (q. v.) 1 Bl. Com. 426; 2 Kent, Com. 211; 3 Rawle, R. 307; Chit. on Apprentices.

APPRENTICESHIP, *contracts,* is a contract entered into between a person who understands some art, trade or business, and called the master, and another person during his or her minority, who is called the apprentice, with the consent of his or her parent or next friend; by which the former undertakes to teach such minor his art, trade or business, and to fulfil such other covenants as may be agreed upon; and the latter agrees to serve the master during a definite period of time, in such art trade or business. The term during which the apprentice is to serve is also called his apprenticeship. Pardessus Dr. Com. n. 34. This contract is generally entered into by indenture or deed, and is to continue no longer than the minority of the apprentice. The English statute law as to binding out minors as apprentices to learn some useful art, trade or business, has been generally adopted in the United States, with some variations which cannot be noticed here. 2 Kent, Com. 212. The principal duties of the parties are as follows: 1st, *Duties of the master.* He is bound to instruct the apprentice by teaching him, bona fide, the knowledge of the art of which he has undertaken to teach him the elements. He ought to watch over the conduct of the apprentice, giving him prudent advice and showing him a good example, and fulfilling towards him the duties of a father, as, in his character of master, he stands in loco parentis. He is also required to fulfil all the covenants he has entered into by the indenture. He cannot abuse his authority, either by bad treatment, or by employing his apprentice in menial employments, wholly unconnected with the business he has to learn. He cannot dismiss his apprentice except by application to a competent tribunal, upon whose decree the indenture may be cancelled. After the apprenticeship is at an end, he cannot retain the apprentice on the ground that he has not fulfilled his contract, unless specially authorised by the statute. 2d. *Duties of the Apprentice.* On his side, the apprentice is bound to obey his master in all his lawful commands, take care of his property, and promote his interest, endeavour to learn his trade or business, and perform all the covenants in his indenture not contrary to law. He cannot leave his master's service during the term of the apprenticeship. See, generally, 2 Kent, Com. 211–214; 4 Bac. Ab. 557; 1 Saund. R. 313, n. 1, 2, 3, and 4; 3 Rawle R. 307; 3 Vin. Ab. 19. In Pennsylvania the courts of quarter sessions and the mayors' courts, and the court of criminal sessions for the city and county of Philadelphia, have jurisdiction in apprentice cases, and can rescind the contract and cancel the indentures. The law of France on this subject is strikingly similar to ours.

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Pardessus, Droit Commerc. n. 518–522.

APPRIZING, a name for an action in the Scotch law, by which a creditor formerly carried off the estates of his debtor in payment of debts due to him; in lieu of which adjudications are now resorted to.

APPROPRIATION, *contracts*, is the application of the payment of a sum of money, made by a debtor to his creditor, to one of several debts which are due by the former to the latter. The debtor has a right to appropriate the payment to which debt he pleases; but if, at the time of making such payment, he neglects to make such appropriation, the creditor has a right to make it, unless the circumstances show, or raise an inference that the debtor had, at the time of making payment, an intention to make such an appropriation. The nature of the debts or claims makes no difference. Chitty, Contr. 277; 3 Stark. Ev. 1093, n. (1) for the American cases on this subject; 1 Vern. R. by Raithby, 23, 24; 3 Vin. Ab. 33; Wheat. Dig. tit. Payment. In Louisiana by statutory enactment, Civ. Code, art. 2159, et seq., it is provided that "the debtor of several debts has a right to declare, when he makes a payment, what debt he means to discharge. The debtor of a debt which bears interest or produces rents, cannot without the consent of the creditor, impute to the reduction of the capital, any payment he may make, when there is interest or rent due. When the debtor of several debts has accepted a receipt, by which the creditor has imputed what he has received to one of the debts especially, the debtor can no longer require the imputation to be made to a different debt, unless there have been fraud or surprise on the part of the creditor. When the receipt bears no imputation, the payment must be imputed to the debt which the debtor had at the time most interest in discharging of those that are equally due, otherwise to the debt which has fallen due, though less burdensome than those which are not yet payable. If the debts be of a like nature, the imputation is made to the less burdensome; if all things are equal, it is made proportionally." This is a translation of the Code Napoléon, art. 1253–1256, slightly altered. See Poth. Obl. n. 528, translated by Evans, and the notes.

TO APPROVE, *approbare*; to increase the profits upon a thing; as to approve land by increasing the rent. 2 Inst. 784.

APPROVEMENT, *Eng. crim. law*, is the act by which a person indicted of treason or felony, and arraigned for the same confesses the same before any plea pleaded, and accuses others, his accomplices, of the same crime, in order to obtain his pardon. This practice is disused. 4 Bl. Com. 330.

APPROVEMENT, *in the English law*. 1. The enclosing the common land within the lord's waste, so as to leave egress and regress to the tenant who is a commoner.—2. The augmentation of the profits of land. Stat. of Merton, 20 Hen. 8; F. N. B. 71; Crompt. Just. 250; 1 Lilly's Reg. 110.

APPROVER, *in the English criminal law*. One confessing himself guilty of felony, and approving others of the same crime to save himself. Cromp. Inst. 250; 3 Inst. 129.

APPURTENANCES in common parlance and legal acceptation, is used to signify something belonging to another thing as principal, and which passes as incident to the principal thing. 10 Peters, R. 25; Angell, Wat. C. 43; 1 Serg. & Rawle, 169; Cro. Jac. 121; 3 Saund. 401, n. 2; Wood's Inst. 121;

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4 Rawle R. 342; 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co Litt. 5 b. 56 a, b; 1 Plowd. 171; 2 Saund. 401, n. (2); 1 Lev. 131; 1 Sid. 211.

AQUAGIUM, i. e. aquæ agium: 1. A water course;—2. A toll for water.

ARBITRARY PUNISHM'TS, *practice*. Those punishments which are left to the decision of the judge, in distinction from those which are defined by statute.

ARBITRATION, *practice*, is a reference and submission of a matter in dispute concerning property, or of a personal wrong, to the decision of one or more persons as arbitrators. They are voluntary or compulsory. The *voluntary* are, 1st. Those made by mutual consent, in which the parties select the arbitrators, and bind themselves by bond to abide by their decision; these are made without any rule of court; 3 Bl. Com. 16.—2d. Those which are made in a cause depending in court, by a rule of court, before trial; these are arbitrations at common law, and the award is enforced by attachment, Kyd. on Awards, 21.—3d. Those which are made by virtue of the statute, 9 & 10 Will. 3, c. 15, by which it is agreed to refer a matter in dispute not then in court, to arbitrators, and agree that the submission be made a rule of court, which is enforced as if it had been made a rule of court; Kyd. on Aw. 22; there are two other voluntary arbitrations which are peculiar to Pennsylvania,—4th. The first of these is the arbitration under the act of 1705, which is a reference to arbitrators "chosen by the parties in open court, the award or report of such referees being made according to the submission of the parties, and approved by the court, and entered upon the record or roll, shall have the same effect and shall be deemed and taken to be as available in law as a verdict of twelve men."—5th. Those by virtue of the act of 1806, which authorises "any person or persons desirous of settling any dispute or controversy, by themselves, their agents or attorneys to enter into an agreement in writing, to refer such dispute or controversy to certain persons to be by them mutually chosen; and it shall be the duty of the referees to make out an award and deliver it to the party in whose favour it shall be made, together with the written agreement entered into by the parties; and it shall be the duty of the prothonotary on the affidavit of a subscribing witness to the agreement, that it was duly executed by the parties, to file the same in his office; and on the agreement being so filed as aforesaid, he shall enter the award on record, which shall be as available in law as an award made under a reference issued by the court, or entered on the docket by the parties." *Compulsory* arbitrations are perhaps confined to Pennsylvania. Either party in a civil suit or action, or his attorney, may enter at the prothonotary's office a rule of reference wherein he shall declare his determination to have arbitrators chosen, on a day certain to be mentioned therein not exceeding thirty days, for the trial of all matters in variance in the suit between the parties. A copy of this rule is served on the opposite party. On the day appointed they meet at the prothonotary's, and endeavour to agree upon arbitrators; if they cannot, the prothonotary makes out a list on which are inscribed the names of a number of citizens, and the parties alternately strike each one of them from the list, beginning with the plaintiff, until there are but the number agreed upon or fixed by the prothonotary left, who are to be the arbitrators; a time of meeting is then agreed upon—or appointed by

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the prothonotary, when the parties cannot agree,—at which time the arbitrators, after being sworn or affirmed justly and equitably to try all matters in variance submitted to them, proceed to hear and decide the case; their award is filed in the office of the prothonotary and has the effect of a judgment, subject, however to appeal, which may be entered at any time within twenty days after the filing of such award. Act of 16th June, 1836, Pamphl. p. 715. This is somewhat similar to the arbitrations of the Romans; there the prætor selected from a list of citizens made for the purpose, one or more persons who were authorised to decide all suits submitted to them, and which had been brought before him; the authority which the prætor gave them conferred on them a public character, and their judgments were without appeal. Toull. Dr. Civ. Fr. liv. 3, t. 3, ch. 4, n. 820. See generally, Kyd. on Awards; Caldwell on Arbitrations; 1 Bac. Ab. 201; 1 Salk. R. 69, 70–75; 2 Saund. R. 133, n. 7; 2 Sell. Pr. 241; Doct. Pl. 96; 3 Vin. Ab. 40.

ARBITRATOR. A private extraordinary judge chosen by the parties who have a matter in dispute, invested with power to decide the same. Arbitrators are so called because they have generally an arbitrary power, there being in common no appeal from their sentences, which are called awards. Vide Caldw. on Arb. Index, h. t.; Kyd on Awards, Index. h. t.

ARCHES' COURT. Vide Court of Arches.

ARCHIVES. Ancient charters or titles, which concern a nation, state or community, in their rights or privileges. The place where the archives are kept, bears the same name. Jacob; Merl. Rép. h. t.

ARGUMENT, *practicé*. Cicero defines it a probable reason proposed in order to induce belief. Ratio probabilis et idonea ad faciendam fidem. The logicians define it more scientifically to be a means, which by its connexion between two extremes, establishes a relation between them. This subject belongs rather to rhetoric and logic than to law.

ARGUMENTUM AB INCONVENIENTI. An argument arising from the inconvenience which the construction of the law would create, is to have effect only in a case where the law is doubtful; where the law is certain, such an argument is of no force. 1 Bac. Ab. 491.

ARISTOCRACY is that form of government in which the sovereign power is exercised by a small number of persons to the exclusion of the remainder of the people.

ARKANSAS. The name of one of the new states of the United States. It was admitted into the Union by the act of Congress of June 15th, 1836, 4 Sharsw. cont. of Story's L. U. S. 2444, by which it is declared that the state of Arkansas shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

ARMS. Any thing that a man wears for his defence, or takes in his hands, or uses in his anger, to cast at or strike at another. Crompt. Just. P. 65; Cunn. Dict. h. t. The Constitution of the United States, Amendm. art. 2, declares that "a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Vide Story, Const. § 1889, 1890; Amer. Citizen, 176; 1 Tuck. Black. App. 300; Rawle on Const. 125.

ARMISTICE. Vide *Truce*.

ARPENT. A quantity of land

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containing a French acre. 4 Hall's Law Journal, 518.

ARPENTATOR, from *arpent*, a measurer or surveyor of land.

ARRAIGNMENT, *crim. law, practice*, signifies the calling of the defendant to the bar of the court, to answer the accusation contained in the indictment. It consists of three parts.

1. Calling the defendant to the bar by his name, and commanding him to hold up his hand; this is done for the purpose of completely identifying the prisoner as the person named in the indictment; the holding up his hand is not, however, indispensable, for if the prisoner should refuse to do so, he may be identified by any admission, that he is the person intended.

2. The reading of the indictment to enable him fully to understand the charge to be produced against him. The mode in which it is read is, after saying, "A B, hold up your hand," to proceed, "you stand indicted by the name of A B, late of, &c. for that you, on, &c." and then go through the whole of the indictment.

3. After this is concluded, the clerk proceeds to the third part by adding, "How say you, A B, are you guilty or not guilty?" upon this, if the prisoner confesses the charge, the confession is recorded, and nothing further is done till judgment; if, on the contrary he answers "not guilty," that plea is entered for him, and the clerk replies that he is guilty; when an issue is formed.

Vide generally, Dalt. J. h. t.; Burn's J. h. t.; Williams's J. h. t.; 4 Bl. Com. 322; Harg. St. Tr. 4 vol. 777, 661; 2 Hale, 219; Cro. C. C. 7; 1 Chit. Cr. Law, 414.

ARRAS, *Span. law*. The property contributed by the husband, ad sustinenda onera matrimonii, is called *arras*. The husband is under no obligation to give arras, but it is a donation purely voluntary. He is not permitted to give in *arras* more than a tenth of his property. The *arras* is the exclusive property of the wife, subject to the husband's usufruct during his life. Burge on the Confl. of Laws, 417.

ARRAY, *practice*, is the whole body of jurors summoned to attend a court, as they are *arrayed* or arranged on the panel. Vide *Challenges*, and Dane's Ab. Index, h. t.; 1 Chit. Cr. Law, 536; Com. Dig. Challenge, B.

ARREARAGE, money remaining unpaid after it becomes due; as rent unpaid; interest remaining due; Pow. Mortgages, Index, h. t.; a sum of money remaining in the hands of an accountant. Merl. Rép. h. t.; Dane's Ab. Index, h. t.

ARREST IN CIVIL CASES, *practice*. An arrest is the apprehension of a person by virtue of a lawful authority, to answer the demand against him in a civil action. Arrests are made either on mesne or final process. 1. An arrest on mesne process is made in order that the defendant shall answer after judgment, to satisfy the claim of the plaintiff; on being arrested, the defendant is entitled to be liberated on giving sufficient bail, which the officer is bound to take. When the arrest is on final process, as a ca. sa., the defendant cannot generally be discharged on bail; and his discharge is considered as an escape. In Pennsylvania, a defendant on being arrested on final process, may give a bond, to be approved by an officer designated by law, with a condition that he will apply for, and take the benefit of the acts of insolvency or surrender himself to prison. Vide, generally, Yelv. 29;

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a, note; 3 Bl. Com. 288, n.; 1 Sup. to Ves. Jr. 374; Wats. on Sher. 87; 11 East, 440; 18 E. C. L. R. 169, note.

ARREST, *in criminal cases*, is the apprehending or detaining of the person, in order to be forthcoming to answer an alleged or suspected crime. It will be convenient to consider, 1, who may be arrested; 2, for what crimes; 3, at what time; 4, in what places; 5, by whom and by what authority.—1. *Who may be arrested.* Generally all persons properly accused of a crime or misdemeanor, may be arrested; by the laws of the United States, ambassadors (q. v.) and other public ministers are exempt from arrest. —2. *For what offences an arrest may be made.* It may be made for treason, felony, breach of the peace or other misdemeanor.—3. *At what time.* An arrest may be made in the night as well as in the day time; and for treasons, felonies, and breaches of the peace, on Sunday as well as on other days. It may be made before as well as after indictment found. Wallace's R. 23.—4. *In what places.* No place affords protection to offenders against the criminal law; a man may therefore be arrested in his own house (q. v.) which may be broken for the purpose of making the arrest.—5. *Who may arrest and by what authority.* An offender may be arrested either without a warrant or with a warrant. First, it may be made without a warrant by a private individual or by a peace officer. *Private* individuals are enjoined by law to arrest an offender when present at the time a felony is committed, or a dangerous wound given, 11 Johns. R. 486; and vide Hawk. B. 1, c. 12, s. 1; c. 13, s. 7, 8; 4 Bl. Com. 292; 1 Hale, 587; Com. Dig. Imprisonment, (H 4); Bac. Ab. Trespass, (D 3.) *Peace officers* may, a fortiori, make an arrest for a crime or misdemeanor committed in their view, without any warrant; 8 Serg. & R. 47. An arrest may therefore be made by a constable, (q. v.) a justice of the peace (q. v.), sheriff, (q. v.) and coroner, (q. v.) Secondly, an arrest may be made by virtue of a warrant (q. v.) which is the proper course when the circumstances of the case will permit it. Vide, generally, 1 Chit. Cr. Law, 11 to 71; Russ. on Cr. Index, h. t.

ARREST OF JUDGMENT, see *Judgment, Arrest of.*

ARRESTANDIS *bonis ne dissipentur*, in the English law, a writ for him whose cattle or goods, being taken during a controversy, are likely to be wasted and consumed.

ARRESTEE, *in the law of Scotland*, is he in whose hands a debt, or property in his possession, has been arrested by a regular arrestment. If, in contempt of the arrestment, he shall make payment of the sum, or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester. Ersk. Pr. L. Scot. 3, 6, 6.

ARRESTMENT, *in the Scotch law;* by this term is sometimes meant the securing of a criminal's person till trial, or that of a debtor till he give security judicio sisty, Ersk. Pr. L. Scot. 1, 2, 12. It is also the order of a judge, by which he who is debtor in a moveable obligation to the arrester's debtor, is prohibited to make payment or delivery till the debt due to the arrester be paid or secured, Ersk. Pr. L. Scot. 3, 6, 1. See *Attachment, foreign.* Where arrestment proceeds on a depending action, it may be loosed by the common

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debtor's giving security to the arrester for his debt, in the event it shall be found due. Ib. 3, 6, 7.

ARRESTER, *in the law of Scotland*, is one who sues out and obtains an arrestment of his debtor's goods or moveable obligations. Ersk. Pr. L. Scot., 3, 6, 1.

ARRETTED, *arrectatus*, i. e. *ad rectum vocatus;* convened before a judge and charged with a crime. —*Ad rectum malefectorem*, is, according to Bracton, to have a malefactor forthcoming to be put on his trial. Sometimes it is used for imputed or laid to his charge; as, no folly may be *arretted* to any one under age, Bract. l. 3, tr. 2, c. 10; Cunn. Dict. h. t.

ARRHÆ, *contracts, in the civil law*, are money or other valuable things given by the buyer to the seller for the purpose of evidencing the contract; earnest. There are two kinds of arrhæ; one kind given when a contract has only been proposed; the other when a sale has actually taken place. Those which are given when a bargain has been merely proposed, before it has been concluded, form the matter of the contract, by which he who gives the arrhæ consents and agrees to lose them, and to transfer the title to them in the opposite party, in case he should refuse to complete the proposed bargain; and the receiver of the arrhæ is obliged on his part, to return double the amount to the giver of them in case he should fail to complete his part of the contract. Poth. Contr. de Vente, n. 498. After the contract of sale has been completed, the purchaser usually gives arrhæ as evidence that the contract has been perfected; arrhæ are therefore defined quod antè pretium datur, et fidem fecit contractûs, facti totiusque pecuniæ solvendæ. Ib. n. 506; Code, 4, 45, 2.

ARROGATION, *civil law*, signifies nearly the same as adoption; the only difference between them is this, that adoption was of a person under full age, but as arrogation required the person arrogated, no one could be arrogated till he was of full age. Dig. 1, 7, 5; Inst. I, 11, 3; 1 Brown's Civ. Law, 119.

ARSER IN LE MAIN. Burning in the hand. This punishment was inflicted on those who received the benefit of clergy. Terms de la Ley.

ARSON, *criminal law*, is at common law an offence of the degree of felony; and is defined by Lord Coke to be the malicious and voluntary burning the house of another, by night or day; 3 Inst. 66. In order to make this crime complete there must be, 1st, a burning of the house, or some part of it; it is sufficient if any part be consumed, however small it may be. 2nd. The house burned must belong to another; but if a man set fire to his own house with a view to burn his neighbour's, and does so, it is at least a great misdemeanor, if not a felony, 1 Hale P. C. 568; 2 East P. C. 1027; 2 Russ. 487. 3d. The burning must have been both malicious and wilful.

The offence of arson at common law does not extend further than the burning of the *house* of another. By statute this crime is greatly enlarged in some of the states, as in Pennsylvania, where it is extended to the burning of any barn, or outhouse having hay or grain therein; any barrack, rick or stack of hay, grain or bark; any public buildings, church or meeting-house, college, school or library. Act 23 April, 1829; 2 Russell on Crimes, 486; 1 Hawk. P. C. c. 39; 4 Bl. Com. 220; 2 East, P. C. c. 21, s. 1, p.

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1015; 16 John. R. 203; 16 Mass. 105; as to the extension of the offence by the laws of the United States, see stat. 1825, c. 276, 3 Story's L. U. S. 1999.

ARSURA. The trial of money by fire after it was coined. This word is obsolete.

ART. The power of doing something not taught by nature or instinct; Johnson. The arts are divided into mechanical and liberal arts. The mechanical arts are those which require more bodily than mental labour; they are usually called trades, and those who pursue them are called artisans or mechanics. The liberal are those which have for the sole or principal object, works of the mind, and those who are engaged in them are called artists; Pard. Dr. Com. n. 35.

ART AND PART, *in the Scotch law*, is where one is accessary to a crime committed by another; a person may be guilty, art and part, either by giving advice or counsel to commit the crime; or, 2, by giving warrant or mandate to commit it; or, 3, by actually assisting the criminal in the execution.

In the more atrocious crimes, it seems agreed, that the adviser is equally punishable with the criminal; and that in the slighter offences, the circumstances arising from the adviser's lesser age, the jocular or careless manner of giving the advice, &c., may be received as pleas for softening the punishment.

One who gives a mandate to commit a crime, as he is the first spring of the action, seems more guilty than the person employed as the instrument in executing it.

Assistance may be given to the committer of a crime, not only in the actual execution, but previous to it, by furnishing him, with a criminal intent, with poison, arms, or other means of perpetrating it. That sort of assistance which is not given till after the criminal act, and which is commonly called abetting, though it be itself criminal, does not infer art and part of the principal crime. Ersk. Pr. L. Scot. 4, 4, 4; Mack. Cr. Treat. Tit. Art and Part.

ARTICLES OF AGREEMENT, *in contracts*, relate either to real or personal estate, or to both. An article is a memorandum or minute of an agreement, reduced to writing to make some future disposition or modification of property; and such an instrument will create a trust or equitable estate, of which a specific performance will be decreed in chancery. Cruise on Real Pr. tit. 32, c. 1, s. 31. And see Ib. tit. 12, c. 1.

ARTICLES OF CONFEDERATION. The compact which was made by the original thirteen states of the United States of America, bore the name of the "Articles of Confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolinia, South Carolina, and Georgia." It was adopted and went into force on the first day of March, 1781, and remained as the supreme law until the first Wednesday of March, 1789; 5 Wheat. R. 420. The following analysis of this celebrated instrument is copied from Judge Story's Commentaries on the constitution of the United States, Book 2, c. 3.

"In pursuance of the design already announced, it is now proposed to give an analysis of the articles of confederation, or, as they are denominated in the instrument itself,

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the "Articles of Confederation and Perpetual Union between the States," as they were finally adopted by the thirteen states in 1781.

"The style of the confederacy was, by the first article, declared to be, 'The United States of America.' The second article declared, that each state retained its sovereignty, freedom, and independence, and every power, jurisdiction and right, which was not by this confederation *expressly* delegated to the United States, in congress assembled. The third article declared, that the states severally entered into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, on any of them, on account of religion, sovereignty, trade, or any other pretence whatever. The fourth article declared, that the free inhabitants of each of the states (vagabonds and fugitives from justice excepted) should be entitled to all the privileges of free citizens in the several states; that the people of each state should have free ingress and regress to and from any other state, and should enjoy all the privileges of trade and commerce, subject to the same duties and restrictions, as the inhabitants; that fugitives from justice should, upon demand of the executive of the state, from which they fled, be delivered up; and that full faith and credit should be given, in each of the states, to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

"Having thus provided for the security and intercourse of the states, the next article (5th) provided for the organization of a general congress, declaring that delegates should be chosen in such manner, as the legislature of each state should direct; to meet in congress on the first Monday in every year, with a power, reserved to each state, to recall any or all of the delegates, and to send others in their stead. No state was to be represented in congress by less than two, nor more than seven members. No delegate was eligible for more than three, in any term of six years; and no delegate was capable of holding any office of emolument under the United States. Each state was to maintain its own delegates; and, in determining questions in congress, was to have one vote. Freedom of speech and debate in congress was not to be impeached or questioned in any other place; and the members were to be protected from arrest and imprisonment, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

"By subsequent articles, congress was invested with the sole and exclusive right and power of determining on peace and war, unless in case of an invasion of a state by enemies, or an imminent danger of an invasion by Indians; of sending and receiving ambassadors; entering into treaties and alliances, under certain limitations, as to treaties of commerce; of establishing rules for deciding all cases of capture on land and water, and for the division and appropriation of prizes taken by the land or naval forces, in the service of the United States; of granting letters of marque and reprisal in times of peace; of appointing courts for the trial of piracies and felonies committed on the high seas; and of establishing courts for receiving and finally determining appeals in all cases of captures.

"Congress was also invested with power to decide in the last resort, on appeal, all disputes and differences

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between two or more states concerning boundary, jurisdiction, or any other cause whatsoever; and the mode of exercising that authority was specially prescribed. And all controversies concerning the private right of soil, claimed under different grants of two or more states before the settlement of their jurisdiction, were to be finally determined in the same manner, upon the petition of either of the grantees. But no state was to be deprived of territory for the benefit of the United States.

"Congress was also invested with the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or that of the United States; of fixing the standard of weights and measures throughout the United States; of regulating the trade and managing all affairs with the Indians, not members of any of the states, provided, that the legislative right of any state within its own limits should be not infringed or violated; of establishing and regulating post-offices from one state to another, and exacting postage to defray the expenses; of appointing all officers of the land forces in the service of the United States, except regimental officers; of appointing all officers of the naval forces, and commissioning all officers whatsoever in the service of the United States; and of making rules for the government and regulation of the land and naval forces, and directing their operations.

"Congress was also invested with authority to appoint a committee of the states to sit in the recess of congress, and to consist of one delegate from each state, and other committees and civil officers, to manage the general affairs under their direction; to appoint one of their number to preside, but no person was to serve in the office of president more than one year in the term of three years; to ascertain the necessary sums for the public service, and to appropriate the same for defraying the public expenses; to borrow money, and emit bills on credit of the United States; to build and equip a navy; to agree upon the number of land forces, and make requisitions upon each state for its quota, in proportion to the number of white inhabitants in such state. The legislature of each state were to appoint the regimental officers, raise the men, and clothe, arm, and equip them at the expense of the United States.

"Congress was also invested with power to adjourn for any time not exceeding six months, and to any place within the United States; and provision was made for the publication of its journal, and for entering the yeas and nays thereon, when desired by any delegate.

"Such were the powers confided in congress. But even these were greatly restricted in their exercise; for it was expressly provided, that congress should never engage in a war; nor grant letters of marque or reprisal in time of peace; nor enter into any treaties or alliances; nor coin money, or regulate the value thereof; nor ascertain the sums or expenses necessary for the defence and welfare of the United States; nor emit bills; nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of vessels of war to be built, or purchased; or the number of land or sea forces to be raised; nor appoint a commander in chief of the army or navy; unless nine states should assent to the same. And no question on any other point, except for adjourning from day to day, was to be determined, except by a vote of the majority of the states.

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"The committee of the states or any nine of them, were authorized in the recess of congress to exercise such powers, as congress, with the assent of nine states, should think it expedient to vest them with, except such powers, for the exercise of which, by the articles of confederation, the assent of nine states was required, which could not be thus delegated.

"It was further provided, that all bills of credit, moneys borrowed, and debts contracted by or under the authority of congress before the confederation, should be a charge against the United States; that when land forces were raised by any state for the common defence, all officers of or under the rank of colonel should be appointed by the legislature of the state, or in such manner as the state should direct; and all vacancies should be filled up in the same manner; that all charges of war, and all other expenses for the common defence or general welfare, should be defrayed out of a common treasury, which should be supplied by the several states, in proportion to the value of the land within each state granted or surveyed, and the buildings and improvements thereon to be estimated according to the mode prescribed by congress; and the taxes for that proportion were to be laid and levied by the legislatures of the states within the time agreed upon by congress.

"Certain prohibitions were laid upon the exercise of powers by the respective states. No state, without the consent of the United States, could send an embassy to, or receive an embassy from, or enter into, any treaty with any king, prince, or state; nor could any person holding any office under the United States, or any of them, accept any present, emolument, office or title, from any foreign king, prince or state; nor could congress itself grant any title of nobility. No two states could enter into any treaty, confederation, or alliance with each other, without the consent of congress. No state could lay any imposts or duties, which might interfere with any then proposed treaties. No vessels of war were to be kept up by any state in time of peace, except deemed necessary by congress for its defence, or trade, nor any body of forces, except such, as should be deemed requisite by congress to garrison its forts, and necessary for its defence. But every state was required always to keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and to be provided with suitable field-pieces, and tents, and arms, and ammunition, and camp-equipage. No state could engage in war without the consent of congress, unless actually invaded by enemies, or in danger of invasion by the Indians. Nor could any state grant commissions to any ships of war, nor letters of marque and reprisal, except after a declaration of war by congress, unless such state were infested by pirates, and then subject to the determination of congress. No state could prevent the removal of any property imported into any state to any other state, of which the owner was an inhabitant. And no imposition, duties, or restriction, could be laid by any state on the property of the United States or of either of them.

"There was also provision made for the admission of Canada into the union, and of other colonies with the assent of nine states. And it was finally declared, that every state should abide by the determinations of congress on all questions submitted to it by the confederation; that the articles should be inviolably observed by every state; that *the*

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union should be perpetual; and that no alterations should be made in any of the articles, unless agreed to by congress, and confirmed by the legislatures of every state.

"Such is the substance of this celebrated instrument, under which the treaty of peace, acknowledging our independence, was negotiated, the war of the revolution concluded, and the union of the states maintained until the adoption of the present constitution."

ARTICLES OF IMPEACHMENT. An instrument, which in cases of impeachment, (q. v.) is used, and performs the same office which an indictment does in a common criminal case, is known by this name. These articles do not usually pursue the strict form and accuracy of an indictment. Woods. Lect. 40, p. 605; Foster, 389, 390; Com. Dig. Parliament, L 21. They are sometimes quite general in the form of the allegations, but always contain, or ought to contain, so much certainty, as to enable the party to put himself on the proper defence, and in case of an acquittal, to avail himself of it, as a bar to another impeachment. Additional articles may, perhaps, be exhibited at any stage of the prosecution. Story on the Const. § 806; Rawle on the Const. 216. The answer to articles of impeachment is exempted from observing great strictness of form; and it may contain arguments as well as facts. It is usual to give a full and particular answer to each article of the accusation. Story, § 808.

ARTICLES OF WAR. The name commonly given to a code made for the government of the army. The act of April 10, 1806, 2 Story's Laws U. S. 992, contains the rules and articles by which the armies of the United States shall be governed. The act of April 23, 1800, 1 Story's L. U. S. 761, contains the rules and regulations for the government of the navy of the United States.

ARTICLES, *eccl. law*, a complaint in the form of a libel, exhibited to an ecclesiastical court.

ARTICULATE ADJUDICATION, a term used in the Scotch law in cases where there is more than the debt due to the adjudging creditor, when it is usual to accumulate each debt by itself, so that any error which may arise in ascertaining one of the debts need not reach to all the rest.

ARTIFICERS. Persons whose employment or business consists chiefly of bodily labour. Those who are masters of their arts. Cunn. Dict. h. t. Vide *Art.*

AS. The name of a kind of money among the Romans. They divided it into twelve parts or twelve ounces, which made a Roman pound. The Romans also divided an inheritance into twelve parts, the whole inheritance was therefore called *as*, whence this expression, hæres ex asse, or, legetarius ex asse, the heir of the whole estate.

ASCENDANTS, are those from whom a person is descended or from whom he derives his birth, however remote they may be. Every one has two ascendants at the first degree, his father and mother; four at the second degree, his paternal grandfather and grandmother, and his maternal grandfather and grandmother; eight at third. Thus in going up we ascend by various lines which fork at every generation. By this progress sixteen ascendants are found at the fourth degree; thirty-two, at the fifth; sixty-four, at the sixth; one hundred and twenty-eight at the seventh, and so on; by this progressive increase, a person has at the twenty-fifth generation, thirty-three millions five hundred and

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fifty-four thousand, four hundred and thirty-two ascendants. But as many of the ascendants of a person have descended from the same ancestor, the lines which were forked, reunite to the first common ancestor, from whom the others descend; and this multiplication thus frequently interrupted by the common ancestors, may be reduced to a few persons. Vide *Line*.

ASPORTATION. Vide *Carrying away*.

ASSASSIN, *crim. law*. An assassin is one who attacks another either traitorously, or with the advantage of arms or place, or of a number of persons who support him, and kills him. This being done with malice aforethought is murder. The term assassin is but little used in the common law, it is borrowed from the civil law.

ASSASSINATION, *crim. law*, is a murder committed by an assassin.

ASSAULT, *crim. law*. An assault is any attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it. 6 Rogers's Rec. 9. When the injury is actually inflicted, it amounts to a battery, (q. v.) Assaults are either simple or aggravated. 1. A simple assault is one where there is no intention to do any other injury. This is punished at common law by fine and imprisonment. 2. An aggravated assault is one that has in addition to the bare intention to commit it, another object which is also criminal; for example if a man should fire a pistol at another and miss him, the former would be guilty of an assault with intent to murder; so an assault with intent to rob a man, or with intent to spoil his clothes and the like are aggravated assaults, and they are more severely punished than simple assaults. General references, 1 East, P. C. 406; Bull. N. P. 15; Hawk. P. C. b. 1, c. 62, s. 12; 1 Russ. Cr. 604; 2 Camp. Rep. 650; 1 Wheeler's Cr. C. 364; 6 Rogers's Rec. 9; 1 Serg. & Rawle, 347; 1 Bac. Ab. 242; Roscoe, Cr. Ev. 210.

ASSAY. A chemical examination of metals by which the quantity of valuable or precious metal contained in any mineral or metallic mixture is ascertained. By the acts of congress of March 3, 1823, 3 Story's L. U. S. 1924; of June 25, 1834, 4 Sharsw. cont. of Story's L. U. S. 2373; and of June 28, 1834, Ibid. 2377, it is made the duty of the secretary of the treasury to cause assays to be made at the mint of the United States, of certain coins made current by the said acts, and to make report of the result thereof to congress.

ASSEMBLY, is a reunion of a number of persons in the same place. There are several kinds of assemblies. Political, authorised by the constitution and laws; for example, the general assembly which includes, the senate and house of representatives; the meeting of the electors of president and vice-president of the United States, may also be called an assembly. Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. Const. U. S. Amendm. art. 1; Const. of Penn. art. 9, s. 20.

ASSEMBLY, *unlawful, in criminal law*, the meeting of three or more persons to do an unlawful act, although they may not carry their purpose into execution. It differs

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from a riot or rout (q. v.) because in each of the latter cases there is some act done besides the simple meeting.

ASSENT, *contracts*, is an agreement to something that has been done before. It is either express, where it is openly declared; or implied, where it is presumed by law. For instance, when a conveyance is made to a man, his assent to it is presumed, for the following reasons; 1. Because there is a strong intendment of law, that it is for a person's benefit to take, and no man can be supposed to be unwilling to do that which is for his advantage.—2. Because it would seem incongruous and absurd, that when a conveyance is completely executed on the part of the grantor, the estate should continue in him.—3. Because it is contrary to the policy of law to permit the freehold to remain in suspense and uncertainty. 2 Ventr. 201; 3 Mod. 296; 3 Lev. 284; Show. P. C. 150; 3 Barn. & Alders. 31; 1 Binn. R. 502. A dissent properly expressed would prevent the title from passing from the grantor unto the grantee. 12 Mass. R. 461. See 3 Munf. R. 345; 4 Munf. R. 332, pl. 9; 5 Serg. & Rawle, 523; 20 Johns. R. 184. The rule requiring an express dissent does not apply however when the grantee is bound to pay a consideration for the thing granted. 1 Wash. C. C. Rep. 70.

TO ASSESS, 1. To rate or to fix the proportion which every person has to pay of any particular tax. 2. To assess damages is to ascertain what damages are due to the plaintiff; in actions founded on writings in many cases after interlocutory judgment, the prothonotary is directed to assess the damages; in cases sounding in tort the damages are assessed on a writ of inquiry by the sheriff and a jury.

ASSESSMENT, is the making out a list of property and fixing its valuation or appraisement; it is also applied to making out a list of persons, and appraising their several occupations, chiefly with a view of taxing the said persons and their property.

ASSESSORS, *in the civil law*, were so called from the word *adsidere*, which signifies to be seated with the judge. They were lawyers who were appointed to assist by their advice the Roman magistrates, who were generally ignorant of law, being mere military men. Dig. lib. 1, t. 22; Code, lib. 1 t. 51. In our law, an assessor is one who has been legally appointed to value and appraise property, generally with a view of laying a tax on it.

ASSETS. The property in the hands of an heir, executor, administrator or trustee, which is legally or equitably liable to discharge the obligations, which such heir, executor, administrator or other trustee, is, as such, required to discharge, is called assets. The term is derived from the French word *assez*, enough, that is, the heir or trustee has enough property. But the property is still called assets although there may not be enough to discharge *all* the obligations; and the heir, executor, &c. is chargeable in distribution as far as such property extends. Assets are sometimes divided by all the old writers, into assets enter mains and assets per descent; considered as to their mode of distribution, they are legal or equitable; as to the property from which they arise, they are real or personal.

Assets enter mains, or assets in hand, is such property as at once comes to the executor or other trustee for the purpose of satisfying claims against him as such. Termes de la Ley.

Assets per descent, is that portion of the ancestor's estate which descends to the heir, and which is

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sufficient to charge him, as far as it goes, with the specialty debts of his ancestor. 2 Williams on Ex. 1011.

Legal assets, are such as constitute the fund for the payment of debts according to their legal priority.

Equitable assets, are such as can be reached only by the aid of a court of equity, and are to be divided, *pari passu*, among all the creditors; as when a debtor has made his property subject to his debts generally, which, without his act, would not have been so subject. 1 Madd. Ch. 586; 2 Fonbl. 401, et seq.; Willis on Trust. 118.

Real assets, are such as descend to the heir, as an estate in fee simple.

Personal assets, are such goods and chattels to which the executor or administrator is entitled.

Vide, generally, Williams on Exec. Index, h. t.; Toll. on Exec. Index, h. t.; 2 Bl. Com. 510, 511; 3 Vin. Ab. 141; 11 Vin. Ab. 239; 1 Vern. 94; 3 Ves. Jr. 117; Gordon's Law of Decedents, Index, h. t; Ram on Assets.

TO ASSIGN, *contracts, practice.* 1. To make a right over to another; as to assign an estate, an annuity, a bond, &c. over to another. 5 John. Rep. 391. 2. To appoint; as to appoint a deputy, &c. Justices are also said to be assigned to keep the peace. 3. To set forth or point out, as to "assign errors," to show where the error is committed; or to assign false judgment, to show wherein it was unjust. F. N. B. 19.

ASSIGNATION, *in the Scotch law*, the ceding or yielding a thing to another of which intimation must be made.

ASSIGNEE. One to whom an assignment has been made. Vide Assigns, and 1 Vern. 425; 1 Salk. 81; 7 East, 337; 2 Bac. Ab. 70, 75; 3 Saund. 182, note 1; Arch. Civ. Pl. 50, 58, 70; 1 Supp. to Ves. Jr. 72; 2 Phil. Ev. Index, h. t.

ASSIGNMENT, *contracts.* In common parlance this word signifies the transfer of all kinds of property, real, personal and mixed, and whether the same be in possession or in action; as, a general assignment. In a more technical sense it is usually applied to the transfer of a term for years; but it is more properly used to signify a transfer of some particular estate or interest in lands. The proper technical words of an assignment are assign, transfer and set over; but the words grant, bargain and sell, or any other words which will show the intent of the parties to make a complete transfer, will amount to an assignment. A chose in action cannot be assigned at law, though it may be done in equity; but the assignee takes it subject to all the equity to which it was liable in the hands of the original party. 2 John. Ch. Rep. 443, and the cases there cited. 2 Wash. Rep. 233. The deed in which an assignment is written is also called an assignment. Vide, generally, Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Nelson's Ab. h. t.; Civ. Code of Louis. art. 2612. In relation to general assignments, see Angell on Assignments, passim.

ASSIGNS, *contracts*, means those to whom rights have been transmitted by particular title, such as sale, gift, legacy, transfer or cession. Vide Ham. Parties, 230; Lofft. 316.

ASSIZE, *Eng. law.* A particular court where writs of assize and other causes were decided. Vide Dane's Ab. Index, h. t.; Bract. lib. 3; Merl. Répert. h. t.

ASSOCIATE. This term is applied to a judge who is not the president of a court, as associate judge.

ASSUMPSIT, *in contracts*, is an undertaking, either express or implied, to perform a parol agreement. 1 Lilly's Reg. 132.

ASSUMPSIT *in practice*, is a

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form of action which may be defined to be an action for the recovery of damages for the non-performance of a parol or simple contract, or in other words, a contract not under seal or of record, circumstances which distinguish this remedy from others, 7 T. R. 351. This action is not maintainable unless there have been an *express* contract, or unless the law will *imply* a contract. On an express contract the plaintiff must declare on it; this is called a special assumpsit.

ASSURANCE, *comm. law.* Insurance, (q. v.)

ASSURANCE, *conveyancing.*—The deed by which lands and tenements are conveyed. Vide Touchst. on Com. Assurances.

ASYLUM. A place of refuge where debtors and criminals fled for safety. At one time in Europe, churches and other consecrated places served as asylums to the disgrace of the law. These never protected criminals in the United States. It may be questioned whether the house of an ambassador, (q. v.) would not afford protection, temporarily, to a person who should take refuge there.

ASSYTHMENT, *in the Scotch law*, is an indemnification which a criminal is bound to make to the party injured or his executors, though the crime itself should be extinguished by pardon. Ersk. Pr. L. Scot. 4, 3, 13.

ATHEIST, one who denies the existence of God. As atheists have not any religion that can bind their consciences to speak the truth, they are excluded from being witnesses. Bull. N. P. 292; 1 Atk. 40; Gilb. Ev. 129: 1 Phil. Ev. 19. See also, Co. Litt. 6 b.; 2 Inst. 606; 3 Inst. 165; Willes R. 541; Hawk. P. C., B. 2, c. 46, s. 148; 2 Hale's P. C. 279.

TO ATTACH, *crim. law, practice*, to take or apprehend by virtue of the order of a writ or precept, commonly called an attachment. It differs from arrest in this, that he who arrests a man, takes him to a person of higher power, to be disposed of; but he who attaches, keeps the party attached, according to the exigency of his writ, and brings him into court on the day assigned. Kitch. 279; Bract. lib. 4; Fleta, lib. 5, c. 24.

ATTACHMENT, *crim. law, practice*, is a writ requiring the sheriff to arrest a particular person, who has been guilty of a contempt of court, and to bring the offender before the court. Tidd's Pr. Index, h. t.; Grah. Pr. 555.

ATTACHMENT, *remedies*, is a writ issued by a court of competent jurisdiction, commanding the sheriff or other proper officer to seize any property, credit or right belonging to the defendant, in whatever hands the same may be found, to satisfy the demand which the plaintiff has against him. In some of the states this process can be issued only against absconding debtors, or those who conceal themselves; in others it is issued in the first instance, so that the property attached may respond to the exigency of the writ, and satisfy the judgment.

In New York, when a person who is indebted within the state, absconds, or is concealed, a creditor to whom he owes one hundred dollars, or any two creditors to whom he owes one hundred and fifty dollars, or any three to whom he owes two hundred dollars may on application to a judge or commissioner, on legal proof of the departure or concealment, procure his real or personal estate to be attached; and on due public notice of the proceedings, if, within three months, the debtor does not return and satisfy the creditor,

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or appear and contest the validity of the demand, and give the requisite security, then trustees are to be appointed, in whom the debtor's estate becomes vested; and they are to collect and sell it, settle controversies, and make dividends among all his creditors in the mode prescribed. From the time of the notice, all sales and assignments are declared void. The property of a debtor who resides out of the state may be attached and sold in like manner, but the trustees are not to be appointed until one year after public notice of the proceeding. Persons imprisoned in the state prison for a less period than life, are liable to be proceeded against as absconding debtors. 2 Kent, Com. 327.

There are two kinds of attachment in Pennsylvania, the foreign attachment, and the domestic attachment. 1. The *foreign* attachment is a mode of proceeding by a creditor against the property of his debtor, when the debtor is out of the jurisdiction of the state, and is not an inhabitant of the same. The object of this process is in the first instance to compel an appearance by the debtor, although his property may eventually be made liable to the amount of the plaintiff's claim. It will be proper to consider, 1, by whom it may be issued; 2, against what property; 3, mode of proceeding.—1. The plaintiff must be a creditor of the defendant: the claim of the plaintiff need not, however, be technically a debt, but it may be such on which an action of assumpsit would lie, but an attachment will not lie for a demand which arises *ex delicto;* or when special bail would not be regularly required. Serg. on Att. 51. 2. The writ of attachment may be issued against the real and personal estate of any person not residing within the commonwealth, and not being within the county in which such writ may issue, at the time of the issuing thereof. And proceedings may be had against persons convicted of crime, and sentenced to imprisonment.—3. The writ of attachment is in general terms not specifying in the body of it, the name of the garnishee, or the property to be attached, but commanding the officer to attach the defendant, by all and singular his goods and chattels, in whose hands or possession soever the same may be found in his bailiwick, so that he be and appear before the court at a certain time to answer, &c. The foreign attachment is issued solely for the benefit of the plaintiff.—2. The *domestic attachment* is issued by the court of common pleas of the county in which any debtor, being an inhabitant of the commonwealth may reside; if such debtor shall have absconded from the place of his usual abode within the same, or shall have remained absent from the commonwealth, or shall have confined himself to his own house, or concealed himself elsewhere, with a design, in either case, to defraud his creditors. It is issued on an oath or affirmation, previously made by a creditor of such person, or by some one on his behalf, of the truth of his debt, and of the facts upon which the attachment may be founded. Any other creditor of such person, upon affidavit of his debt as aforesaid, may suggest his name upon the record, and thereupon such creditor may proceed to prosecute his said writ, if the person suing the same shall refuse or neglect to proceed thereon, or if he fail to establish his right to prosecute the same, as a creditor of the defendant. The property attached is vested in trustees to be appointed by the court, who are, after giving six months public notice of their appointment, to distribute the assets attached among the creditors under

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certain regulations prescribed by the act of assembly. Perishable goods may be sold under an order of the court, both under a foreign and domestic attachment. Vide Serg. on Attachments; Whart. Dig. title Attachment.

By the code of practice of Louisiana, an attachment in the hands of third persons is declared to be a mandate which a creditor obtains from a competent officer, commanding the seizure of any property, credit or right, belonging to his debtor, in whatever hands they may be found, to satisfy the demand which he intends to bring against him. A creditor may obtain such attachment of the property of his debtor, in the following cases. 1. When such debtor is about leaving permanently the state, without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against him previous to his departure; or when such debtor has already left the state never again to return: 2. When such debtor resides out of the state: 3. When he conceals himself to avoid being cited or forced to answer to the suit intended to be brought against him. Articles 239, 240.

By the local laws of some of the New England states, and particularly of the states of Massachusetts, New Hampshire and Maine, personal property and real estate may be attached upon mesne process to respond the exigency of the writ, and satisfy the judgment. In such cases it is the common practice for the officer to bail the goods attached to some person, who is usually a friend of the debtor, upon an express or implied agreement on his part, to have them forthcoming on demand, or in time to respond the judgment, when the execution thereon shall be issued. Story on Bailm. § 124. As to the rights and duties of the officer or bailor in such cases, and as to the rights and duties of the bailee, who is commonly called the receiptor, see 2 Mass. 514; 9 Mass. 112; 11 Mass. 211; 6 Johns. R. 195; 9 Mass. 104, 265; 10 Mass. 125; 15 Mass. 310; 1 Pick. R. 232, 389.

ATTAINDER, *English criminal law*; attinctura, the stain or corruption of blood which arises from being condemned for any crime.—*Attainder by confession*, is either by pleading guilty at the bar before the judges, and not putting oneself on one's trial by a jury; or before the coroner in sanctuary, when, in ancient times, the offender was obliged to abjure the realm.—*Attainder by verdict*, is when the prisoner at the bar pleads not guilty to the indictment, and is pronounced guilty by the verdict of the jury.—*Attainder by process* or *outlawry*, is when the party flies, and is subsequently outlawed. Co. Litt. 391. *Bill of attainder* is a bill brought into parliament for attainting persons condemned for high treason. By the constitution of the United States, art. 1, sect. 9, § 3, it is provided that no bill of attainder or ex post facto law shall be passed.

ATTAINT, *English law*, 1. *Attinctus*, attainted, stained or blackened. 2. A writ which lies to inquire whether a jury of twelve men gave a false verdict. A verdict cannot be attainted by less than twelve men. Bract. lib. 4, tr. 1, c. 134; Fleta, lib. 5, c. 22, § 2.

ATTEMPT, *crim. law*. An attempt to commit a crime, is an endeavour to accomplish it, carried beyond mere preparation but falling short of execution of the ultimate design, in any part of it. Between preparations and attempts to commit a crime, the distinction is in many cases very indeterminate. A man who buys poison for the purpose of committing a murder, and mixes it in the food intended for his victim.

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and places it on a table where he may take it, will or will not be guilty of an attempt to poison from the simple circumstance of his taking back the poisoned food before or after the victim has had an opportunity to take it; for if immediately on putting it down, he should take it up, and, awakened to a just consideration of the enormity of the crime, destroy it, this would amount only to preparations; and certainly if before he placed it on the table, or before he mixed the poison with the food, he had repented of his intention, there would have been no attempt to commit a crime; the law gives this as a *locus penitentiæ*. An attempt to commit a crime is a misdemeanor, and an attempt to commit a misdemeanor, is itself a misdemeanor. 1 Russ on Cr. 44; 2 East, R. 8; 3 Pick. R. 26; 3 Benth. Ev. 69.

ATTENDANT. One who owes a duty or service to another, or in some sort depends upon him. Termes de la Ley, h. t. As to attendant terms, see Powell on Mortg. Index, tit. Attendant terms; Park on Dower, ch. 17.

ATTESTATION, *in contracts, and evidence*, is the act of witnessing an instrument of writing, at the request of the party making the same, and subscribing it as a witness. It will be proper to consider, 1st, how it is to be made; 2dly, how it is proved; 3dly, its effects upon the witness; 4thly, its effects upon the parties.

1. The attestation should be made, in the case of wills, agreeably to direction of the statute of frauds, Com. Dig. Estates, E 1; and in the case of deeds or other writings at the request of the party executing the same. A person who sees an instrument executed, but is not desired by the parties to attest it, is not therefore an attesting witness, although he afterwards subscribes it as such. 3 Camp. 232. See as to the form of attestation, 2 South. R. 449.

2. The general rule is that an attested instrument must be proved by the attesting witness. But to this rule there are various exceptions, namely; 1. If he reside out of the jurisdiction of the court; 2, or is dead; 3, or becomes insane, 3 Camp. 283; 4, or has an interest, 5 T. R. 371; 5, or has married the party who offers the instrument, 2 Esp. C. 697; 6, or refuses to testify, 4 M. & S. 353; 7, or where the witness swears he did not see the writing executed; 8, or becomes infamous Str. 833; 9, or blind, 1 Ld. Raym. 734. From these numerous cases, and those to be found in the books, it would seem that whenever from any cause the attesting witness cannot be had, secondary evidence may be given. But this inability of procuring the witness must be absolute, and, therefore, where he is unable to attend from sickness only, his evidence cannot be dispensed with. 4 Taunt. 46. See 4 Halst. R. 322; Andr. 236; 2 Str. 1096; 10 Ves. 174; 4 M. & S. 353; 7 Taunt. 251; 6 Serg. & Rawle, 310; 1 Rep. Conf. Co. So. Ca. 310; 5 Cranch, 13; Com. Dig. tit. Testmoigne, Evidence, Addenda; 5 Com. Dig. 441; 4 Yeates, 79.

3. When the witness attests an instrument which conveys away, or disposes of his property or rights, he is estopped from denying the effects of such instrument, but in such case he must have been aware of its contents, and this must be proved. 1 Esp. C. 58.

4. Proof of the attestation is evidence of the sealing and delivery. 6 Serg. & Rawle, 311; 2 East, 250; 1 Bos. & Pull. 360; 7 T. R. 266.

See, in general, Starkie's Ev. part 2, 332; 1 Phil. Ev. 419 to 421; 12 Wheat. 91; 2 Dall. 96; 3

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Rawle's Rep. 312; 1 Ves. Jr. 12; 2 Eccl. Rep. 60; 214, 289, 367; 1 Bro. Civ. Law, 279, 286.

ATTESTATION CLAUSE, *in wills and contracts*, is that clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. The usual attestation clause to a will is in the following formula, to wit: "Signed, sealed, published and declared by the above named A B, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names as witnesses thereto, in the presence of the said testator, and of each other." That of contracts is generally in these words: "Sealed and delivered in the presence of us."

When there is an attestation clause to a will, unsubscribed by witnesses, the presumption, though slight, is that the will is in an unfinished state; and it must be removed by some extrinsic circumstances. 2 Eccl. Rep. 60. This presumption is infinitely slighter, where the writer's intention to have it regularly attested, is to be collected only from the single word "witnesses." Ib. 214.

ATTORNEY IN FACT, *contracts*, is a person to whom the authority of another, who is called the constituent, is by him lawfully delegated. All persons who are capable of acting for themselves, and even those who are disqualified from acting in their own capacity, if they have sufficient understanding, as infants of a proper age and femes coverts, may act as attorneys of others. Co. Litt. 52 a; 1 Esp. Cas. 142; 2 Esp. Cas. 511; 2 Stark. Cas. N. P. 204. The form of his appointment is by letter of attorney, (q. v.). The object of his appointment is the transaction of some business of the constituent by the attorney. The attorney is bound to act with due diligence after having accepted the employment, and in the end to render an account to his principal of the acts which he has performed for him. Vide *Agency*, *Agent*, *Authority*, and *Principal*.

ATTORNEY AT LAW, *officers*, an officer in a court of justice, who is employed by a party in a cause to manage the same for him, as his advocate. In some courts, as in the Supreme Court of the United States, advocates are divided into counsellors at law, (q. v.) and attorneys. The business of attorneys is to carry on the practical and more mechanical parts of the suit. 1 Kent, Com. 307; see as to their powers, 2 Supp. to Ves. Jr. 241, 454; 3 Chit. Bl. 23, 338; 1 Bac. Ab. 287; 7 Bac. Ab. 397; 3 Penna. R. 74; 3 Wils. 374; 16 S. & R. 368; 14 S. & R. 307; 7 Cranch, 452; 1 Penna. R. 264.

ATTORNEY GENERAL OF THE UNITED STATES, is an officer appointed by the president. He must be learned in the law, and be sworn or affirmed to a faithful execution of his office. His duties are to prosecute and conduct all suits in the Supreme Court, in which the United States shall be concerned, and give his advice upon questions of law, when required by the president, or when requested by the heads of any of the departments, touching matters that may concern their departments; Act of 24 Sept. 1789; his salary is three thousand five hundred dollars per annum, and he is allowed one clerk, whose compensation shall not exceed one thousand per annum; Act 20 Feb. 1819, 3 Story's Laws, 1720, and Act 20 April, 1818, s. 6, 3 Story's Laws, 1693.

ATTORNMENT, *estates*, was the agreement of the tenant to the grant of the seignory, or of a rent, or the agreement of the donee in tail,

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or tenant for life, or years, to a grant of a reversion or of a remainder made to another, Co. Litt. 309; Touchs. 253; attornments are rendered unnecessary, even in England, by virtue of sundry statutes, and they are abolished in the United States, 4 Kent, Com. 479. Vide 3 Vin. Ab. 317; 1 Vern. 330, n.; Saund. 234, n. 4; Roll. Ab. h. t.; Nelson's Ab. h. t.; Com. Dig. h. t.

AUCTION, *commerce, contract*, is a place, authorised by law, where property is publicly sold to the highest bidder. Auctions are generally held by express authority, and the persons who keep them are licensed to do so under various regulations. The sale of the property is also called an auction.

AUCTIONEER, *contracts, commerce*, is a person authorised by law to keep an auction, and sell the goods of others at public sale. He is the agent of both parties, the seller and the buyer, 2 Taunt. 38, 209; 4 Greenl. R. 1; Chit. Contr. 208. His rights are, 1st, to charge a commission for his services; 2ndly, he has an interest in the goods sold coupled with the possession; 3dly, he has a lien for his commissions; 4thly, he may sue the buyer for the purchase money. He is liable, 1st, to the owner for a faithful discharge of his duties in the sale, and if he gives credit without authority, for the value of the goods; 2dly, he is responsible for the duties due to the government; 3dly, he is answerable to the purchaser when he does not disclose the name of his principal; 4thly, he may be sued when he sells the goods of a third person, after notice not to sell them, Peake's Rep. 120; 2 Kent, Com. 423, 4.

AUDIENCE COURT, *Eng. eccl. law*. A court belonging to the archbishop of Canterbury, having the same authority with the court of arches, 4 Inst. 337.

AUDIENDO ET TERMINANDO, *English crim. law*. A writ or rather a commission directed to certain persons for the trial and punishment of such persons as have been concerned in a riotous assembly, insurrection or other heinous misdemeanor.

AUDITA QUERELA. An obsolete writ by which a defendant, against whom a judgment had been recovered, and who had since discharged the same, might have been relieved from its operation. But now the courts will grant relief on motion, on the facts being proved; 3 Bl. Com. 405; 1 Bac. Ab. 308; 2 Saund. 148, n. 1; 2 Sell. Pr. 252.

AUDITOR. An officer whose duty it is to examine the accounts of officers who have received and disbursed public moneys by lawful authority. See Acts of Congress, April 3, 1817, 3 Story's Laws U. S. 1630; and the Act of February 24, 1819, 3 Story's L. U. S. 1722.

AUNT, *domestic relations*, is the sister of one's father or mother; she is a relation in the third degree. Vide 2 Com. Dig. 474; Dane's Ab. c. 126, a. 3, § 4.

AUTER ACTION PENDENT, *pleading*, another action depending. In cases where the plaintiff has commenced two actions for the same cause, the defendant may plead that there is another action depending for the same cause, in the same or any other court of competent jurisdiction. In general, the pendency of another action must be pleaded in abatement, but in a penal action at the suit of a common informer, the priority of a former suit for the same penalty in the name of a third person may be pleaded in bar, because the party who first sued is entitled to the penalty. 1 Ch. Plead. 443. Having once arrested a defendant, the plaintiff cannot, in general, arrest him again for the same cause of action.

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Tidd, 184. Vide article *Lis pendens*.

AUTER DROIT, or more properly, *Autre Droit*, another's right. A man may sue or be sued in another's right; this is the case with executors and administrators.

AUTHENTIC ACT, *civil law, contracts, evidence.* The authentic act is that which has been executed before a notary or other public officer authorised to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Code, 7, 52, 6; Ib. 4, 21; Dig. 22, 4. In Louisiana, the authentic act, as relates to contracts, is that which has been executed before a notary public or other officer authorised to execute such functions, in presence of two witnesses, free, male, and aged at least fourteen years; or of three witnesses if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument. Civil Code of Lo., art. 2231. The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved to be a forgery. Ib. art. 2233. Vide Merl. Rép. h. t.

AUTHENTICATION, *practice*, is an attestation made by a proper officer, by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed by law to do so. The constitution of the U. S., art. 4, s. 1, declares, "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And congress may by general laws prescribe the manner in which such acts, records and proceedings, shall be proved, and the effect thereof." The object of the authentication is to supply all other proof of the record. The laws of the United States have provided a mode of authentication of public records and office papers; these acts are here transcribed.

By the act of May 26, 1790, it is provided, "That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: That the records and judicial proceedings of the courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are, or shall be taken."

The above act having provided only for one species of record, it was necessary to pass the act of March 27, 1804, to provide for other cases. By this act it is enacted,

§ 1. "That, from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secre-

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tary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken."

§ 2. "That all the provisions of this act, and the act to which this is a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts, and offices of the several states."

The act of May 8, 1792, s. 12, provides, "That all the records and proceedings of the court of appeals, heretofore appointed, previous to the adoption of the present constitution, shall be deposited in the office of the clerk of the supreme court of the United States, who is hereby authorized and directed to give copies of all such records and proceedings, to any person requiring and paying for the same, in like manner as copies of the records and other proceedings of the said court are by law directed to be given: which copies shall have like faith and credit as all other proceedings of the said court."

AUTHENTICS, *civ. law*. This is the name given to a collection of the Novels of Justinian, made by an anonymous author. It is called authentic on account of its authority. There is also another collection which bears the name of *authentics*. It is composed of extracts made from the Novels, by a lawyer named Irnier, and which he inserted in the code at such places as they refer; these extracts have the reputation of not being correct. Merlin, Répertoire, mot Authentique.

AUTHORITIES, *practice*. By this word is understood the citations which are made of laws, acts of the legislature, and decided cases, and opinions of elementary writers. In its more confined sense, this word means, cases decided upon solemn argument which are said to be authorities for similar judgments in like cases. 1 Lilly's Reg. 219. These latter are sometimes called precedents, (q. v.) Merlin, Répertoire, mot Autorités.

AUTHORITY, *contracts*, is the lawful delegation of power by one person to another. We will consider, 1. The delegation. 2. The nature of the authority. 3. The manner it is to be executed. 4. The effects of the authority.

1. The authority may be delegated by deed, or by parol. 1. It may be delegated by deed for any purpose whatever, for whenever an authority by parol would be sufficient, one by deed will be equally so. When the authority is to do something which must be performed through the medium of a deed, then the authority must also be by deed, and executed with all the forms to render that instrument perfect; as, if a man be authorised to convey a

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tract of land, the letter of attorney must be by deed. 1 Bac. Ab. 314; 7 T. R. 209; 2 Bos. & Pull. 335; 5 Binn. 613; 14 S. & R. 331; 6 S. & R. 90. 2. For many purposes however, the authority may be by parol, either in writing not under seal, or verbally, or by the mere employment of the agent. Pal. on Ag. 2.

2. The authority given must have been possessed by the person who delegates it, or it will be void; and it must be to a thing lawful, or it will not justify the person to whom it is given. Dyer, 102; Kielw. 83. Authorities are divided into general or special. A *general* authority is one which extends to all acts connected with a particular employment; a *special* authority is one confined to "an individual instance." 15 East, 408; Id. 38. They are also divided into limited and unlimited. When the agent is bound by precise instructions, it is *limited*, and *unlimited* when he is left to pursue his own discretion. An authority is either express or implied. An *express* authority must be by deed or by parol, that is in writing not under seal, or verbally. The authority must have been actually given. An *implied* authority is one which, although no proof exists of its having been actually given, it may be inferred from the conduct of the principal, that it was given; for example, when a man leaves his wife without support, the law presumes he authorizes her to buy necessaries for her maintenance; or if a master, usually send his servant to buy goods for him upon credit, and the servant buy some things without the master's orders, yet the latter will be liable upon the implied authority. Show. 95; Pal. on Ag. 137 to 146.

3. In considering in what manner the authority is to be executed, it will be necessary to examine, 1. By whom the authority must be executed; 2. In what manner; 3. In what time.—1. A delegated authority can be executed only by the person to whom it is given, for the confidence being personal, cannot be assigned to a stranger. 1 Roll. Ab. 330; 2 Roll. Ab. 9; 9 Co. 77 b.; 9 Ves. 236, 251; 3 Mer. R. 237; 2 M. & S. 299, 301. An authority given to two cannot be executed by one. Co. Litt. 112, b, 181, b. And an authority given to three *jointly* and *separately*, is not, in general, well executed by two. Co. Litt. 181, b, sed vide 1 Roll. Abr. 329, l. 5; Com. Dig. Attorney, C 8.—2. When the authority is particular, it must in general be strictly pursued, or it will be void, unless the variance be merely circumstantial. Co. Litt. 49, b, 303, b; 6 T. R. 591; 2 H. Bl. 623. As to the form to be observed in the execution of an authority, it is a general rule that an act done under a power of attorney must be done in the name of the person who gives the power, and not in the attorney's name. 9 Co. 76, 77; Moor, pl. 1106; Str. 705; 2 East, R. 142; Moor, 818. But it matters not in what words this is done, if it sufficiently appear to be in the name of the principal, as, for A B, (the principal,) C D, (the attorney), which has been held to be sufficient. See 15 Serg. & R., 55; 2 East, R. 142; 7 Watts's R. 121; 6 John. R. 94. But see contra, Bac. Ab. Leases, S 10; 9 Co. 77.—3. The execution must take place during the continuance of the authority; this is determined either by revocation, or performance of the commission. In general, an authority is revocable, unless it be given as a security, or it be coupled with an interest. 2 Esp. Cas. 365; 1 Bac. Ab. 315. The revocation (q. v.) is either express or implied; when it is express and made known to the person authorized,

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the authority is at an end; the revocation is implied when the principal dies, or, if a female, marries; or the subject of the authority is destroyed, as if a man have authority to sell my house, and it is destroyed by fire; or to buy for me a horse, and before the execution of the authority, the horse dies. When once the agent has exercised all the authority given to him, the authority is at an end.

4. An authority is to be so construed as to include all necessary or usual means of executing it with effect. 2 H. Bl. 618; 1 Roll. R. 390; Palm. 394; 10 Ves. 441; 6 Serg. & R. 149; and when the agent acts within his authority, he is not personally responsible. Pal. on Ag. 4, 5.

Vide, generally, 3 Vin. Ab. 416; 1 Bac. Ab. h. t.; 1 Salk. 95; Com. Dig. h. t., and the titles there referred to. 1 Roll. Ab. 330; 2 Roll. Ab. 9; and the articles, *Attorney; Agency; Agent; Principal.*

AUTRE VIE. Another's life. Vide, *Pur autre vie.*

AUTREFOIS, is a French word, signifying, formerly, at another time; and is usually applied to signify that something was done formerly, as autrefois acquit, autrefois convict, &c.

AUTREFOIS ACQUIT, *crim. law, pleading*, is a plea made by a defendant indicted for a crime or misdemeanor, that he has formerly been tried and acquitted of the same offence. See a form of this plea in Arch. Cr. Pl. 90. To be a bar, the acquittal must have been by trial, and by the verdict of a jury on a valid indictment. Hawk. B. 2, c. 35, s. 1; 4 Bl. Com. 335. There must be an acquittal of the offence charged in law and in fact. Stark. Cr. Pl. 355; 2 Swift's Dig. 400; 1 Chit. Cr. Law, 452; 2 Russ. on Cr. 41. The Constitution of the U. S., Amendm. art. 5, provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. Vide, generally, 12 Serg. & Rawle, 389; Yelv. 205, a, note.

AUTREFOIS CONVICT, *crim. law, pleading*, is a plea made by a defendant indicted for a crime or misdemeanor, that he has formerly been tried and convicted of the same. As a man once tried and acquitted of an offence is not again to be placed in jeopardy for the same cause, so, *a fortiori*, if he has suffered the penalty due to his offence, his conviction ought to be a bar to a second indictment for the same cause, least he should be punished twice for the same crime. 2 Hale, 251; 4 Co. 394; 2 Leon. 83. The form of this plea is like that of autrefois acquit, (q. v.) it must set out the former record, and show the identity of the offence and of the person by proper averments. Hawk. B. 2, c. 36; Stark. Cr. Pl. 363; Arch. Cr. Pl. 92; 1 Chit. Cr. Law, 462; 4 Bl. Com. 335.

AUTREFOIS ATTAINT, *crim. law*, formerly attainted. This is a good plea in bar where a second trial would be quite superfluous. Co. Litt. 390 b, note 2; 4 Bl. Com. 336. Where, therefore, any advantage either to public justice, or private individuals would arise from a second prosecution, the plea will not prevent it; as where the criminal is indicted for treason after an attainder of felony, in which case the punishment will be more severe and more extensive. 3 Chit. Cr. Law, 464.

AVERAGE is a term used in commerce to signify a contribution made by the owners of the ship, freight and goods, on board, in proportion to their respective interests, towards any particular loss or expense sustained for the general safety of the ship and cargo; to the end that the particular loser may not be

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a greater sufferer than the owner of the ship and the other owners of goods on board. Marsh. Ins. B. 1, c. 12, s. 7; Code de Com. art. 397; 2 Hov. Supp. to Ves. jr. 407; Poth. Aver. art. Prel.

Average is called general or gross average, because it falls generally upon the whole or gross amount of the ship, freight and cargo; and also to distinguish it from what is often though improperly termed particular average, but which in truth means a particular or partial and not a general loss, and has no affinity to average properly so called. Besides these there are other small charges called petty or accustomed averages. Such as pilotage, towage, light-money, beaconage, anchorage, bridge toll, quarantine, river charges, signals, instructions, castle money, pier-money, digging the ship out of the ice and the like.

A contribution upon general average can only be claimed in cases where, upon as much deliberation and consultation between the captain and his officers as the occasion will admit of, it appears that the sacrifice at the time it was made, was absolutely and indispensably necessary for the preservation of the ship and cargo. To entitle the owner of the goods to an average contribution, the loss must evidently conduce to the preservation of the ship and the rest of the cargo; and it must appear that the ship and the rest of the cargo were in fact saved. Show. Ca. Parl. 20.

See generally Code de Com. tit. 11 and 12; Park, Ins. c. 6; Marsh. Ins. B. 1, c. 12, s. 7; 4 Mass. 548; 6 Mass. 125; 8 Mass. 467; 1 Caines's R. 196; 4 Dall. 459; 2 Binn. 547; 4 Binn. 513; 2 Serg. & Rawle, 237, in note; 2 Serg. & Rawle, 229; 3 Johns. Cas. 178; 1 Caines's R. 43; 2 Caines's R. 263; Ib. 274; 8 Johns. R. 237, 2d. edit.; 9 Johns. R. 9; 11 Johns. R. 315. 1 Caines's R. 573; 7 Johns. R. 412; Ib. 412; Wesk. Ins. tit. Average; 2 Barn. & Cress. 811; 1 Rob. Adm. Rep. 293; 2 New Rep. 378; 18 Ves. 187; Lex Mer. Amer. ch. 9; Bac. Abr. Merchant, F; Vin. Abr. Contribution and Average.

AVERIA, cattle. This word in its most enlarged signification is used to include horses of the plough, oxen and cattle. Cunn. Dict. h. t.

AVERMENT, *in pleading*, comes from the Latin *verificare*, or the French *averrer*, and signifies a positive statement of facts in opposition to argument or inference. Cowp. 683, 684; Lord Coke says averments are twofold, namely; general and particular. A *general* averment is that which is at the conclusion of an offer to make good or prove whole pleas containing new affirmative matter, (but this sort of averment only applies to pleas, replications, or subsequent pleadings; for counts and avowries which are in the nature of counts, need not be averred,) the form of such averment being, *et hoc paratus est verificare*. *Particular* averments are assurances of the truth of particular facts, as the life of tenant or of tenant in tail is averred; and, in these, says Lord Coke, *et hoc*, &c. are not used. Co. Litt. 362 b. Again, in a particular averment the party merely protests and avows the truth of the fact or facts averred; but in general averments he makes an offer to prove and make good by evidence what he asserts. Averments must contain not only matter but form. General averments are always in the same form. The most common form of making particular averments is in express and direct words, for example, And the party *avers* or *in fact saith*, or *although*, or *because*, or *with this that*, or *being*, &c. But they need not be in such words, for any words

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which necessarily imply the matter intended to be averred are sufficient.

See, in general, 3 Vin. Abr. 357; Bac. Abr. Pleas, B 4; Com. Dig. Pleader, C 50, C 67, 68, 69, 70; 1 Saund. 235 a, n. 8; 3 Saund. 352, n. 3; 1 Chit. Pl. 308; Arch. Civ. Pl. 163; Doct. Pl. 120; 1 Lilly's Reg. 209.

AVOIR DU POIS, *comm. law*, a French phrase which signifies "to have weight." This kind of weight is so named in distinction from the Troy weight. One pound avoir du pois contains 7000 grains Troy; that is, fourteen ounces, eleven pennyweights and sixteen grains Troy; a pound avoir du pois contains sixteen ounces, and an ounce sixteen drams. Thirty two cubic feet of pure spring-water at the temperature of fifty-six degrees of Fahrenheit's thermometer make a ton of 2000 pounds avoir du pois, or two thousand two hundred and forty pounds net weight. Dane's Abr. ch. 211, art. 12, § 6. The avoir du pois ounce is less than the troy ounce in the proportion of 72 to 79; though the pound is greater. Encyc. Amer. art. Avoir du pois.

AVOW or ADVOW, *practice*, signifies to justify or maintain an act formerly done. For example, when replevin is brought for a thing distrained, and the distrainer justifies the taking, he is said to avow. Termes de la Ley. This word also signifies to bring forth any thing: formerly when a stolen thing was found in the possession of any one, he was bound *advocare*, i. e. to produce the seller from whom he alleged he had bought it, to justify the sale, and so on till they found the thief. Afterwards the word was taken to mean any thing which a man admitted to be his own or done by him, and in this sense it is mentioned in Fleta, lib. 1, c. 5, par. 4. Cunn. Dict. h. t.

AVOWANT, *practice, pleading*. One who makes an avowry.

AVOWEE, *eccl. law*. An advocate of a church benefice.

AVOWRY, *pleading*. An avowry is where the defendant in an action of replevin, avows the taking of the distress in his own right, or in right of his wife, and sets forth the cause of it, as for arrears of rent, damage done, or the like. Lawes on Pl. 35. Hamm. N. P. 464.

AVULSION is where by the immediate and manifest power of a river or stream, the soil is taken suddenly from one man's estate and carried to another. In such case the property belongs to the first owner. An acquiescence on his part however, will in time entitle the owner of the land to which it is attached to claim it as his own. Bract. 221; Harg. Tracts, De jure maris, &c. Toull. Dr. Civ. Fr. tom. 3 p. 106; 2 Bl. Com. 262; Schultes on Aq. Rights, 115 to 138. Avulsion differs from alluvion (q. v.) in this, that in the latter case the change of the soil is gradual.

AWAIT, *crim. law*. Seems to signify what is now understood by lying in wait, or way-laying.

AWARD. It is the judgment of an arbitrator or arbitrators on a matter submitted to him or them. The qualifications requisite to the validity of an award are, that it be consonant to the submission; that it be certain; be of things possible to be performed, and not contrary to law or reason; and lastly that it be final. 1. It is manifest that the award must be confined within the powers given to the arbitrators, because if their decision extends beyond that authority, this is an assumption of power not delegated, which cannot legally affect the parties. Kyd on Aw. 140; 1 Binn. 109; 13 Johns. 187; Ib. 271; 6

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Johns. 13, 39; 11 Johns. 133; 2 Mass. 164; 8 Mass. 399; 10 Mass. 442; Caldw. on Arb. 98.—2. The award ought to be certain and so expressed that no reasonable doubt can arise on the face of it, as to the arbitrator's meaning, or as to the nature and extent of the duties imposed by it on the parties: an example of such uncertainty may be found in the following cases; an award directing one party to bind himself in an obligation for the quiet enjoyment of lands, without expressing in what sum the obligor should be bound, 5 Co. 77; Roll. Arbit. Q 4; again, an award that one should give security to the other, for the payment of a sum of money, or the performance of any particular act, when the kind of security is not specified. Vin. Ab. Arbitr. Q 12; Com. Dig. Arbitrament, E 11; Kyd on Aw. 194.—3. It must be possible to be performed, be lawful and reasonable. An award that could not by any possibility be performed, as if it directed that the party should deliver a deed not in his possession, or pay a sum of money at a day past, it would of course be void. But the award that the party should pay a sum of money, although he might not then be able to do so, would be binding. The award must not direct any thing to be done contrary to law, such as the performance of an act which would render the party a trespasser or a felon, or would subject him to an action. It must also be reasonable, for if it be of things nugatory in themselves and offering no advantage to either of the parties, it cannot be enforced. Kirby, 353.—4. The award must be final; that is, it must conclusively adjudicate of the matters submitted; but if the award is as final as, under the circumstances of the case it might be expected, it will be considered as valid. Com. Dig. Arbitrament, E 15. As to the *form*, the award may be by parol or by deed, but in general it must be made in accordance with the provisions and requirements of the submission, (q. v.) Vide, generally, Kyd on Awards, Index, h. t.; Caldwell on Arbitrations, Index, h. t.; Dane's Ab. ch. 13; Com. Dig. Arbitrament, E; Ib. Chancery, 2 K 1, &c. 3 Vin. Ab. 52, 372; 1 Vern. 158; 15 East, 215; 1 Ves. jr. 364; 1 Saund. 326, notes 1, 2, and 3; Wats. on Arbitrations and Awards.

B.

BACHELOR. The first in the arts and sciences, as bachelor of arts, &c. It is called in latin *Baccalœureus*, from *bacalus*, a staff, because it was supposed that a staff was given by way of distinction, into the hands of those who had completed their studies; some, however, have derived the word from the French, *bas chevalier*, i. e. knights of a lower order.

BACK WATER. Vide *Inundation*, and 5 Ohio R. 322.

BACKING, *crim. law practice.* When a warrant has been issued for the apprehension of a person accused of some crime in one county, and he is not found there, the constable must make his return without arresting the accused, unless he can follow him into another county, but as the justice's warrant does not run into such county; he must procure some justice of the peace to endorse the same with his name, which is called *backing a warrant;*

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the constable may then execute it in such county.

BACKSIDE, *estates*. In England this term was formerly used in conveyances and even in pleadings, and is still adhered to with reference to ancient descriptions in deeds, in continuing the transfer of the same property; it imports a yard at the back part of, or behind a house, and belonging thereto; but although formerly used in pleadings, it is now unusual to adopt it, and the word yard is preferred. 1 Chitty's Pr. 177; 2 Ld. Raym. 1399.

BADGER, *obsolete*, from *baggage* and *bagagier*, a carrier of bundles; one who buys corn and victuals in one place and sells them in another. Stat. 5 & 6 Edw. 6; 3 Eliz. c. 12.

BAIL, *practice*, *contracts*. Bail is civil or criminal; these will be separately considered. 1. *Civil* bail is that which is entered in civil cases, and is common or special bail. *Common bail* is a formal entry of fictitious sureties in the proper office of the court, which is called filing common bail to the action. It is in the same form as special bail, but differs from it in this, that the sureties are merely fictitious, as, John Doe and Richard Roe: it has, consequently, none of the incidents of special bail. It is only allowed to the defendant when he has been discharged from arrest without bail, after the return day of the writ, and it is necessary in such case to perfect the appearance of the defendant. Steph. Pl. 56, 7; Grah. Pr. 155; Highm. on Bail, 13. *Special bail* is an undertaking by one or more persons for another, before some officer or court properly authorised for that purpose, that he shall appear at a certain time and place to answer a certain charge to be exhibited against him. The person who enters into this undertaking is also called the bail. The essential qualifications to enable a person to become bail, are that he must be, 1, a freeholder or housekeeper; 2, liable to the ordinary process of the court; 3, capable of entering into a contract; and 4, able to pay the amount for which he becomes responsible.—1. He must be a freeholder or housekeeper, (q. v.); 2 Chit. R. 96; 5 Taunt. 174; Lofft, 148; 3 Petersd. Ab. 104. 2. He must be subject to the ordinary process of the court, and a person privileged from arrest, either permanently or temporarily will not be taken, 4 Taunt. 249; 1 D. & R. 127; 2 Marsh. 232. 3. He must be competent to enter into a contract; a feme covert, an infant, or a person non compos mentis, cannot therefore become bail. 4. He must be able to pay the amount for which he becomes responsible. But it is immaterial whether his property consists of real or personal estate, provided it be his own, in his own right, 3 Petersd. Ab. 196; 2 Chit. Rep. 97; 11 Price, 158; and it be liable to the ordinary process of the law, 4 Burr. 2526; though this rule is not invariably adhered to, for when part of the property consisted of a ship, shortly expected, bail was permitted to justify in respect of such property. 1 Chit. R. 286, n. As to the persons who cannot be received because they are not responsible, see 1 Chit. R. 9, 116; 2 Chit. R. 77, 8; Lofft, 72, 184; 3 Petersd. Ab. 112; 1 Chit. R. 309, n.—2. Bail in *criminal* cases is defined to be a delivery or bailment of a person to his sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to be in their friendly custody, instead of going to prison. The constitution of the United States directs that "excessive bail shall not be required." Amendm. art. 8. By the acts of

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congress of September 24, 1789, s. 33, and March 2, 1793, s. 4, authority is given to take bail for any crime or offence against the United States, except where the punishment is death, to any justice or judge of the United States, or to any chancellor, judge of the supreme or superior court, or first judge of any court of common pleas, or mayor of any city of any state, or to any justice of the peace or other magistrate of any state, where the offender may be found; the recognizance taken by any of the persons authorised, is to be returned to the court of the United States having cognizance of the offence. When the punishment by the laws of the United States is death, bail can be taken only by the supreme or circuit court, or by a judge of the supreme court, or a judge of the district court of the United States. If the person committed by a justice of the supreme court, or by a judge of the district court, for an offence not punishable with death, shall, after commitment procure bail; any judge of the supreme or superior court of law, of any state, (there being no judge of the United States in the district to take such bail,) may admit such person to bail. Justices of the peace have in general power to take bail of persons accused, and, when they have such authority, they are required to take such bail. There are many cases, however, under the laws of the several states, as well as under the laws of the United States, as above mentioned, when justices of the peace cannot take bail, but must commit, and, if the accused offers bail, it must be taken by a judge or other officer lawfully authorised. In Pennsylvania, for example, in cases of murder, or when the defendant is charged with stealing of any horse, mare, or gelding, on the direct testimony of one witness, or shall be taken having possession of such horse, mare or gelding, the justice of the peace cannot admit the party to bail. 1 Smith's L. of Pa. 581. In all cases where the party is admitted to bail, the recognizance is to be returned to the court having jurisdiction of the offence charged.

BAIL ABOVE, *practice*, is putting in bail to the action, which is an appearance. Bail above are bound either to satisfy the plaintiff, his debt and costs, or to surrender the defendant in custody, provided judgment should be against him and he should fail to do so. Sell. Pr. 137.

BAIL BELOW, *practice*, is bail given to the sheriff in civil cases, when the defendant is arrested on bailable process; which is done by giving him a bail bond; it is so called to distinguish it from *bail above*, (q. v.) The sheriff is bound to admit a man to bail, provided good and sufficient sureties be tendered, but not otherwise. The sheriff is not however bound to demand bail, and may, at his risk, permit the defendant to be at liberty, provided he will appear, that is, enter bail above or surrender himself in proper time. 1 Sell. Pr. 126, et seq. The undertaking of bail below is that the defendant will appear or put in bail to the action on the return day of the writ.

BAIL BOND, *practice, contracts.* A specialty by which the defendant and other persons, usually not less than two, though the sheriff may take only one, become bound to the sheriff in a penalty equal to that for which bail is demanded, conditioned for the due appearance of such defendant to the legal process therein described, and by which the sheriff has been commanded to arrest him. It is only where the defendant is arrested or in the custody of the sheriff, under other than final

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process, that the sheriff can take such bond. On this bond being tendered to him, which he is compelled to take if the sureties are good, he must discharge the defendant. With some exceptions, as for example, where the defendant surrenders, 6 T. R. 754; 7 T. R. 123; 1 East, 387; 1 Bos. & Pull. 326, nothing can be a performance of the condition of the bail bond, but putting in bail to the action. 5 Burr. 2683. The plaintiff has a right to demand from the sheriff an assignment of such bond so that he may sue it for his own benefit. Wats. on Sheriff, 99; 1 Sell. Pr. 126, 174.

BAILEE, *contracts*, is one to whom goods are bailed. His duties are to act in good faith; he is bound to use extraordinary diligence in those contracts or bailments, where he alone receives the benefit, as in loans; he must observe ordinary diligence in those bailments, which are beneficial to both parties, as hiring; and he will be responsible for gross negligence in those bailments which are only for the benefit of the bailor, as, deposit and mandate. Story's Bailm. § 17, 18, 19. He is bound to return the property as soon as the purpose for which it was bailed shall have been accomplished. And he has generally a right to retain and use the thing bailed, according to the contract, until the object of the bailment shall have been accomplished.

BAILIFF, *office*. Magistrates who formerly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton. There are still bailiffs of particular towns in England; as the bailiff of Dover Castle, &c., otherwise bailiffs are now only officers or stewards, &c.; as *Bailiffs of liberties*, appointed by every lord within his liberty, to serve writs, &c. *Bailiff errant or itenerant*, appointed to go about the country for the same purpose. *Sheriff's bailiffs*, sheriff's officers to execute writs; these are also called *bound bailiffs*, because they are usually bound in a bond to the sheriff for the due execution of their office. *Bailiffs of court baron*, to summon the court, &c. *Bailiffs of husbandry*, appointed by private persons to collect their rents and manage their estates. *Water bailiffs*, officers in port towns for searching ships, gathering tolls, &c.

BAILMENT, *contracts*. This word is derived from the French, *bailler*, to deliver. 2 Bl. Com. 451. Jones's Bailm. 90. Story on Bailm. c. 1, § 2. It is a compendious expression to signify a contract resulting from delivery. It has been defined to be a delivery of goods, on a condition express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they are bailed, shall be answered. Jones's Bailm. 1. Or it is a delivery of goods in trust, on a contract either expressed or implied, that the trust shall be duly executed, and the goods redelivered, as soon as the time or use for which they were bailed, shall have elapsed or be performed. Jones's Bailm. 117. Each of these definitions, says Judge Story, seems redundant and inaccurate, if it be the proper office of a definition to include those things only which belong to the genus or class. Both these definitions suppose that the goods are to be restored or redelivered; but in a bailment for sale, as upon a consignment to a factor, no redelivery is contemplated between the parties. In some cases no use is contemplated by the bailee; in others, it is of the essence of the contract; in some cases time is material to terminate the contract; in others, time is necessary to give a new accessorial

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right. Story on Bailm. c. 1, § 2. Mr. Justice Blackstone has defined a bailment to be a delivery of goods in trust, upon a contract either express or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Com. 451. And in another place, as a delivery of goods to another person for a particular use. 2 Bl. Com. 395. Vide Kent's Comm. Lect. 40, 437. Mr. Justice Story says, that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story on Bailm. c. 1, § 2.

Bailments are divisible into three kinds; 1, Those in which the trust is for the benefit of the bailor, as deposits and mandates. 2. Those in which the trust is for the benefit of the bailee, as gratuitous loans for use. 3. Those in which the trust is for the benefit of both parties, as pledges or pawns, and hiring and letting to hire. See *Deposit*, *Hire*, *Loans*, *Mandates* and *Pledges*. Sir William Jones has divided bailments into five sorts, namely, 1, Depositum, or deposit; 2, Mandatum, or commission without recompense; 3, Commodatum, or loan for use, without pay; 4, Pignori acceptum, or pawn; 5, Locatum, or hiring, which is always with reward. This last is subdivided into, 1, Locatio rei, or hiring, by which the hirer gains a temporary use of the thing; 2. Locatio operis faciendi, when something is to be done to the thing delivered; 3, Locatio operis mercium vehendarum, when the thing is merely to be carried from one place to another. See these several words.

As to the obligations and duties of bailees in general, see *Diligence*, and Story on Bailm. c. 1; Chit. on Cont. 141; 3 John. R. 170; 17 Mass. R. 479; 5 Day, 415; 1 Conn. Rep. 487; 10 Johns. R. 1, 471; 12 Johns. R. 144, 232; 11 Johns. R. 107; 15 Johns. R. 39; 2 John. C. R. 100; 2 Caines's Cas. 189; 19 Johns. R. 44; 14 John. R. 175; 2 Halst. 108; 2 South. 738; 2 Harr. & M'Hen. 453; 1 Rand. 3; 2 Hawks, 145; 1 Murphy, 417; 1 Hayw. 14; 1 Rep. Con. Ct. 121, 186; 2 Rep. Con. Ct. 239; 1 Bay, 101; 2 Nott & M'Cord, 88, 489; 1 Browne, 43, 176; 2 Binn. 72; 4 Binn. 127; 5 Binn. 457; 6 Binn. 129; 6 Serg. & Rawle, 439; 8 Serg. & Rawle, 500, 533; 14 Serg. & R. 275.

BAILOR, *contracts*, he who bails a thing to another. The bailor must act with good faith towards the bailee. Story's Bailm. § 75, 76, 77; permit him to enjoy the thing bailed according to contract; and, in some bailments, as hiring, warrant the title and possession of a thing hired, and probably, to keep it in suitable order and repair for the purpose of the bailment. Ib. § 388—392. Vide Inst. lib. 3, tit. 25.

BAILIWICK, is the district over which a sheriff has jurisdiction; it signifies also the same as county, the sheriff's bailiwick extending over the county. In England, it signifies generally that liberty which is exempted from the sheriff of the county over which the lord of the liberty appoints a bailiff. Vide Wood's Inst. 206.

BAIR-MAN, *Scottish law*. A poor insolvent debtor left bare.

BAIRN'S PART, *Scottish law*. Children's part; a third part of the defunct's free movables, debts deducted, if the wife survive, and a half if there be no relict.

BALANCE is the amount which remains due by one of two persons, who have been dealing together, to the other, after the settlement of their accounts. In the case of mutual debts the balance only can

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be recovered by the assignee of an insolvent, or the executor of a deceased person. But this mutuality must have existed at the time of the assignment by the insolvent, or at the death of the testator.

BALANCE OF TRADE, *comm. law*, is the difference between the exports and importations between two countries. The balance of trade is against that country which has imported more than it has exported, for which it is debtor to the other country.

BALIVA, a bailiwick or jurisdiction.

BALIVO AMOVENDO, *English practice*. A writ to remove a bailiff out of his office.

BALLASTAGE, *mar. law*, a toll paid for the privilege of taking up ballast from the bottom of the port. This arises from the property in the soil. 2 Chit. Com. Law, 16.

BALLOT, *government*, a diminutive ball, i. e. a little ball used in giving votes; the act itself of giving votes. A little bill or ticket used in voting privately, and, for that purpose, put into a box, commonly called a ballot-box, or in some other contrivance.

BANC or BANK. The first of these is a French word signifying bench, pronounced improperly *bank*. 1. The seat of judgment as *banc le roy*, the king's bench; *banc le common pleas*, the bench of common pleas. 2. The meeting of all the judges or such as may form a quorum, as, the court sit in *banc*.

BANE, this word was formerly used to signify a malefactor. Bract. l. 2, t. 8, c. 1.

BANISHMENT, *crim. law*. A punishment inflicted upon criminals, by compelling them to quit a city, place or country, for a specified period of time, or for life.

BANK, *com. law*. 1. A place for the deposit of money. 2. An institution, generally incorporated, authorised to receive deposits of money, to lend money, and to issue promissory notes, usually known by the name of bank notes. 3. Banks are said to be of three kinds, viz. of *deposit*, of *discount*, and of *circulation*; they generally perform all these operations.

BANK BOOK, *commerce*, is a book which persons dealing with a bank keep, in which the officers of the bank enter the amount of money deposited by him, and of all notes or bills deposited by him, or discounted for his use.

BANK NOTE, *contracts*. A bank note resembles a common promissory note, (q. v.) issued by a bank or corporation authorised to act as a bank. It is in fact a promissory note, but such notes are not, for many purposes, to be considered as mere securities for money, but are treated as money or cash, (q. v.) 1 Sch. & Lef. 318, 319; 11 Ves. 662; 1 Roper, Leg. 3. Bank notes are assignable by delivery, Rep. Temp. Hard. 53; 9 East, 48; 4 East, 510; Dougl. 236. The holder of a bank note is *prima facie* entitled to prompt payment of it, and cannot be affected by the fraud of any former holder in obtaining it, unless evidence be given to bring it home to his privity. 13 East, 135; Dane's Ab. Index, h. t.; Pow. on Mortg. Index, h. t.

BANKER, *comm. law*. A banker is one engaged in the business of receiving other persons' money on deposit, to be returned on demand, discounting other persons' notes, and issuing his own for circulation; one who performs the business usually transacted by a bank. Private bankers are generally not permitted. The business of bankers is generally performed through the medium of incorporated banks.

BANKERS' NOTE, *contracts*.

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In England a distinction is made between bank notes, (q. v.) and bankers' notes. The latter are promissory notes, and resemble bank notes in every respect, except that they are given by persons acting as private bankers. 6 Mod. 29. 3 Chit. Com. Law, 590.

BANKRUPTCY, the state of a man unable to pursue his business and meet his engagements, in consequence of the derangement of his affairs. The constitution of the United States, art. 1, s. 8, authorises Congress "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." With the exception of a short interval during which bankrupt laws existed in this country, this salutary power has lain dormant since the formation of the constitution. Any one of the states may pass a bankrupt law, but no state bankrupt or insolvent law can be permitted to impair the obligation of contracts; nor can the several states pass laws conflicting with an act of congress on this subject; 4 Wheat. 122; and the bankrupt laws of a state cannot affect the rights of citizens of another state. 12 Wheat. R. 213. Vide 3 Story on the Const. § 1100 to 1110; 2 Kent, Com. 321; Serg. on Const. Law, 322; Rawle on the Const. c. 9; 6 Pet. R. 348.

BANKS OF RIVERS, *estates.* By this term is understood what contains the river in its natural channel, when there is the greatest flow of water. The owner of the bank has a right to the middle of the stream. Vide *Riperian Proprietor.* When by imperceptible increase the banks on one side become more extended and encroach upon the river, this addition is called alluvion (q. v.); when the increase is sudden and can be perceived it is then called avulsion, (q. v.).

BANS OF MATRIMONY, is the giving public notice or making proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same may have an opportunity to declare such objections before the marriage is solemnized.

BAR, *in actions*, is a perpetual destruction or temporary taking away of the action of the plaintiff. In ancient authors it is called *exceptio peremptoria.* Co. Litt. 303 b; Steph. Pl. Appx. xxviii. When a person is bound in any action real or personal, by judgment on demurrer, confession or verdict, he is barred as to that or any other action, of the like nature or degree for the same thing, for ever; for *expedit reipublicæ ut sit finis litium.* But there is a difference between real and personal actions. In *personal actions*, as debt or account, the bar is perpetual, inasmuch as the plaintiff cannot have an action of a higher nature, and therefore in such actions he has generally no remedy but by bringing a writ of error. Doct. Plac. 65; 6 Co. 7, 8; 4 East, 507, 508. But, if the defendant be barred in a *real* action, by judgment on a verdict, demurrer or confession, &c. he may still have an action of a higher nature and try the same right again. Ib. Lawes Pl. 39, 40. See generally *Plea in bar.*

BAR, *practice*, a place in a court where the counsellors and advocates stand to make their addresses to the court and jury; it is so called because formerly it was closed with a bar. Figuratively the counsellors and attorneys at law are called the bar; the bar of Philadelphia, the New York bar. A place in a court having criminal jurisdiction, to which prisoners are called to plead to the indictment is also

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called the bar. Vide Merl. Répert. mot Barreau, and Dupin, Profession d'Avocat, tom. i. p. 451, for some eloquent advice to gentlemen of the bar.

BAR, *contracts*, is an obstacle or opposition. Some bars arise from circumstances and others from persons. Kindred within the prohibited degree, for example, is a bar to a marriage between the persons related; but the fact that A is married, and cannot therefore marry B, is a circumstance which operates as a bar as long as it subsists; for without it the parties might marry.

BARGAIN AND SALE, *conveyancing*, *contracts*, is a contract by which a person conveys his lands to another, for a pecuniary consideration. In consequence of this conveyance a use arises to a bargainee, and the statute 27 Henry VIII. immediately transfers the legal estate and possession to him. A bargain and sale may be in fee, for life, or for years. The proper and technical words of this conveyance are ***bargain and sale***, but any other words that would have been sufficient to raise a use, upon a valuable consideration, before the statute, are now sufficient to constitute a good bargain and sale. Proper words of limitation must however be inserted. Cruise Dig. tit. 32, ch. 9; Bac. Ab. h. t.; Com. Dig. h. t.; and the cases there cited; Nels. Ab. h. t.; 2 Bl. Com. 338. This is the most common mode of conveyance in the United States. 4 Kent, Com. 483.

BARLEYCORN, a lineal measure containing one-third of an inch. Dane's Ab. c. 211, a. 13, s. 9. The barleycorn was the first measure, with its divisions and multiples, of all our measures of length, superficies, and capacity. Ib. c. 211, a. 12, s. 2.

BARN, *estates*, a building on a farm used to receive the crop, the stabling of animals and other purposes. The grant or demise of a barn without words superadded to extend its meaning, would pass no more than the barn itself and as much land as would be necessary for its complete enjoyment. 4 Serg. & Rawle, 342.

BARON. This word has but one signification in American law, namely, husband: we use baron and feme, for husband and wife. And in this sense it is going out of use. In England, and perhaps some other countries, baron is a title of honour; it is the first degree of nobility below a viscount. Vide Com. Dig. Baron and Feme.

BARRATOR, *crimes*, one who has been guilty of the offence of barratry.

BARRATRY, *crimes*, is the habitual moving, exciting, and maintaining suits and quarrels either at law or otherwise. A man cannot be indicted as a common barrator in respect of any number of false and groundless actions brought in his own right, nor for a *single* act in right of another, for that would not make him a common barrator. Barratry, in this sense, is different from maintainance (q. v.) and champerty, (q. v.) An attorney cannot be indicted for this crime, merely for maintaining another in a groundless action.

BARRATRY, *maratime law*, *crimes*, is a fraudulent act of the master or mariners, committed contrary to their duty as such, to the prejudice of the owners of the ship. Emer. tom. 1, p. 366; Merlin, Répert, h. t.; Roccus, h. t.; 2 Marsh. Insur. 515; as to what will amount to barratry, see Abbott on Shipp. 167, n. (1); 9 East, R. 126; 1 Str. R. 581; 2 Ld. Raym. 1349; 1 Term R. 127; 6 Id. 379; 8 Id. 230; 2 Cain. R. 67, 222; 3 Cain. R. 1; 1 John. R. 229; 8 John. R. 209, n. 2d edit.; 5 Day R. 1; 11

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John. R. 40; 13 John. R. 451; 2 Binn. R. 274; 2 Dall. R. 137; 8 Cran. R. 39; 3 Wheat. R. 168; 4 Dall. R. 294; 1 Yeates, 114. The act of Congress of 30th April, 1790, s. 8, 1 Story's Laws U. S. 84, punishes with death as piracy "any captain or mariner of any ship or other vessel who shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars; or yield up such ship or vessel to any pirate; or if any such seaman shall lay violent hands upon his commander, thereby to hinder or prevent his fighting in defence of his ship, or goods, committed to his trust, or shall make a revolt in the said ship."

BARRISTER, *English law.* A counsellor admitted to plead at the bar.—*Ouster barrister*, is one who pleads ouster or without the bar.—*Inner barrister*, a serjeant or king's counsel who pleads within the bar.—*Vacation barrister*, a counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house. Barristers are called *apprentices*, *apprentitii ad legem*, being looked upon as learners, and not qualified until they obtain the degree of serjeant.

BARTER, *in contracts*, is an exchange, between two or more persons of goods for goods. If an insurance be made upon returns from a country where trade is carried on by barter, the valuation of goods in return shall be made on the cost of those given in barter, adding all charges. Wesk. Ins. 42. See *Price*. Barter differs from sale in this, that in the latter, the exchange of goods is for money.

BARTON, *old English law.* The demesne land of a manor; a farm distinct from the mansion.

BASILICA, *civil law.* This is derived from a Greek word which signifies *imperial constitutions.* The emperor Basilius finding the corpus juris civilis of Justinian, too long and obscure, resolved to abridge it, and under his auspices the work proceeded to the fortieth book, which at his death, remained unfinished. His son and successor, Leo, the philosopher, continued the work, and published it in sixty books about the year 880. Constantine Porphyrogeneta, younger brother of Leo, revised the work, re-arranged it, and republished it, anno domini 910. From that time the laws of Justinian ceased to have any force in the eastern empire, and the Basilica were the foundation of the law observed there till Constantine XIII., the last of the Greek emperors, under whom in 1453, Constantinople was taken by Mahomet the Turkish emperor, who put an end to the empire and its laws. Histoire de la Jurisprudence; Etienne, Intr. a l'étude du Droit Romain, § LIII. The Basilica were written in Greek.

BASTARD. A bastard, according to Sir William Blackstone, 1 Comm. 454, is one that is not only begotten, but born out of lawful matrimony: this definition does not appear to be complete, inasmuch as it does not embrace the case of a person who is the issue of an illicit connexion, during the coverture of his mother. A bastard may be perhaps defined to be one who is born of an illicit union, and before the lawful marriage of his parents. A man is a bastard if born, *first*, *before* the marriage of his parents; but although he may have been begotten while his parents were single, yet if they afterwards marry, and he is born during the coverture, he is legitimate, 1 Bl. Com. 455, 6. *Secondly*, if born *during the coverture*, under circumstances which render it impossible that the husband of his mother can be his father, 6 Binn. 283; 1 Browne's R. Appx. xlvii; 4 T. R. 356; Str. 940; Ib. 51; 8

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East, 193; Hardin's R. 479; *thirdly*, if born beyond a competent time *after* the coverture has determined. Stark. Ev. part 4, p. 221, n. a; Co. Litt. 123, b, by Hargrave & Butler in the note. See *Gestation*.

The principal right which bastard children have is that of maintenance from their parents. 1 Bl. Com. 458; Code Civ. of Lo. 254 to 262. To protect the public from their support the law compels the putative father to maintain his bastard children. See *Bastardy*, *Putative father*.

Considered as nullus filius, a bastard has no inheritable blood in him, and therefore no estate can descend to him, but he may take by testament if properly described after he has obtained a name by reputation. 1 Rop. Leg. 76, 266; Com. Dig. Descent, C 12; Ib. Bastard, E; Co. Lit. 123, a; Ib. 3, a; 1 T. R. 96; Doug. 548.

Bastards can acquire the rights of legitimate children only by an act of the legislature. 1 Bl. Com. 460; 4 Inst. 36.

By the laws of Louisiana, a bastard is one who is born of an illicit union, Civ. Code of Lo. art. 27, 199. There are two sorts of illegitimate children; first, those who are born of two persons, who, at the moment such children were conceived might have legally contracted marriage with each other; and, secondly, those who are born from persons, to whose marriage there existed at the time, some legal impediment. Ib. art. 200. An adulterous bastard is one produced by an unlawful connexion between two persons, who, at the time he was conceived, were, either of them, or both, connected by marriage with some other person. Ib. art. 201. Incestuous bastards are those who are produced by the illegal connexion of two persons who are relations within the degrees prohibited by law. Ib. art. 202.

Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not submitted to the paternal authority, even when they have been acknowledged. See 11 East, 7, n. Nevertheless fathers and mothers owe alimony to their children when they are in need. Ib. art. 254, 256. Alimony is due to bastards, though they be adulterous and incestuous, by the mother and her ascendants. Ib. art. 262.

Children born out of marriage, except those who are born from an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before the marriage or by the contract of marriage itself. Every other mode of legitimatising children is abolished. Ib. art. 217. Legitimation may even be extended to deceased children who have left issue, and in that case, it inures to the benefit of that issue. Ib. art. 218. Children legitimated by a subsequent marriage have the same rights as if born during the marriage. Ib. art. 219.

See generally, Vin. Abr. Bastards; Bac. Abr. Bastard; Com. Dig. Bastard; 1 Bl. Com. 454 to 460; Co. Litt. 3, b. And *Access*, *Bastardy*, *Gestation*, *Natural children*.

BASTARDY, *crim. law.* The offence of begetting a bastard child; as, such a man is guilty of fornication and bastardy.

BASTARDY, *persons*, the state or condition of a bastard. The law presumes every child legitimate, when born of a woman in a state of wedlock, and casts the *onus probandi* (q. v.) on the party who affirms the bastardy. Stark. Ev. h. t.

BASTON, *English law.* An officer so called from the rod or bâton, which he bears; he belongs to the

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warden of the Fleet, and attends the king's courts to take such into custody as are committed by the court.

BATTEL, in French *Bataille; Old English law.* An ancient and barbarous mode of trial, by single combat, called wager of battel, where, in appeals of felony, the appellee might fight with the appellant to prove his innocence. It was also used in affairs of chivalry or honour, and upon civil cases upon certain issues. Co. Litt. 294. Till lately it disgraced the English code.

BATTERY. It is proposed to consider, 1, What is a battery; 2, When a battery may be justified.

§ 1. A battery is the unlawful touching the person of another by the aggressor himself, or any other substance put in motion by him. 1 Saund. 29, b. n. 1; Id. 13 & 14, n. 3. It must either be wilfully committed or proceed from want of due care. Str. 596; Hob. 134; Plowd. 19. Hence an injury, be it never so small, done to the person of another, in an angry, revengeful, rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him, are batteries in the eye of the law. 1 Hawk. P. C. 263; see 1 Selw. N. P. 33, 4. And any thing attached to the person, partakes of its inviolability; if, therefore, A strikes a cane in the hands of B, it is sufficient to justify B in beating A. 1 Dall. 114; 1 Ch. Pr. 37.

§ 2. A battery may be justified, 1st, for the public good; 2dly, in the exercise of an office; 3dly, under process of a court of justice or other legal tribunal; 4thly, in aid of an authority in law; and lastly, as a necessary means of defence.

First,—As a *salutary mode of correction*, the beating may be justified for the public good; namely, 1. A parent may correct his child, a master his servant, a schoolmaster his scholar, 24 Edw. 4; Easter, 17, page 6; and a superior officer, one under his command. Keilw. pl. 120, p. 136; Bull. N. P. 19; and vide Cowp. 173; 15 Mass. 347.—2. As a means to *preserve the peace*, and therefore if the plaintiff assaults or is fighting with another, the defendant may lay hands upon him, and restrain him until his anger is cooled; but he cannot strike him in order to protect the party assailed, as he may do in self-defence. 2 Roll. Abr. 359, (E.) pl. 3.—3. Watchmen may arrest and detain in prison for examination, persons walking in the streets by night, whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. 3 Taunt. 14.—4. Any person has a right to arrest another to prevent a felony, as to prevent him from murdering his wife.—5. Any one may arrest another upon suspicion of felony, provided a felony has actually been committed, that there is reasonable ground for suspecting the person arrested to be the criminal, and that the party making the arrest, himself entertained the suspicion.—6. Any private individual may arrest a felon. Hale's P. C. 89.—7. It is lawful for every man to lay hands on another to preserve public decorum; as to turn him out of church, and prevent him from disturbing the congregation or a funeral ceremony. 1 Mod. 168; and see 1 Lev. 196; 2 Keb. 124. But a request to desist should be first made, unless the urgent necessity of the case dispenses with it.

Secondly; a battery may be justified in the exercise of an office. 1. A constable may freshly arrest one who, in his view, has committed a breach of the peace, and carry him before a magistrate. But if an offence has been committed out of the constable's sight, he cannot ar-

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rest, unless it amounts to a felony. 1 Brownl. 198; or a felony is likely to ensue. Cro. Eliz. 375.—2. A justice of the peace may generally, do all acts which a constable has authority to perform; hence he may freshly arrest one, who in his view, has broken the peace; or he may order a constable at the moment to take him up. Keilw. 41.

Thirdly; A battery may be justified under the process of a court of justice or of a magistrate having competent jurisdiction. See 16 Mass. 450; 13 Mass. 342.

Lastly; A battery may be justified as a necessary means of defence. 1. Against the plaintiff's assaults in the following instances: In defence of himself, his wife, 3 Salk. 46; his child, and his servant, Ow. 150; sed vide, 1 Salk. 407. So likewise the wife may justify a battery in defending her husband, Ld. Raym. 62; the child its parent, 3 Salk. 46, and the servant his master. In these situations, the party need not wait until a blow has been given, for then he might come too late, and be disabled warding off a second stroke from his own person, or effectually protecting that of the party assailed. Care, however, must be taken that the battery transgress not the bounds of necessary defence and protection, for it is only permitted as a means to avert an impending evil which might otherwise overwhelm the party, and not as a punishment or retaliation for the injurious attempt. Str. 953. The degree of force necessary to repel an assault, will naturally depend upon, and be proportioned, to the violence of the assailant; but with this limitation, any degree is justifiable. Ld. Raym. 177. 2 Salk. 642.—2. A battery may likewise be justified in the necessary defence of one's property; if the plaintiff is in the act of entering peaceably upon the defendant's land, or having entered, is discovered not committing violence, a request to depart is necessary in the first instance, 2 Salk. 641; and if the plaintiff refuses, the defendant may then, and not till then, gently lay hands upon the plaintiff to remove him from the close, and for this purpose may use, if necessary, any degree of violence short of striking the plaintiff, as by thrusting him off; Skinn. 228. If the plaintiff resists, the defendant may oppose force to force. 8 T. R. 78. But if the plaintiff is in the act of forcibly entering upon the land, or having entered, is discovered subverting the soil, cutting down a tree or the like, 2 Salk. 641, a previous request is unnecessary, and the defendant may immediately lay hands upon the plaintiff. 8 T. R. 78. A man may justify a battery in defence of his *personal* property, without a previous request, if another forcibly attempt to take away such property. 2 Salk. 641.

BAWDY HOUSE, *crim. law*, is a house of *ill-fame*, (q. v.) kept for the resort and unlawful commerce of lewd people of both sexes. Such a house is a common nuisance, as it endangers the public peace by drawing together dissolute and debauched persons; and it has also an apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. 1 Russ. on Cr. 299; Bac. Ab. Nuisances, A; Hawk. B. 1, c. 74, § 1–5. The keeper of such a house may be indicted for the nuisance; and a married woman, because such houses are generally kept by the female sex, may be indicted with her husband for keeping such house. 1 Salk. 383; vide Dane's Ab. Index, h. t.

BEACH, the *sea shore*, (q. v.)

BEACON. A signal erected as a sea mark for the use of mariners, and to give warning of the approach of an enemy. 1 Com. Dig. 259; 5 Com. Dig. 173. Since the inven-

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tion of the telegraph, the beacon has been but little used.

BEARER, one who bears or carries a thing. If a bill note be made payable to bearer, it will pass by delivery only, without endorsement; and whoever fairly acquires a right to it, may maintain an action against the drawer or acceptor. Bills payable to bearer are contra-distinguished to those payable to order, which can be transferred only by endorsement and delivery. Bills payable to fictitious payees, are considered as bills payable to bearer.

BEARERS, *Eng. crim. law*, are such as bear down or oppress others; maintainers. This word is nearly obsolete.

BEDEL, *Eng. law*, is a cryer or messenger of a court, who cites men to appear and answer. There are also inferior officers of a parish or liberty who bear this name.

BEHAVIOUR. Vide *Good Behaviour*.

BELIEF, is the conviction of the mind, arising from evidence received, or from information derived, not from actual perception by our senses, but from the relation or information of others who have had the means of acquiring actual knowledge of the facts, and whose qualifications for acquiring that knowledge, and retaining it, and afterwards in communicating it, we can place confidence. "Without recurring to the books of metaphysicians," says Chief Justice Tilghman, 4 Serg. & Rawle, 137, "let any man of plain common sense, examine the operations of his own mind, he will assuredly find that on different subjects his belief is different. I have a firm belief that the moon revolves round the earth. I may believe, too, that there are mountains and valleys in the moon; but this belief is not so strong, because the evidence is weaker." Vide 1 Stark. Ev. 41; 2 Pow. Mortg. 555; 1 Ves. 95; 12 Ves. 80; 1 P. A. Browne's R. 258; 1 Stark. Ev. 127; Dyer, 53; 2 Hawk. c. 46, s. 167; 3 Wills. 427; 2 Bl. R. 881; Leach, 270.

BENCH, a seat of justice. Figuratively, the office of a judge, as, the bench and the bar. One of the superior courts in England is called the Court of the King's Bench. The King's Bench prison is a prison belonging and connected with that court.

BENCH WARRANT, *crim. law*. The name of a process sometimes given to an attachment issued by order of a criminal court, against an individual for some contempt, or for the purpose of arresting a person accused; the latter is seldom granted unless when a true bill has been found.

BENEFICE, *eccles. law*, is in its most extended sense, any ecclesiastical preferment or dignity; but in its more limited sense, it is applied only to rectories and vicarages.

BENEFIT OF CLERGY, *English law*, is an exemption of the punishment of death which the laws impose on the commission of certain crimes, on the culprit demanding it; by modern statutes, benefit of clergy was rather a substitution of a more mild punishment for the punishment of death. It was lately granted not only to the clergy, as was formerly the case, but to all persons. The benefit of clergy seems never to have been extended to the crime of high treason, nor to have embraced misdemeanors inferior to felony. Vide 1 Chit. Cr. Law, 667 to 688; 4 Bl. Com. ch. 28. But this infamous privilege given originally to the clergy because they had more learning than others, is now abolished by stat. 7 Geo. 4, c. 28, s. 6.

BENEFIT OF INVENTORY, *civil law*. The benefit of inventory is the privilege which the heir obtains of being liable for the charges and debts of the succession, only to

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the value of the effects of the succession, in causing an inventory of these effects within the time and manner prescribed by law. Civ. Code of Louis. art. 1025. Vide Poth. Traité des Successions, c. 3, s. 3, a. 2.

BENEVOLENCE, *Eng. law.* was an aid given by the subjects to the king under a pretended gratuity, but in reality it was an extortion and imposition.

BEQUEST. A gift by last will or testament; a legacy, (q. v.)

BESAILE or BESAYLE, *domest. relations.* The great grandfather, *proavus.* 1 Bl. Com. 186; vide *Aile.*

BETTER EQUITY. In England this term has lately been adopted. In the case of Foster v. Blackstone, the Master of the Rolls said he could no where find in the authorities what in terms was a *better equity*, but on a reference to all the cases, he considered it might be thus defined: If a prior encumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice, by the party who had the legal estate, a second encumbrancer, taking a security which in its nature afforded him that protection, had what might properly be called a *better security.* 1 Ch. Pr. 470, note. Vide 4 Rawl. R. 242; 5 Rawl. R. 144.

BID, *contracts.* A bid is an offer to pay a stipulated price for an article about to be sold at auction. The bidder has a right to withdraw his bid at any time before it is accepted, which acceptance is generally manifested by knocking down the hammer. 3 T. R. 148; Hardin's Rep. 181; Sugd. Vend. 29; Babington on Auct. 30, 42. Et vide, *Offer.*

BIDDER, *contracts.* One who makes an offer to pay a certain price for an article which is for sale. The term is applied more particularly to a person who offers a price for goods or other property, while being sold at an auction. The bidder is required to act in good faith, and any combination between him and others, to prevent a fair competition, would avoid the sale made to himself. Till the bid is accepted, the bidder may retract his bid. Vide articles, *Auction* and *Bid.*

BIENS, a French word, which signifies property. In law, it means property of every description, except estates of freehold and inheritance. Dane's Ab. c. 133, a. 3; Com. Dig. h. t. In the French law, this term includes all kinds of property, real and personal. Biens are divided into biens meubles, movable or personal property; and biens immeubles, immovable property or real estate.

BIGAMY, *crim. law, domestic relations.* The state of a man who has two wives, or of a woman who has two husbands living at the same time. When the man has more than two wives, or the woman more than two husbands living at the same time, then the party is said to have committed polygamy, but the name of bigamy is more frequently given to this offence in legal proceedings. 1 Russ. on Cr. 187. In England this offence is punished by the stat. 1 Jac. 1, c. 11, which makes the offence felony, but it exempts from punishment the party whose husband or wife shall continue to remain absent for seven years before the second marriage, without being heard from, and persons who shall have been legally divorced. The statutory provisions in the U. S. against bigamy or polygamy, are generally similar to, and copied from the statute of 1 Jac. 1, c. 11, excepting as to the punishment. The several exceptions in this statute are also nearly the same in the American statutes, but the punishment of the offence is different in many of the states. 2 Kent, Com. 69; vide Bac. Ab. h. t.; Com. Dig.

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Justices, (S 5,); Merlin Répert. mot Bigamie. Code lib. 9, tit. 9, l. 18; and lib. 5, tit. 5, l. 2.

BILL, *legislation*, is an instrument drawn or presented by a member to a legislative body for its approbation, so that it may become a law, or its rejection. After it has gone through both houses and received the constitutional sanction of the chief magistrate, where such approbation is requisite, it becomes a law.

BILL, *chancery practice*, is a complaint in writing addressed to the chancellor, containing the names of the parties to the suit, both complainant and defendant, a statement of the facts on which the complainant relies, and the allegations which he makes, with an averment that the acts complained of are contrary to equity, and a prayer for relief and proper process. Its office in a chancery suit, is the same as a declaration is in action at law, a libel in a court of admiralty, or an allegation in the spiritual courts.

A bill usually consists of nine parts, 1st, The address, which must be to the chancellor. 2dly, The second part consists of the names of the plaintiffs and their descriptions; but the description of the parties in this part of the bill does not, it seems, constitute a sufficient averment, so as to put that fact in issue; 2 Ves. & Bea. 327. 3dly, The third is called the premises or stating part of the bill, and contains the plaintiff's case. 4thly, In the fourth place is a general charge of confederacy. 5thly, The fifth part consists of allegations of the defendant's pretences, and charges in evidence of them. 6thly, The sixth contains the clause of jurisdiction, and an averment that the acts complained of are contrary to equity. 7thly, The seventh part consists of a prayer that the parties may answer the premises, which is usually termed the interrogatory part. 8thly, The prayer for relief sought forms the eighth part. And, 9thly, The ninth part is a prayer for process. 2 Madd. Ch. 166; Blake's Ch. Pr. 35; 1 Mitf. Pl. 41. The facts contained in the bill must, as far as known to the complainant, be sworn to be true, and such as are not known to him, he must swear he believes to be true. And it must be signed by counsel. 2 Madd. Ch. Pr. 167.

Bills, with their several kinds and distinctions, may be divided into three clauses or heads; 1, Original bills; 2, Auxiliary bills; and, 3, Bills in the nature of original bills.

1. Original bills related to some matters not before litigated in the court by the same persons, standing under the same interests, under which the following may be ranged: bills praying the decree of the court, &c.—of interpleader—of certiorari—to perpetuate the testimony of witnesses—of discovery of facts—of *quia timet*—of peace—and of information. See these several titles below.

2. Auxiliary bills which are filed in aid of original bills; under this class may be placed bills of revivor—and of revivor and supplement.

3. Bills in the nature of original bills, being sometimes auxiliary, and sometimes otherwise, and those which tend to oppose or seek the benefit of former bills, such as cross bills—bills of review—in the nature of bills of review—to impeach a decree on the ground of fraud—to carry a decree in a former suit in execution—in the nature of bills of revivor—in the nature of supplemental bills—to suspend the operation of decrees, and also bills filed by the direction of the court for the purpose of obtaining its decrees.

To the first class may be added, bills for dower or a partition—bills to marshal securities—bills to

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marshal assets—and bills of foreclosure.

BILL OF ATTAINDER, *legislation, punishment*, is an act of the legislature by which one or more persons are declared to be attainted, and their property confiscated. The constitution of the United States declares that no state shall pass any bill of attainder. During the revolutionary war, bills of attainder, and ex post facto acts of confiscation, were passed to a wide extent. The evils resulting from them, in times of more cool reflection, were discovered to have far outweighed any imagined good. Story on Const. § 1367.

BILL OF ADVENTURE, *com. law, contracts.* A writing signed by a merchant, to testify that the goods shipped on board a certain vessel belong to another person who is to take the hazard, the subscriber signing only to oblige himself to account to him for the produce.

BILL-BOOK, *commerce, accounts*, is one in which an account is kept of promissory notes, bills of exchange, and other bills payable or receivable, and ought to contain all that a man issues or receives. The book should show the date of the bill, the term it has to run before it becomes due, the names of all the parties to it, and the time of its becoming due, together with the amount for which it was given.

BILL OF COSTS, *practice*, a statement of the items which form the total amount of the costs of a suit or action. This is demandable as a matter of right before the payment of the costs.

BILLS OF CREDIT. It is provided by the constitution of the United States, art. 1, s. 10, that no state shall "emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts." Such bills of credit are declared to mean promissory notes or bills issued exclusively on the credit of the state, and for the payment of which the faith of the state only is pledged. The prohibition, therefore, does not apply to the notes of a state bank, drawn on the credit of a particular fund set apart for the purpose. 2 M'Cord's R. 12. Bills of credit may be defined to be paper issued and intended to circulate through the community for its ordinary purposes, as money redeemable at a future day. 4 Pet. U. S. R. 410; 1 Kent Com. 407. This phrase is used in another sense among merchants, it is a letter sent by an agent or other person to a merchant desiring him to give credit to the bearer for goods or money. Com. Dig. Merchant, F 3.

BILL TO CARRY A DECREE INTO EXECUTION, *in chancery practice.* A bill to carry a decree into execution is one which is filed when, from the neglect of parties, or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hinde, 68; 1 Harr. Ch. 148.

BILL OF CERTIORARI, *in chancery practice.* A bill of *certiorari* is one praying the writ of *certiorari* to remove a cause from an inferior court of equity. Coop. Eq. Pl. 44.

BILL, CROSS, *in chancery practice.* A cross bill is one which is brought by a defendant in a suit against the plaintiff, respecting the matter in question in that bill. Coop. Eq. Pl. 85; Mitf. Pl. 75. A bill of this kind is usually brought to obtain, either a necessary discovery, or full relief to all the parties. It frequently happens, and particularly if any question arises between two defendants to a bill, that the court cannot make a complete decree without a cross bill or cross bills to bring every matter in dispute com-

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pletely before the court, litigated by the proper parties, and upon proper proofs. In this case it becomes necessary for some one of the defendants to the original bill to file a bill against the plaintiff and other defendants in that bill, or some of them, and bring the litigated point properly before the court. A cross bill should state the original bill, and proceedings thereon, and the rights of the party exhibiting the bill which are necessary to be made the subject of a cross litigation, or the grounds on which he resists the claims of the plaintiff in the original bill, if that is the object of the new bill.

A cross bill may be filed to answer the purpose of a plea *puis derrein continuance* at the common law. For example, where pending a suit, and after replication and issue joined, the defendant having obtained a release and attempted to prove it *viva voce* at the hearing, it was determined that the release not being in issue in the cause, the court could not try the facts or direct a trial at law for that purpose, and that a new bill must be filed to put the release in issue. Mitf. Pl. 75, 76; Coop. Eq. Pl. 85; 1 Harr. Ch. Pr. 135.

A cross bill must be brought before publication is passed on the first bill, 1 Johns. Ch. R. 62, and not after, except the plaintiff in the cross bill go to the hearing on the depositions already published; because of the danger of perjury and subornation, if the parties should, after publication of the former depositions, examine witnesses *de novo*, to the same matter before examined into. 7 Johns. Ch. Pr. 250; Nels. Ch. R. 103.

BILL OF DEBT, or BILL OBLIGATORY, *in contracts*, is when a merchant by his writing acknowledges himself in debt to another, in a certain sum to be paid on a certain day, and subscribes it at a day and place certain. It may be under seal or not. Com. Dig. Merchant, F 2.

BILL OF DISCOVERY, *in chancery practice*. A bill of discovery emphatically so called, is one which prays for the discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings or other things in his custody or power. Hinde, 20; Blake's Ch. Pr. 37. Every bill, except the bill of certiorari, may in truth be considered a bill of discovery, for every bill seeks a disclosure of circumstances relative to the plaintiff's case; but that usually and emphatically distinguished by this appellation is a bill for the discovery of facts, resting in the knowledge of the defendant, or of deeds or writings or other things in his custody or power, and seeking no relief in consequence of the discovery. This bill is commonly used in aid of the jurisdiction of some other court; as to enable the plaintiff to prosecute or defend an action at law. Mitf. Pl. 52. The plaintiff, in this species of bill, must be entitled to the discovery he seeks, and shall only have a discovery of what is necessary for his own title, as of deeds he claims under, and not to pry into that of the defendant. 2 Ves. 445. See Blake's Ch. Pr. 45; Mitf. Pl. 52; Coop. Eq. Pl. 58; 1 Madd. Ch. Pr. 196.

The action *ad exhibendum*, in the Roman law, was not unlike a bill of discovery. Its object was to force the party against whom it was instituted, to exhibit a thing or a title in his power. It was always preparatory to another, which was always a real action in the sense of the word in the Roman law. See *Action ad exhibendum*; Merlin, Questions de Droit, tome i. 84.

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BILL OF EXCEPTION, *practice*, is the statement in writing, of the objection made by a party in a cause, to the decision of the court on a point of law, which, in confirmation of its accuracy, is signed and sealed by the judge or court who made the decision. The object of the bill of exceptions, is to put the question of law on record for the information of the court of error having cognizance of such cause. The bill of exception is authorised by the statute of Westminster 2, 13 Ed. 1, c. 31, the principles of which have been adopted in all the states of the Union. It is thereby enacted that "when one impleaded before any of the justices, alleges an exception praying they will allow it, and if they will not, if he that alleges the exception writes the same, and requires that the justices will put their seals, the justices shall so do, and if one will not, another shall; and if, upon complaint made of the justice the king cause the record to come before him, and the exception be not found in the roll, and the plaintiff show the written exception, with the seal of the justices thereto put, the justice shall be commanded to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed." The statute extends to both plaintiff and defendant. Here will be considered, 1, the cases in which a bill of exceptions may be had; 2, the time of making the exception; 3, the form of the bill; 4, the effect of the bill.

1. In general a bill of exception can be had only in a *civil* case. When in the course of the trial of a cause the judge, either in his charge to the jury, or in deciding an interlocutory question, mistakes the law, or is supposed by the counsel on either side to have mistaken the law, the counsel against whom the decision is made may tender an exception to his opinion, and require him to seal a bill of exceptions. 3 Bl. Com. 372. See Salk. 284, pl. 16; 7 Serg. & Rawle, 178; Whart. Dig. Error, D, E; 1 Cowen, 622; 2 Caines, 168; 2 Cowen, 479; 5 Cowen, 243; 3 Cranch, 298; 4 Cranch, 62; 6 Cranch, 226; 17 Johns. R. 218; 3 Wend. 418; 9 Wend. 674. In *criminal* cases the judges, it seems, are not required to seal a bill of exceptions, 1 Chit. Cr. Law, 622. In New York, it is provided by statute that on the trial of any indictment, exceptions to any decision of the court may be made by the defendant, in the same cases and manner provided by law in civil cases; and a bill thereof shall be settled, signed and sealed, and filed with the clerk of the court. But such bill of exception shall not stay or delay the rendering of judgment, except in some specified cases. Grah. Pr. 768, note.

2. The bill of exceptions must be tendered at the time the decision complained of is made, or if the exception be to the charge of the court, it must be made before the jury have given their verdict. 8 S. & R. 216; 4 Dall. 249; S. C. 1 Binn. 38; 6 John. 279; 1 John. 312. In practice, however, the point is merely noted, at the time, and the bill is afterwards settled. 8 S. & R. 216.

3. The bill of exception must be signed by the judge who tried the cause, which is to be done upon notice of the time and place, when and where it is to be done. 3 Cowen, 32; 8 Cowen, 766; Bull. N. P. 316; 3 Bl. Com. 372. When the bill of exception is sealed, both parties are concluded by it. 3 Dall. 38; Bull. N. P. 316.

4. The bill of exceptions, being

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part of the record, is evidence between the parties, as to the facts therein stated. No notice can be taken of objections or exceptions not appearing on the bill. 8 East, 280; 3 Dall. 38, 422, n.; 2 Binn. 168. Vide generally, Dunlap's Pr., Grah. Pr., Tidd's Pr., Chit. Pr., Penna. Pr., Archbold's Pr., Sellon's Pr., in their several indexes, h. t.; Steph. Pl. 111; 1 Bac. Ab. 527; 1 Phil. Ev. 214; 12 Vin. Ab. 262; Code of Pract. of Louisiana, art. 487, 8, 9.

BILL OF EXCHANGE, *contracts.* A bill of exchange is defined to be an open letter of request from, and order by, one person on another, to pay a sum of money therein mentioned to a third person, on demand or at a future time therein specified. 2 Bl. Com. 466; Bayl. on Bills, 1; Chit. Bills, 1; 1 H. Bl. 586; 1 B. & P. 291, 654; Selw. N. P. 285; Leigh's N. P. 335; Byles on Bills, 1. The subject will be considered with reference, 1, to the parties to a bill; 2, the form; 3, their different kinds; 4, the indorsement and transfer; 5, the acceptance; 6, the protest.

§ 1. The parties to a bill of exchange are the drawer, (q. v.) or he who makes the order; the drawee, (q. v.) or the person to whom it is addressed; the acceptor, (q. v.) or he who accepts the bill; the payee, (q. v.) or the party to whom, or in whose favour the bill is made. The indorser, (q. v.) is he who writes his name on the back of a bill; the indorsee, (q. v.) is one to whom a bill is transferred by indorsement; and the holder, (q. v.) is in general any one of the parties who is in possession of the bill, and entitled to receive the money therein mentioned. Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and indorsed in the name of the fictitious payee, it is in effect a bill to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties, who were privy to the transaction. 2 H. Bl. 178–288; 3 T. R. 174, 182, 481; 1 Camp. 130; 19 Ves. 311. In a case where the drawer and payee were fictitious persons, the acceptor was held liable to a bona fide holder. 10 B. & C. 468; S. C. 11 E. C. L. R. 116. Vide as to parties to a bill, Chit. Bills, 15 to 76, (ed. of 1836.)

§ 2. The form of the bill. 1. The general requisites of a bill of exchange, are 1st, that it be in writing. R. T. Hardw. 2; 2 Stra. 955; 1 Pardess. 344, 5.—2d, That it be for the payment of money, and not for the payment of merchandise; 5 T. R. 485; 3 Wils. 213; 2 Bla. Rep. 782; 1 Burr. 325; 1 Dowl. & Ry. N. P. C. 33; 1 Bibb's R. 502; 3 Marsh. (Kty.) R. 184; 6 Cowen, 108; 1 Caines's R. 381; 4 Mass. 245; 10 S. & R. 94; 1 M'Cord, 115; 2 Nott & M'Cord, 519. But see 9 John. R. 120; and 19 John. R. 144, where it was held that a note payable in bank bills was a good negotiable note.—3d. That the money be payable at all events, not depending on any contingency, either with regard to event, or with regard to the fund out of which payment is to be made, or the parties by or to whom payment is to be made. 8 Mod. 363; 4 Vin. Ab. 240, pl. 16; 1 Burr. 323; 4 Dougl. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 575; 2 Barn. & Ald. 417. —2. The particular requisites of a bill of exchange. It is proper here to remark that no particular form or set of words is necessary to be adopted. An order "to deliver money," or a promise that "A B shall receive money," or a promise "to be accountable," or "responsible" for it, have been severally held to be

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sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod. 364. The several parts of a bill of exchange are, 1st, that it be properly dated as to place.—2d, That it be properly dated as to the time of making; as the time a bill becomes due is generally regulated by the time when it was made, the date of the instrument ought to be clearly expressed. Beawes, pl. 3; 1 B. & C. 398; 2 Pardess. n. 333.—3d, The superscription of the sum for which the bill is payable is not indispensable, but if it be not mentioned in the bill, the superscription will aid the omission. 2 East, P. C. 951.—4th, The time of payment ought to be expressed in the bill; if no time be mentioned, it is considered as payable on demand. 7 T. R. 427; 2 Barn. & C. 157.—5th, Although it is proper for the drawer to name the place of payment, either in the body or subscription of the bill, it is not essential, and it is the common practice, for the drawer merely to write the address of the drawee, without pointing out any place of payment; in such case the bill is considered payable, and to be presented at the residence of the drawee, where the bill was made, or to him personally any where. 2 Pardess. n. 337; 10 B. & C. 4; Moody & M. 381; 4 Car. & Paine, 35. It is at the option of the drawer whether or not to prescribe a particular place of payment, and make the payment there part of the contract. Beawes, pl. 3. The drawee, unless restricted by the drawer, may also fix a place of payment by his acceptance. Chit. Bills, 172.—6th, There must be an order or request to pay, and that must be a matter of right, and not of favour; Mood. & M. 171; but it seems that civility in the terms of request cannot alter the legal effect of the instrument; "il vous *plaira* de payer," is in France the proper language of a bill. Pailliet, Manuel de Droit Français, 841. The word *pay* is not indispensable, for the word *deliver* is equally operative. Ld. Raym. 1397.—7th, Foreign bills of exchange consist, generally, of several parts; a party who has engaged to deliver a foreign bill, is bound to deliver as many parts as may be requested. 2 Pardess. n. 342. The several parts of a bill of exchange are called a set; each part should contain a condition that it shall be paid, provided the others remain unpaid. Ib. The whole set make but one bill.—8th. The bill ought to specify to whom it is to be paid; 2 Pardess. n. 338; 1 H. Bl. 608; Russ. & Ry. C. C. 195. When the name of the payee is in blank, and the bill has been negotiated by indorsement, the holder may fill the blank with his own name; 2 M. & S. 90; 4 Campb. 97; it may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.—9th, To make a bill negotiable, it must be made payable to order, or bearer, or there must be other operative and equivalent words of transfer. Beawes, pl. 3; Selw. N. P. 303, n. 16; Salk. 133. If, however, it is not intended to make the bill negotiable, these words need not be inserted, and the instrument will nevertheless be valid as a bill of exchange. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines's R. 137; 9 John. R. 217. In France a bill must be made payable to order; Code de Com. art. 110; 2 Pardess. n. 339.—10th, The sum for which the bill is drawn, must be clearly expressed in the body of it, in writing at length. The sum must be fixed and certain, and not contingent. 2 Stark. R. 375; and it may be in the money of any country.—11th, It is usual to insert the words, *value received*, but it is implied that every bill and indorse-

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ment has been made for value received, as much as if it had been expressed *in totidem verbis;* 3 M. & S. 352; Bayl. 40, n. 83.—12th, It is usual when the drawer of the bill is debtor to the drawee, to insert in the bill these words, "and put it to *my* account;" but when the drawee or the person to whom it is directed is debtor to the drawer, then he inserts these words, "and put it to *your* account;" and sometimes where a third person is debtor to the drawee, it may be expressed thus, "and put it to the account of A B." Marius, 27; Com. Dig. Merchant, F 5; R. T. Hardw. 1, 2, 3; but it is altogether unnecessary to insert any of these words. 1 B. & C. 398; S. C. 8 E. C. L. R. 108.—13th, When the drawer is desirous to inform the drawee that he has drawn a bill, he inserts in it, the words, "*as per advice;*" but when he wishes the bill paid without any advice from him, he writes, "*without further advice.*" In the former case the drawee is not authorised to pay the bill till he has received the advice; in the latter, he may pay before he has received advice.—14th, The drawee must either subscribe the bill, or, it seems, his name may be simply inserted in the body of the instrument. Beawes, pl. 3; Ld. Raym. 1376; 1 Stra. 609.—15th, The bill being a letter of request from the maker to a third person, should be addressed to that person, by the christian name and sirname, or by the full style of their firm, 2 Pardess. n. 335; Beawes, pl. 3; Chit. Bills, 186, 7.—16th, The place of payment should be stated in the bill.—17th, As a matter of precaution, the drawer of a foreign bill, may, in order to prevent expenses, require the holder to apply to a third person, named in the bill for that purpose, when the drawee refuses to accept the bill; this requisition is usually in these words, placed in a corner under the drawee's address; "*Au besoin chez*, Messrs. —— at ——," in other words, "In case of need apply to Messrs. —— at ——." 18th, The drawer may also add a request or direction, that in case the bill should not be honoured by the drawee, it shall be returned without protest or without expense, by subscribing the words, "*retour sans protêt*," or "*sans frais;*" in this case the omission of the holder to protest, having been induced by the drawer, he, and perhaps the indorsers, cannot resist the payment on that account, and thus the expense is avoided, Chit. Bills, 188.—19th, The drawer may also limit the amount of damages, by making a memorandum on the bill, that they shall be a definite sum, as, for example, "*In case* of non-acceptance or non-payment, re-exchange and expenses not to exceed —— dollars." Ib.

§ 3. Bills of exchange are either foreign or inland. *Foreign*, when drawn by a person out of, on another in, the United States, or *vice versâ*, or by a person in a foreign country, on another person in another foreign country, or by a person in one state on another in another of the United States. 2 Pet. R. 589; 10 Pet. R. 572; 12 Pick. 483; 15 Wend. 527; 3 Marsh. (Kty.) R. 488; 1 Rep. Const. Ct. 100; 4 Leigh's R. 37; 4 Wash. C. C. Rep. 148; 1 Whart. Dig. tit. Bills of Exchange, pl. 78. But see 5 John. R. 384, where it is said by Van Ness, Justice, that a bill drawn in the United States, upon any place within the United States, is an inland bill. An *inland* bill, is one drawn by a person in a state, on another in the same state. The principal difference between foreign and inland bills is, that the former must be protested, and the latter

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need not. 6 Mod. 29; 2 B. & A. 656; Chit. Bills, (ed. of 1836,) p. 14. "The English rule requiring protest and notice of non-acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law in the states of Massachusetts, Connecticut, New York, Maryland, and South Carolina. 3 Mass. R. 557; 1 Day's R. 11; 3 John. R. 202; 4 John. R. 144; 1 Bay's R. 468; 1 Harr. & John. 187. But the supreme court of the United States, in Brown v. Berry, 3 Dall. R. 365; and in Clark v. Russell, cited in 6 Serg. & Rawle, 358, held, that in an action on a protest for non-payment on a foreign bill, protest for non-acceptance, or notice of non-acceptance, need not be shown, inasmuch as they were not required by the custom of merchants in this country; and those decisions have been followed in Pennsylvania. 6 Serg. & Rawle, 356. It becomes a little difficult, therefore, to know what is the true rule of the law-merchant in the United States, on this point, after such contrary decisions." 3 Kent's Com. 95.

§ 4. The indorsement. Vide articles *Indorsement*, *Indorser*, *Indorsee*.

§ 5. The acceptance. Vide article *Acceptance*.

§ 6. The protest. Vide article *Protest*.

Vide, generally, Chitty on Bills; Bailey on Bills; Byles on Bills; Marius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de change; 4 Vin. Ab. 238; 4 Bac. Ab. 685; Com. Dig. Merchant; Dane's Ab. Index, h. t.; 1 Sup. to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1.

BILL OF FORECLOSURE, *chancery practice*. A bill of foreclosure is one filed by a mortgagee against the mortgagor, for the purpose of having the estate sold, and thereby to obtain the sum mortgaged on the premises with interest and costs. 1 Madd. Ch. Pr. 528.

BILL OF GROSS ADVENTURE, a phrase used in French maritime law; it comprehends every instrument of writing which contains a contract of bottomry, respondentia, and every species of maritime loan. We have no word of similar import. Hall on Mar. Loans, 182, n. See *Bottomry*, *Gross adventure*, *Respondentia*.

BILL OF HEALTH, *in commercial law*, is a certificate, properly authenticated, that a certain ship or vessel therein named, comes from a place wherein no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper. It is generally found on board of ships coming from the Levant, or from the coast of Barbary, where the plague so frequently prevails. 1 Marsh. on Ins. 408.

BILL OF INFORMATION, *chancery practice*. A bill of information, is a bill instituted in behalf of the state, or those whose rights are the objects of its care and protection. It is commenced by information exhibited in the name of the attorney general, and differs from other bills little more than in name. If the suit immediately concerns the rights of the state, the information is generally exhibited without a relator. If it does not immediately concern those rights, it is conducted at the instance and under the immediate direction of some person whose name is inserted in the information, and is termed the relator; the officers of the state in such or the like cases, are no further concerned than as they are instructed and advised by those whose rights the state is

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called upon to protect and establish. Blake's Ch. Pr. 50; see Harr. Ch. Pr. 151.

BILL OF INDICTMENT, See *Indictment.*

BILL OF INTERPLEADER, *chancery practice.* A bill of interpleader, is one in which the person exhibiting it claims no right in opposition to the rights claimed by the person against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person exhibiting the bill. Hinde, 20; Coop. Eq. Pl. 43; Mitf. Pl. 32. A bill of interpleader may be filed, though the party has not been sued at law, or has been sued by one only of the conflicting claimants, or though the claim of one of the defendants is actionable at law, and the other in equity. 6 Johns. Chan. R. 445.

BILL OF LADING, *contracts*, and *commercial law*, is a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, (the dangers of the seas excepted,) at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same. 1 T. R. 745; Bac. Abr. Merchant, (L;) Com. Dig. Merchant, (E 8, b.); Abbott on Ship. 216; 1 Marsh. on Ins. 407; Code de Com. art. 281. Or it is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. Per Lord Loughborough, 1 H. Bl. 359.

A bill of lading ought to contain the name of the consignor; the name of the consignee; the name of the master of the vessel; the name of the vessel; the place of departure and destination; the price of the freight; and in the margin, the marks and numbers of the things shipped. Code de Com. art. 281; Jacobsen's Sea Laws.

It is usually made in three originals, or parts. One of them is commonly sent to the consignee on board with the goods; another is sent to him by mail or some other conveyance; and the third is retained by the merchant or shipper. The master should also take care to have another part for his own use. Abbott on Ship. 217.

The bill of lading is assignable, and the assignee is entitled to the goods, subject, however, to the shipper's right, in some cases, of stoppage in transitu. See *In transitu;* Abbot on Ship. 351; Bac. Abr. Merchant, (L).

BILL TO MARSHAL ASSETS, *chancery practice.* A bill to marshal assets is one filed in favour of simple contract creditors, and of legatees, devisees and heirs, but not in favour of next of kin, to prevent specialty creditors from exhausting the personal estate. See *Marshalling of Assets.*

BILL TO MARSHAL SECURITIES, *chancery practice.* A bill to marshal securities is one which is filed against a party who has two funds by which his debt is secured, by a person having an interest in only one of those funds. As if A has two mortgages and B has but one, B has a right to throw A upon the security which B cannot touch. 2 Atk. 446; see 8 Ves. 388, 395. This last case contains a luminous exposition in all its bearings.

BILL OBLIGATORY, *contracts.* It is a written obligation by

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which a debtor acknowledges himself indebted in a certain sum, say one hundred dollars, and for the payment of the debt binds himself in a larger sum, say two hundred dollars. Cro. Car. 515; 2 Ventr. 106; Com. Dig. Obligations, D.

BILL ORIGINAL, *chancery practice.* An original bill is one, which prays the decree of the court, touching some right claimed by the person exhibiting the bill, in opposition to some right claimed by the person against whom the bill is exhibited. Hinde, 19; Coop. Eq. Pl. 43.

BILL, AN ORIGINAL, *in the nature of a supplemental bill, chancery practice.* An original bill in the nature of a supplemental bill, is one filed when the interest of the plaintiff or defendant, suing or defending wholly determines, and the same property becomes vested in another person not claiming under him. Hinde, 71; Blake's Ch. Pr. 38.

BILL OF PARCELS, *merc. law.* An account containing in detail the names of the items which compose a parcel or package of goods; it is usually transmitted with the goods to the purchaser, in order that if any mistake have been made, it may be corrected.

BILL OF PARTICULARS, *practice,* is a detailed statement of a plaintiff's cause of action, or of the defendant's set-off. In all actions in which the plaintiff declares generally, without specifying his cause of action, a judge upon application will order him to give the defendant a bill of the particulars, and in the meantime stay proceedings. 3 John. R. 248. And when the defendant gives notice or pleads a set-off, he will be required to give a bill of the particulars of his set-off, on failure of which he will be precluded from giving any evidence in support of it at the trial. The object in both cases is to prevent surprise and procure a fair trial. 1 Phil. Ev. 152; 3 Stark. Ev. 1055. The bill of particulars is an account of the items of the demand, and states in what manner they arose.

BILL TO PERPETUATE TESTIMONY, *chancery practice.* A bill to perpetuate the testimony of witnesses, is one which prays leave to examine them *de bene esse,* and states that the witnesses are old, infirm or sick, or going beyond the jurisdiction of the court, whereby the party is in danger of losing the benefit of their testimony. Hinde, 20. It does not pray for relief. Coop. Eq. Pl. 44. As to the requisites of such a bill, see Mitf. Pl. 50.

BILL OF PEACE, *chancery practice.* A bill of peace is one which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions. In such a case the court will prevent a multiplicity of suits, by directing an issue to determine the right, and ultimately an injunction. 1 Madd. Ch. Pr. 166; 1 Harr. Ch. Pr. 104; Blake's Ch. Pr. 48.

BILL QUIA TIMET, *chancery practice.* A bill *quia timet,* is one which is filed when a person is entitled to property of a personal nature after another's death, and has reason to apprehend it may be destroyed by the present possessor; or when he is apprehensive of being subjected to a future inconvenience, probable or even possible to happen or be occasioned by the neglect, inadvertence or culpability of another. Upon a proper case being made out, the court will, in the one case, secure for the use of the party the property, to secure which is the object of the bill, by compelling the person in the possession of it, to guaranty the same by a proper security, entered into

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for that purpose, against any subsequent disposition or wilful destruction, and in the other, they will quiet the party's apprehension of future inconvenience, by removing the causes which may lead to it. 1 Harr. Ch. Pr. 107; 1 Madd. Ch. Pr. 218; Blake's Ch. Pr. 37, 47.

BILL OF REVIEW, *chancery practice.* Bills of review are in the nature of writs of error. They are brought to have decrees of the court reviewed, altered or reversed, and there are two sorts of this species of bill. The first is brought where the decree has been signed and enrolled; and the second, where the decree has not been signed and enrolled. 1 Ch. Cas. 54; 3 P. Wms. 371. The first of these is called by way of pre-eminence, a bill of review; while the other is distinguished by the appellation of a bill in the nature of a bill of review, or a supplemental bill in the nature of a bill of review. Coop. Eq. Pl. 88; 2 Madd. Ch. Pr. 537. A bill of review must be either for error in point of law, 2 Johns. C. R. 488; Coop. Eq. Pl. 89; or for some new matter of fact, relevant to the case, discovered since publication passed in the cause, and which could not, with reasonable diligence, have been discovered before. 2 Johns. Ch. R. 488; Coop. Eq. Pl. 91. See 3 Johns. Ch. R. 124.

BILL OF REVIVOR, *chancery practice.* A bill of revivor is a continuance of the original bill, when by death some party to it has become incapable of prosecuting or defending a suit, or a female plaintiff has by marriage incapacitated herself from suing alone. Mitf. Pl. 33, 70; 2 Madd. Ch. Pr. 526. See 3 Johns. Ch. R. 60.

BILL OF REVIVOR AND SUPPLEMENT, *chancery practice.* A bill of revivor and supplement is a compound of a supplemental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill, arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. 5 Johns. Ch. R. 334; Mitf. Pl. 32, 74.

BILL IN THE NATURE OF A BILL OF REVIEW, *chancery practice.* A bill in the nature of a bill of review, is one brought by a person not bound by a decree, praying that the same may be examined and reversed; as where a decree is made against a person who had no interest at all in the matter in dispute, or had not such an interest as is sufficient to render the decree against him binding after some person claiming after him. Relief may be obtained against error in the decree, by a bill in the nature of a bill of review. This bill in its frame resembles a bill of review, except that praying that the former decree may be reviewed and reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is reheard upon the original bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental bill may require. 1 Harr. Ch. Pr. 145.

BILL IN THE NATURE OF A BILL OF REVIVOR, *chancery practice.* A bill in the nature of a bill of revivor, is one which is filed when the death of a party whose interest is not determined by his death, is attended with such a transmission of his interest, that the title to it, as well as the person entitled, may be litigated in the court of chancery, as in the case of a devise of real estate, the suit is not permitted to be continued by bill of revivor. 1 Ch. Cas. 123; Ib. 174; 3 Ch. Rep.

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39; Mosely, R. 44. An original bill upon which the title may be litigated, must be filed, and this bill will have so far the effect of a bill of revivor, that if the title of the representative by the act of the deceased party is established, the same benefit may be had of the proceedings upon the former bill, as if the suit had been continued by bill of revivor. 1 Vern. 427; 2 Vern. 548; Ib. 672; 2 Bro. P. C. 529; 1 Eq. Cas. Ab. 83; Mitf. Pl. 66, 67.

BILL OF RIGHTS, *English law.* A statute passed in the reign of William and Mary, so called because it declared the true rights of British subjects. W. & M. stat. 2, c. 2.

BILL OF SALE, *contracts*, is an agreement in writing, under seal, by which a man passes the right or interest he has in goods and chattels. As the law imports a consideration when an agreement is made by deed, a bill of sale alters the property. Yelv. 196; Cro. Jac. 270; 6 Co. 18.

BILL, SINGLE, *contracts*, is a writing by which one person or more, promise to another or others, to pay him or them a sum of money at a time therein specified, without any condition. It is usually under seal. It differs from a promissory note in this, that the latter is always payable to order; and from a bond, because that instrument has always a condition attached to it, on the performance of which it is satisfied. 5 Com. Dig. 194; 7 Com. Dig. 357.

BILL, SUPPLEMENTAL, *chancery practice.* A supplemental bill is occasioned by some defect in a suit already instituted, whereby the parties cannot obtain complete justice, to which otherwise the case by their bill would have entitled them. It is used for the purpose of supplying some irregularity discovered in the formation of the original bill, or some of the proceedings thereupon; or some defect in a suit, arising from events happening since the points in the original were at issue, and which gives an interest to persons not parties to the suit. Blake's Ch. Pr. 50. See 3 Johns. Ch. R. 423.

BILL, TRUE, vide *True Bill.*

BILLS PAYABLE, *commerce*, are engagements which a merchant has entered into in writing and which he is to pay on their becoming due. Pard. n. 85.

BILLS RECEIVABLE, *commerce*, are promissory notes, bills of exchange, bonds, and other evidences or securities which a merchant or trader holds and which are payable to him. Pard. n. 85.

BILLA VERA, *practice.* When the proceedings of the courts were recorded in latin, and the grand jury found a bill of indictment to be supported by the evidence, they endorsed on it *billa vera;* now they endorse in plain English "a true bill."

BILLINGUIS, a man of double tongue, in a legal sense is the name of a jury who pass in any case between a citizen and an alien; a jury *de medietate linguæ.* Cunn. Dict. This kind of jury is abolished in Pennsylvania, and probably in most of the United States.

TO BIND, BINDING, *contracts.* These words are applied to the contract entered into between a master and an apprentice; the latter is said to be bound. In order to make a good binding the consent of the apprentice must be had, together with that of his father, next friend, or some one standing in loco parentis. Bac. Ab. Master and Servant, (A).

BIRRETUS, the cap or coif of a judge or serjeant at law. Cunn. Dict.

BIRTH, is the act of being wholly brought into the world. The whole body must be detached from that of

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the mother, in order to make the birth complete. 5 C. & P. 329; S. C. 24 E. C. L. R. 344; 6 C. & P. 349; S. C. 25 E. C. L. R. 433; 5 C. & P. 539; 24 E. C. L. R. 446. Vide articles *Breath*, *Dead Born*, *Gestation*, *Life*; and 1 Beck's Med. Jur. 478, et seq.

BISSEXTILE, is the day which is added every fourth year to the month of February, in order to make the year agree with the course of the sun. It is called *bissextile* because in the Roman calendar it was fixed on the *sixth* day before the calends of March (which answers to the 24th day of February) and this day was counted *twice*; the first was called *bissextus prior*, and the other *bissextus posterior*, but the latter was properly called bissextile or intercalary day. Now the day is not repeated, but a day, the 29th, is added to the month of February every fourth year; and the year when it is added is called leap year.

BLACK ACT, *Engl. law*, is an act of parliament made in the 9 Geo. 2, which bears this name, to punish certain marauders who committed great outrages, in disguise, and with black faces.

BLANK BAR, *pleading*, is the same with what is called a common bar, and is the name of a plea in bar, which in an action of trespass, is put in to oblige the plaintiff to assign the certain place where the trespass was committed. Cro. Jac. 594, pl. 16.

BLANK INDORSEMENT, *contract*, is an indorsement which does not mention the name of the person in whose favour it is made; it is usually made by writing the name of the indorser on the back of the bill. Chit. Bills, 170.

BLANK. A space left in a writing which ought to have been filled up with one or more words in order to make sense. 1. In what cases the ambiguity occasioned by blanks may be explained; 2, in what cases it cannot be explained. 1. When a blank is left in a written agreement which need not have been reduced to writing, and would have been equally binding whether written or unwritten, it is presumed, in an action for the non performance of the contract, parol evidence might be admitted to explain the blank. And where a written instrument, which was made professedly to record a fact, is produced as evidence of that fact which it purports to record, and a blank appears in a material part, the omission may be supplied by other proof. 1 Phil. Ev. 475. 1 Wils. 215. Hence a blank left in an award for a name, was allowed to be supplied by parol proof. 2 Dall. 180.

2. If a blank is left in a policy of insurance for the name of the place of destination of a ship, it will avoid the policy. Molloy, b. 2, c. 7, s. 14. Park Ins. 22. Wesk. Ins. 42. Lines ought to be drawn wherever there are blanks to prevent any thing from being inserted afterwards. 2 Valin's Comm. 151.

When the filling up blanks after the execution of deeds and other writings will vitiate them or not. See 4 Vin. Abr. 268; Moore, 547; Cro. Eliz. 626; 1 Vent. 185; 2 Lev. 35; 2 Ch. Rep. 187; 1 Anst. 228; 5 Mass. 538; 4 Binn. 1; 9 Cranch, 28; Yelv. 96; 2 Show. 161; 1 Saund. Pl. & Ev. 77; 4 B. & A. 672; Com. Dig. Fait, F 1; 4 Bing. 123; 2 Hill. Ab. c. 25, § 80; c. 33, § 54 and 72.

BLASPHEMY, *crim. law*, is to attribute to God that which is contrary to his nature, and does not belong to him, and to deny what does. This offence has been enlarged in Pennsylvania, and perhaps most of the states by statutory provision. Vide *Christianity*; 11 Serg. &

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Rawle, 394. In England all blasphemies against God, the Christian religion, the holy scriptures, and malicious revilings of the established church are punishable by indictment, 1 East, P. C. 3; 1 Russ. on Cr. 217; and in France before the 25th of September, 1791, it was blasphemy also to speak against the holy virgin and the saints, to deny one's faith, to speak with impiety of holy things, and to swear by things sacred. Merl. Rép. h. t. The law relating to blasphemy in that country was totally repealed by the code of 25th of September, 1791, and its present penal code, art. 262, enacts that any person who, by words or gestures, shall commit any outrage upon objects of public worship, in the places designed or actually employed, for the performance of its rites, or shall assault or insult ministers of such worship in the exercise of their functions, shall be fined from sixteen to five hundred francs, and be imprisoned for a period not less than fifteen days nor more than six months.

BLIND, one who is deprived of the faculty of seeing. Persons who are blind may enter into contracts and make wills like others. Carth. 53; Barn. 19, 23. When an attesting witness becomes blind, his handwriting may be proved as if he were dead. 1 Stark. Ev. 341.

BLOCKADE, *international law*, is an interception by one belligerent of communication, by any persons whatever, with a place occupied by another. It will be proper here to consider, 1, by what authority the blockade must be established; 2, what will be considered a sufficient blockade, 3, the consequences of a violation of the blockade.—1. Natural sovereignty confers the right of declaring war, and the right which nations at war have of destroying or capturing each other's citizens, subjects or goods, imposes on neutral nations the obligation not to interfere with the exercise of this right within the rules prescribed by the law of nations. A declaration of a siege or blockade is an act of sovereignty, 1 Rob. Rep. 146, but a direct declaration by the sovereign authority of the besieging belligerent is not always requisite; particularly when the blockade is on a distant station, for its officers may be invested, either expressly or by implication, to institute such siege or blockade. 6 Rob. R. 367.—2. To be sufficient, the blockade must be effective, and made known. By the convention of the Baltic powers of 1780, and again in 1801, and by the ordinance of Congress of 1781, it is required there should be a number of vessels stationed near enough to the port to make the entry apparently dangerous. The government of the United States have uniformly insisted, that the blockade should be effective by the presence of a competent force, stationed and present, at or near the entrance of the port; 1 Kent. Com. 145, and the authorities by him cited; and see 1 Rob. R. 80; 4 Rob. R. 66; 1 Acton's R. 64, 5; and Lord Erskine's speech, 8th March, 1808, on the orders in council, 10 Cobbett's Parl. Debates, 949, 950. But "it is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind, (if the suspension and the reason of the suspension are known,) that will be sufficient in law to remove a blockade." But negligence or remissness on the part of the cruizers stationed to maintain the blockade, may excuse persons, under circumstances, for violating the blockade, 3 Rob. R. 156; 1 Acton's R. 59. To involve a neutral in the consequences of violating a blockade, it is indispensable he should have due notice of it: this information may be communicated to him in two

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ways; either actually, by a formal notice from the blockading power, or, constructively by notice to his government, or by the notoriety of the fact. 6 Rob. R. 367; 2 Rob. R. 110; Ib. 111, note; Ib. 128; 1 Acton's R. 61.—3. In considering the consequences of the violation of a blockade, it will be proper to take a view of what will amount to such a violation, and, then, of its effects. As all criminal acts require an intention to commit them, the party must intend to violate the blockade, or his acts will be perfectly innocent; but this intention will be judged of by the circumstances. This violation may be, either, by going into the place blockaded, or by coming out of it with a cargo laden after the commencement of the blockade; and by placing himself so near a blockaded port as to be in a condition to slip in without observation, is a violation of the blockade, and raises the presumption of a criminal intent. 6 Rob. R. 30, 101, 182; 7 John. R. 47; 1 Edw. R. 202; 4 Cranch, 185. The sailing for a blockaded port, knowing it to be blockaded, is, it seems, such an act as to charge the party with a breach of the blockade. 5 Cranch, 335; 9 Cranch, 440, 446; 1 Kent, Com. 150. When the ship has contracted guilt by a breach of the blockade, she may be taken at any time before the end of her voyage, but the penalty travels no further than the end of her return voyage. 2 Rob. R. 128; 3 Rob. R. 147. When taken, the ship is confiscated, and the cargo is always, *prima facie*, implicated in the guilt of the owner or master of the ship; and the burden of rebutting the presumption that the vessel was going in for the benefit of the cargo, and with the direction of the owners, rests with them. 1 Rob. R. 67, 130; 3 Rob. R. 173; 4 Rob. R. 93; 1 Edw. R. 39. Vide, generally, 2 Bro. Civ. & Adm. Law, 314; Chit. Comm. Law, Index, h. t.; Chit. Law of Nations, 128 to 147; 1 Kent's Com. 143 to 151; Marsh. Ins. Index, h. t.; Dane's Ab. Index, h. t.

BLOOD, *kindred*, a red fluid in man and many other animals, distributing the nutritive principles to every texture, and the source of every secretion. It is taken in law figuratively for *stock* or family. 1 Roper on Leg. 103; 1 Supp. to Ves. jr. 365. In a more extended sense it means kindred generally. Bac. Max. Reg. 18. Blood is either *whole blood*, when the parties are related through both the father and mother, or *half blood* (q. v.) when they are related only through one of them.

BODY POLITIC, *government, corporations*, when applied to the government, this phrase signifies the *state*, when it is passive; *sovereign*, when it is active; *power* when compared to its equal. As to the persons who compose the body politic or associate themselves, they take collectively the name of *people*, or *nation*; and individually they are *citizens*, when considered in relation to their political rights, and *subjects* as being submitted to the laws of the state. When it refers to corporations the term *body politic* means that the members of such corporation shall be considered as an artificial person.

BOILARY. A term used to denote the water which arises from a salt well, belonging to one who has no right to the soil. Ejectment may be maintained for it. 2 Hill. Ab. c. 14, § 5.

BONA, goods and chattels. In the Roman law, it signified every kind of property, real, personal and mixed, but chiefly it applied to *real estates*, chattels being chiefly distinguished by the words *effects*, *movables*,

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&c. Bona were, however, divided into *bona mobilia*, and *bona immobilia*. It is taken in the civil law in nearly the same sense that *biens* (q. v.) mean in the French law.

BONA FIDE, good faith. The law requires all persons in their transactions to act with good faith; and a contract where the parties have not acted *bona fide* is void at the pleasure of the innocent party. 8 John. R. 446; 12 John. R. 320; 2 John. Ch. R. 35. Good faith at the time of the contract and fraudulent acts subsequently to it, will not vitiate it, but such subsequent acts of fraud may raise a presumption, and become a means of proof, of a want of good faith at the time. Vide Rob. Fraud. Conv. 33, 34; Inst. 2, 6; Dig. 41, 3, 10 and 44; Ib. 41, 1, 48; Code, 7, 31; 9 Co. 11; Wingate's Maxims, max. 37; Lane, 47; Plowd. 473.

BONA NOTABILIA, *Engl. ecclesiastical law*, notable goods. When a person dies having at the time of his death goods in any other diocese, besides the goods in the diocese where he dies, amounting to the value of five pounds in the whole, he is said to have *bona notabilia*, in which case proof of his will, or granting letters of administration belongs to the archbishop of the province. 1 Roll. Ab. 908; Toll. Ex. 51; Williams on Ex. Index, h. t.

BONA PERITURA, *perishable goods*. An executor, administrator or trustee, is bound to use due diligence in disposing of perishable goods, such as fattened cattle, grain, fruit, or any other article which may be the worse for keeping. 3 Bac. 13; 11 Vin. Ab. 102; 1 Roll. Ab. 910; 5 Co. 9; Cro. Eliz. 518; Godb. 104; Dane's Ab. Index, h. t. In Pennsylvania, when goods are attached, they may be sold by order of court, when they are of a perishable nature. Vide Wesk. on Ins. 390; Serg. on Attachm. Index.

BOND, *contract*. An obligation or bond is a deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. If this be all, the bond is called a single one, *simplex obligatio;* but there is generally a condition added, that if the obligor does some particular act the obligation shall be void, or else shall remain in full force. 2 Bl. Com. 340. See *Penalty; Condition; Interest of money*. It is proposed to consider, 1. Of the form of a bond, namely, the words by which it may be made; the ceremonies required. 2. The condition. 3. Of the performance or discharge.

I. 1. There must be parties to a bond, an obligor and an obligee; no particular set of words are essential to create an obligation, but any words which declare the intention of the parties, and denote that one is bound to the other, will be sufficient, provided the ceremonies mentioned below have been observed. Shep. Touch. 367, 8; Bac. Abr. Obligations, B; Com. Dig. Obligations, B 1.—2. It must be in writing, on paper or parchment, and if it be made on other materials it is void. Bac. Abr. Obligations, A.—3. It must be sealed, though it is not necessary that it should be mentioned in the writing that it is sealed. As to what is a sufficient sealing, see the above case, and the word, *Seal*. —4. It must be delivered by the party whose bond it is, to the other. Bac. Abr. Obligations, C. But the delivery and acceptance may be by attorney. The date is not considered of the substance of a deed, and therefore a bond which either has no date or an impossible one is still good, provided the real day of its being dated or given, that is, deliver-

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ed, can be proved. 2 Bl. Comm. 304; Com. Dig. Fait, B 3; 3 Call, 309. See *Date*.

II. The condition is either for the payment of money, or for the performance of something else. In the latter case, if the condition be against some rule of law merely, positive, impossible at the time of making it, uncertain or insensible, the condition alone is void, and the bond shall stand single and unconditional, for it is the folly of the obligor to enter into such an obligation from which he can never be released. If it be to do a thing *malum in se*, the obligation itself is void, the whole contract being unlawful. 2 Bl. Com. 340; Bac. Abr. Conditions, K, L; Com. Dig. Conditions, D 1, D 2, D 3, D 7, D 8.

III. 1. When, by the condition of an obligation, the act to be done to the obligee, is of its own nature transitory, as payment of money, delivery of charters, or the like, and no time is limited, it ought to be performed in convenient time. 6 Co. 31; Co. Lit. 208; Roll. Abr. 436.—2. A payment before the day is good. Co. Lit. 212, a; or before action brought, 10 Man. 419; 11 Mass. 217.—3. If the condition be to do a thing within a certain time, it may be performed the last day of the time appointed. Bac. Ab. Conditions, P 3.—4. If the condition be to do an act, without limiting any time, he who has the benefit may do it at what time he pleases. Com. Dig. Conditions, G 3.—5. When the place where the act to be performed is agreed upon, the party who is to perform it is not obliged to seek the opposite party elsewhere; nor is he to whom it is to be performed bound to accept of the performance in another place. Roll. 445, 446; Com. Dig. Conditions, G 9; Bac. Abr. Conditions, P 4. See *Performance*.—6. For what amounts to a breach of a condition in a bond, see Bac. Abr. Conditions, O; Com. Dig. Conditions, M; and this Dict., tit. *Breach*.

BONUS, *contracts*. A premium paid to a grantor or vendor, as, the bank paid a bonus to the state for its charter; a consideration given for what is received.

BOOK. It is a work of the mind, written or printed, so large in extent as to form a volume. The copy-right (q. v.) or exclusive right to print and publish a book, may be secured to the author or his assigns for the term of twenty-eight years; and if the author be living, and a citizen of the United States, or resident therein, the same right shall be continued to him for the further term of fourteen years, by complying with the conditions of the act of Congress, one of which is that he shall within three months after publication, deliver, or cause to be delivered, a copy of the same to the clerk of the said district. Act of February 3, 1831. 4 Sharsw. cont. of Story's L. U. S. 2223.

BOOKS, *commerce, accounts*. Merchants, traders and other persons, who are desirous of understanding their affairs, and of explaining them when necessary, keep, 1, a day book; 2, a journal; 3, a ledger; 4, a letter book; 5, an invoice book; 6, a cash book; 7, a bill book; 8, a bank book; 9, a check book. The reader is referred to these several articles. Commercial books are kept by single or by double entry.

BOOTY, *war*, is the capture of personal property by a public enemy on land, in contradistinction to prize, which is a capture of such property by such an enemy on the sea. After booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of postliminy in favour of the original owner, particularly when it has passed, *bona fide*, into the hands of a neutral. 1 Kent,

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Com. 110. The right to the booty, Pothier says, belongs to the sovereign, but sometimes the right of the sovereign or the public is transferred to the soldiers to encourage them. Tr. du Droit de Propriété, part 1, c. 2, art. 1, § 2; Burl. Nat. and Pol. Law, vol. ii, part 4, c. 7, n. 12.

BOROUGH, an incorporated town; so called in the charter; it is less than a city.

BOROUGH ENGLISH, *Eng. law.* This, as the name imports, relates exclusively to the English law. It is a custom in many ancient boroughs by which the youngest son succeeds to the burgage tenement on the death of the father. 2 Bl. Com. 83; in some parts of France, there was a custom by which the youngest son was entitled to an advantage over the other children in the estate of their father. Mert. Rép. mot Maineté.

BORROWER, *contracts*, is he to whom a thing is lent at his request. The contract of loan confers rights and imposes duties on the borrower.

1. In general, he has the right to use the thing borrowed, during the time and for the purpose intended between the parties; the right of using the thing bailed, is strictly confined to the use, expressed or implied, in the particular transaction, and by any excess, the borrower will make himself responsible. Jones's Bailment, 68; 5 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, § 2, n. 10, 11, 12; Dig. 13, 6, 18; Poth. Prêt à Usage, ch. 2, § 1, n. 22; 2 Bulst. 306; Ersk. Pr. Laws of Scotl. B. 3, t. 1, § 9; 1 Const. Rep. So. Car. 121; Bracton, lib. 3, ch. 2, § 1, p. 99. The loan is considered strictly personal, unless from other circumstances a different intention may be presumed. 1 Mod. Rep. 210; S. C. 3 Salk. 271.

2. The borrower is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender; to restore it in proper time; to restore it in a proper condition. Of these in their order. 1. The loan being gratuitous, the borrower is bound to extraordinary diligence, and is responsible for slight neglect in relation to the thing loaned. 2 Ld. Raym. 909, 916; Jones on Bailm. 65; 1 Dane's Abr. ch. 17, art. 12; Dig. 44, 7, 1, 4; Poth. Prêt à Usage, ch. 2, § 2, art. 21, n. 48.—2. The use is to be according to the condition of the loan; if there is any excess in the nature, time, manner, or quantity of the use, beyond what may be inferred to be within the intention of the parties, the borrower will be responsible, not only for any damages occasioned by the excess, but even for losses by accidents, which could not be foreseen or guarded against. 2 Ld. Raym. 909; Jones on Bailm. 68, 69. —3. The borrower is bound to make a return of the thing loaned, at the time, in the place, and in the manner contemplated by the contract. Domat, Liv. 1, t. 5, § 1, n. 11; Dig. 13, 6, 5, 17. If the borrower does not return the thing at the proper time, he is deemed to be in default, and is generally responsible for all injuries, even for accidents. Jones on Bailm. 70; Pothier, Prêt à Usage, ch. 2, § 2, art. 2, n. 60; Civil Code of Louis. art. 2870; Code Civil, art. 1881; Ersk. Inst. B. 3, t. 1, § 22; Ersk. Pr. Laws of Scotl. B. 3, t. 1, § 9.—4. As to the condition in which the thing is to be restored. The borrower not being liable for any loss or deterioration of the thing, unless caused by his own neglect of duty, it follows, that it is sufficient if he returns it in the proper manner and at the proper time, however much it may be deteriorated from accidental or other causes, not connected with any such neglect.

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Story on Bailm. ch. 4, § 268. See generally Story on Bailm. ch. 4; Poth. Prêt à Usage; 2 Kent, Com. 446-449; Vin. Abr. Bailment, B 6; Bac. Abr. Bailment; Civil Code of Louis, art. 2869–2876.

BOTE, *contracts*, a recompense, satisfaction, amends, profit or advantage: hence came the word *man-bote*, denoting a compensation for a man slain; house-bote, cart-bote, plough-bote, signify that the tenant is privileged to cut wood for these uses. 2 Bl. Com. 35; Woodf. L. & T. 232.

BOTELESS, or bootless, without recompense, reward or satisfaction made; unprofitable or without success.

BOTTOMRY, *maritime law*, is a contract in nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo for a voyage proposed; and he pledges the keel or bottom of the ship, *pars pro toto*, as a security for the repayment: and it is stipulated that if the ship should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money; but if the ship should arrive in safety, then he shall receive back his principal, and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle if they arrive safe, but also the person of the borrower is liable for the money lent and the marine interest. See 2 Bl. Com. 458; Marsh. Ins. B. 2, c. 1; Ord. Louis XIV. B. 3, tit. 5; Laws of Wisbuy, art. 45; Code de Com. B. 2, tit. 9.

The contract of bottomry should specify the principal lent, and the rate of maritime interest agreed upon; the subject on which the loan is effected; the names of the vessel and of the master; those of the lender and borrower; whether the loan be for an entire voyage; for what voyage; and for what space of time; and the period of repayment. Code de Com. art. 311; Marsh. Ins. B. 2.

Bottomry differs materially from a simple loan. In a loan, the money is at the risk of the borrower, and must be paid at all events. But in bottomry, the money is at the risk of the lender during the voyage. Upon a loan only legal interest can be received; but upon bottomry, any interest may be legally reserved which the parties agree upon.

See generally, Marsh. Ins. B. 2; Bac. Abr. Merchant, K; Com. Dig. E 4; 3 Mass. 443; 8 Mass. 340; 4 Binn. 244; 4 Cranch, 328; 3 Johns. R. 352; 2 Johns. Cas. 250; 1 Binn. 405; 8 Cranch, 418; 1 Wheat. 96; 2 Dall. 194. See also this Dict. tit. *Respondentia*; Vin. Abr. Bottomry Bonds.

BOUNDARY, *estates*. By this term is understood, in general, every separation natural or artificial, which marks the confines or line of division of two contiguous estates. Boundary also signifies stones or other materials inserted in the earth on the confines of two estates. Boundaries are either natural or artificial. A river or other stream is a natural boundary, and in that case the centre of the stream is the line; 20 John. R. 91; 12 John. R. 252; 1 Rand. R. 417; 1 Halst. R. 1; 2 N. H. Rep. 369; 6 Cowen R. 579; 4 Pick. 268; 3 Randolph's R. 33; 4 Mason's R. 349–397. An artificial boundary is one made by man. The description of land, in a deed, by specific boundaries, is conclusive as to the quantity; and if the quantity be expressed as a part of the description it will be inoperative, and it is immaterial whether the quantity contained within the specific boundaries, be greater or less than

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that expressed. 5 Mass. 357; 1 Caines's R. 493; 2 John. R. 27; 15 John. 471; 17 John. R. 146; Id. 29; 6 Cranch, 237; 4 Hen. & Munf. 125; 2 Bay R. 515; and the same rule is applicable, although neither the courses and distances, nor the estimated contents correspond with such specific boundaries. 6 Mass. 131; 11 Mass. 193; 2 Mass. 380; 5 Mass. 497; but these rules do not apply in cases where adherence to them would be plainly absurd. 17 Mass. 207. Vide 17 S. & R. 104; 2 Mer. R. 507; 1 Swanst. 9; 4 Ves. 180; 1 Stark. Ev. 169; 1 Phil. Ev. Index, h. t.; Chit. Pr. Index, h. t.; 1 Supp. to Ves. jr. 276; 2 Hill. Ab. c. 24, § 209, and Index, h. t.

BRANCH. This is a metaphorical expression, which designates, in the genealogy of a numerous family, a portion of that family, which has sprung from the same root or stock; these latter expressions, like the first are also metaphorical. The whole of a genealogy is often called the *genealogical tree*, and sometimes it is made to take the form of a tree, which is in the first place divided into as many branches as there are children, afterwards into as many branches as there are grand children, then of great grand children, &c. If, for example, it be desired to form the genealogical tree of Peter's family, Peter will be made the trunk of the tree, if he has had two children, John and James, their names will be written on the first two branches, which will themselves shoot out as many twigs as John and James have children; these will produce others till the whole family shall be represented on the tree; thus the origin, the application and use of the word branch in genealogy will be at once perceived.

BREACH, *contracts*, *torts*, the violation of an obligation or duty; as a breach of a covenant is the non-performance of a covenant; the breach of a duty, is the refusal or neglect to execute an office, trust or the like, according to law; breach of the peace, is the disturbance of the public peace. Vide article *Peace*. Breach of prison, is the act of escaping from prison. A breach of promise, is the non-performance of a promise or engagement. For breaches of contracts, the remedy is by an action on such contracts; for the breach of those duties which amount to quasi contracts, the remedy is also a civil action; and for breaches of peace or violations of the public law, the offender may be indicted for a misdemeanor.

BREACH, *pleading*, is that part of the declaration in which the violation of the defendant's contract is stated. It is usual in assumpsit to introduce the statement of the particular breach, with the allegation that the defendant contriving and fraudulently intending craftily and subtilely to deceive and defraud the plaintiff, neglected and refused to perform, or performed the particular act, contrary to the previous stipulation. In debt the breach or cause of action complained of must proceed only for the non-payment of money previously alleged to be payable; and such breach is nearly similar, whether the action be in debt on simple contract, specialty, record, or statute, and is usually of the following form: "Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of —— dollars, above demanded, nor any part thereof to the said plaintiff, but hath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff —— dollars, and therefore he brings suit, &c. The breach must obviously be governed by the nature

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of the stipulation; it ought to be assigned in the contract; either negatively or affirmatively, or in words which are co-extensive with its import and effect. Com. Dig. Pleader, C 45 to 49; 2 Saund. 181, b, c; 6 Cranch, 127; and see 5 John. R. 168; 8 John. R. 111; 7 John. R. 376; 4 Dall. 436; 2 Hen. & Munf. 446. When the contract is in the disjunctive, as, on a promise to deliver a horse by a particular day, or pay a sum of money, the breach ought to be assigned that the defendant did not do the one act nor the other. 1 Sid. 440; Hardr. 320; Com. Dig. Pleader, C.

BREACH OF THE PEACE, *criminal law.* Any offence against public tranquillity, or against person or property, when accompanied by violence; any act of public indecorum. Vide article *Peace.*

BREAKING DOORS, is the act of forcibly removing the fastenings of a house, so that a person may enter. It is a maxim that every man's house is his castle, and it is protected from every unlawful invasion. An officer having a lawful process of a criminal nature, authorising him to do so, may break an outer door, if upon making a demand of admittance it is refused. The house may also be broken open for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N 3. The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested, and he takes refuge in his own house; in that case the officer may pursue him, and break open any door for the purpose. Foster, 320; 1 Rolle's R. 138; Cro. Jac. 555. V. *Door, House.*

BREATH, *med. juris.* The air expelled from the chest at each expiration. Breathing though a usual sign of life, is not conclusive that a child was *wholly* born alive, as breathing may take place before the whole delivery of the mother is complete. Until the child is *wholly born* its being killed maliciously is not murder or *infanticide,* (q. v.) 5 Carr. & Payn. 329; S. C. 24 Engl. C. L. R. 344. Vide *Birth, Life.*

BREVE, *practice,* is a writ in which the cause of action is *briefly* stated, hence its name. It is issued to summon or attach a defendant requiring him to answer to an action, or any thing commanded to be done by the same.

BREVIA FORMATA, *English law,* is the appellation given to the collection in the book styled *The Register of Writs,* (q. v.) when other forms were invented. The *brevia formata* were adapted to those causes of complaint that most frequently occurred.

BRIBE, *crim. law.* The gift or promise, which is accepted, of some advantage, as the inducement for some illegal act or omission; or of some illegal emolument, as a consideration, for preferring one person to another, in the performance of a legal act.

BRIBERY, *crim. law,* is the receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behaviour in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. 3 Inst. 149; 1 Hawk. P. C. c. 67, s. 2; 4 Bl. Com. 139; 1 Russ. Cr. 156. The term bribery extends now further and includes the offence of giving a bribe to many other officers. The offence of the giver and of the receiver of the bribe has the same name. For the sake of distinction that of the former might be properly denominated posi-

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tive, while that of the latter might be called negative bribery.

BRIEF, *practice*, is a detailed and abridged statement of a party's case. It should contain, 1st. A statement of the names of the parties, and of their residence and occupation, the character in which they sue and are sued, and wherefore they prosecute or resist the action. 2d. An abridgment of all the pleadings. 3d. A regular, chronological and methodical statement of the facts in plain common language. 4th. A summary of the points or questions in issue, and of the proof which is to support such issues, mentioning specially the names of the witnesses by which the facts are to be proved, or if there be written evidence, an abstract of such evidence. 5th. The personal character of the witnesses should be mentioned; whether the moral character is good or bad, whether they are naturally timid or over-zealous, whether firm or wavering. 6th. If known, the evidence of the opposite party, and such facts as are calculated to oppose, confute, or repel it. Perspecuity and conciseness are the most desirable qualities of a brief, but when the facts are material they cannot be too numerous, when the argument is pertinent and weighty, it cannot be too extended. Brief is also used in the sense of *breve*, (q. v.)

BRIEF OF TITLE, *practice, conveyancing*, is an abridgment of all the patents, deeds, indentures, agreements, records and papers relating to certain real estate. In making a brief of title, the practitioner should be careful to place every deed and other paper in chronological order. The date of each deed, the names of the parties, the consideration, the description of the property, should be particularly noted, and all covenants should also be particularly inserted.

BROCAGE, *contracts*, the wages or commissions of a broker; his occupation is also sometimes called brocage. This word is also spelled brokerage.

BROKERAGE, *contracts*, the trade or occupation of a broker; the commissions paid to a broker for his services.

BROKERS, *commerce*, are those who are engaged for others, in the negotiation of contracts, relative to property, with the custody of which they have no concern. Paley on Agency, 13; see Com. Dig. Merchant, C. There are several kinds of brokers, as, *Exchange Brokers*, such as negotiate in all matters of exchange with foreign countries. *Ship Brokers*, those who transact business between the owners of vessels, and the merchants who send cargoes. *Insurance brokers*, those who manage the concerns both of the insurer and the insured. *Pawn brokers*, those who lend money upon goods to necessitous people at interest.

BROTHELS, *crim. law*. Bawdy houses, the common habitations of prostitutes; such places have always been common nuisances in the United States, and the keepers of them may be fined and imprisoned. Till the time of Henry VIII. they were licensed in England, when that lascivious prince suppressed them. Vide 3 Inst. 205, 6; for the history of these pernicious places, see Merl. Répert. Mot. Bordel.

BROTHER, *domest. relat.* He who is born from the same father and mother with another, or of one of them only. Brothers are of the whole blood when they are born from the same father and mother, and of the half blood, when they are the issue of one of them only. In the civil law when they are the children of the same father and mother, they are called *brothers*

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germain; when they descend from the same father, but not the same mother, they are *consanguine brothers;* when they are the issue of the same mother, but not the same father, they are *uterine brothers.* A *half brother*, is one who is born of the same father or mother, but not of both. One born of the same parents before they were married, a *left-sided brother;* and a bastard born of the same father or mother, is called a *natural brother.* Vide *Blood*, *Half blood*, *Line;* and Merl. Répert. Mot. Frère Dict. de Jurisp. Mot. Frère; Code, 3, 28, 27; Nov. 84, præf; Dane's Ab. Index, h. t.

BROTHER-IN-LAW, *domest. relat.* The brother of a man's wife, or the husband of a person's sister. There is no relationship between these parties, there is a mere affinity.

BRUISE, *med. jurisp.*, is an injury done with violence to the person, without breaking the skin; it is nearly synonymous with *contusion*, (q. v.) 1 Ch. Pr. 38. Vide 4 Car. & P. 381, 487, 558, 565; Eng. C. L. Rep. 430, 526, 529. Vide *Wound.*

BUGGERY, *crim. law*, is the detestable crime of having commerce contrary to the order of nature by mankind with mankind, or with brute beasts, or by womankind with brute beasts. 3 Inst. 58; 12 Co. 36; Dane's Ab. Index, h. t.; Merl. Répert. Mot. Bestialité. This is a highly penal offence.

BUILDING, *estates*, is an edifice erected by art and fixed upon or on the soil, composed of different pieces of stone, brick, marble, wood or other proper substance, connected together, and designed for permanent use in the position in which it is so fixed. Every building is an accessary to the soil, and is therefore real estate: it belongs to the owner of the soil. Cruise, tit. 1, s. 46. Vide 1 Chit. Pr. 148, 171; Salk. 459; Hob. 131.

BULK, *contracts*, is said to be merchandise which is neither counted, weighed, nor measured. A sale by bulk, is a sale of a quantity of goods such as they are without measuring, counting or weighing. Civ. Code of Louis. a. 3522, n. 6.

BULL, *eccles. law.* A letter from the pope of Rome, written on parchment, to which is attached a leaden seal, impressed with the images of Saint Peter and Saint Paul. There are three kinds of apostolical rescripts, the *brief*, the *signature*, and the *bull*, which is most commonly used in legal matters. Bulls may be compared to the edicts and letters-patent of secular princes: when the bull grants a favour the seal is attached by means of silken strings, and when to direct execution to be performed, with flax cords. They are written in latin in a round and gothic hand. Ayl. Par. 132; Ayl. Pand. 21; Merl. Rép. h. t.

BULLION, in its usual acceptation, is uncoined gold or silver, in bars, plates, or other masses. In the acts of Congress the term is also applied to copper properly manufactured for the purpose of being coined into money. For the acts of Congress authorising the coinage of bullion for private individuals, see Act of April 2, 1792, s. 14, 1 Story, 230; Act of May 19, 1828, 4 Sharsw. cont. of Story's Laws U. S. 2120; Act of June 28, 1834, Id. 2376; Act of January 18, 1837, Id. 2522 to 2529. See for the English law on the subject of crimes against bullion, 1 Hawk. P. C. 32 to 41.

BUOY, a piece of wood, or an empty barrel, floating on the water, to show the place where it is shallow, to indicate the danger there is to navigation.

BUREAU, a French word which literally means a large writing table.

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It is used figuratively for the place where business is transacted; it has been borrowed by us, and used in nearly the same sense; as, the bureau of the secretary of state. Vide Merl. Réper. h. t.

BURGESS, a magistrate of a borough; generally, the chief officer of the corporation, who performs, within the borough, the same kind of duties which a mayor does in a city. In England the word is sometimes applied to all the inhabitants of a borough, who are called burgesses; sometimes it signifies the representatives of a borough in parliament.

BURGLARIOUSLY, *pleadings;* this is a technical word which must necessarily be introduced into an indictment in cases of burglary; the offence must be charged to have been committed burglariously, no other word will answer the same purpose, nor will any circumlocution be sufficient. 4 Co. 39; 5 Co. 121; Cro. Eliz. 920; Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Chit. Cr. Law, *242.

BURGLARY, *crim. law*, is the breaking and entering the house of another in the night time with intent to commit a felony therein, whether the felony be actually committed or not. 3 Inst. 63; 1 Hale, 549; 1 Hawk. c. 38, s. 1; 4 Bl. Com. 224; 2 East, P. C. c. 15, s. 1, p. 484; 2 Russell on Cr. 2; Roscoe, Cr. Ev. 252. The circumstances essential to be considered, are, 1, in what place the offence must be committed; 2, at what time; 3, by what means; 4, with what intention. 1st. *In what place the burglary must be committed.* It must, in general, be committed in a mansion house, actually occupied as a dwelling; but if it be left by the owner, *animo revertandi*, though no person resides in it in his absence, it is still his mansion. Fost. 77; 3 Rawle, 207; the principal question at the present day, is what is to be deemed a dwelling-house. 1 Leach, 185; 2 Leach, 771; Ib. 876; 3 Inst. 64; 1 Leach, 305; 1 Hale, 558; Hawk. c. 38, s. 18; 1 Russ. on Cr. 16; 3 Serg. & Rawle, 199; 4 John. R. 424; 1 Nott & M'Cord, 583; 1 Hayw. 102, 242; Com. Dig. Justices, (P 5); 2 East, P. C. 504.—2. *At what time it must be committed.* The offence must be committed in the night, for in the day time there can be no burglary. 4 Bl. Com. 224. For this purpose it is night only when by the light of the sun a person cannot reasonably discern the face or countenance of another. 1 Hale, 550; 3 Inst. 63. This rule it is evident does not apply to moonlight, 4 Bl. Com. 224; 2 Russ. on Cr. 32. The breaking and entering need not be done the same night. 1 Russ. & Ry. 417; but it is necessary the breaking and entering should be in the night time, for if the breaking be in day light and the entry in the night, or *vice versa*, it will not be burglary. 1 Hale, 551; 2 Russ. on Cr. 32. Vide Com. Dig. Justices, (P 2); 2 Chit. Cr. Law, 1092.—3. *The means used.* There must be both a *breaking* and an *entry*. First, of the breaking which may be actual or constructive. An *actual breaking* takes place when the burglar breaks or removes any part of the house or the fastenings provided for it, with violence. Breaking a window, taking a pane of glass out by breaking or bending the nails or other fastenings, raising a latch where the door is not otherwise fastened, picking open a lock with a false key, putting back the lock of a door or the fastening of a window, with an instrument, turning the key when the door is locked in the inside, or unloosening any other fastening which the owner has provided are several instances of actual breaking. *Constructive breakings* are such when the burglar

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gains an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 2; 2 Chit. Cr. Law, 1093. The breaking of an inner door of the house will be sufficient to constitute a burglary. 1 Hale, 553. Any, the least, *entry*, with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, will be sufficient to constitute the offence. 3 Inst. 64; 4 Bl. Com. 227; Bac. Ab. Burglary, B; Com. Dig. Justices, (P 4). But the introduction of an instrument, in the act of breaking the house, will not be a sufficient entry unless it be introduced for the purpose of committing a felony.—4. *The intention.* The intent of the breaking and entry must be felonious; if a felony however be committed, the act will be *prima facie* pregnant evidence of an intent to commit it. If the breaking and entry be with an intention to commit a bare trespass, and nothing further is done, the offence will not be a burglary. 1 Hale, 560; East, P. C. 509, 514, 515; 2 Russ. on Cr. 33.

BURNING, vide *Accident*, *Arson*, *Fire*, *accidental*.

BURYING GROUND, a place appropriated for depositing the dead; a cemetry. In Massachusetts burying grounds cannot be appropriated to roads without the consent of the owners. Mass. Rev. St. 239.

BUSHEL, *measure*. The Winchester bushel, established by the 13 W. III. c. 5, A. D. 1701, was made the standard of grain; a cylindrical vessel, eighteen and a half inches in diameter, and eight inches deep inside, contains a bushel; its capacity is 2145.42 cubic inches. By law or usage it is established in most of the United States. The exceptions, as far as known, are Connecticut, where the bushel holds 2198 cubic inches; Kentucky, 2150⅔; Indiana, Ohio, Mississippi and Missouri, where it contains 2150$\frac{4}{10}$ cubic inches. Dane's Ab. c. 211, a. 12, s. 4.

BUYER, *contracts*. A purchaser; (q. v.) a vendee.

BUYING OF TITLES. The purchase of the rights of a person to a piece of land when the seller is disseised. When a deed is made by one who, though having a legal right to land, is at the time of the conveyance disseised, as a general rule, the sale is void; the law will not permit any person to sell a quarrel, or as it is commonly termed, a pretended title. Such a conveyance is an offence at common law, and by a statute of Hen. VIII. This rule has been generally adopted in the United States, and is affirmed by express statute. In some of the states, it has been modified or abolished. It has been recognized in Massachusetts and Indiana. 1 Ind. R. 127. In Massachusetts, there is no statute on the subject, but the act has always been unlawful. 5 Pick. R. 356. In Connecticut the seller and the buyer forfeit, each one half the value of the land. 4 Conn. 575. In New York, a person disseised cannot convey, except by way of mortgage. In North Carolina and South Carolina, a conveyance by a disseisee is illegal; the seller forfeits the land, and the buyer its value. In Kentucky such a sale is void. 1 Dane, R. 566. In Ohio, the purchase of land from one against whom a suit is pending for it, is void, except against himself, if he prevails. Walk. Intr. 297, 351, 352. In Pennsylvania, 2 Watts, R. 272. Illinois, Ill. Rev. L. 130. Missouri, Misso. St. 119. A deed is valid, though there be an adverse possession. 2 Hill. Ab. c. 33, § 42 to 52.

BY ESTIMATION, *contracts*. In sales of land it not unfrequently occurs that the property is said to

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contain a certain number of acres, *by estimation*, or so many acres, *more or less*. When these expressions are used, if the land fall short but a small quantity, the purchaser will receive no relief. In one case of this kind, the land fell short two-fifths, and the purchaser received no relief. 2 Freem. 106, vide 1 Finch, 109; 1 Call. R. 301; 6 Binn. R. 106; 1 Serg. & Rawle, 166; 1 Yeates, R. 322; 2 John. R. 37; 5 John. R. 508; 15 John. R. 471; 1 Caines, R. 493; 3 Mass. R. 380; 5 Mass. R. 355; 1 Root, R. 528; 4 Hen. & Munf. 184; the meaning of these words has never been precisely ascertained by judicial decision.

BY-LAWS, are rules and ordinances made by a corporation for its own government. The power to make by-laws is usually conferred by express terms of the charter creating the corporation, though, when not expressly granted, it is given by implication, and it is incident to the very existence of a corporation. When there is an express grant, limited to certain cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication. 2 Kyd. on Corp. 102; 2 P. Wms. 207; Ang. on Corp. 177. The power of making by-laws, is to be exercised by those persons in whom it is vested by the charter; but if that instrument is silent on that subject, it resides in the members of the corporation at large. Harris & Gill's R. 324; 4 Burr. 2515, 2521; 6 Bro. P. C. 519. The constitution of the United States, and acts of Congress made in conformity to it; the constitution of the state in which a corporation is located, and acts of the legislature, constitutionally made, together with the common law as there accepted, are of superior force to any by-law, and such by-law, when contrary to either of them, is therefore void, whether the charter authorizes the making of such by-law or not; because no legislature can grant power larger than they themselves possess. 7 Cowen's R. 585; Id. 604; 5 Cowen's R. 538. Vide, generally, Ang. on Corp. ch. 9; Willc. on Corp. ch. 2, s. 3; 1 Bac. Ab. 544; 4 Vin. Ab. 301; Dane's Ab. Index, h. t; Com. Dig. h. t; and Id. vol. viii. h. t.

C.

CALENDAR. See *Almanac*.

CALENDAR, *crim. law*, is a list of prisoners, containing their names, the time when they were committed, and by whom, and the cause of their commitments.

CALLING THE PLAINTIFF, *practice*. When a plaintiff perceives that he has not given evidence to maintain his issue, and intends to become non-suited, he withdraws himself, when the cryer is ordered to call the plaintiff, and on his failing to appear, he becomes nonsuited. 3 Bl. Com. 376.

CANCELLATION, in its general acceptation, is the act of crossing a writing; it is used sometimes to signify the manual operation of tearing or destroying the instrument itself. Hyde v. Hyde, 1 Eq. Cas. Abr. 409; Rob. on Wills, 367, n. Cancelling a will, *animo revocandi*, is a revocation of it, and it is unnecessary to show a complete destruction or obliteration. 2 B. & B. 650; 3 B. & A. 489; 2 Bl. R. 1043; 2 Nott & McCord, 272; Whart. Dig. Wills, c; 4 Mass. 462. But the mere act of cancelling a will is no-

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thing, unless it be done *animo revocandi*, and evidence is admissible to show, *quo animo*, the testator cancelled it. 7 Johns. 394; 2 Dall. 266; S. C. 2 Yeates, 170; 4 Serg. & Rawle, 297; cited 2 Dall. 267, n; 3 Hen. & Munf. 502; Rob. on Wills. 365; Lovel, 178; Toll. on Ex'rs, Index, h. t; 3 Stark. Ev. 1714; 1 Addams's Rep. 52; 2 Eccl. Rep. 23. As to the effect of cancelling a deed, which has not been recorded, see 1 Addams's Rep. 1; Palm. 403; Latch. 226; Gilb. Law Ev. 109, 110; 2 H. Bl. 263; 2 Johns. 87.

CANON, *eccl. law*. This word is taken from the Greek, and signifies a rule or law. In the ecclesiastical law, it is also applied to designate an order of religious person.

CANON LAW, see *Law, Canon*.

CANNON SHOT, *war*, is the distance which a cannon will throw a ball. The whole space of the sea, within cannon shot of the coast, is considered as making a part of the territory; and, for that reason, a vessel taken under the cannon of a neutral fortress, is not a lawful prize. Vatt. b. 1, c. 23, s. 289, in finem; Chitt. Law of Nat. 113; Mart. Law of Nat. b. 8, c. 6, s. 6; 3 Rob. Adm. Rep. 102, 336; 5 Ib. 373. Vide *League*.

CAPACITY. This word is taken in various senses. 1. It is that aptitude which good order requires a man should possess for the employment to which he is destined. The constitution requires that the president, senators and representatives should have attained certain ages, and in the case of the senators and representatives that they should have local qualifications; without these they have no capacity to serve in these offices. 2. Capacity is more particularly applied to the legal ability in a party to contract, to devise or bequeath, to grant lands or receive such grants, to give or to receive, to inherit, to marry, and the like. 2 Com. Dig. 294; Dane's Ab. Index, h. t.

CAPAX DOLI. Capable of committing crime. This is said of one who has sufficient mind and understanding to be made responsible for his actions, and who possesses legal discretion, (q. v.)

CAPE, *English law*, is a judicial writ touching a plea of land and tenements. The writs which bear this name are of two kinds, namely, cape magnum, or grand cape; and cape parvum, or petit cape.

CAPIAS, *practice*. This word, the signification of which is "that you take," is applicable to many heads of practice. Several writs and processes commanding the sheriff to take the person of the defendant are known by the name of capias. The writ in ordinary use bearing this name is the *capias ad respondendum*, simply so called. See 3 Bl. Com. 281.

CAPIAS AD AUDIENDUM JUDICIUM, *practice*, is a writ issued in a case of misdemeanor, after the defendant has appeared and is found guilty, and is not present when called. This writ is to bring him to judgment. 4 Bl. Com. 368.

CAPIAS AD RESPONDENDUM, *in practice*, is a writ commanding the sheriff, or other proper officer, "to take the body of the defendant, and to keep the same to answer, *ad respondendum*, the plaintiff in a plea," &c. The amount of bail demanded is endorsed on the writ. Under this writ the defendant is to be arrested, and he gives a bail bond to the officer, or it is the duty of the latter to imprison him. Sometimes when it is too late to issue a summons, or a capias is preferred for any reason, it is the practice in some places, as in Pennsylvania, to endorse on the capias, "no bail re-

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quired;" in which case after the defendant has been arrested he is required to endorse on the writ, "I authorise the prothonotary to enter my appearance to the action," and subscribe his name. He is then discharged. If the writ has been served and the defendant have not given bail, but remains in custody, it is returned C. C. *cepi corpus;* if he have give bail, it is returned C. C. B. B. *cepi corpus*, Bail Bond; if the defendant's appearance have been accepted, the return is "C. C. and defendant's appearance accepted." This, like other writs, bears teste a general teste day, and is returnable on a regular return day. 1 Penns. Pr. 36; 1 Arch. Pr. 68.

CAPIAS AD SATISFACIENDUM, *practice*, is a writ issuing out of a court, in a case where a judgment has been rendered, directed to the proper officer of the court, commanding him to take the defendant, and him safely keep, so that he may have his body in court on the return day, to satisfy, *ad satisfaciendum*, the plaintiff. This writ is tested on a general teste day and returnable on a regular return-day.

It lies after judgment in most instances in which the defendant was subject to a capias ad respondendum before, and plaintiffs are subject to it, when judgment has been given against them for costs. Members of congress and of the legislature *eundo, morando, et dedeundo*, to, at, and from the places of sitting of congress, or of the legislature, are not liable, on account of their public capacity, to this process; nor are ambassadors, (q. v.) and other public ministers and their servants. Act of Congress of April 30, 1790, s. 25 and 26; Story's Laws United States, 88; 1 Dunl. Pr. 95, 96; Com. Dig. Ambassador, B; 4 Dall. 321. In Pennsylvania women are not subject to this writ except in actions founded upon tort, or claims arising otherwise than *ex contractu*. 7 Reed's Laws of Pa. 150. See *Arrest*.

It is executed by arresting the body of the defendant, and keeping him in custody; discharging him upon his giving security for the payment of the debt, or that he will return in custody again before the return day, is an escape, although he do return; 13 Johns. R. 366; 8 Johns. R. 98; and the sheriff is liable for the debt. In England a payment to the sheriff or other officer having the ca. sa. is no payment to the plaintiff. Freem. 842; Lutw. 587; 2 Lev. 203; 1 Arch. Pr. 278; the law is different in Pennsylvania; 3 Serg. & Rawle, 467. The return made by the officer is either C. C. & C., cepi corpus et committitur, if the defendant have been arrested and held in custody; or N. E. I., *non est inventus*, if the officer has not been able to find him. This writ is in common language called a *ca. sa.*

CAPIAS PRO FINE, *practice, crim. law*, is the name of a writ which issues against a defendant, who has been fined for some offence against a statute, and who does not discharge it according to the judgment; this writ commands the sheriff to arrest the defendant and commit him to prison, there to remain till he shall pay the said fine, or be otherwise discharged according to law.

CAPIAS UTLUGATUM, *in English practice;* the capias utlugatum is general or special: the former against the person only, the latter against the person, lands and goods. This writ issues upon the judgment of outlawry being returned by the sheriff upon the *exigent*, and it takes its name from the words of the mandatory part of the writ, which states the defendant being outlawed, *utlugatum*, or *ut.*

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The *general* writ of *capias utlugatum* commands the sheriff to take the defendant, so that he have him before the king on a general return day, wheresoever, &c., to do and receive what the court shall consider of him.

The *special capias utlugatum*, like the general writ, commands the sheriff to take the defendant; and thus far it is executed, and the defendant is discharged upon an attorney's undertaking, or upon giving bond to the sheriff, in the same manner as when the writ is general. But the special writ also commands the sheriff to inquire by a jury of the defendant's goods and lands, to extend and appraise the same, and to take them in the king's hands and safely keep them, so that he may answer to the king for the value and issues of the same. 2 Arch. Pr. 161.

CAPIAS IN WETHERNAM, *practice*, is a writ issued after a return of *elongata* or *eloined* has been made to a writ of *retorno habendo*, commanding the sheriff to take so many of the distrainer's goods by way of reprisal, as will equal the goods mentioned in the *retorno habendo*. 2 Inst. 140; F. N. B. 68; and see form in 2 Sell. Pr. 169.

CAPITAL, *political economy, commerce*. In political economy, it is that portion of the produce of a country, which may be made directly available either to support the human species or to the facilitating of production. In commerce, as applied to individuals, it is those objects, whether consisting of money or other property, which a merchant, trader or other person adventures in an undertaking, or which he contributes to the common stock of a partnership. It signifies money put out at interest. The fund of a trading company or corporation is also called capital, but in this sense the word *stock* is generally added to it; thus, we say the *capital stock* of the Bank of the United States.

CAPITAL CRIME is one for the punishment of which death is inflicted, which punishment is called *capital punishment*. Dane's Ab. Index, h. t.

CAPITATION. A poll-tax; an imposition which is yearly laid on each person according to his estate and ability.

CAPITE, *descents*, by the head. Distribution or succession per capite is said to take place when every one of the kindred in equal degree, and not *jure representationis* receive an equal part of an estate.

CAPITULATION, *war*, is the treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieges it.

CAPTAIN or SEA CAPTAIN, *mar. law*. The name given to the master or commander of a vessel. There are captains in the navy of the United States, who are officers appointed by government, and those who are employed in the service of merchants. It is proposed to consider the duty of the latter. Towards the owner of the vessel he is bound by his personal attention and care, to take all necessary precautions for her safety, to proceed on the voyage in which such vessel may be engaged, and to obey faithfully his instructions, and by all means in his power to promote the interest of his owner. Towards others it is the policy of the law to hold him responsible for all losses or damages that may happen to the goods committed to his charge, whether it arise from negligence, ignorance, or wilful misconduct of himself or his mariners or any other on board the ship. As soon, therefore, as goods are put on board, they are in the master's charge, and he is bound to deliver them again in the same state in

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which they were shipped, and he is answerable for all losses or damages they may sustain, unless it proceed from an inherent defect in the article, or from some accident or misfortune which could not be prevented. It may be laid down as a general rule that the captain is responsible when any loss occurs in consequence of his doing what he ought not to do, or not doing what he ought to do, unless he was forced by the act of God, the enemies of the United States, or the perils of the sea. 1 Marsh. Ins. 241; Pard. n. 658.

The rights of the captain are to choose his crew as he is responsible for their acts, this seems but just, but a reasonable deference to the rights of the owner require that he should be consulted, as he, as well as the captain, is responsible for the acts of the crew. On board the captain is invested with almost arbitrary power over the crew, being responsible for the abuse of his authority. Abb. on Shipp. 162. He may repair the ship, and, if he is not in funds to pay the expenses of such repairs, he may borrow money, when aboard, on the credit of his owners or of the ship. Abb. on Sh. 127, 8.

CAPTATOR, *French law*. The name which is sometimes given to him who by flattery and artifice endeavours to surprise testators and induce them to give legacies or devises, or to make him some other gift. Dict. de Jur.

CAPTION, *practice*, is that part of a legal instrument, as a commission, indictment, &c. which shows where, when, and by what authority it was *taken*, found or executed. In the English practice when an inferior court, in obedience to the writ of certiorari, returns an indictment in the K. B. it is annexed to the caption, then called a schedule. 1 Saund. 309, n. 2. Vide Dane's Ab. Index, h. t. Caption is another name for arrest.

CAPTIVE. By this term is understood one who has been *taken*; it is usually applied to prisoners of war, (q. v.)

CAPTOR, *war*, is one who has taken property from an enemy; this term is also employed to designate one who has taken an enemy. Formerly goods taken in war were adjudged to belong to the captor, they are now considered to vest primarily in the state or sovereign, and belong to the individual captors only to the extent that the municipal laws provide. Captors are responsible to the owners of the property for all losses and damages, when the capture is tortious and without reasonable cause in the exercise of belligerent rights. But if the capture is originally justifiable, the captors will not be responsible, unless by subsequent misconduct they become trespassers *ab initio*. 1 Rob. R. 93, 96.

CAPTURE, *war*, is the taking of property by one belligerent from another. To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals, or by a pirate, and with intent to deprive the owner of it. Capture may be with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods which are on board. The former is a capture of the ship in the proper sense of the word; the latter is only an arrest and detention, without any design to deprive the owner of it. Capture is deemed lawful, when made by a declared enemy, lawfully commissioned and according to the laws of war; and unlawful, when it is against the rules established by the law of nations. Marsh. Ins. B. 1, c. 12, s. 4.

See generally, Lee on Captures, passim; 1 Chitty's Com. Law, 377 to 512; 2 Wooddes. 435 to 457;

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2 Caines's C. Err. 158; 7 Johns. R. 449; 3 Caines's R. 155; 11 Johns. R. 241; 13 Johns. R. 161; 14 Johns. R. 227; 3 Wheat. 183; 4 Cranch, 43; 6 Mass. 197.

CAPUT LUPINUM, *Eng. law*, having the head of a wolf. An outlawed felon was said to have the head of a wolf, and might have been killed by any one legally. Now, such killing would be murder. 1 Hale, Pl. C. 497.

CARCAN, *punishment;* this is a French word which signifies pillory, and is sometimes used in that sense; as is *carcannum* for a prison.

CARDINAL, *eccl. law*, is the title of an ecclesiastical prince, who has an active or passive voice in the conclave when a pope is elected.

CARDS, *crim. law*. Small square paste boards, generally of a fine quality, on which are painted figures of various colours, and used for playing different games. The playing of cards for amusement is not forbidden, but gaming for money is unlawful; vide *Faro bank*, and *Gaming*.

CARGO, *mar. law*. The entire load of a ship or other vessel. Abb. on Sh. Index, h. t.; Merl. Rép. h. t.

CARNAL KNOWLEDGE, *crim. law*. This phrase is used to signify a sexual connexion; as, rape is the carnal knowledge of a woman, &c.

CARNALLY KNEW, *pleadings*. This is a technical phrase essential in an indictment to charge the defendant with the crime of rape: no other word, or circumlocution will answer the same purpose as these words. Vide *Ravished*, and Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Hale, 632; 3 Inst. 60; Co. Litt. 137; 1 Chit. Cr. Law, * 243. It has been doubted whether these words were indispensable, 1 East, P. C. 448, but it would be unsafe to omit them.

CARRAT, *weights*. A carrat is a weight equal to four grains, in diamonds and the like. Jac. L. Dict.

CARRIERS, *contracts*. There are two kinds of carriers, namely *common carriers*, (q. v.) who have been considered under another head; and private carriers. These latter are persons who, although they do not undertake to transport the goods of such as choose to employ them, yet agree to carry the goods of some particular person for hire, from one place to another. In such case the carrier incurs no responsibility beyond that of any ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. 2 Bos. & Pull. 417; 4 Taunt. 787; Selw. N. P. 382, n.; 1 Wend. R. 272; 6 Taunt. 577; Jones, Bailm. 121; Story on Bailm. § 495. To bring a person within the description of a common carrier, he must exercise his business as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to engage in the transportation of goods for hire, as a business; not as a casual occupation *pro hac vice*. 1 Salk. 249; 1 Bell's Com. 467.

CARRYING AWAY, *crim. law*. To complete the crime of larceny, the thief must not only feloniously take the thing stolen, but carry it away. The slightest carrying away will be sufficient; thus to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair; 1 Leach, 320; to remove sheets from a bed and carry them into an adjoining room, 1 Leach, 222, n; to take plate from a trunk, and lay it on the floor with intent to carry it away, Ib; and to remove a package from one part of a wagon to another, with a view to steal it, 1 Leach, 236, have respectively been holden to be felonies. 2 Chit. Cr. Law, 919. Vide 3 Inst.

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108, 109; 1 Hale, 507; Kel. 31; Ry. & Moody, 14; Bac. Ab. Felony, (D); 4 Bl. Com. 231; Hawk. c. 32, s. 25. Where, however, there has not been a complete severance of the possession, it is not a complete carrying away. 2 East, P. C. 556; 1 Hale, 508; 2 Russ. on Cr. 96.

CART BOTE, an allowance to the tenant of wood, sufficient for carts and other instruments of husbandry.

CARTE BLANCHE. The signature of an individual or more, on a white paper, with a sufficient space left above it to write a note or other writing. In the course of business, it not unfrequently occurs that for the sake of convenience, signatures in blank are given, with authority to fill them up. These are binding upon the parties. Vide Ch. on Bills, 70.

CARTEL, *war*. An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel. *Cartel ship*, is a ship, commissioned in time of war to exchange prisoners, or to carry any proposals between hostile powers; she must carry no cargo, ammunitions, nor implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The services on which they are sent is so highly important to the interests of humanity, that it is peculiarly incumbent on all parties to take care that it should be conducted in such a manner as not to become a subject of jealousy and distrust between the two nations. 4 Rob. R. 357, vide Merl. Rép. h. t; Dane's Ab. c. 40, a. 6, § 7.

CASE, *practice*, is a contested question before a court of justice; a suit or action; a cause.

CASE STATED, *practice*, is an agreement in writing, between a plaintiff and defendant, that the facts in dispute between them, are as there agreed upon and mentioned. The facts being thus ascertained, it is left for the court to decide for which party is the law. As no writ of error lies on a judgment rendered on a case stated, Dane's Ab. c. 137, art. 4, n. § 7, it is usual in the agreement to insert a clause that the case stated shall be considered in the nature of special verdict. In that case, a writ of error lies on the judgment which may be rendered upon it. And a writ of error will also lie on a judgment on a case stated, when the parties have agreed to it. 8 Serg. & Rawle, 529.

CASH, *commerce*, money on hand which a merchant trader or other person has to do business with. *Cash price*, in contracts, is the price of articles paid for in cash, in contradistinction of credit price, which is to be paid for some time after the sale. Pard. n. 85; Chipm. Contr. 110. In common parlance, bank notes are considered as cash; but bills receivable are not.

CASH BOOK, *commerce, accounts*, is one in which a merchant or trader enters an account of all the money, or paper moneys he receives or pays. An entry of the same thing ought to be made under the proper dates, in the journal. The object of the cash book is to afford a constant facility to ascertain the true state of a man's cash. Pard. n. 87.

TO CASHIER, *punishment*. To break; to deprive a military man of his office: example, every officer who shall be convicted before a general court martial, of having signed a false certificate relating to the absence of either officer or private soldier, or relative to his daily pay, shall be cashiered. Articles of war, art. 14.

CASSATION, *French law*, is a decision which emanates from the sovereign authority, and by which a sentence or judgment in the last

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resort is annulled. Merl. Rép. h. t; this jurisdiction is now given to the cour de cassation. This court is composed of fifty two judges, including four presidents, an attorney-general, and six substitutes, bearing the title of advocates general, a chief clerk, four subordinate clerks, and eight huissiers. Its jurisdiction extends to the examination and superintendence of the judgments and decrees of the inferior court, as a court of errors, both in civil and criminal cases. It is divided into three sections, namely, the *section des requêtes*, the *section civille*, and the *section criminelle*. Merl. Rép. mot Cour de Cassation.

CASSETUR BREVE, *practice*. That the writ be quashed. This is the name of a judgment which is entered by the plaintiff when he cannot prosecute his writ with effect against the defendant in consequence of some allegation on his, the defendant's part, which puts an end to the proceeding, without paying costs to the defendant, and after which the plaintiff is enabled to commence new process. When a bill has been filed, he may enter a judgment of *cassetur billa*. 3 Bl. Com. 340; and vide 5 T. R. 634; Gould's Pl. c. 5, § 139.

CASTIGATORY, *punishments*, is an engine used to punish women who have been convicted of being common scolds; it is sometimes called the trebucket, tumbrel, ducking stool, or cucking stool. This barbarous punishment has perhaps never been inflicted in the United States. Vide *Common Scold*.

CASTING VOTE, *legislation*, is the vote given by the president, or speaker of a deliberative assembly, when the votes of the other members are equal on both sides, the casting vote then decides the question. Dane's Ab. h. t.

CASTRATION, *crim. law*. The act of maliciously depriving a man of one or both his testes; though it usually indicates the deprivation of both. This is a maihem, and punishable as such, though the patients consented to it. By the ancient law of England this crime was punished by retaliation, *membrum pro membro*, 3 Inst. 118. It is punished in the United States generally by fine and imprisonment. The civil law punished it with death. Dig. 48, 8, 4, 2. For the French law, vide Code Penal, art. 316. The consequence of castration, when both testes have been removed are impotence and sterility. 1 Beck's Med. Jur. 72.

CASU CONSIMILI, *practice*, is a writ of entry, granted when the tenant by the curtesy, or tenant for life, aliens in fee, or in tail or for another's life. It may be brought by the reversioner, against the alienee, in the tenant's lifetime. The clerks in chancery framed this writ in *likeness* to the writ called *in casu proviso*, by authority of the statute Westm. 2, c. 24, hence its name, *casu consimili*, in a like case. Vide 3 Bl. Com. 51; 7 Co. 4; F. N. B. 206.

CASU PROVISO, *practice*, is a writ of entry given by the statute of Gloucester c. 7, when a tenant in dower aliens in fee or for life. It might have been brought by the reversioner against the alienee. This is perhaps an obsolete remedy, having yielded to the writ of ejectment. F. N. B. 205; Dane's Ab. Index, h. t.

CASUAL EJECTOR, *practice, torts*. Formerly in the trial of right to lands by ejectment, was a person supposed casually or by accident to come upon the land, and turn out the lawful possessor; he was called the casual ejector. Originally in order to try the right by ejectment, several things were necessary to be made out before the court; first a title to

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the land in question, upon which the owner was to make a formal entry; and being so in possession he executed a lease to some third person or lessee, leaving him in possession; then the prior tenant or some other person, called the casual ejector, either by accident or by agreement beforehand, came upon the land and turned him out, and for this ouster or turning out, the action was brought. But these formalities are now dispensed with, and the trial relates merely to the title, the defendant being bound to acknowledge the lease, entry, and ouster. 3 Bl. Com. 202; Dane's Ab. Index, h. t.

CASUS OMISSUS, an omitted case. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or on account of some other cause, a case remains to be provided for, it is said to be a *casus omissus*. For example, when a statute provided for the descent of intestates' estates, and omits a case, the estate descends as it did before the statute. 2 Binn. R. 279. Vide Dig. 33, 1, 44 and 55; Ib. 38, 2, 10; Code, 6, 52, 21 and 30.

CATCHING BARGAIN, *contracts, fraud*, is an agreement made with an heir expectant, for the purchase of his expectancy, at an inadequate price. In such case, the heir is, in general, entitled to relief in equity, and may have the contract rescinded upon terms of redemption. 1 Vern. 167; 2 Cox, 80; 2 Ch. Ca. 136; 2 Vern. 121; 2 Freem. 111; 2 Vent. 359; 2 Rep. in Ch. 396; 1 P. Wms. 312; 3 P. Wms. 290, 293, n.; 1 Bro. C. C. 7; 2 Atk. 133; 2 Swanst. 147, and the cases cited in the note; 1 Fonb. 140; 1 Supp. to Ves. Jr. 66; 2 Ib. 361; 1 Vern. 320, n. It has been said that all persons dealing for a reversionary interest are subject to this rule, but it may be doubted whether the course of decisions authorises so extensive a conclusion, and whether, in order to constitute a title to relief, the reversioner must not combine the character of heir. 2 Swanst. 148, n. Vide 1 Ch. Pr. 112, 113, n., 458, 826, 838, 839. A mere hard bargain is not sufficient ground for relief. The French law is in unison with these principles, an agreement which has for its object the succession of a man yet alive, is generally void. Merl. Rép. mots Succession Future. Vide also Dig. 14, 6.

CATCHPOLE, *officer*. This is a nickname given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He is so called because he catches by the poll or head, the party arrested.

CAUSA MATRIMONII PRÆLOCUTI, *Engl. law*, is an obsolete writ which lies when a woman gives land to a man in fee simple, or for a less estate, to the intent that he should marry her and he refuses upon request. New Nat. Bre. 455.

CAUSE, *civ. law*. This word has two meanings. 1. It signifies the delivery of the thing, or the accomplishment of the act which is the object of the convention. *Datio vel factum, quibus ab unâ parte conventio impleri cœpta est.* 6 Toull. n. 13, 166.—2. It is the consideration or motive for making a contract. An obligation without a cause, or with a false or unlawful cause, has no effect; but an engagement is not the less valid, though the cause be not expressed. The cause is illicit, when it is forbidden by law, when it is *contra bonos mores*, or to public order. Dig. 2, 14, 7, 4; Civ. Code of Lo. a. 1887–1894; Code Civil, liv. 3, tit. 3, c. 2, s. 4, art. 1131–1133; Toull. liv. 3, tit. 3, c. 2, s. 4.

CAUSE, *contr. torts, crim.* That which produces an effect. In considering a contract, an injury, or a

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crime, the law generally looks to the immediate, and not to any remote cause. Bac. Max. Reg. 1; 2 Taunt. 314. If the cause is lawful the party will be justified, if unlawful, he will be condemned. The following is an example of an immediate and remote cause. If Peter of malice prepense should discharge a pistol at Paul, and miss him, and then cast away the pistol and fly; and, being pursued by Paul, he turn round, and kill him with a dagger, the law considers the first as the impulsive cause, and Peter would be guilty of murder. But if Peter, with his dagger drawn, had fallen down, and Paul in his haste had fallen upon it and killed himself, the cause of Paul's death would have been too remote to charge Peter as the murderer. Ib. In cases of insurance the general rule is that the immediate and not the remote cause of the loss is to be considered: *causa proximo non remota spectatur.* This rule may in some cases apply to carriers. Story, Bailm. § 515. See also Domat. liv. 3, t. 5, s. 2, n, 4; Toull. liv. 3, n. 286.

CAUSE, *practice*, is a contested question before a court of justice; it is a suit or action. Causes are civil or criminal. Wood's Civ. Law, 302; Code 2, 4, 16.

CAUTION, a term used in the civil law. It nearly corresponds with bail when given in the prosecution of suits or actions. The plaintiff is required to find caution to prosecute his suit; to pay costs, if the judgment be against him, and to confirm the acts of his attorney. Coop. Just. 647. The securities or cautions judicially required of the defendant, are, *judicio sisti*, to attend and appear during the pendency of the suit; *de rato*, to confirm the acts of his attorney or proctor; *judicium solvi*, to pay the sum adjudged against him. Coop. Just. 647; Hall's Admiralty Practice, 12; 2 Bro. Civ. Law, 356.

CAUTION, JURATORY, in *the Scotch law*; Juratory caution is that which a suspender swears is the best he can offer in order to obtain a suspension. Where the suspender cannot, from his low or suspected circumstances, procure unquestionable security, juratory-caution is admitted. Ersk. Pr. L. Scot. 4, 3, 6.

CAUTIONER, *Scotch law, contracts*, one who becomes bound as caution or surety for another for the performance of any obligation, or contract contained in a deed.

CAVEAT, *practice*, that he beware. Caveat is the name of a notice given by a party having an interest in the same, to some officer not to do an act, till the party giving the notice shall have been heard; as, a caveat to the register of wills, or judge of probate, not to permit a will to be proved, or not to grant letters of administration until the party shall have been heard. A caveat is also frequently made to prevent a patent for inventions to be issued. Ayl. Parer. 145; Nelson's Ab. h. t.; Dane's Ab. c. 223, a. 15, § 2, and a. 8, § 22.

CAVEAT EMPTOR. Let the purchaser beware. It is a rule of the common law, in which respect it is directly opposed to the civil law, that the purchaser is bound to examine and ascertain the defects in the thing sold, and unless there be some misrepresentation or artifice to disguise it, or some warranty as to its qualities or character, the vendee is bound by the contract, notwithstanding there may be intrinsic defects and vices in it, known to the vendor and unknown to the vendee, materially affecting its value. 2 Kent. Com. Lect. 39, p. 478; 2 Bl. Com. 451; 1 Story, Eq. § 212; 6 Ves. 678; 10 Ves. 505; 3 Cranch, 270; 2 Day, R. 128; Sugd. Vend.

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221. This rule has been severely assailed, not without some appearance of justice, as being the instrument of falsehood and fraud; but although its policy has been frequently questioned, it is too well established to be disregarded. Coop. Just. 611, n.

CAVIL. Sophism, subtlety. Cavil is a captious argument, by which a conclusion evidently false, is drawn from a principle evidently true: *Ea est natura cavillationis ut ab evidentur veris, per brevissimas mutationes disputatio, ad ea quæ evidenter falsa sunt perducatur.* Dig. 50, 16, 177 et 233; Ib. 17, 65; Ib. 33, 2, 88.

CÆSARIAN OPERATION, *med. jurisp.* An incision made through the parieties of the abdomen and uterus to extract the fœtus. It is said, that Julius Cæsar was born in this manner. When the child is cut out after the death of the mother, his birth alive confers no rights on other persons than himself, to which they would have been entitled if he had been born during her life; for example, his father would not be tenant by the curtesy, for to create that title, it ought to begin by the birth of issue alive, and be consummated by the death of the wife. 8 Co. Rep. 35; 2 Bl. Com. 128; Co. Litt. 29 b.; 1 Beck's Med. Jur. 264; Coop. Med. Jur. 7. The rules of the civil law on this subject will be found in Dig. lib. 50, t. 16, l. 132 and 141; lib. 5, t. 2, l. 6; lib. 28, t. 2, l. 12.

CELEBRATION, *contracts.* This word is usually applied in law to the celebration of marriage, which is the solemn act by which a man and woman take each other for husband and wife, conformably to the rules prescribed by law. Dict. de Juris. h. t.

CENSUS. An enumeration of the inhabitants of a country. For the purpose of keeping the representation of the several states in congress equal, the constitution provides, that "representatives and direct taxes shall be apportioned among the several states, which may be included in this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct." Art. 1. s. 2; vide 1 Story L. U. S., 73, 722, 751; 2 Id. 1134, 1139, 1169, 1194; 3 Id. 1766; 4 Sharsw. continuation, 2179.

CENT, *money*, is a copper coin of the United States of the value of ten mills; ten of them are equal to a dime, and one hundred, to one dollar. Each cent is required to contain one hundred and sixty-eight grains. Act of January 18th, 1837, 4 Sharsw. cont. of Story's L. U. S. 2524.

CEPI, a latin word signifying I have taken. *Cepi corpus*, I have taken the body; *cepi corpus and B. B.*, I have taken the body and discharged him on bail bond; *cepi corpus et est in custodia*, I have taken the body and it is in custody; *cepi corpus, et est languidus*, I have taken the body and it is sick. These are various returns made by the sheriff to a writ of capias, or process of like nature.

CEPI CORPUS, *in practice*, is the return which the sheriff, or other proper officer, makes when he has arrested a defendant by virtue of a capias. See *Capias*. F. N. B. 26.

CEPIT IN ALIO LOCO, *pleadings*. He took in another place.

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This is a plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the plaintiff's declaration. 1 Chit. Pl. 490; 2 Chit. Pl. 558; Rast. Entr. 554, 555; Clift, 636; Willes, R. 475; Tidd's App. 686.

CERTAINTY, UNCERTAINTY, *contracts;* in matters of obligation; a thing is certain, when its essence, quality and quantity, are sufficiently described, such as one hundred dollars, such a house, or such a horse. It is uncertain when the description is not that of one individual object, but designates only the kind, such as some corn, some wine, a horse. Louis. code, art. 3522, No. 8; 5 Co. 121. If a contract be so vague in its terms, that its meaning cannot be certainly collected, and the statute of frauds preclude the admissibility of parol evidence to clear up the difficulty, 5 Barn. & Cr. 583; S. C. 12 Eng. Com. L. R. 327; or the parol evidence will not supply the defect, then neither at law, nor in equity, can effect be given to it. 1 Russ. & M. 116; 1 Ch. Pr. 123.

CERTAINTY, *pleading.* By certainty is understood a clear and distinct statement of the facts which constitute the cause of action, or ground of defence, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give the judgment. Cowp. 682; Co. Litt. 303; 2 Bos. & Pull. 267; 13 East, 107; Com. Dig. Pleader, C. 17; Hob. 295. Certainty has been stated by Lord Coke, Co. Litt. 303, a. to be of three sorts; namely, 1, certainty to a common intent; 2, to a certain intent in general; and, 3, to a certain intent in every particular. In the case of Dovaston v. Paine, Buller, J. said he remembered to have heard Mr. Justice Aston treat these distinctions as a jargon of words without meaning, 2 H. Bl. 530; they have, however, long been made, and ought not altogether to be departed from.

1. By certainty to a *common intent* is to be understood, that when words are used which will bear a natural sense, and also an artificial one, or one to be made out by argument or inference, the natural sense shall prevail; it is simply a rule of construction and not of addition; common intent cannot add to a sentence words which were omitted. 2 H. Bl. 530.

2. Certainty to a *certain intent in general,* is a greater degree of certainty than the last, and means what upon a fair and reasonable construction may be called certain, without recurring to possible facts which do not appear, 9 Johns. R. 317, and is what is required in declarations, replications and indictments, in the charge or accusation, and in returns to writs of mandamus. See 1 Saund. 49, n. 1; 1 Dougl. 159; 2 Johns. Cas. 339; Cowp. 682; 2 Mass. R. 363; by some of which authorities, it would seem, certainty to a common intent is sufficient in a declaration.

3. The third degree of certainty, is that which precludes all argument, inference, or presumption against the party pleading, and is that technical accuracy which is not liable to the most subtile and scrupulous objections, so that it is not merely a rule of construction but of addition; for where this certainty is necessary, the party must not only state the facts of his case in the most precise way, but add to them such as show that they are not to be controverted, and as it were anticipate the case of his adversary. Lawes on Pl. 54, 55. See 1 Chitty on Pl. 235 to 241.

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CERTIFICATE, *practice*, is a writing made in any court, and properly authenticated, to give notice to another court of any thing done therein; or it is a writing by which an officer or other person bears testimony that a fact has or has not taken place. There are two kinds of certificates, those required by the law, and those which are merely voluntary: of the first kind are certificates given to an insolvent of his discharge, and those given to aliens that they have been naturalized. Voluntary certificates are those which are not required by law, but which are given of the mere motion of the party. The former are evidence of the facts therein mentioned, while the latter, which are not unfrequently extorted from weakness or ignorance, are not entitled to any credit, because the facts certified may be proved in the usual way under the solemnity of an oath or affirmation. 2 Com. Dig. 306; Ayl. Parerg. 157.

CERTIFICATE, JUDGE'S, *English practice*. The judge who tries the cause is authorised by several statutes in certain cases to certify, so as to decide when the party or parties shall or shall not be entitled to costs. It is of great importance, in many cases, that these certificates should be obtained at the time of trial. See 3 Camp. R. 316; 5 B. & A. 796; Tidd's Pr. 879; 3 Ch. Pr. 458, 486.

The Lord Chancellor often requires the opinion of the judges upon a question of law; to obtain this a case is framed, containing the admissions on both sides, and upon these the dry legal question is stated; the case is then submitted to the judges, who, after hearing counsel, transmit to the chancellor their opinion. This opinion, signed by judges of the court, is called their *certificate*. See 3 Bl. Comm. 453.

CERTIFICATE, ATTORNEY'S, *in practice*. *In the English law*. By statute 37 Geo. 3, c. 90, s. 26, 28, attorneys are required to deliver to the commissioners of stamp duties a paper or note in writing, containing the name and usual place of residence of such person, and thereupon, on paying certain duties, such person is entitled to a certificate denoting the payment of such duties, which must be renewed yearly. And by the 30th section, an attorney is liable to a penalty of fifty pounds for practising without.

CERTIFICATION OR CERTIFICATE OF ASSISE, a term used in the old English law, applicable to a writ granted for the re-examination or re-trial of a matter passed by assise before justices. F. N. B. 181; 3 Bl. Com. 389. The summary motion for a new trial has entirely superseded the use of this writ, which was one of the means devised by the judges to prevent a resort to the remedy by attaint for a wrong verdict.

CERTIORARI, *practice*. To be certified of; to be informed of. This is the name of a writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify to the former, the record in the particular case. 1 Bac. Ab. 558; 4 Vin. Ab. 330; Nels. Ab. h. t., Dane's Ab. Index, h. t.; 3 Penna. R. 24.

CESSAT EXECUTION, is the staying of an execution. When a judgment has been entered, there is sometimes, by the agreement of the parties, a *cessat executio* for a period of time fixed upon; and when the defendant enters security for the amount of the judgment, there is a *cessat executio* until the time allowed by law has expired.

CESSAVIT, *Engl. law*, is an obsolete writ which could formerly have been sued out when the defendant had for two years *ceased* or

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neglected to perform such service or to pay such rent as he was to by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. F. N. B. 208.

CESSIO BONORUM, *civil law.* The relinquishment which a debtor made of his property for the benefit of his creditors. This exempted the debtor from imprisonment, not, however, without leaving an ignominous stain on his reputation. Dig. 2, 4, 25; Ib. 48, 19, 1; Nov. 4, c. 3, and Nov. 135. By the latter Novel, an honest unfortunate debtor might be discharged by simply affirming that he was insolvent, without having recourse to the benefit of cession. By the cession the creditors acquired title to all the property of the insolvent debtor. Vide for the law of Louisiana, code art. 2166, et seq. and *Abandonment.*

CESSION, *contracts*, yielding up; release. France ceded Louisiana to the United States by the treaty of Paris, of April 30, 1803; Spain made a cession of East and West Florida, by the treaty of February 22, 1819. Cessions have been severally made of a part of their territory, by New York, Virginia, Massachusetts, Connecticut, South Carolina, North Carolina, and Georgia. Vide Gord. Dig. art. 2236 to 2250.

CESTUI QUE TRUST, a barbarous phrase to signify the beneficiary of an estate held in trust. He for whose benefit another person is enfeoffed or seised of lands or tenements. The *cestui que trust* is entitled to receive the rents and profits of the land; he may direct such conveyances, consistent with the trust deed or will, as he shall choose, and the trustee (q. v.) is bound to execute them; he may defend his title in the name of the trustee. 1 Cruise, Dig. tit. 12, c. 4, s. 4; vide Vin. Ab. Trust, U, W, X, and Y; 1 Vern. 14; Dane's Ab. Index, h. t.

CESTUI QUE VIE, he for whose life land is holden by another person; the latter is called *tenant per auter vie*, or tenant for another's life. Vide Dane's Ab. Index, h. t.

CESTUI QUE USE, he to whose use land is granted to another person, the latter is called the terre-tenant, having in himself the legal property and possession, yet not to his own use, but to dispose of it according to the directions of the cestui que use, and to suffer him to take the profits. Vide Bac. Read. on Stat. of Uses, 303, 309, 319, 335, 349; 7 Com. Dig. 593.

CHAFFERS, anciently signified wares and merchandise; hence the word *chaffering*, which is yet used for buying and selling, or beating down the price of an article. The word is used in stat. 3 Ed. 4, c. 4.

CHAIRMAN, is the presiding officer of a committee, as, chairman of the committee of ways and means. The person selected to preside over a popular meeting is also called a chairman or moderator.

CHALLENGE. This word has several significations. 1. It is an objection to a person or thing; as, I challenge such a juror. 2. A call by one person of another to single combat, which is said to be a challenge to fight.

CHALLENGE, *criminal law*, is a request by one person to another to fight a duel. It is a high offence at common law and indictable as tending to a breach of the peace. It may be in writing or verbally. Vide Hawk. P. C. b. 1, c. 63, s. 3; 6 East, R. 464; 3 East, R. 581; 1 Dana, R. 524; 1 South. R. 40; 3 Wheel. Cr. C. 245; 3 Roger's Rec. 133; 2 M'Cord, R. 334; 1 Hawks, R. 487; 1 Const. R. 107. He who carries a challenge is also punishable by indictment. In most of the states, this barbarous practice is punishable by special laws.

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CHALLENGE, *practice*, is an exception made to jurors who are to pass on a trial. It will be proper here to consider, 1, the several kinds of challenges; 2, by whom they are to be made; 3, the time and manner of making them.

§ 1. The several kinds of challenges may be divided into those which are peremptory, and those which are for cause.

1. Peremptory challenges are those which are made without assigning any reason, and which the court must allow. The number of these which the prisoner was allowed at common law, in all cases of felony, was thirty-five, or one under three full juries. This is regulated by the local statutes of the different states, and the number, except in capital cases, has been probably reduced.

2. Challenges for cause are to the array or to the polls.—1. A challenge to the array is made on account of some defect in making the return to the venire, and is at once an objection to all the jurors in the panel. It is either a principal challenge, that is, one founded on some manifest partiality, or error committed in selecting, depositing, drawing or summoning the jurors, by not pursuing the directions of the acts of the legislature; or a challenge for favour.—2. A challenge to the polls is an objection made separately to each juryman as he is about to be sworn. Challenges to the polls like those to the array, are either principal or to the favour. *First*, principal challenges may be made on various grounds, 1st, *propter defectum*, on account of some personal objection, as alienage, infancy, old age, or the want of those qualifications required by legislative enactments. 2d *Propter affectum*, because of some presumed or actual partiality in the juryman who is made the subject of the objection; on this ground a juror may be objected to, if he is related to either within the ninth degree, or is so connected by affinity; this is supposed to bias the juror's mind, and is only a presumption of partiality. Much stronger is the reason for this challenge, where the juryman has expressed his wishes as to the result of the trial, or his opinion of the guilt or innocence of the defendant. 4 Harg. St. Pr. 748; Hawk. b. 2, c. 43, s. 28; Bac. Ab. Juries, E 5.—3. The third ground of principal challenge to the polls, is *propter delictum*, or the legal incompetency of the juror on the ground of infamy. The court when satisfied from their own examination, decide as to the principal challenges to the polls, without any further investigation, and there is no occasion for the appointment of triers. Co. Litt. 157, b; Bac. Ab. Juries, E 12. *Secondly*. Challenges to the poll for favour may be made, when although the juror is not so evidently partial that his supposed bias will be sufficient to authorise a principal challenge, yet there are reasonable grounds to suspect that he will act under some undue influence or prejudice. The causes for such challenge are manifestly very numerous, and depend on a variety of circumstances. The fact to be ascertained is, whether the juryman is altogether indifferent as he stands unsworn, because, even unconsciously to himself, he may be swayed to one side. The line which separates the causes for principal challenges, and for challenge to the favour, is not very distinctly marked. That the juror has acted as godfather to the child of the prosecutors or defendant, is cause for a principal challenge, Co. Litt. 157, a; while the fact that the party and the juryman are fellow servants, and that the latter has been entertained at the house of the former, is only

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cause for challenge to the favour. Co. Litt. 157; Bac. Ab. Juries, E 5. Challenges to the favour are not decided upon by the court, but are settled by triers, (q. v.)

§ 2. The challenges may be made by the government, or those who represent it, or by the defendant, in criminal cases; or they may be made by either party in civil cases.

§ 3. As to the time of making the challenge, it is to be observed that it is a general rule, that no challenge can be made either to the array or to polls, until a full jury have made their appearance, because if that should be the case, the issue will remain pro defectu juratorem; and on this account, the party who intends to challenge the array, may, under such a contingency, pray a tales to complete the number, and then object to the panel. The proper time of challenging, is between the appearance and the swearing of the jurors. The order of making challenges is to the array first, and should not that be supported, then to the polls; challenging any one juror waives the right of challenging the array. Co. Litt. 158, a; Bac. Ab. Juries, E 11. The proper manner of making the challenge, is to state all the objections against the juror at one time, and the party will not be allowed to make a second objection to the same juror, when the first has been overruled. But when a juror has been challenged on one side, and found indifferent, he may still be challenged on the other. When the juror has been challenged for cause and been pronounced impartial, he may still be challenged peremptorily. 6 T. R. 531; 4 Bl. Com. 356; Hawk. b. 2, c. 46, s. 10.

As to the mode of making the challenge, the rule is that a challenge to the array must be in writing, but when it is only to a single individual, the words "I challenge him," are sufficient in a civil case, or on the part of the defendant, in a criminal case; when the challenge is made for the prosecution, the attorney general says, "we challenge him." 4 Harg. St. Tr. 740; Tr. per Pais, 172; and see Cro. C. C. 105; 2 Lil. Entr. 472; 10 Wentw. 474; 1 Chit. Cr. Law, 533 to 551.

CHAMBER OF COMMERCE. A society of the principal merchants and traders of a city, who meet to promote the general trade and commerce of the place. Some of these are incorporated, as in Philadelphia.

CHAMPERTOR, *crim. law*, one who moves pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain.

CHAMPERTY, *crimes*, is a bargain with a plaintiff or defendant, *campum partire*, to divide the land or other matter sued for, between them, if they prevail at law, the champertor undertaking to carry on the suit at his own expense. This offence differs from maintenance, in this, that in the latter the person assisting the suitor receives no benefit, while in the former he receives one half of the thing sued for. Punishment fine and imprisonment. 4 Bl. Com. 135. This was an offence in the civil law. Poth. Pand. lib. 3, t. 1. App. n. 1, tom. 3, p. 104.

CHAMPION, he who fights for another, or takes his place in a quarrel; it also includes him who fights his own battles. Bract. lib. 4, tr. 2, c. 21.

CHANCE, *accident*. As the law punishes a crime only when there is an intention to commit it, it follows that when those acts are done in the performance of a lawful act by mere chance or accident, which would have amounted to a crime if there had been an intention, express or implied to commit them,

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there is no crime. For example, if workmen were employed in blasting rocks in a retired field, and a person not knowing of the circumstance should enter the field, and was killed by a piece of the rock, there would be no guilt in the workmen. 1 East, P. C. 262; Foster, 262; 1 Hale's P. C. 472; 4 Bl. Com. 192. Vide *Accident.*

CHANCE-MEDLEY, *criminal law*, is a sudden affray; this word is sometimes applied to any manner of homicide by misadventure, but in strictness it is applicable to such killing only as happens *se defendendo*, (q. v.) 4 Bl. Com. 184.

CHANCELLOR, is an officer appointed to preside over a court of chancery, invested with various powers, in the several states. The office of chancellor is of Roman origin. He appears at first to have been a chief scribe or secretary, but he was afterwards invested with judicial power, and had the superintendence over the other officers of the empire. From the Romans, the title and office passed to the church, and therefore every bishop of the catholic church has to this day, his chancellor, the principal judge of his consistory. When the modern kingdoms of Europe were established upon the ruins of the empire, almost every state preserved its chancellor, with different jurisdictions and dignities, according to their different constitutions. In all he seems to have had a supervision of all charters, letters and such other public instruments of the crown, as were authenticated in the most solemn manner, and when seals came into use, he had the custody of the public seal. An officer bearing this title is to be found in most countries of Europe, and is generally invested with extensive authority. The title and office of chancellor came to us from England. Many of our state constitutions provide for the appointment of this officer, who is by them, and by the laws of the several states, invested with power as they provide. Vide Encyclopédie, h. t; Encycl. Amer. h. t. Dict. de Jur. h. t; Merl. Rép. h. t; 4 Vin. Ab. 374; Blake's Ch. Index, h. t.

CHANCERY. The name of a court exercising jurisdiction at law, but mainly in equity. It is not easy to determine how courts of equity originally obtained the jurisdiction they now exercise. Their authority and the extent of it have been subjects of much question, but time has firmly established them, and the limits of their jurisdiction seem to be in a great degree fixed and ascertained. 1 Story on Eq. Ch. 2; Mitf. Pl. Introd.; Coop. Eq. Pl. Introd.

The judge of the court of chancery, often called a court of equity, bears the title of chancellor. The equity jurisdiction in England is vested, principally, in the high court of chancery. This court is distinct from courts of law. "American courts of equity are, in some instances, distinct from those of law; in others, the same tribunals exercise the jurisdiction both of courts of law and equity, though their forms of proceeding are different in their two capacities. The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act either as courts of law or equity, according to the form of the process and the subject of adjudication. In some of the states, as New York, Virginia and South Carolina, the equity court is a distinct tribunal, having its appropriate judge, or chancellor, and officers. In most of the states, the two jurisdictions centre in the same judicial officers, as in the courts of the United States; and the extent of equity jurisdiction and proceed-

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ings is very various in the different states, being very ample in Connecticut, New York, New Jersey, Maryland, Virginia and South Carolina, and more restricted in Maine, Massachusetts, Rhode Island and Pennsylvania. But the salutary influence of these powers on the judicial administration generally, by the adaptation of chancery forms and modes of proceeding to many cases in which a court of law affords but an imperfect remedy, or no remedy at all, is producing a gradual extension of them in those states where they have been heretofore very limited."

The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs or for the enforcement of right may be distinguished into two classes; "those which are administered in courts of law, and those which are administered in courts of equity. The rights secured by the former are called *legal;* those secured by the latter are called *equitable.* The former are said to be rights and remedies at common law, because recognised and enforced in courts of common law. The latter are said to be rights and remedies in *equity*, because they are administered in courts of equity or chancery, or by proceedings in other courts analogous to those in courts of equity or chancery. Now, in England and America, courts of common law proceed by certain prescribed forms, and give a *general* judgment for or against the defendant. They entertain jurisdiction only in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not do entire justice, *ex æquo et bono*, to either party. Some modification of the rights of both parties are required; some restraints on one side or the other; and some peculiar adjustments, either present or future, temporary or perpetual. Now, in all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their forms of actions and judgment are not adapted to them. The proper remedy cannot be found, or cannot be administered to the full extent of the relative rights of all parties. Such prescribed forms of actions are not confined to our law. They were known in the civil law; and the party could apply them only to their original purposes. In other cases, he had a special remedy. In such cases, where the courts of common law cannot grant the proper remedy or relief, the law of England and of the United States (in those states where equity is administered) authorises an application to the courts of equity or chancery, which are not confined or limited in their modes of relief by such narrow regulations, but which grant relief to all parties, in cases where they have rights, *ex æquo et bono*, and modify and fashion that relief according to circumstances. The most general description of a court of equity is, that it has jurisdiction in cases where a plain, adequate and complete remedy cannot be had at law; that is, in the common law courts. The remedy must be *plain;* for, if it be doubtful and obscure at law, equity will assert a jurisdiction. So it must be *adequate* at law; for, if it fall short of what the party is entitled to, that founds a jurisdiction in equity. And it must be *complete;* that is, it must attain its full end at law; it must reach the whole mischief and secure the whole right of the party, now and for the future; otherwise equity will interpose, and give relief. The jurisdiction of a

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court of equity is sometimes concurrent with that of courts of law; and sometimes it is exclusive. It exercises concurrent jurisdiction in cases where the rights are purely of a *legal* nature, but where other and more efficient aid is required than a court of law can afford, to meet the difficulties of the case, and ensure full redress. In some of these cases, courts of law formerly refused all redress; but now will grant it. But the jurisdiction having been once justly acquired at a time when there was no such redress at law, it is not now relinquished. The most common exercise of concurrent jurisdiction is in cases of account, accident, dower, fraud, mistake, partnership and partition. The remedy is here often more complete and effectual than it can be at law. In many cases falling under these heads, and especially in some cases of fraud, mistake and accident, courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity also is assistant to the jurisdiction of courts of law, in many cases, where the latter have no like authority. It will remove legal impediments to the fair decision of a question depending at law. It will prevent a party from improperly setting up, at a trial, some title or claim, which would be inequitable. It will compel him to discover, on his own oath, facts which he knows are material to the right of the other party, but which a court of law cannot compel the party to discover. It will perpetuate the testimony of witnesses to rights and titles, which are in danger of being lost before the matter can be tried. It will provide for the safety of property in dispute pending litigation. It will counteract and control, or set aside, fraudulent judgments. It will exercise, in many cases, an *exclusive* jurisdiction. This it does in all cases of merely *equitable rights*, that is, such rights as are not recognised in courts of law. Most cases of trust and confidence fall under this head. Its exclusive jurisdiction is also extensively exercised in granting special relief beyond the reach of the common law. It will grant injunctions to prevent waste, or irreparable injury, or to secure a settled right, or to prevent vexatious litigations, or to compel the restitution of title deeds; it will appoint receivers of property, where it is in danger of misapplication; it will compel the surrender of securities improperly obtained; it will prohibit a party from leaving the country in order to avoid a suit; it will restrain any undue exercise of a legal right, against conscience and equity; it will decree a specific performance of contracts respecting real estates; it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real intention of the parties; it will grant relief in cases of lost deeds or securities; and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it unless he could bring into court the money honestly due without usury. This is a very general and imperfect outline of the jurisdiction of a court of equity; in respect to which it has been justly remarked, that, in matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is impossible to define the boundaries of that jurisdiction, or to enumerate, with precision, its various principles." Ency. Am. art. Equity.

Vide Fonb. Eq.; Story on Eq.; Smith on Eq.; Madd. Ch. Pr.; 10

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Amer. Jur. 227; Coop. Eq. Pl.; Redesd. Pl.; Newl. Ch. Pr.; Beames's Pl. Eq.; Jeremy on Eq. Encyl. Amer. article Equity.

CHARACTER, *evidence*, is the opinion generally entertained of a person, derived from the common report of the people who are acquainted with him. 3 Serg. & R. 336; 3 Mass. 192; 3 Esp. C. 236. There are three classes of cases on which the moral character and conduct of a person in society may be used in proof before a jury, each resting upon particular and distinct grounds. Such evidence is admissible, 1st, To afford a presumption that a particular party has not been guilty of a criminal act; 2dly, To affect the damages in particular cases, where their amount depends on the character and conduct of any individual; and, 3dly, To impeach or confirm the veracity of a witness.

1. Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in the question, a presumption of innocence arises from his former conduct in society, as evidenced by his general character, since it is not probable that a person of known probity and humanity, would commit a dishonest or outrageous act in the particular instance. Such presumptions, however, are so remote from fact, and it is frequently so difficult to estimate a person's real character, that they are entitled to little weight, except in doubtful cases. Since the law considers a presumption of this nature to be admissible, it is in principle admissible whenever a reasonable presumption arises from it, as to the fact in question; in practice it is admitted whenever the character of the party is involved in the issue. See 2 St. Tr. 1038; 1 Coxe's Rep. 424; 5 Serg. & R. 352; 3 Bibb R. 195; 2 Bibb R. 286; 5 Day R. 260; 5 Esp. C. 13; 3 Camp. C. 519; 1 Camp. C. 460; Str. R. 925.

2. In some instances evidence in disparagement of character is admissible, not in order to prove or disprove the commission of a particular fact, but with a view to damages. In actions for criminal conversation with the plaintiff's wife, evidence may be given of the wife's general bad character, for want of chastity, and even of particular acts of adultery committed by her, previous to her intercourse with the defendant. B. N. P. 27, 296; 12 Mod. 232; 3 Esp. C. 236. See 5 Munf. 10. In actions for slander and libel, when the defendant has not justified, evidence of the plaintiff's bad character has also been admitted. 3 Camp. C. 251; 1 M. & S. 284; 2 Esp. C. 720; 2 Nott & M'Cord, 511; 1 Nott & M'Cord, 268; and see 11 Johns. R. 38; 1 Root R. 459; 1 Johns. R. 46. The ground of admitting such evidence is, that a person of disparaged fame is not entitled to the same measure of damages with one whose character is unblemished. When, however, the defendant justifies the slander, it seems to be doubtful whether the evidence of reports as to the conduct and character of the plaintiff can be received. See 1 M. & S. 286, n. (a); 3 Mass. R. 553; 1 Pick. R. 19.

3. The party against whom a witness is called, may disprove the facts stated by him, or may examine other witnesses as to his general character; but they will not be allowed to speak of particular facts or parts of his conduct. B. N. P. 296. The regular mode is to inquire whether the witness under examination has the means of knowing the former witness's general character, and whether from such knowledge he would believe him on his oath. 4 St. Tr. 693; 4 Esp.

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C. 102. In answer to such evidence against character, the other party may cross-examine the witness as to his means of knowledge, and the grounds of his opinion; or he may attack such witness's general character, and by fresh evidence support the character of his own. 2 Stark. C. 151; Ib. 241; St. Ev. pt. 4, 1753 to 1758; 1 Phil. Ev. 229.

See in general as to character, Phil. Ev. Index, tit. Character; Stark. Ev. pt. 4, p. 364; Swift's Ev. 140 to 144.

CHARGE, *practice*, is the opinion expressed by the court to the jury on the law arising out of a case before them. It should contain a clear and explicit exposition of the law, but the court ought at no time to undertake to decide the facts, for these are to be decided by the jury. 4 Rawle's R. 195; 2 Penna. R. 27; 4 Rawle's R. 356; Ib. 100; 2 Serg. & Rawle, 464; 1 Serg. & Rawle, 515; 8 Serg. & Rawle, 150.

CHARGE, *contracts*, is an obligation entered into by the owner of an estate which makes the estate responsible for its performance. Vide 2 Ball & Beatty, 223; 8 Com. Dig. *306, Appendix, h. t. Any obligation binding upon him who enters into it, which may be removed or taken away by a discharge. T. de la Ley, h. t.

CHARGE, *wills, devises*, is an obligation which a testator imposes on his devisee, as, if the testator give Peter, Blackacre, and directs that he shall pay to John during his life an annuity of one hundred dollars which is to be a charge on said land; or if a legacy be given and directed to be paid out of the real property. 1 Rop. Leg. 446. Vide 4 Vin. Ab. 449; 1 Supp. to Ves. jr. 309; 2 Ib. 31; 1 Vern. 45, 411; 1 Swanst. 28; 4 East, R. 501; 4 Ves. jr. 815; Domat, Loix Civ. liv. 3, t. 1, s. 8, n. 2.

CHARGE DES AFFAIRES, *international law*, is a diplomatic representative or minister of an inferior grade, to whose care are confided the affairs of his nation. He has not the title of minister, and is generally introduced and admitted through a verbal presentation of the minister, at his departure, or through letters of credence addressed to the minister of state of the court to which they are sent. He has the essential rights of a minister. Mart. Law of Nat. 206; 1 Kent, Com. 39, n. The president is authorised to allow to any chargé des affaires a sum not greater than at the rate of four thousand five hundred dollars per annum, as a compensation for his personal services and expenses. Act of May 1, 1810, 2 Story's Laws U. S. 1171.

CHARGER, *Scotch law*, is he in whose favour a decree suspended is pronounced, yet a decree may be suspended before a charge is given on it. Ersk. Pr. L. Scot. 4, 3, 7.

CHARITY, in its widest sense, denotes all the good affections which men ought to bear towards each other, 1 Epistle to Cor. c. xiii.; in its most restricted and usual sense, it signifies relief of the poor. But it is not employed in either of these senses in law; its signification is derived chiefly from the statute of 43 Eliz. c. 4. Those purposes are considered charitable which are enumerated in that act, or which by analogy are deemed within its spirit and intendment. 9 Ves. 405; 10 Ves. 541; 2 Vern. 387; Shelf. on Mortm. 59. Lord Chancellor Camden describes a charity to be a gift to a general public use, which extends to the rich as well as to the poor, Ambl. 651; Boyle on Charities, 51; 2 Ves. sen. 52; Ambl. 713; 2 Ves. jr. 272; 6 Ves. 404.

CHARRE OF LEAD, *Engl. law, in commerce*, is a quantity of

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lead consisting of thirty pigs, each pig containing six stones wanting two pounds, and every stone being twelve pounds. Jacob.

CHARTA, an ancient word which signified not only a charter or deed in writing, but any signal or token by which an estate was held.

CHARTER, is a grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights. Of the former kind is the present charter of France, which extends to the whole country; the charters which were granted to the different American colonies by the British government were charters of the latter species. 1 Story, Const. L. § 161; 1 Bl. Com. 108; Encycl. Amer. Charte Constitutionelle. A charter differs from a constitution in this, that the former is granted by the sovereign while the latter is established by the people themselves: both are the fundamental law of the land. This term is susceptible of another signification. During the middle ages almost every document was called *carta*, *charta*, or *chartula*. In this sense the term is nearly synonymous with deed. Co. Litt. 6; 1 Co. 1; Moor. Cas. 687. Vide 2 Bro. Civ. and Adm. Law, 188; Dane's Ab. h. t.

CHARTER-PARTY, *contracts*, is a contract of affreightment in writing by which the owner of a ship or other vessel lets the whole, or a part of her, to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. This instrument ought to contain, 1, the name and tonnage of the vessel; 2, the name of the captain; 3, the names of the letter to freight and the freighter; 4, the place and time agreed upon for the loading and discharge; 5, the price of the freight; 6, the demurrage or indemnity in case of delay; 7, such other conditions as the parties may agree upon. Abbott on Ship. pt. 3, c. 1, s. 1 to 6; Poth. h. t. n. 4; Pardessus, Dr. Com. pt. 4, t. 4, c. 1, n. 708. When a ship is chartered this instrument serves to authenticate many of the facts on which the proof of her neutrality must rest, and should therefore be always found on board chartered ships. 1 Marsh. Ins. 407. When the goods of several merchants unconnected with each other, are laden on board without any particular contract of affreightment with any individual for the entire ship, the vessel is called a *general ship*, (q. v.) because open to all merchants; but where one or more merchants, contract for the ship exclusively, it is said to be a *chartered* ship. 3 Kent, Com. 158; Abbott, Ship. pt. 2, c. 2, s. 1.

CHARTIS REDDENDIS, *Engl. law*, an ancient writ, now obsolete, which lay against one who had charters of feoffment entrusted to his keeping, and who refused to deliver them. Reg. Orig. 159.

CHASE, *property*, is the act of acquiring possession of animals *feræ naturæ* by force, cunning or address. The hunter acquires a right to such animals by occupancy, and they become his property. 4 Toull. n. 7. No man has a right to enter on the lands of another for the purpose of hunting without his consent. Vide 14 East, R. 249; Poth. Tr. du Dr. de Propriété, part 1, c. 2, art. 2.

CHATTELS, *property*, is a term which includes all kinds of property except the freehold or things which are parcel of it. It is a more extensive term than *goods* or *effects*. Chattels are personal or real. *Personal* are such as belong immediately to the person of a man; chattels *real* are such as either appertain not immediately to the person, but to something by way of dependency,

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as a box with the title deeds of lands; or such as are issuing out of some real estate, as a lease of lands, or term of years, which pass like personalty to the executor of the owner. Co. Litt. 118; 1 Chit. Pr. 90; 8 Vin. Ab. 296; 11 Vin. Ab. 166; 14 Vin. Ab. 109; 1 Bac. Ab. 476; 2 Kent, Com. 278; Dane's Ab. Index, h. t.; Com. Dig. Biens, A.

CHEAT, *criminal law, torts.* A cheat is a deceitful practice, of a public nature, in defrauding another of a known right, by some artful device contrary to the plain rules of common honesty. 1 Hawk. 343. To constitute a cheat, the offence must be, 1st, of a public nature; for every species of fraud and dishonesty in transactions between individuals is not the subject-matter of a criminal charge at common law, it must be such as is calculated to defraud numbers, and to deceive the people in general. 2 East, P. C. 816.—2. The cheating must be done by false weights, false measures, false tokens, or the like, calculated to deceive numbers, 2 Burr. 1125; 1 W. Bl. R. 273; Holt, R. 354.—3. That the object of the defendant in defrauding the prosecutor was successful. If unsuccessful it is a mere attempt, (q. v.) When two or more enter into an agreement to cheat, the offence is a conspiracy, (q. v.)

CHECK, *contracts*, is a written order or request, addressed to a bank, or persons carrying on the banking business, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named or to bearer, a named sum of money. It is said that checks are uniformly payable to bearer, Chit. on Bills, 411, but that is not so in practice in the United States: they are generally payable to bearer, but sometimes they are payable to order. Checks are negociable instruments as bills of exchange, though, strictly speaking, they are not due before payment has been demanded, in which respect they differ from promissory notes and bills of exchange payable on a particular day. 7 T. R. 430. Vide 4 John. R. 304; 7 John. R. 26; 2 Ves. jr. 111; Yelv. 4, b, note; 7 Serg. & Rawle, 116.

CHECK BOOK, *commerce*, is one kept by persons who have accounts in bank, in which are printed blank forms of checks, or orders upon the bank to pay money.

CHEMISTRY, *med. jur.*, is the science which teaches the nature and property of all bodies by their analysis and combination. In considering cases of poison the lawyer will find a knowledge of chemistry, even very limited in degree, to be greatly useful. 2 Chit. Pr. 42, n.

CHEVISANCE, *contracts, torts;* this is a French word which signifies in that language accord, agreement, compact. In the English statutes it is used to denote a bargain or contract in general. In a legal sense it is taken for an unlawful bargain or contract.

CHIEF JUSTICE, *officer*, is the president of a supreme court; as, the chief justice of the United States, the chief justice of Pennsylvania, and the like. Vide 15 Vin. Ab. 3.

CHIEF CLERK IN THE DEPARTMENT OF STATE. This officer is appointed by the secretary of state; his duties are to attend to the business of the office under the superintendence of the secretary; and when the secretary shall be removed from office, by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to such department. Act 27th July, 1789, s. 2, 1 Story's Laws, 6. His

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compensation for his services shall not exceed two thousand dollars per annum. Gordon's Dig. art. 211.

CHILD, CHILDREN, *domestic relations.* A child is the son or daughter in relation to the father or mother. We will here consider the law, in general terms, as it relates to the condition, duties and rights of children; and, afterwards, the extent which has been given to the word child or children by dispositions in wills and testaments.

1. Children born in lawful wedlock are presumed to be the issue of the father, and follow his condition; those born out of lawful wedlock follow the condition of the mother. The father is bound to maintain his children and to educate them, and to protect them from injuries. Children are, on their part, bound to maintain their fathers and mothers, when in need, and they are of ability so to do. The father in general is entitled to the custody of minor children, but, under certain circumstances, the mother will be entitled to them, when the father and mother have separated. 5 Binn. 520. Children are liable to the reasonable correction of their parents. Vide *Correction.*

2. The term children does not ordinarily and properly speaking comprehend grand-children, or issue generally; yet sometimes that meaning is affixed to it, in cases of necessity, 6 Co. 16; and it has been held to signify the same as issue, in cases where the testator by using the terms children and issue indiscriminately, showed his intention to use the former term in the sense of issue, so as to entitle grand-children, &c. to take under it. 1 Ves. sen. 196; Ambl. 555; 3 Ves. 258; Ambl. 681; 3 Ves. & Bea. 69. The civil code of Louisiana, art. 2522, n. 14, enacts that "under the name of children are comprehended, not only children of the first degree, but the grand-children, great grand-children, and all other descendants in the direct line."

Vide, generally, 8 Vin. Ab. 318; 8 Com. Dig. 470; 2 Kent, Com. 172; 4 Kent, Com. 408, 9; 1 Rop. on Leg. 45 to 76; 1 Supp. to Ves. jr. 44; 2 Ib. 158.

CHILDREN, POSTHUMOUS, are those who are born after the death of their fathers, Domat, Lois Civ. liv. prel. t. 2, s. 1, § 7; L. 3, § 1, ff de inj. rupt. In Pennsylvania the will of their fathers in which no provision is made for them is revoked as far as regards them, by operation of law.

CHIMIN, this is a corruption of the French word *Chemin*, a highway. It is used by old writers. Com. Dig. Chimin.

CHIROGRAPH, *conveyancing*, signifies a deed or public instrument in writing; chirographs were anciently attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealments, deeds of mutual covenant were made in a *script* and *rescript*, or in a part and counterpart, and in the middle, between the two copies, they drew the capital letters of the alphabet, and then tallied, or cut asunder in an indented manner, the sheet or skin of parchment, one of which parts being delivered to each of the parties, were proved authentic by matching with and answering to one another. Deeds thus made were denominated *syngrapha*, by the canonists, because that word, instead of the letters of the alphabet, or the word *chirographum*, was used. 2 Bl. Com. 296. This method of preventing counterfeiting, or of detecting counterfeits, is now used by having some ornament or some word engraved or printed at one end of certificates of stocks, checks, and a variety of other instruments, which

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are bound up in a book, and after they are executed, are cut asunder through such ornament or word.

Chirograph is also the last part of a fine of land, commonly called the foot of the fine. It is an instrument of writing, beginning with these words; "This is the final agreement," &c. It includes the whole matter, reciting the parties, day, year and place, and before whom the fine was acknowledged and levied. Cruise, Dig. tit. 35, c. 2, s. 52. Vide Chambers's Dict. h. t; Encyclopædia Americana, Charter. Encyclopédie de D'Alembert, h. t; Pothier, Pand. tom. xxii. p. 73.

CHIROGRAPHER, is a word derived from the Greek, which signifies, "a writing with a man's hand;" a chirographer is an officer of the English court of C. P. who engrosses the fines, and delivers the indentures of them to the parties, &c.

CHOICE. Preference either of a person or thing, to one or several other persons or things. *Election*, (q. v.)

CHOSE, *property*, this is a French word, signifying *thing*. In law, it is applied to personal property, as *choses in possession*, are such personal things of which one has possession; *choses in action*, are such as the owner has not the possession, but merely a right of action for their possession. 2 Bl. Com. 389, 397; 1 Chit. Pract. 99; 1 Supp. to Ves. Jr. 26, 59. Chitty defines choses in actions to be rights to receive or recover a debt, or money, or damages, for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed choses, or things in action. Com. Dig. Biens; Harr. Dig. Chose in Action; Chitty's Eq. Dig. h. t. Vide 1 Ch. Pr. 140.

CHRISTIANITY, the religion established by Jesus Christ. Christianity has been judicially declared to be a part of the common law of Pennsylvania, 11 Serg. & Rawle, 394, 5 Binn. R. 555; New York, 8 Johns. R. 291; Connecticut, 2 Swift's System, 321; Massachusetts, Dane's Ab. vol. 7, c. 219, a. 2, 19. To write or speak contemptuously and maliciously against it, is an indictable offence. Vide Cooper on the Law of Libel, 59 and 114, et seq. where he contends that the decisions which have been made, declaring christianity to be a part of the law, are the result of ignorance or falsehood. See also Mr. Jefferson's letter to Major Cartwright, Appx. No. III. to Coop. Law of Libel, on the same subject. Vide generally, 1 Russ. on Cr. 217; 1 Hawk, c. 5; 1 Vent. 293; 3 Keb. 607; 1 Barn. & Cress. 26, S. C. 8 Eng. Com. Law R. 14; Barnard. 162; Fitzgib. 66; Roscoe, Cr. Ev. 524; 2 Str. 834; 3 Barn. & Ald. 161; S. C. 5 Eng. Com. Law R. 249; Jeff. Rep. Appx.

CHURCH. In a moral or spiritual sense, this word signifies a society of persons who profess religion; and in a physical or material sense, the place where such persons assemble. It is not within the plan of this work to give an account of the different local regulations in the United States respecting churches. References are here given to enable the inquirer to ascertain what they are, where such regulations are known to exist. 2 Mass. 500; 3 Mass. 166; 8 Mass. 96; 9 Mass. 277; Ib. 254; 10 Mass. 323; 15 Mass. 296; 16 Mass. 488; 6 Mass. 401; 10 Pick. 172; 4 Day C. 361; 1 Root, § 3, 440; Kirby, 45; 2 Caine's Cas. 336; 10 John. 217; 6 John. 85; 7 John. 112; 8 John. 464; 9 John. 147; 4 Dessaus. 578; 5 Serg. & Rawle, 510; 11 Serg. & Rawle, 35.

CIPHER. An arithmetical cha-

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racter, by which some number is noted; a figure, for example, 1776. Ciphers ought not to be used to express the sums mentioned in a contract; but it is usual to date all simple contracts with ciphers; deeds and writs should be dated by words at length. Vide *Figures*, and 13 Vin. Ab. 210; 18 Eng. C. L. R. 95; 1 Ch. Cr. Law, 176.

CIRCUIT COURT. Vide *Courts of the United States.*

CIRCUITY OF ACTION, *practice, remedies*, is where a party by bringing an action, gives an action to the defendant against him. As supposing the obligee of a bond covenanted that he would not sue on it, if he were to sue he would give an action against himself to the defendant for a breach of his covenant. The courts prevent such circuitous actions, for it is a maxim of law so to judge of contracts, as to prevent a multiplicity of actions, and in the case just put, they would hold that the covenant not to sue, operated as a release. 1 T. R. 441.

CIRCUITS, are certain divisions of the country, appointed for particular judges to visit for the trial of causes, or for the administration of justice. See 3 Bl. Com. 58.

CIRCUMDUCTION, *Scotch law*, is a term applied to the time allowed for bringing proof of allegiance, which being elapsed, if either party sue for circumduction of the time of proving, it has the effect that no proof can afterwards be brought, and the cause must be determined as it stood when circumduction was obtained. Tech. Dict.

CIRCUMSTANCES, *evidence*, the particulars which accompany a fact. The facts proved are either possible or impossible, ordinary and probable, or extraordinary and improbable, recent or ancient, they may have happened near us, or afar off, they are public or private, permanent or transitory, clear and simple, or complicated, they are always accompanied by circumstances which more or less influence the mind in forming a judgment. These points ought to be carefully examined, in order to form a correct opinion. The first question ought to be, is the fact possible? if so, are there any circumstances which render it impossible? If the facts are impossible the witness ought not to be credited, if, for example, a man should swear that he saw the deceased shoot himself with his own pistol, and upon an examination of the ball which killed him, it should be found too large to enter into the pistol, the witness ought not to be credited. 1 Stark. Ev. 505; or if one should swear that another has been guilty of the impossible crime of witchcraft. Toullier mentions a case, which were it not for the ingenuity of the counsel, would require an apology for its introduction here, on account of its length. The case was this, La Veuve Veron brought an action against M. de Morangiès on some notes, which the defendant alleged were fraudulently obtained, for the purpose of recovering 300,000 francs, and the question was, whether the defendant had received the money. Dujonquai, the grandson of the plaintiff, pretended he had himself, alone and on foot, carried this sum in gold to the defendant, at his hotel at the upper end of the rue Saint' Jacques, in thirteen trips, between half past seven and about one o'clock, that is, in about five hours and a half, or at most, six hours. The fact was improbable; Linquet, the counsel of the defendant, proved it was impossible, and this is his argument.

Dujonquai said that he had divided the sum in thirteen bags, each containing six hundred louis d'ors, and in twenty-three other bags, each

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containing two hundred. There remained twenty-five louis to complete the whole sum, which Dujonquai said he received from the defendant as a gratuity. At each of these trips, he says he put a bag, containing two hundred louis, that is, about three pounds four ounces, in each of his coat pockets, which being made in the fashion of those times, hung about his thighs, and in walking must have incommoded him and obstructed his speed, he took besides, a bag containing six hundred louis in his arms, by this means his movements were impeded by a weight of near ten pounds.

The measured distance between the house where Dujonquai took the bags to the foot of the stairs of the defendant, was five hundred and sixteen toises, which multiplied by twenty-six, the thirteen trips going and returning, make thirteen thousand four hundred and sixteen toises, that is, more than five leagues, and a half (near seventeen miles) of two thousand four hundred toises, which latter distance is considered sufficient for an hour's walk, of a good walker. Thus, if Dujonquai had been unimpeded by any obstacle, he would barely have had time to perform the task in five or six hours, even without taking any rest or refreshment. However strikingly improbable this may have been, it was not physically impossible. But

1. Dujonquai in going to the defendant's had to descend sixty-three steps from his grandmother's, the plaintiff's, chamber, and to ascend twenty-seven to that of the defendant, in the whole, ninety steps. In returning, the ascent and descent were changed, but the steps were the same; so that by multiplying by twenty-six, the number of trips going and returning, it would be seen there were two thousand three hundred and forty steps. Experience had proved that in ascending to the top of the tower of Notre Dame, (a church in Paris,) where there are three hundred and eighty-nine steps, it occupied from eight to nine minutes of time. It must then have taken an hour out of the five or six which had been employed in making the thirteen trips.

2. Dujonquai had to go up the rue Saint Jacques, which is very steep, its ascent would necessarily decrease the speed of a man burdened and encumbered with the bags which he carried in his pockets and in his arms.

3. This street, which is very public, is usually, particularly in the morning, encumbered by a multitude of persons going in every direction, so that a person going along must make an infinite number of deviations from a direct line; each, by itself, is almost imperceptible, but at the end of five or six hours, they make a considerable sum, which may be estimated at a tenth part of the whole course in a straight line, this would make about half a league, to be added to the five and a half leagues, which is the distance in a direct line.

4. On the morning that Dujonquai made these trips, the daily and usual incumbrances of this street were increased by sixty or eighty workmen, who were employed in removing by hand and with machine, an enormous stone, intended for the church of Sainte Geneviève, now the pantheon, and by the immense crowd which this attracted; this was a remarkable circumstance, which, supposing that Dujonquai had not yielded to the temptation of stopping a few moments to see what was doing, it must necessarily have impeded his way, and made him lose seven or eight minutes each trip, which multiplied by twenty-six, would make about two hours and a half.

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5. The witness was obliged to open and shut the doors at the defendant's house; it required time to take up the bags and place them in his pockets, to take them out and put them on the defendant's table, who, by an improbable supposition, counted the money in the intervals between the trips, and not in the presence of the witness. Dujonquai, too, must have taken receipts or acknowledgments at each trip, he must read them, and on arriving at home, deposited them in some place of safety; all these distractions would necessarily occasion the loss of a few minutes. By adding these with scrupulous nicety, and by further adding the time employed in taking and depositing the bags, the opening and shutting of the doors, the reception of the receipts, the time occupied in reading and putting them away, the time consumed in several conversations, which he admitted he had with persons in the street; all these joined to the obstacles above mentioned, made it evident that it was physically impossible that Dujonquai should have carried the 300,000 francs to the house of the defendant, as he affirmed he had done. Toull. tom. 9, n. 241, p. 384. Vide, generally, 1 Stark. Ev. 502; 1 Phil. Ev. 116. *Presumption.*

CIRCUMSTANTIBUS, *persons, practice*, are bystanders, from whom jurors are to be selected when the panel has been exhausted. Vide *Tales de circumstantibus.*

CIRCUMVENTION, — *torts, Scotch law*, any act of fraud whereby a person is reduced to a deed by decreet. Tech. Dict.

CITATION, *practice*, is a writ issued out of a court of competent jurisdiction commanding a person therein named to appear and do something therein mentioned, or to show cause why he should not, on a day named. Proct. Pr. h. t. In the ecclesiastical law, the citation is the beginning and foundation of the whole cause; it is said to have six requisites, namely, the insertion of the name of the judge—of the promovert—of the impugnant—of the cause of suit—of the place—and of the time of appearance; to which may be added the affixing the seal of the court, and the name of the register or his deputy. 1 Bro. Civ. Law, 453, 4; Ayl. Parer. xliii. 175; Hall's Adm. Pr. 5; Merl. Rép. h. t.

CITATION OF AUTHORITIES, are the text of acts of legislatures and of treatises, and decided cases which are indicated in order to support what is advanced. Works are sometimes surcharged with useless and misplaced citations; when they are judiciously made they assist the reader in his researches. Citations ought not to be made to prove what is not doubted, but when a controverted point is mooted, it is highly proper to cite the laws and cases, or other authorities in support of the controverted proposition. The mode of citing statutes varies in the United States; the laws of the United States are generally cited by their date, as the act of Sept. 24, 1789, s. 35; or Act of 1819, ch. 170, 3 Story's U. S. Laws, 1722; in Pennsylvania acts of assembly are cited as follows, act of 14th of April, 1834; in Massachusetts, stat. of 1808, c. 92. Treatises and books of reports, are generally cited by the volume and page, as, 2 Powell on Mortg. 600; 3 Binn. R. 60. Judge Story and some others, following the examples of the civilians, have written their works and numbered the paragraphs, these are cited as follows, Story's Bailm. § 494; Gould on Pl. c. 5, § 30. For other citations the reader is referred to the article *Abbreviations.*

CITIZEN, *persons.* One who, under the constitution and laws of

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the United States, has a right to vote for representatives in congress and other public officers, and who is qualified to fill offices in the gift of the people. Citizens are either native born or naturalized. Native citizens may fill any office; naturalized citizens may be elected or appointed to any office under the constitution of the United States, except the office of president. The constitution provides, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." Art. 4, s. 2; vide 3 Story's Const. § 1687; 2 Kent, Com. 258; 4 Johns. Ch. R. 430; Vatt. B. 1, c. 19, § 212; Poth. Des Personnes, tit. 2, s. 1. Vide *Body Politic*.

CITY, *government*, is a town incorporated by that name. Originally this word did not signify a town, but a portion of mankind who lived under the same government: what the Romans called *civitas* and the Greeks *polis*; whence the word *politeia*, *civitas seu reipublicæ status et administratio*. Toull. Dr. Civ. Fr. l. 1, t. 1, n. 202.

CIVIL. This word has various significations. 1. It is used in contradistinction to *barbarous* or *savage*, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government and civil liberty. 2. It is sometimes used in contradistinction to *criminal*, to indicate the private rights and remedies of men, as members of the community, in contrast to those, which are public and relate to the government; thus we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction. 3. It is also used in contradistinction to *military* or *ecclesiastical*, to *natural* or *foreign*; thus we speak of a civil station, as opposed to a military or ecclesiastical station; a civil death, as opposed to a natural death; a civil war as opposed to a foreign war. Story on the Const. § 789: 1 Bl. Com. 6, 125, 251; Montesq. Sp. of Laws, B. 1, c. 3; Ruth. Inst. B. 2, c. 2, Id. ch. 3, Id. ch. 8, p. 359; Hein. Elem. Juris. Nat. B. 2, ch. 6.

CIVIL COMMOTION. In the printed proposals which are considered as making a part of the contract of insurance against fire, it is declared that the insurance company will not make good any loss happening by any civil commotion. Lord Mansfield defines a civil commotion to be "an insurrection of the people for general purposes, though it may not amount to rebellion where there is an usurped power." 2 Marsh. Ins. 793.

CIVIL DEATH, *persons*, is the change of the state (q. v.) of a person who is declared civilly dead by judgment of a competent tribunal. In such case the person against whom such a sentence is pronounced is considered as dead.

CIVIL LAW. See *Law, civil*.

CIVIL OFFICER. The constitution of the United States, art. 2, s. 4, provides, that the president, vice president, and all *civil officers* of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. By this term are included all officers of the United States who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or the lowest departments of the government, with the exception of officers of the army and navy. Rawle on Const. 213; 2 Story, Const. § 790; a senator of the United States, it was decided, was not a civil officer, within the meaning of this clause in the constitution. Senate Journals, 10 January, 1799; 4 Tuck. Bl. Com.

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Appx. 57, 58; Rawle, Const. 213; Serg. on Const. Law, 376; Story, Const. § 791.

CIVIL REMEDY, *practice;* this term is used in opposition to the remedy given by indictment in a criminal case, and signifies the remedy which the law gives to the party against the offender. In cases of treason and felony, the law, for wise purposes, *suspends* this remedy in order to promote the public interest, until the wrongdoer shall have been prosecuted for the public wrong. 12 East, 409; R. T. H. 359; 1 Hale's P. C. 546; 2 T. R. 751, 756; 17 Ves. 329; 4 Bl. Com. 363; Bac. Ab. Trespass, E 2; and Trover, D. This is the principle of the common law; it has been adopted in New Hampshire. N. H. Rep. 239; it has been changed in New York by statutory provision, 2 Rev. Stat. 292, § 2, and by decisions in Massachusetts, except perhaps in felonies punishable with death, 15 Mass. R. 333; in Ohio, 4 Ohio R. 377; in North Carolina, 1 Tayl. R. 58. By the common law, in cases of homicide, the civil remedy is *merged* in the felony. 1 Chit. Pr. 10. Vide art. *Injuries*, *Merger*.

CIVIL STATE, is the union of individual strength in a common direction, the establishment of a public authority to cause the execution of the laws in a nation or state; the fundamental of which laws is that none of the members of the community shall do himself justice, but that he shall appeal to the depositaries of the public power, or the united forces for the surety of all, in those cases which admit of possibility to have recourse to it; hence the citizens are justly considered as being under the safeguard of the law. 1 Toull. n. 201. Vide *Self defence*.

CIVILIAN, a doctor, professor, or student of the civil law.

CLAIM. A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another. Plowd. 359, see 1 Dall. 444; 12 S. & R. 179. In Pennsylvania the entry of the lien of a mechanic or material man for work done or labour furnished in the erection of a building, in those counties to which the lien laws extend, is called a claim.

CLARENDON. The constitutions of Clarendon were certain statutes made in the reign of Henry the Second, of England, in a parliament holden at Clarendon, by which the king checked the power of the pope and his clergy. 4 Bl. Com. 415.

CLAUSE, *contracts*. A particular disposition which makes part of a treaty, an act of the legislature, a deed, written agreement, or other written contract or will. When a clause is obscurely written, it ought to be construed in such a way as to agree with what precedes and what follows, if possible.

CLAUSUM FREGIT, *torts, remedies*, he broke the close. These words are used in a writ for an action of trespass to real estate, the defendant being summoned to answer and show cause *quare clausum fregit*, that is, why he broke the close of the plaintiff. 3 Bl. Com. 209.

CLANDESTINE. That which is done in secret and contrary to law. Generally a clandestine act in cases of the limitation of actions, will prevent the act from running.

CLEARANCE, *comm. law*. The name of a certificate given by the collector of a port in which is stated the master or commander (naming him) of a ship or vessel named and described, bound for a port named, and having on board goods described, has entered and cleared his ship or vessel according to law. The act

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of congress, of 2d March, 1799, section 93, directs that the master of any vessel bound to a foreign place, shall deliver to the collector of the district from which such vessel shall be about to depart, a manifest of all the cargo on board, and the value thereof, by him subscribed, and shall swear or affirm to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo; but without specifying the particulars thereof in such clearance unless required by the master so to do. And if any vessel bound to any foreign place shall depart on her voyage to such foreign place, without delivering such a manifest and obtaining a clearance, the master shall forfeit and pay the sum of five hundred dollars for every such offence. Provided, anything to the contrary notwithstanding, the collectors and other officers of the customs shall pay due regard to the inspection laws of the states in which they respectively act, in such manner that no vessel having on board goods liable to inspection, shall be cleared out until the master or other person shall have produced such certificate, that all such goods have been duly inspected, as the laws of the respective states do or may require, to be produced to the collector or other officer of the customs. And provided, that receipts for the payment of all legal fees which shall have accrued on any vessel, shall before any clearance is granted, be produced to the collector or other officer aforesaid.

CLERK, *commerce, contract*, is a person in the employ of a merchant, who attends only to a part of his business, while the merchant himself superintends the whole. He differs from a factor in this, that the latter wholly supplies the place of his principal. Pard. Dr. Com. n. 38; 1 Chit. Pract. 80.

CLERK, *officer*, is a person appointed to an office generally to write or register what has been done therein; as, clerk of the court. Some clerks however have little or no writing to do in their offices, as, the clerk of the market, whose duties are confined chiefly to superintend the markets. In the English law, clerk also signifies a clergyman.

CLEMENTINES, *eccl. law*, is the name usually given to the collection of decretals or constitutions of Pope Clement V. which was made by order of John XXII. his successor, who published it in 1317. The death of Clement V., which happened in 1314, prevented him from publishing this collection, which is properly a compilation, as well of the epistles and constitutions of this pope, as of the decrees of the council of Vienna, over which he presided. The Clementines are divided in five books, in which the matter is distributed nearly upon the same plan as the Decretals of Gregory IX. Vide La Bibliothèque des auteurs ecclésiastiques, par Dupin.

CLIENT, *practice*, is one who employs and retains an attorney or counsellor to manage or defend a suit or action in which he is a party, or to advise him about some legal matters. The duties of the client towards his counsel are, 1st, to give him a written authority, 1 Ch. Pr. 19; 2, to disclose his case with perfect candour; 3, to offer, spontaneously, advances of money to his attorney, 2 Ch. Pr. 27; 4, he should at the end of the suit promply pay his attorney his fees. Ib.—His rights are, 1, to be diligently served in the management of his business; 2, to be informed of its progress; and, 3, that his counsel will not disclose what has been professionally confided to him.

CLOSE, signifies the interest in the soil, and not merely a close or

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enclosure in the common acceptation of the term. Doct. & Stud. 30; 7 East, 207; 2 Stra. 1004; 6 East, 154; 1 Burr. 133; 1 Ch. R. 160. In every case where one man has a right to exclude another from his real immovable property, the law encircles his estate, if it is not already enclosed, with an imaginary fence reaching in extent upwards *a superficie terræ usque ad cœlum* where he is the owner of the surface, and downwards as far as his property descends; and entitles him to a compensation in damages for the injury he sustains by the act of another passing through his boundary, denominating the injurious act a breach of the enclosure. Hamm. N. P. 151.

An ejectment will not lie for a close. 11 Rep. 55; 1 Rolle's R. 55; Salk. 254; Cro. Eliz. 235; Adams on Eject. 24.

CLOSE ROLLS, or *close writs*, *Engl. law*, are writs containing grants from the crown, to particular persons, and for particular purposes, and, not being intended for public inspection, are closed up and sealed on the outside, and for that reason called close writs, in contradistinction from grants relating to the public in general, which are left open and not sealed up, and are called letters-patent. (q. v.) 2 Bl. Com. 346.

COADJUTOR, *eccles. law*. A fellow helper or assistant; particularly applied to the assistant of a bishop.

COALITION, *French law*. By this word is understood an unlawful agreement among several persons, not to do a thing except on some condition agreed upon. The most usual coalitions, are, 1st, those which take place among master workmen, to reduce, diminish or fix at a low rate the wages of journeymen and other workmen; 2d, those among workmen or journeymen, not to work except at a certain price. These offences are punished by fine and imprisonment. Dict. de Police, h. t. In our law this offence is known by the name of conspiracy, (q. v.)

COCKET, *commerce*. In England the office at the custom house, where the goods to be exported are entered, is so called; also the custom house seal, or the parchment sealed and delivered by the officers of customs to merchants, as a warrant that their goods are customed. Crabbe's Tech. Dict.

COCKETTUM, *commerce*. In the English law this word signifies, 1, the custom-house seal; 2, the office at the custom where cockets are to be procured. Crabbe's Tech. Dict.

CODE, *legislation*, signifies in general a collection of laws; it is a name given by way of eminence to a collection of such laws made by the legislature. Among the most noted may be mentioned the following:

CODES, *Les Cinq*, *French law*, the five codes. These codes are, 1st, *Code Civil*, which is divided into three books; book 1, treats of persons, and of the enjoyment and privation of civil rights; book 2, of property and its different modifications; book 3, of the different ways of acquiring property. One of the most perspicuous and intelligent commentators on this code, is Toullier, frequently cited in this work.—2d. *Code de procédure civille*, which is divided into two parts; part 1, is divided into five books, 1, of justices of the peace; 2, of inferior tribunals; 3, of royal courts; 4, of extraordinary means of proceeding; 5, of execution and judgment. Part 2, is divided into three books; 1, of tender and consignation; 2, process in relation to the opening of a succession; 3, of arbitration.—3d. *Code*

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de Commerce, in four books; 1, of commerce in general; 2, of maritime commerce; 3, of failures and bankruptcy; 4, of commercial jurisdiction. Pardessus is one of the ablest commentators on this code.—4th. *Code d'Instruction criminelle*, in two books; 1, of judiciary police, and its officers; 2, of the administration of justice.—5. *Code Penal*, in four books; 1, of punishment in criminal and correctional cases, and their effects; 2, of the persons punishable, excusable or responsible, for their crimes or misdemeanors; 3, of crimes, misdemeanors, (délits) and their punishment; 4, of contraventions of police, and their punishment. For the history of these codes, vide Merl. Rép. h. t.; Motifs, Rapports, opinions et Discours sur les codes; Encyclop. Amer. h. t.

CODE HENRI. A digest of the laws of Hayti enacted by Henri, king of Hayti. It is based upon the Code Napoléon, but not servilely copied. It is said to be judiciously adapted to the situation of Hayti.—A collection of laws made by order of Henry III. of France is also known by the name of *Code Henri*.

CODE JUSTINIAN, *civil law*, is a collection of the constitutions of the emperors from Adrian to Justinian; the greater part of those from Adrian to Constantine are mere rescripts; those from Constantine to Justinian are edicts or laws properly speaking. The code is divided in twelve books, which are subdivided in titles, under which are placed the constitutions, under proper heads. They are placed in chronological order, but often disjointed. At the head of each constitution is placed the name of the emperor who is the author, and that of the person to whom it is addressed. The date is at the end. Several of these constitutions which were formerly in the code, were lost it is supposed by the neglect of copyists. Some of them have been restored by some modern authors, among whom may be mentioned Charondas, Cugas, and Contius, who translated them from Greek versions.

CODE OF LOUISIANA. In 1822, Peter Derbigny, Edward Livingston and Moreau Lislet were selected by the legislature to revise and amend the civil code, and to add to it such laws still in force as were not included therein. They were authorised to add a system of commercial law, and a code of practice. The code they prepared having been adopted, was promulgated in 1824, under the title of the "Civil Code of the State of Louisiana." The code is based on the Code Napoleon, with proper and judicious modifications suitable for the state of Louisiana. It is composed of three books; 1, the first treats of persons; 2, the second of things, and of the different modifications of property; 3, and the third of the different modes of acquiring the property of things. It contains 3522 articles, numbered from the beginning for the convenience of reference.

CODE NAPOLEON. The *Code Civil* of France, enacted into law during the reign of Napoleon bore his name until the restoration of the Bourbons, when it was deprived of that name and is now cited Code Civil.

CODE PRUSSIAN. Allgemeines Landrecht. This code is also known by the name of *Codex Fredericianus*, or Frederician code. This code was compiled by order of Frederic II., by the minister of justice Samuel V. Cocceji, who completed a part of it before his death, in 1755. In 1780, the work was renewed under the superintendence of the minister Von Carmer, and prosecuted with unceasing activity, and it was published from 1784 to

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1788, in six parts. The opinions of those who understood the subject were requested, and prizes offered on the best commentaries on it; and the whole was completed in June, 1791, under the title "General Prussian Code."

CODEX, literally, a volume or roll; it is particularly applied to the volume of the civil law, collected by the emperor Justinian from all pleas and answers of the ancient lawyers, which were in loose scrolls or sheets of parchment; these he compiled into a book which goes by the name of Codex.

CODICIL, *devises*, is an addition or supplement to a will; it must be executed with the same solemnities. A codicil is a part of the will, the two instruments making but one will. 4 Bro. C. C. 55; 2 Ves. sen. 242; 4 Ves. 610; 2 Ridgw. Irish P. C. 11, 43. There may be several codicils to one will and the whole will be taken as one: the codicil does not consequently revoke the will further than it is in opposition to some of its particular dispositions, or unless there be express words of revocation, 8 Cowen, Re . 56. Formerly the difference bet een a will and a codicil consisted this, that in the former an executor was named, while in the latter none was appointed. Swinb. part 1, s. 5, pl. 2; Godolph. Leg. part 1, c. 6, s. 2. This is the distinction of the civil law, and adopted by the canon law. Vide Williams on Wills, ch. 2; Rob. on Wills 154, n. 388, 476; Lovelass on Wills, 185, 289; 4 Kent, Com. 516; 1 Ves. jr. R. 407, 497; 3 Ves. jr. 110; 4 Ves. jr. 610; 1 Supp. to Ves. jr. 116, 140. The *form* of devising by codicil is abolished in Louisiana, code, 1563, and whether the disposition of the property be made by testament, under this title, or under that of institution of heir, of legacy, codicil, donation mortis causa, or under any other name indicating the last will, provided it be clothed with the forms required for the validity of a testament, it is, as far as form is concerned to be considered a testament. Ib. Vide 1 Brown's Civ. Law, 292; Domat, Lois Civ. liv. 4, t. 1, s. 1; Leçon's Elément. du Dr. Civ. Rom. tit. 25.

COERCION, *crim. law, contracts.* The forcible inducement to do an act. It is positive or presumed. 1. Positive or direct coercion takes place when a man is by physical force compelled to do an act contrary to his will; for example, when a man falls into the hands of the enemies of his country, and they compel him by a just fear of death to fight against it. 2. It is presumed where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contr ry to his will. A married woman, for example, is legally under the subjection of her husband, and if in his company, she commit a crime or offence, not *malum in se*, except the offence of keeping a bawdy-house, in which case she is considered by the policy of the law as a principal, and as not acting by force, she is presumed to act under his coercion. As will (q. v.) is necessary to the commission of a crime, or the making of a contract, a person coerced into either has no will on the subject, and is not responsible. Vide Roscoe's Cr. Ev. 785, and the cases there cited; and 2 Stark. Ev. 705, as to what will amount to coercion in criminal cases.

COGNATION, *civil law*, signifies generally the kindred which exists between two persons, who are united by ties of blood or family, or both. Cognation is of three kinds; natural, civil, or mixed. Natural cognation is that which is alone formed by ties of blood; such is the

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kindred of those who owe their origin to an illicit connexion, either in relation to their ascendants or collaterals. Civil cognation is that which proceeds alone from the ties of families, as the kindred between the adopted father and the adopted child. Mixed cognation is that which unites at the same time the ties of blood and family, as that which exists between brothers, the issue of the same lawful marriage. Inst. 3, 6; Dig. 38, 10.

COGNATES. A term used in the civil law to signify those persons who are connected together by the ties of kindred; but sometimes it means those who are related to others on the side of women.

COGNIZANCE, *pleading*, is where the defendant in an action of replevin, (not being entitled to the distress or goods which are the subject of the replevin,) acknowledges the taking of the distress, and insists that such taking was legal, not because he himself had a right to distrain on his own account, but because he made the distress by the command of another who had a right to distrain on the goods which are the subject of the suit. Lawes on Pl. 35, 36.

COGNIZANCE, *practice*, signifies the hearing of a thing judicially; also the acknowledgment of a fine.

COGNIZANCE OF PLEAS, *Engl. law*, is a privilege granted by the king to a city or town, to hold pleas within the same; and when any one is impleaded in the courts at Westminster, the owner of the franchise may demand cognizance of the plea. T. de la Ley.

COGNISOR, *English law*, is one who passes or acknowledges a fine of lands or tenements to another, in distinction from the *cognisee* to whom the fine of the lands, &c. is acknowledged.

COGNITIONIBUS ADMITTENDIS, *English law, practice*, is a writ to a justice or other person, who has power to take a fine, and having taken the acknowledgment of a fine, delays to certify it in the court of common pleas, requiring him to do it. Crabbe's Tech. Dict.

COGNOVIT, *contr. pleading*, is a written confession of an action by a defendant, subscribed but not sealed, and authorising the plaintiff to sign judgment and issue execution, usually for a sum named. It is given after the action is brought to save expense. It differs from a warrant of attorney which is given before the commencement of any action, and is under seal. A *cognovit actionem* is an acknowledgment and confession of the plaintiff's cause of action against the defendant to be just and true. Vide 3 Ch. Pr. 664.

COHABITATION, living together. The law presumes that husband and wife cohabit together, even after a voluntary separation has taken place between them; but where there has been a divorce *a mensa et thoro*, or a sentence of separation, the presumption then arises that they have obeyed the sentence or decree and do no live together. A criminal cohabitation will not be presumed by the proof of a single act of criminal intercourse between a man and woman not married. 10 Mass. R. 153. When a woman is proved to cohabit with a man and to assume his name with his consent, he will generally be responsible for her debts as if she had been his wife, 2 Esp. R. 637; 1 Campb. R. 245; this being presumptive evidence of marriage, B. N. P. 114; but this liability will continue only while they live together, unless she were actually his wife, 4 Campb. R. 215. In civil actions for criminal conversation with the plaintiff's wife, when the husband and wife had separated,

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the plaintiff will not in general be entitled to recover. 1 Esp. R. 16; S. C. 5 T. R. 357; Peake's Cas. 7, 39; sed vide 6 East, 248; 4 Esp. 39.

COIF, a head-dress. In England there are certain serjeants at law, who are called serjeants of the coif, from the lawn coif they wear on their heads under their thin caps when they are created.

COIN, *commerce*, *contracts*. A piece of gold, silver or other metal stamped by authority of the government, in order to determine its value, commonly called money. Co. Litt. 207; Rutherf. Inst. 123. For the different kinds of coins of the United States, see article *Money*. As to the value of foreign coins see article *Foreign Coins*.

COLLATERAL, *collateralis*, from *latus*, a side; that which is sideways and not direct.

COLLATERAL ASSURANCE, *contracts*, is that which is made over and above the deed itself.

COLLATERAL FACTS, *evidence*, are facts unconnected with the issue or matter in dispute. As no fair and reasonable inference can be drawn from such facts they are inadmissible in evidence, for at best they are useless, and may be mischievous because they tend to abstract the attention of the jury, and to mislead them. Stark. Ev. h. t.; 2 Bl. Rep. 1169; 1 Stark. Ev. 40. It is frequently difficult to ascertain *a priori*, whether a particular fact offered in evidence will or will not become material, and in such cases it is usual in practice for the court to give credit to assertion of counsel who tenders such evidence, that the facts will turn out to be material, but this is always within the sound discretion of the court. When a witness is cross-examined as to collateral facts, the party cross-examining will be bound by the answer, and he cannot, in general, contradict him by another witness. Rosc. Ev. 139.

COLLATERAL ISSUE, *practice*, *pleading*, is where a criminal convict pleads any matter, allowed by law, in bar of execution, as pregnancy, a pardon, and the like.

COLLATERAL KINSMEN, *descent*, *distribution*, are those who descend from one and the same common ancestor, but not from one another; thus brothers and sisters are collateral to each other; the uncle and the nephew are collateral kinsmen, and cousins are the same. The term collateral is used in opposition to the phrase *lineal kinsmen*, (q. v.)

COLLATERAL SECURITY, *contracts*, is a separate obligation which is attached to another contract, and is to guaranty its performance. By this term is also meant the transfer of property or of other contracts to insure the performance of a principal engagement. The property or securities thus conveyed are also called collateral securities. 1 Pow. Mortg. 393; 2 Ib. 666, n. 871; 3 Ib. 944, 1001.

COLLATERAL WARRANTY, *contracts*, *descent*, is where the heir's title to the land neither was nor could have been derived from the warranting ancestor; and yet barred the heir from ever claiming the land, and also imposed upon him the same obligation of giving the warrantee other lands, in case of eviction, as if the warranty were lineal, provided the heir had assets. 4 Cruise, Real Prop. 436.

COLLATIO BONORUM, *descent*, *distribution*, is where a portion or money advanced to a son or daughter, is brought into hotch-pot, in order to have an equal distributive share of the ancestor's personal estate. The same rule obtains in the civil law. Civil Code of Louis. 1305; Dict. de

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Jur. mot Collation; Merlin Rép. mot Collation.

COLLATION, a term used in the laws of Louisiana. Collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided, together with the other effects of the succession. Civil Code of Lo. art. 1305. See Ib. art. 1305 to 1367; and *Hotchpot.*

COLLATION OF SEALS. Where on the same label, one seal was set on the back or reverse of the other, this was said to be a collation of seals. Jacob.

COLLECTOR, *officer*, one appointed to receive taxes or other impositions; as collector of taxes; collector of militia fines, &c. A collector is also a person appointed by a private person to collect the credits due him.

COLLECTORS OF THE CUSTOMS, are officers of the United States, appointed for the term of four years, but removable at the pleasure of the president. Act of May 15, 1820, sect. 1, 3 Story's U. S. Laws, 1790. The general duty of a collector, is "to receive all reports, manifests and documents, to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act; shall record in books to be kept for the purpose, all manifests; shall receive the entries of all ships or vessels, and of the goods, wares and merchandize imported in them; shall, together with the naval officer, where there is one, or alone, where there is none, estimate the amount of duties payable thereupon, endorsing the said amounts upon the respective entries; shall receive all moneys paid for duties, and shall take bonds for securing the payment thereof; shall grant all permits for the unlading and delivery of goods; shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, guagers, measurers and inspectors, at the several ports within his district; and also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights, and measures, as may be necessary." Act of March 2, 1799, s. 21; 1 Story U. S. Laws, 590. Vide, for other duties of collectors, 1 Story U. S. Laws, 592, 612, 620, 632, 659, and vol. 3, 1650, 1697, 1759, 1761, 1791, 1811, 1848, 1854.

COLLISION, *maritime law*, takes place when two ships or other vessels run foul of each other, or when one runs foul of the other. In such cases there is almost always a loss or damage incurred. There are four possibilities under which an accident of this sort may occur. 1. It may happen without blame being imputable to either party, as when the loss is occasioned by a storm, or any other *vis major;* in that case the loss must be borne by the party on whom it happens to light, the other not being responsible to him in any degree.—2. Both parties may be to blame, as when there has been a want of due diligence or of skill on both sides; in such cases, the loss must be apportioned between them, as having been occasioned by the fault of both of them.—3. The suffering party may have been the cause of the injury, then he must bear the loss.—4. It may have been the fault of the ship which ran down the other; in this case, the injured party would be entitled to an entire compensation from the other. 2 Dobson's Rep. 83, 85.—5. Another case has been put, namely, when there has been some fault or neglect, but on which side the blame lies is inscrutable, or the evidence leaves it

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in a state of uncertainty. In this case, it does not appear to be settled whether the loss shall be apportioned or borne by the suffering party; opinions on this subject are divided. Vide generally, Story, Bailm. § 607 to 612; Marsh. Ins. B. 1, c. 12, s. 2; Wesk. Ins. art. Running Foul; Jacobson's Sea Laws, B. 4, c. 1; 4 Taunt. 126; 2 Chit. Pr. 513, 535; Code de Comm. art. 407; Boulay-Paty, Cours de Dr. Commercial, tit. 12, s. 6; Pard. n. 652 to 654; Pothier, Avaries, n. 155; 1 Emerig. Assur. ch. 12, § 14.

COLLOQUIUM, *pleading*, a discourse, a conversation or conference. In actions of slander it is generally true that an action does not lie for words, on account of their being merely disgraceful to a person in his office, profession or trade; unless it be averred, that at the time of publishing the words, there was a colloquium concerning the office, profession or trade of the plaintiff. In its technical sense, the term colloquium signifies an averment in a declaration that there was a conversation or discourse on the part of the defendant, which connects the slander with the office, profession or trade of the plaintiff, and this colloquium ought to extend to the whole of the prefatory matter necessary to render the words actionable. 3 Bulst. 83; Vide Bac. Ab. Slander, S, n. 3; Dane's Ab. Index, h. t; Com. Dig. Action upon the case for Defamation, G 7, 8, &c.; Stark. on Sland. 290, et seq.

COLLOCATION, *French law*. The act by which the creditors of an estate are arranged in the order in which they are to be paid according to law. The order in which the creditors are placed, is also called collocation. Merl. Rép, h. t.

COLLUSION, *fraud*, is an agreement between two or more persons, unlawfully to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law; as, for example, where the husband and wife collude to obtain a divorce for a cause not authorised by law. 4 Eccl. R. 310. It is nearly synonymous with *covin*, (q. v.) Collusion and fraud of every kind vitiate all acts which are infected with them, and render them void.

COLONY, a union of citizens or subjects who have left their country to people another, and remain subject to the mother country. 3 W. C. C. R. 287. The country occupied by the colonists is also called a colony. A colony differs from a possession, or a *dependency*, (q. v.) For a history of the American colonies, the reader is referred to Story on the Constitution, book I.; 1 Kent. Com. 77 to 80; 1 Dane's Ab. Index, h. t.

COLOUR, *pleading*, is of several kinds, namely, express colour, and implied colour.

COLOUR, EXPRESS, *pleading*, is defined to be a feigned matter, pleaded by the defendant, in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has in truth only an appearance or colour of cause. Bac. Ab. Trespass, I 4. It is a general rule in pleading that no man shall be allowed to plead specially such plea as amounts to the general issue, or a total denial of the charges contained in the declaration, and must in such cases plead the general issue in terms, by which the whole question is referred to the jury; yet, if the defendant in an action of trespass, be desirous to refer the validity of his title to the court, rather than to the jury, he may in his plea state his title specially, by expressly giving colour of title to the plaintiff, or supposing him to have an appearance of title, bad indeed in point of law, but of which

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the jury are not competent judges. 3 Bl. Com. 309. Suppose, for example, that the plaintiff was in wrongful possession of the close, without any farther appearance of title than the possession itself, at the time of the trespass alleged, and that the defendants entered upon him in assertion of their title; but being unable to set forth this title in the pleading, in consequence of the objection that would arise for want of colour, are driven to plead the general issue of not guilty. By this plea an issue is produced whether the defendants are guilty or not of the trespass; but upon the trial of the issue, it will be found that the question turns entirely upon construction of law. The defendants say they are not guilty of the trespasses, because they are not guilty of breaking the *close of the plaintiff*, as alleged in the declaration; and that they are not guilty of breaking the close of the plaintiff, because they themselves had the property in that close; and their title is this, that the father of one of the defendants being seised of the close in fee, gave it in tail to his eldest son, remainder in tail to one of the defendants; the eldest son was disseised, but made continual claim till the death of the disseisor; after whose death, the descent being cast upon his heir, the disseisee entered upon the heir, and afterwards died, when the remainder took effect in the said defendant who demised to the other defendant. Now, this title involves a legal question, namely, whether continual claim will not preserve the right of entry in the disseisee, notwithstanding a descent cast on the heir of the disseisor. (See as to this point, *Claim*, *Continual*.) The issue however is merely not guilty, and this is triable by jury; and the effect, therefore, would be, that a jury would have to decide this question of law, subject to the direction upon it, which they would receive from the court. But, let it be supposed that the defendants, in a view to the more satisfactory decision of the question, wish to bring it under the consideration of the court in bank, rather than have it referred to a jury. If they have any means of setting forth their title specially in their plea, the object will be attained; for then the plaintiff, if disposed to question the sufficiency of the title, may demur to the plea, and thus refer the question to the decision of the judges. But such plea if pleaded simply, according to the state of fact, would be informal for want of colour; and hence arises a difficulty. The pleaders of former days, contrived to overcome this difficulty in the following singular manner. In such case as that supposed, the plea wanting *implied* colour, they gave in lieu of it an *express* one, by inserting a fictitious allegation of some colourable title in the plaintiff, which they, at the same time *avoided* by the preferable title of the defendant. See Steph. Pl. 225; Brown's Entr. 343, for a form of the plea. Formerly various suggestions of apparent right, might be adopted according to the fancy of the pleader, and though the same latitude is, perhaps, still available, yet, in practice, it is unusual to resort to any, except certain known fictions, which long usage has applied to the particular case; for example, in trespass to land, the colour universally given is that of a defective charter of demise.

See, in general, 2 Saund. 401; 10 Co. 88; Cro. Eliz. 76; 1 East, 215; Doct. Pl. 17; Doct. & Stud. lib. 2, c. 53; Bac. Abr. Pleas, I 8; Trespass, I 4. 1 Chit. Pl. 500; Steph. on Pl. 220.

COLOUR, IMPLIED, *pleading*. Colour is a term of the ancient rhetoricians; and was adopted, at an

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early period, in the language of pleading. See Year Books, 38 E. 3, 28; 40 E. 3, 23. It signifies an apparent or prima facie right. It is a rule that every pleading by way of confession and avoidance, must give colour; that is it must admit an apparent right in the opposite party, and rely, therefore, on some new matter by which that apparent right is defeated. For example, where the defendant pleads a release to an action for breach of covenant, the tendency of the plea is to admit an apparent right in the plaintiff, namely, that the defendant did, as alleged in the declaration, execute the deed, and break the covenant therein contained, and would therefore, prima facie, be liable on that ground; but shows new matter not before disclosed, by which that apparent right is done away, namely, that the plaintiff executed to him a release. Again, if the plaintiff reply that such release was obtained by duress. In his replication he impliedly admits, that the defendant has, prima facie, a good defence, namely, that such release was executed as alleged in the plea; and that the defendant therefore would be discharged; but relies on new matter by which the plea is avoided, namely, that the release was obtained by duress. The plea in this case, therefore, gives colour to the declaration, and the replication, to the plea. But let it be supposed that the plaintiff has replied, that the release was executed by him, but to another person, and not to the defendant; this would be an informal replication *wanting colour;* because, if the release were not to the defendant, there would not exist even an apparent defence, requiring the allegation of new matter to avoid it, and the plea might be sufficiently answered by a traverse, denying that the deed stated in the plea, is the deed of the plaintiff. See Steph. Pl. 220; 1 Chit. Pl. 498; Lawes Civ. Pl. 126; Arch. Pl. 211; Doct. Pl. 17; 4 Vin. Abr. 552; 5 Bac. Abr. 423; Com. Dig. Pleader, 3 M 40, 3 M 41. See an example of giving colour in pleadings in the Roman law, Inst. lib. 4, tit. 14, De replicationibus.

COLOUR OF OFFICE, *criminal law*, is a wrong committed by an officer under the pretended authority of his office. In some cases the act amounts to a misdemeanor, and the party may then be indicted; in other cases the remedy to redress the wrong is by an action.

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & Ry. 416.

COMBUSTIO DOMORUM, burning of houses; *arson*. Vide 4 Bl. Com. 372.

COMES, *pleading*. In a plea the defendant says, "And the said C D, by E F, his attorney *comes*, and defends," &c. The word comes, *venit*, expresses the appearance of the defendant in court. It is taken from the style of the entry of the proceedings on the record and formed no part of the *viva voce* pleading. It is, accordingly not considered, as in strictness, constituting a part of the plea. 1 Chit. Pl. 411; Steph. Pl. 432.

COMITATUS, a county. Most of the states are divided into counties; some, as Louisiana, are divided into parishes.

COMMAND. This word has several meanings. 1. It signifies an order; an apprentice is bound to obey the lawful command of his master; a constable may command rioters to keep the peace.—2. A request or suggestion; he who commands another to do an unlawful act, is accessary to it. 3 Inst. 51, 57; 2 Inst. 182.

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SUIT OR ACTION. The suit is considered as commenced from the issuing of the writ, 3 Bl. Com. 273, 285; 7 T. R. 4; 1 Wils. 147; 18 John. 14; Dunl. Pr. 120; 2 Phil. Ev. 95; and if the teste or date of the writ be fictitious, the true time of its issuing may be averred and proved, whenever the purposes of justice require it; as in cases of a plea of tender or of the statute of limitations. Bac. Ab. Tender D; 1 Stra. 638; Peake's Ev. 259; 2 Saund. 1, n. 1.

COMMERCE, *trade, contracts*, is the exchange of commodities for commodities; considered in a legal point of view, it consists in the various agreements which have for their object to facilitate the exchange of the products of the earth or industry of man, with an intent to realise a profit. Pard. Dr. Com. n. 1. Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent, Com. 431; Story on Const. § 1052 et seq. The sense in which the word commerce is used in the constitution seems not only to include traffic but intercourse, and navigation. Story, § 1057; 9 Wheat. 190, 191, 215, 229; 1 Tuck. Bl. App. 249 to 252.

COMMISSARY is an officer whose principal duties are to supply the army with provisions. The act of April 14, 1818, s. 6, requires that the president, by and with the consent of the senate, shall appoint a commissary general with the rank, pay, and emoluments of the colonel of ordnance, and as many assistants, to be taken from the subalterns of the line, as the service may require. The commissary general and his assistants shall perform such duties, in the purchasing and issuing of rations to the armies of the United States, as the president may direct. The duties of these officers are further detailed in the subsequent sections of this act, and in the act of March 2, 1821.

COMMISSION, *in contracts*, is when one undertakes without reward, to do something for another in respect to a thing bailed. This term is frequently used synonymously with mandate, (q. v.) Ruth. Inst. 105; Halifax, Analysis of the Civil Law, 70. If the service the party undertakes to perform for another is the custody of his goods, this particular sort of commission is called a *charge*. In a commission, the obligation on his part who undertakes it, is to transact the business without wages, or any other reward, and to use the same care and diligence in it, as if it was his own.

COMMISSION, *office*. Persons authorised to act in a certain matter; as, such a matter was submitted to the commission; there were several meetings before the commission. 4 B. & Cr. 850; 10 E. C. L. R. 459.

COMMISSION, *crim. law*, is the perpetration of an offence; as there are crimes of commission and crimes of omission.

COMMISSION, *government*.—Letters-patent granted by the government, under the public seal, to a person appointed to an office, giving him authority to perform the duties of his office.

COMMISSION OF REBELLION, *chan. prac.*, is the name of a writ issuing out of chancery generally directed to four special commissioners, named by the plaintiff, commanding them to attach the defendant wheresoever he may be found within the state, as a rebel and contemner of the law, so as to have him in chancery on a certain day therein named. This writ may be issued after an attachment with proclamation and a return of *non est*

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inventus. Blake's Ch. Pr. 102; Newl. Ch. Pr. 14.

COMMISSIONER OF PATENTS. The name of an officer of the United States whose duties are detailed in the act to promote the useful arts, &c. which will be found under the article *Patent.*

COMMISSIONS, *in contracts, practice*, are an allowance or compensation to an agent, factor, executor, trustee or other person who manages the affairs of others, for his services in performing the same. The right of agents, factors or other contractors to a commission, may either be the subject of a special contract, or rest upon the *quantum meruit.* The commission of an agent is either ordinary or *del credere*, (q. v.) The latter is an increase of the ordinary commission, in consideration of the responsibility which the agent undertakes, by making himself answerable for the solvency of those with whom he contracts. Liverm. Agency, 3, et seq.; Paley, Agency, 88, et seq. In Pennsylvania the amount of commissions allowed to executors and trustees is generally fixed at five per centum on the sum received and paid out, but this is varied according to circumstances. 9 S. & R. 209, 223; 4 Whart. 98; 1 Serg. & Rawle, 241. In England no commissions are allowed to executors or trustees. 1 Vern. R. 316, n. and the cases there cited; 4 Ves. 72, n.

COMMISSIONER, *officer.* One who has a lawful commission to execute a public office; but in a more restricted sense it is one who is authorised to execute a particular duty, as, commissioner of the revenue, canal commissioner: the term when used in this latter sense is not applied, for example, to a judge. There are commissioners, too, who have no regular commissions, and derive their authority from the elections held by the people. County commissioners, in Pennsylvania, are officers of the latter kind.

COMMISSIONERS OF BAIL, *in practice*, are officers appointed by some courts to take recognizances of bail in civil cases.

COMMITMENT, *criminal law, practice.* The warrant or order by which a court or magistrate directs a ministerial officer to take a person to prison. The commitment is either for further hearing, (q. v.) or it is final. The formal requisites of the commitment are, 1st, that it be in writing under hand and seal, and show the authority of the magistrate, and the time and place of making it. 2d. It must be made in the name of the United States, or of the commonwealth, or people, as required by the constitution of the United States or of the several states. 3d, It should be directed to the keeper of the prison, and not generally to carry the party to prison, 2 Str. 934; 1 Ld. Raym. 424. 4th, The prisoner should be described by his name and surname, or the name he gives as his. 5th, The commitment ought to state that the party has been charged on oath. 6th, The particular species of crime charged against the prisoner should be mentioned with convenient certainty. 3 Cranch, R. 448; 11 St. Tr. 304, 318; Hawk. B. 2, c. 16, s. 16; 1 Chit. Cr. Law, 110. 7th, The commitment should point out the place of imprisonment, and not merely direct that the party be taken to prison. 2 Str. 934; 1 Ld. Ray. 424. 8th, In a final commitment, the authority to the keeper of the prison should be to keep the prisoner "until he shall be discharged by due course of law," when the offence is not bailable; when it is bailable the gaoler should be directed to keep the prisoner in his "said custody for want of sureties, or until he

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shall be discharged by due course of law." When the commitment is not final it is usual to commit the prisoner "for further hearing." The commitment is also a mittimus, (q. v.) The act of sending a person to prison charged with the commission of a crime by virtue of such a warrant is also called a commitment. Vide generally, 4 Vin. Ab. 576; 1 Bac. Ab. Index, h. t.

COMMITTEE, *practice.* When a person has been found non compos, the law requires that a guardian should be appointed to take care of his person and estate, this guardian is called the committee. It is usual to select the committee from the next of kin, Shelf. on Lun. 137; and in case of the lunacy of the husband or wife, the one who is sound is entitled, unless under very special circumstances, to be the committee of the other, Ib. 140. This is the committee of the person. For committee of the estate the heir at law is most favoured; relations are preferred to strangers, but the latter may be appointed. Ib. 144. It is the duty of the committee of the person to take care of the lunatic; and the committee of the estate is bound to administer the estate faithfully, and to account for his administration. He cannot in general make contracts in relation to the estate of the lunatic, or bind it without a special order of the court or authority that appointed him. Ib. 179.

COMMITTEE, *legislation.* One or more members of a legislative body to whom is specially referred some matter before that body, in order that they may investigate and examine into it and report to those who delegated this authority to them.

COMMIXTION, *civil law.* This term is used to signify the act by which goods are mixed together. The matters which are mixed are dry or liquid. In the commixtion of the former, the matter retains its substance and individuality; in the latter the substances no longer remain distinct. The commixtion of liquids is called *confusion*, (q. v.) and that of the solids is a mixture. Leç. Elem. du Dr. Rom. § 370, 371; Story, Bailm. § 40.

COMMODATE, *contracts*, a term used in the Scotch law, which is synonimous to the latin commodatum, or loan for use. Ersk. Inst. B. 3, t. 1, § 20; 1 Bell's Com. 225; Ersk. Pr. Laws of Scotl. B. 3, t. 1, § 9. Judge Story regrets this term has not been adopted and naturalized as mandate has been from mandatum. Story, Com. § 221. Ayliffe, in his Pandects, has gone further and terms the bailor the *commodant* and the bailee the *commodatory*, thus avoiding those circumlocutions, which, in the common phraseology of our law, have become almost indispensable. Ayl. Pand. B. 4, t. 16, p. 517. Browne, in his Civil Law, vol. 1, 352, calls the property loaned "*commodated* property." See *Borrower*, *Loan for use*, *Lender*.

COMMON, *or right of common, in the English law*, is an incorporeal hereditament which consists in a profit which a man has in the lands of another. Common is of four sorts; of pasture, piscary, turbary and estovers. Finch's Law, 157; Co. Litt. 122; 2 Inst. 86; 2 Bl. Com. 32.

1. Common of pasture is a right of feeding one's beasts on another's land, and is either appendant, appurtenant or in gross. Common appendant is of common right, and it may be claimed in pleading as appendant without laying a prescription. Hargr. note to 2 Inst. 122, a, note. Rights of common appurtenant to the claimant's land are altogether independent

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of the tenure, and do not arise from any absolute necessity; but may be annexed to lands in other lordships, or extended to other beasts, besides such as are generally commonable. Common in gross, or at large is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. All these species of pasturable common, may be and usually are limited as to number and time; but there are also common without stint, and which last all the year. 2 Bl. Com. 34.

2. Common of piscary is a liberty of fishing in another man's water. Ib. See *Fishery*.

3. Common of turbary is a liberty of digging turf in another man's ground. Ib.

4. Common of estovers is a liberty of taking necessary wood for the use or furniture of a house or farm from another man's estate. Ib. See *Estovers*.

See, in general, Vin. Abr. Common; Bac. Abr. Common; Com. Dig. Common; Stark. Ev. part 4, p. 383; Cruise on Real Prop. h. t.

COMMON BENCH, *bancus communis*. The court of *common pleas* was anciently called *common bench*, because the pleas and controversies there determined were between common persons.

COMMON CARRIER, *contracts*, is one who undertakes for hire or reward to transport the goods of such as choose to employ him, from place to place. 1 Pick. 50, 53; 1 Salk. 249, 250; Story, Bailm. § 495. Common carriers are generally of two descriptions, namely, carriers by land and carriers by water. Of the former description are the proprietors of stage coaches, and stage wagons, which ply between different places, and carry goods for hire; and truckmen, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one part of a town or city to another, are also considered as common carriers. Carriers by water are the masters and owners of ships and steam-boats engaged in the transportation of goods for persons generally, for hire; and lightermen, hoymen, barge-owners, ferrymen, canal boatmen, and others employed in like manner, are so considered.

By the common law, a common carrier is generally liable for all losses which may occur to property entrusted to his charge in the course of business, unless he can prove the loss happened in consequence of the act of God, or of the enemies of the United States. It has been attempted to relax the rigor of the common law in relation to carriers by water, 6 Cowen, 266; but that case seems to be at variance with other decisions, 2 Kent, Com. 471, 472; 10 Johns. 1; 11 Johns. 107. In respect to carriers by land, the rule of the common law seems every where admitted in its full rigour in the states governed by the jurisprudence of the common law. Louisiana follows the doctrine of the civil law in her code. Proprietors of stage coaches or wagons whose employment is solely to carry passengers, as hackney coachmen, are not deemed common carriers; but if the proprietors of such vehicles for passengers, also carry goods for hire, they are, in respect of such goods, to be deemed common carriers. Bac. Ab. Carriers, A; 2 Show. Rep. 128; 1 Salk. 282; Com. Rep. 25; 1 Pick. 50. The like reasoning applies to packet ships and steam-boats, which ply between different ports, and are accustomed to carry merchandise as well as passengers.

A common carrier of goods is in all cases entitled to demand the price of carriage before he receives the goods, and, if not paid, he may refuse

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to take charge of them; if, however, he take charge of them without the hire being paid he may afterwards recover it. The compensation which becomes due for the carriage of goods by sea, is commonly called *freight*, (q. v.); and see also Abb. on Sh. part 3, c. 7. The carrier is also entitled to a lien on the goods for his hire, which, however, he may waive, but, if once waived, the right cannot be resumed. 2 Kent, Com. 497. The consignor or shipper is commonly bound to the carrier for the hire or freight of goods, 1 T. R. 659. But whenever the consignee engages to pay it, he also may become responsible. It is usual in bills of lading to state, that the goods are to be delivered to the consignee or to his assigns he or they paying freight, in which case the consignee and his assigns by accepting the goods by implication become bound to pay the freight; and the fact that the consignor is also liable to pay it, will not in such case make any difference. Abbott on Sh. part 3, c. 7, § 4.

What is said above relates to common carriers of goods. The duties, liabilities, and rights of carriers of passengers are now to be considered. These are divided into carriers of passengers on land, and carriers of passengers on water. First, of carriers of passengers on land. The *duties* of such carriers are, 1st, those which arise on the commencement of the journey; that is, 1. To carry passengers whenever they offer themselves and are ready to pay for their transportation; they have no more right to refuse a passenger if they have sufficient room and accommodation, than an innkeeper has a guest. 3 Brod. & Bing. 54; 9 Price's R. 408; 6 Moore R. 141; 2 Chit. R. 1; 4 Esp. R. 460; 1 Bell's Com. 462; Story, Bailm. § 591.—2. To provide coaches reasonably strong and sufficient for the journey, with suitable horses, trappings and equipments.—3. To provide careful drivers of reasonable skill and good habits for the journey; and to employ horses which are steady and not vicious, or likely to endanger the safety of the passengers.—4. Not to overload the coach either with passengers or luggage.—5. To receive and take care of the usual luggage allowed to every passenger on the journey.—2dly, Their duties on the progress of the journey.—1. To stop at the usual places, and allow the usual intervals for the refreshment of the passengers, 5 Petersd. Ab. Carriers, p. 48, note.—2. To use all the ordinary precautions for the safety of passengers on the road.—3dly, Their duties on the termination of the journey.—1. To carry the passengers to the end of the journey.—2. To put them down at the usual place of stopping, unless there has been a special contract to the contrary, and then to put them down at the place agreed upon. 1 Esp. R. 27. The *liabilities* of such carriers. They are bound to use extraordinary care and diligence to carry safely those whom they take in their coaches. 2 Esp. R. 533; 2 Camp. R. 79; Peake's R. 80. But, not being insurers, they are not responsible for accidents when all reasonable skill and diligence have been used. The *rights* of such carriers are: 1, to demand and receive their fare at the time the passenger takes his seat.—2. They have a lien on the baggage of the passenger for his fare or passage money, but not on the person of the passenger, nor the clothes he has on. Abb. on Sh. part 3, c. 3, § 11; 2 Campb. R. 631. Second; Carriers of passengers by water. By the act of Congress of 2d of March, 1819, 3 Story's Laws U. S. 1722, it is enacted, 1, that no master of a vessel bound to or from

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the United States shall take more than two passengers for every five tons of the ship's custom-house measurement; 2, that the quantity of water and provisions, which shall be taken on board and secured under deck, by every ship bound from the United States to any port on the continent of Europe, shall be sixty gallons of water, one hundred pounds of salted provisions, one gallon of vinegar, and one hundred pounds of wholesome ship bread, for each passenger, besides the stores of the crew.—In New York, statutory regulations have been made in relation to their canal navigation. Vide 6 Cowen's R. 698. As to the conduct of carrier vessels on the ocean, vide Story, Bailm. § 607 et seq.; Marsh. Ins. B. 1, c. 12, s. 2. And see generally 1 Vin. Ab. 219; Bac. Ab. h. t.; 1 Com. Dig. 423; Petersd. Ab. h. t.; Dane's Ab. Index, h. t.; 2 Kent, Com. 464; 16 East, 247, note.

In Louisiana carriers and watermen are subject, with respect to the safe keeping and preservation of the things entrusted to them, to the same obligations and duties, which are imposed on tavern keepers, Civ. Code, art. 2722, that is, they are responsible for the effects which are brought though they were not delivered into their personal care, provided, however, they were delivered to a servant or person in their employment, art. 2937; they are responsible if any of the effects be stolen or damaged, either by their servants or agents, or by strangers, art. 2938; but they are not responsible for what is stolen by force of arms or with exterior breaking open of doors, or by any other extraordinary violence, art. 2939. For the authorities on the subject of common carriers in the civil law, the reader is referred to Dig. 4, 9, 1 to 7; Poth. Pand. lib. 4, t. 9; Domat, liv. 1, t. 16, s. 1 and 2; Pard. art. 537 to 555; Code Civil, art. 1782, 1786, 1952; Moreau & Carlton, Partidas 5, t. 8, l. 26; Ersk. Inst. B. 3, t. 1, § 28; 1 Bell's Com. 465; Abb. on Sh. part 3, c. 3, § 3, note (l); 1 Voet. ad Pand. lib. 4, t. 9; Merl. Rép. mots Voiture, Voiturier; Dict. de Police, Voiture.

COMMON INTENT, *construction.* The natural sense given to words. It is a rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail; it is simply a rule of construction and not of addition; common intent cannot add to a sentence words which have been omitted. 2 H. Black. 530. In pleading, certainty is required, but certainty to a common intent is sufficient, that is, what upon a reasonable construction may be called certain, without recurring to *possible* facts. Co. Litt. 203, a; Dougl. 153. See *Certainty.*

COMMON LAW. See *Law, common.*

COMMON, TENANTS IN, vide *Tenant in common; Estate in common.*

COMMON PLEAS. The name of a court having jurisdiction generally of civil actions. Vide *Common Bench.*

COMMON RECOVERY. Vide *Recovery.*

COMMON SCOLD, *crim. law, communis rixatrix*, is a woman who in consequence of her scolding, is a public nuisance to the neighborhood. Such a woman may be indicted, and on conviction punished. At common law, the punishment was by being placed in a certain engine of correction called the trebucket or cucking stool. This barbarous punishment has been abolished in Pennsylvania, where the offence may be punished by fine and imprisonment. 12 Serg.

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& Rawle, 220; vide 1 Russ. on Cr. 302; Hawk. B. 2, c. 25, s. 59; 1 T. R. 756; 4 Rogers's Rec. 174; 6 Rogers's Rec. 90; Roscoe on Cr. Ev. 665.

COMMONWEALTH, *government*, is that form of government in which the administration of public affairs is open, or common to all persons, without any special regard to rank or property, as distinguished from monarchy or aristocracy. A republic. The United States of America are so many commonwealths.

COMMORANCY, *persons*, an abiding dwelling, or continuing as an inhabitant in any place. It consists properly in sleeping usually in any place.

COMMUNICATION *contracts*. Information; consultation; conference. In order to make a contract, it is essential there should be an agreement; a bare communication or conference will not therefore amount to a contract, nor can evidence of such communication be received in order to add to, take from, contradict or alter a written agreement. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609. Vide *Pourparler*; Wharton's Dig. Evid. R.

COMMUTATION, *punishments*, is the change of a punishment to which a person has been condemned for a less rigorous one. This can be granted only by the executive authority in which the pardoning power resides.

TO COMMUTE, to substitute one punishment in the place of another. For example, if a man be sentenced to be hung, the executive may, in some instances, commute his punishment to that of imprisonment.

COMPACT, *contracts*; in its more general sense, it signifies an agreement; in its strictest sense, it imports a contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2, c. 6, § 1.

COMPANIONS, *French law*. This is a general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Contr. n. 163.

COMPARISON OF HAND-WRITING, *evidence*. It is a general rule that comparison of hands is not admissible. But to this there are some exceptions; in some instances when the antiquity of the writing makes it impossible for any living witness to swear that he ever saw the party write, comparison of hand-writing, with documents known to be in his hand-writing, has been admitted. 7 East, 282; B. N. P. 236; Anthon's N. P. 98, n.; 8 Price, 653; 11 Mass. R. 309; 2 Greenl. R. 33; 2 Johns. Cas. 211; 1 Esp. Cas. 351; 1 Root, 307; Swift's Ev. 29; 1 Whart. Dig. 245; 5 Binn. R. 349; Addison's R. 33; 2 McCord, 518; 1 Tyler, R. 4.

COMPATIBILITY. In speaking of public offices, it is meant by this term to convey the idea that two of them may be held by the same person at the same time. It is the reverse of *incompatibility*, (q. v.)

COMPENSATION, *chancery practice*, is the performance of that which a court of chancery order to be done on relieving a party who has broken a condition, which is to place the opposite party in no worse situation than if the condition had not been broken. Courts of equity will not relieve from the consequences of a broken condition unless compensation can be made to the opposite party. Fonb. c. 6. s. 5, n. (k.); Newl. Contr. 251 et seq.

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COMPENSATION, *contracts*, a reward for services rendered.

COMPENSATION, *contracts, in the civil law*. When two persons are indebted to each other, there takes place a compensation between them, which extinguishes both debts. Compensation takes place of course by the mere operation of law, even unknown to the debtors; the two debts are reciprocally extinguished, as soon as they exist simultaneously, to the amount of their respective sums. Compensation takes place only between two debts, having equally for their object, a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. Compensation takes place, whatever be the cause of either of the debts, except in case, 1st, of a demand of restitution of a thing of which the owner has been unjustly deprived; 2dly, of a demand of restitution of a deposit and a loan for use; 3dly, of a debt which has for its cause, of aliments declared not liable to seisure. Civil Code of Louis. 2203 to 2208; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t. 6, s. 30. Compensation very nearly resembles the set-off (q. v.) of the common law.

COMPERUIT AD DIEM, *pleading*. He appeared at the day. This is the name of a plea in bar to an action of debt on a bail bond. For forms of this plea, vide 5 Wentw. 470; Lil. Entr. 114; 2 Chit. Pl. 527. When the issue is joined on this plea, the trial is by the record. Vide 1 Taunt. 23; Tidd, 239. And see generally, Com. Dig. Pleader, 2 W 31; 7 B. & C. 478.

COMPETENCY, *evidence*, is the legal ability of a witness to be heard on the trial of a cause. This term is also applied to written or other evidence which may be legally given on such trial, as, depositions, letters, account books, and the like. Prima facie every person offered is a competent witness, and must be received unless his incompetency (q. v.) appears. 9 State Tr. 652. There is a difference between competency and credibility. A witness may be competent, and, on examination, his story may be so contradictory and improbable that he may not be believed; on the contrary he may be incompetent, for example, on account of interest, and be perfectly credible if he were examined. The court are the sole judges of the competency of a witness, and may, for the purpose of deciding whether the witness is or is not competent, ascertain all the facts necessary to form a judgment.

COMPLAINT, *crim. law*, is the allegation made to a proper officer, that some person, whether known or unknown, has been guilty of a designated offence, with an offer to prove the fact, and a request that the offender may be punished. To have a legal effect, the complaint must be supported by such evidence as shows that an act which constitutes an offence has been committed, and renders it certain or probable that it was committed by some person named or described in the complaint.

COMPOS MENTIS, of sound mind. These words are seldom used, they are the opposite to the words *non compos mentis*, (q. v.)

COMPOSITION, *contracts*. An agreement, made upon a sufficient consideration, between a debtor and creditor, by which the creditor accepts part of the debt due to him in satisfaction of the whole. Montagu on Compos. 1; 3 Co. 118; Co. Litt. 212, b; 4 Mod. 88; 1 Str. 426; 2 T. R. 24, 26.

COMPOUNDING A FELONY, *crimes*, is the act of a party immediately aggrieved, who agrees with a thief or other felon, that he will not prosecute him on condition that

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he return to him the goods stolen, or who takes a reward not to prosecute. This is an offence punishable by fine and imprisonment. The mere retaking by the owner of stolen goods, is no offence unless the offender is not to be prosecuted. Hale P. C. 546; 1 Chit. Cr. Law, 4.

COMPROMISE, *contracts*, is an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon; vide Com. Dig. App. tit. Compromise. In the civil law, a compromise is an agreement between two or more persons, who, wishing to settle their disputes, refer the matter in controversy to arbitrators, who are so called because those who choose them, give them full powers to arbitrate and decide what shall appear just and reasonable, to put an end to the differences of which they are made the judges. 1 Domat, Lois Civ. liv. 1, t. 14; vide *Submission*; Ch. Pr. Index, h. t.

COMPTROLLERS, are officers who bear this name, in the treasury department of the United States. There are two comptrollers. It is the duty of the *first* to examine all accounts settled by the first and fifth auditors, and certify the balances arising thereon to the register; to countersign all warrants drawn by the secretary of the treasury, other than those drawn on the requisitions of the secretaries of the war and navy departments, which shall be warranted by law; to report to the secretary the official forms to be issued in the different offices for collecting the public revenues, and the manner and form of stating the accounts of the several persons employed therein; and to superintend the preservation of the public accounts, subject to his revision; and to provide for the payment of all moneys which may be collected. Act of March, 3, 1817, sect. 8; Act of Sept. 2, 1789, s. 2; Act of March 7, 1822. To superintend the recovery of all debts due to the United States; to direct suits and legal proceedings, and to take such measures as may be authorised by the laws, to enforce prompt payment of all such debts. Act of March 3, 1817, sect. 10; Acts of Sept. 2, 1789, s. 2; to lay before congress annually, during the first week of their session, a list of such officers as shall have failed in that year, to make the settlement required by law; and a statement of the accounts in the treasury, war, and navy departments, which may have remained more than three years unsettled, or on which balances appear to have been due more than three years prior to the thirtieth day of September, then last past, together with a statement of the causes which have prevented a settlement of the accounts, or the recovery of the balances due to the United States. Act of March 3, 1809, sect. 2. Besides these, this officer is required to perform minor duties, which the plan of this work forbids to be enumerated here. His salary is three thousand five hundred dollars per annum. Act of Feb. 20, 1804, s. 1. The duties of the *second* comptroller are to examine all accounts settled by the second, third and fourth auditors, and certify the balances arising thereon to the secretary of the department in which the expenditure has been incurred; to countersign all the warrants drawn by the secretary of the treasury upon the requisition of the secretaries of the war and navy departments, which shall be warranted by law; to report to the said secretaries the official forms to be issued in the different offices for disbursing public money in those departments, and the manner and form of keeping and stating the accounts

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of the persons employed therein, and to superintend the preservation of public accounts subject to his revision. His salary is three thousand dollars per annum. Act of March 3, 1817, s. 9 and 15; Act of May 7, 1822.

COMPULSION. The forcible inducement to do an act. *Coercion*, (q. v.)

COMPURGATOR. Formerly when a person was accused of a crime, or sued in a civil action, he might purge himself upon oath of the accusation made against him, whenever the proof was not the most clear and positive; and if upon his oath he declared himself innocent, he was absolved. This usage so eminently calculated to create fraud, and encourage perjury by impunity, was soon found to be dangerous to the public safety. To remove this evil the laws were changed by requiring that the oath should be administered with the greatest solemnity; but the form was soon disregarded, for the mind became easily familiarized to those ceremonies which at first imposed on the imagination, and those who cared not to violate the truth, did not hesitate to treat the form with contempt; in order to give a greater weight to the oath of the accused the law was again altered so as to require that the accused should appear before the judge with a certain number of his neighbours, relations or friends, who should swear that they believed that the accused had sworn truly. This new species of witnesses were called compurgators. The number of compurgators varied according to the nature of the charge and other circumstances. Encyclopédie, h. t. Vide Du Cange, Gloss. voc. Juramentum; Spelman's Gloss. voc. Assarth; Merl. Rép. mot Conjurateurs. By the English law when a party was sued in debt on simple contract, detinue, and perhaps some other forms of action, the defendant might wage his law, by producing eleven compurgators who would swear they believed him on his oath, by which he discharged himself from the action in certain cases. Vide 3 Bl. Com. 341–348.

COMPUTATION, *counting*, *calculation*. It is used in the common law for the true and indifferent account and construction of time. For the computation of a year, see Com. Dig. Ann; of a month, Com. Dig. Temps A; 1 John. Cas. 100; 15 John. R. 120; 2 Mass. 170, n.; 4 Mass. 460; 4 Dall. 144; 3 S. & R. 169; of a day, vide *Day;* and 3 Burr. 1434; 11 Mass. 204; 2 Browne, 18; Dig. 345; Salk. 625; 3 Wils. 274. It is a general rule that when an act is to be done within a certain time, one day is to be taken inclusively, and one exclusively. Vide Lofft, 276; Dougl. 463.

CONCEALMENT, *contracts*, is the unlawful suppression of any fact or circumstance, by one of the parties to a contract, from the other, and which in justice ought to be made known.

Fraud clearly occurs when one person substantially misrepresents or conceals a material fact peculiarly within his own knowledge, in consequence of which a delusion exists; or uses a device naturally calculated to lull the suspicions of a careful man, and induce him to forego inquiry into a matter upon which the other party has information although such information be not exclusively within his reach. 2 Bl. Com. 451; 3 Ib. 166; Sugd. Vend. 1 to 10; 1 Com. Contr. 38; 3 B. & C. 623; 5 D. & R. 490; 2 Wheat. 183; 11 Ib. 59; 1 Pet. Sup. C. R. 15, 16. The party is not bound however to disclose *patent* defects. Sugd. Vend. 2.

In insurances, where fairness is so essential to the contract, a con-

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cealment which is only the effect of accident, negligence, inadvertence, or mistake, if material, is equally fatal to the contract as if it were intentional and fraudulent. 1 Bl. R. 594; 3 Burr. 1909.

Fraudulent concealment avoids the contract. See, generally, Verpl. on Contr. passim.; Marsh. Ins. B. 1, c. 9.

CONCESSI, *conveyancing;* this is a latin word signifying I have granted. It was frequently used when deeds and other conveyances were written in latin; it had the effect of creating a covenant in law. It is a word of a general extent, and is said to amount to a grant, feoffment, lease, release and the like. 2 Saund. 96; Co. Litt. 301, 302; Bane's Ab. Index, h. t.

CONCLUSION TO THE COUNTRY, *pleading.* The tender of an issue to be tried by jury, is a formula called the *conclusion to the country.* This conclusion is in the following words, when the issue is tendered by the defendant; "And of this the said C D puts himself upon the country." When it is tendered by plaintiff, the formula is as follows; "And this the said A B prays may be inquired of by the country." It is held, however, that there is no material difference between these two modes of expression, and that, if *ponit se,* be substituted for *petit quod inquiratur,* or *vice versa,* the mistake is unimportant. 10 Mod. 166. When there is an affirmative on one side, and a negative on the other, or *vice versa,* the conclusion should be to the country. T. Raym. 98; Carth. 87; 2 Saund. 189; 2 Burr. 1022; and so it is, though the affirmative and negative be not in express words, but only tantamount thereto. Co. Litt. 126, a; Yelv. 137; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. Pleader, E 32.

CONCLUSION, *practice.* Making the last address to the court or jury. The party on whom the *onus probandi* is cast has the conclusion.

CONCLUSION, *remedies,* an estopel; a bar; the act of a man by which he has confessed a matter or thing which he can no longer deny; as, for example, the sheriff is concluded by his return to a writ, and therefore if upon a capias he return *cepi corpus,* he cannot afterwards show that he did not arrest the defendant, but is concluded by his return. Vide Plowd. 276, b; 3 Tho. Co. Litt. 600.

CONCORD, *estates, conveyances, practice,* is an agreement or supposed agreement between the parties in levying a fine of lands, in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question, are the right of the complainant; and from the acknowledgment or recognition of right thus made, the party who levies the fine is called the cognizor, and the person to whom it is levied, the cognizee. 2 Bl. Com. 350; Cruise, Dig. tit. 35, c. 2, s. 33; Com. Dig. Fine (E 9.)

CONCUBINAGE. This term has two different significations; sometimes it means a species of marriage which took place among the ancients, and which is yet in use in some countries. In this country it means the carnal connexion between a man and a woman unmarried. Vide 1 Bro. Civ. Law, 80; Merl. Rép. h. t.

CONCURRENCE, *French law.* It is the equality of rights, or privilege which several persons have over the same thing; as, for example, the right which two judgment creditors, whose judgments were rendered at the same time, have to be paid out of the proceeds of real estate bound by them. Dict. de Jur. h. t.

CONDEMNATION, *mar. law,*

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is the sentence of a court of competent jurisdiction that a ship or vessel taken as a prize on the high seas, was liable to capture, and was properly and legally captured. By the general practice of the law of nations, a sentence of condemnation is, at present, generally deemed necessary in order to divest the title of a vessel taken as prize; until this has been done the original owner may regain his property although the ship may have been in possession of the enemy twenty-four hours, or carried infra præsidia. 1 Rob. Rep. 134; 3 Rob. Rep. 97, n.; Carth. 423; Chit. Law of Nat. 99, 100; 10 Mod. 79; Abb. on Sh. 14; Wesk. on Ins. h. t.; Marsh. on Ins. 402. A sentence of condemnation is generally binding everywhere. Marsh. Ins. 402. The term condemnation is also applied to the sentence which declares a ship to be unfit for service: this sentence and the grounds of it may however be re-examined and litigated by parties interested in disputing it. 5 Esp. N. P. C. 65; Abb. on Shipp. 4.

CONDEMNATION, *civil law*, is a sentence or judgment which condemns some one to do, to give, or to pay something; or which declares that his claim or pretensions are unfounded. This word is also used by common lawyers, though it is more usual to say conviction, both in civil and criminal cases. It is a maxim that no man ought to be condemned unheard, or without the opportunity of being heard.

CONDITION, *contracts*, is a clause in an agreement, the validity of which depends upon a future or uncertain event. Dict. de Jurisp. Condition; Poth. Obl. p. 2, c. 3, art. 1, § 1. See 1 Bac. Abr. 629. By the word condition is also understood some quality annexed to a real estate, by virtue of which it may be defeated, enlarged or created upon an uncertain event. Ib. Co. Litt. 201 a. See *Estates upon Condition.*

A condition may be created by inserting the very word *condition*, or *on condition*, in the deed or agreement; there are, however, other words that will do so as effectually, as the word proviso, but then it must not depend upon another sentence. The words must be those of grantor, and compulsory to enforce the grantee to do some act. Co. Litt. 203; Bac. Abr. Conditions, A, H.

Conditions must be lawful; those against law are void. Where the condition is entire and the whole is against law, it is void; but where the condition consists of several different parts, and some of them are lawful and others not, it is good for so much as is lawful, and void for the rest. 2 Bro. P. C. 381; 5 Vin. Abr. 99, pl. 9; 2 Ld. Raym. 1459; Hob. 14; Mo. 856, 857, pl. 1175; 3 Rep. 83, a; 1 Vent. 237. But if a bond be given with condition to do a thing against an act of the legislature, and also to pay a just debt, the whole bond is void, because the letter of the act makes it void, and is a strict law. Hob. 14.

See, in general, Bac. Abr. Conditions, Obligations, F; Com. Dig. Condition; Vin. Abr. Condition; Poth. Obl. Pt. 2, c. 3, art. 1, 2, and 3.

CONDITION, (POSITIVE,) *in contracts.* A positive condition consists in the case where a thing that may or may not happen shall happen, as, *if I marry.* Poth. Obl. P. 2, c. 3, art. 1, § 1.

CONDITION, (POTESTATIVE,) *contracts.* A potestative condition is that which is in the power of the person in whose favour it is contracted; as if I engage to give my neighbour a sum of money, in case he cuts down a tree which obstructs my prospect. Poth. Obl. Pt. 2, c. 3, art. 1, § 1.

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CONDITION, (NEGATIVE,) *contracts.* A negative condition is that which consists in the case where something that may or may not happen, shall, as, if *I do not marry.* Poth. Obl. Pt. 2, c. 3, art. 1, § 1.

CONDITION, *persons,* is the situation in civil society which creates certain relations between the individual, to whom it is applied, and one or more others, from which mutual rights and obligations arise. Thus the situation arising from marriage gives rise to the conditions of husband and wife; that of paternity to the conditions of father and child. Domat, tom. 2, liv. 1, tit. 9, s. 1, n. 8. In contracts every one is presumed to know the condition of the person with whom he deals. A man making a contract with an infant cannot recover against him for a breach of the contract, on the ground that he was not aware of his condition.

CONDITIONS OF SALE, *contracts.* The terms upon which the vendor of property by auction proposes to sell it; the instrument containing these terms, when reduced to writing or printing, is also called the conditions of sale. It is always prudent and advisable that the conditions of sale should be printed and exposed in the auction room; when so done, they are binding on both parties, and nothing that was *said* at the time of sale, to add to or vary such printed conditions, will be of any avail. 1 H. Bl. 289; 12 East, 6; 6 Ves. 330; 15 Ves. 521. Vide forms of conditions of sale in Babington on Auctions, 233 to 243.

CONDONATION, a term used in the canon law. It is a forgiveness by the husband of his wife, or by a wife of her husband, of adultery committed, with an implied condition that the injury shall not be repeated, and that the other party shall be treated with conjugal kindness. 1 Hagg. Rep. 773; 3 Eccl. Rep. 310. See 5 Mass. 320; 6 Mass. 69; 1 Johns. Ch. R. 488. It may be express or implied, as if a husband knowing of his wife's infidelity, cohabit with her. 1 Hagg. Rep. 789; 3 Eccl. Rep. 338. Condonation is not, for many reasons, held so strictly against a wife as against a husband. 3 Eccl. Rep. 330. Ib. 341, n. As all condonations by operation of law, are expressly or impliedly conditional, it follows that the effect is taken off by the repetition of misconduct. 3 Eccl. R. 329; 3 Phillim. Rep. 6; 1 Eccl. R. 35; and cruelty revives condoned adultery. Worsley v. Worsley, cited in Durant v. Durant, 1 Hagg. Rep. 733; 3 Eccl. Rep. 311. Where the parties have separate beds, there must, in order to found condonation, be something of matrimonial intercourse presumed; it does not rest merely on the wife's not withdrawing herself. 3 Eccl. Rep. 341, n. Condonation is a bar to a sentence of divorce. 1 Eccl. Rep. 284. In Pennsylvania, by the act of the 13th of March, 1815, § 7, 6 Reed's Laws of Penna. 288, it is enacted that "in any suit or action for divorce for cause of adultery, if the defendant shall allege and prove that the plaintiff has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the plaintiff (if the husband,) allowed of his wife's prostitutions, or received hire for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence and perpetual bar against the same." The same rule may be found, perhaps, in the codes of most civilized countries. Vilanova Y Mañes, Materia Criminal Forense, Obs. 11, c. 20, n. 4.

CONDUCT, *law of nations,* is

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used in the phrase *safe conduct*, to signify the security given, by authority of the government, under the great seal, to a stranger, for his quiet coming into and passing out of the territories over which it has jurisdiction. A safe conduct differs from a passport, the former is given to enemies, the latter to friends or citizens.

CONFEDERACY, *intern. law*, is an agreement between two or more states or nations, by which they unite for their mutual protection and good. This term is applied to such agreement between two independent nations, but it is used to signify the union of different states of the same nation, as the confederacy of the states. The original thirteen states in 1781, adopted for their federal government the "Articles of confederation and perpetual union between the States," which continued in force until the present constitution of the United States went into full operation on the 30th day of April, 1789, when President Washington was sworn into office. Vide 1 Story on the Const. B. 2, c. 3 and 4.

CONFEDERACY, *crim. law*, is an agreement between two or more persons to do an unlawful act, or an act, which though not unlawful in itself, becomes so by the confederacy. The technical term usually employed to signify this offence, is *conspiracy*, (q. v.)

CONFEDERATION, *government*, is the name given to that form of government which the American colonies, on shaking off the British yoke, devised for their mutual safety and government. The articles of confederation, (q. v.) were finally adopted on the 15th of November, 1777, and with the exception of Maryland, which, however, afterwards also agreed to them, were speedily adopted by the United States, and by which they were formed into a federal body, and went into force on the first day of March, 1781, 1 Story, Const. § 225; and so remained until the adoption of the present constitution, which acquired the force of the supreme law of the land on the first Wednesday of March, 1789; 5 Wheat. R. 420. Vide *Articles of Confederation*.

CONFERENCE, *practice*, *legislation*. In practice, it is the meeting of the parties or their attorneys in a cause, for the purpose of endeavouring to settle the same. In legislation, when the senate and house of representatives cannot agree on a bill or resolution which it is desirable should be passed, committees are appointed by the two bodies respectively, who are called committees of conference, and whose duty it is, if possible, to reconcile the differences between them. In the French law, this term is used to signify the similarity and comparison between two laws, or two systems of law; as the Roman and the common law. Encyclopédie, h. t.

CONFESSION, *crim. law*, *evidence*, is the voluntary declaration made by a person who has committed a crime or misdemeanor, to another, of the agency or participation which he had in the same. When made without bias or improper influence, confessions are admissible in evidence, as the highest and most satisfactory proof, because it is fairly presumed that no man would make such a confession against himself, if the facts confessed were not true; but they are excluded, if liable to the imputation of having been unfairly obtained. A confession must be made voluntarily, by the party himself, to another person. 1. *It must be voluntary*. A confession forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is to be considered as evidence of

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guilt, that no credit ought to be given to it. 1 Leach, 263; this is the principle, but what amounts to a promise or a threat, is not so easily defined; vide 2 East, P. C. 659; 2 Russ. on Cr. 644; 4 Carr. & Payne, 387; S. C. 19 Eng. Com. L. Rep. 434; 1 Southard, R. 231; 1 Wend. R. 625; 6 Wend. R. 268; 5 Halst. R. 163; Miña's Trial, 10; 5 Rogers's Rec. 177; 2 Overton, R. 86; 1 Hayw. (N. C.) Rep. 482.—2. *The confession must be made by the party to be affected by it.* It is evidence only against him; in case of a conspiracy, the acts of one conspirator are the acts of all, while active in the progress of the conspiracy, but after it is over, the confession of one as to the part he and others took in the crime, is not evidence against any but himself. Phil. Ev. 76, 77; 2 Russ. on Cr. 653.—3. *The confession must be to another person.* It may be made to a private individual, or under examination before a magistrate. The whole of the confession must be taken, together with whatever conversation took place at the time of the confession. Roscoe's Ev. N. P. 36; 1 Dall. R. 240; Ib. 392; 3 Halst. R. 275; 2 Penna. R. 27; 1 Rogers's Rec. 66; 3 Wheeler's C. C. 533: 2 Bailey's R. 569; 5 Rand. R. 701. *Confession*, in another sense, is where a prisoner being arraigned for an offence, confesses or admits the crime with which he is charged, whereupon the plea of guilty is entered. Com. Dig. Indictment, (K); Ib. Justices, (W 3.)

CONFESSION AND AVOIDANCE, *pleadings.* Pleas in confession and avoidance are those which admit the averments in the plaintiff's declaration to be true, and allege new facts which obviate and repel their legal effects. These pleas are to be considered, first, with respect to their *division.* Of pleas in confession and avoidance, some are distinguished (in reference to their subject-matter) as pleas in justification or excuse, others as pleas in discharge, Com. Dig. Pleader, 3 M 12. The pleas of the former class, show some justification or excuse of the matter charged in the declaration; those of the latter, some discharge or release of that matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; the effect of the latter to show that though he had once a right of action, it is discharged or released by some matter subsequent. Of those in justification or excuse the plea of son assault demesne is an example; of those in discharge, a release. This division applies to *pleas* only; for replications and other subsequent pleadings in confession and avoidance, are not subject to such classification. Secondly, they are to be considered in respect to their form; as to their form the reader is referred to Stephen on Pleading, 72, 79, where forms are given. In common with all pleadings whatever, which do not tender issue, they always conclude with a verification and prayer of judgment. Thirdly, with respect to the quality of these pleadings, it is a rule that every pleading by way of confession and avoidance must give colour, (q. v.) And see generally, 1 Chit. Pl. 599; 2 Chit. Pl. 644; Co. Litt. 282, b; Arch. Civ. Pl. 215; Dane's Ab. Index, h. t.

CONFESSOR, *evid.* A priest of some christian sects, who receives an account of the sins of his people, and undertakes to give them absolution of their sins. The general rule on the subject of giving evidence of confidential communications is, that the privilege is confined to counsel, solicitors and attorneys, and the interpreter between the counsel and

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client. Vide *Confidential Communications*. Contrary to this general rule it has been decided in New York that a priest of the Roman catholic denomination could not be compelled to divulge secrets which he had received in auricular confession. 2 City Hall Rec. 80, n.

CONFIDENTIAL COMMUNICATIONS, *evidence*. Whatever is communicated professionally by a client to his counsel, solicitor or attorney, is considered as a confidential communication. This the latter is not permitted to divulge, for this is the privilege of the client and not of the attorney. The rule is strictly confined to counsel, solicitors or attorneys, except indeed the case of an interpreter between the counsel and client, when the privilege rests upon the same grounds of necessity. As to the matter communicated, it extends to all cases where the party applies for professional assistance. 6 Mad. R. 47. But the privilege does not extend to extraneous or impertinent communications; 3 John. Cas. 198; nor to information imparted to a counsellor in the character of a friend, and not as counsel. 1 Caine's R. 157. Vide generally, Stark. Ev. h. t.; 1 Peters's R. 356; 1 Root, 383; Whart. Dig. 275; Cary's R. 88, 126, 143; Toth. R. 177; Peake's Cas. 77; 2 Stark. Cas. 274. As to a confession made to a catholic priest, see 2 N. Y. City Hall Rec. 77. Vide 2 Ch. Pr. 18–21.

CONFIRMATION, *contracts, conveyancing*. 1. A contract by which that which was voidable, is made firm and unavoidable. 2. A species of conveyance.

1. When a contract has been entered into by a stranger without authority, he in whose name it has been made, may by his own act confirm it; or if the contract be made by the party himself, in an informal and voidable manner, he may in a more formal manner confirm and render it valid; and in that event it will take effect, as between the parties, from the original making. To make a valid confirmation the party must be apprised of his rights, and where there has been a fraud in the transaction, he must be aware of it, and intend to confirm his contract. Vide 1 Ball & Beaty, 353; 2 Scho. & Lef. 486; 12 Ves. 373; 1 Ves. Jr. 215.

2. Lord Coke defines a confirmation of an estate, to be "a conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable; or where a particular estate is increased." The first part of this definition may be illustrated by the following case put by Littleton, § 516; where a person lets land to another for the term of his life, who lets the same to another for forty years, by force of which he is in possession; if the lessor for life confirms the estate of the tenant for years, by deed, and afterwards the tenant for life dies, during the term; this deed will operate as a confirmation of the term for years. As to the latter branch of the definition; whenever a confirmation operates by way of increasing the estate, it is similar in every respect to a release that operates by way of enlargement, for there must be privity of estate, and proper words of limitation. The proper technical words of a confirmation are, ratify, approve and confirm. A confirmation does not strengthen a void estate. *Confirmatio est nulla, ubi donum precedens est invalidum, et ubi donatio nulla est nec valebit confirmatio.* For conformation may make a voidable or defeasible estate good, but cannot operate on an estate void in law. Co. Litt. 295. The canon law agrees with this rule, and hence the maxim *qui confirmat nihil dat.* Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, n. 476.

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Vide Vin. Ab. h. t.; Com. Dig. h. t.; Ayliff's Pand. *386; 1 Ch. Pr. 315.

CONFISCATION is the act by which the estate, goods or chattels, of a person who has been guilty of some crime, or who is a public enemy, is declared to be forfeited for the benefit of the public treasury. When property is forfeited as a punishment for the commission of crime, it is usually called a forfeiture. 1 Bl. Com. 299.

It is a general rule that the property of the subjects of an enemy found in the country may be appropriated by the government, without notice, unless there be a treaty to the contrary. It has been frequently provided by treaty that foreign subjects should be permitted to remain and continue their business, notwithstanding a rupture between the governments, so long as they conducted themselves innocently; and when there was no such treaty, such a liberal permission has been announced in the very declaration of war. Vattel, liv. 3, c. 4, § 63. Sir Michael Foster, (Discourses on High Treason, p. 185, 6,) mentions several instances of such declarations by the king of Great Britain, and he says that aliens were thereby enabled to acquire personal chattels and to maintain actions for the recovery of their personal rights, in as full a manner as alien friends. 1 Kent. Com. 57. In the United States, the broad principle has been assumed "that war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found. The mitigations of this rigid rule, which the policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself." 8 Cranch, 122, 3. Commercial nations have always considerable property in the possession of their neighbours; and when war breaks out, the question what shall be done with enemy's property found in the country, is one rather of policy than of law, and is properly addressed to the consideration of the legislature, and not to courts of law. The strict right of confiscation exists in Congress; and without a legislative act authorising its confiscation, it cannot be condemned. 8 Cranch, 128, 9.

See Chit. Law of Nations, c. 3; Marten's Law of Nat. lib. 8, c. 3, s. 9; Burlamaqui, Princ. of Pol. Law, part 4, c. 7; Vattel, liv. 3, c. 4, § 63.

The claim of a right to confiscate debts, contracted by individuals in times of peace, and which remain due to subjects of the enemy in time of war, rests very much upon the same principles as that concerning the enemy's tangible property, found in the country at the commencement of the war. But it is the universal practice to forbear to seize and confiscate debts and credits. 1 Kent. Com. 64, 5.

CONFRONTATION, *crim. law, practice*, is the act by which a witness is brought in the presence of the accused, so that the latter may object to him, if he can, and the former may know or identify the accused, and maintain the truth in his presence. No man can be a witness unless confronted with the accused, except by consent.

CONFUSION is the concurrence of two qualities in the same subject; which mutually destroy each other. Poth. Ob. P. 3, c. 5; 3 Bl. Com. 405; Story, Bailm. § 40.

CONFUSION OF RIGHTS, *contracts*. When the qualities of debtor and creditor are united in the same person, there arises a confusion of rights, which extinguishes the two credits; for instance, where a woman obligee marries the obligor, the debt is extinguished. 1 Salk.

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306; Cro. Car. 551; 1 Ld. Raym. 515; Ca. Ch. 21, 117. There is, however, an excepted case in relation to a bond given by the husband to the wife; where it is given to the intended wife for a provision to take effect after his death. 1 Ld. Raym. 515; 5 T. R. 381; Hut. 17; Hob. 216; Cro. Car. 376; 1 Salk. 326; Palm. 99; Carth. 512; Com. Dig. Baron & Feme, D.

Where a person possessed of an estate, becomes in a different right entitled to a charge upon the estate; the charge is in general merged in the estate, and does not revive in favour of the personal representative against the heir; there are particular exceptions, as where the person in whom the interests unite is a minor, and can therefore dispose of the personalty, but not of the estate; but in the case of a lunatic the merger and confusion was ruled to have taken place. 2 Ves. jun. 261. See Louis. Code, art. 801 to 808.

CONFUSION OF GOODS, is where those of two persons are so intermixed that the several portions can no longer be distinguished; if the intermixture be by consent the proprietors have an interest in common, in proportion to their respective shares, 2 Bl. Com. 405; but if one wilfully mixes his money, corn, or hay with that of another man, without his approbation or knowledge, the law, to guard against fraud, gives the entire property without any account, to him whose original dominion is invaded and endeavoured to be rendered uncertain, without his consent. Ib.; and see 2 Johns. Ch. R. 62; 2 Kent's Comm. 297. There may be a case neither of consent nor of wilfulness, in the confusion of goods; as where a bailee by negligence or unskilfulness, or inadvertence, mixes up his own goods of the same sort with those bailed; and there may be a confusion arising from accident and unavoidable casuality. Now, in the latter case of accidental intermixture, the rule, following the civil law, which deemed the property to be held in common, might be adopted; and it would make no difference whether the mixture produced a thing of the same sort or not, as if the wine of two persons were mixed by accident. See Dane's Abr. ch. 76, art. 5, § 19. But in cases of mixture by unskilfulness, negligence, or inadvertence, the true principle seems to be, that if a man having undertaken to keep the property of another distinct from, mixes it with his own, the whole must both at law and in equity, be taken to be the property of the other, until the former puts the subject under such circumstances that it may be distinguished as satisfactorily, as it might have been before the unauthorised mixture on his part. 15 Ves. 440, 432, 436, 439; 2 John. Ch. R. 62; Story on Bailm. c. 1, § 40. And see 7 Mass. R. 123; Dane's Abr. c. 76, art. 3, § 15; Com. Dig. Pleader, 3 M 28; Bac. Ab. Trespass, E 2; 2 Camp. 576; 2 Roll. 566, l. 15; 2 Bul. 323; 2 Cro. 366; 2 Roll. 393; 5 East, 7.

CONGE. A French word which signifies permission, and is understood in that sense in law. Cunn. Dict. h. t.

CONGEABLE, *English law.* This word is nearly obsolete. It is derived from the French *congé*, permission, leave; it signifies that a thing is done lawfully or with permission; as entry congeable, and the like.

CONGRESS. This word has several significations. 1. An assembly of the deputies from different governments, united to treat of peace, or of other political affairs which interest them, is called a Congress.

2. Congress is the name of the

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legislative body of the United States, composed of the senate and house of representatives. Const. U. S. art, 1, s. 1. Congress is composed of two independent houses, 1, the senate; and 2, the house of representatives.—1. The senate is composed of two senators from each state, chosen by the legislature thereof for six years, and each senator has one vote. They represent the states rather than the people, as each state has its equal voice and equal weight in the senate, without any regard to the disparity of population, wealth or dimensions. The senate have been, from the first formation of the government, divided into three classes; and the rotation of the classes was originally determined by lot, and the seats of one class are vacated at the end of the second year, and one-third of the senate is chosen every second year. Const. U. S., art. 1, s. 3. This provision was borrowed from a similar one in some of the state constitutions, of which Virginia gave the first example. The qualifications of a senator which the constitution requires, are, that he should be thirty years of age, have been nine years a citizen of the United States, and, when elected, be an inhabitant of that state for which he shall be chosen. Art. 1, s. 3.—2. The house of representatives is composed of members chosen every second year by the people of the several states, who are qualified electors of the most numerous branch of the legislature of the state to which they belong. No person can be a representative until he has attained the age of twenty-five years, and has been seven years a citizen of the United States, and is, at the time of his election, an inhabitant of the state in which he is chosen. Const. U. S. art. 1, § 2. The constitution requires that the representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Art. 1, s. 2. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative. Ib.

Having shown how congress is constituted, it is proposed here to consider the privileges and powers of the two houses, both aggregately and separately.

Each house is made the judge of the election, returns, and qualifications of its own members. Art. 1, s. 5. As each house acts in these cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to, for the sake of uniformity and certainty. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each may provide. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member. Each house is bound to keep a journal of its proceedings, and from time to time, publish the same, excepting such parts, as may in their judgment, require secrecy; and to enter the yeas and nays on the journal, on any question, at the desire of one-fifth of the members present. Art. 1, s. 5. The members of both houses are in all cases, except treason, felony and breach of the peace, privi-

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leged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same. Art. 1, s. 6. These privileges of the two houses, are obviously necessary for their preservation and character; and, what is still more important to the freedom of deliberation, no member can be questioned in any other place for any speech or debate in either house. Ib. There is no express power given to either house to punish for contempts, except when committed by their own members, but they have such an implied power. 6 Wheat. R. 204. This power, however, extends no further than imprisonment, and that will continue no longer than the duration of the power that imprisons. The imprisonment will therefore terminate with the adjournment or dissolution of congress.

The house of representatives has the exclusive right of originating bills for raising revenue, and this is the only privilege that house enjoys in its legislative character, which is not shared equally with the other, and even those bills are amendable by the senate, in its discretion. Art. 1, s. 7. The two houses are an entire and perfect check upon each other, in all business appertaining to legislation; and one of them cannot even adjourn, during the session of congress, for more than three days, without the consent of the other, nor to any other place than that in which the two houses shall be sitting. Art. 1, s. 5.

The powers of congress extend generally to all subjects of a national nature. Congress are authorised to provide for the common defence and general welfare, and for that purpose, among other express grants, they have the power to lay and collect taxes, duties, imposts and excises; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; to establish an uniform rule of naturalization, and uniform laws of bankruptcies throughout the United States; to establish post offices and post roads; to promote the progress of science and the useful arts, by securing for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries; to constitute tribunals inferior to the supreme court; to define and punish piracies on the high seas, and offences against the laws of nations; to declare war; to raise and support armies; to provide and maintain a navy; to provide for the calling forth of the militia; to exercise exclusive legislation over the District of Columbia; and to give full efficacy to the powers contained in the constitution.

The rules of proceeding in each house are substantially the same; the house of representatives choose their own speaker; the vice-president of the United States, is, ex officio, president of the senate, and gives the casting vote when the members are equally divided. The proceedings and discussions in the two houses are generally in public.

The ordinary mode of passing laws is briefly this; one day's notice of a motion for leave to bring in a bill, in cases of a general nature, is required; every bill must have three readings before it is passed, and these readings must be on different days; and no bill can be committed and amended until it has been twice read In the house of representatives, bills, after being twice read, are committed to a committee of the whole house, when a chairman is appointed by the speaker to preside over the committee; the speaker leaves the chair, and takes a part in the debate

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as an ordinary member. When a bill has passed one house, it is transmitted to the other, and goes through a similar form, though in the senate there is less formality, and bills are often committed to a select committee, chosen by ballot. If a bill be altered or amended in the house to which it is transmitted, it is then returned to the house in which it originated, and if the two houses cannot agree, they appoint a committee to confer on the subject. When a bill is engrossed, and it has received the sanction of both houses, it is sent to the president for his approbation. If he approves of the bill he signs it. If he does not, it is returned, with his objections, to the house in which it originated, and that house enters the objections at large on their journal, and proceeds to re-consider it. If, after such re-consideration, two-thirds of the house agree to pass the bill, it is sent, together with the objections, to the other house, by which it is likewise re-considered, and if approved by two-thirds of that house, it becomes a law. But in all such cases, the votes of both houses are determined by yeas and nays, and the names of the persons voting for and against the bill, are to be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law. Art. 1, s. 7. See *House of Representatives; President; Senate; Veto;* Kent, Com. lecture xi.; Rawle on the Const. ch. ix.

CONJUNCTIVE, *contracts, wills, instruments.* A term in grammar used to designate particles which connect one word to another, or one proposition to another proposition. There are many cases in law, where the conjunctive *and* is used for the disjunctive *or*, and *vice versa*. An obligation is conjunctive when it contains several things united by a conjunction, to indicate that they are all equally the object of the matter or contract; for example, if I promise for a lawful consideration, to deliver to you my copy of the Life of Washington, my Encyclopœdia, and my copy of the History of the United States, I am then bound to deliver all of them and cannot be discharged by delivering one only. There are, according to Toullier, tom. vi. n. 686, as many separate obligations as there are things to be delivered, and the obligor may discharge himself pro tanto by delivering either of them, or in case of refusal the tender will be valid. It is presumed however that only one action could be maintained for the whole. But if the articles in the agreement had not been enumerated, I could not, according to Toullier, deliver one in discharge of my contract, without the consent of the creditor; as if, instead of enumerating the books above mentioned, I had bound myself to deliver all my books, the very books in question. Vide *Disjunctive*, *Item*, and the cases there cited; and also, 1 Bac. Ab. 650; 1 Bos. & Pull. 242.

CONJURATION, swearing together. It signifies a plot, bargain, or compact made by a number of persons under oath, to do some public harm. In times of ignorance this word was used to signify the personal conference which some persons were supposed to have had with the devil, or some evil spirit, to know any secret, or effect any purpose.

CONNECTICUT. The name of one of the original states of the United States of America. It was not until the year 1665 that the ter-

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ritory now known as the state of Connecticut was united under one government. The charter was granted by Charles the Second, in April, 1662, but as it included the whole colony of New Haven, it was not till 1665, that the latter ceased its resistance, when both the colony of Connecticut and that of New Haven agreed, and then they were indissolubly united and have so remained. This charter, with the exception of a temporary suspension, continued in force till the American revolution, and afterwards continued as a fundamental law of the state till the year 1818, when the present constitution was adopted. 1 Story on the Const. § 86–88. The constitution was adopted on the fifteenth day of September, 1818. The powers of the government are divided into three distinct departments, and each of them confided to a separate magistracy, to wit: those which are legislative, to one; those which are executive to another; and those which are judicial to another. Art. 2.—1st. The legislative power is vested in two distinct houses or branches, the one styled the senate, and the other, the house of representatives, and both together the general assembly. 1. The senate consists of twelve members chosen annually by the electors. 2. The house of representatives consists of electors residing in towns from which they are elected. The number of representatives is to be the same as at present practiced and allowed; towns which may be hereafter incorporated are to be entitled to one representative only. 2d. The executive power is vested in a governor and lieutenant-governor. 1. The supreme executive power of the state is vested in a governor, chosen by the electors of the state; he is to hold his office for one year from the first Wednesday of May, next succeeding his election, and until his successor be duly qualified. Art. 4, s. 1. The governor possesses the veto power, art. 4, s. 12. 2. The lieutenant-governor is elected immediately after the election of governor, in the same manner as is provided for the election of governor, who continues in office the same time and is to possess the same qualifications as the governor. Art. 4, s. 3. The lieutenant-governor, by virtue of his office, is president of the senate; and in case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment or absence from the state, the lieutenant governor exercises all the powers and authority appertaining to the office of governor, until another be chosen, at the next periodical election for governor, and be duly qualified; or until the governor impeached or absent shall be acquitted or return. Art. 4, s. 14. 3d. The judicial power of the state is vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly may from time to time ordain and establish; the powers of which courts shall be defined. A sufficient number of justices of the peace, with such jurisdiction, civil and criminal, as the general assembly may prescribe, are to be appointed in each county. Art. 5.

CONNIVANCE, is an agreement or consent, indirectly given, that something shall be done by another. The connivance of the husband to his wife's prostitution deprives him of the right of obtaining a divorce, or of recovering damages from the seducer. It may be satisfactorily proved by implication. 3 Hagg. R. 82; 2 Hagg. R. 376; Ib. 278; 3 Hagg. R. 58, 107, 119, 131, 312.

CONQUETS, *French law*. The name given to every acquisition which the husband and wife, jointly

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or severally make, during the conjugal community. Thus whatever is acquired by the husband and wife, either by his or her industry or good fortune, enures to the extent of one half for the benefit of the other. Merl. Rép. mot Conquêt; Merl. Quest. mot Conquêt. In Louisiana these gains are called *aquets*, (q. v.) Civ. Code of Lo. art. 2369.

CONQUEST, *feudal law*. This term was used by the feudists to signify *purchase*.

CONQUEST, *international law*, is the acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire. It is a general rule that where conquered countries, have laws of their own, these laws remain in force after the conquest, until they are abrogated, unless they are contrary to our religion or enact any *malum in se*; for in all such cases the laws of the conquering country shall prevail; for it is not to be presumed that laws opposed to religion or sound morals could be sanctioned. 1 Story, Const. § 150, and the cases there cited. The right which the English government claimed over the territory now composing the United States was not founded on conquest but discovery. Ib. § 152 et seq.

CONSANGUINITY is the relation subsisting among all the different persons descending from the same stock, or common ancestor. 2 Bl. Com. 202; Toull. Dr. Civ. Fr. liv. 3, t. 1, ch. 3, n. 115. Some portion of the blood of the common ancestor flows into the veins of all his descendants, and though mixed with the blood flowing from many other families, yet it constitutes the kindred or alliance by blood between any two of the individuals. This relation by blood is of two kinds, lineal and collateral.

Lineal consanguinity is that relation which exists among persons, where one is descended from the other, as between the son and the father or the grandfather, and so upwards in a direct ascending line; and between the father and the son, or the grandson, and so downwards in a direct descending line. Every generation in this direct course makes a degree, computing either in the ascending or descending line. This being the natural mode of computing the degrees of lineal consanguinity, it has been adopted by the civil, the canon, and the common law.

Collateral consanguinity is the relation subsisting among persons who descend from the same common ancestor, but not from each other. It is essential to constitute this relation, that they spring from the same common root or stock, but in different branches. The mode of computing the degrees is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree, because from the father to each of them is one degree. An uncle and a nephew are related to each other in the second degree, because the nephew is two degrees distant from the common ancestor, and the rule of computation is extended to the remotest degrees of collateral relationship. This is the mode of computation by the common and canon law. The method of computing by the civil law, is to begin at either of the persons in question, and count up to the common ancestor, and then downwards to the other person, calling it a degree for each person, both ascending and descending, and the degrees they

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stand from each other, is the degree in which they stand related. Thus from a nephew to his father is one degree, to the grandfather two degrees, and then to the uncle three, which points out the relationship. The mode of the civil law is preferable, for it points out the actual degree of kindred in all cases; by the mode adopted by the common law, different relations may stand in the same degree. The uncle and nephew stand related in the second degree by the common law, and so are two first cousins, or two sons of two brothers; but by the civil law the uncle and nephew are in the third degree, and the cousins are in the fourth. The mode of computation, however, is immaterial, for both will establish the same person to be the heir. 2 Bl. Com. 202; 1 Swift's Dig. 113; Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 3, n. 115. Vide *Degree*, *Line*, *Branch*.

CONSCIENCE. The moral sense, or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong. The constitution of the United States wisely provides that "no religious test shall ever be required." No man, then, or body of men, have a right to control a man's belief or opinion in religious matters, or to forbid the most perfect freedom of inquiry in relation to them, by force or threats, or by any other motives than arguments or persuasion. Vide Story, Const. § 1841–1843.

CONSENT, is an agreement to something proposed, and differs from assent, (q. v.) Wolff, Ins. Nat. part 3, § 1054. Consent is either express or implied. Express when it is given viva voce, or in writing; implied, when it is manifested by signs, actions or facts, or by inaction or silence, which raise a presumption that consent has been given.—1. When a legacy is given with a condition annexed to the bequest, requiring the consent of executors to the marriage of the legatee, and under such consent being given a mutual attachment has been suffered to grow up, it would be rather late to state terms and conditions on which a marriage between the parties should take place, 2 Ves. & Beames, 234; Ambl. 264; 2 Freem. 201; unless such consent was obtained by deceit or fraud, 1 Eden, 6; 1 Phillim. 300; 12 Ves. 19.—2. Such a condition does not apply to a *second* marriage. 3 Bro. C. C. 145; 3 Ves. 230.—3. If the consent has been substantially given, though not *modo et forma*, the legatee will be held duly entitled to the legacy. 1 Sim. & Stu. 172; 1 Meriv. 187; 2 Atk. 265.—4. When trustees under a marriage settlement are empowered to sell "with the consent of the husband and wife," a sale made by the trustees without the distinct consent of the wife, cannot be a due execution of their power. 10 Ves. 378.—5. Where a power of sale requires that the sale should be with the consent of certain specified individuals, the fact of such consent having been given, ought to be evidenced in the manner pointed out by the creator of the power, or such power will not be considered as properly executed. 10 Ves. 308. Vide, generally, 2 Supp. to Ves. jr. 161, 165, 169; Ayliff's Pand. 117; 1 Rop. Leg. 345, 539.

CONSEQUENTIAL DAMAGES, *torts*, are those damages or those losses which arise, not from the immediate act of the party, but in consequence of such act; as, if a man throw a log in the public streets, and another fall on it and becomes injured by the fall: or if a man should erect a dam over his own ground, and by that means overflow his neighbour's to his injury. The form of action

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to be instituted for consequential damages caused without force, is by action on the case. 3 East, 602; 1 Stran. 636; 5 T. R. 649; 5 Vin. Ab. 403; 1 Chit. Pl. 127.

CONSERVATOR, a preserver, a protector. Before the institution of the office of justices of the peace in England, the public order was maintained by officers who bore the name of conservators of the peace. All judges, justices, sheriffs and constables are conservators of the peace, and are bound, ex officio, to be aiding and assisting in preserving order.

CONSIDERATIO CURIÆ, *practice*, is the judgment of the court. In pleadings where matters are determined by the court it is said, therefore it is considered and adjudged by the court, *ideo consideratum est per curiam.*

CONSIDERATION, *contracts*, is the compensation which is paid, or inconvenience suffered by the party from whom it flows. Or it is the reason which moves the contracting party to enter into the contract. 2 Bl. Com. 443. Viner defines it to be a cause or occasion meritorious, requiring a mutual recompense in deed or in law. Abr. tit. Consideration, A. A consideration of some sort or other is so absolutely necessary to the forming a good contract, that a *nudum pactum*, or an agreement to do or to pay any thing on one side, without any compensation to the other, is totally void in law; and a man cannot be compelled to perform it. Dr. & Stud. d. 2, c. 24. But contracts under seal are valid without a consideration; and negotiable instruments, as bills of exchange and promissory notes carry with them prima facie evidence of consideration. 2 Bl. Com. 445.

The consideration must be some benefit to the party by whom the promise is made, or to a third person at his instance; or some detriment sustained at the instance of the party promising, by the party in whose favour the promise is made. 4 East, 455; 1 Taunt. 523; Chitty on Contr. 7; Dr. & Stu. 179; 1 Selw. N. P. 39, 40.

Considerations are good, as, when they are for natural love and affection; or valuable, where some benefit arises to the party to whom they are made, or inconvenience to the party making them; Vin. Abr. Consideration, B.

They are legal, which are sufficient to support the contract; or illegal, which render it void. As to illegal considerations, see 1 Hov. Supp. to Ves. jr. 295; 2 Hov. Supp. to Ves. jr. 448. If the performance be utterly impossible, in fact or in law, the consideration is void. 2 Lev. 161; Yelv. 197, and note; 3 Bos. & Pull. 296, n.; 14 Johns. R. 381.

A mere *moral* obligation to pay a debt or perform a duty, is a sufficient consideration for an express promise, although no legal liability existed at the time of making such promise. Cowp. 290; 2 Bl. Com. 445; 3 Bos. & Pull. 249, note; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; 13 Johns. R. 259; Yelv. 41, b, note; 3 Pick. 207.

In respect of time a consideration is either, 1st, executed, or something done before the making of the obligor's promise; Yelv. 41, a. n.; 2dly, executory or something to be done after such promise; 3dly, concurrent, as in the case of mutual promises; and, 4thly, a continuing consideration. Chitty on Contr. 16.

As to cases where the contract has been set aside on the ground of a total failure of the consideration, see 11 Johns. R. 50; 7 Mass. 14; 3 Johns. R. 458; 8 Mass. 46; 6 Cranch, 53; 2 Caine's Rep. 246; and 1 Camp. 40, n.

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See, in general, *Obligation, New Promise;* Evans's Poth. vol. ii. p. 19; 1 Fonb. Eq. 335; Newl. Contr. 65; 1 Com. Contr. 26; Fell on Guarrant. 337; 3 Chit. Com. Law, 63 to 99; 3 Bos. & Pull. 249, n; 1 Fonb. Eq. 122, note z; Ib. 370, note g; 5 East, 20, n.; 1 Saund. 211, note 2; Lawes Pl. Ass. 49; 1 Com. Dig. Action upon the case upon Assumpsit, B; Vin. Abr. Actions of Assumpsit, Q; Ib. tit. Consideration.

CONSIGNATION, *contracts*, in the civil law, is a deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. Poth. Oblig. P. 3, c. 1, art. 8. Generally the consignation is made with a public officer; it is very similar to our practice of paying money into court. The term to consign, or consignation, is derived from the latin *consignare*, which signifies to seal, for it was formerly the practice to seal up the money thus received in a bag or box.

CONSIGNEE, *contracts*, one to whom a consignment is made. When the goods consigned to him are his own, and they have been ordered to be sent, they are at his risk the moment the consignment is made according to his direction; and the persons employed in the transmission of the goods are his agents. 1 Liverm. on Ag. 9. When the goods are not his own, if he accept the consignment, he is bound to pursue the instructions of the consignor; as if the goods be consigned upon condition that the consignee will accept the consignor's bills, he is bound to accept them; Ib. 139; or if he is directed to insure, he must do so. Ib. 325. It is usual in bills of lading to state that the goods are to be delivered to the consignee or his assigns, he or they paying freight; in such case the consignee or his assigns by accepting the goods, by implication, become bound to pay the freight. Abbott on Sh. p. 3, c. 7, § 4; 3 Bing. R. 383.

CONSIGNOR, *contracts*, is one who makes a consignment to another. When goods are consigned to be sold on commissions, and the property remains in the consignor; or when goods have been consigned upon a credit, and the consignee has become a bankrupt or failed, the consignor has a right to stop them *in transitu*, (q. v.) Abbott on Sh. p. 3, c. 9, § 1. The consignor is generally liable for the freight or the hire for the carriage of goods. 1 T. R. 659.

CONSILIUM, or *dies consilii*, *practice*, a time allowed for the accused to make his defence, and now more commonly used for a day appointed to argue a demurrer.

CONSISTORY, *ecclesiastical law*. A court which was formerly held among protestants, in some church in which the bishop presided, assisted by some of his clergy. It is now held in England, by the bishop's chancellor or commissary, and some other ecclesiastical officers, either in the cathedral, church or other place in his diocese, for the determination of ecclesiastical cases arising in that diocese. Merl. Rép. h. t.; Burn's Dict. h. t.

CONSOLIDATION, *civil law*, is the union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or vice versa. In either case the usufruct is extinct. In the common law this is called a merger.

CONSOLIDATION RULE, *practice, com. law*. When a number of actions are brought on the same policy, it is the constant practice, for the purpose of saving costs to consolidate them by a rule of

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court or a judge's order, which restrains the plaintiff from proceeding to trial in more than one, and binds the defendants in all the others to abide the event of that one; but this is done upon condition that the defendant shall not file any bill in equity, or bring any writ of error for delay. 2 Marsh. Ins. 701. For the history of this rule, vide Park on Ins. xlix.; Marsh. Inst. B. 1, c. 16, s. 4. And see 1 John. Cas. 29. The term consolidation seems to be rather misapplied in those cases, for in point of fact there is a mere stay of proceedings in all those cases but one, 3 Chit. Pr. 644. The rule is now extended to other cases: when several actions are brought on the same bond against several obligors, an order for a stay of proceedings in all but one will be made. 3 Chit. Pr. 645; 3 Carr. & P. 58.

CONSPIRACY, *crim. law, torts.* An agreement between two or more persons to do an unlawful act, or any of those acts which become by the combination injurious to others. Formerly this offence was much more circumscribed in its meaning than it is now. Lord Coke describes it as "a consultation or agreement between two or more to appeal or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed; and afterwards the party is acquitted by the verdict of twelve men." The crime of conspiracy, according to its modern interpretation, may be of two kinds, namely, conspiracies against the public, or such as endanger the public health, violate public morals, insult public justice, destroy the public peace, or affect public trade or business. To remedy these evils the guilty persons may be indicted in the name of the commonwealth: conspiracies against individuals are such as have a tendency to injure them in their persons, reputation or property. The remedy in these cases is either by indictment or by a civil action. In order to render the offence complete there is no occasion that any act should be done in pursuance of the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it; the conspiracy is the gist of the crime.—By st. 1825, c. 76, § 23, 3 Stor. L. U. S., 2006, a wilful and corrupt conspiracy to cast away, burn or otherwise destroy any ship or vessel, with intent to injure any underwriter thereon, or on the goods on board thereof, or any lender of money on such vessel, on bottomry or respondentia, is, by the laws of the United States, made felony, and the offender punishable by fine not exceeding ten thousand dollars, and by imprisonment and confinement at hard labour, not exceeding ten years.—By the Revised Statutes of New York, vol. 2, p. 691, 692, it is enacted, that if any two or more persons shall conspire, either, 1, To commit any offence; or, 2, Falsely and maliciously to indict another for any offence; or, 3, Falsely to move or maintain any suit; or, 4, To cheat and defraud any person of any property by any means which are in themselves criminal; or, 5, To cheat and defraud any person of any property, by means which, if executed, would amount to a cheat, or to obtaining property by false pretences; or, 6, To commit any act injurious to the public health, to public morals, or to trade and commerce, or for the perversion or obstruction of justice, or the due administration of the laws; they shall be deemed guilty of a misdemeanor. No other conspiracies are there punishable criminally. And no agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy,

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unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement. Vide 1 Hawk. 444 to 454; 3 Chit. Cr. Law, 1138 to 1193; 3 Inst. 143; Com. Dig. Justices of the Peace, B 107; Burn's Justice, Conspiracy; William's Justice, Conspiracy; 4 Chit. Blacks. 92; Dick. Justice, Conspiracy; 1 Bac. Ab. 94; 2 Russ. on Cr. 553 to 574; 2 Mass. 329; Ib. 536; 5 Mass. 106; 2 Day, 205; Whart. Dig. Conspiracy; 3 Serg. & Rawle, 220; 7 Serg. & Rawle, 469; 4 Halst. R. 293; 5 Harr. & Johns. 317; 4 Wend. 229; 2 Stewart's R. 360. For the French law, see Merl. Rép. mot Conspiration; Code Pénal, art. 89.

CONSTABLE, is an officer, generally elected by the people. He possesses power, virtute officii, as a conservator of the peace at common law and by virtue of various legislative enactments; he may therefore apprehend a supposed offender without a warrant, for treason, felony, breach of the peace and some misdemeanors less than felony, when committed in his view. 1 Hale, 587; 1 East, P. C. 303; 8 Serg. & Rawle, 47. He may also arrest a supposed offender upon the information of others, without any positive charge or his own knowledge of the circumstances on which the suspicion is founded; but he does so at his peril, unless he can show that a felony has been committed by some person, as well as the reasonableness of the suspicion that the party arrested is guilty. 1 Chit. Cr. L. 27; 6 Binn. R. 316; 2 Hale, 91, 92; 1 East, P. C. 301. He has power to call others to his assistance. A constable is also a ministerial officer, bound to obey the warrants and precepts of justices, coroners and sheriffs. Constables are also in some states bound to execute the warrants and process of justices of the peace in civil cases. In England they have many officers, with more or less power, who bear the name of constables; as, lord high constable of England, high constables, head constables, petty constables, constables of castles, constables of the tower, constables of the fees, constable of the exchequer, constable of the staple, &c. In some of the cities of the United States there are officers who are called high constables, who are the principal police officers where they reside. Vide the various Digests of American law, h. t.; 1 Chit. Cr. L. 20; 5 Vin. Ab. 427; 2 Phil. Ev. 253; 2 Sell. Pr. 70; 1 Bac. Ab. 683; Com. Dig. Justices of the Peace, (B 79); Ib. (D 7); Ib. Officer, (E 2.)

CONSTAT, *English law.* The name of a certificate, which the clerk of the pipe and auditors of the exchequer make at the request of any person who intends to plead or move in the court for the discharge of any thing; and the effect of it is, the certifying what *constat* (appears) upon record touching the matter in question. A *constat* is held to be superior to an ordinary certificate, because it contains nothing but what is evident on record. An exemplification under the great seal, of the enrolment of any letters-patent is called a *constat*. Co. Litt. 225.

CONSTITUENT, he who gives authority to another to act for him. The constituent is bound with whatever his attorney does by virtue of his authority. The electors of a member of the legislature are his constituents, to whom he is responsible for his legislative acts.

CONSTITUTION, *in government*, is the fundamental law of the state, containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what

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persons each of these powers is to be confided, and the manner it is to be exercised; as, the constitution of the United States. See Story on the Constitution; Rawle on the Const. The words constitution and government (q. v.) are sometimes employed to express the same idea, the manner in which sovereignty is exercised in each state. Constitution is also the name of the instrument containing the fundamental laws of the state. By constitution the civilians, and, from them, the common law writers mean some particular law; as the constitutions of the emperors contained in the Code.

CONSTITUTIONAL, — that which is consonant to, and agrees with the constitution. When laws are made in violation of the constitution, they are null and void: but the courts will not declare such a law void unless there appears to be a clear and unequivocal breach of the constitution. 4 Dall. R. 14; 3 Dall. R. 399; 1 Cranch, R. 137; 1 Binn. R. 415; 6 Cranch, R. 87, 136; 2 Hall's Law Journ. 96, 255, 262; 3 Hall's Law Journ. 267; Wheat. Dig. tit. Constitutional Law.

CONSTITUTED AUTHORITIES. Those powers which the constitution of each people has established to govern them, to cause their rights to be respected, and to maintain those of each of its members. They are called *constituted* to distinguish them from the *constituting* authority which has created or organised them, or has delegated to an authority, which it has itself created, the right of establishing or regulating their movements. The officers appointed under the constitution are also collectively called the constituted authorities.

TO CONSTITUTE, *contr.* To empower, to authorise. In the common form of letters of attorney, these words occur, "I nominate, constitute and appoint."

CONSTRUCTION, *practice*, is defined by Mr. Powell to be "the drawing an inference by the act of reason, as to the intent of an instrument, from given circumstances, upon principles deduced from men's general motives, conduct and action." This definition may perhaps not be sufficiently complete, inasmuch as the term *instrument* generally implies something reduced into writing, whereas construction is equally necessary to ascertain the meaning of engagements merely verbal. In other respects it appears to be perfectly accurate. The Treatise of Equity, defines interpretation to be the collection of the meaning out of signs the most probable. 1 Powell on Con. 370,

For general rules respecting the construction of contracts, see 2 Bl. Com. 379; 2 Com. on Cont. 23 to 28; 3 Chit. Com. Law, 106 to 118; Poth. Oblig. P. 1, c. 1, art. 7; 2 Evans's Poth. Ob. 35; Long on Sales, 106; 1 Fonb. Eq. 145, n. b; Ib. 440, n. l; Whart. Dig. Contract, F; 1 Powell on Contr. 370; Sheph. Touchst. c. 5; Louis. Code, art. 1940 to 1957; Com. Dig. Merchant, (E 2,) n. (j,); 8 Com. Dig. tit. Contract, iv.; Lilley's Reg. 794; 18 Vin. Abr. 272, tit. Reference to Words; 16 Vin. Abr. 199, tit. Parols; Hall's Dig. 33, 339; 1 Ves. Jun. 210, n; Louis. Code, art. 1940 to 1957; Vattel, B. 2, c. 17; Chit. Contr. 19 to 22; 4 Kent, Com. 419; Story's Const. § 397–456; Ayl. Pand. B. 1, t. 4; Rutherf. Inst. B. 2, c. 7, § 4–11.

As to the construction of wills, see 1 Supp. to Ves. Jr. 21, 39, 56, 63, 228, 260, 273, 275, 364, 399; 1 United States Law Journ. 583; 2 Fonb. Eq. 309; Com. Dig. Estates by Devise, (N 1.); 6 Cruise's Dig. 171; Whart. Dig. Wills, D.

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As to the construction of laws, see Louis. Code, art. 13 to 21; Bac. Ab. Statutes, J.

The following examples of construction, it is believed, will be useful to the student.

A slave set at liberty. 3 Conn. R. 467.

Abbreviations. 4 C. & P. 51; S. C. 19 Engl. C. L. R. 268.

About. 2 Barn. & Adol. 106; 22 E. C. L. R. 36. *About — dollars.* 5 Serg. & Rawle, 402.

Absolute disposal. 2 Eden, 87; 1 Bro. P. C. 476; 2 Johns. R. 391; 12 Johns. R. 389.

Acceptance. There is your bill, it is all right. 1 Esp. 17. If you will send it to the counting-house again, I will give directions for its being accepted. 3 Camp. 179. What, not accepted? we have had the money, and they ought to have been paid, but I do not interfere, you should see my partner. 3 Bing. R. 625; S. C. 13 Eng. C. L. R. 78. The bill shall be duly honoured, and placed to the drawer's credit. 1 Atk. 611. Vide Leigh's N. P. 420.

According to their discretion. 5 Co. 100; 8 How. St. Tr. 55 n.

Account. 5 Cowen, 593. Account closed. 8 Pick. 191. Account stated. 8 Pick. 193.

Account and risk. 4 East, 211; Holt on Sh. 376.

Act of God. 1 Cranch, 345; 22 E. C. L. R. 36; 12 Johns. R. 44; 4 Add. Eccl. R. 490.

Acts. Platt on Cov. 334.

Actual cost. 2 Mason, R. 48, 393.

Adjoining. 1 Turn. R. 21.

Advantage, priority or preference, 4 W. C. C. R. 447.

Adverse possession. 3 Watts, 70, 77, 205, 345; 3 Penna. R. 134; 2 Rawle's R. 305; 17 Serg. & Rawle, 104; 2 Penna. R. 183; 3 Wend. 337, 357; 4 Wend. 507; 7 Wend. 62; 8 Wend. 440; 9 Wend. 523; 15 Wend. 597; 4 Paige, 178; 2 Gill & John. 173; 6 Pet. R. 61, 291; 11 Pet. R. 41; 4 Verm. 155; 14 Pick. 461.

Advice. As per advice. Chit. Bills. 185.

Affecting. 9 Wheat. 855.

Aforesaid. Ld. Raym. 256; Ib. 405.

After paying debts. 1 Ves. jr. 440; 3 Ves. 738; 2 Johns. Ch. R. 614; 1 Bro. C. C. 34; 2 Sch. & Lef. 188.

Aged, impotent and poor people. Preamble to stat. 43 Eliz. c. 4; 17 Ves. 373 in notes; Amb. 595; 7 Ves. 423; Scho. & Lef. 111; 1 P. Wms. 674; S. C. Eq. Cas. Ab. 192, pl. 9; 4 Vin. Ab. 485; 7 Ves. 98, note; 16 Ves. 206; Duke's Ch. Uses, by Bridgman, 361; 17 Ves. 371; Boyle on Charities, 31.

Agreed. 1 Rolle's Ab. 518.

Agreement. 7 E. C. L. R. 331; 3 B. & B. 14; Fell on Guar. 262. Of a good quality and moderate price. 1 Mo. & Malk. 483; S. C. 22 E. C. L. R. 363.

All. 1 Vern. 3; 3 P. Wms. 56; 1 Vern. 341; Dane's Ab. Index, h. t.

All debts due to me. 1 Meriv. 541, n.; 3 Meriv. 434.

All I am worth. 1 Bro. C. C. 487; 8 Ves. 604.

All I am possessed of. 5 Ves. 816.

All my clothes and linen whatsoever. 3 Bro. C. C. 311.

All my household goods and furniture, except my plate and watch. 2 Munf. 234.

All my estate. Cowp. 299; 9 Ves. 604.

All my real property. 18 Ves. 193.

All my freehold lands. 6 Ves. 642.

All and every other my lands, tenements and hereditaments. 8 Ves. 256; 2 Mass. 56; 2 Caine's R. 345; 4 Johns. R. 388.

All the inhabitants. 2 Conn. R. 20.

All sorts of. 1 Holt's N. P. R. 69.

All business. 8 Wendell, 498; 23 E. C. L. R. 398.

All claims and demands whatsoever. 1 Edw. Ch. R. 34.

All actions. 5 Binn. 457.

Also. 4 Rawle R. 69.

Amongst. 9 Ves. 445; 9 Wheat. R. 164; 6 Munf. 352.

And, construed *or*. 3 Ves. 450; 7 Ves. 454; 1 Supp. to Ves. jr. 435; 2 Supp. to Ves. jr. 9, 43, 114; 1 Yeates, 41, 319; 1 Serg. & Rawle, 141. Vide *Disjunction, Or.*

Any person or persons. 11 Wheat. R. 392; 3 Wheat. R. 631.

Any court of record. 6 Co. 19.

Any goods. 3 Campb. 321.

Any creditor. 5 B. & A. 869.

Any other matter or thing from the beginning of the world. 4 Mason, 227.

Apparel. Goods and wearing apparel, in a will, 3 Atk. 61.

Approved paper. 4 Serg. & Rawle, 1.

Appurtenances. 1 Serg. & Rawle, 169; 8 Johns. R. 47, 2d edit.; Com. Dig. Grant, E 9, 5 Serg. & Rawle, 110; Holt on Shipp. 404.

Are. 2 B. & B. 223.

Assignment, actual or potential. 5 M. & S. 228.

At. 2 Caine's Err. 158.

At and from. 1 Marsh. Ins. 358, 261, a; 1 Caine's R. 75, 79; 1 New Rep. 23; 4 East, 130.

At any port or places. 1 Marsh. Ins. 191.

At such time and manner. 19 Ves. 387.

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At twenty-one. Payable at twenty-one. 6 Ves. 245; 7 Ves. 421; 9 Ves. 225; 1 Bro. C. C. 91.

At the trial of the cause. 9 E. C. L. R. 202, 186.

Attention shall meet. 3 E. C. L. R. 407; 13 Id. 329.

Balance due on general account. 3 Pet. R. 430.

Bank notes. 5 Mason's R. 549; 6 Wend. 346, 354.

Bankruptcy. 6 T. R. 684.

Bearing interest. 1 Stark. R. 452; 2 E. C. L. R. 466.

Before the next term. 1 Binn. 76; 4 Yeates, 511.

Before the first day of the term after the action has been commenced. 4 Dall. 433.

Belongs—Belonging. 3 Conn. R. 467; 2 Bing. 76; Chit. Pr. 475 n.

Benefits of my real estate, construed, 4 Yates, 23.

Benevolent purposes. 3 Mer. 17; Amb. 585, n. (Blunt's edit.)

Best of his knowledge and belief. 1 Paige, 404; 3 Ib. 107, 212.

Between. 2 Saund. 158 b. n. 6; 1 Shipl. R. 201; 1 Mass. 91.

Between them. 2 Meriv. 70.

Beyond seas. 3 Wheat. 343; 9 S. & R. 291.

Bona fide. 1 Leigh, N. P. 326.

Bound by surety. 5 Serg. & Rawle, 329. Bound *with* surety, 6 Binn. 53.

Bounded on the margin. 6 Cowen, 526.

Business. 1 M. & Selw. 95.

By act and operation of law. 3 Caine's R. 64. By surety. 5 Serg. & Rawle, 329. By a certain time. 3 Penna. R. 48. By any other means. 2 Co. 46. By virtue of his office. 3 E. C. L. R. 425.

Cargo. 4 Pick. 433; 2 Gill & John. 134, 162.

Cause. 1 Supp. to Ves. jr. 510. Cause of action. Wilk. on Lim. [49].

Cease. Coop. Ch. R. 145.

Charged in execution. 4 T. R. 367.

Charges, costs, and expenses. 2 Wils. 267; 13 Serg. & Rawle, 79.

Charitable uses. Boyle on Charities, 281; 7 Ves. 79; 1 Mer. 86, 92, 93; 1 Sim. & Stu. 69; 1 Myl. & Craig. 286; 4 Wheat. App. p. 6.

Charity. 9 Ves. 399.

Chiefest and discreetest. 14 Ves. 13.

Child, grandchild, issue, son; see *Legatee*; 1 Ves. 290; Ib. 335; Ambl. 397; Ib. 701; 5 Burr. 2703; Cowp. 314; 3 Anstr. 684; Lofft, 19; 7 T. R. 322; 1 East, 120; 2 Eden, 194; 2 Bro. C. C. 33; 2 Ves. jr. 673; 3 Ves. 232; Ib. 421; 4 Ves. 437; Ib. 692; 5 Ves. 530; 6 Ves. 43; Ib. 345; 7 Ves. 522; 10 Ves. 166; Ib. 176; Ib. 195; 13 Ves. 340; 1 Cox, 248; Ib. 327; 2 Cox, 184; 1 Ves. & Bea. 422, 462, 469; 2 Ves. & Bea. 313; 3 Ves. & Bea. 59, 67, 69, 113; 1 Meriv. 654; 2 Meriv. 382; Dick. 344; 1 Eden, 64; 1 Bro. C. C. 530; 2 Bro. C. C. 68, 230, 658; 3 Bro. C. C. 148, 347, 352, 434; 1 Bro. C. C. 55; 19 Ves. 125; 1 Ball. & B. 486; Com. Dig. App., Devise of Real property, x. 5, 6, 7, 8, 9; Ib. Devise of personal property, viii. 13.

Children. 3 Paige, 10; 5 Ves. 530; 1 Ves. & Bea. 434; 4 Eng. Ch. R. 565; 5 Conn. R. 228. To such child or children, if more than one, as A may happen to be enciente by me. 17 Ves. 528. To the children which I may have by A, living at my decease. 1 Ves. & Bea. 422.

Civil action. 6 Binn. 5; 1 Binn. 197.

Clear of all charges and assessments whatever. 4 Yeates, 386.

Closing an account. 7 Serg. & Rawle, 128; 8 Pick. 187.

Clothes. All my clothes and linen whatsoever. 3 Bro. C. C. 311.

Come to. 1 Serg. & Rawle, 224; 2 Pet. R. 69, 94.

Commenced. 14 East, 539.

Commodities. 12 Mass. 256.

Concealed. 12 Wheat. 493.

Conclusive. 5 Binn. 387; 6 Binn. 128; 4 Yeates, 551.

Confidence. Boyle on Char. 319.

Consentable lines. 10 Serg. & Rawle, 114.

Convenient speed, or as soon as convenient. 19 Ves. 336, 390, notes. 1 Ves. jr. 366.

Conveyance. 2 Serg. & Rawle, 498.

Convicted. 1 Wheat. 461.

Copper-fastened. 24 E. C. L. R. 415.

Cost. 2 Wash. C. C. R. 498.

Costs. Pay his own cost. 1 Hayw. 485.

Court of record. 5 Ohio R. 546. Vide 3 Wend. 267.

Covenants. Provided always, and it is agreed that the lessor shall find great timber. Bac. Ab. Covenant, A. I oblige myself to pay so much money. Hard. 178. I am content to give A ten pounds at Michaelmas, and ten pounds at Lady-day. 3 Leon. 119. With usual covenants. 15 Ves. 528; 3 Anstr. 700.

Credit. Mutual credit. 1 Atk. 228. 7 T. R. 378. Montag. on Set-off 48. 8 Taunt. 22. S. C. 4 Eng. C. L. R. 4. 1 Marsh. R. 190, S. C. 4 Eng. C. L. 335.

Creditors and subsequent purchasers. 5 Cranch, 165.

Cross. 5 Pick. 163.

Current money. 1 Dall. 126, 176.

Damages. 5 Cowen, 161.

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Day, (fraction of) 1 Cowen, 594; 6 Cowen, 611; 1 Nott & McC. 405; 3 Penna. R. 245.

Death. Swanst. 161.

Debt, contracted. 2 B. & C. 762; 9 E. C. L. R. 236.

Default. Platt on Cov. 335.

Definitive. 1 Watts, 257.

Delivered. 7 D. & R. 131; 16 E. C. L. R. 277.

Demise. 2 Caine's R. 188; 8 Cowen's R. 36; 4 Taunt. 329.

To depart. 3 M. & S. 461.

Depending. 5 Co. 47, 48; 7 Co. 30; 9 B. & C. 755; 4 Bing. 561; 8 B. & C. 635.

Demands in full. 9 S. & R. 123.

Descendants. 3 Bro. C. C. 367.

Descent. 2 Pet. R. 94; 1 S. & R. 224; 11 S. & R. 232.

Desire. 1 Caine's R. 84; 1 Bro. C. C. 489.

Deviation. 3 Ch. Com. L. 471.

Devise. All messuage, lands, 17 Ves. 64.

Discharge. Her receipt to be a sufficient discharge. 3 Bro. C. C. 362.

Discount. Discounted. 15 Johns. 168; 8 Wheat. 338; 4 Yeates, 223; 2 Cowen, 376; 19 Johns. 332.

Dispose of. 1 Watts, 386; 3 Atk. 287; Rob. on Wills, 3, Appx. note 3.

Distribute. 11 S. & R. 232.

Divide. Boyle on Charities, 291.

Do the needful. 4 Esp. 65.

Due course of law. 3 Cranch, 300; 5 Cranch, 363; 1 Wheat. 447.

Due A B. 2 Penna. R. 67.

Duly honoured. 7 Taunt. 167; 2 E. C. L. R. 63.

Dying without children. 5 Day, 517.

Dying without issue. 12 East, 253; 3 East, 302, 491; 1 Ves. Jr. 562; 10 Ves. 562; 17 Ves. 482.

Dying without lawful issue. 10 Johns. R. 12; 5 Day, 20; 2 Bro. C. C. 553.

Each. 1 B. & C. 682; 8 C. & R. 184.

Effects. 13 Ves. 39; 15 Ves. 326, 507; Cowp. 299. Estates and effects. 1 Ves. & Beam. 406; 1 East, R. 53; 11 East, 290.

Engagement. 15 John. 385, 390.

Entreat. 2 Madd. 458; 2 Ves. & Bea. 378.

Equally to be divided, this phrase construed. 1 Rop. Leg. 266; 1 Atk. 494; 3 Bro. C. C. 25; 5 Ves. 510.

Erect. 8 Ves. 191; 3 Mad. R. 306.

Errors excepted. Gow. on Partn. 136; 3 Bro. C. C. 266.

Establishing. 3 Madd. R. 306; Boyle on Char. 93; 2 Cox, 387; S. C. 4 Bro. C. C. 326.

Estate. 3 Cranch, 97; 3 Yeates, 187; 6 Binn. 97; 2 Binn. 20; 6 Johns. R. 185; 1 Wash. R. 96; 1 Call, 127; 3 Call, 306; 2 Nott & M'Cord, 380; 1 Dall. 226; 12 Serg. & Rawle, 54; 1 Yeates, 250, 380; 1 Salk. 236; 6 T. R. 610; 11 East, 246; 2 Ves. & Bea. 222; 2 Atk. 38; 3 Atk. 486; Ambl. 155, 216; 12 Mod. 592; 1 T. R. 659, n; 8 Ves. 604; 9 Ves. 137; 1 Cox, 362; 2 Ves. & Bea. 225; 18 Ves. 195; 3 Ves. & Bea. 160. Estate and Effects. 1 Ves. & Bea. 406. Temporal estate. 8 Ves. 617.

Evidence. Conclusive evidence. 1 Leigh's N. P. 307.

Expectation. Boyle on Char. 319.

Expenses. 15 Serg. & Rawle, 55.

Extend. 1 Paine's R. 385.

Falsely. 2 M. & Selw. 379.

Family. Cooper's R. 117; 8 Ves. 604.

Farm. 6 T. R. 345.

Father, on the part of the. 1 Serg. & Rawle, 224.

Final. Final and conclusive. 5 Binn. 387; 6 Binn. 128. Final judgment. 2 Pet. R. 264. Final decree. 8 Wend. 242. Final settlement and decree. 4 Am. Dig. 283; 1 Halst. 195; 17 Serg. & Rawle, 59, 340; 14 Serg. & Rawle, 396; 1 Penna. R. 282; 2 Pet. R. 464.

First had and obtained. 1 Serg. & Rawle, 89.

For such times as we think fit. 1 Chit. Com. Law, 495.

For whom it may concern. 1 Pet. R. 151.

Foreign part, place. 2 Gall. R. 4. Foreign voyage. 1 Gall. R. 55, 142. Foreign part. 19 Johns. 375; 4 Am. Law Journ. 101.

Foreigner. 1 Pet. R. 349.

Forever. 6 Cruise, 281; 4 Dane's Ab. c. 129, art. 2, § 14.

Forthwith. 1 Mo. & Malk. 300; S. C. 22 E. C. L. R. 313.

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Gift. I give this note to A. 4 Ves. 565. I return to A his bond. 3 Ves. 231.

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Lawful. Lawful heir. 2 T. R. 720. Lawful deed of conveyance. 2 Serg. & Rawle, 498. Lawful money. 1 Yeates, 349; 1 Dall. 126, 176. Shall be lawful, 2 D. & R. 172; 4 B. & A. 271; 1 B. & C. 35, 8.

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My seven children, naming only *six.* 2 Cox. R. 184.

My property. 17 Johns. R. 281.

My house, and all that shall be in it at my death. 1 Bro. C. C. 129, n; 11 Ves. 662.

My right heirs on the part of my mother. 4 Ves. 766.

Name and blood. 15 Ves. 92.

Navigable river. 6 Cowen, 528.

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Next of kin, or heir at law. 4 Ves. 469.

Next of kin in equal degree. 12 Ves. 433.

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Office, or public trust. 2 Cowen, 29 n.; 20 Johns. 492.

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Person liable. Eden's Bankr. Law, 146.

Personal estate. 1 Ves. & Bea. 415; 4 Ves. 76; 1 M'Cord, 349; 1 Dall. 403; 2 Rawle, 162; 5 Mason, 544.

Personal representatives. 1 Anst. 128.

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Poor. Poor kindred. Boyle on Char. 31; 17 Ves. 371.

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Possession. Coming into possession. 3 Br. C. C. 180.

Power coupled with an interest. 8 Wheat. 203; 2 Cowen, 196.

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Preference. 1 Paine, 630.

Premises. All the premises, 17 Ves. 75; 1 East, R. 456.

Price. A price clear of all expenses. 2 V. & B. 341.

Prior in date. 3 Day, 66.

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Proceed to sea. 9 Serg. & Rawle, 154; 2 Pet. Adm. Dec. 97, 98.

Proceeding. 2 East, R. 213; 3 Com. Dig. 48, note; 1 Hall, 166; 8 Wend. 167.

Proceeds. 4 Mason, 529.

Procurement. Platt on Cov. 337.

Promise. "I don't consider the land as your's; prove your right to it, and I'll pay you for it." 9 Dow. & R. 480; S. C. 22 E. C. L. R. 394. "I promise *never* to pay." 2 Atk. 32; Bayl. Bills, 4; Chit. Bills, 54.

Promissory note. Due A B three hundred and twenty-five dollars, payable on demand. 10 Wend. 675. To pay P D or plaintiffs, or his or their order. 2 B. & A. 417. "I, B C, promise to pay E F the sum of 51*l.* or his order," signed, "B C or else H B." 4 B. & A. 679; 6 E. C. L. R. 563.

Property. 6 Serg. & Rawle, 452; 17 Johns. R. 281; 6 Binn. 94; 18 Ves. 193; 14 East, R. 370; 2 N. R. 214.

Proportion. Charge on estates in equal proportions. 3 Br. C. C. 286. In just and equal proportion. 7 Serg. & Rawle, 514.

Prosecute with effect. 12 Mod. 380; 2 Selw. N. P. 1013, note.

Proviso. Com. Dig. Condition, A 2; Lit. s. 329; Ib. 203, b; 2 Co. 71, b; 1 Roll. Ab. 410, l. 30.

Public policy. 9 E. C. L. R. 452. Public trust. 20 John. 492; 2 Cowen, 29, n.

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Reasonable notice. 1 Penna. R. 466. V. *Reasonable time*, in the body of this work.

Receipts. 2 Gill & Johns. 511.

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Reversion. If the reversion should never fall to the testator. 10 Ves. 453.

Right. 2 Caine's R. 345.

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Thereunto belonging. 22 E. C. L. R. 171.

Things. 11 Ves. 666.

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92; 6 Munf. R. 433, 439; 3 Ohio R. 18; 1 Blackford's R. 336; 1 Fairfield, R. 315; 2 Chit. Cr. Law, *549; 3 Ld. Raym. 36; Trem. P. C. 269; Co. Entr. 394, 435; Rast. Entr. 689; Cro. C. C. 74" Com. Dig. Usury, (C); 4 Bl. Com. 158; Hard. 420.

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Way. In, through, and along. 1 T. R. 560.

Well and truly execute the duties of his office. 1 Pet. R. 69. Well and truly to administer. 9 Mass. 114, 119, 370; 13 John. 441; 1 Bay, 328.

What I may die possessed of. 8 Ves. 604; 3 Call, 225.

What remains. 11 Ves. 330.

Wharf. 6 Mass. 332.

Wheat. An unthrashed parcel of wheat. 1 Leach, 484; 2 East, P. C. 1018; 2 T. R. 255.

When. 6 Ves. 239; 11 Ves. 489; 3 Bro. C. C. 471. When able. 3 Esp. 159; 3 E. C. L. R. 264, note; 4 Esp. 36. When received. 13 Ves. 325. When the same shall be recovered. Ib.

Whereupon. 6 T. R. 573.

Whilst. 7 East, 116.

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With. 2 Vern. 466; Prec. Ch. 200; 1 Atk. 469; 2 Sch. & Lef. 189; 3 Mer. 437; 2 B. & Ald. 710.

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Within four days. 15 Serg. & Rawle, 43. Within — days after. 3 Serg. & Rawle, 395.

Without recourse. 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 Serg. & Rawle, 325. V. article *Sans Recours*, in the body of this work.

Wood-land. 1 Serg. & Rawle, 169.

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Worth and value. 3 B. & C. 516.

Writing. 14 John. 484; 8 Ves. 504; 2 M. & S. 286; 17 Ves. 459.

Writing in pencil. 1 Eng. Eccl. Rep. 406.

CONSTRUCTIVE. That which is interpreted. *Constructive presence*, in the commission of crimes, is when a party is not actually present, an eye-witness to its commission, but acting with others, is watching while another commits the crime. 1 Russ. Cr. 22.—*Constructive larceny*, is one where the taking was not apparently felonious, but by construction of the prisoner's acts it is just to presume he intended at the time of taking to appropriate the property feloniously to his own use. 2 East, P. C. 685; 1 Leach, 212.—*Constructive notice.*

CONSUL, *government, commerce.* Consuls are commercial agents, appointed to reside in the sea-ports of foreign countries, with a commission to watch over the commercial rights and privileges of the nation deputing them. A vice-consul is one acting in the place of the consul. The laws of the United States, on the subject of consuls and vice-consuls, authorise them severally to receive the protests or declarations which captains, masters, crews, passengers, merchants and others make relating to American commerce, and they declare that their consular certificates under seal shall receive faith and credit in the courts of the United States. It is also their duty, where the laws of the country permit, to administer on the estate of American citizens, dying within their consulate, and leaving no legal representatives; and to take charge and secure the effects of stranded American vessels in the absence of the master, owner or consignee; they are required to provide for destitute seamen within their consulates, and to send them to the United States, at the public expense. Vide Acts of Congress of 14 April,

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1792, ch. 24; Act of 28 Feb. 1803, ch. 62; Gordon's Dig. 454 to 476; vide, generally, Abbott on Sh. 210; 2 Bro. Civ. Law, 503; Merl. Rép. h. t.; Ayl. Pand. 160; Warden on Consuls; Marten on Cons.; Borel, De l'Origine et des fonctions des consuls. Foreign consuls are not altogether privileged from civil actions and criminal proceedings. They have not in strictness a diplomatic character. They are deemed as mere commercial agents, and partake of the character of such agents; they are, therefore, subject to the municipal laws of the countries where they reside. The supreme court of the United States is invested with original jurisdiction in such cases, and, when they are defendants, the jurisdiction has been deemed exclusive. Rawle on the Const. 222, 223; 1 Binn. R. 143; 2 Dall. 297; Story on the Const. § 1654; Serg. Const. Law, 225; 1 Kent, Com. 41 to 44.

CONSULTATION, *practice*, is a conference between the counsel or attorneys engaged on the same side of a cause, for the purpose of examining their case, and, if possible, removing the difficulties in their way. This should be had sufficiently early to enable the counsel to obtain an amendment of the pleadings, or further evidence. At these consultations the exact course to be taken by the plaintiff in exhibiting his proofs should be adopted, in consultation by the plaintiff's counsel. In a consultation on a defendant's case, it is important to ascertain the statement of the defence, and the evidence which may be depended upon to support it, to arrange the exact course of defence, and to determine on the cross-examination of the plaintiff's witnesses; and above all whether or not evidence shall be given on the part of the defendant, or withheld so as to avoid a reply on the part of the plaintiff. The wishes of the client should in all cases be consulted. 3 Chit. Pr. 864.

CONSULTATION, *Engl. law*, is the name of a writ whereby a cause being formerly removed by prohibition out of an inferior court into some of the king's courts in Westminster, is returned thither again: for if the judges of the superior court, comparing the proceedings with the suggestion of the party, find the suggestion false or not proved, and that therefore the cause was wrongfully called from the inferior court, then, upon consultation and deliberation, they decree it to be returned, whereupon this writ issues. T. de la Ley.

CONSUMMATION OF MARRIAGE. The first time that the husband and wife cohabit together after the ceremony of marriage has been performed is thus called. The marriage when otherwise legal, is complete without this, for it is a maxim of law borrowed from the civil law, that *consensus, non concubitus, facit nuptias.* Co. Litt. 33; Dig. 50, 17, 30; 1 Bl. Com. 434.

CONTAGIOUS DISORDERS, *crim. law*, are diseases which are capable of being transmitted by mediate or immediate contact. It is indictable at common law unlawfully and injuriously to expose persons infected with the small-pox or other contagious disease in the public streets where persons are passing, or near the habitations of others, to their great danger. 1 Russ. Cr. 114. Lord Hale seems to doubt whether if a person infected with the plague, should go abroad with intent to infect another, and another should be infected and die, it would not be murder; and he thinks it clear that though there should be no such intent, yet if another should be infected it would be a great misdemeanor. 1 Pl. Cor.

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422. Vide 4 M. & S. 73, 272; Dane's Ab. h. t.

CONTEMPT, *crim. law*, is a wilful disregard or disobedience of a public authority. By the constitution of the United States, each house of congress may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. The same provision is substantially contained in the constitutions of the several states. The power to make rules carries that of enforcing them, and to attach persons who violate them, and punish them for contempts. This power of punishing for contempts, is confined to punishment during the session of the legislature, and cannot extend beyond it, 6 Wheat. R. 204, 230, 231; and, it seems this power cannot be exerted beyond imprisonment.

Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings. In some states, as in Pennsylvania, the power to punish for contempts is restricted to offences committed by the officers of the court, or in its presence, or in disobedience of its mandates, orders, or rules; but no one is guilty of a contempt for any publication made or act done out of court, which is not in violation of such lawful rules or orders, or disobedience of its process. When a person is in prison for a contempt, it has been decided in New York that he cannot be discharged by another judge, when brought before him on a *habeas corpus;* and, according to Chancellor Kent, 2 Comm. 27, it belongs exclusively to the court offended to judge of contempts, and what amounts to them; and no other court or judge can, or ought to undertake, in a collateral way, to question or review an adjudication of a contempt made by another competent jurisdiction. This may be considered as the established doctrine equally in England as in this country. 3 Wils. 188; 14 East, R. 1; 2 Bay R. 182; 6 Wheat. R. 204.

CONTENTIOUS JURISDICTION, *eccles. law.* In those cases where there is an action or judicial process, and it consists in hearing and determing the matter between party and party, it is said there is contentious jurisdiction, in contradistinction to *voluntary* jurisdiction which is exercised in matters that require no judicial proceeding, as in granting probate of wills, letters of administration and the like.

CONTINGENT USE, *estates*, is a use limited in a deed or conveyance of land which may or may not happen to vest, according to the contingency expressed in the limitation of such use. A contingent use is such as by possibility may happen in possession, reversion or remainder. 1 Rep. 121; Com. Dig. Uses, (K 6).

CONTINGENT REMAINDER, *estates.* When an estate in remainder is limited to take effect, either to a dubious and uncertain *person*, or upon a dubious and uncertain *event*, by which no present or particular interest passes to the remainder-man, so that the particular estate may chance to be determined and the remainder never take effect, the remainder is then contingent. Vide *Remainder.*

CONTINUAL CLAIM, see *Claim, continual;* and 1 Ch. Pr. 278 (a) in note.

CONTINUANCE, *practice.* The adjournment of a cause from one day to another is called a continuance, an entry of which is made upon the record. If these continuances are omitted, the cause is thereby discontinued, and the de-

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fendant is discharged *sine die*, without a day, for this term. By his appearance he has obeyed the command of the writ, and, unless he be adjourned over to a certain day, he is no longer bound to attend upon that summons. 3 Bl. Com. 316. Continuances, may, however, be entered at any time, and if not entered the want of them is aided or cured by the appearance of the parties; and as a discontinuance can never be objected to *pendente placito*, so after the judgment it is cured by the statute of jeofails. Tidd's Pr. 628, 835. Before the declaration the continuance is by *dies datus prece partium;* after declaration and before issue joined, by imparlance, after issue joined and before verdict, by *vice come non misit breve;* and after verdict or demurrer by *curia advisare vult.* 1 Chit. Pl. 421, n. (p); see 5 Vin. Abr. 454; 5 Bac. Abr. 473, Pleas, P; 6 Bac. Abr. 650, Trial, H; Com. Dig. Pleader, V. See as to the origin of continuances, Steph. Pl. 31; 1 Ch. Pr. 778, 779.

CONTRA FORMAM STATUTI, contrary to the form of the statute.—1. When one statute prohibits a thing and another gives the penalty, in an action for the penalty, the declaration should conclude *contra forman statutorum.* Plowd. 206; 2 East, 333; Esp. on Pen. Act. 111. The same rule applies to informations and indictments. 2 Hale, P. C. 172; 2 Hawk. c. 25, § 117; Owen, 135.—2. But where a statute refers to a former one, and adopts and continues the provisions of it, the declaration or indictment should conclude *contra forman statuti.* Hale, P. C. 172; 1 Lutw. 212.—3. Where a thing is prohibited by several statutes if one only gives the action, and the others are explanatory and restrictive, the conclusion should be *contra forman statuti.* Yelv. 116; Cro. Jac. 187; Noy, 125, S. C.; Rep. temp. Hard. 409; Andr. 115, S. C.; 2 Saund. 377.—4. When the act prohibited was not an offence or ground of action at common law, it is necessary in all cases, criminal and civil, to conclude against the form of the statute or statutes. 1 Saund. 135, n.; 2 East, 333; 1 Chit. Pl. 358; 1 Saund. 249; 7 East, 516; 2 Mass. 116; 7 Mass. 9; 11 Mass. 280; 10 Mass. 36; 1 M'Cord, 121; 1 Gallis. 30.—5. But if the act prohibited by the statute is an offence or ground of action at common law, the indictment or action may be in the common law form, and the statute need not be noticed, even though it prescribe a form of prosecution or of action; the statute remedy is merely cumulative. 2 Inst. 200; 2 Burr. 803; 4 Burr. 2351; 3 Burr. 1418; 2 Wils. 146; 3 Mass. 515.—6. When a statute only inflicts a punishment on that which was an offence at common law, the offence prescribed may be inflicted, though the statute is not noticed in the indictment. 2 Binn. 332.—7. If an indictment for an offence at common law only, conclude "against the form of the statute in such case made and provided;" or "the form of the statute" generally, the conclusion will be rejected as surplusage, and the indictment maintained as at common law. 1 Saund. 135, n. 3.—8. But it will be otherwise if it conclude against the form of "the statute aforesaid," when a statute has been previously recited. 1 Chit. Cr. Law, 266, 289. See further, Com. Dig. Pleader, C. 76; 5 Vin. Abr. 552, 556.

CONTRA PACEM, *pleadings.* Against the peace. In actions of trespass, the words *contra pacem* should uniformly accompany the allegation of the injury; in some cases they are material to the foundation of the action. Trespass to lands in

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a foreign country cannot be sustained. 4 T. R. 503; 2 Bl. Rep. 1058. The conclusion of the declaration in trespass or ejectment, should be contra pacem, though these are now mere words of form and not traversable, and the omission of that allegation will be aided if not specially demurred to. 1 Chit. Pl. 375, 6; vide Arch. Civ. Pl. 169; 5 Vin. Ab. 557; Com. Dig. Action upon the case, c. 4; Pleader, 3 M 8; Prohibition, F 7.

CONTRABAND, *mar. law*, in its most extensive sense means all commerce which is carried on contrary to the laws of the state. The term is usually applied to that commerce which is so carried on in time of war. Merlin, Répert. h. t. Commodities particularly useful in war are contraband, as arms, ammunitions, horses, timber for ship building, and every kind of naval stores. When articles come into use as implements of war, which were before innocent, they may be declared to be contraband. The greatest difficulty to decide what is contraband seems to have occurred in the instance of provisions, which have not been held to be universally contraband, though Vattel admits that they become so on certain occasions, when there is an expectation of reducing an enemy by famine. In modern times one of the principal criteria adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether those provisions be in a rude or manufactured state; for all articles, in such examinations, are treated with greater indulgence in their natural condition than when wrought up for the convenience of the enemy's immediate use. Iron unwrought, is therefore treated with indulgence, though anchors and other instruments fabricated out of it, are directly contraband. 1 Rob. Rep. 189. See Vattel, b. 3, c. 7; Chitty's L. of Nat. 120; Marsh. Ins. 78; 2 Bro. Civ. Law, 311; 1 Kent, Com. 135; 3 Ib. 215.

Contraband of war is the act by which, in times of war, a neutral vessel introduces, or attempts to introduce into the territory of one of the belligerent parties, arms, ammunitions or other effects intended for, or which may serve hostile operations. Merlin, Répert, h. t.; 1 Kent, Com. 135.

CONTRACT. This term, in its more extensive sense, includes every description of agreement or obligation, whereby one party becomes bound to another to pay a sum of money, or perform or omit to do a certain act. In its more confined sense, it is an agreement between two or more persons, concerning something to be done, whereby both parties are bound to each other, or one is bound to the other. 1 Pow. Contr. 6; Civ. Code of Lo. art. 1754; Code Civ. 1101; Poth. Oblig. pt. i. c. 1, s. 1, § 1; Blackstone, (2 Comm. 442,) defines it to be an agreement, upon a sufficient consideration, to do or not to do a particular thing.

Contracts are divided into express or implied. An express contract, is one where the terms of the agreement are openly uttered and avowed at the time of making, as to pay a stated price for certain goods. 2 Bl. Com. 443. Express contracts are of three sorts; 1. By parol, or in writing, as contradistinguished from specialties. 2. By specialty, or under seal. 3. Of record.

1. A parol contract is defined to be a bargain or voluntary agreement made, either verbally, or in writing not under seal, upon a good consideration, between two or more persons capable of contracting, to do a lawful act, or omit to do any thing, the

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performance whereof is not enjoined by law. 1 Com. Contr. 2; Chit. Contr. 2. From this definition it appears, that to constitute a sufficient parol agreement, there must be, 1st. The reciprocal or mutual assent of two or more persons competent to contract. Every agreement ought to be so certain and complete, that each party may have an action upon it; and the agreement would be incomplete if either party withheld his assent to any of its terms. Peake's R. 227; 3 T. R. 653; 1 B. & A. 681; 1 Pick. R. 278. The agreement must, in general, be obligatory on both parties, or it binds neither. To this rule there are, however, some exceptions, as in the case of an infant's contract. He may always sue, though he cannot be sued, on his contract. Stra. 937. See other instances; 6 East, 307; 3 Taunt. 169; 5 Taunt. 788; 3 B. & C. 232. 2dly. There must be a good and valid consideration, motive or inducement to make the promise, upon which a party is charged, for this is of the very essence of a contract not under seal, and must exist, although the contract be reduced to writing. 7 T. R. 350, note (a); 2 Bl. Com. 444. See this Dict. *Consideration;* Fonb. Tr. Eq. 335, n. (a); Chit. Bills, 68. 3dly. There must be a thing to be done, which is not forbidden; or a thing to be omitted, the performance of which is not enjoined by law. A fraudulent or immoral contract, or one contrary to public policy is void. Chit. Contr. 215, 217, 222; and it is also void if contrary to a statute. Ib. 228 to 250; 1 Binn. 118; 4 Dall. 298; 4 Yeates, 24, 84; 6 Binn. 321; 4 Serg. & Rawle, 159; 4 Dall. 269; 1 Binn. 110; 2 Browne's R. 48. As to contracts which are void for want of a compliance with the statutes of Frauds, see *Frauds, Statute of.*

2. The second kind of express contracts, are those which are made under seal, or specialties, as deeds, bonds, and the like; they are not merely written, but delivered over by the party bound. The solemnity and deliberation with which, on account of the ceremonies to be observed, a deed or bond is presumed to be entered into, attach to it an importance and character which do not belong to a simple contract. In the case of specialty, no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 477; 4 B. & A. 652; 3 T. R. 438; 3 Bingh. 111, 112; 1 Fonb. Eq. 342, note.

3. The highest kind of express contracts, are those of record, such as judgments, recognizances of bail, and in England, statutes merchant and staple, and other securities of the same nature, entered into with the intervention of some public authority. 2 Bl. Com. 465. See *Authentic Acts.*

Implied contracts are such as reason and justice dictate, and which, therefore, the law presumes every man undertakes to perform; as if a man employs another to do any business for him, or perform any work, the law implies that the former contracted or undertook to pay the latter as much as his labour deserved; see *Quantum meruit;* or if one takes up goods from a tradesman, without any agreement of price, the law concludes that he contracts to pay their value. 2 Bl. Comm. 443. See *Quantum valebant; assumpsit.* Com. Dig. Action upon the case upon Assumpsit, A, 1; Ib. Agreement.

By the laws of Louisiana, when considered as to the obligation of the parties, contracts are either unilateral, or reciprocal. When the party to whom the engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law

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attaches certain obligations to his acceptance; Civ. Code of Lo. art. 1758. A loan for use, and a loan of money are of this kind. Poth. Ob. P. 1, c. 1, s. 1, art. 2. A reciprocal contract is where the parties expressly enter into mutual engagements, such as sale, hire, and the like. Ib.

Contracts, considered in relation to their substance, are either commutative or independent, principal or accessory. Commutative contracts, are those in which what is done, given or promised by one party, is considered as equivalent to, or in consideration of what is done, given or promised by the other. Civ. Code of Lo. art. 1761. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents, or as considerations. Ib. art. 1762. A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage and pledges. Ib. art. 1764. Poth. Obl. P. 1, c. 1, s. 1, art. 2, n. 14.

Contracts, considered in relation to the motive for making them, are either gratuitous or onerous. To be gratuitous, the object of a contract must be to benefit the person with whom it is made, without any profit or advantage, received or promised as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefit be of a pecuniary nature. Ib. art. 1766. Any thing given or promised, as a consideration for the engagement or gift; any service, interest, or condition, imposed on what is given or promised, although unequal to it in value, makes a contract onerous in its nature. Ib. art. 1767.

Considered in relation to their effects, contracts are either certain or hazardous. A contract is certain, where the thing to be done is supposed to depend on the will of the party, or where in the usual course of events, it must happen in the manner stipulated. It is hazardous, when the performance of that which is one of its objects, depends on an uncertain event. Ib. art. 1769.

Pothier, in his excellent treatise on obligations, p. 1, c. 1, s. 1, art. 2, divides contracts under the five following heads:

1. Into reciprocal and unilateral.

2. Into consensual, or those which are formed by the mere consent of the parties, such as sale, hiring and mandate; and those in which it is necessary there should be something more than mere consent, such as loan of money, deposit or pledge, which from their nature require a delivery of the thing, (rei); whence they are called real contracts. See *Real Contracts.*

3. Into 1st, contracts of mutual interest, which are such as are entered into for the reciprocal interest and utility of each of the parties, as sales, exchange, partnership and the like; 2dly, contracts of beneficence, which are those by which only one of the contracting parties is benefitted, as loans, deposit and mandate; 3dly, mixed contracts, which are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge.

4. Into principal and accessory.

5. Into those which are subjected by the civil law to certain rules and forms, and those which are regulated by mere natural justice.

See generally as to contracts,

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Chitty on Contracts; Comyn on Contracts; Newland on Contracts. Com. Dig. titles Abatement, E 12, F 8; Admiralty, E 10, 11; Action upon the Case upon Assumpsit; Agreement; Bargain and Sale; Baron and Feme, Q; Condition; Dett, A 8, 9; Enfant, B 5; Idiot, D 1; Merchant, E 1; Pleader, 2 W 11, 43; Trade, D 3; War, B 2; Bac. Abr. tit. Agreement; Assumpsit; Condition; Obligation; Vin. Abr. Condition; Contracts and Agreements; Covenants; Vendor, Vendee; Supp. to Ves. Jr. vol. 2, p. 260, 295, 376, 441; Yelv. 47; 4 Ves. Jr. 497, 671; Archb. Civ. Pl. 22; Code Civ. L. 3, tit. 3 to 18; Pothier's Tr. of Obligations; Sugden on Vendors and Purchasers; Story's excellent treatise on Bailments; Jones on Bailments. Toullier, Droit Civil Français, tomes 6 et 7; Ham. Parties to Actions, ch. 1; Chit. Pr. Index, h. t.

CONTRACTOR. One who enters into a contract: this term is usually applied to persons who undertake to do public work, or the work for a company or corporation on a large scale, at a certain fixed price.

CONTRAFACTION, *crim. law*, counterfeiting, imitating. In the French law contrafaction (contrefaçon) is the illegal reprinting of a book for which the author or his assignee has a copy-right, to the prejudice of the latter. Merl. Répert. mot Contrefaçon.

CONTRAVENTION, *French law*, is the act which violates the law, a treaty or an agreement which the party has made. The Penal Code, art. 1, denominates a contravention that infraction of the law which is punished by a fine which does not exceed fifteen francs, and an imprisonment not exceeding three days.

CONTERFACON, *French law*, Counterfeit. This is a bookseller's term, which signifies the offence of those who print or cause to be printed without lawful authority a book of which the author or his assigns have a copy right. Merl. Rép. h. t.

CONTRIBUTION, *civil law*, is said of the partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property, proportionably to the amount of their respective credits. Civ. Code of Lo. art. 2522, n. 10. It is a division pro rata. Merl. Rép. h. t.

CONTRIBUTION, *contracts*. When two or more persons jointly owe a debt, and one is compelled to pay the whole of it, the others are bound to indemnify him for the payment of their shares, the indemnity is called a contribution. Contribution takes place in another case, namely, when in order to save a ship or cargo, a part of the goods are cast overboard, the ship and cargo are liable to contribution in order to indemnify the owner of the goods lost, except his just proportion. Vide 3 Com. Dig. 143; 8 Com. Dig. 373; 5 Vin. Ab. 561; 2 Supp. to Ves. jr. 159, 343; 3 Ves. jr. 64; Wesk. Ins. 130.

CONTROVER, *obsolete*. One who invents false news. 2 Inst. 227.

CONTUBERNIUM, *civ. law*. As among the Romans slaves had no civil state, their marriages although valid according to natural law, when contracted with the consent of their masters, and when there was no legal bar to them, yet such marriages were without civil effects, they having none except what arose from natural law: a marriage of this kind was called *contubernium*. It was so called whether both or only one of the parties was a slave. Poth. Contr. de Mariage, prem. part. c. 2, § 3.

CONTUMACY, *civil law*, is the

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refusal or neglect of a party accused to appear and answer to a charge preferred against him in a court of justice. This word is derived from the latin *contumacia*, disobedience. 1 Bro. Civ. Law, 455; Ayl. Parer. 196.

CONTUMAX, *civ. law*, one accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION, *med. jurisp.* An injury or lesion, arising from the shock of a body with a large surface, which presents no loss of substance, and no apparent wound. If the skin be divided the injury takes the name of a contused wound. Vide 1 Ch. Pr. 38; 4 Carr. & P. 381, 487, 558, 565; 6 Carr. & P. 684; 2 Beck's Med. Jur. 178.

CONUSANCE, CLAIM OF, *English law*, is defined to be an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wilson's R. 409. It is a question of jurisdiction between the two courts. Fortesc. R. 157; 5 Vin. Abr. 588; and not between the plaintiff and defendant, as in the case of plea to the jurisdiction, and therefore it must be demanded by the party entitled to conusance, or by his representative, and not by the defendant or his attorney. Id. ibid. A plea to the jurisdiction must be pleaded in person, but a claim of conusance may be made by attorney. 1 Chit. Pl. 403.

CONUSANT, one who knows, as if a party knowing of an agreement in which he has an interest, he makes no objection to it, he is said to be conusant. Co. Litt. 159.

CONVENTION, *contract, civil law*, is a general term which comprehends all kinds of contracts, treaties, parts, or agreements. It is defined to be the consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed. Domat, Lois. Civ. l. 1, t. 1, s. 1; Dig. lib. 2, t. 14, l. 1; lib. 1, t. 1, l. 1, 4, and 5.

CONVENTION, *legislation.* This term is applied to a meeting of the delegates elected by the people for other purposes than usual legislation. It is mostly used to denote an assembly to make or amend the constitution of a state, but it sometimes indicates an assembly of the delegates of the people to nominate officers to be supported at an election.

CONVERSION, *torts*, is the turning or applying the property of another to one's own use. When a party takes away or wrongfully assumes the right to goods which belong to another, it will in general be sufficient evidence of a conversion; but when the original taking was lawful, as when the party found the goods, and the detension only is illegal, it is absolutely necessary to make a demand of the goods, and there must be a refusal to deliver them before the conversion will be complete. 1 Ch. Pr. 566; 2 Saund. 47 e, note; 1 Ch. Pl. 179; 6 Bac. Ab. 679; 1 Com. Dig. 439; 3 Com. Dig. 142; 1 Vin. Ab. 236; Yelv. 174, n.; 2 East, R. 405; 6 East, R. 540; 4 Taunt. 799; 5 Barn. & Cr. 149; S. C. 11 Eng. C. L. Rep. 185; 3 Bl. Com. 152.

CONVEYANCE, *contracts*, is the transfer of the title to land by one or more persons to another or others. By the term persons here is understood not only natural persons but corporations. The instrument which conveys the property is also called a conveyance. For the several kinds of conveyances see *Deed*. Vide generally, Roberts on Fraud. Conv. *passim*; 16 Vin. Ab. 138; Com. Dig. Chancery, 2 T 1; 3 M 2; 4

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S 2; Ib. Discontinuance, C 3, 4, 5; Ib. Garranty, D; Ib. Pleader, C 37; Ib. Poiar, C 5.

CONVEYANCER. One who makes it his business to draw deeds of conveyance of lands for others. It is usual also for conveyancers to act as brokers for the buyer and seller. In these cases the conveyancer should examine with scrupulous exactness into the title of the lands which are conveyed by his agency, and, if this be good, to be very cautious that the estate be not encumbered. In cases of doubt he should invariably propose to his employer to take the advice of counsel. Conveyancers also act as brokers for the loan of money on real estate secured by mortgage. The same care should be observed in these cases.

CONVICT. One who has been condemned by a competent court. This term is more commonly applied to one who has been convicted of a crime or misdemeanor. There are various local acts which punish the importation of convicts.

CONVICTION, *practice.* A condemnation. In its most extensive sense this word signifies the giving judgment against a defendant, whether criminal or civil. In a more limited sense, it means the judgment given against a criminal. And in its most restricted sense it is a record of the summary proceedings upon any penal statute before one or more justices of the peace, or other persons duly authorised, in a case where the offender has been convicted and sentenced: this last is usually termed a summary conviction. As summary convictions have been introduced in derogation of the common law, and operate to the exclusion of trial by jury, the courts have required that the strict letter of the statute should be observed, and that the magistrates should have been guided by rules, similar to those adopted by the common law, in criminal prosecution, and founded in natural justice; unless when the statute dispenses with the form of stating them. The general rules in relation to convictions are, first, it must be under the hand and seal of the magistrate before whom it is taken; secondly, it must be in the present tense, but this, perhaps, ought to extend only to the judgment; thirdly, it must be certain; fourthly, although it is well to lay the offence to be contra pacem, this is not indispensable; fifthly, a conviction cannot be good in part and bad in part. A conviction usually consists of six parts; first, the information; which should contain, 1, the day when it was taken; 2, the place where it was taken; 3, the name of the informer; 4, the name and style of the justice or justices to whom it was given; 5, the name of the offender; 6, the time of committing the offence; 7, the place where the offence was committed; 8, an exact description of the offence. Secondly, the summons. Thirdly, the appearance or non-appearance of the defendant. Fourthly, his defence or confessions. Fifthly, the evidence. Sixthly, the judgment or adjudication, which should state, 1, that the defendant is convicted; 2, the forfeiture or penalty. Vide Bosc. on Conviction; Espinasse on Penal Actions; 4 Dall. 266; 3 Yeates, 475; 1 Yeates, 471. As to the effect of a conviction as evidence in a civil case, see 1 Phil. Ev. 259.

CONVOCATION, *Eccles. law.* This word literally signifies *called together.* The assembly of the representatives of the clergy.

CONVOY, *mar. law,* is a naval force under the command of an officer appointed by government, for the protection of merchant ships and

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others, during the whole voyage, or such parts of it as is known to require such protection. Marsh. Ins. B. 1, c. 9, s. 5; Park Ins. 338.

Warranties are sometimes inserted in policies of insurance that the ship shall sail with convoy. To comply with this warranty five things are essential; first, the ship must sail with the regular convoy appointed by the government; secondly, she must sail from the place of rendezvous appointed by government; thirdly, the convoy must be for the voyage; fourthly, the ship insured must have sailing instructions; fifthly, she must depart and continue with the convoy till the end of the voyage, unless separated by necessity. Marsh. Ins. B. 1, c. 9, s. 5.

CO-OBLIGOR, *contracts*, is one who is bound together with one or more others to fulfil an obligation. He may be jointly or severally bound. When obligors are jointly and not severally bound to pay a joint debt, they must be sued jointly during their joint lives, and after the death of some of them, the survivors alone can be sued; each is bound to pay the whole debt; having recourse to the others for contribution. When co-obligors are severally bound each may be sued separately, and in case of the death of any one of them his executors or administrators may be sued. On payment of the obligation by any one of them, when it was for a joint debt, the payer is entitled to contribution from the other co-obligors.

COPARCENERS, *estates*, are persons on whom lands of inheritance descend from their ancestor. According to the English law, there must be no males; that is not the rule in this country. Vide *Estates in coparcenary*, and 4 Kent, Com. 262.

COPULATIVE TERM, is one which is placed between two or more others to join them together: the word *and* is frequently used for this purpose. For example, a man promises to pay another a certain sum of money *and* to give his note for another sum: in this case he must perform both. But the copulative may sometimes be construed into a disjunctive (q. v.) as when things are copulated which cannot possibly be so; for example, "I wish to die testate and intestate." For examples of construction of disjunctive terms, see the cases cited at the word *Disjunctive*, and Ayl. Pand. 55; 5 Com. Dig. 338.

COPY. A copy is a true transcript of an original writing. Copies cannot be given in evidence, unless proof is made that the originals from which they are taken, are lost or in the power of the opposite party; and in the latter case that notice has been given him to produce the original. See 12 Vin. Abr. 97; Phil. Ev. Index, h. t.; Poth. Obl. Pt. 4, c. 1, art. 3.

COPY-RIGHT. The property which an author has in his work, secured to him by law for a limited time. The constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science and the useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

In pursuance of this constitutional authority congress passed the act of May 31, 1790, 1 Story's L. U. S. 94, and the act of April 29, 1802, 2 Story's L. U. S. 866, both now repealed by the act of February 3, 1831, 4 Sharsw. cont. of Story, 2221, saving always such rights as may have been obtained in conformity to their provision. By this last mentioned act, entitled "An act to amend the several acts respecting copy-rights," the subject is now regulated. It enacts —

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§ 1. That from and after the passing of this act, any person or persons, being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book or books, map, chart, or musical composition, which may be now made or composed, and not printed and published, or shall hereafter be made or composed, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving, and the executors, administrators, or legal assigns of such person or persons, shall have the sole right and liberty of printing, reprinting, publishing, and vending such book or books, map, chart, musical composition, print, cut, or engraving, in whole or in part, for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

§ 2. That if, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by more than one person, be still living, and a citizen or citizens of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or if dead, then to such widow and child, or children, for the further term of fourteen years: *Provided*, That the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copy-rights, be complied with in respect to such renewed copy-right, and that within six months before the expiration of the first term.

§ 3. That in all cases of renewal of copy-right under this act, such author or proprietor shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

§ 4. That no person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, cut, or engraving, in the clerk's office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby directed and required to record the same thereof forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title under the seal of the court, to the said author or proprietor, whenever he shall require the same;) "District of to wit: Be it remembered, that on the day of anno domini, A. B. of the said district, hath deposited in this office the title of a book, (map, chart, or otherwise as the case may be,) the title of which is in the words following, to wit: (here insert the title;) the right whereof he claims as author (or proprietor as the case may be;) in conformity with an act of congress, entitled 'An act to amend the several acts respecting copy-rights,' C. D. clerk of the district." For which record, the clerk shall be entitled to receive, from the person claiming such right as aforesaid, fifty cents; and the like sum for every copy, under seal, actually given to such person or his assigns. And the author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut or engraving, deliver or cause to

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be delivered a copy of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copy-right, including the titles so recorded, and the date of record, and also all the several copies of books or other works deposited in his office, according to this act, to the secretary of state, to be preserved in his office.

§ 5. That no person shall be entiled to the benefit of this act, unless he shall give information of copy-right being secured, by causing to be inserted, in the several copies of each and every edition published during the term secured on the title page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or frontispiece thereof, the following words, viz: "Entered according to act of Congress, in the year ——— by A. B., in the clerk's office of the district court of ———" (as the case may be.)

§ 6. That if any other person or persons, from and after recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published or imported, any copy of such book or books, without the consent of the person legally entitled to the copy-right thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book, without such consent in writing; then such offender, shall forfeit every copy of such book to the person legally, at the time, entitled to the copy-right thereof; and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed or printing, published, imported, or exposed to sale, contrary to the intent of this act, the one moiety thereof to such legal owner of the copy-right as aforesaid, and the other to the use of the United States, to be recovered by action of debt, in any court having competent jurisdiction thereof.

§ 7. That, if any person or persons, after the recording the title of any print, cut or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or copy, or cause to be engraved, etched, worked or sold, or copied, either on the whole, or by varying, adding to, or diminishing the main design, with intent to evade the law, or shall print or import for sale, or cause to be printed or imported for sale, any such map, chart, musical composition, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copy-right thereof, first obtained in writing, signed in the presence of two credible witnesses; or, knowing the same to be so printed or imported without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as aforesaid; then such offender or offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed, as aforesaid, to the proprietor or proprietors of the copy-right thereof; and shall fur-

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ther forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

§ 8. That nothing in this act shall be construed to extend to prohibit the importation or vending, printing or publishing, of any map, chart, book, musical composition, print or engraving, written, composed, or made, by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

§ 9. That any person or persons, who shall print or publish any manuscript whatever without the consent of the author or legal proprietor first obtained as aforesaid, (if such author or proprietor be a citizen of the United States, or resident therein,) shall be liable to suffer and pay to the author or proprietor, all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript as aforesaid.

§ 10. That, if any person or persons shall be sued or prosecuted, for any matter, act, or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.

§ 11. That, if any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copy-right thereof, and shall insert or impress that the same hath been entered according to act of congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action of debt, in any court of record having cognizance thereof.

§ 12. That, in all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, any thing in any former act to the contrary notwithstanding.

§ 13. That no action or prosecution shall be maintained in any case of forfeiture or penalty under this act, unless the same shall have been commenced within two years after the cause of action shall have arisen.

§ 14. (This is the repealing section above mentioned.)

§ 15. That all and several the provisions of this act, intended for the protection and security of copy-rights, and providing remedies, penalties, and forfeitures, in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or proprietors of each and every copy-right heretofore obtained, according to law, during the term thereof, in the same manner as if such copy-right had been entered and secured according to the directions of this act.

§ 16. That, whenever a copy-right has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same; if such author

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or authors, or either of them, such inventor, designer, or engraver, be living at the passage of this act, then, such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have the same exclusive right to his book, chart, map, print, cut or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the time which shall have elapsed from the first entry of such copy-right, make up the term of twenty-eight years, with the same right to his widow, child, or children, to renew the copy-right, at the expiration thereof, as is above provided in relation to copy-rights originally secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then, his or their heirs, executors and administrators, shall be entitled to the like exclusive enjoyment of said copy-right, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty-eight years from the first entry of said copy-right, with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copy-rights originally secured under this act: *Provided*, That this act shall not extend to any copy-right heretofore secured, the term of which has already expired.

Vide, generally, a well written article in the Amer. Jur. vol. ii. p. 248, and another in vol. x. p. 62; an article in 1 Law Intell. 66, and the authorities cited under the article *Literary Property*.

Copy-rights are secured in most countries of Europe.

In Great Britain an author has a copy-right in his work absolutely for twenty-eight years, and if he be living at the end of that period for the residue of his life.

In France the copy-right of an author extends to twenty years after his death.

In most, if not in all the German states, it is perpetual: it extends only over the state in which it is granted.

In Russia the right of an author or translator continues during his life, and his heirs enjoy the privilege twenty-five years afterwards. No manuscript or printed work of an author can be sold for his debts. 2 Amer. Jur. 253, 4.

COPYHOLD, *estates, in the English law.* A copyhold estate is a parcel of the demesne of a manor, held at the will of the lord, according to the custom of the manor, by a grant from the lord, and admittance of the tenant, entered on the rolls of the manor court. Cruise, Dig. t. 10, c. 1, s. 3. Vide Ch. Pr. Index, h. t.

CORAM. In the presence of; before. *Coram nobis*, before us; *coram vobis*, before you; *coram non judice*, is said of those acts of a court over which it has no jurisdiction; not before the proper judge, before an improper tribunal. Those acts have no validity. Where a thing is required to be done before a particular person, it would not be considered as done before him, if he were asleep or non compos. Vide Dig. 4, 8, 27, 5; Dane's Ab. Index, h. t.

CORD, *measures.* A cord of wood must, when the wood is piled close, measure eight feet by four, and the wood must be four feet long. There are various local regulations in our principal cities as to the manner in which wood shall be measured and sold.

CORN. In its most comprehensive sense, this term signifies every sort of grain as well as peas and beans; this is its meaning in the memorandum usually contained in

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policies of insurance. 1 Marsh. Ins. 223; Park on Ins. 112; Wesk. Ins. 145. Vide Com. Dig. Biens, G 1,

CORODY, *incorporeal hereditament*, is an allowance of meat, drink, money, clothing, lodging, and such like necessaries for sustenance. 1 Bl. Com. 283; 1 Ch. Pr. 225.

CORONER, an officer whose principal duty it is to hold an inquisition, with the assistance of a jury, over the body of any person who may have come to a violent death, or who has died in prison. It is his duty also in case of the death of the sheriff, or when a vacancy happens in that office, to serve all the writs and process which the sheriff is usually bound to serve. Vide 1 Bac. Ab. 478; 6 Vin. Ab. 242; 3 Com. Dig. 222; 5 Com. Dig. 212; and the article *Death*.

CORPORAL, an epithet for any thing belonging to the body, as, corporal punishment, for punishment inflicted on the person of the criminal; corporal oath, which is an oath by the party who takes it being obliged to lay his hand on the Bible.

CORPORAL TOUCH. It was once decided that before a seller of personal property could be said to have stopped it in transitu, so as to regain the possession of it, it was necessary that it should come to his corporal touch. 3 T. R. 466; 5 East, 184. But the contrary is now settled. These words were used merely as a figurative expression. 3 T. R. 464; 5 East, 184.

CORPORATION. An aggregate corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the changes of the individuals who compose it, and which for certain purposes is considered as a natural person. Brown's Civ. Law, 99; Civ. Code of Lo. art. 418; 2 Kent's Com. 215; Mr. Kyd, (Corpor. vol. 1, p. 13,) defines a corporation as follows: "A corporation, or body politic, or body incorporate is a collection of many individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence." In the case of Dartmouth College against Woodward, 4 Wheat. Rep. 636, Chief Justice Marshall describes a corporation to be "an artificial being, invisible, intangible and existing only in contemplation of law. Being the mere creature of law," continues the judge, "it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as the single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyance for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that

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corporations were invented, and are in use." See 2 Bl. Com. 37.

The words corporation and incorporation are frequently confounded, particularly in the old books. The distinction between them is, however, obvious; the one is a political institution, the other the act by which that institution is created.

Corporations are divided into public and private.

Public corporations which are also called political, and sometimes municipal corporations are those which have for their object the government of a portion of the state. Civil Code of Lo. art. 420; and although in such case it involves some private interests, yet, as it is endowed with a portion of political power, the term public has been deemed appropriate. Another class of public corporations are those which are founded for public, (though not for political or municipal purposes,) and the whole interest in which belongs to the government. The Bank of the United States, for example, if the whole stock belonged exclusively to the government, would be a public corporation; but inasmuch as there are other owners of the stock, it is a private corporation. Domat's Civil Law, 452; 4 Wheat. R. 668; 9 Wheat. R. 907; 3 M'Cord's R. 377; 1 Hawk's R. 36; 2 Kent's Com. 222. Nations or states, are denominated by publicists, bodies politic, and are said to have their affairs and interests, and to deliberate and resolve, in common. They thus become as moral persons, having an understanding and will peculiar to themselves, and are susceptible of obligations and laws. Vattel, 49. In this extensive sense the United States may be termed a corporation; and so may each state singly. Per Iredell, J. 3 Dall. 447.

Private corporations. In the popular meaning of the term, nearly every corporation is public, inasmuch as they are created for the public benefit; but if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, the corporation is private. A bank for instance may be created by the government for its own uses; but if the stock is owned by private persons, it is a private corporation, although it is created by the government, and its operations partake of a private nature. 9 Wheat. R. 907. The rule is the same in the case of canal, bridge, turnpike, insurance companies, and the like. Charitable or literary corporations, founded by private benefaction, are in point of law, private corporations, though dedicated to public charity, or for the general promotion of learning. Ang. & Ames on Corp. 22.

Private corporations are divided into ecclesiastical and lay.

Ecclesiastical corporations, in the United States, are commonly called religious corporations; they are created to enable religious societies to manage with more facility and advantage, the temporalities belonging to the church or congregation.

Lay corporations are divided into civil and eleemosynary. *Civil* corporations are created for an infinite variety of temporal purposes, such as affording facilities for the obtaining loans of money; the making of canals, turnpike roads, and the like. And also such as are established for the advancement of learning. 1 Bl. Com. 471. *Eleemosynary* corporations are such as are instituted upon a principle of charity; their object being the perpetual distribution of the bounty of the founder of them, to such persons as he has directed. Of this kind are hospitals for the relief of the impotent, indigent and

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sick, or deaf and dumb. 1 Kyd on Corp. 26; 4 Conn. R. 272; Angell & A. on Corp. 26.

Corporations considered in another point of view, are either sole or aggregate.

A sole corporation, as its name implies, consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons. 1 Black. Com. 469. Those corporations are not common in the United States. In those states, however, where the religious establishment of the church of England was adopted, when they were colonies, together with the common law on that subject, the minister of the parish was seised of the freehold, as persona ecclessiæ, in the same manner as in England; and the right of his successors to the freehold being thus established was not destroyed by the abolition of the regal government, nor can it be divested even by an act of the state legislature. 9 Cranch, 328. A sole corporation cannot take personal property in succession; its corporate capacity of taking property is confined altogether to real estate. 9 Cranch, 43.

An aggregate corporation consists of several persons, who are united in one society, which is continued by a succession of members. Of this kind are the mayor and commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. 1 Kyd. on Corp. 76; 2 Kent's Com. 221; Ang. & A. on Corp. 20.

CORPSE is the *dead body*, (q. v.) of a human being. Russ. & Ry. 366, n.; 2 T. R. 733; 1 Leach, 497; 16 Eng. Com. L. Rep. 413; 8 Pick. 370; Dig. 47, 12, 3, 7; Ib. 11, 7, 38; Code, 3, 44, 1.

CORPUS, a latin word which signifies the body; as, *corpus delicti*, the body of the offence, the essence of the crime; *corpus juris canonis*, the body of the canon law; *corpus juris civilis*, the body of the civil law.

CORPUS JURIS CIVILIS. The body of the civil law. This is the name given to a collection of the civil law consisting of Justinian's Institutes, the Pandects or Digest, the Code, and the Novels.

CORPUS CUM CAUSA, *practice*. The writ of *habeas corpus cum causa*, (q. v.) is a writ commanding the person to whom it is directed *to have the body* together *with the cause* for which he is committed before the court or judge issuing the same.

CORRECTION, *punishment*. Chastisement by one having authority of a person who has committed some offence, for the purpose of bringing him to legal subjection. It is chiefly exercised in a parental manner by parents or those who are placed in loco parentis. A parent may therefore justify the correction of the child either corporally or by confinement; and a school master, under whose care and instruction a parent has placed his child, may equally justify similar correction; but the correction in both cases must be moderate and in a proper manner. Com. Dig. Pleader, 3 M. 19; Hawk. c. 60, s. 23, and c. 62, s. 2.—c. 29, s. 5. The master of an apprentice for disobedience may, himself, correct him moderately. 1 Barn. & Cres. 469; Cro. Car. 179; 2 Show. 289; but he cannot delegate the authority to another. 9 Co. 96. A master has no right to correct his servants who are not apprentices. Soldiers are liable to moderate correction from their superiors; for the sake of maintaining their discipline on board of the navy, the captain of a vessel, either belonging to the United States, or to private individuals, for disobedience or disorderly

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conduct, may inflict moderate correction on a sailor. Abbott on Shipp. 160; 1 Ch. Pr. 73. Any excess of correction by the parent, master, officer or captain, may render the party guilty of an assault and battery, and liable to all its consequences. In some prisons the keepers have the right to correct the prisoners.

CORRUPTION, is an act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done though the advantage to be derived from it be not offered by another. Merl. Rép. h. t.

CORRUPTION OF BLOOD, *English crim. law*, is the incapacity to inherit or pass an inheritance, in consequence of an attainder to which the party has been subject. When this consequence flows from an attainder, the party is stripped of all honours and dignities he possessed and becomes ignoble. The constitution of the United States, Amendm. art. 5, provides, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger;" and by art. 3, s. 3, n. 2, it is declared that "no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted." The constitution of Pennsylvania, art. 9, s. 19, directs that "no attainder shall work corruption of blood." 3 Cruise, 240, 378 to 381, 473; 1 Cruise, 52; 1 Chit. Cr. Law, 740; 4 Bl. Com. 388.

COSENAGE, *torts*. Deceit, fraud: that kind of circumvention and wrong, which has no other specific name. Vide Ayl. Pand. 103; Dane's Ab. Index, h. t.

COSTS, *practice*, the expenses of a suit or action which may be recovered by law from the losing party. At common law neither the plaintiff nor the defendant could recover costs *eo nomine*, but in all actions in which damages were recoverable, the plaintiff in effect recovered his costs when he obtained a verdict, for the jury always computed them in the damages. When the defendant obtained a verdict, or the plaintiff became non suit, the former was wholly without remedy for any expenses he had incurred; it is true the plaintiff was amerced *pro falso clamore suo*, but the amercement was given to the king. Hull. on Costs, 2; 2 Arch. Pr. 281. This defect was afterwards corrected by the statute of Gloucester, 6 Ed. 1, c. 1, by which it is enacted that "the demandant in assise of novel disseisin, in writs of *mort d'ancestor*, *cosinage*, *aiel and besail*, shall have damages. And the demandant shall have the costs of the writ purchased, together with damages, and this act shall hold place in *all cases where the party recovers damages*, and every person shall render damages where land is recovered against him upon his own intrusion or his own act." This statute has been adopted substantially in all the United States. Though it speaks of the costs of the writ only, it has by construction been extended to the costs of the suit generally. The costs which are recovered under it are such as shall be allowed by the master or prothonotary upon taxation, and not those expenses which the plaintiff may have incurred for himself or the extraordinary fees he may have paid counsel, or for the loss of his time. 2 Sell. Pr. 429. Costs are single; when the party receives the same amount he has expended, to be ascer-

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tained by taxation; double, vide *Double costs;* and treble, vide *Treble costs.*

Vide generally, Hullock on Costs; Sayer's Law of Costs; Tidd's Pr. c. 40; 2 Sell. Pr. c. 19; Archb. Pr. Index, h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; 6 Vin. Ab. 321; Grah. Pr. c. 23; Chit. Pr. h. t.; 1 Salk. 207; 1 Supp. to Ves. Jr. 109; Amer. Dig. h. t.; Dane's Ab. h. t.; Harr. Dig. h. t. As to the liability of executors and administrators for costs, 1 Chit. R. 628, note; 18 E. C. L. R. 185; 2 Bay's R. 166, 399; 1 Wash. R. 138; 2 Hen. & Munf. 361, 369; 4 John. R. 190; 8 John. R. 389; 2 John. Ca. 209. As to costs in actions *qui tam*, see Esp. on Pen. Act. 154 to 165.

COTTAGE, *estates*, is nearly synonymous with messuage or house; it imports a smaller and inferior building. 1 Thom. Co. Litt. 216. By the grant of a cottage, it is said, passes a small dwelling-house, which has no land belonging to it. Shep. To. 94.

COUCHANT. Lying down. Animals are said to have been *levant* and *couchant*, when they have been upon another person's land, damage feasant, one night at least. 3 Bl. Com. 9.

COUNCIL, *legislation*. This word signifies an assembly. It was used among the Romans to express the meeting of only a part of the people, and that the most respectable, in opposition to the assemblies of the whole people. It is now usually applied to the legislative bodies of cities and boroughs.

COUNSEL. Advice given to another as to what he ought to do or not to do. To counsel another to do an unlawful act, is to become accessary to it, if it be a felony, or principal, if it be treason, or a misdemeanor.

COUNSELLOR AT LAW, *offices*, is an officer in the supreme court of the United States, and in some other courts, who is employed by a party in a cause, to conduct the same on its trial on his behalf. He differs from an attorney at law, (q. v.) In the supreme court of the United States the two degrees of attorney and counsel are kept separate and no person is permitted to practise both. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Com. 307. In all the other courts of the United States, as well as in the courts of Pennsylvania, the same person performs the duty of counsellor and attorney at law.

COUNT, *pleading*. This word derived from the French, *conte*, a narrative, is in our old law books used synonymously with declaration; but practice has introduced the following distinction: when the plaintiff's complaint embraces only a single cause of action, and he makes only one statement of it, that statement is called, indifferently, a declaration or count; though the former is the more usual term. But when the suit embraces two or more causes of action, (each of which of course requires a different statement;) or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration. In all cases, however, in which there are two or more counts, whether there is actually but one cause of action or several, each count purports, upon the face of it, to disclose a distinct right of action; unconnected with that stated in any of the other counts. One object proposed, in inserting two or

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more counts in one declaration, when there is in fact but one cause of action, is, in some cases to guard against the danger of an insufficient statement of the cause where a doubt exists as to the legal sufficiency of one or another of two different modes of declaring; but the more usual end proposed in inserting more than one count in such case, is to accommodate the statement to the cause, as far as may be, to the possible state of the proof to be exhibited on trial; or to guard, if possible, against the hazard of the proof's varying materially from the statement of the cause of action: so that if one or more of several counts be not adapted to the evidence, some other of them may be so. Gould on Pl. c. 4, s. 2, 3, 4; Steph. Pl. 279; Doct. Pl. 178; 3 Com. Dig. 291; Dane's Ab. Index, h. t.

COUNTER, *Engl. law*, a prison of that name in the city of London.

TO COUNTERFEIT, *criminal law*. To make something false in the semblance of that which is true; it always implies a fraudulent intent. Vide Vin. Ab. h. t.

COUNTERMAND. This word signifies a change of orders which had been given. It may be express or implied. Express when contrary orders are given and a revocation of the former order is made. Implied, when a new order is given which is inconsistent with the former order; as if a man should order a merchant to ship him in a particular vessel certain goods which belonged to him, and then, before the goods were shipped, he directed him to ship them in another vessel, this would be a countermand of the first order. While the first command is unrecalled the person who gave it would be liable to all the consequences in case he should be obeyed: but if, for example, a man should command another to commit a crime, and, before its perpetration, he should repent and countermand it, he would not be liable for the consequences if the crime should afterwards be committed. Vide *Command;* and Com. Dig. Attorney, B 9, C 8; Dane's Ab. Index, h. t.

COUNTERPART, *contracts*. Formerly each party to an indenture executed a separate deed; that part which was executed by the grantor was called the original, and the rest the counterparts. It is now usual for all the parties to execute every part, and this makes them all originals. 2 Bl. Com. 296. In granting lots subject to a ground-rent reserved to the grantor, both parties execute the deeds, of which there are two copies, although both are original, one of them is sometimes called the counterpart. Vide 12 Vin. Ab. 104; Dane's Ab. Index, h. t.; 7 Com. Dig. 443; Merl. Rép. mots Double Ecrit.

COUNTERPLEA, *pleading*. When a tenant in any real action, tenant by the curtesy, or tenant in dower, in his answer and plea, vouches any one to warrant his title, or prays in aid of another who has a larger state, as of the remainder-man or reversioner; or when a stranger to the action comes and prays to be received to save his estate; then that which the defendant alleges against it, why it should not be admitted, is called a counterplea. T. de la Ley; Doct. Placit, 200; Com. Dig, h. t; Dane's Ab. Index, h. t.

COUNTY. A district into which a state is divided. The United States, with the exception of Louisiana, which is divided into parishes, are generally divided into counties; counties are divided into townships or towns.

COURT, *practice*, a court is an incorporeal political being, which requires for its existence, the pre-

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sence of the judges, or a competent number of them, and a clerk or prothonotary, at the time during which, and at the place where it is by law authorised to be held; and the performance of some public act, indicative of a design to perform the functions of a court. In another sense, the judges, clerk or prothonotary, counsellors and ministerial officers, are said to constitute the court. According to Lord Coke, a court is a place where justice is judicially administered. Co. Litt. 58, a. The judges alone, are also called the court, Vide 6 Vin. Ab. 484; Wheat. Dig. 127; Merl. Rép. h. t; 3 Com. Dig. 300; 8 Id. 386; Dane's Ab. Index, h. t.

COURT OF ARCHES, *ecclesiastical law*, is the most ancient consistory court belonging to the archbishop of Canterbury for the trial of spiritual causes. It is so called, because it was anciently held in the church of *Saint Mary le Bow*; which church had that appellation from its steeple, which was raised at top with stone pillars, in the manner of an arch or bow. Termes de la Ley.

COURT, INSTANCE. Vide *Instance Court.*

COURT MARTIAL, is a court authorised by the articles of war, for the trial of all offenders in the army or navy, for military offences. Article, 64, directs that general courts-martial, may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen, where the number can be convened, without manifest injury to the service. Vide Gord. Dig. Laws U. S., art. 3331 to 3357; 2 Story, L. U. S. 1000; and also the Treatises of Adye, Delafon, Hough, J. Kennedy, M. V. Kennedy, McArthur, McNaghten, Simmons and Tytler on Courts Martial.

COURT OF INQUIRY. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation or imputation against any officer or soldier; the said court shall consist of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing, all of whom shall be sworn to the performance of their duty. Art. 91. Gord. Dig. Laws U. S. art. 3558 to 3560.

COURT, PRIZE. Vide *Prize Court.*

COURTS OF THE UNITED STATES. These courts will be considered by taking a separate view of the central courts, and the local courts.

I. The *central* courts are the senate of the United States, as a court for the trial of impeachments; and the supreme court. The territorial jurisdiction of these courts extends over all the states and territories of the United States.

1st. The constitution of the United States, art. 1, s. 3, provides that the senate shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

It will be proper here to consider, 1, the organization of this extraordinary court; and, 2, its jurisdiction.

1. Its organization differs according as it has or has not the president of the United States to try. For the trial of an impeachment of the president, the presence of the chief justice is required. There must also be a sufficient number of senators present to form a quorum. For the trial of all other impeachments,

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it is sufficient if a quorum be present.

2. The jurisdiction of the senate as a court for the trial of impeachments, extends to the following officers, namely, the president, vice-president, and all civil officers of the United States, art. 2, s. 4, when they shall have been guilty of treason, bribery, and other high crimes and misdemeanors. Ib. The constitution defines treason, art. 3, s. 3, but recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by "other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice and the common law, in order to ascertain what they are. Story, Const. § 795.

2d. *The Supreme Court.* The constitution of the United States directs that the judicial power of the United States shall be vested in one supreme court; and in such inferior courts as congress may from time to time ordain and establish. It will be proper to consider 1st. Its organization; 2dly, Its jurisdiction.

§ 1. *Its organization.* Under this head will be considered, 1, the appointment of the judges; 2, the number necessary to form a quorum; 3, the time and place of holding the court.—1. The judges of the supreme court are appointed by the president by and with the advice and consent of the senate. Const. art. 2, s. 2. They hold their office during good behaviour, and receive for their services a compensation, which shall not be diminished during their continuance in office. Const. art. 3, s. 1. They consist of a chief justice and six associate justices. Act of Feb. 24, 1807, s. 5.—2. Four judges are required to make a quorum, Act of April 29th, 1802, s. 1; but those attending on the day appointed for holding a session of the court, although less than four, have authority to adjourn the court from day to day, for twenty days, after the time appointed for the commencement of said session, unless four justices shall sooner attend; and the business shall not be continued over till the next session of the court, until the expiration of the said twenty days. Act of January 21, 1829. By the same act, if after the judges shall have assembled, on any day less than four shall assemble, the judge or judges so assembling shall have authority to adjourn the said court, from day to day, until a quorum shall attend, and, when expedient and proper, may adjourn the same without day. —3. The supreme court is holden at the city of Washington, Act of April 29, 1802; the session commences on the second Monday of January in each and every year, Act of May 4, 1826; the first Monday of August in each year is appointed as a return day, Act of April 29, 1802. In case of a contagious sickness the chief justice or his senior associate may direct in what other place the court shall be held, and the court shall accordingly be adjourned to such place. Act of February 25, 1799, s. 7. The officers of the court are a clerk who is appointed by the court, a marshal appointed by the president by and with the advice and consent of the senate, crier and other inferior officers.

§ 2. *Jurisdiction of the Supreme Court.* The jurisdiction of the supreme court is either civil or criminal.

1st. The *civil* jurisdiction is either original or appellate.

1. The provisions of the constitution that relate to the *original* jurisdiction of the supreme court.

The constitution expressly defines and fixes the original jurisdiction of the supreme court, by de-

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claring the cases in which it shall take original jurisdiction; and that in others it shall take appellate jurisdiction. Congress may, by legislative enactment, enforce the provisions of the constitution on this head; but it cannot assign to the supreme court original jurisdiction in any case in which it is not vested in that court by the constitution. 1 Cranch, 137, 175.

The provisions of the constitution that relate to the original jurisdiction of the supreme court, and the judicial power of the United States, are the following.

Art. III. Sec. 1, 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish.

Sec. 2, 1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states—between a state and citizens of another state—between citizens of different states—between citizens of the same state, claiming lands under grants of different states—and between a state or the citizens thereof and foreign states, citizens, or subjects.

Sec. 2, 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as Congress shall make.

Amendments.—Art. 7. In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Amendments.—Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

By the act of September 24th, 1789, sect. 13, the supreme court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party, except between a state and its citizens; and except also, between a state and citizens of other states or aliens, in which latter case it shall have original, but not exclusive jurisdiction. And shall have, exclusively, all such jurisdiction of suits or proceedings *against* ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently with the law of nations. And original, but not exclusive jurisdiction of all suits brought *by* ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. And the trial of issues in fact, in the supreme court, in all actions at law, against citizens of the United States, shall be by jury.

In consequence of the decision of the case of Chisholm v. Georgia, where it was held that assumpsit might be maintained against a state by a citizen of a different state, the 11th article of the Amendments of the constitution above quoted, was

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adopted. In those cases in which original jurisdiction is given to the supreme court, the judicial power of the United States cannot be exercised in its appellate form. With the exception of those cases in which original jurisdiction is given to this court, there is none to which the judicial power extends, from which the original jurisdiction of the inferior courts is excluded by the constitution. The constitution establishes the supreme court and defines its jurisdiction. It enumerates the cases in which its jurisdiction is original and exclusive, and defines that which is appellate. See 11 Wheat. 467. Congress cannot vest in the supreme court original jurisdiction in a case in which the constitution has clearly not given that court original jurisdiction, and affirmative words in the constitution, declaring in what cases the supreme court shall have original jurisdiction, must be construed negatively as to all other cases, or else the clause would be inoperative and useless. 1 Cranch, 137.

2. The supreme court exercises appellate jurisdiction in the following different modes; 1. By writ of error from the final judgments of the circuit courts; of the district courts, exercising the powers of circuit courts; and of the superior courts of the territories, exercising the powers of circuit courts, in certain cases. 2. By appeals from the final decrees of the circuit courts; of the district courts exercising the powers of circuit courts; and of the superior courts of territories, exercising the powers of circuit courts in certain cases. 3. By writ of error from the final judgments and decrees of the highest courts of law or equity in a state in the cases provided for by the 25th section of the act of September 24th, 1789 which enacts that a final judgment or decree, in any suit in the highest court of law or equity of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the supreme court of the United States, upon a writ of error, the citation being signed by the chief justice or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the supreme court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record,

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and immediately respects the before mentioned questions of validity, or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. See 8 Wheat. 323; 3 Wheat. 246; 6 Wheat. 264, 290, 376; 2 Pet. S. C. Rep. 449; 3 Dall. 308; 1 Wheat. 304, 362; 3 Cranch, 268; 5 Cranch, 344; 7 Wheat. 164, 206. 4. By certificate from the circuit court that the opinions of the judges are opposed on points stated, as provided for by the 6th section of the act of April 29th, 1802. The provisions of the act extend to criminal as well as to civil cases. See 2 Cranch, 33; 10 Wheat. 20; 2 Dall. 384; 4 Hall's Law Journ. 461; 5 Wheat. 434; 6 Wheat. 542; 12 Wheat. 212; 7 Cranch, 279. 5. By mandamus, prohibition, habeas corpus, certiorari, procedendo.

2d. The *criminal* jurisdiction of the supreme court is derived from the constitution and the act of September 24th, 1789, s. 13, which gives the supreme court, exclusively, all such jurisdiction of suits or proceedings against ambassadors, or other public ministers or their domestics as a court of law can have or exercise consistently with the law of nations. But it must be remembered that the act of April 30th, 1790, sections 25 and 26, declares void any writ or process whereby the person of any ambassador, or other public minister, their domestic or domestic servants may be arrested or imprisoned.

II. The *local* courts are, circuit courts, district courts and territorial courts.

1. In treating of *circuit courts*, we will consider, 1, their organization; and 2, their jurisdiction.

§ 1. *Of the organization of the circuit courts.* The circuit courts are the principal inferior courts established by act of congress. The circuit courts are organized as follows: from the majority of the districts of the United States, are formed seven circuits, and there is holden in each of those circuits, a court called a circuit court.

The *first* circuit consists of the districts of New Hampshire, Massachusetts, Rhode Island and Maine, (act of 29th April, 1802, sect. 4. March 30, 1820,) in which the circuit court consists of the justice of the supreme court, residing within the said circuit, and the district judge of the district where such court is holden, (act of March 26, 1812.)

2. The *second* circuit is composed of the districts of Connecticut, southern district of New York, and Vermont, to consist of the justices of the supreme court residing therein, and the district judge of the district where such court is holden, (act of 29th April, 1802).

3. The *third* circuit is composed of the districts of New Jersey, and the eastern district of Pennsylvania, (act of 29th April, 1802. April 20, and December 16, 1818, May 15th, 1820,) to consist of the senior associate justice of the supreme court residing in the fifth circuit, (Virginia, and North Carolina,) (act of 29th April, 1802, sect. 4,) and the district judge of the district where the court is holden, (act of March 3, 1803.)

4. The *fourth* circuit is composed of the districts of Maryland, and Delaware; to consist of the justice of the supreme court, residing within the said circuit, and the district judge of the district where such court is holden, (act of 29th April, 1802.)

5. The *fifth* circuit embraces the eastern district of Virginia, and the district of North Carolina, to consist of the present chief justice of the supreme court, and the district judge of the district where the court is holden.

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6. The *sixth* circuit comprehends South Carolina, and Georgia; to consist of the junior associate justice of the supreme court, and the district judge of the district where such court shall be holden.

7. The *seventh* circuit is composed of the district of Kentucky, East and West Tennessee and Ohio; to consist of the sixth associate judge residing in the seventh circuit, until otherwise allotted, and the district judge of the district where such court is holden.

In several districts of the United States, owing to their remoteness from any justice of the supreme court, there are no circuit courts held. But in these, the district court there is authorised to act as a circuit court, except so far as relates to writs of error or appeals from judgments or decrees in such district court.

In all cases where the day of meeting of the circuit court is fixed for a particular day of the month, if that day happen on Sunday, then, by the act of 29th April, 1802, and other acts, the court shall be held the next day.

The act of 29th April, 1802, sect. 5, further provides, that on every appointment which shall be hereafter made, of a chief justice, or associate justice, the chief justice and associate justices shall allot among themselves the aforesaid circuits, as they shall think fit, and shall enter such allotment on record.

And, in case no such allotment shall be made by them, at their sessions next succeeding such appointment, and also, after the appointment of any judge as aforesaid, and before any other allotment shall have been made, it shall and may be lawful for the president of the United States, to make such allotment as he shall deem proper—which allotment, in either case, shall be binding until another allotment shall be made. And the circuit courts constituted by this act shall have all the power, authority, and jurisdiction, within the several districts of their respective circuits, that before the 13th February, 1801, belonged to the circuit courts of the United States.

The act of September 24th, 1789, sect. 6, provides, that a circuit court may be adjourned from day to day, by one of its judges, or if none are present, by the marshal of the district, until a quorum be convened. By the act of May 19th, 1794, a circuit court in any district, when it shall happen that no judge of the supreme court attends within four days after the time appointed by law, for the commencement of the sessions, may be adjourned to the next stated term, by the judge of the district, or, in case of his absence also, by the marshal of the district. But by the 4th sect. of the act of 29th April, 1802, where only one of the judges thereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending.

By the act of March 2d, 1809, certain duties are imposed on the justice of the supreme court, in case of the disability of the district judge to hold a district court. Sect. 1, enacts, that in case of the disability of the district judge of either of the district courts of the United States, to hold a district court, and to perform the duties of his office, and satisfactory evidence thereof being shown to the justice of the supreme court allotted to that circuit, in which such district court ought, by law to be holden, and on application of the district attorney, or marshal of such district, in writing, to the said justice of the supreme court, said justice of the supreme court shall, thereupon, issue his order in

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the nature of a *certiorari*, directed to the clerk of such district court, requiring him forwith to certify unto the next circuit court, to be holden in said district, all actions, suits, causes, pleas, or processes, civil or criminal, of what nature or kind soever, that may be depending in such district court, and undetermined, with all the proceedings thereon, and all files, and papers relating thereto, which said order shall be immediately published in one or more newspapers, printed in said district, and at least thirty days before the session of such circuit court, and shall be deemed a sufficient notification to all concerned. And the said circuit court shall, thereupon, have the same cognizance of all such actions, suits, causes, pleas, or processes, civil or criminal, of what nature or kind soever, and in the like manner, as the district court of said district by law might have, or the circuit court, had the same been originally commenced therein, and shall proceed to hear and determine the same accordingly; and the said justice of the supreme court, during the continuance of such disability, shall, moreover, be invested with, and exercise all and singular the powers and authority, vested by law in the judge of the district court in said district. And all bonds and recognizances taken for, or returnable to, such district court, shall be construed and taken to be to the circuit court to be holden thereafter, in pursuance of this act, and shall have the same force and effect in such court, as they would have had in the district court to which they were taken. *Provided*, that nothing in this act contained shall be so construed, as to require of the judge of the supreme court, within whose circuit such district may lie, to hold any special court, or court of admiralty, at any other time than the legal time for holding the circuit court of the United States in and for such district. Section 2, provides, that the clerk of such district shall, during the continuance of the disability of the district judge, continue to certify as aforesaid, all suits or actions, of what nature or kind soever, which may thereafter be brought to such district court, and the same transmit to the circuit court next thereafter to be holden in the same district. And the said circuit court shall have cognizance of the same, in like manner as is herein before provided in this act, and shall proceed to hear and determine the same. *Provided, nevertheless*, that when the disability of the district judge shall cease, or be removed, all suits or actions then pending and undetermined in the circuit court, in which by law the district courts have an exclusive original cognizance, shall be remanded, and the clerk of the said circuit court shall transmit the same, pursuant to the order of said court, with all matters and things relating thereto, to the district court next thereafter to be holden in said district, and the same proceedings shall be had therein, as would have been, had the same originated or been continued in the said district court. Sect. 3, enacts, that in case of the district judge in any district being unable to discharge his duties as aforesaid, the district clerk of such district shall be authorized and empowered, by leave or order of the circuit judge of the circuit in which such district is included, to take, during such disability of the district judge, all examinations, and depositions of witnesses, and to make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction. See Ex parte United States, 1 Gall. 337; 1 Cranch, 309; note to Hayburn's case; 2 Dall. 410.

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If the disability of the district judge terminate in his death, the circuit court must remand the certified causes to the district court. Ex parte United States, 1 Gall. 337.

By the 1st section of the act of 3d March, 1821, in all suits and actions in any district court of the United States in which it shall appear that the judge of such court is any ways concerned in interest, or has been of counsel for either party, or is so related to, or connected with either party as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court, and also an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be forthwith certified to the next circuit court of the district, and if there be no circuit court in such district, to the next circuit court in the state, and if there be no circuit court in such state, to the most convenient circuit court in an adjacent state; which circuit court shall, upon such record being filed with the clerk thereof, take cognizance thereof, in like manner as if such suit or action had been originally commenced in that court, and shall proceed to hear and determine the same accordingly, and the jurisdiction of such circuit court shall extend to all such cases to be removed, as were cognisable in the district court from which the same was removed.

The judges of the supreme court are not appointed as circuit court judges, or in other words, have no distinct commission for that purpose: but practice, and acquiescence under it for many years, were held to afford an irresistible argument against this objection to their authority to act, when made in the year 1803, and to have fixed the construction of the judicial system. The court deemed the contemporary exposition to be of the most forcible nature, and considered the question at rest, and not to be disturbed then. Stuart v. Laird, 1 Cranch, 308.

If a vacancy exist by the death of the justice of the supreme court to whom the district was allotted, the district judge may under the act of congress, discharge the official duties, (Pollard v. Dwight, 4 Cranch, 428: see the 5th section of the act of 29th April, 1802,) except that he cannot sit upon a writ of error from a decision in the district court. United States v. Lancaster, 5 Wheat. 434.

The marshal of the district is an officer of the court, and the clerk of the district court is also clerk of the circuit courts in such district. Act of September 24th, 1789, s. 7.

In the District of Columbia, there is a circuit court established by particular acts of congress composed of a chief justice and two associates.

§ 2. *Jurisdiction of the circuit courts.* Their jurisdiction is either civil or criminal.

1st. Their *civil* jurisdiction is either at law or in equity.

Their civil jurisdiction at *law* is, 1st, Original; 2d, Removal of actions from the state courts; 3d, By writ of mandamus; 4th, Appellate.

1. The *original* jurisdiction of the circuit courts may be considered, 1. As to the matter in controversy; 2. With regard to the parties litigant. 1. *The matter in dispute.* By the act of September 24th, 1789, s. 11, the matter in dispute must exceed, exclusive of costs, the sum or value of five hundred dollars. In suits to recover damages for torts, the sum laid in the declaration is the criterion as to the amount of the matter in

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dispute. 2 Dall. 356. And in ejectment, the value of the land in controversy should appear in the declaration. 4 W. C. C. R. 624; 8 Cranch, 220; 1 Pet. R. 73. If the matter in dispute arise out of a local injury for which a local action must be brought, in order to give jurisdiction to the circuit court, it must be brought in the district where the lands lie. 4 Hall's Law Journ. 78. By sundry acts of congress jurisdiction is also given to the circuit courts in cases to recover damages for the violation of patent and copyrights, without fixing any amount as the limit. Acts of April 17, 1800, s. 4; February 19, 1819; and see 7 John. R. 144; 9 John. 507.—2. *The character of the parties.* 1. The United States may sue on all contracts in the circuit courts where the sum in controversy exceeds, exclusive of costs, five hundred dollars; but in cases of penalties the action must be commenced in the district court, unless the law gives express jurisdiction to the circuit courts. 4 Dall. 342. Under the Act of March 3, 1815, s. 4, the circuit court has jurisdiction concurrently with the district court of all suits at common law where any officer of the United States sues under the authority of an act of congress, as where the post master general sues under an act of congress for debts or balances due to the general post office. 12 Wheat. R. 146. 2. Suits *between citizens of different states.* The act of September 24, 1789, s. 11, gives jurisdiction to the Circuit Court in suits of a civil nature of a certain value, between a citizen of the state where a suit is brought, and a citizen of another state; one of the parties must, therefore, be a citizen of the state where the suit is brought. 1 Pet. R. 431.—3. Suits *where an alien is a party.* The act of September 24, 1789, s. 11, gives the circuit court cognizance of all suits of a civil nature where an alien is a party; but these general words must be restricted by the constitution, which gives jurisdiction in controversies between a state, or the citizens of a state, and foreign states, citizens or subjects; and the statute cannot extend the jurisdiction beyond the limits of the constitution. 4 Dall. 11; 5 Cranch, 303. When both parties are aliens, the circuit court has no jurisdiction, 4 Cranch, 46; 4 Dall. 11.—4. When an *assignee* is the plaintiff the court has no jurisdiction unless a suit might have been prosecuted in such court to recover on the contract assigned, if no assignment had been made, except in cases of foreign bills of exchange. Act of September 24, 1789, s. 11. See 1 Mason's R. 251; 2 Mason's R. 268; 2 Pet. S. C. Rep. 318; 6 Cranch, 332; 6 Wheat. R. 146.—5. The circuit court will not entertain an action against a defendant unless he be an *inhabitant of the district in which such court is located, or found therein at the time of serving the writ.* Act of September 24, 1789, s. 11. By virtue of this act, a citizen of one state may be sued in a different state, if the process be served upon him in the latter; but in such case the plaintiff must be a citizen of the latter state, or an alien. 1 Pet. R. 431. This clause in the act is not a restriction of the jurisdiction of the court, but a grant of a personal privilege to the defendant, which he may waive. 5 Cranch, 288; 1 Pet. R. 449; 4 W. C. C. R. 84; 8 Wheat. R. 699.

2. *Removal of actions from state courts.* The act of September 24th, 1789, gives, in certain cases, the right of removing a suit instituted in a state court to the circuit court of the district. It is enacted by that

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law that if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought, against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court, and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial, into the next circuit court to be held in the district where the suit is pending, and offer good and sufficient security for his entering in such court, on the first day of its session, copies of said process against him, and also for his then appearing and entering special bail in the cause, if special bail was originally required therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause. And any bail that may have been originally taken shall be discharged. And the said copies being entered as aforesaid in such court of the United States, the cause shall there proceed in the same manner, as if it had been brought there by original process. And any attachment of the goods or estate of the defendant, by the original process, shall hold the goods or estate so attached, to answer the final judgment, in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. Vide act of September 24, 1789, s. 12; 4 Dall. 11; 5 Cranch, 303; 4 Johns. R. 493; 1 Pet. R. 220; 2 Yeates, R. 275; 4 W. C. C. R. 286, 344.

By the constitution, art. iii. s. 2, 1, The judicial power shall extend to controversies between citizens of the same state, claiming lands under grants of different states. By a clause of the 12th section of the act of September 24th, 1789, it is enacted, that if, in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court, and make affidavit, if it require it, that he claims, and shall rely upon a right or title to the land, under grant from a state, other than that in which the suit is pending, and produce the original grant, or an exemplification of it, except where the loss of records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse party shall give such information, otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he informs that he does claim under any such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial, to the next circuit court to be holden in such district. But if he is the defendant, he shall do it under the same regulations as in the before mentioned case of the removal of a cause into such court by an alien. And neither party removing the cause shall be allowed to plead, or give evidence of, any other title than that by him stated as aforesaid, as the ground of his claim; and see 9 Cranch, 292; 2 Wheat. R. 378.

3. *Remedy by mandamus.* The power of the circuit court to issue a mandamus is confined, exclusively, to cases in which it may be necessary for the exercise of a jurisdiction

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already existing; as, for instance, if the court below refuse to proceed to judgment, there a mandamus in the nature of a procedendo may issue. 7 Cranch, 504; 6 Wheat. R. 598.

4. *Appellate jurisdiction.* The appellate jurisdiction is exercised by means of writs of error; appeals from the district court, in cases of admiralty and maritime jurisdiction; certiorari or procedendo. 1. This court has jurisdiction to issue writs of error to the district court, on judgments of that court in civil cases at common law. The 11th section of the act of September 24th, 1789, provides, that the circuit courts shall also have appellate jurisdiction from the district courts, under the regulations and restrictions thereinafter provided. By the 22d section, final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined, and reversed or affirmed in a circuit court holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the supreme court, the adverse party having at least twenty days' notice. But there shall be no reversal on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of; or, in case the person entitled to such writ of error be an infant, *non compos mentis*, or imprisoned, then within five years, as aforesaid, exclusive of the time of such disability. And every justice or judge signing a citation or any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good. The district judge cannot sit in the circuit court on a writ of error to the district court. 5 Wheat. R. 434. It is above observed that writs of error may be issued to the district court in civil cases at common law, but a writ of error does not lie from a circuit to a district court in an admiralty or maritime cause. 1 Gall. R. 5.—2. Appeals from the district to the circuit court take place generally in civil causes of admiralty or maritime jurisdiction. By the act of March 3, 1803, s. 2, it is enacted, that from all final judgments or decrees in any of the district courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the district court next to be holden in the district where such final judgment or judgments, decree or decrees shall be rendered: and the circuit courts are thereby authorised and required, to hear and determine such appeals.—3. Although no act of congress authorises the circuit court to issue a *certiorari* to the district court for the removal of a cause, yet if the cause be so removed, and, instead of taking advantage of the irregularity in proper time and in a proper manner, the defendant makes defence and pleads to issue, he thereby waives the objection, and the suit will be considered as an original one in the circuit court, made so by consent of parties. 2 Wheat. R. 221. The circuit court may issue a writ of *procedendo* to the district court.

2. *Equity jurisdiction of the cir-*

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cuit courts. Circuit courts are also vested with equity jurisdiction in certain cases. The act of September 1789, s. 11, gives original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in *equity*, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, between certain parties therein mentioned. And the act of April 15, 1819, s. 1, provides "that the circuit court of the United States shall have original cognizance, as well in equity, as at law, of all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to authors or inventors, the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity filed by any party aggrieved, in any such cases, shall have authority to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable: *provided however*, that from all judgments and decrees of any circuit courts rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances, as is now provided by law, in other judgments and decrees of such circuit court."

2nd. *Criminal jurisdiction of the circuit courts.* The often cited 11th section of the act of the 24th of September, 1789, gives the circuit courts exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where that act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. The jurisdiction of the circuit courts in criminal cases is confined to offences committed within the district for which those courts respectively sit when they are committed on land. Serg. Const. Law, 129.

2. In treating of *district courts*, the same division which was made, in considering circuit courts, will here be adopted, by taking a view, 1, of their organization; and 2, of their jurisdiction.

§ 1. *Of the organization of the district courts.* The United States are divided into districts, in each of which is a court called a district court, which is to consist of one judge, who is to reside in the district for which he is appointed, and to hold annually four sessions. Act of September 24, 1789. By subsequent acts of congress the number of annual sessions in particular districts, is sometimes more and sometimes less, and they are to be held at various places in the district. There is also a district court in the District of Columbia, held by the chief justice of the circuit court of that district.

§ 2. *Jurisdiction of the district courts.* Their jurisdiction is either civil or criminal.

1. Their *civil* jurisdiction extends, 1, to admiralty and maritime causes: the admiralty and maritime jurisdiction, is either the ordinary jurisdiction, which comprehends prize-suits; cases of salvage; actions for torts; and actions on contracts, such as seamen's wages, pilotage, bottomry, ransom, materials, and the like; or the extraordinary or expressly vested jurisdiction; which includes cases of seizures under the revenue laws, &c.; and captures within the juris-

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diction of the United States. 2. To cases of seizure on land under the laws of the United States, and in suits for penalties and forfeitures, incurred under the laws of the United States. 3. To cases in which an alien sues for a tort, in violation of the law of nations, or a treaty of the United States. 4. To suits instituted by the United States. 5. To actions by and against consuls. 6. To certain cases in equity.

1st. The admiralty and maritime jurisdiction of the district court, is ordinary or extraordinary. 1. The *ordinary* jurisdiction is granted by the act of September 24th, 1789, s. 9; it is there enacted that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. This jurisdiction is exclusive. 1 Wheat. R. 337; 3 Dall. R. 6. It is exercised in, 1, *Prize suits.* The act of September 24th, 1789, gives the district court as full jurisdiction of all prize causes as the admiralty of England; and this jurisdiction is an ordinary inherent branch of the powers of the court of admiralty. 2. *Cases of salvage.* Under the constitution and laws, this court has exclusive original cognizance in cases of salvage; and, as a consequence, it has the power to determine to whom the residue of the property belongs, after deducting the salvage. 3 Dall. 183. 3. *Actions arising out of torts and injuries.* The district court has jurisdiction over all torts and injuries committed on the high seas, and in ports or harbours within the ebb and flow of the tide. Vide 1 Wheat. R. 304; 2 Gall. R. 398; 1 Mason, 96; 3 Mason, 242; 4 Mason, 380; 18 Johns. R. 257. 4. *Suits on contracts.* As a court of admiralty, this court has a jurisdiction, concurrent with the courts of common law, over all maritime contracts, wheresoever the same may be made or executed, or whatever the form of the contract. 3 Mason, 6; 2 Gall. R. 200. As a court of admiralty, it possesses a general jurisdiction in suits by material men *in rem* and *in personam.* 4 Wheat. R. 438; 9 Wheat. R. 409; 12 Wheat. R. 614; 2 Gall. R. 345. 2. The *extraordinary* jurisdiction, or that which is expressly vested in the district court, consists of, 1, seizures under laws of impost, navigation or trade of the United States. It is enacted by the act of September 24, 1789, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, when the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas, saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it. Sect. 9. See 9 Cranch, 289; 4 Cranch, 443; 5 Cranch, 304; 4 Wheat. 402. Causes of this kind are to be tried by the district court, and not by a jury. 4 Cranch, 438; 7 Cranch, 112; 1 Wheat. 9, 20; 3 Dall. 297. 2. The admiralty jurisdiction expressly vested in the district court embraces also captures made within the jurisdictional limits of the United States. By the act of April 20, s. 7, the district court shall take cognizance of complaints, by whom soever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts and shores thereof.

2d. The act of September 24, 1789, s. 9, gives to the district court exclusive original cognizance of all seizures made on land, and other

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waters than as aforesaid, (that is, those which are navigable by vessels of ten or more tons burthen, within their respective districts, or on the high seas,) and of all suits for penalties and forfeitures, incurred under the laws of the United States. Those cases, it seems, are triable by jury. 4 Cranch, 443.

3d. The district court has further cognizance, concurrent with the courts of the several states, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only, in violation of the law of nations, or a treaty of the United States. Act of September 24, 1789, s. 9.

4th. By the 9th section of the act of September 25th, 1789, the district court shall also have cognizance, concurrent as last mentioned, of all suits at common law, where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And by the act of March 3d, 1815, sect. 4, it has cognizance, concurrent with the courts and magistrates of the several states, and the circuit courts of the United States, of all suits at common law where the United States, or any officer thereof, under the authority of any act of congress sue, although the debt, claim, or other matter in dispute, shall not amount to one hundred dollars. These last words do not confine the jurisdiction given by this act to one hundred dollars, but prevent it from stopping at that sum: and consequently, suits for sums over one hundred dollars are cognizable in the district, circuit, and state courts, and magistrates, in the cases here mentioned. By virtue of this act, these tribunals have jurisdiction over suits brought by the postmaster-general, for debts and balance due the general post office. 12 Wheat. 149.

5th. This court has jurisdiction, exclusively of the courts of the several states, of all suits against consuls or vice consuls, except for offences, where whipping not exceeding thirty stripes, a fine exceeding one hundred dollars, or a term of imprisonment exceeding six month, is inflicted. Act of September 24, 1789, s. 9. For offences above this description, the circuit court has jurisdiction in the case of consuls. 5 Serg. & Rawle, 545. See also 1 Binn. 143; 2 Dall. 299.

6th. By the 1st section of the act of February 13th, 1807, the judges of the district courts of the United States shall have as full power to grant writs of injunctions, to operate within their respective districts, as is now exercised by any of the judges of the supreme court of the United States, under the same rules, regulations, and restrictions, as are prescribed by the several acts of Congress establishing the judiciary of the United States, any law to the contrary notwithstanding. *Provided*, that the same shall not, unless so ordered by the circuit court, continue longer than to the circuit court then next ensuing; nor shall an injunction be issued by a district judge in any case, where the party has had a reasonable time to apply to the circuit court for the writ. An injunction may also be issued by the district judge under the act of March 3d, 1820, sect. 4, 5, where proceedings have taken place by warrant and distress against a debtor to the United States or his sureties, subject by sect. 6, to appeal to the circuit court from the decision of such district judge in refusing or dissolving the injunction, if such appeal be allowed by a justice of the supreme court. On which, with an exception as to the necessity of an answer on the part of the United States, the proceedings are to be as in other cases. The act of 24th

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September, 1789, section 14, vests in the judges of the district courts, power to grant writs of *habeas corpus*, for the purpose of an inquiry into the cause of commitment. Other acts give them powers to issue writs, make rules, take depositions, &c. The acts of congress already treated of relating to the privilege of not being sued out of the district of which the defendant is an inhabitant or in which he is found, restricting suits by assignees, and various others, apply to the district court as well as to the circuit court. By the 9th section of the act of September 24th, 1789, the trial of issues in fact in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury. Serg. Const. Law, 226, 7.

2. The *criminal* jurisdiction of the district court is derived from the act of September 24, 1789, s. 9. That act gives the district court, exclusively of the courts of the several states, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, where no other punishment than whipping not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted. It is, therefore, the grade of punishment alone, that separates the jurisdiction of the district from that of the circuit courts; in other respects the jurisdiction as vested by this act, is similar. By the same section the district court shall also have jurisdiction, exclusively of the courts of the several states, of all suits against consuls or vice-consuls, except for offences above the description above mentioned. Here, it is the character of the party, and the grade of punishment combined that give jurisdiction.—Serg. Const. Law, 236.

There is a class of district courts of a peculiar description. These exercise the power of a circuit court, under the same regulations as they were formerly exercised by the district court of Kentucky, which was the first of the kind. The act of September 24, 1789, s. 10, gives the district court of the Kentucky district, besides the usual jurisdiction of a district court, the jurisdiction of all causes, except of appeals and writs of error, therein after made cognizable in a circuit court, and writs of error and appeals were to lie from decisions therein to the supreme court, and under the same regulations. By the 12th section, authority was given to remove cases from a state court to such court, in the same manner as to a circuit court.

3. *Territorial courts.* These courts have been established to administer justice in the territories of the United States. They are as follows:

1. In *Florida*, the judicial power is vested in two superior courts and such inferior courts and justices of the peace, as the legislative council of the territory may establish. These will be separately considered, by taking a view of the superior courts, 1st, of their organization; and, 2, of their jurisdiction. 1. There is one superior court for East Florida, to consist of one judge, appointed by the president by and with the advice and consent of the senate, who holds his office for four years. The other superior court is for West Florida, to consist of one judge, to be appointed by the same authority, and to hold his office for the same period. 2. Each court has jurisdiction in all criminal cases, and exclusive jurisdiction in all capital cases, and original jurisdiction in all civil cases of

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the value of one hundred dollars, arising under, or cognizable by the laws of the territory. Each superior court has also the same jurisdiction within its limits, in all cases arising under the laws and constitution of the United States, which by the act of September 24th, 1789, was vested in the court of Kentucky district. (*See above.*)

2. In *Wisconsin* the judicial power is vested in a supreme court, district courts, probate courts and in justices of the peace. Act of April 20th, 1836, s. 9, 4 Sharsw. cont. of Story's L. U. S. 2426. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said territory, annually, and they shall hold their offices during good behaviour. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however*, That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in such cases shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the state of New York receives for similar services.

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And by the 10th section it is enacted, that there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the Michigan territory. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the northern district for the state of New York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

3. The act of June 12, 1838, to establish the territorial government of *Iowa*, enacts, section 9, that the judicial power of the said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice, and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of goverment of the said territory annually, and they shall hold their offices during the term of four years. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however*, That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess a chancery as well as a common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue umtil the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all

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cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerks shall receive in all such cases, the same fees which the clerk of the district courts of Wisconsin territory now receives for similar services.

And by the 10th section it is enacted, that there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States, for the present territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Wisconsin; and shall, in addition, be paid the sum of two hundred dollars annually, as a compensation for extra services.

COUSIN, *domest. rel.* Cousins are kindred who are the issue of two brothers or two sisters, or of a brother and a sister. Those who descend from the brother or sister of the father of the person spoken of are called paternal cousins; maternal cousins are those who are descended from the brothers or sisters of the mother. Vide 2 Bro. C. C. 125; 1 Sim. & Stu. 301; 3 Russ. C. C. 140.

COVENANT, *remedies.* The name of an action instituted for the recovery of damages for the breach of a covenant or promise *under seal.* 2 Ld. Raym. 1536; F. N. B. 145; Com. Dig. Pleader, 2 V 2; Ib. Covenant, A 1. The subject will be considered with reference, 1, to the kind of claim or obligation on which this action may be maintained; 2, The form of the declaration; 3, The plea; 4, The judgment.

1. To support this action, there must be a breach of a promise under seal. Such promise may be contained in a deed-poll, or indenture, or be express or implied by law from the terms of the deed; or for the performance of something *in futuro*, or that something has been done; or in some cases, though it relate to something *in presenti*, as that the covenantor has a good title. 2 Saund. 181, b. Though, in general, it is said that covenant will not lie on a contract *in presenti*, as on a covenant to stand seised, or that a certain horse shall henceforth be the property of another. Plowd. 308; Com. Dig. Covenant, A 1; 1 Chit. Pl. 110. The action of covenant is the peculiar remedy for the non-performance of a promise under seal, where the damages are *unliquidated*, and depend in amount on the opinion of a jury, in which case neither debt nor assumpsit can be supported. When the breach of the covenant amounts to misfeasance, the covenantee has an election to proceed by action of covenant, or by action on the case for a tort, as against a lessee, either during his term or afterwards for waste. 2 Bl. R. 1111; 2 Bl. R. 848; but this has been ques-

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tioned. When the contract under seal has been enlarged by parol, the substituted will be considered, together with the original agreement, as a simple contract. 2 Watts's R. 451; 1 Chit. Pl. 96; 3 T. R. 590.

2. The declaration must state that the contract was under seal; and it should make profert of it, or show some excuse for the omission, 3 T. T. 151. It is not in general requisite to state the consideration of the defendant's promise, because a contract under seal usually imports a consideration; but when the performance of the consideration constitutes a condition precedent, such performance must be averred. So much only of the deed and covenant should be set forth as is essential to the cause of action: although it is usual to declare in the words of the deed, each covenant may be stated as to its legal effect. The breach may be in the negative of the covenant generally, 4 Dall. R. 436, or according to the legal effect, and sometimes in the alternative; and several breaches may be assigned at common law. Damages being the object of the suit, should be laid sufficient to cover the real amount. Vide 3 Serg. & Rawle, 364; 4 Dall. R. 436; 2 Yeates's R. 470; 3 Serg. & Rawle, 564, 567; 9 Serg. & Rawle, 45.

3. It is said that strictly there is no general issue in this action, though the plea of *non est factum*, has been said by an intelligent writer to be the general issue. Steph. Pl. 174; but this plea only puts in issue the fact of sealing the deed. 1 Chit. Pl. 116. *Non infregit conventionem*, and *nil debet*, have both been held to be insufficient. Com. Dig. Pleader, 2 V 4. In Pennsylvania, by a practice peculiar to that state, the defendant may plead *covenants performed*, and under this plea, upon notice to the plaintiff, without form, he may give any thing in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 Serg. & Rawle, 105. And this evidence may be given without notice, unless called for. 2 W. C. C. R. 456.

4. The judgment is that the plaintiff recover a named sum for his damages, which he has sustained by reason of the breach or breaches of covenant, together with costs.

COVENANT, *contracts*. A covenant is an agreement between two or more persons, entered into in writing and under seal, whereby either party stipulates for the truth of certain facts, or promises to perform or give something to the other, or to abstain from the performance of certain things. 2 Bl. Com. 303, 4; Bac. Ab. Covenant, vol. 2, p. 60; 4 Cruise, 446; Shep. Touchs. 160. It differs from an express assumpsit in this that the former may be verbal, or in writing not under seal, while the latter must always be by deed. In an assumpsit, a consideration must be shown; in a covenant no consideration is necessary to give it validity, even in a court of equity, Plowd. 308; 7 T. R. 447; 4 Barn. & Ald. 652; 3 Bingh. 111.

It is proposed to consider, first, the general requisites to make a covenant; and secondly, the several kinds of covenants.

§ 1. The general requisites are, 1st, proper parties; 2dly, an agreement; 3dly, a legal purpose; 4thly, a proper form.

1st. The parties must be such as by law they can enter into a contract. If either for want of understanding, as in the case of an idiot or lunatic; or in the case of an infant, where the contract is not for his benefit; or where there is understanding, but owing to certain causes, as coverture in the case of a married woman, or duress, in every case, the parties are not competent, they can-

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not bind themselves. See *Parties to Actions.*

2dly. There must be an agreement. The assent or consent must be mutual; for the agreement would be incomplete if either party withheld his assent to any of its terms. The assent of the parties to a contract necessarily supposes a free, fair, serious exercise of the reasoning faculty. Now, if from any cause, this free assent be not given, the contract is void. See *Consent.*

3dly. A covenant against any positive law, or public policy, is generally void. See *Nullity;* Shep. Touchs. 163. As an example of the first is a covenant by one man that he will rob another; and of the last, a covenant by a merchant or tradesman that he will not follow his occupation or calling. This, if it be unlimited, is absolutely void; but, if the covenant be that he shall not pursue his business in a particular place, as, that he will not trade in the city of Philadelphia, the covenant is no longer against public policy. See Shep. Touchs. 164. A covenant to do an impossible thing is also void. Ib.

4thly. To make a covenant, it must, according to the definition above given, be by deed, or under seal. The law does not seem to have appropriated any set of words, absolutely required in creating a covenant. Any words which manifest the intention of the parties, to perform an act are sufficient. See numerous examples in Bac. Abr. Covenant, (A); Selw. N. P. 469; Com. Dig. Covenant, A 2; 3 Johns. R. 44; 5 Munf. 483. In Pennsylvania, Delaware and Missouri, it is declared by statute that the words *grant*, *bargain*, and *sell* shall amount to a covenant that the grantor was seised of an estate in fee, free from all incumbrances done or suffered by him, and for quiet enjoyment against his acts. But it has been adjudged that those words in the Pennsylvania statute of 1715, (and the decision will equally apply to the statutory language in the other two states,) did not amount to a general warranty, but merely to a covenant that the grantor had not done any act, nor created any incumbrance whereby the estate might be defeated, 2 Binn. 95; 4 Kent, Com. 460.

§ 2. The several kinds of covenants. They are,

1. Express or implied. 1. An *express* covenant, or a covenant in fact, is one expressly agreed between the parties and inserted in the deed. 2. An *implied* or covenant in law, is one which the law intends and implies, though it be not expressed in words; as if a lessor demise and grant to his lessee a house or lands for a certain term, the law will intend a covenant on the lessor's part, that the lessee shall during the term, quietly enjoy the same against all incumbrances. Co. Litt. 384; Bac. Abr. Covenant, (B).

2. Real and personal. 1. Covenants *real* are such as are annexed to estates, and descend to the heirs of the covenantee; such covenants are said to run with the land, so that he that has the one is subject to the other. Bac. Abr. Covenant, E 2. A covenant of warranty, and the covenant for quiet enjoyment are in the nature of real covenants. 4 Kent, Com. 459. 2. A *personal* covenant is one annexed to the person, as if a man covenants to serve another, F. N. B. 340, A.

3. Dependent and independent. 1. Those covenants are *dependent*, in which the performance of one depends on the prior performance of the other; and, therefore, till this prior condition is performed, the other party is not liable to an action on his covenant. 8 Serg. & Rawle, 268. 2. Covenants are *independent*,

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when either party may recover damages from the other for the injury he may have received by a breach of the covenants in his favour, and when it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. 2 W. C. C. Rep. 456. There is also a sort of covenants which are mutual conditions to be performed at the same time; and, in these, if one party was ready and offered to perform his part, and the other neglected or refused to perform his, he who was ready and offered has fulfilled his engagement, and may maintain an action for default of the other, though it is not certain that either is obliged to perform the first act. Dougl. 688.

Covenants are to be construed to be either dependent or independent of each other, according to the intention and meaning of the parties, and the good sense of the case; and technical words should give way to such intention. 1 T. R. 645; 6 T. R. 668, 571; 7 T. R. 130; 1 Saund. 320, n. 4.

COVENANT, AFFIRMATIVE. An affirmative covenant is one by which the covenantor binds himself that something has already been done or shall be performed hereafter. Such a covenant will not deprive a man of a right lawfully enjoyed by him independently of the covenant; as if the lessor agreed with the lessee that he shall have thorns for hedges growing upon the land, by assignment of the lessor's bailiff; here no restraint is imposed upon the exercise of that liberty which the law allows to the lessee, and therefore he may take hedgebote without assignment. Dy. 19 b, pl. 115; 1 Leon. 251.

COVENANTS, *in the disjunctive or alternative*, are those which give the covenantor the choice of doing, or the covenantee the choice of having performed one of two or more things at his election; as a covenant to make a lease to Titius, or pay him one hundred dollars on the fourth day of July, as the covenantor, or the covenantee, as the case may be, shall prefer. Platt on Cov. 21.

COVENANTS, COLLATERAL. Collateral covenants are such as concern some collateral thing, which does not at all, or not so immediately relate to the thing granted; as, to pay a sum of money in gross, that the lessor shall distrain for rent, on some other land than that which is demised, or the like. Touchs. 161; 4 Burr. 2446; 2 Wils. R. 27; 1 Ves. R. 56. These covenants are also termed covenants in gross. Vide 5 Barn. & Ald. 7, 8; Platt on Cov. 69, 70.

COVENANTS, CONCURRENT. Concurrent covenants are those which are to be performed by the parties to each other at the same time. When, in these cases, one party is ready and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain he is obliged to do the first act. 4 Wash. C. C. Rep. 714; 2 Selw. N. P. 443.

COVENANTS DECLARATORY are those which serve to limit and direct uses. 1 Sid. 27.

COVENANT, DEPENDENT. A dependent covenant is one which it is not the duty of the covenantor to perform, until some other covenant, contained in the same agreement, has been performed by the opposite party. When covenants are dependent or concurrent the covenantee is not entitled to recover for the breach of such a covenant until after he has performed the covenants on his part. 4 Wash. C.

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C. Rep. 714. Vide 2 Dougl. R. 689; Lofft, 194; Platt on Cov. 71; 2 Selw. N. P. 443, 444. To ascertain whether covenants are dependent or not, the intention of the parties is to be discovered, rather than the order or time in which the acts are to be done, the structure of the instrument, or the arrangement of the covenants. 4 Wash. C. C. R. 714, 715; Willis, 157; 7 T. R. 130; 8 T. R. 366; 5 Bos. & Pull. 233; 1 Saund. 320, note 4; Dougl. 690; 4 Watts, R. 26; 2 Johns. R. 145.

COVENANT, EXECUTED. Where the covenant relates to an act already done, it is called a covenant executed. Ship. Touch. 161.

COVENANT EXECUTORY. An executory covenant is one to be performed at a future time. Shep. Touch. 161.

COVENANT, EXPRESS; express covenants are such as are created by the express words of the parties, in a deed, declaratory of their intentions. The law does not require any particular form to create an express covenant. The formal word "covenant" is not indispensably necessary, 2 Mod. 268; 3 Keb. 848; 1 Leon. 324; 1 Bing. 433; 8 J. B. Moore, 546; 1 Ch. Cas. 294; 16 East, 352; 12 East, 182, n. The words "I oblige," "agree," 1 Ves. 516; 2 Mod. 266; or, "I bind myself to pay so much such a day, and so much at another day," Hardr. 178; 3 Leon. 119, pl. 199, are held to be covenants, and so are the words of a bond, 1 Ch. Cas. 194. But words merely importing an order or direction that other persons should pay a sum of money are not a covenant. 6 J. B. Moore, 202, n. (*a*).

COVENANT INHERENT. Inherent covenants are such as are made in relation to land; as that the thing demised shall be quietly enjoyed; shall be kept in repair; shall not be aliened, or, if sold, that the lessor shall have the first refusal; to make further assurances and the like. Touchs. 161.

COVENANTS, IMPLIED. Implied covenants depend for their existence on the intendment and construction of law. There are some words which of themselves do not import an express covenant, yet being made use of in certain contracts have a similar operation and are called covenants, in law; and are as effectually binding on the parties, as if expressed in the most unequivocal terms. Bac. Abr. Covenant, B. A few examples will be given of words on which implied covenants may be raised. If a lease for years be made by any of the following words, "grant," 1 Mod. 113; Freem. 367; Cro. Eliz. 214; 5 B. & C. 609; 4 Taunt. 609; "grant and demise," 4 Wend. 502; "*demisi*," 10 Mod. 162; 4 Co. 80; Hob. 12; or, "*demiserunt*," 1 Show. 79; 1 Salk. 137. By legislative enactment in Pennsylvania the words "grant, bargain, and sell," shall be adjudged an express covenant to the grantee, his heirs and assigns; to wit, that the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances done or suffered from the grantor, (excepting the rents and services due to the lord of the fee) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, and assigns, may in any action assign breaches, as if such covenants were expressly inserted. Act of 28 May, 1715, s. 6; 2 Binn. 99; 4 Dall. 441; 4 Kent, Com. 460.

COVENANT, JOINT. A joint covenant is one by which several parties agree to perform or do a

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thing together. In this case although there are several covenantors there is but one contract, and if the covenant be broken, all the covenantors living must be sued; as there is not a separate obligation of each, they cannot be sued separately.

COVENANTS, MUTUAL OR INDEPENDENT. Mutual or independent covenants are those entered into by the parties to an agreement towards each other, which each is bound to perform towards the other, notwithstanding the opposite party may not have fulfilled his. Platt on Cov. 71.

COVENANT, NEGATIVE. A negative covenant is one where the party binds himself that he has not performed and will not perform a certain act; as, that he will not encumber. Such a covenant cannot be said to be performed until it becomes impossible to break it. On this ground the courts are unwilling to construe a covenant of this kind to be a condition precedent. Therefore, where a tailor assigned his trade to the defendant and covenanted thenceforth to desist from carrying on the said business with any of the customers, and the defendant, in consideration of the performance thereof, covenanted to pay him a life annuity of 100*l.*, it was held that if the words *in consideration of the performance thereof*, should be deemed to amount to a condition precedent, the plaintiff would never obtain his annuity; because as at any time during his life he might exercise his former trade, until his death it could never be ascertained whether he had performed the covenant or not. 2 Saund. 156; 1 Sid. 464; 1 Mod. 64; 2 Keb. 674. The defendant, however, on a breach by plaintiff, might have his remedy by a cross-action of covenant. There is also a difference between a negative covenant, which is only in affirmance of an affirmative covenant precedent, and a negative covenant which is additional to the affirmative covenant. 1 Sid. 87; 1 Keb. 334, 372. To a covenant of the former class a plea of performance generally is good, but not to the latter; the defendant in that case must plead specially. Ibid.

COVENANT NOT TO SUE. This is a covenant entered into by a party who had a cause of action at the time of making it, and by which he agrees not to sue the party liable to such action. Covenants of this nature, are either covenants perpetual not to sue, or covenants not to sue for a limited time; for example, seven years.

§ 1. Covenants perpetual not to sue. These will be considered with regard to their effect as relates, 1, to the covenantee; 2, to his partners or co-debtors.

1. A covenant not to sue the covenantee at all, has the effect of a release to him, and may be pleaded as such to avoid a circuity of action. Cro. Eliz. 623; 1 T. R. 446; 8 T. R. 486; 1 Ld. Raym. 688; S. C. Holt, 178; 2 Salk. 575; 3 Salk. 298; 12 Mod. 415, 548. And see 11 Serg. & Rawle, 149.

2. Where the covenantee is jointly and *severally* bound with another to the covenantor, a covenant to sue him will be no protection to the other who may be sued on his several obligations, and such a covenant does not amount to a release to him. 2 Salk. 575; S. C. 12 Mod. 551; 8 T. R. 168; 6 Munf. 6; 8 T. R. 168; 1 Com. 139.

§ 2. Covenant not to sue for a limited time.

Such a covenant does not operate as a release, nor can it be pleaded as such, but is a covenant only for a breach of which the obligor may bring his action. Carth. 63; 1 Show.

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46; Comb. 123, 4; 2 Salk. 573; 6 Wend. 471.

COVENANTS OBLIGATORY, are those which shall never be construed to raise a use. 1 Sid. 27.

COVENANT, PERSONAL. A personal covenant relates only to matters personal, as distinguished from real, and is binding on the covenantor during his life, and on his personal representatives after his decease, in respect of his assets. According to Sir William Blackstone, a personal covenant may be transformed into a real covenant by the mere circumstance of the heir's being named therein, and having assets by descent from the covenantor. A covenant is personal in another sense, where the covenantor is bound to fulfil the covenant himself personally, as to teach an apprentice. Platt. on Cov. 66, 7.

COVENANT, REAL, is one which has for its object something annexed to, or inherent in, or connected with land, or other property. Co. Litt. 384; Jenk. 241; Cruise, Dig. tit. 32, c. 25, s. 22. A covenant real, runs with the land, and descend to the heir; it is also transferred to a purchaser. Bac. Ab. Covenant (E). But see the distinctions and definitions made by Mr. Platt. Platt on Cov. 62.

COVENANT, SEVERAL. A several covenant is one entered into by one person only. It frequently happens that a number of persons enter into the same contract, and that each binds himself to perform the whole of it, in such case, when the contract is under seal, the covenantors are severally bound for the performance of it. The terms usually employed to make a several covenant are "severally," or "each of us." In practice, it is common for the parties to bind themselves jointly and severally, and then the covenant is both joint and several. Vide Hamm. on Parties, 19; Cruise Dig. tit. 32, c. 25, s. 18; Bac. Ab. Covenant (D).

COVENANT TO STAND SEISED TO USES, is a species of conveyance which derives its effect from the statute of uses, and operates without transmutation of possession. By this conveyance, a person seised of lands, covenants that he will stand seised of them to the use of another. On executing the covenant, the other party becomes seised of the use of the land, according to the terms of the use; and the statute immediately annexes the possession to the use. This conveyance has the same force and effect as a common deed of bargain and sale; the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 2 Bl. Com. 338; 4 Kent. Com. 480; Lilly's Reg. h. t.; 1 Vern. by Raithby, 40, n.; Cruise, Dig. tit. 32, c. 10.

COVENTRY ACT, *criminal law*, is the common name for the stutute 22 & 23 Car. II. c. 1; it having been enacted in consequence of an assault on Sir John Coventry in the street, and slitting his nose in revenge, as was supposed, for some obnoxious words uttered by him in parliament. By this statute it is enacted, that if any person shall, of malice aforethought, and by laying in wait, unlawfully cut or disable the tongue, put out an eye, slit the nose, cut off the nose or lip, or cut off or disable any limb, or member of any other person, with intent to maim or disfigure him; such persons, his counsellors, aiders and abetters, shall be guilty of felony, without benefit of clergy; 4 Bl. Com. 207. This statute is copied by the act of the legislature of Pennsylvania, of the 22d April, 1794, s. 6, 3 Smith's Laws of Pa. 188, and punished by fine

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and imprisonment. For the act of Connecticut, see 2 Swift's Dig. 293.

COVERT, BARON, a wife so called, from her being under the cover or protection of her husband, baron or lord.

COVERTURE. The state or condition of a married woman. During coverture, the being of the wife is merged, for many purposes, into that of her husband, she can, therefore, in general, make no contracts without his consent, express or implied. Com. Dig. Baron and Feme, W; Pleader, 2 A 1; 1 Ch. Pl. 19, 45; Litt. s. 28; Chit. Contr. 39. To this rule there are some exceptions; she may contract, when it is for her benefit, as to save her from starvation. Chit. Contr. 40. In some cases, when coercion has been used by the husband to induce her to commit crime, she is exempted from punishment. 1 Hale, P. C. 516; 1 Russ. Cr. 16.

COVIN, *fraud*, is a secret contrivance between two or more persons to defraud and prejudice another of his rights. Co. Litt. 357, b; Com. Dig. Covin, A; 1 Vin. Abr. 473; Vide *Collusion; Fraud.*

COW. The female of the bull. In a penal statute which mentions both cows and heifers, it was held that by the term cow, must be understood one that had had a calf. 2 East, P. C. 616; 1 Leach, 105.

CRANAGE. A toll paid for drawing merchandize out of vessels to the wharf, so called because the instrument used for the purpose is called a crane. 8 Co. 46.

CREDENTIALS *international law*, are the instruments which authorise and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, mandatum manifestum. Vattel, liv. 4, c. 6, § 76.

CREDIBILITY, worthiness of belief. To entitle a witness to credibility, he must be competent. Vide *Competency.* Human testimony can never acquire the certainty of demonstration. Witnesses not unfrequently are mistaken or wish to deceive; the most that can be expected is that moral certainty which arises from analogy. The credibility which is attached to such testimony, arises from the double presumption that the witnesses have good sense and intelligence, and that they are not mistaken or deceived; they are further presumed to have probity, and that they do not wish to deceive. To gain credibility, we must be assured, first, that the witness has not been mistaken or deceived; to be assured as far as possible on this subject, it is proper to consider the nature and quality of the facts proved; the quality and person of the witness; the testimony in itself; and to compare it with the depositions of other witnesses on the subject, and with known facts. Secondly, we must be satisfied that he does not wish to deceive; there are strong assurances of this, when the witness is under oath, is a man of integrity, and disinterested. Vide Arch. Civ. Pl. 444; 5 Com. Dig. 449.

CREDIT, *com. law, contracts*, is the ability to borrow on the opinion conceived by the lender that he will be repaid; this definition includes the effect and the immediate cause of credit; the debt due in consequence of such a contract is also called a credit, as, administrator of all the goods, chattels, effects and *credits*, &c. The time extended for the payment of goods sold, is also called a credit; as, the goods were sold at six months' credit. In commercial

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law, credit is understood as opposed to debit; credit is what is due to a merchant, debit, what is due by him.

CREDITOR, *persons, contracts.* A creditor is he who has a right to require the fulfilment of an obligation or contract. Creditors may be divided into personal and real. The former are so called, because their claims are mainly against the person, and who affect the property of their debtors only by virtue of the general rule by which he who has become personally obligated, is bound to fulfil his engagements, with all his property, acquired and to be acquired, which is a common guaranty for all his creditors. The latter are called real, because they have mortgages or other securities binding on the real estates of their debtors. It is proper to state that personal creditors may be divided in two classes: first, those who have a right on all the property of their debtors, without considering the origin, or the nature of their claims; secondly, those who, in consequence of some provision of law, are entitled to some special prerogative, either in the manner of recovery, or in the rank they are to hold among creditors; these are entitled to preference. As an example, may be mentioned the case of the United States, when they are creditors, they have always a preference in case of insolvent estates.

A creditor sometimes becomes so, unknown to his debtor, as is the case when the former receives an assignment of commercial paper, the title to recover which may be conveyed either by endorsement, or, in some cases, by mere delivery. But in general, it is essential there should be a privity of contract between the parties. Vide, generally, 7 Vin. Ab. 42; 3 Com. Dig. 343; 8 Com. Dig. 388; 1 Supp. to Ves. Jr. 302; 2 Supp. to Ves. Jr. 305.

CREEK, *mar. law*, is defined to be a place where officers commonly are or have been placed for prevention only, and which are not in general lawful places of exportation or importation without particular license from the port or member under which they are placed. 1 Chit. Com. Law, 726; Postlewaite's Com. Dict. h. t.; and see Hale's Tract. de Portibus Maris, part 2, c. 1, vol. 1, page 46. It is, according to Lord Hale, only an inlet from the sea, or a narrow passage with the shore on each side of it, whether the precincts or extent of a port or without, and which gives no harbours to ships, and is endowed with no privileges. Com. Dig. Navigation, C; Callis, 34.

CRIME. A crime is an act committed or omitted in violation of a public law, either forbidding or commanding it. This word in its most general signification comprehends all offences, but in its limited sense it is confined to felony. 1 Chitty, Gen. Pr. 14; the term *misdemeanor* includes every offence inferior to felony, but punishable by indictment, or by particular prescribed proceedings. The term *offence* also may be considered as having the same meaning, but is usually, by itself, understood to be a crime not indictable but punishable summarily or by the forfeiture of a penalty. Burn's Just. Misdemeanor.

Crimes are defined and punished by statutes and by the common law. Most common law offences are as well known and as precisely ascertained as those which are defined by statutes; yet, from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted that all immoral acts which tend to the prejudice of the community are punishable by courts of justice. 2 Swift's Dig. 257. Crimes are *mala in se* or bad

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in themselves, these include all offences against the moral law; or they are *mala prohibita*, bad because prohibited, as being against sound policy, and which unless so prohibited would have been innocent or indifferent. Crimes may be classed into such as affect—

1. Religion and public worship; viz: blasphemy, disturbing public worship.

2. The sovereign power: treason, misprision of treason.

3. The current coin: as counterfeiting or impairing it.

4. Public justice: 1, bribery of judges or jurors, or receiving the bribe.—2. Perjury.—3. Prison breaking.—4. Rescue.—5. Barratry.—6. Maintenance.—7. Champerty.—8. Compounding felonies.—9. Misprision of felonies.—10. Oppression.—11. Extortion.—12. Suppressing evidence.—13. Negligence or misconduct in inferior officers.—14. Obstructing legal process.—15. Embracery.

5. Public peace: 1. Challenges to fight a duel.—2. Riots, routs and unlawful assemblies.—3. Affrays.—4. Libels.

6. Public trade: 1. Cheats.—2. Forestalling.—3. Regrating.—4. Engrossing.—5. Monopolies.

7. Chastity: 1. Sodomy.—2. Adultery.—3. Incest.—4. Bigamy.—5. Fornication.

8. Decency and morality: 1. Public indecency.—2. Drunkenness.—3. Violating the grave.

9. Public police and economy: 1. Common nuisances.—2. Keeping disorderly houses and bawdy houses.—3. Idleness, vagrancy and beggary.

10. Public policy: 1. Gambling. 2. Illegal lotteries.

11. Individuals: 1. Homicide, which is justifiable, excusable or felonious.—2. Mayhem.—3. Rape.—4. Poisoning, with intent to murder.—5. Administering drugs to a woman quick with child to cause miscarriage.—6. Concealing death of bastard child.—7. Assault and battery, which is either simple or with intent to commit some other crime.—8. Kidnapping.—9. False imprisonment.—10. Abduction.

12. Private property: 1. Burglary.—2. Arson.—3. Robbery.—4. Forgery.—5. Counterfeiting.—6. Larceny.—7. Receiving stolen goods, knowing them to have been stolen, or theft-bote.—8. Malicious mischief.

13. The public, individuals, or their property, according to the intent of the criminal: 1. Conspiracy.

CRIMEN FALSI, *civil law, crimes.* It is a fraudulent alteration or forgery, to conceal or alter the truth, to the prejudice of another. This crime may be committed in three ways, namely, 1, by forgery; 2, by false declarations or false oath, perjury; 3, by acts, as, by dealing with false weights and measures, by altering the current coin, by making false keys, and the like. Vide Dig. 48, 10, 22; Dig. 34, 8, 2; Code, lib. 9, t. 22, l. 2, 5, 9, 11, 16, 17, 23 and 24; Merl. Rép. h. t.; 1 Bro. Civ. L. 426; 1 Phil. Ev. 26; 2 Stark. Ev. 715.

CRIMINAL, relating to, or having the character of crime, as, criminal law, criminal conversation, &c. It also signifies, substantively, a person convicted of a crime; as, the criminal is to be hanged.

CRIMINAL CONVERSATION, *crim. law.* This phrase is usually employed to denote the crime of adultery. It is abbreviated *crim. con.* 4 Bac. Ab. 551.

CRITICISM, is the art of examining and judging of the character of an intellectual work; usually of writings or books; when the criticism is reduced to writing, the writing itself is called a criticism.

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Liberty of criticism must be allowed, or there would be neither purity of taste nor of morals. Fair discussion is essentially necessary to the truth of history and advancement of science. That publication therefore is not a libel which has for its object not to injure the reputation of an individual, but to correct misrepresentations of facts, to refute sophistical reasoning, to expose a vicious taste for literature, or to censure what is hostile to morality. 1 Campb. Rep. 351, 2. As every man who publishes a book commits himself to the judgment of the public, any one may comment on his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. And the critic does a great service to the public who writes down any vapid or useless publication, such as ought never to have appeared; and, although the author may suffer a loss from it, the law does not consider such loss an injury; because it is a loss which the party ought to sustain. It is the loss of fame and profit to which he was never entitled. 1 Campb. Rep. 358, n. See 1 Esp. N. P. Cas. 28.

CROFT, *obsolete*. A little close adjoining to a dwelling-house, and enclosed for pasture or arable, or any particular use. Jacob's Law Dictionary.

CROPPER, *contracts*, is one who having no interest in the land, works it in consideration of receiving a portion of the crop for his labour. 2 Rawle, R. 12.

CROSS, *contracts*, a mark made by persons who are unable to write, instead of their names. When properly attested, and proved to have been made by the party whose name is written with the mark, it is generally admitted as evidence of the party's signature.

CROSS-EXAMINATION, *practice*, is the examination of a witness by the party who did not call him. Every party has a right to cross-examine a witness produced by his antagonist, in order to test whether the witness has the knowledge of the things he testifies, and, if upon such examination, it is found that the witness had the means and ability to ascertain the facts about which he testifies, then his memory, his motives, every thing may be scrutinized by the cross-examination. In cross-examinations a great latitude is allowed in the mode of putting questions, and the counsel may put *leading questions* (q. v.). Vide further on this subject, and for some rules which limit the abuse of this right 1 Stark. Ev. 96; 1 Phil. Ev. 210.

CRUELTY. This word has different meanings as it is applied to different things. Between husband and wife those acts which affect the life, the health or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt, are called cruelty. What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; a fortiori the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. These negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. 1 Hagg. R. 35; S. C. 4 Eccles. Rep. 311, 312; 2 Hagg. Suppl. 1; S. C. 4 Eccles. Rep. 238; 2 Chit. Pr.

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461, 489; Poynt. on Mar. & Div. c. 15, p. 208.

Cruelty towards weak and helpless persons takes place where a party bound to provide and protect them either abuses them by whipping them unnecessarily, or by neglecting to provide for them those necessaries which their helpless condition requires. To expose a person of tender years, under a party's care to the inclemency of the weather, 2 Campb. 650; or to keep such a child, of inability to provide for himself, without adequate food, 1 Leach, 137; Russ. & Ry. 20; or for an overseer neglecting to provide food and medical care to a pauper having urgent and immediate occasion for them, Russ. & Ry. 46, 47, 48, are examples of this species of cruelty.

By the civil code of Louisiana, art. 192, it is enacted, that when the master shall be convicted of cruel treatment of his slave, the judge may pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.

Cruelty to animals is an indictable offence. A defendant was convicted of a misdemeanor for tying the tongue of a calf so near the root, as to prevent its sucking, in order to sell the cow at greater price, by giving to her udder the appearance of being full of milk, while affording her calf all he needed. 6 Rogers, City Hall Rec. 62. A man may be indicted for cruelly beating his horse. 3 Rogers, City H. Rec. 191.

CRUISE, *mar. law*, is a voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail through any particular track of the sea, at a certain season of the year; the region in which these cruises are performed is usually termed the rendezvous or cruising latitude. When the ships employed for this purpose, which are accordingly called *cruisers*, have arrived at the destined station, they traverse the sea backwards and forward, under an easy sail, and within a limited space conjectured to be in the track of their expected adversaries. Wesk. Ins. h. t.; Lex Merc. Rediv. 271, 284; Dougl. R. 509; Park. Ins. 58; Marsh. Ins. 196, 199, 520.

CRYER, *practice*. An officer in a court whose duty it is to make various proclamations ordered by the court.

CUEILLETTE, a term in French maritime law. Affreightment of a vessel *à cueillette* is a contract by which the captain obligates himself to receive a partial cargo, only upon condition that he shall succeed in completing his cargo by other partial lading; that is, by gathering it (*en recueillant*) wherever he may be able to find it. If he fails to collect a cargo, such partial chartering is void. Code de Com. par. M. Fournel, art. 286, n.

CULPRIT, *crim. law*. When a prisoner is arraigned and he pleads not guilty, in the English practice the clerk who arraigns him on behalf of the crown, replies that the prisoner is guilty and that he is ready to prove the accusation; this is done by two monosyllables cul. prit. vide *Abbreviations*. 4 Bl. Com. 339; 1 Chit. Cr. Law, 416.

CUM TESTAMENTO ANNEXO, with the testament or will annexed. It often happens that the deceased although he makes a will, appoints no executor, or else the appointment fails; in either of which events he is said to die *quasi intestatus*, 2 Inst. 397. The appointment of an executor fails, 1st, when the person appointed refuses to act;

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2dly, when the person appointed dies before the testator, or before he has proved the will, or when from any other legal cause he is incapable of acting; 3dly, when the executor dies intestate, (and in some places, as in Pennsylvania, whether he die testate or intestate) after having proved the will, but before he has administered all the personal estate of the deceased. In all these cases as well as when no executor has been appointed, administration with the will annexed must be granted by the proper officer; in the case where the goods are not all administered before the death of the executor, the administration is also called an administration *de bonis non*. The office of such an administrator differs little from that of an executor. Vide Com. Dig. Administration; Will. Ex. p. 1, b. 5, c. 3, s. 1; 2 Bl. Com. 504, 5; 11 Vin. Ab. 78; Toll. 92; Gord. Law of Deced. 98.

CUMULATIVE LEGACY, vide *Legacy accumulative;* and 8 Vin. Ab. 308; 1 Supp. to Ves. jr. 133, 282, 332.

CURATOR, *persons, contracts*, is one who has been legally appointed to take care of the interests of one who on account of his youth or defect of his understanding, or for some other cause, is unable to attend to them himself. There are curators *ad bona*, of property, who administer the estate of a minor, take care of his person, and intervene in all his contracts; curators *ad litem*, of suits, who assist the minor in courts of justice, and act as curator *ad bona* in cases where the interests of the curator are opposed to the interests of the minor. Civ. Code of Louis. art. 357 to 366. There are also curators of insane persons. Ib. art. 31; and of vacant successions and absent heirs. Ib. art. 1105 to 1125. The term curator is usually employed in the civil law for that of guardian.

CURATORSHIP, *offices, contracts, in the civil law*, is the power given by authority of law to one or more persons to administer the property of an individual, who is unable to take care of his own estate and affairs, either on account of his absence without an authorised agent, or in consequence of his prodigality or want of mind. Poth. Tr. des Personnes, t. 6, s. 5. As to the laws of Louisiana, which authorise a curatorship, vide Civ. Code, art. 31, 50 et seq.; 357 et seq.; 382; 1105 et seq. Curatorship differs from tutorship, (q. v.) in this, that the latter is instituted for the protection of property in the first place, and secondly of the person; while the former is intended to protect first the person and secondly the property. 1 Leçons Elem. du Droit Civ. Rom. 241.

CURIA ADVISARE VULT, *practice*, the court will consider the matter. This entry is made on the record when the court wish to take time to consider of a case before they give a final judgment, which is made by an abbreviation *cur. ad. vult*, for the purpose of marking the continuance.

CURTESY, OR COURTESY, by the laws of Scotland, is a life-rent given by law to the surviving husband of all his wife's heritage of which she died infeft, if there was a child of the marriage born alive. The child born of the marriage must be the mother's heir. If she had a child by a former marriage, who is to succeed to her estate, the husband has no right to the curtesy while such child is alive; so that the curtesy is due to the husband rather as father to the heir, than as husband to an heiress, conformable to the Roman law which gives to the father the usufruct of what the child suc-

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ceeds to by the mother, Ersk. Pr. L. Scot. B. 2, t. 9, s. 30.

CURTESY, vide *Estate by the curtesy.*

CURTILAGE, *estates*, is the space situated within a common enclosure belonging to a dwelling-house. Vide 2 Roll. Ab. 1, l. 30; Com. Dig. Grant, (E 7), (E 9); Russ. & Ry. 360; Ib. 334, 357; Ry. & Mood. 13; 2 Leach, 913; 2 Bos. & Pull. 508; 2 East, P. C. 494; Russ. & Ry. 170, 289, 322; 22 Eng. Com. Law R. 330; 1 Ch. Pr. 175; Shep. Touchs. 94.

CUSTODY, is the detainer of a person by virtue of a lawful authority. To be in custody is to be lawfully detained under arrest. Vide 14 Vin. Ab. 359; 3 Chit. Pr. 355. In another sense custody signifies having the care and possession of a thing; as, the chancellor is entitled to the custody as the keeper of the seal.

CUSTOM. A usage which has acquired the force of law. A custom derives its force from the tacit consent of the legislature and the people. Law cannot be established or abrogated except by the sovereign will, but this will may be express or implied and presumed, and whether it manifests itself by words or by a series of facts, is of little importance. When a custom is public, peaceable, uniform, general, continued, reasonable and certain, and has lasted "time whereof the memory of man runneth not to the contrary," it acquires the force of law. And when any doubts arise as to the meaning of a statute, the custom which has prevailed on the subject ought to have weight in its construction, for the manner in which a law has always been executed is one of its modes of interpretation. Vide Bac. Ab. h. t.; 1 Bl. Com. 76; 2 Bl. Com. 31; 1 Lill. Reg. 516; 7 Vin. Ab. 164; Com. Dig. h. t.; Nelson's Ab. h. t.; the various Amer. Dig. h. t.; Ayl. Pand. 15, 16; Ayl. Parerg. [194]; Doct. Pl. 201.

CUSTOM-HOUSE. A place appointed by law, in ports of entry, where importers of goods, wares and merchandise are bound to enter the same, in order to pay or secure the duties or customs due to the government.

CUSTOMS. This term is usually applied to those taxes, which are payable upon goods and merchandise imported or exported. Story, Const. § 949; 6 Bac. Ab. 258.

CY PRES, *construction.* These are old French words which signify *as near as.* In cases where a perpetuity is attempted in a will, the courts do not, if they can avoid it, construe the devise to be utterly void, but expound the will in such a manner as to carry the testator's intentions into effect, as far as the rules respecting perpetuities will allow; this is called a construction *cy près.* When the perpetuity is attempted in a deed all the limitations are totally void. Cruise Dig. t. 38, c. 9, s. 34; and vide 1 Vern. 250; 2 Ves. jr. 380, 336, 357, 364; 3 Ves. jr. 141, 220; 4 Ves. 13; Com. Dig. Condition, (L 1); 1 Rop. Leg. 514; Swinb. pt. 4, s. 7, a. 4; Dane's Ab. Index, h. t.; Toull. Dr. Civ. Fr. liv. 3, t. 3, n. 586, 595, 611; Domat, Loix Civ. liv. 6, t. 2, s. 1; 1 Supp. to Ves. jr. 134, 259, 317; 2 Ib. 316, 473; Boyle on Charities, Index, h. t.; Shelford on Mortmain, Index, h. t.

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D.

DAM. A construction of wood, stone, or other materials made across a stream of water for the purpose of confining it; a mole. The owner of a stream, not navigable, may erect a dam across it, and employ the water in any reasonable manner, either for his use or pleasure, so as not to destroy or render useless, materially diminish or affect the application of the water by the proprietors below on the stream. He must not shut the gates of his dams and detain the water unreasonably, or let it off in unusual quantities to the annoyance of his neighbours. 4 Dall. 211; 3 Caines, 207; 13 Mass. 420; 3 Pick. 268; 2 N. H. Rep. 532; 17 John. 306; 3 John. Ch. Rep. 282; 3 Rawle, 256; 2 Conn. Rep. 584; 5 Pick. 199; 20 John. 90; 1 Pick. 180; 4 Ib. 460; 2 Binn. 475; 14 Serg. & Rawle, 71; Ib. 9; 13 John. 212; 1 M'Cord, 580; 3 N. H. Rep. 321; 1 Halst. R. 1; 3 Kent, Com. 354. When one side of the stream is owned by one person and the other by another, neither, without the consent of the other, can build a dam which extends beyond the thread of the river, without committing a trespass. Cro. Eliz. 269; 12 Mass. 211; Ang. on W. C. 14, 104, 141; vide Lois des Bât. P. 1, c. 3, s. 1, a. 3; Poth. Traité du Contrat de Societé, second app. 236; Hill. Ab. Index, h. t.

DAMAGE, *torts*, the loss caused by one person to another, or his property, either with the design of injuring him, or with negligence and carelessness, or by inevitable accident. He who has caused the damage is bound to repair it; and, if he has done it maliciously, he may be compelled to pay beyond the actual loss. When damage occurs by accident without blame to any one, the loss is borne by the owner of the thing injured; as, if a horse run away with his rider, without any fault of the latter, and injure the property of another person, the injury is the loss of the owner of the thing. When the damage happens by the act of God, or inevitable accident, as by tempest, earthquake or other natural cause, the loss must be borne by the owner. Vide Com. Dig. h. t.; Sayer on Damages.

DAMAGE FEASANT, *torts*. This is a corruption of the French words *faisant dommage*, and signifies doing damage. This term is usually applied to the injury which animals belonging to another do upon the owner's land, by feeding there, treading down his grass, corn, or other production of the earth. 3 Bl. Com. 6; Co. Litt. 142, 161; Com. Dig. Pleader, 3 M 26; vide *Animals*.

DAMAGES, *practice*. The indemnity given by law, to be recovered from the wrong doer by a person who has sustained an injury, either in his person, property or relative rights, in consequence of the acts of another. Damages are given either for breaches of contracts or for tortious acts. Damages for breach of contract may be given, for example, for the non-performance of a written or verbal agreement; or of a covenant to do or not to do a particular thing. As to the measure of damages the general rule is, that the delinquent shall answer for all the injury which results from the immediate and direct breach of his agreement, but not for any remote consequences. In cases of eviction, on a covenant of seisin and warranty, the rule seems to be to allow the consideration money with interest and

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costs. But in Massachusetts, on the covenant of warranty the measure of damages is the value of the land at the time of eviction. 4 Kent's Com. 462, 3, and the cases there cited. Damages for tortious acts are given for acts against the person, as an assault and battery; against the reputation, as libels and slander; against the property, as, trespass, when force is used, or for the consequential acts of the tort-feasor; as, when in consequence of a man building a dam on his own premises, he overflows his neighbour's land; against the relative rights of the party injured, as, criminal conversation with his wife. No settled rule or line of distinction can be marked out when a possibility of damages shall be accounted too remote to entitle a party to claim a recompense: each case must be ruled by its own circumstances. Ham. N. P. 40; vide 7 Vin. Ab. 247; Yelv. 45, a; Ib. 176, a; 2 Bac. Ab. 263; 1 Lilly's Reg. 525; Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 2 Saund. 107, note; 1 Rawle's Rep. 27; Coop. Just. 606; Com. Dig. h. t.

DAMAGES ON BILLS OF EXCHANGE, *contracts*, is a penalty affixed by law on the non-payment of a bill of exchange when it is not paid at maturity, and which the parties to it are obliged to pay to the holder. The discordant and shifting regulations on this subject which have been enacted in the several states render it almost impossible to give a correct view of this subject. It is not, besides, within the plan of this work to go into such minute details. The reader is referred to 3 Kent, Com. 80; 1 Law Intell. 33; Griff. Reg. answers to No. 130; Dane's Ab. Index, h. t.

DAMAGES, DOUBLE OR TREBLE, *practice*. In cases where a statute gives a party double or treble damages, the jury are to find single damages, and the court to enhance them according to the statute. Bro. Abr. Damages, pl. 70; 2 Inst. 416; 1 Wils. 126; 1 Mass. 155. In Sayer on Damages, p. 244, it is said, the jury may assess the statute damages; and it would seem from some of the modern cases, that either the jury or the court may assess. Say. R. 214; 1 Gallis. 29.

DAMAGE, GENERAL, *torts*. General damages are such as the law implies to have accrued from the act of a tort-feasor. To call a man a thief or to commit an assault and battery on his person are examples of this kind. In the first case the law presumes that calling a man a thief must be injurious to him, without showing that it is so. Sir W. Jones, 196; 1 Saund. 243, b, n. 5; and, in the latter case, the law implies that his person has been more or less deteriorated, and that the injured party is not required to specify what injury he has sustained, nor to prove it. Ham. N. P. 40; 1 Chit. Pl. 386.

DAMAGES, LAYING, *pleading*. In personal and mixed actions, (but not in penal actions, for obvious reasons,) the declaration must allege, in conclusion, that the injury is to the damage of the plaintiff; and must specify the amount of damage. Com. Dig. Pleader, C 84; 10 Rep. 116, b. In personal actions there is a distinction between actions that sound in damages, and those that do not; but in either of these cases, it is equally the practice to lay damages. There is, however, this difference, that, in the former case, damages are the main object of the suit, and are, therefore, always laid high enough to cover the whole demand; but in the latter the liquidated debt, or the chattel demanded, being the main object, damages are claimed in respect of the detention only, of such debt or chattel; and are, therefore,

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usually laid at a small sum. The plaintiff cannot recover greater damages than he has laid in the conclusion of his declaration. Com. Dig. Pleader, C. 84; 10 Rep. 117, a, b; Vin. Ab. Damages, R. In real actions, no damages are to be laid, because, in these, the demand is specifically for the land withheld, and damages are in no degree, the object of the suit. Steph. Pl. 426; 1 Chit. Pl. 397 to 400.

DAMAGES, LIQUIDATED, *contracts*. When the parties to a contract stipulate for the payment of a certain sum, as a satisfaction fixed and agreed upon by them, for the doing or not doing of certain things particularly mentioned in the agreement; the sum so fixed upon is called *liquidated damages*. It differs from a penalty, because the latter is a forfeiture from which the defaulting party can be relieved. An agreement for liquidated damages can only be when there is an engagement for the performance of certain acts, the not doing of which would be an injury to one of the parties; or to guard against the performance of acts, which if done, would also be injurious. In such cases an estimate of the damages may be made by a jury, or by a previous agreement between the parties, who may foresee the consequences of a breach of the engagement, and stipulate accordingly. 1 H. Bl. 232; and vide 2 Bos. & Pul. 335, 350–355; 2 Bro. P. C. 431; 4 Burr. 2225; 2 T. R. 32. The civil law appears to agree with these principles, Inst. 3, 16, 7; Toull. liv. 3, n. 809; Civil Code of Louis. art. 1928, n. 5; Code Civil, 1152, 1153. And vide generally, 7 Vin. Ab. 247; 16 Vin. Ab. 58; 2 W. Bl. Rep. 1190; Coop. Just. 606; 1 Chit. Pr. 872; 2 Atk. 194; Finch, 117; Prec. in Ch. 102; 2 Bro. P. C. 436; Fonbl. 151, 2, note; Chit. Contr. 336.

DAMAGES, SPECIAL, *torts*. Special damages are such as really took place, and are not implied by law; these are either superadded to general damages arising from an act injurious in itself, as when some particular loss arises from the uttering of slanderous words actionable in themselves, or are such as arise from an act indifferent and not actionable in itself, but injurious only in its consequences, as when the words become actionable only by reason of special damage ensuing. To constitute special damage the legal and natural consequence must arise from the tort, and not be a mere wrongful act of a third person, or a remote consequence. 1 Camp. 58; Ham. N. P. 40; 1 Chit. Pl. 385, 6.

DAMAGES SPECIAL, *pleading*, as distinguished from the gist of the action, signifies that special damage which is stated to result from the gist; as if a plaintiff in action of trespass for entering his house, breaking his closets, and tossing his goods about, were to state that by means of the damage done to his house, he was obliged to seek lodging elsewhere. But sometimes the special damage is said to constitute the gist of the action itself; for example, in an action wherein the plaintiff declares for slanderous words, which of themselves are not a sufficient ground or foundation for the suit, if any particular damage result to the plaintiff from the speaking of them, that damage is properly said to be the gist of the action. But whether special damage be the gist of the action, or only collateral to it, it must be particularly stated in the declaration, as the plaintiff will not otherwise be permitted to go into evidence of it at the trial, because the defendant cannot also be prepared to answer it. Willes, 23. See *Gist*.

DAMAGES, UNLIQUIDAT-

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ED. The unascertained amount which is due to a person by another for an injury to the person, property or relative rights of the party injured. These damages being unknown cannot be set-off against a claim which the tort feasor has against the party injured, 2 Dall. 237; S. C. 1 Yeates, 571; 10 Serg. & Rawle, 14; 5 Serg. & Rawle, 122.

DAMNUM ABSQUE INJURIA. A loss or damage without injury. There are cases when the act of one man may cause a damage or loss to another, and for which the latter has no remedy, he is then said to have received damnum absque injuria; as, for example, if a man should set up a school in the neighbourhood of another school, and, by that means, deprive the former of its patronage; or if a man should build a mill along side of another, and consequently reduce its custom. When a man slanders another by publishing the truth, the person slandered is said to have sustained loss without injury. Bac. Ab. Actions on the Case, C; Dane's Ab. Index, h. t.

DANGERS OF THE SEA, *mar. law.* This phrase is sometimes put in bills of lading, the master of the ship agreeing to deliver the goods therein mentioned to the consignee, who is named, the dangers of the sea excepted. Sometimes the phrase is *Perils of the Sea*, (q. v.)

DARREIN. A corruption of the French word *dernier*, the last. It is sometimes used, as, *darrein continuance*, the last continuance. When any matter has arisen in discharge of the defendant in an action, he may take advantage of it, provided he pleads it *puis darrein continuance*, for if he neglect to do so, he waives his right. Vide article, *Puis darrein continuance.*

DATE, is the designation or indication in an instrument of writing, of the time when it was made. This word is derived from the latin, *datum*, because when deeds and agreements were written in that language, immediately before the day, month and year in which they were made, was set down, it was usual to put the word *datum*, given. All writings ought to bear a date, and in some it is indispensable, in order make them valid, as in policies of insurance; but the date in these instruments is not inserted in the body of the writing, because as each subscription makes a separate contract, each underwriter sets down the day, month and year, he makes his subscription. Marsh. Ins. 336. Deeds, and other writings, when the date is an impossible one, take effect from the time of delivery, the presumption of law is, that the deed was dated on the day it bears date, unless, as just mentioned, the time is impossible; for example, the 32d day of January. The proper way of dating, is to put the day, month, and year of our Lord, the hour need not be mentioned, unless specially required; an instance of which may be taken from the Pennsylvania act, of the 16th of June, 1836, sect. 40, which requires the sheriff on receiving a writ of *fieri facias*, or other writ of execution, to endorse thereon the day of the month, the year and the *hour* of the day whereon he received the same. In public documents, it is usual to give not only the day, the month and the year of our Lord, but also the year of the United States, when issued by authority of the general government, or of the commonwealth, when issued under its authority. Vide, generally, Bac. Ab. Obligations, C; Com. Dig. Fait, B 3; Cruise, Dig. tit. 32, c. 20, s. 1–6; 1 Burr. 60; 2 Rol. Ab. 27, l. 22; 13 Vin. Ab. 34; Dane's Ab. Index, h. t.

DATION, *civil law, contracts*, is

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the act of giving something. It differs from donation, which is a gift; dation, on the contrary, is giving something without any liberality, as the giving of an office. Dation in payment, *datio in solutum*, which was the giving one thing in payment of another, which was due, corresponds nearly to the *accord and satisfaction* of the common law.

DATIVE, that which may be given or disposed of at will and pleasure.

DAY, is a division of time. It is natural, and then it consists of twenty-four hours; or artificial, which contains the time, from the rising until the setting of the sun, except a short time before rising and after setting. Vide *Night*, and Co. Lit. 135, a. Days are sometimes calculated exclusively, as when an act required that an appeal should be made within twenty days after a decision. 3 Penna. 200; 3 B. & A. 581; 15 Serg. & Rawle, 43. In general, if a thing is to be done within such time after such a fact, the day of the fact shall be taken inclusively, Hob. 139; Doug. 463; 3 T. R. 623; Com. Dig. Temps. A; 3 East, 407. The law, generally, rejects fractions of days, but in some cases it takes notice of such parts. Vide *Date*. By the custom of some places, the word *days*, is understood to be working days, and not including Sundays; 3 Espin. N. P. C. 121. Vide, generally, 2 Chit. Bl. 141, note 3; 1 Chit. Pr. 774, 775; 3 Chit. Pr. 110; Lill. Reg. h. t; 1 Rop. Leg. 518; 15 Vin. Ab. 554; Dig. 33, 1, 2; Dig. 50, 16, 2, 1; Ib. 2, 12, 8; and articles, *Year; Month; Hour*.

DAY BOOK, *mer. law*, is an account book, in which merchants and others make entries of their daily transactions. This is generally a book of original entries, and as such may be given in evidence to prove the sale and delivery of merchandize or of work done.

DAY RULE, OR DAY WRIT, in English practice, is a rule or order of the court, by which a prisoner on civil process, and not committed, is enabled, in term time, to go out of the prison, and its rules or bounds; a prisoner is enabled to quit the prison, for more or less time, by three kinds of rules, namely; 1, the day-rule; 2, the term-rule; and the rules. See 9 East, R. 151.

DAYS IN BANK, *Eng. practice*, are days of appearance in the court of Common Pleas, usually called *bancum*. They are the distance of about a week from each other, and are regulated by some festival of the church. 3 Bl. Com. 277.

DAYS OF GRACE, are certain days after the time limited by the bill or note, which the acceptor or drawer has a right to demand for payment of the bill or note; these days were so called because they were formerly gratuitously allowed, but now, by the custom of merchants, sanctioned by decisions of courts of justice, they are demandable of right. The number of these in the United States is generally three. Chitty on Bills, h. t.; but where the last day of grace happens on the 4th of July, 2 Caine's Cas. in Err. 195, or on Sunday, 2 Caine's R. 343, the demand must be made on the day previous. In Louisiana, the days of grace are no obstacle to a set-off, the bill being due for this purpose, before the expiration of those days. Louis. Code, art. 2206. In France all days of grace, of favour, of usage, or of local custom, for the payment of bills of exchange are abolished. Code de Comm. art. 135.

DE, a preposition used in many latin phrases; as, de bene esse, de bonis non.

DE BENE ESSE, *practice*. A technical phrase applied to certain

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proceedings, which are deemed to be well done for the present, or until an exception or other avoidance; that is, *conditionally*, and in that meaning is the phrase usually accepted. For example, a declaration is filed or delivered, special bail put in, witness examined, &c. de bene esse, or conditionally; good for the present.

DE BONIS NON. This phrase is used to signify that the goods of a deceased person have not all been administered. When an executor or administrator has been appointed, and the estate is not fully settled, and the executor or administrator is dead, has absconded, or from any cause has been removed, a second administrator is appointed to perform the duty remaining to be done, who is called an administrator *de bonis non*, an administrator of the goods not administered, and he becomes by the appointment the only representative of the deceased. 11 Vin. Ab. 111; 2 P. Wms. 340; Com. Dig. Administration, B 1; 1 Root's R. 425. And it seems that though the estate has been distributed, an administrator *de bonis non* may be appointed, if some debts remain unsatisfied. 1 Root's R. 174.

DE BONIS PROPRIIS. Of his own goods. When an executor or administrator has been guilty of a *devastavit*, (q. v.) he is responsible for the loss which the estate has sustained, *de bonis propriis*. He may also subject himself to the payment of a debt of the deceased *de bonis propriis*, by his false plea, when sued in a representative capacity; as, if he plead *plene administravit*, and it be found against him, or a release to himself, when false. In this latter case the judgment is *de bonis testatoris si, et si non de bonis propriis*. 1 Saund. 336 b, n. 10; 3 Bac. Ab. 25.

DE FACTO, i. e. in deed; a term used to denote a thing actually done; a president of the United States *de facto* is one in the exercise of the executive power, and is distinguished from one who being legally entitled to such power is ejected from it; the latter would be a president *de jure*.

DE HOMINE REPLEGIANDO. Vide *Homine Replegiando*.

DE INJURIA, *pleading*. The name of a replication in an action for a tort, that the defendant committed the trespasses or grievances of his own wrong without the cause by him in his plea alleged. The import of this replication is to insist that the defendant committed the act complained of, from a motive and impulse altogether different from that insisted on by the plea. For example, if the defendant has justified a battery under a writ of *capias*, having averred as he must do, that the arrest was made by virtue of the writ; the plaintiff may reply *de injuria sua propria absque tali causa*, that the defendant did the act of his own wrong, without the cause by him alleged. This replication, then, has the effect of denying the alleged motive contained in the plea, and to insist that the defendant acted from another, which was unlawful, and not in consequence of the one insisted upon in his plea. Steph. Pl. 186; 2 Chit. Pl. 523, 642; Hamm. N. P. 120, 121; Arch. Civ. Pl. 264; Com. Dig. Pleader, F 19. The replication *de injuria* is only allowed when an excuse is offered for personal injuries. 1 B. & P. 76; 5 Johns. R. 112; 4 Johns. 150; 12 Johns. 491. Vide 7 Vin. Ab. 503; 3 Saund. 295, note 1; 1 Lilly's Reg. 587.

DE JURE, by right. Vide *De facto*.

DE MERCATORIBUS. This is the name of a statute passed in the 11 Edw. I.; it is usually called

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the statute of Acton Burnell, De Mercatoribus. It was passed in consequence of the complaints of foreign merchants, who could not recover their claims because the lands of the debtors could not be sold for their debts. It enacted that the chattels and devisable burgages of the debtor might be sold for the payment of their debts. Cruise, Dig. t. 14, s. 6.

DE NOVO. Anew; afresh. When a judgment is reversed on error, for some mistake made by the court, in the course of the trial, a venire de novo is awarded in order that the case may again be submitted to a jury.

DE ODIO ET ATIA. Vide *Writ de odio et atia.*

DE PROPRIETATE PROBANDA, *Engl. practice*, is the name of a writ which issues in a case of replevin, when the defendant claims property in the chattels replevied, and the sheriff makes a return accordingly. This writ directs the sheriff to summon an inquest to determine on the validity of the claim, and, if they find for the plaintiff to replevy the chattels; but if they find for the defendant, the sheriff merely returns their finding. The plaintiff is not concluded by such finding, he may come into the court above and traverse it. Hamm. N. P. 456.

DE SON TORT. Of his own wrong. This term is usually applied to a person who, having no right to meddle with the affairs or estate of a deceased person, yet undertakes to do so, by acting as executor of the deceased. Vide *Executor de son tort.*

DE SON TORT DEMESNE, *pleading.* The name of a replication in an action for a wrong or injury. When the defendant pleads a matter merely in excuse of an injury to the person or reputation of another, the plaintiff may reply *de son tort demesne sans tiel cause;* that it was the defendant's own wrong without such cause. Vide the articles, *De Injuria*, and *Without*, and also 8 Co. 67 a; Bro. h. t.; Com. Dig. Pleader, F 18.

DEAD BODY, *crim. law.* A corpse. To take up a dead body without lawful authority, even for the purposes of dissection, is a misdemeanor, for which the offender may be indicted at common law. 1 Russ. on Cr. 414; 1 Dowl. & R. 13; Russ. & Ry. 366, n. (b); 2 Chit. Cr. Law, 35; this offence is punished by statute in New Hampshire, Laws of N. H. 339, 340; in Vermont, Laws of Vermont, 368, c. 361; in Massachusetts, stat. 1830, c. 51; 8 Pick. 370; 11 Pick. 350; in New York, 2 Rev. Stat. 688. Vide 1 Russ. 414, n. (A). The preventing a dead body from being buried is also an indictable offence. 2 T. R. 734; 4 East, 460; 1 Russ. on Cr. 415 and 416, note (A). To inter a dead body found in a river, it seems would render the offender liable to an indictment for a misdemeanor, unless he first sent for the coroner. 1 Kenyon's R. 250.

DEAD BORN, *descent, persons.* Children dead born are considered in law as if they had never been conceived, so that no one can claim a title by descent through such dead born child. This is the doctrine of the civil law, Dig. 50, 16, 129; Civil Code of Louis. art. 28; as a child in ventre sa mere is considered by the common law in being only when it is for its advantage, and not for the benefit of a third person, the rule in the common law is probably the same, that a dead born child is to be considered as if he had never been conceived or born; in other words it is presumed he never had life.

DEAD FREIGHT, *contracts.*

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When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is called *dead freight*. The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit. Com. Law, 399; 2 Stark. 450.

DEAF, DUMB AND BLIND. A man born deaf, dumb and blind is considered an idiot (q. v.) 1 Bl. Com. 304; F. N. B. 233.

DEATH, *med. jur., crim. law, evidence.* The cessation of life. It is either natural, as when it happens in the usual course without any violence; or violent, when it is caused either by the acts of the deceased, or those of others. Natural death will not be here considered further than may be requisite to illustrate the manner in which violent death occurs. A violent death is either accidental or criminal; and the criminal act was committed by the deceased or by another. The subject will be considered, 1, as it relates to medical jurisprudence; and, 2, with regard to its effects upon the rights of persons.

§ 1. It is the office of medical jurisprudence, by the light and information which it can bestow, to aid in the detection of criminals against the persons of others, in order to subject them to the punishment which is awarded by the criminal law. Medical men are very frequently called upon to make examinations of the bodies of persons who have been found dead, for the purpose of ascertaining the causes of their death. When it is recollected that the honour, the fortune and even the life of the citizen, as well as the distribution of impartial justice frequently depend on these examinations, one cannot but be struck at the responsibility which rests upon such medical men, particularly when the numerous qualities which are indispensably requisite to form a correct judgment, are considered. In order to form a correct opinion, the physician must be not only skilled in his art, but he must have made such examinations his special study. A man may be an enlightened physician and a skilful chemist, and yet he may find it exceedingly difficult to resolve, properly, the grave and almost always complicated questions which arise in cases of this kind. Judiciary annals unfortunately afford but too many examples of the fatal mistakes made by physicians and others when considering cases of violent deaths. In the examination of bodies of persons who have come to a violent death, every precaution should be taken to ascertain the situation of the place where the body was found; as to whether the ground appears to have been disturbed from its natural condition; whether there are any marks of footsteps, their size, their number, the direction to which they lead and whence they came; whether any traces of blood or hair can be found; and whether any and what weapons or instruments, likely to have caused death, are found in the vicinity; and these instruments should be carefully preserved so that they may be identified. A case or two may here be mentioned to show the importance of examining the ground in order to ascertain the facts. Mr. Jeffries was murdered at Walthamstow, in England, in 1751, by his niece and servant. The perpetrators were suspected from the single circumstance that the dew on the ground surrounding the house had not been disturbed on the morning of the murder. Mr. Taylor of Hornsey was murdered in December, 1818,

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and his body thrown into the river. It was evident he had not gone into the river willingly, as the hands were found clenched and contained grass, which, in the struggle, he had torn from the bank. The marks of foot-steps, particularly in the snow, have been found, not unfrequently, to correspond with the shoes or feet of suspected persons, and led to their detection. Paris, Med. Jur. vol. iii. p. 38, 41. In the survey of the body the following rules should be observed: 1. It should be as thoroughly examined as possible without changing its position or that of any of the limbs; this is particularly desirable when, from appearances, the death has been caused by a wound, because by moving it the altitude of the extremities may be altered, or the state of a fracture or luxation changed, for the internal parts vary in their position with one another, according to the general position of the body. When it is requisite to remove it, it should be done with great caution. 2. The clothes should be removed, as far as necessary, and it should be noted what compresses or bandages, (if any) are applied to particular parts, and to what extent. 3. The colour of the skin, the temperature of the body, the rigidity or flexibility of the extremities, the state of the eyes, and of the sphincter muscles, noting at the same time whatever swellings, ecchymosis or livid black or yellow spots, wounds, ulcer, contusion, fracture or luxation may be present. The fluids from the nose, mouth, ears, sexual organs, &c. should be examined; and, when the deceased is a female, it may be proper to examine the sexual organs with care, in order to ascertain whether before death she has been ravished or not. 4. The clothes of the deceased should be carefully examined, and if parts are torn or defaced, this fact should be noted. A list should also be made of the articles found on the body, and of their state or condition, as whether the purse of the deceased had been opened; whether he had any money, &c. 5. The state of the body as to decomposition should be particularly stated, as by this it may sometimes be ascertained when the death took place; experience proves that in general after the expiration of fourteen days after death, decomposition has so far advanced, that identity cannot be ascertained, excepting in some strongly developed peculiarity; but in a drowned body adipocire is not produced until five or six weeks after death; but this depends upon circumstances, and varies according to climate, season, &c. It is exceedingly important, however, to keep this fact in view in some judicial inquiries relative to the time of death. 1 Chit. Med. Jur. 443. A memorandum should be made of all the facts as they are ascertained; when possible, it should be made on the ground; but when this cannot be done, as, when chemical experiments have to be made, or the body is to be dissected, they should be made in the place where these operations are performed. 1 Beck's Med. Jur. 5; Dr. Gordon Smith, 505; Ryan's Med. Jur. 145; Dr. Male's Elem. of Judicial and For. Med. 101; 3 Paris & Fonbl. Med. Jur. 23 to 25; Vilanova Y Mañes, Materia Criminal Forense, Obs. 11, cap. 7, n. 7; Trebuchet, Médecine Légale, 12 et seq. Vide article *Circumstances*.

§ 2. In examining the law as to the effects which death has upon the rights of others, it will be proper to consider, 1, what is the presumption of life or death; 2, the effects of a man's death.

1. It is a general rule, that persons who are proved to have been living, will be presumed to be alive

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till the contrary is proved; and when the issue is upon the death of a person, the proof of the fact lies upon the party who asserts the death. 2 East, 312; 2 Roll's R. 461. But when a person has been absent for a long time, unheard from, the law will presume him to be dead. It has been adjudged that after twenty-seven years, 3 Bro. C. C. 510; twenty years, in another case; sixteen years, 5 Ves. 458; fourteen years, 3 Serg. & Rawle, 390; seven years, 6 East, 80, 85; and even five years, Finch's R. 419; the presumption of death arises. It seems that seven years has been agreed as the time when death may in general be presumed. 1 Phil. Ev. 159.

The survivorship of two or more is to be proved by facts, and not by any settled legal rule, or prescribed presumption. 5 B. & Adolp. 91; 27 E. C. L. R. 45; Cro. Eliz. 503; 2 Bac. Ab. 721; 2 Phillim. R. 261; 1 Mer. R. 308; 3 Hagg. Ecol. R. 748. In the following cases, no presumption of survivorship was held to arise; where two men, the father and son were hanged about the same time, and one was seen to struggle a little longer than the other, Cro. Eliz. 503; in the case of General Stanwix, who perished at sea in the same vessel with his daughter, 1 Bl. R. 610; and in the case of Taylor and his wife who also perished by being wrecked at sea with his wife, to whom he had bequeathed the principal part of his fortune. 2 Phillim. R. 261, S. C. 1 Eng. Eccl. R. 250, S. C. Vide Fearne on Rem. iv.; Poth. Obl. by Evans, vol. ii. p. 345. The Code Civil of France has provided for most, perhaps all possible cases, art. 720, 721, and 722. These provisions have been transcribed in the Civil Code of Louisiana, in these words:

Art. 930. If several persons respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

Art. 931. In defect of the circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, age, and difference of sex, according to the following rules.

Art. 932. If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived. If both were of the age of sixty years, the youngest shall be presumed to have survived. If some were under fifteen years, and some above sixty, the first shall be presumed to have survived.

Art. 933. If those who perished together, were above the age of fifteen years, and under sixty, the male must be presumed to have survived, where there was an equality of age, or a difference of less than one year. If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted, thus the younger must be presumed to have survived the elder.

2. The death of a man, as to its effects upon others, may be considered with regard, 1, to his contracts; 2, torts committed by or against him; 3, the disposition of his estate.

1st. The contracts of a deceased person are in general not affected by his death, and his executors or administrators are required to fulfil his engagements, and may enforce those in his favour. But to this general rule there are some excep-

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tions; some contracts are either by the terms employed in making them, or by implication of law to continue only during the life of the contracting party. Among these may be mentioned the following cases: 1 The contract of marriage. 2. The partnership of individuals; the contract of partnership is dissolved by death, unless otherwise provided for. 3. Contracts which are altogether personal, as for example where the deceased had agreed to accompany the other party to the contract on a journey, or to serve another, Poth. Ob. P. 3, c. 7, a. 3, § 2 and 3; or to instruct an apprentice, 3 Bac. Ab. 96; 1 Burn's Just. 82, 3; Hamm. on Part. 157; 1 Rawle's R. 61.

2d. In general when the tort-feasor or the party who has received the injury dies, the action for the recovery of damages dies with him, but when the deceased might have waived the tort, and maintained assumpsit against the defendant, his personal representative may do the same thing. See the article *Actio personalis moritur cum persona*, where this subject is more fully examined. When a person accused and guilty of crime dies before trial, no proceedings can be had against his representatives or his estate.

3d. By the death of a person seised of real estate, or possessed of personal property at the time of his death; his property vests when he has made a will, as he has directed by that instrument; but when he dies intestate, his real estate vests in his heirs at law by descent, and his personal property, whether in possession or in action, belongs to his executors or administrators.

Death is also divided into natural and civil. By the former is understood the cessation of life; and by the latter the deprivation of all civil rights.

DEATH BED OR DYING DECLARATIONS, are those which are made *in extremis*, when the person making them was conscious of his danger and had given up all hopes of recovery, in cases of homicide, charging some other person or persons with the murder. See 1 Phil. Ev. 200; Stark. Ev. part 4, p. 458; 15 Johns. R. 288; 1 Hawk's R. 442; 2 Hawk's R. 31; M'Nally Ev. 174; Swift's Ev. 124. These declarations, contrary to the general rule that hearsay is not evidence, are constantly received. The principle of this exception is founded partly on the situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on the supposed absence of interest on the verge of the next world, which dispenses with the necessity of a cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved, that the deceased at the time of making them was conscious of his danger and had given up all hopes of recovery. 1 Phil. Ev. 215, 216; Stark. Ev. part 4, p. 460.

See, in general, Bac. Abr. Evidence, K; Addis. R. 332; East's P. C. 354, 356; 1 Stark. c. 522; 2 Hayw. R. 31; 1 Hawk's R. 442; Swift's Ev. 124; Pothier, by Evans, vol. 2, p. 293; Anth. N. P. 176, and note (a); Str. 500.

DEATH, CIVIL, is the state of a person who though possessing natural life, has lost all his civil rights, and, as to them is considered as dead. A person convicted and attainted of felony, and sentenced to the state prison for life, is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtue of the conviction and sentence of imprisonment for life, to be considered as civilly dead. 6

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Johns. C. R. 118; 4 Johns. C. R. 228, 260; Laws of N. Y. Sess. 24, ch. 49, s. 29, 30, 31; 1 N. R. L. 157, 164; Co. Litt. 130, a; 3 Inst. 215; 1 Bl. Com. 132, 133; 4 Bl. Com. 332; 4 Vin. Ab. 152. See Code Civ. art. 22 a 25.

DEATH'S PART, *English law*, is that portion of the personal estate of a deceased man which remained after his wife and children had received their reasonable parts from his estate; which was, if he had both a wife and child or children, one-third part; if a wife and no child, or a child or children and no wife, one-half; if neither wife nor child, he had the whole to dispose of by his last will and testament; and if he made no will, the same was to go to his administrator. And within the city of London, and throughout the province of York, in case of intestacy the wife and children were till lately entitled to their reasonable parts, and the residue only was distributable by the statute of distribution; but by the 11 G. 1, c. 18, s. 17, 18, the power of devising was thrown generally open. Burn's L. Dict. See this Dict. tit. *Legitime*, and *Lex Falcidia*.

DEATH OF A PARTNER. The following effects follow the death of a partner; namely, 1, The partnership is dissolved, unless otherwise provided for by the articles of partnership; Gow's Partn. 429; 2, The representatives of the deceased partner become tenants in common with the survivor of all partnership effects in possesssion; 3, Choses in action so far survive that the right to reduce them into possession vests exclusively in the survivor; 4, When recovered, the representatives of the deceased partner have, in equity, the same right of sharing and participating in them that their testator or intestate would have had had he been living; 5, It is the duty and the right of the surviving partner to settle the affairs of the firm, for which he is not allowed any compensation; 6, The surviving partner is alone to be sued at law for debts of the firm, yet recourse can be had in equity against the assets of the deceased debtor. Gow's Partn. 460.

DEBATE, *legislation*, *practice*, is a contestation between two or more persons, in which they take different sides of a question, and maintain them respectively by facts and argument; or it is a discussion in writing of some contested point. The debate should be conducted with fairness, candour and decorum, and supported by facts and arguments founded in reason; when, in addition, it is ornamented by learning, and decorated by the powers of rhetoric, it becomes eloquent and persuasive.

DEBENTURE. Is a certificate given in pursuance of law, by the collector of a port of entry, for a certain sum due by the United States, payable at a time therein mentioned, to an importer for drawback of duties on merchandize imported and exported by him, provided the duties arising on the importation of the said merchandise shall have been discharged prior to the time aforesaid. Vide act of congress of March 2, 1799, s. 80. Vide Encyclopédie, h. t.; Dane's Ab. Index, h. t.

DEBET ET DETINET, *pleading*. He owes and detains. In an action of debt the form of the writ is either in the *debet* and *detinet*, that is, it states that the defendant owes and unjustly detains the debt or thing in question; it is so brought between the original contracting parties; or, it is in the *detinet* only, that is that the defendant unjustly detains from the plaintiff the debt or thing for which the action is brought; this is the form in action by an executor, because the debt or duty is

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not due to him, but it is unjustly detained from him. There is one case in which the writ must be in the *detinet* between the contracting parties. This is when the action is instituted for the recovery of goods, as a horse, a ship and the like, the writ must be in the *detinet*, for it cannot be said a man owes another a horse or a ship, but only that he detains them from him. 3 Bl. Com. 153, 4; 11 Vin. Ab. 321; 2 Bac. Ab. 287; 1 Lilly's Reg. 543; Dane's Ab. h. t.

DEBIT, *accounts, commerce;* a term used in book-keeping to express the left hand page of the ledger, to which are carried all the articles supplied or paid on the subject of an account, or that are charged to that account. It also signifies the balance of an account.

DEBT, *contracts*, is a sum of money due by certain and express agreement, 3 Bl. Com. 154. In a less technical sense, as in the "act to regulate arbitrations and proceedings in courts of justice," of Pennsylvania passed the 21st of March, 1806, s. 5, it means any claim for money. In a still more enlarged sense it denotes any kind of a just demand; as, the debts of a bankrupt.

Debts arise or are proved by matter of record, as judgment debts; by bonds or specialties; and by simple contracts, where the quantity is fixed and specific and does not depend upon any future valuation to settle it. 3 Bl. Com. 154.

Debts are discharged in various ways, but principally by payment. See *Accord and Satisfaction, Bankruptcy, Confusion, Compensation, Delegation, Defeasance, Discharge of a contract, Extinction, Extinguishment, Former recovery, Lapse of time, Novation, Payment, Release, Recision, Set-off.*

In payment of debts some are to be paid before others in cases of insolvent estates; first, in consequence of the character of the creditor, as debts due to the United States are generally to be first paid; and secondly, in consequence of the nature of the debt, as funeral expenses and servants' wages which are generally paid in preference to other debts. See *Preference, Privilege, Priority.*

DEBT, *remedies*, the name of an action used for the recovery of a debt *eo nomine* and in numero; though damages are generally awarded for the detention of the debt; these are, however, in most instances merely nominal. 1 H. Bl. 550; Bull. N. P. 167; Cowp. 588. Debt is a more extensive remedy for the recovery of money, than assumpsit or covenant, for it lies to recover money due upon legal liabilities, as for money lent, paid, had and received, due on an account stated, Com. Dig. Dett, A; for work and labour, or for the price of goods, and a quantum valebant thereon. Com. Dig. Dett, B; Hob. 206; or upon simple contracts, express or implied, whether verbal or written, or upon contracts under seal, or of record, or by a common informer, whenever the demand for a sum is certain, or is capable of being reduced to certainty. Bull. N. P. 167. It also lies to recover money due on any specialty or contract under seal to pay money. Str. 1089; Com. Dig. Dett, A 4; 1 T. R. 40. This action also lies on a record, or upon a judgment of a court of record. Gilb. Debt, 391; Salk. 109. Debt is a frequent remedy on statutes, either at the suit of the party grieved, or of a common informer. Com. Dig. Action on Statute, E; Bac. Ab. Debt, A. See generally, Com. Dig. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Vin. Ab. h. t.; Chit. Pl. 100 to 109; Selw. N. 553 to 682; Leigh's N. P. Index, h. t. Debt also lies in the *detinet*, for goods;

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which action differs from detinue, because it is not essential in this action, as in detinue, that the property in any specific goods should be vested in the plaintiff, at the time the action is brought. Dy. 24 b; Com. Dig. Dett, A 5; Bac. Ab. Debt, F; 3 Woodd. 103, 4; 1 Dall. R. 458. Vide *Remedy*.

DEBTOR, *contracts*. One who owes a debt; he who may be constrained to pay what he owes. A debtor is bound to pay his debt personally, and all the estate he possesses or may acquire is also liable for his debt. Debtors are joint or several; joint, when they all equally owe the debt in solido; in this case if a suit should be necessary to recover the debt, all the debtors must be sued together, or, when some are dead, the survivors must be sued, but each is bound for the whole debt, having a right to contribution from the others; they are several, when each promises severally to pay the whole debt; and obligations are generally binding on both or all the debtors jointly and severally. When they are severally bound each may be sued separately, and on the payment of the debt by one, the others will be bound to contribution, where all had participated in the money or property, which was the cause of the debt. Debtors are also principal and surety; the principal debtor is bound as between him and his surety to pay the whole debt, and if the surety pay it, he will be entitled to recover against the principal. Vide Vin. Ab. Creditor and Debtor; Ib. Debt; 8 Com. Dig. 388; Dig. 50, 16, 108; Ib. 50, 16, 178, 3; Toull. liv. 2, n. 250.

DECAPITATION, *punishment*, the punishment of putting a person to death by taking off his head.

DECEM TALES, *practice*. In the English law this is a writ which gives to the sheriff *apponere decem tales*, i. e. to appoint ten such men for the supply of jury men, when a sufficient number do not appear to make up a full jury.

DECEDENT. In the acts of descent and distribution in Pennsylvania, this word is frequently used for a deceased person, testate or intestate.

DECEIT, *torts*, is a fraudulent misrepresentation or contrivance by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter. Fraud, or the intention to deceive is the very essence of this injury, for if the party misrepresenting was himself mistaken, no blame can attach to him. The representation must be made *malo animo*, but whether or not the party is himself to gain by it, is wholly immaterial. Deceit may not only be by asserting a falsehood deliberately to the injury of another, as, that Paul is in flourishing circumstances, whereas he is in truth insolvent; that Peter is an honest man, when he knew him to be a rogue; that property real or personal possesses certain qualities, or belongs to the vendor, whereas he knew these things to be false; but by any act or demeanor which would naturally impress the mind of a careful man with a mistaken belief. Therefore, if one whose manufactures are of a superior quality, distinguishes them by a particular mark, which facts are known to Peter, and Paul counterfeits this mark, and affixes them to articles of the same description, but not made by such person, and sells them to Peter as goods of such manufacture, this is a deceit. Again, the vendor having a knowledge of a defect in a commodity which cannot be obvious to the buyer, does not disclose it, or, if apparent, uses an artifice and conceals it, he has been guilty of a fraudulent misrepresentation, for there is

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an implied condition in every contract that the parties to it act upon equal terms, and the seller is presumed to have assured or represented to the vendee that he is not aware of any secret deficiencies by which the commodity is impaired, and that he has no advantage which himself does not possess. But in all these cases the party injured must have no means of detecting the fraud, for if he has such means, his ignorance will not avail him; in that case he becomes the willing dupe of the other's artifice, and *volunti non fit injuria*. For example, if a horse is sold wanting an eye, and the defect is visible to a common observer, the purchaser cannot be said to be deceived, for by inspection he might discover it; but if the blindness is only discoverable by one experienced in such diseases, and the vendee is an inexperienced person, it is a deceit provided the seller knew of the defect.

The remedy for a deceit, unless the right of action has been suspended or discharged, is by an action of trespass on the case. The old writ of deceit was brought for acknowledging a fine, or the like, in another name, and this being a perversion of law to an evil purpose, and a high contempt, the act was laid *contra pacem*, and a fine imposed upon the offender. When two or more persons unite in a deceit upon another, they may be indicted for a conspiracy, (q. v.) Vide, generally, Com. Dig. Action upon the case for a deceit; Chancery, 3 F 1 and 2; 3 M 1; 3 N 1; 4 D 3; 4 H 4; 4 L 1; 4 O 2; Covin; Justices of the Peace, B 30; Pleader, 2 H; 1 Vin. Ab. 560; 8 Vin. Ab. 490; Doct. Pl. 51; Dane's Ab. Index, h. t.; 1 Chit. Pr. 832; Ham. N. P. C. 2, s. 4; Ayl. Pand. 99; 2 Day, 531; 12 Mass. 20; 3 Johns. 269; 6 Johns. 181; 2 Day, 205, 381; 4 Yeates, 522. Vide also articles *Equality*, *Fraud*.

DECISION, *practice*, is a judgment given by a competent tribunal. The French lawyers call the opinions which they give on questions propounded to them, decisions. Vide Inst. 1, 2, 8; Dig. 1, 2, 2.

DECLARATIONS, *evidence*, are the statements made by the parties to a transaction, in relation to the same. These declarations when proved are received in evidence for the purpose of illustrating the peculiar character and circumstances of the transaction. Declarations are admitted to be proved in a variety of cases.

1. In cases of rape the fact that the woman made declarations, in relation to it, soon after the assault took place, is evidence; but the particulars of what she said cannot be heard. 2 Stark. N. P. C. 242; S. C. 3 E. C. L. R. 344.

2. When more than one person is concerned in the commission of a crime, as in cases of riots, conspiracies, and the like, the declarations of either of the parties, made *while acting in the common design*, are evidence against the whole; but the declarations of one of the rioters or conspirators, made *after the accomplishment of their object*, and when they no longer acted together, are evidence only against the party making them. 2 Stark. Ev. 235; 2 Russ. on Cr. 572; Rosc. Cr. Ev. 324.

3. To prove a pedigree, the declarations of a deceased member of the family are admissible. Vide *Hearsay*, and the cases there cited.

4. The dying declarations of a man who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence; but the party making them must be under a full consciousness of approaching death.

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Evidence of such declarations is admissible only when the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declarations. 2 B. & C. 605; S. C. 9 E. C. L. R. 196; 2 B. & C. 608; S. C. 9 E. C. L. R. 198; 1 John. R. 159; 15 John. R. 286; 7 John. R. 95. But see contra, 2 Car. Law Repos. 102.

DECLARATION, *pleading*. A declaration is a specification, in a methodical and legal form, of the circumstances which constitute the plaintiff's cause of action. 1 Chit. Pl. 248; Co. Litt. 17, a, 303, a; Bac. Abr. Pleas, B; Com. Dig. Pleader, C 7; Lawes on Pl. 35; Steph. Pl. 36; 6 Serg. & Rawle, 28. In real actions, it is most properly called the *count;* in a personal one the declaration. Steph. Pl. 36; Doct. Pl. 83; Lawes, Plead. 33; see F. N. B. 16, a, 60, d. The latter, however, is now the general term; being that commonly used when referring to real and personal actions without distinction. The declaration in an action at law answers to the bill in chancery, the libel of the civilians, and the allegation of the ecclesiastical courts.

It may be considered with reference, 1st, to those general requisites or qualities which govern the whole declaration; and, 2dly, to its form, particular parts and requisites.

1. The general requisites or qualities of a declaration are, *first*, that it correspond with the process. But according to the present practice of the courts, oyer of the writ cannot be craved; and a variance between the writ and declaration cannot be pleaded in abatement. 1 Sau. 318, a. *Secondly*, the second general requisite of a declaration is that it contain a statement of all the facts necessary, in point of law, to sustain the action, and no more. Co. Litt. 303, a; Plowd. 84, 122. See 2 Mass. R. 363; Cowp. 682; 6 East, 422; 5 T. R. 623; Vin. Ab. Declarations. *Thirdly*, These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is to a certain intent in general, which should pervade the whole declaration and is particularly required in setting forth, 1st, the *parties;* it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against "C D and Company," not being a corporation, is insufficient. See Com. Dig. Pleader, C 18; 1 Camp. R. 466; 1 T. R. 508; 3 Caine's R. 170. 2dly, The *time;* in personal actions the declaration must in general state a time when every material or traversable fact happened, and when a venue is necessary, time must also be mentioned. 5 T. R. 620; Com. Dig. Plead. C 19; Plowd. 24; 14 East, 300. The precise time, however, is not material, 2 Dall. 346; 3 Johns. R. 43; 13 Johns. R. 253; unless it constitute a material part of the contract declared upon, or where the date, &c. of a written contract or record is averred, 4 T. R. 590; 10 Mod. 313; 2 Camp. R. 307, 8, n.; or, in ejectment, in which the demise must be stated to have been made after the title of the lessor of the plaintiff, and his right of entry accrued, 2 East, 257; 1 Johns. Cas. 283. 3dly, The *place*. See *Venue*. 4thly, Other circumstances necessary to maintain the action.

2. The parts and particular requisites of a declaration are, *first*, the title of the court and term; see 1 Chit. Pl. 261 et seq. *Secondly*, The venue. Immediately after the title of the declaration follows the statement in the margin of the *venue* or county in which the facts are alleged to have occurred, and in which the cause is tried. See *Venue*.

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Thirdly, The *commencement*. What is termed the commencement of the declaration follows the venue in the margin, and precedes the more circumstantial statement of the cause of action. It contains a statement, 1st, of the names of the parties to the suit, and if they sue or be sued in another right, or in a political capacity, (as executors, assignees, *qui tam*, &c.) of the character or right in respect of which they are parties to the suit. 2dly, Of the mode in which the defendant has been brought into court; and, 3dly, A brief recital of the form of action to be proceeded in. 1 Saund. 318, n. 3; Ib. 111, 112; 6 T. R. 130. *4thly*, The *statement of the cause of action*, in which all the requisites of certainty before mentioned must be observed, necessarily varies, according to the circumstances of each particular case, and the form of action, whether in assumpsit, debt, covenant, detinue, case, trover, replevin or trespass. *Fifthly*, The *several counts*. A declaration may consist of as many counts as the case requires, and the jury may assess entire or distinct damages on all the counts, 3 Wils. R. 185; 2 Bay, R. 206; and it is usual particularly in actions of assumpsit, debt on simple contract, and actions on the case, to set forth the plaintiff's cause of action in various shapes in different counts, so that if the plaintiff fail in proof of one count he may succeed in another. 3 Bl. Com. 295. *Sixthly*, The *conclusion;* in personal and mixed actions the declaration should conclude to the *damage* of the plaintiff, Com. Dig. Pleader, C 84; 10 Co. 116, b, 117, a; unless in *scire facias* and in penal actions at the suit of a common informer. *Seventhly*, The *profert* and *pledges*. In an action at the suit of an executor or administrator, immediately after the conclusion to the damages, &c. and before the pledges, a profert of the letters testamentary or letters of administration should be made. Bac. Abr. Executor, C; Dougl. 5, in notes. At the end of the declaration it is usual to add the plaintiff's common pledges to prosecute, John Doe and Richard Roe.

See, generally, 1 Chit. Pl. 248 to 402; Lawes, Pl. Index, h. t.; Arch. Civ. Pl. Index, h. t.; Steph. Pl. h. t.; Grah. Pr. h. t.; Com. Dig. Pleader, h. t.; Dane's Ab. h. t.

DECLARATION OF INDEPENDENCE. This is a state paper issued by the congress of the United States of America, in the name and by the authority of the people, on the fourth day of July, 1776, wherein are set forth,

1. The rights of mankind; the uses and purposes of governments; the rights of the people to institute or to abolish them; the sufferings of the colonies, and their right to withdraw from the tyranny of the king of Great Britain.

2. The various acts of tyranny of the British king.

3. The petitions for redress of these injuries, and the refusal to redress them; the recital of an appeal to the people of Great Britain, and of their being deaf to the voice of justice and consanguinity.

4. An appeal to the Supreme Judge of the world for the rectitude of the intentions of the representatives.

5. A declaration that the united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is and ought to be dissolved.

6. A pledge by the representatives to each other of their lives, their fortunes, and their sacred honour.

The effect of this declaration was

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the establishment of the government of the United States as free and independent, and thenceforth the people of Great Britain have been held, as the rest of mankind, enemies in war, in peace friends.

DECLARATION OF TRUST, is the act by which an individual acknowledges that a property, the title of which he holds, does in fact belong to another, for whose use he holds the same. The instrument in which the acknowledgment is made, is also called a declaration of trust; but such a declaration is not always in writing, though it is highly proper it should be so. Will. on Trust. 49, note (y); Sugd. on Pow. 200. See Merl. Rép. Declaration au profit d'un tiers.

DECLARATION OF WAR, is an act of the national legislature, in which a state of war is declared to exist between the United States and some other nation. This power is vested in congress by the constitution, art. 1, s. 8. There is no form or ceremony necessary, except the passage of the act. A manifesto stating the causes of the war, is usually published, but war exists as soon as the act takes effect. It was formerly usual to precede hostilities by a public declaration communicated to the enemy, and to send a herald to demand satisfaction. Poter, Antiquities of Greece, b, 3, c. 7. Dig. 49, 15, 24. But that is not the practice of modern times.

In some countries, as England and France, the power of declaring war is vested in the king, but he has no power to raise men or money to carry it on, which renders the right almost nugatory.

The public proclamation of the government of a state, by which it declares itself to be at war with a foreign power, which is named, and which forbids all and every one to aid or assist the common enemy, is also called a declaration of war.

DECLARATORY, is that which explains something, without containing any new provision or obligation, as, a declaratory law.

DECOCTION, *med. jurisp.* The operation of boiling certain ingredients in a fluid, for the purpose of extracting the parts soluble at that temperature. *Decoction* also means the product of this operation. In a case in which the indictment charged the prisoner with having administered to a woman a decoction of a certain shrub called savin, it appeared that the prisoner had administered an *infusion*, (q. v.) and not a decoction; the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed, but it was held that infusion and decoction are *ejusdem generis*, and that the variance was immaterial. 3 Camp. R. 74, 75.

DECREE, *practice*, is the judgment or sentence of a court of equity. It is either interlocutory or final. The former is given on some plea, or issue arising in the cause, which does not decide the main question; the latter settles the matter in dispute, and a final decree, has the same effect as a judgment at law. 2 Madd. Ch. 462; 1 Chan. Cas. 27; 2 Vern. 89; 4 Bro. P. C. 287. Vide 7 Vin. Ab. 394; 7 Com. Dig. 445; 1 Supp. to Ves. Jr. 223.

DECREE, *legislation*. In some countries, as in France, some acts of the legislature, or by the sovereign, which have the force of law, are called *decrees*; as, the Berlin and Milan decrees.

DECRETALS, *eccles. law*. The decretals were letters written by the sovereign pontiffs, who answered questions propounded to them by the bishops, and even by private individuals on points of discipline. These letters decided those points, and

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were called decretals, because they had the force of law or decrees in the church.

DEDI, *conveyancing*. I have given. This word amounts to a warranty in law, when it is in a deed; for example, if in a deed it be said, I have *given*, &c. to A B, this is a warranty to him and his heirs. Co. Litt. 304. Vide *Concessi*.

DEDIMUS, *practice*. The name of a writ to commission private persons to do some act in the place of a judge; as, to administer an oath of office to a justice of the peace, to examine witnesses, and the like. 4 Com. Dig. 319; 3 Com. Dig. 359; Dane's Ab. Index, h. t. Rey, in his Institutions Judiciaires, de l'Angleterre, tom. 2, p. 214, exposes the absurdity of the name given to this writ; he says it is applicable to every writ which emanates from the same authority; *dedimus*, we have given.

DEED, *conveyancing*, *contracts*, is a writing or instrument, under seal, delivered by the parties. Co. Litt. 171; 2 Bl. Com. 295; Shep. Touch. 50. This applies to all instruments in writing, under seal, whether they relate to the conveyance of lands, or to any other matter; a bond, a single bill, an agreement in writing, or any other contract whatever, when reduced to writing, which writing is sealed and delivered, is as much a deed as any conveyance of land. 2 Serg. & Rawle, 504. Deed, in its more confined sense, signifies a writing, by which lands, tenements, and hereditaments are conveyed, which writing is sealed and delivered by the parties.

The formal parts of a deed for the conveyance of land, are, 1, the premises; 2, the *habendum*; 3, the *tenendum*; 4, the *redendum*; 5, the conditions; 6, the warranty; 7, the covenants; and 8, the conclusion. The circumstances necessarily attendant upon a valid deed, are the following; 1. It must be written or printed on parchment or paper. Litt. 229, a; 2 Bl. Com. 297.—2. There must be sufficient parties.—3. A proper subject-matter, which is the object of the grant.—4. A sufficient consideration.—5. An agreement properly set forth.—6. It must be read, if desired.—7. It must be signed and sealed.—8. It must be delivered.—9. And attested by witnesses.—10. It should be properly acknowledged before a competent officer.—11. It ought to be recorded. A deed may be avoided, 1. By alterations made in it subsequent to its execution, when made by the party himself, whether they be material or immaterial; and by any material alteration, made even by a stranger. Vide *Erasure*; *Interlineation*. 2. By the disagreement of those parties whose concurrence is necessary; for instance, in the case of a married woman by the disagreement of her husband. 3. By judgment of a competent tribunal.

According to Sir William Blackstone, 2 Com. 313, deeds may be considered as (1,) conveyances at common law, original and derivative. 1st. The original are, 1, Feoffment; 2, Gift; 3, Grant; 4, Lease; 5, Exchange; and 6, Partition.—2dly. Derivative, which are, 7, Release; 8, Confirmation; 9, Surrender; 10, Assignment; 11, Defeasance. (2), Conveyances which derive their force by virtue of the statute of uses; namely, 12, Covenant to stand seised to uses; 13, Bargain and sale of lands; 14, Lease and release; 15, Deed to lead and declare uses; 16, Deed of revocation of uses.

The deed of bargain and sale, is the most usual in the United States. Vide *Bargain and Sale*. Chancellor Kent is of opinion that a deed would be perfectly competent in any part of the United States, to convey the

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fee, if it was to be to the following effect: "I, A B, in consideration of one dollar to me paid, by C D, do bargain and sell, (or, in some of the states, grant) to C D, and his heirs, (in New York, Virginia, and some other states, the words *and his heirs*, may be omitted,) the lot of land, (describing it,) witness my hand and seal," &c. 4 Kent, Com. 452. Vide generally, Vin. Abr. Fait; Com. Dig. Fait; Shep. Touch. ch. 4; Dane's Ab. Index, h. t. 4 Cruise's Dig. *passim*.

DEED POLL, *contracts*. A deed made by one party only is not indented, but polled or shaved quite even, and is, for this reason, called a *deed-poll* or single deed. Co. Litt. 299, a. A deed poll is not, strictly speaking, an agreement between two persons; but a declaration of some one particular person, respecting an agreement made by him with some other person. For example, a feoffment from A to B by deed poll, is not an agreement between A and B, but rather a declaration by A addressed to all mankind, informing them that he thereby gives and enfeoffs B of certain land therein described. It was formerly called *charta de una parte*, and usually began with these words. Sciant præsentes et futuri quod ego A &c.; and now begins, "know all men by these presents, that I, A B, have given, granted, and enfeoffed, and by these presents do give, grant, and enfeoff," &c. Cruise, Real Prop. tit. 32, c. 1, s. 23.

DEFALCATION, *practice, contracts*. Is the reduction of the claim of one of the contracting parties against the other, by deducting from it a smaller claim due from the former to the latter. The law operates this reduction, for, if the parties die or are insolvent, the balance between them is the only claim. For the etymology of this word, see Bracken. Law Misc. 186; 1 Rawle's R. 291; 3 Binn. R. 135.

DEFAMATION, *tort*, is the speaking slanderous words of a person so as, *de bonis fama aliquid detrahere*, to hurt his good fame. V. *Slander*.

DEFAULT, is the neglect to perform a legal obligation or duty; but in technical language by default is understood the non-appearance of the defendant, within the time prescribed by law, to defend himself; it also signifies the non-appearance of the plaintiff to prosecute his claim. When the plaintiff makes default, he may be non-suited, and when the defendant makes default, judgment by default is rendered against him. Com. Dig. Pleader, E 42; Ib., B 11. Vide article *Judgment by Default*, and 7 Vin. Ab. 429; Doct. Pl. 208; Grah. Pr. 631.

DEFAULTER, *com. law*, one who is deficient in his accounts, or fails in making his accounts correct.

DEFEASANCE, *contracts, conveyancing*, is an instrument which defeats the force or operation of some other deed or estate. That, which in the *same deed* is called a condition, in *another* deed is a defeasance. Every defeasance must contain proper words, as that the thing shall be void. 2 Salk. 575; Willes, 108; and vide Carth. 64. A defeasance must be made *in eodem modo*, and by matter as high as the thing to be defeated; so that if one be by deed, the other must also be by deed. Touchs. 397; Vide Vin. Ab. h. t.; Com. Dig. h. t.; Ib. Pleader, 2 W 35, 2 W 37; Lilly's Reg. h. t.; Nels. Ab. h. t.; 2 Saund. 47 n, note (1); Cruise, Dig. tit. 32, c. 7, s. 25.

DEFENCE, *torts*, is a forcible resistance of an attack by force. A man is justified in defending his person, that of his wife, children,

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and servants, and for this purpose he may use as much force as may be necessary, even to killing the assailant, remembering that the means used must always be proportioned to the occasion, and an excess becomes, itself, an injury. A man may also repel force by force in defence of his personal property, and even justify homicide against one who manifestly intends or endeavours by violence or surprise to commit a known felony, as robbery. With respect to the defence or protection of the possession of real property, although it is justifiable even to kill a person in the act of attempting to commit a forcible felony, as burglary or arson, yet this justification can only take place when the party in possession is wholly without fault. 1 Hale, 440, 444; 1 East, P. C. 259, 277. When a forcible attack is made upon the dwelling-house of another, without any felonious intent but barely to commit a trespass, it is in general lawful to oppose force by force, when the former was clearly illegal. 7 Bing. 305; S. C. 20 Eng. C. L. Rep. 139. Vide, generally, Ham. N. P. 136, 151; 1 Chit. Pr. 589–616; Grot. lib. 2, c. 1; Rutherf. Inst. B. 1, c. 16.

DEFENCE, *pleading*, *practice*, is defined to be the denial of the truth or validity of the complaint, and does not signify a justification. It is a general assertion that the plaintiff has no ground of action, which assertion is afterwards extended and maintained in the plea. 3 Bl. Com. 296; Co. Litt. 127; it is similar to the *contestatio litis* of the civilians. Defence is of two descriptions, first, half defence, which is as follows, "*venit et defendit vim et injuriam, et dicit*," &c. or secondly, full defence, "*venit et defendit vim et injuriam, quando*," &c. (meaning "*quando et ubi curia consideravit*," or when and where it shall behove him,) "*et damna et quicquid quod ipse defendere debet et dicit*," &c. Co. Litt. 127, b; Bac. Abr. Pleas, D; Willis, 41. In strictness the words *quando*, &c. ought not to be added when only half defence is to be made, and after the words "*venit et defendit vim et injuriam*," the subject-matter of the plea should immediately be stated. Gilb. C. P. 188; 8 T. R. 632; 3 B. & P. 9, n. a. It has, however, now become the practice in all cases, whether half or full defence be intended, to state it as follows: "And the said C D, by M N his attorney, comes and defends the *wrong*, (or in trespass, force) and injury, when &c. and says," which will be considered only as half defence in cases where such defence should be made, and as full defence where the latter is necessary. 8 T. R. 633; Willis, 41; 3 B. & P. 9; 2 Saund. 209, c. If full defence were made expressly by the words "when and where it shall behove him," and "the damages and whatever else he ought to defend," the defendant would be precluded from pleading to the jurisdiction or in abatement, for by defending *when and where* it shall behove him, the defendant acknowledges the jurisdiction of the court, and by defending the *damages* he waives all exception to the person of the plaintiff. 2 Saund. 209, c.; 3 Bl. Com. 297; Co. Litt. 127, b.; Bac. Abr. Pleas, D. Want of defence being only matter of form the omission is aided by general demurrer. 3 Salk. 271. See further 7 Vin. Abr. 497; 1 Chit. Pl. 410; Com. Dig. Abatement, I 16; Gould on Pl. c. 2, s. 6–15; Steph. Pl. 430.

TO DEFEND. To forbid. This word is used in some old English statute in the sense it has in French, namely, to forbid. 5 Ric. 2, c. 7. Lord Coke uses the word in this sense; "it is defended by law to dis-

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train on the highway." Co. Litt. 160 b, 161 a. In pleading, to defend is to deny, and the effect of the word "defends," is that the defendant denies the right of the plaintiff, or the force and wrong charged. Steph. Pl. 432.

DEFENDANT, a party who is sued in a personal action. Vide *Demandant; Parties to actions; Pursuer;* and Com. Dig. Abatement, F; Action upon the case upon assumpsit, E b.

DEFENDER, *canon law.* The name by which the defendant or respondent is known in the ecclesiastical courts.

DEFICIT. This latin term signifies that something is wanting. It is used to express the deficiency which is discovered in the accounts of an accountant, or in the money which he has received.

DEFINITION is an enumeration of the principal ideas of which a compound idea is formed, to ascertain and explain its nature and character; or it is that which denotes and points out the substance of a thing to us. Ayliff's Pand. 59. A definition ought to contain every idea which belongs to the thing defined and exclude all others. Definitions are always dangerous, because it is always difficult to prevent their being inaccurate, or their becoming so; *omnis definitio in jure civili periculosa est, parum est enim, ut non subverti possit.*

DEFINITIVE, is that which terminates a suit; a definitive sentence or judgment is put in opposition to an interlocutory judgment. Final, (q. v.)

DEFORCIANT, is one who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Com. 350.

DEFORCEMENT, *tort,* in its most extensive sense, signifies the holding of any lands or tenements to which another person has a right. Co. Litt. 277; so that this includes as well an abatement, an intrusion, a disseisin, or a discontinuance as any other species of wrong whatsoever, by which the owner of the freehold is kept out of possession. But as contradistinguished from the former, it is only such a detainer of the freehold, from him who has the right of property, as falls within none of the injuries above mentioned. 3 Bl. Com. 173; Archb. Civ. Pl. 13; Dane's Ab. Index, h. t.

DEFORCEMENT, *in the law of Scotland,* is the opposition given or resistance made, to messengers or other officers, while they are employed in executing the law. This crime is punished by confiscation of moveables, the one half to the king, and the other to the creditor at whose suit the diligence is used. Ersk. Pr. L. Scot. 4, 4, 16.

DEFUNCT, a term used for one that is deceased or dead. In some acts of assembly in Pennsylvania, such deceased person is called a decedent (q. v.)

DEGRADATION, *punishment in the ecclesiastical law,* is a censure by which a clergyman is deprived of his holy orders, which he had as a priest or deacon.

DEGREE, *descents.* This word is derived from the French *degré,* which is itself taken from the Latin *gradus,* and signifies literally a step in a stair-way, or the round of a ladder. Figuratively applied and as it is understood in law, it is the distance between those who are allied by blood; it means the relations descending from a common ancestor from generation to generation, as by so many steps. Each generation lengthens the line of descent one degree, for the degrees are only the generations marked in a line by small circles or squares in which the names of the persons forming it are

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written. Vide *Consanguinity*, *Line*, and also Ayliff's Parergon, 209; Toull. Dr. Civ. Fran. liv. 3, t. 1, c. 3, n. 158.

DEHORS. Out of; without. By this word is understood something out of the record, agreement, will, or other thing spoken of; something foreign to the matter in question.

DEL CREDERE; *contracts*. A *del credere* commission is one under which the agent, in consideration of an additional premium, engages to insure to his principal, not only the solvency of the debtor, but the punctual discharge of the debt; and he is liable in the first instance without any demand from the debtor. 6 Bro. P. C. 287; Beawes, 429; 1 T. Rep. 112; Paley on Agency, 39. If the agent receive the amount of sales and remit the amount to the principal by a bill of exchange he is not liable if it should be protested. 2 W. C. C. R. 378. See also, Com. Dig. Merchant, B; 4 M. & S. 574.

DELAPIDATION, *property*, is either the letting a building go to ruin, or the ruin and damage which accrues to the building in consequence of such neglect.

DELAWARE. The name of one of the original states of the United States of America. For a considerable time prior to the revolution the counties of this state were connected with Pennsylvania, under the name of territories annexed to the latter. In 1703, a separation between them took place, and from that period down to the revolution, the territories were governed by a separate legislature of their own, pursuant to the liberty reserved to them by a clause of their original charter. 1 Story, Const. § 127. The constitution of this state was amended and adopted December 2, 1831. The powers of the government are divided into three branches, the legislative, the executive and the judicial. 1st. The *legislative* power of the state is vested in a general assembly, which consists of a senate and house of representatives. 1. The *senate* is composed of three senators from each county, the number may be increased by the general assembly, two-thirds of each branch concurring, but the number of senators shall never be greater than one-half, nor less than two-thirds of the number of representatives, Art. 2, s. 3. The senators are chosen for four years by the citizens residing in the several counties. 2. The *house of representatives* is composed of seven members from each county, but the general assembly, two-thirds of each branch concurring, may increase the number. The representatives are chosen for two years by the citizens residing in the several counties. Art. 2, s. 2.—2d. The supreme *executive* power of the state is vested in a governor, who is chosen by the citizens of the state. He holds his office during four years from the third Tuesday in January next ensuing his election, and is not eligible a second time to the said office. Art. 3. Upon the happening of a vacancy, the speaker of the senate exercises the office, until a governor elected by the people shall be duly qualified. Art. 3, s. 14.—3d. The judicial power is vested in a court of errors and appeals, a superior court, a court of chancery, an orphans' court, a court of oyer and terminer, a court of general sessions of the peace and gaol delivery, a register's court, justices of the peace, and such other courts as the general assembly, with the concurrence of two-thirds of all the members of both houses, shall from time to time establish. Art. 6.

DELAY, *civil law*, is the time allowed either by law or by agreement of the parties to do something. The law allows a delay, for a party who has been summoned to appear, to

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make defence, to appeal; it admits of a delay during which an action may be brought, certain rights exercised, and the like. By the agreement of the parties there may be a delay in the payment of a debt, the fulfilment of a contract, &c. Vide Code, 3, 11, 4; Nov. 69, c. 2; Merl. Répert, h. t.

DELEGATE, *government.* A person elected by the people of a territory of the United States to congress, who has a seat in congress, and a right of debating, but not of voting. Ordinance of July 13, 1787, 3 Story's L. U. S. 2076. A delegate is also a person elected to some deliberative assembly, usually one for the nomination of officers.

DELEGATION, *civil law.* It is a kind of novation, by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person appointed by him. It results from this definition that a delegation is made by the concurrence of three parties, and that there may be a fourth. There must be a concurrence, 1, Of the party delegating, that is, the ancient debtor, who procures another debtor in his stead; 2, Of the party delegated, who enters into the obligation in the place of the ancient debtor, either to the creditor or to some other person appointed by him; 3, Of the creditor, who, in consequence of the obligation contracted by the party delegated, discharges the party delegating. Sometimes there intervenes a fourth party, namely, the person indicated by the creditor in whose favour the person delegated becomes obliged, upon the indication of the creditor, and by the order of the person delegating. Poth. Ob. part 3, c. 2, art. 6. See Louis. code, 2188, 2189.

DELIBERATION, *legislation*, is the council which is held touching some business, in an assembly having the power to act in relation to it. In deliberative assemblies, it is presumed that each member will listen to the opinions and arguments of the others before he arrives at a conclusion.

DELICT, *civil law.* The act by which one person, by fraud or malignity, causes some damage or tort to some other. In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally without evil intention; but more commonly by delicts are understood those small offences which are punished by a small fine or a short imprisonment. Delicts are either public or private; the public are those which affect the whole community by their hurtful consequences; the private is that which is directly injurious to a private individual. Inst. 4, 18; Ib. 4, 1; Dig. 47, 1; Ib. 48, 1. A *quasi-delict*, quasi delictum, is the act of a person, who, without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Ob. n. 116; Ersk. Pr. Laws of Scotl. B. 4, t. 4, s. 1.

DELINQUENT, *civil law*, he who has been guilty of some delict.

DELIVERANCE, *practice*, a term used by the clerk in court to every prisoner who is arraigned and pleads *not guilty*, to whom he wishes a good *deliverance*. In modern practice this is seldom used.

DELIVERY, *conveyancing*, is the transferring of a deed from the grantor to the grantee: or the delivery may be made and accepted by an attorney. This is indispensably necessary to the validity of a deed. As to the form, the delivery may be by words without acts; as, if the deed be lying upon a table, and the grantor says to the grantee, "take

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that as my deed," it will be a sufficient delivery; or it may be by acts without words, and therefore a dumb man may deliver a deed. Wood. B. 2, c. 3. A delivery may be either *absolute*, as when it is delivered to the grantor himself; or it may be *conditional*, that is, to a third person to keep until some condition shall have been performed by the grantee, and then it is called an escrow, (q. v.) See 2 Bl. Com. 306; 4 Kent, Com. 446; Cruise, Dig. tit. 32, c. 2, s. 87.

DELIVERY, *contracts*, is the transmitting the possession of a thing from one person to another. In sales, gifts, and other contracts, where the party intends to transfer the property the delivery must be made with the intent to enable the receiver to obtain dominion over it. 3 Serg. & Rawle, 29. The delivery may be actual, by putting the thing sold in the hands or possession of the purchaser; or it may be symbolical, as where a man buys goods in a room, the receipt of the keys will be sufficient. 1 Yeates, 529; 5 Johns. R. 335; 1 East, 192; 3 Bos. & Pull. 233; 10 Mass. 308. As to what will amount to a delivery of goods and merchandize, vide 1 Holt, 18; 4 Mass. 661; 8 Mass. 287; 14 Johns. R. 167; 15 Johns. R. 349; 1 Taunt. R. 318; 2 H. Black. R. 316, 504; 1 New R. 69; 6 East, 614.

There is sometimes considerable difficulty in ascertaining the particular period when the property in the goods sold passes from the vendor to the vendee; and what facts amount to an actual delivery of the goods. Certain rules have been established and the difficulty is to apply the facts of the case. 1. Where goods are sold, if nothing remains to be done on the part of the seller, as between him and the buyer, before the article is to be delivered, the property has passed. East, 614; 4 Mass. 661; 8 Mass. 287; 14 Johns. 167; 15 Johns. 349; 1 Holt's R. 18; 3 Eng. C. L. R. 9.—2. Where a chattel is made to order, the property therein is not vested in the *quasi* vendee, until finished and delivered, though he has paid for it. 1 Taunt. 318.—3. The criterion to determine whether there has been a delivery on a sale, is to consider whether the vendor still retains, in that character, a right over the property. 2 H. Blackst. R. 316.—4. Where a part of the goods sold by an entire contract, has been taken possession of by the vendee, that shall be deemed a taking possession of the whole. 2 H. Bl. R. 504; 1 New Rep. 69. Such partial delivery is not a delivery of the whole so as to vest in the vendee the entire property in the whole, where some act other than the payment of the price is necessary to be performed in order to vest the property. 6 East, 614.—5. Where goods are sent to order to a carrier, the carrier receives them as the vendee's agent. Cowp. 294; 3 Bos. & Pull. 582; 2 N. R. 119.—6. A delivery may be made in a very slight manner; as where one buys goods in a room, the receipt of the key is sufficient. 1 Yeates, 529; 5 Johns. 335; 1 East, 192. See also 3 B. & P. 233; 7 East, 558; 1 Camp. 235.—7. The vendor of bulky articles is not bound to deliver them, unless he stipulated to do so, he must give notice to the buyer that he is ready to deliver them. 5 Serg. & Rawle, 19; 12 Mass. 300; and see 3 Johns. 399; 13 Johns. 294; 19 Johns. 218; 1 Dall. 171.—8. A sale of bricks in a brick yard, accompanied with a lease of the yard until the bricks should be sold and removed, was held to be valid against the creditors of the vendor, without an actual removal. 10 Mass. 308.—9. Where goods

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were contracted to be sold upon condition that the vendee should give security for the price, and they are delivered without security being given, but with the declaration on the part of the vendor, that the transaction should not be deemed a sale, until the security should be furnished; it was held that the goods remained the property of the vendor notwithstanding the delivery. But, it seems, that in such cases, the goods would be liable for the debts of the vendee's creditors, originating after the delivery; and that the vendee may, for a *bona fide* consideration, sell the goods while in his possession. 4 Mass. 405.—10. Where goods are sold to be paid for on delivery, if on delivery the vendee refuses to pay for them, the property is not divested from the vendor. 13 Johns. 434; 1 Yeates, 529.—11. If the vendor rely on the promises of the vendee to perform the conditions of the sale, and deliver the goods accordingly, the right of property is changed; but where performance and delivery are understood to be simultaneous, possession obtained by artifice will not vest a title in the vendee. 3 Serg. & Rawle, 20.—12. Where on the sale of a chattel, the purchase money is paid, the property is vested in the vendee, and if he permit it to remain in the custody of the vendor, he cannot call upon the latter for any subsequent loss or deterioration not arising from negligence. 2 Johns. 13; 2 Caine's R. 38; 3 Johns. 394.

See *Sale*, *Stoppage in transitu*, *Tender*, and Domat, Lois Civiles, Liv. 1, tit. 2, s. 2.

DELIVERY, *med. jur.*, is the act of a woman giving birth to her offspring. It is frequently of great importance to ascertain whether or not a delivery has taken place, and the time when it took place. Delivery may be considered with regard, 1, to pretended delivery; 2, to concealed delivery; and, 3, to the usual signs of delivery.

1. In pretended delivery the female declares herself to be a mother, without being so in reality. It owes its origin to cupidity, when the woman wishes to impose a suppositious heir to an estate, or to a culpable desire of imposing upon the husband and of relieving herself from a reproach of sterility. Pretended delivery may present itself in three points of view;—1. When the female who feigns has never been pregnant. When thoroughly investigated, this may always be detected. There are signs which must be present and cannot be feigned. An enlargement of the orifice of the uterus, and a tumefaction of the organs of generation, should always be present, and if absent, are conclusive against the fact. Annales d'Hygiène, tome ii, p. 227.—2. When the pretended pregnancy and delivery have been preceded by one or more deliveries. In this case attention should be given to the following circumstances; the mystery (if any) which has been affected with regard to the situation of the female—her age—that of her husband, and particularly whether aged or decrepid. — 3. When the woman has been actually delivered, and substitutes a living for a dead child. But little evidence can be obtained on this subject from a physical examination.

2. Concealed delivery generally takes place when the woman either has destroyed her offspring, or it was born dead. In suspected cases the following circumstances should be attended to: 1. The proofs of pregnancy which arise in consequence of the examination of the mother. When she has been pregnant and has been delivered, the usual signs of delivery, mentioned below, will be present. A careful

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investigation as to the woman's appearance before and since the delivery will have some weight, though such evidence is not always to be relied upon, as such appearances are not unfrequently deceptive. 2. The proofs of recent delivery. 3. The connexion between the supposed state of parturition, and the state of the child that is found; for if the age of the child do not correspond to that time, it will be a strong circumstance in favour of the mother's innocence. A redness of the skin and an attachment of the umbilical cord to the navel, indicate a recent birth. Whether the child was living at its birth, belongs to the subject of infanticide, (q. v.)

3. The usual signs of delivery are very well collected in Beck's excellent treatise on Medical Jurisprudence, and are here extracted:

If the female be examined within three or four days after the occurrence of delivery, the following circumstances will generally be observed; greater or less weakness, a slight paleness of the face, the eye a little sunken, and surrounded by a purplish or dark-brown coloured ring, and a whiteness of the skin, like a person convalescing from disease. The belly is soft, the skin of the abdomen is lax, lies in folds, and is traversed in various directions by shining reddish and whitish lines, which especially extend from the groins and pubis, to the navel. These lines have sometimes been termed *lineæ albicantes*, and are particularly observed near the umbilical region, where the abdomen has experienced the greatest distention. The breasts become tumid and hard, and on pressure emit a fluid, which at first is serous, and afterwards gradually becomes whiter; and the presence of this secretion is generally accompanied with a full pulse and soft skin, covered with a moisture of a peculiar and somewhat acid odour. The areolæ round the nipples are dark coloured. The external genital organs and vagina are dilated and tumefied throughout the whole of their extent, from the pressure of the fœtus. The uterus may be felt through the abdominal parietes, voluminous, firm, and globular, and rising nearly as high as the umbilicus. Its orifice is soft and tumid, and dilated so as to admit two or more fingers. The fourchette or anterior margin of the perinæum is sometimes torn, or it is lax, and appears to have suffered considerable distention. A discharge, (termed the lochial) commences from the uterus, which is distinguished from the menses by its pale colour, its peculiar and well known smell, and its duration. The lochia are at first of a red colour, and gradually become lighter until they cease.

These signs may generally be relied upon as indicating the state of pregnancy, yet it requires much experience in order not to be deceived by appearances.

1. The lochial discharge might be mistaken for menstruation, or fluor albus, were it not for its peculiar smell; and this it has been found impossible, by any artifice, to destroy.

2. Relaxation of the soft parts arises as frequently from menstruation as from delivery; but in these cases the os uteri and vagina are not so much tumefied, nor is there that tenderness and swelling. The female parts are found pale and flabby when all signs of contusion disappear after delivery; and this circumstance does not follow menstruation.

3. The presence of milk, though a usual sign of delivery, is not always to be relied upon, for this secretion may take place independent of pregnancy.

4. The wrinkles and relaxation of

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the abdomen which follow delivery, may be the consequence of dropsy, or of lankness following great obesity. This state of the parts is also seldom striking after the birth of the first child, as they shortly resume their natural state.

Vide, generally, 1 Beck's Med. Jur. c. 7, p. 206; 1 Chit. Med. Jur. 411; Ryan's Med. Jur. ch. 10, p. 133.

DELUSION, *med. jurisp.* That state of the mind of an individual who conceives something extravagent to exist, which has no existence, and who is incapable of being reasoned out of that absurd conception. The individual is of course insane or an idiot. For example, should a parent unjustly persist without the least ground, in attributing to his daughter a continued course of propensities and vices, and use her with uniform unkindness, there not being the slightest pretence or colour of reason for the supposition, a just inference of insanity or delusion is presented to the minds of a jury, because a supposition long entertained and persisted in, after argument to the contrary, and against the natural affections of a parent, suggests that he must labour some morbid mental delusion. 3 Addams's R. 90, 91; Ib. 180; Hagg. R. 27; and see Dr. Connolly's Inquiry into Insanity, 384.

DEMAND, *contracts.* A claim; a legal obligation. Lord Coke says that *demand* is a word of art, and of an extent, in its signification, greater than any other word except claim. Hence a release of all demands is, in general, a release of all covenants, real and personal, conditions, whether broken or not, annuities, recognizances, obligations, contracts, and the like. 3 Tho. Co. Litt. 427; 3 Penna. R. 120. But a release of all demands does not discharge rent before it was due, if it be a rent incident to the reversion; for the rent was not only not due, but the consideration—the future enjoyment of the lands—for which the rent was to be given, was not executed. 1 Sid. 141; 1 Lev. 99; 3 Lev. 274.

DEMAND, *practice*, is a request by one individual to another to do a particular thing. Demands are either express or implied. In many cases an express demand must be made before the commencement of an action, some of which will be considered below; in other cases an implied demand is all that the law requires, and the bringing of an action is a sufficient demand in those cases. 1 Saund. 33, note 2.

A demand is frequently necessary to secure to a man all his rights, both in actions arising on contracts and those which are founded on some tort.

1. Whether a demand is requisite before the plaintiff can commence an action arising on contract, depends upon the express or implied stipulations of the parties. In case of the sale of property, for example, to be paid for on delivery, a demand of it must be made before the commencement of an action for non-delivery, and proved on the trial, unless it can be shown that the seller has incapacitated himself by a resale and delivery of the property to another person. 1 East, R. 204; 5 T. R. 409; 10 East, R. 359; 5 B. & Ald. 712. On the same principles, a request on a general promise to marry is requisite, unless it be dispensed with by the party's marrying another person, which puts it out of his power to fulfil his contract, or that he refuses to marry at any time. 2 Dow. & Ry. 55; 1 Chit. Pr. 57, note (n), and 438, note (e). A demand of rent must always be made before a re-entry for the non-payment of rent. Vide *Re-entry*. There are cases where a demand was not

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originally necessary, but has become so by the act of the obligor. On a promissory note no express demand of payment is requisite before bringing an action, but if the debtor has tendered the amount due to the creditor on the note, it becomes necessary before bringing an action, that a demand should be made of the debtor for payment, and this should be of the very sum tendered. 1 Campb. 181; Ib. 474; 1 Stark. R. 323; 2 E. C. L. R. 409.

2. It is requisite in some cases arising *ex delicto*, to make a demand of restoration of some right, before the commencement of an action. The following are examples.—1. When the wife, apprentice, or servant of one person, has been harboured by another, the proper course is to make a demand of restoration before an action brought, in order to constitute the party a wilful wrongdoer, unless the plaintiff can prove an original illegal enticing away. 2 Lev. 63; Willes, 582; 1 Peake's C. N. P. 55; 5 East, 39; 6 T. R. 652; 4 Moore's R. 12; 16 E. C. L. R. 357.—2. In cases where the taking of goods was lawful, but their subsequent detention became illegal, it is absolutely necessary, in order to secure sufficient evidence of a conversion on the trial, to give a formal notice of the owner's right to the property and possession, and to make a formal demand in writing of the delivery of such possession to the owner. The refusal to comply with such a demand, unless justified by some right which the possessor may have in the thing detained, will in general afford sufficient evidence of a conversion. 2 Saund. 47, note (e); 1 Chit. Pl. 179, 180; 1 Chit. Pr. 566.—3. When a nuisance has been erected or continued by a man on his own land, it is advisable, particularly in the case of a private nuisance, to give the party notice and request him to remove it, either before an entry is made for the purpose of abating it, or an action is commenced against the wrong-doer; and a demand is always indispensable in cases of a continuer of such nuisance. 2 B. & C. 302; S. C. 9 E. C. L. R. 96; Cro. Jar. 555; 5 Co. 100, 101; 2 Phil. Ev. 8, 18, n.; 119; 1 East, 111; 7 Vin. Ab. 506; 1 Ayl. Pand. 497; 6 Bac. Ab. 25. Vide articles *Abatement of Nuisance*, and *Nuisance*. For the allegation of a demand or request in a declaration, see article *Licet sæpius requisitus*; and Com. Dig. Pleader, C 70; 2 Chit. Pl. 84; 1 Saund. 33, note 2; 1 Chit. Pl. 322.

DEMANDANT, *practice*. He who brings a real action, who, in personal actions, is called plaintiff. Co. Litt. 127; 1 Com. Dig. 85.

DEMESNE AS OF FEE. A man is said to be seised *in his demesne as of fee* of a corporeal inheritance because he has a property *dominicum* or *demesne* in the *thing* itself. 2 Bl. Com. 106.

DEMIES, in some universities and colleges this term is synonymous with *scholars*. Boyle on Charities, 129.

DEMISE, *contracts*, in its most extended signification is a conveyance either in fee, for life, or for years. In its more technical meaning, it is a lease or conveyance for a term of years. Vide Com. L. & T. Index, h. t.; Ad. Eject. Index, h. t.; 2 Hill. Ab. 130; Com. Dig. h. t.; and the heads there referred to.

DEMOCRACY, *government*, is that form of government in which the sovereign power is exercised by the people in a body, as was the practice in some of the states of Ancient Greece; the term *representative democracy* has been given to a republican government like that of the United States.

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DEMONSTRATION, is whatever is said or written to designate a thing or person; for example, a gift of so much money, with a fund particularly referred to for its payment, so that if the fund be not the testator's property at his death, the legacy will not fail, is called a demonstrative legacy. 4 Ves. 751; Lownd. Leg. 85; Swinb. 485. A legacy given to James, who married my cousin, is demonstrative; these expressions present the idea of a demonstration, there are many James, but only one who married my cousin. Vide Ayl. Pand. 130. Dig. 12, 1, 6; Ib. 35, 1, 34. Inst. 2, 20, 30.

DEMURRAGE, *mar. law.* The freighter of a ship is bound not to detain it, beyond the stipulated or usual time, to load, or to deliver the cargo, or to sail. The extra days beyond the lay days (being the days allowed to load and unload the cargo,) are called the days of *demurrage;* and that term is likewise applied to the payment for such delay, and it may become due, either by the ship's detention, for the purpose of loading or unloading the cargo, either before, or during, or after the voyage, or in waiting for convoy. 3 Kent, Com. 159; 2 Marsh, 721; Abbott on Ship. 192; 5 Com. Dig. 94, n., 505; 4 Taunt. 54, 55; 3 Chit. Comm. Law, 426.

DEMURRER, (from the latin *demorari*, or old French demorrer, to wait or stay,) in pleading, imports, according to its etymology, that the objecting party *will not proceed* with the pleading, because no sufficient statement has been made on the other side; but will wait the judgment of the court whether he is bound to answer, 5 Mod. 232; Co. Litt. 71, b; Steph. Pl. 61.

A demurrer may be for insufficiency either in substance or in form; that is, it may be either on the ground that the case shown by the opposite party is essentially insufficient, or on the ground that it is stated in an inartificial manner; for the law requires in every plea, and all other pleadings, two things: the one that it be in matter sufficient, the other that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer. Hob. 164. A demurrer, as in its nature, so also in its form, is of two kinds; it is either general or special.

With respect to the effect of a demurrer, it is, first, a rule, that a demurrer admits all such matters of fact as are sufficiently pleaded. Bac. Abr. Pleas N 3; Com. Dig. Pleader, Q 5. Again it is a rule that, on a demurrer, the court will consider the whole record, and give judgment for the party who, on the whole, appears to be entitled to it. Com. Dig. Pleader, M 1, M 2; Bac. Abr. Pleas, A, N 3; 5 Rep. 29 a; Hob. 56; 2 Wils. 150; 4 East, 502; 1 Saund. 285, n. 5. For example, on a demurrer to the replication, if the court think the replication bad, but perceive a substantial fault in the plea, they will give judgment, not for the defendant, but for the plaintiff, 2 Wils. R. 150, provided the declaration be good; but if the declaration also be bad in substance, then upon the same principle, judgment would be given for the defendant. 5 Rep. 29 a. For, when judgment is to be given, whether the issue be in law or fact, and whether the cause have proceeded to issue or not, the court is always to examine the whole record, and adjudge for the plaintiff or defendant, according to the legal right, as it may on the whole appear. It is, however, subject to the following exceptions: first, if the plaintiff demur to a plea in abatement, and the

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court decide against the plea, they will give judgment of respondeat ouster, without regard to any defect in the declaration. Lutw. 1592, 1667; 1 Salk. 212; Carth. 172; secondly, the court will not look back into the record, to adjudge in favour of an apparent right in the plaintiff, unless the plaintiff have himself put his action upon that ground. 5 Barn. & Ald. 507; lastly, the court, in examining the whole record, to adjudge according to the apparent right, will consider the right in matter of substance, and not in respect of mere form such as should have been the subject of a special demurrer. 2 Vent. 198–222.

There can be no demurrer to a demurrer; for a demurrer upon a demurrer, or pleading over when an issue in fact is offered, is a discontinuance. Salk. 219; Bac. Abr. Pleas, N 2.

See in general as to demurrers, Bac. Abr. Pleas, N; Com. Dig. Pleader, Q; Saund. Rep. Index, tit. Demurrers; Lawes Civ. Pl. ch. 8; 1 Chit. Pl. 639–649.

DEMURRER, SPECIAL, *in pleading*. A special demurrer is one which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection and the particular ground of exception. Co. Litt. 72, a; Bac. Abr. Pleas, N 5. A special demurrer is necessary, where it turns on matter of form only; that is where notwithstanding such objection, enough appears to entitle the opposite party to judgment, as far as relates to the merits of the cause. For by two statutes, 27 Eliz. ch. 5, and 4 Ann, ch. 16, passed in a view to the discouragement of merely formal objections, it is provided in nearly the same terms, that the judges "shall give judgment according to the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect, or want of form, except those only which the party demurring shall specifically and particularly set down and express, together with his demurrer, as the causes of the same." Since these statutes, therefore, no mere matter of form can be objected on a general demurrer; but the demurrer must be in the special form, and the objection specifically stated. But, on the other hand, it is to be observed, that, under a special demurrer, the party may, on the argument, not only take advantage of the particular faults which his demurrer specifies, but also of all objections in substance, or regarding the very right of the cause, (as the statute expresses it) as do not require, under those statutes, to be particularly set down. It follows, therefore, that unless the objection be clearly of this substantial kind, it is the safer course, in all cases, to demur specially. Yet, where a general demurrer is plainly sufficient, it is more usually adopted in practice; because the effect of the special form being to apprise the opposite party more distinctly of the nature of the objection, it is attended with the inconvenience of enabling him to prepare to maintain his pleading by argument, or of leading to apply the earlier to amend. With respect to the degree of particularity, with which, under these statutes, the special demurrer must assign the ground of objection, it may be observed that it is not sufficient to object, in general terms, that the pleading is "uncertain, defective, and informal," or the like, but it is necessary to show in what respect, uncertain, defective, and informal. 1 Saund. 161, n. 1; 337 b, n. 3; Steph. Pl. 159–161; 1 Chit. Pl. 642.

DEMURRER, GENERAL, *in*

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pleading. A general demurrer is one which excepts to the sufficiency of some previous pleadings in general terms, without showing specifically the nature of the objection; and such demurrer is sufficient, when the objection is on matter of substance. Steph. Pl. 159; 1 Chit. Pl. 639; Lawes, Civ. Pl. 167; Bac. Abr. Pleas, N. 5; Co. Lit. 72 a.

DEMURRER TO EVIDENCE, *in practice*. A demurrer to evidence is analogous to a demurrer in pleading; the party from whom it comes declaring that he will not proceed, because the evidence offered on the other side, is not sufficient to maintain the issue. Upon joinder in demurrer, by the opposite party, the jury are, in general, discharged from giving any verdict, 1 Arch. Pr. 186; and the demurrer being entered on record, is afterwards argued and decided in the court in bank; and the judgment there given upon it, may ultimately be brought before a court of error. See 2 H. Bl. 187; 4 Chit. Pr. 15.

DEMY SANKE OR SANGUE, this is a barbarous corruption of demi sang, *half-blood*, (q. v.)

DENARII. An ancient general term for any sort of *pecunia numerata*, or ready money. The French use the word *denier* in the same sense: payer de ses propres deniers.

DENIZEN, *Eng. law*, is an alien born and who has obtained, *ex donatione legis*, letters-patent to make him an English subject. He is in a middle between a natural born subject and an alien. He may take lands by purchase or devise, which an alien cannot, but he is incapable of taking by inheritance. 1 Bl. Com. 374. In the United States there is no such condition among the people.

DENUNCIATION, *crim. law*. This term is used by the civilians to signify the act by which an individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed. It differs from a complaint, (q. v.) Vide 1 Bro. C. L. 447; 2 Ib. 389; Ayl. Parer. 210.

DEODAND, *English law*. This word is derived from *Deo dandum*, to be given to God; and is meant to designate any unhappy instrument, whether it be an animal or inanimate thing which has caused the death of a man or mischance without the will or fault of himself or of any other man. 3 Inst. 57; Hawk. bk. 1, c. 8. The deodand is forfeited to the king and was formerly applied to pious uses.

DEPARTMENT OF THE NAVY, *government*. The act of the 30th of April, 1798, 1 Story's Laws, 498, establishes an executive department under the denomination of the department of the navy, the chief officer of which shall be called the *secretary of the navy*, (q. v.) A principal clerk, and such other clerk as he shall think necessary, shall be appointed by the secretary of the navy, who shall be employed in such manner as he shall deem most expedient. In case of vacancy in the office of the secretary, by removal or otherwise, it shall be the duty of the principal clerk to take charge and custody of all books, records, and documents of said office. Ib. s. 2.

DEPARTMENT OF STATE, *government*. The laws of the United States provide that there shall be an executive department, denominated the *department of state*; and a principal officer therein, called the *secretary of state* (q. v.) Acts of 27th July, 1789; 15th Sept. 1789, s. 1; there shall be in such department an inferior officer, to be appointed by the secretary, and employed therein, as he shall deem proper, to be called the *chief clerk of the department of state*, (q. v.) Act of 27th July,

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1789, s. 2. He may employ besides one chief clerk, whose compensation shall not exceed two thousand dollars per annum, two clerks, whose compensation shall not exceed one thousand and six hundred dollars each; four clerks, whose compensation shall not exceed one thousand four hundred dollars each; one clerk, whose compensation shall not exceed one thousand dollars; two clerks, whose compensation shall not exceed eight hundred dollars each; one messenger and assistant, at a compensation not exceeding one thousand and fifty dollars per annum; one superintendent of the patent office, whose compensation shall not exceed one thousand five hundred dollars; and, in the patent office, one clerk, whose compensation shall not exceed one thousand dollars; one machinist, at a compensation not exceeding seven hundred dollars; and one messenger at a compensation not exceeding four hundred dollars per annum. Act of 26th May, 1824; Act of 20th April, 1818, s. 2. By the act of 2d March, 1827, 3 Story's Laws, 2061, he is authorised to employ in the state department, one additional clerk, whose compensation shall not exceed sixteen hundred dollars; two additional clerks, whose compensation shall not exceed one thousand dollars each; and one additional clerk for the patent office, whose compensation shall not exceed eight hundred dollars.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES, *government.* The department of the treasury is constituted of the following officers, namely, the *secretary of the treasury*, (q. v.) the head of the department, two comptrollers, five auditors, a treasurer, a register, and a commissioner of the land office. Each of these officers is required to perform certain appropriate duties, in which they are assisted by numerous clerks. They are prohibited from carrying on the business of trade or commerce, from being the owners or part owners of any sea vessel, from buying any public lands, from disposing or purchasing any securities of any state or of the United States, from receiving or applying to their own use any emolument or gain in transacting business in this department, other than what shall be allowed by law, under the penalty of three thousand dollars, and of being removed from office, and being thereafter incapable of holding any office under the United States. Gord. Dig. art. 228 to 248.

DEPARTMENT OF WAR, *government.* The act of the 7th of August, 1789, 1 Story's Laws, 31, creates an executive department, to be denominated the department of war; and there shall be a principal officer therein, to be called the *secretary for the department of war.* (q. v.) There shall be in the said department, an inferior officer, to be appointed by the secretary, to be employed therein, and to be called the chief clerk in the department of war, and who, whenever the said principal officer shall be removed by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books and papers, appertaining to the said department. Ib.

DEPARTURE, *pleading*, is said to be when a party quits or departs from the case or defence which he has first made, and has recourse to another; it is when his replication or rejoinder contains matter not pursuant to the declaration or plea, and which does not support and fortify it. Co. Litt. 304, a; 2 Saund. 84, a. n. (1); 2 Wils. 98; 1 Chit. Pl. 619. A departure in pleading is never allowed, for the record would, by such means, be spun out into endless pro-

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lixity; for he who has departed from and relinquished his first plea, might resort to a second, third, fourth, or even fortieth defence; pleading would, by such means, become infinite. He who had a bad cause, would never be brought to issue, and he who had a good one, would never obtain the end of his suit. Summary on Pleading, 92; 2 Saund. 84, a. n. (1); 16 East, 39; 1 M. & S. 395; Com. Dig. Pleader, (F 7), (F 11); Bac. Abr. Pleas, L; Vin. Abr. Departure; 1 Archb. Civ. Pl. 247, 253; 1 Chit. Pl. 618.

DEPENDENCY, is a territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe; it differs from a *colony*, because it is not settled by the citizens of the sovereign or mother state, and from *possession*, because it is held by other title than that of mere conquest; for example, Malta was considered a dependency of Great Britain in the year 1813. 3 Wash. C. C. R. 286. Vide Act of Congress of 1st March, 1809, commonly called non-importation law.

DEPONENT, *witness*, one who gives information on oath or affirmation, respecting some facts known to him, before a magistrate; he who makes a deposition.

DEPOPULATION. In its most proper signification, is the destruction of the people of a country or place. This word is, however, taken rather in a passive than an active sense; we say depopulation, to designate the diminution of its inhabitants, arising either from violent causes, or the want of multiplication. Vide 12 Co. 30.

DEPORTATION, *civil law*, was among the Romans, a perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation, (q. v.) and exile, (q. v.) 1 Bro. Civ. Law, 125 note; Inst. 1, 12, 1 and 2; Dig. 48, 22, 14, 1.

DEPOSIT, *contracts*, is usually defined to be a naked bailment of goods to be kept for the bailor, without reward, and to be returned when he shall require it. Jones's Bailm. 36, 117; 1 Bell's Comm. 257. See also Dane's Abr. ch. 17, art. 1, § 3. Story on Bailm. c. 2, § 41. Pothier, defines it to be a contract, by which one of the contracting parties gives a thing to another to keep, who is to do so gratuitously, and obliges himself to return it, when he shall be requested. Traité de Depôt. See Code Civ. tit. 11, c. 1, art. 1915; Louisiana Code, tit. 13, c. 1, art. 2897.

Deposits, in the civil law, are divisible into two kinds; necessary and voluntary. A necessary deposit is such as arises from pressing necessity, as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity; and thence it is called *miserabile depositum*. Louis. Code, 2935. A voluntary deposit is such as arises without any such calamity, from the mere consent or agreement of the parties. Dig. Lib. 16, tit. 3, § 2. This distinction was material in the civil law, in respect to the remedy, for in voluntary deposits the action was only *in simplum*; in the other *in duplum*, or two-fold, whenever the depositary was guilty of any default. The common law has made no such distinction, and, therefore, in a necessary deposit, the remedy is limited to damages co-extensive with the wrong. Jones's Bailm. 48.

Deposits are again divided by the civil law into simple deposits, and sequestrations; the former is when there is but one party depositor, (of whatever number composed,) having

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a common interest; the latter is where there are two or more depositors, having each a different and adverse interest. See *Sequestration*. These distinctions give rise to very different considerations in point of responsibility and rights. Hitherto they do not seem to have been incorporated in the common law, though if cases should arise, the principles applicable to them would scarcely fail of receiving general approbation, at least, so far as they affect the rights and the responsibilities of the parties. Cases of judicial sequestration and deposits, especially in courts of chancery and admiralty, may hereafter require the subject to be fully investigated. At present, there have been few cases, in which it has been necessary to consider upon whom the loss should fall when the property has perished in the custody of the law. Story on Bailm. § 41–46.

There is another class of deposits noticed by Pothier, and called by him *irregular deposit*. This arises, when a party having a sum of money which he does not think safe in his own hands, confides it to another, who is to return him, not the same money, but a like sum when he shall demand it. Poth. Traité de Dépôt, ch. 3, § 3.

There is a kind of deposit, which may, for distinction's sake, be called a *quasi deposit*, which is governed by the same general rule as common deposits. It is when a party comes lawfully to the possession of another person's property by finding. Under such circumstances, the finder seems bound to the same reasonable care of it, as any voluntary depositary *ex contractu*. Doct. & Stud. Dial. 2, ch. 38. Story on Bailm. § 85; and see 1 Bac. Abr. Bailm. D.

See further on the subject of deposits, Louis. Code, tit. 13; 1 Bac. Abr. 377; Digeste, *Depositi vel contra*; Code, lib. 4, tit. 34; Inst. lib. 3, tit. 15, § 3; Nov. 73 and 78; Domat, liv. 1, tit. 7; et tom. 2, liv. 3, tit. 1, s. 5, n. 26.

DEPOSITARY, *contracts*. He with whom a deposit is confided or made. Being a bailee without reward, the depositary is bound to slight diligence only, and he is not therefore answerable except for gross neglect. 1 Dane's Abr. ch. 17, art. 2. But in every case good faith requires, that he should take reasonable care; and what is reasonable care, must materially depend upon the nature and quality of the thing, the circumstances under which it is deposited, and sometimes upon the character and confidence, and particular dealing of the parties. See 14 Serg. & Rawle, 275. The degree of care and diligence is not altered by the fact, that the depositary is the joint owner of the goods with the depositor; for in such a case, if the possessor is guilty of gross negligence, he will still be responsible, in the same manner as a common depositary, having no interest in the thing. Jones's Bailm. 82, 83. As to the care which a depositary is bound to use, see 2 Ld. Raym. 909, 914; 1 Ld. Raym. 655; 2 Kent's Comm. 438; 17 Mass. R. 479, 499; 4 Burr. 2298; 14 Serg. & Rawle, 275; Jones's Bailm. 8; Story on Bailm. § 63, 64.

The depositary is bound to return the deposit *in individuo*, and in the same state in which he received it; if it is lost, or injured, or spoiled by his fraud, or gross negligence, he is responsible to the extent of the loss or injury. Jones's Bailm. 36, 46, 120; 17 Mass. R. 479; 2 Hawk. N. Car. R. 145; 1 Dane's Abr. ch. 17, art. 1 and 2. He is also bound to restore, not only the thing deposited, but any increase or profits, which may have accrued from it; if

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an animal deposited brings young, the latter are to be delivered to the owner. Story on Bailm. § 99.

In general it may be laid down that a depositary has no right to use the thing deposited. Bac. Abr. Bailm. D; Jones's Bailm. 81, 82; 1 Dane's Abr. ch. 17, art. 11, § 2. But this proposition must be received with many qualifications. There are certain cases, in which the use of the thing may be necessary for the due preservation of the deposit. There are others, again, where it would be mischievous; and others, again, where it would be, if not beneficial, at least indifferent. Jones's Bailm. 81, 82; Owen's R. 123, 124; 2 Salk. 522; 2 Kent's Comm. 450. The best general rule on the subject is to consider, whether there may or may not be an implied consent, on the part of the owner, to the use. If the use would be for the benefit of the deposit, the assent of the owner may well be presumed; if to his injury or perilous, it ought not to be presumed; if the use would be indifferent, and other circumstances do not incline either way, the use may be deemed not allowable. Jones's Bailm. 80, 81; Story on Bailm. § 90.

DEPOSITION, *evidence*, is the testimony of a witness reduced to writing in due form of law, taken by virtue of a commission or other authority of a competent tribunal. Before it is taken the witness ought to be sworn or affirmed to declare the truth, the whole truth, and nothing but the truth. It should properly be written by the commissioner appointed to take it, or by the witness himself, 3 Penna. R. 41, or by one not interested in the matter in dispute. It ought to answer all the interrogatories, and be signed by the witness when he can write, and by the commissioner: when the witness cannot write it ought to be so stated, and he should make his mark or cross. Depositions in criminal cases cannot be taken without the consent of the defendant. Vide, generally, 1 Phil. Ev. 286; 1 Vern. 413, note; Ayl. Pand. 206; 2 Supp. to Ves. jr. 309; 7 Vin. Ab. 553; 12 Vin. Ab. 107; Dane's Ab. Index, h. t.; Com. Dig. Chancery, P 8, T 4, T 5; Com. Dig. Testmoigne, C 4.

DEPOSITOR, *contracts*, is he who makes a deposit. He is generally entitled to receive the deposit from the depositary, but to this rule there are exceptions; as when the depositor at the time of making the deposit had no title to the property deposited, and the owner claims it from the depositary, the depositor cannot recover it; and for this reason that he can never be in a better situation than the owner. 1 Barn. & Ald. 450; 5 Taunt. 759. As to the place where the depositor is entitled to receive his deposit, see Story on Bailm. § 117—120.

DEPRIVATION, *ecclesiastical punishment*, is a censure by which a clergyman is deprived of his parsonage, vicarage, or other ecclesiastical promotion or dignity. Vide Ayliff's Parerg. 306; 1 Bl. Com. 393.

DEPUTY, one authorised by an officer to exercise the office or right which the officer possesses, for and in place of the latter. In general ministerial officers can appoint deputies, Com. Dig. Officer, D 1, unless the office is to be exercised by the ministerial officer in person; and where the office partakes of a judicial and ministerial character, although a deputy may be made of ministerial acts, one cannot be made to authorise the performance of a judicial act; a sheriff cannot therefore make a deputy to hold an inquisition, under a writ of inquiry, though he may appoint a deputy to serve a

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writ. In general a deputy has power to do every act which his principal might do; but a deputy cannot make a deputy. A deputy should always act in the name of his principal. The principal is liable for the deputy's acts performed by him as such, and for the neglect of the deputy. Dane's Ab. vol. 3, c. 76, a. 2; and the deputy is liable himself to the person injured for his own tortious acts. Dane's Ab. Index, h. t.; Com. Dig. Officer, D;—Viscount, B; vide 7 Vin. Ab. 556; Arch. Civ. Pl. 68; 16 John. R. 108.

DEPUTY ATTORNEY GENERAL, an officer appointed by the attorney-general, who is to hold his office during the pleasure of the latter, and whose duty it is to perform, within a specified district, the duties of the attorney-general. He must be a member of the bar.

DERELICT, *common law.* This term is applied in the common law in a different sense from what it bears in the civil law. In the former it is applied to lands left by the sea. When so left by degrees the derelict land belongs to the owner of the soil adjoining, but when the sea retires suddenly, it belongs to the government. 2 Bl. Com. 262; 1 Bro. Civ. Law, 239.

DERELICTO, *civil law*, are goods voluntarily abandoned by their owner; he must, however, leave them, not only *sine spe revertendi*, but also *sine animo revertendi;* his intention to abandon them may be inferred by a great length of time during which he may have been out of possession, without any attempt to regain it. 1 Bro. Civ. Law, 239; 2 Bro. Civ. Law, 51; Wood's Civ. Law, 156; 19 Amer. Jur. 219, 221, 222; Dane's Ab. Index, h. t.

DEROGATION, *civil law*, is the partial abrogation of a law; to derogate from a law is to enact something which is contrary to it; to abrogate a law is to abolish it entirely. Dig. lib. 50, t. 17, l. 102.

DESCENDANTS are the posterity, or those who have issued from an individual, and include his children, grand-children, and their children to the remotest degree. Ambl. 397; 2 Bro. C. C. 30; Ib. 230; 3 Bro. C. C. 367; 1 Rop. Leg. 115. The descendants form what is called the direct descending line. Vide *Line.* The term is opposed to that of ascendants, (q. v.) There is a difference between the number of ascendants and descendants which a man may have: every one has the same order of ascendants, though they may not be exactly alike as to numbers, because some may be descended from a common ancestor. In the line of descendants they fork differently according to the number of children, and continue longer or shorter as generations continue or cease to exist. Many families become extinct for want of descendants while others will last to the remotest ages; the line of descendants is therefore diversified in each family.

DESCENT. Hereditary succession. Descent is the title, whereby a person, upon the death of his ancestor, acquires the estate of the latter, as his heir at law. This manner of acquiring title is directly opposed to that of purchase, (q. v.) It will be proper to consider 1, what kind of property descends; and, 2, the general rules of descent.

§ 1. All real estate, and all freehold interest in land descend to the heir. And, as being accessory to the land and making a part of the inheritance, fixtures, and emblements, and all things annexed to, or connected with the land descend with it to the heir. Terms for years and other estates less than freehold, pass to the executor, and are not subjects

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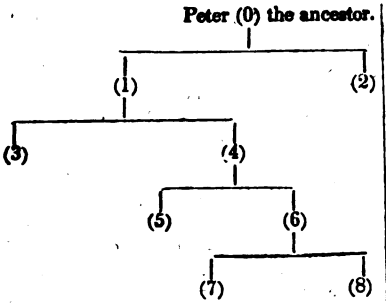
of descent. It is a rule at common law that no one can inherit real estate unless he was heir to the person *last seised*. This does not apply as a general rule in the United States. Vide article *Possessio fratris*.

§ 2. The general rules of the law of descents.

1. It is a general rule in the law of inheritance, that if a person owning, real estate, dies seised, or as owner without devising the same, the estate shall descend to his descendants in the direct line of lineal descent, and if there be but one person, then to him or her alone; and if more than one person, and all of equal degree of consanguinity to the ancestor, then the inheritance shall descend to the several persons as tenants in common in equal parts, however remote from the intestate the common degree of consanguinity may be. This rule is in favour of the equal claims of the descending line, in the same degree, without distinction of sex, and to the exclusion of all other claimants. The following example will illustrate it; it consists of three distinct cases: 1. Suppose Paul should die seised of real estate, leaving two sons and a daughter, in this case the estate would descend to them in equal parts; but suppose, 2, that instead of children, he should leave several grand-children, two of them the children of his son Peter, and one the son of his son John, these will inherit the estate in equal proportions; or, 3, instead of children and grand-children, suppose Paul left ten great grand-children, one the lineal descendant of his son John, and nine the descendants of his son Peter, these, like the others, would partake equally of the inheritance as tenants in common. According to Chancellor Kent, this rule prevails in all the United States, with this variation, that in Vermont the male descendants take double the share of females; and in South Carolina, the widow takes one-third of the estate in fee; and in Georgia, she takes a child's share in fee, if there be any children, and, if none, she then takes in each of those states, a moiety of the estate. In North and South Carolina, the claimant takes in all cases, *per stirpes*, though standing in the same degree. 4 Kent, Com. 371; Reeves's Law of Desc. *passim*; Griff. Law Reg., answers to the 6th interr. under the head of each state. In Louisiana the rule is, that in all cases in which representation is admitted, the partition is made by roots; if one root has produced several branches, the subdivision is also made by root in each branch, and the members of the branch take between them by heads. Civil Code, art. 895.

2. It is also a rule that if a person dying seised, or as owner of the land, leaves lawful issue of different degrees of consanguinity, the inheritance shall descend to the children and grand-children of the ancestor, if any be living, and to the issue of such children and grand-children as shall be dead, and so on to the remotest degree, as tenants in common; but such grand-children and their descendants, shall inherit only such share as their parents respectively would have inherited if living. This rule may be illustrated by the following examples: 1. Suppose Peter, the ancestor, had two children, John, dead, (represented in the following diagram by figure 1,) and Maria, living, (fig. 2,) John had two children, Joseph, living (fig. 3,) and Charles, dead, (fig. 4,); Charles had two children, Robert, living, (fig. 5,) and James, dead, (fig. 6,); James had two children, both living, Ann, (fig. 7,) and William, (fig. 8.)

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In this case Maria would inherit one half; Joseph the son of John, one half of the half, or quarter of the whole; Robert, one eighth of the whole; and Ann and William, each one-sixteenth of the whole, which they would hold as tenants in common in these proportions. This is called inheritance *per stirpes*, by roots, because the heirs take in such portions only as their immediate ancestors would have inherited, if living.

3. When the owner of land dies without lawful issue, leaving parents, it is the rule in some of the states, that the inheritance shall *ascend* to them, first to the father, and then to the mother, or jointly to both, under certain regulations prescribed by statute.

4. When the intestate dies without issue or parents, the estate descends to his brothers and sisters, and their represensatives. When there are such relations, and all of equal degree of consanguinity to the intestate, the inheritance descends to them in equal parts, however remote from the intestate the common degree of consanguinity may be. When all the heirs are brothers and sisters, or all of them nephews and nieces, they take equally. When some are dead who leave issue, and some are living, then those who are living take the share they would have taken if all had been living, and the descendants of those who are dead inherit only the share which their immediate parents would have received if living. When the direct lineal descendants stand in equal degrees, they take *per capita*, by the head, each one full share; when on the contrary, they stand in different degrees of consanguinity to the common ancestor, they take *per stirpes*, by roots, by right of representation. It is nearly a general rule that the ascending line, after parents, is postponed to the collateral line of brothers and sisters. Considerable difference exists in the laws of the several states when the next of kin are nephews and nieces, and uncles and aunts claim as standing in the same degree. In many of the states all these relations take equally as being next of kin; this is the rule in the states of New Hampshire, Vermont, (subject to the claim of the males to a double portion as above stated,) Rhode Island, North Carolina and Louisiana. In Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia, on the contrary, nephews and nieces take in exclusion of uncles and aunts, though they be of equal degree of consanguinty to the intestate. In Alabama, Connecticut, Georgia, Maryland, New Hampshire, Ohio, Rhode Island, and Vermont, there is no representation among collaterals after the children of brothers and sisters; in Delaware, none after the grand-ehildren of brothers and sisters. In Louisiana the ascending line must be exhausted before the estate passes to collaterals. Code, art. 910. In North Carolina, claimants take *per stirpes* in every case, though they stand in equal degree of consanguinity to the com-

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mon ancestor. As to the distinction between whole and half blood, vide *Half blood*.

5. Chancellor Kent lays it down as a general rule in the American law of descent, that when the intestate has left no lineal descendants, nor parents, nor brothers, nor sisters, or their desendants, that the grandfather takes the estate, before uncles and aunts, as being nearest of kin to the intestate.

6. When the intestate dies leaving no lineal descendants, nor parents, nor brothers, nor sisters, nor any of their descendants, nor grandparents, as a general rule, it is presumed, the inheritance descends to the brothers and sisters of both the intestate's parents, and to their descendants, equally. When they all stand in equal degree to the intestate, they take *per capita*, and when in unequal degree, *per stirpes*. To this general rule, however, there are slight variations in some of the states, as, in New York, grandparents do not take before collaterals.

7. When the inheritance came to the intestate on the part of the father, then the brothers and sisters of the father and their descendants shall have the preference, and, in default of them, the estate shall descend to the brothers and sisters of the mother, and their descendants; and where the inheritance comes to the intestate on the part of his mother, then her brothers and sisters, and their descendants, have a preference, and in default of them the brothers and sisters on the side of the father, and their descendants, inherit. This is the rule in Connecticut, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia. In some of the states there is perhaps no distinction as to the descent whether they have been acquired by purchase or by descent from an ancestor.

8. When there is a failure of heirs under the preceding rules, the inheritance descends to the remaining next of kin of the intestate, according to the rules in the statute of distribution of the personal estate, subject to the doctrine in the preceding rules in the different states as to the half blood, to ancestoral estates, and as to the equality of distribution. This rule prevails in several states, subject to some peculiarities in the local laws of descent, which extend to this rule.

It is proper before closing this article, to remind the reader, that in computing the degrees of consanguinity, the civil law is followed generally in this country, except in North Carolina, where the rules of the common law in their application to descents are adopted, to ascertain the degree of consanguinity. Vide the articles *Branch*, *Consanguinity*, *Degree*, *Line*.

DESCRIPTION is a written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory (q. v.) but is more particular in ascertaining the exact condition of the property, and is without any appraisement of it. When goods are found in the possession of a person accused of stealing them, a description ought to be made of them. Merl. Rép. h. t. A description is less perfect than a definition (q. v.) It gives some knowledge of the accidents and qualities of a thing; for example, plants, fruits, and animals, are described by their shape, bulk, colour, and the like accidents. Ayl. Pand. 60. Description may also be of a person, as description of a legatee. 1 Roper on Leg. chap. 2.

DESERTION OF SEAMEN, *contracts*, is the abandonment by a sailor of a ship or vessel in which

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he engaged to perform a voyage, before the expiration of his time, and without leave. Desertion without just cause renders the sailor liable, on his shipping articles, for damages, and will, besides, work a forfeiture of his wages previously earned. 3 Kent, Com. 155.

DESERTION, *crim. law*, is an offence which consists in the abandonment of the public service, in the army or navy, without leave. The act of March 16, 1802, s. 19, enacts that if any non-commissioned officer, musician, or private, shall desert the service of the United States, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve for and during such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried. By the articles of war it is enacted that "any non-commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop, company, or detachment, shall, upon being convicted thereof, be punished according to the nature of his offence, at the discretion of a court martial." Art. 21. By the articles for the government of the navy, art. 16, it is enacted that "if any person in the navy shall desert to an enemy or rebel, he shall suffer death," and by art 17, "if any person in the navy shall desert or shall entice others to desert, he shall suffer death, or such other punishment as a court martial shall adjudge."

DESIGNATION, *wills*, is the expression used by a testator instead of the name of the person or the thing he is desirous to name; for example, a legacy to the eldest son of such a person, would be a designation of the legatee. Vide 1 Rop. Leg. ch. 2. A bequest of the farm which the testator bought of such a person; or of the picture he owns painted by such an artist, would be a designation of the thing devised or bequeathed.

DESPOTISM, *in government*, is that abuse of government, where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not properly a form of government. Toull. Dr. Civ. Fr. tit. prel. n. 32; Rutherf. Inst. b. 1, c. 20, § 1.

DESSEISED, *pleading*. This is a word with a technical meaning, which when inserted in an indictment for forcible entry and detainer has all the force of the words *expelled* or *unlawfully*, for the last is superfluous, and the first is implied in the word desseised. 8 T. R. 357; Cro. Jac. 32; vide 3 Yeates's R. 49; S. C. 4 Dall. Rep. 212.

DESTINATION, *wills, legacies*, is the application which the testator directs shall be made of the legacy he gives; for example, when a testator gives to a hospital a sum of money, to be applied in erecting buildings, he is said to give a destination to the legacy.

DETAINER. 1. The act of keeping a person against his will, or of keeping goods or property. All illegal detainers of the person amount to false imprisonment, and may be remedied by *habeas corpus*. 2. A detainer or detention of goods is either lawful or unlawful; when lawful the party having possession of them cannot be deprived of it. The detention may be unlawful although the original taking were lawful; as when goods were distrained for rent, and the rent was afterwards paid; or when they were pledged, and the money borrowed

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and interest was afterwards paid; in these and the like cases, the owner should make a demand, (q. v.) and if the possessor refuse to restore them, trover, detinue, or replevin will lie, at the option of the plaintiff. 3. A writ or instrument issued or made by a competent officer, authorising the keeper of a prison to keep in his custody a person therein named; a detainer may be lodged against one within the walls of a prison, on what account soever he is there. Com. Dig. Process, E 3 b.

DETERMINATION, is the end, the conclusion of a right or authority; as, the determination of a lease, Com. Dig. Estates by grant, G 10, 11, and 12. The determination of an authority, is the end of the authority given, the end of the return day of a writ determines the authority of the sheriff; the death of the principal determines the authority of a mere attorney.

DETINUE, *remedies*, is the name of an action for the recovery of a personal chattel in specie. 3 Bl. Com. 152. This action may be considered 1, with reference to the nature of the thing to be recovered; 2, the plaintiff's interest therein; 3, the injury; 4, the pleadings; 5 the judgment.

1. The goods which it is sought to recover, must be capable of being distinguished from all others, as, a particular horse, a cow, &c. but not for a bushel of grain. Com. Dig. Detinue, B, C; 3 Bl. Com. 152; Co. Litt. 286 b.

2. To support this action, the plaintiff must have a right to immediate possession, although he never had actual possession, a reversioner cannot, therefore, maintain it. And a bailee, who has only a special property may nevertheless support it, when he delivered the goods to the defendant, or they were taken out of the bailee's custody. 2 Saund. 47, b, c, d. Bro. Ab. h. t.

3. The gist of the action is the wrongful detainer, and not the original taking. The possession must have been acquired by the defendant by lawful means, as by delivery, bailment, or finding, and not tortiously.

4. In the pleadings in this action much certainty is requisite in the description of the chattels. The general issue is *non detinet*, and under it special matter may be given in evidence. Co. Litt. 283.

5. The verdict and judgment must be such, that a special remedy may be had for the recovery of the goods detained, or a satisfaction in value for each parcel, in case they or either of them cannot be returned. The judgment is in the alternative, that the plaintiff recover the goods or the value thereof, if he cannot have the goods themselves, and his damages for the detention and full costs. Vide, generally, 1 Chit. Pl. 117; 3 Bl. Com. 152; 2 Reeve's Hist. C. L. 261, 333, 336; 3 Ib. 66, 74; Bull. N. P. 50. This action has yielded to the more practical and less technical action of trover. 3 Bl. Com. 152.

DETENUIT, *practice*, he detained. Where an action of replevin is instituted for goods which the defendant had taken but which he afterwards restored, it is said to be brought in the *detenuit;* in such case the judgment is that the plaintiff recover the damages assessed by the jury for the taking and unjust detention, or for the latter only where the former was justifiable, and his costs. When the replevin is in the *detinet*, that he retains the goods, the jury must find in addition to the above, the value of the chattels, (assuming they are still detained) not in a gross sum, but each separate article must be separately

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valued, for perhaps the defendant may restore some of them, in which case the plaintiff is to recover the value of the remainder.

DEVASTAVIT. A devastavit is a mismanagement and waste by an executor, administrator or other trustee, of the estate and effects trusted to him as such, by which a loss occurs. It takes place by direct abuse, by mal-administration, and by neglect.

§ 1. *By direct abuse.* This takes place when the executor, administrator or trustee, sells, embezzles, or converts to his own use, the goods entrusted to him. Com. Dig. Administration, I. 1; releases a claim due to the estate, 3 Bac. Ab. 78; and vide 5 Bac. Ab. 700; Hob. 266; Cro. Eliz. 43; 7 John. R. 404; 9 Mass. 352; or surrenders a lease below its value. 2 John. Cas. 376; 3 P. Wms. 330. These instances sufficiently show that any wilful waste of the property will be considered as a direct *devastavit.*

§ 2. *By mal-administration.* Devastavit by mal-administration most frequently occurs by the payment of claims which were not due nor owing; or by paying others out of the order in which they ought to be paid; or by the payment of legacies before all the debts have been satisfied. 4 Serg. & Rawle, 394.

§ 3. *By neglect.* Negligence on the part of an executor, administrator or trustee, may equally tend to the waste of the estate, as the direct destruction or mal-administration of the assets, and render him guilty of a *devastavit.* The neglect to sell the goods at a fair price within a reasonable time, or, if they are perishable goods, before they are wasted, will be a *devastavit.* And a neglect to collect a doubtful debt, which by proper exertion, might have been collected, will be so considered. 3 Bac. Ab. 78.

The law requires from trustees, good faith and due diligence, the want of which is punished by making them responsible for the losses which may be sustained by the property entrusted to them; when, therefore, a party has been guilty of a *devastavit,* he is required to make up the loss out of his own estate. Vide Com. Dig. Administration, I; 11 Vin. Ab. 306; 1 Supp. to Ves. Jr. 209; 1 Vern. 328; 7 East, R. 258; 1 Binn. 194; 1 Serg. & Rawle, 241; 1 John. R. 396; 1 Caine's Cas. 96; 3 Bac. Ab. 77 to 85.

DEVIATION, *insurance, contracts,* is a voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the voyage insured. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility. By the contract the insurer only runs the risk of the contract agreed upon, and no other; and it is therefore a condition implied in the policy, that the ship shall proceed to her port of destination by the shortest and safest course, and on no account to deviate from that course but in cases of necessity. The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters from the time of the deviation. If, therefore, the ship or goods, after the voyage has commenced, receive damage, then the ship deviates, and afterwards a loss happen, there, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained previous to the deviation. 2 Lord Raym. 842; 2 Salk. 444. But though he is thus discharged from subsequent responsibility, he is entitled to retain the whole premium. Dougl. 271; 1 Marsh. Ins. 183;

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Park, Ins. 294. See 2 Phil. Ev. 60, n. (b), where the American cases are cited.

What amounts to a deviation is not easily defined, but a departure from the usual course of the voyage, or remaining at places where the ship is authorised to touch, longer than necessary, or doing there what the insured is not authorised to do, as if the ship have merely liberty to touch at a port, and the insured stay there to trade or break bulk, it is a deviation. 4 Dall. 274; 1 Peters's C. C. R. 104; Marsh. Ins. B. 1, c. 6, s. 2. By the course of the voyage, is not meant the shortest course the ship can take from her port of departure to her port of destination, but the regular and customary track, if such there be, which long usage has proved to be the safest and most convenient. 1 Marsh. Ins. 185. See 3 Johns. Cas. 352; 7 T. R. 162.

A deviation that will discharge the insurer, must be a voluntary departure from the usual course of the voyage insured, and not warranted by any necessity. If a deviation can be justified by necessity, it will not affect the contract; and necessity will justify a deviation, though it proceed from a cause not insured against. The cases of necessity which are most frequently adduced to justify a departure from the direct or usual course of the voyage, are, 1st. Stress of weather; 2d. The want of necessary repairs. 3d. Joining convoy; 4th. Succouring ships in distress; 5th. Avoiding capture or detention; 6th. Sickness of the master or mariners; 7th. Mutiny of the crew.

See Park, Ins. ch. 17; 2 John. Cas. 296; 11 Johns. R. 241; Pet. C. C. R. 98; 2 Johns. R. 89; 14 Johns. R. 315; 2 Johns. R. 138; 9 Johns. R. 192; 8 Johns. R. 491; 13 Mass. 68; 13 Mass. 539; Ib. 118; 14 Mass. 12; 1 Johns. Cas. 313; 11 Johns. R. 241; 3 Johns. R. 352; 10 Johns. R. 83; 1 Johns. R. 301; 9 Mass. 436, 447; 3 Binn. 457; 7 Mass. 349; 5 Mass. 1; 8 Mass. 308; 6 Mass. 102, 121; 6 Mass. 122; 7 Cranch, 26; Ib. 487; 3 Wheat. 159; 7 Mass. 365; 10 Mass. 21; Ib. 347; 7 Johns. R. 363; 3 Johns. R. 352; 4 Dall. R. 274; 5 Binn. 403; 2 Serg. & Rawle, 309; 2 Cranch, 240.

DEVIATION, *contracts.* When a plan has been adopted for a building, and in the progress of the work a change has been made from the original plan, the change is called a deviation. When the contract is to build a house according to the original plan, and a deviation takes place, the contract shall be traced as far as possible, and the additions, if any have been made, shall be paid according to the usual rate of charging. 3 Barn. & Ald. 47; and see 1 Ves. jr. 60; 10 Ves. jr. 306; 14 Ves. 413; 13 Ves. 73; Id. 81; 6 Johns. Ch. R. 38; 3 Cranch, 270; 5 Cranch, 262; 3 Ves. 693; 7 Ves. 274; Chit. Contr. 168.

The Civil Code of Louisiana, art. 2734, provides that when an architect or other workman has undertaken the building of a house by the job, according to a plot agreed on between him and the owner of the ground, he cannot claim an increase of the price agreed on, on the plea of the original plot having been changed and extended, unless he can prove that such changes have been made in compliance with the wishes of the proprietor.

DEVISAVIT VEL NON, *practice*, the name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not

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that paper was his will. 7 Bro. P. C. 437; 2 Atk. 424.

DEVISE. A devise is a disposition of real property by a person's last will and testament, to take effect after the testator's death. Its form is immaterial provided the instrument is to take effect after the death of the party; and a paper in the form of an indenture, which is to have that effect, is considered as a devise. Finch, 195; 6 Watts, 522; 3 Rawle, 15; 4 Dessaus. 617, 313; 1 Mod. 117; 1 Black. R. 345. The term devise, properly and technically, applies only to real estate, the object of the devise must therefore be that kind of property. 1 Hill. Ab. ch. 36, n. 62 to 74. Devise is also improperly applied to a bequest of personal estate, the proper terms being bequest or legacy, (q. v). Vide 4 Kent, Com. 489; 8 Vin. Ab. 41; Com. Dig. Estates by Devise.

DI COLONNA, *mar. contr.* This contract takes place between the owner of a ship, the captain and the mariners, who agree that the voyage shall be for the benefit of all. This is a term used in the Italian law, Targa, ch. 36, 37; Emerigon, Mar. Loans, s. 5. The New England *whalers* are owned and navigated in this manner, and under this species of contract. The captain and his mariners are all interested in the profits of the voyage in certain proportions, in the same manner as the captain and crew of a privateer, according to the agreement between them. Such agreement, being very common in former times; all the mariners and the master being interested in the voyage. It is necessary to know this in order to understand many of the provisions of the laws of Oleron, Wisbuy, the Consolato del Mare, and other ancient codes of maritime and commercial law. Hall, on Mar. Loans, 42.

TO DICTATE is to pronounce word for word what is destined to be at the same time written by another. Merlin. Rép. mot Suggestion p. 500; Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 5, n. 410.

DICTUM, *practice.* Dicta are judicial opinions expressed by the judges on points that do not necessarily arise in the case. Dicta are regarded as of little authority, on account of the manner in which they are delivered; it frequently happening that they are given without much reflection, at the bar, without previous examination. "If," says Huston, J. in Frants v. Brown, 17 Serg. & Rawle, 292, "general dicta in cases turning on special circumstances are to be considered as establishing the law, nothing is yet settled, or can be long settled." "What I have said or written, out of the case trying," continues the learned judge, "or shall say or write, under such circumstances, may be taken as my opinion at the time, without argument or full consideration; but I will never consider myself bound by it, when the point is fairly trying and fully argued and considered. And I protest against any person considering such *obiter dicta* as my deliberate opinion." And it was considered by another learned judge, Mr. Baron Richards, to be "a great misfortune that dicta are taken down from judges, perhaps incorrectly, and then cited as absolute propositions." 1 Phillim. R. 406; S. C. 1 Eng. Ecc. R. 129.

DIES. A day. There are four sorts of days: 1, a natural day; as, the morning and the evening made the first day; 2, an artificial day, that is from day-break until twilight in the evening; 3, an astrological day, *dies astrologicus*, from sun to sun; 4, a legal day, which is dies juridicus, and dies non juridicus. 1. Dies juridici, are all days given in

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term to the parties in court. Dies non juridici are those which are not appointed to do business in court, as Sundays, and the like. Vide *Day*, and 3 Com. Dig. 358.

DIES DATUS, *practice*, is a day or time of respite given to a defendant in a suit.

DIGEST, *civil law*. The name sometimes given to the Pandects of Justinian; it is so called because this compilation is reduced to order, *quasi digestiæ*. It is an abridgment of the decisions of the prætors and the works of the learned and ancient writers on the law. It was made by order of the emperor Justinian who, in 530, published an ordinance entitled *De conceptione Digestorum*, which was addressed to Tribonian, and by which he was required to select some of the most distinguished lawyers to assist him in composing a collection of the best decisions of the ancient lawyers, and compile them in fifty books, without confusion or contradiction. The work was immediately commenced, and completed on the 16th of December, 533.

The Digest is divided in two different ways, the first, into fifty books, each book in several titles, and each title in several laws; at the head of each of them is the name of the lawyer from whose work it was taken.

1. The first book contains twenty-two titles, the subject of the first is *De justicia et jure*; of the division of person and things; of magistrates, &c.

2. The second, divided into fifteen titles, treats of the power of magistrates and their jurisdiction, the manner of commencing suits; of agreements and compromises.

3. The third, composed of six titles, treats of those who can and those who cannot sue, of advocates and attorneys and syndics; and of calumny.

4. The fourth, divided into nine titles, treats of causes of restitution; of submissions and arbitrations; of minors, carriers by water, innkeepers and others who have the care of the property of others.

5. In the fifth there are six titles, which treat of jurisdiction, inofficious testaments.

6. The subject of the sixth, in which there are three titles, is actions.

7. The seventh, in nine titles, embraces whatever concerns usufructs, personal servitudes, habitations, the uses of real estate, and its appurtenances, and of the sureties required of the usufructuary.

8. The eighth book, in six titles, regulates urban and rural servitudes.

9. The ninth book, in four titles, explains certain personal actions.

10. The tenth, in four titles, treats of mixed actions.

11. The object of the eleventh book, containing eight titles, is to regulate interrogatories, the cases of which the judge was to take cognizance, fugitive slaves, of gamblers, of surveyors who made false reports, and of funerals and funeral expenses.

12. The twelfth book, in seven titles, regulates personal actions in which the plaintiff claims the title of a thing.

13. The thirteenth, treats of certain particular actions, in seven titles.

14. This, like the last, regulates certain actions: it has six titles.

15. The fifteenth, in four titles, treats of actions for which a father or master is liable, in consequence of the acts of his children or slaves, and those to which he is entitled; of the peculium of children and slaves, and of the actions on this right.

16. The sixteenth, in three titles, contains the law relating to the senatus consultum vallcianum, of com-

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pensation or set-off, and of the action of deposit.

17. The seventeenth, in two titles, expounds the law of mandates and partnership.

18. The eighteenth book, in seven titles, explains the contract of sale.

19. The nineteenth, in five titles, treats of the actions which arise on a contract of sale.

20. The law relating to pawns, hypothecation, the preference among creditors, and subrogation, occupy the twentieth book, which contains six titles.

21. The twenty-first book explains, under three titles, the edict of the ediles relating to the sale of slaves and animals; then what relates to evictions and warranties.

22. The twenty-second treats of interest, profits and accessories of things, proofs, presumptions, and of ignorance of law and fact. It is divided in six titles.

23. The twenty-third, in five titles, contains the law of marriage, and its accompanying agreements.

24. The twenty-fourth, in three titles, regulates donations between husband and wife, divorces, and their consequence.

25. The twenty-fifth is a continuation of the subject of the preceding. It contains seven titles.

26 and 27. These two books, each in two titles, contain the law relating to tutorship, curatorship.

28. The twenty-eighth, in eight titles, contains the law on last wills and testaments.

29. The twenty-ninth, in seven titles, is a continuation of the twenty-eighth book.

30, 31, and 32. These three books, each divided in two titles, contain the law of trusts and specific legacies.

33, 34, and 35. The first of these, divided in ten titles; the second, in nine titles, and the last in three titles, treat of various kinds of legacies.

36. The thirty-sixth, containing four titles, explains the senatus consultum trebellianum, and the time when trusts become due.

37. This book, containing fifteen titles, has two objects, first, to regulate pretorian successions; and, secondly, the respect which children owe their parents, and freedmen their patrons.

38. The thirty-eighth book, in seventeen titles, treats of a variety of subjects; of successions, and of the degree of kindred in successions; of possession; and of heirs.

39. The thirty-ninth explains the means the law and the pretor take to prevent a threatened injury; and donations *inter vivos* and *mortis causâ*.

40. The fortieth, in sixteen titles, treats of the state and condition of persons and of what relates to freedmen and liberty.

41. The different means of acquiring and losing title to property, are explained in the forty-first book, in ten titles.

42. The forty-second, in eight titles, treats of the *res judicata*, and of the seizure and sale of the property of a debtor.

43. Interdicts or possessory actions are the object of the forty-third book, in three titles.

44. The forty-fourth contains an enumeration of defences which arise in consequence of the *res judicata*, from the lapse of time, prescription, and the like. This occupies six titles; the seventh treats of obligations and actions.

45. This speaks of stipulations, by freedmen, or by slaves. It contains only three titles.

46. This book, in eight titles, treats of securities, novations, delegations, payments, releases, and acceptilations.

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47. In the forty-seventh book are explained the punishments inflicted for private crimes, *de privatis delictis*, among which are included larcenies, slander, libels, offences against religion, and public manners, removing boundaries and other similar offences.

48. This book treats of public crimes, among which are enumerated those of *læsæ magistatis*, adultery, murder, poisoning, parricide, extortion, and the like, with rules for procedure in such cases.

49. The forty-ninth, in eighteen titles, treats of appeals, of the rights of the public treasury, of those who are in captivity, and of their repurchase.

50. The last book, in seventeen titles, explains the rights of municipalities, and then treats of a variety of public officers.

Besides this division, Justinian made another, in which the fifty books were divided in seven parts: The first contains the first four books; the second, from the fifth to the eleventh book inclusive; the third, from the twelfth to the nineteenth inclusive; the fourth, from the twentieth to the twenty-seventh inclusive; the fifth, from the twenty-eighth to the thirty-sixth inclusive; the sixth, commenced with the thirty-seventh and ended with the forty-fourth book; and the seventh or last was composed of the last six books.

A third division, which however is said not to have been made by Justinian, is in three parts. The first called *digestum vetus*, because it was the first printed. It commences with the first book, and includes the work to the end of the second title of the twenty-fourth book. The second, called *digestum infortiatum*, because it is supported or fortified by the other two, it being in the middle; it commences with the beginning of the third title of the twenty-fourth book, and ends with the thirty-eighth. The third, which begins with the thirty-ninth book and ends with the work, is called *digestum novum*, because it was last printed.

The Digest although compiled in Constantinople, was originally written in latin and afterwards translated in Greek.

DIGNITIES, *English law*, are titles of honour. They are considered as incorporeal hereditaments. The genius of our government forbids their admission in the republic.

DILATORY PLEAS. Vide *Plea Dilatory*.

DILIGENCE, *contracts*, is the doing things in proper time. It may be divided into three degrees, namely, ordinary diligence, extraordinary diligence, and slight diligence. It is the reverse of negligence, (q. v.); under that article is shown what degree of negligence or want of diligence will make a party to a contract responsible to the other. Vide Story, Bailm. Index, h. t.; Ayl. Pand. 113.

DILIGENCES, in Scotland, are certain forms of law whereby a creditor endeavours to make good his payment, either by affecting the person of his debtor, or by securing the subjects belonging to him from alienation, or by carrying the property of these subjects to himself. They are either real or personal.

Real diligence is that which is proper to heritable or real rights, and of this kind there are two sorts; 1, inhibitions; 2, adjudication, which the law has substituted in the place of apprising.

Personal diligence is that by which the person of the debtor may be secured, or his personal estate affected. Ersk. Pr. L. Scot. B. 2, t. 11, s. 1.

DIME, *money*, is a silver coin of the United States of the value of one-tenth part of a dollar or ten

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cents. It weighs forty-one and a quarter grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523, 4.

DIMINUTION, *practice*, an omission in the record, or in some part of the proceedings, which is certified on a writ of error on the part of either plaintiff or defendant. Co. Ent. 232; 8 Vin. Ab. 552; 1 Lilly's Ab. 245; 1 Nels. Ab. 658; Cro. Jac. 597; Cro. Car. 91.

DIRECTORS, are persons appointed or elected according to law, authorised to manage and direct the affairs of a corporation, or company. The whole of the directors collectively form the board of directors. They are generally invested with certain powers by the acts of the legislature, to which they owe their existence. In modern corporations created by statutes, it is generally contemplated by the charter, that the business of the corporation shall be transacted exclusively by the directors. 2 Caines's R. 381, and the acts of such a board, evidenced by a legal vote, are as completely binding upon the corporation, and as complete authority to their agents as the most solemn acts done under the corporate seal. 8 Wheat. R. 357, 8; Vide Dane's Ab. h. t.

DISABILITY. Vide *Incapacity*.

DISCHARGE OF A CONTRACT. The act of making a contract or agreement null. Contracts may be discharged by, 1, payment;—2, accord and satisfaction, 8 Com. Dig. 917; 1 Nels. Abr. 18; 1 Lilly's Reg. 10, 16; Hall's Dig. 7; 1 Poth. Ob. 345;—3, Release, 8 Com. Dig. 906; 3 Nels. Ab. 69; 18 Vin. Ab. 294; 1 Vin. Abr. 192; 2 Saund. 48, a; Gow on Partn. 225, 230; 15 Serg. & Rawle, 441; 1 Poth. Ob. 397;—4, Set-off, 8 Vin. Ab. 556, Discount; Hall's Dig. 226, 496; 7 Com. Dig. 335, Pleader, 2 G 17; 1 Poth. Ob. 408;—5, The recision of the contract, 1 Com. Dig. 289, note (x); 8 Com. Dig. 349; Chit. on Contr. 275;—6, Extinguishment, 7 Vin. Abr. 367; 14 Serg. & Rawle, 209, 290; 8 Com. Dig. 394; 2 Nels. Abr. 818; 18 Vin. Abr. 493 to 515; 11 Vin. Abr. 461;—7, Confusion, where the duty to pay and the right to receive unite in the same person, 8 Serg. & Rawle, 24—30; 1 Poth. 425;—8, Extinction or the loss of the subject-matter of the contract, 6 Bac. Abr. 49; 8 Com. Dig. *349; 1 Poth. Ob. 429;—9, Defeasance, 2 Saund. 47, n. note 1;—10, The inability of one of the parties to fulfil his part, Hall's Dig. 40;—11, The death of the contractor, as where he undertook to teach an apprentice;—12, Bankruptcy;—13, By the act of limitations;—14, By lapse of time. Angell on Adv. enjoym. *passim*; 15 Vin. Abr. 52, ‡99; 2 Saund. 63, n. b; Ib. 66 n. 8; Ib. 67 n. 10; Gow on Partn. 235; 1 Poth. 443, 449;—15, By neglecting to give notice to the person charged, Chit. on Bills, 245;—16, By releasing one of two partners, see *Receipt*;—17, By neglecting to sue the principal at the request of the surety, the latter is discharged. 8 Serg. & Rawle, 110.

DISCHARGE, *practice*, is the act by which a person in confinement under some legal process, or held on an accusation of some crime or misdemeanor, is set at liberty; the writing containing the order for his being so set at liberty is also called a discharge. The discharge of a defendant in prison under a ca. sa., when made by the plaintiff, has the operation of satisfying the debt, the plaintiff having no other remedy, 4 T. R. 526; but when the discharge is in consequence of the insolvent laws, or the defendant dies

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in prison, the debt is not satisfied; in the first case the plaintiff has a remedy against the property of the defendant, acquired after his discharge, and, in the last case, against the executors or administrators of the debtor. 2 Bac. Ab. 719; Bingh. on Exec. 266.

DISCHARGE OF A JURY, *practice*. The dismissal of a jury who had been charged with the trial of a cause. Questions frequently arise whether, when the court discharge a jury before they render a verdict, in a criminal case, the prisoner can again be tried. In cases affecting life or member, the general rule is that when a jury have been sworn and charged, they cannot be discharged by the court, or any other, but ought to give a verdict. But to this rule there are many exceptions; for example, when the jury are discharged at the request or with the consent of the prisoner and for his benefit, when ill practices have been used, when the prisoner becomes insane, or becomes suddenly ill so that he cannot defend himself, or instruct others in his defence, when a juror or witness is taken suddenly ill, when a juror has absented himself, or, on account of his intoxication, he is incapable to perform his duties as a juror: these and many similar cases, which may be readily imagined, render the discharge of the jury a matter of necessity, and under such very extraordinary and striking circumstances, it is impossible to proceed with the trial with justice to the prisoner or to the state. The exception to the rule, then, is grounded on *necessity*, and not merely because the jury cannot agree. 6 Serg. & Rawle, 577; 3 Rawle's R. 501. In all these cases the court must exercise a just discretion in deciding what is and what is not a case of necessity. This is the law as to the exceptions in Pennsylvania. In other states, and some of the courts of the United States, it has been ruled that the authority of the court to discharge the jury rests in the *sound discretion of the court*. 4 Wash. C. C. R. 409; 18 Johns. 187; 2 Johns. Cas. 301; 2 Gall. 364; 9 Mass. 494; 1 Johns. R. 66; 2 Johns. Cas. 275. Vide 4 Taunt. 309. A distinction has been made between capital cases and other criminal cases, not capital. In cases of misdemeanors and in civil cases, the right to discharge rests in the sound discretion of the court, which is to be exercised with great caution. 9 Mass. 494. In Pennsylvania this point seems not to be settled. 6 Serg. & Rawle, 599. The reader is referred to the word *Jeopardy*, and Story on the Const. § 1781; 9 Wheat. R. 579; Rawle on the Const. 132, 133; 1 Chit. Cr. Law, 629.

DISCLAIMER, *chancery pleading*, is the renunciation of the defendant to all claims to the subject of the demand made by the plaintiff's bill. A disclaimer is distinct in substance from an answer, though sometimes confounded with it, but it seldom can be put in without an answer, for if the defendant has been made a party by mistake, having had an interest which he has parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not. Mitf. Pl. 11, 14, 253; Coop. Eq. Pl. 309.

DISCLAIMER, *estates*, is the act of a party by which he refuses to accept of an estate which has been conveyed to him. Vide *Assent; Dissent*. It is said, that a disclaimer of a freehold estate must be in a court of record, because a freehold shall not be divested by bare words, *in pais*. Cruise, Dig. tit. 32, c. 26, s. 1, 2. Vide 8 Vin. Ab. 501.

DISCONTINUANCE, *pleading*, is a chasm or interruption in the

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pleading. It is a rule, that every pleading must be an answer to the whole of what is adversely alleged, Com. Dig. Pleader, E 1, F 4; 1 Saund. 28, n. 3.; 4 Rep. 62, a. If, therefore, in an action of trespass for breaking a close, and cutting three hundred trees, the defendant pleads, as to cutting down all but two hundred trees, some matter of justification or title, and as to the two hundred trees says nothing, the plaintiff is entitled to sign judgment, as by nil dicet against him, in respect of the two hundred trees, and to demur, or reply to the plea, as to the remainder of the trespasses. On the other hand, if he demurs or replies to the plea, without signing judgment for the part not answered, the whole action is said to be discontinued. For the plea, if taken by the plaintiff as an answer to the whole action, it being, in fact, a partial answer only, is in contemplation of law, a mere nullity, and a *discontinance* takes place. And such discontinuance will amount to error on the record; such error is cured, however, after verdict, by the statute of Jeofails, 32 H. 8, c. 30; and after judgment by *nil dicit*, confession, or *non sum informatus*, by stat. 4 Ann. c. 16. It is to be observed, that as to the plaintiff's course of proceeding, there is a distinction between a case like this, where the defendant does not profess to answer the whole, and a case where, by the commencement of his plea, he professes to do so, but, in fact, gives a defective and partial answer, applying to part only. The latter case amounts merely to insufficient pleading, and the plaintiff's course, therefore, is not to sign judgment for the part defectively answered, but to demur to the whole plea. 1 Saund. 28, n. 3. It is to be observed, also, that where the part of the pleading to which no answer is given, is immaterial, or such as requires no separate or specific answer, for example, if it be mere matter of allegation, the rule does not, in that case, apply. Ib. See Com. Dig. Pleader, W; Bac. Abr. Pleas, P.

DISCONTINUANCE, *of action*, in practice, takes place when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and time to time, as he ought. 3 Bl. Com. 296; see *Continuance*. A discontinuance also, is an entry upon the record that the plaintiff discontinues his action. The plaintiff cannot discontinue his action after a demurrer joined and entered, or after a verdict or a writ of inquiry, without leave of court. Cro. Jac. 35; 1 Lilly's Abr. 473. The plaintiff is, on discontinuance, generally liable for costs. But in some cases, he is not so liable. See 3 Johns. R. 249; 1 Caines's R. 116; 1 Johns. R. 143; 6 Johns. R. 333; 18 Johns. R. 252; 2 Caines's R. 380; Com. Dig. Pleader, W 5; Bac. Abr. Pleas, P.

DISCOUNT, *practice*, is set-off, or defalcation in an action. Vin. Ab. h. t.

DISCOUNT, *contracts*, is an allowance made upon prompt payment in the purchase of goods; it is also the interest allowed in advancing money upon bills of exchange, or other negociable securities due at a future time.

DISCOVERT, not covert, unmarried; the term is applied to a woman unmarried or widow; one not within the bonds of matrimony.

DISCOVERY, *practice, pleading*, is the act of disclosing or revealing by a defendant, in his answer to a bill filed against him in a court of equity. Vide *Bill of Discovery;* 8 Vin. Ab. 537; 8 Com. Dig. 515.

DISCRETION, *practice*. When it is said that something is left to the

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discretion of a judge, it signifies that he ought to decide according to the rules of equity, and the nature of circumstances. Louis. Code, art. 3522, No. 13; 2 Inst. 50, 298. The discretion of a judge is said to be the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion, to which human nature is liable. 1 Day's Cas. 80, n; 1 Pow. Mortg. 247, a; 2 Supp. to Ves. Jr. 391; Toull. liv. 3, n. 338; 1 Lill. Ab. 447.

DISCRETION, *crim. law*, is the ability to know and distinguish between good and evil; between what is lawful and what is unlawful. The age at which children are said to have discretion, is not very accurately ascertained. Under seven years, it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence, which is raised by an age so tender. 1 Hale, P. C. 27, 8; 4 Bl. Com. 23. Between the ages of seven and fourteen, the infant is, *prima facie*, destitute of criminal design, but this presumption diminishes as the age increases, and even during this interval of youth, may be repelled by positive evidence of vicious intention, for a tenderness of years will not excuse a maturity in crime, the maxim in these cases being *malitia supplet ætatem*. At fourteen, children are said to have acquired legal discretion. 1 Hale, P. C. 25.

DISFRANCHISEMENT, is the act of depriving a member of a corporation of his right as such, by expulsion. It differs from amotion (q. v.) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willc. on Corp. n. 708; Ang. & Ames on Corp. 237; and see *Expulsion*.

DISHERISION, disinheritance, depriving one of an inheritance. Obsolete. Vide *Disinherision*.

DISHERITOR, one who disinherits or puts another out of his freehold. Obsolete.

TO DISHONOUR, *contr.* This term is applied to the non-fulfilment of commercial engagements. To dishonour a bill of exchange or a promissory note, is to refuse or neglect to pay it at maturity. The holder is bound to give notice to the parties to such instrument of its dishonour, and his laches will discharge the indorsers. Chit. on Bills, 394, 395, 256 to 278.

DISINHERISON, *civil law*, is the act of depriving a forced heir of the inheritance which the law gives him. In Louisiana forced heirs may be deprived of their legitime, or legal portion and of the seisin granted them by law, for just cause. The disinherison must be made in proper form, by name and expressly, and for a just cause, otherwise it is null. The just causes for which parents may disinherit their children, are ten in number; 1. If the child has raised his or her hand to strike the parent, or, if he or she has actually struck the parent; but a mere threat is not sufficient. 2. If the child has been guilty, towards a parent, of cruelty, or of a crime or grievous injury. 3. If the child has attempted to take away the life of either parent. 4. If the child has accused either parent of any capital crime, except, however, that of high treason. 5. If the child has refused sustenance to a parent, having the means to afford it. 6. If the child has neglected to take care of a parent, become insane. 7. If a child has refused to ransom them, when detained in captivity. 8. If the child used any act of violence or coercion to

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hinder a parent from making a will. 9. If the child has refused to become security for a parent, having the means, in order to take him out of prison. 10. If the son or daughter, being a minor, marries without the consent of his or her parents. Civil Code, art. 1609–1613. The ascendants may disinherit their legitimate descendants, coming to their succession, for the first nine causes above expressed, when the acts of ingratitude there mentioned have been committed towards them, instead of towards their parents; but they cannot disinherit their descendants for the last cause. Art. 1614. Legitimate children, dying without issue, and leaving a parent, cannot disinherit him or her, unless for the seven following causes, to wit: 1. If the parent has accused the child of a capital crime, except, however, the crime of high treason. 2. If the parent has attempted to take the child's life. 3. If the parent has, by any violence or force, hindered the child from making a will. 4. If the parent has refused sustenance to the child in necessity, having the means of affording it. 5. If the parent has neglected to take care of the child, when in a state of insanity. 6. If the parent has neglected to ransom the child when in captivity. 7. If the father or mother have attempted the life the one of the other, in which case the child or descendant, making a will, may disinherit the one who has attempted the life of the other. Art. 1615. The testator must express in the will for what reason he disinherited his forced heirs, or any of them, and the other heirs of the testator are moreover obliged to prove the facts on which the disinherison is founded, otherwise it is null. Art. 1616. Vide Nov. 115; Ayl. Pand. B. 2, t. 29.

DISJUNCTIVE TERM, is one which is placed between two contraries, by the affirming of one of which, the other is taken away: it is usually expressed by the word *or*. Vide 3 Ves. 450; 7 Ves. 454; 2 Rop. Leg. 290; 1 P. Wms. 433; 2 Cox, Rep. 213; 2 P. Wms. 283; 2 Atk. 643; 6 Ves. 341; 2 Ves. Sr. 67; 2 Str. 1175; Cro. Eliz. 525; Pollexf. 645; 1 Bing. 500; 3 T. R. 470; 1 Ves. Sr. 409; 3 Atk. 83, 85; Ayl. Pand. 56. In the civil law when a legacy is given to Caius *or* Titius, the word *or*, is considered *and*, and both Caius and Titius are entitled to the legacy in equal parts. 6 Toull. n. 704.

DISMES. Another name for tithes. Dime, (q. v.) a piece of federal money is sometimes written disme.

TO DISMISS A CAUSE, *practice*, a term used in courts of chancery for removing a cause out of court without any further hearing.

DISOBEDIENCE is the want of submission to the orders of a superior. In the army, disobedience is a misdemeanor. For disobedience to parents, children may be punished; and apprentices may be imprisoned for disobedience to the lawful commands of their master. Vide *Correction*.

DISORDERLY HOUSE, *crim. law*, is a house the inmates of which behave so badly as to become a nuisance to the neighbourhood. The keeper of such house may be indicted for keeping a public nuisance. Hawk. b. 1, c. 78, s. 1 & 2; 3 Bac. Ab. Inns, A; 1 Russ. on Cr. 298; 1 Wheel. C. C. 290; 1 Serg. & Rawle, 342; 2 Serg. & Rawle, 298; Bac. Ab. Nuisances, A; 4 Chit. Bl. Com. 167, 8, note.

TO DISPAUPER, *Engl. law*, is to deprive a person of the privilege of suing in *forma pauperis* (q. v.) When a person has been admitted to sue in *forma pauperis*, and before the suit is ended, it appears

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that the party has become the owner of a sufficient estate real or personal, or has been guilty of some wrong, he may be *dispaupered*.

TO DISPONE, *Scotch law*. This is a technical word, which implies, it is said, a transfer of feudal property by a particular deed, and is not equivalent to the term *alienate*; but Lord Eldon says, "with respect to the word *dispone*, if I collect the opinions of the majority of the judges rightly, I am of opinion that the word dispone, would have the same effect as the word *alienate*." (q. v.) Sanford on Entails, 179, note.

DISPOSITION, *French law*. This word has several acceptations; sometimes it signifies the effective marks of the will of some person; and at others the instrument containing those marks. The dispositions of man make the dispositions of the law to cease, for example, when a man bequeaths his estate, the disposition he makes of it, renders the legal disposition of it if he had died intestate, to cease.

DISSEISEE, *torts*, one who is wrongfully put out of possession of his lands.

DISSEISOR, *torts*, one who puts another out of the possession of his lands wrongfully.

DISSENT, *contracts*, is a disagreement to something which has been done. It is express or implied. The law presumes that every person to whom a conveyance has been made has given his assent to it, because it is supposed to be for his benefit. To rebut the presumption his dissent must be expressed. Vide *Assent*, and the authorities there cited.

DISSEISIN, *torts*, is the wrongful putting one who is seised, and has actual possession, out of his possession, and depriving him of his freehold. Lord Coke says, that every entry is not a disseisin, for it does not take place unless there is an ouster of the freehold. Co. Litt. 277. To make a disseisin the entry must, in the commencement, be made under colour of title, as any other entry is a mere trespass; it is the intention which fixes its character. It must also have been unlawful. Disseisin may be effected either in corporeal inheritances, or incorporeal. Disseisin of things corporeal, as of houses, lands, &c. must be by entry and actual dispossession of the freehold; as if a man enters, by force or fraud, into the house of another, and turns, or at least, keeps him or his servants out of possession. Disseisin of incorporeal hereditaments cannot be an actual dispossession, for the subject itself is neither capable of actual bodily possession nor dispossession. 3 Bl. Com. 169, 170. See 15 Mass. 495; 6 John. R. 197; 2 Watts, 23; 6 Pick. 172; 1 Verm. 155; 11 Pet. R. 41; 10 Pet. R. 414; 14 Pick. 374; 1 Dana's R. 279; 2 Fairf. 408; 11 Pick. 193; 8 Pick. 172; 8 Vin. Ab. 79; 1 Swift's Dig. 504; 1 Cruise, *65; Arch. Civ. Pl. 12; 2 Bac. Ab. 329; 2 Supp. to Ves. Jr. 343; Dane's Ab. Index, h. t.; 1 Chit. Pr. 374, note (r).

DISSOLUTION, *contracts*. The dissolution of a contract, is to annul its effects between the contracting parties. This dissolution of a partnership, is the destruction of the partnership. Its dissolution does not affect the contracts which were made between the partners and others; so that they are entitled to all their rights, and they are liable on their obligations, as if the partnership had not been dissolved. Vide article *Partnership*, and 3 Kent, Com. 27; Dane's Ab. h. t.; Gow on Partn. Index, h. t.; Wats. on Partn. Index, h. t.

DISTRIBUTION. By this term

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is understood the division of an intestate's estate according to law. The English statute of 22 and 23 Car. 2, c. 10, which was itself borrowed from the 118th Novel of Justinian, is the foundation of, perhaps, most acts of distribution in the several states. Vide 2 Kent, Com. 343, note; 8 Com. Dig. 522; 11 Vin. Ab. 189, 202; Com. Dig. Administration, H.

DISTRICT, is a certain portion of the country, separated from the rest for some special purposes. The United States are divided into judicial districts, in each of which is established a district court; they are also divided into election districts; collection districts, &c.

DISTRICT ATTORNEYS OF THE UNITED STATES. There shall be appointed in each judicial district, a meet person, learned in the law, to act as attorney of the United States in such district, who shall be sworn or affirmed to the faithful execution of his office. Act of 24 Sept. 1789, s. 35, 1 Story's Laws, 67. His duty is to prosecute in such district all delinquents, for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except in the supreme court, in the district in which that court shall be holden. Ib. Their salaries vary in different districts; vide Gordon's Dig. art. 403.

DISTRICT COURT. Vide *Courts of the United States.*

DISTRICT OF COLUMBIA. The name of a district of country ten miles square, situate between the states of Maryland and Virginia, over which the national government has exclusive jurisdiction. By the constitution, congress may "exercise exclusive jurisdiction in all cases whatsoever, over such district, not exceeding ten miles square, as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States." In pursuance of this authority, the states of Maryland and Virginia ceded to the United States, a small territory on the banks of the Potomac, and congress, by the act of July 16, 1790, accepted the same for the permanent seat of the government of the United States. The act provides for the removal of the seat of government from the city of Philadelphia to the District of Columbia, on the first Monday of December, 1800. It is also provided, that the laws of the state within such district, shall not be affected by the acceptance, until the time fixed for the removal of the government thereto, and until congress shall otherwise by law provide.

It seems that the District of Columbia, and the territorial districts of the United States, are not states within the meaning of the constitution, and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat. 91.

TO DISSUADE, *crim. law*, to induce a person not to do an act. To dissuade a witness from giving evidence against a person indicted, is an indictable offence at common law. Hawk. B. 1, c. 21, s. 15. The mere attempt to stifle evidence, is also criminal, although the persuasion should not succeed, on the general principle that an incitement to commit a crime, is in itself criminal. 1 Russ. on Cr. 44; 6 East, R. 464; 2 East, R. 5, 21; 2 Str. 904; 2 Leach, 925. Vide *To Persuade.*

TO DISTRAIN, is to take and keep any personal chattel in custody, as a distress. (q. v.)

DISTRESS, *remedies.* A distress is defined to be the taking of a

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personal chattel, without legal process, from the possession of the wrong doer, into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand. 3 Bl. Com. 6. The remedy by distress for the recovery of arrears of rent, is perhaps more frequently adopted by landlords than any other. Co. Lit. 162, b. For this reason, a considerable space will be dedicated to this article. It will be convenient to consider, 1, the several kinds of rent for which a distress may be made; 2, the persons who may make it; 3, the goods which may be distrained; 4, the time when a distress may be made; 5, in what place it may be made; 6, the manner of making it, and disposing of the goods distrained; 7, when a distress will be a waiver of a forfeiture of the lease.

§ 1. *Of the rents for which a distress may be made.* 1. A distress may generally be taken for any kind of rent in arrear, the detention of which, beyond the day of payment, is an injury to him who is entitled to receive it. 3 Bl. Com. 6. The rent must be reserved out of a corporeal hereditament, and must be certain in its quantity, extent, and time of payment, or at least be capable of being reduced to certainty. Co. Lit. 96, a; 13 Serg. & Rawle, 64; 3 Penna. R. 30. An agreement that the lessee pay no rent, provided he make repairs, and the value of the repairs is uncertain, would not authorise the landlord to distrain. Addis. 347. Where the rent is a *certain* quantity of grain, the landlord may distrain for so many bushels in arrear, and name the value, in order that if the goods should not be replevied, or the arrears tendered, the officer may know what amount of money is to be raised by the sale, and in such case the tenant may tender the arrears in grain. 13 Serg. & Rawle, 52. But where the tenant agreed instead of rent, to render "one half part of all the grain of every kind, and of all hemp, flax, potatoes, apples, fruit and other produce of whatever kind that should be planted, raised, sown or produced, on or out of the demised premises, within and during the term," the landlord cannot, perhaps, distrain at all; he cannot, certainly, distrain for a sum of money, although he, and the tenant may, afterwards have settled their accounts, and agreed that the half of the produce of the land should be fixed in money, for which the tenant gave his note, which was not paid. 13 Serg. & Rawle, 52. But in another case it was held, that on a demise of a grist mill, when the lessee is to render one third of the toll, the lessor may distrain for rent. 2 Rawle, 11.—2. With respect to the *amount* of the rent, for which a lessor may in different cases be entitled to make a distress, it may be laid down as a general rule, that whatever can properly be considered as a part of the rent, may be distrained for, whatever be the particular mode in which it is agreed to be paid. So that where a person entered into possession of certain premises, subject to the approbation of the landlord, which was afterwards obtained, by agreeing to pay in advance, rent from the time he came into possession, it was, in England, determined that the landlord might distrain for the whole sum accrued before and after the agreement, Cowp. 784. For on whatever day the tenant agrees that the rent shall be due, the law gives the landlord the power of distraining for it at that time. 2 T. R. 600. In New York, it was determined, that an agreement that the rent should be paid in advance, is a personal covenant on which an

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action lies, but not distress. 1 Johns. R. 384. The supreme court of Pennsylvania, declined deciding this point, as it was not necessarily before them. 13 Serg. & Rawle, 60. Interest due on rent, cannot, in general, be distrained for; 2 Binn. 146; but may be recovered from the tenant by action, unless under particular circumstances. 6 Binn. 159.

§ 2. *Of the persons entitled to make a distress.* 1. When the landlord is sole owner of the property out of which rent is payable to him, he may, of course distrain in his own right.—2. Joint-tenants have each of them, an estate in every part of the rent, each may, therefore, distrain alone for the whole, although he must afterwards account with his companions for their respective shares of the rent. 3 Salk. 17. They may all join in making the distress, which is the better way. —3. Tenants in common, do not like joint-tenants, hold by one title and by one right, but by different titles, and have several estates. Therefore they should distrain separately, each for his share, Co. Lit. s. 317, unless the rent be of an entire thing, as to render a horse, in which case, the thing being incapable of division, they must join. Co. Lit. 197, a. Each tenant in common is entitled to receive, from the terre-tenant, his proportion of the rent; and therefore, when a person holding under two tenants in common, paid the whole rent to one of them, after having received a notice to the contrary from the other, it was held, the party who gave the notice, might afterwards distrain. 5 T. R. 246. As tenants in common have no original privity of estate between them, as to their respective shares, one may leave his part of the land to the other, rendering rent, for which a distress may be made, as if the land had been demised to a stranger. Bro. Abr. tit. Distress, pl. 65.—4. It may be, perhaps, laid down as a general rule, that for rent due in right of the wife, the husband may distrain alone. 2 Saund. 195; even if it accrue to her in the character of executrix or administratrix. Ld. Raym. 369. With respect to the remedies for the recovery of the arrears of a rent accruing in right of his wife, a distinction is made between rent due for land, in which the wife has a chattel interest, and rent due on land in which she has an estate of freehold and inheritance. And in some cases, a further distinction must be made between a rent accruing before and rent accruing after the coverture. See on this subject, Co. Lit. 46, b, 300, a, 351, a; 1 Roll. Abr. 350; stat. 32 Hen. VIII. c. 37, s. 3.—5. A tenant by the curtesy, has an estate of freehold in the lands of his wife, and in contemplation of law, a reversion on all land of the wife leased for years or lives, and may distrain at common law for all rents reserved thereon. 6. A woman may be endowed of a rent as well as of land; if a husband, therefore, tenant in fee, make a lease for years, reserving rent, and die, his wife shall be endowed of one-third part of the reversion by metes and bounds, together with a third part of the rent. Co. Lit. 32, a. The rent in this case is apportioned by the act of law, and therefore if a widow be endowed of a third part of a rent in fee, she may distrain for the third part thereof, and the heir shall distrain for the other part of the rent. Bro. Abr. tit. Avowry, pl. 139. 7. A tenant for his own life or that of another, has an estate of freehold, and if he make a lease for years, reserving rent, he is entitled to distrain upon the lessee. It may here be proper to remark, that at common law, if a tenant for life made a

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lease for years, if he should so long live, at a certain rent, payable quarterly, and died before the quarter-day, the tenant was discharged of that quarter's rent by the act of God. 10 Rep. 128. But the 11 Geo. II. c. 19, s. 15, gives an action to the executors or administrators of such tenant for life.—8. By the statute 32 Henry VIII. c. 37, s. 1, "the personal representatives of tenants in fee, tail, or for life, of rent-service, rent-charge, and rents-seck, and fee farms, may distrain for arrears upon the land charged with the payment, so long as the lands continue in seisin or possession of the tenant in demesne, who ought to have paid the rent or fee farm, or some person claiming under him by purchase, gift or descent." By the words of the statute, the distress must be made on the lands while in possession of the "tenant in demesne," or some person claiming under him, by purchase gift or descent; and therefore it extends to the possession of those persons only who claim under the tenant, and the statute does not comprise the tenant in dower or by the curtesy, for they come in, not under the party, but by act of law. 1 Leon. 302.—9. The heir entitled to the reversion may distrain for rent arrear which becomes due after the ancestor's death; the rent does not become due till the last minute of the natural day, and if the ancestor die between sun-set and midnight, the heir, and not the executor, shall have the rent. 1 Saund. 287. And if rent be payable at either of two periods, at the choice of the lessee, and the lessor die between them, the rent being unpaid, it will go to the heir. 10 Rep. 128, b.—10. Devisees, like heirs, may distrain in respect of their reversionary estate; for by a devise of the reversion the rent will pass with its incidents. 1 Ventr 161.—11. Trustees who have vested in them legal estates, as trustees of a married woman, or assignees of an insolvent, may of course distrain in respect of their legal estates, in the same manner as if they were beneficially interested therein.—12. Guardians may make leases of their ward's lands in their own names, which will be good during the minority of the ward, and, consequently, in respect of such leases, they possess the same power of distress as other persons granting leases in their own rights. Cro. Jac. 55, 98.—13. Corporations aggregate should generally make and accept leases or other conveyances of lands or rent, under their common seal. But if a lease be made by an agent of the corporation, not under their common seal, although it may be invalid as a lease, yet if the tenant hold under it, and pay rent to the bailiff or agent of the corporation, that is sufficient to constitute a tenancy at least from year to year, and to entitle the corporation to distrain for rent. 2 New Rep. 247. But see *Corporation.*

§ 3. *Of the things which may or may not be distrained.* Goods found upon the premises demised to a tenant, are generally liable to be distrained by a landlord for rent, whether such goods in fact belong to the tenant or to other persons. Com. Dig. Distress, B 1. But such goods are sometimes privileged from distress, first, absolutely; and secondly, conditionally.

First, Those of the first class are privileged, 1, in respect of the owner of them; 2, because no one can have property in them; 3, because they cannot be restored to the owner in the same plight as when taken; 4, because they are fixed to the freehold; 5, because it is against the policy of law they should be distrained; 6, because they are in the custody of the law; 7, because

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they are protected by some special act of the legislature.—1. The goods of a person who has some interest in the land jointly with the distrainer, as those of a joint-tenant although found upon the land, cannot be distrained. The goods of executors and administrators, or of the assignee of an insolvent regularly discharged according to law, cannot, in Pennsylvania, be distrained for more than one year's rent. The goods of a former tenant, rightfully on the land, cannot be distrained for another's rent. For example a tenant at will, if quitting upon notice from his landlord, is entitled to the emblements or growing crops; and therefore even after they are reaped, if they remain on the land for the purpose of husbandry, they cannot be distrained for rent due by the second tenant. Willes, 131; and they are equally protected in the hands of a vendee. Ibid. They cannot be distrained although the purchaser allow them to remain uncut an unreasonable time after they are ripe. 2 B. & B. 362; 5 Moore, 97, S. C.—2. As every thing which is distrained is presumed to be the property of the wrongdoer, it will follow that such things wherein no man can have an absolute and valuable property, as cats, dogs, rabbits, and all animals feræ naturæ, cannot be distrained. Yet, if deer, which are of a wild nature are kept in a private enclosure, for the purpose of sale or profit, this so far changes their nature, by reducing them to a kind of stock or merchandise, that they may be distrained for rent. 3 Bl. Com. 7.—3. Such things as cannot be restored to the owner in the same plight as when they were taken, as milk, fruit, and the like, cannot be distrained. 3 Bl. Com. 9. —4. Things affixed or annexed to the freehold, as furnaces, windows, doors, and the like, cannot be distrained, because they are not personal chattles, but belonging to the realty. Co. Litt. 47, b. And this rule extends to such things as are essentially a part of the freehold, although for a time removed therefrom, as a mill-stone removed to be picked; for this is matter of necessity, and it still remains in contemplation of law, a part of the freehold. For the same reason an anvil fixed in a smith's shop cannot be distrained. Bro. Abr. Distress, pl. 23. 4 T. R. 567.—5. Goods are privileged in cases where the proprietor is either compelled from *necessity* to place his goods upon the land, or where he does so for *commercial* purposes. In the first case the goods are exempt because the owner has no option, hence the goods of a traveller in an inn are exempt from distress. 7 H. 7, M. 1. p. 1; Hamm. N. P. 380, a. In the other the interests of the community require that commerce should be encouraged, and adventurers will not engage in speculations, if the property embarked is to be made liable for the payment of debts they never contracted. Hence goods landed at a wharf, or deposited in a warehouse, on storage, cannot be distrained. 17 Serg. & Rawle, 138. Valuable things in the way of trade are not liable to distress; as a horse standing in a smith's shop to be shod, or in a common inn, or cloth at a tailor's house to be made into a coat, or corn sent to a mill to be ground, for these are privileged and protected for the benefit of trade. 3 Bl. Com. 8. Goods taken in execution cannot be distrained. The law in some states gives the landlord the right to claim payment out of the proceeds of an execution for rent not exceeding one year, and he is entitled to payment up to the day of seisure, though it be in the middle of a quarter. 2 Yeates, 274; 5

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Binn. 505; but he is not entitled to the day of sale. 5 Binn. 505. See 18 Johns. Rep. 1. The usual practice is to give notice to the sheriff that there is a certain sum due to the landlord as arrears of rent, which notice ought to be given to the sheriff, or person who takes the goods in execution upon the premises; for the sheriff is not bound to find out whether rent is due, nor is he liable to an action, unless there has been a demand of rent before the removal. 1 Str. 97, 214; 3 Taunt. 400; 2 Wils. 140; Com. Dig. Rent, D 8; 11 Johns. R. 185. This notice can be given by the immediate landlord only, a ground landlord is not entitled to his rent out of the goods of the under-tenant taken in execution. 2 Str. 787. And where there are two executions, the landlord is not entitled to a year's rent on each. See Str. 1024. Goods distrained and replevied may be distrained by another landlord for subsequent rent. 2 Dall. 68.

Secondly; Besides the above mentioned goods and chattels, which are absolutely privileged from distress, there are others which are conditionally so, but which may be distrained under certain circumstances. These are 1, Beasts of the plough, which are exempt if there be a sufficient distress besides on the land whence the rent issues. Co. Litt. 47, a; 2 Bac. Abr. 108, 9. 2. Implements of trade, as, a loom in actual use, and there is a sufficient distress besides. 4 T. R. 565.—3. Other things in actual use, as a horse whereon a person is riding, an axe in the hands of a person cutting wood, and the like. Co. Litt. 47, a.

§ 4. *The time when a distress may be made.* 1. The distress cannot be made till the rent is due by the terms of the lease, as rent is not due until the last minute of the natural day, on which it is reserved, it follows that a distress for rent cannot be made on that day. 1 Saund. 287; Co. Lit. 47, b. n. 6. A previous demand is not generally necessary, although there is a clause in the lease that the lessor may distrain for rent, "being lawfully demanded," Bradb. 124; 6 Bac. Abr. 26; the making of the distress being a demand; though it is advisable to make such a demand. But where a lease provides for a special demand; as if the clause were that if the rent should happen to be behind it should be demanded at a particular place *not on the land;* or be demanded *of the person of the tenant;* then such special demand is necessary to support the distress. Plowd. 69; 6 Bac. Abr. 26, 28.—2. A distress for rent can only be made during the day time. Co. Lit. 142, a.—3. At common law a distress could not be made after the expiration of the lease; to remedy this evil the legislature of Pennsylvania passed an act making it "lawful for any person having any rent in arrear or due upon any lease for life or years or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease had not been ended; provided that such distress be made during the continuance of such lessor's title or interest. Act of 21st March, 1772, s. 14, 1 Smith's Laws of Penna. 375.—4. In the city and county of Philadelphia the landlord may, under certain circumstances apportion his rent, and distrain before it becomes due. See act of 25th March, 1825, s. 1. Pamph. L. 114.

§ 5. *In what place a distress may be made.* The distress may be made upon the land, or off the land. 1. Upon the land. A distress generally follows the rent, and is consequently confined to the land out of

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which it issues. If two pieces of land, therefore, are let by two separate demises, although both be contained in one lease, a joint distress cannot be made for them, for this would be to make the rent of one issue out of the other. Rep. Temp. Hardw. 245; S. C. Str. 1040. But where lands lying in different counties are let together by one demise, at one entire rent, and it does not appear that the lands are separate from each other, one distress may be made for the whole rent. Ld. Raym. 55; S. C. 12 Mod. 76. And where rent is charged upon land, which is afterwards held by several tenants, the grantee or landlord may distrain for the whole upon the land of any of them; because the whole of the rent issues out of every part of the land. Roll. Abr. 671. If there be a house on the land, the distress may be made in the house; if the outer door or window be open, a distress may be taken out of it. Roll. Abr. 671. And if an outer door be open, an inner door may be broken open for the purpose of taking a distress. Comb. 47; Cas. Temp. Hard. 168. Barges on a river attached to the leased premises (a wharf) by ropes, cannot be distrained. 6 Bingh. 150; 19 Eng. Com. Law R. 36.—2. *Off the land.* By the 5th and 6th sections of the Pennsylvania act of assembly of the 21st March, 1772, copied from the 11 Geo. II. c. 19, it is enacted that if any tenant for life, years, at will, or otherwise, shall fraudulently or clandestinely convey his goods off the premises to prevent the landlord from distraining the same, such person, or any person by him lawfully authorised, may within thirty days after such conveyance, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. Provided, that the landlord shall not distrain any goods which shall have been previously sold, *bona fide*, and for a valuable consideration, not privy to the fraud. To bring a case within the act, the removal must take place *after* the rent becomes due, and must be *secret*, not made in open day, for such removal cannot be said to be clandestine within the meaning of the act. 3 Esp. N. P. C. 15; 12 Serg. & Rawle, 217; 7 Bing. 423; 1 Moody & Malkin, 535. It has, however, been made a question whether goods are protected that were fraudulently removed on the night before the rent had became due. 4 Camp. 135. The goods of a stranger cannot be pursued; they can be distrained only while they are on the premises. 1 Dall. 440.

§ 6. *Of the manner of making a distress.* 1. A distress for rent may be made either by the person to whom it is due, or, which is the preferable mode, by a constable or other officer properly authorised by him.—2. If the distress be made by a constable, it is necessary that he should be properly authorised to make it; for which purpose the landlord should give him a written authority, or as it is usually called, a warrant of distress; but a subsequent assent and recognition given by the party for whose use the distress has been made, is sufficient. Hamm. N. P. 382.—3. When the constable is thus provided with the requisite authority to make a distress by seizing the tenant's goods or some of them in the name of the whole, and declaring that he takes them as a distress for the sum expressed in the warrant to be due by the tenant to the landlord, and that he takes them by virtue of the said warrant; which warrant he ought, if required, to show. 1 Leon. 50.—4. When making the distress it ought to be made for the whole rent; but if goods cannot be found

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at the time sufficient to satisfy the rent, or the party mistake the value of the thing distrained, he may make a second distress. Bradb. 129, 30; 2 Tr. & H. Pr. 155.—5. As soon as a distress is made, an inventory of the goods distrained should be made, and a copy of it delivered to the tenant, together with a notice of taking such distress, with the cause for taking the same. This notice of taking a distress is not required by the statute to be in writing; and, therefore, parol or verbal notice may be given either to the tenant on the premises or to the owner of the goods distrained. 12 Mod. 76. And although such notice is directed by the act to specify the cause of taking, it is not material whether it accurately state the period of the rent's becoming due, Dougl. 279; or even whether the true cause of taking the goods be expressed therein. 7 T. R. 654. If the notice be not personally given, it should be left in writing at the tenant's house, or according to the directions of the act, at the mansion-house or other most notorious place on the premises charged with the rent distrained for.—6. The distrainor may leave or impound the distress on the premises for the five days mentioned in the act, but becomes a trespasser after that time. 2 Dall. 69. As in many cases it is desirable for the sake of the tenant that the goods should not be sold as soon as the law permits, it is usual for him to sign an agreement or consent to their remaining on the premises for a longer time, in the custody of the distrainor, or of a person by him appointed for that purpose. While in his possession, the distrainor cannot use or work cattle distrained, unless it be for the owner's benefit, as to milk a cow or the like. 5 Dane's Abr. 34.—7. Before the goods are sold they must be appraised by two reputable freeholders, who shall take an oath or affirmation to be administered by the sheriff, under-sheriff, or coroner, in the words mentioned in the act.—8. The next requisite is to give six days' public notice of the time and place of sale of the things distrained; after which, if they have not been replevied, they may be sold by the proper officer, who may apply the proceeds to the payment and satisfaction of the rent, and the expenses of the distress, appraisement and sale. The overplus, if any, is to be paid to the tenant.

§ 7. *When a distress will be a waiver of a forfeiture of the lease.* On this subject, see 1 B. & Adol. 428.

DISTRESS INFINITE, *English practice*, is a process commanding the sheriff to distrain a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due from the party distrained upon. In this case no distress can be immoderate, because whatever its value may be, it cannot be sold, but is to be immediately restored on satisfaction being made. 3 Bl. Com. 231.

DISTRINGAS, *remedies*, is a writ directed to the sheriff commanding him to distrain one of his goods and chattels, to enforce his compliance of what is required of him, as for his appearance in a court on such a day, and the like. Com. Dig. Process, D 7; Chit. Pr. Index, h. t.; Sellon's Pr. Index, h. t.; Tidd's Pr. Index, h. t.; 11 East, 353.

DISTURBANCE, *torts*, is a wrong done to an incorporeal hereditament, by hindering or disquieting the owner in the enjoyment of it. Finch, L. 187; 3 Bl. Com. 235; 1 Swift's Dig. 522; Com. Dig. Action upon the case for a disturb-

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ance. Pleader, 8 I 6; 1 Serg. & Rawle, 298.

DIVIDEND, is a portion of the principal or profits divided among several owners of a thing. The term is usually applied to the division of the profits arising out of bank or other stocks; or to the division among the creditors of the effects of an insolvent estate.

DIVORCE is the dissolution of a marriage contracted between a man and a woman, by the judgment of a court of competent jurisdiction, or by an act of the legislature. Divorces are of two kinds; 1, *a vinculo matrimonii*, (q. v.) which dissolves and totally severs the marriage tie; and, 2, *a mensa et thoro*, (q. v.) which merely separates the parties.

1. The divorce *a vinculo* was never granted by the ecclesiastical law, except for the most grave reasons. These according to Lord Coke, Co. Litt. 235 a, are *causa præcontractus, causa metus, causa impotentia, seu frigiditatis, causa affinitatis, et causa consanguinitatis.* When the marriage was dissolved for canonical causes of impediment existing previous to its taking place, it was declared void *ab initio.*

In the United States divorces *a vinculo* are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favour of granting them; and they are granted by the courts to which such jurisdiction is given for certain causes particularly provided for by law. They are granted in—

Alabama, on account of precontract, or having a husband or wife living, at the time of second marriage, although for this cause the statute declares the marriage void *ab initio;* and for consanguinity, adultery, desertion and cruelty. 4 Griff. Reg. 586.

Connecticut, for adultery, absence, and fraudulent contract, by which is meant some cause which makes the marriage void *ab initio.* 3 Griff. Reg. 80; 1 Swift's Dig. 21.

Delaware, for precontract, desertion, adultery, impotence on the part of the husband, and cruelty. 12 Hill. Ab. 61.

Georgia, for *legal grounds*, and adultery. 3 Griff. Reg. 446.

Illinois, on account of a former marriage, desertion, adultery, and impotence. 3 Griff. Reg. 424.

Indiana, for any *just and reasonable cause.* 2 Hill. Ab. 61; a former husband or wife living; impotency, or adultery. 3 Griff. Reg. 468.

Kentucky, for adultery, desertion, cruelty, or the forming a connexion with certain religionists, whose opinions and practice are inconsistent with the marriage duties, and conviction of crime. 2 Hill. Ab. 61; 3 Griff. Reg. 520.

Louisiana. There are no judicial divorces; they are granted by the legislature for grave causes. 4 Griff. Reg. 697.

Maine, for consanguinity within prohibited degrees, former husband or wife alive; impotency; adultery. 4 Griff. Reg. 1007.

Maryland. No judicial divorces. 4 Griff. Reg. 944.

Massachusetts, for adultery and impotence, and imprisonment for crime.

Michigan, for adultery. 2 Hill. Ab. 61.

Mississippi, on account of consanguinity within the prohibited degrees; impotence; adultery; and desertion for five years. Divorces are here obtained in the first instance by bill in chancery, in the superior court where the party resides; the decree of the judge must be confirmed by the legislature, two-thirds concurring. 4 Griff. Reg. 670.

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Missouri, for a prior marriage, conviction of crime, desertion, adultery, impotence, cruelty, and drunkenness. 2 Hill. Ab. 61; 4 Griff. Reg. 627.

New Hampshire, for desertion, adultery, impotence, and a former marriage.

New Jersey, on account of a former marriage subsisting, consanguinity within the prohibited degrees, adultery, and desertion. 4 Griff. Reg. 1181.

New York, for adultery only. 2 Kent, Com. 82.

North Carolina, for any just and reasonable cause. 2 Hill. Ab. 61; former marriage subsisting; impotency; desertion. 3 Griff. Reg. 226.

Ohio, for former marriage undissolved, adultery, and desertion.

Pennsylvania, for adultery, cruelty, desertion, consanguinity within the prohibited degrees, and the existence of a former marriage, at the time of the second.

Rhode Island. Divorces are decreed when either by statute or the common law the marriage is declared void *ab initio*; as for affinity, consanguinity, a former marriage undissolved, idiocy, lunacy, impotency, adultery, extreme cruelty, and desertion; and for neglect or refusal on the part of the husband, (being of sufficient ability) to provide necessaries for the subsistence of his wife, and also for any other gross misbehaviour and wickedness in either of the parties repugnant to, and in violation of, the marriage covenant. 3 Griff. Reg. 117.

South Carolina, divorces are not judicially granted.

Tennessee, on account of a former marriage, desertion, adultery, impotence, and when the wife was pregnant at the time of marriage with a child of colour. 4 Griff. Reg. 799.

Vermont, for impotency, adultery, intolerable severity, and desertion. 3 Griff. Reg. 23.

Virginia, no judicial divorces are granted; they are granted by the legislature.

When the divorce is prayed for on the ground of adultery, in some and perhaps in most of the states, it is a good defence, 1st, that the other party has been guilty of the same offence; 2, that the husband has prostituted his wife, or connived at her amours; 3, that the offended party has been reconciled to the other by either express or implied condonation, (q. v.); 4, that there was no intention to commit adultery, as when the party supposing his or her first husband or wife dead, married again; 5, that the wife was forced or ravished.

2. Divorces *a mensa et thoro*, are a mere separation of the parties for a time for causes arising since the marriage; they are pronounced by tribunals of competent jurisdiction. The effects of the sentence continue for the time it was pronounced, or until the parties are reconciled. Children born after a divorce *a mensa et thoro* are not presumed to be the husband's, unless he afterwards cohabited with his wife. 4 Bac. Ab. 554, 5.

Vide, generally, 1 Bl. Com. 440, 441; 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg. 225; Com. Dig. Baron and Feme, C; Poynt. on Marr. and Divorce, Index, h. t.; Merl. Rép. h. t.; Clef. des Lois Rom. h. t.; as to the effect of the laws of a foreign state, where the divorce was decreed, see Story's Confl. of Laws, ch. 7, § 200.

DOCKET, *practice*, is a formal record of judicial proceedings. The docket should contain the names of the parties, and a minute of every proceeding in the case. It is kept by the clerk or prothonotary of the

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court. Docket is also said to be a brief writing, on a small piece of paper or parchment containing the substance of a larger writing.

DOCTORS COMMONS. A building in London used for a college of civilians in that city. Here the judge of the court of arches, the judge of the admiralty, and the judge of the court of Canterbury, with other eminent civilians reside. It is called Doctors Commons because the persons residing there live in a collegiate commoning together.

DOCUMENTS, *evidence*, are all the deeds, agreements, title papers, letters, receipts, and all other written instruments which are used to prove a fact.

DOG. A domestic animal, the male of the bitch. A dog is said at common law to have no intrinsic value, and he cannot therefore be the subject of larceny. 4 Bl. Com. 236; 8 Serg. & Rawle, 571. But the owner has such property in him, that he may maintain trespass for an injury to his dog. As dogs are very dangerous animals they may lawfully be killed, when their ferocity is known to their owner, or in self-defence. 13 John. R. 312; 10 John. R. 365; and when he has been bitten by a rabid animal, a dog may be lawfully killed by any one. 13 John. R. 312. When a dog in consequence of his vicious habits becomes a common nuisance, the owner may be indicted. Vide *Animal*.

DOLLAR, *money*, a silver coin of the United States of the value of one hundred cents, or tenth part of an eagle. It weighs four hundred and twelve and a half grains. Of one thousand parts nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. Con. of Story's L. U. S. 2523, 4.

DOME-BOOK, DOOM-BOOK, or DOM-BEC, was a book in which Alfred the Great, of England, after uniting the Saxon heptarchy, collected the various customs dispersed through the kingdom, and digested them into one uniform code. 4 Bl. Com. 411.

DOMESDAY or DOMESDAY-BOOK. An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal sizes, containing surveys of the lands in England.

DOMESTICS are those who reside in the same house with the master they serve, and the term does not extend to workmen or labourers employed out of doors. 5 Binn. R. 167; Merl. Rép. h. t.

DOMICIL, is the place where a person has fixed his ordinary dwelling, without a present intention of removal. 10 Mass. 488; 8 Cranch, 278; Ersk. Pr. of Law of Scotl. B. 1, tit. 2, s. 9; Denisart, tit. Domicile, 1, 7, 18, 19; Voet, Pandect, lib. 5, tit. 1, 92, 97; 5 Madd. Ch. R. 379; Merlin, Répertoire, tit. Domicile. In order to constitute a domicil, two circumstances must unite, namely, actual residence, and an intention to remain.

The original domicil of every person is the place of his birth, and this adheres to him till another is acquired by his act. When he changes it, he acquires a new domicil in the new place of his residence, and loses his original domicil. But upon a return with an intention to reside, his original domicil is restored. 3 Rawle's Rep. 312; 1 Gallis. R. 274, 284; 5 Rob. Adm. R. 99. As it requires an intention in order to change one's domicil, it follows that where a party removes with an intention of returning, he does not lose his domicil, as he can have acquired one no where else. Therefore public ministers sent out in the public

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service; the president of the United States, the secretaries and such other officers whose public duties require a temporary residence at the capital, retain their domicils. So do officers, soldiers, and marines in the army and navy.

The domicil of children is the same as that of their parents, until, after they have attained their full age, they change it. The wife's is that of the husband.

How far a settlement in a foreign country will impress a hostile character on a merchant, see Chitty's Law of Nations, 31 to 50; 1 Kent, Com. 74 to 80. As to its effect in the administration of the assets of a deceased non-resident, see 3 Rawle's R. 312; 3 Pick. R. 128; 2 Kent, Com. 348; 10 Pick. R. 77. The law of Louisiana relating to the "domicil and the manner of changing the same" will be found in the Civil Code of Louisiana, tit. 2, art. 42 to 49.

See on the subject generally, 2 Bos. & Pull. 230, note; 1 Mason's Rep. 411; Toullier, Droit Civil Français, liv. 1, tit. 3, n. 362 à 378; Domat, tome 2, liv. 1, s. 3; Pothier, Introduction générale aux coutumes, n. 8 à 20; 1 Ashm. R. 126; Merl. Rép. tit. Domicile.

DOMINANT, *estates.* In the civil law, this term is used to signify the estate to which a servitude or easement is due from another estate; for example, where the owners of the estate, Blackacre, have a right to a way or passage over the estate, Whiteacre, the former is called the dominant, and the latter the servient estate.

DONATIO MORTIS CAUSA, *contracts, legacies*, gift in prospect of death; is when a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another, the possession of any personal goods, to keep in case of his decease. 2 Bl. Com. 514; see Civ. Code of Lou. art. 1455. The civil law defines it to be a gift under apprehension of death, as when any thing is given upon condition that if the donor dies, the donee shall possess it absolutely, or return it if the donee should survive, or should repent of having made the gift, or if the donee should die before the donor. Donations mortis causâ, are now reduced, as far as possible, to the similitude of legacies. Inst. t. 7, De Donationibus. See 2 Ves. Jr. 119. Smith v. Casen, mentioned by the reporter at the end of Drury v. Smith, 1 P. Wms. 406; 2 Ves. Sen. 434; 3 Binn. 366.

With respect to the nature of a donatio mortis causâ, this kind of amphibious gift so far resembles a legacy, that it is ambulatory and incomplete during the donor's life, it is, therefore, revocable by him, 7 Taunt. 231; 3 Binn. 366, and subject to his debts upon a deficiency of assets, 1 P. Wms. 405. But in the following particulars it differs from a legacy; it does not fall within an administration, nor require any act in the executors to constitute a title in the donee. Rop. Leg. 26.

The following circumstances are required to constitute a good donatio mortis causâ; 1st. That the thing given be personal property, 3 Binn. 370; a bond, 3 Binn. 370; 3 Madd. R. 184; bank notes, 2 Bro. C. C. 612; and a check offered for payment during the life of the donor, will be so considered; 4 Bro. C. C. 286. 2dly. That the gift be made by the donor in peril of death, or during his last illness, and to take effect only in case the giver die. 3 Binn. 370; 4 Burn's Ecc. Law, 110. 3dly. That there be an actual delivery of the subject to, and for the donee, in cases where such delivery can be made. 3 Binn. 370; 2 Ves. Jr. 120. See 9 Ves. 1; 7 Taunt.

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224. But such delivery can be made to a third person for the use of the donee. 3 Binn. 370. It is an unsettled question whether such kind of gift appearing in writing, without delivery of the subject, can be supported; 2 Ves. Jr. 120. By the Roman and civil law, a gift, mortis causâ, might be made in writing. Dig. lib. 39, t. 6, l. 28; 2 Ves. Sen. 440; 1 Ves. Sen. 314.

See in general, 1 Fonb. Tr. Eq. 288, n. (p); Coop. Just. 474; Civ. Code of Lo. B. 3, t. 2, c. 1 and 6. No disposition, mortis causâ, shall henceforth be made otherwise than by last will or testament. All other form is abrogated. Civ. Code of Lo. art. 1563; Vin. Abr. Executors, Z 4; Bac. Abr. Legacies, A; Supp. to Ves. Jr. vol. 1, p. 143, 170; vol. 2, 97, 215; Rop. Leg. ch. 1; Swinb. pt. 1, s. 7.

DONATION, *contracts*, is the act by which the owner of a thing, voluntarily transfers the title and possion of the same, from himself to another person, without any consideration; a gift (q. v.) A donation is never perfected, until it has been accepted, for the acceptance, (q. v.) is requisite to make the donation complete. Vide *Assent*, and Ayl. Pand. tit. 9; Clef des Lois Rom. h. t.

DONATION INTER VIVOS, *contracts*, is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given, in order to transmit the title of it to the donee gratuitously, and the donee who accepts the thing and acquires a legal title to it. This donation takes place when the giver is not in any immediate apprehension of death, which distinguishes it from a *donatio mortis causâ*, (q. v.) And see Civ. Code of Lo. art. 1453.

DONEE. He to whom a gift is made, or a bequest given.

DONIS, STATUTE DE, the stat. West. 2, namely, 13 Edw. 1, c. 1, called the statute *de donis conditionalibus*. This statute revives, in some sort, the ancient feudal restraints, which were originally laid on alienations. 2 Bl. Com. 112. 4 1 / 3

DOOR. The place of usual entrance in a house, or into a room in the house. Doors are distinguished into outer doors and inner doors. To authorise the breach of an outer door in order to serve process, the process must be of a criminal nature, and even then a demand of admittance must first have been refused. 5 Co. 93; 4 Leon. 41; T. Jones, 234; the outer door may also be broken open for the purpose of executing a writ of *habere facias*. 5 Co. 93; Bac. Ab. Sheriff, N 3. An outer door cannot in general be broken for the purpose of serving civil process, but after the defendant has been arrested, and he takes refuge in his own house, the officer may justify breaking an outer door to take him. Foster, 320; 1 Roll. R. 138; Cro. Jac. 555. When once an officer is in the house, he may break open an inner door to make an arrest.

DOUBLE COSTS, *practice*. According to the English law, when double costs are given by the statute, the term is not to be understood, according to its literal import, twice the amount of single costs, but in such case the costs are thus calculated; 1, the common costs, and 2, *half* of the common costs. This is not the rule in New York, nor in Pennsylvania. 2 Dunl. Pr. 731; 2 Rawle's R. 201. In all cases where double or treble costs are claimed, the party must apply to the court for them before he can proceed to the taxation, otherwise the proceedings will be set aside as irregular. 4 Wend. R. 216. Vide *Costs*; and *Treble Costs*.

DOUBLE INSURANCE, *contracts*, is where the insured makes two insurances on the same risk, and the same interest. It differs from

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re-insurance in this, that it is made by the insured, with a view of receiving a double satisfaction in case of loss; whereas a re-insurance is made by a former insurer, his executors or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance. The two policies are considered as making but one insurance. They are good to the extent of the value of the effects put in risk; but the insured shall not be permitted to recover a double satisfaction. He can sue the underwriters on both the policies, but he can only recover the real amount of his loss, to which all the underwriters on both shall contribute in proportion to their several subscriptions. Marsh. Ins. B. 1, c. 4, s. 4.

DOUBLE PLEA. Vide *Duplicity*.

DOUBT, is the uncertainty which exists in relation to a fact, a proposition, or other thing; or it is an equipoise of the mind arising from an equality of contrary reasons. Ayl. Pand. 121. The embarrassing position of a judge is that of being in doubt, and it is frequently the lot of the wisest and most enlightened to be in this condition; those who have little or no experience usually find no difficulty in deciding the most problematical questions. Some rules, not always infallible, have been adopted in doubtful cases, in order to arrive at the truth. 1. In civil cases, the doubt ought to operate against him, who having it in his power to prove facts to remove the doubt has neglected to do so. In cases of fraud when there is a doubt, the presumption of innocence (q. v.) ought to remove it. 2. In criminal cases, whenever a reasonable doubt exists as to the guilt of the accused, that doubt ought to operate in his favour.

No judge is presumed to have any doubt on a question of law, and he cannot therefore refuse to give a judgment on that account. Merlin, Répert. h. t.; Ayliff's Pand. b. 2, t. 17; Dig. lib. 34, t. 5; Code, lib. 6, t. 38.

DOWAGER. A widow endowed; one who has a jointure. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen.

DOWER is the right of a woman in a third part of all the lands and tenements in fee simple, fee tail general, or as heir in special tail, of which her deceased husband was seised, either in deed or in law, at any time during the coverture, and of which any issue she might have had, might by possibility have been heir. Litt. § 36. Vide *Estate in Dower*. This is dower at common law. Besides, this in England there are three other species of dower now subsisting; namely, dower by custom, which is, where a widow becomes entitled to a certain portion of her husband's lands in consequence of some local or particular custom: thus by the custom of gavel-kind, the widow is entitled to a moiety of all the lands and tenements, which her husband held by that tenure.—Dower *ad ostium ecclesiæ*, is, when a man of full age comes to the church door to be married, after troth plighted, endows his wife of a certain portion of his lands.—Dower *ex assensu patris*, was only a species of dower *ad ostium ecclesiæ*, made when the husband's father was alive, and the son, with his consent expressly given, endowed his wife, at the church door, of a certain part of his father's lands.—There was another kind, *de la plus belle*, to which the abolition of military tenures has put an end. Vide Cruise's Dig. t. 6, c. 1; 2 Bl. Com. 129; 15 Serg. & Rawle, 72.

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DOWRY, was formerly applied to mean that which a woman brings to her husband in marriage; this is now called a portion. This word is sometimes confounded with dower. Vide Co. Litt. 31; Civ. Code of Lo. art. 2317.

DRAWER, *contracts*. The party who makes a bill of exchange. The obligations of the drawer to the drawee and every subsequent holder lawfully entitled to the possession, that the person on whom he draws is capable of binding himself by his acceptance; that he is to be found at the place where he is described to reside, if that description be mentioned in the bill; that if the bill be duly presented to him, he will accept in writing on the bill itself, according to its tenor, and that he will pay it when it becomes due, if presented in proper time for that purpose; and that if the drawee fail to do either, he, the drawer, will pay the amount, provided he have due notice of the dishonour. The engagement of the drawer of a bill is in all its parts absolute and irrevocable. 2 H. Bl. 378; 3 B. &. P. 291; Poth. Contr. de Change, n. 58; Chit. Bills, 214; Dane's Ab. h. t.

DRIVER. One employed in conducting a coach, carriage, wagon or other vehicle, with horses, mules or other animals. Frequent accidents occur in consequence of the neglect or want of skill of drivers of public stage-coaches, for which the employers are responsible. The law requires that drivers should possess reasonable skill and be of good habits for the journey; if therefore he is not acquainted with the road he undertakes to drive, 3 Bingh. Rep. 314, 321; drives with reins so loose that he cannot govern his horses, 2 Esp. R. 533; does not give notice of any serious danger on the road, 1 Campb. R. 67; takes the wrong side of the road, 4 Esp. R. 273; incautiously comes in collision with another carriage, 1 Stark. R. 423; 1 Campb. R. 167; or does not exercise a sound and reasonable discretion in travelling on the road, to avoid dangers and difficulties, and any accident happens by which any passenger is injured, both he and his employers will be responsible. 2 Stark. R. 37; 3 Engl. C. L. Rep. 233.

DROIT, a French word which in that language signifies the whole collection of laws, written and unwritten, and is synonymous to our word law. With us it means right, jus. Co. Litt. 158. A person was said to have *droit droit*, *plurimum juris*, and *plurimum possessionis*, when he had a freehold, the fee, and the property in him. Ib. 266; Crabb's H. Eng. L. 400.

DRUNKENNESS, intoxication with strong liquor. This is an offence generally punished by local regulations, more or less severely. Although drunkenness reduces a man to a temporary insanity, it does not excuse him or palliate his offence, when he commits a crime during a fit of intoxication, and which is the immediate result of it. When the act is a remote consequence, superinduced by the antecedent drunkenness of the party, as in cases of *delirium tremens* or *mania a potu*, the insanity excuses the act. 5 Mason's R. 28; Amer. Jurist, vol. 3, p. 5–20; Martin & Yeager's R. 133, 147; Dane's Ab. Index, h. t.; 1 Russ. on Cr. 7; Ayliff's Parerg. 231; 4 Bl. Com. 26. Vide *Habitual drunkard*.

DRY EXCHANGE, *contracts*. A term invented for disguising and covering usury, in which something was pretended to pass on both sides, when in truth nothing passed on one side, whence it was called *dry*. Stat. 3 Hen. 7, c. 5.

DRY RENT, *contracts*, rent-

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seck, was a rent reserved without a clause of distress.

DUCES TECUM, *practice, evidence*, i. e. bring with thee. A writ, commonly called a *subpœna duces tecum*, commanding the person to whom it is directed to bring with him some writings, papers, or other things therein specified and described, before the court. 1 Phil. Ev. 386.

DUCKING STOOL, *punishment*, an instrument used in dipping women in the water as a punishment on conviction of being common scolds. It is sometimes confounded with tumbrel (q. v.) This barbarous punishment was never in use in Pennsylvania. 12 Serg. & Rawle, 220.

DUELLING, *crim. law*, is the fighting of two persons one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an affray in this, that the latter occurs on a sudden quarrel, while the former is always the result of design. When one of the parties is killed, the survivor is guilty of murder. 1 Russ. on Cr. 443; 1 Yerger's R. 228; fighting a duel, even where there is no fatal result is of itself a misdemeanor. Vide 2 Com. Dig. 252; Roscoe's Cr. Ev. 610; 2 Chit. Cr. Law, 728; Ib. 848; Com. Dig. Battel, B; 3 Inst. 157; 6 East, 464; Hawk. B. 1, c. 31, s. 21; 3 East R. 581; 3 Bulst 171; 4 Bl. Com. 199. For cases of mutual combat upon a sudden quarrel, vide 1 Russ. on Cr. 495.

DUMB. Vide *Mute*.

DUMB BIDDING, *contracts*. In sales at auction, when the amount which the owner of the thing sold is willing to take for the article, is written and placed by the owner under a candlestick or other thing, and it is agreed that no bidding shall avail unless equal to that, this is called dumb bidding. Babingt. on Auct. 44.

DUNNAGE, *mer. law*, pieces of wood placed against the sides and bottom of the hold of a vessel to preserve the cargo from the effect of leakage, according to its nature and quality. 2 Magens, 101, art. 125, 126; Abbott on Shipp. 227.

DURANTE, a term equivalent to during, which is used in some law phrases, as *durante absentia*, during absence; *durante minore ætate*, during minority; *durante bene placito*, during our good pleasure.

DURANTE ABSENTIA.—When the executor is out of the jurisdiction of the court or officer to whom belongs the probate of wills and granting letters of administration, letters of administration will be granted to another *during the absence* of the executors, and the person thus appointed is called the *administrator durante absentia*.

DURESS is an actual, or a threatened violence or restraint of a man's person contrary to law, to compel him to enter into a contract, or to discharge one. Sir William Blackstone divides duress into two sorts; *first*, duress of imprisonment, where a man actually loses his liberty. If a man is illegally deprived of his liberty until he signs and seals a bond or the like, he may allege this duress and avoid the extorted bond. But if a man be legally imprisoned, and either to procure his discharge, or on any other fair account, seals a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. 2 Inst. 482; 3 Caines's R. 168; 6 Mass. R. 511; 1 Lev. 69; 1 Hen. & Munf. 350. Where the proceedings at law are a mere pretext, the instrument may be avoided. Aleyn, 92; 1 Bl. Com. 136. *Secondly*, Duress per minas, which is either for fear of loss of life, or else for

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fear of mayhem, or loss of limb; and this must be upon a sufficient reason. 1 Bl. Com. 131. In this case a man may avoid his own act. Ib. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces; 1st, for fear of loss of life; 2dly, of member; 3dly, of mayhem; 4thly, of imprisonment. 2 Inst. 483; 2 Roll. Abr. 124; Bac. Ab. Duress.

In Louisiana consent to a contract is void if it be produced by violence or threats, and the contract is invalid. Civ. Code of Louis. art. 1844. It is not every degree of violence or any kind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health, temper and disposition of the party, and other circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration. Ib. art. 1845. A contract by violence or threats, is void, although the party in whose favour the contract is made did not exercise the violence or make the threats, and although he were ignorant of them. Ib. 1846. Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants of the party are the object of them. Ib. 1847. If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract. A just and legal imprisonment, or threats of any measure authorised by law, and the circumstances of the case, are of this description. Ib. 1850. But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; an arrest without cause of action or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure. Ib. 1851. All the above articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it. Ib. 1853.

DUTY, *natural law*, is a human action which is exactly conformable to the laws which require us to obey them. It differs from a legal obligation, because a duty cannot always be enforced by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbours, but no law obliges us to love them. Duties may be considered in the relation of man towards God, towards himself, and towards mankind. 1. We are bound to obey the will of God as far as we are able to discover it, because he is the sovereign Lord of the universe who made and governs all things by his almighty power, and infinite wisdom. The general name of this duty is piety, which consists partly in entertaining just opinions concerning him, and partly in such affections towards him, and such worship of him, as is suitable to these opinions. 2. A man has a duty to perform towards himself; he is bound by the law of nature to protect his life and his limbs; it is his duty, too, to avoid all intemperance in eating and drinking, and in the unlawful gratification of all his other appetites. 3. He has duties to perform towards others. He is bound to do others the same justice which he would have

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a right to expect them to do to him.

DUTIES. In its most enlarged sense, this word is nearly equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense, it is often used as equivalent to *customs*, (q. v.) or *imposts*, (q. v.) Story Const. § 949. Vide for the rate of duties payable on goods and merchandize. Gord. Dig. B. 7, t. 1, c. 1; Story's L. U. S. Index, h. t.

DUPLICATE, is the double of any thing. It is usually applied to agreements, letters, receipts and the like, when two originals are made of either of them. Each copy has the same effect. In the English law, it also signifies the certificate of discharge given to an insolvent debtor, who takes the benefit of the act for the relief of insolvent debtors.

DUPLICITY, *pleading*. Duplicity, or double pleading, consists in alleging, for one single purpose or object, two or more distinct grounds of complaints or defence, when one of them would be as effectual in law, as both or all. This the common law does not allow, because it produces useless prolixity, and always tends to confusion, and to the multiplication of issues. Co. Litt. 304, a; Finch's Law, 393; 3 Bl. Com. 311; Bac. Ab. Pleas, K 1. Duplicity may be in the declaration, or the subsequent proceedings. Duplicity in the declaration consists in joining, in one and the same count, different grounds of action, of different natures. Cro. Car. 20; or of the same nature, 2 Co. 4 a; 1 Saund. 58, n. 1; 2 Ventr. 198; Steph. Pl. 266; to enforce only a single right of recovery. This is a fault in pleading, only because it tends to useless prolixity and confusion, and is, therefore, only a fault in form. The rule forbidding double pleading "extends," according to Lord Coke, "to pleas perpetual or peremptory, and not to pleas dilatory; for in their time and place a man may use divers of them." Co. Litt. 304, a. But by this is not meant that any dilatory plea may be double, or, in other words, that it may consist of different matters, or answers to one and the same thing; but merely, that as there are several kinds or classes of dilatory pleas, having distinct offices or effects, a defendant may use "divers of them" successively, (each being in itself single,) in their proper order. Steph. Pl. App. note 56. The inconveniences which were felt in consequence of this strictness were remedied by the statute 4 Ann, c. 16, s. 4, which provides that "it shall be lawful, for any defendant, or tenant in any action or suit, or for any plaintiff in replevin, in any court of record, with leave of the court to plead as many several matters thereto as he shall think necessary for his defence." This provision, or a similar one is in force probably in most of the states of the American Union. Under this statute, the defendant may, with leave of court, plead as many different pleas in bar, (each being in itself single,) as he may think proper; but although this statute allows the defendant to plead several distinct and substantive matters of defence, in several distinct pleas, to the whole, or one and the same part of the plaintiff's demand; yet, it does not authorise him to allege more than one ground of defence in one plea. Each plea must still be single, as by the rules of the common law. Lawes, Pl. 131; 1 Chit. Pl. 512. This statute extends only to pleas to the declaration, and does not embrace replications, rejoinders, or any of the subsequent pleadings. Lawes, Pl. 132; 2 Chit. Pl. 421; Com. Dig. Pleader, E 2; Story's Pl. 72, 76. Vide, gene-

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rally; 1 Chit. Pl. 230, 512; Steph. Pl. c. 2, s. 3, rule 1; Gould on Pl. c. 8, p. 1; Archb. Civ. Pl. 191; Doct. Pl. 222; 5 John. 240; 8 Vin. Ab. 183.

DYVOUR in the Scotch law, is a bankrupt.

DYVOURS HABIT, in Scotland, is a habit which debtors who are set free on a *cessio bonorum*, are obliged to wear, unless in the summons and process of *cessio*, it be libelled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Pr. L. Scot. 4, 3, 13.

E.

E PLURIBUS UNUM, one of many. The motto of the arms of the United States.

EAGLE, *money*, a gold coin of the United States, of the value of ten dollars. It weighs two hundred and fifty-eight grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of alloy. Act of January 18th, 1837, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide *Money*.

EARL, in the English law, is a title of nobility next below a marquis and above a viscount. Earls were anciently called *comites*, because they were wont *comitari regem*, to wait upon the king for council and advice. He was also called *shireman*, because each earl had the civil government of a shire. After the Norman conquest they were called *counts*, whence the shires obtained the names of counties. They have now nothing to do with the government of counties, which has entirely devolved on the sheriff, the earl's deputy, or *vice-comes*.

EARNEST, *contracts*, is the payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract. The effect of earnest is to bind the goods sold, and upon their being paid for without default, the buyer is entitled to them. But notwithstanding the earnest the money must be paid upon taking away the goods, because no other time for payment is appointed; earnest only binds the bargain, and gives the buyer a right to demand, but a demand without payment of the money is void; after earnest given the vendor cannot sell the goods to another, without a default in the vendee, and therefore if the latter does not come and pay, and take the goods, the vendor ought to go and request him, and then if he does not come, pay for the goods and take them away in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person. 1 Salk. 113; 2 Bl. Com. 447; 2 Kent, Com. 389; Ayl. Pand. 450; 3 Campb. R. 426.

EASEMENTS, *estates*. An easement is defined to be a liberty, privilege or advantage, which one man may have in the lands of another, without profit; it may arise by deed or prescription. Vide 1 Serg. & Rawle, 298; 5 Barn. & Cr. 221. This is an incorporeal hereditament, and corresponds nearly to the servitudes or services of the civil law. Vide Lilly's Reg. h. t.; 3 Kent, Com. 344; Cruise, Dig. t. 31, c. 1, s. 17.

EAT INDE SINE DIE. Words used on an. acquittal, or when a prisoner is to be discharged, *that he may go without day*, that is, that he

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be dismissed. Dane's Abr. Index, h. t.

EAVES-DROPPERS, *crim. law*, are such persons as wait under walls or windows or the eaves of a house, to listen after discourses, and thereupon to frame mischievous tales. The common law punishment for this offence is fine, and finding sureties for good behaviour. 4 Bl. Com. 167; Burn's Just. h. t.; Dane's Ab. Index, h. t.

ECCHYMOSIS, *medical jur.* Blackness. It is an extravasation of blood by rupture of capillary vessels, and hence it follows contusion, but it may exist, as in cases of scurvy, and other morbid conditions without the latter. Ryan's Med. Jur. 172.

ECCLESIASTICAL. Belonging to, or set apart for the church; as distinguished from civil or secular.

ECCLESIASTICAL COURTS, *Engl. law*, are courts held by the king's authority as supreme governor of the church, for matters which chiefly concern religion. These six courts which may be ranged under this class; 1. The Archdeacon's court; 2. The Consistory court; 3. The Court of Arches; 4. The Court of Peculiars; 5. The Prerogative court; and, 6. The Court of Delegates, which is the great court of appeals in all ecclesiastical causes.

ECCLESIASTICAL LAW.—Vide *Law*, *Canon*.

EDICT, in some countries, is a law ordained by the sovereign, by which he forbids or commands something, and extends either to the whole country, or only to some particular provinces. Edicts are somewhat similar to the president's proclamation; their difference consists in this, that the former have authority and force of law in themselves, whereas the latter are only declarations of a law, which has been before enacted by congress.

Among the Romans this word sometimes signified a *citation* to appear before a judge. The edicts of the emperors, also called *constitutiones principum*, were new laws which they made of their own motion, either to decide cases which they had foreseen, or to abolish or change some ancient laws. They were different from their rescripts or decrees. These edicts were the sources which contributed to the formation of the Gregorian, Hermogenian, Theodorian, and Justinian codes.

EDICTS OF JUSTINIAN, are thirteen constitutions or laws of that prince, found, in most editions of the *corpus juris civilis*, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EDICT, *perpetual*, is the title of a compilation of all the edicts. This collection was made by Salvius Julianus, a jurist who was selected by the emperor Adrian for the purpose, and who performed his task with credit to himself.

EE, in the termination of words, has a passive signification, usually denoting the person to whom an act is done; as the grantee, he to whom a grant is made, the donee, he to whom a gift is made; the lessee, he to whom a lease is made. Vide Litt. s. 57; 2 Bl. Com. 140.

EFFECT. The operation of a law, an agreement, or an act, is called its effect. What is null produces no effect.

EFFECTS. This word used *simpliciter* is equivalent to *property* or *worldly substance*, and may carry the whole personal estate, when used in a will. 5 Madd. Ch. Rep. 72; Cowp. 299; 15 Ves. 507; 6 Madd. Ch. R. 119. But when it is preceded and connected with words of a narrower import, and the bequest is not residuary, it will be confined to species of property *ejusdem generis*

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with those previously described. 13 Ves. 39; 15 Ves. 326; Roper on Leg. 210.

EFFIGY, *crim. law*, is the figure or representation of a person. To make the effigy of a person with an intent to make him the object of ridicule is a libel, (q. v.) Hawk. b. 1, c. 73, s. 2; 14 East, 227; 2 Chit. Cr. Law, 866.

EIGNE, *persons*. This is a corruption of the French word *ainé*, eldest or first born. It is frequently used in our old law books; *bastard eigné* signifies an elder bastard when spoken of two children one of whom was born before the marriage of his parents, and the other after; the latter is called *mulier puisne*. Litt. sect. 399.

EIRE or EYRE, *English law*, signifies a journey. Justices in eire, were itinerant judges, who were sent once in seven years with a general commission in divers counties, to hear and determine such causes as were called pleas of the crown.

EJECTMENT, *remedies*, is the name of an action which lies for the recovery of the possession of real property, and of damages for the unlawful detention. This subject may be considered with reference, 1st, to the form of the proceedings; 2d, to the nature of the property or thing to be recovered; 3d, to the right to such property; 4th, to the nature of the ouster or injury; 5th, to the judgment.

1. In the English practice, which is still adhered to in some states, in order to lay the foundation of this action, the party claiming title enters upon the land, and then gives a lease of it to a third person, who being ejected by the other claimant, or some one else for him, brings a suit against the ejector in his own name; to sustain the action the lessee must prove a good title in the lessor, and, in this collateral way, the title is tried. To obviate the difficulty of proving these forms, this action has been made substantially, a fictitious process. The defendant agrees, and is required to confess that a lease was made to the plaintiff, that he entered under it, and has been ousted by the defendant; or, in other words, to admit lease, entry, and ouster, and that he will rely only upon his title. An actual entry, however, is still supposed, and, therefore, an ejectment will not lie, if the right of entry is gone. 3 Bl. Com. 199 to 206. In Pennsylvania, New York, and perhaps other states, these fictions have all been abolished, and the writ of ejectment sets forth the possession of the plaintiff, and an unlawful entry on the part of the defendant.

2. This action is in general sustainable only for the recovery of the possession of property upon which an entry might in point of fact be made, and of which the sheriff could deliver actual possession; it cannot, therefore, in general, be sustained for the recovery of property which in legal consideration is not tangible, as, for a rent, or other incorporeal hereditaments, a water course, or for a mere privilege of a landing held in common with other citizens of a town. 2 Yeates, 331; 3 Bl. Com. 206; Yelv. 143; Run. Eject. 121 to 136; Ad. Ej. c. 2; 9 John. 298; 16 John. 284.

3. The title of the party having a right of entry may be in fee-simple, fee-tail or for life or years; and if it is the *best* title to the property the plaintiff will succeed. The plaintiff must recover on the strength of his title, and not on the deficiency of that of the defendant. Addis. R. 390; 2 Serg. & Rawle, 65; 3 S. & Rawle, 288; 4 Burr. 2487; 1 East, R. 246; Run. Ej. 15; 5 T. R. 110.

4. The injury sustained must in

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fact or in point of law have amounted to an ouster or dispossession of the lessor of the plaintiff, or of the plaintiff himself, where the fictions have been abolished; for if there be no ouster, or the defendant be not in possession at the time of bringing the action, the plaintiff must fail. 7 T. R. 327; 1 B. & P. 573; 2 Caines's R. 335.

5. The judgment is that the plaintiff do recover his term, of and in the tenements, and, unless the damages be remitted, as is most usual, the damages assessed by the jury with the costs of increase.

Vide, generally, Adams on Ej.; Run. Ej.; Com. Dig. h. t.; Dane's Ab. h. t.; 1 Chit. Pl. 188 to 193; 18 E. C. L. R. 158; Woodf. L. & T. 354 to 417; 2 Phil. Ev. 169; 8 Vin. Ab. 323; Arch. Civ. Pl. 503; 2 Sell. Pr. 85; Chit. Pr. Index, h. t.; 2 Bac. Ab. 406; Doct. Pl. 227; Am. Dig. h. t.

ELECTION. This term, in its most usual acceptation, signifies the choice which several persons collectively make of a person to fill an office or place; in another sense, it means the choice which is made by a person having the right, of selecting one of two alternative contracts, or rights. Elections, then, are of men or of things.

§ 1. Of men. These are either public elections or elections by companies or corporations.

1. Public elections. These should be free and uninfluenced either by hope or fear. They are, therefore, generally made by ballot, (though there are exceptions, as in Virginia, where elections to any office of honour, trust, or profit, are *viva voce*, Const of Virg. art. 3, § 15;) except those by persons in their representative capacities, which are *viva voce*. And to render this freedom as perfect as possible, electors are generally exempted from arrest in all cases, except treason, felony, or breach of the peace, during their attendance on elections, and in going to and returning from them. And provisions are made by law in several states to prevent the interference or appearance of the military on the election-ground.

One of the cardinal principles on the subject of elections is, that the person who receives a majority or plurality of votes is the person elected. Generally a plurality of the votes of the electors present is sufficient, but in some states, as in Maine, Const. art. 4, part 1, § 5, a majority of *all* the votes is required. Each elector has one vote.

2. Elections by corporations or companies are made by the members in such a way as their respective constitutions or charters direct. It is usual in these cases to vote a greater or lesser number of votes in proportion as the voter has a greater or less amount of the stock of the company or corporation, if such corporation or company be a pecuniary institution. And the members are frequently permitted to vote by proxy.

§ 2. The election of things. 1. In contracts when a debtor is obliged, in an alternative obligation, to do one of two things, as to pay one hundred dollars or deliver one hundred bushels of wheat, he has the choice to do the one or the other, until the time of payment; he has not the choice, however, to pay a part in each. Poth. Obl. part 2, c. 3, art. 6, No. 247. Or if a man sell or agree to deliver one of two articles, as a horse or an ox, he has the election till the time of delivery. It being a rule that "in case an election be given of two several things, always he, which is the first agent, and which ought to do the first act, shall have the election." Co. Litt. 145, a. On a failure on the part of

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the person who has the right to make his election in proper time, the right passes to the opposite party. Co. Litt. 145, a.; Viner, Abr. Election, B, C; Poth. Obl. No. 247.

2. Courts of equity have adopted the principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or will, without giving full effect to it, in every respect, so far as such person is concerned. This doctrine is called into exercise when a testator gives what does not belong to him, but to some other person, and gives to that person some estate of his own; by virtue of which gift a condition is implied, either that he shall part with his own estate or shall not take the bounty. 9 Ves. 515; 10 Ves. 609; 13 Ves. 220. In such a case, equity will not allow the first legatee to insist upon that by which he would deprive another legatee under the same will of the benefit to which he would be entitled, if the first legatee permitted the whole will to operate, and therefore compels him to make his election between his right independent of the will, and the benefit under it. This principle of equity does not give the disappointed legatee the right to detain the thing itself, but gives a right to compensation out of something else. 2 Rop. Leg. 378, ch. 23, s. 1. In order to impose upon a party claiming under a will the obligation of making an election, the intention of the testator must be expressed, or clearly implied in the will itself, in two respects; first, to dispose of that which is not his own; and, secondly, that the person taking the benefit under the will should take under the condition of giving effect thereto. 6 Dow. P. C. 179; 13 Ves. 174; 15 Ves. 390; 1 Bro. C. C. 492. See generally, on this doctrine, Roper's Legacies, ch. 23; and the learned notes of Mr. Swanston to the case Dillon v. Parker, 1 Swanst. R. 394, and 381; Com. Dig. Appendix, tit. Election.

There are many other cases where a party may be compelled to make an election, which it does not fall within the plan of this work to consider. The reader will easily inform himself by examining the works above referred to.

3. The law frequently gives several forms of action to the injured party to enable him to recover his rights. To make a proper election of the proper remedy is of great importance. To enable the practitioner to make the best election, Mr. Chitty, in his valuable Treatise on Pleadings, p. 207 et seq. has very ably examined the subject and given rules for forming a correct judgment; as his work is in the hands of every member of the profession a reference to it here is all that is deemed necessary to say on this subject. See also Hammond on Parties to Actions.

ELECTION OF ACTIONS, *in practice.* It is frequently at the choice of the plaintiff what kind of an action to bring; a skilful practitioner will naturally select that in which his client can most easily prove what is his interest in the matter affected; may recover all his several demands against the defendant; may preclude the defendant from availing himself of a defence, which he might otherwise establish; may most easily introduce his own evidence; may not be embarrassed by making too many or too few persons parties to the suit; may try it in the county most convenient to himself; may demand bail, where it is for the plaintiff's interest; may obtain a judgment with the least expense and delay; may entitle himself to costs; and may demand bail in error. 1 Chit. Pl. 207 to 214.

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ELECTION OF A DEVISE OR LEGACY. It is an admitted principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or a will, without giving full effect to it in every respect, so far as such person is concerned. When a testator, therefore, gives what belongs to another and not to him, and gives to the owner some estate of his own; this gift is under an implied condition either that he shall part with his own estate, or not take the bounty. 9 Ves. 515; 10 Ves. 609; 13 Ves. 220; 2 Ves. 697; 1 Suppl. to Ves. Jr. 222; Ib. 55; Ib. 340. If, for example, a testator undertake to dispose of an estate belonging to B, and devise to B other lands, or bequeath to him a legacy by the same will, B will not be permitted to keep his own estate, and enjoy at the same time the benefit of the devise or bequest made in his favour, but must elect whether he will part with his own estate, and accept the provisions in the will, or continue in possession of the former and reject the latter. See 2 Vern. 581; Forr. 176; 1 Swanst. 436, 447; 1 Bro. C. C. 480.

The foundation of the equitable doctrine of election, is the intention, explicit or presumed, of the author of the instrument to which it is applied, and such is the import of the expression by which it is described as proceeding, sometimes on a tacit, implied or constructive condition, sometimes on equity. See Cas. Temp. Talb. 183; 2 Vern. 582; 2 Ves. 14; 1 Eden, R. 536; 1 Ves. 306. See, generally, 1 Swan. 380 to 408, 414, 425, 432, several very full notes.

As to what acts of acceptance or acquiescence will constitute an implied election, see 1 Swan. R. 381, n. a; and the cases there cited.

ELECTOR, *government*, one who has the right to make choice of public officers; one who has a right to vote. The qualifications of electors, are generally the same as those required in the person to be elected; to this, however, there is one exception, a naturalized citizen may be an elector of president of the United States, although he could not constitutionally be elected to that office.

ELECTORS OF PRESIDENT, are persons elected by the people, whose sole duty is to elect a president of the United States. The constitution provides, Amendm. art. 12, that "the electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose,

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shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States." Vide 3 Story, Const. §1448 to 1470.

ELEEMOSYNARY, charitable, alms-giving. Eleemosynary corporations are confined to colleges, schools and hospitals. 1 Woodd. Lect. 474; Skinn. 447; 1 Lord Raym. 5; 2 T. R. 346.

ELEGIT, *Engl. practice, remedies*, a writ of execution directed to the sheriff, commanding him to make delivery of a moiety of the party's land, and all his goods, beasts of the plough only excepted. The sheriff, on the receipt of the writ, holds an inquest to ascertain the value of the lands and goods he has seized, and then they are delivered to the plaintiff, who retains them until the whole debt and damages have been paid and satisfied; during that term he is called tenant by elegit. Co. Litt. 289. Vide Pow. Mortg. Index, h. t.; Wats. Sher. 206. As to the law of the several states on the subject of seizing land and extending it, see 1 Hill. Ab. 555, 6.

ELIGIBILITY, capacity to be elected. Citizens are in general eligible to all offices, the exceptions arise from the want of those qualifications which the constitution requires; these are such as regard his person, his property, or relations to the state. 1. In general, no person is eligible to *any* office, until he has attained the full age of twenty-one years; no one can be elected a senator of the United States, who shall not have attained the age of thirty years, been a citizen of the United States nine years, and who shall not be an inhabitant of the state for which he shall be chosen. Const. art. 1, s. 3. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, is eligible to the office of president, and no person shall be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. Const. art 2, s. 1. —2. A citizen may be ineligible in consequence of his relations to the state, for example, holding an office incompatible with the office sought. Vide *Ineligibility*. Because he has not paid the taxes the law requires; because he has not resided a sufficient length of time in the state.— 3. He may be ineligible for want of certain property qualifications required by the constitution of the state. Const. of Virginia, art. 3, s. 7.

ELISORS, *practice*, are two persons appointed by the court to return a jury, when the sheriff and the coroner have been challenged as incompetent, in this case the elisors return the writ of venire directed to them, with a panel of the jurors' names, and

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their return is final, no challenge being allowed to their array. 3 Bl. Com. 355.

ELOIGNE, *practice*, this word signifies, literally, to remove at a great distance; to remove afar off. It is used as a return to a writ of replevin, when the chattels have been removed out of the way of the sheriff. Vide *Elongata*.

ELONGATA, *practice*, is the return made by the sheriff to a writ of replevin, when the goods have been removed to places unknown to him. See the form of this return, Wats. Sher. Appx. c. 18, s. 3, p. 454; 3 Bl. Com. 148. On this return, the plaintiff is entitled to a capias in withernam. Vide *Withernam*, and Wats. Sher. 300, 301. The word *eloigné*, (q. v.) is sometimes used as synonymous with elongata.

ELOPEMENT, is the departure of a married woman from her husband, and dwelling with an adulterer. While the wife resides with her husband, and cohabits with him, however exceptionable her conduct may be, yet he is bound to provide her with necessaries, and to pay for them; but when she elopes, the husband is no longer liable for her alimony, and is not bound to pay debts of her contracting, when the separation is notorious and; whoever gives her credit under these circumstances, does so at his peril. Chit. Contr. 49; 4 Esp. R. 42; 3 Pick. R. 289; 1 Str. R. 647; 706; 6 T. R. 603; 11 John. R. 281; 12 John. R. 293; Bull. N. P. 135; Stark. Ev. part 4, p. 699.

ELSEWHERE, in another place. 1. Where one devises all his lands in A, B, and C, three distinct towns, and *elsewhere*, and had lands of much greater value than those in A, B, and C, in another county, the lands in the other county were decreed to pass by the word elsewhere; and by Lord Chancellor King, assisted by Raymond, Ch. J., and other judges, the word elsewhere, was the same as if the testator had said he devised all his lands in the three towns particularly mentioned, or in any other place whatever. 3 P. Wms. 56. See also Prec. Chan. 202; 2 Vern. 461; 2 Vern. 560; 3 Atk. 492; Cowp. 360; Id. 808; 2 Burr. 912; 5 Bro. P. C. 496, S. C., 1 East, 456; 1 Vern. 4, n.—2. As to the effect of the word elsewhere, in the case of lands not purchased at the time of making the will, see 3 Atk. 254; 2 Vent. 351. Vide *Alibi*.

EMANCIPATION, is an act by which a person who was once in the power of another, is rendered free. By the laws of Louisiana, minors may be emancipated. Emancipation is express or implied.

Express emancipation. The minor may be emancipated by his father, or if he has no father, by his mother, when he shall have arrived at the age of fifteen years. This emancipation takes place by the declaration to that effect of the father or mother, before a notary public, in the presence of two witnesses. The orphan minor, may likewise be emancipated by the judge, but not before he has arrived at the full age of eighteen years, if the family meeting called to that effect, be of opinion that he is able to administer his property. The minor may be emancipated against the will of his father and mother when they ill treat him excessively, refuse him support, or give him corrupt example.

The marriage of the minor is an implied emancipation.

The minor who is emancipated, has the full administration of his estate, and may pass all acts which may be confined to such administration; grant leases, receive his revenues and moneys which may be due

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him, and give receipts for the same. He cannot bind himself legally by promise or obligation, for any sum exceeding the amount of one year of his revenue. When he is engaged in trade, he is considered as having arrived to the age of majority, for all acts which have any relation to such trade.

The emancipation, whatever be the manner in which it may have been effected, may be revoked, whenever the minor contracts engagements which exceed the limits prescribed by law.

See Civil Code of Louisiana, B. 1, tit. 8, c. 3; Code Civ. B. 1, tit. 10, c. 2; Dict. de Droit, par Ferrière; Dict de Jurisp. art. Emancipation.

By the English law, filial emancipation is recognized chiefly in relation to the parochial settlement of paupers. See 3 T. R. 355; 6 T. R. 247; 8 T. R. 479; 2 East, 276; 10 East, 88.

EMBARGO, *in maritime law*, is a proclamation or order of state, usually issued in time of war, or threatened hostilities, prohibiting the departure of ships or goods from some or all the ports of such state until further order. The detention of ships by an embargo is such an injury to the owner as to entitle him to recover on a policy of insurance against "arrests or detainments." And whether the embargo be legally or illegally laid, the injury to the owner is the same; and the insurer is equally liable for the loss occasioned by it. Marsh. Ins. B. 1, c. 12, s. 5; 1 Kent, Com. 60.

EMBEZZLEMENT, *crim. law*, is the fraudulently removing and secreting of personal property, with which the party has been entrusted, for the purpose of applying it to his own use.

The act of April 30, 1790, s. 16, 1 Story, L. U. S. 86, provides that if any person within any of the places under the sole and exclusive jurisdiction of the United States, or upon the high seas, shall take and carry away, with an intent to steal or purloin, the personal goods of another; or if any person or persons, having, at any time hereafter, the charge or custody of any arms, ordnance, munition, shot, powder, or habiliments of war, belonging to the United States, or of any victuals provided for the victualling of any soldiers, gunners, marines or pioneers, shall, for any lucre or gain, or wittingly, advisedly, and of purpose to hinder or impede the service of the United States, embezzle, purloin or convey away, any of the said arms, ordnance, munition, shot or powder, habiliments of war, or victuals, that then and in every of the cases aforesaid, the person or persons so offending, their counsellors, aiders and abettors (knowing of and privy to the offences aforesaid) shall, on conviction, be fined not exceeding the fourfold value of the property so stolen, embezzled or purloined; the one moiety to be paid to the owner of the goods, or the United States, as the case may be, and the other moiety to the informer and prosecutor, and be publicly whipped, not exceeding thirty-nine stripes.

The act of April 20, 1818, 3 Story, 1715, directs that wines and distilled spirits shall, in certain cases be deposited in the public warehouses of the United States, and then it is enacted, s. 5, that if any wines, or other spirits, deposited under the provisions of this act, shall be embezzled, or fraudulently hid or removed, from any store or place wherein they shall have been deposited, they shall be forfeited, and the person or persons so embezzling, hiding, or removing, the same, or aiding or assisting therein, shall be liable to the same pains and penalties as if such wines or spirits had been fraud-

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ulently unshipped or landed without payment of duty.

By the 21st section of the act to reduce into one the several acts establishing and regulating the post-office, passed March 3, 1825, 3 Story, 1991, the offence of embezzling letters, is punished with fine and imprisonment. Vide *Letter*.

The act more effectually to provide for the punishment of certain crimes against the United States and for other purposes, passed March 3, 1825, s. 24, 3 Story, 2006, enacts that, if any of the gold or silver coins which shall be struck or coined at the mint of the United States, shall be debased, or made worse, as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to the several acts relative thereto, through the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise, with a fraudulent intent; and if any of the said officers or persons shall embezzle any of the metals which shall, at any time, be committed to their charge for the purpose of being coined; or any of the coins which shall be struck or coined, at the said mint; every such officer, or person who shall commit any, or either, of the said offences, shall be deemed guilty of felony, and shall be sentenced to imprisonment and hard labour for a term not less than one year, nor more than ten years, and shall be fined in a sum not exceeding ten thousand dollars.

When an embezzlement of a part of the cargo takes place on board of a ship either from the fault, fraud, connivance or negligence of any of the crew, they are bound to contribute to the reparation of the loss, in proportion to their wages. When the embezzlement is fixed on any individual, he is solely responsible; when it is made by the crew or some of the crew, but the particular offender is unknown, and from the circumstances of the case, strong presumptions of guilt apply to the whole crew, all must contribute. The presumption of innocence is always in favour of the crew, and the guilt of the parties must be established beyond all reasonable doubt, before they can be required to contribute. 1 Mason's R. 104; 4 B. & P. 347; 3 Johns. R. 17; 1 Marsh. Ins. 241; Dane's Ab. Index, h. t.; Wesk. Ins. 194; 3 Kent, Com. 151.

EMBLEMENTS, *rights*. By this term is understood the crops growing upon the land. By crops is here meant the products of the earth which grow yearly and are raised by annual expense and labour, or "great manurance and industry," such as grain; but not fruits which grow on trees which are not to be planted yearly, grass, and the like, though they are annual. Co. Litt. 55, b; Com. Dig. Biens, G. It is a general rule that when the estate is terminated by the act of God in any other way than by his death, the tenant for life is entitled to the emblements, whether such termination arise by the act of God or by the act of law; and when he dies before harvest time, his executors shall have the emblements, as a return for the labour and expense of the deceased in tilling the ground. 9 Johns. R. 112; 1 Chit. Pr. 91; 8 Vin. Ab. 364; Woodf. L. & T. 237; Toll. Ex. book 2, c. 4; Bac. Ab. Executors, H 3; Co. Litt. 55; Com. Dig. Biens, G; Dane's Ab. Index, h. t.; 1 Penna. R. 471; 3 Penna. R. 496; Ang. Wat. Co. 1.

EMBRACEOR, *crim. law*, he who, when a matter is on trial between party and party, comes to the bar with one of the parties, and being bribed thereto, endeavours to

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corrupt the judge. Co. Litt. 369.

EMBRACERY, *crim. law*, is an attempt to corrupt or influence a jury, or any way incline them to be more favourable to the one side than the other, by money, promises, threats, or persuasions; whether the juror on whom such attempt is made give any verdict or not, or whether the verdict be true or false. Hawk. 259.

EMENDALS, *Engl. law*. This ancient word is said to be used in the accounts of the Inner Temple, where so much in emendals at the foot of an account signifies so much in bank, in stock, for the supply of emergencies. Cunn. L. D.

EMIGRANT, one who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property with him. Vatt. b. 1, c. 19, § 224.

EMIGRATION, the act of removing from one place to another. It is sometimes used in the same sense as expatriation, (q. v.) but there is some difference in the signification. Expatriation is the act of abandoning one's country, while emigration is, perhaps not strictly, applied to the act of removing from one part of the country to another. V. 2 Kent, Com. 36.

EMISSION, *med. jur.* The act by which any matter whatever is thrown from the body; thus it is usual to say, emission of urine, emission of semen, &c. In cases of rape when the fact of penetration is proved, it may be left to the jury whether emission did or did not take place. Proof of emission would perhaps be held to be evidence of penetration. Addis. R. 143; 2 So. Car. Const. R. 351; 2 Chitty Cr. Law, 810; 1 Beck's Med. Jur. 140.

EMMENAGOGUES, *med. jur.*, the name of a class of medicines which are believed to have the power of favouring the discharge of the menses. These are *black hellebore*, *savine*, (vide *Juneperius Sabina*,) *madder*, *mercury*, *polygala senega*, and *pennyroyal*. They are sometimes used for the criminal purpose of producing abortion, (q. v.) They always endanger the life of the woman. 1 Beck's Med. Jur. 316; Dungl. Med. Dict. h. t.; Parr's Med. Dict. h. t.; 3 Paris and Fonbl. Med. Jur. 88.

TO EMPANEL, *practice*, is to make a list or roll, by the sheriff or other authorised officer, of the names of jurors who are summoned to appear for the performance of such service as jurors are required to perform.

EMPEROR, *an officer*. This word is synonymous with the latin *imperator*, they are both derived from the verb *imperare*. Literally it signifies, *he who commands*. Under the Roman republic, the title of emperor was the generic name given to the commanders-in-chief in the armies. But even then the application of the word was restrained to the successful commander who was declared emperor by the acclamations of the army, and was afterwards honoured with this title by a decree of the senate. It is now used to designate some sovereign prince who bears this title. Ayl. Pand. tit. 23.

EMPLOYER, *in contracts*, is he who hires another to perform labour or services for him. As to his duties towards those whom he has hired, see Story on Bailm. § 425.

ENCEINTE, *med. jur.*, a French word which signifies pregnant: when a woman is pregnant, and is convicted of a capital crime she cannot be punished till after her delivery. In the English law where a widow is suspected to feign herself with child, in order to produce a suppositious heir to the estate, the

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presumptive heir may have a writ *de ventre inspiciendo*, to examine whether she be with child or not. Cro. Eliz. 566; 4 Bro. C. C. 90. As to the signs of pregnancy, see 1 Beck's Med. Jur. 157. See generally, 4 Bl. Com. 394; 2 Pr. Wms. 591; 1 Cox, C. C. 297; and *Pregnancy; Privement enceinte.*

ENCROACHMENT, an unlawful gaining upon the right or possession of another; as when a man sets his fence beyond his line, in this case the proper remedy for the party injured is an action of ejectment, or an action of trespass.

ENCUMBRANCE, is an embarrassment of an estate or property, so that it cannot be disposed of without being subject to it. A mortgage, a judgment, a lien for taxes, are examples of encumbrances.

ENDEAVOUR, *crim. law*, is an attempt, (q. v.) Vide *Revolt.*

ENDORSEMENT. V. *Indorsement.*

ENDOWMENT. The bestowing or assuring of dower to a woman. It is sometimes used metaphorically for the setting a provison for a charitable institution, as the endowment of a hospital.

ENEMY, *international law*. By this term is understood the whole body of a nation at war with another, hence we say the enemy. It also signifies a citizen or subject of such a nation, as when we say an alien enemy. An enemy cannot, as a general rule, enter into any contract which can be enforced in a court of law; but the rule is not without exceptions; as for example, when a state permits expressly its own citizens to trade with the enemy; and perhaps a contract for necessaries, or for money to enable the individual to get home, might be enforced. 7 Pet. R. 586. An alien enemy cannot, in general, sue during the war a citizen of the United States either in the courts of the United States or those of the several states. 1 Kent, Com. 68; 15 John. R. 57; S. C. 16 John. R. 438; vide Marsh. Ins. c. 2, s. 1; Park. Ins. Index, h. t.; Wesk. Ins. 197; Phil. Ins. Index, h. t.; Chit. Com. Law, Index, h. t.; Chit. Law of Nat. Index, h. t.

TO ENFRANCHISE, to make free; to incorporate a man in a society or body politic. Cunn. L. D. h. t. Vide *Disfranchise.*

TO ENGROSS, *practice, conveyancing*, to copy the rude draught of an instrument in a fair and large hand.

ENJOYMENT, is the right which a man possesses of receiving all the product of a thing for his necessity, his use or his pleasure.

TO ENROLL, to register; to enter on the rolls of chancery, or other courts; to make a record.

ENROLLMENT, *Engl. law*, is the registering or entering in the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as, a recognizance, a deed of bargain and sale, and the like. Jacob.

ENTRY, *estates, rights*, is the taking possession of lands by the legal owner. When another person has taken possession of lands or tenements, and the owner does peaceably make an entry thereon, and declare that he thereby takes possession of the same, he shall by this notorious act of ownership which is equal to a feodal investiture, be restored to his original right. 3 Bl. Com. 174. A right of entry was not assignable at common law, and statutes were made to punish such as bought such titles. Co. Litt. 214 a. V. *Buying of titles*, as to the law on this subject in the United States, and 4 Kent, Com. 439; 2 Hill. Ab. c. 33, § 42 to 52; also article *Re-*

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entry; 2 Bac. Ab. 307 to 315; 8 Vin. Ab. 441.

In another sense entry signifies the going upon another man's lands or his tenements. An entry, in this sense may be justifiably made on another's land or house, first, when the law confers an authority; and secondly, when the party has authority in fact. First, 1. An officer may enter the close of one against whose person or property he is charged with the execution of a writ; in a civil case the officer cannot open (even by unlatching) the outer inlet to a house, as a door or window opening into the street, 18 Edw. 4, Easter, 19, pl. 4; Moore, pl. 917, p. 668; Cooke's case, Wm. Jones, 429; although it has been closed for the purpose of excluding him. Cowp. 1. But in a criminal case a constable may break open an outer door to arrest one within suspected of felony. 13 Edw. 4, Easter, 4, p. 9. If the outer door or window be open he may enter through it to execute a civil writ, Palm. 52; 5 Rep. 91; and, having entered, he may, in every case, if necessary, break open an inner door. 1 Brownl. 50.—2. The lord may enter to distrain, and go into the house for this purpose, the outer door being open. 5 Rep. 91.—3. The proprietor of goods or chattels may enter the land of another upon which they are placed, and remove them, provided they are there without his default; as where his tree has blown down into the adjoining close by the wind, or his fruit has fallen from a branch which overhung it. 20 Vin. Abr. 418.—4. If one man is bound to repair a bridge, he has a right of entry given him by law for that purpose. Moore, 889.—5. A creditor has a right to enter the close of his debtor to demand the duty owing, though it is not to be rendered there. Cro. Eliz. 876.—6. If trees are excepted out of a demise, the lessor has the right of entering to prune or fell them. Cro. Eliz. 17; 11 Rep. 53.—7. Every traveller has by law the privilege of entering a common inn, at all seasonable times, provided the host has sufficient accommodation, which, if he has not, it is for him to declare.—8. Every man may throw down a public nuisance, and a private one may be thrown down by the party grieved, and this before any prejudice happens, but only from the probability that it may happen. 5 Rep. 102; and see 1 Brownl. 212; 12 Mod. 510; Wm. Jones, 221; 1 Str. 683. To this end the abator has authority to enter the close in which it stands. See *Nuisance.*—9. An entry may be made on the land of another to exercise therein an incorporeal right or hereditament to which he is entitled. Hamm. N. P. 172.

ENTRY, *commercial law*, the act of setting down the particulars of a sale or other transaction in a merchant or tradesman's account books; such entries are in general *prima facie* evidence of the sale and delivery and of work done; but unless the entry be an original one, it is not evidence.

ENTRY OF GOODS, *common law.* An entry of goods at the custom house is the submitting to the officers appointed by law, who have the collection of the customs, goods imported into the United States, together with a statement or description of such goods and the original invoices of the same.

The act of March 2, 1799, s. 36, 1 Story's L. U. S. 606, requires "that the owner or owners, consignee or consignees, of any goods, wares, or merchandize, on board of any such ship or vessel, or, in case of his, her, or their absence or sickness, his, her, or their known agent

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or factor, in his, her, or their names, within fifteen days after the report of the master, or person having the charge or command of such ship or vessel, to the collector of the district for which such goods, wares, or merchandise, shall be destined, shall make entry thereof, in writing, with the said collector, and shall, in such entry, specify the vessel and master's names in which, and the port or place from whence, such goods, wares, or merchandise, were imported, the particular marks, numbers, denomination, and prime cost, including charges of each particular package or parcel whereof the entry shall consist, or, if in bulk, the quantity, quality, and prime cost, including charges thereof, particularly specifying the species of money in which the invoices thereof are made out; and shall, also, produce to the said collector and naval officer (if any) the original invoice or invoices of the said goods, wares, or merchandise, or other documents received in lieu thereof, or concerning the same, in the same state in which they were received, with the bill or bills of loading for the same; which invoices shall be signed by the persons in the offices of the collector and naval officer, who shall have compared and examined the same." The act further gives a form of the entry, which, however, may be varied under certain circumstances. When the entry is made by an importer, consignee, or agent, it must be verified by the oath or affirmation of the person making the same. The act also provides "that whenever any entry shall be made with the collector of any district, of merchandise imported into the United States, subject to duty, by any agent, factor, or person, other than the person to whom they belong, or to whom they are ultimately consigned, it shall be the duty of the collector to take a bond, with surety, from such agent, factor, or person, (other than the bond or for securing the duties, in the penal sum of one thousand dollars) with condition that the bona fide owner or consignee of such goods, wares, or merchandise, shall, on or before the first day of payment stipulated in the bond or bonds for securing the duties, deliver, or cause to be delivered, to the said collector, a full and correct account of the said goods, wares, and merchandise, imported by him, or for him, on his own account, or consigned to his care, in the same manner and form as required by this section, in respect to an entry previous to the landing of any merchandise; which account shall be verified, as in the case of an entry, by a like oath or affirmation, to be taken and subscribed before any judge of the United States, or the judge of any court of record of a state, or before a collector of the customs of the same, or some other district; and in case of the payment of the duties, at the time of entry, by any factor or agent, on the goods, wares, or merchandise, entered by him, the condition of the bond aforesaid shall be to produce the account of the proper owner, or consignee, verified in manner as before directed, within ninety days from the date of such bond." The act gives the form of the bond and provides further, "that where the particulars of any goods, wares, or merchandise, shall be unknown, in lieu of the entry hereinbefore directed to be made, an entry thereof shall be made and received according to the circumstances of the case, the party making the same declaring, upon oath, all that he or she knows or believes concerning the quality and particulars of the said goods, wares, and merchandise, and that he or she hath no other knowledge or infor-

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mation concerning the same; which entry, as well the first as the last, shall be made in writing, and shall be subscribed by the party making the same, if the proper owner or consignee, in their own name, or, if by an agent, factor, or person, other than such owner or consignee, in his or their names, as agents or factors for such owner or consignee: *Provided*, That in every case in which the entry of any goods, wares, or merchandise, shall be imperfect, for want of invoices, bills of loading, or for any other cause, it shall be the duty of the collector to take the said goods, wares, and merchandise, into his custody, until the quantity, quality, or value thereof, as the case may require, can be ascertained, in manner hereafter directed and prescribed."

§ 37 of the same act requires, "that every importer of distilled spirits, wines, or teas, or person to whom distilled spirits, wines, or teas, are consigned, shall make a separate and additional entry thereof, specifying the name of the vessel, and master, in which, and the place from whence, such spirits, wines, or teas, were imported, together with the quantity and quality thereof, and a particular detail of the chests, casks, or vessels, containing the same, with their marks and numbers; which entry shall be subscribed by the person making the same, for himself, or in behalf of the person for whom such entry is made; and shall be certified by the collector, before whom the same is made, as being a true copy, and conformable to the general entry before directed, in respect to all distilled spirits, wines, and teas, therein contained; which entry, thus certified, shall be transmitted to the surveyor, or officer acting as inspector of the revenue, for the port where it is intended to commence the delivery of such spirits, wines, or teas, so entered, or any part thereof: And every permit granted by such collector and naval officer, where any, for the unlading of said spirits, wines, or teas, or any part thereof, shall, previous to such landing or unlading thereof, be produced to the said officer of inspection, who shall record or register, in proper books, the contents thereof, and shall endorse thereupon the word, "*Inspected*," the time when, and his own name; after which he shall return the said permit to the person by whom it shall have been produced, and then, and not otherwise, it shall be lawful to land the spirits, wines, or teas, therein specified; and if the said spirits, wines, or teas, shall be landed without such endorsement upon the permit granted for that purpose, the master, or other person having the charge or command of the ship or vessel from which the same shall have been so landed, shall, for every such offence, forfeit and pay the sum of five hundred dollars; and the spirits, wines, or teas, so landed, shall be forfeited."

It is enacted by the act of March 1, 1823, 3 Story's L. U. S. 1881:

§ 1. That, from and after the third day of March next, no goods, wares, or merchandise, subject to ad valorem duty, and imported into the United States, shall be admitted to an entry, unless the true invoice of the same be presented to the collector at the time of entry, or unless the same be admitted in the mode authorized and prescribed in the next ensuing section of this act: *Provided*, That this prohibition shall not extend to such goods, wares, or merchandise, as shall have been taken from a wreck.

§ 2. That when no invoice has been received of any goods, wares, or merchandise, imported and subject to ad valorem duty as aforesaid,

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the owner, importer, consignee, or agent, shall make oath of the same, and the collector of the port shall be, and he is hereby, authorized, if in his judgment the circumstances under which such goods, wares, or merchandize, shall have been imported, or any other circumstances connected therewith, render it expedient, to admit the same to an entry, on an appraisement thereof, duly made, in the manner hereinafter prescribed: *Provided*, The owner, importer, consignee, or agent, of such goods, wares, or merchandise, shall, previous to such entry, give bond, with sufficient sureties, to the United States, to produce to such collector the invoice of the same within eight months from the time of entry, if the same were imported from any port or place on this side, and within eighteen months, if from any port or place beyond, the Cape of Good Hope or Cape Horn, or from the Cape of Good Hope, and to pay any amount of duty to which it may appear, by such invoice, the said goods, wares, or merchandise, were subject, over and above the amount of duties estimated on the said appraisement.

§ 3. That when goods, wares, or merchandise, imported into the United States, shall not have been entered in pursuance of the provisions of this or any other act regulating imports and tonnage, the same shall be deposited, according to existing laws, in the public warehouse, and shall there remain, at the expense and risk of the owner, until such invoice be produced: *Provided, however*, That, when the said goods, wares, or merchandise, shall have remained in the public warehouse nine months, if imported from any port or place on this side, and eighteen months, if from any port or place beyond, the Cape of Good Hope, or Cape Horn, or from the Cape of Good Hope, and no invoice shall be produced, then the said goods, wares, and merchandise, shall be appraised, and the duties estimated thereon in the manner hereinafter directed: *Provided, also*, That nothing herein contained shall be understood to prohibit the sale of such quantities of goods, stored as aforesaid, as may be necessary to discharge the duties thereon, and all intervening charges at the time or times when such duties shall become due and payable: *And provided further*, That the collector be, and he is hereby, authorized to direct an earlier sale of articles of a perishable nature, and of such as may be liable to waste; first giving such notice of the sale as circumstances may admit, by public advertisement, in one or more papers, at or nearest to the port where such sale may be had; which said articles the collector shall previously cause to be appraised, and the duties estimated thereon, in the manner hereinafter directed; and the proceeds of such sale shall be disposed of at the expiration of the said periods of nine and eighteen months, respectively, as the case may be, in the manner prescribed by the fifty-sixth section of the act regulating the collection of duties on imports and tonnage, passed the second day of March, one thousand seven hundred and ninety-nine: *Provided also*, That nothing in this section shall be construed to affect the cases contemplated by the fifty-sixth section of the act regulating the collection of duties on imports and tonnage, passed the second of March, one thousand seven hundred and ninety-nine.

§ 4. Gives the form of the oaths to be taken by the importer or his agent, the owner or the manufacturer.

§ 6. That no goods, wares, or merchandise, imported into the Uni-

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ted States, subject to ad valorem duty, and belonging to a person or persons residing in the United States, but who shall, at the time, be absent from the place where the same are intended to be entered, shall be admitted to an entry, unless the importer, consignee or agent, shall previously give bond, the form of which shall be prescribed by the secretary of the treasury, with sufficient sureties, to produce, within four months, to the collector of the port where the said goods, wares, or merchandise, may be, the invoice of the same, duly verified, according to the circumstances of the case, by the oath of the said owner, or one of the owners, as prescribed in the fourth section of this act; which oath shall be administered by a collector of the United States, if there be any in the place where the said owner or owners may be; or if there be none, by some public officer duly authorized to administer oaths.

§ 7. That no goods, wares, or merchandise, subject to ad valorem duty, imported as aforesaid, and belonging to a person or persons not residing at the time in the United States, and who shall have actually purchased the same, shall be admitted to entry, unless the invoice be verified by the oath of the owner, or one of the owners, certifying that the said goods, wares, or merchandise, were actually purchased for his account, or for account of himself and partners in the said purchase; that the invoice annexed thereto contains a true and faithful account of the actual cost thereof, and of all charges thereon; and that no discounts, bounties, or drawbacks, are contained in the said invoice, but such as have been actually allowed on the same; which said oath shall be administered by a consul or commercial agent of the United States: or by some public officer duly authorized to administer oaths in the country where the said goods, wares, or merchandise, shall have been purchased, and the same duly certified by the said consul, commercial agent, or public officer; in which latter case, such official certificate shall be authenticated by a consul or commercial agent of the United States: *Provided*, That if there be no consul or commercial agent of the United States in the country from which the said goods, wares, or merchandise, shall have been imported, the authentication hereby required, shall be executed by a consul of a nation at the time in amity with the United States, if there be any such residing there: and if there be no such consul in the country, the said authentication shall be made by two respectable merchants, if any such there be, residing in the port from which the said goods, wares, or merchandise, shall have been imported.

§ 8. That no goods, wares, or merchandise, subject to ad valorem duty, imported as aforesaid, and belonging to a person or persons not residing at the time in the United States, who may not have acquired the same in the ordinary mode of bargain and sale, or belonging to a person or persons who may be the manufacturer or manufacturers, in whole or in part, of the same, shall be admitted to entry, unless the invoice thereof be verified by the oath of the owner, or of one of the owners, certifying that the invoice contains a true and faithful account of the said goods, wares, or merchandise, at their fair market value at the time and place when and where the same were procured or manufactured, as the case may be, and of all charges thereon; and that the said invoice contains no discounts, bounties, or drawbacks, but such as have been actually allowed; which said

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oath shall have been duly administered and authenticated in the mode prescribed in the seventh section of this act.

§ 9. That in all cases where goods, wares, or merchandise, subject to ad valorem duty, imported as aforesaid, shall belong to the estates of deceased persons or of persons insolvent, who shall have assigned the same for the benefit of their creditors, the oaths required by the fourth, seventh, and eighth sections of this act, may be administered to the executor, administrator, or assignees, of such persons, in the manner prescribed by this act, according to the nature of the case.

§ 10. Authorizes the secretary of the treasury in certain cases to admit of the entry of goods belonging to persons not residing in the United States.

§ 11. That in all cases where goods, wares, or merchandise, subject to ad valorem duty, imported as aforesaid, shall belong in part to a person or persons residing in the United States and in part to a person or persons residing out of the United States, the oath of one of the owners residing in the United States, shall be sufficient to admit the same to an entry according to the provisions of this act: ***But it is expressly provided***, That, in all cases where the said goods, wares, or merchandise, shall have been manufactured in whole, or in part, by any one of the owners residing out of the United States, the same shall not be admitted to an entry, unless the invoice shall have been verified and authenticated by such manufacturer in the manner prescribed in the eighth section of this act.

ENTRY, WRIT OF. Vide *Writ of Entry*.

TO ENURE. To be available or for the benefit of a person. A release to the tenant for life, ***enures*** to him in reversion; that is, it has the same effect for him as for the tenant for life. A discharge of the principal enures to the benefit of the surety.

ENVOY, *international law*. In diplomatic language an envoy is a minister of the second rank, on whom his government has conferred a degree of dignity and respectability, which without being on a level with an ambassador, immediately follows, and among ministers, yields the pre-eminence to him alone. Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration. Vattel, liv. 4, c. 6. § 72.

EQUALITY. Possessing the same rights and being liable to the same duties. Persons are all equal before the law, whatever adventitious advantages some may possess over others. All persons are protected by the law, and obedience to it is required from all. In contracts, the law presumes the parties act upon a perfect equality; when therefore one party uses any fraud or deceit to destroy this equality, the party grieved may avoid the contract. Vide *Deceit*, *Fraud*.

EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. This was owing in part to the fact that the chancellors of those days were either statesmen or ecclesiastics, perhaps not very scrupulous in the exercise of power. It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience and natural justice. 3 Bl. Com. 433, 440, 441.

In a moral sense that is called equity which is founded in natural justice, in honesty, and in right, *ex æquo et bono*. In an enlarged legal view, "equity, in its true and genuine meaning, is the soul and spirit

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of the law; positive law is construed and rational law is made by it. In this, equity is made synonymous with justice; in that, to the true and sound interpretation of the rule." 3 Bl. Com. 429. This equity is said to be a supplement to the laws; and nothing is perhaps more correct and just, but it must be directed by science, without which the magistrate must tremble to set in the temple of justice, and without which his mind will wander in pursuit of a phantom of equity purely imaginary. The Roman law will furnish him with the surest guides, and the safest rules; here will be found fully developed the first principles and the most consequences of natural right. "From the moment when principles of decision came to be acted upon in chancery," says Mr. Justice Story, "the Roman law furnished abundant materials to erect a superstructure, at once solid, convenient and lofty, adopted to human wants, and enriched by the aid of human wisdom, experience and learning." Com. on Eq. Jur. § 23.

But equity has a more restrained and qualified meaning. The remedies for the redress of wrongs and for the enforcement of rights, are distinguished into two classes: first those which are administered in courts of common law; and, secondly, those which are administered in courts of equity. Rights which are recognised and protected, and wrongs which are redressed, by the former courts, are called legal rights and legal injuries. Rights which are recognized and protected, and wrongs which are redressed by the latter courts only, are called equitable rights and equitable injuries. The former are said to be rights and wrongs at common law, and the remedies, therefore are remedies at common law; the latter are said to be rights and wrongs in equity, and the remedies, therefore, are remedies in equity. Equity jurisprudence may, therefore, properly be said to be that portion of remedial justice, which is exclusively administered by a court of equity, as contradistinguished from that remedial justice, which is exclusively administered by a court of law. Story, Eq. § 25. Vide *Chancery*, and the authorities there cited; and 3 Chit. Bl. Com. 425 n. 1; Dane's Ab. h. t.; Ayl. Pand. 37.

EQUITY, COURT OF. Vide *Chancery*.

EQUITY OF REDEMPTION, is a right which the mortgagee of an estate has of redeeming it, after it has been forfeited at law by the non-payment at the time appointed of the money secured by the mortgage to be paid, by paying the amount of the debt, interest and costs. An equity of redemption is a mere creature of a court of equity, founded on this principle, that as a mortgage is nothing more than a pledge for securing the repayment of a sum of money to the mortgagee, it is but natural justice to consider the ownership of the land as still vested in the mortgagor, subject only to the legal title of the mortgagee, so far as such legal title is necessary to his security. In Pennsylvania, however, redemption is a legal right. 11 Serg. & Rawle, 223.

The right of redemption exists, not only in the mortgagor himself, but in his heirs, and personal representatives, and assignee, and in every other person who has an interest in, or a legal or equitable lien upon the lands; and therefore a tenant in dower, a jointress, a tenant by the curtesy, a remainder-man and a reversioner, a judgment-creditor, and every other incumbrancer, unless he be an incumbrancer *pendente lite* may redeem. 4 Kent, Com. 156. Vide generally, Cruise, Dig. tit. 15,

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c. 3; 4 Kent, Com. 148; 1 Pow. on Mortg. ch. 10 and 11; 2 Black. Com. 158; 13 Vin. Ab. 458; 2 Supp. to Ves. Jr. 368; 2 Jac. & Walk. 194, n.

ERASURE, *contracts, evidence*, is the obliteration of a writing; it will render it void or not under the same circumstances as an interlineation, (q. v.) Vide 5 Pet. S. C. R. 560.

ERROR, is the non-conformity or opposition of our ideas to the nature or state of things. It differs from ignorance, (q. v.) which is the want of knowledge. Error is also a mistake made in the trial of a cause, to correct which a writ of error (q. v.) may be sued out of a superior court.

ERROR, WRIT OF. Vide *Writ of Error.*

ESCAPE. An escape is the deliverance of a person out of prison, who is lawfully imprisoned, before such person is entitled to such deliverance by law. Escapes are either negligent or voluntary, in civil or criminal cases.

It is not necessary that the party should be held in actual imprisonment within a gaol; if he be in custody of a proper officer he may escape as much as if he were in prison. 3 Bl. Com. 290, 415; 1 Hal. P. C. 590; 2 Hawk. P. C. 134; 4 Bl. Com. 130.

The prisoner's being out of prison for any or the shortest time, is an escape, although he afterwards return. 2 Bl. Rep. 1048; 1 Rolle's Abr. 806; and though he has a keeper with him, 3 Co. 44 a; Plowd. Com. 37; Hob. 202; 1 Bos. & Pull. 24; 2 Bl. R. 1048. See also 5 Mass. R. 310; 7 Mass. R. 98; 4 Mass. R. 391; 2 Mass. R. 549; 9 Johns. R. 329; 13 Johns. R. 366; 9 Johns. R. 146; 5 Johns. R. 115; 15 Johns. R. 152; 3 Binn. R. 404; 13 Johns. R. 503; 6 Johns. R. 62; 10 Johns. R. 220; 14 Johns. R. 263; 10 Johns. R. 420; 18 Johns. R. 48; Com. Dig. Escape, C; Bac. Abr. Escape; Vin. Abr. Escape.

ESCAPE, CONSTRUCTIVE. Where the prisoner still remains in prison, but owing to some act of the keeper he is not in the same strict confinement in which he ought to be, it is a constructive escape; as if a man marries his prisoner, Plowd. 17; Bac. Abr. Escape, B 3; or if an underkeeper of the gaol be taken in execution, and delivered at the gaol house, and neither the sheriff nor any authorised person is there to receive him. 5 Mass. R. 310.

ESCAPE, VOLUNTARY. Voluntary escapes are such as are by the consent of the keeper.

In civil cases, when the prisoner is confined under a *ca. sa.* after a voluntary escape, the sheriff can never retake his prisoner, and he must answer for the debt. Carter, 212. But the plaintiff, having been in no default, may retake him by virtue of stat. 8 & 9 W. 3, c. 26; and independently of the statute, he might have a new action of debt, or scire facias quare executionem non, against the prisoner. Ba. Abr. Escape in Civil cases, C.

ESCHEAT, *title to lands.* According to the English law, escheat denotes an obstruction of the course of descent, and a consequent determination of the tenure, by some unforeseen contingency; in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee. 2 Bl. Com. 244. All escheats, under the English law, are declared to be strictly feudal, and to import the extinction of tenure. Wright on Ten. 115 to 117; 1 Wm. Bl. R. 123. But as the feudal tenures do not exist in this country, there are no private persons who succeed to the inheritance by escheat. The state steps in, in the place of the feudal lord,

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by virtue of its sovereignty, as the original and ultimate proprietor of all the lands within its jurisdiction. 4 Kent, Com. 420. It seems to be the universal rule of civilised society, that when the deceased owner has left no heirs it should vest in the public, and be at the disposal of the government. Code, 10, 10, 1; Domat, Droit Pub. liv. 1, t. 6, s. 3, n. 1. Vide 10 Vin. Ab. 139; 1 Bro. Civ. Law, 250; 1 Swift's Dig. 156; 2 Tuck. Blacks. 244, 245, n.; 5 Binn. R. 375; 3 Dane's Ab. 140, sect. 24.

ESCHEATOR. The name of an officer whose duties are generally to ascertain what escheats have taken place, and to prosecute the claim of the commonwealth for the purpose of recovering the escheated property. Vide 10 Vin. Ab. 158.

ESCROW, *conveyancing*, *contracts*, is a conditional delivery of a deed to a stranger, and not to the grantee himself, until certain conditions shall be performed, and then it is to be delivered to the grantee. Until the condition be performed and the deed delivered over, the estate does not pass, but remains in the grantor. 2 Johns. R. 248; Perk. 137, 138. Generally, an escrow takes effect from the second delivery, and is to be considered as the deed of the party from that time; but this general rule does not apply when justice requires a resort to fiction. The relation back to the first delivery, so as to give the deed effect from that time, is allowed in cases of necessity, to avoid injury to the operation of the deed, from events happening between the first and second delivery. For example when a feme sole makes a deed and delivers it as an escrow, and then marries before the second delivery, the relation back to the time when she was sole, is necessary to render the deed valid. Vide 2 Bl. Com. 307; 4 Kent, Com. 446; Cruise, Dig. t. 32, c. 2, s. 87 to 91; Com. Dig. Fait, (A 3); 13 Vin. Ab. 29.

ESPLEES, are the products which the land or ground yields, as the hay of the meadows, the herbage of the pasture, corn or other produce of the arable, rents and services. Termes de la Ley; Dane's Ab. Index, h. t.

ESPOUSALS, *contracts*, a mutual promise between a man and a woman to marry each other, at some other time: it differs from a marriage, because then the contract is completed. Wood's Inst. 57; vide Dig. 23, 1, 1; Code, 5, 1, 4; Novel. 115, c. 3, s. 11; Ayliff's Parerg. 245.

ESQUIRE, a title applied by courtesy to officers of almost every description, to members of the bar, and others. No one is entitled to it by law, and, therefore, it confers no distinction in law. In England it is a title next above that of a gentleman and below a knight. Camden reckons up four kinds of esquires, particularly regarded by the heralds: 1. The eldest sons of knights and their eldest sons, in perpetual succession; 2, The eldest sons of the younger sons of peers, and their eldest sons in like perpetual succession; 3, Esquires created by the king's letters-patent, or other investiture, and their eldest sons; 4, Esquires by virtue of their office, as justices of the peace, and others who bear any office of trust under the crown.

ESSOIN, *practice*, is an excuse which a party bound to be in court on a particular day, offers for not being there. 1 Sell. Pr. 4; Lee's Dict. h. t. Essoin-day is the day on which the writ is returnable.

ESTATE. This word has several meanings; 1, in its most extensive sense it is applied to signify every thing of which riches or fortune

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may consist, and includes personal and real property; hence we say personal estate, real estate. 8 Ves. 604. 2. In its more limited sense the word estate is applied to lands. An estate in land means such an interest as the tenant has therein. In latin it is called *status*, because it signifies the condition or circumstance in which the owner stands with regard to his property. To ascertain this with precision and accuracy, estates in lands may be considered in a threefold view; first, with regard to the quantity of interest which the tenant has in his tenement; secondly, with regard to the time at which that quantity of interest is to be enjoyed; thirdly, with regard to the number and connexion of the tenants.

I. The quantity of interest which the tenant has in his tenement is measured by its duration and extent; this occasions the first division of estates into such as are of freehold, and such as are less than freehold. 1. Freehold estates are of inheritance and not of inheritance. 1st. Estates of inheritance, are absolute, as fee simple; and limited, which are qualified, as where an estate is granted to A B, tenant of the manor of Dale; or conditional, as fee tail, and the like. 2d. Freehold estates not of inheritance, are estates for life. These are either conventional, or such as are created by deed: or legal, which arise by operation of law. The estates of tenant in tail after the possibility of issue extinct, tenant by the curtesy, and tenant in dower, are of this description. 2. Estates less than freehold. These are estates for years, estates at will, and estates by suffrance.

Both estates of freehold and less than freehold may be, 1, equitable, namely, to the use, or in trust; 2, upon condition, expressed or implied; 3, as a pledge or security, as a mortgage.

II. The time of their enjoyment. Estates are either in possession, or expectancy; the latter are either remainders, created by the act of the parties, which are vested or contingent; or reversions created by act of law.

III. The tenants may hold an estate. 1st. In severalty, when only one tenant holds the estate in his own right, without any other person being joined or connected with him, in point of interest, during the continuance of his estate. 2d. Joint tenancy, which must be created by deed, and have the unities of interest, time, title and possession. A joint tenancy may be destroyed by the severance of any of its unities. At common law, the survivor among joint tenants is entitled to the whole of the property by virtue of the *jus accrescendi*. This has been altered by acts of assembly in Pennsylvania, and perhaps some other states. 3d. Coparcenary, which arises at common law, and by particular custom, as, gavel-kind; it must have the unities of interest, title, and possession. It may be destroyed by partition, which may be by consent or by compulsion. Coparcenaries are always created by descent. The technical distinction between coparcenaries and estates in common, may be considered as essentially extinguished in the United States. 4th. In common. Estates in common are created by, first, the destruction of a joint tenancy or coparcenary estate if they sever the possession; and, secondly, by the proper limitation in a deed: they must have such incidents which arise from the unity of possession: they may be destroyed by uniting the title and interest in one tenant, or by partition. Vide, generally, 10 Vin. Ab. 201; 2 Bac. Ab. 530; Com. Dig. tit. Estates; Wood's Inst. 119; 4 Dane's Ab. 498; 2 Bl. Com. 107 to 197; 2

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Supp. to Ves. jr. 48, 96, 109, 407; 1 Hist. Law Tracts, 222. As to the effect of the word *estate* in a devise, see 3 Cranch, R. 97; 3 Yeates, R. 187; 6 Binn. R. 97; 2 Binn. R. 20; 6 Johns. R. 185; see also 1 Wash. R. 96; 1 Call, R. 127; 3 Call, R. 306; 2 Nott & M'Cord, R. 380; Com. Dig. App. tit. Estates; Chit. Pract. Index, h. t.

ESTATE IN COMMON, is one which is held by two or more persons by unity of possession. They may acquire their estate by purchase and hold by several and distinct titles, or by title derived at the same time, by the same deed or will; or by descent. In this respect the American law differs from the English common law. This tenancy, according to the common law, is created by deed or will, or by change of title from joint tenancy or coparcenary, or it arises, in many cases, by construction of law. Litt. sec. 292, 294, 298, 302; 2 Bl. Com. 192; 2 Prest. on Abstr. 75. In this country it may be created by descent, as well as by deed or will. 4 Kent, Com. 363. Vide Cruise, Dig. tit. 20; Com. Dig. Estates by Grant, K 8.

ESTATE UPON CONDITION is such an one as has a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged, or destroyed. These estates are divided into estates upon condition implied or in law, and estates upon condition express or in deed. 1. Estates upon condition in law are such as have a condition impliedly annexed to them, without any condition being specified in the deed or will. Litt. sec. 378, 380; Co. Litt. 215, b; 233, b; 234, b.—2. The express conditions are particularly mentioned in the contract between the parties. Litt. s. 325; 4 Kent, Com. 117; Cruise, Dig. tit. 13. Vide *Condition*.

ESTATE IN COPARCENARY, is an estate of lands of inheritance which descend from the ancestor to two or more persons who are called coparceners or parceners. This is usually applied, in England, to cases where lands descend to females, when there are no male heirs. As in the several states, estates generally descend to all the children equally, there is no substantial difference between coparceners and tenants in common. The title inherited by more persons than one, is, in some of the states, expressly declared to be a tenancy in common, as in New York and New Jersey, and where it is not so declared the effect is the same; the technical distinction between coparcenary and estates in common may be considered as essentially extinguished in the United States. 4 Kent, Com. 363. Vide *Estates*.

ESTATE BY THE CURTESY, is an estate for life, created by act of law, which is defined as follows. When a man marries a woman, seised at any time during the coverture of the estate of inheritance, in severalty, in coparcenary, or in common, and has issue by her born alive, and which might by possibility inherit the same estate as heir to the wife, and the wife dies in the life-time of the husband, he holds the lands during his life by the curtesy of England, and it is immaterial whether the issue be living at the time of the seisin, or at the death of the wife, or whether it was born before or after the seisin. Litt. s. 35; Co. Litt. 29, b; 8 Co. 34. There are four requisites indispensably necessary to the existence of this estate; 1, marriage; 2, seisin of the wife, which must have been seisin in deed, and not merely seisin in law; 3, issue; and 4, death of the wife.

This estate is generally prevalent in the United States; in some of

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them it has received a modification. In Vermont, the title by curtesy has been laid under the equitable restriction of existing only in the event that the children of the wife entitled to inherit, died within age and without children. In South Carolina, tenancy by the curtesy, *eo nomine*, has ceased by the provisions of an act passed in 1791, relative to the distribution of intestates' estates, which gives to the husband surviving his wife, the same share of her real estate, as she would have taken out of his, if left a widow, and that is one moiety, or one-third of it in fee, according to circumstances. In Georgia, tenancy by the curtesy does not exist, because since 1785, all marriages vest the real, equally with the personal, estate in the husband. 4 Kent, Com. 29. In Louisiana, where the common law has not been adopted in this respect, this estate is unknown.

This estate is not peculiar to the English law, as Littleton erroneously supposes; Litt. s. 35; for it is to be found, with some modifications, in the ancient laws of Scotland, Ireland, Normandy and Germany. In France there were several customs, which gave a somewhat similar estate to the surviving husband, out of the wife's inheritances. Merlin, Répert. mots Linotte, et Quarte de Conjoint pauvre.

Vide, generally, 2 Bac. Ab. 218; 7 Bac. Ab. 440; Com. Dig. Estates by grant, D; Cruise, Dig. t. 5, c. 1; 2 Bl. Com. 126.

ESTATE IN DOWER, is the right of a woman in a third part of all the lands and tenements, in fee simple, fee tail, general, or as heir in special tail, of which her deceased husband was seised, either in deed or in law, at any time during the coverture, and of which any issue she might have had, might by possibility have been heir. Litt. § 36. To create a title to dower three things, are indispensably requisite, 1. Marriage. This must be a marriage not absolutely void, and existing at the death of the husband; a wife *de facto*, whose marriage is voidable by decree, as well as a wife *de jure*, is entitled to it; and the wife shall be endowed, though the marriage be within the age of consent, and the husband dies within that age. Co. Litt. 33, a; 7 Co. 42; Doct. & Stud. 22; Cruise, Dig. t. 6, c. 2, s. 2, et seq.—2. Seisin. The husband must have been seised, some time during the coverture of the estate of which the wife is dowable. Co. Litt. 31, a. An actual seisin is not indispensable, a seisin in law is sufficient. As to the effect of a transitory seisin, see 4 Kent, Com. 38; 2 Bl. Com. 132; Co. Litt. 31, a.—3. Death of the husband. This must be a natural death; though there are authorities which declare that a civil death shall have the same effect. Cruise, Dig. tit. 6, ch. 2, § 22. Vide, generally, 8 Vin. Ab. 210; 2 Bac. Ab. 356; Com. Dig. Dower; Ib. App. tit. Dower; 1 Supp. to Ves. Jr. 173, 189; 2 Ib. 49; 1 Vern. R. by Raithby, 218, n. 358, n; 1 Salk. R. 291; 2 Ves. Jr. 572; 5 Ves. 130; Arch. Civ. Pl. 469; 2 Sell. Pr. 200; 4 Kent, Com. 35; Amer. Dig. h. t.; Pothier, Traité du Douaire; 1 Swift's Dig. 85; Perk. 300, et seq.

ESTATE IN JOINT-TENANCY, is where the lands or tenements are granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 Bl. Com. 179; the creation of the estate depends upon the expression in the deed or devise, by which the tenants hold, for it must be created by the acts of the parties, and does not result from the operation of law. Thus an estate given to a number of persons, without any restriction or

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explanation, will be construed a joint-tenancy; for every part of the grant can take effect only, by considering the estate equal in all, and the union of their names gives them a union in every respect. The properties of this estate arise from its unities; these are, 1. Unity of title; the estate must have been created and derived from one and the same conveyance. 2. There must be a unity of time; the estate must be created and vested at the same period. 3. There must be a unity of interest, the estate must be for the same duration and the same quantity of interest. 4. There must be a unity of possession; all the tenants must possess and enjoy at the same time, for each must have an entire possession of every parcel, as of the whole. One has not possession of one half, and another of the other half, but each has an undivided moiety of the whole, and not the whole of an undivided moiety. The distinguishing incident of this estate, is the right of survivorship, or *jus accrescendi;* at common law, the entire tenancy or estate, upon the death of any of the joint-tenants, went to the survivors, and so on to the last survivor, who took an estate of inheritance. The right of survivorship, except perhaps in estates held in trust, is abolished in Pennsylvania, New York, Virginia, Kentucky, Indiana, Missouri, Tennessee, North and South Carolina, Georgia, and Alabama. Griffith's Register, h. t. In Connecticut it never was recognised. 1 Root, R. 48; 1 Swift's Dig. 102. Joint tenancy may be destroyed by destroying any of its constituent unities except that of time. 4 Kent. Com. 359. Vide Cruise, Dig. tit. 18; 1 Swift's Dig. 102; 14 Vin. Ab. 470; 3 Bac. Ab. 670; 3 Saund. 319, n. 4; 1 Vern. 353; Com. Dig. Estates by Grant, K 1; 4 Kent, Com. 353; 2 Bl. Com. 181; Litt. sec. 304; 2 Woodd. Lect. 127; 2 Preston on Abst. 67; 5 Binn. R. 18.

ESTATE FOR LIFE. An estate for life is a freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain event. Estates for life are divided into conventional or legal estates. The first created by the act of the parties, and the second by operation of law. 1. Life estates may be created by express words, as, if A conveys land to B, for the term of his natural life; or they may arise by construction of law, as, if A conveys land to B, without specifying the term or duration, and without words of limitation. In the last case, B cannot have an estate in fee, according to the English law, and according to the law of those parts of the United States which have adopted and not altered the common law in this particular, but he will take the largest estate which can possibly arise from the grant, and that is an estate for life. Co. Litt. 42, a. The life estate may be either for a man's own life, or for the life of another person, and in this last case, it is termed an estate *pur autre vie.* There are some estates for life, which may depend upon future contingencies, before the deaths of the persons to whom they are granted; for example, an estate given to a woman *dum sola fuerit,* or *durante viduitate,* or to a man and woman during coverture, or as long as the grantee shall dwell in a particular house, is determinable upon the happening of the event. In the same manner, a house usually worth one hundred dollars a year, may be granted to a person till he shall have received one thousand dollars, this will be an estate for life, for as the profits are uncertain, and

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may rise and fall, no precise time can be fixed for the determination of the estate. On the contrary, where the time is fixed, although it may extend far beyond any life, as a term for five hundred years, this does not create a life estate.—2. The estates for life created by operation of law, are, 1st. Estates tail after possibility of issue extinct; 2d. Estate by the curtesy; 3d. Dower; 4th. Jointure. Vide Cruise, Dig. tit. 3; 4 Kent, Com. 23; 1 Brown's Civ. Law, 191; 2 Bl. Com. 103. The estate for life is somewhat similar to the usufruct (q. v.) of the civil law.

ESTATE AT SUFFRANCE. It is the right of a tenant who comes into possession of land by lawful title, but holds over by wrong after the determination of his interest. Co. Litt. 57, b. He has a bare naked possession, but no estate which he can transfer or transmit, or which is capable of enlargement by release, for he stands in no privity to his landlord. There is a material distinction between the cases of a person coming to an estate by act of the party, and afterwards holding over, and by act of the law and then holding over. In the first case he is regarded as a tenant at suffrance; and in the other, as an intruder, abator and trespasser. Co. Litt. 57, b; 2 Inst. 134; Cruise, Dig. t. 9, c. 2; 4 Kent, Com. 115; 13 Serg. & Rawle, 60; 8 Serg. & Rawle, 459. 4 Rawle's R. 126.

ESTATE TAIL AFTER POSSIBILITY OF ISSUE EXTINCT. By this awkward, but perhaps necessary paraphrasis, justified by Sir William Blackstone, 2 Com. 124, is meant the estate which is thus described by Littleton, § 32: "when tenements are given to a man and his wife in special tail, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct." This estate, though, strictly speaking, not more than an estate for life, partakes in some circumstances of the nature of an estate tail. For a tenant in tail after possibility of issue extinct, has eight qualities or privileges in common with a tenant in tail. 1. He is dispunishable for waste; 2, he is not compellable to attorn; 3, he shall not have aid of the person in reversion; 4, upon his alienation no writ of entry *in consimili casu* lies; 5, after his death, no writ of intrusion lies; 6, he may join the mise in a writ of right in a special manner; 7, in a præcipe brought by him, he shall not name himself tenant for life; 8, in a præcipe brought against him, he shall not be named barely tenant for life. There are however four qualities annexed to this estate, which prove it to be in fact only an estate for life. 1. If this tenant makes a feoffment in fee it is a forfeiture; 2, if an estate tail or in fee descends upon him, the estate tail after possibility of issue extinct is merged; 3, if he is impleaded, and makes default, the person in reversion shall be received, as upon default of any other tenant for life; 4, an exchange between this tenant, and a bare tenant for life, is good; for, with respect to duration their estates are equal. Cruise, Dig. tit. 4; Tho. Co. Litt. B. 2, c. 17; Co. Litt. 28, a. Nothing but absolute impossibility of having issue can give rise to this estate. Thus if a person gives lands to a man and *his* wife, and to the heirs of their two bodies, and they live to a hundred years, without having issue, yet they are tenants in tail; for the law sees no impossibility of their having issue, until the death of one of them. Co. Litt. 28, a. See *Tenant in tail after possibility of issue extinct.*

ESTATE AT WILL. An estate at will is that which a man has in

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consequence of a lease of land made to him to hold at the will of the lessor. Co. Litt. sec. 68. Estates at will have become almost extinguished under the operation of judicial decisions. Where no certain term is agreed on, they are now construed to be tenancies from year to year, and each party is bound to give reasonable notice of an intention to terminate the estate. When the tenant holds over by consent given, either expressly or by implication, after the determination of a lease for years, it is held evidence of a new contract, without any definite period, and is construed to be a tenancy from year to year. 4 Kent, Com. 210; Cruise, Dig. tit. 9, c. 1.

ESTATE FOR YEARS, is one which is created by a lease for years, which is a contract for the possession and profits of land for a determinate period, with the recompense of rent; and it is deemed an estate for years, though the number of years should exceed the ordinary limits of human life: and it is deemed an estate for years though it be limited to less than a single year. An estate for life is higher than an estate for years, though the latter should be for a thousand years. Co. Litt. 46, a; 2 Kent, Com. 278; 1 Brown's Civ. Law, 191; 4 Kent, Com. 85; Cruise's Dig. tit. 8; 4 Rawle's R. 126; 8 Serg. & Rawle, 459; 13 Ib. 60; 10 Vin. Ab. 295, 318 to 325.

ESTOPPEL, *in pleading*. An estoppel is a preclusion, in law, which prevents a man from alleging or denying a fact, in consequence of his own previous act, allegation or denial of a contrary tenor. Steph. Pl. 239. Lord Coke says, "an estoppel is, when a man is concluded by his own act or acceptance, to say the truth." Co. Litt. 352, a. And Blackstone defines "an estoppel to be a special plea in bar, which happens where a man hath done some act, or executed some deed, which estops or precludes him from averring any thing to the contrary." 3 Com. 308. An estoppel may arise either from matter of *record*; from the *deed* of the party; or from matter *in pays*, that is, matter of *fact*. Thus, any confession or admission made in pleading, in a court of record, whether it be express, or implied from pleading over without a traverse, will forever preclude the party from afterwards contesting the same fact, in any subsequent suit with his adversary. Com. Dig. Estoppel, A 1. This is an estoppel by matter of record. As an instance of an estoppel by *deed*, may be mentioned the case of a bond reciting a certain fact. The party executing that bond, will be precluded from afterwards denying in any action brought upon that instrument, the fact so recited. 5 Barn. & Ald. 682. An example of an estoppel by matter *in pays* occurs when one man has accepted rent of another. He will be estopped from afterwards denying, in any action with that person, that he was, at the time of such acceptance, his tenant. Com. Dig. Estoppel, A 3; Co. Litt. 352, a.

This doctrine of law gives rise to a kind of pleading that is neither by way of traverse, nor confession and avoidance: viz. a pleading, that, waiving any question of fact, relies merely on the estoppel, and, after stating the previous act, allegation, or denial, of the opposite party, prays judgment, if he shall be received or admitted to aver to what he before did or said. This pleading is called a pleading by way of estoppel. Steph. 240.

Every estoppel ought to be reciprocal, that is, to bind both parties: and this is the reason that regularly a stranger shall neither take advantage or be bound by an estoppel.

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Com. Dig. Estoppel, C; 3 Johns. Cas. 101; 2 Johns. R. 382. Privies in blood, privies in estate, and privies in law, are bound by, and may take advantage of estoppels. Co. Litt. 352; 2 Serg. & Rawle, 508; 5 Day, R. 88.

See the following cases relating to estoppels by—

Matter of record: 4 Mass. R. 625; 10 Mass. R. 155; 4 Munf. R. 466; 3 East, R. 354; 2 Barn. & Ald. 662; 17 Mass. R. 365; Gilm. R. 235; 5 Esp. R. 58; 1 Show. 47; 3 East, R. 346.

Matter of writing: 12 Johns. R. 357; 5 Mass. R. 395; Ib. 286; 6 Mass. R. 421; 3 John. Cas. 174; 5 Johns. R. 489; 2 Caines's R. 320; 3 Johns. R. 331; 14 Johns. R. 193; Ib. 224; 17 Johns. R. 161; Willes, R. 9, 25; 6 Binn. R. 59; 1 Call, R. 429; 6 Munf. R. 120; 1 Esp. R. 89; Ib. 159; Ib. 217; 1 Mass. R. 219.

Matter in pays: 4 Mass. R. 181; Ib. 273; 15 Mass. R. 18; 2 Bl. R. 1259; 1 T. R. 760, n.; 3 T. R. 14; 6 T. R. 62; 4 Munf. 124; 6 Esp. R. 20; 2 Ves. 236; 2 Camp. R. 344; 1 Stark. R. 192.

And see, in general, 10 Vin. Abr. 420, tit. Estoppel; Bac. Abr. Pleas, I 11; Com. Dig. Estoppel; Ib. Pleader, S 5; Arch. Civ. Pl. 218; Doct. Pl. 255; Stark. Ev. pt. 2, p. 206, 302; pt. 4, p. 30.

ESTOVERS, *estates*, is the right of taking necessary wood for the use or furniture of a house or farm, from off another's estate. The word *bote* is used synonymously with the word stovers. 2 Bl. Com. 35; Dane's Ab. Index, h. t.; Woodf. L. & T. 232.

ESTRAYS, are cattle whose owner is unknown. In the United States generally it is presumed by local regulations, they are subject to being sold for the benefit of the poor or some other public use of the place where found, after certain formalities of advertising, &c. have been performed.

ESTREAT. This term is used to signify a true copy or note of some original writing or record, and specially of fines and amercement imposed by a court, and *extracted* from the record, and certified to a proper officer or officers authorised and required to collect them. Vide F. N. B. 57, 76.

ESTREPEMENT. The name of a writ which lay at common law to prevent a party in possession from committing waste on an estate the title to which is disputed, after judgment obtained in any real action, and before possession was delivered by the sheriff. But as waste might be committed, in some cases, pending the suit, the statute of Gloucester gave another writ of estrepement pendente placito, commanding the sheriff firmly to inhibit the tenant "ne faciat vastum vel strepementum pendente placito dicto indiscusso." By virtue of either of these writs the sheriff may resist those who commit waste or offer to do so; and he may use sufficient force for the purpose. 3 Bl. Com. 225, 226. In Pennsylvania by legislative enactment the remedy by estrepement is extended for the benefit of any owner of lands leased for years or at will, at any time during the continuance or after the expiration of such demise, and due notice given to the tenant to leave the same, agreeably to law, or for any purchaser at sheriff or coroner's sale of lands, &c. after he has been declared the highest bidder by the sheriff or coroner; or for any mortgagee or judgment creditor, after the lands bound by such judgment or mortgage, shall have been condemned by inquisition, or which may be subject to be sold by a writ of venditioni exponas or levari facias. Vide 10 Vin. Ab. 497; Woodf. Landl. & Ten. 447;

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Archb. Civ. Pl. 17; 7 Com. Dig. 659.

ET CÆTERA, a latin phrase which has been adopted in English; it signifies, *and the like, and so of the rest;* it is commonly abbreviated, *&c.* Formerly the pleader was required to be very particular in making his defence, (q. v.) By making full defence, he impliedly admitted the jurisdiction of the court, and the competency of the plaintiff to sue; and half defence was used when the defendant intended to plead to the jurisdiction, or disability. To prevent the inconveniences which might arise by pleading full or half defence, it became the practice to plead in the following form: "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says," which was either for full or half defence. 2 Saund. 209, c.; Steph. Pl. 432; 2 Chit. Pl. 455. In practice the *&c.* is used to supply the place of words which have been omitted. In taking a recognizance, for example, it is usual to make an entry on the docket of the clerk of the court as follows; A B, tent. *&c.* in the sum of $1000, to answer, *&c.*

EUNUCH, is a male whose organs of generation have been so far removed or disorganized, that he is rendered incapable of reproducing his species. Domat, Lois Civ. lib. prel. tit. 2, s. 1, n. 10.

EVASION, a subtle device to set aside the truth, or escape the punishment of the law; as if a man should tempt another to strike him first, in order that he may have an opportunity of returning it with impunity. He is nevertheless punishable because he becomes himself the aggressor in such a case.

EVICTION, *contracts*, is the loss or deprivation of the buyer of the thing he has bought in consequence of the right of a third person established in a competent tribunal. Vide 6 Bac. 44; 1 Saund. R. 204, n. 2; Ib. 322, a, n. 2; as to damages on eviction, 4 Kent, Com. 462, et seq.

EVIDENCE, is that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue; 3 Bl. Com. 367; or it is whatever is exhibited to a court or jury, whether it be by matter of record, or writing, or by the testimony of witnesses, in order to enable them to pronounce with certainty concerning the truth of any matter in dispute; Bac. Ab. Evidence, p. 575; or it is that which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings and distinguished from all comment or argument. 1 Stark. Ev. 8. Evidence may be considered with reference to, 1, the *nature* of the evidence; 2, the *object* of the evidence; 3, the *instruments* of evidence; and, 4, the *effect* of evidence.

§ 1. As to its *nature*, evidence may be considered with reference to its being, 1, primary evidence; 2, secondary evidence; 3, positive; 4, presumptive; 5, hearsay; and, 6, admissions.

1. *Primary evidence.* The law generally requires that the best evidence the case admits of, should be given; B. N. P. 293; 1 Stark. Ev. 102, 390; for example, when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing if it is to be attainted, and in that case no copy or other inferior evidence will be received. To this general rule there are several exceptions. 1. As it refers to the *quality* rather than to the *quantity* of evidence, it is evident, that the fullest proof that every case ad-

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mits of, is not requisite; if, therefore, there are several eye witnesses to a fact, it may be sufficiently proved by one only.—2. It is not always requisite, when the matter to be proved has been reduced to writing, that the writing should be produced; as, if the narrative of a fact to be proved has been committed to writing, it may yet be proved by parol evidence. A receipt for the payment of money, for example, will not exclude parol evidence of payment. 4 Esp. R. 213; and see 7 B. & C. 611; S. C. 14 E. C. L. R. 101; 1 Campb. R. 439; 8 B. & A. 566; 5 E. C. L. R. 377.

2. *Secondary evidence* is that species of proof which is admissible on the loss of primary evidence, and which becomes, by that event, the best evidence. Before such secondary evidence can be received, proof must be made that the primary evidence cannot be had, and all the proper sources from which it can be obtained must be exhausted before the secondary evidence can be received.

The person who possesses it must be applied to, whether he be a stranger or the opposite party; in the case of a stranger, a subpœna and attachment, when proper, must be taken out and served, and, in the case of a party, notice to produce such primary evidence must be proved before the secondary evidence will be admitted. 7 Serg. & Rawle, 116; 6 Binn. R. 228; 4 Binn. R. 295, note; 6 Binn. R. 478; 7 East, R. 66; 8 East, R. 278; 3 B. & A. 296; S. C. 5 E. C. L. R. 291.

3. *Positive* evidence is that which if believed, establishes the truth of a fact in issue, and does not arise from any presumption. Evidence is direct and positive, when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. 1 Phil. Ev. 116; 1 Stark. 19. In one sense there is but little direct or positive proof, or such proof as is acquired by means of one's own sense, all other evidence is presumptive, but, in common acceptation, direct and positive evidence is that which is communicated by one who has actual knowledge of the fact.

4. *Presumptive* evidence is that which is not direct, but where, on the contrary, a fact which is not positively known, is presumed or infered from one or more other facts or circumstances which are known. Vide article *Presumption*, and Rosc. Civ. Ev. 13; 1 Stark. Ev. 18.

5. *Hearsay*, which is the evidence of those who relate, not what they know themselves, but what they have heard from others. Vide *Hearsay*.

6. *Admissions*, which are the declarations, which a party by himself, or those who act under his authority, makes of the existence of certain facts. Vide *Admissions*.

§ 2. The *object* of evidence is next to be considered. It is to ascertain the truth between the parties. It has been discovered by experience that this is done most certainly by the adoption of the following rules which are now binding as law: 1. The evidence must be confined to the point in issue;—2. The substance of the issue must be proved, but only the substance is required to be proved;—3. The affirmative of the issue must be proved.

1. It is a general rule, both in civil and criminal cases, that the evidence shall be confined to the point in issue. Justice and convenience require the observance of this rule, particularly in criminal cases, for when a prisoner is charged with an offence, it is of the utmost importance to him that the facts laid before the jury should consist exclusively of the transaction, which forms the subject of the indictment, and, which alone, he has come prepared to an-

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swer. 2 Russ. on Cr. 694; 1 Phil. Ev. 166. To this general rule, there are several exceptions, and a variety of cases which do not fall within the rule. 1. In general, evidence of collateral facts is not admissible; but when such a fact is material to the issue joined between the parties, it may be given in evidence, as, for example, in order to prove that the acceptor of a bill knew the payee to be a fictitious person; or that the drawer had general authority from him to fill up bills with the name of a fictitious payee, evidence may be given to show that he had accepted similar bills before they could from their date, have arrived from the place of date. 2 H. Bl. 288.—2. Although when special damage sustained by the plaintiff is not stated in the declaration, it is not one of the points in issue, and evidence of it cannot be received; yet a damage which is the necessary result of the defendant's breach of contract, may be proved, notwithstanding it is not in the declaration. 11 Price's R. 19.—3. In general, evidence of the character of either party to a suit is inadmissible, yet in some cases such evidence may be given. Vide article *Character*.—4. When evidence incidently applies to another person or thing not included in the transaction in question, and with regard to whom or to which it is inadmissible; yet if it bear upon the point in issue, it will be received. 8 Bingh. R. 376; S. C. 21 E. C. L. R. 325; and see 1 Phil. Ev. 158; 2 East, P. C. 1035; 2 Leach, 985; S. C. 1 New Rep. 92; Russ. & Ry. C. C. 376; 2 Yeates, 114; 9 Conn. R. 47.—5. The *acts* of others, as in the case of conspirators, may be given in evidence against the prisoner, when referable to the issue; but *confessions* made by one of several conspirators after the offence has been completed, and when the conspirators no longer act in concert, cannot be received. Vide article *Confession*, and 10 Pick. 497; 2 Pet. R. 364; 1 Bree. R. 269; 3 Serg. & Rawle, 9; 1 Rawle, 362, 458; 2 Leigh's R. 745; 2 Day's Cas. 205; 3 Serg. & Rawle, 220; 3 Pick. 33; 4 Cranch, 75; 2 B. & A. 573, 4; S. C. 5 E. C. L. R. 381.—6. In criminal cases when the offence is a cumulative one, consisting, itself in the commission of a number of acts, evidence of those acts is not only admissible, but essential to support the charge. On an indictment against a defendant for a conspiracy, to cause himself to be believed a man of large property, for the purpose of defrauding tradesmen; after proof of a representation to one tradesman, evidence may therefore be given of a representation to another tradesman at a different time. 1 Campb. R. 399; 2 Day's Cas. 205; 1 John. R. 99; 4 Rogers's Rec. 143; 2 Johns. Cas. 193.—7. To prove the guilty knowledge of a prisoner, with regard to the transaction in question, evidence of other offences of the same kind, committed by the prisoner, though not charged in the indictment, is admissible against him. As in the case where a prisoner had passed a counterfeit dollar, evidence that he had other counterfeit dollars in his possession is evidence to prove the guilty knowledge. 2 Const. R. 758; Ib. 776; 1 Bailey, R. 300; 2 Leigh's R. 745; 1 Wheeler's Cr. Cas. 415; 3 Rogers's Rec. 148; Russ. & Ry. 132; 1 Campb. R. 324; 5 Randolph's R. 701.

2. The substance of the issue joined between the parties must be proved. 1 Phil. Ev. 190. Under this rule will be considered the *quantity* of evidence required to support particular averments in the declaration or indictment. And, *first*, of civil cases. 1. It is a fatal vari-

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ance in a contract, if it appear that a party who ought to have been joined as plaintiff has been omitted. 1 Saund. 291 h, (n.); 2 T. R. 282; but it is no variance to omit a person who might have been joined as defendant, because the non-joinder ought to have been pleaded in abatement. 1 Saund. 291 d, (n.)—2. The consideration of the contract must be proved; but it is not necessary for the plaintiff to set out in his declaration, or prove on the trial the several parts of a contract consisting of distinct and collateral provisions; it is sufficient to state so much of the contract as contains the entire consideration of the act, and the entire act to be done in virtue of such consideration, including the time, manner, and other circumstances of its performance. 6 East, R. 568; 4 B. & A. 387; 6 E. C. L. R. 455. *Secondly*, in criminal cases it may be laid down, 1. That it is in general sufficient to prove what constitutes an offence. It is enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified. 2 Campb. R. 585; 1 Harr. & John. 427. If a man be indicted for robbery, he may be found guilty of larceny, and not guilty of the robbery. 2 Hale, P. C. 302. The offence of which the party is convicted must, however, be of the same class with that of which he is charged. 1 Leach, 14; 2 Stra. 1133.—2. When the intent of the prisoner furnishes one of the ingredients in the offence, and several intents are laid in the indictment, each of which, together with the act done, constitutes an offence, it is sufficient to prove one intent only. 3 Stark. R. 35; 14 E. C. L. R. 154, 163.—3. When a person or thing, necessary to be mentioned in an indictment, is described with circumstances of greater particularity than is requisite, yet those circumstances must be proved. 3 Rogers's Rec. 77; 3 Day's Cas. 283. For example, if a party be charged with stealing a *black* horse, the evidence must correspond with the averment, although it was unnecessary to make it. Roscoe's Cr. Ev. 77; 4 Ohio, 350.—4. The name of the prosecutor or party injured must be proved as laid, and the rule is the same with reference to the name of a third person introduced into the indictment, as descriptive of some person or thing.

3. The affirmative of the issue must be proved. The general rule with regard to the onus of proving the issue requires that the party who asserts the affirmative should prove it. But this rule ceases to operate the moment the presumption of law is thrown in the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2. Selw. N. P. 709. Vide *Onus Probandi*, *Presumption*, and 2 Gall. R. 485; 1 McCord's R. 573.

§ 3. The consideration of the *instruments* of evidence will be the subject of this head. These consist of records, private writings, or witnesses.

1. Records are to be proved by an exemplification duly authenticated, vide *Authentication*, in all cases where the issue is *nul tiel record*. In other cases an examined copy, duly proved will, in general, be evidence. Foreign laws are proved in the mode pointed out under the article *Foreign laws*.

2. Private writings are proved by producing the attesting witness, or in case of his death, absence, or other legal inability to testify, as, if after attesting the paper, he becomes infamous, his hand-writing may be proved. When there is no witness

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to the instrument, it may be proved by evidence of the hand-writing of the party, by a person who has seen him write, or in a course of correspondence has become acquainted with his hand. See *Comparison of hand-writing*, and 5 Binn. R. 349; 10 Serg. & Rawle, 110; 11 Serg. & Rawle, 333; 3 W. C. C. R. 31; 11 Serg. & Rawle, 347; 6 Serg. & Rawle, 12, 312; 1 Rawle, R. 223; 3 Rawle, R. 312; 1 Ashm. R. 8; 3 Penna. R. 136.

3. Proof by witnesses. Vide article *Witness*.

§ 4. The *effect* of evidence. Under this head will be considered, 1st, the effect of judgments rendered in the United States, and of records lawfully made in this country, and, 2dly, the effect of foreign judgments and laws.

1. As a general rule a judgment rendered by a court of competent jurisdiction, directly upon the point in issue is a bar between the same parties. 1 Phil. Ev. 242; and privies in blood, as an heir, 3 Mod. 141, or privies in estate, 1 Ld. Raym. 730; B. N. P. 232; stand in the same situation as those they represent; the verdict and judgment may be used for or against them, and is conclusive. Vide *Res Judicata*. The constitution of the United States, art. 4, s. 1, declares, that "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And congress may by general laws prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof." Vide article *Authentication*, and 7 Cranch, 481; 3 Wheat. R. 234; 10 Wheat. R. 469; 17 Mass. R. 546; 9 Cranch, 192; 2 Yeates, 532; 7 Cranch, 408; 3 Bibb's R. 369; 5 Day's R. 563; 2 Marsh. (Kty.) R. 293.

2. As to the effect of foreign laws, see article *Foreign Laws*. For the force and effect of foreign judgments, see article *Foreign Judgments*.

Vide, generally, the Treatises on evidence of Gilbert, Phillips, Starkie, Roscoe, Swift, Bentham, Macnally, and Peake; the various Digests, h. t.

EVIDENCE, BEST, *in practice;* by the best evidence is understood that proof which most certainly exhibits the true state of facts to which it relates. The law requires the best evidence to be adduced which the case admits of; or perhaps more properly speaking, it rejects secondary or inferior evidence, when it is attempted to be substituted for evidence of a higher and superior nature. This is a rule of policy, grounded upon a reasonable suspicion, that the substitution of inferior for better evidence arises from sinister motives; and an apprehension that the best evidence, if produced, would alter the case to the prejudice of the party. This rule relates not to the measure and quantity of evidence, but to its quality when compared with some other evidence of superior degree. It is not necessary in point of law, to give the fullest proof that every case may admit of. If, for example, there be several eye-witnesses to a fact, it may be proved by the testimony of one only.

EVIDENCE, HEARSAY, *in practice*. The mere declarations of third persons as to a fact, are called hearsay evidence. Such mere recitals or assertions cannot be received in evidence for many reasons, but principally for the following: first, that the party making such declarations is not on oath; and, secondly, because the party against whom it operates, has no opportunity of cross-examination. 1 Phil. Ev. 185. See for other reasons 1 Stark. Ev. pt. 4,

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p. 44. The general rule excluding hearsay evidence does not apply to those declarations to which the party is privy, or to admissions which he himself has made. See *Admissions.*

Many facts, from their very nature, either absolutely, or usually, exclude direct evidence to prove them, being such as are either necessarily or usually imperceptible by the senses, and therefore incapable of the ordinary means of proof. These are questions of pedigree or relationship, character, prescription, custom, boundary, and the like; as also questions which depend upon the exercise of particular skill and judgment. Such facts, some from their nature, and others from their antiquity, do not admit of the ordinary and direct means of proof by living witnesses; and, consequently, resort must be had to the best means of proof which the nature of the cases afford. See *Pedigree, Prescription, Custom, Boundary, Opinion.*

EVIDENCE, PAROL, *in practice.* Parol evidence is that which is given by witnesses, viva voce, in contradistinction to that which is written or documentary. It is a general rule that oral evidence shall in no case be received as equivalent to, or as a substitute for a written instrument, where the latter is required by law; or to give effect to a written instrument which is defective in any particular which by law is essential to its validity; or to contradict, alter or vary a written instrument, either appointed by law, or by the contract of the parties, to be the appropriate and authentic memorial of the particular facts it recites; for by doing so, oral testimony would be admitted in usurpation of a species of evidence decidedly superior in degree. 1 Serg. & Rawle, 464; Ib. 27; Addis. R. 361; 2 Dall. 172; 1 Yeates, 140; 1 Binn. 616; 3 Marsh. (Ken.) R. 333; 4 Bibb, R. 473; 1 Bibb, R. 271; 11 Mass. R. 30; 13 Mass. R. 443; 3 Conn. 9; 20 Johns. R. 49; 12 Johns. R. 77; 3 Camp. 57; 1 Esp. C. 53; 1 M. & S. 21; Bunb. 175.

But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, &c. or to apply it to its proper subject-matter, or, in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases the parol evidence does not usurp the place or arrogate the authority of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. 1 Murph. R. 426; 4 Dessaus. R. 211; 1 Dessaus. R. 345; 1 Bay, R. 247; 1 Bibb, R. 271; 11 Mass. R. 30; see 1 Pet. C. C. R. 85; 1 Binn. R. 610; 3 Binn. R. 587; 3 Serg. & Rawle, 340; Poth. Obl. Pt. 4, c. 2.

EVIDENCE, SECONDARY, *in practice.* Secondary evidence is the proof of the contents of a writing, when the original has been lost or destroyed, or it is in the possession of the opposite party. It is that proof which is not the best to exhibit the true state of the facts to which it relates, but when such primary evidence cannot be had, the best in the power of the party offering it. After proof of the due execution of the original, the contents should be proved by a counterpart, if there be one, for this is the next best evidence; and it seems that no evidence of a mere copy is admissible until proof has been given that the counterpart cannot be produced. 6 T. R. 236. If there be no counterpart a copy may be proved in evidence by any witness who knows that it is a copy,

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from having compared it with the original. Bull. N. P. 254; 1 Keb. 117; 6 Binn. R. 234; 2 Taunt. R. 52; 1 Campb. R. 469; 8 Mass. R. 273. If there be no copy, the party may produce an abstract, or even give parol evidence of the contents of a deed. 10 Mod. 8; 6 T. R. 556. Before secondary evidence can be given of the contents of a paper which is in the possession of the opposite party, notice must be given to such party to produce it on the trial. 3 T. R. 306; 2 T. R. 201. And the service of such notice must be proved. 2 T. R. 201, n.

EVOCATION, *French law*, is the act by which a judge is deprived of cognizance of a suit over which he had jurisdiction, for the purpose of conferring on other judges the power of deciding it. This is done with us by writ of *certiorari*.

EX MERO MOTU, from mere motion. To prevent injustice, the courts will, *ex mero motu*, make rules and orders which the parties would not strictly be entitled to ask for.

EX PARTE, of the one part. Many things may be done *ex parte*, when the opposite party has had notice; an affidavit, or deposition is said to be taken *ex parte*, when only one of the parties attends to taking the same.

EX POST FACTO, *contracts, crim. law.* This is a technical expression which signifies, that something has been after another thing, in relation to the latter. An estate granted may be made good or avoided by matter ex post facto, when an election is given to the party to accept or not to accept. 1 Co. 146. The constitution of the United States, art. 1, s. 10, forbids the states to pass any *ex post facto law*, which has been defined to be one which renders the act punishable in a manner in which it was not punishable when it was committed. 6 Cranch, 138. This definition extends to laws passed after the act, and affecting a person by way of punishment of that act, either in his person or estate. 3 Dall. 386; 1 Blackf. Ind. R. 193; 2 Pet. U. S. Rep. 413; 1 Kent, Com. 408; Dane's Ab. Index, h. t. This prohibition in the constitution against passing *ex post facto* laws, applies exclusively to criminal or penal cases, and not to civil cases. Serg. Const. Law, 356.

EXACTION, *torts*, a wilful wrong done by an officer, or by one who, under colour of his office, takes more fee or pay for his services than what the law allows. Between *extortion* and *exaction* there is this difference; that in the former case the officer extorts more than his due, when something is due to him; in the latter he exacts what is not his due, when there is nothing due to him. Co. Litt. 368.

EXAMINERS, *practice*, are persons appointed to question students of law, in order to ascertain their qualifications before they are admitted to practice. Officers in the courts of chancery whose duty it is to examine witnesses, are also called examiners. Com. Dig. Chancery, P. 1.

EXCAMBIATOR, the name of an exchange of lands; a broker. This term is now obsolete.

EXCEPTION, *legislation, construction.* Exceptions are rules or laws which bound the extent of others; they limit the extent of the rule to which they apply, and render that just and proper, which would be, on account of its generality, unjust and improper; for example, it is a general rule that parties competent may make contracts, the rule that they shall not make any contrary to equity, or *contra bonos mores*, is the exception.

EXCEPTION, *in contracts.* An

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exception is a clause in a deed, by which the lessor excepts something, out of that which he granted before by the deed. To make a valid exception, these things must concur; 1, the exception must be by apt words, as, saving and excepting, &c.; 2, it must be of part of the thing demised, and not of some other thing; 3, it must be part of the thing only, and not of all, the greater part, or the effect of the thing granted; an exception, therefore, in a lease, which extends to the whole thing demised, is void; 4, it must be of such thing as is severable from the demised premises, and not of an inseparable incident; 5, it must be of such a thing as he that accepts may have, and which properly belongs to him; 6, it must be of a particular thing out of a general, and not of a particular thing out of a particular thing; 7, it must be particularly described and set forth; a lease of a tract of land, except one acre, would be void, because that acre was not particularly described. Woodf. Landl. & Ten. 10.

EXCEPTION, *practice, pleading.* This term is used in the civil, nearly in the same sense that the word *plea* has in the common law. Merl. Répert, h. t.; Ayl. Parerg. 251. In chancery practice, it is the allegation of a party in writing, that some pleading or proceeding in a cause is insufficient. 1 Harr. Ch. Pr. 228. Exceptions are dilatory or peremptory. Bract. lib. 5, tr. 5; Britton, cap. 91, 92; 1 Lilly's Ab. 559.

EXCHANGE, *comm. law.* This word has several significations.

1. Exchange is a negociation by which one person transfers to another, funds which he has in a certain place, either at a price agreed upon, or which is fixed by commercial usage. This transfer is made by means of an instrument which represents such funds, and is well known by the name of bill of exchange.

2. The price which is paid in order to obtain such transfer, is also known among merchants by the name of exchange; as, exchange on England is five per cent.

3. Barter, (q. v.) or the transfer of goods and chattels for other goods and chattels, is also known by the name of exchange, though the term barter is more commonly used.

Vide the articles *Bills of Exchange; Damages on Bills of Exchange*, and *Re-exchange*. Also Civ. Code of Lo. art. 2630.

EXCHANGE, *conveyancing.* An exchange is a mutual grant of equal interests in land, the one in consideration of the other. 2 Bl. Com. 323; Litt. s. 62; Touchs. 289; there are five circumstances necessary to an exchange; 1. That the estates given be equal. 2. That the word *escambium* or exchange be used, which cannot be supplied by any other word, or described by circumlocution. 3. That there be an execution by entry or claim in the life of the parties. 4. That if it be of things which lie in grant, it be by deed. 5. That if the lands lie in several counties, it be by deed indented; or if the thing lie in grant, though they be in one county. In practice this mode of conveyance is obsolete. Vide Cruise, Dig. tit. 32; Perk. ch. 4; 10 Vin. Ab. 125; Com. Dig. h. t.; Nels. Ab. h. t. Vide Horsman, 362; 3 Wood, 243, for forms.

EXCHEQUER, *Eng. law*, is an ancient court of record, set up by William the conqueror. It is called exchequer from the chequed cloth, resembling a chess board, which covers the table there; 3 Bl. Com. 43; it consists of two divisions; the receipt of the exchequer, which manages the royal revenue; and the court, or judicial part of it, which is again divided into a court of

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equity, and a court of common law. Ib. 44.

EXCHEQUER CHAMBER, *Eng. law*, is a court erected by statute 31 Ed. 3, c. 12, to determine causes upon writs of error from the common law side of the court of exchequer. 3 Bl. Com. 55.

EXCISES. This word is used to signify an inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale. 1 Bl. Com. 318; 1 Tuck. Bl. Com. Appx. 341; Story, Const. § 950.

EXCLUSIVE, *rights*. The act of preventing one from participating in a thing. An exclusive right or privilege, is one granted to a person to do a thing, and forbidding all others to do the same. A patent-right or copy-right, are of this kind.

EXCLUSIVE, *construction*, when an act is to be done within a certain time, as ten days from a particular time, one day is to be included and the other excluded. Vide Hob. 139; Cowp. 714; Lofft. 276; Dougl. 463; 2 Mod. 280; Sav. 124; 3 Penna. Rep. 200; 1 Serg. & Rawle, 43; 3 B. & A. 581; Com. Dig. Temps, A; 3 East, 407; Com. Dig. Estates, G 8; 2 Chit. Pr. 69, 147.

EXCUSABLE HOMICIDE, *crim. law*, is the killing of a human being, when the party killing is not altogether free from blame, but the necessity which renders it excusable, may be said to be partly induced by his own act. 1 East, P. C. 220.

EXCUSE. A reason alleged for the doing or not doing a thing. This word presents two ideas differing essentially from each other. In one case an excuse may be made in order to show that the party accused is not guilty; in another, by showing that though guilty, he is less so, than he appears to be. Take, for example the case of a sheriff who has an execution against an individual, and who in performance of his duty, arrests him; in an action by the defendant against the sheriff, the latter may prove the facts and this shall be a sufficient excuse for him: this is an excuse of the first kind, the sheriff was guilty of no offence. But, suppose, secondly, that the sheriff has an execution against Paul, and by mistake, and without any malicious design, he arrests Peter instead of Paul, the fact of his having the execution against Paul and the mistake he made, will not justify the sheriff, but it will extenuate and excuse his conduct, and this will be an excuse of the second kind.

Many persons are excused in the commission of acts, which but for the valid and lawful excuse would be crimes. These persons are generally excused because they had no intention of doing wrong, or so the law presumes, because they had no power of judging, and therefore had no criminal will, (q. v.); or having power of judging they had no choice, and were compelled by necessity. Among the first class may be placed infants, under the age of discretion, lunatics, and married women, while acting in the presence of their husbands, when committing an offence, not *malum in se*, as treason or murder. 1 Hale's P. C. 44, 45; or in offences relating to the domestic concern or management of the house, as the keeping of a bawdy house. Hawk. b. 1, c. 1, s. 12. Among acts of the second kind may be classed, the beating or killing another in self-defence; the destruction of property in order to prevent a more serious calamity, as the tearing down of a house on fire, to prevent its spreading to the neighbouring property, and the like.

EXECUTION, *contracts*, signi-

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fies the accomplishment of a thing; as, the execution of a bond and warrant of attorney, which is the signing, sealing, and delivery of the same.

EXECUTION, *practice*. The act of carrying into effect the final judgment of a court, or other jurisdiction. The writ which authorises the officer so to carry into effect such judgment is also called an execution. A distinction has been made between an execution which is used to make the money due on a judgment out of the property of the defendant, and which is called a *final* execution; and one which tends to an end but is not absolutely final, as a *capias ad satisfaciendum*, by virtue of which the body of the defendant is taken, to the intent that the plaintiff shall be satisfied his debt, &c. the imprisonment not being absolute, but until he shall satisfy the same; this is called an execution *quousque*. 6 Co. 87.

Executions are either to recover specific things, or money.—1. Of the first class are the writs of *habere facias seisinam*, (q. v.) *habere facias possessionem*, (q. v.) *retorno habendo*, (q. v.) *distringas*, (q. v.).—2. Executions for the recovery of money are those which issue against the body of the defendant, as the *capias ad satisfaciendum*, (q. v.) an attachment; (q. v.) those which issue against his goods and chattels, namely, the *fieri facias*, (q. v.) the *venditioni exponas;* (q. v.) those which issue against his lands, the *levari facias*, (q. v.) the *liberari facias*, the *elegit*, (q. v.) Vide 10 Vin. Ab. 541; 1 Ves. Jr. 430; 1 Sell. Pr. 512; 2 Bac. Ab. 683; Com. Dig. h. t.; Dane's Ab. h. t.; the various Digests, h. t.; Tidd's Pr. Index, h. t.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman. In the United States executions are so rare that there are no executioners by profession. It is the duty of the sheriff or marshal to perform this office, or to procure a deputy to do it for them.

EXECUTIVE, *government*, is that power in the government which causes the laws to be executed and obeyed: it is usually confided in the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands. The officer in whom is vested the executive power is also called the executive. The constitution of the United States directs that "the executive power shall be vested in a president of the United States of America." Art. 2, s. 1. Vide Story, Const. B. 3, c. 36.

EXECUTOR, *trusts*. The word executor taken in its largest sense, has several acceptations.—1. Executor dativus, who is one called an administrator to an intestate; 2. Executor testamentarius, or one appointed to the office by the last will of a testator, and this is what is usually meant by the term. In the civil law the person who is appointed to perform the duties of an executor as to goods, is called hæres testamentarius; the term executor, it is said, is a barbarism unknown to that law. 3 Atk. 304. An executor, as the term is at present accepted, is the person to whom the execution of a last will and testament of personal estate is, by the testator's appointment, confided. 2 Bl. Com. 503; 2 P. Wms. 548; Toller, 30; 1 Will. on Ex. 112; Swinb. pt. 4, s. 2, pl. 2. Generally speaking all persons who are capable of making wills may be executors, and some others beside, as infants and married

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women. 2 Bl. Com. 503. An executor is absolute or qualified; his appointment is absolute when he is constituted certainly, immediately, and without restriction in regard to the testator's effects, or limitation in point of time. It may be qualified by limitation as to the time or place wherein, or the subject-matters whereon the office is to be exercised; or the creation of the office may be conditional. It may be qualified, 1st, by limitations in point of time, for the time may be limited when the person appointed shall begin, or when he shall cease to be executor; as, if a man be appointed executor upon the marriage of testator's daughter. Swinb. pt. 4, s. 17, pl. 4.—2. The appointment may be limited in point of place; as, if one be appointed executor of all the testator's goods in the state of Pennsylvania.—3. The power of the executor may be limited as to the subject-matter, upon which it is to be exercised; as, when a testator appoints A his executor of his goods and chattels in possession, B, of his choses in action. One may be appointed executor of one thing only, as of a particular claim or debt due by bond, and the like. Off. Ex. 29; 3 Phillim. 424. But although a testator may thus appoint separate executors of distinct parts of his property and may divide their authority, yet *quoad* creditors of the testator they are all executors, and as one executor, and may be sued as one executor. Cro. Car. 293.—4. The appointment may be conditional, and the condition may be either precedent or subsequent. Godolp. Orph. Leg. pt, 2, c. 2, s. 1; Off. Ex. 23.

An executor derives his interest in the estate of the deceased entirely from the will, and it vests in him from the moment of the testator's death. 1 Will. Ex. 159; Com. Dig. Administration, B 10, 5 B. & A. 745; 2 W. Bl. Rep. 692. His interest in the goods of the deceased is not that absolute, proper and ordinary interest, which every one has in his own proper goods. He is a mere trustee to apply the goods for such purposes as are sanctioned by law. 4 T. R. 645; 9 Co. 88 b; 2 Inst. 236; Off. Ex. 192. He represents the testator and therefore may sue and recover all the claims he had at the time of his death; and may be sued for all debts due by him. 1 Will. Ex. 508 et seq.

The following are the principal duties of an executor: 1. Within a convenient time after the testator's death, to collect the goods of the deceased, provided he can do so peaceably; when he is resisted he must apply to the law for redress.—2. To bury the deceased in a manner suitable to the estate he leaves behind him; and when there is just reason to believe he died insolvent, he is not warranted in expending more in funeral expenses (q. v.) than is absolutely necessary. 2 Will. Ex. 636; 1 Salk. 296; 11 Serg. & Rawle, 204; 14 Serg. & Rawle, 64.—3. The executor should prove the will in the proper office.—4. He should make an inventory (q. v.) of the goods of the intestate, which should be filed in the office.—5. He should ascertain the state of the debts and credits of the estate, and endeavour to collect all such claims with as little delay as possible consistently with the interest of the estate.—6. He should advertise for debts and credits, *see forms of advertisements*, 1 Chit. Pr. 521.—7. He should reduce the whole of the goods, not specifically bequeathed, into money with all due expedition.—8. Keep the money of the estate in bank, but not mixed with his own account, or he may be charged interest on it.—9. Be at all times

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ready to account and actually file an account within a year.—10. Pay the debts and legacies in the order required by law.

Co-executors, however numerous, are considered in law as an individual person, and, consequently, the acts of any one of them, in respect of the administration of the assets, are deemed, generally, the acts of all. 3 Bac. Ab. 30; Touchst. 484; for they have all a joint and entire authority over the whole property. Off. Ex. 213; 1 Rolle's Ab. 924; Com. Dig. Administration, B 12. On the death of one of several joint executors, the rights and power which he possessed survive to those who are still living. When there are several executors and all die, the power is in common transferred to the executor of the executor, so that he is executor of the first testator; and the law is the same when a sole executor dies leaving an executor, the rights are vested in the latter. This rule has been changed in Pennsylvania and perhaps some other states by legislative provision; there, in such case, administration cum testamento annexo must be obtained, the right does not survive to the executor of the executor. In general executors are not responsible for each other, and they have a right to settle separate accounts.

Vide, generally, 11 Vin. Ab. h. t.; Bac. Ab. h. t.; Rolle, Ab. h. t.; Nelson's Ab. h. t.; Dane's Ab. Index, h. t.; Com. Dig. Administration; 1 Supp. to Ves. jr. 8, 90, 356, 438; 2 Ib. 69; 1 Vern. 302, 3; Yelv. 84 a; 1 Salk. 318; 18 Engl. C. L. Rep. 185; 10 East, 295; 2 Phil. Ev. 289; 1 Rop. Leg. 114; American Digests, h. t.; Swinburne, Williams, Lovelass and Roberts's several treatises on the Law of Executors; Off. Ex. per totum; Chit. Pr. Index, h. t. For the origin and progress of the law in relation to executors, the reader is referred to 5 Toull. n. 576, note; Glossaire du Droit Français, par Delaulière, verbo Exécuteurs testamentaires, and the same author on art. 297, of the Custom of Paris; Poth. Des Donations Testamentaires.

EXECUTOR, INSTITUTED; an instituted executor is one who is appointed by the testator without any condition, and who has the first right of acting when there are substituted executors. An example will show the difference between an instituted and a substituted executor: suppose a man makes his son his executor, but if he will not act, he appoints his brother, and if neither will act his cousin; here the son is the instituted executor, in the first degree, the brother is said to be substituted in the second degree, and the cousin in the third degree, and so on. See *Heir, instituted*, and Swinb. pt. 4, s. 19, pl. 1.

EXECUTOR, SUBSTITUTED, is the person who is appointed executor, if another person who has been so appointed refuses to act. See *Executor, instituted*.

EXECUTOR DE SON TORT, executor in his own wrong, is one who, without lawful authority, undertakes to act as executor of a person deceased. He is in general held responsible for all his acts, when he does any thing which might prejudice the estate, and receives no advantage whatever in consequence of his assuming the office. He cannot sue a debtor of the estate, but may be sued generally as executor. Vide Off. Ex. 181; 3 Bac. Ab. 25; 11 Vin. Ab. 215; 1 Dane's Ab. 561; Bull. N. P. 48; Com. Dig. Administration, c. 3; Ham. on Part. 146 to 156; 8 John. R. 426; 7 John. R. 161; 3 Penna. R. 129; 15 Serg. & Rawle, 39.

EXECUTOR TO THE TENOR. This phrase is used in the ec-

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clesiastical law, to denote a person who is not directly appointed by the will an executor, but who is charged with the duties which appertain to one; as, "I appoint A B to discharge all lawful demands against my will." 3 Phill. 116; 1 Eccl. Rep. 374; Swinb. 247; Wentw. Ex. part 4, s. 4, p. 230.

EXECUTORY. Whatever may be executed as an executory sentence or judgment, an executory contract.

EXECUTORY DEVISE, *estates.* An executory devise is a limitation by will of future contingent interest in lands, contrary to the rules of limitation of contingent estates in conveyances at law. When the limitation by will does not depart from those rules prescribed for the government of contingent remainders, it is, in that case, a contingent remainder, and not an executory devise. 4 Kent, Com. 257; 1 Eden's R. 27; 3 T. R. 763. An executory devise differs from a contingent remainder in three material points; 1. It needs no particular estate to precede and support it, for example, a devise to A B, upon his marriage. 2. A fee may be limited after a fee, as in the case of a devise of land to C D in fee, and if he dies without issue, or before the age of twenty-one, then to E F in fee. 3. A term for years may be limited over after a life estate created in the same. 2 Bl. Com. 172, 173.

To prevent perpetuities a rule has been adopted that the contingency must happen during the time of a life in being and twenty-one years, and the months allowed for gestation in order to reach beyond the minority of a person not in esse at the time of making the executory devise. 3 P. Wms. 258; 7 T. R. 100; 2 Bl. Com. 174; 7 Cranch, 456; 1 Gilm. 194; 2 Hayw. 375.

There are several kinds of executory devises, two relative to real estate; and one in relation to personal estate.

1. When the devisor parts with his whole estate, but upon some contingency, qualifies the disposition of it, and limits an estate on that contingency. For example, when the testator devises to Peter for life, remainder to Paul, in fee, provided that if James should within three months after the death of Peter pay one hundred to Paul, then to James in fee; this is an executory devise to James, and if he dies during the life of Peter, his heir may perform the condition. 10 Mod. 419; Prec. in Ch. 486; 2 Binn. 532; 5 Binn. 252; 7 Cranch, 456; 6 Munf. 187; 1 Dessaus. 137, 183; 4 Ib. 340, 459; 5 Day, 517.

2. When the testator gives a future interest to arise upon a contingency, but does not part with the fee in the mean time; as in the case of devise of the estate to the heirs of John, after the death of John; or a devise to John in fee, to take effect six months after the testator's death; or a devise to the daughter of John, who shall marry Robert within fifteen years. T. Raym. 82; 1 Salk. 226; 1 Lutw. 798.

3. The executory bequest of a chattel interest is good, even though the ulterior devisee be not at the time *in esse*, and chattels so limited are protected from the demands of creditors beyond the life of the first taker, who cannot pledge them, nor dispose of them beyond his own life interest in them. 2 Kent. Com. 285; 2 Serg. & Rawle, 59; 1 Dessaus. 271; 4 Dessaus. 340; 1 Bay, 78.

Vide, Com. Dig. Estates by Devise, N 16; Fearne on Rem. 381; Cruise's Dig. Index, h. t.; 4 Kent, Com. 357 to 381; 1 Hill. Ab. c. 43, p. 533.

EXEMPLIFICATION, *in evidence*, is a perfect copy of a record,

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or office-book lawfully kept, so far as relates to the matter in question. Vide, generally, 1 Stark. Ev. 151; 1 Phil. Ev. 307; 7 Cranch. 481; 3 Wheat. 234; 10 Wheat. 469; 9 Cranch, 122; 2 Yeates, 532; 1 Hayw. 359; 1 John. Cas. 238. As to the mode of authenticating records of other states, see articles *Authentication*, and *Evidence*.

EXEMPTION, is a privilege which dispenses with the general rule: for example, in Pennsylvania, and perhaps in all the other states, clergymen are exempt from serving on juries. Exemptions are generally allowed, not for the benefit of the individual, but for some public advantage.

EXERCITOR, a term in the *civil law*, to denote the person who fits out and equips a vessel, whether he be the absolute or qualified owner, or even a mere agent. Emer. on Mar. Loans, c. 1, s. 1. In English we generally use the word "ship's husband," but it is generally to designate and distinguish from among several part owners of a ship, the one who has the immediate care and management of her. Hall on Mar. Loans, 142, n. See *Ship's husband*.

EXEQUATUR, *French law*. This latin word was, in the ancient practice, placed at the bottom of a judgment emanating from another tribunal, and was a permission and authority to the officer to execute it within the jurisdiction of the judge who put it below the judgment. We have something of the same kind in our practice. When a warrant for the arrest of a criminal is issued by a justice of the peace of one county, and he flies into another, a justice of the latter county may endorse the warrant and then the ministerial officer may execute it in such county. This is called *backing* a warrant.

EXEQUATUR, *international law*, is a declaration made by the executive of a government near to which a consul has been nominated and appointed, after such nomination and appointment has been notified, addressed to the people, in which is recited the appointment of the foreign state, and that the executive having approved of the consul, as such commands all the citizens to receive, countenance, and, as there may be occasion, favourably assist the consul in the exercise of his place, giving and allowing him all the privileges, immunities, and advantages, thereto belonging. 3 Chit. Com. Law, 56; 3 Maule & Selw. 290; 5 Pardes. n. 1445.

EXHEREDATION, *civil law*, is the act by which a forced heir is deprived of his legitimate or legal portion which the law gives him; disinherison, (q. v.)

EXHIBIT, *in practice*; where a paper or other writing is on motion, or on other occasion proved; or if an affidavit to which the paper-writing is annexed refer to it, it is usual to mark the same with a capital letter, and to add, "This paper writing, marked with the letter A, was shown to the deponent at the time of his being sworn by me, and is the same by him referred to by the affidavit annexed hereto." Such paper or other writing, with this attestation, signed by the judge or other person before whom the affidavit shall have been sworn, is called an *exhibit*. Vide Stra. 674; 2 P. Wms. 410.

EXHIBITION, *Scotch law*, is an action for compelling the production of writings; in Pennsylvania a party possessing writings is compelled to produce them on a proper notice being given, in default of which judgment is rendered against him.

EXIGENT, or EXIGI FACIAS, *in practice*, is a writ issued in the course of proceedings to outlawry, deriving its name and appli-

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cation from the mandatory words found therein, signifying, "that you cause to be exacted or required," and it is that proceeding in an outlawry which, with the writ of proclamation, issued at the same time, immediately precedes the writ of *capias utlugatum*.

EXILE, *civil law*, is the interdiction of all places except one in which the party is forced to make his residence. This punishment did not deprive the sufferer of his right of citizenship, or of his property, unless the exile should have been perpetual, in which case confiscation might have been part of the sentence. Exile was temporary or perpetual. Dig. 48, 22, 4; Code, 10, 59, 2. Exile differs from deportation, (q. v.) and relegation, (q. v.) Vide 2 Lev. 191.

EXONERATION, is the taking off a burden or duty. It is a rule in the distribution of an intestate's estate that the debts which he himself contracted, and for which he mortgaged his land as security, shall be paid out of the personal estate in exoneration of the real. But when the real estate is charged with the payment of a mortgage at the time the intestate buys it, and the purchase is made subject to it, the personal is not in that case to be applied in exoneration of the real estate. 2 Pow. Mortg. 780; 5 Hayw. 57; 3 Johns. Ch. R. 229. But the rule for exonerating the real estate out of the personal does not apply to the disappointment of specific or pecuniary legatees, nor the widow's right to paraphernalia, and with greater reason not with the interest of creditors. 2 Ves. Jr. 64; 1 P. Wms. 693; Ib. 729; 2 Ib. 120, 335; 3 Ib. 367. Vide Pow. Mortg. Index, h. t.

EXPATRIATION, the voluntary act of abandoning one's country and becoming the citizen or subject of another. Citizens of the United States have the right to expatriate themselves until restrained by congress, but it seems that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law. To be legal the expatriation must be for a purpose which is not unlawful, nor a fraud of the duties at home of the emigrant. A citizen may acquire in a foreign country the commercial privileges attached to his domicil, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection. 2 Cranch, 120; vide Serg. Const. Law, 318, 2d ed.; 2 Kent, Com. 36; Grotius, B. 2, c. 5, s. 24; Puffend. B. 8, c. 11, s. 2, 3; Vattel, B. 1, c. 19, s. 218, 223, 224, 225; Wyckf. tom. i. 117, 119; 3 Dall. 133; 7 Wheat. 342; 1 Pet. C. C. R. 161; 4 Hall's Law Journ. 461; Bracken. Law Misc. 409; 9 Mass. R. 461.

EXPECTANCY, *estates*, signifies having a relation or dependence upon something future. Estates are of two sorts, either in *possession*, sometimes called estates executed; or in *expectancy*, which are executory. Expectancies are, first, created by the parties, called a *remainder*; or by act of law, called a *reversion*.

EXPECTANT, having relation to, or depending upon something; this word is commonly used with *fee*, as *fee expectant*.

EXPENSÆ LITIS, expenses of the suit, the costs which are generally allowed to the successful party.

EXPERTS, from the latin *experiens*, which signifies instructed by experience, in French law, are persons who are selected by the courts or the parties in a cause on account of their knowledge or skill to examine and estimate certain things, and

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make a report of their opinions. Merl. Rép. mot Expert; 2 Lois des Bâtimens, 253.

EXPORTATION, *comm. law.* The act of sending goods and merchandise from one country to another. In order to preserve equality among the states, in their commercial relations, the constitution provides that "no tax or duty shall be laid on articles exported from any state," art. 1, s. 9. And to prevent a pernicious interference with the commerce of the nation, the 10th section of the 1st article of the constitution contains the following prohibition: "No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress." Vide 12 Wheat. 419; and the article *Importation.*

EXPRESS, that which is made known and not left to implication. The opposite of implied.

EXPULSION of a member of a body politic, corporate, or of a society, is the act of depriving such member of his right of membership therein, by the vote of such body or society, for some violation of his duties as such, or for some offence which renders him unworthy of longer remaining a member of the same. By the constitution of the United States, art. 1, s. 5, § 2, each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. In the case of John Smith, a senator from Ohio, who was expelled from the senate in 180-, the committee made a report which embraces the following points:

1. That the senate may expel a member for a high misdemeanor, such as a conspiracy to commit treason. Its authority is not confined to an act done in its presence.

2. That a previous conviction is not requisite, in order to authorize the senate to expel a member from their body, for a high offence against the United States.

3. That although a bill of indictment against a party for treason and misdemeanor has been abandoned, because a principal party had terminated in an acquittal, owing to the admissibility of the evidence upon that indictment, yet the senate may examine the evidence for themselves, and if it is sufficient to satisfy their minds that the party is guilty of a high misdemeanor, it is a sufficient ground for expulsion.

4. That the 5th and 6th articles of the amendments of the constitution of the United States, containing the general rights and privileges of the citizen as to criminal prosecutions, refer only to prosecutions at law, and do not affect the jurisdiction of the senate as to expulsion.

5. That before a committee of the senate appointed to report an opinion, relative to the honour and privileges of the senate, and the facts respecting the conduct of the member implicated, such member is not entitled to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers. It is before the senate that the member charged is entitled to be heard.

6. In determining on expulsion, the senate is not bound by the forms of judicial proceedings, or the rules of judicial evidence; nor, it seems, is the same degree of proof essential which is required to convict of a crime. The power of expulsion

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must, in its nature, be discretionary, and its exercise of a more summary character. 1 Hall's Law Journ.

Corporations have the right of expulsion in certain cases, as such power is necessary to the good order and government of corporate bodies; and the cases in which this inherent power may be exercised are of three kinds: 1. When an offence is committed which has no immediate relation to a member's corporate duty, but is of so infamous a nature, as renders him unfit for the society of honest men; such are the offences of perjury, forgery and the like. But before an expulsion is made for a cause of this kind, it is necessary that there should be a previous conviction by a jury, according to the law of the land. 2. When the offence is against his duty as a corporator, in which case he may be expelled on trial and conviction before the corporation. 3. The third is of a mixed nature, against the member's duty as a corporator, and also indictable by the law of the land. 2 Binn. 448. See also 2 Burr. 536.

Members of what are called joint stock incorporated companies, or indeed members of any corporation owning property, cannot, without express authority in the charter, be expelled, and thus deprived of their interest in the general fund. Ang. & Ames on Corp. 238.

See generally, Ang. & Ames on Corp. ch. 11; Willcock on Mun. Corp. 270; 11 Co. 99; 2 Bing. 293; 5 Day, 329; Sty. 478; 6 Conn. R. 532; 6 Serg. & Rawle, 469; 5 Binn. 486.

EXTENSION, *comm. law.* This term is applied among merchants to signify an agreement made between a debtor and his creditors, by which the latter, in order to enable the former, who is somewhat embarrassed in his circumstances, to retrieve his former standing, agree to wait for a definite length of time after their several claims should become due and payable, before they will demand payment; as John Smith & Co. have received an extension. Among the French, a similar agreement is known by the name of atermoiement. Merl. Rép. mot Atermoiement.

EXTENT IN CHIEF, *in English practice*, is an execution issuing out of the exchequer at the suit of the crown. It is a mere fiscal writ. See West on Extents; 2 Tidd, Index.

EXTENT IN AID, *in English practice*, is an exchequer process, formerly much used, and now liable to be abused; it is regulated by 57 Geo. 3, c. 117.

EXTINGUISHMENT, *in contracts*, the destruction of a contract, the act by which a contract is made void. 7 Vin. Ab. 367; 11 Vin. Ab. 461; 18 Vin. Ab. 493 to 515; 2 Nels. Ab. 818; 14 Serg. & Rawle, 209; 3 Bac. Ab. 101. Vide *Discharge of a debt.*

EXTORTION, *crimes*, in a large sense signifies any oppression, under colour of right: but in a more strict sense it means the unlawful taking by any officer, by colour of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due. 4 Bl. Com. 141; 1 Hawk. P. C. c. 68, s. 1; 1 Russ. Cr. *144. It differs from exaction, (q. v.)

EXTRACT is a part of a writing. This is not evidence, because the *whole* of the writing may explain the part extracted so as to give it a different sense.

EXTRADICTION, *French law*, is the act of sending by authority of law, a person accused of a crime to a foreign jurisdiction where it was committed, in order that he may be tried there. Merl. Rép. h. t. By the constitution and laws of the

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United States fugitives from justice, (q. v.) may be demanded by the executive of one state where the crime has been committed from that of another where the accused is. Const. United States, art. 4, s. 2, 2; 3 Story, Com. Const. U. S. § 1801 et seq. The government of the United States is bound by some treaty stipulations to surrender criminals who take refuge within the country, but independently of such conventions, it is questionable whether criminals can be surrendered. 1 Kent, Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125.

EXTRAJUDICIAL, that which does not belong to the judge or his jurisdiction, notwithstanding which he takes cognizance of it. Extrajudicial judgments and acts are absolutely void. Vide *Coram non judice*. Vide Merl. Répert. mots Excés de Pouvoir.

EXTRAVAGANTES, *canon law*. This is the name given to the constitutions of the popes posterior to the Clementines; they are thus called *quasi vagantes extra corpus juris*, to express that they were out of the canonical law, which at first contained only the decrees of Gratian; afterwards the decretals of Gregory IX., the sexte of Boniface VIII., the Clementines, and at last the extravagantes were added to it. There are the extravagantes of John XXII., and the common extravagantes. The first contain twenty epistles, decretals or constitutions of that pope, divided under fifteen titles, without any subdivision into books. The others are epistles, decretals or constitutions of the popes who occupied the holy see either before or after John XXII., they are divided into books like the decretals.

EXTREMIS. When a person is sick beyond the hope of recovery, and he afterwards dies, he is said to be in extremis. A will made in this state is liable to be impeached; but if made without undue influence by a person of sound mind, it is valid. The declarations of persons in extremis, when made with a full consciousness of approaching death, are admissible in evidence when the death of the person making them is the subject of the charge, and the circumstances of the death the subject of such declarations. 2 B. & C. 605; S. C. 9 Engl. C. L. Rep. 196; and see 15 John. 286; 1 John. Rep. 159; 2 John. R. 31; 7 John. 95; 2 Car. Law Repos. 102.

EYOTT, a small island arising in a river. See *Island*.

F.

F, *punishment, in the English law*, formerly felons were branded and marked with a hot iron, with this letter, on being admitted to the benefit of clergy.

FACT, is an action; a thing done. It is either simple or compound. A fact is simple when it expresses a purely material act unconnected with any moral qualification; for example, to say Peter went in his house, kissed his children, took a book and went out, is to express four simple facts. A compound fact contains the materiality of the act, and the qualification which that act has in its connexion with morals and with the law. To say, then, that Peter has stolen a horse is to express a compound fact; for the fact of the stealing expresses at the same time, the material fact of taking the horse, and of taking him with the guilty intention of depriving

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the owner of his property and appropriating it to his own use; which is a violation of the law of property. Fact is also put in opposition to law; in every case which has to be tried there are facts to be established, and the law which bears on those facts. Facts are also to be considered as material or immaterial. Material facts are those which are essential to the right of action or defence, and therefore of the substance of the one or the other—these must always be proved; or immaterial, which are those not essential to the cause of action—these need not be proved. Facts are generally determined by a jury; but there are many facts, which not being the principal matters in issue, may be decided by the court; such, for example, whether a subpœna has or has not been served; whether a party has or has not been summoned, &c. As to pleading material facts, see Gould, Pl. c. 3, s. 28. Vide Eng. Ecc. R. 401, 2, and the article *Circumstances*.

FACTO, in fact, in contradistinction to the thing being in law: it is applied to any thing actually done.

FACTOR, *contracts*, is an agent employed to sell goods or merchandise consigned or delivered to him, by, or for his principal, for a compensation, commonly called factorage or commission. Paley on Ag. 13; 1 Liverm. on Ag. 68; Story on Ag. § 33; Com. Dig. Merchant, B; Mal. Lex Merc. 81; Beawes, Lex Merc. 44; 3 Chit. Com. Law, 193; 2 Kent. Com. 622, note (d), 3d ed.; 1 Bell's Com. 385, § 408, 409; 2 B. & Ald. 143. He is also called a commission merchant, or consignee. When he resides in the same state or country with his principal, he is called a home factor; and a foreign factor when he resides in a different state or country, 3 Chit. Com. Law, 193; 1 T. R. 112; 4 M. & S. 576; 1 Bell's Com. 289, § 313. When the agent accompanies the ship taking a cargo abroad, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor; he is, however, usually known by the name of a supercargo. Beawes, Lex Merc. 44, 47; Liverm. on Ag. 69, 70; 1 Domat, b. 1, t. 16, § 3, art. 2. A factor differs from a broker, in some important particulars, namely; he may buy and sell for his principal in his own name, as well as in the name of his principal; on the contrary, a broker must always buy and sell in the name of his principal. 3 Chit. Com. Law, 193, 210, 541; 2 B. & Ald. 143, 148; 3 Kent, Com. 622, note (d), 3d ed. Again a factor is entrusted with the possession, management, disposal and control of the goods to be bought and sold, and has a special property and a lien on them; the broker, on the contrary, has usually no such possession, management, control or disposal of the goods, nor any such special property nor lien. Paley on Ag. 13, (Loyd's ed.); 1 Bell's Com. 385. A factor is liable to duties, which will be first considered; and, afterwards a statement of his rights will be made.

1. *His duties.* He is required to use a reasonable exercise of skill and ordinary diligence in his vocation; in general, he has a right to sell the goods, but he cannot pawn them. He is bound to obey his instructions, but when he has none he may and ought to act according to the general usages of trade; sell for cash, when that is usual, or give credit on sales, when that is customary. He is bound to render a just account to his principal, and to pay him the moneys he may receive for him.

2. *His rights.* He has the right to sell the goods in his own name, and is, for many, if not for all pur-

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poses, between himself and third persons, to be considered as the owner of the goods. He may, therefore, recover the price of goods sold by him, in his own name, and consequently he may receive payment and give receipts, and discharge the debtor, unless, indeed, notice has been given by the principal to the debtor not to pay. He has a lien on the goods for advances made by him and for his commissions.

A factor has no right to barter the goods of his principal, nor to pledge them for the purpose of raising money for himself, or to secure a debt he may owe. But he may pledge them for advances made to his principal, or for the purpose of raising money for him, or in order to re-imburse himself to the amount of his own lien. 2 Kent. Com. (3d ed.) 625 to 628; 4 John. R. 103; Story on Bailm. § 325, 326, 327. Another exception to the general rule that a factor cannot pledge the goods of his principal, is, that he may raise money by pledging the goods, for the payment of duties, or any other charge or purpose allowed or justified by the usages of trade. 2 Gall. 13; 6 Serg. & Rawle, 386; Paley on Ag. 217; 3 Esp. R. 182.

The legislature of Pennsylvania, by an act entitled "An act for the amendment of the law relating to factors," passed April 14, 1834, have made the following provisions. This act is here inserted with a belief that it will be found useful to the commercial lawyer of the other states.

§ 1. Whenever, any person intrusted with merchandise, and having authority to sell or consign the same, shall ship or otherwise transmit the same to any other person, such other person shall have a lien thereon—

I. For any money advanced or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such merchandise was shipped or transmitted.

II. For any money or negotiable security received for the use of such consignee by the person in whose name such merchandise was shipped or transmitted.

§ 2. But such lien shall not exist for any of the purposes aforesaid, if such consignee shall have notice by the bill of lading or otherwise, before the time of such advance or receipt, that the person in whose name such merchandise was shipped or transmitted, is not the actual owner thereof.

§ 3. Whenever any consignee or factor, having possession of merchandise, with authority to sell the same, or having possession of any bill of lading, permit, certificate, receipt or order, for the delivery of merchandise, with the like authority, shall deposit or pledge such merchandise, or any part thereof, with any other person, as a security for any money advanced or negotiable instrument given by him on the faith thereof; such other person shall acquire by virtue of such contract, the same interest in and authority over the said merchandise, as he would have acquired thereby if such consignee or factor had been the actual owner thereof; *Provided*, That such person shall not have notice by such document or otherwise before the time of such advance or receipt, that the holder of such merchandise or document is not the actual owner of such merchandise.

§ 4. If any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge for any debt or demand previously due by or existing against such consignee or factor, and without notice as aforesaid, and if any person shall accept or take

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such merchandise or document from any such consignee or factor in deposit or pledge, without notice or knowledge that the person making such deposit or pledge, is a consignee or factor only, in every such case the person accepting or taking such merchandise or document in deposit or pledge, shall acquire the same right and interest in such merchandise as was possessed or could have been enforced by such consignee or factor against his principal at the time of making such deposit or on pledge, and further or other right or interest.

§ 5. Nothing in this act contained shall be construed or taken—

I. To affect any lien which a consignee or factor may possess at law, for the expenses and charges attending the shipment or transmission and care of merchandise consigned, or otherwise intrusted to him.

II. Nor to prevent the actual owner of merchandise from recovering the same from such consignee or factor, before the same shall have been deposited or pledged as aforesaid, or from the assignees or trustees of such consignee or factor, in the event of his insolvency.

III. Nor to prevent such owner from recovering any merchandise so as aforesaid deposited or pledged, upon tender of the money, or of restoration of any negotiable instrument so advanced, or given to such consignee or factor, and upon tender of such further sum of money, or of restoration of such other negotiable instrument, if any, as may have been advanced or given by such consignee or factor to such owner, or on tender of a sum of money equal to the amount of such instrument.

IV. Nor to prevent such owner from recovering, from the person accepting or taking such merchandise in deposit or pledge, any balance or sum of money remaining in his hands as the produce of the sale of such merchandise, after deducting thereout the amount of money or the negotiable instrument so advanced or given upon the security thereof as aforesaid.

§ 6. If any consignee or factor shall deposite or pledge any merchandise or document as aforesaid, consigned or intrusted to him as a security for any money borrowed, or negotiable instrument received by such consignee or factor, and shall apply and dispose of the same to his own use, in violation of good faith, and with intent to defraud the owner of such merchandise, and if any consignee or factor shall, with the like fraudulent intent, apply or dispose of to his own use any money or negotiable instrument, raised or acquired by the sale or other disposition of such merchandise, such consignee or factor shall, in every such case, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding two thousand dollars, and by imprisonment for a term not exceeding five years.

FACTORAGE, the wages or allowances paid to a factor for his services; it is more usual to call this commissions.

FACTUM, a deed, a man's own act and deed. When a man denies by his plea that he made a deed on which he is sued, he pleads *non est factum*, (q. v.) Vide *Deed; Fait.*

FACULTY, *Scotch law*, is equivalent to ability or power.

FAILURE, *commercial law*, signifies the situation of a debtor who finds himself in the impossibility of paying his debts. Louis. Code, art. 3522, No. 15. See *Insolvency; Insolvent; Bankrupt.*

FAILURE OF RECORD, *pleading, practice.* When a record is pleaded, and the plaintiff replies *nul tiel* record, upon which the defendant has a day assigned to produce

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it, if he fail to do it, then he is said to fail of record, and the plaintiff shall have judgment to recover. T. de la Ley.

FAIT, *conveyancing*, a deed lawfully executed. Com. Dig. h. t.; Cunn. Dict. h. t.

FALCIDIAN LAW, *civil law*, is a plebecist made during the reign of Augustus, on the proposition of Falcidius, who was a tribune in the year of Rome, 714. Its principal provision gave power to fathers of families to bequeath three-fourths of their property, but deprived them of the power to give away the other fourth, which was to descend to the heir. The same rule, somewhat modified has been adopted in Louisiana; "donations *inter vivos* or *mortis causa*," says the Civil Code, art. 1480, "cannot exceed two-thirds of the property of the disposer, if he leaves at his decease, a legitimate child; one half, if he leaves two children; and one-third, if he leaves three or a greater number."

FALSE IMPRISONMENT, *torts*. It is any illegal imprisonment, without any process whatever, or under colour of process wholly illegal, without regard to any question whether any crime has been committed or a debt due. 1 Chit. Pr. 48. The remedy is, in order to be restored to liberty, by writ of *habeas corpus*; and to recover damages for the injury, by action of trespass vi et armis. To punish the wrong done to the public, by the false imprisonment of an individual, the offender may be indicted. 4 Bl. Com. 218, 219; 2 Burr. 993. Vide 6 Bac. Ab. 569; Dane's Ab. Index, h. t.

FALSE TOKEN. V. *Token*, and 2 Stark. Ev. 563.

FALSEHOOD is a wilful act or declaration contrary to truth. It is committed either by the wilful act of the party, or by dissimulation, or by words. It is wilful when the owner of a thing sells it twice, by different contracts to different individuals, unknown to them; for in this the seller must wilfully declare the thing is his own, when he knows that is not so. It is committed by dissimulation when a creditor has an understanding with his former debtor, sells the land of the latter, although he has been paid the debt which was due to him. Falsehood by word is committed when a witness swears to what he knows not to be true. Falsehood is usually attendant on crime. Roscoe, Cr. Ev. 362. A slander must be false to entitle the plaintiff to recover damages. But whether a libel be true or false the writer or publisher may be indicted for it. Bull. N. P. 9; Selw. N. P. 1047, note 6; 5 Co. 125; Hawk. B. 1, c. 73, s. 6.—Vide Dig. 48, 10, 31; Ib. 22, 6, 2; Code, 9, 22, 20.

TO FALSIFY, to prove a thing to be false; as, "to falsify a record," Tech. Dict. To alter or make false a record. This is punishable at common law. Vide *Forgery*. By the act of congress of April 30, 1790, s. 15, 1 Story's L. U. S. 86, it is enacted, that if any person shall feloniously steal, take away, alter, falsify, or otherwise avoid, any record, writ, process, or other proceedings in any of the courts of the United States, by means whereof any judgment shall be reversed, made void, or not take effect, or if any person shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person, or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and be whipped not exceeding thirty-nine stripes. *Pro-*

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vided nevertheless, that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be had or given.

FALSO RETORNO BREVIUM, *old Eng. law*. The name of a writ which might have been sued out against a sheriff, for falsely returning writs. Cunn. Dict.

FAMILY, *domestic relations*, in a limited sense signifies the father, mother, and children. In a more extensive sense it comprehends all the individuals who live under the authority of another, and includes the servants of the family. It is also employed to signify all the relations who descend from a common ancestor, or who spring from a common root. Louis. Code, art. 3522, No. 16; 9 Ves. 323. In the construction of wills, the word family, when applied to personal property is synonymous with *kindred*, or *relations*. It may, nevertheless, be confined to particular relations by the context of the will, or may be enlarged by it, so that the expression may in some cases mean children, or next of kin, and in others may even include relations by marriage. 1 Rop. on Leg. 115; 1 Hov. Supp. 365, notes 6 and 7, to Brown v. Higgs, 4 Ves. 708. Vide article *Legatee;* see Dig. lib. 50, t. 16, l. 195, s. 2.

FAMILY ARRANGEMENTS. This term has been used to signify an agreement made between a father and his son, or between brothers, to dispose of property in a different manner to that which would otherwise take place. In these cases frequently the mere relation of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & Russ. 13.

FAMILY BIBLE, is a bible containing an account of the births, marriages, and deaths of the members of a family. An entry by a father made in a bible stating that Peter his eldest son was born in lawful wedlock of Maria his wife, at a time specified, is evidence to prove the legitimacy of Peter. 4 Campb. 401. But the entry, in order to be evidence, must be an original entry, and, if it is not so, the loss of the original must be proved before the copy can be received. 6 Serg. & Rawle, 135.

FAMILY EXPENSES. The sum which it costs a man to maintain a family. Merchants and traders who desire to exhibit the true state of their affairs in their books, keep an exact account of family expenses which in case of failure is very important, and at all times proper.

FAMILY MEETINGS or family council, in Louisiana, are meetings of at least five relations, or in default of relations of minors or other persons on whose interest they are called upon to deliberate, then of the friends of such minors or other persons.

The appointment of the members of the family meeting is made by the judge. The relations or friends must be selected from among those domiciliated in the parish in which the meeting is held; the relations are selected according to their proximity, beginning with the nearest. The relation is preferred to the connection in the same degree, and among relations of the same degree, the eldest is preferred.

The family meeting is held before a justice of the peace or notary public, appointed by the judge for the purpose. It is called for a fixed day and hour, by citations delivered at least three days before the day appointed for the meeting.

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The members of the family meeting, before commencing their deliberations, take an oath before the officer before whom the meeting is held, to give their advice according to the best of their knowledge, touching the interests of the person on whom they are called upon to deliberate. The officer before whom the family meeting is held, must make a particular process-verbal of the deliberations, cause the members of the family meeting to sign it, if they know how to sign, sign it himself, and deliver a copy to the parties that they may have it homologated. Civil Code of Louis. B. 1, tit. 8, c. 1, s. 6, art. 305 to 311; Code Civ. B. 1, tit. 10, c. 2, s. 4.

FARE, signifies a voyage or passage; in its modern application, it is the money paid for a passage.

FARM, *estates*, an indefinite quantity of land, some of which is cultivated. 2 Binn. 238. By the conveyance of a farm will pass a messuage, arable land, meadow, pasture, wood, &c. belonging to or used with it. 1 Inst. 5, a; Touch. 93; 4 Cruise, 321.

FARMER. One who is lessee of a farm. It is said that every lessee for life or years, although it be but of a small house and land, is called *farmer*. This word implies no mystery except it be that of husbandmen. Cunn. Dict. h. t. In common parlance, a farmer is one who cultivates a farm, whether he be the owner of it or not.

FARO, *crim. law*. There is a species of game called faro table or faro bank which is forbidden by law, in many states; and the persons who keep it for the purpose of playing for money or other valuable thing, may generally be indicted at common law for a nuisance. 1 Rogers's Rec. 66. It is played with cards in this manner: a pack of cards is displayed on the table so that the face of each card may be seen by the spectators. The man who keeps the bank, as it is termed, and who is called the banker, sits by the table with another pack of cards, and a bag containing money, some of which is displayed, or sometimes instead of money *chips* or small pieces of ivory or other substance, are used. The parties who play with the banker, are called punters or pointeurs. Suppose the banker and A, a punter, wish to play for five dollars, the banker shuffles the pack which he holds in his hand while A lays his money intended to be bet, say five dollars, on any card he may choose as aforesaid. The banker then runs the cards alternately in two piles, one on the right the other on the left, until he reaches, in the pack, the card corresponding to that on which A has laid his money. If, in this alternative, the card chosen comes on the right hand, the banker takes up the money; if on the other, A is entitled to five dollars from the banker. Several persons are usually engaged at the same table with the banker. 1 Rog. Rec. 66, note; Encycl. Amer. h. t.

FATHER, *domestic relations*. A man who has a child. A father is the natural guardian of his children, and his duties by the natural law consist in maintaining and educating them during their infancy, and making a necessary provision for their happiness in life; these latter, however, are imperfect duties which the law does not enforce. By law, the father is bound to support his children if of sufficient ability, even though they have property of their own. 1 Bro. C. C. 387; 4 Mass. R. 97; 2 Mass. R. 415; but this obligation ceases as soon as the child becomes of age, unless he becomes chargeable to the public. 1 Ld. Ray. 699.—The rights of the father are to have authority over his chil-

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dren to enforce all his lawful commands, and to correct with moderation his disobedient children. A father may delegate his power over the person of his child to a tutor or instructor the better to accomplish the purposes of his education. This power ceases on the arrival of the child at the age of twenty-one years. Generally, the father is entitled to the services of his children during their minority. 4 S. & R. 207.

FATHER, PUTATIVE. Vide *Putative father.*

FAULT, *in contracts*, is an improper act or omission, which arises from ignorance, carelessness, or negligence.

1. Faults or negligence are usually divided into, gross, ordinary, and slight: 1. Gross fault or neglect, consists in not observing that care towards others, which a man the least attentive, usually takes of his own affairs. Such fault may, in some cases, afford a presumption of fraud, and in very gross cases it approaches so near, as to be almost undistinguishable from it, especially when the facts seem hardly consistent with an honest intention. But there may be a gross fault without fraud. 2 Str. 1099; Story, Bailm. § 18–22; Toullier, l. 3, t. 3, § 231.—2. Ordinary faults consist in the omission of that care which mankind generally pay to their own concerns; that is the want of ordinary diligence.—3. A slight fault consists in the want of that care which very attentive persons take of their own affairs. This fault assimilates itself, and, in some cases, is scarcely distinguishable, from mere accident, or want of foresight. This division has been adopted by common lawyers from the civil law. Although the civilians generally agree in this division, yet they are not without a difference of opinion. See Pothier, Observation générale, sur le précédent Traité, et sur les suivants; printed at the end of his Traité des Obligations, where he cites Accurse, Alciat, Cujas, Duaren, D'Avezan, Vinnius and Heineccius, in support of this division. On the other side the reader is referred to Thomasius, tom. 2, Dissertationem, page 1006; Le Brun, cited by Jones, Bailm. 27; and Toullier, Droit Civil Francais, liv. 3, tit. 3, § 231.

2. These principles established, different rules have been made as to the responsibilities of parties for their faults in relation to their contracts. They are reduced by Pothier to three.

1. In those contracts where the party derives no benefit from his undertaking, he is answerable only for his gross faults.

2. In those contracts where the parties have a reciprocal interest, as in the contract of sale, they are responsible for ordinary neglect.

3. In those contracts where the party receives the only advantage, as in the case of loan for use, he is answerable for his slight fault. Poth. Observ. Générale; Traité des Oblig. § 142; Jones, Bailm. 119; Story, Bailm. 12. See also Ayliff, Pand. 108; Civ. C. Lou. 3522; 1 Com. Dig. 413; 5 Ib. 184; Wesk. on Ins. 370.

FEALTY, fidelity, allegiance. Under the feudal system, every owner of lands held them of some superior lord, from whom or from whose ancestors, the tenant had received them. By this connexion the lord became bound to protect the tenant in the enjoyment of the land granted to him; and, on the other hand, the tenant was bound to be faithful to his lord, and defend him against all his enemies. This obligation was called *fidelitas*, or fealty. 1 Bl. Com. 366; 2 Bl. Com. 86.

FEAR, *crim. law*, dread, consciousness of approaching danger. Fear in the person robbed is one of the ingredients required to consti-

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tute a robbery from the person, and without this the felonious taking of the property is a larceny. It is not necessary that the owner of the property should be in fear for his own person, but fear of violence to the person of his child, 2 East, P. C. 718; or of his property, Ib. 731; 2 Russ. 72, 2, is sufficient; 2 Russ. 71 to 90. Vide *Putting in fear*, and Ayl. Pand. tit. 12, p. 106.

FEASTS, certain established periods in the christian church. Formerly the days of the feasts of saints were used to indicate the dates of instruments, and memorable events. 8 Toull. n. 81. These are yet used in England, there they have Easter term, Hilary term, &c.

FEDERAL, *government.* This term is commonly used to express a league or compact between two or more states. In the United States the central government of the Union is federal. The constitution was adopted "to form a more perfect union" among the states, for the purpose of self-protection and for the promotion of their mutual happiness.

FEE, FEODUM OR FEUDUM, from the French, fief; *in estates.* A fee is an estate which may continue forever. The word fee is explained to signify that the land, or other subject of property, belongs to its owner, and is transmissible, in case of an individual, to those whom the law appoints to succeed him, under the appellation of heirs; and in case of corporate bodies, to those who are to take on themselves the corporate function; and from the manner in which the body is to be continued, are denominated successors. 1 Co. Litt. 1, 271, b; Wright's Ten. 147, 150; 2 Bl. Com. 104, 106. Estates in fee are of several sorts, and have different denominations, according to their several natures and respective qualities. They may with propriety be divided into, 1, fees simple; 2, fees determinable; 3, fees qualified; 4, fees conditional; and 5, fees tail.

1. A fee simple is an interest which, in reference to the ownership of individuals, is not restrained to any heirs in particular, nor subject to any condition or collateral determination, except the laws of escheat and the canons of descent, by which it may be qualified, abridged or defeated. 1 Co. Litt. 1, b; Plowd. 557; 2 Bl. Com. 104, 106; Hale's Analysis, 74. The word *fee-simple* is sometimes used by the best writers on the law, as contrasted with estates tail. 1 Co. Litt. 19. In this sense, the term comprehends all other fees as well as the estate, properly, and, in strict propriety of technical language, is peculiarly distinguished by this appellation.

2. A *determinable fee* is an interest which may continue forever. Plowd. 557; Shep. Touch. 97. It is a quality of this estate while it falls under this denomination, that it is liable to be determined by some act or event, expressed on its limitation, to circumscribe its continuance, or interfered by the law as bounding its extent; 2 Bl. Com. 109; limitations to a man and his heirs, till the marriage of such a person shall take place, Cro. Jac. 593; 10 Vin. Abr. 233; till debts shall be paid; Fearne, 187; until a minor shall attain the age of twenty-one years; 3 Atk. 74; Ambler, 204; 9 Mod. 28; 10 Vin. Abr. 203; Fearne, 342; are instances of such a determinable fee.

3. A *qualified fee* is an interest, given on its first limitation, to a man and to certain of his heirs, and not to extend to all of them generally, nor confined to the issue of his body. A limitation to a man and *his heirs on the part of his father*, affords an example of this species of estate. Litt. § 354; 1 Inst. 27, a. 220; 1 Prest. on Estates, 449.

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4. A *conditional fee*, in the more general acception of the term, is when, to the limitation of an estate, a condition is annexed which renders the estate liable to be defeated. 10 Rep. 95, b. In this application of the term, either a determinable or qualified fee may at the same time be a conditional fee. An estate limited to a man and his heirs, to commence on the performance of a condition, is also frequently described by this appellation. Prest. on Est. 476; Fearne, 9.

5. As to *fee-tail*, see *Tail*.

FEE FARM RENT, *contracts, Engl. law*. When the lord upon the creation of a tenancy reserves to himself and his heirs, either the rent for which it was before let to farm, or at least one-fourth part of that farm rent. It is called a fee farm rent, because a *farm rent* is reserved upon a grant in fee. 2 Inst. 44.

FEES, *compensation*, are certain perquisites allowed by law to officers concerned in the administration of justice, or in the performance of duties required by law, as a recompense for their labour and trouble. 3 Bac. Ab. 120.

FEIGNED ACTION, *practice*, is an action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true; it differs from *false action*, in which case the words of the writ are false. Co. Litt. 361, sect. 689. Vide *Fictitious action*.

FEIGNED ISSUE, *practice*, is an issue brought by consent of the parties, or the direction of a court of equity, or such courts as possess equitable powers, to determine before a jury some disputed right, which the court had not the power to try. 3 Bl. Com. 452.

FELO DE SE, *criminal law*, a felon of himself; a self-murderer. To be guilty of this offence the deceased must have had the will and intention of committing it, else he committed no crime. As he is beyond the reach of human laws, he cannot be punished; the English law, indeed attempts to inflict a punishment by a barbarous burial of his body, and by forfeiting to the king the property which he owned, and which would belong to his relations. Hawk. P. C. c. 9; 4 Bl. Com. 189.

FELON, *crimes*, one convicted and sentenced for a felony. A felon is infamous and cannot fill any office or become a witness in any case, unless pardoned, except in cases of absolute necessity for his own preservation and defence, as, for example, an affidavit in relation to the irregularity of a judgment in a cause in which he is a party. 2 Salk. R. 461; 2 Str. 1148; Martin's R. 25; Stark. Ev. part 2, tit. Infamy. As to the effect of a conviction in one state, where the witness is offered in another, see 17 Mass. R. 515; 2 Harr. & M'Hen. R. 120, 378; 1 Harr. & Johns. R. 572.

FELONIOUSLY, *pleadings*; this is a technical word which must be introduced into every indictment for a felony, charging the offence to have been committed feloniously, no other word, nor any circumlocution will supply its place. Com. Dig. Indictment, G 6; Bac. Ab. Indictment, G 1; 2 Hale, 172, 184; Hawk. B. 2, c. 25, s. 55; Cro. C. C. 37; Burn's Just. Indict. ix.; Williams's Just. Indict. iv.; Cro. Eliz. 193; 5 Co. 121; 1 Chit. Cr. Law, 242.

FELONY, *crimes*, is an offence which occasions a total forfeiture of either lands or goods or both at common law; and to which capital or other punishment may be superadded according to the degree of guilt. 4 Bl. Com. 94, 5; 1 Russ. Cr. *42; 1 Chit. Pract. 14.

FEME, or more properly, FEMME. Woman. This word is fre-

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quently used in law. *Baron and feme*, husband and wife; *feme covert*, a married woman; *feme sole*, a single woman.

FEME COVERT. A married woman. Coverture subjects a feme covert to some duties and disabilities, and gives her some rights and immunities to which she would not be entitled as a feme sole. These have been considered under the articles, *Marriage*, (q. v.) and *Wife*, (q. v.)

FEME SOLE. A single or unmarried woman.

FEME SOLE TRADER. A married woman who trades and deals on her own account, independently of her husband. By the custom of London a feme covert being a *sole trader*, may sue and be sued in the city courts, as a feme sole, with reference to her transactions in London. Bac. Ab. Baron and Feme, M. In Pennsylvania where any mariners or others go abroad leaving their wives at shop-keeping, or to work for their livelihood at any other trade, all such wives are declared to be feme sole traders, with ability to sue and be sued, without naming the husbands. Act of February 22, 1718.

FEOD. Vide *Fief* or *Feud*.

FEOFFMENT, *conveyancing*, is a gift of any corporeal hereditaments to another. It also signifies the instrument or deed by which such hereditament is conveyed. This instrument was used as one of the earliest modes of conveyance of the common law. It signified, originally, the grant of a feud or fee; but it became, in time, to signify the grant of a free inheritance in fee, respect being had to the perpetuity of the estate granted, rather than to the feudal tenure. The feoffment was likewise accompanied by livery of seisin. The conveyance by feoffment, with livery of seisin, has long since become obsolete in England, and in this country it has not been used in practice. Cruise, Dig. t. 32, c. 4, s. 3; Touchs. ch. 9; 2 Bl. Com. 20; Co. Litt. 9; 4 Kent, Com. 467; Perk. ch. 3; Com. Dig. h. t.; 13 Vin. Ab. 167; 3 Bac. Ab. 144; Doct. Plac. 271; Dane's Ab. c. 104, a. 3, s. 4. He who gives or enfeoffs is called the *feoffor*; and the person enfeoffed is denominated the *feoffee*. 2 Bl. Com. 20.

FERÆ NATURÆ. Of a wild nature. This term is used to designate animals which are not usually tamed. Such animals belong to the person who has captured them only while they are in his power; for if they regain their liberty his property in them instantly ceases, unless they have *animum revertendi*, which is to be known only by their habit of returning. 2 Bl. Com. 396; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, F; 7 Co. 17, b; 1 Chit. Pr. 87; Inst. 2, 1, 15; 13 Vin. Ab. 207.

FESTINUM REMEDIUM. A speedy remedy. This is said of those cases where the remedy for the redress of an injury is given without any unnecessary delay. 1 Bac. Ab. 251.

FETTERS, a sort of iron put on the legs of malefactors, or persons accused. When a prisoner is brought into court to plead he shall not be put in fetters. 2 Inst. 315; 3 Inst. 34; 2 Hale, 119; Hawk. b. 2, c. 28, s. 1; Kel. 10; 1 Chitty's Cr. Law, 417. An officer having arrested a defendant in a civil suit, or a person accused of a crime, has no right to handcuff him unless it was necessary, or he had attempted to make his escape. 4 B. & C. 596; 10 Engl. C. L. Rep. 412, S. C.

FEUD. This word, in Scotland, signifies a combination of kindred to revenge injuries or affronts done to any of their blood.

FIAR, *in the Scotch law*, is he whose property is burdened with a

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life-rent. Ersk. Pr. of L. Scot. B. 2, t. 9, s. 23.

FIAT, *in practice*, is an order of a judge, or of an officer, whose authority to be signified by his signature, is necessary to authenticate the particular acts.

FICTION OF LAW, is the assumption that a certain thing is true, whether it be so or not. Fictions were invented by the Roman pretors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he needs not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench. 4 Benth. Ev. 300. It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177; and, to prevent their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; 2 Hawk. 320. The law abounds in fictions. That an estate is in *abeyance;* the doctrine of *remitter*, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done to-day, is considered as done at a preceding time by the doctrine of *relation;* that because one thing is proved, another shall be presumed to be true, which is the case in all *presumptions;* that the heir, executor and administrator, stand by *representation*, in the place of the deceased; are all fictions of law. "Our various introduction of John Doe and Richard Roe," says Mr. Evans, (Poth. on Ob. by Evans, vol. ii., p. 43,) "our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe,) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enemy's settlement in the antipodes; our charge of picking a pocket, or forging a bill with force and arms; of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity; are circumstances, which, looked at by themselves, would convey an impression of no very favourable nature, with respect to the wisdom of our jurisprudence." Vide 13 Vin. Ab. 209; Merl. Rép. h. t.; Dane's Ab. Index, h. t.

FICTITIOUS ACTIONS, *practice*, are suits brought on pretended rights. They are sometimes brought, usually on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted for the purpose of deciding really existing questions of right between parties, and they are not bound to answer whatever impertinent questions persons think proper to ask them in the form of an action on a wager. 12 East, 248. Such an attempt has been held to be a contempt of court, and Lord Hardwicke in such a case committed the parties and their attorneys. Rep. Temp. Hardw. 237. See also Comb. 425; 1 Ca. 83; 6 Cranch, 147, 8. Vide *Feigned actions*. The court of the King's Bench fined an attorney forty pounds for stating a special case for the opinion of the court, the greater part of which statement was fictitious. 3 Barn. & Cr. 597; S. C. 10 E. C. L. R. 193.

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FIDEICOMMISSUM, *civil law*, is a gift which a man makes to another, through the agency of a third person, who is requested to perform the desire of the giver. For example, when a testator writes, "I institute for my heir Lucius Titius," he may add, "I pray my heir Lucius Titius to deliver, as soon as he shall be able, my succession to Caius Scius: *cùm igitur aliquis scripserit Lucius Titius heres esto;* potest adjicere, *rogo te Luci Titi, ut, cùm poteris hereditatem meam adire, eam Caio Seio reddas, restituus.* Inst. 2, 23, 2; vide Code 6, 42. The *uses* of the common law, it is said, were borrowed from the Roman *fideicommissum.* 1 Cru. Dig. 388; Bac. Read, 19; 1 Madd. Ch. 446, 7.

FIDEJUSSOR, *civil law*, is one who becomes security for the debt of another, promising to pay it in case the principal does not do so. He differs from a co-obligor in this that the latter is equally a debtor with his principal, while the former is not liable till the principal has failed to fulfil his engagement. Dig. 12, 4, 4; Ib. 16, 1, 13; Ib. 24, 3, 64; Ib. 38, 1, 37; Ib. 50, 17, 110; and 14, 6, 20; Hall's Pr. 33; Dunl. Ad. Pr. 300; Clerke's Prax. tit. 63, 4, 5.

FIEF OR FEUD. In its origin, a fief was a district of country, allotted to one of the chiefs who invaded the Roman empire, as a stipend or reward; with a condition annexed that the possessor should do service faithfully both at home and in the wars, to him by whom they were given. 2 Bl. Com. 45; Encyclopédie, h. t.; Merl. Rép. h. t.

FIERI FACIAS, *practice*, is the name of a writ of execution. It is so called because when writs were in latin, the words directed to the sheriff, were, *quod fieri facias de bonis et catallis*, &c. that you cause to be made of the goods and chattels, &c. Co. Litt. 290 b. The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceedings in error. This subject will be considered with regard to, 1, the form of the writ; 2, its effects; 3, the manner of executing it.

1. The writ is issued in the name of the government, as required by the constitution, and directed to the sheriff, commanding him that of the goods and chattels (and, where lands are liable for the payment of debts, as, in Pennsylvania, of the lands and tenements) of the defendant, therein named, in his bailiwick, he cause to be levied as well a certain debt of —— dollars, which the plaintiff, (naming him,) in the court of ——, (naming it), recovered against him, as —— dollars, like money which to the said plaintiff were adjudged for his damages, which he had by the detention of that debt, and that he, (the sheriff,) have that money before the judges of the said court, on a day certain, (being the return day therein mentioned,) to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict. It must be tested in the name of the officer as directed by the constitution or laws; as, "Witness the honourable John B. Gibson, our chief justice, at Philadelphia, the tenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine." It must be signed by the prothonotary, or clerk of the court, and sealed with its seal. The signature of the prothonotary, it has been decided in Pennsylvania, is not indispensable. The amount of the debt, interest, and costs, must also be endorsed on the writ. This form varies as it is issued on a judg-

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ment in debt, and one obtained for damages merely. The execution being founded on the judgment must, of course, follow, and be warranted by it. 2 Saund. 72 h, k; Bing. on Ex. 186; hence, where there is more than one plaintiff or defendant, it must be in the name of all the plaintiffs, against all the defendants. 6 T. R. 525. It is either for the plaintiff or the defendant. When it is against an executor or administrator, for a liability of the testator or intestate, it is conformable to the judgment, and must be only against the goods of the deceased, unless the defendant has made himself personally liable by his false pleading, in which case the judgment is *de bonis testatoris si, et si non, de bonis propriis*, and the fieri facias must conform to it. 4 Serg. & Rawle, 394; 18 John. 502; 1 Serg. & Rawle, 453; 1 Dall. 481; and see Tidd's Pr. 933; Com. Dig. Pleader, 2 D 15; 1 Hayw. 298; 2 Hayw. 112.

2. At common law the writ bound the goods of the defendant or party against whom it was issued, from the teste day; by which must be understood that the writ bound the property against the party himself, and all claiming by assignment from, or by representation under him; 4 East, R. 538; so that a sale by the defendant of his goods to a *bona fide* purchaser, did not protect them from a *fieri facias* tested before, although not issued or delivered to the sheriff till after the sale; Cro. Eliz. 174; Cro. Jac. 451; 1 Sid. 271. To remedy this manifest injustice, the statute of frauds, 29 Car. II. c. 3, s. 16, was passed. The principles of this statute have been adopted in most of the states, Griff. Law Reg. answers to No. 38, under No. III. The statute enacts "that no writ of *fieri facias*, or other writ of execution shall bind the property of the goods of the party, against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroners, to be executed; and for the better manifestation of the said time, the sheriff, &c., their deputies, or agents, shall upon the receipt of any such writ, (without fee for doing the same,) endorse upon the back thereof, the day of the month and year, whereon he or they received the same." Vide 2 Binn. R. 174; 2 Serg. & Rawle, 157; 2 Yeates, 177; 8 Johns. R. 446; 12 Johns. R. 320; 1 Hopk. R. 368; 3 Penna. R. 247; 3 Rawle, 401; 1 Whart. R. 377.

3. The execution of the writ is made by levying upon the goods and chattels of the defendant, or party against whom it is issued; and, in general, seizing a part of the goods in the name of the whole on the premises, is a good seizure of the whole, Ld. Raym. 725; 2 Serg. & Rawle, 142; 4 Wash. C. C. R. 29; but see 1 Whart. Rep. 377. The sheriff cannot break the outer door of a house for the purpose of executing a *fieri facias*, 5 Co. 92; nor can a window be broken for this purpose, W. Jones, 429. See articles *Door*, *House*. He may, however, enter the house, if it be open, and, being once lawfully entered, he may break open an inner door or chest to seize the goods of the defendant, even without any request to open them. 4 Taunt. 619; 3 B. & P. 223; Cowp. 1. Although the sheriff is authorised to enter the house of the party to search for goods, he cannot enter that of a stranger, for that purpose, without being guilty of a trespass, unless the defendant's goods are actually in the house. Com. Dig. Execution, C 5; 1 Marsh. R. 565. The sheriff may break the outer door of a barn; 1 Sid. 186; S. C. 1 Keb. 689; or of a store disconnected with the dwelling-house,

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and forming no part of the curtilage. 16 Johns. R. 287. The *fi. fa.* may be executed at any time before, and on the return day, but not on Sunday, where it is forbidden by statute. Wats. on Sheriffs, 173; 5 Co. 92; Com. Dig. Execution, c. 5.

Vide Wats. on Sher. ch. 10; Bingh. Ex. c. 1, s. 4; Gilb. on Exec. Index, h. t.; Grah. Pr. 321; Troub. & Hal. Pr. Index, h. t.; Com. Dig. Execution, C 4; Process, F 5, 7; Caines's Pr. Index, h. t.; Tidd's Pr. Index, h. t.; Sell. Pr. Index, h. t.

FIERI FECI, *in practice*, is the return which the sheriff, or other proper officer, makes to certain writs, signifying, "I have caused to be made." When the officer has made this return, a rule may be obtained upon him, after the return day, to pay the money into court, and if he withholds payment, an action of debt may be had on the return, or assumpsit for money had and received may be sustained against him. 3 Johns. R. 183.

FIGURES, are numerals. They are either Roman, made with letters of the Alphabet, for example, MDCCLXXVI; or they are Arabic, as follows, 1776. Roman figures may be used in contracts and law proceedings, and they will be held valid; but Arabic figures, probably owing to the ease with which they may be counterfeited, have been held not to be sufficient to express the sum due on a contract; and indictments have been set aside because the day or year were expressed in figures. 13 Vin. Ab. 210; 1 Ch. Rep. 319; S. C. 18 Eng. C. L. Rep. 95. Bills of exchange, promissory notes, checks and agreements of every description, are usually dated with Arabic figures; it is, however, better to date deeds and other formal instruments, by writing the words at length. Vide 1 Ch. Cr. L. 176; 1 Verm. R. 336; 5 Toull. n. 366.

FILACER, FILAZER or FILIZER, *Eng. law.* An officer of the Court of Common Pleas, so called because he files those writs on which he makes out process.

FILE, *practice*, a thread, a string or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keeping and ready turning to the same. The papers put together in order, in bundles and tied, are also called a file. A paper is said to be filed, when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Ab. 211.

FILIATION, *civ. law*, is the descent of son or daughter with regard to her father and his ancestors.

FILLEY. A mare not more than one year old. Russ. & Ry. 416; Ib. 494.

FILUM AQUÆ, thread or middle of a water course, (q. v.)

FINAL, that which puts an end to a thing. It is used in opposition to interlocutory; as, a final judgment, is a judgment which ends the controversy between the parties litigant.

FINDER, is one who lawfully comes to the possession of another's personal property, which was then lost. The finder is entitled to certain rights and liable to duties which he is obliged to perform. This is a species of deposit, which as it does not arise *ex contractu*, may be called a *quasi* deposit, and it is governed by the same general rules as common deposits. The finder is required to take the same reasonable care of the property found, as any voluntary depositary *ex contractu*. Doct. & St. Dial. 2, c. 68; 2 Bulst. 306, 312; S. C. 1 Rolle's R. 125; the finder is not bound to take the goods he finds, yet, when he does undertake the custody, he is requir-

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ed to exercise reasonable diligence in preserving the property, and he will be responsible for gross negligence. Some of the old authorities laid down that "if a man find butter, and by his negligent keeping it putrify; or if a man find garments, and by his negligent keeping they be moth eaten, no action lies. So it is if a man finds goods and lose them again, 1 Bac. Ab. 376; and in support of this position, Leon. 123, 223; Owen 141; and 2 Bulstr. 21, are cited. But these cases, if carefully examined, will not, perhaps, be found to decide the point as broadly as it is stated in Bacon. A finder would doubtless be held responsible for gross negligence. On the other hand, the finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found, as if a man were to find an animal, he would be entitled to be re-imbursed for his keeping, for advertising in a reasonable manner, that he had found it, and to any reward which may have been offered by the owner for the recovery of such lost thing. Domat, l. 2, t. 9, s, 2, n. 2. Vide Story, Bailm. § 35. And when the owner does not reclaim the goods lost, they belong to the finder. 1 Bl. Com. 296; 2 Kent's Com. 290.

FINE. This word has various significations. It is employed, 1, to mean a sum of money, which by judgment of a competent jurisdiction, is required to be paid for the punishment of an offence; 2, to designate the amount paid by the tenant, on his entrance, to the lord; 3, to signify a special kind of conveyance.

FINE, *in conveyances, and in practice*, is an amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. Co. Litt. 120; 2 Bl. Com. 349; Bac. Abr. Fines and Recoveries. A fine is so called, because it puts an *end*, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter.

The stat. 18 E. 1, called *modus levandi fines*, declares and regulates the manner in which they should be levied and carried on; and that is as follows; 1, the party to whom the land is conveyed or assured, commences an action at law against the other, generally an action of covenant, by suing out a writ of *præcipe* called a writ of covenant, that the one shall convey the lands to the other, on the breach of which agreement the action is brought. The suit being thus commenced, then follows, 2. The *licentia concordi*, or leave to agree to the suit, 3. The *concord* or agreement itself, after leave obtained by the court; this is usually an acknowledgment from the deforciants, that the lands in question are the lands of the complainants; 4. The *note* of the fine, which is only an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement. 5. The foot of the fine or the conclusion of it, which includes the whole matter, reciting the parties, day, year and place, and before whom it was acknowledged or levied.

Fines thus levied, are of four kinds, 1. What in law French is called a fine *sur cognizance de droit, come ceo que il ad de son done;* or a fine upon an acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. This fine is called a feoffment of record. 2. A fine *sur cognizance de droit tantum*, or acknowledgment of the right merely. 3. A fine *sur concessit*, is where the cognizor in order to make an end of disputes, though he acknowledges no prece-

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dent right, yet grants to the consignee an estate *de novo*, usually for life or years, by way of a supposed composition. 4. A fine *sur done grant et render*, which is a double fine, comprehending the fine *sur cognizance de droit come ceo*, &c. and the fine *sur concessit;* and may be used to convey particular limitations of estate, and to persons who are strangers, or not named in the writ of covenant, whereas the fine *sur cognizance de droit come ceo*, &c. conveys nothing but an absolute estate, either of inheritance, or at least of freehold. Salk. 340. In this last species of fines, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Com. 348 to 358. See Cruise on Fines; Vin. Abr. Fine; Sheph. Touch. c. 2; Bac. Ab. Fines and Recoveries; Com. Dig. Fine.

FINE, *in criminal law*, is a pecuniary punishment imposed by a lawful tribunal, upon a person convicted of crime or misdemeanor. See Shep. Touchs. 2; Bac. Abr. Fines and Amercements. The amount of the fine is frequently left to the discretion of the court, who ought to proportion each fine to the offence. To prevent the abuse of excessive fines the constitution of the United States directs that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Amendm. to the Constitution, art. 8.

FIRE, ACCIDENTAL. Vide *Accident; Act of God*, and 3 Saund. 422 a, note 2; 3 Co. Litt. 57 a, n. 1; Ham. N. P. 171; 1 Cruise's Dig. 151, 2; 1 Vin. Ab. 215; 1 Rolle's Ab. 1; 1 Bac. Ab. 85; 2 Lois des Bâtim. 124.

FIREBOTE, fuel for necessary use; a privilege allowed to tenants to take necessary wood for fuel.

FISC, *civil law*. The treasury of a prince. The public treasury. Hence *to confiscate* a thing, is to appropriate it to the *fisc*.

FISCAL, what belongs to the fisc or public treasury.

FISH, an animal which inhabits the water exclusively. Fishes in rivers and in the sea are animals *feræ naturæ*, and consequently no one has any property in them until they have been captured; and, like other wild animals, if having been taken they escape, and regain their liberty, the captor loses his property in them. Vide *Feræ naturæ*. The owner of a fishery in the lower part of the stream cannot construct any contrivance by which he will obstruct the passage of fish up the stream. 5 Pick. R. 199.

FISHERY, *estates*. A place where fish may be caught. This term seems to be exclusively applied to a place of drawing a seine, or net. 1 Whart. R. 131, 2. The right of fishery is incident to the owner of the soil over which the water passes, and to the riperian proprietors, when a stream is owned by two or more. 6 Cowen's R. 369; 5 Mason's R. 191; 4 Pick. R. 145; 5 Pick. R. 199. The rule, that the right of fishery, within his territorial limits, belongs exclusively to the riperian owner, extends alike to great and small streams. The owners of farms adjoining the Connecticut river, above the flowing of the tide, have the exclusive right of fishing opposite their farms, to the middle of the river; although the public have an easement in the river as a public highway, for passing and repassing with every kind of water craft. 2 Conn. R. 481. The right of fishery may exist, not only in the owner of the soil or the riperian proprietor, but also in another who has acquired

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it by grant or otherwise. Co. Litt. 122 a, n. 7; Schul. Aq. R. 40, 41; Ang. W. C. 184; sed vide 2 Salk. 637. Fisheries have been divided into—

1. *Several fisheries.* A several fishery is one to which the party claiming it has the right of fishing, independently of all others, as that no person can have a co-extensive right with him in the object claimed, but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814. A several fishery, as its name imports, is an exclusive property; this however is not to be understood as depriving the territorial owner of his right to a several fishery, when he grants to another person permission to fish; for he would continue to be the several proprietor, although he should suffer a stranger a co-extensive right with himself. Woolr. on Wat. 96.

2. *Free fisheries.* A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right and applies to a public navigable river, without any right in the soil. 3 Kent, Com. 329. Mr. Woolrych says, that sometimes a free fishery is confounded with a several, sometimes it is said to be synonymous with common, and again treated as distinct from either. Law of Waters, &c. 97.

3. *Common of fishery.* A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Com. 329. A distinction has been made between a common fishery, (*commune piscarium*,) which may mean for all mankind, as in the sea, and a common of fishery, (*communiam piscariæ*,) which is a right, in common with certain other persons, in a particular stream. 8 Taunt. R. 183. Mr. Angell seems to think that *common of fishery* and *free fishery*, are convertible terms. Law of Water Courses, c. 6, s. 3, 4.

These distinctions in relation to several, free, and common of fishery, are not strongly marked, and the lines are sometimes scarcely perceptible. See 14 Mass. R. 488; 2 Bl. Com. 39, 40; 7 Pick. R. 79. Vide, generally, Ang. Wat. Co. Index, h. t.; Woolr. on Wat. Index, h. t.; Schul. Aq. R. Index, h. t.; 2 Hill. Ab. ch. 18, p. 163; Dane's Ab. h. t.; 5 Bac. Ab. 498.

FIXTURES, *property*, are personal chattels annexed to land, and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of the owner of the freehold. Questions frequently arise as to whether fixtures are to be considered real estate, or a part of the freehold; or whether they are to be treated as personal property. To decide these, it is proper to consider the mode of annexation, the object and customary use of the thing, and the character of the contending parties.

1. The annexation may be actual or constructive; 1st, By actual connexation or annexation is understood every mode by which a chattel can be joined or united to the freehold. The article must not however be laid upon the ground; it must be fastened, fixed or set into the land, or some such erection as is unquestionably a part of the realty. Bull. N. P. 34; 3 East, 38; 9 East, 215; 1 Taunt. 21; Pothier, Traité des choses, § 1. Locks, iron stoves set in brick-work, posts, and window blinds afford examples of actual annexation. 2dly, Some things have been held to be parcel of the realty, which are not in a real sense annexed, fixed, or fastened to the freehold; for example, deeds or chattels which

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relate to the title of the inheritance, go to the heir. Shep. Touch. 469; it is also laid down that deer in a park, fish in a pond, and doves in a dove-house, go to the heir and not to the executor, being, with keys and heir-looms, constructively annexed to the inheritance. Sheph. Touchs. 90; Pothier, Traité des Choses, § 1.

2. The general rule is that fixtures once annexed to the freehold, become a part of the realty. But to this rule there are exceptions. These are, 1st, where there is a manifest intention to use the fixture in some employment distinct from that of the occupier of the real estate; 2dly, where it has been annexed for the purpose of carrying on a trade, 3 East, 88; but the distinction between fixtures for trade and those for agriculture does not, in the United States, seem to have been generally admitted to prevail. 8 Mass. R. 411; 16 Mass. R. 449; 4 Pick. R. 311; and see 2 Peters's Rep. 137. The fact that it was put up for the purposes of trade indicates an intention that the thing should not become a part of the freehold. See 1 H. Bl. 260. But if there was a clear intention that the thing should be annexed to the realty, its being used for the purposes of trade would not perhaps bring the case within one of the exceptions. 1 H. Bl. 260.

3. There is a difference as to what fixtures may or may not be removed, as the parties claiming them stand in one situation or another. These classes of persons will be separately considered.

1st. When the question as to fixtures arises between the executor and the heir. The rule as between these persons has retained much of its original strictness, that the fixtures belong to the real estate, or the heir; but if the ancestor manifested an intention, which is to be inferred from circumstances, that the things affixed should be considered as personalty, they must be so considered and will belong to the executor. See Bac. Abr. Executors and Administrators; 2 Str. 1141; 1 P. Wms. 94; Bull. N. P. 34.

2dly, As between vendor and vendee. The rule is as strict between these persons as between the executor and the heir; and fixtures erected by the vendor for the purpose of trade and manufactures, as pot-ash kettles for manufacturing ashes, pass to the vendee of the land. 6 Cowen, R. 663; 20 Johns. R. 29.

3dly. Between devisee and executor. On a devise of real estate, things permanently annexed to the realty, at the time of the testator's death, will pass to the devisee. His right to fixtures will be similar to that of the vendee. 2 Barn. & Cresw. 80.

4thly, Between landlord and tenant for years. The ancient rule is relaxed, and the right of removal of fixtures by the tenant is is said to be most extensive. 3 East, 38. But his right of removal is held to depend rather upon the question whether the estate will be left in the same condition in which he took it. 4 Pick. R. 311.

5thly. In cases between tenants for life or their executors and the remainder-men or reversioners, the right to sever fixtures seems to be the same as that of the tenant for years. It has been held that the steam engines erected in a colliery, by a tenant for life, should belong to the executor and not to go to the remainder-man. 3 Atk. R. 13.

6thly, In a case between the landlord and a tenant at will, there seems to be no reason why the same privilege of removing fixtures should not be allowed. 4 Pick. R. 511; 5 Pick. R. 487.

The time for exercising the right

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of removal of fixtures is a matter of importance; a tenant for years may remove them at any time before he gives up the possession of the premises, although it should be after his term has expired, and he is holding over. 1 Barn. & Cres. 79; 2 East, 88. Tenants for life or at will having uncertain interests in the land, may after the determination of their estates, not occasioned by their own faults, have a reasonable time within which to remove their fixtures. Hence their right to bring an action for them. 3 Atk. 13. In case of their death the right passes to their representatives.

See generally, Vin. Abr. Landlord and Tenant, A; Bac. Abr. Executors, &c. H 3; Com. Dig. Biens, B and C; 2 Chitty's Blacks. 281, n. 23; Pothier, Traité des Choses; 4 Co. 63, 64; Co. Litt. 53, a, and note 5, by Hargr.; Moore, 177; Hob. 234; 3 Salk. 368; 1 P. Wms. 94; 1 Atk. 553; 2 Vern. 508; 3 Atk. 13; 1 H. Bl. 259, n; Ambl. 113; 2 Str. 1141; 3 Esp. 11; 2 East, 88; 3 East, 38; 9 East, 215; 3 Johns. R. 468; 7 Mass. 432; 6 Cowen, 665; 2 Kent, Com. 280; Ham. Part. 182; Jurist, No. 19, p. 53.

FLAG OF THE UNITED STATES. By the act entitled, "An act to establish the flag of the United States," passed April 4, 1818, 3 Story's L. U. S., 1667, it is enacted—

§ 1. That from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white: that the union be twenty stars, white in a blue field.

§ 2. That, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission.

FLEET, *punishment*, *Engl. law*, a place of running water, where the tide or float comes up. A prison in London so called from a river or ditch which was formerly there, on the side of which it stood.

FLETA. The title of an ancient law-book, supposed to have been written by a judge who was confined in the Fleet prison. It is written in latin, and is divided into six books.

FLIGHT, *crim. law*, is the evading the course of justice, by a man's voluntarily withdrawing himself. 4 Bl. Com. 387.

FLORIDA. The name of one of the territories of the United States of America. It was purchased from Spain by treaty between the United States and Spain, executed at Washington on the twenty-second day of February, in the year one thousand eight hundred and nineteen. Congress established a temporary government for East and West Florida by the act of March 3, 1819, 3 Story's L. U. S. 1745; and by the act of March 30, 1822, Ib. 1828, it is enacted that all the territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a territory of the United States.

FLORIN, *comm. law*, a denomination of money, of the United Netherlands. It is computed in the ad volorem duty upon goods, &c. at the rate of forty cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign coins*.

FLOTSAM or FLOTSAN, a name for the goods which float upon the sea when a ship is sunk, in distinction from *Jetsam*, (q. v.) and *Legan*, (q. v.). Bract. lib. 2, c. 5; 5 Co. 106; Com. Dig. Wreck (A).

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FŒTICIDE, *med. jur.* Recently this term has been applied to designate the act by which criminal abortion is produced. 1 Beck's Med. Jur. 288.

FŒTUS, *med. jur.*, is the unborn child. The name of embryo is sometimes given to it, but although the terms are occasionally used indiscriminately, the latter is more frequently employed to designate the state of an unborn child during the first three months after conception, and by some until quickening. A fœtus is sometimes described by the homely phrase of *infant in ventre sa mere*. It is sometimes of great importance, particularly in criminal law, to ascertain the age of a fœtus or how far it has progressed towards maturity. There are certain signs which furnish evidence on this subject, the size and weight and the formation of certain parts, as the cartilages, the bones, &c., are the principal. These are not always the same, much of course must depend upon the constitution and health of the mother, and other circumstances which have an influence on the fœtus. The average length and weight of the fœtus at different periods of gestation as deduced by Doctor Beck from various observers, and as found by Maygrier, is here given. The discordance apparent between them proves that the observations which have been made, are only an approximation to truth.

It is proper to remark that the Paris pound *poids de marc*, which was the weight used by Maygrier, differs from *avoirdupois* weight used by Dr. Beck. The pound *poids de marc*, of sixteen ounces, contains 9216 Paris grains, whilst the *avoirdupois* contains only 8532.5 Paris grains. The Paris inch is 1.065977 English inch.

	Length.		Weight.	
	Beck.	Maygrier.	Beck.	Maygrier.
At 30 days	3 to 5 lines.	10 to 12 lines.		9 to 10 grains.
2 months	2 inches.	4 inches.	2 ounces.	5 drachms.
3 do.	3½ inches.	6 inches.	2 to 3 ounces.	2½ ounces.
4 do.	5 to 6 inches.	8 inches.	4 to 5 ounces.	7 to 8 ounces.
5 do.	7 to 9 inches.	10 inches.	9 to 10 ounces.	16 ounces.
6 do.	9 to 12 inches.	12 inches.	1 to 2 pounds.	2 pounds.
7 do.	12 to 14 inch.	14 inches.	2 to 3 pounds.	3 pounds.
8 do.	16 inches.	16 inches.	3 to 4 pounds.	4 pounds.

Vide, generally, 1 Beck's Med. Jur. 239; 2 Dunglison's Human Physiology, 391; Ryan's Med. Jur. 137; 1 Chit. Med. Jur. 403; and the articles *Birth*, *Dead Born*, *Fœticide*, *In ventre sa mere*, *Infanticide*, *Life*, and *Quick with child*.

FOOT, a measure of length, containing one-third of a yard, or twelve inches.

FOR THAT, *pleading*. It is a maxim in law, regulating alike every form of action, that the plaintiff shall state his complaint in positive and direct terms, and not by way of recital. "For that," is a positive allegation; "For that whereas," is

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latin "quod cum," (q. v.) is a recital. Hamm. N. P. 9.

FORBEARANCE, *contracts*, is the act by which a creditor waits for the payment of the debt, due him by the debtor, after it has become due. When the creditor agrees to forbear with his debtor, this is a sufficient consideration to support an assumpsit made by the debtor. 4 John. R. 237; 2 Nott & McCord, 133; 2 Binn. R. 510; Com. Dig. Action upon the case upon assumpsit, B 1; Dane's Ab. Index, h. t.; 1 Leigh's N. P. 31; 1 Penna. R. 385; 4 Wash. C. C. R. 148; 5 Rawle's R. 69. Vide *Giving time*.

FORCE, is a power put in motion for some object. It is, 1, actual; or 2, implied.

§ 1. If a person with force break a door or gate for an illegal purpose, it is lawful to oppose force to force; and if one enter the close of another, *vi et armis*, he may be expelled immediately, without a previous request; for there is no time to make a request. 2 Salk. 641; 8 T. R. 78, 357. And see tit. *Battery*, § 2. When it is necessary to rely upon actual force in pleading, as in the case of a forcibly entry, the words "*manu forti*," or "with a strong hand," should be adopted. 8 T. R. 357, 378; but in other cases, the words "*vi et armis*," or "with force and arms," is sufficient. Id.

§ 2. The entry into the ground of another, without his consent, is breaking his close, for force is implied in every trespass *quare clausum fregit*. 2 Salk. 641; Co. Lit. 257, b. 161, b. 162, a; 1 Saund. 81, 140, n. 4; 8 T. R. 78, 358. Bac. Abr. Trespass; this Dict. tit. *Close*. In the case of false imprisonment, force is implied, 1 N. R. 255; and the same rule prevails where a wife, a daughter, or servant have been enticed away or debauched, though in fact they consented, the law considering them incapable of consenting. See 3 Wils. 18; Fitz. N. B. 89, O; 5 T. R. 361; 6 East, 387; 2 N. R. 365, 454. In general, a mere nonfeasance cannot be considered as forcible; for where there has been no act, there cannot be force, as in the case of the mere detention of goods without an unlawful taking. 2 Saund. 47, k. l.

FORCED HEIRS, in Louisiana, are those persons whom the testator or donor, cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civ. Code of Lo. art. 1482; as to the portion of the estate they are entitled to, see the article *Legitime*. As to the causes for which forced heirs may be deprived of this right, see *Disinherison*.

FORCIBLE ENTRY OR DETAINER, *crim. law*, is committed by unlawfully and violently taking or keeping possession of lands and tenements with menaces, force and arms, and without the authority of law. Com. Dig. h. t. The proceedings in case of forcible entry and detainer, are regulated by statute in the several states. (q. v.) The offence is generally punished by indictment. 4 Bl. Com. 148; 1 Russ. on Cr. 283. A forcible entry and a forcible detainer, are distinct offences, 1 Serg. & Rawle, 124; 8 Cowen, 226. Vide generally, 3 Pick. 31; 3 Halst. R. 48; 2 Tyler's R. 64; 2 Root's R. 411; Ib. 472; 4 Johns. R. 150; 8 Johns. R. 44; 10 Johns. R. 304; 1 Caines's R. 125; 2 Caines's R. 98; 9 Johns. R. 147; 2 Johns. Cas. 400; 6 Johns. R. 334; 2 Johns. R. 27; 3 Caines's R. 104; 11 John. R. 504; 12 John. R. 31; 13 Johns. R. 158; Ib. 340; 16 Johns. R. 141; 8 Cowen, 226; 1 Coxe's R. 258; Ib. 260; 1 South. R. 125; 1 Halst. R. 396; 3 Ib. 48; 4 Ib. 37; 6 Ib. 84; 1 Yeates,

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501; Addis. R. 14, 17, 43, 316, 355; 3 Serg. & Rawle, 418; 3 Yeates, 49; 4 Dall. 212; 4 Yeates, 326; 1 Harr. & McHen. 428; 2 Bay, R. 355; 2 Nott & McCord, 121; 1 Const. R. 325; Cam. & Norw. 337, 340; Com. Dig. h. t.; Vin. Ab. h. t.; Bac. Ab. h. t.

FORECLOSURE, *practice*, is a proceeding in chancery, by which the mortgagor's right of redemption of the mortgaged premises is barred or foreclosed forever. This takes place when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption; in such case the mortgagee may file a bill calling on the mortgagor, in a court of equity, to redeem his estate presently, or in default thereof, to be forever foreclosed and barred from any right of redemption.

FOREIGN ATTACHMENT. Vide *Attachment*.

FOREIGN COINS, *com. law*. The money of foreign nations. Congress have, from time to time, regulated the rates at which certain foreign coins should pass. The acts now in force are the following.

The act of June 25, 1834, 4 Sharsw. cont. of Story's L. U. S. 2373, enacts, sect. 1. That from and after the passage of this act, the following silver coins shall be of the legal value, and shall pass current as money within the United States, by tale, for the payment of all debts and demands, at the rate of one hundred cents the dollar, that is to say, the dollars of Mexico, Peru, Chili, and Central America, of not less weight than four hundred and fifteen grains each, and those re-stamped in Brazil of the like weight, of not less fineness than ten ounces, fifteen pennyweights of pure silver, in the troy pound of twelve ounces of standard silver; and the five franc pieces of France, when of not less fineness than ten ounces and sixteen pennyweights in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty-four grains each, at the rate of ninety-three cents each.

The act of June 28, 1834, 4 Sharsw. cont. of Story's L. U. S. 2377, enacts, sect. 1. That from and after the thirty-first day of July next, the following gold coins shall pass current as money within the United States, and be receivable in all payments, by weight, for the payment of all debts and demands, at the rates following, that is to say: the gold coins of Great Britain, Portugal and Brazil, of not less than twenty-two carats fine, at the rate of ninety-four cents and eight-tenths of a cent per pennyweight; the gold coins of France nine-tenths fine, at the rate of ninety-three cents and one-tenth of a cent per pennyweight; and the gold coins of Spain, Mexico, and Colombia, of the fineness of twenty carats three grains and seven-sixteenths of a grain, at the rates of eighty-nine cents and nine-tenths of a cent per pennyweight.

By the act of March 3, 1823, 3 Story's L. U. S. 1923, it is enacted, sect 1. That from and after the passage of this act, the following gold coins shall be received in all payments on account of public lands, at the several and respective rates following, and not otherwise, viz: the gold coins of Great Britain and Portugal, and of their present standard, at the rate of one hundred cents for every twenty-seven grains, or eighty-eight cents and eight-ninths per pennyweight: the gold coins of France of their present standard, at the rate of one hundred cents for every twenty-seven and a half grains, or eighty-seven and a quarter cents per pennyweight; and the gold coins of Spain of their present standard, at

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the rate of one hundred cents for every twenty-eight and a half-grains, or eighty-four cents per penny-weight.

The act of March, 2, 1799, 1 Story's L. U. S. 573, to regulate the collection of duties on imports and tonnage, sect. 61, (p. 626,) enacts, That the ad valorem rates of duty upon goods, wares, and merchandise, at the place of importation, shall be estimated by adding twenty per cent. to the actual costs thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place or country, including all charges; commissions, outside packages, and insurance, only excepted. That all foreign coins and currencies shall be estimated at the following rates; each pound sterling of Great Britain, at four dollars and forty-four cents; each livre tournois of France, at eighteen and a half cents; each florin, or guilder of the United Netherlands, at forty cents; each mark banco of Hamburgh, at thirty-three and one-third cents; each rix dollar of Denmark, at one hundred cents; each rial of plate, and each rial of vellon, of Spain, the former at ten cents, the latter at five cents, each; each milree of Portugal, at one dollar and twenty-four cents; each pound sterling of Ireland, at four dollars and ten cents; each tale of China, at one dollar and forty-eight cents; each pagoda of India, at one dollar and ninety-four cents; each rupee of Bengal, at fifty-five cents and one half; and all other denominations of money, in value as nearly as may be to the said rates, or the intrinsic value thereof, compared with money of the United States: *Provided*, That it shall be lawful for the president of the United States to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchandise, imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

By the act of July 14, 1832, s. 16, (4 Sharsw. Cont. of Story's L. U. S. 2326,) the law is changed as to the value of the pound sterling, in calculating the rate of duties. It is thereby enacted, that from and after the said third day of March, one thousand eight hundred and thirty-three, in calculating the rate of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents.

FOREIGN JUDGMENT, *evidence, remedies.* A judgment rendered in a foreign state. The subject will be considered with regard, 1st, to the manner of proving such judgment; and, 2dly, its efficacy.

1. Foreign judgments are authenticated in various ways; 1, by an exemplification certified under the great seal of the state or country where it was rendered; 2, by a copy proved to be a true copy; 3, by the certificate of an officer authorised by law, which certificate must, itself, be properly authenticated. 2 Cranch, 238; 2 Caines's R. 155; 5 Cranch, 335; 7 John. R. 514; 8 Mass. R. 273; 2 Munf. R. 53; 4 Campb. R. 28; 2 Russ. on Cr. 723. There is a difference between the judgments of courts of common law jurisdiction and courts of admiralty, as to the mode of proof of judgments rendered by them. Courts of admiralty are under the law of nations; certificates of such judgments with their seals affixed, will therefore be admitted in evidence without further proof. 5 Cranch, 335; 3 Conn. R. 171.

2. A judgment rendered in a foreign country by a court *de jure*, or even a court *de facto*, 4 Binn. 371,

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in a matter within its jurisdiction, when the parties litigant had been notified, and had had an opportunity of being heard, either establishing a demand against the defendant or discharging him from it, is of binding force. 1 Dall. R. 191; 9 Serg. & Rawle, 260; 10 Serg. & Rawle, 240; 1 Pet. C. C. R. 155. As to the plea of the act of limitation to a suit on a foreign judgment, see 4 Bac. 472; 2 Vern. 540; 5 John. R. 132; 13 Serg. & Rawle, 395.

For the manner of proving a judgment obtained in a sister state; see the article *Authentication*.

FOREIGN LAWS, *evidence*, the laws of a foreign country. They will be considered with regard to, 1, the manner in which they are to be proved; 2, their effect when proved.

1. The courts do not judicially take notice of foreign laws, and they must therefore be proved as facts. Cowp. 174; 3 Esp. C. 163; 3 Campb. R. 166; 2 Dow & Clark's R. 171; 1 Cranch, 38; 2 Cranch, 187, 236, 237; 6 Cranch, 274; 2 Harr. & John. R. 193; 3 Gill & John. R. 234; 4 Conn. R. 517; 4 Cowen, R. 515, 516, note; Pet. C. C. R. 229; 8 Mass. R. 99; 1 Paige's R. 220. The manner of proof varies according to circumstances; as a general rule the best testimony or proof is required, for no proof will be received which pre-supposes better testimony attainable by the party who offers it. When the best testimony cannot be obtained, secondary evidence will be received. 2 Cranch, 237. Authenticated copies of written laws and other public documents must be produced when they can be procured; but should they be refused by the competent authorities, then inferior proof may be admissible. Ib. When our own government has promulgated a foreign law or ordinance of a public nature as authentic, that is held sufficient evidence of its existence. 1 Cranch, 38; 1 Dall. 462; 6 Binn. 321; 12 Serg. & Rawle, 203. When foreign laws cannot be proved by some mode which the law respects as being of equal authority to an oath, they must be verified by the sanction of an oath. The usual modes of authenticating them are by an exemplification under the great seal of a state; or by a copy proved by oath to be a true copy; or by a certificate of an officer authorised by law, which must, itself, be duly authenticated. 2 Cranch, 238; 2 Wend. 411; 6 Wend. 475; 5 Serg. & Rawle, 523; 15 Serg. & Rawle, 84; 2 Wash. C. C. R. 175. Foreign unwritten laws, customs and usages, may be proved, and are ordinarily proved by parol evidence; and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show that fact. 15 Serg. & R. 87. Proof of such unwritten laws is usually made by the testimony of witnesses learned in the law, and competent to state it correctly under oath. 2 Cranch, 237; 1 Pet. C. C. R. 225; 2 Wash. C. C. R. 175; 15 Serg. & R. 84; 4 John. Ch. R. 520; Cowp. 174; 2 Hagg. R. App. 15 to 144. In England certificates of persons in high authority have been allowed as evidence in such cases. 3 Hagg. Eccl. R. 767, 769. The public seal of a foreign sovereign or state affixed to a writing purporting to be a written edict, or law, or judgment, is, of itself, the highest evidence, and no further proof is required of such public seal. 2 Cranch, 238; 2 Conn. R. 85; 1 Wash. C. C. R. 363; 4 Dall. 413, 416; 6 Wend. 475; 9 Mod. 66. But the seal of a foreign court is not in general evidence without further proof, and it must therefore be established by competent testimony. 3 John. R. 310; 2 Harr. & John. 193;

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4 Cowen, 526, n.; 3 East, 221. As courts of admiralty are courts under the laws of nations, their seals will be admitted as evidence without further proofs. 5 Cranch, 335; 3 Conn. 171. This is an exception to the general rule.

The mode of authenticating the laws and records of the several states of the American union, is peculiar and will be found under the article *Authentication*.

2. The effect of such foreign laws, when proved, is properly referable to the court; the object of the proof of foreign laws, is to enable the court to instruct the jury what is, in point of law, the result from foreign laws, to be applied to the matters in controversy before them. The court are therefore to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the court are to judge of their applicability to the matter in issue. Story, Confl. of L. § 638; 2 Harr. & John. 193, 219; 4 Conn. R. 517; 3 Harr. & John. 234, 242; Cowp. 174. Vide *Opinion*.

FOREIGNERS. Aliens, persons born in another country than the United States, who have not been naturalized. 1 Pet. R. 349. Vide 8 Com. Dig. 615, and the articles *Alien*, *Citizens*.

FOREJUDGED THE COURT. An officer of the court who is expelled the same, is, in the English law, said to be forejudged the court. Cunn. Dict. h. t.

FORESTALLING, *crim. law*. Every practice or device, by act, conspiracy, words, or news, to enhance the price of victuals or other provisions. 3 Inst. 196; 3 Bac. Ab. 261; 1 Russ. Cr. 169; 4 Bl. Com. 158. All endeavours whatever to enhance the common price of any merchandize, and all kinds of practices which have that tendency, whether by spreading false rumours, or by buying things in a market before the accustomed hour, are offences at common law, and come under the notion of forestalling, which includes all kinds of offences of this nature. Hawk. P. C. B. 1, c. 80, s. 1; vide 13 Vin. Ab. 430; Dane's Ab. Index, h. t.; 4 Com. Dig. 391; 1 East, Rep. 143.

FORFEITURE, *punishments*, *torts*. Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of lands, tenements or hereditaments; whereby he loses all his interest therein, and they become vested in the party injured, as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Com. 267. Lands, tenements, and hereditaments may be forfeited by various means: 1. By the commission of crimes and misdemeanors; 2. By alienation contrary to law; 3. By the non-performance of conditions; 4. By waste.

1. *Forfeiture for crimes*. By the constitution of the United States, art. 3, s. 3, it is declared that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. And by the act of April 30, 1790, s. 24, 1 Story's Laws U. S. 88, it is enacted, that no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate. As the offences punished by this act are of the blackest dye, including cases of treason, the punishment of forfeiture may be considered as being abolished. The forfeiture of the estate for crimes is very much reduced in practice in this country, and when it occurs, the state takes the title the party had, and no more. 4 Mason's R. 174; Dalrymple on Feudal Property, c. 4, p. 145–154; Fost. C. L. 95.

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2. *Forfeiture by alienation.* By the English law, estates less than a fee may be forfeited to the party entitled to the residuary interest by a breach of duty in the owner of the particular estate. When a tenant for life or years, therefore, by feoffment, fine, or recovery, conveys a greater estate than he is by law entitled to do, he forfeits his estate to the person next entitled in remainder or reversion. 2 Bl. Com. 274. In this country such forfeitures are almost unknown, and the more just principle prevails that the conveyance by the tenant operates only on the interest which he possessed, and does not affect the remainder-man or reversioner. 4 Kent. Com. 81, 82, 424.

3. *Forfeiture by non-performance of conditions.* An estate may be forfeited by a breach or non-performance of a condition annexed to the estate, either expressed in the deed at its original creation, or impliedly by law, from a principle of natural reason. 2 Bl. Com. 281; and see Ad. Ej. 140 to 173. Vide article *Re-entry.*

4. *Forfeiture by waste.* Waste is also a cause of forfeiture. 2 Bl. Com. 283. Vide article *Waste.*

Vide, generally, 2 Bl. Com. ch. 18; 2 Kent's Com. 318; 4 Ib. 422; 10 Vin. Ab. 371, 394; 13 Vin. Ab. 436; 3 Bac. Ab. 236; Com. Dig. h. t.; Dane's Ab. h. t.; 1 Bro. Civ. L. 252; 4 Bl. Com. 382; and Considerations on the law of forfeiture for high treason, London edition, 1746.

FORGERY, *crim. law.* Forgery at common law has been held to be "the fraudulent making and alteration of a writing to the prejudice of another man's right." 4 Bl. Com. 247. By a more modern writer, it is defined, as "a false making, a making malo animo, of any written instrument, for the purpose of fraud and deceit." 2 East, P. C. 852. This offence at common law is of the degree of a misdemeanor. There are many kinds of forgery, especially subjected to punishment by statutes enacted by the national and state legislatures. The subject will be considered with reference, 1, to the making or alteration requisite to constitute forgery; 2, the written instruments in respect of which forgery may be committed; 3, the fraud and deceit to the prejudice of another man's right; 4, the statutory provisions under the laws of the United States on the subject of forgery.

1. The making of a whole written instrument in the name of another with a fraudulent intent is undoubtedly a sufficient making; but a fraudulent insertion, alteration or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery; and this, although it be afterwards executed by a person ignorant of the deceit. 2 East, P. C. 855. The fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versa*, will also be a forgery. For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procuring the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted. Noy, 101; Moor, 759, 760; 3 Inst. 170; 1 Hawk. c. 70, s. 2; 2 Russ. on Cr. 318; Bac. Ab. h. t. (A). It has even been intimated by Lord Ellenborough, that a party who makes a copy of a receipt, and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery. 5 Esp. R. 100. It is a

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sufficient making where in the writing the party assumes the name and character of a person in existence. 2 Russ. 327. But the adoption of a false *description* and *addition*, where a false name is not assumed, and there is no person answering the description, is not a forgery. Russ. & Ry. 405. Making an instrument in a fictitious name, or the name of a non-existing person, is equally a forgery, as making it in the name of an existing person, 2 East, P. C. 957; 2 Russ. on Cr. 328; and although a man may make the instrument in his own name, if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be a forgery in the name of a non-existing person, 2 Leach, 775; 2 East, P. C. 963; but the correctness of this decision has been doubted. Rosc. Cr. Ev. 384. Though in general a party cannot be guilty of forgery by a mere *non-feasance*, yet if in drawing a will he should fraudulently omit a legacy which he had been directed to insert, and by the omission of such bequest, it would cause a material alteration in the limitation of a bequest to another, as where the omission of a devise of an estate for life to one, causes a devise of the same lands to another to pass a present estate, which would otherwise have passed a remainder only, it would be a forgery. Moor, 760; Noy, 101; 1 Hawk. c. 70, s. 6; 2 East, P. C. 856; 2 Russ. on Cr. 320. It may be observed that the offence of forgery may be complete without a publication of the forged instrument. 2 East, P. C. 855; 3 Chit. Cr. 1038.

2. With regard to the thing forged, it may be observed that it has been holden to be forgery at common law fraudulently to falsify, or falsely make records and other matters of a public nature, 1 Rolle's Ab. 65, 68; a parish register, 1 Hawk. c. 70; a letter in the name of a magistrate, the governor of a gaol, directing the discharge of a prisoner, 6 Car. & P. 129; S. C. 25 E. C. L. R. 315. With regard to private writings, it is forgery fraudulently to falsify or falsely make a deed or will, 1 Hawk. b. 1, c. 70, s. 10; or any private document, whereby another person may be prejudiced. 2 Greenl. R. 365; Addis. R. 33; 2 Binn. R. 332; 2 Russ. on Cr. b. 4, c. 32, s. 2; 2 East, P. C. 861; 3 Chit. Cr. Law, 1022 to 1038.

3. The intent must be to defraud another, but it is not requisite that any one should have been injured; it is sufficient that the instrument forged might have proved prejudicial. 3 Gill & John. 220; 4 W. C. C. R. 726. It has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument, if it were genuine, although from the manner of executing the forgery, or from the person's ordinary caution, it would not be likely to impose upon him, and although the object was general to defraud whoever might take the instrument, and the intention of defrauding, in particular, the person who would have to pay the instrument, if genuine, did not enter into the contemplation of the prisoner. Russ. & Ry. 291; vide Russ. on Cr. b. 4, c. 32, s. 3; 2 East, P. C. 853; 1 Leach, 367; 2 Leach, 775; Rosc. Cr. Ev. 400.

4. Perhaps each of the states in the union has passed laws making certain acts to be forgery, and the national legislature has also enacted several on this subject, which being of public interest are here transcribed.

Act of March 2, 1803, 2 Story, 888.—§ 1. That if any person shall knowingly make, utter, or publish, any false sea-letter, Mediterranean passport, or certificate of registry,

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or shall knowingly avail himself of any such Mediterranean passport, sea-letter, or certificate of registry, he shall forfeit and pay a sum not exceeding five thousand dollars, to be recovered by action of debt, in the name of the United States, in any court of competent jurisdiction; and, if an officer of the United States, he shall forever thereafter be rendered incapable of holding any office of trust or profit under the authority of the United States.

An act for the regulation of seamen on board the public and private vessels of the United States, passed March 3, 1813, 2 Story, 1304.—

§ 13. That if any person shall falsely make, forge, or counterfeit, or cause, or procure to be falsely made, forged, or counterfeited, any certificate or evidence of citizenship referred to in this act; or shall pass, utter, or use as true, any false, forged, or counterfeited certificate of citizenship, or shall make sale or dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony; and, on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three, or more than five years, or be fined in a sum not less than five hundred dollars, nor more than one thousand dollars, at the discretion of the court taking cognizance thereof.

An act supplementary to, and to amend, an act entitled, "An act to regulate the collection of duties, on imports and tonnage, passed second March one thousand seven hundred and ninety-nine, and for other purposes," passed March 1, 1823, 3 Story, 1889.

§ 24. That any person or persons, who shall counterfeit any certificate or attestation made in pursuance of this act, or use such certificate or attestation, knowing the same to be counterfeit, shall, upon conviction thereof before any court of the United States having cognizance of the same, be adjudged guilty of felony, and be fined in a sum not exceeding ten thousand dollars, and imprisoned for a term not exceeding three years.

An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes, passed March 3, 1825, 3 Story, 2003.

§ 17. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any paper, writing, or instrument, in imitation of, or purporting to be, an indent, certificate of the public stock, or debt, treasury note, or other public security of the United States, or any letters-patent, issued or granted by the president of the United States, or any bill, check, or draft for money drawn by, or on the treasurer of the United States, or by, or on, any other public officer or agent of the United States, duly authorised to make, draw, accept, or pay the same, on behalf and for account of the United States; or if any person or persons shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any such false, forged, or counterfeited paper, writing, or instrument, knowing the same to be false, forged, or counterfeited, with intent to defraud the United States, or any body politic or corporate, or any other person or persons whatsoever; or if any person or persons shall falsely alter any indent, certificate of the public stock, or debt, treasury note, or other public security of the United States, or any letters-patent, issued or grant-

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ed by the president of the United States, or any bill, check, or draft for money drawn by or on the treasurer of the United States, or any public officer or agent of the United States, duly authorised to make, draw, accept, or pay such bill, check, or draft; or if any person or persons shall pass, utter, or publish, or attempt to pass, utter, or publish, as true and unaltered, any such falsely altered indent, certificate, treasury note, or other public security, letters-patent, or bill, check, or draft, knowing the same to be falsely altered, with intent to defraud the United States, or any body politic or corporate, or any person or persons, whatsoever; every such person, so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labour, not exceeding ten years, according to the aggravation of the offence.

§ 18. That, if any person or persons shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any paper, writing, or instrument, in imitation of, or purporting to be, any letter of attorney, or other authority or instrument to assign, transfer, sell, or convey any share or sum in the public stock or debt of the United States, or in the capital stock of the president, directors, and company of the Bank of the United States, or to receive any annuity or annuities, dividend or dividends, due or to become due on any such stock or debt; or to receive any pension, prize money, wages, or other debt or sum of money due, or to become due from the United States; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or willingly aid or assist in forging or counterfeiting the name or names of any of the holders or proprietors of any such public stock or debt, or of any person entitled to any such annuity, dividend, pension, prize money, wages, or other debt, or sum of money as aforesaid, in or to any such pretended letter of attorney, authority or instrument; or shall, knowingly and fraudulently demand, or endeavour to have or obtain such share or sum in such public stock or debt, or capital stock of the said bank, or to have any part thereof transferred, assigned, sold or conveyed, or such annuity, dividend, pension, prize money, wages, or other debt or sum of money, or any part thereof, to be received or paid, by virtue of any such false, forged, or counterfeited letter of attorney, authority, or instrument; or shall falsely and deceitfully personate any true or real proprietor or holder of such share or sum in such public stock or debt, or capital stock of the said bank, or any person entitled to such annuity, dividend, pension, prize money, wages, or other debt or sum of money, as aforesaid, and thereby transferring or endeavouring to transfer such public stock or debt, or capital stock of the said bank, or receiving, or endeavouring to receive the money of such true or lawful holder or proprietor thereof, or the money of such person or persons, really and truly entitled to receive such annuity, dividend, pension, prize money, wages or other debt, or sum of money, as aforesaid, as if such offender were the true and lawful owner thereof, and entitled thereto; every person so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labour, not exceeding ten years, ac-

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cording to the aggravation of the offence.

§ 19. That if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any instrument in imitation of, or purporting to be, an abstract or official copy, or certificate of the recording, registry, or enrolment of any ship or vessel in the office of any collector of the customs of the United States, or a license to any ship or vessel, for carrying on the coasting trade, or fishery or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any ship or vessel, under the authority of the United States, or a permit, debenture, or other official document, granted by any collector or other officer of the customs, by virtue of his or their office; or shall falsely alter any abstract, official copy or certificate of any recording, registering, or enrolling of any ship or vessel in the office of any collector of the customs of the United States, or any license to any ship or vessel for carrying on the coasting trade or fisheries of the United States, or any certificate of ownership, pass, passport, sea letter, or clearance granted for any ship or vessel under the authority of the United States, or any permit, debenture, or other official document granted by any collector, or other officer of the customs, by virtue of his or their office; or shall pass, utter or publish, or attempt to pass, utter, or publish, as true, any such false, forged, or counterfeited instrument, or any such falsely altered abstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture, or other official document as aforesaid, knowing the same to be false, forged or counterfeited, or falsely altered, with an intent to defraud the United States, or any other body politic or corporate, or person, whatsoever; every person, so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding one thousand dollars, and by imprisonment and confinement to hard labour not exceeding three years.

The term forgery, is also applied to the making of false or counterfeit coin. For the law respecting the forgery of coin, see article *Money*. And for the act of congress punishing forgery in the District of Columbia, see 4 Sharsw. cont. of Story Laws U. S. 2234.

Vide, generally, Hawk, b. 1, c. 51 and 70; 3 Chit. Cr. Law, 1022 to 1048; 4 Bl. Com. 247 to 250; 2 East, P. C. 840 to 1003; 2 Russ. on Cr. b. 4, c. 32; 13 Vin. Ab. 459; Com. Dig. h. t; Dane's Ab. h. t.; Williams's Just. h. t.; Burn's Just. h. t.; Rosc. Cr. Ev. h. t.; Stark. Ev. h. t. Vide article *Frank*.

FORM, *practice*, is the model of an instrument or legal proceeding, containing the substance and the principal terms, to be used in accordance with the laws; or, it is the act of pursuing, in legal proceedings, and in the construction of legal instruments, the order required by law. Form is usually put in contradistinction to substance. For example, by the operation of the statute of 27 Eliz. c. 5, s. 1, all merely formal defects in pleading, except in dilatory pleas, are aided on general demurrer. The difference between matter of form, and matter of substance, in general, under this statute, as laid down by Lord Hobart, is that "*that* without which *the right* doth sufficiently appear to the court, is *form*;" but that any defect, "by reason whereof the *right appears*

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not," is a defect in substance. Hob. 233. A distinction somewhat more definite, is, that if the *matter* pleaded be in itself insufficient, without reference to the manner of pleading it, the defect is substantial; but that if the fault is in the manner of alleging it, the defect is formal. Dougl. 683. For example, the omission of a consideration in a declaration in assumpsit; or of the performance of a condition precedent, when such condition exists; of a conversion, or property of the plaintiff, in trover; of science in the defendant, in an action for mischief done by his dog; of malice, in action for malicious prosecution, and the like, are all defects in *substance*. On the other hand duplicity; a negative pregnant; argumentative pleading; a special plea, amounting to the general issue; omission of a day, when time is immaterial; of a place, in transitory actions, and the like, are only faults in form. Bac. Ab. Pleas, &c. N. 5, 6; Com. Dig. Pleader, Q 7; 10 Co. 95 a; 2 Str. 694; Gould, Pl. c. 9, § 17, 18; 1 Bl. Com. 142.

FORMA PAUPERIS, *English law;* when a person is so poor that he cannot bear the charges of suing at law or in equity, upon making oath that he is not worth five pounds, and bringing a certificate from a counsellor at law, that he believes him to have a just cause, he is permitted to sue *in forma pauperis*, in the manner of a pauper; that is, he is allowed to have original writs and subpœnas gratis, and counsel assigned him without fee. 3 Bl. Com. 400.

FORMEDON, *old Engl. law.* The writ of formedon is nearly obsolete, it having been superseded by the writ of ejectment. Upon an alienation of the tenant in tail, by which the estate in tail is discontinued, and the remainder or reversion is by the failure of the particular estate displaced, and turned into a mere right, the remedy is by action of formedon, (*secundum formam doni*,) because the writ comprehends the *form* of the *gift*. This writ is in the nature of a writ of right, and the action of formedon is the highest a tenant in tail can have. This writ is distinguished into three species; a *formedon* in the *descender*, in the *remainder*, and in the *reverter*. 3 Bl. Com. 191.

FORMULARY, a book of forms or precedents for matters of law; the form.

FORNICATION, *crim. law*, is the unlawful carnal knowledge of an unmarried person with another, whether the latter be married or unmarried; when the party is married, the offence as to him or her, is known by the name of adultery, (q. v.) Fornication is however included in every case of adultery, as a larceny is included in robbery. 2 Hale's P. C. 302.

FORPRISE, taken before hand. This word is sometimes, though but seldom, used in leases and conveyances, implying an exception or reservation. Forprise, in another sense, is taken for any exaction. Cunn. Dict. h. t.

TO FORSWEAR, *crim. law, torts.* To swear to a falsehood. This word has not the same meaning as perjury. It does not *ex vi termini* signify a false swearing before an officer or court having authority to administer an oath, on an issue. A man may be forsworn by making a false oath before an incompetent tribunal as well as before a lawful court. Hence to say that a man is forsworn will or will not be slander, as the circumstances show that the oath was or was not taken before a lawful authority. Cro. Car. 378; Lut. 1292; 1 Rolle, Ab. 39, pl. 7; 6 Bac. Ab. 207; Cro. Eliz. 609; 13 Johns. R. 80; Ib. 48; 12

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Mass. 496; 1 Johns. R. 505; 2 Johns. R. 10; 1 Hayw. R. 116.

FORTHWITH. When a thing is to be done forthwith, it seems that it must be performed as soon as by reasonable exertion, confined to that object, it may be done. This is the import of the term; it varies of course with every particular case. 4 Tyr. 837.

FORTIORI or *à fortiori*, an epithet for any conclusion or inference, which is much stronger than another. "If it be so, in a feoffment, passing a new right, *à fortiori*, *much more* is it for the restitution of an ancient right." Co. Litt. 253, 260.

FORTUITOUS EVENT, a term in the civil law to denote that which happens by a cause which cannot be resisted, Louis. Code, art. 2522, No. 7; or it is that which neither of the parties has occasioned or could prevent. Lois des Bât. Pt. 2, c. 2, § 1. It is also defined to be an unforeseen event which cannot be prevented. Dict. de Jurisp. Cas fortuit. There is a difference between a fortuitous event or inevitable accident and irresistible force; by the former commonly called the act of God, is meant any accident produced by physical causes, which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency, as is, from its nature and power absolutely uncontrollable. Of this nature are losses occasioned by the inroads of a hostile army, or by public enemies. Story on Bailm. § 25; Lois des Bât. Pt. 2, c. 2, § 1.

Fortuitous events are fortunate or unfortunate. The accident of finding a treasure is a fortuitous event of the first class. Lois des Bât. Pt. 2, c. 2, § 2.

Involuntary obligations may arise in consequence of fortuitous events; for example, when to save a vessel from shipwreck, it is necessary to throw goods overboard, the loss must be borne in common; there arises in this case between the owners of the vessel and of the goods remaining on board, an obligation to bear proportionably the loss which has been sustained. Lois des Bât. Pt. 2, c. 2, § 2.

See, in general, *Act of God*, *Accident*, *Perils of the sea*.

FORUM, signifies jurisdiction, a court of justice, a tribunal. The French divide it into *forum exterior* which is the authority which human justice exercises on persons and property, to a greater or lesser extent, according to the quality of those to whom it is entrusted; and *interior forum* which is the moral sense of justice which a correct conscience indicates. Merlin, Répert. mot For.

FORWARDING MERCHANT, *in contracts*, is a person who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons, by which they are transported, and no interest in the freight; such an one is not deemed a common carrier, but a mere warehouseman or agent. 12 Johns. 232; 7 Cowen's R. 497.

FOUNDLING, a new born child abandoned by its parents, who are unknown, and found by another. The settlement of such a child is in the place where found.

FOURCHER, *English law*, a French word which means to fork. Formerly when an action was brought against two, who, being jointly concerned, were not bound to answer till both appeared, and they agreed not to appear both in one day; the appearance of one excused the other's default, who had a day given him to appear with the

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other, the defaulter on the day appointed appeared, but the first then made default, in this manner they forked each other, and practiced this for delay. Vide 2 Inst. 250.

FRACTION, signifies, in arithmetic and algebra, a combination of numbers representing one or more parts of a unit or integer; thus four-fifths is a fraction, formed by dividing a unit into five equal parts, and taking one part four times. In law, the term fraction is usually applied to the division of a day. In general there are no fractions in days, Co. Litt. 225; 2 Salk. 625; but in some cases a fraction will be taken into the account in order to secure a party his rights. 3 Chit. Pr. 111; 8 Ves. 80; 4 Campb. 197; 2 B. & Ald. 586; Rob. Dig. of Engl. statutes in force in Pennsylvania 431, 2, and when it is required by a special law. Vide article *Date*.

FRANC, *comm. law*. The name of a French coin. Five franc pieces when not of less fineness than ten ounces and sixteen pennyweight in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty-four grains each, are made a legal tender at the rate of ninety-three cents each. Act of June 25, 1834, s. 1, 4 Sharsw. cont. of Story's L. U. S. 2373. See *Foreign coins*.

FRANCHISE. This word has several significations; 1, it is a right reserved to the people by the constitution, hence we say the elective franchise, to designate the right of the people to elect their officers. 2. It is a certain privilege conferred by grant from the government, and vested in individuals. Corporations, or bodies politic, are the most usual franchises known to our law. They have been classed among incorporeal hereditaments, perhaps improperly, as they have no inheritable quality. In England franchises are very numerous; they are said to be royal privileges in the hands of a subject. Vide 3 Kent, Com. 366; Cruise Dig. tit. 27; 2 Bl. Com. 37; 15 Serg. & Rawle, 130; Finch, 164.

FRANK. The privilege of sending and receiving letters through the mails free of postage. This privilege is granted to various officers not for their own special benefit, but with a view to promote the public good. By the act of congress to reduce into one the several acts establishing and regulating the post office department, passed March 3, 1825, 3 Story's L. U. S. 1985, it is provided—

§ 27. That letters and packets to and from the following officers of the United States, shall be received and conveyed by post, free of postage. Each postmaster, provided each of his letters or packets shall not exceed half an ounce in weight; each member of the senate, and each member and delegate of the house of representatives of the congress of the United States, the secretary of the senate, and clerk of the house of representatives, provided each letter or packet, (except documents printed by the order of either house of congress,) shall not exceed two ounces in weight, and during their actual attendance in any session of congress, and sixty days before and after such session; and in case of excess of weight, that excess alone shall be paid for; the president of the United States, vice president, the secretaries of state, of the treasury, of war, of the navy, attorney general, postmaster general, and the assistants postmaster general, the comptrollers of the treasury, auditors, register, treasurer, and commissioner of the general land office, and such individual who shall have been, or may hereafter be, president of the United States, and each may receive newspapers by post, free of

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postage: *Provided*, That postmasters shall not receive, free of postage, more than one daily newspaper, each, or what is equivalent thereto; nor shall members of the senate, or of the house of representatives, the clerk of the house, or secretary of the senate, receive newspapers, free of postage, after their privilege of franking shall cease.

§ 28. That, if any person shall frank any letter or letters, other than those written by himself, or by his order, on the business of his office, he shall, on conviction thereof, pay a fine of ten dollars, and it shall be the especial duty of postmasters to prosecute for said offence: *Provided*, That the secretary of the treasury, secretary of state, secretary of war, secretary of the navy, and postmaster general, may frank letters or packets on official business, prepared in any other public office, in the absence of the principal thereof. And if any person, having the right to receive his letters free of postage, shall receive, enclosed to him, any letter or packet addressed to a person not having that right, it shall be his duty to return the same to the post office, marking thereon the place from whence it came, that it may be charged with postage. And if any person shall counterfeit the hand-writing or frank of any person, or cause the same to be done, in order to avoid the payment of postage, each person, so offending, shall pay for every such offence, five hundred dollars.

The franking privilege is also granted to the following named officers.

The commissary general. Act of April 14, 1828, 3 Story's L. U. S. 1672.

The adjutant general of the militia of any state or territory is vested with this privilege by the act of March 3, 1825, as follows:

§ 40. That the adjutant general of the militia of each state and territory shall have a right to receive, by mail, free of postage, from any major general or brigadier general thereof, and to transmit to said generals, any letter or packet, relating solely to the militia of such state or territory: *Provided always*, That every such officer, before he delivers any such letter or package for transmission, shall, in his own proper hand-writing, on the outside thereof, endorse the nature of the papers enclosed, and thereto subscribe his name and office, and shall previously furnish the postmaster of the office where he shall deposite the same, with a specimen of his signature. And, if any such officer shall frank any letter or package, in which shall be contained any thing relative to any subject, other than of the militia of such state or territory, every offender shall, on conviction of every such offence, forfeit and pay a fine of fifty dollars.

The speaker of the house of representatives is authorised to frank and to receive letters and packages by mail free of postage. Resolution of congress, April 3, 1828, 4 Sharsw. cont. of Story's L. U. S. 2156.

The governors of the several states. By the act of June 30, 1834, 4 Sharsw. cont. of Story's L. U. S. 2406, it is enacted, that it shall be lawful for the governors of the several states, to transmit by mail, free of postage, all laws and reports, whether bound or unbound, and all records and documents of their respective states, which may be directed by the legislature of the several states to be transmitted to the executives of other states; and the governor of the state transmitting the same shall, in addition to his frank, endorse the kind of book or document enclosed, and direct

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the same to the governor of the state to which the same may be sent.

The solicitor of the treasury. All letters to and from the solicitor of the treasury relating to the duties and business of his office, shall be transmitted by mail free of postage. Act of May 29, 1830, 4 Sharsw. cont. of Story's L. U. S. 2208.

The commissioner of patents, is declared by the act of July 4, 1836, 4 Sharsw. cont. of Story's L. U. S. 2504, to be entitled to send and receive letters and packages by mail relating to the business of the office free of postage. Vide article *Patent*.

FRANK, free. This word is used in composition, as frank-almoign, frank-marriage, frank-tenement, &c.

FRANKALMOIGN, *old Engl. law*. This is a law French word signifying free-alms. Formerly religious corporations, aggregate or sole, held lands of the donor, to them and their successors forever in frankalmoign. The service which they were bound to render for these lands was not certainly defined; they were in general to pray for the souls of the donor, his ancestors, and successors. 2 Bl. Com. 101.

FRANK-MARRIAGE, *English law*, takes place, according to Blackstone, when lands are given by one man to another, together with a wife who is daughter or kinswoman of the donor, to hold in *frank-marriage*. By this gift, though nothing but the word frank-marriage is expressed, the donees shall have the tenements to them and the heirs of their two bodies begotten; that is they are tenants in special tail. It is called *frank* or *free* marriage, because the donees are liable to no service but fealty. This is now obsolete even in England. 2 Bl. Com. 115.

FRANK-TENEMENT, *estates*, the same as freehold, (q. v.) or *liberum tenementum*.

FRATRICIDE, *crim. law*, he who kills his brother or sister. The crime of such a person is also called fratricide.

FRAUD, TO DEFRAUD, *torts*. unlawfully, designedly, and knowingly, to appropriate the property of another, without a criminal intent. *Illustrations*, 1. Every appropriation of the right of property of another, is not fraud. It must be unlawful; that is to say, such an appropriation as is not permitted by law. Property loaned, may during the time of the loan, be appropriated to the use of the borrower. This is not fraud, because it is permitted by law.—2. The appropriation must be, not only unlawful, but it must be made with a knowledge that the property belongs to another, and with a design to deprive him of the same. It is unlawful to take the property of another; but if it be done with a design of preserving it for the owners, or if it be taken by mistake, it is not done designedly or knowingly, and, therefore, does not come within the definition of fraud.—3. Every species of unlawful appropriation, not made with a criminal intent, enters into this definition when designedly made, with a knowledge that the property is another's; therefore, such an appropriation, intended either for the use of another, or for the benefit of the offender himself, is comprehended by the term.—4. Fraud, however immoral or illegal, is not in itself a crime, or offence for want of a criminal intent. It only becomes such in the cases provided by law. Liv. System of Penal Law, 739.

FRAUD, *contracts*, *torts*, is any trick or artifice employed by one person to induce another to fall into an error, or to detain him in it, so that he may make an agreement

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contrary to his interest. The fraud, may consist either, first, in the misrepresentation, or secondly, in the concealment of a material fact. Fraud avoids a contract, *ab initio*, both at law and in equity, whether the object be to deceive the public or third persons, or one party endeavour thereby to cheat the other. 1 Fonb. Tr. Equity, 3d ed. 66, note, 6th ed. 122, and notes; Newl. Cont. 352; 1 Bl. R. 465; Dougl. R. 450; 3 Burr. R. 1909; 3 V. & B. Rep. 42; 3 Chit. Com. Law, 155, 306, 698; 1 Sch. & Lef. R. 209; Verpl. Contr. *passim*; Domat, Lois Civ. p. 1, l. 4, t. 6, s. 3, n. 2.

The civilians divide frauds into *positive*, which consists in doing one's self, or causing another to do such things as induce a belief of the truth of what does not exist; or *negative*, which consists in doing or dissimulating certain things in order to induce the opposite party into error, or to retain him there. The intention to deceive, which is the characteristic of fraud, is here present. Fraud is also divided into that which has induced the contract, *dolus dans causam contractui*, and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, that without which the party defrauded would not have contracted, when the artifices practised by one of the parties have been such, that it is evident without them the other would not have contracted. Incidental or accidental fraud is that by which a person otherwise determined to contract, is deceived on some accessories or incidents of the contract; for example, as to the quality of the object of the contract, or its price, so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. It is otherwise where the fraud has been the determining cause of the contract, *qui causam dedit contractui*; in that case the contract is void. Toull. Dr. Civ. Fr. Liv. 3, t. 3, c. 2, n. § 5, n. 86, et seq.

FRAUDS, STATUTE OF. The name commonly given to the statute 29 Car. 2, c. 3, entitled "An act for prevention of frauds and perjuries." This statute has been re-enacted in most of the states of the Union, generally with amendments and alterations. When the *words* of the statute have been used, the construction put upon them has also been adopted. Most of the acts of the different states will be found in Anthon's Appendix to Shep. Touchst. See also the Appendix to the second edition of Roberts on Frauds.

FREE. Not bound to servitude, at liberty to act as one pleases. This word is put in opposition to slaves. Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of *free* persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Const. U. S. art. 1, s. 2. It is also put in contradistinction to being bound as an apprentice; as, an apprentice becomes *free* on attaining the age of twenty-one years. The Declaration of Independence asserts that all men are born *free*, and in that sense, the term includes all mankind.

FREEDMEN, was the name given by the Romans to those persons who had been released from a state of servitude. Vide *Liberti libertini*.

FREEHOLD, *estates*. An estate of freehold is an estate in lands or other real property, held by a free

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tenure, for the life of the tenant or that of some other person; or for some uncertain period. It is called liberum tenementum, frank tenement or freehold; it was formerly described to be such an estate as could only be created by livery of seisin, a ceremony similar to the investiture of the feudal law. But since the introduction of certain modern conveyances, by which an estate of freehold may be created without livery of seisin, this description is not sufficient. There are two qualities essentially requisite to the existence of a freehold estate. 1. Immobility; that is the subject-matter must either be land, or some interest issuing out of or annexed to land. 2. A sufficient legal indeterminate duration; for if the utmost period of time to which an estate can last, is fixed and determined, it is not an estate of freehold. For example, if lands are conveyed to a man and his heirs, or for his life, or for the life of another, or until he shall be married, or go to Europe, he has an estate of freehold; but if such lands are limited to a man for one hundred or five hundred years, if he shall so long live, he has not estate of freehold. Cruise on Real Property, t. 1, s. 13, 14 and 15; Litt. § 59; 1 Inst. 42 a; 5 Mass. R. 419; 4 Kent, Com. 23. Freehold estates are of inheritance or not of inheritance. Cruise, t. 1, s. 42.

FREEHOLDER, a person who is the owner of a freehold estate.

FREIGHT, *mar. law, contracts*, is the sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. 13 East, 300, note; but in its more extensive sense it is applied to all rewards or compensation paid for the use of ships. 1 Pet. Adm. R. 206; 2 Boulay Paty, t. 8, s. 1; 2 B. & P. 321; 4 Dall. R. 459; 3 Johns. R. 335; 2 Johns. R. 346; 3 Pardess. n. 705. It will be proper to consider, 1, how the amount of freight is to be fixed; 2, what acts must be done in order to be entitled to freight; 3, of the lien of the master or owner.

1. The amount of freight is usually fixed by the agreement of the parties, and if there be no agreement, the amount is to be ascertained by the usage of the trade, and the circumstances and reason of the case. 3 Kent, Com. 173. Pothier is of opinion that when the parties agree as to the conveyance of the goods, without fixing a price, the master is entitled to freight at the price usually paid for merchandise of a like quality at the time and place of shipment, and if the prices vary he is to pay the mean price, Charte-part. n. 8. But there is a case which authorises the master to require the highest price, namely, when goods are put on board without his knowledge. Ib. n. 9. When the merchant hires the whole ship for the entire voyage, he must pay the freight though he does not fully lade the ship; he is of course only bound to pay in proportion to the goods he puts on board, when he does not agree to provide a full cargo. If the merchant agrees to furnish a return cargo, and he furnishes none, and lets the ship return in ballast, he must make compensation to the amount of the freight; this is called *dead freight*, (q. v.) in contradistinction to freight due for the actual carriage of goods. Roccus, note 72—75; 1 Pet. Adm. R. 207; 10 East, 530; 2 Vern. R. 210.

2. The general rule is that the delivery of the goods at the place of destination, in fulfilment of the agreement of the charter party, is required, to entitle the master or owner of the vessel to freight. But to this rule there are several exceptions: 1,

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when a cargo consists of live stock, and some of the animals die in the course of the voyage, without any fault or negligence of the master or crew, and there is no express agreement respecting the payment of freight, it is in general to be paid, for all that were put on board; but when the contract is to pay for the transportation of them, then no freight is due for those which die on the voyage. Molloy, b. 2, c. 4, s. 8; Dig. 14, 2, 10; Abb. Ship. 272.—2. An interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture. 3 Rob. Adm. R. 101.—3. When the ship is forced into a port short of her destination, and cannot finish the voyage. If in this case the owner of the goods will not allow the master a reasonable time to repair, or to proceed in another ship, the master will be entitled to the whole freight; and, if after giving his consent the master refuse to go on, he is not entitled to freight. —4. When the merchant accepts of the goods at an intermediate port, it is the general rule of marine law, that freight is to be paid according to the proportion of the voyage performed, and the law will imply such contract. The acceptance must be voluntary, and not one forced upon the owner by any illegal or violent proceedings, as, from it, the law implies a contract that freight *pro rata itineris* shall be accepted and paid. 2 Burr. 883; 7 T. R. 381; Abb. Shipp. part 3, c. 7, s. 13; 3 Binn. 445; 5 Binn. 525; 2 Serg. & Rawle, 229; 1 W. C. C. R. 530; 2 Johns. R. 323; 7 Cranch, R. 358; 6 Cowen, R. 504; Marsh. Ins. 281, 691; 3 Kent, Com. 182.—5. When the ship has performed the whole voyage, and has brought only a part of her cargo to the place of destination; in this case there is a difference between a general ship, and a ship chartered for a specific sum for the whole voyage. In the former case, freight is to be paid for the goods which may be delivered at their place of destination; in the latter it has been questioned whether the freight could be apportioned, and, it seems, that in such case a partial performance is not sufficient, and that a special payment cannot be claimed except in special cases. 1 Johns. R. 24; 1 Bulstr. 167; 7 T. R. 381; 2 Campb. N. P. R. 466. These are some of the exceptions to the general rule, called for by principles of equity, that a partial performance is not sufficient, and that a partial payment or rateable freight cannot be claimed.

3. In general the master has a lien on the goods, and need not part with them until the freight is paid; and when the regulations of the revenue require them to be landed in a public warehouse, the master may enter them in his own name and preserve the lien. His right to retain the goods may however be waived either by an express agreement at the time of making the original contract, or by his subsequent agreement or consent. Vide 18 Johns. R. 157; 4 Cowen, R. 470; 1 Paine's R. 358; 5 Binn. R. 392.

Vide, generally, 13 Vin. Ab. 501; Com. Dig. Merchant, E 3, a; Bac. Ab. Merchant, D; Marsh. Ins. 91; 10 East, 394; 13 East, 300, n.; 3 Kent, Com. 173; 2 Bro. Civ. & Adm. L. 190; Merl. Rép. h. t.; Poth. Charte-Partie, h. t.; Boulay-Paty, h. t.; Pardess. Index, Affrétement.

FREIGHTER, *contracts*, is he to whom a ship or vessel has been hired. 3 Kent, Com. 173; 3 Pardess. n. 704. The freighter is entitled to the enjoyment of the vessel accord-

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ing to contract, and the vessel hired is the only one that he is bound to take; there can, therefore, be no substitution without his consent. When the vessel has been chartered only in part, the freighter is only entitled to the space he has contracted for; and in case of his occupying more room, or putting on board a greater weight, he must pay freight on the principles mentioned under the article freight. The freighter is required to use the vessel agreeably to the provisions of the charter-party, or, in the absence of any such provisions, according to the usages of trade: he cannot load the vessel with merchandise which would render it liable to condemnation for violating the laws of a foreign state. 3 John. R. 105. The freighter is also required to return the vessel as soon as the time for which he chartered her has expired, and to pay the freight.

FRESH SUIT, *Engl. law*, is an earnest pursuit of the offender, when a robbery has been committed, without ceasing, until he has been arrested or discovered. Toml. Law Dict. h. t.

FRIBUSCULUM, *in the civil law*, was a slight dissention between husband and wife, which produced a momentary separation, without any intention to dissolve the marriage, in which it differed from a divorce. Poth. Pand. lib. 50, s. 100. This amounted to a separation, (q. v.) in our law.

FRIENDLESS MAN. This name was sometimes anciently given to an outlaw.

FRIGIDITY, *med. juris.* The same as impotence, (q. v.)

FRUIT, *property*, the production of trees and other plants. Fruit is considered real estate before it is separated from the plant or tree on which it grows; after its separation it acquires the character of personalty, and may be the subject of larceny: it then has all the qualities of personal property.

FUGITIVE SLAVE, is one who has escaped from the service of his master. The constitution of the United States, art. 4, s. 2, 3, directs that "no person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any laws or regulation therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labour may be due." In practice summary ministerial proceedings are adopted, and not the ordinary course of judicial investigations, to ascertain whether the claim of ownership be established beyond all legal controversy. In some states strenuous but unsuccessful efforts have been made to procure the supposed slave a trial by jury. Vide generally, 3 Story, Com. on Const. § 1804–1806; Serg. on Const. ch. 31, p. 387; 9 John. R. 62; 5 Serg. & Rawle, 62; 2 Pick. R. 11; 2 Serg. & Rawle, 306; 3 Ib. 4; 1 Wash. C. C. R. 500.

FUGITIVE FROM JUSTICE, *crim. law*, is one who having committed a crime within a jurisdiction goes into another in order to evade the law, and avoid its punishment. By the constitution of the United States, art. 4, s. 2, 2, it is provided that "a person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the same state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." The act of thus delivering up a prisoner is, in the French law called *extradiction*, (q. v.) Different opinions are entertained in relation to the duty of a nation, by the

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law of nations, and independently of any treaty stipulations, to surrender fugitives from justice when properly demanded. Vide 1 Kent, Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125; 3 Story, Com. Const. United States, § 1801.

FUNCTION, *office*, is properly the occupation of an office, by the performance of its duties; the officer is said to fill his function. Dig. lib. 32, l. 65, § 1.

FUNCTIONARY. One who is in office or in some public employment.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse. The person who orders the funeral is responsible personally for the expenses, and if the estate of the deceased should be insolvent, he must lose the amount. But if there are assets sufficient to pay these expenses, the executor or administrator is bound, upon an implied assumpsit, to pay them. 1 Campb. N. P. R. 298; Holt, 309; Com. on Contr. 529; 1 Hawk's R. 394; 13 Vin. Ab. 563. Frequent questions arise as to the amount which is to be allowed to the executor or administrator for such expenses. It is exceedingly difficult to gather from the numerous cases which have been decided upon this subject any certain rule. Courts of equity have taken into consideration the circumstances of each case, and when the executors have acted with common prudence and in obedience to the will, their expenses have been allowed. In a case where the testator directed to be buried at a church thirty miles distant from the place of his death, the sum of sixty pounds sterling was allowed. 3 Atk. 119; and in another case, under peculiar circumstances, six hundred pounds was allowed. Preced. in Ch. 27. In a case in Pennsylvania where the intestate left a considerable estate, and no children, the sum of two hundred and fifty-eight dollars and seventy-five cents was allowed, the greater part of which had been expended in erecting a tomb-stone over a vault in which the body was interred. 14 Serg. & Rawle, 64. It seems doubtful whether the husband can call upon the separate personal estate of his wife to pay her funeral expenses. 6 Madd. R. 90.

Vide 2 Bl. Com. 508; Godolph. p. 2; 3 Atk. 249; Off. Ex. 174; 3 Bac. Ab. 85; Vin. Ab. h. t.

FUNGIBLE, a term used in the civil, French and Scotch law, signifies any thing, whatever, which consists in quantity, and is regulated by number, weight or measure, such as corn, wine or money. Hein. Elem. Pand. Lib. 12, t. 1, § 2; 1 Bell's Com. 225, n. 2; Ersk. Pr. Scot. Law, B. 3, t. 1, § 7; Poth. Prêt de Consomption, No. 25; Dict. de Jurisprudence, mot Fongible; Story, Bailm. § 284.

FURCA. The gallows. 3 Inst. 58.

FURLONG. A measure of length being forty poles or one-eighth of a mile. Vide *Measures*.

FURLOUGH, is a permission given in the army and navy to an officer or private to absent himself for a limited time.

FURNITURE, personal chattels in the use of a family. By the term household furniture in a will all personal chattels will pass which may contribute to the use or convenience of the householder, or the ornament of the house, as plate, linen, china, both useful and ornamental, and pictures. Amb. 610; 1 John. Ch. R. 329, 338; 1 Sim. & Stu. 189; S. C. 3 Russ. Ch. Cas. 301; 2 Williams on Ex. 752; 1 Rop. on Leg. 203, 4; 3 Ves. 312, 313.

FUTURE STATE, *evidence*. A

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state of existence after this life. A witness who professed not to believe in any future state of existence was formerly rejected on the ground of his infidelity. See the authorities cited under the article *Infidel*. But it seems now to be settled that when the witness believes in a God who will reward or punish him even in this world, he is competent. Willes, 550. Vide *Atheist*.

G.

GABEL, a tax, imposition or duty. This word is said to have the same signification that *gabelle* formerly had in France. Cunn. Dict. h. t. But this seems to be an error, for gabelle signified in that country, previously to its revolution, a duty upon salt. Merl. Rép. h. t. Lord Coke says, that *gabel* or *gavel*, *gablum*, *gabellum*, *gabelletum*, *galbelletum*, and *gavillettum*, signify a rent, duty or service, yielded or done to the king or any other lord. Co. Litt. 142, a.

GAGE, *contracts*. Personal property placed by a debtor in possession of his creditor, as a security for his debt; a pawn, (q. v.) Hence *mortgage* is a dead pledge.

GAGER DEL LEY. *Wager of law*, (q. v.)

GAINAGE, *old Eng. law*, signifies the draft oxen, horses, wain, plough, and furniture for carrying on the work of tillage by the baser sort of soke men and villains, and sometimes the land itself, or the profits raised by cultivating it. Bract. lib. 1, c. 9.

GALLON, *measures*. A gallon is a liquid measure, containing two hundred and thirty one cubic inches, or four quarts.

GALLOWS. An instrument on which to hang criminals condemned to death.

GAME. Birds and beasts of a wild nature obtained by fowling and hunting.

GAMING, *contracts; crim. law*, is the playing at cards, dice, or other contrivance. When practised as a recreation, the better to fit a person for business, it is not unlawful at common law; but a person guilty of cheating at any game, as by playing with false cards, dice, and the like, may be indicted at common law, and fined and imprisoned according to the heinousness of the offence. 1 Russ. on Cr. 406. This offence is punished by statutory provisions in perhaps all the states. Vide Roscoe, Cr. Ev. 446; Hawk. B. 1, c. 92, s. 1. There is nothing contrary to natural equity in gaming, and unless the game be of an immoral, illegal or indecent tendency, the contract will be considered as a reciprocal gift, which the parties make of the thing played for under a certain condition. Vide Bac. Ab. h. t. (A); Toull. liv. 3, t. 3, n. 381; Barbeyrac, Traité du Jeu, tom. 1, page 104, n. 4; Poth. Traité du Jeu; Merl. Répert. mot Jeu; 1 P. A. Bro. Rep. 171. But the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play. Bac. Ab. *ut supra*.

GAMING HOUSES, *crim. law*, are houses kept for the purpose of permitting persons to game for money or other valuable thing. They are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices. 1 Russ. on Cr. 299; Roscoe's Cr. Ev. 663; Hawk. B. 1, ch. 75, s. 6. This offence is punished in Pennsylvania, and per-

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haps, in most of the states, by statutory provisions.

GANANCIAL, *Spanish law.* A term which in Spanish signifies nearly the same as acquets. *Bienes gananciales* are thus defined: "Aquellos que el marido y la muger ó cualquiera de los dos adquieren ó aumentan durante el matrimonio por compra ú otro contrato, ó mediante su trabajo é industria, como tambien los frutos de los bienos proprios que cada uno elevó al matrimonio, et de los que subsistiendo este adquieran para si por cualquier titulo." 1 Febr. Nov. lib. 1, tit. 2, c. 8, s. 1. This is a species of community; the property of which it is formed belongs in common to the two consorts, and, on the dissolution of the marriage is divisible between them in equal shares. It is confined to their future acquisition *durante el matrimonio*, and the *fructus* or rents and profits of their other property. 1 Burge on Confl. of Laws, 418, 419.

GAOL, is a prison or building designated by law or used by the sheriff, for the confinement or detention of those whose persons are judicially ordered to be kept in custody. Vide 6 John. R. 22; 14 Vin. Ab. 9; 3 Bac. Ab. 344; Dane's Ab. Index. h. t.; 4 Com. Dig. 619; and the articles *Gaoler*, *Prison*, *Prisoner*.

GAOL-DELIVERY, *Eng. law.* To insure the trial, within a certain time, of all prisoners, a patent in the nature of a letter is issued from the king to certain persons, appointing them his justices, and authorising them to deliver his gaols. Cromp. Jurisd. 125; 4 Inst. 168; 4 Bl. Com. 269; 2 Hale, P. C. 22, 32; 2 Hawk. P. C. 14, 28. In the United States, the judges of the criminal courts are required to cause the accused to be tried within the times prescribed by the local statutes, and the constitutions require a speedy trial.

GAOLER, the keeper of a gaol or prison, one who has the legal custody of the place where prisoners are kept. It is his duty to keep the prisoners in safe custody, and for this purpose he may use all necessary force, 1 Hale, P. C. 601; but any oppression of a prisoner under a pretended necessity will be punished, for the prisoner, whether he be a debtor or a criminal, is entitled to the protection of the laws from oppression.

GARNISH, *Engl. law.* Money paid by a prisoner to his fellow prisoners on his entrance into prison.

TO GARNISH. To warn; to garnish the heir, is to warn the heir. Obsolete.

GARNISHEE, is a person who has money or property in his possession, belonging to a defendant, which money or property has been attached in his hands, and he has had notice of such attachment; he is so called because he has had warning or notice of the attachment. From the time of the notice of the attachment, the garnishee is bound to keep the property in his hands to answer the plaintiff's claim, until the attachment is dissolved, or he is otherwise discharged. Vide Serg. on Att. 88 to 110; Com. Dig. Attachment, E.

GARNISHMENT. A warning to any one for his appearance, in a cause in which he is not a party, for the information of the court, and explaining a cause. For example, in the practice of Pennsylvania, when an attachment issues against a debtor in order to secure to the plaintiff a claim due by a third person to such debtor, notice is given to such third person, which notice is a garnishment, and he is called the garnishee.

GAVEL, a tax, imposition or tribute; the same as *gabel*, (q. v.)

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GAVELKIND, given to all the kindred. *Eng. law.* A tenure or custom annexed or belonging to lands in Kent, by which the lands of the father are equally divided among all his sons, or the land of the brother among all his brothers, if he have no issue of his own. Litt. s. 210.

GELD, *old Engl. law*, signifies a fine or compensation for an offence; also, rent, money or tribute.

GEMOTE. An assembly. Wittena gemote, during the time of the Saxons in England, signified an assembly of wise men. The parliament.

GENDER. That which designates the sexes. As a general rule when the masculine is used it includes the feminine, as, man (q. v.) sometimes includes women. This is the general rule, unless a contrary intention appears. But in penal statutes, which must be construed strictly, when the masculine is used and not the feminine, the latter is not included. Pothier says that the masculine often includes the feminine, but the feminine never includes the masculine; that according to this rule if a man were to bequeath to another all his horses, his mares would pass by the legacy; but if he were to give all his mares, the horses would not be included. Poth. Introd. au titre 1ß, des Testaments et Donations testamentaires, n. 170. Vide Ayl. Pand. 57; 4 Car. & Payne, 216; S. C. 19 Engl. Com. Law R. 351.

GENEALOGY, is the summary history or table of a house or family, showing how the persons there named are connected together. It is founded on the idea of a lineage or family. Persons descended from the common father constitute a family. Under the idea of degrees is noted the nearness or remoteness of relationship, in which one person stands with respect to another. A series of several persons, descended from a common progenitor, is called a *line*, (q. v.) Children stand to each other in the relation either of full blood or half blood, according as they are descended from the same parents, or have only one parent in common. For illustrating descent and relationship, genealogical tables are constructed, the order of which depend on the end in view. In tables the object of which is to show all the individuals embraced in a family; it is usual to begin with the oldest progenitor, and to put all the persons of the male or female sex in descending, and then in collateral lines. Other tables exhibit the ancestors of a particular person in ascending lines both on the father's and mother's side. In this way 4, 8, 16, 32, &c. ancestors are exhibited, doubling at every degree. Some tables are constructed in the form of a tree, after the model of the canonical law, (*arbor consanguinitatis*,) in which the progenitor is placed beneath, as if for the root or stem. Vide *Branch*, *Line*.

GENERAL ISSUE, *pleading*, is a plea which traverses or denies at once the whole indictment or declaration, without offering any special matter, to evade it. It is called the general issue, because, by importing an absolute and general denial of what is alleged in the indictment or declaration, it amounts at once to an issue. 3 Bl. Com. 305. The general issue in criminal cases, is, *not guilty*. In civil cases, the general issues are almost as various as the forms of action; in assumpsit, the general issue is *non-assumpsit*; in debt, *nil debet*; in detinue, *non detinet*; in trespass, *non cul.* or *not guilty*, &c.

GENERAL LAND OFFICE. One of the departments of government of the United States. It was

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established by the act of April 25, 1812, 2 Story's Laws U. S. 1238; another act was passed March 24, 1824, 3 Story, 1938, which authorised the employment of additional officers. And it was re-organized by the following act entitled "An act to re-organize the General Land Office," approved July 4, 1836.

§ 1. *Be it enacted, &c.* That from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the government of the United States, shall be subject to the supervision and control of the commissioner of the general land office, under the direction of the president of the United States.

§ 2. That there shall be appointed in said office, by the president, by and with the advice and consent of the senate, two subordinate officers, one of whom shall be called principal clerk of the public lands, and the other principal clerk on private land claims, who shall perform such duties as may be assigned to them by the commissioner of the general land office; and in case of vacancy in the office of the commissioner of the general land office, or of the absence or sickness of the commissioner, the duties of said office shall devolve upon and be performed, ad interim, by the principal clerk of the public lands.

§ 3. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be styled the principal clerk of the surveys, whose duty it shall be to direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the surveyor general; and he shall perform such other duties as may be assigned to him by the commissioner of the general land office.

§ 4. That there shall be appointed by the president, by and with the consent of the senate, a recorder of the general land office, whose duty it shall be, in pursuance of instructions from the commissioner, to certify and affix the seal of the general land office to all patents for public lands, and he shall attend to the correct engrossing and recording and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees, and of persons entitled to patents; and he shall prepare such copies and exemplifications of matters on file, or recorded in the general land office, as the commissioner may from time to time direct.

§ 5. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be called the solicitor of the general land office, with an annual salary of two thousand dollars, whose duty it shall be to examine and present a report to the commissioner, of the state of facts in all cases referred by the commissioner to his attention which shall involve questions of law, or where the facts are in controversy between the agents of government and individuals, or there are conflicting claims of parties before the department, with his opinion thereon; and also, to advise the commissioner, when required thereto, on all questions growing out of the management of the public lands, or the title thereto, private land claims, Virginia military scrip, bounty lands, and pre-emption claims; and to render such further professional services in the business of the department as may

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be required, and shall be connected with the discharge of the duties thereof.

§ 6. That it shall be lawful for the president of the United States, by and with the advice and consent of the senate, to appoint a secretary, with a salary of fifteen hundred dollars per annum, whose duty it shall be, under the direction of the president, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States.

§ 7. That it shall be the duty of the commissioner to cause to be prepared, and to certify, under the seal of the general land office, such copies of records, books, and papers on file in his office, as may be applied for, to be used in evidence in courts of justice.

§ 8. That whenever the office of recorder shall become vacant, or in case of the sickness or absence of the recorder, the duties of his office shall be performed, ad interim, by the principal clerk on private land claims.

§ 9. That the receivers of the land offices shall make to the secretary of the treasury monthly returns of the moneys received in their several offices, and pay over such money pursuant to his instructions. And they shall also make to the commissioner of the general land office, like monthly returns, and transmit to him quarterly accounts current of the debits and credits of their several offices with the United States.

§ 10. That the commissioner of the general land office shall be entitled to receive an annual salary of three thousand dollars; the recorder of the general land office, an annual salary of fifteen hundred dollars; the principal clerk of the surveys, an annual salary of eighteen hundred dollars; and each of the said principal clerks an annual salary of eighteen hundred dollars; from and after the date of their respective commissions; and that the said commissioner be authorised to employ, for the service of the general land office, one clerk, whose annual salary shall not exceed fifteen hundred dollars; four clerks, whose annual salary shall not exceed fourteen hundred dollars each; sixteen clerks, whose annual salary shall not exceed thirteen hundred dollars each; twenty clerks, whose annual salary shall not exceed twelve hundred dollars each; five clerks, whose annual salary shall not exceed eleven hundred dollars each; thirty-five clerks, whose annual salary shall not exceed one thousand dollars each; one principal draughtsman, whose annual salary shall not exceed fifteen hundred dollars; one assistant draughtsman, whose annual salary shall not exceed twelve hundred dollars; two messengers, whose annual salary shall not exceed seven hundred dollars each; three assistant messengers, whose annual salary shall not exceed three hundred and fifty dollars each; and two packers, to make up packages of patents, blank forms, and other things necessary to be transmitted to the district land offices, at a salary of four hundred and fifty dollars each.

§ 11. That such provisions of the act of the 25th of April, in the year one thousand eight hundred and twelve, entitled "An act for the establishment of a general land office in the department of the treasury," and of all acts amendatory thereof, as are inconsistent with the provisions of this act, be, and the same are hereby repealed.

§ 12. That from the first day of the month of October, until the first day of the month of April in each and every year, the general land office and all the bureaus and offices therein, as well as those in the departments of the treasury, war, navy,

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state, and general post office, shall be open for the transaction of the public business at least eight hours in each and every day, except Sundays, and the twenty-fifth day of December; and from the first day of April until the first day of October, in each year, all the aforesaid offices and bureaus shall be kept open for the transaction of the public business at least ten hours, in each and every day, except Sundays and the fourth day of July.

§ 13. That if any person shall apply to any register of any land office to enter any land whatever, and the said register shall knowingly and falsely inform the person so applying that the same has already been entered and refuse to permit the person so applying to enter the same, such register shall be liable therefor to the person so applying for five dollars for each acre of land which the person so applying offered to enter, to be recovered by action of debt in any court of record, having jurisdiction of the amount.

§ 14. That all and every of the officers whose salaries are hereinbefore provided for, are hereby prohibited from directly or indirectly purchasing or in any way becoming interested in the purchase of any of the public land; and in case of a violation of this section by such officer, and on proof thereof, being made to the president of the United States, such officer, so offending, shall be, forthwith, removed from office.

GENERAL SHIP. When a ship is so employed that the contract by which its master or owners destine it on a particular voyage, engage separately with a number of persons unconnected with each other, to convey their respective goods to the place of destination, it is usually called a *general* ship. Abbott on Ship. 112. This contract although usually made with the master, and not with the owners, is considered in law to be made with them also, and that both he and they are separately bound to the performance of it. Ib. 215, 216.

GENERAL TRAVERSE, *in pleading*, is one preceded by a general inducement and denying in general terms, all that is last before alleged on the opposite side, instead of pursuing the words of the allegations, which it denies. Of this sort of traverse, the replication *de injuriâ suâ propria, absque tali causa*, in answer to a justification, is a familiar example. Bac. Ab. Pleas, H 1; Steph. Pl. 171; Gould, Pl. c. 7, § 5; Archb. Civ. Pl. 194. Vide *Traverse; Special Traverse.*

GENTLEMAN. In the English law, according to Sir Edward Coke, is one who bears a coat of armour. 2 Inst. 667. In the United States this word is unknown to the law, but in many places the word is applied by courtesy to all men, rich or poor, black or white.

GENTLEWOMAN. This word is unknown to the law in the United States, and is but little used. In England it was formerly a good addition of the state or degree of a woman. 2 Inst. 667.

GENUS, denotes the number of beings or objects, which agree in certain general properties, common to them all, so that genus is in fact only an abstract idea, expressed by some general name or term; or rather a name or term, to signify what is called an abstract idea. Thus, goods is the generic name, and includes, generally, all personal property; but this word may be restrained, particularly in bequests, to such goods as are of the same kind as those previously enumerated. Vide 3 Ves. 311; 11 Ves. 657; 1 Eq. Cas. Ab. 201, pl. 14; 2 Ves. sen. 278, 280; Dig. 50, 17, 80; Ib. 12, 1, 2, 3.

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GEORGIA. The name of one of the original states of the United States of America. George the Second granted a charter to Lord Percival and twenty others, for the government of the province of Georgia. It was governed under this charter till the year 1751, when it was surrendered to the crown. From that period to the time of the American revolution, the colony was governed as other royal provinces. The constitution of the state, as revised, amended, and compiled by the convention of the state, was adopted at Louisville, on the 30th day of May, 1798. It directs, art. 1, s. 1, that the legislative, executive, and judiciary departments of government shall be distinct, and each department shall be confided to a separate body of magistracy.

1. The legislative power is vested in two separate and distinct branches, to wit, a senate and house of representatives, styled, "the General Assembly." 1st. The senate is elected annually, and is composed of one member from each county, chosen by the electors thereof. The senate elect, by ballot, a president out of their own body. 2d. The house of representatives is composed of members from all the counties, according to their respective numbers of free white persons, and including three-fifths of all the people of colour. The enumeration is made once in seven years, and any county containing three thousand persons, according to the foregoing plan of enumeration, is entitled to two members; seven thousand to three members; and twelve thousand to four members; but each county shall have at least one, and not more than four members. The representatives are chosen annually. The house of representatives choose their speaker and other officers.

2. The executive power is vested in a governor, elected by the general assembly, who holds his office for the term of two years. In case of vacancy in his office, the president of the senate acts as governor, until the disability is removed, or until the next meeting of the general assembly.

3. The judicial powers of the state are, by the 3d article of the constitution, distributed as follows:

§ 1. The judicial powers of this state shall be vested in a superior court, and in such inferior jurisdictions as the legislature shall, from time to time, ordain and establish. The judges of the superior courts shall be elected for the term of three years, removable by the governor, on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. The superior court shall have exclusive and final jurisdiction in all criminal cases which shall be tried in the county wherein the crime was committed, and in all cases respecting titles to land, which shall be tried in the county where the land lies; and shall have power to correct errors in inferior judicatories by writs of *certiorari*, as well as errors in the superior courts, and to order new trials on proper and legal grounds: Provided, That such new trials shall be determined, and such errors corrected, in the superior court of the county in which such action originated. And the said court shall also have appellative jurisdiction in such other cases as the legislature may by law direct, which shall in no case tend to remove the cause from the county in which the action originated; and the judges thereof, in all cases of application for new trials, or correction of error, shall enter their opinions on the minutes of the court. The inferior courts shall have cognizance of all other civil cases, which shall be tried in the

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county wherein the defendant resides, except in cases of joint obligors, residing in different counties, which may be commenced in either county: and a copy of the petition and process served on the party or parties residing out of the county in which the suit may be commenced, shall be deemed sufficient service, under such rules and regulations as the legislature may direct: but the legislature may, by law, to which two-thirds of each branch shall concur, give concurrent jurisdiction to the superior courts. The superior and inferior courts shall sit in each county twice in every year, at such stated times as the legislature shall appoint.

§ 2. The judges shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others on account of any duty required of them.

§ 3. There shall be a state's attorney and solicitors appointed by the legislature, and commissioned by the governor, who shall hold their offices for the term of three years, unless removed by sentence on impeachment, or by the governor, on the address of two-thirds of each branch of the general assembly. They shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office.

§ 4. Justices of the inferior courts shall be appointed by the general assembly, and be commissioned by the governor, and shall hold their commissions during good behaviour, or as long as they respectively reside in the county for which they shall be appointed, unless removed by sentence on impeachment, or by the governor, on the address of two-thirds of each branch of the general assembly. They may be compensated for their services in such manner as the legislature may by law direct.

§ 5. The justices of the peace shall be nominated by the inferior courts of the several counties, and commissioned by the governor; and there shall be two justices of the peace in each captain's district, either or both of whom shall have power to try all cases of a civil nature within their district, where the debt or litigated demand does not exceed thirty dollars, in such manner as the legislature may by law direct. They shall hold their appointments during good behaviour, or until they shall be removed by conviction, on indictment in the superior court, for mal-practice in office, or for any felonious or infamous crime, or by the governor, on the address of two-thirds of each branch of the legislature.

§ 6. The powers of a court of ordinary or register of probates, shall be invested in the inferior courts of each county, from whose decision there may be an appeal to the superior court, under such restrictions and regulations as the general assembly may by law direct, but the inferior court shall have power to vest the care of the records, and other proceedings therein, in the clerk, or such other person as they may appoint, and any one or more justices of the said court, with such clerk or other person, may issue citations and grant temporary letters in time of vacation, to hold until the next meeting of the said court; and such clerk or other person may grant marriage licenses.

§ 7. The judges of the superior courts, or any one of them, shall have power to issue writs of mandamus, prohibition, scire facias, and all

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other writs which may be necessary for carrying their powers fully into effect.

GERMAN, *relations*, *germanus*, whole or entire, as respects genealogy or descent; thus, "brother-german," denotes one who is brother both by the father and mother's side; "cousins-german," those in the first and nearest degree, i. e. children of brothers or sisters. *Tech. Dict.*

GESTATION, *med. jur.* The time during which, a female who has conceived, carries the embryo or fœtus in her uterus. By the common consent of mankind, the term of gestation is considered to be ten *lunar* months, or forty weeks, equal to nine *calendar* months and a week. This period has been adopted, because general observation when it could be correctly made, has proved its correctness. Cyclop. of Pract. Med. vol. 4, p. 87, art. Succession of Inheritance. But this may vary one, two, or three weeks. Co. Litt. 123 b, Harg. & Butler's notes, note 190*; Ryan's Med. Jurisp. 121; Coop. Med. Jur. 18; Civ. Code of Louis. art. 203–211; 1 Beck's Med. Jur. 478. See *Pregnancy*.

GIFT, *conveyancing*, is properly applied to the creation of an estate tail; as that of feoffment is to that of an estate in fee simple. It differs in nothing from a feoffment, but in the nature of the estate passing by it; and livery of seisin must be given to render it effectual. The operative words of this conveyance are *do* or *dedi*. The maker of this instrument is called the donor, and he to whom it is made, the donee. 2 Bl. Com. 316; Litt. 59; Touchs. ch. 11.

GIFT, *contracts*, is the act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person, without any consideration. It differs from a grant, sale, or barter in this, that in each of these cases there must be a consideration, and a gift, as the definition states, must be without consideration. The manner of making the gift may be in writing, or verbally, and, as far as personal chattels are concerned, they are equally binding. Perk. § 57; 2 Bl. Com. 441. But real estate must be transferred by deed. There must be a transfer made with an intention of passing the title and delivering the possession of the thing given, and it must be accepted by the donee. 1 Madd. Ch. R. 176, Am. ed. p. 104; sed vide 2 Barn. & Ald. 551; Noy's Rep. 67. The transfer must be without consideration, for if there be the least consideration, it will change the contract into a sale or barter, if possession be delivered; or if not into an executory contract. 2 Bl. Com. 440. Gifts are divided into gifts *inter vivos*, and gifts *causa mortis*. Vide *Donatio causa mortis; Gifts inter vivos;* and Vin. Ab. h. t.; Com. Dig. Biens, D 2, and Grant; Bac. Ab. Grant; 14 Vin. Ab. 19; 3 M. & S. 7; 5 Taunt. 212.

GIFTS INTER VIVOS, is a gift made from one or more persons, without any prospect of immediate death, to one or more others. These gifts are so called to distinguish them from gifts causa mortis, (vide *Donatio causa mortis*,) from which they differ essentially.—1. A gift inter vivos, when completed by delivery, passes the title to the thing so that it cannot be recovered back, by the giver: the gift *causa mortis* is always given upon the implied condition that the giver may at any time during his life revoke it. 7 Taunt. 231; 3 Binn. 366.—2. A gift *inter vivos* may be made by the giver at any time; the donatio mortis causa must be made by the donor

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while in peril of death. In both cases there must be a delivery. 2 Kent's Com. 354.

GIVER, *contracts.* He who makes a gift, (q. v.); by his gift, the giver always impliedly agrees with the donee that he will not revoke the gift.

GIVING TIME, *contracts.* Any agreement by which a creditor gives his debtor a delay or time in paying his debt, beyond that contained in the original agreement; when other persons are responsible to him either as drawer, endorser or surety, if such time be given without the consent of the latter, it discharges them from responsibility to him. 1 Gall. R. 32; 7 John. R. 332; 10 John. R. 180; Ib. 587; Kirby, R. 397; 3 Binn. R. 523; 2 John. Ch. R. 554; 3 Desaus. Ch. R. 604; 2 Desaus. Ch. R. 230, 389; 2 Ves. Jr. 504; 6 Ves. Jr. 805; 3 Atk. 91; 2 Bos. & Pull. 62; 4 M. & S. 232. Vide 1 Leigh's N. P. 31.

GIST, *pleading.* Gist of the action is the essential ground or object of it in point of law, and without which there is no cause of action. Gould on Pl. ch. 4. § 12. But it is observable that the substance or gist of the action is not always the principal cause of the plaintiff's complaint in point of fact, nor that on which he recovers all or the greatest part of his damages. It frequently happens that upon that part of his declaration which contains the substance or gist of the action he only recovers nominal damages, and he gets his principal satisfaction on account of matters altogether collateral thereto. A familiar instance of this is the case where a father sues the defendant for a trespass for the seduction of his daughter. The gist of the action is the trespass and the loss of his daughter's services, but the collateral cause is the injury done to his feelings for which the principal damages are given. In stating the substance or gist of the action, every thing must be averred which is necessary to be proved at the trial. Vide 1 Vin. Ab. 598; 2 Phil. Ev. 1, note. See Bac. Abr. Pleas, B; Doct. Pl. 85. See *Damages, special, in pleading;* 1 Vin. Ab. 598; 2 Phil. Ev. 1, n.

GLADIUS. In our old Latin authors and in the Norman laws, this word was used to signify supreme jurisdiction, *jus gladii.*

GLEANING. The act of gathering such grain in a field where it grew, which may have been left by the reapers after the sheaves were gathered. There is a custom in England, it is said, by which the poor are allowed to enter and glean upon another's land after harvest without being guilty of a trespass. 3 Bl. Com. 212. But it has been decided that the community are not entitled to claim this privilege as a right. 1 Hen. Bl. 51. In the United States, it is believed, no such right exists. This right seems to have existed in some parts of France. Merl. Répert. mot, Glanage. As to whether gleaning would or would not amount to larceny, vide Woodf. Landl. & Ten. 242; 2 Russ. on Cr. 99.

GLEBE, *eccles. law,* is the land which belongs to a church.

GO. This word is used sometimes technically. When a party is dismissed the court, he is said to go without day; that is, there is no day appointed for him to appear again.

GOOD BEHAVIOUR. Conduct authorised by law. Surety of good behaviour may be demanded from any person who is justly suspected, upon sufficient grounds, of intending to commit a crime or misdemeanor. Surety for good behaviour is somewhat similar to surety of the peace, but the recognizance is more easily

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forfeited, and it ought to be demanded with greater caution. 1 Binn. 98, n.; 2 Yeates, 437; 14 Vin. Ab. 21; Dane's Ab. Index, h. t.

GOOD WILL; by this term is meant the benefit which arises from the establishment of particular trades or occupations. As between partners it has been held that the good-will of a partnership trade survives. 5 Ves. 539; but this appears to be doubtful, 15 Ves. 227; and a distinction, in this respect, has been suggested between commercial and professional partnerships; the advantages of established connexions in the latter being held to survive, unless the benefit is excluded by positive stipulation. 3 Madd. 79. As to the sale of the good-will of a trade or business, see 3 Meriv. 452; 1 Jac. & Walk. 589; 2 Swanst. 332; 1 Ves. & Beames, 505; 17 Ves. 346; 2 Madd. 220; Gow on Partn. 428; Collyer on Partn. 172, note; 2 B. & Adolph. 341; 4 Id. 592, 596; 1 Rose, 123; 5 Russ. 29.

GOODS, *property*. For some purposes this term includes money, valuable securities, and other mere personal effects. The term *goods and chattels*, includes not only personal property in possession, but also choses in action, 12 Co. 1; 1 Atk. 182; the term *chattels* is more comprehensive than that of *goods*, and will include all animate as well as inanimate property, and also a *chattel real*, as a lease for years of house or land. Co. Litt. 118; 1 Russ. Rep. 376. The word *goods* simply and without qualification, will pass the whole personal estate when used in a will, including even stocks in the funds. But in general it will be limited by the context of the will. Vide 2 Supp. to Ves. Jr. 289; 1 Chit. Pr. 89, 90; 1 Ves. Jr. 63; Hamm. on Parties, 182; 3 Ves. 212; 1 Yeates, 101; 2 Dall. 142; Ayl. Pand. 296; Wesk. Ins. 260; 1 Rop. on Leg. 189; 1 Bro. C. C. 128. Vide *Furniture*.

GORGE. A weir or dam by which the passage of boats is obstructed. Co. Litt. 5.

GOVERNMENT, *natural and political law*, is the manner in which sovereignty is exercised in each state. There are three simple forms of government, the democratic, the aristocratic and the monarchical. But these three simple forms may be varied to infinity by the mixture and divisions of their different powers. Sometimes by the word government is understood the body of men, or the individual in the state, to whom is intrusted the executive power. It is taken in this sense when the government is spoken of in opposition to other bodies in the state.

GOVERNOR. The title of the executive magistrate in each state and territory of the United States. Under the names of the particular states, the reader will find some of the duties of the governor of such state.

GRACE. Is that to which a person is not entitled to by law, but which is extended to him as a favour; a pardon, for example, is an act of grace. There are certain days allowed to the payer of a promissory note or bill of exchange, beyond the time which appears on its face, which are called *days of grace*. (q. v.)

GRAFFER. This word is a corruption of the French word *greffier*, a clerk, or prothonotary. It signifies a notary or scrivener; vide stat. 5 Hen. 8, c. 1.

GRAFT. A figurative term which has obtained in chancery practice, to designate the right of a mortgagee in premises, to which the mortgagor at the time of making the mortgage had an imperfect title, but who afterwards obtained a good

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title. In this case the old mortgage is considered a *graft* into the old stock, and as arising in consideration of the former title. 1 Ball & Beat. 46; Ib. 40; Ib. 57; 1 Pow. on Mortg. 190. The same principle has obtained legislative enactment in Louisiana: If a person contracting an obligation towards another, says the Civil Code, art. 2371, grants a mortgage on property of which he is not then the owner, this mortgage shall be valid, if the debtor should ever acquire the ownership of the property, by whatever right.

GRAIN, *weight*, is the twenty-fourth part of a penny-weight.

GRAIN, *corn*, signifies wheat, rye, barley, or other corn sown in the ground. In Pennsylvania a tenant for a certain term is entitled to the way-going crop. 5 Binn. 289, 258; 2 Binn. 487; 2 Serg. & Rawle, 14.

GRAND JURY, *practice*. The grand jury is a body of men, consisting of not less than twelve nor more than twenty-three, taken at stated periods, from the mass of citizens residing in the proper county, in the manner prescribed by law. A view of the important duties of grand juries will be taken, by considering, 1, the organization of the grand jury; 2, the extent of its jurisdiction; 3, the mode of doing business; 4, the evidence to be received; 5, their duty to make presentments; 6, the secrecy to be observed by the grand jury.

1. *Of the organization of the grand jury.*—The law requires that twenty-four citizens shall be summoned to attend on the grand jury, but in practice, not more than twenty-three are sworn, because of the inconvenience which else might arise, of having twelve, who are sufficient to find a true bill, opposed to other twelve who might be against it. Upon being called, all who present themselves are sworn, as it scarcely ever happens that all who are summoned are in attendance. The grand jury cannot consist of less than twelve, and from fifteen to twenty are usually sworn. Being called in the jury-box, they are usually permitted to select a foreman whom the court appoint, but the court may exercise the right to nominate one for them. The foreman then takes the following oath or affirmation, namely:—"You, A B, as foreman of this inquest for the body of the —— of ———, do swear (or affirm) that you will diligently inquire, and true presentments make, of all such articles, matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service; the commonwealth's counsel, your fellows and your own, you shall keep secret; you shall present no one for envy, hatred, or malice, nor shall you leave any one unpresented for fear, favour, affection, hope of reward or gain; but shall present all things truly, as they come to your knowledge, according to the best of your understanding, (so help you God.)" It will be perceived that this oath contains the substance of the duties of the grand jury. The foreman having been sworn or affirmed, the other grand jurors are sworn or affirmed, according to this formula:—"You and each of you do swear (or affirm) that the same oath (or affirmation) which your foreman has taken on his part, you and every one of you shall well and truly observe on your part." Being so sworn or affirmed, and having received the charge of the court, the grand jury are organized, and may proceed to the room provided for them to transact the business which may be laid before them.

2. *The extent of the grand jury's jurisdiction.* Their jurisdiction is co-extensive with that of the court

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for which they inquire, both as to the offences triable there, and the territory over which such court has jurisdiction.

3. *The mode of doing business.*— The foreman acts as president, and the jury usually appoint one of their number to perform the duties of secretary. No records are to be kept of the acts of the grand jury, except for their own use, because, as will be seen hereafter, their proceedings are to be secret. Being thus prepared to enter upon their duties, the grand jury are supplied with bills of indictment by the attorney-general against offenders. On these bills are endorsed the names of the witnesses by whose testimony they are supported. The witnesses are in attendance in another room, and must be called when wanted. Before they are examined as to their knowledge of the matters mentioned in the indictment, care must be taken that they have been sworn or affirmed. For the sake of convenience they are generally sworn or affirmed in open court before they are sent to be examined, and when so qualified, a mark to that effect is made opposite their names.

In order to save time, the best practice is to find a true bill, as soon as the jury are satisfied that the defendant ought to be put upon his trial. It is a waste of time to examine any other witness after they have arrived at that conclusion. Twelve at least must agree, in order to find a true bill; but it is not required that they should be unanimous. Unless that number consent, the bill must be ignored. When a defendant is to be put upon his trial, the foreman must write on the back of the indictment "a true bill," sign his name as foreman, and date the time of finding. On the contrary, where there is not sufficient evidence to authorise the finding of the bill, the jury return that they are ignorant whether the person accused committed the offence charged in the bill, which is expressed by the foreman endorsing on the bill "ignoramus," signing his name as before, and dating the time.

4. *Of the evidence to be received.* In order to ascertain the facts which the jury have not themselves witnessed, they must depend upon the statement of those who know them, and who will testify to them. When the witness, from his position and ability, has been in a condition to know the facts about which he testifies, he is deserving of implicit confidence; if, with such knowledge, he has no motive for telling a false or exaggerated story, has intelligence enough to tell what he knows, and gives a probable account of the transaction. If, on the other hand, from his position he could not know the facts, or if knowing them, he distorts them, he is undeserving of credit. The jury are the sole judges of the credit and confidence to which a witness is entitled.

Should any member of the jury be acquainted with any fact on which the grand jury are to act, he must, before he testifies, be sworn or affimed, as any other witness, for the law requires this sanction in all cases.

As the jury are not competent to try the accused, but merely to investigate the case so far as to ascertain whether he ought to be put on his trial; they cannot hear evidence in his favour; their's is a mere preliminary inquiry; it is when he comes to be tried in court that he may defend himself by examining witnesses in his favour and showing the facts of the case.

5. *Of presentments.* The jury are required to make true presentments of all such matters which may be given to them in charge, or which have otherwise come to their know-

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ledge. A presentment, properly speaking, is the notice taken by the grand jury of any offence from their own knowledge, as of a nuisance, a libel, or the like. In these cases, the authors of the offence should be named, so that they may be indicted.

6. *Of the secrecy to be observed by the grand jury.* The oath which they have taken obliges them to keep secret, "the commonwealth's counsel, your fellows and your own." Although contrary to the general spirit of our institutions, which do not shun day-light, this secrecy is required by law for wise purposes. It extends to the votes given in any case, to the evidence delivered by witnesses, and the communications of the jurors to each other; the disclosure of these facts, unless under the sanction of law, would render the imprudent juror who should make them public liable to punishment. Giving intelligence to a defendent that a bill has been found against him, to enable him to escape, is so obviously wrong, that no one can for a moment doubt its being criminal. The grand juror who should be guilty of this offence might, upon conviction, be fined and imprisoned. The duration of the secrecy appears not to be definitely settled, but it seems this injunction is to remain as long as the particular circumstances of each case require. In a case, for example, where a witness swears to a fact in open court, on the trial, directly in opposition to what he swore before the grand jury, there can be no doubt the injunction of secrecy, as far as regards this evidence, would be at an end, and the grand juror might be sworn to testify what this witness swore to in the grand jury's room, in order that the witness might be prosecuted for perjury. 2 Russ. Cr. 616; 4 Greenl. Rep. 439; but see contra, 2 Halst. R. 347.

Vide, generally, 1 Chit. Cr. Law, 162; 1 Russ. Cr. 291; 2 Russ. Cr. 616; 2 Stark. Ev. 232, n. (1); 1 Hawk. 65, 506; 2 Hawk. ch. 25; 3 Story, Const. § 1778; 2 Swift's Dig. 370; 4 Bl. Com. 402.

GRANDFATHER, *domestic relations*, is the father of one's father or mother. The father's father is called the paternal grandfather; the mother's father is the maternal grandfather.

GRANDMOTHER, *domestic relations*, is the mother of one's father or mother. The father's mother is called the paternal grandmother; the mother's mother is the maternal grandmother.

GRANT, *conveyancing*, *concessio*. Technically speaking, grants are applicable to the conveyance of incorporeal rights, though in the largest sense, the term comprehends every thing that is granted or passed from one to another, and is applied to every species of property. Grant is one of the usual words in a feoffment, and differs but little except in the subject-matter; for the operative words used in grants are *dedi et concessi*, "have given and granted." Incorporeal rights are said to lie in grant and not in livery, for existing only in idea, in contemplation of law, they cannot be transferred by livery of possession; of course at common law, a conveyance in writing was necessary, hence they are said to be in grant and pass by the delivery of the deed. To render the grant effectual, the common law required the consent of the tenant of the land out of which the rent, or other incorporeal interest proceeded; and this was called *attornment*, (q. v.) It arose from the intimate alliance between the lord and vassal existing under the feudal tenures. The tenant could not alien the feud without the consent of the lord, nor the lord part with his seignory without the consent of the tenant. The necessity

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of attornment has been abolished in the United States. 4 Kent, Com. 479. He who makes the grant is called the grantor, and he to whom it is made, the grantee. Vide Com. Dig. h. t.; 14 Vin. Ab. 27; 2 Bac. Ab. 371; 4 Kent, Com. 477; 2 Bl. Com. 317, 440; Perk. ch. 1; Touchs. c. 12; 8 Cowen's R. 36.

GRANT, BARGAIN, AND SELL. By the laws of the states of Pennsylvania, Delaware and Missouri, it is declared that the words *grant, bargain, and sell*, shall amount to a covenant that the grantor was seised of an estate in fee, freed from encumbrances done or suffered by him, and for quiet enjoyment as against all his acts. But these words do not amount to a general warranty, but merely to a covenant that the grantor has not done any acts, nor created any encumbrance, by which the estate may be defeated. 2 Binn. R. 95; 3 Penna. R. 313; vide 2 Caines's R. 188; 1 Murph. R. 343; Ib. 348.

GRATIS, without reward or consideration. When a bailee undertakes to perform some act or work *gratis*, he is answerable for his gross negligence, if any loss should be sustained in consequence of it; but a distinction exists between non-feasance, and misfeasance; between a total omission to do an act which one gratuitously promises to do, and a culpable negligence in the execution of it; in the latter case he is responsible, while in the former he would not in general be bound to perform his contract. 4 Johns. R. 84; 5 T. R. 143; 2 Ld. Raym. 913.

GREAT LAW. The name of an act of the legislature of Pennsylvania passed at Chester immediately after the arrival of William Penn, December 7th, 1682. Serg. Land Laws of Penn. 24, 230.

GREE, *obsolete*, signified satisfaction; as, to make gree to the parties, is to agree with, or satisfy them for an offence done.

GROS BOIS, or GROSSE BOIS. Such wood as by the common law or custom is reputed timber. 2 Inst. 642.

GROSS, absolute, entire, not depending on another. Vide *Common*.

GROSS WEIGHT. The total weight of goods or merchandise, with the chests, bags, and the like, from which are to be deducted tare and tret.

GROUNDAGE, *mar. law*, is the consideration paid for standing a ship in a port. Jacobs, Dict. h. t. Vide *Demurrage*.

GUAGER. An officer appointed to examine all tuns, pipes, hogsheads, barrels and tierces of wine, oil, and other liquids, and to give them a mark of allowance, as containing lawful measure.

GUARANTEE, *contracts*. He to whom a guaranty is made. The guarantee is entitled to receive payment in the first place from the debtor, and, secondly, from the guarantor. He must be careful not to give time beyond that stipulated in original agreement, to the debtor, without the consent of the guarantor; the guarantee should, at the instance of the guarantor, bring an action against the principal for the recovery of the debt. 2 Johns. Ch. R. 554; 17 Johns. R. 384; 8 Serg. & Rawle, 116; 10 Serg. & Rawle, 33; 2 Bro. C. C. 579, 582; 2 Ves. jr. 542. But the mere omission of the guarantee to sue the principal debtor will not in general discharge the guarantor. 8 Serg. & Rawle, 112; 3 Yeates, R. 157; 6 Binn. R. 292, 300.

GUARANTOR, *contracts*. He who makes a guaranty. The guarantor is bound to fulfil the engagement he has entered into, provided the principal debtor does not. He is bound only to the extent that the

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debtor is, and, any payment made by the latter, or release of him by the creditor, will operate as a release of the guarantor, 3 Penna. R. 19; or even if the guarantee should give time to the debtor beyond that contained in the agreement, or substitute a new agreement, or do any other act by which the guarantor's situation would be worse, the obligation of the latter would be discharged. Smith on Mer. Law, 285.

GUARANTY, *contracts*, is a promise made upon a good consideration, to answer for the payment of some debt or the performance of some duty, in case of the failure of another person, who is, in the first instance, liable to such payment or performance. The English statute of frauds, 29 Car. II. c. 3, which, with modifications, has been adopted in most of the states, 3 Kent's Com. 86, requires that "upon any special promise to answer for the debt, default or miscarriage of another person, the agreement or some memorandum or note thereof, must be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." This clause of the statute is not in force in Pennsylvania. To render this contract valid, under the statute, its form must be in writing; it must be made upon a sufficient consideration; and it must be to fulfil the engagement of another.

1. The agreement must be in writing and signed by the party to be bound, or some one authorised by him. It should substantially contain the names of the party promising, and of the person on whose behalf the promise is made; the promise itself, and the consideration for it.

2. The word *agreement* in the statute includes the consideration for the promise, as well as the promise itself; if, therefore, the guaranty be for a subsisting debt, or engagement of another person, not only the engagement but the consideration for it, must appear in the writing. 5 East, R. 10. This has been the construction which has been given in England, and which has been followed in New York and South Carolina, though it has been rejected in several other states. 3 John. R. 210; 8 John. R. 29; 2 Nott & M'Cord, 372, note; 4 Greenl. R. 180, 387; 6 Conn. R. 81; 17 Mass. R. 122. The decisions have all turned upon the force of the word *agreement;* and where by statute the word *promise* has been introduced, by requiring the *promise or agreement* to be in writing, as in Virginia, the construction has not been so strict. 5 Cranch's R. 151, 2.

3. The guaranty must be to answer for the debt or default of another. The term debt implies, that the liability of the principal debtor had been previously incurred; but a default may arise upon an executory contract and a promise to pay for goods to be furnished to another, is a collateral promise to pay on the other's default, provided the credit was given, in the first instance, solely to the other. It is a general rule that when a promise is made by a third person, previous to the sale of goods, or other credit given, or other liability incurred, it comes within the statute, when it is conditional upon the default of another, who is solely liable in the first instance, otherwise not; the only inquiry to ascertain this, is, to whom was it agreed that the vendor or creditor should look in the first instance. Many nice distinctions have been made on this subject. 1st. When a party actually purchases goods himself, which are to be delivered to a third person for his sole use, and the latter was not to be responsible, this

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is not a case of guaranty, because the person to whom the goods were furnished never was liable. 2 T. R. 80.—2d. Where a person buys goods, or incurs any other liability, jointly with another, but for the use of that other, and this fact is known to the creditor, the guaranty must be in writing. 8 Johns. R. 89.—3d. A person may make himself liable, in the third place, by adding his credit to that of another, but conditionally only, in case of the other's default. This species of promise comes immediately within the meaning of the statute, and in the cases, is sometimes termed a *collateral promise.*

Vide generally, Fell on Mercantile Guaranties; 3 Kent's Com. 85; Theob. P. & S. ch. 2 and 3; Smith on Mer. Law, ch. 10; 3 Saund. 414, n. 5; Wheat. Dig. 182.

GUARDIANS, *domestic relations.* Guardians are divided into guardians of the person, in the civil law called tutors; and guardians of the estate, in the same law known by the name of curators; for the distinction between them vide article *Curatorship*, and 2 Kent, Com. 186.

1. A guardian of the person is one who has been lawfully invested with the care of the person of an infant, whose father is dead. The guardian must be properly appointed; he must be capable of serving; he must be appointed guardian of an infant; and after his appointment he must perform the duties imposed upon him by his office. 1st. In England, and in some of the states, where the English law has been adopted in this respect, as in Pennsylvania, Rob. Dig. 312, by stat. 12 Car. II. c. 24, power is given to the father to appoint a testamentary guardian, for his children, whether *in esse*, or in *ventra sa* (leur) *mere.* According to Chancellor Kent, this statute has been adopted in the state of New York, and, probably, throughout this country. 2 Kent, Com. 184. The statute of Connecticut, however, is an exception, there the father cannot appoint a testamentary guardian. 1 Swift's Dig. 48. All other kinds of guardians (to be hereafter noticed) have been superseded in practice by guardians appointed by courts having jurisdiction of such matters. Courts of chancery orphans' courts, and courts of a similar character having jurisdiction of testamentary matters in the several states, are invested generally with the power of appointing guardians.—2dly, the person appointed must be capable of performing the duties, an idiot therefore cannot be appointed guardian.—3dly, The person over whom a guardian is appointed must be an infant; for after the party has attained his full age he is entitled to all his rights, if of sound mind, and, if not, the person appointed to take care of him is called a committee, (q. v.) No guardian of the person can be appointed over an infant whose father is alive, unless the latter be non compos mentis, in which case one may be appointed as if the latter were dead.—4thly. After his appointment the guardian of the person is considered as standing in the place of the father, and of course the relative powers and duties of guardian and ward correspond, in a great measure to those of parent and child; in one prominent matter they are different. The father is entitled to the services of his child, and is bound to support him; the guardian is not entitled to the ward's services, and is not bound to maintain him out of his own estate.

2. A guardian of the estate is one who has been lawfully invested with the power of taking care and managing the estate of an infant. 1 John. R. 561; 7 John. Ch. R. 150. His appointment is made in the same manner as that of a guardian of the

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person. It is the duty of the guardian to take reasonable and prudent care of the estate of the ward, and manage it in the most advantageous manner; and when the guardianship shall expire to account with the ward for the administration of the estate.

Guardians, have also been divided into guardians by nature; guardians by nurture; guardians in socage; testamentary guardians; statutory guardians; and guardians ad litem.

1. Guardian by *nature*, is the father, and, on his death, the mother; this guardianship extends only to the custody of the person, 3 Bro. C. C. 186; 1 John. Ch. R. 3; 3 Pickering R. 213; and continues till the child shall acquire the age of twenty-one years. Co. Litt. 84 a.

2. Guardian by *nurture*, occurs only when the infant is without any other guardian, and the right belongs exclusively to the parents, first the father, and then the mother. It extends only to the person, and determines, in males and females at the age of fourteen. This species of guardianship has become obsolete.

3. Guardian in *socage*, has the custody of the infant's lands as well as his person. The common law gave this guardianship to the next of blood to the child to whom the inheritance could not possibly descend: this species of guardianship has become obsolete, and does not perhaps exist in this country; for the guardian must be a relation by blood who cannot possibly inherit, and such a case can rarely exist.

4. *Testamentary* guardians, these are appointed under the stat. 12 Car. II., above mentioned: they supersede the claims of any other guardian, and extend to the person, and real and personal estate of the child, and continue till the ward arrives at full age.

5. Guardians *appointed by the courts*, by virtue of some statutory authority. The distinction of guardians by nature, and by socage, appear to have become obsolete, and have been essentially superseded in practice by the appointment of guardians by courts of chancery, orphans' courts, probate courts, and such other courts as have jurisdiction to make such appointments. Testamentary guardians might, as well as those of this class, be considered as statutory guardians, in as much as their appointment is authorised by a statute.

6. Guardian *ad litem*, is one appointed for the infant to defend him in an action brought against him. Every court when an infant is sued in a civil action, has power to appoint a guardian *ad litem* when he has no guardian, for as the infant cannot appoint an attorney, he would be without assistance if such a guardian were not appointed. The powers and duties of a guardian *ad litem* are confined to the defence of the suit. F. N. B. 27; Co. Litt. 88 b, note (16); Ib. 135 b, note (1).

GUARDIANS OF THE POOR. The name given to officers whose duties are very similar to those of overseers of the poor, (q. v.), that is, generally to relieve the distresses of such poor persons who are unable to take care of themselves.

GUARDIANSHIP, *persons*, is the power or protective authority given by law, and imposed on an individual who is free and in the enjoyment of his rights, but which his weakness on account of his age, renders him unable to protect himself. Vide *Tutor*.

GUEST. A traveller who stays at an inn or tavern with the consent of the keeper. Bac. Ab. Inns, C 5; 8 Co. 32; and if after having taken lodgings at an inn, he leaves his horse there, and goes elsewhere to lodge, he is still to be considered a

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guest. But not if he merely leaves goods for which the landlord receives no compensation. 1 Salk. 388; 2 Ld. Raym. 866; Cro. Jac. 188. The length of time a man is at an inn makes no difference, whether he stays a day, or a week, or a month, or longer, so always, that, though not strictly *transeuns*, he retains his character as a traveller. But if a person comes upon a special contract to board and sojourn at an inn, he is not in the sense of the law a guest, but a boarder. Bac. Ab. Inns, C 5; Story, Bailm. § 477. Innkeepers are generally liable for all goods, belonging to the guest, brought within the inn. It is not necessary that the goods should have been in the special keeping of the innkeeper to make him liable. This rule is founded on principles of public utility, to which all private considerations ought to yield. 2 Kent, Com. 459; 1 Hayw. N. C. Rep. 40; 14 John. R. 175; Dig. 4, 9, 1. Vide 3 Barn. & Ald. 283; 4 Maule & Selw. 306; 1 Holt's N. P. 209; 1 Salk. 387; S. C. Carth. 417; 1 Bell's Com. 469; Dane's Ab. Index, h. t.; Yelv. 67, a; Smith's Leading Cases, 47; 8 Co. 32.

GUILD, a fraternity or company. Guildhall, the place of meeting of guilds.

GUILT, *crim. law*, is that quality in a person which renders him criminal, and to which the law annexes a punishment; or it is that disposition to violate the law, which has manifested itself by some act already done. The opposite of innocence. Vide Rutherf. Inst. B. 1, c. 18, s. 10.

GUILTY. The state or condition of a person who has committed a crime, misdemeanor or offence. In pleading, it is a plea by which a defendant who is charged with a crime or misdemeanor admits or confesses it. When the accused is arraigned, the clerk ask him, "How say you, A B, are you guilty or not guilty?" His answer, which is given *ore tenus*, is called his plea; and when he admits the charge in the indictment he answers or pleads *guilty*.

H.

HABEAS CORPORA, in English practice, is a writ issued out of the C. P. commanding the sheriff to compel the appearance of a jury in the cause between the parties. It answers the same purpose in that court as the *Distringas juratores* answers in the K. B.

HABEAS CORPUS, *remedies*. A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of a court of which he is a judge, issued in the name of the sovereignty where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody or under his restraint, commanding him to produce such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.

This writ was at common law considered as a remedy to remove the illegal restrainst on a freeman, but anterior to the 31 Charles II. its benefit was, in a great degree, eluded by time-serving judges, who awarded it only in term time, and who assumed a discretionary power of awarding or refusing it. 3 Bulstr. 23. To secure the full benefit of it to the subject, the statute 31 Car. 2, c. 2, commonly called the *habeas corpus* act was passed. This gave

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to the writ, the vigour, life, and efficacy requisite for the due protection of the liberty of the subject. In England this is considered as a high prerogative writ, issuing out of the court of King's Bench, in term time or vacation, and running into every part of the king's dominions. It is also grantable as a matter of right, *ex merito justitiæ*, upon the application of any person.

The *habeas corpus* act has been substantially incorporated into the jurisprudence of every state in the union, and the right to the writ has been secured by most of the constitutions of the states, and of the United States. The statute of 31 Car. 2, c. 2, provides that the person imprisoned, if he be not a prisoner convict, or in execution of legal process, or committed for treason or felony, plainly expressed in the warrant, or has not neglected wilfully by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, may apply by any one in his behalf, in vacation time, to a judicial officer for the writ of *habeas corpus*, and the officer upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And, in term time, any of the said prisoners may obtain his writ of *habeas corpus*, by applying to the proper court.

By the habeas corpus law of Pennsylvania, (the act of 18 February, 1785,) the benefit of the writ of habeas corpus is given in "all cases where any person, not being committed or detained for any criminal or supposed criminal matter," who "shall be confined or restrained of his or her liberty, under any colour or pretence whatsoever." A similar provision is contained in the habeas corpus act of New York. Act of 21st April, 1818, sect. 41, ch. 277.

The constitution of the United States, art. 1, s. 9, n. 2, provides that "the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it;" and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ, a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal.

It is proper to consider, 1, when it is to be granted; 2, how it is to be served; 3, what return is to be made to it; 4, the hearing; 5, the effect of the judgment upon it.

1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, as in Pennsylvania and New York, in all cases where he is confined or restrained of his liberty, under any colour or pretence whatsoever. But persons discharged on bail will not be considered as restrained of their liberty so as to be entitled to a writ of habeas corpus directed to their bail. 3 Yeates, R. 263; 1 Serg. & Rawle, 356.

2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers. In Louisiana it is provided that if the person to whom it is addressed shall refuse to receive the writ, he who is charged to serve it, shall inform him of its contents; if he to whom the writ is addressed conceal himself, or refuse admittance to the person charged to serve it on him, the latter shall affix the order on the exterior of the place where the person resides, or in which

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the petitioner is confined. Lo. Code of Pract. art. 803. The service is proved by the oath of the party making it.

3. The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed; he either complies or he does not. If he *complies*, he must positively answer; 1, whether he has or has not in his power or custody, the person to be set at liberty, or whether that person is confined by him; if he returns that he has not, and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty and other punishment for making such a false return. If he returns that he has such person in his custody, then he must show by his return further by what authority and for what cause he arrested or detained him. If he *does not comply*, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.

4. When the prisoner is brought before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that for any other cause the imprisonment cannot be legally continued, the prisoner is discharged from custody. For those offences which are bailable when the prisoner offers sufficient bail, he is to be bailed. He is to be remanded in the following cases; 1, when it appears he is detained upon legal process, out of some court having jurisdiction of criminal matters; 2, when he is detained by warrant, under the hand and seal of a magistrate for some offence for which by law, the prisoner is not bailable; 3, when he is a convict in execution, or detained in execution by legal civil process; 4, when he is detained for a contempt, specially and plainly charged in the commitment, by some existing court having authority to commit for contempt; and 5, when he refuses or neglects to give the requisite bail in a case bailable of right. The judge is not confined to the return, but he is to examine into the causes of the imprisonment, and then he is to discharge bail, or remand as justice shall require. 2 Kent, Com. 26; Lo. Code of Prac. art. 819.

5. It is provided by the habeas corpus act, that a person set at liberty by the writ, shall not again be imprisoned for the same offence, by any person whatsoever, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear, or other court having jurisdiction of the cause. 4 Johns. R. 318; 1 Binn. 374; 5 John. R. 282.

Vide, generally, Bac. Ab. h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; the various American Digests, h. t.; Lo. Code of Prac. art. 791 to 827; Dane's Ab. Index, h. t.

HABEAS CORPUS AD DELIBERANDUM ET RECIPIENDUM, *practice*, is a writ which lies to remove a prisoner to take his trial in the county where the offence was committed. Bac. Ab. Habeas Corpus, A.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM,

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practice, is a writ which issues out of a court of competent jurisdiction, when a person is sued in an inferior court, commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, (whence this writ is frequently denominated *habeas corpus cum causâ*,) to *do and receive* whatever the court or the judge issuing the writ shall consider in that behalf. This writ may also be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to surrender him in his own discharge; upon the return of this writ the court will cause an exoneratur to be entered on the bail-piece, and remand the prisoner to his former custody. Tidd's Pr. 405; 1 Chit. Cr. Law, 132.

HABEAS CORPUS AD PROSEQUENDUM, is a writ which issues for the purpose of removing a prisoner in order to prosecute. 3 Bl. Com. 130.

HABEAS CORPUS AD RESPONDENDUM, is a writ which issues at the instance of a creditor or one who has a cause of action against a person who is confined by the process of some inferior court; in order to remove the prisoner and charge him with this new action in the court above. 2 Mod. 198; 3 Bl. Com. 107.

HABEAS CORPUS AD SATISFACIENDUM, is a writ issued at the instance of a plaintiff for the purpose of bringing up a prisoner, against whom a judgment has been rendered, in a superior court to charge him with the process of execution. 2 Lill. Pr. Reg. 4; 3 Bl. Com. 129, 130.

HABEAS CORPUS AD SUBJICIENDUM, *remedies*, is by way of eminence called the writ of *habeas corpus*, (q. v.), is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum*, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. 3 Bl. Com. 131; 3 Story, Const. § 1333.

HABEAS CORPUS AD TESTIFICANDUM, a writ issued for the purpose of bringing a prisoner, in order that he may testify before the court. 3 Bl. Com. 130.

HABENDUM, *in conveyancing*. This is a latin word which signifies to have. In conveyancing, it is that part of a deed which usually declares what estate or interest is granted by it, its certainty, duration, and to what use. It sometimes qualifies the estate, so that the general implication of the estate, which, by construction of law, passes in the premises, may by the habendum be controlled; in which case the habendum may enlarge the estate, but not totally contradict, or be repugnant to it. The habendum commences in our common deeds with the words, "to have and to hold." 2 Bl. Com. 298; 14 Vin. Ab. 143; Com. Dig. Fait, E 9; 2 Co. 55 a; 8 Mass. R. 175; 1 Litt. R. 220; Cruise, Dig. tit. 32, c. 20, s. 69 to 93; 5 Serg. & Rawle, 375; 2 Rolle, Ab. 65; Plowd. 153; Co. Litt. 183; Martin's N. C. Rep. 28; 4 Kent, Com. 456; 3 Prest. on Abstr. 206 to 210; 5 Barnw. & Cres. 709.

HABERDASHER, a dealer in miscellaneous goods and merchandise.

HABERE FACIAS POSSESSIONEM, *practice, remedies*. The name of a writ of execution in the action of ejectment. The sheriff is commanded by this writ that without delay he cause the plaintiff to have possession of the land in dispute which is therein described; a *fi. fa.*

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or *ca. sa.* for costs may be included in the writ. The duty of the sheriff in the execution and return of that part of the writ, is the same as on a common *fi. fa.* or *ca. sa.* The sheriff is to execute this writ by delivering a full and actual possession of the premises to the plaintiff. For this purpose he may break an outer or inner door of the house, and, should he be violently opposed, he may raise the *posse comitatus*. Wats. on Sher. 60, 215; 5 Co. 91 b.; 1 Leon. 145. The name of this writ is abbreviated *hab. fa. poss.* Vide 10 Vin. Ab. 14; Tidd's Pr. 1081, 8th Engl. edit.; 2 Arch. Pr. 58; 3 Bl. Com. 412; Bingh. on Execut. 115, 252; 3 Bac. Ab. 717.

HABERE FACIAS SEISINAM, *practice, remedies.* The name of a writ of execution, used in most real actions, by which the sheriff is directed that he cause the demandant to have seisin of the lands which he has recovered. This writ may be taken out at any time within a year and day after judgment. It is to be executed nearly in the same manner as the writ of *habere facias possessionem*, and, for this purpose, the officer may break open the outer door of a house to deliver seisin to the demandant. 5 Co. 91 b; Com. Dig. Execution, E; Wats. Off. of Sheriff, 238. The name of this writ is abbreviated *hab. fa. seis.* Vide Bingh. on Exec. 115, 252; 3 Bac. Ab. 717.

HABERE FACIAS VISUM, *practice*, the name of a writ which lies when a view is to be taken of lands and tenements. F. N. B. Index, verbo, View.

HABITATION, *civil law*, was the right of a person to live in the house of another without prejudice to the property. It differed from a usufruct, in this, that the usufructarian might have applied the house to any purpose, as, a store or manufactory; whereas the party having the right of habitation could only use it for the residence of himself and family. 1 Bro. Civ. Law, 184; Domat, l. 1, t. 11, s. 2, n. 7.

HABITATION, *estates.* A dwelling-house, a home-stall. 2 Bl. Com. 4; 4 Bl. Com. 220. Vide *House.*

HABITUAL DRUNKARD, one who is so frequently drunk as to manifest a design of repeating the same act. By the laws of Pennsylvania a habitual drunkard is put nearly upon the same footing with a lunatic; he is deprived of his property and a committee is appointed by the court to take care of his person and estate. Act of 13th June, 1836, Pamph. p. 589. Vide 6 Watts's Rep. 139; 1 Ashm. R. 71.

HABITUALLY, so frequently as to show a design of repeating the same act.

HALF-BLOOD, *parentage, kindred.* When persons are descended from only one parent in common, they are of the half-blood, or related only by half in the same degree that children descended from the same parents are. For example, if John marry Sarah and has a son by that marriage, and after Sarah's death he marry Maria, and has by her another son, these children are of the half-blood, whereas two of the children of John and Sarah would be of the whole blood. By the English common law, one related to an intestate of the half blood only, could never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by the 3 and 4 Wm. 4, c. 106. In this country the common law principle on this subject may be considered as not being in force, though in some states some distinction is still preserved between the whole and the half blood. 4 Kent, Com. 403, n.; 1 Badg. & Dev. (N. C.) Rep. 160; 2

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Yerg. 115; 1 M'Cord, 456; Dane's Ab. Index, h. t.; Reeves on Descents, *passim*. Vide *Descents*.

HALF CENT, *money*, a copper coin of the United States, of the value of one two-hundredth part of a dollar, or five mills. It weighs eighty-four grains. Act of January 18, 1837, s. 12, 4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide *Money*.

HALF DEFENCE, *pleading*. Vide *Defence*, *Et cetera*.

HALF DIME, *money*, a silver coin of the United States of the value of one-twentieth part of a dollar, or five cents. It weighs twenty grains and five-eighths of a grain. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide *Money*.

HALF DOLLAR, *money*, a silver coin of the United States of the value of fifty cents. It weighs two hundred and six and one-fourth grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide *Money*.

HALF EAGLE, *money*, a gold coin of the United States, of the value of five dollars. It weighs one hundred and twenty-nine grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of alloy. Act of January 18th, 1837, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide *Money*.

HALF SEAL, is a seal used in the English chancery for the sealing of commissions to delegates appointed upon any appeal, either in ecclesiastical or marine causes.

HALL. A public building used either for the meetings of corporations, courts, or employed to some public use; as the city hall, the town hall. Formerly this word denoted the chief mansion or habitation.

HAMESUCKEN, *Scotch law*. The crime of hamesucken consists in "the felonious seeking and invasion of a person in his dwelling-house." 1 Hume, 312; Burnett, 86; Alison's Princ. of the Cr. Law of Scotl. 199. The mere breaking into the house, without the personal violence does not constitute the offence, nor does the violence without an entry with intent to commit an assault. It is the combination of both which completes the crime. 1. It is necessary that the invasion of the house should have proceeded from forethought malice; but it is sufficient if, from any illegal motive, the violence has been meditated, although it may not have proceeded from the desire of wreaking personal revenge properly so called. 2. The place where the assault was committed must have been the proper dwelling-house of the party injured, and not a place of business, visit, or occasional residence. 3. The offence may be committed equally in the day as in the night, and not only by effraction of the building by actual force, but by an entry obtained by fraud, with the intention of inflicting personal violence, followed by its perpetration. 4. But unless the injury to the person be of a grievous and material character, it is not hamesucken, though the other requisites to the crime have occurred. When this is the case it is immaterial whether the violence be done *lucri causa*, or from personal spite. 5. The punishment of hamesucken, in aggravated cases of injury, is death; in cases of inferior atrocity, an arbitrary punishment. Alison's Pr. of Cr. Law of Scotl. ch. 6; Ersk. Pr. L. Scotl. 4, 9, 23.

HANAPER OFFICE. *Engl.*

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law. This is the name of one of the offices belonging to the English court of chancery. 3 Bl. Com. 49.

HAND, *measure.* The length of four inches. Horses are measured by the hand. Vide *Measures.*

HANDSALE, *contracts.* Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain; a custom still retained in verbal contracts; a sale thus made was called *handsale, venditio per mutuam manuum complexionem.* In process of time the same word was used to signify the price or earnest, which was given immediately after the shaking of hands, or instead thereof. 2 Bl. Com. 448; Heineccius, *de Antique* Jure Germanico, lib. 2, § 335; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 2, n. 33.

HAND-WRITING, *evidence;* every man's hand is different from others, and the character of his writing differs from all others, this is called his hand-writing. It is sometimes necessary to prove that a certain instrument or name is in the hand-writing of a particular person, that is done either by the testimony of a witness, who saw the paper or signature actually written; or by one who has by sufficient means, acquired such a knowledge of the general character of the hand-writing of the party as will enable him to swear to his belief, that the hand-writing of the person is the hand-writing in question. 1 Phil. Ev. 422; Stark. Ev. h. t.; 2 John. Cas. 211; 5 John. R. 144; 1 Dall. 14; 2 Grenl. R. 33; 6 Serg. & Rawle, 568; 1 Nott & M'Cord, 554; 19 Johns. R. 134; Anthon's N. P. 77; 1 Ruffin's R. 6; 2 Nott & M'Cord, 400; 7 Com. Dig. 447; 2 Bac. Ab. 664; Dane's Ab. Index, h. t.

TO HARBOUR, *torts,* is to receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person, shall be deprived of the same; for example the harbouring of a wife or an apprentice in order to deprive the husband or the master of them. The harbouring of such persons will subject the harbourer to an action for the injury; but in order to put him completely in the wrong, a demand should be made for their restoration, for in cases where the harbourer has not committed any other wrong than merely receiving plaintiff's wife, child or apprentice, he may be under no obligation to return them without a demand. 1 Chit. Pr. 564; Dane's Ab. Index, h. t.

HARD LABOUR, *punishment.* In those states where the penitentiary system has been adopted convicts who are to be imprisoned as part of their punishment, are sentenced to perform *hard labour.* This labour is not greater than many freemen perform voluntarily, and the quantity required to be performed is not at all unreasonable. In the penitentiaries of Pennsylvania it consists in being employed in weaving, shoemaking and such like employments.

HART. A stag or male deer of the forest five years old complete.

HAT MONEY, *mar. law.* The name of a small duty paid to the captain and mariners of a ship, usually called primage, (q. v.)

HAVEN. A place calculated for the reception of ships, and so situated, in regard to the surrounding land that the vessel may ride at anchor in it in safety. Hale, de Port. Mar. c. 2; 2 Chit. Com. Law, 2; 15 East, 304, 5. Vide *Creek, Port, Road.*

HAWKERS. Persons going from place to place with goods and merchandise for sale. To prevent impositions they are generally required to take out licenses, under regula-

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tions established by the local laws of the states.

HEALTH. The most perfect state of life. It may then be defined to be the natural agreement and concordant dispositions of the parts of the living body. Public health is an object of the utmost importance, and has attracted the attention of the national and state legislatures. By the act of congress of the 25th of February, 1799, 1 Story's Laws U. S. 564, it is enacted, 1, that the quarantines and other restraints, which shall be established by the laws of any state, respecting any vessels arriving in or bound to any port or district thereof, whether coming from a foreign port or some other part of the United States, shall be observed and enforced by all officers of the United States, in such place. Sect. 1.—2. In times of contagion the collectors of the revenue may remove, under the provisions of the act, into another district. Sect. 4.—3. The judge of any district court, may when a contagious disorder prevails in his district, cause the removal of persons confined in prison under the laws of the United States, into another district. Sect. 5.—4. In case of the prevalence of a contagious disease at the seat of government, the president of the United States may direct the removal of any or all public offices to a place of safety. Sect. 6.—5. In case of such contagious disease, at the seat of government, the chief justice, or in case of his death or inability, the senior associate justice of the supreme court of the United States, may issue his warrant to the marshal of the district court within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same or adjoining district as he may deem convenient. And the district judges may under the same circumstances, have the same power to adjourn to some other part of their several districts. Sect. 7.—Offences against the provisions of the health laws are generally punished by fine and imprisonment. There are offences against public health punishable by the common law by fine and imprisonment, such for example as selling unwholesome provisions. 4 Bl. Com. 162; 2 East's P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10.

Private injuries affecting a man's health arise upon a breach of contract, express or implied; or in consequence of some tortious act unconnected with a contract. 1. Those injuries to health which arise upon a contract are, 1st. The misconduct of medical men, when through neglect, ignorance, or wanton experiments, they injure their patients. 1 Saund. 312, n. 2.—2d. By the sale of unwholesome food; though the law does not consider a sale to be a warranty as to the goodness or quality of a personal chattel, it is otherwise with regard to food and liquors. 1 Rolle's Ab. 90, pl. 1, 2.—2. Those injuries which affect a man's health and which arise from tortious acts unconnected with contracts are, 1st, private nuisances; 2d, public nuisances; 3d, breaking quarantine; 4th, by sudden alarms, and frightening: as by raising a pretended ghost. 4 Bl. Com. 197, 201, note 25; 1 Hale, 429; Smith's Forens. Med. 37 to 39; 1 Paris & Fonbl. 351, 352. For private injuries affecting his health a man may generally have an action on the case.

HEALTH OFFICER. The name of an officer invested with power to enforce the health law. The powers and duties of health officers are regulated by local laws.

HEARING, *chancery practice.* The name of hearing is given to the

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trial of a chancery suit. The hearing is conducted as follows. When the cause is called on in court, the pleadings on each side are opened in a brief manner to the court by the junior counsel for the plaintiff; after which the plaintiff's leading counsel states the plaintiff's case, and the points in issue, and submits to the court his arguments upon them. Then the depositions (if any) of the plaintiff's witnesses, and such parts of the defendant's answer as support the plaintiff's case are read by the plaintiff's solicitor; after which the rest of the plaintiff's counsel address the court; then the same course of proceedings is observed on the other side excepting that no part of the defendant's answer can be read in his favour, if it be replied to: the leading counsel for the plaintiff is then heard in reply; after which the court pronounces the decree. Newl. Pr. 153, 4; 14 Vin. Ab. 233; Com. Dig. Chancery, T 1, 2, 3.

HEARSAY EVIDENCE, is the evidence of those who relate, not what they know themselves, but what they have heard from others. As a general rule hearsay evidence of a fact is not admissible. If any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn or affirmed to speak the truth. There are, however, exceptions to the rule.—1. Hearsay is admissible when it is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, when it is a part of the *res gestæ*. 1 Phil. Ev. 218; 4 Wash. C. C. R. 729; 14 Serg. & Rawle, 275; 21 How. St. Tr. 535; 6 East, 193.—2. What a witness swore on a former trial, between the same parties, and where the same point was in issue as in the second action, and he is since dead, what he swore to is, in general, evidence. 2 Show. 47; 11 John. R. 446; 2 Hen. & Mumf. 193; 17 John. R. 176. But see, 14 Mass. 234; 2 Russ. on Cr. 683, and the notes.—3. The dying declarations of a person who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence under certain circumstances. Vide *Declarations*, and 15 John. R. 286; 1 Phil. Ev. 215; 2 Russ. on Cr. 683.—4. In questions concerning public rights, common reputation is admitted to be evidence.—5. The declarations of deceased persons in cases where they appear to have been made against their interest, have been admitted.—6. Declarations in cases of birth and pedigree are also to be received in evidence. There are perhaps a few more exceptions which will be found in the books referred to below. 2 Russ. on Cr. B. 6, c. 3; Phil. Ev. ch. 7, s. 7; 1 Stark. Ev. 40; Rosc. Cr. Ev. 20; Rosc. Civ. Ev. 19 to 24; 2 Bac. Ab. 662; Dane's Ab. Index, h. t. Vide also, Dig. 39, 3, 2, 8; Ib. 22, 3, 28.

HEIFER. The female issue of a cow, which issue has not had a calf. A beast of this kind two years and a half old was held to be improperly described in an indictment as a cow. 2 East, P. C. 616; 1 Leach, 105.

HEIR, is one born in lawful matrimony, who succeeds by descent, right of blood, and by act of God, to lands, tenements or hereditaments, being an estate of inheritance. Under the word heirs are comprehended the heirs of heirs in infinitum. 1 Co. Litt. 7 b, 9 a, 237 b; Wood's Inst. 69. According to many authorities, heir may be *nomen collectivum*, as well in a deed as in a will, and operate in both in the same manner, as heirs in the plural number. 2 Roll. Abr. 253; Ambl. 453;

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Godb. 155; T. Jones, 111; Cro. Eliz. 313; 1 Burr. 38; 10 Vin. Abr. 233, pl. 1; 8 Vin. Abr. 233; sed vide 2 Prest. on Est. 9, 10. In wills in order to effectuate the intention of the testator the word *heirs* is sometimes construed to mean next of him. 1 Jac. & Walk. 388; and children, Ambl. 273; see further as to the force and import of this word 2 Vent. 311; 1 P. Wms. 229; 3 Bro. P. C. 60, 454; 2 P. Wms. 1, 369; 2 Blk. R. 1010; 4 Ves. 326, 766, 794; 2 Atk. 89, 580; 5 East, 533; 5 Burr. 2615; 11 Mod. 189; 8 Vin. Abr. 317; 1 T. R. 630; Bac. Abr. Estates in fee simple, B.

There are several kinds of heirs specified below.

By the civil law heirs are divided into testamentary or instituted heirs; legal heirs or heirs of the blood; to which the Civil Code of Louisiana has added irregular heirs. They are also divided into unconditional and beneficiary heirs.

All free persons, even minors lunatics, persons of insane mind or the like, may transmit their estates as intestate ab intestato, and inherit from others. Civ. Code of Lo. 945; accord Co. Litt. 8 a. The child in its mother's womb is considered as born for all purposes of its own interest; it takes all succession opened in its favour, since its conception, provided it be capable of succeeding at the moment of its birth. Civ. Code of Lo. 948. Nevertheless, if the child conceived is reputed born, it is only in the hope of its birth; it is necessary then that the child be born alive, for it cannot be said those who are born dead ever inherited. Ib. 949. See *In ventre sa mere.*

HEIR APPARENT is one who has an indefeasible right to the inheritance, provided he outlive the ancestor. 2 Bl. Com. 208.

HEIR, (BENEFICIARY,) a term used in the civil law. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. Civ. Code of Lo. art. 879; If the heir apprehend that the succession will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession. See *Inventory, benefit of.*

HEIR, (COLLATERAL). A collateral heir is one who is not of the direct line of the deceased, but comes from a collateral line; as a brother, sister, an uncle and aunt, a nephew, niece, or cousin of the deceased.

HEIR, (CONVENTIONAL,) *civil law.* A conventional heir is one who takes a succession by virtue of a contract; for example a marriage contract which entitles the heir to the succession.

HEIRS, FORCED. Vide *Forced heirs.*

HEIR GENERAL, or heir at common law, in the English law. The heir at common law is he who after his father or ancestor's death has a right to, and is introduced into all his lands, tenements and hereditaments. He must be of the whole blood, not a bastard, alien, &c. Bac. Abr. Heir, B, 2; *Coparceners; Descent.*

HEIR, (IRREGULAR) *in Louisiana.* Irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See Civ. Code of Lo. art. 874. When the deceased has left neither lawful descendants nor ascendants, nor collateral relations, the law calls to his inheritance either the surviving husband or wife, or his or her natural children or the state. Ib. art. 911. This is called an irregular succession.

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HEIR, (LEGAL) *civil law.* A legal heir is one who is of the same blood of the deceased, and who takes the succession by force of law; this is different from a testamentary or conventional heir who takes the succession in virtue of the disposition of man. See Civ. Code of Lo. art. 873, 875; Dict. de Jurisp. Heritier legitime. There are three classes of legal heirs, to wit; the children and other lawful descendants; the fathers and mothers and other lawful ascendants; and the collateral kindred. Civ. Code of Lo. art. 883.

HEIR LOOM, *estates*, is literally a *limb* or member of the inheritance. The term *heir looms* is applied to those chattels which are considered as annexed and necessary to the enjoyment of an inheritance. They are chattels, which contrary to the nature of chattels, descend to the heir, along with the inheritance, and do not pass to the executor of the last proprietor. Charters, deeds, and other evidences of the title of the land, together with the box or chest in which they are contained; the keys of a house, and fish in a fish pond, are all heir looms. 1 Inst. 3 a; Ib. 185 b; 7 Rep. 17 b; Cro. Eliz. 372; Bro. Ab. Charters, pl. 13; 2 Bl. Com. 28; 14 Vin. Ab. 291.

HEIR PRESUMPTIVE. A presumptive heir is one who in the present circumstances would be entitled to the inheritance, but whose rights may be defeated by the contingency of some nearer heir being born. 2 Bl. Com. 208. In Louisiana, the presumptive heir is he who is the nearest relation to the deceased, capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well after the opening of the succession, until he has accepted or renounced it. Civ. Code of Lo. art. 876.

HEIR, (TESTAMENTARY,) *civil law.* A testamentary heir is one who is so constituted by testament executed in the form prescribed by law. He is so called to distinguish him from the legal heirs who are called to the succession by the law; and from conventional heirs, who are so constituted by a contract *inter vivos.* See *Hæres factus; Devisee.*

HEIR, (UNCONDITIONAL,) a term used in the civil law, adopted by the Civil Code of Louisiana. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Civ. Code of Lo. art. 878.

HEIRESS, a female heir to a person having an estate of inheritance. When there is more than one, they they are called *co-heiresses*, or *co-heirs.*

HEREDITAMENTS, *estates*, is any thing capable of being inherited, be it corporeal or incorporeal, real, personal or mixed, and including not only lands and every thing thereon, but also heir-looms, and certain furniture which by custom may descend to the heir together with the land. Co. Litt. 5 b; 1 Tho. Co. Litt. 219; 2 Bl. Com. 17; by this term such things are denoted, as may be the subject-matter of inheritance, but not the inheritance itself; it cannot, therefore, by its own intrinsic force, enlarge an estate, *prima facie* a life estate, into a fee. 2 B. & P. 251; 8 T. R. 503; 1 Tho. Co. Litt. 219, note T. Hereditaments are divided into corporeal and incorporeal. Corporeal hereditaments are confined to lands, (q. v.) Vide *Incorporeal hereditaments*, and Shep. To. 91; Cruise's Dig. tit. 1, s. 1; Wood's Inst. 121; 3 Kent, Com. 321; Dane's Ab. Index, h. t.

HEREDITARY. That which is inherited.

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HERIOTS, *Engl. law*, are a render of the best beast or other goods, as the custom may be, to the lord on the death of the tenant. 2 Bl. Com. 97. They are usually divided into two sorts, heriot-service, and heriot-custom: the former are such as are due upon a special reservation in the grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatsoever, but depend merely upon immemorial usage and custom; these are defined to be a customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 Bl. Com. 422; vide Com. Dig. Copyhold, K 18; Bac. Ab. h. t.; 2 Saund. Index, h. t.; 1 Vern. 441.

HERMAPHRODITES are persons who have in the sexual organs the appearance of both sexes; they are adjudged to belong to that which prevails in them. Co. Litt. 2, 7; Domat, Lois Civ. lib. 1, t. 2, s. 1, n. 9. The sexual characteristics in the human species, are widely separate, and the two sexes never, perhaps, united in the same individual. 2 Dunglison's Hum. Physiol. 304; 1 Beck's Med. Jur. 94 to 110. Dr. Wm. Harris in a lecture delivered to the Philadelphia Medical Institute gives an interesting account of a supposed hermaphrodite who came under his own observation in Chester county, Pennsylvania. The individual was called Elizabeth, and till the age of eighteen wore the female dress, when she threw it off, and assumed the name of Rees with the dress and habits of a man: at twenty-five she married a woman, but had no children. Her clitoris was five or six inches long, and in coition, which she greatly enjoyed, she used this instead of the male organ. She lived till she was sixty years of age, and died in possession of a large estate which she had acquired by her industry and enterprise. Medical Examiner, vol. ii. p. 314.

HIDE, *measures*. In England a hide of land, according to some ancient manuscripts, contained one hundred and twenty acres.

HIGH CONSTABLE. An officer appointed in some cities who bears this name. His powers are generally limited to matters of police, and are not more extensive in these respects than those of *constables*, (q. v.)

HIGH SEAS. This term, which is frequently used in the laws of the United States, signifies the unenclosed waters of the ocean on the sea coast which are without the boundaries of low water mark. 1 Gall. R. 624; 5 Mason's R. 290. The act of congress of 30th of April, 1790, s. 8, 1 Story's L. U. S. 84, enacts that if any person shall commit upon the *high seas*, or in any river, haven, basin, or bay, out of the jurisdiction of any particular state, murder, &c. which, if committed within the body of a county would, by the laws of the United States be punishable with death, every such offender, being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought. See 4 Dall. R. 426; 3 Wheat. R. 336; 5 Wheat. R. 184, 412; 3 W. C. C. R. 515; Serg. Const. Law, 334.

HIGH WATER MARK, is that part of the shore of the sea to which the waves reach on ordinary occasions, when the tide is at its highest. 6 Mass. R. 435. Vide *Sea shore*.

HIGHEST BIDDER, *contracts*, he who, at an auction, offers the greatest price for the property sold.

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The highest bidder is entitled to have the article sold at his bid, provided there has been no unfairness on his part. A distinction has been made between the *highest* and the *best* bidder. In judicial sales, where the highest bidder is unable to pay, it is said the sheriff may offer the property to the next highest, who will pay, and he is considered the best bidder. 1 Dall. R. 419.

HIGHWAY. Vide *Road*, *Street*, *Way*, and 4 Vin. Ab. 502; 3 Bac. Ab. 492; Com. Dig. Chemin; Dane's Ab. Index, h. t.; Egremont on Highways; Wellbeloved on Highways; Woolrych on Ways.

HIGHWAYMAN, a robber on the highway.

HIGLER, *Eng. law.* A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIRE, *contracts*, is a bailment, where a compensation is to be given for the use of a thing or for labour or services about it. 2 Kent's Com. 456; 1 Bell's Com. 451; Story on Bailm. § 369; see Pothier, contrat de Louage, ch. 1, n. 1. Domat, B. 1, tit. 4, § 1, n. 1; Code Civ. art. 1709, 1710; Civ. Code of Lo. art. 2644; 2645. See this Dict. *Hirer*, *Letter*.

The contract of letting and hiring is usually divided into two kinds; first, *Locatio* or *Locatio conductio rei*, the bailment of a thing to be used by the hirer for a compensation to be paid by him. Secondly, *Locatio operis*, or the hire of the labour and services of the hirer for a compensation to be paid by the letter. And this last kind is again subdivided into two classes; 1. *Locatio operis facienda*, or the hire of labour and work to be done, or care and attention to be bestowed on the goods let by the hirer for a compensation; or, 2, *Locatio operis mercium vehendarum*, or the hire and carriage of goods from one place to another, for a compensation. Jones's Bailm. 85, 86, 90, 103, 118; 2 Kent's Com. 456; Code Civ. art. 1709, 1710, 1711.

This contract arises from the principles of natural law; it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale; the principal difference between them being, that in cases of sale, the owner parts with the whole proprietary interest in the thing, and in cases of hire, the owner parts with it only for a temporary use and purpose. Pothier, Louage, n. 2, 3, 4; Jones's Bailm. 86; Story on Bailm. § 371.

Three things are of the essence of the contract; 1. That there should be a thing to be let; 2, a price for the hire; and, 3, a contract possessing a legal obligation. Pothier, Louage, n. 6. Civ. Code of Lo. art. 2640.

Hire also means the price given for the use of the thing hired; as, the hirer is bound to pay the hire or recompense.

HIRER, *contracts*, called in the civil law, *conductor*, and in the French law, *conducteur*, *procureur*, *locataire*, is he who takes a thing from another, to use it, and pays a compensation therefor. Wood's Inst. B. 3, c. 5, p. 236; Pothier, Louage, n. 1; Domat, B. 1, tit. 4, § 1, n. 2; Jones's Bailm. 70; see this Dict. *Letter*.

There is, on the part of the hirer, an implied obligation, not only to use the thing with due care and moderation, but not to apply it to any other use than that for which it is hired; for example, if a horse is hired as a saddle horse, the hirer has no right to use the horse in a cart, or to carry loads, or as a beast of burden. Pothier, Louage, n.

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189; Domat, B. 1, tit. 4, § 2, art. 2, 3; Jones's Bailm. 68, 88; 2 Saund. 47 g, and note; 1 Bell's Com. 454; 1 Cowen's R. 322. If a carriage and horses are hired to go from Philadelphia to New York, the hirer has no right to go with them on a journey to Boston. Jones's Bailm. 68; 2 Ld. Raym. 915. So if they are hired for a week, he has no right to use them for a month. Jones's Bailm. 68; 2 Ld. Raym. 915; 5 Mass. 104. And if the thing is used for a different purpose from that which was intended by the parties, or in a different manner, or for a longer period, the hirer is not only responsible for all damages, but if a loss occurs, although by inevitable casualty, he will be responsible therefor. 1 Rep. Const. C. So. Car. 121; Jones's Bailm. 68, 121; 2 Ld. Raym. 909, 917. In short, such a mis-user is deemed a conversion of the property, for which the hirer is deemed responsible. Bac. Abr. Bailment, C; Id. Trover, C. D; E; 2 Saund. 47 g; 2 Bulst. 306, 309.

Another implied obligation of the hirer is to restore the thing hired, when the bailment is determined. 4 T. R. 260. And 3 Campb. 5, n; 13 Johns. R. 211.

The time, the place, and the mode of restitution of the thing hired, are governed by the circumstances of each case, and depend upon rules of presumption of the intention of the parties, like those in other cases of bailment. Story on Bailm. § 415.

There is also an implied obligation on the part of the hirer, to pay the hire or recompense. Pothier, Louage, n. 134; Domat, B. 2, tit. 4, § 2, n. 11; Code Civ. art. 1728.

See generally, *Employer*, *Hire*, *Letter*.

HIS EXCELLENCY, a title given by the constitution of Massachusetts to the governor of that commonwealth. Const. part 2, c. 2, s. 1, art. 1.

HIS HONOUR. A title given by the constitution of Massachusetts to the lieutenant governor of that commonwealth. Const. part, 2, c. 2, s. 2, art. 1.

HISTORY, *evidence*. The recital of facts written and given out for true. Facts stated in ancient histories may be read in evidence, on the ground of their notoriety. Skin. R. 14; 1 Ventr. R. 149.

HOGSHEAD. A measure of wine, oil, and the like, containing half a pipe, the fourth part of a tun, or sixty-three gallons.

HOLDER. The holder of a bill of exchange is the person who is legally in the possession of it, either by endorsement or delivery, or both, and entitled to receive payment either from the drawee or acceptor, and is considered as an assignee. 4 Dall. 53. Vide *Bill of Exchange*.

HOLDING OVER, the act of keeping possession by the tenant, without the consent of the landlord, of premises which the latter, or those under whom he claims, had leased to the former, after the term has expired. When a proper notice has been given, this injury is remedied by ejectment, or, under local regulations, by summary proceedings. Vide 2 Yeates's R. 523; 2 Serg. & Rawle, 486; 5 Binn. 228; 8 Serg. & Rawle, 459; 1 Binn. 334, n.; 5 Serg. & Rawle, 174; 2 Serg. & Rawle, *50; 4 Rawle, 123.

HOLOGRAPH. Vide *Olograph*.

HOMAGE, *Engl. law*, is an acknowledgment made by the vassal in the presence of his lord, that he is his man, that is, his subject or vassal. The form in law French was, *Jeo deveigne vostre home*.

HOMESTALL. The mansion-house.

HOMICIDE, *crim. law*, is, according to Blackstone, the killing of

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any human creature, 4 Com. 177; Hawkins defines it to be the killing of a man by a man, 1 Hawk. c. 8, s. 2. Both these definitions appear to be defective; according to Blackstone any killing whatever is homicide; if a man, therefore, fell into a well, or should be thrown from a horse and be killed, this would be homicide, yet such killing would not come under either of the kinds he mentioned, namely, justifiable, excusable or felonious. Hawkins confines the killing of a *man* by a *man*, which is not correct unless the term man (q. v.) be taken in its most extensive sense. Homicide may perhaps be described to be the destruction of the life of one human being, either by himself, or by the act, procurement or culpable omission of another. When the death has been intentionally caused by the deceased himself, the offence is called *felo de se;* when it is caused by another, it is justifiable, excusable, or felonious.

The person killed must have been born, the killing before birth is called fœticide, (q. v.) The destruction of human life at any period after birth, is homicide, however near it may be extinction, from any other cause.

1. Justifiable homicide is such as arises, 1st, from unavoidable necessity, without any will, intention or desire, and without any inadvertence in the party killing, and therefore without blame; as, for instance, the execution, according to law, of a criminal who has been lawfully sentenced to be hanged: or, 2dly, it is committed for the advancement of public justice; as, if an officer, in the lawful execution of his office, either in a civil or criminal case, should kill a person who assaults and resists him. 4 Bl. Com. 178—180.

2. Excusable homicide is of two kinds, 1st, homicide *per infortunium*, (q. v.); or, 2d, *se defendendo*, or self defence, (q. v.) 4 Bl. Com. 182, 3.

3. Felonious homicide, which includes, 1, self murder, or suicide; 2, manslaughter, (q. v.); and, 3, murder, (q. v.)

Vide, generally, 3 Inst. 47 to 57; 1 Hale, P. C. 411 to 502; 1 Hawk. c. 8; Fost. 255 to 337; 1 East, P. C. 214 to 391; Com. Dig. Justices, L, M; Bac. Ab. Murder and Homicide; Burn's Just. h. t.; Williams's Just. h. t.; 2 Chit. Cr. Law, ch. 9; Cro. C. C. 285 to 300; 4 Bl. Com. 176 to 204; 1 Russ. Cr. 421 to 553; 2 Swift's Dig. 267 to 292.

HOMINE REPLEGIANDO, vide *Writ de homine replegiando.*

HOMO. This latin word, in its most enlarged sense, includes both man and woman. 2 Inst. 45. Vide *Man.*

HOMOLOGATION, *civil law.* Approbation, confirmation by a court of justice, a judgment which orders the execution of some act; as the approbation of an award, and ordering execution on the same. Merl. Répert. h. t.; Civil Code of Louis. Index, h. t.; Dig. 4, 8; 7 Toull. n. 254.

HONORARIUM, a recompense for services rendered. It is usually applied only to the recompense given to persons whose business is connected with science; as the fee paid to counsel. It is said this *honorarium* is purely voluntary, and differs from a fee, which may be recovered by action. 5 Serg. & Rawle, 412; 3 Bl. Com. 28; 1 Ch. Rep. 38; 2 Atk. 332; but see 2 Penna. R. 75; 4 Watts's R. 334.

HONOUR. It is the esteem we have of ourselves, and the consciousness that we deserve the esteem of others, because we have not departed from the principles of virtue, in which we are resolved to continue. This is true honour. False honour is the standard of respect to which

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we claim to be entitled, without considering whether or not we are deserving it. It is the latter which causes duels. A duel is not justified by any insult to our honour. Honour is also employed to signify the chastity of a woman. To deprive a woman of her honour is in some cases punished as a public wrong, and by an action for the recovery of damages done to the relative rights of a husband or a father. Vide *Criminal Conversation.*

TO HONOUR, *contr.*, is to accept a bill of exchange; to pay a bill accepted, or a promissory note, on the day it becomes due. Vide *To Dishonour.*

HORS DE SON FEE, *pleading in the ancient English law.* These words signify *out of his fee.* A plea which was pleaded, when a person who pretended to be the lord, brought an action for rent services, as issuing out of his land: because if the defendant could prove the land was out of his fee, the action failed. Vide 9 Rep. 30; 2 Mod. 104; 1 Danvers's Ab. 655; Vin. Ab. h. t.

HORSE, a stallion, the male of the mare; until a horse has attained the age of four years, he is called a colt, (q. v.) Russ. & Ry. 416. This word is sometimes used as a generic name for all animals of the horse kind. Vide *Gender*, and Yelv. 67, a.

HOSTAGE. A person delivered in the possession of a public enemy in time of war as a security for the performance of a contract entered into between the belligerents. Hostages are frequently given as a security for the payment of a ransom bill, and if they should die, their death would not discharge the contract. 3 Burr. 1734; 1 Kent, Com. 106; Dane's Ab. Index, h. t.

HOSTELLAGIUM, *Engl. law.* A right reserved to the lords to be lodged and entertained in the houses of their tenants.

HOSTILITY. A state of open enmity, open war. Hostility, as it regards individuals, may be permanent or temporary; it is permanent when the individual is a citizen or subject of the government at war, and temporary when he happens to be domiciliated or resident in the country of one of the belligerents; in this latter case the individual may throw off the national character he has thus acquired by residence, when he puts himself in motion, *bona fide*, to quit the country *sine animo revertendi.* 3 Rob. Adm. Rep. 12; 3 Wheat. R. 14. There may be a hostile character merely as to commercial purposes, and hostility may attach only to the person as a temporary enemy, or it may attach only to property of a particular description. This hostile character in a commercial view, or one limited to certain intents and purposes only, will attach in consequence of having possessions in the territory of the enemy, or by maintaining a commercial establishment there, or by a personal residence, or by particular modes of traffic, as by sailing under the enemy's flag or passport. 9 Cranch, 191; 5 Rob. Adm. Rep. 21, 161; 1 Kent, Com. 73; Wesk. on Ins. h. t.; Chit. Law of Nat. Index, h. t.

HOTCHPOT, *estates.* This homely term is used figuratively to signify the blending and mixing property belonging to different persons, in order to divide it equally among those entitled to it. For example, if a man seised of thirty acres of land, and having two children, should on the marriage of one of them give him ten acres of it, and then die intestate seised of the remaining twenty; now in order to obtain his portion of the latter the married child must bring back the ten acres he received, and add it to his father's estate, when an equal

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division of the whole will take place, and each be entitled to fifteen acres. 2 Bl. Com. 190. The term hotchpot is also applied to bringing together all the personal estate of the deceased, with the advancements he has made to his children, in order that the same may be divided agreeably to provision of the statute for the distribution of intestate's estates.

In Louisiana the term collation is used instead of hotchpot. The collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civ. Code of Lo. Art. 1305; and vide from that article to article 1367.

Vide, generally, 1 Bac. Ab. 701; 3 Bac. Ab. 76; Com. Dig. Guardian, G 2, Parcener, C 4; 8 Com. Dig. Appx. tit. Distribution, Statute of, III. For the French law, see Merl. Répért. mots Rapport à succession.

HOUR, *measure of time*, is the space of sixty minutes, or the twenty-fourth part of a natural day. Vide *Date*, *Fraction*, and Co. Litt. 135.

HOUSE, *estates*, a place for the habitation and dwelling of man. This word has several significations, as it is applied to different things. In a grant or demise of a house, the curtilage and garden will pass even without the words "with the appurtenances," being added. Cro. Eliz. 89; S. C. 3 Leon. 214; 1 Plowd. 171; 2 Saund. 401, note (2). In a grant or demise of a house with the appurtenances, no more will pass, although other lands have been occupied with the house. 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 b.; 56 a. b.; 2 Saund. 401, note (2). If a house, originally entire, be divided into several apartments, with an outer door to each apartment, and no communication with each other subsists, in such case the several apartments are considered as distinct houses. 6 Mod. 214; Woodf. Land. & Ten. 178. In cases of burglary, the mansion or dwelling-house in which the burglary might be committed, at common law includes the outhouses, though not under the same roof or adjoining to the dwelling-house, provided they were within the curtilage, or common fence, as the dwelling or mansion house. 3 Inst. 64; 1 Hale, 558; 4 Bl. Com. 225; 2 East, P. C. 493; 1 Hayw. (N. C.) Rep. 102, 142; 2 Russ. on Cr. 14. The term house, in cases of arson, includes not only the dwelling but all the outhouses as in the case of burglary. It is a maxim in law that every man's house is his castle, and there he is entitled to perfect security; this asylum cannot therefore be legally invaded, unless by an officer duly authorised by legal process; and this process must be of a criminal nature to authorise the breaking of an outer door; and even with it, it cannot be done until after demand of admittance and refusal. 5 Co. 93; 4 Leon. 41; T. Jones, 234; the house may be also broken for the purpose of executing a writ of *habere facias*. 5 Co. 93; Bac. Ab. Sheriff, (N 3). The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested and he takes refuge in his own house, in that case, the officer may pursue him and break open any door for the purpose. Foster, 320; 1 Rolle, R. 138; Cro. Jac. 555; Bac. Ab. *ubi sup.* In the civil law the rule was nemo de domo sua extrahi debet. Dig. 50, 17, 103. Vide, generally, 14 Vin. Ab. 315; Yelv. 29 a, n. (1); 4 Rawle, R. 342; Arch. Cr. Pl. 251; and *Burglary*.

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House is used figuratively to signify a collection of persons as the house of representatives; or an institution, as the house of refuge; or a commercial firm, as the house of A B & Co. of New Orleans.

HOUSE OF REFUGE, *punishment.* The name given to a prison for juvenile delinquents. These houses are regulated in the United States on the most humane principles, by special local laws.

HOUSE OF REPRESENTATIVES, *government*, is the popular branch of the legislature. The constitution of the United States, art. 1, s. 2, 1, provides that "the house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors of each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The general qualifications of electors of the assembly, or most numerous branch of the legislature, in the several state governments, are, that they be of the age of twenty-one years and upwards, and free resident citizens of the state in which they vote, and have paid taxes: several of the state constitutions have prescribed the same or higher qualifications, as to property in the elected, than in the electors. The constitution of the United States, however, requires no evidence of property in the representatives, nor any declarations as to his religious belief. He must be free from undue bias or dependence by not holding any office under the United States. Art. 1, s. 6, 2. By the constitutions of the several states, the most numerous branch of the legislature generally bears the name of the house of representatives. Vide Story, on Constitution of the United States, chapter 9; 1 Kents, Com. 228.

By the act of congress of May 22, 1832, the representatives are apportioned among the states as follows, namely, Maine is entitled to eight, New Hampshire to five, Massachusetts to twelve, Rhode Island to two, Connecticut to six, Vermont to five, New York to forty, New Jersey to six, Pennsylvania to twenty-eight, Delaware to one, Maryland to eight, Virginia to twenty-one, North Carolina to thirteen, South Carolina to nine, Georgia to nine, Kentucky to thirteen, Tennessee to thirteen, Ohio to nineteen, Indiana to seven, Mississippi to two, Illinois to three, Louisiana to three, Missouri to two, Alabama to five.

For the constitution of the houses of representatives in the several states, the reader is referred to the names of the states in this work.

HOUSEBOTE. An allowance of necessary timber out of the landlord's woods, for the repairing and support of a house or tenement. This belongs of common right to any lessee for years or for life; housebote is said to be of two kinds, *estoveriam ædificandi et ardendi.* Co. Litt. 41.

HOUSEKEEPER, one who occupies a house. A person who occupies every room in the house, under a lease, except one, which is reserved for his landlord, who pays all the taxes, is not a housekeeper. 1 Chit. Rep. 502; nor is a person a housekeeper who takes a house, which he afterwards underlets to another, whom the landlord refuses to accept as his tenant; in this case, the under tenant paid the taxes, and let to the tenant the first floor of the house, and the rent was paid for the whole house to the tenant, who paid it to the landlord. Ib. note. In order to make the party a housekeeper, he must be in actual possession of the house. 1 Chit. Rep. 288; and

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must occupy a whole house, 1 Chit. Rep. 316. See 1 Barn. & Cresw. 178; 2 T. R. 406; 1 Bott, 5; 3 Petersd. Ab. 103, note.

HOVEL. A place used by husbandmen to set their ploughs, carts and other farming utensils, out of the rain and sun. Law Latin Dict. A shed.

HUE AND CRY, *Eng. law.* A mode of pursuing felons, or such as have dangerously wounded any person, or assaulted any one with intent to rob him, by the constable, for the purpose of arresting the offender. 2 Hale, P. C. 100.

HUISSIER, an usher of a court. In France, an officer of this name performs many of the duties which in this country devolve on the sheriff or constable.

HUNDRED, *Eng. law.* A district of country originally comprehending one hundred families. In many cases when an offence is committed within the hundred, the inhabitants are civilly responsible to the party injured.

HUNDREDORS, in England, are inhabitants of a local division of a county, who, by several statutes, are held to be liable in the cases therein specified to make good the loss sustained by persons within the hundred, by robbery or other violence, therein also specified. The principal of these statutes are, 13 Edw. 1, st. 2, c. 1, s. 4; 28 Edw. 3, c. 11; 27 Eliz. c. 13; 29 C. 2, c. 7; 8 G. 2, c. 16; 22 G. 2, c. 24.

HUNGER. The necessity for taking food. Hunger is no excuse for larceny. 1 Hale, P. C. 54; 4 Bl. Com. 31. It is a matter which applies itself strongly to the consciences of the judges in mitigation of the punishment.

HURDLE, *Eng. law.* A species of sledge used to draw traitors to execution.

HUSBAND, *domestic relations,* a man who has a wife. The husband, as such, is liable to certain obligations, and entitled to certain rights, which will be here briefly considered. First, of his obligations. He is bound to receive his wife at his home, and treat her there as a husband, that is, furnish her with all the necessaries and conveniences which his fortune enables him to do, and which her situation requires; but this does not include such luxuries, as, according to her fancy, she deems necessaries; vide article *Cruelty*, where this matter is considered. He is bound to love his wife, and to bear with her faults, and, if possible, by mild means to correct them; and he is required to fulfil towards her his marital promise of fidelity, and can, therefore, have no carnal connexion with any other woman, without a violation of his obligations. As he is bound to govern his house properly, he is liable for its misgovernment, and he may be punished for keeping a disorderly house, where his wife had the principal agency, and he is liable for her torts, as, for her slander or trespass. He is also liable for the wife's debts, incurred before coverture, provided they are recovered from him during her life; and generally for such as are contracted by her, after coverture, for necessaries. Secondly, of his rights. Being the head of the family, the husband has a right to establish himself wherever he may please, and in this he cannot be controlled by his wife; he may manage his affairs his own way, buy and sell all kinds of personal property, without any control, and he may buy any real estate he may deem proper, but as the wife acquires a right in the latter, he cannot sell it, discharged of her dower, except by her consent, expressed in the manner prescribed by the laws

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of the state where such lands lie. All her *personal* property in possession, is vested in him, and he may dispose of it as if he had acquired it by his own contract; this arises from the principle that they are considered one person in law; 2 Bl. Com. 433; and he is entitled to all her property in action, provided he reduces it to possession during her life. Ib. 434. He is also entitled to her *chattels real*, but these vest in him not absolutely, but *sub modo*; as, in the case of a lease for years, the husband is entitled to receive the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it during the coverture, and it is liable to be taken in execution for his debts; and, if he survives her, it is to all intents and purposes his own. In case his wife survives him, it is considered as if it had never been transferred from her, and it belongs to her alone. In his wife's freehold estate, he has a life estate, during the joint lives of himself and wife, and, at common law when he has a child by her who could inherit, he has an estate by the curtesy.

Vide generally, articles, *Divorce*, *Marriage*, *Wife*, and 1 Bac. Ab. 474; 7 Bac. Ab. 410; Rop. H. & W.; Prater on H. & W.; Clancy on the rights, duties and liabilities of Husband and Wife; Canning on the interest of Husband and Wife, &c; 1 Phil. Ev. 63; Woodf. L. & T. 75; 2 Kent, Com. 109; 1 Salk. 113 to 119‡; Yelv. 106, a, 156, a, 166, a; Vern. by Raithby, 7, 17, 48, 261; Chit. Pr. Index, h. t.; Poth. Du contr. de Mar. n. 379.

HUSBAND, *mer. law.* Vide *Ship's husband.*

HUSBRECE, *old Engl. law.* The ancient name of the offence now called burglary.

HUSTINGS, *Engl. law.* The name of a court held before the lord mayor and aldermen of London; it is the principal and supreme court of the city.

HYDROMETER, measure of density (for fluids), is an instrument, which being immersed in fluids, as, in water, brine, beer, brandy, &c. determines the proportion of their densities, or their specific gravities, and thence their qualities. By the act of congress of January 12, 1825, 3 Story's Laws, U. S. 1976, the secretary of the treasury is authorised, under the direction of the president of the United States, to adopt and substitute such hydrometer as he may deem best calculated to promote the public interest, in lieu of that now prescribed by law, for the purpose of ascertaining the proof of liquors; and that after such adoption and substitution, the duties imposed by law upon distilled spirits, shall be levied, collected and paid, according to the proof ascertained by any hydrometer so substituted and adopted.

HYPOTHECATION, *civil law.* This term is used principally in the civil law; it is defined to be a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold, in order, out of the proceeds, to be paid his claim. There are two species of hypothecation, one called pledge, *pignus*, and the other properly denominated hypothecation. Pledge is that species of hypothecation which is contracted by the delivery by the debtor to the creditor, of the thing hypothecated. Hypothecation properly so called is that which is contracted without delivery of the thing hypothecated.

Hypothecation is further divided into general and special. When the debtor hypothecates to his creditor all his estate and property, which he has, or may have, the hypothecation is general: when the

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hypothecation is confined to a particular estate, it is special.

Hypothecations are also distinguished into conventional, legal and tacit. 1. Conventional hypothecations are those which arise by the agreement of the parties. Dig. 20, 1, 5.—2. Legal hypothecation is that which has not been agreed upon by any contract, express or implied; such as arises from the effect of judgments and executions.—3. A tacit, which is also a legal hypothecation, is that which the law gives in certain cases, without the consent of the parties, to secure the creditor, such as, 1st, the lien which the public treasury has over the property of public debtors. Code, 8, 15, 1.—2d. The landlord has a lien on the goods in the house leased, for the payment of his rent. Dig. 20, 2, 2; Code, 8, 15, 7.—3d. The builder has a lien, for his bill, on the house he has built, Dig. 20, 1.—4th. The pupil has a lien on the property of the guardian for the balance of his account. Dig. 46, 6, 22; Code, 5, 37, 20.—5th. There is hypothecation of the goods of a testator for the security of a legacy he has given. Code, 6, 43, 1.

In the common law, cases of hypothecation, in the strict sense of the civil law, that is of a pledge without possession by the pledgee, are scarcely to be found; cases of bottomry bonds and claims for seamen's wages against ships are the nearest approach to it; but these are liens and privileges rather than hypothecations. Story, Bailm. § 288.

Vide, generally, Poth. De l'Hypothèque; Poth. Mar. Contr. translated by Cushing, note, 26, p. 145; Commercial Code of France, translated by Rodman, note, 52, p. 351; Merl. Répertoire, mot Hypothèque, where the subject is fully considered; 2 Bro. Civ. Law, 195; Ayl. Pand. 524; 1 Law Tracts, 224; Dane's Ab. h. t.; Abbott on Shipp. Index, h. t.; 13 Ves. 599; 4 Bac. Ab. 625. Civil Code of Louis. tit. 22, where this sort of security bears the name of mortgage, (q. v.)

I.

I O U, *contracts.* The memorandum I O U, (I owe you,) given by merchants to each other is a mere evidence of the debt, and does not amount to a promissory note. Esp. Cas. N. P. 426; 4 Carr. & Payne, 324; 19 Eng. Com. L. Rep. 405.

ICTUS ORBUS, *med. jurisp.* A maim, a bruise or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a wound, (q. v.) Bract. lib. 2, tr. 2, c. 5 and 24.

IDEM SONANS, of the same sound. In pleadings when a name which it is material to state, is wrongly spelled, yet if it be idem sonans with that proved, it is sufficient, as *Segrave* for *Seagrave*, 2 Str. R. 889; vide also Russ. & Ry. 412; 2 Taunt. R. 401. In the following cases the variances there mentioned were declared to be fatal. Russ & Ry. 351; 10 East, R. 83; 5 Taunt. R. 14; 1 Baldw. R. 83. See, generally, 3 Chit. Pr. 231, 2.

IDENTITY, *evidence*, sameness. It is frequently necessary to identify persons and things. In criminal prosecutions, and in actions for torts and on contracts, it is required to be proved that the defendants have in criminal actions, and for injuries, been guilty of the crime or injury charged, and in an action on a contract, that the defendant was a party to it. Cases of considerable diffi-

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culty occur, in consequence of the omission to take particular notice; 2 Stark. Cas. 239; Ryan's Med. Jur. 301; and in consequence of the great resemblance of two persons. 1 Hall's Am. Law Journ. 70. In cases of larceny, trover, replevin, and the like, the things in dispute must always be identified. Vide 4 Bl. Com. 396.

IDENTITATE NOMINIS, *in Engl. law.* The name of a writ which lies for a person taken upon a capias or exigent and committed to prison, for another man of the same name; this writ directs the sheriff to inquire whether he be the same person against whom the action was brought, and if not, then to discharge him. F. N. B. 267. In practice a party would be relieved by *habeas corpus.*

IDES, NONES AND CALENDS, *civil law.* This mode of computing time, formerly in use among the Romans, is yet used in several chanceries in Europe, particularly in that of the pope. Many ancient instruments bear those dates, it is therefore proper to notice them here. These three words designate all the days of the month. The calends were the first day of every month, and were known by adding the names of the months; as *calendis januarii, calendis februarii*, for the first days of the months of January and February. They designated the following days by those before the *nones.* The fifth day of each month, except those of March, May, July, and October; in those four months the *nones* indicated the seventh day; *nonis* martii, was therefore the seventh day of March, and so of the rest. In those months in which the nones indicated the fifth day, the second was called *quarto nonas* or 4 *nonas*, that is to say, *quarto die ante nonas*, the fourth day before the *non.* The words *die* and *ante*, being understood were usually suppressed. The third day of each of those eight months was called *tertio*, or 3 *nonas.* The fourth, was *pridie* or 2 *nonas;* and the fifth was *nonas.* In the months of March, May, July and October, the second day of the months was called *sexto* or 6 *nonas;* the third, *quinto*, or 5 *nonas;* the fourth, *quarto*, or 4 *nonas;* the fifth, *tertio*, or 3 *nonas;* the sixth, *pridie*, usually abridged *prid.* or *pr.* or 2 *nonas;* and the seventh, *nonis.* The word *nonæ* is so applied, it is said, because it indicates the ninth day before the ides of each month.

In the months of March, May, July, and October, the fifteenth day of the months was the *Ides.* These are the four months, as above mentioned, in which the nones were on the seventh day. In the other eight months of the year the *nones* were the fifth of the months, and the *ides* the thirteenth; in each of them the *ides* indicated the ninth day after the *nones.* The seven days between the *nones* and the *ides*, which we count 8, 9, 10, 11, 12, 13 and 14, in March, May, July and October, the Romans counted *octavo*, or 8 *idus; septimo*, or 7 *idus; sexto, or* 6 *idus; quinto*, or 5 *idus; quarto*, or 4 *idus; tertio*, or 3 *idus; pridie* or 2 *idus;* the word *ante* being understood as mentioned above. As to the other eight months of the year, in which the nones indicated the fifth day of the month, instead of our 6, 7, 8, 9, 10, 11, and 12, the Romans counted *octavo idus, septimo*, &c. The word is said to be derived from the Tuscan, iduare, in Latin *dividere*, to divide, because the day of ides divided the month in nearly equal parts. The days from the Ides to the end of the month were computed as follows; for example, the fourteenth day of January, which was the next day after

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the Ides, was called *decimo nono*, or 19 *kalendas*, or ante *kalendas februarii*; the fifteenth, *decimo octavo*, or 18 *kalendas februarii*, and so of the rest counting in a retrograde manner to *pridie* or 2 *kalendas februarii*, which was the thirty-first day of January.

As in some months the Ides indicate the thirteenth, and in some the fifteenth of the month, and as the months have not an equal number of days, it follows that the *decimo nono* or 19 *kalendas* did not always happen to be the next day after the *Ides*; this was the case only in the months of January, August and December. *Decimo sexto* or the 16th in February; *decimo septimo* or 17, March, May, July and October; *decimo octavo* or 18, in April, June, September, and November. Merlin, Répertoire de Jurisprudence, mots Ides, Nones et Calender.

IDIOT, *persons*, is a person who has been without understanding from his nativity, and whom the law therefore presumes never likely to attain any. Shelf. on Lun. 2. It is an imbecility or sterility of mind, and not a perversion of the understanding. Chit. Med. Jur. 345, 327, note (*s.*); 1 Russ. on Cr. 6; Bac. Ab. h. t. (A); Bro. Ab. h. t.; Co. Litt. 246, 247; 3 Mod. 44; 1 Vern. 16; 4 Rep. 126; 1 Bl. Com 302. When a man cannot count or number twenty, nor tell his father's or mother's name, nor how old he is, having been frequently told of it, it is a fair presumption that he is devoid of understanding. F. N. B. 233. Vide 1 Dow. P. C. new series, 392; S. C. 3 Bligh, R. new ser. 1. Persons born deaf, dumb and blind, are presumed to be idiots, for the senses being the only inlets of knowledge, and these, the most important of them, being closed, all ideas and associations belonging to them are totally excluded from their minds. Co. Litt. 42; Shelf. on Lun. 3. Vide Locke on Human Understanding, B. 2, c. 11, §§ 12, 13; Ayliff's Pand. 234; 4 Com. Dig. 610; 8 Com. Dig. 644. Idiots are incapable of committing crimes, or entering into contracts: they cannot of course make a will. But they may acquire property by descent. Vide, generally, 1 Dow's Parl. Cas. new series, 392; 3 Bligh's R. 1; 19 Ves. 286, 352, 353; Stock on the Law of Non Compotes Mentis.

IDIOTA INQUIRENDO, WRIT DE. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. Fitz. N. B. 232.

IDLENESS, is the refusal or neglect to perform some honest labour, in order to gain a livelihood. The vagrant act 17 G. 2, c. 5, which, with some modification has been adopted in perhaps most of the states, describes idle persons to be those who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages. These are declared to be vagrants. They are punishable according to the different police regulations with fine and imprisonment. In Pennsylvania vagrancy is punished, on a conviction before a magistrate, with imprisonment for one month.

IGNIS JUDICIUM, *Eng. law.* The name of the old judicial trial by fire.

IGNORAMUS, *practice.* We are ignorant. This word which in law means we are uninformed, is written on a bill presented to them, by a grand jury, when they find there is not sufficient evidence to authorise the finding a true bill. Sometimes instead of using this word the grand jury endorse on the bill *Not found*. 4 Bl. Com. 305.

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IGNORANCE is the want of knowledge. Considered in itself ignorance is distinguished from error. Ignorance is but a privation of ideas or knowledge; but error is the non conformity or opposition of our ideas to the nature or state of things. Considered as a motive of our actions, ignorance differs but little from error, they are generally found amalgamated, and what is said of one is said of both. Ignorance and error are of several kinds; 1, when considered as to their object they are of law, and of fact; 2, when examined as to their origin, they are voluntary or involuntary; 3, when viewed with regard to their influence on the affairs of men, they are essential, or non-essential.

§ 1. Ignorance of law and fact. 1. *Ignorance of law* consists in the want of knowledge of those laws which it is the duty to understand, and which every man is presumed to know. The law forbids any one from marrying a woman whose husband is living. If any man, then, imagined he could marry such a woman, he would be ignorant of the law, and, if he marries her, he would commit an error as to a matter of law. 2. *Ignorance of fact* is the absence of knowledge as to the fact in question. It is a defect of the will, when a man intending to do what is lawful does that which is unlawful. It would be ignorance of fact, if a man believed he could marry a certain woman, whom he believed to be unmarried and free, when in fact she was a married woman. Vide for the difference between ignorance of law and ignorance of fact, 9 Pick. R. 112.

§ 2. Ignorance is either voluntary or involuntary. 1. It is voluntary when a party might, by taking sufficient pains, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated, a neglect to become acquainted with them is therefore voluntary ignorance. Doct. & St. 1, 46; Plowd. 343. 2. Involuntary ignorance is that which is invincible, and which cannot by any exertion be overcome; as, the ignorance of a law which has not yet been promulgated.

§ 3. Ignorance is either essential or non-essential. 1. By essential ignorance is understood that which has for its object some essential circumstance so intimately connected with the matter in question, and which so influences the parties that it induces them to act in the business. For example, if A should sell his horse to B, and at the time of the sale the horse was dead unknown to the parties, the fact of the death would render the sale void. Poth. Vente, n. 3 and 4; 2 Kent, Com. 367.—2. *Non-essential* or accidental ignorance is that which has not, of itself, any necessary connexion with the business in question, and which is not the true consideration for entering into the contract; as, if a man should marry a woman whom he believed to be rich, and she proved to be poor, this fact would not be essential, and the marriage would therefore be good. Vide, generally, Ed. Inj. 7; 1 Johns. Ch. R. 512; 2 Johns. Ch. R. 41; S. C. 14 Johns. R. 501; Dougl. 467; 2 East, R. 469; 1 Campb. 134; 5 Taunt. 379; 3 M. & S. 378; 12 East, R. 38; 1 Vern. 243; 3 P. Wms. 127, n.; 1 Bro. C. C. 92; 10 Ves. 406; 2 Madd. R. 163; 1 V. & B. 30; 2 Atk. 112, 591; 3 P. Wms. 315; Mos. 364; Dig. 22, 6; Code, 1, 16; Clef. des Lois Rom. h. t.; Merl. Répert. h. t.

ILL FAME. This is a technical expression which means not only bad character as generally understood, but every person, whatever may be his conduct and character in

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life, who visits bawdy houses, gaming houses, and other places which are of ill fame, is a person of ill fame. 1 Rogers's Recorder, 67.

ILLEGITIMATE, that which is contrary to law; it is usually applied to children born out of lawful wedlock. A bastard is sometimes called an illegitimate child.

ILLEVIABLE. A debt or duty that cannot or ought not to be levied; as *nihil* set upon a debt is a mark for *illeviable*.

ILLINOIS. The name of one of the new states of the United States of America. This state was admitted into the Union by virtue of a "Resolution declaring the admission of the state of Illinois into the Union," passed December 3, 1818, in the following words: *Resolved, &c.* That, whereas, in pursuance of an act of congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," the people of said territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven: *Resolved, &c.* That the state of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

The constitution of this state was adopted in convention, held at Kaskaskia, on the twenty-sixth day of August, one thousand eight hundred and eighteen. The powers of the government are divided into three distinct departments, each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another. Art. 1, s. 1.

1st. The *legislative* power is vested in a general assembly, which consists in a senate and house of representatives, both elected by the people. The elections for senators and representatives are directed to be held on the first Monday in August, one thousand eight hundred and twenty, and forever after, elections are required to be held once in two years on the first Monday of August, in each and every county, at such places therein as may be provided by law. 1. The *senate* is to be composed of a number of persons who shall never be less than one-third, nor more than one-half of the number of representatives. Art. 2, s. 5. To be a senator a person must be twenty-five years of age, a citizen of the United States, have resided one year in the district or county in which he shall be chosen immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; and moreover have paid a state or county tax. Art. 2, s. 6. The one-half of the senate is renewed biennially. Art. 2, s. 4.—2. The *house of representatives*, is to consist of the number of members to be fixed by the general assembly,

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which number is to be not less than twenty-seven, nor more than thirty-six, until the number of white inhabitants within the state, shall amount to one hundred thousand. The qualifications of the representatives are that the person, 1, be of the age of twenty-one years; 2, be a citizen of the United States; 3, be an inhabitant of the state; 4, have resided within the limit of the county or district in which he shall be chosen, twelve months next preceding his election, if such county or district shall have been so long erected, but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States or of this state; 5, have, moreover, paid a state or county tax. Art. 2, s. 3. The members are elected for two years.

2d. The executive power of the state is vested in a governor, and lieutenant-governor.—1. The *governor* holds his office for the term of four years; he is elected by the electors of members of the general assembly. Art. 3, s. 2 and 3. He must, 1, be at least thirty years of age; 2, have been a citizen of the United States thirty years, two years of which next preceding his election, he shall have resided within the limits of this state. He is invested with the power to grant reprieves and pardons after conviction, except in cases of impeachment—to make appointments of officers in case of vacancy during the recess of the legislature, to continue till the end of its next session—to convene the general assembly upon extraordinary occasions—to give information to the legislature. He is commander-in-chief of the army and navy of the state. Art. 3.—2. The *lieutenant-governor* is chosen at every election for governor, in the same manner, continues in office for the same time, and possesses the same qualifications. By virtue of his office, he is speaker of the senate, has a right when in committee of the whole, to debate and vote on all subjects, and, whenever the senate are equally divided, to give the casting vote. Art. 3, s. 13 and 14.

In case of an impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy. Art. 3, s. 18.

Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion. And if, during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government. Art. 3, s. 15.

The governor for the time being, and the judges of the supreme court, or a major part of them, together with the governor, shall be and are hereby constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time, when the general assembly shall be convened; for which, nevertheless, they shall not receive any salary or consideration, under any pretence whatever; and all bills which have passed the

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senate and house of representatives, shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revisal and consideration, it should appear improper to the said council, or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto, in writing to the senate or house of representatives, (in whichsoever the same shall have originated) who shall enter the objections set down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, by a majority of the whole number of members elected, it shall, together with the said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered; and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been presented, the same shall be a law; unless the general assembly shall, by their adjournment, render a return of the said bill, in ten days, impracticable, in which case the said bill shall be returned on the first day of the meeting of the general assembly after the expiration of the said ten days, or be a law. Art. 3, s. 19.

3d. The judicial power of the state is vested by the 4th article of the constitution as follows:

§ 1. The judicial power of this state shall be vested in one supreme court, and such inferior courts as the general assembly shall from time to time ordain and establish.

§ 2. The supreme court shall be holden at the seat of government, and shall have an appellate jurisdiction only except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it.

§ 3. The supreme court shall consist of a chief justice, and three associates, any two of whom shall form a quorum. The number of justices, may, however be increased, by the general assembly, after the year one thousand eight hundred and twenty-four.

§ 4. The justices of the supreme court, and the judges of the inferior courts shall be appointed by joint ballot of both branches of the general assembly, and commissioned by the governor, and shall hold their offices during good behaviour, until the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our lord one thousand eight hundred and twenty-four, at which time their commissions shall expire; and until the expiration of which time the said justices respectively shall hold circuit courts in the several counties, in such manner, and at such times, and shall have and exercise such jurisdiction, as the general assembly shall by law prescribe. But ever after the aforesaid period, the justices of the supreme court shall be commissioned during good behaviour, and the justices thereof shall not hold circuit courts, unless required by law.

§ 5. The judges of the inferior courts shall hold their offices during good behaviour, but for any reasonable cause, which shall not be sufficient ground for impeachment, both the judges of the supreme and inferior courts shall be removed from office, on the address of two-thirds of each branch of the general assembly: Provided, always, that no member of either house of the general

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assembly, nor any person connected with a member by consanguinity or affinity, shall be appointed to fill the vacancy occasioned by such removal. The said justices of the supreme court, during their temporary appointments, shall receive an annual salary of one thousand dollars, payable quarter-yearly out of the public treasury. The judges of the inferior courts, and the justices of the supreme court, who may be appointed after the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, shall have adequate and competent salaries, which shall not be diminished during their continuance in office.

§ 6. The supreme court, or a majority of the justices thereof, the circuit courts, or the justices thereof, shall respectively appoint their own clerks.

§ 7. All process, writs, and other proceedings, shall run in the name of "the people of the state of Illinois." All prosecutions shall be carried on in the name and by the authority of "the people of the state of Illinois," and conclude "against the peace and dignity of the same."

§ 8. A competent number of justices of the peace shall be appointed in each county, in such manner as the general assembly may direct, whose time of service, power, and duties, shall be regulated and defined by law. And justices of the peace when so appointed, shall be commissioned by the governor.

ILLITERATE, this term is applied to one unacquainted with letters When an ignorant man unable to read, signs a deed or agreement, or makes his mark instead of a signature, and he alleges, and can prove, that it was falsely read to him, he is not bound by it in consequence of the fraud. And the same effect would result, if the deed or agreement were falsely read to a blind man, who could have read before he lost his sight, or to a foreigner who did not understand the language. Vide, generally, 2 Nels. Ab. 946; 2 Co. 3; 11 Co. 28; Moor, 148.

TO IMAGINE, *Engl. law.* In cases of treason the law makes it a crime to imagine the death of the king. In order to complete the offence there must, however, be an overt act; the terms *compassing* and *imagining* being synonymous.

IMMEMORIAL. That which commences beyond the time of memory. Vide *Memory, time of.*

IMMORALITY. That which is *contra bonos moros.* Immoral contracts are generally void; an agreement in consideration of future illicit cohabitation between the parties, 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. R. 13; 1 B. & P. 340, 341; an agreement for the value of libellous and immoral pictures, 4 Esp. R. 97; or for printing a libel, 2 Stark. R. 107; or for an immoral wager, Chit. Contr. 156, cannot, therefore, be enforced.

IMMOVEABLES, *civil law.* Things are moveable or immoveable. Immoveables, *res immobiles*, are things in general, such as cannot move themselves or be removed from one place to another. But this definition, strictly speaking, is applicable only to such things as are immoveable by their own nature, and not to such as are so only by the destination of the law. There are things immoveable by their nature, others by their destination, and others by the objects to which they are applied. 1. Lands and buildings or other constructions, whether they have their foundations in the soil or not, are immoveable by their nature. By the common law, buildings erected on the land are not considered

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real estate unless they have been let into, or united to the land or to substances previously connected therewith. Ferard on Fixt. 2.—2. Things which the owner of the land has placed upon it for its service and improvement, are immoveables by destination, as seeds, plants, fodder, manure, pigeons in a pigeon-house, bee-hives, and the like. By the common law, erections with or without a foundation, when made for the purpose of trade, are considered personal estate. 2 Pet. S. C. Rep. 137; 3 Atk. 13. Ambl. 113.—3. A servitude established on real estate, is an instance of an immoveable which is so considered in consequence of the object to which it is applied. Vide Civil Code of Louis. B. 2, t. 1, c. 2, art. 453–463; Poth. Des Choses, § 1; Poth. De la Communauté, n. 25 et seq. Clef des Lois Romaines, Mot Immeubles.

IMMUNITY is an exemption to serve in an office, or to perform duties which the law generally requires other citizens to perform. Vide Dig. lib. 50, t. 6; 1 Chit. Cr. L. 821.

IMPAIRING THE OBLIGATION OF CONTRACTS. The constitution of the United States, art. 1, s. 9, cl. 1, declares that no state shall "pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." Contracts when considered in relation to their effects are executed, that is transfer for the *possession* of the thing contracted for, or they are executory, which gives only a right of *action* for the subject of the contract. Contracts are also express or implied. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164. The *obligation* of a contract here spoken of is a legal not a mere moral obligation. Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. 12 Wheat. 256; Id. 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197. Vide, generally, Story on the Const. § 1368 to 1391; Serg. Const. Law, 356; Rawle on the Const. h. t.; Dane's Ab. Index, h. t.

TO IMPANEL, *practice*, is to write the names of a jury on a schedule, by the sheriff or other officer lawfully authorised.

IMPARLANCE, *pleading and practice*. Imparlance from the French, *parler*, to speak, or licentia loquandi, in its most general signification, means time given by the court to either party to answer the pleading of his opponent, as either to plead, reply, rejoin, &c. and is said to be nothing else but the continuance of the cause till a further day. Bac. Abr. Pleas, G. But the more common signification of the term is time to plead. 2 Saund. 1, n. 2; 2 Show. 310; Barnes, 346; Lawes, Civ. Pl. 93, 94. Imparlances are of three descriptions; first, a common or general imparlance; secondly, a special imparlance; and, thirdly, a general special imparlance. 1. A general imparlance is the entry of a general prayer and allowance of time to plead till the next term, without reserving to the defendant the benefit of any exception; so that after such an imparlance the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparlance is always from one term to another. 2. A special imparlance reserves to the defendant all exception to the writ, bill, or count; and therefore after it the defendant may plead in abatement, though not to the jurisdiction of the court. 3. A general special imparlance contains a saving of all exceptions whatsoever, so that defendant after this may plead, not only in

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abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender and that he was always ready to pay, because by craving time he admits he is not ready, and so falsifies his plea. Tidd's Pr. 418, 419. The two last kinds of imparlances, are, it seems, sometimes from one day to another in the same term. See, in general, Com. Dig. Abatement, I 19, 20, 21; 1 Chitt. Pl. 420; Bac. Abr. Pleas, G; 14 Vin. Abr. 335; Com. Dig. Pleader, D; 1 Sell. Pr. 265; Doct. Pl. 291; Encycl. de M. D'Alembert, art. Delai (Jurisp.)

IMPEACHMENT, *const. law, punishments.* Under the constitution and laws of the United States, an impeachment may be described to be a written accusation by the house of representatives of the United States, to the senate of the United States, against an officer. The presentment or written accusation is called articles of impeachment. The constitution declares that the house of representatives shall have the sole power of impeachment, art. 1, s. 2, cl. 5; and that the senate shall have the sole power to try all impeachments, art. 1, s. 3, cl. 6. The persons liable to impeachment are the president, vice-president, and all civil officers of the United States, art. 2, s. 4. A question arose upon an impeachment before the senate in 1799, whether a senator was a civil officer of the United States within the purview of this section of the constitution, and it was decided by the senate, by a vote of fourteen against eleven, that he was not: Senate Journ. 10th January, 1799; Story on Const. § 791; Rawle on Const. 213, 214; Serg. Const. Law, 376. The offences for which a guilty officer may be impeached are treason, bribery, and other high crimes and misdemeanors, art. 2. s. 4. The constitution defines the crime of treason, art. 3, s. 3. Recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by "other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice and the common law in order to ascertain what they are. Story, § 795. The mode of proceeding in the institution and trial of impeachments is as follows. When a person who may be legally impeached has been guilty, or is supposed to have been guilty, of some malversation in office, a resolution is generally brought forward by a member of the house of representatives, either to accuse the party, or for a committee of inquiry. If the committee report adversely to the party accused, they give a statement of the charges, and recommend that he be impeached; when the resolution is adopted by the house, a committee is appointed to impeach the party at the bar of the senate, and to state that the articles of impeachment against him will be exhibited in due time, and made good before the senate, and to demand that the senate take order for the appearance of the party to answer to the impeachment. The house then agree upon the articles of impeachment, and they are presented to the senate, by a committee appointed by the house to prosecute the impeachment; the senate then issue process summoning the party to appear at a given day before them, to answer to the articles. The process is served by the sergeant-at-arms of the senate, and a return is made of it to the senate under oath. On the return day of the process the senate resolve themselves into a court of impeachment, and the senators are then sworn to do justice according to the constitution and laws. The person impeached is called to

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answer, and either appears or does not appear. If he does not appear his default is recorded and the senate may proceed *ex parte*. If he does appear, either by himself or attorney, the parties are required to form an issue, and a time is then assigned for the trial. The proceedings on the trial are conducted substantially as they are upon common judicial trials. If any debates arise among the senators they are conducted in secret and the final decision is given by yeas and nays, but no person can be convicted without the concurrence of two-thirds of the members present. Const. art. 1, s. 2, cl. 6. When the president is tried, the chief justice shall preside. The judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States. Proceedings on impeachments under the state constitutions are somewhat similar. Vide *Courts of the United States.*

IMPEACHMENT, *evidence*, is an allegation, supported by proof, that a witness who has been examined, is unworthy of credit. Every witness is liable to be impeached as to his character for truth; and, if his general character is good, he is presumed at all times to be ready to support it.

IMPEACHMENT OF WASTE, signifies a restraint from committing waste upon lands or tenements; or a demand of compensation for waste done by a tenant who has but particular estate in the land granted, and therefore no right to commit waste. All tenants for life, or any less estate, are liable to be impeached for waste, unless they hold *without impeachment of waste;* in the latter case they may commit waste, without being questioned, or any demand for compensation for the waste done. 11 Co. 82.

IMPEDIMENTS, *contracts*, legal objections to the making of a contract: impediments which relate to the person are those of minority, want of reason, coverture and the like: they are sometimes called disabilities. Vide *Incapacity.*

IMPERTINENT, *in practice, pleading.* What does not appertain or belong, *id est, qui ad rem non pertinet.* Evidence of facts which do not belong to the matter in question, is impertinent and inadmissible. Impertinent matter in a declaration or other pleading, is that which does not belong to the subject; in such case, it is considered as mere surplusage, (q. v.) and is rejected. Ham. N. P. 25; vide 2 Ves. 24; 5 Madd. R. 450; Newl. Pr. 38; 2 Ves. 631; 5 Ves. 656; 18 Eng. Com. Law R. 201; Eden on Inj. 71.

TO IMPLEAD, *practice*, to sue or prosecute by due course of law.

IMPLEMENTS, are such things as are used or *employed* for a trade, or furniture of a house.

IMPLICATA, *mar. law.* In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent., to which they are entitled at all events, even if the adventure be lost. This is what the Italians call *implicata.* Targa, chap. 34; Emer. Mar. Loans, s. 5.

IMPLICATION, is an inference of something not directly declared, but arising from what is admitted or expressed. It is a rule that when the law gives any thing to a man, it gives him by implication all that is necessary for its enjoyment. It is also a rule that when a man accepts an office, he undertakes by implication to use it according to law, and by non user he may forfeit it. 2 Bl. Com. 152. An estate in fee simple will pass by implication, 6 John. R. 185; 18 John. R. 31; 2 Binn. R.

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464, 532: such implication must not only be a possible or probable one, but it must be plain and necessary; that is, so strong a probability of intention, that an intention contrary to that imputed to the testator cannot be supposed. 1 Ves. & B. 466; Willes, 141; 1 Ves. jr. 564; 14 John. R. 198. Vide generally, Com. Dig. Estates by Devise, N 12, 13; 2 Rop. Leg. 342; 14 Vin. Ab. 341; 5 Ves. 805; 5 Ves. 582; 3 Ves. 676.

IMPORTATION, *comm. law*, is the act of bringing goods and merchandize into the United States from a foreign country. To prevent the mischievous interference of the several states with the national commerce, the constitution of the United States, art. 1, s. 10, provides as follows: "no state shall without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress." This apparently plain provision has received a judicial construction. In the year 1821, the legislature of Maryland passed an act requiring that all importers of foreign articles, commodities, &c. by the bale or package, of wine, rum, &c., and other persons selling the same by wholesale, bale or package, hogshead, barrel or tierce, should before they were authorised to sell, take out a license for which they were to pay fifty dollars, under certain penalties. A question arose whether this act was or was not a violation of the constitution of the United States and particularly of the above clause, and the supreme court decided against the constitutionality of the law. 12 Wheat. 419.

The act of Congress of March 1, 1817, 3 Story, L. U. S. 1622, provides:

§ 1. That, after the thirtieth day of September next, no goods, wares, or merchandise, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture; or from which such goods, wares or merchandise, can only be, or most usually are, first shipped for transportation; Provided, nevertheless, That this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt a similar regulation.

§ 2. That all goods, wares or merchandise, imported into the United States contrary to the true intent and meaning of this act, and the ship or vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo, shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions, as have been heretofore established for the recovery, collection, distribution, and remission, of forfeitures to the United States by the several revenue laws.

§ 4. That no goods, wares, or merchandise, shall be imported, under penalty of forfeiture thereof, from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power; but this clause shall not be construed to prohibit the sailing of any foreign vessel from one to another port of the United States, provided

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no goods, wares, or merchandise, other than those imported in such vessel from some foreign port, and which shall not have been unladen, shall be carried from one port or place to another in the United States.

§ 6. That after the thirtieth day of September next, there shall be paid upon every ship or vessel of the United States, which shall be entered in the United States from any foreign port or place, unless the officers, and at least two-thirds of the crew thereof, shall be proved citizens of the United States, or persons not the subjects of any foreign prince or state, to the satisfaction of the collector, fifty cents per ton: And provided also, That this section shall not extend to ships or vessels of the United States, which are now on foreign voyages, or which may depart from the United States prior to the first day of May next, until after their return to some port of the United States.

§ 7. That the several bounties and remissions, or abatements of duty, allowed by this act, in the case of vessels having a certain proportion of seamen who are American citizens, or persons not the subjects of any foreign power, shall be allowed only in the case of vessels having such proportion of American seamen during their whole voyage, unless in case of sickness, death or desertion, or where the whole or part of the crew shall have been taken prisoners in the voyage.

Vide article, *Entry of goods at the Custom-house.*

IMPORTUNITY. Tiresome solicitation. In cases of wills and devises, they are sometimes set aside in consequence of the importunity of those who have procured them. Whenever the importunity is such as to deprive the devisor of the freedom of his will, the devise becomes fraudulent and void. Dane's Ab. ch. 127, a, 14, s. 5, 6, 7; 2 Phillim. R. 551, 2.

IMPOSSIBILITY. The character of that which cannot be done agreeably to the accustomed order of nature. As to impossible conditions in contracts, see Bac. Ab. Conditions, M; Co. Litt. 206; Roll. Ab. 420; 6 Toull. n. 486, 686; Dig. 2, 14, 39; Ib. 44, 7, 31; Ib. 50, 17, 185; Ib. 45, 1, 69: on the subject of impossible conditions in wills, vide 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; 6 Toull. 614. Vide generally, Dane's Ab. Index, h. t.; Clef des Lois Rom. par Fieffé Lacroix, h. t.; Com. Dig. Conditions, D 1 & 2; Vin. Ab. Conditions, C a, D a, E a.

IMPOSTS. This word is sometimes used to signify taxes, or duties, or impositions; and, sometimes, in the more restrained sense of a duty on imported goods and merchandise. The Federalist, No. 30; 3 Elliott's Debates, 289; Story, Const. § 949.

IMPOTENCE, *med. jur.* The incapacity for copulation or propagating the species. It has also been used synonymously with *sterility*. Impotence may be considered as incurable, curable, accidental or temporary. Absolute or incurable impotence, is that for which there is no known relief, principally originating in some malformation or defect of the genital organs. Where this defect existed at the time of the marriage, and was incurable, by the ecclesiastical law and the law of several of the American states, the marriage may be declared void *ab initio*. Com. Dig. Baron and Feme, (C 3); 4 Bac. Ab. 554; 1 Bl. Com. 440; Beck's Med. Jur. 67; Code, lib. 5, t. 17, l. 10; Poynt. on Marr. and Div. ch. 8; Merl. Répert. mot Impuissance.

IMPRIMERY. In some of the ancient English statutes this word is used to signify a printing-office,

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the art of printing, a print or impression.

IMPRISONMENT, is the restraint of a person contrary to his will, 2 Inst. 589; Baldw. Rep. 239, 600; imprisonment is either lawful or unlawful; lawful imprisonment is used either for crimes or for the appearance of the party in a civil suit, or arrest in execution. Imprisonment for crimes is either for the appearance of a person accused, as when he cannot give bail; or it is the effect of a sentence, and then it is a part of the punishment. Imprisonment in civil cases takes place when a defendant on being sued on bailable process refuses or cannot give the bail legally demanded, or it is under a *capias ad satisfiendum*, when he is taken in execution under a judgment. An unlawful imprisonment, commonly called *false imprisonment*, (q. v.) means any illegal imprisonment either with or without process whatever, or under colour of process wholly illegal, without regard to any question whether any crime has been committed or a debt due. As to what will amount to an imprisonment, the most obvious modes are confinement in a prison or a private house, but a forcible detention in the street, or the touching of a person by a peace officer by way of arrest, are also imprisonments. Bac. Ab. Trespass, D 3; 1 Esp. R. 431, 526. It has been decided that lifting up a person in his chair, and carrying him out of the room in which he was sitting with others, and excluding him from the room, was not an imprisonment, 1 Chit. Pr. 48; and the merely giving charge of a person to a peace officer, not followed by any actual apprehension of the person, does not amount to an imprisonment, though the party to avoid it, next day attend at a police office, 1 Esp. R. 431; New Rep. 211; 1 Carr. & Payn. 153; S. C. 11 Eng. Com. Law R. 351; and if in consequence of a message from a sheriff's officer holding a writ, the defendant execute and send him a bail bond, such submission to the process will not constitute an arrest. 6 Bar. & Cres. 528; S. C. 13 Eng. Com. Law Rep. 245; Dowl. & R. 233. Vide, generally, 14 Vin. Ab. 342; 4 Com. Dig. 618; 1 Chit. Pr. 47; Merl. Répert. mot Emprisonnement; 17 Eng. Com. L. R. 246, n.

IMPROVEMENT. This term is of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to every amelioration of every description of property, whether real or personal; it is generally explained by other words. Where, by the terms of a lease the covenant was to leave at the end of the term a water-mill with all the fixtures, fastenings, and *improvements*, during the demise fixed, fastened, or set up on or upon the premises, in good plight and condition, it was held to include a pair of new mill-stones set up by the lessee during the term, although the custom of the country in general authorised the tenant to remove them. 9 Bing. 24; 3 Sim. 450; 2 Ves. & Bea. 349. Vide 3 Yeates, 71; Addis. R. 335.

IMPUBER, *in the civil law*, one who is more than seven years old, or out of infancy, and who has not attained the age of an adult, (q. v.) and who is yet in his puberty; that is, if a boy, till he has attained his full age of fourteen years, and, if a girl, her full age of twelve years. Domat, Liv. Prel. t. 2, s. 2, n. 8.

IN ALIO LOCO. In another place. Vide *Cepit in alio loco.*

IN AUTRE DROIT. In another's right. An executor, administrator or trustee, is said to have the property confided to him in such character *in autre droit.*

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IN ESSE. In being. A thing in existence. It is used in opposition to *in posse*. A child in *ventre sa mere* is a thing in *posse*; after he is born, he is *in esse*. Vide 1 Supp. to Ves. jr. 466; 2 Suppl. to Ves. jr. 155, 191. Vide *Posse*.

IN LIMINE, in or at the beginning. This phrase is frequently used, as, the courts are anxious to check crimes *in limine*.

IN MITIORI SENSU, *construction*. Formerly in actions of slander it was a rule to take the expression used *in mitiori sensu*, in the mildest acceptation, and ingenuity was, upon these occasions, continually exercised to devise or discover a meaning which by some remote possibility the speaker might have intended; and some ludicrous examples of this ingenuity may be found. To say of a man who was making his livelihood by buying and selling merchandise, he is a base broken rascal, he has broken twice, and I'll make him break a third time, was gravely asserted not to be actionable—"ne poet dar porter action, car poet estre intend de *burstness de belly*," Latch, 114. And to call a man a thief was declared to be no slander, for this reason "perhaps the speaker might mean he had stolen a lady's heart." The rule now is to construe words agreeably to the meaning usually attached to them. 1 Nott & McCord, 217; 2 Nott & McCord, 511; 8 Mass. R. 248; 1 Wash. R. 152; Kirby, R. 12; 7 Serg. & Rawle, 451; 2 Binn. 34; 3 Binn. 515.

IN MORA, Vide *Mora, in*.

IN NULLO EST ERRATUM, *pleading*. A plea to errors assigned on proceedings in error, by which the defendant in error affirms there is no error in the record. As to the effect of such plea, see 1 Vent. 252; 1 Str. 684; 9 Mass. R. 532; 1 Burr. 410; T. Ray. 231. It is a general rule that the plea *in nullo est erratum* confesses the fact assigned for error. Yelv. 57; Dane's Ab. Index, h. t.

IN PERSONAM, *remedies*. A remedy *in personam*, is one where the proceedings are against the person, in contradistinction of those which are against specific things, or *in rem*. (q. v.)

IN REM, *remedies*. This technical term is used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions which are said to be *in personam*. Courts of admiralty enforce the performance of a contract by seizing into their custody the very subject of hypothecation; for in these cases the parties are not personally bound, and the proceedings are confined to the thing in specie. Bro. Civ. and Adm. Law 98; and see 2 Gall. R. 200; 3 T. R. 269, 270. There are cases however where the remedy is either *in personam* or *in rem*. Seamen, for example, may proceed against the ship or cargo for their wages, and this is the most expeditious mode; or they may proceed against the master or owners. 4 Burr. 1944; 2 Bro. C. & A. Law, 396. Vide, generally, 1 Phil. Ev. 254; 1 Stark. Ev. 228; Dane's Ab. h. t.; Serg. Const. Law, 202, 203, 212.

IN SOLIDO, a term used in the civil law, to signify that a contract is joint. Obligations are *in solido*, first, between several creditors; secondly, between several debtors.—1. When a person contracts the obligation of one and the same thing, in favour of several others, each of these is only creditor for his own share, but he may contract with each of them for the whole when such is the intention of the parties, so that each of the persons in whose favour the obligation is contracted, is creditor for the

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whole, but that a payment made to any one liberates the debtor against them all. This is called solidity of obligation. Poth. Obl. pt. 2, c. 3, art. 7. The common law is exactly the reverse of this, for a general obligation in favour of several persons, is a joint-obligation to them all, unless the nature of the subject, or the particularity of the expression lead to a different conclusion. Evans's Poth. vol. 2, p. 56. See tit. *Joint and Several; Parties to action.*—2. An obligation is contracted *in solido* on the part of the debtors, when each of them is obliged for the whole, but so that a payment made by one liberates them all. Poth. pt. 2, c. 3, art. 7, s. 1

IN TERROREM POPULI, to the terror of the people. An indictment for a riot is bad unless it conclude in terrorem populi. 4 Carr. & Payne, 373.

IN VENTRE SA MERE, in his mother's womb.—1. In law a child is for all beneficial purposes considered to be born while in ventre sa mere. 5 T. R. 49; Co. Litt. 36; 1 P. Wms. 329; Civ. Code of Lo. art. 948.—2. He is enabled to have an estate limited to his use. 1 Bl. Com. 130.—3. May have a distributive share of intestate property. 1 Ves. 81.—4. Is capable of taking a devise of lands. 2 Atk. 117; 1 Freem. 244, 293.—5. Takes under a marriage settlement a provision made for children living at the death of the father. 1 Ves. 85.—6. Is capable of taking a legacy, and is entitled to a share in a fund bequeathed to children under a general description of "children," or of "children living at the testator's death." 2 H. Bl. 399; 2 Bro. C. C. 320; S. C. 2 Ves. jun. 673; 1 Sim. & Stu. 181; 1 B. & P. 243; 5 T. R. 49. See also, 1 Ves. sen. 85; Id. 111; 1 P. Wms. 244, 341; 2 Bro. C. C. 63; Amb. 708, 711; 1 Salk. 229; 2 P. Wms. 446; 2 Atk. 114; Prec. Ch. 50; 2 Vern. 710; 3 Ves. 486; 7 T. R. 100; 4 Ves. 322; 4 Bac. Ab. 246; 1 Rop. Leg. 52, 3; 5 Serg. & Rawle, 40.—7. May be appointed executor. 3 Bac. Ab. 582.—8. A bill may be brought in its behalf, and the court will grant an injunction to stay waste, 2 Vern. 710; Pre. Ch. 50.—9. The mother of a child *in ventre sa mere* may detain writings on its behalf. 2 Vern. 710.—10. May have a guardian assigned to it. 1 Bl. Com. 130.—11. The destruction of such a child is a heinous misdemeanor. 1 Bl. Com. 129, 130.—12. And the birth of a posthumous child amounts in Pennsylvania to a revocation of a will previously executed, so far as regards such child. 3 Binn. 498. See Coop. Just. 496. See as to the law of Virginia on this subject, 3 Munf. 20. Vide *Fœtus.*

INADMISSIBLE. What cannot be received. Parol evidence, for example, is inadmissible to contradict a written agreement.

INALIENABLE. This word is applied to those things, the property of which cannot be lawfully transferred from one person to another. Public highways and rivers are of this kind: there are also many rights which are inalienable, as the rights of liberty, or of speech.

INAUGURATION, this word was applied by the Romans to the ceremony of dedicating some temple, or raising some man to the priesthood, after the *augurs* had been consulted. It was afterwards applied to the *installation* (q. v.) of the emperors, kings and prelates, in imitation of the ceremonies of the Romans when they entered into the temple of the augurs. It is applied in the United States to the installation of the chief magistrate of the republic, and of the governors of the several states.

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INCAPACITY, is the want of a quality legally to do, give, transmit or receive something. It arises from nature, from the law, or from both. From nature when the party has not his senses, as, in the case of an idiot; from the law, as in the case of a bastard who cannot inherit; from nature and the law, as in the case of a married woman, who cannot make contracts or a will. In general the incapacity ceases with the cause which produces it. If the idiot should obtain his senses, or the married woman's husband die, their incapacity would be at an end.

INCENDIARY, *crim. law.* One who maliciously and wilfully sets another person's house on fire; one guilty of the crime of arson. This offender is punished by the statute laws of the different states according to their several provisions. The civil law punished him with death, Dig. 47, 9, 12, 1, by being cast into the fire. Ib. 48, 19, 28, 12; Code, 9, 1, 11; vide Dane's Ab. Index, h. t.

INCEST, is the carnal copulation of two persons related to each other within the degrees prohibited by law. Vide *Marriage.* It is punished by fine and imprisonment, under the laws of the respective states. Vide 1 Smith's Laws of Pennsylv. 26; Dane's Ab. Index, h. t.; Dig. 23, 2, 68.

INCH, a measure of length, containing one-twelfth part of a foot.

INCIDENT, is a thing necessarily depending upon, appertaining to, or following another, called the principal. The power of punishing for contempt is incident to a court of record; rent is incident to a reversion; distress to rent; estovers of wood to a tenancy for life or years. 1 Inst. 151; Noy's Max. n. 13; Vin. Ab. h. t.; Dane's Ab. h. t.; Com. Dig. h. t. and the references there; Bro. Ab. h. t.; Rolle's Ab. 75.

INCIPITUR, *practice.* This word, which means "it is begun," signifies the commencement of the entry on the roll on signing judgment, &c.

INCLUSIVE, is that which is taken in the computation of any thing. In computing time, as ten days from a particular time, one day is generally to be included and one excluded. Vide article *Exclusive,* and the authorities there cited.

INCOMPATIBILITY, *offices, rights;* this term is used to show that two or more things ought not to be at the same time in the same person; for example, a man cannot at the same time be landlord and tenant of the same land; heir and devisee of the same thing; trustee and cestui que trust of the same property. There are offices which are incompatible with each other by constitutional provision; the vice-president of the United States cannot act as such when filling the office of president; Const. art. 1, s. 3, n. 5; and by the same instrument, art. 1, s. 6, n. 2, it is directed that "no senator or representative, shall during the time for which he was elected be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office." Provisions rendering offices incompatible are to be found in most of the constitutions of the states and in some of their laws. In Pennsylvania the acts of the 12th of February, 1802, 3 Smith's Laws of Pa. 485; and 6th of March, 1812, 5 Sm. L. Pa. 309, contain various provisions making certain offices incompatible with each other.

INCOMPETENCY, *in the*

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French law, is the state of a judge who cannot take cognizance of a dispute brought before him; a want of jurisdiction. Incompetency is material, *ratione materiæ*, or personal, *ratione personæ*. The first takes place when a judge takes cognizance of a matter over which another judge has the sole jurisdiction, and this cannot be cured by the appearance or agreement of the parties. The second is when the matter in dispute is within the jurisdiction of the judge, but the parties in the case are not, in which case they make the judge competent unless they make their objection before they take defence. Merl. Rép. mot Incompétence. It is a maxim in the common law, *aliquis non debet esse judex in propriâ causâ*. Co. Litt. 141 a; see 14 Vin. Abr. 573; 4 Com. Dig. 6.

INCOMPETENCY, *evidence*, is the want of legal ability in a witness to be heard as such on the trial of a cause. The objections to the competency (q. v.) of a witness are fourfold. The first ground is the want of understanding; a second is defect of religious principles; a third arises from the conviction of certain crimes or infamy of character; the fourth is on account of interest, (q. v.) 1 Phil. Ev. 15.

INCORPOREAL, that which has no body. Things incorporeal are those which are not the object of sense, which cannot be seen nor felt, but which we can easily conceive in the understanding, as rights, actions, successions, easements, and the like. Dig. lib. 6, t. 1; Ib. lib. 41, t. 1, l. 43, § 1; Poth. Traité des choses, § 2.

INCORPOREAL HEREDITAMENT, *title*, *estates*, is a right issuing out of, or annexed unto, a thing corporeal. Their existence is merely in idea and abstracted contemplation, though their effects and profits may be frequently the objects of our bodily senses. Co. Litt. 9 a; Poth. Traité des choses, § 2. According to Sir William Blackstone, there are ten kinds of incorporeal hereditaments; namely, 1, advowsons; 2, tithes; 3, commons; 4, ways; 5, offices; 6, dignities; 7, franchises; 8, corodies; 9, annuities; 10, rents. 2 Blacks. Com. 20.

INCUMBENT, *Eccl. law*. A clerk resident on his benefice with cure; he is so called because he does or ought to bend the whole of his studies to his duties. In common parlance, it signifies one who is in the possession of an office, as, the present incumbent.

INCUMBRANCE, whatever is a lien upon an estate. In cases of sales of real estate, the vendor is required to disclose the incumbrances, and to deliver to the purchaser the instruments by which they were created, or on which the defects arise; and the neglect of this will be considered as a fraud. Sugd. Vend. 6; 1 Ves. 96; and see 6 Ves. jr. 193; 10 Ves. jr. 470; 1 Sch. & Lef. 227; 7 Serg. & Rawle, 73. Whether the tenant for life or the remainder-man is to keep down the interest on incumbrances, see Turn. R. 174; 3 Mer. R. 566; 5 Ves. 99; 4 Ves. 24. See, generally, 14 Vin. Ab. 352; Com. Dig. Chancery, 4 A 10, 4 I 3.

INDEBITATUS ASSUMPSIT, *remedies, pleadings*, is that species of action of assumpsit, in which the plaintiff alleges in his declaration, first a debt, and then a promise in consideration of the debt, that the defendant *being indebted he promised* the plaintiff to pay him. The promise so laid is generally an implied one only. Vide 1 Chit. Pl. 334; Steph. Pl. 318; Yelv. 21; 4 Co. 92 b. For the history of this form of action, see 3 Reeve's Hist. Com. Law; 2 Comyn on Contr.

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549 to 556; 1 H. Bl. 550, 551; 3 Bl. Com. 154; Yelv. 70.

INDECENCY. Obscenity calculated to promote the violation of the law, or that which tends to the general corruption of morals. 2 Serg. & Rawle, 91. The following are examples of such indecency, namely, the exposure by a man of his naked person on a balcony, to public view, or bathing in public, 2 Campb. 89; or the exhibition of bawdy pictures, 2 Chit. Cr. Law, 42; 2 Serg. & Rawle, 91. This indecency is punishable by indictment.

INDEFEASIBLE, what cannot be defeated; what cannot be undone. This epithet is usually applied to an estate or right which cannot be defeated.

INDEFENSUS. One sued or impleaded, who refuses to answer.

INDEFINITE PAYMENT, *contracts*, is that which a debtor who owes several debts to a creditor, makes without making an *appropriation*; (q. v.) in that case the creditor has a right to make such appropriation.

IDEMNITY. What is given to a person to prevent his suffering damage. Sometimes it signifies diminution; a tenant who has been interrupted in the enjoyment of his lease may require an indemnity from the lessor, that is, a reduction of his rent.

INDENTURE, *conveyancing*, is an instrument of writing containing a conveyance or contract between two or more persons usually indented or cut unevenly, or in and out, on the top or side. Formerly it was common to make two instruments exactly alike, and it was then usual to write both on the same parchment, with some words or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave one half of the word on one part, and half on the other. The instrument usually commences with these words, "This Indenture," which were not formerly sufficient, unless the parchment or paper were actually indented to make an indenture, 5 Co. 20; but now if the form of indenting the parchment be wanting, it may be supplied by being done in court, this being mere form. Besides it would be exceedingly difficult with even the most perfect instruments, to cut parchment or paper without indenting it. Vide 4 Bac. Ab. 51; Com. Dig. Fait, C, and note (d); Litt. sec. 370; Co. Litt. 143 b, 229 a; Cruise Dig. t. 32, c. 1, s. 24; 2 Bl. Com. 294.

INDEPENDENCE. A state of perfect irresponsibility to any superior; the United States are free and independent of all earthly power. Vide *Declaration of Independence.*

INDIAN TRIBE, a body of the aboriginal Indian race of men found in the United States. Such a tribe, situated within the boundaries of a state, and exercising the powers of government and sovereignty, under the national government, is deemed politically a state; that is, a distinct political society, capable of self-government; but is not deemed a foreign state, in the sense of the constitution. It is rather a domestic dependent nation. Such a tribe may properly be deemed in a state of pupillage; and its relation to the United States resembles that of a ward to a guardian. 5 Pet. R. 1, 16, 17; 20 John. R. 193; 3 Kent, Com. 308 to 318; Story on Const. § 1096.

INDIANA. The name of one of the new states of the United States. This state was admitted into the union by virtue of the "Resolution for admitting the state of Indiana into the Union," approved Decem-

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ber 11, 1816, in the following words: Whereas, in pursuance of an act of congress, passed on the nineteenth day of April, one thousand eight hundred and sixteen, entitled "An act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of that state into the Union," the people of the said territory did, on the twenty-ninth day of June, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity with the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven.

Resolved, That the state of Indiana shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

The constitution of the state was adopted by a convention, held at Corydon, in the year eighteen hundred and sixteen, from the 10th to the 29th day of June of that year. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary to another. Art. 2.

1st. The legislative authority of the state is vested in a general assembly, which consists in a senate and house of representatives, both elected by the people.

1. The senate is composed of a number of persons, who shall never be less than one-third, nor more than one-half of the number of representatives. The number to be fixed by law. Art. 3, s. 6. A senator shall, 1, have attained the age of twenty-five years; 2, be a citizen of the United States; 3, have resided, next preceding his election, two years in this state, the last twelve months of which in the county or district in which he may be elected, if the county or district shall have been so long erected, but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; 4, have paid a state or county tax. Art. 3, s. 7. One-third of the senate is elected every year, on the first Monday in August.

2. The number of representatives is to be fixed by law. It shall never be less than twenty-five, nor more than thirty-six, until the number of white male inhabitants, above twenty-one years of age, shall be twenty-two thousand; and, after that event, in such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed one hundred. To be qualified for a representative, a person must, 1, have attained the age of twenty-one years; 2, be a citizen of the United States; 3, be an inhabitant of this state; 4, have resided within the limits of the county in which he shall be chosen one year next preceding his election, if the county shall have been so long erected, but if not, then within the limits of the county or counties out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; 5, have paid a state or county tax. Art. 3, s. 4. The members are elected yearly, by the qualified elec-

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tors of each county respectively, on the first Monday of August. Art. 3, s. 3.

2d. The supreme *executive* power of this state is vested in a governor, who is styled the governor of the state of Indiana. And, under certain circumstances, this power is exercised by the lieutenant-governor.

1. The *governor* is chosen by the qualified electors, on the first Monday in August, at the place where they shall respectively vote for representatives. He shall hold his office during three years, from and after the third day of the first session of the general assembly next ensuing his election, and until a successor shall be chosen and qualified; and shall not be capable of holding it longer than six years in any term of nine years. His requisite qualifications are, that he shall, 1, have been a citizen of the United States for ten years; 2, be at least thirty years of age; 3, have resided in the state five years next preceding his election, unless he shall have been absent on the business of this state, or of the United States; 4, not hold any office under the United States, or this state. He is commander-in-chief of the army and navy of the state, when not in the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the general assembly. He nominates, and by and with the consent of the senate, appoints all officers whose appointment is not otherwise provided for; fills vacancies, during the recess of the legislature; remits fines and forfeitures; grants reprieves and pardons, except in cases of impeachments; may require information from executive officers; gives to the general assembly information, and recommends necessary measures; may convene the legislature at the seat of government, or at a different place, on extraordinary occasions, such as war or pestilence; may adjourn the two houses, when they cannot agree as to an adjournment; and cause the laws to be faithfully executed. He is also invested with the veto power. Art. 4.

2. The *lieutenant-governor* shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor. He shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote. In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant-governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached shall return or be acquitted. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if, during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the president of the senate pro tem. shall, in like manner, administer the government, until he shall be superseded by a governor or lieutenant-governor. The lieutenant-governor, while he acts as president of the senate, shall receive for his services the same

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compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office, and no more. The president pro tempore of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office, and no more. If the lieutenant-governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore. Art. 4, s. 15 to 20.

3d. The *judicial* power of the state is vested by the 5th article of the constitution, as follows:

§ 1. The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may, from time to time, direct and establish.

§ 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law: Provided, nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases and cases in chancery, where the president of the circuit court may be interested or prejudiced.

§ 3. The circuit courts shall consist of a president and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner, as may be prescribed by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: Provided, that nothing herein contained shall prevent the general assembly from increasing the number of the circuits and presidents, as the exigencies of the state may, from time to time require.

§ 4. The judges of the supreme court, the circuit and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

§ 5. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts, in their respective circuits, and the associate judges in their respective counties.

§ 6. The supreme court shall hold its sessions at the seat of government, at such times as shall be pre-

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scribed by law: and the circuit courts shall be held in the respective counties as may be directed by law.

§ 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly, and the associate judges of the circuit courts shall be elected by the qualified electors in their respective counties.

§ 8. The supreme court shall appoint its own clerk; and the clerks of the circuit court, in the several counties, shall be elected by the qualified electors in the several counties, but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate that he is qualified to execute the duties of the office of clerk of the circuit court: Provided, that nothing herein contained shall prevent the circuit courts in each county from appointing a clerk pro tem. until a qualified clerk may be duly elected: And provided also, that the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed.

§ 12. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office five years, if they shall so long behave well; whose powers and duties shall, from time to time, be regulated and defined by law.

INDICTED, *practice.* When a man is accused by a bill of indictment preferred by a grand jury, he is said to be indicted.

INDICTION, *comput. of time.* An indiction contained a space of fifteen years. It was used in dating at Rome and in England. It began at the dismission of the Nicene council, anno Domini 312; the first year was reckoned the first of the first indiction, the second, the second, &c. till fifteen years afterwards. The sixteenth year was the first year of the second indiction, the thirty-first year, was the first year of the third indiction, &c.

INDICTMENT, *crim. law, practice*, is a written accusation of one or more persons of a crime or misdemeanor, presented to, and preferred upon oath or affirmation, by a grand jury legally convoked. 4 Bl. Com. 299; Co. Litt. 126; 2 Hale, 152; Bac. Ab. h. t.; Com. Dig. h. t. (A); 1 Chit. Cr. L. 168. To render an indictment valid, there are certain essential and formal requisites. First, the essential requisites are, 1st, that the indictment be presented to some court having jurisdiction of the offence stated therein; 2dly, that it appears to have been found by the grand jury of the proper county or district; 3dly, that the indictment be found a true bill, and signed by the foreman of the grand jury; 4thly, that it be framed with sufficient certainty; for this purpose, the charge must contain a certain description of the crime or misdemeanor, of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation. Cowp. 682, 3; 2 Hale, 167; 1 Binn. R. 201; 3 Binn. R. 533; 1 P. A. Bro. R. 360; 6 Serg. & Rawle, 398; 4 Serg. & Rawle, 194; 4 Bl. Com. 301; 3 Yeates, R. 407; 4 Cranch, R. 167. 5thly, The indictment must be in the English language. But if any document in a foreign language, as a libel, be necessarily introduced, it should be set

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out in the original tongue, and then translated, showing its application. 6 T. R. 162. Secondly, the formal requisites, are, 1st, the *venue*, which at common law should always be laid in the county where the offence has been committed, although the charge is in its nature transitory, as a battery. Hawk. B. 2, c. 25, s. 35. The venue is stated in the margin thus, "City and county of Philadelphia, to wit." 2dly, The *presentment* which must be in the present tense, and is usually expressed by the following formula, "the grand inquest of the commonwealth of Pennsylvania, inquiring for the city and county aforesaid, upon their oaths and affirmations present." 3dly, The *name and addition of the defendant;* but in case an error has been made in this respect, it is cured by the plea of the defendant. Bac. Ab. Misnomer, (B); Indictment, (G 2); 2 Hale, 175; 1 Chit. Pr. 202. 4thly, The *names of third persons*, when they must be necessarily mentioned in the indictment, should be stated with certainty to a common intent, so as sufficiently to inform the defendant who are his accusers. When, however, the names of third persons cannot be ascertained, it is sufficient in some cases, to state "a certain person or persons to the jurors aforesaid unknown." Hawk. B. 2, c. 25, s. 71; 2 East, P. C. 651, 781; 2 Hale, 181; Plowd. 85; Dyer, 97, 286. 5thly, The *time* when the offence was committed, should in general be stated to be on a specific year and day. In some offences, as in perjury, the day must be precisely stated, 2 Wash. C. C. Rep. 328; but although it is necessary that a day certain should be laid in the indictment, yet, in general, the prosecutor may give evidence of an offence committed on any other day previous to the finding of the indictment. 5 Serg. & Rawle, 316. Vide 11 Serg. & Rawle, 177; 1 Chit. Cr. Law, 217, 224; 1 Chit. Pl. Index, tit. Time. 6thly, The *offence should be properly described.* This is done by stating the substantial circumstances necessary to show the nature of the crime; and, next, the formal allegations and terms of art required by law. 1. As to the substantial circumstances. The whole of the facts of the case necessary to make it appear judicially to the court that the indictors have gone upon sufficient premises, should be set forth; but there should be no unnecessary matter or any thing which on its face makes the indictment repugnant, inconsistent, or absurd. 2 Hale, 183; Hawk. B. 2, c. 25, s. 57; Bac. Ab. h. t. (G 1); Com. Dig. h. t. (G 3); 2 Leach, 660; 2 Str. 1226. All indictments ought to charge a man with a particular offence, and not with being an offender in general: to this rule there are some exceptions, namely, a common barrator, a common scold, and the keeper of a common bawdy-house, may be indicted by these general words. 1 Chit. Cr. Law, 230, and the authorities there cited. The offence must not be stated in the disjunctive, so as to leave it uncertain on what it is intended to rely as an accusation; as, that the defendant erected *or* caused to be erected a nuisance. 2 Str. 900; 1 Chit. Cr. Law, 236.—2. There are certain terms of art used, so appropriated by the law to express the precise idea which it entertains of the offence, that no other terms, however synonymous they may seem, are capable of filling the same office: such, for example, as traitorously, (q. v.) in treason; feloniously, (q. v.) in felony; burglariously, (q. v.) in burglary; maim, (q. v.) in mayhem, &c. 7thly, The conclusion of the indictment should conform to the provision of the constitution of the

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state on the subject, where there is such provision; as in Pennsylvania, Const. art. 5, s. 12, which provides, that "all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, *and conclude against the peace and dignity of the same.*" As to the necessity and propriety of having several counts in an indictment, vide 1 Chit. Cr. Law, 248; as to joinder of several offences in the same indictment, vide 1 Chit. Cr. Law, 253; Arch. Cr. Pl. 60; several defendants may in some cases be joined in the same indictment, Ib. 255; Arch. Cr. Pl. 59. When an indictment may be amended, see Ib. 297; Stark. Cr. Pl. 286; or quashed, Ib. 299; Stark. Cr. Pl. 331; Arch. Cr. 66. Vide, generally, Arch. Cr. Pl. B. 1, part 1, c. 1, p. 1 to 68; Stark. Cr. Pl. 1 to 336; 1 Chit. Cr. Law, 168 to 304; Com. Dig. h. t.; Vin. Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Nels. Ab. h. t.; Burn's Just. h. t.; Russ. on Cr. Index, h. t. By the constitution of the United States, Amendm. art. 5, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger.

INDICTOR. He who causes another to be indicted. The latter is sometimes called the indictee.

INDIVISUM. What two or more persons hold in common without partition; undivided, (q. v.)

INDORSEE, *contracts*, is the person in whose favour an indorsement is made. He is entitled to all the rights of the indorser, and, if the bill or note have been indorsed over to him before it became due, he is entitled to greater rights than the indorser would have had, had he retained it till it became due, as none of the parties can make a set-off or inquire into the consideration of the bill which he then holds. If he remains to be the holder (q. v.) when the bill becomes due, he ought to make a legal demand, and give notice in case of non-acceptance or non-payment. Chitty on Bills, *passim.*

INDORSEMENT, *criminal law and practice.* When a warrant for the arrest of a person charged with a crime has been issued by a justice of the peace of one county, which is to be executed in another county, it is necessary in some states, as in Pennsylvania, that it should be indorsed by a justice of the county where it is to be executed, this indorsement is called backing, (q. v.)

INDORSEMENT, *contracts*, in its most general acceptation is what is written on the back of an instrument of writing, and which has relation to it; as, for example, a receipt or acquittance on a bond; an assignment on a promissory note.

Writing one's name on the back of a bill of exchange or a promissory note payable to order is what is usually called an indorsement. It will be convenient to consider, 1, the form of an indorsement; and, 2, its effect.

1. An indorsement is in full or in blank. In full, when mention is made of the name of the indorsee; and in blank when the name of the indorsee is not mentioned. Chitty on Bills, 170; 13 Serg. & Rawle, 315. A blank indorsement is made by writing the name of the indorser on the back; a writing or assignment on the face of the note or bill would however be considered to have the force and effect of an indorsement. 16 East, R. 12.

Indorsements may also be restrictive, conditional or qualified. A restrictive indorsement may restrain the negociability of a bill by using

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express words to that effect, as by indorsing it "payable to J. S. only," or by using other words clearly demonstrating his intention to do so. Dougl. 637. The indorser may also make his indorsement conditional, and if the condition be not performed it will be invalid. 4 Taunt. Rep. 30. A qualified indorsement is one which passes the property in the bill to the indorsee, but is made without responsibility to the indorser, 7 Taunt. R. 160; the words commonly used are *sans recours*, without recourse. Chitty on Bills, 179.

2. The effects of a regular indorsement, may be considered, 1, as between the indorser and the indorsee; 2, between the indorser and the acceptor; and, 3, between the indorser and future parties to the bill.

1. An indorsement is sometimes an original engagement, as, when a man draws a bill payable to his own order, and indorses it; mostly, however, it operates as an assignment, as when the bill is perfect, and the payee indorses it over to a third person. As an assignment it carries with it all the rights which the indorsee had with a guaranty of the solvency of the debtor. This guaranty is nevertheless upon condition that the holder will use due diligence in making a demand of payment from the acceptor, and give notice of non-acceptance or non-payment. 13 Serg. & Rawle, 311.

2. As between the indorsee and the acceptor, the indorsement has the effect of giving to the former all the rights which the indorser had against the acceptor and all other parties liable on the bill, and it is unnecessary that the acceptor or other party should signify his consent or knowledge of the indorsement; and if made before the bill is due, it conveys all these rights without any set-off, as between the antecedent parties. Being thus fully invested with all the rights in the bill, the indorsee may himself indorse it to another, when he becomes responsible to all future parties as an indorser, as the others were to him.

3. The indorser becomes responsible by that act to all persons who may afterwards become party to the bill.

Vide Chitty on Bills, ch. 4; 3 Kent. Com. 58; Vin. Abr. Indorsement; Com. Dig. Fait E 2; 13 Serg. & Rawle, 311; Merl. Répert. mot Endossement; Pard. Droit, Com. 344–357.

INDORSER, *contracts*, is the person who makes an indorsement. The indorser of a bill of exchange or other negotiable paper by his indorsement undertakes to be responsible to the holder for the amount of the bill or note if the latter shall make a legal demand from the payer, and, in default of payment give proper notice thereof to the indorser. But the indorser may make his indorsement conditional, which will operate as a transfer of the bill, if the condition be performed; or he may make it qualified, so that he shall not be responsible on non-payment by the payer. Chitty on Bills, 179, 180. To make an indorser liable on his indorsement, the instrument must be commercial paper, for the indorsement of a bond or single bill will not, per se, create a responsibility. 13 Serg. & Rawle, 311.

INDUCEMENT, *pleading*, is the statement of matter which is introductory to the principal subject of the declaration or plea, &c. but which is necessary to explain and elucidate it; such matter as is not introductory to or necessary to elucidate the substance or gist of the declaration or plea, &c. nor is collaterally applicable to it, not being

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inducement but surplusage. Inducement or conveyance (which are synonymous terms) is in the nature of a preamble to an act of assembly, and leads to the principal subject of the declaration or plea, &c. the same as that does to the purview or providing clause of the act. For instance, in an action for a nuisance to property in the possession of the plaintiff, the circumstance of his being possessed of the property should be stated as inducement, or by way of introduction to the mention of the nuisance. Lawes, Pl. 66, 67; 1 Chit. Pl. 292; Steph. Pl. 257; 14 Vin. Ab. 405; 20 Ib. 345; 5 Bac. Ab. 404.

INDUCLÆ LEGALES, *Scotch law.* The days between the citation of the defendant, and the day of appearance. Bell's Scotch L. Dict. h. t.; the days between the test and the return day of the writ.

INDUCTION, *Eccl. law.* The giving a clerk instituted to a benefice, the actual possession of its temporalties, in the nature of livery of seisin. Ayl. Parerg. 299.

INEVITABLE ACCIDENT. A term used in the civil law, nearly synonymous with *fortuitous event*, (q. v.) In the common law commonly called the *act of God*, (q. v.)

INFAMY, *crim. law, evidence*, is that state which is produced by the conviction of crime and the loss of honour, which renders the infamous person incompetent as a witness. It is to be considered, 1st, what crimes or punishment incapacitate a witness; 2dly, how the guilt is to be proved; 3dly, how the objection is answered; and 4thly, the effect of incompetency.

1. When a man is convicted of an offence which is inconsistent with the common principles of honesty and humanity, the law considers his oath to be of no weight, and excludes his testimony as of too doubtful and suspicious a nature to be admitted in a court of justice to deprive another of life, liberty or property. Gilb. L. E. 256; 2 Bulst. 154; 1 Phil. 23; Bull. N. P. 291. The crimes which render a person incompetent are treason, 5 Mod. 16, 74; felony, 2 Bulst. 154; Co. Litt. 6; T. Raym. 369; all offences founded in fraud, and which come within the general notion of the crimen falsi of the Roman law, Leach, 496; as perjury and forgery, Co. Litt. 6; Fort. 209; piracy, 2 Roll. Ab. 886; swindling, cheating, Fort. 209; barretry, 2 Salk. 690; and the bribing a witness to absent himself from a trial, in order to get rid of his evidence, Fort. 208. It is the crime and not the punishment which renders the offender unworthy of belief. 1 Phil. Ev. 25.

2. In order to incapacitate the party, the judgment must be proved as pronounced by a court possessing competent jurisdiction. 1 Sid. 51; 2 Stark. C. 183; Stark. Ev. part 2, p. 144, note (1); Ib. part 4, p. 716.

3. The objection to competency may be answered 1st, by proof of pardon. See *Pardon*. And, 2dly, by proof of a reversal by writ of error, which must be proved by the production of the record.

4. The judgment for an infamous crime, even for perjury, does not preclude the party from making an affidavit with a view to his own defence, 2 Salk. 461; 2 Str. 1148; Martin's R. 45. He may, for instance, make an affidavit in relation to the irregularity of a judgment in a cause in which he is party, for otherwise he would be without a remedy. But the rule is confined to defence, and he cannot be heard upon oath as complainant, 2 Salk. 461; 2 Str. 1148. When the witness becomes incompetent from infamy of character, the effect is the same as if he were dead; and if he

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has attested any instrument as a witness, previous to his conviction, evidence may be given of his hand-writing. 2 Str. 833; Stark. Ev. part 2, sect. 193; Ib. part 4, p. 723.

INFANCY. The state or condition of a person under the age of twenty-one years. Vide *Infant.*

INFANT, *persons*, is one under the age of twenty-one years. Co. Litt. 171. But he is reputed to be twenty-one years old, or of full age, the first instant of the last day of the twenty-first year next before the anniversary of his birth; if, for example, a person were born at any hour of the first day of January, 1810, (even a few minutes before twelve o'clock of the night of that day,) he would be of full age at the first instant of the thirty-first of December, 1831, although nearly forty eight hours before he had actually attained the full age of twenty-one years, according to years, days, hours and minutes, because there is, in this case, no fraction of a day. 1 Sid. 162; S. C. 1 Keb. 589; 1 Salk. 44; Raym. 84; 1 Bl. Com. 463, 464, note (13) by Chitty; 1 Lilly's Reg. 57; Com. Dig. Enfant, A. The sex makes no difference, a woman is therefore an infant until she has attained her age of twenty-one years. Co. Litt. 171. Before arriving at full age an infant may do many acts. A *male* at fourteen is of discretion, and may consent to marry; and at that age he may disagree to and annul a marriage he may before that time have contracted; he may then choose a guardian; and, if his discretion be proved, may at common law make a will of his personal estate: at seventeen he may be an executor. A *female* at seven may be betrothed or given in marriage; at nine she is entitled to dower; at twelve may consent or disagree to marriage; and at seventeen may be an executrix. Considerable changes of the common law have probably taken place in many of the states. In Pennsylvania to be an executor the party must be of full age. In general an infant is not bound by his contracts, unless to supply him for necessaries. Selw. N. P. 137; Chit. Contr. 31; 3 Bac. Ab. 593; 9 Vin. Ab. 391; 1 Com. Contr. 150, 151; 3 Rawle's R. 351; 8 T. R. 335; 1 Keb. 905, 913; S. C. 1 Sid. 258; 1 Lev. 168; 1 Sid. 129; 1 Southard's R. 87. Sed vide 6 Cranch, 226; 3 Pick. 492; 1 Nott & McCord, 197. Or, unless he is empowered to enter into a contract, by some legislative provision; as with the consent of his parent or guardian to put himself apprentice, or to enlist in the service of the United States. 4 Binn. 487; 5 Binn. 423. The protection which the law gives an infant is to operate as a shield to him, to protect him from improvident contracts, but not as a sword to do injury to others. An infant is therefore responsible for his torts, as for slander, trespass, and the like: but he cannot be made responsible in an action ex delicto, where the cause arose on a contract. 3 Rawle's R. 351; 6 Watts's R. 9. But see contra, 6 Cranch, 226; 15 Mass. 359; 4 McCord, 387. He is also punishable for his crime, if of sufficient discretion, or *doli capax*. 1 Russ. on Cr. 2, 3. Vide, generally, Bingh. on Infancy; the various Abridgments and Digests, tit. Enfant, Infancy.

INFANTICIDE, *med. jurisp.* The murder of a new born infant. There is a difference between this offence and those known by the names of *prolicide*, (q. v.) and *fœticide*, (q. v.) To commit infanticide the child must be wholly born, it is not sufficient that it was born so far as the head and breathed, if it died before it was wholly born. 5 Carr.

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& Payn. 329; 24 Eng. C. L. Rep. 344, S. C.; 6 Carr. & Payn. 349; S. C. 25 Eng. C. L. Rep. 433. Vide Ryan's Med. Jur. 137.

INFEOFFMENT, *estates*. The act or instrument of feoffment, (q. v.) In Scotland it is synonymous with *sasine*, meaning the instrument of possession; formerly it was synonymous with investiture. Bell's Sc. L. Dict. h. t.

INFERIOR COURTS. By this term are understood all courts except the supreme courts.

INFIDEL, *persons*, *evidence*, is one who does not believe in the existence of a God, who will reward or punish in this world or that which is to come. Willes's R. 550. This term has been very indefinitely applied, and has been by different persons made to express almost opposite ideas. Under the name of infidel, Lord Coke comprises jews and heathens. 2 Inst. 506; 3 Inst. 165; and Hawkins includes among infidels such as do not believe either in the Old or New Testament. Hawk. P. C. b 2, c. 46, s. 148. It is now settled that when the witness believes in a God who will reward or punish him even in this world, he is competent. Willes, R. 550. His belief may be proved from his previous declarations and avowed opinions, and when he has avowed himself to be an infidel, he may show a reform of his conduct, and change of his opinion since the declarations proved; when the declarations have been made for a very considerable space of time, slight proof will suffice to show he has changed his opinion. There is some conflict in the cases on this subject, some of them are here referred to, 18 John. R. 98; 1 Harper, R. 62; 4 N. Hamp. R. 444; 4 Day's Cas. 51; 2 Cowen, R. 431, 433 n., 572; 7 Conn. R. 66; 2 Tenn. R. 96. Vide *Atheist*, *Future state*.

INFLUENCE. Authority, credit, ascendance. Influence is proper or improper. Proper influence is that which one person gains over another by acts of kindness and attention, and by correct conduct, 3 Serg. & Rawle, 269. Improper influence is that dominion acquired by any person over a mind of sanity for general purposes, and of sufficient soundness and discretion to regulate his affairs in general, which prevents the exercise of his discretion, and destroys his free will. 1 Cox's Cas. 355. When the former is used to induce a testator to make a will, it will not vitiate it, but when the latter is the moving cause, the will cannot stand. 1 Hagg. R. 581; 2 Hagg. 142; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323.

INFORMATION, is an accusation or complaint made in writing to a court of competent jurisdiction, charging some person with a specific violation of some public law. It differs in nothing from an indictment in its form and substance, except that it is filed at the discretion of the proper law officer of the government, *ex officio*, without the intervention or approval of a grand jury. 4 Bl. Com. 308, 9. Informations have for their object either to punish a crime or misdemeanor, and these have, perhaps, never been resorted to in the United States; or to recover penalties or forfeitures, which are quite common. Vide Blake's Ch. 49; 14 Vin. Ab. 407; 3 Story Const. § 1780; 3 Bl. Com. 261.

INFORMATION IN THE NATURE OF A WRIT OF QUO WARRANTO, *remedies*. The name of a proceeding against any one who usurps a franchise or office. Informations of this kind are filed in the highest courts of ordinary jurisdiction in the several states, either by the attorney-general, of his own

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authority, or by the prosecutor, who is entitled, pro forma, to use his name, as the case may be. 6 Cowen, R. 102, n.; 10 Mass. 290; 2 Dall. 112; 2 Halst. R. 101; 1 Rep. Const. Ct. (So. Car.) 36; 3 Serg. & Rawle, 52; 15 Serg. & Rawle, 127; though, in form, these informations are criminal, they are, in their nature, but civil proceedings. 3 T. R. 484; Kyd on Corp. 439; they are used to try a civil right, or to oust a wrongful possessor of an office. 3 Dall. 490; 1 Serg. & Rawle, 385. For a full and satisfactory statement of the law on this subject, the reader is referred to Angell on Corp. ch. 20, p. 469. And see *Quo Warranto.*

INFORMATUS NON SUM, *pleading, practice*, i. e., I am not informed; a formal answer made in court, or put upon record by an attorney, when he has no more to say in defence of his client.

INFORMER. A person who informs or prefers an accusation against another, whom he suspects of the violation of some penal statute. When the informer is entitled to the penalty or part of the penalty, upon the conviction of an offender, he is, or is not a competent witness, accordingly as the statute creating the penalty has or has not made him so. 1 Phil. Ev. 97; Rosc. Cr. Ev. 107; 5 Mass. R. 57; 1 Dall. 68; 1 Saund. 262, c. Vide articles, *Prosecutor, Rewards.*

INFORTIATUM, *civil law.* The second part of the Digest or Pandects of Justinian, is called *infortiatum*, see *Digestum infortiatum.* This part, which commences with the third title of the twenty-fourth book, and ends with the thirty-eighth book, was thus called because it was the middle part, which, it was said, was supported and fortified by the two others. Some have supposed that this name was given to it, because it treats of successions, substitutions and other important matters, and being more used than the others, produced greater fees to the lawyers.

INFRA PRÆSIDIA. This term is used in relation to prizes, to signify that they have been brought completely in the power of the captors that is within the towns, camps, ports or fleet of the captors. Formerly, the rule was, and perhaps still in some countries is, that the act of bringing a prize *infra præsidia*, changed the property, but the rule now established is, that there must be a sentence of condemnation to effect this purpose. 1 Rob. Adm. R. 134; 1 Kent's Com. 104; Chit. Law of Nat. 98; Abb. Sh. 14.

INFUSION, *med. jur.* A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance, whose medical properties it is desired to extract. *Infusion* is also used for the product of this operation. Although *infusion* differs from *decoction*, (q. v.) they are said to be *ejusdum generis*, and in the case of an indictment which charged the prisoner with giving a decoction, and the evidence was that he had given an infusion, the difference was held to be immaterial. 3 Camp. R. 74.

INGENUI, *civ. law*, were those freemen who were born free. They were a class of freemen, distinguished from those who, born slaves, had afterwards legally obtained their freedom; the latter were called at various periods, sometimes *liberti*, sometimes *libertini*. An unjust or illegal servitude did not prevent a man from being *ingenuus.*

INGRATITUDE is the forgetfulness of a kindness or benefit. In the civil law, ingratitude on the part of a legatee, was sufficient to defeat a legacy in his favour. There is no such rule in the common law. Ingratitude is not punishable by law.

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INGRESS, EGRESS AND REGRESS. These words are frequently used in leases to express the right of the lessee to enter, go upon, and return from the lands in question.

INGROSSING, *practice*, the act of copying from a rough draft a writing in order that it may be executed; as ingrossing a deed.

INHABITANT, one who has his domicil in a place is an inhabitant of that place; one who has an actual fixed residence in a place. A mere intention to remove to a place will not make a man an inhabitant of such place, although as a sign of such intention he may have sent his wife and children to reside there, 1 Ashm. R. 126; nor will his intention to quit his residence, unless consummated, deprive him of his right as an inhabitant. 1 Dall. 480. Vide 10 Ves. 339; 14 Vin. Ab. 420; 1 Phil. Ev. Index, h. t.; Const. of Mass. part 2, c. 1, s. 2, a. 1; Kyd on Corp. 321; Anal. des Pand. de Poth. mot Habitans; Poth. Pand. lib. 50, t. 1, s. 2.

INHERITANCE, *estates*, is a perpetuity in lands to a man and his heirs. The term inheritance includes not only lands and tenements which have been acquired by descent, but also every fee simple or fee tail, which a person has acquired by purchase, may be said to be an inheritance, because the purchaser's heirs may inherit it. Litt. sec. 9. Estates of inheritance are divided into inheritances absolute, or fee simple; and inheritances limited, one species of which is called fee tail. They are also divided into corporeal, as houses and lands; and incorporeal, commonly called incorporeal hereditaments, (q. v.) 1 Cruise Dig. 68; Sw. 163.

INHIBITION, *Scotch law*, is a personal prohibition which passes by letters under the signet, prohibiting the party inhibited to contract any debt, or do any deed, by which any part of the lands may be aliened or carried off, in prejudice of the creditor inhibiting. Ersk. Pr. L. Scot. B. 2, t. 2. s. 2. See *Diligences*.

INHIBITION, *Engl. law*, is the name of a writ which forbids a judge from further proceeding in a cause depending before him; it is in the nature of a prohibition. T. de la Ley; F. N. B. 39.

INITIAL, placed at the beginning. The initials of a man's name are the first letters of his name, as, G. W. for George Washington. When in a will the legatee is described by the initials of his name only, parol evidence may be given to prove his identity. 3 Ves. 148.

INITIALIA TESTIMONII, *Scotch law*. Before a witness can be examined in chief, he may be examined with regard to his disposition, whether he bear good or ill will towards either of the parties; whether he has been prompted what to say; whether he has received a bribe, and the like. This previous examination, which somewhat resembles our *voir dire* is called *initialia testimonii*.

INITIATIVE, *French law*. The name given to the important prerogative given by the *charte constitutionelle*, art. 16, to the king to propose through his ministers projects of laws. 1 Toull. n. 39.

INJUNCTION, *remedies, chancery practice*. An injunction is a prohibitory writ, specially prayed for by a bill, in which the plaintiff's title is set forth, restraining a person from committing or doing an act (other than criminal acts,) which appear to be against equity and conscience. Mitf. Pl. 124; 1 Madd. Ch. Pr. 126. Injunctions are of two kinds, the one called the writ remedial, and the other the judicial writ.

1. The former kind of injunction,

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or remedial writ, is in the nature of a prohibition, directed to, and controlling, not the inferior court but the party. It is granted when a party is doing or is about to do an act against equity or good conscience, or litigious or vexatious; in these cases the court will not leave the party to feel the mischief or inconvenience of the wrong, and in vain look for redress, but will interpose its authority to restrain such unjustifiable proceedings. Remedial injunctions are of two kinds, common or special. 1. It is common when it prays to stay proceedings at law, and will be granted of course; as, upon an attachment for want of an appearance, or of an answer; or upon a *dedimus* obtained by the defendant to take his answer in the country; or upon his praying for time to answer, &c. Newl. Pr. 92; 13 Ves. 323.—2. A special injunction is obtained only on motion or petition, with notice to the other party, and is applied for, sometimes on affidavit before answer, but more frequently upon the merits disclosed in the defendant's answer. Injunctions before answer are granted in cases of waste and other injuries of so urgent a nature, that mischief would ensue if the plaintiff were to wait until the answer were put in; but the court will not grant an injunction during the pendency of a plea or demurrer to the bill, for until that be argued, it does not appear whether or not the court has jurisdiction of the cause. The injunction granted in this stage of the suit, is to continue till answer or further order; the injunction obtained upon the merits confessed in the answer, continues generally till the hearing of the cause.

An injunction is generally granted for the purpose of preventing a wrong, or preserving property in dispute pending a suit. Its effect in general is only *in personam*, that is, to attach and punish the party if disobedient in violating the injunction. Ed. Inj. 363; Harr. Ch. Pr. 552.

The principal injuries which may be prevented by injunction relate to the *person*, to *personal property*, or to *real property*. These will be separately considered.

1. With respect to the *person*, the chancellor may prevent a breach of the peace by requiring sureties of the peace. A court of chancery has also summary and extensive jurisdiction for the protection of the *relative rights of persons*, as between husband and wife, parent and child, and guardian and ward; and in these cases on a proper state of facts, an injunction will be granted. For example, an injunction may be obtained by a parent to prevent the marriage of his infant son. 1 Madd. Ch. Pr. 348; Ed. Inj. 297; 14 Ves. 206; 19 Ves. 282; 1 Chit. Pr. 702.

2. Injunctions respecting *personal property* are usually granted, 1st, to restrain a partner or agent from making or negociating bills, notes, or contracts, or doing other acts injurious to the partner or principal. 3 Ves. Jr. 74; 3 Bro. C. C. 15; 2 Campb. 619; 1 Price, R. 503; 1 Mont. on Part. 93; 1 Madd. Ch. Pr. 160; Chit. Bills, 58, 61; 1 Hov. Supp. to Ves. Jr. *335; Woodd. Lect. 416.—2d. To restrain the negociation of bills or notes obtained by fraud, or without consideration. 8 Price, R. 631; Chit. Bills, 31 to 41; Ed. Inj. 210; Blake's Ch. Pr. 338; 2 Anst. 519; 3 Anst. 851; 2 Ves. Jr. 493; 1 Fonb. Eq. 43; 1 Madd. Ch. Pr. 154.—3d. To deliver up void or satisfied deeds. 1 V. & B. 244; 11 Ves. 535; 17 Ves. 111.—4th. To enter into and deliver a proper security. 1 Anst. 49.—5th. To prevent breaches of covenant or contract, and enjoin the per-

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formance of others. Ed. Inj. 308.—6th. To prevent a breach of confidence or good faith, or to prevent other loss; as, for example, to restrain the *disclosure of secrets*, which came to the defendant's knowledge in the course of any confidential employment. 1 Sim. R. 483; and see 1 Jac. & W. 394.—7th. To prevent improper sales, payments, or conveyances. Chit. Eq. Dig. tit. Practice, xlvii.—8th. To prevent loss or inconvenience; this can be obtained on filing a bill *quia timet*, (q. v.) 1 Madd. Ch. Pr. 218 to 225.—9th. To prevent waste of property by an executor or administrator. Ed. Inj. 300; 1 Madd. Ch. Pr. 160, 224.—10th. To restrain the infringement of patents; Ed. Inj. ch. 12; 14 Ves. 130; 1 Madd. Ch. Pr. 137; or of copyrights; Ed. Inj. ch. 13; 8 Ves. 225; 17 Ves. 424.—11th. To stay proceedings in a court of law. These proceedings will be stayed when justice cannot be done in consequence of accident. 1 John. Cas. 417; 4 John. Ch. R. 287, 294; Latch, 24, 146, 148; 1 Vern. 180, 247; 1 Ch. C. 77, 120; 1 Eq. Cas. Ab. 92; mistake, 1 John. Ch. R. 119, 607; 2 John. Ch. R. 585; 4 John. Ch. R. 85; Ib. 144; 2 Munf. 187; 1 Day's Cas. Err. 139; 3 Ch. R. 55; Finch, 413; 2 Freem. 16; Fitzg. 118; or fraud, 1 John. Ch. R. 402; 2 John. Ch. R. 512; 4 John. Ch. R. 65. But no injunction will be granted to stay proceedings in a criminal case. 2 John. Ch. R. 387; 6 Mod. 12; 2 Ves. 396.

3. Injunctions respecting real property may be obtained, 1st, to prevent wasteful trespasses or irreparable damages, although the owner may be entitled to retake possession, if he can do so, without a breach of the peace. 1 Chit. Pr. 722.—2d. To compel the performance of lawful works in the least injurious manner. 1 Turn. & Myl. 181.—3d. To prevent waste. 3 Tho. Co. Litt. 241, M; 1 Madd. Ch. Pr. 138; Ed. Inj. ch. 8, 9, and 10; 1 John. Ch. R. 11; 2 Atk. 183.—4th. To prevent the creation of a nuisance either private or public. 1. Private nuisance, for example, to restrain the owner of a house from making any erections or improvements, so as materially to darken or obstruct the ancient lights and windows of an adjoining house. 2 Russ. R. 121. 2. Public nuisances. Though usual to prosecute the parties who create nuisances by indictment, yet in some cases an injunction may be had to prevent the creating of such nuisance. 5 Ves. 129; 1 Madd. Ch. 156; Ed. Inj. ch. 11.

2d. An injunction of the second kind called the *judicial writ* issues subsequently to a decree. It is a direction to yield up, to quit, or to continue possession of lands, and is properly described as being in the nature of an execution. Ed. Inj. 2.

Injunctions are also divided into temporary and perpetual. 1. A temporary injunction is one which is granted until some stage of the suit shall be reached, as, until the defendant shall file his answer; until the hearing; and the like. 2. A perpetual injunction is one which is issued when in the opinion of the court, at the hearing, the plaintiff has established a case, which entitles him to an injunction; or when a bill praying for an injunction is taken pro confesso; in such cases a perpetual injunction will be decreed. Ed. Inj. 253.

Vide, generally, Eden on Injunctions; 1 Madd. Ch. Pr. 125 to 165; Blake's Ch. Pr. 330 to 344; 1 Chit. Pr. 701 to 731; Coop. Eq. Pl. Index, h. t.; Redesd. Pl. Index, h. t.; Smith's Ch. Pr. h. t.; 14 Vin. Ab. 442; 2 Hov. Supp. to Ves. Jr. 173, 434, 442; Com. Dig. Chancery, D 8; Newl. Pr. ch. 4, s. 7.

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INJURY, a wrong or tort. Injuries are divided into public and private; and they affect the person, personal property or real property. 1. They affect the *person* absolutely or relatively; the *absolute* injuries are threats and menaces, assaults, batteries, wounding, mayhems; injuries to health, by nuisances or medical malpractices; those affecting reputation are verbal slander, libels, and malicious prosecutions; and those affecting personal liberty are false imprisonment and malicious prosecutions. The *relative* injuries are those which affect the right of a husband; these are abduction and harbouring, adultery and battery:—those which affect the rights of a parent, as abduction, seduction and battery;—and of a master, seduction, harbouring and battery of his apprentice or servant. Those which conflict with the right of the inferior relation, namely, the wife, child, apprentice or servant; they are withholding conjugal rights, maintenance, wages, &c. 2. Injuries to *personal property*, are the unlawful taking and detention thereof from the owner; and other injuries, are some damage affecting the same while in the claimant's possession or that of a third person, or injuries to his reversionary interests.—3. Injuries to *real property* are ousters, trespasses, nuisances, waste, subtraction of rent, disturbance of right of way, and the like.

The remedies are different as the injury affects private individuals, or the public. 1. When the injuries affect a private right and a private individual, (although often also affecting the public) there are three descriptions of remedies; first, the preventive, such as defence, resistance, recaption, abatement of nuisance, surety of the peace, injunction, &c.: secondly, remedies for compensation, which may be by arbitration, suit, action, or summary proceedings before a justice of the peace: thirdly, proceedings for punishment, as by indictment, or summary proceedings before a justice. 2. When the injury is such as to affect the public, it becomes a crime, misdemeanor, or offence, and the party may be punished by indictment, or summary conviction, for the public injury; and by civil action, at the suit of the party, for the private wrong. But in cases of felony the remedy by action for the private injury is generally ***suspended*** until the party particularly injured has fulfilled his duty to the public by prosecuting the offender for the public crime; and in cases of homicide the remedy is ***merged*** in the felony. 1 Chit. Pr. 10; Ayl. Pand. 592; and article *Civil Remedy*.

INJURY, *in the Scotch law*, is the reproaching or affronting our neighbour. Injuries are verbal or real. A *verbal* injury when directed against a private person consists in the uttering contumelious words, which tend to expose our neighbour's character by making him little or ridiculous. Where the offensive words are uttered in the heat of a dispute, and spoken to the person's face, the law does not presume any malicious intention in the utterer, whose resentment generally subsides with his passion; and yet, even in that case, the truth of the injurious words seldom absolves entirely from punishment. Where the injurious expressions have a tendency to blacken one's moral character, or fix some particular guilt upon him, and are deliberately repeated in different companies, or handed about in whispers to confidants, it then grows up to the crime of slander, agreeably to the distinction of the Roman law, l. 15, § 12, *de injur.* A *real* injury is inflicted by any fact by which a person's honour or dignity

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is affected; as striking one with a cane, or even aiming a blow without striking; spitting in one's face; assuming a coat of arms, or any other mark of distinction proper to another, &c. The composing and publishing defamatory libels may be reckoned of this kind. Ersk. Pr. L. Scot. 4, 4, 45.

INLAND, within the same country. It seems not to be agreed whether the term inland applies to all the United States or only to one state. It has been holden in New York that a bill of exchange by one person in one state, on another person in another, is an inland bill of exchange, 5 John. Rep. 375; but a contrary opinion seems to have been held in the circuit court of the United States for Pennsylvania. Whart. Dig. tit. Bills of Exchange, E, pl. 78. Vide 2 Phil. Ev. 36, and *Bills of Exchange.*

INLAGARE. To admit or restore to the benefit of law.

INLAGATION. The restitution of one outlawed to the protection of the law. Bract. lib. 2, c. 14.

INMATE, is one who dwells in a part of another's house, the latter dwelling, at the same time, in the said house. Kitch. 45, b; Com. Dig. Justices of the Peace, B. 85.

INN. A house where a traveller is furnished with every thing he has occasion for while on his way. 3 B. & A. 283; 4 Campb. 77; 2 Chit. Rep. 484; 3 Chit. Com. Law, 365, n. 6.

INNINGS, *estates.* Lands gained from the sea by draining. Cunn. L. Dict. h. t.; Law of Sewers, 31.

INNKEEPER, is defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. 3 Bac. Ab. 662; Story, Bailm. § 475. His duties will be first considered; and, secondly, his rights.

1. He is bound to take in and receive all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. He is liable only for the goods which are brought within the inn. 8 Co. 32; Jones's Bailm. 91. A delivery of the goods into the custody of the innkeeper is not, however, necessary, in order to make him responsible; for although he may not know any thing of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person, 8 Co. 32; Hayw. N. C. R. 41; 14 John. R. 175; 1 Bell's Com. 469; and if he receive the guest, the custody of the goods may be considered as an accessory to the principal contract; and the money paid for the apartments as extending to the care of the box and portmanteau. Jones's Bailm. 94; Story, Bailm. § 470; 1 Bl. Com. 430; 2 Kent, Com. 458 to 463. The degree of care which the innkeeper is bound to take is uncommon care, and he will be liable even for a slight negligence. He is responsible for the acts of his domestics and servants as well as for the acts of his other guests, if the goods are stolen or lost; but he is not responsible for any tort or injury done by his servants or others to the person of his guest without his own cooperation or consent. 8 Co. 32. The innkeeper will be excused whenever the loss has occurred through the fault of the guest. Story, Bailm. § 483; 4 M. & S. 306; S. C. 1 Stark. R. 251, note; 2 Kent, Com. 461; 1 Yeates's R. 34.

2. The innkeeper is entitled to a just compensation for his care and trouble in taking care of his guest and his property; and to enable him

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to obtain this, the law invests him with some peculiar privileges, giving him a lien upon the goods, and, it is said, upon the person of his guest, for his compensation. 3 B. & Ald. 287; 8 Mod. 172; 1 Shower, R. 270; 3 Bac. Ab. 667. But the horse of the guest can be detained only for his own keeping, and not for the boarding and personal expenses of the guest. 3 Bac. Ab. 668. The landlord may also bring an action for the recovery of his compensation.

Vide, generally, 1 Vin. Ab. 224; 14 Vin. Ab. 436; Bac. Ab. h. t.; Yelv. 67, a, 162, a; 2 Kent, Com. 458; Ayl. Pand. 266.

INNOCENCE, the absence of guilt. The law always presumes in favour of innocence, even against another presumption of law: for example, when a woman marries a second husband within the space of twelve months after her husband had left the country, the presumption of innocence preponderates over the presumption of the continuance of life. 2 B. & A. 386; 3 Stark. Ev. 1249.

INNOVATION, change of a thing established for something new. Innovations are said to be dangerous, as likely to unsettle the common law. Co. Litt. 379, b; Ib. 282, b; certainly no innovations ought to be made by the courts, but as every thing human is mutable, no legislation can be, or ought to be immutable; changes are required by the alteration of circumstances; amendments, by the imperfection of all human institutions; but laws ought never to be changed without great deliberation, and a due consideration of the reasons on which they were founded, as of the circumstances under which they were enacted. Many innovations have been made in the common law, which philosophy, philanthropy and common sense approve. The destruction of the *benefit of clergy*; of *appeal*, in felony; of *trial by battle and ordeal*; of the right of *sanctuary*; of the privilege to *abjure the realm*; of *approvement*, by which any criminal who could in a judicial combat, by skill, force or fraud kill his accomplice, secured his own pardon; of *corruption of blood*; of *constructive treason*; will be sanctioned by all wise men, and none will desire a return to these barbarisms.

INNOVATION, *Scotch law*. The exchange of one obligation for another, so that the second shall come in the place of the first. Bell's Scotch Law Dict. h. t. The same as *Novation*, (q. v.)

INNS OF COURT, *Engl. law*. The name given to the colleges of the English professors and students of the common law. The four principal inns of court are the Inner Temple and Middle Temple, (formerly belonging to the Knights Templars) Lincoln's Inn, and Gray's Inn, (anciently belonging to the earls of Lincoln and Gray). The other inns are the two Sergeants' Inns. The Inns of Chancery were probably so called because they were once inhabited by such clerks, as chiefly studied the forming of writs, which regularly belonged to the cursitors, who are officers of chancery. These are Thavie's Inn, the New Inn, Symond's Inn, Clement's Inn, Clifford's Inn, Staple's Inn, Lion's Inn, Furnival's Inn and Bernard's Inn. Before being called to the bar, it is necessary to be admitted to one of the Inns of Court.

INNUENDO, *pleading*, is an averment which explains the defendant's meaning by reference to antecedent matter. Salk. 513; 1 Ld. Raym. 256; 12 Mod. 139; 1 Saund. 243. The innuendo is mostly used in actions for slander. An innuendo, as, " he (the said plaintiff meaning)

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is only explanatory of some matter expressed, it serves to apply the slander to the precedent matter, but cannot add or enlarge, extend, or change the sense of the previous words, and the matter to which it alludes must always appear from the antecedent parts of the declaration or indictment. 1 Chit. Pl. 383; 3 Caines's Rep. 76; 7 Johns. R. 271; 5 Johns. R. 211; 8 Johns. R. 109. It is necessary only when the intent may be mistaken, or when it cannot be collected from the libel or slander itself. Cowp. 679; 5 East, 463. If the innuendo materially enlarge the sense of the words it will vitiate the declaration or indictment. 6 T. R. 691; 5 Binn. 218; 5 Johns. R. 220; 6 Johns. R. 83; 7 Johns. R. 271. But when the new matter stated in an innuendo is not necessary to support the action, it may be rejected as surplusage. 9 East, 95; 7 Johns. R. 272. Vide generally, Stark. on Sland. 293; 1 Chit. Pl. 383; 3 Chit. Cr. Law, 873; 6 Bac. Ab. 249; 1 Saund. 243, n. 4; 4 Com. Dig. 712; 14 Vin. Ab. 442; Dane's Ab. Index, h. t.; 4 Co. 17.

INOFFICIOUS, *in civil law.* Those dispositions, which fathers, mothers, and other ascendants make of their property to the prejudice of their descendants, beyond the proportion reserved to them by law, are called inofficious. Civ. Code of Lo. art. 2522, No. 21. Such a disposition of property is void. Vide Dig. 5, 2, 5; Inst. 2, 18, 1; Code, 3, 29; Nov. 115; Ayl. Pand. 405.

INQUIRY, WRIT OF. Vide *Writ of Inquiry.*

INQUISITION, *practice*, is an examination of certain facts by a jury impanelled by the sheriff for the purpose; the instrument of writing on which their decision is made is also called an inquisition. The sheriff and the jury who make the inquisition, are called the inquest.

INSANITY, *med. jur.* is a continued impetuosity of thought, which *totally* unfits a man for judging and acting with the composure requisite for the maintenance of the social relations of life. Various other definitions of this state have been given, but perhaps the subject is not susceptible of any satisfactory definition, which shall, with precision, include all cases of insanity, and exclude all others. It may be considered in a threefold point of view: 1, a chronic disease, manifested by deviations from the healthy and natural state of the mind, such deviations consisting in a morbid perversion of the feelings, affections and habits; 2, disturbances of the intellectual faculties, under the influence of which the understanding becomes susceptible of hallucinations or erroneous impressions of a particular kind; 3, a state of mental incoherence or constant hurry and confusion of thought. Cyclop. Practical Medecine, h. t.; Brewster's Encyclopædia, h. t.; Observations on the Deranged Manifestations of the Mind, or Insanity, 71, 72; Merl. Répert. mots Démence, Folie, Imbécilité. Insanity is an excuse for the commission of those acts which in others would be crimes, because the insane man has no intention; it deprives a man also from entering into any valid contract. Vide *Lunacy*, *Non compos mentis*, and Stock on the Law of Non Compotes Mentis.

INSCRIPTIONES. The name given by the old English law to any written instrument by which any thing was granted. Blount.

INSCRIPTION, *evidence*, something written or engraved. Inscriptions upon tombstones and other proper places, as rings, and the like, are held to be evidence of pedigree, Bull. N. P. 233; Cowp. 591; 10 East, 120; 13 Ves. 145; Vin. Ab. Ev. T. b, 87; 3 Stark. Ev. 1116.

INSIDIATORES VIARUM, are

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persons who lie in wait, in order to commit some felony or other misdemeanour.

INSIMUL COMPUTASSENT, *practice, actions*, they accounted together. When an account has been stated, and a balance ascertained between the parties, they are said to have computed together, and the amount due may be recovered in an action of assumpsit, which could not have been done, if the defendant had been the mere bailiff or partner of the plaintiff, and there had been no settlement made, for in that case, the remedy would be an action of account render, or a bill in chancery. It is usual in actions of assumpsit, to add a count commonly called *insimul computassent*, or an *account stated*, (q. v.) Lawes on Pl. in Ass. 488.

INSINUATION, *civil law*, consisted in the transcription of an act on the public registers, like our recording of deeds. It was not necessary in any other alienation, but that appropriated to the purpose of donation. Inst. 2, 7, 2; Poth. Traité des Donations, entre vifs, sect. 2. art. 3, § 3; Encyclopédie; 8 Toull. n. 198.

INSOLVENT, this word has several meanings. It signifies a person whose estate is not sufficient to pay his debts. Civ. Code of Louisiana, art. 1980. A person is also said to be insolvent, who is under a present inability to answer, in the ordinary course of businesss, the responsibilities which his creditors may enforce, by recourse to legal measures, without reference to his estate proving sufficient to pay all his debts, when ultimately wound up. 3 Dowl. & Ryl. Rep. 218; 1 Maule & Selw. 338; 1 Campb. R. 492, n; Sugd. Vend. 487, 488. It signifies the situation of a person who has done some notorious act to divest himself of all his property, as a general assignment, or an application for relief, under bankrupt or insolvent laws. 1 Peters's R. 195; 2 Wheat. R. 396; 7 Toull. n. 45; Domat, liv. 4, t. 5, n. 1 et 2. When an insolvent delivers or offers to deliver up all his property for the benefit of his creditors, he is entitled to be discharged under the laws of the several states, from all liability to be arrested. Vide 2 Kent, Com. 321; Ingrah. on Insolv. 9; 9 Mass. R. 431; 16 Mass. R. 53.

The following acts of the national legislature, will give a view of the relief granted to insolvent debtors under the laws of the United States, and also of the rights which are secured to the United States out of the estates of insolvent debtors.

§ 1. Act of March 3, 1797, 1 Story's L. U. S. 465.

Sect. 5. That where any revenue officer, or other person, hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor, in the hands of executors or administrators, shall be insufficient to pay all the debts due from the deceased, the debt due to the United States shall be first satisfied; and the priority hereby established shall be deemed to extend, as well to cases in which a debtor not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor, shall be attached by process of law, as to cases in which an act of legal bankruptcy shall be committed.

§ 2. Act of March 2, 1799, 1 Story's L. U. S. 630.

Sect. 65. That where any bond for the payment of duties shall not be satisfied on the day it may become due, the collector shall, forthwith and without delay, cause a prosecu-

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tion to be commenced for the recovery of the money thereon, by action or suit at law, in the proper court having cognizance thereof; and in all cases of insolvency, or where any estate in the hands of the executors, administrators or assignees, shall be insufficient to pay all the debt due from the deceased, the debt or debts due to the United States, on any such bond or bonds, shall be first satisfied; and any executor, administrator or assignees, or other person, who shall pay any debt due by the person or estate from whom, or for which they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall become answerable, in their own person and estate, for the debt or debts so due to the United States, or so much thereof as may remain due and unpaid; and actions or suits at law may be commenced against them, for the recovery of the said debt or debts, or so much thereof as may remain due and unpaid, in the proper court having cognizance thereof: Provided, That in all cases in which suits or prosecutions shall be commenced for the recovery of duties, or pecuniary penalties, prescribed by the laws of the United States, the person or persons against whom process may be issued, shall and may be held to special bail, subject to the rules and regulations which prevail in civil suits in which special bail is required: And provided, also, That if the principal in any bond which shall be given to the United States for duties on goods, wares or merchandise imported, or other penalty, either by himself, his factor, agent, or other person for him, shall be insolvent, or if such principal being deceased, his or her estate and effects, which shall come to the hands of his or her executors, administrators or assignees, shall be insufficient for the payment of his or her debts, and if, in either of the said cases, any surety on the said bond or bonds, or the executors, administrators, or assignees, of such surety, shall pay to the United States the money due upon such bond or bonds, such surety, his or her executors, administrators, or assignees, shall have and enjoy the like advantage, priority or preference, for the recovery and receipt of the said moneys, out of the estate and effects of such insolvent, or deceased principal, as are reserved and secured to the United States; and shall and may bring and maintain a suit or suits, upon the said bond or bonds, in law or equity, in his, her, or their, own name, or names, for the recovery of all moneys paid thereon. And the cases of insolvency mentioned in this section, shall be deemed to extend, as well to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, for the benefit of his or her creditors, or in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law, as to cases in which an act of legal bankruptcy shall have been committed. And where suit shall be instituted on any bond, for the recovery of duties due to the United States, it shall be the duty of the court, where the same may be pending, to grant judgment at the return term, upon motion, unless the defendant shall, in open court, the United States' attorney being present, make oath or affirmation that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified, in writing, to the collector of the district, prior to the commence-

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ment of the return term aforesaid; whereupon, if the court be satisfied that a continuance, until the next succeeding term, is necessary for the attainment of justice, and not otherwise, a continuance may be granted until next succeeding term, and no longer. And on all bonds upon which suits shall be commenced, an interest shall be allowed, at the rate of six per cent. per annum, from the time when said bonds become due until the payment thereof.

§ 3. Act of March 2, 1831, 4 Sharsw. cont. of Story L. U. S. 2236.

Sect. 1. *Be it enacted, &c.* That any person who was an insolvent debtor, on or before the first day of January last, and who is indebted to the United States for any sum of money then due, which he is unable to pay, unless such person be indebted as the principal in an official bond, or for public money received by him, and not paid over or accounted for according to law, or for any fine, forfeiture or penalty, incurred by the violation of any law of the United States, may make application in writing, under oath or affirmation, to the secretary of the treasury, for the purpose of obtaining a release or discharge of the said debt; which application shall state, as near as may be, the time when the applicant became insolvent, how soon thereafter he made known his insolvency to his creditors, the cause or causes, and the amount of such insolvency; and also, all the estate, real and personal, which the said applicant owned at the time of his insolvency, and the manner in which such estate has been disposed of; and what estate, if any, he has since owned, and still owns.

2. That the secretary of the treasury is hereby directed to transmit to the district attorney of the United States, for the district or territory within which the said applicant shall reside, a certificate copy of the said application, with such instructions as he may think proper; and it shall be the duty of the said district attorney, to lay the said copy of such application before the commissioner or commissioners of insolvency to be appointed by virtue of this act, and to appear and act before them as counsel in behalf of the United States.

3. That the secretary of the treasury is hereby authorised and directed to appoint any number of commissioners of insolvency he may think proper, not exceeding three in each judicial district or territory of the United States, who, before they enter upon the duties of their appointment, shall severally take an oath or affirmation before one of the justices of the supreme court, or before any judge of a district court of the United States, that they will faithfully execute the trust committed to them: and it shall be the duty of the said commissioner or commissioners to proceed publicly to examine the books, papers and vouchers of each of the said applicants; and they, or either of them, shall also be authorised to examine each of the said applicants, or any other person or persons upon oath or affirmation, touching the said application; and it shall be the duty of the said commissioner or commissioners to make a report, in writing, to the said secretary, of the result of their examination in each case, therein particularly stating, as near as may be, the time when the applicant became insolvent, how soon thereafter, he made known his insolvency to his creditors, the cause or causes, and the amount of such insolvency; and, also, all the estate, real and personal, which the said applicant owned at the time of his insolvency, and the manner in which such estate

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has been disposed of; and what estate, if any, he has since owned, and still owns.

4. That the secretary of the treasury, after he shall have received the report of the said commissioner or commissioners, shall proceed to examine the circumstances of each case; and if it shall have been proved to his satisfaction that the said debtor is unable to pay the said debt or debts which he owes to the United States; that he hath done no act fraudulently to deprive the United States of their legal priority; that he has not been guilty of any fraud, nor made any conveyance of his estate, real or personal, in trust for himself, or with an intent to defraud the United States, or whereby to expect any benefit or advantage to himself or family; then and in that case, the said secretary may compromise with the said debtor, upon such terms and conditions as he may think reasonable and proper under all the circumstances of the case, and may execute a release to him or her for the amount of the said debt or debts which he or she may owe to the United States; which said release shall contain a recital that the foregoing particulars have been satisfactorily proved to the said secretary: *Provided, however*, That the said release shall be rendered null and void, if it shall at any time be ascertained that the said insolvent debtor hath obtained the same upon false suggestions.

5. That if the said insolvent debtor, or any other person, shall falsely take an oath or affirmation under this act, he or she shall be deemed guilty of perjury, and shall suffer the pains and penalties in that case provided.

6. That each of the said commissioners of insolvency shall receive five dollars per day for each day they shall be actually employed in the performance of their duty under this act; which sum together with the actual expense incurred for office rent and all other contingencies, provided the same shall not, in the whole, exceed two dollars per day, shall be apportioned among the several applicants by the said commissioner or commissioners, under the direction of the secretary of the treasury, according to the time occupied in the investigation of each case; and each of the said applicants, immediately after the investigation of his or her case shall be completed, by the commissioner or commissioners, and before the report shall be transmitted to the said secretary, shall pay his or her respective proportions of the same: and it shall be the duty of the said commissioner or commissioners to transmit with his or their report, in each case, a statement, under oath or affirmation, to the said secretary, of the time actually occupied in the investigation thereof and the amount which they shall have received from the said applicant.

7. That the compensation to be paid to the district attorney of each district and territory shall be five dollars for each day he shall be actually employed under the provisions of this act.

8. That it shall be the duty of the secretary of the treasury to report annually to congress the names of the applicants under this act, and the nature and amount of the debt or debts due from each to the United States; and, also, the names of those who shall have obtained releases, together with the terms of compromise in each case.

9. That the sum of five thousand dollars be, and the same is hereby appropriated, to be paid out of any money not otherwise appropriated, for the purpose of carrying into effect the provisions of this act.

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10. That this act shall continue in force for three years, and no longer.

§ 4. Act of July 14, 1832, 4 Sharsw. cont. of S. L. U. S. 2327.

Sect. 1. *Be it enacted, &c.* That all and each of the provisions of the act to which this is an addition, shall be extended to every person who was a debtor to the United States on the first day of January, one thousand eight hundred and thirty-one, in any sum of money which he is unable to pay, unless such person be indebted as the principal in an official bond, or for public money received by him, and not paid over or accounted for according to law; or for any fine, forfeiture, or penalty, incurred by the violation of any law of the United States.

2. That, in all such cases of indebtedness as are described in the fourth section of the act to which this is an addition, the secretary of the treasury may, according to his discretion, execute to the debtor of the United States a release, as mentioned therein, without any payment by said debtor, if the secretary of the treasury is satisfied that said debtor is unable to pay any part of said debt.

3. That nothing contained in this act, or in the act of which it is an amendment,, shall be construed to entitle any government debtor to be discharged, until it shall appear to the satisfaction of the secretary of the treasury, that the sureties of such debtor are unable to pay the said debt, and that they are entitled to the provisions of this act, in like manner as the said principal debtor shall be entitled to the same, or, unless said sureties shall file their consent in writing, with the secretary of the treasury, that the privileges of this act, and the act to which this is an amendment, may be extended to their principal without any prejudice to their liability, or unless such discharge can and shall be given in such manner as not to affect the legal liability of such sureties.

4. That there be, and hereby is, appropriated the sum of five thousand dollars, out of any unappropriated moneys in the treasury, to carry into effect this act, and that of which it is an amendment.

§ 5. Act of June 7th, 1834, 4 Sharsw. cont. of Story's L. U. S. 2368.

Sect. 1. *Be it enacted, &c.* That an act, entitled "An act for the relief of certain insolvent debtors of the United States," passed on the second day of March, eighteen hundred and thirty-one, and an act in addition thereto, passed on the fourteenth day of July, eighteen hundred and thirty-two, which said acts expired on the second day of March, eighteen hundred and thirty-four, be, and the same are hereby revived, and shall continue in force for three years from and after the passage of this act.

2. That if any surety, or co-surety, of any debtor who is, or shall become, an applicant for relief under the provisions of the act recited in the preceding section of this act, shall be dead, the consent of the legal representative or representatives of such deceased surety, or co-surety, shall be received, and entitle the applicant to relief, in like manner as the consent of a living surety, or co-surety, would do by the provisions of the third section of the act of the fourteenth of July, eighteen hundred and thirty-two: and if the surety, or co-surety, of any such debtor shall be absent in parts unknown, or if the consent of the legal representative or representatives of any deceased surety or co-surety, cannot be obtained, and the property or estate of any such deceased or absent surety or co-surety, shall not be sufficient to pay the debt due to

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the United States, and the secretary of the treasury shall be satisfied by proof of these facts, he shall be authorised in all such cases, to grant such relief or discharge as the debtor applying for the same may be entitled to, according to the provisions of the acts which this act is intended to revive and amend, upon the condition that such debtor shall not be discharged thereby from his or her legal liability to such absent surety, or co-surety, or to the estate of such deceased debtor, for any part of the debt due to the United States, which may thereafter, be paid by or out of the estate of any such absent or deceased surety, or co-surety.

3. That all discharges which have heretofore been granted by the secretary of the treasury to any principal debtor, with the consent of the legal representative or representatives of any deceased surety, or co-surety, shall be as valid as though such surety or co-surety, had been alive, and his or her consent obtained, according to the letter of the third section of the act of the fourteenth of July, eighteen hundred and thirty-two.

4. That the secretary of the treasury shall be authorised to cause satisfaction to be entered upon all judgments against such insolvents as have heretofore been, or may hereafter be, relieved from the provisions of the acts which this act is intended to revive and amend; or under any other and former act of congress for the relief of persons imprisoned for debts due to the United States: *Provided*, The district judge of the district in which such judgments are on record, shall certify that he is satisfied that the debtor is possessed or entitled to no property liable to be applied to the satisfaction of said judgments, and that the interest of the government does not require that such judgments should remain unsatisfied. In every case of application for such certificate to a judge at his chambers, ten days' notice shall be given to the district attorney for the district when the application is made.

§ 6. Act of March 2nd, 1837, 4 Sharsw. cont. of Story's L. U. S. 2536.

Sect. 1. *Be it enacted, &c.* That the act entitled "An act for the relief of certain insolvent debtors of the United States," passed on the second day of March, one thousand eight hundred and thirty-one, and an act in addition thereto, passed on the fourteenth day of July, one thousand eight hundred and thirty-two, and an act to revive and amend the said acts, passed on the seventh day of June, one thousand eight hundred and thirty-four, be, and the same are hereby extended and continued in force for three years from and after the passage of this act.

2. That the provisions of the said several acts shall apply to cases of insolvency which shall have occurred on or before the first day of January last.

INSPECTION, *practice*. Examination. The inspection of all public records is free to all persons who have an interest in them, upon payment of the usual fees. 7 Mod. 129; 1 Str. 304; 2 Str. 260, 954, 1005. But it seems a mere stranger who has no such interest, has no right at common law. 8 T. R. 390. Vide *Trial by inspection*.

INSPECTOR. The name given to certain officers, whose duties are to examine and inspect into things over which they have jurisdiction; as, inspector of bark, one who is by law authorised to examine bark for exportation, and to approve or disapprove of its quality. Inspectors of customs are officers appointed by the general government: as to their duties, see Story's L. U. S. vol. i.

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590, 605, 609, 610, 612, 619, 621, 623, 650; ii. 1490, 1516; iii. 1650, 1790.

INSPEXIMUS, we have seen. A word sometimes used in letters patent, reciting a grant, *inspeximus* such former grant, and so reciting it verbatim, it then grants such further privileges as are thought convenient.

INSTALLATION OR INSTALMENT, is the act by which an officer is put in public possession of the place he is to fill. The president of the United States, or the governor, is installed into office, by being sworn agreeably to the requisition of the constitution and the laws. Vide *Inauguration*.

INSTALMENT, *contracts*, is a part of a debt due by one contract, agreed to be paid at a time different from that fixed for the payment of the other part. For example, if I engage to pay you one thousand dollars, in two payments, one on the first day of January, and the other on the first day of July, each of these payments or obligations to pay will be an instalment. In such case each instalment is a separate debt so far that it may be tendered at any time, or the first may be sued for although the other shall not be due. Dane's Ab. vol. iii. ch. 93, art. 3, s. 11, page 493, 4; 1 Esp. R. 129; Ib. 226; 3 Salk. 6, 18; 2 Esp. R. 235; 1 Maule & Selw. 706. A debtor who by failing to pay three instalments of rent due on a lease would forfeit his estate, may, in order to save it, tender one instalment to prevent the forfeiture, although there may be two due at the time, and he is not bound to tender both. 6 Toull. n. 688.

INSTANCE, *French law*. It signifies generally all sorts of actions and judicial demands.

INSTANCE COURT, *Eng. law*. The English court of admiralty is divided into two distinct tribunals; the one having generally all the jurisdiction of the admiralty, except in prize cases, is called the *instance court*; the other, acting under a special commission, distinct from the usual commission given to judges of the admiralty, to enable the judge in time of war, to assume the jurisdiction of prize, and called *prize court*. In the United States the District Courts of the U. S. possess all the powers of courts of admiralty, whether considered as instance or prize courts. 3 Dall. R. 6. Vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 4 & 5; 1 Kent, Com. 355, 378.

INSTANT. An indivisible space of time. Although it cannot be actually divided, yet by intendment of law, it may, and be applied to several purposes; for example, he who lays violent hands upon himself, commits no felony till he is dead, and when he is dead he is not in being so as to be termed a felon; but he is so adjudged in law, *eo instante*, at the very instant this fact is done. Vin. Ab. Instant, A, pl. 2; Plowd. 258; Co. Litt. 18; Show. 415.

INSTANTER, immediately, presently. This term, it is said, means that the act to which it applies, shall be done within twenty-four hours; but a doubt has been suggested by whom is the account of the hours to be kept, and whether the term instanter as applied to the subject-matter may not be more properly taken to mean "before the rising of the court," when the act is to be done in court; or, "before the shutting of the office the same night," when the act is to be done there. 1 Taunt. R. 343; 6 East, R. 587 n. (e); Tidd's Pr. (3d ed.) 508, n.; 3 Chit. Pr. 112. Vide, 3 Burr. 1809; Co. Litt. 157.

INSTIGATION, is the act by

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which one excites another to do something, as to injure a third person, or to commit some crime or misdemeanor, to commence a suit or to prosecute a criminal. Vide *Accomplice.*

INSTITOR, *civil law.* A person to whom the immediate management of any manufactory, ship, or undertaking was committed. A mercantile consignee or factor, is in this sense an *institor.*

INSTITUTE, in the Scotch law, is the person first called in the tailzie; the rest or the heirs of tailzie are called substitutes. Ersk. Pr. L. Scot. 3, 8, 8. See *Heir of tailzie; Substitutes.*

INSTITUTES. The principles or first elements of jurisprudence. Many books have borne the title of Institutes. Among the most celebrated in the common law, are the Institutes of Lord Coke, which, however, on account of the want of arrangement and the diffusion with which his books are written, bear but little the character of Institutes; in the civil law those most generally known are those of Caius, Justinian, and Theophilus.

The Institutes of Caius are an abridgment of the Roman law, composed by the celebrated lawyer Caius or Gaius, who lived during the reign of Marcus Aurelius.

The Institutes of Justinian are an abridgment of the Code and of the Digest, composed by order of that emperor: his intention in this composition was to give a summary knowledge of the law to those persons not versed in it, and particularly to merchants. The lawyers employed to make this book were Tribonian, Theophilus and Dorotheus. The work was first published in the year 533, and received the sanction of statute law by order of the emperor. The Institutes of Justinian are divided in four books: each book is divided into titles, and each title into parts. The first part is called *principium*, because it is the commencement of the title; those which follow are numbered and called paragraphs. The work treats of the rights of persons, of things, and of actions. The first book treats of persons; the second, third, and the first five titles of the fourth book, of things; and the remainder of the fourth book, of actions. This work has been much admired on account of its order and scientific arrangement, which presents at a single glance the whole jurisprudence of the Romans. This work is too little known and studied. Judge Cooper has published an edition with valuable notes.

The Institutes of Theophilus are a paraphrase of those of Justinian, composed in Greek by a lawyer of that name, by order of the emperor Phocas. Vide 1 Kent, Com. 538; Profession d'Avocat, tom. ii, n. 536, page 95; Introd. à l'Etude du Droit Romain, p. 124; Dict. de Jurisp. h. t.; Merl. Répert. h. t.; Encyclopédie de d'Alembert, h. t.

INSTITUTION, *eccles. law;* is the act by which the ordinary commits the cure of souls to a person presented to a benefice.

INSTITUTION, *political law*, what has been established and settled by law for the public good; as, the American institutions guaranty to the citizens all the privileges essential to freedom.

INSTITUTION, *practice*, is the commencement of an action; as, A B has instituted a suit against C D, to recover damages for a trespass.

INSTITUTION OF HEIR, *civil law*, is the act by which a testator nominates one or more persons to succeed him in all his rights active and passive. Poth. Tr. des Donations testamentaires, c. 2, s. 1, § 1; Civ. Code of Lo. art. 1593.

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INSTRUMENT, *contracts*, is the writing which contains some agreement, and is so called because it is calculated to instruct of what has taken place or been agreed upon. The agreement and the instrument in which it is contained are very different things, the latter being only evidence of the existence of the former. The instrument or form of the contract may be valid, but the contract itself may be void on account of fraud. Vide Ayl. Parerg. 305.

INSTRUCTIONS, *comm. law, contracts.* Orders given by a principal to his agent, in relation to the business of his agency. The agent is bound to obey the instructions he has received, and when he neglects so to do, he is responsible for the consequences, unless he is justified by matter of necessity. 4 Binn. R. 361; 1 Liverm. Agency, 368.

INSTRUCTIONS, *in practice.* The statements of a cause of action, given by a client to his attorney, and, which, where such is the practice, are sent to his pleader to put into legal form of a declaration. Warr. Law Stud. 284.

INSUPER, *Engl. law*, is the balance due by an accountant in the exchequer, as apparent by his account: the auditors in settling his account say there remains so much *insuper* to such accountant.

INSURANCE, *contracts*, is defined to be a contract of indemnity from loss or damage arising upon an uncertain event. 1 Marsh. Ins. 104. It is more fully defined to be a contract by which one of the parties, called the *insurer*, binds himself to the other, called the *insured*, to pay him a sum of money or otherwise indemnify him, in case of the happening of a fortuitous event provided for in a general or special manner in the contract, in consideration of a premium which the latter pays or binds himself to pay him. Pardess. part 3, t. 8, n. 588. The instrument by which the contract is made is denominated a *policy*; the events or causes to be insured against, *risks or perils*; and the thing insured the *subject* or *insurable interest*. *Marine* insurance relates to property and risks at sea; insurance of property on shore against fire, is called *fire* insurance; and the various contracts in such cases, are *fire* policies. Insurance of the lives of individuals are called insurances on *lives*.

INSURANCE AGAINST FIRE, is a contract by which the insurer, in consequence of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain to a certain amount, in his houses or other buildings, stock, goods or merchandise, mentioned in the policy, by fire, during the time agreed upon. 2 Marsh. Ins. B. 4, p. 784; Park, Ins. ch. 23, p. 441.

INSURANCE, MARINE, *contracts.* Marine insurance is a contract whereby one party, for a stipulated premium undertakes to indemnify the other against certain perils, or sea risks, to which his ship, freight or cargo, or some of them may be exposed, during a certain voyage, or a fixed period of time. 3 Kent, Com. 203; Boulay-Paty, Dr. Commercial, t. 10. This contract is usually reduced to writing; the instrument is called a policy of insurance, (q. v.) All persons whether natives, citizens or aliens may be insured with the exception of alien enemies. The insurance may be of goods on a certain ship, or without naming any, as upon goods on board any *ship or ships*. The subject insured must be an insurable legal interest. The contract requires the most perfect good faith; if the insured make false representations to

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the insurer in order to procure his insurance upon better terms, it will avoid the contract, though the loss arose from a cause unconnected with the misrepresentation, or the concealment happened through mistake, neglect or accident, without any fraudulent intention. Vide Kent, Com. Lecture, 48; Marsh. Ins. ch. 4; Pardessus, Dr. Com. part 4, t. 5, n. 756, et seq.; Boulay-Paty, Dr. Com. t. 10.

INSURANCE ON LIVES, *contracts.* The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or annuity equivalent, upon the death of the person whose life is insured, whenever this shall happen, if the insurance be for the whole life, or in case this shall happen within a certain period, if the insurance be for a limited time. 2 Marsh. Ins. 766; Park on Insurance, 429.

INSURED, *contracts.* The person who procures an insurance on his property. It is the duty of the insured to pay the premium, and to represent fully and fairly all the circumstances relating to the subject-matter of the insurance, which may influence the determination of the underwriters in undertaking the risk, or estimating the premium. A concealment of such facts amounts to a fraud, which avoids the contract. 2 Marsh. Ins. 464; Park Ins. h. t.

INSURER, *contracts.* One who has obliged himself to insure the safety of another's property, in consideration of a premium paid or secured to be paid to him. It is his duty to pay any loss which has arisen on the property insured. Vide Marsh. Ins. Index, h. t.; Park. Ins. Index, h. t.; Phill. Ins. h. t.; Wesk. Ins. h. t.; Pardess. Index, art. Assureur.

INSURRECTION, rebellion of citizens or subjects of a country against its government. The constitution of the United States, art. 1, s. 8, gives power to congress "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." By the act of congress of the 28th February, 1795, 1 Story's L. U. S. 389, it is provided:—

§ 1. That whenever the United States shall be invaded, or be in imminent danger of invasion, from any foreign nation or Indian tribe, it shall be lawful for the president of the United States to call forth such number of the militia of the state, or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders, for that purpose, to such officer or officers of the militia as he shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the president of the United States, on application of the legislature of such state, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection.

§ 2. That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause

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the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of congress.

§ 3. That whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

INTENDED TO BE RECORDED. This phrase is frequently used in conveyancing in deeds which recite other deeds which have not been recorded. In Pennsylvania it has been construed to be a covenant on the part of the grantor to procure the deed to be recorded in a reasonable time. 2 Rawle's Rep. 14.

INTENDMENT OF LAW. The true meaning, the correct understanding, or intention of the law; a presumption or inference made by the courts. Co. Litt. 78. It is an intendment of law that every man is innocent until proved guilty, vide *Innocence;* that every one will act for his own advantage, vide *Assent;* Fin. Law, 10, Max. 54; that every officer acts in his office with fidelity; that the children of a married woman, born during the coverture, are the children of the husband, vide *Bastardy;* many things are intended after verdict, in order to support a judgment, but intendment cannot supply the want of certainty in a charge in an indictment for a crime. 5 Co. 121; vide Com. Dig. Pleader, C 25, and S 31; Dane's Ab. Index, h. t.; 14 Vin. Ab. 449.

INTENTION, a design, resolve, or determination of the mind. Intention is required in the commission of crimes and injuries; in making contracts; and wills.

1. Every crime must have necessarily two constituent parts, namely, an act forbidden by law, and an intention. The act is innocent or guilty just as there was or was not an intention to commit a crime; for example, a man embarks on board of a ship at New York, for the purpose of going to New Orleans; if he went with an intention to perform a lawful act, he is perfectly innocent; but if his intention was to levy war against the United States, he is guilty of an overt act of treason. Cro. Car. 332; Fost. 202, 203; Hale, P. C. 116. The same rule prevails in numerous civil cases; in actions founded on malicious injuries, for instance, it is necessary to prove that the act was accompanied by a wrongful and malicious intention. 2 Stark. Ev. 739.

The intention is to be proved, or it is inferred by the law. The existence of the intention is usually matter of inference; and proof of external and visible acts and conduct serves to indicate more or less forcibly the particular intention, But in some cases the inference of intention necessarily arises from the facts. It is a universal rule that a man shall be taken to intend that which he does, or is the necessary and immediate consequence of his act, 3 M. & S. 15; Hale, P. C. 229; in cases of homicide, therefore, malice will generally be inferred by the law. Vide *Malice*, and Jacob's Intr. to the Civ. Law, Reg. 70; Dig. 24, 18.

2. In order to make a contract, there must be an intention to make it; a person non compos mentis, who has no contracting mind, cannot therefore enter into any engagement which requires an intention; for to make a contract the law requires a fair and serious exercise of the reasoning faculty. Vide *Gift*, *Occupancy*.

3. In wills and testaments the

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intention of the testator must be gathered from the whole instrument, 3 Ves. 105; and a codicil ought to be taken as a part of the will, 4 Ves. 610; and when such intention is ascertained, it must prevail, unless it be in opposition to some unbending rule of law. 6 Cruise's Dig. 295; Rand. on Perp. 121; Cro. Jac. 415. "It is written," says Swinb. p. 10, "that the will or meaning of the testator, is the queen or empress of the testament; because the will doth rule the testament, enlarge and restrain it, and in every respect moderate and direct the same, and is indeed the very efficient cause thereof. The will therefore and meaning of the testator ought before all things to be sought for diligently, and, being found, ought to be observed faithfully." 6 Pet. R. 68.

Vide, generally, Bl. Com. Index, h. t.; 2 Stark. Ev. h. t.; Ayl. Pand. 95; Dane's Ab. Index, h. t.; Rob. Fr. Conv. 30. As to intention in changing a residence, see article *Inhabitant.*

INTER CANEM ET LUPUM. Literally, between the dog and the wolf. Metaphorically, the twilight, because then the dog seeks his rest, and the wolf his prey. 3 Inst. 63.

INTERDICT, *civil law*, among the Romans was an ordinance of the prætor which forbade or enjoined the parties in a suit to do something particularly specified, until it should be decided definitely who had the right in relation to it. Vide *Injunction.*

INTERDICT or INTERDICTION, *eccles. law*, is an ecclesiastical censure by which divine services are prohibited either to particular persons or particular places. These tyrannical edicts, issued by ecclesiastical powers, have never been in force in the United States.

INTERDICTED OF FIRE AND WATER. Formerly those persons who were banished for some crime, were interdicted of fire and water; that is, by the judgment order was given that no man should receive them into his house, but should deny them fire and water, the two necessary elements of life.

INTERDICTION, *civil law*, is a legal restraint upon a person incapable of managing his estate, because of mental incapacity, from signing any deed or doing any act to his own prejudice, without the consent of his curator or interdictor. Interdictions are of two kinds, voluntary or judicial. The first is usually executed in the form of an obligation by which the obligor binds himself to do no act which may affect his estate, without the consent of certain friends or other persons therein mentioned. The latter, or judicial interdiction is imposed by a sentence of a competent tribunal, which disqualifies the party on account of imbecility, madness, or prodigality, and deprives the person interdicted of the right to manage his affairs and receive the rents and profits of his estate.

The Civil Code of Louisiana makes the following provisions on this subject:

Art. 382. No person above the age of majority, who is subject to an habitual state of madness or insanity, shall be allowed to take charge of his own person or to administer his estate, although such person shall, at times, appear to have the possession of his reason.

383. Every relation has a right to petition for the interdiction of a relation; and so has every husband a right to petition for the interdiction of his wife, and every wife of her husband.

384. If the insane person has no relations and is not married, or if his relations or consort do not act, the interdiction may be solicited by any

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stranger, or pronounced *ex officio* by the judge, after having heard the counsel of the person whose interdiction is prayed for, whom it shall be the duty of the judge to name, if one be not already named by the party.

385. Every interdiction shall be pronounced by the judge of the parish of the domicil or residence of the person to be interdicted.

386. The acts of madness, insanity or fury, must be proved to the satisfaction of the judge, that he may be enabled to pronounce the interdiction, and his proof may be established, as well by written as by parol evidence; and the judge may moreover interrogate or cause to be interrogated by any other person commissioned by him for that purpose, the person whose interdiction is petitioned for, or cause such person to be examined by physicians, or other skilful persons, in order to obtain their report upon oath on the real situation of him who is stated to be of unsound mind.

387. Pending the issue of the petition for interdiction, the judge may, if he deems it proper, appoint for the preservation of the moveable, and for the administration of the immovable estate of the defendant, an administrator *pro tempore*.

388. Every judgment, by which an interdiction is pronounced, shall be provisionally executed, notwithstanding the appeal.

389. In case of appeal, the appellate court may, if they deem it necessary, proceed to the hearing of new proofs, and question or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind.

390. On every petition for interdiction, the costs shall be paid out of the estate of the defendant, if he shall be interdicted, and by the petitioner, if the interdiction prayed for shall not be pronounced.

391. Every sentence of interdiction shall be published three times, in at least two of the newspapers printed in New-Orleans, or made known by advertisements at the door of the court-house of the parish of the domicil of the person interdicted, both in the French and English languages, and this duty is imposed upon him who shall be appointed curator of the person interdicted, and shall be performed within a month after the date of the interdiction, under the penalty of being answerable for all damages to such persons as may, through ignorance, have contracted with the person interdicted.

392. No petition for interdiction, if the same shall have once been rejected, shall be acted upon again, unless new facts, happening posterior to the sentence shall be alleged.

393. The interdiction takes place from the day of presenting the petition for the same.

394. All acts done by the person interdicted from the date of the filing the petition for interdiction, until the day when the same is pronounced, are null.

395. No act anterior to the petition for the interdiction, shall be annulled, except where it shall be proved that the cause of such interdiction notoriously existed at the time when the deeds, the validity of which is contested, were made, or that the party who contracted with the lunatic or insane person, could not have been deceived as to the situation of his mind.

Notoriously, in this article, means that the insanity was generally known by the persons who saw and conversed with the party.

396. After the death of a person, the validity of acts done by him cannot be contested for cause of insanity,

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unless his interdiction was pronounced or petitioned for, previous to the death of such person, except in cases in which mental alienation manifested itself within ten days previous to the decease, or in which the proof of the want of reason results from the act itself which is contested.

397. Within a month, to reckon from the date of the judgment of interdiction, if there has been no appeal from the same, or if there has been an appeal, then within a month from the confirmative sentence, it shall be the duty of the judge of the parish of the domicil or residence of the person interdicted, to appoint a curator to his person and estate.

398. This appointment is made according to the same forms as the appointment to the tutorship of minors.

After the appointment of the curator to the person interdicted, the duties of the administrator, pro tempore, if he shall not have been appointed curator, are at an end; and he shall give an account of his administration to the curator.

399. The married woman, who is interdicted, is of course under the curatorship of her husband. Nevertheless it is the duty of the husband, in such case, to cause to be appointed by the judge, a curator *ad litem*; who may appear for the wife in every case when she may have an interest in opposition to the interest of her husband, or one of a nature to be pursued or defended jointly with his.

400. The wife may be appointed curatrix to her husband, if she has, in other respects, the necessary qualifications.

She is not bound to give security.

401. No one, except the husband with respect to his wife, or wife with respect to her husband, the relations in the ascending line with respect to the relations in the descending line, and vice versa, the relations in the descending line with respect to the relations in the ascending line, can be compelled to act as curator to a person interdicted more than ten years, after which time the curator may petition for his discharge.

402. The person interdicted is, in every respect, like the minor who has not arrived at the age of puberty, both as it respects his person and estate; and the rules respecting the guardianship of the minor, concerning the oath, the inventory and the security, the mode of administering, the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the guardianship, the mode of rendering the accounts, and the other obligations, apply with respect to the person interdicted.

403. When any of the children of the person interdicted is to be married, the dowry or advance of money to be drawn from his estate, is to be regulated by the judge, with the advice of a family meeting.

404. According to the symptoms of the disease, under which the person interdicted labours, and according to the amount of his estate, the judge may order that the interdicted person be attended in his own house, or that he be placed in a bettering-house, or indeed if he be so deranged as to be dangerous, he may order him to be confined in safe custody.

405. The income of the person interdicted shall be employed in mitigating his sufferings, and in accelerating his cure, under the penalty against the curator of being removed in case of neglect.

406. He who petitions for the interdiction of any person, and fails in obtaining such interdiction, may be prosecuted for and sentenced to pay damages, if he shall have acted from motives of interest or passion.

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407. Interdiction ends with the causes which gave rise to it. Nevertheless the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced.

408. Interdiction can only be revoked by the same solemnities which were observed in pronouncing it.

409. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to certain infirmities, are incapable of taking care of their persons and administering their estates.

Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter.

410. The person interdicted cannot be taken out of the state without a judicial order, given on the recommendation of a family meeting, and on the opinion delivered under oath of at least two physicians, that they believe the departure necessary to the health of the person interdicted.

411. There shall be appointed by the judge a superintendent to the person interdicted; whose duty it shall be to inform the judge, at least once in three months, of the state of the health of the person interdicted, and of the manner in which he is treated.

To this end, the superintendent shall have free access to the person interdicted, whenever he wishes to see him.

412. It is the duty of the judge to visit the person interdicted, whenever from the information he receives, he shall deem it expedient.

This visit shall be made at times when the curator is not present.

413. Interdicting is not allowed on account of profligacy or prodigality.

Vide *Committee*, *Habitual Drunkard*.

INTERESSE TERMINI, *estates*, an interest in the term. A bare lease of land does not vest any estate in the lessee, but gives him a mere right of entry in the tenement, which right is called his interest in the term or *interesse termini*. Vide Co. Litt. 46; 2 Bl. Com. 144; 10 Vin. Ab. 348; Dane's Ab. Index, h. t.

INTEREST, *estates*, is the right which a man has in a chattel real, and more particularly in a future term. It is a word of less efficacy and extent than estates, though, in legal understanding, an interest extends to estates, rights and titles which a man has in or out of lands, so that by a grant of his whole interest in land, a reversion as well as the fee simple shall pass. Co. Litt. 345.

INTEREST, *mar. law*, is the right or property which a man has in a thing, commonly called *insurable interest*. It is not easy to give an accurate definition of insurable interest. The policy of commerce and the various complicated rights which different persons may have in the same thing, require that not only those who have an absolute property in ships and goods, but those also who have a qualified property therein may be at liberty to insure them. For example, when a ship is mortgaged, after the mortgage becomes absolute, the owner of the *legal* estate has an insurable interest, and the mortgagor, on account of his *equity*, has also an insurable interest. 2 T. R. 188; 1 Burr. 489; and see 1 T. R. 745; Marsh. Ins. h. t.

INTEREST FOR MONEY, *in contracts*, is the compensation which is paid by the borrower to the lender for its use. It is proposed to consider, 1, who is bound to pay interest; 2, who is entitled to receive it; 3, on what claim it is allowed; 4, what

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interest is allowed; 5, how it is computed; 6, when it will be barred; 7, rate of interest in the different states.

§ 1. *Who is bound to pay interest.* 1. The contractor himself, who has agreed, either expressly or by implication, to pay interest, is of course bound to do so.—2. Executors, administrators, assignees of bankrupts or of insolvents, and trustees, who have kept money an unreasonable length of time, and have made or who might have made it productive, are chargeable with interest. 2 Ves. 85; 1 Bro. C. C. 359; Id. 375; 2 Ch. Cas. 235; Chan. Rep. 389; 1 Vern. 197; 2 Vern. 548; 3 Bro. C. C. 73; Id. 433; 4 Ves. 620; 1 Johns. Ch. R. 508; Id. 527, 535, 6; Id. 620; 1 Desaus. Ch. R. 193, n.; Id. 208; 1 Wash. 2; 1 Binn. R. 194; 3 Munf. 198, pl. 3; Id. 289, pl. 16; 1 Serg. & Rawle, 241; 4 Desaus. Ch. Rep. 463; 5 Munf. 223, pl. 7, 8; 1 Ves. jr. 236; Id. 452; Id. 89; 1 Atk. 90; see 1 Supp. to Ves. jr. 30; 11 Ves. 61; 15 Ves. 470; 1 Ball. & Beat. 230; 1 Supp. to Ves. jr. 127, n. 3; 1 Jac. & Walk. 140; 3 Meriv. 43; 2 Bro. C. C. 156; 5 Ves. 839; 7 Ves. 152; 1 Jac. & Walk. 122; 1 Pick. 530; 13 Mass. R. 232; 3 Call, 538; 4 Hen. & Munf. 415; 2 Esp. N. P. C. 702; 2 Atk. 106; 2 Dall. 192; 4 Serg. & Rawle, 116; 1 Dall. 349; 3 Binn. 121. As to the distinction between executors and trustees, see Mr. Cox's note to Fellowes v. Mitchell, 1 P. Wms. 241; 1 Eden, 357, and the cases there collected.—3. Tenant for life must pay interest on encumbrances on the estate. 4 Ves. 33; 1 Vern. 404, n. by Raithby. In Pennsylvania the heir at law is not bound to pay interest on a mortgage given by his ancestor. 4. In Massachusetts a bank is liable independent of the statute of 1809, c. 37, to pay interest on their bills, if not paid when presented for payment. 8 Mass. 445.—5. Revenue officers must pay interest to the United States from the time of receiving the money. 6 Binn. 266.

§ 2. *Who are entitled to receive interest.* 1. The lender upon an express or implied contract.—2. An executor was not allowed interest in a case where money due to his testatrix was out at interest, and before money came to his hands, he advanced his own in payment of debts of the testatrix. Vin. Ab. tit. Interest, C. pl. 13. In Massachusetts a trustee of property placed in his hands for security, who was obliged to advance money to protect it, was allowed interest at the compound rate. 16 Mass. 228.

§ 3. *On what claims allowed.* First, on express contracts; secondly, on implied contracts; and, thirdly, on legacies.

First, on *express contracts.* 1. When the debtor expressly undertakes to pay interest, he or his personal representatives having assets, are bound to pay it. But if a party has accepted the principal, it has been determined that he cannot recover interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 220. See 1 Campb. 50; 1 Dall. 315; Stark. Ev. pt. iv. 787.

Secondly, *On implied contracts.* 1. On money lent, or laid out for another's use. Bunb. 119; 2 Bl. Rep. 761; S. C. 3 Wils. 205; 2 Burr. 1077; 5 Bro. Parl. Ca. 71; 1 Ves. jr. 63; 1 Dall. 349; 1 Binn. 488; 2 Call, 102; 2 Hen. & Munf. 381; 1 Hayw. 4; 3 Caines's Rep. 226, 234, 238, 245; see 3 Johns. Cas. 303; 9 Johns. 71; 3 Caines's Rep. 266; 1 Conn. Rep. 32; 7 Mass. 14; 1 Dall. 349; 6 Binn. R. 163; Stark. Ev. pt. iv. 789, n. (y), and (z); 11 Mass. 504.

2. For goods sold and deliver-

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ed, after the customary or stipulated term of credit has expired. Doug. 376; 2 B. & P. 337; 4 Dall. 289; 2 Dall. 193; 6 Binn. 162; 1 Dall. 265, 349.

3. On bills and notes. If payable at a future day certain, after due; if payable on demand, after demand made. Bunb. 119; 6 Mod. 138; 1 Str. 649; 2 Ld. Raym. 773; 2 Burr. 1081; 3 Ves. jr. 133. Where the terms of a promissory note are, that it shall be payable by instalments, and on the failure of any instalment, the whole is to become due, interest on the whole becomes payable from the first default. 4 Esp. 147. Where by the terms of a bond, or a promissory note, interest is to be paid annually, and the principal at a distant day, the interest may be recovered before the principal is due. 1 Binn. 165; 2 Mass. 568; 3 Mass. 221.

4. On an account stated, or other liquidated sum, whenever the debtor knows precisely what he is to pay, and when he is to pay it. 2 Black. Rep. 761; S. C. 3 Wils. 205; 2 Ves. 365; 8 Bro. Parl. C. 561; 2 Burr. 1085; 5 Esp. N. P. C. 114; 2 Com. Contr. 207; Treat. Eq. lib. 5, c. 1, s. 4; 2 Fonb. 438; 1 Hayw. 173; 2 Cox, 219; 1 V. & B. 345; 1 Supp. to Ves. jr. 194; Stark. Ev. pt. iv. 789, n. (a).

5. On the arrears of an annuity secured by a specialty. 14 Vin. Ab. 458, pl. 8; 3 Atk. 579.

6. On a deposit by a purchaser, which he is entitled to recover back, paid either to a principal, or an auctioneer. Sugd. Vend. 327; 3 Campb. 258; 5 Taunt. 625. Sed vide 4 Taunt. 334, 341.

7. On purchase-money, which has lain dead, where the vendor cannot make a title. Sugd. Vend. 327.

8. On purchase-money remaining in purchaser's hands to pay off encumbrances. 1 Sch. & Lef. 134. See 1 Wash. 125; 5 Munf. 342; 6 Binn. 435.

9. On judgment debts. 14 Vin. Abr. 458, pl. 15; 4 Dall. 251; 2 Ves. 162; 5 Binn. R. 61; Ib. 220. In Massachusetts the principal of a judgment is recovered by execution; for the interest the plaintiff must bring an action. 14 Mass. 239.

10. On judgments affirmed in a higher court. 2 Burr. 1097; 2 Str. 931; 4 Burr. 2128; Dougl. 752, n. 3; 2 H. Bl. 267; Id. 284; 2 Campb. 428, n.; 3 Taunt. 503; 4 Taunt. 30.

11. On money obtained by fraud, or where it has been wrongfully detained. 9 Mass. 504; 1 Campb. 129; 3 Cowen, 426.

12. On money paid by mistake, or recovered on a *void* execution. 1 Pick. 212; 9 Serg. & Rawle, 409.

13. Rent in arrear bears interest, unless under special circumstances, which may be recovered in action, 1 Yeates, 72; 6 Binn. 159; 4 Yeates, 264; but no distress can be made for such interest. 2 Binn. 246. Interest cannot, however, be recovered for arrears of rent payable in wheat. 1 Johns. 276. See 2 Call, 249; Id. 253; 3 Hen. & Munf. 463; 4 Hen. & Munf. 470; 5 Munf. 21.

14. Where from the course of dealing between the parties, a promise to pay interest is implied. 1 Campb. 50; Id. 52; 3 Bro. C. C. 436; Kirby, 207.

Thirdly, *of interest on legacies.* 1. *On specific legacies.* Interest on specific legacies is to be calculated from the date of the death of testator. 2 Ves. Sen. 563; 6 Ves. 345; 5 Binn. 475; 3 Munf. 10.—2. A *general* legacy when the time of payment is *not* named by the testator is not payable till the end of one year after testator's death, at which time the interest commences to run. 1 Ves. jr. 366; 1 Sch. &

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Lef. 10; 5 Binn. 475; 13 Ves. 333; 1 Ves. 308; 3 Ves. & Bea. 183. But where only the interest is given, no payment will be due till the end of the second year, when the interest will begin to run. 7 Ves. 89.—3. Where a general legacy is given, and the time of payment is named by the testator, interest is not allowed before the arrival of the appointed period of payment, and that notwithstanding the legacies are vested; Prec. in Chan. 337. But when that period arrives, the legatee will be entitled, although the legacy be charged upon a dry reversion. 2 Atk. 108. See also Daniel's Rep. in Exch. 84; 3 Atk. 101; 3 Ves. 10; 4 Ves. 1; 4 Bro. C. C. 149, n.; S. C. 1 Cox, 133. Where a legacy is given payable at a future day with interest, and the legatee die before it becomes payable, the arrears of the interest up to the time of his death must be paid to his personal representatives. McClel. Exch. Rep. 141. And a bequest of a sum to be paid annually for life bears interest from the death of testator. 5 Binn. 475.—4. Where the legatee is a child of the testator or one towards whom he has placed himself in *loco parentis*, the legacy bears interest from the testator's death, whether it be particular or residuary; vested, but payable at a future time, or contingent, if the child have no maintainance. In that case the court will do what, in common presumption, the father would have done, provide necessaries for the child. 2 P. Wms. 21; 3 Ves. 287; Id. 13; 4 Bac. Abr. 439; Fonb. Eq. 431, n. j.; 1 Eq. Cas. Ab. 301, pl. 3; 3 Atk. 432; 1 Dick. Rep. 310; 2 Bro. C. C. 59; 2 Rand. Rep. 409. In case of a child *in ventre sa mere*, at the time of the father's decease, interest is allowed only from its *birth*. 2 Cox, 425. Where maintenance or interest is given by the will, and the rate specified, the legatee will not, in general, be entitled to claim more than the maintenance or rate specified. 3 Atk. 697, 716; 3 Ves. 286, n.; and see further as to interest in cases of legacies to children, 15 Ves. 363; 1 Bro. C. C. 267; 4 Madd. R. 275; 1 Swanst. 553; 1 P. Wms. 783; 1 Vern. 251; 3 Ves. & Bea. 183.—5. Interest is not allowed by way of maintenance to any other person than the legitimate children of the testator, 3 Ves. 10; 4 Ves. 1; unless the testator has put himself in loco parentis. 1 Sch. & Lef. 5, 6. A wife, 15 Ves. 301, a niece, 3 Ves. 10, a grand-child, 15 Ves. 301, 6 Ves. 546, 12 Ves. 3, 1 Cox, 133, are therefore not entitled to interest by way of maintenance. Nor is a legitimate child entitled to such interest if he have a maintenance; although it may be less than the amount of the interest of the legacy. 1 Scho. & Lef. 5; 3 Ves. 17. Sed vide 4 John. Ch. Rep. 103; 2 Rop. Leg. 202.—6. Where an intention though not expressed is fairly inferrible from the will, interest will be allowed. 1 Swanst. 561, note; Coop. 143.—7. Interest is not allowed for maintenance, although given by immediate bequest for maintenance, if the parent of the legatee, who is under moral obligation to provide for him be of sufficient ability, so that the interest will accumulate for the child's benefit, until the principal becomes payable. 3 Atk. 399; 3 Bro. C. C. 416; 1 Bro. C. C. 386; 3 Bro. C. C. 60. But to this rule there are some exceptions. 3 Ves. 730; 4 Bro. C. C. 223; 4 Madd. 275, 289; 4 Ves. 498.—8. Where a fund, particular or residuary, is given upon a contingency, so that the intermediate interest undisposed of, that is to say, the intermediate interest between the testator's death, if there be no

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previous legatee for life, or, if there be, between the death of the previous taker and the happening of the contingency, will sink into the residue for the benefit of the next of kin or executor of the testator, if not bequeathed by him; but if not disposed of, for the benefit of his residuary legatee. 1 Bro. C. C. 57; 4 Bro. C. C. 114; Meriv. 384; 2 Atk. 329; Forr. 145; 2 Rop. Leg. 224.—9. Where a legacy is given by immediate bequest whether such legacy be particular or residuary, and there is a condition to divest it upon the death of the legatee under twenty-one, or upon the happening of some other event, with a limitation over, and the legatee dies before twenty-one, or before such other event happens, which nevertheless does take place, yet as the legacy was payable at the end of a year after the testator's death, the legatee's representatives, and not the legatee over, will be entitled to the interest which accrued during the legatee's life, until the happening of the event which was to divest the legacy. 1 P. Wms. 500; 2 P. Wms. 504; Ambl. 448; 5 Ves. 335; Id. 522.—10. Where a residue is given, so as to be vested but not payable at the end of the year from the testator's death, but upon the legatee's attaining twenty-one, or upon any other contingency, and with a bequest over divesting the legacy, upon the legatee's dying under age, or upon the happening of the contingency, then the legatee's representatives in the former case, and the legatee himself in the latter, shall be entitled to the interest that became due, during the legatee's life, or until the happening of the contingency. 2 P. Wms. 419; 1 Bro. C. C. 81; Id. 335; 3 Meriv. 335.—11. Where a residue of personal estate is given generally, to one for life with remainder over, and no mention is made by the testator respecting the interest, nor any intention to the contrary to be collected from the will, the rule appears to be now settled that the person taking for life, is entitled to interest from the death of the testator, on such part of the residue bearing interest, as is not necessary for the payment of debts. And it is immaterial whether the residue is only given generally, or directed to be laid out with all convenient speed in funds or securities, or to be laid out in lands. See 6 Ves. 520; 9 Ves. 549, 553; 2 Rop. Leg. 234; 9 Ves. 89.—12. But where a residue is directed to be laid out in land, to be settled on one for life, with remainder over, and the testator directs the interest to accumulate in the mean time, until money is laid out in lands, or otherwise invested on security, the accumulation shall cease at the end of one year from the testator's death, and from that period, the tenant for life shall be entitled to the interest. 6 Ves. 520; 7 Ves. 95; 6 Ves. 528; Ib. 529; 2 Sim. & Stu. 396.—13. Where no time of payment is mentioned by the testator, annuities are considered as commencing from the death of the testator; and consequently the first payment will be due at the end of the year from that event; if, therefore, it be not made then, interest, in those cases wherein it is allowed at all, must be computed from that period. 2 Rop. Leg. 249; 5 Binn. 475. See 6 Mass. 37.

§ 4. As to the *quantum or amount* of interest allowed. 1, During what time; 2, simple interest; 3, compound interest; 4, in what cases given beyond the penalty of a bond; 5, when foreign interest is allowed.

First. *During what time.* 1. In actions for money had and received, interest is allowed in Massachusetts from the time of serving the writ. 1 Mass. 436. On debts payable on

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demand, interest is payable only from the demand. Addis. 137. See 12 Mass. 4. The words "with interest for the same," bear interest from date. Addis. 323, 4; 1 Stark. N. P. C. 452; Ibid. 507.—2. The mere circumstance of war existing between two nations, is not a sufficient reason for abating interest on debts due by the subjects of one belligerent to another. 1 Peters's C. C. R. 524; but a prohibition of all intercourse with an enemy during war, furnishes a sound reason for the abatement of interest until the return of peace. Ib. See on this subject, 2 Dall. 132; 2 Dall. 102; 4 Dall. 286; 1 Wash. 172; 1 Call, 194; 3 Wash. C. C. R. 396; 8 Serg. & Rawle, 103; Post. § 7.

Secondly. *Simple interest.* 1. Interest upon interest is not allowed except in special cases, and the uniform current of decisions is against it, as being a hard, oppressive exaction, and tending to usury. 1 Johns. Ch. R. 14; Cam. & Norw. Rep. 361.

Thirdly. *Compound interest.* 1. Where a partner has overdrawn the partnership funds, and refuses, when called upon, to account, to disclose the profits, recourse would be had to compound interest as a substitute for the profits he might reasonably be supposed to have made. 2 Johns. Ch. R. 213.—2. When executors, administrators, or trustees convert the trust money to their own use or employ it in business or trade, they are chargeable with compound interest. 1 Johns. Ch. R. 620.—3. In an action to recover the annual interest due on a promissory note, interest will be allowed on each year's interest until paid. 2 Mass. 568; 8 Mass. 455. See as to charging compound interest the following cases: 1 Johns. Ch. Rep. 550; Cam. & Norw. 361; 1 Binn. 165; 4 Yeates, 220; 1 Hen. & Munf. 4; 1 Vin. Abr. 457, tit. Interest, (C); Com. Dig. Chancery, 3 S 3; 3 Hen. & Munf. 89.

Fourthly. *When given beyond the penalty of a bond.* 1. It is a general rule that the penalty of a bond limits the amount of the recovery. 2 T. R. 388. But in some cases the interest is recoverable beyond the amount of the penalty. The recovery depends on principles of law, and not on the arbitrary *ad libitum* discretion of a jury. 3 Caines's Rep. 49.—2. The exceptions are where the bond is to account for moneys to be received; 2 T. R. 388; where the plaintiff is kept out of his money by writs of error; 2 Burr. 1094; 2 Evans's Poth. 101, 2; or delayed by injunction, 1 Vern. 349; 16 Vin. Abr. 303; if the recovery of the debt be delayed by the obligor, 6 Ves. 92; 1 Vern. 349; Show. P. C. 15; if extraordinary emoluments are derived from holding the money, 2 Bro. P. C. 251; or the bond is taken only as a collateral security, 2 Bro. P. C. 333; or the action be on a judgment recovered on a bond, 1 East, 436; see also 4 Day's Cas. 30; 3 Caines's R. 49; 1 Taunt. 218; 1 Mass. 308; Com. Dig. Chancery, 3 S 2; Vin. Abr. Interest, E.—3. But these exceptions do not obtain in the administration of the debtor's assets, where his other creditors might be injured by allowing the bond to be rated beyond the penalty, 5 Ves. 329; see Vin. Abr. Interest, C. pl. 5.

Fifthly. *When foreign interest is allowed.* 1. The rate of interest allowed by law where the contract is made, may, in general, be recovered; hence where a note was given in China, payable eighteen months after date, without any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per month from the expiration of the eighteen months, 1 Wash. C. C. R. 253.—2. If a citizen of an-

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other state, advance money there for the benefit of a citizen of the state of Massachusetts, which the latter is liable to reimburse, the former shall recover interest, at the rate established by the laws of the place where he lives. 12 Mass. 4. See further, 1 Eq. Cas. Ab. 289; 1 P. Wms. 395; 2 Bro. C. C. 2; 14 Vin. Abr. 460, tit. Interest, (F).

§ 4. *How computed.*—In casting interest on notes, bonds, &c. upon which partial payments have been made, every payment is to be first applied to keep down the interest, but the interest is never allowed to form a part of the principal, so as to carry interest. 17 Mass. R. 417; 1 Dall. 378.—2. When a partial payment exceeds the amount of interest due when it is made, it is correct to compute the interest to the time of the first payment, add it to the principal, subtract the payment, cast interest on the remainder to the time of the second payment, add it to the remainder, and subtract the second payment, and in like manner from one payment to another, until the time of judgment. 1 Pick. 194; 4 Hen. & Munf. 431; 8 Serg. & Rawle, 458; 2 Wash. C. C. R. 167. See 3 Wash. C. C. R. 350; Ibid. 396.—3. Where a partial payment is made *before* the debt is due, it cannot be apportioned, part to the debt and part to the interest. As if there be a bond for one hundred dollars, payable in one year, and, at the expiration of six months, fifty dollars be paid in. This payment shall not be apportioned part to the principal and part to the interest, but at the end of the year, interest shall be charged on the whole sum, and the obligor shall receive credit for the interest of fifty dollars for six months. 1 Dall. 124.

§ 6. *When interest will be barred.*—1. Where the money due is tendered to the person entitled to it, and he refuses to receive it, the interest ceases. 3 Campb. 296. Vide 8 East, 168; 3 Binn. 295.—2. Where the plaintiff was absent in foreign parts, beyond seas, evidence of that fact may be given in evidence to the jury on the plea of payment, in order to extinguish the interest during such absence. 1 Call, 133. But see 9 Serg. & Rawle, 263.—3. Whenever the law prohibits the payment of the principal, interest during the prohibition is not demandable. 2 Dall. 102; 1 Peters's C. C. R. 524. See also 2 Dall. 132; 4 Dall. 286.—4. If the plaintiff has accepted the principal he cannot recover the interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 229.

§ 7. *Rate of interest allowed by law in the different states. Six per cent.* is allowed by law in Connecticut. 3 Griff. L. R. 77; Delaware, 4 Griff. L. R. 1068; Indiana, 3 Griff. L. R. 467; Maine, Id. 1005; Massachusetts, 4 Griff. L. R. 517; Maryland, Id. 942; North Carolina, 3 Griff. L. R. 224; New Hampshire, Id. 47; Ohio, Id. 403; Pennsylvania, Purd. Dig. 547; Rhode Island, 3 Griff. L. R. 116; Tennessee, 4 Griff. L. R. 795; Vermont, 3 Griff. L. R. 21; Virginia, Id. 362. *Seven per cent.* is the legal interest in New Jersey, 4 Griff. L. R. 1299; New York, 3 Griff. L. R. 142; South Carolina, 4 Griff. L. R. 863. In Alabama, 4 Griff. L. R. 585, and Georgia, 3 Griff. L. R. 445, *eight per cent.* is the legal interest. In Illinois *six per cent.* is allowed where there is no agreement, but by agreement the parties may fix a greater rate. 3 Griff. L. R. 423. In Kentucky *six per cent.* excepting on notes, &c. to any corporation having an office in the state, and not incorporated by the state; such corporation can recover only *one per cent.* In Louisiana legal interest is *five per cent.* which, when

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not stipulated otherwise, begins to run from the commencement of the suit only, and is called judicial interest; but promissory notes and bills *regularly protested*, carry interest from the date of the protest. By agreement interest may be charged at the rate of ten per cent. The banks are authorised to demand *six per cent.* and one of them may exact at the rate of *nine*, where money is loaned for four months or upwards. 4 Griff. L. R. 696. In Mississippi there is no law against usury; where there is no bargain as to the rate of interest, *eight per cent.* is allowed. 4 Griff. L. R. 470. In Missouri *six* per cent. is allowed where there is no agreement, but *ten* per cent. may be charged. 4 Griff. L. R. 626, 7.

INTEREST, MARITIME. By maritime interest is understood the profit of money lent on bottomry or respondentia, which is allowed to be greater than simple interest because the capital of the lender is put in jeopardy. There is no limit by law as to the amount which may be charged for maritime interest. It is fixed generally by the agreement of the parties. The French writers employ a variety of words in order to distinguish it according to the nature of the case. They call it *interest*, when it is stipulated to be paid by the month, or at other stated periods. It is a *premium* when a gross sum is to be paid at the end of the voyage, and here the risk is the principal object they have in view. When the sum is a per centage on the money lent, they call it *exchange*, considering it in the light of money lent at one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference of time and place. When they intend to combine these various shades into one general denomination, they make use of the term *maritime profit*, to convey their meaning. Hall on Mar. Loans, 56, n.

INTEREST, *evidence*, is the benefit which a person has in the matter about to be decided and which is in issue between the parties. By the term benefit is here understood some pecuniary or other advantage, which, if obtained, would increase his estate. This interest renders such person incompetent to be a witness in such a case. To disable a witness, his interest must be a legal, certain and immediate benefit in the cause or matter in issue, or in the record as an instrument of evidence. 1 Phil. Ev. 36; Stark. Ev. pt. 4, p. 744; and must have been acquired without fraud. 3 Camp. R. 380; 1 M. & S. 9; 1 T. R. 37. It must be a *legal* interest as contradistinguished from mere prejudice or bias, arising from relationship, friendship, or any of the numerous motives by which a witness may be supposed to be influenced. Leach, 154; 2 St. Tr. 334, 891; 2 Hawk. c. 46, s. 25. The interest must be a *present*, *certain*, *vested* interest, and not uncertain and contingent. Doug. R. 134; 1 P. Wms. 287; 3 Serg. & Rawle, 132; 4 Binn. R. 83; 2 Yeates, R. 200; 5 Johns. R. 256; 7 Mass. R. 25. The *magnitude* of the interest is altogether immaterial. 5 T. R. 174; 2 Vern. R. 317; 2 Greenl. R. 194; 11 Johns. R. 57. To the general rule that interest renders a witness incompetent, there are some exceptions; 1st. When the witness is reduced to a state of neutrality by an equipoise of interest the objection to his testimony ceases. 7 T. R. 480, 481, n; 1 Bibb, R. 298; 2 Mass. R. 108; 2 Serg. & Rawle, 119.—2d. In some cases the law admits the testimony of one interested, from the extreme necessity of the case: upon this ground the servant of a tradesman is admitted to

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prove the delivery of goods and the payment of money, without any release from the master. 4 T. R. 490; 2 Litt. R. 27. The objection to incompetency on the ground of interest may be removed by an extinguishment of that interest by means of a release, executed either by the witness or by those who have a claim upon him, or by payment. Stark. Ev. pt. 4, p. 757. See 5 Benth. Rationale Jur. Ev. 628–692, where he combats the established doctrines of the law.

INTERLOPERS. Persons who interrupt the trade of a company of merchants, by pursuing the same business with them in the same place, without lawful authority.

INTERLINEATION, *in contracts, evidence*, is writing between two lines. Interlineations are made either *before* or *after* the execution of an instrument. Those made before should be noted previous to its execution; those made after are made either by the party in whose favour they are, or by strangers. When made by the party himself, whether the interlineation be material or immaterial, they render the deed void, 1 Gall. Rep. 71, unless made with the consent of the opposite party. Vide 11 Co. 27 a; 9 Mass. Rep. 307; 15 Johns. R. 293; 1 Dall. R. 67. When the interlineation is made by a stranger, if it be immaterial, it will not vitiate the instrument, but if it be material, it will in general avoid it. Vide Cruise, Dig. tit. 32, c. 26, s. 8; Com. Dig. Fait, F 1. The presumption is, that a material interlineation was made *after* the execution of an instrument, unless the contrary be proved. 1 Dall. 67. This doctrine corresponds nearly with the rules of the canon law on this subject. The canonists have examined it with care. Vide Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 115, and article *Erasure*.

INTERLOCUTORY. This word is applied to signify something which is done between the commencement and the end of a suit or action which decides some point or matter, which however is not a final decision of the matter in issue; as, interlocutory judgments, or decrees or orders. Vide *Judgment, interlocutory*.

INTERPLEADER, *practice*. Vide *Bill of Interpleader*, and 8 Vin. Ab. 419; Doct. Pl. 247; 3 Bl. Com. 448; Com. Dig. Chancery, 3 T.

INTERPRETATION, is the explication of a law, agreement, will or other instrument which appears obscure or ambiguous. The object of interpretation is to find out or collect the intention of the maker of the instrument, either from his own words, or from other conjectures or both. It may then be divided into three sorts, according to the different means it makes use of for obtaining its end. These three sorts of interpretations are either literal, rational or mixed. When we collect the intention of the writer from his words only, as they lie before us, this is a *literal* interpretation; when his words do not express his intention perfectly, but either exceed it, or fall short of it, so that we are to collect it from probable or rational conjectures only, this is *rational* interpretation; and when his words, though they do express his intention, when rightly understood, are in themselves of doubtful meaning, and we are forced to have recourse to like conjectures to find out in what sense he used them; this sort of interpretation is *mixed;* it is partly literal, and partly rational.

According to the civilians there are three sorts of interpretations, the authentic, the usual, and the doctrinal. 1. The *authentic* interpretation is that which refers to the legis-

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lator himself, in order to fix the sense of the law. 2. When the judge interprets the law so as to accord with prior decisions, the interpretation is called *usual*. 3. It is *doctrinal* when it is made agreeably to rules of science. The commentaries of learned lawyers in this case furnish the greatest assistance. This last kind of interpretation is itself divided into three distinct classes. Doctrinal interpretation is extensive, restrictive, or declaratory. 1st. It is *extensive* whenever the reason of the law has a more enlarged sense than its terms, and it is consequently applied to a case which had not been explained. 2d. On the contrary, it is *restrictive* when the expressions of the law have a greater latitude than its reason, so that by a restricted interpretation, an exception is made in a case which the law does not seem to have embraced. 3d. When the reason of the law and the terms in which it is conceived agree, and it is only necessary to explain them to have the sense complete, the interpretation is *declaratory*.

The term interpretation is used by foreign jurists in nearly the same sense that we use the word construction, (q. v.)

Pothier, in his excellent treatise on Obligations, lays down the following rules for the interpretation of contracts:

1. We ought to examine what was the common intention of the contracting parties rather than the grammatical sense of the terms.

2. When a clause is capable of two significations, it should be understood in that which will have some operation rather than that in which it will have none.

3. Where the terms of a contract are capable of two significations, we ought to understand them in the sense which is most agreeable to the nature of the contract.

4. Any thing, which may appear ambiguous in the terms of a contract, may be explained by the common use of those terms in the country where it is made.

5. Usage is of so much authority in the interpretation of agreements, that a contract is understood to contain the customary clauses although they are not expressed; in contractibus tacite veniunt ea quæ sunt moris et consuetudinis.

6. We ought to interpret one clause by the others contained in the same act, whether they precede or follow it.

7. In case of doubt a clause ought to be interpreted against the person who stipulates any thing, and in discharge of the person who contracts the obligation.

8. However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears, that the contracting parties proposed to contract, and not others which they never thought of.

9. When the object of the agreement is universally to include every thing of a given nature, (une universalité des choses) the general description will comprise all particular articles, although they may not have been in the knowledge of the parties. We may state as an example of this rule an engagement which I make with you to abandon my share in a succession for a certain sum. This agreement includes every thing which makes part of the succession whether known or not; our intention was to contract for the whole. Therefore it is decided that I cannot object to the agreement, under pretence that a considerable property has been found to belong to the succession of which we had not any knowledge.

10. When a case is expressed in a contract on account of any doubt

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which there may be whether the engagement resulting from the contract would extend to such case, the parties are not thereby understood to restrain the extent which the engagement has of right, in respect to all cases not expressed.

11. In contracts as well as in testaments, a clause conceived in the plural may be frequently distributed into several particular clauses.

12. What is at the end of a phrase commonly refers to the whole phrase, and not only to what immediately precedes it, provided it agrees in gender and number with the whole phrase.

For instance, if in the contract for sale of a farm, it is said to be sold with all the corn, small grain, fruits and wine that have been *got this year*, the terms, that have been *got this year*, refer to the whole phrase and not only to the wine, and consequently the old corn is not less excepted than the old wine; it would be otherwise if it had been said, all the wine that has been got this year, for the expression is in the singular and only refers to the wine and not to the rest of the phrase, with which it does not agree in number.

INTERPRETER. One employed to make a translation, (q. v.). An interpreter should be sworn before he translates the testimony of a witness. 4 Mass. 81; 5 Mass. 219; 2 Caines's Rep. 155.

INTERREGNUM, *polit. law.* In an established government, the period which elapses between the death of a sovereign and the election of another is called interregnum. It is also understood for the vacancy created in the executive power, and for any vacancy which occurs when there is no government.

INTERRUPTION, is the effect of some act or circumstance which stops the course of a prescription or the act of limitations. Interruption of the use of a thing is natural or civil. *Natural* interruption is an interruption in fact, which takes place whenever by some act we cease truly to possess what we formerly possessed. Vide 4 Mason's Rep. 404; 2 Y. & Jarv. 285. *Civil* interruption is that which takes place by some judicial act, as the commencement of a suit to recover the thing in dispute, which gives notice to the possessor that the thing which he possesses does not belong to him. When the title has once been gained by prescription, it will not be lost by any interruption of it for ten or twenty years. 1 Inst. 113 b. A simple acknowledgment of a debt by the debtor, is a sufficient interruption to prevent the statute from running. Indeed whenever an agreement express or implied takes place between the creditor and the debtor, between the possessor and the owner, which admits the indebtedness or the right to the thing in dispute, it is considered a civil conventional interruption which prevents the statute or the right of prescription from running. Vide 3 Burge on the Confl. of Laws, 63.

INTERVENTION, *civil law*, is the act by which a third party becomes a party in a suit pending between other persons.

INTIMATION, *civil law*, is the name of any judicial act by which a notice of a legal proceeding is given to some one; but it is more usually understood to mean the notice or summons which an appellant causes to be given to the opposite party that the sentence will be reviewed by the superior judge.

INTROMISSION, *Scotch law*, is the assuming possession of property belonging to another, either on legal grounds, or without any authority; in the latter case, it is called *vicious* intromission. Bell's S. L. Dict. h. t.

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INTRUSION, *estates, torts.*—When the ancestor dies seised of any estate of inheritance, expectant upon an estate for life, and then the tenant dies, and between his death and the entry of the heir, a stranger unlawfully enters upon the estate, this is called an intrusion. It differs from an abatement that the latter is an entry into lands void by the death of a tenant in fee, and an intrusion, as already stated, is an entry into land void by the death of a tenant for years. F. N. B. 203; 3 Bl. Com. 169; Archb. Civ. Pl. 12; Dane's Ab. Index, h. t.

INTRUSION, *remedies*, is the name of a writ brought by the owner of a fee simple, &c., against an intruder. New Nat. Br. 453.

INUNDATION, the overflow of waters by coming out of their bed. Inundations may arise from three causes; from public necessity, as, in the defence of a place it may be necessary to dam the current of a stream which will cause an inundation to the upper lands; they may be occasioned by an invincible force, as by the accidental fall of a rock in the stream; or they may result from the erections of works on the stream. In the first case, the injury caused by the inundation, is to be compensated as other injuries done in war; in the second, as there was no fault of any one the loss is to be borne by the unfortunate owner of the estate; in the last, when the riparian proprietor is injured by such works as alter the level of the water where it enters or where it leaves the property on which the yare erected, the person injured may recover damages for the injury thus caused to his property by the inundation. 9 Co. 59; 4 Day's R. 244; 17 Serg. & Rawle, 383; 3 Mason's R. 172; 7 Pick. R. 198; 7 Cowen, R. 266; 1 B. & Ald. 258; 1 Rawle's R. 218; 5 N. H. Rep. 232; 9 Mass. R. 316; 4 Mason's R. 400; 1 Sim. & Stu. 203; 1 Coxe's R. 460. Vide Schult. Aq. R. 122; Ang. W. C. 101.

TO INURE. To take effect; as, the pardon inures.

INVASION. The entry of a country by a public enemy, making war. The constitution of the United States, art. 1, s. 8, gives power to congress "to provide for calling the militia to execute the laws of the Union, suppress insurrections and repel invasions." Vide *Insurrection.*

INVENTION. A contrivance; a discovery. It is in this sense this word is used in the patent laws of the United States. It signifies not some thing which has been found ready made, but which in consequence of art or accident has been formed: for the invention must relate to some new or useful art, machine, manufacture, or composition of matter, or some new and useful improvement on any art, machine, manufacture, or composition of matter not before known or used by others. Act of July 4, 1836, 4 Sharsw. continuation of Story's L. U. S. 2506. Vide *Patent.*

INVENTIONES. This word is used in some ancient English charters to signify *treasure-trove.*

INVENTORY. A list, schedule or enumeration in writing, containing, article by article, the goods and chattels, rights and credits, and in some cases, the lands and tenements, of a person or persons. In its most common acceptation, an inventory is a conservatory act which is made to ascertain the situation of an intestate's estate, the estate of an insolvent, and the like, for the purpose of securing it to those entitled to it. When the inventory is made of goods and estates assigned or conveyed in trust, it must include all the property conveyed. In case of intestate estates, it is required to contain only the personal property, or that to

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which the administrators is entitled. The claims due to the estate ought to be separated; those which are desperate or bad ought to be so returned. The articles ought to be set down separately, as already mentioned, and separately valued.

The inventory is to be made in the presence of at least two of the creditors of the deceased, or legatees or next of kin, and, in their default and absence, of two honest persons. The appraisers must sign it, and make oath or affirmation that the appraisement is just to the best of their knowledge. Vide, generally, 14 Vin. Ab. 465; 3 Bac. Ab. 44; 4 Com. Dig. 714; Ayliff's Pand. 414; Ayliff's Parerg. [305]; Com. Dig. Administration, B 7; 3 Burr. 1922; 2 Addams's R. 319; S. C. 2 Eccles. Rep. 322; Lovel. on Wills, 38; 2 Bl. Com. 514; 8 Serg. & Rawle, 128; Godolph. 150, and the article *Benefit of Inventory*.

TO INVEST, *contracts*. To lay out money in such a manner that it may bring a revenue; as, to invest money in houses or stocks.

INVESTITURE, *estates*, is the act of giving possession of lands by actual seisin. When livery of seisin was made to a person, by the common law he was invested with the whole fee; this, the foreign feudists and sometimes our own law writers call investiture, but generally speaking, it is termed, by the common law writers, the seisin of the fee. 2 Bl. Com. 209, 313; Fearne on Rem. 223, n. (z).

INVITO DOMINO, *crim. law*, without the consent of the owner. In order to constitute larceny, the property stolen, must be taken *invito domino*, this is the very essence of the crime. Cases of considerable difficulty arise when the owner has, for the purpose of detecting thieves, by himself or his agents, delivered the property taken, whether they are larcenies or not; the distinction seems to be this, that when the owner procures the property to be taken, it is not larceny; and when he merely leaves it in the power of the defendant to execute his original purpose of taking it, in the latter case it will be considered as taken *invito domino*. 2 Bailey's R. 569; Fost. 123; 2 Russ. on Cr. 66, 105; 2 Leach, 913; 2 East, P. C. 666.

INVOICE, *commerce*, an account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the particular marks of each package, with other particulars are set forth. Marsh. Ins. 408; Dane's Ab. Index, h. t.

INVOICE BOOK, *commerce, accounts*, is one in which invoices are copied.

IOWA. The name of one of the territories of the United States of America. This territory was established by the act of congress of June 12th, 1838, Pamphlet Laws, 1837–1838, p. 60. This act is the fundamental law of the territory. The government is organized as follows:—

§ 1. That from and after the third day of July next, all that part of the present territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government by the name of Iowa; and that from and after the said third day of July next, the present territorial government of Wisconsin shall extend only to that part of the present territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the government of Wisconsin, in and over the territory

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hereby constituted shall cease: Provided, that nothing in this act contained shall be construed to impair the rights of person or property, now appertaining to any Indians within the said territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or any wise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: Provided, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories in such manner and at such times as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

§ 2. That the executive power and authority in and over the said territory of Iowa shall be vested in a governor, who shall hold his office for three years, unless sooner removed by the president of the United States. The governor shall reside within the said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of the said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

§ 3. That there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first Monday in December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorised and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

§ 4. That the legislative power shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of twenty-six members possessing the same qualications as prescribed for the members of the council, and whose term of service shall continue one year.

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An apportionment shall be made as nearly equal as practicable, among the several counties, for the election of the council and representatives giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and house of representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the territory shall cause the census or enumeration of the inhabitants of the several counties in the territory to be taken, and made by the sheriffs of the said counties, respectively, unless the same shall have been taken within three months previous to the third day of July next, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner as the governor shall appoint and direct; and he shall at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts are entitled under this act. The number of persons authorised to be elected having the greatest number of votes in each of the said counties or districts for the council, shall be declared by the said governor to be duly elected to the said council; and the person or persons having the greatest number of votes for the house of representatives, equal to the number to which each county may be entitled, shall also be declared by the governor to be duly elected: Provided, the governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place, and on such day as he shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session in any year shall exceed the term of seventy-five days.

§ 5. That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters at all subsequent elections, shall be such as shall be determined by the legislative assembly: Provided, that the right of suffrage shall be exercised only by citizens of the United States.

§ 6. That the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and if disapproved by, the congress of the United States, the same shall be null and of no effect.

§ 7. That all township officers, and all county officers, except judicial officers, justices of the peace, sheriffs and clerks of courts, shall be elected by the people, in such manner as is now prescribed by the laws of the territory of Wisconsin, or as may, after the first election, be pro-

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vided by the governor and legislative assembly of Iowa Territory. The governor shall nominate and by and with the advice and consent of the legislative council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the council, shall be filled by appointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said legislative assembly.

§ 8. That no member of the legislative assembly shall hold, or be appointed to, any office created, or the salary or emoluments of which shall have been increased, whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer, shall be a member of the said council or house of representatives, or shall hold any office under the government of the said territory.

Vide *Courts of the United States.*

IPSO FACTO, by the fact itself. This phrase is frequently employed to convey the idea that something which has been done contrary to law is void; for example, if a married man, during the life of his wife, of which he had knowledge, should marry a second woman, the latter marriage would be void *ipso facto;* that is, on that fact being proved, the second marriage would be declared void *ab initio.*

IRE AD LARGUM, to go at large, to escape, or be set at liberty. Vide *Ad largum.*

IRONY, *in rhetoric*, is a term derived from the Greek, which signifies dissimulation. It is a refined species of ridicule, which under the mask of honest simplicity or of ignorance, exposes the faults and errors of others, by seeming to adopt or defend them. In libels, irony may convey imputations more effectually than direct assertion, and render the publication libellous. Hob. 215; Hawk. B. 1, c. 73, s. 4; 3 Chit. Cr. Law, 869; 4 Bac. Ab. 453.

IRREGULARITY, *practice*, is the doing or not doing that in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. A party entitled to complain of irregularity, should except to it previously to taking any step by him in the cause, Lofft. 323, 333, because the taking of any such step is a waiver of any irregularity. 1 Bos. & Pull. 342; 2 Smith's R. 391; 1 Taunt. R. 59; 2 Taunt. R. 243; 3 East, R. 547; 2 New R. 509; 2 Wils. R. 380. The court will, on motion, set aside proceedings for irregularity. On setting aside a judgment and execution for irregularity, they have power to impose terms on the defendant, and will restrain him from bringing an action of trespass, unless a strong case of damages appears. 1 Chit. R. 133, n; and see Baldw. R. 246. Vide *Regular and irregular Process.* In the canon law, this term is used to signify any impediment which prevents a man from taking holy orders.

IRREPLEVISABLE, *practice.* This term is applied to those things which cannot legally be replevied; for example, in Pennsylvania, no goods seized in execution or for taxes, can be replevied.

IRRESISTIBLE FORCE. This term is applied to such an interposi-

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tion of human agency, as is, from its nature and power, absolutely uncontrollable; as the inroads of a hostile army. Story on Bailm. § 25; Lois des Bâtim. pt. 2, c, 2, § 1. It differs from *inevitable accident*, (q. v.) the latter being the effect of physical causes, as, lightning, storms, and the like.

IRRIGATION, The act of wetting or moistening the ground by artificial means. The owner of land over which there is a current stream, is, as such, the proprietor of the current. 4 Mason's R. 400. It seems the riparian proprietor may avail himself of the river for irrigation, provided the river be not thereby materially lessened, and the water absorbed be imperceptible or trifling. Ang. W. C. 34; and vide 1 Root's R. 535; 2 Swift's Syst. 87; 7 Mass. R. 136; 13 Mass. R. 420; 1 Swift's Dig. 111; 5 Pick. R. 175; 9 Pick. 59; 6 Bing. R. 379; 5 Esp. R. 56; 2 Conn. R. 584; Ham. N. P. 199; 2 Chit. Bl. Com. 403; n. 7; 22 Vin. Ab. 525; 1 Vin. Ab. 557; 1 Bac. Ab. 84. The French law coincides with our own. 1 Lois des Bâtimens, sect. 1, art. 3, page 21.

ISLAND. A piece of land surrounded by water. Islands are in the sea or in rivers. Those in the sea are either in the open sea, or within the boundary of some country. When new islands arise in the open sea, they belong to the first occupant; when they are newly formed so near the shore as to be within the boundary of some state, they belong to that state. Islands which arise in rivers when in the middle of the stream, belong in equal parts to the riparian proprietors; when they arise mostly on one side, they will belong to the riparian owners up to the middle of the stream. Bract. lib. 2, c. 2; Fleta, lib. 3, c. 2, s. 6; 2 Bl. 261; 1 Swift's Dig. 111; Schult. Aq. R. 117; Woolr. on Waters, 38; 4 Pick. R. 268. For the law of Louisiana, see Civil Code, art. 505-507. The doctrine of the common law on this subject, founded on reason, seems to have been borrowed from the civil law. Vide Inst. 2, 1, 22; Dig. 41, 1, 7; Code, 7, 41, 1.

ISSUE, *pleading*. An issue is defined to be a single, certain, and material point, issuing out of the allegations or pleadings of the plaintiff or defendant. Co. Litt. 126, a; Bac. Abr. Pleas, G; though in common acceptance it signifies the entry of the pleadings. 1 Chit. Pl. 630. An issue should be upon a single and certain point, Com. Dig. Pleader, R 4; but it is not necessary that such point should consist of a single fact. 1 Burr. 316. And that point must be a material one. Com. Dig. Pleader, R. 8. The issue also should not be on a negative pregnant, but it may be upon a disjunctive. Com. Dig. Pleader, R. 7. There are several kinds of issues in pleading, which are enumerated below.

ISSUE IN FACT, *pleading*, takes place when the parties are at issue in their pleadings as to a matter of fact. This issue is to be tried by a jury. Issues in fact are general or special.

ISSUE IN LAW, *pleading*, takes place when one of the parties demurs to the pleadings of the other, and there is a joinder in the demurrer; in such case the facts being admitted, the court decide the law of the case, which is the matter in dispute between the parties.

ISSUE, SPECIAL, *pleading*. When the defendant takes issue upon any one substantial part of the declaration, and rests the weight of his cause upon it, he is said to take a special issue, in contradiction to the general issue, which denies and puts in issue the whole of the declaration. Com. Dig. Pleader, R. 1, 2.

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ISSUE, FEIGNED, *practice.* When in a court of equity any matter of fact is strongly contested, the court usually directs the matter to be tried by a jury, especially such important facts as the validity of a will, or whether A is the heir at law of B. But as no jury is summoned to attend this court, the fact is usually directed to be tried in a court of law upon a *feigned issue.* For this purpose an action is brought in which the plaintiff by a fiction declares that he laid a wager for a sum of money with the defendant, for example, that a certain paper is the last will and testament of A, then avers it is his will, and therefore demands the money; the defendant admits the wager but avers that it is not the will of A, and thereupon that issue is joined, which is directed out of chancery to be tried; and thus the verdict of the jurors at law determines the fact in the court of equity. These feigned issues are frequently used in the courts of law, by consent of the parties, to determine some disputed rights without the formality of pleading, and by this practice much time and expenses are saved in the decision of a cause. 3 Bl. Com. 452. The consent of the court must also be previously obtained, for the trial of a feigned issue; without such consent it is a contempt, which will authorise the court to order the proceedings to be stayed, 4 T. R. 402, and punish the parties engaged. See *Fictitious action.*

ISSUE, INFORMAL, *pleading.* An informal issue is where a material allegation is traversed in an improper or inartificial manner; and this and the other preceding mistakes are aided by verdict by the 32 H. 8, c. 30; Gilb. C. P. 147; 2 Saund. 319.

ISSUE, IMMATERIAL, *pleading.* An immaterial issue is where a material allegation in the pleadings is not traversed, but an issue is taken on some other point, which, though found by the verdict, will not determine the merits of the cause, and would leave the court at a loss for which of the parties to give judgment. 2 Saund. 319, n. 6; Gilb. C. P. 147; 1 Lev. 32; Com. Dig. Pleader, R 18.

ISSUE, GENERAL, *pleading.* The general issue denies in direct terms the whole declaration; as in personal actions, where the defendant pleads *nil debet*, that he owes the plaintiff nothing; or *non culpabilis*, that he is not guilty of the facts alleged in the declaration; or in real actions, where the defendant pleads *nul tort*, no wrong done, or *nul disseisin*, no disseisin committed. These pleas and the like are called general issues because by importing an absolute and general denial of all the matters alleged in the declaration, they at once put them all in issue. Formerly the general issue was seldom pleaded, except where the defendant meant wholly to deny the charge alleged against him; for when he meant to avoid and justify the charge, it was usual for him to set forth the particular ground of his defence as a special plea, which appears to have been necessary to apprize the court and the plaintiff of the particular nature and circumstances of the defendant's case, and was originally intended to keep the law and the fact distinct. And even now as it is an invariable rule that every defence which cannot be specially pleaded, may be given in evidence at the trial upon the general issue, so the defendant is in many cases obliged to plead the particular circumstances of his defence specially, and cannot give them in evidence on that general plea. But the science of special pleading having been frequently

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perverted to the purposes of chicane and delay, the courts have in some instances, and the legislature in others, permitted the general issue to be pleaded, and special matter to be given in evidence under it at the trial, which at once includes the facts, the equity, and the law of the case. 3 Bl. Com. 305, 6.

ISSUE, *kindred.* This term is of very extensive import, in its most enlarged signification, and includes all persons who have descended from a common ancestor. 17 Ves. 481; 19 Ves. 547; 3 Ves. 257; 1 Rop. Leg. 88; and see Wilmot's Notes, 314, 321. But when this word is used in a will, in order to give effect to the testator's intention it will be construed in a more restricted sense than its legal import conveys. 7 Ves. 522; 19 Ves. 73; 1 Rop. Leg. 90. Vide 2 Bac. Ab. 228; 8 Com. Dig. 473.

ISSUES, *Eng. law.* The goods and profits of the lands of a defendant against whom a writ of *distringas* or *distress infinite* has been issued, taken by virtue of such writ, are called *issues.* 3 Bl. Com. 280; 1 Chit. Cr. Law, 351.

ITEM, also, likewise, in like manner, again, a second time. These are the various meanings of this latin adverb. V. *Construction.* In law it is to be construed conjunctively, in the sense of *and*, or *also*, in such a manner as to connect sentences: if therefore a testator bequeath a legacy to Peter payable out of a particular fund, or charged upon a particular estate, *item* a legacy to James, James's legacy as well as Peter's will be a charge upon the same property. 1 Atk. 436; 3 Atk. 256; 1 Bro. C. C. 482; 1 Rolle's Ab. 844; 1 Mod. 100; Cro. Car. 368; Vaugh. 262; 2 Rop. on Leg. 349; 1 Salk. 234. Vide *Disjunctive.*

ITINERANT, travelling or taking a journey. In England there were formerly judges called *Justices itinerant*, who were sent with commissions into certain counties to try causes.

J.

JEOFAILE, this is a law French phrase, which signifies, I am in an error; I have failed. There are certain statutes, called statutes of *amendment* and *jeofails*, because where a pleader perceives any slip in the form of his proceedings, and acknowledges the error, (jeofaile,) he is at liberty by those statutes to amend it. The amendment, however, is seldom made, but the benefit is attained by the court's overlooking the exception. 3 Bl. Com. 407; 1 Saund. 228, n. 1; Doct. Pl. 287; Dane's Ab. h. t.

JEOPARDY, peril, danger. This is the meaning attached to this word used in the act establishing and regulating the post office department. The words of the act are, "or if, in effecting such robbery of the mail the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy by the use of dangerous weapons, such offender shall suffer death." 3 Story's L. U. S. 1992. Vide Baldw. R. 93-95. The constitution declares that no person shall "for the same offence, be twice put in jeopardy of life and limb." The meaning of this is, that the party shall not be tried a second time for the same offence, after he has once been convicted or acquitted of the offence charged, by the verdict of a jury, and judgment has passed thereon for or against him; but it does

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not mean that he shall not be tried for the offence, if the jury have been discharged from necessity or by consent, without giving any verdict; or, if having given a verdict, judgment has been arrested upon it, or a new trial has been granted in his favour; for, in such a case, his life and limb cannot judicially be said to have been put in jeopardy. 4 Wash. C. C. R. 410; 9 Wheat. R. 579; 6 Serg. & Rawle, 577; 3 Rawle, R. 498; 3 Story on the Const. § 1781. Vide 2 Sumn. R. 19. This great privilege is secured by the common law. Hawk. P. C., B. 2, c. 35; 4 Bl. Com. 335. This was the Roman law, from which it has been probably engrafted on the common law. Vide Merl. Rép. art. *Non bis in idem.* Qui de crimine publico accusationem deductus est, says the Code, 9, 2, 9; ab alio super eodem crimine deferri non potest. Vide article *Non bis in idem.*

JETTISON or JETSAM, is the casting out of a vessel, from necessity, a part of the lading; the thing cast out also bears the same name; it differs from flotsam in this, that in the latter the goods float, while in the former they sink, and remain under water; it differs also from ligan, (q. v.) The jettison must be made for sufficient cause, and not from groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm, or is labouring upon rocks or shallows, or is closely pursued by pirates or enemies; if the residue of the cargo be saved by such sacrifice, the property saved is bound to pay a proportion of the loss. In ascertaining such average loss, the goods lost and saved are both to be valued at the price they would have fetched at the place of delivery, on the ship's arrival there, freight, duties and other charges being deducted. Marsh. Ins. 546; 3 Kent. Com. 185 to 187; Park, Ins. 123; Poth. Charte-partie, n. 108, et suiv; Boulay-Paty, Dr. Com. tit. 13; Pardessus, Dr. Com. n. 734.

JOBBER, *commerce.* One who buys and sells articles for others. Stock-jobbers are those who buy and sell stocks for others; this term is also applied to those who speculate in stocks on their own account.

JOCALIA, jewels; this term was formerly more properly applied to those ornaments which women, although married, call their own. When these *jocalia* are not suitable to her degree, they are assets for the payment of debts. 1 Roll. Ab. 911. Vide *Paraphernalia.*

JOINDER OF ACTIONS, *practice.* The putting two or more causes of action in the same declaration. It is a general rule, that in real actions, there never can be but one count. 8 Co. 86, 87; Bac. Ab. Action, C; Com. Dig. Action, G. A count in a real, and a count in a mixed action, cannot be joined in the same declaration; nor a count in a mixed action, and a count in a personal action; nor a count in a mixed action with a count in another, as ejectment and trespass.

In mixed actions, there may be two counts in the same declaration; for example, waste lies upon several leases, and ejectment upon several demises and ousters. 8 Co. 87 b; Poph. 24; Cro. Eliz. 290; Ow. 11.

In personal actions, the use of several counts in the same declaration is quite common. Sometimes they are applied to distinct causes of actions, as upon several promissory notes; but it more frequently happens otherwise, that when various counts are introduced, they do not really relate to different claims, but are adopted merely as so many different forms of propounding the same question. The joinder in action

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depends on the *form* of action, rather than on the subject-matter of it; in an action against a carrier, for example, if the plaintiff declare in assumpsit, he cannot join a count in trover, as he may if he declare against him in case. 1 T. R. 277; but see 2 Caines's R. 216; 3 East, R. 70. The rule as to joinder is, that when the same plea may be pleaded, and the same judgment given on all the counts of the declaration, or when the counts are all of the same nature, and the same judgment is to be given upon them all, though the pleas be different, as in the case of debt upon bond and simple contract, they may be joined. 2 Saund. 117, c. When the same form of action may be adopted, the plaintiff may join as many causes of action as he may choose, though he acquired the rights affected by different titles; but the rights of the plaintiffs, and the liabilities of the defendant, must be in his own character, or in his representative capacity, exclusively. A plaintiff cannot sue, therefore, for a cause of action in his own *right*, and another cause in his character as *executor*, and join them; nor can he sue the defendant for a debt due by himself, and another due by him as executor.

In criminal cases, different offences may be joined in the same indictment, if of the same nature, but an indictment may be quashed, at the discretion of the court, when the counts are joined in such a manner as will confound the evidence. 1 Chit. Cr. Law, 253-255.

Vide generally, 2 Saund. 117, b. to 117, c; Com. Dig. Action. G; 2 Vin. Ab. 38; Bac. Ab. Actions in General, C; 13 John. R. 462; 10 John. R. 240; 11 John. R. 479; 1 John. R. 503; 3 Binn. 555; 1 Chit. Pl. 196 to 206; Arch. Civ. Pl. 172 to 176; Steph. Pl. Index, h. t.; Dane's Ab. h. t.

JOINDER IN DEMURRER. When a demurrer is offered by one party, the adverse party joins with him in demurrer, and the answer which he makes is called a joinder in demurrer. Co. Litt. 71, b.

JOINDER OF ISSUE, *pleading*, is the act by which the parties to a cause, arrive at that stage of it in their pleadings, that one asserts a fact to be so, and the other denies it. For example, when one party denies the fact pleaded by his antagonist, who has tendered the issue thus, "And this he prays may be inquired of by the country," or "And of this he puts himself upon the country," the party denying the fact may immediately subjoin, "And the said A B, does the like," when the issue is said to be joined.

JOINT EXECUTORS. It is proposed to consider, 1, the interest which they have in the estate of the deceased; 2, how far they are liable for each other's acts; 3, the rights of the survivor.

§ 1. Joint executors are considered in law as but one person, representing the testator, and therefore the acts of any one of them which relate either to the delivery, gift, sale, payment, possession or release of the testator's goods, are deemed, as regards the persons with whom they contract, the acts of all. 3 Bac. Abr. 30; 11 Vin. Abr. 358; Com. Dig. Administration, B 12; 1 Dane's Abr. 583; 2 Litt. (Kentucky) R. 315; Godolph. 314; Dyer, 23, in marg.; 16 Serg. & Rawle, 337.

§ 2. As a general rule, it may be laid down that each executor is liable for his own wrong, or *devastavit* only, and not for that of his colleague. He may be rendered liable, however, for the misplaced confidence which he may have reposed in his co-executor. As if he signs a receipt for money, in conjunction with another executor, and he receives no part of

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the money, but agrees that the other executor shall retain it, and apply it to his own use, this is his own misapplication, for which he is responsible. 1 P. Wms. 241, n. 1; 1 Sch. & Lef. 341; 2 Sch. & Lef. 231; 7 East, 256; 11 John. R. 16; 11 Serg. & Rawle, 71; Hardr. 314; 5 Johns. Ch. R. 283; and see 2 Bro. C. C. 116; 3 Bro. C. C. 112; 2 Penna. R. 421; Fonb. Eq. B. 2, c, 7, s. 5, n. (k).

§ 3. Upon the death of one of several joint executors, the right of administering the estate of the testator, devolves upon the survivor. 3 Atk. 509; Com. Dig. Administration, B 12; Hamm. on Parties, 148.

In Pennsylvania, by legislative enactment, it is provided, "that when testators may devise their estates to their executors to be sold, or direct such executors to sell and convey such estates, or direct such real estate to be sold, without naming or declaring who shall sell the same, if one or more of the executors die, it shall or may be lawful for the surviving executor to bring actions for the recovery of the possession thereof, and against trespassers thereon; to sell and convey such real estates, or manage the same for the benefit of the persons interested therein. Act of 12th of March, 1800, 3 Sm. Laws, 433.

JOINT TENANTS, *estates*, are two or more persons to whom are granted lands or tenements to hold in fee simple, fee tail, for life, for years, or at will. 2 Black. Com. 179. The estate which they thus hold is called an estate in joint tenancy.

JOINT TRUSTEES, two or more persons who are entrusted with the performance of a thing. Unlike joint executors, joint trustees cannot act separately, but must join both in conveyances and receipts, for one cannot sell without the others, or receive more of the consideration-money or be more a trustee than his partner. The trust having been given to the whole, it requires their joint act to do any thing under it. They are not responsible for money received by their co-trustees, if the receipt be given for the mere purposes of form. But if receipts be given under circumstances purporting that the money though not received by both was under the control of both, such a receipt shall charge, and the consent that the other shall misapply the money, particularly where he has it in his power to secure it, renders him responsible. 11 Serg. & Rawle, 71. See 1 Sch. & Lef. 341; 5 Johns. Ch. R. 283; Fonbl. Eq. B. 2, c. 7, s. 5; Bac. Abr. Uses and Trusts, K; 2 Bro. Ch. R. 116; 3 Bro. Ch. R. 112; Bac. Abr. (N 2). In the case of the Attorney-General v. Randall, a different doctrine was held. Ib. pl. 9.

JOINTRESS OR JOINTURESS. A woman who has an estate settled on her by her husband, to hold during her life, if she survive him. Co. Litt. 46.

JOINTURE, *estates*, is a competent livelihood of freehold for the wife, of lands and tenements; to take effect in profit or possession, presently after the death of the husband, for the life of the wife at least. Jointures are regulated by the statute of 27 Hen. 8, c. 10, commonly called the statute of *uses*. To make a good jointure, it must be attended with the following circumstances; namely, 1, it must take effect, in possession or profit, immediately from the death of the husband; 2, it must be for the wife's life, or for some greater estate; 3, it must be limited to the wife herself, and not to any other person in trust for her; 4, it must be made in satisfaction for the wife's whole dower, and not of part of it only; 5, the estate limited to the wife must be expressed or

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averred to be, in satisfaction of her whole dower; 6, it must be made before marriage. A jointure attended with all these circumstances is binding on the widow, and is a complete bar to the claim of dower; or rather it prevents its ever arising. But there are other modes of limiting an estate to a wife, which Lord Coke says are good jointures within the statute, provided the wife accepts of them after the death of the husband. She may, however, reject them, and claim her dower. Cruise, Dig. tit. 7; 2 Bl. Com. 137; Perk. h. t. In its more enlarged sense, a jointure signifies a joint estate, limited to both husband and wife. 2 Bl. Com. 137. Vide 14 Vin. Ab. 540; 3 Bac. Ab. 710.

JOUR. This is a French word signifying day. It is used in our old law books, as *tout jours*, forever. It is also frequently employed in the composition of words, as, *journal*, a day-book; *journeyman*, a man who works by the day; *journey's account*, (q. v.)

JOURNAL, *mar. law*, is the book kept on board of a ship or other vessel, and which contains an account of the ship's course, with a short history of every occurrence during the voyage. Another name for Log Book, (q. v.) Chit. Law of Nat. 199.

JOURNAL, *comm. law*, is a book used among merchants in which the contents of the waste book are separated every month, and entered on the debtor and creditor side, for more convenient posting in the ledger.

JOURNAL, *legislation*, is an account of the proceedings of a legislative body. The Constitution of the United States, art. 1, s. 5, directs that "each house shall keep a journal of its proceedings; and from time to time publish the same, excepting such parts as may in their judgment require secrecy." Vide 2 Story, Const. 301. The constitutions of the several states contain similar provisions.

JOURNEY'S ACCOUNT, *Eng. practice*. When a writ abated without any fault of the plaintiff, he was permitted to sue out a new writ, within as little time as he possibly could after abatement of the first writ, which was *quasi* a continuance of the first writ, and placed him in a situation in which he would have been, supposing he had still proceeded on that writ. This was called *journey's account*. This mode of proceeding has fallen into disuse, the practice now being to permit that writ to be quashed, and to sue out another. Vide Termes de la Ley, h. t.; 1 Bac. Ab. 30; 14 Vin. Ab. 558; 4 Com. Dig. 714.

JUDGE. A public officer lawfully appointed to decide litigated questions according to law. This, in its most extensive sense, includes all officers who are appointed to decide such questions, and not only judges properly so called, but also justices of the peace, and jurors who are judges of the facts in issue. See 4 Dall. 229; 3 Yeates, R. 300. In a more limited sense, the term judge signifies an officer who is so named in his commission, and who presides in some court.

Judges are appointed or elected in a variety of ways in the United States, they are appointed by the president by and with the consent of the senate; in some of the states they are appointed by the governor; the governor and senate, or by the legislature. In the United States and some of the states, they hold their offices during good behaviour; in others, as in New York, during good behaviour or until they shall attain a certain age; and in others for a limited term of years.

Impartiality is the first duty of a

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judge; before he gives an opinion or sits in judgment in a cause, he ought to be certain he has no bias for or against either of the parties; and if he has any the slightest interest in the cause he is disqualified from sitting as judge, 8 Co. 118; and when he is aware of such interest he ought himself to refuse to sit on the case. He must not only be impartial, but he must pay a blind obedience to the law, whether good or bad. He is bound to declare what the law is, and not to make it; he is not an arbitrator, but an interpreter of the law. It is his duty to be patient in the investigation of the case, learned in considering it, and firm in his judgment. He ought, according to Cicero, "never to lose sight that he is a man, and that he cannot exceed the power given him by his commission; that not only power but public confidence has been given to him; that he ought always seriously to attend not to his wishes but to the requisitions of the law, of justice and religion." Cic. pro Cluentius.

While acting within the bounds of his jurisdiction, the judge is not responsible for any error of judgment or mistake he may commit as a judge. Co. Litt. 294; 2 Inst. 422.

Vide Com. Dig. Courts, B 4, C 2, E 1, P 16—Justices, I 1, 2, and 3; 14 Vin. Ab. 573; 2 Bac. Ab. 96; 1 Kent, Com. 291; Ayl. Parerg. 309; Story, Const. Index, h. t.

JUDGE ADVOCATE, is an officer who is a member of a court martial. His duties are to prosecute in the name of the United States, but he shall so far consider himself as counsel for the prisoner, after the prisoner shall have made his plea, as to object to leading questions to any of the witnesses, or any question to the prisoner, the answer to which might tend to criminate himself. He is further to swear the members of the court before they proceed upon any trial. Rules and Articles of War, art. 69, 2 Story, L. U. S. 1001.

JUDGMENT, *practice*, is the decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted therein, for the redress of an injury. The language of judgments, therefore, is not that "it is decreed," or "resolved," by the court; but "it is considered," (consideratum est per curiam) that the plaintiff recover his debt, damages, possession, and the like, or that the defendant do go quit. This implies that the judgment is not so much the decision of the court, as the sentence of the law pronounced and declared by the court, after due deliberation and inquiry. There are four kinds of judgments in civil cases, namely: 1. When the facts are admitted by the parties, but the law is disputed; as in case of judgment upon demurrer. 2. When the law is admitted, but the facts are disputed; as in case of judgment upon a verdict. 3. When both the law and the facts are admitted by confession; as in the case of cognovit actionem, on the part of the defendant; or nolle prosequi, on the part of the plaintiff. 4. By default of either party in the course of legal proceedings, as in the case of judgment by nihil dicit, or non sum informatus, when the defendant has omitted to plead or instruct his attorney to do so, after a proper notice; or in cases of judgment by non-pros, non-suit, or, as in case of non-suit, when the plaintiff omits to follow up his proceedings. These four species of judgments, again, are either interlocutory or final. Vide 3 Bl. Com. 396; Bingh. on Judgm. 1.

JUDGMENT, ARREST OF, *practice*; this takes place when the court withhold judgment from the

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plaintiff, on the ground that there is some error appearing on the face of the record, which vitiates the proceedings. In consequence of such error, on whatever part of the record it may arise, from the commencement of the suit to the time when the motion in arrest of judgment is made, the court are bound to arrest the judgment. It is, however, only with respect to objections apparent on the record, that such motions can be made. They cannot, in general, be made in respect to formal objections. This was formerly otherwise, and judgments were constantly arrested for matters of mere form. 3 Bl. Com. 407; 2 Reeves, 448; but this abuse has been long remedied by certain statutes passed at different periods, called the statutes of amendment and jeofails, by the effect of which, judgments, in the present day, cannot, in general, be arrested for any objection of form. Steph. Pl. 117; see 3 Bl. Com. 393; 21 Vin. Ab. 457; 1 Sell. Pr. 496.

JUDGMENT, IN ASSUMPSIT, when in favour of the plaintiff, is that he recover a specified sum, assessed by a jury, or on reference to the prothonotary, or other proper officer, for the damages which he has sustained, by reason of the defendant's non-performance of his promises and undertakings, and for full costs of suit. 1 Chitty's Pl. 100. When the judgment is for the defendant, it is that he recover his costs.

JUDGMENT, IN ACTIONS ON THE CASE FOR TORTS, when for the plaintiff, is that he recover a sum of money ascertained by a jury, for his damages occasioned by the committing of the grievances complained of, and the costs of suit. 1 Ch. Pl. 147. When for the defendant, it is for costs.

JUDGMENT OF CASSETUR BREVE OR BILLA, *practice*, is, in cases of pleas in abatement where the plaintiff prays that his "writ" or "bill" "may be quashed, that he may sue or exhibit a better one." Steph. Pl. 130, 131, 128; Lawes, Civ. Pl. 166.

JUDGMENT BY CONFESSION, *practice*. When instead of entering a plea, the defendant chooses to confess the action; or, after pleading, he does, at any time before trial, both confess the action and withdraw his plea or other allegations; the judgment against him, in these two cases, is called a judgment by *confession*, or *by confession relictâ verificatione*. Steph. Pl. 130.

JUDGMENT IN COVENANT, when for the plaintiff, is that he recover an ascertained sum for his damages, which he has sustained by reason of the breach or breaches of his covenant, together with costs of suit. 1 Chitty's Pl. 116, 117. When for the defendant, the judgment is for costs.

JUDGMENT, IN DEBT, when for the plaintiff, is that he recover his debt, and, in general, nominal damages for the detention thereof; and in cases under the 8 and 9 Wm. III. c. 11, it is also awarded, that the plaintiff have execution for the damages sustained by the breach of a bond, conditioned for the performance of covenants; and that plaintiff recover full costs of suit. 1 Chitty's Pl. 108, 9. In some penal and other particular actions the plaintiff does not, however, always recover costs. Espinasse on Pen. Act. 154; Hull. on Costs, 200; Bull. N. P. 333; 5 Johns. R. 251. When the judgment is for the defendant, it is generally for costs. In some penal actions however, neither party can recover costs. 5 Johns. R. 251.

JUDGMENT BY DEFAULT, *practice*, is a judgment rendered in consequence of the non-appearance

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of the defendant, and is either by *nil dicit*, vide *Judgment by nil dicit*, or by *non sum informatus*, vide *Judgment by non sum informatus*. This judgment is interlocutory in assumpsit, covenant, trespass, case, and replevin, where the sole object of the action is damages; but in debt, damages not being the principal object of the action, the plaintiff usually signs final judgment in the first instance. Vide Com. Dig. Pleader, B 11 and 12—E 42; 7 Vin. Ab. 429; Doct. Pl. 208; Grah. Pr. 631; Dane's Ab. Index, h. t.; 3 Chit. Pr. 671 to 680; Tidd's Pr. 563; 1 Lilly's Reg. 585; and article *Default*.

JUDGMENT, IN DETINUE, when for the plaintiff, is in the alternative, that he recover the goods or the value thereof, if he cannot have the goods themselves, and his damage for the detention and costs. 1 Ch. Pl. 121, 2; 1 Dall. R. 458.

JUDGMENT IN ERROR, *practice*, is a judgment rendered by a court of error, on a record sent up from an inferior court. These judgments are of two kinds, of affirmance and reversal.—1. When the judgment is for the defendant in error, whether the errors assigned be in law or in fact, it is that the former judgment be affirmed, and stand in full force and effect, the said causes and matters assigned for error notwithstanding, and that the defendant in error recover $— for his damages charges and costs, which he hath sustained," &c. 2 Tidd's Pr. 1126; Arch. Forms, 221.—When it is for plaintiff in error, the judgment is that it be reversed or recalled. It is to be *reversed* for error in law, in this form, that it "be reversed, annulled and altogether holden for nought." Arch. Forms, 224. For error in fact the judgment is *recalled*, *revocatur*. 2 Tidd, Pr. 1126.

JUDGMENT, FINAL, *practice*. A final judgment is one which puts an end to the suit. When the issue is one in *fact*, and is tried by a jury, the jury at the time that they try the issue, assess the damages, and the judgment is final in the first instance, and is *that the plaintiff do recover the damages assessed*. When an interlocutory judgment has been rendered, and a writ of inquiry has issued to ascertain the damages, on the return of the inquisition the plaintiff is entitled to a final judgment, namely, *that he recover the amount of damages so assessed*. Steph. Pl. 127, 128.

JUDGMENT, INTERLOCUTORY, *practice*. When the action sounds in damages, and the issue is an issue in law, or when any issue in fact not tried by a jury is decided in favour of the plaintiff, then the judgment is that the plaintiff ought to recover his damages, without specifying their amount; for, as there has been no trial by jury in the case, the amount of damages is not yet ascertained. The judgment is then said to be interlocutory. To ascertain such damages it is the practice to issue a writ of inquiry. Steph. Pl. 127; when the action is founded on a promissory note, bond, or other writing, or any other contract by which the amount due may be readily computed, the practice is, in some courts, to refer it to the prothonotary or clerk to assess the damages. There is one species of interlocutory judgment which establishes nothing but the inadequacy of the defence set up; this is the judgment for the plaintiff on demurrer to a plea in abatement, by which it appears that the defendant has mistaken the law on a point which does not affect the merits of his case; and it being but reasonable that he should offer, if he can, a further defence, that judgment is

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that he do answer over, in technical language, judgment of respondeat ouster. (q. v.) Steph. Plead. 126; Bac. Ab. Pleas, N 4; 2 Arch. Pr. 3.

JUDGMENT OF NIL CAPIAT PER BREVE, OR PER BILLAM, *practice.* When an issue arises upon a declaration or peremptory plea, and it is decided in favour of the defendant, the judgment is, in general, *that the plaintiff take nothing by his writ,* (*or bill,*) *and that the defendant go thereof without day,* &c. This is called a judgment of *nil capiat per breve,* or *per billam.* Steph. Pl. 128.

JUDGMENT BY NIL DICIT, *practice,* is one rendered against a defendant for want of a plea. The plaintiff obtains a rule on the defendant to plead within a time specified, of which he serves a notice on the defendant or his attorney; if the defendant neglect to enter a plea within the time specified, the plaintiff may sign judgment against him.

JUDGMENT OF NOLLE PROSEQUI, *practice,* is a judgment entered against the plaintiff, where after appearance and before judgment he says, "he will not further prosecute his suit." Steph. Pl. 130; Lawes Civ. Pl. 166.

JUDGMENT NON OBSTANTE VEREDICTO, *practice,* is a judgment rendered in favour of the plaintiff, *without regard to the verdict* obtained by the defendant. The motion for such judgment is made where after a pleading by the defendant in confession and avoidance, as, for example, a plea in bar, and issue joined thereon, and verdict found for the defendant, the plaintiff on retrospective examination of the record, conceives that such plea was bad in substance, and might have been made the subject of demurrer on that ground. If the plea was itself substantially bad in law, of course the verdict, which merely shows it to be true in point of fact, cannot avail to entitle the defendant to judgment; while on the other hand the plea being in confession and avoidance, involves a confession of the plaintiff's declaration, and shows that he was entitled to maintain his action. In such case, therefore, the court will give judgment for the plaintiff, *without regard to the verdict;* and this, for the reasons above explained, is called a judgment *upon confession.* Sometimes it may be expedient for the plaintiff to move for judgment non obstante, &c. even though the verdict be in his own favour; for if in such case as above described, he takes judgment as *upon the verdict,* it seems that such judgment would be erroneous, and that the only safe course is to take it *as upon confession.* 1 Wils. 63; Cro. Eliz. 778; 2 Roll. Ab. 99. See also Cro. Eliz. 214; 6 Mod. 10; Str. 394; 1 Ld. Raym. 641; 8 Taunt. 413; Rast. Ent. 622. See this Dict. *Repleader,* for the difference between a repleader and a judgment non obstante veredicto.

JUDGMENT BY NON SUM INFORMATUS, *practice,* is one which is rendered, when instead of entering a plea, the defendant's attorney says he is not informed of any answer to be given to the action. Steph. Pl. 130.

JUDGMENT OF NON PROS, (from non prosequitur,) *practice,* is one given against the plaintiff, in any class of actions, for not declaring, or replying, or surrejoining, &c. or for not entering the issue.

JUDGMENT OF NONSUIT, *practice,* is one against the plaintiff, which happens when, on trial by jury, the plaintiff, on being called or demanded, at the instance of the defendant, to be present while the jury

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give their verdict, fails to make his appearance. In this case no verdict is given, but the judgment of *non suit* passes against the plaintiff. So if after issue is joined, the plaintiff neglects to bring such issue on to be tried in due time, as limited by the practice of the court, in the particular case, judgment will be also given against him for this default; and it is called judgment *as in case of non-suit*. Steph. Pl. 131. After suffering a non-suit the plaintiff may commence another action for the same cause for which the first had been instituted. In some cases plaintiff's having obtained information in what manner the jury had agreed upon their verdict before it was delivered in court, have, when the jury were ready to give in such verdict against them, suffered a non-suit for the purpose of commencing another action and obtaining another trial. To prevent this abuse the legislature of Pennsylvania have provided by the act of the 28th of March, 1814, 6 Reed's L. 208, that "whenever on the trial of any cause, the jury shall be ready to give in their verdict, the plaintiff shall not be called, nor shall he then be permitted to suffer a non-suit."

JUDGMENT QUOD RECUPERET, *practice*. When an issue in *law*, other than one arising on a dilatory plea, or an issue in *fact*, is decided in favour of the plaintiff, the judgment is *that the plaintiff do recover*, which is called a judgment *quod recuperet*. Steph. Pl. 126; Com. Dig. Abatement, I 14, I 15; 2 Arch. Pr. 3. This judgment is of two kinds, namely, interlocutory or final.

JUDGMENT, IN REPLEVIN, is either for the plaintiff or defendant.

§ 1. For the plaintiff. 1. When the declaration is in the *detinuit*, that is, where the plaintiff declares, that the chattels "were detained until replevied by the sheriff," the judgment is that he recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, as also his costs. 5 Serg. & Rawle, 133; Ham. N. P. 488.

2. If the replevin is in the *detinet*, that is, where the plaintiff declares, that the chattels taken are "yet detained," the jury must find, in addition to the above, the value of the chattels, (assuming that they are still detained) not in a gross sum, but each separate article; for the defendant perhaps will restore some, in which case the plaintiff is to recover the value of the remainder. Ham. N. P. 489; Fitz. N. B. 159, b; 5 Serg. & Rawle, 130.

§ 2. For the defendant. 1. If the replevin is *abated*, the judgment is, that the writ or plaint abate, and that the defendant (having avowed) have a return of the chattels.

2. When the plaintiff is *nonsuited*, the judgment for the defendant, at common law, is, that the chattels be restored to him, and this, without his first assigning the purpose for which they were taken, because by abandoning his suit, the plaintiff admits that he had no right to dispossess the defendant by prosecuting the replevin. The form of this judgment is simply "to have a return," without adding the words "to hold irreprevisable." Ham. N. P. 490. As to the form of judgments in cases of non-suit under the 21 Hen. 8, c. 19, and 17 Car. 2, c. 7, see Ham. N. P. 490, 491; 2 Ch. Plead. 161; 8 Wentw. Pl. 116; 5 Serg. & Rawle, 132; 1 Saund. 195, n. 3; 2 Saund. 286, n. 5. It is still in the defendant's option, in these cases, to take his judgment *pro retorno habendo* at common law. 5 Serg. & Rawle, 132; 1 Lev. 255; 3 T. R. 349.

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3. When the avowant succeeds upon the merits of his case, the common law judgment is, that he "have returnable irreprevisable," for it is apparent that he is by law entitled to keep possession of the goods. 5 Serg. & Rawle, 135; Ham. N. P. 493; 1 Chit. Pl. 162. For the form of judgments in favour of the avowant, under the last mentioned statutes, see Ham. N. P. 494, 5.

JUDGMENT OF RESPONDEAT OUSTER, *practice*. When there is an issue in law, arising on *dilatory plea*, and it is decided in favour of the plaintiff, the judgment is only that the defendant answer over, which is called a judgment of *respondeat ouster*. The pleading is accordingly resumed, and the action proceeds. Steph. Pl. 126; see Bac. Abr. Pleas, N 4; 2 Arch. Pr. 3.

JUDGMENT OF RETRAXIT, *practice*, is one where after appearance and before judgment, the plaintiff enters upon the record that he "withdraws his suit;" in such case judgment is given against him. Steph. Pl. 130.

JUDGMENT, IN TRESPASS, when for the plaintiff, is that he recover the damages assessed by the jury, and the costs. For the defendant that he recover the costs.

JUDGMENT, IN TROVER, when for the plaintiff, is that he recover damages and costs. 1 Ch. Pl. 157. For the defendant, the judgment is, that he recover his costs.

JUDICATURE, is the state of those employed in the administration of justice, and in this sense it is nearly synonymous with judiciary. This term is also used to signify a tribunal; and sometimes it is employed to show the extent of jurisdiction, as, the judicature is upon writs of error, &c. Com. Dig. Parliament, L 1; and see Com. Dig. Courts, A.

JUDICIAL, belonging or emanating from a judge as such. Judicial sales, are such as are ordered by virtue of the process of courts. 1 Supp. to Ves. jr. 129, 160; 2 Ves. jr. 50. A judicial writ is one issued in the progress of the cause, in contradistinction to an original writ. 3 Bl. Com. 282. Judicial decisions, are the opinions or determinations of the judges in causes before them. Hale, H. C. L. 68. Judicial power, the authority vested in the judges. Vide Ayl. Parerg. 27.

JUDICIAL WRITS, *Eng. practice*. The capias and all other subsequent writs to the original writ, not issuing out of chancery, but from the court into which the original was returnable, and being grounded on what had passed in that court in consequence of the sheriff's return, were called *judicial* writs, in contradistinction to the writs issued out of chancery, which were called *original* writs. 3 Bl. Com. 282.

JUDICIARY, the whole body of judges and courts. Vide *Courts*, and 3 Story, Const. B. 3, c. 38.

JUDICIUM DEI. The judgment of God. The English law formerly impiously called the judgments on trials by ordeal, by battle, and the like, the judgments of God.

JUNIOR, younger. This has been held to be no part of a man's name, but an addition by use, and a convenient distinction between a father and son of the same name. 10 Mass. R. 203.

JUNIPERUS SABINA, *med. jur.* This plant is commonly called savine. It is used for lawful purposes in medicine, but too frequently for the criminal intent of producing abortion, generally endangering the life of the woman. It is usually administered in powder or oil. The dose of oil for lawful purposes for a grown person is from two to four drops. Parr's Med. Dictionary, arti-

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cle Sabina. Foderé mentions a case where a large dose of powdered savine had been administered to an ignorant girl, in the seventh month of her pregnancy, which had no effect on the fœtus. It was, however, near taking the life of the girl. Foderé, tome iv. p. 431. Given in sufficiently large doses, 4 or 6 grains in the form of powder, kills a dog in a few hours, and even its insertion in a wound has the same effect. Orfila, Traité des Poisons, tome iii. p. 42. For a form of indictment for administering savine to a woman quick with child, see 3 Chit. Cr. Law, 798. Vide 1 Beck's Med. Jur. 316.

JURAMENTUM JUDICIALE, a term in the civil law. The oath called *juramentum judiciale* is that which the judge, of his own accord, defers to either of the parties. It is of two kinds, 1st, That which the judge defers for the decision of the cause, and which is understood by the general name *juramentum judiciale*, and is sometimes called suppletory oath, *juramentum suppletorium*. 2d. That which the judge defers in order to fix and determine the amount of the condemnation which he ought to pronounce, and which is called *juramentum in litem*. Poth. on Oblig. P. 4, c. 3, s. 3, art. 3.

JURATS, *officers*, in some English corporations, jurats are officers who have much the same power as aldermen in others. Stat. 1 Ed. 4; stat. 2 & 3 Ed. 6, c. 30; 13 Ed. 1, c. 26.

JURIDICAL DAYS, dies juridici. Days in court on which the law is administered.

JURISCONSULT, is one well versed in jurisprudence; a jurist.

JURISDICTION, *practice*, is a power constitutionally conferred upon a judge or magistrate to take cognizance of and decide causes according to law, and to carry his sentence into execution. The tract of land or district within which a judge or magistrate has jurisdiction, is called his territory, and his power in relation to his territory is called his territorial jurisdiction. Every act of jurisdiction exercised by a judge without his territory, either by pronouncing sentence or carrying it into execution, is null. An inferior court has no jurisdiction beyond what is expressly delegated. 1 Salk. 404, n.; Gilb. C. P. 188; 1 Saund. 73; 2 Lord Raym. 1311; and see 2 Bac. Ab. 98, et seq.; 5 Bac. Ab. 360.—Jurisdiction is original, when it is conferred on the court in the first instance, which is called *original jurisdiction*, (q. v.); or it is *appellate*, which is when an appeal is given from the judgment of another court. Jurisdiction is also *civil*, where the subject-matter to be tried is not of a criminal nature; or *criminal*, where the court is to punish crimes. Some courts and magistrates have both civil and criminal jurisdiction. Vide 1 Salk. 414; 2 Bac. Ab. 98, 107; 5 Id. 560; Merlin, Répert. h. t.; Ayl. Parerg. 317, and the article *Competency*.

JURISPRUDENCE, is the science of the law. By science here is understood that connection of truths founded on principles either evident of themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense jurisprudence is the practical science of giving a wise interpretation to the laws, and to make a just application of them to all cases as they arise. In this sense it is the habit of judging the same question in the same manner, and by this course of judgments forming precedents. 1 Ayl. Pand. 3; Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rép. h. t.; 19 Amer. Jurist, 3.

JURIST, one well versed in the

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science of the law. The term is usually applied to students and practitioners of law.

JUROR, *practice*, from *juro*, to swear; a man who is sworn or affirmed to serve on a jury. Jurors are selected from citizens, and may be compelled to serve by fine; they generally receive a compensation for their service; while attending court they are privileged from arrest in civil cases.

JURY, a body of men selected according to law, for the purpose of deciding some controversy. Juries are either grand juries, (q. v.), or pettit juries. The former having been treated of elsewhere, it will only be necessary to consider the latter. A pettit jury consists of twelve citizens duly qualified to serve on juries, impanelled and sworn to try one or more issues of fact submitted to them, and to give a judgment respecting the same, which is called a verdict. Each one of the citizens so impanelled and sworn is called a juror. Vide *Trial*.

The constitution of the United States directs, that "the trial of all crimes, except in cases of impeachment, shall be by jury;" and this invaluable institution is also secured by the several state constitutions. The constitution of the United States also provides that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. Amendm. VII.

JUS. Law or right. This term is applied in many modern phrases.

JUS ACCRESCENDI, *estates*, the right of survivorship between *joint tenants*, (q. v.)

JUS AD REM, *property*, *title*. This phrase is applied to designate the right a man has in relation to a thing; it is not the right in the thing itself, but only against the person who has contracted to deliver it. It is a mere imperfect or inchoate right. 2 Bl. Com. 312; Poth. Dr. de Dom. de Proprieté, ch. prél. n. 1.

JUS AQUÆDUCTUS, *civil law*. The name of a servitude which gives to the owner of land the right to bring down water through or from the land of another, either from its source or from any other place. Its privilege may be limited as to the time when it may be exercised. If the source fails, the servitude ceases, but revives when the water returns. If the water rises in, or naturally flows through the land, its proprietor cannot by any grant divert it so as to prevent it flowing to the land below. But if it had been brought into his land by artificial means, it seems it would be strictly his property, and that it would be in his power to grant it. Dig. 8, 3, 1 & 10; 3 Burge on the Confl. of Laws, 417.

JUS DELIBERANDI. The right of deliberating which in some countries where the heir may have *benefit of inventory*, (q. v.) is given to him to consider whether he will accept or renounce the succession. In Louisiana he is allowed ten days before he is required to make his election. Civ. Code, art. 1028.

JUS DUPLICATUM, *property*, *title*. When a man has the possession as well as the property of any thing, he is said to have a double right, *jus duplicatum*. Bract. l. 4, tr. 4, c. 4; 3 Bl. Com. 189.

JUS GENTIUM, the *law of nations*, (q. v.)

JUS IN RE, *property*, *title*. It is the right which a man has in a thing, by which it belongs to him. It is a complete and full right. Poth. Dr. de Dom. de Prop. n. 1.

JUS MARITI, *Scotch law*, is the right of the husband to administer, during the marriage, his wife's goods and the rents of her heritage.

JUS POSTLIMINII, *property*,

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title. The right to claim property after re-capture. Vide *Potliminy;* Marsh. Ins. 573; 1 Kent, Com. 108; Dane's Ab. Index, h. t.

JUS PROJICIENDI, *civil law.* The name of a servitude; it is the right which the owner of a building has of projecting a part of his building towards the adjoining house, without resting on the latter. It is extended merely over the ground. Dig. 50, 16, 242, 1; Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

JUS PROTEGENDI, *civil law.* The name of a servitude; it is a right by which a part of the roof or tiling of one house is made to extend over the adjoining house. Dig. 50, 16, 242, 1; Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

JUS RELICTA, *Scotch law,* is the right of a wife, after her husband's death, to a third of moveables, if there be children; and to one-half, if there be none.

JUSTICE is the constant and perpetual disposition to render every man his due. Just. Inst. B. 1, tit. 1. Toullier defines it to be the conformity of our actions and our will to the law. Dr. Civ. Fr. tit. prel. n. 5. In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtue. Yet the common distinction between them is that which considered positively and in itself, is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought. Justice is either distributive or commutative.

Distributive justice is that virtue whose object is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing a person or a fact with another, so that neither equal persons have unequal things, nor unequal persons things equal. Tr. of Eq. 3, and Toullier's learned note; Dr. Civ. Fr. tit. prel. n. 7, note.

Commutative justice is that virtue whose object it is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, that no one may be a gainer by another's loss. Tr. Eq. 3.

Toullier exposes the want of utility and exactness in this division of distributive and commutative justice, adopted in the *compendium* or abridgments of the ancient doctors, and prefers the division of *internal* and *external* justice; the first being a conformity of our *will,* and the latter a conformity of our *actions* to the law: their union make perfect justice. Exterior justice is the object of jurisprudence; interior justice is the object of morality. Dr. Civ. Fr. tit. prél. n. 6 et 7.

According to the Frederician code, part 1, book 1, tit. 2, s. 27, justice consists simply in letting every one enjoy the rights which he has acquired in virtue of the laws. And as this definition includes all the other rules of right, there is properly but one single general rule of right, namely, ***Give every one his own.***

See generally, Puffend. Law of Nature and Nations, B. 1, c. 7, s. 89; Elementorum Jurisprudentiæ universalis, lib. 1, definito, 17, 3, 1; Gro. lib. 2, c. 11, s. 3; Ld. Bac. Read. Stat. Uses, 306; Treatise of Equity, B. 1, c. 1, s. 1.

JUSTICES OF THE PEACE, are public officers invested with judicial powers for the purpose of preventing breaches of the peace, and bringing to punishment those who

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have violated the law. These officers, under the constitution of the United States and some of the states, are appointed by the executive; in others they are elected by the people, and commissioned by the executive. In some states they hold their office during good behaviour, in others for a limited period.

At common law justices of the peace have a double power in relation to the arrest of wrong-doers; when a felony or breach of the peace has been committed in their presence, they may personally arrest the offender, or command others to do so; and in order to prevent the riotous consequences of a tumultuous assembly, they may command others to arrest affrayers, when the affray has been committed in their presence. When the magistrate is not present when a crime is committed, before he can take a step to arrest the offender, an oath or affirmation must be made before him by some person cognizant of the fact, that the offence has been committed, and that the person charged is the offender, or there is probable cause to believe that he has committed the offence. The constitution of the United States directs, that "no warrants shall issue, but upon probable cause, supported by oath or affirmation." Amendm. IV. After his arrest, the person charged is brought before the justice of the peace, and after hearing he is discharged, held to bail to answer to the complaint, or, for want of bail, committed to prison.

In some, perhaps all the United States, justices of the peace have jurisdiction in civil cases, given to them by local regulations. In Pennsylvania their jurisdiction in cases of contracts, express or implied, extends to one hundred dollars.

Vide, generally, Burn's Justice; Graydon's Justice; Bache's Manual of a Justice of the Peace; Com. Dig. h. t.; 15 Vin. Ab. 3; 3 Bac. Ab. 787; 2 Sell. Pr. 70; 2 Phil. Ev. 239; Chit. Pr. h. t.; Amer. Dig. h. t.

JUSTICES, judges. Officers appointed by a competent authority to administer justice. They are so called because in ancient times the latin word for judge was *justitia*. This term is in common parlance used to designate justices of the peace.

JUSTICIARY, *officer*, another name for a judge. In latin he was called *justiciarius*, and in French *justicier*. Not used.

JUSTIFIABLE HOMICIDE, *crim. law*, is the killing of a human being in consequence of an imperious duty prescribed by law, as hanging a man lawfully sentenced to be hung; or it is when the killing is owing to some unavoidable necessity induced by the act of the party killed, without any manner of fault in the party killing. 1 East, P. C. 219; Hawk. B. 1, c. 28, s. 1, n. 22.

JUSTIFICATION, *pleading*, is the maintaining and showing a good and legal reason in court why a party charged did the thing he is called upon to answer. Vide for justification in cases of slander, Com. Dig. Pleader, 2 L 3 to 2 L 7; in cases of trespass, 15 East, R. 615, note (e); 2 Lill. Ab. 134; 15 Vin. Ab. 31; Dane's Ab. Index, h. t. When the plea of justification is supported by evidence, it is a bar to the action.

JUSTIFICATORS. A kind of compurgators, or those who by oath justified the innocence or oaths of others, as in the case of wagers of law.

JUSTIFYING BAIL, *practice*, is the production of bail in court, who there justify themselves against the exception of the plaintiff.

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KENTUCKY. The name of one of the new states of the United States of America. This state was formerly a part of Virginia, and the latter state, by an act of the legislature, passed the 18th day of December 1789, "consented that the district of Kentucky, within the jurisdiction of the said commonwealth, and according to its actual boundaries at the time of passing the act aforesaid, should be formed into a new state." By the act of Congress of February, 4, 1791, 1 Story's L. U. S. 168, congress consented that after the first day of June, 1792, the district of Kentucky should be formed into a new state, separate from and independent of the commonwealth of Virginia. And by the second section, it is enacted, that upon the aforesaid first day of June, 1792, the said new state, by the name and style of the state of Kentucky, shall be received and admitted into the Union, as a new and entire member of the United States of America.

The constitution of this state was adopted the 17th day of August, 1799. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative to one; those which are executive, to another; and those which are judiciary, to another.

1st. The legislative power is vested in two distinct branches; the one styled the house of representatives, and the other the senate; and both together, the general assembly of the commonwealth of Kentucky. 1. The house of representatives is elected yearly, and consists of not less than fifty-eight nor more than one hundred members. 2. The members of the senate are elected for four years. The senate consists of twenty-four members at least, and for every three members above fifty-eight, which shall be added to the house of representatives, one member shall be added to the senate.

2d. The executive power is vested in a chief magistrate, who is styled the governor of the commonwealth of Kentucky. The governor is elected for four years. He is commander-in-chief of the army and navy of the commonwealth, except when called into actual service of the United States. He nominates, and with the consent of the senate, appoints all officers, except those whose appointment is otherwise provided for. He is invested with the pardoning power, except in certain cases, as impeachment and treason. A lieutenant-governor is chosen at every election for governor, in the same manner, and to continue in office for the same time as the governor. He is, ex officio, speaker of the senate, and acts as governor when the latter is impeached, or removed from office, or dead, or refuses to qualify, resigns, or is absent from the state.

3d. The judicial power, both as to matters of law and equity, is vested in one supreme court, styled the court of appeals, and in such inferior courts as the general assembly may, from time to time erect and establish. The judges hold their office during good behaviour.

KEY, *estates*. A wharf at which to land or load goods from or in a vessel. This word is now generally spelled *Quay*, from the French, *quai*.

KEYAGE, a toll paid for loading and unloading merchandize at a key or wharf.

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KEY. An instrument made for opening a lock. The keys of a house are considered as real estate, and descend to the heir with the inheritance. When the keys of a warehouse are delivered to a purchaser of goods locked up there, with a view of effecting a delivery of such goods, the delivery is complete. The doctrine of the civil law is the same. Dig. lib. 41, t. 1, l. 9, § 6; and lib. 18, t. 1, l. 74.

KEEL. The name of a kind of vessel used in rivers in the north of England, for the carriage of coals.

KEELAGE, the right of demanding money for the bottom of ships resting in a port or harbour. The money so paid, is also called *keelage*.

KEELS. This word is applied, in England, to vessels employed in the carriage of coals. Jacob.

KINDRED, relations by blood. Nature has divided kindred of every one into three principal classes. 1. His children and their descendants; 2, his father, mother and other ascendants; 3, his collateral relations, which include, in the first place, his brothers and sisters and their descendants; and, secondly, his uncles, cousins and other relations of either sex, who have not descended from a brother or sister of the deceased. All kindred then are descendants, ascendants or collaterals. A husband or wife of the deceased, therefore, is not his or her kindred. 14 Ves. 372; vide Wood's Inst. 50; Ayl. Parerg. 325; Dane's Ab. h. t.; Toll. Ex. 382, 3; 2 Chit. Bl. Com. 516, n. 59.

KING. The chief magistrate of a kingdom, vested usually with the executive power.

KING'S BENCH. The name of the supreme court of law in England. It is so called because formerly the king used to sit there in person, the style of the court being still *coram ipso rege*, before the king himself. During the reign of a queen, it is called the Queen's Bench, and during the protectorate of Cromwell, it was called the Upper Bench. It consists of a chief justice, and three other judges who are, by their office, the principal coroners and conservators of the peace. 3 Bl. Com. 41.

KIRBY'S QUEST. An ancient record remaining with the remembrancer of the English Exchequer, so called from being the inquest of John De Kirby, treasurer to Edw. I.

KINTLIDGE, *merc. law*. This term is used by merchants and seafaring men to signify a ship's ballast. Merc. Dict.

KNAVE. A false, dishonest, or deceitful person. This signification of the word has arisen by a long perversion of its original meaning.

KNOWINGLY, *pleadings*. The word "knowingly," or "well knowing," will supply the place of a positive averment in an indictment or declaration, that the defendant knew the facts subsequently stated; if notice or knowledge be unnecessarily stated, the allegation may be rejected as surplusage. Vide Com. Dig. Indictment, G 6; 2 Stra. 904; 2 East, 452; 1 Chit. Pl. *376. Vide *Scienter*.

KNOWLEDGE. Information as to a fact. Many acts are perfectly innocent when the party performing them is not aware of certain circumstances attending them; for example, a man may pass a counterfeit note and be guiltless if he did not know it was so; he may receive stolen goods if he was not aware of the fact that they were stolen. In these and the like cases it is the guilty knowledge which makes the crime. See as to the manner of proving guilty knowledge. Archb. Cr. Pl. 110, 111.

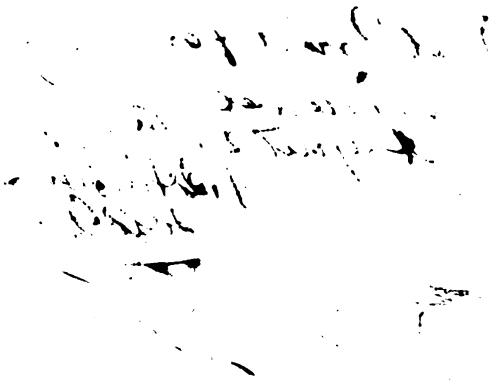
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