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.

Ignorantis terminis ignoratur et aera.—Co. Litt. 2 a.
Je sais que chaque science et chaque art a ses termes propres, inconnus au commun des hommes.—Fleury.

THIRD EDITION, MUCH IMPROVED AND ENLARGED.

VOL. I.

PHILADELPHIA:
T. & J. W. JOHNSON, LAW BOOKSELLERS.
1848.
Entered according to Act of Congress in the year one thousand eight hundred and thirty-nine,  

BY JOHN BOUVIER,  

In the Clerk's Office of the District Court for the Eastern District of Pennsylvania.

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Entered according to Act of Congress in the year one thousand eight hundred and forty-three,  

BY JOHN BOUVIER,  

In the Clerk's Office of the District Court for the Eastern District of Pennsylvania.

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Entered according to Act of Congress in the year one thousand eight hundred and forty-eight,  

BY JOHN BOUVIER,  

In the Clerk's office of the District Court for the Eastern District of Pennsylvania.

KITE & WALTON, PRINTERS.
TO THE HONOURABLE

JOSEPH STORY, LL.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.
ADVERTISEMENT

TO THE THIRD EDITION.

Encouraged by the success of this work, the author has endeavoured to render this edition as perfect as it was possible for him to make it. He has remoulded very many of the articles contained in the former editions, and added upwards of twelve hundred new ones.

To render the work as useful as possible, he has added a very copious Index to the whole, which, at the same time that it will assist the inquirer, will exhibit the great number of subjects treated of in these volumes.

As Kelham's Law Dictionary has been published in this city, and can be had by those who desire to possess it, that work has not been added as an appendix to this edition.

Philadelphia, November, 1848.
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, nor calculated for present use, even in England. And there is a great portion which, though useful to an English lawyer, is almost 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, Williams, the Termes de 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, 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, with our own, 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 ours. The articles *Condonation*, *Extradition* 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 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.
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.
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. Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote; A, when he voted to absolve the party on trial; C, when he was for condemnation; and N L, (non liquet) when the matter did not appear clearly, and he desired a new argument.

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 seize, in contracts, as profits a prendre, Ham. N. P. 184; or a right to take something out of the soil. 5 Ad. & Ell. 764; 1 N. & P. 172; it differs from a right of way, which is simply an easement or interest which confers no interest in the land. 5 B. & C. 221.

A QUO, A latin phrase, which signifies from which; example, in the computation of time, the day à quo is not to be counted, but the day ad quem is always included. 13 Toull. n. 52; 2 Duv. n. 22. A court a quo, the court from which an appeal has been taken; a judge à quo is a judge of a court below. 6 Mart. Lo. R. 520; 1 Har. Cond. L. R. 501. See Ad quem.

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.

A B INITIO, from the beginning.

2.—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 re-
move 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. 3. — 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. 146. 169, 180. 

AB INTESTAT. An heir, ab intestat, is one upon whom the law casts the inheritance or estate of a person who dies intestate.

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, Rèperti, mots, Ab irato.

ABANDONMENT, contracts. In the French law the act by which a debtor surrenders his property for the benefit of his creditors. Merlin, Rèperti, mots Abandonment.

ABANDONMENT, contracts. — In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured.

2. — 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.

3. — It must also be made in reasonable time after the loss.

4. — 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.

5. — The abandonment, when legally made, transfers from the insured to the assurer the property in the thing insured, and obliges him to pay to the assurer 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. Maratime, 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 propriétaires, art. 2; Code de Com. l. 2, t. 2, art. 216. 

ABANDONMENT, rights. The relinquishment of a right; the giving up of something to which we are entitled. 

2. — Legal rights when once vested must be divested according to law, but equitable rights may be abandoned. 2 Wash. R. 106. See 1 H. & M. 429; a mill site, once occupied, may be abandoned. 17 Mass. 297; an application for land, which is an inception of title, 5 S. & R. 215; 2 S. & R. 375; 1 Yeates, 193, 289; 2 Yeates, 81, 88, 318; an improvement, 1 Yeates, 515; 2 Yeates, 476; 5 Binn. 73; 3 S. & R. 319; and a trust fund, 3 Yerg. 258, may be abandoned. 

3. — The abandonment must be made by the owner without being pressed by any duty, necessity or utility to himself, but simply because he wishes no longer to possess the thing; and further it must be made without any desire that any other person shall acquire the same; for
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.

2. 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 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. 150, 181.

3. 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.

ABANDONMENT, malicious.—The act of a husband or wife, who leaves his or her consort wilfully, and with an intention of causing perpetual separation.

2. Such abandonment, when it has continued a length of time required by the local statutes, is sufficient cause for a divorce. Vide 1 Hoff. R. 47; Divorce.

ABATEMENT, chancery practice, is a suspension of all proceedings in a suit, from the want of proper parties capable of proceeding therein. It differs from an abatement at law in this, that in the latter the action is in general entirely dead, and cannot be revived, 3 Bl. Com. 168; but in the former, the right to proceed is merely suspended, and may be revived by a bill of revivor. Mitf. Eq. Pl. by Jeremy, 57; Story, Eq. Pl. § 354.

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, merc. law. By this term is understood the deduction sometimes made at the custom-house from the duties chargeable upon goods when they are damaged. See Act of Congress, March 2, 1799, s. 52, 1 Story L. U. S. 617.

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.

2. 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.

3.—§ 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.
4.—§ 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 *verum 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. 485; Arch. Civ. Pl. 304. But a nominal plaintiff in ejectment may sustain an action. 5 Vern. 93; 19 John. 308. As to the rule in Pennsylvania, see 5 Watts, 423.

5.—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. 235; Bac. Abr. Abatement, G.; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Vern. 545; 2 Wheat. 111; 14 Mass. 295; 1 Blackf. 288; 2 Bailey, 349. See 10 S. & R. 208; 7 Vern. 505; 1 Yeates, 185; 2 Dall. 184; 3 Bibb, 246.

6.—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. 142; 2 Saund. 212, a, n. 5; 1 Went. 58, 62; 7 John. R. 373; 3 N. H. Rep. 345; 8 Pick. 552; and see 7 Mass. 241; 4 Halst. 381; 2 N. H. Rep. 487.

7.—4. A suit brought by a lunatic under guardianship, shall abate. Brayt. 18.

8.—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. 4 Hawks, 433; 2 Root, 57; 9 Mass. 422; 4 H. & M. 410; Gilmer, 145; 2 Rand. 454; 2 Greenl. 127. 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.

9.—6. Alienage, or that the plaintiff is an alien enemy. Bac. Abr. h. t.; 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.


11.—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 Partt. 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-joiner in abatement. Arch. Civ. Pl. 304; see Com. Dig. Abatement, E 9, E 12, E 13, E 14.

12.—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.

13.—10. When the plaintiff is an alleged corporation, and it is intended to contest its existence, the defendant must plead in abatement. Wright, 12; 3 Pick. 236; 1 Mass. 485; 1 Pet. 450; 4 Pet. 501; 5 Pet. 231. To a suit brought in the name of the "judges of the county court," after such court has been abolished, the defendant may plead in abatement that there are no such judges. Judges, &c. v. Phillips, 2 Bay, 519.

14.—§ 3. Relating to the person of the defendant. 1. In an action against two or more, one may plead in abate-
ment that there never was such a person in rerum natura as A, who is named as defendant with him. Arch. Civ. Pl. 312.

15.—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.

16.—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; 1 Const. Rep. 83; 4 McCord, 160; 7 Wheat. 530; 1 Watts, 229; 4 Mass. 480; 8 Greenl. 128; in general where the cause of action dies with the person, the suit abates by the death of the defendant before judgment. Vide Actio Personalis moritur cum persona.

17.—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.

18.—5. When one joint tenant, Com. Dig. Abatement, F 5, or one tenant in common in cases where they ought to be joined, Ib. 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-jointer in abatement. Ib. F 8, a; 1 Wash. 9; 18 Johns. 459; 2 Johns. Cas. 382; 3 Caines’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-jointer may be pleaded in abatement. Arch. Civ. Pl. 309. The non-jointer of all the executors, who have proved the will; and the non-jointer of all the administrators of the deceased, may be pleaded in abatement. Com. Dig. Abatement, F 10.

19.—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.

20.—7. In cases where the defendant may plead non-tenure, see Arch. Civ. Pl. 310; Cro. El. 559.

21.—8. Where he may plead a disclaimer, see Arch. Civ. Pl. 311; Com. Dig. Abatement, F 15.


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

24.—2. Pleas in abatement to the writ or bill and to the form or to the action. Com. Dig. Abatement, H 1, 17.

25.—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.

26.—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; 2 B. & P. 395. But as over of the writ can no longer be had, an omission in the defendant’s declaration 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. & B. 395; 7 East, 382.

27.—6. 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.

28.—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 pendante. Com. Dig. Abatement, H. 24; Bac. Ab. Abatement, M; 1 Chitty's Pl. 443.

29.—§ 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.

30.—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 without any intention, and be pleaded without any repugnancy. 3 T. R. 186; Willes, 42; 2 Bl. R. 1096; 2 Saund. 298, n. 1; Com. Dig. I, 11; Co. Lit. 392; 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; 2 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.

31.—§ 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.

32.—§ 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. 3 Str. 705; Litt. Ent. 1; 2 Chit. Pl. 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. (h.) Penna. Pract. Index, h. t.; Tidd's Pr. Index, h. t.; Arch. Civ. Pl. Index, h. t.; Arch. Pract. Index, h. t. Death; Parties to Actions; Plaintiff; Puis darrein continuance.

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, n; Finch's Law, 195; Arch. Civ. Pl. 11.

2. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. Howard, Anciennes Lois des Français, tome 1, p. 539.

ABATEMENT OF LEGACIES, is the reduction of legacies for the purpose of paying the testator's debts.

2.—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 proportionally 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 proportionally. 2 Bl. Com. 513; 2 Ves. sen. 561 to 564; 1 P. Wms. 680; 2 P. Wms. 283. See 2 Bro. C. C. 19; Bac. Abr. Legacies, H; Rop. on Leg. 253, 234.

**Abatement of Nuisances** is the prostration or removal of a nuisance. 3 Bl. Com. 5.

2. 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. 4—§ 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.

5. 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.

6. 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 abatement is not confined merely to a house, mill or land. 2 Smith’s Rep. 9; 2 Roll. Abr. 565; 2 Leon. 202; Com. Dig. Plead. 3 M. 42; 3 Lev. 92; 1 Brownl. 212.

7. 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; Godd. 221; Str. 686.

8. 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. Ab. tit. Trees, E, and Nuisance W.

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.

ABATUDA, obsolete. Any thing diminished; as, moneta abatudia, which is money clipped or diminished in value. Cowell, h. t.

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

**Abbreviation, practice.**—The omission of some words or letters in writing; as when fi. fa. is written fieri facias.

2. 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; 9 Co. 48.

3. 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.

App. Apposition.
Appx. Appendix.
Arg. Argumento, by an argument drawn from such a law. It also signifies arguendo.
Ashby, R. Shaw's Reports.
Ass. or Lib. Ass. Liber Assis Darium, or Pleas of the Crown.
Ast. Ent. Aston's Entries.
Atk. Atkyn's Reports.
Atk. on Con. Atkinson on Conveyancing.
Atk. on Tit. Atkinson on Marketable Titles.
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).
Aust. on Jur. The Province of Jurisprudence determined, by John Austin.
Auth. Authentic, in the Authentic; that is the Summary of some of the Novels of the civil law inserted in the code under such a title.
Ayl. Ayliffe's Pandect. New Pandect of the Roman Civil Law, with many useful observations thereon, showing wherein that law differs from the municipal law of Great Britain and from the Canon law in general, &c. 1 vol. fol.
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 or Bk. Book.
B. & A. Barnwall and 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 vols. 8vo. These reports commence Michaelmas Term, 59 Geo. III. (1817) and end with Trinity Term, 2 Geo. IV. (1821.) In E. C. L. R.
B. & B. Ball and Beatty's Reports.
B. C. R. Brown's Chancery Reports.

Vol. I.—3

B. & P. or Bos. & Pull. Bosanquet and 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 Ch. 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.
B. Tr. Bishop's Trial.
Bob. Set off. Babington on Set off and mutual credit.
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. This book is generally cited by the page and sometimes by the title. An edition of this work has been published, with notes to American law and decisions, by the author of this work.
Bac. Gov. Bacon on Government.
Bac. Law Tr. Bacon's Law Tracts.
Bac. Leas. Bacon (M.) on Leases and Terms of Years.
Bac. Uses. Bacon's Reading on the statute of Uses. This is printed in his Law Tracts.
Bail. R. Bailey's Reports.
Bain, on M. & M. Bainbridge on Mines and Minerals.
Baldw. R. Baldwin's Circuit Court Reports.
Bail & 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.
Barb. Eq. Dig. Barber's Equity Digest.
Barb. Pract. in Ch. Barber's Treatise on the Practice of the Court of Chancery.
Barb. R. Barber's Chancery Reports.
Barb. Grat. Gratian on War and Peace, with notes by Barbevrahe.
Barb. on Set off. Barbou on the law of Set off, with an appendix of precedents.
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 1, to Trinity Term 7 George 2, 2 vols. This book is said to be “not of much authority,” Doug. 333, n.; “of still less authority than 10 Mod.” Doug. 689, n.; “a bad reporter.” 1 East, 642, n.

Barn. & Ald. Barnetwall & Alderson’s Reports. vide B. & A. In E. C. L. R.

Barn. & Adolphus. Barnetwall & Adolphus’s Reports. In E. C. L. R.

Barn. & Cresswell. Barnetwall & Cresswell’s Reports. In E. C. L. R.

Barn. Sher. Barnes’s Sheriff.

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.


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

Bay’s R. Bay’s Reports.


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. Pease.

Beam. Eq. Beames on Equity Pleading.


Bett. R. Betti’s Reports determined in the High Court of Chancery in Ireland.

Beavan. Beavan’s Chancery Reports.

Beaves. Beaves’s Lex Mercatoria.


Bee’s R. Bee’s Reports.


Bellevw. Bellevew’s Cases in the time of K. Richard II. Bellevew’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.

Bellingh. Tr. Bellingham’s Trial.

Bell’s Supp. Bell’s Supplement. Supplement to the Reports in Chancery of Francis Vesey, Senior, Esq. during the time of Lord Ch. J. Hardwicke.

Bell’s Ves. sen. Bell’s edition of Vesey Senior’s Reports.


Benl. on Av. Benecke on Average.

Benl. Diss. Bennet’s Short Dissertation on the nature and various proceedings in the Master’s Office, in the Court of Chancery. Sometimes this book is called Benn. Pract.

Beent. Pract. See Benl. Diss.


Best on Pres. Best’s Treatise on Presumptions of Law and Fact.

Bett’s Adm. Pr. Bett’s Admiralty Practice.

Bett’s on Hom. Bett’s on Homicide.


Bing. R. Bingham’s Reports. In E. C. L. R.

Bing. N. C. Bingham’s New Cases.

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

Bird on Cons. Bird on Conveyancing.


Birn, De l’Abs. Traite de l’Absence et de ses effets, par M. Birn.

Biss. on Est. or Biss. on Life Est. Bissett on the Law of Estates for Life.

Biss. on Partn. Bissett on Partnership.


Bl. Comm. 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 1749. By Sir William Blackstone. 2 vols. 8vo. These reports are said not to be very accurate. Per Ld. Mansfield, Doug. 92, n.

Bl. II. Henry Blackstone’s Reports, sometimes cited H. Bl.

Black. L. T. Blackstone’s Law Tracts.

Black’s on Sales. Blackburn on the effect of the Contract of Sale.

Black’s on Sales. Blackburn on the Law of Sales.

Blackf. R. Blackford’s Reports.

Blanc, on Ann. Blaney on Life Annuities.
Blane, Ch. R. Bland's Chancery Reports. 
Blas. Lim. Blashard 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; and is still continued.
Blount, Blount's Law Dictionary and Glossary.
Booth's R. A. Booth on Real Actions.
Borth, L. L. Borthw. on the Law of Libels.
Box & Pull, Bosanquet and Puller's Reports.
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Bott. Bott's Poor Laws. 3 vols. 8vo.
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Bouv. on Lib. Bowles on Libels.
Bru, or Brown. Brownlow's Reports.
Br. or Br. Ab. Brooke's Abrigment.
Bran. 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.;
Bradh. Bradley on Distresses.
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Bran. Prin. or Bran. Max. Branche's Principia Legis Aquitatis, being an alphabetical collection of maxims, &c.
Brayt. R. Brayton's Reports.
Brees. R. Breeze's Reports.
Bree. Sel. Brevia Selecta, or Choice Writs. 
Brid. Dig. Ind. Bridgman's Digested Index.
Bridg. O. Orlando Bridgman's Reports.

Bro. on Sales. Brown on Sales.
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Broad. & Ring. Broderip & Bingham's Reports. In E. C. L. R.
Brook on Part. Broom on Parties to Actions.
Bruce M. L. Bruce's Military Law.
Bull. or Bull. N. P. Boller'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.
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.
Burge Confl. of L. Burge on the Conflict of Laws.
Burge Far. Law. Burge on Foreign Law.
Burlem. Burlamaqui's Natural and Political Law.
Burn's J. D. Burn's Law Dictionary.
Burn's Just. Burn's Justice of the Peace.
Burn's Eccl. Law or Burn's E. L. Burn's Ecclesiastical Law.
Burnt. C. L. Burnett's Treatise on the Criminal Law of Scotland.
Burr. Barrow's Reports.
Burra. Sett. Cas. Burrow's Settlement Cases,
Burru. Tr. Burru's Trial.
Scotland. The work is in two parts, one
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borough, 1 H. Bl. 332.
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Error.
C. D. or Com Dig. Comy's Digest. This
book is cited in this manner. Com. Dig. Arbi-
tratment, (A. 2,) which signifies Comy's
Digest, title Arbitration, division (A. 2).
Sometimes the volume and page are cited as
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C. J. Q. B. Chief Justice of the Queen's
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C. R. or Ch. Rep. Chancery Reports.
C. & R. Cockburn and Rowe's Reports.
C. W. Dudl. Eq. C. W. Dudley's Equity
Reports.
C. Theod. Codic Or Theodosiano, in the
Theodosian code.
Ca. Case or placitum.
Ca. T. K. Select cases tempore King.
Ca. res. Capias ad respondendum.
Ca. su. in practice, is the abbreviation of
Capias ad satisfaciendum.
Caimes's R. Caines's Term Reports.
Caimes's Cas. Caines's Cases, in error.
Caimes's Pr. Caines's Practice.
Cald. R. Caldecott's Reports.
Cald. S. C. Caldecott's Settlement cases;
sometimes cited Cald. R.
Call. on S:uv. Callia on the Law relating to
Sewers.
Call's R. Call's Reports.
Calth. R Calthorp's Reports of special
cases touching several customs and liberties
of the city of London.
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equity.
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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.
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Can. Canon.
Cap. Capitulo, chapter.
Cur. Carolus; as 13 Car. 2, st. 2, c. 1.
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Reports. See C. & K.
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Curt. Carter's Reports. Reports in C. P.
in 16, 17, 18 and 19, Charles II.
Carta de For. Carta de Foresta.
Corth. 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. 57; but
Ld. Kenyon says Carthew is, in general, a
good reporter.
Cary. Cary's Reports. Reports in Chan-
cery, whereunto is annexed the King's Order
and Decree in Chancery for a rule to be ob-
erved in that Court.
Cary on Part. Cary on the law of Part-
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Cas. of Sett. Cases of Settlement.
Cas. Temp. Hardw. Cases during the time of Lord Hardwicke.
Cas. Temp. Tabot. Cases during the time of Lord Talbot.
Ch. Chancellor.
Ch. Cas. Cases in Chancery. The two parts or volumes of these reports are commonly cited 1 or 2 Ch. Cas. It is proper to observe that the work entitled “Reports of Cases in Chancery,” is a distinct collection of cases. The three volumes are usually cited as 1, 2, or 3 Ch. Rep.
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Choice’s Tr. Chase’s Trial.
Chir. Cas. Cherokee Case.
Cher. C. C. Cheves’ Chancery Cases.
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Chit. F. Chitty’s Forms and Practical proceedings.
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.
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Clark & Fin. Clark and Finelly’s Reports.
Clark, Adm. Pr. Clarke’s Practice in the Admiralty.
Clark, Prax. Clarke’s Praxis, being the manner of proceeding in the ecclesiastical courts.
Clay. Clayton’s Reports. Reports of Pleas of Assize at York, with some precedents useful for pleaders, in English. 1 vol. 12mo.
Cléir. Us et Cours. Cieirac, Us et Cours de la mer.
Clisft. 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 executors 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.
Coke, 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. Coke’s Bankrupt Law, in 2 vols. 8vo.
Co. on Courts. Coke on Courts; 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 Carta; 2d Institute. See Inst. and 1 Bl. Com. 73.
Cock. & Rowe. Cockburn and Rowe’s Reports.
Code Cie. Code Civil, or Civil Code of France. This work is usually cited by the article.
These reports are a continuation of those by Vesey and Beames, and are continued by Merivale.

Coop. on Lib. Cooper on the law of Libels.
Coop. Eq. Pl. Cooper’s Equity Pleading.
Coop. Just. Cooper’s Justinian’s Institutes.
Coop. t. Brough. Cooper’s cases in the time of Brougham.
Coop. P. P. Cooper’s Points of Practice.
Coote Mort. Coote on Mortgages.
Corb. & Dan. Corbet and Daniel’s Election Cases.
Corn. on Uses. Cornish on Uses.
Corn. on Rem. Cornish on Remainers.
Corvis. Corvinus. See Bac. Ab. Mortgage A, where this author is cited. There were two persons of this name, the first, Arn. Corvis, who wrote a book entitled, Digesta per aphorismos Strictum explicata; the other, Ant. Corvis, wrote a work entitled, De personis et beneficiis ecclesiasticis.
Col. Abr. Cotton’s Abridgment of Records.
Con. on Conv. Eci. Coventry on Conveyancer’s Evidence.
Con. Int. Cowell’s Law Dictionary, or the Interpreter of words and terms, used either in the common or statute laws of Great Britain.
Coop. 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.
Cox’s R. Cowen’s Reports, N. Y.
Cox’s Cas. Cox’s Cases. Cases determined in the Courts of Equity from 1783 to 1796 inclusive.
Cox’s R. Cox’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.
Crabb, R. P. Crabb on the Law of Real Property.
Craig & Phil. Craig and Phillips’s Reports.
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Crompt. J. C. Crompton’s Jurisdiction of Courts.
Crompt. & Mee’s. Crompton and Mee’s Exchequer Reports.
Crompt. Mees. & Rosc. Crompton, Meeson and Roscoe's Exchequer Reports.

Cross on Liens. Cross's Treatise on the law of Liens and Stoppage in Transitu.

Cra. 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; culit, as above mentioned, means culpabilis, or culpable; and prit, which is a corruption of prét, and signifies ready, 1 Chitty Cr. Law, 416.


Curn. 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.


Cur. Secce. Cursus Secaccari, the court of the Star Chamber.


Curt. R. Curtis's Ecclesiastical Reports.


Cur. on Copyr. Curtis on Copyrights.

Cush. Trust. Pr. Cushing on Trustee Process, or Foreign Attachment, of the laws of Massachusetts and Maine.

Cust. de Norm. Custome de Normandie.

See Bac. Ab. Customs. B.

D. dialogue; as, Dr. & Stud. d. 2, c. 24, or Doctor and Student, dialogue 2, chapter 24.

D. dictum; D. Digest of Justinian.

D. The Digest or Pandects of the civil law, is sometimes cited thus, D. c. 1. 5.

D. C. District Court; District of Columbia.

D. C. L. Doctor of the Civil Law.

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

D. S. B. Debitt sans brève.

D. S. Deput Sheriff. See 1 Tenn. R. 436.

D. & C. Dow and Clark's Reports.

D. & C. Deacon and Chitty's Reports.

D. & E. Durnford and East's Reports.

This book is also cited as Term Reports, abbreviated T. R.

D. & L. Danson and Loyd's Mercantile Cases.

D. & M. Davidson's and Mercivale's Reports.

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. & W. Drury and Walsh's Reports.


Dag. Cr. L. Dagge's Criminal Law.

Dal. Dalison's Reports. See Bent.

Dall. Dallas's Reports.

Dall. L. Dallas's Laws of Pennsylvania.


Dalr. F. F. Dalrymple's Essay, or History of Feudal Property in Great Britain. Sometimes cited Dalr. F. L.

Dalr. on Ent. Dalrymple on the Polity of Entails.

Dalr. F. L. Dalrymple's Feudal Law.


Dalr. Sh. Dalton's Sheriff.

D'Ane. D'Anvers's Abridgment.


Dan. & L. Danon & 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.

Dav. on Pat. Davies's collection of cases respecting Patents.


Dav. Real Pr. Davies's Introduction to the knowledge of the law on Real Estates.

Dav. on Arr. Davies's Commentaries on the law of Arrest in civil cases.


Deca. R. Deacon's Reports.

Deca. & Chit. Deacon and Chitty's Reports.

Deb. on Jud. Debates on the Judiciary.

Dec. temp. H. & M. Decisions in admiralty during the time of Hay & Marriott.

Def. Defendant.

De Gex & Sm. R. De Gex and Smale's Reports.


Den. R. Denio's New York Reports.

Desauss. R. Desaussure's Chancery Reports.

Dev. R. Devereux's Reports.

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

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

Di. Dyer's Reports.

Dial. de Sec. Dialogus de Secaccario.

Dick. Pr. Dickinson’s Practice of the Quarter and other Sessions.

Dick. Dicken’s Reports. Reports of Cases in the High Court of Chancery. By John Dicken. Revised by John Wyatt, Esq. 2 vols. Svo.—“Mr. Dicken was a 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.


Dict. Dr. Con. Dictionnaire de Droit Canonique.


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.

Disso. on Gam. Disney’s Law of Gaming.

Doe. & Stud. Doctor and Student.

Doe. & St. Doctor and Student.

Dow. on Inj. Drewry on Injunctions.

Dru. & War. Drury and Walsh’s Reports.

Dur. Fr. Dunlap’s Practice.

Dunlap’s Summons.


Dun. Pr. Dunlap’s Practice.

Dup. on Jur. Duponceau on Jurisdictions.

Dup. on Const. Duponceau on the Constitution.

Dur. Dr. Fr. Duranton, Droit Français. Duruf. & East. Durnford and East’s Reports, also cited D. & E. or T. R.

Dur. Dr. Civ. Fr. Duverger, Droit Civil Français. This is a continuation of Touilier’s Droit Civil Français. The first volume of Duverger is the sixteenth volume of the continuation. The work is sometimes cited 16 Touil. or 16 Touilier, instead of being cited 1 Duv. or 1 Duverger, &c.

Dyer. on Stat. Dwarris on Statutes.

Dyer’s Reports.

E. Easter Term.

E. Edward; as 9 E. 3, c. 9.

E. of Cw. Earl of Coventry’s Case.

E. C. L. R. English Common Law Reports, sometimes cited Eng. Com. Law Rep. (q. v.) E. g., usually written e. g., exempli gratia; for the sake of an instance or example.

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

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

Eccl. Ecclesiastical.


Ed. or Edit. Edition.

Ed. Edward; as, 3 Ed. 1, c. 9.


Ed. Eq. Reps. Eden’s Equity Reports.


Edw. on Rec. Edwards on Receivers in Chancery.

Eliz. Elizabeth; as, 13 Eliz. c. 15.

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

Emin. on Dit. Elmes on Ecclesiastical and Civil Dilapidations.


Encyc. Encyclopedia, or Encyclopædia.

Eng. English.

Eng. Ch. R. English Chancery Reports.

Eng. Com. Law Rep. 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. 54 vols. are now published. (See App. B, at the end of the work.)

Eng. Ecc. R. English Ecclesiastical Reports. This is a reprint of Ecclesiastical Reports. For the sake of convenient reference, a list of those published will be given. Five volumes of this work are published furnishing a series of decisions in the Ecclesiastical
Courts of England and Scotland, from 1790 to 1833. (See App. C at the end of the work.)

End. Eodem, under the same title.
End. tit. In the same title.
Eq. Draft. Equity Draftsmen.
Esp. N. F. Espinasse's nisi prius. Esp. N. P. R. Espinasse's Nisi Prius Reports.
Esp. on Ev. Espinasse on Evidence.
Eq. Esquire.
Et al. Et aliis, and others.
Europ. Europus, or Doctor and Student.
Ev. on Pl. Evans on Pleading.
Ev. Tr. Evans's Trial.
Exp. Expired.
Extrav. Extravagants.
P. Finalis, the last or latter part.
F. Fitzherbert's Abridgment.
F. & F. Falconer & Fitzherbert's Reports.
F. K. Forum Romanum.
F. & S. Fox & Smith's Reports.
F. N. B. Fitzherbert's Natura Brevium.
Fuirch. Fairfax's Reports.
Fuc. Coll. Faculty Collection; the name of a set of Scotch Reports.
Fulc. & Fitzh. Falconer & Fitzherbert's Election Cases.
Fearn. on Rem. Fearne on Remainders.
Ferg. on M. & D. Ferguson on Marriage and Divorce.
Ferg. R. Ferguson's Reports of the Consistorial Court of Scotland.
Fy. or f. Pandects of Justinian, this is a careless way of writing the Greek π.
Ferr. Mod. Ferrière Moderne, ou nouveau Dictionnaire des Termes de droit et de pratique.
Fess. on Pat. Fessenden on Patents.
Fis. fa. Fieri Facias.

Finch. Finch's Law; or a Discourse thereof in five books. Finch's Pr. Finch's Precedents in Chancery.
Finl. L. C. Finlason's Leading Cases on Pleading.
Fish. Copyh. Fisher on Copyholds.
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.
Fol. Foley's Poor Laws.
Fol. Folio.
Forg. Forrester's Cases during the time of Lord Talbot, commonly cited Cas. Temp. Talh.
Forb. on Bills. Forbes on Bills of Exchange.
Forr. on Comp. Forsyth on the Law relating to Composition with Creditors.
Fost. or Post. C. L. Foster's Crown Law.
Fox & Sm. Fox and Smith's Reports.
Fr. Fragmentum.
Fru. or Fra. Max. Francis's Maxims.
Frus. Elec. Cas. Fraser's Election Cases.
Freem. Freeman's Reports. Freem. C. C. Freeman's Cases in Chancery.
Freem. (Miss.) R. Freeman's Reports of Cases decided by the Superior Court of Chancery of Mississippi.
G. George; as, 13 G. 1, c. 29.
G. & J. Glyn and Jameson's Reports.
G. & J. Gill and Johnson's Reports.
Gale & Dan. Gale and Davison's Reports.
Gall. or Gall. Rep. Gallison's Reports.
Geo. George; as, 13 Geo. 1, c. 29.
Geo. Lib. George on the offence of Libel.
Gibb, on D. & N. Gibbons on the Law of Dilapidations and Nuisances.
Gill & John. Gill and Johnson's Reports.
Gill's R. Gill's Reports.
Giln. R. Gilmer's Reports.
Gilp. R. Gilpin's Circuit Court Reports.
Gl. Glossa, the Gloss.
Godb. Godbold's Reports.
Godolph. Godolphin's Orphan's Legacy.
Gold's. Goldsborough's Reports.
Gow on Part. Gow on Partnership.
Grand Cout. Grand Coutumier de Norman- die, (q. v.)
Grant on New Tr. Grant on New Trials.
Grant's Ch. Pr. Grant's Chancery Practice.
Gratt. R. Grattan's Virginia Reports.
Green's B. L. Green's Bankrupt Laws.
Green's R. Green's Reports.
Greenl. R. Greenleaf's Reports.
Greenw. on Courts. Greenwood on Courts.
Grot. Grotius de Jure Bellum.
Gude's Pr. Gude's Practice on the crown side of King's Bench, &c.
Gwil. Gwilliam's Tithe Cases.
H. Henry; as, 19 H. 7, c. 15.
H. Hilary Term.
H. A. Hoe ano.
H. v. commonly written in small letters h. v. hoc verbo.
H. of L. House of Lords.
H. of R. House of Representatives.
H. & B. Hudson and Brooke's Reports.
H. & G. Harris & Gill's Reports.
H. & J. Harris and Johnson's Reports.
H. H. C. L. Hale's History of the Common Law.
H. & M. Henning & Munford's Reports.
H. & M. H. or Harr. & M. Hen. Harris and McHenry's Reports.
Hab. fa. seis. Habere facias seismam.
H. t. usually put in small letters, h. t. hoc titulo.
Hab. Corp. Habes corpus.
Hab. fa. pos. Habere facias possessionem.
Hogg. Ad. R. Haggard's Admiralty Reports.
Hale's Sum. Hale's Summary of Pleas.
Hale's Hist. C. L. Hale's History of the Common Law.
Hallows R. Hall's Reports of Cases decided in the Superior Court of the city of New York.
Halls's Adm. Pr. Hall's Admiralty Practice.
Halst. R. Halstead's Reports.
Hamm. N. P. Hammond's nisi Prius.
Ham. R. Hammond's (Ohio) Reports.
Ham. on Part. Hammond on Parties to Actions.
Hamm. Pl. Hammond's Analysis of the principles of Pleading.
Ham. on F. I. Hammond on Fire Insurance.
Han. Hansard's Entries.
Hand's Ch. Pr. Hand's Chancery Practice.
Hand on Fines. Hand on Fines and Recoveries.
Hand's Cr. Pr. Hand's Crown Practice.
Hand on Pat. Hand on Patents.
Hard. Hardress's Reports.
Hardin's R. Hardin's Reports.
Hare R. Hare's Reports.
Hare on Dec. Hare on the Discovery of evidence by bill and answer in equity.
Harg. St. Tr. Hargrave's State Trials.
Harg. Law Tr. Hargrave's Law Tracts.
Harp. L. R. Harper's Law Reports.
Harp. Eq. R. Harper's Equity Reports.
Harr. Ch. Harrison's Chancery Practice.
Harr. Cond. LO. R. Harrison's Condensed Reports of Cases in the Superior Court of the Territory of Orleans, and in the Supreme Court of Louisiana.
Harr. Dig. Harrison's Digest.
Harr. & Gill. Harris and Gill's Reports.
Harr. & John. Harris and Johnson's Reports.
Harr. & M'H. Harris and M'Henry's Reports.
Harrington. R. Harrington's Reports.
Hawk's R. Hawk's Reports.
Hay. on Est. An elementary view of the common law of uses, devises, and trusts, with reference to the creation and conveyance of estates. By William Hayes.
Hay. on Lim. Hayes on Limitations.
Hay. Exch. R. Hayes's Exchanger Reports.
Hay's on R. P. Hayes on Real Property.
Hen. on For. Law. Henry on Foreign Law.
Hen. J. P. Henning's Virginia Justice of the Peace.
Hen. & Musf. Henning and Munford's Reports.
Hem's Plead. Hem's Pleader.
Het. Hetley's Reports.
Heywo. on El. Heywood on Elections.
Heywo. (N. C.) R. Heywood's North Carolina Reports.
Heywo. (Tenn.) R. Heywood's Tennessee Reports.
Hill's R. Hill's Reports.
Hill's Ch. R. Hill's Chancery Reports.
Hill on Trust. A practical Treatise on the Law relating to Trustees, &c.
Hind's Pr. Hind's Practice.
Hob. Hobart's Reports.
Hodg. R. Hodgson's Reports.
Hodges on Rail. Hodges on the Law of Railways.
Hoffin. R. Hoffman's Reports.
Hog. R. Hogan's Reports.
Hog. St. Tr. Hogan's State Trials.
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.
Howard's Dict. Howard's Dictionary of the customs of Normandy.
Hough C. M. Hough on Courts Martial.
Hov. Pr. Hovenden on Frauds.
Hov. Supp. Hovenden's Supplement to Vesey Junior's Reports.
Hov. St. Tr. Howell's State Trials.
Hove's Pr. Howe's Practice in civil actions and proceedings at law, in Massachusetts.
Hov. Pr. R. Howard's Practice Reports.
Hub. on Suc. Hubbard on Successions.
Huds. & Br. Hudson and Brooke's Reports.
Hugh. on Wills. Hughes on Wills.
Hugh. R. Hughes's Reports.
Hugh. Or. Writs. Hughes's Comments upon Original Writs.
Hugh. Ins. Hughes on Insurance.
Hugh. on Wills. Hughes's practical Directions for taking instructions for drawing wills.
Hult. on Conv. Hulton on Convictions.
Humph. R. Humphrey's Reports.
Hume's Com. Hume's Commentaries on the criminal law of Scotland.
Hut. Hutton's Reports.
I. The Institutes of Justinian (q. v.) are sometimes cited, 1, 1, 3, 4.
I. Infra, beneath or below.
Id. Ibidem.
Ictus. Jurisconsultus. This abbreviation is usually written with an I, though it would be more proper to write it with a J, the first letter of the word Jurisconsultus; e is the initial letter of the third syllable, and tus is the end of the word.
Id. Idem.
Il. Cons. del Mar. Il Consolato del Mare.
See Consolato del Mare, in the body of the work.


In f. In fine, at the end of the title, law or paragraph quoted.

In pr. In principio, in the beginning and before the first paragraph of a law.

In prince. In principium. In the beginning, the preface.

In sum. In summam, in the summary.

Ind. Index.

Inf. Infra, beneath or below.

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

Ing. Roc. Ingersoll’s Recess.

Ingr. on Insol. Ingraham on Insolvency.

Inj. Injunction.

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 24 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, tit. 2, law 1. Coke’s Institutes are cited, the first, either, Co. Lit., or 1 Inst. and the others 2 Inst., 3 Ins. and 4 Inst.

Inst. Cl. or Inst. Cler. Instructor Clerici.


Intro. Introduction.

Ir. Eq. R. Irish Equity Reports.

Ir. T. R. Irish Term Reports. Sometimes cited Ridg. Irish T. R. (q.v.)

J. Justice; as Story, J.

J. Institutes of Justinian.

J. C. Juris consultus.

J. C. P. Justice of the Common Pleas.

J. Glo. Juneta Glossa, the Gloss joined to the text quoted.

J.J. Justices, as Yelverton and Croke, JJ. Hov. on Frauds, 271.

J. J. Marsh. J. J. Marshall’s (Kentucky) Reports.

J. K. B. Justice of the King’s Bench.

J. P. Justice of the Peace.

J. Q. B. Justice of the queen’s bench.

J. U. B. Justice of the upper bench. During the commonwealth, the English court of the king’s bench was called Upper Bench.

Jac. Jacobus; James; as, 4 Jac. 1, c. 1.

Jac. Intro. Jacob’s Introduction to the Common, Civil, and Canon law.


Jac. L. G. Jacob’s Law Grammar.

Jac. Lex Mnr. Jacob’s Lex Mercatoria, or the Merchant’s Companion.

Jac. R. Jacob’s Chancery Reports.

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


Jebb’s Ir. Cr. Cas. Jebb’s Irish Criminal Cases.


Jeff. R. 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. on Cor. Jer. on Cor. on Coroners.


John. R. Johnson’s Reports.

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


Jon. Sir Wm. Jones’s Reports.

Jon. & Car. Jones and Carrey’s Reports.

Jon. on Lib. Jones, De Libellis Famosis, or the law of Libels.


Jon. (1) Sir W. Jones’s Reports.

Jon. (2) Sir T. Jones’s Reports.

Jon. T. Thomas Jones’s Reports.


Jones’s Intr. Jones’s Introduction to Legal Science.


Joy on Chal. Joy on Challenge to Jurors.


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. Eccl.* Jura Ecclesiastica, or a treatise of the Ecclesiastical Law and Courts, interspersed with various cases of law and equity.


*Just. Inst.* Justinian’s Institutes.

*K. B.* King’s Bench.

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

*K. & O.* Knapp and Omer’s Election Cases.

*Kames on Eq.* Kames’s Principles of Equity.

*Kames’s Ess.* Kames’s Essays.

*Kames’s Hist.* L. T. Kames’s Historical Law Tracts.


*Keb.* Keble’s Reports.


*Keen’s R.* Keen’s Reports.

*Kel.* or *Keile.* Keilway’s Reports.

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


*Kell. R.* Kelly’s Reports.

*Ken. on Jur.* Kennedy on Jurisprudence.

*Kent, Com.* Kent’s Commentaries on American Law.

*Keny.* Kenyon’s Reports of the Court of King’s Bench.

*Kit. or Kitch.* Kitchen on Courts.

*Kna. & Omb.* Knapp and Omer’s Election Cases.

*Knapp’s A. C.* Knapp’s Appeal Cases.

*Knapp’s R.* Knapp’s Privy Council Reports.

*Kyd on Ave.* 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. 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. & G.* Lloyd and Goold’s Reports.

*L. & W.* Lloyd and Welsby’s Mercantile Cases.

*LL.* Laws, as *LL.* Gul. 1, c. 42. Laws of William I., chapter 42; *LL.* of U. S., Laws of the United States.

*L. S.* Locus sigilli.

*L. R.* Louisiana Reports.

*La.* Lane’s Reports.


*Lamb, Archai.* Lambard’s Archaionomia.

*Lamb, Eiren.* Lambard’s Eironomachia.

*Lamb, on Dowe.* Lambert on Dower.

*Lat.* Latch’s Reports.

*Lauz. on Eq.* Lauzat’s Essay on Equity Practice in Pennsylvania.


*Lauz. Lib.* Law Library. (See App. D. at the end of the work.)


*Lauz. Intel.* Law’s Intelligencer.


*Lauz. Pl.* Lauzat’s Elements of Practice in Pleading in Civil Actions.

*Lauz. Pl. in Ass.* Lauzat’s Elements of Practice in Pleading in Assumpsit.


*Lawsy. Mag.* Lawyer’s Magazine.

*Le.* Ley’s Reports.

*Leach.* Leach’s Cases in Crown Law.

*Leg. Elem.* Lecon’s Élémentaire du Droit Civil Romain.

*Lee, Abs. Tit.* Lee on the Evidence of Abstracts of Title to real property.

*Lee on Capt.* Lee’s Treatise of Captures in war.

*Lee’s Dict.* Lee’s Dictionary of Practice, 2 volumes.

*Lee’s Eccl. R.* Lee’s Ecclesiastical Reports.


*Leg.* Logibus.

*Leg. Obs.* Legal Observer.


*Leg. on Outl.* Legge on Outlawry.

*Leg. Rhod.* The Laws of Rhodes.

*Leg. ult.* The last law.


*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.* Levins’s Reports.

*Lev. Ent.* Levins’s Entries.


*Lev. on Tr.* Lewin on Trusts.

*Lev. on Perp.* Lewis on the Law of Perpetuities.

*Lex. Man.* Lex Manerium.


*Lex Parl.* Lex Parliamentaria.

*Lev.* Ley’s Reports.

*Lib.* Liber, book.

*Lib. Ass.* Liber Assisariurn.

*Lib. Ent.* Old Book of Entries.

*Lib. Feud.* Liber Feudorum.

*Lib. Intr.* Liber Intronition; or Old Book of Entries.


 Miles R. Miles's Reports.
 Mill. Ins. Miller's Elements of the law relating
to Insurances. Sometimes this work is cited Mill. El.
 Mill. on Eq. Mort. Miller on Equitable
Mortgages.
 Minor's Rep. Minor's Alabama Reports,
 Mireh. on Adv. Mirehead on Advowsions.
 Mirth. Mirror des Justices.
 Miss. R. Missouri Reports.
 Miss. Pl. Mifflin's Pleadings in Equity.
 Also cited Redesd. Pl. Redesdale's Pleadings.
 Mr. Sir Francis Moore's Reports in the
reign of K. Henry VIII., Q. Elizabeth, and K.
James.
 Mo. & Makk. Moody and Malkin's Reports.
 In E. C. L. R.
 Mo. C. C. Moody's Crown Cases.
 Mo. Cas. Moody's Nisi Prius and Crown
Cases.
 Mod. or Mod. R. Modern Reports.
 Mod. Cas. Modern Cases.
 Mod. C. L. & E. Modern cases in law and
equity. The 8 & 9 Modern Reports are some-
times so cited; the 8th cited as the 1st, and
the 9th as the 2d.
 Mod. Entr. Modern Entries.
 Mod. Int. Modus Inrani.
 Molloy. Molloy, De jure Maritimo.
 Molloy. Molloy's Chancery Reports.
 Mor. R. Monroe's Reports.
 Mont. & Ayrt. Montagu and Ayrton's Re-
ports.
 Mont. B. C. Montagu's Bankrupt Cases.
 Mont. & Blign. Montagu and Bligh's Cases
in Bankruptcy.
 Mont. & Chitt. Montagu and Chitty's Re-
ports.
 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. Deac. & Gex. Montagu, Deacon and
Gex's Reports of Cases in Bankruptcy, argued
and determined in the Court of Review, and
on appeals to the Lord Chancellor.
 Mont. Dig. Montagu's Digest of Pleadings
in Equity.
 Mont. & Mac. Montagu and Macarthur's
Reports.
 Mont. Sp. of Law. Montesquieu's Spirit of
Laws.
 Montesq. Montesquieu, Esprit des Lois.
 Moa. & Makk. Moody and Malkin's Re-
ports.
 Moa. & Rob. Moody and Robinson's Re-
ports.
 Moore, R. J. B. Moore's Reports of Cases
declared in the Court of Common Pleas. In E.
C. L. R.
Moore's A. C. Moore's Appeal Cases.
Moore & Payne, Moore and Payne's Reports of Cases in C. P.
Moore & Scott, Moore and Scott's Reports of Cases in C. P.
Mort. on Vend. Morton's Law of Vendors and Purchasers of chattels Personal.
Mos. Mosely's Reports.
MSS. Manuscripts; as, Lord Colchester's MSS.
Mach. D. & S. Muchall's Doctor and Student.
Man. Municipal.
Munf. R. Munford's Reports.
Murph. R. Murphy’s Reports.
My. & Keen, Mylne and Keen's Chancery Reports.
Myl. & Cr. Mylne and Craig's Reports.
N. Number, N. or Nov. Novellae: the novels.
N. A. Non allocatur.
N. B. Nulla bona.
N. Bel. New Benloe.
N. C. Cas. North Carolina Cases.
N. C. Term R. North Carolina Term Reports. This volume is sometimes cited 2 Taul.
N. Chipp. R. N. Chipman’s Reports.
N. E. J. Non est inventus.
N. H. & G. Nicholl, Hare and Garrow's Reports.
N. L. Nelson’s edition of Lutwyche’s Reports.
N. L. Non liquet. Vide Ampliation.
N. & M. Neville and Manning's Reports.
N. & P. Neville and Perry’s Reports.
N. P. Nisi Prius.
N. & M'C. Nott and McCord’s Reports.
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.
N. Y. R. S. New York Revised Statutes.
Neal's P. & F. Neale's Feasts and Fasts: an essay on the Rise, Progress and Present State of the Laws relating to Sundays and other Holidays, and other days of fasting.
Nela. A. Nelson’s Abridgment.
Nels. R. Nelson’s Reports.
Nem. con. Nemine contradicente, (q. v.)
Nem. dis. Nemine dissentiente.
Nev. & Mann. Neville and Manning’s Reports.
Nev. & Per. Neville and Perry’s Reports.
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 Charles. By William Benloe. See Benl.

of Bosanquet and Puller’s Reports. See B. & P.
N. Pri. Nisi Prius.
Nich. Har. & Car. Nicholl, Hare and Garrow’s Reports.
Nient cul. Nient culpable, old French, not guilty.
Nol. R. Nolan’s Reports of cases relative to the duty and office of justice of the peace.
Non Cul. Non culpabiles, not guilty.
North. Northington’s Reports.
Nov. Novellae, the Novels.
Noy’s Max. Noy’s Maxims. Noy’s R. Noy’s Reports.
O. Benl. Old Benloe.
O. Bridg. Orlando Bridgman’s Reports.
O. C. Old Code; so is denominated the Civil Code of Louisiana 1808.
O. N. B. Old Natura Brevium. Vide Vet. N. B., in the abbreviations, and Old Natura Brevium, in the body of the work.
O. Ni. These letters, which are an abbreviation for punctatur nisi habent sufficientem ex cura rationem, are according to the practice of the English Exchequer, marked upon each head of a sheriff’s account for issues, amerciements and mean profits. 4 Inst. 116.
Oblig. Obligations.
Obserr. Observations.
Ohio R. Ohio Reports.
Oldn. Oldnall’s Welsh Practice.
Onsal. N. P. Onslow’s Nisi Prius.
Ord. Ch. Orders in Chancery.
Ord. Leg. Ordinance of Leghorn.
Ord. de la Mar. Ordonnance de la Marine, de Louis XIV.
Ord. on Us. Ord, on the law of Usury.
Orig. Original.
Ought. Oughton’s Ordo Judiciorum.
Overt. R. Overton’s Reports.
Owen. Owen’s Reports.
Owen, Bankr. Owen on Bankruptcy.
P. Paschalis, Easter term.
P. C. Pleas of the crown.
P. & D. Perry and Davison’s Reports.
P. & K. Perry and Knapp’s Election Cases.

P. & M. Philip and Mary; as, 1 & 2 P. & M. c. 4.
P. N. P. Peake’s Nisi Prius.
P. P. Propria persona in his own person.
Pa. R. Pennsylvania Reports.
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 R. Paine’s Reports.
Pal. Palmer’s Reports.
Pand. Pandects. Vide Dig.

Par. Paragraph; as, 29 Eliz. cap. 5, par. 21.
Par. Founb. & M. J. Paris and Foulbouque on Medical Jurisprudence.
Pardess. Pardessus, Cours de Droit Commercial. In this work Pardessus is cited in several ways, namely: Pardessus, Dr. Compt. part. 3, tit. 1, c. 2, s. n. 256, or 2 Pardessus n. 256, which is the same reference.
Park on Dower. Park on Dower.
Park, Ins. Park on Insurance.
Park, R. Sir Thomas Parker’s Reports of cases concerning the revenue, in the Exchequer.

Park on Ship. Parker on Shipping and Insurance.

Park, Pr. in Ch. Parker’s Practice in Chancery.
Patch on Morig. Patch’s Treatise on the law of Mortages.
Paul’s Par. Off. Paul’s Parish Officer.
Peak. Add. Cas. Peake’s Additional Cases.
Peak, C. N. P. Peake’s cases determined at Nisi Prius, and in the K. B.

Penn. J. Penn’s Journal.
Penn. Leg. Penn’s Laws.
Penn. R. Pennsylvania Reports.
Penn. R. Pennington’s Reports. The Pennsylvania Reports are sometimes cited Penn. R., but more properly, for the sake of distinction, Penna. R.

Penn. St. R. Pennsylvania State Reports.
Penn. Pr. Pennsylvania Practice; also cited Tro. & Hal. Pr. Troubat and Haly’s Practice.
Penn. R. Pennsylvania Reports.
Pennsylvania Reports.
Penn. Anal. Pennudderock’s Analysis of the criminal law.
Per. The last but one.
Per. & Dav. Perry and Davison’s Reports.
Per. & Knapp. Perry and Knapp’s Election Cases.
Perk. Perkins on Conveyancing.
Perk, Prof. B. Perkins’s Profitable Book.
Perlig. on Pat. Perigia on Patents. The full title of this work is, “The French law and practice of patents for inventions, improvements, and importations. By A. Perigia, A. M. L. B. Barrister in the Royal Court of Paris, member of the Society for the encouragement of arts, etc. The work is well written in the English language. The author is a French lawyer, and has written another work on the same subject in French.”


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.

Petting. on Jur. Pettingal on Juries.


Phil. Ins. Phillips on Insurance.

Phil. St. Tr. Phillips’s State Trials.

Phil. Civ. and Can. Laws. Phillimore on the study of the civil and canon law, considered in relation to the state, the church, and the universities, and in connexion with the college of advocates.

Phil. on Dom. Phillimore on the Law of Domicile.

Phillic. 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 Flow. or Pl. Com. Plowden’s Commentaries, or Reports.

Plut. Plaintiff.

Plut on Core. Platt on the Law of Covenants.

Plut on Lea. Platt on Leases.

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.
Quam. Attac. Quoniam Attachiamenta.
See Dall. F. L. 47.
R. Resolved, ruled, or repealed.
R. Richard; as, 2 R. 2, c. 1.
RC. Rescriptum.
R. & M. Russell and Mylne's Reports.
R. & M. C. C. Ryan and Moody's Crown Cases.
R. M. Charl. R. M. Charlton's Reports.
RS. Responsum.
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, Lid. Raym. Lord Raymond's Reports.
T. Raym. Sir Thomas Raymond's Reports.
Re. fo. la. Recordari facias loquelas. Vide
Refalo in the body of the work.
Redesd. Pl. Redesdale's Equity Pleading.
This work is also and most usually cited Mif. Pl.
Reeves on Des. Reeves on Descents.
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.
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
Judiciaires de l'Angleterre compar%c%ées avec
celles de la France. Par Joseph Rey.
Reyn. Inst. Institutions du Droit des Gens,
&c. par Gerard de Reyneval.
Ric. Richard; as, 12 Ric. 2, c. 15.
Rice's Rep. Reports of cases in Chancery
argued and determined in the Court of Appeals
and Court of Errors of South Carolina. By
William Rice, State reporter.
Rich. Pr. C. P. Richardson's Practice in
the Common Pleas.
Rich. Pr. K. B. Richardson's Practice in
the King's Bench.
Rich. Eq. R. Richardson's Equity Reports.
Rich. on Will. Richardson on Wills.
Ridg. Irish T. R. Ridgeway, Lapp, and
Scholastic's Term Reports in the K. B.,
Dublin. Sometimes this is cited Ridg. L. & S.
Ridg. Rep. Ridgeway's Reports of Cases
in K. B. and Chancery.
Ridg. St. Tr. Ridgeway's Reports of State
Trials in Ireland.
Rel. Ch. Cas. Riley's Chancery Cases.
Rob. Cas. Robertson's cases in Parliament,
from Scotland.
Rob. Dig. Roberts' Digest of the English
Statutes in force in Pennsylvania.
Rob. on Fr. Roberts on Frauds.
Rob. on Fraud. Con. Roberts on Fraudu-
lent Conveyances.
Rob. on Gavel. Robinson on Gavelkind.
Rob. Lo. Rep. Robinson's Louisiana Re-
ports.
Rob. Pr. Robinson's Practice in suits at
law, in Virginia.
Rob. V. Rep. Robinson's (Virginia) Re-
ports.
Rob. on Wills. Roberta's Treatise on the
Law of Wills and Codicils.
Roc.
Roll. Rolle's Abridgment. Roll. R. Rolle's
Reports.
Rom. Cr. Law. Romilly's Observations on
the Criminal law of England, as it relates to
capital punishments.
Rom. on 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.
Rom. Leg. Roper on Legacies.
Rom. on Recov. Roper on Revocations.
Rosc. Roscoe. Rosc. on Act. Roscoe on
En. Roscoe's Digest of the Law of Evidence
on the trial of actions at nisi prius. Rosc. Cr.
En. 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 Bank-
ruptcy.
Ross on V. & P. Ross on the Law of Vend-
ors and Purchasers.
Rot. Parl. Rotul%c%a% Parlamentarie.
Rub. or Rubr. Rubric, (q. v.)
Ruff. Ruff'shead's Statutes at large.
Ruff. or Rufin's R. Ruffin's Reports.
Russ. & Myl. Russell and Mylne's Chancery
Reports.
Rush. Rushworth's Collections.
Russ & Myl. Russell and Mylne's Reports
of cases in Chancery.
Russ. on Fact. Russell on the laws relating
to Factors and Brokers.
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.
By. F. Byrner's Federas.
By. & Ma. Ryan and Moody's Nisi Prius
Reports. In E. C. L. R. By. & Ma. C. C.
Ryan and Moody's Crown Cases.
By. Med. Jur. Ryan on Medical Jurispru-
dence.
S. 5. section.
S. B. Upper Bench.
S. & B. Smith and Batty's Reports.
S. C. Same Case.
S. C. C. Select Cases in Chancery.
S. & L. Scholastic and Leftroy's Reports.
S. & M. Shaw and Maclean's Reports.
S. & M. Ch. R. Smades and Marshall's Re-
ports of cases decided by the Superior Court
of Chancery of Mississippi.
S. & M. Err. & App. Smades and Marshall's
Reports of cases in the High Court of Errors
and Appeals of Mississippi.
S. P. Same Point.
S. & R. Sergeant and Rawle's Reports.
S. & S. Sause and Scully's Reports.
S. & S. Simon and Stuart's Chancery Re-
ports. In Con. C. R.
Su. & Scul. Sause and Scully's Reports.
Salk. Salkeld's Reports.
Sanif. Rep. Reports of cases argued and
determined in the Court of Chancery of the
State of New York, before the Hon. Lewis H.
Sandford, assistant vice chancellor of the First
Circuit.
Sanf. on Ent. Sanford on Entails.
St. Cas. Stillingfleet's Cases.
St. Tr. State Trials.
Stair's Inst. Stair's Institutions of the law of Scotland.
Stallm. on Elec. & Sat. Stallman on Election and Satisfaction.
Stearne, on R. A. Stearne on Real Actions.
Steph. on Slav. Stephens on Slavery.
Stev. on Ac. Stevens on Average.
Stev. & B. on Ac. Stevens and Beneke on Average.
Stev. R. Stewart's Reports.
Stro. & Port. Stewart and Porter's Reports.
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 and 5th volumes are a continuation of the same work by George Sharswood, Esq.
Story on Ports. Story on Partnership.
Story on Pl. Story on Pleading.
Story, R. Story's Reports.
Str. & Strange's Reports.
Streac. de Mer. Stræcha de Mercatura, Navibus Assurcationibus.
Streh. R. Strobart's Reports.
Stroud's Dig. Stroud's Digest of the laws of Pennsylvania.
Stuart's (L. C.) R. Reports of cases in the court of King's Bench in the Provincial court of appeals of Lower Canada, and appeals from Lower Canada before the Lords of the Privy Council. By George O'Kill Stuart, Esq.
Sty. Style's Reports.
Sull. on Land Tt. Sullivan's History of Land Titles in Massachusetts.
Sum. Summa, the Summary of a law.
Summ. R. Sumner's Circuit Court Reports.
Supers. Supersedences.
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.
Swann. Swanston's Reports.
Sweet. Sweet's Popular treatise on Wills.
Swinb. Swinburne on the Law of Wills and Testaments. This work is generally cited by reference to the part, book, chapter, &c.
Swinb. on Desc. Swinburne on the Law of Descent.
Swinb. on Mar. Swinburne on Marriage.
Swinb. on Spn. Swinburne on Spousals.
Swe. Swinburne on Wills.
Syst. Plead. System of Pleading.
T. Title.
T. & G. Tyrwhitt and Granger's Reports.
T. & P. Turner and Phillips's Reports.
T. J. Sir Thomas Jones's Reports.
T. L. Terms de la Ley, or Terms of the Law.
T. R. Term Reports. Ridgeway's Reports are sometimes cited Irish T. R.
T. R. Teste Rohe.
T. & R. Turner and Russell's Chancery Reports.
T. & R. Turner and Russell's Reports.
T. R. E. or T. E. R. Tempore Regis Edwardi. This abbreviation is frequently used in Doomsday Book, and in the more ancient law writers. See Tyrrel's Hist. Eng., Intro. viii. p. 49. See also Co. Inst. 86, a, where in a quotation from Doomesday 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. Chart. T. U. P. Charton's Reports.
Tait on Ev. Tait on Evidence.
Talmyl. on Ev. Tamlyn on Evidence, principally with reference to the practice of the Court of Chancery, and in the Master's Office.
Talmyl. R. Tamlyn's Reports of Cases decided in Chancery.
Taunt. Taunt's Reports. In E. C.
L. R.
Tayl. on Ev. Taylor on Evidence.
Tayl. R. Taylor's Reports.
Th. Br. Thesaurus Brevium.
Th. Dig. Thelwall's Digest.
Thomp. on Bills. Thompson on Bills.
Tidd's Pr. Tidd's Practice.
Tit. Title.
Toll. Ex. Toller's Executors.
Toth. Tothill's Reports.
Touch. Sheppard's Touchstone.
Toull. Le Droit Civil Français suivant l'ordre du Code; ouvrage dans lequel on a tâché de reunir la théorie a la pratique. 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.
Par Adolphe Trebuchets.
Tri. of 7 Bish. Trial of the Seven Bishops.
Tri. per Pays. Trials per Pays.
Trin. Trinity term.
Turn. R. Turner's Reports of Cases determined in Chancery.
Turn. & Rus. Turner and Russell's Chancery Reports.
Tuck Com. Tuckier's Commentaries.
Turn. & Phil. Turner and Phillips's Reports.
Tyl. R. Tyler's Reports.
Tywh. Tyrwhitt's Eschequer Reports.
Tywh. & Gr. Tyrwhitt and Granger's Reports.
U. S. United States of America.
U. S. Dig. United States Digest. See Metc. & Perk. Dig.
Ulti. Ultimo, ultima, the last, usually applied to the last title, paragraph or law.
Umfrev. Off. of Cor. Umfreville's Office of Coroner.
Under Sher. Under Sheriff, containing the office and duty of High Sheriff, Under Sheriffs, and Bailiffs.
Us. et. Et uxor, et uxorem, and wife.
V. Versus against, as A B v. C D.
V. Versicule, in such a verse.
V. vide, see.
V. or e. Voice; as Spelm. Gloss. v. Cancellorious.
V. & B. Vesey and Beames's Reports.
V. C. Vice Chancellor.
Voc. Voice.
V. & S. Vernon and Scriven's Reports.
Vaug. Vaughan's Reports.
Vend. Ex. Venditioni Exponas.
Ventr. Ventris's Reports.
Verm. R. Vermont Judges' Reports.
Vern. Vernon's Reports.
Vern. & Scriv. Vernon and Scriven's Reports of Cases in the King's Courts, Dublin.
Ves. Vesey Senior's Reports.
Ves. Jr. Vesey Junior's Reports.
Ves. & Bea. Vesey and Beames's Reports.
Vet. N. B. Old Natura Brevium.
Vid. Vidian's Entries.
Vin. Ab. Viner's Abrigation.
Vin. Vinnius.
Viz. Videlicit, that is to say.
Vs. Versus.
W. 1, W. 2. Statutes of Westminster, 1, and 2.
W. C. C. R. Washington's Circuit Court Reports.
W. & C. Wilson and Courtenay's Reports.
W. Jo. Sir William Jones's Reports.
W. Kel. William Kelynge's Reports.
W. & M. William and Mary.
W. & M. Rep. Woodbury and Minot's Reports.
W. & S. Wilson and Shaw's Reports of Cases decided in the H. of L.
Wagr. on Disc. Wagrar on Discoveries.
Walf. on Part. Walford's Treatise on the law respecting Parties to actions.
Walk. Ch Ca. Walker's Chancery Cases.
Walk. R. Walker's Reports.
Wall. R. Wallace's Circuit Court Reports.
Ward. on Leg. Ward on Legacies.
Ware's R. Reports of cases argued and determined in the District Court of the United States, for the District of Maine.
Wash. C. C. Washington's Circuit Court Reports.
Washb. R. Washburn's Vermont Reports.
Wat. Cop. Watkin's Copyhold.
Wats. on Arb. Watton on the Law of arbitrations and Awards.
Wats. on Sher. Watton on the Law relating to the office and duty of Sheriff.
Watts's R. Watts's Reports.
Watts & Serg. Watts and Sergeant's Reports.
Welf. on Eq. Plead. Welford on Equity Pleading.
Wend. R. Wendell's Reports.
West's Parl. Rep. West's Parliamentary Reports.
West's Symb. West's Symbolography, or a description of instruments and precedents, 2 parts.
West. on Av. Quintin Van Wykston on Average.
Whart. Dig. Wharton's Digest.
Whart. R. Wharton's Reports.
Wheel. Cr. Cas. Wheeler's Criminal Cases.
Wheel. on Slav. Wheeler on Slavery.
Whit. on Lien. Whittaker on the law of Liens.
Whit. on Trans. Whittaker on Stoppage in Transitu.
Whitm. B. L. Whitmarsh's Bankrupt Law. Wiep. L'ambassadeur et ses fonctions, par de Wiecofert.
Wilk. R. Wilcox's Reports.
Wilk. on Lim. Wilkinson on Limitations.
Wilk. on Pub. Funds. Wilkinson on the law relating to the Public Funds, including the practice of Distraint, &c.
Wilk. on Repl. Wilkinson on the law of Replevin.
Wilk. on Eq. Pl. Willis's treatise on Equity Pleadings.
Wilk. on Inter. Willis on Interrogatories.
Wilk. L. D. Williams's Law Dictionary.
Wille. Oj. of Const. Willock on the Office of Constable.
Willes's R. Willes's Reports.
Wills on Cir. Ev. Wills on Circumstantial Evidence.
Wills on Us. Wilson on Springing Uses.
Wilm. on Mortg. Wilmott on Mortgage.
Wilm. Judg. Wilmott's Notes of Opinions and Judgments.
Wills. Ch. R. Wilson's Chancery Reports.
Wills. Co. Wilson and Courtenay's Reports.
Wills. Ex. R. Wilson's Exchequer Reports.
Wills. & S. Wilson and Shaw's Reports decided by the House of Lords.
Wills. R. Wilson's Reports.
Wing. Max. Wingate's Maxims.
Wms. R., more usually, P. Wms. Peere Williams's Reports.
Woodes. Lect. Woodessons's Vinerian Lectures.
Woodm. R. Woodman's Reports of Criminal cases tried in the Municipal Court of the city of Boston.
Wool. on Ways. Woolrych on Ways.
Worth. on Jar. Worthington's Inquiry into the Power of Juries to decide incidentally on questions of law.
Worth. Pre. Wills. Worthington's General Precedents for Wills, with practical notes.
Wright's R. Wright's Reports.
ABBREVIATORS, eccl. law, are officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form, to be converted into Papal Bulls. Vide Bulls.

ABROCHMENT, obsolete. The forestalling of a market or fair.

ABDITION, 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 reparation, (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.

ABERERMURDER, obsolete. An apparent, plain, or downright murder. It was used to distinguish a willful murder, from chance-medley, or manslaughter.

ABEARANCE. Behaviour; as, a recognition to be of good bearance, signifies to be of good behaviour. 4 Bl. Com. 251, 256.

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, persuades or sets another on to commit a crime. Such a person is either a principal or an accessory 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 accessory. 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.

2.—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.

3.—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 heres viventis. 2 Bl. Com. 107; 1 Cruise, 67—70; 1 Inst. 342; Merlin, Repertoire, mot Abeyance; 1 Com. Dig. 175; 1 Vin. Abr. 104.

4.—Another example may be given in the case of a corporation. When a charter is given and the charter grants franchises or property to a corporation which is to be brought into existence by some future acts of the corporators, such franchises or property are in abeyance, until such acts shall be done, and when the corporation is thereby brought into life, the franchises instantaneously attach. 4 Wheat. 691. See, generally, 2 Mass. 500; 7 Mass. 445; 10 Mass.
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 instantaneously; 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.

ABIGEAT, civ. law. A particular kind of larceny, which is committed not by taking and carrying away the property from one place to another, but by driving a living thing away with an intention of feloniously appropriating the same. Vide Taking.

ABIGEI, civil law, were stealers of cattle, who were punished with more severity than other thieves. Dig. 47. 14; 4 Bl. Com. 239.

ABJURATION. A renunciation of a country by oath.

2.—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.

3.—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.

4.—3. It signifies also according to 25 Car. II., an oath abjuring to certain doctrines of the church of Rome.

5.—4. In the ancient English law it was a renunciation of one's 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. This term is used in making genealogical tables.

ABOLITION, is the act by which a thing is extinguished, abrogated or annihilated. Merl. Repert. h. t., as the abolition of slavery is the destruction of slavery.

2.—In the civil and French law abolition is used nearly synonymously with pardon, remission, grace. Dig. 39, 4, 3, 3. There is, however, this difference; grace is the generic term; pardon, according to those laws, 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.

3.—The term abolition is used in the German law in the sense it is used in the French law. Encyl. Amer. h. t. The term abolition is derived from the civil law, where it is sometimes used
ABORTUS. The fruit of an abortion; the child born before its time, incapable of life. See Abortion; Birth; Breath; Dead born; Gestation; Life.

ABOVE. Uppermost. This word is applied in law to designate the superior court, or one which may revise proceedings of an inferior court on error, from such inferior jurisdiction. The court of error is called the court above; the court whose proceedings are to be examined is called the court below.

2.—By bail above, is understood bail to the action entered with the prothonotary or clerk, which is an appearance. See Bail above. The bail given to the sheriff, in civil cases, when the defendant is arrested on bailable process, is called bail below; q. v. vide Below.

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. Ah. 109.

2.—When an abridgment is fairly made, it may be justly called a new book, and in that case its publication will not violate a copy-right in the larger publication, but an injunction will be granted against a mere colourable abridgment. 1 Bro. C. C. 351; 5 Ves. 709; 3 Atk. 143.

ABRIDGMENT, is a literary work taken from another, where the principal ideas of the larger work are contained and made shorter.

2.—When fairly made, it is no infringement of the copy-right of the larger work. 2 Atk. 143; 1 Bro. C. C. 451; 5 Ves. 709; Luff’s R. 775; Ambl. 403; 5 Ves. 709; 1 Story, R. 11. See Quotation.

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: derogat legi, cum pars detrahitur; abrogat legi,
cum prorsus tollitur. Dig. lib. 50, t. 17, 1, 102.

2.—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.

3.—Abrogation is implied when the new law contains provisions which are positively contrary to the ancient laws, without expressly abrogating such laws: for it is a maxim, posteriora derogant prioribus. 3 N. S. 190; 10 M. R. 172, 560. 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 legis omnino cessante cessat lex. Toullier, Droit Civil Français, tit. prel. § 11, n. 151. Merlin, mot Abrogation.

ABSCOND, to go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed in order to avoid their process.

ABSENTEE. One who is away from his domicile, or usual place of residence.

2.—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. 422; 1 Stark. C. 121; Park on Ins. 433; 1 Bl. R. 404.

3.—In Louisiana when a person possessed of either moveable or immovable property within the state leaves it, 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 La. 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. 379-457; Merl. Rép. h. t.; and see also Ayl. Pand. 269; Dig. 50, 16, 198; Ib. 50, 16, 173; Ib. 3, 3, 5; Code, 7, 32, 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.

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

ABSCUS 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.

ABSTENTION, French law. It is the tacit renunciation by an heir of a succession. Merl. Rép. h. t.

ABSTRACT OF TITLE, is a brief account of all the deeds upon which the title to an estate rests. See Brief of Title.

ABUSE, every thing which is contrary to good order established by usage. Merl. Rep. h. t. Among the civilians, abuse has another signification; which is the destruction of the substance of a thing in using it. For example, the borrower of wine or grain abuses the article lent by using it, because he cannot enjoy it without consuming it. Leç. El. Dr. Rom. § 414. 416.

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.
AC ETIAM, Eng. law. In order to give jurisdiction to a court, a cause of action over which the court has jurisdiction is alleged, and also (ac etiam) another cause of action over which, without being joined with the first, the court would have no jurisdiction; for example, to the usual complaint of breaking the plaintiff's close, over which the court has jurisdiction, a clause is added containing the real cause of action.

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 relievum sued by plaint in court of any lord, other than the county before the sheriff. See F. N. B. 18; Dyer, 169.

ACCEDAS AD VICECOMITEM, Engl. law. The name of a writ directed to the coroner, commanding him to deliver a writ to the sheriff, who having a pone delivered to him, suppresses it.

ACCEPTANCE, contracts, an agreement to receive something which has been offered.

2. To complete the contract, the acceptance must be absolute and post recall, 10 Pick. 326; 1 Pick, 278; and communicated to the party making the offer at the time and place appointed. 4 Wheat. R. 225; 6 Wend. 103.

3. In many cases acceptance of a thing waives the right which the party receiving before had; as, for example, the acceptance of rent after notice to quit, in general waives the notice. See Co. Litt. 211, b; Id. 215, a; and Notice to quit.

4. The acceptance must be express, as when it is openly declared by the party to be bound by it; or implied, as where the party acts as if he had accepted. The offer and acceptance must be in some medium understood by both parties; it may be language, symbolical, oral or written. For example, persons deaf and dumb may contract by symbolical or written language. At auction sales, the contract is generally symbolical; a nod, a wink, or some other sign by one party, imports that he makes an offer, and knocking down a hammer by the other, that he agrees to it. 3 D. & E. 148. This subject is further considered under the articles Assent and Offer, (q. v.)

5. Acceptance of a bill of exchange is the act by which the drawee or other person evinces his assent or intention to comply with, and be bound by, the request contained in a bill of exchange to pay the same; or in other words, it is an engagement to pay the bill when due. 4 East, 72. It will be proper to consider, 1, by whom the acceptance ought to be made; 2, the time when it is to be made; 3, the form of the acceptance; 4, its extent or effect.

6. 1. The acceptance must be made by the drawee himself, or by one authorized by him. On the presentment of a bill, 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 its tenor; 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. See 2 Ad. & Ell. N. S. 16, 17.

7. 2. As to the time when a bill ought to be accepted, it may be before the bill is drawn; in this case it must be in writing; 3 Mass. 1; or it may be after it is drawn; when the bill is presented, the drawee must accept the bill within twenty-four hours after presentment, or it should be treated as dishonoured. Chit. Bills, 212, 217. On the refusal to accept, even within the twenty-four hours, it should be protested. Chit. Bills, 217. The acceptance may be made after the bill is drawn, and before it becomes due; or after the time appointed for payment; 1 H. Bl. 313; 2 Green, R. 339; and even after refusal to accept so as to bind the acceptor.

8. The acceptance may also be made supra protest, which is the acceptance of the bill, after protest for non-acceptance by the drawee, for the honour of the drawer, or 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. 52; 5 Campb. R. 447.
9.—3. As to the form of the acceptance, it is clearly established 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 John. 207; 3 Mass. 1; or it may be expressed or implied.

10.—An express acceptance is 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.

11.—An implied acceptance is 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 writes “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.

12.—4. An acceptance in regard to its extent and effect, may be either absolute, conditional, or partial.

13.—An absolute acceptance is a positive 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 merely writing his name either at the bottom or across the bill. Comb. 401; Vin. Ab. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. But in order to bind another than the drawee, it is requisite his name should appear. Bayl. 78.

14.—A conditional acceptance is one which will subject the drawee or acceptor to the payment of the money on a contingency. Bayl. 83, 4, 5; Chit. Bills, 234; Holt’s C. N. P. 182; 5 Taunt. 344; 1 Marsh. 186. The holder is not bound to receive such an acceptance, but if he do receive it he must observe its terms. 4 M. & S. 466; 2 W. C. C. R. 485; 1 Campb. 425.

15.—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 Stra. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, b. 2, c. 10, s. 20; or place, 4 M. & S. 462.

ACCEPTATION, 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. Acceptation may be defined verborum conceptio qua creditor debitori, qua debit, acceptum fert; or, a certain arrangement of words by which on the question of the debtor, the creditor, wishing to dissolve the obligation, answers that he admits as received, what in fact, he has not received. The acceptation is an imaginary payment. Dig. 46, 4, 1 and 19; Dig. 2, 14, 27, 9; Inst. 330, 1.

ACCEPTOR, contracts. The person who agrees to pay a bill of exchange drawn upon him.

2.—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.

3.—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. Doug. R. 247. What amounts to a waiver and discharge of the acceptor’s liability, must depend on the circumstances of each particular case. Doug. 236, 248; Bayl. on Bills, 90; Chitty on Bills, 249.

ACceptor supra protest, in contracts, is a third person who, after pro-
test for non-acceptance by the drawee, accepts the bill for the honour of the drawer, or of the particular endorser.

2.—By this acceptance he subjects himself to the same obligations as if the bill had been directed to him. An acceptor supra protest 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. The acceptor supra protest is required to give the same notice, in order to charge a party, which is necessary to be given by other holders. 8 Pick. 1, 79; 1 Pet. R. 262. Such acceptor is not liable, unless demand of payment is made on the drawee, and notice of his refusal given. 3 Wend. 491.

ACCESS, persons, the means or power of approaching. Sometimes by access is understood sexual intercourse; at other times the opportunity of communicating together so that sexual intercourse may have taken place is also called access. 1 Turn. & R. 141.

2.—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. But this presumption may be rebutted by positive evidence that no sexual intercourse took place. Ib.

3.—Parents are not allowed to prove non-access for the purpose of bastardizing the issue of the wife; nor will their declarations be received after their deaths 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; Coup. R. 592; 8 East, R. 203; 11 East, R. 133. 2 Munf. R. 242; 3 Munf. R. 599; 7 N. S. 553; 4 Hayw. R. 221; 3 Hawkes, R. 623; 1 Ashm. R. 269; 6 Binn. R. 283; Paine’s R. 129; 7 N. S. 548. See Shelf. on Mar. & Div. 711; and Paternity.

ACCESSORY, 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.

2.—An accessory 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. It is proper to observe that when the act is committed through the agency of a person who has no legal discretion nor a will, as in the case of a child or an insane person, the incitor, though absent when the crime was committed, will be considered, not an accessory, for none can be accessory to the acts of a madman, but a principal in the first degree. Post. 340; 1 P. C. 118.

3.—An accessory after the fact, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. 4 Bl. Com. 37.

4.—No one who is a principal (q. v.) can be an accessory.

5.—In certain crimes, there can be no accessaries, all who are concerned are principals 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, property. The ownership of a thing, whether it be real or personal, moveable or immovable, 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.

2.—The doctrine of property arising from accession, is grounded on the right of occupancy.

3.—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 to 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. Proprietie, 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.

Accession, in international law, signifies the consent or agreement by which a nation enters into an engagement already contracted by other powers. Merl. Rép. not Accession.

ACCESSORY, property. Everything which is joined to another thing, as an ornament, or to render it more perfect, is an accessory, and belongs to the principal thing. For example, the halter of a horse, the frame of a picture, the keys of a house, and the like; but a bequest of a house would not carry the furniture in it, as accessory to it. Domat, Lois Civ. Part. 2. liv. 4, tit. 2, s. 4; n. 1. Accessorium non ducit, sed sequitur principale. Co. Litt. 152, a. Co. Litt. 121, b, note (6). Vide Accession; Adjunction; Appendant; Appurtenances; Appurtenant; Incident.

Accessory Contract, is one made for assuring the performance of a prior contract, either by the same parties or by others; such as suretyship, mortgages, and pledges.

2.—It is a general rule, that payment of the debt due, or the performance of a thing required to be performed by the first or principal contract, is a full discharge of such accessory obligation, Poth. Ob. part. 1, c. 1, s. 1, art. 2, n. 14. Id. n. 152, 1816. See 8 Mass. 551; 15 Mass. 233; 17 Mass. 419; 4 Pick. 11; 8 Pick. 522.

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 lighting would have been an accident of the second kind. 1 Fonb. Eq. 374, 5, note.

2.—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. Neither the landlord nor the tenant is bound to rebuild a house burned down, unless it has been so expressly agreed. Amb. 619; 1 T. R. 705; 4 Paige, R. 355; 6 Mass. R. 67; 4 M'Cord, R. 431; 3 Kent, Com. 373.

3. 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.

2.—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.

3.—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 Fond. 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; Mitf. 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 profits which are to be divided. Emer. on Mar. Loans, s. 5.

ACCOMMODATION, com. 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.

2.—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. See 4 Cranch, 141; 1 Ham. 413; 7 John. 361; 15 John. 355; 17 John. 176; 9 Wend. 170; 2 Whart. 344; 5 Wend. 566; 8 Wend. 437; 2 Hill. S. C. 362; 10 Conn. 308; 5 Munf. 381.

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 particeps criminis, whether they are considered in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact, Foster, 341; 1 Russell, 21; 4 Bl. Com. 331; 1 Phil. Ev. 28; Merlin, Répertoire, mot Complice. U. S. Dig. h. t.

2.—But in another sense, by the word accomplice is meant, one who not being a principal, is yet in some way concerned in the commission of a crime. It has been questioned whether one who was an accomplice to a suicide can be punished as such. A case occurred in Prussia where a soldier, at the request of his comrade, had cut the latter in pieces; for this he was tried capitaly. In the year 1817 a young woman named Leruth received a recompense for aiding a man to kill himself. He put the point of a bistouri on his naked breast, and used the hand of the young woman to plunge it with greater force into his bosom; hearing some noise he ordered her away. The man receiving effectual aid was soon cured of the wound which had been inflicted; and she was tried and convicted of having inflicted the wound, and punished by ten years imprisonment. Lepage, Science du Droit, ch. 2, art. 3, § 5.

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.
2. 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 to sue him for those injuries. Bac. Abr. Accord, &c. A; Perk. s. 749; Dyer, 75; 5 East, R. 230; 1 Str. R. 426; 2 T. R. 24; 11 East, R. 390; 3 Hawks, R. 580; 1 Litt. R. 49; 1 Stew. R. 476; 5 Day, R. 380; 1 Root, R. 426; 3 Wend. R. 66; 1 Wend. R. 164; 14 Wend. R. 116; 3 J. J. Marsh. R. 497.

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. 83; 2 Johns. 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; 6 John, R. 37; 3 Monr. R. 302; but in such case equity will grant relief by injunction. 3 Monr. R. 302; 5 East, R. 294; 1 Smith's R. 515; Cro. Eliz. 541; 9 Co. 79; b; 3 Taunt. R. 117; 5 Co. 117, b.


7. Accord with satisfaction when completed has two effects; it is a payment of the debt; and it is a species of sale of the thing given by the debtor to the creditor, but it differs from it in this, that it is not valid until the delivery of the article, and there is no warranty of the thing sold, except perhaps the title.

for in regard to this it cannot be doubted that if the debtor gave on an accord and satisfaction the goods of another, there would be no satisfaction. See Dation en paiement.

See in general Com. Dig. h. t.; Bac. Ab. h. t.; Com. Dig. Plead. 2 V 8; 5 East, R. 230; 4 Mod. 88; 1 Taunt. R. 428; 7 East, R. 150; 1 J. B. Moore, 358, 460; 2 Wils, R. 86; 6 Co. 43, b; 3 Chit. Com. Law, 657 to 693; Harr. Dig. h. t.; 1 W. Bl. 388; 2 T. R. 24; 2 Taunt. 141; 3 Taunt. 117; 5 B. & A. 886; 2 Chit. R. 303, 324; 11 East, R. 390; 7 Price, 604; 2 Greenl. Ev. § 28. V. Discharge of Obligations.

ACCOUNT, remedies. This is the name of a writ or action more properly called account render.

2. 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. 8 Cowen, R. 304; 9 Conn. R. 556; 2 Day, R. 28; Kirby, 164; 3 Gill & John. 388; 3 Verm. 485; 4 Watts, 420; 8 Cowen, 220. It is also the proper remedy by one partner against another. 15 S. & R. 153; 3 Binn. 317; 10 S. & R. 220; 2 Conn. 425; 4 Verm. 137; 1 Dall. 340; 2 Watts, 86.

3. In this action if the plaintiff succeeds, there are two judgments, the first that the defendant do account, quod computet, before auditors appointed by the court; the second that the plaintiff recover the amount to which he is found to be entitled.

4. 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 facts from the defendant under his oath, instead of relying merely on the evidence he may be able to produce. 9 John. R. 470; 1 Paige, R. 41; 2 Caines's Cas. Err. 1, 38, 52; 1 J. J. Marsh. R. 82; Cooke, R. 420; 1 Yerg. R. 360; 2 John, Ch. R. 424; 10 John. R. 587; 2 Rand. R. 449; 1 Hen. & M. 9; 2 Mc' Cord's Ch. R. 469; 2 Leigh's R. 6.

5. When an account has once been stated, the plaintiff may recover in an ac-
the plaintiff, is sufficient to support a count on account stated. 13 East, 249; 5 M. & S. 65.

3. It is proposed to consider, 1st, By whom an account may be stated; 2d, the manner of stating the account; 3d, the declaration upon such an account; 4th, The evidence.

4.—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, Aley, 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 compositum.

5. 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 a plaintiff to maintain an action on such stated account for the balance due him, Ozens v. Johnson, 4 Dall. 434; S. C. 1 Binn. 191; S. P. Andrews v. Allen, 9 S. & R. 241; and see Lamelere v. Caze, 1 W. C. C. R. 435.

6.—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, Styrat 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 Maue & Selw. 65; Knowles et al. 13 East, 249. The acknowledgment by the defendant that a certain sum is due, creates an implied promise to pay the amount.
7.—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.

8.—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 sum 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, it is 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, Aley, 72; and it seems not to be conclusive 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; Stark. Ev. 123; 1 Chit. Pl. 343.

9.—In courts of equity when a bill for one account has been filed, it is a good defence that the parties have already in writing stated and adjusted the items of the account, and struck a balance, for then an action lies at law, and there is no ground for the interference of a court of equity. 1 Atk. 1; 2 Freem. 62; 4 Cranch, 306; 11 Wheat, 237; 9 Ves. 265; 2 Bro. Ch. R. 310; 3 Bro. Ch. R. 266; 1 Cox, 435.

10.—But if there has been any mistake, omission, fraud, or undue advantage, by which the account stated is in fact vitiated, and the balance is incorrectly fixed, a court of equity will open it, and allow it to be re-examined; and where there has been gross fraud it will direct the whole account to be opened and examined de novo. Fonbl. Eq. b. 1, c. 1 § 3, note (f); 1 John. Ch. R. 550.

11.—Sometimes the court will allow the account to stand, with liberty to the plaintiff to surcharge and falsify it; the effect of this is to leave the account in full force and vigour, as a stated account, except so far as it can be impugned by the opposing party. 2 Ves. 565; 11 Wheat, 237. See Falsification; Surcharge.

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.

ACCREDION is the increase of land by the washing of the seas or rivers. Hale, De Jure Maris, 14. Vide Alluvion; Avulsion.

TO ACCRUE. Something that accedes to, or follows some other thing; as a profit accrues to the government from the coinage of copper; a loss accrues from the coinage of silver. Rent is said to accrue when it becomes due. 2 Rawle, 277; 10 Watts, 363.

2.—An action accrues when the plaintiff has a right to commence it. On a
contract, it accrues when the time of its fulfilment has arrived; and when a covenant is to be performed on a contingency, it accrues the moment the contingency has taken place. Bac. Ab. Limitation of Actions. D. 3.

ACUMULATIVE JUDGMENT, is a second or additional judgment given against one who has been convicted, the operation of which is to commence after the first has expired; as, where a man is sentenced to an imprisonment for six months on conviction of larceny, and, afterwards, he is convicted of burglary, he may be sentenced to undergo an imprisonment for the latter crime, to commence after the expiration of the first imprisonment; this is called an accumulative judgment.

ACCUSED. One who is charged with a crime or misdemeanor.

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.

2. 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.

3. It is a rule that no man is bound to accuse himself, or to testify against himself in a criminal case. Accusare nemo se debet nisi coram Deo. Vide, Evidence; Interest; Witness.

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 achator, a purchaser, which in some ancient statutes means purveyor. Stat. 36 Edw. III.

ACHERSET, obsolete. An ancient English measure of grain, supposed to be the same with their quarter or eight bushels.

ACKNOWLEDGMENT, conveyancing, is the act of the grantor going before a competent officer, and declaring the instrument to be his act or 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 acknowledgment. The acknowledgment is indispensable before the instrument can be put upon record.

2. 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 American Law of Real Property, and from Griffith's Register. Much valuable information has also been received on this subject from the correspondents of the author.

3. Alabama. Before one of the judges of the superior court, or any one of the justices of the county court. Act of March 3, 1803; or before any one of the superior judges or justices of the quorum of the territory (state). Act of Dec. 12, 1812; or before the clerks of the circuit and county courts, within their respective counties. Act of Nov. 21, 1818; or any two justices of the peace. Act of Dec. 17, 1819; or clerks of the circuit courts, for deeds conveying lands anywhere in the state. Act of January 6, 1831; or before any notary public, Id. sec. 2; or before one justice of the peace. Act of January 5, 1836; or before the clerks of the county courts. Act of Feb. 1, 1839. See Aikin's Dig. 88, 59, 90, 91, 616; Meek's Suppl. 86.

4. When the acknowledgment is out of the state, in one of the United States or territories thereof, it must be made before the chief justice or any associate judge of the supreme court of the United States, or any judge or justice of the superior court of any state or territory in the Union. Aikin's Dig. 89.

5. When it is made out of the United States, it may be made before and certified by any court of law, mayor or other chief magistrate of any city, borough or corporation of the kingdom, state, nation, or colony, where it is made. Act of March 3, 1803.

6. When a feme covert is a grantor, the officer must certify that she was examined "separately and apart from her said husband, and that on such private examination, she acknowledged
that she signed, sealed and delivered the deed as her voluntary act and deed, freely and without any threat, fear, or compulsion, of her said husband.

7.—Arkansas. The proof or acknowledgment of every deed or instrument of writing for the conveyance of real estate, shall be taken by some one of the following courts or officers: 1. When acknowledged or proven within this state, before the supreme court, the circuit court, or either of the judges thereof, or of the clerk of either of the said courts, or before the county court, or the judge thereof, or before any justice of the peace or notary public.

8.—2. When acknowledged or proven without this state, and within the United States or their territories, before any court of the United States, or of any state or territory having a seal, or the clerk of any such court, or before the mayor of any city or town, or the chief officer of any city or town having a seal of office.

9.—3. When acknowledged or proven without the United States, before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country, who, by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has by law an official seal.

10.—The conveyance of any real estate by any married woman, or the relinquishment of her dower in any of her husband’s real estate, shall be authenticated, and the title passed, by such married woman voluntarily appearing before the proper court or officer, and, in the absence of her husband, declaring that she had of her own free will executed the deed or instrument in question, or that she had signed and sealed the relinquishment of dower for the purposes therein contained and set forth, without any compulsion or undue influence of her husband. Act of Nov. 30, 1837, s. 13, 21, Rev. Stat. 190, 191.

11.—In cases of acknowledgment or proof of deeds or conveyances of real estate taken within the United States or territories thereof, when taken before a court or officer, having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer. Idem, s. 14, Rev. Stat. 190.

12.—In all cases of deeds and conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court, or officer before whom such probate is had. Idem. s. 15.

13.—Every court or officer that shall take the proof or acknowledgment of any deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on the said deed, instrument, conveyance, or relinquishment of dower, which certificate shall be signed by the clerk of the court where the probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office. Idem. s. 16.

14.—Connecticut. In this state deeds must be acknowledged before a judge of the supreme or district court of the United States, or the supreme or superior court, or court of common pleas or county court of this state, or a notary public.

15.—When the acknowledgment is made in another state or territory of the United States, it must be before some officer or commissioner having power to take acknowledgments there.

16.—When made out of the United States before a resident American consul, a justice of the peace, or notary public, no different form is used, and no different examination of a feme covert from others. See Act of 1828; Act of 1833; 1 Hill. Ab. c. 34, s. 82.

17.—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.

18.—The certificate of an acknow-
A judgment in court must be under the seal of the court.

19.—A feme covert may also make her acknowledgment before the same officers, who are to examine her separately from her husband.

20.—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, of 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. i.

21.—Florida. Deeds and mortgages must be acknowledged within the state before the officer authorised by law to record the same, or before some judicial officers of this state. Out of the state, but within some other state or territory of the United States, before a commissioner of Florida, appointed under the act passed January 24, 1831; and where there is no commissioner, or he is unable to attend, before the chief justice, judge, presiding judge, or president of any court of record of the United States or of any state or territory thereof having a seal and a clerk or prothonotary. The certificate must show, first, that the acknowledgment was taken within the territorial jurisdiction of the officer; secondly, the court of which he is such officer. And it must be accompanied by the certificate of the clerk or prothonotary of the court for which he is judge, justice or president, under the seal of said court that he is duly appointed and authorised as such. Out of the United States. If in Europe, or in North or South America, before any minister plenipotentiary, or minister extraordinary, or any chargé des affaires, or consul of the United States, resident or accredited there. If in any part of Great Britain and Ireland, or the dominions thereunto belonging, before the consul of the United States, resident or accredited therein, or before the mayor or other chief magistrate of London, Bristol, Liverpool, Dublin or Edinburgh, the certificate to be under the hand and seal of the officer. In any other place out of the United States, where there are no public minister, consul or vice consul, commercial agent or vice commercial agent of the United States, before two subscribing witnesses and officers of such place, and the identity of such civil officer and credibility shall be certified by a consul or vice consul of the United States, of the government of which such place is a part.

22.—The certificate of acknowledgment of a married woman must state that she was examined apart from her husband, that she executed such deeds, &c., freely and without any fear or compulsion of her husband.

23.—Georgia. Deeds of conveyance of land in the state must be executed in the presence of two witnesses, and proved before a justice of the peace, a justice of the inferior court, or one of the judges of the superior courts. If executed in the presence of one witness and a magistrate, no probate is required. Prince’s Dig. 162; 1 Laws of Geo. 115.

24.—When out of the state, in the United States, they may be proved by affidavit of one or more of the witnesses thereto, before any governor, chief justice, mayor, or other justice, of either of the United States, and certified accordingly, and transmitted under the common or public seal of the state, court, city or place, where the same is taken. The affidavit must express the place of the affidavit’s abode. Idem.

25.—There is no state law directing how the acknowledgment shall be made when it is made out of the United States.

26.—By an act of the legislature passed in 1826, the widow is barred of her dower in all lands of her deceased husband, that he aliens or conveys away during the coverture, except such lands as he acquired by his intermarriage with his wife; so that no relinquishment of the wife is necessary, unless the lands came to her husband by her. Prince’s Dig. 249; 4 Laws of Geo. 217. The magistrate should certify that the wife did declare that freely, and without compulsion, she signed, sealed and delivered the instrument of writing between the
parties (naming them), and that she did renounce all title or claim to dower; that she might claim or be entitled to after the death of her husband, (naming him).

1 Laws of Geo. 112; Prince's Dig. 160.

27.—Indiana. Before the recorder of the county in which the lands may be situate, or one of the judges of the supreme court of this state, or before one of the judges of the circuit court, or some justice of the peace of the county within which the estate may be situate, before notaries public, or before probate judges. Ind. Rev. Stat. c. 44, s. 7; Id. ch. 74; Act of Feb. 24, 1840.

28.—All deeds and conveyances made and executed by any person without this state and brought hither to be recorded, the acknowledgment having been lawfully made before any judge or justice of the peace of the proper county in which such deed may have been made and executed, and certified under the seal of such county by the proper officer, shall be valid and effectual in law. Rev. Code, c. 44, s. 11; App. Jan. 24, 1831.

29.—When acknowledged by a feme covert, it must be certified that she was examined separate and apart from her husband; that the full contents of the deed were made known to her; that she did then and there declare that she had, as her own voluntary act and deed, signed, sealed and executed the said deed of her own free will and accord without any fear or compulsion from her said husband.

30.—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.

31.—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.

32.—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.

33.—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.

34.—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.

35.—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.

36.—Kentucky. Acknowledgments taken in the state must be before the clerk of a county court, clerk of the general court, or clerk of the court of appeals. 4 Litt. L. of K. 165; or before two justices of the peace, 1 Litt. L. of K. 152; or before the mayor of the city of Louisville. Acts of 1828, p. 219, s. 12.

37.—When in another state or territory of the United States, before two justices of the peace, 1 Litt. L. of K. 152; or before any court of law, mayor, or other chief magistrate of any city, town, or corporation of the county where the grantors dwell, Id. 567; or before
any justice or judge of a superior or inferior court of law. Acts of 1831, p. 128.

38.—When made out of the United States, before a mayor of a city, or consul of the U. S. residing there, or before the chief magistrate of such state or country, to be authenticated in the usual manner such officers authenticate their official acts. Acts of 1831, p. 128, s. 5.

39.—When a feme covert acknowledges the deed, the certificate must state that she was examined by the officer separate and apart from her husband, that she declared that she did freely and willingly seal and deliver the said writing, and wishes not to retract it, and acknowledged the said writing again shown and explained to her, to be her act and deed, and consents that the same may be recorded.

40.—Maine. Before a justice of the peace in this state, or any justice of the peace, magistrate, or notary public, within the United States, or any commissioner appointed for that purpose by the governor of this state, or before any minister or consul of the United States, or notary public in any foreign country. Rev. St. t. 7, c. 91, § 7; 6 Pick. 86.

41.—No peculiar form for the certificate of acknowledgment is prescribed; it is required that the husband join in the deed. “The joint deed of husband and wife shall be effectual to convey her real estate, but not to bind her to any covenant or estoppel therein.” Rev. St. t. 7, c. 91, § 5.

42.—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.

43.—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.

44.—By the act of 1837, c. 97, commissioners may be appointed by authority of the state, who shall reside in the other states or territories of the United States, who shall be authorised to take acknowledgment of deeds. The act of 1831, c. 205, requires that the officer shall certify his knowledge of the parties.

45.—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.

46.—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 authorise 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.

47.—Michigan. Before a judge of a court of record, notary public, justice of the peace, or master in chancery; and in case of the death of the grantor, or his departure from the state, it may be
proved by one of the subscribing witnesses before any court of record in the state. Rev. St. 208; Laws of 1840, p. 166.

48.—When the deed is acknowledged out of the state of Michigan, in the United States, or any of the territories of the U. S., it is to be acknowledged according to the laws of such state or territory, with a certificate of the proper county clerk, under his seal of office, that such deed is executed according to the laws of such state or territory, attached thereto.

49.—When acknowledged in a foreign country, it may be executed according to the laws of such foreign country, but it must in such case be acknowledged before a minister plenipotentiary, consul, or chargé des affaires of the United States, and the acknowledgment must be certified by the officer before whom the same was taken. Laws of 1840, p. 166, sec. 2 and 3.

50.—When the acknowledgment is made by a feme covert, the certificate must state that on a private examination of such feme covert, separate and apart from her husband, she acknowledged that she executed the deed without fear or compulsion from any one. Laws of 1840, p. 167, sec. 4.

51.—Mississippi. When in the state, the deeds may be acknowledged, or proved by one or more of the subscribing witnesses to them, before any judge of the high court of errors and appeals, or a judge of the circuit courts, or judge of probate, and certified by such judge; or before any notary public, or clerk of any court of record in this state, and certified by such notary or clerk, under the seal of his office. How. & Hutch. c. 34 s. 99, p. 368, Law of 1833; or before any justice of that county, where the land, or any part thereof, is situated, Ib. p. 348, s. 1, Law of 1822; or before any member of the board of police, in his respective county, Ib. p. 445, c. 38, s. 50, Law of 1838.

52.—When in another state or territory of the United States, such deeds must be acknowledged, or proved as aforesaid, before a judge of the supreme court or of the district courts of the Unit-
pire having a seal, or the mayor of any city having an official seal.

58.—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. Miss. St. 120—122; 2 Hill. Ab. 453; Griffin h. t.

59.—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 authorised to take acknowledgments. It must be done as in the cases of release of dower, and have a similar certificate. Ib.

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

61.—New Jersey. In the state, before the chancellor, a justice of the supreme court of this state, a master in chancery, or a judge of any inferior court of common pleas, whether in the same or a different county. Rev. Laws, 458, Act of June 7, 1799; or before a commissioner for taking the acknowledgments or proofs of deeds, two of whom are appointed by the legislature in each township, who are authorised to take acknowledgments or proof of deeds in any part of the state. Rev. Laws, 748, Act of June, 5, 1820.

62.—In another state or territory of the United States, before a judge of the supreme court of the United States, or a district judge of the United States, or any judge or justice of the supreme or superior court of any state in the Union, Rev. Laws, 459, act of June 7, 1799; or before any mayor or other chief magistrate of any city in any other state or territory of the U. S., and duly certified under the seal of such city, or before a judge of any superior court, or court of common pleas of any state or territory; when taken before a judge of a court of common pleas, it must be accompanied by a certificate under the great seal of the state, or the seal of the county court in which it is made, that he is such officer. Rev. Laws, 747, act of June 5, 1820; or before a commissioner appointed by the governor, who resides in such state. Harr. Comp. 158, act of December 27, 1826; two of whom may be appointed for each of the States of New York and Pennsylvania. Elmer’s Dig. Act of Nov. 3, 1836.

63.—When made out of the United States, the acknowledgment must be before any court of law, or mayor, or other magistrate of any city, borough or corporation of a foreign kingdom, state, nation or colony, in which the party or his witnesses reside, certified by the said court, mayor, or chief magistrate, in the manner in which such acts are usually authenticated by him. Rev. Laws, 459, act of June 7, 1799. The certificate in all cases must state that the officer who makes it, first made known the contents of the deed to the person making the acknowledgment, and that he was satisfied such person was the grantor mentioned in the deed. Rev. Laws, 749, act of June 5, 1820.

64.—When the acknowledgment is made by a feme covert, the certificate must state that on a private examination, apart from her husband, before a proper officer (ut supra), she acknowledged that she signed, sealed, and delivered the deed, as her voluntary act and deed, freely, without any fear,
threats or compulsion of her husband. Rev. Laws, 459, act of June 7, 1799.

65.—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.

66.—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. By a statute passed in 1840, chap. 290, the governor is authorised to appoint commissioners in other states, to take the acknowledgment and proof of deeds and other instruments.

67.—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, Edinburgh 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 authorised by the court of chancery of this state.

68.—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.

69.—A feme covert must be privately examined; but if out of the state this is unnecessary. 2 Hill, Ab. 434; Griff. Reg. h. t.

70.—By the act passed April 7, 1848, it is provided, that:

§ 1.—The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged, in order to entitle the same to be recorded, or read in evidence, when made by any person residing out of this state, and within any other state or territory of the United States may be made before any officer of such state or territory, authorised by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as herein provided, shall be entitled to be recorded in any county in this state, and may be read in evidence in any court in this state, in the same manner and with like effect, as proofs and acknowledgments taken before any of the officers now authorised by law to take such proofs and acknowledgments: Provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed the said deed or instrument.

71.—§ 2. To entitle any conveyance or other written instrument acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resides, specifying that such officer was at the time of taking such proof or acknowledgment, duly authorised to take the same, and that such clerk or register is well acquainted with the hand writing of such officer, and verily believes that the signature to said certificate of proof and acknowledgment is genuine.

72.—North Carolina. The acknowledgment or proof of deeds for the conveyance of lands, when taken or made in the state, must be “before one of the judges of the supreme court, or superior court, or in the court of the county where the land lies.” 1 Rev. Stat. c. 37, s. 1.

73.—When in another state or territory of the United States, or the District of Columbia, the deed must be acknowledged, or proved, before some one of the judges of the superior courts of law, or circuit courts of law of superior jurisdiction, within the said state, &c., with a certificate of the governor of the said state or territory or of the secretary of state of the United States, when in the District of Columbia, of the official character of the judge; or
before a commissioner appointed by the
 governor of this state according to law.
 1 Rev. Stat. c. 37, s. 5.

74.—When out of the United States, the
deeds must be acknowledged, or
proved, before the chief magistrate of
some city, town, or corporation of the
said countries where the said deeds were
executed; or before some ambassador,
public minister, consul, or commercial
agent, with proper certificates under
their official seals. 1 Rev. Stat. c. 37,
s. 6 and 7; or before a commissioner in
such foreign country, under a commis-

sion from the county court where the
land lies. Sec. 8.

75.—When acknowledged by a feme
covet, the certificate must state that she
was privily examined by the proper
officer, that she acknowledged the due
execution of the deed, and declared that
she executed the same freely, volun-
tarily, and without the fear or compul-

sion of her said husband, or any other
person, and that she then assented
thereunto. When she is resident of another
county, or so infirm that she cannot
c

travel to the judge, or county court, the
deed may be acknowledged by the hus-

band, or proved by witnesses, and a
commission in a prescribed form may
be issued for taking the examination of
the wife. 1 Rev. Stat. c. 37, s. 6, 8, 9,
10, 11, 13, and 14.

76.—Ohio. In the state, deeds and
other instruments affecting lands must
be acknowledged before a judge of the
supreme court, a judge of the court of
common pleas, a justice of the peace,
notary public, mayor, or other presiding
officer of an incorporated town or city.
Ohio Stat. vol. 29, p. 346, act of Feb-
uary 22, 1831, which went in force,
June 1, 1831, Swan’s Coll. L. 265, s. 1.

77.—When made out of the state,
whether in another state or territory, or
out of the U. S., they must be acknow-

ledged, or proved, according to the laws
of the state, territory or country; where
they are executed, or according to the
laws of the state of Ohio. Swan’s Coll.
L. 265, s. 5.

78.—When made by a feme covert,
the certificate must state that she was
examined by the officer, separate and
apart from her husband, and the con-
tents of the said deed were fully made
known to her; that she did declare, upon
such separate examination that she did
voluntarily sign, seal, and acknowledge
the same, and that she is still satisfied
therewith.

79.—Pennsylvania. Before a judge
of the supreme court, the courts of
common pleas, the district courts, or
before any mayor or alderman, or justice
of the peace of the commonwealth, or
before the recorder of the city of Phila-

delphia.

80.—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 terri-
tory within the United States; and so
certified under the hand of the said
judge, and the seal of the court. Com-
missioners appointed by the governor,
residing in either of the United States or
of the District of Columbia, are also
authorised to take acknowledgment of
deeds.

81.—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 wit-
nesses 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 convey-
ances are so proved. The proof must
be certified by the officer under the
common or public seal of the cities,
towns, or places where such convey-
ances are so proved. But by construc-
tion 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.

82.—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.

83.—By the act of the 16th day of April, 1840, entitled “An act incorporating the Ebenezer Methodist Episcopal congregation for the borough of Reading, and for other purposes,” Pamp. Laws, 357, 361, it is provided by § 15, “That any and every grant, bargain and sale, release, or other deed of conveyance or assurance of any lands, tenements, or hereditaments in this Commonwealth, heretofore bona fide made, executed and delivered by husband and wife within any other of the United States, where the acknowledgment of the execution thereof has been taken, and certified by any officer or officers in any of the states where made and executed, who was, or were authorized by the laws of such state to take and certify the acknowledgment of deeds of conveyance of lands therein, shall be deemed and adjudged to be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such husband and wife of, in, and to the lands, tenements and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgment mentioned in the act, entitled an act for the better confirmation of the estates of persons holding or claiming under feme covert, and for establishing a mode by which husband and wife may hereafter convey their estates, passed the twenty-fourth day of February, one thousand seven hundred and seventy, were particularly set forth in the certificate thereof, or appeared upon the face of the same.”

84.—By the act of the 3d day of April, 1840, Pamp. L. 233, it is enacted, “that where any deed, conveyance, or other instrument of writing has been or shall be made and executed, either within or out of this state, and the acknowledgment or proof thereof duly certified, by any officer under seal, according to the existing laws of this Commonwealth, for the purpose of being recorded therein, such certificate shall be deemed prima facie evidence of such execution and acknowledgment, or proof, without requiring proof of the said seal, as fully, to all intents and purposes, and with the same effect only, as if the same
Deeds may be proved upon the oath of one witness before a magistrate, and this is said to be the general practice.

90.—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 de limus empower two or more justices of the county where the grantor resides to take his acknowledgment upon the oath of two witnesses to the execution. 2 Hill. Ab. 448, 9; Griff. Reg. h. t.

91.—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.

92.—The certificate of acknowledgment must be endorsed upon the deed by the clerk of the court.

93.—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.

94.—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 attestations. By the statute of 1820, the acknowledgment in other states may be conformable to the laws of the state, in which the grantor resides.

95.—By the act of 1831, c. 90, s. 9, it is provided, that all deeds or conveyances for land made without the limits of this state, shall be proved as heretofore, or before a notary public under his seal of office. Caruthers & Nicholson's Compilation of the Stat. of Tenn. 393.

96.—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.

97.—By an act passed during the session of 1839–1840, chap. 26, it is enacted,—§ 1. “That deeds of every description may be proved by two subscribing witnesses, or acknowledged and recorded, and may then be read in evidence. 2. That deeds executed beyond the limits of the United States may be proved or acknowledged before a notary public, or before any consul, minister, or ambassador of the United States, or before a commissioner of the state.—3. That the governor may appoint commissioners in other states and in foreign countries for the proof, &c. of deeds.—4. Affidavits taken as above, as to pedigree or heirship, may be received as evidence, by executors or administrators, or in regard to the partition and distribution of property or estates.” See 2 Yerg. 91, 108, 238, 400, 520; 3 Yerg. 81; Cooke, 481.

98.—Vermont. 1. All deeds and other conveyances of lands, or any estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses, and acknowledged by the grantor, before a justice of the peace. Rev. Stat. tit. 14, c. 6, s. 4.

99.—Every deed by the husband and wife shall contain an acknowledgment by the wife, made apart from her husband, before a judge of the supreme court, a judge of the county court, or some justice of the peace, that she executed such conveyance freely, and without any fear or compulsion of her husband; a certificate of which acknowledgment, so taken, shall be endorsed on the deed by the authority taking the same. Id. s. 7.

100.—2. All deeds and other conveyances, and powers of attorney for the conveyance of lands, the acknowledgment or proof of which shall have been, or hereafter shall be taken without this state, if certified agreeably to the laws of the state, province, or kingdom in which it was taken, shall be as valid as

though the same were taken before some proper officer or court, within this state; and the proof of the same may be taken, and the same acknowledged with like effect, before any justice of the peace, magistrate, or notary public, within the United States, or in any foreign country, or before any commissioner appointed for that purpose by the governor of this state, or before any minister, chargé des affaires, or consul of the United States in any foreign country; and the acknowledgment of a deed by a femme covert, in the form required by this chapter, may be taken by either of the said persons. Id. 9.

101.—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.

102.—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.

103.—The certificate 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 suc-
cession. Merlin Rép. h. t., confines acquets to immovable property.

2.—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.

3.—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.

4.—The acquets are divided into two equal portions between the husband and wife, or between their heirs at the dissolution of their marriage. Ib. art. 2375.

5.—The parties may however lawfully stipulate there to be no community of profits or gains. Ib. art. 2369.

6.—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.

TO ACQUIESCE, practice, is a renunciation of a right; as, to acquiesce in a judgment, is to abandon the right of suing out a writ of error.

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.

2.—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 primà facie evidence of such election. Vide 2 Ves. Jr. 371; 12 Ves. 136; 1 Ves. Jr. 335; 3 P. Wms. 315; 2 Rep. Leg. 439.

3.—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.

4.—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. Story on Eq. § 255; 4 W. C. C. R. 559; 6 Mass. R. 193; 1 John. Cas. 110; 2 John. Cas. 434; Liv. on Ag. 45; Paley on Ag. by Lloyd, 41; 3 Pet. R. 69, 81; 12 John. R. 300; 3 Cowen's R. 281; 3 Pick. R. 495, 505; 4 Mason's R. 296.

Acquiescence differs from assent. (q. v.)

ACQUIETANDIS PLEGISIS, obsoleto. A writ of justices, lying for the surety against a creditor, who refuses to acquit him after the debt has been satisfied. Reg. of Writs, 158.

TO ACQUIRE, descents, contracts, To make property one's own.

2. 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.

ACQUISITION, property, contracts, descent. It is the act by which the person procures the property of a thing. The thing acquired, particularly when spoken of real estate, is also called an acquisition.

2.—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.

3.—Acquisition may be divided into original and derivative. Original acquisition is procured by occupancy, 2 Kent. Com. 289; Menestr. Leg. 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 copy-rights.

4.—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 parties, 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.

ACQUITAL, contracts. A release, a discharge from obligation or engagement. According to Lord Coke there are three kinds of acquittal, namely, 1. By deed, when the party releases the obligation; 2. By Prescription; and 3. By tenure. Co. Litt. 100, a.

ACQUITTAL, crim. law, practice, is the absolution of a party charged with a crime or misdemeanor.

2.—Technically speaking, acquittal is the absolution of a party accused, or a trial before a traverse jury, 1 N. & M. 36; 3 Mc-Cord, 461.

3.—Acquittals are 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 accessory, 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. Co. Litt. 212 a, 273 a.

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 Vol. 1.—9

Penn. 185. See Cro. Eliz. 476, 665; 6 Co. 67; Poph. 55; Co. Litt. 5, b, and note 22.

ACREDULITARE, obsolete. To purge one's self of an offence by oath. It frequently happens that when a person has been arrested for a contempt, he comes into court and purges himself, on oath, of having intended any contempt.

ACT. In its largest sense, this word designates all that has been done or said between the parties when making a contract, or what has been done in the performance of any other thing. Acts are, therefore, lawful and unlawful, civil or criminal.

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.

2.—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.

3.—Acts under private signature are those which have been made by private individuals, under their hands. An act of this kind does not acquire the force of an authentic act, by being registered in the office of a notary. 5 N. S. 693; 8 N. S. 568; 3 L. R. 419; 3 N. S. 396; 11 M. R. 243; unless it has been properly acknowledged before the officer by the parties to it. 5 N. S. 196.

4.—Private Acts are those made by private persons, as registers in relation to their receipts and expenditures, schedules, acquaintances, 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. Francais, tom. 8 p. 94.

Act, evidence. The performance of something, as the acts of one conspirator, committed in pursuance of their design, are evidence against them all; proof of an overt act of treason by two witnesses is required. See Overt.
2.—The term, acts, includes written correspondence, and other papers relative to the design of the parties, but whether it includes unpublished writings upon abstract questions, though of a kindred nature, has been doubted. Foster’s Rep. 198; 2 Stark, R. 116, 141.

3.—In cases of partnership it is a rule that the act or declaration of each partner in furtherance of the common object of the association, is the act of all. 1 Pet. R. 371; 5 B. & Ald. 267.

4.—And the acts of an agent, in pursuance of his authority, will be binding on his principal. Grec. Ev. § 113.

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.

2.—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.

3.—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 bankruptcy, is an act which subjects a person to be proceeded against as a bankrupt. The acts of bankruptcy enumerated in the late act of Congress of 19th Aug., 1841, s. 1, are the following:

1.—Departure from the state, district, or territory of which a person, subject to the operation of the bankrupt laws, is an inhabitant, with intent to defraud his creditors. See as to what will be considered a departure, 1 Campb. R. 279; Dea. & Chit. 451; 1 Rose, R. 387; 9 Moore, R. 217; 2 V. & B. 177; 5 T. & R. 512; 1 C. & P. 77; 2 Bing. R. 99; 2 Taunt. 176; Holt, R. 175.

2.—Concealment to avoid being arrested. 1 M. & S. 676; 2 Rose, R. 137; 15 Ves. 447; 6 Taunt. 540; 14 Ves. 86; 9 Taunt. 176; 1 Rose, R. 362; 5 T. & R. 512; 1 Esp. 334.

3.—Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands, or tenements to be attached, distrained, sequestered, or taken in execution.

4.—Removal of his goods, chattels and effects, or concealment of them to prevent their being levied upon, or taken in execution, or by other process.

5.—Making any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, or chattels, credits, or evidences of debt. 15 Wend. R. 588; 5 Cowen, R. 67; 1 Burr. 467, 471, 481; 4 C. & P. 315; 18 Wend. R. 375; 19 Wend. R. 414; 1 Doug. 295; 7 East, R. 137; 16 Ves. 149; 17 Ves. 193; 1 Smith, R. 33; Rose, R. 213.

Act of God, in contracts. This phrase denotes those accidents which arise from physical causes, and which cannot be prevented.

2.—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, nor within the control of the party. Chitty on Contr. 272, 3; Aleyin, 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; 1 T. R. 33; Jones on Bailm. 104, 5.

3.—Special bail are discharged when the defendant dies, Tidd, 243; actus Dei nemini facit injuriem being a maxim of law, applicable in such case; 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

See generally, Fortuitous Event; Perils of the Sea.

**ACT OF GRACE**, in the Scotch law, is the same by which the statute which provides for the aliment of prisoners, confined for civil debts, is usually known.

2.—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, 1695, c. 32; Ersk. Pr. L. Scot. 4, 3, 14. This is somewhat similar to a provision in the insolvent act of Pennsylvania.

**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.

2.—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 salesmen, although he may possibly have had no knowledge of it.

**ACTIO COMMODATI CONTRARIA.** The name of an action in the civil law, by the borrower against the lender, to compel the execution of the contract. Poth. Prêt à Usage, n. 75.

**ACTIO COMMODATI DIRECTA.** In the civil law, is the name of an action, by a borrower against a lender, the principal object of which is to obtain restitution of the thing lent. Poth. Prêt à Usage, n. 65, 68.

**ACTIO CONDUCTIO INDEBITI.** The name of an action in the civil law, by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake. Poth. Promutum, n. 140. See Assumpit.

**ACTIO EX CONDUCTIO, civ. law.** The name of an action which the hirer of a thing might bring in order to compel the latter to deliver to him the thing hired. Poth. du Contr. de Louage, n 59.

**ACTIO DEPOSITI CONTRARIA.** The name of an action in the civil law which the depository has against the depository to compel him to fulfill his engagement towards him. Poth. Du Dépot, n. 69.

**ACTIO DEPOSITI DIRECTA.** In the civil law, this is the name of an action which is brought by the depository against the depository, in order to get back the thing deposited. Poth. Du Dépot, n. 60.

**ACTIO JUDICATI, civ. law.** Was an action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and, if at the end of two months, the debt was not paid, the land was sold. Dig. 42, t. 1. Code, 8, 34.

**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 debe ro habet. This is
技术上称为 actio non. 1 Ch. Plead. 531; 2 Ch. Plead. 421; Steph. Plead. 394.

ACTIO NON ACCREVIT INFRA
SEX ANNOS. The name of a plea to
the statute of limitations, when the
defendant insists that the plaintiff's ac-
tion has not accrued within six years.
It differs from non assumpsit in this:
non assumpsit is the proper plea to an
action on a simple contract, when the
action accrues on the promise; but when
it does not accrue on the promise but
subsequently to it, the proper plea is
actio non accretit, &c. Lawes, Pl. in
Ass. 733.

ACTIO PERSONALIS MORITUR
CUM PERSONA. That a personal
action dies with the person, is an an-
cient and uncontested maxim. But the
term personal action, requires ex-
planation. In a large sense all actions ex-
cept those for the recovery of real prop-
erty may be called personal. This de-
inition would include contracts for the
payment of money, which never were
supposed to die with the person.
2. The maxim must therefore be ta-
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 ac-
tual 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 propri-
ty 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.
3. 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;
Cwpw. 376; 1 Saund. 216, 217, n. 1
Com. Dig. 241, B. 13; 1 Salk. 252;
4. 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; Cwpw. 374; 3 Mass. 321; 4
Mass. 480; 13 Mass. 272; 1 Root, 216.
5. An action for a breach of a promis-
e of marriage cannot be maintained by
an executor, 2 M. & S. 498; nor
against him, 13 S. & R. 183; 1 Picker.
71; unless, perhaps, where the plainti-
f's testator sustained special damages.

See further 12 S. & R. 76; 1 Day's
Cas. 150; Bac. Abr. Ejectment, H; 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 Bos. & Pull. 330, n. a.; 1 Chit. Pl.
86; this Dictionary, tit. Actions; Death;
Parties to Actions; Survivor.

ACTIO PRO SOCIO. In the civil
law, is the name of an action by which
either partner could compel his co-part-
tners to perform their social contract.—

ACTION, conduct, behaviour, some-
thing done.
2. Human actions have been divided
into necessary actions, or those over
which man has no control, as respira-
tion, the circulation of the blood, and
the like; and into free actions, or such
as he can control at his pleasure, as to
walk, to talk, and the like. As man is
responsible only when he exerts his
will, it is clear he can be punished only
for the latter.
3. Actions are also divided into po-
itive and negative: the former is the do-
ing of some effective act, which is called
an act of commission; the latter is the
omission to do something which ought
to be done, and this is called an act of
omission. Man is responsible as well for acts of omission, where he is bound to act, as for acts of commission, when the law requires he should not act.

4. — Actions are also voluntary and involuntary; a voluntary action is one performed without constraint or repugnance; an involuntary action is the act of doing a thing when we desire to do another, either by some physical or moral constraint. Man is not responsible for his involuntary actions, see Duress; Will.


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

2.—§ 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 committing a crime. See 1 Chitty’s Cr. Law.

3.—§ 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 Coutumes, 109; 1 Sel. Pr. Introd. s. 4, p. 73. Ersk. Princ. of Scot. Law, B. 4, t. 1 § 1. Till judgment the writ is properly called an action, but not after, and therefore, a release of all actions is regularly no bar of an execution. Co. Litt. 289 a; Roll. Ab. 291. They are real, personal and mixed.

4.—1. Real actions are those brought for the specific recovery of lands, tenements, or hereditaments. Steph. Pl. 3. They are either doliurable, 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 desessein, intrusion, or alienation; 3dly, Writs ancestral possessory, as Mort d’Ancestor, aiel, besaiel cosinage, or Nuper obit. Com. Dig. Actions, D 2. By these actions formerly all disputes concerning real estate, were decided; but now they are generally laid aside in practice, upon account of the great nicety required in their management, and the inconvenience 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.

5.—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 dehine; see these several words. In Connecticut and Vermont there is an action used which is peculiar to those states, 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.

6.—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.

7.—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.

8.—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.

9.—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 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.

10.—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. 278; 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 personality 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).

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

A real action, according to the civil law, is that which lie 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.

12.—A personal action is that a creditor has against his debtor, to compel him to fulfill 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.

13.—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.

**Action Ad Exhibendum, civil law.** This was an action instituted for the purpose of compelling the defendant to
exhibit a thing or title, in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law, that is, for the recovery of a thing, whether it was movable or immovable. Merl. Quest. de Dr. tome i. 84. This is not unlike a bill of discovery, (q. v.)

**ACTION OF BOOK DEBT.**—The name of an action in Connecticut and Vermont, resorted to for the purpose of recovering the payment for articles usually charged on book. 1 Day, 105; 4 Day, 105; 2 Verm. 366; see 1 Root, 59; 1 Conn. 75; Kirby, 289; 2 Root, 130; 11 Conn. 205.

**ACTION, REDHBITORY,—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 have purchased it, had he known of the vice. Civ. Code of Louis. art. 2496.

**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. Terms de la ley.

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


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

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

4.—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.

**ACTIONARY, a commercial term used among foreigners, to signify stockholders.**

**ACTIONES NOMINATIE.** Formerly the English courts of chancery would make no writs when there was no precedent, and the cases for which there were no precedents were called actions nominatae. The statute of Westm. 2, c. 24, gave chancery authority to form new writs, and hence arose the action on the case. Bac. Ab. Court of Chancery, A.

**ACTIVE.** The opposite of passive. We say active debts, or debts due to us; passive debts are those we owe.

**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 repenin both parties are said to be actors. The proctor or advocate in the courts of the civil law, was called actor.

**ACTS OF COURT.** In courts of admiralty, by this phrase is understood legal memoranda of the nature of pleas. For example, the English court of admiralty disregards all tenders, except those formally made by acts of court. Abbott on Ship. pt. 3, c. 10, § 2, p. 403; 4 Rob. R. 103; 1 Hagg. R. 157; Dunl. Adm. Pr. 104, 5.

**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.

**ACTUARIUS.** An ancient name or appellation of a notary.

**ACTUARY, is a clerk in some cor-
porations 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 DIEM. At the day, as a plea of payment ad diem, on the day when the money became due. See Solut ad diem, and Com. Dig. Pleader, 2 W. 29.

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

Ad largum, at large, as title at large, assize at large. See Dane’s Abr. ch. 144, a, 16, § 7.

Ad quern. A Latin expression which signifies to which: in the computation of time, the day ad quern, the last day of the term, is always computed. See A quo.

Ad quod damnum, Eng. law. The name of a writ issuing out of and returnable into chancery, directed to the sheriff, commanding him to inquire by a jury what damage it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like.

Ad terminum qui preterit. The name of a writ of entry which lay for the lessor or his heirs, when a lease had been made up of lands or tenements, for term of life or years, and, after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same. F. N. B. 201. The remedy now applied for holding over (q. v.) is by ejectment, or under local regulations, by summary proceedings.

Ad tum et inde. That part of an indictment, where it is stated that the subject-matter of the crime or offence “then and there being found,” is technically so called. N. C. Term R. 93; Bac. Ab. Indictment, G 4.

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 gessit.

Ad valorem. According to the value. This Latin term is used in commerce in reference to certain duties, called ad valorem duties, which are levied on commodities at certain rates per centum on their value. See Duties; Imposts; act of Cong. of March 2, 1799, s. 61; of March 1, 1823, s. 5.

ADDITION, whatever is added to a man’s name by way of title, as additions of estate, mystery, or place.

2.—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.

3.—Additions of mystery are such as scrivener, painter, printer, manufacturer, &c.

4.—Additions of places are of Philadelphia, New York, Cincinnati and the like. See Bac. Ab. h. t.; Doct. Pl. 71; 2 Vin. Abr. 77; 1 Lilly’s Reg. 39; 1 Metc. R. 151.

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

ADDRESS, chan. plead., is that part of a bill which contains the appropriate and technical description of the court where the plaintiff seeks his remedy. Coop. Eq. Pl. 8; Bart. Suit in Eq. 26 Story, Eq. Pl. § 26; Van Hey. Eq Draft. 2.

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 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. 

ADEPTION, wills, is a taking away or revocation of a legacy by the testator.

2.—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.

ADHERING, aiding, assisting; as, adhering to the enemies of the United States.

2.—The constitution of the United States, art. 3, s. 3, defines treason against the United States to consist only in levying war against them or in adhering to their enemies, giving them aid and comfort.

3.—The fact that a citizen is cruising in an enemy’s ship, with a design to capture or destroy American ships, would be an adhering to the enemies of the United States. 4 State Tr. 328; Salk. 634; 2 Glib. Ev. by Loft, 799.

4.—If war be actually levied, that is, a body of men be actually assembled for the purpose of effecting by force a treasonable enterprise, all those who may perform any part, however minute, or however remote from the scene of action, and who are leagued in the general conspiracy, are to be considered as traitors. 4 Cranch, 126.

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.

2.—The constitution of the United States, art. 1, s. 5, 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 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.

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 affirmation day are finished. 2 Tidd, 1224.

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

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

2.—By statute 1672, c. 19, such part only of the debtor’s lands is to be adjudged to the principal sum and interest of the debt, with the compositions due to the superior, and the expenses of infeoffment, 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.

3.—2. 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 adjudicate 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 Dilegences.

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 enchased in another's ring; by soldering, as if one's guard be soldered 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.

2. In these cases, as a general rule, the accessory follows the principal; hence these 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. Proprietie; Com.Dig. Pleader, M 28; Bac. Abr. Trespass, E 2.

ADJUNCTS, Eng. law, are additional judges appointed to determine causes in the High Court of Delegates, when the former judges cannot decide in consequence of disagreement, or because one of the law judges of the court was not one of the majority. Shelf. on Lun. 310.

ADJURATION, Is the act by which one person solicits another to tell or swear to the truth. Wolff, Inst. § 374.

ADJUSTMFTNT, in maritime law; the adjustment of a loss is the setting 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 under-writer 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.

2.—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, 253; 13 East, 304; 6 Taunt. 358. 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.

3.—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 afford a just criterion to ascertain its true value. It may have been bought very dear or very cheap. The circumstances 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, p. 621; Laws of Wisbury, art. 20; Laws of Oléron, 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.

4. 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. See Damages.

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 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; Bac. Ab. Dower, K; F. N. B. 148; Co. Litt. 39 a; 2 Inst. 367; Dower; Estate in Dower.

ADMEASUREMENT OF PASTURE, Eng. Law. The name of a writ which lies where many tenants have common appendant in another ground, and one overcharges the common with beasts. The other commoners to obtain their just rights may sue out this writ against him.

ADMINICULE. 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. Tech. Dict. h. t.; Merl. Répért. mot Adminicule.

TO ADMINISTER, ADMINISTERING. The stat. 9 G. 4, c. 31, s. 11, enacts "that if any person unlawfully and maliciously shall administer, or attempt to administer to any person, or shall cause to be taken by any person any poison or other destructive things," &c., every such offender, &c. In a case which arose under this statute, it was decided that to constitute the act of administering the poison, it was not absolutely necessary there should have been a delivery to the party poisoned, but that if she took it from a place where it had been put for her by the defendant, and any part of it went into her stomach, it was an administering. 4 Carr. & Payne, 369; S. C. 19 E. C. L. R. 423; 1 Moody's C. C. 114; Carr. Crim. L. 237. Vide Attempt; to Persuade.

To ADMINISTER, trusts, is to do some act in relation to an estate, such as none but the owner, or some one authorized by him or by the law, in case of his decease, could legally do. 1 Harr. Cond. Lo. R. 666.

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.

2.—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.

3.—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 minore estate** 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 lice** 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. Administration **cum testamento annoce** 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, by an officer having jurisdiction, to manage and settle the estate of a deceased person who has left no executor, or one who is for the time incompetent to act.

2.—It will be proper to consider, first, his rights; secondly, his duties; thirdly, the number of administrators, and their joint and severall powers; fourthly, the several kinds of administrators.

3.—1. By the grant of the letters of administration, the administrator is vested with full and ample power, unless restrained to some special administration, to take possession of all the personal estate of the deceased and to sell it; to collect the debts due to him; and to represent him in all matters which relate to his chattels real or personal. He is authorised to pay the debts of the intestate in the order directed by law; and, in the United States, he is generally entitled to a just compensation, which is allowed him as commissions on the amount which passes through his hands.

4.—2. He is bound to use due diligence in the management of the estate; and he is generally on his appointment required to give security that he will do so; he is responsible for any waste which may happen for his default, and is liable for a devastavit, (**q. v.**)

5.—Administrators are authorised to bring and defend actions. They sue and are sued in their own names; as, A B, administrator of C D, v. E F; or E F v. A B, administrator of C D.

6.—3. As to the number of administrators. There may be one or more. When there are several they must, in general, act together in bringing suits, and they must all be sued; but like executors, the acts of each one of them, which relate to the delivery, gift, sale, payment, possession or release of the intestate’s goods, are considered as of equal validity, as the acts of all, for they have a joint power and authority over the whole. Bac. Ab. Executor, C 4; 11 Vin. Ab. 358; Com. Dig. Administration, B 12; 1 Dane’s Ab. 383; 2 Litt. R. 315. On the death of one of several joint administrators, the whole authority is vested in the survivor or survivors.

7.—4. Administrators are general, or those who have right to administer the whole estate of the intestate; or special, that is, those who administer it but partially, or but for a limited time.

8.—1st. General administrators are of two kinds, namely: first, when the grant of administration is unlimited, and the administrator is required to administer the whole estate under the intestate laws; secondly, when the grant is made with the annexation of the will, which is to be the guide to the administrator
how to administer and distribute the estate. This latter administration is granted when the deceased has made a will, and either he has not appointed any executor, or having appointed one, he refuses to serve or is dead, or is otherwise incapable to act; this last kind is called an administrator *cum testamento annexo*. 1 Will. on Wills, 309.

9.—2d. Special administrators are of two kinds; first, when the administration is limited to part of the estate, as for example, when the former administrator has died, leaving a part of the estate unadministered, an administrator is appointed to administer the remainder, and he is called an administrator *de bonis non*. He has all the powers of a common administrator. Bac. Ab. Executors, B 1; Sw. 396; Roll. Ab. 907; 6 Sm. & Marsh. 323. When the estate was administered by an executor and he died, leaving a part of it unadministered, the administration is granted to him with the will annexed; and then he is called an administrator *de bonis non, cum testamento annexo*. Com. Dig. Administrator, (B 1.) Secondly, When the authority of the administrator is limited as to time. Administrators of this kind are, 1st. An administrator *durante minore eate*, This administrator is appointed to act as such during the minority of an infant executor, until the latter shall attain his lawful age to act, Godolph. 102; 5 Co. 29. His powers extend to administer the estate so far as to collect the same, sell a sufficiency of the personal property to pay the debts, sell *bona peritura*, and perform such other acts as require immediate attention. He may sue and be sued. Bac. Ab. Executor, B 1; Roll. Ab. 110; Cro. Eliz. 718. The powers of such an administrator determine as soon as the infant executor attains the age when the law authorises him to act for himself, which, at common law, is seventeen years, but by statutory provision in several states is fixed at twenty-one years.

10.—2d. An administrator *durante absentia*, is one who is appointed to administer the estate during the absence of the executor, before he has proved the will. The powers of this administrator continue until the return of the executor, and then his powers cease upon the probate of the will by the executor. 4 Hagg. 360. In England it was held, that the death of the executor abroad did not determine the authority of the administrator *durante absentia*. 3 Bos. & Pull. 26.

11—3d. An administrator *pendente lite*. Administration *pendente lite* may be granted pending the controversy respecting an alleged will; and it has been granted pending a contest as to who is by law entitled to administration. 2 P. Wins. 589; 2 Atk. 286; 2 Cas. temp. Lee, 258. The administrator *pendente lite* is merely an officer of the court, and holds the property only till the suit terminates. 1 Hagg. 313. He may maintain suits, 1 Ves. sen. 325; 2 Ves. & B. 97; 1 Ball & B. 192; though his power does not extend to the distribution of the assets. 1 Ball & B. 192.

ADMINISTRATRIX. This term is applied to a woman to whom letters of administration have been granted. See Administrator.

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. 465. 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, Bac. Ab,
Court of Admiralty; Merl. Répert. h. t.; Encyclopédie, h. t.

2. 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 impost, 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.

3.—It is not within the plan of this work to enlargo upon this subject. The reader is referred 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. P. 508; Bac. Ab. Courts of Admiralty; 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 Sharow. cont. of Story’s L. U. S. 2262; Clerke’s Praxis; Collectanea Maritima; 1 U. S. Dig. tit. Admiralty Courts, XIII.

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.

2.—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.

3.—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.

4. 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. The term admission is usually applied to civil transactions, and to matters of fact, in criminal cases, where there is no criminal intent; the term confession, (q. v.) is generally considered as an admission of guilt.

2.—The admission is nothing but the testimony which the party admitting bears to the truth of an obligation or of a fact against himself. It is a pure voluntary act of his will, or of his consent, by which he acknowledges as true the fact in dispute. An admission and consent are, in fact, one and the same thing, unless indeed for more exactness we say, that that consent is given to a present fact or agreement, and admission has reference to an agreement or a fact anterior, already past; for properly speaking, it is not the admission which forms a contract, obligation or engagement, against the party admitting. The admission is, by its nature, only the proof of a pre-existing obligation, resulting from the agreement or the fact, the truth of which is acknowledged. There is still another remarkable difference between admission and consent: the first is always free in its origin; the latter, always morally forced. I may refuse to consent to a proposition made to me, abstain from a fact or an action which would subject me to an obligation; but once my consent given, or the action committed, I am no longer at liberty to deny or refuse either; I am constrained to admit, under the penalty of dishonour and infamy. But notwithstanding all these differences, admission is identified with consent, and they are both the manifestation of the will. These admissions are generally evidence of those facts, when the admissions themselves are proved.

3.—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.

4. 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 or casual representation.

5. As an instance of 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.

6. 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.

7. 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.

8. 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. 563; 1 Dall. 65. The admissions of the party really interested, although he is no party to the suit, are evidence, 1 Wils. 257.

9. 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. According to the English decisions, it seems, the admissions of one partner, after the dissolution, have been held to bind the other partner; this rule has been partially changed by act of parliament, Colly. on Part. 252; Stat. 9 Geo. c. 14, (May 9, 1828.) In the Supreme Court of the United States, a rule, the reverse of the English, has been adopted, mainly on the ground, that the admission is a new contract or promise, springing out of, and supported by, the original consideration. 1 Pet. R. 351; 2 McLean, 87. The state courts have varied in their decisions; some have adopted the English rule; and in others it has been overruled. Story, Partn. § 324; 3 Kent, Com. Lect. 43, p. 49, 4th ed.; 17 S. & R. 126; 15 Johns. R. 409; 9 Cowen, R. 422; 4 Paige, R. 17; 11 Pick. R. 400; 7 Yerg. R. 534.

10. By one of several persons who have a community of interest, Stark. Ev. pt. 4, p. 47; 3 Serg. & R. 9.

11. By an agent, 1 Phil. Ev. 77–82; Paley Ag. 203–207.

12. 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.

13. 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.


Admissions, of attorneys and counsellors. To entitle counsellors and attorneys to practise in court, they must be admitted by the court to practise 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 1 Troub. & Haly's Pr. 18; 1 Arch. Pr. 16; Blake's Pr. 30.

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.

2.—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 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. Laws Civ. Pl. 143, 144. See 1 Chit. Pl. 600; Archb. Civ. Pl. 215.

3.—In chancery pleadings admissions are said to be plenary and partial. They are plenary by force of terms not only when the answer runs in this form, "the defendant admits it to be true," but also when he simply asserts, and generally speaking, when he says, that "he has been informed, and believes it to be true," without adding a qualification such as, "that he does not know it of his own knowledge to be so, and therefore does not admit the same." Partial admissions are those which are delivered in terms of uncertainty, mixed up as they frequently are, with explanatory or qualifying circumstances.

Admissions, in practice. It frequently occurs in practice, that in order to save expenses 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.

2.—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. Gresl. Eq. Ev., c. 2, p. 38.

Admittance, Eng. Law, is the act of giving possession of a copy-hold estate, as livery of seisin is of a freehold; it is of three kinds, namely: upon a voluntary grant by the lord; upon a surrender by the former tenant; and upon descent.

Admittendo in socium, Eng. law. A writ associating certain persons to justices of assize.

Amonition, 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 he guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, Répert. h. t.

2.—The admonition was authorised
by the civil law, as a species of punishment for slight misdemeanors. Vide Reprimand.

ADNEPOS. A term employed by the Romans to designate male descendant in the fifth degree, in a direct line. This term is used in making genealogical tables.

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. Répért, h. t. Dig. 1, 7, 15, 1, and see Arrogation. 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.

ADROGATION, civil law. The adoption of one who was impubes, that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

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.

2. This term also signifies the act of mixing something impure with something pure, as, to mix an inferior liquor with wine; an inferior article with coffee, tea, and the like.

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

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ADULTERIUM. In the old records this word does not signify the offence of adultery, but the fine imposed for its commission. Barr. on the Stat. 62, note.

ADULTERY, in criminal law, from ad and alter another person; a criminal conversation, between a man married to another woman, and a woman married to another man, or a married and unmarried person. The married person is guilty of adultery, the unmarried of fornication, (q. v.) 1 Yeates, 6; 2 Dall. 124; but see 2 Blackf. 318.

2.—The elements of this crime are, 1st, that there shall be an unlawful carnal connexion; 2dly, that the guilty party shall at the time be married; 3dly, that he or she shall willingly commit the offence, for a woman who has been ravished against her will is not guilty of adultery. Domat, Supp. du Droit Public, liv. 3, t. 10, n. 13.

3.—The punishment of adultery in the United States generally is fine and imprisonment.

4.—In England it is left to the feeble hands of the ecclesiastical courts to punish this offence.

5.—Adultery in one of the married persons is good cause for obtaining a divorce by the innocent partner. See 1 Pick. 136; 8 Pick. 433; 9 Mass. 492; 14 Pick. 518; 7 Greenl. 57; 8 Greenl. 75; 7 Conn. 267; 10 Conn. 372; 6 Verm. 311; 2 Fairf. 391; 4 S. & R. 449; 5 Rand. 634; 6 Rand. 627; 8 S. & R. 159; 2 Yeates, 278, 466; 4 N. H. Rep. 501; 5 Day, 149; 2 N. & M. 167.

6.—As to proof of adultery, see 2 Greenl. § 40, Marriage.

ADVANCEMENT, is that which is given by a father to his child or presumptive heir, by anticipation of what he might inherit. 6 Watts, R. 87; 17 Mass. R. 358; 16 Mass. R. 200; 4 S. & R. 333; 11 John. R. 91; Wright, R. 339.

2.—The advancement which will exclude a child must be made by the father, and not by any other, not even the mother. 2 P. Wms. 356. 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 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.

3.—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.

4.—The advancement is either express or implied. As to what is an implied advancement, see 2 Fond. Eq. 121; 1 Supp. to Ves. Jr. 84; 2 Ib. 57; 1 Vern. by Raithby, 88, 108, 216; 5 Ves. 421; Bac. Ab. h. t.; 4 Kent, Com. 173.

5.—A debt due by a child to his father differs from an advancement. In case of a debt, the money due may be recovered by action for the use of the estate, whether any other property be left by the deceased or not; whereas, an advancement merely bars the child’s right to receive any part of his father’s estate, unless he brings into hotch pot the property advanced. 17 Mass. R. 93, 359. See, generally, 17 Mass. R. 81, 356; 4 Pick. R. 21; 4 Mass. R. 680; 8 Mass. R. 143; 10 Mass. R. 437; 5 Pick. R. 527; 7 Conn. R. 1; 6 Conn. R. 355; 5 Paige’s R. 318; 6 Watts’s R. 86, 254, 309; 2 Yerg. R. 135; 3 Yerg. R. 95; Bac. Ab. Trusts, D; Math. on Pres. 59; 5 Hayw. 137; 11 John. 91; 1 Swanst. 13; 1 Ch. Cas. 58; 3 Conn. 31; 15 Ves. 43, 50; 4 S. & R. 333; 4 Whart. 130, 540; 5 Watts, 9; 1 Watts & Serg. 390; 10 Watts, R. 158; 5 Rawle, 213; 5 Watts, 9, 80; 6 Watts & Serg. 203.

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.

2.—The agent or factor has a right not only to advances made to the owner of goods, but also for expenses and disbursements, made in the course of his agency, out of his own moneys, on account of, or for the benefit of his principal; such as incidental charges for warehouse-room, duties, freight, general average, salvage, repairs, journeys, and all other acts done to preserve the property of the principal and to enable the agent to accomplish the objects of the principal, are to be paid fully by the latter. Story on Bailm. § 196, 197; Story on Ag. § 335.

3.—The advances, expenses and disbursements of the agent must, however, have been made in good faith, without any default on his part. Liv. on Ag. 14—16; Smith on Merc. L. 56; Paley on Ag. by Lloyd, 109; 6 East, R. 392.

4.—When the advances and disbursements have been properly made, the agent is entitled not only to the return of the money so advanced, but to interest upon such advances and disbursements, whenever from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to be stipulated for, or due to the agent. 7 Wend. R. 315; 3 Binn. R. 295; 3 Caines, R. 226; 1 H. Bl. 303; 3 Camp. R. 467; 15 East, R. 223. This just rule coincides with the civil law on this subject. Dig. 17, 1, 12, 9; Poth. Pand. lib. 17, t. 1, n. 74.

ADVENTITIOUS, adventitious, 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 pa-
rent.

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.

ADVENTURE, crim. law. A mis-
chance or accident which causes the death of a man; as where a man cut-
ing a log of wood, and the axe flies off and kills a by-stander. There must be no design or carelessness, or the act will assume a criminal character. Co. Litt. 391.

ADVENTURE, mer. law. Goods sent abroad under the care of a super-
cargo, to be disposed of to the best ad-
vantage for the benefit of his employers, are called an adventure.

ADVERSARY. One who is a party, in a writ or action opposed to the other party.

ADVERSE POSSESSION, title to land, 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; 10 Watts, R. 289; 8 Conn. 440; 3 Penn. 132; 2 Aik. 364; 2 Watts, 23; 9 John. 174; 18 John. 40, 355; 5 Pet. 402; 4 Bibb, 550.

2.—When the possession has been adverse for twenty years, of which the jury are to judge from the circumstance, the law raises the presumption of a grant. Ang. on Wat. Courses, 85, et seq. But this presumption arises only when the user or occupation would otherwise have been unlawful. 3 Greenl. R. 120; 6 Binn. R. 416; 6 Cowen, R. 617, 677; 8 Cowen, R. 589; 4 S. & R. 456. See 2 Smith’s Lead. Cas. 307-416.

3.—There are four general rules by which it may be ascertained that possession is not adverse; these will be separately considered.

4.—1. When both parties claim under the same title; as, if a man

seised of certain land in fee, have issue two sons and die seised, and one of the sons enter by abatement into the land, the statute of limitations will not operate against the other son; for when the abator entered into the land of his father, before entry made by his brother, the law intends that he entered claim-
ing as heir to his father, by which title the other son also claims. Co. Litt. s. 396.

5.—2. When the possession of the one party is consistent with the title of the other; as, where the rents of a trust estate were received by a cestui que trust for more than twenty years after the creation of the trust, without any interference of the trustee, such possession being consistent with and secured to the cestui que trust by the terms of the deed, the receipt was held not to be adverse to the title of the trustee, 8 East, 248.

6.—3. When, in contemplation of law, the claimant has never been out of possession; as, where Paul devised lands to John and his heirs, and died, and John died, and afterwards the heirs of John and a stranger entered, and took the profits for twenty years; upon ejectment brought by the devisee of the heir of John against the stranger, it was held that the perception of the rents and profits by the stranger was not adverse to the devisee’s title; for when two men are in possession, the law adjudges it to be the possession of him who has the right. Lord Raym. 329.

7.—4. When the occupier has ac-
nowledged the claimant’s titles; as, if a lease be granted for a term, and, after paying the rent for the land during such term, the tenant hold for twenty years without paying rent, his possession will not be adverse. See Bos. & P. 542; 8 B. & C. 717.

ADVERTISEMENT, is a notice published either in hand-bills or in a newspaper.

2.—The law in many instances re-
quires parties to advertise in order to give notice of acts which are to be done; in these cases, the advertisement is in general equivalent to notice.
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 counselor does in the common law.

2. 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.

3. College or faculty of advocates, a college consisting of 180 persons appointed to plead in all actions before the lords of sessions.

4. Church or ecclesiastical advocates, pleaders appointed by the church to maintain its rights.

5. A patron who has the advowson or presentation to a church, Techn. Dict.; Ayl. Per. 53; Dane Ab. ch. 31, § 20. See Counsellor at law; Honorarium.

ADVOCATIA, civil law. This sometimes signifies the quality, or functions, and at other times privilege, or the territorial jurisdiction of an advocate. See Du Cange, voce Advocatia, Advocatio.

ADVOCACTION, 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.

ADVOCAATUS, A pleader, a narrator. Bract. 412 a, 372 b.

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.

2. 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 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. Mirehouse on Advowsons; Com. Dig. Advowson, Quare Impedit; Bac. Ab. Simony; Burn's Eccl. Law, h. t.; Cruise's Dig. Index, h. t.

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.

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

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

AFFIANCE, in contracts, from affi-
dare or dare fidem, to give a pledge; a phlicting 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. This word is
used by some authors as synonymous
with marriage. Co. Litt. 34, a, note 2.
See Dig. 23, 1, 1; Code, 5, 1, 4; Ex-
trav. 4, 1.

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

AFFIDATIO DOMINORUM, Eng.
law. An oath taken by a lord in par-
liament.

AFFIDAVIT, in practice: an oath
or affirmation reduced to writing, sworn
or affirmed to before some officer who
has authority to administer it. It dif-
fers from a deposition in this, that in
the latter the opposite party has had an
opportunity to cross-examine the wit-
ness, whereas an affidavit is always
taken ex parte. Gresl. Eq. Ev. 413,
Vide Harr. Dig. h. t.

2.—Affidavit to hold to bail, is in
many cases required before the defen-
dant can be arrested; such affidavit
must be made by a person who is ac-
quainted 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.

3.—An affidavit of defence, is made

\[
\begin{array}{c}
0 \\
Ego \\
0 \\
My wife's father, \\
My 0 father, \\
My brother, 0 \quad Ego, 0 \quad 0 \\
My wife, 0 \quad My wife's father, \\
My wife's sister, \quad My brother and my wife's sister are not allied to each other. \\
My wife's niece, \quad are all allied to me. \\
My wife, \quad My brother and my wife's sister are not allied to each other. \\
My 0 father, \\
0 \\
Ego, 0 \quad 0 \\
My wife, 0 \quad My wife's sister, \\
My wife's niece, \quad are all allied to me. \\
My wife's sister, \quad My brother and my wife's sister are not allied to each other. \\
My wife, \quad My brother and my wife's sister are not allied to each other. \\
My wife's niece, \quad are all allied to me. \\
\end{array}
\]

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. It has
been decided that when a writ of sum-
mons has been served upon three de-
defendants, and only one appears, a
judgment for want of an affidavit of
defence may be rendered against all.
8 Watts, R. 367. Vide Bac. Ab. h. t.

AFFINITAS AFFINITATIS, is that
connexion between two persons which
has neither consanguinity nor affinity;
as, the connexion between the hus-
band's brother and the wife's sister.
This connexion is formed not between
the parties themselves, nor between
one of the spouses and the kinsmen of
the other, but between the kinsmen of
both. Ersk. Inst. B. 1, tit. 6, s. 8.

AFFINITY, is a connexion formed
by marriage which places the husband
in the same degree of nominal pro-
pinquity to the relations of the wife, as
that in which she herself stands to-
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.

2.—Affinity or alliance is very dif-
ferent from kindred. Kindred are re-
lations by blood; affinity is the tie
which exists between one of the spouses
with the kindred of the other; thus,
the relations of my wife, her brothers,
hers, her sisters, her uncles, are allied to me
by affinity, and my brothers, sisters,
&c., are allied in the same way to my
wife. But my brother and the sister
of my wife are not allied by the ties of
affinity. This will appear by the fol-
lowing paradigms:
3.—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 5 M. R. 296; Inst. 1, 10, 6; Dig. 38, 10, 4, 3; 1 Phillim. R. 210; S. C. 1 Eng. Eccl. R. 72; 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. Is the confirmation of a voidable act; as, for example, when an infant enters into a contract, which is not binding upon him, if, after attaining his full age, he gives his affirmation to it, he will thereafter be bound, as if it had been made when of full age. 10 N. H. Rep. 194.

2.—To be binding upon the infant, the affirmation must be made after arriving of age, with a full knowledge that it would be void without such confirmation. 11 S. & R. 305.

3.—An affirmation may be express, that is, where the party declares his determination of fulfilling the contract; but a mere acknowledgment is not sufficient. Duddl. R. 203. Or it may be implied, as, for example, where an infant mortgaged his land, and, at full age, conveyed it subject to the mortgage. 15 Mass. 220. See 10 N. H. Rep. 561.

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 affirmation or reversal of judgments. 2 Tidd, 1091.

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.

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.

2.—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.

3.—In England, laws have been enacted which partially relieve persons who have conscientious scruples against taking an oath, and authorise them to make affirmation. In France, the laws which allow freedom of religious opinion, have received the liberal construction that all persons are to be sworn or affirmed according to the dictates of their consciences; and a quaker's affirmation has been received and held of the same effect as an oath. Merl. Quest. de Droit, mot Serment, § 1.

4.—The form is to this effect, “You A. B., do solemnly, sincerely, and truly declare and affirm,” &c. For the violation of the truth in such case, the witness is subject to the punishment of perjury as if he had been sworn.

5.—Affirmation also means confirming; as, an affirmative statute.

AFFIRMATIVE. Averring a fact to be true; that which is opposed to negative, (q. v.)

2.—It is a general rule of evidence that the affirmative of the issue must be proved. Bull. N. P. 298; Peake, Ev. 2.

3.—But when the law requires a person to do an act, and the neglect of it will render him guilty and punishable, the negative must be proved, because every man is presumed to do his duty, and in that case they who affirm he did not, must prove it. B. N. P. 298; 1 Roll, R. 58; Comb. 57; 3 B. & P. 307; 1 Mass. R. 56.
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 implicitly 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.

TO AFFRANCHISE. To make free.

AFFRAY, criminal law, is the fighting of two or more persons in some public place to the terror of the people.

2.—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.

3.—It differs from a riot it 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.

AFFREIGHTMENT, comm. law, is the contract by which a vessel or the use of it, is let out to hire. See Freight; General Ship.

AFORETHOUGHT, crim. law, premeditated, prepense; the length 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; Premeditation; 2 Chit. Cr. 785; 4 Bl. Com. 199; Post. 132, 291, 292; Cro. Car. 131; Palm. 545; W. Jones, 198; 4 Dall. R. 146; 1 P. A. Bro. App. xviii.; Addis. R. 148; 1 Ashm. R. 289.

AGAINST. Opposed to; as A. B. against C. D. Instead of using this word in actions, we say A. B. versus C. D.

AGAINST THE FORM OF THE STATUTE. When a statute prohibits a thing to be done, and an action is brought for the breach of the statute, the declaration or indictment, must conclude against the form of the statute. See Contra formam statutis.

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

AGARD. An old word which signifies award. It is used in pleading, as null a guard, no award.

AGE, the time when the law allows persons to do acts, which, for want of years, they were prohibited from doing before.

2.—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 to 45 inclusive, unless exempted for some particular reason.

3.—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.

4.—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.

5.—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 première 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. I, Intr. n. 188.

6.—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. 22.


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 quad 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.

AGED WITNESS. When a deposition is wanted to be taken on account of the age of a witness, he must be at least seventy years old to be considered an aged witness. Coop. Eq. Pl. 57; Amb. R. 65; 13 Ves. 56, 261.

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.

2.—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.

3.—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. 9 Cranch, 153, 161; 26 Wend, 193, 226; 6 Man. & Gr. 236, 242; 1 Hare & Wall. Sel. Dec. 420; 2 Kent, Com. 478; Paley on Agency; Livermore on Agency.

4.—An agency may be dissolved in two ways: 1, by the act of the principal or the agent; 2, by operation of law.

5.—1. The agency may be dissolved by the act of one of the parties. 1st, As a general rule it may be laid down that the principal has a right to revoke
the powers which he has given; but this is subject to some exceptions, of which the following are examples. When the principal has expressly stipulated that the authority shall be irre-vocably, and the agent has an interest in its execution: it is to be observed, however, that although there may be an express agreement not to revoke, yet if the agent has no interest in its execution, and there is no consideration for the agreement, it will be considered a novus pact, and the authority may be revoked. But when an authority or power is coupled with an interest, or when it is given for a valuable consi-seration, or when it is a part of a security, then, unless there is an express stipulation that it shall be revocable, it cannot be revoked, whether it be expressed on the face of the instrument giving the authority, that it be so, or not. Story on Ag. 477; Smith on Merc. L. 71; 2 Liv. on Ag. 308; Paley on Ag. by Lloyd, 154; 3 Chit. Com. L. 223; 2 Mason's R. 244; Id. 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Kent, Com. 643, 3d edit.; Story on Bailm. § 209; 2 Esp. R. 565; 3 Barnw. & Cressw. 842; 10 Barnw. & Cressw. 731; 2 Story, Eq. Jur. § 1041, 1042, 1043.

6.—2dly. The agency may be determined by the renunciation of the agent. If the renunciation be made when it has been partly executed, the agent by renouncing it, becomes liable for the damages which may thereby be sustained by his principal. Story on Ag. § 478; Story on Bailm. § 436; Jones on Bailm. 101; 4 John. R. 84.

7.—2. The agency is revoked by operation of law in the following cases: 1st. When the agency terminates by the expiration of the period, during which it was to exist, and to have effect; as, if an agency be created by the principal to endure a year, or till the happening of a contingency, it becomes extinct at the end of the year, or on the happening of the contingency.

8.—2dly. When a change of condition, or of state, produces an incapa-

city in either party; as, if the principal, being a woman, marry, this would be a revocation, because the power of creating an agent is founded on the right of the principal to do the business himself, and a married woman has no such power. For the same reason, when the principal becomes insane, the agency is ipso facto revoked. 8 Wheat. R. 174, 201 to 204; Story on Ag. § 481; Story on Bailm. § 206, 2 Liv. on Ag. 307. The incapacity of the agent also amounts to a revocation in law, as in case of insanity, and the like, which render an agent altogether incompetent, but the rule does not re-ciprocally apply in its full extent. For instance, an infant or a married woman may in some cases be agents, although they cannot act for themselves.

9.—3dly. The death of either principal or agent revokes the agency, unless in cases where the agent has an interest in the thing actually vested in the agent. 8 Wheat. R. 174; Story on Ag. § 486 to 499; 2 Greenl. R. 14, 18; but see 4 W. & S. 282; 1 Hare & Wall. Sel. Dec. 415.

10.—4thly. The agency is revoked in law, by the extinction of the subject-matter of the agency, or of the principal's power over it, or by the complete execution of the trust. Story on Bailm. § 207. Vide, generally, 1 Hare & Wall. Sel. Dec. 384-422; Pal. on Ag.; Story on Ag.; Liv. on Ag.

AGENT, practice; an agent is an attorney who transacts the business of another attorney.

2.—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.

3.—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, international law, is one who is employed by a prince to manage his private affairs, or those of his subjects in his name, near a foreign government. Wolff, Inst. Nat. § 1237.

Agent, contracts. One who undertakes to manage some affair to be transacted for another, by his authority, on account of the latter, who is called the principal, and to render an account of it.

2.—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, therefore, express or implied. Vide Authority.

3.—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.

4.—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; Bac. Abr. Master and Servant, 1; 1 Ves. Jr. R. 317. Vide Smith on Merc. Law, ch. 3, p. 43, et seq.; and the articles Agency, Authority, and Principal.

5.—Agents are either joint or several. It is a general rule of the common law, that when an authority is given to two or more persons to do an act, and there is no several authority given, all the agents must concur in doing it, in order to bind the principal.

3 Pick. R. 232; 2 Pick. R. 345; 12 Mass. R. 185; Co. Litt. 49 b, 112 b, 113, and Harg. n. 2; Id. 181 b; 6 Pick. R. 198; 6 John. R. 39; 5 Barn. & Ald. 628.

6.—This rule has been so construed that when the authority is given jointly and severally to three persons, two cannot properly execute it; it must be done by all or by one only. Co. Litt. 181 b; Com. Dig. Attorney, C 11; but if the authority is so worded as to be apparent the principal intended to give power to either of them, an execution by two will be valid. Co. Litt. 49 b; Dy. R. 62; 5 Barn. & Ald. 628. This rule applies to private agencies, for in public agencies an authority executed by a majority would be sufficient. 1 Co. Litt. 181 b; Com. Dig. Attorney, C 15; Bac. Ab. Authority, C; 1 T. R. 592.

7.—The rule in commercial transactions is, however, very different; and generally when there are several agents each possesses the whole power. For example, on a consignment of goods for sale to two factors, (whether they are partners or not,) each of them is understood to possess the whole power over the goods for the purposes of the consignment. 3 Wils. R. 94, 114; Story on Ag. § 43.

8.—As to the persons who are capable of becoming agents, it may be observed, that but few persons are excluded from acting as agents, or from exercising authority delegated to them by others. It is not, therefore, requisite that a person be sui juris, or capable of acting in his own right, in order to be qualified to act for others. Infants, feme covert, persons attainted or outlawed, aliens and other disabled persons for many other purposes, may act as agents for others. Co. Litt. 52; Bac. Ab. Authority, B; Com. Dig. Attorney, C 4; Id. Baron and Feme, P 3; 1 Hill, S. Car. R. 271; 4 Wend. 405; 3 Miss. R. 465; 10 John R. 114; 3 Watts, 39; 2 S. & R. 197; 1 Pet. R. 170.

9.—But in the case of a married woman, it is to be observed, that she cannot be an agent for another when
her husband expressly dissent, particularly when he may be rendered liable for her acts. Persons who have clearly no understanding, as idiots and lunatics, cannot be agents for others. Story on Ag. § 7.

10.—There is another class who, though possessing understanding, are incapable of acting as agents for others; there are persons whose duties and characters are incompatible with their obligations to the principal. For example, a person cannot act as agent in buying for another goods belonging to himself. Paley on Ag. by Lloyd, 33 to 38; 2 Ves. Jr. 317.

11.—An agent has rights which he can enforce, and is liable to obligations which he must perform. These will be briefly considered:

§ 1. The rights to which agents are entitled arise from obligations due to them by their principals, or by third persons.

12.—1. Their rights against their principals are, 1, to receive a just compensation for their services, when faithfully performed, in execution of a lawful agency, unless such services are entirely gratuitous, or the agreement between the parties repels such a claim; this compensation, usually called a commission, is regulated either by particular agreement, or by the usage of trade, or the presumed intention of the parties. 8 Bing. 65; 1 Caines, 349; 2 Caines, 357. 2. To be reimbursed all their just advances, expenses and disbursements made in the course of their agency, on account of, or for the benefit of their principal. 2 Liverm. on Ag. p. 11—23; Story on Ag. § 335; Story on Bailm. § 196; Smith on Mer. Law, 56; 6 East, 392; and also to be paid interest upon such advances, whenever, from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to have been stipulated for, or due to the agent. 7 Wend. 315; 3 Binn. 295; 3 Caines, 226; 3 Camp. 467; 15 East, 223.

13.—Besides the personal remedies which an agent has to enforce his claims against his principal for his commissions and advancements, he has a lien upon the property of the principal in his hands. See Lien, and Story on Ag. § 351 to 390.

14.—2. The rights of agents against third persons arise—either on contracts made between such third persons and them, or in consequence of torts committed by the latter. 1. The rights of agents against third persons on contracts are, 1st, when the contract is in writing, and made expressly with the agent, and imports to be a contract personally with him, although he may be known to act as an agent; as, for example, when a promissory note is given to the agent as such, for the benefit of his principal, and the promise is to pay the money to the agent, ex nunc. Story on Ag. § 393, 395; 8 Mass. 103; see 6 S. & R. 420; 1 Lev. 235; 3 Camp. 320; 5 B. & A. 27. 2dly, when the agent is the only known or ostensible principal, and, therefore, is, in contemplation of law, the real contracting party. Story on Ag. § 226, 270, 393; as, if an agent sells goods of his principal in his own name, as if he were the owner, he is entitled to sue the buyer in his own name; although his principal may also sue. 12 Wend. 413; 5 M. & S. 383. And, on the other hand, if he so buys, he may enforce the contract by action. 3dly. When, by the usage of trade, the agent is authorised to act as owner, or as a principal contracting party, although his character as agent is known, he may enforce his contract by action. For example, an auctioneer, who sells the goods of another, may maintain an action for the price, because he has a possession coupled with an interest in the goods, and it is a general rule, that whenever an agent, though known as such, has a special property in the subject-matter of the contract, and not a bare custody, or when he has acquired an interest, or has a lien upon it, he may sue upon the contract. 2 Esp. R. 493; 1 H. Bl. 81, 84; 6 Wheat. 565; 3 Chit. Com. Law, 210; 3 B. & A. 276. But this right to
bring action by agents is subordinate to the rights of the principal, who may, unless in particular cases, where the agent has a lien, or some other vested right, bring a suit himself, and suspend or extinguish the right of the agent. 7 Taunt. 237, 243; 2 Wash. C. C. R. 283. 2. Agents are entitled to actions against third persons for torts committed against them in the course of their agency. 1st. They may maintain actions of trespass or trover against third persons for any torts or injuries affecting their possession of the goods which they hold as agents. Story on Ag. § 414; 13 East, 135; 9 B. & Cressw. 208; 1 Hen. Bl. 81. 2dly. When an agent has been induced by fraud of a third person to sell or buy goods for his principal, and he has sustained a loss, he may maintain an action against such third person for such wrongful act, deceit, or fraud. Story on Ag. § 415.

15.—§ 2. Agents are liable for their acts, 1, to their principals, and, 2, to third persons.

16.—1. The liabilities of agents to their principals arise from a violation of their duties and obligations to the principal, by exceeding their authority, by misconduct, or by any negligence or omission, or some other act, by which the principal sustains a loss. 1 B. & Adol. 415; 12 Pick. 328. Agents may become liable for damages and loss under a special contract, contrary to the general usages of trade. 3. They may also become responsible when charging a del credere commission. Story on Ag. § 234.

17.—2. Agents become liable to third persons, 1st, on their contracts; 1, when the agent, undertaking to do an act for another, does not possess a sufficient authority from the principal, and that is unknown to the other party, he will be considered as having acted for himself as a principal. 3 B. & Adol. 114. 2. When the agent does not disclose his agency, he will be considered as a principal. 2 Esp. R. 567; 15 East, 62; 12 Ves. 352; 16 Martin’s R. 530; and, in the case of agents or factors, acting for merchants residing in a foreign country, they will be considered liable whether they disclose their principal or not, this being the usage of trade. Paley on Ag. by Lloyd, 248, 373; 1 B. & P. 368; but this presumption may be rebutted by proof of a contrary agreement. 3. The agent will be liable when he expressly, or by implication, incurs a personal responsibility. Story on Ag. § 156—159. 3. When the agent makes a contract as such, and there is no other responsible as principal, to whom resort can be had; as, if a man sign a note as “guardian of A B,” an infant; in that case neither the infant nor his property will be liable, and the agent alone will be responsible. 5 Mass. 299; 6 Mass. 58. 2dly. Agents become liable to third persons in regard to torts or wrongs, done by them in the course of their agency. A distinction has been made, in relation to third persons, between acts of misfeasance and non-feasance: an agent is liable for the former, under certain circumstances, but not for the latter; he being responsible for his non-feasance only to his principal. Story on Ag. § 309, 310. An agent is liable for misfeasance as to third persons, when, intentionally or ignorantly, he commits a wrong, although authorised by his principal, because no one can lawfully authorise another to commit a wrong upon the rights or property of another. 1 Wils. R. 328; 1 B. & P. 410.

See Diplomatic Agent.

Agent and Patient. This phrase is used to indicate the state of a person who is required to do a thing, and is at the same time the person to whom it is done; as, when a man is indebted to another, and he appoints him his executor, the latter is required to pay the debt in his capacity of executor, and entitled to receive it in his own right, he is then agent and patient.

Aggravation, crimes, torts, that which increases the enormity of a crime or the injury of a wrong. The opposite of extenuation.

2.—When a crime has been com-
mitted with aggravating circumstances, or those unfavourable circumstances which do not usually attend it, it is punished with more severity; and, when an injury has been done under such circumstances, the damages given to vindicate the wrong, are greater.

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. See 3 Am. Jur. 287—313. 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.

AGIO. This term is used to denote the difference of price between the value of bank notes and the coin of the country.

AGISTATE, 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.

AGISTER. One who takes horses or other animals to agist.

2.—The agister is not, like an innkeeper, bound to take all horses offered to him, nor is he liable for any injury done to such animals in his care, unless he has been guilty of negligence, or from his ignorance negligence may be inferred. Holt’s R. 457.

AGISTMENT, contracts, is the taking of another 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.

2.—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, Bail. § 443. Bac. Ab. Tythes, C 1.

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.

2.—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.

AGRARIAN LAW. Among the Romans, this name was given to a law which had for its object the division among the people of all the lands which had been conquered, and which belonged to the domain of the state.

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. It will be proper to consider, 1, the requisites of an agreement; 2, the kinds of agreements; 3, how they are annulled.

2.—1. To render an agreement com-
plete, 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.

3.—2. As to their form, agreements are of two kinds, 1, by parol, or in writing, as contrariwise distinguished from specialities; 2, by specialty, or under seal. In relation to their performance, agreements are executed or executory. An agreement is executed, 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.

4.—3. Agreements are annulled or rendered of no effect, first, by the acts of the parties, as, by payment; release; accord and satisfaction; rescission, which is express or implied, 1 Watts & Serg. 442; defeasance; by novation; secondly, by the acts of the law, as, confusion; merger; set-off; limitation of actions; lapse of time; death, as when a man bound himself to teach an apprentice, and he dies; extinction of the thing which is the subject of the contract, as, when the agreement is to deliver a certain horse, and before the time of delivery he dies. See Discharge of a Contract.

5.—The writing or instrument containing an agreement is also called an agreement, and sometimes articles of agreement, (q. v.) Vide Contract; Deed; Guaranty; Parties to Contracts.

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

AGRICULTURE. The art of cultivating the earth in order to obtain all the divers things which it can produce; and particularly what is useful to man for his food, as grain, fruits, and the like; or to his clothing, as cotton, flax, and all other things which are procured by the labour of man. Domat, Dr. Pub. liv. tit. 14, s. 1, n. 1.

AID AND COMFORT. The constitution of the United States, art. 3, s. 3, declares, that adhering to the enemies of the United States, giving them aid and comfort, shall be treason. These words have not received a judicial construction, but it has been held, that if a body of men be actually assembled for the purpose of effecting by force a treasonable enterprise, all who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. 4 Cranch, 126. See 4 Cranch, 469 to 505; 1 John, 553.

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 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.

AIDS, Engl. law. Formerly they were certain sums of money granted by the tenant to his lord in times of difficulty and distress; but, as usual in such cases, what was received as a gratuity by the rich and powerful from the weak and poor, was soon claimed as a matter of right; and aids became a species of taxes to be paid by the tenant to his lord, in these cases: 1. To ransom the lord's person, when
taken prisoner; 2. To make the lord’s eldest son a knight; 3. To marry the lord’s eldest daughter, by giving her a suitable portion. The first of these remained uncertain; the other two were fixed by act of parliament at twenty shillings each, being the supposed twentieth part of a knight’s fee. 2 Bl. Com. 64.

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

AIR, is that fluid transparent substance which surrounds our globe.

2.—No property can be had in the air, it belongs equally to all men, being indispensable to their existence. To poison or materially to change the air, to the annoyance of the public, is a nuisance. Cro. Car. 510; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686; Hawk. B. 1, c. 75, s. 10; Dane’s Ab. Index, h. t.

3.—It is the right of the proprietor of an estate to enjoy the light and air that will come to him, and, in general, no one has a right to deprive him of them; but sometimes in building, a man opens windows over his neighbour’s ground, and the latter desires of building on his own ground necessarily stops the windows already built, and deprives the first builder of light and air; this he has an undoubted right to do, unless the windows were ancient lights, (q. v.) or such proprietor has acquired a right by grant or prescription to have such windows open. See Crabb on R. P. § 444 to 479; and Plan. Vide Nuisance.

AJUTAGE. A conical tube used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased. When a privilege to draw water from a canal, through the forebay or tunnel, by means of an aperture has been granted, is not lawful to add an ajutage, unless such was the intention of the parties. 2 Whart. R. 477.

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 second day of August, 1819, when the constitution was adopted.

2.—The powers of the government are divided by the constitution into three distinct departments; and each of them confined 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.

3.—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 representatives are chosen by the qualified electors for the term of one year, from the commencement of the general election, and no longer.
4.—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 where 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. lb. s. 16. In cases of vacancies, the president of the senate acts as governor, Art. 4, s. 18.

5.—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.

ALBA FIRMA, Eng. law. When quit rents were reserved payable in silver or white money, they were called white rents, or blanch farms, relictus albi. When they were reserved payable in work, grain, or the like, they were called relictus nigri, or black mail. 2 Inst. 19.

ALBINATUS JUS. In the ancient French law, the right of the crown to all the personal property of which an alien died possessed in France was so called, droit d'audaine. This unjust law was swept away with multitudes of a similar character, during the French revolution.

ALCADE, Span. law, the name of a judicial officer in Spain, and in those countries which have received the body of their laws from those of Spain.

ALDERMAN, is an officer, generally appointed or elected in towns corporate or cities, possessing various powers in different places.

2.—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 mayor's courts.

3.—Among the Saxons there was an officer called the elderman, elderman, or alderman, which appellation signified literally elderman. Like the Roman senator, he was so called, not on account of his age, but because of his wisdom and dignity, non propter etatum sed propter sapientiam et dignitatem. He presided with the bishop at the synod, and was, ex officio, a member of the witenagemote. At one time he was a military officer, but afterwards his office was purely judicial.

4.—There were several kinds of aldermen, as king's aldermen, aldermen of all England, aldermen of the county, aldermen of the hundred, &c., to denote difference of rank and jurisdiction.

ALEA, civil law. The chance of gain or loss in a contract; this chance results either from the uncertainty of the thing sold, as the effects of a succession; or from the uncertainty of the price, as when a thing is sold for an annuity, which is to be greater or less on the happening of a future event; or it sometimes arises in consequence of the uncertainty of both. 2 Duv. Dr. Civ. Fr. n. 74.

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.

2.—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.

3.—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 Repert. 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.

ALFET, obsolete. A vessel in which hot water was put for the purpose of dipping a criminal's arms in it up to the elbow.

ALIA ENORMIA, pleading. And other wrongs. In trespass, the declaration ought to conclude "and other wrongs to the said plaintiff then and there did, against the peace," &c.

2.—Under this allegation of alia enormia, some matters may be given in evidence in aggravation of damages, though not specified in other parts of the declaration. Bull. N. P. 89; Holt, R. 699, 700. For example, a trespass for breaking and entering a house, the plaintiff may in aggravation of damages give in evidence the debauching of his daughter, or the beating of his servants under the general allegation alia enormia, &c. 6 Mod. 127.

3.—But under the alia enormia no evidence of the loss of service, or any other matter which would of itself bear an action; for if it would, it should be stated specially. In trespass quare clausum fregit, therefore, the plaintiff would not, under the above general allegation be permitted to give evidence of the defendant's taking away a horse, &c. Bull. N. P. 89; Holt, R. 700; 1 Sid. 225; 2 Salk. 643; 1 Str. 61; 1 Chit. Pl. 388; 2 Greenl. Ev. § 278.

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. See 4 John. 118; 1 John. Cas. 243; 2 Caines, R. 362; 3 Caines, R. 219.

ALIBI, in evidence. This is a Latin word which signifies elsewhere.

2.—It 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.

3.—This proof is usually made out by the testimony of witnesses, but it is presumed it might be made out in writing, as if the party could prove by a record, properly authenticated, that on the day or at the time in question, he was in another place.

4.—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 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. See Citizen, Inhabitant.

2.—Aliens are subject to disabili- ties, 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, Louisiana, New Jersey, Rev. Laws, 604, and Michigan, Rev. St. 266, s. 26, the disability has been removed; in North Carolina, (but see Mart. R. 48; 3 Dev. R. 138; 2 Hayw. 104, 108; 3 Murph. 194; 4 Dev. 247,) Vermont and Virginia, by constitutional provision; and in Alabama, 3 Stew. R. 60; Connecticut, act of 1824, Stat. tit. Foreigners, 251; Indiana, Rev. Code, c. 3; act of January 25, 1842; Illinois, Kentucky, 1 Litt. 399; 6 Monr. 266; Maine, Rev. St. tit. 7, c. 93, s. 5; Maryland, act of 1825, ch. 66; 2 Wheat. 259; and Missouri, Rev. Code, 1825, p. 66, by statutory provision it is partly so.

3.—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. An alien can exercise no political rights whatever; he cannot therefore vote at any political election, fill any office, or serve as a juror, 6 John. R. 332.

4.—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.

5.—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. 157; 13 Vin. Ab. 414; Bac. Ab. h. t.; 1 Saund. 8 n. 2; Wheat. Dig. h. t.

ALIENATION. The condition or state of an alien.

TO ALIENATE, estates, titles. This is a generic term applicable to all those modes of parting with property of which the direct object is to deprive the heirs of the substantial interest in the estate; modes, which it is impossi-

ble 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.

2.—Alienations may be made by deed; by matter of record; and by devise.

3.—Alienations by deed may be made by original or primary conveyances, which are those by means of which the benefit or estate is created or first arises; by derivative or secondary conveyances, by which the benefit or estate originally created, is enlarged, restrained, transferred, or extinguished. These are conveyances by the common law. To these may be added some conveyances which derive their force and operation from the statute of uses. The original conveyances are the following: 1. Feoffment; 2. Gift; 3. Grant; 4. Lease; 5. Exchange; 6. Partition; the derivative are, 7. Release; 8. Confirmation; 9. Surrender; 10 Assignment; 11. Defeasance: those deriving their force from the statute of uses, are, 12. Covenants to stand seised to uses; 13. Bargains and sale; 14. Lease and release; 15. Deeds to lead or declare the uses of other more direct conveyances; 16. Deeds of revocation of uses. 2 Bl. Com. ch. 20. Vide Conveyance; Deed. Alienations by matter of record may be, 1. By private acts of the legislature; 2. By Grants, as by patents of lands; 3. By fines; 4. By common recovery. Alienations may also be made by devise, (q. v.)

ALIENATION, med. jur. The term alienation or mental alienation is a generic expression to express the different kinds of aberrations of the human understanding. Dict. des Science Med. h. v.; 1 Beck's Med. Jur. 535.

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*, is to make over lands or tenements to a religious house or body politic.

ALIENE. One to whom an alienation is made; an assignee.

ALIENI JURIS. Persons who are subject to the authority of another, as an infant who is under the authority of his father or guardian, a wife under the power of her husband are said to be *alieni juris*. *Vide sui juris*.

ALIENOR. He who makes a grant or alienation.

ALIMENTS. In the Roman and 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. *Dig. 50, 16, 43.*

2.—By the common law parents and children reciprocally owe each other aliments or maintenance, (*q.v.*). *Vide 1 Bl. Com. 447; Merl. Rep. h. t.; Dig. 25, 3, 5.* In the common law the word alimony (*q.v.*.) is used. *Vide Allowance to a Prisoner*.

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.


3.—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.

4.—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 Comm. Dig. 498; 3 Ves. 358; 4 Vin. Ab. 175; Ayl. Parerg. 58; Dane's Ab. Index. h. t.; Dig. 34, 1, 6.

5.—Alimony is allowed to the wife, *pendente lite*, almost as a matter of course, whether she be plaintiff or defendant, for the obvious reason that she has generally no other means of living. 1 Clarke's R. 151; but there are special cases where it will not be allowed, as when the wife, pending the progress of the suit, went to her father's who agreed with the husband to support her for services. 1 Clarke's R. 460. *See Shelf. on Mar. & Div. 556. 2 Toull. n. 612.*

ALLEGATA, a word which the emperors formerly signed at the bottom of their rescripts and constitutions, under other instruments they usually wrote *signata* or *testata*. *Ency. Lond.*

ALLEGATA and PROBATA. The allegations made by a party to a suit and the proof adduced in their support. It is a general rule of evidence that the allegata and probata must correspond; that is, the proof must at least, be sufficiently extensive to cover all the allegations of the party. *Greenl. Ev. § 51; 3 N. S. 636.*

ALLEGATION, in the English ecclesiastical law; according to the practice of the prerogative court, the facts intended to be relied on in support of the 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 Phil. 1, n.; 1 Eccl.

Allegation, in the common 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 Juras.; Encyclopédie, mot, Allegation; 1 Brown's Civ. Law, 473, n.

Allegation of faculties. When a suit is instituted in the English ecclesiastical courts, in order to obtain alimony, before it is allowed an allegation must be made on the part of the wife, stating the property of the husband. This allegation is called an allegation of faculties. Shelf. on Mar. & Div. 587.

Allegiance, is the tie or ligament which binds the citizen to the government, in return for the protection which the government affords him.

2. 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.

3. 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 domicile determines the character of a party as to trade. 1 Kent, Com. 71; Com. Rep. 677; 2 Kent, Com. 42.

4. 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.; 1 East, P. C. 49 to 57.

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. Vide Inst. 1; 10, 6; Dig. 35, 10, 4, 3; and Affinity.

Alliance, international law, is a contract, treaty, or league, between two sovereigns or states, made to insure their safety and common defence.

2. 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. 2 Dall. 15.

Allocation, Eng. law. An allowance upon account in the Exchequer; or rather, placing or adding to a thing. Encyc. Lond.

Allocatione Facienda.—Eng. law. A writ commanding that an allowance be made to an accountant, for such moneys as he has lawfully expended in his office. It is directed to the lord treasurer and barons of the exchequer.

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.

Alodium, estates, signifies an absolute estate of inheritance in contradistinction to a feud.

2. In this country, the title to land is essentially alodial, 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. Dis. c. 1, § 13; 2 Bl. Com. 45. For
The etymology of this word vide 3 Kent, Com. 398, note.

ALLONGE, French law. When a bill of exchange, or other paper is too small to receive the endorsements which are to be made on it, another piece of paper is added to it, and bears the name of allonge. Pard. n. 343. Story on P. N., § 121, 151; Story on Bills, § 204. See Rider.

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

TO ALLOW, practice. To approve, to grant; as to allow a writ of error, is to approve of it, to grant it. Vide Allocatur. To allow an amount is to approve of it.

ALLOWANCE TO A PRISONER. By the insolvent laws of it, 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 a 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 to the plaintiff before the defendant can be discharged.

ALLOY, is an inferior metal used with gold and silver in making coin or public money.

2.—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 of 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.

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

ALLUVION is the additions made to land by the washing of the sea or river.

2.—The characteristic of alluvion is its imperceptible increase, so that it cannot be perceived how 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. 282, 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 Ag. Rights, 116; 2 Amer. Law Journ. 282, 293; Angell on Tide Waters, 213; Inst. 2, 1, 20; Dig. 41, 1, 7; Dig. 39, 2, 9; Dig. 6, 1, 23; 41, 1, 5; 1 Bouv. Inst. pars 1, c. 1, art. 1, § 4, s. 4, p. 74.

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. 2 Dall. 15.

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.

2.—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; 12 Vin. Ab. Evidence (A b, 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.

ALLODARI, Eng. law, are such tenants who have as large an estate as a subject can have. 1 Inst. 1; Bac. Ab. Tenure, A.

ALMS. In its most extensive sense this 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 DougI. Election Cas. 370; 2 Id. 107; Heywood on Elections, 263.

ALTA PRODITIO, Eng. law. High treason.

ALTARAGE, ecol. law. Offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayl. Par. 61; 2 Cro. 516.

TO ALTER. To change. Alterations are made either in the contract itself, or the instrument which is evidence of it. The contract may at any time be altered with the consent of the parties, and the alteration may be either in writing or not in writing.

2.—It is a general rule that the terms of a contract under seal, cannot be changed by a parol agreement. Cooke, 500; 3 Blackf. R. 353; 4 Bibb, 1. But it has been decided that an alteration of a contract by specialty, made by parol, makes it a parol. 2 Watts, 451; 1 Wash. R. 170; 4 Cowen, 564; 3 Harr. & John. 438; 9 Pick, 298; 1 East, R. 619; but see 3 S. & R. 579.

3.—When the contract is in writing, but not under seal, it may be varied by parol, and the whole will make but one agreement. 9 Cowen, 115; 5 N. H. Rep. 99; 6 Harr. & John. 38; 18 John. 429; 1 John. Cas. 22; 5 Cowen, 506; Pet. C. C. R. 221; 1 Fairf. 414.

4.—When the contract is evidenced by a specialty, and it is altered by parol, the whole will be considered as a parol agreement. 2 Watts, 451; 9 Pick. 298. For alteration of instruments see Erasure; Interlineation. See, generally, 7 Greenl. 76, 121, 394; 15 John. 200; 2 Penna. R. 454.

ALTERATION. A dispute between two persons or more in which there is some acrimony; this is never permitted in court.

ALTERNAT. The name of a usage among diplomatists by which the rank and places of different powers, who have the same rights and pretensions to precedence are changed from time to time, either in a certain regular order, or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Intern. Law, pt. 2, c. 3, § 4.

ALTERNATIVE. The one or the other of two things. In contracts a party has frequently the choice to perform one of several things, as if he is bound to pay one hundred dollars or to deliver a horse, he has the alternative. Vide Election; Obligation, Alternative.

ALTUS NON TOLLIENDI, 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 1, 12, 17, 25.

ALTUS TOLLIENDI, civil law. The name of a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title.

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.

ALUMNUS, civil law. A child which one has nursed; a foster child. Dig. 40, 2, 14.

AMALPHITAN CODE. The name given to a collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi. It consists of the laws on maritime sub-
jects which were or had been in force in countries bordering on the Mediterranean; and, on account of its being collected into one regular system, it was for a long time received as authority in those countries.

AMANUENSIS. One who writes what another dictates. About the beginning of the sixth century, the tabellions (q.v.) were known by this name. 1 Sav. Dr. Rom. Moy. Age, n. 16,

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.

2.—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.

3.—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.

4.—Ambassadors are ordinary or extraordinary. The former designation is exclusively applied to those sent on permanent missions, the latter to those employed on particular events or extraordinary occasions, or residing at a foreign court for an indeterminate period. Vattel, Droit des Gens, I. 4, c. 6, §§ 70–79.

5.—The act of Congress of April 30th, 1790, s. 25, makes void any writ or process sued for 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 prosecuting 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; Bac. Ab. h. t.; 2 Vin. Ab. 286; Grot. lib. 2, c. 8, 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 embrasser 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.

2.—There are two sorts of ambigui-
ties of words, *ambiguitas latens* and *ambiguitas patens*.

3.—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.

4.—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. 557; 4 Binn. 482. Vide generally, Bac. Max. Reg. 23; 1 Phil. Ev. 410 to 420; 3 Stark. Ev. 1021; 1 Com. Dig. 575; Sugg. Vend. 113. 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 HONORABLE, 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.

2.—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 Sep-

3.—For the form of a sentence of amende honorable, see D'Aguessseau, Œuvres, 43e Plaidoyer, tom. 4, p. 246.

**AMENDMENT, legislation,** is an alteration or change of something proposed in a bill.

2.—Either house of the legislature has a right to make amendments; but, when so made, they must be sanctioned by the other house before they can become a law. The senate has no power to originate any money bills, (q. v.) but may propose and make amendments to such as have passed the house of representatives. Vide Congress; Senate.

3.—The constitution of the United States, art. 5, and the constitutions of some of the states, provide for their amendment. The provisions contained in the constitution of the United States are as follows:—“Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress: Provided, that no amend-
ment, which may be made prior to the year one thousand eight hundred and eight, shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”

**AMENDMENT, practice,** is the correction by the court of an error committed in the progress of a cause.

2.—Amendments at common law, independently of any statutory pro-
vision 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.

3.—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.; Vinier'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.

2.—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.

AMECICENT, in practice. A pecuniary penalty imposed upon a person who is in misericordia; as, for example, when the demandant or plaintiff, tenant or defendant se retractit, or recessit in contempt curiae. 8 Co. 58; Bar. Ab. Fines and Amercements.

2.—Formerly, if the sheriff failed in obeying the writs, rules, or orders of the court, he might be amerced; that is, a penalty might be imposed upon him; but this practice has been superseded by attachment. In New Jersey and Ohio, the sheriff may, by statutory provision, be amerced for making a return contrary to the provision of the statute. Coxe, 136, 169; 6 Halst. 334; 3 Halst. 270, 271; 5 Halst. 319; 1 Green, 159, 341; 2 Green, 350; 2 South. 433; 1 Ham. 275; 2 Ham. 503; 6 Ham. 452; Wright, 720.

AMERCIAMENT, or AMERICAN, 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.—Amerciamento royal, when the amerciament is made by the sheriff, or any other officer of the king. 4 Bl. Com. 372.

AMI. A friend; a prochain ami, or, as it is written in old works, prochein amy, the next friend. Vide Prochein amy.

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. An amicable action may be entered by attorney, independently of the provisions of the act of 1806. 8 S & R. 567.

AMICUS CURIE, 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 curiae, may make an application to the court in favour of an infant, though he be no relation. 1 Ves. Sen. 313.

AMITA. A paternal aunt; the sister of one's father. Inst. 3, 6, 3.

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.

2.—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.

3.—Amnesty and pardon are very different. The former is an act of the sovereign power, the object of which to efface and to cause to be forgotten a crime or misdemeanor; the latter is an act of the same authority, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. 7 Pet. 160. Amnesty is the abolition and forgetfulness of the offence; pardon is pity and forgiveness. A pardon is given to one who is certainly guilty, or has been convicted; amnesty to those who may have been so.

4.—Their effects are also different. That of pardon is the remission of the whole or a part of the punishment awarded by the law; the conviction remaining unaffected when only a partial pardon is granted: an amnesty, on the contrary, has the effect of destroying the criminal act, so that it is as if it had not been committed, as far as the public interests are concerned.

5.—Their application also differs. Pardon is always given to individuals, and after judgment: amnesty may be granted either before judgment or afterwards, and it is in general given to whole classes of criminals or supposed criminals, for the purpose of restoring tranquility in the state. But sometimes amnesties are limited, and certain classes are excluded from their operation.


2.—The reduction of the property of lands or tenements to mortmain, in the feudal customs.

AMORTISE, in contracts: to alien lands in mortmain.

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.

2.—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 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. 2 Binn. R. 448. 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.


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.

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 liquidet, 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.)

AMPLIFICATION, French law. It signifies the giving a duplicate of an acquaintance or other instrument, in order that it may be produced in different places.

The copies which notaries make out of acts passed before them, and which are delivered to the parties, are also called amplifications. Dict. de Jur. h. t.

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

AN, JOUR, ET WASTE. See Year, day, and waste.

ANALOGY, construction, is the similitude of relations which exist between things compared; it is the induction made from a known fact.

2.—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.

3.—Analogy has been declared to be an argument or guide in forming legal judgments, and is very commonly a ground of such judgments. 7 Barn. & Cres. 165; 3 Bing. R. 265; 8 Bing. R. 557, 563; 3 Atlk. 313; 1 Eden’s R. 212; 1 W. Bl. 151; 6 Ves. jr. 675, 676; 3 Swanst. R. 561; 1 Turn. & R. 103, 335; 1 R. & M. 352, 475, 477; 4 Burr. R. 1962, 2022, 2068; 4 T. R. 591; 4 Barn. & Cr. 555; 7 Dowl. & Ry. 251; Cas. t. Talb. 140; 3 P. Wms. 391; 3 Bro. C. C. 639, n.

ANATHHEMA, eclel. law, is a punishment by which a person is separated from the body of the church, and forbidden all intercourse with the faithful:

it differs from excommunication, which simply forbids the person excommunicated from going into the church and communicating with the faithful.

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, 1, 30.

2.—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 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.

ANCESTRAL, 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; Bac. Ab. h. t.; 1 Ayl. Pand. 58.

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

ANCHOR. A measure containing ten gallons. Lex Mercatoria.

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 1 Wm. Bl. 413; 2 Chit. Com. Law, 16.

ANCIENT. Something old, which by age alone has acquired some force; as ancient lights, ancient writings.

ANCIENT DERMESNE, 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; Bac. Ab. h. t.; F. N. B. 14.
ANCIENT LIGHTS, ESTATES, ARE WINDOWS WHICH HAVE BEEN OPENED FOR TWENTY YEARS, AND ENJOYED WITHOUT MOLESTATION BY THE OWNER OF THE HOUSE. 5 HAR. & JOHN. 477; 12 MASS. R. 157, 220.

2.—It is proposed to consider, 1, How the right of ancient light is gained. 2, What amounts to interruption of an ancient light. 3, The remedy for obstructing an ancient light.

3.—§ 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. It has been justly remarked, that the English doctrine as to ancient lights can hardly be regarded as applicable to narrow lots in the new and growing cities of this country; for the effect of the rule would be greatly to impair the value of vacant lots, or those having low buildings upon them, in the neighbourhood of other buildings more than twenty years old. 3 Kent, Com. 446, n.

4.—§ 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. An abandonment of the right by express agreement, or by acts from which an abandonment may be inferred, will deprive the party having such ancient light of his right to it. The building of a blank wall where the lights formerly existed, would have that effect. 3 B. & Cr. 332. See Ad. & Ell. 325.

5.—§ 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 Rolle’s Abr. 140, l. Nusans, G. 10. And see Bac. Ab. Actions on the Case, (D.) Carth. 454; Comb. 481; 6 Mod. 116.

6.—2. Total deprivation of 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.

7.—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.

8.—5. When the right is clearly established, courts of equity will grant an injunction to restrain a party from building so near the plaintiff’s house as to darken his windows. 2 Vern. 646; 2 Bro. C. C. 65; 16 Ves. 338; Eden
on Inj. 268, 9; 1 Story on Eq. § 926; 1 Smith's Chan. Pr. 593; 4 Simm. 559; 2 Russ. R. 121. See Injunction; Plan.

See generally on this subject, 1 Nels. Abr. 56, 7; 16 Vin, Abr. 26; 1 Leigh's N. P. C. 6, s. 8, p. 558; 12 E. C. L. R. 218; 24 Id. 401; 21 Id. 373; 1 Id. 161; 10 Id. 99; 28 Id. 143; 23 Am. Jur. 46 to 64; 3 Kent, Com. 446, 2nd ed.; 7 Wheat. R. 109; 19 Wend. R. 309; Math. on Pres. 318 to 323; 2 Watts, 331; 9 Bing. 305; 1 Chit. Pr. 206, 208.

ANCIENT WRITINGS, evidence. Deeds, wills, and other writings more than thirty years old, are considered ancient writings. They may in general be read in evidence, without any other proof of their execution than that they have been in the possession of those claiming rights under them. Tr. per Pais, 370; 7 East, R. 279; 4 Esp. R. 1; 9 Ves. Jr. 5; 3 John. R. 292; 1 Esp. R. 275; 5 T. R. R. 259; 2 T. R. 466; 2 Day's R. 280. But in the case of deeds possession must have accompanied them. Plowd. 6, 7. See Math. Pres. 271, n. (2).

ANCIENTLY, in the English law, a term for eldership or seniority used in the statute of Ireland, 14 Hen. 8.

ANCEINTS, 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.

ANCILLARY, that which is subordinate on, or is subordinate to, some other decision. Encyc. Lond.

ANDROLEPSY, is the taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former, Wolff; § 1164.

ANGEL. An ancient English coin of the value of ten shillings sterling. Jac. L. D. h. t.

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.

2. 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 amove, and such as are fera nature.

3. 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 does not lose his property. 2 Bl. Com. 390; 2 Mod. 319.

4. But in animals ferae naturae, 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. Prop. 37; Com. Dig. Biens, (F); 7 Co. 17 b; 1 Ch. Pr. 87; Inst. 2, 1, 15.

5. 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. 195; 1 Starke's Cas. 285; 1 Holt, 617; 2 Str. 1264; Lord Raym. 110; B. N. P. 77; 1 B. & A. 620; 2 C. M. & R. 496; 5 C. & P. 1; S. C. 24 E. C. L. R. 187. This principle agrees with the civil law. Domat, Lois Civ. Liv. 2, t. 8, s. 2. And any person may justify the killing of such ferocious animals, 9 Johns. 233; 10 Johns. 365; 13 Johns. 312. The owner of such an animal may be indicted for a common nuisance, 1
Russ. Ch. Cr. Law, 643; Burn's Just.,
Nuisance, 1.

6.—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,
art. 2301.

**Animals of a base nature** are
such animals, which though they may
be reclaimed, are not such as at com-
mon law a larceny 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
often claimed 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. 33, s.
36; 4 Bl. Com. 236; 2 East, P. C. 614.

**ANIMUS** is the intent with
which a thing is done, as animus can-
cellandi, the intention of cancelling;
animus furandi, the intention of steal-
ing; animus manendi, the intention
of remaining; animus morandi, the inten-
tion 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.

2.—Whether the act of a man, when
in appearance criminal, is so or not,
depends upon the intention with which
it was done. Vide Intention.

**ANIMUS furandi**, crim. law, an
intention to steal. In order to constitute
larceny, (q. v.) the thief must take the
property animo furandi, but this is ex-
pressed in the definition of larceny by
the word felonious, 3 Inst. 107; Hale,
on Cr. 96; 2 Tyler's R. 272. When
the taking of property is lawful, al-
though it may afterwards be converted,
animo furandi, to the taker's use, it is
not larceny, 3 Inst. 108; Bae. Ab.
Felony, (C); 14 Johns. R. 294; Ry.
& Mood. C. C. 160; Ib. 137; Prin. of

**ANIMUS MANENDI**. The intention
of remaining. To acquire a domicil,
the party must not only be fixed and
have his abode in one place, but there
must be an intention of remaining there, for
without such intention no new domicil
can be gained; and the old will not be
lost. See Domicil.

**ANIMUS revertendi**, 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. 229; 2 Russ. on Cr.
18; Pop. 42, 52; 4 Co. 40.

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, ecd. 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.

2.—In the law relating to fixtures,
(q. v.) annexation is actual or con-
structive. By actual annexation is
understood every movement 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 helden parcel of the reality,
but which are not actually annexed,
fixed, or fastened to the freehold; for
example, deeds, or chattels, which re-
late to the title of the "inheritance."
Shep. Touch. 469. Vide Amos &
Fer. on Fixtures, 2.

3.—This term has been applied to
the union of one country to another; as
Texas was annexed to the United
States by the joint resolution of Con-
gress of March 1, 1845. See Texas.

**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 ãera."

ANNONÆ CIVILÆ, civil law. A species of rent issuing out of certain lands, which were paid to some monasteries.

ANNOTATION, civil law. It was the designation of a place of deportation, Dig. 32, 1, 3, or the summoning of an absentee. Dig. lib. 5.

2.—In another sense annotations were the answers of the prince to questions put to him by private persons respecting some doubtful point of law. See Rescript.

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 yearly payment for the payment of money.

ANNUITY, in contracts. An annuity is a yearly sum of money granted to another party to another in fee for life or years, charging the person of the grantor only. Co. Litt. 144 ; 1 Lilly's Reg. 89 ; 2 Bl. Com. 40 ; 5 M. R. 312.

2.—In a less technical sense, however, when the money is chargeable on land and on the person, it is generally called an annuity. Doct. and Stud. Dial. 2, 230 ; Roll. Ab. 226. See 10 Watts, 127.

3.—An annuity 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 grantor. Bac. Abr. Annuity, A. See for many regulations in England relating to annuities, the statutes 17 Geo. 3, c. 26.

3.—An annuity may be created by contract, or by will.

4.—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.

5.—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.

6.—This annuity may be perpetual or for life, art. 2765.

7.—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.

8.—Constituted annuity is essentially redeemable, art. 2767.

9.—The debtor of a constituted annuity may be compelled to redeem the same: 1, If he ceases fulfilling his obligations during three years: 2, If he does not give the lender the securities promised by the contract, art. 2768.

10. 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.
11.—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. 308. 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.

12.—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; 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, 1 Harr. Dig. h. t.

ANNUM DIEM ET VASTUM, English law, is the title which the king acquires in land, when a party, who held not of the king, is attainted of felony. He acquires the power not to take the profits for a year, but to waste and demolish houses, and to extinguish woods and trees.

2.—This is but a chattel interest.

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. The word answer involves an ambiguity, it is one thing when it simply replies to a question, another when it meets a charge; the answer in equity includes both senses, and may be divided into an examination and a defence. In that part which consists of an examination, a direct and full answer, or reply, must in general be given to every question asked. In that part which consists of a defence, the defendant must state his case distinctly; but is not required to give information respecting the proofs that are to maintain it. Gresl. Eq. Ev. 16.

2.—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.

3.—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 the 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.

4.—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.

Answer, practice, is the declaration of a fact by a witness after a question has been put asking for it.

2. In general when a party asks his own witness a question, he is bound by his answer, it being a general rule that a party cannot contradict his own witness; but he is not precluded from showing by other witnesses the true state of the facts, although they may contradict the first witness.

ANTEDATE. To put a date to an instrument of a time before the time it was written. Vide Date.

ANTE-NATUM. 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.

ANTE-NUPITAL. What takes place before marriage; as, an ante-nuptial agreement, which is an agreement made between a man and a woman in contemplation of marriage. Vide Settlement.

ANTHETARIUS, absolute. 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 anthetarius. Jacob, h. t.

ANTI-MANIFESTO. Is the declaration of the reasons which one of the belligerents publishes to show that the war as to him is defensive. Wolff, § 1157. See Manifesto.

ANTICIPATION. The act of doing or taking a thing before its proper time.

2.—In deeds of trust there is frequently a provision that the income of the estate shall be paid to the trustee as it shall accrue, and not by way of anticipation. A payment made contrary to such provision would not be considered as a discharge of the trustee.

ANTICHERESIS, 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 immovables 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. Antichéresi, Mortgage; Code Civ. 2085. Dig. 13; 7, 7; 4, 24, 1; Code, 8, 28, 1.

ANTINOMY. A term used in the civil law to signify the real or apparent contradiction between two laws or two decisions. Merl. Répert. h. t. Vide Conflict of Laws.

ANTIQUA CUSTOMA, Eng. law. A duty or imposition which was collected on wool, wool-felts, and leather, was so called. This custom was called nova custuma until the 22 Edw. I., when the king, without parliament, set a new imposition of 40s. a sack, and then, for the first time, the nova custuma went by the name of antiqua custuma. Bac. Ab. Smuggling, &c. B.

ANTIQUA STATUTA. In England the statutes are divided into new and ancient statutes; since the time of memory; those from the time of 1 R. I. to E. III., are called antiqua statuta—those made since, nova statuta.

ANTITHEHARIUS, 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.

APARTMENTS. A part of a house occupied by a person, while the rest is occupied by another, or others. 7 Mann. & Gr. 95; 6 Mod. 214; Woodl. L. & T. 178. See House.

APOSTACY, Eng. law, is a total renunciation of the Christian religion,
and differs from heresy, (q. v.) This offence is punished by the statute of 9 and 10 W. 3, c. 32. Vide Christianity.

APOSTLES. In the British courts of admiralty, when a party appeals from a decision made against him, he prays apostles from the judge, which are brief letters of dismissal, stating the case, and declaring that the record will be transmitted. 2 Brown’s Civ. and Adm. Law, 438.

2.—This term was used in the civil law. It is derived from apostolos, a Greek word, which signifies one sent, because the judge from whose sentence an appeal was made sent to the superior judge these letters of dismissal, or apostles. Merl. Rép. mot Apôtres.

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; 5 Burr. R. 263, 2793; 2 W. Bl. R. 713; 1 B. & A. 405. Appeals of murder, as well as of treason, felony, or other offences, together with wager of battle, are abolished by stat. 59 Geo. 3, c. 46.

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.

2.—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.

3.—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, practice, signifies the filing common or special bail to the action.

2.—The appearance, with all other subsequent pleadings 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, in fact, much of the business is now done in periods of vacation.

3.—The appearance of the parties is no longer (as formerly) by the actual presence in court, either by themselves or their attorneys; but, it must be remembered, an appearance of this kind is still supposed, and exists in contemplation of law. The appearance is effected on the part of the defendant (when he is not arrested) by making certain formal entries in the proper office of the court, expressing his appearance; 5 Watts & Serg. 215; 1 Scam. R. 250; 2 Scam. R. 462; 6 Port. R. 352; 9 Port. R. 272; 6 Miss. R. 50; 7 Miss. R. 411; 17 Verm. 531; 2 Pike, R. 26; 6 Ala. R. 784; 3 Watts & Serg. 501, 8 Port. R. 442; 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.

4.—In general, the appearance of either party may be in person or by attorney, and, when by attorney, there is always supposed to be a warrant of attorney executed to the attorney by his client, authorising such appearance.

5.—But to this general rule there are various exceptions; persons devoid of understanding, as idiots, or, having understanding, they are by law deprived of a capacity to appoint an attorney, as married women, when sued
alone, they must appear not by attorney, but in person. The appearance of such persons must purport, and is so entered on the record, to be in person, whether in fact an attorney be employed or not. See Tidd's Pr. 68, 75; 1 Arch. Pract. 22; 2 John. 192; 8 John. 418; 14 John. 417; 5 Pick. 413.

6.—Among others, there must be an appearance in person in the following cases:

1st. An idiot can appear only in person, and as a plaintiff he may sue in person or by his next friend.

2d. A married woman, when sued without her husband, should defend in person, 3 Wms. Saund. 209, b; and when the cause of action accrued before her marriage, and she is afterwards sued alone, she must plead her coverture in person, and not by attorney. Co. Litt. 125.

3d. When the party pleads to the jurisdiction, he must plead in person. Summ. on Pl. 51; Merrif. Law of Att. 58.

4th. A plea of misnomer must always be in person, unless it be by special warrant of attorney. 1 Chit. Pl. 398; Summ. on Pl. 50; 3 Wms. Saund. 209 b.

7.—An infant cannot appoint an attorney, he must therefore prosecute or appear by guardian, or prochain ami.

8.—A lunatic, if of full age, may appear by attorney; if under age, by guardian. 2 Wms. Saund. 335; 1b. 332 (a) n. (4.)

9.—When an appearance is lawfully entered by the defendant, both parties are considered as being in court. Imp. Pr. 215.

**Appearance Day.** The day on which the parties are bound to appear in court. This is regulated in the different states by particular provisions.

**Appellant, practice,** he who makes an appeal from one jurisdiction to another.

**Appellate Jurisdiction,** is the jurisdiction which a superior court has to hear appeals of causes which have been tried in inferior courts. It differs from original jurisdiction, which is the power to entertain suits instituted in the first instance. Vide Jurisdiction; Original Jurisdiction.

**Appellee, practice.** The party in a cause on which an appeal has been made, who is not the appellant.

**Appellor.** A criminal who accuses his accomplices; one who challenges a jury.

**Appendant,** is an inheritance belonging to another inheritance.

2.—By the word appellant in a deed, nothing can be conveyed which is itself substantial corporeal real property, and capable of passing by feoffment and livery of seisin; for one kind of corporeal real property cannot be appellant to another description of the like real property, it being a maxim that land cannot be appellant to land, Co. Litt. 121; 4 Coke, 86; 8 Barn. & Cr. 150; 6 Bing. 150. Only such things can be appellant as can consistently be so, as a right of way, and the like. This distinction is of importance, as will be seen by the following case. If a wharf with the appurtenances be demised, and the water adjoining the wharf were intended to pass, yet no distress for rent on the demised premises could be made on a barge on the water, because it is not a place which could pass as a part of the thing demised. 6 Bing. 150.

3.—Appendant differs from appurtenant 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 Abr. h. t.; 2 Vin. Ab. 594; Bac. Ab. Common, A 1. And things appellant must have belonged by prescription to another principal substantial thing, which is considered in law as more worthy. The principal thing and the appellant must be appropriate with each other in nature and quality, or such as may be properly used together. 1 Chit. Pr. 154.

**Appendita, from appendo, to hang at or on; the appendages or pertinances of an estate; the appurtenances to a dwelling, &c.; thus pent-houses, are the appendititia domus, &c.
APPLICATION. The act of making a request for something; the paper on which the request is written is also called an application; as an application to chancery for leave to invest trust funds; an application to an insurance company for insurance.

2.—An application for insurance ought to state the facts truly as to the object to be insured, for if any false representation be made with a fraudulent intent, it will avoid the policy. 7 Wend. 72.

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.

2.—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; 10 Pet. 343. The appointment of an executor, which is done by nominat-
complex event, constituted by the performance of various acts, the imperfect completion of the event, by the performance of only some 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 1 Swanst. C. 338, n. and the cases there cited; Story, Bailm. § 441; Chit. Contr. 165; 3 Watts, 331; 2 Mass. 147, 436; 3 Hen. & Munf. 407; 2 John. Cas. 17; 13 John, R. 365; 11 Wend. 257; 7 Cowen, 154; 8 Cowen, 84; 2 Pick. 332. See generally on the subject of the apportionment of personal obligations, 16 Vin. Ab. 138; 22 Vin. Ab. 13; Stark Ev. part 4, p. 1622; Com. Dig. Chancery, 2 E and 4 N 5; 3 Chit. Com. Law, 129; Newl. Contr. 159; Long on Sales, 108. And for the doctrine of the civil law, see Dumoulin, de dividuo et individuo, part 2, n. 6, 7; Toull. Dr. Civ. Fr. liv. 3, tit. 3, c. 4, n. 750, et seq.

5.—2. With regard to rents, the law is different. Rents may in general be apportioned, and this may take place in several ways; first, by the act of the landlord or reversioner alone, and, secondly, by virtue of the statute of 11 Geo. 2, c. 19, s. 15, or by statutes in the several states in which its principles have been embodied.

6.—1st. When there is a subsisting obligation on the part of the tenant to pay a certain 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, 404; 3 Kent, Com. 470, 3d. ed.; Co. Litt. 158 a; Gilb. on Rents, 173; 7 Car. 23; 13 Co. 57; Cro. Eliz. 637, 651; Archbl. L. & T. 172; 5 B. & A. 876; 6 Halst. 262. It is usual for the owners of the reversion to agree among themselves as to the amount which each is to receive, but when there is no agreement, the rent will be apportioned by the jury. 3 Kent, Com. 470.

7.—2d. Rent may be apportioned as to time by virtue of the stat. 11 Geo.
made of the property of decedents, insolvents and others; an inventory (q. v.) of the article 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 person appointed by competent authority to appraise or value goods; as in case of the death of a person an appraiser 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 appraiser made of it.

**APPReHENSION, practice.** The capture or arrest of a person. The term apprehension is applied to criminal cases, and arrest to civil cases; as, one having authority may arrest on civil process, and apprehend on a criminal warrant.

**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, Rep. 307; Chit. on Apprentices.

2.—Formerly the name of *apprentice en la ley* was given indiscriminately to all students of law. In the reign of Edward IV, they were sometimes called *apprentici ad barras.* And in some of the ancient law writers, the term apprentice and barrister are synonymous. 


**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.

2.—The term during which the apprentice is to serve is also called his apprenticeship. Pardessus Dr. Com. n. 34.

3.—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.

4.—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 fulfill 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.

5.—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. The apprentice is en-
titled to payment for extraordinary services, when promised by the master, 1 Penn. Law Jour. 368; and even when no express promise has been made, under peculiar circumstances. 2 Cranch, 240, 270; 3 Rob. Ad. Rep. 237; but see 1 Whart. 118. See, generally, 2 Kent, Com. 211-214; Bac. Ab. Master and Servant; 1 Saund. R. 313, n. 1, 2, 3, and 4; 3 Rawle, R. 307; 3 Vin. Ab. 19. The law of France on this subject is strikingly similar to ours. Parduessus, Droit Commerce, 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.

APPROBATE AND REPROBATE. In Scotland this term is used to signify to approve and reject. It is a maxim quod approbo non reprobo. For example, if testator give his property to A, and give A's property to B, A shall not be at liberty to approve of the will so far as the legacy is given to him, and reject it as to the bequest of his property to B; in other words, he cannot approve and reject the will. 1 Black, 21; 1 Bell's Com. 146.

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.

2.—The debtor has a right to appropriate the payment to which he pleases; 7 Wheat. 13; 2 Harr. & Gill, 159; S. C. 4 Gill & John. 361; 1 Bibb, 334; 5 Watts, 544; 12 Pick. 463; 20 Pick. 441; 2 Bailey, 617; 4 Mass. 692; 17 Mass. 575; 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. This application or appropriation of the money may be made by the creditor at any time, he is not re-quired to make an immediate election. 4 Cranch, 317. But see 2 B. & C. 65; 12 S. & R. 301; 2 Verm. 283; 10 Conn. 176. When once made, as by rendering an account, bringing suit and declaring in a particular way, the appropriation cannot be changed, 1 Wash. 128; 3 Green, 314; 2 N. H. 195; 2 Rawle, 316; 5 Watts, 544; 2 Wash. C. C. 47; 1 Gilp. 106; 12 S. & R. 305. The nature of the debts or claims makes no difference. Chitty, Contr. 277; 5 Stark. Ev. 1093, n. (1); Pet. Dig. Payment, 2, for the American cases on this subject; 1 Vern. R. by Raithby, 23, 24; 3 Vin. Ab. 33; Wheat. Dig. tit. Payment.

3.—When neither party avails himself of his power to make the appropriation, in consequence of which it devolves on the court, such an equitable appropriation will be made as will extinguish those debts first for which the security is most precarious. 6 Cranch, R. 8, 28. See 6 Cranch, R. 253, 264; 7 Cranch, 572, 575; 1 Mer. R. 572, 605; Burge on Sur. 126-138; 1 M. & M. 40.

4.—In Louisiana by statutory enactment, Civ. Code, art. 1159, 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 Napoleon, art. 1253-1256, slightly altered. See Poth. Obl. n. 528, translated by Evans, and the notes, Bac. Ab. Obligations, F. 6 Watts & Serg. 1; Amer. Law Mag. 31; 1 Hare & Wall. Sel. Dce. 123-158.

Appropriation, eccl. law, is the setting apart an ecclesiastical benefice, which is the general property of the church, to the perpetual and proper use of some religious house, bishop or college, dean and chapter, and the like. Ayl. Par. 86. See the form of an appropriation in Jacob’s Introd. 411.

To approve, approbare; to increase the profits upon a thing; as to approve land by increasing the rent. 2 Inst. 784.

Approvement, Engl. 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.

2.—This practice is disused. 4 Bl. Com. 330; 1 Phil. Ev. 37. In modern practice an accomplice is permitted to give evidence against his associates. 9 Cowen, R. 707; 2 Virg. Cas. 490; 4 Mass. R. 156; 12 Mass. R. 20; 4 Wash. C. C. R. 428; 1 Dev. R. 363; 1 City Hall Rec. 8. In Vermont, on a trial for adultery, it was held that a particeps criminis was not a competent witness, because no person can be allowed to testify his own guilt or turpitude to convict another. N. Chap. R. 9.

Approval, in the English law. 1. The inclosing 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 Mer- ton, 20 Hen. 8; F. N. B. 72; 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. Crompt. Inst. 250; 3 Inst. 129.

Appurtenances, in common parlance and legal acceptance, 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; 5 S. & R. 110; 5 S. & R. 107; Cro. Jac. 121; 3 Saund. 401, n. 2; Wood’s Inst. 121; 4 Rawle, R. 342; 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 6, 56 a, b; 1 Plowd. 171; 2 Saund. 401, n. (2); 1 Lev. 131; 1 Sid. 211; 1 Bos. & P. R. 371; 1 Cr. & M. 439; 4 Ad. & Ell. 761; 2 Nev. & M. 515; 5 Toul. n. 531.

Aqua. Water. This word is used in composition; as aquæ ductus, &c.

Aqua ductus, civil law. The name of a servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3; Lalaure, Des Serv. ch. 5, p. 23.

Aqua haustus, civil law. The name of a servitude which consists in the right to draw water from the fountain, the pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

Aqua immittere, civil law. The name of a servitude, which frequently occurs among neighbours, when a house is built in such a manner as to be surrounded by other buildings, so that it has no outlet for its waters. It is in the obligation on the part of him who owns it, to permit the owner of the dominant building to cast water out of his windows on his own or on his soil. Lalaure, Des Serv. 23.

Aquagium, i. e. aquæ agium. 1. A water course;—2. A toll for water.

Arbitrament. A term nearly synonymous with arbitration. (q. v.)

Arbitrament and award. The name of a plea to an action brought for the same cause which had been submitted to arbitration, and on which an award had been made. Wats. on Arb. 256.

Arbitrary. What depends on
the will of the judge, not regulated or established by law.

2. In all well adjusted systems of law, every thing is regulated, and nothing arbitrary can be allowed; but there is a discretion which is sometimes allowed by law, which leaves the judge free to act as he pleases to a certain extent. See Discretion.

Arbitrary PUNISHMENTS, 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.

2.—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.

3.—2d. Those which are made in a cause depending in court, by a rule of court, before trial; these are arbitrators at common law, and the award is enforced by attachment. Kyd on Awards, 21.

4.—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.

5.—4th. The first of these is the arbitration under the act of June 16, 1836, which provides that the parties to any suit may consent to a rule of court for referring all matters of fact in controversy to referees, reserving all matters of law for the decision of the court, and the report of the referees shall have the effect of a special verdict, which is to be proceeded upon by the court as a special verdict, and either party may have a writ of error to the judgment entered thereupon.

6.—5th. Those by virtue of the act of 1806, which authorizes "any person or persons desirous of settling any dispute or controversy, by themselves, their agents or attorneys, to enter into an agreement in writing, or 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."

7.—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 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.

8.—This is somewhat similar to the arbitrations of the Romans; there the praetor 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 praetor 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; Bac. Ab. h. t.; 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.

ARCHAIONOMIA. The name of a collection of Saxon laws, published during the reign of the English Queen Elizabeth, in the Saxon language, with a Latin version by Mr. Lambard. Dr. Wilkins enlarged this collection in his work, entitled Leges Anglo Saxonicæ, containing all the Saxon laws extant, together with those ascribed to Edward the Confessor, in Latin; those of William the Conqueror, in Norman and Latin; and of Henry I., Stephen, and Henry II., in Latin.

ARCHBISHOP, eccl. law. The chief of the clergy of a whole province. He has the inspection of the bishops of that province, as well as of the inferior clergy, and may deprive them on notorious cause. The archbishop has also his own diocese, in which he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal authority. 1 Bl. Com. 380; L. Raym. 541; Code, 1, 2.

ARCHES' COURT. The name of one of the English ecclesiastical courts. 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, L. D. h. t.; Merl. Rép. h. t.

ARCHIVIST. One to whose care the archives have been confided.

ARE. A French measure of surface. This is a square, the sides of which are of the length of ten mètres. The are is equal to 1076.441 square feet. Vide Measure.

AREA. An enclosed yard or opening in a house; an open place adjoining to a house. 1 Chit. Pr. 176.

ARGENTUM ALBUM. White money; silver coin. See Alba Firma.

ARGUMENT, practice. Cicero defines it a probable reason proposed in order to induce belief. Ratio probabilis et idonea ad audientiam 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.

ARGUMENTATIVENESS. What is used by way of reasoning in pleading is so called.

2.—It is a rule that pleadings must not be argumentative. For example, when a defendant is sued for taking away the goods of the plaintiff, he must not plead that "the plaintiff never had any goods," because although this may be an inadmissible argument, it is not a good plea. The plea should be not guilty. Com. Dig. Pleader (R 3); Doug1. 60; Co. Litt. 126 a.

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. Bac, 
Ab, Baron & Feme, H.

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.

ARISTODEMOCRACY. A form 
of government where the power is di-
vided between the great men of the na-
tion and 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.

2.—A convention assembled at 
Little Rock, on Monday, the 4th day of 
January, 1836, for the purpose of 
forming a constitution, by which it is 
declared that 
"We, the people of the 
Territory of Arkansas, by our represen-
tatives in convention assembled," 
"in order to secure to ourselves and 
our posterity the enjoyment of all the 
rights of life, liberty and property, and 
the free pursuit of happiness, do mutu-
ally agree with each other to form our-
selves into a free and independent state, 
by the name and style of 'The State 
of Arkansas.'" The constitution was 
finally adopted on the 30th day of Jan-
uary, 1836.

3.—The powers of the government 
are divided into three 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 judicial, to another.

4.—§ 1. The legislative authority of 
the state is vested in a general as-
sembly, which consists of a senate and 
house of representatives.

Each house shall appoint its own of-
icers, and shall judge of the qualifica-
tions, returns and elections of its own 
members. Two-thirds of each shall 
constitute a quorum to do business, but 
a smaller number may adjourn from 
day to day, and compel the attendance 
of absent members, in such manner, 
and under such penalties as each house 
shall provide. Sect. 15. Each house 
may determine the rules of its own 
proceedings, punish its own members 
for disorderly behaviour, and with the 
concurrence of two-thirds of the mem-
bers elected, expel a member; but no 
member shall be expelled a second 
time for the same offence. They shall 
each from time to time publish a jour-
nal of their proceedings, except such 
parts as, in their opinion, require se-
crecy; and the yeas and nays shall be 
entered on the journal, at the desire of 
any five members. Sect. 16.

5.—The doors of each house while 
in session, or in a committee of the 
whole, shall be kept open, except in 
cases which may require secrecy; and 
each house may punish by fine and 
imprisonment, any person, not a mem-
ber, who shall be guilty of disrespect to 
the house, by any disorderly or con-
temptuous behaviour in their presence, 
during their session; but such impris-
onment shall not extend beyond the 
final adjournment of that session. 
Sect. 17.

6.—Bills may originate in either 
house, and be amended or rejected in 
the other; and every bill shall be read 
on three different days in each house, 
unless two-thirds of the house where 
the same is pending shall dispense with 
the rules: and every bill having passed 
both houses shall be signed by the pre-
sident of the senate, and the speaker 
of the house of representatives. Sect. 
81.

7. Whenever an officer, civil or 
military, shall be appointed by the joint 
congressional vote of both houses, or by 
the separate vote of either house of the 
general assembly, the vote shall be 
taken viva voce, and entered on the 
journal. Sect. 19.

8.—The senators and representa-
tives shall, in all cases except treason,
felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place. Sect. 20.

9.—The members of the general assembly shall severally receive, from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made. Sect. 21.

10.—1st. The senate shall never consist of less than seventeen nor more than thirty-three members. Art. 4, Sect. 31. The members shall be chosen for four years, by the qualified electors of the several districts. Art. Sect. 5. No person shall be a senator who shall not have attained the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state for one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent. Art. 4, Sect. 6.

11.—All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of the senators elected. Art. 4, Sect. 27.

12.—2dly. The house of representatives shall consist of not less than fifty-four, nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five; and when they amount to seventy-five, they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative. The members are chosen every second year, by the qualified electors of the several counties. Art. 4, Sect. 2.

13.—The qualification of an elector is as follows: he must 1, be a free, white male citizen of the United States; 2, have attained the age of twenty-one years; 3, have been a citizen of this state six months; 4, he must actually reside in the county, or district where he votes for an office made elective under this state or the United States. But no soldier, seaman, or marine, in the army of the United States, shall be entitled to vote at any election within this state. Art. 4, Sect. 2.

14.—No person shall be a member of the house of representatives, who shall not have attained the age of twenty-five years; who shall not be a free, white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an actual residence in the county he may be chosen to represent. Art. 4, Sect. 4.

15.—The house of representatives shall have the sole power of impeachment. Art. 4, Sect. 27.

16.—§ 2. The supreme executive power of this state is vested in a chief magistrate, who is styled “The Governor of the State of Arkansas.” Art. 5, Sect. 1.

17.—1. He is elected by the electors of the representatives.

18.—2. He must be thirty years of age; a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States; and shall have been a resident of the same at least four years next before his election. Art. 4, s. 4.

19.—3. The governor holds his office for the term of four years from the time of his installation, and until his
successor shall be duly qualified; but he is not eligible for more than eight years in any term of twelve years. Art. 5, s. 4.

20.—4. His principal duties are enumerated in the fifth article of the constitution, and are as follows: He shall be commander-in-chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States; s. 6. He may require information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices; s. 7. He may by proclamation, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly; s. 8. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient; s. 9. He shall take care that the laws be faithfully executed; s. 10. In all criminal and penal cases, except those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, reverse the sentence until the end of the next session of the general assembly; s. 11. He is the keeper of the seal of the state, which is to be used by him officially; s. 12. Every bill which shall have passed both houses, shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays; and the names of persons voting for or against the bill, shall be entered on the journals of each house respectively. If the bill shall not be returned by the governor within three 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 general assembly, by their adjournment, prevent its return; in such case it shall not be a law; s. 16.

—5. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, or absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor, until another governor shall have been elected and qualified, or until the governor absent or impeached, shall return or be acquitted; s. 18. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government; s. 19.

21.—§ 3. The judicial power of this state is vested by the sixth article of the constitution, as follows:

22.—1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts, and in justices of the peace. The General Assembly may also vest such jurisdiction as may be deemed necessary, in corporation courts; and, when they deem it expedient, may establish courts of chancery,
23.—2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum; and the concurrence of any two of the said judges shall, in every case, be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such rules and regulations as may, from time to time, be prescribed by law; it shall have a general superintending control over all inferior and other courts of law and equity; it shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus, and quo warranto, and other remedial writs, and to hear and determine the same; said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

24.—3. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction of all crimes amounting to felony common at law; and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the General Assembly; and original jurisdiction in all matters of contract, when the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county, as may be by law directed.

25.—4. The state shall be divided into convenient circuits, each to consist of not less than five, nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

26.—5. The circuit courts shall exercise a superintending control over the county courts, and over justices of the peace, in each county in their respective circuits; and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

27.—6. Until the General Assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

28.—7. The General Assembly shall, by joint vote of both houses, elect the judges of the supreme and circuit courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices for eight years from the date of their commissions. The judges of the circuit courts shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions.

29.—9. There shall be established in each county, a court to be holden by the justices of the peace, and called the county court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

30.—10. There shall be elected by the justices of the peace of the respective counties, a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected or qualified. He shall, in addition to the duties that may be required of him by law, as presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators, and guardians, as may be prescribed by law, until otherwise directed by the General Assembly.

31.—11. No judge shall preside in the trial of any cause, in the event of which he may be interested, or where either of the parties shall be
connected with him by affinity or con-
sangurnity, within such degrees as may
be prescribed by law, or in which he
shall have been of counsel, or have
presided in any inferior court, except
by consent of all the parties.

32.—12. The qualified voters in
each township shall elect the justices of
the peace for their respective townships.
For every fifty voters there may be
elected one justice of the peace, pro-
vided, that each township, however
small, shall have two justices of the
peace. Justices of the peace shall be
elected for two years, and shall be
commissioned by the governor, and re-
side in the townships for which they
shall have been elected, during their
continuance in office. They shall
have individually, or two or more of
them jointly, exclusive original jur-
diction in all matters of contract, ex-
ccept in actions of covenant, where the
sum in controversy is of one hundred
dollars and under. Justices of the
peace shall in no case have jurisdiction
to try and determine any criminal case
or penal offence against the state; but
may sit as examining courts, and com-
mit, discharge, or recognize to the
court having jurisdiction, for further
trial, offenders against the peace. For
the foregoing purposes they shall have
power to issue all necessary process;
they shall also have power to bind to
keep the peace, or for good behaviour.

ARM OF THE SEA. Lord Coke
defines an arm of the sea to be where
the sea or tide flows or refloows.
Constable’s Case, 5 Co. 107. This term
includes bays, roads, creeks, coves,
ports, and rivers where the water flows
and refloows, whether it be salt or fresh.
Ang. Tide Wat. 61. Vide Creek;
Haven; Navigable; Port; Relicition;
River; Road.

ARMISTICE, is a cessation of hos-
tilities between belligerent nations for a
considerable time. It is either partial
and local, or general. It differs from
a mere suspension of arms which takes
place to enable the two armies to bury
their dead, their chiefs to hold confer-
ences or pourparlers, and the like,

Vattel, Droit des Gens, liv. 3, c. 16, §
233. The terms truce, (q. v.) and ar-
mistice, are sometimes, used in the
same sense. Vide Truce.

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. Co. Lit. 161 b,
162 a; Crompt. Just. P. 65; Cumm.
Dict. h. t.

2.—The Constitution of the United
States, Amendm. art. 2, declares, that
“a well regulated militia being nec-
sary to the security of a free state, the
right of the people to keep and bear
arms shall not be infringed.” In Ken-
ucky, a statute “to prevent persons
from wearing concealed arms,” has
been declared to be unconstitutional, 2
Litt. R. 90; while in Indiana a similar
statute has been held invalid and con-
stitutional. 3 Blackf. R. 229; Vide
Story, Const. § 1889, 1890; Amer.
300; Rawle on Const. 125.

ARMS, in heraldry, are signs of arms,
drawings, painted on shields, banners,
and the like. The arms of the United
States are described in the Resolution
of Congress, of June 20, 1782. Vide
Seal of the United States.

ARPENT. A quantity of land con-
taining a French acre. 4 Hall’s Law
Journal, 518.

ARPENTATOR, from arpent, a
measurer or surveyor of land.

ARRAIGNMENT, crim. law, prac-
tice, signifies the calling of the defen-
dant to the bar of the court, to answer
the accusation contained in the indict-
ment. It consists of three parts.

2.—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.

3.—2. The reading of the indict-
ment 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.

4.—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 or attorney general 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.

ARRAMEUR, maritime law. The name of an ancient officer of a port, whose business was to load and unload vessels.

2.—In the Laws of Oleron, art. 11, (published in English in the App. to 1 Pet. Adm. R. xxxv.) some account of arrameurs will be found in these words: “There were formerly, in several ports of Guyenne, certain officers called arrameurs, or stowers, who were master carpenters by profession, and were paid by the merchants, who loaded the ship. Their business was to dispose right, and stow closely, all goods in casks, bales, boxes, bundles or otherwise; to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. It was not but that the greatest part of the ship’s crew understood this as well as these stowers; but they would not meddle with it, nor undertake it, to avoid falling under the merchant’s displeasure, or being accountable for any ill accident that might happen by that means. There were also sacquiers, who were very ancient officers, as may be seen in the 14th book of the Theodosian code, Unica de Saccariis Portus Roma, lib. 14. Their business was to load and unload vessels loaded with salt, corn, or fish, to prevent the ship’s crew defrauding the merchant by false tale, or cheating him of his merchandise otherwise.” See Sacquier; Stevedore.

ARRAS, Span. law. The property contributed by the husband, ad sustenanda 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.

2.—By arras is also understood the donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the dote, or portion, which he receives from her. Aso & Man. Inst. B. I, t. 7, c. 3.

ARRAY, practice, is the whole body of jurors summoned to attend a court, as they are arranged 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. To stop; to seize; to deprive one of his liberty by virtue of legal authority.

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.

2.—To constitute an arrest, no actual force or manual touching of the body is requisite; it is sufficient if the party be within the power of the officer, and submit to the arrest. 2 N. H. Rep. 316; 8 Dana, 190; 3 Harring. 416; 1 Baldw. 239; Harper, 453; 8 Greenl. 127; 1 Wend. 215; 2 Blackf. 294.

3.—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. 2. 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. Vide, generally, Telv. 29, a, note; 3 Bl. Com. 288, n.; 1 Sup. to Ves. Jr. 374; Watts. on Sher. 87; 11 East, 440; 18 E. C. L. R. 109, note.

4.—In all governments there are persons who are privileged from arrest in civil cases. In the United States this privilege continues generally while the defendant remains invested with a particular character. Members of Congress and of the state legislatures are exempted while attending the respective assemblies to which they belong; parties and witnesses, while lawfully attending court; electors, while attending a public election; ambassadors and other foreign ministers; insolvent debtors, when they have been lawfully discharged; married women, when sued upon their contracts, are generally privileged; and executors and administrators, when sued in their representative characters, generally enjoy the same privilege. The privilege in favour of members of Congress, or of the state legislatures, of electors, and of parties and witnesses in a cause, extend to the time of going to, remaining at, and returning from, the places to which they are thus legally called.

5.—The code of civil practice of Louisiana enacts as follows, namely: Art. 210. The arrest is one of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment, Art. 211. Minors of both sexes, whether emancipated or not, interdicted persons, and women, married or single, cannot be arrested. Art. 212. Any creditor, whose debtor is about to leave the state, even for a limited time, without leaving in it sufficient property to satisfy the judgment which he expects to obtain in the suit he intends to bring against him, may have the person of such debtor arrested and confined until he shall give sufficient security that he shall not depart from the state without the leave of the court.—Art. 213. Such arrest may be ordered in all demands brought for a debt, whether liquidated or not, when the term of payment has expired, and even for damages for any injury sustained by the plaintiff in either his person or property.—Art. 214. Previous to obtaining an order of arrest against his debtor, to compel him to give sufficient security that he shall not depart from the state, the creditor must swear in the petition which he presents to that effect to any competent judge, that the debt, or the damages which he claims, and the amount of which he specifies, is really due to him, and that he verily believes that the defendant is about to remove from the state, without leaving in it sufficient property to satisfy his demand; and lastly, that he does not take this oath with the intention of vexing the defendant, but only in order to secure his demand.—Art. 215. The oath prescribed in the preceding article may be taken either by the creditor himself, or, in his absence, by his attorney in fact or his agent, provided either the one or the other can swear to the debt from his personal and direct knowledge of its being due, and not by what he may know or have learned from the creditor he represents.—Art. 216. The oath which the creditor is required to take of the existence and nature of the debt of which he claims payment, in the cases provided in the two preceding articles, may be taken either before any judge or justice of the peace of the place where the court is held, before which he sues, or before the judge of any other place, provided the signature of such judge be proved or duly authenticated. Vide Actum action pendant; Lis pendens; Privilege; Rights.

Arrest, in criminal cases, is the
apprehending or detaining of the person, in order to be forthcoming to answer an alleged or suspected crime. The word *arrest* is more properly used in civil cases, and *apprehension* in criminal. A man is arrested under a *capias ad respondendum*, apprehended under a warrant charging him with a larceny.

2.—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.

3.—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.

4.—2. *For what offences an arrest may be made*. It may be made for treason, felony, breach of the peace or other misdemeanor.

5.—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.

6.—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.

7.—5. *Who may arrest and by what authority*. An offender may be arrested without a warrant or with a warrant. First, an arrest 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.** The act of a court by which the judges refuse to give judgment, because upon the face of the record it appears the plaintiff is not entitled to it. See Judgment, Arrest of.

**ARRESTANDIS bonus 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.

**ARRESTER, in the law of Scotland**, is one who sues out and obtains an arrestment of his debtor’s goods or movable obligations. Ersk. Pr. L. Scot. 3, 6, 1.

**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 sisti, Ersk. Pr. L. Scot. 1, 2, 12. It is also the order of a judge, by which he who is debtor in a movable 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 debtor’s giving security to the arrester for his debt, in the event it shall be found due. 1b. 3, 6, 7.
ARRETTED, arrectatus, i.e. ad rectum vocatus; convened before a judge and charged with a crime.—Ad rectum malefectorum, 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 arreted to any one under age, Bract. 1, 3, tr. 2, c. 10; Cunn. Dict. h. t.

ARRHE, 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.

2.—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 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 anté pretium datur, et idem fecit contractus, facti totiusque pecuniae solvendae, 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, sui juris, no one could be arrogated till he was of full age. Dig. 1, 7, 5; Inst. 1, 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.

2.—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. 9 C. & P. 45; 38 E. C. L. R. 29; 16 Mass. 105. 2d. The house burnt 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. 457. 3d. The burning must have been both malicious and wilful.

3.—The offence of arson at common law does not extend farther 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 out-house 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. 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. Eunomus defines art to be a collection of certain rules for doing any thing in a set form. Dial, 2, p. 74. The Dictionnaire des Sciences Médicales, h. v., defines it in nearly the same terms.

2. 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.

3. The act of Congress of July 4, 1836, s. 6, in describing the subjects of patents, uses the term art. The sense of this word in its usual acceptation is perhaps too comprehensive. The thing to be patented is not a mere elementary principle, or intellectual discovery; but a principle put in practice, and applied to some art, machine, manufacture or composition of matter.

4 Mason, 1. 4 Wash. C. C. R. 9.

ART AND PART, in the Scotch law, is where one is accessory 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.

2.—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 jocund or careless manner of giving the advice, &c., may be received as pleas for softening the punishment.

3. 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.

4. 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, chan. practice. An instrument in writing, filed by a party to a proceeding in chancery, containing reasons why a witness in the cause should be discredited.

2. As to the matter which ought to be contained in these articles, Lord Eldon gave some general directions in the case of Carlos v. Brook, 10 Ves. 49. “The court,” says he, “attending with great caution to an application to permit any witness to be examined after publication, has held, where the proposition was to examine a witness to credit, that the examination is either to be confined to general credit; that is, by producing witnesses to swear, that the person is not to be believed upon his oath; or, if you find him swearing to a matter, not to issue in the cause, (and therefore not thought material to the merits,) in that case, as the witness is not produced to vary the case in evidence by testimony that relates to matters in issue, but is to speak only to the truth or want of veracity, with which a witness had spoken to a fact not in issue, there is no danger in permitting him to state that such fact, not put in issue, is false; and, for the purpose of discrediting a witness, the court has not considered itself at liberty to sanction such a proceeding as an examination, to destroy the credit of another witness, who had deposed only to points put in issue. In Purcell v. M’Namara it was agreed that after publication it was competent to examine any witness to the point, whether he would believe that man upon his oath. It is not competent even at law to ask the ground of that opinion; but the general question only is permitted. In Purcell v. M’Namara the witness went into the history of his whole life; and as to his solvency, &c. It was not at all put at issue whether he had been insolvent, or had compounded with his creditors; but, having sworn the contrary, they proved by witnesses, that he, who had sworn to a matter not in
issue, had sworn falsely in that fact; and that he had been insolvent and had compounded with his creditors; and it would be lamentable, if the court could not find means of getting at it; for he could not be indicted for perjury, though swearing falsely; the fact not being material. The rule is, in general cases the cause is heard upon evidence given before publication; but that you may examine after publication, provided you examine to credit only, and do not go to matters in issue in the cause, or in contradiction of them, under pretense of examining to credit only. Those depositions, he continued, “appear to me material to what is in issue in the cause; and therefore must be suppressed. See a form of articles in Gresl. Eq. Ev. 140, 141; and also 8 Ves. 327; 9 Ves. 145; 1 S. & S. 469.

ARTICLES, ecc. law. A complaint in the form of a libel, exhibited to an ecclesiastical court.

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.

2.—This instrument should contain: 1, the name and character of the parties; 2, the subject-matter of the contracts; 3, the covenants which each of the parties bind themselves to perform; 4, the date; 5, the signatures of the parties.

3.—1. The parties should be named, and their addition should also be mentioned, in order to identify them. It should also be stated which persons are of the first, second, or other part. A confusion, in this respect, may occasion difficulties.

4.—2. The subject-matter of the contract ought to be set out in clear and explicit language, and the time and place of the performance of the agreement ought to be mentioned; and, when goods are to be delivered, it ought to be provided at whose expense they shall be removed, for there is a difference in the delivery of light and bulky articles. The seller of bulky articles is not in general bound to deliver them, unless he agrees to do so. 5 S. & R. 19; 12 Mass. 300; 4 Shepl. 49.

5.—3. The covenants to be performed by each party should be specially and correctly stated, as a mistake in this respect leads to difficulties which might have been obviated had they been properly drawn.

6.—4. The instrument should be truly dated.

7.—5. It should be signed by the parties or their agents. When signed by an agent he should state his authority, and sign his principal’s name, and then his own, as, A B, by his agent or attorney C D.

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 Carolina, 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.

2.—“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, the “Articles of Confederation and Perpetual Union between the States,” as they were finally adopted by the thirteen states in 1781.
3.—"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, or 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 the 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.

4.—"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.

5.—"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.

6.—"Congress was also invested with power to decide in the last resort, on appeal, all disputes and differences 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.

7.—"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 not be 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.

8.—"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.

9.—"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.

10.—"Such were the powers con-
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.

13.—“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 impost or duties, which might interfere with any 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.

14.—“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 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.

15.—“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. Wood, 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.

2.—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 PARTNERSHIP. The name given to an instrument of writing by which the parties enter into a partnership, upon the conditions therein mentioned. This instrument generally
contains certain provisions which it is the object here to point out.

2.—But before proceeding more particularly to the consideration of the subject, it will be proper to observe that sometimes preliminary agreements to enter into a partnership are formed, and that questions, not unfrequently, arise as to their effects. These are not partnerships, but agreements to enter into partnership at a future time. When such an agreement has been broken, the parties may apply for redress to a court of law, where damages will be given, as a compensation. Application is sometimes made to courts of equity for their more efficient aid to compel a specific performance. In general these courts will not entertain bills for specific performance of such preliminary contracts; but in order to suppress frauds, or manifestly mischievous consequences, they will compel such performance. 3 Atk. 383; Colly. Partn. B. 2, c. 2, § 2; Wats. Partn. 60; Gow, Partn. 109; Story, Eq. Jur. § 666, note; Story, Partn. § 189; 1 Swanst. R. 513, note. When, however, the partnership may be immediately dissolved, it seems the contract cannot be specifically enforced. 9 Ves. 360.

3.—It is proper to premise that under each particular head, it is intended briefly to examine the decisions which have been made in relation to it.

4.—The principal parts of articles of partnership are here enumerated.

1. The names of the contracting parties. These should all be severally set out.

5.—2. The agreement that the parties actually by the instrument enter into partnership; and care must be taken to distinguish this agreement from a covenant to enter into partnership at a future time.

6.—3. The commencement of the partnership. This ought always to be expressly provided for. When no other time is fixed by it, the commencement will take place from the date of the instrument. Colly. Partn. 140; 5 Barn. & Cres. 108.

7.—4. The duration of the partnership. This may be for life, or for a specific period of time; partnerships may be conditional or indefinite in their duration, or for a single adventure or dealing; this period of duration is either express or implied, but it will not be presumed to be beyond life. 1 Swanst. R. 521. When a term is fixed, it is presumed to endure until that period has elapsed; and, when no term is fixed, for the life of the parties, unless sooner dissolved by the acts of one of them, by mutual consent, or operation of law. Story, Partn. § 84.

8.—A stipulation may lawfully be introduced for the continuance of the partnership after the death of one of the parties, either by his executors or administrators, or for the admission of one or more of his children into the concern. Colly. Partn. 147; 9 Ves. 500. Sometimes this clause provides that the interest of the partner shall go to such persons, as he shall by his last will name and appoint, and for want of appointment on such persons as are named. In these cases it seems that the executors or administrators have an option to continue the partnership or not. Colly. Partn. 149; 1 McCl. & Yo. 569; Colles, Parl. Rep. 157.

9.—When the duration of the partnership has been fixed by the articles, and the partnership expires by mere effluxion of time, and, after such determination it is carried on by the partners without any new agreement, in the absence of all circumstances which may lead as to the true intent of the partners, the partnership will not, in general, be deemed one for a definite period, 17 Ves. 298; but in other respects, the old articles of the expired partnership are to be deemed adopted by implication as the basis of the new partnership during its continuance. 5 Mason, R. 176, 185; 15 Ves. 218; 1 Molloy, R. 466.

10.—5. The business to be carried on, and the place where it is to be conducted. This clause ought to be very particularly written, as courts of
equity will grant an injunction when one or more of the partners attempt, against the wishes of one or more of them, to extend such business beyond the provision contained in the articles. Story, Partn. § 193; Gow, Partn. 398.

11.—6. The name of the firm, as for example, John Doe and Company, ought to be ascertained. The members of the partnership are required to use the name thus agreed upon, and a departure from it will make them individually liable to third persons or to their partners, in particular cases. Colly. Partn. 141; 2 Jac. & Walk. 266; 9 Adol. & Ellis, 314; 11 Adol. & Ellis, 339; Story, Partn. § 102, 136, 142, 202.

12.—7. A provision is not unfrequently inserted that the business shall be managed and administered by a particular partner, or that one of its departments shall be under his special care. In this case, courts of equity will protect such partner in his rights. Story, Partn. § 172, 182, 193, 202, 204; Colly. Partn. 755. In Louisiana, this provision is incorporated in its civil code, art. 2838 to art. 2840. The French and civil law also agree as to this provision. Poth, de Société, n. 71; Dig. 14, 1, 1, 13; Poth. Pand. 14, 1, 4.

13.—Sometimes a provision is introduced that a majority of the partners shall have the management of the affairs of the partnership. This is requisite, particularly when the associates are numerous. As to the rights of the majority, see Partners.

14.—8. A provision should be inserted as to the manner of furnishing the capital or stock of the partnership. When a partner is required to furnish his proportion of the stock at stated periods, or pay by instalments, he will, where there are no stipulations to the contrary, be considered a debtor to the firm. Colly. Partn. 141; Story, Partn. § 203; 1 Swanst. R. 89. Sometimes a provision is inserted that real estate and fixtures belonging to the firm shall be considered, as between the partners, not as partnership but as several property. In cases of bankruptcy this property will be treated as the separate property of the partners. Colly, Partn. 141, 595, 600; 5 Ves. 189; 3 Madd. R. 63.

15.—9. A provision for the apportionment of the profits and losses among the partners should be introduced. In the absence of all proof, and controlling circumstances, the partners are to share in both equally, although one may have furnished all the capital, and the other only his skill. Wats. Partn. 59; Colly, Partn. 105; Story, Partn. § 24; 3 Kent, Com. 28; 4th ed.; 6 Wend. R. 263; but see 7 Bligh, R. 432; 5 Wils. & Shaw, 16.

16.—10. Sometimes a stipulation for an annual account of the property of the partnership whether in possession or in action, and of the debts due by partnership is inserted. These accounts when settled are at least prima facie evidence of the facts they contain. Colly, Partn. 146; Story, Partn. § 206; 7 Sim. R. 239.

17.—11. A provision is frequently introduced forbidding any one partner to carry on any other business. This should be provided for, though there is an implied provision in every partnership that no partner shall carry on any separate business inconsistent or contrary to the true interest of the partnership. Story, Partn. § 178, 179, 209.

18.—12. When the partners are numerous a provision is often made for the expulsion of a partner for gross misconduct, for insolvency, bankruptcy, or other causes particularly enumerated. This provision will govern when the case occurs.

19.—13. This instrument should always contain a provision for winding up the business. This is generally provided for in one of three modes: first, by turning all the assets into cash, and, after paying all the liabilities of the partnership, dividing such money in proportion to the several interests of the parties; secondly, by providing that one or more of the part-
ners shall be entitled to purchase the shares of the others at a valuation; thirdly, that all the property of partnership shall be appraised, and that after paying the partnership debts, it shall be divided in the proper proportions. The first of these modes is adopted by courts of equity in the absence of express stipulations. Colly. Partn. 145; Story, Partn. § 207; 8 Sim. R. 529.

20.—14. It is not unusual to insert in these articles, a provision that in case of disputes the matter shall be submitted to arbitration. This clause seems nugatory, for no action will lie for a breach of it, as that would deprive the courts of their jurisdiction, which the parties cannot do. Story, Partn. § 215; Gow, Partn. 72; Colly. Partn. 165; Wats. Partn. 383.

21.—15. The articles should be dated, and executed by the parties. It is not requisite that the instrument should be under seal.

Vide Parties to contracts; Partners; Partnership.

ARTICLES OF THE PEACE, Eng. practice, is an instrument which is presented to a court of competent jurisdiction, in which the exhibitor shows the grievances under which he labours, and prays the protection of the court. It is made on oath. See a form in 12 Adol. & Ellis, 599; 40 E. C. L. R. 125, 126; 1 Chit. Pr. 678.

2.—The truth of the articles cannot be contradicted, either by affidavit or otherwise; but the defendant may either except to their sufficiency, or tender affidavits in reduction of the amounts of bail. 13 East, 171.

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.

ARTICULATE ADJUDICATION, a term used in 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 that 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, heres ex asse, or, legatus 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.

2.—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 the third. Thus in going up we ascend by various lines which fork at every generation. By this process 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 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 other descends; and this multiplication thus frequently interrupted by the common ancestors, may be reduced to a few persons. Vide Line.

ASCRPTTITII, civil law. Among the Romans ascriptitii were foreigners, who had been naturalized, who had in
general the same rights as natives. Nov. 22, ch. 17; Code 11, 47.

APHYXY, med. jur. A temporary suspension of the motion of the heart and arteries; swooning, fainting. This term includes persons who have been asphyxiated by submersion or drowning; by breathing mephitic gas; by the effect of lightning; by the effect of cold; by heat; by suspension or strangulation. In a legal point of view it is always proper to ascertain whether the person who has thus been deprived of his senses is the victim of another, whether the injury has been caused by accident, or whether it is the act of the sufferer himself.

2.—In a medical point of view it is important to ascertain whether the person is merely asphyxiated, or whether he is dead. The following general remarks have been made as to the efforts which ought to be made to restore a person thus situated:

1st. Persons asphyxiated are frequently in a state of only apparent death.

2nd. Real from apparent death can be distinguished only by putrefaction.

3rd. Till putrefaction commences, aid ought to be rendered to persons asphyxiated.

4th. Experience proves that remaining several hours under water does not always produce death.

5th. The red, violet, or black colour of the face, the coldness of the body, the stiffness of the limbs, are not always signs of death.

6th. The assistance to persons thus situated, may be administered by any intelligent person, but to insure success, it must be done without discouragement for several hours together.

7th. All unnecessary persons should be sent away; five or six are in general sufficient.

8th. The place where the operation is performed should not be too warm.

9th. The assistance should be rendered with activity, but without precipitation.

ASPORTATION. The act of carrying a thing away; the removing a thing from one place to another. Vide Carrying away; Taking.

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 his victim. 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. By assassination is understood a murder committed for hire in money, without any provocation or cause of resentment, given by the person against whom the crime is directed. Ersk. Inst. B. 4, t. 4, n. 45.

ASSAULT, crim. law. An assault is any unlawful 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.)

2.—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. B. b. 1, c. 62, s. 12; 1 Russ. Cr. 604;
ASSAY. A chemical examination of metals by which the quantity of valuable or precious metal contained in any mineral or metallic mixture is ascertained.

2.—By the acts of Congress of March 3, 1823, 3 Story’s L. U. S. 1924; of June 25, 1834, 4 Sharws., 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.

2.—Political assemblies, or those 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.

3.—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.

4.—Unlawful assemblies. An unlawful assembly is the meeting of three or more persons to do an unlawful act, although they may not carry their purpose into execution. It differs 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.

2.—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 Vent. 201; 3 Mod. 296; 3 Lev. 284; Show. P. C. 150; 3 Barn. & Alders. 31; 1 Binn. R. 592; 2 Hayw. 234; 12 Mass. R. 461; 4 Day, 395; 5 S. & R. 523; 20 John. R. 184; 14 S. & R. 296; 15 Wend. R. 656; 4 Halst. R. 161; 6 Verm. R. 411.

3.—When a devise draws after it no charge or risk of loss, and is, therefore, a mere bounty, the assent of the devisee to take it will be presumed. 17 Mass. 73, 4. 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; 8 Watts, R. 9, 11; 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.

4.—When an offer to do a thing has been made, it is not binding on the party making it until the assent of the other party has been given; and such assent must be to the same subject-matter in the same sense. 1 Summ. 218. When such assent is given, before the offer is withdrawn, the contract is complete. 6 Wend. 103. See 5 Wend. 523; 5 Greenl. R. 419; 3 Mass. 1; 8 S. & R. 243; 12 John. 190; 19 John. 205; 4 Call, R. 379; 1 Fairf. 185; and Offer.

5.—In general when an assignment is made to one for the benefit of creditors, the assent of the assignees will be presumed. 1 Binn. 502, 518; 6 W. & S. 339; 8 Leigh, R. 272, 281. But see 24 Wend. 280.

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.

2.—In actions for damages, the jury are required to fix the amount or to assess the damages. In the exercise of this power or duty, the jury must be guided by a sound discretion, and, when the circumstances will warrant it, may give high damages. Const. Rep. 500. The jury must in the assessment of damages be guided by their own judgment, and not by a blind chance. They cannot, therefore, in making up their verdict, each one put down a sum, add the sums together, divide the aggregate by the number of jurors, and adopt the quotient for their verdict. 1 Cowen, 238.

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 ad sivere, 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.

2.—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 asseiz, 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.

2.—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.

3.—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. Ternes de la Ley.

4.—Assets per descent, is that portion of the ancestor’s estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestor. 2 Williams on Ex. 1011.

5.—Legal assets, are such as constitute the fund for the payment of debts according to their legal priority.

6.—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 Fond. 401, et seq.; Willis on Trust. 118.

7.—Real assets, are such as descend to the heir, as an estate in fee simple.

8.—Personal assets, are such goods and chattels to which the executor or administrator is entitled.

9.—In commerce, by assets is understood all the stock in trade, cash, and all available property belonging to a merchant or company.

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.

ASSEVERATION, is the proof which a man gives of the truth of what he says, by appealing to his conscience as a witness. It differs from an oath in this, that by the latter he appeals to God as a witness of the truth of what he says, and invokes him as the avenger of falsehood and perfidy, to punish him if he speak not the truth. Vide Affirmation; Oath; and Merl. Quest. de Droit, mot Serment.

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. P. 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.

2.—Assignees are either assignees in fact or assignees in law. An assignee in fact is one to whom an assignment is made in fact by the party having the right. An assignee in law is one in whom the law vests the right, as an executor or administrator. Co. Litt. 210 a, note (1); Hob. 9. Vide Assigns, and 1 Vern. 425; 1 Salk. 81; 7 East, 337; Bac. Ab. Covenant, E; 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.

2.—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.

3.—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.

4.—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; 1 Hare & Wall. Sel. Dec. 78–85.

ASSIGNMENT OF ERRORS, is the act by which the plaintiff in error points out the errors in the record of which he complains.

2.—The errors should be assigned in distinct terms, such as the defendant in error may plead to; and all the errors of which the plaintiff complains should be assigned. 9 Port. 186; 15 Conn. 83; 6 Dana, 242; 3 How. (Miss.) R. 77.

ASSIGNOR. One who makes an assignment; one who transfers property to another.

2.—In general the assignor can limit the operation of his assignment, and impose whatever condition he may think proper; but when he makes a general assignment in trust for the use of his creditors, he can impose no condition whatever which will deprive them of any right. 14 Pick. 123; 15 John. 151; 7 Cowen, 735; 5 Cowen, 547; 20 John. 442; 2 Pick. 129; nor any condition forbidden by law; as giving preference when the law forbids it.

3.—An assignor may legally choose his own trustees. 1 Binn. 514.
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.

ASSISES OF JERUSALEM. The name of a code of feudal law, made at a general assembly of lords, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France. 2 Profession d’Avocat, par Dupin, 674 to 680.

ASSISORS. Scotch Law. This term corresponds nearly to that of jurors.

ASSIZE, Eng. Law. This was the name of an ancient court; it derived its name from assideo, to sit together. Litt. s. 234; Co. Litt. 153 b., 159 b. It was a kind of jury before which no evidence was added, their verdict being regarded as a statement of facts, which they knew of their own knowledge; Bract. iv. 1, 6.

2.—The name of assize was also given to a remedy for the restitution of a frehold, of which the claimant had been dispossessed. Bac. Ab. h. t. Assizes were of four kinds; Mort d’Ancestor; Novel Dissisaein; Darrein Presentment; and Utrum. Neale’s F. & F. 84. This remedy has given way to others less perplexed and more expeditious. Bac. Ab. h. t.; Co. Litt. 153–155.

ASSIZE OF MORT D’ANCESTOR. The name of an ancient writ, now obsolete. It might have been sued out by one whose father, mother, brother, &c., died seised of lands and tenements, which they held in fee, and which, after their death, a stranger abated. Reg. Orig. 223. See Mort d’Ancestor.

ASSOCIATE. This term is applied to a judge who is not the president of a court, as associate judge.

ASSOCIATION, is the act of a number of persons uniting together for some purpose; the persons so joined are also called an association. See Company.

ASSUMPSIT, in contracts, is an undertaking, either express or implied, to perform a parol agreement. 1 Lilly’s Reg. 132.

2.—An express assumpsit is where one undertakes verbally or in writing, not under seal, or by matter of record, to perform an act, or to pay a sum of money to another.

3.—An implied assumpsit is where one has not made any formal promise to do an act or to pay a sum of money to another, but who is presumed from his conduct to have assumed to do what is in point of law just and right; for, 1st, it is to be presumed that no one desires to enrich himself at the expense of another; 2d, it is a rule that he who desires the antecedent, must abide by the consequent; as, if I receive a loaf of bread or a newspaper daily sent to my house without orders, and I use it without objection, I am presumed to have accepted the terms upon which the person sending it had in contemplation, that I should pay a fair price for it; 3d, it is also a rule that every one is presumed to assent to what is useful to him. See Assent.

ASSUMPSIT, remedies, practice, is a 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, nor of record; circumstances which distinguish this remedy from others. 7 T. R. 351; 3 Johns. Cas. 60. This action differs from the action of debt; for, in legal consideration, that is for the recovery of a debt eo nomine, and in numero, and may be upon a deed as well as upon any other contract. 1 H. Bl. 554; B. N. P. 167. It differs from covenant, which, though brought for the recovery of damages, can only be supported upon a contract under seal. See Covenant.

2.—It will be proper to consider this subject with reference, 1, to the contract upon which this action may be sustained; 2, the declaration; 3, the plea; 4, the judgment.

3.—1. Assumpsit lies to recover damages for the breach of all parol or simple contracts, whether written or
not written; express or implied; for the payment of money, or for the performance or omission of any other act. For example, to recover money lent, paid, or had and received, to the use of the plaintiff; and in some cases, where money has been received by the defendant, in consequence of some tortious act to the plaintiff's property, the plaintiff may waive the tort, and sue the defendant in assumpsit. 5 Pick. 285; 1 J. J. Marsh. 543; 3 Watts, R. 277; 4 Binn. 374; 3 Dana, R. 552; 1 N. H. Rep. 151; 12 Pick. 120; 4 Call. R. 451; 4 Pick. 542. Assumpsit lies to recover the purchase money for land sold, 14 Johns. R. 210; 14 Johns. R. 162; 20 Johns. R. 338; 3 McCord, R. 421; and it lies, specially, upon wages, 2 Chit. Pl. 114; seigned issues, 2 Chit. Pl. 116; upon foreign judgments, 8 Mass. 273; Doug'l. 1; 3 East, 221; 11 East, 124; 3 T. R. 493; 5 Johns. R. 132. But it will not lie on a judgment obtained in a sister state. 1 Bibb, 361; 19 Johns. 162; 3 Fairf. 94; 2 Rawle, 431. Assumpsit is the proper remedy upon an account stated. Bac. Ab. Assumpsit, A. It will lie for a corporation, 2 Lev. 252; 1 Camp. 466. In England it does not lie against a corporation, unless by express authority of some legislative act, 1 Chit. Pl. 98; but in this country it lies against a corporation aggregate, on an express or implied promise, in the same manner as against an individual. 7 Cranch, 297; 9 Pet. 541; 3 S. & R. 117; 4 S. & R. 16; 12 Johns. 231; 14 Johns. 118; 2 Bay. 109; 1 Chipm. 371, 456; 1 Aik. 180; 10 Mass. 397. But see 3 Marsh. 1; 3 Dall. 496.

4.—2. The declaration must invariably disclose the consideration of the contract, the contract itself, and the breach of it. Bac. Ab. h. t. F; 5 Mass. 95; but in a declaration on a negotiable instrument under the statute of Anne, it is not requisite to allege any consideration, 2 Leigh, R. 195; and on a note expressed to have been given for value received, it is not necessary to aver a special consideration.

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7 Johns. 321. See 5 Mass. 97. The gist of this action is the promise, and it must be averred. 2 Wash. 187; 2 N. H. Rep. 289; Hardin, 225. Damages should be laid in a sufficient amount to cover the real amount of the claim. See 4 Pick. 497; 2 Rep. Const. Ct. 339; 4 Munf. 95; 5 Munf. 23; 2 N. H. Rep. 289; 1 Breese, 286; 1 Hall, 201; 4 Johns, 280; 11 S. & R. 27; 5 S. & R. 15; 2 Conn. 17; 9 Conn. 508; 1 N. & M. 342; 6 Cowen, 151; 2 Bibb, 429; 3 Caines, 286.

5.—3. The usual plea is non-assumpsit, (q. v.) under which the defendant may give in evidence most matters of defence. Com. Dig. Pleadcr, 2 G. 1. When there are several defendants they cannot plead the general issue severally, 6 Mass. 444; nor the same plea in bar, severally. 13 Mass. 152. The plea of not guilty, in an action of assumpsit, is cured by verdict. 8 S. & R. 541; 4 Call, 451. See 1 Marsch, 602; 17 Mass. 623; 2 Greenl. 362; Minor, 254.


Vide Bac. Ab. h. t.; Com. Dig. Action upon the case upon assumpsit; Dane's Ab. Index, h. t.; Viner's Ab. h. t.; 1 Chit. Pl. h. t.; Petersd. h. t.; Lawes's Pl. in Assumpsit; the various digests, h. t. Actions; Covenant; Debt; Indebitatus assumpsit; Pactum Constitutio pecuniae.

ASSURANCE, comm. law. Insurance, (q. v.)

Assurance, conveyancing. This is called a common assurance. But the term assurances includes, in an enlarged sense, all instruments which dispose of property, whether they be the grants of private persons, or not; such are fines and recoveries, and private acts of the legislature. Eunom. Dial. 2, s. 5.

ASSURED, a person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Vide Insured.

ASSURER. One who insures another against certain perils and dangers.
The same as underwriter, (q. v.) Vide Insurer.

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.

ASYLUM. A place of refuge where debtors and criminals fled for safety.

2.—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.

ATAVUS. The male ascendant in the fifth degree, was so called among the Romans, and in tables of genealogy the term is still employed.

ATHEIST, one who denies the existence of God.

2. 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. 451; Hawk. 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 an 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.

ATTACHE’, connected with, attached to. This word is used to signify those persons who are attached to a foreign legation. An attaché is a public minister within the meaning of the act of April 30, 1790, s. 37, 1 Story’s L. U. S. 89, which protects from violence “the person of an ambassador or other public minister.” 1 Bald. 240.

Vide 2 W. C. C. R. 205; 4 W. C. C. R. 531; 1 Dall. 117; 1 W. C. C. R. 232; 4 Dall. 321. Vide Ambassador; Consul; Envoy; Minister.

ATTACHMENT, crim. law, practice, is a writ requiring a 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.

2.—It may be awarded by the court upon a bare suggestion, though generally an oath stating what contempt has been committed is required, or on their own knowledge without indictment or information. An attachment may be issued against officers of the court for disobedience or contempt of their rules and orders, for disobedience of their process, and for disturbing them in their lawful proceedings. Bac. Ab. h. t. A. An attachment for contempt for the non-performance of an award is considered in the nature of a civil execution, and, it was therefore held it could not be executed on Sunday, 1 T. R. 266; Cowper, 394; Willes, R. 292, note (b); yet, in one case, it was decided, that it was so far criminal, that it could not be granted in England on the affirmation of a Quaker. Stra. 441. See 5 Halst. 63; 1 Cowen, 121, note; Bac. Ab. h. t.

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.

2.—This writ always issues before judgment, and is intended to compel an appearance; in this respect it differs from an execution. In some of the states this process can be issued only against ascribing 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.

3.—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, 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.

4.—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 even eventually be made liable to the amount of the plaintiff’s claim. It will be proper to consider, 1, by whom it is 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.

5.—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 as-
sets attached among the creditors under 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.

6.—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.

7.—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 receptor, see 2 Mass. 514; 9 Mass. 112; 11 Mass. 211; 6 Johns. R. 193; 9 Mass. 104, 265; 10 Mass. 125; 15 Mass. 310; 1 Pick. R. 232, 389. See Metc. & Perk. Dig. tit. Absent and Absconding Debtors.

Attachment of Privilege, Eng. law, a process by which a man by virtue of his privilege, calls another to litigate in that court to which he himself belongs; and who has the privilege to answer there.

ATTAINDER, English criminal law; attinctura, the stain or corruption of blood which arises from being condemned for any crime.

2.—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.

3.—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.

4.—Attainder by process or outlawry, is when the party flies, and is subsequently outlawed. Co. Lit. 391.

5.—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.

ATTAIN, English law, 1. Accusation, 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.

2.—It was a trial by jury of twenty-four men empanelled to try the goodness of a former verdict. 3 Bl. Com. 351; 3 Gilb. Ev. by Loffl, 1146. See Assize.

ATTEMPT, criminal 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.
2.—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, 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 penitentiae. 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; 6 C. & P. 368.

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.

ATTENTAT. In the language of the civil and canon laws, is any thing whatsoever wrongfully innovated or attempted in the suit by the judge a quo pending an appeal. 1 Addams, R. 22, n.; Ayl. Par. 100.

ATTERMINING. The granting a time or term for the payment of a debt. This word is not used. See Delay.

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, 3 P. Wms. 254; 2 Ves. 454; 1 Ves. & B. 362; 3 Marsh. 146; 3 Bibb. 494; 17 Pick. 373.

2.—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 effect upon the parties.

3.—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.

4.—2. The general rule, 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, 22 Pick. R. 55; 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. 698; 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. Const. Co. So. Ca. 310; 5 Cranch, 13; Com. Dig. tit. Testimoigne, Evidence, Addenda; 5 Com. Dig. 441; 4 Yeates, 79.

5.—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.

6.—4. Proof of the attestation is evidence of the sealing and delivery. 6 Serg. & Rawle, 311; 2 East, R. 250; 1 Bos. & Pull. 360; 7 T. R. 266.


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 the 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.”

2.—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. See 3 Phillim. R. 323; S. C. 1 Eng. Eccl. R. 407.

ATTESTING WITNESS, one who upon being required by the parties to an instrument, signs his name to it to prove it, and for the purpose of identification.

2.—The witness must be desired by the parties to attest it, for unless this be done, he will not be an attesting witness, although he may have seen the parties execute it. 3 Campb. 282. See Competent witness; Credible witness; Disinterested witness; Respectable witness; Subscribing witness; and Witness; Witness Instrumentary; 5 Watts, 399.

ATTORNEY. One who acts for another by virtue of an appointment by the latter. Attorneys are of various kinds.

2.—Attorney in fact, is a person to whom the authority of another, who is called the constituent, is by him lawfully delegated. This term is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed in factum, for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any business, or to do any act or acts in pais for another. Bac. Ab. Attorney; Story, Ag. § 25.

3.—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 feme covert, may act as attorneys of others. Co. Litt. 52 a; 1 Esp. Cas. 142; 2 Esp. Cas. 511; 2 Stark. Cas. N. P. 204.

4.—The form of his appointment is by letter of attorney, (q. v.)

5.—The object of his appointment is the transaction of some business of the constituent by the attorney.

6.—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.

7.—Attorney at law, 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.

8.—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, 254; 3 Chit. Bl. 23, 338; Bac. Ab. h. r. 1; 3 Penna. R. 74; 3 Wils. 374;
16 S. & R. 368; 14 S. & R. 307; 7
Cranch, 452; 1 Penna. R. 264.

9.—The name of attorney is given to
those officers who practice in courts
of common law; solicitors, in courts
of equity; and proctors in courts of
admiralty and in the English ecclesiasti-
cal courts.

10.—The principal duties of an at-

torney are, 1. To be true to the court
and to his client; 2. To manage the
business of his client with care, skill
and integrity: 4 Burr. 2061; 1 B. &
A. 202; 2 Wils. 325; 1 Bing. R. 347;
3. To keep his client informed as to
the state of his business; 4. To keep
his secrets confided to him as such.
See Client; Confidential Comuni-

ication.

11.—For a violation of his duties, an
action will in general lie; 2 Greenl.
Ev. § 145, 146; and, in some cases,
he may be punished by an attachment.
His rights are, to be justly compensated
for his services. Vide 1 Keen’s R.
668; Client; Counsellor at law.

12.—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.

13.—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, touch-
ing matters that may concern their
departments; Act of 24 Sept. 1789.

14.—His salary is three thousand
five hundred dollars per annum, and
he is allowed one clerk, whose com-

pensation 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. By
the act of May 29, 1830, 4 Sharps,
cont. of Story, L. U. S. 2208, § 10, his
salary is increased five hundred dollars
per annum.

ATTORNAMENT, estates, was the
agreement of the tenant to the grant of
the seignory, or of a rent, or the agree-

ment of the donee in tail, 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 En-

gland, by virtue of sundry statutes, and
they are abolished in the United States,
4 Kent, Com. 479; 1 Hill. Ab. 128, 9.
Vide 3 Vin. Ab. 317; 1 Vern. 330, n.;
Saund. 234, n. 4; Roll. Ab. h. t.; Nel-
son’s Ab. h. t.; Com. Dig. h. t.

AUBAINE, French law. When a
foreigner died in France, the crown by
virtue of a right called droit d’aubaine,
formerly claimed all the personal pro-

perty such foreigner had in France at
the time of his death. This barbarous
law was swept away by the French
revolution of 1789. Vide Albinatus
Jus.

AUCTION, commerce, contract, is a
place, authorised by law, where pro-

perty is publicly sold to the highest
bidder.

2.—Auctions are generally held by
express authority, and the person who
keeps them are licensed to do so under
various regulations. The sale of the
property is also called an auction.

3.—The manner of conducting an
auction is immaterial; whether it be by
public outcry or by any other manner.
The essential part is the selection of a
purchaser from a number of bidders.
In a case where a woman continued
silent during the whole time of the sale,
but whenever any one bid she gave
him a glass of brandy, and when the
sale broke up the person who received
the last glass of brandy was taken into
a private room, and he was declared to
be the purchaser; this was adjudged to
be an auction. 1 Dow. 115.

4.—The law requires fairness in
auction sales, and when a puffer is em-
ployed to raise the property offered for
sale on bona fide bidders, or a com-

bination is entered into between two or
more persons not to overbid each other,
the contract may in general be avoided.
Vide Puffer, and 6 John. R. 194; 8
John. R. 444; 3 John. Cas. 29; Cowp.
395; 6 T. R. 642; Harr. Dig. Sale,
IV.; and the article Conditions of

AUCTIONEER, contracts, commerce, is a person authorised by law to keep an auction, and sell the goods of others at public sale.

2.—He is the agent of both parties the seller and the buyer, 2 Taunt. 38, 209; 4 Greenl. R. 1; Chit. Contr. 208.

3.—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.

4.—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 the 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; 4 John. Ch. R. 659; 3 Burr. R. 1921; 2 Taunt. R. 38; 1 Jac. & Walk. R. 350; 3 V. & B. 57; 13 Ves. R. 472; 1 Y. & J. R. 395; 5 Barn. & Ald. 333; 1 H. Bl. 81; 7 East, R. 558; 4 B. & Adolph. R. 443; 7 Taunt. 209; 3 Chit. Com. L. 210; Story on Ag. § 27; 2 Liv. Ag. 335; Cowp. 395; 6 T. R. 642; 6 John. 194.

AUCTOR. Among the Romans the seller was called auctor; and public sales were made by fixing a spear in the forum, and a person who acted as crier stood by the spear; the catalogue of the goods to be sold was made in tables called auctionaria.

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 misdemeanour.

AUDITA QUERELA. A writ the object of which is to be relieved from a judgment or execution for some injustice of the party who obtained it, which could not be pleaded in bar to the action. 13 Mass. 453; 12 Mass. 270; 6 Verm. 243; Bac. Ab. h. t.; 2 Saund. 148, n. 1; 2 Sell. Pr. 252.

2.—It is a remedy process, which bears solely on the wrongful acts of the opposite party, and not upon the erroneous judgments or acts of the court. 10 Mass. 103; 17 Mass. 159; 1 Aik. 363. It will not lie, therefore, where the cause of complaint is a proper subject for a writ of error. 1 Verm. 403, 491; Brayt. 27.

3.—An audit promissory is in the nature of an equitable suit, in which the equitable rights of the parties will be considered. 10 Mass. 101; 14 Mass. 448; 2 John. Cas. 229.

4.—An audit promissory is a regular suit, in which the parties may plead, take issue, &c. 17 John. 454. But the writ must be allowed in open court, and is not, of itself, a supersedeas, which may or may not be granted, in the discretion of the court, according to circumstances. 2 John. 227.

5.—In modern practice, it is usual to grant the same relief, on motion, which might be obtained by audit promissory. 4 John. 191; 11 S. & R. 274; and in Virginia, 5 Rand. 639; and South Carolina, 2 Hill. 298, the summary remedy, by motion, has superseded this ancient remedy. In Pennsylvania, this writ, it seems, may still be maintained, though relief is more generally obtained on motion. 11 S. & R. 274. Vide, generally, Pet. C. C. R. 269; Brayt. 27, 28; Walker, 66; 1 Chipm. 387; 3 Conn. 260; 10 Pick. 439; 1 Aik. 107; 1 Over. 45; 2 John. Cas. 227; 1 Root, 151; 2 Root, 178; 9 John. 221.

AUDITOR. An officer whose duty
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. 1636; and the Act of Feb-

uary 24, 1819, 3 Story’s L. U. S. 1722.

AUDITORS, practice, are persons lawfully appointed to examine and dig-
gest accounts referred to them, take down the evidence in writing, which
may be lawfully offered in relation to such accounts, and prepare materials
on which a decree or judgment may be made; and to report the whole, to-
gether with their opinion, to the court in which such accounts originated. 6
Cranch, 8; 1 Aik. 145; 12 Mass. 412.

2.—Their report is not, per se, binding and conclusive, but will become so,
unless excepted to. 5 Rawle, R. 323. It may be set aside, either with or
without exceptions to it being filed. In the first case, when errors are ap-
parent on its face, it may be set aside or corrected. 2 Cranch, 124; 5 Cranch,
313. In the second case, it may be set aside for any fraud, corruption,
gross misconduct, or error. 6 Cranch, 8; 4 Cranch, 308; 1 Aik. 145. The
auditors ought to be sworn, but this will be presumed. 8 Verm. 396.

3.—Auditors are also persons ap-
pointed to examine the accounts sub-
sisting between the parties in an action of account render after a judgment
quot computet. Bac. Ab. Acompl. F.

4.—The auditors are required to
state a special account, 4 Yeates, 514,
and the whole is to be brought down to
the time when they make an end of
their account. 2 Burr. 1086, and au-
ditors are to make proper charges and
credits without regard to time, or the
verdict, 2 S. & R. 317. When the
facts or matters of law are disputed
before them, they are to report them to
the court, when the former will be de-
cided by a jury, and the latter by the
court, and the result sent to the au-
ditors for their guidance. 5 Binn. 433.

AUGMENTATION, old English law. The name of a court erected by
Henry VIII., which was invested with
the power of determining suits and
controversies relating to monasteries
and abbey lands.

AULA REGIS. The name of an
English court, so called because it was
held in the great hall of the king’s pa-
cel. Vide Curia Regis.

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. Another. This word is
frequently used in composition, as au-

ter droit, autre vie, auter action, &c.

AUTRE ACTION PENDANT. A plea
that another action is pending for the
same cause.

2.—It is evident that a plaintiff can-
not have two actions at the same time,
for the same cause, against the same
defendant; and when a second action is
so commenced, and this plea is filed,
the first action must be discontinued,
and the costs paid, and this ought to be
done before the plaintiff replies mut tiet
record. Grah. Pr. 98. See Lis Pendens.

3.—But the suit must be for the
same cause, in order to take advantage
of it under these circumstances, for if it
be for a different cause, as, if the ac-

tion be for a lien, as, a proceeding in
rem to enforce a mechanic’s lien, it
cannot be pleaded in abatement in an
action for the labour and materials.
3 Scamm. 201; see 16 Verm. 234; 1
Richards, 438; 3 Watts & S. 395; 7
Metc. 570; 9 N. H. Rep. 545.

4.—In general, the pending of an-
other action must be pleaded in abate-
ment, 3 Rawle, 320; 1 Mass. 495; 5
Mass. 174, 179; 2 N. H. Rep. 36; 7
Verm. 124; 3 Dana, 157; 1 Ashm.
4; 2 Browne, 175; 4 H. & M. 487;
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 Chit.
Pl. 443.

5.—Having once arrested a defend-
ant, the plaintiff cannot, in general, ar-
rest him again for the same cause of action. Tidd, 184. But under special circumstances, of which the court will judge, a defendant may be arrested a second time. 2 Miles, 99, 100, 141, 142. Vide Bac. Ab. Bail in civil cases, B 3; Grah. Pr. 98; Troub. & H. Pr. 44; 4 Yeates, 206; 1 John. Cas. 397; 7 Taunt. 151; 1 Marsh. 395; and 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. This term signifies an original of which there is no doubt.

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.

2.—In Louisiana, the authentic act, as it 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.

3.—The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assignees, 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.

2.—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.

3.—By the act of May 26, 1790, it is provided, “That the act 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.”

4.—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 secretary 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.

5.—§ 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."

6.—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."

7.—By authentication is also under-

stood whatever act is done either by the party or some other person with a view of causing an instrument to be known and identified; as for example the acknowledgment of a deed by the grantor; the attesting a deed by witnesses. 2 Benth. on Ev. 449.

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.

2.—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.

2.—It has been remarked that when we find an opinion in a text writer upon any particular point, we must consider it not merely as the opinion of the author, but as the supposed result of the authorities to which he refers, 3 Bos. & Pull. 301; but this is not always the case, and frequently the opinion is advanced with the reasons which support it, and it must stand or fall as these are or are not well founded. A distinction has been made between writers who have, and those who have not held a judicial station; the former are considered authority, and the latter are not so considered unless their works have been judicially approved as such. Ram, on Judgments, 93. But this distinction appears not to be well founded: some writers who have occupied a judicial station do not possess the talents
or the learning of others who have not been so elevated, and the works or writings of the latter are much more deserving the character of an authority than those of the former.

AUTHORITY, contracts, is the lawful delegation of power by one person to another.

2.—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.

3.—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; unless, indeed, the principal be present, and verbally or impliedly authorises the agent to fix his name to the deed, 4 T. R. 313; W. Jones, R. 268; as, if a man be authorised to convey a tract of land, the letter of attorney must be by deed. Bac. Ab. h.t.; 7 T. R. 209; 2 Bos. & Pull. 338; 5 Binn. 613; 14 S. & R. 331; 6 S. & R. 90; 2 Pick. R. 345; 5 Mass. R. 11; 1 Wend. 424; 9 Wend. R. 54, 68; 12 Wend. R. 525; Story, Ag. § 49; 3 Kent, Com. 613, 3d edit.; 3 Chit. Com. Law, 195. But it does not require a written authority to sign an unsealed paper, or a contract in writing not under seal. Paley on Ag. by Lloyd, 161; Story, Ag. § 50.

4.—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 Agen. 2. The exigencies of commercial affairs render such an appointment indispensable; business would be greatly embarrassed, if a regular letter of attorney were required to sign or negotiate a promissory note or bill of exchange, or sell or buy goods, or write a letter, or procure a policy for another. This rule of the common law has been adopted and followed from the civil law. Story, Ag. § 47; Dig. 3, 3, 1, 1; Poth. Pand. 3, 3; Domat, liv. 1, tit. 15, § 1, art. 5; see also 3 Chit. Com. Law, 5, 195, 7 T. R. 350.

5.—2. The authority given must have been possessed by the person who delegates it, or it will be void; and it must be of a thing lawful, or it will not justify the person to whom it is given. Dyer, 102; Kielw. 83. It is a maxim that delegates non potest delegare, so that an agent who has a mere authority must execute it himself, and cannot delegate his authority to a sub-agent. See 5 Pet. 390; 3 Story, R. 411, 425; 11 Gill & John. 58; 26 Wend. 485; 15 Pick. 303, 307; 1 McMullan, 453; 4 Scamm. 127, 133. See Delegation.

6.—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.

7.—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.

8.—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.

9.—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.

10.—3. In considering in what man-
ner 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.

11.—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.

12.—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, 1. 5; Com. Dig. Attorney, C 8; 3 Pick. R. 232; 2 Pick. R. 345; 12 Mass. R. 185; 6 Pick. R. 198; 6 John. R. 39; Story, Ag. § 42. These rules apply to an authority of a private nature, which must be executed by all to whom it is given; and not to a power of a public nature, which may be executed by a majority. 9 Watts, R. 466. 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, 308, b; 6 T. R. 591; 2 H. Bl. 623.

13.—2. 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 a power, and not in the attorney's name. 9 Co. 76, 77. It has been held that the name of the attorney is not requisite 1 W. & S. 328, 332; Moor, pl. 1106; Str. 705; 2 East, R. 142; Moor, 818. Paley on Ag. by Lloyd, 175; Story on Ag. § 146; 9 Ves. 236; 1 Y. & J. 387; 2 M. & S. 299; 4 Cambp. R. 184; 2 Cox, R. 84; 9 Co. R. 75; 6 John. R. 94; 9 John. R. 334; 10 Wend. R. 87; 4 Mass. R. 595; 2 Kent, Com. 631, 3d ed. 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; 11 Mass. R. 97; 22 Pick. R. 158; 12 Mass. R. 237; 9 Mass. 335; 16 Mass. R. 461; 1 Cowen, 513; 3 Wend. 94; Story, Ag. §§ 154, 275, 278, 395; Story on P. N. § 69; 2 East, R. 142; 7 Watt's R. 121; 6 John. R. 94. But see contra, Bac. Ab. Leases, S. 10; 9 Co. 77; 1 Hare & Wall. Sel. Dec. 426.

14.—3. The execution must take place during the continuance of the authority; this is determined either by revocation, or performance of the commission.

15.—In general, an authority is revocable, unless it be given as a security, or it be coupled with an interest. 2 Esp. Cas. 365; Bac. Ab. h. t. The revocation (q. v.) is either express or implied; when it is express and made known to the person authorized, 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.

16.—When once the agent has exercised all the authority given to him, the authority is at an end.

17.—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; Com. Dig. Attorney, C 15; 4 Cambp. R. 163; Story on Ag. § 48 to 142; 1 J. J. Marsh. R. 292; 5 Johns. R. 58; 1 Liv. on Ag. 103, 4; and when the agent acts, as such, within his authority, he is not personally responsible. Pal. on Ag. 4, 5.

Vide, generally, 3 Vin. Ab. 416; 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.

Authority, government, is the right and power which an officer has in the exercise of a public function to compel
obedience to his lawful commands. A judge, for example, has authority to enforce obedience to his lawful orders. Domat, Dr. Pub. lib. 1, tit. 9, s. 1, n. 13.

AUTOCRACY. The name of a government where the monarch is unlimited by law. Such is the power of the emperor of Russia, who, following the example of his predecessors, calls himself the autocrat of all the Russians.

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.

2.—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. 25, s. 1; 4 Bl. Com. 305. There must be an acquittal of the offence charged in law and in fact. Stark. Pl. 355; 2 Swift's Dig. 400; 1 Chit. Cr. Law, 452; 2 Russ. on Cr. 41.

3.—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; 1 Yelv. 205, a, note.

AUTREFOIS ATTAINED, crim. law, formerly attained.

2.—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.

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.

2.—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.

3.—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; 11 Verm. R. 516.

AVAIL. Profits of land; hence tenant paravail is one who makes avail or profits of the land.

AWALUM. By this word is understood the written engagement of a third person to guaranty and to become security that a bill of exchange shall be paid when due.

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 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.

2.—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, or has no affinity to average properly so called. Besides these
there are other small charges, called petty or accustomed averages. Such as pilage, 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.

3.—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.*


**AVERIA,** cattle. This word in its most enlarged signification is used to include horses of the plough, oxen and cattle. *Cunn. Dict.* h. t.

**AVERIIS CAPTIS IN WITHERNAM, Eng. law.* The name of a writ which lies in favour of a man whose cattle have been unlawfully taken by another, and driven out of the county where they were taken, so that they cannot be repleived.

2.—This writ issues against the wrong doer to take his cattle to the plaintiff’s use. *Reg. of Writs,* 82.

**AVERMENT, in pleading,** comes from the Latin *verificare,* or the French *avérer,* and signifies a positive statement of facts in opposition to argument or inference. *Comp.* 683, 684.

2.—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.*

3.—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.

4.—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 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.* 305; *Arch Civ.* Pl. 163; *Doch. Pl.* 120; 1 *Lilly’s Reg.* 209; *United States Dig.* Pleading, II (c).

**AVOIDANCE, eccl. law.* It is when a benefice becomes vacant for want of an incumbent; and, in this sense, it is opposed to plenary. Avoid-
ances are in fact, as by the death of
the incumbent; or in law.

AVOWANCE, pleading. The intro-
duction of new or special matter, which,
admiring the premises of the
opposite party, avoids or repels his con-
clusions. Gould on Pl. c. 1 § 24, 42.

AVOIR DU POIS, comm. law. The
name of a peculiar 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. 13, § 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. For the derivation
of this phrase, see Barr. on the Stat.
206.

AVOUCHER. The call which the
tenant makes on another who is bound
to him to warranty to come into court,
either to defend the right against the
demandant, or to yield him other land
in value. 2 Tho. Co. Litt. 304.

AVOW or ADVOW, practice, signifies
to justify or maintain an act
formerly done. For example, when
replevin is brought for a thing dis-
trained, and the distrainer justifies the
taking, he is said to avow. Terms de
la Ley. This word also signifies to
bring forth anything: formerly when
a stolen thing was found in the pos-
session of any one, he was bound ad-
vocare, 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, ecc. 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 dis-
tress 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.

AVOWTER, Eng. law. An
adulterer with whom a married woman
continues in adultery. T. L.

AVOWTRY, Eng. law. The crime
of adultery.

AVULSION is where, by the imme-
diate and manifest power of a river or
stream, the soil is taken suddenly from
one man's estate and carried to an-
other. In such case the property be-
longs to the first owner. An acques-
cence 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
marius, &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.

AVUS. Grandfather. This term is
used in making genealogical tables.

AWAIT, crim. law. Seems to sig-
ify 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 writ-
ing which contains such judgment is
also called an award.

2.—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.

3.—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 de-
gated, which cannot legally affect the parties. Kyd on Aw. 140; 1 Binn. 109; 13 Johns. 157; Ib. 271; 6 Johns. 13, 39; 11 Johns. 133; 2 Mass. 164; 8 Mass. 399; 10 Mass. 442; Caldw. on Arb. 98; 2 Harring. 347; 3 Harring. 22; 5 Sm. & Marsh. 172; 8 N. H. Rep. 82; 6 Shepl. 251; 12 Gill & John. 456; 22 Pick. 144. If the arbitrators, therefore, transcend their authority, their award pro tanto will be void; but if the void part affect not the merits of the submission, the residue will be valid. 1 Wend. 326; 13 John. 264; 1 Cowen, 117; 2 Cowen, 638; 1 Greenl. 300; 6 Greenl. 247; 8 Mass. 399; 13 Mass. 244; 14 Mass. 43; 6 Harr. & John. 10; Hardin, 326.

4.—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. Arbitr. 11; Kyd on Aw. 194; 3 S. & R. 340; 9 John. 43; 2 Halst. 90; 2 Caines, 235; 3 Harr. & John. 383; 3 Ham. 266; 1 Pike, 206; 7 Metc. 316; 5 Sm. & Marsh. 712; 13 Vern. 53; 5 Blackf. 128; 2 Hill, 75; 3 Harr. 442.

5.—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, 253.

6.—4. The award must be final; that is, it must conclusively adjudicate of the matters submitted, 1 Dall. 173; 2 Yeates, 539; 4 Rawle, 304; 1 Caines, 304; 2 Harr. & Gill, 67; Chrl. 289; 3 Pike, 324; 3 Harr, 442; 1 P. S. R. 395; 4 Blackf. 253; 11 Wheat. 446; 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. Arbitr. 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. Arbitr. E; Ib. Chancery, 2 K 1, &c. 3 Vin. Ab. 52, 372; 1 Vern. 158; 15 East. R. 215; 1 Ves. jr. 364; 1 Saund. 326; notes 1, 2, and 3; Wats. on Arbitrations and Awards.

AWM, or AUME. An ancient measure, used in measuring Rhenish wines; it contained forty gallons.

AYANT CAUSE, French law. This term, which is used in Louisiana, signifies one to whom a right has been assigned, either by will, gift, sale, exchange, or the like. An assignee. An ayant cause differs from an heir who acquires the right by inheritance. 8 Toull. n. 245.
BACHELOR. The first degree taken at the universities in the arts and sciences, as bachelor of arts, &c. It is called in Latin Baccalaurensis, from baccalus, 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-BOND. A bond given by one to a surety to indemnify such surety in case of loss. In Scotland, a back-bond is an instrument which, in conjunction with another which gives an absolute disposition, constitutes a trust; a declaration of trust.

BACK-WATER. It is that water in a stream which, in consequence of some obstruction below, flows back up the stream.

2.—Every riparian owner is entitled to the benefit of the water, as it subsists in its natural state. Whenever, therefore, the owner of an inferior property damns or impedes the water in such a manner as to back it on his superior neighbour, and thereby causes him an injury, he is liable to an action; for no one has a right to alter the level of the water, either where it enters, or where it leaves his property. 9 Co. 59; 1 B. & Ald. 258; 1 Wils. R. 178; 6 East, R. 203; 1 S. & Stu. 190; 4 Day, R. 244; 7 Cowen, R. 266; 1 Rawle, R. 218; 5 N. H. Rep. 232; 9 Mass. R. 316; 7 Pick. R. 198; 4 Mason, R. 400; 1 Rawle, R. 27; 2 John. Ch. R. 162, 463; 1 Coxe's R. 460. Vide Dam; Inundation; Water-course; 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; 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.

BADGE. A mark or sign worn by some persons, or placed upon certain things to designate from others. Some public officers, as watchmen, policemen, and the like, are required to wear badges that they may be readily known. It is used figuratively when we say possession of personal property by the seller is a badge of fraud.

BAGGAGE. Such articles as are carried by a traveller; luggage. Every thing which a passenger carries with him, is not baggage. Large sums of money, for example, carried in a travelling trunk, will not be considered baggage, so as to render the carrier responsible. 9 Wend. R. 85. But a watch deposited in his trunk is a part of his baggage. 10 Ohio, R. 145. See, as to what is baggage, 6 Hill, R. 586.

2.—In general a common carrier of passengers is responsible for the baggage, if lost, though no distinct price be paid for transporting it, it being included in the passenger's fare. Ib. The carrier's responsibility for the baggage begins as soon as it has been delivered to him, or to his servants, or to some other person authorised by him to receive it. Then the delivery is complete. The risk and responsibility
of the carrier is at an end as soon as he has delivered the baggage to the owner or his agent; and, if an offer to deliver it be made, at a proper time, the carrier will be discharged from responsibility, as such; and, if the baggage remain in his custody afterwards, he will hold as bailee, and be responsible for it according to the terms of such bailment. 3 Dana, R. 92. Vide Common Carriers.

3.—By the act of Congress of March 2, 1799, sect. 46, 1 Story's L. U. S. 612, it is declared that all wearing apparel and other personal baggage, &c., of persons who shall arrive in the United States, shall be free and exempted from duty.

BAIL, practice, contracts. By bail is understood a security given according to law, to insure the attendance, at a future time, of a party in court, or before a proper tribunal. The person who becomes surety is also called the bail. Sometimes the term is applied, with a want of exactness, to the security given by a defendant, in order to obtain a stay of execution, after judgment, in civil cases. Bail is either civil or criminal.

2.—1. Civil bail is that which is entered in civil cases, and is common or special; bail below or bail above.

3.—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; Graham Pr. 155; Highm. on Bail. 13.

4.—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 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, 155; 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.

5.—Bail below. This 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.

6.—Bail above, which 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.

7.—It is a general rule that the defendant having been held to bail, in civil cases, cannot be held a second time for the same cause of action. Tidd’s Pr. 184; Grah. Pr. 98; Troub. & Hal. 44; 1 Yeates, 206; 8 Ves., jur. 594; See Auter action pendens; Lis pendens.

8.—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.

9.—The constitution of the United States directs that “excessive bail shall not be required.” Amend. art. 8.

10.—By the acts of 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.

11.—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 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.

12.—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, where 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.

13.—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.

14.—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. Vide Act of God; Arrest; Auter action pendens; Death; Lis pendens.

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 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.

2.—With some exceptions, as for
example, where the defendant surrenders, 5 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.

3.—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 Selb. Pr. 126, 174. For the general requisites of a bail bond, see 1 T. R. 422; 2 T. R. 569; 15 East, 320; 2 Wils. 69; 6 T. R. 702; 9 East, 55; 5 D. & R. 215; 4 M. & S. 338; 1 Moore, R. 514; 6 Moore, R. 264; 4 East, 568; Hurl. on Bonds, 56; U. S. Dig. Bail V.

BAIL PIECE, is a certificate given by the clerk of the court, or person lawful authorized to keep the record, in which it is certified that A B, the bail, became bail for C D, the defendant, in a certain sum, and in a particular case.

2.—As the bail is supposed to have the custody of the defendant, when he is armed with this process, he may arrest the latter, though he is out of the jurisdiction of the court in which he became bail, and even in a different state. 1 Baldw. 578; 3 Com. 34, 421; 2 Yeates, 263; 8 Pick. 138; 7 John. 145; 3 Day, 485; the bail may take him even while attending court as a suitor, or any time even on Sunday, 4 Yeates, 123; 4 Conn. 170. He may break even an outer door, to seize him, command the assistance of the sheriff or other officers. 8 Pick. 188; and depute his power to others. 1 John. Cas. 413; 8 Pick. 140. See 1 Serg. & R. 311.

BAILABLE ACTION. An action is one in which the defendant is entitled to be discharged from custody, when arrested under a capias ad respondendum, upon giving bail to answer.

BAILEE, contracts, is one to whom goods are bailed.

2.—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 extraordinary diligence of 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 Balm. § 17, 18, 19. He is bound to return the property as soon as the purpose for which it was bailed shall have been accomplished.

3.—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 Braeton. 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 itinerant, 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. Bailiff's 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. Bac. Ab. h. t.

BAILMENT, contracts. This word is derived from the French, bailer, to deliver. 2 Bl. Com. 451; Jones's Balm. 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. 1 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 re-delivered, as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones’s Bailm. 117.

2.—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 re-delivered; but in a bailment for sale, as upon a consignment to a factor, no re-delivery 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 right. Story on Bailm. c. 1, § 2.

3.—Mr. Justice Blackstone has defined a bailment to be a delivery of goods in trust, upon a contract either expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Com. 451. And in another place, as the delivery of goods to another person for a particular use. 2 Bl. Com. 395. Vide Kent’s Comm. Lect. 40, 437.

4.—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. This corresponds very nearly with the definition of Merlin. Vide Répertoire, mot Bail.

5.—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.

6.—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 vehendorum when the thing is merely to be carried from one place to another. See these several words.


BAILOR, contracts, he who bails a thing to another.

2.—The bailor must act with good faith towards the bailee. Story’s Bailm. § 74, 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.

2.—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.

BAIRN-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 moveables, debts deducted, if the wife survive, and a half if there be no relict.

BALANCE, comm. law, 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.

2.—In the case of mutual debts the balance only can 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.

3.—The term general balance is sometimes used to signify the difference which is due to a party claiming a lien on goods in his hands, for work or labour done, or money expended in relation to those other goods of the debtor. 3 B. & P. 485; 3 Esp. R. 265.

Balance, evidence. When a witness has an interest in the cause which renders him incompetent, and there is a countervailing interest on the other side which reduces him to a state of neutrality, his interest is said to be balanced; as, when a person acknowledges he has received money as an agent, he may prove whether he received it for the plaintiff or the defendant. 7 T. R. 481, note; 2 East, R. 455; but the least interest, as where in the one case the witness would be liable for costs, and in the other he would not, the equilibrium is destroyed. 4 Taunt. 464.

Balance Sheet. A statement made by merchants and others to show the true state of a particular business. A balance sheet should exhibit all the balances of debits and credits, also the value of merchandize, and the result of the whole. Vide Bilan.

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 ball or ticket used in voting privately, and, for that purpose, put into a box, commonly called a ballot-box, or in some other contrivance.

BALSAMARII, civil law, were stealers of the clothes of persons who were washing in the public baths. Dig. 47, 17; 4 Bl. Com. 239.

BAN. A proclamation, or public notice; any summons or edict by which a thing is forbidden or commanded. Vide Bans of Matrimony; Proclamation.

BANC or BANK. The first of these is a French word signifying bench, pronounced improperly banc. 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.

BANCO. A commercial term, adopted from the Italian, used to distinguish bank money from the common currency; as $1000, banco.

BANDIT. A man outlawed; one who is said to be under ban.
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. Vide 4 Dall. 14. Deportation; Relegation.

BANK, com. law. 1. A place for the deposit of money. 2. An institution, generally incorporated, authorized 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. Vide Metc. & Perk. Dig. Banks and Banking.

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 authorized 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; 1 Ham. R. 189, 524; 15 Pick. 177; 5 G. & John. 58; 3 Hawks, 328; 5 J. J. Marsh. 643.

2. These notes are not like bills of exchange, mere securities, or documents for debts, nor are they so esteemed; but are treated as money, in the ordinary course and transactions of business, by the general consent of mankind; and, on payment of them, when a receipt is required, the receipts are always given as for money, not as for securities or notes. 1 Burr. R. 457; 12 John. R. 200; 1 John. Ch. R. 231; 9 John. R. 120; 19 John. 144.

3. Bank notes are assignable by delivery, Rep. Temp. Hard. 53; 9 East, R. 48; 4 East, R. 510; Doug. 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, R. 135; Dane's Ab. Index, h. t.; Pow. on Mortg. Index, h., t.; U. S. Dig. h. t. Vide Note; Promissory note; Re-issuable note.

BANK STOCK, is the capital of a bank. It is usually divided in shares of a certain amount, as five hundred dollars, one hundred dollars, and the like. This stock is generally transferable on the books of the bank, and considered as personal property. Vide Stock.

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.

2.—The business of bankers is generally performed through the medium of incorporated banks.

3.—A banker may be declared a bankrupt by adverse proceedings against him. Act of Congress of 19 Aug. 1841. See 1 Atk. 218; 2 H. Bl. 235; 1 Mont. B. L. 12.

4.—Among the ancient Romans there were bankers called argentaria, whose office was to keep registers of contracts between individuals, either to loan money, or in relation to sales and stipulations. These bankers frequently agreed with the creditor to pay him the debt due to him by the debtor.

BANKERS' NOTE, contracts. 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; 1 Leigh's N. P. 338.

BANKRUPT. A person who has done, or suffered some act to be done,
which is by law declared an act of bankruptcy; in such case he may be declared a bankrupt.

2. — It is proper to notice that there is much difference between a bankrupt and an insolvent. A man may be a bankrupt and yet be perfectly solvent, that is, eventually able to pay all his debts; or, he may be insolvent, and, in consequence of not having done, or suffered, an act of bankruptcy, he may not be a bankrupt. Again, the bankrupt laws are intended mainly to secure creditors from the waste, extravagance and mismanagement, by seizing the property out of the hands of the debtors, and placing it in the custody of the law; whereas the insolvent laws only relieve a man from imprisonment for debt after he has assigned his property for the benefit of his creditors. Both under bankrupt and insolvent laws the debtor is required to surrender his property for the benefit of his creditors. Bankrupt laws discharge the person from imprisonment, and his property, acquired after his discharge, from all liabilities for his debts; insolvent laws simply discharge the debtor from imprisonment, or liability to be imprisoned, but his after-acquired property may be taken in satisfaction of his former debts. 2 Bell, Com. B. 6, part 1, c. 1, p. 162; 3 Am. Jur. 218.

BANKRUPTCY, the state of a man unable to pursue his business and meet his engagements, in consequence of the derangement of his affairs.

2. — 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 laid dormant till the passage of the act of 1841, since repealed.

3. — 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 con-

fecting 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. Vide Bankrupt.

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.

3. — 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.)

BANNTITUS. One outlawed or banished. This word is obsolete.

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. Poth. Du Mariage, partie 2, c. 2. Vide Ban.

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.

2. — 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, forever; for expedit rei publica ut sit finis litium.

3. — But there is a difference between real and personal actions.

4. — 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.

5.—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, Bac. Ab. Abatement, N; 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.

2.—A place in a court having criminal jurisdiction, to which prisoners are called to plead to the indictment, is also called the bar. Vide Merl. Repert. 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.

2.—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.

BAR FEE, Eng. law, is a fee taken time out of mind by the sheriff for every prisoner who is acquitted. Bac. Ab. Extortion.

BARBICAN, an ancient word to signify a watch-tower. Barbicanage was money given for the support of a barbican.

BARGAIN AND SALE, conveyancing, contracts, is a contract by which a person conveys his lands to another, for a pecuniary consideration.

2.—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.

3.—A bargain and sale may be in fee, for life, or for years.

4.—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.


BARGAINED, a person to whom a bargain is made; one who receives the advantages of a bargain.

BARGAINER, a person who makes a bargain, and who becomes bound to perform it.

BARGEMEN, persons who own and keep a barge for the purpose of carrying the goods of all such other persons who may desire to employ them; they are liable as common carriers. Story, Bailm. § 496.

BARLEYCORN, a lineal measure containing one-third of an inch. Dane’s Ab. c. 211, a. 13, s. 9. The barley-corn was the first measure, with its division and multiples, of all our measures of length, superficies, and capacity. Ib. c. 211, a. 12, s. 2.

BARN, estantes, a building on a farm used to receive the crop, the stable of animals and other purposes.

2.—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.

2.—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. Bac. Ab. Baron and Feme; and the articles Husband; Marriage; Wife.

BARONS OF EXCHEQUER, Eng. law. The name given to the five judges of the Exchequer; formerly these were barons of the realm, but now they are chosen from persons learned in the law.

BARRACK. By this term, as used in Pennsylvania, is understood an erection of upright posts supporting a sliding roof, usually of thatch. 5 Whart. R. 429.

BARRATOR, crimes, one who has been guilty of the offence of baratry.

BARRATRY, crimes, is the habitual moving, exciting, and maintaining suits and quarrels either at law or otherwise.

2. 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.

3.—Barratry, in this sense, is different from maintenance (q. v.) and champerty, (q. v.)

4.—An attorney cannot be indicted for this crime, merely for maintaining another in a groundless action. Vide 15 Mass. R. 229; 1 Bailey's R. 379; 11 Pick. R. 432; 13 Pick. R. 362; 9 Cowen, R. 557; Bac. Ab. h. t.; Hawk. P. C. B. 1, c. 21; Roll. Ab. 335; Co. Litt. 368; 3 Inst. 175.

BARRATRY, maritime 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; 8 East, R. 138, 139; as to what will amount to barratry, see Abbott on Shipp. 167, n. (1); 2 Wash. C. C. R. 61; 9 East, R. 126; 1 Stra. 581; 2 Ld. Raym. 1349; 1 Term. R. 127; 6 Id. 379; 8 Id. 320; 2 Cai. R. 67, 222; 3 Cai. R. 1; 1 John. R. 229; 8 John. R. 209, n. 2d edit.; 5 Day. R. 1; 11 John. R. 40; 13 John. R. 451; 2 Binn. R. 274; 2 Dall. R. 137; 3 Cran. R. 39; 3 Wheat. R. 168; 4 Dall. R. 294; 1 Yeates, 114.

2.—The act of Congress of 30th April, 1790, s. 8, 1 Story's Laws U. S. 84, punishes with a 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 merchandise 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."

BARREL. A measure of capacity, equal to thirty-six gallons.

BARREN MONEY, civil law. This term is used to denote money which bears no interest.

BARRENNESS, is the incapacity to produce a child. This when arising from impotence is a cause for dissolving a marriage. 1 Fodéré Méd. Lég. § 254.

BARRISTER, English law. A counsellor admitted to plead at the bar.

2.—Ouster barrister, is one who pleads ouster or without the bar.

3.—Inner barrister, a serjeant or king's counsel who pleads within the bar.

4.—Vacation barrister, a counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house.

5.—Barristers are called apprentices, apprentitii ad legem, being looked upon as learners, and not qualified until they obtain the degree of serjeant.

BARTER, is a contract by which the parties exchange goods for goods. To be complete the goods must be de-
livered, for without a delivery, the property is not changed.

2.—This contract differs from a sale in this, that barter is always of goods for goods, whereas a sale is an exchange of goods for money. When the contract is an exchange of goods on one side, and on the other side, the consideration is partly goods and partly money, the contract is not a barter, but a sale. See Price; Sale.

3.—If an insurance be made upon returns from a country where trade is carried on by barter, the valuation of the goods in return shall be made on the cost of those given in barter, adding all charges. Wesk. on Ins. 42.

See 3 Camp. 351; Cowp. 818; 1 Doug. 24, n.; 1 N. R. 151; Tropl. de l'Echange.

BARTON, old English law. The demesne land of a manor; a farm distinct from the mansion.

BASE. Something low; inferior; this word is frequently used in composition; as base court, base estate, base fee, &c.

Base court. An inferior court, one not of record. Not used.

Base estate, English law, was the estate which base tenants had in their lands. Base tenants were a degree above villeins, the latter being compelled to perform all the commands of their lords, the former did not hold their lands by the performance of such commands. See Kitch. 41.

Base fee, English law. A tenure in fee at the will of the lord; this was distinguished from socage free tenure. See Co. Litt. 1, 18.

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 Porphyro-genita, younger brother of Leo, revised the work, rearranged 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 Roman § 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.

2.—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 East, 193; Hardin's R. 479; it seems by the Gardner peerage case, reported by Dennis Le Marchant, esquire, that strong moral improbability that the husband is not the father, is sufficient to batardize the issue. Bac. Ab. tit. Bastardy, A. last ed.; 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.

3.—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 and the law compels the putative father to maintain his bastard children. See Bastardy, Putative father.

4.—Considered as nullius 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; 3 Dana, R. 233; 4 Pick. R. 93; 4 Desaus. 434. But this hard rule has been somewhat mitigated in some of the states, where by statute, various inheritable qualities have been conferred upon bastards. See 5 Conn. 228; 1 Dev. Eq. R. 345; 2 Root, 280; 5 Wheat. 207; 3 H. & M. 229, n; 5 Call. 143; 3 Dana, 233.

5.—Bastards can acquire the rights of legitimate children only by an act of the legislature. 1 Bl. Com. 460; 4 Inst. 36.

6.—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.

7.—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.

8.—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 legitimating 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. Bastard; Bac. Abr. Bastard; Com. Dig. Bastard; Metc. & Perk. Dig. h. t.; the various other American Digests, h. t.; Harr. Dig. h. t.; 1 Bl. Com. 454 to 460; Co. Litt. 3, b. And Access; Bastardy; Gestation; Natural children.

BASTARD EIGNE, Eng. law, is a son born before the marriage of his parents, when the latter afterwards marry and have issue; in this case the first child, or, the one before marriage, is called bastard eigne, and the first born after marriage is called müler puisné. 2 Bl. Com. 248. Vide Eigne; Muller.

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, an ancient French word which signifies a staff, or club. In
some old English statutes the servants or officers of the wardens of the Fleet are so called, because they attended the king's courts with a red staff. Vide Tipstaff.

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. This mode of trial was abolished in England by stat. 59 Geo. 3, c. 46.

BATTERY. It is proposed to consider, 1, What is a battery; 2, When a battery may be justified.

2. § 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 be either wilfully committed or proceed from want of due care. Str. 596; Hob. 134; Plowd. 19; 3 Wend. 391. 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. 1 Penn. R. 380; 1 Hill's R. 46; 4 Wash. C. R. 534; 1 Baldw. R. 600.

3. § 2. A battery may be justified, 1st, for the public good; 2ndly, 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.

4. 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. 130, p. 136; Bull. N. P. 19; Bee, 161; 1 Bay., 3; 14 John. R. 119; 15 Mass. 365; and vide Cown. 173; 15 Mass. 347.

5. —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 assaulted, as he may in self-defence. 2 Roll. Abr. 359, (E.) pl. 3.

6. —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.

7. —4. Any person has a right to arrest another to prevent a felony, as to prevent him from murdering his wife.

8. —5. Any one may arrest another upon suspicion of felony, provided a felony has actually been committed, and there is reasonable ground for suspecting the person arrested to be the criminal, and that the party making the arrest, himself entertained the suspicion.


10. —7. It is lawful for every man to lay hands on another to preserve public decorum; as to turn him out of church, and to 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.

11. —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 arrest, unless it amounts to a felony. 1 Brownl. 198; or a felony is likely to ensue. Cro. Eliz. 375.

12.—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. Kielw. 41.

13.—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.

14.—Fourthly; A battery may be justified in aid of an authority in law. Every person is empowered to restrain breaches of the peace, by virtue of the authority vested in him by the law.

15.—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 justifi 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 person assaulted. 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.

16.—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. Vide Rudeness; Wantonness.

BATTURE, means an elevation of the bed of a river under the surface of the water; but it is sometimes used to signify the same elevation when it has risen above the surface. 6 M. R. 19, 246. The term battures is applied, principally, to certain portions of the bed of the river Mississippi, which are left dry when the water is low, and are covered again, either in whole or in part, by the annual swells.

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.

2.—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.

3.—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 a house. 1 Salk. 383; vide Dane's Ab. Index, h.t. One who
assists in establishing a bawdy-house is guilty of a misdemeanour. 2 B.
Monroe, 417.

BAY. Is an enclosure to keep in
the water for the supply of a mill or
other contrivance, so that the water
may be able to drive the wheels of
such mill. Stat. 27 Eliz. c. 19.

2.—A large open water or harbour
where ships may ride, is also called a
bay; as, the Chesapeake Bay, the Bay
of New York.

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 invention of the
telegraph, the beacon has been but little
used.

BARRIER, one who bears or carries
a thing.

2.—If a bill or note be made payable
to bearer, it will pass by delivery
only, without endorsement; and who-
ever fairly acquires a right to it, may
maintain an action against the drawer
or acceptor.

3.—It has been decided that the
bearer of a bank note, payable to
bearer, is not an assignee of a chose in
action within the 11th section of the
judiciary act of 1789, ch. 20, limiting
the jurisdiction of the circuit court. 3
Mason, R. 308.

4.—Bills payable to bearer are con-
tra-distinguished to those payable to
order, which can be transferred only
by endorsement and delivery.

5.—Bills payable to fictitious pay-
ces, are considered as bills payable to
bearer.

BEARERS, Eng. crim. law, are
such as bear down or oppress others;
maintainers. This word is nearly ob-
solete.

BEAU PLEADER, Eng. law. Fair
pleading.

2.—This is the name of a writ upon
the statute of Marlbridge, 52 H. 3, c.
11, which enacts, that neither in the
circuit of justices, nor in counties, hun-
dreds, courts-baron, any fines shall be
taken for fair pleading; namely, for
not pleading fairly or aptly to the pur-
pose. Upon this statute this writ was
ordained, directed to the sheriff, bailiff,
or him who shall demand the fine; and
it is a prohibition or command not to

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.

BEE. The name of a well known
insect.

2.—Bees are considered feræ nature
while unreclaimed; and they are not
more subjects of property while in their
natural state, than the birds which have
their nests on the tree of an individual.
3 Binn. R. 546; 5 Sm. & Marsh. 333.
This agrees with the Roman law.
Inst. 2, 1, 14; Dig. 41, 1, 5, 2.

3.—In New York, it has been deci-
ded that bees in a tree belong to the
owner of the soil, while unreclaimed.
When they have been reclaimed, and
the owner can identify them, they be-
long to him, and not to the owner of
the soil. 15 Wend. R. 550. See 1
Cowen, R. 243.

BEGGAR. One who solicits alms.
The laws of the several states punish
the offence of begging, and provide for
the proper support of the poor.

BEHAVIOUR. Conduct. Behaviour
is good or bad; the former is the con-
duct of a person who acts as the
law requires; the latter that which is
punished by the laws. Vide Good Be-
behaviour.

BEHOOF. Profit, advantage, benefit;
as, to the only proper use and be-
hoof of A B.

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 ac-
quiring 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. Mort. 555; 1 Ves. 95; 12 Ves. 80; 1 P. A. Brown's R. 255; 1 Stark. Ev. 127; Dyer, 53; 2 Hawk. c. 46, s. 167; 3 Wills. 427; 2 Bl. R. 881; Leach, 270; 8 Watts, R. 406.

BELOW. Undermost.

2.—The court below is an inferior court, whose proceedings may be examined on error by a superior court, which is called the court above.

3.—Bail below is that given to the sheriff in bailable actions, which is so called to distinguish it from bail to the action, which is called bail above. See Above; Bail above; Bail below.

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.

2.—Bench was the name of an ancient English court. This court was probably erected in aid of the curia regis, (q. v.) 1 Reeve Hist. 40, 4to ed. 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.

BENCHER, English law. A bencher is a senior in the inns of court, entrusted with their government and direction.

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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.

BENEFICIA. In the early feudal times, grants were made to continue only during the pleasure of the grantor, which were called munera, (q. v.) but soon afterwards these grants were made for life, and then they assumed the name of beneficia. Dalr. Feud. Pr. 199.

BENEFICIAL, of advantage, profit or interest; as the wife has a beneficial interest in property held by a trustee for her. Vide Cestui que trust.

BENEFICIAL INTEREST, is that right which a person has in a contract made with another; as if A makes a contract with B that he will pay C a certain sum of money, B has the legal interest in the contract, and C the beneficial interest. Hamm. on Part. 6, 7, 25; 2 Bulst. 70.

BENEFICIARY. This term is frequently used as synonymous with the technical phrase cestui que trust, (q. v.)

BENEFICIO PRIMO ECCLESIASTICO HABENDO, Eng. eccl. law. A writ directed from the king to the chancellor, commanding him to bestow the benefice which shall first fall in the king's gift, above or under a certain value, upon a particular and certain person.

BENEFICIO COMPETENTIL. Among the Romans the right which an insolvent debtor had, on making cession of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition. 7 Toul. n. 258.

BENEFIT. This word is used in the same sense as gain (q. v.) and profits. (q. v.) 20 Toul. n. 199.

Benefit of cession, civil law. The release of a debtor which the law operates in his favour, upon the surrender of his property for the benefit of his creditors, from future imprisonment for his debts. Poth. Procéd.
Civ. 5:me part., c. 2, § 1. This was something like a discharge under the insolvent laws, which releases the person of the debtor, but not the goods he may acquire afterwards. See Bankrupt; Cessio Bonorum; Insolvent.

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.

2.—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 668; 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.

3.—By the act of Congress of April 30, 1790, it is provided, § 30, that the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is, or shall be declared to be, death.

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 the value of the effects of the succession, in causing an inventory of these effects within the time and manner prescribed by law. Civil Code of Louis, art. 1025. Vide Poth. Traité des Successions, c. 3, s. 3, a. 2.

BENEVOLENCE, duty, is the doing a kind action to another, from mere good will, without any legal obligation. It is a moral duty only, and it cannot be enforced by law. A good man is benevolent to the poor, but no law can compel him to be so.

Benevolence, English law, was an aid given by the subjects to the king under a pretended gratuity, but in reality it was an extortion and imposition.

TO BEQUEATH. To give personal property by will to another.

BEQUEST. A gift by last will or testament; a legacy, (q. v.) This word is sometimes, though improperly used, as synonymous with devise. There is however a distinction between them. A bequest is applied, more properly, to a gift by will of a legacy, that is, of personal property; devise is properly a gift by testament of real property. Vide Devise.

BESAILE or BESAYLE, domestic relations. The great grandfather, precessus. 1 Bl. Com. 186; vide Aile.

BETROTHMENT, is a contract between a man and a woman by which they agree that at a future time they will marry together.

2.—The requisites of this contract are, 1, that it be reciprocal; 2, that the parties be able to contract.

3.—The contract must be mutual; the promise of the one must be the consideration for the promise of the other. It must be obligatory on both parties at the same instant, so that each may have an action upon it or it will bind neither. 1 Salk. 24; Carth. 467; 5 Mod. 411; 1 Freem. 95; 3 Keb. 148.

4.—The parties must be able to contract. If either be married at the time of betrothment, the contract is void; but the married party cannot take advantage of his own wrong, and set up a marriage or previous engagement, as an answer to the action for the breach of the contract, because this disability proceeds from the defendant’s own act. Raym. 387.

5.—The performance of this engagement or completion of the marriage, must be performed within a reasonable time. Either party may, therefore, call upon the other to fulfil the engagement, and in case of refusal or neglect to do so, within a reasonable time after request made, may treat the betrothment as at an end, and bring action for the breach of the contract. 2 C. & P. 631.
6.—For a breach of the betrothment, without a just cause, an action on the case may be maintained for the recovery of damages. See Affiance; Promise of Marriage.

BETTER EQUITY. In England this term has lately been adopted. In the case of Foster v. Blackston, 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 incumbrancer 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 equity. 1 Ch. Pr. 470; note. Vide 4 Rawle, R. 144.

BETTERMENTS. Improvements made to an estate. It signifies such improvements as have been made to the estate which render it better than mere repairs. See 2 Fairf. 482; 9 Shepl. 110; 10 Shepl. 192; 13 Ohio, R. 305; 10 Yerg. 477; 13 Verm. 533; 17 Verm. 109.

BEYOND SEA. This phrase is used in the acts of limitations of several of the states, in imitation of the phraseology of the English statute of limitations. In Pennsylvania, the term has been construed to signify out of the United States, 9 S. & R. 288; 2 Dall. R. 217; 1 Yeates, R. 329. In Georgia, it is equivalent to without the limits of the state. 3 Wheat. R. 541; and the same construction prevails in Maryland, 1 Har. & John. 350; 1 Harr. & McC. 89; in South Carolina, 2 McCord, Rep. 331; and in Massachusetts, 3 Mass. R. 271; 1 Pick. R. 263. Vide Kirby, R. 299; 3 Bibb, R. 510; 3 Litt. R. 48; 1 John. Cas. 76.

BIAS. A particular influential power which sways the judgment; the inclination of the mind towards a particular object.

2.—Justice requires that the judge should have no bias for or against any individual; and that his mind should be perfectly free to act as the law requires.

3.—There is, however, one kind of bias which the courts suffer to influence them in their judgments; it is a bias favourable to a class of cases, or persons, as distinguished from an individual case or person. A few examples will explain this. A bias is felt on account of convenience, 1 Ves. sen. 13, 14; 3 Atk. 524. It is also felt in favour of the heir at law, as when there is an heir on one side and a mere volunteer on the other. Wiltes, R. 570; 1 W. Bl. 256; Amb. R. 645; 1 Ball & B. 309; 1 Wils. R. 310; 3 Atk. 747; Ib. 222. On the other hand, the court leans against double portions for children, M'Clell. R. 356; 13 Price, R. 599; against double provisions, and double satisfactions. 3 Atk. R. 421; and against forfeitures, 3 T. R. 172. Vide, generally, 1 Burr. 419; 1 Bos. & Pull. 614; 3 Bos. & Pull. 456; 2 Ves. jr. 648; Jacob, Rep. 115; 1 Turn. & R. 350.

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; or the bid may be withdrawn by implication. 6 Penn. St. R. 486. Vide Offer.

BIDDER, contracts. One who makes an offer to pay a certain price for an article which is for sale.

2.—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.

3.—But there is nothing illegal in two or more persons agreeing together to purchase a property at sheriff’s sale, fixing a certain price which they
are willing to give, and appointing one of their number to be the bidder. 6 Watts & Serg. 122.

4.—Till the bid is accepted, the bidder may retract his bid. Vide articles, *Auction* and *Bid*; 3 John. Cas. 29; 6 John. R. 194; 8 John. R. 444; 1 Fonbl. Eq. b. 1, c. 4, § 4, note (z).

*BIENS*, a French word, which signifies property. In law, it means property of every description, except estates of frehold and inheritance. Dane's Ab. c. 133, a, 3; Com. Dig. h. t.; Co. Litt. 118, b; Suld. Vend. 495.

2.—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. This distinction between movable and immovable property, is, however, recognized by them, and gives rise in the civil, as well as in the common law, to many important distinctions as to rights and remedies. Story, *Confl. of Laws*, § 13, note 1.

*BIGAMUS*. One guilty of bigamy. Obsolete.

*BIGAMY*, crim. law, domestic relations. The willful contracting of a second marriage when the contracting party knows that the first is still subsisting; or it is 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.

2.—In England this crime is punishable by the stat. 1 Jac. 1, c. 1, 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 to 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. Justices, (S 5;) Merlin Repert. mot Bigamie. Code lib. 9, tit. 9, l. 18; and lib. 5, tit. 5, l. 2.

3.—According to the canonists, bigamy consisted in marrying two virgins successively, one after the death of the other, or in once marrying a widow; persons who had so married were considered incapable of orders. Bac. Ab. h. t.; 6 Decret. l. 12. See *Marriage*.

*BILAN*. A book in which bankers, merchants and traders write a statement of all they owe and all that is due to them. This term is used in the French law, and in the state of Louisiana. 5 N. S. 158. A balance sheet. See 3 N. S. 446, 504.

*BILATERAL CONTRACT*, civil law, is a contract in which both the contracting parties are bound to fulfill obligations respectively towards each other. Leg. Elem. § 781, as a contract of sale where one becomes bound to deliver the thing sold, and the other to pay the price of it. Vide *Contract; Synallagmatic contract*.

*BILINGUIS*. One who uses two tongues or languages.

2.—In the ancient law, this term signified a jury who were to give a verdict between an Englishman and a foreigner, part of whom were to be Englishmen and part foreigners. Vide *Medietas Linguae*.

*BILL*, legislation, is an instrument drawn or presented by a member or committee 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. See Meigs, R. 237.

*BILL*, chancery practice, is a com-
plaint 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 in action at law, a libel in a court of admiralty, or an allegation in the spiritual courts.

2.—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 part 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 part 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 Mad. Ch. P. 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; Story, Eq. Pl. § 26 to 47.

3.—Bills may be divided into three classes, namely: 1, Original bills; 2, Bills not original; 3, Bills in the nature of original bills.

4.—1. 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. Original bills always relate to some matter not before litigated in the court by the same persons and standing in the same interests. Mitf. Eq. Pl. by Jeremy, 34; Story Eq. Pl. § 16. They may be divided into those which pray relief, and those which do not pray relief.

5.—1st, Original bills praying relief are of three kinds; First, Bills praying the decree or order of the court, touching some right claimed by the party exhibiting the bill, in opposition to some right, real or supposed, claimed by the party against whom the bill is exhibited, or touching some wrong done in violation of the plaintiff’s right. Mitf. Eq. Pl. 32.

6.—Secondly. 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. The Practical Register defines it to be a bill exhibited by a third person, who not knowing to whom he ought of right to render a debt or duty, or pay his rent, fears he may be hurt by some of the claimants, and therefore prays he may interplead, so that the court may judge to whom the thing belongs, and he be thereby safe on the payment. Pr. Reg. 78; Harr. Ch. Pr. 45; Edw. Inj. 393; 2 Paige, 199; Id. 570; 6 John. Ch. R. 445.

7.—The interpleader has been compared to the intervention (q. v.) of the civil law, Gilb. For. Rom. 47. But there is a striking difference between them. The tertius in our interpleader in equity, professes to have no interest in the subject, and calls upon the parties who allege to have, to come forward and discuss their claims: the tertius of the civil law, on the other hand, asserts a right himself in the
subject, which two persons are at the time actually contesting, and insists upon his right to join in the discussion. 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. The requisites of a bill of this kind are, 1, it must admit the want of interest in the plaintiff in the subject-matter of dispute; 2, the plaintiff must annex an affidavit that there is no collusion between him and either of the parties; 3, the bill must contain an offer to bring the money into court, when there is any due; the want of which is a ground of demurrer, unless the money has actually been paid into court; Mitf. Eq. Pl. 49; Coop. Eq. Pl. 49; Barton, Suit in Eq. 47, note (1); 4, the plaintiff should state his own rights, and thereby negative any interest in the thing in controversy; and also should state the several claims of the opposite parties; a neglect on this subject is good cause of demurrer. Mitf. Eq. Pl. by Jeremy, 142; 2 Story on Eq. § 821; Story, Eq. Pl. 292; 5, the bill should also show that there are persons in esse, capable of interpleading, and setting up opposite claims. Coop. Eq. Pl. 46; 1 Mont. Eq. Pl. 234; Story, Eq. Pl. § 295; Story on Eq. § 821; 1 Ves. 245; 6, the bill should pray that the defendants may set forth their several titles, and may interplead, settle, and adjust their demands between themselves. The bill also generally prays an injunction to restrain the proceedings of the claimants, or either of them, at law; and, in this case, the bill should offer to bring the money into court; and the court will not in general act upon this part of the prayer, unless the money be actually brought into court, 4 Paige’s R. 384; 6 John. Ch. R. 445.

8.—Thirdly. A bill of certiorari is one praying the writ of certiorari to remove a cause from an inferior court of equity. Coop. Eq. 44. The requisites of this bill are that it state, 1st, the proceedings in the inferior court; 2d, the incompetency of such court, by suggesting that the cause is out of its jurisdiction; or that the witnesses live out of its jurisdiction; or are not able, by age or infirmity, or the distance of the place, to follow the suit there; or that, for some other cause, justice is not likely to be done; 3d, the bill must pray a writ of certiorari, to certify and remove the record and the cause to the superior court. Wyatt, Pr. Reg. 82; Harr. Ch. Pr. 49; Story, Eq. Pl. § 298. This bill is but little used in the United States.

9.—2d. Original bills not praying relief are of two kinds. First. Bills to secure evidence, which are bills to perpetuate the testimony of witnesses; or bills to examine witnesses de bene esse. These will be separately considered.

10.—1. A bill to perpetuate the testimony of witnesses, is one which prays leave to examine them, 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.

11.—In order to maintain such a bill, it is requisite to state on its face all the material facts to support the jurisdiction. It must state, 1, the subject-matter touching which the plaintiff is desirous of giving evidence, Rep. Temp. Finch, 391; 4 Madd. R. 8, 10. 2, It must show that the plaintiff has some interest in the subject-matter, which may be endangered if the testimony in support of it be lost; and a mere expectancy, however strong, is not sufficient. 6 Ves. 260; 1 Vern. 105; 15 Ves. 136; Mitf. Eq. Pl. by Jeremy, 51; Coop. Eq. Pl. 52. 3, It must state that the defendant has, or pretends to have, or that he claims an interest to contest the title of the plaintiff in the subject-matter of the proposed testimony. Coop. Pl. 56; Story, Eq. Pl. § 302. 4, It must exhibit some ground of necessity for perpetuating the evidence.
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.

14.—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; Hare on Disc. passim; Wagr. on Disc. passim.

15.—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.

16.—II. Bills not original. These may be classed as bills which are, 1st, an addition to, or continuance of an original bill; or, 2dly, those which are for the purpose of cross litigation, or of converting or suspending or reversing some decree or order of the court, or carrying it into execution. Coop. Eq. Pl. 62.

17.—1st. Of the first class are, I, A supplemental bill. This bill is occa-
sioned 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.

18.—It is proper to consider more minutely, 1, in what cases such a bill may be filed; 2, its particular requisites.

19.—1. A supplemental bill may be filed, 1st, whenever the imperfection in the original bill arises from the omission of some material fact, which existed before the filing of the bill, but the time has passed, in which it can be introduced into the bill by amendment, Mitf. Eq. Pl. 55, 61, 325; but leave of court must be obtained, before a bill which seeks to change the original structure of the bill, and to introduce a new and different case, can be filed; 2d, when a party necessary to the proceedings has been omitted, and cannot be admitted by an amendment. Mitf. Eq. Pl. 61; 6 Madd. R. 369; 4 John. Ch. R. 605. 3d, When after the court has decided upon the suit as framed, it appears necessary to bring some other matter before the court to obtain the full effect of the decision; or before a decision has been obtained, but after the parties are at issue upon the points in the original bill, and witnesses have been examined, (in which case, an amendment is not in general permitted,) some other point appears necessary to be made, or some additional discovery is found requisite. Mitf. Eq. Pl. by Jeremy, 55; Coop. Eq. Pl. 73; 3 Atk. R. 110; 1 Paige, R. 200. 4th, When new events, or new matters have occurred since the filing of the bill, Coop. Eq. Pl. 74; these events or matters, however, are confined to such as refer to and support the rights and interests already mentioned in the bill. Story, Eq. Pl. § 336.

20.—2. The supplemental bill must state the original bill, and the proceedings thereon, and when it is occasioned by an event which has occurred subsequently to the original bill, it must state that event, and the consequent alteration with regard to the parties. In general, the supplemental bill must pray that all defendants may appear and answer to the charges it contains. Mitf. Eq. Pl. by Jeremy, 75; Story, Eq. Pl. § 343.

21.—2. A bill of revivor, which 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; Story, Eq. Pl. § 354, et seq.

22.—3. A bill of revivor and supplement. This 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.

23.—2d. Among the second class may be placed, 1, A cross bill. This 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.

24.—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 completely 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.

25.—A cross bill should state the original bill, and the 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.

26.—A cross bill may be filed to answer the purpose of a plea *puis derrien 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. Mitfl. Pl. 75, 76; Coop. Eq. Pl. 85; 1 Harr. Ch. Pr. 135.

27.—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.

28.—2. A bill of review. 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.

29.—A bill of review must be either

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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. 94. See 3 Johns. R. 124.

30.—3. Bill to *impeach a decree* on the ground of fraud. When a decree has been obtained by fraud, it may be impeached by original bill without leave of court. As the principal point in issue, is the fraud in obtaining it, it must be established before the propriety of the decree can be investigated. The fraud must be clearly stated in the bill. The prayer must necessarily be varied according to the nature of the fraud used, and the extent of its operation in obtaining an improper decision of the court. When the decree to set aside a fraudulent decree has been obtained, the court will restore the parties to their former situation, whatever their rights may be. Mitfl. Eq. Pl. 84; Sto. Eq. Pl. § 426.

31.—4. Bill to *suspend a decree*. The operation of a decree may be suspended under special circumstances, or avoided by matter subsequent to the decree, upon a new bill for that purpose. See 1 Ch. Cas. 3, 61; 2 Ch. Cas. 8; Mitfl. Eq. Pl. 85, 86.

32.—5. Bill to carry a *decrees into execution*. This 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.

33.—6. Bills partaking of the qualities of some one or more of other bills. These are,

34.—First. Bill in the nature of a bill of revivor. 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 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. 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.

35.—Secondly. Bill in the nature of a supplemental bill. An original bill in the nature of a supplemental bill, is one filed when the interest of plaintiff or defendant, suing or defending, wholly determines, and the same property becomes vested in another person not claiming under him. Hinde’s Ch. Pr. 71; Blake’s Ch. Pr. 38. The principal difference between this and a supplemental bill, seems to be, that a supplemental bill is applicable to such cases only, where the same parties or the same interests remain before the court; whereas, an original bill in the nature of a supplemental bill, is properly applicable where new parties, with new interests, arising from events since the institution of the suit, are brought before the court. Coop. Eq. Pl. 75; Story, Eq. Pl. § 345.

36.—Thirdly. Bill in the nature of a bill of review. 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 has 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.

37.—There are also bills which derive their names from the object which the complainant has in view. These will be separately considered.

38.—1. Bill of foreclosure. 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. As to the persons who are to be made parties to a bill of foreclosure, see Story, Eq. Pl. § 199—202.

39.—2. Bill of information. A bill of information is a bill instituted in behalf of the state, or those whose rights are the object 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 right 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 not further concerned than as they are instructed and advised by those whose rights the state is called upon to protect and establish. Blake’s Ch. Pl. 50; see Harr. Ch. Pr. 151.

40.—3. Bill to marshal assets. A bill to marshal assets is one filed in favour of simple contract creditors, and of legatees, devises, and heirs, but not in favour of next of kin, to prevent specialty creditors from exhausting the personal estate. See Marshalling of Assets.

41.—4. Bill to marshal securities. 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.

42.—5. Bill for a new trial. This is a bill filed in a court of equity praying for an injunction after judgment at law, when there is any fact, which renders it against conscience to execute such judgment, and of which the injured party could not avail himself in a court of law; or, if he could have so availed himself, he was prevented by fraud or accident, unmixed with any fault or negligence of himself or his agents. Mitf. Pl. by Jeremy, 131; 2 Story, Eq. § 887. Of late years bills of this description are not countenanced. Id. ; 1 John. Ch. R. 432; 6 John. Ch. R. 479.

43.—6. Bill of peace. 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; 2 Story, Eq. Jurisd. § 852 to 860; Jeremy on Eq. Jurisd. 343; 2 John. Ch. R. 281; 8 Cranch, R. 426.

44.—There is another class of cases in which a bill of peace is now ordinarily applied; namely, when the plaintiff, after repeated and satisfactory trials, has established his right at law; and still he is in danger of new attempts to controvert it. In order to quiet the possession of the plaintiff; and to suppress future litigation of the right, courts of equity, under such circumstances, will interfere, and grant a perpetual injunction. 3 John. R. 529; 8 Cranch, R. 462; Mitf. Pl. by Jeremy, 143; 2 John. Ch. R. 281; Ed. on Inj. 356.

45.—7. Bill quia timet. 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 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 possession of it, to guaranty the same by a proper security, entered into 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; 2 Story, Eq. Jur. § 285 to 851.

BILL, merc. law, is an account containing the items of goods sold, or of work done, by one person against another. It differs from an account stated (q. v.) in this, that the latter is a bill approved and sanctioned by the debtor, whereas a bill is one made out by the creditor alone.

BILL of ADVENTURE, comm. 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 of ATTAINDER, legislation, punishment, is an act of the legislature by which one or more persons are declared to be attained, and their property confiscated.

2.—The constitution of the United States declares that no state shall pass any bill of attainder.

3.—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. Vide Attainder; Bill of Pains and Penalties.

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 CONFORMITY, is the name of a bill filed by an executor or administrator who finds the affairs of the deceased so much involved that he cannot safely administer the estate, except under the direction of a court of chancery. This bill is filed against the creditors generally for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets. 1 Story, Eq. Jur. 440.

BILL OF COST, 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.

BILL 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 McCard’s R. 12; 2 Pet. R. 318; 11 Pet. R. 257. 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; 4 Dall. R. xxiii.; Story, Const. §§ 1362 to 1364; 1 Scam. R. 87, 526.

2.—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; 5 Sm. & Marsh. 491; R. M. Charl. 151; 4 Pike, R. 44.

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 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.

2.—The bill of exception is authorized 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, "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 do so, 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.

3.—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.

4.—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, 165; 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; 13 John. R. 90; 1 Virg. Cas. 264; 2 Watts, R. 285; 2 Sumn. R. 19. 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. Statutory provisions have been made in several other states authorizing the taking of exceptions in criminal cases. 2 Virg. Cas. 60 and note; 14 Pick. R. 370; 4 Ham. R. 348; 6 Ham. R. 16; 7 Ham. R. 214; 1 Leigh, R. 598; 14 Wend. 546. See also 1 Halst. R. 405; 2 Penn. R. 637.

5.—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. 5 Watts, R. 69; 10 John. R. 312; 5 Monr. R. 177; 7 Wend. R. 34; 7 S. & R. 219; 11 S. & R. 267; 4 Pet. R. 102; Ala. R. 66; 1 Monr. 215; 11 Pet. R. 185; 6 Cowen, R. 189. In practice, however, the point is merely noted, at the time, and the bill is afterwards settled, 8 S. & R. 216. 11 S. & R. 270.

6.—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.

7.—4. The bill of exceptions, being 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., Graham's Pr., Tidd's Pr., Chit. Pr., Penna. Pr., Archibold's Pr., Sellon's Pr., in their several indexes, h. t.; Steph. Pl. 111; Bac. Ab. h. t.; 1 Phil. Ev. 214; 12 Vin. Ab. 262; Code of Pract. of Louisiana, art. 457, 8, 9; 6 Watts & Serg. 386, 397.

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. 406; 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.

2.—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.

3.—§ 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 indorssee, (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.

4.—Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and endorsed 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, 451; 1 Camp. 130; 19 Ves. 311. In 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.)

5.—§ 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 Par- dess. 344, 5.

6.—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. 154; 6 Cowen, 108; 1 Caines’s R. 381; 4 Mass. 245; 10 S. & R. 64; 14 Pet. R. 293; 1 McCord, 115; 2 Nott & McCord, 519; 9 Watts, R. 102. 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.

7.—3d, That the money be payable at all events, not depending on any contingency, either 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 Doug. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 575; 2 Barn. & Ald. 417.

8.—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 shall receive money,” or a promise “to be accountable,” or “responsible” for it, have been severally held to be sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod. 364.

9.—The several parts of a bill of exchange are, 1st, that it be properly dated as to place.

10.—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. 338.

11.—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.

12.—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.

13.—5th, Although it is proper for the drawer to name the place of payment, either in the body or superscription 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.

14.—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 plaîtra 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.

15.—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. 345. 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. 1b. The whole set make but one bill.

16.—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 Camp. 97. It may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.

17.—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. 305, n. 16; Salk. 135. 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.

18.—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.

19.—11th, It is usual to insert the words, value received, but it is implied that every bill and indorsement has been made for value received, as much as if it had been expressed in toto, verbis; 3 M. & S. 352; Beyl. 40, n. 83.

20.—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.

21.—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.

22.—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.

23.—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 surname, or by the full style of their firm, 2 Pardess. n. 335; Beawes, pl. 3; Chit. Bills, 186, 7.

24.—16th, The place of payment should be stated in the bill.

25.—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 ---".

26.—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 proté," 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, 185.

27.—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.

28.—§ 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; or by a 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. (Kity.) R. 458; 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.

29.—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 need not, 6 Med. 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. Rep. 557; 1 Day's R. 11; 3 John. Rep. 202; 4 John. R. 144; 1 Bay's Rep. 465; 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. 3 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. As to what will be considered a foreign or an inland bill, when part of the bill is made in one place and part in another, see 1 M. & S. 87; Gow, R. 56; S. C. 5 E. C. L. R. 460; 8 Taunt. 679; 4 E. C. L. R. 245; 5 Taunt. 529; 1 E. C. L. R. 179.

30.—§ 4. The indorsement. Vide articles, Indorsement; Indorser; Indorse.

31.—§ 5. The acceptance. Vide article, Acceptance.

32.—§ 6. The protest. Vide article, Protest.

Vide, generally, Chitty on Bills; Bayley on Bills; Byles on Bills; Murius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de Change; 4 Vin. Ab. 236; Bac. Ab., Merchant and Merchandise, M.; Com. Digest, Merchant; Dane's Ab. Index, h. t.; 1 Sup. to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1.

BILL OF CROSS ADVENTURE, a phrase used in French maritime law; it com-
prehends 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 where no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper.

2.—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. The bill of health is necessary whenever a ship sails from a suspected port; or when it is required at the port of destination. Holt's R. 167; 1 Bell's Com. 553, 5th ed.

3.—In Scotland the name of bill of health, has been given to an application made by an imprisoned debtor for relief under the Act of Sederunt. When the want of health of the prisoner requires it, the prisoner is indulged, under proper regulations, with such a degree of liberty as may be necessary to restore him. 2 Bell's Com. 549, 5th ed.

Bill of indictment, is a written accusation of one or more persons of a crime or misdemeanor, lawfully presented to a grand jury, convoked for their judgment whether there is sufficient evidence of the charge contained in such bill to put the accused on trial. It is returned to the court with an endorsement of true bill (q. v.) when the grand jury are satisfied that the accused ought to be tried; or ignorantus, when they are ignorant of any just cause to put the accused upon his trial.

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.

2.—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.

3.—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.

4.—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; Stoppage in transitu. Abbott on Shipping, 381; Bac. Ab. Merchant (L); 1 Bell's Com. 542, 5th ed.

Bills of Mortality. Accounts of births and deaths which have occurred in a certain district during a definite space of time.

Bill obligatory, contracts. It is a written obligation by 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 of pains and penalties. It
is a special act of the legislature which
inflicts a punishment, less than death,
upon persons supposed to be guilty of
high offences, such as treason and fel-
ony, without any conviction in the or-
dinary course of judicial proceedings.
2 Wood. Law Lect. 625. It differs
from a bill of attainder in this, that the
punishment inflicted by the latter is
death.

2.—The constitution of the United
States provides that “no bill of attai-
der shall be passed.” It has been
judicially said by the highest tribunal
in the land, the supreme court of the
United States, that “a bill of attainder
may affect the life of an individual, or
may confiscate his property, or both.”
6 Cranch, R. 138. In the sense of the
constitution, then, it seems, that bills of
attainder include bills of pains and pe-
nalties. Story, Const. § 1338. Vide
Attainder; Bills of Attainder.

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 trans-
mitted 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.

2.—In all actions in which the plain-
tiff declares generally, without specify-
ing 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 defend-
ant 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 ac-
count of the items of the demand, and
states in what manner they arose.
Metc. & Perk. Dig. h. t. For forms
see Lee’s Dict. of Pr. Particulars of
demand.

BILL OF PRIVILEGE, Eng. law. A
process issued out of the court
against an attorney, who is privileged
from arrest, instead of process demand-
ing bail. 3 Bl. Com. 289.

BILL OF PROOF. In the mayor’s
court, London, the claim made by a
third person to the subject-matter in
dispute between two others in a suit
there, is called bill of proof. It is some-
what similar to an intervention, (q. v.)
3 Chit. Comm. Law, 623; 2 Chit. Pr.
492; 1 Marsh, R. 233.

BILL OF SUFFRANCE, Eng. law, is the
name of a license granted at the custom
house to a merchant, authorising him
to trade from one English port to
another, without paying custom. Cunn.
L. D.

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 agree-
ment 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 agree-
ment is made by deed, a bill of sale
alters the property. Yelv. 196; Cro.
Jac. 270; 6 Co. 18.

2.—The act of Congress of January
14, 1793, 1 Story, L. U. S. 276, pro-
vides that when any ship or vessel
which shall have been registered pur-
suant to that act, or the act thereby
partially repealed, shall in whole or in
part be sold or transferred to a citizen
of the United States, in every such sale
or transfer, there shall be some instru-
ment or writing in the nature of a bill
of sale, which shall recite at length the
certificate of registry; otherwise the
said ship or vessel shall be incapable
to be registered anew.

3.—In England a distinction is made
between a bill of sale for the transfer of
a ship at sea, and one for the convey-
ance of a ship in the country, the former
is called a grand bill of sale, the latter,
simply, a bill of sale. In this country
there does not appear to be such a dis-
tinction. 4 Mass. 661.
4.—In general, the maritime law requires that the transfer of a ship should be evidenced by a bill of sale,
1 Mason, 306. But a contract to sell, accompanied by delivery of possession is sufficient. 8 Pick, 86; 16 Pick, 401;
16 Mass. 336; 7 John. 308. See, 4 Mason, 515; 4 John. 54; 16 Pet. 215; 2 Hall, 1; 1 Wash. C. C. 226.

Bill of Sight, English commercial law. When a merchant is ignorant of the real quantities or qualities of any goods consigned to him, so that he is unable to make a perfect entry of them, he is required to acquaint the collector or comptroller of the circumstances; and such officer is authorised, upon the importer or his agent making oath that he cannot for want of full information, make a perfect entry, to receive an entry by bill of sight, for the packages, by the best description which can be given, and to grant a warrant that the same be landed and examined by the importer in presence of the officer; and within three days after the goods have been so landed, the importer is required to make a perfect entry. See stat. 3 & 4 Will. 4, c. 52, § 24.

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.

2.—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 of store. English commercial law. A license granted by custom house officers to merchants, to carry such stores and provisions as are necessary for a voyage, free of duty. See stat. 3 & 4 Will. 4, c. 52.

Bill, true. A true bill is an indictment approved of by a grand jury. Vide Billa Vera; 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 medicate lingua. 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.

2. 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.); 8 John. 328; 2 Pen. 977; 2 Yerg. 546; 1 Ashm. 123; 10 Sergeant & Rawle, 416; 1 Massachusetts, 172; 1 Vermont, 69; whether a father has, by the common law, a right to bind out his child, during his minority without his consent, seems not to be settled. 2 Dall. 199; 7 Mass. 147; 1 Mason, 78; 1 Ashm. 267. Vide Apprentice; Father; Mother; Parent.

3.—The words to bind or binding, are also used to signify that a thing is responsible for an obligation or engagement; as, the judgment binds such an estate. Vide Lien.

To bind, or to bind over, crim. law. The act by which a magistrate or a court hold to bail a party accused of a crime or misdemeanors.

2.—A person accused may be bound
over to appear at a court having jurisdiction of the offence charged, to answer; or he may be bound over to be of good behaviour, (q. v.) or to keep the peace. See Surety of the Peace.

3.—On refusing to enter into the requisite recognizance, the accused may be committed to prison.

BIRRETUM or BIRRETUS. A cap or coif used formerly in England, by judges and sergeants at law. Spelm. h. t.; Cunn. Dict. Vide Coff.

BIRTH, is the act of being wholly brought into the world. The whole body must be detached from that of the mother, in order to make the birth complete. 5 C. & P. 329; S. C. 24 E. C. L. R. 314; 6 C. & P. 349; S. C. 25 E. C. L. R. 433; 5 C. & P. 539; 24 E. C. L. R. 446.

2.—But if a child be killed after it has wholly come forth from the body of the mother, but is still connected with her by means of the umbilical cord, it seems that such killing will be murder. 9 C. & P. 25; S. C. 38 E. C. L. R. 21; 7 C. & P. 814. Vide articles Breath; Dead Born; Gestation; Life; and 1 Beck’s Med. Jur. 478, et seq.; 1 Chit. Med. Jur. 438; 7 C. & P. 814; 1 Carr. & Marsh. 650; S. C. 41 E. C. L. R. 352; 9 C. & P. 25.

3.—It seems that unless the child be born alive, it is not properly a birth, but a miscarriage. 1 Chit. Pr. 35, note [z]. But see Russ. & Ry. C. C. 336.

BISAILE, domestic relations. A corruption of the French word basailez, the father of the grandfather or grandmother. In Latin he is called procurois. Inst. 3, 6, 3; Dig. 38, 10, 1, 5. Vide Aide.

BISHOP. An ecclesiastical officer who is the chief of the clergy of his diocese, and is the archbishop’s assistant. Happily for this country, these officers are not recognised by law. They derive all their authority from the churches over which they preside.

Bishop’s court, Eng. law. An ecclesiastical court held in the cathedral of each diocese, the judge of which is the bishop’s chancellor.

BISHOPRICK, eccl. law. The extent of country over which a bishop has jurisdiction; a see; a diocese.

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 calendes 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. Savig. Dr. Rom. § 192.

BLACK ACT, English 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. See Charit. R. 166.

BLACK BOOK OF THE ADMIRALT, is an ancient book compiled in the reign of Edw. III. It has always been deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron, at large; a view of the crimes and offences cognisable in the admiralty; ordinances and commentaries on matters of prize and maritime torts, injuries and contracts. 2 Gall. R. 404.

BLACK MAIL. When rents were reserved payable in work, grain, and the like, they were called reditus negri, or black mail, to distinguish them from white rents or blanch farms, or such as were paid in money. Vide Alba firma.

BLANCH FIRMES. The same as white rent, (q. v.)

BLANK. A space left in 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.
2.—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; 7 Verm. R. 522; 6 Verm. R. 411. Hence a blank left in an award for a name, was allowed to be supplied by parol proof. 2 Dall. 150. But where a creditor signs a deed of composition leaving the amount of his debt in blank, he binds himself to all existing debts. 1 B. & A. 101; S. C. 2 Stark. R. 195.

3.—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. A paper signed and sealed in blank, with verbal authority to fill it up, which is afterwards done, is void, unless afterwards delivered or acknowledged and adopted. 1 Yerg. 69, 149; 1 Hill, 267; 2 N. & M. 125; 2 Brock, 64; 2 Dev. 379; 1 Ham. 368; 6 Gill & John. 250; but see contra, 17 S. & R. 438. Lines ought to be drawn wherever there are blanks, to prevent anything from being inserted afterwards. 2 Valin’s Comm. 151.

4.—When the filling up blanks after the execution of deeds and other writings will vitiate them or not, see 3 Vin. Abr. 268; Moore, 547; Cro. Eliz. 620; 1 Vent. 185; 2 Lev. 35; 2 Ch. R. 187; 1 Anst. 225; 5 Mass. 535; 4 Binn. 1; 9 Cranch, 28; Yelv. 96; 2 Show. 161; 1 Saund. Pl. & Ev. 77; 4 B. & A. 672; Com. Dig. Fait, P 1; 4 Bing. 123; 2 Hill, Ab. c. 25, § 80; n. 33, § 54 and 72; 1 Ohio, R. 365; 4 Binn. R. 1; 6 Cowen, 118; Wright, 176.

BLANK BAR, pleading, is the same with that which is called a common 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.

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 he; or it is a false reflection uttered with a malicious design of reviling. God. Elym’s Pref. to Vol. 8, St. Tr.

2.—This offence has been enlarged in Pennsylvania, and perhaps most of the states by statutory provision. Vide Christianity; 11 Serg. & 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.

3.—In France before the 25th of September, 1791, it was a 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.

4.—The civil law forbids the crime of blasphemy, such, for example, as to swear by the hair or the head of God;
and it punished its violation with death. *Si enim contra homines factæ blasphemæ impune nit non relinquuntur; multo magis qui ipsum Deum blasphemant, digni sunt supplicia sustiner.* Nov. 77, ch. 1, § 1.

5.—In Spain it is blasphemy not only to speak against God and his government, but to utter injuries against the Virgin Mary and the saints, Senen Villanova Y Maños, Materia Criminal, forensè, Observ. 11, cap. 3, n. 1.

BLIND, one who is deprived of the faculty of seeing.

2.—Persons who are blind may enter into contracts and make wills like others. Carth. 53; Barn. 19, 23; 3 Leigh, R. 32. When an attesting witness becomes blind, his handwriting may be proved as if he were dead. 1 Stark. Ev. 341. But before proving his handwriting the witness must be produced, if within the jurisdiction of the court, and examined. Ld. Raym. 734; 1 M. & Rob. 258; 2 M. & Rob. 262.

BLOCKADE, international law, is an interception by one belligerent of communication, by any persons whatever, with a place occupied by another.

2.—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.

3.—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 have power, either expressly or by implication, to institute such siege or blockade. 6 Rob. R. 367.

4.—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 Cobbet’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 cruisers 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 indispensible he should have due notice of it; this information may be communicated to him in two 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.

4.—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
2.—This book, containing the original entries, is received in evidence, when supported by the oaths or affirmations of those who keep it. See Original entry.

BOARD. This word is used to designate all the magistrates, or all the managers or directors of any institution; as, the board of aldermen; the board of directors of the Bank of North America. The majority of the board have in general the power to perform the acts of the whole board, but sometimes they are restrained by their charters, and it requires a greater number to perform certain acts.

BOARD OF CIVIL AUTHORITY. A term used in Vermont. This board is composed of the selectmen and justices of the peace of their respective towns. They are authorised to abate taxes, and the like.

BOCKLAND, Eng. law, the name of an ancient alodial tenure, which was exempt from feudal services. Bac. Ab. Gavelkind, A.

BODY. A person.

2.—In practice, when the sheriff returns ceip corpus to a capias, the plaintiff may obtain a rule, before special bail has been entered, to bring in the body; and this must be done either by committing the defendant or entering special bail. See Dead Body.

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.

2.—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.

3.—When it refers to corporations the term body politic means that the members of such corporations 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; Co. Litt. 4 b.

**BONA, goods and chattels.** In the Roman law, it signifies every kind of property, real, personal and mixed, but chiefly it applied to real estates, chattels being chiefly distinguished by the words *effects, movables, &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.) means in the French law.

**BONA FIDE, in good faith.**

2.—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. 440; 12 John. R. 320; 2 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 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 Maximis, max. 37; Lane, 47; Plowd. 473; 9 Pick. R. 265; 12 Pick. R. 545; 8 Conn. R. 336; 10 Conn. R. 30; 3 Watts, R. 25; 5 Wend. R. 20, 566.

**BONA GESTURA, Good behaviour.**

**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.**

2.—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 worse for keeping. Bac. Ab. Executors, &c. (D); 11 Vin. Ab. 102; 1 Roll. Ab. 910; 5 Co. 9; Cro. Eliz. 518; Godb. 104; 3 Munf. R. 288; 1 Beat. R. 5, 14; Dane’s Ab. Index, h. t.

3.—In Pennsylania, 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.

**BONA VACANTIA, Goods to which no one claims a property, as, shipwrecks, treasure trove, &c.; vacant goods.**

**BONA WAVIATE.** Goods waived or thrown away by a thief in his flight for fear of being apprehended.

**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. But see 2 Shep. 185. If this be all, the bond is called a single one, *simplex obligatio;* but there is generally a condition added, and if the obligor does some particular act the obligation shall be void, or else shall remain in full force. 2 Bl. Com. 340. The word bond *ex vi termini* imports a sealed instrument. 2 S. & R. 502; 1 Bald. R. 129; 2 Porter, R. 19; 1 Blackf. R. 241; Harp. R. 434; 6 Verm. R. 40. See *Condition; Interest of money; Penalty.* 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.

2.—1. There must be parties to a bond, an obligor and 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.

3.—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.

4.—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.

5.—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, delivered, can be proved. 2 Bl. Comm. 304; Com. Dig. Fait, B. 3; 3 Call, 309. See Date.

6.—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, positively 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. Comm. 340; Bac. Abr. Conditions, K. L; Com. Dig. Conditions, D 1, D 2, D 3, D 7, D 8.

7.—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.

8.—2. A payment before the day is good. Co. Lit. 212, a; or before action brought, 10 Mass. 419; 11 Mass. 217.

9.—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. Abr. Conditions, P 3.

10.—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.

11.—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. Abr. Conditions, P 4. See Performance.

12.—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.

BOND TENANT, Eng. law. Copyholders and customary tenants are sometimes so called. Calth. on Copyr. 51, 54.

BONDAGE. Slavery.

BONIS NON AMOVENDIS. The name of a writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained, be not suffered to remove his goods till the error be tried and determined. Reg. Orig. 131.

BONO ET MALO. The name of a special writ of gaol delivery, which formerly issued of course for each particular prisoner. 4 Bl. Com. 270.

BONUS, contracts. A premium paid to a grantor or vender, 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.

2.—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. Sharsw. cont. of Story's L. U. S. 2223.

Book-land, Eng. law, was land, also called charter-land, which was held by deed under certain rents and fee services, and differed in nothing from free socage land, 2 Bl. Com. 90.

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.

2.—After booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of post-liminy in favour of the original owner, particularly when it has passed, bona fide, into the hands of a neutral. 1 Kent, Com. 110.

3.—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. 1 Mann. & Gran. 1; 39 Eng. C. L. R. 323.

Borough English, Eng. law. This, as the name imports, relates exclusively to the English law.

2.—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.

3.—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. Merl. Rep. mot Maineté.

Borrower, contracts, is he to whom a thing is lent at his request.

2.—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, 58; 5 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 10, p. 517; Domat, B. 1, t. 5, § 2, n. 10, 11, 12; Dig. 13, 6, 15; 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; 8 C. 3 Salk. 271.

3.—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.

4.—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.

5.—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.

6.—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, § 3, 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.

7.—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. Story on Bailm. ch. 4, § 268. See generally, Story on Bailm. ch. 4; Pothier, Prêt à Usage; 2 Kent, Com. 445-449; Vin. Abr. Bailment, B 6; Bac. Abr. Bailment; Civil Code of Louis. art. 2869-2876. Vide Lender.

BOSCAGE, Eng. Law, is that food which wood and trees yield to cattle.

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 a tenant is privileged to cut wood for these uses. 2 Bl. Com. 35; Woodl. 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.

2.—The contract of bottomry should specify the principal lent, and the rate of marine 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.

3.—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 Metc. & Perk. Dig. h. t.; Marsh. Inst. B. 2; Bac. Abr. Merchant, K; Com. Dig. Merchant, E 4; 3 Mass. 443; 8 Mass. 340; 4 Binn. 244; 4 Cranch, 328; 3 John. 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. Bottomy Bonds.

BOUGHT NOTE, contracts, is an instrument in writing, given by a broker to the seller of merchandize, in which is stated that the goods therein
mentioned have been sold for him. There appears, however, some confusion in the books, on the subject of these notes, sometimes they are called sold notes. 2 B. & Ald. 144; Blackb. on Sales, 89.

2.—This note is signed in the broker's name, as agent of the buyer and seller; and, if he has not exceeded his authority, the parties are thereby respectively bound. 1 Bell's Com. (5th ed.) 435; Holt's C. 170; Story on Agency, § 28; 9 B. & Cr. 78; 17 E. C. L. R. 335; 5 B. & Ad. 521; 1 N. R. 252; 1 Moo. & R. 368; Moo. & M. 43; 22 E. C. L. R. 243; 2 M. & W. 440; Moo. & M. 43; 6 A. & E. 486; 33 E. C. L. R. 122; 16 East, 62; Gow, R. 74; 1 Camp. R. 353; 4 Taunt. 209; 7 Ves. 265. Vide Sold Note.

BOUND BAILIFF. Sheriff's officers, who serve writs and make arrests; they are so called because they are bound to the sheriff for the due execution of their office.

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. 3 Toull. n. 171.

2.—Boundary also signifies stones or other materials inserted in the earth on the confines of two estates.

3.—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.

4.—An artificial boundary is one made by man.

5.—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 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.

6.—When a boundary, fixed and by mutual consent has been permitted to stand for twenty-one years, it cannot afterwards be disturbed. In accordance with this rule, it has been decided, that where town lots have been occupied up to a line fence between them, for more than twenty-one years, each party gained an incontrovertible right to the line thus established, and this whether either party knew of the adverse claim or not; and whether either party has more or less ground than was originally in the lot he owns. 9 Watts, R. 565. See Hov. Fr. c. 8, p. 239 to 234; 3 Sum. R. 170; Poth. Contr. de Société, prém. app. n. 231.

Bounty, is a sum of money or other thing, given, generally by the government, to certain persons, for some good they have done or are about to do to the public. As bounty upon the culture of silk; the bounty given to an enlisted soldier; and the like. It differs from a reward, which is generally applied to particular cases; and from a payment, as there is no contract on the part of the receiver of the bounty.

BOVATA TERRÆ. As much land as one ox can plough.

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.

2.—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 grandchildren, and so on. If, for example, it be desired to form the genealogical tree of Peter’s family, Peter will be 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 subdivide into 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 the use of the word branch in genealogy will be at once perceived.

BRANCHES. Those woody parts of trees which grow above the trunk.

2.—In general the owner of a tree is the owner of the branches; but when they grow beyond his line, and extend over the adjoining estate, the proprietor of the latter may cut them off as far as they grow over his land. Rolle’s R. 394; 3 Bulst. 198. See Root; Tree.

TO BRAND. An ancient mode of punishment, which was to inflict a mark on an offender with a hot iron. This barbarous punishment has been generally disused.

BRANDY. A spirituous liquor made of wine by distillation. See Stat. 22 Car. 2, c. 4.

BREACH, contract, torts, the violation of an obligation, engagement or duty; as a breach of covenant is the non-performance of a covenant; the breach of a promise is non-performance of a promise; the breach of a duty is the refusal or neglect to execute an office or public trust, according to law.

2.—In general the remedy for breaches of contracts, or quasi contracts, is by a civil action.

3.—A breach of the peace is an unlawful disturbance of the public peace or tranquility, whether the offence be against the public generally, or against the persons or property of individuals. An act of public indecorum is also a breach of the peace. The remedy for this offence is by indictment. Vide Peace.

4.—Breach of prison is the actual or constructive effraction of a prison by a prisoner and making his escape. 1 Russ. Cr. 378; 4 Bl. Com. 129; 2 Hawk. P. C. c. 18, s. 1; 7 Conn. 753. The remedy for this offence is by indictment. See Escape.

5.—Breach of trust is the willful misappropriation, by a trustee, of a thing which had been lawfully delivered to him in confidence.

6.—The distinction between larceny and a breach of trust is to be found chiefly in the terms or way in which the thing was taken originally into the party’s possession; and the rule seems to be, that whenever the article is obtained upon a fair contract, not for a mere temporary purpose, or by one who is in the employment of the deliverer, then the subsequent misappropriation is to be considered as an act of breach of trust. This rule is, however, subject to many nice distinctions. 15 S. & R. 93, 97. It has been adjudged that when the owner of goods parts with the possession for a particular purpose, and the person who receives them avowedly for that purpose, has at the time a fraudulent intention to make use of the possession as the means of converting the goods to his own use, and does so convert them, it is larceny; but if the owner part with the property, although fraudulent means have been used to obtain it, the act of conversion is not larceny. Ib. Alis. Princ. c. 12, p. 354.

BREACH, pleading, is that part of the declaration in which the violation of the defendant’s contract is stated.

2.—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 subtly to deceive and defraud the plaintiff, neglected and
refused to perform, or performed the particular act, contrary to the previous stipulation.

3.—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.

4.—The breach must obviously be governed by the nature 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.

5.—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.

BREAK DOWN. This phrase is applied to a witness who has made a statement of what he will swear to, and who, afterwards, when under the influence of his oath, contradicts or materially qualifies such previous statement. He is then said to break down. 3 Chit. Pr. 840.

BREAKING. Forcibly tearing asunder.

2.—In cases of burglary and house-breaking, the removal of any part of the house, or of the fastenings provided to secure it, with violence and a felonious intent, is called a breaking.

3.—The breaking is actual, as in the above case, or constructive, as when the burglar or house-breaker gains an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 2; 2 Chit. Cr. Law, 1092, 1 Hale, P. C. 553; Alis. Prin. 282, 291. In England it has been decided that if the sash of a window be partly open, but not sufficiently so to admit a person, the raising of it so as to admit a person is not a breaking of the house. 1 Moody, Cr. Cas. 178. No reasons are assigned. It is difficult to conceive how a window made in the usual way can be otherwise than partially open, and what will amount to a sufficient opening to render further opening not a breaking? But see 1 Moody, Cr. Cas. 327, 377; and Burglary.

BREAKING DOORS, is the act of forcibly removing the fastenings of a house, so that a person may enter.

2.—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 habeas facias. 5 Co. 93; Bae. Ab. Sheriff, N. 3.

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.

2.—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 it 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.

BREPHOTROPHI, civil law. Per-
sons appointed to take care of houses destined to receive foundlings. Clef des Lois Rom. mot Administrateurs.

BREVÉ, 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.

2.—Writs are divided into two kinds, namely; breve nominatum et innominatum. The former contains the time, place and demand very particularly; and therefore by such writ several lands by several titles cannot be demanded by the same writ. The latter contains only a general complaint, without expressing time, damages, &c.; as in trespass quare clausum fregit, &c., and therefore several lands coming to the defendant by several titles may be demanded in such writ. F. N. B. 209; 8 Co. 87; Kielw. 105; Dy. 145; 2 Brownl. 274; Bac. Ab. Actions in General, C. See Innominate contracts.

BREVÉ de recto. A writ of right, (q. v.)

BREVÉ testatum, feudal law. A declaration by a superior lord to his vassal, made in the presence of the pares curiae, by which he gave his consent to the grant of land, was so called. Ersk. Inst. B. 2, tit. 3, s. 17. This was made in writing, and had the operation of a deed. Dalr. Feud, Pr. 239.

BREVIA ANTICIPANTIA. This name is given to a number of writs, which are also called writs of prevention. See Quia Timet.

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.

BREVIIARIUM. The name of a code of laws of Alaric II., king of the Visigoths.

BREVIVUS ET ROTULIS LIBERANDIS, Eng. law. A writ or man-

date directed to a sheriff, commanding him to deliver to his successor the county and the appurtenances, with all the briefs, rolls, remembrancers, and all other things belonging to his office.

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. 67, s. 2; 4 Bl. Com. 139; 1 Russ. Cr. 156.

2.—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 positive, while that of the latter might be called negative bribery.

3.—An attempt to bribe, though unsuccessful, has been held to be criminal, and the offender may be indicted. 2 Dall. 384; 4 Burr. 2500; 3 Inst. 147; 2 Campb. R. 229; 2 Wash. 88; 1 Virg. Cas. 138; 2 Virg. Cas. 460.

BRIBOUR. One that pilfers other men's goods; a thief. See 28 E. 2, c. 1.

BRIDGE, is a building constructed over a river, creek, or other stream, or over a ditch or other place, in order to facilitate the passage over the same. 3 Harr. 108.

2.—Bridges are of several kinds, public and private. Public bridges may be divided into, 1st, those which belong to the public, as state, county, or township bridges, over which all the people have a right to pass, with or without paying toll; these are built by public authority at the public ex-
pense, either of the state itself, or a district or part of the state.

3.—2dly, Those which have been built by companies, or at the expense of private individuals, and over which all the people have a right to pass, on the payment of a toll fixed by law; 3dly, those which have been built by private individuals, and which have been dedicated to public uses. 2 East, R. 356; 5 Burr. R. 2594; 2 Bl. R. 685; 1 Camp. R. 262, n.; 2 M. & S. 262.

4.—A private bridge is one erected for the use of one or more private persons; such a bridge will not be considered a public bridge although it may be occasionally used by the public. 12 East, R. 203, 4. Vide 7 Pick. R. 344; 11 Pet. R. 539; 7 N. H. Rep. 59; 1 Pick. R. 432; 4 John. Ch. R. 150.

BRIEF, eccl. law. The name of a kind of papal rescript. Briefs are writings sealed with wax, and differ in this respect from bullets (q. v.) which are sealed with lead. They are so called, because they usually are comprised in short and compendious writings. Ayl. Parerg. 132.

BRIEF, practice, is a detailed and abridged statement of a party’s case.

2.—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. Perspicuity 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.

3.—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.

2.—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 noticed, and all covenants should also be particularly inserted.

3.—A vendor of an interest in realty ought to have his title investigated, abstracted, and evidence in proof of it ready to be produced and established before he sells; for if he sell with a confused title, or without being ready to produce deeds and vouchers, he must be at the expense of clearing it. 1 Chit. Pr. 304, 463.

BRINGING MONEY INTO COURT, is the act of depositing money in the hands of the proper officer of the court, for the purpose of satisfying a debt or duty.

2.—Whenever a tender of money is pleaded, and the debt is not discharged by the tender and a refusal, money may be brought into court, without asking leave of the court; indeed, in such cases the money must be brought into court in order to have the benefit of the tender. In other cases, leave must be had, before money can be brought into court.

3.—In general, if the money brought into court is sufficient to satisfy the plaintiff’s claim, he shall not recover costs. See Bac. Ab. Tender, &c.

BROCAGE, contracts, the wages or commissions of a broker; his occu-
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.

2. — A broker is, for some purposes, treated as the agent of both parties; but in the first place, he is deemed the agent only of the person by whom he is originally employed; and does not become the agent of the other until the bargain or contract has been definitely settled, as to its terms, between the principals. Paley, Ag. on Lloyd, 171, note (p); 1 Y. & J. 387.

3. There are several kinds of brokers, as, Exchange Brokers, such as negotiate in all matters of exchange with foreign countries.

4. — Ship Brokers, those who transact business between the owners of vessels, and the merchants who send cargoes.

5. — Insurance Brokers, those who manage the concerns both of the insurer and the insured.

6. — Pawn Brokers, those who lend money upon goods to necessitous people at interest.

7. — Stock Brokers, those employed to buy and sell shares of stocks in corporations and companies. Vide Story on Ag. § 28 to 32; T. L. h. t.; Maly. Lex Mer. 143; 2 H. Bl. 555; 4 Berr. R. 2103; 4 Kent, Com. 622, note (d), 3d ed.; Liv. on Ag. Index, h. t.; Chit. Com. L. Index, h. t., and articles Agency; Agent; Bought note; Factor; Sold note.

BROTHERS, crim. law. Bawdy houses, the common habitation of prostitutes; such places have always been common nuisances in the United States, and the keepers of them may be fined and imprisoned.

2. — Till the time of Henry VIII., they were licensed in England, when Vol. 1. — 27

that lascivious prince suppressed them. Vide 2 Inst. 205, 6; for the history of these pernicious places, see Merl. Répért. mot Bordel; Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 5, § 1.

BROTHER, domest. relat. He who is born from the same father and mother with another, or of one of them only.

2. — Brothers are of the whole blood when they are born of the same father and mother, and of the half blood, when they are the issue of one of them only.

3. — In the civil law, when they are the children of the same father and mother, they are called brothers 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. Répért. 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.

BUBBLE ACT, Eng. law. The name given to the statute 6 Geo. I, c. 18, which was passed in 1719, and was intended "for restraining several extravagant and unwarrantable practices therein mentioned." See 2 P. Wms. 210.
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. 55; 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 accessory 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; 1 Metc. 258.

BULK, contracts, is said to be merchandise which is neither counted, weighed nor measured.

2.—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.

2.—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. Bulls are written in Latin, in a round and Gothic hand. Ayl. Par. 132; Ayl. Pand. 21; Mer. Rép. h. t.

BULLETIN. An official account of public transactions on matters of importance. In France, it is the registry of the laws.

BULLION, in its usual acceptation, is uncoined gold or silver, in bars, plates, or other masses. 1 East, P. C. 188.

2.—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, 1825, 4 Sharsw. cont. of Story’s Laws U. S. 2120; Act of June 28, 1834, Id. 2370; 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.

BURDEN OF PROOF. This phrase is employed to signify the duty of proving the facts in dispute on an issue raised between the parties in a cause.

2.—The burden of proof always lies on the party who takes the affirmative in pleading. 1 Mass. 71, 335; 4 Mass. 593; 9 Pick. 39.

3.—In criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof rests on the prosecutor, unless a different provision is expressly made by statute. 12 Wheat. 460. See Onus probandi.

BUREAU, a French word which literally means a large writing table. 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. Rép. h. t.

BUREAUCRACY. The abuse of official influence in the affairs of government; corruption. This word has lately been adopted to denote that those persons who are employed in bureau abuse of their authority by intrigue to promote their own benefit or that of friends, rather than the public good. The word is derived from the French.

BURGAGE, Eng. law. It is a species of tenure in socage; it is where the king or other person is lord
of an ancient borough, in which the tenements are held by a rent certain. 2 Bl. Com. 82.

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; Coxe, R. 441; 7 Mass. Rep. 247.

2. 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.

3. 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 revertendi, 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.

4.—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.

5.—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. According to the Scotch law, entering a house by means of the true key, while in the door, or when it had been stolen, is a breaking. Alis. Pr. Cr. Law, 284. Constructive breakings are such when the burglar 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.

6.—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* 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.

**BURIAL.** The act of interring the dead.

2.—No burial is lawful unless made in conformity with the local regulations; and when a dead body has been found it cannot be lawfully buried until the coroner has holden an inquest over it.

**BURNING,** vide *Accident; Arson; Fire, accidental.*

**BURYING-GROUND,** a place appropriated for depositing the dead; a cemetery. In Massachusetts, burying-grounds cannot be appropriated to roads without the consent of the owners. Massachusetts Revised 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; the 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, 2150½; Indiana, Ohio, Mississippi and Missouri, where it contains 2150½ cubic inches. Dana’s Ab. c. 211, a. 12, s. 4.

**BUSINESS HOURS.** The time of the day during which business is transacted. In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the evening, except when the paper is due at or from a banker. 2 Hill, N. Y. 3 R. 835. See 3 Shepl. 67; 5 Shepl. 230.

**BUTT.** A measure of capacity, equal to one hundred and eight gallons. See *Measure.*

**TO BUY.** To purchase. Vide *Sale.*

**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 dispossessed.

2. When a deed is made by one who, though having a legal right to land, is at the time of the conveyance dispossessed, 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 dispossessed cannot convey, except by way of mortgage. But the statute does not apply to judicial sales. 6 Wend. 224; see 4 Wend. 474; 2 John. Cas. 58; 3 Cow. 89; 5 Wend. 532; 5 Cow. 74; 13 John. 466; 8 Wend. 629; 7 Wend. 53, 152; 11 Wend. 442; 13 John. 289. In North Carolina and South Carolina, a conveyance by a dispossessor is illegal; the seller forfeits the land, and the buyer its value. In Kentucky
such sale is void. 1 Dana, R. 566. But when the deeds were made since the passage of the statute of 1798, the grantee might, under that act, sue for land conveyed to him, which was adversely possessed by another, as the grantor might have done before. The statute rendered transfers valid to pass the title. 2 Litt. 393; 1 Wheat. 292; 2 Litt. 225; 3 Dana, 309. The statute of 1824, "to revive and amend the chancery and maintenance law," forbids the buying of titles where there is an adverse possession. See 3 J. J. Marsh. 549; 2 Dana, 374; 6 J. J. Marsh. 490, 554. 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.

3.—The Roman law forbade the sale of a right or thing in litigation. Code, 8, 37, 2.

BY ESTIMATION, contracts. In sales of land it not unfrequently occurs that the property is said to 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 by 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. Rep. 106; 1 Serg. & Rawle, R. 166; 1 Yeates, R. 322; 2 John. R. 37; 5 John. R. 508; 15 John. R. 471; 1 Caines, R. 493; 3 Mass. Rep. 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. See Suggd. Vend. 231 to 236; Wolff, Inst. § 658; and the cases cited under the article Constitution; More or less; Subdivision.

BY-LAWS, are rules and ordinances made by a corporation for its own government.

2.—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.

3.—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; Wille. on Corp. ch. 2, s. 3; Bac. Ab. h. t.; 4 Vin. Ab. 301; Dane's Ab. Index, h. t.; Com. Dig. h. t.; and Id. vol. viii. h. t.

BY THE BYE, Eng. law. A declaration may be filed without a new process or writ, when the defendant is in court in another case, by the plaintiff in that case having filed common bail for him; the declaration thus filed is called a declaration by the bye. 1 Crompt. 96; Lee's Dict. of Pr. Declaration IV.
CABINET. Certain officers who taken collectively make a board, as, the president's cabinet, which is usually composed of the secretary of state, the secretary of the treasury, the attorney general and some others.

2.—These officers are the advisers of the president.

CADASTRE. A term derived from the French, which has been adopted in Louisiana, and which signifies the official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 3 Amer. St. Papers, 679; 12 Pet. 428, n.

CADET. A younger brother; one trained up for the army or navy.

CALENDAR. An almanac. 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 nonsuited, 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.

CALLS. This name is given to instalments which are demanded by directors or managers of corporations, and which are due by subscribers to the stock of such corporations.

CALUMNIATORS, civil law, are persons who accuse others of having committed crimes, whom they know to be innocent. Code, 9, 46, 9.

CAMBIST. A person skilled in exchange; one who deals or trades in promissory notes or bills of exchange.

CAMERA STELLATA, Eng. law, the court of the Star Chamber, now abolished.

CAMPARTUM. A part or portion of a larger field or ground, which would otherwise be in gross or common. Vide Champerty.

CANAL. A trench dug for leading water in a particular direction, and confining it.

2.—Canals can be dug only by authority of the legislature, and are generally protected by the law which authorises their being made. Various points have arisen under numerous laws authorising the construction of canals which have been decided in cases reported in 1 Yeates, 430; 1 Binn. 70; 1 Pennysl. 462; 2 Pennysl. 517; 7 Mass. 169; 1 Sumn. 46; 20 Johns. 103, 735; 2 Johns. 283; 7 John. Ch. 315; 1 Wend. 474; 5 Wend. 166; 8 Wend. 469; 4 Wend. 667; 6 Cowen, 698; 7 Cowen, 526; 4 Hamm. 253; 5 Hamm. 141, 391; 6 Hamm. 126; 1 N. H. Rep. 339; See River.

CANCELLARIA CURIA. The name formerly given to the court of chancery.

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.

2.—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. 459; 2 Bl. R. 1043; 2 Nott & McCord, 272; Whart. Dig. Wills, c.; 4 Mass. 462. When one duplicate has been cancelled, animo revocandi, it is the cancellation of both. 2 Lee, Ecc. R. 332.

3.—But the mere act of cancelling a will is nothing, 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 Adams’s Rep. 52; 9 Mass. 307; 5 Conn. 262; 4 Wend. 474; 4 Wend. 585; 1 Harr. & McH. 162; 4 Conn. 550; 8 Verm. 373; 1 N. H. Rep. 1; 4 N. H. Rep. 191; 2 Eccl. Rep. 23.

4.—As to the effect of cancelling a deed, which has not been recorded, see 1 Adams’s Rep. 1; Palm. 403; Latch. 226; Gibb. Law Ev. 109, 110; 2 H. Bl. 263; 2 Johns. 87; 1 Greenl. R. 78; 10 Mass. 403; 9 Pick. 105; 4 N. H. Rep. 191; Greenl. Ev. § 265; 5 Conn. 262; 4 Conn. 450; 5 Conn. 86; 2 John. R. 84; 4 Yerg. 375; 6 Mass. 24; 11 Mass. 357; 2 Curt. Ecc. R. 458.

CANDIDATE. One who offers himself or is offered by others for an office.

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 persons. See Law, Canon.

CANONIST. One well versed in the canon or ecclesiastical law.

CANNON SHOT, scar, is the distance which a cannon will throw a ball.

2.—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; 3 Hagg. Adm. R. 257. This part of the sea, being considered as part of the adjacent territory, it follows that magistrates can cause the orders of their governments to be executed there. Three miles is considered as the greatest distance that the force of gunpowder can carry a bomb or a ball. Azun. Mar. Law, part 2, c. 2, art. 2, § 15; Bouch. Inst. n. 1848. The anonymous author of the poem, del della Natura, lib. 5, expresses this idea in the following lines:

Tanta s'avanza in mar questo dominio,  
Quante può d'antemurale e guardia,  

Findove può da terra in mar vibrandosi  
Cores di cavò bronzo accesso fulmine.

Far as the sovereign can defend his sway,  
Extends his empire o'er the watery way;  
The shot sent thundering to the liquid plain,  
Assigns the limits of his just domain.

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.

2.—All laws which regulate the capacity of persons to contract, are considered personal laws; such are the laws which relate to minority and majority; to the powers of guardians or parents; to the powers or disabilities caused by coverture. The law of the domicil generally governs in cases of this kind. Burge on Sureties, 89.

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 lands and tenements. The writs which bear this name are of two kinds, namely, cape magnum, or grand cape; and cape parvum, or petit cape.

CAPERS, are vessels of war owned by private persons, and differ from privateers (q. v.) only in respect of their size; they being smaller. Bea. Lex. Mer. 220.

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.

2.—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 lately in Pennsylvania, to endorse on the capias, "no bail required;" in which case, after the defendant has been arrested, he is required to endorse on the writ, "I authorize 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 given 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.

2.—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 delevendo, 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.

3.—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. 806; 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., 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 uti lugatum, in English practice;** the capias uti lugatum is general or special; the former against the person only, the latter against the person, lands and goods.

2.—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 uti lugatum, or ut.

3.—The general writ of capias uti lugatum commands the sheriff to take the defendant, so that he have him before the king on a general return day, whereassoever, &c., to do and receive what the court shall consider of him.

4.—The special capias uti lugatum, 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 Withernam, practice,** is a writ issued after a return of elongata or elongin has been made to a writ of returno habendo, commanding the sheriff to take so many of the distrainer’s goods by way of reprisa] as will equal the goods mentioned in the returno habendo. 2 Inst. 140; F. N. B. 68; and see form in 2 Sell. Pr. 169.

**Capiatur.** The name of a writ which was issued to levy a fine due to the king, imposed upon an offender for a grave offence. Bac. Ab. Fines and

Amerecements, in prin. See Judgment of Capiatur.

**CAPITA.** In the distribution of an intestate’s personal estate a person who claims to receive a share in his own right, is said to claim per capita, in contradistinction to those who claim per stirpes. See 1 Rop. on Leg. 126, 130; Per Capita; Per Stirpes; Stirpes.

**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.

2.—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.

3.—It signifies money put out at interest.

4.—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 North America.

**Capital Crime, is one for the punishment of which death is inflicted, which punishment is called capital punishment.** Dane’s Ab. Index, h. t.

2.—The subject of capital punishment has occupied the attention of the most enlightened men for a long time, particularly since the middle of the last century; and none deserves to be more carefully investigated. The right of punishing its members by society cannot be denied; but how far that right is to extend seems not to be agreed upon. Baccaria in his celebrated treatise of crimes and punishments, contends with zeal, that the punishment of death ought not to be inflicted in times of peace; and only when it is necessary to support the laws, and they can be supported in no other manner, at other times. § 28.

3.—It is not within the plan of this work to examine the question, whether the punishment is allowed by the natu-
r al law. The principal arguments for and against it are here given.

4.—1. The arguments used in favour of the abolition of capital punishment, are,

5.—1st. That existence is a right which men hold from God, and which society in a body can no more deprive them of, than a member of that society can do so, because society is governed by the immutable laws of humanity.

6.—2d. That, even should the right be admitted, this is a restraint badly selected, which does not attain its end, death being less dreaded, than either solitary confinement for life, or the performance of hard labour and disgrace for life.

7.—3d. That the infliction of the punishment does not prevent crimes, any more than other less severe but longer punishments.

8.—4th. That as a public example, this punishment is only a barbarous show, better calculated to accustom mankind to the contemplation of bloodshed, than to restrain them.

9.—5th. That the law by taking life, when it is unnecessary for the safety of society, must act by some other motive; this can be no other than revenge. To the extent the law punishes an individual beyond what is requisite for the preservation of society, and the restoration of the offender, is cruel and barbarous. The law to prevent a barbarous act, commits one of the same kind; it kills one of the members of society, to convince the others that killing is unlawful.

10.—6th. That by depriving a man of life, society is deprived of the benefits which he is able to confer upon it; for, according to the vulgar phrase, a man hanged is good for nothing.

11.—7th. That experience has proved that offences which were formerly punished with death, have not increased since the punishment has been changed to a milder one.

12.—2. The arguments which have been urged on the other side, are,

13.—1st. That all that humanity commands to legislators is that they should inflict only necessary and useful punishments; and that if they keep within these bounds, the law may permit an extreme remedy, even the punishment of death, when it is requisite for the safety of society.

14.—2d. That, whatever be said to the contrary, this punishment is more repulsive than any other, as life is esteemed above all things, and death is considered as the greatest of evils, particularly when it is accompanied by infamy.

15.—3d. That restrained, as this punishment ought to be, to the greatest crimes, it can never lose its efficacy as an example, nor harden the multitude by the frequency of executions.

16.—4th. That unless this punishment be placed at the top of the scale of punishment, criminals will always kill, when they can, while committing an inferior crime, as the punishment will be increased only by a more protracted imprisonment, where they still will hope for a pardon or an escape.

17.—5th. The essays which have been made by two countries at least, (Russia, under the reign of Elizabeth, and Tuscany under the reign of Leopold, where the punishment of death was abolished,) have proved unsuccessful, as that punishment has been restored in both.

18.—Arguments on theological grounds have also been advanced on both sides.


CAPITATION. A poll tax; an imposition which is yearly laid on each person according to his estate and ability.

2.—The constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therefore before directed to be taken." Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317.
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.

CAPITULARIES. The Capitularia or Capitularies, was a code of laws promulgated by Childeberht, Clotaire, Carloman, Pepin, Charlemagne and other kings. It was so called from the small chapters or heads into which they were divided. The edition by Baluze, published in 1677, is said to be the best.

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.

2.—On surrender by capitulation, all the property of the inhabitants protected by the articles, is considered by the law of nations as neutral, and not subject to capture on the high seas, by the belligerent or its ally. 2 Dall.

CAPITULATION, *civ. law*, is an agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolff, § 989.

CAPTAIN or SEA CAPTAIN, *mar. law*. The name given to the master or commander of a vessel. He is known in this country very generally by the name of master, (q. v.) He is also frequently denominated patron in foreign laws and books.

2.—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.

3.—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 the 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. But he is not required to violate good faith, nor employ fraud even with an enemy. 3 Cranch, 242.

4.—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 they 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 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.

5.—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, 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.

6.—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. In such cases, although contracting within the ordinary scope of his powers and duties, he is generally responsible as well as the owner. This is the established rule of the maritime law, introduced in favour of commerce; it has been recognized and adopted by the commercial nations of Europe, and is derived from the civil or Roman law. Abbott, Ship. 90; Story, Ag. § 116 to
123, § 294; Paley, Ag. by Lloyd, 244; 1 Liverm. Ag. 70; Poth. Ob. n. 82; Ersk. Inst. 3, 3, 43; Dig. 4, 9, 1; Poth. Pand. lib. 14, tit. 1; 3 Summ. R. 228. See Bell’s Com. 505, 5th ed.

CAPTATION, *French law*, is the act of one who succeeds in controlling the will of another, so as to become master of it. It is generally taken in a bad sense.

2.—Captation takes place by those demonstrations of attachment and friendship, by those assiduous attentions, by those services and officious little presents which are usual among friends, and by all those means which ordinarily render us agreeable to others. When those little attentions are unattended by deceit or fraud they are perfectly fair, and the captation is lawful; but if under the mask of friendship, fraud is the object, and means are used to deceive the person with whom you are connected, then the captation is fraudulent, and the acts procured by the captator are void. See *Influence*.

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. As to the forms and requisites of captions, see 1 Murph. 281; 8 Yerg. 514; 4 Iredell, 113; 6 Miss. 469; 1 Scam. 456; 5 How. Mis. 20; 6 Blackf. 299; 1 Hawks, 354; 1 Brev. 169.

2.—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 Dacre’s Ab. Index, h. t.

3.—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.) Although he has lost his liberty, a captive does not by his captivity lose his civil rights.

CAPTOR, *war*, is one who has taken property from an enemy; this term is also employed to designate one who has taken an enemy.

2.—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.

3.—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. See 2 Gall. 374; 1 Gall. 274; 1 Pet. Adm. Dec. 116; 1 Mason, R. 14.

CAPTURE, *war*, is the taking of property by one belligerent from another.

2.—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.

3.—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 the 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 Woddes. 435 to 457; 2 Caines’s C. Err. 155; 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 Gambling.

CARGO, mar. law. The entire load of a ship or other vessel. Abb. on Sh. Index. h. t.; 1 Dall. 197; Merl. Rep. h. t. 2 Gill & John. 136. This term is usually applied to goods only, and does not include human beings or animals. 1 Phill. Ins. 155; 4 Pick. 429. But in a more extensive and less technical sense, it includes persons, thus we say a cargo of emigrants. See 7 Mann. & Gr. 729, 744.

CARNAL KNOWLEDGE, crim. law. This phrase is used to signify a sexual connexion; as, rape is the carnal knowledge of a woman, &c. See Rape.

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 circumlocation will answer the same purpose as these words. Vide Renvished, 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 three and one-sixth grains, in diamonds, and the like. Jac. L. Diet. See Weight.

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.

2.—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. 757; Selw. N. P. 382, n.; 1 Wend. R. 272; 1 Hayw. R. 14; 2 Dana, R. 430; 6 Taunt. 577; Jones, Balm. 121; Story on Balm. § 495. But in Gordon v. Hutchinson, 1 Watts & Serg. 285, it was held that a wagner who carries goods for hire, contracts the responsibility of a common carrier, whether transportation be his principal and direct business, or only an occasional and incidental employment.

3.—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; 1 Hayw. R. 14; 1 Wend. 272; 2 Dana, R. 430.

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 held to be felonies. 2 Chit. Cr. Law, 919. Vide 3 Inst, 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 sev enrance of the possession, it is not a complete carrying away. 2 East, P. C. 556; 1 Hale, 508; 2 Russ. on Cr. 96. Vide Invito Domino; Larceny; Robbery; Taking.

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.

2.—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. But the blank must be filled up by the very person authorised. 6 Mart. L. R. 707. Vide Ch. on Bills, 70; 2 Penna. R. 200. Vide Blank.

CARTEL, war. An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

2.—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, ammunit ions, or implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The service 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. Rep. h.t.; Dane's Ab. c, 40, a, 6, § 7; Pet. C. C. R. 106; 3 C. Rob. 141; 6 C. Rob. 336; 1 Dods. R. 60.

CARTMEN, are persons who carry goods and merchandise in carts, either for great or short distances for hire.

2.—Cartmen who undertake to carry goods for hire as a common employment, are common carriers. Story on Bailm. § 496; and see 2 Wend. 327; 2 N. & M. 88; 1 Murph. 417; 2 Bailey, 421; 2 Verm. 92; 1 McCord, 444; Bac. Ab. Carriers, A.

CASE, practice, is a contested question before a court of justice; a suit or action; a cause. 9 Wheat. 738.

Case, remedies, is this the name of an action in very general use, which lies where a party sues for damages for any wrong or cause of complaint to which covenant or trespass will not lie. Steph. Pl. 13; 3 Woodd. 167; Ham. N. P. 1. Vide Writ of trespass on the case. In its most comprehensive signification, case, includes assumpsit as well as an action in form ex delicto; but when simply mentioned, it is usually understood to mean an action in form ex delicto. 7 T. R. 36.

2.—An action on the case lies to recover damages for torts not committed with force actual or implied, or having been occasioned by force, where the matter affected was not tangible, or where the injury was not immediate but consequential; 11 Mass. 59, 137; 1 Yeates, 556; 6 S. & R. 348; 12 S. & R. 210; 18 John. 257; 19 John. 381; 6 Call. 44; 2 Dana, 378; 1 Marsh. 194; 2 H. & M. 423; Harper, 113; Coxe, 339; or where the interest in the property was only in reversion. 8 Pick. 235; 7 Conn. 328; 2 Green, 8; 1 John. 511; 3 Hawks, 246; 2 Murph. 61; 2 N. H. Rep. 430. In these several cases trespass cannot be sustained. 4 T. R. 489; 7 T. R. 9.

Case is also the proper remedy for a wrongful act done under legal process regularly issuing from a court of competent jurisdiction. 2 Conn. 700; 11 Mass. 500; 6 Greenl. 421; 1 Bailey, 441, 457; 9 Conn. 141; 2 Litt. 234; 3 Conn. 537; 3 Gill &

3.—It will be proper to consider, 1, in what case this action lies; 2, the pleadings; 3, the evidence; 4, the judgment.

4.—§ 1. This action lies for injuries, 1, to the absolute rights of persons; 2, to the relative rights of persons; 3, to personal property; 4, to real property.

5.—1. When the injury has been done to the absolute rights of persons by an act not immediate but consequent, as in the case of special damages arising from a public nuisance, Willes, 71 to 74; or where an encumbrance had been placed in a public street, and the plaintiff passing there received an injury; or for a malicious prosecution. See Malicious prosecution.

6.—2. For injuries to the relative rights, as for enticing away an infant child, per quod servitium amissit, 4 Litt. 25; for criminal conversation, seducing or harbouring wives; debauching daughters,—but in this case the daughter must live with her father as his servant, see Seduction,—or enticing away or harbouring apprentices or servants. 1 Chit. Pl. 137; 2 Chit. Plead. 313, 319; when the seduction takes place in the husband or father’s house, he may, at his election, have trespass or case. 6 Munf. 587; Gilmer, 33; but when the injury is done in the house of another, case is the proper remedy. 5 Greenl. 546.

7.—3. When the injury to personal property is without force and not immediate, but consequent, or when the plaintiff’s right to it is in reversion, as, where property is injured by a third person while in the hands of a hirer, 3 Camp. 157; 2 Murph. 62; 3 Hawks, 246, case is the proper remedy. 3 East, 593; Ld. Raym. 1309; Str. 634; 1 Chit. Pl. 138.

8.—4. When the real property which has been injured is corporeal, where the injury is not immediate but consequential, as for example, putting a spout so near the plaintiff’s land, as that the water runs upon it; 1 Chit. Pl. 126, 141; Str. 634; or where the plaintiff’s property is only in reversion. When the injury has been done to incorporeal rights, as for obstructing a private way, or disturbing a party in the use of a pew, or for injury to a franchise, as a ferry, and the like, case is the proper remedy. 1 Chit. Pl. 143.

9.—§ 2. The declaration in case, technically so called, differs from a declaration in trespass, chiefly in this, that in case it must not in general state the injury to have been committed vi et armis, 3 Conn. 64; see 2 Ham. 169; 11 Mass. 57; Coxe, 339; after verdict, the words “with force and arms” will be rejected as surplusage. Harp. 122; and it ought not to conclude contra pacem. Com. Dig. Action on the case, C 3; the plea is usually the general issue, not guilty.

10.—§ 3. Any matter may, in general, be given in evidence, under the plea of not guilty, except the statute of limitations. In cases of slander and a few other instances, however, this cannot be done. 1 Saund. 130, n. 1; Willes, 20. When the plaintiff declares in case, with averments appropriate to that form of action, and the evidence shows that the injury was trespass; or when he declares in trespass, and the evidence proves an injury for which case will lie, and not trespass, the defendant should be acquitted by the jury, or the plaintiff should be nonsuited. 5 Mass. 560; 16 Mass. 451; Coxe, 339; 3 John. 468.

11.—§ 4. The judgment is, that the plaintiff recover a sum of money, ascertained by a jury, for his damages sustained by the committing of the grievances complained of in the declaration, and costs.

12.—In the civil law, an action was given in all cases of nominate contracts, which was always of the same name. But in nominative contracts, which had always the same consideration, but not the same name, there could be no action of the same deno-
mination, but an action which arose from the fact, in factum, or an action with a form which arose from the particular circumstance, praeceptis verbis actio. 1 Leç. Elem. § 779.

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. 3 Whart. 143.

2.-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.

3.-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.

4.-In another sense, by a case stated is understood a statement of all the facts of a case, together with the names of the witnesses, and a detail of the documents which are to support them. In other words, a brief, (q. v.)

CASH, commerce, money on hand, which a merchant, trader or other person has to do business with.

2.-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.

CASHIER. An officer of a monied institution who is entitled by virtue of his office to take care of the cash or money of such institution.

2.-The cashier of a bank is usually entrusted with all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He usually receives directly, or through the subordinate officers, all moneys and notes of the bank; delivers up all discounted notes and other securities, when they have been paid; draws checks to withdraw the funds of the bank where they have been deposited; and as the executive officer of the bank transacts much of the business of the institution. In general, the bank is bound by the acts of the cashier within the scope of his authority, expressed or implied. 1 Pet. R. 46, 70; 8 Wheat. R. 300, 361; 5 Wheat. R. 326; 3 Mason's R. 505; 1 Breese, R. 45; 1 Monr. Rep. 179. But the bank is not bound by the declaration of the cashier, not within the scope of his authority; as when a note is about to be discounted by the bank, he tells a person that he will incur no risk nor responsibility by becoming an indorser upon such note. 6 Pet. R. 51; 8 Pet. R. 12. Vide 17 Mass, R. 1; Story on Ag. § 114, 115; 3 Halst. R. 1; 12 Wheat. R. 183; 1 Watts & Serg. 161.

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 resort is annulled. Merl. Rép. h.t.; this jurisdiction is now given to the cour de cassation.

2.-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 civile, 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 casseur billa, 3 Bl. Com. 340; and vide 5 T. R. 634; Gould’s Plead. c. 5, § 139. Vide To quash.

CASTIGATORY, punishments, is an engine used to punish women who have been convicted of being common scolds; it is sometimes called the trebucket, tumbril, 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 deliberate 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 mayhem, and punishable as such, though the patient consented to it.

2.—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. Vol. i.—29

Dig. 48, 8, 4, 2. For the French law, vide Code Penal, art. 316.

3.—The consequences 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.

2.—It may be brought by the receiver, against the alienee, in the tenant’s lifetime.

3.—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 receiver against the alienee. This is perhaps an absolute remedy, having yielded to the writ of ejectment. F. N. B. 205; Dane’s Ab. Index, h. t.

CASUAL, what happens fortuitously; what is accidental; as, the casual revenues of the government, are those which are contingent or uncertain.

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.

2.—Originally in order to try the right by ejectment, several things were necessary to be made out before the court; first a title to 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 oyster 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 FEDERIS. When two nations have formed a treaty of alliance, in anticipation of a war or other difficulty with another, and it is required to determine the case in which the parties must act in consequence of the alliance, this is called the casus federis, or case of alliance. Vattel, liv. 3, c. 6, § 88.

CASUS OMISSUS, an omitted case.

2.—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 provides 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. 38, 1, 44 and 55; lb. 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.

2.—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. 329; 2 Rep. in Ch. 396; 1 P. Wms. 312; 3 P. Wms. 290, 293, n.; 1 Cro. C. C. 7; 2 Atk. 133; 2 Swanst. 147, and the cases cited in the note; 1 Fonb. 140; 1 Supp. to Ves. Jr. 60; 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.

3.—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, and Lesion.

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 PRELICT, 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 unus parte conventio impiet et capta est. 6 Tol. 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, 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.

2.—In considering a contract, an injury, or a crime, the law generally looks to the immediate, and not to any remote cause. Bac. Max. Reg. 1; Bac. Ab. Damages, E; Sid. 433; 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.

3.—In cases of insurance the general rule is that the immediate and not the remote cause of the loss is to be considered; causa proxima non remota spectatur. This rule may in some cases apply to carriers. Story, Bailm. § 515.

4.—For the breach of contracts, the contractor is liable for the immediate effects of such breach, but not for any remote cause, as the failure of a party who was to receive money, and did not receive it, in consequence of which he was compelled to stop payment. 1 Brock. Cir. C. Rep. 103. See Remote; and also Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 6 Bing. R. 716; 6 Ves. 496; Pal. Ag. by Lloyd, 10; Story, Ag. § 200; 3 Sumn. R. 98.

Cause, pleading. The reason; the motive.

2.—In a replication de injuria, for example, the plaintiff alleges that the defendant of his own wrong, and without the cause by him in his plea alleged, did, &c. The word cause here means without the matter of excuse alleged, and though in the singular number, it puts in issue all the facts in the plea, which constitute but one cause. 8 Co. 67; 11 East, 451; 1 Chit. Pl. 585.

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.

CAUTO DE NON OFFENDO, civil law. This is a kind of security or fide jussors which a person who has threatened to do an injury is bound to give for his good behaviour. It resem-

bles the proceedings of the English law, which we have adopted of binding persons to keep the peace.

CAUTIO PRO EXPENSIS. Security for costs or expenses.

2.—This term is used among the civilians, Nov. 112, c. 2, and generally on the continent of Europe. In nearly all the countries of Europe, a foreign plaintiff, whether resident there or not, is required to give caution pro expensis. In some states this requisition is modified, and, when such plaintiff has real estate, or a commercial or manufacturing establishment, he is not required to give such caution. Feolix, Droit. Intern. Privé, n. 106.

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 sibi, 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 Brown, Civ. Law, 356.

CAUTION, jurat ory, 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 being issued. Ayl. Parer. 145; Nelson’s Ab. h. t.; Dane’s Ab. c. 223, a. 15, § 2, and a. 8, § 22. See 2 Chit. Pr. 502, note (b) for a form.

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; Suld. Vend. 221.

2.—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. Cooper, Just. 611, n. See 8 Watts, 308, 309.

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 evidenter veris, per brevissimas mutationes disputatio, ad ea qua evidenter falsa sunt perducatur. Dig. 50, 16, 177 et 233; Ib. 17, 65; Ib. 33, 2, 88.

Cæsarian operation, med. jurispr. An incision made through the parietes of the abdomen and uterus to extract the fetus. 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; Cooper, Med. Jur. 71; 1 Foderé, Méd. Lég., § 334. The rules of the civil law on this subject will be found in Dig. lib. 50, t. 16, l. 132 et 141; lib. 5, t. 2, l. 6; lib. 28, t. 2, l. 12.

Cæterorum. The name of a kind of administration, which, after an administration has been granted for a limited purpose, is granted for the rest of the estate. 1 Will. on Ex. 357; 2 Hagg. 62; 4 Hagg. Ecl. R. 382, 386; 4 Mann. & Gr. 398. For example, where a wife had a right to devise or bequeath certain stock, and she made a will of the same, but there were accumulations that did not pass, the husband might take out letters of administration cæterorum. 4 Mann. & Grang. 398; 1 Curtes, 286.

To cede, civil law. To assign; to transfer; as, France ceded Louisiana to the United States.

Cedent, civil law; Scotch law. An assignor. The term is usually applied to the assignor of a chose in action. Kames on Eq. 43.

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.

Cell. A small room in a prison. See Dungeon.

Cenotaph. An empty tomb.—Dig. 11, 7, 42.

Census. An enumeration of the inhabitants of a country.

2.—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 re-
spective 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 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. 1776; 4 Sharps. 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 Sharps. cont. of Story's L. U. S. 2524.

CENTIME. The name of a French money; the one hundredth part of a franc.

CENTUMVIRI, civil law, were judges to whom were referred questions of law for their decision. 3 Bl. Com. 315.

CENTURY, civil law. One hundred. The Roman people were divided into centuries. In England they were divided into hundreds. Vide Hundred. Century also means one hundred years.

CEPI, a Latin word signifying I have taken. Ceipi corpus, I have taken the body; ceipi corpus and B. B., I have taken the body and discharged him on bail bond; ceipi corpus est in custodia, I have taken the body and it is in custody; ceipi corpus, et est languidas, 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. Took. This is a technical word which cannot be supplied by any other in an indictment for larceny. The charge against the defendant must be that he took the thing stolen with a felonious design. Bac. Ab. Indictment, G 1.

CEPIT IN ALIO LOCO, pleadings. He took in another place. This is a plea in replevin, by which the defendant alleges, that he took the thing repleved in another place than that mentioned in the plaintiff's declaration. 1 Chit. Pl. 490; 2 Chit. Pl. 555; Rast. 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. Dig. 12, 1, 6. 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.

2.—If a contract be so vague in its terms, that its meaning cannot be certainly connected, 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.

3.—It is a maxim of law, that that is certain which may be made certain; certum est quod certum reddi potest, Co. Litt. 43; for example, when a man sells the oil he has in his store at so much a gallon, although there is uncertainty as to the quantity of oil, yet inasmuch as it can be ascertained, the maxim applies, and the sale is good. Vide, generally, Story, Eq. El. § 240 to 256; Mitf. Eq. Pl. by Jeremy, 41; Coop. Eq. Pl. 5; Wigr. on Disc. 77.

CERTAINTY, pleading. By certainty is understood a clear and distinct statement of the facts which constitute the cause of action, or ground of de-
fence, 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. Comp. 682; Co. Litt. 303; 2 Bos. & Pull. 267; 13 East, R. 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.

4.—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.

5.—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 Doug. 159; 2 Johns, Cas. 339; Comp. 682; 2 Mass. R. 363; by some of which authorities, it would seem, certainty to a common intent is sufficient in a declaration.

6.—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 subtle, 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. Laws. on Pl. 54, 55. See 1 Chitty on Pl. 235 to 241.

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.

2.—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. Parer. 157; Greenl. Ev. § 498.

Certificate, judge's, English practice. The judge who tries the cause is authorized 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.

2.—The Lord Chancellor often requires the opinion of the judges upon a question of law; to obtain this a case is framed, containing the admission 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 the 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 the 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 attainder 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. Bac. Ab. h. t.; 4 Vin. Ab. 330; Nels. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Penna. R. 24. A certiorari differs from a writ of error.

2.—By the common law, a supreme court has power to review the proceedings of all inferior tribunals, and to pass upon their jurisdiction and decisions on questions of law. But in general the determination of such inferior courts on questions of fact are conclusive, and cannot be reversed on certiorari, unless some statute confers the power on such supreme court. 6 Wend. 564; 10 Pick. 358; 4 Halst. 209. When any error has occurred in the proceedings of the court below, different from the course of the common law, in any stage of the cause, either civil or criminal cases, the writ of certiorari is the only remedy to correct such error, unless some other statutory remedy has been given. 5 Binn. 27; 1 Gill & John. 196; 2 Mass. R. 245; 11 Mass. R. 460; 2 Virg. Cas. 270; 3 Halst. 123; 3 Pick. 194; 4 Hayw. 100; 2 Greenl. 165; 8 Greenl. 293. A certiorari, for example, is the correct process to remove the proceedings of a court of sessions, or of county commissioners in laying out highways. 2 Binn. 250; 2 Mass. 249; 7 Mass. 158; 8 Pick. 440; 13 Pick. 195; 1 Overt. 131; 2 Overt. 109; 2 Pen. 1038; 8 Verm. 271; 3 Ham. 383; 2 Caines, 179.

3.—Sometimes the writ of certiorari is used as auxiliary process in order to obtain a full return to some other process. When, for example, the record of an inferior court is brought before a superior court by appeal, writ of error, or other lawful mode, and there is a manifest defect, or a suggestion of diminution, a certiorari is awarded requiring a perfect transcript and all papers. 3 Dall. R. 413; 3 John. R. 23; 7 Cranch, R. 288; 2 South. R. 270, 551; 1 Blackf. R. 32; 9 Wheat. R. 526; 7 Halst. R. 85; 3 Dev. R. 117; 1 Dev. & Bat. 382; 1 Mass. 414; 2 Munf. R. 229; 2 Cowen, R. 38.

**Cessset Executio,** is the staying of an execution.

2.—When a judgment has been entered, there is sometimes by the agreement of the parties, a cessset executio for a period of time fixed upon; and when the defendant enters security for the amount of the judgment, there is a cessset executio until the time allowed by law has expired.

**Cessset Processus,** practice. An entry made on the record that there be a stay of the process or proceedings.

2.—This is made in cases where the plaintiff has become insolvent after action brought. 2 Dougil. 637.

**Cessavit, Eng. law,** is an obsolete writ which could formerly have been sued out when the defendant had
for two years ceased or neglected to perform such service or to pay such rent as he was bound to do 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.

2.—This exempted the debtor from imprisonment, not, however, without leaving an ignominious stain on his reputation. Dig. 2, 4, 25; Ib. 48, 12, 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.

3.—The cession discharged the debtor only to the extent of the property ceded, and he remained responsible for the difference. Dom. Lois Civ. liv. 4, tit. 5, s. 1, n. 2. Vide, for the law of Louisiana, Code art. 2166, et seq. 2 M. R. 112; 2 L. R. 354; 11 L. R. 531; 5 N. S. 299; 2 L. R. 39; 2 N. S. 108; 3 M. R. 232; 4 Wheat. 122; and Abandonment.

CESSION, contracts, yielding up; release.

2.—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.

Cession, eccl. law. When an ecclesiastic is created bishop, or a parson of a parsonage takes another benefice, without dispensation, the first benefice becomes void by a legal cession, or surrender. Cowel. n. t.

CESTUI. He. This word is frequently used in composition; as, cestui que trust, cestui que vie, &c.

CESTUI QUE TRUST, a barbarous phrase to signify the beneficiary of an estate held in trust. He for whose benefit another person is enjoined or seised of land or tenements, or is possessed of personal property. 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.; 1 Story, Eq. Jur. § 321, note 1.

CESTUI QUE VIE, he for whose life land is held by another person; the latter is called tenant per annus 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 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, 310, 335, 349; 7 Com. Dig. 593.

CHAFAWAX, Eng. law. An officer in chancery who fits the wax for sealing to the writs, commissions and other instruments then made to be issued out. He is probably so called because he warms (chaufé), the wax.

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. 3, 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.

CHALDRON. A measure of capacity, equal to fifty-eight and two-third cubic feet nearly. Vide Measure.

CHALLENGE. This word has seve-
chal 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 a 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.

2.—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 Rogers’s Rec. 133; 2 M’Cord, R. 334; 1 Hawks, R. 457; 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.

3.—In most of the civilized nations challenging another to fight is a crime, as calculated to destroy the public peace, and those who partake in the offence are generally liable to punishment. It is punished by loss of offices, rents, and honours received from the king, in Spain, and the delinquent is incapable to hold them in future. Aso & Man. Inst. B. 2, t. 19, c. 2, § 6. See, generally, 6 J. J. Marsh, 120; 1 Munf. 465; 1 Russ. on Cr. 275; 6 J. J. Marsh, 119; Const. Rep. 107; Joy on Chal. pasim.

Challenge, practice, is an exception made to jurors who are to pass on a trial.

2.—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.

3.—§ 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.

4.—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.

5.—2. A challenge to the polls is an objection made separately to each juror as he is about to be sworn. Challenges to the polls, like those to the array, are either principal or to the favour.

6.—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 enactment. 2d. Propter affectum, because of some presumed or actual partiality in the juror 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. Coxe, 446; 6 Greenl. 307; 3 Day, 491. A juror who has conscientious scruples in finding a verdict in a capital case, may be challenged. 1 Bald. 78. Much stronger is the reason for this challenge, where the juror 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. Tr. 748; Hawk. b. 2, c. 43, s. 28; Bac. Ab. Juries, E 5. And the smallest degree of interest in the matter to be tried is a decisive objection against a juror. 1 Bay, 229; 8 S. & R. 444; 2 Tyler, 401. But see 5 Mass. 90. 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; 8 Watts, R. 304.

7.—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 authorize 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 juryma- man 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 prosecutor or defendant, is cause for a principal challenge, Co. Litt. 157, a; while the fact that the party and the jurymen are fellow servants, and that the latter has been entertained at the house of the former, is only cause for challenge to the favour. Co. Litt. 147; Bac. Ab. Juries, E 5. Challenges to the favour are not decided upon by the court, but are settled by triers, (q. v.)

8.—§ 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.

9.—§ 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 the polls, until a full jury have made their appearance, because if that should be the case, the issue will remain pro defectu juratorum; 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 jurors 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.

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. Enr. 472; 10 Wentw. 474; 1 Chit. Cr. Law, 533 to 551.

CHAMBER. A room in a house.

2.—It was formerly held that no frehold estate could be had in a chamber, but it was afterwards ruled otherwise. When a chamber belongs to one person, and the rest of the house with the land is owned by another, the two estates are considered as two separate but adjoining dwelling houses. Co. Litt. 48, b; Bro. Ab. Demand, 20; 4 Mass. 575; 6 N. H. Rep. 555; 9 Pick. R. 297; vide 3 Leon. 210; 3 Watts, R. 243.

3.—By chamber is also understood the place where an assembly is held; and, by the use of a figure, the assembly itself is called a chamber.
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.

CHAMBERS, practice. When a judge decides some interlocutory matter, which has arisen in the course of the cause, out of court, he is said to make such decision at his chambers. The most usual applications at chambers take place in relation to taking bail, and staying proceedings on process.

CHAMPART, French law. By this name was formerly understood the grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. 18 Toull. n. 182.

CHAMPERTOR, crim. law, one who makes 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. 1 Pick. 416; 1 Ham. 132; 5 Monr. 416; 4 Litt. 117; 5 John. Ch. R. 44; 7 Port. R. 488.

2.—This offence differs from maintenance, in this, that in the former the person assisting the suitor receives no benefit, while in the former he receives one half, or other portion, of the thing sued for. Punishment, fine and imprisonment. 4 Bl. Com. 135.


4.—To maintain a defendant may be champerty. Hawk. P. C. b. 1, c. 84, s. 8; 3 Ham. 541; 6 Monr. 392; 8 Yerg. 484; 8 John. 479; 1 John.

Ch. R. 444; 7 Wend. 152; 3 Cowen, 624; 6 Cowen, 90.

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, t. 2, c. 12.

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, 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 be 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.

2.—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 in-
struments 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.

3.—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 Encyclopædia, 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.; Wood- des. Lect. 95.

CHANCERY. The name of a court exercising jurisdiction at law, but mainly in equity.

2.—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.

3.—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 proceedings 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."

4.—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 aequo 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 aequo 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 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 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 assistent 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, a 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 per-
formance 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 impossi-
bile 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.;
Ch. Practice; Beame's Pl. Eq.;
Jeremy on Eq.; Encycl. Amer. article
Equity.

CHANGE. The exchange of
money for money. The giving, for
example, dollars for eagles, dimes for
dollars, cents for dimes. This is a
contract which always takes place in
the same place. By change is also
understood small money, Poth. Contr.
de Change, n. 1.

CHANGE TICKET. The name given
in Arkansas to a species of promissory
notes issued for the purpose of making
change in small transactions. Ark.

CHAPLAIN. A clergyman ap-
pointed to say prayers and perform
divine service. Each house of Con-
gress usually appoints its own chap-
lain.

CHAPMAN. One whose business
is to buy and sell goods or other things.
2 Bl. Com. 476.

CHAPTER, eccl. law. A congre-
gation of clergymen. Such an assem-
bly is termed capitulum, which signifies
a little head; it being a kind of head,
not only to govern the diocese in the
vacation of the bishopric, but also for
other purposes. Co. Litt. 103.

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.

2.—There are three classes of cases
on which the moral character and con-
duct 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 im-
piece or confirm the veracity of a
witness.

3.—1. Where the guilt of an ac-
cused party is doubtful, and the char-
acter of the supposed agent is involved
in the question, a presumption of inno-
cence 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 humani-
ty, would commit a dishonest or out-
rageous 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 reason-
able 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, Tha. Cr. Cas.
230; 5 Port, 352.

4.—2. In some instances evidence
in disparagement of character is ad-
missible, not in order to prove or dis-
prove 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 char-
acter, 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 justi-
fied, 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 & McCord, 511;
1 Nott & McCord, 268; and see 11
Johns. R. 38; 1 Root, R. 449; 1
The ground of admitting such evidence
is, that a person of dispersed 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.

5.—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 char-
acter; but they will not be allowed to
speak of particular facts or parts of
his conduct. B. N. P. 296. For ex-
ample, evidence of the general charac-
ter of a prosecutrix for a rape, may be
given, as that she was a street walker;
but evidence of specific acts of crim-
nality cannot be admitted. 3 Carr. &
P. 559. The regular mode is to in-
quire whether the witness under exa-
mination 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. 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 sup-
port the character of his own. 2
Stark. C. 151; Ib. 241; St. Ev. pt. 4,
1753 to 1755; 1 Phil. Ev. 229. A
party cannot give evidence to confirm
the good character of a witness, unless
his general character has been im-
pugned by his antagonist. 9 Watts,
R. 124.

See in general as to character, Phil.
Ev. Index, tit. Character; Stark. Ev.
pl. 4, 364; Swift’s Ev. 140 to 144; 5
Ohio R. 227; Greenl. Ev. § 54; 3
Hill. R. 178.

CHARGE, practice, is the opinion
expressed by the court to the jury on
the law arising out of a case before them.

2.—It should contain a clear and
explicit exposition of the law, when
the points of the law in dispute arise
out of the facts proved on the trial of
the cause, 10 Pet. 657; 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.
See 3 Cranch, 298; 6 Pet. 622; 1
Gall. R. 53; 5 Cranch, 187; 2 Pet.
625; 9 Pet. 541.

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 re-
moved or taken away by a discharge.
T. de la Ley, h. t.

2.—That particular kind of commis-
mission which one undertakes to perform
for another in keeping the custody of
his goods, is called a charge.
CHARGE, wills, devises, is an obligation which a testator imposes on his devisee; as, if the testator give Peter, Blackacre, and direct that he shall pay to John during his life an annuity of one hundred dollars which shall 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 Swans. 28; 4 East, R. 501; 4 Ves. jr. 815; Domat, Loix Civ. liv. 3, t. 1, s. 8, n. 2.

CHARGE DES AFFAIRES or CHARGE D’AFFAIRES, international law. These phrases, the first of which is used in the acts of Congress, are synonymous.

2.—The officer who bears this title 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.; 4 Dall. 321.

3.—The president is authorized 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.

CHARTER, 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 to the poor. This species of charity is a mere moral duty, which cannot be enforced by the law. Kames on Eq. 17. But it is not employed in either of these senses in law; its significance 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. 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, Amb. 651; Boyle on Charities, 51; 2 Ves. sen. 52; Amb. 713; 2 Ves. jr. 272; 6 Ves. 404; 3 Rawle, 170; 1 Penna. R. 49; 2 Dana, 170; 2 Pet. 584; 3 Pet. 99, 498; 9 Cow. 481; 1 Hawks, 96; 12 Mass. 537; 17 S. & R. 88; 7 Vern. 241; 5 Harr. & John. 392; 6 Harr. & John. 1; 9 Pet. 566; 6 Pet. 435; 9 Cranch, 331; 4 Wheat. 1; 9 Wend. 394; 2 N. H. Rep. 21, 510; 9 Cow. 437; 7 John. Ch. R. 292; 3 Leigh, 45O; 1 Dev. Eq. Rep. 276.

CHARRE OF LEAD, Eng. law, in commerce, is a quantity of 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 late charter of France, which extended 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.

2.—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.

3.—This term is susceptible of
another signification. During the middle ages almost every document was called cartu, chartula, or chartula. In this sense the term is nearly synonymous with deed. Co. Litt. 6; 1 Co. 1; Moor. Cas. 687.

4.—The act of the legislature creating a corporation, is called its charter. Vide 3 Bro. Civ. and Adm. Law, 188; Dane’s Ab. h. t.

Charter, mar. contr., is an agreement by which a vessel is hired by the owner to another; as, A B chartered the ship Benjamin Franklin to C D.

Charter-land, Eng. law, was land held by deed under certain rents and free services, and it differed in nothing from free socage land. It was also called book-land. 2 Bl. Com. 90.

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 term is derived from the fact that the contract which bears this name was formerly written on a card, and afterwards the card was cut into two parts from top to bottom, and one part was delivered to each of the parties, which was produced when required, and by this means counterfeits were prevented.

2.—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 freigher; 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. 705.

3.—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; Harr. Dig. Ship and Shipping, IV.

Chartered Ship. When a ship is hired or freighted by one or more merchants for a particular voyage or on time, it is called a chartered ship. It is freighted by a special contract of affreightment, executed between the owners, ship’s husband, or master on the one hand, and the merchants on the other. It differs from a General ship, (q. v.)

Chartis reddendis, Eng. law, an ancient writ, now obsolete, which lays against one who had charters of feoffment entrusted to his keeping, and who refused to deliver them. Reg. Orig. 159.

Chase, Eng. law, is the liberty of keeping beasts of chase, or royal game, on another man’s ground as well as on one’s own ground, protected even from the owner of the land, with a power of hunting them thereon. It differs from a park, because it may be on another’s ground, and because it is not enclosed. 2 Bl. Com. 38.

Chase, property, is the act of acquiring possession of animals ferae naturae 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.

Chastity. That virtue which prevents the unlawful commerce of the sexes.

2.—A woman may defend her chastity by killing her assailant. See Self defence. And even the solicita-
tion of her chastity is indictable in some of the states, 7 Conn. 267; though in England, and perhaps elsewhere, such act is not indictable. 2 Chit. Pr. 478. Words charging a woman with a violation of chastity are actionable in themselves. 2 Conn. 707.

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.

2.—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, 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; Bac. Ab. Baron, &c. (C 2); 2 Kent, Com. 275; Dane's Ab. Index, h. t.; Com. Dig. Biens, A.

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.

2.—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.

3.—Checks are negotiable 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.

4.—The differences between a common check and a bill of exchange are, first, that a check may be taken after it is overdue, and still the holder is not subject to the equities which may exist between the drawer and the party from whom he receives it; in the case of bills of exchange, the holder is subject to such equity. 3 John. Cas. 5, 9; 9 B. & Cr. 388. Secondly, the drawer of a bill of exchange is liable only on the condition that it be presented in due time, and, if it be dishonoured, that he has had notice; but such is not the case with a check, no delay will excuse the drawer of it, unless he has suffered some loss or injury on that account, and then only pro tanto. 3 Kent, Com. 104 n. (5th ed.) 3 John. Cas. 2; Story, Prom. Notes, § 492.

5.—There is a kind of check known by the name of memorandum checks; these are given in general with an understanding that they are not to be presented at the bank on which they are
drawn for payment; and, as between the parties, they have no other effect than an IOU, or common due bill; but third persons who become the holders of them, for a valuable consideration, without notice, have all the rights which the holders of ordinary checks can lawfully claim. Story, Prom. Notes, § 499.

6.—Giving a creditor a check on a bank does not constitute payment of a debt. 1 Hall, 56, 78; 7 S. & R. 116; 2 Pick. 204; 4 John. 296. See 3 Rand. 481.

7.—A check delivered by a testator in his life time to a person as a gift, and not presented till after his death, was considered as a part of his will, and allowed to be proved as such. 3 Curt. Ecc. R. 650. Vide, generally, 4 John. R. 304; 7 John. R. 26; 2 Ves. jr. 111; Yelv. 4, b, note; 7 Serg. & Rawle, 116; 3 John. Cas. 5, 259; 6 Wend. R. 445; 2 N. & M. 251; 1 Blackf. R. 104; 1 Litt. R. 194; 2 Litt. R. 299; 6 Cowen, R. 484; 4 Har. & J. 276; 13 Wend. R. 133; 10 Wend. R. 304; 7 Har. & J. 381; 1 Hall, R. 78; 15 Mass. R. 74; 4 Yerg. R. 210; 9 S. & R. 125; 2 Story, R. 502; 4 Whart. R. 252.

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, principal. One who is put above the rest; as, chief magistrate; chief justice; it also signifies the best of a number of things. It is frequently used in composition.

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 of the 27th of July, 1789, s. 2, 1 Story’s Laws, 6. His compensation for his services shall not exceed two thousand dollars per annum. Gordon’s Dig. art. 211.

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 JUSTICIARY. An officer among the English, established soon after the conquest.

2.—He had judicial power, and sat as a judge in the Curia Regis, (q. v.) In the absence of the king, he governed the kingdom. In the course of time, the power and distinction of this officer gradually diminished, until the reign of Henry III., when the office was abolished.

CHILD, CHILDREN, domestic relations. A child is the son or daughter in relation to the father or mother.

2.—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.

3.—1. Children born in lawful wedlock, or within a competent time afterwards, 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. Poth. Du Mar-riage, n. 384, 389. 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.

4.—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 grandchildren, &c., to take under it. 1 Ves. sen. 196; Ambl. 555; 3 Ves. 255; Ambl. 661; 3 Ves. & Bea. 69. When legally construed, the term ‘children’ is confined to legitimate children. 7 Ves. 458. 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 grandchildren, great-grandchildren, and all other descendants in the direct line.’

5.—Children are divided into legitimate children, or those born in lawful wedlock; and natural or illegitimate children, who are born bastards, (q. v.) Vide Natural children. Illegitimate children are incestuos bastards, or those which are not incestuous.

6.—Posthumous children are those who are born after the death of their fathers, Domat, Lois Civ. liv. pred. t. 2, s. 1, § 7; L. 3, § 1, it de inj. rupt.

7.—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. 3 Binn. R. 498; see as to the law of Virginia on this subject, 3 Munf. 20; and article In ventre so mere.

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. Natural children.

CHILDBRISHNESS. Weakness of intellect, such as that of a child.

2.—When the childishness is so great that a man has lost his memory, or is incapable to plan a proper disposition of his property, he is unable to make a will. Swinb. part 11, § 1; 6 Co. 23. See 9 Conn. 102; 9 Phil. R. 57.

CHIMIN. This is a corruption of the French word Chemin, a highway. It is used by old writers. Com. Dig. Chimin.

CHIROGRAPH, conveying, 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 are bound up in a book, and after they are executed, are cut asunder through such ornament or word.

2.—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.

CHIVALRY, ancient Eng. law. This word is derived from the French chevalier, a horseman. It is the name of a tenure of land by knight’s service. Chivalry was of two kinds: the first, which was regal, or held only of the king; or common, which was held of a common person. Co. Litt. h. t.

CHOICE, Preference either of a person or thing, to one of 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.

2.—It is one of the qualities of a chose in action, that, at common law, it is not assignable. 2 John. 1; 15 Mass. 388; 1 Cranch, 367. But bills of exchange and promissory notes, though choses in action, may be assigned by indorsement, when payable to order, or by delivery, when payable to bearer. See Bills of Exchange.

3.—Bonds are assignable in Pennsylvania, and perhaps some other states, by virtue of statutory provisions. In equity, however, all choses in action are assignable, and the assignee has an equitable right to enforce the fulfilment of the obligation in the name of the assignor. 4 Mass. 511; 3 Day, 364; 1 Wheat. 236; 6 Pick. 316; 9 Cow. 34; 10 Mass. 316; 11 Mass. 157, n.; 9 S. & R. 244; 3 Yeates, 327; 1 Binn. 429; 5 Stew. & Port. 60; 4 Rand. 266; 7 Conn. 399; 2 Green, 510; Harp. 17.

CHRISTIANITY, the religion established by Jesus Christ.

2.—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. See 1 Cro. Jac. 421; Vent. 293; 3 Keb. 607; Cooke on Def. 74; 2 How. S. C. Rep. 127, 197 to 201.

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. The term church is nomen collectivum; it comprehends the chancel, aisles, and body of the church. Ham, N. P. 204.

2.—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. 206; 16 Mass. 488; 6 Mass. 401; 10 Pick. 172; 4 Day, C. 361; 1 Root § 3, 440; Kirby, 45; 2 Caines’s Cas. 336; 10 John. 217; 6 John. 85; 7 John. 112; 8 John. 464; 9 John. 147; 4 Desauns. 578; 5 Serg. & Rawle, 510; 11 Serg. & Rawle, 35; Metc. & Perk. Dig. h. t.

CHURCH-WARDEN. An officer whose duties are, as the name implies, to take care of or guard the church.

2. — These officers are created in some ecclesiastical corporealities by the charter, and their rights and duties are definitely explained. In England it is said, their principal duties are to take care of, 1, the church or building; 2, the utensils and furniture; 3, the church yard; 4, certain matters of good order concerning the church and church yard; 5, the endowments of the church. Bac. Ab. h. t. By the common law, the capacity of church-wardens to hold property for the church is limited to personal property. 9 Cranch. 43.

CINQUE PORTS, Eng. law. Literally, five ports. The name by which the five ports of Hastings, Ramenhal, Hetha, or Hethe, Dover, and Sandwich, are known.

2. — These ports have peculiar charges and services imposed upon them, and were entitled to certain privileges and liberties. See Harg. L. Tr. 106—113.

CIPHER. An arithmetical character, 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. The name of a court of the United States, which has both civil and criminal jurisdiction. In several of the states there are courts which bear this name. 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.

2. — 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. It is a favourite object of courts of equity to prevent a multiplicity of actions. 4 Cowen, 682.

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.

CIRCULATING MEDIUM. By this term is understood whatever is used in making payments, as money, bank notes, or paper which passes from hand to hand in payment of goods, or debts. It is a term more extensive than money.

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.

2. — 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 at a distance; 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.
And in some instances these circumstances assume the character of irresistible evidence; where, for example, a woman was found dead in a room, with every mark of having met with a violent death, the presence of another person at the scene of action was made manifest by the bloody mark of a left hand visible on her left arm. 14 How. St. Tr. 1324. 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 had been guilty of the impossible crime of witchcraft.

3.—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 Morangies 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:

4.—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 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 the thighs, and in walking must have incommode 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.

5.—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 unimpeached 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

6.—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.

7.-2. Dujonquai had to go up the rue Saint Jaques, 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.

8.—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.

9.—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.

10.—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. See some curious cases of circumstantial evidence in Alis. Pr. Cr. Law, 313, 314; and 2 Théorie des Lois criminelles, 147, n.; 3 Benth. Jud. Ev. 94, 223; Harvey’s Meditations on the Night, note 35; 1 Taylor’s Med. Jur. 372; 14 How. St. Tr. 1324; Theory of Presumptive Proof, passim; Best on Pres. §§ 187, 188, 197. See Death; Presumption; Somnambulism.

CIRCUMSTANDIBUS, persons, practice, are bystanders, from whom jurors are to be selected when the panel has been exhausted. Vide Tales de circumstansibus.

CIRCUMVENTION, torts, Scotch law, any act of fraud whereby a person is reduced to a deed by deceit. Tech. Dict. It has the same sense in the civil law. Dig. 50, 17, 49 et 155; Id. 12, 6, 6, 2; Id. 41, 2, 34. Vide Paraphrase.

CITATIO AD REASSUMENDAM CAUSAM, civil law. The name of a citation, which issued when a party died pending a suit, against the heir of the defendant, or when the plaintiff died, for the heir of the plaintiff. Our bill of revivor is probably borrowed from this proceeding.

CITATION, practice, is a writ issued out of a court of competent jurisdiction, commanding a person therein named to appear and do some-
thing therein mentioned, or to show
cause why he should not, on a day
named. Proct. Pr. h. t. In the eccle-
siastical law, the citation is the be-
inning and foundation of the whole
cause; it is said to have six requisites,
that is, the insertion of the name of the judge
—of the promover—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. Rep. h. t.
By citation is also understood the act
by which a person is summoned, or
cited.

Citation of Authorities, is the
production or reference to the text of
acts of legislatures and of treatises,
and decided cases, which are indicated
in order to support what is advanced.

2. —Works are sometimes sur-
charged with useless and misplaced
citations; when they are judiciously
made they assist the reader in his re-
sources. Citations ought not to be
made to prove what is not doubted;
but when a controverted point is
moated, it is highly proper to cite the
laws and cases, or other authorities in
support of the controverted proposition.

3. —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 Balm., § 494;
Gould on Pl. c. 5, § 30. For other cit-
atious the reader is referred to the
article Abbreviations.

4. —It is usual among the civilians
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on the continent of Europe, in imitation
of those in the darker ages, in their
references to the Institutes, the Code
and the Pandects or Digest, to mention
the number, not of the book, but of the
law, and the first word of the title to
which it belongs; and as there are
more than a thousand of these, it is no
easy task for one not thoroughly ac-
quainted with those collections, to find
the place to which reference is made.
The American writers generally follow
the natural mode of reference, by put-
ing down the name of the collection,
and then the number of the book, title,
law, and section. For example, Inst.
4, 15, 2, signifies Institutes, book four,
title fifteen, and section two. Dig. 41,
9, 1, 3, means Digest, book 41, title 9,
section 3. Dig. pro dote; or ff pro dote;
that is, section 3, law 1, of the book
and title of the Digest or Pandects,
titled pro dote. It is proper to remark
that Dig. and ff are equivalent; the
former signifies Digest, and the latter,
which is a careless mode of writing the
Greek letter π, the first letter of the
word ταυτας ται, Pandects, and the
Digest and Pandects are differ-
ent names for one and the same thing.
The Code is cited in the same way.
The Novels are cited by their number,
with that of the chapter and paragraph;
for example, Nov. 185, 2, 4; for No-
vella Justiniani 185, capit. 2, par-
agraph 4. Novels are also quoted by
the Collation, the title, chapter, and
paragraph, as follows; in Authentico,
Collatione 1, titulio 1, cap. 281. The
Authenticals are quoted by their first
words, after which is set down the title
of the Code under which they are
placed; for example, Authenticum cum
testator, Codice ad legem fasciandam.
See Mackel, Man. Intro. § 65.

CITIZEN, persons. One who,
under the constitution and laws of
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. In
a more extended sense, under the
word citizen, are included all white
persons born in the United States, and
naturalized persons born out the same, who have not lost their right as such. This includes men, women, and children.

2. — 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 and vice-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.

3. — All natives are not citizens of the United States, the descendants of the aborigines, and those of African origin are not entitled to the rights of citizens. Anterior to the adoption of the constitution of the United States, each state had the right to make citizens of such persons as it pleased. That constitution does not authorize any but white persons to become citizens of the United States; and it must therefore be presumed that no one is a citizen who is not white. 1 Litt. R. 334; 10 Conn. R. 340; 1 Meigs, R. 331.

4. — A citizen of the United States, residing in any state of the Union, is a citizen of that state. 6 Pet. 761; Paine, 594; 1 Brock, 391; 1 Paige, 183; Metc. & Perk. Dig. h. t.; vide 3 Story's Const. § 1657; 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; Inhabitant.

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 riepublicae 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. Jurisp. Nat. B. 2, ch. 6.

CIVIL ACTION. In New York, actions are divided only in two kinds, namely, criminal, and civil. A criminal action is prosecuted by the state, as a party, against a person charged with a public offence, for the punishment thereof. Every other action is a civil action. Code of Procedure, s. 4, 5, 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 any good 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. Inst. 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 sentence is pronounced is considered dead. 2 John. R. 248. Vide Death, civil.

CIVIL LAW. The municipal code of the Romans is so called; a rule of action, adopted by mankind in a state of so-
CIVIL

CIVIL list, is the sum which is yearly paid by the state to its monarch, and the domains of which he is suffered to have the enjoyment.

Civil obligation, civil law, is one which binds in law, vinculum juris, and which may be enforced in a court of justice. Poth. Obl. 173, and 191. See Obligation.

Civil officer. The constitution of the United States, art. 2, s. 4, provides, that the president, vice-president, and 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 the 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. 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.

2. 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. R. 239; 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 law 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 security 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.

CIVILITER. Civilly; opposed to criminaliter or criminally.

2. When a person does an unlawful act injurious to another, whether with or without an intention to commit a tort, he is responsible civiliter. In order to make him liable criminaliter, he must have intended to do the wrong, for it is a maxim, actus non facit reum nisi mens sit rea. 2 East, 104.

CIVILITER MORTUUS. Civilly defunct; one who is considered as if he were naturally dead, so far as his rights are concerned.

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.

2. In Pennsylvania the entry of the lien of a mechanic or materialman for work done or material furnished in the erection of a building, in those counties to which the lien laws extend, is called a claim.

3. A continual claim is a claim made in particular way to preserve the rights of a coffee. See Continual claim.
4.—Claim of conusance 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 the claimant's court. 2 Wils. 490; 1 Cit. Ph. 403; Vin. Ab. Conusance; Com. Dig. Courts, P; Bac. Ab. Courts, D 3; 3 Bl. Com. 298.

CLAIMANT. In the courts of admiralty, when the suit is in rem, the cause is entitled in the name of the libellant against the thing labelled, as A B v. Ten cases of calico; and it preserves that title through the whole progress of the suit. When a person is authorised and admitted to defend the libel, he is called the claimant. The United States v. 1960 bags of coffee, 8 Cranch, R. 398; The United States v. The Mars, 8 Cranch, R. 417; 30 hlds. of sugar, (Brenton, claimant,) v. Boyle, 9 Cranch, R. 191.

CLANDESTINE. That which is done in secret and contrary to law.

2.—Generally a clandestine act in cases of the limitation of actions will prevent the act from running. A clandestine marriage is one which has been contracted without the form which the law has prescribed for this important contract. Alis. Princ. 543.

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.

CLASS. The order according to which are ranged or distributed, or are supposed to be ranged or distributed, divers persons or things; thus we say, a class of legatees.

2.—When a legacy is given to a class of individuals, all who answer the description at the time the will shall take effect, are entitled, and though the expression be in the plural, yet if there be but one, he shall take the whole. 3 McCord, Ch. R. 440.

3.—When a bond is given to a class, it is good, and the whole of the persons composing that class are entitled to sue upon it; but if the obligor be a member of such class, the bond is void, because a man cannot be obligor and obligee at the same time; as if a bond be given to the justices of the county court, and at the time he is himself one of said justices. 3 Dev. 284, 287, 289; 4 Dev. 382.

4.—When a charge is made against a class of society, a profession, an order or body of men, and cannot possibly import a personal application to private injury, no action lies; but if any one of the class have sustained special damages in consequence of such charge, he may maintain an action. 17 Wend. 52; 23, 186. See 12 John. 475. When the charge is against one of a class without designating which, no action lies; as, where three persons had been examined as witnesses, and the defendant said in addressing himself to them, “one of you three is perjured.” 1 Roll. Ab. 81; Cro. Jac. 107; 16 Pick. 132.

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 constructed in such a way as to agree with what precedes and what follows, if possible. Vide Dig. 50, 17, 77. Construction; Interpretation.

CLASUM 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 clasum fregit, that is, why he broke the close of the plaintiff. 3 Bl. Com. 209.

2.—Trespass quare clasum fregit lies for every unlawful intrusion, whether the land is enclosed or not, though only grass may be trodden. 1 Dev. & Bat. 371. And to maintain this action there must be a possession in the plaintiff, and a right to that possession. 9 Cowen, 39; 4 Yeates, 418; 11 Conn. 60; 10 Conn. 225; 1 John. 511; 12 John. 183; 4 Watts, 377; 4 Bibb, 218; 15 Pick. 32; 6
of the vessel, for if a vessel should be found without it at sea, it may be legally taken and brought into some port for adjudication, on a charge of piracy. Vide Ship's papers.

CLEARING HOUSE, comm. law. Among the English bankers, the clearing house is a place in Lombard street, in London, where the bankers of that city daily settle with each other the balances which they owe, or to which they are entitled. Desks are placed around the room, one of which is appropriated to each banking house, and they are occupied in alphabetical order. Each clerk has a box or drawer along side of him, and the name of the house he represents is inscribed over his head. A clerk of each house comes in about half-past three o'clock in the afternoon, and brings the drafts or checks on the other bankers, which have been paid by his house that day, and deposits them in their proper drawers. The clerk at the desk credits their accounts separately which they have against him, as found in the drawer. Balances are thus struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled, that each clerk has only to settle with two or three others, and the balances are immediately paid. When drafts are paid at so late an hour that they cannot be cleared that day, they are sent to the houses on which they are drawn, to be marked, that is, a memorandum is made on them, and they are to be cleared the next day. See Gilbert's Practical Treatise on Banking, pp. 16-20; Babbage on the Economy of Machines, n. 173, 174; Kelly's Cambist; Byles on Bills, 106, 110; Pulling's Laws and Customs of London, 437.

CLEMENTENCY, the act of forgiving or pardoning an offense. See Mercy; Pardon.

CLEMENTINES, ecc. law, is the name usually given to the collection of decretales 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

2.—The act of Congress, of 2d March, 1790, 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.
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.

CLERGY. All who are attached to the ecclesiastical ministry are called the clergy; a clergyman is therefore an ecclesiastical minister.

2.—In the United States the clergy is not established by law, but each congregation or church may choose its own clergyman.

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 superintending the markets. In the English law, clerk also signifies a clergyman.

CLERK, eccl. law. Every individual, who is attached to the ecclesiastical state, and who has submitted to the ceremony of the tonsure, is a clerk.

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.

2.—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 promptly 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. See Attorney at law; Confidential communication.

CLOSE, signifies the interest in the soil, and not merely a close or 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.

2.—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 terre usque ad celum, 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, denoting the injurious act a breach of the enclosure. Hamm. N. P. 151; Doct. & Stud. dial. 1, c. 8, p. 30; 2 Whart. 430.

3.—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, Eng. 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.

CLOSED DOORS. Signifies that something is done privately; as, the senate sit with closed doors on executive business.

2.—In general the legislative business of the country is transacted openly. And the constitution and laws require that courts of justice shall be open to
as many of the people as can get in the court house without interrupting the public business.

CLUB. An association of persons. It differs from a partnership in this, that the members of a club have no authority to bind each other further than they are authorised, either expressly or by implication as each other’s agent in the particular transaction; whereas in trading associations, or common partnerships, one partner may bind his co-partners, as he has the right of property for the whole. 2 Mees. & Welsh 172; Colly, Parthn. 31; Story, Parthn. 144; Wordsworth on Joint Stock Companies, 154; et seq.; 6 W. & S. 67; 3 W. & S. 118.

CO. A particle used in the composition of words, as, co-executors, co-obligor. It is also used as an abbreviation for company; as, John Smith & Co.

COADJUTATOR, eccls. law. A fellow helper or assistant; particularly applied to the assistant of a bishop.

COAL NOTE, Eng. law. A species of promissory note authorised by the st. 3 Geo. 2, c. 26, §§ 7 and 8, which having these words expressed therein, namely; “value received in coals,” are to be protected and noted as inland bills of exchange.

COALITION, French law. By this word is understood an unlawful agreement among several persons, not to do a thing except on some conditions agreed upon.

2.—The most usual coalitions, are, 1st, those which take place among master workmen, to reduce, diminish or fix at a law 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.)

CO-ASSIGNEE. One who is assignee with another.

2.—In general the rights and duties of co-assignees are equal.

COAST. The margin of a country bounded by the sea. This term includes the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shores perpendicularly covered with water are not, however, comprehended in the name of coast. The small islands, situate at the mouth of the Mississippi, composed of earth and trees drifted down by the river, which are not of consistency enough to support the purposes of life, and are uninhabited, and resorted to for shooting birds, were held to form a part of the coast. 5 Rob. Adm. R. 385, (c).

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. Crabbé’s Tech. Dict.

COCKETTUM, commerce. In the English law this word signifies, 1, the custom-house seal; 2, the office at the custom where coquets are to be procured. Crabbé’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.

2.—These codes are, 1st, Code Civil, which is divided into three books; book 1, treaties 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 perspicuous and intelligent commentators on this code, is Toullier, frequently cited in this work.

3.—2d. Code de procédure civile, 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 consignment; 2, process in relation to the opening of a succession; 3, of arbitration.

4.—3d. Code 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.

5.—4th. Code d’Instructions Criminelles, in two books; 1, of judiciary police, and its officers; 2, of the administration of justice.

6.—5th. 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, (débits,) 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 Napoleon, 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.

2.—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.”

2.—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.

3.—This code was prepared by lawyers, who, it is said, mixed with positive legislation, definitions seldom accurate, and points of doctrine always unnecessary. The legislature modified and changed many of the provisions relating to the positive legislation, but adopted the definitions and abstract doctrine without material alterations; from this circumstance, as well as from the inherent difficulty of the subject, the positive provisions of the code are often at variance with the theoretical part, which was intended to elucidate them. 13 L. R. 237.

4.—This code went into operation on the 20th day of May, 1825. 11 L. R. 60. It is in both the French and English languages; and in construing it, it is a rule that when the expressions used in the French text of the code are more comprehensive than those used in English, or vice versa, the more enlarged sense will be taken,
as thus full effect will be given to both clauses. 2 N. S. 582.

**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 Papirian.** The name of a collection of the Roman laws, which had been promulgated by Romulus, Numa, and other kings who governed Rome till the time of Tarquin, the Proud. It was so called in honour of Sextus Papirius, the compiler. Dig. 1, 2, 2.

**Code Prussian.** Allgemeines Landrecht. This code is also known by the name of Codex Fredericianus, or Frederician code. It was compiled by order of Frederic II., by the minister of justice Samuel V. Cocciji, 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 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."

**Code Theodosian.** This code, which originated in the eastern empire, was adopted in the western empire towards its decline. It is a collection of the legislation of the Christian emperors from and including Constantine to Theodosian, the Younger; it is composed of sixteen books, the edicts, acts, rescripts, and ordinances of the two empires, that of the east and that of the west.

**CO-DEFENDANT.** One who is made defendant in an action with another person.

**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;

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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.

2.—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, unless there be express words of revocation. 8 Cowen, Rep. 56.

3.—Formerly, the difference between a will and a codicil consisted in 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, 155, 289; 4 Kent, Com. 516; 1 Ves. jr. 407, 497; 3 Ves. jr. 110; 4 Ves. jr. 610; 1 Supp. to Ves. jr. 116, 140.

4.—Codicils were chiefly intended to mitigate the strictness of the ancient Roman law, which required that a will should be attested by seven Roman citizens, omni exceptione majoris. A legacy could be bequeathed, but the heir could not be appointed by codicil, though he might be made heir indirectly by way of fidei commissum.

5.—Codicils owe their origin to the following circumstances. Lucius Lentulus, dying in Africa, left codicils, confirmed by anticipation in a will of former date, and in those codicils requested the emperor Augustus, by way of fidei commissum, or trust, to do something therein expressed. The emperor carried this will into effect, and the daughter of Lentulus paid legacies which she would not otherwise have been legally bound to pay. Other persons made similar fidei commissa, and then the emperor, by the advice of learned men whom he consulted, sanc-
tioned the making of codicils, and thus they became clothed with legal authority. Inst. 2, 25; Bowy. Com. 155, 156.

6.—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. Vide 1 Brown's Civil Law, 292; Domat, Lois Civ. liv. 4, t. 1, s. 1; Leçons Élément. du Dr. Civ. Rom. tit. 25.

COERCION, criminal law, contracts. The forcible inducement to do an act.

2.—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.

3.—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 contrary 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.

4.—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.

CO-EXECUTOR. One who is executor with another.

2.—In general the rights and duties of co-executors are equal.

COGNATION, civil law, signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

2.—Cognition is of three kinds; natural, civil, or mixed. Natural cognition is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connection, either in relation to their ascendants or collaterals.

3.—Civil cognition is that which proceeds alone from the ties of families, as the kindred between the adopted father and the adopted child.

4.—Mixed cognition 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 distraint on his own account, but because he made the distress by the command of another, who had a right to distraint on the goods which are the subject of the suit. Lawes on Pl. 35, 36.

COGNIZANCE, practice, signifies the hearing of a thing judicaily; also the acknowledgment of a fine.

COGNIZANCE OF PLEAS, Eng. 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.

COGNISEE. He to whom a fine
of lands, &c. is acknowledged. See Cognisor.

Cognisor, English law, is one who passes or acknowledges a fine of lands or tenements to another, in distinction from the cognissee, 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. Crabb's Tech. Dict.

Cognomen. The surname; the family name. Franklin is the cognomen of Benjamin Franklin. See Cas. temp. Hardw. 286; 1 Tayl. 148. See Name; Surname.

Cognovit, contr. pleading, is a written confession of an action by a defendant, subscribed but not sealed, and authorizing the plaintiff to sign judgment and issue execution, usually for a sum named.

2.—It is given after the action is brought to save expense.

3.—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.

2.—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 not live together.

3.—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.

4.—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.

5.—In civil actions for criminal conversations with the plaintiff's wife, when the husband and wife had separated, 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.

Co-heir. One of several men among whom an inheritance is to be divided.

Co-heiress. A woman who has an equal share in an inheritance, with other women.

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.

2.—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 distract the attention of the jury, and to mislead them. Stark. Ev. h. t.; 2 Bl. Rep. 1169; 1 Stark. Ev. 40.
3.—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.

4.—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 lb. 666, n. 871; 3 lb. 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.

2.—The doctrine of collateral war-
And upon the same principle, if a co-heir claims no share of the estate, he is not bound to collate. *Qui non vult hereditatem, non cogit tur ad collectionem.*

See lb. art. 1305 to 1367; and Hotchpot.

**Collation, eccl. law,** is the act by which the bishop who has the bestowing of a benefice, gives it to an incumbent. T. L.

**Collation, practice,** the comparison of a copy with its original in order to ascertain its correctness and conformity; the report of the officer who made the comparison, is also called a collation.

**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, L. D. h. t.

**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. Metc. & Perk. Dig. h. t.

**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.

2.—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 unloading 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, store-houses 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; 10 Wheat. 246.

**COLLEGE.** A civil corporation, society or company, authorized by law, having in general a literary object. In some countries by college is understood the re-union of certain voters; these are called electoral colleges; as, the college of electors or their deputies to the diet of Ratisbon; the college of cardinals. The term is used in the United States; as, the college of electors of president and vice-president of the United States. Act of Congress of January 23, 1845.

**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.

2.—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.

3.—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. 6 Whart. R. 311.

4.—3. The suffering party may have been the cause of the injury, then he must bear the loss.
5.—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. 33, 85; 3 Hagg. Adm. R. 320; 1 How. S. C. R. 89; the same rule is applied to steamers; 1b. 414.

6.—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 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.

7.—A collision between two ships on the high seas, whether it be the result of accident or negligence, is in all cases to be deemed a peril of the seas within the meaning of a policy of insurance. 2 Story, R. 176; 3 Sumn. R. 389.

Vide generally, Story, Bailm. § 607 to 612; Marsh. Ins. B. 1, c. 12, s. 2; Westk. Ins. art. Running Foul; Jacob- sen'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; Parf. n. 652 to 654; Pothier, Avaries, n. 155; 1 Emerig. Assur. ch. 12, § 14.

COLLIGSTIRGIUM. The pillory.

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.—Merrl. Rép. h. t. Vide Maskalling Assets.

COLOQUIUM, pleading, a discourse, a conversation or conference.

2.—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 coloquium concerning the office, profession or trade of the plaintiff.

3.—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 preatory matter necessarily to render the words actionable. 3 Bulst. 83; vide Bac. Slander, S. n. 3; Dane'sAb. Index, h. t.; Com. Dig. Action upon the case for defamation, G 7, 8, &c.; Stark. on Sland. 290, et seq.

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. It is nearly synonymous with covin, (q. v.)

2.—Collusion and fraud of every kind vitiate all acts which are infected with them, and render them void. Vide Shelf. on Mar. & Div. 415, 450; 3 Hagg. Eccl. R. 130, 133; 2 Greenl. Ev. § 51; Bousq. Dict. de Dr., mot Abordage.

COLONEL. An officer in the army, next below a brigadier general, bears this title.

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 1; 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.

2.—Express colour, 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, 14.
3.—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 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 further 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 seized 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 dispossessed, but made continual claim till the death of the disseisor; after whose death, the descent being cast upon the 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 in-
Lawes Civ. Pl. 126; Arch. Pl. 211; Doct. Pl. 17; 4 Vin. Abr. 552; Bac-Abr. Pleas, &c. I. B; Com. Dig. Pleader, 3 M 40, 3 M 41. See an example of giving colour in pleading 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.

COMBAT, Eng. law, the form of a trial by battle. A combat is an act by which two persons attack each other by force. A duel.

COMBINATION. A union of different things. A patent may be taken out for a new combination of existing machinery, or machines. See 2 Mason, 112; and Composition of matter.

2.—By combination is understood, in a bad sense, a re-union or assembly of men for the purpose of violating the law.


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 vivae voce pleading. It is, accordingly, not considered as, in strictness, constituting a part of the plea. 1 Chit. Pl. 411; Steph. Pl. 432.

COMES, offices, was an officer during the middle ages, who possessed civil and military authority. Sav. Dr. Rom. Moy. age, n. 80.

2.—Vic-comes, the Latin name for sheriff, was originally the lieutenant of the comes.

COMITATUS, a county. Most of
the states are divided into counties; some, as Louisiana, are divided into parishes.

COMITES. Persons who are attached to a public minister are so called. As to their privileges, see 1 Dall. 117; Baldw. 240; and Ambas-
dador.

COMITY. Courtesy; a disposition to accommodate.

2.—Courts of justice in one state will, out of comity, enforce the laws of another state, when by such enforce-
ment they will not violate their laws or inflict an injury on some one of their own citizens; as, for example, the dis-
charge of a debtor under the insolvent laws of one state, will be respected in another state, where there is a recipro-
city in this respect, where a citizen of the state where a remedy is sought will receive no injury.

3.—It is a general rule that the mun-
icipal laws of one country do not ex-
tend beyond such country, and cannot be enforced in another, except on the prin-
ciple of comity. But when those laws clash and interfere with the rights of citizens, or the laws of the coun-
tries where the parties to the contract seek to enforce it, as one or the other must give way, those prevailing where the relief is sought must have the pre-
flict of Laws; Lex loci contractus.

COMMAND. This word has se-
veral meanings. 1. It signifies an order; an apprentice is bound to obey the law-
ful command of his master; a consta-
table may command rioters to keep the peace. 2. A request or suggestion; he who commands another to do an unlawful act, is accessory to it. 3 Inst. 51, 57; 2 Inst. 152; 1 Hayw. 4. 3. Command is also equivalent to de-
putation or voluntary substitution; as, when a master employs one to do a thing, he is said to have commanded him to do it; and he is responsible ac-
cordingly. Story, Ag. § 454, note.

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whom he makes the advance of capital, a partner in commendam. Civ. Code of Lo. art. 2811.

COMMENDATORY. A person who holds a church living or presentation in commendam.

COMMENDATORS, eccl. law, are secular persons upon whom ecclesiastical benefices are bestowed, because they were commended and instructed to their oversight: they are merely trustees.

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. In a narrower sense, commerce signifies any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration; if the consideration be money, it is called a sale; if any other thing than money, it is called exchange or barter. Domat, Dr. Pub. liv. 1, tit. 7, s. 1, n. 2.

2.—Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent. 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. Vide 17 John. R. 488; 4 John. Ch. R. 150; 5 John. Ch. R. 300; 1 Halst. R. 285; Id. 236; 3 Cowen, R. 713; 12 Wheat. R. 419; 1 Brock R. 433; 11 Pet. R. 102; 6 Cowen, R. 169; 3 Dana, R. 274; 6 Pet. R. 515; 13 S. & R. 205.

COMMISSARIATE, the whole body of officers who act in the department of the commissary, are called the commissariat.

COMMISSARY is an officer whose principal duties are to supply the army with provisions.

2.—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 purchase 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.

2.—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. The commission is not the appointment, but only evidence of it; and as soon as it is signed and sealed, vests the office in the appointee. 1 Cranch, 137; 2 N. & M. 357; 1 Mc-Cord, 233, 238. See Pet. C. C. R. 194; 2 Summ.
are officers appointed by some courts to take recognizances of bail in civil cases.

COMMISSIONERS OF SEWERS, Eng. law, are officers whose duty it is to repair sea banks and walls, survey rivers, public steams, ditches, &c.

COMMISSIONS, in contracts, practice, are an allowance of compensation to an agent, factor, executor, trustee or other person who manages the affairs of others, for his services in performing the same.

2.—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. 9 C. & P. 559; 38 E. C. L. R. 227; 3 Smith's R. 440; 7 C. & P. 584; 32 E. C. L. R. 641; Suld. Vend. Index, tit. Auctioneer.

3.—This compensation is usually the allowance of a certain per centage upon the actual amount or value of the business done. When there is a usage of trade at the particular place, or in the particular business in which the agent is engaged, the amount of commissions allowed to auctioneers, brokers and factors, is regulated by such usage. 3 Chit. Com. Law, 221; Smith on Merc. Law, 54; Story, Ag. § 826; 3 Camp. R. 412; 4 Camp. R. 96; 2 Stark. R. 225, 294.

4.—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.

5.—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.
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.

2.—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. 3 Harr. & McHen, 113; Charl. 250; 3 Cranch, R. 448; see Harp. R. 313, where it is said a seal is not indispensable.

3.—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.

4.—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.

5.—4th. The prisoner should be described by his name and surname, or the name he gives as his.

6.—5th. The commitment ought to state that the party has been charged on oath. 3 Cranch, R. 448. But see 2 Virg. Cas. 504; 2 Bail. R. 290.

7.—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.

8.—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. Raym. 424.

9.—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 shall be discharged by due course of law.” When the commitment is not final, it is usual to commit the prisoner “for further hear-

ing.” The commitment is also called a mittimus, (q. v.)

10.—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; Bac. Ab. h. t.; 4 Cranch, R. 129; 4 Dall. R. 412; 1 Ashm. R. 248; 1 Cowen, R. 144; 3 Conn. R. 502; Wright, R. 691; 2 Virg. Cas. 276; Hardin, R. 249; 4 Mass. R. 497; 14 John. R. 371; 2 Virg. Cas. 594; 1 Tyler, R. 444; U. S. Dig. 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.

2.—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.

3.—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.

COMMITTITUR PIECE, Eng. law, an instrument in writing or parchment, which charges a person already in prison, in execution at the suit of the person who arrested him.
COMMIXTION, civil law. This term is used to signify the act by which goods are mixed together.

2.—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. Lec. Elecm. du Dr. Rom. § 370, 371; Story, Bailm. § 40.

3.—The distinction between confusion and commixtion is, that in the first it is impossible to effect a separation, and in the second such separation of the mingled substances may be made.

COMMODATE, contracts, a term used in the Scotch law, which is synonymous 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.

2.—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.

COMMODATUM, is a contract by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him, to be used by him, without reward; loan for use. Vide Loan for use.

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. 12 S. & R. 32; 10 Wend. R 647; 11 John. R. 498.

2.—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.

3.—1. Common of pasture is a right of feeding one’s beast’s on another’s land, and is either appurtenant, appurtenant or in gross.

4.—Common appurtenant is of common right, and it may be claimed in pleading as appurtenant without laying a prescription. Hargr. note to 2 Inst. 122, a, note.

5.—Rights of common appurtenant to the claimant’s land are altogether independent 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.

6.—Common in gross, or at large, is such as is neither appurtenant 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 commons without stint, and which last all the year. 2 Bl. Com. 34.

7.—2. Common of piscary is a liberty of fishing in another man’s water. Ib. See Fishery.

8.—3. Common of turbary is a liberty of digging turf in another man’s ground. Ib.

9.—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.; 10 Wend. R. 639. See Estovers.

10.—The right of common is little known in the United States, yet there are some regulations to be found in relation to this subject. The constitution of Illinois provides for the continuance of certain commons in that state. Const. art. 8, s. 8.

11.—All unappropriated lands on the Chesapeake Bay, on the shore of the sea, or of any river or creek, and the bed of any river or creek, in the eastern parts of the commonwealth, ungranted and used as common, it is declared by statute in Virginia, shall remain so, and not be subject to grant. 1 Virg. Rev. C. 142.
12.—In most of the cities and towns in the United States, there are considerable tracts of land appropriated to public use. These commons were generally laid out with the cities or towns where they are found, either by the original proprietors or by the early inhabitants. Vide 2 Pick. Rep. 475; 12 S. & R. 32; 2 Dane’s Ab. 610; 14 Mass. R. 440; 6 Verm. 355.


**Common appurtenant, Eng. law,** is a right attached to arable land, and is an incident of tenure, and supposed to have originated in the lord or owner of a manor or waste, in consideration of certain rents or services, or other value, granting out to a freeholder, or copyholder, plough land, and at the same time either expressly or by implication, and as of common right and necessity common appurtenant over his other wastes and commons. Co. Litt. 132 a; Willis, 222.

**Common appurtenant, Eng. law,** is a right granted by deed, made by a person who has waste or other land, to another person, owner of other land, to have his cattle, or a particular description of cattle, levant and couchant upon the land, at certain seasons of the year, or at all times of the year. An uninterrupted usage for twenty years, is evidence of a grant. 15 East, 116.

**Common bail,** is the formal entry of fictitious sureties in the proper office of the court, which is called filing common bail to the action. See Bail.

**Common bar, pleading,** is a plea to compel the plaintiff to assign the certain place where the trespass has been committed. Steph. Pl. 256; it is sometimes called a blank bar, (q. v.)

**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, Bailment, § 495.

2.—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.

3.—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, or by the act of the owner of the property. 8 S. & R. 533; 6 John. R. 160; 11 John. R. 107; 4 N. H. Rep. 304; Harp. R. 469; Peck. R. 270; 7 Yerg. R. 340; 3 Munf. R. 239; 1 Conn. R. 457; 1 Dev. & Bat. 273; 2 Bail. Rep. 157.

4.—It has been attempted to relax the rigour 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.

5.—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. 2 Watts, R. 443; 5 Day’s Rep. 415; 1 Conn. R. 54; 4 Greenl. R. 441; 5 Yerg. R. 427; 4 Har. & J. 291; 2 Verm. R. 92; 2 Binn. Rep. 74; 1 Bay, Rep. 99; 10 John. R. 1; 11 Pick. R. 41; 3 Stew. & Port. 135; 4 Stew. & Port. 382; 3 Misso. R. 264; 2 Nott & M. 88. But see 6 Cowen, R. 266. The rule which makes a common carrier responsible for losses of goods, does not extend to the carriage of intelligent beings; a carrier of slaves, is, therefore, answerable only for want of care and skill. 2 Pet. S. C. R. 150; 4 M’Cord, R. 229; 4 Port. R. 238.

6.—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 to take charge of them; if, however, he takes 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 imple-
cation 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.

7.—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.

8.—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. 405; 6 Moore, R. 141; 2 Chit. R. 1; 4 Esp. R. 460; 1 Bell’s Com. 462; Story, Balm. § 591.

9.—2. To provide coaches reasonably strong and sufficient for the journey, with suitable horses, trappings and equipments.

10.—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.

11.—4. Not to overload the coach either with passengers or baggage.

12.—5. To receive and take care of the usual luggage allowed to every passenger on the journey. 6 Hill, N. Y. Rep. 586.

13.—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.

14.—2. To use all the ordinary precautions for the safety of passengers on the road.

15.—3dly. Their duties on the termination of the journey. 1. To carry the passengers to the end of the journey.
16.—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.

17.—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.

18.—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.

19.—Second, Carriers of passengers by water. By the act of Congress of 2d March, 1819, 3 Story’s Laws U. S. 1722, it is enacted, 1, that no master of a vessel bound to or from 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. The tonnage here mentioned, is the measurement of the custom house; and in estimating the number of passengers in a vessel, no deduction is to be made for children or persons not paying, but the crew is not to be included. Gilp. R. 334.

20.—The act of Congress of February 22, 1847, section 1, provides:—“That if the master of any vessel, owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger for every twenty such clear superficial feet of deck, and on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or place with the same, and bring the same, or any number thereof, within the jurisdiction of the United States aforesaid, or if any such master of a vessel shall take on board of his vessel at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel.

21. Children under one year of age not to be computed in counting the passengers, and those over one year and under eight, are to be counted as two children for one passenger. Sect. 4. But this section is repealed so far as authorizes shippers to estimate two children of eight years of age and under as one passenger, by the act of March 2, 1847, s. 2.
22. — 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.

23. — 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 through them 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 even 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, 1852; Moreau & Carlton, Partidas 5, t. 8, l. 26; Ersk. Inst. B. 2, 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 pleas. The name of a court having jurisdiction generally of civil actions. For a historical account of the origin of this court in England, see Boote’s Suit at law, 1 to 10. Vide Common Bench.

Common recovery, is a judgment recovered in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in the suit. A common recovery is a kind of conveyance. Vide Recovery.

Common scold, crim. law, communis vexatrix, is a woman who in consequence of her scolding, is a public nuisance to the neighbourhood.

2. — Such a woman may be indicted, and on conviction punished. At com-
mon law, the punishment was by being placed in a certain engine of correction called the trebucket or cucking stool.

3.—This barbarous punishment has been abolished in Pennsylvania, where the offence may be punished by fine and imprisonment. 12 Serg. & Rawle, 220; vide 1 Russ. on Cr. 302; Hawk. B. 2, c. 25, s. 59; 1 T. R. 756; 4 Rogers’s Rec. 90; Roscoe on Cr. Ev. 665.

COMMON SENSE, med. jur. When a person possesses those perceptions, associations and judgments in relation to persons and things which agree with those of the generality of mankind, he is said to possess common sense; and, on the contrary, when a particular individual differs from all others in these respects, he is said not to have common sense, or not to be in his senses. 1 Chit. Med. Jur. 334.

COMMON TRVERSE. This kind of traverse differs from those called technical traverses principally in this, that it is preceded by no inducement general or special; it is taken without an absque hoc, or any similar words, and is simply a direct denial of the adverse allegations, in common language, and always concludes to the country. It can be used properly only when an inducement is not requisite; that is, when the party traversing has no need to allege any new matter. 1 Saund. 103 b, n. 1.

2.—This traverse derives its name, it is presumed, from the fact that common language is used, and that it is more informal than other traverses.

COMMONALTY, Eng. law. This word signifies, 1st, the common people of England, as contradistinguished from the king and the nobles; 2d, the body of a society, as the masters, wardens, and commonalty of such a society.

COMMONER, is one who is entitled with others to the use of a common.

COMMONS, Eng. law. Those subjects of the English nation who are not noblemen. They are represented in parliament in the house of commons.

COMMONWEALTH, government,
Community. This word has several meanings; when used in common parlance it signifies the body of the people, as such acts cannot be tolerated in a moral community.

2.—In the civil law, by community is understood corporations, or bodies politic. Dig. 3, 4.

3.—In the French law, which has been adopted in this respect in Louisiana, Civ. Code, art. 2371, community is a species of partnership, which a man and woman contract when they are lawfully married to each other. It consists of 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, or by purchase, or in any other similar way, even although the purchase be made 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. 10 L. R. 146; Id. 172, 181; 1 N. S. 325; 4 N. S. 212. The debts contracted during the marriage enter into the community, and must be acquitted out the common fund; but not the debts contracted before the marriage.

4.—The community is either, first, conventional, or that which is formed by an express agreement in the contract of marriage itself; by this contract the legal community may be modified, as to the proportions which each shall take, or as to the things which shall compose it, Civ. Code of L. art. 2393; second, legal, which takes place when the parties make no agreement on this subject in the contract of marriage; when it is regulated by the law of the domicil they had at the time of marriage.

5.—The effects which compose the community of gains, are divided into two equal portions between the heirs, at the dissolution of the marriage. Civ. Code of L. art. 2375. See Poth. h. t.; Toull. h. t.; Civ. Code of Lo. tit. 6, c. 2, s. 4.

6.—In another sense, community is the right which all men have, according to the laws of nature, to use all things. Wolff, Inst. § 186.

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.

Commutative contract, civil law, is one in which the contracting parties give and receive an equivalent for what they give; the contract of sale is of one kind, the seller gives the thing sold, and receives the price, which is the equivalent; the buyer gives the price and receives the thing sold which is the equivalent.

2.—These contracts are usually distributed into four classes, namely; Do ut des, Facio ut facias, Facio ut des, Do ut facias. Poth. Obl. n. 13. See Civ. Code of Lo. art. 1761.

Commutative justice, is that virtue whose object is, to render to every one what belongs to him, as nearly as may be, or that which governs contracts.

2.—The word commutative is derived from commutare, which signified to exchange. Lepage, El. du Dr. ch. 1, art. 3, § 3. See Justice.

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 be-
between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2, c. 6, § 1.

2. — The constitution of the United States declares that "no state shall, without the consent of Congress, enter into agreement or compact with another state, or with a foreign power." See 11 Pet. 1; 8 Wheat. 1; Bald. R. 60; 11 Pet. 185.

COMPANION, dom. rel. The wife. By 25 Edw. 3, st. 5, c. 2, § 1, it is declared to be high treason in any one who "doth compass or imagine the death of our lord the king, our lady his companion," &c. See 2 Inst. 8, 9; 1 H. H. P. C. 124.

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.

COMPANY. An association of a number of individuals for the purpose of carrying on some legitimate business.

2. — This term is not synonymous with partnership, though every such unincorporated company is a partnership.

3. — Usage has reserved this term to associations whose members are in greater number, their capital more considerable, and their enterprises greater, either on account of their risk or importance.

4. — When these companies are authorised by the government, they are known by the name of corporations, (q. v.)

5. — Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm; as, A B & Company. Vide 12 Toull. n. 97; Mortimer on Commerce, 128. Vide Club; Corporation; Firm; Parties to actions; Partnership.

COMPARISON OF HANDWRITING, 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 im-
possible for any living witness to swear that he ever saw the party write, comparison of handwriting, with documents known to be in his handwriting, has been admitted. 7 East, R. 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. 351; 1 Root, 307; Swift's Ev. 29; 1 Whart. Dig. 245; 5 Binn. R. 349; Addison's R. 33; 2 M'Cord, 518; 1 Tyler, R. 4; 6 Whart. R. 284. Vide Diploma.

TO COMPASS. To imagine; to contrive.

2. — In England, to compass the death of the king is high treason. Bract. l. 3, c. 2; Brit. c. 8; Mirror, c. 1, s. 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.)

COMPENSATIO CRIMINIS. The compensation or set-off of one crime against another; for example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offence, and having himself violated the contract, he cannot complain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. 1 Ought. Ord. per tit. 214; 1 Hagg. Consist. R. 144; 1 Hagg. Eccl. R. 714; 2 Paige, 108; 2 Dev. & Batt. 64. See Condition.

COMPENSATION, chancery practice, is the performance of that which a court of chancery orders 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.

2. — 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.
Compensation, contracts, a reward for services rendered.

Compensation, contracts, in the civil law. When two persons are equally indebted to each other, there takes place a compensation between them, which extinguishes both debts.

2.—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 seizure. Civil Code of Louis. 2203 to 2209. Compensation is of three kinds: 1, legal or by operation of law; 2, compensation by way of exception; and, 3, by re-convention. 8 L. R. 156; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t. 6, s. 30; Poth. Obl. partie 3eme, ch. 4eme, n. 623; Burge on Sur. Book 2, c. 6, p. 181.

3.—Compensation very nearly resembles the set-off (q. v.) of the common law. The principal difference is this, that a set-off, to have any effect, must be pleaded, whereas compensation is effectual without any such plea, only the balance is a debt.

Compensation, crim. law; eccl. law. Compensatio criminum, or re-crimination, (q. v.)

2.—In cases of suits for divorce on the ground of adultery, a compensation of the crime hinders its being granted; that is, if the defendant proves that the party has also committed adultery, the defendant is absolved as to the matters charged in the libel of the plaintiff.

Ought. tit. 214, pl. 1; Clarke’s Prax. tit. 115; Shelf. on Mar. & Div. 439; 1 Hagg. Cons. R. 148. See Condonation; Divorce.

Compensation, remedies, is the damages recovered for an injury, or the violation of a contract. See Damages.

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.

2.—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.

2.—Prima facie every person offered is a competent witness, and must be received, unless his incompetency (q. v.) appears. 9 State Tr. 652.

3.—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.

4.—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. Vide 8 Watts, R. 227, and articles Credibility; Incompetency; Interest; Witness.

COMPETENT WITNESS, is one who is legally qualified to be heard to testify in a cause. In Kentucky, Michigan, and Missouri, a will must be attested, for the purpose of passing lands, by competent witnesses; but if wholly written by the testator, in Kentucky, it need not be so attested. See
Attesting witness; Credible witness; Disinterested witness; Respectable witness; and Witness.

COMPETITORS. Persons who compete or aspire to the same office, rank or employment. Ferrière, Dict. de Dr. h. t.

COMPILATION, a literary production, composed of the works of others, and arranged in some methodical manner.

2.—When a compilation requires in its execution discernment, taste, learning, and intellectual labour, it is an object of copyright; as, for example, Bacon’s Abridgment. Curt. on Copyr. 186.

COMPLAINANT. One who makes a complaint; a plaintiff in a suit in chancery is so called.

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.

2.—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 com pos mentis, (q. v.)

COMPOSITE STATE. A name sometimes given to sovereign states permanently united together by a federal compact, with a supreme federal government. According to this definition, the United States of America are a composite state.

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; 2 Chit. R. 541, 564; 5 D. & R. 56; 3 B. & C. 242; 1 R. & M. 138; 1 B. & A. 103, 440; 3 Moore’s R. 11; 6 T. R. 263; 1 D. & R. 493; 2 Campb. R. 283; 2 M. & S. 120; 1 N. R. 124; Harr. Dig. Deed VIII.

2.—In England, compositions were formerly allowed for crimes and misdemeanors, even for murder. But these compositions are no longer allowed, and even a qui tam action cannot be lawfully compounded. Bac. Ab. Actions qui tam, G. See 2 John. 405; 9 John. 251; 10 John. 118; 11 John. 474; 6 N. H. Rep. 200.

COMPOSITION OF MATTER. In describing the subjects of patents, the act of Congress of July 4, 1836, sect. 6, uses the words “composition of matter;” these words are usually applied to mixtures and chemical compositions, and in these cases it is enough that the compound is new. Both the composition and the mode of compounding may be considered to be included in the invention, when the compound is new.

COMPOUND INTEREST, is interest allowed upon interest; for example, when a sum of money due for interest, is added to the principal, and then bears interest. This is not, in general, allowed. See Interest for money.

COMPOUNDER, in Louisiana. He who makes a composition. An amicable compounder is one who has undertaken by the agreement of the parties to compound or settle differences between them. Code of Pract. of Lo. art. 444.

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 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 lawsuit, amicably settle their differences, on such terms as they can agree upon; vide Com. Dig. App. tit. Compromise.

2. The compromise must be of something uncertain; for if the debt be certain and undisputed, a payment of a part will not, of itself, discharge the whole.

3. It must be made by a person having a right and capacity to enter into the contract. The compromise may be by parol, or in writing, and the writing may be under seal or not: though as a general rule a partner cannot bind his co-partner by deed, unless expressly authorized, yet, it would seem that a compromise with the principal is an act which one partner may do in behalf of his co-partners, and that it would conclude the firm. 2 Swanst. 539.

4. The compromise puts an end to the suit, if it be proceeding, and bars any suit which may afterwards be instituted. It has the effect of res judicata.

5. 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.

COMPROMISSARIUS, civil law. A name sometimes given to an arbitrator; because the parties to the submission usually agree to fulfill his award as a compromise.

COMPTROLLERS, are officers who bear this name, in the treasury department of the United States.

2. 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.

3. To superintend the recovery of all debts due to the United States; to direct suits and legal proceeding, and to take such measures as may be authorized 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 thirteenth 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.

4. Besides these, this officer is required to perform minor duties, which the plan of this work forbids to be enumerated here.

5. His salary is three thousand five hundred dollars per annum. Act of Feb. 20, 1804, s. 1.

6. 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 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 an act.

2.—Compulsion may be lawful or unlawful. 1. When a man is compelled by lawful authority to do that which he ought to do, that compulsion does not affect the validity of the act; as for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the granter cannot object to it on the ground of compulsion. 2. But if the court compelled a party to do an act forbidden by law, or not having jurisdiction over the parties or the subject-matter, the act done by such compulsion would be void. Bowy, Mod. C. L. 305.

3.—Compulsion is never presumed, 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.

2.—This usage, so eminently calculated to create fraud, and encourage purjury 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.

3.—The number of compurgators varied according to the nature of the charge and other circumstances. Encyclopedie, h. t. Vide Du Cange, Gloss. voc. Juramentum; Spelman's Gloss. voc. Assarthur; Merl. Rép mot Conjurateurs.

4.—By the English law, when a party was sued in debt or 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; Barr. on the Stat. 344.

COMPUTATION, counting, calculation. It is a reckoning or ascertaining the number of any thing.

2.—It is used in the common law for the true and indifferent account and construction of time. Time is computed in two ways; first, naturally, counting years, days and hours; and, secondly, civilly, that is, that when the last part of the time has once commenced, it is considered as accomplished. Savig. Dr. Rom. § 182; See Infant; Fraction. 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. 3, 4, 5; Salk. 625; 3 Wils. 274.

3.—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 Loffi, 276;
crease the risk. Under this rule it has been decided that a policy was void, which was obtained by the concealment by the assured of the fact that he had heard that a vessel like his was taken. 2 P. Wms. 170. And in a case where the assured had information of “a violent storm,” about eleven hours after his vessel had sailed, and had stated only that “there had been blowing weather and severe storms on the coast after the vessel had sailed,” but without any reference to the particular storm, it was decided that this was a concealment which vitiated the policy. 2 Caines, R. 57. Vide 1 Marsh. Ins. 468; Park, Ins. 276; 14 East, R. 494; 1 John. R. 522; 2 Cowen, 56; 1 Caines, 276; 3 Wash. C. C. Rep. 138; 2 Gallis, 353; 12 John. 128.

4.—Fraudulent concealment avoids the contract. See generally, Verpl. on Contr. passim; Marsh. Ins. B. 1, c. 9; 1 Bell’s Com. B. 2, pt. 3, c. 1, s. 3, § 1; 1 M. & S. 517; 2 Marsh. R. 3:6.

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; Dane’s Ab. Index, h. t.; 5 Whart. R. 278.

CONCESSION. A grant. This word is frequently used in this sense when applied to grants made by the French and Spanish governments in Louisiana.

CONCESSIMUS. A Latin word which signifies we grant. This word creates a covenant in law, for the breach of which the grantors may be jointly sued. Bac. Ab. Covenant, B. See Bac. Ab. officers, &c, E.

CONCILIUM. A day allowed to a defendant to make his defence; an imparlance. 4 Bl. Com. 356, n.; 3 T. R. 530.

CONCILIUM regis. The name of a tribunal which existed in England.
during the times of Edward, the first, and Edward, the second; composed of the judges and sages of the law. To them were referred cases of great difficulty. Co. Litt. 304.

CONCLAVE. An assembly of cardinals for the purpose of electing a pope; the place where the assembly is held is also called a conclave. It derives this name from the fact that all the windows and doors are locked, with the exception of a single panel which admits a gloomy light.

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 estoppel; 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 certior 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.

Conclusion to the country, pleading. The tender of an issue to be tried by a party, is a formula called the conclusion to the country.

2.—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 the 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 postit se, be substituted for petit quoi inquirer, or vice versa, the mistake is unimportant. 10 Mod. 166.

3.—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.

CONCLUSIVE EVIDENCE, is that which cannot be contradicted by any other evidence; for example, a record, unless impeached for fraud, is conclusive evidence between the parties.

CONCLUSUM, intern. law. The form of an acceptance or conclusion of a treaty; as, the treaty was ratified purely and simply by a conclusum. It is the name of a decree of the Germanic diet, or of the aulic council.

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 cognisor, and the person to whom it is levied, the cognised. 2 Bl. Com. 330; Cruise, Dig. tit. 35, c. 2, s. 33; Com. Dig. Fine (E 9.)

CONCORDATE. A convention, a pact, an agreement. The term is generally confined to the agreements made between independent governments; and, most usually, applied to those between the pope and some prince.

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.; Dig. 32, 49, 4; Id. 7, 1, 1; Code, 5, 27, 12.

TO CONCUR. In Louisiana, to concur signifies, to claim a part of the estate of an insolvent along with other claimants, 6 N. S. 460; as “the wife concurs with her husband’s creditors, and claims a privilege over them.”

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.

CONCURRENT. Running together; having the same authority; thus we say a concurrent consideration occurs in the case of mutual promises; such and such a court have concurrent jurisdiction; that is, each has the same jurisdiction.

CONCUSSION, civ. law, is the unlawful forcing of another by threats of violence to give something of value. It differs from robbery in this, that in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Hein. Leç. El. § 1071.

CONDEDIT, eccl. law, is the name of a plea, entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Eccl. Rep. 438; 6 Eng. Eccl. Rep. 431.

CONDELEGATES. Advocates who have been appointed judges of the high court of delegates are so called. Shelf. on Lun. 310.

CONDEMNATION, mar. law, 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.

2.—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 a prize; until this has been done the original owner may retain his property although the ship may have been in possession of the enemy twenty-four hours, or carried infra praesidia. 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. on Ins. 402.

3.—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 of 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, Lat. condicio. This term is used in the civil law in the same sense as action. Condicio certi, is an action for the recovery of a certain thing, as our action of replevin; condicio incerti, is an action given for the recovery of an uncertain thing. Dig. 12, 1.

CONDITION, contracts, wills. In its most extended signification a condition is a clause in a contract or agreement which has for its object to suspend, to rescind, or to modify the principal obligation; or in case of a will, to suspend, revoke, or modify the devise or bequest.

2.—Conditions suspend the obligation when it is to have no effect until they are fulfilled; as, if I bind myself to pay you one thousand dollars on condition that the ship Thomas Jefferson shall arrive in the United States from Havre; the contract is suspended until the arrival of the ship.

3.—The condition rescinds the contract; as, when I sell you my horse, on condition that he shall be alive on the first day of January, and he dies before that time.

4.—A condition may modify the contract; as, if I sell you two thousand bushels of corn, upon condition that my crop shall produce that much, and it produces only fifteen hundred bushels.
5.—In a less extended acceptation, but in a true sense, a condition is a future and uncertain event, on the existence or non-existence of which is made to depend, either the accomplishment, the modification, or the rescission of an obligation or testamentary disposition.

6.—There is a marked difference between a condition and a limitation; when a thing is given generally, but the gift may be defeated upon the happening of an uncertain event, the latter is called a condition; but when it is given to be enjoyed until the event arrives, it is a limitation. See Limitation, estates. It is not easy to say when a condition will be considered a covenant and when not, or when it will be held to be both. Platt on Cov. 71.

7.—Events foreseen by conditions are of three kinds; some depend on the acts of the persons who deal together, as if the agreement should provide that a partner should not join another partnership; others are independent of the will of the parties, as, if I sell you one thousand bushels of corn, on condition that my crop shall not be destroyed by a fortuitous event, an act of God; and some depend in part on the contracting parties and partly on the act of God, as if it be provided that such merchandise shall arrive by a certain day.

8.—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 proviso, if, &c. Bac. Ab, Conditions, A.

9.—Conditions are of various kinds: 1, as to their form, they are express or implied; 2, as to their object, they are lawful or unlawful; 3, as to the time when they are to take effect, they are precedent or subsequent; 4, as to their nature, they are possible or impossible; 5, as to their operation, they are positive or negative; 6, as to their divisibility, they are copulative or disjunctive; 7, as to their agreement with the contract, they are consistent or repugnant; 8, as to their effect, they are solutory or suspensive. These will be severally considered.

10.—An express condition is one created by express words, as for instance, a condition in a lease that if the tenant shall not pay the rent at the day, the lessor may re-enter. Litt. 328. Vide Re-entry.

11.—An implied condition is one created by law, and not by express words; for example, at common law, the tenant for life holds upon the implied condition not to commit waste. Co. Litt. 233, b.

12.—A lawful or legal condition is one made in consonance with the law; this must be understood of the law as existing at the time of making the condition, for no change of the law, can change the force of the condition. For example, a conveyance was made to the grantee, on condition that he should not alienate until he reached the age of twenty-five years. Before he acquired this age he aliened, and made a second conveyance after he obtained it; the first deed was declared void, and the last valid. When the condition was imposed, twenty-five was the age of majority in the state; it was afterwards changed to twenty-one; under these circumstances the condition was held to be binding. 3 Miss. R. 40.

13.—An unlawful or illegal condition is one forbidden by law. Unlawful conditions have for their object, 1st, to do something malum in se, or malum prohibitum; 2dly, to omit the performance of some duty required by law; 3dly, to encourage such act or omission. 1 P. Wms. 189. When the law prohibits, in express terms, the transaction in respect to which the condition is entered, and declares it void, such condition is then void. 3 Binn. R. 533; but when it is prohibited, without being declared void, although unlawful, it is not void. 12 S. & R. 237.

14.—A condition precedent is one which must be performed before the estate will vest, or the obligation is to be formed. 2 Dall. R. 317. Whether a condition shall be considered as pre-

15.—A subsequent condition is one which enlarges or defeats an estate or right, already created. A conveyance in fee, reserving a life estate in a part of the land, and made upon condition that the grantee shall pay certain sums of money at divers times to several persons, passes the fee upon condition subsequent. 6 Greenl. R. 106. Sometimes it becomes of great importance to ascertain whether the condition is precedent or subsequent. When a precedent condition becomes impossible by the act of God, no estate or right vests; but if the condition is subsequent, the estate or right becomes absolute. Co. Litt. 206, 209; 1 Salk. 170.

16.—A possible condition is one which may be performed, and there is nothing in the laws of nature to prevents its performance.

17.—An impossible condition is one which cannot be accomplished according to the laws of nature; as, to go from the United States to Europe in one day; such a condition is void. 1 Swift's Dig. 93; 6 Toull. n. 481. When a condition becomes impossible by the act of God, it either vests the estate, or does not, as it is precedent or subsequent; when it is the former, no estate vests; when the latter, it becomes absolute. Co. Litt. 206, a, 218, a; 3 Pet. R. 374; 1 Hill. Ab. 249. When the performance of the condition becomes impossible by the act of the party who imposed it, the estate is rendered absolute. 3 Bro. Parl. Cas. 359. Vide 1 Paine's R. 652; Bac. Ab. Conditions, M; Roll. Ab. 420; Co. Litt. 206; 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; Inst. 2, 4, 10; Dig. 28, 7, 1; Id. 44, 7, 31; Code 6, 25, 1; 6 Toull. n. 486, 686; and the article Impossibility.

18.—A positive condition consists in the case where a thing that may or may not happen, shall happen; as, If I marry. Poth. Ob. part. 2, c. 3, art. 1, § 1.

19.—A negative condition is that which consists in the case where something that may or may not happen, shall not happen; as, If I do not marry. Poth. Ob. n. 200.

20.—A copulative condition is one of several distinct matters, the whole of which are made precedent to the vesting of an estate or right. In this case the entire condition must be performed, or the estate or right can never arise or take place. 2 Freem. 186. Such a condition differs from a disjunctive condition, which gives to the party the right to perform the one or the other; for, in this case, if one becomes impossible by the act of God, the whole will, in general, be excused. This rule, however, is not without exception. 1 B. & P. 242; Cro. Eliz. 780; 5 Co. 21; 1 Lord Raym. 279. Vide Conjunctive; Disjunctive.

21.—A disjunctive condition is one which gives the party to be affected by it, the right to perform one or the other of two alternatives.

22.—A consistent condition is one which agrees with other parts of the contract.

23.—A repugnant condition is one which is contrary to the contract; as, if I grant to you a house and lot in fee, upon condition that you shall not alienate, the condition is repugnant and void, as being inconsistent with the estate granted. Bac. Ab. Conditions, L; 9 Wheat. 325; 2 Ves. jr. 324.

24.—A resolutory condition is one which has for its object, when accomplished, to revoke the principal obligation. This condition does not suspend either the existence or the execution of the obligation, it merely obliges the creditor to return what he has received.

25.—A suspensive condition is one
which suspends the fulfilment of the obligation until it has been performed; as, if a man bind himself to pay one hundred dollars, upon condition that the ship Thomas Jefferson shall arrive from Europe. The obligation in this case, is suspended until the arrival of the ship, when the condition having been performed, the obligation becomes absolute, and it is no longer conditional. A suspensive condition is in fact a condition precedent.

26.—Pothier further divides conditions into potestative, casual and mixt.

27.—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.

28.—A casual condition is one which depends altogether upon chance, and not in the power of the creditor, as the following; if I have children; if I have no children; if such a vessel arrives in the United States, &c. Poth. Ob. n. 201.

29.—A mixed condition is one which depends on the will of the creditor and of a third person, as the following, if you marry my cousin. Poth. Ob. n. 201.

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.

2.—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.

CONDITIONAL OBLIGATION, is one which is superseded by a condition under which it was created and which is not yet accomplished. Poth. Obl. n. 176, 198.

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.

2.—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 is said at the time of sale, to add or vary such printed conditions, will be of any avail. 1 H. Bl. 289; 12 East, 6; 6 Ves. 330; 15 Ves. 521; 2 Munf. Rep. 119; 1 Desauss. Ch. Rep. 578; 2 Desauss. Ch. R. 320; 11 John. Rep. 555; 3 Camp. 258. Vide forms of conditions of sale in Babington on Auctions, 233 to 243; Suld. Vend, Appx. No. 4. Vide Auction; Auctioneer; Puffer.

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. R. 773; 3 Eccl. Rep. 310. See 5 Mass. 320; 5 Mass. 69; 1 Johns. Ch. R. 488.

2.—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. R. 338.

3.—Condonation is not, for many reasons, held so strictly against a wife as against a husband. 3 Eccl. R. 330; 1b. 341, n. 2 Edw. R. 207. 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.

4.—In New York, an act of cruelty alone, on the part of the husband, does not revive condoned adultery, to entitle
the wife to a divorce. 4 Paige's R. 460. See 3 Edw. R. 207.

5.—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. R. 341, n.; 2 Paige, R. 108.

6.—Condonation is a bar to a sentence of divorce. 1 Eccl. Rep. 284; 2 Paige, R. 108.

7.—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. Villanova Y Mañes, Materia Criminal Forense, Obs. 11, c. 20, n. 4. Vide generally, 2 Edw. 207; Dev. Eq. R. 382; 4 Paige, 432; 1 Edw. R. 14; Shelf. on M. & D. 445; 1 John, Ch. R. 488; 4 N. Hamp. R. 462; 5 Mass. 320.

Conduct, law of nations, is 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 quietly 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.

Conductor Operarum, civil law. One who undertakes, for a reward, to perform a job or piece of work for another. See Locator Operis.

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.

2.—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.)

Confederacy, equity pleading. The fourth part of a bill in chancery usually charges a confederacy; this is either general or special.

2.—The first is by alleging general charge of confederacy between the defendants and other persons to injure or defraud the plaintiff. The common form of the charge is, that the defendants combining and confederating together, to and with divers other persons as yet to the plaintiff unknown, but whose names, when discovered, he may be may be inserted in the bill, and they be made parties thereto, with proper and apt words to charge them with the premises, in order to injure and oppress the plaintiff in the premises, do absolutely refuse, &c. Mitf. Eq. Pl. by Jeremy, 40; Coop. Eq. Pl. 9; Story, Eq. Pl. § 29; 1 Mont. Eq. Pl. 77; Barton, Suit in Eq. 3. Van Heytn. Eq. Drafts, 4.

3.—When it is intended to rely on a confederacy or combination as a ground of equitable jurisdiction, the confederacy must be specially charged to justify an assumption of jurisdiction. Mitf. Eq. Pl. by Jeremy, 41; Story, Eq. Pl. § 30.
4.—A general allegation of confederacy is now considered as mere form. Story, Eq. Pl. § 29.

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.

2.—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.

2.—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.

3.—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.

2.—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.

3.—Confessions should be received with great caution, as they are liable to many objections. There is danger of error from the misapprehension of witnesses, the misuse of words, the failure of a party to express his own meaning, the prisoner being oppressed by his unfortunate situation, and influenced by hope, fear, and sometimes a worse motive to make an untrue confession. See the case of the two Boorins in Greenl. Ev. § 214, note 1; North American Review, vol. 10, p. 418; 6 Carr. & P. 451; Joy on Confess. s. 14, p. 100; and see 1 Chit. Cr. Law, 85.

4.—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 guilt, that no credit ought to be given to it. 1 Leech, 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.) R. 482; 1 Carr. & Marsh. 584. But it must be observed that a confession will be considered as voluntarily made, although it was made after a promise of favour or threat of punishment, by a person not in authority, over the prisoner. If, however, a person having such authority over him be present at the time, and he express no dissent, evidence of such confession cannot be given. 8 Car. & Payne, 738.

5.—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.

6.—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. 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.

7.—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); Arch. Cr. Pl. 121; Harr. Dig. h. t.; 20 Am. Jur. 68. Joy on Confession.

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.

2.—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. Pledger, 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 demense 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.

3.—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.

4.—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, evill. A priest of some Christian sect, who receives an account of the sins of his people, and undertakes to give them absolution of their sins.

2.—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 the 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.; Joy on Conf. § 4, p. 49.

CONFIDENTIAL COMMUNICATIONS, evidence. Whatever is communicated professedly by a client to his counsel, solicitor, or attorney, is considered as a confidential communication.

2.—This the latter is not permitted to divulge, for this is the privilege of the client and not of the attorney.

3.—The rule is, in general, strictly confined to counsel, solicitors or attor-
neys, except, indeed, the case of an interpreter between the counsel and client, when the privilege rests upon the same grounds of necessity. 3 Wend. R. 339. In New York, contrary to this general rule, under the statute of that state, it has been decided that information disclosed to a physician while attending upon the defendant in his professional character, and which information was necessary to enable the witness to prescribe for his patient, was a confidential communication which the witness need not have testified about; and in a case where such evidence had been received by the master, it was rejected. 4 Paige, R. 460.

4.—As to the matter communicated, it extends to all cases where the party applies for professional assistance. 6 Mad. R. 47; 14 Pick. R. 416. But the privilege does not extend to extraneous or impertinent communications; 3 John, Cas. 195; nor to information imparted to a counsellor in the character of a friend, and not as counsel. 1 Caines’s R. 157.

5.—The cases in which communications to counsel have been held not to be privileged may be classed under the following heads: —1. When the communication was made before the attorney was employed, as such, 1 Vent. 197; 2 Atk. 524; 2, after the attorney's employment has ceased, 4 T. R. 431; 3, when the attorney was consulted because he was an attorney, yet he refused to act as such, and was therefore only applied to as a friend, 4 T. R. 753; 4, where a fact merely took place in the presence of the attorney, Cowp. 846; 2 Ves. 189; 2 Curt. Ecll. R. 866; but see Str. 1122; 5, when the matter communicated was not in its nature private, and could in no sense be termed the subject of a confidential communication, 7 East, R. 357; 2 B. & B. 176; 3 John, Cas. 198; 6, when the things disclosed had no reference to professional employment, though disclosed while the relation of attorney and client subsisted, Peake’s R. 77; 7, when the attorney made himself a subscribing witness. 10 Mod. 40; 2 Curt. Ecll. R. 866; 3 Burr. 1687; 8, when he was directed to plead the facts to which he is called to testify. 7 N. S. 179. See a well written article on this subject in the American Jurist, vol. xvi. p. 304. 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; 4 Wash. C. C. R. 718; 11 Wheat. 280; 3 Yeates, R. 4; 4 Munf. R. 273; 1 Porter, R. 433; Wright, R. 136; 13 John, R. 492. As to a confession made to a catholic priest, see 2 N. Y. City Hall Rec. 77. Vide 2 Ch. Pr. 18–21. Confessor.

CONFIRMATIO CHARTORUM.
The name given to a statute passed during the reign of the English king Edward the First, 25 Ed. 1, c. 6. See Bac. Ab. Smuggling, B.

CONFIRMATION, contracts, conveyancing. 1. A contract by which that which was voidable, is made firm and unavoidable. 2. A species of conveyance.

2.—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 & Beatty, 353; 2 Scho. & Lef. 486; 12 Ves. 373; 1 Ves. Jr. 215; Newl. Contr. 496; 1 Atk. 301; 8 Watts, R. 280.

3.—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.”

4.—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.

5.—A confirmation does not strengthen a void estate. *Confirmatio est nulla, uti donum precedens est invalidum, et uti donatio nulla est nec valid bit confirmatio.* For confirmation may make a voidable or defeasible estate good, but cannot operate on an estate void in law. Co. Litt. 295. The common 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. Vide Vin. Ab. h. t.; Com. Dig. h. t.; Ayliffes's Pand.*338; 1 Chit. Pr. 315. 3 Gill & John. 290; 3 Yerg. R. 405; Co. Litt. 295; Gilbert on Ten. 75; 1 Breese's R. 236; 9 Co. 142, a.

6.—An infant is said to confirm his acts performed during infancy, when, after coming of full age, he expressly approves of them, or does acts from which such confirmation may be implied. See *Ratification.*

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. Domat, Droit Public, liv. 1, tit. 6, s. 2, n. 1. When property is forfeited as a punishment for the commission of crime, it is usually called a forfeiture. 1 Bl. Com. 299.

2.—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. 1 Gallis. R. 563; 3 Dall. R. 199; N. Car. Cas. 79. 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, 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.

3.—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, 129.

See Chit. Law of Nations, c. 3; Marten's Law of Nat. lib. 8, c. 3, ss. 9; Burlamaqui, Princ. of Pol. Law, part 4, c. 7; Vattel, liv. 3, c. 4, § 63.
fiscate 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; vide 4 Cranch, R. 415; Charlt. 140; 2 Harr. & John. 101, 112, 471; 6 Cranch, R. 286; 7 Conn. R. 428; 2 Tayl. R. 115; 1 Day, R. 4; Kirby, R. 228, 291; C. & N. 77, 492.

CONFLICT. The opposition or difference between two judicial jurisdictions, when they both claim the right to decide a cause, or where they both declare their incompetency. The first is called a positive conflict, and the latter a negative conflict.

CONFLICT OF JURISDICTION, is the contest between two officers, who each claim to have cognizance of a particular case.

CONFLICT OF LAWS. This phrase is used to denote that the laws of different countries, on the subject-matter to be decided, are in opposition to each other; or that certain laws of the same country are contradictory.

2.—When this happens to be the case, it becomes necessary to decide which law is to be obeyed. This subject has occupied the attention and talents of some of the most learned jurists, and their labours are comprised in many volumes. A few general rules have been adopted on this subject, which will be here noticed.

3.—1. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The laws of every state, therefore, affect and bind directly all property, whether real or personal, within its territory; and all persons who are resident within it, whether citizens or aliens, natives or foreigners; and also all contracts made, and acts done within it. Vide Lex Loca contractus; Henry, For. Law, part 1, c. 1, § 1; Comp. R. 208; 2 Hagg. C. R. 383. It is proper, however, to observe, that ambassadors and other public ministers, while in the territory of the state to which they are delegates, are exempt from the local jurisdiction. Vide Ambassador. And the persons composing a foreign army, or fleet, marching through, or stationed in the territory of another state, with whom the foreign nation is in amity, are also exempt from the civil and criminal jurisdiction of the place. Wheat Intern. Law, part 2, c. 2, § 10; Casaregis, Disc. 136-174; vide 7 Cranch, R. 116.

4.—Possessing exclusive authority, with the above qualification, a state may regulate the manner and circumstances, under which property, whether real or personal, in possession or in action, within it shall be held, transmitted or transferred, by sale, barter, or bequest, or recovered or enforced; the condition, capacity, and state, of all persons within it; the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts; and the remedies, and modes of administering justice in all cases. Story Confl. of Laws, § 18; Vattel, B. 2, c. 7, § 84, 85; Wheat, Intern. Law, part 1, c. 2, § 5.

5.—2. A state or nation cannot, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, whether they are natural born or naturalized citizens or subjects, or others. This result flows from the principle that each sovereignty is perfectly independent. 13 Mass. R. 4. To this general rule there appears to be an exception, which is this, that a nation has a right to bind its own citizens or subjects by its own laws in every place; but this exception is not to be adopted without some qualification. Story, Confl. of Laws, § 21; Wheat Intern. Law, part 2, c. 2, § 7.

6.—3. Whatever force and obligation the laws of one country have in another, depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its
own express or tacit consent. Huberius, lib. 1, t. 3, § 2. When a statute, or the unwritten or common law of the country, forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Whether the one or the other shall be the rule of decision must necessarily depend on a variety of circumstances, which cannot be reduced to any certain rule. No nation will suffer the laws of another to interfere with her own, to the injury of her own citizens; and whether they do or not, must depend on the condition of the country in which the law is sought to be enforced; the particular state of her legislation, her policy, and the character of her institutions. 2 Mart. Lo. Rep. N. S. 606. In the conflict of laws, it must often be a matter of doubt which should prevail; and, whenever a doubt does exist, the court which decides will prefer the law of its own country to that of the stranger. 17 Mart. (Lo.) R. 569, 595, 596.

Vide, generally, Story, Confl. of Laws, Burge, Confl. of Laws; Liverm. on Contr. of Laws; Fœlix, Droit Intern.; Huberius, De Confictu Legum; Hertijs, de Collisione Legum; Boulefois, Traité de la personnalité et de la réalité de lois, coutumes et statuts, par forme d'observations; Boulefois, Dissertations sur des questions qui naissent de la contrariété des lois et des coutumes.

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 and 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 Balm. § 40.

CONFUSION OF GOODS, is where the goods of two or more persons become mixed together so that they cannot be separated. There is a difference between confusion and commixtion; in the former it is impossible, while in the latter it is possible, to make a separation. Bowy. Comm. 88.

2.—When the confusion takes place by the mutual consent of the owners, they have an interest in the mixture in proportion to their respective shares. 2 Bl. Com. 405; 6 Hill, N. Y. Rep. 425. But if one willfully 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.

3.—There may be a case neither of consent nor of willfulness, 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 casualty. 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.

4.—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 unauthorized 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. Pledger, 3 M 28; Bac. Ab. Trespas, E 2; 2 Campb. 576; 2 Roll. 506, l. 15; 2 Bul. 323; 2 Cro. 366; 2 Roll. 393; 5 East, 7; 21 Pick. R. 298.

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. 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.

2.—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 interest unites is a minor, and can therefore dispose of the personality, 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; 2 Ld. R. 527; 3 L. R. 552; 4 L. R. 399, 488. Barge on Sur. Book 2, c. 11, p. 253.

CONGE'. A French word which signifies permission, and is understood in that sense in law. Cunn. Dict. h. t. In the French maritime law, it is a species of passport or permission to navigate, delivered by public authority. It is also in the nature of a clearance.—(q. v.) Bouch. Inst. n. 812.

CONGEABLE, Eng. law. This word is nearly obsolete. It is derived from the French conge, permission, leave; it signifies that a thing is done lawfully or with permission; as entry congeable, and the like. Litt. s. 279.

CONGREGATION. A society of a number of persons who compose an ecclesiastical body. In the ecclesiastical law this term is used to designate certain bureaux at Rome, where ecclesiastical matters are attended to. In the United States, by congregation is meant the members of a particular church, who meet in one place to worship. See 2 Russ. 120.

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.—2. Congress is the name of the legislative body of the United States, composed of the senate and house of representatives. Const. U. S. art. 1, s. 1.

3.—Congress is composed of two independent houses. 1. The senate; and, 2. The house of representatives.

4.—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 lots, 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.

5.—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.
6.—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.

7.—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.

8.—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. 1.

9.—The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative. Ib.

10.—Having shown how Congress is constituted, it is proposed here to consider the privileges and powers of the two houses, both aggregates and separately.

11.—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.

12.—The members of both houses are in all cases, except treason, felony and breach of the peace, privileged 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.

13.—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.

14.—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 further than the duration of the power that imprisons. The imprisonment will therefore terminate with the adjournment or dissolution of Congress.

15.—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.

16.—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.

17.—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 Indians; 1 McLean, R. 257; to establish an uniform rule of naturalization, and uniform laws of bankruptcy 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.

18.—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.

19.—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 take a part in the debate as an ordinary member.

20.—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.

21.—When a bill is engrossed, and 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.

22.—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. I, s. 7. See House of Representatives; President; Senate; Veto; Kent, Com. lecture xi.; Rawle on the Const. ch. ix.

CONGRESS, med. juris. This name was anciently given in France, England, and other countries, to the indecent consummation of marriage, when made in the presence of witnesses appointed by the courts, in cases when
the husband or wife was charged by the other with impotence. Trebuchet, Jurisp. de Med. 101; Dictionnaire des Sciences Medicale, art. Congrès, by Marc.

CONJECTURE. Conjectures are reasoning founded on probabilities without any demonstration of their truth. Mascardus has defined conjecture "rationable vestigium latenis verbatis, unde nascitur opinio sapientis;" or a slight degree of credence arising from evidence too weak or too remote to produce belief. De Prob. vol. i. quest. 14, n. 14. See Dict. de Trévoux, h. v.; Denisart, h. v.

CONJONCTS. Persons married to each other. Story, Confl. of L. § 71; Wolff, Dr. de la Nat. § 558.

CONJUGAL. Matrimonial; belonging to marriage; as, conjugal rights, or the rights which belong to the husband or wife as such.

CONJUNCTIVE, contracts, wills, instruments. A term in grammar used to designate particles which connect one word to another, or one proposition to another proposition.

2.—There are many cases in law, where the conjunctive and is used for the disjunctive or, and vice versa.

3.—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 Encyclopaedia, 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 dis-

charge 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, Bac. Ab. Conditions, M; 1 Bos. & Pall. 242; 4 Bing. N. C. 463; S. C. 33 E. C. L. R. 413.

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 territory 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. § 56–88.

2.—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.

3.—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 practised and allowed; towns which may be hereafter incorporated are to be entitled to one representative only.

4.—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.

5.—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 unlawful shall be done by another.

2.—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; 4 T. R. 657. It may be satisfactorily proved by implication.

3.—Connivance differs from condonation, (q. v.) though either may have the same legal consequences. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury.

4.—Connivance must be the act of the mind before the offence has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Eccl. R. 350.

5.—Connivance differs also, from collusion, (q. v.); the former is generally collusion for a particular purpose, while the latter may exist without connivance. 3 Hagg. Eccl. R. 130. Vide Shelf. on Mar. & Div. 449; 3 Hagg. R. 82; 2 Hagg. R. 376; lb. 278; 3 Hagg. R. 58, 107, 119, 131, 312; 3 Pick. R. 299; 2 Caines, 219; Anth. N. P. 190.

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.

2.—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 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.
3. — The conquest and military occupation of a part of the territory of the United States by a public enemy, renders such conquered territory, during such occupation, a foreign country with respect to the revenue laws of the United States. 4 Wheat. R. 246; 2 Gallis. R. 486. The people of a conquered territory change their allegiance; but, by the modern practice, their relations to each other, and their rights of property remain the same. 7 Pet. R. 86.


5. — The right which the English government claimed over the territory now composing the United States was not founded on conquest, but discovery. 1 b. § 152 et seq.

CONQUÊTS, French law. The name given to every acquisition which the husband and wife, jointly 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 aqüets, (q. v.) Civ. Code of Lo. art. 2369.

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. n. 115.

2. — 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.

3. — 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.

4. — 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 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.

5. — The following table, in which the Roman numeral letters express the
degrees by the civil law, and those in Arabic figures at the bottom, those by the common law, will fully illustrate the subject.

6.—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. Civ. Fr. liv. 3, t. 1, c. 3, n. 115. Vide Branch; Degree; Line.

CONSCIENCEx. The moral sense, or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong.
2. 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.

CONSENSUAL, civil law. This word is applied to designate one species of contract known in the civil laws; these contracts derive their name from the consent of the parties which is required in their formation, as they cannot exist without such consent.

2. The contract of sale, among the civilians, is an example of a consensual contract, because the moment there is an agreement between the seller and the buyer as to the thing and the price, the vender and the purchaser, have reciprocal actions. On the contrary, on a loan, there is no action by the lender or borrower, although there may have been consent, until the thing is delivered or the money counted. This is a real contract in the sense of the civil law. Leç. El. Dr. Rom. § 695; Poth. Ob. pt. 1, c. 1, s. 1, art. 2; 1 Bell's Com. (5th ed.) 435. Vide Contract.

CONSENT, is an agreement to something proposed, and differs from assent, (q. v.) Wolff, Ins. Nat. part 1, §§ 27-30; Pard. Dr. Com. part. 2, tit. 1, n. 138 to 178.

2. 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 the consent has been given.

3. 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. 200; 12 Ves. 19.

4. Such a condition does not apply to a second marriage. 3 Bro. C. C. 145; 3 Ves. 239.

5. 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.

6. 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.

7. 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 evinced 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 Rob. Leg. 345, 539.

8. Courts of equity have established the rule that when the true owner of property stands by, and knowingly suffers a stranger to sell the same as his own, without objection, this will be such implied consent as to render the sale valid against the true owner. Story on Ag. § 91; Story on Eq. Jur. § 385 to 390. And courts of law, unless restrained by technical formalities, act upon the principles of justice; as, for example, when a man permitted, without objection, the sale of his goods under an execution against another person. 6 Adolph. & Ell. 469; 9 Barn. & Cr. 586; 3 Barn. & Adolph. 318, note.

9. The consent which is implied in every agreement is excluded, 1, by error in the essentials of the contract, as, if Paul, in the city of Philadelphia, buy the horse of Peter, which is in Boston, and promise to pay one hundred dollars for him, the horse at the
time of the sale, unknown to either party, being dead. 2. Consent is excluded by duress of the party making the agreement. 3. Consent is never given so as to bind the parties, when it is obtained by fraud. 4. It cannot be given by a person who has no understanding, as an idiot, nor by one who, though possessed of understanding, is not in law capable of making a contract, as a feme covert.

CONSENT RULE. In the English practice, still adhered to in some of the states of the American union, the defendant in ejectment is required to enter on record that he confesses the lease, entry, and ouster of the plaintiff; this is called the consent rule.

2.—The consent rule contains the following particulars, namely: 1. The person appearing consents to be made defendant instead of the casual ejector; 2. To appear at the suit of the plaintiff; and, if the proceedings are by bill, to file common bail; 3. To receive a declaration in ejectment, and plead not guilty; 4. At the trial of the case to confess lease, entry, and ouster, and insist upon his title only; 5. That if at the trial, the party appearing shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able to prosecute his suit, such party shall pay to the plaintiff the costs of the non pros, and suffer judgment to be entered against the casual ejector; 6. That if a verdict shall be given for the defendant, or the plaintiff shall not prosecute his suit for any other cause than the non-confession of lease, entry, and ouster, the lessor of the plaintiff shall pay costs to the defendant; 7. When the landlord appears alone, that the plaintiff shall be at liberty to sign judgment immediately against the casual ejector, but that execution shall be stayed until the court shall further order. Adams, Ej. 233, 234; and for a form see Ad. Ej. Appx. No. 25.

Vide 2 Cowen, 442; 4 John. R. 311; Caioes’s Cas. 102; 12 Wend. 105; 3 Cowen, 356; 6 Cowen, 587; 1 Cowen, 166; and Casual Ejector; Ejectment.

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 become 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.

2.—The form of action 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. Kames on Eq. 71. Vide Immediate.

CONSERVATOR, a preserver, a protector.

2.—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.

3.—In Connecticut, this term is applied to designate a guardian who has the care of the estate of an idiot. 5 Conn. R. 280.

CONSIDERATIO CURLE, 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.

2.—A consideration of some sort or other, is so absolutely necessary to the forming a good contract, that a nulium 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; 3 Call. R. 439; 7 Conn. 57; 1 Stew. R. 51; 5 Mass. 301; 4 John. R. 235; 6 Yerg. 418; Cooke, R. 467; 6 Halst. R. 174; 4 Munif. R. 95. But contracts under seal are valid without a consideration; or, perhaps, more properly speaking, every bond imports in itself a sufficient consideration, though none be mentioned. 11 Serg. & R. 107; and negotiable instruments, as bills of exchange and promissory notes, carry with them prima facie evidence of consideration. 2 Bl. Com. 445.

3.—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; 2 Pet. 182; 1 Litt. 123; 3 John. 100; 6 Mass. 55; 2 Bibb, 30; 2 J. J. Marsh. 222; 5 Cranch, 142, 150; 2 N. H. Rep. 97; Wright, R. 660; 14 John. R. 466; 13 S. & R. 29; 3 M. Gr. & Sc. 321.

4.—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.

5.—They are legal, which are sufficient to support the contract; or illegal, which renders 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.

6.—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. But it is to be observed that in such cases there must have been a good or valuable consideration; for example, every one is under a moral obligation to relieve a person in distress, a promise to do so, however, is not binding in law. One is bound to pay a debt which he owes, although he has been released; a promise to pay such a debt is obligatory in law on the debtor, and can therefore be enforced by action. 12 S. & R. 177; 19 John. R. 147; 4 W. C. C. R. 86, 148; 7 John. R. 36; 14 John. R. 178; 1 Cowen, R. 249; 8 Mass. R. 127. See 7 Conn. R. 57; 1 Verm. R. 420; 5 Verm. R. 173; 5 Ham. R. 58; 3 Penna. R. 172; 5 Binn. R. 33.

7.—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. In general an executed consideration is insufficient to support a contract, 7 John. R. 87; 2 Conn. R. 404; 7 Cowen, R. 358; but an executed consideration on request, 7 John. R. 87; 1 Caines, R. 584, or by some previous duty, or if the debt be continuing at the time, or it is barred by some rule of law, or some provision of a statute, as the act of limitation, it is sufficient to maintain an action. 4 W. C. C. R. 148; 14 John. R. 378; 17 S. & R. 126; 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.

8.—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 Caines's Rep. 246; and 1 Camp. 40, n.

See, in general, Obligation; New Promise; Evans's Poth. vol. ii. p. 19; 1 Fobn. Eq. 335; Newl. Contr. 65; 1 Com. Contr. 26; Fell on Guaranty, 337; 3 Chit. Com. Law, 63 to 99; 3 Bos. & Pull. 249, n; 1 Fobn. Eq. 122,
note z; Ib. 370, note g; 5 East, 20, n.; 2 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.

2.—Generally the consignment is made with a public officer; it is very similar to our practice of paying money into court.

3.—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. Aso & Man. Inst. B. 2, t. 11, c. 1, § 5. See Burge on Sur. 138.

CONSIGNEE, contracts, one to whom a consignment is made.

2.—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.

3.—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.

4.—Where a person acts, publicly as a consignee, there is an implied engagement on his part that he will be vigilant in receiving goods consigned to his care, so as to make him respon-
sible for any loss which the owner may sustain in consequence of his neglect. 9 Watts & Serg. 62.

CONSIGNMENT, the goods or property sent by a common carrier from one or more persons called the consignors, from one place, to one or more persons, called the consignees, who are in another. By this term is also understood the goods sent by one person to another, to be sold or disposed of by the latter for and on account of the former.

CONSIGNOR, contracts, is one who makes a consignment to another.

2.—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, s. 1.

3.—The consignor is generally liable for the freight or the hire for the carriage of goods. 1 T.R. 659.

CONSILIO, 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. An assembly of cardinals convoked by the Pope. The consistory is public or secret. It is public when the Pope receives princes or gives audience to ambassadors; secret, when he fills vacant sees, proceeds to the canonization of saints, or judges and settles certain contestations submitted to him.

2.—A court which was formerly held among protists, in some church in which the bishop presided, assisted by some of his clergy, also bears this name. 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.; Burns’s Dict. h. t.

CONSOLATO DEL MARE, (IL) The name of a code of sea laws com-
piled by order of the ancient kings of Arragon. Its date is not very certain, but it was adopted on the continent of Europe, as the code of maritime law in the course of the eleventh, twelfth, and thirteenth centuries. It comprised the ancient ordinances of the Greek and Roman emperors, and of the kings of France and Spain; and the laws of the Mediterranean islands, and of Venice and Genoa. It was originally written in the dialect of Catalonia, as its title plainly indicates, and it has been translated into every language of Europe.

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. Lee, El. Dr. Rom. 424. U. S. Dig. tit. Actions, V.

2.—Consolidation may take place in two ways: first, by the usufructuary surrendering his right to the proprietor, which in the common law is called a surrender; secondly, by the release of the proprietor of his rights to the usufructuary, which in our law is called a release.

CONSOLIDATION RULE, practice, comm. 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 court or 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 Parke on Ins. xlix.; Marsh. Ins. B. 1. c. 16. s. 4. And see 1 John, Cas. 29; 19 Wend. 23; 13 Wend. 644; 5 Cowen, 282; 4 Cowen, 78; Id. 55; 1 John. 29; 9 John. 262.

2.—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. See 4 Yeates, R. 128; 3 S. & R. 262; Coleman, 62; 3 Rand. 481; 1 N. & M. 417, n.; 1 Cowen, 89; 3 Wend. 441; 9 Wend. 451; 2 N. & M. 438, 440, n.; 5 Cowen, 282; 4 Halst. 335; 1 Dall. 145; 1 Browne, Appx. lxvii.; 1 Ala. R. 77; 4 Hill, R. 46; 19 Wend. 23; 5 Yerg. 297; 7 Miss. 477; 2 Tayl. 200.

CONSOLS, Eng. law. This is an abbreviation for consolidated annuities. Formerly when a loan was made authorized by government, a particular part of the revenue was appropriated for the payment of the interest and of the principal, this was called the fund, and every loan had its fund. In this manner the Aggregate fund originated in 1715; the South Sea fund, in 1717; the General fund, in 1617; and the Sinking fund into which the surplus of these three funds flowed, which, although destined for the diminution of the national debt, was applied to the necessities of the government. These four funds were consolidated into one in the year 1757, under the name of consolidated fund.

2.—The income arises from the receipts on account of excise, customs, stamps, and other perpetual taxes. The charges on it are the interest on and the redemption of the public debt; the civil list; the salaries of the judges and officers of state, and the like.

3.—The annual grants on account of the army and navy, and every part of the revenue which is considered temporary, are excluded from this fund.

4.—Those persons who lent the money to the government, or their assigns, are entitled to an annuity of three per cent, on the amount lent, which, however, is not to be returned, except at the option of the government; so that the holders of consols are simply annuitants.
CONSORT. A man or woman married. The man is the consort of his wife, the woman is the consort of her husband.

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."

2. 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.

3. 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.

4. In order to render the offence complete there is no occasion that any act should be done in pursuit 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. 2 Mass. R. 337; Id. 538; 6 Mass. R. 74; 3 S. & R. 229; 4 Wend. R. 259; 4 Halst. R. 293; 2 Stew. Rep. 360; 5 Harr. & John. 317; 8 S. & R. 420. But see 10 Verm. 353.

5. By st. 1825, c. 76, § 23, 3 Story's L. U. S., 2006, a willful 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 responden-
tia, is, by the laws of the United States made felony, and the offender punishable by fine or exceeding ten thousand dollars, and by imprisonment and confinement at hard labour, not exceeding ten years.

6. 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. False-ly 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 per- vention or obstruction of justice, or the due administration of the laws; they shall be deemed guilty of a misde-meanor. No other conspiracies are there punishable criminally. And no agree-
ment, except to commit a felony upon the person of another, or to commit ar-
son or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

7. When a felony has been committed in pursuance of a conspiracy, the latter, which is only a misdemeanor, is merged in the former; but when a misdemeanor only has been committed in pursuance of such conspiracy, the two crimes being of equal degree, there can be no legal technical merger. 4 Wend. R. 265. Vide 1 Hawk. 444 to 454; 3 Chit. Cr. Law, 1193 to 1193; 3 Inst. 143; Com. Dig. Justices of the Peace, B. 107; Burn's Justice, Conspiracy; Williams's Justice, Conspira-
ry; 4 Chit. Blacks. 92; Dick. Justice, Conspiracy; Bac. Ab. Actions on the Case, G; 2 Russ. on Cr. 553 to 574; 2 Mass. 329; Ib. 536; 5 Mass. 196; 2 Day. R. 205; Whart.
Dig. Conspiracy; 3 Serg. & Rawle, 220; 7 Serg. & Rawle, 469; 4 Halst. R. 293; 5 Harr. & Johns. 317; 4 Wend. 229; 2 Stew.R. 360; 1 Saund. 230, n. (4). For the French law, see Merl. Rép. mot Conspiration; Code Penal, art. 89.

CONSPIRATORS, persons guilty of a conspiracy. There must be at least two conspirators. See Conspiracy.

CONSTABLE, is an officer, generally elected by the people.

2.—He possesses power, virtue 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 on 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.

3.—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.

4.—In England they have many officers, with more or less power, who bear the name of constables; as, lord high constable of England, high constable, head constables, petty constables, constables of castles, constables of the tower, constables of the fees, constable of the exchequer, constable of the staple, &c.

5.—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 Phill. Ev. 253; 2 Sell. Pr. 70; Bac. Ab. h. t.; Com. Dig. Justices of the Peace (B 79); Ib. (D 7); Ib. Officer, (E 2); Wille. Off. Const.

CONSTABLEWICK. In England, by this word is meant the territorial jurisdiction of a constable. 5 Nev. & M. 261.

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 anything; and the effect of it is, the certifying what constat (appears) upon record touching the matter in question.

2.—A constat is held to be superior to an ordinary certificate, because it contains nothing but what is on record. An exemplification under the great seal, of the enrolment of any letters-patent, is called a constat. Co. Litt. 225. Vide Exemplification; Inspe­ximus.

CONSTITUENT, he who gives authority to another to act for him.

2.—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.

CONSTITUimus. A Latin word, which signifies we constitute. Whenever the king of England is vested with the right of creating a new office, he must use proper words to do so; for example, erigimus, constituimus, &c. Bac. Ab. Offices, &c. E.

TO CONSTITUTE, contr. To empower, to authorize. In the common form of letters of attorney, these words occur, “I nominate, constitute and appoint.”

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.

2.—They are called constituted to distinguish them from the constituting authority which has created or organized 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. Dall, Dict. mots contrainte par corps, n. 526.

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 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.

2.—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.

3.—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.

CONSTITUTION, contracts. The constitution of a contract, is the making of the contract; as, the written constitution of a debt. 1 Bell’s Com. 332, 5th ed.

CONSTITUTION OF THE UNITED STATES OF AMERICA. The fundamental law of the United States.

2.—It was framed by a convention of the representatives of the people, who met at Philadelphia, and finally adopted it on the 17th day of September, 1787. It became the law of the land on the first Wednesday in March, 1789. 5 Wheat, 420.

2.—A short analysis of this instrument, so replete with salutary provisions for insuring liberty and private rights, and public peace and prosperity, will here be given.

3.—The preamble declares that the people of the United States, in order to form a more perfect union, establish justice, insure public tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish this constitution for the United States of America.

4.—1. The first article is divided into ten sections. By the first the legislative power is vested in Congress. The second regulates the formation of the house of representatives, and declares who shall be electors. The third provides for the organization of the senate, and bestows on it the power to try impeachments. The fourth directs the times and places of holding elections; and the time of meeting of Congress. The fifth determines the power of the respective houses. The sixth provides for a compensation to members of Congress, and for their safety from arrests; and disqualifies them from holding certain offices. The seventh directs the manner of passing bills. The eighth defines the powers vested in Congress. The ninth contains the following provisions; 1st, that the migration or importation of persons shall not be prohibited prior to the year 1808; 2dly, that the writ of habeas corpus shall not be suspended, except in particular cases; 3dly, that no bill of attainder, or ex post facto law, shall be passed; 4thly, the manner of laying taxes; 5thly, the manner of drawing money out of the treasury; 6thly, that no title of nobility shall be granted; 7thly, that no officer shall receive a present from a foreign government. The tenth forbids the respective states to exercise certain powers there enumerated.

5.—2. The second article is divided into four sections. The first vests the executive power in the president of the United States of America, and provides for his election, and that of the vice-
president. The second section confers various powers on the president. The third defines his duties. The fourth provides for the impeachment of the president, vice-president, and all civil officers of the United States.

6.—3. The third article contains three sections. The first vests the judicial power in sundry courts, provides for the tenure of office by the judges, and for their compensation. The second provides for the extent of the judicial power, vests in the supreme court original jurisdiction in certain cases, and directs the manner of trying crimes. The third defines treason, and vests in Congress the power to declare its punishment.

7.—4. The fourth article is composed of four sections. The first relates to the faith which state records, &c., shall have in other states. The second secures the rights of citizens in the several states—for the delivery of fugitives from justice or from labour. The third for the admission of new states, and the government of the territories. The fourth guaranties to every state in the union the republican form of government, and protection from invasion or domestic violence.

8.—5. The fifth article provides for amendments to the constitution.

9.—6. The sixth article declares that the debts due under the confederation shall be valid against the United States; that the constitution and treaties made under its powers shall be the supreme law of the land; that public officers shall be required by oath or affirmation to support the constitution of the United States; that no religious test shall be required as a qualification for office.

10.—7. The seventh article directs what shall be a sufficient ratification of this constitution by the states.

11.—In pursuance of the fifth article of the constitution, articles in addition to, and amendment of, the constitution, were proposed by Congress, and ratified by the legislatures of the several states. These additional articles are to the following import:

12.—1. Relates to religious freedom; the liberty of the press; the right of the people to assemble and petition.

13.—2. Secures to the people the right to bear arms.

14.—3. Provides for the quartering of soldiers.

15.—4. Regulates the right of search, and of arrest on criminal charges.

16.—5. Directs the manner of being held to answer for crimes, and provides for the security of the life, liberty and property of the citizens.

17.—6. Secures to the accused the right to a fair trial by jury.

18.—7. Provides for a trial by jury in civil cases.

19.—8. Directs that excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

20.—9. Secures to the people the rights retained by them.

21.—10. Secures the rights to the states, or to the people the rights they have not granted.

22.—11. Limits the powers of the courts as to suits against one of the United States.

23.—12. Points out the manner of electing the President and Vice-President.

CONSTITUTIONAL, that which is consonant to, and agrees with the constitution.

2.—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; 2 Pet. R. 522; 2 Dall. 309; 12 Wheat. R. 270; Chariot. R. 175, 235; 1 Breese, R. 70, 209; 1 Blackf. R. 206; 2 Porter, R. 303; 5 Binn. 355; 3 S. & R. 169; 2 Penna. R. 184; 19 John. R. 58; 1 Cowen, R. 550; 1 Marsh, R.
2.—There are two kinds of constructions; the 1st, is literal or strict; this is uniformly the construction given to penal statutes. 1 Bl. Com. 88; 6 Watts & Serg. 276; 3 Taunt. 377. 2dly. The other is liberal, and applied, usually, to remedial laws, in order to enforce them according to their spirit.

3.—In the supreme court of the United States, the rule which has been uniformly observed “in construing statutes is to adopt the construction made by the courts of the country by whose legislature the statute was enacted. This rule may be susceptible of some modification when applied to British statutes which are adopted in any of these states. By adopting them, they become our own, as entirely as if they had been enacted by the legislature of the state.

4.—The received construction, in England, at the time they are admitted to operate in this country,—indeed, to the time of our separation from the British empire,—may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But, however we may respect the subsequent decisions, (and certainly they are entitled to great respect,) we do not admit their absolute authority. If the English courts vary their construction of a statute, which is common to the two countries, we do not hold ourselves bound to fluctuate with them.” 5 Pet. R. 280.

5.—The great object which the law has, in all cases, in contemplation, as furnishing the leading principle of the rules to be observed in the construction of contracts, is, that justice is to be done between the parties, by enforcing the performance of their agreement, according to the sense in which it was mutually understood and relied upon at the time of making it.

6.—When the contract is in writing, the difficulty lies only in the construction of the words; when it is to be made out by parol testimony, that difficulty is augmented by the possible mistakes of the witnesses as to the

CONSTITUTOR, civil law. He who promised by a simple pact to pay the debt of another; and this is always a principal obligation. Inst. 4, 6, 9.

CONSTRAINT. In the civil and Scottish law, by this term is understood what, in the common, is known by the name of duress.

2.—It is a general rule that when one is compelled into a contract, there is no effectual consent, though, ostensibly, there is the form of it. In such case the contract will be declared void.

3.—The constraint requisite thus to annul a contract, must be a vis aut metus qui cadet in constantem virum, such as would shake a man of firmness and resolution. 3 Ersk. 1, § 16; and 4, 1, § 26; 1 Bell’s Com. B. 3, part 1, c. 1, s. 1, art. 1, page 295.

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.
words used by the parties; but still, when the evidence is received, it must be admitted to be perfectly correct, when a construction is to be put upon it. The following are the principal rules to be observed in the construction of contracts.

7.—1. When the words used are of precise and unambiguous meaning, leading to no absurdity, that meaning is to be taken as conveying the intention of the parties. But should there be manifest absurdity in the application of such meaning, to the particular occasion, this will let in construction to discover the true intention of the parties: for example: 1st, when words are manifestly inconsistent with the declared purpose and object of the contract they will be rejected; as if, in a contract for sales, the price of the thing sold should be acknowledged as received, while the obligation of the seller was not to deliver the commodity. 2 Atk. R. 32. 2dly, when words are omitted so as to defeat the effect of the contract, they will be supplied by the obvious sense and inference from the context; as if the contract stated that the seller for the consideration of one hundred dollars sold a horse, and the buyer promised to pay him for the said horse one hundred, the word dollars would be supplied. 3dly, when the words, taken in one sense, go to defeat the contract, while they are susceptible of another construction which will give effect to the design of the parties, and not destroy it, the latter will be preferred. Cowp. 714.

8.—2. The plain, ordinary, and popular sense of the words, is to be preferred to the more unusual, etymological, and recondite meaning; or even to the literal, and strictly grammatical construction of the words, where these last would lead to any inefficacy or inconsistency.

9.—3. When a peculiar meaning has been stamped upon the words by the usage of that particular trade or place in which the contract occurs, such technical or peculiar meaning will prevail. 4 East, R. 135. It is as if the parties in framing their contract had made use of a foreign language, which the court is not bound to understand, but which, on evidence of its import, must be applied. 7 Taunt. R. 272; 1 Stark. R. 504. But the expression so made technical and appropriate, and the usage by which it has become so, must be so clear that the court cannot entertain a doubt upon the subject. 2 Bos. & P. 164; 3 Stark. Ev. 1036; 6 T. R. 320. Technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to which it relates, unless they have manifestly been understood in another sense by the parties. Vide 16 Serg. & R. 126.

10.—4. The place where a contract has been made, is a most material consideration in its construction. Generally its validity is to be decided by the law of the place where it is made; if valid there, it is considered valid everywhere. 2 Mass. R. 88; 1 Pet. R. 317; Story, Conf. of Laws, § 424; 4 Cowen's R. 410, note; 2Kent, Com. p. 39, 457, in the notes; 3 Conn. R. 253, 472; 4 Conn. R. 517. Its construction is to be according to the laws of the place where it is made; for example, where a note was given in China, payable eighteen months after date, without any stipulation as to the amount of 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; see 12 Mass. R. 4, and the article Interest for money.

11.—5. Previous conversations and all that passes in the course of correspondence or negotiation leading to the contract, are entirely superseded by a written agreement. The parties having agreed to reduce the terms of their contract to writing, the document is constituted as the only true and final exposition of their admissions and intentions; and nothing which does not appear in the written agreement will be considered as a part of the contract. 5 Co. R. 26; 2 B. & C. 634; 4 Taunt,
R. 779. But this rule admits of some exceptions; as, where a declaration is made before a deed is executed, showing the design with which it was to be executed, in cases of frauds, 1 S. & R. 464; 10 S. & R. 292; and trusts, though no trust was declared in the writing, 1 Dall. R. 426; 7 S. & R. 114.

12.—6. All contracts made in general terms, in the ordinary course of trade, are presumed to incorporate the usage and custom of the trade to which they relate. The parties are presumed to know such usages, and not to intend to exclude them. But when there is a special stipulation in opposition to, or inconsistent with the custom, that will of course prevail. Holt's R. 95.

13.—7. When there is an ambiguity which impedes the execution of the contract, it is first, if possible, to be resolved, on a view of the whole contract or instrument, aided by the admitted views of the parties, and, if indispensable, parol evidence may be admitted to clear it, consistently with the words. 1 Dall. R. 426; 4 Dall. R. 340; 3 S. & R. 609.

14.—8. When the words cannot be reconciled with any practicable or consistent interpretation, they are to be considered as not made use of “perinde sunt ac si scripta non essent.”

15.—It is the duty of the court to give a construction to all written instruments, 3 Binn. R. 337; 7 S. & R. 372; 15 S. & R. 100; 4 S. & R. 279; 8 S. & R. 381; 1 Watts, R. 425; 10 Mass. R. 384; 3 Cranch, R. 180; 3 Rand. R. 556; to written evidence, 2 Watts, R. 347; and to foreign laws, 1 Penna. R. 388.

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 Pothis. Ob. 35; Long on Sales, 106; 1 Fomkb. Eq. 143, n. b.; 1b. 440, n. 1; Whart. Dig. Contract, F.; 1 Powell on Contr. 370; Shepp. Touchst. c. 5; Louis. Code, art. 1940 to 1957; Com. Dig. Merchant, (E 2.) n. (j.); 8 Com. Dig. tit. Contract, iv.; Lilly'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.; Vatth, 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. 20 Pick. 150; 1 Bell's Com. (5th ed.) 431; and the articles, Communings; Evidence; Interpretation; Parol; Pourparler.

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. 553; 2 Fomkb. Eq. 309; Com. Dig. Estates by Devise, (N 1); 6 Cruise's Dig. 171; Whart. Dig. Wills, D.

As to the construction of laws, see Louis. Code, art. 13 to 21; Bac. Ab. Statutes, J.

16.—The following examples of construction, it is believed, will be useful to the student.

A and his associates. 2 Nott & M'Cord, 400.
A B, agent. 1 Breese's R. 172.
A case. 9 Wheat, 738.
A place called the vestry. 3 Lev. R. 96; 2 Ld. Raym. 1471.
A slave set at liberty. 3 Conn. R. 467.
A true bill. 1 Meigs, 109.
A two penny bleeder. 3 Whart. R. 138.
Abbreviations. 4 C. & P. 51; S. C. 19 Eng. C. L. R. 268.
Abide. 6 N. H. Rep. 162.
About — dollars. 5 Serg. & Rawle, 402.
About $150. 9 Shep. 121.
Absolutely. 2 Pa. St. R. 133.
Accept. 4 Gill & Johns. 5, 129.
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? I 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.

  Accepted. 2 Hill. R. 582.

  According to the bill delivered by the plaintify to the defendant. 3 T. R. 575.

  According to their discretion. 5 Co. 100;

8 How. St. Tr. 55 n.

Account. 5 Cowen, 387, 393. Account closed.
8 Pick. 191. Account stated. 8 Pick. 193. Account dealings. 5 Mann & Gr. 392, 398.

Account and risk. 4 East, R. 211; Holt on Sh. 376.

Accounts. 2 Conn. R. 433.

Acrass. 1 Fairf. 391.

Across a country. 3 Mann & Gr. 759.


Actual cost. 2 Mason R. 48, 393; 2 Story’s C. C. R. 422.

Actual damages. 1 Gall. R. 429.

Reliure. 4 Mod. 131.

Adjourn. Cooke, 128.

Adjoining. 1 Turn. R. 21.

Administrator. 1 Litt. R. 93, 100.

Ad tunc et thidem. 1 Ed. Raym. 576.

Advantage, priority or preference. 4 W. C. C. R. 447.


Advice. As per advice. Chit. Bills. 185.

Affecting. 9 Wheat. 855.

Aforenamed. Id. Raym. 236; Ib. 205.

After paying debts. 1 Ves. jr. 440; 3 Ves. 753; 2 Johns. Ch. R. 614; 1 Bro. C. C. 34; 2 Sch. & Lef. 188.


Against all risks. 1 John. Cas. 357.

Aged, imputant and poor people. Preamble to 34 Eliz. c. 4; 17 Ves. 373 in notes; Amb. 535; 7 Ves. 423; Scho. & Lef. 111; 1 P. Wms. 674; 8. C. Eq. Cas. Ab. 192, pl. 9; 4 Vin. Ab. 455; 7 Ves. 98, note; 16 Ves. 206; Duke’s Ch. Uses, by Bridgman, 361; 17 Ves. 371; Boyle on Charities, 31.

Agreed. 1 Rolfe’s Ab. 518.

Agreement. 7 E. C. L. R. 331; 3 B. & B. 14; Fell on Guerr. 262. Of a good quality and moderate price. 1 Mo. & Malk. 453; 8 C. C. 22 E. C. L. R. 363.


Aliments. Dig. 34, 1, 1.

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 possessed of. 1 Bro. C. C. 457; 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. 294;

All my estate. Comp. 299; 9 Ves. 604.

All my real property. 18 Ves. 193. All my frehold lands. 6 Ves. 642. All and every other my lands, tenements and hereditaments. 8 Ves. 256; 2 Mass. 56; 2 Caines’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; 1 Taunt. R. 349; 7 B. & Cr. 278, 293, 284. All claims and demands whatsoever. 1 Edw. Ch. R. 34. All baggage is at the owner’s risk. 13 Wend. R. 611; 5 Rawle’s R. 179; 1 Pick. R. 33; 3 Fairf. R. 422; 4 Har. & John. 317. All civil suits. 4 S. & R. 76. All demands. 2 Caines’s R. 320, 337; 15 John R. 197; 1 Ed. Raym. 114. All lots I own in the town of. E. 4 Bibb, R. 288. All the buildings thereon. 4 Mass. R. 110; 7 John R. 217. All my rents. Cron. Jac. 104. All I am worth. 1 Bro. C. C. 457. All and every other my lands, tenements and hereditaments. 8 Ves. 246; 2 Mass. 56; 2 Caines, R. 345; 4 John. Ch. 388.

All other articles perishable in their own nature. 7 Cowen, 202.

All and every. Ward on Leg. 105; Cox, R. 213.

All minerals, or magnesia of any kind. 5 Watts, 34.

All my notes. 2 Dev. Eq. R. 488.

All that I possess, in doors and out of doors. 3 Hawks. R. 74.

All timber trees and other trees, but not the annual fruit thereof. 8 D. & R. 657; S. C.

5 B. & Cr. 812.

All two lots. 7 Gill & John. 227.

All actions. 5 Binm. 457.

Also. 4 Rawle, R. 69; 2 Hayw. 161.

Amongst. 9 Ves. 443; 9 Wheat. R. 164;

6 Munf. 332.

And, construed or. 3 Ves. 450; 7 Ves.

454; 1 Supp. to Ves. jr. 453; 2 Supp. to Ves. jr. 9, 43, 114; 7 Ves. 455; 41, 319; 1 Serg. & Rawle, 141. Vide Disjunction, Or.

And all the buildings thereon. 4 Mass. R.

110; 7 John R. 217.

And also. 1 Hayw. 161.

And so on, from year to year, until the tenancy hereby created shall be determined as hereinafter mentioned. 1 P. & D. 454; and see 2 Campb. R. 573; 3 Campb. 510; 1 T. R. 378; And the plaintiff doth the like. 1 Breese’s R. 125.

Annual interest. 16 Vern. 41.

Annually, or in any way she may wish. 2 McCord’s Ch. R. 281.

Any person or persons. 11 Wheat. R. 392;


Any court of record. 6 Co. 19.

Any goods. 3 Campb. 321.

Any creditor. 5 B. & A. 869.

Any other fund. 1 Colly. R. 263.

Any other matter or thing from the beginning of the world. 4 Mason, 227.

Apartment. 10 Pick. 293.
Apparel. Goods and wearing apparel, in a will, 3 Atk. 61.
Apparatus. 9 Law Rep. 207.
Appeals. 1 Bree's R. 261.
Appeal. 2 Bailey's R. 513.
Appellate. 1 Bree's, R. 261.
Appropriation. 1 Scam. R. 344.
Approved paper. 4 Serg. & Rawle, 1; 20
Wend. R. 431; 2 Campb. 532.
Apparantes. 1 Serg. & Rawle, 169; 8
Johns. R. 47, 2d edit.; Com. Dig. Grant, E 9; 5 Serg. & Rawle, 110; Holt on Shipp. 404; 9 Pick. 293; 7 Mass. 6; 12 Pick. 436.
Are. 2 F. & B. 223.
Arears. Ward on Leg. 219; 2 Ves. 430.
Arrears. 17 Mass. 188.
Articles in their own nature. 7
Cowen, 292.
As appears by the bond or by the books. 1
Wils. 339, 279, 121; 2 Str. 1157, 1209, 1219.
As appears by the master's allocative. 2 T.
R. 55.
As executors are bound in law to do. 2
Ohio R. 346.
As follows. 1 Chit. Cr. Law, 233.
As this deponent believes. 2 M. & S. 563.
Ass. 2 Moody, C. C. 3.
Asses—Cattle. 1 R. & M. C. C. 3; 2 Russ.
Cr. & M. 498.
Assent to. 4 Gill & Johns, 5, 129.
Assignment, actual or potential. 5 M. &
S. 298.
Assigns. 5 Co. 77 b.
At. 2 Caines's Err. 158.
At and from. 1 Marsh. Ins. 358, 261, a;
1 Caines's R. 75, 79; 1 New Rep. 23; 4 East,
R. 130.
At any port or places. 1 Marsh. Ins. 191.
At his will. Roll's Ab. 845; Bac. Ab. Es-
rate for life and occupancy, A.
At least. 8 W. & S. 470.
At such time and manner. 19 Ves. 357.
At twenty-one. Payable at twenty-one. 6
Ves. 245; 7 Ves. 421; 9 Ves. 325; 1 Bro. C.
C. 91.
At the trial of the cause. 9 E. C. L. R.
202, 186.
At the wholesale factory prices. 2 Conn. R.
69.
Attention, shall meet. 3 E. C. L. R. 407;
13 Id. 339.
Attest. 9 Meas. & W. 404.
Authority—Jurisdiction. 2 Bl. R. 1141.
Baggage. 6 Hill, N. Y. 386.
Baggage, or passagems at the risk of the
owners. 19 Wend. 234, 251; 21 Wend. 133;
26 Wend. 591; 10 Ohio R. 145.
Balance. 2 J. & W. 248.
Balance due on general account. 3 Pet. R.
430.
Bank bills—Bank notes. 2 Scamm. R. 301;
17 Verm. 151.
Bank money. 5 Humph. R. 140.
Bank notes. 5 Mason's R. 549; 6 Wend.
346, 354.
Bankruptcy. 6 T. R. 684.
Barkeeper. 3 S. & R. 351.
Bargain and sell. 4 Monr. R. 463.
Barley. 4 C. & P. 548.
Barrels. 7 Cowen, R. 681.
Beans. Bac. Ab. Merchant, &c. (1); 1
Mood. C. C. 323.
Bearing Interest. 1 Stark. R. 452; 2 E.
C. L. R. 466.
Beast. 1 Russ. C. & M. 568; 1 Russ. on
Cr. 568; Bac. Ab. Sodomy.
Bench. 6 W. & S. 279.
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511.
Before the first day of the term after the ac-
tion has been commenced. 4 Dall. 433.
Before the sitting of the court. 5 Mass. R.
197.
Beginning to keep house. 6 Bing. R. 363;
19 Ves. 543.
Begotten. To be begotten. Co. Litt. 20 b,
and n. 3; 3 Leon. 5.
Belongs—Belonging. 3 Conn. R. 467; 2
Bing. 76; Chit. Pr. 475 n.; 11 Conn. R. 240;
1 Coxe's R. 255.
Believe. 2 Wend. 298.
Belong. 3 Conn. R. 467.
Benefits of my real estate, construed 4
Yates, 23.
Benevolent purposes. 3 Mer. 17; Amb.
585, n. (Blunt's ed.)
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 Mer. R. 70.
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R. 177; 14 Pet. C. 141; 1 Harr. & McHem.
89; 1 Harr. & J. 350; 2 McCord, R. 331; 3
Mass. R. 271; 1 Pick. R. 263; 9 Serg. &
Rawle, 288; 2 Dall. 217; 1 Yeates, 329.
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Beyond seas. 3 Wheat. 343; 9 S. & R.
291.
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Bounded on the margin. 6 Cowen, 526.
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Brick factory. 21 Pick. R. 25.
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Serg. 269, 277.