creditor obtained an execution against his person, and made an attempt to execute it and retain Cassado in France, but the council of state (conseil d'état) on appeal decided that the courts could not interfere, and directed Cassado to be delivered to the Spanish authorities. Morrin, Dict. du Dr. Crim. h. v.

EXTRAJUDICIAL, that which does not belong to the judge or his jurisdiction, notwithstanding which he takes cognizance of it. Extrajudicial judgments and acts are absolutely void. Vide Coram non judice, and Merl. Répert. mots Excès de Pouvoir.

EXTRAVAGANTES, canon law. This is the name given to the constitutions of the popes posterior to the Clementines; they are thus called quasi vagantes extra corpus juris, to express that they were out of the canonical act, which at first contained only the decrees of Gratian; afterwards the decreals of Gregory IX., the sext of Boniface VIII., the Clementines, and at last the extravagantes were added to it. There are the extravagantes of John XXII., and the common extravagantes. The first contain twenty epistles, decreals or constitutions of that pope, divided under fifteen titles, without any subdivision into books. The others are epistles, decreals or constitutions of the popes who occupied the holy see either before or after John XXII.; they are divided into books like the decreals.

EXTREMIS. When a person is sick beyond the hope of recovery, and he afterwards dies, he is said to be in extremis.

2.—A will made in this state is liable to be impeached; but if made without undue influence by a person of sound mind, it is valid.

3.—The declarations of persons in extremis, when made with a full consciousness of approaching death, are admissible in evidence when the death of the person making them is the subject of the charge, and the circumstances of the death the subject of such declarations. 2 B. & C. 605; S. C. 9 Engl. C. L. Rep. 196; and see 15 John. 286; 1 John. Rep. 159; 2 John. R. 31; 7 John. 95; 2 Car. Law. Repos. 102; 5 Whart. R. 396, 7.

EY. A watery place; water. Co. Litt. 6.

EYE-WITNESS. One who has seen with his own eyes what he testifies. When an eye-witness testifies, and is a man of intelligence and integrity, much reliance must be placed on his testimony, for he has the means of making known the truth.

EYOTT, a small island arising in a river. Fleta, lib. 3, c. 2, s. b; Bract. lib. 2, c. 2. See Island.

EYRE. Vide Eire Justiciarii Itinerantes.

F.

F, punishment, in the English law, formerly felons were branded and marked with a hot iron, with this letter, on being admitted to the benefit of clergy.

FACT, is an action; a thing done. It is either simple or compound.

2.—A fact is simple when it expresses a purely material act unconnected with any moral qualification; for example, to say Peter went in his house, kissed his children, took a book, and went out, is to express four simple facts. A compound fact contains the materiality of the act, and the qualification which that act has in its connexion with morals and the law. To say, then, that Peter has stolen a horse, is to express a compound fact; for the fact of stealing, expresses at the same time, the material fact of taking the horse, and of taking him with the guilty intention of depriving the owner of his property and appropriating it to his own use; which is a violation of the law of property.

3.—Fact is also put in opposition to law; in every case which has to be
tried there are facts to be established, and the law which bears on those facts.

4.—Facts are also to be considered as material or immaterial. Material facts are those which are essential to the right of action or defence, and therefore of the substance of the one or the other—these must always be proved; or immaterial, which are those not essential to the cause of action—these need not be proved.

5.—Facts are generally determined by a jury; but there are many facts, which not being the principal matters in issue, may be decided by the court; such, for example, whether a subpoena has or has not been served; whether a party has or has not been summoned, &c. As to pleading material facts, see Gould, Pl. c. 3, s. 28. Vide Eng. Ecc. R. 401, 2, and the article Circumstances.

FACTO, in fact, in contradistinction to the thing being in law: it is applied to any thing actually done. Vide Ex post facto.

FACTOR, contracts, is an agent employed to sell goods or merchandise consigned or delivered to him, by, or for his principal, for a compensation, commonly called factorage or commission. Paley on Ag. 13; 1 Liverm. on Ag. 68; Story on Ag. § 33; Com. Dig. Merchant, B; Mal. Lex Merc. 81; Beawes, Lex Merc. 44; 3 Chit. Com. Law, 193; 2 Kent, Com. 622, note (d), 3d ed.; 1 Bell’s Com. 385, § 408, 409; 2 B. & Ald. 143. He is also called a commission merchant, or consignee.

2.—When he resides in the same state or country with his principal, he is called a home factor; and a foreign factor when he resides in a different state or country, 3 Chit. Com. Law, 193; 1 T. R. 112; 4 M. & S. 576; 1 Bell’s Com. 289, § 313.

3.—When the agent accompanies the ship taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor; he is, however, usually known by the name of a supercargo. Beawes, Lex Merc. 44, 47; Liverm. on Ag. 69, 70; 1 Domat, b. 1, t. 16, § 3, art. 2.

4.—A factor differs from a broker, in some important particulars, namely: he may buy and sell for his principal in his own name, as well as in the name of his principal; on the contrary, a broker must always buy and sell in the name of his principal. 3 Chit. Com. Law, 193, 210, 541; 2 B. & Ald. 143, 148; 3 Kent, Com. 622, note (d), 3d ed. Again a factor is entrusted with the possession, management, disposal, and control of the goods to be bought and sold, and has a special property and a lien on them; the broker, on the contrary, has usually no such possession, management, control, or disposal of the goods, nor any such special property nor lien. Paley on Ag. 13, (Loyd’s ed.); 1 Bell’s Com. 385.

5.—Before proceeding further, it will be proper to consider the difference which exists in the liability of a home or domestic factor and a foreign factor.

6.—By the usages of trade, or intention of law, when domestic factors are employed in the ordinary business of buying and selling goods, it is presumed that a reciprocal credit between the principal and the agent and third persons has been given. When a purchase has been made by such a factor, he, as well as his principal, is deemed liable for the debt; and in case of a sale, the buyer is responsible both to the factor and principal for the purchase money; but this presumption may be rebutted by proof of exclusive credit. Story, Ag. §§ 267, 291, 293; Paley, Ag. 243, 371; 9 B. & C. 78; 15 East, R. 62.

7.—Foreign factors, or those acting for principals residing in a foreign country, are held personally liable upon all contracts made by them for their employers, whether they describe themselves in the contract as agents or not. In such cases the presumption is, that the credit is given exclusively to
the factor. But this presumption may be rebutted by proof of a contrary agreement. Story, Ag. § 268; Paley, Ag. 248, 373; Bull. N. P. 130; Smith, Merc. Law, 66; 2 Liverm. Ag. 249; 1 B. & P. 398; 15 East, R. 62; 9 B. & C. 78.

8.—A factor is liable to duties, which will be first considered; and, afterwards a statement of his rights will be made.

9.—1. His duties. He is desired to use a reasonable exercise of skill and ordinary diligence in his vocation; in general, he has a right to sell the goods, but he cannot pawn them. He is bound to obey his instructions, but when he has none he may and ought to act according to the general usages of trade; sell for cash, when that is usual, or give credit on sales, when that is customary. He is bound to render a just account to his principal, and to pay him the moneys he may receive for him.

10.—2. His rights. He has the right to sell the goods in his own name, and when untrammelled by instructions, he may sell them at such times and for such prices, as, in the exercise of a just discretion, he may think best for his employer. 3 Man. Gran. & Scott, 850. He is, for many, if not for all purposes, between himself and third persons, to be considered as the owner of the goods. He may, therefore, recover the price of goods sold by him, in his own name, and consequently he may receive payment and give receipts, and discharge the debtor, unless, indeed, notice has been given by the principal to the debtor not to pay. He has a lien on the goods for advances made by him and for his commissions.

11.—Mr. Bell, in his Commentaries, vol. 1, page 265, (5th ed.) lays down the following rules with regard to the rights of the principal, in those cases in which the goods in the factor’s hands have been changed in the course of his transactions.

12.—1. When the factor has sold the goods of his principal, and failed before the price of the goods has been paid, the principal is the creditor, and preferable to the creditors of the factor. Cook’s B. L. 4th ed. p. 400.

13.—2. When bills have been taken for the price, and are still in the factor’s hands, undiscouted at his failure; or where goods have been taken in return for those sold; the principal is entitled to them, as forming no part of the divisible fund. Willes, R. 400.

14.—3. When the price has been in money, coin, bank-notes, &c., it remains the property of the principal, if kept distinct as his. 5 T. R. 277; 2 Burr. 1369; 5 Ves. jr. 169; 2 Mont. B. L. 233, notes.

15.—4. When a bill received for goods, or placed with the factor, has been discounted, or when money coming into his hands has been paid away, the endorsee of the bill, or the person receiving the money, will be free from all claim at the instance of the principal. Vide 1 B. & P. 539, 618.

16.—5. When the factor sinks the name of the principal entirely; as where he is employed to sell goods, and receives a del credere commission, for which he engages to guaranty the payment to the principal, it is not the practice to communicate the names of the purchasers to the principal, except where the factor fails. Under these circumstances, the following points have been settled. 1. When the factor fails, the principal is the creditor of the buyer, and has a direct action against him for the price. Cook’s B. L. 400; and vide Bull. N. P. 42; 2 Stra. 1182. But persons contracting with the factor in his own name, and bona fide, are entitled to set off the factor’s debt to them. 7 T. R. 360.—2. Where the factor is entrusted with the money or property of his principal to buy stock, bills, and the like, and misapplies it, the produce will be the principal’s, if clearly distinguishable. 3 M. & S. 562.

17.—6. When the factor purchases goods for behoof of his principal, but on his own general current account, without mention of the principal, the
goods vest in the factor, and the principal has only an obligation against the factor's estate. But when the factor, after purchasing the goods, writes to his principal that he has bought such a quantity of goods in consequence of his order, and that they are lying in his warehouse, or elsewhere, the property would seem to be vested in the principal.

18.—It may, therefore, be laid down as a general rule, that when the property remitted by the principal, or acquired for him by his order, is found distinguishable in the hands of the factor, capable of being traced by a clear and connected chain of identity, in no one link of it degenerating from a specific trust into a general debt, the creditors of the factor, who has become bankrupt, have no right to the specific property. Much discrimination is requisite in the application of this doctrine, as may be seen by the case of Ex parte Sayers, 5 Ves. Jr. 169.

19.—A factor has no right to barter the goods of his principal, nor to pledge them for the purpose of raising money for himself, or to secure a debt he may owe. But he may pledge them for advances made to his principal, or for the purpose of raising money for him, or in order to reimburse himself to the amount of his own lien. 2 Kent, Com. (3d ed.) 625 to 628; 4 John R. 103; Story on Bailm. § 325, 326, 327. Another exception to the general rule that a factor cannot pledge the goods of his principal, is, that he may raise money by pledging the goods, for the payment of duties, or any other charge or purpose allowed or justified by the usages of trade. 2 Gall. 13; 6 Serg. & Rawle, 386; Panon Ag. 217; 3 Esp. R. 182.

20.—The legislature of Pennsylvania, by an act entitled “An act for the amendment of the law relating to factors,” passed April 14, 1834, have made the following provisions. This act is here inserted, with a belief that it will be found useful to the commercial lawyer of the other states.

21.—§ 1. Whenever any person

untrusted with merchandise, and having authority to sell or consign the same, shall ship or otherwise transmit the same to any other person, such other person shall have a lien thereon—

22.—§ 1. For any money advanced, or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such merchandise was shipped or transmitted.

23.—§ 2. For any money, or negotiable security, received for the use of such consignee, by the person in whose name such merchandise was shipped or transmitted.

24.—§ 2. But such lien shall not exist for any of the purposes aforesaid, if such consignee shall have notice by the bill of lading or otherwise, before the time of such advance or receipt, that the person in whose name such merchandise was shipped or transmitted, is not the actual owner thereof.

25.—§ 3. Whenever any consignee or factor, having possession of merchandise, with authority to sell the same, or having possession of any bill of lading, permit, certificate, receipt or order, for the delivery of merchandise, with the like authority, shall deposit or pledge such merchandise, or any part thereof, with any other person, as a security for any money advanced, or negotiable instrument given by him on the faith thereof; such other person shall acquire, by virtue of such contract, the same interest in, and authority over, the said merchandise, as he would have acquired thereby if such consignee or factor had been the actual owner thereof; Provided, That such person shall not have notice by such document or otherwise, before the time of such advance or receipt, that the holder of such merchandise or document is not the actual owner of such merchandise.

26.—§ 4. If any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge for any debt or demand previously due by, or existing against, such consignee or factor,
and without notice as aforesaid, and if any person shall accept or take such merchandise or document from any such consignee or factor in deposit or pledge, without notice or knowledge that the person making such deposit or pledge, is a consignee or factor only, in every such case the person accepting or taking such merchandise or document in deposit or pledge, shall acquire the same right and interest in such merchandise as was possessed, or could have been enforced, by such consignee or factor against his principal at the time of making such deposit or on pledge, and further or other right or interest.

27.—§ 5. Nothing in this act contained shall be construed or taken
I. To affect any lien which a consignee or factor may possess at law, for the expenses and charges attending the shipment, or transmission and care of merchandise consigned, or otherwise intrusted to him.

28.—II. Nor to prevent the actual owner of merchandise from recovering the same from such consignee or factor, before the same shall have been deposited or pledged as aforesaid, or from the assignees or trustees of such consignee or factor, in the event of his insolvency.

29.—III. Nor to prevent such owner from recovering any merchandise, so as aforesaid deposited or pledged, upon tender of the money, or of restoration of any negotiable instrument so advanced, or given to such consignee or factor, and upon tender of such further sum of money, or of restoration of such other negotiable instrument, if any, as may have been advanced or given by such consignee or factor to such owner, or on tender of a sum of money equal to the amount of such instrument.

30.—IV. Nor to prevent such owner from recovering, from the person accepting or taking such merchandise in deposit or pledge, any balance or sum of money remaining in his hands as the produce of the sale of such merchandise, after deducting the amount of money or the negotiable instrument so advanced or given upon the security thereof as aforesaid.

31.—§ 6. If any consignee or factor shall deposit or pledge any merchandise or document as aforesaid, consigned or intrusted to him as a security for any money borrowed, or negotiable instrument received by such consignee or factor, and shall apply and dispose of the same to his own use, in violation of good faith, and with intent to defraud the owner of such merchandise, and if any consignee or factor shall, with the like fraudulent intent, apply or dispose of to his own use any money or negotiable instrument, raised or acquired by the sale or other disposition of such merchandise, such consignee or factor shall, in every such ease, be deemed guilty of a misdemeanor, and shall be punished by a fine, not exceeding two thousand dollars, and by imprisonment, for a term not exceeding five years.

FACTORAGE, the wages or allowances paid to a factor for his services; it is more usual to call this commissions.

FACTORY, Scotch law, is a contract which partakes of a mandate and locatio operandum, and which is in the English and American law-books discussed under the title of Principal and Agent. 1 Bell's Com. 259.

FACTUM, a deed; a man's own act and deed.

2.—When a man denies by his plea that he made a deed on which he is sued, he pleads non est factum, (q. v.) Vide Deed; Fait.

FACTUM, French law, is a memoir which contains summarily the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. Vide Brief.

FACULTY, canon law. A license; an authority. For example, the ordinary having the disposal of all seats in the nave of a church, may grant this power, which, when it is delegated, is called a faculty, to another.
2.—Faculties are of two kinds; first, when the grant is to a man and his heirs in gross; secondly, when it is to a person and his heirs, as appurtenant to a house which he holds in the parish. 1 T. R. 429, 432; 12 Co. R. 106.

FACULTY, Scotch law, is equivalent to ability or power. The term faculty is more properly applied to a power founded on the consent of the party from whom it springs, and not founded on property. Kames on Eq. 504.

FAILURE. A suspension of payment; a neglect to fulfill commercial pecuniary engagements.

2.—According to the French code of commerce, art. 437, every merchant or trader who suspends payment is in a state of failure. Vide Bankruptcy; Insolvency.

FAILURE of RECORD, pleading, practice. When a record is pleaded, and the plaintiff replies null tid record, upon which the defendant has a day assigned to produce it, if he fail to do it, then he is said to fail of record, and the plaintiff shall have judgment to recover. T. de la Ley.

FAINT PLEADER, a false, fraudulent, or collusory manner of pleading to the deception of a third person. 3 E. 1, c. 19.

FAIR. A privileged market.

2.—In England, fairs are granted by the king's patent.

3.—In the United States, fairs are almost unknown. They are recognised in Alabama. Aik. Dig. 409, note; and in North Carolina, where they are regulated by statute. 1 N. C. Rev. St. 282. See Domat, Dr. Public, liv. 1, t. 7, s. 3, n. 1.

FAIR-PLAY MEN. About the year 1769, there was a tract of country in Pennsylvania, situate between Lycoming creek and Pine creek, in which the proprietaries prohibited the making of surveys, as it was doubtful whether it had or not been ceded by the Indians; although settlements there were forbidden, yet adventurers settled themselves there; being without the pale of ordinary authorities, the inhabitants annually elected a tribunal, in rotation, of three of their number, whom they designated fair-play men, who had authority to decide all disputes as to boundaries. Their decisions were final, and enforced by the whole community en masse. Their decisions are said to have been just and equitable. 2 Smith's Laws of Penn. 195; Serg. Land Laws, 77.

FAIR PLEADER. This is the name of a writ given by the statute of Marlbridge, 52 H. 3, c. 11. Vide Beau Pleader.

FAIT, conveyancing, a deed lawfully executed. Com. Dig. h. t.; Cunn. Dict. h. t.

FAITH. Probity; good faith is the very soul of contracts. Faith also signifies confidence, belief; as, full faith and credit ought to be given to the acts of a magistrate while acting within his jurisdiction. Vide Bona fide.

FALCIDIAN LAW, civil law, is a plebecist, made during the reign of Augustus, on the proposition of Falciadius, who was a tribune in the year of Rome, 714.

2.—Its principal provision gave power to fathers of families to bequeath three-fourths of their property, but deprived them of the power to give away the other fourth, which was to descend to the heir.

3.—The same rule, somewhat modified, has been adopted in Louisiana; "donations inter vivos or mortis causa," says the Civil Code, art. 1480, "cannot exceed two-thirds of the property of the disposer, if he leaves at his decease a legitimate child; one-half, if he leaves two children; and one-third if he leaves three, or a greater number."

4.—By the common law, the power of the father to give his property is unlimited. He may bequeath it to his children equally, to one in preference to another, or to a stranger, in exclusion of the whole of them. Over his real estate, his wife has a right of dower, or a similar right given to her
by act of assembly, in, perhaps, all the states.

FALSE. Not true; as, false pretences; unjust, unlawful, as, false imprisonment. This word is frequently used in composition.

FALSE IMPRISONMENT, torts. Any intentional detention of the person of another, not authorised by law, is false imprisonment; 1 Bald. 571; 9 N. H. Rep. 491; 2 Brev. R. 157. It is any illegal imprisonment, without any process whatever, or under colour of process wholly illegal, without regard to any question whether any crime has been committed, or a debt due. 1 Chit. Pr. 48; 5 Verm. 588; 3 Blackf. 46; 3 Wend. 350; 5 Wend. 298; 9 John. 117; 1 A. K. Marsh. 345; Kirby, 65; Hardin, 249.

2.—The remedy is, in order to be restored to liberty, by writ of habeas corpus; and to recover damages for the injury, by action of trespass vi et armis. To punish the wrong done to the public, by the false imprisonment of an individual, the offender may be indicted. 4 Bl. Com. 213, 219; 2 Burr. 993. Vide Bac. Ab. Trespass, D 3; Dane's Ab. Index, h. t. Vide 9 N. H. Rep. 491; 2 Brev. R. 157; Malicious Prosecution; Regular and Irregular Process.

FALSE JUDGMENT, Eng. law. The name of a writ which lies when a false judgment has been given in the county court, court baron, or other courts not of record. F. N. B. 17, 18.

FALSE PRETENCES, criminal law, false representations and statements, made with a fraudulent design, to obtain “money, goods, wares, merchandise,” with intent to cheat.

2.—This subject may be considered under the following heads: 1. The nature of the false pretence; 2, what must be obtained; 3, the intent.

3.—1. When the false pretence is such as to impose upon a person of ordinary caution, it will doubtless be sufficient. 11 Wend. R. 557; but although it may be difficult to restrain false pretences to such an ordinarily prudent man may avoid, yet it is not every absurd or irrational pretence which will be sufficient. 2 East, P. C. 828. It is not necessary that all the pretences should be false, if one of them, per se, is sufficient to constitute the offence. 14 Wend. R. 547. And although other circumstances may have induced the credit, or the delivery of the property, yet it will be sufficient if the false pretences had such an influence that, without them, the credit would not have been given, or the property delivered. 11 Wend. R. 557; 14 Wend. R. 547; 13 Wend. Rep. 87. The false pretences must have been used before the contract was completed. 14 Wend. Rep. 546; 13 Wend. Rep. 311. In North Carolina, the cheat must be effected by means of some token or false contrivance adapted to impose on an ordinary mind. 3 Hawks, R. 620; 4 Pick. R. 178.

4.—2. The wording of the statutes of the several states on this subject is not the same, as to the acts which are indictable. In Massachusetts, the intent must be to obtain “money, goods, wares, merchandise, or other things.” Stat. of 1815, c. 136. In New York, the words are “money, goods, or chattels, or other effects.” Under this statute it has been held that obtaining a signature to a note, 13 Wend. R. 87, or an endorsement on a promissory note, 9 Wend. Rep. 190, fell within the spirit of the statute; and that where credit was obtained by false pretence, it was also within the statute. 12 John. R. 292.

5.—3. There must be an intent to cheat or defraud some person. Russ. & Ry. 317; 1 Stark. Rep. 396. This may be inferred from a false representation. 13 Wend. R. 87. The intent is all that is requisite; it is not necessary that the party defrauded should sustain any loss. 11 Wend. R. 18; 1 Carr. & Marsh. 516, 537.

FALSE RETURN. A return made by the sheriff, or other ministerial officer, to a writ, in which is stated a fact contrary to the truth, and injurious to one of the parties or some one having an interest in it.
2.—In this case the officer is liable for damages to the party injured. 2 Esp. Cas. 475. See False returno brevium.

False token, is a false document or sign of the existence of a fact, in general used for the purpose of fraud. Vide Token, and 2 Stark. Ev. 563.

FALSEHOOD is a wilful act or declaration contrary to truth. It is committed either by the wilful act of the party, or by dissimulation, or by words. It is wilful when the owner of a thing sells it twice, by different contracts to different individuals, unknown to them: for in this the seller must wilfully declare the thing is his own, when he knows that it is not so. It is committed by dissimulation when a creditor has an understanding with his former debtor, sells the land of the latter, although he has been paid the debt which was due to him.

2.—Falsehood by word is committed when a witness swears to what he knows not to be true. Falsehood is usually attendant on crime. Roscoe, Cr. Ev. 362.

3.—A slander must be false to entitle the plaintiff to recover damages. But whether a libel be true or false the writer or publisher may be indicted for it. Bul. N. P. 9; Selw. N. P. 1047, note 6; 5 Co. 125; Hawk. B. 1, c. 73, s. 6. Vide Dig. 48, 10, 31; Ib. 22, 6, 2; Code, 9, 22, 20.

4.—It is a general rule that if a witness testifies falsely as to any one material fact, the whole of his testimony must be rejected; but still the jury may consider whether the wrong statement be of such character, as to entitle the witness to be believed in other respects. 5 Shepl. R. 267.

TO FALSIFY, crim. law, is to prove a thing to be false; as, “to falsify a record,” Tech. Dict.; Co. Litt. 104 b. To alter or make false a record. This is punishable at common law. Vide Forgery.

2.—By the act of Congress of April 30, 1790, s. 15, 1 Story’s L. U. S. 86, it is enacted, that if any person shall feloniously steal, take away, alter, falsify, or otherwise avoid, any record, writ, process, or other proceedings in any of the courts of the United States, by means whereof any judgment shall be reversed, made void, or not take effect, or if any person shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person, or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and be whipped not exceeding thirty-nine stripes. Provided nevertheless, that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be had or given.

To falsify, chancery practice. When a bill to open an account has been filed, the plaintiff is sometimes allowed to surcharge and falsify such account; and if any thing has been inserted that is a wrong charge, he is at liberty to show it, and that is a falsification. 2 Ves. 565; 11 Wheat. 237. See Account stated; Surcharge.

FALSO RETORNO BREVIUM, old English law. The name of a writ which might have been sued out against a sheriff, for falsely returning writs. Cunn. Dict.

FAMILY, domestic relations, in a limited sense signifies the father, mother, and children. In a more extensive sense it comprehends all the individuals who live under the authority of another, and includes the servants of the family. It is also employed to signify all the relations who descend from a common ancestor, or who spring from a common root. Louis. Code, art. 3522, No. 16; 9 Ves. 323.

2.—In the construction of wills, the word family, when applied to personal property is synonymous with kindred, or relations. It may, nevertheless, be confined to particular relations by the
context of the will, or may be enlarged by it, so that the expression may in some cases mean children, or next of kin, and in others may even include relations by marriage. 1 Rep. on Leg. 115; 1 Hov. Supp. 365, notes 6 and 7, to Brown v. Higgs; 4 Ves. 708; 2 Ves. jr. 110; 3 East, Rep. 172; 5 Ves. 156; 17 Ves. 255; 5 M. & S. 126. Vide article Legatee. See Dig. lib. 50, t. 16, l. 195, s. 2.

FAMILY ARRANGEMENTS. This term has been used to signify an agreement made between a father and his son, or between brothers, to dispose of property in a different manner to that which would otherwise take place.

2.—In these cases frequently the mere relation of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & Russ. 13.

FAMILY BIBLE, is a Bible containing an account of the births, marriages, and deaths of the members of a family.

2.—An entry by a father made in a Bible stating that Peter his eldest son was born in lawful wedlock of Maria his wife, at a time specified, is evidence to prove the legitimacy of Peter. 4 Campb. 401. But the entry, in order to be evidence, must be an original entry, and, when it is not so, the loss of the original must be proved before the copy can be received. 6 Serg. & Rawle, 135. See 10 Watts, R. 82.

FAMILY EXPENSES. The sum which it costs a man to maintain a family.

2.—Merchants and traders who desire to exhibit the true state of their affairs in their books, keep an exact account of family expenses, which in case of failure is very important, and at all times proper.

FAMILY MEETINGS, or family council, in Louisiana, are meetings of at least five relations, or in default of relations of minors or other persons on whose interest they are called upon to deliberate, then of the friends of such minors or other persons.

2.—The appointment of the members of the family meeting is made by the judge. The relations or friends must be selected from among those domiciliated in the parish in which the meeting is held; the relations are selected according to their proximity, beginning with the nearest. The relation is preferred to the connection in the same degree, and among relations of the same degree, the eldest is preferred. The under-tutor must also be present. 6 N. S. 455.

3.—The family meeting is held before a justice of the peace or notary public, appointed by the judge for the purpose. It is called for a fixed day and hour, by citations delivered at least three days before the day appointed for the purpose.

4.—The members of the family meeting, before commencing their deliberations, take an oath before the officer before whom the meeting is held, to give their advice according to the best of their knowledge, touching the interests of the person on whom they are called upon to deliberate. The officer before whom the family meeting is held, must make a particular process-verbal of the deliberations, cause the members of the family meeting to sign it, if they know how to sign, sign it himself, and deliver a copy to the parties that they may have it homologated. Civil Code of Louis. B. 1, tit. 8, c. 1, s. 6, art. 305 to 311; Code Civ. B. 1, tit. 10, c. 2, s. 4.

FAMOSUS LIBELLUS. Among the civilians these words signified that species of injuria which corresponds nearly to libel or slander.

FARE, signifies a voyage or passage; in its modern application, it is the money paid for a passage.

FARM, estates, an indefinite quantity of land, some of which is cultivated. 2 Binn. 238.

2.—By the conveyance of a farm, will pass a messuage, arable land, meadow, pasture, wood, &c., belonging to or used with it. 1 Inst. 5, a; Touch. 93; 4 Cruise, 521; Bro. Grants, 155; Plowd. 167.

TO FARM LET. These words in a lease have the effect of creating a lease for years. Co. Litt. 45 b; 2 Mod. 250.
FARMER. One who is lessee of a farm. It is said that every lessee for life or years, although it be but of a small house and land, is called farmer. This word implies no mystery except it be that of husbandman. Cunn. Dict. h. t. In common parlance, a farmer is one who cultivates a farm, whether he be the owner of it or not.

FARO, crim. law. There is a species of game called faro-table, or faro-bank, which is forbidden by law in many states; and the persons who keep it for the purpose of playing for money or other valuable thing, may generally be indicted at common law for a nuisance. 1 Rogers’s Rec. 66. It is played with cards in this manner: a pack of cards is displayed on the table so that the face of each card may be seen by the spectators. The man who keeps the bank, as it is termed, and who is called the banker, sits by the table with another pack of cards, and a bag containing money, some of which is displayed, or sometimes instead of money, chips or small pieces of ivory or other substance is used. The parties who play with the banker, are called punters or pointeurs. Suppose the banker and A, a punter, wish to play for five dollars, the banker shuffles the pack which he holds in his hand, while A lays his money intended to be bet, say five dollars, on any card he may choose as aforesaid. The banker then runs the cards alternately in two piles, one on the right the other on the left, until he reaches, in the pack, the card corresponding to that on which A has laid his money. If, in this alternative, the card chosen comes on the right hand, the banker takes up the money; if on the other, A is entitled to five dollars from the banker. Several persons are usually engaged at the same table with the banker. 1 Rog. Rec. 66, note; Encycl. Amer. h. t.

FARRIER. One who takes upon himself the public employment of shoeing horses.

2.—Like an inn-keeper, a common carrier, and other persons who assume a public employment, a farrier is bound to serve the public as far as his employment goes, and an action lies against him for refusing, when a horse is brought to him at a reasonable time for such purpose, if he refuse. Oliph. on Horses, 131; and he is liable for the unskillfulness of himself or servant in performing such work, 1 Bl. Com. 431, but not for the malicious act of the servant in purposely driving a nail in the foot of the horse, with an intention of laming him. 2 Salk. 440.

FATHER, domestic relations. A man who has a child.

3.—By law, the father is bound to support his children if of sufficient ability, even though they have property of their own. 1 Bro. C. C. 387; 4 Mass. R. 97; 2 Mass. R. 415; 5 Rawle, 323. But he is not bound, without some agreement, to pay another for maintaining them, 9 C. & P. 497; nor is he bound to pay their debts, unless he has authorized them to be contracted. 38 E. C. L. R. 195, n. See 8 Watts, R. 366; 1 Craig. & Phil. 317; Bind; Mother; Parent; but this obligation ceases as soon as the child becomes of age, unless he becomes chargeable to the public. 1 Ld. Ray. 699.

4.—The rights of the father are to have authority over his children, to enforce all his lawful commands, and to correct with moderation his disobedient children. A father may delegate his power over the person of his child to a tutor or instructor, the better to accomplish the purposes of his education. This power ceases on the arrival of the child at the age of twenty-one years. Generally, the father is entitled to the services of his children during their minority. 4 S. & R. 207.

FATHER-IN-LAW. In Latin, socer,
is the father of one’s wife, or of one’s husband.

Father putative, reputed father. Vide Putative father.

Fathom. A measure of length, equal to six feet. Vide Measure.

Fatuos person. One entirely destitute of reason; is qui omnino desipit. Ersk. Inst. B. 1, tit. 7, s. 48.

Faubourg. A district or part of a town adjoining the principal city; as, a faubourg of New Orleans, 18 Lo. R. 286.

Fault, in contracts, is an improper act or omission, which arises from ignorance, carelessness, or negligence. The act or omission must not have been meditated, and must have caused some injury to another. Leç. Elem. § 783. See Dolus.

2.—1. Faults or negligence are usually divided into, gross, ordinary, and slight: 1. Gross fault or neglect, consists in not observing that care towards others, which a man the least attentive, usually takes of his own affairs. Such fault may, in some cases, afford a presumption of fraud, and in very gross cases it approaches so near, as to be almost undistinguishable from it, especially when the facts seem hardly consistent with an honest intention. But there may be a gross fault without fraud. 2 Str. 1099; Story, Bailm. § 18-22; Toullier, l. 3, t. 3, § 231.—2. Ordinary faults consist in the omission of that care which mankind generally pay to their own concerns; that is the want of ordinary diligence.—3. A slight fault consists in the want of that care which very attentive persons take of their own affairs. This fault assimilates itself, and, in some cases, is scarcely distinguishable, from mere accident, or want of foresight. This division has been adopted by common lawyers from the civil law. Although the civilians generally agree in this division, yet they are not without a difference of opinion. See Pothier, Observation générale, sur le précédent Traité, et sur les suivants; printed at the end of his Traité des Obligations, where he cites Accurse, Alciat, Cujas, Duaren, D’Avezan, Vinnius, and Heinencius, in support of this division. On the other side the reader is referred to Thomasius, tom. 2, Dissertationem, page 1006; Le Brun, cited by Jones, Bailm. 27; and Toullier, Droit Civil Français, liv. 3, tit. 3, § 231.

3.—2. These principles established, different rules have been made as to the responsibilities of parties for their faults in relation to their contracts. They are reduced by Pothier to three.

4.—1. In those contracts where the party derives no benefit from his undertaking, he is answerable only for his gross faults.

5.—2. In those contracts where the parties have a reciprocal interest, as in the contract of sale, they are responsible for ordinary neglect.

6.—3. In those contracts where the party receives the only advantage, as in the case of loan for use, he is answerable for his slight fault. Poth. Observ. Générale; Traité des Oblig. § 142; Jones, Bailm. 119; Story, Bailm. 12. See also Ayliiffe, Pand. 108; Civ. C. Lou. 3522; 1 Com. Dig. 413; 5 Ib. 184; Wesc. on Ins. 370.

Favour. Bias; partiality; lenity; prejudice.

2.—The grand jury are sworn to inquire into all offences which have been committed and of all violations of law, without fear, favour, or affection. Vide Grand Jury. When a juror is influenced by bias or prejudice, so that there is not sufficient ground for a principal challenge, he may nevertheless be challenged for favour. Vide Challenge, and Bac. Ab. Juries, (E); Dig. 50, 17, 156, 4; 7 Pet. R. 160.

Féal. Faithful. This word is not used.

Féalité, fidelity, allegiance.

2.—Under the feudal system, every owner of lands held them of some superior lord, from whom or from whose ancestors, the tenant had received them. By this connexion the lord became bound to protect the tenant in the enjoyment of the land granted to him; and, on the other hand, the tenant was bound to be
faithful to his lord, and defend him against all his enemies. This obligation was called *fidelitas*, or fealty. 1 Bl. Com. 366; 2 Bl. Com. 86; Co. Litt. 67, b.

FEAR, *crim. law*, dread, consciousness of approaching danger.

2.—Fear in the person robbed is one of the ingredients required to constitute a robbery from the person, and without this the felonious taking of the property is a larceny. It is not necessary that the owner of the property should be in fear for his own person, but fear of violence to the person of his child, 2 East, P. C. 718; or of his property, Ib. 731; 2 Russ. 72, 2, is sufficient; 2 Russ. 71 to 90. Vide *Putting in fear*, and Ayl. Pand. tit. 12, p. 106; Dig. 4, 2, 3 & 6.

FEASTS, certain established periods in the Christian church. Formerly the days of the feasts of saints were used to indicate the dates of instruments, and memorable events, 8 Toull. n. 81. These are yet used in England, there they have Easter term, Hilary term, &c.

FEDERAL, government. This term is commonly used to express a league or compact between two or more states.

2.—In the United States the central government of the Union is federal. The constitution was adopted "to form a more perfect union" among the states, for the purpose of self-protection and for the promotion of their mutual happiness.

FEE, FEODUM or FEUDUM, from the French, fief; in estates. A fee is an estate which may continue forever. The word fee is explained to signify that the land, or other subject of property, belongs to its owner, and is transmissible, in case of an individual, to those whom the law appoints to succeed him, under the appellation of heirs; and in case of corporate bodies, to those who are to take on themselves the corporate function; and from the manner in which the body is to be continued, are denominated successors. 1 Co. Litt. 1, 271, b; Wright's Ten. 147, 150; 2 Bl. Com. 104, 106.

2.—Estates in fee are of several sorts, and have different denominations, according to their several natures and respective qualities. They may with propriety be divided into, 1, fees simple; 2, fees determinable; 3, fees qualified; 4, fees conditional; and 6, fees tail.

3.—1. A fee simple is an interest which, in reference to the ownership of individuals, is not restrained to any heirs in particular, nor subject to any condition or collateral determination, except the laws of escheat and the canons of descent, by which it may be qualified, abridged or defeated. 1 Co. Litt. 1, b; Plowd. 557; 2 Bl. Com. 104, 106; Hale's Analysis, 74. The word *fee-simple* is sometimes used by the best writers on the law, as contrasted with estates tail. 1 Co. Litt. 19. In this sense, the term comprehends all other fees as well as the estate, properly, and in strict propriety of technical language, is peculiarly distinguished by this appellation.

4.—2. A determinable fee is an interest which may continue forever. Plowd. 557; Shep. Touch. 97. It is a quality of this estate while it falls under this denomination, that it is liable to be determined by some act or event, expressed on its limitation, to circumscribe its continuance, or inferred by the law as bounding its extent; 2 Bl. Com. 109; limitations to a man and his heirs, till the marriage of such a person shall take place, Cro. Jac. 593; 10 Vin. Abr. 133; till debts shall be paid; Fearne, 187; until a minor shall attain the age of twenty-one years; 3 Atk. 74; Ambler, 204; 9 Mod. 28; 10 Vin. Abr. 203; Fearne, 342; are instances of such a determinable fee.

5.—3. Qualified fee, is an interest given on its first limitation, to a man and to certain of his heirs, and not to extend to all of them generally, nor confined to the issue of his body. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. § 254; 1 Inst. 27, a 220; 1 Prest. on Estates, 449.
6.—4. A conditional fee, in the more general acceptation of the term, is when, to the limitation of an estate, a condition is annexed which renders the estate liable to be defeated. 10 Rep. 95, b. In this application of the term, either a determinable or qualified fee may at the same time be a conditional fee. An estate limited to a man and his heirs, to commence on the performance of a condition, is also frequently described by this appellation. Prest. on Est. 476; Fearne, 9.

7.—5. As to fee-tail, see Tail.

Fee farm, Eng. law. Is a perpetual farm or rent. 1 Tho. Co. Litt. 446, n. 5.

Fee farm rent, contracts, Eng. law. When the lord upon the creation of a tenancy reserves to himself and his heirs, either the rent for which it was before let to him, or at least one-fourth part of that farm rent, it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. 2 Inst. 44.

FEES, compensation, are certain perquisites allowed by law to officers concerned in the administration of justice, or in the performance of duties required by law, as a recompense for their labour and trouble. Bac. Ab. h. t.

2.—The term fees differs from costs in this, that the former are, as above mentioned, a recompense to the officer for his services, and the latter, an indemnification to the party for money laid out and expended in his suit. 11 S. & R. 248; 9 Wheat. 262; See 4 Binn. 267. Vide Costs; Colour of office; Exaction; Extortion.

FEIGNED ACTION, practice, is an action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true; it differs from false action, in which case the words of the writ are false. Co. Litt. 361, sect. 689. Vide Fictitious action.

Feigned issue, practice, is an issue brought by consent of the parties, or the direction of a court of equity; or such courts as possess equitable powers, to determine before a jury some disputed right, which the court had not the power to try. 3 Bl. Com. 452.

FELON DESE, criminal law, a felon, of himself; a self-murderer.

2.—To be guilty of this offence the deceased must have had the will and intention of committing it, else he committed no crime. As he is beyond the reach of human laws, he cannot be punished; the English law, indeed, attempts to inflict a punishment by a barbarous burial of his body, and by forfeiting to the king the property which he owned, and which would belong to his relations. Hawk. P. C. c. 9; 4 Bl. Com. 189.

FELON, crimes, one convicted and sentenced for a felony.

2.—A felon is infamous and cannot fill any office or become a witness in any case, unless pardoned, except in cases of absolute necessity for his own preservation and defence, as, for example, an affidavit in relation to the irregularity of a judgment in a cause in which he is a party. 2 Salk. R. 461; 2 Str. 1148; Martin's R. 25; Stark. Ev. part 2, tit. Infamy. As to the effect of a conviction in one state, where the witness is offered in another, see 17 Mass. R. 515; 2 Harr. & M'Hen. R. 120, 378; 1 Harr. & Johns. R. 572.

FELONIOUSLY, pleadings;—this is a technical word which must be introduced into every indictment for a felony, charging the offence to have been committed feloniously, no other word, nor any circumlocution will supply its place. Com. Dig. Indictment, G. 6; Bac. Ab. Indictment, G 1; 2 Hale, 172, 184; Hawk. B. 2, c. 25, s. 55; Cro. C. C. 37; Burn's Just. Indict. ix.; Williams's Just. Indict. iv.; Cro. Eliz. 193; 5 Co. 121; 1 Chit. Cr. Law, 242.

FELONY, crimes, is an offence which occasions a total forfeiture of either lands or goods or both at common law; and to which capital or other punishment may be superadded according to the degree of guilt. 4 Bl.
FEMALE. An animal of the sex which bears young.

2.—It is a general rule, that the young of female animals which belong to us, are ours, nam fetus ventrem sequitur. Inst. 2, 1, 19; Dig. 6, 1, 5.

The rule is, in general, the same with regard to slaves, but when a female slave comes into a free state, even without the consent of her master, and is delivered of a child, the latter is free. Vide Feminine; Gender; Masculine.

FEME, or more properly, FEMME. Woman.

2. This word is frequently used in law. Baron and feme, husband and wife; feme covert, a married woman; feme sole, a single woman.

3. A feme covert, is a married woman. A feme covert may sue and be sued at law, and will be treated as a feme sole, when the husband is civiliter mortuus, Bac. Ab. Baron and Feme, M; see article, Parties to Actions, part 1, section 1, § 7, n. 3; or where, as it has been decided in England, he is an alien and has left the country, or has never been in it. 2 Esp. R. 554; 1 B. & P. 357. And courts of equity will treat a married woman as a feme sole, so as to enable her to sue or be sued whenever her husband has abjured the realm, been transported for felony, or is civilly dead. And when she has a separate property she may sue her husband, in respect of such property, with the assistance of a next friend of her own selection. Story, Eq. Pl. § 61; Story, Eq. Jur. § 1368; and see article Parties to a suit in equity, § 1, n. 2.

4. Coverture subjects a feme covert to some duties and disabilities, and gives her some rights and immunities to which she would not be entitled as a feme sole. These have been considered under the articles, Marriage, (q. v.) and Wife, (q. v.)

5. A feme sole trader is a married woman who trades and deals on her own account, independently of her hus-

band. By the custom of London a feme covert being a sole trader, may sue and be sued in the city courts, as a feme sole, with reference to her transactions in London. Bac. Ab. Baron and Feme, M.

6.—In Pennsylvania, where any mariners or others go abroad leaving their wives at shop-keeping, or to work for their livelihood at any other trade, all such wives are declared to be feme sole traders, with ability to sue and be sued, without naming the husbands. Act of February 22, 1718. See Poth. De la puissance du mari, n. 20.

FEMININE. What belongs to the female sex.

2. When the feminine is used, it is generally confined to females; as, if a man bequeathed all his mares to his son, his horses would not pass. Vide 3 Brev. R. 9. Gender; Man; Masculine.

FENCE, a building or erection between two contiguous estates, so as to divide them, or on the same estate, so as to divide one part from another.

2. Fences are regulated by the local laws. In general fences on boundaries are to be built on the line, and the expense, when made no more expensively than is required by the law, is borne equally between the parties. See the following cases on the subject. 2 Miles, 337, 395; 2 Greenl. 72; 11 Mass. 294; 3 Wend. 142; 2 Metc. 180; 15 Conn. 526; 2 Miles, 447.

FEOD. The same as sief. Vide Fief or Feud.

FEOFFMENT, conveyancing, is a gift of any corporeal hereditaments to another. It also signifies the instrument or deed by which such hereditament is conveyed.

2. This instrument was used as one of the earliest modes of conveyance of the common law. It signified, originally, the grant of a feu or fee; but it became, in time, to signify the grant of a free inheritance in fee, respect being had to the perpetuity of the estate granted, rather than to the feudal tenure. The feoffment was like-
wise accompanied by livery of seisin. The conveyance by seisinment, with livery of seisin, has long since become obsolete in England, and in this country it has not been used in practice. Cruise, Dig. t. 32, c. 4, s. 3; Touchs. ch. 9; 2 Bl. Com. 20; Co. Litt. 9; 4 Kent, Com. 467; Perk. ch. 3; Com. Dig. h. t.; 12 Vin. Ab. 167; Bac, Ab. h. t. in pr.; Doct. Plac. 271; Dane's Ab. c. 104, a. 3, s. 4. He who gives or enfeoffs is called the feoffor; and the person enfeoffed is denominated the feoffee. 2 Bl. Com. 20.

F.E.R.E. Wild, savage, not tame. 

F.E.R.E. Bestie. Wild beasts. See Animals; Fere nature. 


FERRYMAN. One employed in taking persons across a river or other stream, in boats or other contrivances at a ferry. The owner of a ferry is not considered a ferryman, when it is rented and in the possession of a tenant. Minor, R. 366.

FERRYMEN. One considered as common carriers, and are therefore the legal judges to decide when it is proper to pass over or not. 1 McCard, R. 444; Id. 157; 1 N. & M. 19; 2 N. & M. 17. They are to regulate how the property to be taken across shall be put in their boats or flats, 1 McCard, 157; and as soon as the carriage is fairly on the drop or slip of a flat, although driven by the owner's servant, it is in possession of the ferryman, and he is answerable. 1 McCard's R. 439.

FESTINUM REMEDIUM. A speedy remedy.

FETTERS, a sort of iron put on the legs of malefactors, or persons accused.

2.—When a prisoner is brought into court to plead he shall not be put in fetters. 2 Inst. 315; 3 Inst. 34; 2 Hale, 119; Hawk. b. 2, c. 28, s. 1;
An officer having arrested a defendant on a civil suit, or a person accused of a crime, has no right to handcuff him unless it is necessary, or he had attempted to make his escape. 4 B. & C. 596; 10 Eng. C. L. Rep. 412, S. C.

FEUD. This word, in Scotland, signifies a combination of kindred to revenge injuries or affronts done to any of their blood. Vide Fief.

FEUDA. In the early feudal times grants were made, in the first place, only during the pleasure of the grantor, and called munera, (q. v.) afterwards for life, called beneficia, (q. v.) and, finally, they were extended to the vassal and his sons, and then they acquired the name of feuda. Dalr. Feud, Pr. 199.

FEUDAL, a term applied to whatever concerned a feud; as feudal law; feudal rights.

FEUDAL LAW. By this phrase is understood a political system which placed men and estates under hierarchial and multiplied distinctions of lords and vassals. The principal features of this system were the following.

2.—The right to all lands was vested in the sovereign. These were parcelled out among the great men of the nation by its chief, to be held of him, so that the king had the Dominium directum, and the grantee or vassal, had what was called Dominum utile. It was a maxim nulle terre sans seigneur. These tenants were bound to perform services to the king, generally of a military character. These great lords again granted parts of the lands they thus acquired, to other inferior vassals, who held under them, and were bound to perform services to the lord.

3.—The principles of the feudal law will be found in Littleton's Tenures; Wright's Tenures; 2 Blackstone's Com. c. 5; Dalrymple's History of Feudal Property; Sullivan's Lectures; Book of Fees; Spellman, Treatise of Feuds and Tenures; Le Grand Coutumier; the Salic Laws; The Capitularies; Les Establissements de St. Louis; Assizes de Jerusalem; Poth. Des Fees; Merl. Rép. Feodalité; Dalloz, Dict. Feodalité; Guizot, Essais sur l'histoire de France, Essai 5ème.

4.—In the United States the feudal law never was in its full vigour, though some of its principles are still retained. "Those principles are so interwoven with every part of our jurisprudence," says Ch. J. Tilghman, 3 S. & R. 447, "that to attempt to eradicate them would be to destroy the whole. They are massy stones worked into the foundation of our legal edifice. Most of the inconveniences attending them have been removed, and the few that remain can be easily removed, by acts of the legislature." See 3 Kent, Com. 509, 4th ed.

FIAR, in the Scotch law, is he whose property is burdened with a life-rent. Ersk. Pr. of L. Scot. B. 2, t. 9, s. 23.

FIAT, in practice, is an order of a judge, or of an officer, whose authority, to be signified by his signature, is necessary to authenticate the particular acts.

FICTION OF LAW, is the assumption that a certain thing is true, and which gives to a person or thing, a quality which is not natural to it, and establishes, consequently, a certain disposition, which without the fiction would be repugnant to reason and to truth. It is an order of things which does not exist, but which the law prescribes or authorises: it differs from presumption, because it establishes as true, something which is false; whereas presumption supplies the proof of something true, Dalloz, Dict. h. t.

2.—The law never feigns what is impossible; fictum est id quod factum non est fieri potuit. Fiction is like art; it imitates nature, but never disguises it; it aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is not, exists; but it will never feign that what was impossible, actually is. D'A. Aguesseau, Œuvres, tome iv, page 427, 47° Plaidoyer.

3.—Fictions were invented by the
Roman pretors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench. 4 Benth. Ev. 300.

4.—It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177; and, to prevent their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; 2 Hawk. 320; Best on Pres. § 20.

5.—The law abounds in fictions. That an estate is in abeyance; the doctrine of remitter, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done to-day, is considered as done at a preceding time by the doctrine of relation; that because one thing is proved, another shall be presumed to be true, which is the case in all presumptions; that the heir, executor and administrator, stand by representation, in the place of the deceased; are all fictions of law. “Our various introduction of John Doe and Richard Roe,” says Mr. Evans, (Poth. on Ob. by Evans, vol. ii. p. 43,) “our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe,) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enemy’s settlement in the antipodes; our charge of picking a pocket, or forging a bill with force and arms: of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity; are circumstances, which, looked at by themselves, would convey an impression of no very favourable nature, with respect to the wisdom of our jurisprudence.” Vide 13 Vin. Ab. 209; Merl. Rep. h. t.; Dane’s Ab. Index, h. t.; and Rey, des Inst. de l'Angl. tome 2, p. 219, where he severely censures these fictions as absurd and useless.

FICTITIOUS. Pretended; supposed; as, fictitious actions; fictitious payee.

Fictitious actions, practice, are suits brought on pretended rights.

2.—They are sometimes brought, usually on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted for the purpose of deciding really existing questions of right between parties, and they are not bound to answer whatever impertinent questions persons think proper to ask them in the form of an action on a wager. 12 East, 248. Such an attempt has been held to be a contempt of court; and Lord Hardwicke in such a case committed the parties and their attorneys. Rep. temp. Hardw. 237. See also Comb. 425; 1 Co. 83; 6 Crunch, 147, 8. Vide Feigned actions.

3.—The court of the king’s bench fined an attorney forty pounds for stating a special case for the opinion of the court, the greater part of which statement was fictitious. 3 Barn. & Cr. 597; S. C. 10 E. C. L R. 193.

Fictitious payee, contracts. A supposed person, who has no existence.

2.—When the name of a fictitious payee has been used, in making a bill of exchange, and it has been indorsed in such name, it is considered as having the effect of a bill payable to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties who were privy to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 3 Bro. C. C. 238. Vide Bills of Exchange, § 1.
one who has a beneficial interest in an estate, which, for a time, is committed to the faith or trust of another. This term has nearly the same meaning as *cestui que trust* has in our law.

FIDEI-COMMISSUM, civil law, is a gift which a man makes to another, through the agency of a third person, who is requested to perform the desire of the giver. For example, when a testator writes, "I institute for my heir, Lucius Titius," he may add, "I pray my heir, Lucius Titius, to deliver, as soon as he shall be able, my succession to Caius Scius: *cum igitur aliquis scripsit Lucius Titius heres esto; potest adjicere, rogo te Luci Titi, ut cum poteris hereditatem meam adire, eam Caio Seto reddas, restituas." Inst. 2, 23, 2; vide Code 6, 42.

2.—Fidei-commissa were abolished in Louisiana by the code. 5 N. S. 302.

3.—The uses of the common law, it is said, were borrowed from the Roman fidei comissum. 1 Cru. Dig. 388; Bac. Read. 19; 1 Madd. Ch. 446, 7.

FIDEI-JUSSIO, civil law. The contract of suretyship.

FIDEI-JUSSOR, civil law, is one who becomes security for the debt of another, promising to pay it in case the principal does not do so.

2.—He differs from a co-obligor in this, that the latter is equally bound to a debtor with his principal, while the former is not liable till the principal has failed to fulfil his engagement. Dig. 12, 4, 4; lb. 16, 1, 13; lb. 24, 3, 64; lb. 38, 1, 37; lb. 50, 17, 110; and 14, 6, 20; Hall's Pr. 33; Dunl. Ad. Pr. 300; Clerke's Prax. tit. 63, 4, 5.

3.—The obligation of the fide-jusor was an accessory contract, for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. Leç. Elem. § 872; Code Nap. 2012.

FIDUCIA, civil law, is a contract by which we sell a thing to some one, that is, transmit to him the property of the thing, with the solemn forms of emancipation, on condition that he will sell it back to us. This species of contract took place in the emancipation of children, in testaments, and in pledges. Poth. Pand. h. t.

FIDUCIARY. This term is borrowed from the civil law. The Roman laws called a fiduciary heir, the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament. Merl. Répert. h. t. But Pothier, Pand. vol. 22, h. t., says that *fiduciarius heres* properly signifies the person to whom a testator has sold his inheritance, under the condition that he should sell it to another. Fiduciary may be defined to be, in trust, in confidence.

2.—A fiduciary contract is defined to be, an agreement by which a person delivers a thing to another, on the condition that he will restore it to him. The following formula was employed: *Ut inter bonus agrere opporunte, ne prosper te fidemque tuae frauder.* Cic. de Offic., lib. 3, cap. 13; Leç. du Dr. Civ. Rom. § 237, 238. See 2 How. S. C. Rep. 202, 208; 6 Watts & Serg. 18; 7 Watts, 415.

FIEF or FEUD. In its origin, a fief was a district of country, allotted to one of the chiefs who invaded the Roman empire, as a stipend or reward; with a condition annexed that the possessor should do service faithfully both at home and in the wars, to him by whom it was given. 2 Bl. Com. 45; Encyclopédie, h. t.; Merl. Rép. h. t.

FIELD. It is a part of a farm separately enclosed; a close. 1 Chit. Pr. 160. The Digest defines a field to be a piece of land without a house; ager est locus, que sine villa est. Dig. 50, 16, 27.

FIERI FACIAS, practice, is the name of a writ of execution. It is so called because, when writs were in Latin, the words directed to the sheriff were, *quod fieri facias de bonis et catastis,* &c., that you cause to be made of the goods and chattels, &c. Co. Litt. 290 b.

2.—The foundation of this writ is a judgment for debt or damages, and the
party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceedings in error.

3.—This subject will be considered with regard to, 1, the form of the writ; 2, its effects; 3, the manner of executing it.

4.—1. The writ is issued in the name of the government, as required by the constitution, and directed to the sheriff, commanding him that of the goods and chattels (and, where lands are liable for the payment of debts, as in Pennsylvania, of the lands and tenements) of the defendant, therein named, in his bailiwick, he cause to be levied as well a certain debt of —— dollars, which the plaintiff, (naming him,) in the court of —— (naming it,) recovered against him, as —— dollars, like money which to the said plaintiff were adjudged for his damages, which he had by the detention of that debt, and that he, (the sheriff,) have that money before the judges of the said court, on a day certain, (being the return day therein mentioned,) to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict. It must be tested in the name of the officer, as directed by the constitution or laws; as, "Witness the honourable John B. Gibson, our chief justice, at Philadelphia, the tenth day of October, in the year of our Lord one thousand eight hundred and forty-eight." It must be signed by the prothonotary, or clerk of the court, and sealed with its seal. The signature of the prothonotary it has been decided, in Pennsylvania, is not indispensable. The amount of the debt, interest, and costs, must also be endorsed on the writ. This form varies as it is issued on a judgment in debt, and one obtained for damages merely. The execution being founded on the judgment, must, of course, follow, and be warranted by it. 2 Saund. 72 h, k; Bing. on Ex. 186; hence, where there is more than one plaintiff or de-

FIE

fendant, it must be in the name of all the plaintiffs, against all the defendants. 6 T. R. 525. It is either for the plaintiff or the defendant. When it is against an executor or administrator, for a liability of the testator or intestate, it is conformable to the judgment, and must be only against the goods of the deceased, unless the defendant has made himself personally liable by his false pleading, in which case the judgment is de bonis testatoris si, et si non, de bonis propriis, and the fieri facias must conform to it. 4 Serg. & Rawle, 394; 18 John, 502; 1 Serg. & Rawle, 453; 1 Dall. 451; and see Tidd's Pr. 938; Com. Dig. Pleader, 2 D, 15; 1 Hayw. 298; 2 Hayw. 112.

5.—2. At common law, the writ bound the goods of the defendant or party against whom it was issued, from the test day; by which must be understood that the writ bound the property against the party himself, and all claiming by assignment from, or by representation under him; 4 East, R. 535; so that a sale, by the defendant, of his goods to a bona fide purchaser, did not protect them from a fieri facias tested before, although not issued or delivered to the sheriff till after the sale; Cro. Eliz. 174; Cro. Jac. 451; 1 Sid. 271. To remedy this manifest injustice, the statute of frauds, 29 Car. II., c. 3, s. 16, was passed. The principles of this statute have been adopted in most of the states, Grill. Law Reg. answers to No. 38, under No. III. The statute enacts "that no writ of fieri facias, or other writ of execution, shall bind the property of the goods of the party, against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroners, to be executed; and for the better manifestation of the said time, the sheriffs, &c., their deputies, or agents, shall, upon the receipt of any such writ, (without fee for doing the same,) endorse, upon the back thereof, the day of the month and year whereon he or they received the same." Vide 2 Binn. R. 174; 2 Serg. & Rawle,

6.—The execution of the writ is made by levying upon the goods and chattels of the defendant, or party against whom it is issued; and, in general, seizing a part of the goods in the name of the whole on the premises, is a good seizure of the whole. Ld. Raym. 725; 2 Serg. & Rawle, 142; 4 Wash. C. C. R. 29; but see 1 Whart. Rep. 377. The sheriff cannot break the outer door of a house for the purpose of executing a fieri facias, 5 Co. 92; nor can a window be broken for this purpose, W. Jones, 429. See articles Door; House. He may, however, enter the house, if it be open, and, being once lawfully entered, he may break open an inner door or chest to seize the goods of the defendant, even without any request to open them. 4 Taunt. 619; 3 B. & P. 223; Cowp. 1. Although the sheriff is authorised to enter the house of the party to search for goods, he cannot enter that of a stranger, for that purpose, without being guilty of a trespass, unless the defendant’s goods are actually in the house. Com. Dig. Execution, C 5; 1 Marsh. R. 565. The sheriff may break the outer door of a barn; 1 Sid. 186; S. C. 1 Keb. 689; or of a store disconnected with the dwelling-house, and forming no part of the curtilage. 16 Johns. R. 287. The fi. fa. may be executed at any time before, and on the return day, but not on Sunday, where it is forbidden by statute. Wats. on Sheriffs, 173; 5 Co. 92; Com. Dig. Execution, c. 5.

Vide Wats. on Sher. ch. 10; Bing. Ex. c. 1, s. 4; Gilb. on Exec. Index, h. t.; Grah. Pr. 321; Troub. & Hal. Pr. Index, h. t.; Com. Dig. Execution, C 4; Process, F 5, 7; Caines’s Pr. Index, h. t.; Tidd. Pr. Index, h. t.; Sell. Pr. Index, h. t.

FIERI FECI, in practice, is the return which the sheriff, or other proper officer makes to certain writs, signifying, “I have caused to be made.”

2.—When the officer has made this return, a rule may be obtained upon him, after the return day, to pay the money into court, and if he withhold payment, an action of debt may be had on the return, or assumpsit for money had and received may be sustained against him. 3 Johns. R. 183.

FIFTEENTH, Eng. law. The name of a temporary tax levied by authority of parliament for the use of the king, which consisted of one-fifteenth part of the goods of those who were subject to it. T. L.

FIGURES, are numerals. They are either Roman, made with letters of the Alphabet, for example, MDCCCLXXVI; or they are Arabic, as follows, 1776.

2.—Roman figures may be used in contracts and law proceedings, and they will be held valid; but Arabic figures, probably owing to the ease with which they may be counterfeited, or altered, have been the hold not to be sufficient to express the sum due on a contract; but, it seems, that if the amount payable and due on a promissory note be expressed in figures or ciphers, it will be valid. Story on Bills, § 42; note; Story, Prom. Notes, § 21. Indictments have been set aside because the day or year was expressed in figures. 13 Vin. Ab. 210; 1 Ch. Rep. 319; S. C. 18 Eng. Com. Law Rep. 95.

3.—Bills of exchange, promissory notes, checks and agreements of every description, are usually dated with Arabic figures; it is, however, better to date deeds and other formal instruments, by writing the words at length. Vide 1 Ch. Cr. L. 176; 1 Verm. R. 336; 5 Toull. n. 336; 4 Yeates, R. 278; 2 John. R. 233; 1 How. Mis. 256; 6 Blackf. 533.

FILACER, FILAZIER, or FILZER, English law. An officer of the Court of Common Pleas, so called because he files those writs on which he makes out process.

FILE, practice, thread, a string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keep-
ing and ready turning to the same. The papers put together in order, in bundles and tied, are also called a file.

2.—A paper is said to be filed, when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Ab. 211.

FILATION, civil law, is the descent of son or daughter with regard to his or her father, mother, and their ancestors.

2.—Nature always points out the mother by evident signs, and whether married or not, she is always certain: mater semper certa est, etiamsi vulgo conceperit. There is not the same certainty with regard to the father, and the relation may not know or feign ignorance as to the paternity, the law has therefore established a legal presumption to serve as a foundation for paternity and filiation.

3.—When the mother is or has been married, her husband is presumed to be the father of the children born during the coverture, or within a competent time afterwards, whether they were conceived during the coverture or not: pater est quem nuptiae demonstrant.

4.—This rule is founded on two presumptions; one on the cohabitation before the birth of the child; and the other that the mother has faithfully observed the vow she made to her husband.

5.—This presumption may however be rebutted by showing either that there has been no cohabitation, or some physical or other impossibility that the husband could be the father. See Acceess; Bastard; Gestation; Natural children; Paternity; Putative father.

FILIIUS. The son, the immediate male descendant. This term is used in making genealogical tables.

FILIIUS MULIERATVS. The eldest legitimate son of parents, who, before their marriage, had illegitimate children. Vide Mulier.

Filius populi. The son of the people; a bastard.

FILLEY. A mare not more than one year old. Russ. & Ry. 416; Ib. 494.

FILUM. The centre or middle; the thread of any thing; as filum aquæ; filum viæ.

FILUM AQUÆ, thread or middle of a water-course, (q. v.)

2.—It is a general rule that in grants of lands bounded on rivers and streams above tide water, unless otherwise expressed, the grant extends usque filum aquæ, and that not only the banks, but the bed of the river, and the islands therein, together with exclusive right of fishing, pass to the grantee. 5 Wend. 423.

FILUM VIÆ. The thread or centre of the road.

2.—Where a law requires travellers meeting each other on a road to drive their carriages to the right of the centre of the road, the parties are bound to keep on their side of the centre of the worked part of the road, although the whole of the smooth or most travelled path may be upon one side of that centre. 7 Wend. 185; 5 Conn. 305.

FIN DE NON RECEVOIR, French law. It is an exception or plea founded on law, which without entering into the merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called prescription, or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. Poth. Proc. Civ. partie 1, c. 2, s. 2, art. 2; Story, Confl. of Laws, § 550.

FINAL, that which puts an end to any thing.

2.—It is used in opposition to interlocutory; as, a final judgment, is a judgment which ends the controversy between the parties litigant. 1 Wheat. 365; 2 Pet. 449. See 12 Wheat. 135; 4 Dall. 22; 9 Pet. 1; 6 Wheat. 448; 3 Cranch, 179; 6 Cranch, 51.

FINANCIER, a person employed in the economical management and application of public money or finances; one who is employed in the management of money.
FINANCES. By this word is understood the revenue of the state.

FINDER, is one who lawfully comes to the possession of another's personal property, which was then lost.

2.—The finder is entitled to certain rights and liable to duties which he is obliged to perform. This is a species of deposit, which as it does not arise ex contractu, may be called a quasi deposit, and it is governed by the same general rules as common deposits. The finder is required to take the same reasonable care of the property found, as any voluntary depositary ex contractu. Doct. & St. Dial. 2, c. 38; 2 Bulst. 306, 312; S. C. 1 Rolle's R. 125.

3.—The finder is not bound to take the goods he finds; yet, when he does undertake the custody, he is required to exercise reasonable diligence in preserving the property; and he will be responsible for gross negligence. Some of the old authorities laid down that "if a man find butter, and by his negligent keeping it putrify; or if a man find garments, and by his negligent keeping they be moth eaten, no action lies." So it is if a man find goods and lose them again, Bac. Ab. Bailment, D; and in support of this position, Leon. 128, 223; Owen, 141; and 2 Bulstr. 21, are cited. But these cases, if carefully examined, will not, perhaps, be found to decide the point as broadly as it is stated in Bacon. A finder would doubtless be held responsible for gross negligence.

4.—On the other hand, the finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found, as if a man were to find an animal, he would be entitled to be reimbursed for his keeping, for advertising in a reasonable manner, that he had found it, and to any reward which may have been offered by the owner for the recovery of such lost thing, Domat, 1, 2, t. 9, s. 2, n. 2. Vide Story, Bailm. § 35.

5.—And when the owner does not reclaim the goods lost, they belong to the finder. 1 Black, Com. 395; 2 Kent's Com. 290. How far the finder is responsible criminally, see 1 Hill, (N. Y.) Rep. 94; 2 Russ. on Cr. 102; Rosc. Cr. Ev. 474. See Taking.

FINDING, practice. That which has been ascertained, as, the finding of the jury is conclusive as to matters of fact. 1 Day, 238; 2 Day, 12.

FINE. This word has various significations. It is employed, 1, to mean a sum of money, which, by judgment of a competent jurisdiction, is required to be paid for the punishment of an offence; 2, to designate the amount paid by the tenant, on his entrance, to the lord; 3, to signify a special kind of conveyance.

Fine, in conveyance, and in practice, is an amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. Co. Litt. 120; 2 Bl. Com. 349; Bac. Abr. Fines and Recoveries. A fine is so called, because it puts an end, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter.

2.—The stat. 18 E. 1, called modus levandi fines, declares and regulates the manner in which they should be levied and carried on; and that is as follows: 1, the party to whom the land is conveyed or assured, commences an action at law against the other, generally an action of covenant, by suing out of a writ of precipe, called a writ of covenant, that the one shall convey the lands to the other, on the breach of which agreement the action is brought. The suit being thus commenced then follows, 2. The licentia concordi, or leave to agree to the suit, 3. The concord or agreement itself, after leave obtained by the court; this is usually an acknowledgment from the deforciants, that the lands in question are the lands of the complainants; 4. The note of the fine, which is only an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement. 5. The foot of
the fine or the conclusion of it, which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

3.—Fines thus levied, are of four kinds. 1. What in law French is called a fine sur cognizance de droit, comme ceo que il ad de son done; or a fine upon the acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. This fine is called a feoffment of record. 2. A fine sur cognizance de droit tantum, or acknowledgment of the right merely.

3. A fine sur concessit, is where the cognizor in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the consignee an estate de novo, usually for life or years, by way of a supposed composition. 4. A fine sur done grant et render, which is a double fine, comprehending the fine sur cognizance de droit comme ceo, &c., and the fine sur concessit; and may be used to convey particular limitations of estate, and to persons who are strangers, or not named in the writ of the covenant, whereas the fine sur cognizance de droit comme ceo, &c., conveys nothing but an absolute estate, either of inheritance, or at least of freehold. Salk. 340. In this last species of fines, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Com. 348 to 358. See Cruize on Fines; Vin. Abr. Fine; Sheph. Touch. c. 2; Bac. Ab. Fines and Recoveries; Com. Dig. Fine.

Fines, in criminal law, is a pecuniary punishment imposed by a lawful tribunal, upon a person convicted of crime or misdemeanor. See Shep. Touchs. 2; Bac. Abr. Fines and Amerceiments.

2.—The amount of the fine is frequently left to the discretion of the court, who ought to proportion each fine to the offence. To prevent the abuse of excessive fines the constitution of the United States directs that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Amend. to the Constitution, art. 8. See Division of opinion.

Fines for alienation. During the vigour of the feudal law, a fine for alienation was a sum of money which a tenant by knight’s service paid to his lord for the permission to alienate his right in the estate he held to another, and by that means to substitute the new tenant for himself. 2 Bl. Com. 71. But when the tenant held land of the king in capite by socage tenure, he was bound to pay such a fine as well as in the case of knight-service. 2 Bl. Com. 59. These fines are now abolished. In France, a similar demand from the tenant, made by the lord when the former alienated his estate was called bois et vente. This imposition was abolished, with nearly every feudal right, by the French revolution.

FIRE, ACCIDENTAL. Is is an uncontrollable fire which arises in consequence of some human agency, without any intention, or which happens by some natural cause without human agency.

2.—Whether a fire arises purely by accident, or from any other cause, when it becomes uncontrollable and dangerous to the public, a man may, in general, justify the destruction of a house on fire for the protection of the neighbourhood, for the maxim salus populi est suprema lex, applies in such case. 11 Co. 13; Jac. Inter. 122, max. 115. Vide Accident; Act of God, and 3 Saund. 422 a, note 2; 3 Co. Litt. 57 a, n. 1; Ham. N. P. 171; 1 Cruise’s Dig. 151, 2; 1 Vin. Ab. 215; 1 Rolle’s Ab. 1; Bac. Ab. Action on the case, F; 2 Lois des Bâtim. 124; Newll. on Contr. 323; 1 T. R. 310, 708; Amb. 619; 6 T. R. 489.

3.—When real estate is let, and the tenant covenants to pay the rent during the term (unless there are proper exceptions to such covenants), and the premises are afterwards destroyed by fire, during the term, the rent must be
paid, although there be no enjoyment, for the common rule prevails, res perit domino; the tenant, by the accident, loses his term, the landlord, the residence. Story, Eq. Jur. § 102.

FIREBOTE, fuel for necessary use; a privilege allowed to tenants to take necessary wood for fuel.

FIRKIN. A measure of capacity, equal to nine gallons. The word firkin is also used to designate a weight, (used for butter and cheese) of fifty-six pounds avoirdupois.

FIRM. The persons composing a partnership, taken collectively, are called the firm. Sometimes this word is used synonymously with partnership.

2.—The name of a firm should be distinct from the names of all other firms. When there is a confusion in this respect, the partners composing one firm may, in some cases, be made responsible for the debts of another. For example, where three persons carried on a trade under the firm of King and Company, and two of those persons with another, under the same firm, carried on another partnership; a bill under the firm, and which was drawn on account of the one partnership, was made the ground of an action of assumpsit against the other. Lord Kenyon was of opinion that this company was liable; that the partner not connected with the company that drew the bill, having traded along with the other partner under that firm, persons taking bills under it, though without his knowledge, had a right to look to him for payment. Peake's N. P. Cas. 80; and see 7 East, R. 210; 2 Bell's Com. 670, 5th ed.; 3 Mart. N. S. 39. But it would seem, 1st, that any act distinctly indicating credit to be given to one of the partnerships, will fix the election of the creditor to that company; and, 2dly, that making a claim on either of the firms, or, when they are insolvent, on either of the estates, will have the same effect.

3.—When the style of the firm has been agreed upon, for example, John Doe and Company, the partners who sign the name of the firm are required to use such name in the style adopted, and a departure from it may have the double effect of rendering the individual partner who signs it, personally liable not only to third persons, but to his co-partners. Story, Partn. § 102, 202; and it will be a breach of the agreement, if the partner sign his own name, and add “for himself and partners.” Colly. Partn. B. 2, c. 2, § 2; 2 Jac. & Walk. 266.

4.—As a general rule a firm will be bound by the acts of one of the partners in the course of their trade and business, and will be discharged by transactions with a single partner; for example, the payment or satisfaction of a debt by a partner, is a satisfaction and payment by them all, and a release to one partner is a release to them all. Co. Litt. 233 n.; 6 T. R. 525. Vide Partn.; Partnership.

5.—It not unfrequently happens that the name of the firm is the name of only one of the partners, and that such partner does business in his own name on his private or separate account. In such case if the contract be entered into for the firm, and there is express or implied proof of that fact, the partnership will be bound by it; but when there is no such proof, the presumption will be that the debt was contracted by the partner on his own separate account, and the firm will not be responsible. Story, on Partn. § 139; Colly. on Partn. Book 3, c. 1, § 2; 17 Serg. & Rawle, 165; 5 Mason, 176; 5 Peters, 529; 9 Pick, 274.

FIRMAN, a passport granted by the Great Mogul to captains of foreign vessels to trade within the territories over which he has jurisdiction; a permit.

FISC, civil law. The treasury of a prince. The public treasury. Hence to confiscate a thing, is to appropriate it to the fisc.

FISCAL, what belongs to the fisc, or public treasury.

FISH, an animal which inhabits the water exclusively.

2.—Fishes in rivers and in the sea
are animals fere naturae, and consequently no one has any property in them until they have been captured; and, like other wild animals, if having been taken they escape, and regain their liberty, the captor loses his property in them. Vide Fere Naturae. The owner of a fishery in the lower part of the stream cannot construct any contrivance by which to obstruct the passage of fish up the stream. 5 Pick. R. 199.

FISHERY, estates. A place where fish may be caught. This term seems to be exclusively applied to a place of drawing a seine, or net. 1 Whart. R. 181, 2.

2.—The right of fishery is to be considered as to tide or navigable waters, and to rivers not navigable. A river where the tide ebbs and flows is considered an arm of the sea. The people have a common right to fish in all arms of the sea, creeks, coves, and navigable rivers. In rivers not navigable, that is where there is no flux or reflux of the tide, the right of fishing is incident to the owner of the soil over which the water passes, and to the riparian proprietors, when a stream is owned by two or more. 6 Cowen’s R. 369; 5 Mason’s R. 191; 4 Pick. R. 145; 5 Pick. R. 199. The rule, that the right of fishery, within his territorial limits, belongs exclusively to the riparian owner, extends alike to great and small streams. The owners of farms adjoining the Connecticut river, above the flowing of the tide, have the exclusive right of fishing opposite their farms, to the middle of the river; although the public have an easement in the river as a public highway, for passing and repassing with every kind of water craft. 2 Conn. R. 481. The right of fishery may exist, not only in the owner of the soil or the riparian proprietor, but also in another who has acquired it by grant or otherwise. Co. Litt. 122 a, n. 7; Schul. Aq. R. 40, 41; Ang. W. C. 184; sed vide 2 Salk. 637.

3.—Fisheries have been divided into—

1. Several fisheries. A several fishery is one to which the party claiming it has the right of fishing, independently of all others, as that no person can have a co-extensive right with him in the object claimed, but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814. A several fishery, as its name imports, is an exclusive property; this however is not to be understood as depriving the territorial owner of his right to a several fishery, when he grants to another person permission to fish; for he would continue to be the several proprietor, although he should suffer a stranger a co-extensive right with himself. Woolr. on Wat. 96.

4.—2. Free fisheries. A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right and applies to a public navigable river, without any right in the soil. 3 Kent, Com. 329. Mr. Woolrych says, that sometimes a free fishery is confounded with a several, sometimes it is said to be synonymous with common, and again treated as distinct from either. Law of Waters, &c. 97.

5.—3. Common of fishery. A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Com. 329. A distinction has been made between a common fishery, (commune piscarium,) which may mean for all mankind, as in the sea, and a common of fishery, (communiam piscaric,) which is a right, in common with certain other persons, in a particular stream. 8 Taunt. R. 183. Mr. Angell seems to think that common of fishery and free fishery, are convertible terms. Law of Water Courses, c. 6, s. 3, 4.

6.—These distinctions in relation to several, free, and common of fishery, are not strongly marked, and the lines are sometimes scarcely perceptible. “Instead of going into the black letter books, to learn what was a fishery,

TO FIX. To render liable.

2.—This term is applied to the condition of special bail; when the plaintiff has issued a ca. sa. which has been returned by the sheriff, non est, the bail are said to be fixed, unless the defendant be surrendered within the time allowed ex gratia, by the practice of the court. 5 Binn. R. 332; Coxe, R. 110; 12 Wheat. R. 604; 4 John. R. 407; 1 Caines, R. 588. The defendant's death after the return is no excuse for not surrendering him during the time allowed ex gratia. See Act of God; Death. In New Hampshire, 1 N. H. Rep. 472, and Massachusetts, 2 Mass. R. 485, the bail are not fixed until judgment against them, on a scire facias, or unless the defendant die after the return of non est on the execution against him. In North Carolina, the bail are not fixed till judgment against them. 3 Dev. R. 155. When the bail are absolutely fixed, they are responsible.

FIXTURES, property, are personal chattels annexed to land, and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of the owner of the freehold.

2.—Questions frequently arise as to whether fixtures are to be considered real estate, or a part of the freehold; or whether they are to be treated as personal property. To decide these, it is proper to consider the mode of annexation, the object and customary use of the thing, and the character of the contending parties.

3.—1. The annexation may be actual or constructive; 1st, By actual connexation or annexation is understood every mode by which a chattel can be joined or united to the freehold. The article must not however be laid upon the ground; it must be fastened, fixed or set into the land, or some such erection as is unquestionably a part of the reality. Bull. N. P. 34; 3 East, R. 38; 9 East, R. 215; 1 Taunt. 21; Pothier, Traite des choses, § 1. Locks, iron stoves set in brick-work, posts, and window blinds, afford examples of actual annexation, See 5 Hayw. 109; 20 John. 29; 1 Harr. & John. 289; 3 M'Cord, 553; 9 Conn. 63; 1 Miss. 508, 620; 7 Mass. 432; 15 Mass. 159; 3 Stew. 314. 2dly, Some things have been held to be parcel of the reality, which are not in a real sense annexed, fixed, or fastened to the freehold; for example, deeds or chattels which relate to the title of the inheritance, go to the heir. Shep. Touch. 499; but loose movable machinery, not attached nor affixed, which is used in prosecuting any business to which the freehold is adapted, is not considered as part of the real estate, nor as an appurtenance to it. 12 New H. Rep. 205. See, however, 2 Watts & S. 116, 390; it is also laid down that deer in a park, fish in a pond, and doves in a dove-house, go to the heir and not to the executor, being, with keys and heirlooms, constructively annexed to the inheritance, Shep. Touchs. 90; Pothier, Traite des choses, § 1.

4.—2. The general rule is that fixtures once annexed to the freehold, become a part of the reality. But to this rule there are exceptions. These are, 1st, where there is a manifest intention to use the fixtures in some employment distinct from that of the occupier of the
real estate; 2dly, where it has been annexed for the purpose of carrying on a trade, 3 East, 88; 4 Watts, 330; but the distinction between fixtures for trade and those for agriculture does not in the United States, seem to have been generally admitted to prevail. 8 Mass. R. 411; 16 Mass. R. 449; 4 Pick, R. 311; and see 2 Peters’s Rep. 187. The fact that it was put up for the purposes of trade indicates an intention that the thing should not become a part of the freehold. See 1 H. Bl. 260. But if there was a clear intention that the thing should be annexed to the realty, its being used for the purposes of trade would not perhaps bring the case within one of the exceptions. 1 H. Bl. 260.

5.—3. There is a difference as to what fixtures may or may not be removed, as the parties claiming them stand in one situation or another. These classes of persons will be separately considered.

6.—1st. When the question as to fixtures arises between the executor and the heir, The rule as between these persons has retained much of its original strictness, that the fixtures belong to the real estate, or the heir; but if the ancestor manifested an intention, which is to be inferred from circumstances, that the things affixed should be considered as personalty, they must be so considered, and will belong to the executor. See Bac. Abr, Executors and Administrators; 2 Str. 1141; 1 P. Wms. 94; Bull. N. P. 34.

7.—2dly. As between vendor and vendee, The rule is as strict between these persons as between the executor, and the heir; and fixtures erected by the vendor for the purpose of trade and manufactures, as pot-ash kettles for manufacturing ashes, pass to the vendee of the land. 6 Cowen, R. 663; 20 Johns. R. 29. Between mortgagor and mortgagee, the rule seems to be the same as that between vendor and vendee. Amos & F. on F xt. 188; 15 Mass. R. 159; 1 Atk. 477; 16 Verm. 124; 12 N. H. Rep. 205.

8.—3dly, Between devisee and executor. On a devise of real estate, things permanently annexed to the realty, at the time of the testator’s death, will pass to the devisee. His right to fixtures will be similar to that of the vendee. 2 Barn. & Cresw. 80.

9.—4thly, Between landlord and tenant for years. The ancient rule is relaxed, and the right of removal of fixtures by the tenant is said to be most extensive. 3 East, 38. But his right of removal is held to depend rather upon the question whether the estate will be left in the same condition in which he took it. 4 Pick. R. 311.

10.—5thly, In cases between tenants for life or their executors and the remainder-men or reversioners, the right to sever fixtures seems to be the same as that of the tenant for years. It has been held that the steam engines erected in a colliery, by a tenant for life, should belong to the executor and not go to the remainder-man. 3 Atk. R. 13.

11.—6thly, In a case between the landlord and a tenant at will, there seems to be no reason why the same privilege of removing fixtures should not be allowed. 4 Pick. R. 511; 5 Pick. R. 487.

12.—The time for exercising the right of removal of fixtures is a matter of importance; a tenant for years may remove them at any time before he gives up the possession of the premises, although it should be after his term has expired, and he is holding over. 1 Barn. & Cresw. 79; 2 East, 88. Tenants for life or at will, having uncertain interests in the land, may, after the determination of their estates, not occasioned by their own faults, have a reasonable time within which to remove their fixtures. Hence their right to bring an action for them. 3 Atk. R. 13. In case of their death the right passes to their representatives.

See generally, Vin. Abr. Landlord and Tenant, A; Bac. Abr, Executors, &c. H 3; Com. Dig. Biens, B and C; 2 Chitty’s Blacks. 281, n. 23; Pothier, Traité des choses; 4 Co. 63, 64; Co. Litt. 53, a, and note 5, by Hargr.
Moore, 177; Hob. 234; 3 Salt. 365;
1 P. Wms. 94; 1 Atk. 553; 2 Vern.
508; 3 Atk. 13; 1 H. Bl. 259, n;
Amb. 113; 2 Str. 1141; 3 Esp. 11;
2 East, 88; 3 East, 38; 9 East, 215;
3 Johns. R. 468; 7 Mass. 432; 6
Cowen, 665; 2 Kent, Com. 280; Ham.
Part. 183; Jurist, No. 19, p. 53; Arch.
L. & T. 359.

FLAG OF THE UNITED
STATES. By the act entitled, “An
act to establish the flag of the United
States,” passed April 4, 1818, 3
Story’s L. U. S., 1667, it is enacted—

2. § 1. That from and after the
fourth day of July next, the flag of the
United States be thirteen horizontal
stripes, alternate red and white; that
the union be twenty stars, white in a
blue field.

3. § 2. That, on the admission of
every new state into the Union, one
star be added to the union of the flag;
and that such addition shall take effect
on the fourth day of July then next succeeding such admission.

FLAGRANS CRIMEN. Among
the Romans signified that a crime was
then or had just been committed; for
example, when a crime has just been
committed and the corpus delictum is
publicly exposed; or if a mob take
place; or if a house be feloniously
burned, these are severally flagrant
crimen.

2.—The term used in France is flagrant délit. The code of criminal in-
struction gives the following concise definition of it, art. 41: “Le délit qui
se commet actuellement ou qui vient de
se commettre, est un flagrant délit.”

FLAGRANTE DELICTO. Is the
act of committing a crime; when a
person is arrested flagrant delicto, the
only evidence required to convict him,
is to prove that fact.

FLEET, punishment, Eng. law, a
place of running water, where the tide
or float comes up. A prison in Lon-
don, so called from a river or ditch
which was formerly there, on the side
of which it stood.

FLETA. The title of an ancient
law-book, supposed to have been writ-
ten by a judge who was confined in the
Fleet prison. It is written in Latin, and
is divided into six books.

FLIGHT, crim. law, is the evading
the course of justice, by a man’s vol-
untarily withdrawing himself. 4 Bl.
Com. 387. Vide Fugitive from jus-
tice.

FLORIDA. The name of one of the
new states of the United States of
America. It was admitted into the
Union by virtue of the act of
Congress entitled an act for the ad-
mission of the states of Iowa and
Florida into the Union, approved March
3, 1851.

2.—The constitution was adopted on
the eleventh day of January, eighteen
hundred and thirty-nine. The powers
of the government are divided into
three distinct branches, namely, the
legislative, the executive, and the judi-
cial.

3.—§ 1. Of the legislative power. 1.
The legislative power of this state shall
be vested in two distinct branches, the
one to be styled the senate, the other the
house of representatives, and both to-
gether, “The General Assembly of
the State of Florida,” and the style of
the laws shall be, “Be it enacted by
the Senate and House of Representa-
tives of the State of Florida in General
Assembly convened.”

4.—2. A majority of each house shall
constitute a quorum to do business, but
a smaller number may adjourn from
day to day, and may compel the at-
endance of absent members in such
manner and under such penalties as
each house may prescribe.

5.—3. Each house may determine the
rules of its own proceedings, punish its
members for disorderly behaviour,
and, with the consent of two-thirds,
expel a member; but not a second
time for the same cause.

6.—4. Each house, during the session,
may punish, by imprisonment, any
person not a member, for disrespectful
or disorderly behaviour in its presence,
or for obstructing any of its proceed-
ings, provided such imprisonment shall
not extend beyond the end of the session.
7.—5. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, and the yeas and nays of the members of each house shall be taken, and entered upon the journals, upon the final passage of every bill, and may, by any two members, be required upon any other question, and any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public, or an individual, and have the reasons of his dissent entered on the journal.

8.—6. Senators and representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, or returning from the same, allowing one day for every twenty miles such member may reside from the place, at which the general assembly is convened; and for any speech or debate, in either house, they shall not be questioned in any other place.

9.—7. The general assembly shall make provision, by law, for filling vacancies that may occur in either house, by the death, resignation, (or otherwise,) of any of its members.

10.—8. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may imperiously require secrecy.

11.—9. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

12.—10. Bills may originate in either house of the general assembly, and all bills passed by one house may be discussed, amended or rejected by the other; but no bill shall have the force of law until, on three several days, it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, four-fifths of the house in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses.

13.—11. Each member of the general assembly shall receive from the public treasury such compensation for his services, as may be fixed by law, but no increase of compensation shall take effect during the term for which the representatives were elected when such law passed.

14.—12. The sessions of the general assembly shall be annual, and commence on the fourth Monday in November in each year, or at such other time as may be prescribed by law.

15.—The senators will be considered with regard, 1, to the qualification of the electors; 2, the qualification of the members; 3, the number of members; 4, the time of their election; 5, the length of service.

16.—1st. The senators shall be elected by the qualified voters. Const. art. 4, s. 5.

17.—2d. No man shall be a senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of Florida two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen, and shall have attained the age of twenty-five years. Const. art. 4, s. 5. And to this there are the following exceptions:

All banking officers of any bank in the state are ineligible until after twelve months after they shall go out of such office. Art. 6, 3.

All persons who shall fight, or send, or accept a duel, the probable issue of which may be death, whether committed in or out of the state. Art. 6, s. 5.

All collectors or holders of public money. Art. 6, s. 6.

All ministers of the Gospel. Art. 6, s. 10.

All persons who shall have procured their elections by bribery.

All members of Congress, or persons holding or exercising any office of profit under the United States, or under a foreign power. Art. 6, s. 15.

18.—3d. The number of senators
may be varied by the General Assembly, but it shall never be less than one-fourth, nor more than one-half of the whole number of the house of representatives. Art. 9, s. 2.

19.—4th. The time and place of their election is the same as those for the house of representatives. Art. 4, s. 5.

20.—5th. They are elected for the term of two years. Art. 4, s. 5.

21.—The house of representatives will be considered in the same way that has been done in relation to the senate.

22.—1st. Members of the house of representatives shall be chosen by the qualified voters.

23.—2d. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of the state two years next preceding his election, and the last year thereof a resident of the county for which he shall be chosen, and have attained the age of twenty-one years. Art. 4, s. 4. And the same persons are disqualified, who are disqualified as senators.

24.—3d. The number of members shall never exceed sixty. Art. 4, s. 18.

25.—4th. The time of holding the election is the first Monday of October annually.

26.—5th. Members of the house of representatives are elected for one year from the day of the commencement of the general election, and no longer. Art. 4, s. 2.

27.—§ 2. Of the executive. The supreme executive power is vested in a chief magistrate, who is styled the governor of Florida. Art. 3.

28.—No person shall be eligible to the office of governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States ten years, or an inhabitant of Florida at the time of the adoption of the constitution, (being a citizen of the United States,) and shall have resided in Florida at least five years preceding the day of election.

29.—The governor shall be elected for four years, by the qualified electors, at the time and place where they shall vote for representatives; and shall remain in office until a successor shall be chosen and qualified, and shall not be eligible to re-election until the expiration of four years thereafter.

30.—His general powers are as follows: 1. He is commander-in-chief of the army, navy, and militia of the state. 2. He shall take care that the laws be faithfully executed. 3. He may require information from the officers of the executive department. 4. He may convene the general assembly by proclamation upon particular occasions. 5. He shall, from time to time, give information to the general assembly. 6. He may grant pardons, after conviction, in all cases except treason and impeachment, and in these cases, with the consent of the senate; and he may respite the sentence in these cases until the end of the next session of the senate. 7. He may approve or veto bills.

31.—In case of vacancy in the office of governor, the president of the senate shall act in his place, and in case of his default, the speaker of the house of representatives shall fill the office of governor. Art. 3, s. 21.

32.—§ 3. Of the judicial department. 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, courts of chancery, circuit courts, and justices of the peace: Provided, the general assembly may also vest such criminal jurisdiction as may be deemed necessary in corporation courts; but such jurisdiction shall not extend to capital offences. Art. 5, s. 1.

33.—2. Justices of the supreme court, chancellors, and judges of the circuit courts, shall be elected by the concurrent vote of a majority of both houses of the general assembly. Art. 5, s. 11.

34.—3. The judges of the circuit courts shall, at the first session of the general assembly to be holden under the constitution, be elected for the term
of five years, and shall hold their office for that term, unless sooner removed, under the provisions in the constitution; and at the expiration of five years, the justices of the supreme courts, and the judges of the circuit courts, shall be elected for the term of and during their good behaviour.

35.—Of the supreme court. 1. The powers of the supreme court are vested in, and its duties performed by, the judges of the several circuit courts, and they, or a majority of them, shall hold such session of the supreme court, and at such time and place as may be directed by law. Art. 5, s. 3. But no justice of the supreme court shall sit as judge, or take any part in the appellate court, on the trial or hearing of any case which shall have been decided by him in the court below. Art. 5, s. 18.

36.—2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only. Provided, that the said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs, as may be necessary to give it a general superintendence and control of all other courts. Art. 5, s. 2.

37.—3. The supreme court shall exercise appellate jurisdiction in all cases brought by appeal or writ of error from the several circuit courts, when the matter in controversy exceeds in amount or value fifty dollars.

38.—Of the circuit courts. 1. The state is to be divided in circuits, and the circuit courts, held within such circuits, shall have original jurisdiction in all matters, civil and criminal, within the state, not otherwise excepted in this constitution. Art. 5, s. 6.

FLORIN. The name of a foreign coin. In all computations of customs, the florin of the southern states of Germany, shall be estimated at forty cents; the florin of the Austrian empire, and of the city of Augsburg, at forty-eight and one-half cents. Act of March 22, 1846. The florin of the United Netherlands is computed at the rate of forty cents. Act of March 2, 1799, § 61. Vide Foreign Coins.

FLOTSAM or FLOTSAN, a name for the goods which float upon the sea when a ship is sunk, in distinction from Jetsam, (q. v.) and Legan, (q. v.) Bract. lib. 2, c. 5; 5 Co. 106; Com. Dig. Wreck (A.); Bac. Ab. Court of Admiralty, B.

FLUMEN, civ. law. The name of a servitude which consists in the right of turning the rain-water, gathered in a spout, on another’s land. Ersk. Inst. B. 2, t. 9, n. 9. See Stillicidium.

FœDUS. A league; a compact.

FœNUS NAUTICUS. The name given to marine interest, (q. v.)

2.—The amount of such interest is not limited by law, because the lender runs the risk of losing his principal. Ersk. Inst. B. 4, t. 4, n. 76. See Marine Interest.

FœTICIDE, med. jur. Recently, this term has been applied to designate the act by which criminal abortion is produced. 1 Beck’s Med. Jur. 235; Guy, Med. Jur. 133. See Infanticide; Pro cidie.

FœTURA, civil law, is the produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property, by virtue of his right. Bowy. Mod. C. L. c. 14, p. 81.

FœTUS, med. jur., is the unborn child. The name of embryo is sometimes given to it; but, although the terms are occasionally used indiscriminately, the latter is more frequently employed to designate the state of an unborn child during the first three months after conception, and by some until quickening. A fetus is sometimes described by the homely phrase of infant in ventre sa mere.

2.—It is sometimes of great importance, particularly in criminal law, to ascertain the age of the fetus, or how far it has progressed towards maturity. There are certain signs which furnish evidence on this subject, the size and weight and the formation of certain parts, as the cartilages, the bones, &c.,
are the principal. These are not
always the same, much of course must
depend upon the constitution and health
of the mother, and other circumstances
which have an influence on the fetus.
The average length and weight of the
fetus at different periods of gestation,
as deduced by Doctor Beck from vari-
ous observers, and as found by May-
grier, is here given.

<table>
<thead>
<tr>
<th>Beck.</th>
<th>Mayeur.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weight.</td>
<td>Length.</td>
</tr>
<tr>
<td>9 to 10 grains.</td>
<td>10 to 12 lines.</td>
</tr>
<tr>
<td>2 ounces.</td>
<td>4 inches.</td>
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<tr>
<td>3 ounces.</td>
<td>6 inches.</td>
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<tr>
<td>4 ounces.</td>
<td>8 inches.</td>
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<tr>
<td>5 ounces.</td>
<td>10 inches.</td>
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<tr>
<td>6 ounces.</td>
<td>12 inches.</td>
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<tr>
<td>7 ounces.</td>
<td>14 inches.</td>
</tr>
<tr>
<td>8 ounces.</td>
<td>16 inches.</td>
</tr>
</tbody>
</table>

At 30 days at 2 months.

3.—The discordance apparent be-
tween them proves that the observations
which have been made, are only an
approximation to truth.

4.—It is proper to remark that the
Paris pound poids de marc, which was
the weight used by Maygrier, differs
from avoirdupois weight used by Dr.

Beck. The pound poids de marc, of
sixteen ounces, contains 9216 Paris
grains, whilst the avoirdupois contains
only 8532.5 Paris grains. The Paris
inch is 1.065977 English inch.

239; 2 Dunglison’s Human Physi-
ology, 391; Ryan’s Med. Jur. 137; 1
Lég. prém. partie, c. 4, art. 2; and
the articles Birth; Dead Born; Fe-
ticide; In ventre sa mere; Infanticide;
Life; and Quick with child.

FOLCMOTE. The name of a court
among the Saxons. It was literally
an assembly of the people or inhabi-
tants of the tithing or town; its juris-
diction extended over disputes between
neighbours, as to matters of trespass
in meadows, corn, and the like.

FOLD-COURSE, Eng. law. By
this phrase is understood land used as
a sheep-walk; it also signifies land to
which the sole right of folding the
cattle of others is appurtenant; some-
times it means merely such right of
of folding. It is also used to denote
the right of folding on another’s land,
which is called common foldage. Co.
Litt. 6 a, note (1); W. Jo. 375; Cro.
Car. 432; 2 Vent. 139.

FOLK-LAND, Eng. law, was land
held at the pleasure of the lord, and
resumed at his discretion. It was held
in villenage. 2 Bl. Com. 90.

FOOT, a measure of length, con-
taining one-third of a yard, or twelve
inches. Figuratively, it signifies the
conclusion, the end; as, the foot of
the fine, the foot of the account.

Foot of the fine, estates, convey-
ancing, is the fifth part of the conclu-
sion of a fine. It includes the whole
mater, recting the names of the par-
ties, day, year, and place, and before
whom it was acknowledged or levied.
2 Bl. Com. 351.

FOR THAT, pleading. It is a
maxim in law, regulating alike every
form of action, that the plaintiff shall
state his complaint in positive and
direct terms, and not by way of recital.
“For that,” is a positive allegation;
“For that whereas,” in Latin “quod
cum," (q. v.) is a recital. Hamm. N. P. 9.

FORBEARANCE, contracts, is the act by which a creditor waits for the payment of the debt due him by the debtor, after it has become due.

2.—When the creditor agrees to forbear with his debtor, this is a sufficient consideration to support an assumpsit made by the debtor. 4 John, R. 237; 2 Nott & McCord, 133; 2 Binn. R. 510; Com. Dig. Action upon the case upon assumpsit, B 1; Dane’s Ab. Index, h. t.; 1 Leigh’s N. P. 31; 1 Penna. R. 385; 4 Wash. C. C. R. 148; 5 Rawle’s R. 69.

3.—The forbearance must be of some right which can be enforced with effect against the party forborne; if it cannot be so enforced by the party forbearing, he has sustained no detriment, and the party forborne has derived no benefit. 4 East, 455; 5 B. & A. 123. See 1 B. & A. 605; Burgeon Sur. 12, 18. Vide Giving time.

FORCE, is a power put in motion for some object. It is, 1, actual; or 2, implied.

2.—§ 1. If a person with force break a door or gate for an illegal purpose, it is lawful to oppose force to force; and if one enter the close of another, vi et armis, he may be expelled immediately, without a previous request; for there is no time to make a request. 2 Salk. 641; 8 T. R. 78, 357. And see tit. Battery, § 2. When it is necessary to rely upon actual force in pleading, as in the case of a forcible entry, the words “manu fortis,” or “with a strong hand,” should be adopted. 8 T. R. 357, 358; but in other cases, the words “vi et armis,” or “with force and arms,” is sufficient. Id.

3.—§ 2. The entry into the ground of another, without his consent, is breaking his close, for force is implied in every trespass quare clausum fregit, 1 Salk. 641; Co. Litt. 257, b. 161, b. 162, a; 1 Saund. 81, 140, n. 4; 8 T. R. 78, 358; Bac. Abr. Trespass; this Dict. tit. Close. In the case of false imprisonment, force is implied, 1 N. R. 255; and the same rule prevails where a wife, a daughter, or servant have been enticed away or debauched, though in fact they consented, the law considering them incapable of consent. See 3 Wils. 15; Fitz. N. B. 89, O; 5 T. R. 361; 6 East, 357; 2 N. R. 365, 454.

4.—In general, a mere nonfeasance cannot be considered as forcible; for where there has been no act, there cannot be force, as in the case of the mere detention of goods without an unlawful taking. 2 Saund. 47, k. l. In general, by force is understood unlawful violence. Co. Litt. 161, b. Vide Arms.

FORCED HEIRS, in Louisiana, are those persons whom the testator or donor, cannot deprive of the portion of his estate reserved for them by law except in cases where he has a just cause to disinherit them. Civ. Code of Lo. art. 1482; as to the portion of the estate they are entitled to, see the article Legitime. As to the causes for which forced heirs may be deprived of this right, see Disinherison.

FORCIBLE ENTRY OR DETAINER, crim. law, is committed by unlawfully and violently taking or keeping possession of lands and tenements with menaces, force and arms, and without the authority of law. Com. Dig. h. t.

2.—The proceedings in case of forcible entry or detainer, are regulated by statute in the several states, (q. v.) The offence is generally punished by indictment. 4 Bl. Com. 148; 1 Russ. on Cr. 253. A forcible entry and a forcible detainer, are distinct offences, 1 Serg. & Rawle, 124; 8 Cowen, 226.

3.—In the civil and French law a similar remedy is given for this offence. The party injured has two actions a criminal or a civil. The action is called actio interdictum unde vi. In French l’action réintégrande. Poth. Proc. Civ. Partie 2, c. 3, art. 3. Vide generally, 3 Pick, 31; 3 Halst. R. 48; 2 Tyler’s R. 64; 2 Root’s R. 411; Ib. 472; 4 Johns. R. 150; 8 Johns, R. 44; 10 Johns, R. 304; 1 Caines’s R.
FORECLOSURE, practice, is a proceeding in chancery, by which
the mortgagor’s right of redemption of the mortgaged premises is barred or foreclosed forever.

2.—This takes place when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption; in such case the mortgagee may file a bill calling on the mortgagor, in a court of equity, to redeem his estate presently, or in default thereof, to be forever closed or barred from any right of redemption.

3.—In some cases, however, the mortgagee obtains a decree for a sale of the land, under the direction of an officer of the court, in which case the proceeds are applied to the discharge of encumbrances, according to their privity. This practice has been adopted in Indiana, Kentucky, Maryland, South Carolina, Tennessee and Virginia. 4 Kent, Com. 1180. When it is the practice to foreclose without a sale, its severity is mitigated by enlarging the time of redemption from six months to six months, or for shorter periods, according to the equity arising from the circumstances. Ib. Vide 2 John. Ch. R. 100; 5 Pick. R. 418; 1 Sumn. R. 401; 7 Conn. R. 152; 5 N. H. Rep. 30; 1 Hayw. R. 482; 5 Han. R. 554; 5 Yerg. 240; 2 Pick, R. 540; 4 Pick. R. 6; 2 Gallis. 154; 9 Cow- en’s R. 346; 4 Greenl. R. 495.

FOREIGN. That which belongs to another country; that which is strange.

2.—Every nation is foreign to all the rest, and the several states of the American union are foreign to each other, with respect to their municipal laws. 2 Wash. R. 282; 4 Conn. 517; 6 Conn. 480; 2 Wend. 411; 1 Dall. 458, 463; 6 Binn. 321; 12 S. & R. 203; 2 Hill R. 319; 1 D. Chipm. 303; 7 Monroe, 585; 5 Leigh, 471; 3 Pick. 293.

3.—But the reciprocal relations between the national government and the several states composing the United States are not considered as foreign, but domestic. 9 Pet. 607; 5 Pet. 398; 6 Pet. 317; 4 Cranch, 384; 4 Gill & John. 1, 63. Vide Attachment, for foreign attachment; Bill of exchange, for foreign bills of exchange; Foreign Coins; Foreign Judgment; Foreign Laws; Foreigners.

FOREIGN ATTACHMENT. The name of a writ. By virtue of a foreign attachment, the property of an absent debtor is seized for the purpose of compelling an appearance, and in default of that, to pay the claim of the plaintiff. Vide Attachment.

FOREIGN COINS, com. law. The money of foreign nations.

2.—Congress have, from time to time, regulated the rates at which certain foreign coins should pass. The acts now in force are the following.

3.—The act of June, 25, 1834, 4 Sharsw. cont. of Story’s L. U. S. 2373,
enacts, sect. 1. That from and after the passage of this act, the following silver coins shall be of the legal value, and shall pass current as money within the United States, by tale, for the payment of all debts and demands, at the rate of one hundred cents the dollar, that is to say, the dollars of Mexico, Peru, Chili, and Central America, of not less weight than four hundred and fifteen grains each, and those re-stamped in Brazil of the like weight, of not less fineness than ten ounces, fifteen pennyweights of pure silver, in the troy pound of twelve ounces of standard silver; and five franc pieces of France, when of not less fineness than ten ounces and sixteen pennyweights in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty-four grains each, at the rate of ninety-three cents each.

4.—The act of June 28, 1834, 4 Sharsw. Cont. of Story's L. U. S. 2377, enacts, sect. 1. That from and after the thirty-first day of July next, the following gold coins shall pass current as money within the United States, and be receivable in all payments, by weight, for the payment of all debts and demands, at the rates following, that is to say: the gold coins of Great Britain and Portugal and Brazil, of not less than twenty-two carats fine, at the rate of ninety-four cents and eight-tenths of a cent per penny-weight; the gold coins of France nine-tenths fine, at the rate of ninety-three cents and one-tenth of a cent per penny-weight; and the gold coins of Spain, Mexico, and Colombia, of the fineness of twenty carats three grains and seven-sixteenths of a grain, at the rates of eighty-nine cents and nine-tenths of a cent per penny-weight.

5.—By the act of March 3, 1823, 3 Story's L. U. S. 1923, it is enacted, sect. 1. That from and after the passage of this act, the following gold coins shall be received in all payments on account of public lands, at the several and respective rates following, and not otherwise, viz.: the gold coins of Great Britain and Portugal, and of their present standard, at the rate of one hundred cents for every twenty-seven grains, or eighty-eight cents and eight-ninths per penny-weight; the gold coins of France of their present standard, at the rate of one hundred cents for every twenty-seven and a half grains, or eighty-seven and a quarter cents per penny-weight; and the gold coins of Spain of their present standard, at the rate of one hundred cents for every twenty-eight and a half grains or eighty-four cents per penny-weight.

6.—The act of March 2, 1799, 1 Story's L. U. S. 573, to regulate the collection of duties on imports and tonnage, sect. 61, (p. 626,) enacts, That the ad valorem rates of duty upon goods, wares, and merchandise, at the place of importation, shall be estimated by adding twenty per cent, to the actual costs thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place or country, including all charges; commissions, outside packages, and insurance, only excepted. That all foreign coins and currencies shall be estimated at the following rates; each pound sterling of Great Britain, at four dollars and forty-four cents; each livre tournois of France, at eighteen and a half cents; each florin, or guilder of the United Netherlands, at forty cents; each mark banco of Hamburg, at thirty-three and one-third cents; each rix dollar of Denmark, at one hundred cents; each rial of plate, and each rial of vellon, of Spain, the former at ten cents, the latter at five cents, each; each milree of Portugal, at one dollar and twenty-four cents; each pound sterling of Ireland, at four dollars and ten cents; each tale of China, at one dollar and forty-eight cents; each pagoda of India, at one dollar and ninety-four cents; each rupee of Bengal, at fifty-five cents and one half; and all other denominations of money, in value as nearly as may be
to the said rates, or the intrinsic value thereof, compared with money of the United States: Provided, That it shall be lawful for the president of the United States to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchandise, imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

7.—By the act of July, 14, 1832, s. 16, (4 Simshw. Cont. of Story’s L. U. S. 2326,) the law is changed as to the value of the pound sterling, in calculating the rates of duties. It is thereby enacted, that from and after the said third day of March, one thousand eight hundred and thirty-three, in calculating the rate of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents.

8.—The act of March 3, 1843, provides, That in all computations of the value of foreign moneys of account at the custom houses, of the United States, the thaler of Prussia shall be deemed and taken to be of the value of sixty-eight and one-half cents; the mil-reis of Portugal shall be deemed and taken to be of the value of one hundred and twelve cents; the rix dollar of Bremen shall be deemed and taken to be of the value of seventy-eight and three quarter cents; the thaler of Bremen, of seventy-two grosses, shall be deemed and taken to be of the value of seventy-one cents; that the mil-reis of Madeira shall be deemed and taken to be of the value of one hundred cents; the mil-reis of the Azores shall be deemed and taken to be of the value of eighty-eight and one third cents; the marcbanco of Hamburg shall be deemed and taken to be of the value of thirty-five cents; the rouble of Russia shall be deemed and taken to be of the value of seventy-five cents; the rupee of British India shall be deemed and taken to be of the value of forty-four and one half cents; and all former laws inconsistent herewith are hereby repealed.

9.—And the act of May 23, 1846, further directs, That in all computations at the customs-house, the foreign coins and money of account herein specified shall be estimated as follows, to wit: The specie dollar of Sweden and Norway, at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. The thaler of Prussia and of the Northern States of Germany, at sixty-nine cents. The florin of the Southern States of Germany, at forty cents. The florin of the Austrian Empire, and of the city of Augsburg, at forty-eight and one half cents. The lira of the Lombard-Venetian Kingdom, and the lira of the Tuscany, at sixteen cents. The franc of France, and of Belgium, and the lira of Sardinia, at eighteen cents six mills. The ducat of Naples, at eighteen cents. The ounce of Sicily, at two dollars and forty cents. The pound of the British provinces of Nova Scotia, New Brunswick, Newfoundland, and Canada, at four dollars.—And all laws inconsistent with this act are hereby repealed.

Foreign Judgments, evidence, remedies. A judgment rendered in a foreign state.

2.—In Louisiana it has been decided that a judgment rendered by a Spanish tribunal, under the former government of the country, is not a foreign judgment. 4 M. R. 301; Id. 310.

3.—The subject will be considered with regard, 1st, to the manner of proving such judgment; and 2dly, its efficacy.

4.—1. Foreign judgments are authenticated in various ways; 1, by an exemplification, certified under the great seal of the state or country where it was rendered; 2, by a copy proved to be a true copy; 3, by the certificate of an officer authorised by law, which certificate must itself, be properly authenticated. 2 Cranch, 235; 2 Caines’s R. 155; 5 Cranch, 335; 7 Johns. R. 514; 8 Mass. R. 273; 2 Munf. R. 43; 4 Camp. R. 28; 2 Russ. on Cr. 723. There is a difference between the judgments of courts of
common law jurisdiction and courts of admiralty, as to the mode of proof of judgments rendered by them. Courts of admiralty are under the law of nations; certificates of such judgments with their seals affixed, will therefore be admitted in evidence without further proof. 5 Cranch, 335; 3 Conn. R. 171.

5.—2. A judgment rendered in a foreign country by a court de jure, or even a court de facto, 4 Binn. 371, in a matter within its jurisdiction, when the parties litigant had been notified and had had an opportunity of being heard, either establishing a demand against the defendant or discharging him from it, is of binding force. 1 Dall. R. 191; 9 Serg. & Rawle, 360; 10 Serg. & Rawle, 240; 1 Pet. C. C. R. 155; 1 Spears, Eq. Eq. Cas. 229; 7 Branch, 481. As to the plea of the act of limitation to a suit on a foreign judgment, see Bac. Ab. h. t.; 2 Vern. 540; 5 John. R. 132; 13 Serg. & Rawle, 395; 1 Spears, Eq. Cas. 219, 229.

6.—For the manner of proving a judgment obtained in a sister state; see the article Authentication. For the French law in relation to the force of foreign judgments, see Dalloz, Dict. mot Etranger, art. 6.

Foreign laws, evidence, the laws of a foreign country. They will be considered with regard to, 1, the manner in which they are to be proved; 2, their effect when proved.

2.—1. The courts do not judicially take notice of foreign laws, and they must therefore be proved as facts. Cowp. 144; 3 Esp. C. 163; 3 Campb. R. 166; 2 Dow & Clark’s R. 171; 1 Cranch, 38; 2 Cranch, 187, 236, 237; 6 Cranch, 274; 2 Harr. & John. R. 193; 3 Gill & John. R. 234; 4 Conn. R. 517; 4 Cowen, R. 515, 516, note; Pet. C. C. R. 229; 8 Mass. R. 99; 1 Paige’s R. 220; 10 Watts, R. 158. The manner of proof varies according to circumstances; as a general rule the best testimony or proof is required, for no proof will be received which pre-supposes better testimony attainable by the party who offers it. When the best testimony cannot be obtained, secondary evidence will be received. 2 Cranch, 237.

3.—Authenticated copies of written laws and other public documents must be produced when they can be procured; but should they be refused by the competent authorities, then inferior proof may be admissible. Ib.

4.—When our own government has promulgated a foreign law or ordinance of a public nature as authentic, that is held sufficient evidence of its existence. 1 Cranch, 38; 1 Dall. 462; 6 Binn. 321; 12 Serg. & Rawle, 203.

5.—When foreign laws cannot be proved by some mode which the law respects as being of equal authority to an oath, they must be verified by the sanction of an oath.

6.—The usual modes of authenticating them are by an exemplification under the great seal of a state; or by a copy proved by oath to be a true copy; or by a certificate of an officer authorised by law, which must, itself, be duly authenticated. 2 Cranch, 238; 2 Wend. 411; 6 Wend. 475; 5 Serg. & Rawle, 523; 15 Serg. & Rawle, 84; 2 Wash. C. C. R. 175.

7.—Foreign unwritten laws, customs and usages, may be proved, and are ordinarily proved by parol evidence; and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show that fact. 15 Serg. & R. 87; 2 L. R. 154. Proof of such unwritten law is usually made by the testimony of witnesses learned in the law, and competent to state it correctly under oath. 2 Cranch, 237; 1 Pet. C. C. R. 225; 2 Wash. C. C. R. 175; 15 Serg. & R. 84; 4 John. Ch. R. 520; Cowp. 174; 2 Hagg. R. App. 15 to 144.

8.—In England certificates of persons in high authority have been allowed as evidence in such cases. 3 Hagg. Eccl. R. 767, 769.

9.—The public seal of a foreign sovereign or state affixed to a writing purporting to be a written edict, or law, or judgment, is, of itself, the highest evidence, and no further proof
is required of such public seal. 2 Cranch, 238; 2 Conn. R. 85; 1 Wash. C. C. R. 363; 4 Dall. 413, 416; 6 Wend. 475; 9 Mod. 66.

10.—But the seal of a foreign court is not in general evidence without further proof, and it must therefore be established by competent testimony. 3 John. R. 310; 2 Harr. & John. 193; 4 Cowen, 526, n.; 3 East. 221.

11.—As courts of admiralty are courts under the laws of nations, their seals will be admitted as evidence without further proofs. 5 Cranch, 335; 3 Conn. 171. This is an exception to the general rule.

12.—The mode of authenticating the laws and records of the several states of the American union, is peculiar, and will be found under the article *Authentication*. It may hereby be observed that the rules prescribed by acts of Congress do not exclude every other mode of authentication, and that the courts may admit proof of the acts of the legislatures of the several states, although not authenticated under the acts of Congress. Accordingly a printed volume purporting on its face to contain the laws of a sister state, is admissible, as *prima facie* evidence, to prove the statute law of that state. 4 Cranch, 384; 12 S. & R. 203; 6 Binn. 321; 5 Leigh, 571.

13.—2. The effect of such foreign laws, when proved, is properly referable to the court; the object of the proof of foreign laws, is to enable the court to instruct the jury what is, in point of law, the result from foreign laws, to be applied to the matters in controversy before them. The court are therefore to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the court are to judge of their applicability to the matter in issue. Story, Confl. of L. § 638; 2 Harr. & John. 193. 219; 4 Conn. R. 517; 3 Harr. & John. 234, 242; Cownp. 174. *Vide* *Opinion*.

**FOREIGN NATION or STATE.** Is a nation totally independent of the United States of America.

2.—The constitution authorises Congress to regulate commerce with "foreign nations." This phrase does not include an Indian tribe, situated within the boundaries of a state, and exercising the powers of government and sovereignty. 5 Pet. R. 1. Vide *Nation*.

**FOREIGN FLEA,** is one which, if true, carries the cause out of court where it is brought, by showing that the matter alleged is not within its jurisdiction. 2 Lill. Pr. Reg. 374; Carth. 402; Lill. Ent. 475. It must be on oath and before imparsance. Bac. Ab. Abatement, R.

**FOREIGNERS.** Aliens; persons born in another country than the United States, who have not been naturalized. 1 Pet. R. 349. Vide 8 Com. Dig. 615, and the articles *Alien; Citizens*.

**FOREJUDGED THE COURT.** An officer of the court who is expelled the same, is, in the English law, said to be forejudged the court. Comm. Dict. h.t.

**FOREMAN.** The title of the presiding officer of a grand jury.

**FOREST.** By the English law, a forest is a circuit of ground properly under the king’s protection, for the peaceable living and abiding of beasts of venery and the chase, and distinguished not only by having bounds and privileges, but also by having courts and offices. 12 Co. 22. The signification of forest in the United States is the popular one of an extensive piece of woodland. Vide *Purlieu*.

**FORESTALLING, crim. law.**—Every practice or device, by act, conspiracy, words, or news, to enhance the price of victuals or other provisions. 3 Inst. 196; Bac. Ab. h.t.; 1 Russ. Cr. 169; 4 Bl. Com. 158.

2.—All endeavours whatever to enhance the common price of any merchandise, and all kinds of practices which have that tendency, whether by spreading false rumours, or by buying things in a market before the accustomed hour, are offences at common law, and come under the notion of forestalling, which includes all kind of
offences of this nature. Hawk. P. C. b. 1, c. 80, s. 1; vide 13 Vin. Ab. 430; Dane’s Ab. Index, h. t.; 4 Com. Dig. 391; 1 East, Rep. 132.

FORFEITURE, punishments, torts. Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of lands, tenements, or hereditaments; whereby he loses all his interest therein, and they become vested in the party injured, as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Com. 267.

2.—Lands, tenements, and hereditaments may be forfeited by various means: 1. By the commission of crimes and misdemeanors; 2. By alienation contrary to law; 3. By the non-performance of conditions; 4. By waste.

3.—1. Forfeiture for crimes. By the constitution of the United States, art. 3, s. 3, it is declared that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained. And by the act of April 30, 1790, s. 24, 1 Story’s Laws U. S. 88, it is enacted, that no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate. As the offences punished by this act are of the blackest dye, including cases of treason, the punishment of forfeiture may be considered as being abolished. The forfeiture of the estate for crime is very much reduced in practice in this country, and when it occurs, the state takes the title the party had, and no more. 4 Mason’s R. 174; Dalrymple on Feudal Property, c. 4, p. 145–154; Post. C. L. 95.

4.—2. Forfeiture by alienation. By the English law, estates less than a fee may be forfeited to the party entitled to the residuary interest by a breach of duty in the owner of the particular estate. When a tenant for life or years, therefore, by secession, fine, or recovery, conveys a greater estate than he is by law entitled to do, he forfeits his estate to the person next entitled in remainder or reversion. 2 Bl. Com.

274. In this country, such forfeitures are almost unknown, and the more just principle prevails, that the conveyance by the tenant operates only on the interest which he possessed, and does not affect the remainder-man or reversioner. 4 Kent, Com. 81, 82, 424; 1 Hill. Ab. c. 4, s. 25 to 34; 3 Dall. Rep. 486; 5 Ohio, R. 30.

5.—3. Forfeiture by non-performance of conditions. An estate may be forfeited by a breach or non-performance of a condition annexed to the estate, either expressed in the deed at its original creation, or impliedly by law, from a principle of natural reason. 2 Bl. Com. 281; and see Ad. Eject, 140 to 173. Vide article Re-entry; 12 Serg. & Rawle, 190.


7.—By forfeiture is also understood the neglect of an obligor to fulfill his obligation in proper time; as, when one has entered into a bond for a penal sum, upon condition to pay a smaller at a particular day, and he fails to do it, there is then said to be a forfeiture. Again, when a party becomes bound in a certain sum by a recognizance to pay a certain sum, with a condition that he will appear at court to answer or prosecute a crime, and he fails to do it, there is a forfeiture of the recognizance. Courts of equity, and now courts of law, will relieve from the forfeiture of a bond; and, upon a proper case shown, criminal courts will in general relieve from the forfeiture of a recognizance to appear. See 3 Yeates, 93; 2 Wash. C. C. 442; 2 Blackf. 104, 200; Breeze, 257.


FORFEITURE OF MARRIAGE, old Eng. law. The name of a penalty formerly incurred by a ward in chivalry, when
he or she married contrary to the wishes of his or her guardian in chivalry. The latter, who was the ward’s lord, had an interest in controlling the marriage of his female wards, and he could exact a price for his consent; and, at length, it became customary to sell the marriage of wards of both sexes. 2 Bl. Com. 70.

2.—When a male ward refused an equal match provided by his guardian, he was obliged, on coming of age to pay him the value of the marriage; that is, as much as he had been bona fide offered for it; or, if the guardian chose, as much as a jury would assess, taking into consideration all the real and personal property of the ward; and the guardian could claim this value, although he might have made no tender of the marriage. Co. Litt. 82 a; 2 Inst. 92; 5 Co. 126 b; 6 Co. 70 b.

3.—When a male ward between his age of fourteen and twenty-one years, refused to accept an offer of an equal match, and during that period formed an alliance elsewhere, without his permission, he incurred forfeiture of marriage, that is, he became liable to pay double the value of the marriage. Co. Litt. 78 b, 82 b.

FORGERY, crim. law. Forgery at common law has been held to be “the fraudulent making and alteration of a writing to the prejudice of another man’s right.” 4 Bl. Com. 247. By a more modern writer, it is defined, as “a false making; a making malo animo, of any written instrument, for the purpose of fraud and deceit.” 2 East, P. C. 552.

2.—This offence at common law is of the degree of a misdemeanor. There are many kinds of forgery, especially subjected to punishment by statutes enacted by the national and state legislatures.

3.—The subject will be considered, with reference, 1, to the making or alteration requisite to constitute forgery; 2, the written instruments in respect of which forgery may be committed; 3, the fraud and deceit to the prejudice of another man’s right; 4, the statutory provisions under the laws of the United States, on the subject of forgery.

4.—1. The making of a whole written instrument in the name of another with a fraudulent intent is undoubtedly a sufficient making; but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery; and this, although it be afterwards executed by a person ignorant of the deceit. 2 East, P. C. 855.

5.—The fraudulent application of a true signature to a false instrument for which it was not intended, or vice versa, will also be a forgery. For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procuring the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted, Hoy, 101; Moor, 759, 760; 3 Inst. 170; 1 Hawk. c. 70, s. 2; 2 Russ. on Cr. 318; Bac, Ab. h. t. (A).

6.—It has even been intimated by Lord Ellenborough, that a party who makes a copy of a receipt, and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery. 5 Esp. R. 100.

7.—It is a sufficient making where, in the writing, the party assumes the name and character of a person in existence. 2 Russ. 327. But the adoption of a false description and addition, where a false name is not assumed, and there is no person answering the description, is not a forgery. Russ. & Ry. 405.

8.—Making an instrument in a fictitious name, or the name of a non-existing person, is equally a forgery, as making it in the name of an existing person, 2 East, P. C. 957; 2 Russ. on Cr. 328; and although a man may make the instrument in his own name,
if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be a forgery in the name of a non-existing person, 2 Leach, 775; 2 East, P. C. 963: but the correctness of this decision has been doubted. Rosc. Cr. Ev. 384.

9.—Though in general a party cannot be guilty of forgery by a mere non-joissance, yet if in drawing a will he should fraudulently omit a legacy, which he had been directed to insert, and by the omission of such bequest, it would cause a material alteration in the limitation of a bequest to another, as where the omission of a devise of an estate for life to one, causes a devise of the same lands to another to pass a present estate which would otherwise have passed a remainder only, it would be a forgery. Moor, 760; Noy, 101; 1 Hawk. c. 70, s. 6; 2 East, P. C. 856; 2 Russ. on Cr. 320.

10.—It may be observed that the offence of forgery may be complete without a publication of the forged instrument. 2 East, P. C. 855; 3 Chit. Cr. L. 1038.

11.—2. With regard to the thing forged, it may be observed that it has been held to be forgery at common law fraudulently to falsify, or falsely make records and other matters of a public nature, 1 Rolle's Ab. 65, 66; a parish register, 1 Hawk. c. 70; a letter in the name of a magistrate, the governor of a gaol, directing the discharge of a prisoner, 6 Car. & P. 129; S. C. 25 Eng. C. L. R. 315.

12.—With regard to private writings, it is forgery fraudulently to falsify or falsely make a deed or will, 1 Hawk. b. 1, c. 70, s. 10; or any private document, whereby another person may be prejudiced. 2 Greenl. Rep. 365; Addis. R. 33; 2 Binn. R. 322; 2 Russ. on Cr. b. 4, c. 32, s. 2; 2 East, P. C. 861; 3 Chit. Cr. Law, 1022 to 1038.

13.—3. The intent must be to defraud another, but it is not requisite that any one should have been injured; it is sufficient that the instrument forged might have proved prejudicial. 3 Gill & John. 220; 4 W. C. C. R. 726. It has been held that the jury ought to infer an intent to defraud the person who would have to pay the instrument, if it were genuine, although from the manner of executing the forgery, or from the person's ordinary caution, it would not be likely to impose upon him, and although the object was general to defraud whoever might take the instrument, and the intention of the defrauding in particular, the person who would have to pay the instrument, if genuine, did not enter into the contemplation of the prisoner. Russ. & Ry. 291; vide Russ. on Cr. b. 4, c. 32, s. 3; 2 East, P. C. 853; 1 Leach, 367; 2 Leach, 775; Rosc. Cr. Ev. 400.

14.—4. Perhaps each of the states in the union has passed laws making certain acts to be forgery, and the national legislature has also enacted several on this subject, which are here referred to. Act of March 2, 1803, 2 Story's L. U. S. 888; Act of March 3, 1813, 2 Story's L. U. S. 1304; Act of March 1, 1823, 3 Story's L. U. S. 1889; Act of March 3, 1825, 3 Story's L. U. S. 2003; Act of October 12, 1837, 9 Laws U. S. 696.

15.—The term forgery, is also applied to the making of false or counterfeit coin. 2 Virg. Cas. 356. See 10 Pet. 613; 4 Wash. C. C. 733. For the law respecting the forgery of coin, see article Money. And for the act of Congress punishing forgery in the District of Columbia, see 4 Sharpsw. cont. of Story's Laws U. S. 2234.

Vide, generally, Hawk. b. 1, c. 51 and 70; 3 Chit. Cr. Law, 1022 to 1048; 4 Bl. Com. 247 to 250; 2 East, P. C. 840 to 1003; 2 Russ. on Cr. b. 4, c. 32; 13 Vin. Ab. 459; Com. Dig. h. t.; Dane's Ab. h. t.; Williams's Just. h. t.; Burn's Just. h. t.; Rosc. Cr. Ev. h. t.; Stark. Ev. h. t. Vide article Frank.

FORISFAMILIATION, law of Scot. By this is understood the act by which a father gives to a child his share of his legitimate, and the latter re-
nounces all further claim; from this
time, the child who has so received his
share, is no longer accounted a child
in the division of the estate. Ersk.
Inst. 655, n. 23; Burt. Man. P. R
part l, c. 2, s. 3, page 35.

FORM, practice, is the model of an
instrument or legal proceeding, con-
taining the substance and the principal
terms, to be used in accordance with
the laws; or, it is the act of pursuing,
in legal proceedings, and in the con-
struction of legal instruments, the order
required by law. Form is usually put
in contradistinction to substance. For
example, by the operation of the statute
of 27 Eliz. c. 5, s. 1, all merely for-
mal defects in pleading, except in di-
atory pleas, are aided on general de-
murrer.

2.—The difference between matter
of form, and matter of substance, in
general, under this statute, as laid
down by Lord Hobart, is that “that
without which the right doth sufficient-
ly appear to the court, is form;” but
that any defect, “by reason whereof
the right appears not,” is a defect in

3.—A distinction somewhat more de-
finite, is, that if the matter pleaded be
in itself insufficient, without reference
to the manner of pleading it, the defect
is substantial; but that if the fault is
in the manner of alleging it, the defect
is formal. Doug. 653. For ex-
ample, the omission of a consideration in a
declaration in assumpsit; or of the per-
formance of a condition precedent,
when such condition exists; or of a
conversion of property of the plaintiff, in
trover; of science in the defendant, in
an action for mischief done by his dog;
of malice, in action for malicious pro-
secution, and the like, are all defects in
substance. On the other hand duplicit-
ty; a negative pregnant; argumenta-
tive pleading; a special plea, amount-
ing to the general issue; omission of a
day, when time is immaterial; of a
place, in transitory actions, and the
like, are only faults in form. Bac. Ab.
Pleas, &c. N 5, 6; Com. Dig. Plead-
er, Q 7; 10 Co. 95 a; 2 Str. 694;

Gould, Pl. c. 9, § 17, 18; 1 Bl. Com.
142.

4.—At the same time that fastidious
objections against trifling errors of
form, arising from mere clerical mis-
takes, are not encouraged or sanction-
ed by the courts, it has been justly ob-
erved, that “infinite mischief has been
produced by the facility of the courts
in overlooking matters of form; it en-
courages carelessness, and places igno-
nance too much upon a footing with
knowledge amongst those who practice
the drawing of pleadings.” 1 B. & P.
59.

FORMA PAUPERIS, English law;
when a person is so poor that he can-
not bear the charges of suing at law or
in equity, upon making oath that he is
not worth five pounds, and bringing a
certificate from a counsellor at law,
that he believes him to have a just
cause, he is permitted to sue in forma
pauperis, in the manner of a pauper;
that is, he is allowed to have original
writs and subpoenas gratis, and counsel
assigned him without fee. 3 Bl. Com.
400. See 3 John. Ch. R. 65; 1 Paige,
R. 588; 3 Paige, R. 273; 5 Paige,
R. 58; 2 Moll. R. 475; 1 Beat. R.
54.

FORMALITY. The conditions
which must be observed in making
contracts, and the words which the
law gives to be used in order to render
them valid; it also signifies the condi-
tions which the law requires to make
regular proceedings.

FORMEDON, old Eng. law. The
writ of formedon is nearly obsolete, it
having been superseded by the writ of
ejection. Upon an alienation of the
tenant in tail, by which the estate in
tail is discontinued, and the remainder
or reversion is by the failure of the
particular estate displaced, and turned
into a mere right the remedy is by ac-
tion of formedon, (secundum formam
doni,) because the writ comprehends the
form of the gift. This writ is in
the nature of a writ of right, and the
action of formedon is the highest a ten-
ant in tail can have. This writ is dis-
tinguished into three species; a forme-
don in the descender, in the remainder, and in the reverter. 3 Bl. Com. 191; Bac. Ab. h. t.; 4 Mass. 64.

FORMER RECOVERY. A recovery in a former action.

2.—It is a general rule, that in a real or personal action, a judgment unreversed, whether it be by confession, verdict or demurrer is a perpetual bar, and may be pleaded to any new action of the same or a like nature. Bac. Ab. Pleas, I 12, n. 2; 6 Co. 7; Hob. 4, 5; Ventr. 170.

3.—There are two exceptions to this general rule, 1. The case of mutual dealings between the parties, when the defendant omits to set off his counter demand, in that case he may recover in a cross action; 2. When the defendant in ejectment neglects to bring forward his title, he may avail himself of a new suit. 1 John. Cas. 492, 502, 510. It is evident that in these cases the cause of the second action is not the same as that of the first, and, therefore, a former recovery cannot be pleaded. In real actions, one is not a bar to an action of a higher nature. 6 Co. 7. Vide 12 Mass. 337; Res Judicata; Thing Adjudged.

FOMULARY, a book of forms or precedents for matters of law; the form.

FORNICATION, crim. law, is the unlawful carnal knowledge of an unmarried person with another, whether the latter be married or unmarried; when the party is married, the offence as to him or her, is known by the name of adultery, (q. v.) Fornication is however included in every case of adultery, as a larceny is included in robbery. 2 Hale’s P. C. 302.

FORPRIZE, taken before hand. This word is sometimes, though but seldom, used in leases and conveyances, implying an exception or reservation. Forprize, in another sense, is taken for any exactation. Cunn. Dict. h. t.

TO FORSWEAR, crim. law, torts. To swear to a falsehood.

2.—This word has not the same meaning as perjury. It does not ex vi termini signify a false swearing before an officer or court having authority to administer an oath, on an issue. A man may be forsworn by making a false oath before an incompetent tribunal as well as before a lawful court. Hence to say that a man is forsworn will or will not be slander, as the circumstances show that the oath was or was not taken before a lawful authority. Cro. Car. 378; Lut. 1292; 1 Rolle, Ab. 39, pl. 7; Bac. Ab. Slander, B 3; Cro. Eliz. 609; 13 Johns. R. 80; Ib. 48; 12 Mass. 496; 1 Johns. R. 505; 2 Johns. R. 10; 1 Hayw. R. 116.

FORTHWITH. When a thing is to be done forthwith, it seems that it must be performed as soon as by reasonable exertion, confined to that object, it may be done. This is the import of the term; it varies of course with every particular case. 4 Tyr. 837.

FORTIORI or à fortiori, an epithet for any conclusion or inference, which is much stronger than another. “If it be so, in a feoffment passing a new right, à fortiori, much more is it for the restitution of an ancient right.” Co. Litt. 253, 260.

FORTUITOUS EVENT, a term in the civil law to denote that which happens by a cause which cannot be resisted, Louis. Code, art. 2522, No. 7; or it is that which neither of the parties has occasioned or could prevent. Lois des Bât. Pt. 2, c. 2, § 1. It is also defined to be an unforeseen event which cannot be prevented. Dict. de Jurisp. Cas fortuit.

2.—There is a difference between a fortuitous event or inevitable accident and irresistible force; by the former, commonly called the act of God, is meant, any accident produced by physical causes, which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency, as is, from its nature and power absolutely uncontrollable. Of this nature are
losses occasioned by the inroads of a hostile army, or by public enemies. Story on Bailm. § 25; Lois des Bât. Pt. 2, c. 2, § 1.

3.—Fortuitous events are fortunate or unfortunate. The accident of finding a treasure is a fortuitous event of the first class. Lois des Bât. Pt. 2, c. 2, § 2.

4.—Involuntary obligations may arise in consequence of fortuitous events; for example, when to save a vessel from shipwreck, it is necessary to throw goods overboard, the loss must be borne in common; there arises in this case between the owners of the vessel and of the goods remaining on board, an obligation to bear proportionably the loss which has been sustained. Lois des Bât. Pt. 2, c. 2, § 2.

See in general Dig. 50, 17, 23; Id. 16, 3, 1; Id. 19, 2, 11; Id. 44, 7, 1; Id. 18, 6, 10; Id. 13, 6, 18; Id. 26, 7, 50; Act of God; Accident; Perils of the Sea.

FORUM, signifies jurisdiction, a court of justice, a tribunal.

2.—The French divide it into forum exterior, which is the authority which human justice exercises on persons and property, to a greater or lesser extent, according to the quality of those to whom it is entrusted; and interior forum, which is the moral sense of justice which a correct conscience dictates. Merlin, Répert. mot For.

FORWARDING MERCHANT, in contracts, is a person who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons by which they are transported, and no interest in the freight; such an one is not deemed a common carrier, but a mere warehouseman or agent. 12 Johns. 232; 7 Cowen’s R. 497. He is required to use only ordinary diligence in sending the property by responsible persons. 2 Cowen’s R. 593.

FOSSA, Eng. law. A ditch full of water where formerly women who had committed a felony were drowned; the grave.

FOUNDATION. This word in the English law is taken in two senses, fundatio incipiens, and fundatio perfiniens. As to its political capacity, an act of incorporation is metaphorically called its foundation; but as to its donation, the first gift of the revenues is called the foundation. 10 Co. 22 a.

FOUNDLING, a new-born child abandoned by its parents, who are unknown, and found by another. The settlement of such a child is in the place where found.

FOURCHER, English law, a French word, which means to fork. Formerly, when an action was brought against two, who, being jointly concerned, were not bound to answer till both appeared, and they agreed not to appear both in one day; the appearance of one excused the other’s default, who had a day given him to appear with the other: the defaulter, on the day appointed, appeared; but the first then made default; in this manner they forked each other, and practised this for delay. Vide 2 Inst. 250.

FRACTION signifies, in arithmetic and algebra, a combination of numbers representing one or more parts of a unit or integer; thus, four-fifths is a fraction, formed by dividing a unit into five equal parts, and taking one part four times. In law, the term fraction is usually applied to the division of a day.

2.—In general, there are no fractions in days, Co. Litt. 225; 2 Salk. 625; 2 P. A. Browne, 18; 11 Mass. 204; but in some cases a fraction will be taken into the account in order to secure a party his rights. 3 Chit. Pr. 111; 8 Ves. 80; 4 Campb. R. 197; 2 B. & Ald. 586; Savig. Dr. Rom. § 182; Rob. Dig. of Eng. statutes in force in Pennsylvania, 431, 2, and when it is required by a special law. Vide article Date.

FRANC, comm. law. The name of a French coin. Five franc pieces, when not of less fineness than ten ounces and sixteen pennyweight in
twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty-four grains each, are made a legal tender at the rate of ninety-three cents each. Act of June 25, 1834, s. 1, 4 Sharsw. cont. of Story’s L. U. S. 2373.

2.—In all computations at the custom-house, the franc of France and of Belgium shall be estimated at eighteen cents six mills. Act of May 22, 1846. See Foreign coins.

FRANCHISE. This word has several significations: 1. It is a right reserved to the people by the constitution; hence we say, the elective franchise, to designate the right of the people to elect their officers. 2. It is a certain privilege, conferred by grant from the government, and vested in individuals.

2.—Corporations, or bodies politic, are the most usual franchises known to our law. They have been classed among incorporeal hereditaments, perhaps improperly, as they have no inheritable quality.

3.—In England, franchises are very numerous; they are said to be royal privileges in the hands of a subject. Vide 3 Kent, Com. 366; Cruise, Dig. tit. 27; 2 Bl. Com. 37; 15 Serg. & Rawle, 130; Finch, 164.

FRANCIGENA. Formerly, in England, every alien was known by this name, as Franks is the generic name of foreigners in the Turkish dominions.

FRANK. The privilege of sending and receiving letters, through the mails, free of postage.

2.—This privilege is granted to various officers, not for their own special benefit, but with a view to promote the public good.

3.—The act of the 3d of March, 1845, s. 1, enacts, That members of Congress, and delegates from territories, may receive letters, not exceeding two ounces in weight, free of postage, during the recess of Congress; and the same privilege is extended to the Vice-president of the United States.

4.—It is enacted, by 3d section, That all printed or lithographed circu-
received, shall be paid out of the contingent fund of the house of which the person receiving the same may be a member. And they shall have the right to frank written letters from themselves during the whole year, as now authorized by law.

6.—The 5th section repeals all acts, and parts of acts, granting or conferring upon any person whatsoever the franking privilege.

7.—The 23d section enacts, that nothing in this act contained shall be construed to repeal the laws granting the franking privilege to the President of the United States when in office, and to all ex-presidents, and the widows of the former Presidents, Madison and Harrison.

8.—The act of March 1st, 1847, enacts as follows:

§ 3.—That all members of Congress, delegates from territories, the Vice-president of the United States, the secretary of the senate, and the clerk of the house of representatives, shall have the power to send and receive public documents free of postage, during their term of office, and that the said members and delegates shall have the power to send and receive public documents, free of postage, up to the first Monday of December following the expiration of their term of office.

§ 4.—That the secretary of the senate and clerk of the house of representatives shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage, during their term of office.

§ 5.—That members of Congress shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage up to the first Monday in December following the expiration of their term of office.

Frank, free. This word is used in composition, as frank-almoign, frank-marriage, frank-tenant, &c.

Frank-almoign, old English law. This is a French law word, signifying free-alms.

2.—Formerly religious corporations, aggregate or sole, held lands of the donor, to them and their successors for ever, in frank-almoign. The service which they were bound to render for these lands was not certainly defined; they were, in general, to pray for the souls of the donor, his ancestors, and successors. 2 Bl. Com. 101.

Frank-marriage, English law, takes place, according to Blackstone, when lands are given by one man to another, together with a wife who is daughter or kinswoman of the donor, to hold in frank-marriage. By this gift, though nothing but the word frank-marriage is expressed, the donees shall have the tenements to them and the heirs of their two bodies begotten; that is, they are tenants in special tail. It is called frank or free marriage, because the donees are liable to no service but fealty. This is now obsolete, even in England. 2 Bl. Com. 115.

Frank-tenant, estates, the same as freehold, (q.v.) or liberum tenementum.


Fratricide, criminal law, he who kills his brother or sister. The crime of such a person is also called fratricide.

Fraud, to defraud, torts, unlawfully, designedly, and knowingly, to appropriate the property of another, without a criminal intent.

2.—Illustrations: 1. Every appropriation of the right of property of another is not fraud. It must be unlawful; that is to say, such an appropriation as is not permitted by law. Property loaned may, during the time of the loan, be appropriated to the use of the borrower. This is not fraud, because it is permitted by law. 2. The appropriation must be, not only unlawful, but it must be made with a knowledge that the property belongs to another, and with a design to deprive him of the same. It is unlawful to take the property of another; but if it be done with a design of preserving
it for the owners, or if it be taken by mistake, it is not done designedly or knowingly, and, therefore, does not come within the definition of fraud. 3. Every species of unlawful appropriation, not made with a criminal intent, enters into this definition, when designedly made, with a knowledge that the property is another’s; therefore, such an appropriation, intended either for the use of another, or for the benefit of the offender himself, is comprehended by the term. 4. Fraud, however immoral or illegal, is not in itself a crime or offence, for want of a criminal intent. It only becomes such in the cases provided by law. Liv. System of Penal Law, 739.

 Fraud, contracts, torts, is any trick or artifice employed by one person to induce another to fall into an error, or to detain him in it, so that he may make an agreement contrary to his interest. The fraud may consist either, first, in the misrepresentation, or, secondly, in the concealment of a material fact.

2.—Fraud avoids a contract, ab initio, both at law and in equity, whether the object be to deceive the public, or third persons, or one party endeavour thereby to cheat the other. 1 Fohn. Tr. Equity, 3d ed. 66, note, 6th ed. 132, and notes; Newl. Cont. 352; 1 Bl. R. 465; Doug. Rep. 450; 3 Burr. Rep. 1909; 3 V. & B. Rep. 42; 3 Chit. Com. Law, 155, 306, 698; 1 Sch. & Leif. 209; Verpl. Contracts, passim; Domat, Lois Civ. p. 1, t. 4, t. 6, s. 3, n. 2.

3.—The following enumeration of frauds, for which equity will grant relief, is given by Lord Hardwicke, 2 Ves. 155. 1. Fraud, dolus malus, may be actual, arising from facts and circumstances of imposition, which is the plainest case. 2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses, and not under delusion, would make on the one hand, and as no honest and fair man would accept on the other, which are inequitable and unconscientious bargains. 1

Lev. R. 111. 3. Fraud, which may be presumed from the circumstances and condition of the parties contracting. 4. Fraud, which may be collected and inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties to the fraudulent agreement. 5. Fraud, in what are called catching bargains, (q. v.) with heirs, reversioners, or expectants in the life of the parents. This last seems to fall, naturally, under one or more of the preceding divisions.

4.—Frauds may be also divided into actual or positive and constructive frauds.

5.—An actual or positive fraud is the intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another. 1 Story, Eq. Jur. § 186; Dig. 4, 3, 1, 2; Id. 2, 14, 7, 9.

6.—By constructive fraud is meant such a contract or act, which, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, yet, by its tendency to deceive or mislead them, or to violate private or public confidence, or to impair or injure the public interests, is deemed equally reprehensible with positive fraud, and, therefore, is prohibited by law, as within the same reason and mischief as contracts and acts done mala animo. Constructive frauds are such as are either against public policy, in violation of some special confidence or trust, or operate substantially as a fraud upon private rights, interests, duties, or intentions of third persons; or unconscientiously comprimit, or injuriously affect, the private interests, rights or duties of the parties themselves. 1 Story, Eq. ch. 7, § 258 to 440.

7.—The civilians divide frauds into positive, which consists in doing one’s self, or causing another to do, such things as induce a belief of the truth of what does not exist; or negative, which consists in doing or dissimulating
certain things, in order to induce the opposite party into error, or to retain him there. The intention to deceive, which is the characteristic of fraud, is here present. Fraud is also divided into that which has induced the contract, dolus dans causam contractui, and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, that without which the party defrauded would not have contracted, when the artifices practised by one of the parties have been such that it is evident, without them, the other would not have contracted. Incidental or accidental fraud is that by which a person, otherwise determined to contract, is deceived on some accessories or incidents of the contract; for example, as to the quality of the object of the contract, or its price, so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. It is otherwise where the fraud has been the determining cause of the contract, qui causam delit contractui; in that case the contract is void. Toull. Dr. Civ. Fr. Liv. 3, t. 3, c. 2, n. § 5, n. 86, et seq. Vide Catching bargain; Lesion; Voluntary Conveyance.

Frauds, statute of. The name commonly given to the statute 29 Car. 2, c. 3, entitled "An act for prevention of frauds and perjuries." This statute has been re-enacted in most of the states of the Union, generally with amendments and alterations. When the words of the statute have been used, the construction put upon them has also been adopted. Most of the acts of the different states will be found in Anthony's Appendix to Shep. Touchst. See also the Appendix to the second edition of Roberts on Frauds.

Fraudulent Conveyance, is a conveyance of property without any consideration of value, for the purpose of delaying or hindering creditors. These are declared void by the statutes 13 Eliz. c. 6, and 27 Eliz. c. 4, the principles of which have been adopted in perhaps all the states of the American Union. See Voluntary Conveyance.

FREE. Not bound to servitude; at liberty to act as one pleases. This word is put in opposition to slave.

2.—Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Const. U. S. art. 1, s. 2.

3.—It is also put in contradistinction to being bound as an apprentice; as, an apprentice becomes free on attaining the age of twenty-one years.

4.—The Declaration of Independence asserts that all men are born free, and in that sense, the term includes all mankind.

FREE course, mar. law. Having the wind from a favourable quarter.

2.—To prevent collision of vessels, it is the duty of the vessel having a free course to give way to a vessel beating up to windward and tacking. 3 Hagg. Adm. R. 215, 326. And at sea, it is the duty of such vessel, in meeting another, to go to leeward. 3 Car. & P. 528. See 9 Car. & P. 528; 2 W. Rob. 225; 2 Dodson, 87.

FREE WARRIORS, Eng. law, in a franchise erected for the preservation and custody of beasts and fowls of warren. 2 Bl. Com. 39; Co. Litt. 233.

FREEDMEN, was the name given by the Romans to those persons who had been released from a state of servitude. Vide Liberti libertini.

FREEDOM. Liberty; the right to do what is not forbidden by law. Freedom does not preclude the idea of submission to law; indeed, it presupposes the existence of some legislative provision, the observance of which insures freedom to us, by securing the like observance from others. 2 Har. Cond. L. R. 208.
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FREEHOLD, estates. An estate of freehold is an estate in lands or other real property, held by a free tenure, for the life of the tenant or that of some other person; or for some uncertain period. It is called liberum tenementum, frank tenement or freehold; it was formerly described to be such an estate as could only be created by livery of seizin, a ceremony similar to the investiture of the feudal law. But since the introduction of certain modern conveyances, by which an estate of freehold may be created without livery of seizin, this description is not sufficient.

2.—There are two qualities essentially requisite to the existence of a freehold estate. 1. Immobility; that is the subject-matter must either be land, or some interest issuing out of or annexed to land. 2. A sufficient legal indeterminate duration; for if the utmost period of time to which an estate can last, is fixed and determined, it is not an estate of freehold. For example, if lands are conveyed to a man and his heirs, or for his life, or for the life of another, or until he shall be married, or go to Europe, he has an estate of freehold; but if such lands are limited to a man for one hundred or five hundred years, if he shall so long live, he has not an estate of freehold. Cruise on Real Property, t. 1, s. 13, 14 and 15; Litt. § 59; 1 Inst. 42, a; 5 Mass. R. 419; 4 Kent, Com. 23. Freehold estates are of inheritance or not of inheritance. Cruise, t. 1, s. 42.

FREEDOMER, a person who is the owner of a freehold estate.

FREEMAN. One who is in the enjoyment of the right to do whatever he pleases, not forbidden by law. One in the possession of the civil rights enjoyed by the people generally. See 6 Watts, 556.

FREIGHT, mar. law, contracts, is the sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another; 13 East, 300, note; but in its more extensive sense it is applied to all rewards or compensation paid for the use of ships. 1 Pet. Adm. R. 206; 2 Boulay-Paty, t. 8, s. 1; 2 B. & P. 321; 4 Dall. R. 459; 3 Johns. R. 335; 2 Johns. R. 346; 3 Pardess, n. 705.

2.—It will be proper to consider, 1, how the amount of freight is to be fixed; 2, what acts must be done in order to be entitled to freight; 3, of the lien of the master or owner.

3.—1. The amount of freight is usually fixed by the agreement of the parties, and if there be no agreement, the amount is to be ascertained by the usage of the trade, and the circumstances and reason of the case. 3 Kent, Com. 173. Pothier is of opinion that when the parties agree as to the conveyance of the goods, without fixing a price, the master is entitled to freight at the price usually paid for merchandise of a like quality at the time and place of shipment, and if the prices vary he is to pay the mean price, Chartre-part, n. 8. But there is a case which authorises the master to require the highest price, namely, when goods are put on board without his knowledge. Ib. n. 9. When the merchant hires the whole ship for the entire voyage, he must pay the freight though he does not fully laden the ship; he is of course only bound to pay in proportion to the goods he puts on board, when he does not agree to provide a full cargo. If the merchant agrees to furnish a return cargo, and he furnishes none, and lets the ship return in ballast, he must make compensation to the amount of the freight; this is called dead freight, (q. v.) in contradistinction to freight due for the actual carriage of goods. Roccus, note 72—75; 1 Pet. Adm. R. 207; 10 East, 530; 2 Vern. R. 210.

4.—2. The general rule is that the delivery of the goods at the place of destination, in fulfilment of the agreement of the charter party, is required, to entitle the master or owner of the vessel to freight. But to this rule there are several exceptions:

5.—1. When a cargo consists of live stock, and some of the animals die in the course of the voyage, without any
fault or negligence of the master or crew, and there is no express agreement respecting the payment of freight, it is in general to be paid, for all that were put on board; but when the contract is to pay for the transportation of them, then no freight is due for those which die on the voyage. Molloy, b. 2, c. 4, s. 8; Dig. 14, 2, 10; Abb. Ship. 272.

6. — An interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture. 3 Rob. Adm. R. 101.

7. — When the ship is forced into a port short of her destination, and cannot finish the voyage. If in this case the owner of the goods will not allow the master a reasonable time to repair, or to proceed in another ship, the master will be entitled to the whole freight; and, if after giving his consent the master refuse to go on, he is not entitled to freight.

8. — When the merchant accepts of the goods at an intermediate port, it is the general rule of marine law, that freight is to be paid according to the proportion of the voyage performed, and the law will imply such contract. The acceptance must be voluntary, and not one forced upon the owner by any illegal or violent proceedings, as, from it, the law implies a contract that freight pro rata itineris shall be accepted and paid. 2 Burr. 883; 7 T. R. 381; Abb. Shipp. part 3, c. 7, s. 13; 3 Binn. 445; 5 Binn. 525; 2 Serg. & Rawle, 229; 1 W. C. C. R. 533; 2 Johns. R. 323; 7 Cranch, R. 353; 6 Cowen, R. 504; Marsh. Ins. 281, 691; 3 Kent, Com. 182; Com. Dig. Merchant, E 3 a note, pl. 43, and the cases there cited.

9. — When the ship has performed the whole voyage, and has brought only a part of her cargo to the place of destination; in this case there is a difference between a general ship, and a ship chartered for a specific sum for the whole voyage. In the former case, the freight is to be paid for the goods which may be delivered at their place of destination; in the latter it has been questioned whether the freight could be apportioned, and it seems, that in such case a partial performance is not sufficient, and that a special payment cannot be claimed except in special cases. 1 Johns. R. 24; 1 Bulstr. 167; 7 T. R. 381; 2 Campb. N. P. R. 466. These are some of the exceptions to the general rule, called for by principles of equity, that a partial performance is not sufficient, and that a partial payment or rateable freight cannot be claimed.

10. — In general the master has a lien on the goods, and need not part with them until the freight is paid; and when the regulations of the revenue require them to be landed in a public warehouse, the master may enter them in his own name and preserve the lien. His right to retain the goods may, however, be waived either by an express agreement at the time of making the original contract, or by his subsequent agreement or consent. Vide 18 Johns. R. 157; 4 Cowen, R. 470; 1 Paine’s R. 355; 5 Binn. R. 392.

Vide, generally, 13 Vin, Ab. 501; Com. Dig. Merchant, E 3, a; Bac. Ab. Merchant, D; Marsh. Ins. 91; 10 East, 394; 13 East, 300, n.; 3 Kent, Com. 173; 2 Bro. Civ. & Adm. L. 190; Merl. Rép. h. t.; Poth. Charte-Partie, h. t.; Boulay-Paty, h. t.; Pardess. Index, Affrétement.

FREIGHTER, contracts, is he to whom a ship or vessel has been hired. 3 Kent, Com. 173; 3 Pardess. n. 704.

2. The freighter is entitled to the enjoyment of the vessel according to contract, and the vessel hired is the only one that he is bound to take; there can, therefore, be no substitution without his consent. When the vessel has been chartered only in part, the freighter is only entitled to the space he has contracted for; and in case of his occupying more room, or putting on board a greater weight he must pay
freight on the principles mentioned under the article of freight.

3.—The freighter is required to use the vessel agreeably to the provisions of the charter-party, or, in the absence of any such provisions, according to the usages of trade: he cannot load the vessel with merchandise which would render it liable to condemnation for violating the laws of a foreign state. 3 John. R. 105. The freighter is also required to return the vessel as soon as the time for which he chartered her has expired, and to pay the freight.

FRESH SUIT, Eng. law, is an earnest pursuit of the offender, when a robbery has been committed, without ceasing, until he has been arrested or discovered. Toml. Law Dict. h. t.

FRIBUSCULUM, in the civil law, was a slight dissenion between husband and wife, which produced a momentary separation, without any intention to dissolve the marriage, in which it differed from a divorce. Poth. Pand. lib. 50, s. 106. This amounted to a separation, (q. v.) in our law.

FRIENDLESS MAN. This name was sometimes anciebtly given to an outlaw.

FRIGIDITY, med. juris. The same as impotence, (q. v.)

FRUCTUS INDUSTRIALES, are those fruits or produce of the earth which are obtained by the industry of man, as growing corn.

FRUIT, property, the production of trees and other plants. Fruit is considered real estates before it is separated from the plant or tree on which it grows; after its separation it acquires the character of personalty, and may be the subject of larceny; it then has all the qualities of personal property.

2.—The term fruit, among the civilians signifies not only the production of trees and other plants, but all sorts of revenue of whatever kind they may be. Fruits may be distinguished into two kinds; the first called natural fruits, are those which the earth produces without culture, as hay, the production of trees, minerals, and the like; or with culture, as grain and the like. Secondly, the other kind of fruits, known by the name of civil fruits, are the revenue which is not produced by the earth, but by the industry of man, or from animals, from some estate, or by virtue of some rule of law. Thus, the rent of a house, a right of fishing, the freight of a ship, the toll of a mill, are called, by a metaphorical expression, fruits, Domat, Lois Civ. liv. 3, tit. 5, s. 3, n. 3. See Poth. De la Communaute, n. 45.

FUERO JURGO. A Spanish code of laws, said to be the most ancient in Europe. Barr. on the Stat. 8, note.

FUGAM FECIT, Eng. law. He fled. This phrase is used to express that it has been found by inquisition that a person fled for treason or felony. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

FUGITIVE. A runaway; one who is at liberty and endeavours, by going away, to escape.

FUGITIVE SLAVE, is one who has escaped from the service of his master.

2.—The constitution of the United States, art. 4, s. 2, 3, directs that no person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any laws or regulation therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labour may be due.” In practice summary ministerial proceedings are adopted, and not the ordinary course of judicial investigations, to ascertain whether the claim of ownership be established beyond all legal controversy. In some states strenuous but unsuccessful efforts have been made to procure the supposed slave a trial by jury. Vide generally, 3 Story, Com. on Const. § 1804-1806; Serg. on Const. ch. 31, p. 387; 9 John. R. 62; 5 Serg. & Rawle, 62; 2 Pick. R. 11; 2 Serg. & Rawle, 306; 3 Ib. 4; 1 Wash. C. C. R. 500; 14 Wend. R. 507, 539; 18 Wend. R. 678; 22 Amer. Jur. 344.
FUGITIVE FROM JUSTICE, crim. law, is one who having committed a crime within a jurisdiction goes into another in order to evade the law, and avoid its punishment.

2.—By the constitution of the United States, art. 4, s. 2, 2, it is provided that "a person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the same state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." The act of thus delivering up a prisoner is, by the law of nations called extradition, (q. v.)


FULL DEFENCE, pleading, is a denial of all wrong or injury, and is expressed in the following formula: "And the said C D, (the defendant,) by E F his attorney, comes, and defends the wrong or injury, (or force and injury,) when and where it shall behave him, and the damages and whatsoever else he ought to defend." Bac. Ab. Pleas, &c. D; Co. Litt. 127 b; Lawes on Pl. 89; 2 Chit. Pl. 409; 2 Saund. 209 c; Gould on Pl. c. 2, § 6. See Defence; Et Cetera; Half defence.

FUNCTION, office, is properly the occupation of an office, by the performance of its duties; the officer is said to fill his function. Dig. lib. 32. 1. 65, § 1.

FUNCTIONARY. One who is in office or in some public employment.

FUNCTUS OFFICIO. This term is applied to something which once had life and power, but which now has no virtue whatsoever; as, for example, a warrant of attorney on which a judgment has been entered, is functus officio, and a second judgment, cannot be entered by virtue of its authority. When arbitrators cannot agree and choose an umpire, they are said to be functus officio. Watts, on Arb. 94. If a bill of exchange be sent to the drawee, and he passes it to the credit of the holder, it is functus officio, and cannot be further negotiated. 5 Pick. 85.

FUNDAMENTAL. This word is applied to those laws which are the foundation of society. Those laws by which the exercise of empire is restrained and regulated, are fundamental. The constitution of the United States is the fundamental law of the land. See Wolff, Inst. Nat. § 984.

FUNDED DEBT, is that part of the national debt for which certain funds are appropriated towards the payment of the interest.

FUNDING SYSTEM, Eng. law. The name given to a plan which provides that on the creation of a public loan, funds shall immediately be formed, and secured by law, for the payment of the interest, until the state shall redeem the whole, and also for the gradual redemption of the capital itself. This gradual redemption of the capital is called the sinking of the debt, and the fund appropriated is called the sinking fund.

FUNDS. Cash on hands, as, A B is in funds to pay my bill on him; stocks, as, A B has $1000 dollars in the funds. By public funds is understood, the taxes, customs, &c. appropriated by the government for the discharge of its obligations.

FUNDUS, civil law. Any portion of land whatever, without considering the use or employ to which it is applied.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse.

2.—The person who orders the funeral is responsible personally for the expenses, and if the estate of the
deceased should be insolvent, he must lose the amount. But if there are assets sufficient to pay these expenses, the executor or administrator is bound, upon an implied assumpsit, to pay them. 1 Campb. N. P. R. 298; Holt, 309; Com. on Contr. 529; 1 Hawke's R. 394; 13 Vin. Ab. 563.

3.—Frequent questions arise as to the amount which is to be allowed to the executor or administrator for such expenses. It is exceedingly difficult to gather from the numerous cases which have been decided upon this subject any certain rule. Courts of equity have taken into consideration the circumstances of each case, and when the executors have acted with common prudence and in obedience to the will, their expenses have been allowed. In a case where the testator directed to be buried at a church thirty miles distant from the place of his death, the sum of sixty pounds sterling was allowed; 3 Atk. 119; and in another case, under peculiar circumstances, six hundred pounds was allowed. Preced. in Ch. 29. In a case in Pennsylvania where the intestate left a considerable estate, and no children, the sum of two hundred and fifty-eight dollars and seventy-five cents was allowed, the greater part of which had been expended in erecting a tombstone over a vault in which the body was interred. 14 Serg. & Rawle, 64.

4.—It seems doubtful whether the husband can call upon the separate personal estate of his wife to pay her funeral expenses. 6 Madd. R. 90.

Vide 2 Bl. Com. 508; Godolph. p. 2; 3 Atk. 249; Off. Ex. 174; Bac. Ab. Executors, &c., L 4; Vin. Ab. h. t.

FUNGIBLE, a term used in the civil, French and Scotch law, signifies any thing, whatever, which consists in quantity, and is regulated by number, weight or measure, such as corn, wine or money. Hein. Elem. Pand. Lib. 12, t. 1, § 2; 1 Bell's Com. 225, n. 2; Ersk. Pr. Scot. Law, B. 3, t. 1, § 7; Poth. Prêt de Consommation, No. 25; Dict. de Jurisprudence, mot Fongible; Story, Bailm. § 284. Vol. i.—76

FURCA. The gallows. 3 Inst. 58.

FURLINGUS, a furlong, or a furrow one-eighth part of a mile long. Co. Litt. 5 b.

FURLONG. A measure of length being forty poles or one-eighth of a mile. Vide Measures.

FURLOUGH, is a permission given in the army and navy to an officer or private to absent himself for a limited time.

FURNITURE, personal chattels in the use of a family. By the term household furniture in a will, all personal chattels will pass which may contribute to the use or convenience of the householder, or the ornament of the house, as plate, linen, china, both useful and ornamental, and pictures. Amb. 610; 1 John. Ch. R. 329, 338; 1 Sim. & Stu. 189; S. C. 3 Russ. Ch. Cas. 301; 2 Williams on Ex. 752; 1 Rop. on Leg. 203, 4; 3 Ves., 312, 313.

FURTHER HEARING, crim. law, practice. Hearing at another time.

2.—Prisoners are frequently committed for further hearing, either when there is not sufficient evidence for a final commitment, or because the magistrate has not time at the moment to hear the whole of the evidence. The magistrate is required by law, and by every principle of humanity, to hear the prisoner as soon as possible after a commitment for further hearing; and if he neglect to do so within a reasonable time, he becomes a trespasser. 10 Barn. & Cresw. 28; S. C. 5 Man. & Ry. 53. Fifteen days were held an unreasonable time, unless under special circumstances. 4 Carr. & P. 134; 4 Day, 98; 6 S. & R. 427.

3.—In Massachusetts, magistrates may, by statute, adjourn the case for ten days. Rev. Laws, 135, s. 9.

4.—It is the practice in England to commit for three days and then from three days to three days. 1 Chitty's Criminal Law, 74.

FUTURE DEBT, in Scotland this term is applied to a debt which though created is not due, but is to become so at future day. 1 Bell's Com. 315, 5th ed.
GABEL, a tax imposition or duty. This word is said to have the same signification that gabelle formerly had in France. Cunn. Dict. h. t. But this seems to be an error, for gabelle signified in that country, previously to its revolution, a duty upon salt. Merl. Rép. h. t. Lord Coke says, that gabel or gavel, gabilum, gabellium, gabelletum, gabelletum, and garilletum, signify a rent, duty or service, yielded or done to the king or any other lord. Co. Litt. 142, a.

GAGE, contracts. Personal property placed by a debtor in possession of his creditor, as a security for his debt; a pawn, (q. v.) Hence mortgage is a dead pledge.

GAGER DEL LEY. Wager of law, (q. v.)

GAIN. The word is used as synonymous with profits, (q. v.) See Fruit.

GAINAGE, old Eng. law, signifies the draft oxen, horses, wain, plough, and furniture for carrying on the work of tillage by the baser sort of soke men and villeins, and sometimes the land itself, or the profits raised by cultivating it. Bract. lib. 1, c. 9.

GALLON, measures. A gallon is a liquid measure containing two hundred and thirty-one cubic inches, or four quarts.

GALLOWES. An instrument on which to hang criminals condemned to death.

GAME. Birds and beasts of a wild nature obtained by fowling and hunting. Bac. Ab. h. t. ; Animals ; Fere nature.

GAMING, is a contract between two or more persons by which they agree to play by certain rules at cards, dice, or other contrivance, and that one shall be the loser and the other the winner. When considered in itself, and without regard to the end proposed by the players, there is nothing in it contrary to natural equity, and the contract will be considered as a reciprocal gift, which the parties make of the thing played for, under certain conditions.

2.—There are some games which depend altogether upon skill, others, upon chance, and some others are of a mixed nature. Billiards is an example of the first; lottery, of the second; and backgammon of the last.

3.—In general, at common law, all games are lawful, unless some fraud has been practiced, or such games are contrary to public policy. Each of the parties to the contract must, 1, have a right to the money or thing played for; 2, he must have given his full and free consent, and not been entrapped by fraud; 3, there must be equality in the play; 4, the play must be conducted fairly. But even when all these rules have been observed, the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play. Bac. Ab. h. t. (A).

4.—But when fraud has been practiced, as in all other cases, the contract is void; and in some cases, when the party has been guilty of cheating, by playing with false dice, cards and the like, he may be indicted at common law, and fined and imprisoned, according to the heinousness of the offence. 1 Russ. on Cr. 406.

5.—Statutes have been passed in perhaps all the states forbidding gam-
ing for money, at certain games, and prohibiting the recovery of money lost at such games. Vide Bac. Ab. h. t.; Dane's Ab. Index, h. t.; Poth. Traité du Jeu; Merlin, Repertoire, mot Jeu; Barbyrac, Traité du Jeu, tome 1, p. 104, note 4; 1 P. A. Browne's Rep. 171; 1 Overt. R. 360; 3 Pick. 446; 7 Cowen, 496; 1 Bibb, 614; 1 Miss. 635; Mart. & Yerg. 262; 1 Bailey, 315; 6 Rand. 694; 8 Cowen, 139; 2 Blackf. 251; 3 Blackf. 294; and Stakeholder; Wagers.

GAMING HOUSES, crim. law, are houses kept for the purpose of permitting persons to game for money or other valuable thing. They are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices. 1 Russ. on Cr. 299; Roscoe's Cr. Ev. 663; Hawk. B. 1, ch. 75, s. 6; 3 Denio's R. 101; 8 Cowen, 139. This offence is punished in Pennsylvania, and perhaps, in most of the states, by statutory provisions.

GANANCIAL, Spanish law. A term which in Spanish signifies nearly the same as acquets. Bienes gananciales are thus defined: "Aquello que el marido y la mujer ó cualquiera de los dos adquieran ó aumentan durante el matrimonio por compra ó otro contrato, ó mediante su trabajo é industria, como tambien los frutos de los bienes propios que cada uno elevó al matrimonio, et de los que subsistiendo este adquieran para sí por cualquier título." 1 Febr. Nov. lib. 1, tit. 2, c. 8, s. 1.

This is a species of commuity; the property of which it is formed belongs in common to the two consorts; and, on the dissolution of the marriage is divisible between them in equal shares. It is confined to their future acquisition durante el matrimonio, and the frutos or rents and profits of the other property. 1 Burge on Conf. of Laws, 418, 419; Aso & Man. Inst. B. 1, t. 7, c. 5, § 1.

GAOL, is a prison or building designated by law or used by the sheriff, for the confinement or detention of those whose persons are judicially or

GAR

GAOL-DELIVERY, Eng. law. To insure the trial, within a certain time, of all prisoners, a patent in the nature of a letter is issued from the king to certain persons, appointing them his justices, and authorising them to deliver his goals. Cromp. Jurisd. 125; 4 Inst. 168; 4 Bl. Com. 269; 2 Hale, P. C. 22, 32; 2 Hawk. P. C. 14, 28. In the United States, the judges of the criminal courts are required to cause the accused to be tried within the times prescribed by the local statutes, and the constitutions require a speedy trial.

GAOLER, the keeper of a gaol or prison, one who has the legal custody of the place where prisoners are kept.

2.—It is his duty to keep the prisoners in safe custody, and for this purpose he may use all necessary force, 1 Hale, P. C. 601; but any oppression of a prisoner under a pretended necessity will be punished, for the prisoner, whether he be a debtor or a criminal, is entitled to the protection of the laws from oppression.

GARDEN. A piece of ground appropriated to raising plants and flowers.

2.—A garden is a parcel of a house and passes with it. Br. Feoffin, de terre, 53; 2 Co. 32; Plowd. 171; Co. Litt. 5 b, 56 a, b. But see Moore, 24; Bac. Ab. Grants, I.

GARNISH, Eng. law. Money paid by a prisoner to his fellow prisoners on his entrance into prison.

To GARNISH. To warn; to garnish the heir, is to warn the heir. Obsolete.

GARNISHEE, is a person who has money or property in his possession, belonging to a defendant, which money or property has been attached in his
hands, and he has had notice of such attachment; he is so called because he has had warning or notice of the attachment.

2.—From the time of the notice of the attachment, the garnishee is bound to keep the property in his hands to answer the plaintiff’s claim, until the attachment is dissolved, or he is otherwise discharged. Vide Serg. on Att. 88 to 110; Com. Dig. Attachment, E.

GARNISHMENT. A warning to any one for his appearance, in a cause in which he is not a party, for the information of the court, and explaining a cause. For example, in the practice of Pennsylvania, when an attachment issues against a debtor in order to secure to the plaintiff a claim due by a third person to such debtor, notice is given to such third person, which notice is a garnishment, and he is called the garnishee.

GAVEL, a tax, imposition or tribute; the same as gabel, (q. v.)

GAVELKIND, given to all the kindred. Eng. law. A tenure or custom annexed or belonging to land in Kent, by which the lands of the father are equally divided among all his sons, or the land of the brother among all his brothers, if he have no issue of his own. Litt. s. 210.

GELD, old Eng. law, signifies a fine or compensation for an offence; also, rent, money or tribute.


GENDER. That which designates the sexes.

2.—As a general rule, when the masculine is used it includes the feminine, as, man (q. v.) sometimes includes women. This is the general rule, unless a contrary intention appears. But in penal statutes, which must be construed strictly, when the masculine is used and not the feminine, the latter is not in general included. 3 C. & P. 225. An instance to the contrary, however, may be found in the construction, 25 Ed. 3, st. 5, c. 2,

§ 1, which declares it to be high treason, “When a man doth compass or imagine the death of our lord the king,” &c. These words “our lord the king,” have been construed to include a queen regnant. 2 Inst. 7, 8, 9; H. P. C. 12; 1 Hawk. P. C. c. 17; Bac. Ab. Treason, D.

3.—Pothier says that the masculine often includes the feminine, but the feminine never includes the masculine; that according to this rule if a man were to bequeath to another all his horses, his mares would pass by the legacy; but if he were to give all his mares, the horses would not be included. Poth. Introd. au titre 16, des Testaments et Donations testamentaires, n. 170; 3 Brev. R. 9, Vide Ayl. Pand. 57; 4 Car. & Payne, 215; S. C. 19 Engl. Com. Law R. 351; Barr. on the Stat. 216, note. Feme; Feme covert; Feminine; Male; Man; Sex; Women; Worthiest of blood.

GENEALOGY, is the summary history or table of a house or family, showing how the persons there named are connected together.

2.—It is founded on the idea of a lineage or family. Persons descended from the common father constitute a family. Under the idea of degrees is noted the nearness or remoteness of relationship, in which one person stands with respect to another. A series of several persons, descended from a common progenitor, is called a line, (q. v.) Children stand to each other in the relation either of full blood or half blood, according as they are descended from the same parents, or have only one parent in common. For illustrating descent and relationship, genealogical tables are constructed, the order of which depends on the end in view. In tables, the object of which is to show all the individuals embraced in a family, it is usual to begin with the oldest progenitor, and to put all the persons of the male or female sex in descending, and then in collateral lines. Other tables exhibit the ancestors of a particular person in ascending lines both on the father’s and mother’s side.
In this way 4, 8, 16, 32, &c. ancestors are exhibited, doubling at every degree. Some tables are constructed in the form of a tree, after the model of canonical law, (arb. consanguinitatis,) in which the progenitor is placed beneath, as if for the root or stem. Vide Branch: Line.

**GENERAL.** This word has several meanings, namely: 1. A principal officer, particularly in the army; as, General Washington. 2. Something opposed to special, as, a general verdict, the general issue, which expressions are used in contradistinction to special verdict, special issue. 3. Principal, as the general post office. 4. Not select, as a general ship. (q. v.) 5. Not particular, as a general custom. 6. Not limited as general jurisdiction. 7. This word is sometimes annexed or prefixed to other words to express or limit the extent of their signification; as Attorney General, Solicitor General, the General Assembly, &c.

**General Assembly.** This name is given in some of the states to the senate and house of representatives, which compose the legislative body.

**General Impairment, pleading,** is one granted upon a prayer, in which the defendant reserves to himself no exceptions, and is always from one term to another. Gould on Pl. c. 2, § 17.

2.—After such impairment, the defendant cannot plead to the jurisdiction nor in abatement, but only to the action or merits. See Impairment.

**General Issue, pleading,** is a plea which traverses or denies at once the whole indictment or declaration, without offering any special matter, to evade it. It is called the general issue, because, by importing an absolute and general denial of what is alleged in the indictment or declaration, it amounts at once to an issue. 3 Bl. Com. 305.

2.—The general issue in criminal cases, is, not guilty. In civil cases, the general issues are almost as various as the forms of action; in assumption, the general issue is non-assumpsit; in debt, nil debet; in detinue, non detinet; in trespass, non cul. or not guilty, &c.

3.—Any matter going to show that a deed or contract, or other instrument is void, may be given in evidence under the general issue. 10 Mass. 267; 274; 14 Pick. 303. 305; such as usury, 2 Mass. 540; 12 Mass. 26; 15 Mass. 48. 54. See 4 N. Hamp. R. 40; 2 Werd. 246; 6 Mass. 460; 10 Mass. 281. But a right to give evidence under the general issue, any matter which would avail under a special plea, does not extend to matters in abatement. 9 Mass. 366; 14 Mass. 273. Gould on Pl. c. 4, pt. 1, § 9 et seq.; Special Issue.

**General Land Office.** One of the departments of government of the United States.

2.—It was established by the act of April 25, 1812, 2 Story's Laws U. S. 1238; another act was passed March 24, 1824, 3 Story, 1838, which authorized the employment of additional officers. And it was re-organized by the following act entitled "An act to reorganize the General Land Office," approved July 4, 1836.

3.—§ 1. Be it enacted, &c. That from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the government of the United States, shall be subject to the supervision and control of the commissioner of the general land office, under the direction of the president of the United States.

4.—§ 2. That there shall be appointed in said office, by the president, by and with the advice and consent of the senate, two subordinate officers, one of whom shall be called principal clerk of the public lands, and the other principal clerk on private land claims, who shall perform such duties as may be
assigned to them by the commissioner of the general land office; and in case of vacancy in the office of the commissioner of the general land office, or of the absence or sickness of the commissioner, the duties of said office shall devolve upon and be performed, ad interim, by the principal clerk of the public lands.

5.—§ 3. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be styled the principal clerk of the surveys, whose duty it shall be to direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the surveyor general; and he shall perform such other duties as may be assigned to him by the commissioner of the general land office.

6.—§ 4. That there shall be appointed by the president, by and with the consent of the senate, a recorder of the general land office, whose duty it shall be, in pursuance of instructions from the commissioner, to certify and affix the seal of the general land office to all patents for public lands, and he shall attend to the correct engrossing and recording and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees, and of persons entitled to patents; and he shall prepare such copies and exemplifications of matters on file, or recorded in the general land office, as the commissioner may from time to time direct.

7.—§ 5. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be called the solicitor of the general land office, with an annual salary of two thousand dollars, whose duty it shall be to examine and present a report to the commissioner, of the state of facts in all cases referred by the commissioner to his attention which shall involve questions of law, or where the facts are in controversy between the agents of government and individuals, or there are conflicting claims of parties before the department, with his opinion thereon; and also, to advise the commissioner, when required thereto, on all questions growing out of the management of the public lands, or the title thereto, private land claims, Virginia military scrip, bounty lands, and pre-emption claims; and to render such further professional services in the business of the department as may be required, and shall be connected with the discharge of the duties thereof.

8.—§ 6. That it shall be lawful for the president of the United States, by and with the advice and consent of the senate, to appoint a secretary, with a salary of fifteen hundred dollars per annum, whose duty it shall be, under the direction of the president, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States.

9.—§ 7. That it shall be the duty of the commissioner to cause to be prepared, and to certify, under the seal of the general land office, such copies of records, books, and papers on file in his office, as may be applied for, to be used in evidence in courts of justice.

10.—§ 8. That whenever the office of recorder shall become vacant, or in case of the sickness or absence of the recorder, the duties of his office shall be performed, ad interim, by the principal clerk on private land claims.

11.—§ 9. That the receivers of the land offices shall make to the secretary of the treasury monthly returns of the moneys received in their several offices, and pay over such money pursuant to his instructions. And they shall also make to the commissioner of the general land office, like monthly returns, and transmit to him quarterly accounts current of the debits and credits of their several offices with the United States.

12.—§ 10. That the commissioner of the general land office shall be entitled to receive an annual salary of three thousand dollars; the recorder of the general land office an annual salary of fifteen hundred dollars; the principal clerk of the surveys, an an-
annual salary of eighteen hundred dollars; and each of the said principal clerks an annual salary of eighteen hundred dollars—from and after the date of their respective commissions; and that the said commissioner be authorised to employ, for the service of the general land office, one clerk, whose annual salary shall not exceed fifteen hundred dollars; four clerks, whose annual salary shall not exceed fourteen hundred dollars each; sixteen clerks, whose annual salary shall not exceed thirteen hundred dollars each; twenty clerks, whose annual salary shall not exceed twelve hundred dollars each; five clerks, whose annual salary shall not exceed eleven hundred dollars each; thirty-five clerks, whose annual salary shall not exceed one thousand dollars each; one principal draughtsman, whose annual salary shall not exceed fifteen hundred dollars; one assistant draughtsman, whose annual salary shall not exceed twelve hundred dollars; two messengers, whose annual salary shall not exceed seven hundred dollars each; three assistant messengers, whose annual salary shall not exceed three hundred and fifty dollars each; and two packers, to make up packages of patents, blank forms, and other things necessary to be transmitted to the district land offices, at a salary of four hundred and fifty dollars each.

13.—§ 11. That such provisions of the act of the 25th of April, in the year one thousand eight hundred and twelve, entitled “An act for the establishment of a general land office in the department of the treasury, and of all acts amendatory thereof, as are inconsistent with the provisions of this act, be, and the same are hereby repealed.

14.—§ 12. That from the first day of the month of October, until the first day of the month of April, in each and every year, the general land office and all the bureaus and offices therein, as well as those in the departments of the treasury, war, navy, state, and general post-office, shall be open for the transaction of the public business at least eight hours in each and every day, except Sundays and the twenty-fifth day of December; and from the first day of April until the first day of October, in each year, all the aforesaid offices and bureaus shall be kept open for the transaction of the public business at least ten hours, in each and every day, except Sundays and the fourth day of July.

15.—§ 13. That if any person shall apply to any register of any land office to enter any land whatever, and the said register shall knowingly and falsely inform the person so applying that the same has already been entered, and refuse to permit the person so applying to enter the same, such register shall be liable therefor, to the person so applying, for five dollars for each acre of land which the person so applying offered to enter, to be recovered by action of debt, in any court of record having jurisdiction of the amount.

16.—§ 14. That all and every of the officers whose salaries are hereinbefore provided for, are hereby prohibited from directly or indirectly purchasing, or in any way becoming interested in the purchase of, any of the public land; and in case of a violation of this section by such officer, and on proof thereof being made to the President of the United States, such officer, so offending, shall be, forthwith, removed from office.

**General ship,** is one which is employed by the master or owners, on a particular voyage, and is hired by a number of persons, unconnected with each other, to convey their respective goods to the place of destination.

2.—This contract, although usually made with the master, and not with the owners, is considered in law to be made with them also, and that both he and they are separately bound to the performance of it. Abbott on Ship. 112, 215, 216.

**General special imparlance,** pleading, is one in which the defendant reserves to himself "all advan-
tages and exceptions whatsoever.” 2 Chit. Pl. 408.

2.—This kind of imparsibility allows the defendant not only to plead in abatement and to the action, but also to the jurisdiction of the court. Gould on Pl. c. 2, § 19. See Imparsibility.

GENERAL TRAVERSE, in pleading, is one preceded by a general inducement, and denying, in general terms, all that is last before alleged on the opposite side, instead of pursuing the words of the allegations, which it denies.

2.—Of this sort of traverse, the replication de injurià suà propria, ab-queue tali causa, in answer to a justification, is a familiar example. Bac. Ab. Pleas, H 1; Steph. Pl. 171; Gould, Pl. c. 7, § 5; Archb. Civ. Pl. 194. Vide Traverse; Special Traverse.

GENS. An ancient word, signifying nation, and sometimes a family. 1 Tho. Co. Litt. 259, n. 13. In the French law, it is used to signify people or nations, as, Droit des Gens, the law of nations.

GENTLEMAN. In the English law, according to Sir Edward Coke, is one who bears a coat of armour. 2 Inst. 667. In the United States, this word is unknown to the law, but in many places it is applied, by courtesy, to all men, rich or poor, black or white. See Poth. Proc. Crim. sect. 1, App. § 3.

GENTLEWOMAN. This word is unknown to the law in the United States, and is but little used. In England it was, formerly, a good addition of the state or degree of a woman. 2 Inst. 667.

GENUS, denotes the number of beings, or objects, which agree in certain general properties, common to them all, so that genus is, in fact, only an abstract idea, expressed by some general name or term; or rather a name or term, to signify what is called an abstract idea. Thus, goods is the generic name, and includes, generally, all personal property; but this word may be restrained, particularly in be-

quests, to such goods as are of the same kind as those previously enumerated. Vide 3 Ves. 311; 11 Ves. 657; 1 Eq. Cas. Ab. 201, pl. 14; 2 Ves. sen. 278, 280; Dig. 50, 17, 80; Ib. 12, 1, 2, 3.

GEORGIA. The name of one of the original states of the United States of America. George the Second granted a charter to Lord Percival, and twenty others, for the government of the province of Georgia. It was governed under this charter till the year 1751, when it was surrendered to the crown. From that period to the time of the American revolution, the colony was governed as other royal provinces.

2.—The constitution of the state, as revised, amended, and compiled by the convention of the state, was adopted at Louisville, on the 30th day of May, 1798. It directs, art. 1, s. 1, that the legislative, executive, and judiciary departments of government shall be distinct, and each department shall be confided to a separate body of magistracy.

3.—1. The legislative power is vested in two separate and distinct branches, to wit, a senate and house of representatives, styled, “the General Assembly.” 1st. The senate is elected annually, and is composed of one member from each county, chosen by the electors thereof. The senate elect, by ballot, a president out of their own body. 2d. The house of representatives is composed of members from all the counties, according to their respective numbers of free white persons, and including three-fifths of all the people of colour. The enumeration is made once in seven years, and any county containing three thousand persons, according to the foregoing plan of enumeration, is entitled to two members; seven thousand to three members; and twelve thousand to four members; but each county shall have at least one, and not more than four members. The representatives are chosen annually. The house of representatives choose their speaker and other officers.
4.—2. The executive power is vested in a governor, elected by the general assembly, who holds his office for the term of two years. In case of vacancy in his office, the president of the Senate acts as governor, until the disability is removed, or until the next meeting of the general assembly.

5.—3. The judicial powers of the state are, by the 3d article of the constitution, distributed as follows:

§ 1. The judicial powers of this state shall be vested in a superior court, and in such inferior jurisdictions as the legislature shall, from time to time, ordain and establish. The judges of the superior courts shall be elected for the term of three years, removable by the governor, on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. The superior court shall have exclusive and final jurisdiction in all criminal cases which shall be tried in the county wherein the crime was committed; and in all cases respecting titles to land, which shall be tried in the county where the land lies; and shall have power to correct errors in inferior judicatories by writs of certiorari, as well as errors in the superior courts, and to order new trials on proper and legal grounds: Provided, That such new trials shall be determined, and such errors corrected, in the superior court of the county in which such action originated. And the said court shall also have appellate jurisdiction in such other cases as the legislature may by law direct, which shall in no case tend to remove the cause from the county in which the action originated; and the judges thereof, in all cases of application for new trials, or correction of error, shall enter their opinions on the minutes of the court. The inferior courts shall have cognizance of all civil cases, which shall be tried in the county wherein the defendant resides, except in cases of joint obligors, residing in different counties, which may be commenced in either county; and a copy of the petition and process served on the party or parties residing out of the county in which the suit may be commenced, shall be deemed sufficient service, under such rules and regulations as the legislature may direct; but the legislature may, by law, to which two-thirds of each branch shall concur, give concurrent jurisdiction to the superior courts. The superior and inferior courts shall sit in each county twice in every year, at such stated times as the legislature shall appoint.

6.—§ 2. The judges shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them.

7.—§ 3. There shall be a state’s attorney and solicitors appointed by the legislature, and commissioned by the governor, who shall hold their offices for the term of three years, unless removed by sentence on impeachment, or by the governor, on the address of each branch of the general assembly. They shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office.

8.—§ 4. Justices of the inferior courts shall be appointed by the general assembly, and be commissioned by the governor, and shall hold their commissions during good behaviour, or as long as they respectively reside in the county for which they shall be appointed, unless removed by sentence on impeachment, or by the governor, on the address of two-thirds of each branch of the general assembly. They may be compensated for their services in such manner as the legislature may by law direct.

9.—§ 5. The justices of the peace shall be nominated by the inferior courts of the several counties, and commissioned by the governor; and there shall be two justices of the peace in each captain’s district, either or both of whom shall have power to try all
cases of a civil nature within their district, where the debt or litigated demand does not exceed thirty dollars, in such manner as the legislature may by law direct. They shall hold their appointments during good behaviour, or until they shall be removed by conviction, on indictment in the superior court, for malpractice in office, or for any felo-
nious or infamous crime, or by the governor, on the address of two-thirds of each branch of the legislature.

10.—§ 6. The powers of a court of ordinary or register of probates, shall be invested in the inferior courts of each county; from whose decision there may be an appeal to the superior court, under such restrictions and regulations as the general assembly may by law direct; but the inferior court shall have power to vest the care of the records, and other proceedings therein, in the clerk, or such other person as they may appoint; and any one or more justices of the said court, with such clerk or other person, may issue citations and grant temporary letters in time of vacation, to hold until the next meeting of the said court; and such clerk or other person may grant marriage licenses.

11.—§ 7. The judges of the superior courts, or any one of them, shall have power to issue writs of mandamus, prohibition, scire facias, and all other writs which may be necessary for carrying their powers fully into effect.

GERMAN, relations, germanus, whole or entire, as respects genealogy or descent; thus, “brother-german,” denotes one who is brother both by the father and mother’s side; “cousin-
german,” those in the first and nearest degree, i.e. children of brothers or sisters. Tech. Dict. 4 M. & C. 56.


GESTATION, med. jur. The time during which, a female who has conceived, carries the embryo or fetus in her uterus. By the common consent of mankind, the term of gestation is considered to be ten lunar months, or forty weeks, equal to nine calendar months and a week. This period has been adopted, because general observation when it could be correctly made, has proved its correctness. Cyclop. of Pract. Med. vol. 4, p. 87, art. Succession of inheritance. But this may vary one, two, or three weeks. Co. Litt. 123 b, Harg. & Butler’s, note 190*; Ryan’s Med. Jurisp. 121; Coop. Med. Jur. 18; Civ. Code of Louis. art. 203-211; 1 Beck’s Med. Jur. 478. See Pregnancy.

GIFT, conveyancing, is properly applied to the creation of an estate tail; as that of feoffment is to that of an estate in fee simple. It differs in nothing from a feoffment, but in the nature of the estate passing by it; and livery of seisin must be given to render it effectual. The operative words of this conveyance are do or dedit. The maker of this instrument is called the donor, and he to whom it is made, the donee. 2 Bl. Com. 316; Litt. 59; Touchs. ch. 11.

GIFT, contracts, is the act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person who accepts it, without any consideration. It differs from a grant, sale, or barter in this, that in each of these cases there must be a consideration, and a gift, as the definition states, must be without consideration.

2.—The manner of making the gift may be in writing, or verbally, and, as far as personal chattels are concerned, they are equally binding. Perk. § 57; 2 Bl. Com. 441. But real estate must be transferred by deed.

3.—There must be a transfer made with an intention of passing the title, and delivering the possession of the thing given, and it must be accepted by the donee. 1 Madd. Ch. R. 176, Am. ed. p. 104; sed vide 2 Barn. & Ald. 551; Noy’s Rep. 67.

4.—The transfer must be without consideration, for if there be the least
consideration, it will change the contract into a sale or barter, if possession be delivered; or if not into an executory contract. 2 Bl. Com. 440.

5.—Gifts are divided into gifts inter vivos, and gifts causa mortis; and also into simple or proper gifts, that is, such as are to take immediate effect, without any condition; and qualified or improper gifts, or such as derive their force upon the happening of some condition or contingency; as, for example, a donatio causa mortis. Vide Donatio causa mortis; Gifts inter vivos; and Vin. Ab. h. t.; Com. Dig. Biens, D 2, and Grant; Bac. Ab. Grant; 14 Vin. Ab. 19; 3 M. & S. 7; 5 Taunt. 212.

Gift inter vivos, is a gift made from one or more persons, without any prospect of immediate death, to one or more others.

2.—These gifts are so called to distinguish them from gifts causa mortis, (vide Donatio causa mortis,) from which they differ essentially.—1. A gift inter vivos, when completed by delivery passes the title to the thing so that it cannot be recovered back, by the giver: the gift causa mortis is always given upon the implied condition that the giver may at any time during his life revoke it. 7 Taunt. 283; 3 Binn. 366.—2. A gift inter vivos may be made by the giver at any time; the donatio mortis causa must be made by the donor while in peril of death. In both cases there must be a delivery. 2 Kent’s Com. 354; 1 Beav. R. 605.

Giftoman, Swedish law. He who has a right to dispose of a woman in marriage.

2.—This right is vested in the father, if living; if dead, in the mother; they may nominate a person in their place, but for want of such nomination, the brothers german, and for want of them, consanguine brothers, and in default of the latter, uterine brothers have the right, but they are bound to consult the paternal or maternal grandfather. Swed. Code, tit. of Marriage, c. 1.

Gill. A measure of capacity, equal to one fourth of a pint. Vide Measure.

Girantem, mer. law. An Italian word, which signifies the drawer. It is derived from girare, to draw, in the same manner that the English verb to murder, is transformed into mordicare in our old indictments. Hall, Mar. Loans, 183, n.

Gist, pleading. Gist of the action is the essential ground or object of it in point of law, and without which there is no cause of action. Goulch, Pl. ch. 4, § 12. But it is observable that the substance or gist of the action is not always the principal cause of the plaintiff’s complaint in point of fact, nor that on which he recovers all or the greatest part of his damages.

2.—It frequently happens that upon that part of his declaration which contains the substance or gist of the action he only recovers nominal damages, and he gets his principal satisfaction on account of matter altogether collateral thereto. A familiar instance of this is the case where a father sues the defendant for a trespass for the seduction of his daughter. The gist of the action is the trespass and the loss of his daughter’s services, but the collateral cause is the injury done to his feelings for which the principal damages are given. In stating the substance or gist of the action, every thing must be averred which is necessary to be proved at the trial. Vide 1 Vin. Ab. 598; 2 Phil. Ev. 1, note. See Bac. Abr. Pleas, B; Doct. Pl. 85. See Damages, special, in pleading; 1 Vin. Ab. 598; 2 Phil. Ev. 1, n.

Giver, contracts. He who makes a gift, (q. v.); by his gift, the giver always impliedly agrees with the donee that he will not revoke the gift.

Giving in payment. This term is used in Louisiana; it signifies that a debtor instead of paying a debt he owes in money, satisfies his creditor by giving in payment a movable or immovable. Vide Dation en paiement.

Giving time, contracts. Any agreement by which a creditor gives his
debtor a delay or time in paying his debt, beyond that contained in the original agreement; when other persons are responsible to him either as drawer, endorser, or surety, if such time be given without the consent of the latter, it discharges them from responsibility to him. 1 Gall. Rep. 32; 7 John. R. 332; 10 John. Rep. 180; Ib. 587; Kirby, R. 397; 3 Binn. R. 523; 2 John. Ch. R. 554; 3 Desaun. Ch. Rep. 604; 2 Desaun. Ch. R. 230, 389; 2 Ves. jr. 504; 6 Ves. jr. 805; 3 Atk. 91; 2 Bos. & Pull. 62; 4 M. & S. 232; Bac. Ab. Obligations, D; 6 Dow. P. C. 238; 3 Meriv. R. 272; 5 Barn. & A. 157. Vide 1 Leigh’s N. P. 31; 1 B. & P. 652; 2 B. & P. 61; 3 B. & P. 363; 8 East, R. 570; 3 Price, R. 521; 2 Campb. R. 175; 12 East, R. 38; 5 Taunt. R. 319; S. C. 1 E. C. L. R. 119; Rosc. Civ. Ev. 171; 8 Watts, R. 448; 4 Penn. St. R. 73; 10 Paige 76; and the article Forbearance.

2.—But mere delay in suing, without fraud or any agreement with the principal, is not such giving time as will discharge the surety. 1 Gallis, 32; 2 Pick. 581; 3 Blackf. 93; 7 John. 332. See Surety.

GLADIUS. In our old Latin authors and in the Norman laws, this word was used to signify supreme jurisdiction, jus gladii.

GLEANING. The act of gathering such grain in a field where it grew, which may have been left by the reapers after the sheaves were gathered. 2.—There is a custom in England, it is said, by which the poor are allowed to enter and glean upon another’s land after harvest without being guilty of a trespass. 3 Bl. Com. 212. But it has been decided that the community are not entitled to claim this privilege as a right. 1 Hen. Bl. 51. In the United States, it is believed, no such right exists. This right seems to have existed in some parts of France. Merl. Repert. mot, Glanage. As to whether gleaning would or would not amount to larceny, Vide Woodf. Landl. & Ten. 242; 2 Russ. on Cr. 99.

GLEBE, Eccles. law, is the land which belongs to a church. It is the dowry of the church. Gleba est terraque consistit dos ecclesie. Lind. 254; 9 Cranch, Rep. 329. In the civil law, it signified the soil of an inheritance; there were serfs of the glebe, called glebe addii. Code, 11, 47, 7 et 21; Nov. 54, c. 1.

GLOUCESTER, STATUTE OF. An English statute passed 6 Edw. 1. Anno Domini 1278; is so called because it was passed at Gloucester. There were other statutes made at Gloucester, which do not bear this name. See stat. 2 Rich. II.

GO. This word is used sometimes technically. When a party is dismissed the court, he is said to go without day; that is, there is no day appointed for him to appear again.

GOD. The Supreme Being. Men have sometimes presumptuously attempted to legislate in matters between God and man. Such laws are generally unwise and unjust. In the United States every one is allowed to worship God according to the dictates of his own conscience.

GOD AND MY COUNTRY. When a prisoner is arraigned, he is asked, how will you be tried? he answers, By God and my country. This practice arose when the prisoner had the right to choose the mode of trial, namely, by ordeal or by jury, and then he elected by God or his country, that is, by jury. It is probable that originally it was By God or my country; for the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. 1 Chit. Cr. Law, 416; Barr. on the Stat. 73, note.

GOD NOTE, eccles. law. An ecclesiastical or church fine imposed upon an offender for crimes and offences committed against God.

GOING WITNESS, is one who is going out of the jurisdiction of the court, although only into a state or country under the general sovereignty; as, for example, if he is going from one to another of the United States, or, in
Great Britain, from England to Scotland. 2 Dick. 454.

GOLD. A metal used mostly in making money, or coin. It is divided into pure gold, that is, when the metal is unmixed with any other; and standard gold, which is a gold less pure, and mixed with some other metal, called alloy. Vide Money.

GOOD BEHAVIOUR. Conduct authorised by law. Surety of good behaviour may be demanded from any person who is justly suspected, upon sufficient grounds, of intending to commit a crime or misdemeanor. Surety for good behaviour is somewhat similar to surety of the peace, but the recognizance is more easily forfeited, and it ought to be demanded with greater caution. 1 Binn. 98, n. 2 Yeates, 437; 14 Vin. Ab. 21; Dane's Ab. Index, h. t. As to what is a breach of good behaviour, see 2 Mart. N. S. 683.

GOOD AND LAWFUL MEN, probi et legales homines. The law requires that those who serve on juries shall be good and lawful men; by which is understood those qualified to serve on juries, that is, that they be of full age, citizens, not infamous nor non comites mentis, and they must be resident in the county where the venue is laid. Bac. Ab. Juries, A; Cro. Eliz. 654; 3 Inst. 30; 2 Rolle's R. 82; Cam. & Norw. 38.

GOOD CONSIDERATION, contracts. A good consideration is one which flows from kindred or natural love and affection alone, and is not of a pecuniary nature. Vin. Ab. Consideration, B. Vide Consideration.

GOOD WILL; by this term is meant the benefit which arises from the establishment of particular trades or occupations. Mr. Justice Story describes a good will to be the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stocks, funds, or property employed therein, in consequence of the general public patronage and encouragement, which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities, or prejudices. Story, Partn. § 99; see 17 Ves. 336; 1 Hoffm. R. 68; 16 Am. Jur. 87.

2.—As between partners it has been held that the good-will of a partnership trade survives. 5 Ves. 589; but this appears to be doubtful, 15 Ves. 227; and a distinction, in this respect, has been suggested between the commercial and professional partnerships; the advantages of established connexions in the latter being held to survive, unless the benefit is excluded by positive stipulation. 3 Madd. 79. As to the sale of the good-will of a trade or business, see 3 Meriv. 452; 1 Jac. & Walk, 589; 2 Swanst. 332; 1 Ves. & Beames, 505; 17 Ves. 346; 2 Madd. 220; Gow on Partn. 428; Collyer on Partn. 172, note; 2 B. & Adolph. 341; 4 Id. 592, 596; 1 Rose, 123; 5 Russ. 29; 2 Watts, 111. Vide 5 Bos. & Pull. 67; 1 Bro. C. C. 160, as to the effect of a bankrupt's assignment on a good-will; and 16 Amer. Jur. 87.

GOODS, property. For some purposes this term includes money, valuable securities, and other mere personal effects. The term goods and chattels, includes not only personal property in possession, but also choses in action, 12 Co. 1; 1 Atk. 182; the term chattels is more comprehensive than that of goods, and will include all animate as well as inanimate property, and also a chattel real, as a lease for years of house or land. Co. Litt. 118; 1 Russ. Rep. 376. The word goods simply and without qualification, will pass the whole personal estate when used in a will, including even stocks in the funds. But in general it will be limited by the context of the will. Vide 2 Supp. to Ves. jr. 289; 1 Chit. Pr. 89, 90; 1 Ves. jr. 63; Hamm. on Parties, 182; 3 Ves. 212; 1 Yeates, 101; 2 Dall. 143; Ayl. Pand. 296; Wesk. Ins. 260; 1 Rop. on Leg. 189; 1 Bro. C. C. 128; Sugg. Vend. 493, 497; and the articles Biens; Chattels; Furniture.
Goods are said to be of different kinds, as adventitious, such as are given or arise otherwise than by succession; dotal goods, or those which accrue from a dowry, or marriage portion; vacant goods, those which are abandoned or left at large.

Goods sold and delivered. This phrase is frequently used in actions of assumpsit, and the sale and delivery of goods are the foundation of the action. When a plaintiff declares for goods sold and delivered, he is required to prove, first, the contract of sale; secondly, that delivery of the goods, or such disposition of them as will be equivalent to it; and, thirdly, their value. 11 Shepl. 505. These will be separately considered.

2.—1. The contract of sale may be express, as where the purchaser actually bought the goods on credit, and promised to pay for them at a future time; or implied, where from his acts the defendant manifested an intention to buy them; as, for example, when one takes goods by virtue of a sale made by a person who has no authority to sell, and the owner afterwards affirms the contract, he may maintain an action for goods sold and delivered. 12 Pick. 120. Again, if the goods come to the hands of the defendant tortuously, and are converted by him to his own use, the plaintiff may waive the tort, and recover as for goods sold and delivered. 3 N. H. Rep. 384; 1 Miss. R. 430, 643; 3 Watts, 277; 5 Pick. 285; 4 Binn. 374; 2 Gill & John. 326; 3 Dana, 552; 5 Greenl. 323.

2.—2. The delivery must be made in accordance with the terms of the sale, for if there has not been such delivery no action can be maintained. 2 Ired. R. 12; 15 Pick. 171; 3 John. 534.

4.—3. The plaintiff must prove the value of the goods; where there is an express agreement as to their value, that must be established by evidence, but where there is no such express agreement, the value of the goods at the time of sale must be proved. Coxe, 261. And the purchaser of goods can not defend, against an action for the purchase money, by showing that the property was of no value. 8 Port. 133.

5.—To support an action for goods sold and delivered, it is indispensable that the goods should have been sold for money, and that the credit on which they were sold should have expired. But where the goods have been sold on a credit to be paid for by giving a note or bill, and the purchaser does not give it according to contract, although the seller cannot recover in assumpsit for goods sold and delivered till the credit has expired, yet he may proceed immediately for a breach of the agreement. 21 Wend. 175.

6.—When goods have been sold to be paid for partly in money, and partly in goods to be delivered to the vendor, the plaintiff must declare specially, and he cannot recover on the common count for goods sold and delivered. 1 Chit. Pl. 339; 1 Leigh’s N. P. 88; 1 H. Bl. 287; Holt, 179.

Gout, med. jur. contracts, is an inflammation of the fibrous and ligamentous parts of the joints.

2.—In cases of insurance on lives, when there is warranty of health, it seems that a man subject to the gout, is a life capable of being insured, if he has no sickness at the time to make it an unequal contract. 2 Park, Ins. 583.

Government, natural and political law, is the manner in which sovereignty is exercised in each state.

2.—There are three simple forms of government, the democratic, the aristocratic and monarchical. But these three simple forms may be varied to infinity by the mixture and divisions of their different powers. Sometimes by the word government is understood the body of men, or the individual in the state, to whom is intrusted the executive power. It is taken in this sense when the government is spoken of in opposition to other bodies in the state.

3.—Governments are also divided into monarchical and republican; among the monarchical states may be classed empires, kingdoms, and others; in these the sovereignty resides in a
single individual. There are some
monarchical states under the name of
duchies, counties, and the like. Re-
publican states are those where the
sovereignty is in several persons.
These are subdivided into aristocracies,
where the power is exercised by a few
persons of the first rank in the state,
and democracies which are those gov-
ernments where the common people
may exercise the highest powers. See
Aristocracy; Democracy; Despotism;
Monarchy; Theocracy.

GOVERNOR. The title of the
executive magistrate in each state
and territory of the United States.
Under the names of the particu-
lar states, the reader will find some
of the duties of the governor of such
state.

GRACE. Is that which a person
is not entitled to by law, but which is
extended to him as a favour; a pardon,
for example, is an act of grace. There
are certain days allowed to the payer
of a promissory note or bill of exchange,
beyond the time which appears on its
face, which are called days of grace,
(q. v.)

GRAFFER. This word is a cor-
rupption of the French word greffier, a
clerk, or prothonotary. It signifies
a notary or scrivener; vide stat. 5
Hen. 8, c. 1.

GRAPT. A figurative term which
had obtained in chancery practice, to
designate the right of a mortgagee in
premises, to which the mortgageor at
the time of making the mortgage had
an imperfect title, but who afterwards
obtained a good title. In this case the
new mortgage is considered a graft
into the old stock, and, as arising in
consideration of the former title. 1
Ball & Beat. 46; Ib. 40; Ib. 57; 1
Pow. on Mortg. 190. See 9 Mass. 34.
The same principle has obtained by
legislative enactment in Louisiana. If
a person contracting an obligation
towards another, says the Civil Code,
art. 2371, grants a mortgage on prop-
erty of which he is not then the
owner, this mortgage shall be valid, if
the debtor should ever acquire the
ownership of the property, by whatever
right.

GRAIN, weight, is the twenty-
fourth part of a penny-weight.

2.—For scientific purposes, the
grain only is used, and sets of weights
are constructed in decimal progression,
from 10,000 grains downward to one-
hundredth of a grain.

GRAIN, corn, signifies wheat, rye,
barley, or other corn sown in the
ground. In Pennsylvania, a tenant
for a certain term is entitled to the
way-going crop. 5 Binn. 289, 258;
2 Binn. 487; 2 Serg. & Rawle, 14.

GRAINAGE, Eng. law. The name
of an ancient duty collected in London,
consisting of one-twentieth part of the
salt imported into that city.

GRAMME. A French weight.
The gramme is of a cubic centimetre
of distilled water, at the temperature
of zero. It is equal to 15,4441 grains
troy, or 5,6481 drachms avoirdupois.
Vide Measure.

GRAND. An epithet frequently
used to designate that the thing to
which it is joined is of more impor-
tance and dignity, than other things of
the same name; as, grand assize, a
writ in a real action to determine the
right of property in land; grand cape,
a writ used in England, on a plea of
land, when the tenant makes default
in appearance at the day given for the
king to take the land into his hands;
grand days, among the English law-
yers, are those days in term which are
solemly kept in the inns of court and
chancery, namely, Candlemas day, in
Hilary term; Ascension day, in Easter
term; and All-saint's day, in Michael-
mas term; which days are dies non
juridici. Grand distress is the name
of a writ so called because of its
extent, namely, to all the goods and
chattels of the party distrained within
the county; this writ is believed to be
peculiar to England. Grand Jury,
(q. v.) Grand serjeantry, the name of
an ancient English military tenure.

GRAND BILL OF SALE, Eng. law.
Is the name of an instrument used for
the transfer of a ship, while she is at
sea; it differs from a common bill of sale, (q. v.) See 7 Mart. Lo. R. 318; 1 Harr. Cond. Lo. R. 567.

GRAND Coutumier. Two collections of laws bore this title. The one, also called the Coutumier of France, is a collection of the customs, usages, and forms of practice, which had been used from time immemorial in France; the other called the Coutumier de Normandie, which indeed made a part of the former, with some alterations, was composed about the fourteenth of Henry II., in 1229, is a collection of the Norman laws, not as they stood at the Conquest of England by William the Conqueror, but some time afterwards, and contains many provisions, probably borrowed from the old English or Saxon laws. Hale’s Hist. C. L. c. 6.

GRAND Jury, practice. The grand jury is a body of men, consisting of not less than twelve nor more than twenty-three, taken at stated periods, from the mass of citizens residing in the proper county, in the manner prescribed by law.

2.—There is just reason to believe that this institution existed among the Saxons. Crabb’s C. L. 35. By the constitutions of Clarendon, enacted 10 H. 2, a. d. 1164, it is provided, that “if such men were suspected, whom non wished or dared to accuse, the sheriff, being thereto required by the bishop, should swear twelve men of the neighbourhood, or village to declare the truth respecting such supposed crime; the jurors being summoned as witnesses or accusers, rather than judges. If this institution did not exist before, it seems to be pretty certain that this statute established grand juries, or recognized them, if they existed before.

3.—A view of the important duties of grand juries will be taken, by considering, 1, the organization of the grand jury; 2, the extent of its jurisdiction; 3, the mode of doing business; 4, the evidence to be received; 5, their duty to make presentments; 6, the secrecy to be observed by the grand jury.

4.—1. Of the organization of the grand jury.—The law requires that twenty-four citizens shall be summoned to attend on the grand jury, but in practice, not more than twenty-three are sworn, because of the inconvenience which else might arise, of having twelve, who are sufficient to find a true bill, opposed to other twelve who might be against it. 6 Adolp. & Ell. 236; S. C. 33 E. C. L. R. 66; 2 Caines, R. 98. Upon being called, all who present themselves are sworn, as it scarcely ever happens that all who are summoned are in attendance.

The grand jury cannot consist of less than twelve, and from fifteen to twenty are usually sworn. 2 Hale, P. C. 161; 7 Sm. & Marsh. 58. Being called in the jury-box, they are usually permitted to select a foreman whom the court appoints, but the court may exercise the right to nominate one for them. The foreman then takes the following oath or affirmation, namely: “You, A B, as foreman of this inquest for the body of the ——, do swear (or affirm) that you will diligently inquire, and true presentments make, of all such articles, matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service; the commonwealth’s counsel, your fellows and your own, you shall keep secret; you shall present no one for envy, hatred, or malice; nor shall you leave any one unrepresented for fear, favour, affection, hope of reward or gain; but shall present all things truly, as they come to your knowledge, according to the best of your understanding, (so help you God.)” It will be perceived that this oath contains the substance of the duties of the grand jury. The foreman having been sworn or affirmed, the other grand jurors are sworn or affirmed according to this formula:—

“You and each of you do swear (or affirm) that the same oath (or affirmation) which your foreman has taken on his part, you and every one of you shall well and truly observe on your part.”

Being so sworn or affirmed, and
having received the charge of the court, the grand jury are organized, and may proceed to the room provided for them to transact the business which may be laid before them. 2 Burr. 1058; Bac. Ab. Juries. A. The grand jury constitute a regular body until discharged by the court, or by operation of law, as where they cannot continue by virtue of an act of assembly beyond a certain day. But although they have been formally discharged by the court, if they have not separated, they may be called back, and fresh bills submitted to them. 9 C. & P. 43; S. C. 38 E. C. L. R. 28.

5.—2. The extent of the grand jury’s jurisdiction. Their jurisdiction is co-extensive with that of the court for which they inquire, both as to the offences triable there, and the territory over which such court has jurisdiction.

6.—3. The mode of doing business. The foreman acts as president, and the jury usually appoint one of their number to perform the duties of secretary. No records are to be kept of the acts of the grand jury, except for their own use, because, as will be seen hereafter, their proceedings are to be secret. Being thus prepared to enter upon their duties, the grand jury are supplied with bills of indictment by the attorney-general against offenders. On these bills are endorsed the names of the witnesses by whose testimony they are supported. The witnesses are in attendance in another room, and must be called when wanted. Before they are examined as to their knowledge of the matters mentioned in the indictment, care must be taken that they have been sworn or affirmed. For the sake of convenience they are generally sworn or affirmed in open court before they are sent to be examined, and when so qualified, a mark to that effect is made opposite their names.

7.—In order to save time, the best practice is to find a true bill, as soon as the jury are satisfied that the defendant ought to be put upon his trial. It is a waste of time to examine any other witness after they have arrived at that conclusion. Twelve at least must agree, in order to find a true bill; but it is not required that they should be unanimous. Unless that number consent, the bill must be ignored. When a defendant is to be put upon his trial, the foreman must write on the back of the indictment “a true bill,” sign his name as foreman, and date the time of finding. On the contrary, where there is not sufficient evidence to authorize the finding of the bill, the jury return that they are ignorant whether the person accused committed the offence charged in the bill, which is expressed by the foreman endorsing on the bill “ignoramus,” signing his name as before, and dating the time.

8.—4. Of the evidence to be received. In order to ascertain the facts which the jury have not themselves witnessed, they must depend upon the statement of those who know them, and who will testify to them. When the witness, from his position and ability, has been in a condition to know the facts about which he testifies, he is deserving of implicit confidence; if, with such knowledge, he has no motive for telling a false or exaggerated story, has intelligence enough to tell what he knows, and give a probable account of the transaction. If, on the other hand, from his position he could not know the facts, or if knowing them, he distorts them, he is undeserving of credit. The jury are the sole judges of the credit and confidence to which a witness is entitled.

9.—Should any member of the jury be acquainted with any fact on which the grand jury are to act, he must, before he testifies, be sworn or affirmed, as any other witness, for the law requires this sanction in all cases.

10.—As the jury are not competent to try the accused, but merely to investigate the case so far as to ascertain whether he ought to be put on his trial; they cannot hear evidence in his favour; their’s is a mere preliminary inquiry; it is when he comes to be tried in court that he may defend himself.
by examining witnesses in his favour, and showing the facts of the case.

11.—5. Of presentments. The jury are required to make true presentments of all such matters which may be given to them in charge, or which have otherwise come to their knowledge. A presentment, properly speaking, is the notice taken by the grand jury of any offence from their own knowledge, as of a nuisance, a libel, or the like. In these cases, the authors of the offence should be named, so that they may be indicted.

12.—6. Of the secrecy to be observed by the grand jury. The oath which they have taken obliges them to keep secret, “the commonwealth’s counsel, your fellows and your own.” Although contrary to the general spirit of our institutions, which do not shun daylight, this secrecy is required by law for wise purposes. It extends to the votes given in any case, to the evidence delivered by witnesses, and the communications of the jurors to each other; the disclosure of these facts, unless under the sanction of law, would render the imprudent juror who should make them public, liable to punishment. Giving intelligence to a defendant that a bill has been found against him, to enable him to escape, is so obviously wrong, that no one can for a moment doubt its being criminal. The grand juror who should be guilty of this offence might, upon conviction, be fined and imprisoned. The duration of the secrecy appears not to be definitely settled, but it seems this injunction is to remain as long as the particular circumstances of each case require. In a case, for example, where a witness swears to a fact in open court, on the trial, directly in opposition to what he swore before the grand jury, there can be no doubt the injunction of secrecy, as far as regards this evidence, would be at an end, and the grand juror might be sworn to testify what this witness swore to in the grand jury’s room, in order that the witness might be prosecuted for perjury. 2 Russ. Cr. 616; 4 Greenl. Rep. 439; but see contra, 2 Halst. R. 347; 1 Car. & K. 519.

Vide, generally, 1 Chit. Cr. Law, 162; 1 Russ. Cr. 291; 2 Russ. Cr. 616; 2 Stark. Ev. 232, n. (1); 1 Hawk. 65, 506; 2 Hawk. ch. 25; 3 Story, Const. § 1778; 2 Swift’s Dig. 370; 4 Bl. Com. 402; Archib. Cr. Pl. 63.

GRANDCHILDREN, are the children of one’s children. Sometimes these may claim bequests given in a will to children, though in general they can make no such claim. 6 Co. 16.

GRANDFATHER, domestic relations, is the father of one’s father or mother. The father’s father is called the paternal grandfather; the mother’s father is the maternal grandfather.

GRANDMOTHER, domestic relations, is the mother of one’s father or mother. The father’s mother is called the paternal grandmother; the mother’s mother is the maternal grandmother.

GRANT, conveyancing concessio. Technically speaking, grants are applicable to the conveyance of incorporeal rights, though in the largest sense, the term comprehends every thing that is granted or passed from one to another, and is applied to every species of property. Grant is one of the usual words in a feoffment, and differs but little except in the subject-matter; for the operative words used in grants are deces et concessi, “have given and granted.”

2.—Incorporeal rights are said to lie in grant and not in livery, for existing only in idea, in contemplation of law, they cannot be transferred by livery of possession; of course at common law, a conveyance in writing was necessary, hence they are said to be in grant, and pass by the delivery of the deed.

3.—To render the grant effectual, the common law required the consent of the tenant of the land out of which the rent, or other incorporeal interest proceeded; and this was called attornement, (q. v.) It arose from the intimate alliance between the lord and vassal existing under the feudal tenures.
The tenant could not alien the feud without the consent of the lord, nor the lord part with his seignory without the consent of the tenant. The necessity of attornment has been abolished in the United States. 4 Kent, Com. 479. He who makes the grant is called the grantor, and he to whom it is made, the grantee. Vide Com. Dig. h. t.; 14 Vin. Ab. 27; Bac. Ab. h. t.; 4 Kent, Com. 477; 2 Bl. Com. 317, 440; Perk. ch. 1; Touchs. c. 12; 8 Cowen's R. 36.

4.—By the word grant, in a treaty, is meant not only a formal grant, but any concession, warrant, order, or permission to survey, possess or settle, whether written or parole, express, or presumed from possession. Such a grant may be made by law, as well as by a patent pursuant to a law. 12 Pet. R. 410. See, generally, 9 A. & E. 532; 5 Mass. 472; 9 Pick. 80.

GRANT, BARGAIN, AND SELL. By the laws of the states of Pennsylvania, Delaware, Missouri, and Arkansas, it is declared that the words grant, bargain, and sell, shall amount to a covenant that the grantor was seised of an estate in fee, freed from encumbrances done or suffered by him, and for quiet enjoyment as against all his acts. These words do not amount to a general warranty, but merely to a covenant that the grantor has not done any acts, nor created any encumbrance, by which the estate may be defeated. 2 Binn. R. 95; 3 Penna. R. 313; 3 Penna. R. 317, note; 1 Rawle, 377; 1 Misso. 576; vide 2 Caines's R. 188; 1 Murph. R. 343; Ib. 348; Ark. Rev. Stat. ch. 31, s. 1; 11 S. & R. 109.

GRANTEES. He to whom a grant is made.

GRANTOR. He by whom a grant is made.

GRASSHEARTH, old Eng. law. The name of an ancient customary service of tenant's doing one day's work for their landlord.

GRATIFICATION. A reward given voluntarily for some service or benefit rendered, without being requested so to do, either expressly or by implication.

GRATIS, without reward or consideration.

2.—When a bailee undertakes to perform some act or work gratis, he is answerable for his gross negligence, if any loss should be sustained in consequence of it; but a distinction exists between non-feasance and misfeasance; between a total omission to do an act which one gratuitously promises to do, and a culpable negligence in the execution of it; in the latter case he is responsible, while in the former he would not, in general, be bound to perform his contract. 4 Johns. R. 84; 5 T. 143; 2 Ld. Raym. 913.

GRATUITOUS CONTRACT, civ. law, is one the object of which is for the benefit of the person with whom it is made, without any profit, received or promised, as a consideration for it; as, for example, a gift.

GRAVAMEN. The grievance complained of; the substantial cause of the action. See Greenl. Ev. § 66.

GRAVE, a place where a dead body is interred.

2.—The violation of the grave, by taking up the dead body, or stealing the coffin or grave-clothes, is a misdemeanor at common law. 1 Russ. on Cr. 414. A singular case, illustrative of this subject, occurred in Louisiana. A son, who inherited a large estate from his mother, buried her with all her jewels, worth $2000; he then made a sale of all he inherited from his mother, for $30,000. After this, a thief broke the grave and stole the jewels, which, after his conviction, were left with the clerk of the court, to be delivered to the owner. The son claimed them, and so did the purchaser of the inheritance; it was held that the jewels, although buried with the mother, belonged to the son, and that they passed to the purchaser by a sale of the whole inheritance, 6 Robins. L. R. 488. See Dead Body.

3.—In New York, by statutory enactment, it is provided, that every person who shall open a grave, or other place of interment, with intent, 1, to remove the dead body of any
human being, for the purpose of selling the same, or for the purpose of dissection; or, 2, to steal the coffin, or any part thereof, or the vestments or other articles interred with any dead body, shall, upon conviction, be punished by imprisonment, in a state prison, not exceeding two years, or in a county gaol, not exceeding six months, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. Rev. Stat. part 4, tit. 5, art. 3, § 15.

GREAT CHARTER. The name of the charter granted by the English King John, securing to the English people their principal liberties; magna charta, (q. v.)

GREAT LAW. The name of an act of the legislature of Pennsylvania, passed at Chester, immediately after the arrival of William Penn, December 7th, 1682. Serg. Land Laws of Penn. 24, 230.

GREE, obsolete, signified satisfaction; as, to make gree to the parties, is, to agree with, or satisfy them for, an offence done.

GREEN WAX, Engl. law. The name of the estrats of fines, issues, and amercements in the exchequer, delivered to the sheriff under the seal of that court, which is made with green wax.

GROS BOIS, or GROSSE BOIS. Such wood as, by the common law or custom, is reputed timber. 2 Inst. 642.

GROSS, absolute, entire, not depending on another. Vide Common.

Gross adventure. By this term the French law writers signify a maritime law, or bottomy, (q.v.) It is so called because the lender exposes his money to the perils of the sea; and contributes to the gross or general average. Poth. h. t.; Pard. Dr. Com. h. t.

GROSS WEIGHT. The total weight of goods or merchandise, with the chests, bags, and the like, from which are to be deduced tare and tret.

GROUND-RENT, estates. In Pennsylvania, this term is used to signify a perpetual rent issuing out of some real estate. This rent is redeemable where there is a covenant in the deed that, before the expiration of a period therein named, it may be redeemed by the payment of a certain sum of money; or it is irredeemable, when there is no such agreement; and, in the latter case, it cannot be redeemed without the consent of both parties. See 1 Whart. R. 337; 4 Watts, R. 98; Cro. Jac. 510; 6 Halst. 262; 7 Wend. 463; 7 Pet. 596, and Emphytesosis.

GROUNDAGE, mar. law, is the consideration paid for standing a ship in a port. Jacobs, Dict. h. t. Vide Demurrage.

GUAGER. An officer appointed to examine all tuns, pipes, hogsheads, barrels, and tiers of wine, oil, and other liquids, and to give them a mark of allowance, as containing lawful measure.

GUARANTEE, contracts. He to whom a guaranty is made.

2. The guarantee is entitled to receive payment, in the first place, from the debtor, and, secondly, from the guarantor. He must be careful not to give time beyond that stipulated in original agreement, to the debtor, without the consent of the guarantor; the guarantee should, at the instance of the guarantor, bring an action against the principal for the recovery of the debt. 2 Johns. Ch. R. 554; 17 Johns. R. 324; 8 Serg. & Rawle, 116; 10 Serg. & Rawle, 33; 2 Bro. C. C. 579, 582; 2 Ves. jr. 542. But the mere omission of the guarantee to sue the principal debtor will not, in general, discharge the guarantor. 8 Serg. & Rawle, 112; 3 Yeates, R. 157; 6 Binn. R. 292, 300.

GUARANTOR, contracts. He who makes a guaranty.

2. The guarantor is bound to fulfil the engagement he has entered into, provided the principal debtor does not. He is bound only to the extent that the debtor is, and any payment made by the latter, or release of him by the creditor, will operate as a release of the guarantor, 3 Penn. R. 19; or even if the guarantee should give time
to the debtor beyond that contained in the agreement, or substitute a new agreement, or do any other act by which the guarantor’s situation would be worse, the obligation of the latter would be discharged. Smith on Mer. Law, 255.

3. — A guarantor differs from a surety in this, that the former cannot be sued until a failure on the part of the principal, when sued; while the latter may be sued at the same time with the principal. 10 Watts, 258.

GUARANTY, contracts, is a promise made upon a good consideration, to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who is, in the first instance, liable to such payment or performance.

2. — The English statute of frauds, 29 Car. II. c. 3, which, with modification, has been adopted in most of the states, 3 Kent’s Com. 50, requires that “upon any special promise to answer for the debt, default or miscarriage of another person, the agreement or some memorandum or note thereof, must be in writing, and signed by the party to be charged therewith, or some other thereunto by him lawfully authorised.” This clause of the statute is not in force in Pennsylvania. To render this contract valid, under the statute, its form must be in writing; it must be made upon a sufficient consideration; and it must be to fulfill the engagement of another.

3. — 1. The agreement must be in writing and signed by the party to be bound, or some one authorised by him. It should substantially contain the names of the party promising, and of the person on whose behalf the promise is made; the promise itself, and the consideration for it.

4. — 2. The word agreement in the statute includes the consideration for the promise, as well as the promise itself; if, therefore, the guaranty be for a subsisting debt, or engagement of another person, not only the engagement but the consideration for it, must appear in the writing. 5 East, 10. This has been the construction which has been given in England, and which has been followed in New York and South Carolina, though it has been rejected in several other states. 3 John. R. 210; 8 John. R. 29; 2 Nott. & McCord, 372, note; 4 Greenl. R. 150, 387; 6 Conn. R. 81; 17 Mass. R. 122. The decisions have all turned upon the force of the word agreement; and where by statute the word promise has been introduced, by requiring the promise or agreement, to be in writing, as in Virginia, the construction has not been so strict. 5 Cranch’s R. 151, 2.

5. — 3. The guaranty must be to answer for the debt or default of another. The term debt implies, that the liability of the principal debtor had been previously incurred; but a default may arise upon an executory contract and a promise to pay for goods to be furnished to another, is a collateral promise to pay on the other’s default, provided the credit was given, in the first instance, solely to the other. It is a general rule that when a promise is made by a third person, previous to the sale of goods, or other credit given, or other liability incurred, it comes within the statute, when it is conditional upon the default of another, who is solely liable in the first instance, otherwise not; the only inquiry to ascertain this, is, to whom was it agreed that the vendor or creditor should look in the first instance? Many nice distinctions have been made on this subject. 1st. When a party actually purchases goods himself, which are to be delivered to a third person for his sole use, and the latter was not to be responsible, this is not a case of guaranty, because the person to whom the goods were furnished never was liable. 8 T. R. 80. — 2d. Where a person buys goods, or incurs any other liability, jointly with another, but for the use of that other, and this fact is known to the creditor, the guaranty must be in writing. 8 John. R. 89. — 3d. A person may make himself liable, in the third place, by adding his credit to that of another, but conditionally only, in case of the other’s default. This species of pro-
mise comes immediately within the meaning of the statute, and in the cases is sometimes termed a collateral promise.

6.—Guaranties are either special, or for a particular transaction, or they are continuing guaranties; that is, they are to be valid for other transactions, though not particularly mentioned. 2 How. U. S. 426; 1 Metc. 24; 7 Pet. 113.

Vide generally, Fell on Mercantile Guaranties; 3 Kent’s Com. 86; Theob. P. & S. ch. 2 and 3; Smith on Mer. Law, ch. 10; 3 Saund. 414, n. 5; Wheat. Dig. 182; 14 Wend. 231. The following authorities refer to cases of special guaranties of notes, 6 Conn. 81; 20 John. 367; 1 Mason, 365; 8 Pick. 423; 2 Dev. & Bat. 470; 14 Wend. 231; of absolute guaranties, 2 Har. & J. 186; 3 Fairf. 193; 1 Mason, 323; 12 Pick. 123; conditional guaranties, 12 Conn. 433; to promises to guaranty, 8 Greenl. 234; 16 John. 67.

GUARDIANS, domestic relations. Guardians are divided into, guardians of the person, in the civil law called tutors; and guardians of the estate, in the same law known by the name of curators; for the distinction between them, vide article Curatorship, and 2 Kent, Com. 186.

2.—1. A guardian of the person is one who has been lawfully invested with the care of the person of an infant, whose father is dead.

3.—The guardian must be properly appointed; he must be capable of serving; he must be appointed guardian of an infant; and after his appointment he must perform the duties imposed on him by his office.

4.—1st. In England and in some of the states, where the English law has been adopted in this respect, as in Pennsylvania, Rob. Dig. 312, by stat. 12 Car. II. c. 24, power is given to the father to appoint a testamentary guardian, for his children, whether in esse, or in ventre sa (leur) mere. According to Chancellor Kent, this statute has been adopted in the state of New York, and probably throughout this country.

2. Kent, Com. 184. The statute of Connecticut, however, is an exception, there the father cannot appoint a testamentary guardian. 1 Swift’s Dig. 48.

5.—All other kinds of guardians (to be hereafter noticed) have been superseded in practice by guardians appointed by courts having jurisdiction of such matters. Courts of chancery, orphans’ courts, and courts of a similar character having jurisdiction of testamentary matters in the several states, are invested generally with the power of appointing guardians.

6.—2dly, The person appointed must be capable of performing the duties, an idiot therefore cannot be appointed guardian.

7.—3dly, The person over whom a guardian is appointed must be an infant; for after the party has attained his full age he is entitled to all his rights, if of sound mind, and, if not, the person appointed to take care of him is called a committee, (q. v.) No guardian of the person can be appointed over an infant whose father is alive, unless the latter be non compos mentis, in which case one may be appointed, as if the latter were dead.

8.—4thly, After his appointment the guardian of the person is considered as standing in the place of the father, and of course the relative powers and duties of guardian and ward correspond, in a great measure to those of parent and child; in one prominent matter they are different. The father is entitled to the services of his child, and is bound to support him; the guardian is not entitled to the ward’s services, and is not bound to maintain him out of his own estate.

9.—2. A guardian of the estate is one who has been lawfully invested with the power of taking care and managing the estate of an infant, 1 John. R. 561; 7 John, Ch. R. 150. His appointment is made in the same manner as that of a guardian of a person. It is the duty of the guardian to take reasonable and prudent care of the estate of the ward, and manage it in the most advantageous manner; and when
the guardianship shall expire, to account with the ward for the administration of the estate.

10.—Guardians have also been divided into guardians by nature; guardians by nurture; guardians in socage; testamentary guardians; statutory guardians; and guardians ad litem.

11.—1. Guardian by nature, is the father, and, on his death, the mother; this guardianship extends only to the custody of the person, 3 Bro. C. C. 186; 1 John. Ch. R. 3; 3 Pick. R. 213; and continues till the child shall acquire the age of twenty-one years. Co. Litt. 84 a.

12.—2. Guardian by nurture, occurs only when the infant is without any other guardian, and the right belongs exclusively to the parents, first the father, and then the mother. It extends only to the person, and determines, in males and females at the age of fourteen. This species of guardianship has become obsolete.

13.—3. Guardian in socage, has the custody of the infant’s lands as well as his person. The common law gave this guardianship to the next of blood to the child to whom the inheritance could not possibly descend; this species of guardianship has become obsolete, and does not perhaps exist in this country; for the guardian must be a relation by blood who cannot possibly inherit, and such a case can rarely exist. 2 Wend. 153; 15 Wend. 631; 6 Paige. 390; 7 Cowen. 36; 5 John. 66.

14.—4. Testamentary guardians; these are appointed under the stat, 12 Car. II., above mentioned; they supersede the claims of any other guardian, and extend to the person, and real and personal estate of the child, and continue till the ward arrives at full age.

15.—5. Guardians appointed by the courts, by virtue of some statutory authority. The distinction of guardians by nature, and by socage, appear to have become obsolete, and have been essentially superseded in practice by the appointment of guardians by courts of chancery, orphans’ courts, probate courts, and such other courts as have jurisdiction to make such appointments. Testamentary guardians might, as well as those of this class, be considered as statutory guardians, inasmuch as their appointment is authorised by a statute.

16.—6. Guardian ad litem, is one appointed for the infant to defend him in an action brought against him. Every court when an infant is sued in a civil action, has power to appoint a guardian ad litem when he has no guardian, for as the infant cannot appoint an attorney, he would be without assistance if such a guardian were not appointed. The powers and duties of a guardian ad litem are confined to the defence of the suit. F. N. B. 27; Co. Litt. 88 b. note (16); Ib. 135 b. note (1).

GUARDIANS OF THE POOR. The name given to officers whose duties are very similar to those of overseers of the poor, (q. v.), that is, generally to relieve the distresses of such poor persons who are unable to take care of themselves.

GUARDIANSHIP, persons, is the power or protective authority given by law, and imposed on an individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age, renders him unable to protect himself. Vide Tutor.

GUEST. A traveller who stays at an inn or tavern with the consent of the keeper, Bac. Ab. Inns. C 5; 8 Co. 32; and if after having taken lodgings at an inn, he leaves his horse there, and goes elsewhere to lodge, he is still to be considered a guest. But not if he merely leaves goods for which the landlord receives no compensation, 1 Salk. 388; 2 Lord Raym. 866; Cro. Jac. 188. The length of time a man is at an inn makes no difference, whether he stays a day, or a week, or a month, or longer, so always, that, though not strictly transiens, he retains his character as a traveller. But if a person comes upon a special contract to board and sojourn at an inn, he is not in the sense of the law a guest,
but a boarder. Bac. Ab. Inns, C 5; Story, Bailm. § 477.

2.—Innkeepers are generally liable for all goods belonging to the guest, brought within the inn. It is not necessary that the goods should have been in the special keeping of the innkeeper to make him liable. This rule is founded on principles of public utility, to which all private considerations ought to yield. 2 Kent, Com. 459; 1 Hayw. N. C. Rep. 40; 14 John. R. 175; Dig. 4, 9, 1. Vide 3 Barn. & Ald. 283; 4 Maule & Selw. 306; 1 Holt's N. P. 209; 1 Salk. 387; S. C. Carth, 417; 1 Bell's Com. 469; Dane's Ab. Index, h. t.; Yelv. 67, a; Smith's Leading Cases, 47; 8 Co. 32.

GUIDON DE LA MEB, (L. E.)
The name of a treatise on maritime law, written in Rouen, then Normandy, in 1671, as is supposed. It was received on the continent of Europe almost as equal in authority to one of the ancient codes of maritime law. The author of this work is unknown.

GUILD, a fraternity or company.

Guildhall, the place of meeting of guilds.

GUILT, crim. law, is that quality in a person which renders him criminal, and to which the law annexes a punishment; or it is that disposition to violate the law, which has manifested itself by some act already done. The opposite of innocence. Vide Rutherf. Inst. B. 1, c. 18, s. 10.

GUILTY. The state or condition of a person who has committed a crime, misdemeanor or offence.

2.—This word implies a malicious intent, and must be applied to something universally allowed to be a crime, Cowp. 275.

3.—In pleading, it is a plea by which a defendant who is charged with a crime or misdemeanor admits or confesses it. When the accused is arraigned, the clerk asks him, “How say you, A B, are you guilty or not guilty?” His answer, which is given ore tenus, is called his plea; and when he admits the charge in the indictment he answers or pleads guilty.

H.

HABEAS CORPORA, in English practice, is a writ issued out of the C. P. commanding the sheriff to compel the appearance of a jury in the cause between the parties. It answers the same purpose in that court as the Distrippingas juratori answers in the K. B. For a form, see Boote's Suit at Law, 151.

HABEAS CORPUS, remedies. A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of a court of which he is a judge, issued in the name of the sovereignty where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody or under his restraint, commanding him to produce such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.

2.—This writ was at common law considered as a remedy to remove the illegal restraint on a freeman, but anterior to the 31 Charles II, its benefit was, in a great degree, eluded by time-serving judges, who awarded it only in term time, and who assumed a discretionary power of awarding or refusing it. 3 Bulstr. 23.

3.—To secure the full benefit of it to the subject, the statute 31 Car. 2, c. 2, commonly called the habeas corpus act was passed. This gave to the writ the vigour, life, and efficacy requisite for the due protection of the liberty of the subject. In England this is considered as a high prerogative writ, issuing out of the court of king's bench, in term time or vacation, and running into every part of the king's dominions. It is also grantable as a matter of right, ex merito justitiae, upon the application of any person.
4.—The interdict De homine libero exhibendo of the Roman law, was a remedy very similar to the writ of habeas corpus. When a freeman was restrained by another contrary to good faith the pretor ordered his interdict that such person should be brought before him that he might be liberated. Dig. 43, 29, 1.

5.—The habeas corpus act has been substantially incorporated into the jurisprudence of every state in the Union, and the right to the writ has been secured by most of the constitutions of the states, and of the United States. The statute of 31 Car. 2, e. 2, provides that the person imprisoned, if he be not a prisoner convict, or in execution of legal process, or committed for treason or felony, plainly expressed in the warrant, or has not neglected wilfully, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, may apply by any one in his behalf, in vacation time, to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And, in term time, any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.

6.—By the habeas corpus law of Pennsylvania, (the act of 18th February, 1785,) the benefit of the writ of habeas corpus is given in “all cases where any person, not being committed or detained for any criminal, or supposed criminal matter,” who “shall be confined or restrained of his or her liberty, under any colour or pretence whatsoever.” A similar provision is contained in the habeas corpus act of New York. Act of 21st April, 1818, sect. 41, ch. 277.

7.—The constitution of the United States, art. 1, s. 9, n. 2, provides, that “the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it;” and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ, a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal.

8.—It is proper to consider, 1, when it is to be granted; 2, how it is to be served; 3, what return is to be made to it; 4, the hearing; 5, the effect of the judgment upon it.

9.—1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, as in Pennsylvania and New York, in all cases where he is confined or restrained of his liberty, under any colour or pretence whatsoever. But persons discharged on bail will not be considered as restrained of their liberty so as to be entitled to a writ of habeas corpus, directed to their bail. 3 Yeates, R. 263; 1 Serg. & Rawle, 356.

10.—2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers. In Louisiana, it is provided that if the person to whom it is addressed shall refuse to receive the writ, he who is charged to serve it, shall inform him of its contents; if he to whom the writ is addressed conceal himself, or refuse admittance to the person charged to serve it on him, the latter shall affix the order on the exterior of the place where the person resides, or in which the petitioner is confined. Lo. Code of Pract. art. 803. The service is proved by the oath of the party making it.

11.—3. The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed; he either complies, or he does not. If he complies, he must positively answer; 1, whether he has or has not in his power or custody
the person to be set at liberty, or whether that person is confined by him; if he return that he has not, and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty, and other punishment, for making such a false return. If he return that he has such person in his custody, then he must show by his return, further, by what authority, and for what cause, he arrested or detained him. If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.

12.—4. When the prisoner is brought before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the period required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody.

13.—For those offences which are bailable when the prisoner offers sufficient bail, he is to be bailed.

14.—He is to be remanded in the following cases: 1, when it appears he is detained upon legal process, out of some court having jurisdiction of criminal matters; 2, when he is detained by warrant, under the hand and seal of a magistrate, for some offence for which, by law, the prisoner is not bailable; 3, when he is a convict in execution, or detained in execution by legal civil process; 4, when he is detained for a contempt, specially and plainly charged in the commitment, by some existing court having authority to commit for contempt; and, 5, when he refuses or neglects to give the requisite bail in a case bailable of right. The judge is not confined to the return, but he is to examine into the causes of the imprisonment, and then he is to discharge, bail, or remand, as justice shall require. 2 Kent, Com. 26; Lo. Code of Prac. art. 819.

15.—5. It is provided by the habeas corpus act, that a person set at liberty by the writ, shall not again be imprisoned for the same offence, by any person whomsoever, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear; or other court having jurisdiction of the cause. 4 Johns. R. 318; 1 Binn. 374; 5 John. R. 282.

16.—The habeas corpus can be suspended only by authority of the legislature. The constitution of the United States provides, that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require it. Whether this writ ought to be suspended depends on political considerations, of which the legislature is to decide. 4 Cranch, 101. The proclamation of a military chief, declaring martial law, cannot, therefore, suspend the operation of the law. 1 Harr. Cond. Rep. (Lo.) 157, 159; 3 Mart. Lo. R. 531.

17.—There are various kinds of this writ; the principal of which are explained below.

18.—Habeas corpus ad deliberandum et recipiendum, is a writ which lies to remove a prisoner to take his trial in the county where the offence was committed. Bac. Ab. Habeas Corpus, A.

19.—Habeas corpus ad faciendum et recipiendum, is a writ which issues out of a court of competent jurisdiction, when a person is sued in an inferior court, commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, (whence this writ is frequently denominated habeas corpus cum causa,) to do and receive whatever the court or the
judge issuing the writ shall consider in that behalf. This writ may also be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to surrender him in his own discharge; upon the return of this writ, the court will cause an exoneratur to be entered on the bail-piece, and remand the prisoner to his former custody. Tidd’s Pr. 405; 1 Chit. Cr. Law, 132.

20.—Habeas corpus ad prosequendum, is a writ which issues for the purpose of removing a prisoner in order to prosecute. 3 Bl. Com. 130.

21.—Habeas corpus ad respondendum, is a writ which issues at the instance of a creditor or one who has a cause of action against a person who is confined by the process of some inferior court; in order to remove the prisoner and charge him with this new action in the court above. 2 Mod. 198; 3 Bl. Com. 107.

22.—Habeas corpus ad satisfaciendum, is a writ issued at the instance of a plaintiff for the purpose of bringing up a prisoner, against whom a judgment has been rendered, in a superior court to charge him with the process of execution. 2 Lill. Pr. Reg. 4; 3 Bl. Com. 129, 130.

23.—Habeas corpus ad subjiicendum, by way of eminence called the writ of habeas corpus, (q. v.), is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his citation and detention, ad faciendum, subjiicendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. 3 Bl. Com. 131; 3 Story, Const. § 1333.

24.—Habeas corpus ad testificandum, a writ issued for the purpose of bringing a prisoner, in order that he may testify, before the court. 3 Bl. Com. 130.

25.—Habeas corpus cum causâ, is a writ which may be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to render him in their own discharge. Tidd’s Pr. 405; upon the return of this writ the court will cause an exoneratur to be entered on the bail-piece, and remand the defendant to his former custody. Id. ibid.; 1 Chit. Cr. Law, 132. Vide, generally, Bac. Ab. h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; the various American Digests, h. t.; Lo. Code of Prac. art. 791 to 827; Dane’s Ab. Index, h. t.

HABENDUM, in conveyancing. This is a Latin word which signifies to have.

2.—In conveyancing, it is that part of a deed which usually declares what estate or interest is granted by it, its certainty, duration, and to what use. It sometimes qualifies the estate, so that the general implication of the estate, which, by construction of law, passes in the premises, may by the habendum be controlled; in which case the habendum may enlarge the estate, but not totally contradict, or be repugnant to it.

3.—The habendum commences in our common deeds with the words, “to have and to hold.” 2 Bl. Com. 298; 14 Vin. Ab. 143; Com. Dig. Fait, E 9; 2 Co. 55 a; 8 Mass. R. 175; 1 Litt. R. 220; Cruise, Dig. tit. 32, c. 20, s. 69 to 93; 5 Serg. & Rawle, 375; 2 Rolle, Ab. 65; Plowd. 153; Co. Litt. 183; Martin’s N. C. Rep. 28; 4 Kent, Com. 456; 3 Prest. on Abstr. 206 to 210; 5 Barnw. & Cres. 709; 7 Greenl. R. 455; 6 Conn. R. 289; 6 Har. & J. 132; 3 Wend. 99.

HABERDASHER, a dealer in miscellaneous goods and merchandise. HABERÉ. To cause; to have. This word is used in composition. HABERE FACIAS POSSESSIONEM, practice, remedies. The name of a writ of execution in the action of ejectment.

2.—The sheriff is commanded by this writ that without delay he cause the plaintiff to have possession of the land in dispute which is therein described; a fi. fa. or ca. sa. for costs may be included in the writ. The duty of the sheriff in the execution and return of that part of the writ, is the
same as on a common *fi*. *fa*. or ca. *sa*. The sheriff is to execute this writ by delivering a full and actual possession of the premises to the plaintiff. For this purpose he may break an outer or inner door of the house, and, should he be violently opposed, he may raise the *posse comitatus*. Wats. on Sher. 60, 215; 5 Co. 91 b; 1 Leon. 145.

3.—The name of this writ is abbreviated *hab. fa. poss.* Vide 10 Vin. Ab. 14; Tidd’s Pr. 1081, 8th Engl. edit.; 2 Arch. Pr. 58; 3 Bl. Com. 412; Bing. on Execut. 115, 252; Bac. Ab. h.t.

**HABERE FACIAS SEISINAM**, *practise, remedies*. The name of a writ of execution, used in most real actions, by which the sheriff is directed that he cause the demandant to have seisin of the lands which he has recovered.

2.—This writ may be taken out at any time within a year and day after judgment. It is to be executed nearly in the same manner as the writ of *habere facias possessionem*, and, for this purpose, the officer may break open the outer door of a house to deliver seisin to the demandant. 5 Co. 91 b; Com. Dig. Execution, E; Wats. Off. of Sheriff, 238. The name of this writ is abbreviated *hab. fa. seis.* Vide Bingham. on Execut. 115, 252; Bac. Ab. h.t.

**HABERE FACIAS VISUM**, *practise*, the name of a writ which lies when a view is to be taken of lands and tenements. F. N. B. Index, verbo, View.


**HABITATION, civil law**, was the right of a person to live in the house of another without prejudice to the property.

2.—It differed from a usufruct, in this, that the usufructuary might have applied the house to any purpose, as, a store or manufactury; whereas the party having the right of habitation could only use it for the residence of himself and family. 1 Bro. Civ. Law, 184; Domat, l. 1, t. 11, s. 2, n. 7.

**HABITATION, estates**. A dwelling-house, a home-stall. 2 Bl. Com. 4; 4 Bl. Com. 220. Vide *House*.

**HABITUAL DRUNKARD**, one who is so frequently drunk as to manifest a design of repeating the same act.

2.—By the laws of Pennsylvania a habitual drunkard is put nearly upon the same footing with a lunatic; he is deprived of his property and a committee is appointed by the court to take care of his person and estate. Act of 13th June, 1836, Pamph. p. 589. Vide 6 Watts’s Rep. 139; 1 Ashm. R. 71.

**HABITUALLY**, so frequently as to show a design of repeating the same act. 2 N. S. 622; 1 Mart. (Lo.) R. 149.

**HAD BOTE**, *Engl. law*. A recompense or amends made for violence offered to a person in holy orders.

**HEREDES PROXIMI**, are the children or descendants of the deceased. Dalr. Feud. Pr. 110; Spellm. Remains.

**HEREDES REMOTIORES**. The kinsmen other than children or descendants. Dalr. Feud. Pr. 110; Spellm. Remains.

**HALF**. One of two equal parts. This word is used in composition; as, half cent, half dime, &c.

**HALF-BLOOD, parentage, kindred**. When persons are descended from only one parent in common, they are of the half-blood, or related only by half in the same degree that children descended from the same parents are. For example, if John marry Sarah and has a son by that marriage, and after Sarah’s death he marry Maria, and has by her another son, these children are of the half-blood, whereas two of the children of John and Sarah would be of the whole blood.

2.—By the English common law, one related to an intestate of the half-blood only, could never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by the 3 and 4 Wm. 4, c. 106.

3.—In this country the common law principle on this subject may be considered as not being in force, though in some states some distinction is still pre-
served between the whole and the half blood. 4 Kent, Com. 403, n.; 1 Badg. & Dev. (N. C.) Rep. 160; 2 Yerg. 115; 1 McCard, 456; Dane’s Ab. Index, h. t.; Reeves on Descents, passim. Vide Descents.

HALF BROTHER AND HALF SISTER. Persons whose father is the same, who have different mothers; or whose mother is the same, who have different fathers, are so called.

HALF CENT, money, a copper coin of the United States, of the value of one two-hundredth part of a dollar, or five mills. It weighs eighty-four grains. Act of January 18, 1837, s. 12, 4 Sharswood’s cont. of Story’s L. U. S. 2523, 4. Vide Money.

HALF DEFENCE, pleading. It is the peculiar form of a defence, which is as follows, “venit et defendit vim et injuriun, et dicit,” &c. It differs from full defence. Vide Defence; &c. et cetera.

HALF DIME, money, a silver coin of the United States, of the value of one-twentieth part of a dollar, or five cents. It weighs twenty grains and five-eights of a grain. Of one thousand parts, nine hundred are of pure silver, and one hundred are of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharswood’s cont. of Story’s L. U. S. 2523, 4. Vide Money.

HALF DOLLAR, money, a silver coin of the United States of the value of fifty cents. It weighs two hundred and six and one-fourth grains. Of one thousand parts, nine hundred are of pure silver, and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF EAGLE, money, a gold coin of the United States, of the value of five dollars. It weighs one hundred and twenty-nine grains. Of one thousand parts, nine hundred are of pure gold, and one-hundred of alloy. Act of January 18th, 1837, 4 Sharsw. cont. of Story’s L. U. S. 2523, 4. Vide Money.

HALF SEAL, is a seal used in the English chancery for the sealing of commissions to delegates appointed upon any appeal, either in ecclesiastical or marine causes.

HALF YEAR. In the computation of time, a half year consists of one hundred and eighty-two days. Co. Litt. 135 b; Rev. Stat. of N. Y. part 1, c. 19, t. 1, § 3.

HALL. A public building used either for the meetings of corporations, courts, or employed to some public uses; as the city hall, the town hall. Formerly this word denoted the chief mansion or habitation.

HALLUCINATION, med. jur. It is a species of mania, by which “an idea reproduced by the memory is associated and embodied by the imagination.” This state of mind is sometimes called delusion or waking dreams.

2.—An attempt has been made to distinguish hallucinations from illusions; the former are said to be dependent on the state of the intellectual organs; and, the latter, on that of those of sense. Ray, Med. Jur. § 99; 1 Beck, Med. Jur. 538, note. An instance is given of a temporary hallucination in the celebrated Ben Jonson, the poet. He told a friend of his that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartars, Romans and Carthagians, fight, in his imagination. 1 Coll. on Lun. 34. If instead of being temporary, this affliction of his mind had been permanent, he would doubtless have been considered insane. See on the subject of spectral illusions, Hibbert, Alderson and Farrar’s Essays; Scott on Demonology, &c.; Bostock’s Physiology, vol. 3, p. 91, 161; 1 Esquirol, Maladies Mentates, 159.

HALMOT: The name of a court among the Saxons. It had civil and criminal jurisdiction.

HAMESUCKEN, Scotch law. The crime of hamesucken consists in “the felonious seeking and invasion of a person in his dwelling-house.” 1 Hume, 312; Burnett, 86; Alison’s Princ. of the Cr. Law of Scotl. 199.

2.—The mere breaking into the house, without the personal violence
does not constitute the offence, nor does the violence without an entry with intent to commit an assault. It is the combination of both which completes the crime. 1. It is necessary that the invasion of the house should have proceeded from forethought malice; but it is sufficient, if, from any illegal motive, the violence has been meditated, although it may not have proceeded from the desire of wreaking personal revenge properly so called. 2. The place where the assault was committed must have been the proper dwelling-house of the party injured, and not a place of business, visit, or occasional residence. 3. The offence may be committed equally in the day as in the night, and not only by effraction of the building by actual force, but by an entry obtained by fraud, with the intention of inflicting personal violence, followed by its perpetration. 4. But unless the injury to the person be of a grievous and material character, it is not hamesucken, though the other requisites to the crime have occurred. When this is the case, it is immaterial whether the violence be done lucrē causa, or from personal spite. 5. The punishment of hamesucken in aggravated cases of injury, is death; in cases of inferior atrocity, an arbitrary punishment. Alison’s Pr. of Cr. Law of Scotl. ch. 6; Ersk. Pr. L. Scotl. 4, 9, 23. This term was formerly used in England instead of the now modern term burglary. 4 Bl. Com. 223.

**HANAPER OFFICE, Eng. law.** This is the name of one of the offices belonging to the English court of chancery. 3 Bl. Com. 49.

**HAND.** That part of the human body at the end of the arm.

2.—Formerly the hand was considered as the symbol of good faith, and some contracts derive their names from the fact that the hand was used in making them; as handsale, (q. v.) mandatum, (q. v.) which comes from a manu data. The hand is still used for various purposes; when a person is accused of a crime and he is arraigned, he is asked to hold up his right hand; and when one is sworn as a witness, he is required to lay his right hand on the Bible, or to hold it up.

3.—Hand is also the name of a measure of length used in ascertaining the height of horses. It is four inches long. See **Measure.**

4.—In a figurative sense, by hand is understood a particular form of writing; as if B writes a good hand. Various kinds of hand have been used, as, the secretary hand, the Roman hand, the court hand, &c. Wills and contracts may be written in any of these or any other which is understood. See pt. 4, § 27, n. 4, p. 352.

**HANDBILL,** is a printed or written notice put up on walls, &c., in order to inform those concerned that something is to be done.

**HANDSALER, contracts.** Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain; a custom still retained in verbal contracts; a sale thus made was called handsale, venditio per mutuam manum complexionem. In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. 2 Bl. Com. 448. Heinæciius, de Antique Jure Germanico, lib. 2, § 335; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 2, n. 33.

**HANDWRITING, evidence;** every man’s hand is different from others, and the character of his handwriting differs from all others, this is called his handwriting.

2.—It is sometimes necessary to prove that a certain instrument or name is in the handwriting of a particular person, that is done either by the testimony of a witness, who saw the paper or signature actually written; or by one who has by sufficient means, acquired such a knowledge of the general character of the handwriting of the party, as will enable him to swear to his belief, that the handwriting of the person is the handwriting in question. 1 Phil. Ev. 422; Stark. Ev. h. t.; 2 John. Cas. 211; 5 John. R. 144;
HANGING, punishment. Suspension by the neck of a criminal, who has been sentenced to suffer death in due form of law, until he is dead.

HANGMAN. The name usually given to a man employed by the sheriff to put a man to death, according to law, in pursuance of a judgment of a competent court, and lawful warrant. The same as executioner, (q. v.)

HAP. An old word which signifies to catch; as, “to hap the rent,” “to hap the deed poll.” Techn. Dict. h. t.

HARBOUR. A place where ships may ride with safety; any navigable water protected by the surrounding country; a haven, (q. v.)

To harbour, torts, is to receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person, shall be deprived of the same; for example, the harbouring of a wife or an apprentice, in order to deprive the husband or the master of them; or in a less technical sense it is the reception of persons improperly; as, the ward harbores vicious persons without the consent of his guardian. 10 N. H. Rep. 247.

2.—The harbouring of such persons will subject the harbourer to an action for the injury; but in order to to put him completely in the wrong, a demand should be made for their restoration, for in cases where the harbourer has not committed any other wrong than merely receiving plaintiff’s wife, child, or apprentice, he may be under no obligation to return them without a demand. 1 Chit. Pr. 564; Dane’s Ab. Index, h. t.; 2 N. Car. Law Repos. 249; 5 How. U. S. Rep. 215, 227.

HARD LABOUR, punishment. In those states where the penitentiary system has been adopted, convicts who are to be imprisoned as part of their punishment, are sentenced to perform hard labour. This labour is not greater than many freemen perform voluntarily, and the quantity required to be performed is not at all unreasonable. In the penitentiaries of Pennsylvania it consists in being employed in weaving, shoemaking and such like employments.

HART. A stag or male deer of the forest five years old complete.

HAT MONEY, mar. law. The name of a small duty paid to the captain and mariners of a ship, usually called primage, (q. v.)

TO HAVE. These words are used in deeds for the conveyance of land, in that clause which usually declared for what estate the land is granted. The same as Habendum, (q. v.) Vide Habendum; Tenendum.

HAVEN. A place calculated for the reception of ships, and so situated, in regard to the surrounding land that the vessel may ride at anchor in it in safety. Hale, de Port. Mar. c. 2; 2 Chit. Com. Law, 2; 15 East, R. 304, 5. Vide Creek; Port; Road.

HAWKERS. Persons going from place to place with goods and merchandise for sale. To prevent impositions they are generally required to take out licenses, under regulations established by the local laws of the states.

HAZARDOUS CONTRACT, civil law. When the performance of that which is one of its objects, depends on an uncertain event, the contract is said to be hazardous. Civ. Co. of Lo. art. 1769.

2.—When a contract is hazardous, and the lender may lose all or some part of his principal, it is lawful for him to charge more than lawful interest for the use of his money. Bac. Ab. Usury, D; 1 J. J. Marsh. 596; 3 J. J. Marsh. 84.

HEAD BOROUGH, English law. Formerly he was a chief officer of a borough, but now he is an officer sub-

HEALTH. The most perfect state of life. It may then be defined to be the natural agreement and concordant dispositions of the parts of the living body.

2.—Public health is an object of the utmost importance, and has attracted the attention of the national and state legislatures.

3.—By the act of Congress of the 25th of February, 1799, 1 Story's L. U. S. 564, it is enacted, 1, that the quarantines and other restraints, which shall be established by the laws of any state, respecting any vessels arriving in or bound to any port or district thereof, whether coming from a foreign port or some other part of the United States, shall be observed and enforced by all officers of the United States, in such place. Sect. 1. 2. In times of contagion the collectors of the revenue may remove, under the provisions of the act, into another district. Sect. 4. 3. The judge of any district court, may, when a contagious disorder prevails in his district, cause the removal of persons confined in prison under the laws of the United States, into another district. Sect. 5. 4. In case of the prevalence of a contagious disease at the seat of government, the president of the United States may direct the removal of any or all public offices to a place of safety. Sect. 6. 5. In case of such contagious disease, at the seat of government, the chief justice, or in case of his death or inability, the senior associate justice of the supreme court of the United States, may issue his warrant to the marshal of the district court within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same or adjoining district as he may deem convenient. And the district judges may, under the same circumstances, have the same power to adjourn to some other part of their several districts. Sect. 7.

3.—Offences against the provisions of the health laws are generally punished by fine and imprisonment. There are offences against public health punishable by the common law by fine and imprisonment, such for example, as selling unwholesome provisions. 4 Bl. Com. 162; 2 East's P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10.

4.—Private injuries affecting a man’s health arise upon a breach of contract, express or implied; or in consequence of some tortious act unconnected with a contract.

5.—1. Those injuries to health which arise upon a contract are, 1st. The misconduct of medical men, when through neglect, ignorance, or wanton experiments, they injure their patients. 1 Saund. 312, n. 2. 2d. By the sale of unwholesome food; though the law does not consider a sale to be a warranty as to the goodness or quality of a personal chattel, it is otherwise with regard to food and liquors. 1 Rolle's Ab. 90, pl. 1, 2.

6.—2. Those injuries which affect a man’s health, and which arise from tortious acts unconnected with contracts are, 1st, private nuisances; 2d, public nuisances; 3d, breaking quarantine; 4th, by sudden alarms, and frightening; as by raising a pretended ghost. 4 Bl. Com. 197, 201, note 25; 1 Hale, 429; Smith's Forens. Med. 37 to 39; 1 Paris & Fonbl. 351, 352. For private injuries affecting his health a man may generally have an action on the case.

HEALTH OFFICER. The name of an officer invested with power to enforce the health law. The powers and duties of health officers are regulated by local laws.

HEARING, chancery practice. The name of hearing is given to the trial of a chancery suit.

2.—The hearing is conducted as follows. When the cause is called on in court, the pleadings on each side are opened in a brief manner to the court by the junior counsel for the plaintiff; after which the plaintiff’s leading coun-
sel states the plaintiff’s case, and the points in issue, and submits to the court his arguments upon them. Then the depositions (if any) of the plaintiff’s witnesses, and such parts of the defendant’s answer as support the plaintiff’s case are read by the plaintiff’s solicitor; after which the rest of the plaintiff’s counsel address the court; then the same course of proceedings is observed on the other side, excepting that no part of the defendant’s answer can be read in his favour, if it be replied to; the leading counsel for the plaintiff is then heard in reply; after which the court pronounces the decree. Newl. Pr. 153. 4 : 14 Vin. Ab. 233; Com. Dig. Chancery, T. 1, 2, 3.

Hearing, crim. law, is the examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accuser.

2.—The magistrate should examine with care all the witnesses for the prosecution, or so many of them as will satisfy his mind, that there is sufficient ground to believe the prisoner guilty, and that the case ought to examined in court and the prisoner ought to be tried. If, after the hearing of all such witnesses, the offence charged is not made out, or, if made out, the matter charged is not criminal, the magistrate is bound to discharge the prisoner.

3.—When the magistrate cannot for want of time, or on account of the absence of a witness, close the hearing at one sitting, he may adjourn the case to another day, and, in bailable offences, either take bail from the prisoner for his appearance on that day, or commit him for a further hearing. See Further hearing.

4.—After a final hearing, unless the magistrate discharge the prisoner, it is his duty to take bail in bailable offences, and he is the sole judge of the amount of bail to be demanded; this, however, must not be excessive. He is the sole judge, also, whether the offence be bailable or not. When the defendant can give the bail required, he must be discharged; when not, he must be committed to the county prison, to take his trial, or to be otherwise disposed of according to law. See 1 Chit. Cr. Law, 72, ch. 2.

HEARSAY EVIDENCE, is the evidence of those who relate, not what they know themselves, but what they have heard from others.

2.—As a general rule, hearsay evidence of a fact is not admissible. If any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn or affirmed to speak the truth.

3.—There are, however, exceptions to the rule.—1. Hearsay is admissible when it is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, when it is a part of the res gestae. 1 Phil. Ev. 218; 4 Wash. C. C. R. 729; 14 Serg. & Rawle, 275; 21 How. St. Tr. 535; 6 East, 193.

4.—2. What a witness swore on a former trial, between the same parties, and where the same point was in issue as in the second action, and he is since dead, what he swore to is in general, evidence. 2 Show. 47; 11 John. R. 446; 2 Hen. & Marm. 193; 17 John. R. 176. But see, 14 Mass. 234; 2 Russ. on Cr. 683, and the notes.

5.—3. The dying declarations of a person who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence under certain circumstances. Vide Declarations, and 15 John. R. 286; 1 Phil. Ev. 215; 2 Russ. on Cr. 683.

6.—4. In questions concerning public rights, common reputation is admitted to be evidence.

7.—5. The declarations of deceased persons in cases where they appear to have been made against their interest, have been admitted.

8.—6. Declarations in cases of birth and pedigree are also to be received in evidence.

9.—7. Boundaries may be proved by hearsay evidence, but, it seems, it must amount to common tradition or repute. 6 Litt. 7; 6 Pet.
341; Cooke, R. 142; 4 Dev. 342; 1 Hawks, 45; 4 Hawks, 116; 4 Day, 265. See 3 Ham. 283.

10.—There are perhaps a few more exceptions which will be found in the books referred to below. 2 Russ. on Cr. B. 6, c. 3; Phil. Ev. ch. 7, s. 7; 1 Stark. Ev. 40; Rosc. Cr. Ev. 20; Rosc. Civ. Ev. 19 to 24; Bac. Ab. Evidence, K; Dane’s Ab. Index, h. t. Vide also, Dig. 39, 3, 2, 8; Ib. 22, 3, 28. See Gresl. Eq. Ev. pt. 2, c. 3, s. 3, p. 218, for the rules in courts of equity as to receiving hearsay evidence. 20 Am. Jur. 68.

HEIFER. The female issue of a cow, which issue has not had a calf. A beast of this kind two years and a half old, was held to be improperly described in an indictment as a cow. 2 East, P. C. 616; 1 Leach, 105.

HEIR, is one born in lawful matrimony, who succeeds by descent, right of blood, and by act of God, to lands, tenements or hereditaments, being an estate of inheritance. Under the word heirs are comprehended the heirs of heirs in infinitum. 1 Co. Litt. 7 b, 9 a, 237 b; Wood’s Inst. 69. According to many authorities, heir may be nomen collectivum, as well in a deed as in a will, and operate in both in the same manner, as heirs in the plural number. 1 Roll. Abr. 253; Ambl. 453; Godb. 155; T. Jones, 111; Cro. Eliz. 313; 1 Burr. 35; 10 Vin. Abr. 293, pl. 1; 8 Vin. Abr. 233; sed vide 2 Prest. on Est. 9, 10. In wills in order to effectuate the intention of the testator the word heirs is sometimes construed to mean next of kin. 1 Jac. & Walk. 388; and children, Ambl. 273; see further as to the force and import of this word, 2 Vent. 311; 1 P. Wms. 229; 3 Bro. P. C. 60, 454; 2 P. Wms. 1, 369; 2 Black. R. 1010; 4 Ves. 26, 766, 794; 2 Atk. 89, 580; 5 East, Rep. 533; 5 Burr. 2615; 11 Mod. 189; 8 Vin. Abr. 317; 1 T. R. 630; Bac. Abr. Estates in fee simple, B.

2.—There are several kinds of heirs specified below.

3.—By the civil law heirs are divided into testamentary or instituted heirs; legal heirs or heirs of the blood; to which the Civil Code of Louisiana has added irregular heirs. They are also divided into unconditional and beneficiary heirs.

4.—It is proper here to notice a difference in the meaning of the word heir, as it is understood by the common and by the civil law. By the civil law the term heirs was applied to all persons who were called to the succession, whether by the act of the party or by operation of law. The person who was created universal successor by a will, was called the testamentary heir; and the next of kin by blood was, in cases of intestacy, called the heir at law, or heir by intestacy. The executor of the common law is in many respects not unsimilar to the testamentary heir of the civil law. Again, the administrator in many respects corresponds with the heir by intestacy. By the common law, executors, unless expressly authorised by the will, and administrators have no right, except to the personal estate of the deceased; whereas the heir by the civil law was authorised to administer both the personal and real estate. 1 Brown’s Civ. Law. 344; Story, Confl. of Laws, § 508.

5.—All free persons, even minors, lunatics, persons of insane mind or the like, may transmit their estates as intestate ab intestato, and inherit from others. Civ. Code of Lo. 945; accord, Co. Litt. 8 a.

6.—The child in its mother’s womb is considered as born for all purposes of its own interest; it takes all successions opened in its favour, since its conception, provided it be capable of succeeding at the moment of its birth. Civ. Code of Lo. 948. Nevertheless, if the child conceived is reputed born, it is only in the hope of its birth; it is necessary then that the child be born alive, for it cannot be said those who are born dead ever inherited. Ib. 949. See In ventre sa mere.

Heir apparent is one who has an indefeasible right to the inheritance,
provided he outlive the ancestor. 2 Bl. Com. 208.

Heir, beneficiary, a term used in the civil law. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made, Civ. Code of Lo. art. 879. If the heir apprehend that the succession will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession. See Inventory, benefit of.

Heir, collateral. A collateral heir is one who is not of the direct line of the deceased, but comes from a collateral line; as a brother, sister, an uncle and aunt, a nephew, niece, or cousin of the deceased.

Heir, conventional, civ. law. A conventional heir is one who takes a succession by virtue of a contract; for example, a marriage contract which entitles the heir to the succession.

Heir, forced. Forced heirs are those who cannot be disinherited. This term is used among the civilians. Vide Forced heirs.

Heir general, or heir at common law, in the English law. The heir at common law is he who after his father or ancestor’s death has a right to, and is introduced into all his lands, tenements and hereditaments. He must be of the whole blood, not a bastard, alien, &c. Bac. Abr. Heir, B 2; Co-parceners; Descent.

Heir, irregular, in Louisiana. Irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See Civ. Code of Lo. art. 874. When the deceased has left neither lawful descendants nor ascendants, nor collateral relations, the law calls to his inheritance either the surviving husband or wife, or his or her natural children or the state. Ib. art. 911. This is called an irregular succession.

Heir at law, is he who after his ancestor’s death, when he dies intestate, has a right to all lands, tenements and hereditaments, which belong-
ed to him or of which he was seised. The same as heir general; (q. v.)

Heir, legal, civil law. A legal heir is one who is of the same blood of the deceased, and who takes the succession by force of law; this is different from a testamentary or conventional heir who takes the succession in virtue of the disposition of man. See Civ. Code of Louis. art. 873, 875; Dict. de Jurisp., Heriter legitime. There are three classes of legal heirs, to wit; the children and other lawful descendants; the fathers and mothers and other lawful ascendants; and the collateral kindred. Civ. Code of Lo. art. 883.

Heir loom, estates, is literally a limb or member of the inheritance. The term heir looms is applied to those chattels which are considered as annexed and necessary to the enjoyment of an inheritance.

2.—They are chattels, which, contrary to the nature of chattels, descend to the heir, along with the inheritance, and do not pass to the executor of the last proprietor. Charters, deeds, and other evidences of the title of the land, together with the box or chest in which they are contained; the keys of a house, and fish in a fish pond, are all heir looms. 1 Inst. 3 a; 1 b. 185 b; 7 Rep. 17 b; Cro. Eliz. 372; Bro. Ab. Charters, pl. 13; 2 Bl. Com. 28; 14 Vin. Ab. 291.

Heir presumptive. A presumptive heir is one who in the present circumstances would be entitled to the inheritance, but whose rights may be defeated by the contingency of some nearer heir being born. 2 Bl. Com. 208. In Louisiana, the presumptive heir is he who is the nearest relation of the deceased, capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it. Civ. Code of Lo. art. 876.

Heir, testamentary, civil law. A testamentary heir is one who is so constituted by testament executed in
the form prescribed by law. He is so called to distinguish him from the legal heirs who are called to the succession by the law; and from conventional heirs, who are so constituted by a contract inter vivos. See Heres factus; Devises.

Heir, unconditional, a term used in the civil law, adopted by the Civil Code of Louisiana. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Civ. Code of Louisiana, art. 878.

Heiress, a female heir to a person having an estate of inheritance. When there is more than one, they are called co-heiresses, or co-heirs.

Herbage, English law. A species of easement, which consists in the right to feed one’s cattle on another man’s ground.

Hereditaments, estates, is any thing capable of being inherited, be it corporeal or incorporeal, real, personal or mixed, and including not only lands and every thing thereon, but also heri-looms, and certain furniture which by custom may descend to the heir together with the land. Co. Litt. 5 b; 1 Tho. Co. Litt. 219; 2 Bl. Com. 17; by this term such things are denoted, as may be the subject-matter of inheritance, but not the inheritance itself; it cannot, therefore, by its own intrinsic force, enlarge an estate, prima facie a life estate, into a fee. 2 B. & P. 251; 8 T. R. 503; 1 Tho. Co. Litt. 219; note T.

2.—Hereditaments are divided into corporeal and incorporeal. Corporeal hereditaments are confined to lands, (q. v.) Vide Incorporeal hereditaments, and Shep. To. 91; Cruise’s Dig. tit. 1, s. 1; Wood’s Inst. 221; 3 Kent, Com. 321; Dane’s Ab. Index, h. t.; 1 Chit. Pr. 203-229.

Hereditary. That which is inherited.

Heresy, Eng. law, is the adoption of any erroneous tenet not warranted by the established church.

2.—This is punished by the deprivation of certain civil rights, and by fine and imprisonment. 1 East, P. C. 4.
3.—In other countries than England, by heresy is meant the profession, by christians, of religious opinions contrary to the dogmas approved by the established church of the respective countries.

4.—In the United States happily we have no established religion, there can therefore be no legal heresy. Vide Apostacy; Christianity.

HERISCHILD. A species of English military service or knight’s fee.

HERIOTS, Eng. law, are a render of the best beast or other goods, as the custom may be, to the lord on the death of the tenant. 2 Bl. Com. 97.

2.—They are usually divided into two sorts, heriot-service, and heriot-custum; the former are such as are due upon a special reservation in the grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatsoever, but depend merely upon immemorial usage and custom; these are defined to be a customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 Bl. Com. 422; vide Com. Dig. Copyhold, K 18; Bac. Ab. h. t.; 2 Saund. Index, h. t.; 1 Vern. 441.

Heritage. By this word is understood among the civilians every species of immovable which can be the subject of property, such as lands, houses, orchards, woods, marshes, ponds, &c. in whatever mode they may have been acquired either by descent or purchase. 3 Toull. 472. It is something that can be inherited. Co. Litt. s. 781.

Hermaphrodites are persons who have in the sexual organs the appearance of both sexes; they are adjudged to belong to that which prevails in them. Co. Litt. 2, 7; Domat, Lois Civ. lib. 1, t. 2, s. 1, n. 9.

2.—The sexual characteristics in the human species, are widely separated, and the two sexes never, perhaps, united in the same individual.
appointed are three puisne judges, one from each court of common law, and three or more civilians; but in special cases, a fuller commission is sometimes issued, consisting of spiritual and temporal peers, judges of the common law, and civilians, three of each description. In case of the court being equally divided, or no common law judge forming part of the majority, a commission of adjuncts issues appointing additional judges of the same description. 1 Haggs. Eccl. R. 384; 2 Haggs. Eccl. R. 84; 3 Haggs. Eccl. R. 471; 4 Burr. 2251.

HIGH SEAS. This term, which is frequently used in the laws of the United States, signifies the unenclosed waters of the ocean, and also those waters on the sea coast which are without the boundaries of low water mark. 1 Gall. R. 624; 5 Mason’s R. 290; 1 Bl. Com. 110; 2 Hagg. Adm. R. 398; Dunl. Adm. Pr. 32, 33.

2.—The act of Congress of 30th of April, 1790, s. 8, 1 Story’s L. U. S. 84, enacts, that if any person shall commit upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular state, murder, &c., which, if committed within the body of a county would, by the laws of the United States be punishable with death, every such offender, being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought. See 4 Dall. R. 426; 3 Wheat. R. 336; 5 Wheat. 184, 412; 3 W. C. C. R. 515; Serg. Const. Law, 334; 13 Am. Jur. 279; 1 Mason, 147, 152; 1 Gallis. 624.

HIGH TREASON, Eng. law, is treason against the king, in contravention with petit treason, which is the treason of a servant towards his master; a wife towards her husband; a secular or religious man against his prelate. See Petit treason; Treason.

HIGH WATER MARK, is that part of the shore of the sea to which the waves reach on ordinary occasions,
when the tide is at its highest. 6 Mass. R. 435; 1 Pick. R. 180; 1 Halst. R. 1; 1 Russ. on Cr. 107; 2 East, P. C. 803. Vide Sea shore; Tide.

HIGHEST BIDDER, contracts, he who, at an auction, offers the greatest price for the property sold.

2.—The highest bidder is entitled to have the article sold at his bid, provided there has been no unfairness on his part. A distinction has been made between the highest and the best bidder. In judicial sales, where the highest bidder is unable to pay, it is said the sheriff may offer the property to the next highest, who will pay, and he is considered the best bidder. 1 Dall. R. 419.

HIGHWAY. This is said to be a generic name for all kinds of public ways, 6 Mod. R. 255.

2.—Highways are universally laid out by public authority, and repaired at the public expense, by direction of law.

3.—The public have an easement over a highway, of which the owner of the land cannot deprive them; but the soil and freehold still remain in the owner, and he may use the land above and below consistently with the easement. He may, therefore, work a mine, sink a drain or water-course, under the highway, if the easement remains unimpaired. Vide Road; Street; Way; and 4 Vin. Ab. 502. Bac. Ab. h. t.; Com. Dig. Chemin; Dane's Ab. Index, h. t.; Egremont on Highways; Wellbeloved on Highways; Woolrych on Ways; 1 N. H. Rep. 16; 1 Conn. R. 103; 1 Pick. R. 122; 1 McCord's R. 67; 2 Mass. R. 127; 1 Pick. R. 122; 3 Rawle. R. 495; 15 John. R. 483; 16 Mass. R. 33; 1 Shepl. R. 250; 4 Day, R. 330; 2 Bail. R. 271.

HIGHWAYMAN, a robber on the highway.

HILARY TERM, Eng. law. One of the four terms of the courts, beginning the 11th and ending the 31st day of January in each year.

HIGLIER, Eng. law, a person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIRE, contracts, is a bailment, where a compensation is to be given for the use of a thing, or for labour or services about it. 2 Kent's Com. 456; 1 Bell's Com. 451; Story on Bailm. § 369; see Pothier, Contrat de Louage, ch. 1, n. 1; Domat, B. 1, tit. 4, § 1, n. 1; Code Civ. art. 1709, 1710; Civ. Code of Lo. art. 2644, 2645. See this Dict. Hirer; Letter.

2.—The contract of letting and hiring is usually divided into two kinds; first, Locatio or Locatio conductio rei, the bailment of a thing to be used by the hirer for a compensation to be paid by him.

3.—Secondly, Locatio operis, or the hire of the labour and services of the hirer for a compensation to be paid by the letter.

4.—And this last kind is again subdivided into two classes: 1, Locatio operis facienda, or the hire of labour and work to be done, or care and attention to be bestowed on the goods let by the hirer for a compensation; or,

5.—2. Locatio operis mercium vehendorum, or the hire and carriage of goods from one place to another, for a compensation. Jones's Bailm. 85, 86, 90, 103, 118; 2 Kent's Com. 456; Code Civ. art. 1709, 1710, 1711.

6.—This contract arises from the principles of natural law; it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale; the principal difference between them being, that in cases of sale, the owner parts with the whole proprietary interest in the thing, and in cases of hire, the owner parts with it only for a temporary use and purpose. In a sale, the thing itself is the object of the contract; in hiring, the use of the thing is its object. Vinnius, lib. 3, tit. 25, in pr.; Pothier, Louage, n. 2, 3, 4; Jones's Bailm. 86; Story on Bailm. § 371.

7.—Three things are of the essence
of the contract: 1, that there should be a thing to be let; 2, a price for the hire; and, 3, a contract possessing a legal obligation. Pothier, Louage, n. 6. Civ. Code of Lo. art. 2640.

8.—There is a species of contract in which, though no price in money be paid, and which, strictly speaking, is not the contract of hiring, yet partakes of its nature. According to Pothier, it is an agreement which must be classed with contracts do ut des. It frequently takes place among poor people in the country. He gives the following example: two poor neighbours, each owning a horse, and desirous to plough their respective fields, to do which two horses are required, one agrees that he will let the other have his horse for a particular time, on condition that the latter will let the former have his horse for the same length of time. Du Louage, n. 458. This contract is not a hiring, strictly speaking, for want of a price; nor is it a loan for use, because there is to be a recompense. It has been supposed to be a partnership; but it is different from that contract, because there is no community of profits. This contract is, in general, ruled by the same principles which govern the contract of hiring. 19 Toull. n. 247.

9.—Hire also means the price given for the use of the thing hired; as, the hirer is bound to pay the hire or recompense.

Vide Domat, liv. 1, tit. 4; Pothier, Contrat de Louage; Toull. tomes 18, 19, 20; Merl. Repert. mot Louage; Dalloz, Dict. mot Louage; Argou, Inst. liv. 3, c. 27.

HIRIR, contracts, called, in the civil law, conducteur, or, in the French law, procureur, locataire, is he who takes a thing from another, to use it, and pays a compensation therefor. Wood’s Inst. B. 3, c. 5, p. 236; Pothier, Louage, n. 1; Domat, B. 1, tit. 4, § 1, n. 2; Jones’s Bailm. 70; see this Dict. Letter.

2.—There is, on the part of the hirer, an implied obligation, not only to use the thing with due care and mo-
5.—The time, the place, and the mode of restitution of the thing hired, are governed by the circumstances of each case, and depend upon rules of presumption of the intention of the parties, like those in other cases of bailment. Story on Bailm. § 415.

6.—There is also an implied obligation on the part of the hirer, to pay the hire or recompense. Pothier, Lounge, n. 134; Domat, B. 2, tit. 2, § 2, n. 11; Code Civ. art. 1728.

See generally, Employer; Hire; Letter.

HIS EXCELLENCY, a title given by the constitution of Massachusetts to the governor of that commonwealth. Const. part 2, c. 2, s. 1, art. 1.

HIS HONOUR. A title given by the constitution of Massachusetts to the lieutenant governor of that commonwealth. Const. part 2, c. 2, s. 2, art. 1.

HISTORY, evidence. The recital of facts written and given out for true.

2.—Facts stated in ancient histories may be read in evidence, on the ground of their notoriety. Skin. R. 14; 1 Ventr. R. 149. But these facts must be of a public nature, and the general usages and customs of the country. Bull. N. P. 243; 7 Pet. R. 554; 1 Phil. & Am. Ev. 606; 30 Howell’s St. Tr. 492. Histories are not admissible in relation to matters not of a public nature, such as the custom of a particular town, a descent, the boundaries of a county, and the like. 1 Salk. 281; S. C. Skin. 623; T. Jones, 164; 6 C. & P. 586, note. See 9 Ves. 347; 10 Ves. 354; 3 John. 385; 1 Binn. 399; and Notoriety.

HODGE-PODGE ACT. A name given to a legislative act which embraces many subjects. Such acts, besides being evident proofs of the ignorance of the makers of them, or of their want of good faith, are calculated to create a confusion which is highly prejudicial to the interests of justice. Instances of this wretched legislation are every where to be found. See Barring, on the Stat. 449. Vide Title; Legislation.

HERES FACTUS, civil law. An heir instituted by testament; one made an heir by the testator. Vide Heir.

HERES NATUS, civil law. An heir by intestacy; he on whom an estate descends by operation of law. Vide Heir.

HOGSHEAD. A measure of wine, oil, and the like, containing half a pipe, the fourth part of a tun, or sixty-three gallons.

TO HOLD. These words are now used in a deed to express by what tenure the grantee is to have the land. The clause which commences with these words is called the tenendum. Vide Habendum; Tenendum.

HOLDER. The holder of a bill of exchange is the person who is legally in the possession of it, either by endorsement or delivery, or both, and entitled to receive payment either from the drawee or acceptor, and is considered as an assignee. 4 Dall. 53. And one who endorsing a promissory note for collection, as an agent, will be considered the holder for the purpose of transmitting notices. 2 Hall, R. 112; 6 How. U. S. 248; 20 John. 372. Vide Bill of Exchange.

HOLDING OVER, the act of keeping possession by the tenant, without the consent of the landlord, of premises which the latter, or those under whom he claims, had leased to the former, after the term has expired.

2.—When a proper notice has been given, this injury is remedied by ejectment, or, under local regulations, by summary proceedings. Vide 2 Yeates’s R. 523; 2 Serg. & Rawle, 486; 5 Binn. 228; 8 Serg. & Rawle, 459; 1 Binn. 334, n.; 5 Serg. & Rawle, 174; 2 Serg. & Rawle, *50; 4 Rawle, 123.

HOLOGRAPH. What is written by one’s own hand. The same as Olograph. Vide Olograph.

HOMAGE, Eng. law, is an acknowledgment made by the vassal in the presence of his lord, that he is his man, that is, his subject or vassal. The form in law French was, Jea devisez vostre home.

HOMESTALL. The manion-house,
HOMICIDE, crim. law, is, according to Blackstone, the killing of any human creature, 4 Com. 177. This is the most extensive sense of this word, in which the intention is not considered. But in a more limited sense, it is always understood that the killing is by human agency, and Hawkins defines it to be the killing of a man by a man. 1 Hawk. c. 8, s. 2. See Dalloz, Dict. h. t. Homicide may perhaps be described to be the destruction of the life of one human being, either by himself, or by the act, procurement, or culpable omission of another. When the death has been intentionally caused by the deceased himself, the offence is called felo de se; when it is caused by another, it is justifiable, excusable, or felonious.

2.—The person killed must have been born, the killing before birth is called foeticide, (q. v.)

3.—The destruction of human life at any period after birth, is homicide, however near it may be extinction, from any other cause.

4.—1. Justifiable homicide is such as arises, 1st, from unavoidable necessity, without any will, intention or desire, and without any inadvertence in the party killing, and therefore without blame; as, for instance, the execution, according to law, of a criminal who has been lawfully sentenced to be hanged; or, 2dly, it is committed for the advancement of public justice; as, if an officer, in the lawful execution of his office, either in a civil or criminal case, should kill a person who assaults and resists him. 4 Bl. Com. 178–180. See Justifiable homicide.

5.—2. Excusable homicide is of two kinds, 1st, homicide per infortunium; vol. i.—81 (q. v.); or, 2d, se defendendo, or self defence, (q. v.) 4 Bl. Com. 182, 3.

6.—3. Felonious homicide, which includes, 1, self-murder, or suicide; 2, manslaughter, (q. v.); and, 3, murder, (q. v.)

Vide, generally, 3 Inst. 47 to 57; 1 Hale, P. C. 411 to 502; 1 Hawk. c. 8; Fost. 255 to 337; 1 East, P. C. 214 to 339; Com. Dig. Justices, L. M.; Bac. Ab. Murder and Homicide; Burn's Just. h. t.; Williams's Just. h. t.; 2 Chit. Cr. Law, ch. 9; Cro. C. C. 285 to 300; 4 Bl. Com. 176 to 204; 1 Russ. Cr. 421 to 553; 2 Swift's Dig. 267 to 292.

HOMINE CAPITO IN WITHERNAM, Engl. law. The name of a writ directed to the sheriff and commanding him to take one who has taken any bondsman, and conveyed him out of the country, so that he cannot be repleived. Vide Withernam.

HOMINE ELIGENDO, Engl. law. The name of a writ directed to a corporation, requiring the members to make choice of a new man, to keep the one part of a seal appointed for statutes merchant. Techn. Dict. h. t.

HOMINE REPLEGIANDO. These words signify man replevy. When a man is unlawfully in custody, he may be restored to his liberty by writ de homine replegiando, upon giving bail; or by a writ of habeas corpus, which is the more usual remedy. Vide Writ de homine replegiando.

HOMO. This Latin word, in its most enlarged sense, includes both man and woman. 2 Inst. 45. Vide Man.

HOMOLOGATION, civil law. Approval, confirmation by a court of justice, a judgment which orders the execution of some act; as the approbation of an award, and ordering execution on the same. Merl. Repert. h. t.; Civil Code of Louis. Index, h. t.; Dig. 4, 8; 7 Toull. n. 224. To homologate, is to say the like, homos logos similar dixere. 9 Mart. L. R. 324.

HONESTY. That principle which requires us to give every one his due,
Nul ne doit s'enrichir aux dépens du droit d'autrui.

2.—The very object of social order is to promote honesty, and to restrain dishonesty, to do justice and to prevent injustice. It is no less a maxim of law than of religion; do unto others as you wish to be done by.

HONORARIUM, a recompense for services rendered. It is usually applied only to the recompense given to persons whose business is connected with science; as the fee paid to counsel.

2.—It is said this honorarium is purely voluntary, and differs from a fee, which may be recovered by action. 5 Serg. & Rawle, 412; 3 Bl. Com. 28; 1 Chit. Rep. 38; 2 Atk. 332; but see 2 Penna. R. 75; 4 Watts’s R. 334. Vide Dalloz, Dict. h. t., and Salary. See Counsellor at law.

HONOUR. It is the esteem we have of ourselves, and the consciousness that we deserve the esteem of others, because we have not departed from the principles of virtue, in which we are resolved to continue. This is true honour. False honour is the standard of respect to which we claim to be entitled, without considering whether or not we are deserving it. It is the latter which causes duels. A duel is not justified by any insult to our honour. Honour is also employed to signify integrity in a judge, courage in a soldier, and chastity in a woman. To deprive a woman of her honour is, in some cases, punished as a public wrong, and by an action for the recovery of damages done to the relative rights of a husband or a father. Vide Criminal conversation.

2.—In England, when a peer of parliament is sitting judicially in that body, his pledge of honour is equal to another’s oath; and in courts of equity peers, peeresses, and lords of parliament, answer on their honour only. But the court of common law knows no such distinction. It is needless to add that as we are not encumbered by a nobility, there is no such distinction in the United States, all persons being equal in the eyes of the law.

Honour, Eng. law, is the seignory of a lord paramount. 2 Bl. Com. 91. To honour, contr., is to accept a bill of exchange; to pay a bill accepted, or a promissory note, on the day it becomes due. 7 Taunt. 164; 1 T. R. 172. Vide To Dishonour.

HORS DE SON FEE, pleading in the ancient English law. These words signify out of his fee. A plea which was pleaded, when a person who pretended to be the lord, brought an action for rent services, as issuing out of his land; because if the defendant could prove the land was out of his fee, the action failed. Vide 9 Rep. 30; 2 Mod. 104; 1 Danvers’s Ab. 655; Vin. Ab. h. t.

HORSE, a stallion. Until a horse has attained the age of four years, he is called a colt, (q. v.) Russ. & Ry. 416. This word is sometimes used as a generic name for all animals of the horse kind. Vide Colt; Gender, and Yelv. 67, a.

HOSTAGE. A person delivered into the possession of a public enemy in the time of war, as a security for the performance of a contract entered into between the belligerents.

2.—Hostages are frequently given as a security for the payment of a ransom bill, and if they should die, their death would not discharge the contract. 3 Burr. 1734; 1 Kent, Com. 106; Dane’s Ab. Index, h. t.

HOSTELLAGIUM, Engl. law. A right reserved to the lords to be lodged and entertained in the houses of their tenants.

HOSTILITY. A state of open enmity; open war. Wolff, Dr. de la Nat. § 1191. Hostility, as it regards individuals, may be permanent or temporary; it is permanent when the individual is a citizen or subject of the government at war, and temporary when he happens to be domiciliated or resident in the country of one of the belligerents; in this latter case the individual may throw off the national character he has thus acquired by resi-

2.—There may be a hostile character merely as to commercial purposes, and hostility may attach only to the person as a temporary enemy, or it may attach only to the property of a particular description. This hostile character in a commercial view, or one limited to certain intents and purposes only, will attach in consequence of having possessions in the territory of the enemy, or by maintaining a commercial establishment there, or by a personal residence, or by particular modes of traffic, as by sailing under the enemy's flag or passport. 9 Cranch, 191; 5 Rob. Adm. Rep. 21, 161; 1 Kent, Com. 73; Wesk. on Ins. h. t.; Chit. Law of Nat. Index, h. t.

HOTCHPOT, estates. This homely term is used figuratively to signify the blending and mixing property belonging to different persons, in order to divide it equally among those entitled to it. For example, if a man seized of thirty acres of land, and having two children, should on the marriage of one of them, give him ten acres of it, and then die intestate seized of the remaining twenty; now in order to obtain his portion of the latter, the married child must bring back the ten acres he received, and add it to his father's estate, when an equal division of the whole will take place, and each be entitled to fifteen acres. 2 Bl. Com. 190. The term hotchpot is also applied to bringing together all the personal estate of the deceased, with the advancements he has made to his children, in order that the same may be divided agreeably to the provisions of the statute for the distribution of intestate's estates. In bringing an advancement into hotchpot, the donee is not required to account for the profits of the thing given, for example, he is not required to bring into hotchpot the produce of negroes, nor the interest of money. The property must be accounted for at its value when given. 1 Wash. R. 224; 17 Mass. 358; 2 Desau. 127; 3 Rand. R. 117; 3 Pick. R. 450; 3 Rand. 559.

2.—In Louisiana the term collation is used instead of hotchpot. The collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civ. Code of Lo. art. 1305; and vide from that article to article 1367.


HOUR, measure of time, is the space of sixty minutes, or the twenty-fourth part of a natural day. Vide D ATE; F R ACTION, and Co. Litt. 135; 3 Chit. Pr. 110.

HOUSE, estates, a place for the habitation and dwelling of man. This word has several significations, as it is applied to different things. In a grant or demise of a house, the curtilage and garden will pass even without the words "with the appurtenances," being added. Cro. Eliz. 89; S. C. 3 Leon. 214; 1 Plowd. 171; 2 Saund. 401, note (2); 4 Penn. St. R. 93.

2.—In a grant or demise of a house with the appurtenances, no more will pass, although other lands have been occupied with the house. 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 d.; Id. 36 a. b.; 2 Saund. 401, note (2).

3.—If a house, originally entire, be divided into several apartments, with an outer door to each apartment, and no communication with each other subsists, in such case the several apartments are considered as distinct houses. 6 Mod. 214; Woodf. Land. & Ten. 178.

4.—In cases of burglary, the mansion or dwelling-house in which the burglary might be committed, at com-
mon law includes the outhouses, though not under the same roof or adjoining to the dwelling-house, provided they were within the curtilage, or common fence, as the dwelling or mansion house. 3 Inst. 64; 1 Hale, 558; 4 Bl. Com. 225; 2 East, P. C. 493; 1 Hayw. (N. C.) Rep. 102, 142; 2 Russ. on Cr. 14.

5.—The term house, in case of arson, includes not only the dwelling but all the out-houses as in the case of burglary. It is a maxim in law that every man’s house is his castle, and there he is entitled to perfect security; this asylum cannot therefore be legally invaded, unless by an officer duly authorised by legal process; and this process must be of a criminal nature to authorise the breaking of an outer door; and even with it, this cannot be done until after demand of admittance and refusal. 5 Co. 93; 4 Leon. 41; T. Jones, 234; the house may be also broken for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, (N. 3).

6.—The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested and he takes refuge in his own house, in that case, the officer may pursue him and break open any door for the purpose. Foster, 320; 1 Rolle, R. 138; Cro. Jac. 555; Bac. Ab. ubi sup. In the civil law the rule was nemo de domo sua extrahi debet. Dig. 50, 17, 103. Vide generally, 14 Vin. Ab. 315; Yelv. 29 a, n.(1); 4 Rawle, R. 342; Arch. Cr. Pl. 251; and Burglary.

7.—House is used figuratively to signify a collection of persons as the house of representatives; or an institution, as the house of refuge; or a commercial firm, as the house of A B & Co. of New Orleans; or a family, as, the house of Lancaster, the house of York.

House of commons, Engl. law. The representatives of the people, in contradistinction to the nobles, taken collectively are called the house of commons.

2.—This house must give its consent to all bills before they acquire the authority of law, and all laws for raising revenue must originate there.

House of correction. A prison where offenders of a particular class are confined. The term is more common in England than in the United States.

House of lords, Engl. law. The English lords, temporal and spiritual, when taken collectively and forming a branch of the parliament, are called the House of Lords.

2.—Its assent is required to all laws. As a court of justice, it tries all impeachments.

House of refuge, punishment. The name given to a prison for juvenile delinquents. These houses are regulated in the United States on the most humane principles, by special local laws.

House of representatives, government, is the popular branch of the legislature.

2.—The constitution of the United States, art. 1, s. 2, 1, provides that “the house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors of each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature.”

3.—The general qualifications of electors of the assembly, or most numerous branch of the legislature, in the several state governments, are, that they be of the age of twenty-one years and upwards, and free resident citizens of the state in which they vote, and have paid taxes; several of the state constitutions have prescribed the same or higher qualifications, as to property in the elected, than in the electors.

4.—The constitution of the United States, however, requires no evidence of property in the representatives, nor any declarations as to his religious belief. He must be free from undue bias or dependence by not holding any office under the United States. Art. 1, s. 6, 2.

5.—By the constitutions of the se-
veral states, the most numerous branch of the legislature generally bears the name of the house of representatives. Vide Story on Constitution of the United States, chapter 9; 1 Kent's Com. 228.

6.—By the act of June 22, 1842, ch. 47, it is provided
§ 1. That from and after the third day of March, one thousand eight hundred and forty-three, the house of representatives shall be composed of members elected agreeably to a ratio of one representative for every seventy thousand six hundred and eighty persons in each state, and of one additional representative for each state having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the constitution of the United States; that is to say: Within the state of Maine, seven; within the state of New Hampshire, four; within the state of Massachusetts, ten; within the state of Rhode Island, two; within the state of Connecticut, four; within the state of Vermont, four; within the state of New York, thirty-four; within the state of New Jersey, five; within the state of Pennsylvania, twenty-four; within the state of Delaware, one; within the state of Maryland, six; within the state of Virginia, fifteen; within the state of North Carolina, nine; within the state of South Carolina, seven; within the state of Georgia, eight; within the state of Alabama, seven; within the state of Louisiana, four; within the state of Mississippi, four; within the state of Tennessee, eleven; within the state of Kentucky, ten; within the state of Ohio, twenty-one; within the state of Indiana, ten; within the state of Illinois, seven; within the state of Missouri, five; within the state of Arkansas, one; within the state of Michigan, three.

7.—§ 2. That in every case where a state is entitled to more than one representative, the number to which each state shall be entitled under this apportionment shall be elected by districts composed of contiguous territory equal in number to the number of representatives to which said state may be entitled, no one district electing more than one representative.

8.—For the constitutions of the houses of representatives in the several states, the reader is referred to the names of the states in this work. Vide Congress.

HOUSEBOTE. An allowance of necessary timber out of the landlord's woods, for the repairing and support of a house or tenement. This belongs of common right to any lessee for years or for life; housebote is said to be of two kinds, estoveriam edificandi et arrendi. Co. Litt. 41.

HOUSEKEEPER, one who occupies a house.

2.—A person who occupies every room in the house, under a lease, except one, which is reserved for his landlord, who pays all the taxes, is not a housekeeper. 1 Chit. Rep. 502; nor is a person a housekeeper who takes a house, which he afterwards underlets to another, whom the landlord refuses to accept as his tenant; in this case, the under-tenant paid the taxes, and let to the tenant the first floor of the house, and the rent was paid for the whole house to the tenant, who paid it to the landlord. Ib. note.

3.—In order to make the party a housekeeper, he must be in actual possession of the house. 1 Chit. Rep. 288; and must occupy a whole house, 1 Chit. Rep. 316. See 1 Barn. & Cresw. 178; 2 T. R. 406; 1 Bott, 5; 3 Petersd. Ab. 103, note; 2 Mart. Lo. R. 313.

HOVEL. A place used by husbandmen to set their ploughs, carts and other farming utensils, out of the rain and sun. Law Latin Dict. A shed.

HOYMAN, the master or captain of a hoy.

2.—Hoymen are liable as common carriers. Story, Bailm, § 496.

HUE AND CRY, Eng. law. A mode of pursuing felons, or such as have dangerously wounded any person, or assaulted any one with intent to rob him, by the constable, for the
purpose of arresting the offender. 2 Hale, P. C. 100.

HUISSIER, an usher of a court. In France, an officer of this name performs many of the duties which in this country devolve on the sheriff or constable. Dalloo, Dict. h. t. See 3 Wend. 173.

HUNDRED, Eng. law. A district of country originally comprehending one hundred families. In many cases, when an offence is committed within the hundred, the inhabitants are civilly responsible to the party injured.

2.—This rule was probably borrowed from the nations of German origin, where it was known. Montesqu. Esp. des Lois, liv. 30, ch. 17. It was established by Clotaire, among the Franks, 11 Toull. n. 237.

3.—To make the innocent pay for the guilty, seems to be contrary to the first principles of justice, and can be justified only by necessity. In this country, laws have been passed making cities or counties responsible for the destruction of property by a mob. These can be justified only on the ground that it is the interest of every one that property should be protected, and that it is for the general good such laws should exist.

HUNDRED GEMOTE. The name of a court among the Saxons. It was holden every month, for the benefit of the inhabitants of the hundred.

HUNDREDORS, in England, are inhabitants of a local division of a county, who, by several statutes, are held to be liable in the cases therein specified to make good the loss sustained by persons within the hundred, by robbery or other violence, therein also specified. The principal of these statutes are, 13 Edw. 1, st. 2, c. 1, s. 4; 28 Edw. 3, c. 11; 27 Eliz. c. 13; 29 Car. 2, c. 7; 8 Geo. 2, c. 16; 22 Geo. 2, c. 24.

HUNGER. The desire for taking food. Hunger is no excuse for larceny. 1 Hale, P. C. 54; 4 Bl. Com. 31. It is a matter which applies itself strongly to the consciences of the judges in mitigation of the punishment.

2.—When a person has died, and it is suspected he has been starved to death, an examination of his body ought to be made, to ascertain whether or not he died of hunger. The signs which usually attend death from hunger are the following: The body is much emaciated, and a fastid, acid, odour exhales from it, although death may have been very recent. The eyes are red and open, which is not usual in other cases of death. The tongue and throat are dry, even to aridity, and the stomach and intestines are contracted and empty. The gall bladder is pressed with bile, and this fluid is found scattered over the stomach and intestines, so as to tinge them very extensively. The lungs are withered, but all the other organs are generally in a healthy state. The blood vessels are usually empty. Foderé, tom. ii. p. 276, tom. iii. p. 231; 2 Beck's Med. Jur. 52; see Eunom. Dial. 2, § 47, p. 142, and the note at p. 384.

HUNTING. The act of pursuing and taking wild animals; the chase.

2.—The chase gives a kind of title by occupancy, by which the hunter acquires a right or property in the game which he captures. In the United States, the right of hunting is universal, and limited only so far as to exclude hunters from committing injuries to private property or to the public, as by shooting on public roads. Vide Feræ naturæ; Occupancy.

HURDLE, Engl. law. A species of sledge, used to draw traitors to execution.

HUSBAND, domestic relations, a man who has a wife.

2.—The husband, as such, is liable to certain obligations, and entitled to certain rights, which will be here briefly considered.

3.—First, of his obligations. He is bound to receive his wife at his home, and treat her there as a husband, that is, furnish her with all the necessaries and conveniences which his fortune enables him to do, and which her situation requires; but this does not include such luxuries as, according to
her fancy, she deems necessaries; vide article Cruelty, where this matter is considered. He is bound to love his wife, and to bear with her faults, and, if possible, by mild means to correct them; and he is required to fulfil towards her his marital promise of fidelity, and can, therefore, have no carnal connexion with any other woman, without a violation of his obligations. As he is bound to govern his house properly, he is liable for its misgovernment, and he may be punished for keeping a disorderly house, where his wife had the principal agency, and he is liable for her torts, as for her slander or trespass. He is also liable for the wife's debts, incurred before coverture, provided they are recovered from him during his life; and generally for such as are contracted by her, after coverture, for necessaries.

4.—Secondly, of his rights. Being the head of the family, the husband has a right to establish himself wherever he may please, and in this he cannot be controlled by his wife; he may manage his affairs his own way, buy and sell all kinds of personal property, without any control, and he may buy any real estate he may deem proper, but, as the wife acquires a right in the latter, he cannot sell it; discharged of her dower, except by her consent, expressed in the manner prescribed by the laws of the state where such lands lie. All her personal property, in possession, is vested in him, and he may dispose of it as if he had acquired it by his own contract; this arises from the principle that they are considered one person in law; 2 Bl. Com. 433; and he is entitled to all her property in action, provided he reduces it to possession during her life. Ib. 434. He is also entitled to her chattels real, but these vest in him not absolutely, but sub modo; as, in the case of a lease for years, the husband is entitled to receive the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it during the coverture, and it is liable to be taken in execution for his debts; and, if he survives her, it is, to all intents and purposes, his own. In case his wife survives him, it is considered as if it had never been transferred from her, and it belongs to her alone. In his wife's freehold estate, he has a life estate, during the joint lives of himself and wife, and, at common law, when he has a child by her who could inherit, he has an estate by the curtesy.

5.—The laws of Louisiana differ essentially from those of the other states, as to the rights and duties of husband and wife, particularly as it regards their property. Those readers, desirous of knowing the legislative regulations on this subject, in that state, are referred to Civil Code of Louisiana, B. 1, tit. 4; B. 3, tit. 6.

Vide, generally, articles Divorce; Marriage; Wife; and Bac. Ab. Baron and Feme; Rop. H. & W.; Prater on H. & W.; Clancy on the rights, duties and liabilities of Husband and Wife; Canning on the Interest of Husband and Wife, &c.; 1 Phil. Ev. 63; Woodf. L. & T. 75; 2 Kent, Com. 109; 1 Salk. 113 to 119; Yelv. 106 a, 156 a, 166 a; Vern. by Raithby, 7, 17, 48, 261; Chit. Pr. Index, h. t.; Poth. Du contr. de Mar. n. 379.

Husband, mar. law. The name of an agent who is authorised to make the necessary repairs to a ship, and to act in relation to the ship, generally, for the owner. He is usually called ship's husband. Vide Ship's Husband.

HUSBRECE, old Engl. law. The ancient name of the offence now called burglary.

HUSTINGS, Engl. law. The name of a court held before the lord mayor and aldermen of London; it is the principal and supreme court of the city. See 2 Inst. 327; St. Armand, Hist. Essay on the Legisl. Power of England, 75.

HYDROMETER, measure of density, (for fluids,) an instrument which, being immersed in fluids, as, in water, brine, beer, brandy, &c., determines the proportion of their den-
sities, or their specific gravities, and thence their qualities.

2.—By the act of Congress of January 12, 1825, 3 Story’s Laws, U. S. 1976, the secretary of the treasury is authorised, under the direction of the president of the United States, to adopt and substitute such hydrometer as he may deem best calculated to promote the public interest, in lieu of that now prescribed by law, for the purpose of ascertaining the proof of liquors; and that after such adoption and substitution, the duties imposed by law upon distilled spirits, shall be levied, collected and paid, according to the proof ascertained by any hydrometer so substituted and adopted.

HYPOBOLUM, civ. law. The name of the bequest or legacy given by the husband to his wife, at his death, above her dowry. Techn. Dict. h. t.

HYPOTHECATION, civil law. This term is used principally in the civil law; it is defined to be a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold, in order, out of the proceeds, to be paid his claim.

2.—There are two species of hypothecation, one called pledge, pignus, and the other properly denominated hypothecation. Pledge is that species of hypothecation which is contracted by the delivery by the debtor to the creditor, of the thing hypothecated. Hypothecation, properly so called, is that which is contracted without delivery of the thing hypothecated. 2 Bell’s Com. 25, 5th ed.

3.—Hypothecation is further divided into general and special. When the debtor hypothecates to his creditor all his estate and property, which he has, or may have, the hypothecation is general: when the hypothecation is confined to a particular estate, it is special.

4.—Hypothecations are also distinguished into conventional, legal and tacit. 1. Conventional hypothecations are those which arise by the agreement of the parties. Dig. 20, 1, 5.

5.—2. Legal hypothecation is that which has not been agreed upon by any contract, express or implied; such as arises from the effect of judgments and executions.

6.—3. A tacit, which is also a legal hypothecation, is that which the law gives in certain cases, without the consent of the parties, to secure the creditor, such as, 1st, the lien which the public treasury has over the property of public debtors. Code, 8, 15, 1. 2. The landlord has a lien on the goods in the house leased, for the payment of his rent. Dig. 20, 2, 2; Code, 8, 15, 7. 3d. The builder has a lien, for his bill, on the house he has built, Dig. 20, 1. 4th. The pupil has a lien on the property of the guardian for the balance of his account. Dig. 46, 6, 22; Code, 5, 37, 20. 5th. There is hypothecation of the goods of a testator for the security of a legacy he has given. Code, 6, 43, 1.

7.—In the common law, cases of hypothecation, in the strict sense of the civil law, that is of a pledge without possession by the pledgee, are scarcely to be found; cases of bottomry bonds and claims for seamen’s wages against ships are the nearest approach to it; but these are liens and privileges rather than hypothecations. Story, Bailm. § 258. It seems that chattels not in existence, though they cannot be pledged, can be hypothecated, so that the lien will attach, as soon as the chattel has been produced. 14 Pick. R. 497.

Vide generally, Poth. De l’Hypothèque; Poth. Mar. Contr. translated by Cushing, note, 26, p. 145; Commercial Code of France, translated by Rodman, note 52, p. 331; Merl. Répertoire, mot Hypothèque, where the subject is fully considered; 2 Bro. Civ. Law, 195; Ayl. Pand. 524; 1 Law Tracts, 224; Dane’s Ab. h. t; Abbott on Ship. Index, h. t; 13 Ves. 599; Bac. Ab. Merchant, &c. G. Civil Code of Louis, tit. 22, where this sort of security bears the name of mortgage, (q. v.)
I.

I O U, contracts. The memorandum I O U (I owe you), given by merchants to each other is a mere evidence of the debt, and does not amount to a promissory note. Esp. Cas. N. A. 426; 4 Carr. & Payne, 324; 19 Eng. Com. L. Rep. 405; 1 Man. & Gran. 46; 39 E. C. L. R. 346; 1 Campb. 499; 1 Esp. R. 426; 1 Man. Gr. & Sc. 543; Dowell. & R. N. P. Cas. 8.

ICTUS ORBUS, med. jurispr. A maim, a bruise, or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a wound, (q. v.) Bract. lib. 2, tr. 2, c. 5 and 24.

IDEM SONANS, of the same sound.

2. In pleadings, when a name which it is material to state, is wrongly spelled, yet if it be idem sonans with that proved, it is sufficient, as Segrave for Seagrave, 2 Str. R. 889; Keen for Keene, Thach. Cr. Cas. 67; Deadema for Diadema, 2 Ired. 346; Hutson for Hudson, 7 Miss. R. 142; Conrad for Conrad, 8 Miss. R. 291. See 5 Pike, 72; 6 Ala. R. 679; vide also Russ. & Ry. 412; 2 Taunt. R. 401. In the following cases the variances there mentioned were declared to be fatal, Russ. & Ry. 351; 10 East, R. 83; 5 Taunt. R. 14, 1 Baldw. R. 83; 2 Crompt. & M. 189; 6 Price, R. 2; 1 Chit. R. 659; 13 E. C. L. R. 194. See, generally, 3 Chit. Pr. 231, 2; 4 T. R. 611; 3 B. & P. 559; 1 Stark. R. 47; 2 Stark. R. 29; 3 Camp. R. 29; 6 M. & S. 45; 2 N. H. Rep. 557; 7 S. & R. 479; 3 Caines, 219; 1 Wash. C. C. R. 285; 4 Cowen, 148, and the article Name.

IDENTITATE NOMINIS, in Eng. law. The name of a writ which lies for a person taken upon a capias or exigent and committed to prison, for another man of the same name; this writ directs the sheriff to inquire whether he be the same person against whom the action was brought, and if not, then to discharge him. F. N. B. 267. In practice a party would be relieved by habeas corpus.

IDENTITY, evidence, sameness.

2. It is frequently necessary to identify persons and things. In criminal prosecutions, and in actions for torts and on contracts, it is required to be proved that the defendants have in criminal actions, and for injuries, been guilty of the crime or injury charged, and in an action on a contract, that the defendant was a party to it. Sometimes, too, a party who has been absent, and who appears to claim an inheritance, must prove his identity; and, not unfrequently, the body of a person which has been found dead must be identified; cases occur when the body is much disfigured, and, at other times, there is nothing left but the skeleton. Cases of considerable difficulty arise, in consequence of the omission to take particular notice; 2 Stark. Car. 239; Ryan's Med. Jur. 301; and in consequence of the great resemblance of two persons. 1 Hall's Am. Law Journ. 70; 1 Beck's Med. Jur. 509; 1 Paris, Med. Jur. 222; 3 Id. 143; Trail. Med. Jur. 33; Foderé, Méd. Lég. ch. 2, tome 1, p. 78—139.

3. In cases of larceny, trover, replevin, and the like, the things in dispute must always be identified. Vide 4 Bl. Com. 396.

4.—M. Briand, in his Manuel Complet de Médecine Légale, 4ème partie, ch. 1, gives rules for the discovery of particular marks, which an individual may have had, and also the true colour of the hair, although it may have been artificially coloured. He also gives some rules for the purpose of discovering, from the appearance of a skeleton, the sex, the age, and the height of the person when living, which he illustrates by various examples. See, generally, 6 C. & P. 677; 1 C. & M. 730; 3 Tyr. 806; Shelf. on Mar. & Div. 226; 1 Hagl. Cons. R.
in each of them the *ides* indicated the ninth day after the *nones*. The seven days between the *nones* and the *ides*, which we count 8, 9, 10, 11, 12, 13, and 14, in March, May, July and October, the Romans counted *octavo*, or *8 idus*; *septimo*, or *7 idus*; *sexto*, or *6 idus*; *quinto*, or *5 idus*; *quarto*, or *4 idus*; *tertio*, or *3 idus*; *pridie*, or *2 idus*; the word *ante* being understood as mentioned above. As to the other eight months of the year, in which the *nones* indicated the fifth day of the month, instead of our 6, 7, 8, 9, 10, 11, and 12, the Romans counted *octavo idus*, *septimo*, &c.

The word is said to be derived from the Tuscan *idare*, in Latin *dividere*, to divide, because the day of *ides* divided the month in equal parts. The days from the *ides* to the end of the month were computed as follows; for example, the fourteenth day of January, which was the next day after the *ides*, was called *decimo nemo*, or *19 kalendas*, or ante *kalendas febrarii*; the fifteenth, *decimo octavo*, or *18 kalendas febrarii*; and so of the rest, counting in a retrograde manner to *pridie* or *2 kalendas febrarri*; which was the thirty-first day of January.

4.—As in some months the *ides* indicate the thirteenth, and in some the fifteenth of the month, and as the months have not an equal number of days, it follows that the *decimo nemo* or *19 kalendas* did not always happen to be the next day after the *Ides*; this was the case only in the months of January, August and December. *Decimo sexto* or the 16th in February; *decimo septimo* or 17, March, May, July and October; *decimo octavo* or 18, in April, June, September, and November. Merlin, Répertoire de Jurisprudence, mots Ides, Nones et Calendes.

**IDIocy, med. jur.**, is that condition of mind, in which the reflective, or all or a part of the affective powers, are either entirely wanting, or are manifested to the least possible extent.

2.—Idiocy generally depends upon organic defects. The most striking
physical trait, and one seldom wanting, is the diminutive size of the head, particularly of the anterior superior portions, indicating a deficiency of the anterior lobes of the brain. According to Gall, whose observations on this subject are entitled to great confidence, its circumference, measured immediately over the orbitarch, and the most prominent part of the occipital bone, is between $11\frac{1}{2}$ and $14\frac{1}{4}$ inches. Gall, sur les Fonctions, p. 329. In the intelligent adult, it usually measures from 21 to 22 inches. Chit. Med. Jur. 248. See on this subject the learned work of Dr. Morton of Philadelphia, entitled Crania Americana. The brain of an idiot equals that of a new born infant; that is, about one-fourth, one-fifth, or one-sixth of the cerebral mass of an adult's in the enjoyment of his faculties. The above is the only constant character observed in the heads of idiots. In other respects their forms are as various as those of other persons. When idiocy supervenes in early infancy, the head is sometimes remarkable for immense size. This unnatural enlargement arises from some kind of morbid action preventing the development of the cerebral mass, and producing serous cysts, dropical effusions, and the like.

3.—In idiocy the features are irregular; the forehead low, retracting and narrowed to a point; the eyes are unsteady and often squint; the lips are thick and the mouth is generally open; the gums are spongy and the teeth are defective; the limbs are crooked and feeble. The senses are usually entirely wanting; many are deaf and dumb or blind; and others are incapable of perceiving odours, and show little or no discrimination in their food for want of taste. Their movements are constrained and awkward, they walk badly, and easily fall, and are not less awkward with their hands, dropping generally what is given to them. They are seldom able to articulate beyond a few sounds. They are generally affected with rickets, epilepsy, scrofula, or paralysis. Its subjects seldom live beyond the twenty-fifth year, and are incurable, as there is a natural deformity which cannot be remedied. Vide Chit. Med. Jur. 345; Ray's Med. Jur. ch. 2; 1 Beck's Med. Jur. 571; Shelf. on Lun. Index, h. t., and Idiot.

IDIOT, persons, is a person who has been without understanding from his nativity, and whom the law therefore presumes never likely to attain any. Shelf. on Lun. 2.

2.—It is an imbecility or sterility of mind, and not a perversion of the understanding. Chit. Med. Jur. 345, note (s); 1 Russ. on Cr. 6; Bac. Ab. h. t. (A); Bro. Ab. h. t.; Co. Litt. 246, 247; 3 Mod. 44; 1 Vern. 16; 4 Rep. 126; 1 Bl. Com. 302. When a man cannot count or number twenty, nor tell his father's or mother's name, nor how old he is, having been frequently told of it, it is a fair presumption that he is devoid of understanding. F. N. B. 238. Vide 1 Dow, P. C. new series, 392; S. C. 3 Bligh, R. new ser. 1. Persons born deaf, dumb and blind, are presumed to be idiots, for the senses being the only inlets of knowledge, and these, the most important of them, being closed, all ideas and associations belonging to them are totally excluded from their minds. Co. Litt. 42; Shelf. on Lun. 3. But this is a mere presumption, which, like most others, may be rebutted; and doubtless a person born deaf, dumb and blind, who could be taught to read and write, would not be considered an idiot. A remarkable instance of such an one may be found in the person of Laura Bridgman, who has been taught how to converse, and even to write. This young woman is now, in the year 1846, at school at South Boston. Vide Locke on Human understanding, B. 2, c. 11, §§ 12, 13; Ayliffe's Pand. 234; 4 Com. Dig. 610; 8 Com. Dig. 644.

3.—Idiots are incapable of committing crimes, or entering into contracts: they cannot of course make a will: but they may acquire property by descent. Vide, generally, 1 Dow's Parl. Cas. new series, 392; 3 Bligh's R. 1; 19
Ves. 286, 352, 353; Stock on the law of Non Compotes Mentis.

IDIOTA INQUIRENDO, WRIT DE. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. Fitz. N. B. 232.

IDLENESS, is the refusal or neglect to perform some honest labour, in order to gain a livelihood.

2.—The vagrant act of 17 G. 2, c. 5, which, with some modification, has been adopted in perhaps most of the states, describes idle persons to be those who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages. These are punishable according to the different police regulations with fine and imprisonment. In Pennsylvania vagrancy is punished, on a conviction before a magistrate, with imprisonment for one month.

IGNIS JUDICIVM, English law. The name of the old judicial trial by fire.

IGNOMINY, is the judgment of others touching our imperfections, and consequently true ignominy can be produced only by our vices. Ignominy is the opposite of esteem. Wolff, § 145. See Infamy.

IGNORAMUS, practice. We are ignorant. This word which in law means we are uninformed, is written on a bill presented to them, by a grand jury, when they find there is not sufficient evidence to authorise the finding a true bill. Sometimes instead of using this word the grand jury endorse on the bill Not found. 4 Bl. Com. 305. Vide Grand Jury.

IGNORANCE is the want of knowledge.

2.—Considered in itself ignorance is distinguished from error. Ignorance is but a privation of ideas or knowledge; but error is the non conformity or opposition of our ideas to the nature or state of things. Considered as a motive of our actions, ignorance differs but little from error, they are generally found amalgamated, and what is said of one is said of both.

3.—Ignorance and error, are of several kinds; 1, when considered as to their object, they are of law, and of fact; 2, when examined as to their origin, they are voluntary or involuntary; 3, when viewed with regard to their influence on the affairs of men, they are essential, or non-essential.

4.—§ 1. Ignorance of law and fact.

1. Ignorance of law consists in the want of knowledge of those laws which it is our duty to understand, and which every man is presumed to know. The law forbids any one to marry a woman whose husband is living. If any man, then, imagined he could marry such a woman, he would be ignorant of the law; and, if he married her, he would commit an error as to a matter of law. How far a party is bound to fulfil a promise to pay, upon a supposed liability, and in ignorance of the law, see 12 East, R. 38; 2 Jac. & Walk. 263; 5 Taunt. R. 143; 3 B. & Cresw. R. 280; 1 John. Ch. R. 512, 516; 6 John. Ch. R. 166; 9 Cowen's R. 674; 4 Mass. R. 342; 7 Mass. R. 452; 7 Mass. R. 488; 9 Pick. R. 112; 1 Binn. R. 27. And whether he can be relieved from a contract entered into in ignorance or mistake of the law; 1 Atk. 591; 1 Ves. & Bea. 23, 30; 1 Chan. Cas. 84; 2 Vern. 243; 1 John. Ch. R. 512; 2 John. Ch. R. 51; 1 Pet. S. C. R. 1; 6 John. Ch. R. 169, 170; 8 Wheat. R. 174; 2 Mason, R. 244, 342.

5.—2. Ignorance of fact, is the absence of knowledge as to the fact in question. It is a defect of the will, when a man intending to do what is lawful does that which is unlawful. It would be ignorance of fact, if a man believed he could marry a certain woman, whom he believed to be unmarried and free, when in fact she was a married woman. Ignorance of the laws of a foreign government, or of another state, is ignorance of a fact. 9 Pick. R. 112. Vide for the difference between ignorance of law and ignorance of fact, 9 Pick. R. 112. Clef
des Lois Rom. mot Fait; Dig. 22, 6, 7.

6.—§ 2. Ignorance is either voluntary or involuntary. 1. It is voluntary when a party might, by taking sufficient pains, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated, a neglect to become acquainted with them is therefore voluntary ignorance. Doct. & St. 1, 46; Plowd. 343.

7.—2. Involuntary ignorance is that which is invincible, and which cannot by any exertion be overcome; as, the ignorance of a law which has not yet been promulgated.

8.—§ 3. Ignorance is either essential or non-essential. 1. By essential ignorance is understood that which has for its object some essential circumstance so intimately connected with the matter in question, and which so influences the parties that it induces them to act in the business. For example, if A should sell his horse to B, and at the time of the sale the horse was dead unknown to the parties, the fact of the death would render the sale void. Poth. Vente, n. 3 and 4; 2 Kent, Com. 367.

9.—2. Non-essential or accidental ignorance is that which has not of itself any necessary connexion with the business in question, and which is not the true consideration for entering into the contract; as, if a man should marry a woman whom he believed to be rich, and she proved to be poor, this fact would not be essential, and the marriage would therefore be good. Vide, generally, Ed. Inj. 7; 1 Johns. Ch. R. 512; 2 Johns. Ch. R. 41; S. C. 14 Johns. R. 501; Doug. 467; 2 East, R. 469; 1 Campb. 134; 5 Taunt. 379; 3 M. & S. 378; 12 East, R. 38; 1 Vern. 243; 3 P. Wms. 127; n.; 1 Bro. C. 92; 10 Ves. 406; 2 Madd. R. 163; 1 V. & B. 30; 2 Atk. 112, 591; 3 P. Wms. 315; Mos. 364; Doct. & Stud. Dial. 1, c. 26, p. 92; Id. Dial. 2, ch. 46, p. 303; 2 East, R. 469; 12 East, R. 38; 1 Ponbl. Eq. B. 1, ch. 2, § 7, note (v); 8 Wheat. R. 174; S. C. 1 Pet. S. C. R. 1; 1 Chan. Cas. 84; 1 Story, Eq. Jur. § 137, note 1; Dig. 22, 6; Code, 1, 16; Clef des Lois Rom. h. t.; Mérl. Répért. h. t.; 3 Sav. Dr. Rom. Appendice viii., pp. 337 to 444.

ILL FAME. This is a technical expression which means not only bad character as generally understood, but every person, whatever may be his conduct and character in life, who visits bawdy houses, gaming houses, and other places which are of ill fame, is a person of ill fame. 1 Rogers's Recorder, 67; Ayl. Par. 276; 2 Hill, 558; 17 Pick. 80.

ILLEGAL, contrary to law; unlawful.

2.—It is a general rule, that the law will never give its aid to a party who has entered into an illegal contract, whether the same be in direct violation of a statute, against public policy, or opposed to public manners. Nor to a contract which is fraudulent, which affects the defendant or a third person.

3.—A contract in violation of a statute is absolutely void, and, however disguised, it will be set aside, for no form of expression can remove the substantial defect inherent in the nature of the transaction; the courts will investigate the real object of the contracting parties, and if that be repugnant to the law, it will vitiate the transaction.

4.—Contracts against the public policy of the law, are equally void as if they were in violation of a public statute; a contract not to marry any one, is therefore illegal and void. See Void.

5.—A contract against the purity of manners is also illegal; as, for example, an agreement to cohabit unlawfully with another, is therefore void; but a bond given for past cohabitation, being considered as a remuneration for past injury, is binding.

6.—And all contracts which have for their object, or which may in their consequences, be injurious to third persons, altogether unconnected with
them, are in general illegal and void.
Of the first, an example may be found
in the case where a sheriff's officer
received a sum of money from a de-
defendant for admitting to bail, and
agreed to pay the bail part of the mo-
ney which was so exacted. 2 Burr. 924.
The case of a wager between
two persons, as to the character of a
third, is an example of the second class.
Cowp. 729; 4 Camp. 152; 1 Rawle,
42; 1 B. & A. 683. Vide Illicit; Unlawful.

ILLEGITIMATE, that which is
contrary to law; it is usually applied
to children born out of lawful wed-
lock. A bastard is sometimes called
an illegitimate child.

ILLEVIALE. A debt or duty
that cannot or ought not to be levied;
as nihil set upon a debt is a mark for
illeivable.

ILlicit. What is unlawful; what
is forbidden by the law. Vide Unlaw-
ful.

2.—This word is frequently used in
policies of insurance, where the assured
warrants against illicit trade. By
illicit trade is understood that "which
is made unlawful by the laws of the
country to which the object is bound."
The assured having entered into this
warranty, is required to do no act which
will expose the vessel to be legally con-
demned. 2 L. R. 337, 338. Vide In-
surance; Trade; Warranty.

ILLICITE. Unlawfully.

2.—This word has a technical mean-
ing and is requisite in an indictment
where the act charged is unlawful; as,
in the case of a riot. 2 Hawk, P. C.
25, § 96.

ILLINOIS. The name of one of
the new states of the United States of
America. This state was admitted into
the Union by virtue of a "Resolution
declaring the admission of the state of
Illinois into the Union," passed De-
cember 3, 1818, in the following
words: Resolved, &c. That, whereas,
in pursuance of an act of Congress,
passed on the eighteenth day of April,
one thousand eight hundred and eigh-
teen, entitled "An act to enable the
people of the Illinois territory to form a
constitution and state government, and
for the admission of such state into the
Union, on an equal footing with the
original states," the people of said ter-
ditory did, on the twenty-sixth day of
August, in the present year, by a con-
vention called for that purpose, form
for themselves a constitution and state
government, which constitution and
state government, so formed, is repub-
lican, and in conformity to the prin-
ciples of the articles of compact between
the original states and the people and
states in the territory northwest of the
river Ohio, passed on the thirteenth
day of July, one thousand seven hun-
dred and eighty-seven: Resolved &c.
That the state of Illinois shall be one,
and is hereby declared to be one, of the
United States of America, and admitted
into the Union on an equal footing with
the original states, in all respects what-
ever.

2.—A constitution for this state was
adopted in convention held at Kaskaskia,
the 26th day of August, 1818,
which continued in force until the first
day of April, 1848. A convention to
revise the constitution assembled at
Springfield, June 7, 1847, in pursuance
of an act of the general assembly of
the state of Illinois, entitled "An act
to provide for the call of a convention."
On the first day of August, 1848, this
convention adopted a constitution of the
state of Illinois, and by the 13th sec-
tion of the schedule thereof it provided
that this constitution shall be the
supreme law of the land from and
after the first day of April, A. D.
1848.

3.—It will be proper to consider, 1,
the rights of citizens to vote at elec-
tions; 2, the distribution of the powers
of government.

4.—1. The sixth article directs that,
§ 1. In all elections, every white
male citizen above the age of twenty-
one years, having resided in the state
one year next preceding any election,
shall be entitled to vote at such elec-
tion; and every white male inhabitant
of the age aforesaid, who may be a re-
sident of the state at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election.

§ 2. All votes shall be given by ballot.

§ 6. No soldier, seaman or mariner of the United States, is deemed a resident of the state, in consequence of being stationed within the state.

§ 7. No person elected to the general assembly shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the general assembly, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorised by any law passed during the time for which he shall have been elected, or during one year after the expiration thereof.

§ 2. No person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted; and all acts in contravention of this section shall be void.

These will be separately considered.

§ 6. The *legislative department* will be considered by taking a view, 1, of those parts of the constitution which relate to the *general assembly*; 2, of the senate; 3, of the house of representatives.

7.—1st. Of the *general assembly.* The third article of the constitution provides as follows:

§ 1. The legislative authority of this state shall be vested in a general assembly; which shall consist of a senate and house of representatives, both to be elected by the people.

§ 2. The first election for senators and representatives shall be held on the Tuesday after the first Monday in November, one thousand eight hundred and forty-eight; and thereafter, elections for members of the general assembly shall be held once in two years, on the Tuesday next after the first Monday in November, in each and every county, at such places therein as may be provided by law.

§ 11. The senate and house of representatives, when assembled, shall each choose a speaker and other officers, (the speaker of the senate excepted.) Each house shall judge of the qualifications and election of its members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum; but a smaller number may adjourn from day to day, and compel the attendance of absent members.

§ 14. Any two members of either house shall have liberty to dissent and protest against any act or resolution, which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on the journals.

§ 15. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds of
all the members elected, expel a member, but not a second time for the same cause; and the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

§ 16. When vacancies shall happen in either house, the governor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

§ 17. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileges from arrest during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

§ 18. Each house may punish, by imprisonment during its session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence: Provided, such imprisonment shall not, at any one time, exceed twenty-four hours.

§ 19. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

8.—2d. Of the senate. The senate will be considered by taking a view of; 1, the qualification of senators; 2, their election; 3, by whom elected; 4, when elected; 5, number of senators; 6, the duration of their office.

9.—First, Art. 3, s. 4, of the constitution, directs that "No person shall be a senator who shall not have attained the age of thirty years; who shall not be a citizen of the United States, five years an inhabitant of this state, and one year in the county or district in which he shall be chosen, immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall not, moreover, have paid a state or county tax."

10.—Secondly, The senators at their first session herein provided for shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the second class at the expiration of the fourth year; so that one-half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 3, s. 5.

11.—Thirdly, The senators are elected by the people.

12.—Fourthly, The first election shall be held on the Tuesday after the first Monday in November, 1845; and thereafter the elections shall be on the Tuesday after the first Monday in November, once in two years. Art. 3, s. 2.

13.—Fifthly, The senate shall consist of twenty-five members, and the house of representatives shall consist of seventy-five members, until the population of the state shall amount to one million of souls, when five members may be added to the house, and five additional members for every five hundred thousand inhabitants thereafter, until the whole number of representatives shall amount to one hundred; after which, the number shall neither be increased nor diminished; to be apportioned among the several counties according to the number of white inhabitants. In all future apportionments, where more than one county shall be thrown into a representative district, all the representatives to which said counties may be entitled shall be elected by the entire district. Art. 3, s. 6.

14.—Sixthly, The senators at their first session herein provided for shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the
second class at the expiration of the fourth year, so that one-half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 3, s. 5.

15.—3. The house of representatives. This will be considered in the same order which has been observed in relation to the senate.

16.—First, No person shall be a representative who shall not have attained the age of twenty-five years; who shall not be a citizen of the United States, and three years an inhabitant of this state; who shall not have resided within the limits of the county or district in which he shall be chosen twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; and who, moreover, shall not have paid a state or county tax, Art. 3, s. 3.

17.—Secondly, They are elected biennially.

18.—Thirdly, Representatives are elected by the people.

19.—Fourthly, Representatives are elected at the same time that senators are elected.

20.—Fifthly, The house of representatives shall consist of seventy-five members. See ante, No. 16.

21.—Sixthly, Their office continues for two years.

22.—2. The executive department. The executive power is vested in a governor. Art. 4, s. 1. It will be proper to consider, 1, his qualifications; 2, his election; 3, the duration of his office; 4, his authority and duty.

23.—First, No person except a citizen of the United States shall be eligible to the office of governor; nor shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been ten years a resident of this state, and fourteen years a citizen of the United States. Art. 4, s. 4.

24.—Secondly, His election is to be on the Tuesday next after the first Monday in November. The first election in 1848, and every fourth year afterwards.

25.—Thirdly, He remains in office for four years. The first governor is to be installed on the first Monday of January, 1849, and the others every fourth year thereafter.

26.—Fourthly, His authority and duty. He may give information and recommend measures to the legislature—grant reprieves, commutations and pardons, except in cases of treason and impeachment, but in these cases he may suspend execution of the sentence until the meeting of the legislature—require information from the officers of the executive department, and take care that the laws be faithfully executed—on extraordinary occasions, convene the general assembly by proclamation—be commander-in-chief of the army and navy of the state, except when they shall be called into the service of the United States—nominate, and, by and with the consent and advice of the senate, appoint all officers whose offices are established by the constitution, or which may be created by law, and whose appointments are not otherwise provided for—in case of disagreement between the two houses with respect to the time of adjournment, adjourn the general assembly to such time as he thinks proper, provided it be not to a period beyond a constitutional meeting of the same. Art. 4. He has also the veto power.

27.—A lieutenant governor shall be chosen at every election of governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor. Art. 4, s. 14.

The following are his principal powers and duties:

§ 15. The lieutenant governor shall,
by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects, and, whenever the senate are equally divided, to give the casting vote.

§ 16. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own number as speaker for that occasion; and if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from his office, refuse to qualify, or resign, or die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government.

§ 17. The lieutenant governor, while he acts as speaker of the senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives and no more.

§ 18. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a speaker.

§ 19. In case of the impeachment of the governor, his absence from the state, or inability to discharge the duties of his office, the powers, duties, and emoluments of the office shall devolve upon the lieutenant governor; and in case of his death, resignation, or removal, then upon the speaker of the senate for the time being, until the governor, absent or impeached, shall return or be acquitted; or until the disqualification or inability shall cease; or until a new governor shall be elected and qualified.

§ 20. In case of a vacancy in the office of governor, for any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified, the powers, duties, and emoluments of the office devolve upon the lieutenant governor, or speaker of the senate, as above provided, until a new governor be elected and qualified.

28.—3. The judiciary department. The judicial power is vested in one supreme court, in circuit courts, in county courts, and in justices of the peace, but inferior local courts, of civil and criminal jurisdiction, may be established by the general assembly in the cities of the state, but such courts shall have a uniform organization and jurisdiction in such cities.

Art. 5, s. 1. These will be separately considered.

29.—1st. Of the supreme court, its organization and jurisdiction. 1. Of its organization. 1st. The judges must be citizens of the United States; have resided in the state five years previous to their respective elections; and two years next preceding their election in the division, circuit, or county in which they shall respectively be elected; and not be less than thirty-five years of age at the time of their election. 2d. The judges are elected each one in a particular district, by the people. But the legislature may change the mode of election. 3d. The supreme court consists of the judges, two of whom form a quorum; and a concurrence of two of said judges is necessary to a decision. 4th. They hold their office for nine years. After the first election, the judges are to draw by lot, and one is to go out of office in three, one in six, and the other in nine years. And one judge is to be elected every third year. 2. Of the jurisdiction of the supreme court. This court has original jurisdiction in cases relative to the revenue, in cases of mandamus, habeas corpus, and in such cases of impeachment as may be by law directed to be tried before it, and it has appellate jurisdiction in all other cases.

30.—2d. Of the circuit courts, their organization and jurisdiction. 1st. Of their organization. The state is divided into nine judicial districts, in
each of which a circuit judge having the same qualifications as the supreme judges, except that he may be appointed at the age of thirty years, is elected by the qualified electors, who holds his office for six years and until his successor shall be commissioned and qualified; but the legislature may increase the number of circuits. 2d. Of their jurisdiction. The circuit courts have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts.

31.—3d. Of the county courts.
There is in each county a court to be called a county court. It is composed of one judge, elected by the people, who holds his office for four years. Its jurisdiction extends to all probate and such other jurisdiction as the general assembly may confer in civil cases, and in such criminal cases as may be prescribed by law, when the punishment is by fine only, not exceeding one hundred dollars. The county judge, with such justices of the peace in each county as may be designated by law, shall hold terms for the transaction of county business, and shall perform such other duties as the general assembly shall prescribe; Provided, the general assembly may require that two justices, to be chosen by the qualified electors of each county, shall sit with the county judge in all cases; and there shall be elected, quadrennially, in each county, a clerk of the county court, who shall be ex officio recorder, whose compensation shall be fees; Provided, the general assembly may, by law, make the clerk of the circuit court ex officio recorder, in lieu of the county clerk.

32.—4th. Of justices of the peace.
There shall be elected in each county in this state, in such districts as the general assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law.

ILLITERATE, this term is applied to one unacquainted with letters.

2.—When an ignorant man unable to read, signs a deed or agreement, or makes his mark instead of a signature, and he alleges, and can prove, that it was falsely read to him, he is not bound by it, in consequence of the fraud. And the same effect would result, if the deed or agreement were falsely read to a blind man, who could have read before he lost his sight, or to a foreigner who did not understand the language.

3.—To induce an illiterate man, by false representations and false reading, to sign a note for a greater amount than that agreed on, is indictable as a cheat. 1 Yerg. 76. Vide, generally, 2 Nels. Ab. 946; 2 Co. 3; 11 Co. 28; Moor, 148.

ILLUSION, is a species of mania in which the sensibility of the nervous extremities is altered, excited, weakened or perverted. The patient is deceived by the false appearance of things, and his reason is not sufficiently active and powerful to correct the error, and this last particular is what distinguished the same from the insane individual. Illusions are not unfrequent in a state of health, but reason corrects the errors and dissipates them. A square tower seen from a distance may appear round, but on approaching it, the error is corrected. A distant mountain may be taken for a cloud, but as we approach, we discover the truth. To a person in the cabin of a vessel under sail, the shore appears to move; but reflection and a closer examination soon destroy this illusion. An insane individual is mistaken on the qualities, connexions, and causes of the impressions he actually receives, and he forms wrong judgments as to his internal and external sensations; and his reason does not correct the error. 1 Beck's Med. Jur. 538; Esquirol, Maladies Mentales, prém. partie, III., tome 1, p. 202. Dict. des Sciences
Medicales, Hallucination, tome 20, p. 64. See Hallucination.

ILLUSORY APPOINTMENT,—
chancery practice. Such an appointment or disposition of property under a power as is merely nominal and not substantial.

2.—Illusory appointments are void in equity. Sugd. Pow. 489; 1 Vern. 67; 1 T. R. 438; note; 4 Ves. 785; 16 Ves. 26; 1 Taunt. 289; and the article Appointment.

TO IMAGINE, Eng. law. In cases of treason the law makes it a crime to imagine the death of the king. In order to complete the offence there must, however, be an overt act; the terms compassing and imagining being synonymous. It has been justly remarked that the words to compass and imagine are too vague for a statute whose penalty affects the life of a subject. Barr. on the Stat. 243, 4. Vide Fiction.

IMBECILITY, med. jur., is a weakness of the mind, caused by the absence or obliteratiion of natural or acquired ideas; or it is described to be abnormal deficiency either in those faculties which acquaint us with the qualities and ordinary relation of things, or in those which furnish us with the moral motives that regulate our relations and conduct towards our fellow men. It is frequently attended with excessive activity of one or more of the animal propensities.

2.—Imbecility differs from idiocy in this, that the subjects of the former possess some intellectual capacity, though inferior in degree to that possessed by the great mass of mankind; while those of the latter are utterly destitute of reason. Imbecility also from stupidity, (q. v.) The former consists in a defect of the mind, which renders it unable to examine the data presented to it by the senses, and therefrom to deduce the correct judgment, that is, a defect of intensity, or the reflective power. The latter is occasioned by a want of intensity, or the perceptive power.

3.—There are various degrees of this disease. It has been attempted to classify the degrees of imbecility, but the careful observer of nature will perhaps be soon satisfied that the shades of difference between one species and another, are almost imperceptible. Ray, Med. Jur. ch. 3; 2 Beck, Med. Jur. 550, 542; 1 Hagg. Ecc. R. 384; 2 Philm. R. 449; 1 Litt. R. 252; 5 John. Ch. R. 161; 1 Litt. R. 101; Des Maladies mentales, considérées dans leurs rapports avec la législation civile et criminelle, S; Georget, Discussion medico-légale sur la folie, 140.

IMMATERIAL, what is not essential; what is not requisite; what is informal; as, an immaterial averment, an immaterial issue.

2.—When a witness deposes to something immaterial, which is false, although he is guilty of perjury in foro conscientiae, he cannot be punished for perjury. 2 Russ. on Cr. 521; 1 Hawk. b. 1, c. 69, s. 8; Bac. Ab. Perjury, (A).

IMMATERIAL AVERMENT, is one alleging with needless particularly or unnecessary circumstances, what is material and requisite, and which, properly, might have been stated more generally, or without such circumstances or particulars; or, in other words, it is a statement of unnecessary particulars, in connexion with, and as descriptive of, what is material. Gould on Pl. c. 3, § 186.

2.—It is highly improper to introduce immaterial averments, because when they are made, they must be proved; as, if a plaintiff declare for rent on a demise which is described as reserving a certain annual rent, payable "by four even and equal quarterly payments," &c.; and on the trial it appears that there was no stipulation with regard to the time or times of payment of the rents, the plaintiff could not recover. The averment as to the time, though it need not have been made, yet it must be proved, and the plaintiff having failed in this, he could not recover; as there was a variance between the contract declared
upon and the contract proved. Doug. 665.

3.—But when the immaterial aver-
ment is such that it may be struck out
of the declaration, without striking out
at the same time the cause of action,
and when there is no variance between
the contract as laid in the declaration
and that proved, immaterial averments
then need not be proved. Gould on
Pl. c. 3, § 188.

IMMATERIAL issue, is one taken on
a point not proper to decide the action;
for example, if in an action of debt on
bond, conditioned for the payment of
ten dollars and fifty cents at a certain
day, the defendant pleads the payment
ten dollars according to the form of
the condition, and the plaintiff,
instead of demurring, tenders issue upon
the payment, it is manifest that, whether
this issue be found for the plaint-
iff or the defendant, it will remain
equally uncertain whether the plaintiff
is entitled to maintain his action, or
not; for, in an action for the penalty
of a bond, conditioned to pay a certain
sum, the only material question is,
whether the exact sum were paid or
not, and the question of payment of a
part is a question quite beside the
legal merits. Hob. 113; 5 Taunt. 386.

IMMEDIATE. That which is pro-
duced directly by the act to which it is
ascribed, without the intervention or
agency of any distinct intermediate
cause.

2.—For immediate injuries the
remedy is trespass, for those which
are consequential, an action on the
case. 11 Mass. R. 59, 137, 525; 1
& 2 Ohio R. 342; 6 S. & R. 348; 18
John. 257; 19 John. 381; 2 H. & M.
423; 1 Yeates, R. 586; 12 S. & R.
210; Coxe, R. 339; Harper's R. 113;
6 Call's R. 44; 1 Marsh. R. 194.

3.—When an immediate injury is
caused by negligence, the injured party
may elect to regard the negligence as
the immediate cause of action, and
declare in case; or to consider the act
itself as the immediate injury; and sue
in trespass. 14 John. 432; 6 Cowen,
342; 3 N. H. Rep. 465; sed vide 3
Conn. 64. See Cause.

IMMEMORIAL. That which com-
mences beyond the time of memory.
Vide Memory, time of.

IMMEMORIAL possession. In Lo-
uisiana, by this term is understood that
of which no man living has seen the
beginning, and the existence of which
he has learned from his elders. Civ.
Code of Lo. art. 762; 2 M. R. 214;
17 L. R. 46; 3 Toull. p. 410; Poth.
Contr. de Societe, n. 244.

IMMIGRATION is the removing
into one place from another. It differs
from emigration, which is the moving
from one place into another. Vide
Emigration.

IMMORALITY. That which is
contra bonos moros.

2.—Immoral contracts are generally
void; an agreement in consideration of
future illicit cohabitation between the
517; 1 Esp. R. 13; 1 B. & P. 340,
341; an agreement for the value of
libellous and immoral pictures, 4 Esp.
R. 97; or for printing a libel, 2 Stark.
R. 107; or for an immoral wager,
Chit. Contr. 156, cannot, therefore, be
enforced.

3.—It is a general rule, that when-
ever an agreement appears to be ille-
gal, immoral, or against public policy,
a court of justice leaves the parties
where it finds them; when the agree-
ment has been executed, the court will
not rescind it; when executory, the
court will not help the execution. 4
Ohio R. 419; 4 John. R. 419; 11
John. R. 341; 3 Cowen's R. 213; 2
Wils. R. 341.

IMMOVABLES, civil law. Things
are movable or immovable. Immova-
bles, res immobiles, are things in
general, such as cannot move them-
selves or be removed from one place
to another. But this definition, strictly
speaking, is applicable only to such
things as are immovable by their own
nature, and not to such as are so only
by the destination of the law.

2.—There are things immovable by
their nature, others by their destination, and others by the objects to which they are applied.

3.—1. Lands and buildings or other constructions, whether they have their foundations in the soil or not, are immovable by their nature. By the common law, buildings erected on the land are not considered real estate unless they have been let into, or united to the land, or to substances previously connected therewith. Ferard on Fxst. 2.

4.—2. Things which the owner of the land has placed upon it for its service and improvement, and immovables by destination, as seeds, plants, fodder, manure, pigeons in a pigeon-house, bee-hives, and the like. By the common law, erections with or without a foundation, when made for the purpose of trade, are considered personal estate, 2 Pet. S. C. Rep. 137; 3 Atk. 13; Ambl. 113.

5.—3. A servitude established on real estate, is an instance of an immovable which is so considered in consequence of the object to which it is applied. Vide Civil Code of Louis. B. 2, t. 1, c. 2, art. 453–463; Poth. Des Choses, § 1; Poth. de la Communauté, n. 25 et seq.; Clef des Lois Romaines, mot Imménius.

IMMUNITY is an exemption to serve in an office, or to perform duties which the law generally requires other citizens to perform. Vide Dig. lib. 50, t. 6; 1 Chit. Cr. L. 821; 4 Har. & M‘Hn. 341.

IMPAIRING THE OBLIGATION OF CONTRACTS. The constitution of the United States, art. 1, s. 9. cl. 1, declares that no state shall “pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.”

2.—Contracts when considered in relation to their effects are executed, that is, transfer for the possession of the thing contracted for, or they are executory, which gives only a right of action for the subject of the contract. Contracts are also express or implied. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164.

3.—The obligation of a contract here spoken of is a legal not a mere moral obligation; it is the law which binds the party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, proprio vigore, but in the law applicable to the contract. 4 Wheat. R. 197; 12 Wheat. R. 318; and this law is not the universal law of nations, but it is the law of the state where the contract is made. 12 Wheat. R. 213. Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. 12 Wheat. 256; Id. 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197.

4.—The constitution forbids the states to pass any law impairing the obligation of contracts, but there is nothing in that instrument which prohibits Congress from passing such a law. Pet. C. C. R. 322. Vide generally, Story on the Const. § 1368 to 1391; Serg. Const. Law, 356; Rawle on the Const. h. t.; Dane’s Ab. Index, h. t.; 10 Am. Jur. 273—297.

TO IMPANEL, practice, is to write the names of a jury on a schedule, by the sheriff or other officer lawfully authorised.

IMPARLANCE, pleading and practice. Imparlance from the French, parler, to speak, or licentia loquendi, in its most general signification, means time given by the court to either party to answer the pleading of his opponent, as either to plead, reply, rejoin, &c. and is said to be nothing else but the continuance of the cause till a further day. Bac. Abr. Pleas, C. But the more common signification of the term is time to plead. 2 Saund. 1, n. 2; 2 Show. 310; Barnes, 346; Lawes, Civ. Pl. 93, 94.

2.—Imparlances are of three descriptions; first, a common or general imparlance; secondly, a special imparlance; and, thirdly, a general special imparlance.
3.—1. A general imparlance is the entry of a general prayer and allowance of time to plead till the next term, without reserving to the defendant the benefit of any exception; so that after such an imparlance the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparlance is always from one term to another.

4.—2. A special imparlance reserves to the defendant all exception to the writ, bill, or count; and therefore after it the defendant may plead in abatement, though not to the jurisdiction of the court.

5.—3. A general special imparlance contains a saving of all exceptions whatsoever, so that the defendant, after this may plead, not only in abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender, and that he was always ready to pay, because, by craving time, he admits he is not ready, and so falsifies his plea. Tidd’s Pr. 418, 419. The last two kinds of imparlances, are, it seems, sometimes from one day to another in the same term. See, in general, Com. Dig. Abatement, I 19, 20, 21; 1 Chitt. Pl. 420; Bac. Abr. Pleas, C; 14 Vin. Abr. 335; Com. Dig. Pleader, D; 1 Sel. Pl. 265; Doct. Pl. 291; Encycl. de M. D’Alembert, art. Delai (Jurisp.)

IMPEACHMENT, const. law, punishments. Under the constitution and laws of the United States, an impeachment may be described to be a written accusation, by the house of representatives of the United States, to the senate of the United States, against an officer. The presentment, or written accusation, is called articles of impeachment.

2.—The constitution declares that the house of representatives shall have the sole power of impeachment, art. 1, s. 2, cl. 5; and that the senate shall have the sole power to try all impeachments, art. 1, s. 3, cl. 6.

3.—The persons liable to impeachment are the President, Vice-president, and all civil officers of the United States, art. 2, s. 4. A question arose upon an impeachment before the senate, in 1799, whether a senator was a civil officer of the United States, within the purview of this section of the constitution, and it was decided by the senate, by a vote of fourteen against eleven, that he was not. Senate Journ. 10th January, 1799; Story on Const. § 791; Rawle on Const. 213, 214; Serg. Const. Law, 376.

4.—The offences for which a guilty officer may be impeached are, treason, bribery, and other high crimes and misdemeanors. Art. 2, s. 4. The constitution defines the crime of treason, art. 3, s. 3. Recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by “other high crimes and misdemeanors,” resort, it is presumed, must be had to parliamentary practice, and the common law, in order to ascertain what they are. Story, § 795.

5.—The mode of proceeding, in the institution and trial of impeachments is as follows: When a person who may be legally impeached has been guilty, or is supposed to have been guilty, of some malversation in office, a resolution is generally brought forward by a member of the house of representatives, either to accuse the party, or for a committee of inquiry. If the committee report adversely to the party accused, they give a statement of the charges, and recommend that he be impeached; when the resolution is adopted by the house, a committee is appointed to impeach the party at the bar of the senate, and to state that the articles of impeachment against him will be exhibited in due time, and made good before the senate, and to demand that the senate take order for the appearance of the party to answer to the impeachment. The house then agree upon the articles of impeachment, and they are presented to the senate by a committee appointed by the house to prosecute the impeachment; the senate then issues process, summoning the party to appear at a given day before
them, to answer to the articles. The process is served by the sergeant-at-arms of the senate, and a return is made of it to the senate, under oath. On the return-day of the process, the senate resolve themselves into a court of impeachment, and the senators are sworn to do justice according to the constitution and laws. The person impeached is called to answer, and either appears or does not appear. If he does not appear, his default is recorded, and the senate may proceed ex parte. If he does appear, either by himself or attorney, the parties are required to form an issue, and a time is then assigned for the trial. The proceedings on the trial are conducted substantially as they are upon common judicial trials. If any debates arise among the senators, they are conducted in secret, and the final decision is given by yeas and nays; but no person can be convicted without the concurrence of two-thirds of the members present. Const. art. 1, s. 2, cl. 6.

6.—When the President is tried, the chief justice shall preside. The judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States. Proceedings on impeachments under the state constitutions are somewhat similar. Vide Courts of the United States.

IMPEACHMENT, evidence, is an allegation, supported by proof, that a witness who has been examined is unworthy of credit.

2.—Every witness is liable to be impeached as to his character for truth; and, if his general character is good, he is presumed, at all times, to be ready to support it.

IMPEACHMENT OF WASTE, signifies a restraint from committing waste upon lands or tenements; or a demand of compensation for waste done by a tenant who has but particular estate in the land granted, and therefore no right to commit waste.

2.—All tenants for life, or any less estate, are liable to be impeached for waste, unless they hold without impeachment of waste; in the latter case, they may commit waste without being questioned, or any demand for compensation for the waste done. 11 Co. 82.

IMPEDEMENTS, contracts, legal objections to the making of a contract; impediments which relate to the person are, those of minority, want of reason, coverture, and the like; they are sometimes called disabilities. Vide Incapacity.

IMPERFECT. That which is incomplete.

2.—This term is applied to rights and obligations. A man has a right to be relieved by his fellow-creatures when in distress; but this right he cannot enforce by law; hence it is called an imperfect right. On the other hand, we are bound to be grateful for favours received, but we cannot be compelled to perform such imperfect obligations. Vide Poth. Ob. art. Preliminary; Vattel, Dr. des Gens, Prel. notes, § 17; and Obligations.

IMPERIUM. The right to command, which includes the right to employ the force of the state to enforce the laws; this is one of the principal attributes of the power of the executive. 1 Toull. n. 58.

IMPERTINENT, in practice, pleading. What does not appertain, or belong, id est, qui ad rem non pertinent.

2.—Evidence of facts which do not belong to the matter in question, is impertinent and inadmissible. In general, what is immaterial is impertinent, and what is material is, in general, not impertinent. 1 McC. & Y. 337. See Gresl. Ev. Ch. 3, s. 1, p. 229. Impertinent matter, in a declaration or other pleading, is that which does not belong to the subject; in such case it is considered as mere surplusage, (q. v.) and is rejected. Ham. N. P. 25; vide 2 Ves. 24; 5 Madd. R. 450; Newl. Pr. 38; 2 Ves. 631; 5 Ves. 656; 18 Eng. Com. Law R. 201; Eden on Inj. 71.

3.—There is a difference between matter merely impertinent and that
which is scandalous; matter may be
ingrant, without being scandalous; but if it is scandalous, it must be im-

4.—In equity a bill cannot, accord-
ing to the general practice, be referred
for impertinence after the defendant
has answered or submitted to answer,
but it may be referred for scandal at
any time, and even upon the applica-
tion of a stranger to the suit. Coop.
Eq. Pl. 19; 2 Ves. 631; 6 Ves. 514;
Story, Eq. Pl. § 270. Vide Gresl.
Eq. Ev. p. 2, c. 3, s. 1; 1 John Ch.
R. 103; 1 Paige’s R. 555; 1 Edw. R.
350; 11 Price, R. 111; 5 Paige’s R.
522; 1 Russ. & My. 28; Scand.

IMPETRATION. The obtaining
any thing by prayer or petition. In
the ancient English statutes, it signifies
a pre-obtaining of church benefices in
England from the church of Rome,
which belonged to the gift of the king,
or other lay patrons.

TO IMPEL, practice, to sue or
prosecute by due course of law. 9
Watts, 47.

IMPLEMENTS, are such things as
are used or employed for a trade, or
furniture of a house.

IMPLICATA, mar. law. In order
to avoid the risk of making fruitless
voyages, merchants have been in the
habit of receiving small adventures on
freight at so much per cent., to which
they are entitled at all events, even if
the adventure be lost. This is what
the Italians call implicata. Targa,
chap. 34; Emer. Mar. Loans, s. 5.

IMPLICATION, is an inference of
something not directly declared, but
arising from what is admitted or ex-

2.—It is a rule that when the law
gives any thing to a man, it gives him
by implication all that is necessary for
its enjoyment. It is also a rule that
when a man accepts an office, he
undertakes by implication to use it ac-
cording to law, and by non-user he
may forfeit it. 2 Bl. Com. 152.

3.—An estate in fee simple will pass
by implication, 6 John. R. 185; 18

JOHN. R. 31; 2 Binn. R. 464, 532:
such implication must not only be a
possible or probable one, but it must be
plain and necessary; that is, so strong
a probability of intention, that an in-
etion contrary to that imputed to the
testator cannot be supposed. 1 Ves.
& B. 466; Willes, 141; 1 Ves. jr.
564; 14 John. R. 198. Vide, gene-
 rally, Com. Dig. Estates by Devise, N
12, 13; 2 Rop. Leg. 342; 14 Vin.
Ab. 341; 5 Ves. 805; 5 Ves. 582; 3
Ves. 676.

IMPORTATION, comm. law, is the
act of bringing goods and merchandize
into the United States from a foreign
country. 9 Cranch, 104, 120; 5
Cranch, 368; 2 Mann. & Gr. 155,
note (a).

2.—To prevent the mischievous in-
terference of the several states with the
national commerce, the constitution of
the United States, art. 1, s. 10, provides
as follows: “no state shall, without
the consent of the Congress, lay any
imposts or duties on imports or ex-
ports, except what may be absolutely
necessary for executing its inspection
laws; and the net produce of all duties
and imports, laid by any state on im-
ports or exports, shall be for the use of
the treasury of the United States; and
all such laws shall be subject to the re-
vision and control of the Congress.”

3.—This apparently plain provision
has received a judicial construction.
In the year 1821, the legislature of
Maryland passed an act requiring that
all importers of foreign articles, com-
modities, &c., by the bale or package,
of wine, rum, &c., and other persons
selling the same by wholesale, bale or
package, hoghead, barrel or tierce,
should before they were authorised to
sell, take out a license for which they
were to pay fifty dollars, under certain
penalties. A question arose whether
this act was or was not a violation of
the constitution of the United States
and particularly of the above clause,
and the supreme court decided against
the constitutionality of the law. 12
Wheat. 419.

4.—The act of Congress of March
upon every ship or vessel of the United States, which shall be entered in the United States from any foreign port or place, unless the officers, and at least two-thirds of the crew thereof, shall be proved citizens of the United States, or persons not the subjects of any foreign prince or state, to the satisfaction of the collector, fifty cents per ton: And provided also, that this section shall not extend to ships or vessels of the United States, which are now on foreign voyages, or which may depart from the United States prior to the first day of May next, until after their return to some port of the United States.

9.—§ 7. That the several bounties and remissions, or abatements of duty, allowed by this act, in the case of vessels having a certain proportion of seamen who are American citizens, or persons not the subjects of any foreign power, shall be allowed only in the case of vessels having such proportion of American seamen during their whole voyage, unless in case of sickness, death or desertion, or where the whole or part of the crew shall have been taken prisoners in the voyage. Vide article, Entry of goods at the Customhouse.

IMPORTUNITY. tiresome solicitation.

2.—In cases of wills and devises, they are sometimes set aside in consequence of the importunity of those who have procured them. Whenever the importunity is such as to deprive the deviser of the freedom of his will, the devise becomes fraudulent and void. Dane’s Ab. ch. 127, a. 14, s. 6, 7; 2 Phillim. R. 551, 2.

IMPOSITIONS. Imposts, taxes, or contributions.

IMPOSSIBILITY. The character of that which cannot be done agreeably to the accustomed order of nature.

2.—It is a maxim that no one is bound to perform an impossibility. A l’impossible n’est tenu, 1 Swift’s Dig. 93; 6 Toull. n. 481.

3.—As to impossible conditions in contracts, see Bac. Ab. Conditions, M;
Co. Litt. 206; Roll. Ab. 420; 6 Toull. n. 486, 686; Dig. 2, 14, 39; lb. 44, 7, 31; lb. 50, 17, 185; lb. 45, 1, 69; on the subject of impossible conditions in wills, vide 1 Rep. Leg. 505; Swinburne, pt. 4, s. 6; 6 Toull. 614. Vide, generally, Dane's Ab. Index, h. t.; Clef des Lois Rom. par Fieffe Lacroix, h. t.; Com. Dig. Conditions, D 1 & 2; Vin. Ab. Conditions, C a, D a, E a.

IMPOSTS. This word is sometimes used to signify taxes, or duties, or import duties; and, sometimes, in the more restrained sense of a duty on imported goods and merchandise. The Federalist, No. 30; 3 Elliott's Debates, 289; Story, Const. § 649.

2.—The constitution of the United States, art. 1, s. 8, n. 1, gives power to Congress “to lay and collect taxes, duties, imposts and excises.” And art. 1, s. 10, n. 2, directs that “no state shall, without the consent of Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.” See Bac. Ab. Smuggling, B; 2 Inst. 62; Dy. 165 n.; Sir John Davis on Impostion.

IMPOTENCE, med. jur. The incapacity for copulation or propagating the species. It has also been used synonymously with sterility.

2.—Impotence may be considered as incurable, curable, accidental or temporary. Absolute or incurable impotence, is that for which there is no known relief, principally originating in some malformation or defect of the genital organs. Where this defect existed at the time of the marriage, and was incurable, by the ecclesiastical law and the law of several of the American states, the marriage may be declared void ab initio. Com. Dig. Baron and Feme, (C 3); Bac. Ab. Marriage, &c. E 3; 1 Bl. Com. 440; Beck's Med. Jur. 67; Code, lib. 5, t. 17, l. 10; Poynter, on Marr. and Div. ch. 8; 5 Paige, 554; Merle, Rep. mot Impuissance. But it seems the party naturally impotent cannot allege that fact for the purpose of obtaining a divorce. 3 Phillim. R. 147; S. C. 1


IMPRESCRIPTIBILITY. The state of being incapable of prescription.

2.—A property which is held in trust is imprescriptible; that is, the trustee cannot acquire a title to it by prescription; nor can the borrower of a thing get a right to it by any lapse of time, unless he claims an adverse right to it during the time required by law.

IMPRIMATUR. A "license" or allowance to one to print.

2.—At one time before a book could be printed in England, it was requisite that a permission should be obtained; that permission was called an imprimatur. In some countries where the press is liable to censure, an imprimatur is required.

IMPRIMERY. In some of the ancient English statutes this word is used to signify a printing-office, the art of printing, a print or impression.

IMPRISONMENT, is the restraint of a person contrary to his will, 2 Inst. 589; Baldw. Rep. 239, 600; imprisonment is either lawful or unlawful; lawful imprisonment is used either for crimes or for the appearance of the party in a civil suit, or arrest in execution.

2.—Imprisonment for crimes is either for the appearance of a person accused, as when he cannot give bail; or it is the effect of a sentence, and then it is a part of the punishment.

3.—Imprisonment in civil cases takes place when a defendant on being sued on bailable process refuses or cannot give the bail legally demanded, or is under a capias ad satisfaciendum, when he is taken in execution under a
judgment. An unlawful imprisonment, commonly called *false imprisonment*, (q. v.) means any illegal imprisonment either with or without process whatever, or under colour of process wholly illegal, without regard to any question whether any crime has been committed or a debt due.

4.—As to what will amount to an imprisonment, the most obvious modes are confinement in a prison or a private house, but a forcible detention in the street, or the touching of a person by a peace officer by way of arrest, are also imprisonments. *Bac. Ab. Trespass*, D 3; 1 Esp. R. 431, 526. It has been decided that lifting up a person in his chair, and carrying him out of the room in which he was sitting with others, and excluding him from the room, was not an imprisonment, 1 Chit. Pr. 48; and the merely giving charge of a person to a peace officer, not followed by any actual apprehension of the person does not amount to an imprisonment, though the party to avoid it, next day attend at a police, 1 Esp. R. 431; New Rep. 211; 1 Carr. & Payn. 153; S. C. 11 Eng. Com. Law R. 351; and if in consequence of a message from a sheriff’s officer holding a writ, the defendant execute and send him a bail bond, such submission to the process will not constitute an arrest. 6 Bar. & Cres. 528; S. C. 13 Eng. Com. Law Rep. 245; Dowell, & R. 233. Vide, generally, 14 Vin. Ab. 342; 4 Com. Dig. 615; 1 Chit. Pr. 47; Merl. Repert. mot Emprisonment; 17 Eng. Com. L. R. 246, n.

IMPROBATION. The act by which perjury or falsehood is proved. *Techn. Dict. h. t.*

IMPROPRIATION, eccl. law. The act of employing the revenues of a church living to one’s own use; it is also a parsonage or ecclesiastical living in the hands of a layman, or which descends by inheritance. *Techn. Dict. h. t.*

IMPROVEMENT, estates. This term is of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to every amelioration of every description of property, whether real or personal; it is generally explained by other words.

2.—Where, by the terms of a lease the covenant was to leave at the end of the term a water-mill with all the fixtures, fastenings, and *improvements*, during the demise fixed, fastened, or set up on or upon the premises, in good plight and condition, it was held to include a pair of new mill-stones set up by the lessee during the term, although the custom of the country in general authorised the tenant to remove them. 9 Bing. 24; 3 Sim. 450; 2 Ves. & Bea. 349. Vide 3 Yate, 71; Addis. R. 335; 4 Binn. R. 418; 5 Binn. R. 77; 5 S. & R. 266; 1 Binn. R. 495; 1 John. Ch. R. 450; 15 Pick. R. 471. Vide *Profits*. 2 Man. & Gra. 729, 757; S. C. 40 Eng. C. L. R. 598, 612.

IMPROVEMENT, rights. Is an addition of some useful thing to a machine, manufacture or composition of matter.

2.—The patent law of July 4, 1836, authorises the granting of a patent for any new and useful improvement on any art, machine, manufacture or composition of matter. Sect. 6. It is often very difficult to say what is a new and useful improvement, the cases often approach very near to each other. In the present improved state of machinery, it is almost impracticable not to employ the same elements of motion, and in some particulars, the same manner of operation, to produce any new effect. 1 Gallis, 478; 2 Gallis. 51. See 4 B. & Ald. 540; 2 Kent, Com. 370.

IMPUBER, in the civil law, one who is more than seven years old, or out of infancy, and who has not attained the age of an adult, (q. v.) and who is yet in his puberty; that is, if a boy, till he has attained his full age of fourteen years, and, if a girl, her full age of twelve years. *Domat, Liv. Prel. t. 2, s. 2, n. 8.*

IMPUNITY. Not being punished for a crime or misdemeanour committed. The impunity of crimes is one of
the most prolific sources whence they arise.

IMPUTATION is the judgment by which we declare that an agent is the cause of his free action, or of the result of it, whether good or ill. Wolff, § 3.

IMPUTATION OF PAYMENT. This term is used in Louisiana to signify the appropriation which is made of a payment, when the debtor owes two debts to the creditor. Civ. Code of Lo. art. 2159 to 2202. See 3 N. S. 483; 6 N. S. 28; Id. 113; Poth. Ob. n. 539, 565, 570; Durant. Des Contr. Liv. 3, t. 3, § 3, n. 191; 10 L. R. 232, 352; 7 Touli. n. 173, p. 246.

IN ALIO LOCO. In another place. Vide Ceptit in alio loco.

IN AUTRE DROIT. In another's right. An executor, administrator or trustee, is said to have the property confided to him in such character in autre droit.

IN CHIEF. Evidence is said to be in chief when it is given in support of the case opened by the leading counsel. Vide Tb Open—Opening. The term is used to distinguish evidence of this nature from evidence obtained on a cross-examination, (q. v.) 3 Chit. 890. By evidence in chief is sometimes meant that evidence, which is given, in contradistinction to evidence which is obtained on the witness's voir dire.

2.—Evidence in chief should be confined to such matters as the pleadings and the opening warrant, and a departure from this rule, will be sometimes highly inconvenient, if not fatal. Suppose, for example, that two assaults have been committed, one in January and the other in February, and the plaintiff prove his cause of action to have been the assault in January, he cannot abandon that, and afterwards prove another committed in February, unless the pleadings and openings extend to both. 1 Campb. R. 473. See also, 6 Carr. & P. 73; S. C. 25 E. C. L. R. 288; 1 Mood. & R. 282.

IN COMMENDAM. The state or condition of a church living, which is void or vacant, and it is commended to the care of some one. In Louisiana, there is a species of partnership called a partnership in commendam. Vide Commendam.

IN ESSE. In being. A thing in existence. It is used in opposition to in posse. A child in ventra sa mere is a thing in posse; after he is born, he is in esse. Vide 1 Supp. to Ves. jr. 466; 2 Suppl. to Ves. jr. 155, 191. Vide Posse.

IN EXTREMIS. This phrase is used to denote the end of life; as, a marriage in extremis, is one made at the end of life. Vide Extremis.

IN FIERI. In the act of being made; incomplete. A record is said to be in fieri during the term of the court, and, during that time, it may be amended or altered at the sound discretion of the court. See 2 B. & Adol. 971.

IN FORO CONSCIENTIAE. Before the tribunal of conscience; conscientiously. This term is applied in opposition to the tribunal which the law enforces.

2.—In the sale of property, for example, the concealment of facts by the vendee which may enhance the price, is wrong in foro conscientiae, but there is no legal obligation on the part of the vendee to disclose them, and the contract will be good if not vitiated by fraud. Poth. Vent. part. 2, c. 2, n. 233; 2 Wheat. 185, note (c).

IN LIMINE, in or at the beginning. This phrase is frequently used, as, the courts are anxious to check crimes in limine.

IN MITIORI SENSU, construction. Formerly in actions of slander it was a rule to take the expression used in mitiori sensu, in the mildest acceptation, and ingenuity was, upon these occasions, continually exercised to devise or discover a meaning which by some remote possibility the speaker might have intended; and some ludicrous examples of this ingenuity may be found. To say of a man who was making his livelihood by buying and selling merchandise, he is a base, broken rascal, he has broken twice, and I'll make him
break a third time, was gravely asserted not to be actionable—"ne poet dar porter action, car poet estre intend de burstness de belly," Latch, 114. And to call a man a thief was declared to be no slander, for this reason "perhaps the speaker might mean he had stolen a lady's heart."

2.—The rule now is to construe words accordly to the meaning usually attached to them, 1 Nott & McCord, 217; 2 Nott & McCord, 511; 8 Mass. R. 248; 1 Wash. R. 152; Kirby, R. 12; 7 Serg. & Rawle, 451; 2 Binn. 34; 3 Binn. 515.

IN MORA. In default. Vide Mora, in.

IN NULLO EST ERRATUM, pleading. A plea to errors assigned on proceedings in error, by which the defendant in error affirms there is no error in the record. As to the effect of such plea, see 1 Vent. 252; 1 Str. 684; 9 Mass. R. 532; 1 Burr. 410; T. Ray. 231. It is a general rule that the plea in nullo est erratum confesses the fact assigned for error. Yelv. 57; Dane's Ab. Index, h. t. But not a matter assigned contrary to the record. 7 Wend. 55; Bac. Ab. Error, G.

IN PERSONAM, remedies. A remedy in personam, is one where the proceedings are against the person, in contradistinction of those which are against specific things, or in rem, (q.v.)

IN REM, remedies. This technical term is used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions which are said to be in personam.

2.—Courts of admiralty enforce the performance of a contract by seizing into their custody the very subject of hypothecation; for in these cases the parties are not personally bound, and the proceedings are confined to the thing in specie. Bro. Civ. and Adm. Law, 98; and see 2 Gall. R. 200; 3 T. R. 269, 270.

3.—There are cases however where the remedy is either in personam or in rem. Seamen, for example, may proceed against the ship or cargo for their wages, and this is the most expeditious mode; or they may proceed against the master or owners. 4 Burr. 1944; 2 Bro. C. & A. Law, 396. Vide generally, 1 Phil. Ev. 254; 1 Stark. Ev. 228; Dane's Ab. h. t.; Serg. Const. Law, 202, 203, 212.

IN RERUM NATURA. In the nature of things; in existence.

IN SOLIDO, a term used in the civil law, to signify that a contract is joint.

2.—Obligations are in solido, first, between several creditors; secondly, between several debtors.—1. When a person contracts the obligation of one and the same thing, in favour of several others, each of these is only creditor for his own share, but he may contract with each of them for the whole when such is the intention of the parties, so that each of the persons in whose favour the obligation is contracted, is creditor for the whole, but that a payment made to any one liberates the debtor against them all. This is called solidarity of obligation. Poth. Obl. pt. 2, c. 3, art. 7. The common law is exactly the reverse of this, for a general obligation in favour of several persons, is a joint obligation to them all, unless the nature of the subject, or the particularity of the expression lead to a different conclusion. Evans's Poth. vol. 2, p. 56. See tit. Joint and Several; Parties to action.

3.—2. An obligation is contracted in solido on the part of the debtors, when each of them is obliged for the whole, but so that a payment made by one liberates them all. Poth. Obli. pt. 2, c. 3, art. 7, s. 1. See 9 M. R. 322; 5 L. R. 287; 2 N. S. 140; 3 L. R. 352; 4 N. S. 317; 5 L. R. 122; 12 M. R. 216; Burge on Sur. 398—420.

IN STATU QUO. In the same situation; in the same place; as, between the time of the submission and the time when the award was rendered, things remained in statu quo.

IN TERROREM. By way of threat, terror, or warning. For example, when a legacy is given to a person upon condition not to dispute the validity or
the dispositions in wills and testaments, the conditions are not in general obligatory, but only in terræ orum; if, therefore, there exist probatibilis causa litigandi, the non-observance of the conditions will not be a forfeiture. 2 Vern. 90; 1 Hill. Ab. 253; 3 P. Wms. 344; 1 Atk. 404. But when the acquiescence of the legatee appears to be a material ingredient in the gift, the bequest is only quousque the legatee shall refrain from disturbing the will. 2 P. Wms. 52; 2 Ventr. 352. For cases of legacies given to a wife while she shall continue unmarried, see 1 Madd. R. 590; 1 Rep. Leg. 558.

IN TERRÆ OPOLIS, to the terror of the people. An indictment for a riot is bad unless it conclude in terræ opolis. 4 Carr. & Payne, 373.

IN TOTO. In the whole; wholly; completely; as, the award is void in toto.

IN TRANSITU. During the transit or removal from one place to another.

2. The transit continues until the goods have arrived at their place of destination and nothing remains to be done to complete the delivery; or until the goods have been delivered before reaching their place of destination and the person entitled takes an actual or symbolical possession. Vide Stoppage in transitu; Transitus.

IN VENTRE SA MERE, in his mother's womb.

2. In law a child is for all beneficent purposes considered to be born while in ventre sa mere. 5 T. R. 49; Co. Litt. 36; 1 P. Wms. 329; Civ. Code of Lo. art. 948. But a stranger can acquire no title by descent through a child in ventre sa mere, who is not subsequently born alive. See Birth; Dead Born.

3. He is enabled to have an estate limited to his use. 1 Bl. Com. 130.

4. May have a distributive share of intestate property. 1 Ves. 81.

5. Is capable of taking a devise of lands. 2 Atk. 117; 1 Freem. 224, 293.

6. Takes under a marriage settlement a provision made for children living at the death of the father. 1 Ves. 85.

7. Is capable of taking a legacy, and is entitled to a share in a fund bequeathed to children under a general description of "children," or of "children living at the testator's death," 2 H. Bl. 399; 2 Bro. C. 320; S. C. 2 Ves. Jun. 673; 1 Sim. & Stu. 181; 1 B. & P. 243; 5 T. R. 49. See also, 1 Ves. sen. 85; Id. 111; 1 P. Wms. 244, 341; 2 Bro. C. 63; Amb. 708, 711; 1 Salk. 229; 2 P. Wms. 446; 2 Atk. 114; Pre. Ch. 50; 2 Vern. 710; 3 Ves. 486; 7 T. R. 100; 4 Ves. 322; Bac. Ab. Legacies, &c., A; 1 Rep. Leg. 52, 3; 5 Serg. & Rawle, 40.

8. May be appointed executor. Bac. Ab. Infancy, B.

9. A bill may be brought in its behalf, and the court will grant an injunction to stay waste. 2 Vern. 710; Pre. Ch. 50.

10. The mother of a child in ventre sa mere may detain writings on its behalf. 2 Vern. 710.

11. May have a guardian assigned to it. 1 Bl. Com. 130.

12. The destruction of such a child is a hideous misdemeanor. 1 Bl. Com. 129, 130.

13. And the birth of a posthumous child amounts, in Pennsylvania, to the revocation of a will previously executed, so far as regards such child. 3 Binn. 498. See Cooper. Just. 496. See as to the law of Virginia on this subject, 3 Munf. 20. Vide Piatus.

INADEQUATE PRICE. This term is applied to indicate the want of a sufficient consideration for a thing sold, or such price as under ordinary circumstances would be considered insufficient.

2. Inadequacy of price is frequently connected with fraud, gross misrepresentations, or an intentional concealment of the defects in the thing sold. In these cases it is clear, the vendor cannot compel the buyer to fulfill the contract. 1 Lev. 111; 1 Bro. P. C. 187;
In general, the incapacity ceases with the cause which produces it. If the idiot should obtain his senses, or the married woman’s husband die, their incapacity would be at an end.

4.—When a cause of action arises during the incapacity of a person having the right to sue, the act of limitation does not, in general, commence to run till the incapacity has been removed. But two incapacities cannot be joined in order to come within the statute.

INCEMBDIARY, crim. law. One who maliciously and wilfully sets another person’s house on fire; one guilty of the crime of arson.

2.—This offence is punished by the statute laws of the different states according to their several provisions. The civil law punished him with death, Dig. 47, 9, 12, 1, by being cast into the fire. Ib. 48, 19, 28, 12; Code, 9, 1, 11; vide Dane’s Ab. Index, h. t.

INCEPTION. The commencement; the beginning. In making a will, for example, the writing is its inception. 3 Co. 31 b; Plowd. 343. Vide Consummation; Progression.

INCEST, is the carnal copulation of a man and a woman related to each other in any of the degrees within which marriage is prohibited by law. Vide Marriage. It is punished by fine and imprisonment, under the laws of the respective states. Vide 1 Smith’s Laws of Pennsylv. 26; Dane’s Ab. Index, h. t.; Dig. 23, 2, 68; 6 Conn. R. 446; Penal Laws of China, B. 1, s. 2, § 10. Sw. part 2, § 17, p. 103.

INCH, a measure of length, containing one-twelfth part of a foot.

INCHOATE. that which is not yet completed; what is not finished. Contracts are considered inchoate until they are executed by all the parties who ought to have executed them. For example, a covenant which purports to be tripartite, and it is executed by only two of the parties, is incomplete, and no one is bound by it. 2 Halst. 142. Vide Locus penitentiae.

INCIDENT, is a thing necessarily
depending upon, appertaining to, or following another, called the principal.

2.—The power of punishing for contempt is incident to a court of record; rent is incident to a reversion; distress to rent; estovers of woods to a tenancy for a life or years. 1 Inst. 151; Noy’s Max. n. 13; Vin. Ab. h. t.; Dane’s Ab. h. t.; Com. Dig. h. t., and the references there; Bro. Ab. h. t.; Roll’s Ab. 75.

INCIPITUR, practice. This word, which means “it is begun,” signifies the commencement of the entry on the roll on signing judgment, &c.

INCLUSIVE, is that which is taken in the computation of any thing. In computing time, as ten days from a particular time, one day is generally to be included and one excluded. Vide article Exclusive, and the authorities there cited.

INCOME. The gain which proceeds from property, labour, or business; it is applied particularly to individuals, the income of the government is usually called revenue.

2.—It has been held that a devise of the income of land, is in effect the same as a devise of the land itself. 9 Mass. 372; 1 Ashm. 136.

INCOMPATIBILITY, offices, rights; this term is used to show that two or more things ought not to be at the same time in the same person; for example, a man cannot at the same time be landlord and tenant of the same land; heir and devise of the same thing; trustee and custui que trust of the same property.

2.—There are offices which are incompatible with each other by constitutional provision; the vice-president of the United States cannot act as such when filling the office of president; Const. art. 1, s. 3, n. 5; and by the same instrument, art. 1, s. 6, n. 2, it is directed that “no senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office.”

3.—Provisions rendering offices incompatible are to be found in most of the constitutions of the states, and in some of their laws. In Pennsylvania, the acts of the 12th of February, 1802, 3 Smith’s Laws of Pa. 485; and 6th of March, 1812, 5 Sm. L. Pa. 309, contain various provisions, making certain offices incompatible with each other. At common law, offices subordinate and interfering with each other have been considered incompatible; for example, a man cannot be at once a judge and prothonotary or clerk of the same court. 4 Inst. 100. Vide 4 S. & R. 277; 17 S. & R. 219; and the article Office.

INCOMPETENCY, in the French law, is the state of a judge who cannot take cognizance of a dispute brought before him; a want of jurisdiction.

2.—Incompetency is material, ratione materiae, or personal, ratione persona. The first takes place when a judge takes cognizance of a matter over which another judge has the sole jurisdiction, and this cannot be cured by the appearance or agreement of the parties.

3.—The second is, when the matter in dispute is within the jurisdiction of the judge, but the parties in the case are not, in which case they make the judge competent, unless they make their objection before they take defence. See Peck, 374; 17 John. 13.; 12 Conn. 88; 3 Cowen, Rep. 724; 1 Penn. 195; 4 Yeates, 446. When a party has a privilege which exempts him from the jurisdiction, he may waive the privilege. 4 McCord, 79; Wright, 484; 4 Mass. 593; Pet. C. C. R. 489; 5 Cranch, 288; 1 Pet. R. 449; 4 W. C. C. R. 84; 8 Wheat. 699; Merl. Rép. mot Incompétence.

4.—It is a maxim in the common law, aliquis non debit esse iudex in propriâ causâ. Co. Litt. 141, n.; see 14 Vin. Abr. 573; 4 Com. Dig. 6. The greatest delicacy is constantly ob-
served on the part of judges, so that they never act when there could be the possibility of doubt whether they could be free from bias, and even a distant degree of relationship has induced a judge to decline interfering. 1 Knapp’s Rep. 376. The slightest degree of pecuniary interest is considered as an insuperable objection. 4 Mod. 226; Comb. 218; Hard. 44; Hob. 87; 2 Binn. R. 454; 13 Mass. R. 340; 5 Mass. R. 92; 6 Pick. 199; Peck, R. 374; Coxe, Rep. 190; 3 Ham. R. 289; 17 John. Rep. 133; 12 Conn. R. 88; 1 Penning. R. 185; 4 Yeates, R. 466; 3 Cowen, R. 725; Salk. 396; Bac. Ab. Courts, B.; and the articles Competency; Credibility; Interest; Judge; Witness.

INCOMPETENCY, evidence, is the want of legal ability in a witness to be heard as such on the trial of a cause.

2.—The objections to the competency (q. v.) of a witness are four-fold. The first ground is the want of understanding; a second is defect of religious principles; a third arises from the conviction of certain crimes, or infamy of character; the fourth is on account of interest, (q. v.) 1 Phil. Ev. 15.

INCONTINENCE. Impudicity, the indulgence in unlawful carnal connexions, Wolff, Dr. des la Nat. § 862.

INCORPORATION. This term is frequently confounded, particularly in the old books, with corporation. The distinction between them is this, that by incorporation is understood the act by which a corporation is created; by corporation is meant the body thus created. Vide Corporation.

INCORPORATION, civil law. The reunion of one domain to another.

INCORPOREAL, is that which has no body.

2.—Things incorporeal are those which are not the object of sense, which cannot be seen nor felt, but which we can easily conceive in the understanding, as rights, actions, successions, easements, and the like. Dig. lib. 6, t. 1; Ib. lib. 41, t. 1, l. 43, § 1; Poth. Traité des choses, § 2.

3. — In cases of sales of real estate, the vendor is required to disclose the incumbrances, and to deliver to the purchaser the instruments by which they were created, or on which the defects arise; and the neglect of this will be considered as a fraud. Suld. Vend. 6; 1 Ves. 96; and see 6 Ves. Jr. 193; 10 Ves. Jr. 470; 1 Sch. & Lef. 227; 7 Serg. & Rawle, 73.

4. — Whether the tenant for life, or the remainder-man, is to keep down the interest on incumbrances, see Turn. R. 174; 3 Mer. R. 566; 5 Ves. 99; 4 Ves. 24. See, generally, 14 Vin. Ab. 352; Com. Dig. Chancery, 4 A 10, 4 I 3; 9 Watts, R. 152.

INDEBITATUS ASSUMPST, remedies, pleadings, is that species of action of assumpsit, in which the plaintiff alleges in his declaration, first a debt, and then a promise in consideration of the debt, that the defendant, being indebted, he promised the plaintiff, to pay him. The promise so laid is, generally, an implied one only. Vide 1 Chit. Pl. 334; Steph. Pl. 315; Yelv. 21; 4 Co. 92 b. For the history of this form of action, see 3 Reeves’s Hist. Com. Law; 2 Comyn on Contr. 549 to 556; 1 H. Bl. 550, 551; 3 Black. Com. 154; Yelv. 70. Vide Pactum Constitute Pecuniae.

INDEBTEDNESS. The state of being in debt, without regard to the ability or inability of the party to pay the same. See 1 Story, Eq. 343; 2 Hill. Ab. 421.

2. — But in order to create an indebtedness, there must be an actual liability at the time, either to pay then or at a future time. If, for example, a person were to enter and become surety for another, who enters into a rule of reference, he does not thereby become a debtor to the opposite party until the rendition of the judgment on the award.

1 Mass. 134. See Creditor; Debt; Debtor.

INDECENTY. Obscenity, calculated to promote the violation of the law, or that which tends to the general corruption of morals. 2 Serg. & Rawle, 91.

2. — The following are examples of such indecency, namely: the exposure by a man of his naked person on a balcony, to public view, or bathing in public, 2 Campb. 89; or the exhibition of bawdy pictures, 2 Chit. Cr. Law, 42; 2 Serg. & Rawle, 91. This indecency is punishable by indictment. Vide 1 Sid. 165; S. C. 1 Keb. 620; 2 Yerg. R. 482, 589; 1 Mass. Rep. 8; 2 Chan. Cas. 110; 1 Russ. Cr. 392; 1 Hawk. P. C. c. 5, s. 4; 4 Bl. Com. 65, n.; 1 East, P. C. c. 1, s. 1; Burn’s Just. Lewdness.

INDEFEASIBLE, what cannot be defeated; what cannot be undone. This epithet is usually applied to an estate or right which cannot be defeated.

INDEFENSUS. One sued or imploved, who refuses to answer.

INDEFINITE. What is undefined; uncertain.

INDEFINITE NUMBER. A number which may be increased or diminished at pleasure.

2. — When a corporation is composed of an indefinite number of persons, any number of them consisting of a majority of those present may do any act. See Definite number.

INDEFINITE PAYMENT, contracts, is that which a debtor who owes several debts to a creditor, makes without making an appropriation, (q. v.); in that case the creditor has a right to make such appropriation.

INDEMNITY. What is given to a person to prevent his suffering damage. 2 McCord, 279. Sometimes it signifies diminution; a tenant who has been interrupted in the enjoyment of his lease may require an indemnity from the lessor, that is, a reduction of his rent.

2. — It is a rule established in all just governments that when private
property is required for public use, idemnity shall be given by the public to the owner. This is the case in the United States. See Code Civil, art. 545. See Damnification.

INDENTURE, conveyancing, is an instrument of writing containing a conveyance or contract between two or more persons usually indented or cut unevenly, or in and out, on the top or side.

2.—Formerly it was common to make two instruments exactly alike; and it was then usual to write both on the same parchment, with some words or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave one-half of the word on one part, and half on the other. The instrument usually commences with these words, “This indenture,” which were not formerly sufficient, unless the parchment or paper was actually indented to make an indenture, 5 Co. 20; but now if the form of indenting the parchment be wanting, it may be supplied by being done in court, this being mere form. Besides it would be exceedingly difficult with even the most perfect instruments, to cut parchment or paper without indenting it. Vide Bac. Ab. Leases, &c. P. 2; Com. Dig. Fait, C, and note (d); Litt. sec. 370; Co. Litt. 143 b, 229 a; Cruise, Dig. t. 32, c. 1, s. 24; 2 Bl. Com. 294; 1 Sess. Cas. 222.

INDEPENDENCE. A state of perfect irresponsibility to any superior; the United States are free and independent of all earthly power.

2.—Independence may be divided into political and natural independence. By the former is to be understood that we have contracted no tie except those which flow from the three great natural rights of safety, liberty and property. The latter consists in the power of being able to enjoy a permanent well-being, whatever may be the disposition of those from whom we call ourselves independent. In that sense a nation may be independent with regard to most people, but not independent of the whole world. Vide Declaration of Independence.

INDEPENDENT CONTRACT, is one in which the mutual acts or promises have no relation to each other, either as equivalents or considerations. Civil Code of Lo. art. 1762.

INDIAN TRIBE, a body of the aboriginal Indian race of men found in the United States.

2.—Such a tribe, situated within the boundaries of a state, and exercising the powers of government and sovereignty, under the national government, is deemed politically a state; that is, a distinct political society, capable of self-government; but it is not deemed a foreign state, in the sense of the constitution. It is rather a domestic dependent nation. Such a tribe may properly be deemed in a state of pupilage; and its relation to the United States resembles that of a ward to a guardian. 5 Pet. R. 1, 16, 17; 20 John. R. 193; 3 Kent. Com. 308 to 315; Story on Const. § 1096; 4 How. U. S. 567; 1 McLean, 254; 6 Hill, 546; 8 Ala. R. 48.

INDIANS. The aborigines of this country are so called.

2.—In general, Indians have no political rights in the United States, they cannot vote at the general elections for officers, nor hold office. In New York they are considered as citizens and not as aliens, owing allegiance to the government and entitled to its protection. 20 John. 188; 633. But it was ruled that the Cherokee nation in Georgia was a distinct community. 6 Pet. 515. See 8 Cowen, 189; 9 Wheat. 673; 14 John. 151, 332; 18 John. 506.

INDIANA. The name of one of the new states of the United States. This state was admitted into the union by virtue of the “Resolution for admitting the state of Indiana into the Union,” approved December 11, 1816, in the following words: Whereas, in pursuance of an act of Congress, passed on the nineteenth day of April, one thousand eight hundred and sixteen, entitled “An act to enable the people
of the Indiana territory to form a constitution and state government, and for the admission of that state into the Union," the people of the said territory did, on the twenty-ninth day of June, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity with the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven.

2.—Resolved, That the state of Indiana shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

3.—The constitution of the state was adopted by a convention, held at Corydon, in the year eighteen hundred and sixteen, from the 10th to the 29th day of June of that year. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary to another. Art. 2.

4.—1st. The legislative authority of the state is vested in a general assembly, which consists in a senate and house of representatives, both elected by the people.

5.—1. The senate is composed of a number of persons, who shall never be less than one-third, nor more than one-half, of the number of representatives. The number to be fixed by law. Art. 3, s. 6. A senator shall, 1, have attained the age of twenty-five years; 2, be a citizen of the United States; 3, have resided, next preceding his election, two years in this state, the last twelve months of which in the county or district in which he may be elected, if the county or district shall have been so long erected, but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; 4, have paid a state or county tax. Art. 3, s. 7. One-third of the senate is elected every year, on the first Monday in August.

6.—2. The number of representatives is to be fixed by law. It shall never be less than twenty-five, nor more than thirty-six, until the number of white male inhabitants, above twenty-one years of age, shall be twenty-two thousand; and, after that event, in such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed one hundred.

7.—To be qualified for a representative, a person must, 1, have attained the age of twenty-one years; 2, be a citizen of the United States; 3, be an inhabitant of this state; 4, have resided within the limits of the county in which he shall be chosen one year next preceding his election, if the county shall have been so long erected, but if not, then within the limits of the county or counties out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; 5, have paid a state or county tax. Art. 3, s. 4. The members are elected yearly, by the qualified electors of each county respectively, on the first Monday of August. Art. 3, s. 3.

8.—2d. The supreme executive power of this state is vested in a governor, who is styled the governor of the state of Indiana. And, under certain circumstances, this power is exercised by the lieutenant-governor.

9.—1. The governor is chosen by the qualified electors on the first Monday in August, at the place where they shall respectively vote for representatives. He shall hold his office during three years, from and after the third day of the first session of the general assembly next ensuing his election, and
until a successor shall be chosen and qualified; and shall not be capable of holding it longer than six years in any term of nine years. His requisite qualifications are, that he shall, 1, have been a citizen of the United States for ten years; 2, be at least thirty years of age; 3, have resided in the state five years next preceding his election, unless he shall have been absent on the business of this state, or of the United States; 4, not hold any office under the United States, or this state. He is commander-in-chief of the army and navy of the state, when not in the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the general assembly. He nominates, and by and with the consent of the senate, appoints all officers whose appointment is not otherwise provided for; fills vacancies, during the recess of the legislature; remits fines and forfeitures; grants reprieves and pardons, except in cases of impeachments; may require information from executive officers; gives to the general assembly information, and recommends necessary measures; may convene the legislature at the seat of government, or at a different place, on extraordinary occasions, such as war or pestilence; may adjourn the two houses, when they cannot agree as to an adjournment; and cause the laws to be faithfully executed. He is also invested with the veto power. Art. 4.

10.—2. The lieutenant-governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor. He shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant-governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached shall return or be acquitted. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if, during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the president of the senate pro tem, shall, in like manner, administer the government, until he shall be superseded by a governor or lieutenant-governor. The lieutenant-governor, while he acts as president of the senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office, and no more. The president pro tempore of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office, and no more. If the lieutenant-governor shall be called upon to administer the government, and shall while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore. Art. 4, s. 15 to 20.

11.—3d. The judicial power of the state is vested by the 5th article of the constitution as follows: § 1. The judiciary power of this
state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may, from time to time, direct and establish.

12.—§ 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law: Provided, nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases and cases in chancery, where the president of the circuit court may be interested or prejudiced.

13.—§ 3. The circuit courts shall consist of a president and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner, as may be prescribed by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: Provided, that nothing herein contained shall prevent the general assembly from increasing the number of the circuits and presidents, as the exigencies of the state may, from time to time require.

14.—§ 4. The judges of the supreme court, the circuit and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

15.—§ 5. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts, in their respective circuits, and the associate judges in their respective counties.

16.—§ 6. The supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law: and the circuit courts shall be held in the respective counties as may be directed by law.

17.—§ 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly, and the associate judges of the circuit courts shall be elected by the qualified electors in their respective counties.

18.—§ 8. The supreme court shall appoint its own clerk; and the clerks of the circuit court, in the several counties, shall be elected by the qualified electors in the several counties, but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate that he is qualified to execute the duties of the office of clerk of the circuit court: Provided, that nothing herein contained shall prevent the circuit courts in each county from appointing a clerk pro tem. until a qualified clerk may be duly elected: And provided also, that the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed.

19.—§ 12. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office five years, if they shall so long behave well; whose
powers and duties shall, from time to time, be regulated and defined by


INDICTED, practice. When a

man is accused by a bill of indictment

preferred by a grand jury, he is said to be indicted.

INDICATION, comput. of time. An

indication contained a space of fifteen

years.

2.—It was used in dating at Rome

and England. It began at the dismis-

sion of the Nicene council, anno Do-

mini 312; the first year was reckoned

the first of the first indictment, the sec-

ond, the third, &c., till fifteen years

afterwards. The sixteenth year was

the first year of the second indictment,

the thirty-first year, was the first year of

the third indictment, &c.

INDICTMENT, crim. law, practice,

is a written accusation of one or more

persons of a crime or misdemeanor,

presented to, and preferred upon oath or

affirmation, by a grand jury legally

convoked. 4 Bl. Com. 299; Co. Litt.

126; 2 Hale, 152; Bac. Ab. h.t.; Com.

Dig. h. t. (A); 1 Chit. Cr. L. 168.

2.—This word, indictment, is said to be derived from the old French

word inditer, which signifies to indi-

cate; to show, or point out. Its object

is to indicate the offence charged

against the accused. Rey. des Inst.

l’Angl. tome 2, p. 347.

3.—To render an indictment valid,

there are certain essential and formal

requisites. First, the essential re-

quisites are, 1st, that the indictment be

presented to some court having juris-

diction of the offence stated therein;

2dly, that it appear to have been found

by the grand jury of the proper coun-

ty or district; 3rdly, that the indict-

ment be found a true bill, and signed

by the foreman of the grand jury;

4thly, that it be framed with sufficient

certainty; for this purpose, the charge

must contain a certain description of

the crime or misdemeanor, of which

the defendant is accused, and a state-

ment of the facts by which it is consti-

tuted, so as to identify the accusation.

Cwp. 682, 3; 2 Hale, 167; 1 Binn.

R. 201; 3 Binn. R. 533; 1 P. A. Bro.
R. 360; 6 Serg. & Rawle, 398; 4 Serg. & Rawle, 194; 4 Bl. Com. 301; 3 Yeates, R. 407; 4 Cranch, R. 167.

5thly, the indictment must be in the English language. But if any document in a foreign language, as a libel, be necessarily introduced, it should be set out in the original tongue, and then translated, showing its application. 6 T. R. 162.

4. Secondly, the formal requisites are, 1st, the venue, which at common law should always be laid in the county where the offence has been committed, although the charge is in its nature transitory, as a battery. Hawk. B. 2, c. 25, s. 35. The venue is stated in the margin thus, “City and county of Philadelphia, to wit.” 2ndly, The presentment which must be in the present tense, and is usually expressed by the following formula, “the grand inquest of the commonwealth of Pennsylvania, inquiring for the city and county aforesaid, upon their oaths and affirmations present.” See as to the venue, 1 Pike, R. 171; 9 Yerg. 357. 3rdly, The name and addition of the defendant; but in case an error has been made in this respect, it is cured by the plea of the defendant. Bac. Ab. Misnomer; (B); Indictment, (G 2); 2 Hale, 175; 1 Chit. Pr. 202, 4thly, The names of third persons, when they must be necessarily mentioned in the indictment, should be stated with certainty to a common intent, so as sufficiently to inform the defendant who are his accusers. When, however, the names of third persons cannot be ascertained, it is sufficient in some cases, to state “a certain person or persons to the jurors aforesaid unknown.” Hawk. B. 2, c. 25, s. 71; 2 East, P. C. 651, 781; 2 Hale, 181; Plowd. 85; Dyer, 97, 286; 8 C. & P. 773. See Unknown, 5thly, The time when the offence was committed, should in general be stated to be on a specific year and day. In some offences, as in perjury, the day must be precisely stated, 2 Wash. C. C. Rep. 328; but although it is necessary that a day certain should be laid in the indict-

ment, yet, in general, the prosecutor may give evidence of an offence committed on any other day previous to the finding of the indictment. 5 Serg. & Rawle, 316. Vide 11 Serg. & Rawle, 177; 1 Chit. Cr. Law, 217, 224; 1 Chit. Pl. Index, tit. Time. See 17 Wend. 475; 2 Dev. 567; 5 How. Mis. 14; 4 Dana, 496; C. & N. 369; 1 Hawks, 460. 6thly, The offence should be properly described. This is done by stating the substantial circumstances necessary to show the nature of the crime; and, next, the formal allegations and terms of art required by law. 1. As to the substantial circumstances. The wholly of the facts of the case necessary to make it appear judicially to the court that the indictors have gone upon sufficient premises, should be set forth; but there should be no unnecessary matter, or any thing which on its face makes the indictment repugnant, inconsistent, or absurd. 2 Hale, 183; Haw. B. 2, c. 25, s. 57; Bac. Ab. h. t. (G 1); Com. Dig. h. t. (G 3); 2 Leach, 660; 2 Str. 1326. All indictments ought to charge a man with a particular offence, and not with being an offender in general: to this rule there are some exception, namely, a common barrator, a common scold, and the keeper of a common bawdy-house, may be indicted by these general words, 1 Chit. Cr. Law, 230, and the authorities there cited. The offence must not be stated in the disjunctive, so as to leave it uncertain on what it is intended to rely as an accusation; as, that the defendant erected or caused to be erected a nuisance 2 Str. 900; 1 Chit. Cr. Law, 236.—2. There are certain terms of art used, so appropriated by the law to express the precise idea which it entertains of the offence, that no other terms, however synonymous they may seem, are capable of filling the same office: such, for example, as traitorously, (q. v.) in treason; feloniously, (q. v.) in felony; burglary, (q. v.) in burglary; maim, (q. v.) in mayhem, &c. 7thly, The conclusion of the indictment should conform to the provision of the consti-
tution of the state on the subject, where there is such provision; as in Pennsylvania, Const. art. s. 12, which provides, that "all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude against the peace and dignity of the same." As to the necessity and propriety of having several counts in an indictment, vide 1 Chit. Cr. Law, 248; as to joinder of several offences in the same indictment, vide 1 Chit. Cr. Law, 253; Arch. Cr. Pl. 60; several defendants may in some cases be joined in the same indictment, Ib. 255; Arch. Cr. Pl. 59. When an indictment may be amended, see Ib. 297; Stark. Cr. Pl. 286; or quashed, Ib. 298; Stark. Cr. Pl. 331; Arch. Cr. 66. Vide, generally, Arch. Cr. Pl. B. 1, part I, c. 1, p. 1 to 68; Stark. Cr. Pl. 1 to 336; 1 Chit. Cr. Law, 168 to 304; Com. Dig. h. t.; Vin. Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Nels. Ab. h. t.; Burn's Just. h. t.; Russ. on Cr. Index, h. t.

5.—By the constitution of the United States, Amendm. art. 5, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger.

INDICTOR. He who causes another to be indicted. The latter is sometimes called the indictee.

INDIFFERENT. To have no bias nor partiality. 7 Conn. 229. A juror, an arbitrator, and a witness, ought to be indifferent, and when they are not so, they may be challenged. See 9 Conn. 42.

INDIVISUM. What two or more persons hold in common without partition; undivided, (q. v.)

TO INDORSE, to write on the back. Bills of exchange and promissory notes are indorsed by the party writing his name on the back; writing one’s name on the back of a writ, is to indorse such writ. 7 Pick. 117. See 13 Mass. 396.

INDORSE, contracts, is the per- son in whose favour an indorsement is made.

2.—He is entitled to all the rights of the indorser, and, if the bill or note have been indorsed over to him before it became due, he is entitled to greater rights than the indorser would have had, had he retained it till it became due, as none of the parties can make a set-off, or inquire into the consideration of the bill which he then holds. If he remains to be the holder (q. v.) when the bill becomes due, he ought to make a legal demand, and give notice in case of non-acceptance or non-payment. Chitty on Bills, possim.

INDORSEMENT, crim. law and practice. When a warrant for the arrest of a person charged with a crime has been issued by a justice of the peace of one county, which is to be executed in another county, it is necessary in some states, as in Pennsylvania, that it should be indorsed by a justice of the county where it is to be executed, this indorsement is called backing, (q. v.)

INDORSEMENT, contracts, in its most general acceptation, is what is written on the back of an instrument of writing, and which has relation to it; as, for example, a receipt or acquittance on a bond; an assignment on a promissory note.

2.—Writing one’s name on the back of a bill of exchange, or a promissory note payable to order, is what is usually called an indorsement. It will be convenient to consider, 1, the form of an indorsement; and, 2, its effect.

3.—1. An indorsement is in full, or in blank. In full, when mention is made of the name of the indorsee; and in blank, when the name of the indorsee is not mentioned. Chitty on Bills, 170; 13 Serg. & Rawle, 315.

A blank indorsement is made by writing the name of the indorser on the back; a writing or assignment on the face of the note or bill would, however, be considered to have the force and effect of an indorsement. 16 East, R. 12.

4.—Indorsements may also be re-
stricte, conditional, or qualified. A restrictive indorsement may restrain the negotiability of a bill, by using express words to that effect, as by in-
orsing it "payable to J. S. only," or by using other words clearly demonstrat-
ing his intention to do so. Doug, 637. The indorser may also make his indorsement conditional, and if the condition be not performed, it will be
invalid. 4 Taunt. Rep. 30. A qualified indorsement is one which passes the property in the bill to the indorsee, but is made without responsibility to
the indorser, 7 Taunt. R. 160; the words commonly used are, sans re-
5.—2. The effects of a regular in-
dorsement may be considered, 1, as between the indorser and the indorsee; 2, between the indorser and the ac-
ceptor; and, 3, between the indorser and future parties to the bill.
6.—1. An indorsement is sometimes
an original engagement, as, when a
man draws a bill payable to his own
order, and indorses it; mostly, how-
ever, it operates as an assignment, as
when the bill is perfect, and the payee
indorses it over to a third person. As
an assignment, it carries with it all the
rights which the indorsee had, with a
 guaranty of the solvency of the debtor.
This guaranty is, nevertheless, upon
condition that the holder will use due di-
gence in making a demand of payment
from the acceptor, and give notice of
non-acceptance or non-payment. 13
Serg. & Rawle, 311.
7.—2. As between the indorsee and
the acceptor, the indorsement has the
effect of giving to the former all the
rights which the indorser had against
the acceptor, and all other parties lia-
bile on the bill, and it is unnecessary
that the acceptor or other party should
signify his consent or knowledge of the
indorsement; and if made before the
bill is paid, it conveys all these rights
without any set-off, as between the an-
tecedent parties. Being thus fully in-
vested with all the rights in the bill,
the indorsee may himself indorse it to
another, when he becomes responsible
to all future parties as an indorser, as
the others were to him.
8.—3. The indorser becomes re-
sponsible by that act to all persons
who may afterwards become party to
the bill.

Vide Chitty on Bills, ch. 4; 3 Kent,
Com. 58; Vin. Abr. Indorsement;
Com. Dig. Fait, E 2; 13 Serg. &
Rawle, 311; Merl. Répert. mot En-
dossement; Pard. Droit, Com. 344-
357; 7 Verm. 356; 2 Dana, R. 90;
3 Dana, R. 407; 8 Wend. 600; 4
Verm. 11; 5 Harr. & John, 115.

INDORSER, contracts, is the per-
son who makes an indorsement.

2.—The indorser of a bill of ex-
change, or other negotiable paper, by
his indorsement undertakes to be re-
sponsible to the holder for the amount
of the bill or note, if the latter shall
make a legal demand from the payer,
and, in default of payment, give proper
notice thereof to the indorser. But the
indorser may make his indorsement condi-
tional, which will operate as a
transfer of the bill, if the condition be
performed; or he may make it quali-
fied, so that he shall not be responsible
on non-payment by the payer. Chitty
on Bills, 179, 180.

3.—To make an indorser liable on
his indorsement, the instrument must
be commercial paper, for the in-
dorsement of a bond or single bill will not,
per se, create a responsibility. 13
Serg. & Rawle, 311.

4.—When there are several in-
dorsers, the first in point of time is gen-
erally, but not always, first responsible;
there may be circumstances which may
cast the responsibility, in the first
place, as between them, on a subse-
quent indorser. 5 Munf. R. 252.

INDUCEMENT, pleading, is the
statement of matter which is intro-
ductive to the principal subject of the
declaration or plea, &c, but which is ne-
necessary to explain and elucidate it;
such matter as is not introductory to
or necessary to elucidate the substance
or gist of the declaration or plea, &c,
nor is collaterally applicable to it, not
being inducement but surplusage. Inducement or conveyance (which are synonymous terms) is in the nature of a precept to an act of assembly, and leads to the principal subject of the declaration or plea, &c. the same as that does to the purview or providing clause of the act. For instance, in an action for a nuisance to property in the possession of the plaintiff, the circumstance of his being possessed of the property should be stated as inducement, or by way of introduction to the mention of the nuisance. Lawes, Pl. 66, 67; Chit, Pl. 292; Steph, Pl. 257; 14 Vin. Ab. 405; 20 Ib. 345; Bac. Ab. Pleas, &c. 1 2.

Inducement, contracts, evidence, is the moving cause of an action.

2.—In contracts the benefit which the obligor is to receive is the inducement to making them. Vide Cause; Consideration.

3.—When a person is charged with a crime, he is sometimes induced to make confessions by the flattery of hope, or the torture of fear. When such confessions are made in consequence of promises or threats by a person in authority, they cannot be received in evidence. In England a distinction has been made between temporal and spiritual inducements; confessions made under the former are not receivable in evidence while the latter may be admitted. Joy on Conf. ss. 1 and 4.

Inducement, Scotch law. The days between the citation of the defendant, and the day of appearance. Bell's Scotch Law Dict. h. t.; the days between the test and the return day of the writ.

Induction, eccles. law. The giving a clerk instituted to a benefice, the actual possession of its temporalities, in the nature of livery of seisin. Ayl. Parerg. 299.

Indulgence. A favour granted.

2.—It is a general rule that where a creditor gives indulgence, by entering into a binding contract with a principal debtor, by which the surety is or may be dammified, such surety is discharged, because the creditor has put it out of his power to enforce immediate payment, when the surety would have a right to require him to do so. 6 Dow, P. C. 238; 3 Meriv. 272; Bac. Ab. Oblig. D; and see Giving Time.

3.—But mere inaction by the creditor, if he do not deprive himself of the right to sue the principal, does not in general discharge the surety. See Forbearance.

Ineligibility. The incapacity to be lawfully elected.

2.—This incapacity arises from various causes, and a person may be incapable of being elected to one office who may be elected to another; the incapacity may also be perpetual or temporary.

3.—1. Among the perpetual inabilities may be reckoned, 1, the inability of women to be elected to a public office; 2, of citizens born in a foreign country to be elected president of the United States.

4.—2. Among the temporary inabilities may be mentioned, 1, the holding of an office declared by law to be incompatible with the one sought; 2, the non-payment of the taxes required by law; 3, the want of certain property qualifications required by the constitution; 4, the want of age, or being over the age required. Vide Eligibility; Incompatibility.

Inevitable Accident. A term used in the civil law, nearly synonymous with fortitious event, (q. v.) 2 Sm. & Marsh. 572. In the common law commonly called the act of God, (q. v.) 2 Smed. & Marsh. Err. & App. 572.

Infamis. Among the Romans was one who in consequence of the application of a general rule, and not by virtue of an arbitrary decision of the censors, lost his political rights, but preserved his civil rights. Sav. Dr. Rom. § 79.

Infamy, crim. law, evidence, is that state which is produced by the conviction of crime and the loss of honour, which renders the infamous person incompetent as a witness.
2.—It is to be considered, 1st, what crimes or punishment incapacitate a witness; 2dly, how the guilt is to be proved; 3dly, how the objection is answered; and, 4thly, the effect of infamy.

3.—1. When a man is convicted of an offence which is inconsistent with the common principles of honesty and humanity, the law considers his oath to be of no weight, and excludes his testimony as of too doubtful and suspicious a nature to be admitted in a court of justice to deprive another of life, liberty or property. Gilb. L. E. 256; 2 Bulst. 154; 1 Phil. 23; Bull. N. P. 291. The crimes which render a person incompetent, are treason, 5 Mod. 16, 74; felony, 2 Bulst. 154; Co. Litt. 6; T. Raym. 369; all offences founded in fraud, and which come within the general notion of the crime falsi of the Roman law, Leach, 496; as perjury and forgery, Co. Litt. 6; Fort. 209; piracy, 2 Roll. Ab. 886; swindling, cheating, Fort. 209; barratry, 2 Salk. 690; and the bribing a witness to absent himself from a trial, in order to get rid of his evidence, Fort. 208. It is the crime and not the punishment which renders the offender unworthy of belief. 1 Phil. Ev. 25.

4.—2. In order to incapacitate the party, the judgment must be proved as pronounced by a court possessing competent jurisdiction. 1 Sid. 51; 2 Stark. C. 183; Stark. Ev. part 2, p. 144, note (1); Ib. part 4, p. 716. But it has been held that a conviction of an infamous crime in another country, or another of the United States, does not render the witness incompetent on the ground of infamy. 17 Mass. 515. Though this doctrine appears to be at variance with the opinions entertained by foreign jurists, who maintain that the state or condition of a person in the place of his domicili accompanies him every where, Story, Confl. § 620, and the authorities there cited; Félix, Traité De Droit Intern. Privé, § 31; Merl. Repert, verbo Loi, § 6, n. 6.

5.—3. The objection to competency may be answered, 1st, by proof of pardon. See Pardon. And, 2dly, by proof of a reversal by writ of error, which must be proved by the production of the record.

6.—4. The judgment for an infamous crime, even for perjury, does not preclude the party from making an affidavit with a view to his own defence, 2 Salk. 461; 2 Str. 1148; Martin's Rep. 45. He may, for instance, make an affidavit in relation to the irregularity of a judgment in a case in which he is party; for otherwise he would be without a remedy. But the rule is confined to defence, and he cannot be heard upon oath as complainant, 2 Salk. 461; 2 Str. 1148. When the witness becomes incompetent from infamy of character, the effect is the same as if he were dead; and if he has attested any instrument as a witness, previous to his conviction, evidence may be given of his handwriting. 2 Str. 833; Stark. Ev. part 2, sect. 193; Ib. part 4, p. 723.

7.—5. By infamy is also understood the expressed opinion of men generally as to the vices of another. Wolff, Dr. de la Nat. et des Gens, § 148.

INFANCY. The state or condition of a person under the age of twenty-one years. Vide Infant.

INFANT, persons, is one under the age of twenty-one years. Co. Litt. 171.

2.—But he is reputed to be twenty-one years old, or of full age, the first instant of the last day of the twenty-first year next before the anniversary of his birth; because according to the civil computation of time, which differs from the natural computation, the last part of the delay having once commenced, it is considered as ended. Savig. Dr. Rom. § 182. If, for example, a person were born at any hour of the first day of January, 1810, (even a few minutes before twelve o'clock of the night of that day,) he would be of full age at the first instant of the thirty-first of December, 1831, although nearly forty-eight hours before he had actually attained the full age of twenty-one years, according to years, days, hours and minutes, because there is, in this case, no fraction of a day. 1 Sid.
3.—A curious case occurred in England of a young lady who was born after the house clock had struck, while the parish clock was striking, and before St. Paul's had begun to strike twelve on the night of the fourth and fifth of January, 1805, and the question was whether she was born on the 4th or 5th of January. Mr. Coventry gives it as his opinion that she was born on the fourth, because the house clock does not regulate any thing but domestic affairs, that the parochial clock is much better evidence, and that a metropolitan clock ought to be received with "implicit acquiescence." Cov. on Conv. Ev. 182, 3. It is conceived that this can only be prima facie, because if the fact were otherwise, and the parochial and metropolitan clocks should both be wrong, they would undoubtedly have no effect in ascertaining the age of the child.

4.—The sex makes no difference, a woman is therefore an infant until she has attained her age of twenty-one years. Co. Litt. 171. Before arriving at full age an infant may do many acts. A male at fourteen is of discretion, and may consent to marry; and at that age he may disagree to and annul a marriage he may before that time have contracted; he may then choose a guardian; and, if his discretion be proved, may, at common law, make a will of his personal estate; at seventeen he may be an executor. A female at seven may be betrothed or given in marriage; at nine she is entitled to dower; at twelve may consent or disagree to marriage; and at seventeen may be an executrix.

5.—Considerable changes of the common law have probably taken place in many of the states. In Pennsylvania to be an executor the party must be of full age. In general, an infant is not bound by his contracts, unless to supply him for necessaries.

6.—Contracts made with him, may be enforced or avoided by him on his coming of age, see Parties, in contracts; Voidable. But to this general rule there is an exception: he cannot avoid contracts for necessaries, because these are for his benefit. See Necessaries. The privilege of avoiding a contract on account of infancy, is strictly personal to the infant, and no one can take advantage of it but himself. 3 Green, 343; 3 Brev. 438. When the contract has been performed, and it is such as he would be capable by law to perform, it will be good and bind him. Co. Litt. 172 a; and all the acts of an infant, which do not touch his interest, but take effect from an authority which he has been trusted to execute, are binding. 3 Burr, 1794; Fonbl. Eq. b. 1, c. 2, § 5, note (c).

7.—The protection which the law gives an infant is to operate as a shield to him, to protect him from improvident contracts, but not as a sword to do injury to others. An infant is therefore responsible for his torts, as, for slander, trespass, and the like: but he cannot be made responsible in an action ex delicto, where the cause arose on a contract. 3 Rawle's R. 351; 6 Watts's R. 9; 25 Wend. 399; 3 Shep. 233; 9 N. H. Rep. 441; 10 Verm. 71; 5 Hill. 391. But see contra, 6 Cranch. 226; 15 Mass. 359; 4 M'Cord, 387.

8.—He is also punishable for his crime, if of sufficient discretion, or doli capax. 1 Russ. on Cr. 2, 3.
Vide, generally, Bingham, on Infancy; 1 Hare & Wall, Sel. Dec. 103, 122; the various Abridgments and Digests, tit. Enfant, Infancy; and articles Age; Birth; Capax Doli; Dead born; Fetus; In ventre sa mere.

INFANTICIDE, med. jurispr. The murder of a new born infant, Dalloz, Dict. Homicide, § 4; Code Pénal, 300. There is a difference between this offence and those known by the name of prolicide, (q. v.) and faticide, (q. v.)

2.—To commit infanticide the child must be wholly born, it is not sufficient that it was born so far as the head and breathed, if it died before it was wholly born. 5 Carr. & Payn. 329; 24 Eng. C. L. Rep. 344; S. C. 6 Carr. & Payn. 349; S. C. 25 Eng. C. L. Rep. 433.

3.—When this crime is to be proved from circumstances, it is proper to consider whether the child had attained that size and maturity by which it would be enabled to maintain an independent existence; whether it was born alive; and, if born alive, by what means it came to its death. 1 Beck’s Med. Jur. 381 to 428, where these several questions are learnedly considered. See also 1 Briand, Méd. Lég. prém. part. c. 8; Cooper’s Med. Jur. h. t. Vide Ryan’s Med. Jur. 137; Med. Jur. 145, 194; Dr. Cummin’s Proof of Infanticide considered; Lécieux, Considerations Médico-légales sur l’infanticide; Duvrieux, Médicine Légale, art. Infanticide.

INFECTION, estates. The act or instrument of infection, (q. v.) In Scotland it is synonymous with sasine, meaning the instrument of possession; formerly it was synonymous with investiture. Bell’s Sc. L. Dict. h. t.

INFERENC. It is a conclusion drawn by reason and common sense from premises established by proof.

2.—It is the province of the judge who is to decide upon the facts to draw the inference. When the facts are submitted to the court, the judges draw the inference; when they are to be ascertained by a jury, it is their duty to do so. The witness is not permitted in any case to draw the inference, and testify that to the court or jury. It is his duty to state the facts simply as they occurred. Inferences differ from presumptions, (q. v.)

INFERIOR COURTS. By this term are understood all courts except the supreme courts.

INFIDEL, persons, evidence, is one who does not believe in the existence of a God, who will reward or punish in this world or that which is to come. Willes’s R. 550. This term has been very indefinitely applied, and has been by different persons made to express almost opposite ideas. Under the name of infidel, Lord Coke comprises Jews and heathens, 2 Inst. 506; 3 Inst. 165; and Hawkins includes among infidels, such as do not believe either in the Old or New Testament, Hawk. P. C. b 2, c. 46, s. 148.

2.—It is now settled that when the witness believes in a God who will reward or punish him even in this world he is competent. Willes, R. 550. His belief may be proved from his previous declarations and avowed opinions; and when he has avowed himself to be an infidel, he may show a reform of his conduct, and change of his opinion since the declarations proved; when the declarations have been made for a very considerable space of time, slight proof will suffice to show he has changed his opinion. There is some conflict in the cases on this subject, some of them are here referred to: 18 John. R. 98; 1 Harper, R. 62; 4 N. Hamp. R. 444; 4 Day’s Cas. 51; 2 Cowen, R. 431, 433 n., 572; 7 Conn. R. 66; 2 Tenn. R. 96; 4 Law Report, 268; Allis. Pr. Cr. Law, 438; 5 Mason, 16; 15 Mass. 184; 1 Wright, 345; So. Car. Law Journ. 202. Vide Atheist; Future state.

INFIRM. To be in want of health.

2.—When a witness is infirm to an extent likely to destroy his life, or to prevent his attendance at the trial, his testimony de bene esse may be taken at any age. 1 P. Will. 117; see Aged witness; Going witness.
INFLUENCE. Authority, credit, ascendance.

2. Influence is proper or improper. Proper influence is that which one person gains over another by acts of kindness and attention, and by correct conduct. 3 Serg. & Rawle, 269. Improper influence is that dominion acquired by any person over a mind of sanctity for general purposes, and of sufficient soundness and discretion to regulate his affairs in general, which prevents the exercise of his discretion, and destroys his free will. 1 Cox's Cas. 355. When the former is used to induce a testator to make a will, it will not vitiate it, but when the latter is the moving cause, the will cannot stand. 1 Hagg. R. 581; 2 Hagg. 142; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323; 4 Greenl. R. 220; 1 Paige, R. 171; 1 Dow & Cl. 440; 1 Speers, 93.

INFORMATION, is an accusation or complaint made in writing to a court of competent jurisdiction, charging some person with a specific violation of some public law. It differs in nothing from an indictment in its form and substance, except that it is filed at the discretion of the proper law officer of the government, ex officio, without the intervention or approval of a grand jury. 4 Bl. Com. 308, 9.

2. In the French law the term information is used to signify the act or instrument which contains the deposition of witnesses against the accused. Poth. Proc. Cr. sect. 2, art. 5.

3. Informations have for their object either to punish a crime or misdemeanor, and these have, perhaps, never been resorted to in the United States; or to recover penalties or forfeitures, which are quite common. For the form and requisites of an information for a penalty, see 2 Chit. Pr. 155 to 171. Vide Blake's Ch. 49; 14 Vin. Ab. 407; 3 Story, Constitution, § 1780; 3 Bl. Com. 261.

4. In summary proceedings before justices of the peace, the complaint or accusation, at least when the proceedings relate to a penalty, is called an information, and it is then taken down in writing and sworn to. As the object is to limit the informer to a certain charge, in order that the defendant may know what he has to defend, and the justice may limit the evidence and his subsequent adjudication to the allegations in the information, it follows that the substance of the particular complaint must be stated, and it must be sufficiently formal to contain all material averments. 8 T. R. 256; 5 Barn. & Cres. 251; 11 E. C. L. R. 217; 2 Chit. Pr. 156. See 1 Wheat. R. 9.

INFORMATION IN THE NATURE OF A WRIT OF QUO WARRANTO, remedies. The name of a proceeding against any one who usurps a franchise or office.

2. Informations of this kind are filed in the highest courts of ordinary jurisdiction in the several states, either by the attorney-general, of his own authority, or by the prosecutor, who is entitled, pro forma, to use his name, as the case may be. 6 Cowen, R. 102, n.; 10 Mass. 290; 2 Dall. 112; 2 Halst. R. 101; 1 Rep. Const. Ct. (So. Car.) 36; 3 Serg. & Rawle, 52; 15 Serg. & Rawle, 127; though, in form, these informations are criminal, they are, in their nature, but civil proceedings. 3 T. R. 484; Kyd on Corp. 439; they are used to try a civil right, or to oust a wrongful possessor of an office. 3 Dall. 490; 1 Serg. & Rawle, 385. For a full and satisfactory statement of the law on this subject, the reader is referred to Angell on Corp. ch. 20, p. 469. And see Quo Warranto.

INFORMATUS NON SUM, pleading, practice, i. e., I am not informed; a formal answer made in court, or put upon record by an attorney when he has no more to say in defence of his client.

INFORMER. A person who informs or prefers an accusation against another, whom he suspects of the violation of some penal statute.

2. When the informer is entitled to the penalty or part of the penalty, upon the conviction of an offender, he is, or is not a competent witness, accordingly
as the statute creating the penalty has or has not made him so. 1 Phil. Ev. 97; Rosev. Cr. Ev. 107; 5 Mass. R. 57; 1 Dall. 68; 1 Saund. 262, c. Vide articles, Prosecutor; Rewards.

INFORCIATUM, civil law. The second part of the Digest or Pandects of Justinian, is called inforciatum, see Digest. This part, which commences with the third title of the twenty-fourth book, and ends with the thirty-eighth book, was thus called because it was the middle part, which, it was said, was supported and fortified by the two others. Some have supposed that this name was given to it, because it treats of successions, substitutions, and other important matters, and being more used than the others, produced greater fees to the lawyers.

INFRA PRÆSIDIA. This term is used in relation to prizes, to signify that they have been brought completely in the power of the captors that is within the towns, camps, ports or fleet of the captors. Formerly, the rule was, and perhaps still in some countries is, that the act of bringing a prize supra presidia, changed the property, but the rule now established is, that there must be a sentence of condemnation to effect this purpose. 1 Rob. Adm. R. 134; 1 Kent’s Com. 104; Chit. Law of Nat. 98; Abb. Sh. 14; Hugo, Droit Romain, § 90.

INFRACION. The breach of a law or agreement; the violation of a compact. In the French law this is the generic expression to designate all actions which are punishable by the code of France.

INFUSION, med. jur. A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance, whose medical properties it is desired to extract. Infusion is also used for the product of this operation. Although infusion differs from decoction, (q.v.) they are said to be ejusdem generis; and in the case of an indictment which charged the prisoner with giving a decocion, and the evidence was that he had given an infusion, the difference was held to be immaterial. 3 Camp. R. 74.

INGENUI, civ. law, were those freemen who were born free.

2.—They were a class of freemen, distinguished from those who, born slaves, had afterwards legally obtained their freedom; the latter were called at various periods, sometimes liberti, sometimes libertini. An unjust or illegal servitude did not prevent a man from being ingenues.

INGRATITUDE, is the forgetfulness of a kindness or benefit.

2.—In the civil law, ingratitude on the part of a legatee, was sufficient to defeat a legacy in his favour. In Louisiana, donations inter vivos are liable to be revoked or dissolved on account of the ingratitude of the donee; but the revocation on this account can take place only in the three following cases: 1, if the donee has attempted to take the life of the donor; 2, if he has been guilty towards him of cruel treatment, crimes or grievous injuries: 3, if he has refused him food when in distress. Civ. Code of Lo. art. 1546, 1547; Poth. Donations entrevis, s. 3, art. 1, § 1. There are no such rules in the common law. Ingratitude is not punishable by law.

INGRESS, EGRESS AND REGRESS. These words are frequently used in leases to express the right of the lessee to enter, go upon, and return from the lands in question.

INGRESSU. An ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Techn. Dict. h. t.

INGROSSING, practice, the act of copying from a rough draft a writing in order that it may be executed; as, ingrossing a deed.

INHABITANT, one who has his domicil in a place is an inhabitant of that place; one who has an actual fixed residence in a place.

2.—A mere intention to remove to a place will not make a man an inhabitant of such place, although as a sign of such intention he may have sent his wife and children to reside there, 1
Ashm. R. 126; nor will his intention to quit his residence, unless consummated, deprive him of his right as an inhabitant. 1 Dall. 480. Vide 10 Ves. 339; 14 Vin. Ab. 420; 1 Phil. Ev. Index, h. t.; Const. of Mass., part 2, c. 1, s. 2, a. 1; Kyd on Corp. 321; Anal. des Pand. de Poth. mot Habitans; Poth. Pand. lib. 50, t. 1, s. 2; 6 Adolph. & Ell. 153; 33 Eng. Common Law Rep. 31.

3.—The inhabitants of the United States may be classed into, 1, those born within the country; and, 2, those born out of it.

4.—1. The natives consist, 1st, of white persons, and these are all citizens of the United States, unless they have lost that right; 2dly, of the aborigines, and these are not in general citizens of the United States, nor do they possess any political power; 3dly, of negroes, or descendants of the African race, and these generally possess no political authority whatever, not being able to vote, nor to hold any office; 4thly, of the children of foreign ambassadors, who are citizens or subjects as their fathers are or were at the time of their birth.

5.—2. Persons born out of the jurisdiction of the United States, are, 1st, children of citizens of the United States, or of persons who have been such; they are citizens of the United States, provided the father of such children shall have resided within the same. Act of Congress of April 14, 1803, § 4. 2dly, persons who were in the country at the time of the adoption of the constitution, these have all the rights of citizens; 3dly, persons who have become naturalized under the laws of any state before the passage of any law on the subject of naturalization by Congress, or who have become naturalized under the acts of Congress, are citizens of the United States, and entitled to vote for all officers who are elected by citizens, and to hold any office except that of president and vice-president of the United States; 4thly, children of naturalized citizens, who were under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizenship, are, if then dwelling in the United States, considered as citizens of the United States, and entitled to the same rights as their respective fathers; 5thly, persons who resided in a territory which was annexed to the United States by treaty, and the territory became a state, as, for example, a person who, born in France, moved to Louisiana in 1806, and settled there, and remained in the territory until it was admitted as a state, it was held, that although not naturalized under the acts of Congress, he was a citizen of the United States. Desbois’s Case, 2 Mart. L. R. 185; 6thly, aliens or foreigners, who have never been naturalized, and these are not citizens of the United States, nor entitled to any political rights whatever. See Alien; Body politic; Citizen; Domicil; Naturalization.

INHERITANCE, estates, is a perpetuity in lands to a man and his heirs.

2.—The term inheritance includes not only lands and tenements which have been acquired by descent, but also every fee simple or fee tail, which a person has acquired by purchase, may be said to be an inheritance, because the purchaser’s heirs may inherit it. Litt. sec. 9.

3.—Estates of inheritance are divided into inheritance absolute, or fee simple; and inheritance limited, one species of which is called fee tail. They are also divided into corporeal, as houses and lands; and incorporeal, commonly called incorporeal hereditaments, (q. v.); 1 Cruise. Dig. 68; Sw. 163; Poth. des Retraits, n. 28.

4.—Among the civilians by inheritance is understood, the succession to all the rights of the deceased. It is of two kinds, 1, that which arises by testament, when the testator gives his succession to a particular person; and, 2, that which arises by operation of law, which is called succession ab intestato. Hein. Leg. El. § 484, 485.

INHIBITION, Scotch law, is a personal prohibition which passes by letters under the signet, prohibiting the party inhibited to contract any debt,
or do any deed, by which any part of
the lands may be aliened or carried
off, in prejudice of the creditor inhibiting.
Ersk. Pr. L. Scot. B. 2, t. s. 2.
See Diligences.

2.—In the civil law, the prohibition
which the law makes, or a judge
ordains to an individual, is called inhi-

bition.

INHIBITION, Eng. law, is the name of
a writ which forbids a judge from
further proceeding in a cause depend-
ing before him; it is in the nature of a
prohibition. T. de la Ley; F. N. B.
39.

INIQUITY. Vice; contrary to equi-

ty; injustice.

2.—Where in a doubtful matter, the
judge is required to pronounce, it is
his duty to decide in such a manner
as is the least against equity.

INITIAL, placed at the beginning.
The initials of a man's name are the
first letters of his name, as, G. W. for
George Washington. When in a will
the legatee is described by the initials
of his name only, parol evidence may
be given to prove his identity. 3 Ves.
148. And a signature made simply
with initials is binding. 1 Denio, R.
471. But see Ersk. Inst. B. 3, t. 2,
n. 8.

INITIALIA TESTIMONII, Scotch
law. Before a witness can be examin-
ed in chief, he may be examined with
regard to his disposition, whether he
bear good or ill will towards either of
the parties; whether he has been
prompted what to say; whether he
has received a bribe, and the like.
This previous examination, which
somewhat resembles our voir dire is
called initialia testimonii.

INITIATIVE, French law. The
name given to the important preroga-
tive given by the charte constitutionelle,
art. 16, to the late king to propose
through his ministers projects of laws.
1 Toull. n. 39.

INJUNCTION, remedies, chancery
practice. An injunction is a prohibi-
tory writ, specially prayed for by a bill,
in which the plaintiff's title is set forth,
restraining a person from committing or
doing an act (other than criminal acts,)
which appear to be against equity and
Ch. Pr. 126.

2.—Injunctions are of two kinds, the
one called the writ remedial, and the
other the judicial writ.

3.—1st. The former kind of injunc-
tion, or remedial writ, is in the nature
of a prohibition, directed to, and con-
trolling, not the inferior court, but the
party. It is granted when a party is
doing or is about to do an act against
equity or good conscience, or litigious
or vexatious; in these cases the court
will not leave the party to feel the
mischief or inconvenience of the wrong,
and in vain look for redress, but will
interpose its authority to restrain such
unjustifiable proceedings.

4.—Remedial injunctions are of two
kinds; common or special. 1. It is
common when it prays to stay proceed-
ings at law, and will be granted of
course; as, upon an attachment for
want of an appearance, or of an
answer; or upon a delinisus obtained
by the defendant to take his answer in
the country; or upon his praying for
time to answer, &c. Newl. Pl. 92;
13 Ves. 323.—2. A special injunction
is obtained only on motion or petition,
with notice to the other party, and is
applied for, sometimes on affidavit
before answer, but more frequently
upon the merits disclosed in the defend-
ant's answer. Injunctions before
answer are granted in cases of waste
and other injuries of so urgent a nature,
that mischief would ensue if the plain-
tiff were to wait until the answer were
put in; but the court will not grant an
injunction during the pendency of a
plea or demurrer to the bill, for until
that be argued, it does not appear
whether or not the court has jurisdi-
cion of the cause. The injunction
granted in this stage of the suit, is to
continue till answer or further order;
the injunction obtained upon the merits
confessed in the answer, continues
generally till the hearing of the cause.

5.—An injunction is generally grant-
ed for the purpose of preventing a
wrong, or preserving property in dispute pending a suit. Its effect in general is only in personam, that is, to attach and punish the party if disobedient in violating the injunction. Ed. Inj. 363; Harr. Ch. Pr. 552.

6.—The principal injuries which may be prevented by injunction relate to the person, to personal property, or to real property. These will be separately considered.

7.—1. With respect to the person, the chancellor may prevent a breach of the peace by requiring sureties of the peace. A court of chancery has also summary and extensive jurisdiction for the protection of the relative rights of persons, as between husband and wife, parent and child, and guardian and ward; and in these cases on a proper state of facts, an injunction will be granted. For example, an injunction may be obtained by a parent to prevent the marriage of his infant son. 1 Madd. Ch. Pr. 345; Ed. Inj. 297; 14 Ves. 206; 19 Ves. 282; 1 Chitt. Pr. 702.

8.—2. Injunctions respecting personal property are usually granted, 1st, to restrain a partner or agent from making or negotiating bills, notes or contracts, or doing other acts injurious to the partner or principal. 3 Ves. Jr. 74; 3 Bro. C. C. 15; 2 Campb. 619; 1 Price, R. 503; 1 Mont. on Part. 93; 1 Madd. Ch. Pr. 160; Chitt. Bills, 58, 61; 1 Hov. Supp. to Ves. jr. *335; Woold. Lect. 416.

9.—2d. To restrain the negotiation of bills or notes obtained by fraud, or without consideration. 8 Price, R. 631; Chitt. Bills, 31 to 41; Ed. Inj. 210; Blake’s Ch. Pr. 338; 2 Anst. 519; 3 Anst. 581; 2 Ves. jr. 493; 1 Fonb. Eq. 43; 1 Madd. Ch. Pr. 154.—3d. To deliver up void or satisfied deeds. 1 V. & B. 244; 11 Ves. 535; 17 Ves. 111.—4th. To enter into and deliver a proper security. 1 Anst. 49.—5th. To prevent breaches of covenant or contract, and enjoin the performance of others. Ed. Inj. 308.—6th. To prevent a breach of confidence or good faith, or to prevent other loss; as, for example, to restrain the disclosure of secrets, which came to the defendant’s knowledge in the course of any confidential employment. 1 Sim. R. 483; and see 1 Jac. & W. 394. An injunction will be granted to prevent the publication of private letters without the author’s consent. Curt. on Copyr. 90; 2 Atk. 342; Ambl. 737; 2 Swanst. 402, 427; 1 Ball & Beat. 207; 2 Ves. & B. 19; 1 Mart. Lo. R. 297; Bac. Ab. Injunction A. But the publication will be allowed when necessary to the defence of the character of the party who received them. 2 Ves. & B. 19.—7th. To prevent improper sales, payments, or conveyances. Chit. Eq. Dig. tit. Practice, xlvii.—8th. To prevent loss or inconvenience; this can be obtained on filing a bill quia timet, (q. v.) 1 Madd. Ch. Pr. 218 to 225.—9th. To prevent waste of property by an executor or administrator. Ed. Inj. 300; 1 Madd. Ch. Pr. 160, 224.—10th. To restrain the infringement of patents; Ed. Inj. ch. 13; 14 Ves. 130; 1 Madd. Ch. Pr. 137; or of copyrights; Ed. Inj. ch. 13; 8 Ves. 225; 17 Ves. 424.—11th. To stay proceedings in a court of law. These proceedings will be stayed when justice cannot be done in consequence of accident, 1 John. Cas. 417; 4 John. Ch. R. 287, 194; Latch. 24, 146, 148; 1 Vern. 180, 247; 1 Ch. C. 77, 120; 1 Eq. Cas. Ab. 92; mistake, 1 John. Ch. R. 119, 607; 2 John. Ch. R. 585; 4 John Ch. R. 85; Ib. 144; 2 Munf. 187; 1 Day’s Cas. Err. 139; 3 Ch. R. 55; Finch, 413; 2 Frecm. 16; Fitzg. 118; or fraud, 1 John. Ch. R. 402; 2 John. Ch. R. 512; 4 John Ch. R. 65. But no injunction will be granted to stay proceedings in a criminal case. 2 John. Ch. R. 387; 6 Mod. 12; 2 Ves. 396.

9.—3. Injunctions respecting real property may be obtained, 1st, to prevent wasteful trespasses or irreparable damages, although the owner may be entitled to retake possession, if he can do so, without a breach of the peace. 1 Chitt. Pr. 722. 9d. To compel the
performance of lawful works in the least injurious manner. 1 Turn. & Myl. 181. 3d, To prevent waste. 3 Tho. Co. Litt. 241, M; 1 Madd. Ch. Pr. 138; Ed. Inj. ch. 8, 9, and 10; 1 John. Ch. R. 11; 2 Atk. 183. 4th, To prevent the creation of a nuisance, either private or public. 1. Private nuisance, for example, to restrain the owner of a house from making any erections or improvements, so as materially to darken or obstruct the ancient lights and windows of an adjoining house. 2 Russ. R. 121. 2. Public nuisances. Though usual to prosecute the parties who create nuisances by indictment, yet, in some cases, an injunction may be had to prevent the creating of such nuisance. 5 Ves. 129; 1 Mad. Ch. 156; Ed. Inj. ch. 11.

10.—2d. An injunction of the second kind, called the judicial writ, issues subsequently to a decree. It is a direction to yield up, to quit, or to continue possession of lands, and is properly described as being in the nature of an execution. Ed. Inj. 2.

11.—Injunctions are also divided into temporary and perpetual. 1. A temporary injunction is one which is granted until some stage of the suit shall be reached, as, until the defendant shall file his answer; until the hearing; and the like. 2. A perpetual injunction is one which is issued when, in the opinion of the court, at the hearing, the plaintiff has established a case, which entitles him to an injunction; or when a bill, praying for an injunction, is taken pro confesso; in such cases a perpetual injunction will be decreed. Ed. Inj. 253.

12.—The interdict (q. v.) of the Roman law resembles, in many respects, our injunction. It was used in three distinct, but cognate senses. 1. It was applied to signify the edicts made by the praetor, declaratory of his intention to give a remedy in certain cases, chiefly to preserve or to restore possession; this interdict was called edictal, edictale, quod praetoris edictis protonitur, ut sciant omnes eà formà posse implorari. 2. It was used to signify his order or decree, applying the remedy in the given case before him, and then was called decretal; decretale, quod praetor re nata implorantibus decrevit. It is this which bears a strong resemblance to the injunction of a court of equity. 3. It was used, in the last place, to signify the very remedy sought in the suit commenced under the praetor’s edict; and thus it became the denomination of the action itself. Livingston on the Batture case, 5 Am. Law Journ. 271; 2 Story, Eq. Jur. § 865; Analyse des Pandectes de Thcro- thier, h. t.; Dict. du Dig. h. t.; Cler des Lois Rom. h. t.; Heineccii, Elem. Pand. Ps. 6, § 285, 286.

Vide, generally, Eden on Injunctions; 1 Madd. Ch. Pr. 125 to 165; Blake’s Ch. Pr. 330 to 344; 1 Chit. Pr. 701 to 731; Coop. Eq. Pl. Index, h. t.; Redesd. Pl. Index, h. t.; Smith’s Ch. Pr. h. t.; 14 Vin. Ab. 442; 2 Hov. Supp. to Ves. jr. 173, 434, 442; Com. Dig. Chancery, D 8; Newl. Pr. ch. 4, s. 7.

INJURIOUS WORDS. This phrase is used, in Louisiana, to signify slander, or libellous words. Code, art. 3501.

INJURY, a wrong or tort.

2.—Injuries are divided into public and private; and they affect the person, personal property, or real property.

3.—1. They affect the person absolutely or relatively; the absolute injuries are threats and menaces, assaults, batteries, wounding, mayhems; injuries to health, by nuisances or medical malpractices; those affecting reputation are verbal slander, libels, and malicious prosecutions; and those affecting personal liberty are, false imprisonment and malicious prosecutions. The relative injuries are those which affect the right of a husband; these are, abduction and harbouring, adultery and battery; those which affect the rights of a parent, as, abduction, seduction and battery; and of a master, seduction, harbouring and battery of his apprentice or servant. Those which conflict with the right of the in-
ferior relation, namely, the wife, child, apprentice, or servant; they are, withholding conjugal rights, maintenance, wages, &c.

4.—2. Injuries to personal property, are, the unlawful taking and detention thereof from the owner; and other injuries are, some damage affecting the same while in the claimant's possession or that of a third person, or injuries to his reversionary interests.

5.—3. Injuries to real property are, ousters, trespasses, nuisances, waste, subtraction of rent, disturbance of right of way, and the like.

6.—Injuries arise in three ways: 1, by nonfeasance, or the not doing what was a legal obligation, or duty, or contract, to perform; 2, misfeasance, or the performance, in an improper manner, of an act which it was either the party's duty, or his contract, to perform; 3, malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not to do.

7.—The remedies are different, as the injury affects private individuals, or the public. 1. When the injuries affect a private right and a private individual, (although often also affecting the public), there are three descriptions of remedies; first, the preventive, such as defense, resistance, recapture, abatement of nuisance, surety of the peace, injunction, &c.; secondly, remedies for compensation, which may be by arbitration, suit, action, or summary proceedings before a justice of the peace: thirdly, proceedings for punishment, as by indictment, or summary proceedings before a justice. 2. When the injury is such as to affect the public, it becomes a crime, misdemeanor, or offense, and the party may be punished by indictment, or summary conviction, for the public injury; and by civil action, at the suit of the party, for the private wrong. But in cases of felony, the remedy by action for the private injury is generally suspended until the party particularly injured has fulfilled his duty to the public by prosecuting the offender for the public crime; and in cases of homicide the remedy is merged in the felony. 1 Chit. Pr. 10; Ayl. Pand. 592; and article Civil Remedy.

8.—There are many injuries for which the law affords no remedy. In general, it interferes only when there has been a visible bodily injury inflicted by force or poison, while it leaves almost totally unprotected the whole class of the most malignant mental injuries and sufferings, unless in a few cases, where, by descending to a fiction, it sordidly supposes some pecuniary loss, and sometimes—under a mask, and contrary to its own legal principles—affords compensation to wounded feelings. A parent, for example, cannot sue, in that character, for an injury inflicted on his child; and when his own domestic happiness has been destroyed, unless the fact will sustain the allegation that the daughter was the servant of her father, and that, by reason of such seduction, he lost the benefit of her services. Another instance may be mentioned:—A party cannot recover damages for verbal slander in many cases; as when the facts published are true, for the defendant would justify, and the party injured must fail. A case of this kind, remarkably hard, occurred in England. A young nobleman had seduced a young woman, who, after living with him some time, became sensible of the impropriety of her conduct. She left him secretly, and removed to an obscure place in the kingdom, where she obtained a situation, and became highly respected in consequence of her good conduct—she was even promoted to a better and more public employment—when she was unfortunately discovered by her seducer. He made proposals to her to renew their illicit intercourse, which were rejected; in order to force her to accept them, he published the history of her early life, and she was discharged from her employment, and lost the good opinion of those on whom she depended for her livelihood. For this outrage the culprit could not be made answerable, civilly or criminally,
Nor will the law punish criminally the author of verbal slander, imputing even the most infamous crimes, unless done with intent to extort a chattel, money, or valuable thing. The law presumes (perhaps unnaturally enough) that a man is incapable of being alarmed or affected by such injuries to his feelings. Vide 1 Chit. Med. Jur. 320.

INJURY, in the civil law, in the technical sense of the term, is a delict committed in contempt, or outrage of any one, whereby his body, his dignity, or his reputation, is maliciously injured. Voet, Com. ad Pand. lib. 47, t. 10, n. 1.

2.—Injuries may be divided into two classes, with reference to the means used by the wrong-doer, namely by words and by acts. The first are called verbal injuries, the latter real.

3.—A verbal injury when directed against a private person consists in the uttering contumelious words, which tend to expose our neighbour's character by making him little or ridiculous. Where the offensive words are uttered in the heat of a dispute, and spoken to the person's face, the law does not presume any malicious intention in the utterer, whose resentment generally subsides with his passion; and yet, even in that case, the truth of the injurious words seldom absolves entirely from punishment. Where the injurious expressions have a tendency to blacken one's moral character, or fix some particular guilt upon him, and are deliberately repeated in different companies, or handed about in whispers to confidants, it then grows up to the crime of slander, agreeably to the distinction of the Roman law, l. 15, § 12, de injur.

4.—A real injury is inflicted by any fact by which a person's honour or dignity is affected; as striking one with a cane, or even aiming a blow without striking; spitting in one's face; assuming a coat of arms, or any other mark of distinction proper to another, &c. The composing and publishing defamatory libels may be reckoned of this kind. Ersk. Pr. L. Scot. 4, 4, 45.

INJUSTICE. Is that which is opposed to justice.

2.—It is either natural or civil: 1. Natural injustice is the act of doing harm to mankind, by violating natural rights; 2. Civil injustice, is the unlawful violation of civil rights.

INLAGARE. To admit or restore to the benefit of law.


INLAND, within the same country.

2.—It seems not to be agreed whether the term inland applies to all the United States or only to one state. It has been held in New York that a bill of exchange by one person in one state, on another person in another, is an inland bill of exchange, 5 John. Rep. 375; but a contrary opinion seems to have been held in the circuit court of the United States for Pennsylvania. Whart. Dig. tit. Bills of Exchange, E, pl. 78. Vide 2 Phil. Ev. 36, and Bills of Exchange.

INMATE, is one who dwells in a part of another's house, the latter dwelling, at the same time, in the said house. Kitch. 45, b; Com. Dig. Justices of the Peace, B 85; 1 B. & Cr. 578; 8 E. C. L. R. 153; 2 Dowil. & Ryl. 743; 8 B. & Cr. 71; 15 E. C. L. R. 154; 2 Mann. & Ryl. 227; 9 B. & Cr. 176; 17 E. C. L. R. 335; 4 Mann. & Ryl. 151; 2 Russ. on Cr. 937; 1 Deac. L. 185; 2 East, P. Cr. 499, 505; 1 Leach's Cr. L. 90, 237, 427; Alcock's Registration Cases, 21; 1 Mann. & Gran. 83; 39 E. C. L. R. 365. Vide Lodger.

INN. A house where a traveller is furnished with every thing he has occasion for while on his way. Bac. Ab. Inns. (B); 12 Mod. 255; 3 B. & A. 283; 4 Campb. 77; 2 Chit. Rep. 484; 3 Chit. Com. Law, 365, n. 6.

2.—All travellers have a lawful right to enter an inn for the purpose of being accommodated. It has been held that an innkeeper in a town through which lines of stages pass, has no
right to exclude the driver of one of these lines from his yard and the common public rooms, where travellers are usually placed, who comes there at proper hours, and in a proper manner, to solicit passengers for his coach, and without doing any injury to the innkeeper. 8 N. H. R. 523; Hamm. N. P. 170. Vide Entry; Guest.


INNKEEPER, is defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. Bac. Ab. Inns, &c.; Story, Bailm. § 475. But one who entertains strangers occasionally, although he may receive compensation for it, is not an innkeeper. 2 Dev. & Bat. 424.

2.—His duties will be first considered; secondly, his rights.

3.—1. He is bound to take in and receive all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. He is liable only for the goods which are brought within the inn. 8 Co. 32; Jones’s Bailm. 91. A delivery of the goods into the custody of the innkeeper is not, however necessary, in order to make him responsible; for although he may not know any thing of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person, 8 Co. 32; Hayw. N. C. R. 41; 14 John. R. 175; 1 Bell’s Com. 469; and if he receive the guest, the custody of the goods may be considered as an accessory to the principal contract; and the money paid for the apartments as extending to the care of the box and portmanteau, Jones’s Bailm. 94; Story, Bailm. § 470; 1 Bl. Com. 430; 2 Kent, Com. 458 to 463. The degree of care which the innkeeper is bound to take is uncommon care, and he will be liable for a slight negligence. He is responsible for the acts of his domestics and servants, as well as for the acts of his other guests, if the goods are stolen or lost; but he is not responsible for any tort or injury done by his servants or others, to the person of his guest without his own co-operation or consent. 8 Co. 32. The innkeeper will be excused whenever the loss has occurred through the fault of the guest. Story, Bailm. § 483; 4 M. & S. 306; S. C. 1 Stark. R. 251, note; 2 Kent, Com. 461; 1 Yeates’s R. 34.

4.—2. The innkeeper is entitled to a just compensation for his care and trouble in taking care of his guest and his property; and to enable him to obtain this, the law invests him with some peculiar privileges, giving him a lien upon the goods, and, it is said, upon the person of his guest, for his compensation. 3 B. & Aid. 257; 8 Mod. 172; 1 Shower, Rep. 270; Bac. Ab. Inns, &c., D. But the horse of the guest can be detained only for his own keeping, and not for the boarding and personal expenses of the guest. Bac. Ab. h. t. The landlord may also bring an action for the recovery of his compensation.

Vide, generally, 1 Vin. Ab. 224; 14 Vin. Ab. 436; Bac. Ab. h. t.; Yelv. 67, a, 162, a; 2 Kent, Com. 458; Ayl. Pand. 266; 9 Pick. 280; 21 Wend. 285; 1 Yeates, 35; Oliph. on the Law of Horses, 125.

INNOCENCE, the absence of guilt.

2.—The law presumes in favour of innocence, even against another presumption of law: for example, when a woman marries a second husband within the space of twelve months after her husband had left the country, the presumption of innocence preponderates over the presumption of the continuance of life. 2 B. & A. 386; 3 Stark. Ev. 1249. An exception to this rule respecting the presumption of innocence has been made in the case of the publication of a libel, the principal being presumed to have authorised the sale, when a libel is sold by his agent in his usual place of doing business. 1 Russ. on Cr. 341; 10 Johns. R. 443; Bull. N. P. 6; Greenl. Ev. §
36. See 4 Nev. & M. 341; 2 Ad. & Ell. 540; 5 Barn. & Ad. 86; 1 Stark. N. P. C. 21; 2 Nev. & M. 219.

INNOMINATE CONTRACTS, civil law. Contracts which have no particular names, as permutation and transaction, are so called. Inst. 2, 10, 13. There are many innominate contracts, but the Roman lawyers reduced them to four classes, namely, do ut des, do ut facias, facio ut des, and facio ut facias. Dig. 2, 14, 7, 2.

INNOTESCIMUS, English law. An epithet used for letters-patent, which are always of a charter of feoffment, or some other instrument not of record, concluding with the words Innotescimus per presentes, &c. Tech. Dict. h. t.

INNOVATION, change of a thing established for something new.

2.—Innovations are said to be dangerous, as likely to unsettle the common law. Co. Litt. 370, b; Ilb. 282, b; certainly no innovations ought to be made by the courts, but as every thing human is mutable, no legislation can be, or ought to be immutable; changes are required by the alteration of circumstances; amendments, by the imperfections of all human institutions; but laws ought never to be changed without great deliberation, and a due consideration of the reasons on which they were founded, as of the circumstances under which they were enacted. Many innovations have been made in the common law, which philosophy, philanthropy and common sense approve. The destruction of the benefit of clergy; of appeal, in felony; of trial by battle and ordeal; of the right of sanctuary; of the privilege to abjure the realm; of approbation, by which any criminal who could in a judicial combat, by skill, force or fraud kill his accomplice, secured his own pardon; of corruption of blood; of constructive treason; will be sanctioned by all wise men, and none will desire a return to these barbarisms. The reader is referred to the case of James v. The Commonwealth, 12 Serg. & R. 220, and 225 to 236, where Duncan, J., ex-

poses the absurdity of some ancient laws, with much sarcasm.

INNOVATION, Scotch law. The exchange of one obligation for another, so that the second shall come in the place of the first. Bell's Scotch Law Dict. h. t. The same as Novation, (q. v.)

INNS OF COURT, Engl. law.—The name given to the colleges of the English professors and students of the common law.

2.—The four principal inns of court are the Inner Temple and Middle Temple, (formerly belonging to the Knights Templars) Lincoln's Inn, and Gray's Inn, (anciently belonging to the earls of Lincoln and Gray,) The other inns are the two Sergeants' Inns. The Inns of Chancery were probably so called because they were once inhabited by such clerks, as chiefly studied the forming of writs, which regularly belonged to the cursitors, who are officers of chancery. These are Thavie's Inn, the New Inn, Symond's Inn, Clement's Inn, Clifford's Inn, Staple's Inn, Lion's Inn, Furnival's Inn and Barnard's Inn. Before being called to the bar, it is necessary to be admitted to one of the Inns of Court.

INNUENDO, pleading, is an averment which explains the defendant's meaning by reference to antecedent matter. Salk. 513; 1 Ed. Raym. 256; 12 Mod. 139; 1 Saund. 243. The innuendo is mostly used in actions for slander.

2.—An innuendo, as, "he (the said plaintiff meaning)" is only explanatory of some matter expressed, it serves to apply the slander to the precedent matter, but cannot add or enlarge, extend, or change the sense of the previous words, and the matter to which it alludes must always appear from the antecedent parts of the declaration or indictment. 1 Chit. Pl. 383; 3 Caines's Rep. 76; 7 Johns. R. 271; 5 Johns. R. 211; 8 Johns. R. 109; 8 N. H. Rep. 256.

3.—It is necessary only when the intent may be mistaken, or when it cannot be collected from the libel or
slander itself. Cowp. 679; 5 East, 463.

4.—If the innuendo materially enlarge the sense of the words it will vitiate the declaration or indictment, 6 T. R. 691; 5 Binn. 218; 5 Johns. R. 220; 6 Johns. R. 83; 7 Johns. Rep. 271. But when the new matter stated in an innuendo is not necessary to support the action, it may be rejected as surplusage. 9 East, R. 95; 7 Johns. R. 272. Vide generally, Stark. on Slan. 293; 1 Chit. Pl. 383; 3 Chit. Cr. Law. 673; Bac. Ab. Slander, R.; 1 Saund. 243, n. 4; 4 Com. Dig. 712; 14 Vin. Ab. 442; Dane’s Ab. Index, h. t.; 4 Co. 17.

INOFFICIOUS, civil law. This word is frequently used with others; as, inofficious testamentum, inofficiosum testamentum; inofficios gift, donatio inofficiosa. An inofficious testament is one not made according to the rules of piety; that is, one made by which the testator has unlawfully omitted or disinherited one of his heirs. Such a disposition is void. Dig. 5, 2, 5; see Code, 3, 29; Nov. 115; Ayl. Pand. 405; Civil Code of Lo. art. 2522, n. 21.

INQUIRY, WRIT OF. A writ of inquiry is one issued where a judgment has been entered in a case sounding in damages, without any particular amount being ascertained; this writ is for the purpose of ascertaining the amount to which the plaintiff is entitled. Vide Writ of Inquiry.

INQUISITION, practice, is an examination of certain facts by a jury impannelled by the sheriff for the purpose; the instrument of writing on which their decision is made is also called an inquisition. The sheriff and the jury who make the inquisition, are called the inquest.

INQUISITOR. A designation of sheriffs, coroners, super visum corporis, and the like, who have power to inquire into certain matters.

2.—The name of an officer, among ecclesiastics, who is authorised to inquire into heresies, and the like, and to punish them; an ecclesiastical judge.

INSANE. One deprived of the use of reason, after he has arrived at the age when he ought to have it, either by a natural defect or by accident. Domat, Lois Civ. Lib. prél. tit. 2, s. 1, n. 11.

INSANITY, med. jur., is a continued imputatious of thought, which for the time being totally unfitts a man for judging and acting in relation to the matter in question, with the composse requisite for the maintenance of the social relations of life. Various other definitions of this state have been given, but perhaps the subject is not susceptible of any satisfactory definition, which shall, with precision, include all cases of insanity, and exclude all others. Ray, Med. Jur. § 24, p. 50.

2.—It may be considered in a threefold point of view: 1, a chronic disease, manifested by deviations from the healthy and natural state of the mind, such deviations consisting in a morbid perversion of the feelings, affections and habits; 2, disturbances of the intellectual faculties, under the influence of which the understanding becomes susceptible of hallucinations or erroneous impressions of a particular kind; 3, a state of mental incoherence or constant hurry and confusion of thought. Cyclop. Practical Medicine, h. t.; Brewster’s Encyclopaedia, h. t.; Observations on the Deranged Manifestations of the Mind, or Insanity, 71, 72; Merl. Répert. mots Démence, Folie, Imbécilité; 6 Watts & Serg. 451.

3.—The diseases included under the name of insanity have been arranged under two divisions, founded on two very different conditions of the brain. Ray, Med. Jur. ch. 1, § 33.

4.—1. The want of, or a defective development of the faculties. 1st. Idioe, resulting from, 1, congenital defect; 2, an obstacle to the development of the faculties, supervening in infancy. 2d. Imbecility, resulting from, 1, congenital defects; 2, an obstacle to the development of the faculties, supervening in infancy.

5.—2. The lesion of the faculties
subsequent to their developments. In this division may be classed, 1st, Mania, which is, 1, intellectual, and is general or partial; 2, affective, and is general or partial. 2d. Dementia, which is, 1, consequent to mania, or injuries of the brain; 2, senile, or peculiar to old age.

6. — There is also a disease which has acquired the name of Moral insanity, (q. v.)

7. — Insanity is an excuse for the commission of those acts which in others would be crimes, because the insane man has no intention; it deprives a man also from entering into any valid contract. Vide Lunacy; Non composita mentis, and Stock on the Law of Non Compotes Mentis; 1 Hagg. Cons. R. 417; 3 Addams, R. 90, 91, 180, 181; 3 Hagg. Eccl. R. 545, 598 —600; 2 Greenl. Ev. §§ 369—374.

INSCRIPTION, civil law. It is an engagement which a person who makes a solemn accusation of a crime against another enters into, that he will suffer the same punishment, if he has accused the other falsely, which would have been inflicted upon him had he been guilty. Code, 9, 1, 10; Id. 9, 2, 16 and 17.

INSCRIPTION, evidence, something written or engraved.

2. — Inscriptions upon tombstones and other proper places, as rings, and the like, are held to be evidence of pedigree, Bull. N. P. 283; Comp. 591; 10 East, R. 120; 13 Ves. 145; Vin. Ab. Ev. T. b. 87; 3 Stark Ev. 1116.

INSCRIPTIONES. The name given by the old English law to any written instrument by which any thing was granted. Blount.

INSENSIBLE, In the language of pleading, what is unintelligible is said to be insensible. Steph. Pl. 378.

INSIDIATORES VIARUM, are persons who lie in wait, in order to commit some felony or other misde-meanor.

INSIMUL COMPUTASSENT, practice, actions, they accounted together.

2. — When an account has been stated, and a balance ascertained between the parties, they are said to have computed together, and the amount due may be recovered in an action of assumpsit, which could not have been done, if the defendant had been the mere bailiff or partner of the plaintiff, and there had been no settlement made, for in that case, the remedy would be an action of account render, or a bill in chancery. It is usual in actions of assumpsit, to add a count commonly called insimul computassent, or an account stated, (q. v.) Lawes on Pl. in Ass. 488.

INSINUATION, civil law, consisted in the transcription of an act on the public registers, like our recording of deeds. It was not necessary in any other alienation, but that appropriated to the purpose of donation. Inst. 2, 7, 2; Poth. Traite des Donations, entre vifs, sect. 2, art. 3, § 3; Encyclopedie; 8 Toull. n. 198.

INSOLVENCY, is the state or condition of a person who is insolvent, (q. v.)

2. — Insolvency may be simple or notorious. Simple insolvency is the debtor's inability to pay his debts, and is attended by no legal badge of notorious or promulgation. Notorious insolvency is that which is designated by some public act, by which it becomes notorious and irretrievable, as applying for the benefit of the insolvent laws, and being discharged under the same.

3. — Insolvency is a term of more extensive signification than bankruptcy, and includes all kinds of inability to pay a just debt. 2 Bell's Commentaries, 162, 5th ed.

INSOLVENT, This word has several meanings. It signifies a person whose estate is not sufficient to pay his debts. Civ. Code of Louisiana, art. 1980. A person is also said to be insolvent, who is under a present inability to answer, in the ordinary course of business, the responsibility which his creditors may enforce, by recourse to legal measures, without reference to his estate proving sufficient to pay all
his debts, when ultimately wound up.

3 Dowl. & Ryl. Rep. 218; 1 Maule & Selw. 338; 1 Campb. R. 492, n.; Sugg. Vend. 457, 488. It signifies the situation of a person who has done some notorious act to divest himself of all his property, as a general assignment, or an application for relief, under bankrupt or insolvent laws.

1 Peters's R. 195; 2 Wheat. R. 396; 7 Toull. n. 45; Domat, liv. 4, t. 5, n. 1 et 2; 2 Bell's Com. 162, 5th ed.

2.—When an insolvent delivers or offers to deliver up all his property for the benefit of his creditors, he is entitled to be discharged under the laws of the several states from all liability to be arrested. Vide 2 Kent, Com. 321; Ingraham on Insolv. 9; 9 Mass. R. 431; 16 Mass. R. 53.

3.—The reader will find the provisions made by the national legislature on this subject, by a reference to the following acts of Congress, namely: Act of March 3, 1797, 1 Story, L. U. S. 465; Act of March 2, 1799, 1 Story, L. U. S. 630; Act of March 2, 1831, 4 Sharsw. Cont. of Story, L. U. S. 2236; Act of June 7, 1834, 4 Sharsw. Cont. of Story, L. U. S. 2358; Act of March 2, 1837, 4 Sharsw. Cont. of Story, L. U. S. 2536. See Bankrupt.

INSPECTION, comm. law. The examination of certain articles made by law subject to such examination, so that they may be declared fit for commerce. The decision of the inspectors is not final; the object of the law is to protect the community from fraud, and to preserve the character of the merchandise abroad. 8 Cowen, R. 45. See 1 John. 205; 13 John. R. 331; 2 Caines, R. 312; 3 Caines, R. 207.

INSPECTION, practice. Examination.

2.—The inspection of all public records is free to all persons who have an interest in them, upon payment of the usual fees. 7 Mod. 129; 1 Str. 304; 2 Str. 260, 954, 1005. But it seems a mere stranger who has no such interest, has no right at common law. 8 T. R. 390. Vide Trial by inspection.

INSPECTOR. The name given to certain officers whose duties are to examine and inspect into things over which they have jurisdiction; as, inspector of bark, one who is by law authorised to examine bark for exportation, and to approve or disapprove of its quality. Inspectors of customs are officers appointed by the general government: as to their duties, see Story's L. U. S. vol. 1, 590, 605, 609, 610, 612, 619, 621, 623, 650; ii. 1490, 1516; iii. 1650, 1790.

INSPEXIMUS, we have seen. A word sometimes used in letters-patent, reciting a grant, inspecimus such former grant, and so reciting it verbatim, it then grants such further privileges as are thought convenient. 5 Co. 54.

INSTALLATION or INSTALLMENT, is the act by which an officer is put in public possession of the place he is to fill. The president of the United States, or a governor, is installed into office, by being sworn agreeably to the requisition of the constitution and laws. Vide Inauguration.

INSTALLMENT, contracts, is a part of a debt due by one contract, agreed to be paid at a time different from that fixed for the payment of the other part. For example, if I engage to pay you one thousand dollars, in two payments, one on the first day of January, and the other on the first day of July, each of these payments or obligations to pay will be an installment.

2.—In such case each installment is a separate debt so far that it may be tendered at any time, or the first may be sued for although the other shall not be due. Dane's Ab. vol. iii. ch. 93, art. 3, s. 11, page 493, 4; 1 Esp. R. 129; Ib. 226; 3 Salk. 6, 18; 2 Esp. R. 235; 1 Maule & Selw. 706.

3.—A debtor who by failing to pay three instalments of rent due on a lease would forfeit his estate, may, in order to save it, tender one installment to prevent the forfeiture, although there may be two due at the time, and he is not bound to tender both. 6 Toull. n. 688.

INSTANCE, civil and French law.
It signifies generally all sorts of actions and judicial demands. Dig. 44, 7, 58.

Instance court, Eng. law. The English court of admiralty is divided into two distinct tribunals; the one having generally all the jurisdiction of the admiralty, except in prize cases, is called the instance court; the other, acting under a special commission, distinct from the usual commission given to judges of the admiralty, to enable the judge in time of war, to assume the jurisdiction of prizes, and called prize court.

2.—In the United States the district courts of the U. S. possess all the powers of courts of admiralty, whether considered as instance or prize courts.


INSTANT. An invisible space of time.

2.—Although it cannot be actually divided, yet by intention of law, it may, and be applied to several purposes; for example, he who lays violent hands upon himself commits no felony till he is dead, and when he is dead he is not in being so as to be termed a felon; but he is so adjudged in law, eo instante, at the very instant this fact is done. Vin. Ab. Instant, A, pl. 2; Plowd. 258; Co. Litt. 18; Show. 415.

INSTANTER, immediately, presently. This term, it is said, means that the act to which it applies, shall be done within twenty-four hours; but a doubt has been suggested by whom is the account of the hours to be kept, and whether the term instanter as applied to the subject-matter may not be more properly taken to mean “before the rising of the court,” when the act is to be done in court; or, “before the shutting of the office the same night,” when the act is to be done there. 1 Taunt. R. 343; 6 East, R. 557 n. (e); Tidd’s Pr. (3d ed.) 508, n.; 3 Chit. Pr. 112. Vide, 3 Burr. 1809; Co. Litt. 157.

INSTIGATION, is the act by which one incites another to do something; as to injure a third person, or to commit some crime or misdemeanor, to commence a suit or to prosecute a criminal. Vide Accomplice.

INSTITOR, civ. law. A clerk in a store; an agent.

2.—He was so called because he watched over the business with which he was charged; and it is immaterial whether he was employed in making a sale in a store, or whether charged with any other business. Institor appellatus est ex eo, quod negotio gerendo instet; nec multum facit tabernæ sit praepositus, an euliberit ali negotiatio. Dig. lib. 14, tit. 3, 1, 3. Mr. Bell says that the charge given to a clerk to manage a store or shop is called institorial power. 1 Bell’s Com. 470, 5th ed.; Esk. Inst. B. 3, t. 3, § 46; 1 Stair’s Inst. by Brodie, B. 1, tit. 11, §§ 12, 18, 19; Story, Ag. § 8.

INSTITUTE, in the Scotch law, is the person first called in the tailzie; the rest or the heirs of tailzie are called substitutes. Ersk. Pr. L. Scot. 3, 8, 8. See Tailzie, Heir of; Substitutes.

TO INSTITUTE is to name or to make an heir by testament. Dig. 28, 5, 65. To make an accusation; to commence an action.

INSTITUTES. The principles or first elements of jurisprudence.

2.—Many books have borne the title of Institutes. Among the most celebrated in the common law, are the Institutes of Lord Coke, which, however, on account of the want of arrangement and the diffusion with which his books are written, bear but little the character of Institutes; in the civil law the most generally known are those of Caius, Justinian, and Theophilus.

3.—The Institutes of Caius are an abridgment of the Roman law, composed by the celebrated lawyer Caius or Gaius, who lived during the reign of Marcus Aurelius.

4.—The Institutes of Justinian are an abridgment of the Code and of the Digest, composed by order of that
emperor: his intention in this composition was to give a summary knowledge of the law to those persons not versed in it, and particularly to merchants. The lawyers employed to make this book were Tribonian, Theophilus and Dorotheus. The work was first published in the year 533, and received the sanction of statute law, by order of the emperor. The Institutes of Justinian are divided in four books: each book is divided into two titles, and each title into parts. The first part is called principium, because it is the commencement of the title; those which follow are numbered and called paragraphs. The work treats of the rights of persons, of things, and of actions. The first book treats of persons; the second, third, and the first five titles of the fourth book, of things; and the remainder of the fourth book, of actions. This work has been much admired on account of its order and scientific arrangement, which presents at a single glance the whole jurisprudence of the Romans. It is too little known and studied. Judge Cooper has published an edition with valuable notes.

5.—The Institutes of Theophilus are a paraphrase of those of Justinian, composed in Greek by a lawyer of that name, by order of the emperor Phocas. Vide 1 Kent, Com. 538; Profession d’Avocat, tom. ii. n. 536, page 95; Introd. à l’Etude du Droit Romain, p. 124; Dict. de Jurisp. h. t.; Merl. Répert. h. t.; Encyclopédie de d’Alembert, h. t.

INSTITUTION, eccl. law; is the act by which the ordinary commits the cure of souls to a person presented to a benefice.

INSTITUTION, political law, what has been established and settled by law for the public good; as, the American institutions guaranty to the citizens all the privileges essential to freedom.

INSTITUTION, practice, is the commencement of an action; as, A B has instituted a suit against C D, to recover damages for a trespass.

INSTITUTION OF HEIR, civil law, is the act by which a testator nominates one or more persons to succeed him in all his rights, active and passive. Poth, Tr, des Donations testamentaires, c. 2, s. 1, § 1; Civ. Code of Lo. art. 1598; Dig. lib. 28, tit. 5, l. 1; and lib. 28, tit. 6, l. 2, § 4.

INSTRUCTION, French law. This word signifies the means used and formality employed to prepare a case for trial. It is generally applied to criminal cases, and is then called criminal instruction; it is then defined the acts and proceedings which tend to prove positively a crime or delict, in order to inflict on the guilty person the punishment which he deserves.

INSTRUCTIONS, comm. law, contracts. Orders given by a principal to his agent, in relation to the business of his agency.

2.—The agent is bound to obey the instructions he has received, and when he neglects so to do, he is responsible for the consequences, unless he is justified by matter of necessity. 4 Binn, R. 361; 1 Liverm, Agency, 368.

3.—Instructions differ materially from authority, as regards third persons. When a written authority is known to exist, or, by the nature of the transaction, it is presupposed, it is the duty of persons dealing with an agent to ascertain the nature and extent of his authority; but they are not required to make inquiry of the agent as to any private instructions from his principal, for the obvious reason that they may be presumed to be secret and of a confidential nature, and therefore not to be communicated to third persons. 5 Bing. R. 442.

4.—Instructions are given as applicable to the usual course of things, and are subject to two qualifications which are naturally, and perhaps necessarily implied in every mercantile agency.—

1. As instructions are applicable only to the ordinary course of affairs, the agent will be justified in cases of extreme necessity and unforeseen emergency, in deviating from them; as, for example, when goods on hand are perishable and perishing, or when they
are accidentally injured and must be sold to prevent further loss; or if they are in imminent danger of being lost by the capture of the port where they are, they may be transferred to another port. Story on Ag. § 85, 118, 193; 3 Chit. Com. Law, 118; 4 Binn. 361; 1 Liverm. on Ag. 368. Instructions must be lawful; if they are given to perform an unlawful act, the agent is not bound by them. 4 Camp. 113; Story on Ag. § 195. But the lawfulness of such instruction does not relate to the laws of foreign countries. Story Confl. of Laws, § 245; 1 Liverm. on Ag. 15–19. As to the construction of letters of instruction, see 3 Wash. C. C. R. 151; 4 Wash. C. C. R. 551; 1 Liv. on Ag. 403; Story on Ag. § 74; 2 Wash. C. C. R. 132; 2 Crompt. & J. 244; 1 Knapp, R. 341.

Instructions, in practice. The statements of a cause of action, given by a client to his attorney, and, which, where such is the practice, are sent to his pleader to put into legal form of a declaration. Warr. Stud. 284.

2.—Instructions to counsel are their indemnity for any aspersions they may make on the opposite party; but attorneys who have a just regard to their own reputation will be cautious, even under instructions, not to make any unnecessary attack upon a party or witness. For such an unjustifiable conduct the counsel will be held responsible. Eunom. Dial., 2, § 43, p. 132. For a form of instructions, see 3 Chit. Pr. 117, and 120 n.

Instrument, contracts, is the writing which contains some agreement, and is so called because it is calculated to instruct of what has taken place or been agreed upon. The agreement and the instrument in which it is contained are very different things, the latter being only evidence of the existence of the former. The instrument or form of the contract may be valid, but the contract itself may be void on account of fraud. Vide Ayl. Parerg. 305; Dunl. Ad. Pr. 220.

Instrumenta. This word is properly applied to designate that kind of evidence which consists of writings not under seal, as court rolls, accounts, and the like. 3 Tho. Co. Litt. 457.

Insuper, Engl. law, is the balance due by an accountant in the exchequer, as apparent by his account; the auditors in settling his account say there remains so much insuper to such accountant.

Insurance, contracts, is defined to be a contract of indemnity from loss or damage arising upon an uncertain event. 1 Marsh. Ins. 104. It is more fully defined to be a contract by which one of the parties, called the insurer, binds himself to the other, called the insured, to pay him a sum of money or otherwise indemnify him, in case of the happening of a fortuitous event provided for in a general or special manner in the contract, in consideration of a premium which the latter pays or binds himself to pay him. Pardess, part 3, 1, 8, n. 588.

2.—The instrument by which the contract is made is denominated a policy; the events or causes to be insured against, risks or perils; and the thing insured, the subject or insurable interest.

3.—Marine insurance relates to property and risks at sea; insurance of property on shore against fire, is called fire insurance; and the various contracts in such cases, are fire policies. Insurance of the lives of individuals are called insurances on lives. Vide Double Insurance; Re-Insurance.

Insurance against fire, is a contract by which the insurer, in consequence of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain to a certain amount, in his house or other buildings, stock, goods, or merchandise, mentioned in the policy, by fire, during the time agreed upon. 2 Marsh. Ins. B. 4, p. 784; 1 Stuart's (L. C.) R. 174; Park, Ins. ch. 23, p. 441.

2.—The risks and losses insured against, are “all losses or damage by
fire," during the time of the policy, to the houses or things insured.

3.—1. There must be an actual fire or ignition to entitle the insured to recover; it is not sufficient that there has been a great and injurious increase of heat, while nothing has taken fire, which ought not to be on fire. 4 Campb. R. 360.

4.—2. The loss must be within the policy, that is, within the time insured. 5 T. R. 699; 1 Bos. & P. 470; 6 East, R. 571.

5.—3. The insurers are liable not only for loss by burning, but for all damages and injuries, and reasonable charges attending the removal of articles though never touched by the fire. 1 Bell's Com. 626, 7, 5th ed.

6.—Generally there is an exception in the policy, as to fire occasioned "by invasion, foreign enemy, or any military, or usurped power whatsoever," and in some there is a further exception of riot, tumult or civil commotion. For the construction of these provisos, see the articles Civil Commotion and Usurped Power.

Insurance, marine, contracts. Marine insurance is a contract whereby one party, for a stipulated premium undertakes to indemnify the other against certain perils, or sea risks, to which his ship, freight or cargo, or some of them may be exposed, during a certain voyage, or a fixed period of time. 3 Kent, Com. 203; Boulay-Paty, Dr. Commercial, t. 10.

2.—This contract is usually reduced to writing; the instrument is called a policy of insurance, (q. v.)

3.—All persons, whether natives, citizens, or aliens, may be insured, with the exception of alien enemies.

4.—The insurance may be of goods on a certain ship, or without naming any, as upon goods on board any ship or ships. The subject insured must be an insurable legal interest.

5.—The contract requires the most perfect good faith; if the insured make false representations to the insurer in order to procure his insurance upon better terms, it will avoid the contract, though the loss arose from a cause unconnected with the misrepresentation, or the concealment happened through mistake, neglect, or accident, without any fraudulent intention. Vide Kent, Com. Lecture, 45; Marsh. Ins. ch. 4; Pardessus, Dr. Com. part 4, t. 5, n. 756, et seq.; Boulay-Paty, Dr. Com. t. 10.

Insurance on lives, contracts. The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or annuity equivalent, upon the death of the person whose life is insured, whenever this shall happen, if the insurance be for the whole life, or in case this shall happen within a certain period, if the insurance be for a limited time. 2 Marsh. Ins. 766; Park on Insurance, 429.

2.—The insured is required to make a representation or declaration, previous to the policy being issued, of the age and state of health of the person whose life is insured; and the party making it is bound to the truth of it. Park, Ins. 650; Marsh. Ins. 771; 4 Taunt. R. 763.

3.—In almost every life-policy there are several exceptions, some of them applicable to all cases, others to the case of insurance of one's life. The exceptions are, 1, Death abroad, or at sea; 2, Entering into the naval or military service without the previous consent of the insurers; 3, Death by suicide; 4, Death by dwelling; 5, Death by the hand of justice. The last three are not understood to be excepted when the insurance is on another's life. 1 Bell's Com. 631, 5th ed. See 1 Beck's Med. Jur. 518.

Insured, contracts. The person who procures an insurance on his property.

2.—It is the duty of the insured to pay the premium, and to represent fully and fairly all the circumstances relating to the subject-matter of the insurance, which may influence the determination of the underwriters in under-
taking the risk, or estimating the premium. A concealment of such facts amounts to a fraud, which avoids the contract. 1 Marsh. Ins. 464; Park, Ins. h. t.

INSURER, contracts. One who has obliged himself to insure the safety of another's property, in consideration of a premium paid, or secured to be paid, to him. It is his duty to pay any loss which has arisen on the property insured. Vide Marsh. Ins. Index, h. t.; Park. Ins. Index, h. t.; Phill. Ins. h. t.; Wesk. Ins. h. t.; Pardess. Index, art. Assureur.

INSURGENT. One who is concerned in an insurrection. He differs from a rebel in this, that rebel is always understood in a bad sense, or one who unjustly opposes the constituted authorities; insurgent may be one who justly opposes the tyranny of constituted authorities. The colonists who opposed the tyranny of the English government were insurgents, not rebels.

INSURRECTION, rebellion of citizens or subjects of a country against its government.

2.—The constitution of the United States, art. 1, s. 8, gives power to Congress “to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.”

3.—By the act of Congress of the 25th of February, 1795, 1 Story's L. U. S. 389, it is provided:—

§ 1. That whenever the United States shall be invaded, or be in imminent danger of invasion, from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state, or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders, for that purpose, to such officer or officers of the militia as he shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection.

4.—§ 2. That, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress.

5.—§ 3. That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

INTAKERS, Eng. law. The name given to receivers of goods stolen in Scotland, who take them to England. 9 H. 5, c. 27.

INTENDED TO BERecorded. This phrase is frequently used in conveyancing, in deeds which recite other deeds which have not been recorded. In Pennsylvania, it has been construed to be a covenant, on the part of the grantor, to procure the deed to be recorded in a reasonable time. 2 Rawle's Rep. 14.

INTENDANT. One who has the charge, management, or direction of some office, department, or public business.

INTENTMENT OF LAW. The true meaning, the correct understanding, or intention of the law; a presumption or inference made by the courts. Co. Litt. 78.
2.—It is an intendment of law that every man is innocent until proved guilty, vide *Innocence*; that every one will act for his own advantage, vide *Assent*; *Fin. Law*, 10, Max. 54; that every officer acts in his office with fidelity; that the children of a married woman, born during the coverture, are the children of the husband, vide *Bastardy*; many things are intended after verdict, in order to support a judgment, but intendment cannot supply the want of certainty in a charge in an indictment for a crime. 5 Co. 121; vide *Com. Dig. Pleader*, C 25, and S 31; *Dane’s Ab. Index*, h. t.; 14 Vin. Ab. 449; 1 Halst. 132; 1 Harris, 133.

**INTENTION.** A design, resolve, or determination of the mind.

2.—Intention is required in the commission of crimes and injuries; in making contracts; and wills.

3.—1. Every crime must have necessarily two constituent parts, namely, an act forbidden by law, and an intention. The act is innocent or guilty just as there was or was not an intention to commit a crime; for example, a man embarks on board of a ship, at New York, for the purpose of going to New Orleans; if he went with an intention to perform a lawful act, he is perfectly innocent; but if his intention was to levy war against the United States, he is guilty of an overt act of treason, *Cro. Car.* 332; *Post.* 202, 203; *Hale, P. C.* 116. The same rule prevails in numerous civil cases; in actions founded on malicious injuries, for instance, it is necessary to prove that the act was accompanied by a wrongful and malicious intention. 2 *Stark. Ev.* 739.

4.—The intention is to be proved, or it is inferred by the law. The existence of the intention is usually matter of inference; and proof of external and visible acts and conduct serves to indicate, more or less forcibly, the particular intention. But, in some cases, the inference of intention necessarily arises from the facts. *Exteriora acta indicant interiora animi secreta.* 8 Co. 146. It is a universal rule, that a man shall be taken to intend that which he does, or is the necessary and immediate consequence of his act, 3 *M. & S.* 15; *Hale, P. C.* 229; in cases of homicide, therefore, malice will generally be inferred by the law. Vide *Malice* and Jacob’s *Intr.* to the *Civ. Law*, Reg. 70; *Dig.* 24, 18.

5.—But a bare intention to commit a crime, without any overt act towards its commission, although punishable in foro conscientia, is not a crime or offence for which the party can be indicted; as, for example, an intention to pass counterfeit bank notes, knowing them to be counterfeit. 1 *Car. Law Rep.* 517.

6.—2. In order to make a contract, there must be an intention to make it; a person non compos mentis, who has no contracting mind, cannot, therefore, enter into any engagement which requires an intention; for to make a contract the law requires a fair and serious exercise of the reasoning faculty. Vide *Gift; Occupancy*.

7.—3. In wills and testaments, the intention of the testator must be gathered from the whole instrument, 3 *Ves.* 105; and a codicil ought to be taken as a part of the will, 4 *Ves.* 610; and when such intention is ascertained, it must prevail, unless it be in opposition to some unbending rule of law. 6 *Cruise’s Dig.* 295; *Rand. on Perp.* 121; *Cro. Jac.* 415. “It is written,” says *Swinb.* p. 10, “that the will or meaning of the testator is the queen or empress of the testament; because the will doth rule the testament, enlarge and restrain it, and in every respect moderate and direct the same, and is, indeed, the very efficient cause thereof. The will, therefore, and meaning of the testator ought, before all things, to be sought for diligently, and, being found, ought to be observed faithfully.” 6 *Pet. R.* 68.

Vide, generally, *Bl. Com. Index*, h. t.; 2 *Stark. Ev.* h. t.; *Ayl. Pand.* 95; *Dane’s Ab. Index*, h. t.; *Rob. Fr. Conv.* 30. As to intention in changing a residence, see article *Inhabitant*.

**INTER.** Between, among; as, in-
ter vivos, between living persons; inter alia, among others.

**INTER ALIA.** Among other things; as "the said premises, which inter alia, Titius granted to Caius."

**INTERCOMMONING, Eng. law.**—Where the commons of two manors lie together, and the inhabitants, or those having a right of common of both, have time out of mind depastured their cattle, without any distinction, this is called intercommoning.

**INTER CANEM ET LUPUM.** Literally, between the dog and the wolf. Metaphorically, the twilight; because then the dog seeks his rest, and the wolf his prey. 3 Inst. 63.

**INTER PARTES.** This, in a technical sense, signifies an agreement professing in the outset, and before any stipulations are introduced, to be made between such and such persons; as, for example, "This Indenture made the day of 1848, between A B of the one part, and C D of the other." It is true that every contract is in one sense inter partes, because to be valid there must be two parties at least; but the technical sense of this expression is as above mentioned. Addis, on Contr. 9.

2.—This being a solemn declaration, the effect of such introduction is to make all the covenants, comprised in a deed to be covenants between the parties and none others; so that should a stipulation be found in the body of a deed by which "the said A B covenants with E F to pay him one hundred dollars," the words "with E F" are inoperative, unless they have been used to denote for whose benefit the stipulation may have been made, being in direct contradiction with what was previously declared, and C D alone can sue for the non-payment; it being a maxim that where two opposite intentions are expressed in a contract, the first in order shall prevail. 8 Mod. 116; 1 Show. 58; 3 Lev. 138; Carth. 76; Roll. R. 196; 7 M. & W. 63. But this rule does not apply to simple contracts inter partes, 2 D. & R. 277; 3 D. & R. 273; Addis, on Contr. 244, 256.

3.—When there are more than two sides to a contract inter partes, for example, a deed; as when it is made between A B, of the first part; C D, of the second; and E F, of the third, there is no objection to one covenanting with another in exclusion of the third. See 5 Co. 182; 8 Taunt. 245; 4 Ad. & Ell. N. S. 207; Addis, on Contr. 267.

**INTER VIVOS.** Between living persons; as, a gift inter vivos, which is a gift made by one living person to another; see Gifts inter vivos. It is a rule that a fee cannot pass by grant or transfer, inter vivos, without appropriate words of inheritance. 2 Prest. on Est. 64.

**INTERDICT, civil law,** among the Romans was an ordinance of the praetor which forbade or enjoined the parties in a suit to do something particularly specified, until it should be decided definitely who had the right in relation to it. Like an injunction, the interdict was merely personal in its effects, and it had also another similarity to it, by being temporary or perpetual. Dig. 43, 1, 1, 3 and 4. See Story, Eq. Jur. § 865; Halif. Civ. Law, ch. 6; Vicat, Vocab. h. v.; Hein. Elem. Pand. Ps. 6, § 285. Vide Injunction.

**INTERDICT OR INTERDICTION, eccles. law,** is an ecclesiastical censure by which divine services are prohibited either to particular persons or particular places. These tyrannical edicts, issued by ecclesiastical powers, have never been in force in the United States.

**INTERDICTED OF FIRE AND WATER.** Formerly those persons who were banished for some crime, were interdicted of fire and water; that is, by the judgment order was given that no man should receive them into his house, but should deny them fire and water, the two necessary elements of life.

**INTERDICTION, civil law,** is a legal restraint upon a person incapable of managing his estate, because of mental incapacity, from signing any deed or doing any act to his own pre-
and the judge may moreover interrogate or cause to be interrogated by
any other person commissioned by him
for that purpose, the person whose in-
terdict is petitioned for, or cause
such person to be examined by physi-
cians, or other skilful persons, in order
to obtain their report upon oath on the
real situation of him who is stated to
be of unsound mind.

387. Pending the issue of the peti-
tion for interdict, the judge may, if
he deems it proper, appoint for the pre-
servation of the movable, and for the
administration of the immovable estate
of the defendant, an administrator pro
tempore.

388. Every judgment, by which an
interdict is pronounced, shall be
 provisionally executed, notwithstanding
the appeal.

389. In case of appeal, the appel-
late court may, if they deem it neces-
sary, proceed to the hearing of new
proofs, and question or cause to be
questioned, as above provided, the per-
son whose interdict is petitioned for,
in order to ascertain the state of his
mind.

390. On every pétition for interdic-
tion, the costs shall be paid out of the
estate of the defendant, if he shall be
interdicted, and by the petitioner, if the
interdict prayed for shall not be
pronounced.

391. Every sentence of interdictio
shall be published three times, in at
least two of the newspapers printed in
New Orleans, or made known by ad-
tvertisements at the door of the court-
house of the parish of the domicil of
the person interdicted, both in the
French and English languages; and
this duty is imposed upon him who
shall be appointed curator of the per-
son interdicted, and shall be performed
within a month after the date of the
interdict, under the penalty of being
answerable for all damages to such
persons as may, through ignorance,
have contracted with the person inter-
dicted.

392. No petition for interdictio, if
the same shall have once been reject-
ed, shall be acted upon again, unless new facts, happening posterior to the sentence shall be alleged.

293. The interdiction takes place from the day of presenting the petition for the same.

394. All acts done by the person interdicted, from the date of the filing the petition for interdiction until the day when the same is pronounced, are null.

395. No act anterior to the petition for the interdiction, shall be annull[ed], except where it shall be proved that the cause of such interdiction notoriously existed at the time when the deeds, the validity of which is contested, were made, or that the party who contracted with the lunatic or insane person, could not have been deceived as to the situation of his mind.

Notoriously, in this article, means that the insanity was generally known by the persons who saw and conversed with the party.

396. After the death of a person, the validity of acts done by him cannot be contested for cause of insanity, unless his interdiction was pronounced or petitioned for, previous to the death of such person, except in cases in which mental alienation manifested itself within ten days previous to the decease, or in which the proof of the want of reason results from the act itself which is contested.

397. Within a month, to reckon from the date of the judgment of interdiction, if there has been no appeal from the same, or if there has been an appeal, then within a month from the confirmative sentence, it shall be the duty of the judge of the parish of the domicil or residence of the person interdicted, to appoint a curator to his person and estate.

398. This appointment is made according to the same forms as the appointment to the tutorship of minors.

After the appointment of the curator to the person interdicted, the duties of the administrator, pro tempore, if he shall not have been appointed curator, are at an end; and he shall give an account of his administration to the curator.

399. The married woman, who is interdicted, is of course under the curatorship of her husband. Nevertheless it is the duty of the husband, in such case, to cause to be appointed by the judge, a curator ad litteram; who may appear for the wife in every case when she may have an interest in opposition to the interest of her husband, or one of a nature to be pursued or defended jointly with his.

400. The wife may be appointed curatrix to her husband, if she has, in other respects, the necessary qualifications.

She is not bound to give security.

401. No one, except the husband with respect to his wife, or wife with respect to her husband, the relations in the ascending line with respect to the relations in the descending line, and vice versa, the relations in the descending line with respect to the relations in the ascending line, can be compelled to act as curator to a person interdicted more than ten years, after which time the curator may petition for his discharge.

402. The person interdicted is, in every respect, like the minor who has not arrived at the age of puberty, both as it respects his person and estate; and the rules respecting the guardianship of the minor, concerning the oath, the inventory and the security, the mode of administering the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the guardianship, mode of rendering the accounts, and the other obligations, apply with respect to the person interdicted.

403. When any of the children of the person interdicted is to be married, the dowry or advance of money to be drawn from his estate is to be regulated by the judge, with the advice of a family meeting.

404. According to the symptoms of the disease, under which the person interdicted labours, and according to the amount of his estate, the judge may
order that the interdicted person be attended in his own house, or that he be placed in a bettering-house, or indeed if he be so deranged as to be dangerous, he may order him to be confined in safe custody.

405. The income of the person interdicted shall be employed in mitigating his sufferings, and in accelerating his cure, under the penalty against the curator of being removed in case of neglect.

406. He who petitions for the interdict of any person, and fails in obtaining such interdict, may be prosecuted for and sentenced to pay damages, if he shall have acted from motives of interest or passion.

407. Interdict ends with the cause which gave rise to it. Nevertheless the person interdicted cannot resume the exercise of his rights, until after the definite judgment by which a repeal of the interdict is pronounced.

408. Interdict can only be revoked by the same solemnities which were observed in pronouncing it.

6.—409. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to certain infirmities, are incapable of taking care of their persons and administering their estates.

7.—Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter.

8.—410. The person interdicted cannot be taken out of the state without a judicial order, given on the recommendation of a family meeting, and on the opinion delivered under oath of at least two physicians, that they believe the departure necessary to the health of the person interdicted.

9.—411. There shall be appointed by the judge a superintendent to the person interdicted: whose duty it shall be to inform the judge, at least once in three months, of the state of the health of the person interdicted, and of the manner in which he is treated.

10.—To this end, the superintendent shall have free access to the person interdicted, whenever he wishes to see him.

11.—412. It is the duty of the judge to visit the person interdicted, whenever from the information he receives, he shall deem it expedient.

12.—This visit shall be made at times when the curator is not present.

13.—413. Interdict is not allowed on account of profliqacy or prodigality.


INTERESSE TERMINI, estates, an interest in the term. A bare lease of land does not vest any estate in the lessee, but gives him a mere right of entry in the tenement, which right is called his interest in the term or interesse termini. Vide Co. Litt. 46; 2 Bl. Com. 144; 10 Vin. Ab. 348; Dane's Ab. Index, h. t.

INTEREST, estates, is the right which a man has in a chattel real, and more particularly in a future term. It is a word of less efficacy and extent than estates, though, in legal understanding, an interest extends to estates, rights and titles which a man has in or out of lands, so that by a grant of his whole interest in land, a reversion as well as the fee simple shall pass. Co. Litt. 345.

INTEREST, contracts, is the right of property which a man has in a thing, commonly called insurable interest. It is not easy to give an accurate definition of insurable interest. 1 Burr. 480; 1 Pet. R. 163; 12 Wend. 507; 16 Wend. 385; 16 Pick. 397; 3 Mass. 61, 96; 3 Day, 108; 1 Wash. C. C. Rep. 409.

2.—The policy of commerce and the various complicated rights which different persons may have in the same thing, require that not only those who have an absolute property in ships and goods, but those also who have a qualified property therein may be at liberty to insure them. For example, when a ship is mortgaged, after the mortgage becomes
absolute, the owner of the legal estate has an insurable interest, and the mortgagor, on account of his equity, has also an insurable interest. 2 T. R. 188; 1 Burr. 489; 13 Mass. 96; 10 Pick. 40; and see 1 T. R. 745; Marsh. Ins. h. t.; 6 Meeson & Welsby, 224.

3.—A man may not only insure his own life for the benefit of his heirs or creditors, and assign the benefit of this insurance to others having thus or otherwise an interest in his life, but he may insure the life of another in which he may be interested. Marsh. Ins. Index, h. t.; Park, Ins. Index, h. t.; 1 Bell's Com. 629, 5th ed.; 9 East, R. 72. Vide Insurance.

INTEREST, evidence, is the benefit which a person has in the matter about to be decided and which is in issue between the parties. By the term benefit is here understood some pecuniary or other advantage, which if obtained, would increase the witness's estate, or some loss, which would decrease it.

2.—It is a general rule that a party who has an interest in the cause cannot be a witness. It will be proper to consider this matter by taking a brief view of the thing or subject in dispute, which is the object of the interest; the quantity of interest; the quality of interest; when an interested witness can be examined; when the interest must exist; how an interested witness can be rendered competent.

3.—1. To be disqualified on the ground of interest, the witness must gain or lose by the event of the cause, or the verdict must be lawful evidence for or against him in another suit, or the record must be an instrument of evidence for or against him. 3 John. Cas. 53; 1 Phil. Ev. 36; Stark. Ev. pt. 4, p. 744; but an interest in the question does not disqualify the witness. 1 Caines, 171; 4 John. 302; 5 John. 255; 1 Serg. & R. 32, 36; 6 Binn. 266; 1 H. & M. 165, 168.

4.—2. The magnitude of the interest is altogether immaterial, even a liability for the most trifling costs will be sufficient. 5 T. R. 174; 2 Vern. 317; 2 Greenl. 194; 11 John. 57.

5.—3. With regard to the quality, the interest must be legal, as contradistinguished from mere prejudice or bias, arising from relationship, friendship, or any of the numerous motives by which a witness may be supposed to be influenced. Leach, 154; 2 St. Tr. 334, 891; 2 Hawk. ch. 46, s. 25. It must be a present, certain, vested interest and not uncertain and contingent. Doug. 134; 2 P. Wms. 287; 3 S. & R. 132; 4 Binn. 83; Yeates, 200; 5 John. 256; 7 Mass. 25. And it must have been acquired without fraud. 3 Camp. 380; 1 M. & S. 9; 1 T. R. 37.

6.—4. To the general rule that interest renders a witness incompetent, there are some exceptions. First, Although the witness may have an interest, yet if his interest is equally strong on the other side, and no more, the witness is reduced to a state of neutrality by an equipoise of interest, and the objection to his testimony ceases. 7 T. R. 480, 481, n.; 1 Bibb, R. 298; 2 Mass. R. 108; 2 S. & R. 119; 6 Penn. St. Rep. 322.

7.—Secondly, In some instances the law admits the testimony of one interested, from the extreme necessity of the case; upon this ground the servant of a tradesman is admitted to prove the delivery of goods and the payment of money, without any release from the master. 4 T. R. 490; 2 Litt. R. 27.

8.—5. The interest, to render the witness disqualified, must exist at the time of his examination. A deposition made at a time when the witness had no interest, may be read in evidence, although he has afterwards acquired an interest. 1 Hoff. R. 21.

9.—6. The objection to incompetency on the ground of interest may be removed by an extinguishment of that interest by means of a release, executed either by the witness, when he would receive an advantage by his testimony, or by those who have a claim upon him, when his testimony
would be evidence of his liability. The objection may also be removed by payment. Stark. Ev. pt. 4, p. 757. See Benth. Rationale of Jud. Ev. 628—692, where he combats the established doctrines of the law, as to the exclusion on the ground of interest; and Balance.

Interest for money, in contracts, is the compensation which is paid by the borrower to the lender or by the debtor to the creditor for its use.

2.—It is proposed to consider, 1, who is bound to pay interest; 2, who is entitled to receive it; 3, on what claim it is allowed; 4, what interest is allowed; 5, how it is computed; 6, when it will be barred; 7, rate of interest in the different states.

3.—§ 1. Who is bound to pay interest
1. The contractor himself, who has agreed, either expressly or by implication, to pay interest, is of course bound to do so.

4.—2. Executors, administrators, assignees of bankrupts or of insolvents, and trustees, who have kept money an unreasonable length of time, and have made or who might have made it productive, are chargeable with interest. 2 Ves. 85; 1 Bro. C. C. 359; Id. 375; 2 Ch. Co. 235; Chan. Rep. 359; 1 Vern. 197; 2 Vern. 548; 3 Bro. C. C. 73; Id. 433; 4 Ves. 620; 1 Johns. Ch. R. 508; Id. 527, 535, 6; Id. 620; 1 Desaus. Ch. R. 193, n.; Id. 208; 1 Wash. 2; 1 Binn. R. 194; 3 Munf. 198, pl. 3; Id. 289, pl. 16; 1 Serg. & Rawle, 241; 4 Desaus. Ch. Rep. 465; 5 Munf. 223, pl. 7, 8; 1 Ves. jr. 236; Id. 452; Id. 89; 1 Atk. 90; see 1 Supp. to Ves. jr. 30; 11 Ves. 61; 15 Ves. 470; 1 Ball & Beat. 230; 1 Supp. to Ves. jr. 127, n. 3; 1 Jac. & Walk. 140; 3 Meriv. 43; 2 Bro. C. C. 156; 5 Ves. 839; 7 Ves. 152; 1 Jac. & Walk. 122; 1 Pick. 530; 13 Mass. R. 232; 3 Call, 538; 4 Hen. & Munf. 415; 2 Esp. N. P. C. 702; 2 Atk. 106; 2 Dall. 182; 4 Serg. & Rawle, 116; 1 Dall. 349; 3 Binn. 121. As to the distinction between executors and trustees, see Mr. Coxe’s note to Fellows v. Mitchell, 1 P. Wms.

241; 1 Eden, 357, and the cases there collected.

5.—3. Tenant for life must pay interest on encumbrances on the estate. 4 Ves. 33; 1 Vern. 404, n. by Raitby. In Pennsylvania the heir at law is not bound to pay interest on a mortgage given by his ancestor.

6.—4. In Massachusetts a bank is liable independently of the statute of 1809, c. 37, to pay interest on their bills, if not paid when presented for payment. 8 Mass. 445.

7.—5. Revenue officers must pay interest to the United States from the time of receiving the money. 6 Binney’s Rep. 266.

8.—§ 1. Who are entitled to receive interest. 1. The lender upon an express or implied contract.

9.—2. An executor was not allowed interest in a case where money due to his testatrix was out at interest, and before money came to his hands, he advanced his own in payment of debts of the testatrix. Vin. Ab. tit. Interest, C. pl. 13.

10.—In Massachusetts a trustee of property placed in his hands for security, who was obliged to advance money to protect it, was allowed interest at the compound rate. 16 Mass. 228.

11.—§ 3. On what claims allowed. First, on express contracts; secondly, on implied contracts; and, thirdly, on legacies.

12.—First, on express contracts. 1. When the debtor expressly undertakes to pay interest, he or his personal representatives having assets are bound to pay it. But if a party has accepted the principal, it has been determined that he cannot recover interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 220. See 1 Camp. 50; 1 Dall. 315; Stark. Ev. pt. iv. 787; 1 Hare & Wall, Sel. Dec. 345.

13.—Secondly. On implied contracts. 1. On money lent, or laid out for another’s use. Bunb. 119; 2 Bl. Rep. 761; S. C. 3 Wils. 205; 2 Burr. 1077; 5 Bro. Parl. Ca. 71; 1 Ves. jr. 63; 1 Dall. 349; 1 Binn. 488; 2 Call, 102; 2 Hen. & Munf. 381; 1
Hayw. 4; 3 Caines's Rep. 226, 234, 238, 245; see 3 Johns. Cas. 303; 9 Johns. 71; 3 Caines's Rep. 266; 1 Conn. Rep. 32; 7 Mass. 14; 1 Dall. 349; 6 Binn. R. 163; Stark. Ev. pt. iv. 789, n. (y), and (z); 11 Mass. 504; 1 Hare & Wall. Sel. Dec. 346.

14.—2. For goods sold and delivered, after the customary or stipulated term of credit has expired, Doug. 376; 2 B. & P. 337; 4 Dall. 289; 2 Dall. 193; 6 Binn. 162; 1 Dall. 265, 349.

15.—3. On bills and notes. If payable at a future day certain, after due; if payable on demand, after a demand made. Banb. 119; 6 Mod. 138; 1 Str. 649; 2 Ld. Raym. 733; 2 Burr. 1081; 5 Ves. Jr. 133; 15 Serg. & R. 264. Where the terms of a promissory note are, that it shall be payable by instalments, and on the failure of any instalment, the whole is to become due, interest on the whole becomes payable from the first default. 4 Esp. 147. Where by the terms of a bond, or a promissory note, interest is to be paid annually, and the principal at a distant day, the interest may be recovered before the principal is due. 1 Binn. 165; 2 Mass. 568; 3 Mass. 221.

16.—4. On an account stated, or other liquidated sum, whenever the debtor knows precisely what he is to pay, and when he is to pay it. 2 Black. Rep. 761; S. C. Wils. 205; 2 Ves. 365; 8 Bro. Parl. C. 561; 2 Burr. 1058; 5 Esp. N. P. C. 114; 2 Com. Contr. 207; Treat. Eq. lib. 5, c. 1, s. 4; 2 Fondn. 438; 1 Hayw. 173; 2 Cox. 219; 1 V. & B. 345; 1 Supp. to Ves. Jr. 194; Stark. Ev. pt. iv. 789, n. (a). But interest is not due for unliquidated damages, or on a running account where the items are all on one side, unless otherwise agreed upon. 1 Dall. 265; 4 Cowen. 496; 6 Cowen. 193; 5 Verr. 177; 2 Wend. 501; 1 Spears. 209; Rice, 21; 2 Blackf. 313; 1 Bibb. 443.

17.—5. On the arrears of an annuity secured by a specialty. 14 Vin.

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Ab. 458, pl. 8; 3 Atk. 579; 9 Watts, R. 530.

18.—6. On a deposit by a purchaser, which he is entitled to recover back, paid either to a principal, or an auctioneer. Sugd. Vend. 327; 3 Campb. 258; 5 Taunt. 625. Sed vide 4 Taunt. 334, 341.

19.—7. On purchase-money, which has lain dead, where the vendor cannot make a title. Sugd. Vend. 327.

20.—8. On purchase-money remaining in purchaser’s hands to pay off encumbrances. 1 Sch. & Lef. 134. See 1 Wash. 125; 5 Munf. 342; 6 Binn. 435.

21.—9. On judgment debts. 14 Vin. Abr. 458, pl. 15; 4 Dall. 251; 2 Ves. 162; 5 Binn. R. 61; 1 B. 220; 1 Harr. & John. 754; 3 Wond. 496; 4 Metc. 317; 1 Hare & Wall. Sel. Dec. 350. In Massachusetts the principal of a judgment is recovered by execution; for the interest the plaintiff must bring an action. 14 Mass. 239.

22.—10. On judgments affirmed in a higher court. 2 Burr. 1097; 2 Str. 931; 4 Burr. 2128; Doug. 752, n. 3; 2 H. Bl. 267; Id. 284; 2 Camp. 428; n. 3; 4 Taunt. 503; 4 Taunt. 30.

23.—11. On money obtained by fraud, or where it has been wrongfully detained. 9 Mass. 504; 1 Camp. 129; 3 Cowen. 426.

24.—12. On money paid by mistake, or recovered on a void execution. 1 Pick. 212; 9 Serg. & Rawle, 409.

25.—13. Rent in arrear bears interest, unless under special circumstances, which may be recovered in action, 1 Yeates, 72; 6 Binn. 159; 4 Yeates, 264; but no distress can be made for such interest. 2 Binn. 246. Interest cannot, however be recovered for arrears of rent payable in wheat. 1 Johns. 276. See 2 Call, 249; Id. 253; 3 Hen. & Munf. 463; 3 Hen. & Munf. 470; 5 Munf. 21.

26.—14. Where from the course of dealing between the parties, a promise to pay interest is implied. 1 Campb. 50; Id. 52; 3 Bro. C. C. 436; Kirby, 207.
29.—Where a general legacy is given, and the time of payment is named by the testator, the interest is not allowed before the arrival of the appointed period of payment, and that notwithstanding the legacies are vested; see also Daniel’s Rep. in Exch. 84; 3 Atk. 101; 3 Ves. 10; 4 Ves. 1; 4 Bro. C. C. 149, n.; S. C. 1 Cox, 133. Where a legacy is given payable at a future day with interest, and the legatee dies before it becomes payable, the arrears of the interest up to the time of his death must be paid to his personal representatives. McClell. Exch. Rep. 141. And a bequest of a sum to be paid annually for life bears interest from the death of testator. 5 Binn. 475.

30.—Where the legatee is a child of the testator or one towards whom he has placed himself in loco parentis, the legacy bears interest from the testator’s death, whether it be particular or residuary; vested, but payable at a future time, or contingent, if the child have no maintenance. In that case the court will do what, in common presumption, the father would have done, provide necessaries for the child. 2 P. Wms. 31; 3 Ves. 287; Id. 13; Bac. Abr. Legacies, K 3; Fonb. Eq. 431, n. j.; 1 Éq. Cas. Ab. 301, pl. 3; 3 Atk. 432; 1 Dick. Rep. 310; 2 Bro. C. C. 59; 2 Rand. Rep. 409. In case of a child in ventre sa mere, at the time of the father’s decease, interest is allowed only from its birth. 2 Cox, 425. Where maintenance or interest is given by the will, and the rate specified, the legatee will not, in general, be entitled to claim more than the maintenance or rate specified. 3 Atk. 697, 716; 3 Ves. 286, n.; and see further as to interest in cases of legacies to children, 15 Ves. 363; 1 Bro. C. C. 267; 4 Madd. R. 275; 1 Swanst. 553; 1 P. Wms. 783; 1 Vern. 251; 3 Vesey & Beames, 183.

31.—Interest is not allowed by way of maintenance to any other person than the legitimate children of the testator, 3 Ves. 10; 4 Ves. 1; unless the testator has put himself in loco parentis. 1 Sch. & Lef. 5, 6. A wife, 15 Ves. 301, a niece, 3 Ves. 10, a grandchild, 15 Ves. 301; 6 Ves. 546; 12 Ves. 3, 1 Cox, 133, are therefore not entitled to interest by way of maintenance. Nor is a legitimate child entitled to such interest if he have a maintenance; although it may be less than the amount of the interest of the legatee. 1 Scho. & Lef. 5; 3 Ves. 17. Sed vide 4 John. Ch. Rep. 109; 2 Rep. Leg. 202.

32.—Where an intention though not expressed is fairly inferable from the will, interest will be allowed. 1 Swanst. 561, note; Coop. 143.

33.—Interest is not allowed for maintenance, although given by immediate bequest for maintenance, if the parent of the legatee, who is under moral obligation to provide for him be of sufficient ability, so that the interest will accumulate for the child’s benefit, until the principal becomes payable. 3 Atk. 309; 3 Bro. C. C. 416; 1 Bro. C. C. 386; 3 Bro. C. C. 60. But to this rule there are some exceptions. 3 Ves. 730; 4 Bro. C. C. 223; 4 Madd. 275, 289; 4 Ves. 498.

34.—Where a fund, particular or residuary, is given upon a contingency, so that the intermediate interest undis-
posed of, that is to say, the immediate interest between the testator's death, if there be no previous legatee for life, or, if there be, between the death of the previous taker and the happening of the contingency, will sink into the residue for the benefit of the next of kin or executor of the testator, if not bequeathed by him; but if not disposed of, for the benefit of his residuary legatee. 1 Bro. C. C. 57; 4 Bro. C. C. 114; Meriv. 384; 2 Atk. 329; Forr. 145; 2 Rop. Leg. 224.

35.—9. Where a legacy is given by immediate bequest whether such legacy be particular or residuary, and there is a condition to divest it upon the death of the legatee under twenty-one, or upon the happening of some other event, with a limitation over, and the legatee dies before twenty-one, or before such other event happens, which nevertheless does take place, yet as the legacy was payable at the end of a year after the testator's death, the legatee's representatives, and not the legatee over, will be entitled to the interest which accrued during the legatee's life, until the happening of the event which was to divest the legacy. 1 P. Wms. 500; 2 P. Wms. 504; Ambl. 448; 5 Ves. 335; Id. 522.

36.—10. Where a residue is given, so as to be vested but not payable at the end of the year from the testator's death, but upon the legatees attaining twenty-one, or upon any other contingency, and with a bequest over divesting the legacy, upon the legatee's dying under age, or upon the happening of the contingency, then the legatee's representatives in the former case, and the legatee himself in the latter, shall be entitled to the interest that became due, during the legatee's life, or until the happening of the contingency. 2 P. Wms. 419; 1 Bro. C. C. 81; Id. 335; 3 Meriv. 335.

37.—11. Where a residue of personal estate is given, generally, to one for life with remainder over, and no mention is made by the testator respecting the interest, nor any intention to the contrary to be collected from the will, the rule appears to be now settled that the person taking for life is entitled to interest from the death of the testator, on such part of the residue, bearing interest, as is not necessary for the payment of debts. And it is immaterial whether the residue is only given generally, or directed to be laid out, with all convenient speed, in funds or securities, or to be laid out in lands. See 6 Ves. 520; 9 Ves. 549, 553; 2 Rop. Leg. 234; 9 Ves. 89.

38.—12. But where a residue is directed to be laid out in land, to be settled on one for life, with remainder over, and the testator directs the interest to accumulate in the mean time, until money is laid out in lands, or otherwise invested on security, the accumulation shall cease at the end of one year from the testator's death, and from that period the tenant for life shall be entitled to the interest. 6 Ves. 520; 7 Ves. 95; 6 Ves. 528; Ib. 529; 2 Sim. & Stu. 396.

39.—13. Where no time of payment is mentioned by the testator, annuities are considered as commencing from the death of the testator; and consequently the first payment will be due at the end of the year from that event; if, therefore, it be not made then, interest, in those cases wherein it is allowed at all, must be computed from that period. 2 Rop. Leg. 249; 5 Binn. 475. See 6 Mass. 37; 1 Hare & Wall. Sel. Dec. 356.

40.—§ 4. As to the quantum or amount of interest allowed, 1, During what time; 2, Simple interest; 3, Compound interest; 4, In what cases given beyond the penalty of a bond; 5, When foreign interest is allowed.

41.—First. During what time. 1. In actions for money had and received, interest is allowed, in Massachusetts, from the time of serving the writ. 1 Mass. 436. On debts payable on demand, interest is payable only from the demand. Addis. 137. See 12 Mass. 4. The words "with interest for the same," bear interest from date, Addis, 323, 4; 1 Stark. N. P. C. 452; Ibid. 507.
42.—2. The mere circumstance of war existing between two nations, is not a sufficient reason for abating interest on debts due by the subjects of one belligerent to another. 1 Peters’s C. C. R. 524; but a prohibition of all intercourse with an enemy, during war, furnishes a sound reason for the abatement of interest until the return of peace. Ib. See on this subject, 2 Dall. 132; 2 Dall. 102; 4 Dall. 286; 1 Wash. 172; 1 Call. 194; 3 Wash. C. C. R. 396; 8 Serg. & Rawle, 103; Post. § 7.

43.—Secondly. Simple Interest. 1. Interest upon interest is not allowed except in special cases, 1 Eq. Cas. Ab. 287; Foubl. Eq. b. 1, c. 2, § 4, note (a); U. S. Dig. tit. Accounts, IV.; and the uniform current of decisions is against it, as being a hard, oppressive exaction, and tending to usury. 1 Johns. Ch. R. 14; Cam. & Norw. Rep. 361.

44.—Thirdly. Compound Interest. 1. Where a partner has overdrawn the partnership funds, and refuses, when called upon, to account, to disclose the profits, recourse would be had to compound interest as a substitute for the profits he might reasonably be supposed to have made. 2 Johns. Ch. R. 213.

45.—2. When executors, administrators, or trustees, convert the trust-money to their own use, or employ it in business or trade, they are chargeable with compound interest. 1 Johns. Ch. R. 620.

46.—3. In an action to recover the annual interest due on a promissory note, interest will be allowed on each year’s interest until paid, 2 Mass. 568; 8 Mass. 455. See, as to charging compound interest, the following cases: 1 Johns, Ch. Rep. 550; Cam. & Norw. 361; 1 Binn. 165; 4 Yeates, 220; 1 Hen. & Munf. 4; 1 Vin. Abr. 457, tit. Interest, (C); Com. Dig. Chancery, 3 S 3; 3 Hen. & Munf. 89; 1 Hare & Wall, Sel. Dec. 371. An infant’s contract to pay interest on interest, after it has accrued, will be binding upon him, when it is for his benefit. 1 Eq. Cas. Ab. 286; 1 Atk. 489; 3 Atk. 613. Newl. Contr. 2.

47.—Fourthly. When given beyond the penalty of a bond. 1. It is a general rule that the penalty of a bond limits the amount of the recovery. 2 T. R. 388. But, in some cases, the interest is recoverable beyond the amount of the penalty. The recovery depends on principles of law, and not on the arbitrary discretion of a jury. 3 Caines’s Rep. 49.

48.—2. The exceptions are, where the bond is to account for moneys to be received; 2 T. R. 388; where the plaintiff is kept out of his money by writs of error; 2 Burr. 1094; 2 Evans’s Poth. 101, 2; or delayed by injunction, 1 Vern. 349; 16 Vin. Abr. 303; if the recovery of the debt be delayed by the obligor, 6 Ves. 92; 1 Vern. 349; Show. P. C. 15; if extraordinary emoluments are derived from holding the money, 2 Bro. P. C. 251; or the bond is taken only as a collateral security, 2 Bro. P. C. 333; or the action be on a judgment recovered on a bond, 1 East, R. 436; see, also, 4 Day’s Cas. 30; 3 Caines’s R. 49; 1 Taunt. 218; 1 Mass. 308; Com. Dig. Chancery, 3 S 2; Vin. Abr. Interest, E.

49.—3. But these exceptions do not obtain in the administration of the debtor’s assets, where his other creditors might be injured by allowing the bond to be rated beyond the penalty, 5 Ves. 329; see Vin. Abr. Interest C, pl. 5.

50.—Fifthly. When foreign interest is allowed. 1. The rate of interest allowed by law where the contract is made may, in general, be recovered; hence, where a note was given in China, payable eighteen months after date, without any stipulation respecting interest, the court allowed the Chinese interest, of one per cent. per month from the expiration of the eighteen months, 1 Wash. C. C. R. 253.

51.—2. If a citizen of another state advance money, there, for the benefit of a citizen of the state of Massachusetts, which the latter is liable to reim-
burse, the former shall recover interest, at the rate established by the laws of the place where he lives. 12 Mass. 4. See, further, 1 Eq. Cas. Ab. 289; 1 P. Wms. 395; 2 Bro. C. C. 3; 14 Vin. Abr. 460, tit. Interest (F).

52.—§ 5. How computed. 1. In casting interest on notes, bonds, &c., upon which partial payments have been made, every payment is to be first applied to keep down the interest, but the interest is never allowed to form a part of the principal, so as to carry interest. 17 Mass. R. 417; 1 Dall. 378.

53.—2. When a partial payment exceeds the amount of interest due when it is made, it is correct to compute the interest to the time of the first payment, add it to the principal, subtract the payment, cast interest on the remainder to the time of the second payment, add it to the remainder, and subtract the second payment, and in like manner from one payment to another, until the time of judgment. 1 Pick. 194; 4 Hen. & Munf. 431; 8 Serg. & Rawle, 458; 2 Wash. C. C. R. 167. See 3 Wash. C. C. R. 350; Ibid. 396.

54.—3. Where a partial payment is made before the debt is due, it cannot be apportioned, part to the debt and part to the interest. As if there be a bond for one hundred dollars, payable in one year, and, at the expiration of six months, fifty dollars be paid in. This payment shall not be apportioned part to the principal and part to the interest, but at the end of the year, interest shall be charged on the whole sum, and the obligor shall receive credit for the interest of fifty dollars for six months. 1 Dall. 124.

55.—§ 6. When interest will be barred. 1. When the money due is tendered to the person entitled to it, and he refuses to receive it, the interest ceases. 3 Campb. 296. Vide 8 East, 168; 3 Binn. 295.

56.—2. Where the plaintiff was absent in foreign parts, beyond seas, evidence of that fact may be given in evidence to the jury on the plea of payment, in order to extinguish the inte-

rest during such absence. 1 Call, 133. But see 9 Serg. & Rawle, 263.

57.—3. Whenever the law prohibits the payment of the principal, interest during the prohibition is not demandable. 2 Dall. 102; 1 Peters’s C. C. R. 524. See also 2 Dall. 132; 4 Dall. 286.

58.—4. If the plaintiff has accepted the principal, he cannot recover the interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 229. See 14 Wend. 116.

59.—§ 7. Rate of interest allowed by law in the different states.

Alabama. Eight per centum per annum is allowed. Notes not exceeding one dollar bear interest at the rate of one hundred per centum per annum. Some of the bank charters prohibit certain banks from charging more than six per cent. upon bills of exchange; and notes negotiable at the bank, not having more than six months to run; and over six and under nine, not more than seven per cent.; and over nine months, to charge not more than eight per cent. Aikin’s Dig. 236.

64.—Arkansas. Six per centum per annum is the legal rate of interest, but the parties may agree in writing for the payment of interest not exceeding ten per centum per annum, on money due and to become due on any contract, whether under seal or not. Rev. St. c. 50, s. 1, 2. Contracts where a greater amount is reserved are declared to be void. Id. s. 7, but this provision will not affect an innocent endorsee for a valuable consideration. Id. s. 8.

65.—Connecticut. Six per centum is the amount allowed by law.

66.—Delaware. The legal amount of interest allowed in this state is at the rate of six per centum per annum. Laws of Del. 314.

67.—Georgia. Eight per centum per annum interest is allowed on all liquidated demands. 1 Laws of Geo. 270; 4 Id. 488; Prince’s Dig. 294, 295.

68.—Illinois. Six per centum per annum is the legal interest allowed
when there is no contract, but by agreement the parties may fix a greater rate. 3 Griff. L. Reg. 423.

69.—Indiana. Six per centum per annum is the rate fixed by law, except in Union county. On the following funds loaned out by the state, namely, Sinking, Surplus, Revenue, Saline, and College funds, seven per cent.; on the common school fund, eight per cent. Act of January 31, 1842.

70.—Kentucky. Six per centum per annum is allowed by law. There is no provision in favor of any kind of loan. See Sessions acts 1818, p. 707.

71.—Louisiana. The Civil Code provides, art. 2895, as follows: Interest is either legal or conventional. Legal interest is fixed at the following rates, to wit: at five per cent. on all sums which are the object of a judicial demand, whence this is called judicial interest; and sums discounted by banks, at the rate established by their charters. The amount of conventional interest cannot exceed ten per cent. The same must be fixed in writing, and the testimonial proof of it is not admitted. See also, art. 1930 to 1939.

72.—Maine. Six per centum per annum is the legal interest, and any contract for more is voidable as to the excess, except in case of letting cattle, and other usages of a like nature, in practice among farmers, or maritime contracts among merchants, as bottomry, insurance or course of exchange, as has been heretofore practiced. Rev. St. T. 4, c. 69, §§ 1, 4.

73.—Maryland. Six per centum per annum is the amount limited by law in all cases.

74.—Massachusetts. The interest of money shall continue to be at the rate of six dollars, and no more, upon one hundred dollars for a year; and at the same rate for a greater or less sum, and for a longer or shorter time. Rev. Stat. ch. 35, s. 1.

75.—Michigan. Seven per centum is the legal rate of interest; but on stipulation in writing, interest is allowed to any amount not exceeding ten per cent. on loans of money, but only on such loans. Rev. St. 160, 161.

76.—Mississippi. The legal interest is six per centum; but on all bonds, notes, or contracts in writing signed by the debtor for the bona fide loan of money, expressing therein the rate of interest fairly agreed on between the parties for the use of money so loaned, eight per cent. interest is allowed. Laws of 1842.

77.—Missouri. When no contract is made as to interest, six per centum per annum is allowed. But the parties may agree to any higher rate, not exceeding ten per cent. Rev. Code, § 1, p. 333.

78.—New Hampshire. No person shall take interest for the loan of money, wares, or merchandize, or any other personal estate whatsoever, above the value of six pounds for the use or forbearance of one hundred pounds for a year, and after that rate for a greater or lesser sum, or for a longer or shorter time. Act of February 12, 1791, s. 1. Provided that nothing in this act shall extend to the letting of cattle, or other usages of a like nature, in practice among farmers, or to maritime contracts among merchant, as bottomry, insurance or course of exchange, as hath been heretofore used. Id. s. 2.

79.—New Jersey. Six per centum per annum is the interest allowed by law for the loan of money, without any exception. Statute of December 5, 1823, Harr. Comp. 45.

80.—New York. The rate is fixed at seven per centum per annum. Rev. Stat. part 2, c. 4, t. 3, s. 1. Monied institutions, subject to the safety-fund act, are entitled to receive the legal interest, established, or which may thereafter be established by the laws of this state, on all loans made by them, or notes, or bills, by them severally discounted or received in the ordinary course of business; but on all notes or bills by them discounted or received in the ordinary course of business which shall be mature in sixty-three days from the time of such discount,
the said monied corporations shall not take or receive more than at the rate of six per centum per annum in advance. 2 Rev. Stat. p. 612.

81.—North Carolina. Six per centum per annum is the interest allowed by law. The banks are allowed to take the interest off at the time of making a discount.

82.—Ohio. The legal rate of interest on all contracts, judgments or decrees in chancery, is six per centum per annum, and no more, 29 Ohio Stat. 451; Swan's Coll. Laws, 465. A contract to pay a higher rate is good for principal and interest, and void for the excess. Banks are bound to pay twelve per cent, interest on all their notes during a suspension of specie payment, 37 Acts 30, Act of February 25, 1839, Swan's Coll. 129.

83.—Pennsylvania. Interest is allowed at the rate of six per centum per annum for the loan or use of money or other commodities, Act of March 2, 1723; and lawful interest is allowed on judgments, Act of 1700, 1 Smith's L. of Penn. 12. Sec 6 Watts, 53; 12 S. & R. 47; 13 S. & R. 221; 4 Whart. 221; 6 Binn. 435; 1 Dall. 378; 1 Dall. 407; 2 Dall. 92; 1 S. & R. 176; 1 Binn. 489; 2 Pet. 538; 1 S. & R. 355.

84.—Rhode Island. Six per centum per annum is allowed for interest on loans of money. 3 Griff. Law Reg. 116.

85.—South Carolina. Seven per centum per annum, or at that rate, is allowed for interest, 4 Cooper's Stat. of S. C. 364. When more is reserved, the amount lent and interest may be recovered. 6 Id. 409.

86.—Tennessee. The interest allowed by law is six per centum per annum. When more is charged it is not recoverable, but the principal and legal interest may be recovered. Act of 1835, c. 50, Car. & Nich. Comp. 406, 407.

87.—Vermont. Six per centum per annum is the legal interest. If more be charged and paid it may be recovered back in an action of assump-

sit. But these provisions do not extend "to the letting of cattle and other usages of a like nature among farmers, or maritime contracts, bottomry or course of exchange, as has been customary." Rev. St. c. 72, ss. 3, 4, 5.


INTEREST, MARITIME. By maritime interest is understood the profit of money lent on bottomry or respondentia, which is allowed to be greater than simple interest because the capital of the lender is put in jeopardy. There is no limit by law as to the amount which may be charged for maritime interest. It is fixed generally by the agreement of the parties.

2.—The French writers employ a variety of terms in order to distinguish it according to the nature of the case. They call it interest, when it is stipulated to be paid by the month, or at other stated periods. It is a premium when a gross sum is to be paid at the end of the voyage, and here the risk is the principal object they have in view. When the sum is a per centage on the money lent, they call it exchange, considering it in the light of money lent at one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference of time and place. When they intend to combine these various shades into one general denomination, they make use of the term maritime profit, to convey their meaning. Hall on Mar. Loans, 56, n.

INTERESTED CONTRACT, civil law, is one in which both parties have an interest; it is put in opposition to a contract of mere benevolence; the contracts of partnership, sale, hiring, exchange or barter, are of this kind. Poth. Oblig. n. 12. Contract.

INTERIM. In the mean time; in the meanwhile. For example, one appointed between the time that a person is made bankrupt, to act in the
place of the assignee, until the assignee shall be appointed, is an inter-

INTERLINEATION, in contracts, evidence, is writing between two lines.

2.—Interlineations are made either before or after the execution of an instrument. Those made before should be noted previous to its execution; those made after are made either by the party in whose favour they are, or by strangers.

3.—When made by the party himself, whether the interlineation be material or immaterial, they render the deed void, 1 Gall. Rep. 71, unless made with the consent of the opposite party. Vide 11 Co. 27 a; 9 Mass. Rep. 307; 15 Johns. R. 293; 1 Dall. R. 57; 1 Halst. R. 215; but see 1 Pet. C. R. 364; 5 Har. & John. 41; 2 L. R. 290; 2 Ch. R. 410; 4 Bing. R. 123; Fitzg. 207, 223; Cov. on Conv. Ev. 22.

4.—When the interlineation is made by a stranger, if it be material, it will not vitiate the instrument, but if it be material, it will in general avoid it. Vide Cruise, Dig. tit. 32; c. 26, s. 8; Com. Dig. Fait, F. 1.

5.—The ancient rule, which is still said to be in force, is that an alteration shall be presumed to have been made before the execution of the instrument. Vin. Ab. Evidence, Q. a 2; Ib. Faits, U; 1 Swift’s Syst. 310; 6 Wheat. R. 451; 1 Halst. 215; but other cases hold the presumption to be that a material interlineation was made after the execution of an instrument, unless the contrary be proved. 1 Dall. 67. This doctrine corresponds nearly with the rules of the canon law on this subject. The canonists have examined it with care. Vide 18 Pick. R. 172; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 115, and article Erasure.

INTERLOCUTORY. This word is applied to signify something which is done between the commencement and the end of a suit or action which decides some point or matter, which however is not a final decision of the matter in issue; as, interlocutory judg-

ments, or decrees or orders. Vide Judgment, interlocutory.

INTERLOPERS. Persons who inter-

rupt the trade of a company of mer-

chants, by pursuing the same business with them in the same place, without lawful authority.

INTERNUNCIO, is a minister of a second order, charged with the affairs of the court of Rome, where that court has no nuncio under that title.

INTERPELATION, civil law, is the act by which, in consequence of an agreement, the party bound declares that he will not be bound beyond a certain time. Wolff, Inst. Nat. § 752.

2.—In the case of a lease from year to year, or to continue as long as both parties please, a notice given by one of them to another of a determination to put an end to the contract, would bear the name of interpellation.

INTERPLEADER, practice. Interpleaders may be had at law and in equity.

2.—An interpleader at law is a plea to an action of detinue, by which the defendant states the fact that the thing sued for is in his hands, and that it is claimed by a third person, and that whether such person or the plaintiff is entitled to it, is unknown to the defendant, and thereupon the defendant prays, that a process of garnishment may be issued to compel such third person, so claiming to become defendant in his stead. 3 Reeves, Hist. of the Eng. Law; ch. 23; Mitford, Eq. Pl. by Jeremy, 141; Story, Eq. Jur. §§ 800, 801, 802.

3.—In equity interpleaders are common. Vide Bill of Interpleader, and 8 Vin. Ab. 419; Doct. Pl. 247; 3 Bl. Com. 448; Com. Dig. Chancery, 3 T; 2 Story, Eq. Jur. § 800.

INTERPRETATION, is the expli-

cation of a law, agreement, will, or other instrument, which appears obscure or ambiguous.

2.—The object of interpretation is to find out or collect the intention of the maker of the instrument, either from his own words, or from other conjectures, or both. It may then be divided
into three sorts, according to the different means it makes use of for obtaining its end.

3.—These three sorts of interpretations are either literal, rational, or mixed. When we collect the intention of the writer from his words only, as they lie before us, this is a literal interpretation. When his words do not express his intention perfectly, but either exceed it, or fall short of it, so that we are to collect it from probable or rational conjectures only, this is rational interpretation; and when his words, though they do express his intention, when rightly understood, are in themselves of doubtful meaning, and we are forced to have recourse to like conjectures to find out in what sense he used them; this sort of interpretation is mixed; it is partly literal, and partly rational.

4.—According to the civilians there are three sorts of interpretations, the authentic, the usual, and the doctrinal.

5.—1. The authentic interpretation is that which refers to the legislator himself, in order to fix the sense of the law.

6.—2. When the judge interprets the law so as to accord with prior decisions, the interpretation is called usual.

7.—3. It is doctrinal when it is made agreeably to rules of science. The commentaries of learned lawyers in this case furnish the greatest assistance. This last kind of interpretation is itself divided into three distinct classes. Doctrinal interpretation is extensive, restrictive, or declaratory. 1st. It is extensive whenever the reason of the law has a more enlarged sense than its terms, and it is consequently applied to a case which had not been explained. 2d. On the contrary, it is restrictive when the expressions of the law have a greater latitude than its reasons, so that by a restricted interpretation, an exception is made in a case which the law does not seem to have embraced. 3d. When the reason of the law and the terms in which it is conceived agree, and it is only necessary to explain them to have the sense complete, the interpretation is declaratory.

8.—The term interpretation is used by foreign jurists in nearly the same sense that we use the word construction, (q. v.)

9.—Pothier, in his excellent treatise on Obligations, lays down the following rules for the interpretation of contracts:

10.—1. We ought to examine what was the common intention of the contracting parties rather than the grammatical sense of the terms.

11.—2. When a clause is capable of two significations, it should be understood in that which will have some operation rather than that in which it will have none.

12.—3. Where the terms of a contract are capable of two significations, we ought to understand them in the sense which is most agreeable to the nature of the contract.

13.—4. Any thing, which may appear ambiguous in the terms of a contract, may be explained by the common use of those terms in the country where it is made.

14.—5. Usage is so much authority in the interpretation of agreements, that a contract is understood to contain the customary clauses although they are not expressed; in contractibus tacite veniunt ca que sunt moris et consuetudinis.

15.—6. We ought to interpret one clause by the others contained in the same act, whether they precede or follow it.

16.—7. In case of doubt a clause ought to be interpreted against the person who stipulates any thing, and in discharge of the person who contracts the obligation.

17.—8. However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears, that the contracting parties proposed to contract, and not others which they never thought of.
18.—9. When the object of the agreement is universally to include every thing of a given nature, (une universalité de choses) the general description will comprise all particular articles, although they may not have been in the knowledge of the parties. We may state as an example of this rule an engagement which I make with you to abandon my share in a succession for a certain sum. This agreement includes every thing which makes part of the succession, whether known or not; our intention was to contract for the whole. Therefore it is decided that I cannot object to the agreement, under pretence that a considerable property has been found to belong to the succession of which we had not any knowledge.

19.—10. When a case is expressed in a contract on account of any doubt which there may be whether the engagement resulting from the contract would extend to such case, the parties are not thereby understood to restrain the extent which the engagement has of right, in respect to all cases not expressed.

20.—11. In contracts as well as in testaments, a clause conceived in the plural may be frequently distributed into several particular classes.

21.—12. What is at the end of a phrase commonly refers to the whole phrase, and not only to what immediately precedes it, provided it agrees in gender and number with the whole phrase.

22.—For instance, if in the contract for sale of a farm, it is said to be sold with all the corn, small grain, fruits and wine that have been got this year, the terms, that have been got this year, refer to the whole phrase, and not to the wine only, and consequently the old corn is not less excepted than the old wine; it would be otherwise if it had been said, all the wine that has been got this year, for the expression is in the singular, and only refers to the wine and not to the rest of the phrase, with which it does not agree in number.

INTERPRETER. One employed to make a translation, (q.v.)

2.—An interpreter should be sworn before he translates the testimony of a witness. 4 Mass. 81; 5 Mass. 219; 2 Caines’s Rep. 155.

3.—A person employed between an attorney and client to act as interpreter, is considered merely as the organ between them, and is not bound to testify as to what he has acquired in those confidential communications. 1 Pet. C. C. R. 356; 4 Munf. R. 273; 3 Wend. R. 337. Vide Confidential Communications.

INTERREGNUM, polit. law. In an established government, the period which elapses between the death of a sovereign and the election of another is called interregnum. It is also understood for the vacancy created in the executive power, and for any vacancy which occurs when there is no government.

INTERROGATOIRE, French law, is an act, or instrument, which contains the interrogatories made by the judge to the person accused, on the facts which are the object of the accusation, and the answers of the accused. Poth. Proc. Crim. s. 4, art. 2, § 1. Vide Information.

INTERROGATORIES are material and pertinent questions, in writing, to necessary points, not confessed, exhibited for the examination of witnesses or persons who are to give testimony in the cause.

2.—They are either original and direct on the part of him who produces the witnesses, or cross and counter, on behalf of the adverse party, to examine witnesses produced on the other side. Either party, plaintiff or defendant, may exhibit original or cross interrogatories.

3.—The form which interrogatories assume, is as various as the minds of the persons who propound them. They should be as distinct as possible, and capable of a definite answer; and they should leave no loop holes for evasion to an unwilling witness. Care must be observed to put no leading questions
in original interrogatories, for these always lead to inconvenience; and for scandal or impertinence, interrogatories will, under certain circumstances, be suppressed. Vide Will. on Interrogatories, passim; Gresl. Eq. Ev. pt. 1, c. 3, s. 1; Vin. Ab. h. t.; Hind’s Pr. 317.

INTERUPTION, is the effect of some act or circumstance which stops the course of a prescription or act of limitations.

2.—Interuption of the use of a thing is natural or civil. Natural interruption is an interruption in fact, which takes place whenever by some act we cease truly to possess what we formerly possessed. Vide 4 Mason’s Rep. 404; 2 Y. & Jarv. 285.

3.—Civil interruption is that which takes place by some judicial act, as the commencement of a suit to recover the thing in dispute, which gives notice to the possessor that the thing which he possesses does not belong to him. When the title has once been gained by prescription, it will not be lost by interruption of it for ten or twenty years. 1 Inst. 113 b. A simple acknowledgment of a debt by the debtor, is a sufficient interruption to prevent the statute from running. Indeed, whenever an agreement, express or implied, takes place between the creditor and the debtor, between the possessor and the owner, which admits the indebtedness or the right to the thing in dispute, it is considered a civil conventional interruption which prevents the statute or the right of prescription from running. Vide 3 Burge on the Conf. of Laws, 63.

INTERVAL is a space of time between two periods.

2.—When a person is unable to perform an act at any two given periods, but in the interval he has performed such act, as when a man is found to be insane in the months of January and March, and he enters into a contract or makes a will in the interval, in February, he will be presumed to have been insane at that time; and the onus will lie to show his sanity on the person who affirms such act. See Lucid interval.

INTERVENTION, civil law, is the act by which a third party becomes a party in a suit pending between other persons.

2. The intervention is made either to be joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it; or, to join the defendant, and with him to oppose the claim of the plaintiff, which it is his interest to defeat. Poth. Proc. Civ. Iere part. ch. 2, s. 6, § 3. In the English ecclesiastical courts, the same term is used in the same sense.

3.—When a third person, not originally a party to the suit or proceeding, but claiming an interest in the subject-matter in dispute, may, in order the better to protect such interest, interpose his claim, which proceeding is termed intervention. 2 Chit. Pr. 492; 3 Chit. Com. Law, 633; 2 Hagg. Cons. R. 137; 3 Phillim. R. 586; 1 Addams, R. 5; Ought. tit. 14; 4 Hagg. Eccl. R. 67; Dunl. Ad. Pr. 74. The intervener may come in at any stage of the cause, and even after judgment, if an appeal can be allowed on such judgment. 2 Hagg. Cons. R. 137; 1 Eng. Eccl. R. 480; 2 Eng. Eccl. R. 13.

INTESTACY. The state or condition of dying without a will.

2.—An infant, an insane person, or one civilly dead, cannot make a will, for want of capacity or understanding; a married woman cannot make such a will without some special authority, because she is under the power of her husband. They are all intestate.

INTESTATE. One who, having lawful power to make a will, has made none, or one which is defective in form. In that case he is said to die intestate, and his estate descends to his heir at law. See Testate.

INTIMATION, civil law, is the name of any judicial act by which a notice of a legal proceeding is given to some one; but it is more usually understood to mean the notice or sum-
mons which an appellant causes to be given to the opposite party, that the sentence will be reviewed by the superior judge.

2.—In the Scotch law, it is an instrument of writing, made under the hand of a notary, and notified to a party, to inform him of a right which a third person has acquired; for example, when a creditor assigns a claim against his debtor, the assignee or cedent must give an intimation of this to the debtor, who, till then, is justified in making payment to the original creditor. Kames’s Eq. B. 1, p. 1, s. 1.

INTRODUCTION is that part of a writing in which are detailed those facts which elucidate the subject. In chancery pleading, the introduction is that part of a bill which contains the names and description of the persons exhibiting the bill. In this part of the bill are also given the places of abode, title, or office, or business, and the character in which they sue, if it is in autre droit, and such other description as is required to show the jurisdiction of the court.

INTROMISSION, Scotch law, is the assuming possession of property belonging to another, either on legal grounds, or without any authority; in the latter case, it is called vicious intromission. Bell’s S. L. Dict. h. t.

INTRONISTATION, eccl. law. The installation of a bishop in his episcopal see. Clef des Lois Rom. h. t.

INTRUDER. One who, on the death of the ancestor, enters on the land, unlawfully, before the heir can enter.

INTRUSION, estates, torts. When an ancestor dies seised of any estate of inheritance, expectant upon an estate for life, and then the tenant dies, and between his death and the entry of the heir, a stranger unlawfully enters upon the estate, this is called an intrusion. It differs from an abatement, for the latter is an entry into lands void by the death of a tenant in fee, and an intrusion, as already stated, is an entry into land void by the death of a tenant for years. F. N. B. 203; 3 Bl. Com.

169; Archb. Civ. Pl. 12; Dane’s Ab. Index, h. t.

INTRUSION, remedies, is the name of a writ, brought by the owner of a fee simple, &c., against an intruder. New Nat. Br. 453.

INUNDATION, the overflow of waters by coming out of their bed.

2.—Inundations may arise from three causes; from public necessity, as in the defence of a place it may be necessary to dam the current of a stream, which will cause an inundation to the upper lands; they may be occasioned by an invincible force, as by the accidental fall of a rock in the stream; or they may result from the erections of works on the stream. In the first case, the injury caused by the inundation is to be compensated as other injuries done in war; in the second, as there was no fault of any one, the loss is to be borne by the unfortunate owner of the estate; in the last, when the riparian proprietor is injured by such works as alter the level of the water where it enters or where it leaves the property on which they are erected, the person injured may recover damages for the injury thus caused to his property by the inundation. 9 Co. 59; 4 Day’s R. 244; 17 Serg. & Rawle, 333; 3 Mason’s R. 172; 7 Pick. R. 198; 7 Cowen, R. 266; 1 B. & Ald. 255; 1 Rawle’s R. 218; 5 N. H. Rep. 232; 9 Mass. R. 316; 4 Mason’s R. 400; 1 Sim. & Stu. 203; 1 Coke’s R. 460. Vide Schult. Aq. R. 122; Ang. W. C. 101; 5 Ohio R. 322, 421; and art. Dam.

TO INURE. To take effect; as, the pardon inures.

INVALID, in a physical sense, is, what is wanting force; in a figurative sense, it signifies what has no effect.

INVASION. The entry of a country by a public enemy, making war.

2.—The constitution of the United States, art. 1, s. 8, gives power to Congress “to provide for calling the militia to execute the laws of the Union, suppress insurrections, and repel invasions.” Vide Insurrection.

INVENTION. A contrivance; a
discovery. It is in this sense this word is used in the patent laws of the United States. 17 Pet. 228; S. C. I How. U. S. 202. It signifies not something which has been found ready made, but which, in consequence of art or accident, has been formed: for the invention must relate to some new or useful art, machine, manufacture, or composition of matter, or some new and useful improvement on any art, machine, manufacture, or composition of matter, not before known or used by others. Act of July 4, 1836, 4 Sharsw. continuation of Story’s L. U. S. 2506; 1 Mason, R. 302; 4 Wash. C. C. R. 9. Vide Patent. By invention, the civilians understand the finding of some things which had not been lost; they must either have been abandoned, or they must never have belonged to any one, as a pearl found on the sea shore. Lec. Elem. § 350.

INVENTIONES. This word is used in some ancient English charters to signify treasure-trove.

INVENTOR. One who invents or finds out something.

2.—The patent laws of the United States authorise a patent to be issued to the original inventor; if the invention is suggested by another, he is not the inventor within the meaning of those laws; but in that case the suggestion must be of the specific process or machine; for a general theoretical suggestion, as that steam might be applied to the navigation of the air or water, without pointing by what specific process or machine that could be accomplished, would not be such a suggestion as to deprive the person to whom it had been made from being considered as the inventor. Dav. Pat. Cas. 429; 1 C. & P. 558; 1 Russ. & M. 187; 4 Taunt. 770. But see 1 M. G. & S. 551; 3 Man. Gr. & Sc. 97.

INVENTORY. A list, schedule, or enumeration in writing, containing, article by article, the goods and chattels, rights and credits, and, in some cases, the lands and tenements, of a person or persons. In its most common acceptation, an inventory is a conservatory act, which is made to ascertain the situation of an intestate’s estate, the estate of an insolvent, and the like, for the purpose of securing it to those entitled to it.

2.—When the inventory is made of goods and estates assigned or conveyed in trust, it must include all the property conveyed.

3.—In case of intestate estates, it is required to contain only the personal property, or that to which the administrator is entitled. The claims due to the estate ought to be separated; those which are desperate or bad ought to be so returned. The articles ought to be set down separately, as already mentioned, and separately valued.

4.—The inventory is to be made in the presence of at least two of the creditors of the deceased, or legatees or next of kin, and, in their default and absence, of two honest persons. The appraisers must sign it, and make oath or affirmation that the appraisement is just to the best of their knowledge. Vide, generally, 14 Vin. Ab. 465; Bac. Ab. Executors, etc., E. 11; 4 Com. Dig. 714; Ayliffe’s Pand. 414; Ayliffe’s Parerg. [305]; Com. Dig. Administration, B 7; 3 Burr. 1922; 2 Addams’s Rep. 319; S. C. 2 Eccles. R. 322; Lovel. on Wills, 38; 2 Bl. Com. 514; 8 Serg. & Rawle, 128; Godolph, 150, and the article Benefit of Inventory.

TO INVEST, contracts. To lay out money in such a manner that it may bring a revenue; as, to invest money in houses or stocks; to give possession.

INVESTITURE, estates, is the act of giving possession of lands by actual seizin. When livery of seizin was made to a person, by the common law he was invested with the whole fee; this, the foreign feudists and sometimes our own law writers call investiture, but generally speaking, it is termed by the common law writers, the seizin of the fee. 2 Bl. Com. 209, 318; Fearne on Rem. 223, n. (z).

INVOLIABILITY. What is not to be violated. The persons of ambas-
sadors are inviolable. See Ambassador.

INVITO DOMINO, crim. law, without the consent of the owner.

2.—In order to constitute larceny, the property stolen must be taken *invito domino*, this is the very essence of the crime. Cases of considerable difficulty arise when the owner has, for the purpose of detecting thieves, by himself or his agents, delivered the property taken, whether they are larcenies or not; the distinction seems to be this, that when the owner procures the property to be taken, it is not larceny; and when he merely leaves it in the power of the defendant to execute his original purpose of taking it, in the latter case it will be considered as taken *invito domino*. 2 Bailey’s Rep. 569; Post. 123; 2 Russ. on Cr. 66, 105; 2 Leach, 913; 2 East, P. C. 666; Bac. Ab. Felony, C; Alis, Prin. 273; 2 Bos. & Pull. 508; 1 Carr. & Marsh. 217; and article Taking.

INVOICE, commerce, an account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the marks of each package, with other particulars are set forth. Marsh. Ins. 408; Dane’s Ab. Index, h. t. An invoice ought to contain a detailed statement, which should indicate the nature, quantity, quality, and price of the things sold, deposited, &c. 1 Pardess. Dr. Com. n. 248. Vide *Bill of Lading*; and 2 Wash. C. C. R. 113; Id. 155.

INVOICE BOOK, commerce, accounts, is one in which invoices are copied.

INCOMPLETE. An involuntary act is that which is performed with constraint, (q. v.) or with repugnance. An action is involuntary then which is performed under duress. Wolff, § 5. Vide Duress.

IOWA. The name of one of the new states of the United States of America.

2.—This state was admitted into the Union by the act of Congress, approved the 3d day of March, 1845.

3.—The powers of the government are divided into three separate depart-

ments, the Legislative, the Executive, and Judicial; and no person charged with the exercise of power properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in cases provided for in the constitution.

4.—1. The Legislative authority of this state is vested in a senate and house of representatives, which are designated the General Assembly of the state of Iowa.

5.—§ 1. Of the Senate. This will be considered with reference, 1, to the qualifications of the electors; 2, the qualifications of the members; 3, the length of time for which they are elected; 4, the time of their election; 5, the number of senators.

6.—1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorised by law. But with this exception, that no person in the military, naval, or marine service of the United States shall be considered a resident of this state, by being stationed in any garrison, barrack, military or naval place or station within this state. And no idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector. Art. 3.

7.—2. Senators must be twenty-five years of age, be free white male citizens of the United States, and have been inhabitants of the state or territory, one year next preceding their election; and at the time of their elections have an actual residence of thirty days in the county or district they may be chosen to represent. Art. 4, s. 5.

8.—3. The senators are elected for four years. They are so classed that one half are renewed every two years. Art. 4, s. 5.

9.—4. They are chosen every second year, on the first Monday in August. Art. 4, s. 3.
10.—5. The number of senators is not less than one-third nor more than one-half the representative body. Art. 4, s. 6.

11.—§ 2. Of the House of Representatives. This will be considered in the same order which has been observed with regard to the senate.

12.—1. The electors qualified to vote for senators are electors of members of the House of Representatives.

13.—2. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free male white citizen of the United States, and have been an inhabitant of the state or territory one year next preceding his election; and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent. Art. 4, s. 4.

14.—3. Members of the House of Representatives are chosen for two years. Art. 4, s. 3.

15.—4. They are elected at the same time that senators are elected.

16.—5. The number of representatives is not limited.

17.—The two houses have respectively the following power. Each house has power to choose its own officers, and judge of the qualification of its members.

To sit upon its adjournments; keep a journal of its proceedings and publish the same; punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member, but not a second time for the same offence; and shall have all other power necessary for a branch of the General Assembly of a free and independent state.

18.—The House of Representatives has the power of impeachment, and the senate is a court for the trial of persons impeached.

19.—II. The supreme executive power is vested in a chief magistrate, who is called the governor of the state of Iowa. Art. 5, s. 1.

20.—The governor shall be elected by the qualified electors, at the time and place of voting for members of the general assembly, and hold his office for four years from the time of his installation and until his successor shall be duly qualified. Art. 5, s. 2.

21.—No person shall be eligible to the office of governor, who has not been a citizen of the United States, a resident of the state two years next preceding his election, and attained the age of thirty-five years at the time of holding said election. Art. 5, s. 3.

22.—Various powers are conferred on the governor, among others, he shall be commander-in-chief of the militia, army, and navy of the state; transact executive business with the officers of the government; see that the laws are faithfully executed: fill vacancies by granting temporary commissions: on extraordinary occasions convene the general assembly by proclamation: communicate by message with the general assembly at every session: adjourn the two houses, when they cannot agree upon the time of an adjournment: may grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment: shall be keeper of the great seal: and sign all commissions. He is also invested with the veto power.

23.—When there is a vacancy in the office of governor, or in case of his impeachment, the duties of his office shall devolve on the secretary of state; on his default on the president of the senate; and if the president cannot act, on the speaker of the house of representatives.

24.—III. The judicial power shall be vested in a supreme court, district courts, and such inferior courts as the general assembly may from time to time establish. Art. 6, s. 1.

25.—§ 1. The supreme court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold court. Art. 6, s. 2.

26.—The judges of the supreme court shall be elected by joint ballot of both branches of the general assembly, and shall hold their courts at such
time and place as the general assembly may direct, and hold their office for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. Art. 6, s. 3.

27.—The supreme court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may by law prescribe. It shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the judges of the supreme court shall be conservators of the peace throughout the state. Art. 6, s. 3.

28.—§ 2. The district court shall consist of a judge who shall be elected by the qualified electors of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected.

29.—The district court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The judges of the district courts shall be conservators of the peace in their respective districts. The first general assembly shall divide the state into four districts, which may be increased as the exigencies require. Art. 6, s. 4.

IPSOS FACTO, by the fact itself.

2.—This phrase is frequently employed to convey the idea that something which has been done contrary to law is void; for example, if a married man, during the life of his wife, of which he had knowledge, should marry a second woman, the latter marriage would be void ipso facto; that is, on that fact being proved, the second marriage would be declared void ab initio.

IRE AD LARGUM, to go at large; to escape, or be set at liberty. Vide Ad largum.

IRONY, in rhetoric, is a term derived from the Greek, which signifies dissimulation. It is a refined species of ridicule, which under the mask of honest simplicity or of ignorance, exposes the faults and errors of others, by seeming to adopt or defend them.

2.—In libels, irony may convey imputations more effectually than direct assertion, and render the publication libellous. Hob. 215; Hawk. B. 1, c. 73, s. 4; 3 Chit. Cr. Law, 869; Bac. Ab. Libel, A 3.

IRREGULARITY, practice, is the doing or not doing that in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done.

2.—A party entitled to complain of irregularity, should except to it previously to taking any step by him in the cause. Lofft. 323, 333, because the taking of any such step is a waiver of any irregularity. 1 Bos. & Phil. 342; 2 Smith's R. 391; 1 Taunt. R. 53; 2 Taunt. R. 243; 3 East, R. 547; 2 New R. 509; 2 Wils. R. 380.

3.—The court will, on motion, set aside proceedings for irregularity. On setting aside a judgment and execution for irregularity, they have power to impose terms on the defendant, and will restrain him from bringing an action of trespass, unless a strong case of damages appears. 1 Chit. R. 133, n.; and see Baldw. R. 246. Vide 3 Chit. Pr. 509, and Regular and irregular Process.

4.—In the canon law, this term is used to signify any impediment which prevents a man from taking holy orders.

IRREPLEASABLE, practice.—This term is applied to those things which cannot legally be repleved; for example, in Pennsylvania, no goods seized in execution or for taxes, can be repleived.

IRRESISTIBLE FORCE. This term is applied to such an interposition of human agency, as is, from its nature
and power, absolutely uncontrovertible; as the inroads of a hostile army. Story on Bailm. § 25; Lois des Bâtiments, pt. 2, c. 2, § 1. It differs from inevitable accident, (q. v.); the latter being the effect of physical causes, as, lightning, storms, and the like.

IRREVOCABLE. That which cannot be revoked.

2.—A will may at all times be revoked by the same person who made it, he having a disposing mind; but the moment the testator is rendered incapable of making a will he can no longer revoke a former will, because he wants a disposing mind. Letters of attorney are generally revocable; but when made for a valuable consideration they become irrevocable. 7 Ves. jr. 28; 1 Caines’s Cas, in Er. 16; Bac. Ab. Authority, E. Vide Authority; License; Revocation.

IRRIGATION, the act of wetting or moistening the ground by artificial means.

2.—The owner of land over which there is a current stream, is, as such, the proprietor of the current. 4 Mason’s R. 400. It seems the riparian proprietor may avail himself of the river for irrigation, provided the river be not thereby materially lessened, and the water absorbed be imperceptible or trifling. Ang. W. C. 34; and vide 1 Root’s R. 535; 8 Greenl. R. 266; 2 Conn. R. 554; 2 Swift’s Syst. 87; 7 Mass. R. 136; 13 Mass. R. 420; 1 Swift’s Dig. 111; 5 Pick. R. 175; 9 Pick. 59; 6 Bing. R. 379; 5 Esp. R. 56; 2 Conn. R. 584; Ham. N. P. 199; 2 Chit. Bl. Com. 403, n. 7; 22 Vin. Ab. 525; 1 Vin. Ab. 557; Bac. Ab. Action on the case, F. The French law coincides with our own. 1 Lois des Bâtiments, sect. 1, art. 3, page 21.

IRRITANCY, in Scotland, is the happening of a condition or event by which a charter, contract or other deed, to which a clause irritant is annexed, becomes void. Ersk. Inst. B. 2, t. 5, n. 25. Irritancy is a kind of forfeiture. It is legal or conventional. Burt. Man. P. R. 298

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ISLAND. A piece of land surrounded by water.

2.—Islands are in the sea or in rivers. Those in the sea are either in the open sea, or within the boundary of some country.

3.—When new islands arise in the open sea, they belong to the first occupant; but when they are newly formed so near the shore as to be within the boundary of some state, they belong to that state.

4.—Islands which arise in rivers when in the middle of the stream, belong in equal parts to the riparian proprietors; when they arise mostly on one side, they will belong to the riparian owners up to the middle of the stream. Bract. lib. 2, c. 2; Fleta, lib. 3, c. 2, s. 6; 2 Bl. 261; 1 Swift’s Dig. 111; Schult. Aq. R. 117; Wooln. on Waters, 38; 4 Pick. R. 238; Dougls. R. 441; 10 Wend. 260; 14 S. & R. 1. For the law of Louisiana, see Civil Code, art. 505-507.

5.—The doctrine of the common law on this subject, founded on reason, seems to have been borrowed from the civil law. Vide Inst. 2, 1, 22; Dig. 41, 1, 7; Code, 7, 41, 1.

ISSINT. This is a Norman French word which signifies thus, so. It has given the name to a part of a plea, because when pleas were in that language this word was used. In actions founded on deeds, the defendant may, instead of pleading non est factum in the common form, allege any special matter which admits the execution of the writing in question, but which, nevertheless, shows that it is not in law his deed; and may conclude with non est factum; as that the writing was delivered to A B as an escrow, to be delivered over on certain conditions, which have not been complied with, “and so it is not his act;” or that at the time of making the writing, the defendant was a femme covert, “and so it is not her act.” Bac. Ab. Pleas, H 3, I 2; Gould on Pl. c. 6, part 1, § 64.

ISSUE, kindred. This term is of very extensive import, in its most enlarged signification, and includes all.
persons who have descended from a common ancestor. 17 Ves. 481; 19 Ves. 547; 3 Ves. 257; 1 Rop. Leg. 88; and see Wilmot's Notes, 314, 321. But when this word is used in a will, in order to give effect to the testator's intention it will be construed in a more restricted sense than its legal import conveys. 7 Ves. 522; 19 Ves. 73; 1 Rop. Leg. 90. Vide Bac. Ab. Curtesy of England, D; 8 Com. Dig. 473; and article Legatee, II, § 4.

Issue, pleading. An issue in pleading, is defined to be a single, certain and material point issuing out of the allegations of the parties, and consisting, regularly, of an affirmative and negative. In common parlance, issue also signifies the entry of the pleadings. 1 Chit. Pl. 630.

2. Issues are material when properly formed on some material point, which will decide the question in dispute between the parties; and immaterial, when predicated on some immaterial fact, which though found by the verdict will not determine the merits of the cause, and would leave the court at a loss how to give judgment. 2 Saund. 319, n. 6.

3. Issues are also divided into issues in law and issues in fact. 1. An issue in law admits all the facts and rests simply upon a question of law. It is said to consist of a single point, but by this it must not be understood that such issue involves, necessarily, only a single rule or principle of law, or that it brings into question the legal sufficiency of a single fact only. It is meant that such an issue reduces the whole controversy to the single question, whether the facts confessed by the issue are sufficient in law to maintain the action or defence of the party who alleged them. 2. An issue in fact, is one in which the parties disagree as to their existence, one affirming they exist, and the other denying it. By the common law, every issue in fact, subject to some exceptions, which are noticed below, must consist of a direct affirmative allegation, on the one side, and of a direct negative on the other, Co. Litt. 126, a; Bac. Ab. Pleas, &c. G 1; 5 Pet. 149; 2 Black. R. 1312; 8 T. R. 278. But it has been held that when the defendant pleaded that he was born in France, and the plaintiff replied that he was born in England, it was sufficient to form a good issue. 1 Wils. 6; 2 Str. 1177. In this case, it will be observed, there were two affirmatives, and the ground upon which the issue was held to be good is that the second affirmative is so contrary to the first, that the first cannot in any degree be true. The exceptions above mentioned to the rule that a direct affirmative and a direct negative are required, are the following:—

1st. The general issue upon a writ of right is formed by two affirmatives: the demandant, on one side, avers that he has greater right than the tenant; and, on the other, that the tenant has a greater right than the demandant. This issue is called the mise, (q. v.) Lawes, Pl. 232; 3 Chit. Pl. 652; 3 Bl. Com. 195, 305. 2d. In an action of dower, the court merely demands the third part of acres of land, &c., as the dower of the demandant of the endowment of A B, heretofore the husband, &c., and the general issue is, that A B was not seised of such estate, &c., and that he could not endow the demandant thereof, &c. 2 Saund. 329, 330. This mode of negation, instead of being direct, is merely argumentative, and argumentativeness is not generally allowed in pleading.

4. Issues in fact are divided into general issues, special issues, and common issues.

5. The general issue denies in direct terms the whole declaration; as in personal actions, where the defendant pleads nil debet, that he owes the plaintiff nothing; or non culpabilis, that he is not guilty of the facts alleged in the declaration; or in real actions, where the defendant pleads null tort, no wrong done, or null disseisin, no disseisin committed. These pleas, and the like, are called general issues, because by importing an absolute and general denial of all the matters alleged in the
declaration, they at once put them all in issue.

6.—Formerly the general issue was seldom pleaded, except where the defendant meant wholly to deny the charge alleged against him; for when he meant to avoid and justify the charge, it was usual for him to set forth the particular ground of his defence as a special plea, which appears to have been necessary to apprise the court and the plaintiff of the particular nature and circumstances of the defendant’s case, and was originally intended to keep the law and the fact distinct. And even now it is an invariable rule, that every defence which cannot be specially pleaded, may be given in evidence at the trial upon the general issue, so the defendant is in many cases obliged to plead the particular circumstances of his defence specially, and cannot give them in evidence on that general plea. But the science of special pleading having been frequently perverted to the purposes of chicane and delay, the courts have in some instances, and the legislature in others, permitted the general issue to be pleaded, and special matter to be given in evidence under it at the trial, which at once includes the facts, the equity, and the law of the case. 3 Bl. Com. 305, 6; 3 Green. Ev. § 9.

7.—The special issue is when the defendant takes issue upon any one substantial part of the declaration, and rests the weight of his case upon it, he is said to take a special issue, in contradiction to the general issue, which denies and puts in issue the whole of the declaration. Com. Dig. Pleader, R. 1, 2.

8.—Common issue is the name given to that which is formed on the single plea of non est factum, when pleaded to an action of covenant broken. This is so called because to an action of covenant broken there can properly be no general issue, since the plea of non est factum, which denies the deed only, and not the breach, does not put the whole declaration in issue. 1 Chit. Pl. 482; Lawes on Pl. 113.

9.—Issues are formal and informal.

10.—A formal issue is one which is formed according to the rules required by law, in a proper and artificial manner.

11.—An informal issue is one which arises when a material allegation is traversed in an improper or artificial manner. Bac. Ab. Pleas, &c., G 2, N 5; 2 Saund. 319, a, n. 6; the defect is cured by verdict, by the statute of 32 H. 8, c. 30.

12.—Issues are also divided into actual and feigned issues.

13.—An actual issue is one formed in an action brought in the regular manner, for the purpose of trying a question of right between the parties.

14.—A feigned issue is one directed by a court, generally by a court exercising equitable powers, for the purpose of trying before a jury a matter in dispute between the parties. When in a court of equity any matter of fact is strongly contested, the court usually directs the matter to be tried by a jury, especially such important facts as the validity of a will, or whether A is the heir at law of B.

15.—But as no jury is summoned to attend this court, the fact is usually directed to be tried in a court of law upon a feigned issue. For this purpose an action is brought in which the plaintiff by a fiction declares that he laid a wager for a sum of money with the defendant, for example, that a certain paper is the last will and testament of A; then avers it is his will, and therefore demands the money; the defendant admits the wager but avers that it is not the will of A, and thereupon that issue is joined, which is directed out of chancery to be tried; and thus the verdict of the jurors at law determines the fact in the court of equity.

16.—These feigned issues are frequently used in the courts of law, by consent of the parties, to determine some disputed rights without the formality of pleading, and by this practice much time and expenses are saved in the decision of a cause. 3 Bl. Com. 542. The consent of the court must
also be previously obtained, for the trial of a feigned issue; without such consent it is a contempt, which will authorise the court to order the proceeding to be stayed, 4 T. R. 402, and punish the parties engaged. See Fictitious action.

Issue roll, Eng. law. The name of a record which contains an entry of the term of which the demurrer book, issue or paper book is entitled, and the warrants of attorney supposed to have been given by the parties at the commencement of the cause, and then proceeds with the transcript of the declaration and subsequent pleadings, continuances, and award of the mode of the decision as contained in the demurrer, issue or paper book. Steph. Pl. 98, 99. After final judgment, the issue roll is no longer called by that name, but assumes that of judgment roll. 2 Arch. Pr. 206.

Issues, Eng. law. The goods and profits of the lands of a defendant against whom a writ of distinguos or distress infinite has been issued, taken by virtue of such writ, are called issues. 3 Bl. Com. 280; 1 Chit. Cr. Law, 351.

Isthmus. A tongue or strip of land between two seas. Gloss. on Law, 37, book 2, tit. 3, Dig.

Ita est. These words signify it is thus. Among the civilians when a notary dies, leaving his register, an officer who is authorised to make official copies of his notarial acts, writes instead of the deceased notary’s name, which is required, when he is living, ita est.

Ita quod. The name or condition in a submission which is usually introduced by these words “so as the award be made of and upon the premises,” which from the first word is called the ita quod.

2.—When the submission is with an ita quod, the arbitrator must make an award of all matters submitted to him of which he had notice, or the award will be entirely void. 7 East, 81; Cro. Jac. 200; 2 Vern. 109; 1 Ca. Chan. 86; Roll. Ab. Arbitr. L 9.

Item, also; likewise; in like manner; again; a second time. These are the various meanings of this Latin adverb. V. Construction.

2.—In law it is to be construed conjunctively, in the sense of and, or also, in such a manner as to connect sentences; if therefore a testator bequeath a legacy to Peter payable out of a particular fund, or charged upon a particular estate, item a legacy to James, James’s legacy as well as Peter’s will be a charge upon the same property. 1 Atk. 436; 3 Atk. 256; 1 Bro. C. C. 482; 1 Rolle’s Ab. 844; 1 Mod. 100; Cro. Car. 368; Vaugh. 262; 2 Rep. on Leg. 349; 1 Salk. 234. Vide Disjunctive.


Itinerant, travelling or taking a journey. In England there were formerly judges called Justices itinerant, who were sent with commissions into certain counties to try causes.

Jactitation of marriage, Eng. eccle. law, is the boasting by an individual that he or she has married another, from which it may happen that they will acquire the reputation of being married to each other.

2.—The ecclesiastical courts may in such cases entertain a libel by the party injured; and, on proof of the facts, enjoin the wrongdoer to perpetual silence; and, as a punishment, make him pay the costs. 3 Bl. Com. 93; 2 Hagg. Cons. R. 423; Id. 285; 2 Chit. Pr. 459.

Jactura. The same as jetison, (q.v.) 1 Bell’s Com. 586, 5th ed.

Jail. A prison; a place appointed by law for the detention of prisoners. A jail is an inhabited dwelling-house within the statute of New York, which makes the malicious burning of an inhabited dwelling-house to be
4.—This was the Roman law, from which it has been probably engrafted on the common law. Vide Merl. Rép. art. Non bis in idem. Qui de crimine publico accusationem deductus est, says the Code, 9, 2, 9, ab aliis super eodem crimine deferri non potest. Vide article Non bis in idem.

JERGUER, Engl. law. An officer of the custom-house, who oversees the waiters. Techn. Dict. h. t.

JETTISON or JETSAM, is the casting out of a vessel, from necessity, a part of the lading; the thing cast out also bears the same name; it differs from flotsam in this, that in the latter the goods float, while in the former they sink, and remain under water; it differs also from ligan, (q. v.)

2.—The jettison must be made for sufficient cause, and not from groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm, or is labouring upon rocks or shallows, or is closely pursued by pirates or enemies.

3.—If the residue of the cargo be saved by such sacrifice, the property saved is bound to pay a proportion of the loss. In ascertaining such average loss, the goods lost and saved are both to be valued at the price they would have fetched at the place of delivery, on the ship's arrival there, freight, duties and other charges being deducted. Marsh. Ins. 246; 3 Kent, Com. 155 to 157; Park, Ins. 123; Poth. Charte-partie, n. 108, et suiv.; Boulay-Paty, Dr. Com. tit. 13; Pardessus, Dr. Com. n. 734; 1 Ware's R. 9.

JOB. By this term is understood among workmen, the whole of a thing which is to be done. In this sense it is employed in the civil code of Louisiana, art. 2727, "to build by plot, or to work by the job," says that article, "is to undertake a building for a certain stipulated price." See Durant, du Contr. de Louange, liv. 3, t. 8, n. 248, 263; Poth. Contr. de Louange, n. 392, 394; and Deviation.

JOBBER, commerce. One who buys and sells articles for others.
Stock-jobbers are those who buy and sell stocks for others; this term is also applied to those who speculate in stocks on their own account.

JOICALIA, jewels; this term was formerly more properly applied to those ornaments which women, although married, call their own. When these jocalia are not suitable to her degree, they are assets for the payment of debts. 1 Roll. Ab. 911. Vide Paraphernalia.

JOINER OF ACTIONS, practice. The putting two or more causes of action in the same declaration.

2.—It is a general rule, that in real actions there never can be but one count. 8 Co. 86, 87; Bac. Ab. Action, C; Com. Dig. Action, G. A count in a real, and a count in a mixed action, cannot be joined in the same declaration; nor a count in a mixed action, and a count in a personal action; nor a count in a mixed action with a count in another, as ejectment and trespass.

3.—In mixed actions, there may be two counts in the same declaration; for example, waste lies upon several leases, and ejectment upon several demises and oysters. 8 Co. 87 b.; Poph. 24; Cro. Eliz. 290; Ow. 11.

4.—In personal actions, the use of several counts in the same declaration is quite common. Sometimes they are applied to distinct causes of actions, as upon several promissory notes; but it more frequently happens otherwise, that when various counts are introduced, they do not really relate to different claims, but are adopted merely as so many different forms of propounding the same question. The joinder in action depends on the form of action, rather than on the subject-matter of it; in an action against a carrier, for example, if the plaintiff declare in assumpsit, he cannot join a count in trover, as he may if he declare against him in case. 1 T. R. 277; but see 2 Caines's R. 216; 3 East, R. 70. The rule as to joinder is, that when the same plea may be pleaded, and the same judgment given on all the counts of the declaration, or when the counts are all of the same nature, and the same judgment is to be given upon them all, though the pleas be different, as in the case of debt upon bond and simple contract, they may be joined. 2 Saund, 117, c. When the same form of action may be adopted, the plaintiff may join as many causes of action as he may choose, though he acquired the rights affected by different titles; but the rights of the plaintiffs, and the liabilities of the defendant, must be in his own character, or in his representative capacity, exclusively. A plaintiff cannot sue, therefore, for a cause of action in his own right, and another cause in his character as executor, and join them; nor can he sue the defendant for a debt due by himself, and another due by him as executor.

5.—In criminal cases, different offences may be joined in the same indictment, if of the same nature, but an indictment may be quashed, at the discretion of the court, when the counts are joined in such a manner as will confound the evidence. 1 Chit. Cr. Law, 253-255. In Pennsylvania it has been decided that when a defendant was indicted at one session of the court for a conspiracy with another to cheat a third person, and at another sessions of the same court he was indicted for another conspiracy to cheat another person, the two bills might be tried by the same jury, against the will of the defendant, provided he was not thereby deprived of any material right, as the right to challenge; whether he should be so tried or not seems to be a matter of discretion with the court. 5 S. & R. 59; 12 S. & R. 69. Vide Separate Trial.


JOINER IN DEMURRER. When
a demurrer is offered by one party, the adverse party joins him in demurrer, and the answer which he makes is called a joinder in demurrer. Co. Litt. 71 b.

JOINDER OF ISSUE, pleadings, is the act by which the parties to a cause, arrive at that stage of it in their pleadings, that one asserts a fact to be so, and the other denies it. For example, when one party denies the fact pleaded by his antagonist, who has tendered the issue thus, "And this he prays may be inquired of by the country," or "And of this he puts himself upon the country," the party denying the fact may immediately subjoin, "And the said A B, does the like." when the issue is said to be joined.

JOINDER OF PARTIES TO ACTIONS. It is a rule in actions ex contractu that all who have a legal interest in the contract, and no others, must join in action founded on a breach of such contract; whether the parties are too many or too few, it is equally fatal. S. & R. 308; 4 Watts. 456; 1 Breese, 286; 6 Pick. 359; 6 Mass. 460; 2 Conn. 697; 6 Wend. 629; 2 N. & M. 70; 1 Bailey, 13; 5 Vern. 116; 3 J. J. Marsh. 165; 16 John. 34; 19 John. 213; 2 Greenl. 117; 2 Penn. 817.

1.—In actions ex contractu all obligors jointly and not severally liable, and no others, must be made defendants. 1 Saund. 153, note 1; 1 Breese, 128; 11 John. 101; 2 J. J. Marsh. 38; 2 John. 213.

3.—In actions ex delicto, when an injury is done to the property of two or more joint owners, they must join in the action. 1 Saund. 291, g; 11 Pick. 269; 12 Pick. 120; 7 Mass. 135; 13 John. 286.

4.—When a tort is of such a nature that it may be committed by several, they may all be joined in an action ex delicto, or they may be sued severally. But when the tort cannot be committed jointly, as for example, slander, two or more persons cannot be sued jointly, although they may have uttered the same words. 6 John. 32.

JOINT CONTRACT, is one in which the contractors are jointly bound to perform the promise or obligation therein contained, or entitled to receive the benefit of such promise or obligation.

2.—It is a general rule that a joint contract survives, whatever may be the beneficial interests of the parties under it; where a partner, covenator, or other person entitled having a joint interest in a contract not running with the land dies, the right to sue survives in the other partner, &c. 1 Dall. 65, 248; Addis. on Contr. 285. And when the obligation or promise is to perform something jointly by the obligors or promissors, and one dies, the action must be brought against the survivor. Ham. on Part. 156.

3.—When all the parties interested in a joint contract die, the action must be brought by the executors or administrators of the last surviving obligee, against the executors or administrators of the last surviving obligor. Addis. on Contr. 285. See Contract; Parties to Actions.

JOINT EXECUTORS. It is proposed to consider, 1, the interest which they have in the estate of the deceased; 2, how far they are liable for each other’s acts; 3, the rights of the survivor.

2.—§ 1. Joint executors are considered in law as but one person, representing the testator, and therefore the acts of any one of them which relate either to the delivery, gift, sale, payment, possession or release of the testator’s goods, are deemed, as regards the persons with whom they contract, the acts of all. Bac. Abr. h. t.; 11 Vin. Abr. 358; Com. Dig. Adminis- tration, B 12; 1 Dane’s Abr. 583; 2 Litt. (Kentucky) R. 315; Godolph. 314; Dyer, 23, in marg.; 16 Serg. & Rawle, 337. But an executor cannot without the knowledge of his co-executor confess a judgment for a claim, part of which was barred by the act of limitations, so as to bind the estate of the testator. 6 Penna. St. Rep. 267.

3.—§ 2. As a general rule, it may be laid down that each executor is liable for his own wrong, or devastavit
only, and not for that of his colleague. He may be rendered liable, however, for the misplaced confidence which he may have reposed in his co-executor. As if he signs a receipt for money, in conjunction with another executor, and he receives no part of the money, but agrees that the other executor shall retain it, and apply it to his own use, this is his own misapplication, for which he is responsible. 1 P. Wms. 241, n. 1; 1 Sch. & Lef. 341; 2 Sch. & Lef. 231; 7 East, R. 256; 11 John, R. 16; 11 Serg. & Rawle, 71; Hardr. 314; 5 Johns. Ch. R. 283; and see 2 Bro. C. C. 116; 3 Bro. C. C. 112; 2 Penna. R. 421; Fonbl. Eq. B. 2, c. 7, s. 5, n. (k).

4.—§ 3. Upon the death of one of several joint executors, the right of administering the estate of the testator, devolves upon the survivor, 3 Atk. 509; Com. Dig. Administration, B 12; Hamm. on Parties, 148.

5.—In Pennsylvania, by legislative enactment, it is provided, that where testators may devise their estates to their executors to be sold, or direct such executors to sell and convey such estates, or direct such real estate to be sold, without naming or declaring who shall sell the same, if one or more of the executors die, it shall or may be lawful for the surviving executor to bring actions for the recovery of the possession thereof, and against trespassers thereon; to sell and convey such real estates, or manage the same for the benefit of the persons interested therein, Act of 12th of March, 1800, 3 Sm. L. 433.

JOINT STOCK BANKS, in England, are a species of quasi corporations, or companies regulated by deeds of settlement; and, in this respect, they stand in the same situation as other unincorporated bodies. But they differ from the latter in this, that they are invested by certain statutes with power and privileges usually incident to corporations. These enactments provide for the continuance of the partnership notwithstanding a change of partners. The death, bankruptcy, or the sale by a partner of his share, do not affect the identity of the partnership; it continues the same body, under the same name, by virtue of the act of parliament, notwithstanding these changes. 7 Geo. 4, c. 46, s. 9.

JOINT TENANTS, estates, are two or more persons to whom are granted lands or tenements to hold in fee simple, fee tail, for life, for years, or at will. 2 Black. Com. 179. The estate which they thus hold is called an estate in joint tenancy; Vide Estate in joint tenancy; Jus accrescendi; Survivor.

JOINT TRUSTEES, two or more persons who are entrusted with the performance of a thing.

2.—Unlike joint executors, joint trustees cannot act separately, but must join both in conveyances and receipts, for one cannot sell without the others, or receive more of the consideration-money, or be more a trustee, than his partner. The trust having been given to the whole, it requires their joint act to do any thing under it. They are not responsible for money received by their co-trustees, if the receipt be given for the mere purposes of form. But if receipts be given under circumstances purporting that the money, though not received by both, was under the control of both, such a receipt shall charge, and the consent that the other shall misapply the money, particularly where he has it in his power to secure it, renders him responsible. 11 Serg. & Rawle, 71. See 1 Sch. & Lef. 341; 5 Johns. Ch. R. 283; Fonbl. Eq. B. 2, c. 7, s. 5; Bac. Abr. Uses and Trusts, K; 2 Bro. Ch. R. 116; 3 Bro. Ch. R. 112. In the case of the Attorney-general v. Randall, a different doctrine was held. Ib. pl. 9.

JOINTRESS or JOINTURESS. A woman who has an estate settled on her by her husband, to hold during her life, if she survive him. Co. Litt. 46.

JOINTURE, estates, is a competent livelihood of freehold for the wife, of lands and tenements; to take effect in profit or possession, presently after the
death of the husband, for the life of the wife at least.

2.—Jointures are regulated by the statute of 27 Hen. 8, c. 10, commonly called the statute of uses.

3.—To make a good jointure, it must be attended with the following circumstances, namely: 1, it must take effect, in possession or profit, immediately from the death of the husband; 2, it must be for the wife’s life, or for some greater estate; 3, it must be limited to the wife herself, and not to any other person in trust for her; 4, it must be made in satisfaction for the wife’s whole dower, and not of part of it only; 5, the estate limited to the wife must be expressed or averred to be, in satisfaction of her whole dower; 6, it must be made before marriage. A jointure attended with all these circumstances is binding on the widow, and is a complete bar to the claim of dower; or rather it prevents its ever arising. But there are other modes of limiting an estate to a wife, which, Lord Coke says, are good jointures within the statute, provided the wife accepts of them after the death of the husband. She may, however, reject them, and claim her dower. Cruise, Dig. tit. 7; 2 Bl. Com. 137; Perk. h. t. In its more enlarged sense, a jointure signifies a joint estate, limited to both husband and wife. 2 Bl. Com. 137. Vide 14 Vin. Ab. 540; Bac. Ab. h. t.

JOURN. This is a French word, signifying day. It is used in our old law books, as, tout jours, for ever. It is also frequently employed in the composition of words, as, journal, a day-book; journeyman, a man who works by the day; journeys account, (q. v.)

JOURNAL, mar. law, is the book kept on board of a ship or other vessel, and which contains an account of the ship’s course, with a short history of every occurrence during the voyage. Another name for log-book, (q. v.) Chit. Law of Nat. 199.

JOURNAL, comm. law, is a book used among merchants, in which the contents of the waste-book are separa-

ted every month, and entered on the debtor and creditor side, for more convenient posting in the ledger.

JOURNAL, legislation, is an account of the proceedings of a legislative body.

2.—The constitution of the United States, art. 1, s. 5, directs that “each house shall keep a journal of its proceedings; and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy.” Vide 2 Story, Const. 301.

3.—The constitutions of the several states contain similar provisions.

4.—The journal of either house is evidence of the action of that house upon all matters before it. 7 Cowen, R. 613; Cowp. 17.

JOURNEYS ACCOUNT, Eng. practice. When a writ abated without any fault of the plaintiff, he was permitted to sue out a new writ, within as little time as he possibly could after abatement of the first writ, which was quasi a continuance of the first writ, and placed him in a situation in which he would have been, supposing he had still proceeded on that writ. This was called journeys account.

2.—This mode of proceeding has fallen into disuse, the practice now being to permit that writ to be quashed, and to sue out another. Vide Terms de la Ley, h. t.; Bac. Ab. Ab. Abatement, Q; 14 Vin. Ab. 558; 4 Com. Dig. 714; 7 Mann. & Gr. 762.

JUDGE. A public officer, lawfully appointed to decide litigated questions according to law. This, in its most extensive sense, includes all officers who are appointed to decide such questions, and not only judges properly so called, but also justices of the peace, and jurors, who are judges of the facts in issue. See 4 Dall. 229; 3 Yeates, R. 300. In a more limited sense, the term judge signifies an officer who is so named in his commission, and who presides in some court.

2.—Judges are appointed or elected, in a variety of ways, in the United States; they are appointed by the President, by and with the consent of the
senate; in some of the states they are appointed by the governor, the governor and senate, or by the legislature. In the United States, and some of the states, they hold their offices during good behaviour; in others, as in New York, during good behaviour, or until they shall attain a certain age; and in others for a limited term of years.

3.—Impartiality is the first duty of a judge; before he gives an opinion, or sits in judgment in a cause, he ought to be certain he has no bias for or against either of the parties; and if he has any (the slightest) interest in the cause, he is disqualified from sitting as judge; aliquid non debet esse iudex in propriâ causâ; 8 Co. 118; 21 Pick. Rep. 101; 5 Mass. 92; 13 Mass. 340; 6 Pick. R. 109; 14 S. & R. 157, 8; and when he is aware of such interest, he ought himself to refuse to sit on the case. It seems it is discretionary with him whether he will sit in a cause in which he has been of counsel. 2 Marsh. 517; Coxe, 164; see 2 Binn. 454; but the delicacy which characterizes the judges in this country, generally, forbids their sitting in such a cause.

4.—He must not only be impartial, but he must pay a blind obedience to the law, whether good or bad. He is bound to declare what the law is, and not to make it; he is not an arbitrator, but an interpreter of the law. It is his duty to be patient in the investigation of the case, learned in considering it, and firm in his judgment. He ought, according to Cicero, “never to lose sight that he is a man, and that he cannot exceed the power given him by his commission; that not only power, but public confidence has been given to him; that he ought always seriously to attend not to his wishes but to the requisitions of law, of justice and religion.” Cic. Pro. Cluentius.

5.—While acting within the bounds of his jurisdiction, the judge is not responsible for any error of judgment, nor mistake he may commit as a judge. Co. Litt. 294; 2 Inst. 422; 2 Dall. R. 160; 1 Yeates, R. 443; 2 N. & McC. 168; 1 Day, R. 315; 1 Root, R. 211; 3 Caines, R. 170; 5 John. R. 282; 9 John. R. 395; 11 John. R. 150; 3 Marsh. R. 76; 1 South. R. 74; 1 N. H. Rep. 374; 2 Bay, 1, 69; 8 Wend. 468; 3 Marsh. R. 76; when he acts corruptly, he may be impeached. 5 John. R. 282; 8 Cowen, R. 178; 4 Dall. R. 225.

Vide Com. Dig. Courts, B 4, C 2, E 1, F 16—Justices, I 1, 2, and 3; 14 Vin. Ab. 573; Bac. Ab. Courts, &c., B; 1 Kent, Com. 291; Ayl. Parer. 309; Story, Const. Index, h. t. See U. S. Dig. Courts, I, where will be found an abstract of various decisions relating to the appointment and powers of judges in different states. Vide Equality: Incompetency.

JUDGE ADVOCATE, is an officer who is a member of a court martial.

2.—His duties are to prosecute in the name of the United States, but he shall so far consider himself as counsel for the prisoner, after the prisoner shall have made his plea, as to object to leading questions to any of the witnesses, or any question to the prisoner, the answer to which might tend to criminate himself. He is further to swear the members of the court before they proceed upon any trial. Rules and Articles of War, art. 69, 2 Story, L. U. S. 1001. Lid. Jud. Adv. passim.

JUDGMENT, practice, is the decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted therein, for the redress of an injury.

2.—The language of judgments, therefore, is not that “it is decreed,” or “resolved,” by the court; but “it is considered,” (consideratum est per curiam) that the plaintiff recover his debt, damages, possession, and the like, or that the defendant do go quit. This implies that the judgment is not so much the decision of the court, as the sentence of the law pronounced and decreed by the court, after due deliberation and inquiry.

3.—To be valid, a judicial judgment
must be given by a competent judge or court, at a time and place appointed by law, and in the form it requires. A judgment would be null, if the judge had not jurisdiction of the matter; or, having such jurisdiction, he exercised it, when there was no court held, or out of his district; or if he rendered a judgment before the cause was prepared for a hearing.

4. — There are four kinds of judgments in civil cases, namely: 1. When the facts are admitted by the parties, but the law is disputed; as in case of judgment upon demurrer. 2. When the law is admitted, but the facts are disputed; as in case of judgment upon a verdict. 3. When both the law and the facts are admitted by confession; as in the case of cognovit actionem, on the part of the defendant; or nolle prosequi, on the part of the plaintiff. 4. By default of either party in the course of legal proceedings, as in the case of judgment by nihil dicit, or non sum informatus, when the defendant has omitted to plead or instruct his attorney to do so, after a proper notice; or in cases of judgment by non-pros, non-suít, or, as in case of non-suít, when the plaintiff omits to follow up his proceeding.

5. — These four species of judgments, again, are either interlocutory or final. Vide 3 Black. Com. 396; Bingh. on Judgm. 1. For the lien of judgments in the several states, vide Lien.

6. — A list of the various judgments is here given.

7. — Judgment in assumpsit is either in favour of the plaintiff or defendant; when in favour of the plaintiff, it is that he recover a specified sum, assessed by a jury, or on reference to the prothonotary, or other proper officer, for the damages which he has sustained, by reason of the defendant's non-performance of his promises and undertakings, and for full costs of suit. 1 Chitty's Pl. 100. When the judgment is for the defendant, it is that he recover his costs.

8. — Judgment in actions on the case for torts, when for the plaintiff, is that he recover a sum of money ascertained by a jury, for his damages occasioned by the committing of the grievances complained of, and the costs of suit. 1 Ch. Pl. 147. When for the defendant, it is for costs.

9. — Judgment of cassettur breve, or billa, is in cases of pleas in abatement where the plaintiff prays that his "writ" or "bill" "may be quashed, that he may sue or exhibit a better one." Steph. Pl. 130, 131, 128; Lawes, Civ. Pl.

10. — Judgment by confession. When instead of entering a plea, the defendant chooses to confess the action; or, after pleading, he does, at any time before trial, both confess the action and withdraw his plea or other allegations; the judgment against him, in these two cases, is called a judgment by confession or by confession relictà verificatōs. Steph. Pl. 130.

11. — Contradictory judgment. By this term is understood, in the state of Louisiana, a judgment which has been given after the parties have been heard, either in support of their claims, or in their defence. Code of Pract. art. 535; 11 L. R. 366, 569. A judgment is called contradictory to distinguish it from one which is rendered by default.

12. — Judgment on covenant; when for the plaintiff, it is that he recover an ascertained sum for his damages, which he has sustained by reason of the breach or breaches of the defendant's covenant, together with costs of suit. 1 Chitty's Plead. 116, 117. When for the defendant, the judgment is for costs.

13. — Judgment in an action of debt; when for the plaintiff, it is that he recover his debt, and, in general, nominal damages for the detention thereof; and in cases under the 8 and 9 Wm. III. c. 11, it is also awarded, that the plaintiff have execution for the damages sustained by the breach of a bond, conditioned for the performance of covenants; and that plaintiff recover full costs of suit. 1 Chitty's Pl. 108, 9.

14. — In some penal and other par-

15.—When the judgment is for the defendant, it is generally for costs. In some penal actions however, neither party can recover costs. 5 Johns. R. 251.

16.—Judgment by default, is a judgment rendered in consequence of the non-appearance of the defendant, and is either by nil dict., vide Judgment by nil dict., or by non sum informatus, vide Judgment by non sum informatus.

17.—This judgment is interlocutory in assumpsit, covenant, trespass, case, and replevin, where the sole object of the action is damages; but in debt, damages not being the principal object of the action, the plaintiff usually signs final judgment in the first instance. Vide Com. Dig. Pleader, B 11 and 12—E 42; 7 Vin. Ab. 439; Doct. Pl. 208; Grah. Pr. 631; Dane’s Ab. Index, h. t.; 3 Chit. Pr. 671 to 680; Tidd’s Pr. 563; 1 Lilly’s Reg., 585; and article Default.

18.—Judgment in action of detinue; when for the plaintiff, is in the alternative, that he recover the goods, or the value thereof, if he cannot have the goods themselves, and his damage for the detention and costs. 1 Ch. Pl. 121, 2; 1 Dall. R. 458.

19.—Judgment in error, is a judgment rendered by a court of error, on a record sent up from an inferior court. These judgments are of two kinds, of affirmance and reversal. When the judgment is for the defendant in error, whether the errors assigned be in law or in fact, it is “that the former judgment be affirmed, and stand in full force and effect, the said causes and matters assigned for error notwithstanding, and that the defendant in error recover $— for his damages, charges and costs which he hath sustained,” &c. 2 Tidd’s Pr. 1126; Arch. Forms, 221. When it is for the plaintiff in error, the judgment is that it be reversed or recalled. It is to be reversed for error in law, in this form, that it “be reversed, annulled and altogether holden for nought.” Arch. Forms, 224. For error in fact the judgment is recalled, revocatur. 2 Tidd, Pr. 1126.

20.—A final judgment is one which puts an end to the suit.

21.—When the issue is one in fact, and is tried by a jury, the jury at the time that they try the issue, assess the damages, and the judgment is final in the first instance, and is that the plaintiff do recover the damages assessed.

22.—When an interlocutory judgment has been rendered, and a writ of inquiry has issued to ascertain the damages, on the return of the inquisition the plaintiff is entitled to a final judgment, namely, that he recover the amount of damages so assessed. Steph. Pl. 127, 128.

23.—An interlocutory judgment, is one given in the course of a cause, before final judgment. When the action sounds in damages, and the issue is an issue in law, or when any issue in fact not tried by a jury is decided in favour of the plaintiff, then the judgment is that the plaintiff ought to recover his damages without specifying their amount; for, as there has been no trial by jury in the case, the amount of damages is not yet ascertained. The judgment is then said to be interlocutory.

24.—To ascertain such damages it is the practice to issue a writ of inquiry. Steph. Pl. 127; when the action is founded on a promissory note, bond, or other writing, or any other contract by which the amount due may be readily computed, the practice is, in some courts, to refer to the prothonotary or clerk to assess the damages.

25.—There is one species of interlocutory judgment which establishes nothing but the inadequacy of the defence set up: this is the judgment for the plaintiff on demurrer to a plea in abatement, by which it appears that the defendant has mistaken the law on a point which does not affect the merits
of his case; and it being but reasonable that he should offer, if he can, a further defence, that judgment is that he do answer over, in technical language, judgment of respondent ouster, (q. v.) Steph. Plead. 126; Bac. Ab. Pleas, N. 4; 2 Arch. Pr. 3.

26.—Judgment of *nil capiat per breve* or *per billam*. When an issue arises upon a declaration or peremptory plea, and it is decided in favour of the defendant, the judgment is, in general, that the plaintiff take nothing by his writ (or bill,) and that the defendant go thereof without day, &c. This is called a judgment of *nil capiat per breve*, or *per billam*. Steph. Pl. 128.

27.—Judgment by *nil dicit*, is one rendered against a defendant for want of a plea. The plaintiff obtains a rule on the defendant to plead within a time specified, of which he serves a notice on the defendant or his attorney; if the defendant neglect to enter a plea within the time specified, the plaintiff may sign judgment against him.

28.—Judgment of *nolle prosequi*, is a judgment entered against the plaintiff, where after appearance and before judgment he says, "he will not further prosecute his suit." Steph. Pl. 130; Lawes Civ. Pl. 166.

29.—Judgment of *non obstante veredicto*, is a judgment rendered in favour of the plaintiff, *without regard to the verdict* obtained by the defendant.

30.—The motion for such judgment is made where after a pleading by the defendant in confession and avoidance, as, for example, a plea in bar, and issue joined thereon, and verdict found for the defendant, the plaintiff on retrospective examination of the record, conceives that such plea was bad in substance, and might have been made the subject of demurrer on that ground. If the plea was itself substantially bad in law, of course the verdict, which merely shows it to be true in point of fact, cannot avail to entitle the defendant to judgment; while on the other hand the plea being in confession and avoidance, involves a confession of the plaintiff’s declaration, and shows that he was entitled to maintain his action. In such case, therefore, the court will give judgment for the plaintiff, *without regard to the verdict*; and this, for the reasons above explained, is called a judgment upon confession. Sometimes it may be expedient for the plaintiff to move for judgment non obstante, &c. even though the verdict be in his own favour; for if in such case as above described, he takes judgment as upon the verdict, it seems that such judgment would be erroneous, and that the only safe course is to take it as upon confession. 1 Wils. 63; Cro. Eliz. 778; 2 Roll. Ab. 99. See also Cro. Eliz. 214; 6 Mod. 10; Str. 394; 1 Ld. Raym. 641; 8 Taunt. 413; Rast. Ent. 622; 1 Wend. 307; 2 Wend. 624; 5 Wend. 513; 4 Wend. 465; 6 Cowen, R. 225. See this Dict. Repleader, for the difference between a repleader and a judgment non obstante veredicto.

31.—Judgment by *non sum in-\textit{matus}*, is one which is rendered, when instead of entering a plea, the defendant’s attorney says he is not informed of any answer to be given to the action. Steph. Pl. 130.

32.—Judgment of *non pros., (from non prosequitur)*, is one given against the plaintiff, in any class of actions, for not declaring, or replying, or surrejoining, &c., or for not entering the issue.

33.—Judgment of *non-suit, prac-\textit{tice*}, is one against the plaintiff, which happens when, on trial by jury, the plaintiff, on being called or demanded, at the instance of the defendant, to be present while the jury give their verdict, fails to make his appearance.

34.—In this case no verdict is given, but the judgment of *nonsuit* passes against the plaintiff. So if, after issue is joined, the plaintiff neglects to bring such issue on to be tried, in due time, as limited by the practice of the court, in the particular case, judgment will be also given against him for this default; and it is called judgment as in case of *nonsuit*. Steph. Pl. 131.
35.—After suffering a non-suit, the plaintiff may commence another action for the same cause for which the first had been instituted.

36.—In some cases, plaintiffs having obtained information in what manner the jury had agreed upon their verdict before it was delivered in court, have, when the jury were ready to give in such verdict against them, suffered a non-suit for the purpose of commencing another action and obtaining another trial. To prevent this abuse, the legislature of Pennsylvania have provided, by the act of the 28th of March, 1814, 6 Reed's L. 208, that “whenever on the trial of any cause, the jury shall be ready to give in their verdict, the plaintiff shall not be called, nor shall he then be permitted to suffer a non-suit.”

37.—Judgment quod computet. The name of an interlocutory judgment in an action of account render that the defendant do account, quod computet. Vide 4 Wash. C. C. R. 84; 2 Watts, R. 95; 1 Penn. R. 138.

38.—Judgment quod recuperet. When an issue in law, other than one arising on a dilatory plea, or an issue in fact, is decided in favour of the plaintiff, the judgment is that the plaintiff do recover, which is called a judgment quod recuperet. Steph. Pl. 126; Com. Dig. Abatement, I 14, I 15; 2 Arch. Pr. 3. This judgment is of two kinds, namely, interlocutory or final.

39.—Judgment in replevin, is either for the plaintiff or defendant.

40.—§ 1. For the plaintiff: 1. When the declaration is in the detruit, that is, where the plaintiff declares, that the chattels were detained until repleved by the sheriff, the judgment is that he recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, as also his costs. 5 Serg. & Rawle, 133; Ham. N. P. 488.

41.—2. If the replevin is in the detinet, that is, where the plaintiff declares that the chattels taken are yet detained, the jury must find, in addition to the above, the value of the chattels, (assuming that they are still detained), not in a gross sum, but each separate article; for the defendant, perhaps, will restore some, in which case the plaintiff is to recover the value of the remainder. Ham. N. P. 489; Fitz. N. B. 159, b; 5 Serg. & Rawle, 130.

42.—§ 2. For the defendant. 1. If the replevin is abated, the judgment is, that the writ or plaint abate, and that the defendant (having avowed) have a return of the chattels.

43.—2. When the plaintiff is non-suited, the judgment for the defendant, at common law, is, that the chattels be restored to him, and this without his first assigning the purpose for which they were taken, because, by abandoning his suit, the plaintiff admits that he had no right to dispossess the defendant by prosecuting the replevin. The form of this judgment is simply “to have a return,” without adding the words “to hold irrepleivable.” Ham. N. P. 490.

44.—As to the form of judgments in cases of non-suit, under the 21 Hen. 8, c.19, and 17 Car. 2, c. 7, see Ham. N. P. 490, 491; 2 Ch. Plead. 161; 8 Wentw. Pl. 116; 5 Serg. & Rawle, 132; 1 Saund. 195, n. 3; 2 Saund. 256, n. 5. It is still in the defendant’s option, in these cases, to take his judgment pro retourno habendo at common law. 5 Serg. & Rawle, 132; 1 Lev. 255; 3 T. R. 349.

45.—3. When the avowant succeeds upon the merits of his case, the common law judgment is, that he “have returnable irrepleivable,” for it is apparent that he is by law entitled to keep possession of the goods. 5 Serg. & Rawle, 135; Ham. N. P. 493; 1 Chit. Pl. 162. For the form of judgments in favour of the avowant, under the last mentioned statutes, see Ham. N. P. 494, d.

46.—Judgment of respondent estouer. When there is an issue in law, arising on dilatory plea, and it is decided in favour of the plaintiff, the judgment is only that the defendant answer over,
which is called a judgment of *respondeat ouster*. The pleading is accordingly resumed, and the action proceeds. Steph. Pl. 126; see Bac. Abr. Pleas, N 4; 2 Arch. Pr. 3.

47.—Judgment of *retraxit*, is one where, after appearance and before judgment, the plaintiff enters upon the record that he “withdraws his suit”; in such case judgment is given against him. Steph. Pl. 130.

48.—Judgment in an *action of trespass*, when for the plaintiff, is, that he recover the damages assessed by the jury, and the costs. For the defendant that he recover the costs.

49.—Judgment in *action of trover*, when for the plaintiff, is, that he recover damages and costs. 1 Ch. Pl. 157. For the defendant, the judgment is, that he recover his costs.

50.—Judgment of *capiat ur*, At common law, on conviction, in a civil action, of a forcible wrong, alleged to have been committed *vi et armis*, &c., the defendant was obliged to pay a fine to the king, for the breach of the peace implied in the act, and a judgment of *capiat pro fine* was rendered against him, under which he was liable to be arrested, and imprisoned till the fine was paid. But by the 5 W. & M. c. 12, the judgment of *capiat pro fine* was abolished. Gould on Pl. § 38, 82; Bac. Ab. Fines and Amerce ment, C 1. See Judgment of *misericordia*.

51.—Judgment of *misericordia*. At common law, the party to a suit who did not prevail was punished for his unjust vexation, and therefore judgment was given against him, *quod sit in misericordia pro false clamore*. Hence, when the plaintiff sued out a writ, the sheriff was obliged to take pledges of prosecution before he returned it, which, when fines and amerce ment were considerable, were real and responsible persons, and answerable for those amerce ment, but now they are never levied, and the pledges are merely formal, namely, John Doe and Richard Roe. Bac. Ab. Fines, &c., C 1.

52.—In actions where the judgment was against the defendant, it was entered, at common law, with a *misericordia* or a *capiat ur*. With a misericordia in actions on contracts, with a capiat ur in actions of trespass, or other forcible wrong, alleged to have been committed *vi et armis*. See Judgment of *capiat ur*; Gould on Pl. c. 4, §§ 38, 82, 83.

53.—Judgment *quod partitio fiat*, is a judgment, in a *writ of partition*, that partition be made; this is not a final judgment. The final judgment is, *quod partitio facta firma et stabiles in perpetuum teneantur*. Co. Litt. 169; 2 Bl. Rep. 1159.

54.—Judgment *quod partes replacien*. The name of a judgment given when the court award a repleader.

55.—When a judgment is joined on an immaterial point, or such a point on which the court cannot give a judgment determining the right, they award a repleader or judgment *quod partes replacien*. See Bac. Ab. Pleas, &c., M; 3 Hayw. 150; Peek’s R. 325.

Judgment, Arrest of, *practice*; this takes place when the court withhold judgment from the plaintiff on the ground that there is some error appearing on the face of the record, which vitiated the proceedings. In consequence of such error, on whatever part of the record it may arise, from the commencement of the suit to the time when the motion in arrest of judgment is made, the court are bound to arrest the judgment.

2.—It is, however, only with respect to objections apparent on the record, that such motions can be made. They cannot, in general, be made in respect to formal objections. This was formerly otherwise, and judgments were constantly arrested for matters of mere form. 3 Bl. Com. 407; 2 Reeves, 448; but this abuse has been long remedied by certain statutes passed at different periods, called the statutes of amendment and jeofails, by the effect of which, judgments, in the present day, cannot, in general, be arrested for any objection of form. Steph. Pl. 117;
see 3 Bl. Com. 393; 21 Vin. Ab. 457; 1 Sell. Pr. 496.

Judgment Roll, Eng. law, is a record made of the issue roll, (q. v.), which, after final judgment has been given in the cause, assumes this name. Steph. Pl. 133. Vide Issue Roll.

Judicature, is the state of those employed in the administration of justice, and in this sense it is nearly synonymous with judiciary. This term is also used to signify a tribunal; and sometimes it is employed to show the extent of jurisdiction, as, the judicature is upon writs of error, &c. Com. Dig. Parliament, L 1; and see Com. Dig. Courts, A.

Judices Pedaneos. Among the Romans, the praetors, and other great magistrates, did not themselves decide the actions which arose between private individuals; these were submitted to judges chosen by the parties, and these judges were called judices pedaneos. In choosing them, the plaintiff had the right to nominate, and the defendant to accept or reject those nominated. Heinnec. Antiq. lib. 4, tit. b. n. 40; 7 Toull. n. 353.

Judicial, belonging, or emanating from a judge, as such.

2. — Judicial sales, are such as are ordered by virtue of the process of courts. 1 Supp. to Ves. jr., 129, 160; 2 Ves. jr., 50.

3. — A judicial writ is one issued in the progress of the cause, in contradistinction to an original writ. 3 Bl. Com. 282.

4. — Judicial decisions, are the opinions or determinations of the judges in causes before them. Hale H. C. L. 65; Willes's R. 666; 3 Barn. & Ald. 122; 4 Barn. & Adol. 207; 1 H. Bl. 63; 5 M. & S. 185.

5. — Judicial power, the authority vested in the judges. The constitution of the United States declares, that “the judicial power of the United States, shall be vested in one supreme court, and in such inferior courts, as the Congress may, from time to time, ordain and establish.” Art. 3, s. 1.

6. — By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. See the names of the several states. There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions. 2 Pet. R. 413; and judicial acts have occasionally been performed by the legislatures. 2 Root. R. 350; 3 Greenl. R. 334; 3 Dall. R. 386; 2 Pet. R. 660; 16 Mass. R. 328; Walk. R. 258; 1 New H. Rep. 198; 10 Yerg. R. 59; 4 Greenl. R. 140; 2 Chip. R. 77; 1 Aik. R. 314. But a state legislature cannot annul the judgments, nor determine the jurisdiction of the courts of the United States. 5 Cranch, R. 115; 2 Dall. R. 410; nor authoritatively declare what the law is, or has been, but what it shall be. 2 Cranch, R. 272; 4 Pick. R. 23. Vide Ayl. Parerg. 27; 3 M. R. 245; 4 M. R. 451; 9 M. R. 325; 6 M. R. 668; 12 M. R. 349; 3 N. S. 551; 5 N. S. 519; 1 L. R. 438; 7 M. R. 325; 9 M. R. 204; 10 M. R. 1.

Judicial Conventions, are agreements entered into in consequence of an order of court, as, for example, entering into a bond on taking out a writ of sequestration. 6 N. S. 494.

Judicial Mortgage. In Louisiana, is the lien resulting from judgments, whether these be rendered on contested cases, or by default, whether they be final or provisional, in favour of the person obtaining them. Civ. Code of Lo. art. 3289.

Judicial sale, is a sale by authority of some competent tribunal, by an officer authorised by law for the purpose.

2. — The officer who makes the sale, conveys all the rights of the defendant, or other person against whom the process has been issued, in the property sold. Under such a sale there is no warranty, either express or implied, of the thing sold. 9 Wheat. 616. When real estate is sold by the sheriff or marshal, the sale is subject to the confirmation of the court, or it
JUDICIAL WRITS, Eng. practice. The capias and all other subsequent writs to the original writ, not issuing out of chancery, but from the court into which the original was returnable, and being grounded on what had passed in that court in consequence of the sheriff’s return, were called JUDICIAL WRITS, in contradistinction to the writs, issued out of chancery, which were called ORIGINAL WRITS. 3 BL. COM. 282.

JUDICARY. What is done while administering justice; the judges taken collectively, as, the liberties of the people are secured by a wise and independent judiciary. See Courts, and 3 STORY, CONST. B. 3, c. 38.

JUDICIUM DEI. The judgment of God. The English law formerly impiously called the judgments on trials by ordeal, by battle, and the like, the judgments of God.

JUICIO DE CONCURSO. This term is Spanish and it is used in Louisiana. It is the name of an action brought for the purpose of making a distribution of an insolvent’s estate. It differs from all other actions in this important particular, that all the parties to it, except the insolvent, are at once plaintiffs and defendants. Each creditor is plaintiff against the failing debtor, to recover the amount due by him, and against the co-creditors to diminish the amount they demand from his estate, and each is of necessity defendant, against the opposition made by the other creditors against his demand. From the peculiar situation in which the parties are thus placed, many distinct and separate suits arise, and are decided during the pendency of the main one by the insolvent in which they originate. 4 N. S. 601; 3 HARR. COND. LO. R. 409.

JUNIOR, younger.

2.—This has been held to be no part of a man’s name, but an addition by use, and a convenient distinction between a father and son of the same name. 10 Mass. R. 203; 10 Paige, 170; 1 Pick. R. 388; 7 JOHN. R. 549; 2 Caines, 164; 1 Pick. 388; 15 Pick. 7; 17 Pick. 200; 3 METC. 330.

JUNIPERUS SABINA, med. JUR. This plant is commonly called savine.

2.—It is used for lawful purposes in medicine, but too frequently for the criminal intent of producing abortion, generally endangering the life of the woman. It is usually administered in powder or oil. The dose of oil for lawful purposes for a grown person is from two to four drops. PARR’S MED. DICTIONARY, article Sabina. Foderé mentions a case where a large dose of powdered savine had been administered to an ignorant girl, in the seventh month of her pregnancy, which had no effect on the foetus. It was, however, near taking the life of the girl. Foderé, tome iv. p. 431. Given in sufficiently large doses, 4 or 6 grains in the form of powder, kills a dog in a few hours, and even its insertion in a wound has the same effect. ORFILA, Traité des Poisons, tome ii. p. 42. For a form of indictment for administering savine to a woman quick with child, see 3 CHIT. CR. LAW, 795. Vide 1 BECK’S MED. JUR., 316.

JURA PERSONARUM. The rights and duties of persons are so called.

JURA RERUM. The rights which a man may acquire in and to such external things as are unconnected with his person are called JURA RERUM. 2 BL. COM. 1.

JURAMENTUM JUDICIALE, a term in the civil law. The oath called JURAMENTUM JUDICIALE is that which the judge, of his own accord, defers to either of the parties.

2.—It is of two kinds, 1st. That which the judge defers for the decision of the cause, and which is understood by the general name JURAMENTUM JUDICIALE, and is sometimes called SUPPLETORY OATH, JURAMENTUM SUPPLETORIUM.

3.—2d. That which the judge defers in order to fix and determine the amount of the condemnation which he
ought to pronounce, and which is called
juramentum in item. Poth. on Ob-
lig. P. 4, c. 3, s. 3, art. 3.

JURAT, practice. That part of an
affidavit where the officer certifies that
the same was “sworn” before him.

2. The jurat is usually in the fol-
lowing form, namely: “Sworn and sub-
scribed before me on the — day of —,
1842, J. P. justice of the peace.”

3. In some case it has been holden
that it was essential that the officer
should sign the jurat, and that it should
contain his addition and official descrip-
tion. 3 Caines, 128; but see 6 Wend.
543; 12 Wend. 223; 2 Cowen, 552;
2 Wend. 283; 2 John. 479; Harr.
Dig. h. t.; Am. Eq. Dig. h. t.

JURATA, is a certificate placed at
the bottom of an affidavit, declaring
that the witness has been sworn or
affirmed to the truth of the facts there-
by alleged. Its usual form is “sworn
(or affirmed) before me, the — day
of —, 18—.” The Jurat, (q. v.)

JURATS, officers, in some English
 corporations, jurats are officers who
have much the same power as alder-
men in others. Stat. 1 Ed. 4; stat. 2 &
3 Ed. 6, c. 30; 13 Ed. 1, c. 26.

JURIDICAL. Signifies regular;
done in conformity to the laws of the
country, and the practice which is
there observed.

JURIDICAL days, dies judicii.—
Days in court on which the law is
administered.

JURISCONSULT, is one well
versed in jurisprudence; a jurist; one
whose profession it is to give counsel
on questions of law.

JURISDICTION, practice, is a
power constitutionally conferred upon
a judge or magistrate to take cognizance
of and decide causes according to law,
and to carry his sentence into execu-
tion; 6 Pet. 591; 9 John. 239. The
tract of land or district within which a
judge or magistrate has jurisdiction, is
called his territory, and his power in
relation to his territory is called his
territorial jurisdiction.

2. Every act of jurisdiction exer-
cised by a judge without his territory,
5.—Courts of inferior jurisdiction must act within their jurisdiction, and so it must appear upon the record. 5 Cranch, 172; Pet. C. C. R. 36; 4 Dall. 11; 2 Mass. 213; 4 Mass. 122; 8 Mass. 86; 11 Mass. 513; Pr. Dec. 380; 2 Verm. 329; 3 Verm. 114; 10 Conn. 514; 4 John. 292; 3 Yerg. 355; Walker, 75; 9 Cowen, 227; 5 Har. & John. 36; 1 Bailey, 459; 2 Bailey, 267. But the legislature may by a general or special law provide otherwise. Pet. C. C. R. 36. Vide 1 Salk. 414; Bac. Ab. Courts, &c., C. D.; Id. Prerogative, E 5; Merlin Rép. h. t.; Ayl. Par. 317, and the art. Competency. As to the force of municipal laws beyond the territorial jurisdiction of the state, see Wheat. Intern. Law, part. 2, c. 2, s. 7, et seq.; Story, Confl. of Laws, c. 2; Huber's, lib. 1, t. 3; 13 Mass. R. 4; Pard. Dr. Com. part. 6, t. 7, c. 2, s. 1; and the articles Conflict of Laws; Courts of the United States.

Jurisdiction clause. That part of a bill in chancery which is intended to give jurisdiction of the suit to the court, by a general averment that the acts complained of are contrary to equity, and tend to the injury of the plaintiff, and that he has no remedy, or not a complete remedy, without the assistance of a court of equity, is called the jurisdiction clause. Mitf. Eq. Pl. by Jeremy, 43.

2.—This clause is unnecessary, for if the court appear from the bills, to have jurisdiction, the bill will be sustained without this clause; and if the court have not jurisdiction, the bill will be dismissed though the clause may be inserted. Story, Eq. Pl. § 34.

Jurisprudence, is the science of the law. By science here is understood that connexion of truths founded on principles either evident in themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense, jurisprudence is the practical science of giving a wise interpretation to the laws, and to make a just application of them to all cases as they arise. In this sense it is the habit of judging the same question in the same manner, and by this course of judgments forming precedents. 1 Ayl. Pand. 3; Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rép. h. t.; 19 Amer. Jurist, 3.

JURIST, one well versed in the science of the law. The term is usually applied to students and practitioners of law.

JUROR, practice, from jurato, to swear; a man who is sworn or affirmed to serve on a jury.

2.—Jurors are selected from citizens, and may be compelled to serve by fine; they generally receive a compensation for their services; while attending court they are privileged from arrest in civil cases.

JURY, a body of men selected according to law, for the purpose of deciding some controversy.

2.—This mode of trial by jury was adopted soon after the conquest of England, by William, and was fully established for the trial of civil suits in the reign of Henry II. Crabb's C. L. 50, 51.

3.—Juries are either grand juries, (q. v.) or petit juries. The former having been treated of elsewhere, it will only be necessary to consider the latter. A petit jury consists of twelve citizens duly qualified to serve on juries, impanneld and sworn to try one or more issues of facts submitted to them, and to give a judgment respecting the same, which is called a verdict.

4.—Each one of the citizens so impanneld and sworn is called a juror. Vide Trial.

5.—The constitution of the United States directs, that "the trial of all crimes, except in cases of impeachment, shall be by jury;" and this invaluable institution is also secured by the several state constitutions. The constitution of the United States also provides that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. Amendm. VII.

6.—It is scarcely practicable to giv
the rules established in the different states to secure impartial juries; it may, however, be stated that in all, the selections of persons who are to serve on the jury is made by disinterested officers, and that out of the lists thus made out, the jurors are selected by lot.

JURY-BOX. A place set apart for the jury to sit in during the trial of a cause.

JUS, Law or right. This term is applied in many modern phrases. It is also used to signify equity. Story, Eq. Jur., § 1; Bract. lib. 1, c. 4, p. 3; Tayl. Civ. Law, 147; Dig. 1, 1, 1.

JUS ABUTENDI. The right to abuse. By this phrase is understood the right to abuse property, or full dominion over property. 3 Toull. n. 86.

JUS ACCRESCENDI. The right of survivorship.

2.—At common law when one of several joint tenants died, the entire tenancy or estate went to the survivor, and so on to the last survivor, who took an estate of inheritance. This right, except in estates held in trust, has been abolished by statute in Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, and Virginia. Griff. Reg. h. t.; 1 Hill. Ab. 439, 440. In Connecticut, 1 Root, Rep. 48; 1 Swift's Dig. 102; and Louisiana, this right was never recognized. See 11 Serg. & R. 192; 2 Caines, Cas, Err. 326; 3 Verm. 543; 6 Monr. R. 15; and Estate in common; Estate in joint tenancy.

JUS AD REM, property, title. This phrase is applied to designate the right a man has in relation to a thing; it is not the right in the thing itself, but only against the person who has contracted to deliver it. It is a mere imperfect or inchoate right. 2 Bl. Com. 312; Poth. Dr. de Dom. de Proprie, ch. prél. n. 1. This phrase is nearly equivalent to chose in action. 2 Wood- des. Lect. 235; see 2 P. Wms. 491; 1 Mason, 221; 1 Story, Eq. Jur. § 506; 2 Story, Eq. Jur. § 1215; Story, Ag. § 352; and Jus in re.

JUS AQUEDUCTUS, civil law. The name of a servitude which gives to the owner of land the right to bring down water through or from the land of another, either from its source or from any other place.

2.—Its privilege may be limited as to the time when it may be exercised. If the source fails, the servitude ceases, but revives when the water returns. If the water rises in, or naturally flows through the land, its proprietor cannot by any grant divert it so as to prevent it flowing to the land below. 2 Roll. Ab. 140, l. 25; Lois des Bât. part. 1, c. 3, s. 1, art. 1. But if it had been brought into his land by artificial means, it seems it would be strictly his property, and that it would be in his power to grant it. Dig. 8, 3, 1 & 10; 3 Burge on the Confl. of Laws, 417. Vide Rain water; River; Water-course.

JUS CIVILE. Among the Romans by jus civile was understood the civil law, in contradistinction to the public law, or jus gentium. 1 Savigny, Dr. Rom. c. 1, § 1.

JUS CIVITATIS. Among the Romans the collection of laws which are to be observed among all the members of a nation, were so called. It is opposed to jus gentium, which is the law which regulates the affairs of nations among themselves. 2 Lepage, El. du Dr. ch. 5, page 1.

JUS CLOACE, civil law. The name of a servitude which requires the party who is subject to it, to permit his neighbour to conduct the waters which fall on his grounds over those of the servient estate.

JUS DARE. To give or to make the law. Jus dare belongs to the legislature; jus dicere to the judge.

JUS DICERE. To tell or to declare the law. This word is used to explain the power which the court has to expound the law; and not to make it, jus dare.

JUS DELIBERANDI. The right of deliberating, which in some countries where the heir may have benefit of inventory, (q. v.) which is given to him
to consider whether he will accept or renounce the succession.

2.—In Louisiana he is allowed ten days before he is required to make his election. Civ. Code, art. 1028.

**Jus disponeendi**, the right to dispose of a thing.

**Jus duplicatum**, property, title.—When a man has the possession as well as the property of any thing, he is said to have a double right, **jus duplicatum**. Bract. 1. 4, tr. 4, c. 4; 2 Bl. Com. 199.

**Jus feciale**, was among the Romans that species of international law which had its foundation in the origin or religious belief of different nations, such as the international law which now exists among the Christian people of Europe. Sav. Dr. Rom. ch. 2, § 11.

**Jus fiduciarii**, civil law, a right to something held in trust; for this there was a remedy in conscience. 2 Bl. Com. 328.

**Jus gentium**, the law of nations, (q. v.) Although the Romans used these words in the sense we attach to law of nations, yet among them the sense was much more extended. Falck, Eneyc. Jur. 102, n. 42.

2.—Some modern writers have made a distinction between the laws of nations which have for their object the conflict between the laws of different nations, which they call **jus gentium privatum**, or private international law; and those laws of nations which regulate those matters which nations, as such, have with each other, which is denominated **jus gentium publicum**, or public international law. Fclix, Droit Interm. Privé, n. 14.

**Jus gladii**, Supreme jurisdiction. The right to absolve or condemn a man to death.

**Jus habendi**, is the right to have and enjoy a thing.

**Jus legitimum**, civil law, was a legal right which might have been enforced by due course of law. 2 Bl. Com. 328.

**Jus mariti**, Scotch law, is the right of the husband to administer, during the marriage, his wife’s goods and the rents of her heritage.

2.—In the common law, by **jus mariti** is understood the rights of the husband; as, **jus mariti** cannot attach upon a bequest to the wife, although given during coverture, until the executor has assented to the legacy. 1 Bail. Eq. R. 214.

**Jus patronatus**, Eccl. law, is a commission from the bishop, directed usually to his chancellor and others of competent learning, who are required to summon a jury composed of six clergymen and six laymen, to inquire into and examine who is the rightful patron. 3 Bl. Com. 246.

**Jus personalium**, The right of persons.

2.—A branch of the law which embraces the theory of the different classes of men who exist in a state, and which have been formed by nature or by the society; it includes particularly the theory of the ties of families, of the legal form and the juridical effects as to the relations among them. The Danes, the English, and the learned in this country, class under this head the relations which exist between men in a political point of view. Blackstone, among others, has adopted this classification. There seems a confusion of ideas when such matters are placed under this head. Vide Bl. Com. Book 1.

**Jus precatiurum**, civil law, was a right to a thing held for another, for which there was no remedy. 2 Bl. Com. 328.

**Jus postlimini**, property, title. The right to claim property after re-capture. Vide Postliminies; Marsh. Ins. 573; 1 Kent, Com. 105; Dane’s Ab. Index, h. t.

**Jus projiciendi**, civil law. The name of a servitude; it is the right which the owner of a building has of projecting a part of his building towards the adjoining house, without resting on the latter. It is extended merely over the ground. Dig. 50, 16, 242, 1; Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

**Jus protegendi**, civil law. The
name of a servitude; it is a right by which a part of the roof or tiling of one house is made to extend over the adjoining house. Dig. 50, 16, 242, 1; Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

**Jus quæsitum.** A right to ask or recover; for example, in an obligation there is a binding of the obligor, and a *jus quæsitum* in the obligee. 1 Bell’s Com. 323, 5th ed.

**Jus in re, property, title.** It is the right which a man has in a thing, by which it belongs to him. It is a complete and full right. Poth. Dr. de Dom. de Prop. n. 1.

2.—This phrase of the civil law corresponds to convey the same idea as *thing in possession*, does with us. 4 Wooddes. Lect. 235; vide 2 P. Wms. 491; 1 Mason, 221; 1 Story, Eq. Jur. § 506; 2 Story, Eq. Jur. § 1215; Story, Ag. § 352; and *Jus ad rem*.

**Jus relictæ, Scotch law, is the right of a wife, after her husband’s death, to a third of movables, if there be children; and to one-half, if there be none.**

**Jus rerum.** The right of things. This treats of the juridical relations which bear upon the objects of external nature. Its principal object is to ascertain how far a person can have a permanent dominion over a specified portion of nature, and how that dominion is acquired. Vide Bl. Com. Book 2.

**Jus strictum.** A Latin phrase which signifies that the law is to be interpreted without any modification, and in its utmost rigour.

**Jus utendi.** The right to use property, without destroying its substance. It is employed in contradistinction to the *jus abutendi.* (q.v.) 3 Toull. n. 86.

**JUST.** This epithet is applied to that which agrees with a given law which is the test of right and wrong. 1 Toull. pref. n. 5; Aust. Jur. 276, n. It is that which accords with the perfect rights of others. Wolff, Inst. § 83; Swinb. part 1, s. 2, n. 5, and part 1, § 4, n. 3.

**JUSTICE, is the constant and perpetual disposition to render every man his due. Just. Inst. B. 1, tit. 1. Toul-**

liér defines it to be the conformity of our actions and our will to the law. Dr. Civ. Fr. tit. prel. n. 5. In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtues. Yet the common distinction between them is that which considered positively and in itself, is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man’s taking such a proportion of them as he ought.

2.—Justice is either distributive or commutative. Distributive justice is that virtue whose object is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing a person or a fact with another, so that neither equal persons have unequal things, nor unequal persons things equal. Tr. of Eq. 3, and Toullier’s learned note, Dr. Civ. Fr. tit. prel. n. 7, note.

3.—Commutative justice is that virtue whose object it is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, that no one may be a gainer by another’s loss. Tr. Eq. 3.

4.—Toullier exposes the want of utility and exactness in this division of distributive and commutative justice, adopted in the compendium or abridgments of the ancient doctors, and prefers the division of internal and external justice; the first being a conformity of our will, and the latter a conformity of our actions to the law; their union makes perfect justice. Exterior justice is the object of jurisprudence; interior justice is the object of morality. Dr. Civ. Fr. tit. prel. n. 6 et 7.

5.—According to the Frederician code, part 1, book 1, tit. 2, s. 27, justice consists simply in letting every one enjoy the rights which he has acquired in virtue of the laws. And as this definition includes all the other
rules of right, there is properly but one single general rule of right, namely, 
Gave every one his own.

See generally, Puffend. Law of Nature and Nations, B. 1, c. 7, s. 89; Elementorum Jurisprudentiae universalis, lib. 1, definito, 17, 3, 1; Gro. lib. 2, c. 11, s. 3; Id. Bac. Read. Stat. Uses, 306; Treatise of Equity, B. 1, c. 1, s. 1.

JUSTICES, judges. Officers appointed by a competent authority to administer justice. They are so called because in ancient times the Latin word for judge was justitia. This term is in common parlance used to designate justices of the peace.

JUSTICES IN EYRE, were certain judges established if not first appointed, a. d. 1176, 22 Hen. 2. England was divided into certain circuits, and three justices in eyre, or justices itinerant, as they were sometimes called, were appointed to each district, and made the circuit of the kingdom once in seven years for the purpose of trying causes. They were afterwards directed by Magna Charta, c. 12, to be sent into every county once a year. The itinerant justices were sometimes mere justices of assise or dower, or of general gaol delivery, and the like. 3 Bl. Com. 58, 9; Crabb’s Eng. Law, 103. 4. Vide Eire.

JUSTICES OF THE PEACE, are public officers invested with judicial powers for the purpose of preventing breaches of the peace, and bringing to punishment those who have violated the law.

2.—These officers, under the constitution of the United States and some of the states, are appointed by the executive; in others they are elected by the people, and commissioned by the executive. In some states they hold their office during good behaviour, in others for a limited period.

3.—At common law justices of the peace have a double power in relation to the arrest of wrong-doers; when a felony or breach of the peace has been committed in their presence, they may personally arrest the offender, or command others to do so; and in order to prevent the riotous consequences of a tumultuous assembly, they may command others to arrest affrayers, when the affray has been committed in their presence. When the magistrate is not present when a crime is committed, before he can take a step to arrest the offender, an oath or affirmation must be made before him by some person cognizant of the fact, that the offence has been committed, and that the person charged is the offender, or there is probable cause to believe that he has committed the offence.

4.—The constitution of the United States directs, that “no warrants shall issue, but upon probable cause, supported by oath or affirmation.”—Amendm. IV. After his arrest, the person charged is brought before the justice of the peace, and after hearing he is discharged, held to bail to answer to the complaint, or, for want of bail, committed to prison.

5.—In some, perhaps all the United States, justices of the peace have jurisdiction in civil cases, given to them by local regulations. In Pennsylvania, their jurisdiction in cases of contracts, express or implied, extends to one hundred dollars.

Vide, generally, Burn’s Justice; Graydon’s Justice; Bache’s Manual of a Justice of the Peace; Com. Dig. h. t.; 15 Vin. Ab. 3; Bac. Ab. h. t.; 2 Sell. Pr. 70; 2 Phil. Ev. 239; Chit. Pr. h. t.; Amer. Dig. h. t.

JUSTICIAR or JUSTICIER. A judge, or justice; the same as justiciary, (q. v.)

JUSTICIARIH ITENERANTES, Eng. l. aw, were formerly justices, who were so called because they went from county to county to administer justice. They were usually called justices in eyre, to distinguish them from justices residing at Westminster, who were called justicii residentes. Co. Litt. 293. Vide Itenerant.

JUSTICIARIH RESIDENTES,—Eng. l. aw, were justices or judges, who usually resided in Westminster; they were so called to distinguish them from

JUSTICIARY, officer, another name for a judge. In Latin, he was called justiciarius, and in French, justicier. Not used. Bac. Ab. Courts and their jurisdiction, (A).

JUSTICES, Eng. law. The name of a writ which acquires its name from the mandatory words which it contains, "that you do A B justice."

2. — The county court has jurisdiction, in cases where damages are claimed, only to a certain amount; but sometimes suits are brought there when greater damages are claimed. In such cases, an original writ, by this name, issues out of chancery, in order to give the court jurisdiction. See 1 Saund. 74, n. 1.

JUSTIFIABLE HOMICIDE is that which is committed with the intention to kill, or to do a grievous bodily injury, under circumstances which the law holds sufficient to exculpate the person who commits it.

2. — It is justifiable, 1, when a judge or other magistrate acts in obedience to the law; 2, when a ministerial officer acts in obedience to a lawful warrant, issued by a competent tribunal; 3, when a subaltern officer, or a soldier, kills in obedience to the lawful commands of his superior; 4, when the party kills in lawful self-defence.

3. — § 1. A judge who, in pursuance of his duty, pronounces sentence of death, is not guilty of homicide; for it is evident, that as the law prescribes the punishment of death for certain offences, it must protect those who are entrusted with its execution. A judge, therefore, who pronounces sentence of death, in a legal manner, on a legal indictment, legally brought before him, for a capital offence committed within his jurisdiction, after a lawful trial and conviction of the defendant, is guilty of no offence.

4. — 2. Magistrates, or other officers entrusted with the preservation of the public peace, are justified in committing homicide, or giving orders which lead to it, if the excesses of a riotous assembly cannot be otherwise repressed.

5. — § 2. An officer entrusted with a legal warrant, criminal or civil, and lawfully commanded by a competent tribunal to execute it, will be justified in committing homicide, if, in the course of advancing to discharge his duty, he be brought into such perils that, without doing so, he cannot either save his life, or discharge the duty which he is commanded by the warrant to perform. And when the warrant commands him to put a criminal to death, he is justified in obeying it.

6. — § 3. A soldier on duty is justified in committing homicide, in obedience to the command of his officer, unless the command was something plainly unlawful.

7. — § 4. A private individual will, in many cases, be justified in committing homicide, while acting in self-defence. See Self-defence.

Vide, generally, 1 East, P. C. 219; Hawk. B. 1, c. 28, s. 1, n. 22; Allis. Prin. 126—139; 1 Russ. on Cr. 538; Bac. Ab. Murder, &c., (E); 2 Wash. C. C. 515; 4 Mass. 391; 1 Hawkes, 210; 1 Coke's R. 424; 5 Yerg. 459; 9 C. & P. 22; S. C. 38 Eng. C. L. R. 20.

JUSTIFICATION, is the act by which a party accused shows and maintains a good and legal reason in court, why he did the thing he is called upon to answer.

2. — The subject will be considered by examining, 1, what acts are justifiable; 2, the manner of making the justification; 3, its effects.

3. — § 1. The acts to be justified are those committed with a warrant, and those committed without a warrant. 1. It is a general rule, that a warrant or execution, issued by a court having jurisdiction, whether the same be right or wrong, justifies the officer to whom it is directed, and who is by law required to execute it, and is a complete justification to the officer for obeying its command. But when the warrant is not merely voidable, but it is absolutely void, as, for want of jurisdiction in the
court which issued it, or by reason of the privilege of the defendant, as in the case of the arrest of an ambassador, who cannot waive his privilege and immunities by submitting to be arrested under such warrant, the officer is no longer justified. 1 Baldw. 240; see 4 Mass. 232; 13 Mass. 286, 334; 14 Mass. 210. 2. A person may justify many acts, while acting without any authority from a court or magistrate. He may justifiably, even, take the life of an aggressor, while acting in the defence of himself, his wife, children, and servants, or for the protection of his house, when attacked with a felonious intent, or even for the protection of his personal property. See Self-defence. A man may justify what would, otherwise, have been a trespass, an entry on the land of another for various purposes; as, for example, to demand a debt due to him by the owner of the land; to remove chattels which belong to him, but this entry must be peaceable; to exercise an incorporeal right; ask for lodgings at an inn. See 15 East, 615, note (c); 2 Litt. Ab. 134; 15 Vin. Ab. 31; Ham. N. P. 48 to 66; Dane’s Ab. Index, h. t.; Entry. In a civil action, a man may justify a libel, or slanderous words, by proving their truth, or because the defendant had a right, upon the particular occasion, either to write and publish the writing, or to utter the words; as, when slanderous words are found in a report of a committee of Congress, or in an indictment, or words of a slanderous nature are uttered in the course of debate in the legislature, by a member, or at the bar, by counsel, when properly instructed by his client on the subject. See Debate; Slander; Com. Dig. Pleader, 2 L 3 to 2 L 7.

4.—§ 2. In general, justification must be specially pleaded, and it cannot be given in evidence under the plea of the general issue.

5.—§ 3. When the plea of justification is supported by the evidence, it is a complete bar to the action. Vide Excuse.

JUSTIFICATORS. A kind of compurgators, or those who, by oath, justified the innocence or oaths of others, as in the case of wagers of law.

JUSTIFYING BAIL, practice, is the production of bail in court, who there justify themselves against the exception of the plaintiff.

K.

KENTUCKY. The name of one of the new states of the United States of America.

2.—This state was formerly a part of Virginia, and the latter state, by an act of the legislature, passed the 15th day of December, 1789, “consented that the district of Kentucky, within the jurisdiction of the said commonwealth, and according to its actual boundaries at the time of passing the act aforesaid, should be formed into a new state.” By the act of Congress of February 4, 1791, 1 Story’s L. U. S. 168, Congress consented that, after the first day of June, 1792, the district of Kentucky should be formed into a new state, separate from and independent of the commonwealth of Virginia. And by the second section it is enacted, that upon the aforesaid first day of June, 1792, the said new state, by the name and style of the State of Kentucky, shall be received and admitted into the Union, as a new and entire member of the United States of America.

3.—The constitution of this state was adopted the 17th day of August, 1799. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative to one; those which are executive, to another;
and those which are judiciary, to another.

4.—1st. The legislative power is vested in two distinct branches; the one styled the house of representatives, and the other the senate; and both together, the general assembly of the commonwealth of Kentucky. 1. The house of representatives is elected yearly, and consists of not less than fifty-eight nor more than one hundred members. 2. The members of the senate are elected for four years. The senate consists of twenty-four members, at least, and for every three members, above fifty-eight, which shall be added to the house of representatives, one member shall be added to the senate.

5.—2. The executive power is vested in a chief magistrate, who is styled the governor of the commonwealth of Kentucky. The governor is elected for four years. He is commander-in-chief of the army and navy of the commonwealth, except when called into actual service of the United States. He nominates, and, with the consent of the senate, appoints all officers, except those whose appointment is otherwise provided for. He is invested with the pardoning power, except in certain cases, as impeachment and treason. A lieutenant-governor is chosen at every election for governor, in the same manner, and to continue in office for the same time as the governor. He is, ex officio, speaker of the senate, and acts as governor when the latter is impeached, or removed from office, or dead, or refuses to qualify, resigns, or is absent from the state.

6.—3d. The judicial power, both as to matters of law and equity, is vested in one supreme court, styled the court of appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish. The judges hold their office during good behaviour.

KEY. An instrument made for shutting and opening a lock.

2.—The keys of a house are considered as real estate, and descend to the heir with the inheritance.—But see 5 Blackf. 417.

3.—When the keys of a warehouse are delivered to a purchaser of goods locked up there, with a view of effecting a delivery of such goods, the delivery is complete. The doctrine of the civil law is the same. Dig. lib. 41, t. 1, l. 9, § 6; and lib. 18, t. 1, l. 74.

KEY, estates. A wharf at which to land or load goods from or in a vessel. This word is now generally spelled Quay, from the French, quai.

KEYAGE, a toll, paid for loading and unloading merchandize at a key or wharf.

KEELAGE, the right of demanding money for the bottom of ships resting in a port or harbour. The money so paid is also called keadage.

KEELS. This word is applied, in England, to vessels employed in the carriage of coals. Jacob, L. D.

KIDNAPPING. The forcible and unlawful abduction and conveying away of a man, woman, or child, from his or her home, without his or her will or consent, and sending such person away, with an intent to deprive him or her of some right. This is an offence at common law.

KILDERKIN. A measure of capacity equal to eighteen gallons. See Measure.

KINDRED, relations by blood.

2.—Nature has divided kindred of every one into three principal classes. 1. His children and their descendants; 2, his father, mother, and other ascendants; 3, his collateral relations, which include, in the first place, his brothers and sisters, and their descendants; and, secondly, his uncles, cousins, and other relations of either sex, who have not descended from a brother or sister of the deceased. All kindred then are descendants, ascendants or collaterals. A husband or wife of the deceased, therefore, is not his or her kindred. 14 Ves. 372; vide Wood's Inst. 50; Ayl. Parerg. 325; Dane's Ab. h. 1.; Tolli. Ex. 382; 3; 2 Chit. Bl. Com. 516, n. 59; Poth. Des Successions, ch. 1, art. 3.
KING. The chief magistrate of a kingdom, vested usually with the executive power.

2.—The following table of the reigns of English and British kings and queens, commencing with the Reports, is added to assist the student in many points of chronology.

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<td>William IV</td>
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Vide article Reports.

KING'S BENCH. The name of the supreme court of law in England. It is so called because formerly the king used to sit there in person, the style of the court being still coram ipso rege, before the king himself. During the reign of a queen, it is called the Queen's Bench, and during the protectorate of Cromwell, it was called the Upper Bench. It consists of a chief justice, and three other judges, who are, by their office, the principal corners and conservators of the peace. 3 Bl. Com. 41.

2.—This court has jurisdiction in criminal matters, in civil causes, and is a supervisory tribunal to keep other jurisdictions within their proper bounds.

3.—1. Its criminal jurisdiction extends over all offenders, and not only over all capital offences, but also over all other misdemeanors of a public nature; it being considered the custos morum of the realm. Its jurisdiction is so universal that an act of parliament appointing that all crimes of a certain denomination shall be tried before certain judges, does not exclude the jurisdiction of this court, without negative words. It may also proceed on indictments removed into that court out of the inferior courts by certiorari.

4.—2. Its civil jurisdiction against the officers or ministers of the court entitled to its privilege, 2 Inst. 23; 4 Inst. 71; 2 Bulstr. 123; and against prisoners for trespasses. In these last cases a declaration may be filed against them in debt, covenant or account; and this is done also upon the notion of a privilege, because the common pleas could not obtain or procure the prisoners of the king's bench to appear in their court.

5.—3. Its supervisory powers extend, 1, to issuing writs of error to inferior jurisdiction, and affirming or reversing their judgments; 2, to issuing writs of mandamus to compel inferior officers and courts to perform the duties required of them by law. Bac. Ab. Court of King's Bench.

KINGDOM. Is a country where an officer called a king exercises the powers of government, whether the same be absolute or limited. Wolff, Inst. Nat. § 994. In some kingdoms the executive officer may be a woman, who is called a queen.

KINTLIDGE, merc. law. This term is used by merchants and seafaring men to signify a ship's ballast. Merc. Dict.

KIRBY'S QUEST. An ancient record remaining with the remembrance of the English Exchequer, so called from being the inquest of John De Kirby, treasurer to Edward I.

KNAVE. A false, dishonest, or
deceitful person. This signification of
the word has arisen by a long pervers-
on of its original meaning.

2.—To call a man a knave has been
held to be actionable. 1 Rolle's Ab.
52; 1 Freem. 277.

KNIGHT'S FEE, old Eng. law,
is an uncertain measure of land, but,
according to some opinions is said to
contain six hundred and eighty acres.
Co. Litt. 69, a.

KNIGHT'S SERVICE, Eng. law,
was a tenure of lands. Those who
held by knight's service were called
"milites qui per loricas terras suos
defendant;" soldiers who defend the
country by their armour. The inci-
dents of knight's service were homage,
fealty, warranty, wardship, marriage,
reliefs, heriots, aids, escheats, and for-
feiture. Vide Socage.

KNOWINGLY, pleadings. The
word "knowingly," or "well know-
ing," will supply the place of a posi-
tive averment in an indictment or de-
claration, that the defendant knew the
facts subsequently stated; if notice or
knowledge be unnecessarily stated, the
allegation may be rejected as surplus-
age. Vide Com. Dig. Indictment, G
6; 2 Stra. 904; 2 East, 452; 1 Chit.

KNOWLEDGE. Information as to
a fact.

2.—Many acts are perfectly inno-
cent when the party performing them
is not aware of certain circumstances
attending them; for example, a man
may pass a counterfeit note, and be
guiltless if he did not know it was so;
he may receive stolen goods if he was
not aware of the fact that they were
stolen. In these and the like cases it
is the guilty knowledge which makes
the crime. See as to the manner of
proving guilty knowledge, Archib, Cr.
Pl. 110, 111. Vide Animal; Dog;
Evidence; Ignorance; Scienter.

END OF VOLUME I.