A LAW DICTIONARY,

ADAPTED TO THE

CONSTITUTION AND LAWS

OF THE

UNITED STATES OF AMERICA,

AND OF THE

SEVERAL STATES OF THE AMERICAN UNION;

WITH

REFERENCES TO THE CIVIL AND OTHER SYSTEMS OF FOREIGN LAW.

BY JOHN BOUVIER.

THIRD EDITION, MUCH IMPROVED AND ENLARGED.

VOL. II.

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

BY JOHN BOUVIER,

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

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

BY JOHN BOUVIER,

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

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

BY JOHN BOUVIER,

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

KING AND BAIRD, Printers, 9 George Street.
LABEL. A narrow slip of paper or parchment, affixed to a deed or writing hanging at or out of the same. This name is also given to an appending seal.

LABOUR, continued operation; work.

2.—The labour and skill of one man is frequently used in a partnership, and valued as equal to the capital of another.

3.—When business has been done for another, and suit is brought to recover a just reward, there is generally contained in the declaration, a count for work and labour.

4.—Where penitentiaries exist, persons who have committed crimes are condemned to be imprisoned therein at labour.

LACHES. This word, derived from the French lacher, is nearly synonymous with negligence.

2. In general, when a party has been guilty of laches in enforcing his right by great delay and lapse of time, this circumstance will at common law prejudice, and sometimes operate in bar of a remedy which it is discretionary and not compulsory in the court to afford. In courts of equity also delay will generally prejudice; 1 Chit. Pr. 786, and the cases there cited; 8 Com. Dig. 684; 6 Johns. Ch. R. 360.

3.—But laches may be excused from ignorance of the party’s rights. 2. Mer. R. 362; 2 Ball & Beat. 104; from the obscurity of the transaction, 2 Sch. & Lef. 487; by the pendency of a suit, 1 Sch. & Lef. 413; and where the party labours under a legal disability, as insanity, coverture, infancy, and the like. And no laches can be imputed to the public. 4 Mass. Rep. 522; 3 Serg. & Rawle, 291; 4 Henn. & Munf. 57; 1 Penna. R. 476. Vide 1 Supp. to Ves. Jr. 436; 2 Ib. 170; Dane’s Ab. Index, h. t.

LADY’S FRIEND. The name of a functionary in the British house of commons. When the husband sues for a divorce, or asks the passage of an act to divorce him from his wife, he is required to make a provision for her before the passage of the act; it is the duty of the lady’s friend to see that such provision is made. Macq. on H. & W. 213.

LAGA. The law; Magna Carta; hence Saxon-lage, Mercien-lage, Dane-lage, &c.

LAGAN. Goods cast into the sea tied to a buoy are so called. The same as Ligan. (q. v.)

LAIRESITE. The name of a fine imposed upon those who committed adultery or fornication. Tech. Diet. h. t.

LAITY. Those persons who do not make a part of the clergy. In the United States the division of the people between clergy and laity is not authorized by law, but is merely conventional.

LAMB. A ram, sheep or ewe under the age of one year. 4 Car. & P. 216; S. C. 19 Eng. Com. Law Rep. 351.

LAND. This term comprehends any ground, soil or earth whatsoever, as
meadows, pastures, woods, waters, marshes, furnace and heath. It has an indefinite extent upwards as well as downwards; therefore land, legally includes all houses and other buildings standing or built on it; and downwards, whatever is in a direct line between the surface and the centre of the earth, such as mines of metals and fossils. 1 Inst. 4 a; Wood's Inst. 120; 2 Bl. Com. 18; 1 Cruise on Real Prop. 58. In a more confined sense, the word land is said to denote "frank tenement at the least." Shepp. Touch. 92. In this sense, then, leaseholds cannot be said to be included under the word lands. 3 Madd. Rep. 553. The technical sense of the word land is further explained by Sheppard, in his Touch. p. 88, thus: "if one be seised of some lands in fee, and possessed of other lands for years, all in one parish, and he grant all his lands in that parish (without naming them) in fee simple or for life; by this grant shall pass no more but the lands he hath in fee simple." It is also said that land in its legal acceptation means arable land. 11 Co. 55 a. See also Cro. Car. 293; 2 P. Wms. 458, n.; 5 Ves. 476; 20 Vin. Ab. 203.

2.—Land, as above observed, includes in general all the buildings erected upon it: 9 Day, R. 374; but to this general rule, there are some exceptions. It is true, that if a stranger voluntarily erect buildings on another's land, they will belong to the owner of the land, and will become a part of it. 16 Mass. R. 449; yet cases are not wanting where it has been decided that such an erection, under peculiar circumstances, would be considered as personal property. 4 Mass. R. 514; 8 Pick. R. 283, 402; 5 Pick. R. 487; 6 N. H. Rep. 555; 2 Fairf. R. 371; 1 Dana, R. 591; 1 Burr. 144.

LAND MARK, is a monument set up in order to ascertain the boundaries between two contiguous estates. For removing a land mark an action lies. 1 Tho. Co. Litt. 787. Vide Monuments.

LAND TENANT. He who actually possesses the land. He is technically called the terre-tenant. (q. v.)

LANDLORD, he who rents or leases real estate to another.

2.—He is bound to perform certain duties and is entitled to rights, as such, which will be here briefly considered.—

1. His obligations are, 1, to perform all the express covenants into which he has entered in making the lease;—2, to secure to the tenant the quiet enjoyment of the premises leased; but a tenant for years has no remedy against his landlord if he be ousted by one who has no title, in that case the law leaves him to his remedy against the wrong-doer. Y. B. 22 H. VI. 52 b, and 32 H. VI. 32 b; Cro. Eliz. 214; 2 Leon. 104; and see Bac. Ab. Covenant, B. But the implied covenant for quiet enjoyment may be qualified, and enlarged or narrowed according to the particular agreement of the parties; and a general covenant for quiet enjoyment does not extend to wrongful evictions or disturbances by a stranger. Y. B. 26 H. VIII. 3 b.—

3. The landlord is bound by his express covenant to repair the premises, but unless he bind himself by express covenant the tenant cannot compel him to repair. 1 Saund. 320; 1 Vent. 26, 44; 1 Sed. 429; 2 Keb. 503; 1 T. R. 312; 1 Sim. R. 146.

3.—2. His rights are, 1, to receive the rent agreed upon, and to enforce all the express covenants into which the tenant may have entered.—2. To require the lessee to treat the premises demised in such manner that no injury be done to the inheritance, and prevent waste.—

3. To have the possession of the premises after the expiration of the lease. Vide, generally, Com. L. & T., B. 3, c. 1; Woodf. L. & T. ch. 10; 2 Bl. Com. by Chitty, 275, note; 1 Supp. to Ves. Jr. 212, 246, 249; 2 Ib. 232, 403; Com. Dig. Estate by Grant, G 1; 5 Com. Dig. tit. Nisi Prius Dig. page 553; 8 Com. Dig. 694; Whart. Dig. Landlord & Tenant. As to frauds between landlord and tenant, see Hov. Fr. c. 6, p. 199 to 225.

LANGUAGE. The faculty which men possess of communicating their perceptions and ideas to one another by means of articulate sounds. This is the definition of spoken language; but ideas and perceptions may be communicated without sound by writing, and this is
called written language. By conventional usage certain sounds have a definite meaning in one country or in certain countries, and this is called the language of such country or countries, as the Greek, the Latin, the French or the English language. The law, too, has a peculiar language. Vide Eunom. Dial. 2; Technical.

2.—On the subjugation of England by William the Conqueror, the French-Norman language was substituted in all law proceedings for the ancient Saxon. This, according to Blackstone, (vol. iii. p. 317,) was the language of the records, writs and pleadings, until the time of Edward III. Mr. Stephen thinks Blackstone has fallen into an error, and says the record was, from the earliest period to which that document can be traced, in the Latin language. Plead. Appx. note 14. By the statute 36 Ed. 3, st. 1, c. 15, it was enacted that for the future all pleas should be pleaded, shown, defended, answered, debated and judged in the English tongue; but be entered and enrolled in Latin. The Norman or law-French, however, being more familiar as applied to the law, than any other language, the lawyers continued to employ it in making their notes of the trial of cases, which they afterwards published in that barbarous dialect, under the name of Reports. After the enactment of this statute, on the introduction of paper pleadings, they followed in the language, as well as in other respects, the style of the records, which were drawn up in Latin. This technical language continued in use till the time of Cromwell, when by a statute the records were directed to be in English; but this act was repealed at the restoration by Charles II., the lawyers finding it difficult to express themselves as well and as concisely in the vernacular as in the Latin tongue; and the language of the law continued as before till about the year 1730, when the statute of 4 Geo. II., c. 26, was passed. It provided that both the pleadings and the records should thenceforward be framed in English. The ancient terms and expressions which had been so long known in French and Latin were now literally translated into English. The translation of such terms and phrases were found to be exceedingly ridiculous. Such terms as nisi prius, habeas corpus, fieri facias, mandamus, and the like, are not capable of an English dress with any degree of seriousness. They are equally absurd in the manner they are employed in Latin, but use and the fact that they are in a foreign language has made the absurdity less apparent.

3.—By statute of 6 Geo. II., c. 14, passed two years after the last mentioned statute, the use of technical words was allowed to continue in the usual language, which defeated almost every beneficial purpose of the former statute. In changing from one language to another many words and technical expressions were retained in the new which belonged to the more ancient language, and not seldom they partook of both; this, to the unlearned student, has given an air of confusion, and disfigured the language of the law. It has rendered essential also the study of the Latin and French languages. This perhaps is not to be regretted, as they are the keys which open to the ardent student vast stores of knowledge. In the United States, the records, pleadings, and all law proceedings are in the English language, except certain technical terms which retain their ancient French and Latin dresses.

4.—Agreements, contracts, wills and other instruments, may be made in any language, and will be enforced. Bac. Ab. Wills, D 1. And a slander spoken in a foreign language, if understood by those present, or a libel published in such language, will be punished as if spoken or written in the English language. Bac. Ab. Slander, D 3; 1 Roll. Ab. 74; 6 T. R. 163. For the construction of language, see articles Construction; Interpretation; and Jacob's Intr. to the Com. Law, Max. 46.

5.—Among diplomats, the French language is the one commonly used. At an early period the Latin was the diplomatic language in use in Europe. Towards the end of the fifteenth century that of Spain gained the ascendency, in consequence of the great influence which
that country then exercised in Europe. The French, since the age of Louis XIV., has become the almost universal diplomatic idiom of the civilized world, though some states use their national language in treaties and diplomatic correspondence. It is usual in these cases to annex to the papers transmitted, a translation, in the language of the opposite party, wherever it is understood this comity will be reciprocated. This is the usage of the Germanic confederation, of Spain, and of the Italian courts. When nations using a common language, as the United States and Great Britain, treat with each other, such language is used in their diplomatic intercourse.


LARGUS. manner of a return made by the sheriff, when a defendant whom he has taken by virtue of process is so dangerously sick that to remove him would endanger his life or health. In that case the officer may and ought unquestionably to abstain from removing him, and may permit him to remain even in his own house, in the custody of a follower, though not named in the warrant, he keeping the key of the house in his possession; the officer ought to remove him as soon as sufficiently recovered. If there be a doubt as to the state of health of the defendant, the officer should require the attendance and advice of some respectable medical man, and require him, at the peril of the consequences of misrepresentation, to certify in writing whether it be fit to remove the party, or take him to prison within the county; 3 Chit. Pr. 358. For a form of the return of longurus, see 3 Chit. P. 249; T. Chit. Forms, 53.

LAPSE, eccles. law, is the transfer, by forfeiture, of a right or power to present or collate to a vacant benefice, from a person vested with such right, to another, in consequence of some act of negligence of the former. Ayl. Pareng. 331.

LAPSED LEGACY is one which is extinguished. The extinguishment may take place for various reasons. See Legacy, Lapsed.

LARCENY, crim. law. The wrongful and fraudulent taking and carrying away, by one person, of the mere personal goods of another, from any place, with a felonious intent to convert them to his, the taker’s use, and make them his property, without the consent of the owner; 4 Wash. C. C. R. 700.

2.—To constitute larceny, several ingredients are necessary. 1. The intent of the party must be felonious; he must intend to appropriate the property of another to his own use; if, therefore, the accused have taken the goods under a claim of right, however unfounded, he has not committed a larceny.

3.—2. There must be a taking from the possession, actual or implied, of the owner; hence if a man should find goods, and appropriate them to his own use, he is not a thief on this account; Mart. and Yerg. 226; 14 John. 294; Breese, 227.

4.—3. There must be a taking against the will of the owner, and this may be in some case, where he appears to consent; for example, if a man suspects another of an intent to steal his property, and in order to try him leaves it in his way, which he takes, he is guilty of larceny. The taking must be in the county where the criminal is to be tried. 9 C. & P. 29; S. C. 38 E. L. R. 28; Ry. & Mod. 349. But when the taking has been in the country or state, and the thief is caught with the stolen property in another county than that where the theft was committed, he may be tried in the county where arrested with the goods, as by construction of law, there is a fresh taking in every county in which the thief carries the stolen property.

5.—4. There must be an actual carrying away, but the slightest removal, if the goods are completely in the power of the thief, is sufficient. To snatch a diamond from a lady’s ear, which is instantly dropped among the curls of her hair, is a sufficient asportation or carrying away.

6.—5. The property taken must be personal property; a man cannot commit larceny of real estate, or of what is so considered in law. A familiar example will illustrate this; an apple while
hanging on the tree where it grew, is real estate, having never been separated from the freehold; it is not larceny, therefore, at common law, to pluck an apple from the tree, and appropriate it to one's own use, but a mere trespass; if that same apple, however, had been separated from the tree by the owner or otherwise, even by accident, as if shaken by the wind, and while lying on the ground it should be taken with a felonious intent, the taker would commit a larceny, because then it was personal property. In some states there are statutory provisions to punish the felonious taking of emblems or fruits of plants, while the same are hanging by the roots, and there the felony is complete, although the thing stolen is not, at common law, strictly personal property. Animals fera nature, while in the enjoyment of their natural liberty, are not the subjects of larceny; as, doves, 9 Pick. 15; bees, 3 Binn. 546. See Bac. 5 N. H. Rep. 203. And, at common law, choses in action are not subjects of larceny. 1 Port. 33.

7.—Larceny is divided in some states, into grand and petit larceny; this depends upon the value of the property stolen. Vide 1 Hawk, 141 to 250, ch. 19; 4 Bl. Com. 229 to 250; Com. Dig. Justices, O 4, 5, 6, 7, 8; 2 East's P. C. 524 to 791; Burn's Justice, Larceny; Williams's Justice, Felony; 3 Chitty's Cr. Law, 917 to 992; and articles Carrying Away; Invito Domino; Robbery; Taking.

LASCIVIOUS CARRIAGE, in Connecticut, is an offence, ill defined, created by statute, which enacts that every person who shall be guilty of lascivious carriage and behaviour, and shall be thereof duly convicted, shall be punished by fine not exceeding ten dollars, or by imprisonment in a common gaol, not exceeding two months, or by fine and imprisonment or both, at the discretion of the court. This law was passed at a very early period. Though indefinite in its terms, it has received a construction so limiting it, that it may be said to punish those wanton acts between persons of different sexes, who are not married to each other, that flow from the exercise of lustful passions, and which are not otherwise punished as crimes against chastity and public decency. 2 Swift's Dig. 343; 2 Swift's Syst. 331.

2.—Lascivious carriage may consist not only in mutual acts of wanton and indecent familiarity between persons of different sexes, but in wanton and indecent actions against the will, and without the consent of one of them, as if a man should forcibly attempt to pull up the clothes of a woman. 5 Day, 81.

LAST SICKNESS, is that of which a person died.

2.—The expenses of this sickness are generally entitled to a preference, in payment of debts of an insolvent estate. Civ. Code of Lo. art. 3166; Purd. Ab. 393.

3.—To prevent impositions, the statute of frauds requires that nuncupative wills shall be made during the testator's last sickness. Rob. on Frauds, 556; 20 John. R. 502.

LATENT, construction. That which is concealed: or which does not appear; for example, if a testator bequeaths to his cousin Peter his white horse; and at the time of making his will and at his death he had two cousins named Peter, and he owned two white horses, the ambiguity in this case would be latent, both as respects the legatee, and the thing bequeathed. Vide Bac. Max. Reg. 23, and article Ambiguity. A latent ambiguity can only be made to appear by parol evidence, and may be explained by the same kind of proof. 5 Co. 69.

LATITAT, he lies hid. In the English law this is the name of a writ calling a defendant to answer to a personal action in the king's bench; it derives its name from a supposition that the defendant lurks and lies hid, and cannot be found in the county of Middlesex, (in which the said court is holden,) to be taken there, but is gone into some other county, and therefore requiring the sheriff to apprehend him in such other county. Fitz. N. B. 78.

LAUNCHES. Small vessels employed to carry the cargo of a large one to and from the shore; lighters, (q. v.)

2.—The goods on board of a launch are at the risk of the insurers till landed.
5 N. S. 387. The duties and rights of the master of a launch are the same as those of the master of a lighter.

LAW, in its most general and comprehensive sense, signifies a rule of action; and this term is applied indiscriminately to all kinds of action; whether animate or inanimate, rational or irrational. 1 Bl. Com. 38. In its more confined sense, law denotes the rule, not of actions in general, but of human action or conduct. In the civil code of Louisiana, art. 1, it is defined to be “a solemn expression of the legislative will.” Vide Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 4.

2.—Law is generally divided into four principal classes, namely: Natural law, the law of nations, public law, and private or civil law. When considered in relation to its origin, it is statute law or common law. When examined as to its different systems, it is divided into civil law, common law, canon law. When applied to objects, it is civil, criminal, or penal. It is also divided into natural law and positive law. Into written law, lex scripta; and unwritten law, lex non scripta. Into law merchant, martial law, municipal law, and foreign law. When considered as to their duration, laws are immutable and arbitrary or positive; when as to their effect they are prospective and retrospective. These will be separately considered.

LAW, ARBITRARY. An arbitrary law is one made by the legislator simply because he wills it, and is not founded in the nature of things; such law, for example, as the tariff law, which may be high or low. This term is used in opposition to immutable.

LAW, CANON. The canon law is a body of Roman ecclesiastical law, relative to such matters as that church either has or pretends to have the proper jurisdiction over.

2.—This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the holy see. All which lay in the same confusion and disorder as the Roman civil law, till about the year 1151, when one Gratian, an Italian monk, animated by the discovery of Justinian’s Pandects, reduced the ecclesiastical constitutions also into some method, in three books, which he entitled Concordia discordantium canonum, but which are generally known by the name of Decretum Gratiani. These reached as low as the time of Pope Alexander III. The subsequent papal decrees to the pontificate of Gregory IX., were published in much the same method, under the auspices of that pope, about the year 1230, in five books entitled Decretalia Gregorii noni. A sixth book was added by Boniface VIII., about the year 1298, which is called Sextus decretalium. The Clementine constitutions or decrees of Clement V., were in like manner authenticated in 1317, by his successor, John XXII., who also published twenty constitutions of his own, called the Extravagantes Joannis, all of which in some manner answer to the novels of the civil law. To these have since been added some decrees of the later popes, in five books, called Extravagantes communes. And all these together, Gratian’s Decrees, Gregory’s Decretals, the Sixth Decretals, the Clementine Constitutions, and the Extravagants of John and his successors, form the Corpus juris canonici, or body of the Roman canon law. 1 Bl. Com. 82; Encyclopédie, Droit Canonique, Droit Public Ecclesiastique; Dict. de Jurispr. Droit Canonique; Ersk. Pr. L. Scotl. B. 1, t. 1, s. 10. See in general, Ayl. Par. Jur. Can. Ang.; Shelf. on M. & D. 19; Preface to Burn’s Eccel. Law, by Thyrwhitt, 22; Hale’s Hist. C. L. 20–29; Bell’s case of a Putative Marriage, 203; Dict. du Droit Canonique; Stair’s Inst. b. 1, t. 1, 7.

LAW, CIVIL. The term civil law is generally applied by way of eminence to the civil or municipal law of the Roman empire, without distinction as to the time when the principles of such law were established or modified. In another sense, the civil law is that collection of laws comprised in the institutes, the Code, and the Digest of the Emperor Justinian, and the novel constitutions of himself and some of his successors. Ersk. Pr. L. Scotl. B. 1, t. 1, s. 9; 5 L. R. 494.

2.—The Institutes contain the ele-
ments or first principles of the Roman law, in four books. The Digests or Pandects are in fifty books, and contain the opinions and writings of eminent lawyers digested in a systematical method, whose works comprised more than two thousand volumes. The new code, or collection of imperial constitutions, in twelve books; which was a substitute of the code of Theodosius. The novels or new constitutions, posterior in time to the other books, and amounting to a supplement to the code, containing new decrees of successive emperors as new questions happened to arise. These form the body of the Roman law, or corpus juris civilis, as published about the time of Justinian.

3.—Although successful in the west, these laws were not, even in the life-time of the emperor universally received; and after the Lombard invasion they became so totally neglected, that both the Code and Pandects were lost till the twelfth century, A.D. 1130; when it is said the Pandects were accidentally recovered at Amelphi, and the Code at Ravenna. But, as if fortune would make an atonement for her former severity, they have since been the study of the wisest men, and revered as law, by the politer nations.

4.—By the term civil law is also understood the particular law of each people, opposed to natural law, or the law of nations, which are common to all.

Just. Inst. l. 1, t. 1, § 1, 2; Ersk. Pr. L. Scot. B. 1, t. 1, s. 4. In this sense it is used by Judge Swift. See below.

5.—Civil law is also sometimes understood as that which has emanated from the secular power opposed to the ecclesiastical or military.

6.—Sometimes by the term civil law is meant those laws which relate to civil matters only; and in this sense it is opposed to criminal law, or to those laws which concern criminal matters. Vide Civil.

7.—Judge Swift, in his System of the Laws of Connecticut, prefers the term civil law, to that of municipal law. He considers the term municipal to be too limited in its signification. He defines civil law to be a rule of human action, adopted by mankind in a state of society, or prescribed by the supreme power of the government, requiring a course of conduct not repugnant to morality or religion, productive of the greatest political happiness, and prohibiting actions contrary thereto, and which is enforced by the sanctions of pains and penalties.

1 Sw. Syst. 37. See Ayl. Pand. B. 1, t. 2, p. 6.

See in general as to civil law, Cooper's Justinian; the Pandects; 1 Bl. Com. 80, 81; Encyclopædie, art. Droit Civil, Droit Romain; Donat, Les Loix Civiles; Ferriere's Dict.; Brown's Civ. Law; Halifax's Analyt. Civ. Law; Wood's Civ. Law; Ayliffe's Pandects; Heinec. Elem. Jur.; Erskine's Institutes; Po- thier; Eunomus, Dial. 1; Corpus Juris Civilis; Taylor's Elem. Civ. Law.

LAW, COMMON. The common law is that which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature, by an express act, which is the criterion by which it is distinguished from the statute law. It has never been reduced to writing; by this expression, however, it is not meant that all those laws are at present merely oral, or communicated from former ages to the present solely by word of mouth, but that the evidence of our common law is contained in our books of Reports, and depends on the general practice and judicial adjudications of our courts.

2.—The common law is derived from two sources, the common law of England, and the practice and decision of our own courts. In some states the English common law has been adopted by statute. There is no general rule to ascertain what part of the English common law is valid and binding. To run the line of distinction, is a subject of embarrassment to courts, and the want of it a great perplexity to the student. Kirb. Rep. Pref. It may however be observed generally, that it is binding where it has not been superseded by the constitution of the United States, or of the several states, or by their legislative enactments, or varied by custom, and where it is founded in reason and con-
sonant to the genius and manners of the people.

3.—The phrase "common law" occurs in the seventh article of the amendments of the constitution of the United States. "In suits at common law, where the value in controversy shall not exceed twenty dollars," says that article, "the right of trial by jury shall be preserved." The "common law" here mentioned is the common law of England, and not of any particular state. 1 Gallis. 20; 1 Bald. 558; 3 Wheat. 223; 3 Pet. R. 446; 1 Bald. R. 554. The term is used in contradistinction to equity, admiralty, and maritime law. 3 Pet. 446; 1 Bald. 554.

4.—The common law of England is not in all respects to be taken as that of the United States, or of the several states; its general principles are adopted only so far as they are applicable to our situation. 2 Pet. 144; 8 Pet. 659; 9 Cranch, 333; 9 S. & R. 330; 1 Blackf. 66, 82, 206; Kirby, 117; 5 Har. & John. 356; 2 Aik. 187; Charlt. 172; 1 Ham. 243. See 5 Cow. 628; 5 Pet. 241; 1 Dall. 67; 1 Mass. 61; 9 Pick. 532; 3 Greenl. 162; 6 Greenl. 55; 3 Gill & John. 62; Sampson’s Discourse before the Historical Society of New York; 1 Gallis. R. 489; 3 Conn. R. 114; 2 Dall. 2. 297, 384; 7 Cranch, R. 52; 1 Wheat. R. 415; 3 Wheat. 223; 1 Blackf. R. 205; 8 Pet. R. 658; 5 Cowen, R. 628; 2 Stew. R. 362.

LAW, CRIMINAL. By criminal law is understood that system of laws which provides for the mode of trial of persons charged with criminal offences, defines crimes, and provides for their punishments.

LAW, FOREIGN. By foreign laws are understood the laws of a foreign country. The states of the American Union are for some purpose foreign to each other, and the laws of each are foreign in the others. See Foreign Laws.

LAW, INTERNATIONAL. The law of nature applied to the affairs of nations, commonly called the law of nations; jus gentium, is also called by some modern authors international law. Toulié, Droit Français, tit. pred. § 12. Mann Comm. 1; Bentham on Morals, &c., 260, 262; Wheat. on Int. Law; Feuill, Du Droit Intern. Privé, n. 1.

LAW, MARTIAL. Martial law is a code established for the government of the army and navy of the United States.

2.—Its principal rules are to be found in the articles of war, (q. v.) The object of this code or body of regulations is to maintain that order and discipline, the fundamental principles of which are a due obedience of the several ranks to their proper officers, a subordination of each rank to their superiors, and the subjection of the whole to certain rules of discipline, essential to their acting with the union and energy of an organized body. The violations of this law are to be tried by a court martial, (q. v.)

3.—A military commander has not the power by declaring a district to be under martial law, to subject all the citizens to that code, and to suspend the operation of the writ of habeas corpus. 3 Mart. (Lo.) 531. Vide Hale’s Hist. C. L. 38; 1 Bl. Com. 413; Tytler on Military Law; Ho. on C. M.; M’Arth. on C. M.; Rules and Articles of War, art. 64, et. seq. 2 Story, L. U. S. 1000.

LAW, MERCHANT, is a system of customs acknowledged and taken notice of by all commercial nations; and those customs constitute a part of the general law of the land; and being a part of that law their existence cannot be proved by witnesses, but the judges are bound to take notice of them ex officio. See Beavies Lex Mercatoria Rediviva; Caines’s Lex Mercatoria Americana; Com. Dig. Merchant, D; Chit. Comm. Law; Pardess. Droit Commercial; Collection des Lois Maritimes antérieure au dix huitiéme siècle, par Dupin; Capmany, Costumbres maritimas; Il Consolo del mare; Us et coutumes de la mer; Piantanida, Della Giurisprudenza marittima commerciale, antica e moderna; Yalin, Commentaire sur l’ordonnance de la marine, du mois d’aout, 1061; Boulay-Paty, Dr. Comm.; Boucher, Institutions au droit maritime.

LAW, MUNICIPAL. Municipal law is defined by Mr. Justice Blackstone to be "a rule of civil conduct prescribed
by the supreme power in a state commanding what is right and prohibiting what is wrong.” This definition has been criticised, and has been perhaps justly considered imperfect. The latter part has been thought superabundant to the first; see Mr. Christian’s note; and the first too general and indefinite, and too limited in its signification to convey a just idea of the subject. See *Law, civil*. Mr. Chitty defines municipal law to be “a rule of civil conduct, prescribed by the supreme power in a state, commanding what shall be done or what shall not be done.” 1 Bl. Com. 44, note 6, Chitty’s edit.

2.—Municipal law, among the Romans was a law made to govern a particular city or province; this term is derived from the Latin *municipium*, which among them signified a city which was governed by its own laws, and which had its own magistrates.

**LAW OF NATIONS**, is the science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights. *Vattel’s Law of Nat. Prelim.* § 8. Some complaints, perhaps not unfounded, have been made as to the want of exactness in the definition of this term. Mann. Comm. 1. The phrase “international law,” has been proposed in its stead. 1 Benth. on *Morals and Legislation*, 260, 262. It is a system of rules deducible by natural reason from the immutable principles of natural justice, and established by universal consent among the civilized inhabitants of the world; Inst. lib. 1, t. 2, § 1; Dig. lib. 1, t. 1, l. 9; in order to decide all disputes, and to insure the observance of good faith and justice in that intercourse which must frequently occur between them and the individuals belonging to each; or they depend upon mutual compacts, treaties, leagues and agreements between the separate free, and independent communities.

2.—International law is generally divided into two branches; 1. The Natural law of nations, consisting of the rules of justice applicable to the conduct of states. 2. The Positive law of nations, which consists of, 1. The voluntary law of nations, derived from the presumed consent of nations, arising out of their general usage. 2. The Conventional law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts. 3. The Customary law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts between themselves. *Vattel, Law of Nat. Prel.*

3.—The various sources and evidence of the law of nations are the following: 1. The rules of conduct, deducible by reason from the nature of society existing among independent states, which ought to be observed among nations. 2. The adjudication of international tribunals, such as prize courts and boards of arbitration. 3. Text writers of authority. 4. Ordinances or laws of particular states, prescribing rules for the conduct of their commissioned cruisers and prize tribunals. 5. The history of the wars, negotiations, treaties of peace, and other matters relating to the public intercourse of nations. 6. Treaties of peace, alliance and commerce, declaring, modifying, or defining the pre-existing international law. *Wheat. Intern. Law*, pt. 1, e. 1, § 14.

4.—The law of nations has been divided by writers into necessary, and voluntary; or into absolute and arbitrary; by others into primary and secondary, which latter has been divided into customary and conventional. Another division, which is the one more usually employed, is that of the natural and positive law of nations. The natural law of nations consists of those rules, which, being universal, apply to all men and to all nations, and which may be deduced by the assistance of revelation or reason, as being of utility to nations, and inseparable from their existence. The positive law of nations consists of rules and obligations, which owe their origin, not to the divine or natural law, but to human compacts or agreements, either express or implied; that is they are dependent on custom or convention.

5.—Among the Romans there were two sorts of laws of nations, namely, the primitive, called *primarium*, and the
other known by the name of **secondary**. The **primary**, that is to say, primitive or more ancient, is properly the only law of nations which human reason suggests to men; as the worship of God, the respect and submission which children have for their parents, the attachment which citizens have for their country, the good faith which ought to be the soul of every agreement, and the like. The law of nations called **secondary**, are certain usages which have been established among men, from time to time, as they have been felt to be necessary. Ayl. Pand. B. 1, t. 2, p. 6.


**LAW OF NATURE.** The law of nature is that which God, the sovereign of the universe, has prescribed to all men, not by any formal promulgation, but by the internal dictate of reason alone. It is discovered by a just consideration of the agreeableness or disagreeableness of human actions to the nature of man; and it comprehends all the duties we owe either to the Supreme Being, to ourselves, or to our neighbours; as reverence to God, self-defence, temperance, honour to our parents, benevolence to all, a strict adherence to our engagements, gratitude, and the like. Erskine’s Pr. of L. of Scot. B. 1, t. 1, s. 1. See Ayl. Pand. tit. 2, p. 5; Cicer. de Leg. lib. 1.

2.—The primitive laws of nature may be reduced to six, namely: 1, comparative sagacity, or reason; 2, self-love; 3, the attraction of the sexes to each other; 4, the tenderness of parents towards their children; 5, the religious sentiment; 6, sociability.

3.—1. When man is properly organized, he is able to discover moral good from moral evil; and the study of man proves that man is not only an intelligent, but a free being, and he is therefore responsible for his actions. The judgment we form of those of our good actions, produces happiness; on the contrary the judgment we form of our bad actions produces unhappiness.

4.—2. Every animated being is impelled by nature to his own preservation, to defend his life and body from injuries, to shun what may be hurtful, and to provide all things requisite to his existence. Hence the duty to watch over his own preservation. Suicide and duelling are therefore contrary to this law; and a man cannot mutilate himself, nor renounce to his liberty.

5.—3. The attraction of the sexes has been provided for the preservation of the human race, and this law condemns celibacy. The end of marriage proves that polygamy, (q. v.) and polyandry, (q. v.) are contrary to the law of nature. Hence it follows that the husband and wife have a mutual and exclusive right over each other.

6.—4. Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness. This is one of the most powerful laws of nature. The principal duties it imposes on the parents, are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

7.—5. The religious sentiment which leads us naturally towards the Supreme Being is one of the attributes which belong to humanity alone; and its importance gives it the rank of the moral law of nature. From this sentiment arise all the sects and different forms of worship among men.

8.—6. The need which man feels to live in society is one of the primitive laws of nature, whence flow our duties
and rights; and the existence of society depends upon the condition that the
rights of all shall be respected. On this
law are based the assistance, succours
and good offices which men owe to each
other, they being unable to provide each
every thing for himself.

Law, Penal, is one which inflicts a
penalty for a violation of its enactment.

Law, Positive. Positive law, as used
in opposition to natural law, may be con-
considered in a threefold point of view. 1.
The universal voluntary law, or those
rules which are presumed to be law, by
the uniform practice of nations in gen-
eral, and by the manifest utility of the
rules themselves. 2. The customary law,
or that which, from motives of conve-
nience, has, by tacit, but implied agree-
ment, prevailed, not generally indeed
among all nations, nor with so perma-
nent an utility as to become a portion of
the universal voluntary law, but enough
to have acquired a prescriptive obliga-
tion among certain states so situated as to be
mutually benefited by it. 1 Taunt. 241.
3. The conventional law, or that which
is agreed between particular states by
express treaty, a law binding on the par-
ties among whom such treaties are in

Law, Private, is an act of the legis-
lature which relates to some private mat-
ters, which do not concern the public at
large.

Law, Prospective, is one which pro-
vides for, and regulates the future acts
of men, and does not interfere in any
way with what has past.

Law, Public. A public law is one
in which all persons have interest.

Law, Retrospective. A retrospec-
tive law is one that is to take effect, in
point of time, before it was passed.

2.—Whenever a law of this kind im-
pairs the obligation of contracts it is void.
3 Dall. 391. But laws which only vary
the remedies, divest no right, but merely
cure a defect in proceedings otherwise
fair, are valid. 10 Serg. & Rawle, 102;
3; 15 Serg. & Rawle, 72; see Ex post
facto.

Law, Statute, is the written will of
the legislature, solemnly expressed ac-
cording to the forms prescribed by the
constitution; an act of the legislature. See Statute.

Law, Unwritten, or lex non scripta,
is composed of all the laws, which do
not come under the definition of written
law; it is composed, principally, of the
law of nature, the law of nations, the
common law, and customs.

Law, Written, or lex scripta. This
consists of the constitution of the United
States, the constitutions of the several
states; the acts of the different legisla-
tures, as the acts of Congress, and of the
legislatures of the several states, and of
treaties. See Statute.

Lawful. What is not forbidden
by law. Id omne licet est, quod non
est legibus prohibitum, quamobrem,
quod, lege permittente, fit, poenam non
meretur. To be valid a contract must
be lawful.

Lawless. Without law; without
lawful control.

Laws ex post facto, are those
which are made to punish actions
committed before the existence of such
laws, and which had not been declared
crimes by preceding laws. Decl. of
Rights, Mass. part 1, s. 24; Decl. of
Rights, Maryl. art. 15. By the con-
stitution of the United States and those
of the several states, the legislatures are
forbidden to pass ex post facto laws.
Const. U. S. art. 1, s. 10, subd. 1.

2.—There is a distinction between ex
post facto laws, and retrospective laws;
every ex post facto law must necessarily
be retrospective, but every retrospective
law is not an ex post facto law; the
former only are prohibited.

3.—Laws under the following circum-
stances are to be considered ex post facto
laws, within the words and intents of
the prohibition; 1st, Every law that
makes an act done before the passing of
the law, and which was innocent when
done, criminal, and punishes such action;
2dly, Every law that aggravates a crime,
or makes it greater than it was when
committed; 3dly, Every law that
changes the punishment, and inflicts a
greater punishment than the law annex-
ed to the crime when committed; 4thly,
Every law that alters the legal rules of
evidence and receives less, or different,
testimony, than the law required at the
time of the commission of the offence,
in order to convict the offender. 3 Dall. 390.

4.—The policy, the reason and human-
ity of the prohibition against passing ex post facto laws, do not extend to civil
cases, to cases that merely affect the pri-
ivate property of citizens. Some of the
most necessary acts of legislation are,
on the contrary, founded upon the prin-
ciples that private rights must yield to
public exigencies. 3 Dall. 400; 8
Wheat. 89; see 1 Cranch, 109; 1 Gall.
Rep. 105; 9 Cranch, 374; 2 Pet. S.
C. R. 627; Ib. 380; Ib. 523.

LAWS OF THE TWELVE TAB-
LES. Laws of ancient Rome com-
piled in part from those of Solon, and
other Greek legislators, and in part from
the unwritten laws or customs of the
Romans. These laws, first appeared in
the year of Rome 303 inscribed on ten
plates of brass. The following year two
others were added, and the entire code
bore the name of the Laws of the Twelve
Tables. The principles they contained
became the source of all the Roman
law, and serve to this day as the founda-
tion of the jurisprudence of the greatest
part of Europe.

See a fragment of the Law of the
Twelve Tables in Coop. Justinian, 656;
Gibbon's Rome, e. 44.

LAWS OF THE HANSE TOWNS.
A code of maritime laws known as
the laws of Hanse towns, or the ordinances
of the Hanseatic towns, was first pub-
lished in German at Lubeck, in 1597.
In an assembly of deputies from the
several towns held at Lubeck, these laws
were afterwards, May 23, 1614, revised
and enlarged. The text of this digest,
and a Latin translation, are published
with a commentary by Kuricke; and a
French translation has been given by
Clairec.

LAWS OF OLERON, in maritime
law, a code of sea laws of deserved
celebrity. It was originally promulgated
by Eleonor, duchess of Guiene, the
mother of Richard the First, of Eng-
land. Returning from the Holy Land,
and familiar with the maritime regula-
tions of the Archipelago, she enacted
these laws at Oleron in Guiene, and
they derive their title from the place of
their publication. The language in
which they were originally written is
the Gascon, and their first object appears
to have been the commercial operations
of that part of France only. Richard
L. of England, who inherited the duked-
dom of Guiene from his mother, im-
poved this code, and introduced it into
England. Some additions were made
to it by King John; it was promulgated
anew in the 50th year of Henry III.,
and received its ultimate confirmation in
the 12th year of Edward III. Brown's

2.—These laws are inserted in the
beginning of the book entitled "Us et
coutumes de la mer," with a very ex-
cellent commentary on each section by
Clairec, the learned editor. A transla-
tion is to be found in the Appendix to 1 Pet.
16. See Laws of Wisby: Laws of
the Hanse Towns: Code.

LAWS OF WISBUY, in maritime
law, is a code of sea laws established by
the merchants and masters of the
magnificent city of Wisbuy." This
city was the ancient capital of Gotland,
an island in the Baltic sea, anciently
much celebrated for its commerce and
wealth, now an obscure and inconsider-
able place. Malyn, in his collection
of sea laws, p. 44, says that the laws of
Oleron were translated into Dutch by
the people of Wisby for the use of
the Dutch coast. By Dutch, he pro-
bably means German, and it cannot be
denied that many of the provisions con-
tained in the Laws of Wisby, are pre-
cisely the same as those which are found
in the Laws of Oleron. The northern
writers pretend however that they are
more ancient than the Laws of Oleron,
or even the Consolato del Mare. 
Clairec treats this notion with contempt,
and declares that at the time of the promul-
gation of the laws of Oleron, in 1266,
which was many years after they were
compiled, the magnificent city of Wisbuy
had not yet acquired the denomination
of a town. Be this as it may, these
laws were for some ages, and indeed
still remain, in great authority in the

A translation of these laws is to be found in 1 Peters's Adm. Dec. Appendix, See Code; Laws of Oleron.

LAWS, RHODIAN, in maritime law, is a code of laws adopted by the people of Rhodes, who had, by their commerce and naval victories, obtained the sovereignty of the sea, about nine hundred years before the Christian era. There is reason to suppose this code has not been transmitted to posterity, at least not in a perfect state. A collection of marine constitutions, under the denomination of Rhodian Laws, may be seen in Vinnius, but they bear evident marks of a spurious origin. See Marsh. Ins. B. 1, c. 4, p. 15; this Dict. Code; Laws of Oleron; Laws of Wisby; Laws of the Hanse Towns.

LAWYER. A counsellor; one learned in the law. Vide Attorney.

LAY-DAYS, is the time allowed to the master of a vessel for loading and unloading the same. In the absence of any custom to the contrary, Sundays are to be computed in the calculation of lay-days at the port of discharge. 10 Mees. & Wels. 331; see 3 Esp. 121. They differ from demurrage, (q. v.)

LAY PEOPLE. By this expression was formerly understood jurymen. Finch's Law, B. 4, p. 381; Eunom. Dial. 2, § 51, p. 151.

LAYMAN, eccl. law: one who is not an ecclesiastical nor a clergyman.

LAZARET or LAZARETTO. A place selected by public authority where vessels coming from infected or unhealthy countries are required to perform quarantine. Vide Health.

LÆSE MAJESTATIS CRIMEN. The crime of high treason. Glanv. lib. 1, c. 2; Clef des Lois Rom. h. t.; Inst. 4, 18, 3; Dig. 48, 4; Code, 9, 8.

LE ROI S'AVISERA. The king will consider of it. This phrase is used by the English monarch when he gives his dissent to an act passed by the lords and commons. The same formula was used by the late King of the French, for the same purpose. 1 Toull. n. 52. Vide Veto.

LE ROI LE VEUT. The king assents. This is the formula used in England, and formerly in France, when the king approved of a bill passed by the legislature. 1 Toull. n. 52.

LE ROI VEUT EN DELIBERER. The king will deliberate on it. This is the formula which the late French king used when he intended to veto an act of the legislative assembly. 1 Toull. n. 42.

LEADING QUESTION, evidence, practice, is one put to a witness, which puts into the witness's mouth the words to be echoed back, or plainly suggests the answer which the party wishes to get from him. 7 Serg. & Rawle, 171; 4 Wend. Rep. 247; in that case the examiner is said to lead him to the answer. It is not always easy to determine what is or is not a leading question.

2.—These questions cannot in general be put to a witness in his examination in chief, 6 Binn. R. 483; 3 Binn. R. 130; 1 Phill. Ev. 221; 1 Stark. Ev. 123. But in an examination in chief, questions may be put to lead the mind of the witness to the subject of inquiry; and they are allowed when it appears the witness wishes to conceal the truth, or to favour the opposite party, or where, from the nature of the case, the mind of the witness cannot be directed to the subject of inquiry, without a particular specification, of such subject. 1 Camp. R. 43; 1 Stark. C. 100.

3.—In cross-examinations, the examiner has generally the right to put leading questions. 1 Stark. Ev. 132; 3 Chit. Pr. 892; Rose. Civ. Ev. 94.

LEAGUE, measure. A league is a measure of length which consists of three geographical miles. The jurisdiction of the United States extends into the sea a marine league. See Acts of Congress of June 5, 1794, 1 Story's L. U. S. 352; and April 20, 1818, 3 Story's L. U. S. 1694; 1 Wait's State Papers, 193. Vide Cannon Shot.

LEAGUE, crim. law, contracts. In
circumstantial, a league is a conspiracy to do an unlawful act. The term is but little used.

2.—In contracts, it is applied to agreements between states. Leagues between states are of several kinds; 1st, Leagues offensive and defensive, by which two or more nations agree not only to defend each other, but to carry on war against their common enemies. 2d, Defensive but not offensive, obliging each to defend the other against any foreign invasion. 3d, Leagues of simple amity, by which one contracts not to invade, injure or offend the other; this usually includes the liberty of mutual commerce and trade, and the safeguard of merchant and traders in each other’s dominion. Bac. Ab. Prerogative, D 4. Vide Confederacy; Conspiracy; Peace; Truce; War.

LEAKAGE. The waste which has taken place in liquids, by their escaping out of the casks or vessels in which they were kept.

2.—By the act of March 2, 1799, s. 59, 1 Story’s Laws U. S. 625, it is provided that there be an allowance of two per cent. for leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors, subject to duty by the gallon; and ten per cent. on all beer, ale, and porter, in bottles; and five per cent. on all other liquors in bottles; to be deducted from the invoice quantity, in lieu of breakage; or it shall be lawful to compute the duties on the actual quantity, to be ascertained by sale, at the option of the importer, to be made at the time of entry.

LEAL. Loyal; which belongs to the law.

LEAP YEAR. Vide Bissett’s.

LEASE, contracts. A lease is a contract for the possession and profits of lands and tenements on one side, and a recompense of rent or other income on the other, Bac. Ab. Lease, in pr.; or else it is a conveyance of lands and tenements to a person for life, or years, or at will, in consideration of a return of rent, or other recompense. Cruise’s Dig. tit. Leases. The instrument in writing is also known by the name of lease; and this word sometimes signifies the term, or time for which it was to run; for example, the owner of land, containing a quarry, leases the quarry for ten years, and then conveys the land, “reserving the quarry until the end of the lease;” in this case the reservation remained in force till the ten years expired, although the lease was cancelled by mutual consent within the ten years. 8 Pick. R. 339.

2.—To make such contract, there must be a lessor able to grant the land; a lessee, capable of accepting the grant, and a subject-matter capable of being granted. See Lessor; Lessee.

3.—This contract resembles several others, namely: sale, to constitute which there must be a thing sold, a price for which it is sold, and the consent of the parties as to both. So in a lease there must be a thing leased, the price or rent, and the consent of the parties as to both. Again, a lease resembles the contract of hiring of a thing locatio conductio vei, where there must be a thing to be hired, a price or compensation called the hire, and the agreement and consent of the parties respecting both. Poth. Bail à rente, n. 2.

4.—Before proceeding to the examination of the several parts of a lease, it will be proper here to say a few words, pointing out the difference between an agreement or covenant to make a lease, and the lease itself. When an agreement for a lease contains words of present demise, and there are circumstances from which it may be collected that it was meant the tenant should have immediate legal interest in the term, such an agreement will amount to an actual lease; but although words of present demise are used, if it appears on the whole, that no legal interest was intended to pass, and that the agreement was only preparatory to a future lease, to be made, the construction will be governed by the intention of the parties, and the contract will be held to amount to no more than an agreement for a lease. 2 T. R. 739. See Co. Litt. 45 b; Bac. Abr. Leases, K; 15 Vin. Abr. 94, pl. 2; 1 Leon. 129; 1 Burr. 2209; Crow. Eliz. 156; Ib. 173; 12 East, 168; 2 Campb. 286; 10 John. R. 336; 15 East, 244; 3 Johns. R. 44, 383; 4
Johns. R. 74, 424; 5 T. R. 163; 12 East, 274; Ib. 170; 6 East, 530; 13 East, 18; 16 Esp. R. 106; 3 Taunt. 65; 5 B. & A. 322.

5.—Having made these few preliminary observations, it is proposed to consider, 1, By what words a lease may be made; 2, Its several parts; 3, The formalities the law requires.

6.—1. The words “demise, grant, and to farm let,” are technical words well understood, and are the most proper that can be used in making a lease; but whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession and the other come into it, for such a determinate time, whether they run in the form of a license, covenant, or agreement, are of themselves sufficient, and will, in construction of law, amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose.

4 Burr. 2209; 1 Mod. 14; 11 Mod. 42; 2 Mod. 89; 3 Burr. 1446; Bac. Abr. Leases; 6 Watts, 362; 3 M'Cord, 211; 3 Fairf. 478; 5 Rand. 571; 1 Root, 318.

7.—2. A lease in writing by deed indented consists of the following parts, namely, 1, The premises; 2, The habendum; 3, The tenendum; 4, The reedendum; 5, The covenants; 6, The conditions; 7, The warranty. See Deed.

8.—3. As to the form, leases may be in writing or not in writing, but verbally. See Parol Leases. Leases in writing are either by deed or without deed; a deed is a writing sealed and delivered by the parties, so that a lease under seal is a lease by deed. The respective parties, the lessor and lessee, whose deed the lease is, should seal, and now in every case, sign it also. The lease must be delivered either by the parties themselves or their attorneys, which delivery is expressed in the attestation “sealed and delivered in the presence of us.” Almost any manifestation, however, of a party’s intention to deliver, if accompanied by an act importing such intention, will constitute a delivery. 1 Ves. Jr. 206.

9.—A lease may be avoided, 1, Because it is not sufficiently formal; and, 2, Because of some matter which has arisen since its delivery.

10.—1. It may be avoided for want of either, 1st, Proper parties and a proper subject-matter; 2dly, writing or printing on parchment or paper, in those cases where the statute of frauds requires they should be in writing; 3dly, sufficient and legal words properly disposed; 4thly, reading, if desired, before the execution; 5thly, sealing, and in most cases, signing also; or, 6thly, delivery. Without these essentials it is void from the beginning.

11.—2. It may be avoided by matter arising after its delivery; as, 1st, by easement, interlining, or other alteration in any material part; an immaterial alteration made by a stranger does not vitiate it, but such alteration made by the party himself, renders it void; 2dly, by breaking or effacing the seal unless it be done by accident; 3dly, by delivering it up to be cancelled; 4thly, by the disagreement of such whose concurrence is necessary; as the husband where a married woman is concerned; 5thly, by the judgment or decree of a court of judicature.

LEASE AND RELEASE, a species of conveyance, invented by Serjeant Moore, soon after the enactment of the statute of uses. It is thus contrived; a lease, or rather bargain and sale, upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or bargainer. This, without any enrolment, makes the bargainer stand seised to the use of the bargainee, and vests in the bargainee the use of the term for one year, and then the statute immediately annexes the possession. Being thus in possession, he is capable of receiving a release of the freehold and reversion, which must be made to the tenant in possession; and, accordingly, the next day a release is granted to him.

2.—The lease and release, when used as a conveyance of the fee, have the joint operation of a single conveyance.

2 Bl. Com. 339; 4 Kent. Com. 482; Co. Litt. 207; Cruise, Dig. tit. 32, c. 11.

LEDGER, commerce, accounts, evi-
dence, is a book in which are inscribed the names of all persons dealing with the person who keeps it, and in which there is a separate account, composed generally of one or more pages for each. There are two parallel columns, on one of which the party named is the debtor, and the other, the creditor, and presents a ready means of ascertaining the state of the account. As this book is a transcript from the day book or journal, it is not evidence per se.

LEDGER-BOOK, *eccl. law*, is the name of a book kept in the Prerogative courts in England. It is considered as a roll of the court, but, it seems, it cannot be read in evidence. Bac. Ab. h. t.

LEGACY, is a bequest or gift of goods or chattels by testament. 2 Bl. Com. 512; Bac. Abr. Legacies, A. See Merlin, R*pertorium, mot Leggs, s. 1; Swimb. 17; Domat, liv. 4, t. 2, § 1, n. 1. This word, though properly applicable to bequests of personal estate only, has nevertheless been extended to property not technically within its import in order to effectuate the intention, so as to include real property and annuities. 5 T. R. 716; 1 Burr. 265; 7 Ves. 522; Ib. 391; 2 Cain. R. 345. Devise is the term more properly applied to gifts of real estate. Godolph. 271. 2.-As the testator is presumed at the time of making his will to be *in opus consicii*, his intention is to be sought for, and any words which manifest the intention to give or create a legacy, are sufficient. Godolph. 281, pt. 3, c. 22, s. 21; Com. Dig. Chancery, 3 Y 4; Bac. Abr. Legacies, B 1.

3.-Legacies are of different kinds; they may be considered as general, specific, and residuary. 1. A legacy is general, when it is so given as not to amount to a bequest of a specific part of a testator’s personal estate; as of a sum of money generally, or out of the testator’s personal estate, or the like. 1 Rop. Leg. 256; Lownd. Leg. 10. A general legacy is relative to the testator’s death; it is a bequest of such a sum or such a thing at that time, or a direction to the executors, if such a thing be not in the testator’s possession at that time, to pro-

4.—2. A specific legacy is a bequest of a particular thing, or money specified and distinguished from all other things of the same kind; as of a particular horse, a particular piece of plate, a particular term of years, and the like, which would vest immediately, with the assent of the executor. 1 Rop. Leg. 149; Lownd. Leg. 10, 11; 1 Atk. 415. A specific legacy has relation to the time of making the will; it is a bequest of some particular thing in the testator’s possession at that time, if such a thing should be in the testator’s possession at the time of his death. If it should not be in the testator’s possession, the legatee has no claim. There are legacies of quantity in the nature of specific legacies, as of so much money with reference to a particular fund for their payment. Touchst. 433; Amb. 310; 4 Ves. 565; 3 Ves. & Bea. 5.

5.—This kind of legacy is so far general, and differs so much in effect from a specific one, that if the funds be called in or fail, the legatees will not be deprived of their legacies, but be permitted to receive them out of the general assets; yet the legacies are so far specific, that they will not be liable to abate with general legacies upon a deficiency of assets. 2 Ves. jr. 640; 5 Ves. jr. 206; 1 Meriv. 178.

6.—3. A residuary legacy is a bequest of all the testator’s personal estate, not otherwise effectually disposed of by his will. Lownd. Leg. 10; Bac. Abr. Legacies, I.

7.—As to the interest given, legacies may be considered as absolute, for life, or in remainder.—1. A legacy is absolute, when it is given without condition, and is to vest immediately. See 2 Vern. 181; Ambl. 750; 19 Ves. 86; Lownd. 151; 2 Vern. 430; 1 Vern. 254; 5 Ves. 461; Com. Dig. Appendix, Chancery, IX.

8.—2. A legacy for life is sometimes given, with an executory limitation after the death of the tenant for life to another person; in this case, the tenant
for life is entitled to the possession of the legacy, but when it is of specific articles, the first legatee must sign and deliver to the second, an inventory of the chattels, expressing that they are in his custody for life only, and that afterwards they are to be delivered and remain to the use and benefit of the second legatee. 3 P. Wms. 336; 1 Atk. 471; 2 Atk. 82; 1 Bro. C. C. 279; 2 Vern. 249. See 1 Rep. Leg. 404, 5, 580. It seems that a bequest for life, if specific of things quae ipso usu consumeratur, is a gift of the property, and that there cannot be a limitation over, after a life interest in such articles. 3 Meriv. 194.

9.—3. In personal property there cannot be a remainder in the strict sense of the word, and therefore every future bequest of personal property, whether it be preceded or not by any particular bequest, or limited on a certain or uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated. Fearne, Cont. R. 401, n. An executory bequest cannot be prevented or destroyed by any alteration whatsoever, in the estate, out of which, or after which it is limited. Ib. 421; 8 Co. 96, a; 10 Co. 476.

And this privilege of executory bequests, which exempts them from being barred or destroyed, is the foundation of an invariable rule, that the event on which an interest of this sort is permitted to take effect, is such as must happen within a life or lives in being, and twenty-one years, and the fraction of another year, allowing for the period of gestation afterwards. Fearne, Cont. R. 431.

10.—As to the right acquired by the legatee, legacies may be considered as vested and contingent.—1. A vested legacy is one by which a certain interest, either present or future in possession, passes to the legatee. 2. A contingent legacy is one which is so given to a person, that it is uncertain whether any interest will ever vest in him.

11.—A legacy may be lost by abatement, ademption, and lapse.—1. Abatement, see Abatement of Legacies.—2. Ademption, see Ademption.—3. When the legatee dies before the testator, or before the condition upon which the legacy is given be performed, or before the time at which it is directed to vest in interest have arrived, the legacy is lapsed or extinguished. See Bac. Abr. Legacies, E.; Com. Dig. Chancery, 3 Y 13; 1 P. Wms. 83; Lownd. Leg. ch. 12, p. 408 to 415; 1 Rep. Leg. ch. 8, p. 319 to 341.

12.—In Pennsylvania, by legislative enactment, no legacy in favour of a child or other lineal descendant of any testator, shall be deemed or held to lapse or become void, by reason of the decease of such devisee or legatee, in the life-time of the testator, if such devisee or legatee shall leave issue surviving the testator, but such devise or legacy shall be good and available, in favour of such surviving issue, with like effect, as if such devisee or legatee had survived the testator. The testator may, however, intentionally exclude such surviving issue, or any of them. Act of 19th March, 1810. 5 Smith's L. of Pa. 112.

13.—As to the payment of legacies, it is proper to consider out of what fund they are to be paid; at what time; and to whom. 1. It is a general rule, that the personal estate is the primary fund for the payment of legacies. When the real estate is merely charged with those demands, the personal assets are to be applied in the first place towards their liquidation. 1 Serg. & Rawle, 453; 1 Rep. Leg. 463.

14.—2. When legacies are given generally to persons under no disability to receive them, the payments ought to be made at the end of a year next after the testator's decease. 5 Binn. 475. The executor is not obliged to pay them sooner, although the testator may have directed them to be discharged within six months after his death, because the law allows the executor one year from the demise of the testator, to ascertain and settle his testator's affairs; and it presumes that at the expiration of that period, and not before, all debts due by the estate have been satisfied, and the executor to be then able properly to ap-
ply the residue among the legatees according to their several rights and interests.

15.—When a legacy is given generally, and is subject to a limitation over upon a subsequent event, the divesting contingency will not prevent the legatee from receiving his legacy at the end of the year after the testator’s death, and he is under no obligation to give security for re-payment of the money, in case the event shall happen. The principle seems to be, that as the testator has entrusted him without requiring security, no person has authority to require it. 1 Ves. Jr. 97; 18 Ves. 131; Lownd. on Legacies, 403.

16.—As to the persons to whom payment is to be made, see where the legacy is given to an infant, 1 Rom. Leg. 590; 1 P. Wms. 285; 1 Eq. Cas. Abr. 300; 3 Bro. C. C. 97, edit. by Belt; 2 Atk. 80; Johns. C. R.; where the legacy is given to a married woman, 1 Rom. Leg. 595; Lownd. Leg. 399; where the legacy is given to a lunatic, 1 Rom. Leg. 599; where it is given to a bankrupt, Ib. 600; 2 Burr. 717; where it is given to a person abroad, who has not been heard of for a long time, Ib. 601; Finch, R. 419; 3 Bro. C. C. 510; 5 Ves. 458; Lownd. Leg. 398.

See generally, as to legacies, Roper on Legacies; Lowndes on Legacies; Bae. Abr. Legacy; Com. Dig. Administration, C 3, 5; Ib. Chancery, 3 A; 3 G; 3 Y 1; Ib. Prohibition, G 17; Vin. Abr. Devise; Ib. Executor; Swinb. 17 to 44; 2 Salk. 414 to 416.

17.—By the Civil Code of Louisiana, legacies are divided into universal legacies, legacies under an universal title, and particular legacies. 1. An universal legacy, is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease; Civ. Code of Lo. art. 1599.

18.—2. The legacy under an universal title, is that by which a testator bequeathes a certain proportion of the effects of which the law permits him to dispose, as a half, a third, or all his immovables, or all his movables, or a fixed proportion of all his immovables, or of all his movables. Ib. 1604.

19.—3. Every legacy not included in the definition given of universal legacies, and legacies under an universal title, is a legacy under a particular title. Ib. 1618. Copied from Code Civ. art. 1003 and 1010. And see Toullier, Droit Civil Français, tome 5, p. 482, et seq.

LEGACY, ACCUMULATIVE. An accumulative legacy is a second bequest given by the same testator to the same legatee, whether it be of the same kind of thing, as money, or whether it be of different things, as one hundred dollars, in one legacy, and a thousand dollars in another, or whether the sums are equal; or whether the legacies are of a different nature. 2 Rom. Leg. 19.

LEGACY, ADDITIONAL.—An additional legacy is one which is given by a codicil, besides one before given by the will; or it is an increase by a codicil of a legacy before given by the will. An additional legacy is generally subject to the same qualities and conditions as the original legacy. 6 Mod. 31; 2 Ves. Jir. 449; 3 Mer. 154; Ward on Leg. 142.

LEGACY, ALTERNATIVE, is one where the testator gives one of two things to the legatee without designating which of them; as, one of my two horses. Vide Election.

LEGACY, CONDITIONAL, is a bequest which is to take effect upon the happening or not happening of a certain event. Lownd. Leg. 166; Rom. Leg. Index, tit. Condition.

LEGACY, DEMONSTRATIVE. A demonstrative legacy is a bequest of a certain sum of money, intended for the legatee at all events, with a fund particularly referred to for its payment; so that if the estate be not the testator’s property at his death, the legacy will not fail but be payable out of his general assets. 1 Rom. Leg. 153; Lownd. Leg. 85; Swinb. 485; Ward on Leg. 370.

LEGACY, INDEFINITE, is a bequest of things which are not enumerated or ascertained as to numbers or quantities; as, a bequest by a testator of all his goods, all his stocks in the funds. Lownd.
on Leg. 84; Swinb. 485; Amb. 641; 1 P. Wms. 697.

LEGACY, Lapsed. A legacy is said to be lapsed or extinguished, when the legatee dies before the testator, or before the condition upon which the legacy is given has been performed, or before the time at which it is directed to vest in interest has arrived. Bac. Ab. Legacy, E; Com. Dig. Chancery, 3 Y 13; 1 P. Wms. 83; Lownd. Leg. 408 to 415; 1 Rep. Leg. 319 to 341. See as to the law of Pennsylvania in favour of lineal descendants, 5 Smith's Laws of Pa. 112. Vide, generally, 8 Com. Dig. 502, 3; 5 Toull. n. 671.

LEGACY, MODAL. A modal legacy is a bequest accompanied with directions as to the mode in which it should be applied for the legatee's benefit; for example, a legacy to Titius to put him an apprentice. 2 Vern. 431; Lownd. Leg. 151.

LEGACY, PECUNIARY. A pecuniary legacy is one of money; pecuniary legacies are most usually general legacies, but there may be a specific pecuniary legacy; for example of the money in a certain bag. 1 Rep. Leg. 150, n.

LEGACY, RESIDUARY, is that which is of the remainder of an estate after the payment of all the debts and other legacies. 1 Madd. Ch. P. 284.

LEGAL, that which is according to law. It is used in opposition to equitable, as the legal estate is in the trustee, the equitable estate, in the cestui que trust. Vide Powell on Mortg. Index, h. t.

LEGALIZATION, is an attestation given by an officer duly authorized of the truth of the signatures to a paper, and of the quality of those who made or received it, in order that faith and credit may be given to it elsewhere. Vide Dalloz, Dict. h. t.; Authentication.

LEGATE, canon law. Legates are extraordinary ambassadors whom the pope sends into Catholic countries to represent him, and to exercise his jurisdiction there. It is under this singular name that these ministers are distinguished from those of other powers, and from nuncios, who are the ordinary ambassadors of the pope.

2.—There are three kinds of legates; the first, Legati à latere; they are so called for the same reason that the magistrates of ancient Rome were called missi de latere, who were selected from the court, or, as it were, from the side of the emperor. The legates are trustees from the sacred college, and the pope confers on them the plenitude of his power. The second class are the legati missi, or those to whom a legation is committed although they are not cardinals. The third class, legati nati, are archbishops to whose see is attached the quality of a legate.

LEGATEE. A legatee is a person to whom a legacy is given by a last will and testament.

2.—It is proposed to consider, 1, who may be a legatee; 2, under what description legatees may take.

3.—I. Who may be a legatee. In general every person may be a legatee. 2 Bl. Com. 512. But a person civilly dead cannot take a legacy.

II. Under what description legatees may take.

4.—§ 1. Of legacies to legitimate children. 1. When it appears from express declaration, or a clear inference arising upon the face of the will, that a testator in giving a legacy to a class of individuals generally, intended to apply the terms used by him to such persons only as answered the description at the date of the instrument, those individuals alone will be entitled, although if no such intention had been expressed, or appeared in the will, every person falling within that class at the testator's death, would have been included in the terms of the bequest. 1 Meriv. 320; and see 3 Ves. 611; Id. 609; 15 Ves. 363; Amb. 397; 2 Cox, 291; 4 Bro. C. C. 55; 3 Bro. C. C. 148; 2 Cox, 384.

5.—2. Where a legacy is given to a descript class of individuals, as to children, in general terms, and no period is appointed for the distribution of it, the legacy is due at the death of the testator; the payment of it being merely postponed to the end of a year after that event, for the convenience of the executor or administrator in administering the
assets. The rights of the legatees are finally settled, and determined at the testator’s decease. 1 Ball & B. 459; 2 Murph. 178. Upon this principle is founded the well established rule that children in existence at that period, or legally considered so to be, are alone entitled to participate in the bequest. 1 Bro. C. C. 532, n.; 2 Bro. C. C. 658; 2 Cox, 190; 1 Dick. 344; 14 Ves. 576; 1 Ves. jr. 405; 1 Cox, 68; 3 Bro. C. C. 391; Amb. 448; 1 Ves. sen. 485; 5 Binn. 607.

6.—3. A child in ventre sa mere takes a share in a fund bequeathed to children, under the general description of “children,” or of “children living at the testator’s death.” 1 Ves. sen. 89; and see 1 P. Wms. 244, 341; 2 Bro. C. C. 63; 1 Salk. 229; 2 Cox, 425; 5 Serg. & Rawle. 38. See tit. In ventre sa mere.

7.—4. When legacies are given to a class of individuals, generally, payable at a future period, as to the children of B, when the youngest shall attain the age of twenty-one; or to be divided among them upon the death of C; any child who can entitle itself under the description, at the time when the fund is to be divided, may claim a share, viz. as well children living at the period of distribution, although not born till after the testator’s death, as those born before, and living at the happening of that event. 1 Supp. to Ves. jr. 115, note 3, to Hill v. Chapman; 2 Supp. to Ves. jr. 157, note 1, to Lincoln v. Pelham. This general rule may be divided into two branches. First, when the division of the fund is postponed until a child or children attain a particular age; when a legacy is given to the children of A at the age of twenty-one, in that case so soon as the eldest arrives at that period, the fund is distributable among so many as are in existence at that time; and no child born afterwards can be admitted to a share, because the period of division fixes the number of legatees. Distribution is then made and nothing remains for future partition. 1 Ball & Beat. 459; 3 Bro. C. C. 402; 5 Binn. 607; 2 Ves. jr. 090; 3 Ves. 739; 3 Bro. C. C. 352, ed. by Belt; 14 Ves. 256; 6 Ves. 345; 10 Ves. 152; 11 Ves. 238.

Second, when the distribution of the fund is deferred during the life of a person in esse. In these cases when the enjoyment of the thing given is by the testator’s express declaration not to be immediate by those, among whom it is to be finally divided, but is postponed to a particular period, as the death of A, then the children or individuals who answer the general description at that time, when distribution is to be made, are entitled to take, in exclusion of those afterwards coming in esse. 1 Ves. sen. 111; 1 Bro. C. C. 386; Id. 530; Id. 582; Id. 587; 1 Atk. 509; 2 Atk. 329; 5 Ves. 136; 3 Bro. C. C. 417; 1 Cox, 327; 8 Ves. 375; 15 Ves. 122; 1 Madd. R. 290; 1 Ball & Beat. 449.

8.—5. The word “children” does not, ordinarily and properly speaking, comprehend grandchildren or issue generally; these being included in that term is permitted only in two cases, namely, from necessity, which occurs where the will would remain inoperative unless the sense of the word “children” were extended beyond its natural import; and where the testator has shown by other words, that he did not intend to use the term children in its proper and actual meaning, but in a more extended sense. 1 Supp. to Ves. jr. 202, note 2, to Bristow v. Ward. In the following cases the word children was extended beyond its natural import from necessity. 6 Rep. 16; 10 Ves. 201; 2 Desauss. 123, in note. The following are instances where by using the words children and issue, indiscriminately, the testator showed his intention to use the former term in the sense of issue so as to entitle grandchildren, &c. to take. 1 Ves. sen. 196; S. C. Ambl. 555; 3 Ves. 258; 3 Ves. & Bea. 68; 4 Ves. 437; 2 Supp. to Ves. jr. 158. There is another class of cases wherein it was determined that grandchildren, &c. were not included in the word children. 2 Vern. 107; 4 Ves. 692; 10 Ves. 195; 3 Ves. & Bea. 59; see 2 Desauss. 308.

9.—§2. Of legacies to natural children. 1. Natural children unborn at the date of the will, cannot take under
a bequest to the children generally, or to the illegitimate children of A B by Mary C; because a natural child cannot take as the issue of a particular person, until it has acquired the reputation of being the child of that person, which cannot be before its birth. Co. Litt. 3, b. 10.—2. Natural children unborn at the date of the will and described as children of the testator or another man, to be born of a particular woman, cannot take under such a description. 1 Peere Wms. 529; 18 Ves. 288.

11.—3. A legacy to an illegitimate child in ventre sa mere, described as the child of the testator or of another man, will fail, since whether the testator or such person were or were not in truth the father, is a fact which can only be ascertained by evidence, that public policy forbids to be admitted. 1 Meriv. 141 to 152.

12.—4. A child in ventre sa mere described merely as a child with which the mother is enceinte, without mentioning its putative father; or if the testator express a belief that the child is his own, and provide for it under that impression, regardless of the chance of being mistaken; then the child will in the first place be capable of taking; and in the second, as presumed, be also entitled in consequence of the testator’s intent to provide for it, whether he be the father or not. 1 Meriv. 148-152.

13.—5. Natural children in existence, having acquired by reputation the name and character of children of a particular person, prior to the date of the will, are capable of taking under the name of children. 1 P. Wms. 529; 1 Ves. & Bea. 467. But the term child, son, issue, and every other word of that species, is to be considered as prima facie to mean legitimate child, son, or issue. Ib.

14.—6. Whether such children take or not depends upon the evidence of the testator’s intention, manifested by the will, to include them in the term children; these cases are instances where the evidence of such intention was deemed insufficient; 5 Ves. 530; 1 Ves. & Bea. 454; 6 Ves. 43-48; 1 Ves. & Bea. 469; and see 1 Ves. & Bea. 456; 2 East, 530.

542. In the following the evidence of intention was held to be sufficient. 1 Ves. & Bea. 469; Blundell v. Dunn, cited in 1 Madd. 433; Beachcroft v. Beachcroft, cited in 1 Madd. 430; 2 Meriv. 419.

15.—§ 3. Of legacies of personal estate to a man and his heirs. 1. A legacy to A and his heirs, is an absolute legacy to A, and the whole interest of the money vests in him for his use. 4 Mad. 361. But when no property in the bequest is given to A, and the money is bequeathed to his heirs, or to him with a limitation to his heirs, if he die before the testator, and the contingency happens, then if there be nothing in the will showing the sense in which the testator made use of the word heirs, the next of kin of A, are entitled to claim under the description, as the only persons appointed by law to succeed to personal estate. 5 Ves. 493; 4 Ves. 649; 1 Jac. & Walk. 388.

16.—2. A bequest to the heirs of an individual, without addition or explanation, will belong to the next of kin; the rule, however, is subject to alteration by the intention of the testator. If then the contents of the will show, that by the word heirs the testator meant other persons than the next of kin, those persons will be entitled. Ambl. 273; I P. Wms. 432; Forrest. 56; 2 Atk. 89. See also 1 Ves. jr. 145; 4 Madd. 361; 14 Ves. 488; 1 Car. Law R. 484.

17.—§ 4. Legacies to issue. 1. The term issue, is of very extensive import, and when used as a word of purchase, and unconfined by any indication of intention, will comprise all persons who can claim as descendants from or through the person to whose issue the bequest is made; and in order to restrain the legal sense of the term, a clear intention must appear upon the will. 3 Ves. 257; Id. 421; 1 Meriv. 434; 13 Ves. 344.

18.—2. Where it appears clearly to be a testator’s meaning to provide for a class of individuals living at the date of his will, and he provides against a lapse by the death of any of them in his lifetime, by the substitution of their issue; in such case although the word will in-
clude all the descendants of the designated legatees, yet if any person who would have answered the description of an original legatee, when the will was made, be then dead, leaving issue, that issue will be excluded, because the issue of those individuals only who were capable of taking original shares, at the date of the will, were intended to take by substitution; so that as the person who was dead when the will was made, could never have taken an original share, there is nothing for his issue in his place. 1 Meriv. 320.

19.—3. When it can be collected from the will that a testator in using the word issue, did not intend it should be understood in its common acceptation, the import of it will be confined to the persons whom it was intended to comprehend. 7 Ves. 531; 3 Ves. 383; 7 Ves. 522; 1 Ves. jr. 143.

20.—§ 5. Of legacies to relations. 1. Under a bequest to relations, none are entitled but those, who in the case of intestacy, could have claimed under the statute of distribution. Forrest. 251; 4 Bro. C. C. 207; 1 Bro. C. C. 31; 3 Bro. C. C. 234; 5 Ves. 529; Amblo. 507; Dick. 380; 1 P. Wms. 327; 2 Ves. sen. 527; 19 Ves. 403; 1 Taunt. 263; 1 T. R. 435, n. See the following cases where the bequests were to “poor relations,” 1 P. Wms. 327; 8 Serg. & Rawle, 45; 1 Scho. & Lef. 111; “most necessitous relations,” Amblo. 636.

21.—2. To this general rule there are several exceptions, namely, first, when the testator has delegated a power to an individual to distribute the fund among the testator’s relations according to his discretion; in such an instance whether the bequest be made to “relations” generally, or to “poor,” or “poorest,” or “most necessitous” relations, the person may exercise his discretion in distributing the property among the testator’s kindred although they be not within the statute of distributions. 1 Scho. & Lef. 111, and 16 Ves. 43; 1 T. R. 435, n.; Amblo. 708; 16 Ves. 27-43. Secondly, Another exception occurs where a testator has fixed a certain test, by which the number of relatives intended by him to participate in his property, can be ascertained; as if a legacy be given to such of the testator’s relations as should not be worth a certain sum, in such case, it seems, all the testator’s relatives answering the description would take, although not within the degrees of the statute of distributions. Amblo. 798. Thirdly, Another exception to the general rule is where a testator has shown an intention in his will, to comprehend relations more remote than those entitled under the statute; in that case his intention will prevail, 1 Bro. C. C. 32, n., and see 1 Cox, 235.

22.—3. The word “relation” or “relations,” may be so qualified as to exclude some of the next of kin from participating in the bequest; and this will also happen when the terms of the bequest are to my “nearest relations,” 19 Ves. 400; Cooper. 275; 1 Bro. C. C. 293; and see 1 Ves. sen. 337; Amblo. 70; to testator’s relations of his name, 1 Ves. sen. 336; or stock, or blood, 15 Ves. 107.

23.—4. The word relations being governed by the statute of distributions, no person can regularly answer the description but those who are of kin to the testator by blood, consequently relatives by marriage are not included in a bequest to relations generally. 1 Ves. sen. 84; 3 Atk. 761; 1 Bro. C. C. 71, 294.

24.—§ 6. Legacies to next of kin. 1. When a bequest is made to testator’s next of kin, it is understood the testator means such as are related to him by blood. But it is not necessary that the next of kin should be of the whole blood, the half blood answering the description of next of kin, are equally entitled with the whole, and if nearer in degree, will exclude the whole blood. 1 Ventr. 425; Alleyn. 36; Styl. 74.

25.—2. Relations by marriage are in general excluded from participating in a legacy given to the next of kin. 18 Ves. 53; 14 Ves. 376, 381, 386; and see 3 Ves. 244; 18 Ves. 49. But this is only a primâ facie construction which may be repelled by the contrary intention of a testator. 14 Ves. 382.
26.—3. A testator is to be understood to mean by the expression “next of kin,” when he does not refer to the statute, or to a distribution of the property as if he had died intestate, those persons only who should be nearest of kin to him, to the exclusion of others who might happen to be within the degree limited by the statute. 3 Bro. C. C. 69; 19 Ves. 404; 14 Ves. 385; see 3 Bro. C. C. 64.

27.—4. Nearest of kin will alone be entitled under a bequest to the next of kin in equal degree. 12 Ves. 438; 1 Madd. 36.

28.—§ 7. Legacies to legal personal representatives or to personal representatives. 1. Where there is nothing on the face of the will to manifest a different intention, the legal construction of the words “personal representatives,” or “legal personal representatives,” is executors or administrators of the person described. 6 Ves. 402; 6 Madd. 159. A legacy limited to the personal or legal personal representatives of A, unexplained by any thing in the will, will entitle A’s executors or administrators to it, not as representing A, or as part of his estate, or liable to his debts, but in their own right as persons designated by the law. 2 Madd. 155.

29.—2. In the following cases the executors or administrators were held to be entitled under the designation of personal, or legal personal representatives. 3 Ves. 486; Anstr. 128.

30.—3. The next of kin and not the executors or administrators, were, in the following cases, held to be entitled under the same designation. 3 Bro. C. C. 224, approved by Lord Rosslyn in 3 Ves. 486; 3 Ves. 146; 19 Ves. 404.

31.—4. The same words were held to mean children, grandchildren, &c.; and if the will direct the bequest to be divided equally among them, they are entitled to the fund per capita. Ambl. 397; 3 Bro. C. C. 369.

36.—§ 10. Legacies to a family. 1. The word family, when applied to personal property, is synonymous with “kindred,” or “relations;” see 9 Ves. 323. This being the ordinary acceptation of the word family, it may nevertheless be confined to particular relations by the context of the will; or the term 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. See 8 Ves. 604; Dy. 333; 5 Ves. 166; Hob. 33; Coop. 122; 5 M. & S. 126; 17 Ves. 263; 1 Taunt. 266; 14 Ves. 488; 9 Ves. 319; 3 Morr. 689.

37.—§ 11. Legacies to servants. 1. To entitle himself to a bequest “to servants;” the relation of master and servant must have arisen out of a contract by
which the claimant must have formed an engagement which entitled the master to the service of the individual during the whole period, or each and every part of the time for which he contracted to serve. 12 Ves. 114; 2 Vern. 546.

38.—2. To claim as a servant the legatee must in general be in the actual service of the testator at the time of his death. Still a servant may be considered by a testator as continuing in his employment, and be intended to take under the bequest, although he quitted the testator’s house previous to his death, so as to answer the description in the instrument; and to establish which fact declarations of the testator upon the subject cannot be rejected; but testimony that the testator meant a servant notwithstanding having left the testator’s service, to take a legacy bequeathed only to servants in his employment at his death, cannot be received as in direct opposition to the will. 16 Ves. 486, 489.

39.—§ 12. The different periods of time at which persons answering the descriptions of next of kin, family relations, issue, heirs, descendants and personal representatives, (to whom legacies are given by those terms generally, and without discrimination,) were required to be in esse, for the purpose of participating in the legatory fund. 1. When the will expresses or clearly shows that a testator in bequeathing to the relations, &c. of a deceased individual, referred to such of them as were in existence when the will was made, they only will be entitled; as if the bequest was, “I give 1000l. to the descendants of the late A B, now living,” those descendants only in esse at the date of the will can claim the legacy. Amb. 397.

40.—2. But, in general, a will begins to speak at the death of the testator, and consequently in ordinary cases, relations, next of kin, issue, descendants, &c. living at that period will alone divide the property bequeathed to them by those words. See 1 Ball & Bent. 459; 1 Bro. C. C. 532; 3 Bro. C. C. 224; 5 Ves. 399; 1 Jac. & Walk. 388, n.; 3 Meriv. 689; 5 Binn. 607; 2 Murph. 178.

41.—3. If a testator express, or his intention otherwise appear from his will, that a request to his relations, &c. living at the death of a person, or upon the happening of any other event should take the fund, his next of kin only in existence at the period described, will be entitled, in exclusion of the representatives of such of them as happened to be then dead. 3 Ves. 486; 9 Ves. 325; 1 Atk. 409; 15 Ves. 27; 4 Vin. Abr. 485, pl. 16; 8 Ves. 38; 5 Binn. 606; see 6 Munf. 47.

42.—§ 13. When the fund given to legates, by the description of “family,” “relations,” “next in kin,” &c. is to be divided among them either per capita, or per stirpes, or both per stirpes et capita.

1. Where the testator gives a legacy to his relations generally, if his next of kin be related to him in equal degree, as brothers, there being no children of a deceased brother, the brothers will divide the fund among them in equal shares, or per capita; each being entitled in his own right to an equal share. So it would be if all the brothers had died before the testator, one leaving two children, another three, &c. all the nephews and nieces would take in equal shares, per capita, in their own rights, and not as representing their parents; because they are sole next of kin, and related to the testator in equal degree. Pre. Ch. 54; and see 1 P. Wms. 595; 1 Atk. 454; 3 P. Wms. 50. But if the testator’s next of kin happen not to be related to him in equal degrees, as a brother, and the children of a deceased brother, so as that under the statute the children would take per stirpes as representing their parents, namely, the share he would have taken, had he been living; yet if the testator has shown an intention that his next of kin shall be entitled to his property in equal shares, i.e. per capita, the distribution by the statute will be superseded. This may happen where the bequest is to relations, next of kin, &c. to be equally divided among them; or by expressions of like import. Forrest. 251; and see 1 Bro. C. C. 33; 8 Serg. & Rawle, 43; 11 Serg. & Rawle, 103; 1 Murph. 383.
43.—2. Where a bequest is to relations, &c. those persons only who are next of kin are entitled, and the statute of distributions is adopted, not only to ascertain the persons who take, but also the proportions and manner in which the property is to be divided; the will being silent upon the subjects, if the next of kin of the person described be not related to him in equal degree, those most remote can only claim per stirpes, or in right of those who would have been entitled under the statute if they had been living. Hence it appears that taking per stirpes always supposes an inequality in relationship. For example, where a testator bequeaths a legacy to his “relations,” or “next of kin,” and leaves at his death two children, and three grandchildren, the children of a deceased child; the grandchildren would take their parents’ share, that is, one-third per stirpes under the statute, as representing their deceased parent. 1 Cox, 235.

44.—3. Where a testator bequeaths personal estate to several persons as tenants in common, with a declaration that upon all or any of their deaths before a particular time, their respective shares shall be equally divided among the issue or descendants of each of them, and they die before the arrival of the period, some leaving children, others grandchildren, and great grandchildren, and others grandchildren and more remote descendants; in such case the issue of each deceased person will take their parents’ share per stirpes; and such issue, whether children only, or children and grandchildren, &c. will divide each parent’s share among them equally per capita. 1 Ves. sen. 196.

45.—§ 14. The effect of a mistake in the names of legatees. Where the name has been mistaken in a will or deed, it will be corrected from the instrument, if the intention appear in the description of the legatee or donee, or in other parts of the will or deed. For example, if a testator give a bequest to Thomas second son of his brother John, when in fact John had no son named Thomas, and his second son was called William; it was held William was entitled. 19 Ves. 381; Coop. 229; and see Ambl. 175; Co. Litt. 3, a; Finch’s R. 403; 3 Leon, 18. When a bequest is made to a class of individuals, nominatim, and the name or christian name of one of them is omitted, and the name or christian name of another is repeated; if the context of the will show that the repetition of the name was error, and the name of the person omitted was intended to have been inserted, the mistake will be corrected. As where a testator gave his residuary estate to his six grandchildren, by their christian names. The name of Ann, one of them, was repeated, and the name of Elizabeth, another of them, was omitted. The context of the will clearly showed the mistake which had occurred, and Elizabeth was admitted to an equal share in the bequest. 1 Bro. C. C. 30; see 2 Cox, 186. And as to cases where parol evidence will be received to prove the mistakes in the names or additions of legatees, and to ascertain the proper person, see 3 B. & A. 632 to 642; 6 T. R. 676; 2 P. Wms. 137; 1 Atk. 410; 1 P. Wms. 421; 5 Rep. 68, b; 6 Ves. 42; 7 East, 302; Ambl. 75.

46.—§ 15. The effect of mistakes in the descriptions of legatees, and the admission of parol evidence in those cases. Where the description of the legatee is erroneous, the error not occasioned by any fraud practiced upon the testator, and there is no doubt as to the person who was intended to be described, the mistake will not disappoint the bequest. Hence if a legacy be given to a person by a correct name, but a wrong description or addition, the mistaken description will not vitiate the bequest, but be rejected; for it is a maxim that veritas nominis tollit errorem demonstrationes. Ld. Bac. Max. reg. 25; and see 2 Ves. Jr. 589; Ambl. 75; 4 Ves. 808; Plowd. 344; 19 Ves. 400.

47.—2. Wherever a legacy is given to a person under a particular description and character which he himself has falsely assumed; or, where a testator induced by the false representations of third persons to regard the legatee in a relationship which claims his bounty,
bequeaths him a legacy according with such supposed relationship, and no mo-
tive for such bounty can be supposed, the law will not, in either case, permit
the legatee to avail himself of the de-
scription, and therefore he cannot demand
his legacy. See 4 Ves. 802; 4 Bro. C. C. 20.

48.—3. The same principle which has established the admissibility of parol
evidence to correct errors in naming le-
gatees, authorizes its allowance to rectify
mistakes in the description of them.
Amb. 374; 1 Ves. Jr. 266; 1 Meriv.
184.

49.—4. If neither the will nor ex-
trinsic evidence is sufficient to dispel the
ambiguity arising from the attempt to
apply the description of the legatee to
the person intended by the testator, the
legacy must fail, from the uncertainty of
its object. 7 Ves. 508; 6 T. R. 671.

50.—§ 16. The consequences of im-
perfect descriptions of, or reference to
legatees, appearing upon the face of
wills, and when parol evidence is admis-
sible. These cases occur, 1. When a
blank is left for the Christian name of the
legatee; 2. When the whole name is
omitted; 3. When the testator has
merely written the initials of the name;
and, 4. When legatees have been once
accurately described, but in a subsequent
reference to one of them, to take an
additional bounty, the person intended
is doubtful, from ambiguity in the terms.

51.—1. When a blank is left for the
Christian name of the legatee, evidence
is admissible to supply the omission. 4
Ves. 680.

52.—2. When the omission consists of
the entire name of the legatee, parol
evidence cannot be admitted to supply
the blank. 2 Ch. Ca. 51; 2 Atk. 239;
3 Bro. C. C. 311.

53.—3. When a legatee is described
by the initials of his name only, parol
evidence may be given to prove his iden-
tity. 3 Ves. 148.—When a patent am-
biguity arises from an imperfect reference
to one of two legatees correctly described
in a prior part of the will, parol evidence
is admitted to show which of them
was intended, so that the additional

legacy intended for the one will depend
upon the removal of the obscurity by a
sound interpretation of the whole will.
3 Atk. 257; and see 2 Ves. 217; 2
Eden, 107.

See further upon this subject, Lownd.
on Leg. ch. 4; 1 Roper on Leg. ch. 2;
Com. Dig. Chancery, 3 Y; Bac. Abr.
h. t.; Vin. Abr. h. t.; Nels. Abr. h. t.;
Whart. Dig. Wills, G. P.; Hamm. Dig.
756; Grimké on Exec. ch. 5; Toll. on
Executors, ch. 4.

LEGALIS HOMO. A person who
stands rectus in curia, who possesses all
his civil rights. A lawful man. One
who stands rectus in curia, not outlawed
nor infamous. In this sense are the
words pro bi et legales homines.

LEGANTINE CONSTITUTIONS.
The name of a code of ecclesiastical
laws, enacted in national synods under
Pope Gregory IX. and Pope Clement
IV. about the years from 1220 to 1230.

LEGATORY. One to whom any
thing is bequeathed; a legatee. This
word is sometimes though seldom used
to designate a legate or nuncio.

LEGATION. An embassy; a mis-

sion.

2.—All persons attached to a foreign
legation, lawfully acknowledged by the
government of this country, whether
they are ambassadors, envoys, ministers,
or attachés, are protected by the act of
April 30, 1790, 1 Story's L. U. S. 83,
from violence, arrest or molestation. 1
Dall. 117; 1 W. C. C. R. 232; 11
Wheat. 467; 2 W. C. C. Rep. 435; 4
W. C. C. R. 581; 1 Miles, 366; 1 N.
& M. 217; 1 Bald. 240; Wheat. Int.
Law, 167. Vide Ambassador; Envoy;
Minister.

LEGATORY, or dead man's part or
share, (q. v.) is, by the custom of Lon-
don, the third part of a freeman's per-
sonal estate, which in case he had a wife
and children, the freeman might always
have disposed of by will. Bac. Ab.
Customs of London, D 4.

LEGISLATIVE POWER, is the
authority, under the constitution, to
make laws, and to alter or repeal them.

LEGISLATOR. One who makes
laws.
2.—In order to make good laws, it is necessary to understand those which are in force; the legislator ought, therefore, to be thoroughly imbued with a knowledge of the laws of his country, their advantages and defects; to legislate without this previous knowledge is to attempt to make a beautiful piece of machinery with one's eyes shut. There is unfortunately too strong a propensity to multiply our laws and to change them. Laws must be yearly made, for the legislatures meet yearly, but whether they are always for the better may be well questioned. A mutable legislation is always attended with evil. It renders the law uncertain, weakens its effects, hurts credit, lessens the value of property, and as they are made frequently, in consequence of some extraordinary case, laws sometimes operate very unequally. Vide 1 Kent, Com. 227; and Le Magasin Universel, tome ii. p. 227, for a good article against excessive legislation; Matter, De l'Influence des Lois sur les Mœurs, et de l'Influence des Mœurs sur les Lois.

LEGISLATURE, government, is that body of men in the state which has the power of making laws.

2.—By the constitution of the United States, art. 1, s. 1, all legislative powers granted by it are vested in a congress of the United States, which shall consist of a senate and house of representatives.

3.—It requires the consent of a majority of each branch of the legislature in order to enact a law, and then it must be approved by the president of the United States, or in case of his refusal, by two-thirds of each house. Const. U. S. art. 1, s. 7, 2.

4.—Most of the constitutions of the several states contain provisions nearly similar to this. In general the legislature will not exercise judicial functions, yet the use of such power, upon particular occasions, is not without example. Vide Judicial.

LEGITIMACY, is the state of being born in wedlock, that is in a lawful manner.

2.—Marriage is considered by all civilized nations as the only source of legiti-
The same rule seems to have been adopted in Indiana and Missouri. An acknowledgment of illegitimate children, of itself, legitimatizes in Ohio, and in Michigan and Mississippi marriage alone between the reputed parents has the same effect. In Maine a bastard inherits to one who is legally adjudged, or in writing owns himself to be the father. A bastard may be legitimatized in North Carolina on application of the putative father to court, either where he has married the mother, or she is dead, or married another, or lives out of the state. In a number of the states, namely, in Alabama, Connecticut, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, and Virginia, a bastard takes by descent from his mother, with modifications regulated by the laws of these states. 2 Hill. Ab. s. 24 to 35, and the authorities there referred to. Vide Bastard; Bastardly; Descent.

LEGITIME, civil law, is that portion of a parent's estate of which he cannot disinherit his children, without a legal cause.

2.—The civil code of Louisiana declares that donations inter vivos or mortis causa 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. Under the name of children are included descendants of whatever degree they may be; it must be understood that they are only counted for the child they represent. Civil Code of Lo. art. 1480.

3.—Donation inter vivos or mortis causa cannot exceed two-thirds of the property if the disposer having no children have a father, mother, or both. Ib. art. 1481. Where there are no descendants, and in case of the previous decease of the father and mother, donations inter vivos and mortis causa, may, in general, be made of the whole amount of the property of the disposer. Ib. art. 1483. The Code Civil makes nearly similar provisions. Code Civ. L. 3, t. 2, c. 3, s. 1, art. 913 to 919.

4.—In Holland, Germany, and Spain, the principles of the Falcidian law, more or less limited, have been generally adopted. Coop. Just. 516.

5.—In the United States, other than Louisiana, and in England, there is no restriction on the right of bequeathing. But this power of bequeathing did not originally extend to all a man's personal estate; on the contrary, by the common law, as it stood in the reign of Henry the Second, a man's goods were to be divided into three equal parts, one of which went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so converse if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal. Glany. l. 2, c. 5; Bract. l. 2, c. 26. The shares of the wife and children were called their reasonable part. 2 Bl. Comm. 491, 2. See Death's part; Falcidian law.

LENDER, contracts, is he from whom a thing is borrowed.

2.—The contract of loan confers rights on the lender, and imposes duties on him. 1. The lender has the right to revoke the loan at his mere pleasure, 9 Cowen, R. 687; 8 Johns. Rep. 432; 1 T. R. 480; 2 Campb. Rep. 464; and is deemed the owner or proprietor of the thing during the period of the loan; so that an action for a trespass or conversion will lie in favour of the lender against a stranger, who has obtained a wrongful possession, or has made a wrongful conversion of the thing loaned. As mere gratuitous permission to a third person to use a chattel does not in contemplation of the common law, take it out of the possession of the owner. 11 Johns. Rep. 285; 7 Cowen, Rep. 753; 9 Cowen, Rep. 687; 2 Saund. Rep. 47 b; 8 Johns. Rep. 432; 13 Johns. Rep. 141, 561; Bae. Abr. Trespass, C 2; id. Trover, C 2. And in this the civil agrees with the common law. Dig. 13, 6, 6, 8; Pothier, Prét à Usage, ch. 1, § 1, art. 2, n. 4; art. n. 9; Ayliffe's Fund. B. 4, t. 16, p.
517; Domat, B. 1, t. 5, § 1, n. 4; and so does the Scotch law, Ersk. Pr. Laws of Scotl. B. 3, t. 1, § 8.

3.—2. In the civil law, the first obligation on the part of the lender, is to suffer the borrower to use and enjoy the thing loaned during the time of the loan, according to the original intention. Such is not the doctrine of the common law, 9 Cowen, Rep. 687. The lender is obliged, by the civil law, to reimburse the borrower the extraordinary expenses, to which he has been put for the preservation of the thing lent. And in such a case, the borrower would have a lien on the thing, and may detain it, until these extraordinary expenses are paid; and the lender cannot, even by an abandonment of the thing to the borrower, excuse himself from re-payment; nor is he excused by the subsequent loss of the thing by accident, nor by a restitution of it by the borrower, without insisting upon re-payment. Pothier, Prêt à Usage, ch. 3, n. 82, 83; Dig. 13, 6, 18, 4; Ersk. Pr. Laws of Scotl. B. 3, t. 1, § 9.

What would be decided at common law, does not seem very clear. Story on Bailm. § 274. Another case of implied obligation on the part of the lender by the civil law is, that he is bound to give notice to the borrower of the defects of the thing loaned; and if he does not and conceals them, and any injury occurs to the borrower thereby, the lender is responsible. Dig. 13, 6, 98, 3; Poth. Prêt à Usage, n. 84; Domat, Liv. 1, t. 5, s. 3, n. 3. In the civil law there is also an implied obligation on the part of the lender where the thing has been lost by the borrower, and after he has paid the lender the value of it, the thing has been restored to the lender; in such case the lender must return to the borrower either the price or thing. Dig. 13, 6, 17, 5; Poth. ib. n. 85. “The common law seems to recognise the same principles, though,” says Judge Story, Bailm. § 276, “it would not perhaps be easy to cite a case on a gratuitous loan directly on the point.” See Borrower; Commodity; Story, Bailm. ch. 4; Domat. Liv. 2, tit. 5.

LESSEE. He to whom a lease is made. The subject will be considered by taking a view, 1, of his rights; 2, of his duties.

2.—1. He has a right to enjoy the premises leased for the term mentioned in the lease, and to use them for the purpose agreed upon. He may, unless restrained by the covenants in the lease,
either assign it, or underlet the premises. 1 Cruise, Dig. 174. By an assignment of the lease is meant the transfer of all the tenant’s interest in the estate to another person; on the contrary, an under-letting is but a partial transfer of the property leased, the lessee retaining a reversion to himself.

3.—2. The duties of the lessee are numerous. First, he is bound to fulfill all express covenants he has entered into in relation to the premises leased; and, secondly, he is required to fulfill all implied covenants which the relation of lessee imposes upon him towards the lessor. For example, he is bound to put the premises to no other use than that for which it was hired; when a farm is let to him for common farming purposes, he cannot open a mine and dig ore which may happen to be in the ground, but if the mine has been opened, it is presumed both parties intended it should be used, unless the lessee were expressly restrained. 1 Cruise, Dig. 132. He is required to use the property in a tenant-like and proper manner; to take reasonable care of it, and to restore it at the end of his term, subject only to the deterioration produced by ordinary wear, and the reasonable use for which it was demised. 12 M. & W. 827. Although he is not bound, in the absence of an express covenant, to rebuild in case of destruction by fire or other accident, yet he must keep the house in a habitable state, if he received it in good order. See Repairs. The lessee is required to restore the property to the lessor at the end of the term.

Vide Estate for years; Lease; Notice to quit; Tenant for years; Under-lease.

LESSOR, contr. is he who grants a lease. Civ. Code of L. art. 2647.


LET. Hinderance, obstacle, obstruction; as, without let, molestation or hinderance.

TO LET. To hire, to lease; to grant the use and possession of something for a compensation.

2.—This term is applied to real estate, and the words to hire are more commonly used when speaking of personal estate. See Hire, Hirer, and Letter.

3.—Letting is very similar to selling; the difference consists in this; that instead of selling the thing itself, the letter sells only the use of it.

LETTER, com. law, crim. law, an epistle; a despatch; a writing usually on paper, which is folded up and sealed, written by one person to another.

2.—A letter is always presumed to be sealed, unless the presumption be rebutted. 1 Caines, R. 582.

3.—This subject will be considered by 1st, taking a view of the law relating to the transmission of letters through the post office; and 2, The effect of letters in making contracts; 3, The ownership of letters sent and received.

4.—§ 1. Letters are commonly sent through the post office, and the law has carefully provided for their conveyance through the country, and their delivery to the persons to whom they are addressed. The act to reduce into one the several acts establishing and regulating the post office department, section 21, 3 Story’s Laws United States, 1991, enact, that if any person employed in any of the departments of the post office establishment, shall unlawfully detain, delay, or open, any letter, packet, bag, or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and which are intended to be conveyed by post; or, if any such person shall secrete, embezzle, or destroy, any letter or packet entrusted to such person as aforesaid, and which shall not contain any security for, or assurance relating to money, as hereinafter described, every such offender, being thereof duly convicted, shall, for every such offence, be fined, not exceeding three hundred dollars, or imprisoned, not exceeding six months, or both, according to the circumstances and aggravations of the offence. And if any person, employed as aforesaid, shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, with which he or she shall be entrusted, or which shall have come
to his or her possession, and are intended to be conveyed by post, containing any bank note, or bank post bill, bill of exchange, warrant of the treasury of the United States, note of assignment of stock in the funds, letters of attorney for receiving annuities or dividends, or for selling stock in the funds, or for receiving the interest thereof, or any letter of credit, or note for, or relating to, payment of moneys, or any bond, or warrant, draft, bill, or promissory note, covenant, contract, or agreement whatsoever, for, or relating to, the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing, or any receipt, release, acquittance, or discharge of, or from, any debt, covenant, or demand, or any part thereof, or any copy of any record of any judgment, or decree, in any court of law or chancery, or any execution which may have issued thereon; or any copy of any other record, or any other article of value, or any writing representing the same; or if any such person, employed as aforesaid, shall steal, or take, any of the same out of any letter, packet, bag, or mail of letters, that shall come to his or her possession, such person shall, on conviction for any such offence, be imprisoned not less than ten years, nor exceeding twenty-one years; and if any person who shall have taken charge of the mails of the United States, shall quit or desert the same before such person delivers it into the post office kept at the termination of the route, or some known mail carrier, or agent of the general post office, authorized to receive the same, every such person, so offending, shall forfeit and pay a sum not exceeding five hundred dollars, for every such offence; and if any person concerned in carrying the mail of the United States, shall collect, receive, or carry any letter, or packet, or shall cause or procure the same to be done, contrary to this act, every such offender shall forfeit and pay for every such offence a sum not exceeding fifty dollars.

5.—§ 2. Most contracts may be formed by correspondence; and cases not unfrequently arise where it is difficult to say whether the concurrence of the will of the contracting parties took place or not. In order to form a contract both parties must concur at the same time, or there is no agreement. Suppose, for example, that Paul of Philadelphia, is desirous of purchasing a thousand bales of cotton, and offers by letter to Peter of New Orleans, to buy them from him at a certain price; but on the next day he changes his mind, and then he writes to Peter that he withdraws his offer; or on the next day he dies, in either case, there is no contract, because Paul did not continue in the same disposition to buy the cotton, at the time that his offer was accepted. The precise moment when the consent of both parties is perfect, is, in strictness, when the person who made the offer becomes acquainted that it has been accepted. But this may be presumed from circumstances. The acceptance must be of the same precise terms without any variance whatever. 4 Wheat. 225; see 1 Pick. 278; 10 Pick. 326; 6 Wend. 103.

6.—§ 3. A letter received by the person to whom it is directed, is the qualified property of such person, but where it is of a private nature, the receiver has no right to publish it without the consent of the writer, unless under very extraordinary circumstances, as for example, when it is requisite to the defence of the character of the party who received it. 2 Ves. & B. 19; 2 Atk. 542; Amb. 757; 1 Ball. & B. 207; 1 Mart. (Lo.) R. 297; Denisart, verbo Lettres Missives. Vide Dead Letter; Jeopardy; Mail; Newspaper; Postage; Post Master General.

LETTER, contracts, called in the civil law, locutor, and in the French law, locateur, bouteur, or baillieur, is he who, being the owner of a thing, lets it out to another for hire or compensation. See HIRER; LOCATOR; CONDUCTOR; Story on Bailm. § 369.

2.—According to the French and civil law, in virtue of the contract the letter of a thing to hire impliedly engages the hirer the full use and enjoyment of the thing hired, and to fulfil his own engagements and trusts in respect to it, accord-
ing to the original intention of the parties. This implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act which shall deprive the hirer of the thing; to warrant the title and possession to the hirer, to enable him to use the thing or to perform the service; to keep the thing in suitable order and repair for the purpose of the bailment; and finally to warrant the thing free from any fault inconsistent with the use of it. These are the main obligations deduced from the nature of the contract; and they seem generally founded on unexceptionable reasoning. Pothier, Louage, n. 53; Id. n. 277; Domat, B. 1, tit. 4, § 3; Code Civ. of L. tit. 9, c. 2, s. 2. It is difficult to say how far (reasonable as they are in a general sense) these obligations are recognized in the common law. In some respects the common law certainly differs. See Repairs; Doug. 744, 748; 1 Saund. 321, 328, and ibid. note 7; 4 T. R. 318.

LETTER, civil law. The answer which the prince gave to questions of law, which had been submitted to him by magistrates, was called letters or epistles. See Rescripts.

LETTER OF ADVICE, comm. law, is a letter containing information of any circumstances unknown to the person to whom it is written; generally informing him of some act done by the writer of the letter.

2.—It is usual and perfectly proper for the drawer of a bill of exchange to write a letter of advice to the drawee, as well to prevent fraud or alteration of the bill, or otherwise to let the drawee know what provision has been made for the payment of the bill. Chit. Bills, 185, (ed. of 1836.)

LETTER OF ATTORNEY, practice. A written instrument under seal by which one or more persons called the constituents, authorize one or more other persons called the attorneys, to do some lawful act by the latter, for or instead, and in the place of the former. 1 Moody, Cr. Cas. 52, 70.

2.—The authority given in the letter of attorney is either general, as to transact all the business of the constituent; or special, as to do some special business, particularly named, as to collect a debt.

3.—It is revocable or irrevocable; the former when no interest is conveyed to the attorney, or some other person. It is irrevocable when the constituent conveys a right to the attorney in the matter which is the subject of it; as, when it is given as part security. 2 Esp. R. 565. Civil Code of Lo. art. 2954 to 2970.

LETTER-BOOK, commerce, is a book which contains copies of letters a merchant or trader writes to his correspondents.

2.—After notice to the plaintiff to produce a letter which he admitted to have received from the defendant, it was held that an entry by a deceased clerk, in a letter-book professing to be a copy of a letter from the defendant to the plaintiff of the same date, was admissible evidence of the contents, proof having been given, that according to the course of business, letters of business written by the plaintiff were copied by this clerk and then sent off by the post. 3 Campb. R. 305. Vide 1 Stark. Ev. 356.

LETTER CARRIER. A person employed to carry letters from the post office to the persons to whom they are addressed.

2.—The act of congress of July 2, 1836, 4 Sharsw. Cont. of Story, L. U. S. 2475, directs, § 41, That the postmaster general shall be authorized, whenever the same may be proper for the accommodation of the public in any city, to employ letter carriers for the delivery of letters received at the post office in said city; except such as the persons to whom they are addressed may have requested, in writing, addressed to the postmaster, to be retained in the post office; and for the receipt of letters at such places in the said city as the postmaster general may direct, and for the deposit of the same in the post office; and for the delivery by a carrier of each letter received from the post office, the person to whom the same may be delivered shall pay not exceeding two cents;
and for the delivery of each newspaper and pamphlet, one-half cent; and for every letter received by a carrier to be deposited in the post office, there shall be paid to him, at the time of the receipt, not exceeding two cents; all of which receipts, by the carriers in any city, shall, if the postmaster general do direct, be accounted for to the postmaster of said city; to constitute a fund for the compensation of the said carriers, and be paid to them in such proportions and manner as the postmaster general may direct. Each of the said carriers shall give bond with sureties, to be approved by the postmaster general, for the safe custody and delivery of letters, and for the due account and payment of all moneys received by him.

LETTER OF CREDENCE, international law, is a written instrument addressed by the sovereign or chief magistrate of a state to the sovereign or state to whom a public minister is sent, certifying his appointment as such, and the general object of his mission, and requests that full faith and credit may be given to what he shall do and say on the part of his court.

2.—When it is given to an ambassador, envoy, or minister accredited to a sovereign, it is addressed to the sovereign or state to whom the minister is delegated; in the case of a chargé d'affaires, it is addressed by the secretary or minister of state charged with the department of foreign affairs, to the minister of foreign affairs of the other government. Wheat. International Law, pt. 3, c. 1, § 7; Wiequefort, de l’Ambassadeur, l. 1, § 15.

LETTER OF CREDIT, contracts, is an open or sealed letter from one merchant in one place directed to another in another place or country, requiring him, that if a person therein named, or the bearer of the letter, shall have occasion to buy commodities, or to want money to any particular unlimited amount, that he will either procure the same or pass his promise, bill, or other engagement for it, on the writer of the letter undertaking that he will provide him the money for the goods, or repay him by exchange, or give him such satisfaction as he shall require, either for himself or the bearer of the letter. 3 Chit. Com. Law, 336; and see 4 Chit. Com. Law, 259, for a form of such letter.

2.—These letters are either general or special; the former is directed to the writer’s friends or correspondents generally, where the bearer of the letter may happen to go; the latter is directed to some particular person. When the letter is presented to the person to whom it is addressed, he either agrees to comply with the request, in which case he immediately becomes bound to fulfill all the engagements therein mentioned; or he refuses; in which case the bearer should return it to the giver without any other proceeding, unless, indeed, the merchant to whom the letter is directed is a debtor of the merchant who gave the letter, in which case he should procure the letter to be protested. 3 Chit. Com. Law, 337; Malyn, 76; 1 Beaw. Lex Merc. 607; Hall’s Adm. Pr. 14; 4 Ohio R. 197; 1 Wile. R. 510.

3.—The debt which arises on such letter, in its simplest form, when complied with, is between the mandatory and the mandant; though it may be so conceived as to raise a debt also against the person who is supplied by the mandatory. 1. When the letter is purchased with money by the person wishing for the foreign credit; or is granted in consequence of a check on his cash account; or procured on the credit of securities lodged with the person who granted it; or in payment of money due by him to the payee; the letter is in its effects similar to a bill of exchange, drawn on the foreign merchant. The payment of the money by the person on whom the letter is granted raises a debt, or goes into account between him and the writer of the letter; but raises no debt to the person who pays on the letter, against him to whom the money is paid.—2. When not so purchased, but truly an accommodation, and meant to raise a debt on the person accommodated, the engagement generally is, to see paid any advances made to him, or to guaranty any draft accepted or bill discounted; and the compliance with the mandate, in such case,
raises a debt, both against the writer of the letter, and against the person accredited. 1 Bell's Com. 371, 5th ed. The bearer of the letter of credit is not considered bound to receive the money; he may use the letter as he pleases, and he contracts an obligation only by receiving the money. Poth. Contr. de Change, 237.

**LETTER OF LICENSE, contracts.** An instrument or writing made by creditors to their insolvent debtor, by which they bind themselves to allow him longer time than he had a right to, for the payment of his debts; and that they will not arrest or molest him in his person or property till after the expiration of such additional time.

**LETTER OF MARQUE AND REPRISAL, war.** A commission granted by the government to a private individual, to take the property of a foreign state, or of the citizens or subjects of such state, as a reparation for an injury committed by such state, its citizens or subjects. A vessel loaded with merchandise, on a voyage to a friendly port, but armed for its own defence, in case of attack by an enemy, is also called a letter of marque. 1 Boul. Paty, tit. 3, s. 2, p. 300.

2.—By the constitution, art. 1, s. 8, cl. 11, congress have no power to grant letters of marque and reprisal. Vide Chit. Law of Nat. 73; 1 Black. Com. 251; Vin. Ab. Prerogative, N a; Com. Dig. Prerogative, B 4; Molloy, B. 1, c. 2, s. 10; 2 Wooddes. 440; 5 Rob. Rep. 9; 5 Id. 360; 2 Rob. Rep. 224. And vide Reprisal.

**LETTER MISSIVE, Engl. law.** After a bill has been filed against a peer or peeress or lord of parliament, a petition is presented to the lord chancellor for his letter called a letter missive, which requests the defendant to appear and answer to the bill. A neglect to attend to this, places the defendant in relation to such suit, on the same ground as other defendants who are not peers, and a subpoena may then issue. Newl. Pr. 9; 2 Madd. Ch. Pr. 196; Coop. Eq. Pl. 16.

**LETTER OF RECOMMENDATION, comm. law, is an instrument given by one person to another, addressed to a third, in which the bearer is represented as worthy of credit.** 1 Bell's Com. 371, 5th ed.; 3 T. R. 51; 7 Cranch, R. 69; Fell on Guar. ch. 8; 6 Johns. R. 181; 13 Johns. R. 224; 1 Day's Cas. Er. 22; and the article Recommendation.

**LETTERS CLOSE, Engl. law.** Close letters are grants of the king, and being of private concern, they are thus distinguished from letters patent.

**LETTERS AD COLLIGENDUM BONA DEFUNCTI, practice.** In default of the representatives and creditors to administer to the estate of an intestate, the officer entitled to grant letters of administration, may grant to such person as he approves letters to collect the goods of the deceased, which neither make him executor nor administrator; his only business being to collect the goods and keep them in his safe custody. 2 Bl. Comm. 505.

**LETTERS PATENT.** The name of an instrument granted by the government to convey a right to the patentee, as, a patent for a tract of land; or to secure to him a right which he already possesses, as, a patent for a new invention or discovery. Letters patent are matter of record. They are so called because they are not sealed up, but are granted open. Vide Patent.

**LETTERS OF REQUEST, Eng. Ecc. law, is an instrument by which a judge of an inferior court waives or remits his own jurisdiction in favour of a court of appeal immediately superior to it.**

2.—Letters of request in general lie only where an appeal would lie, and lie only to the next immediate court of appeal, waiving merely the primary jurisdiction to the proper appellate court, except letters of request from the most inferior ecclesiastical court may be direct to the Court of Arches, although one or two courts of appeal may by this be ousted of their jurisdiction as courts of appeal. 2 Addams, R. 406. The effect of letters of request is to give jurisdiction to the appellate court in the first
instance. Id. See a form of letters of request in 2 Chit. Pr. 498, note (h).

LETTERS ROGATORY. A letter rogatory is an instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause depending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed. In letters rogatory there is always an offer, on the part of the court whence they issued, to render a similar service to the court to which they may be directed whenever required. Pet. C. C. Rep. 236.

2.—Though formerly used in England in the courts of common law, 1 Roll. Ab. 530, pl. 13, they have been superseded by commissions of Dedimus potestatem, which are considered to be but a feeble substitute. Dunl. Pr. 223, n.; Hall’s Ad. Pr. 37. The courts of admiralty use these letters, which are derived from the civil law, and are recognised by the law of nations. See Felix, Dr. Intern. liv. 2, t. 4, p. 300; Denisart, h. t.

LETTERS TESTAMENTARY, AND OF ADMINISTRATION. It is proposed to consider, 1, their different kinds; 2, their effect.

2.—§ 1. Their different kinds. 1. Letters testamentary. This is an instrument in writing, granted by the judge or officer having jurisdiction of the probate of wills, under his hand and official seal, making known that on the day of the date of the said letters, the last will of the (testator, naming him,) was duly proved before him; that the testator left goods, &c. by reason, whereof, and the probate of the said will, he certifies “that administration of all and singular, the goods, chattels, rights and credits of the said deceased, any way concerning his last will and testament, was committed to (the executor, naming him,) in the said testament named.—2. Letters of administration may be described to be an instrument in writing, granted by the judge or officer having jurisdiction and power of granting such letters, thereby giving (the administrator, naming him,) “full power to administer the goods, chattels, rights and credits, which were of the said deceased, in the county or district in which the said judge or officer has jurisdiction; as also to ask, collect, levy, recover and receive the credits whatsoever, of the said deceased, which at the time of his death were owing, or did in any way belong to him, and to pay the debts in which the said deceased stood obliged, so far forth as the said goods and chattels, rights and credits will extend, according to the rate and order of law.”—3. Letters of administration pendente lite, are letters granted during the pendency of a suit in relation to a paper purporting to be the last will and testament of the deceased.—4. Letters of administration de bonis non, are granted, where the former executor or administrator did not administer all the personal estate of the deceased, and where he is dead or has been discharged or dismissed.—5. Letters of administration, duringante minori iure, are granted where the testator, by his will, appoints an infant executor, who is incapable of acting on account of his infancy. Such letters remain in force until the infant arrives at an age to take upon himself the execution of the will. Com. Dig. Administration, F; Off. Ex. 215, 216. And see 6 Rep. 67, b; 5 Rep. 29, a; 11 Vin. Abr. 103; Bac. Ab. h. t.—6. Letters of administration duringante absenctia, are granted when the executor happens to be absent at the time when the testator died, and it is necessary that some person should act immediately in the management of the affairs of the estate.

3.—§ 2. Of their effect. 1. Generally; 2. Of their effect in the different states, when granted out of the state in which legal proceedings are instituted.

4.—1. Letters testamentary are conclusive as to personal property, while they remain unrevoked; as to realty they are merely primâ facie evidence of right. 3 Binn. 498; Gilb. Ev. 66; 6 Binn. 409; Bac. Abr. Evidence, F. See 2 Binn. 511. Proof that the testator was insane, or that the will was forged, is inadmissible. 16 Mass. 433; 1 Lev. 236. But if the nature of his plea allow the defendant to enter into such
proof, he may show that the seal of the supposed probate has been forged, or that the letters have been obtained by surprise, 1 Lev. 136; or been revoked, 15 Serg. & Rawle, 42; or that the testator is alive, 15 Serg. & Rawle, 42; 3 T. R. 130.

5.—2. The effect of letters testamentary, and of administration granted, in some one of the U. States, is different in different states. A brief view of the law on this subject, will here be given, taking the states in alphabetical order.

6.—Alabama. Administrators may sue upon letters of administration granted in another state, where the intestate had no known place of residence in Alabama at the time of his death, and no representative has been appointed in the state; but before rendition of the judgment, he must produce to the court his letters of administration, authenticated according to the laws of the United States, and the certificate of the clerk of some county court in this state, that the letters have been recorded in his office. Before he is entitled to the money on the judgment, he must also give bond, payable to the judge of the court where the judgment is rendered, for the faithful administration of the money received. Aiken's Dig. 183; Toulm. Dig. 342.

7.—Arkansas. When the deceased had no residence in Arkansas, and he devised lands by will, or where the intestate died possessed of lands, letters testamentary or of administration shall be granted in the county where the lands lie, or of one of them, if they lie in several counties; and if the deceased had no such place of residence and no lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be. Rev. Stat. c. 4, s. 2.

8.—Connecticut. Letters testamentary issued in another state, are not available in this. 3 Day, 303. Nor are letters of administration. 3 Day, 74; and see 2 Root, 462.

9.—Delaware. By the act of 1721, 1 State Laws, 82, it is declared in substance, that when any person shall die, leaving bona notabilia in several counties in the state and in Pennsylvania or elsewhere; and any person not residing in the state, obtains letters of administration out of the state, the deceased being indebted to any of the inhabitants of the state, for a debt contracted within the same, to the value of 20L, then, and in such case, such administrator, before he can obtain any judgment in any court of record within the state against any inhabitant thereof, by virtue of such letters of administration, is obliged to file them with some of the registers in this state; and must enter into bonds with sufficient sureties, who have visible estates here, with condition to pay and satisfy all such debts as were owing by the intestate at the time of his death to any person residing in this state, so far as the effects of the deceased in this state will extend. By the act of June 16, 1769, 1 State Laws, 448, it is enacted in substance that any will in writing made by a person residing out of the state, whereby any lands within the state are devised, which shall be proved in the chancery in England, Scotland, Ireland, or any colony, plantation, or island in America, belonging to the king of Great Britain, or in the hustings, or mayor's court, in London, or in some manor court, or before such persons as have power or authority at the time of proving such wills, in the places aforesaid, to take probates of wills, shall be good and available in law for granting the lands devised, as well as of the goods and chattels bequeathed by such will. The copies of such will, and of the bill, answer, depositions and decree, where proved in any court of chancery, or copies of such wills and the probate thereof, where proved in any other court, or in any office as aforesaid, being transmitted to this state, and produced under the public or common seal of the court or office where the probate is taken, or under the great seal of the kingdom, colony, plantation or island, within which such will is proved, (except copies of such wills and probates as shall appear to be revoked,) are declared to be matter of record, and to be good evidence
in any court of law or equity in this state, to prove the gift or devise made in such will; and such probates are declared to be sufficient to enable executors to bring their actions within any court within this state, as if the same probates or letters testamentary were granted here, and produced under the seal of any of the registers’ offices within this state. By the 3d section of the act, it is declared that the copies of such wills and probates so produced and given in evidence, shall not be returned by the court to the persons producing them, but shall be recorded in the office of the recorder of the county where the same are given in evidence, at the expense of the party producing the same.

10.—Florida. Copies of all wills, and letters testamentary and of administration, heretofore recorded in any public office of record in the state, when duly certified by the keeper of said records, shall be received in evidence in all courts of record in this state; and the probate of wills granted in any of the United States or of the territories thereof, in any foreign country or state, duly authenticated and certified according to the laws of the state or territory, or of the foreign country or state, where such probate may have been granted, shall likewise be received in evidence in all courts of record in this state.

11.—Georgia. To enable executors and administrators to sue in Georgia, the former must take out letters testamentary in the county where the property or debt is, and administrators, letters of administration. Prince’s Dig. 238; Act of 1805, 2 Laws of Geo. 268.

12.—Illinois. Letters testamentary must be taken out in this state, and when the will is to be proved, the original must be produced; administrators of other states must take out letters in Illinois, before they can maintain an action in the courts of the state. 3 Griff. L. R. 419.

13.—Indiana. Executors and administrators appointed in another state may maintain actions and suits, and do all other acts coming within their powers, as such, within this state, upon produc-
Maryland. But, before they can transfer the stocks, they must, during three months, give notice in two newspapers, published in Baltimore, of the death of the testator or intestate, and of the "amount and description of the stock designed to be transferred." Administration must be granted in this state, in order to recover a debt due here to a decedent, or any of his property, with the exceptions above noticed.

18.—Massachusetts. When any person shall die intestate in any other state or country, leaving estate to be administered within this state, administration thereof shall be granted by the judge of probate of any county, in which there is any estate to be administered; and the administration which shall be first lawfully granted shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of the probate court in every other county. Rev. Stat. ch. 64, s. 3. See 3 Mass. 514; 5 Mass. 67; 11 Mass. 256; Id. 314; 1 Pick. 81.

19.—Michigan. Letters testamentary or letters of administration granted out of the state, are not of any validity in it. In order to collect the debts or to obtain the property of a deceased person who was not a resident of the state, it is requisite to take out letters testamentary or letters of administration from a probate court of this state, within whose jurisdiction the property lies, which letters operate over all the state, and then sue in the name of the executor or administrator so appointed. Rev. Stat. 280. When the deceased leaves a will executed according to the laws of this state, and the same is admitted to proof and record where he dies, a certified transcript of the will and probate thereof, may be proved and recorded in any county in this state, where the deceased has property real or personal, and letters testamentary may issue thereon. Rev. stat. 272, 273.

20.—Mississippi. Executors or administrators in another state or territory cannot, as such, sue nor be sued in this state. In order to recover a debt due to a deceased person or his property, there must be taken out in the state, letters of administration or letters with the will annexed, as the case may be. These may be taken out from the probate court of the county where the property is situated, by a foreign as well as a local creditor, or any person interested in the estate of the deceased, if properly qualified in other respects. Walker’s R. 211.

21.—Missouri. Letters testamentary or of administration granted in another state have no validity in this; to maintain a suit, the executors or administrators must be appointed under the laws of this state. Rev. Code, § 2, p. 41.

22.—New Hampshire. "One who has obtained letters of administration, Adams’s Rep. 193, or letters testamentary under the authority of another state, cannot maintain an action in New Hampshire by virtue of such letters. 3 Griff. L. R. 41.

23.—New Jersey. Executors having letters testamentary, and administrators, letters of administration, granted in another state, cannot sue thereon in New Jersey, but must obtain such letters in that state as the law prescribes. 4 Griff. L. R. 1240. By the act of March 6, 1828, Harr. Comp. 195, when a will has been admitted to probate in any state or territory of the United States, or foreign nation, the surrogate of any county of this state is authorized on application of the executor or any person interested, on filing a duly exemplified copy of the will, to appoint a time not less than thirty days, and not more than six months distant, of which notice is to be given as he shall direct, and, if at such time, no sufficient reason be shown to the contrary, to admit such will to probate, and grant letters testamentary or of administration cum testamento annexo, which shall have the same effect as though the original will had been produced and proved under form. If the person to whom such letters testamentary or of administration be granted, is not a resident of this state, he is required to give security for the faithful administration of the estate. By the statute passed February 28, 1838, Elmer’s Dig. 602, no instrument of writing can be admitted to probate under the preceding
act unless it be signed and published by the testator as his will. See Saxton's Ch. R. 332.

24.—New York. An executor or administrator appointed in another state has no authority to sue in New York. 6 John. Ch. Rep. 353; 7 John. Ch. Rep. 45; 1 Johns. Ch. Rep. 153. Whenever an intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in several counties, or assets shall after his death come in several counties, the surrogate of any county in which assets shall be, shall have power to grant letters of administration on the estate of such intestate; but the surrogate, who shall first grant letters of administration on such estate, shall be deemed thereby to have acquired sole and exclusive jurisdiction over such estate, and shall be vested with the powers incidental thereto. Rev. Stat. part 2, c. 6, tit. 2, art. 2, s. 24; 1 R. L. 455, § 3; Laws of 1823, p. 62, s. 2, 1824, p. 332.

25.—North Carolina. It was decided by the court of conference, then the highest tribunal in North Carolina, that letters granted in Georgia were insufficient. Conf. Rep. 68. But the supreme court have since held that letters testamentary granted in South Carolina, were sufficient to enable an executor to sue in North Carolina. 1 Car. Law Repos. 471. See 1 Hayw. 354.

26.—By the revised statutes, ch. 46, s. 6, it is provided that, "when a testator or testatrix shall appoint any person, residing out of this state, executor or executrix of his or her last will and testament, it shall be the duty of the court of pleas and quarter sessions, before which the said will shall be offered for probate, to cause the executor or executrix named therein, to enter into bond with good and sufficient security for his or her faithful administration of the estate of the said testator or testatrix, and for the distribution thereof in the manner prescribed by law; the penalty of said bond shall be double the supposed amount of the personal estate of the said testator or testatrix; and until the said executor or executrix shall enter into such bond, he or she shall have no power nor authority to intermeddle with the estate of the said testator or testatrix, and the court of the county, in which the testator or testatrix had his or her last usual place of residence, shall proceed to grant letters of administration with the will annexed, which shall continue in force until the said executor or executrix shall enter into bond as aforesaid. Provided nevertheless, and it is hereby declared, that the said executor or executrix shall enter into bond as by this act directed within the space of one year after the death of the said testator or testatrix, and not afterwards."

27.—Ohio. Executors and administrators appointed under the authority of another state, may, by virtue of such appointment, sue in this. Ohio Stat. vol. 38, p. 146; act of March 23, 1840, which went into effect the first day of November following; Swan's Coll. 184.

28.—Pennsylvania. Letters testamentary or of administration, or otherwise purporting to authorize any person to intermeddle with the estate of a decedent, granted out of the commonwealth, do not in general confer on any such person any of the powers and authorities possessed by an executor or administrator, under letters granted within the state. Act of March 15, 1832, s. 6. But by the act of April 14, 1835, s. 3, this rule is declared not to apply to any public debt or loan of this commonwealth; but such public debt or loan shall pass and be transferable, and the dividends thereon accrued and to accrue, be receivable in like manner and in all respects and under the same and no other regulations, powers and authorities as were used and practised before the passage of the above mentioned act. And the act of June 16, 1836, s. 3, declares that the above act of March 15, 1832, s. 6, shall not apply to shares of stock in any bank or other incorporated company, within this commonwealth, but such shares of stock shall pass and be transferable, and the dividends thereon accrued and to accrue, be receivable in like manner in all respects, and under the same regulations, powers and authorities as were used and practised with the loans or public debts.
of the United States, and were used and
practised with the loans or public debt
of this commonwealth, before the pas-
sage of the said act of March 15, 1832,
s. 6, unless the by-laws, rules and regu-
lations of any such bank or corporation,
shall otherwise provide and declare.
Executors and administrators who had
been lawfully appointed in some other
of the United States, might by virtue of
their letters duly authenticated by the
proper officer, have sued in this state.
4 Dall. 492; S. C., 1 Binn. 63. But
letters of administration granted by the
archbishop of York, in England, give no
authority to the administrator in Penn-
sylvania. 1 Dall. 456.
30. — Rhode Island. It does not ap-
pear to be settled whether executors
and administrators appointed in another state,
may, by virtue of such appointment, sue
in this. 3 Griff. L. R. 167, 8.
30. — South Carolina. Executors and
administrators of other states, cannot, as
such, sue in South Carolina; they must
take out letters in the state. 3 Griff.
L. R. 848.
31. — Tennessee. § 1. Where any person
or persons may obtain administration on
the estate of any intestate, in any one of
the United States, or territory thereof,
such person or persons shall be enabled
to prosecute suits in any court in this
state, in the same manner as if adminis-
tration had been granted to such person
or persons by any court in the state of
Tennessee. Provided, that such person
or persons shall produce a copy of the
letters of administration, authenticated
in the manner which has been prescribed
by the congress of the United States, for
authenticating the records or judicial
acts of any one state, in order to give
them validity in any other state; and
that such letters of administration had
been granted in pursuance of, and agree-
able to the laws of the state or territory
in which such letters of administration
were granted.
32. — § 2. When any executor or ex-
cutors may prove the last will and testa-
ment of any deceased person, and take on
him or themselves the execution of said
will in any state in the U. States, or in
any territory thereof, such person or per-
sons shall be enabled to prosecute suits in
any court in this state, in the same man-
ner as if letters testamentary had been
granted to him or them, by any court
within the state of Tennessee. Provided,
that such executor or executors shall
produce a certified copy of the letters
testimonial under the hand and seal of
the clerk of the court, where the same
were obtained, and a certificate by the
chief justice, presiding judge, or chair-
man of such court, that the clerk’s cer-
ificate is in due form, and that such
letters testamentary had been granted,
in pursuance of, and agreeable to, the
laws of the state or territory in which
such letters testamentary were granted.
Act of 1809, Carr. & Nich. Comp. 78.
33. — Vermont. If the deceased person
shall, at the time of his death, reside in
any other state or country, leaving estate
to be administered in this state, adminis-
tration thereof shall be granted by the
probate court of the district in which
there shall be estate to administer; and
the administration first legally granted,
shall extend to all the estate of the de-
ceased in this state, and shall exclude
the jurisdiction of the probate court of
every other district. Rev. Stat. tit. 12,
c. 47, s. 2.
34. — Virginia. Authenticated copies
of wills, proved according to the laws of
any of the United States, or of any
foreign country, relative to any estate in
Virginia, may be offered for probate in
the general court; or if the estate lie
altogether in any one county or corpo-
rion, in the circuit, county or corporation
court of such county or corporation. 3
Griff. L. R. 345. It is understood to
be the settled law of Virginia, though
there is no statutory provision on the
subject, that no probate of a will or
grant of administration in another state
of the Union, or in a foreign country,
and no qualification of an executor or
administrator, elsewhere than in Vir-
ginia, give any such executor or admin-
istrator any right to demand the effects
or debts of the decedent, which may
happen to be within the jurisdiction of
the state. There must be a regular pro-
bate or grant of administration and qualification of the executor or administrator in Virginia, according to her laws. And the doctrine prevails in the federal courts held in Virginia, as well as in the state courts. 3 Griff. L. R. 348.

LEVANT ET COUCHANT. This French phrase, which ought perhaps more properly to be couchant et levant, signifies literally rising and lying down. In law it denotes that space of time which cattle have been on the land in which they have had time to lie down and rise again, which, in general, is held to be one night at least. 3 Bl. Com. 9; Dane's Ab. Index, h. t.; 2 Lilly's Ab. 167; Wood's Inst. 190.

LEVARI FACIAS, in the English law, is a writ of execution against the goods and chattels of a clerk. Also the writ of execution on judgment at the suit of the crown. When issued against an ecclesiastic, this writ is in effect the writ of fieri facias, directed to the bishop of the diocese, commanding him to cause execution to be made of the goods and chattels of the defendant in his diocese. The writ also recites, that the sheriff had returned that the defendant had no lay fee, or goods or chattels whereof he could make a levy, and that the defendant was a beneficed clerk, &c. See 1 Chit. R. 428; Ib. 583, for cases when it issues at the suit of the crown. This writ is also used to recover the plaintiff's debt; the sheriff is commanded to levy such debt on the lands and goods of the defendant, in virtue of which he may seize his goods, and receive the rents and profits of his lands, till satisfaction be made to the plaintiff. 3 Bl. Com. 417; 11 Vin. Ab. 14; Dane's Ab. Index, h. t.

LEVITICAL DEGREES, are those degrees of kindred set forth in the eighteenth chapter of Levitical, within which persons are prohibited to marry. Vide Branch; Descent; Line.

LEVY, practice. A seizure, (q. v.); the raising of the money for which an execution has been issued.

2.—In order to make a valid levy on personal property the sheriff must have it within his power and control, or at least within his view; and if having it so, he makes a levy upon it, it will be good if followed up afterwards within a reasonable time, by his taking possession in such manner as to appraise every body of the fact of its having been taken in execution. 3 Rawle, R. 405, 6; 1 Whart. 377; 2 S. & R. 142; 1 Wash. C. C. R. 29; 6 Watts, 468; 1 Whart. 116.

3.—It is a general rule that when a sufficient levy has been made, the officer cannot make a second. 12 John. R. 208; 8 Cowen, R. 192.

LEVYING WAR, crim. law, is the assembling of a body of men for the purpose of effecting by force a treasonable object; and all who perform any part however minute, or however remote from the scene of action, and who are leagued in the general conspiracy, are considered as engaged in levying war, within the meaning of the constitution. 4 Cranch, R. 473, 4; Const. art. 3, s. 3. Vide Treason; Fries's Trial, Pampl. This is a technical term, borrowed from the English law, and its meaning is the same as it is when used in stat. 25 Edw. 3; 4 Cranch's R. 471; U. S. v. Fries, Pampl. 167; Hall's Am. Law Jo. 351; Burr's Trial; 1 East, P. C. 62 to 77; Alis. Cr. Law of Scotl. 606; 9 C. & P. 129.

LEX. The law. A law for the government of mankind in society. Among the ancient Romans this word was frequently used as synonymous with right, jus. When put absolutely lex meant the Law of the Twelve Tables.

LEX FALCIDIA, civil law. The name of a law which permitted a testator to dispose of three-fourths of his property, but he could not deprive his heir of the other fourth. It was made during the reign of Augustus, about the year of Rome 714, on the requisition of Falcidius, a tribune. Inst. 2, 22; Dig. 35, 2; Code, 6, 50; and Nov. 1 and 131. Vide article Legitimae, and Coop. Just. 486; Rob. Fruits, 290, note (113).

LEX FORI, practice. The law of the court or forum.

2.—The forms of remedies, the modes of proceeding, and the execution of judgments, are to be regulated solely and
LEX

exclusively by the laws of the place where the action is instituted; or as the civilians uniformly express it according to the lex fori. Story, Confl. of Laws, § 556; 1 Caines's Rep. 402; 3 Johns. Ch. R. 190; 5 Johns. R. 152; 2 Mass. R. 84; 7 Mass. R. 515; 3 Conn. R. 472; 7 M. R. 214.

LEX LOCI CONTRACTUS,—contracts. The law of the place where an agreement is made.

2.—Generally, the validity of a contract is to be decided by the law of the place where the contract is made; if valid there, it is, in general, valid everywhere. Story, Confl. of Laws, § 242, and the cases there cited. And vice versa, if void or illegal there, it generally void everywhere. Ib. § 243; 2 Kent, Com. 457; 4 M. R. 584; 7 M. R. 213; 11 M. R. 730; 12 M. R. 475; 1 N. S. 202; 5 N. S. 555; 6 N. S. 76; 6 L. R. 676; 6 N. S. 651; 4 Blackf. R. 89.

3.—There is an exception to the rule as to the universal validity of contracts. The comity of nations, by virtue of which such contracts derive their force in foreign countries, cannot prevail in cases, where it violates the law of our own country, the law of nature, or the law of God. 2 Barn. & Cresw. 448, 471. And a further exception may be mentioned, namely, that no nation will regard or enforce the revenue laws of another country. Cas. Temp. 85, 89, 194.

4.—When the contract is entered into in one place, to be executed in another, there are two loci contractus; the locus celebratati contractus; and the locus solutionis; the former governs in every thing which relates to the mode of constructing the contract, the meaning to be attached to the expressions, and the nature and validity of the engagement; but the latter governs the performance of the agreement. 8 N. S. 34. Vide 15 Serg. & Rawle, 84; 2 Mass. R. 88; 1 Nott & M'Cord, 173; 2 Harr. & Johns. 193, 221; 2 N. H. Rep. 42; 5 Id. 401; 2 John. Cas. 355; 5 Pardes. n. 1482; Bac. Abr. Bail in Civil Causes, B 5; 1 Com. Dig. 545, n.; 1 Supp. to Ves. jr. 270; 3 Ves. 198; 5 Ves. 750.

LEX LONGOBARDORUM.—The name of an ancient code in force among the Lombards. It contains many evident traces of feudal policy. It survived the destruction of the ancient government of Lombardy by Charlemagne, and is said to be still partially in force in some districts of Italy.

LEX MERCATORIA, is that system of laws which are adopted by all commercial nations, and which, therefore, constitute a part of the law of the land. Vide Law Merchant.

LEX TALIONIS. The law of retaliation; an example of which is given in the law of Moses, an eye for an eye, a tooth for a tooth, &c.

2.—Jurists and writers on international law are divided as to the right of one nation punishing with death, by way of retaliation, the citizens or subjects of another nation; in the United States no example of such barbarity has ever been witnessed; but prisoners have been kept in close confinement in retaliation for the same conduct towards American prisoners. Vide Rutherf. Inst. b. 2, c. 9; Mart. Law of Nat. b. 8, c. 1, s. 3, note; 1 Kent, Com. 93.

3.—Writers on the law of nations have divided retaliation into vindictive and amicable. By the former are meant those acts of retaliation which amount to a war; by the latter those acts of retaliation which correspond to the acts of the other nation under similar circumstances. Wheat. Intern. Law, pt. 4, c. 1, § 1.

LEX TERRÆ. The law of the land. The phrase is used to distinguish this from the civil or Roman law.

2.—By lex terræ, as used in Magna Charta, is meant one process of law, namely, proceeding by indictment or presentment of good and lawful men. 2 Inst. 50; 19 Wend. 659; 4 Dev. R. 15. In the constitution of Tennessee, the words “the law of the land” signify a general and public law, operating equally upon every member of the community. 10 Yerg. 71.

LEY. This word is old French, a corruption of loi, and signifies law; for example, Terms de la Ley, Terms of the law.
LEY-GAGER.  *Wager of Law* (q. v.)

**LIABILITY. Responsibility;** the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

2.—The liabilities of one man are not in general transferred to his representatives, further than to reach the estate in his hands. For example, an executor is not responsible for the liabilities of his testator further than the estate of testator which has come to his hands. See Hamm. on Part. 169, 170.

3.—The husband is liable for his wife’s contracts made *dum sola*, and for those made during coverture for necessaries, and for torts committed either while she was sole or since her marriage with him; but this liability continues only during the coverture as to her torts, or even her contracts made before marriage; for the latter, however he may be sued as her executor or administrator, when he assumes that character.

4.—A master is liable for the acts of his servant while in his employ, performed in the usual course of his business, upon the presumption that they have been authorized by him, but he is responsible only in a civil point of view and not criminally, unless the acts have been actually authorized by him. See *Driver; Quasi Offence; Servant.*

**LIBEL, practice.** A libel has been defined to be "the plaintiff’s petition or allegation, made and exhibited in a judicial process, with some solemnity of law;" it is also said to be "a short and well ordered writing, setting forth in a clear manner, as well to the judge as to the defendant, the plaintiff or accuser’s intention in judgment." It is a written statement, by a plaintiff, of his cause of action, and of the relief he seeks to obtain in a suit. *Law’s Eccl. Law, 147; Ayl. Par. 346; Shelf. on M. & D. 506; Dunl. Adm. Pr. 111; Betts, Pr. 17; Proct. Pr. h. t.; 2 Chit. Pr. 487, 553.

2.—The libel should be a narrative, specious, clear, direct, certain, not general nor alternative. *3 Law’s Eccl. Law, 147.*

It should contain, substantially, the following requisites; 1. The name, description, and addition of the plaintiff, who makes his demand by bringing his action; 2. The name, description, and addition of the defendant; 3. The name of the judge, with a respectful designation of his office and court; 4. The thing or relief, general or special, which is demanded in the suit; 5. The grounds upon which the suit is founded. All these things are summed up in Latin, as follows:

Quis, quid, ceram quo, quo jure petatur, et a quo,
Recte compositus quique libellus habet:

which has been translated,

Each plaintiff and defendant’s name,
And ask the judge who tries the same;
The thing demanded and the right whereby
You urge to have it granted instantly:
He doth a libel write and well compose,
Who forms the same omitting none of those.

3.—The form of a libel is either simple or articulate. The simple form is, when the cause of action is stated in a continuous narration, when the cause of action can be briefly set forth. The articulate form, is when the cause of action is stated in distinct allegations, or articles. *2 Law’s Eccl. Law, 148; Hall’s Adm. Pr. 123; 7 Cranch, 349.* The material facts should be stated in distinct articles in the libel, with as much exactness and attention to times and circumstances, as in a declaration at common law. *4 Mason, 541.* Pompous diction and strong epithets are out of place in a legal paper designed to obtain the admission of the opposite party of the averments it contains, or to lay before the court the facts which the actor will prove.

4.—Although there is no fixed formula for libels, and the courts will receive such an instrument from the party in such form as his own skill, or that of his counsel may enable him to give it, yet long usage has sanctioned forms, which it may be most prudent to adopt. The parts and arrangement of libels commonly employed are,

5.—1. The address to the court; as,
To the Honorable John K. Kane, Judge of the district court of the United States, within and for the eastern district of Pennsylvania.

6.—2. The names and descriptions of the parties. Persons competent to sue at common law may be parties libellant, and similar regulations obtain in the admiralty courts and the common law courts, respecting those disqualified from suing in their own right or name. Married women prosecute by their husbands, or by prochein ami, when the husband has an adverse interest to hers; minors, by guardians, tutors, or prochein ami; lunatics and persons non compos mentis, by tutor, guardian ad litem, or committee; the rights of deceased persons are prosecuted by executors or administrators; and corporations are represented and proceeded against as at common law.

7.—3. The averments or allegations setting forth the cause of action. These should be conformable to the truth, and so framed as to correspond with the evidence. Every fact requisite to establish the libellant's right should be clearly stated, so that it may be directly met by the opposing party by admission, denial or avoidance; this is the more necessary, because no proof can be given, or decree rendered, not covered by and conformable to the allegations. 1 Law's Eccl. Laws, 150; Hall's Pr. 126; Dunl. Adm. Pr. 113; 7 Cranch, 394.

8.—4. The conclusion, or prayer for relief and process; the prayer should be for the specific relief desired; for general relief, as is usual in bills in chancery; the conclusion should also pray for general or particular process. Law's Eccl. Law, 149; and see 3 Mason, R. 503. Interrogatories are sometimes annexed to the libel; when this is the case, there is usually a special prayer, that the defendant may be required to answer the libel, and the interrogatories annexed and propounded. This, however, is a dangerous practice, because it renders the answers of the defendant evidence, which must be disproved by two witnesses, or by one witness, corroborated by very strong circumstances.

9.—The libel is the first proceeding in a suit in admiralty in the courts of the United States. 3 Mason, R. 504. It is also used in some other courts.

Vide generally, Dunl. Adm. Pr. ch. 3; Betts's Adm. Pr. s. 3; Shelf. on M. & D. 506; Hall's Adm. Pr. Index, h. t.; 3 Bl. Com. 100; Ayl. Par. Index, h. t.; Com. Dig. Admiralty, E; 2 Roll. Ab. 298.

LIBEL, libellus, in the criminal law; it is a malicious defamation expressed either in printing or writing, or by signs or pictures, tending to blacken the memory of one who is dead, with intent to provoke the living; or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule. Hawk. b. 1, c. 73, s. 1; Wood's Inst. 444; 4 Bl. Com. 150; 2 Chitty, Cr. Law, 867; Holt on Lib. 73; 5 Co. 125; Salk. 418; Id. Raym. 416; 4 T. R. 126; 4 Mass. R. 165; 9 John. 214; 1 Den. Rep. 347; 2 Pick. R. 115; 2 Kent, Com. 13. It has been defined perhaps with more precision to be a censorious or ridiculous writing, picture or sign, made with a malicious or mischievous intent, towards government, magistrates or individuals. 3 John. Cas. 354; 9 John. R. 215; 5 Binn. 340.

2.—In briefly considering this offence, we will inquire, 1st, by what mode of expression a libel may be conveyed; 2ndly, of what kind of defamation it must consist; 3rdly, how plainly it must be expressed; and 4thly, what mode of publication is essential.

3.—1. The reduction of the slanderous matter to writing or printing, is the most usual mode of conveying it. The exhibition of a picture, intimating that which in print would be libellous, is equally criminal. 2 Camp. 512; 5 Co. 125; 2 Serg. & Rawle, 91. Fixing a gallows at a man's door, burning him in effigy, or exhibiting him in any ignominious manner, is a libel. Hawk. b. 1, c. 73, s. 2; 11 East, R. 227.

4.—2. There is perhaps no branch of the law which is so difficult to reduce to exact principles, or to compress within a small compass, as the requisites of libel. All publications denying the Christian religion to be true, 11 Serg.
copies have been sold, is a distinct publication, and a fresh offence. The publication must be malicious; evidence of the malice may be either express or implied. Express proof is not necessary; for where a man publishes a writing which on the face of it, is libellous, the law presumes he does so from that malicious intention which constitutes the offence, and it is unnecessary on the part of the prosecution to prove any circumstance from which malice may be inferred. But no allegation, however false and malicious, contained in answers to interrogatories, in affidavits duly made, or any other proceedings in courts of justice, or petitions to the legislature, is indictable. 4 Co. 14; 2 Burr. 807; Hawk. B. 1, c. 73, s. 8; 1 Saund. 131, n. 1; 1 Lev. 240; 2 Chitty's Cr. Law, 869; 2 Serg. & Rawle, 23. It is no defence that the matter published is part of a document printed by order of the house of commons. 9 A. & E. 1.

8.—The publisher of a libel is liable to be punished criminally by indictment, 2 Chitty's Cr. Law, 875, or is subject to an action on the case by the party grieved. Both remedies may be pursued at the same time. Vide, generally, Holt on Libels; Starkie on Slander; 1 Harr. Dig. Case, L.; Chit. Cr. L. Index, h. t.; Chit. Pr. Index, h. t.

LIBELLANT. The party who files a libel in a chancery or admiralty case, corresponding to the plaintiff in actions in the common law courts, is called the libellant.

LIBELLEE. A party against whom a libel has been filed in chancery proceedings, or in admiralty, corresponding to the defendant in a common law suit.

LIBER FEUDORUM. A code of the feudal law, which was compiled by direction of the emperor Frederick Barbarossa, and published in Milan in 1170. It was called the Liber Feudorum, and was divided into five books, of which the first, second, and some fragments of the others still exist, and are printed at the end of all the modern editions of the Corpus Juris Civilis. Giannone, B. 13, c. 3; Cruise's Dig. Prel. Diss. c. 1, § 31.

LIBER HOMO. A freeman lawfully
competent to act as a juror. Raym. 417; Keb. 563.

LIBERATE, English practice, is a writ which issues on lands, tenements and chattels, being returned under an extent on a statute staple, commanding the sheriff to deliver them to the plaintiff, by the extent and appraisement mentioned in the writ of extent, and in the sheriff’s return thereto. See Com. Dig. Statute Staple, D 6.

LIBERATION, civil law. This term is synonymous with payment. Dig. 50, 16, 47. It is the extinguishment of a contract by which he who had becomes free or liberated. Wolff, Dr. de la Nat. § 749.

LIBERTI, LIBERTINI. These two words were at different times made to express, among the Romans, the condition of those who, having been slaves, had been made free. 1 Brown’s Civ. Law, 99. There is some distinction between these words. By libertus, was understood the freedman, when considered in relation to his patron who had bestowed liberty upon him; and he was called libertinus, when considered in relation to the state he occupied in society since his manumission. Lec. El. Dr. Rom. § 93.

LIBERTY is the power of doing whatever is not injurious to others; the exercise of our natural rights, is, therefore, bounded only by the rights which assure to others the enjoyment of their rights. The extent of these is determined by law.

2.—Liberty is divided into civil, natural, personal, and political.

3.—Civil liberty is the power to do whatever is permitted by the constitution of the state and the laws of the land. It is no other than natural liberty, so far restrained by human laws, and no further, operating equally upon all the citizens, as is necessary and expedient for the general advantage of the public. 1 Black. Com. 125; Paley’s Mor. Phil. B. 6, c. 5; Swift’s Syst. 12.

4.—That system of laws is alone calculated to maintain civil liberty, which leaves the citizen entirely master of his own conduct, except in those points in which the public good requires some direction and restraint.

5.—Natural liberty is the right which nature gives to all mankind, of disposing of their persons and property after the manner they judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and that they do not in any way abuse it to the prejudice of other men. Burlamaqui, e. 3, s. 15; 1 Bl. Com. 125.

6.—Personal liberty is the independence of our actions of all other will than our own. Wolff, Ins. Nat. § 77; it consists in the power of locomotion, of changing situation, or removing one’s person to whatever place one’s inclination may direct, without imprisonment or restraint, unless by due course of law. 1 Bl. Com. 134.

7.—Political liberty may be defined to be the security with which, from the constitution, form, and nature of the established government, the citizens enjoy civil liberty. No ideas or definitions are more distinguishable than those of civil and political liberty, yet they are generally confounded. 1 Bl. Com. 6, 125. The political liberty of a state is based upon those fundamental laws which establish the distribution of legislative and executive powers. The political liberty of a citizen is that tranquillity of mind, which is the effect of an opinion that he is in perfect security; and to insure this security, the government must be such that one citizen shall not fear another.

8.—In the English law, by liberty is meant a privilege held by grant or prescription, by which some men enjoy greater benefit than ordinary subjects. A liberty is also a territory, with some extraordinary privilege.

9.—By liberty or liberties is also understood a part of a town or city, as the Northern Liberties of the city of Philadelphia. The same as Faubourg. (q. v.)

LIBERTY OF THE PRESS, is the right to print and publish the truth, from good motives, and for justifiable ends. 3 Johns. Cas. 394.

2.—This right is secured by the constitution of the United States. Amend-
ments, art. 1. The abuse of the right is punished criminally, by indictment; civilly, by action. Vide Judge Cooper's Treatise on the Law of Libel, and the liberty of the press, passim; and article Libel.

Liberty of speech, is the right given by the constitution and the laws, to support publicly by speaking facts or opinions.

2.—In a republican government, like ours, liberty of speech cannot be extended too far when its object is the public good. It is, therefore, wisely provided by the constitution of the United States, that members of the congress shall not be called to account for any thing said in debate; and similar provisions are contained in the constitutions of the several states in relation to the members of their respective legislatures. This right, however, does not extend beyond the mere speaking; for if a member of congress were to reduce his speech to writing and cause it to be printed, it would no longer bear a privileged character, and he might be held responsible for a libel, as any other individual. B. Ab. Libel, B. See Debate.

3.—The greatest latitude is allowed by the common law to counsel, in the discharge of their professional duty to use strong epithets, however derogatory to other persons it may be, if pertinent to the cause, and stated in his instructions, whether the thing were true or false. But if he were maliciously to travel out of his case for the purpose of slandering another, he would be liable to an action, and amenable to a just and often more efficacious punishment inflicted by public opinion. 3 Chit. Pr. 887. No respectable counsel will indulge himself with unjust severity; and it is doubtless the duty of the court to prevent any such abuse.

Liberum tenementum, pleading. The name of a plea in an action of trespass, by which the defendant claims the locus in quo to be his soil and freehold, or the soil and freehold of a third person, by whose command he entered. 2 Salk. 453; 7 T. R. 355; 1 Saund. 299, b. note.
voked, and it may then be assigned to a third person. 5 Hen. 5, M. 1, page 1; 2 Mod. 317; 7 Bing. 693; 8 East, 309; 5 B. & C. 221; 7 D. & R. 783; Crabb on R. P. § 521 to 525. When the license is coupled with an interest, the formalities essential to confer such interest should be observed. Say. R. 3; 6 East, R. 602; 8 East, R. 310, note. See 14 S. & R. 267; 4 S. & R. 241; 2 Eq. Cas. Ab. 522; 11 Ad. & El. 34, 39; S. C. 39 Eng. C. L. R. 19.

License, international law, is an authority given by one of two belligerent parties, to the citizens or subjects of the other, to carry on a specified trade.

2.—The effects of the license are to suspend or relax the rules of war to the extent of the authority given. It is the assumption of a state of peace to the extent of the license. In the country which grants them, licenses to carry on a pacific commerce are stricti juris, as being exceptions to the general rule; though they are not to be construed with pedantic accuracy, nor will every small deviation be held to vitiate the fair effect of them. 4 Rob. Rep. 8; Chitty, Law of Nat. 1 to 5, and 260; 1 Kent, Com. 164, 85.

License, pleading. The name of a plea of justification to an action of trespass. A license must be specially pleaded, and cannot, like liberum tenementum, be given in evidence under the general issue. 2 T. R. 166, 168.

Licentee. One to whom a license has been given. 1 M. G. & S. 699 n.

Licentia concordandi, estates, conveyancing, practice. When an action is brought for the purpose of levying a fine, the defendant knowing himself to be in the wrong, is supposed to make overtures of accommodation to the plaintiff, who accepts them; but having given pledges to prosecute his suit, applies to the court, upon the return of the writ of covenant, for leave to make the matter up; this, which is readily granted, is called the licentia concordandi. 5 Rep. 39; Cruise, Dig. tit. 33, c. 2, 22.

Licentia loquendi. Imparlance, (q. v.)

Licentiousness, is the doing what one pleases without regard to the rights of others; it differs from liberty in this, that the latter is restrained by natural or positive law, and consists in doing whatever we please, not inconsistent with the rights of others, whereas the former does not respect those rights.

Wolff, Inst. § 84.

Licet saepius requisitus, pleading, practice. Although often requested. It is usually alleged in the declaration that the defendant licet saepius requisitus, &c. did not perform the contract; the violation of which is the foundation of the action. This allegation is generally sufficient when a request is not parcel of the contract.

Indeed, in such cases, it is unnecessary even to lay a general request, for the bringing of the suit is itself a sufficient request. 1 Saund. 33, n. 2; 2 Saund. 118, note, 3; Plowd. 128; 1 Wils. 33; 2 H. Bl. 131; 1 John. Cas. 99, 319; 7 John. R. 462; 18 John. R. 485; 3 M. & S. 150. Vide Demand.

Licit, is said of every thing which is not forbidden by law. Id omne licitum est, quod non est legibus prohibitum; quamobrem, quod, lege permittente, fit, poenam non meretur.

Licitation. A sale at auction; a sale to the highest bidder.

Lidford Law. Vide Lynch Law.

Liege Poustie, Scotch law, is the condition or state of a person who is in his ordinary health and capacity, and not a minor, nor cognosced as an idiot or madman, nor under interdiction. He is then said to be in liege poustie, or in legitima potestati, and he has full power of disposal of his property. 1 Bell's Com. 85, 5th ed.; 6 Clark & Fin. 540. Vide Sui juris.

Lien, contracts. In its most extensive signification, this term includes every case in which real or personal property is charged with the payment of any debt or duty; every such charge being denominated a lien on the property. In a more limited sense it is defined to be a right of detaining the property of another until some claim be satisfied. 2 East, 235; 6 East, 25; 2 Campb. 579; 2 Meriv. 494; 2 Rose, 357; 1 Dall. R. 345.
2.—The right of lien generally arises by operation of law, but in some cases it is created by express contract.

3.—There are two kinds of lien; namely, particular and general. When a person claims a right to retain property in respect of money or labour expended on such particular property, this is a particular lien. Liens may arise in three ways: 1st, by express contract; 2dly, from implied contract, as from general or particular usage of trade; 3dly, by legal relation between the parties, which may be created in two ways; 1, when the law casts an obligation on a party to do a particular act, and in return for which, to secure him payment, it gives him such lien, 1 Esp. R. 109; 6 East, 519; 2 Ld. Raym. 866; common carriers and innkeepers are among this number. General liens arise in three ways, 1, by the agreement of the parties, 6 T. R. 14; 3 Bos. & Pull. 42; 2, by the general usage of trade; 3, by particular usage of trade, Whitaker on Liens, 35; Prec. Ch. 580; 1 Atk. 235; 6 T. R. 19.

4.—It may be proper to consider a few general principles, 1, as to the manner in which a lien may be acquired; 2, to what claims liens properly attach; 3, how they may be lost; and, 4, their effect.

5.—1. How liens may be acquired. To create a valid lien, it is essential, 1st, that the party to whom or by whom it is acquired should have the absolute property or ownership of the thing; or, at least, a right to vest it. 2d, that the party claiming the lien should have an actual or constructive possession, with the assent of the party against whom the claim is made. 3 Chit. Com. Law, 547; Paley on Ag. by Lloyd, 137; 17 Mass. R. 197; 4 Campb. R. 291; 3 T. R. 119 and 783; 1 East, R. 4; 7 East, R. 5; 1 Stark. R. 123; 3 Rose. R. 355; 3 Price. R. 547; 5 Binn. R. 392. 3d, that the lien should arise upon an agreement, express, or implied, and not be for a limited or specific purpose inconsistent with the express terms, or the clear intent of the contract. 2 Stark. R. 272; 6 T. R. 258; 7 Taunt. 278; 5 M. & S. 180; 15 Mass. 389, 397; as, for example, when goods are deposited to be delivered to a third person, or to be transported to another place. Pal. on Ag. by Lloyd, 140.

6.—2. The debts or claims to which liens properly attach. 1st. In general liens properly attach on liquidated demands, and not those which sound only in damages, 3 Chit. Com. Law, 548, though by an express contract they may attach even in such a case, as, where the goods are to be held as an indemnity against a future contingent claim or damages. Ibid.—2d, The claim for which the lien is asserted, must be due to the party claiming it in his own right, and not merely as agent of a third person. It must be a debt or demand due from the very person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him. Pal. Ag. by Lloyd, 132.

7.—3. How a lien may be lost. 1st, It may be waived or lost by any act or agreement between the parties, by which it is surrendered, or becomes inapplicable.—2d, It may also be lost by voluntarily parting with the possession of the goods. But to this rule there are some exceptions, for example, when a factor by lawful authority sells the goods of his principal, and parts with the possession under the sale, he is not, by this act, deemed to lose his lien, but it attaches to the proceeds of the sale in the hands of the vendee.

8.—4. The effect of liens. In general the right of the holder of the lien is confined to the mere right of retainer. But when the creditor has made advances on the goods as a factor, he is generally invested with the right to sell, Holt's N. P. Rep. 383; 3 Chit. Com. Law, 551; 2 Liverm. Ag. 103; 2 Kent's Com. 642, 3d ed. In some cases where the lien would not confer a power to sell, a court of equity would decree it, 1 Story, Eq. Jur. § 506; 2 Story, Eq. Jur. § 1216; Story, Ag. § 371. And courts of admiralty will decree a sale to satisfy maritime liens. Abb. Ship. pt. 3, c. 10, § 2; Story, Ag. § 371.
9.—Judgments rendered in courts of records are generally liens on the real estate of the defendants or parties against whom such judgments are given. In Alabama, Georgia, and Indiana, a judgment is a lien; in the last mentioned state, it continues for ten years from January 1, 1826, if it was rendered from that time; if, after, ten years from the rendition of the judgment, and when the proceedings are stayed by order of the court, or by an agreement recorded, the time of its suspension is not reckoned in the ten years. A judgment does not bind lands in Kentucky, the lien commences by the delivery of execution to the sheriff, or officer. 4 Pet. R. 366; 1 Dane’s R. 360. The law seems to be the same in Mississippi. 2 Hill. Ab. c. 46, s. 6. In New Jersey the judgments take priority among themselves in the order the executions on them have been issued. The lien of a judgment and the decree of a court of chancery continue a lien in New York for ten years, and bind after-acquired lands. N. Y. Stat. part 3, t. 4, s. 3. It seems that a judgment is a lien in North Carolina, if an elegist has been sued out, but this is perhaps not settled. 2 Murph. R. 43. The lien of a judgment in Ohio is confined to the county, and continues only for one year unless revived. It does not bind after-acquired lands. In Pennsylvania, it commences with the rendering of judgment, and continues five years from the return day of that term. It does not, per se, bind after-acquired lands. It may be revived by scire facias, or an agreement of the parties, and terre tenants, written and filed. In South Carolina and Tennessee a judgment is also a lien. In the New England states lands are attached by mesne process or on the writ, and a lien is thereby created. See 2 Hill. Ab. c. 46.

10.—Liens are also divided into legal and equitable. The former are those which may be enforced in a court of law; the latter are valid only in a court of equity. The lien which the vender of real estate has on the estate sold, for the purchase money remaining unpaid, is a familiar example of an equitable lien.

Math. on Pres. 392. Vide Purchase money. Vide generally, Yelv. 67, n.; 2 Kent, Com. 495; Pal. Ag. 107; Whit. on Liens; Story on Ag. ch. 14, §851, et seq.; Hov. Fr. 35.

11.—Lien of mechanics and material men. By virtue of express statutes in several of the states, mechanics and material men, or persons who furnish materials for the erection of houses or other buildings, are entitled to a lien or preference in the payment of debts out of the houses and buildings so erected, and to the land, to a greater or less extent, on which they are erected. A considerable similarity exists in the laws of the different states which have legislated on this subject.

12.—The lien generally attaches from the commencement of the work or the furnishing of materials, and continues for a limited period of time. In some states a claim must be filed in the office of the clerk or prothonotary of the court, or a suit brought within a limited time. On the sale of the building these liens are to be paid pro rata. In some states no lien is created unless the work done or the goods furnished amount to a certain specified sum, while in others there is no limit to the amount. In general none but the original contractors can claim under the law, sometimes, however, subcontractors have the same right.

13.—The remedy is various; in some states it is by scire facias on the lien, in others it is by petition to the court for an order of sale; in some the property is subject to foreclosure, as on a mortgage; in others by a common action. See 1 Hill. Ab. ch. 40, p. 354, where will be found an abstract of the laws of the several states, except the state of Louisiana, for the laws of that state, see Civ. Code of Louis. art. 2727 to 2748. See, generally, 5 Binn. 585; 2 Browne, R. 229, n. 275; 2 Rawle, R. 316; Ib. 343; 3 Rawle, R. 492; 5 Rawle, R. 291; 2 Whart. R. 223; 2 S. & R. 138; 14 S. & R. 32; 12 S. & R. 301; 3 Watts, R. 140, 141; Ib. 301; 5 Watts, R. 487; 14 Pick. R. 49; Serg. on Mech. Liens.

LIEGE, Engl. law. This word is
used in connexion with others, as liege-lord, who is one who acknowledges no superior; liege-man, is one who owes allegiance to a liege-lord.

LIEGE POUISTIE, Engl. law. A state of health, in contradistinction to death-bed. A person possessed of lawful power of disposing, is said to be liege poustie.

LIEU, place. In lieu of, instead, in the place of.

LIEUTENANT. This word has now a narrower meaning than it formerly had; its true meaning is a deputy, a substitute, from the French lieu, (place or post) and tenant (holder). Among civil officers we have lieutenant-governors, who in certain cases perform the duties of governors; (vide the names of the several states.) Lieutenants of police, &c. Among military men, lieutenant-general, was formerly the title of a commanding general, but now it signifies the degree above major general. Lieutenant-colonel, is the officer between the colonel and the major. Lieutenant, simply, signifies the officer next below a captain. In the navy, a lieutenant is the second officer next in command to the captain of a ship.

LIFE is the aggregate of the animal functions which resist death.

2.—The state of animated beings, while they possess the power of feeling and motion. It commences in contemplation of law generally as soon as the infant is able to stir in the mother’s womb, 1 Bl. Com. 129; 3 Inst. 50; Wood’s Inst. 11; and ceases at death. Lawyers and legislators are not however the best physiologists, and it may be justly suspected that in fact life commences before the mother can perceive any motion of the fetus. 1 Beck’s Med. Jur. 291.

3.—For many purposes, however, life is considered as begun from the moment of conception, vide Fetus; In ventre sa mere. But in order to acquire and transfer civil rights the child must be born alive. Whether a child is born alive is to be ascertained from certain signs which are always attendant upon life. The fact of the child’s crying is the most certain. There may be a certain motion in a new born infant which may last even for hours, and yet there may not be complete life. It seems that in order to commence life the child must be born with the ability to breathe, and must actually have breathed. 1 Briand, Méc. Lég. Iere partie, c. 6, art. 1.

4.—Life is presumed to continue at least till one hundred years. 9 Mart. Lo. R. 257. See Death; Survivorship.

5.—Life is considered by the law of the utmost importance, and its most anxious care is to protect it.

LIFE-ESTATE. Vide Estate for life, and 3 Saund. 338, h. note; 2 Kent, Com. 285; 4 Kent, Com. 23; 1 Hov. Suppl. to Ves. jr. 371, 381; 2 Id. 45, 249, 330, 349, 398, 467; 8 Com. Dig. 714.

LIFE-RENT, in Scotland, is a right to use and enjoy a thing during life, the substance of it being preserved. A life-rent cannot, therefore, be constituted upon things which perish in the use; and though it may upon subjects which gradually wear out by time as household furniture, &c., yet it is generally applied to heritable subjects. Life-rents are divided into conventional and legal.

2.—1. The conventional are either simple or by reservation. A simple life-rent, or by a separate constitution, is that which is granted by the proprietor in favour of another. A life-rent by reservation is that which a proprietor reserves to himself, in the same writing by which he conveys the fee to another.

3.—2. Life-rents, by law, are the terce and the courtesy. See Terce; Courtesy.

LIGAN or LAGAN. Goods cast into the sea tied to a buoy, so that they may be found again by the owners, are so denominated. When goods are cast into the sea in storms or shipwrecks, and remain there without coming to land, they are distinguished by the barbarous names of jetsam, (q. v.) flotsam, (q. v.) and ligan. 5 Rep. 108; Harg. Tr. 48; 1 Bl. Com. 292.

LIGEANCE. The true and faithful obedience of a subject to his sovereign, of a citizen to his government. It signifies also the territory of a sovereign. See Allegiance.
LIGHTERMAN, is the owner or manager of a lighter. A lighter is considered as a common carrier. See Lighters.

LIGHTERS, commerce, are small vessels employed in loading and unloading larger vessels.

2.—The owners of lighters are liable, like other common carriers, for hire; it is a term of the contract on the part of the carrier or lighterman, implied by law, that his vessel is tight and fit for the purpose or employments for which he offers and holds it forth to the public; it is the immediate foundation and substratum of the contract that it is so: the law presumes a promise to that effect on the part of the carrier without actual proof, and every reason of sound policy and public convenience requires it should be so. 5 East, 428; Abbott on Sh. 225; 1 Marsh. on Ins. 254; Park on Ins. 23; Wesk. on Ins. 328.

LIGHTS, are those openings in a wall which are made rather for the admission of light, than to look out of. 6 Moore, C. B. 47; 9 Bingh. R. 305; 1 Lev. 122; Civ. Code of Lo. art. 711. See Ancient Lights; Windows.

LIMBS, are those members of a man which may be useful to him in fight, and the unlawful deprivation of which by another amounts to a mayhem at common law. 1 Bl. Com. 130. If a man, se defendendo, commit homicide, he will be excuse; and if he enter into an apparent contract, under a well-grounded apprehension of losing his life or limbs, he may afterwards avoid it. 1 Bl. 130.

LIMITATION, estates. When an estate is so expressly confined and limited by the words of its creation, that it cannot endure for a longer time than till the contingency shall happen, upon which the estate is to fail, this is denominated a limitation; as when land is granted to a man while he continues unmarried, or until the rents and profits shall have made a certain sum, and the like; in these cases the estate is limited, that is, it does not go beyond the happening of the contingency. 2 Bl. Com. 155; 10 Co. 41; Bac. Ab. Conditions, H; Co.

Litt. 236 b; 4 Kent, Com. 121; Tho. Co. Litt. Index, h. t.; 10 Vin. Ab. 218; 1 Vern. 483, n.; 4 Ves. Jr. 718.

2.—There is a difference between a limitation and a condition. When a thing is given until an event shall arrive; this is called a limitation; but when it is given generally, and the gift is to be defeated upon the happening of an uncertain event, then the gift is conditional. For example, when a man gives a legacy to his wife, while, or as long as, she shall remain his widow, or until she shall marry, the estate is given to her only for the time of her widowhood, and, on her marriage, her right to it determines. Bac. Ab. Conditions, H. But if instead of giving the legacy to the wife, as above mentioned, the gift had been to her generally, with a proviso, or on condition that she should not marry, or that if she married she should forfeit her legacy, this would be a condition, and such condition being in restraint of marriage, would be void.

LIMITATION, remedies, is a bar to the alleged right of a plaintiff to recover in an action, caused by the lapse of a certain time appointed by law; or, it is the end of the time appointed by law, during which a party may sue for and recover a right. It is a maxim of the common law, that a right never dies, and, as far as contracts were concerned, there was no time of limitation to actions on such contracts. The only limit there was to the recovery in cases of torts, was the death of one of the parties; for it was a maxim actio personale moritur cum persona. This unrestrained power of commencing actions at any period, however remote from the original cause of actions, was found to encourage fraud and injustice; to prevent which, to assure the titles to land, to quiet the possessions of the owner, and to prevent litigation, statutes of limitation were passed. This was effected by the statutes of 32 Hen. 8, c. 2, and 21 Jac. 1, c. 16. These statutes were adopted and practised upon in this country, in several of the states, though they are now in many of the states in most respects superseded by the enactments of other acts of limitation.
2.—Before proceeding to notice the enactments on this subject in the several states, it is proper to call the attention of the reader to the rights of the government to sue untrammeled by any statute of limitation; unless expressly restricted, or by necessary implication included. It has therefore been decided that the general words of a statute ought not to include the government, or affect its rights, unless the construction be clear and indisputable upon the text of the act, 2 Mason’s R. 314; for no laches can be imputed to the government, 4 Mass. R. 528; 2 Overt. R. 352; 1 Const. Rep. 125; 4 Henn. & M. 58; 3 Serg. & Rawle, 291; 1 Bay’s R. 26. The acts of limitation passed by the several states are not binding upon the government of the United States, in a suit in the courts of the United States. 2 Mason’s R. 311.

3.—For the following abstract of the laws of the United States and of the several states, regulating the limitations of actions, the author has been much assisted by the appendix of Mr. Angell’s excellent treatise on the Limitation of Actions.

4.—United States.—1. On contracts. All suits on marshals’ bonds shall be commenced and prosecuted within six years after the right of action shall have accrued, and not after; saving the rights of infants, females covert, and persons non compos mentis, so that they may sue within three years after disability removed. Act of April 10, 1806, s. 1.

5.—2. On legal proceedings. Writs of error must be brought within five years after judgment or decree complained of; saving in cases of disability the right to bring them five years after its removal. Act of September 24th, 1789, s. 22. And the like limitation is applied to bills of review. 10 Wheat. 146.

6.—3. Penalties. Prosecutions under the revenue laws, must be commenced within three years. Act of March 2, 1799, s. 89; Act of March 1, 1823. Suits for penalties respecting copy-rights, within two years. Act of April 29, 1802, s. 3. Suits in violation of the provisions of the act of 1818 respecting the slave trade, must be commenced within five years. Act of April 20, 1818, s. 9.

7.—4. Crimes. Offences punishable by a court martial must be proceeded against within two years unless the person, by reason of having absented himself, or some other manifest impediment, has not been amenable to justice within that period. The act of April 30, 1790, s. 31, limits the prosecution and trial of treason or other capital offence, wilful murder or forgery excepted, to three years next after their commission; and for offences not capital to two years, unless the party has fled from justice. 2 Cranch, 336.

8.—Alabama.—1. As to real estate. 1. After twenty years after title accrued, no entry can be made into lands. 2. No action for the recovery of land can be maintained, if commenced after thirty years after title accrued. 3. Actions on claims by virtue of any title which has not been confirmed by either of the boards of commissioners of the United States, for adjusting land claims, &c. and not recognised or confirmed by any act of congress, are barred after three years; there is a proviso as to lands formerly in West Florida, and in favour of persons under disabilities.

9.—2. As to personal actions. 1. Actions of trespass, quare clausum fretit; trespass; detinue; trover; replevin for taking away of goods and chattels; of debt, founded on any lending or contract, without specialty, or for arrearages of rent on a parol demise; of account and upon the case, (except actions for slander, and such as concern the trade of merchandise between merchant and merchant, their factors or agents,) are to be commenced within six years next after the cause of action accrued, and not after.

10.—2. Actions of trespass for assaults, menace, battery, wounding and imprisonment, or any of them, are limited to two years.

11.—3. Actions for words to one year.

12.—4. Actions of debt or covenant for rent or arrearages of rent, founded
upon any lease under seal, or upon any single or penal bill for the payment of money only, or on any obligation with condition for the payment of money only, or upon any award under the hands and seals of arbitrators, are to be commenced within sixteen years after the cause of action accrued, and not after; but if any payment has been made on the same at any time, then sixteen years from the time of such payment.

13.—5. Judgments cannot be revived after twenty years.

14.—6. A new action must be brought within one year, when the former has been reversed on error, or the judgment has been arrested.

15—7. Actions on book accounts must be commenced within three years, except in the case of trade or merchandise between merchant and merchant, their factors or agents.

16.—8. Writs of error must be sued out within three years after final judgment.

17.—Arkansas. 1. As to lands. No action for the recovery of any lands or tenements, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of such suit. Act of March 3, 1838, s. 1, Rev. Stat. 527. No entry upon lands or tenements shall be deemed sufficient or valid as a claim, unless an action be commenced thereon within one year after such entry, and within ten years from the time when the right to make such entry descended and accrued. Id. s. 2. The right of any person to the possession of any lands or tenements, shall not be impaired or affected by a descent cast in consequence of the death of any person in possession of such estate. Id. s. 3.

18.—The savings are as follows: If any person entitled to commence any action in the preceding sections specified, or to make an entry, be, at the time such title shall first descend or accrue; first, within the age of twenty-one years; second, insane; third, beyond the limits of the state; or, fourth, a married woman; the time during which such disabilities shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such suit, or the making of such entry; but such person may bring such action, or make such entry, after the time so limited, and within five years after such disability is removed, but not after that period. Id. s. 4. If any person entitled to commence any such action, or make such entry, die during the continuance of such disability specified in the preceding section, and no determination or judgment be had of the title, right, or action to him accrued, his heirs may commence such action, or make such entry, after the time in this act limited for that purpose, and within five years after his death, and not after that period. Id. s. 5, Rev. Stat. 527.

19.—2. As to personal actions. 1. The following actions shall be commenced within three years after the cause of action shall accrue: first, all actions founded upon any contract, obligation, or liability, (not under seal,) excepting such as are brought upon the judgment or decree of some court of record of the United States, of this, or some other state; second, all actions upon judgments rendered in any court not being a court of record; third, all actions for arrearages of rent, (not reserved by some instrument under seal); fourth, all actions of account, assumpsit, or on the case, founded upon any contract or liability, expressed or implied; fifth, all actions of trespass on lands, or for libels; sixth, all actions for taking or injuring any goods or chattels. Id. s. 6, Rev. Stat. 527, 528.

20.—2. The following actions shall be commenced within one year after the cause of action shall accrue, and not after: first, all special actions on the case for criminal conversation, assault and battery and false imprisonment; second, all actions for words spoken, slandering the character of another; third, all words spoken whereby special damages are sustained. Id. s. 7.

21.—3. All actions against sheriffs or
other officers, for the escape of any per-
son imprisoned on civil process, shall be
commenced within one year from the
time of such escape, and not after. Ib.
s. 8.

22.—4. All actions against sheriffs
and coroners, upon any liability incurred
by them, by the doing any act in their
official capacity, or by the omission of
any official duty, except for escapes, shall
be brought within two years after the
cause of action shall have accrued, and
not thereafter. Id. s. 9.

23.—5. All actions upon penal sta-
tutes, where the penalty or any part
thereof, goes to the state, or any county,
or person suing for the same, shall be
commenced within two years after the
offence shall have been committed, or
the cause of action shall have accrued.
Id. s. 10.

24.—6. All actions not included in
the foregoing provisions, shall be com-
mmenced within five years after the cause
of action shall have accrued. Id. s. 11.

25.—7. In all actions of debt, ac-
count or assumpsit, brought to recover
any balance due upon a mutual, open
account current, the cause of action shall
be deemed to have accrued from the
time of the last item proved in such ac-
count. Id. s. 12.

26.—The savings are as follows: 1. If
any person entitled to bring any ac-
tion in the preceding seven sections men-
tioned, except in actions against
sheriffs for escapes, and actions of slander,
shall, at the time of action accrued, be
either within the age of twenty-one
years, or insane, or beyond the limits of
this state, or a married woman, such
person shall be at liberty to bring such
action within the time specified in this
act, after such disability is removed.
Id. s. 13.

27.—2. If any person entitled to
bring an action in the preceding provi-
sions of this act specified, die before the
expiration of the time limited for the
commencement of such suit, and such
cause of action shall survive to his
representatives, his executors or admin-
istrators may, after the expiration of
such time, and within one year after
such death, commence such suit, but not
after that period. Id. s. 19.

28.—3. If at any time when any
cause of action specified in this act ac-
accuses against any person, he be out of
the state, such action may be com-
mmenced within the times herein respect-
ively limited, after the return of such
person into the state; and if, after such
cause of action shall have accrued, such
person depart from, and reside out of
the state, the time of his absence shall
not be deemed or taken as any part of
the time limited for the commencement
of such action. Id. s. 20. If any per-
son, by leaving the county, absconding
or concealing himself, or any other im-
proper act of his own, prevent the com-
mmencement of any action in this act
specified, such action may be commenced
within the times respectively limited,
after the commencement of such action
shall have ceased to be so prevented.
Id. s. 26.

29.—4. None of the provisions of this
act shall apply to suits brought to enforce
payment on bills, notes, or evidences of
debt issued by any bank, or monied cor-
poration. Id. s. 18.

30.—Connecticut. 1. As to lands.
No person can make an entry into lands
after fifteen years next after his right or
title first accrued to the same; and no such
entry is valid unless an action is after-
wards commenced thereupon, and is
prosecuted with effect within one year
next after the making thereof; there is
a proviso in favour of disabled persons,
who may sue within five years after the
disability has been removed.

31.—2. As to personal actions. 1. In
actions on specialties and promissory
notes, not negotiable, the limitation is
seventeen years, with a saving that “per-
sons legally incapable to bring an action
on such bond or writing at the accruing
of the right of action, may bring the
same within four years after becoming
legally capable.”

32.—2. Actions of account, of debt
on book, on simple contract, or assump-
sic, founded on an implied contract, or
upon any contract in writing, not under
seal, (except promissory notes not nego-
tiable,) within six years, saving as above three years.

33.—3. In trespass on the case, six years, but no savings.

34.—4. Actions founded upon express contracts not reduced to writing; upon trespass; or upon the case for words; three years and no savings.

35.—5. Actions founded on penal statutes one year after the commission of the offence.

36.—6. A new suit must be commenced within one year after reversal of the former, or when it was arrested.

37.——Delaware. 1. As to lands. Twenty years of adverse possession of land is a bar. The general principles of the English law on this subject, have been adopted in this state.

38.—2. As to personal actions. All actions of trespass pass quare clausum fregit; of detinue; trover and replevin, for taking away goods or chattels; upon account and upon the case; (other than actions between merchant and merchant, their factors and servants, relating to merchandise;) upon the case for words; of debt grounded upon any lending or contract without specialty; of debt for arrearages of rent; and all actions of trespass, assault, battery, menace, wounding or imprisonment, shall be commenced and sued within three years next after the cause of such action or suit accrues, and not after.

39.—The 2d section of the same act contains a saving; in favour of persons who, at the time of the cause of action accrued, are within the age of twenty-one years; femes covert; persons of insane memory, or imprisoned. Such persons must bring their actions within one year next after the removal of such disability as aforesaid.

40.—In the 3d section of the same act, provision is made, that no person not keeping a day book, or regular book of accounts, shall be admitted to prove or require payment of any account of longer standing than one year against the estate of any person dying within the state, or if it consist of many particulars, unless every charge therein shall have accrued within three years next be-

fore the death of the deceased, and unless the truth and justice thereof shall be made to appear by one sufficient witness; and in case of a regular book of accounts, unless such account shall have accrued or arisen within three years before the death of the deceased person.

41.—In section 6th, there is a saving of the rights or demands of infants, femes covert, persons of insane memory, or imprisoned, so their accounts be proved and their claims prosecuted within one year after the removal of such disability.

42.—By a supplementary act, it is declared, that nothing contained in this act, shall extend to any intercourse between merchant and merchant, according to the usual course of mercantile business, nor to any demands founded on mortgages, bonds, bills, promissory notes, or settlements under the hands of the parties concerned.

43.—All actions upon administration, guardian and testamentary bonds, must be commenced within six years after passing the said bonds; and actions on sheriff’s recognizances, within seven years after the entering into such recognizances, and not after; saving in all these cases, the rights of infants, femes covert, persons of insane memory, or imprisoned, of bringing such actions on administration, guardian or testamentary bonds, within three years after the removal of the disability, and on sheriff’s recognizances within one year after such disability removed.

44.—No appeal can be taken from any interlocutory order, or final decrees of the chancellor, but within one year next after making and signing the final decree, unless the person entitled to such appeal be an infant, femes covert, non compos mentis, or a prisoner.

45.—No writ of error, can be brought upon any judgment, but within five years after the confessing, entering or rendering thereof, unless the person entitled to such writ, be an infant, femes covert, non compos mentis, or a prisoner, and then within five years exclusive of the time of such disability. Constitution, article 5, s. 13.
46.—There is no saving in favour of foreigners or citizens of other states. The courts of this state have adopted the general principles of the English law.

47.—Florida. 1. As to lands. Writs of forredon in descender, remainder, or reverter, must be brought within twenty years. Act of Nov. 10, 1828, sec. 1, Duval, 154. Infants, femes covert, persons non compos mentis, or prisoners, may sue within ten years after disability is removed. Id. s. 2. A writ of right on seisin of ancestor or predecessor within fifty years; other possessor action on seisin of ancestor or predecessor, within forty years; real action on plaintiff’s possession or seisin within thirty years. Id. sec. 3.

48.—2. As to personal actions. All actions upon the case, other than for slander, actions for accounts, for trespass, debt, detinue, and replevin for goods and chattels, and actions of trespass quare clausum fregit, within five years. Actions of trespass, assault, battery, wounding and imprisonment or any of them within three years; and actions for words within one year. Id. s. 4. There is a saving in favour of infants, femes covert, persons non compos mentis, imprisoned, or beyond seas or out of the country, who may bring suit within the same time after the disability has been removed. All actions on book accounts shall be brought within two years.

49.—3. As to crimes. All offences not punishable with death shall be prosecuted within two years. Act of Feb. 10, 1832, s. 78. All actions, suits and presentments upon penal acts of the General Assembly, shall be prosecuted within one year. Act of Nov. 19, 1828, s. 18.

50.—Georgia.—1. As to lands. Seven years’ adverse possession of lands is a bar; with a saving in favour of infants, femes covert, persons non compos mentis, imprisoned or beyond seas.

51.—2. As to personal actions. Twenty years is a bar in personal actions, on bonds under seal; other obligations not under seal, six years; trespass quare clausum fregit, three years; trespass, assault and battery, two years; slander and qui tam actions, six months. There are savings in favour of infants, femes covert, persons non compos mentis, imprisoned and beyond seas.

52.—No other savings in favour of citizens of other states or foreigners.

53.—As to crimes. In cases of murder there is no limitation. In all other criminal cases where the punishment is death or perpetual imprisonment, seven years; other felonies, four years; cases punishable by fine and imprisonment, two years. Prince’s Dig. 573—579. Acts of 1767, 1813, and 1833. See 1 Laws of Geo. 33; 2 Id. 344; 3 Id. 30; Pamphlet Laws, 1833, p. 143.

54.—Illinois. 1. As to lands. No statute on this subject.

55.—2. As to personal actions. All actions of trespass quare clausum fregit; all actions of trespass; detinue; actions sur trover; and replevin for taking away goods and chattels; all actions of account; and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants; all actions of debt, grounded upon any lending or contract without speciality; all actions of debt for arrearages of rent; all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought, shall be commenced within the following times, and not after—actions upon the case, other than for slander; actions of account, and actions of trespass, debt, detinue and replevin for goods and chattels, and actions of trespass quare clausum fregit, within five years next after the cause of action or suit, and not after; and the actions of trespass for assault, battery, wounding, imprisonment, or any of them, within three years next after cause of action or suit, and not after; and actions for slander, within one year next after the words spoken.

There are no savings, by the statute, in favour of citizens of other states, or foreigners.

56.—Indiana. 1. As to lands. "No action of ejectment shall be commenced for the recovery of lands or tenements against any person or persons who may
have been in the quiet and peaceable possession of the same under an adverse title for twenty years, either in his own right, or the right of any other person or persons under whom he claims; and any action of ejection commenced against the provisions of this act shall be dismissed at the cost of the party commencing the same. Provided, however, that this act shall not be so construed as to affect any person who may be a femme covert, non compositus mentis, a minor, or any person beyond the seas, within five years after such disability is removed.” Rev. Code, c. 36, sec. 3, January 13, 1831.

57.—2. As to personal actions. “All actions of debt on simple contract, and for rent arrear, action on the case, (other than slander,) actions of account, trespass, quare clausum fregit, detinue and replevin for goods and chattels, shall be commenced within five years after the cause of action accrued, and not after. All actions of trespass, for assault and battery, and for wounding and imprisonment, shall be commenced within three years, and not after.” Rev. Code, c. 81, sec. 12, January 29, 1831.

58.—3. Crimes. “All criminal prosecutions for offences, the affixed penalty of which is three dollars, or less, shall be commenced within thirty days,” &c. “All prosecutions for offences except those the fixed penalties of which do not exceed three dollars, and except treason, murder, arson, burglary, man stealing, horse stealing, and forgery, shall be instituted within two years,” &c. Revised Code, ch. 26, Feb. 10, 1831.

59.—4. Penal actions. “All actions upon any act of assembly, now or hereafter to be made, when the right is limited to the party aggrieved, shall be commenced within two years, &c., and all actions of slander shall be commenced within one year, &c., saving the right of infants, femmes covert, persons non compositus mentis, or without the jurisdiction of the United States, until one year after their several disabilities are removed.” Sec. 12.

60.—5. Savings. Provided that no statute of limitation shall ever be plead—ed as a bar, or operate as such on an instrument or contract in writing, whether the same be sealed or unsealed, nor to running accounts between merchant and merchant. Rev. Code, ch. 81, s. 12.

61.—And provided further, that on all contracts made in this state, if the defendant shall be without the same when the cause of action accrued, said action shall not be barred until the times above limited shall have expired, after the defendant shall have come within the jurisdiction thereof, and on all contracts made without the state, if the defendant shall have left the state or territory when the same was made, and come within the jurisdiction of this state before the cause of action accrued thereon, the plaintiff shall not be barred his right of action, until the time above limited after the said demand shall have been brought within the jurisdiction of this state. Rev. Code, ch. 81, s. 12.

62.—Kentucky.—1. As to lands. The act of limitation takes effect in a writ of right or other possessory action, in thirty years from the seisin of the demandant or his ancestors. In ejectment in twenty years. See 1 Litt. 389, and Sessions acts 1838—9, page 330. In the action of ejectment there is a saving in favour of infants; persons insane or imprisoned; femmes covert, to whom lands have descended, during the coverture, when their cause of action accrued. These persons may sue within three years after the removal of the disability. 5 Litt. 90; 1d. 97. There is no saving in favour of non-residents or absent persons. 5 Litt. 90; 4 Bibb, 561. But when the possession has been held for seven years under a connected title in law or equity deducible of record from the commonwealth, claiming title under an adverse entry, survey or patent, no writ of ejectment or other possessory action can be commenced. In this case there is a saving in favour of infants, &c. as above, and of persons out of the United States, in the service of the United States or of this state, who may bring actions seven years after the removal of the disability. 4 Litt. 55.

63.—2. As to personal actions. The
act of limitation operates on simple contracts (except store accounts) in five years. Torts to the person, three years. Torts, except torts to the person, five years. Slander, one year. Store accounts, one year from the delivery of each article; except in cases of the death of the creditor or debtor before the expiration of one year, when the further time of one year is allowed after such death.

64.—Savings in such actions of simple contracts, tort, slander, and upon store accounts, in favour of infants, fames covert, persons imprisoned or insane at the time such action accrued, who have the full time aforesaid after the removal of their respective disabilities to commence their suit. But if the defendant in any of said personal actions absconds, or conceals himself by removal out of the country or county where he resides when the cause of action accrues, or by any other indirect ways or means defeats or obstructs the bringing of such suits or action, such defendant shall not be permitted to plead the act of limitations. 1 Litt. 380. There is no saving in favour of non-residents or persons absent. Act of 1823, s. 3, Session Acts, p. 287.

65.—Louisiana. — The Civil Code, book 3, title 28, chapter 1, section 3, provides as follows:

66.—§ I. Of the prescription of one year.—Art. 3499. The action of justices of the peace and notaries, and persons performing their duties, as well as constables, for the fees and emoluments which are due to them in their official capacity; that of masters and instructors in the arts and sciences, for lessons which they give by the month; that of innkeepers and such others, on account of lodging and board which they furnish; that of retailers of provisions and liquors; that of workmen, labourers and servants, for the payment of their wages; that for the payment of the freight of ships and other vessels, the wages of the officers, sailors, and others of the crew; that for the supply of wood and other things necessary for the construction, equipment and provisioning of ships and other vessels, are prescribed by one year.

67.—3500.—In the cases mentioned in the preceding article, the prescription takes place, although there may have been a regular continuance of supplies, or of labour or other service. It only ceases, from the time when there has been an account acknowledged, a note or bond, or a suit instituted. However, with respect to the wages of officers, sailors and others of the crew of a ship, this prescription runs only from the day when the voyage is completed.

68.—3501.—The actions for injurious words, whether verbal or written, and that for damages caused by slaves or animals, or resulting from offences or quasi offences; that which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted; that for the delivery of merchandise or other effects, shipped on board any kind of vessels; that for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other, are prescribed by one year.

69.—3502.—The prescription mentioned in the preceding article, runs: with respect to the merchandise injured or not delivered, from the day of the arrival of the vessel, or that on which she ought to have arrived; and in the other cases, from that on which the injurious words, disturbance, or damage were sustained.

70.—§ II. Of the prescription of three years.—Art. 3503.—The action for arrearages of rent charge, annuities and alimony, or of the hire of movables or immovables: that for the payment of money lent; for the salaries of overseers, clerks, secretaries, and of teachers of the sciences, for lessons by the year or quarter; that of physicians, surgeons and apothecaries, for visits, operations and medicines; that of parish judges, sheriffs, clerks and attorneys, for their fees and emoluments, are prescribed by three years, unless there be an account acknowledged, a note or bond given, or an action commenced before that time.

71.—3504.—The action of parties against their attorneys for the return of papers delivered to them for the interest of their suits, is prescribed also by three
years, reckoning from the day when judgment was rendered in the suit, or from the revocation of the powers of the attorneys.

72.—§ III. Of the prescription of five years.—Art. 3505.—Actions on bills of exchange, notes payable to order or bearer, except bank notes, those on all effects negotiable or transferable by endorsement or delivery, are prescribed by five years, reckoning from the day when these engagements were payable.

73.—3506.—The prescription, mentioned in the preceding article, and those described above in the paragraphs I. and II. run against minors and interdicted persons, reserving, however, to them their recourse against their tutors or curators. They run also against persons residing out of the state.

74.—3507.—The action of nullity or rescission of contracts, testaments or other acts; that for the reduction of excessive donations; that for the rescission of partitions and guaranty of the portions, are prescribed by five years, when the person entitled to exercise them is in the state, and ten years if he be out of it. This prescription only commences against minors after their majority.

75.—§ IV. Of the prescription of ten years.—Art. 3508.—In general, all personal actions, except those above enumerated, are prescribed by ten years, if the creditor be present, and by twenty years, if he be absent.

76.—3509.—The action against an undertaker or architect, for defect of construction of buildings of brick or stone, is prescribed by ten years.

77.—3510.—If a master suffer a slave to enjoy his liberty for ten years, during his residence in the state, or for twenty years while out of it, he shall lose all right of action to recover possession of the slave, unless the slave be a runaway or fugitive.

78.—3511.—The rights of usufruct, use and habitation, and services, are lost by non-use for ten years, if the person, having a right to enjoy them, be in the state, and by twenty years if he be absent.

79.—§ V. Of the prescription of thirty years.—Art. 3512.—All actions for immovable property, or for an entire estate, as a succession, are prescribed by thirty years, whether the parties be present or absent from the state.

80.—3513.—Actions for the revindication of slaves are prescribed by fifteen years, in the same manner as in the preceding article.

81.—§ VI. Of the rules relative to the prescription operating a discharge from debts.—Art. 3514. In cases of prescription releasing debts, one may prescribe against a title created by himself, that is, against an obligation which he has contracted.

82.—3515.—Good faith not being required on the part of the person pleading this prescription, the creditor cannot compel him or his heirs to swear whether the debt has or has not been paid, but can only blame himself for not having taken his measures within the time directed by law; and it may be that the debtor may not be able to take any positive oath on the subject.

83.—3516.—The prescription releasing debts is interrupted by all such causes as interrupt the prescription, by which property is acquired, and which have been explained in the first section of this chapter. It is also interrupted by the causes explained in the following articles.

84.—3517.—A citation served upon one joint debtor, or his acknowledgment of the debt, interrupts the prescription with regard to all the others and even their heirs. A citation served on one of the heirs of a joint debtor, or the acknowledgment of such heir, does not interrupt the prescription, with regard to the other heirs, even if the debt was by mortgage, if the obligation be not indivisible. This citation or acknowledgment does not interrupt the prescription, with regard to the other co-debtors, except for that portion for which such heir is bound. To interrupt this prescription for the whole, with regard to the other co-debtors, it is necessary, either that the citations be served on all, or the acknowledgment be made by all the heirs.

85.—3518.—A citation served on the
principal debtor, or his acknowledgment, interrupts the prescription on the part of the surety.

86.—3519.—Prescription does not run against minors and persons under interdiction, except in the cases specified above.

87.—3520.—Prescription runs against the wife, even although she be not separated of property by marriage contract or by authority of law, for all such credits as she brought in marriage to her husband, or for whatever has been promised to her in dower; but the husband continues responsible to her.

88.—Maine.—1. As to real actions.
The writ of right is limited to thirty years; writ of ancestral seisin, twenty-five years; writ of entry on party’s own seisin, twenty years. Stat. of Maine, ch. 62, § 1, 2, 3. But by the revised statutes, all real actions are limited to twenty years, from the time the right accrues. They took effect on the first day of April, 1843. Rev. Stat. T. 10, ch. 140, § 1. And writs of right and of formeden are abolished after that time. Rev. Stat. ch. 145, § 1.

89.—2. As to personal actions. When founded on simple contract, they are limited after six years. Rev. Stat. T. 10, ch. 146, § 1; on specialties, twenty years. Id. § 11. Personal actions founded on torts are limited to six years, except trespass for assault and battery, false imprisonment, slander and words and libels, which are limited to two years. Id. § 1.

90.—3. As to penal actions. When brought by individuals having an interest in the penalty or forfeiture, are limited to one year, Rev. Stat. T. 10, ch. 146, § 15; when prosecuted by the state, two years, Id. § 16.

91.—4. As to crimes. Prosecutions for crimes must be commenced within six years, when the party charged has publicly resided within the state, except in cases of treason, murder, arson and manslaughter. Rev. Stat. T. 12, ch. 167, § 15.

92.—Maryland.—1. As to lands.
The statute of 21 Jac. 1, c. 16, is in force in this state.

93.—2. As to personal actions. By the act of assembly, 1715, c. 23, actions of account; upon the case; or simple contract; or book debt or account; and of debt not of specialty; detinue and replevin for taking away goods and chattels; and trespass quare clausum frigint; must be brought within three years ensuing the cause of action, and not after: other actions of trespass, of assault, battery, wounding and imprisonment, within one year from the time of the cause of action accruing; from these provisions are excepted, however, such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants which are not resident within this [province] state. This statute also enacts, that no bill, bond, judgment, or recognizance, statute merchant or of the staple, or other specialty whatsoever, (except such as shall be taken in the name or for the use of our sovereign the king, &c.) shall be “good and pleasurable, or admitted in evidence” against any person of this [province] state, after the principal debtor and creditor have both been dead twelve years, or the debt or thing in action above twelve years standing.

94.—Persons labouring under the impediments of infancy, coverture, insanity, or imprisonment, are not barred until five years after the disability has been removed. And when a personal action abates by the death of the defendant, the plaintiff may at any time renew his suit, provided it be commenced without delay after letters testamentary have been granted.

95.—Defendants when absent from the state at the time the cause of action accrued, cannot compute the time of their absence in order to bar the plaintiff, but the latter may prosecute the same after the presence in the state of the persons liable thereto, within the time or times limited by the acts of limitation in such actions.

96.—Massachusetts.—By the Revised Statutes, ch. 120, it is provided as follows, to wit:

97.—§ 1. The following actions shall be commenced within six years next after
the cause of action shall accrue, and not afterwards:

98.—First, all actions of debt, founded upon any contract, or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the U. States:

99.—Secondly, all actions upon judgments rendered in any court, not being a court of record:

100.—Thirdly, all actions for arrears of rent:

101.—Fourthly, all actions of assumpsit, or upon the case, founded on any contract or liability, express or implied:

102.—Fifthly, all actions for waste and for trespass upon land:

103.—Sixthly, all actions of replevin, and all other actions for taking, detaining or injuring goods or chattels:

104.—Seventhly, all other actions on the case, except actions for slanderous words, and for libels.

105.—§ 2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards.

106.—§ 3. All actions against sheriffs, for the misconduct or negligence of their deputies, shall be commenced within four years next after the cause of action shall accrue, and not afterwards.

107.—§ 4. None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness, provided the action be brought by the original payee, or by his executor or administrator, nor to an action brought upon any bills, notes, or other evidences of debt, issued by any bank.

108.—§ 5. In all actions of debt or assumpsit, brought to recover the balance, due upon a mutual and open account current, the cause of action shall be deemed to have accrued, at the time of the last item proved in such account.

109.—§ 6. If any person, entitled to bring any of the actions, before mentioned in this chapter, shall, at the time when the cause of action accrues, be

within the age of twenty years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the times in this chapter respectively limited, after the disability shall be removed, or within six years after the disability mentioned in the preceding section.

110.—§ 7. All personal actions on any contract, not limited by the foregoing sections, or by any other law of this commonwealth, shall be brought within twenty years after the accruing of the cause of action.

111.—§ 8. When any person shall be disabled to prosecute an action in the courts of this commonwealth, by reason of his being an alien subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the actions before mentioned.

112.—§ 9. If, at the time when any cause of action, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced, within the time herein limited therefor, after such person shall come into the state; and if after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

113.—§ 10. If any person, entitled to bring any of the actions, before mentioned in this chapter, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

114.—§ 11. If, in any action, duly commenced within the time in this chap-
ter limited and allowed therefor, the writ shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

115.—§ 12. If any person, who is liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced, at any time within six years after the person, who is entitled to bring the same, shall discover that he has such cause of action, and not afterwards.

116.—Michigan.—1. As to lands.—
Sec. 1. In all real actions the statute of limitation takes effect as follows, to wit: In all actions for the recovery of land the statute runs after twenty years from the time the cause of action accrued, or within twenty-five years after the plaintiff or those from, by or under whom he claims, shall have been seized or possessed of the premises except as specified below.

117.—Sec. 2. If the right or title accrued to an ancestor of the person who brings the action or makes the entry upon the land, or to any other person from, by or under whom he claims, the said twenty-five years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor or other person.

118.—Sec. 3. The right to bring an action for the recovery of land or to make an entry thereon shall be deemed first to accrue when any person is dispossessed, at the time of such disposses.

119.—When any person claims as heir or devisee of one who died seised, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy or other estate, intervening after the death of such ancestor or deviser, in which case the right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation.

120.—When there is such an intermediate estate, and in all other cases when the party claims by force of any remainder or reversion, his right so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time; but if the person claims by reason of any forfeiture or breach of the condition, the statute runs from the time when the forfeiture was incurred or the condition was broken.

121.—In all other cases not otherwise provided for, the right shall be deemed to accrue when the claimant or the person under whom he claims first became entitled to the possession of the premises, under the title upon which the entry or action is founded.

122.—Sec. 4. If any minister or other sole corporation shall be dispossessed, any of his successors may enter upon the premises, or bring an action for the recovery thereof at any time within five years after death, resignation or removal of the person so dispossessed, notwithstanding the twenty-five years after such dispossess shall have expired.

123.—Sec. 5. If the person first entitled to make such entry or bring such action shall die within the age of twenty-one years, or be a married woman, insane, imprisoned in the state prison, or absent from the United States, and no determination or judgment shall have been had of or upon the title, right or action which accrued to him, the entry
may be made or the action brought by his heirs, or any other person claiming from, by or under him, at any time within ten years after his death, notwithstanding the said twenty-five years shall have expired.

124.—Sec. 6. No person shall be deemed to have been in possession of any lands within the meaning of the foregoing provisions merely by reason of having made an entry thereon, unless he shall have continued in open and peaceable possession of the premises for the space of one year next after such entry, or unless an action shall be commenced upon such entry and seisin within one year after he shall be ousted or dispossessed of the premises. R. S., p. 573 and 574.

125.—No actions for the recovery of an estate sold by an executor or administrator shall be maintained by the heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale. And no actions for any estate sold by a guardian shall be maintained by the ward or any other person claiming under him, unless it be commenced within five years after the termination of the guardianship. Except that persons out of the state and minors and others under any legal disability to sue at the time when the right of action shall first accrue, may commence such action at any time within five years after the disability is removed, or after their return to the state. R. S., p. 317, sec. 35.

126.—2. As to personal actions. The following actions shall be commenced within six years next after the cause of action shall accrue and not afterwards, to wit:

127.—1st. All actions of debt founded upon any contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record, or of general equity jurisdiction of the United States, or of this or some other of the United States.

128.—2d. All actions upon judgments rendered in any court other than those above excepted.

129.—3d. All actions for arrears of rent.

130.—4th. All actions of assumpsit or upon the case founded on any contract or liability express or implied.

131.—5th. All actions for waste.

132.—6th. All actions of replevin and trover and all other actions for taking, detaining, or injuring goods and chattels.

133.—7th. All other actions on the case, except actions for slanderous words or for libels.

134.—Sec. 2. All actions for trespass upon land or for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue and not afterwards.

135.—Sec. 3. All actions against sheriffs for the misconduct or neglect of their deputies shall be commenced within four years next after the cause of action shall accrue and not afterwards.

136.—Sec. 4. None of the foregoing provisions shall apply to any action brought upon any bills, notes or other evidence of debt issued by any bank.

137.—Sec. 5. In all actions of debt or assumpsit brought to recover the balance due upon mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

138.—Sec. 6. If any person entitled to bring any of the actions before mentioned in this chapter shall, at the time when the cause of action accures, be within the age of twenty-one years, or a married woman, insane, imprisoned in the state prison, or absent from the United States, such person may bring the said actions within the times in this chapter respectively limited after the disability shall be removed.

139.—Sec. 7. All personal actions on any contract not limited by the foregoing sections or by any other laws of this state, shall be brought within twenty years after the accruing of the cause of action.

140.—Sec. 8. When any person shall be disabled to prosecute an action in the courts of this state by reason of his being an alien subject or citizen of any country at war with the United States, the time of the continuance of such war shall not
be deemed any part of the respective periods herein limited for the commencement of any of the actions before mentioned.

141.—Sec. 9. If at the time when any cause of action mentioned in this chapter shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor after such person shall come into this state. And if after any cause of action shall have accrued, the person against whom it has accrued shall be absent from, and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

142.—Sec. 10. If any person entitled to bring any of the actions before mentioned in this chapter, or liable to any such actions, shall die before the expiration of the time herein limited or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person as the case may be, at any time within two years after the granting of the letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

143.—Sec. 11. If in any action, duly commenced within the time limited in this chapter and allowed therefor, the writ shall fail of a sufficient service or return, by an unavoidable accident or by any default or neglect of the officer to whom it is committed, or if the suit shall be abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any other matter of form, or if after a verdict for the plaintiff the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit or after the reversal of the judgment therein. And if the cause of action does by law survive, the executor or administrator may in case of his death commence such action within said one year.

144.—Sec. 12. In case of the fraudulent concealment of the right of action, such action may be commenced at any time within six years after the person entitled to the same shall discover that he has such cause of action. R. S., p. 576, 577 and 578.

145.—Sec. 21. All actions and suits for any penalty or forfeiture on any penal statute brought by any person to whom the penalty or forfeiture is given in the whole or in part, shall be commenced within one year next after the offence was committed, and not afterwards.

146.—Sec. 22. If the penalty or forfeiture is given in whole or in part to the state, a suit therefor may be commenced by or in behalf of the state at any time within two years after the offence was committed and not afterwards. Rev. Stat. p. 579.

147.—3. As to crimes. The statute of limitations in criminal cases takes effect after six years from the time the offence was committed; but any period during which the party charged was not usually and publicly resident within this state shall not be reckoned as a part of the six years. In case of murder, however, there is no limitation. Rev. Stat., p. 606, sec. 15.

148.—Mississippi.—1. As to lands. Real, possessory, ancestral and mixed actions for lands, tenements or hereditaments must be instituted within twenty years next after the right or title thereto, or cause of action accrued. How. & Hutch. page 568, ch. 43, sec. 88, L. 1822. Right or title of entry is barred after twenty years. Ibid. sec. 89, L. 1822. Fifty years' actual possession, uninterruptedly continued by occupancy, descent, conveyance or otherwise, vests a complete title in the occupier. Ib. sec. 90, L. 1822. Real estate, which may have escheated to the state, must be claimed within two years next after the inquisition, or it will be sold. How. & Hutch. page 363, ch. 34, sec. 84, L. 1822. If real estate escheat to the state and be sold, the moneys arising from such sale may be claimed within twelve years next from the day of such sale. Ibid. sec. 87, L. 1822; and moneys
arising from sale of personal estate, escheated, may be claimed within six years next after the sale thereof. Ib. All persons, claiming real estate escheated, either by descent or otherwise, must appear and traverse the office of inquest within twelve years from the date thereof, and in case of personal estate, within six years, or they will be forever barred of their claim. Ibid. sec. 88, L. 1822.

149.—2. As to personal actions. 1st. On contracts. These are, 1. Actions on simple contracts must be commenced and sued within six years next after the cause of action accrued. Except such actions as concern the trade or merchandise between merchant and merchant, their factors, agents and servants—where there are mutual dealings and mutual credits. How. & Hutch. page 569, ch. 43, sec. 91, L. 1822; How. Rep. 2, 786.

150.—Actions founded upon any account for goods, wares or merchandise, sold and delivered, or for any articles charged in any store account, must be commenced and sued within three years next after cause of action accrued. Post-dating any article in such account is highly penal. How. & Hutch. page 570, ch. 43, sec. 98, L. 1822.

151.—2. Actions on specialties must be commenced and sued within sixteen years next after cause of action accrued. How. & Hutch. page 569, ch. 43, sec. 95, L. 1822.

152.—Judgments recovered in any court of record as well without as within this state, may be revived by scire facias, or an action of debt brought thereon within twenty years next after the date of such judgment. How. & Hutch. pages 570 and 574, ch. 43, sec. 96 and 111, Laws 1822 and 1830. This extends to decrees of chancery court. How. Rep. 4, 31.

153.—3. Suits on bonds, or recognizances against sureties for public officers, must be commenced and sued within five years next after cause of action accrued. Ibid. sec. 97, page 570, L. 1822.

154.—2d. On torts. Actions for torts affecting the person must be sued within two years next after cause accrued. How. & Hutch. page 569, ch. 43, sec. 92, L. 1822. Actions of slander for words spoken or written must be sued within one year. Ibid. sec. 93, L. 1822; How. Rep. 2, 698. Actions of trespass quare clausum fregit; trespass; detinue; trover; replevin, for taking away goods and chattels, actions on the case, must be sued within six years next after cause of action accrued. Ibid. How. & Hutch. page 569, ch. 43, sec. 91, L. 1822.

155.—3. As to penal actions. Penal actions are limited to twelve months from the time of incurring the fine or forfeiture. (Persons absconding or fleeing from justice are excepted.) How. & Hutch. p. 668, ch. 49, sec. 19, L. 1822.

156.—4. As to crimes. Indictments, presentments or informations for offences (crimes) must be found or exhibited within one year next after the offence committed, (except for willful murder, arson, forgery, counterfeiting and larceny; as to which there is no limitation.) How. & Hutch. p. 668, ch. 49, sec. 19, L. 1822.

157.—Missouri.—1. As to lands. That from henceforth no person or persons whatsoever shall make entry into any lands, tenements or hereditaments, after the expiration of twenty years next after his, her or their right or title to the same first descended or accrued; nor shall any person or persons whatsoever have or maintain any writ of right, or any other real or possessory writ or action for any lands, tenements, or hereditaments of the seisin or possession of him, her or them, his, her or their ancestors or predecessors, nor declare or allege any other seisin or possession of him, her or them, his, her or their ancestors or predecessors, than within twenty years next before such writ, action, or suit, so hereafter to be sued, commenced or brought. Act of 1848. Infants, femmes coverts, persons of unsound memory, imprisoned, beyond seas, or without the jurisdiction of the United States, may sustain such actions commenced within twenty years after the disability has been removed.

158.—2. As to personal actions. In all actions upon the case (other than for slander;) actions for accounts, (other
than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants;) actions for debt, grounded upon any lending or contract without specialty, or of debt for arrearages of rent; and actions of trespass quare clausum fretit, shall be brought within five years after the cause of action shall accrue.

159.—All actions upon accounts, for goods, wares and merchandise sold and delivered, or for any article in any store account; all actions of trespass vi et armis, assault and battery, and imprisonment, shall be brought within two years after the cause of action shall accrue.

160.—Actions on the case for words, one year after the words spoken; and writs of error shall be brought within five years after the judgment or order of complaint shall be rendered and not after. Act of July 4, 1807.

161.—The plaintiff may within one year commence a new suit when a former judgment has been reversed, or the plaintiff has suffered a nonsuit.

162.—3. As to criminal actions. Actions, suits, indictments, or information, (if the punishment be fine and imprisonment,) must be brought within two years after the offence has been committed and not after.

163.—New Hampshire. 1. As to lands. No action can be maintained for the recovery of lands, unless upon a seizin within twenty years, except by persons under disability, that is, by those under twenty-one years of age, femes covert, non compos mentis, imprisoned, or without the limits of the United States, who may sue within five years after the disability has been removed.

164.—2. As to personal actions. Actions in general are limited to be brought within six years after they have accrued; but actions of trespass, assault and battery are limited to three years; and actions of slander to two. Infants, femes covert, persons imprisoned, or beyond sea, without the limits of the United States, or non compos mentis, may bring an action within the same time, after the disability has been removed. When the defendant has left the state before the action accrued, and left no property there which could have been attached, then the whole time is allowed after his return.

165.—New Jersey. 1. As to lands. By the act of June 5, 1787, it is enacted, § 1. At the aforesaid date, it was enacted, that sixty years’ actual possession of lands, tenements or other real estate uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced or been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements or other real estate, and shall be a good and sufficient bar to all claims that may be made or actions commenced, by any person or persons whatsoever for the recovery of such lands, &c.

166.—§ 2. And that thirty years’ actual possession of lands, &c. uninterruptedly continued as aforesaid, wherever such possession commenced or is founded upon a proprietary right duly laid thereon, and recorded in the surveyor general’s office of the division in which such location was made, or in the secretary’s office, agreeably to law; or, wherever such possession was obtained by a fair bona fide purchase of such land, &c. of any person in possession, and supposed to have a legal right and title thereto, or of the agent or agents of such person or persons, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor or occupier of all such lands, &c.

168.—Provided, That if any person or persons having a right or title to lands, &c. shall, at the time of the said right or title first descended or accrued, be within twenty-one years of age, femes covert, non compos, imprisoned, or without the United States, then such person or persons, and his heir or heirs may, notwithstanding the aforesaid times are expired, be entitled to his or their action for the same, so as such person or persons, or his or their heirs, commence
or sue forth his or their actions within five years, after his or their full age,
discovert, coming of sound mind, enlargement out of prison, or coming
within any of the United States, and at no other time.

169.—And provided that any citizens of this, or any of the United States, and
his or their heirs, having such right, &c. may, notwithstanding the aforesaid times
expired, commence his or their action for such lands, &c., at any time within five
years next after passing this act, and not afterwards.

170.—By the act of February 7, 1799, s. 9, it is enacted, that no person
who now hath, or hereafter may have,
any right or title of entry into lands,
tenements or hereditaments, shall make
entry therein, but within twenty years
next after such right or title shall accrue,
and such person shall be barred from any
entry afterwards.

171.—Provided, That, the time, during
which the person who hath or shall
have such right or title of entry, shall
have been under the age of twenty-one
years, femme covert, or insane, shall not be computed as part of the said limited
period of twenty years.

172.—By section 10, of the same act,
from and after the first day of January,
1803, every real, possessory, ancestral,
mixed or other action for any lands, tenen-
tments or hereditaments, shall be brought
or instituted within twenty years next after
the right or title thereto or cause
of such action shall accrue, and not after.

173.—Provided, That the time during
which the person who hath or shall have
such right or title or cause of action,
shall have been under the age of twenty-
one years, femme covert, or insane, shall
not be computed as part of the said
twenty years.

174.—Section 11. That if a mort-
gage, and those under him, be in pos-
session of lands, &c. contained in the
mortgage or any part thereof, for twenty
years after default of payment, then the
right or equity of redemption therein,
shall be barred forever.

175.—Section 13. That no person or
persons, bodies politic or corporate, shall
be sued or impleaded by the state of New
Jersey, for any land, &c. or any rents,
revenues, or profits thereof, but within
twenty years after the right, title or
cause of action to the same shall accrue
and not after.

176.—2. As to personal actions.—It
is enacted that all actions of trespass
quire clausum freget; trespass; detinue;
trover; replevin; debt, founded on any
lending or contract without specialty, or
for arrears of rent due on a parol de-
mise; of account, (except such actions
as concern the trade of merchandise be-
tween merchant and merchant, their
factors, agents and servants;) and on the
case, (except actions for slander,) shall
be commenced and sued within six
years next after the cause of such actions
shall have accrued, and not after. That
all actions of trespass for assault, menace,
battery, wounding and imprisonment, or
any of them, shall be commenced and sued
within four years next after the cause of
such actions shall have accrued and not after.
That every action upon the case
for words, shall be commenced and sued
within two years next after the words
spoken, and not after. Persons within
the age of twenty-one years, femmes covert
or insane, may institute such actions
within such time as is before limited
after his or her coming to or being of
full age, discovert, or same memory.

177.—The act of February 7, 1799,
s. 6, provides that every action of debt,
or covenant for rent, or arrears of
rent, founded upon lease under seal; debt
on any bill or obligation for the payment
of money only, or upon any award, under
the hands and seals of arbitrators, for
the payment of money only, shall be
commenced and sued within sixteen years
next after the cause of such action shall
have accrued, and not after; but if any
payment shall have been made on any
such lease, specialty or award, within or
after the said period of sixteen years,
then an action, instituted on such lease,
specialty or award, within sixteen years
after such payment, shall be effectual in
law, and not after. Provided, That the
time during which the person, who is or
shall be entitled to any of the actions
specified in this section, shall have been within the age of twenty-one years, femcoer, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

178.—3. As to crimes. By the statute passed February 17, 1829, Harr. Comp. 243, all indictments for offences punishable with death, (except murder,) must be found within three years, and all offences not punishable with death, must be brought within two years; except, as to both, where the offender flies.

179.—4. As to penal actions. By the statute of February 7, 1799, Rev. Laws, 410, all popular and *qui tam* actions, and also all actions on penal statutes by the party grieved, must be brought within two years.

180.—New York.—The provisions limiting the time of commencing actions, are contained in the Revised Statutes, part 3, chapter 4, tit. 2, and are substantially as follows:

181.—1. As to lands. The people of this state will not sue or implead any person for, or in respect to, any lands, tenements, or hereditaments, or for the issues or the profits thereof, by reason of any right or title of the said people to the same, unless, 1. Such right shall have accrued within twenty years before any suit, or other proceeding for the same shall have been commenced; or unless, 2. The said people or those from whom they claim, shall have received the rents and profits of such real estate, or some part thereof, within the said space of twenty years. Grantees of the state cannot recover, if the state could not; and when patents granted by the state are declared void for fraud, a suit may be brought at any time within twenty years thereafter.

182.—No action for the recovery of any lands, tenements, or hereditaments, or for the recovery of the possession thereof, shall be maintained, unless it appear, that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

183.—No avowry or cognizance of title of real estate, or to any rents or services, shall be valid, unless it appear that the person making the avowry, or the person in whose right the cognizance is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question, within twenty years before committing the act, in defence of which the avowry or cognizance is made.

184.—No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right of making such entry accrued.

185.—All writs of *scire facias* upon fines, heretofore levied, of any manors, lands, tenements, or hereditaments, shall be sued out within twenty years next after the title or cause of action first descended or fallen, and not after that period.

186.—If any person entitled to commence any action as above specified, or to make any entry, avowry, or cognizance, be at the time such title shall first descend or accrue, either, 1, within the age of twenty-one years; or, 2, insane; or, 3, imprisoned on any criminal charge or in execution upon some conviction of a criminal offence for any term less than for life; or, 4, a married woman; the time during which such disability shall continue shall not be deemed any portion of the time above limited, for the commencement of such suit, or the making such entry, avowry, or cognizance; but such person may bring such action, or make such entry, avowry, or cognizance, after the said time so limited, and within ten years after such disability removed and not after. In case of the death of the person entitled to such action, &c., before any determination or judgment in the case, his heirs may institute the same within ten years after his death, but not after. Rev. Statutes, part 3, c. 4, tit. 2, article 1.

187.—The 68th section of the act “to simplify and abridge the practice, pleadings and proceedings of the courts of this state,” (New York,) passed the 12th
of April, 1848, known as the Code of Procedure, enacts that the provisions of the Revised Statutes, contained in the article entitled, “Of the time of commencing actions relating to real property,” shall, until otherwise provided by statute, continue in force, and be applicable to actions for the recovery of real property.

188. Other actions than for the recovery of real property, and actions already commenced, or cases where the right of action has accrued, to which the statutes in force when the said act was passed shall be applicable, according to the subject of the action, and without regard to the form, must be commenced within the times as provided for in part 2, t. 2, c. 3 and 4, of the code of procedure in the following sections, namely:

§ 70. Within twenty years:
1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.
2. An action upon a sealed instrument.

§ 71. Within six years:
1. An action upon a contract, obligation or liability, express or implied; excepting those mentioned in section seventy.
2. An action upon a liability created by statute, other than a penalty or forfeiture.
3. An action for trespass upon real property.
4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not herein after enumerated.
6. An action for relief, on the ground of fraud; the cause of action in such case not to be deemed to have accrued, until the discovery by the aggrieved party, of the facts constituting the fraud.

§ 72. Within three years:
1. An action against a sheriff or coroner, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute, for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the people of this state, except where the statute imposing it prescribes a different limitation.

§ 73. Within two years:
1. An action for libel, slander, assault, battery, or false imprisonment.
2. An action upon a statute, for a forfeiture or penalty to the people of this state.

§ 74. Within one year:
1. An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

§ 75. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item in the account, on the adverse side.

§ 76. An action upon a statute for a penalty or forfeiture, given in whole or in part to any person who will prosecute for the same, must be commenced within one year after the commission of the offense; and if the action be not commenced within the year, by a private party, it may be commenced within two years thereafter, in behalf of the people of this state, by the attorney-general, or the district attorney of the county where the offense was committed.

§ 77. An action for relief, not herein-before provided for, must be commenced within ten years after the cause of action shall have accrued.

§ 78. The limitations prescribed in this title shall apply to actions brought in the name of the people of this state or for their benefit, in the same manner as to actions by private parties.

§ 79. An action shall not be deemed commenced, within the meaning of this title, unless it appear:
1. That the summons or other process therein was duly served upon the defendants, or one of them; or
2. That the summons was delivered, with the intent that it should be actually served, to the sheriff of the county in which the defendants, or one of them, usually or last resided; or if a corporation be defendant, to the sheriff of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business.

§ 80. If, when the cause of action shall accrue against a person, he be out of the state, the action may be commenced within the term herein limited, after his return to the state; and if, after the cause of action shall have accrued, he depart from and reside out of the state, the time of his absence shall not be part of the time limited for the commencement of the action.

§ 81. If a person entitled to bring an action except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either:
1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life; or
4. A married woman:
   The time of such disability shall not be part of the time limited for the commencement of the action.

§ 82. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, his representatives may commence the action, after the expiration of that time, and within one year from his death.

§ 83. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action.

§ 84. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed, on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

§ 85. When the commencement of an action shall be stayed by injunction, the time of the continuance of the injunction shall not be part of the time limited for the commencement of the action.

§ 86. No person shall avail himself of a disability, unless it existed when his right of action accrued.

§ 87. When two or more disabilities shall exist, the limitation shall not attach until they all be removed.

§ 88. This title shall not affect actions to enforce the payment of bills, notes or other evidences of debt issued by monied corporations, or issued or put in circulation as money.

§ 89. This title shall not affect actions against directors or stockholders of a monied corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created, by the second title of the chapter of the Revised Statutes, entitled "Of incorporations?" but such actions must be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

§ 90. Where the time for commencing an action arising on contract shall have expired, the cause of action shall not be deemed revived by an acknowledgment or new promise, unless the same be in writing, subscribed by the party to be charged thereby.

189.—North Carolina. By the Revised Statutes, chapter 65, it is provided as follows, to wit:

190.—1. As to lands. § 1. That no person or persons, nor their heirs, which hereafter shall have any right or title to any lands, tenements, or hereditaments, shall thereunto enter or make any claim, but within seven years next after his, her or their right or title descended or accrued, and in default thereof such person or persons, so not entering or making claim, shall be utterly excluded and disabled from any entry or claim thereafter to be made: Provided nevertheless, that if any person or persons, that is or here-
after shall be entitled to any right or claim of lands, tenements or hereditaments, shall be, at the time the said right or title first descended, accrued, come or fallen, within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned or beyond seas, that then such person or persons shall and may, notwithstanding the said seven years be expired, commence his, her or their suit, or make his, her or their entry, as he, she or they might have done before this act, so as such person or persons shall, within three years next after full age, discover, coming of sound mind, enlargement out of prison, or persons beyond seas, within eight years after the title or claim becomes due, take benefit and sue for the same, and at no time after the times or limitations herein specified; but that all possessions, held without suing such claim as aforesaid, shall be a perpetual bar against all, and all manner of persons whatsoever, that the expectation of heirs may not, in a short time, leave much land unpossessed, and titles so perplexed, that no man will know of whom to take or buy land. Provided also, that if in any action of ejectment for the recovery of any lands, tenements or hereditaments, judgment be given for the plaintiff, and the same be reversed for error, or a verdict pass for the plaintiff, and, upon matter alleged in arrest of judgment, the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, or a verdict be given against the plaintiff, in all such cases the party plaintiff, his heirs or executors, as the case shall require, may commence a new action or suit from time to time, within one year after such judgment reversed, or judgment given against the plaintiff.

191.—§ 2. Where any person or persons, or the person or persons under whom he, she or they claim, shall have been, or shall continue to be, in possession of any lands, tenements or hereditaments whatsoever, under titles derived from sales, made either by creditors, executors or administrators of any person deceased, or by husbands and their wives, or by endorsement of patents or other colorable title, for the space of twenty-one years, all such possessions of lands, tenements or hereditaments, under such title, shall be and are hereby ratified, confirmed and declared to be a good and legal bar, against the entry of any person or persons, under the right or claim of the state, to all intents and purposes whatsoever; Provided nevertheless, that the possession so set up shall have been ascertained and identified under known and visible lines or boundaries.

192.—2. As to personal actions. § 3. All actions of trespass, detinue, actions sur trover and replevin for taking away of goods and chattels, all actions of account and upon the case, all actions of debt for arrearages of rent, all actions of debt grounded upon any lending or contract without specialty, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought, shall be commenced or brought within the time and limitation in this act expressed, and not after; that is to say, actions of account render, actions upon the case, actions of debt for arrearages of rent, actions of debt upon simple contract, actions of detinue, replevin, and trespass either for goods and chattels or *quære clausum fregit*, within three years next after the cause of such action or suit, and not after; except such accounts as concern the trade of merchandise, between merchant and merchant, and their factors, or servants; and the said actions of trespass, of assault and battery, wounding, imprisonment or any of them within one year after the cause of such action or suit, and not after; and the said actions upon the case for words, within six months after the words spoken, and not after.

193.—§ 4. Provided nevertheless, that if, on any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed for error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill; or if any of the said actions shall be brought by original writ, and the defendant cannot be attached or legally served with process, in all such cases the party plaintiff, his
heirs, executors or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or till the defendant can be attached or served with the process, so as to compel him to appear and answer. And provided further, that if any person or persons, that is or shall be entitled to any such action of trespass, detinue, action sur trover, replevin, actions of account and upon the case, actions of debt for arrears of rent, actions of debt grounded upon any lending or contract without specialty, actions of assault, menace, battery, wounding and imprisonment, actions of trespass guare clausum fregi, actions upon the case for slanderous words, be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they bring the same within such times as are before limited, after their coming to or being of full age, discover, of sound memory, at large or returned from beyond seas, as other persons having no such impediment might have done. And provided further, that when any person or persons, against whom there is cause of action, shall be beyond sea at the time of such cause of action given or accrued, fallen or come, the person, who shall have such cause of action, may bring his action against them within such time or times as are herein before limited, for bringing such actions after their return.

194.—§ 5. The limitation of actions shall apply to all bonds, bills, and other securities made transferable by law, after the assignment or endorsement thereof, in the same manner as it operates against promissory notes.

195.—§ 6. As to penal actions. All actions and suits to be brought on any penal act of the General Assembly, for the recovery of the penalty therein set forth, shall be brought within three years after the cause of such action or suit shall or may have accrued, and not after:

Provided, that this act shall not affect the time of bringing suit on any penal act of the General Assembly, which hath a time limited therein for bringing the same.

196.—Ohio.—1. As to lands. Twenty-one years’ adverse possession of lands operates a bar, with a saving in favour of infants, feme covert, persons insane, imprisoned or beyond the sea, when the right of action accrues. And if a person shall have left the state, and remain out of the same at the time the cause of action accrued; or shall have left the state or county at any time during the period of limitation, (that is, after the right of action has accrued,) and remain out of the same in a place unknown to the person having the right of action, suit may be brought at any time within the period of limitation, after the return of such person to the state or county.

197.—2. As to personal actions. 1st. Actions upon the case, covenant and debt founded upon a specialty, or any agreement, contract or promise in writing may be brought within fifteen years after the cause of action shall have accrued.

198.—2d. Actions upon the case and debt founded upon any simple contract, not in writing, and actions on the case for consequential damages within six years.

199.—3d. Actions of trespass upon property, real or personal, detinue, trover and replevin, within four years.

200.—4th. Actions of trespass for any injury done to the person, actions of slander for words spoken, or for a libel, actions for malicious prosecution, and for false imprisonment; actions against officers for malfeasance or nonfeasance in office, and actions of debt qui tam, within one year.

201.—5th. Actions for forcible entry and detainer, or forcible detainer only, within two years.

202.—6th. All other actions within four years; and all penalties and forfeitures given by statute and limited by the statute, within the times so limited.

203.—7th. Infants, feme covert, persons insane or imprisoned, entitled to
an action of ejectment, may, after the twenty-one years have elapsed, bring
their actions within ten years after such
disability removed. They may bring all
other actions, within the respective times
limited for bringing such actions, after
the disability removed.

204.—8th. Actions, founded on con-
tracts between persons resident at the
time of the contract without this state,
which are barred by the laws of the
country where the contract was made are
barred in the courts of this state.

205.—9th. In all actions on contract
express or implied, in case of payment
of any part, principal or interest, ac-
nowledgment of an existing liability,
debt or claim, or any promise to pay the
same, within the time herein limited, the
action may be commenced within the
time limited after such payment, ac-
nowledgment or promise.

206.—10th. If judgment be arrested
or reversed, the suit abate or the plain-
tiff become nonsuit, and the time limited
shall have expired, the plaintiff may
bring a new action within one year after
such arrest, reversal, abatement or non-
suit.

207.—11th. A person who has left
the state, or resides out of it, or whose
place of residence is unknown although
in the state, at the time the cause of
action accrues, may be sued within the
time limited by the act, after his return
or removal to the state, or his place of
residence, if in the state, becomes known.
O. Stat. vol. 29, 214; Act of Feb. 18,
1831. Took effect, June 1, 1831.
Swan’s Col. Laws, 553, 4, 5, 6.

208.—This act only operates upon
causes of action accruing after the act
took effect, and all causes of action pre-
viously subsisting are governed by the
statutes (and there have been several) in
force when the respective causes of ac-
tion accrued, none of the statutes being
retrospective in their operation. 7 O. R.
p. 2, 235, West’s Adm’r. vs. Hymer;
Ib. 153, Hazlett et al. vs. Crichtfield et
al.; 6 Ib. 96, Bigelow’s Ex’r. vs. Bige-
low’s Adm’r.

209.—3. As to penal actions. Prose-
cutions for any forfeitures under a penal
statute, must be instituted within two
years unless otherwise specially provided
for.

210.—Pennsylvania.—1. As to lands.
From henceforth no person or persons
whatsoever, shall make entry into any
manors, lands, tenements or heredita-
tments, after the expiration of twenty-
one years next after his, her or their
right or title to the same first descended
or accrued; nor shall any person or per-
sons whatsoever have or maintain any
writ of right, or any other real or pos-
essor’s writ or action, for any manor,
lands, tenements or hereditaments, of
the seisin or possession of him, her or
themselves, his, her, or their ancestors
or predecessors, nor declare or allege
any other seisin or possession of him,
her or themselves, his, her or their an-
cestors or predecessors, than within
twenty-one years next before such writ,
action, or suit so hereafter to be sued,
commenced or brought. Act of March
26, 1785, s. 2, 2 Smith’s Laws Pa. 299.

211.—Section 4, provides, that if any
person or persons having such right or
title be, or shall be at the time such
right or title first descended or accrued,
within the age of twenty-one years, feme
covert, non-compos mentis, imprisoned
or beyond the seas, or from and without
the United States of America, then such
person or persons, and the heir or heirs
of such person or persons, shall and
may, notwithstanding the said twenty-
one years be expired, bring his or their
action, or make his or their entry, as he,
she or they might have done, before the
passing of this act, so as such person or
persons, or the heir or heirs of such
person or persons, shall within ten years
next after attaining full age, discover-
ture, soundness of mind, enlargement
out of prison, or coming into the said
United States, take benefit of or sue for
the same, and no time after the said ten
years; and in case such person or per-
sons shall die within the said term of
ten years, under any of the disabilities
aforesaid, the heir or heirs of such per-
son or persons shall have the same ben-
efit, that such person or persons could or
might have had, by living until the dis-
abilities should have ceased or been removed; and if any abatement happen in any proceeding or proceedings upon such right or title, such proceeding or proceedings may be renewed and continued, within three years from the time of such abatement, but not afterward.

212.—By the act March 11, 1815, the provision above contained, so far as the same relates to persons beyond the seas, and from and without the United States of America, is repealed.

213.—2. As to personal actions. All actions of trespass *quære clausum fregit*, all actions of detinue, trover and replevin, for taking away goods and cattle, all actions upon account, and upon the case (other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants) all actions of debt, grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent, except the proprietaries' quit rents, and all actions of trespass, of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the five and twentieth day of April, which shall be in the year of our Lord one thousand seven hundred and thirteen, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions upon the case, other than for slander, and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or chattels, and the said actions of trespass *quære clausum fregit*, within six years next after the cause of such actions or suit, and not after. And the said actions of trespass, of assault, menace, battery, wounding, imprisonment, or any of them, within two years next after the cause of such actions or suit, and not after. And the said actions upon the case for words, within one year next after the words spoken, and not after. Act of March 27, 1713, s. 1.

214.—If in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict passed for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, then and in every such case, the party plaintiff, his heirs, executors, or administrators as the case may require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or given against the plaintiff as aforesaid, and not after. Ib. s. 2.

215.—In all actions upon the case, for slanderous words, to be sued or prosecuted by any person or persons, in any court within this province, after the said twenty-fifth day of April next, if the jury upon trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed, do amount unto, without any further increase of the same. Ib. s. 4.

216.—Provided nevertheless, that if any person or persons who is or shall be entitled to any such action or trespass, detinue, trover, replevin, actions of account, debt, actions for trespass, for assault, menace, battery, wounding or imprisonment, actions upon the case for words, be, or, at the time of any cause of such action given or accrued, fallen, or come, shall be within the age of twenty-one years, feme covert, *non compus mentis*, imprisoned or beyond the seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are hereby before limited, after their coming to or being of full age, discoverment, of sound memory, at large, or returning into this province as other persons. Ib. s. 5.

217.—3. As to penal actions. All actions, suits, bills, indictments, or information, which shall be brought for any forfeiture upon any penal act of assembly made or to be made, whereby the forfeiture is or shall be limited to the commonwealth only, shall hereafter be brought within two years after the offence was committed, and at no time
afterwards; and all actions, suits, bills, or informations which shall be brought for any forfeiture upon any penal act of assembly made or to be made, the benefit and suit whereof is or shall be by the said act limited to the commonwealth, and to any person or persons that shall prosecute in that behalf, shall be brought by any person or persons that may lawfully sue for the same, within one year next after the offence was committed; and in default of such pursuit, then the same shall be brought for the commonwealth, any time within one year after that year ended; and if any action, suit, bill, indictment or information shall be brought after the time so limited, the same shall be void, and where a shorter time is limited by any act of assembly, the prosecution shall be within that time.

Act of March 26, 1785, s. 6.

218.—Rhode Island.—1. As to lands. It is enacted that where any person or persons, or others from whom he or they derive their titles, either by themselves, tenants or lessees, shall have been, for the space of twenty years, in the uninterrupted, quiet, peaceable and actual seisin and possession of any lands, tenements or hereditaments in the state, during the said time, claiming the same as his, her or their proper, sole and rightful estate in fee-simple, such actual seisin and possession shall be allowed to give and make a good and rightful title to such person or persons, their heirs and assigns forever; saving and excepting however, the rights and claims of persons under age, non compos mentis, feme covert, and persons imprisoned, or beyond sea, they bringing their suits for the recovery of such lands, &c. within the space of ten years next after the removal of such impediment; saving also, the rights and claims of any person or persons, having any estate in reversion or remainder, expectant or dependent on any lands, &c. after the determination of the estate for years, life, &c.; such person or persons pursuing his or their title by due course of law, within ten years after his or their right of action shall accrue.

219.—2. As to personal actions. It provides, that all actions upon the case, (except actions for slander,) all actions of account (except such as concern trade and merchandise between merchant and merchant, their factors or servants,) all actions of detinue, replevin and trover, all actions of debt founded upon any contract without specialty, and all actions of debt for arrearage of rents, must be commenced within six years next after the accruing of the cause of said actions, and not after. That all actions of trespass for breaking enclosures, and all other actions of trespass for any assault, battery, wounding and imprisonment, must be commenced within four years next after the accruing of such cause of action, and not after. And that actions upon the case for words spoken, must be commenced within two years next after the words spoken, and not after. If the person against whom there is any such cause of action, at the time the same accrued, was without the limits of the state, and did not leave property or estate therein, that could, by common and ordinary process of law be attached, in that case, the person who is entitled to such action, may commence the same, within the respective periods limited in the preceding clause, after such person’s return into the state. If a person, entitled to any of the before described actions, is at the time any such cause of action accrues, within the age of twenty-one, feme covert, non compos mentis, imprisoned, or beyond sea, such person may commence the same within the times respectively, limited as above, after being of full age, discover, of sane memory, at large, or returned from beyond sea.

220.—South Carolina.—1. As to lands. By the act of 1712, s. 2, it is enacted, that if any person or persons to whom any right or title to lands, tenements or hereditaments within this province, shall hereafter descend or come, do not prosecute the same within five years after such right or title accrued, that then he or they, and all claiming under him or them, shall be forever barred to recover the same.

221.—By section 5, that not only the persons who have not made claim within
the time limited shall be barred, but also, all persons that shall come under such as have lost their claim.

222.—And by section 2, that any person or persons beyond the seas, or out of the limits of this province, feme covert, or imprisoned, shall be allowed the space of seven years to prosecute their right or title, or claim to any lands, tenements or hereditaments in this province, after such right and title accrued to them or any of them, and at no time after the said seven years; and also, any person or persons that are under the age of twenty-one years, shall be allowed to prosecute their claims at any time within two years after they come of age, and if beyond the seas, three years." But a subsequent act in 1778, (Pub. L. 455, s. 2,) as to persons under twenty-one, allows five years to prosecute their right to lands after coming to twenty-one.

223.—2. As to personal actions. By the act of 1712, s. 6, actions of account, and upon the case, (other than case for slander, and upon such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants;) of debt, grounded upon any lending or contract without specialty, or for arrearages of rent reserved by indenture; of covenant; of trespass, and trespass quam clausum fregit; of detinue; and of replevin, for taking away of goods and chattels; must be commenced within four years next after the cause of such action or suits, and not after. Actions of trespass, of assault and battery, wounding, imprisonment, or any of them, within one year next after the cause of action; and actions on the case for words, within six months next after the words spoken, and not after.

224.—There are various minute provisions in the savings in favour of persons under age, insane, beyond seas, imprisoned, and of femes covert.

225.—When the defendant is beyond seas at the time any personal action accrues, the plaintiff may sue after his return within such times as is limited for bringing such action. Act of 1712, s. 6.

226.—Tennessee. 1. As to lands. The act of Nov. 16, 1819, c. 28, 2 Scott, 482, enacts in substance: § 1. That any persons, their heirs or assigns, who shall, at the passing of the act, or at any time after, have had seven years’ possession of any lands, tenements or hereditaments, which have been granted by this state, or the state of North Carolina, holding or claiming the same under a deed or deeds of conveyance, devise, grant, or other assurance, purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted, shall have been set up or made to said lands, &c. within the aforesaid time, in that case, the persons or their heirs or assigns so holding possession, shall be entitled to keep and hold in possession, such quantity of land as shall be specified and described in his or their deed of conveyance, devise, grant, or other assurance as aforesaid, in preference to and against all and all manner of persons whatsoever; and any persons or their heirs, who shall neglect or have neglected for the said term of seven years to avail themselves of any title legal or equitable which they may have had to any lands, &c. by suit in law or equity, effectually prosecuted against the persons in possession, shall be forever barred; and the persons so holding, their heirs or assigns for the term aforesaid, shall have an indefeasible title in fee simple to such lands. See 3 Am. Jur. 255.

227.—§ 2. That no persons or their heirs shall maintain any action in law or equity for any lands, &c. but within seven years next after his, her or their right to commence, have or maintain such suit, shall have come, fallen or accrued; and that all suits in law or equity shall be commenced and sued within seven years next after the title or cause of action accrued or fallen, and at no time after the said seven years shall have passed.

228.—Persons who when title first accrued were within twenty-one years of age, femes covert, non compos mentis, imprisoned, or beyond the limits of the United States, or the territories thereof, may bring their action at any time, so as such suit is commenced within three years next after his, her or their respec-
tive disabilities or death, and not after; and it is further provided that in the construction of the savings, no cumulative disability shall prevent the bar.

229.—§ 3. That if in any of the said actions or suits, judgment is given for the plaintiff and is reversed for error, or verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing, &c.; or if the action be commenced by original writ, and the defendant cannot be legally attached or served with process, in such case the plaintiff, his heirs, executors or administrators, as the case is, may commence a new action from time to time, within a year after such judgment reversed or given against the plaintiff, or until the defendant can be attached or served with process so as to compel him, her or them to appear and answer.

230.—§ 4. Provided, that this act shall have no bearing on the lands reserved for the use of schools.

231.—2. As to personal actions. Actions of account render; upon the case; debt for arrearages of rent; detinue; replevin; and trespass quare clausum freti; must be brought within three years next after the cause of such action, and not after: except such accounts as concern the trade of merchandise between merchant and merchant, and their factors or servants. Actions of trespass, assault and battery, wounding, and imprisonment, or any of them, within one year after the cause of such action, and not after: and actions of the case for words, within six months after the words spoken, and not after. Act of 1715, c. 27, s. 5. Persons who at the time the cause of action accrued are within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond seas, may bring their actions within the time above limited, after the removal of the disability. Ib. s. 9.

232.—The act of 1756, c. 4, 1 Scott, 89, contains the following enactment: 1. Where the plaintiff founds his demand upon a book account for goods, wares and merchandise sold and delivered, or work done, and solely relies for proof of delivery of the articles upon his oath, such oath shall not be admitted to prove the delivery of any articles in the book, of longer standing than two years.

233.—2. And no such book of accounts although proved by witnesses, shall be received in evidence, for goods, &c., sold, or work done, above five years before action brought, except of persons being out of the government, or where the account shall be settled and signed by the parties.

234.—3. Creditors of any deceased person, residing in the state, shall, within two years, and out of the state, within three years from the qualification of the executors or administrators, make demand of their respective accounts, debts and demands of every kind whatsoever, to such executors and administrators, and on failure to make the demand and bring suit within those times, shall be forever barred; saving to infants, non compos, and feme covert, one year to sue, after the disability removed. But if any creditor after making demand of his debt, &c. of the executor or administrator, shall delay his suit at their special request, then the demand shall not be barred during the time of indulgence.

235.—Vermont.—1. Criminal cases. Sect. 1. All actions, suits, bills, complaints, informations or indictments, for any crime or misdemeanor, other than theft, robbery, burglary, forgery, arson and murder, shall be brought, had, commenced or prosecuted within three years next after the offence was committed, and not after.

236.—Sect. 2. All complaints and prosecutions for theft, robbery, burglary and forgery, shall be commenced and prosecuted within six years next after the commission of the offence, and not after.

237.—Sect. 3. If any action, suit, bill, complaint, information or indictment, for any crime or misdemeanor, other than arson and murder, shall be brought, had, commenced or prosecuted, after the time limited by the two preceding sections, such proceedings shall be void and of no effect.

238.—Sect. 4. All actions and suits,
upon any statute, for any penalty or forfeiture, given in whole or in part to any person who will prosecute for the same, shall be commenced within one year after the offence was committed, and not after.

239.—Sect. 5. If the penalty is given in whole or in part to the state, or to any county or town, or to the treasury thereof, a suit therefor may be commenced by or in behalf of the state, county, town or treasury, at any time within two years after the offence was committed, and not afterwards.

240.—Sect. 6. All actions, upon any statute, for any penalty or forfeiture, given in whole or in part to the party aggrieved, shall be commenced within four years after the offence was committed, and not after.

241.—Sect. 7. The six preceding sections shall not apply to any bill, complaint, information, indictment or action, which is or shall be limited by any statute, to be brought, had, commenced or prosecuted within a shorter or longer time than is prescribed in these six sections; but such bill, complaint, information, indictment or other suit, shall be brought and prosecuted within the time that may be limited by such statute.

242.—Sect. 8. When any bill, complaint, information or indictment shall be exhibited in any of the cases mentioned in this chapter, the clerk of the court, or magistrate, to whom it shall be exhibited, shall, at the time of exhibiting, make a minute thereon, in writing, under his official signature, of the true day, month and year, when the same was exhibited.

243.—Sect. 9. When any action shall be commenced, in any of the cases mentioned in this chapter, the clerk or magistrate, signing the writ, shall enter upon it a true minute of the day, month and year, when the same was signed.

244.—Sect. 10. Every bill, complaint, information, indictment or writ, on which a minute of the day, month and year, shall not be made, as provided by the two preceding sections, shall, on motion, be dismissed.

245.—Sect. 11. None of the provisions of this chapter shall apply to suits against moneyed corporations, or against the directors or stockholders thereof, to recover any penalty or forfeiture imposed, or to enforce any liability created by the act of incorporation or any other law; but all such suits shall be brought within six years after the discovery, by the aggrieved party, of the facts upon which such penalty or forfeiture attached, or by which such liability was created.

246.—2. Real and personal actions and rights of entry. Sec. 1. No action for the recovery of any lands, or for the recovery of the possession thereof, shall be maintained, unless such action is commenced within fifteen years next after the cause of action first accrued to the plaintiff, or those under whom he claims.

247.—Sect. 2. No person, having right or title of entry into houses or lands, shall thereinto enter, but within fifteen years next after such right of entry shall accrue.

248.—Sect. 3. The right of any person to the possession of any real estate shall not be impaired or affected, by a descent being hereafter cast in consequence of the death of any person in possession of such estate.

249.—Sect. 4. The first two sections of this chapter, so far as they relate to or affect lands granted, given, sequestered or appropriated to any public, pious or charitable use, shall take effect from and after the first day of January, in the year of our Lord eighteen hundred and forty-two, and, until that day, the laws now in force relating to such lands, shall continue in operation.

250.—Sect. 5. The following actions shall be commenced within six years next after the cause of action accrued, and not after:

First. All actions of debt founded upon any contract, obligation or liability, not under seal, excepting such as are brought upon the judgment or decree of some court of record of the United States, or of this or some other state:

Second. All actions upon judgments rendered in any court not being a court of record:
Third. All actions of debt for arrearages of rent:

Fourth. All actions of account, assumpsit or on the case, founded on any contract or liability, express or implied:

Fifth. All actions of trespass upon land:

Sixth. All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels:

Seventh. All other actions on the case, except actions for slanderous words, and for libels.

251.—Sect. 6. All actions for assault and battery, and for false imprisonment, shall be commenced within three years next after the cause of action shall accrue, and not afterwards.

252.—Sect. 7. All actions for slanderous words, and for libels, shall be commenced within two years next after the cause of action shall accrue, and not after.

253.—Sect. 8. All actions against sheriffs, for the misconduct or negligence of their deputies, shall be commenced within four years next after the cause of action shall accrue, and not afterwards.

254.—Sect. 9. None of the foregoing provisions shall apply so any action brought upon a promissory note, which is signed in the presence of an attesting witness, but the action, in such case, shall be commenced within fourteen years next after the cause of action shall accrue thereon, and not afterwards.

255.—Sect. 10. All actions of debt or scire facias on judgment shall be brought within eight years, next after the rendition of such judgment, and all actions of debt on specialties within eight years after the cause of action accrued, and not afterwards.

256.—Sect. 11. All actions of covenant, other than the covenants of warranty, and seisin, contained in deeds of conveyance of lands, shall be brought within eight years next after the cause of action shall accrue, and not after.

257.—Sect. 12. All actions of covenant, brought on any covenant of warranty, contained in any deed of conveyance of land, shall be brought within eight years next after there shall have been a final decision against the title of the covenantor in such deed; and all actions of covenant brought on any covenant of seisin, contained in any such deed, shall be brought within fifteen years next after the cause of action shall accrue, and not after.

258.—Sect. 13. When any person shall be disabled to prosecute an action in the courts of this state, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the actions before mentioned.

259.—Sect. 14. If, at the time when any cause of action of a personal nature, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced, within the time herein limited therefor, after such person shall come into the state; and, if, after any cause of action shall have accrued, and before the statute has run, the person against whom it has accrued, shall be absent from and reside out of the state, and shall not have known property within this state, which could, by the common and ordinary process of law, be attached, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

260.—Sect. 15. If any person, entitled to bring any of the actions, before mentioned in this chapter, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced, by the executor or administrator, within two years after such death, or against the administrator or executor of the deceased person, or the same may be presented to the commissioners on said estate, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter, provided, however, if the commissioners on such estate are required to make their
report to the probate court before the expiration of said two years, the claim against the deceased shall be presented to the commissioners within the time allowed other creditors to present their claims.

261.—Sect. 16. If, in any action, duly commenced within the time in this chapter limited and allowed therefor, the writ shall fail of a sufficient service, or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise defeated or avoided, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, or on exceptions, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year; or, if no executor or administrator be appointed within that time, then within one year after letters testamentary or of administration shall have been granted to him.

262.—Sect. 17. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time, during which such injunction shall be in force, shall not be deemed any portion of the time in this chapter limited, for the commencement of suit.

263.—Sect. 18. If any person, entitled to bring any action in this chapter specified, shall, at the time when the cause of action accrues, be a minor or a married woman, insane or imprisoned, such person may bring the said action, within the times in this chapter respectively limited, after the disability shall be removed.

264.—Sect. 19. None of the provisions of this chapter shall apply to suits, brought to enforce payment on bills, notes or other evidences of debt, issued by moneyed corporations.

265.—Sect. 20. All the provisions of this chapter shall apply to the case of a debt or contract, alleged by way of set-off; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff’s action was commenced.

266.—Sect. 21. The limitations, herein before prescribed for the commencement of actions, shall apply to the same actions, when brought in the name of the state, or in the name of any officer, or otherwise, for the benefit of the state, in the same manner as to actions brought by citizens.

267.—Sect. 22. In actions of debt, or upon the case, founded on any contract, no acknowledgment, or promise shall be evidence of a new or continuing contract, whereby to take any case out of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party chargeable thereby.

268.—Sect. 23. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise, made or signed by any other or others of them.

269.—Sect. 24. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial, or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants, against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

270.—Sect. 25. If, in any action on contract, the defendant shall plead in abatement, that any other person ought
to have been jointly sued, and issue be joined on that plea, and it shall appear on the trial, that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for the plaintiff.

271.—Sect. 26. Nothing, contained in the four preceding sections, shall alter, take away or lessen the effect of a payment of any principal or interest, made by any person.

272.—Sect. 27. If there are two or more joint contractors or joint executors or administrators of any contractor, no one of them shall lose the benefits of the provisions of this chapter, so as to be chargeable by reason only of any payment, made by any other or others of them.

273.—Sect. 28. None of the provisions of this chapter, respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise, made before the first day of January, in the year of our Lord, eighteen hundred and forty-two, but every such last mentioned acknowledgment or promise, although not made in writing, shall have the same effect as if no provisions, relating thereunto, had been herein contained.

274.—Sect. 29. The provisions of this chapter, which alter or vary the law, now in force relative to the limitation of actions, shall not apply to any case, where the cause of action accrues before this chapter shall take effect, and go into operation; and in all cases, where the cause of action accrues before this chapter takes effect, the laws now in force limiting the time for the commencement of suits thereon, shall continue in operation.

275. — Virginia. — 1. As to lands. All writs of formedon in descender, remainder, or reverter, of any lands, tenements or hereditaments, shall be sued out within twenty years next after the title or cause of action accrued, and not afterwards: and no person having any right or title of entry into any lands, &c. shall make any entry but within twenty years next after such right or title accrued.

Persons entitled to such writ or right or title of entry, who are under twenty-one years of age, femmes covert, non compos mentis, imprisoned, or not within the commonwealth, at the time such right or title accrues, may themselves or their heirs, notwithstanding the said twenty years have expired, bring and maintain his action, or make his entry, within ten years next after such disabilities removed, or the death of the person so disabled.

276.—In all writs of right, and other actions possessory, any person may maintain a writ of right upon the possession or seisin of his ancestor or predecessor within fifty years, or any other possessory action upon the possession or seisin of his ancestor or predecessor, within forty years; but no person shall maintain a real action upon his own possession or seisin, but within thirty years next before the teste of the writ.

277.—2. As to personal actions. The provisions in relation to personal actions are as follows: 1. Upon all actions upon the case, (other than for slander,) actions of account or assumpsit, (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants,) debt grounded upon any lending or contract without specialty, debt for arrears of rent, trespass, detinue, trover, or replevin for goods and chattels, and trespass quare clausum fregit, five years: 2. Upon actions of assault, battery, wounding, or imprisonment, three years: 3. Upon actions of slander, one year. Infants, femmes covert, persons non compos mentis, imprisoned, beyond seas, or out of the country, are allowed full time to bring all such actions, except that of slander, after the disability has been removed.

278.—All actions or suits, founded upon any account for goods sold and delivered, or for articles charged in any store account, must be commenced within one year next after the cause of action, or the delivery of the goods, and not after; except that, in the case of the death of the creditors or debtors, before the expiration of the said term of one year, the farther time of one year, from the death of such creditor or debtor, shall
be allowed. In suits in the name of any person residing beyond the seas, or out of this country, for recovery of any debt due for goods actually sold and delivered here by his factor or factors, the saving in favour of persons beyond the seas at the time their causes of action accrued, is not to be allowed; but, if any factor shall happen to die before the expiration of the time in which suit should have been brought, his principal shall be allowed two years from his death, to bring suit for any debt due on account of any contract or dealing with such factor. 1 Rev. Code, 489-491.

LINE, descents, is the series of persons who have descended from a common ancestor, placed one under the other, in the order of their birth. It connects successively all the relations by blood to each other. Vide Consanguinity; Degree.

2. The line is either direct or collateral. The direct line is composed of all the persons who are descended from each other. If, in the direct line, any one person is assumed as the propositus, in order to count from him upwards and downwards, the line will be divided into two parts, the ascending and descending lines. The ascending line is that, which counting from the propositus, ascends to his ancestors, to his father, grandfather, great grandfather, &c. The descending line is that which, counting from the same person, descends to his children, grandchildren, great grandchildren, &c. The preceding table is an example.

3. The collateral line considered by itself, and in relation to the common ancestor, is a direct line; it becomes collateral when placed along side of another line below the common ancestor, in whom both lines unite, for example:

```
        Common O ancestor.
          Direct line.                          Collateral line.
               0-----0-----0-----0-----0
                       Ego.
               1. Filius,
               2. Nepos,
               3. Proponces,
               4. Amicus,
               5. Ashepotes,
               6. Timepotes.
```

4. These two lines are independent of each other; they have no connexion, except by their union in the person of the common ancestor. This reunion is what forms the relation among the persons composing the two lines.

5. A line is also paternal or maternal. In the examination of a person’s ascending line, the line ascends first to his father, next to his paternal grandfather, his paternal great grandfather, &c. so on from father to father; this is called the paternal line. Another line will be found to ascend from the same person to his mother, his maternal grandmother, and so from mother to mother; this is the maternal line. These lines, however, do not take in all the ascendents, there are many others who must be imagined.
The number of ascendants is double at each degree, as is shown by the following table:

| 16 | ⋋ | ⋋ | ⋋ |
| 4  | ⋋ | ⋋ | ⋋ |
| 2  | ⋋ | ⋋ | ⋋ |

3.—When a line is mentioned in a deed as ending at a particular monument, (q. v.) it is to be extended in the direction called for, without regard to distance, until it reach the boundary. 1 Taylor, 110, 303; 2 Hawks, 219; 3 Hawks, 21; 2 Taylor, 1. And a marked line is to be adhered to, although it depart from the course. 7 Wheat. 7; 2 Overt. 304; 3 Call, 239; 7 Monr. 333; 2 Bibb, 261; 4 Bibb, 503; 4 Monr. 29; see further, 2 Dana, 2; 6 Wend. 467; 1 Bibb, 466; 1 Marsh. 382; 3 Marsh. 382; 3 Murph. 82; 13 Pick. 145; 13 Wend. 300; 5 J. J. Marsh. 587.

4.—Lines fixed by compact between nations are binding on their citizens and subjects. 11 Pet. 209; 1 Overt. 269.

LINEAGE. Properly speaking lineage is the relationship of persons in a direct line; as the grandfather, the father, the son, the grandson, &c.

LINEAL. That which comes in a line. Lineal consanguinity is that which subsists between persons, one of whom is descended in a direct line from the other. Lineal descent, is that which takes place among lineal kindred.

LIQUIDATED. That which is made clear, certain, and manifested; as, liquidated damages, ascertained damages; liquidated debt, an ascertained debt, as to amount. A debt is liquidated when it is certain what is due, and how much is due, cum certum est an et quantum debeatur; for although it may appear that something is due, if it does not also appear how much is due, the debt is not liquidated. An unliquidated claim is one which one of the parties to the contract, cannot alone render certain. 5 M. R. 11; 1 N. S. 130; 6 N. S. 715; 6 N. S. 10; 13 L. R. 275; 7 L. R. 134; 599. Such a claim cannot be set off. 2 Dall. 237; S. C. 1 Yeates’s R. 571; 10 Serg. & Rawle, 14; see Poth. Ob. n. 628; Dig. 50, 17, 24; Id. 42, 1, 64; Id. 45, 1, 112; Id. 46, 5, 11; Code, 7, 47. Dom. Lois Civ. l. 4, t. 2, s. 2, n. 2; Arg. Inst. l. 4, c. 7; 7 Toull. n. 303; 6 Duv. Dr. Civ. Fr. n. 304.

LIQUIDATED DAMAGES. By this term is understood the fixed amount, which a
party to an agreement promises to pay
to the other, in case he shall not fulfil
some primary or principal engagement
into which he has entered by the same
agreement; it differs from a penalty; (q.
v.) Vide Damages liquidated.

2. The sum will be considered as
liquidated damages in the following cases: 1. When the damages are un-
certain, and not capable of being ascer-
tained by any satisfactory or known rule;
whether the uncertainty lies in the
nature of the subject itself, or in the
particular circumstances of the case. 2
T. R. 32; 1 Ale. & N. 389; 2 Burr.
2225; 10 Ves. 429; 7 Cowen, 307; 4
Wend. 468. 2. When, from the nature of
the case, and the tenor of the agree-
ment, it is clear, that the damages have
been the subject of actual and fair cal-
culation and adjustment between the
parties. 2 Greenl. Ev. § 259; 2 Story,
Eq. § 1318; 3 C. & P. 240; 10 Mass.
450, 462; 6 Bro. P. C. 436; 3 Taunt.
473; 7 John. 72; 4 Mass. 433; 3
Conn. 58.

LIQUIDATION, is a fixed and deter-
minate valuation of things which before
were uncertain.

LIRA, the name of a foreign coin.
In all computations at the custom house,
the lira of Sardinia shall be estimated at
eighteen cents and six mills. Act of
March 22, 1846. The lira of the Lomb-
ardo-Venetian Kingdom, and the lira of
Tuscany, at sixteen cents. Act of
March 22, 1846.

LIS. A suit; an action; a contro-
versy in court; a dispute.

LIS MOTA, the cause of the suit or
action. By this term is understood the
commencement of the controversy and
the beginning of the suit. 4 Campb. R.
417; 6 Carr. & P. 552, 561; 2 Russ.
& My. 161; Greenl. Ev. § 131, 132.

LIS PENDENS. The pendency of a
suit; the time between which it is insti-
tuted and finally decided.

2.—It has been decided th at the mere
serving of a subpoena in chancery, unless
a bill be also filed, is not a sufficient lis
pendens, but the bill being filed, the lis
pendens commences from the service of
the subpoena, although that may not be
returnable till the following term, 1
Vern. 318; and after a decree, final in
its nature, there remains no lis pendens.
1 Vern. 459.

3.—It is a general rule that lis pen-
dens is a general notice of an equity to
all the world, 3 Atk. 345; 2 P. Wms.
282; Amb. 676; 1 Vern. 286. Vide
2 Frob. Eq. 152, note; 1 Supp. to
Ves. jr. 284; 3 Rawle, R. 14; Pow.
Mortg. Index, h. t.; 1 John. Ch. R.
506; 2 John. Ch. R. 158; 4 John.
Ch. Rep. 83; 2 Rand. Rep. 93; 1
M'Cord, Ch. R. 264; -Harp. Eq. R.
224; 1 Bibb, R. 314; 5 Ham. Rep.
462; 4 Cowen, R. 667; 1 Wend. R.
583; 1 Desuas. R. 167, 170; 2 Edw.
R. 115; 1 Hogan, R. 69; 6 Har. &
John. 21; 2 Dana, R. 480; Juc. R.
202; 1 Russ. & My. 617; Com. Dig.
Chancery, 4 C 3; 2 Bell's Com. 152;
5th ed. 1 Bail. Eq. R. 479; 7 Dana,
R. 110; 7 J. J. Marsh. 529; 1 Clarke,
R. 560, 584; 14 Ohio, 109, 329.

4.—When a defendant is arrested
pending a former suit or action, in which
he was held to bail, he will not, in gen-
eral, be held to bail, if the second suit be
for the same cause of action. Grah.
Prac. 98; Troub. & Haly's Prac. 44; 4
Yeates's R. 206. But under special
circumstances, he may be held to bail
twice, and of these circumstances the
court will judge. 2 Miles, Rep. 99,
100, 142. See 14 John R. 347. When
such a second action is commenced, the
first ought to be discontinued, and the
costs paid; but, it seems, it is sufficient
if they are paid before the replication of
null tield record to a plea of autre action
pendent in the second suit. Grah. Pr.
98; and see 1 John. Cas. 397; 7
Taunt. 151; 1 Marsh. R. 395; Merl.
Rep. Litispendance; 5 Ohio R. 462; 6
Ohio R. 225; 1 Blackf. R. 53; Id.
315; Autre action pendent; Bail; Litig-
osity.

LISTERS. This word is used in
some of the states to designate the per-
sons appointed to make lists of taxables.

LITERAL CONTRACT, civil law,
is a contract the whole of the evidence
of which is reduced to writing. This
contract is perfect by the writing, and binds the party who subscribed it, although he has received no consideration. Lee. Elem. § 887.

LITERARY PROPERTY. This name has been given to the right which authors have in their works. This is secured to them by copyright, (q. v.) Vide 2 Bl. Com. 405, 6; 4 Vin. Ab. 278; Bac. Ab. Prorogation, F 5; 2 Kent, Com. 306 to 315; 1 Supp. to Ves. jr. 360, 376; 2 Id. 469; Nicklin on Literary Property; Dane's Ab. Index, h. t.; 1 Chit. Pr. 98; 2 Amer. Jur. 248; 10 Amer. Jur. 62; 1 Law Intell. 66; Curt. on Copyr. 11; 1 Bell's Com. B. 1, part 2, c. 4, s. 2, p. 115. Vide Copyright.

LITIGANT. One engaged in a suit; one fond of litigation.

LITIGATION. A contest in a court of justice.

2.—In order to prevent injustice courts of equity will restrain a party from further litigation, by a writ of injunction; for example, after two verdicts on trials at bar, in favour of the plaintiff, a perpetual injunction was decreed. Str. 404. And not only between two individuals will a court of equity grant this relief, as in the above case of several ejectments, but also, when one general legal right, as a right of fishery, is claimed against several distinct persons, in which case there would be no end of bringing actions, since each action would only bind the particular right in question, between the plaintiff and defendant in such action, without deciding the general right claimed. 2 Atk. 484; 2 Ves. jr. 587. Vide Circuity of Actions.

LITIGIOSITY, Scottish law, is the pendency of a suit; it is an implied prohibition of alienation, to the disappointment of an action, or of diligence, the direct object of which is to attain possession, or to acquire the property of a particular subject. The effect of it is analogous to that of inhibition, (q. v.) 2 Bell's Com. 152, 5th ed. Vide Litis Pendentia.

LITIGIOUS. That which is the subject of a suit or action; that which is contested in a court of justice. In another sense, litigious signifies a disposition to sue; a fondness for litigation.

LITIGIOUS RIGHTS, French law, are those which are or may be contested either in whole or in part, whether an action has been commenced, or when there is reason to apprehend one. Poth. Vente, n. 584; 9 Mart. R. 183; Trop-long, De la Vente, n. 984 a 1003; Civ. Code of Lo. art. 2623; Id. 3522, n. 22. Vide Contentious jurisdiction.

LITIS CONTESTATIO, civil law. The contesting of the suit, or pleading the general issue. Vide 2 Bro. Civ. and Adm. Law, 358.

LITISPENDENCE. The part of an action being dependent and undetermined; the time during which an action is pending. See Litis pendentia.

LITRE. A French measure of capacity. It is of the size of a décimètre, or one tenth part of a cubic metre. It is equal to 61.028 cubic inches. Vide Measure.

LIVERY, Engl. law. 1. The delivery of possession of lands to those tenants who hold of the king in capite, or knight's service.—2. Livery was also the name of a writ which lay for the heir of age, to obtain the possession of seisin of his lands at the king's hands. F. N. B. 155.—3. It signifies in the third place the clothes given by a nobleman or gentleman to his servant.

LIVERY OF SEISIN, estates. A delivery of possession of lands, tenements and hereditaments, unto one entitled to the same. This was a ceremony used in the common law for the conveyance of real estate; and the livery was in deed, which was performed by the feoffor and feoffee going upon the land, and the latter receiving it from the former; or in law, where the same was not made on the land but in sight of it. 2 Bl. Com. 315, 316.

2.—In most of the states, livery of seisin is unnecessary; it having been dispensed with either by express law or by usage. The recording of the deed has the same effect. In Maryland, however, it seems that a deed cannot operate as a feoffment, without livery of seisin. 5 Harr. & John. 158. Vide 4 Kent, Com.
381; 2 Hill. Ab. e. 26, s. 4; 1 Misso. R. 553; 1 Pet. R. 508; 1 Bay's R. 197; 5 Har. & John. 158; 2 Fairf. R. 318; Dane's Abridgment, h. t.; and the article Seisin.

LIVRE TOURNOIS, com. law, a denomination of money in France before the revolution. It is to be computed in the ad valorem duty on goods, &c., at eighteen and a half cents. Act of March 2, 1798, s. 61. 1 Story's L. U. S. 626. Vide Foreign Coins.

LOADMANAGE, maritime law, contracts, is the pay to loadsmen, that is, persons who sail or row before ships in barks or small vessels with instruments for towing the ship, and directing her course, in order that she may escape the dangers in her way. Poth. Des Avaries, n. 147; Guidon de la mer, ch. 14. Bac. Ab. Merchant and Merchandize, F.

LOAN, contracts, is the act by which a person lets another have a thing to be used by him gratuitously, and which is to be returned, either in specie or in kind, agreeably to the terms of the contract. The thing which is thus transferred is also called a loan.

2.—A loan in general implies that a thing is lent without reward; but in some cases a loan may be for a reward, as the loan of money. 7 Pet. R. 109.

3.—In order to make a contract usurious, there must be a loan, Cowp. 112, 770; 1 Ves. jr. 527; 2 Bl. R. 859; 3 Wils. 390; and the borrower must be bound to return the money at all events. 2 Scho. & Lef. 470. The purchase of a bond or note is not a loan, 3 Scho. & Lef. 469; 9 Pet. R. 103. But if such a purchase be merely colourable, it will be considered as a loan. 2 John. Cas. 60; 2 John. Cas. 66; 12 S. & R. 46; 15 John. R. 44.

LOAN FOR CONSUMPTION, or, MUTUUM, (q. v.) is a contract by which the owner of a personal chattel, called the lender, delivers it to another, known as the borrower, by which it is agreed that the borrower shall consume the chattel loaned, and return, at the time agreed upon, another chattel, of the same quality, kind, and number, to the lender, either gratuitously or for a consideration; as, if Peter lends to Paul one bushel of wheat, to be used by the latter, so that it shall not be returned to Peter, but instead of which Paul will return to Peter another bushel of wheat of the same kind and quality, at a time agreed upon.

2.—It is evident that this contract differs essentially from a loan for use. In the latter the property of the thing lent remains with the lender, and, if it be destroyed, without the fault or negligence of the borrower, it is his loss, and the thing to be returned is the identical thing lent; but in the loan for consumption, the property passes to the borrower, and in case of its destruction, he must bear the loss, and the identical property is never to be returned, but other property of the like kind, quality and number. This contract bears a nearer resemblance to a barter or exchange; in a loan for consumption the borrower agrees to exchange with the lender a bushel of wheat, which he has not but expects to obtain, for another bushel of wheat which the lender now has and with which he is willing to part; or a more familiar example may be given: Debtor borrowers from Creditor, one hundred dollars to use as he shall deem best, and he promises to return to Creditor another hundred dollars at a future time.

3.—In cases of loan for consumption the lender may charge for the use of the thing loaned or not, as, if I lend one thousand dollars to a friend for a month, I may charge interest or not; but a loan for use is always gratuitous; when any thing is charged for the use, it becomes a hiring. See Hire; and also Mutualia.

LOAN FOR USE, or COMMODOATUM, in contracts, is a bailment or loan of an article for a certain time, to be used by the borrower, without paying for it. 2 Kent's Com. 446, 447. Sir William Jones defines it to be a bailment of a thing for a certain time, to be used by the borrower, without paying for it. Jones's Bailm. 118. According to the Louisiana Code, art. 2864, it is an agreement by which a person delivers a thing to another, to use it according to its natural destination, or according to the agreement, under an obligation on the
part of the borrower, to return it after he shall have done using it. This loan is essentially gratuitous. The Code Civil, art. 1875, defines it in nearly the same words. Lord Holt has defined this bailment to be, when goods or chattels, that are useful, are lent to a friend gratis, to be used by him; and it is called commodatum, he adds, because the thing is to be restored in specie. 2 Ld. Ray. 909, 913.

2.—The loan for use resembles somewhat a gift, for the lender, as in a gift, gives something to the borrower; but it differs from the latter, because there the property of the thing given is transferred to the donee; instead of which, in the loan for use, the thing given is only the use, and the property in the thing lent remains in the lender. This contract has also some analogy to the mutuum, or loan for consumption; but they differ in this, that in the loan for use the lender retains the property in the thing lent, and it must be returned in individuo; in the loan for consumption, on the contrary, the things lent are to be consumed, such as money, corn, oats, grain, cider, &c., and the property in them is transferred to the borrower who becomes a debtor to the lender for the same quantity of like articles. Poth. Prêt à Usage, n. 9, 10.

3.—Several things are essential to constitute this contract; first, there must be a thing which is lent; and this, according to the civil law, may be either a thing movable, as a horse, or an immovable, as a house or land, or goods, or even a thing incorporeal. But in our law, the contract seems confined entirely to goods and chattels, or personal property, and not to extend to real estate. It must be a thing lent, in contradistinction to a thing deposited, or sold, or entrusted to another for the purpose of the owner. Story on Bailm. § 223.

4.—Secondly, it must be lent gratuitously, for if any compensation is to be paid in any manner whatsoever, it falls under another denomination, that of hire. Ayliffe's Pand. B. 4, tit. 16, n. 516; Louis. Code, art. 2865; Pothier, Prêt à Usage, ch. 1, art. 1, n. 1, 2, art. 2, n. 11.

5.—Thirdly, it must be lent for use and for the use of the borrower. It is not material whether the use be exactly that which is peculiarly appropriate to the thing lent, as a loan of a bed to lie on, or a loan of a horse to ride; it is equally a loan, if the thing is lent to the borrower for any other purpose; as, to pledge as a security on his own account. Story on Bailm. § 225. But the rights of the borrower are strictly confined to the use actually or impliedly agreed to by the lender, and cannot be lawfully exceeded. Poth. Prêt à Usage, ch. 1, § 1, art. 1, n. 5. The use may be for a limited time, or for an indefinite time.

6.—Fourthly, the property must be lent to be specifically returned to the lender at the determination of the bailment; and, in this respect it differs from a mutuum or loan for consumption, where the thing borrowed, such as corn, wine and money, is to be returned in kind and quantity. See Mutuum. It follows that a loan for use can never be of a thing which is to be consumed by use, as if wine is lent to be drunk at a feast, even if no return in kind is intended, unless, perhaps, so far as it is not drunk; for as to all the rest, it is strictly a gift.

7.—In general, it may be said that the borrower has the right to use the thing during the time and for the purpose, which was intended between the parties. But this right is strictly confined to the use, expressed or implied in the particular transaction; and the borrower by any excess will make himself responsible. Jones's Bailm. 68; Cro. Jac. 244; 2 Ld. Raym. 909, 916; 1 Const. Rep. So. Car. 121; Louis. Code, art. 2869; Code Civ. art. 1881; 2 Bulst. 306.

8.—The obligations of the borrower are to take proper care of the thing borrowed, to use it according to the intention of the lender, to restore it in proper time, and to restore it in proper condition. Story on Bailm. § 236; Louis. Code, art. 2869; Code Civ. 1880.

9.—By the common law, this bailment may always be terminated at the pleasure of the lender, (q. v.) Vin. Abr. Bailment, D; Bac. Abr. Bailment, D.

10.—The property in the thing lent,
in a loan for use, remains in the lender. Story on Bailment, § 283; Code Civil, art. 1877; Louis. Code, art. 2866.

11.—It is proper to remark that the loan for use must be lawful; a loan by Peter to Paul of a ladder to enable him to commit a larceny, or of a gun, to commit a murder, is not a loan for use, but Peter by this act becomes an accomplice of Paul. 17 Duv. n. 503; 6 Duverg. n. 32.

LOCAL. Fixedness in a place; something annexed to the freehold or tied to a certain place; as, local courts, or courts fixed in a particular place; local allegiance, or allegiance due while you are in a particular place or country; local taxes, or those which are collected for particular districts.

LOCAL ACTION, practice, pleadings. An action is local when the venue must be laid in the county where the cause of action arose. 1 Chit. Pl. 271; 21 Vin. Ab. 79; 3 Bl. Com. 294; Bac. Ab. Actions, Local, &c., Dane’s Ab. Index, h. t.; 15 Mass. 284; 1 Brock. 203; 1 Greenl. 246. Vide Action; Venue.

LOCALITY, Scotch law. This name is given to a life rent created in marriage contracts, instead of her having her legal life rent of terce. 1 Bell’s Com. 55. See Jointure.

LOCATIQ. Hire; a letting out.

LOCATIO CONDUCTIO, civil law. Location conduction is a consensual contract by which a person becomes bound to deliver to another the use of a thing for a certain time, or to do work at a certain price.

LOCATIO MERCIMUM VEHENDARUM, in contracts, a term used in the civil law, to signify the carriage of goods for hire.

2.—In respect to contracts of this sort entered into by private persons, not exercising the business of common carriers, there does not seem to be any material distinction varying the rights, obligations and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by ordinary negligence, unless he has expressly, by the terms of his contract, taken upon himself such risk. 2 Ld. Raym. 909, 917, 918; 4 Taunt. 787; 6 Taunt. 577; 2 Marsh. 293; Jones’s Bailm. 103, 106, 121; 2 Bos. & Pull. 417. See Common Carrier.

LOCATIO OPERIS, contracts, a term used in the civil law, to signify the hiring of labour and services. It is a contract by which one of the parties gives a certain work to be performed by the other, who binds himself to do it for the price agreed between them, which he who gives the work to be done promises to pay to the other for doing it. Poth. Louage, n. 392. This is divided into two branches, first, Locatio operis faciendi; and, secondly, Locatio mercium vehendarum. See these words.

LOCATIO OPERIS FACIENDI, contracts, a term used in the civil law. There are two kinds, first, the locatio operis faciendi, strictly so called, or the hire of labour and services; such as the hire of tailors to make clothes, and of jewellers to set gems, and of watchmakers to repair watches. Jones’s Bailm. 90, 96, 97. Secondly, Locatio custodie, or the receiving of goods on deposit for a reward, which is properly the hire of care and attention about the goods. Story on Bailm. §§ 422, 442.

2.—In contracts for work, it is of the essence of the contract, first, that there should be work to be done; secondly, for a price or reward; and, thirdly, a lawful contract between parties capable and intending to contract. Pothier, Louage, n. 395 to 403.

LOCATIO REI, contracts, a term used in the civil law, which signifies the hiring of a thing. It is a contract by which one of the parties obligates himself to give to the other the use and enjoyment of a certain thing for a period of time agreed upon between them, and in consideration of a price which the latter binds himself to pay in return. Poth. Contr. de Louage, n. 1. See Bailment; Hire; Hiber; Letter.

LOCATION, contracts, is a contract by which the temporary use of a subject, or the work or service of a person, is given for an ascertained hire. 1 Bell’s
Com. B. 2, pt. 3, c. 2, s. 4, art. 2, § 1, page 255. Vide Bailment; Hire.

LOCATOR, civil law. He who leases or lets a thing to hire to another. His duties are, 1st. to deliver to the hirer the thing hired, that he may use it; 2d. To guaranty to the hirer the free enjoyment of it; 3d. To keep the thing hired in good order in such manner that the hirer may enjoy it; 4th. To warrant that the thing hired has not such defects as to destroy its use. Poth. Du. Contr. de Louage, n. 53.

LOCK-UP HOUSE. A place used temporarily as a prison.

LOCO PARENTIS. In the place of a parent.

2. — It is frequently important, in cases of devises and bequests, to ascertain whether the testator did or did not stand towards the devisee or legatee, in loco parentis. In general, those who assume the parental character may be considered as standing in that relation; but this character must clearly appear.

3. — The fact of his so standing may be shown by positive proof, or the express declarations of the testator in his will, or by circumstances; as, when a grandfather, 2 Atk. 518; a brother, 1 B. & Beat. 298; or an uncle, 2 A. 492, takes an orphan child under his care, or supports him, assumes the office of a parent. The law places a master in loco parentis in relation to his apprentice. See 2 Ashm. R. 178, 207.

LOCUM TENENS, he who holds the place of another, a deputy; as A B, locum tenens of C D, mayor of the city of Philadelphia.

LOCUS. The place where a thing is done.

LOCUS CONTRACTUS. The place of the contract. In general, the law of the place where the contract governs in every thing which relates to the mode of construing it. Vide Lex loci contractus.

LOCUS PENITENTIAE, contracts, crim. law. Laterally this signifies a place of repentance; in law, it is the opportunity of withdrawing from a projected contract, before the parties are finally bound; or of abandoning the intention of committing a crime, before it has been com-


LOCUS IN QUO. The place in which. In pleadings it is the place where any thing is alleged to have been done. 1 Salk. 94.

LODGER. One who has a right to inhabit another man’s house. He has not the same right as a tenant; and is not entitled to the same notice to quit. Woodf. L. & T. 177. See 7 Mann. & Gr. 87; S. C. 49 E. C. L. R. 85, 151, and article Inmate.

LOG BOOK. A ship’s journal. It contains a minute account of the ship’s course, with a short history of every occurrence during the voyage. 1 Marsh. Ins. 408. When a log book is required by law to be kept, it is an official register so far as regards the transactions required by law to be entered in it, but no further. Abbott on Shipp. by Story, 468, n. 1; 1 Summ. R. 373; 2 Summ. 19, 78; 4 Mason, R. 544; 1 Esp. R. 427.

LOQUELA, practice. An imparlance. Loqueula sine die, a respite in law to an indefinite time. Formerly by loqueula was meant the allegations of fact mutually made on either side, now denominated the pleadings. Steph. Pl. 29.

LORD. In England, this is a title of honour. Fortunately in the U. S. no such titles are allowed.

LORD’S DAY, the same as Sunday, (q. v.) Dies Dominicus non est juridicus. Co. Litt. 135; Noy’s Max. 2.

LOSS, contracts. The deprivation of something which one had, which was either advantageous, agreeable or commodious.

2. In cases of partnership, the losses are in general borne by the partners equally, unless stipulations or circumstances manifest a different intention, Story, Partn. § 24. But it is not essential that the partners should all share the losses. They may agree, that if there shall be no profits, but a loss, that the loss shall be borne by one or more of the partners exclusively; and that the other shall, inter sese, be exempted from all liabilities for losses. Colly. Partn. 11; Gow, Partn. 9; 3 M. &
Wels. 357; 5 Barn. & Ald. 954; Story, Partn. § 23.

3.—When a thing sold is lost by an accident, as by fire, the loss falls on the owner, res perit domino, and questions not unfrequently arise, whether the thing has been delivered and passed to the purchaser, or whether it remains still the property of the seller. See on this subject Delivery.

LOSS, IN INSURANCE, contracts. A loss is the injury or damage sustained by the insured, in consequence of the happening of one or more of the accidents or misfortunes against which the insurer, in consideration of the premium, has undertaken to indemnify the insured.

2.—These accidents or misfortunes, or perils, as they are usually denominated, are all distinctly enumerated in the policy. And no loss, however great or unforeseen, can be a loss within the policy, unless it be the direct and immediate consequence of one or more of these perils. Marsh. Ins. B. 1, c. 12. As to the risks which are within the common policy, see Marsh. Ins. c. 7, s. 2.

3.—Every loss is either total or partial.

4.—The term total loss is understood in two different senses; natural and legal. In its natural sense it signifies the complete and absolute destruction of the thing insured. In its legal sense, it means, not merely the entire destruction or deprivation of the thing insured, but also such damage to it, though it specifically remain, as renders it of little or no value to the owner. A loss is also deemed total, if, by the happening of any of the perils or misfortunes insured against, the voyage be lost, or be not worth pursuing, and the projected adventure frustrated; or if the value of what is saved, be less than the freight. See Doug. 231; 1 T. R. 608; Ib. 187; Str. 1065; 13 East. R. 323; 2 M. & S. 374; 1 N. R. 236; 1 Wils. 191; 4 T. R. 785; 9 East. R. 283; 3 B. & P. 388; Marsh. Ins. B. 1, c. 12; 1 T. R. 187.

5.—A partial loss, is any loss or damage short of, or not amounting to a total loss, for if it be not the latter it must be the former. See 4 Mass. 374; 6 Mass. 102; Ib. 122; Ib. 317; 7 Mass. 349; 9 Mass. 20; 12 Mass. 170; 12 Mass. 288; 6 Mass. 479; 8 Mass. 494; 10 Johns. Rep. 487; 8 Johns. 237; 5 Binn. 595; 2 Serg. & Rawle, 553.

6.—Partial losses are sometimes denominated average losses, because they are often in the nature of those losses which are the subject of average contributions; and they are distinguished into general and particular averages. See tit. Average.

7.—Losses are occasioned in a variety of ways, but most usually by the following: 1. By perils of the sea. See tit. Perils of the Sea. 2. By collision, as where one ship drives against, or runs foul of another; Marsh. Ins. B. 1, c. 12, s. 2. 3. By fire, Marsh. B. 1, c. 12, s. 3. 4. By capture, see tit. Capture; Marsh. Ins. B. 1, c. 12, s. 4; 2 Caines’s C. Err. 158; 7 Johns. R. 449; 13 Johns. R. 161; 14 Johns R. 227; 3 Wheat. 183; 4 Cranch, 43; 6 Mass. 197. 5. By detention of princes. By the terms of the policy, the insurer is liable for all loss occasioned by “arrest or detainments of all kings, princes, and people of what nation, condition, or quality soever.” Under these words, the insurers are liable for all losses occasioned by arrests or detention of the ship or goods insured, by the authority of any prince or public body claiming to exercise sovereign power under what pretence soever. Marsh. Ins. B. 1, c. 12, s. 5. See Embargo; People. 6. By Barratry. Marsh. Ins. B. 1, c. 12, s. 6. See tit. Barratry; 2 Caines’s R. 67; Ib. 222; 3 Caines’s Rep. 1; 1 Johns. R. 229; 8 Johns. R. 209, 2d edit.; 5 Day, 1; 11 Johns. Rep. 40; 13 Johns. Rep. 451; 2 Binn. 574; 2 Dall. 137; 8 Cranch, 39; 3 Wheat. 168. 7. By average by contribution. See Marsh. Ins. B. 1, c. 12, s. 7; this Dict. tit. Average. 8. By salvage, see tit. Saleage; Marsh. Ins. B. 1, c. 12, s. 8. 9. By the death of animals. If animals, such as horses, cattle, or beasts or birds of curiosity, be insured in their passage by sea, their death, occasioned by tempests, by the shot of
an enemy, by jettison in a storm, or by
any other extraordinary accident, oc-
casioned by the perils enumerated in the
policy, is a loss for which the under-
writers are liable. Not so, if it be oc-
casioned by mere disease or natural death.
Marsh. Ins. B. 1, c. 12, s. 10. 10. By
fraud, Marsh. Ins. B. 1, c. 12, s. 11.

See, generally, Com. Dig. Merchant,
E 9, n.; Bac. Abr. Merchant, I.

LOST OR NOT LOST. These words
are sometimes inserted in policies of ma-
rine insurance. They are used when the
underwriter undertakes that if the ship
or goods should be lost at the time of the
insurance, still the underwriter is liable,
provided there is no fraud. Moll. B. 2,
c. 7, s. 5; Hildy. on Mar. Ins. 10.

LOT, is any thing on which depends
the accidental determination of a right
by which we acquire or lose something;
or it is that which fortuitously deter-
mines what we are to acquire. When it
can be certainly known what are our
rights, we ought never to resort to a de-
cision by lot; but when it is impossible
to tell what actually belong to us, as if
an estate is divided in three parts and one
part given to each of three persons, the
proper way to ascertain each one’s part is
to draw lots. Wolff, Dr. &c. de la Nat.
§ 669.

LOT OF GROUND. A small piece
of land in a town or city usually em-
ployed for building, a yard, a garden or
such other urban use. Lots are in-lots,
or those within the boundary of the city
or town, and out-lots, those which are
out of such boundary, and which are
used by some of the inhabitants of such
town or city.

LOTTERY, a scheme for the distribu-
tion of prizes by chance.

2. — In most, if not all of the United
States, lotteries not specially authorized
by the legislatures of the respective states
are prohibited, and the persons concerned
in establishing them are subjected to a
heavy penalty. This is the case in
Alabama, Connecticut, Delaware, Georgi-
a, Kentucky, Maryland, Massachusetts,
Mississippi, New York, Ohio, Pennsyl-
vania, Rhode Island, Tennessee, Vermont
and Virginia. In Louisiana, a license
is granted to sell tickets in a lottery not
authorized by the legislature of that state,
on the payment of $5000, and the license
extends only to one lottery. In many
of the states, the lotteries authorized by
other states, are absolutely prohibited. Encycl. Amer. h. t.

LOUISIANA. The name of one of
the new states of the United States of
America. This state was admitted into
the Union by the act of congress, entitled
“An act for the admission of the state of
Louisiana into the Union, and to extend
the laws of the United States to the said
state,” approved April 8, 1812, 2 Story’s
L. U. S. 1224. The preamble of which
recites and the first section enacts as fol-
lows, namely:

Whereas, the representatives of the
people of all that part of the territory or
country ceded, under the name of “Lo-
uisiana,” by the treaty made at Paris, on
the thirtieth day of April, one thousand
eight hundred and three, between the
United States and France, contained
within the following limits; that is to
say: beginning at the mouth of the river
Sabine; thence, by a line to be drawn
along the middle of said river, including
all islands to the thirty-second degree
of latitude; thence, due north, to the
northernmost part of the thirty-third de-
gree of north latitude; thence, along the
said parallel of latitude, to the river
Mississippi; thence, down the said river,
to the river Iberville; and from thence,
along the middle of the said river, and
lakes Maurepas and Ponchartrain, to the
gulp of Mexico; thence, bounded by the
said gulph, to the place of beginning;
including all islands within three leagues
of the coast; did, on the twenty-second
day of January, one thousand eight hun-
dred and twelve, form for themselves a
constitution and state government, and
give to the said state the name of the
state of Louisiana, in pursuance of an act
of congress, entitled “An act to enable
the people of the territory of Orleans
to form a constitution and state go-
vernment, and for the admission of the
said state into the Union, on an equal
footing with the original states, and for
other purposes;” And the said consti-
tion having been transmitted to congress, and by them being hereby approved; therefore,

§ 1. Be it enacted, &c. That the said state 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, by the name and title of the state of Louisiana: Provided, That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said state as to the inhabitants of other states, and the territories of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state; and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited, shall be considered, deemed, and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union. See 11 M. R. 309.

LOW WATER MARK, is that part of the shore of the sea to which the waters recede when the tide is the lowest. Vide High Water Mark; River; Sea Shore; Dane's Ab. h. t.; 1 Halst. R. 1.

LOYAL. Legal; according to law; as, loyal matrimoniy, a lawful marriage; attached to the existing law.

LOYALTY. That which adheres to the law, that which sustains an existing government. See Penal Laws of China, 3.

LUCID INTERVAL, med. jur. is that space of time between two fits of insanity, during which a person non compos mentis is completely restored to the perfect enjoyment of reason upon every subject upon which the mind was previously cognizant. Shelf. on Lun. 70; Male's Elem. of Forensic Medicine, 227; and see Doctor Haslam on Madness, 46; Reid's Essays on Hypochondriasis, 317; Willis on Mental Derangement, 151.

2.—To ascertain whether a partial restoration to sanity is a lucid interval, we must consider the nature of the interval, and its duration. 1st, Of its nature. "It must not," says D'Agueneseau, "be a superficial tranquillity, a shadow of repose, but on the contrary, a profound tranquillity, a real repose; it must not be a mere ray of reason, which only makes its absence more apparent when it is gone, not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal, not a glimmering which unites night to the day; but a perfect light, a lively and continued lustre, a full and entire day, interposed between two separate nights of the fury which precedes and follows it; and to use another image, it is not a deceitful and faithless stillness, which follows or forebodes a storm, but a sure and steady tranquillity for a time, a real calm, a perfect serenity; without looking for so many metaphors to represent an idea, it must not be a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health." 2dly, Of its duration. "As it is impossible," he continues, "to judge in a moment of the qualities of an interval, it is requisite that there should be a sufficient length of time for giving a perfect assurance of the temporary re-estabishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury, but it is certain there must be a time, and a considerable time." 2 Evans's Poth. on Oblig. 668, 669.

3.—It is the duty of the party who contends for a lucid interval to prove it; for a person once insane is presumed so, until it is shown that he has a lucid interval or has recovered. Swinb. 77; Co. Litt. by Butler, n. 185; 3 Bro. C. C. 443; 1 Rep. Con. Ct. 225; 1 Pet. R. 163; 1 Litt. R. 102. Except perhaps the alleged insanity was very long ago, or for a very short continuance. And the wisdom of a testament, where it is proved the party framed it without assistance, is a strong presumption of the
sanity of a testator. 1 Phill. R. 90; 1 Hen. & Munf. 476.

4.—Medical men have doubted of the existence of a lucid interval, in which the mind was completely restored to its same state. It is only an abatement of the symptoms, they say, and not a removal of the cause of the disease; a degree of irritability of the brain remains behind which renders the patient unable to withstand any unusual emotion, any sudden provocation, or any unexpected pressing emergency. Dr. Combe, Observations on Mental Derangement, 241; Halsam, Med. Jour. of Insanity, 224; Fodéré, De Médecine Légale, tom. 1, p. 205, § 140; Georget, Des Maladies Mentales, 46; 2 Phllim. R. 90; 2 Hagg. Eccl. R. 433; 1 Phllim. Eccl. R. 84.

See further, Godolph. 25; 3 Bro. C. C. 443; 11 Ves. 11; Com. Dig. Testimoigne, (A 1); 1 Phil. Ev. 8; 2 Hale, 278; 10 Harg. State Tr. 478; Erskine’s Speeches, vol. 5, p. 1; 1 Fodéré, Med. Lég. § 205.

LUCRE. Gain, profit. Cl. des Lois Rom. h. t.

LUCRI CAUSA. This is a Latin expression which signifies that the thing to which it applies is done for the sake of gain.

2.—It was supposed that when a larceny was committed the taking should have been lucri causa; but it has been considered that it is not necessary the taking should be lucri causa, if it be fraudulent, with intent to wholly deprive the owner of the property. Russ. & Ry. 292; 2 Russ. on Cr. 92; 1 Car. & K. 532. Vide Inst. lib. 4, t. 1, s. 1.

LUGGAGE. Such things as are carried by a traveller, generally for his personal accommodation; baggage. In England this word is generally used in the same sense that baggage is used in the United States. See Baggage.

LUNACY, med. jur., is a disease of the mind which is differently defined as it applies to a class of disorders, or only to one species of them. As a general term it includes all the varieties of mental disorders, not fatuous.

2.—Lunacy is adopted as a general term on account of its general use as such in various legislative acts and legal proceedings, as commissions of lunacy, and in this sense it seems to be synonymous with non comus mentis, or of unsound mind.

3.—In a more restricted sense, lunacy is the state of one who has had understanding, but by disease, grief or other accident has lost the use of reason. 1 Bl. Com. 304.

4.—The following extract from a late work, (Stock on the Law of Non Competes Mentis,) will show the difficulties of discovering what is and what is not lunacy. “If it be difficult to find an appropriate definition or comprehensive name for the various species of lunacy,” says this author, page 9, “it is quite as difficult to find any thing approximating to a positive evidence of its presence. There are not in lunacy, as in fatuity, external signs not to be mistaken, neither is there that similarity of manner and conduct which enables any one, who has observed instances of idiocy or imbecility, to detect their presence in all subsequent cases, by the feebleness of perception and dullness of sensibility common to them all. The varieties of lunacy are as numerous as the varieties of human nature, its excesses commensurate with the force of human passion, its phantasies co-extensive with the range of human intellect. It may exhibit every mood from the most serious to the most gay, and take every tone from the most sublime to the most ridiculous. It may confine itself to any trifling feeling or opinion, or overcast the whole moral and mental conformation. It may surround its victim with unreal persons and events, or merely cause him to regard real persons and events, with an irrational favour or dislike, admiration or contempt. It may find satisfaction in the most innocent folly, or draw delight from the most atrocious crime. It may lurk so deep as to elude the keenest search, or obtrude so openly as to attract the most careless notice. It may be the fancy of an hour, or the distraction of a whole life. Such being the fact, it is not surprising that many scientific and
philosophical men have vainly exhausted their observation and ingenuity to find out some special quality, some peculiar mark or characteristic common to all cases of lunacy, which might serve at least as a guide in deciding on its absence or presence in individual instances. Being hopeless of a definition they would willingly have contented themselves with a test, but even this the obscurity and difficulty of the subject seem to forbid.

5.—Lord Erskine, who in his practice at the bar, had his attention drawn this way, from being engaged in some of the most remarkable trials of his time involving questions of lunacy, has given as his test, “a delusive image, the inseparable companion of real insanity,” (Ersk. Misc. Speeches); and Dr. Haslam, whose opportunities of observation have surpassed most other persons, has proposed nearly the same, by saying that “false belief is the essence of insanity.” (Haslam on Insanity.) Sir John Nicholl, in his admirable judgment in the case of Dew v. Clark, thus expresses himself: “The true criterion is, where there is delusion of mind there is insanity; that is, when persons believe things to exist, which exist only, or at least, in that degree exist only in their own imagination, and of the non-existence of which neither argument nor proof can convince them; they are of unsound mind; or as one of the counsel accurately expressed it, it is only the belief of facts, which no rational person would have believed, that is insane delusion.” (Report by Haggard, p. 7.) Useful as these several remarks are, they are not absolutely true. It is indeed beyond all question that the great majority of lunatics indulge in some “delusive image,” entertain some “false belief.” They assume the existence of things or persons which do not exist, and so yield to a delusive image, or they come to wrong conclusions about persons and things which do exist, and so fall into a false belief. But there is a class of cases where lunacy is the result of exclusive indulgence in particular trains of thought or feeling, where these tests are sometimes wholly wanting, and yet where the entire absorption of the faculties in one predominant idea, the devotion of all the bodily and mental powers to one useless or injurious purpose, prove that the mind has lost its equilbrium. With some passions, indeed, such as self-esteem and fear, what was at first an engrossing sentiment, will often go on to a positive delusion; the self-adoring egotist grows to fancy himself a sovereign or a deity; the timid valetudinarian becomes the prey of imaginary diseases, the victim of unreal persecutions. But with many other passions, such as desire, avarice or revenge, the neglect and forgetfulness of all things save one, the insensibility to all restraints of reason, morality, or prudence, often proceed to such an extent as to justify holding an individual as a lunatic, incapable of all self-restraint, although, strictly speaking, not possessed by any delusive image or false belief. Much less do these tests apply to many cases of irresistible propensity to acts wholly irrational, such as to murder or to steal without the smallest assignable motive, which, rare as they are, certainly occur from time to time, and cannot but be held as an example of at least partial and temporary lunacy. It is to cases where no false belief or image can be detected, that the remark of Lord Erskine is more particularly applicable; “they frequently mock the wisdom of the wisest in judicial trials,” (Ersk. Misc. Speeches,) and were not the paramount object of all legal punishment the benefit of the community, which makes it inexpedient to spare offenders against the law, if insanity be the ground of their defence, except upon the clearest proof, lest skilful dissemblers should thereby be led to hope for impunity; very subtle questions might no doubt be raised as to the degree of moral responsibility and mental sanity attaching to the perpetrators of many atrocious acts, seeing that they often commit them under temptations quite inadequate to allure men of common prudence, or under passions so violent as to suspend altogether the operations of reason or free will. For as it is impossible to obtain an accu-
rate definition of lunacy, so it is manifestly so, to draw the line correctly between it and its opposite rationality, or to borrow the words of Chief Justice Hale, (1 Hale’s P. C. p. 30,) “Doubtless most persons that are felons, of themselves and others, are under a degree of partial insanity when they commit those offences. It is very difficult to define the indivisible line that divides perfect and partial insanity; but it must rest on circumstances duly to be weighed and considered both by the judge and jury, lest on one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes.”

LUNAR. What belongs to the moon; relating to the moon; as a lunar month. See Month.

LUNATIC, persons, is one who has had an understanding, but who, by disease, grief, or other accident, has lost the use of his reason. A lunatic is properly one who has had lucid intervals, sometimes enjoying his senses, and sometimes not. 4 Co. 123; 1 Bl. Com. 304; Bac. Abr. Idioms, &c. (A); 1 Russ. on Crimes, 8; Shelf. on Lam. 4; Merlin, mot De-

M. When persons were convicted of manslaughter in England, they were formerly marked with this letter on the brawn of the thumb. It is no longer used.

2.—This letter is sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. 13 Peters, 176.

MACE-BEARER, Eng. law. An officer attending the court of session.

MACEDONIAN DECREE, civil law. A decree of the Roman senate, which derived its name, from that of a certain usurer who was the cause of its being made, in consequence of his exactions. It was intended to protect sons who lived under the paternal jurisdiction, from the unconscionable contracts which they sometimes made on the expectations after their fathers’ deaths; another, and perhaps, the principal object, was to cast odium on the rapacious creditors. It declared such contracts void. Dig. 14, 6, 1; Domat, Lois, Civ. liv. 1, tit. 6, § 4; Fonbl. Eq. B. I, c. 2, § 12, note. Vide Catching bargain; Post obit.

MACHINATION. The act by which some plot or conspiracy is set on foot.

MACHINE. A contrivance which serves to apply or regulate moving power; or it is a tool more or less complicated, which is used to render useful natural instruments. Clef des Lois Rom. h. t.

2.—The act of congress gives to inventors to obtain a patent right for any

MADE KNOWN. These words are used as a return to a seire facias, when it has been served on the defendant.


MAGISTRACY. In its most enlarged signification this term includes all officers, legislative, executive, and judicial: for example, in most of the state constitutions will be found this provision; "the powers of the government are divided into three distinct departments, and each of these is confided to a separate magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another." In a more confined sense, it signifies the body of officers whose duty it is to put the laws in force; as judges, justices of the peace, and the like. In a still narrower sense it is employed to designate the body of justices of peace. It is also used for the office of a magistrate.

MAGISTRATE, is a public civil officer invested with some part of the legislative, executive or judicial power given by the constitution. In a narrower sense this term includes only inferior judicial officers, as justices of the peace.

2.—The president of the United States is the chief magistrate of this nation; the governors are the chief magistrates of their respective states.

3.—It is the duty of all magistrates to exercise the power vested in them for the good of the people, according to law, and with zeal and fidelity. A neglect on the part of a magistrate to exercise the functions of his office when required by law, is a misdemeanor. Vide 15 Vin. Ab. 144; Ayl. Pand. tit. 22; Dig. 30, 16, 57; Merl. Rép. h. t.; 13 Pick. R. 523.

MAGNA CHARTA. The Great Charter. The name of an instrument granted by King John, June 19, 1215, which secured to the English people many liberties which had before been invaded, and provided against many abuses which before rendered liberty a mere name.

2.—It is divided into thirty-eight chapters, which relate as follows, namely,
1. To the freedom of the church and ecclesiastical persons.—2. To the nobility, knights’ service, &c.—3. Heirs and their being in ward.—4. Guardians for heirs within age, who are to commit no waste.—5. To the land and other property of heirs, and the delivery of them up when the heirs are of age.—6. The marriage of heirs.—7. Dower of women in the lands of their husbands.—8. Sheriffs and their bailiffs.—9. To the ancient liberties of London and other cities.—10. To distresses for rent.—11. The court of common pleas, which is to be located.—12. The assise on disseisin of lands.—13. Assises of derrain presentments, brought by ecclesiastics.—14. The amercement of a freeman for a fault.—15. The making of bridges by towns.—16. Provisions for repairing sea banks and sewers.—17. Forbids sheriffs and coroners to hold pleas of the crown.—18. Prefers the king’s debt when debtor dies insolvent.—19. To the purveyance of the king’s house.—20. To castleward.—21. To the manner of taking property for public use.—22. To the lands of felons, which the king is to have for a year and a day, and afterwards the lord of the fee.—23. To weirs which are to be put down in rivers.—24. To the writ of procipe in capite for lords against tenants offering wrong, &c.—25. To measures.—26. To inquisitions of life and member which are to be granted freely.—27. To knights’ service and other ancient tenures.—28. To accusations which must be under oath.—29. To the freedom of the subject. No freeman shall be disseised of his freehold, imprisoned and condemned, but by judgment of his peers, or by the law of the land.—30 To
merchant strangers, who are to be civilly treated.—31. To escheats.—32. To the power of selling land by a freeman, which is limited.—33. To patrons of abbeys, &c.—34. To the right of a woman to appeal for the death of her husband.—35. To the time of holding courts.—36. To mortmain.—37. To escogate and subsidy.—38. Confirms every article of the charter. See a copy of Magna Charta in 1 Laws of South Carolina, edited by Judge Cooper, p. 78. In the Penny Magazine for the year 1833, page 229, there is a copy of the original seal of King John, affixed to this instrument, and a specimen of a fac simile of the writing of Magna Charta, beginning at the passage, *Nullus liber homo capiatur vel imprisonetur*, &c. A copy of both may be found in the Magazin Pittoresque, for the year 1834, p. 52, 53. Vide 4 Bl. Com. 423.

MAIDEN. The name of an instrument formerly used in Scotland for beheading criminals.

MAIL. This word, derived from the French *malle*, a trunk, signifies the bag, valise, or other contrivance used in conveying through the post-office, letters, packets, newspapers, pamphlets, and the like, from place to place under the authority of the United States. The things thus carried are also called the mail.

2. The laws of the United States have provided for the punishment of robberies or willful injuries to the mail; the act of March 3, 1825, 3 Story’s Laws, U. S. 1895, provides—

§ 22. That, if any person shall rob any carrier of the mail of the United States, or other person entrusted therewith, of such mail, or of part thereof, such offender or offenders shall, on conviction, be imprisoned not less than five years, nor exceeding ten years; and, if convicted a second time of a like offence, he or they shall suffer death; or if, in effecting such robbery of the mail the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender or offenders shall suffer death. And if any person shall attempt to rob the mail of the United States, by assaulting the person having custody thereof, shooting at him, or his horse or mule, or threatening him with dangerous weapons, and the robbery is not effected, every such offender, on conviction thereof, shall be punished by imprisonment, not less than two years, nor exceeding ten years. And, if any person shall steal the mail, or shall steal or take from, or out of, any mail, or from, or out of, any post-office, any letter or packet; or, if any person shall take the mail, or any letter or packet therefrom, or from any post-office, whether with or without the consent of the person having custody thereof, and shall open, embezzle, or destroy, any such mail, letter, or packet, the same containing any article of value, or evidence of any debt, due, demand, right, or claim, or any release, receipt, acquittance, or discharge, or any other article, paper, or thing, mentioned and described in the twenty-first section of this act; or, if any person shall, by fraud or deception, obtain from any person having custody thereof, any mail, letter, or packet, containing any article of value, or evidence thereof, or either of the writings referred to, or next above mentioned, such offender or offenders, on conviction thereof, shall be imprisoned not less than two, nor exceeding ten years. And if any person shall take any letter, or packet, not containing any article of value, or evidence thereof, out of a post-office, or shall open any letter, or packet, which shall have been in a post-office, or in custody of a mail carrier, before it shall have been delivered to the person to whom it is directed, with a design to obstruct the correspondence, to pry into another’s business or secrets; or shall secrete, embezzle, or destroy, any such mail, letter, or packet, such offender, upon conviction, shall pay, for every such offence, a sum not exceeding five hundred dollars, and be imprisoned not exceeding twelve months.

3.—§ 23. That, if any person shall rip, cut, tear, burn, or otherwise injure, any valise, portmanteau, or other bag, used, or designed to be used, by any person acting under the authority of the
postmaster general, or any person in whom his powers are vested, in a conveyance of any mail, letter, packet, or newspaper, or pamphlet, or shall draw or break any staple, or loosen any part of any lock, chain, or strap, attached to, or belonging to any such valise, portmanteau, or bag, with an intent to rob, or steal any mail, letter, packet, newspaper, or pamphlet, or to render either of the same insecure, every such offender, upon conviction, shall, for every such offence, pay a sum, not less than one hundred dollars, nor exceeding five hundred dollars, or be imprisoned not less than one year, nor exceeding three years, at the discretion of the court before whom such conviction is had.

4.—§ 24. That every person who, from and after the passage of this act, shall procure, and advise, or assist, in the doing or perpetration of any of the acts or crimes by this act forbidden, shall be subject to the same penalties and punishments as the persons are subject to, who shall actually do or perpetrate any of the said acts or crimes, according to the provision of this act.

5.—§ 25. That every person who shall be imprisoned by a judgment of court, under and by virtue of the twenty-first, twenty-second, twenty-third, or twenty-fourth, sections of this act, shall be kept at hard labour during the period of such imprisonment.

MAILE, ancient English law. Maile was a small piece of money; it also signified a rent, because the rent was paid with maile.

MAIM, pleadings. This is a technical word necessary to be introduced into all indictments for mayhem; the words "feloniously did maim," must of necessity be inserted, because no other word, or any circumlocution, will answer the same purpose. 4 Inst. 118; Hawk. B. 2, c. 23, s. 17, 18, 77; Hawk. B. 2, c. 25, s. 55; 1 Chit. Cr. Law, 244.

TO MAIM, crim. law, is to deprive a person of such part of his body as to render him less able in fighting or defending himself than he would have otherwise been. Vide Mayhem.

MAINE. One of the new states of the United States of America. This state was admitted into the Union, by the Act of Congress of March 3, 1820, 3 Story’s L. U. S. 1761, from and after the fifteenth day of March, 1820, and is thereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

2.—The constitution of this state was adopted October 29th, 1819. The powers of the government are vested in three distinct departments, the legislative, executive and judicial.

3.—1. The legislative power is vested in two distinct branches, a house of representatives and senate, each to have a negative on the other, and both to be styled The legislature of Maine. 1. The house of representatives, is to consist of not less than one hundred, nor more than two hundred members; to be apportioned among the counties according to law; to be elected by the qualified electors for one year from the next day preceding the annual meeting of the legislature. 2. The senate consists of not less than twenty, nor more than thirty-one members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts into which the state shall, from time to time, be divided. Art. 4, part 2, s. 1. The veto power is given to the governor, by art. 4, part 3, s. 2.

4.—2. The supreme executive power of the state is vested in a governor, who is elected by the qualified electors, and holds his office one year from the first Wednesday of January in each year. On the first Wednesday of January annually, seven persons, citizens of the United States, and resident within the state, are to be elected by joint ballot of the senators and representatives in convention, who are called the council. This council is to advise the governor in the executive part of government, art. 5, part 2, s. 1 and 2.

5.—3. The judicial power of the state is distributed by the 6th article of the constitution as follows:

6.—§ 1. The judicial power of this state shall be vested in a supreme judicial
court, and such other courts as the legislature shall, from time to time, establish.

7.—§ 2. The justices of the supreme judicial court shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

8.—§ 3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the governor, council, senate, or house of representatives.

9.—§ 4. All judicial officers, except justices of the peace, shall hold their offices during good behaviour, but not beyond the age of seventy years.

10.—§ 5. Justices of the peace and notaries public shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be re-appointed, or others appointed, as the public interest may require.

11.—§ 6. The justices of the supreme judicial court shall hold no office under the United States, nor any state, nor any other office under this state, except that of justice of the peace.

For a history of the province of Maine, see 1 Story on the Const. § 82.

MAINOUR, crim. law, the thing stolen found in the hands of the thief who has stolen it; hence when a man is found with property which he has stolen, he is said to be taken with the mainour, that is, it is found in his hands.

2.—Formerly there was a distinction made between a larceny, when the thing stolen was found in the hands of the criminal, and when the proof depended upon other circumstances not quite so irrefragable; the former properly was termed prisco magnoceore, or oce mainer, or mainour, as it is generally written. Barr. on the Stat. 315, 316, note.

MAINPERNABLE. Capable of being bailed; one for whom bail may be taken; bailable.

MAINPERNORS, English law, are those persons to whom a man is delivered out of custody or prison, on their becoming bound for his appearance.

2.—Mainpernors differ from bail: a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are merely sureties for his appearance at the day; bail are only sureties that the party be answerable for all the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3 Bl. Com. 128; vide Dane's Index, h. t.

MAINPRISE, Engl. law, is the taking a man into friendly custody, who might otherwise be committed to prison, upon security given for his appearance at a time and place assigned. Wood's Inst. B. 4, c. 4.

2.—Mainprise differs from bail in this, that a man's mainpernors are rarely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed. 6 Mod. 281; 7 Mod. 77, 82, 98; Ld. Raym. 606. Bac. Ab. Bail in Civil Cases; 4 Inst. 180. Vide Mainpernors; Writ of Mainprise; and 15 Vin. Ab. 146; 3 Bl. Com. 128.

MAINTENANCE, crimes, is a malicious, or at least, officious interference in a suit in which the offender has no interest, to assist one of the parties to it against the other, with money or advice to prosecute or defend an action, without any authority of law. 1 Russ. Cr. 176.

2.—But there are many acts in the nature of maintenance, which become justifiable from the circumstances under which they are done. They may be justified, 1, because the party has an interest in the thing in variance; as when he has a bare contingency in the lands in question, which possibly may never come in esse. Bac. Ab. h. t.; 2, because the party is of kindred or affinity, as father, son, or heir apparent or husband or wife; 3, because the relation of landlord and tenant or master and servant subsists between the party to the suit and the person who assist him; 4, because the money is given out of charity. 1 Bailey, (S. C.) Rep. 401; 5, because the person assisting the party to the suit, is an attorney or counsellor; the assistance to be rendered must, however, be strictly
professional, for a lawyer is not more justified in giving his client money than another man. 1 Russ. Cr. 179. Bae. Ab. Maintenance: Bro. Maintenance. This offence is punishable by fine and imprisonment. 4 Black. Com. 124; 2 Swift's Dig. 328; Bae. Ab. h. t. Vide 3 Hawks, 86; 1 Greenl. 292; 11 Mass. 553; 6 Mass. 421; 5 Pick. 359; 5 Monr. 413; 6 Cowen, 431; 4 Wend. 306; 14 John. R. 124; 3 Cowen, 647; 3 John. Ch. R. 508; 7 D. & R. 846; 5 B. & C. 188.

Maintenance, quasi contracts, is the support which one person, who is bound by law to do so, gives to another for his living; for example, a father is bound to find maintenance for his children; and a child is required by law to maintain his father or mother, when they cannot support themselves, and he has ability to maintain them.

MAINTAINED, pleadings. This is a technical word, indispensable in an indictment for maintenance, which no other word or circumlocution will supply. 1 Wils. 325.

MAINTAINORS, criminal law. Those who maintain or support a cause depending between others, not being retained as counsel or attorney. For this they may be fined and imprisoned. 2 Swift's Dig. 328; 4 Bl. Com. 124; Bae. Ab. Barrator.

MAISON DE DIEU, House of God. In England this term, which is borrowed from the French, signified formerly a hospital, an almshouse, a monastery. 39 Eliz. c. 5.

MAJESTY. Properly speaking, this term can be applied only to God, for it signifies what surpasses all things in grandeur and superiority. But it is used to kings and emperors, as a title of honour. It sometimes means power, as when we say, the majesty of the people. See Wolff, § 998.

MAJOR, persons. One who has attained his full age, and has acquired all his civil rights; one who is no longer a minor; an adult.

MAJOR, in military language. The lowest of the staff officers; a degree higher than captain.

MAJOR GENERAL. A military officer, commanding a division or number of regiments; the next in rank below a lieutenant-general.

MAJORES. The male ascendant beyond the sixth degree were so called among the Romans, and the term is still used in making genealogical tables.

MAJORITY, persons. The state or condition of a person who has arrived at full age. He is then said to be a major, in opposition to minor, which is his condition during infancy.

MAJORITY, government, is the greater number of the voters; though in another sense, it means the greater number of votes given; in which sense it is a mere plurality, (q. v.)

2.—In every well regulated society, the majority has always claimed and exercised the right to govern the whole society, in the manner pointed out by the fundamental laws; and the minority are bound, whether they have assented or not, for the obvious reason that opposite wills cannot prevail at the same time, in the same society, on the subject. 1 Tuck. Bl. Com. App. 168, 172; 9 Dane's Ab. 37 to 43; 1 Story, Const. § 330.

3.—As to the rights of the majority of part owners of vessels, vide 3 Kent, Com. 114 et seq. As to the majority of a church, vide 16 Mass. 488.

4.—As to the majorities of companies or corporations, see Angel, Corp. 48, et seq.; 3 M. R. 495. Vide, generally, Rutherf. Inst. 249; 9 Serg. & Rawle, 99; Bro. Corporation, pl. 63; 15 Vin. Abr. 183, 184; and the article Authority; Plurality; Quorum.

TO MAKE. English law. To perform or execute; as to make his law, is to perform that law which a man had bound himself to do; that is to clear himself of an action commenced against him, by his oath, and the oaths of his neighbours. Old Nat. Br. 161.

MAKER. This term is applied to one who makes a promissory note and promises to pay it when due. He who makes a bill of exchange is called the drawer, and frequently in common parlance and in books of Reports we find the word drawer inaccurately applied to
the maker of a promissory note. See *Promissory note.*

**MAKING HIS LAW.** A phrase used to denote the act of a person who wages his law. *Bac. Ab. Wager of law,* in *pr.*

**MALA FIDES.** Bad faith. It is opposed to *bona fides,* good faith.

**MALA PRAXIS,** *crim. law,* is a Latin expression to signify bad or unskilful practice in a physician or other professional person, as a midwife, whereby the health of the patient is injured.

2.—This offence is a misdemeanor (whether it be occasioned by curiosity and experiment or neglect) because it breaks the trust which the patient has put in the physician, and tends directly to his destruction. *1 Lord Raym.* 213.


Vide also, *2 Russ. on Cr.* 288; *1 Chit. Pr.* 43; *Com. Dig. Physician; Vin. Ab. Physician.*

3.—There are three kinds of *mal practice.* 1. Wilful *mal practice,* which takes place when the physician purposely administers medicines or performs an operation which he knows and expects will result in danger or death to the individual under his care; as in the case of criminal abortion.

4.—2. Negligent *mal practice,* which comprehends those cases where there is no criminal or dishonest object, but gross negligence of that attention which the situation of the patient requires: as if a physician should administer medicines while in a state of intoxication, from which injury would arise to his patient.

5.—3. *Ignorant mal practice,* which is the administration of medicines, calculated to do injury, which do harm, and which a well educated and scientific medical man would know were not proper in the case. Besides the public remedy for *mal practice,* in many cases the party injured may bring a civil action. *5 Day's R.* 260; *9 Conn. 209.* See *M. & Rob.* 107; *1 Saund.* 312, *n.* 2; *1 Ld. Raym.* 213; *1 Briand, Méd. Lég.* 50; *3 Watts,* 355; *9 Conn. 209.*

**MALA PROHIBITA,** are those things which are prohibited by law, and therefore unlawful.

2.—A distinction was formerly made in respect of contracts, between *mala prohibita* and *mala in se*; but that distinction has been exploded, and, it is now established that when the provisions of an act of the legislature have for their object the protection of the public, it makes no difference with respect to contracts, whether the thing be prohibited absolutely or under a penalty. *5 B. & A.* 335, 340; *10 B. & C.* 98; *3 Stark. 61; 13 Pick.* 518; *2 Bing. N. C.* 636, 646.

**MALE.** Of the masculine sex; of the sex that begets young; the sex opposed to the female. *Vide Gender; Man; Sex; Worthiest of blood.*

**MALEDICTION,** *Eccles. law.* A curse which was anciently annexed to donations of lands made to churches and religious houses, against those who should violate their rights.

**MALEFACTOR.** He who has been guilty of some crime; in another sense, one who has been convicted of having committed a crime.

**MALEFICIA,** *civil law.* Waste, damage, torts, injury. *Dig.* 5, 18, 1.

**MALEFASANCE,** *contracts, torts,* is the unjust performance of some act which the party had no right, or which he had contracted not to do. It differs from misfeasance, (*q. v.*) and nonfeasance, (*q. v.*) *Vide 1 Chit. Pr.* 9; *1 Chit. Pl.* 134.

**MALICE,** *crim. law,* is a wicked intention to do an injury. *4 Mason, R.* 115, 505; *1 Gall. R.* 524. It is not confined to the intention of doing an injury to any particular person, but extends to an evil design, a corrupt and wicked motion against some one at the time of committing the crime; as, if A intending to poison B, conceals a quantity of poison in an apple and puts it in the way of B, and C, against whom he had no ill will, and who, on the contrary, was his friend, happened to eat it, and die, A will be guilty of murdering C with malice aforesaid. *Bac. Max. Reg.* 15; *2 Chit. Cr. Law,* 727; *3 Chit. Cr. Law,* 1104.
2.—Malice is express or implied. It is express when the party evinces an intention to commit the crime, as to kill a man; for example, modern duelling. 3 Bulstr. 171. It is implied when an officer of justice is killed in the discharge of his duty, or when death occurs in the prosecution of some unlawful design.

3.—It is a general rule that when a man commits an act, unaccompanied by any circumstance justifying its commission, the law presumes he has acted advisedly and with an intent to produce the consequences which have ensued. 3 M. & S. 15; Foster, 255; 1 Hale, P. C. 455; 1 East, P. C. 223 to 232, and 340; Russ. & Ry. 207; 1 Moody, C. C. 263; 4 Bl. Com. 198; 15 Vin. Ab. 506; Yelv. 105 a; Bac. Ab. Murder and Homicide, C. 2. Malice aforethought is deliberate premeditation. Vide Aforethought.

MALICE, torts, is the doing any act injurious to another without a just cause.

2.—This term, as applied to torts, does no necessarily mean what must proceed from a spiteful, malignant, or revengeful disposition, but a conduct injurious to another, though proceeding from an ill-regulated mind not sufficiently cautious before it occasions an injury to another. 11 S. & R. 39, 40.

3.—Indeed in some cases it seems not to require any intention in order to make an act malicious. When a slander has been published, therefore, the proper question for the jury is, not whether the intention of the publication was to injure the plaintiff, but whether the tendency of the matter published, was so injurious, 10 B. & C. 472; S. C. 21 E. C. L. R. 117.

4.—Again, take the common case of an offensive trade, the melting of tallow for instance, such trade is not itself unlawful, but if carried on to the annoyance of the neighbouring dwellings, it becomes unlawful with respect to them, and their inhabitants may maintain an action, and may charge the act of the defendant to be malicious. 3 B. & C. 584; S. C. 10 E. C. L. R. 179.

Malice aforethought, pleadings. In an indictment for murder, these words, which have a technical force, must be used in charging the offence; for without them, and the artificial phrase murder, the indictment will be taken to charge manslaughter only. Fost. 424; Yelv. 205; 1 Chit. Cr. Law, *242, and the authorities and cases there cited.

2.—Whenever malice aforethought is necessary to constitute the offence, these words must be used in charging the crime in the indictment. 2 Chit. Cr. Law, *787; 1 East, Pl. Cr. 402; 2 Mason, R. 91.

MALICIOUS. With bad and unlawful motives; wicked.

MALICIOUS ABANDONMENT. The forsaking without a just cause a husband by the wife, or a wife by her husband. Vide Abandonment, malicious.

MALICIOUS MISCHIEF. This expression is applied to the wanton or reckless destruction of property, and the wilful perpetration of injury to the person. Alis. Prin. 448; 3 Dev. & Batt. 130; 8 Leigh, 719; 5 Ired. R. 364; 8 Port. 447; 2 Mete. 21; 3 Greenl. 177.

MALICIOUS PROSECUTION, or MALICIOUS ARREST, torts, or remedies. These terms import a wanton prosecution or arrest, made by a prosecutor in a criminal proceeding, or a plaintiff in a civil suit, without probable cause, by a regular process and proceeding, which the facts did not warrant, as appears by the result.

2.—This definition will be analysed by considering 1, the nature of the prosecution or arrest; 2, who is liable under it; 3, what are malice and probable cause; 4, the proceedings; 5, the result of the prosecution; and afterwards, 6, the remedy.

3.—§ 1. Where the defendant commenced a criminal prosecution wantonly, and in other respects against law, he will be responsible. Addis. R. 270; 12 Conn. 219. The prosecution of a civil suit, when malicious, is a good cause of action, even when there has been no arrest. 2 Penns. R. 11 Conn. 552; 1 Wend. 345. But no action lies for commencing a civil action, though without sufficient cause. 1 Penns. R. 93; 156.
4.—§ 2. The action lies against the prosecutor and even against a mere informer, when the proceedings are malicious. 5 Stew. & Port. 367. But grand jurors are not liable to an action for a malicious prosecution, for information given by them to their fellow jurors, on which a prosecution is founded. Hardin, R. 556. Such action lies against a plaintiff in a civil action who maliciously sues out the writ and prosecutes it. 16 Pick. 453; but an action does not lie against an attorney at law for bringing the action, when regularly employed. 16 Pick. 478. See 6 Pick. 193.

5.—§ 3. There must be malice and want of probable cause. 1 Wend. 140; 345; 7 Cowen, 281; 2 P. A. Browne, Appx. xlii; Cooke, 90; Litt. Sel. Cas. 106; 4 Litt. 334; 3 Gill & John. 377; 1 N. & M. 36; 12 Conn. 219; 3 Call, 446; 2 Hall, 315; 3 Mason, 112; 2 N. & M. 54, 143. See Malice; Probable cause.

6.—§ 4. The proceedings under which the original prosecution or action was held, must have been regular, in the ordinary course of justice, and before a tribunal having power to ascertain the truth or falsity of the charge, and to punish the supposed offender, the new plaintiff. 3 Pick. 379, 383. When the proceedings are irregular, the prosecutor is a trespasser. 3 Blackf. 210. See Regular and irregular process.

7.—§ 5. The malicious prosecution or action must be ended, and the plaintiff must show it was groundless, either by his acquittal or by obtaining a final judgment in his favour in a civil action. 1 Root, R. 553; 1 N. & M. 36; 2 N. & M. 54, 143; 7 Cowen, 715; 2 Dev. & Bat. 492.

8.—§ 6. The remedy for a malicious prosecution is an action on the case to recover damages for the injury sustained. 5 Stew. & Porter, 367; 2 Conn. 700; 11 Mass. 500; 6 Greenl. 421; 3 Gill & John. 377. See Case; Regular and irregular process.

See generally, Bull. N. P. 11; 1 Saund. 228; 12 Mod. 208; 1 T. R. 493 to 551; Bac. Ab. Actions on the case, (H).

MALUM IN SE. Evil in itself.

2.—An offence malum in se is one which is naturally evil, as murder, theft, and the like; offences at common law are generally mala in sese.

3.—An offence malum prohibitum, on the contrary, is not naturally an evil, but becomes so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden. Vide Bac. Ab. Assumpsit, A, note; 2 Rolle's Ab. 355.

MALVEILLES. Ill-will. In some ancient records this word signifies malicious practices, or crimes and misdemeanors.

MALVERSATION. French law. This word is applied to all punishable faults committed in the exercise of an office, such as corruptions, exactions, extortions, and larceny. Merl. Repert. h. t.

MAN, is a human being. This definition includes not only the adult male sex of the human species, but women and children; examples: "of offences against man, some are more immediately against the king, others more immediately against the subject." Hawk. P. C. book 1, c. 2, s. 1. "Offences against the life of man come under the general name of homicide, which in our law signifies the killing of a man by a man." Ib. book 1, c. 8, s. 2.

2.—In a more confined sense, man means a person of the male sex; and sometimes it signifies a male of the human species above the age of puberty; vide Rape. It was considered in the civil or Roman law, that although man and person are synonymous in grammar, they had a different acception in law; all persons were men, but all men, for example, slaves, were not persons, but things. Vide Barr. on the Stat. 216, note.

MANAGER, is a person appointed or elected to manage the affairs of another, but the term is more usually applied to those officers of a corporation who are authorized to manage its affairs.

2.—In banking corporations these officers are commonly called directors,
and the power to conduct the affairs of the company, is vested in a board of directors. In other private corporations, such as rail-road companies, canal, coal companies, and the like, these officers are called managers. Being agents, when their authority is limited, they have no power to bind their principal beyond such authority. 17 Mass. R. 29; 1 Greenl. R. 81.

3.—The persons appointed on the part of the house of representatives to prosecute impeachments before the senate are called managers.

MANDOBTE. In a barbarous age, when impunity could be purchased with money the compensation which was paid for homicide was called mandobre.

MANDAMUS, practice, is the name of a writ, the principal word of which when the proceedings were in Latin, was mandamus, we command.

2.—It is a command issuing in the name of the sovereign authority from a superior court having jurisdiction, and is directed to some person, corporation, or inferior court, within the jurisdiction of such superior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the superior court has previously determined, or at least supposes to be consonant to right and justice. 20 Pick. 484; 21 Pick. 258; Dudley, 37; 4 Humph. 437.

3.—Mandamus is not a writ of right, it is not consequently granted of course, but only at the discretion of the court to whom the application for it is made; and this discretion is not exercised in favour of the applicant, unless some just and useful purpose may be answered by the writ. 2 T. R. 385; 1 Cowen’s R. 501; 11 Shepl. 151; 1 Pike, 11.

4.—This writ was introduced to prevent disorders from a failure of justice; therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one. 3 Burr. R. 1267; 1 T. R. 148, 9; 2 Pick. 414; 4 Pick. 68; 10 Pick. 285, 244; 7 Mass. 340; 3 Binn. 273; 5 Halst. 57; Cooke, 160; 1 Wend. 318; 5 Pet. 190; 1 Caines, R. 511; 1 John. Cas. 181; 12 Wend. 183; 8 Pet. 291; 12 Pet. 524; 2 Penning. 1024; Hardin, 172; 7 Wheat. 537; 5 Watts, 152; 2 H. & M. 132; 3 H. & M. 1; 1 S. & R. 473; 5 Binns. 87; 3 Conn. 243; 2 Virg. Cas. 499; 5 Call, 548. Mandamus will not lie where the law has given another specific remedy. 1 Wend. 318; 10 John. 484; 1 Cow. 417; Coleman, 117; 1 Pet. 567; 2 Cowen, 444; 2 M’Cord, 170; Minor, 46; 2 Leigh, 165; Const. Rep. 165, 175, 705.

5.—The 13th section of the act of congress of September, 24, 1789, gives the supreme court power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. The issuing of a mandamus to courts, is the exercise of an appellate jurisdiction, and, therefore constitutionally vested in the supreme court; but a mandamus directed to a public officer, belongs to original jurisdiction, and, by the constitution, the exercise of original jurisdiction by the supreme court is restricted to certain specified cases, which do not comprehend a mandamus. The latter clause of the above section, authorizing this writ to be issued by the supreme court, to persons holding office under the authority of the United States, is, therefore, not warranted by the constitution, and void. 1 Cranch, R. 175.

6.—The circuit courts of the United States may also issue writs of mandamus, but their power in this particular, is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. 7 Cranch, R. 504; 8 Wheat. R. 598; 1 Paine’s R. 453. Vide generally, 3 Bl. Com. 110; Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Selw. N. P. h. t.; Chit. Pr. h. t.; Serg. Const. Index, h. t.; Ang. on Corp. Index, h. t.; 3 Chit. Bl. Com. 265 n. (7); 1 Kent, Com. 322; Dane’s Ab. Index, h. t.; 6 Watts & Serg. 386, 397; and the article Courts of the United States.

MANDANT. The principal in the
contract of mandate is so called. Story, Ag. § 337.

MANDATARIUS. This word is used by the civilians in the same sense we use mandatory; one who is entrusted with and undertakes to perform a mandate. Poth. du Mandat, n. 1.


2.—It is the duty of a mere mandatory, it is said, to take ordinary care of the property entrusted to him. Vide Negligence. But it has been held that he is liable only for gross negligence. 14 S. & R. 275; 2 Hawks, R. 145; 2 Murph. R. 375; 3 Dana, R. 205; 3 Mason, R. 132; 11 Wend. R. 25; Wright, R. 598.

MANDATE, in practice, is a judicial command or precept issued by a court or magistrate directing the proper officer to enforce a judgment, sentence or decree. Jones’s Bailm. 52; Story on Bailm. § 137.

MANDATE, mandatum or commission, in contracts. Sir William Jones defines a mandate to be, a bailment of goods without reward, to be carried from place to place, or to have some act performed about them. Jones’s Bailm. 52; 2 Ld. Raym. 909, 913. This seems more properly an enumeration of the various sorts of mandates than a definition of the contract. According to Mr. Justice Story, it is a bailment of personal property in regard to which the bailee engages to do some act without reward. Bailm. § 137. And Mr. Chancellor Kent defines it to be when one undertakes, without recompense, to do some act for the other in respect to the thing bailed. Comm. 443. See for other definitions, Story on Bailm. § 137; Pothier, Pand. lib. 17, tit. 1; Wood’s Civ. Law, B. 3, c. 5, p. 242; Halifax’s Anal. of the Civ. Law, 70; Code of Louis. art. 2954; Code Civ. art. 1984.

2.—From the very term of the definition, three things are necessary to create a mandate. First, that there should exist something, which should be the matter of the contract; secondly, that it should be done gratuitously; and, thirdly, that the parties should voluntarily intend to enter into the contract. Poth. Pand. Lib. 17, tit. 1, p. 1, § 1; Poth. Contr. de Mandat, c. 1, § 3.

3.—There is no particular form or manner of entering into the contract of mandate, prescribed either by the common law, or by the civil law, in order to give it validity. It may be verbal or in writing; it may be express or implied; it may be in solemn form or in any other manner. Story on Bailm. § 160. The contract may be varied at the pleasure of the parties. It may be absolute or conditional, general or special; temporary or permanent. Wood’s Civ. Law, 242; 1 Domat, B. 1, tit. 15 § 1, 6, 7, 8; Poth. Contr. de Mandat, c. 1, § 3, n. 34, 35, 36.

4.—As to the degree of diligence which the mandatory is bound to exercise, see Mandatory; Negligence; Pothier, Mandat, h. t.; Louis. Code, tit. 15; Code Civ. tit. 13, c. 2; Story on Bailm. § 163 to 195.

5.—As to the duties and obligations of the mandatory, see Story on Bailm. § 196 to 201; Code Civ. tit. 13, c. 3; Louis. Code, tit. 15, c. 4.

6.—The contract of mandate may be dissolved in various ways: 1. It may be dissolved by the mandatory at any time before he has entered upon its execution; but in this case, as indeed in all others, where the contract is dissolved before the act is done, which the parties intended, the property bailed is to be restored to the mandatory.

7.—2. It may be dissolved by the death of the mandatory; for being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But this principally applies to cases where the mandate remains wholly unexecuted; for if it be in part executed, there may, in some cases, arise a personal obligation on the part of the representatives to complete it. Story on Bailm. § 202; 2 Kent’s Com. 504, § 4; Pothier, Mandat, c. 4, § 1, n. 101.
8.—Whenever the trust is of a nature which requires united advice, confidence and skill of all, and is deemed a joint personal trust to all, the death of one joint mandatory dissolves the contract as to all. See Story on Bailm. § 202; Co. Litt. 112, b; Id. 181, b; Com. Dig. Attorney, (C 8); Bac. Abr. Authority, C; 2 Kent’s Com. 504; 7 Taunt. 403.

9.—The death of the mandator, in like manner, puts an end to the contract. See 2 Mason’s R. 342; 8 Wheat. R. 174; 2 Kent’s Com. 507; 1 Domat, B. 1, tit. 15, § 4, n. 6, 7, 8; Pothier, Contract de Mandat, c. 4, § 2, n. 103. But although an unexecuted mandate ceases with the death of the mandator, yet, if it is executed in part at that time, it is binding to that extent, and his representatives must indemnify the mandatory. Story on Bailm. §§ 204, 205.

10.—3. The contract of mandate may be dissolved by a change in the state of the parties; as if either party becomes insane, or, being a woman, marries before the execution of the mandate. Story on Bailm. § 206; 2 Roper, Husb. and Wife, 69, 73; Salk. 117; Bac. Abr. Baron and Feme, E; 2 Kent’s Com. 506.

11.—4. It may be dissolved by a revocation of the authority, either by operation of law, or by the act of the mandator.

12.—It ceases by operation of law, when the power of the mandator ceases over the subject-matter; as if he be a guardian, it ceases, as to his ward’s property, by the termination of the guardianship. Pothier, Contrat de Mandat, c. 4, § 4, n. 112.

13.—So, if the mandator sells the property, it ceases upon the sale, if it is made known to the mandatory. 7 Ves. jr. 276; Story on Bailm. § 207.

14.—By the civil law the contract of mandate ceases by the revocation of the authority. Story on Bailm. § 208; Code Civ. art. 2003 to 2008; Louis. Code, art. 2997.

15.—At common law, the party giving an authority is generally entitled to revoke it. See 5 T. R. 215; Wallace’s R. 126; 5 Binn. 316. But if it is given as a part of a security, as if a letter of attorney is given to collect a debt, as a security for money advanced, it is irrevocable by the party, although revoked by death. 2 Mason’s R. 342; 8 Wheat. 174; 2 Esp. R. 365; 7 Ves. 28; 2 Ves. & Bea. 51; 1 Stark. R. 121; 4 Campb. 272.

MANDATE, civil law. Mandates were the instructions which the emperor addressed to public functionaries, and which were to serve as rules of their conduct.

2. These mandates resembled those of the pro-consuls, the mandato jurisdictio, were ordinarily binding on the legates or lieutenants of the emperor of the imperial provinces, and, there they had the authority of the principal edicts. Sav. Dr. Rom. ch. 3, § 24, n. 4.

MANDATOR, contracts, is the person employing another to perform a mandate. Story on Bailm. § 138; 1 Brown, Civ. Law, 382; Halif. Anal. Civ. Law, 70.

MANHOOD. The ceremony of doing homage by the vassal to his lord was denominated homagium or manhood, by the feudists. The formula used was devenio vester homo, I become your man. 2 Bl. Com. 54. See Homage.

MANIA, med. jur. This subject will be considered by examining it, first, in a medical point of view; and, secondly, as to its legal consequences.

2.—§ 1. Mania may be divided into intellectual and moral.

1. Intellectual mania is that state of mind which is characterised by certain hallucinations, in which the patient is impressed with the reality of facts or events which have never occurred, and acts in accordance with such belief; or, having some notion not altogether unfounded, carries it to an extravagant and absurd length. It may be considered as involving all or most of the operations of the understanding, when it is said to be general; or as being confined to a particular idea, or train of ideas, when it is called partial.

3.—These will be separately examined. 1st. General intellectual mania is a disease which presents the most chaotic confusion into which the human mind can
be involved, and is attended by greater disturbance of the functions of the body than any other. According to Pinel, Traité d'alienation mentale, p. 63, "the patient sometimes keeps his head elevated and his looks fixed on high; he speaks in a low voice, or utters cries and vociferations without any apparent motive; he walks to and fro, and sometimes arrests his steps as if excited by the sentiment of admiration, or wrapt up in profound reverie. Some insane persons display wild excesses of merriment, with immoderate bursts of laughter. Sometimes also, as if nature delighted in contrasts, gloom and taciturnity prevail, with involuntary showers of tears, or the anguish of deep sorrow, with all the external signs of acute mental suffering. In certain cases a sudden reddening of the eyes and excessive loquacity give presage of a speedy explosion of violent madness and the urgent necessity of a strict confinement. One lunatic, after long intervals of calmsness, spoke at first with volubility, uttered frequent shouts of laughter, and then shed a torrent of tears; experience had taught the necessity of shutting him up immediately, for his paroxysms were at such times of the greatest violence." Sometimes, however, the patient is not altogether devoid of intelligence; answers some questions very appropriately, and is not destitute of acuteness and ingenuity. The disarrangement in this form of mania is not confined to the intellectual faculties, but not unfrequently extends to the moral powers of the mind.

4.—2dly. Partial intellectual mania is generally known by the name of monomania, (q. v.) In its most usual and simplest form, the patient has conceived some single notion contrary to common sense and to common experience, generally dependent on errors of sensation; as for example, when a person believes that he is made of glass, that animals or men have taken their abode in his stomach or bowels. In these cases the understanding is frequently found to be sound on all subjects, except those connected with the hallucination. Sometimes instead of being limited to a single point, this disease takes a wider range, and, there is a class of cases, where it involves a train of morbid ideas. The patient then imbibes some notions connected with the various relations of persons, events, time, space, &c. of the most absurd and unfounded nature, and endeavours, in some measure, to regulate his conduct accordingly; though, in most respects, it is grossly inconsistent with his delusion.

5.—Moral mania or moral insanity, (q. v.) is divided into, first, general, where all the moral faculties are subject to a general disturbance; and, secondly, partial, where one or two only of the moral powers are perverted.

6.—These will be briefly and separately examined. 1st. It is certain that many individuals are living at large who are affected, in a degree at least, by general moral mania. They are generally of singular habits, wayward temper, and eccentric character; and circumstances are frequently attending them which induce a belief that they are not altogether sane. Frequently there is a hereditary tendency to madness in the family; and, not seldom, the individual himself has at a previous period of life sustained an attack of a decided character: his temper has undergone a change, he has become an altered man, probably from the time of the occurrence of something which deeply affected him, or which deeply affected his bodily constitution. Sometimes these alterations are imperceptible, at others, they are sudden and immediate. Individuals afflicted with this disease not unfrequently "perform most of the common duties of life with propriety, and some of them, indeed, with scrupulous exactness, who exhibit no strongly marked features of either temperament, no traits of superior or defective mental endowment, but yet take violent antipathies, harbor unjust suspicions, indulge strong propensities, affect singularity in dress, gait, and phraseology; are proud, conceited and ostentatious; easily excited and with difficulty appeased; dead to sensibility, delicacy, and refinement; obstinately riveted to the most absurd opinions;
prone to controversy, and yet incapable of reasoning; always the hero of their own tale, using hyperbolic, high-flown language to express the most simple ideas, accompanied by unnatural gesti-

culation, inordinate action, and frequently by the most alarming expression of countenance. On some occasions they suspect sinister intentions on the most trivial grounds; on others are a prey to fear and dread from the most ridiculous and imaginary sources; now embracing every opportunity of exhibiting romantic courage and feats of hardihood, then indulging themselves in all manner of excesses. Persons of this description, to the casual observer, might appear actuated by a bad heart, but the experienced physician knows it is the head which is defective. They seem as if constantly affected by a greater or less degree of stimulation from intoxicating liquors, while the expression of countenance furnishes an infallible proof of mental disease. If subjected to moral restraint, or a medical regimen, they yield with reluctance to the means proposed, and generally refuse and resist, on the ground that such means are unnecessary where no disease exists; and when, by the system adopted, they are so far recovered, as to be enabled to suppress the exhibition of the former peculiarities, and are again fit to be restored to society, the physician, and those friends who put them under the physician’s care, are generally ever after objects of enmity and frequently of revenge.” Cox, Præct. Obs. on Insanity; see cases of this kind of madness cited in Ray, Med. Jur. §112 to 119; Combe’s Moral Philos. lect. 12.

7.—2dly. Partial moral mania consists in the derangement of one or a few of the affective faculties, the moral and intellectual constitution in other respects remaining in a sound state. With a mind apparently in full possession of his reason, the patient commits a crime, without any extraordinary temptation, and with every inducement to refrain from it, he appears to act without a motive, or in opposition to one, with the most perfect consciousness of the impro-

priety of his conduct, and yet he pursues perseveringly his mad course. This disease of the mind manifests itself in a variety of ways, among which may be mentioned the following: 1. An irresistible propensity to steal. 2. An inordinate propensity to lying. 3. A morbid activity of the sexual propensity. Vide Erotic Mania. 4. A morbid propensity to commit arson. 5. A morbid activity to the propensity to destroy. Ray, Med. Jur. ch. 7.

8.—§ 2. In general persons labouring under mania are not responsible nor bound for their acts like other persons, either in their contracts or for their crimes, and their wills or testaments are voidable. Vide Insanity; Moral Insanity. 2 Phillim. Ecc. R. 69; 1 Hagg. Cons. R. 414; 4 Pick. R. 32; 3 Adams, R. 79; 1 Litt. R. 371.

MANIA A POTU. Insanity arising from the use of spirituous liquors. Vide Delirium Tremens.

MANIFEST, com. law, is a written instrument containing a true account of the cargo of a ship or commercial vessel.

2.—The act of the 2d of March, 1799, s. 23, requires that when goods, wares, or merchandise, shall be brought into the United States, from any foreign port or place, in any ship or vessel, belonging, in whole or in part to a citizen or inhabitant of the United States, the manifest shall be in writing signed by the master of the vessel, and that it shall contain the names of the places where the goods in such manifest mentioned, shall have been respectively taken on board, and the places within the United States for which they are respectively consigned, particularly noticing the goods destined for each place, respectively; the name, description, and build of such vessel, and her true admeasurement or tonnage, the place to which she belongs, with the name of each owner, according to her register, the name of her master, and a just and particular account of the goods so laden on board, whether in package or stowed loose, of any kind whatsoever, with the marks and numbers on each package, the numbers and descriptions of the packages in words at length, whe-
ther leaguier, pipe, butt, puncheon, hogshad, barrel, keg, case, bale, pack, trust, chest, box, bandbox, bundle, parcel, cask, or package of any kind, describing each by its usual denomination; the names of the persons to whom they are, respectively, consigned, agreeably to the bills of lading, unless when the goods are consigned to order, when it shall be so expressed; the names of the several passengers on board, distinguishing whether cabin or steerage passengers, or both, with their baggage, specifying the number and description of packages belonging to each, respectively; together with an account of the remaining sea stores, if any. And if any merchandise be imported, destined for different districts, or ports, the quantities and packages thereof, shall be inserted in successive order in the manifest; and all spirits, wines and teases, constituting the whole or any part of the cargo of any vessel, shall be inserted in successive order, distinguishing the ports to which they may be destined, and the kinds, qualities and quantities thereof; and if merchandise be imported by citizens or inhabitants of the United States, in vessels other than of the United States, the manifests shall be of the form and shall contain the particulars aforesaid, except that vessel shall be specially described as provided by a form in the act. 1 Story’s Laws, 593, 594.

3.—The want of a manifest, where one is required, or when it is false, is severely punished.

MANIFEST, evidence. What is clear and requires no proof; what is notorious. See Notoriety.

MANIFESTO. Is a solemn declaration by the constituted authorities of a nation which contains the reasons for its public acts towards another.

2.—On the declaration of war, a manifesto is usually issued in which the nation declaring the war states the reasons for so doing. Vattel, liv. 3, c. 4, § 64; Wolff, § 1187. See Anti-manifesto.

MANKIND. Persons of the male sex; but in a more general sense, it includes persons of both sexes; for example, the statute of 25 H. 8, c. 6, makes it felony to commit sodomy with mankind or beast. Females as well as males are included under the term mankind. Fortesc. 91; Bac. Ab. Sodomy. See Gender.

MANNOPUS. An ancient word which signifies goods taken in the hands of an apprehended thief.

MANOR, estates. This word is derived from the French manoir, and signifies a house, residence, or habitation. At present its meaning is more enlarged, and includes not only a dwelling-house, but also lands. Vide Co. Litt. 58, 108; 2 Roll. Ab. 121; Merl. Répert. mot Manoir. See Serg. Land Laws of Pennsylvania.
Russ. Cr. 485. Manslaughter is voluntary, when it happens upon a sudden heat; or involuntary, when it takes place in the commission of some unlawful act.

3. The cases of manslaughter may be classed as follows; those which take place in consequence of, 1, provocation; 2, mutual combat; 3, resistance to public officers, &c.; 4, killing in the prosecution of an unlawful or wanton act; 5, killing in the prosecution of a lawful act, improperly performed, or performed without lawful authority.

4. 1. The provocation which reduces the killing from murder to manslaughter, is an answer to the presumption of malice, which the law raises in every case of homicide; it is therefore no answer when express malice is proved. 1 Russ. Cr. 440; Foster, 193; 1 East, P. C. 239; and to be available the provocation must have been reasonable and recent, for no words or slight provocation will be sufficient, and if the party has had time to cool, malice will be inferred.

5. 2. In cases of mutual combat, it is generally manslaughter only when one of the parties is killed. When death ensues from duelling the rule is different, and such killing is murder.

6. 3. The killing of an officer by resistance to him while acting under lawful authority is murder; but if the officer be acting under a void or illegal authority, or out of his jurisdiction, the killing is manslaughter, or excusable homicide, according to the circumstances of the case. 1 Moody, C. C. 80, 132; 1 Hale, P. C. 458; 1 East, P. C. 314; 2 Stark. N. P. C. 205; S. C. 3 E. C. L. R. 315.

7. 4. Killing a person while doing an act of mere wantonness, is manslaughter; as, if a person throws down stones in a coal-pit, by which a man is killed, although the offender was only a trespasser. Lewin, C. C. 179.

8. 5. When death ensues from the performance of a lawful act, it may, in consequence of the negligence of the offender, amount to manslaughter. For instance, if the death has been occasioned by negligent driving. 1 East, P. C. 263; 1 C. & P. 320; S. C. 9 E. C. L. R. 408; 6 C. & P. 629; S. C. 25 E. C. L. R. 569. Again, when death ensues from the gross negligence of a medical or surgical practitioner, it is manslaughter. 1 Hale, P. C. 429; 3 C. & P. 652; S. C. 14 E. C. L. R. 495.

MANSTEALING. This word is sometimes used synonymously with kidnapping. The latter is more technical. 4 Bl. Com. 219.

MANU FORTI. With strong hand, (q. v.) This term is used in pleading in cases of forcible entry, and no other words are of equal import. Dane's Ab. ch. 132, a. 6; ch. 203, a. 12.

MANU OPERA. This has the same meaning with mannopos, (q. v.)

MANUAL, signifies what is employed or used by the hand, of which a present profit may be made. Things in the manual occupation of the owner cannot be distrained for rent. Vide Tools.

MANUCAPTIO, practice. In the English law it is a writ which lies for a man taken on suspicion of felony and the like, who cannot be admitted to bail by the sheriff, or others having power to let to mainprise. F. N. B. 249.

MANUCAPTORS. The same as mainporners, (q. v.)

MANUFACTURE. This word is used in the English and American patent laws. This term includes two classes of things; first, all machinery which is to be used and is not the object of sale; and, secondly, substances (such, for example, as medicines) formed by chemical processes, when the vendible substance is the thing produced, and that which operates preserves no permanent form. In the first class, the machine, and, in the second the substance produced is the subject of the patent. 2 H. Bl. 492. See 8 T. R. 99; 2 B. & A. 349; Dav. Pat. Cas. 278; Webst. on Pat. 8; Phil. on Pat. 77; Perp. Manuel des Inv. c. 2, s. 1; Renouard, c. 5, s. 1; Westminster Review, No. 44, April 1835, p. 247; 1 Bell's Com., B. I, part 2, c. 4, s. 1, p. 110, 5th ed.

MANUMISSION, contracts, is the agreement by which the owner or master of a slave sets him free and at liberty; the written instrument which contains
this agreement is also called a manumission.

2.—In the civil law it was different from emancipation which, properly speaking, was applied to the liberation of children from paternal power. Inst. liv. 1, t. 5 & 12; Co. Litt. 137, a; Dane’s Ab. h. t.

MANURE. Dung. When collected in a heap, it is considered as personal property, but, when spread, it becomes a part of the land and acquires the character of real estate. Alleyn, 31; 2 Ired. R. 326.

MANUS, anciently signified the person taking an oath as a compurgator. The use of this word probably came from the party laying his hand on the New Testament. Manus signifies, among the civilians, power, and is frequently used as synonymous with potestas. Leg. El. Dr. Rom. § 94.

MANUSCRIPT. A writing; a writing which has never been printed.

2.—The act of congress securing to authors a copy-right passed February 3, 1831, sect. 9, protects authors in their manuscripts, and renders any person who shall unlawfully publish a manuscript liable to an action, and authorizes the courts to enjoin the publisher. See Copyright. The right of the author to his manuscripts, at common law, cannot be contested. 4 Burr. 2396; 2 Eden, Ch. R. 329; 2 Story, R. 100; 2 Atk. 342; Ambl. 694; 2 B. & A. 290; 2 Story, Eq. Jur. § 943; Eden, Inj. 322; 2 B. & A. 298; 2 Bro. P. C. (Toml. ed.) 138; 4 Vin. Ab. 278; 2 Atk. 342; 2 Ves. & B. 23. These rights will be considered as abandoned if the author publishes his manuscripts, without securing the copy-right under the acts of congress. See Copyright.

MARAUDER, is one who while employed in the army as a soldier, commits a larceny or robbery in the neighbourhood of the camp, or while wandering away from the army. Merl. Répert. h. t.

MARC-BANCO. The name of a coin. The marc-banco of Hamburg, as money of account, at the custom-house, is deemed and taken to be of the value of thirty-five cents. Act of March 3, 1843.

MARCHES, Eng. law. This word signifies the limits, or confines, or borders. Bac. Law Tracts, tit. Jurisdiction of the Marches, p. 246. It was applied to the limits between England and Wales or Scotland. In Scotland the term marches is applied to the boundaries between private properties.

MARETUM. Marshy ground overflowed by the sea or great rivers. Co. Litt. 5.

MARINARIUS. An ancient word which signified a mariner or seaman; in England marinarius capitaneus, was the admiral or warden of the ports.

MARINE. Whatever concerns the navigation of the sea, and forms the naval power of a nation is called its marine.

MARINE CONTRACT, is one which relates to business done or transacted upon the sea and in sea ports, and over which the courts of admiralty have jurisdiction concurrent with the courts of common law; such contracts include according to civilians and jurors among other things, charter parties, affreightments, marine hypotheceans, contracts for the marine service in the building, repairing, supplying and navigating ships; contracts and quasi contracts respecting averages, contributions and jettisons, and policies of insurance. 2 Gall. R. 398, where Judge Story gave a very learned opinion on the subject.

MARINE INTEREST, contracts, is a compensation paid for the use and risk of money loaned on respondentia and bottomry, provided the money be loaned and put in risk, there is no limit as to the amount which may be lawfully charged by the lender. 2 Marsh. Ins. 749; Hall on Mar. Loans; Pothier, Prét à la Grosse, n. 19; 1 Stuart’s (L. C.) R. 130.

MARINE LEAGUE, is a measure equal to the twentieth part of a degree. Bouch. Inst. n. 1845, note. Vide Cannon Shot; Sea.

MARINER. One whose occupation is to navigate vessels on the sea. Vide Seamen; Shipping articles.
MARITAGIUM. Anciently that portion which was given with a daughter in marriage.

2. During the existence of the feudal law, it was the right which the lord of the fee had, under certain tenures, to dispose of the daughters of his vassal in marriage. By this word was also understood marriage. Beames’ Glav. 138 n.; Bract. 21 a; Spelm. Gl. ad voc.; 2 Bl. Com. 69; Co. Litt. 21 b, 76 a.

MARITAL. What belongs to marriage; as marital rights, marital duties.

2. Contracts made by a feme sole with a view to deprive her intended husband of his marital rights, with respect to her property, are a fraud upon him, and may be set aside in equity. By the marriage, the husband assumes the duty of paying her debts, contracted previous to the coverture, and of supporting her during its existence; and he cannot, therefore, be fraudulently deprived, by the intended wife, of those rights which enable him to perform the duties which attach to him. 2 Cha. R. 42; Newl. Conr. 424; 1 Vern. 408; 2 Vern. 17; 2 P. Wms. 357, 674; 2 Bro. C. C. 345.

MARITAL PORTION. In Louisiana, this name is given to that part of a deceased husband’s estate, to which the widow is entitled. Civil Code, 334, art. 55; 3 Mart. N. S. 1.

MARITIME. What belongs to or is connected with the sea.

MARITIME CONTRACT, is one which relates to the navigation of the sea.

2. The admiralty has jurisdiction in case of the breach of such contract, whether it has been entered into on land or at sea. 4 Wash. C. C. R. 453; see 2 Gallis. 465; 2 Sumn. 1; Gilp. 529.

MARITIME LAW. That system of law which relates to the affairs of the sea, such as seamen, ships, shipping, navigation, and the like.

MARITIME LOAN, is a contract or agreement by which one, who is the lender, lends to another, who is the borrower, a certain sum of money, upon condition that if the thing upon which the loan has been made, should be lost by any peril of the sea, or vis major, the lender shall not be repaid, unless what remains shall be equal to the sum borrowed; and if the thing arrive in safety, or in case it shall not have been injured, but by its own defects or the fault of the master or mariners, the borrower shall be bound to return the sum borrowed, together with a certain sum agreed upon as the price of the hazard incurred. Emer. Mar. Loans, c. 1, s. 2; Poth. h. t.; Vide Bottomy; Gross Adventure; Interest, maritime; Respondentia.

MARITIME PROFIT, mar. law. The French writers use the term maritime profit to signify any profit derived from a maritime loan. Vide Interest, maritime.

MARK. This term has several acceptations. 1. It is a sign traced on paper or parchment, which stands in the place of a signature, usually made by persons who cannot write. 2 Cart. R. 324; M. & M. 516; 12 Pet. 150.

2. It is the sign, writing or ticket put upon manufactured goods to distinguish them from others. Poph. R. 144; 3 B. & C. 541; 2 Atk. R. 485; 2 V. & B. 218; 3 M. & C. 1; Ed. Inj. 314. Vide Trade Marks.

3. Mark or marc, denotes a weight used in several parts of Europe, and for several commodities, especially gold and silver. When gold and silver are sold by the mark, it is divided into twenty-four carats.

4. Mark is also in England a money of accounts, and in some other countries a coin. The English marc is two-thirds of a pound sterling, or 13s. 4d., and the Scotch mark is of equal value in Scotch money of account. Encyc. Amer. h. t.

MARKET, is a public place appointed by public authority, where all sorts of things necessary for the subsistence, or for the conveniences of life are sold.

2. Markets are generally regulated by local laws.

3. By the term market is also understood the demand there is for any particular article; as the cotton market in Europe is dull. Vide 15 Vin. Ab. 242; Com. Dig. h. t.

MARKET OVERT, Engl. law. Market
overt is an open or public market; that is, a place appointed by law or custom for the sale of goods and chattels at stated times in public.

2.—In London, every day except Sunday, is market day. In the country particular days are fixed for market days. 2 Bl. Com. 449.

3.—It is a general rule that sales of vendible articles made in market over, are good not only between the parties, but are also binding on all those who have any property or right therein. Ib. 2 Chitt. Com. Law, 148 to 154; Com. Dig. Market, E; Bac. Abr. Fairs and Markets, E; 5 B. & A. 624; Dane's Abr. chap. 45, a. 2.

4.—There is no law recognising the effect of a sale in market overt in Pennsylvania, 3 Yeates, R. 347; 5 Serg. & Rawle, 139; in New York, 1 Johns. R. 480; in Massachusetts, 8 Mass. R. 521; 14 Mass. R. 500; in Ohio, 5 Ohio, R. 203; nor in Vermont, 1 Tyl. R. 341; nor indeed in any of the United States, 10 Pet. 161.

MARLEBRIDGE, STATUTE OF. The name of a statute passed the 52 Hen. III. anno domini 1267, so called because it was enacted at Marlebridge. Barr. on Stat. 58.

MARQUE AND REPRISAL. The name given to a commission granted to a private person for the purpose of seizing the property of a foreign state or of its subjects. Vide Letters of Marque.

MARRIAGE is a contract made in due form of law, by which a free man and a free woman reciprocally engage to live with each other during their joint lives, in the union which ought to exist between husband and wife. By the terms freeman and freewoman in this definition are meant, not only that they are free and not slaves, but also that they are clear of all bars to a lawful marriage. Dig. 23, 2, 1; Ayl. Pacer, 359; Stair, Inst. tit. 4, s. 1; Shelford on Mar. and Div. c. 1, s. 1.

2. To make a valid marriage, the parties must be willing to contract, able to contract, and have actually contracted.

3.—1. They must be willing to contract. Those persons, therefore, who have no legal capacity in point of intellect, to make a contract, cannot legally marry, as idiots, lunatics, and infants, males under the age of fourteen, and females under the age of twelve, and when minors over those ages marry, they must have the consent of their parents or guardians.

4.—There is no will where there is a person whom the party intended to marry; as, if Peter intended to marry Maria, through error or mistake of person, in fact marries Eliza; but an error in the fortune, as if a man marries a woman whom he believes to be rich, and he finds her to be poor; or quality, as if he marries a woman whom he took to be chaste, whom he finds of an opposite character, does not invalidate the marriage, because in these cases, the error is only of some quality or accident, and not in the person. Poyn. on Marr. and Div. ch. 9.

5.—When the marriage is obtained by force or fraud, it is clear there is no consent, it is, therefore, void ab initio, and may be treated as null by every court in which its validity may incidentally be called in question. 2 Kent, Com. 66; Shelf. on Marr. and Div. 199; 2 Hagg. Cons. R. 246; 5 Paige, 43.

6.—2. Generally, all persons who are of sound mind, and have arrived to years of maturity, are able to contract marriage. To this general rule, however, there are many exceptions, among which the following may be enumerated.

7.—1. The previous marriage of the party to another person who is still living.

8.—2. Consanguinity, or affinity between the parties within the prohibited degree. It seems that persons in the descending or ascending line, however remote from each other, cannot lawfully marry; such marriages are against nature; but when we come to consider collaterals, it is not so easy to fix the forbidden degrees, by clear and established principles. Vaugh. 206; S. C. 2 Vent. 9. In several of the United States, marriages within the limited degrees are made void by statute. 2 Kent, Com. 79; Vide Poyn. on Marr. and Div. ch. 7.
9.—3. Impotency, (q. v.) which must have existed at the time of the marriage, and be incurable. 2 Phill. Rep. 10; 2 Hagg. Rep. 332.

10.—4. Adultery; by statutory provision in Pennsylvania, when a person is convicted of adultery with another person, or is divorced from her husband or his wife, he or she cannot afterwards marry the partner of his or her guilt. This provision is copied from the civil law, Poth. Contr. de Mariage, part 3, ch. 3, art. 7. And the same provision exists in the French code civil, art. 298. See 1 Toull. n. 555.

11.—3. The parties must not only be willing and able, but must have actually contracted in due form of law.

12.—The common law requires no particular ceremony to the valid celebration of marriage. The consent of the parties is all that is necessary, and as marriage is said to be a contract jure gentium, that consent is all that is needful by natural or public law. If the contract be made per verba de presenti, or if made per verba de futuro, and followed by consummation, it amounts to a valid marriage, and which the parties cannot dissolve if otherwise competent; it is not necessary that a clergyman should be present to give validity to the marriage; the consent of the parties may be declared before a magistrate, or simply before witnesses, or subsequently confessed or acknowledged, or the marriage may even be inferred from continual co-habitation, and reputation as husband and wife, except in cases of civil actions for adultery or public prosecutions for bigamy. 1 Salk. 119; 4 Burr. 2057; Doug. 171; Burr. Settl. Cas. 509; 1 Dow, 148; 2 Dow, 482; 4 John. 2; 18 John. R. 346; 6 Binn. 455; 1 Penna. R. 452; 2 Watts, R. 9. But a promise to marry at a future time, cannot, by any process of law, be converted into a marriage, though the breach of such promise will be the foundation of an action for damages.

13.—In some of the states, statutory regulations have been made on this subject. In Maine and Massachusetts, the marriage must be made in the presence and with the assent of a magistrate, or a stated or ordained minister of the gospel. 7 Mass. Rep. 48; 2 Greenl. Rep. 102. The statute of Connecticut on this subject requires the marriage to be celebrated by a clergyman or magistrate, and requires the previous publication of the intention of marriage, and the consent of parents; it inflicts a penalty on those who disobey its regulations. The marriage, however, would probably be considered valid, although the regulations of the statutes had not been observed. Reeve's Dom. Rel. 196, 200, 290. The rule in Pennsylvania is, that the marriage is valid, although the directions of the statute have not been observed. 2 Watts, Rep. 9; 1 How. S. C. R. 219; the same rule probably obtains in New Jersey, 2 Halsted, 138; New Hampshire, 2 N. H. Rep. 268; and Kentucky, 3 Marsh. R. 370. In Louisiana, a license must be obtained from the parish judge of the parish in which at least one of the parties is domiciliated, and the marriage must be celebrated before a priest or minister of a religious sect, or an authorized justice of the peace; it must be celebrated in the presence of three witnesses of full age, and an act must be made of the celebration, signed by the person who celebrated the marriage, by the parties and the witnesses. Code, art. 101 to 107. The 89th article of the Code declares, that such marriages only are recognized by law, as are contracted and solemnized according to the rules which it prescribes. But the Code does not declare null a marriage not preceded by a license, and not evidenced by an act signed by a certain number of witnesses and the parties, nor does it make such an act exclusive evidence of the marriage. The laws relating to forms and ceremonies are directory to those who are authorized to celebrate marriage. 6 L. R. 470.

14.—A marriage made in a foreign country, if good there, would, in general, be held good in this country, unless when it would work injustice, or be contra bonos mores, or be repugnant to the settled principles and policy of our laws. Story, Confl. of Laws, § 87; Shelf. on
M. & D. 140; 1 Bland, 188; 2 Bland, 485; 3 John Ch. R. 190; 8 Ala. R. 48.  

15.—Marriage is a contract intended in its origin to endure till the death of one of the contracting parties. It is dissolved by death or divorce. 

16.—In some cases as in prosecutions for bigamy, by the common law, an actual marriage must be proved in order to convict the accused. See 6 Conn. R. 446. This rule is much qualified. See Bigamy. 

17.—But for many purposes it may be proved by circumstances; for example, co-habitation; acknowledgment by the parties themselves that they were married; their reception as such by their friends and relations; their correspondence, on being casually separated, addressing each other as man and wife; 2 Bl. R. 899; declaring, deliberately, that the marriage took place in a foreign country, 2 Moo. & R. 503; describing their children in parish registers of baptism, as their legitimate offspring; 2 Str. 1073; 8 Ves. 417; or when the parties pass for husband and wife by common reputation. 1 Bl. R. 639; S. C. 4 Burr. 2057; Doug. 174; Cown. 594; 3 Swans. R. 400; 8 S. & R. 159; 2 Hayw. R. 3; 1 Taylor, R. 121; 1 H. & MeH. 152; 2 N. & McC. 114; 5 Day, R. 290; 4 H. & M. 507; 9 Mass. R. 414; 4 John. 52; 18 John. 346. After their death, the presumption is generally conclusive. Cown. 591; 6 T. R. 330. 

18.—The civil effects of marriage are the following: 1. It confirms all matrimonial agreements between the parties. 

19.—2. It vests in the husband all the personal property of the wife, that which is in possession absolutely, and choses in action, upon the condition that he shall reduce them to possession; it also vests in the husband the right to manage the real estate of the wife, and enjoy the profits arising from it during their joint lives, and after her death, an estate by the curtesy, when a child has been born. It vests in the wife, after the husband’s death, an estate in dower in the husband’s lands, and a right to a certain part of his personal estate, when he dies intestate. 

20.—3. It creates the civil affinity which each contracts towards the relations of the other. 

21.—4. It gives the husband marital authority over the person of his wife. 

22.—5. The wife acquires thereby the name of her husband, as they are considered as but one, of which he is the head: erat duo in carne unâ. 

23.—6. In general the wife follows the condition of her husband. 

24.—7. The wife, on her marriage, loses her domicil and gains that of her husband. 

25.—8. One of the effects of marriage is to give paternal power over the issue. 

26.—9. The children acquire the domicil of their father. 

27.—10. It gives to the children who are the fruits of the marriage, the rights of kindred not only with the father and mother, but all their kin. 

28.—11. It makes all the issue legitimate. 

Vide, generally, 1 Bl. Com. 433; 15 Vin. Ab. 252; Bac. Ab. h. t.; Com. Dig. Baron and Feme, B; Ib. Appx. h. t.; 2 Selw. Pr. 194; Ayl. Parag. 359; 1 Bro. Civ. Law, 94; Rutherf. Inst. 162; 2 Supp. to Ves. Jr. 334; Roper on Husband & Wife; Poynter on Marriage and Divorce; Merl. Répert. h. t.; Pothier, Traité du contrat de Marriage; Toullier, h. t.; Chit. Pract. Index, h. t.; Dane’s Ab. Index, h. t.; Burge on the Conf. of Laws, Index, h. t. 

Marriage Brokage. By this expression is meant the act by which a person interferences for a consideration to be received by him, between a man and a woman for the purpose of promoting a marriage between them. The money paid for such services is also known by this name. 

2.—It is a doctrine of the courts of equity that all marriage brokage contracts are utterly void as against public policy; and are, therefore, incapable of confirmation. 1 Fond. Eq. B. 1, ch. 4, s. 10, note (s); 1 Story, Eq. Jur. § 263; Newl. on Contr. 469. 

Marriage Portion, is that property which is given to a woman on her marriage. Vide Dowry.
MARRIAGE, PROMISE OF. A promise of marriage is a contract entered into between a man and a woman that they will marry each other.

2.—When the promise is made between persons competent to contract matrimony, an action lies for a breach of it. Vide Promise of Marriage.

MARRIAGE SETTLEMENT, is an agreement made by the parties in contemplation of marriage, by which the title to certain property is changed, and the property to some extent becomes tied up, and is rendered inalienable. Rice's Eq. R. 315. See 2 Hill, Ch. R. 3; Ril. Ch. Cas. 76; 8 Leigh, 20; 1 Dev. & Bat. Eq. 389; 2 Dev. & Bat. Eq. 103; 1 Bald. 344; 15 Mass. 106; 1 Yeates, 221; 7 Pet. 348. Vide Settlement, Contracts.

MARSHAL. An officer of the United States, whose duty it is to execute the process of the courts of the United States. His duties are very similar to those of a sheriff.

2.—It is enacted by the act to establish the judicial courts of the United States, 1 Story's L. U. S. 53, as follows.

§ 27. That a marshal shall be appointed, in and for each district, for the term of four years, but shall be removable from office at pleasure; whose duty it shall be to attend the district and circuit courts, when sitting therein, and also the supreme court in the district in which that court shall sit: and to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint, as there shall be occasion, one or more deputies, who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either. And before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies, before the judge of the district court, to the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A B do solemnly swear or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of under the authority of the United States, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be,) of the district of during my continuance in said office, and take only my lawful fees. So help me God."

3.—§ 28. That in all causes wherein the marshal, or his deputy, shall be a party, the writs and precepts therein shall be directed to such disinterested person, as the court, or any justice or judge thereof may appoint, and the person so appointed is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies, shall continue in office unless otherwise especially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults, or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed them; and the executor or administrator of the deceased marshal, shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life, and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal, or his deputy, when removed from office, or when the term for which the marshal is appointed shall expire, shall have power, notwithstanding, to execute all such precepts as may be in their hands, respectively, at the time of such removal or expiration of office; and the marshal shall be held answerable for
the delivery to his successors of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody, until his successor shall be appointed, and qualified as the law directs.

4.—By the act making certain alterations in the act for establishing the judicial courts, &c. passed June 9, 1794, 1 Story’s L. U. S. 365, it is enacted,

§ 7. That so much of the act to establish the judicial courts of the United States, as is, or may be, construed to require the attendance of the marshals of all the districts at the supreme court, shall be, and the same is hereby repealed: And that the said court shall be attended, during its session, by the marshal of the district only, in which the court shall sit, unless the attendance of the marshals of other districts shall be required by special order of the said court.

5.—The act of February 28, 1795, 1 Story’s L. U. S. 391, directs,

§ 9. That the marshals of the several districts, and their deputies, shall have the same powers, in executing the laws of the United States, as sheriffs and their deputies, in the several states, have by law in executing the laws of the respective states.

6.—There are various other legislative provisions in relation to the duties and rights of marshals, which are here briefly noticed with references to the laws themselves.

7.—1. The act of May 8, 1792, s. 4, provides for the payment of expenses incurred by the marshal in holding the courts of the United States, the payment of jurors, witnesses, &c.

8.—2. The act of April 16, 1817, prescribes the duties of the marshal in relation to the proceeds of prizes captured by the public armed ships of the United States and sold by decree of court.

9.—3. The resolution of congress of March 3, 1791; the act of February 25, 1799, s. 5; and the resolution of March 3, 1821; all relate to the duties of marshals in procuring prisons, and detaining and keeping prisoners.

10.—4. The act of April 10, 1806, directs how and for what marshals shall give bonds for the faithful execution of their office.

Vide Story’s L. U. S. Index, h. t.; Serg. Const. Law, ch. 25; 2 Dall. 402; United States v. Burr, 365; Mason’s R. 100; 2 Gall. 101; 4 Cranch, 96; 7 Cranch, 276; 9 Cranch, 86, 212; 6 Wheat. 194; 9 Wheat. 645.

MARSHALLING ASSETS. It is a general rule that if a party has two funds liable to his claim, a person having an interest in one only, has a right in equity to compel the former to resort to the other, if that is necessary for the satisfaction of both. Amb. 91; 8 Ves. 389; 9 Ves. 209. This rule has given rise to what in the administration of assets is termed marshalling of assets.

2.—Marshalling of assets respects two different funds, and two different sets of parties, where one set can resort to either fund, the other only to one. It is grounded on obvious equity. It does no prejudice to any body, and it effectuates the testator’s intent. It takes place in favour of simple contract creditors, and of legatees, devisees and heirs, and in a few other cases, but not in favour of the next of kin. 4 Bro. C. C. 411; 1 P. Wmns. 680.

3.—The cases in which a court of equity marshals real and personal assets for the payment of simple contract debts and legacies may be classed as follows:

1. Where there are specialty and simple contract debts and legacies and lands left to descend. In this case if the specialty creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors first, and then the legatees, shall stand in the place of the specialty creditors, for obtaining satisfaction out of the lands, to the amount of so much as was received by the specialty creditors out of the personal estate.

4.—2. Where there are specialty and simple contract debts, and lands are specifically devised. In this case if the creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors shall stand in the place of the specialty creditors for obtaining a
satisfaction out of the lands to the amount of so much as was received by the specialy creditors out of the personal estate, but then there can be no relief for the legatees, because there is as much equity to support the specific devise of the lands, as to support the bequest of the legatees.

5.—3. Where the debts are charged upon the lands. Here the legatees shall have the personal estate towards their satisfaction, and if the creditors take it, or towards the discharge of their debts, the legatees shall stand in their place pro tanto to have a discharge out of the lands.

6.—4. When simple contract debts and legacies are both charged on the land. In this case the land shall be sold and all paid equally. 1 Madd. Ch. Pr. 617.

MARSHALSEA, English law. The name of a prison belonging to the court of the king’s bench.

MARTIAL LAW. Vide Law, Martial.

MARYLAND, one of the original states of the United States of America. The province of Maryland was included in the patent of the Southern or Virginia company; and upon the dissolution of that company, it reverted to the crown. Charles the First, on the 20th of June, 1632, granted it by patent to Lord Baltimore. Under this charter Maryland continued to be governed, with some short intervals of interruption, down to the period of the American revolution, by the successors of the original proprietor. 1 Chalmers’ Annals, 203.

2.—Upon the revolution of 1688, the government of Maryland was seised into the hands of the crown, and was not again restored to the proprietary until 1716; from that period no alteration occurred until the American revolution. Bacon’s Laws of Maryland, 1692, 1716.

3.—The original constitution of this state was adopted on the 14th day of August, 1776. The 59th article of which declares “that this form of government, and the declaration of rights, and no part thereof, shall be altered, changed or abolishd, unless a bill so to alter, change or abolish the same shall pass the general assembly, and be pub-

lished at least three months before a new election, and shall be confirmed by the general assembly, after a new election of delegates, in the first session after such new election.”

4.—This perhaps too easy mode of altering the fundamental law, and the frequent use of this power, makes the constitution of Maryland have more the air of confusion, than is to be found in the constitutions of the other states.

5.—The powers of the government are distributed into the legislative, the executive, and the judicial.

6.—1. The legislature consists of two branches, a senate and house of delegates, which are styled the general assembly of Maryland. Const. art. 1. The senators are elected for the term of five years, art. 14, and the delegates for the term of one year, art. 2.

7.—2. The executive consists of a governor, art. 28, and council, art. 26, both elected by the legislature. The governor cannot continue in office longer than three years, and is not eligible as governor until the expiration of four years after he shall have been out of that office, art. 31. He is elected yearly on the second Monday of December, Amendm. art. 17, s. 2. The council consists of five persons elected annually, Amendm. art. 17, s. 2.

8.—3. The judiciary consists of a chancery court, and county courts, as provided for by the amendments of the constitution, as follows:

§ 9. That this state shall be divided into six judicial districts, in manner and form following, to wit: St. Mary’s, Charles, and Prince George’s counties, shall be the first district; Cecil, Kent, Queen Anne’s, and Talbot counties, shall be the second district; Calvert, Anne Arundel and Montgomery counties, shall be the third district; Caroline, Dorchester, Somerset, and Worcester counties, shall be the fourth district; Frederick, Washington, and Allegheny counties, shall be the fifth district; Baltimore and Harford counties, shall be the sixth district; and there shall be appointed for each of the said judicial districts, three persons of integrity and
sound legal knowledge, residents of the state of Maryland, who shall, previous to, and during their acting as judges, reside in the district for which they shall respectively be appointed, one of whom shall be styled in the commission chief judge, and the other two associate judges of the district for which they shall be appointed; and the chief judge, together with the two associate judges, shall compose the county court in each respective district; and each judge shall hold his commission during good behaviour, removable for misbehaviour, on conviction in a court of law, or shall be removed by the governor, upon the address of the general assembly, provided that two-thirds of the members of each house concur in such address; and the county courts, so as aforesaid established, shall have, hold, and exercise, in the several counties of this state, all and every the powers, authorities, and jurisdictions, which the county courts of this state now have, use, and exercise, and which shall be hereafter prescribed by law; and the said county courts established by this act, shall respectively hold their sessions in the several counties, at such times and places as the legislature shall direct and appoint; and the salaries of the said judges shall not be diminished during the period of their continuance in office.

MASCULINE. What belongs to the male sex.

2.—The masculine sometimes includes the feminine, vide an example under the article Man, and see also the articles Gender, Worthiest of blood; Poth. Intr. au titre 16, des Testaments et Donations Testamentaires, n. 170; Ayl. Pand. 57; 4 C. & P. 216; S. C. 19 E. C. L. R. 351; Fred. Code, pt. 1, b. 1, t. 4, s. 3; 3 Brev. R. 9.

MASSACHUSETTS, one of the original states of the United States of America. The colony or province of Massachusetts was included in a charter granted by James the First, by which its territories were extended in breadth from the 40th to the 48th degree of north latitude, and in length by all the breadth aforesaid throughout the mainland from sea to sea. This charter con-

continued until 1684, Holmes’s Annals, 412; 1 Story, Const. § 71. In 1691 William and Mary granted a new charter to the colony, and henceforth it became known as a province, and continued to act under this charter till after the revolution, 1 Story, Const. § 71.

2.—The constitution of Massachusetts was adopted by a convention begun and held at Cambridge, on the first of September, 1779, and continued, by adjournment, to the second of March, 1780.

3.—The style and name of the state is The Commonwealth of Massachusetts. The government is distributed into a legislative, executive and judicial power.

4.—1st. The department of legislation is formed by two branches, a senate and house of representatives, each of which has a negative on the other, and both are styled The General Court of Massachusetts. Part 2, c. 1, s. 1.

5.—1. The senate is elected by the qualified electors, and is composed of forty persons to be counsellors and senators for the year ensuing their election. Part 2, c. 1, s. 2, art. 1.

6.—2. The house of representatives is composed of an indefinite number of persons elected by the towns in proportion to their population. Part 2, c. 1, s. 3, art. 2.

7.—2d. The executive power is vested in a governor, lieutenant governor and council.

8.—1. The supreme executive magistrate is styled The Governor of the Commonwealth of Massachusetts. He is elected yearly by the qualified electors. Part 2, c. 2, s. 1. He is invested with the veto power. Part 2, c. 1, s. 1, art. 2.

9.—2. The electors are required to elect annually a lieutenant governor. When the office of governor happens to be vacant he acts as governor, and at other times he is a member of the council. Part 2, c. 2, s. 2, art. 2 and 3.

10.—3. The council consists of nine persons chosen annually by the general court; they must be taken from those returned for counsellors and senators, unless they will not accept the said
office, when they shall be chosen from the people at large. The council shall advise the governor in the executive part of the government. Part 2, c. 2, s. 3, art. 1 & 2.

11.—3d. The judicial power. The third chapter of part second of the constitution makes the following provisions in relation to the judiciary:

Art. 1. The tenure that all commissioned officers shall, by law, have in their offices, shall be expressed in their respective commissions; all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behaviour; excepting such concerning whom there is different provision made in this constitution; Provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

12.—2. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

13.—3. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the commonwealth.

14.—4. The judges of probates of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people may require; and the legislature shall, from time to time hereafter, appoint such times and places: until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

15.—5. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

MASTER. This word has several meanings. 1. Master is one who has control over a servant or apprentice. A master stands in relation to his apprentices, in loco parentis, and is bound to fulfil that relation, which the law generally enforces. He is also entitled to be obeyed by his apprentices, as if they were his children.

2.—2. Master is one who is employed in teaching children, known generally as a school master; as to his powers, see Correction.

3.—3. Master is the name of an officer: as, the ship Benjamin Franklin, whereof A B is master; the master of the rolls; master in chancery, &c.

4.—4. By master is also understood a principal who employs another to perform some act or do something for him. The law having adopted the maxim of the civil law, qui facit per alium facit per se; the agent is but an instrument, and the master is civilly responsible for the act of his agent, as if it were his own, when he either commands him to do an act, or puts him in a condition, of which such act is a result, or by the absence of due care and control, either previously in the choice of his agent, or immediately in the act itself, negligently suffers him to do an injury. Story, Ag. § 454, note; Noy's Max. c. 44; Salk. 282; 1 East, R. 106; 1 Bos. & Pul. 404; 2 H. Bl. 267; 5 Barn. & Cr. 547; 2 Taunt. R. 314; 4 Taunt. R. 649; Mass. 364, 385; 17 Mass. 479, 509; 1 Pick. 475; 4 Watts, 222; 2 Harr. & Gill, 316; 6 Cowen, 189; 8 Pick. 28; 5 Munuf. 483. Vide Agent; Agency; Driver; Servant.

Master in Chancery, is an officer of the court of chancery.

2.—The origin of these officers is thus accounted for. The chancellor from the first found it necessary to have a number of clerks, were it for no other purpose, to perform the mechanical part of the business, the writing; these soon rose to the number of twelve. In process of
time this number being found insufficient, these clerks contrived to have other clerks under them, and then, the original clerks became distinguished by the name of masters in chancery. He is an assistant to the chancellor, who refers to him interlocutory orders for stating accounts, computing damages, and the like. Masters in chancery are also invested with other powers, by local regulations. Vide Blake’s Ch. Pr. 26; 1 Madd. Pr. 3; 1 Smith’s Ch. Pr. 9, 19.

3.—In England there are two kinds of masters in chancery, the ordinary, and the extraordinary.

4.—1. The masters in ordinary execute the orders of the court, upon references made to them, and certify in writing in what manner they have executed such orders. 1 Sm. Ch. Pr. 9.

5.—2. The masters extraordinary perform the duty of taking affidavits touching any matter in or relating to the court of chancery, taking the acknowledgment of deeds to be enrolled in the said court, and taking such recognizances, as may by the tenor of the order for entering them, be taken before a master extraordinary. 1 Sm. Ch. Pr. 19. Vide, generally, 1 Harg. Law Tr. 203, a; Treatise of the Master of the Chaunecerie.

MASTER OF THE ROLLS. English law. An officer who bears this title, and who acts as an assistant to the lord chancellor, in the court of chancery.

2.—This officer was formerly one of the clerks in chancery whose duty was principally confined to keeping the rolls; and when the clerks in chancery became masters, then this officer became distinguished as master of the rolls. Vide Master in Chancery.

MASTER OF A SHIP, mar. law. The commander or first officer of a ship; a captain. (q. v.)

2.—His rights and duties have been considered under the article Captain. Vide also, 2 Bro. Civ. Adm. Law, 133; 3 Kent, Com. 121; Wesk. Ins. 360; Park on Ins. Index, h. t.; Com. Dig. Navigation, I 4.

MATE. The second officer on board of a merchant ship or vessel.

2.—He has the right to sue in the admiralty as a common mariner for wages. 1 Pet. Adm. Dec. 246.

3.—When on the death of the master, the mate assumes the command, he succeeds to the rights and duties of the principal officer. 1 Sumn. 157; 3 Mason, 161; 4 Mason, 196. See 7 Conn. 239; 4 Mason, 541; 4 Wash. C. C. 338.

MATERIAL MEN. This name is given to persons who furnish materials for the purpose of constructing or erecting ships, houses, and other buildings.

2.—By the common law material men have a lien on a foreign ship for supplies of materials furnished for such ships, which may be recovered in the admiralty. 9 Wheat. 409. But they have no lien for furnishing materials for repairs of domestic ships. 4 Wheat. 438.

3.—In several of the states, laws have been enacted giving material men a lien on houses and other buildings when they have furnished materials for constructing the same.

MATERIALITY. That which is important; that which is not merely of form but of substance.

2.—When a bill for discovery has been filed, for example, the defendant must answer every material fact which is charged in the bill, and the test in these cases seems to be that when, if the defendant should answer in the affirmative, his answer would be of use to the plaintiff, the answer would be material, and it must be made. 4 Price, R. 364; 13 Price, R. 291; 2 Y. & J. 385.

3.—In order to convict a witness of a perjury, it is requisite to prove that the matter he swore was material to the question then depending. Vide 3 Chit. Pr. 233; 3 Dow. 104; 10 Bing. 340; Perjury.

MATERIALS. Every thing employed in constructing.

2.—In some of the states by their laws persons who furnish materials for the construction of a building, have a lien against such building for the payment of the value of such materials. See Lien of Mechanics.

MATERNA MATERNIS. This expression is used in the French law to signify that in a succession the property
coming from the mother of a deceased person, descends to his maternal relations.

MATERNAL, what belongs to, or comes from the mother: as, maternal authority, maternal relation, maternal estate, maternal line. Vide Line.

MATERNAL PROPERTY, is that which comes from the mother of the party, and other ascendants of the maternal stock. Domat, Liv. Prel. tit. 3, s. 2. n. 12.

MATERNITY, is the state or condition of a mother.

2.—It is either legitimate or natural. The former is the condition of the mother who has given birth to legitimate children, while the latter is the condition of her who has given birth to illegitimate children. Maternity is always certain, while the paternity, (q. v.) is only presumed.

MATERTERA. Maternal aunt; the sister of one’s mother. Inst. 3, 4, 3; Dig. 38, 10, 10, 14.

MATRICULA, civil law. A register in which are inscribed the names of persons who become members of an association or society. Dig. 50, 3, 1.

MATRIMONIAL CAUSES. In the English ecclesiastical courts there are five kinds of causes which are classed under this head. 1. Causes for a malicious jactitation; 2, suits for nullity of marriage, on account of fraud, incest, or other bar to the marriage; 2 Hagg. Cons. Rep. 423; 3, suits for restitution of conjugal rights; 4, suits for divorces on account of cruelty or adultery, or causes which have arisen since the marriage; 5, suits for alimony.

MATRIMONIUM. By this word is understood the inheritance descending to a man, ex parti matris. It is but little used.

2.—Among the Romans this word was employed to signify marriage; and it was so called because this conjunction was made with the design that the wife should become a mother. Inst. 1, 9, 1.

MATRINA. A godmother.

MATRON. A married woman, generally an elderly married woman.

2.—By the laws of England, when a woman was sentenced to death, and she declared herself to be quick with child, a jury of matrons is impannelled to try whether she be or be not with child. 4 Bl. Com. 395. See Pregnancy; Quick with child.

MATTER OF RECORD. Those facts which may be proved by the production of a record. It differs from matter in deed, which consists of facts which may be proved by specialty. Vide Estopped.

MATURITY. The time when a bill or note becomes due. In order to bind the endorsers such note or bill must be protested, when not paid, on the last day of grace. See Days of grace.

MAXIM. Is a rule or principle of law universally admitted, as being just and consonant with reason.

2.—Maxims are in law somewhat like axioms in geometry. 1 Bl. Comm. 68; Co. Litt. 11, 67.

3.—Maxims have the force of law, and are binding as such. Plowd. 27 b; D. & S. Dial. 1, c. 4. But the application of the maxim to the case before the court is generally the only difficulty. The true method of making the application is to ascertain how the maxim arose, and to consider whether the case to which it is applied is of the same character, or whether it is an exception to an apparently general rule. Several writers have collected the maxims of the common law, and published them with explanations. The most noted are Bacon, Noy, Francis, Branch and Heath.

4.—Justinian, in the Digest, book 50, title 17, has collected a great number of rules or maxims to which the reader is referred. The first of them explains what a maxim is; Regula est quo rem, quae est, breviter enarrat. Dig. 50, 17, 1. Popes Gregory IX. and Boniface VIII. published at the end of the collection of decretals which bear their names, a compilation of maxims. Vide, generally, Ayl. Pand. B. 1, t. 6; Merl. Répert. Regles de Droit; Pow. Mortg. Index, h. t.; Dane’s Ab. Index, h. t. See a collection of maxims of the civil or Roman law, adopted by the common law. Wooddes. Lect. lxxi. note. See Rule of Law.
MAY. To be permitted; to be at liberty; to have the power.

2.—Whenever a statute directs the doing of a thing for the sake of justice or the public good, the word may is the same as shall. For example, the 23 H. 6, says, the sheriff may take bail, that is construed he shall, for he is compellable to do so. Carth. 293; Salk. 609; Skin. 370.

3.—The words shall and may in general acts of the legislature or in private constitutions, are to be construed imperatively, 3 Atk. 166; but the construction of those words in a deed depends on circumstances. 3 Atk. 282. See 1 Vern. 152, case 142; 9 Porter, R. 390.

MAYHEM, crimes, is the act of unlawfully violently depriving another of the use of such of his members as may render him less able in fighting either to defend himself or annoy his adversary; and therefore the cutting or disabling, or weakening a man’s hand or finger, or striking out his eye or foretooth, or depriving him of those parts; the loss of which abates their courage, are held to be mayhems. But cutting off the ear or nose or the like, are not held to be mayhems at common law. 4 Bl. Com. 205.

2.—These and other severe personal injuries are punished by the Coventry act, (q. v.) which has been re-enacted in several of the states. Ryan’s Med. Jurispr. 191, Philad. ed. 1832; and by congress, vide act of April 30, 1790, s. 13, 1 Story’s Laws U. S. 85; act of March 3, 1825, s. 22, 3 Story’s L. U. S. 2006.

MAYHEMavit. Maimed. This is a term of art which cannot be supplied in pleadings by another word, mutilavit, truncavit, &c. 3 Tho. Co. Litt. 548.

MAYOR, officer. The chief or executive magistrate of a city who bears this title.

2.—It is generally his duty to cause the laws of the city to be enforced, and to superintend inferior officers, such as constables, watchmen and the like. But the power and authority which mayors possess being given to them by local regulations, vary in different places.

MAYOR’S COURT, is the name of a court usually established in cities, composed of a mayor, recorder and aldermen, generally having jurisdiction of offences committed within the city, and of other matters specially given them by the statute.

MEASURE. That which is used as a rule to determine a quantity. A certain quantity of something, taken for a unit, and which expresses a relation with other quantities of the same thing.

2.—The constitution of the United States gives power to congress to “fix the standard of weights and measures.” Art. 1, s. 8. Hitherto this has remained as a dormant power, though frequently brought before the attention of congress.

3.—The states, it seems, possess the power to legislate on this subject, or, at least, the existing standards at the adoption of the constitution remain in full force. 3 Sto. Const. 21; Rawle on the Const. 102.

4.—By a resolution of congress, of the 14th of June, 1836, the secretary of the treasury is directed to cause a complete set of all weights and measures adopted as standards, and now either made or in the progress of manufacture, for the use of the several custom-houses and for other purposes, to be delivered to the governor of each state in the Union, or such person as he may appoint, for the use of the states respectively, to the end that an uniform standard of weights and measures may be established throughout the United States.

5.—Measures are either, 1, of length; 2, of surface; 3, of solidity or capacity; 4, of force or gravity, or what is commonly called weight, (q. v.); 5, of angles; 6, of time. The measures now used in the United States, are the same as those of England, and are as follows:—

1. MEASURES OF LENGTH.

12 inches = 1 foot
3 feet = 1 yard
5.6 yards = 1 rod or pole
40 poles = 1 furlong
8 furlongs = 1 mile
69 9/10 miles = 1 degree of a great circle of the earth.
An inch is the smallest lineal measure to which a name is given, but subdivisions are used for many purposes. Among mechanics, the inch is commonly divided into eightths. By the officers of the revenue and by scientific persons, it is divided into tenths, hundredths, &c. Formerly it was made to consist of twelve parts called lines, but these have fallen into disuse.

**Particular measures of length.**

1st. Used for measuring cloth of all kinds.
1 nail = 2\(\frac{1}{2}\) inches
1 quarter = 4 inches
1 yard = 4 quarters
1 ell = 5 quarters

2d. Used for the height of horses.
1 hand = 4 inches.

3d. Used in measuring depths.
1 fathom = 6 feet.

4th. Used in land measure, to facilitate computation of the contents, 10 square chains being equal to an acre.
1 link = 7\(\frac{2}{20}\) inches.
1 chain = 100 links.

6.—2. **MEASURES OF SURFACE.**

144 square inches = 1 square foot
9 square feet = 1 square yard
30\(\frac{1}{4}\) square yards = 1 perch or rod
40 perches = 1 rood
4 roods or 160 perches = 1 acre
640 acres = 1 square mile.

7.—3. **MEASURES OF SOLIDITY AND CAPACITY.**

1st. Measures of solidity.
1728 cubic inches = 1 cubic foot
27 cubic feet = 1 cubic yard.

2d. Measures of capacity for all liquids, and for all goods, not liquid, except such as are comprised in the next division.
4 gills = 1 pint = 34\(\frac{3}{8}\) cubic inches nearly.
2 pints = 1 quart = 69\(\frac{3}{8}\)
4 quarts = 1 gallon = 277\(\frac{1}{2}\)
2 gallons = 1 peck = 554\(\frac{1}{2}\)

8 gallons = 1 bushel = 2218\(\frac{1}{2}\) cubic inches nearly.
8 bushels = 1 quarter = 10\(\frac{1}{4}\) cubic ft.
5 quarters = 1 load = 51\(\frac{3}{16}\) cubic ft.

The last four denominations are used only for goods not liquids. For liquids, several denominations have heretofore been adopted, namely, for beer, the firkin of 9 gallons, the kilderkin of 18, the barrel of 36, the hogshead of 54, and the butt of 108 gallons. For wine or spirits there are the anker, rumlet, tierce, hogshead, puncheon, pipe, butt and tun; these are however, rather the names of the casks, in which the commodities are imported, than as expressing any definite number of gallons. It is the practice to gauge all such vessels, and to charge them according to their actual contents.

3d. Measure of capacity for coal, lime, potatoes, fruit, and other commodities, sold by heaped measure.

2 gallons = 1 peck = 704 cubic in. nearly.
8 gallons = 1 bushel = 2813\(\frac{3}{8}\)
3 bushels = 1 sack = 4\(\frac{3}{4}\) cubic ft. nearly.
12 sacks = 1 chaldron = 58\(\frac{3}{4}\)

8.—4. **MEASURES OF WEIGHTS.**

See art. **Weights.**

9.—5. **ANGULAR MEASURE; or DIVISION OF THE CIRCLE.**

60 seconds = 1 minute
60 minutes = 1 degree
30 degrees = 1 sign
90 degrees = 1 quadrant
360 degrees or 12 signs = 1 circumference.

Formerly the subdivisions were carried on by sixties; thus the second was divided into 60 thirds, the third into 60 fourths, &c. At present the second is more generally divided decimally into tenths, hundredths, &c. The degree is frequently so divided.

10.—6. **MEASURE OF TIME.**

60 seconds = 1 minute
60 minutes = 1 hour
24 hours = 1 day
7 days = 1 week
28 days, or 4 weeks = 1 lunar month
28, 29, 30, or 31 days = 1 calendar month
12 calendar months = 1 year
365 days = 1 common year
366 days = 1 leap year.
The second of time is subdivided like that of angular measure.

FRENCH MEASURES.
11.—As the French system of weights and measures is the most scientific plan known, and as the commercial connexions of the United States with France are daily increasing, it has been thought proper here to give a short account of that system.
12.—The fundamental, invariable and standard measure by which all weights and measures are formed, is called the mètre, a word derived from the Greek, which signifies measure. It is a linear measure and is equal to 3 feet, 0 inches, 11\(\frac{1}{4}\) lines, Paris measure, or 3 feet, 3 inches, \(\frac{3}{2}\) English. This unit is divided into ten parts; each tenth, in ten hundredths; each hundredth, in ten thousandths, &c. These divisions, as well as those of all other measures, are infinite. As the standard is to be invariable, something has been sought, from which to make it, which is not variable or subject to any change. The fundamental base of the mètre is the quarter of the terrestrial meridian, or the distance from the pole to the equator, which has been divided into ten millions of equal parts, one of which is the length of the mètre. All the other measures are formed from the mètre as follows:

2. MEASURE OF CAPACITY.
13.—The litre. This is the décimètre; or one-tenth part of the cubic mètre; that is, if a vase be made of a cubic form, of a décimètre every way, it would be of the capacity of a litre. This is divided by tenths as the mètre. The measures which amount to more than a single litre are counted by tens, hundreds, thousands, &c., of litres.

3. MEASURES OF WEIGHTS.
14.—The gramme. This is the weight of a cubic centimètre of distilled water at the temperature of zero; that is, if a vase be made of a cubic form, of a hundredth part of a mètre every way, and it be filled with distilled water, the weight of that water will be that of the gramme.

4. MEASURES OF SURFACES.
15.—The arc, used in surveying. This is a square, the sides of which are of the length of ten mètres or what is equal to one hundred square mètres. Its divisions are the same as in the preceding measures.

5. MEASURES OF SOLIDITY.
16.—The stère used in measuring fire-wood. It is a cubic mètre. Its subdivisions are similar to the preceding. The term is used only for measuring fire-wood. For the measure of other things, the term cube mètre, or cubic mètre is used, or the tenth, hundredth, &c., of such a cube.

6. MONEY.
17.—The franc. It weighs five grammes. It is made of nine-tenths of silver, and one-tenth of copper. Its tenth part is called a décime, and its hundredth part a centime.
18.—One measure being thus made the standard of all the rest, they must be all equally invariable; but in order to make this certainty perfectly sure, the following precautions have been adopted. As the temperature was found to have an influence on bodies, the term zero, or melting ice, has been selected in making the models or standard of the mètre. Distilled water has been chosen to make the standard of the gramme, as being purer and less encumbered with foreign matter than common water. The temperature having also an influence on a determinate volume of water, that with which the experiments were made, was of the temperature of zero, or melting ice. The air, more or less charged with humidity, causes the weight of bodies to vary, the models which represent the
weight of the gramme, have therefore been taken in a vacuum.

19. — It has already been stated, that the divisions of these measures are all uniform, namely by tens, or decimal fractions, they may therefore be written as such. Instead of writing,

1 mètre and 1 tenth of a mètre,
2 mètre and 8 tenths,—2 m. 8.
10 mètre and 4 hundredths,—10 m. 04.

7 litres, 1 tenth, and 2 hundredths,
—7 lit. 12, &c.

20. — Names have been given to each of these divisions of the principal unit; but these names always indicate the value of the fraction, and the unit from which it is derived. To the name of the unit have been prefixed the particles déc, for tenth, centé, for hundredth, and milli, for thousandth. They are thus expressed, a décimètre, a décilitre, a decigramme, a décistère, a déchare, a centimètre, a centilitre, a centigramme, &c. The facility with which the divisions of the unit are reduced to the same expression, is very apparent; this cannot be done with any other kind of measures.

21. — As it may sometimes be necessary to express great quantities of units, collections have been made of them in tens, hundreds, thousands, tens of thousands, &c., to which names, derived from the Greek, have been given; namely, déca, for tens; hecto, for hundreds; kilo, for thousands; and myria, for tens of thousands; they are thus expressed; a décamètre, a décadri, &c.; a hectomètre, a hectogramme, &c.; a kilomètre, a kilogramme, &c.

22. — The following table will facilitate the reduction of these weights and measures into our own.

<table>
<thead>
<tr>
<th>Unit</th>
<th>Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mètre</td>
<td>3.28 feet, or 39.371 in.</td>
</tr>
<tr>
<td>Are</td>
<td>1076.441 square feet</td>
</tr>
<tr>
<td>Litre</td>
<td>61.028 cubic inches</td>
</tr>
<tr>
<td>Stère</td>
<td>35.317 cubic feet</td>
</tr>
<tr>
<td>Gramme</td>
<td>15.4441 grains troy, or 5.6481 drams, avoirdupois.</td>
</tr>
</tbody>
</table>

MEAN. This word is sometimes used for mesne, (q. v.)

MEASON-DUE. A corruption of Maison de Dieu, (q. v.)

MEDIATE POWERS, are those invidious to primary powers, given by a principal to his agent. For example, the general authority given to collect, receive and pay debts due by or to the principal is a primary power. In order to accomplish this it is frequently required to settle accounts, adjust disputed claims, resist those which are unjust, and answer and defend suits; these subordinate powers are sometimes called mediate powers. Story, Ag. § 58. See Primary powers, and 1 Campb. R. 43, note; 4 Campb. R. 163; 6 S. & & R. 149.

MEDIATION, is the act of some mutual friend of two contending parties, who brings them to agree, compromise or settle their disputes. Vattel, Droit des Gens, liv. 2, ch. 18, § 328.

MEDICAL JURISPRUDENCE, is that science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in courts of justice. By some authors, it is used in a more extensive sense and also comprehends Medical Police, or those medical precepts which may prove useful to the legislature or the magistracy. Some authors, instead of using the phrase medical jurisprudence, employ, to convey the same idea, those of legal medicine, forensic medicine, or, as the Germans have it, state medicine.

2. — The best American writers on this subject are Doctors T. R. Beck and J. B. Beck, Elements of Medical Jurisprudence; Doctor Thomas Cooper; Doctor James S. Stringham, who was the first individual to deliver a course of lectures on medical jurisprudence, in this country; Doctor Charles Caldwell. Among the British writers may be enumerated Doctor John Gordon Smith; Doctor Male; Doctor Paris and Mr. Fonblanque, who published a joint work; Mr. Chitty, and Doctor Ryan. The French writers are numerous; Briand, Biessy, Esquirol, Georget, Falret, Trebuchet, Marc, and others have written treatises or published papers on this subject; the learned Feodore published a work entitled "Les Lois éclairées par les sciences physiques, ou Traité de Médecine Légale et d’hygiène publique;" the "Anale d’hygiène
et de Médecine Legale," is one of the most valued works on this subject. Among the Germans may be found Rose's Manual on Medico Legal Dissection; Metzger's Principles of Legal Medicine, and others. The reader is referred for a list of authors and their works on Medical Jurisprudence, to Dupin, Profession d'Avocat, tom. ii., p. 343, art. 1617 to 1636, bis. For a history of the rise and progress of Medical Jurisprudence, see Traill, Med. Jur. 13.

MEDICINE CHEST, is a box containing an assortment of medicines.

2.—The act of congress for the government and regulation of seamen in the merchant service, sect. 8, 1 Story's L. U. S. 106, directs that every ship or vessel, belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary, once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

3.—And by the act to amend the above mentioned act, approved March 2, 1805, 2 Story's Laws U. S. 971, it is provided that all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burthen, and upwards shall be extended to all merchant vessels of the burthen of seventy-five tons, or upwards, navigated with six persons, or more, in the whole, and bound from the United States to any port or ports in the West Indies.

MEDIETAS LINGUÆ. Half tongue. This expression was used to signify that a jury for the trial of a foreigner or alien for a crime, was to be composed one half of natives and the other of foreigners. The jury de medietate linguæ is used in but a few if any of the United States. Dane's Ab. vol. 6, c. 182, a, 4, n. 1. Vide 2 Johns. R. 381; 1 Chit. Cr. Law, 525; Bae. Ab. Juries, (B 8).

MELOANCHOLIA, med. jur., a name given by the ancients to a species of partial intellectual mania, now more generally known by the name of monomania, (q. v.) It bore this name because it was supposed to be always attended by dejection of mind and gloomy ideas. Vide Mania.

MELIORATION, Scotch law. Improvements of an estate, other than mere repairs; betterments, (q. v.) 1 Bell's Com. 73.

MELIUS INQUIRENDUM VEL INQUIRENDO, in English practice, is a writ which in certain cases issues after an imperfect inquisition returned on a copias utlugatum in outlawry. This melius inquirendum commands the sheriff to summon another inquest in order that the value, &c. of lands, &c. may be better or more correctly ascertained. Its use is rare.

MEMBER. This word has various significations; 1, the limbs of the body useful in self defense. Membrum est pars corporis habens destinatam operationem in compore. Co. Litt. 126 a. See Limbs.

2.—2. An individual who belongs to a firm, partnership, company or corporation. Vide Corporation; Partnership.

3.—3. One who belongs to a legislative body, or other branch of the government; as, a member of the house of representatives; a member of the court.

MEMBER OF CONGRESS, is a member of the Senate or House of Representatives of the United States.
2.—During the session of congress they are privileged from arrest, except for treason, felony, or breach of the peace; they receive a compensation of eight dollars per day while in session, besides mileage, (q. v.)

3.—They are authorized to frank letters and receive them free of postage for sixty days before, during, and for sixty days after the session.

4.—They are prohibited from entering into any contracts with the United States, directly or indirectly, in whole or in part for themselves and others, under the penalty of three thousand dollars. Act of April 21, 1808, 2 Story’s L. U. S. 1091. Vide Congress; Frank.

MEMBERS, English law, are defined to be places where a custom house has been kept of old time, with officers or deputies in attendance; and they are lawful places of exportation or importation. 1 Chit. Com. L. 726.

MEMORANDUM, insurance, is a clause in a policy limiting the liability of the insurer. Its usual form is as follows, namely, “N. B. Corn, fish, salt, fruit, flour and seed, are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins, are warranted free from average, under five per cent.; and all other goods, also the ship and freight, are warranted free from average, under three per cent. unless general or the ship be stranded.” Marsh. Ins. 223; 5 N. S. 293; Ib. 540; 4 N. S. 640; 2 L. R. 433; Ib. 435.

MEMORANDUM or NOTE. These words are used in the 4th section of the statute 29 Charles 2, c. 3, commonly called the statute of frauds and perjuries, which enacts that “no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing,” &c.

2.—Many cases have arisen out of the words of this part of the statute; the general rule seems to be that the contract must be stated with reasonable certainty in the memorandum or note so that it can be understood from the writing itself, without having recourse to parol proof. 3 John. R. 399; 2 Kent, Com. 402; Cruise, Dig. t. 32, c. 3, s. 18. See 1 N. R. 252; 3 Taunt. 169; 15 East, 103; 2 M. & R. 222; 8 M. & W. 834; 6 M. & W. 109.

MEMORIAL, is a petition or representation made by one or more individuals to a legislative body. When such instrument is addressed to a court, it is called a petition.

MEMORY, understanding; a capacity to make contracts, a will, or to commit a crime, so far as intention is necessary.

2.—Memory is sometimes employed to express the capacity of the understanding, and sometimes its power; when we speak of a retentive memory, we use it in the former sense; when of a ready memory in the latter. Shelf. on Lam. Intr. 29, 30.

3.—Memory, in another sense, is the reputation, good or bad, which a man leaves at his death. This memory, when good, is highly prized by the relations of the deceased, and it is therefore libellous to throw a shade over the memory of the dead, when the writing has a tendency to create a breach of the peace, by inciting the friends and relations of the deceased to avenge the insult offered to the family. 4 T. R. 126; 5 Co. R. 125; Hawk. b. 1, c. 73, s. 1.

MEMORY, TIME OF. According to the English common law, which has been altered by 2 & 3 Wm. 4, c. 71, the time of memory commenced from the reign of Richard the First, A. D. 1189, 2 Bl. Com. 31.

2.—But proof of a regular usage for twenty years, not explained or contradicted, is evidence, upon which many public and private rights are held, and sufficient for a jury in finding the existence of an immemorial custom or prescription. 2 Saund. 175, a, d; Peake’s Ev. 336; 2 Price’s R. 450; 4 Price’s R. 198.

MENACE. A threat; a declaration
of an intention to cause evil to happen to another.

2.—When menaces to do an injury to another have been made, the party making them may, in general, be held to bail to keep the peace; and, when followed by any inconvenience or loss, the injured party has a civil action against the wrong doer. Com. Dig. Battery, D; Vin. Ab. h. t.; Bac. Ab. Assault; Co. Litt. 161 a, 162 b, 253 b; 2 Lutw. 1428. Vide Threat.

MENIAL. This term is applied to servants who live under their master's roof. Vide stat. 2 H. 4, c. 21.

MENSA. This comprehends all goods and necessities for livelihood. Obsolete.

MENSA ET THORO. The phrase d mensa et thoro is applied to a divorce which separates the husband and wife, but does not dissolve the marriage. Vide Divorce.

MERCANDISE. By this term is understood all those things which merchants sell either wholesale or retail, as dry goods, hardware, groceries, drugs, &c. It is usually applied to personal chattels only, and to those which are not required for food or immediate support, but such as remain after having been used, or which are used only by a slow consumption. Vide Pardess. n. 8; Dig. 13, 3, 1; Id. 19, 4, 1; Id. 50, 16, 66. 8 Pet. 277.

MERCHANT, is one whose business it is to buy and sell merchandise; this applies to all persons who habitually trade in merchandise. 1 Watts & S. 469; 2 Salk. 445.

2.—In another sense, it signifies a person who owns ships, and trades, by means of them, with foreign nations, or with the different states of the United States; these are known by the name of shipping merchants. Com. Dig. Merchant, A; Dyer, R. 279 b; Bac. Ab. h. t.

3.—According to an old authority, there are four species of merchants, namely, merchant adventurers, merchants dormant, merchant travellers, and merchant residents. 2 Brownl. 99. Vide, generally, 9 Salk. R. 445; Bac. Ab. h. t.; Com. Dig. h. t.; 1 Bl. Com. 75, 260.

MERCHANTMAN, a ship or vessel employed in a merchant's service. This term is used in opposition to a ship of war.

MERCHANTS' ACCOUNTS. In the statute of limitations, 21 Jac. 1, c. 16, there is an exception which has been copied in the acts of the legislatures of a number of the states, that its provisions shall not apply to such accounts as concern trade and merchandise between merchant and merchant, their factors or servants.

2.—This exception, it has been held, applies to actions of assumpsit as to actions of account. 5 Cranch, 15; but to bring a case within the exception, there must be an account, and that account open and current, and it must concern trade. 12 Pet. 300. See 6 Pet. 151; 5 Mason, R. 505; Bac. Ab. Limitation of Actions, E 3; and article Limitation. MERCY, practice. To be in mercy, signifies to be liable to punishment at the discretion of the judge.

Mercy, crim. law, is the total or partial remission of a punishment to which a convict is subject. When the whole punishment is remitted, it is called a pardon, (q. v.) when only a part of the punishment is remitted, it is frequently a conditional pardon; or before sentence, it is called clemency or mercy. Vide Rutherf. Inst. 224; 1 Kent, Com. 265; 3 Story, Const. § 1488.

MERGER, is where a greater and lesser thing meet, and the latter loses its separate existence and sinks into the former. It is applied to estates, rights, crimes, and torts.

Merger, estates, takes place when a greater estate and less coincide and meet in one and the same person, without any intermediate estate, the less is immediately merged, that is, sunk or drowned in the latter; example, if there be a tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is merged in the inheritance, and no longer exists; but they must be to one and the same person, at one and the same time, in one and the same right. 2 Bl. Com. 177; 3 Mass. Rep. 172; Latch, 153; Poph.
166; 1 John Ch. R. 417; 3 John. Ch. R. 53; 6 Madd. Ch. R. 119.

2.—The estate in which the merger takes place, is not enlarged by the accession of the preceding estate; and the greater, or only subsisting estate, continues, after the merger, precisely of the same quantity and extent of ownership, as it was before the accession of the estate which is merged, and the lesser estate is extinguished, Prest. on Conv. 7; as a general rule, equal estates will not drown in each other.

3.—The merger is produced, either from the meeting of an estate of higher degree, with an estate of inferior degree; or from the meeting of the particular estate and the immediate reversion, in the same person. 4 Kent, Com. 98. Vide 3 Prest. on Conv. which is devoted to this subject. Vide generally Bac. Ab. Leases, &c. R.; 15 Vin. Ab. 361; Dane’s Ab. Index, h. t.; 10 Verm. R. 293; 8 Watts, R. 146; Co. Litt. 338 b, note (4); Hill. Ab. Index, h. t.; and Confusion; Consolidation; Unity of possession.

MERGER, crin. law. When a man commits a great crime which includes a lesser, the latter is merged in the former.

2.—Murder, when committed by blows, necessarily includes an assault and battery; a battery, an assault; a burglary, when accompanied with a felonious taking of personal property, a larceny; in all these, and similar cases, the lesser crime is merged in the greater.

3.—But when one offence is of the same character with the other, there is no merger; as in the case of a conspiracy to commit a misdemeanor, and the misdemeanor is afterwards committed in pursuance of the conspiracy. The two crimes being of equal degree, there can be no legal merger. 4 Wend. R. 265. Vide Civil Remedy.

MERGER, rights. Rights are said to be merged when the same person who is bound to pay is also entitled to receive. This is more properly called a confusion of rights, or extinguishment.

2.—When there is a confusion of rights and the debtor and creditor becomes the same person, there can be no right to put in exortion; but there is an immediate merger. 2 Ves. jr. 264. Example, a man becomes indebted to a woman in a sum of money, and afterwards marries her, there is immediately a confusion of rights, and the debt is merged or extinguished.

MERGER, torts, takes place where a person in committing a felony also commits a tort, against a private person; in this case, the wrong is sunk in the felony, at least until after the felon’s conviction.

2.—The old maxim that a trespass is merged in a felony, has sometimes been supposed to mean that there is no redress by civil action for an injury which amounts to a felony. But it is now established that the defendant is liable to the party injured either after his conviction, Latch, 144; Noy, 82; W. Jones, 147; Sty. 346; 1 Mod. 282; 1 Hale, P. C. 546; or acquittal, 12 East, R. 409; 1 Tayl. R. 58; 2 Hayw. 108. If the civil action be commenced before, the plaintiff will be nonsuited. Yelv. 90, a. n. See Hamm. N. P. 63; Kely, 48; Cas. Temp. Hardw. 350; Loffi, 88; 2 T. R. 750; 3 Groun. R. 458. Butler, J., says, this doctrine is not extended beyond actions of trespass or tort. 4 T. R. 333. See also 1 H. Bl. 583, 588, 594; 15 Mass. R. 78; Th. 336. Vide Civil Remedy; Injury.

3.—The Revised Statutes of New York, part 3, c. 4, t. 1, s. 2, direct that the right of action of any person injured by any felony, shall not, in any case, be merged in such felony, or be in any manner affected thereby. In Kentucky, Pr. Dec. 203, and New Hampshire, 6 N. H. Rep. 454, the owner of stolen goods, may immediately pursue his civil remedy. See, generally, Minor, 8; 1 Stew. R. 70; 15 Mass. 336; Coxe, 115; 4 Ham. 376; 4 N. Hamp. Rep. 239; 1 Miles, R. 312; 6 Rand. 223; 1 Const. R. 231; 2 Root, 90.

MERITS. This word is used principally in matters of defence.

2.—A defence upon the merits, is one that rests upon the justice of the cause, and not upon technical grounds.
only; there is, therefore, a difference
between a good defence, which may be
technical or not, and a defence on the
merits. 5 B. & Ald. 703; 1 Ashm. R.
4; 5 John. R. 536; Ib. 360; 3 John.
R. 245; Ib. 449; 6 John. R. 131; 4
John. R. 486; 2 Cowen, R. 281; 7
Cowen, R. 514; 6 Wend. R. 511; 6
Cowen, R. 395.
MERTON, STATUTE OF. A statu-
tute so called, because the parliament or
rather council, which enacted it, sitting
at Merton in Surrey. It was made the
20 Hen. III. Anno Domini 1236. See
Barr. on the Stat. 41.
MESCROYANT, in our ancient
books, is the name of unbelievers. Vide
Infidel.
MESE. An ancient word used to
signify house, probably from the French
maison; it is said that by this word the
buildings, curtilage, orchards and gardens
will pass. Co. Litt. 56.
MESNE, the middle between two ex-
tremes, that part between the commenc-
ment and the end, as it relates to time.
2.—Hence the profits which a man
receives between disseisin and recovery
of lands are called mesne profits, (q. v.)
Process which is issued in a suit between
the original and final, is called mesne pro-
cess, (q. v.)
3.—In England the word mesne also
applies to a dignity: those persons who
hold lordships or manors of some supe-
rior who is called lord paramount, and
grant the same to inferior persons, they
are called mesne lords.
MESNE PROCESS, is any process issued
between original and final process; that
is between the original writ and the exe-
cution. See Process, mesne.
MESNE PROFITS, torts, remedies, are
the value of the premises, recovered in
ejection, during the time that the les-
or of the plaintiff has been illegally kept
out of the possession of his estate, by
the defendant; such are properly re-
covered by an action of trespass, quare
clausum fregit, after a recovery in ejet-
ment. 11 Serg. & Rawle, 55; Bae.
Ab. Ejectment, H; 3 Bl. Com. 205.
2.—As a general rule, the plaintiff is
entitled to recover for such time as he
can prove the defendant to have been in
possession, provided he does not go back
beyond six years, for in that case, the
defendant may plead the statute of
limitations. 3 Yeates’s R. 13; B. N.
P. 88.
3.—The value of improvements made
by the defendant, may be set off against
a claim for mesne profits, but profits
before the demise laid, should be first
deducted from the value of the improve-
ments. 2 W. C. C. R. 165. Vide,
generally, Bac. Ab. Ejectionment, H;
Woodf. L. & T. ch. 14, s. 3; 2 Selb.
Pr. 140; Fonbl. Eq. Index, h. t.; Com.
L. & T. Index, h. t.; 2 Phil. Ev. 208;
Adams on Ej. ch. 13; Dane’s Ab.
Index, h. t.; Pow. Mortg. Index, h. t.
MESNE, WRIT OF. The name of an
ancient writ, which lies when the lord
paramount distrains on the tenant par-
vail; the latter shall have a writ of
mesne against the lord who is mesne.
F. N. B. 316.
MESSENGER. A person appointed
to perform certain duties, generally of a
ministerial character.
2.—In England, a messenger ap-
pointed under the bankrupt laws is an officer
who is authorized to execute the lawful
commands of commissioners of bankrupts.
MESSUAGE, property. This word
is synonymous with dwelling-house; and
a grant of a messuage with the appurte-
nances, will not only pass a house, but
all the buildings attached or belonging
to it, as also its curtilage, garden and
orchard, together with the close on which
the house is built. 1 Inst. 5, b.; 2
Saund. 400; Ham. N. P. 189; 4 Cruise,
215, note 35; 4 Blackf. 331; but see
the cases cited in 9 B. & Cress. 681; S.
C. 17 Engl. Com. L. 472. This term,
it is said, includes a church. 11 Co. 26;
2 Esp. N. P. 528; 1 Sleik. 256; 8 B.
N. C. 617; 1 Saund. 6.
METHOD. The mode of operating
or the means of attaining an object.
2.—It has been questioned whether
the method of making a thing can be
patented. But it has been considered that a method or mode may be the subject of a patent, because when the object of two patents or effect to be produced is essentially the same, they may both be valid, if the modes of attaining the desired effect are essentially different.

Dav. Pat. Cas. 290; 2 B. & Ald. 350; 2 H. Bl. 492; 8 T. R. 106; 4 Barr. 2397; Gods. on Pat. 85; Perpigna, Manuel des Inventeurs, &c., c. 1, sect. 5, §1, p. 22.

METRE or METER. This word is derived from the Greek, and signifies a measure.

2.—This is the standard of French measure.

3.—The fundamental base of the metre is the quarter of the terrestrial meridian, or the distance from the pole to equator, which has been divided into ten millions of equal parts, one of which is of the length of the metre. The metre is equal to 3.28 feet, or 39.371 inches. Vide Measure.

MEUBLES MEUBLANS. A French term used in Louisiana, which signifies simply household furniture. 4 N. S. 664; 3 Harr. Cond. R. 431.

MICEL GEMOT, Eng. law. In Saxon times, the great council of the nation bore this name, sometimes also called the witenagemot, or assembly of wise men; in aftertimes, this assembly assumed the name of parliament. Vide 1 Bl. Comm. 147.

MICHIGAN. One of the new states of the United States of America. This state was admitted into the Union by the act of congress of January 26th, 1837, Sharsw. cont. of Story's L. U. S. 2531, which enacts "that the state of Michigan shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever."

2.—The constitution of this state was adopted by a convention of the people, begun and held at the capital in the city of Detroit, on Monday the eleventh day of May, 1835. It provides article 3, §1. The powers of the government shall be divided into three distinct departments; the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this constitution.

3.—1. Art. 4, relates to the Legislative department, and provides that §1. The legislative power shall be vested in a senate and house of representatives.

4.—§ 8. No person holding any office under the United States, or of this state, officers of the militia, justices of the peace, associate judges of the circuit and county courts, and postmasters excepted, shall be eligible to either house of the legislature.

5.—§ 9. Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

6.—§ 10. 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 attendance of absent members, in such manner and under such penalties as each house may provide. Each house shall choose its own officers.

7.—§ 11. Each house shall determine the rules of its proceedings, and judge of the qualifications, elections, and return of its own members; and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election.

8.—§ 12. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the request of one-fifth of the members present, be entered on the journal. Any member of either house shall have liberty to dissent from and 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.

9.—§ 13. In all elections by either or both houses, the votes shall be given 
víve voce; and all votes on nominations 
made to the senate shall be taken by yeas 
and nays, and published with the jour-
als of its proceedings.

10.—§ 14. The doors of each house 
shall be open, except when the public 
welfare shall require secrecy; neither 
house shall, without the consent of the 
other, adjourn for more than three days, 
nor to any other place than that where 
the legislature may then be in session.

11.—1st. In considering the house of 
representatives, it will be proper to take 
a view of the qualifications of members; 
the qualification of the electors; the 
number of members; the time for which 
they are elected.

12.—1. The representatives must be 
citizens of the United States, and quali-
fied electors in the respective counties 
which they represent. Art. 4, s. 7.—
2. In all elections, every white male 
citizen above the age of twenty-one years, 
having resided in the state six months 
next preceding any election, shall be enti-
tled to vote at such election; and every 
white male inhabitant of the age afores-
said, who may be a resident of the state 
at the time of the signing of this con-
titution, shall have the right of voting as 
aforesaid; but no such citizen or inhab-
tant shall be entitled to vote except in 
the district, county, or township, in which 
he shall actually reside at the time of 
such election. Art. 2, s. 1.—3. The 
number of members of the house of rep-
resentatives shall never be less than forty-
eight nor more than one hundred. Art. 
4, s. 2.—4. The representatives shall be 
chosen annually on the first Monday of 
November and on the following day.

13.—2d. The senate will be consid-
ered in the same order. 1. Senators 
must be citizens of the United States, 
and be qualified electors in the district 
which they represent. Art. 4, s. 7.—2. 
They are elected by the electors of re-
presentatives. Art. 2, s. 1.—3. The 
 senate shall, at all times, equal in num-
ber one-third of the house of representa-
tives, as nearly as may be. Art. 4, s. 
2.—4. The senators are chosen for two 
years, at the same time and in the same 
manner as the representatives are required 
to be chosen. Article 4, section 5.

14.—2. The executive department is 
regulated by the fifth article of the con-
stitution as follows, namely:

§ 1. The supreme executive power 
shall be vested in a governor, who shall 
hold his office for two years; and a lieu-
tenant-governor shall be chosen at the 
same time and for the same term.

15.—§ 2. No person shall be eligible 
to the office of governor or lieutenant-
governor, who shall not have been five 
years a citizen of the United States, and 
a resident of this state two years next 
preceding the election.

16.—§ 3. The governor and lieuten-
ant-governor shall be elected by the 
electors at the times and places of choos-
ing members of the legislature. The 
persons having the highest number of 
votes for governor and lieutenant-gov-
ernor shall be elected; but in case two 
or more have an equal and the highest 
number of votes for governor or lieuten-
ant-governor, the legislature shall by 
joint vote choose one of the said per-
sons, so having an equal and the highest 
number of votes for governor or lieu-
tenant-governor.

17.—§ 4. The returns of every elec-
tion for governor and lieutenant-gov-
ernor shall be sealed up and transmitted 
to the seat of government, by the re-
turning officers, directed to the president 
of the senate, who shall open and pub-
lish them in the presence of the mem-
bers of both houses.

18.—§ 5. The governor shall be com-
mander-in-chief of the militia, and of 
the army and navy of this state.

19.—§ 6. He shall transact all ex-
ecutive business with the officers of gov-
ernment, civil and military; and may 
require information, in writing, from the 
officers in the executive department, upon 
any subject relating to the duties of their 
respective offices.

20.—§ 7. He shall take care that the 
laws be faithfully executed.
21.—§ 8. He shall have power to convene the legislature on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters to them as he shall deem expedient.

22.—§ 9. He shall have power to adjourn the legislature to such time as he may think proper, in case of disagreement between the two houses with respect to the time of adjournment, but not to a period beyond the next annual meeting.

23.—§ 10. He may direct the legislature to meet at some other place than the seat of government, if that shall become, after its adjournment, dangerous from a common enemy or a contagious disease.

24.—§ 11. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

25.—§ 12. When any office, the appointment to which is vested in the governor and senate, or in the legislature, becomes vacant during the recess of the legislature, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the succeeding session of the legislature.

26.—§ 13. In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor until such disability shall cease, or the vacancy be filled.

27.—§ 14. If, during the vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate, pro tempore, shall act as governor, until the vacancy be filled.

28.—§ 15. The lieutenant-governor shall, by virtue of his office, be president of the senate; in committee of the whole, he may debate on all questions; and, when there is an equal division, he shall give the casting vote.

29.—§ 16. No member of congress, nor any other person holding office under the United States, or this state, shall execute the office of governor.

30.—§ 17. Whenever the office of governor or lieutenant-governor becomes vacant, the person exercising the powers of governor for the time being shall give notice thereof, and the electors shall, at the next succeeding annual election for members of the legislature, choose a person to fill such vacancy.

31.—§ 18. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he has been elected.

32.—§ 19. The lieutenant-governor, except when acting as governor, and the president of the senate, pro tempore, shall each receive the same compensation as shall be allowed to the speaker of the house of representatives.

33.—§ 20. A great seal for the state shall be provided by the governor, which shall contain the device and inscription represented and described in the papers relating thereto, signed by the president of the convention, and deposited in the office of the secretary of the territory. It shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

34.—§ 21. All grants and commissions shall be in the name, and by the authority, of the people of the state of Michigan.

35.—§ 1. The judicial department is regulated by the sixth article as follows, namely:

36.—§ 2. The judges of the supreme court shall hold their offices for the term of seven years; they shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. They shall receive an adequate compensation, which shall not be diminished during their continuance in office. But they shall receive no fees nor perquisites of office, nor hold any other office of
38. § 3. A court of probate shall be established in each of the organized counties.

39. § 4. Judges of all county courts, associate judges of circuit courts, and judges of probate shall be elected by the qualified electors of the county in which they reside, and shall hold their offices for four years.

40. § 5. The supreme court shall appoint their clerk or clerks; and the electors of each county shall elect a clerk, to be denominated a county clerk, who shall hold his office for the term of two years, and shall perform the duties of clerk to all the courts of record to be held in each county, except the supreme court and court of probate.

41. § 6. Each township may elect four justices of the peace, who shall hold their offices four years; and whose powers and duties shall be defined and regulated by law. At their first election they shall be classed and divided by lot into numbers one, two, three, and four, to be determined in such manner as shall be prescribed by law, so that one justice shall be annually elected in each township thereafter. A removal of any justice from the township in which he was elected shall vacate his office. In all incorporated towns, or cities, it shall be competent for the legislature to increase the number of justices.

MIDDLEMAN, contracts, is a person who is employed both by the seller and purchaser of goods, or by the purchaser alone, to receive them in his possession, for the purpose of doing something in or about them; as if goods be delivered from a ship by the seller to a wharfinger, to be by him forwarded to the purchaser, who has been appointed by the latter to receive them; or if goods be sent to a packer, for and by orders of the vendee, the packer is to be considered as a middleman.

2. The goods in both these cases will be considered in transitu, provided the purchaser has not used the wharfinger’s or the packer’s warehouse as his own, and have an ulterior place of delivery in view, 3 B. & P. 127, 469; 4 Esp. R. 82; 2 B. & P. 457; 1 Campb. 282; 1 Atk. 245; 1 H. Bl. 364; 3 East, R. 93; Whit. on Trans. 195.

MIDWIFE, med. jur. A woman who practices midwifery; a woman who pursues the business of an accouchese.

2. A midwife is required to perform the business she undertakes with proper skill, and if she be guilty of any mala praxis, (q. v.) she is liable to an action or an indictment for the misdemeanor. Vide Vin. Ab. Physician; Com. Dig. Physician; 8 East, R. 348; 2 Wils. R. 359; 4 C. & P. 398; S. C. 10 E. C. L. R. 440; 4 C. & P. 407, n. (a); 1 Chit. Pr. 43; 2 Russ. Cr. 288.

MILE, measure. A length of a thousand paces, or seventeen hundred and sixty yards, or five thousand two hundred and eighty feet. It contains eight furlongs, every furlong being forty poles, and each pole sixteen feet six inches. 2 Stark. R. 89.

MILEAGE, is a compensation allowed by law, to officers for their trouble and expenses in travelling on public business.

2. The mileage allowed to members of congress, is eight dollars for every twenty miles of estimated distance, by the most usual roads, from his place of residence to the seat of congress, at the commencement and end of every session. Act of Jan. 22, 1818; 3 Story’s Laws U. S. 1657.

3. In computing mileage the distance by the road usually travelled is that which must be allowed, whether in fact the officer travels a more or less distant way to suit his own convenience. 5 Shepl. R. 431.

MILITIA. The military force of the nation, consisting of citizens called forth to execute the laws of the Union, suppress insurrection and repel invasion.

2. The constitution of the United States provides on this subject as follows: Art. I, s. 8, 14. Congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

3. 15. To provide for organizing, arming, and disciplining the militia, and
for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

4.—Under these clauses of the constitution, the following points have been decided.

1. If congress had chosen, they might, by law, have considered a militia man, called into the service of the United States, as being, from the time of such call, constructively in that service, though not actually so, although he should not appear at the place of rendezvous. But they have not so considered him, in the acts of congress, till after his appearance at the place of rendezvous: previous to that, a fine was to be paid for the delinquency in not obeying the call, which fine was deemed an equivalent for his services, and an atonement for his disobedience.

5.—2. The militia belong to the states respectively, and are subject, both in their civil and military capacities, to the jurisdiction and laws of the state, except so far as these laws are controlled by acts of congress, constitutionally made.

6.—3. It is presumable the framers of the constitution contemplated a full exercise of all the powers of organizing, arming, and disciplining the militia; nevertheless, if congress had declined to exercise them, it was competent to the state governments respectively to do it. But congress has executed these powers as fully as was thought right, and covered the whole ground of their legislation by different laws, notwithstanding important provisions may have been omitted, or those enacted might be beneficially altered or enlarged.

7.—4. After this, the states cannot enact or enforce laws on the same subject. For although their laws may not be directly repugnant to those of congress, yet congress, having exercised their will upon the subject, the states cannot legislate upon it. If the law of the latter be the same, it is inoperative: if they differ, they must, in the nature of things, oppose each other, so far as they differ.

8.—5. Thus if an act of congress imposes a fine, and a state law fine and imprisonment for the same offence, though the latter is not repugnant, inasmuch as it agrees with the act of congress, so far as the latter goes, and add another punishment, yet the wills of the two legislating powers in relation to the subject are different, and cannot consist harmoniously together.

9.—6. The same legislating power may impose cumulative punishments; but not different legislating powers.

10.—7. Therefore, where the state governments have, by the constitution, a concurrent power with the national government, the former cannot legislate on any subject on which congress has acted, although the two laws are not in terms contradictory and repugnant to each other.

11.—8. Where congress prescribed the punishment to be inflicted on a militia man, detached and called forth, but refusing to march, and also provided that courts martial for the trial of such delinquents, to be composed of militia officers only, should be held and conducted in the manner pointed out by the rules and articles of war, and a state had passed a law enacting the penalties on such delinquents which the act of congress prescribed, and directing lists of the delinquents to be furnished to the comptroller of the United States and marshal, that further proceedings might take place according to the act of congress, and providing for their trial by state courts martial, such state courts martial have jurisdiction. Congress might have vested exclusive jurisdiction in courts martial to be held according to their laws, but not having done so expressly, their jurisdiction is not exclusive.

12.—9. Although congress have exercised the whole power of calling out the militia, yet they are not national militia, till employed in actual service; and they are not employed in actual service, till they arrive at the place of rendezvous.

5 Wheat. 1; vide 1 Kent's Com. 262; 3 Story, Const. § 1194 to 1210.

13.—The acts of the national legisla-
ture which regulate the militia are the following, namely: Act of May 8, 1792, 1 Story, L. U. S. 252; Act of February 28, 1795, 1 Story, L. U. S. 390; Act of March 2, 1803, 2 Story, L. U. S. 888; Act of April 10, 1806, 2 Story, L. U. S. 1005; Act of April 20, 1816, 3 Story, L. U. S. 1573; Act of May 12, 1820, 3 Story, L. U. S. 1786; Act of March 2, 1821, 3 Story, L. U. S. 1811.

MILL, estates. Mills are so very different and various, that it is not easy to give a definition of the term. They are used for the purpose of grinding and pulverising grain and other matters, to extract the juices of vegetables, to make various articles of manufacture. They take their names from the uses to which they are employed, hence we have paper-mills, fulling-mills, iron-mills, oil-mills, saw-mills, &c. In another respect their kinds are various; they are either fixed in the freehold or not. Those which are a part of the freehold, are either water-mills, wind-mills, steam-mills, &c.; those which are not so fixed, are hand-mills, and are merely personal property. Those which are fixed, and make a part of the freehold, are buildings with machinery calculated to obtain the object proposed in their erection.

2.—It has been held that the grant of a mill, and its appurtenances, even without the land, carries the whole right of water enjoyed by the grantor, as necessary to its use, and as a necessary incident. Cro. Jac. 121. And a devise of a mill carries the land used with it, and the right to use the water. 1 Serg. & Rawle, 169; and see 5 Serg. & Rawle, 107; 2 Caines’s Ca. 87; 10 Serg. & Rawle, 63; 1 Penna. R. 402; 3 N. H. Rep. 190; 6 Greenl. R. 436; Ib. 154; 7 Mass. Rep. 6; 5 Shepl. 281.

3.—A mill means not merely the building, in which the business is carried on, but includes the site, the dam, and other things annexed to the freehold, necessary for its beneficial enjoyment. 3 Mass. R. 280. Sed vide 6 Greenl. R. 436.

4.—Whether manufacturing machinery will pass under the grant of a mill must depend mainly on the circumstances of each case. 5 Eng. C. L. R.

MILLED MONEY. This term means merely coined money, and it is not necessary that it should be marked or rolled on the edges. Running’s case, Leach, 708.

MILL-REIS. The name of a coin. The mill-reis of Portugal is taken as money of account, at the custom-house to be of the value of one hundred and twelve cents. Act of March 3, 1843.

2.—The mill-reis of Azores, is deemed of the value of eighty-three and one third cents. Act of March 3, 1843.

3.—The mill-reis of Madeira is deemed of the value of one hundred cents. Id.

MINE. An excavation made for obtaining minerals from the bowels of the earth; and the minerals themselves are known by the name of mine.

2.—Mines are therefore considered as open and not open. An open mine is one at which work has been done, and a part of the materials taken out. When
land is let on which there is an open mine, the tenant may, unless restricted by his lease, work the mine. 1 Cru. Dig. 132; 5 Co. R. 12; 1 Chit. Pr. 184, 5; and he may open new pits or shafts for working the old vein, for otherwise the working of the same mine might be impracticable. 2 P. Wms. 368; 3 Tho. Co. Litt. 287; 10 Pick. R. 460. A mine not opened, cannot be opened by a tenant for years unless authorized, nor even a tenant for life, without being guilty of waste. 5 Co. 12.

3.—Unless expressly excepted, mines would be included in the conveyance of land, without being expressly named, and so vice versa, by a grant of a mine, the land itself, the surface above the mine, if livery be made, will pass. Co. Litt. 6; 1 Tho. Co. Litt. 218; Shep. To. 26. Vide, generally, 15 Vin. Ab. 401; 2 Supp. to Ves. jr. 257, and the cases there cited, and 448; Com. Dig. Grant, G 7; Ib. Waifs, H 1; Crabb, R. P. §§ 98-101; 10 East, 273; 1 M. & S. 84; 2 B. & A. 554; 4 Watts, 223-246.

4.—In New York the following provisions have been made in relation to the mines in that state, by the revised statutes, part 1, chapter 9, title 11. It is enacted as follows, by

§ 1. The following mines are, and shall be, the property of this state, in its right of sovereignty. 1. All mines of gold and silver discovered, or hereafter to be discovered, within this state. 2. All mines of other metals discovered, or hereafter to be discovered, upon any lands owned by persons not being citizens of any of the United States. 3. All mines of other metals discovered, or hereafter to be discovered, upon lands owned by a citizen of any of the United States, the ore of which, upon an average, shall contain less than two equal third parts in value, of copper, tin, iron or lead, or any of those metals.

5.—§ 2. All mines, and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state, are, and shall be the property of the people, subject to the provisions hereinafter made to encourage the discovery thereof.

6.—§ 3. All mines of whatever description, other than mines of gold and silver, discovered or hereafter to be discovered, upon any lands owned by a citizen of the United States, the ore of which, upon an average, shall contain two equal third parts or more, in value, of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

7.—§ 4. Every person who shall make a discovery of any mine of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be exempted from paying to the people of this state, any part of the ore, profit or produce of such mine, for the term of twenty-one years, to be computed from the time of giving notice of such discovery, in the manner hereinafter directed.

8.—§ 5. No person discovering a mine of gold or silver within this state, shall work the same, until he give notice thereof, by information in writing, to the secretary of this state, describing particularly therein, the nature and situation of the mine. Such notice shall be registered in a book, to be kept by the secretary for that purpose.

9.—§ 6. After the expiration of the term above specified, the discoverer of the mine, or his representatives, shall be preferred in any contract for the working of such mine, made with the legislature or under its authority.

10.—§ 7. Nothing in this title contained shall affect any grants heretofore made by the legislature, to persons having discovered mines; nor be construed to give to any person a right to enter on, or to break up the lands of any other person, or of the people of this state, or to work any mines in such lands, unless the consent, in writing, of the owner thereof, or of the commissioners of the land office, when the lands belong to the people of this state, shall be previously obtained.

MINISTER, government, is an officer who is placed near the sovereign, and is invested with the administration of some one of the principal branches of the government.
2.—Ministers are responsible to the king or other supreme magistrate who has appointed them. 4 Comm. 134.

Minister, international law, this is the general name given to public functionaries who represent their country abroad, such as ambassadors, (q. v.), envoys, (q. v.) and residents, (q. v.) A custom of recent origin has introduced a new kind of ministers, without any particular determination of character; these are simply called ministers, to indicate that they are invested with the general character of a sovereign’s mandatories, without any particular assignment of rank or character.

2.—The minister represents his government in a vague and indeterminate manner, which cannot be equal to the first degree; and he possesses all the rights essential to a public minister.

3.—There are also ministers plenipotentiary, who, as they possess full powers, are of much greater distinction than simple ministers. These also, are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary. Vattel, liv. 4, c. 6, § 74; 1 Kent, Com. 38; Merl. Répert. h. t. sect. 1, n. 4.

4.—Formerly no distinction was made in the different classes of public ministers, but the modern usage of Europe introduced some distinctions in this respect, which, on account of a want of precision, became the source of controversy. To obviate these, the congress of Vienna, and that of Aix la Chapelle, put an end to these disputes by classing ministers as follows: 1. Ambassadors, and papal legates or nuncios. 2. Envoys, ministers, or others accredited to sovereigns, (au prèts des souverains). 3. Ministers resident, accredited to sovereigns. 4. Chargés d’Affaires, accredited to the minister of foreign affairs. Récez du Congrès de Vienne, du 19 Mars, 1815; Protocu du Congrès d’Aix la Chapelle, du 21 Novembre, 1818; Wheat. Intern. Law, pt. 3, c. 1, § 6.

5.—The act of May 1, 1810, 2 Story’s L. U. S. 1171, fixes a compensation for public ministers, as follows:

§ 1. Be it enacted, &c. That the president of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of nine thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any chargé des affaires, a greater sum than at the rate of four thousand five hundred dollars per annum, as a compensation for all his personal services and expenses; nor to the secretary of any legation or embassy to any foreign country, or secretary of any minister plenipotentiary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any consul who shall be appointed to reside at Algiers, a greater sum than at the rate of four thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any other consul who shall be appointed to reside at any other of the states on the coast of Barbary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor shall there be appointed more than one consul for any one of the said states: Provided, it shall be lawful for the president of the United States to allow to a minister plenipotentiary, or chargé des affaires, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year’s full salary of such minister or chargé des affaires; but no consul shall be allowed an outfit in any case whatever, any usage or custom to the contrary notwithstanding.

6.—§ 2. That to entitle any chargé des affaires, or secretary of any legation or embassy to any foreign country, or secretary of any minister plenipotentiary, to the compensation hereinafter provided, they shall, respectively, be appointed by the president of the United States, by and with the advice and consent of the senate; but in the recess of the senate, the president is hereby authorized to make such appointments, which shall be submitted to the senate at the next session thereafter, for their advice and consent; and no compensa-
tion shall be allowed to any chargé des affaires, or any of the secretaries hereinbefore described, who shall not be appointed as aforesaid: Provided, That nothing herein contained shall be construed to authorize any appointment of a secretary to a chargé des affaires, or to any consul residing on the Barbary coast, or to sanction any claim against the United States for expense incidental to the same, any usage or custom to the contrary notwithstanding.

7.—The act of August 6, 1842, sect. 9, directs, that the president of the United States shall not allow to any minister resident a greater sum than at the rate of six thousand dollars per annum, as a compensation for all his personal services and expenses: Provided, that it shall be lawful for the president to allow to such minister resident, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year’s full salary of such minister resident.

MINISTER, eccles. law, is one ordained by some church to preach the gospel.

2.—Ministers are authorized in the United States, generally, to marry, and are liable to fines and penalties for marrying minors contrary to the local regulations. As to the right of ministers or parsons, see Am. Jur. No. 30, p. 268; Anth. Shep. Touch. 564; 2 Mass. R. 500; 10 Mass. R. 97; 14 Mass. R. 333; 3 Fairf. R. 487.

MINISTERIAL. What is done under the authority of a superior; opposed to judicial; as, the sheriff is a ministerial officer bound to obey the judicial commands of the court.

2.—When an officer acts in both judicial and ministerial capacity, he may be compelled to perform ministerial acts in a particular way, but when he acts in a judicial capacity he can only be required to proceed, the manner of doing so is left entirely to his judgment. See 2 Fairf. 377; Bac. Ab. Justices of the peace, B; 1 Conn. 295; 3 Conn. 107; 9 Conn. 275; 12 Conn. 484; also Judicial; Mandamus; Sheriff.

MINOR, persons. One under the age of twenty-one years while in a state of infancy; one who has not attained the age of a major.

2.—The terms major and minor are more particularly used in the civil law. The common law terms are adult and infant.

MINORITY. The state or condition of a minor; infancy. In another sense it signifies the lesser number of votes of a deliberative assembly; opposed to majority, (q. v.)

MINT, is the place designated by law, where money is coined by authority of the government of the United States.

2.—The mint was established by the act of April 2, 1792, 1 Story’s L. U. S. 227, and located at Philadelphia, where by virtue of sundry acts of congress, it still remains. Act of 24th April, 1800; 1 Story, 770; Act of March 3, 1801; 1 Story, 816; Act of May 19, 1828, 4 Sharsw. cont. of Story’s L. U. S. 2120.

3.—Below will be found a reference to the acts of congress now in force in relation to the mint.

Act of January 18, 1837, 4 Sharsw. cont. of Story, L. U. S. 2120; Act of May 19, 1828, 4 Id. 2120; Act of May 3, 1835; Act of February 13, 1837.

Vide Coin; Foreign Coin; Money.

MINUTE. Measures. In divisions of the circle or angular measures, a minute is equal to sixty seconds, or one sixtieth part of a degree.

2.—In the computation of time, a minute is equal to sixty seconds, or the sixtieth part of an hour. Vide Measure.

MINUTE, practice, is a memorandum of what takes place in court; made by authority of the court. From these minutes the record is afterwards made up.

2.—Toullier says they are so called because the writing in which they were originally was small, that the word is derived from the Latin minuta (scriptura) in opposition to copies which were delivered to the parties, and which were always written in a larger hand. 8 Toull. n. 413.

3.—Minutes are not considered as any part of the record. 1 Ohio R. 268. See 23 Pick. R. 184.

MINUTE BOOK. A book kept by the
clerk or prothonotary of a court, in which minutes of its proceedings are entered. It has been decided that minutes are no part of the record. 1 Ohio R. 268.

MIRROR DES JUSTICES. The Mirror of Justices, a treatise written during the reign of Edward II. Andrew Horne is its reputed author. It was first published in 1614, and in 1768, it was translated into English by William Hughes. Some diversity of opinion seems to exist as to its merits. Pref. to 9 & 10 Co. Rep. As to the history of this celebrated book, see St. Armand’s Hist. Essays on the Legislative power of England, 58, 59.

MIS. A syllable which prefixed to some word signifies some fault or defect; as, misadventure, misprision, mistrial, and the like.

MISADVENTURE, crm. law; torts, is an accident by which an injury occurs to another.

2. — When applied to homicide, misadventure is the act of a man who, in the performance of a lawful act, without any intention to do harm, and after using proper precaution to prevent danger, unfortunately kills another person. The act upon which the death ensues must be neither malum in se, nor malum prohibitum. The usual examples under this head are, 1, when the death ensues from innocent recreations; 2, from moderate and lawful correction (q. v.) in foro domestico; and, 3, from acts lawful and indifferent in themselves, done with proper and ordinary caution. 4 Bl. Com. 182; 1 East, P. C. 221.

MISBEHAVIOUR. Improper or unlawful conduct. See 2 Mart. N. S. 683.

2. A party guilty of misbehaviour, as, for example, to threaten to do injury to another, may be bound to his good behaviour, and thus restrained. See Good behaviour.

3. — Verdicts are not unfrequently set aside on the ground of misbehaviour of jurors; as, when the jury take out with them papers which were not given in evidence, to the prejudice of one of the parties. Id. Raym. 148; when they separate before they have agreed upon their verdict. 3 Day, 287, 310; when they cast lot for a verdict. 2 Lev. 205; or give their verdict, because they have agreed to give it for the amount ascertained, by each juror putting down a sum, adding the whole together, and then dividing by twelve, the number of jurors, and giving their verdict for the quotient. 15 John. 87. See Bac. Ab. Verdict, H.

4. — A verdict will be set aside if the successful party has been guilty of any misbehaviour towards the jury, as, if he say to a juror, “I hope you will find a verdict for me,” or “the matter is clearly of my side.” 1 Vent. 125; 2 Roll. Ab. 716, pl. 17. See Code, 166, 401; Bac. Ab. Verdict, I.

MISCARRIAGE, med. jurispr. By this word is technically understood the expulsion of the ovum or embryo from the uterus within the first six weeks after conception; between that time and before the expiration of the sixth month, when the child may possibly live, it is termed abortion. When the delivery takes place soon after the sixth month, it is denominated premature labour. But the criminal act of destroying the fetus at any time before birth, is termed in law, procuring miscarriage. Chit. Med. Jur. 410; 2 Dunglison’s Human Physiology, 364. Vide Abortion; Fetus.

MISCARRIAGE, contracts, torts. By the English statute of frauds, 29 C. 2, c. 3, s. 4, it is enacted that “no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement,” &c. “shall be in writing,” &c. The word miscarriage, in this statute comprehends that species of wrongful act, for the consequences of which the law would make the party civilly responsible. The wrongful riding the horse of another, without his leave or license, and thereby causing his death, is clearly an act for which the party is responsible in damages, and, therefore, falls within the meaning of the word miscarriage. 2 Barn. & Ald. 516; Burge on Sur. 21.

MISCIGNISANT. This word, which
is but little used, signifies ignorant, or not knowing. Stat. 32, H. 8, c. 9.

MISCONTINUANCE, practice. By this term is understood a continuance of a suit by undue process. Its effect is the same as a discontinuance, (q. v.) 2 Hawk. 299; Kitch. 231; Jenk. Cent. 57.

MISDEMEANOR, crim. law. This term is used to express every offence inferior to felony, punishable by indictment, or by particular prescribed proceedings: in its usual acceptance it is applied to all those crimes and offences for which the law has not provided a particular name; this word is generally used in contradistinction to felony; misdemeanors comprehending all indictable offences, which do not amount to felony, as perjury, battery, libels, conspiracies and public nuisances.

2.—Misdemeanors have sometimes been called misprisions, (q. v.) Burn’s Just. tit. Misdemeanor; 4 Bl. Com. 5, n. 2; 2 Bar. & Adolph. 75; 1 Russell, 43; 1 Chitty, Pr. 14; 3 Verm. 347; 2 Hill, S. C. 674; Addis. 21; 3 Pick. 26; 1 Greenl. 226; 2 P. A. Browne, 249; 9 Pick. 1; 1 S. & R. 342; 6 Call, 245; 4 Wend. 229; 2 Stew. & Port. 379. And see 4 Wend. 229, 265; 12 Pick. 496; 3 Mass. 254; 5 Mass. 106. See Offence.

MISDIRECTION, practice, is an error made by a judge in charging the jury in a special case.

2.—Such misdirection is either in relation to matters of law or matters of fact.

3.—1. When the judge at the trial misdirects the jury, on matters of law, material to the issue, whatever may be the nature of the case, the verdict will be set aside, and a new trial granted, 6 Mod. 242; 2 Salk. 649; 2 Wils. 263; or if such misdirection appear in the bill of exceptions or otherwise upon the record, a judgment founded on a verdict thus obtained, will be reversed. When the issue consists of a mixed question of law and fact, and there is a conceded state of facts, the rest is a question for the court; 2 Wend. R. 596; and a misdirection in this respect will avoid the verdict.

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4.—2. Misdirection as to matter of fact will in some cases be sufficient to vitiate the proceedings. If, for example, the judge should undertake to dictate to the jury. When the judge delivers his opinion to the jury on a matter of fact, it should be delivered as mere opinion, and not as direction, 12 John. R. 513. But the judge is in general allowed a very liberal discretion in charging a jury on matters of fact. 1 McGe & Y. 286.

5.—As to its effects, misdirection must be calculated to do injustice; for if justice has been done, and a new trial would produce the same result, a new trial will not be granted on that account. 2 Salk. 644, 646; 2 T. R. 4; 1 B. & P. 333; 5 Mass. R. 1; 7 Greenl. R. 442; 2 Pick. R. 310; 4 Day’s R. 42; 5 Day’s R. 329; 3 John. R. 528; 2 Penna. R. 325.

MISE, in the English law, in a writ of right which is intended to be tried by the grand assize, the general issue is called the mise. Lawes Civ. Pl. 111; 7 Cowen, 51. This word also signifies expenses, and it is so commonly used in the entries of judgments in personal actions; as when the plaintiff recovers, the judgment is quod recuperet danna suae for such value, and pro mises et causagiis for costs and charges for so much, &c.

MISERABILE DEPOSITUM, civil law. The name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity. Poth. Procéd. Civ. 5ème part., ch. 1, § 1; Louis. Code, 2935.

MISERICORDIA, mercy. An arbitrary or discretionairy amercement.

2.—To be in mercy, is to be liable to such punishment as the judge may inflict in his discretion inflict. According to Spelman, misericordia is so called, because the party is in mercy, and to distinguish this fine from redemptions, or heavy fines. Spelm. Gl. ad voc.; see Co. Litt. 126 b, and Madox’s Excheq. c. 14. See Judgment of Misericordia.

MISFEASANCE, torts, contracts, is the performance of an act which might lawfully be done, in an improper man-
ner, by which another person receives an injury. It differs from malafeasance, (q. v.) or nonfeasance, (q. v.) Vide, generally, 2 Vin. Ab. 35; 2 Kent, Com. 443; Doct. Pl. 62; Story, Bail. § 9.

2.—It seems to be settled that there is a distinction between misfeasance and nonfeasance in the case of mandates. In cases of nonfeasance, the mandatory is not generally liable, because his undertaking being gratuitous, there is no consideration to support it, but in cases of misfeasance, the common law gives a remedy for the injury done, and to the extent of that injury. 5 T. R. 143; 4 John. Rep. 84; Story, Bailment, § 165; 2 Ld. Raym. 909, 919, 920; 2 Johns. Cas. 92; Doct. & Stu. 210; 1 Esp. R. 74; 1 Russ. Cr. 140.

MISJOINER, pleading. Misjoiner of causes of action, or counts, consists in joining, in different counts in one declaration, several demands, which the law does not permit to be joined; to enforce several distinct, substantive rights of recovery; as, where a declaration joins a count in trespass with another in case, for distinct wrongs; or a count in tort, with another in contract. Gould on Pl. c. 4, § 98; Archb. Civ. Pl. 61, 78, 176; Serg. and Rawle, 358; Dane's Ab. Index, h. t.

2.—Misjoiner of parties, consists in joining as plaintiffs or defendants, persons who have not a joint interest. When the misjoiner relates to the plaintiffs, the defendants may, at common law, plead the matter in abatement, whether the action be real, 12 H. 4, 15; personal, Johns. Ch. R. 350, 438; 12 John. R. 1; 2 Mass. R. 293; or mixed; or it will be good cause of nonsuit at the trial, 3 Bos. & Pull. 235; where the objection appears upon the face of the declaration, the defendant may demur generally, 2 Saund. 115; or move in arrest of judgment; or bring a writ of error.

3.—When in actions et contractu against several, there is a misjoinder of the defendants, as if there be too many persons made defendants, and the objection appears on the pleadings, either of the defendants may demur, move in arrest of judgment, or support a writ of error; and, if the objection do not appear on the pleadings, the plaintiff may be nonsuited upon the trial, if he fail in proving a joint contract. 5 Johns. R. 280; 2 Johns. R. 213; 11 Johns. R. 101; 5 Mass. R. 270.

4.—In actions ex delicto, the misjoinder cannot in general be objected to, because in actions for torts, one defendant may be found guilty and the others acquitted. Archb. Civ. Pl. 79. As to the cases in which a misjoinder may be aided by a nolle prosequi, see 2 Archb. Pr. 218-220.

MISNOMER. The act of using a wrong name.

2.—Misnomers may be considered with regard to contracts, to devises and bequests, and to suits or actions.

3.—1. In general, when the party can be ascertained, a mistake in the name will not avoid the contract. 11 Co. 20, 21; Lord Raym. 304; Hob. 125. Nihil facit error nominis, cum de corpori constat, is the rule of the civil law.

4.—2. Misnomers of legatees, will not in general avoid the legacy, when the person intended can be ascertained from the context: example, Thomas Stockdale bequeathed "to his nephew Thomas Stockdale, second son of his brother John Stockdale," 1000l. John had no son named Thomas, his second son was named William, and he claimed the legacy. It was determined in his favour, because the mistake of the name was obviated by the correct description given of the person, namely, the second son of John Stockdale. 19 Ves. 381; S. C. Coop. 229; and see Ambl. 175; 3 Leon. 18; Co. Litt. 3 a; Finch's R. 403; Domat, 1. 4, t. 2, s. 1, n. 22; 1 Rep. Leg. 131.

5.—3. Misnomers in suits or actions, when the mistake is in the name of one of the parties, it must be pleaded in abatement, 1 Chit. Pl. 440; 1 Mass. 76; 5 Mass. 97; 15 Mass. 469; 16 Mass. 146; 10 S. & R. 257; 4 Cowen, R. 148; Cox, 138; 6 Munf. 219; 2 Wash. C. C. R. 200; 2 Penna. 984; 5 Halst. R. 295; 1 Pen. R. 75, 187; 6 Munf. 580; 3 Caines, 170; 1 Tayl.
for the misnomer of one of the parties sued is not material on the general issue, when the identity is proved. 16 East, R. 110.

6.—The names of third persons must be correctly laid, for the error will not be helped by pleading the general issue; but if a sufficient description be given, it has been held in a civil case, that the misnomer was immaterial; example, in an action for medicines alleged to have been furnished to defendant’s wife Mary, and his wife was named Elizabeth, the misnomer was held to be immaterial, the word wife being the material word. 2 Marsh. R. 159. In indictments, the names of third persons must be correctly given, Rose. Cr. Ev. R. 78. Vide, generally, 18 E. C. L. R. 149; 10 East, R. 83, n.; Bac. Ab. h. t.; Dane’s Ab. h. t.; 1 Vin. Ab. 7; 15 Vin. Ab. 466; 2 Phil. Ev. 2, note b; Bac. Ab. Abatement, D.; Archib. Civ. Pl. 308; 1 Mete. & Perk. Dig. Abatement, V.; and this Dictionary, Abatement; Contracts; Parties to Contracts; Parties to Actions.

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defence of an action, is so called.

2.—Pleading not guilty to an action of debt, is an example of the first; and when the plaintiff sets out a title not simply in a defective manner, but sets out a defective title, is an example of the second. See 3 Salk. 365.

MISPRISION, crim. law. 1. In its larger sense, this word is used to signify every considerable misdemeanor which has not a certain name given to it in the law; and it is said that a misprison is contained in every treason or felony whatever. 2. In its narrower sense it is the concealment of a crime.

2.—Mispriion of treason is the concealment of treason, by being merely passive, act of Congress of 30th of April, 1790, 1 Story’s L. U. S. 83; 1 East, P. C. 139; for if any assistance be given to the traitor, it makes the party a principal, as there are no accessories in treason.

3.—Mispriion of felony, is the like concealment of felony, without giving any degree of maintenance to the felon, act of Congress of 30th April, 1790, s. 6, 1 Story’s L. U. S. 84; if for any aid be given him, the party becomes an accessory after the fact.

4.—It is the duty of every good citizen, knowing of a treason or felony having been committed, to inform a magistrate; silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprison. 1 Russ. on Cr. 43; Hawk. P. C. c. 59, s. 6; Ib. Book 1, c. 5, s. 1; 4 Bl. Com. 119.

5.—Mispriions which are merely positive, are denominated contempt or high misdemeanors, as for example, dissuading a witness from giving evidence. 4 Bl. Com. 126.

MISREADING, in contracts. When a deed is read falsely to an illiterate or blind man, a party to it, such false reading amounts to a fraud, because the contract never had the assent of both parties. 5 Co. 19; 6 East, R. 309; Dane’s Ab. c. 86, a, 3, § 7; 2 John. R. 404; 12 John. R. 469; 3 Cowen, R. 557.

MISRECITAL, contracts, pleading, is the incorrect recital of a matter of fact, either in an agreement or a plea; under the latter term is here understood the declaration and all the subsequent pleadings. Vide Recital, and the cases there cited, and Bac. Ab. Pleas, &c. B. 3, n. 3.

MISREPRESENTATION, contracts, is the statement made by a party to a contract, that a thing relating to it is in fact a particular way, when he knows it is not so.

2.—The misrepresentation must be both false and fraudulent in order to make the party making it responsible to the other for damages. 3 Conn. R. 413; 10 Mass. R. 197; 1 Rep. Const. Court, 328, 475; Yelv. 21 a, note (1); Peake’s Cas. 115; 3 Campb. 154; Marsh. Ins. B. 1, c. 10, s. 1. And see Representation. It is not every misrepresentation which will make a party liable; when a mere misstatement of a fact has been erroneously made, without fraud, in a casual, impromptu communication, re-
specting a matter which the person to whom the communication was made, and who had an interest in it, should not have taken upon trust, but was bound to inquire himself, and had the means of ascertaining the truth, there would be no responsibility; 5 Maule & Selw. 380; 1 Chit. Pr. 836; 1 Sim. R. 13, 63; and when the informant was under no legal pledge or obligation as to the precise accuracy and correctness of his statement, the other party can maintain no action for the consequences of that statement, upon which it was his indiscretion to place reliance. 12 East, 638; see also, 2 Cox, R. 134; 13 Ves. 133; 3 Bos. & Pull. 370; 2 East, 103; 3 T.R. 56, 61; 3 Balstr. 93; 6 Ves. 183; 3 Ves. & Bea. 110; 4 Dall. R. 250. Vide Concealment; Representation. Suggestio falsi; Supressio veri.

MISSING SHIP, mar. law. When a ship or other vessel has been at sea for a much longer time than she ought to have been, she is presumed to have perished there with all-on board, and such a vessel is called a missing ship.

2.—There is no precise time fixed as to when the presumption is to arise, and this must depend upon the circumstances of each case; 2 Str. R. 1199; Park. Ins. 63; Marsh. Ins. 488; 2 Johns. R. 150; 1 Caines's R. 525; Holt's N. P. Rep. 242.

MISSISSIPPI. The name of one of the new states of the United States of America. This state was admitted into the Union by a resolution of congress passed the 10th day of December, 1817, 3 Story's L. U. S. 1716, by which it is “Resolved, that the state of Mississippi shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.”

2.—The constitution of this state was adopted at the town of Washington the 15th day of August, 1817. It was revised by a convention and adopted on the 26th day of October, 1832, when it went into operation.

3.—By the second article of the constitution, a provision is made for the distribution of powers as follows, namely:

§ 1. The powers of the government of the state of Mississippi, shall be divided into three distinct departments, and each of them confided to a separate body of magistracy; to wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

4.—2. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

5.—1st. The legislative power of this state is vested in two distinct branches: the one styled “the Senate,” the other, “the House of Representatives;” and both together “the Legislature of the state of Mississippi.”

6.—The following regulations contained in the third article of the constitution apply to both branches of the legislature.

7.—§ 16. Each house may determine the rules of its own proceedings, punish members for disorderly behaviour, and with the consent of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

8.—§ 17. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall at the desire of any three members present, be entered on the journal.

9.—§ 18. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

10.—§ 19. Senators and representatives shall in all cases, except of treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.
11.—§ 20. Each house may punish by imprisonment, during the session, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings: Provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

12.—§ 21. The doors of each house shall be open, except on such occasions of great emergency, as, in the opinion of the house, may require secrecy.

13.—§ 22. 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.

14.—§ 23. Bills may originate in either house, and be amended, altered or rejected by the other, but no bill shall have the force of a law, until on three several days, it be read in each house, and free discussion be allowed thereon, unless four fifths of the house in which the bill shall be pending, may deem it expedient to dispense with this rule; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

15.—§ 24. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

16.—§ 25. Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

17.—§ 26. No senator or representative shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people; and no member of either house of the legislature shall, after the commencement of the first session of the legislature after his election and during the remainder of the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part by either branch of the legislature.

18.—§ 27. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff or collector, or any person holding a lucrative office under the United States or this state, shall be eligible to the legislature: Provided, That offices in the militia, to which there is attached no annual salary, and the office of justice of the peace, shall not be deemed lucrative.

19.—§ 28. No person who hath hitherto been, or hereafter may be, a collector or holder of public moneys, shall have a seat in either house of the legislature, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

20.—§ 29. The first election for senators and representatives shall be general throughout the state, and shall be held on the first Monday and day following in November, 1833; and thereafter, there shall be biennial elections for senators to fill the places of those whose term of service may have expired.

21.—§ 30. The first and all future sessions of the legislature shall be held in the town of Jackson, in the county of Hinds, until the year 1850. During the first session thereafter, the legislature shall have power to designate by law the permanent seat of government: Provided, however, That unless such designation be then made by law, the seat of government shall continue permanently at the town of Jackson. The first session shall commence on the third Monday in November, in the year 1833. And in every two years thereafter, at such time as may be prescribed by law.

22.—1. The senate. Under this head will be considered the qualification of senators; their number; by whom they are elected; the time for which they are elected. 1. No person shall be a senator unless he be a citizen of the United States, and shall have been an inhabitant of this state for four years next preceding his election, and the last year thereof a
resident of the district for which he shall be chosen, and have attained the age of thirty years. Art. 3, s. 14. 2. The number of senators shall never be less than one fourth, nor more than one third, of the whole number of representatives. Art. 3, s. 10. 3. The qualifications of electors is as follows: every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last four months within the county, city, or town in which he offers to vote, shall be deemed a qualified elector. Art. 3, s. 1. 4. The senators shall be chosen for four years, and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into two classes, as nearly equal as can be. And the seats of the senators of the first class shall be vacated at the expiration of the second year.

23.—2. The house of representatives, will be considered in the same order that has been observed in relation to the senate. —1. No person shall be a representative unless he be a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city or town for which he shall be chosen; and shall have attained the age of twenty-one years. Art. 3, s. 7.—2. The number of representatives shall not be less than thirty-six, nor more than one hundred. Art. 3, s. 9.—3. They are elected by the same electors who elect senators. Art. 3, s. 1.—4. The representatives are chosen every two years on the first Monday and day following in November. They serve two years from the day of the commencement of the general election and no longer. Art. 3, s. 5 and 6.

24.—2d. The judicial power. By the fourth article of the constitution, the judicial power is distributed as follows, namely:

§ 1. The judicial power of this state shall be vested in one high court of errors and appeals, and such other courts of law and equity as are hereafter provided for in this constitution.

25.—§ 2. The high court of errors and appeals shall consist of three judges, any two of whom shall form a quorum. The legislature shall divide the state into three districts, and the qualified electors of each district shall elect one of said judges for the term of six years.

26.—§ 3. The office of one of said judges shall be vacated in two years, and of one in four years, and of one in six years, so that at the expiration of every two years, one of said judges shall be elected as aforesaid.

27.—§ 4. The high court of errors and appeals shall have no jurisdiction, but such as properly belongs to a court of errors and appeals.

28.—§ 5. All vacancies that may occur in said court, from death, resignation or removal, shall be filled by election as aforesaid. Provided, however, that if the unexpired term do not exceed one year, the vacancy shall be filled by executive appointment.

29.—§ 6. No person shall be eligible to the office of judge of the high court of errors and appeals, who shall not have attained, at the time of his election, the age of thirty years.

30.—§ 7. The high court of errors and appeals shall be held twice in each year, at such place as the legislature shall direct, until the year eighteen hundred and thirty-six, and afterwards at the seat of government of the state.

31.—§ 8. The secretary of state, on receiving all the official returns of the first election, shall proceed, forthwith, in the presence and with the assistance of two justices of the peace, to determine by lot among the three candidates having the highest number of votes, which of said judges elect shall serve for the term of two years, which shall serve for the term of four years, and which shall serve for the term of six years, and having so determined the same, it shall be the duty of the governor to issue commissions accordingly.

32.—§ 9. No judge shall sit on the trial of any cause when the parties or either of them shall be connected with him by affinity or consanguinity, or when he may be interested in the same, except
by consent of the judge and of the parties; and whenever a quorum of said court are situated as aforesaid, the governor of the state shall in such case specially commission two or more men of law knowledge for the determination thereof.

33.—§ 10. The judges of said court shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

34.—§ 11. The judges of the circuit court shall be elected by the qualified electors of each judicial district, and hold their offices for the term of four years, and reside in their respective districts.

35.—§ 12. No person shall be eligible to the office of judge of the circuit court, who shall not at the time of his election, have attained the age of twenty-six years.

36.—§ 13. The state shall be divided into convenient districts, and each district shall contain not less than three nor more than twelve counties.

37.—§ 14. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state; but in civil cases only when the principal of the sum in controversy exceeds fifty dollars.

38.—§ 15. A circuit court shall be held in each county of this state, at least twice in each year; and the judges of said courts, shall interchange circuits with each other, in such manner as may be prescribed by law, and shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

39.—§ 16. A separate superior court of chancery shall be established, with full jurisdiction in all matters of equity; Provided, however, the legislature may give to the circuit courts of each county equity jurisdiction in all cases where the value of the thing, or amount in controversy, does not exceed five hundred dollars; also, in all cases of divorce, and for the foreclosure of mortgages. The chancellor shall be elected by the qualified electors of the whole state, for the term of six years, and shall be at least thirty years old at the time of his election.

40.—§ 17. The style of all process, shall be "The state of Mississippi," and all prosecutions shall be carried on in the name and by the authority of "The state of Mississippi," and shall conclude "against the peace and dignity of the same."

41.—§ 18. A court of probates shall be established in each county of this state, with jurisdiction in all matters testamentary and of administration in orphans' business and the allotment of dower, in cases of idiocy and lunacy, and of persons non compos mentis; the judge of said court shall be elected by the qualified electors of the respective counties, for the term of two years.

42.—§ 19. The clerk of the high court of errors and appeals shall be appointed by said court, for the term of four years, and the clerks of the circuit, probate, and other inferior courts, shall be elected by the qualified electors of the respective counties, and shall hold their offices for the term of two years.

43.—§ 20. The qualified electors of each county shall elect five persons for the term of two years, who shall constitute a board of police for each county, a majority of whom may transact business; which body shall have full jurisdiction over roads, highways, ferries, and bridges, and all other matters of county police, and shall order all county elections to fill vacancies that may occur in the offices of their respective counties: the clerk of the court of probate shall be the clerk of the board of county police.

44.—§ 21. No person shall be eligible as a member of said board, who shall not have resided one year in the county: but this qualification shall not extend to such new counties as may hereafter be established until one year after their organization; and all vacancies that may occur in said board shall be supplied by election as aforesaid to fill the unexpired term.

45.—§ 22. The judges of all the courts of the state, and also the members of the board of county police, shall in virtue of their offices be conservators of the peace, and shall be by law vested with ample powers in this respect.
46.—§ 23. A competent number of justices of the peace and constables shall be chosen in each county by the qualified electors thereof, by districts, who shall hold their offices for the term of two years. The jurisdiction of justices of the peace shall be limited to causes in which the principal of the amount in controversy shall not exceed fifty dollars. In all causes tried by a justice of the peace, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law.

47.—§ 24. The legislature may from time to time establish such other inferior courts as may be deemed necessary, and abolish the same whenever they shall deem it expedient.

48.—§ 25. There shall be an attorney general elected by the qualified electors of the state; and a competent number of district attorneys shall be elected by qualified voters of their respective districts, whose compensation and term of service shall be prescribed by law.

49.—§ 26. The legislature shall provide by law for determining contested elections of judges of the high court of errors and appeals, of the circuit and probate courts, and other officers.

50.—§ 27. The judges of the several courts of this state, for wilful neglect of duty or other reasonable cause, shall be removed by the governor on the address of two-thirds of both houses of the legislature; the address to be by joint vote of both houses. The cause or causes for which such removal shall be required, shall be stated at length in such address, and on the journals of each house. The judge so intended to be removed, shall be notified and admitted to a hearing in his own defence before any vote for such address shall pass; the note on such address shall be taken by yeas and nays, and entered on the journals of each house.

51.—§ 28. Judges of probate, clerks, sheriffs, and other county officers, for wilful neglect of duty, or misdemeanor in office, shall be liable to presentment or indictment by a grand jury, and trial by a petit jury, and upon conviction shall be removed from office.

52.—3d. The chief executive power of this state shall be vested in a governor. It will be proper to consider his qualifications; by whom he is elected; the time for which he is elected; his rights, duties, and powers; and how vacancies are supplied when the office of governor becomes vacant.

53.—1. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this state at least five years next preceding the day of his election, and shall not be capable of holding the office more than four in any term of six years. Art. 5, s. 3.

54.—2. The governor shall be elected by the qualified electors of the state. Art. 5, s. 2.

55.—3. He shall hold his office for two years from the time of his installation. Art. 5, s. 1.

56.—4. He shall, at stated times, receive for his services a compensation which shall not be increased or diminished during the term for which he shall be elected. Art. 5, s. 4.

57.—5. He shall be commander in chief of the army and navy in this state, and of the militia, except when they shall be called into the service of the United States. Art. 5, s. 5.

58.—6. He may require information in writing, from the officers in the executive department, on any subject relating to the duties of their respective offices. Art. 5, s. 6.

59.—7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the legislature. Art. 5, s. 7.

60.—8. He shall from time to time give to the legislature information of the state of the government, and recommend to their consideration such mea-
sures as he may deem necessary and expedient. Art. 5, s. 8.

61.—9. He shall take care that the laws be faithfully executed. Art. 5, s. 9.

62.—10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines; and in cases of forfeiture to stay the collection until the end of the next session of the legislature, and to remit forfeitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature. Art. 5, s. 10.

63.—11. All commissions shall be in the name and by the authority of the state of Mississippi; be sealed with the great seal, and signed by the governor, and be attested by the secretary of state. The governor is also invested with the veto power. Art. 5, s. 15 and 16.

64.—Whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified; and in case of the death, resignation, removal from office, or other disqualifications of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until the president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. Art. 5, s. 17.

MIS.

MISSOURI. The name of one of the new states of the United States of America. This state was admitted into the Union by a resolution of congress, approved March 2, 1821, 3 Story's L. U. S. 1823, by which it is resolved, that Missouri shall be admitted into this Union on an equal footing with the original states, in all respects whatever. To this resolution there is a condition which having been fulfilled, it is now useless here to repeat.

2.—The convention which formed the constitution of this state assembled at St. Louis, on Monday the 12th of June, 1820, and continued by adjournment, till the 19th day of July, 1820, when the constitution was adopted establishing "an independent republic by the name of the state of Missouri."

3.—The powers of the government are divided into three distinct departments, each of which is confided to a separate magistracy. Art. 2.

4.—1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives. 1. The senate is to consist of not less than fourteen nor more than thirty-three members. The senators are chosen by the electors for the term of four years; one-half of the senators are chosen every second year. 2. The house of representatives is never to consist of more than one hundred members. The members are chosen by the qualified electors every second year.

5.—2d. The executive power is vested in a governor and lieutenant-governor: 1. The supreme executive power is vested in a chief magistrate, styled "the governor of the state of Missouri." Art. 4, s. 1. He is elected by the people, and holds his office for four years, and until a successor be duly appointed and qualified. Art. 4, s. 3. He is invested with the veto power. Art. 4, s. 10. The lieutenant-governor is elected at the same time, in the same manner, for the same term, and is required to possess the same qualifications as the governor. Art. 4, s. 14. He is by virtue of his office president of the senate, and when the office of governor becomes vacant by death, resignation, absence from the state, removal from office, refusal to qualify, or otherwise, the lieutenant-governor possesses all the powers and discharges all the duties of governor until such vacancy be filled, or the governor, so absent or impeached, shall return or be acquitted. And in such case there shall be a new
election after three months previous notice.

6.—3d. The judicial powers are vested by the 5th article of the constitution as follows:

§ 1. The judicial powers, as to matters of law and equity, shall be vested in a "supreme court," in a "chancellor," in "circuit courts," and in such inferior tribunals as the general assembly may, from time to time, ordain and establish.

7.—2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under the restrictions and limitations in this constitution provided.

8.—3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs; and to hear and determine the same.

9.—4. The supreme court shall consist of three judges, any two of whom shall be a quorum, and the said judges shall be conservators of the peace throughout the state.

10.—5. The state shall be divided into convenient districts, not to exceed four; in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only; provided, however, that the general assembly may, at any time hereafter, direct by law, that the said court shall be held at one place only.

11.—6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

12.—7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who after his appointment, shall reside, and be a conservator of the peace, within the circuit for which he shall be appointed.

13.—8. The circuit courts shall exercise a superintending control over all such inferior tribunals as the general assembly may establish; and over justices of the peace in each county in their respective circuits.

14.—9. The jurisdiction of the court of chancery shall be co-extensive with the state, and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.

15.—10. The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians, and minors, subject to appeal, in all cases, to the supreme court, under such limitations as the general assembly may by law provide.

16.—11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law.

17.—12. Inferior tribunals shall be established in each county, for the transaction of all county business; for appointing guardians; for granting letters testamentary, and of administration; and for settling the accounts of executors, administrators, and guardians.

18.—13. The governor shall nominate, and, by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behaviour, and shall receive for his services a compensation, which shall not be diminished during his continuance in office, and which shall not be less than two thousand dollars annually.

19.—14. No person shall be appointed a judge in the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person
continue to exercise the duties of any of said offices after he shall have attained to the age of sixty-five years.

20.—15. The courts respectively shall appoint their clerks, who shall hold their offices during good behaviour. For any misdemeanor in office, they shall be liable to be tried and removed by the supreme court, in such manner as the general assembly shall by law provide.

21.—16. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two-thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof; and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

22.—17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

23.—18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law.

24.—19. All writs and process shall run, and all prosecutions shall be conducted in the name of the "state of Missouri;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "against the peace and dignity of the state."

MISTAKE, contracts, is an error committed in relation to some matter of fact affecting the rights of one of the parties to a contract.

2.—Mistakes in making a contract are distinguished ordinarily into, first, mistakes as to the motive; secondly, mistakes as to the person, with whom the contract is made; thirdly, as to the subject matter of the contract; and, lastly, mistakes of fact and of law. See Story, Eq. Jur. § 110; Ignorance; Motive.

3.—In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 Ark. 208;mit. Pl. 116; 4 Vin. Ab. 277; 13 Vin. Ab. 41; 18 C. Com. Law Reps. 14; 8 Com. Digest, 75; Mad. Ch. Prac. Index, h. t.; 1 Story on Eq. ch. 5, p. 121; Jeremy's Eq. Jurisd. B. 3, part 2, p. 358. See article Surprise.

4.—As to mistakes in the names of legatees, see 1 Rop. Leg. 131; Domat, l. 4, t. 2, s. 1, n. 22. As to mistakes made in practice, and as to the propriety or impropriety of taking advantage of them, see Chitt. Pr. Index, h. t. As to mistakes of law in relation to contracts, see 23 Am. Jur. 146 to 166.

MISTRIAL, is an erroneous trial on account of some defect in the persons trying, as if the jury come from the wrong county; or because there was no issue formed, as if no plea be entered; or some other defect of jurisdiction. 3 Cro. 284; Hob. 5; 2 M. & S. 270.

MISUSER, is to make an unlawful use of a right.

2.—In cases of public officers and corporations, a misuser is sufficient to cause the right to be forfeited. 2 Bl. Com. 153; 5 Pick. R. 163.

MITIGATION. To make less rigorous or penal.

2.—Crimes are frequently committed under circumstances which are not justifiable nor excusable, yet they show that the offender has been greatly tempted; as, for example, when a starving man steals bread to satisfy his hunger, this circumstance is taken into consideration in mitigation of his sentence.

3.—In actions for damages, for torts, matters are frequently proved in mitigation of damages. In an action for criminal conversation with the plaintiff's wife, for example, evidence may be given of the wife's general bad character for want of chastity; or of particular acts of adultery committed by her, before she became
acquainted with the defendant, 12 Mod. R. 232; Bull. N. P. 27, 296; Selw. N. P. 25; 1 Johns. Cas. 16; or that the plaintiff has carried on a criminal conversation with other women, Bull. N. P. 27; or that the plaintiff's wife has made the first advances to the defendant. 2 Esp. N. P. C. 562; Selw. N. P. 25. See 3 Am. Jur. 287, 313.

4.—In actions for libel, although the defendant cannot under the general issue prove the crime, which is imputed to the plaintiff, yet he is in many cases allowed to give evidence of the plaintiff's general character in mitigation of damages. 2 Campb. R. 251; 1 M. & S. 284.

MITTER, law French, to put, to send, or to pass; as mitter l'estate, to pass the estate; mitter le droit, to pass a right. 2 Bl. Com. 324; Bac. Ab. Release, (C); Co. Lit. 193, 273, b. Mitter a large, to put or set at large. Law French Dict. h. t.

MITTIMUS, in English practice, is a writ enclosing a record sent to be tried in a county palatine; it derives its name from the Latin word mittimus, "we send." It is the jury process of these counties, and commands the proper officer of the county palatine to command the sheriff to summon the jury for the trial of the cause, and to return the record, &c.; 1 M. R. 275; 2 M. R. 88.

MITTIMUS, crim. law, practice. A precept in writing, under the hand and seal of a justice of the peace, or other competent officer, directed to the gaoler or keeper of a prison, commanding him to receive and safely keep, a person charged with an offence therein named, until he shall be delivered by due course of law. Co. Litt. 590.

MIXED. A compound made of several simples is said to be something mixed.

MIXED ACTIONS, practice. An action partaking of a real and personal action, by which real property is demanded, and damages for a wrong sustained: an ejectment is of this nature.

MIXED OR COMPOUND LARCENY, crim. law, is a larceny which has all the properties of simple larceny, and is accompanied with one or both the aggravations of violence to the person or taking from the house.

MIXED GOVERNMENT, is a government composed of some of the powers of a monarchical, aristocratical, and democratical government. See Government.

MIXED PROPERTY, is that kind of property which is not altogether real nor personal, but a compound of both. Heir-rooms, tomb-stones, monuments in a church, and title deeds to an estate are of this nature. 1 Ch. Pr. 95; 2 Bl. Com. 428; 3 Barn. & Adolph. 174; 4 Bingh. R. 106; S. C. 13 Eng. Com. Law Rep. 362.

MIXT CONTRACT, civil law, is one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself. Poth. Oblig. n. 12. See Contract.

MIXTION, is the putting of different goods or chattels together in such a manner that they can no longer be separated; as putting the wines of two different persons in the same barrel, the grain of several persons in the same bag, and the like.

2.—The intermixture may be occasioned by the wilful act of the party, or owner of one of the articles; by the wilful act of the stranger; by the negligence of the owner or a stranger; or by accident. See as to the rights of the parties under each of these circumstances, the article Confusion of Goods. Vide Asso & Man. Inst. B. 2, t. 2, c. 8.

MOBBING AND RIOTING, Scotch law. The general term mobbing and rioting includes all those convocations of the lieges for violent and unlawful purposes, which are attended with injury to the persons or property of the lieges, or terror and alarm to the neighbourhood in which it takes place. The two phrases are usually placed together, but, nevertheless, they have distinct meanings, and are sometimes used separately in legal language; the word mobbing being peculiarly applicable to the unlawful assemblage and violence of a number of persons, and that of rioting to the outrageous

MODEL. A machine made on a small scale to show the manner in which it is to be worked or employed.

2.—The act of congress of July 4, 1836, section 6, requires an inventor who is desirous to take out a patent for his invention, to furnish a model of his invention, in all cases which admit of representation by model, of a convenient size to exhibit advantageously its several parts.

MODERATE CASTIGAVIT, pleading the name of a plea in trespass by which the defendant justifies an assault and battery, because he moderately corrected the plaintiff, whom he had a right to correct. 2 Chit. Pl. 576; 2 Bos. & Pull. 224. Vide Correction, and 15 Mass. R. 347; 2 Phil. Ev. 147; Bac. Ab. Assault, &c. C.

2.—This plea ought to disclose, in general terms, the cause which rendered the correction expedient. 3 Salk. 47.

MODERATOR, is a person appointed to preside at a popular meeting; sometimes he is called a chairman.

MODO ET FORMA, pleading. In manner and form. These words are used in tendering an issue in a civil case.

2.—Their legal effect is to put in issue all material circumstances and no other, they may therefore be always used with safety.

3.—These words are sometimes of the substance of the issue, and sometimes merely words of form. When they are of the substance of the issue, they put in issue the circumstances alleged as concomitants of the principal matter denied by the pleader, such as time, place, manner, &c. When not of the substance of the issue, they do not put in issue such circumstances. Bac. Ab. Pleas, G 1; Lawes's Pl. 120; Hardry 39. To determine when they are of the substance of the issue and when not so, the established criterion is, that when the circumstances of manner, time, place, &c. alleged in connexion with the principal fact traversed, are originally and in themselves material, and therefore necessary to be proved as stated, the words modo et forma, are of the substance of the issue, and do, consequently, put those concomitants in issue; but that when such concomitants or circumstances are not in themselves material, and therefore not necessary to be proved as stated, the words modo et forma, are not of the substance of the issue, and consequently do not put them in issue. Lawes on Pl. 120; and see Gould, Pl. c. 6, § 22; Steph. Pl. 213; Dane's Ab. Index, h. t.; Kitch. 232. See Bac. Ab. Verdict, P; Vin. Ab. Modo et forma.

MODUS, civil law. Manner; means; way.

MODUS, eccl. law. Where there is by custom a particular manner of tithing allowed, different from the general law of taking tithes in kind, as a pecuniary compensation, or the performance of labour, or when any means are adopted by which the general law of tithing is altered, and a new method of taking them is introduced, is called a modus decimandi, or special manner of taking tithes. 2 Bl. Com. 29.

MOHATRA, French law. The name of a fraudulent contract made to cover a usurious loan of money.

2.—It takes place when an individual buys merchandise from another on a credit at a high price, to sell it immediately to the first seller, or to a third person, who acts as his agent, at much less price for cash. 16 Toull. n. 44.

MOIETY. The half of any thing, as if a testator bequeath one moiety of his estate to A, and the other to B, each shall take an equal part. Joint tenants are said to hold by moieties. Lit. 125; 3 M. G. & S. 274, 283.

MOLESTATION, Scotch law. The name of an action competent to the proprietor of a landed estate, against those who disturb his possession. It is chiefly used in questions of commony, or of controverted marches. Ersk. Prin. B. 4, t. 1, n. 24.

MOLITER MANUS IMPOSIT, pleading. In an action of trespass to the person, the defendant frequently justifies by pleading that he used no more force than was necessary to remove the
plaintiff who was unlawfully in the house of the defendant, and for this purpose he gently laid his hands upon him, molit tur manus imposuit.

2.—This plea may be used whenever the defendant laid hold of the plaintiff to prevent his committing a breach of the peace.

3.—When supported by evidence it is a complete defence. Ham. N. P. 149; 2 Chit. Pl. 574, 576; 12 Vin. Ab. 182; Bac. Abr. Assault and Battery, C. 8.

MOLITURA. Toll paid for grinding at a mill; multure. Not used.

MONARCHY, government. That form of government in which the sovereign power is entrusted in the hands of a single magistrate. Toull. tit. prel. n. 30. The country governed by a monarch is also called a monarchy.

MONEY. Gold, silver and some other less precious metals, in the progress of civilization and commerce, have become the common standards of value; in order to avoid the delay and inconvenience of regulating their weight and quality whenever passed, the governments of the civilized world have caused them to be manufactured in certain portions, marked with a stamp which attests their value; this is called money. 1 Inst. 207; 1 Hale’s Hist. 188; 1 Pard. n. 22; Dom. Lois civ. liv. prel. t. 3, s. 2, n. 6.

2.—For many purposes, bank notes, (q. v.) 1 Y. & J. 380; 3 Mass. 405; 14 Mass. 122; 2 N. H. Rep. 333; 17 Mass. 560; 7 Cowen, 662; 4 Pick. 74; Brayt. 24; a check, 4 Bing. 179; S. C. 13 E. C. L. R. 295; and negotiable notes, 3 Mass. 405; will be so considered. To support a count for money had and received, the receipt by the defendant of bank notes, promissory notes, 3 Mass. 405; 3 Shepl. 285; 9 Pick. 93; 7 John. 132; credit in account, in the books of a third person, 3 Campb. 199; or any chattel is sufficient, 4 Pick. 71; 17 Mass. 560; will be treated as money. See 7 Wend. 311; 8 Wend. 641; 7 S. & R. 246; 8 T. R. 687; 3 B. & P. 559; 1 Y. & J. 380.

3.—The constitution of the United States has vested in congress the power “to coin money, and regulate the value thereof.” Art. 1, s. 8.

4.—By virtue of this constitutional authority the following provisions have been enacted by congress.

1. Act of April 2, 1792, 1 Story’s L. U. S. 229.

§ 9. That there shall be from time to time, struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values, and descriptions, viz. eagles; each to be of the value of ten dollars, or units, and to contain two hundred and forty-seven grains and four-eighths of a grain of pure, or two hundred and seventy grains of standard, gold. Half eagles: each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six-eighths of a grain of pure, or one hundred and thirty-five grains of standard, gold. Quarter eagles; each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven-eighths of a grain of pure, or sixty-seven grains and four-eighths of a grain of standard, gold. Dollars, or units: each to be of the value of a Spanish milled dollar, as the same is now current, and to contain three hundred and seventy-one grains and four-sixteenth parts a grain of pure, or four hundred and sixteen grains of standard, silver. Half dollars: each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten-sixteenth parts of a grain of pure, or two hundred and eight grains of standard, silver. Quarter dollars: each to be of one-fourth the value of the dollar, or unit, and to contain ninety-two grains and thirteen-sixteenth parts of a grain of pure, or one hundred and four grains of standard, silver. Dimes: each to be of the value of one-tenth of a dollar, or unit, and to contain thirty-seven grains and two-sixteenth parts of a grain of pure, or forty-one grains and three-fifths parts of a grain of standard, silver. Half-dimes: each to be of the value of one-twentieth of a dollar, and to contain eighteen grains and nine-sixteenth parts of a grain of pure, or twenty grains and
four-fifths parts of a grain of standard, silver. Cents: each to be of the value of the one-hundredth part of a dollar, and to contain eleven pennyweights of copper. Half cents: each to be of the value of half a cent, and to contain five pennyweights and a half a pennyweight of copper.

5.—§10. That upon the said coins, respectively, there shall be the following devices and legends, namely: Upon one side of each of the said coins there shall be an impression emblematic of liberty, with an inscription of the word liberty, and the year of the coinage; and, upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with this inscription, “United States of America:” and, upon the reverse of each of the copper coins, there shall be an inscription which shall express the denomination of the piece, namely, cent or half cent, as the case may require.

6.—§11. That the proportional value of gold to silver, in all coins which shall, by law, be current as money within the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value, in all payments, with one pound weight of pure gold; and so in proportion, as to any greater or less quantities of the respective metals.

7.—§12. That the standard for all gold coins of the United States, shall be eleven parts fine to one part alloy; and accordingly, that eleven parts in twelve, of the entire weight of each of the said coins, shall consist of pure gold, and the remaining one-twelfth part of alloy; and the said alloy shall be composed of silver and copper in such proportions, not exceeding one-half silver, as shall be found convenient; to be regulated by the director of the mint for the time being, with the approbation of the president of the United States, until further provision shall be made by law. And to the end that the necessary information may be had in order to the making of such further provision, it shall be the duty of the director of the mint, at the expiration of a year after commencing the operations of the said mint, to report to congress the practice thereof during the said year, touching the composition of the alloy of the said gold coins, the reasons for such practice, and the experiments and observations which shall have been made concerning the effects of different proportions of silver and copper in the said alloy.

8.—§13. That the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine to one hundred and seventy-nine parts alloy; and, accordingly, that one thousand four hundred and eighty-five parts in one thousand six hundred and sixty-four parts, of the entire weight of each of the said coins, shall consist of pure silver, and the remaining one hundred and seventy-nine parts of alloy; which alloy shall be wholly of copper.


§1. That the gold coins of the United States shall contain the following quantities of metal, that is to say: each eagle shall contain two hundred and thirty-two grains of pure gold, and two hundred and fifty-eight grains of standard gold; each half eagle, one hundred and sixteen grains of pure gold, and one hundred and twenty-nine grains of standard gold; each quarter eagle shall contain fifty-eight grains of pure gold, and sixty-four and a half grains of standard gold; every such eagle shall be of the value of ten dollars; every such half eagle shall be of the value of five dollars; and every such quarter eagle shall be of the value of two dollars and fifty cents; and the said gold coins shall be receivable in all payments, when of full weight, according to their respective values; and when of less than full weight, at less values, proportioned to their respective actual weights.

10.—§2. That all standard gold or silver deposited for coinage after the thirty-first of July next, shall be paid for in coin under the direction of the secretary of the treasury, within five days from the making of such deposit, deduct-
ing from the amount of said deposit of gold and silver, one-half of one per centum: Provided, That no deduction shall be made unless said advance be required by such depositor within forty days.

11.—§ 3. That all gold coins of the United States, minted anterior to the thirty-first day of July next, shall be receivable in all payments at the rate of ninety-four and eight-tenths of a cent per pennyweight.


§ 9. That the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains; the half dollar of the weight of two hundred and six and one-fourth grains; the quarter dollar of the weight of one hundred and three and one-eighth grains; the dime, or tenth part of a dollar, of the weight of forty-one and a quarter grains; and the half dime, or twentieth part of a dollar, of the weight of twenty grains, and five-eighths of a grain. And that dollars, half dollars, and quarter dollars, dimes and half dimes, shall be legal tenders of payment, according to their nominal value, for any sums whatever.

13.—§ 10. That the gold coins, the weight of the eagle shall be two hundred and fifty-eight grains; that of the half eagle one hundred and twenty-nine grains; and that of the quarter eagle sixty-four and one-half grains. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars; and the quarter eagle for two and a half dollars.

14.—§ 11. That the silver coins here-tofore issued at the mint of the United States, and the gold coins issued since the thirty-first day of July, one thousand eight hundred and thirty-four, shall continue to be legal tenders of payment for their nominal values, on the same terms as if they were of the coinage provided for by this act.

15.—§ 12. That the copper coins, the weight of the cent shall be one hundred and sixty-eight grains, and the weight of the half-cent eighty-four grains. And the cent shall be considered of the value of one hundredth part of a dollar, and the half-cent of the value of one two-hundredth part of a dollar.

16.—§ 13. That upon the coins struck at the mint, there shall be the following devices and legends: upon one side of each of said coins there shall be an impression emblematic of liberty, with an inscription of the word Liberty, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin; but on the reverse of the dime and half dime, cent and half cent, the figure of the eagle shall be omitted.

17.—§ 38. That all acts or parts of acts here-tofore passed, relating to the mint and coins of the United States, which are inconsistent with the provisions of this act, be, and the same are hereby repealed.


§ 20. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forgimg, or counterfeiting any coin, in the resemblance or similitude of the gold or silver coin, which has been, or hereafter may be, coined at the mint of the United States; or in the resemblance or similitude of any foreign gold or silver coin which by law now is, or hereafter may be made current in the United States; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States, from any foreign place, with intent to pass, utter, publish, or sell, as true, any such false, forged, or counterfeited coin, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic, or corporate, or any other person or persons, whatsoever; every person, so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment,
and confinement to hard labour, not exceeding ten years, according to the aggravation of the offence.

19.—§ 21. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any coin, in the resemblance or similitude of any copper coin, which has been, or hereafter may be, coined at the mint of the United States; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish or sell, or bring into the United States, from any foreign place, with intent to pass, utter, publish, or sell as true, any such false, forged, or counterfeited coin, with intent to defraud any body politic, or corporate, or any other person or persons whatsoever; every person so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding one thousand dollars, and by imprisonment, and confinement to hard labour, not exceeding three years. See generally, 1 J. J. Marsh. 202; 1 Bibb, 330; 2 Wash. 282; 3 Call, 557; 5 S. & R. 48; 1 Dall. 124; 2 Dana, 298; 3 Conn. 534; 4 Harr. & McHen. 199.

MONEY BILLS, legislation, are bills or projects of laws providing for raising revenue, and for making grants or appropriations of the public treasure.

2.—The first clause of the seventh section of the constitution of the United States declares, "all bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills." Vide Story on the Const. § 871 to 877.

3.—What bills are properly "bills for raising revenue," in the sense of the constitution, has been matter of some discussion. Tucker's Black. App. 261 and note; Story, § 877. In practice, the power has been confined to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. Story, Ibid.; 2 Elliott's Debates, 283, 284.

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MONEY COUNTS, pleadings. The common counts in an action of assumpsit are so called, because they are founded on express or implied promises to pay money in consideration of a precedent debt; they are of four descriptions; 1, the indebitatus assumpsit, (q. v.); 2, the quantum meruit, (q. v.); 3, the quantum valebant, (q. v.); and, 4, the account stated, (q. v.).

2.—Although the plaintiff cannot resort to an implied promise when there is a general contract, yet, he may, in many cases, recover on the common counts, notwithstanding there was a special agreement, provided it has been executed. 1 Camp. 471; 12 East, 1; 7 Cranch, Rep. 299; 10 Mass. Rep. 287; 7 Johns. Rep. 132; 10 John. Rep. 136; 5 Mass. Rep. 391. It is therefore advisable to insert the money counts in an action of assumpsit, when suing on a special contract. 1 Chit. Pl. 333, 4.

MONEY HAD AND RECEIVED. An action of assumpsit will lie to recover money to which the plaintiff is entitled, and which in justice and equity, when no rule of policy or strict law prevents it, the defendant ought to refund to the plaintiff, and he cannot with a good conscience retain it, on a count for money had and received. 6 S. & R. 369; 10 S. & R. 219; 1 Dall. 148; 2 Dall. 154; 3 J. J. Marsh. 175; 1 Harring. 447; 1 Harr. & Gill. 258; 7 Mass. 285; 6 Wend. 290; 13 Wend. 488; Addis. on Contr. 230.

2.—When the money has been received by the defendant in consequence of some tortious act to the plaintiff's property, as when he cut down the plaintiff's timber and sold it, the plaintiff may waive the tort and sue in assumpsit for money had and received. 1 Dall. 122; 1 Blackf. 181; 5 Pick. 285; 1 J. J. Marsh. 543; 4 Pick. 452; 12 Pick. 120; 4 Binn. 374; 3 Watts, 277; 4 Call, 451.

3.—In general the action for money had and received lies only where money has been received by the defendant. 14 S. & R. 179; 1 Pick. 204; 7 S. & R. 246; 1 J. J. Marsh. 544; 3 J. J. Marsh. 6; 7 J. J. Marsh. 100; 3 Bibb,
878; 11 John. 464. But bank notes or any other property received as money, will be considered for this purpose as money. 17 Mass. 560; 3 Mass. 405; 14 Mass. 122; 17 Mass. 560; Brayt. 24; 7 Cowen, 622; 4 Pick. 74. See 9 S. & R. 11.

4.—No privity of contract between the parties is required in order to support this action, except that which results from the fact of one man’s having the money of another, which he cannot conscientiously retain. 17 Mass. 563; 579; see 2 Dall. 54; Mart. & Yerg. 221; 5 Conn. 71.

MONEY LENT. In actions of assumpsit a count is frequently introduced in the declaration charging that the defendant promised to pay the plaintiff for money lent. To recover, the plaintiff must prove that the defendant received his money, but it is not indispensable that it should be originally lent. If, for example, money has been advanced upon a special contract, which has been abandoned and rescinded, and which cannot be enforced, the law raises an implied promise from the person who holds the money, to pay it back as money lent. 5 M. & P. 26; 7 Bing. 266; 9 M. & W. 729; 3 M. & W. 434. See 1 Chip. 214; 3 J. J. Marsh. 37.

MONEY PAID. When one advances money for the benefit of another with his consent, or at his express request, although he be not benefited by the transaction, 5 S. & R. 9, the creditor may recover the money in an action of assumpsit declaring for money paid for the defendant. But one cannot by a voluntary payment of another’s debt make himself creditor of that other. 1 Const. R. 472; 1 Gill & John. 497; 5 Cowen, 603; 10 John. 361; 14 John. 87; 2 Root, 84; 2 Stew. 500; 4 N. H. Rep. 138; 3 John. 434; 8 John. 436; 1 South. 150.

2.—Assumpsit for money paid will not lie where property, not money, has been paid or received. 7 S. & R. 246; 3 Bibb, 378; 14 S. & R. 179; 10 S. & R. 75; 7 J. J. Marsh. 18. But see 7 Cowen, 662.

3.—But where money has been paid to the plaintiff either for a just legal or equitable claim, although it could not have been enforced at law, it cannot be recovered as money paid. See Money had and received.

4.—The form of declaring is for “money paid by the plaintiff for the use of the defendant and at his request.” 1 M. & W. 511.

MONITION, practice. In those courts which use the civil law process, (as the court of admiralty, whose proceedings are, under the provisions of the acts of congress, to be according to the course of the civil law,) is a process in the nature of a summons; it is either, general, special, or mixed.

2.—1. The general monition is a citation or summons to all persons interested, or, as is commonly said, to the whole world, to appear and show cause why the libel filed in the case should not be sustained, and the prayer of relief granted. This is adopted in prize cases, admiralty suits for forfeitures, and other suits in rem, when no particular individuals are summoned to answer. In such cases the taking possession of the property libelled, and this general citation or nomination, served according to law, are considered constructive notice to the world of the pendency of the suit; and the judgment rendered thereupon is conclusive upon the title of the property which may be affected. In form, the monition is a warrant of the court, in an admiralty cause, directed to the marshal or his deputy, commanding him, in the name of the president of the United States, to give public notice, by advertisements in such newspapers as the court may select, and by notifications to be posted in public places, that a libel has been filed in a certain admiralty cause pending, and of the time and place appointed for the trial. A brief statement of the allegations in the libel is usually contained in the monition. The monition is served in the manner directed in the warrant.

3.—2. A special monition is a similar warrant, directed to the marshal or his deputy, requiring him to give special notice to certain persons, named in the warrant, of the pendency of the suit, the grounds of it, and the time and
place of trial. It is served by delivery of a copy of the warrant, attested by the officer, to each one of the adverse parties, or by leaving the same at his usual place of residence; but the service should be personal if possible. Clerke’s Prax. tit. 21; Dunlap’s Adm. Pr. 135.

4.—3. A mixed monition is one which contains directions for a general monition to all persons interested, and a special summons to particular persons named in the warrant. This is served by newspaper advertisements, by notifications posted in public places, and by delivery of a copy attested by the officer to each person specially named, or by leaving it at his usual place of residence. See Dunlap’s Adm. Pr. Index, h. t.; Bett’s Adm. Pr. Index, h. t.

MONITORY LETTER, eccles. law. is the process of an official, a bishop, or other prelate having jurisdiction, issued to compel, by ecclesiastical censures, those who know of a crime or other matter which requires to be explained, to come and reveal it. Merl. Répert. h. t.

MONOCRACY. A government by one person only.

MONOCRAT. A monarch who governs alone; an absolute governor.

MONOGAMY. Is a marriage contracted between one man and one woman, in exclusion of all the rest of mankind; it is used in opposition to bigamy and polygamy, (q. v.) Wolff, Dr. de la Nat. § 857. The state of having only one husband or one wife at one time.

MONOMANIA, med. jur., is insanity only upon a particular subject, and with a single delusion of the mind.

2.—The most simple form of this disorder is that in which the patient has imbibed some single notion, contrary to common sense and to his own experience, and which seems, and no doubt really is, dependent on errors of sensation. It is supposed the mind in other respects retains its intellectual powers. In order to avoid any civil act done, or criminal responsibility incurred, it must manifestly appear that the act in question was the effect of monomania. Cyclop. Pract. Medicine, title Soundness and Unsoundness of Mind; Dr. Ray on Insanity, § 208; 13 Ves. 89; 3 Bro. C. C. 444; 1 Addams’s R. 283; Hagg. R. 18; 2 Addams’s R. 102; 2 Addams’s R. 79, 94, 209; 5 Car. & P. 168; Dr. Burrows on Insanity, 484, 485. Vide Delusion; Mania; and Trebuchet, Jur. del a Méd. 55 to 58.

MONOPOLY, commercial law; this word has various significations: 1, it is the abuse of free commerce by which one or more individuals have procured the advantage of selling alone all a particular kind of merchandise, to the detriment of the public;

2.—2. All combinations among merchants to raise the price of merchandise to the injury of the public, is also said to be a monopoly;

3.—3. A monopoly is also an institution or allowance by a grant from the sovereign power of a state, by commission, letters-patent, or otherwise, to any person, or corporation, by which the exclusive right of buying, selling, making, working, or using of any thing is given. Bac. Abr. h. t.; 3 Inst. 181.

4.—The constitutions of Maryland, North Carolina, and Tennessee, declare that “monopolies are contrary to the genius of a free government, and ought not to be allowed.” Vide art. Copyright; Patent.

MONSTER, physiology, persons. An animal which has a conformation contrary to the order of nature. Dunglis’s Human Physiol. vol. 2, p 422.

2.—A monster, although born of a woman in lawful wedlock, cannot inherit. Those who have however the essential parts of the human form, and have merely some defect of conformation, are capable of inheriting, if otherwise qualified. 2 Bl. Com. 246; 1 Beck’s Med Jurisp. 366; Co. Litt. 7, 8; Dig. lib. 1, t. 5, l. 14; 1 Swift’s Syst. 331; Fred. Code, Pt. 1, b. 1, t. 4, s. 4.

3.—No living human birth, however much it may differ from human shape, can be lawfully destroyed. Traill, Med. Jur. 47; see Briand, Méd. Lég. 1ère part. c. 6, art. 2, § 3; 1 Foderé, Méd. Lég. § 402-405.

MONSTRANS DE DROIT. Literally showing of right, in the English
law, is a process by which a subject claims from the crown a restitution of a right. Bac. Ab. Prerogative, E; 3 Bl. 256; 1 And. 181; 5 Leigh's R. 512.


MONSTRAVERUNT, WRIT OF, Engl. law. Is a writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor. F. N. B. 31.

MONTES PIETATIS, or Monts de Piété. The name of institutions established by public authority for lending money upon pledge of goods. In these establishments a fund is provided with suitable warehouses, and all necessary accommodations. Directors manage these concerns. When the money for which the goods pledged is not returned in proper time, the goods are sold to reimburse the institutions.

2.—These establishments are found principally on the continent of Europe. With us private persons, called pawnbrokers, perform this office, sometimes with doubtful fidelity. See Bell's Com. B. 5, c. 2, s. 2.

MONTH, is a space of time variously computed, as it is applied to astronomical, civil or solar, or lunar months.

2.—The astronomical month contains one-twelfth part of the time employed by the sun in going through the zodiac. In law, when a month simply is mentioned, it is never understood to mean an astronomical month.

3.—The civil or solar month is that which agrees with the Gregorian calendar, and these months are known by the names of January, February, March, &c. They are composed of unequal portions of time. There are seven of thirty-one days each, four of thirty, and one which is sometimes composed of twenty-eight days, and in leap years, of twenty-nine.

4.—The lunar month is composed of twenty-eight days only. When a law is passed or contract made, and the month is expressly stated to be solar or civil, which is expressed by the term calendar month, or when it is expressed to be a lunar month, no difficulty can arise; but when time is given for the performance of an act, and the word month simply is used, so that the intention of the parties cannot be ascertained; then the question arises, how shall the month be computed? By the law of England a month means ordinarily, in common contracts, as, in leases, a lunar month; a contract, therefore, made for a lease of land for twelve months, would mean a lease for forty-eight weeks only. 2 Bl. Com. 141; 6 Co. R. 62; 6 T. R. 224. A distinction has been made between "twelve months," and "a twelve-month;" the latter has been held to mean a year. 6 Co. R. 61.

5.—Among the Greeks and Romans the months were lunar, and probably the mode of computation adopted in the English law has been adopted from the codes of these countries. Clef des Lois Rom. mot Mois.

6.—But in mercantile contracts, a month simply signifies a calendar month; a promissory note to pay money in twelve months, would therefore mean a promise to pay in one year, or twelve calendar months. Chit. on Bills, 406; 1 John. Cas. 99; 3 B. & B. 187; 1 M. & S. 111; Story on Bills, § 143; Story, P. N. § 213; Bayl. on Bills, c. 7; 4 Kent, Comm. Sect. 56; 2 Mass. 170; 4 Mass. 460; 6 Watts. & Serg. 179.

7.—In general, when a statute speaks of a month, without adding "calendar," or other words showing a clear intention, it shall be intended a lunar month. Com. Dig. Ann B; 4 Wend. 512; 15 John. R. 358. See 2 Cowen, R. 518; Id. 605. In all legal proceedings, as in commitments, pleadings, &c. a month means four weeks. 3 Burr. R. 1455; 1 Bl. Rep. 450; Doug. R. 446, 463.

8.—In Pennsylvania and Massachusetts, and perhaps some other states, 1 Hill. Ab. 118, n., a month mentioned generally in a statute, has been construed to mean a calendar month. 2 Dall. R. 302; 4 Dall. Rep. 143; 4 Mass. R. 461; 4 Bibb, R. 105. In England, in the ecclesiastical law, months are com-
puted by the calendar. 3 Burr. R. 1455; 1 M. & S. 111.

9.—In New York, it is enacted that whenever the term "month" or "months" is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar, and not a lunar month; unless otherwise expressed. Rev. Stat. part 1, ch. 19, tit. 1, § 4. Vide, generally, 2 Sim. & Stu. 476; 2 A. K. Marsh. Rep. 245; 3 John. Ch. Rep. 74; 2 Campb. 294; 1 Esp. R. 146; 6 T. R. 224; 1 M. & S. 111; 3 East, R. 407; 4 Moore, 485; 1 Bl. Rep. 150; 1 Bing. 307; S. C. 8 Eng. C. L. R. 328; 1 M. & S. 111; 1 Str. 652; 6 M. & S. 227; 3 Brod. & B. 187; 8 S. C. 7 Eng. C. L. R. 404.

MONUMENT. A thing intended to transmit to posterity the memory of some one; it is used also to signify a tomb where a dead body has been deposited. In this sense it differs from a cenotaph, which is an empty tomb. Dig. 11, 7, 2, 6; Id. 11, 7, 2, 42.

MONUMENTS are permanent landmarks established for the purpose of ascertaining boundaries.

2.—Monuments may be either natural or artificial objects, as rivers, known streams, springs or marked trees. 7 Wheat. R. 10; 6 Wheat. R. 582; 9 Cranch, 173; 6 Pet. 498; Pet. C. C. R. 64; 3 Ham. 284; 5 Ham. 534; 5 N. H. Rep. 524; 3 Dev. 75; even posts set up at the corners, 5 Ham. 534, and a clearing, 7 Cowen, 723, are considered as monuments. Sed vide 3 Dev. 75.

3.—When monuments are established they must govern, although neither courses, nor distances, nor computed contents correspond. 5 Cowen, 346; 1 Cowen, 605; 6 Cowen, 706; 7 Cowen, 723; 6 Mass. 131; 2 Mass. 380; 3 Pick. 401; 5 Pick. 135; 3 Gill & John. 142; 5 Har. & John. 163, 255; 2 Har. & John. 260; Wright, 176; 5 Ham. 534; 1 Har. & McH. 355; 2 H. & McH. 416; Cooke, 146; 1 Call. 429; 3 Call, 239; 3 Fairf. 325; 4 H. & M. 125; 1 Hayw. 22; 5 J. J. Marsh, 578; 3 Hawks, 91; 3 Murph. 88; 4 Monr. 32; 5 Monr. 175; 2 Overt. 200; 2 Bibb, 493; S. C. 6 Wheat. 582; 4 W. C. C. Rep. 15. Vide Boundary.

MOORING, mar. law. The act of arriving of a ship or vessel at a particular port, and there being anchored or otherwise fastened to the shore.

2.—Policies of insurance frequently contain a provision that the ship is insured from one place to another, "and till there moored twenty-four hours in good safety." As to what shall be a sufficient mooring see 1 Marsh. Ins. 262; Park. on Ins. 35; 2 Str. 1251; 3 T. R. 362.

MOOT, English law, a term used in the inns of court, signifying the exercise of arguing imaginary cases, which young barristers and students used to perform at certain times, the better to be enabled by this practice to defend their clients' cases. A moot question is one which has not been decided.

MORA, IN, civil law. This term, in mora, is used to denote that a party to a contract, who is obliged to do any thing, has neglected to perform it, and is in default. Story on Bailm. § 123, 259; Jones on Bailm. 70; Poth. Prêt à Usage, c. 2, § 2, art. 2, n. 60; Encyclopédie, mot Demeure; Broderode, mot Morà.

MORA, estates. A moor, barren or unprofitable ground; marsh; a heath. 1 Inst. 5; Fleta, lib. 2, c. 71.

MORAL INSANITY, med. jur. A term used by medical men, which has not yet acquired much reputation in the courts. Moral insanity is said to consist in a morbid perversion of the moral feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination. Prichard, art. Insanity, in Cyclopaedia of Practical Medicine.

2.—It is contended that some human beings exist, who in consequence of a deficiency in the moral organs, are as blind to the dictates of justice, as others are deaf to melody. Combe, Moral Philosophy, Lect. 12.

3.—In some this species of malady is said to display itself in an irresistible
propensity to commit murder; in others to commit theft, or arson. Though most persons afflicted with this malady commit such crimes, there are others whose disease is manifest in nothing but irascibility. Annals d’hygiène, tom. i. p. 284. Many are subjected to melancholy and dejection, without any delusion or illusion. This, perhaps without full consideration, has been judicially declared to be a “groundless theory.” The courts and law writers have not given to it their full assent. 1 Chit. Med. Jur. 352; 1 Beek, Med. Jur. 553; Ray, Med. Jur. Prel. Views, § 23, p. 49.

MORATUR IN LEGE. He demurs in law. He rests on the pleadings of the case, and abides the judgment of the court.

MORGANTIC MARRIAGE. During the middle ages, there was an intermediate estate between matrimony and concubinage, known by this name. It is defined to be a lawful and inseparable conjunction of a single man, of noble and illustrious birth, with a single woman of an inferior or plebeian station, upon this condition that neither the wife nor children should partake of the title, arms, or dignity of the husband, nor succeed to his inheritance, but should have a certain allowance assigned to them by the morgantic contract. The marriage ceremony was regularly performed; the union was for life and indissoluble; and the children were considered legitimate, though they could not inherit. Fred. Code, book 2, art. 3; Poth. Du Marri- age, 1, e. 2, s. 2; Shelf. M. & D. 10; Pruss. Code, art. 835.

MORT D’ANCESTOR. An ancient and now almost obsolete remedy in the English law. An assise of mort d’ancestor was a writ which was sued out where after the decease of a man’s ancestor, a stranger abated and entered into the estate. 1 Co. Litt. 159. The remedy in such case is now to bring ejectment.

MORTGAGE, contracts, conveying. Mortgages are of several kinds: as they concern the kind of property mortgaged, they are mortgages of lands, tenements, and hereditaments, or of goods and chattels; as they affect the title of the thing mortgaged, they are legal and equitable.

2.—In equity all kinds of property, real or personal, which is capable of an absolute sale, may be the subject of a mortgage; rights in remainder and reversion, franchises, and choses in action, may, therefore, be mortgaged. But a mere possibility or expectancy, as that of an heir, cannot. 2 Story, Eq. Jur. § 1021; 4 Kent, Com. 144; 1 Powell, Mortg. 17, 23; 3 Meri. 667.

3.—A legal mortgage of lands may be described to be a conveyance of lands by a debtor to his creditor as a pledge and security for the repayment of a sum of money borrowed, or performance of a covenant, 1 Watts, R. 140; with a proviso, that such conveyance shall be void on payment of the money and interest on a certain day, or the performance of such covenant by the time appointed, by which the conveyance of the land becomes absolute at law, yet the mortgagor has an equity of redemption, that is a right in equity on the performance of the agreement within a reasonable time, to call for a re-conveyance of the land. Cruise, Dig. t. 15, c. 1, s. 11; 1 Pow. on Mortg. 4 a, n.; 1 Ken. 296; 1 Pet. R. 386; 2 Mason, 531; 13 Wend. 485; 5 Verm. 532; 1 Yeates, 579; 2 Pick. 211.

4.—It is an universal rule in equity that once a mortgage, always a mortgage. 2 Cowen, R. 324; 1 Yeates, R. 584; every attempt, therefore, to defeat the equity of redemption must fail. See Equity of Redemption.

5.—As to the form, such a mortgage must be in writing, when it is intended to convey the legal title, 1 Penna. R. 240; it is either in one single deed which contains the whole contract,—and which is the usual form,—or it is two separate instruments, the one containing an absolute conveyance, and the other a defeasance. 2 Johns. Ch. Rep. 189; 15 Johns. R. 555; 2 Greenl. R. 132; 12 Mass. 456; 7 Pick. 157; 3 Wend. 208; Addis. 357; 6 Watts, 405; 3 Watts, 188; 3 Fairf. 346; 7 Wend. 248. But it may be observed in general, that whatever clauses or covenants
there are in a conveyance, though they seem to import an absolute disposition or conditional purchase, yet, if, upon the whole, it appears to have been the intention of the parties that such conveyance should be a mortgage only, or pass an estate redeemable, a court of equity will always so construe it. Vern. 185, 268, 394; Prec. Ch. 95; 1 Wash. R. 126; 2 Mass. R. 493; 4 John. R. 186; 2 Cain. Er. 124.

6.—As the money borrowed on mortgage is seldom paid on the day appointed, mortgages are now become entirely subject to the court of chancery, where it is an established rule that the mortgagee holds the estate merely as a pledge or security for the repayment of his money; therefore a mortgage is considered in equity as personal estate.

7.—The mortgagor is held to be the real owner of the land, the debt being considered the principal, and the land the accessory; whenever the debt is discharged, the interest of the mortgagee in the lands determines of course, and he is looked on in equity as a trustee for the mortgagor.

8.—An equitable mortgage of lands is one where the mortgagor does not convey regularly the land, but does some act by which he manifests his determination to bind the same for the security of a debt he owes. An agreement in writing to transfer an estate as a security for the repayment of a sum of money borrowed, or even a deposit of title deeds, and a verbal agreement will have the same effect of creating an equitable mortgage. 1 Rawle, Rep. 328; 5 Wheat. R. 284; 1 Cox’s Rep. 211. But in Pennsylvania there is no such a thing as an equitable mortgage. 3 P. S. R. 233. Such an agreement will be carried into execution in equity against the mortgagor, or any one claiming under him with notice, either actual or constructive of such deposit having been made. 1 Bro. C. C. 269; 2 Dick. 759; 2 Anstr. 427; 2 East. R. 486; 9 Ves. jr. 115; 11 Ves. jr. 398, 403; 12 Ves. jr. 6, 192; 1 John. Cas. 116; 2 John. Ch. R. 608; 2 Story, Eq. Jur. § 1020. Miller, Esq. Mortg. passim.

9.—A mortgage of goods is distinguishable from a mere pawn. 5 Verm. 582; 9 Wend. 80; 8 John. 96. By a grant or conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee, and if not redeemed at the time stipulated, the title becomes absolute at law, though equity will interfere to compel a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledger. There have been some cases of mortgages of chattels, which have been held valid without any actual possession in the mortgagee; but they stand upon very peculiar grounds and may be deemed exceptions to the general rule. 2 Pick. R. 607; 5 Pick. R. 59; 5 Johns. R. 261. Sed vide 12 Mass. R. 300; 4 Mass. R. 352; 6 Mass. R. 422; 15 Mass. R. 477; 5 S. & R. 275; 12 Wend. 277; 15 Wend. 212, 244; 1 Penn. 57 Vide, generally, Powell on Mortgages; Cruise, Dig. tit. 15; Viner, Ab. h. t.; Bac. Ab. b. t.; Com. Dig. b. t.; American Digests, generally, h. t.; New York Rev. Stat. p. 2, c. 3; 9 Wend. 80; 9 Greenl. 79; 12 Wend. 61; 2 Wend. 296; 3 Cowen, 166; 9 Wend. 345; 12 Wend. 207; 5 Greenl. 96; 14 Pick. 497; 3 Wend. 348; 2 Hall, 63; 2 Leigh, 401; 15 Wend. 244.

10.—It is proper to observe that a conditional sale with the right to repurchase very nearly resembles a mortgage; but they are distinguishable. It is said that if the debt remains, the transaction is a mortgage, but if the debt is extinguished by mutual agreement, or the money advanced is not loaned, but the grantor has a right to refund it in a given time, and have a reconveyance, this is a conditional sale. 2 Edw. R. 138; 2 Call, R. 354; 5 Gill & John. 82; 2 Yerg. R. 6; 6 Yerg. R. 96; 2 Sumner, R. 487; 1 Paige, R. 50; 2 Ball & Beat. 274. In cases of doubt, however, courts of equity will always lean in favour of a mortgage. 7 Cranch, R. 287; 2 Desauns. 564.

11.—According to the laws of Louisiana a mortgage is a right granted to the creditor over the property of his debtor,
for the security of his debt, and gives him the power of having the property seized and sold in default of payment. Civ. Code of Lo. art. 3245.

12.—Mortgage is conventional, legal or judicial. Ist. The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favour of another, to secure the execution of some engagement, but without divesting himself of the possession. Civ. Code, art. 3257.

13.—2d. Legal mortgage is that which is created by operation of law: this is also called tacit mortgage, because it is established by the law, without the aid of any agreement. Art. 3279. A few examples will show the nature of this mortgage. Minors, persons interdicted, and absenteees, have a legal mortgage on the property of their tutors and curators, as a security for their administration; and the latter have a mortgage on the property of the former for advances which they have made. The property of persons who, without being lawfully appointed curators or tutors of minors, &c. interfere with their property, is bound by a legal mortgage from the day on which the first act of interference was done.

14.—3d. The judicial mortgage is that 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. Art. 3289.

15.—Mortgage, with respect to the manner in which it binds the property, is divided into general mortgage, or special mortgage. General mortgage is that which binds all the property, present or future, of the debtor. Special mortgage is that which binds only certain specified property. Art. 3255.

16.—The following objects are alone susceptible of mortgage: 1. Immovables, subject to alienation, and their accessories considered likewise as immovable. 2. The usufruct of the same description of property with its accessories during the time of its duration. 3. Slaves. 4. Ships and other vessels. Art. 3256.

MORTGAGEE, estates, contracts, is he to whom a mortgage is made.

2.—He is entitled to the payment of the money secured to him by the mortgage; he has the legal estate in the land mortgaged, and may recover it in ejectment; on the other hand he cannot commit waste, 4 Watts, R. 460; he cannot make leases to the injury of the mortgagor; and he must account for the profits he receives out of the thing mortgaged when in possession. Cruise, Dig. tit. 15, c. 2.

MORTGAGOR, estates, contracts, is he who makes a mortgage.

2.—He has rights, and is liable to certain duties as such. 1. He is quasi tenant at will; he is entitled to an equity of redemption after forfeiture. 2. He cannot commit waste, nor make a lease injurious to the mortgagor. As between the mortgagor and third persons, the mortgagor is owner of the land. Doug1. 632; 4 M'Cord, R. 340; 3 Fairf. R. 243; but see 3 Pick. R. 204; 1 N. H. Rep. 171; 2 N. H. Rep. 16; 10 Conn. R. 243; 1 Vern. 3; 2 Vern. 621; 1 Atk. 605. He can, however, do nothing which will defeat the rights of the mortgagor, as, to make a lease to bind him. Doug1. 21. Vide Mortgage; 2 Jack. & Walk. 194.

MORTIFICATION, Scotch law. This term is nearly synonymous with mortmain.

MORTMAIN, is an unlawful alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of mortmain to be applied to such alienations. 2 Bl. Com. 268; Co. Litt. 2 b; Ersk. Inst. B. 2, t. 4, s. 10; Barr. on the Stat. 27, 97.

2.—Mortmain is also employed to designate all prohibitory laws, which limit, restrain, or annul gifts, grants, or devises of lands and other corporeal hereditaments to charitable uses. 2 Story, Eq. Jur. § 1137, note 1. See Shelf. on Mortin. 2, 3.

MORTUARIES, Eng. law. These
are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister, in many parishes on the death of the parishioner. 2 Bl. Com. 425.

MORTUUM VADIUM. A mortgage; a dead pledge.

MORTUUS EST. A return made by the sheriff when the defendant is dead, as an excuse for not executing the writ. 4 Watts, 270, 276.

MOTHER, domestic relations. A woman who has a child.

2.—It is generally the duty of a mother to support her child, when she is left a widow, until he becomes of age, or is able to maintain himself; 8 Watts, R. 306; and even after he becomes of age, if he be chargeable to the public, she may, perhaps, in all the states, be compelled, when she has sufficient means, to support him. But when the child has property sufficient for his support, she is not, even during his minority, obliged to maintain him. 1 Bro. C. C. 387; 2 Mass. R. 415; 4 Mass. R. 97.

3.—When the father dies without leaving a testamentary guardian, at common law, the mother is entitled to be the guardian of the person and estate of the infant, until he arrives at fourteen years, when he is able to choose a guardian. Litt. sect. 123; 3 Co. 38; Co. Litt. 84 b; 2 Atk. 14; Com. Dig. B, D, E; 7 Ves. 348. See 10 Mass. 135, 140; 15 Mass. 272; 4 Binn. 487; 4 Stew. & Port. 123; 2 Mass. 415; Harper, R. 9; 1 Root, R. 487.

4.—In Pennsylvania, the orphans’court will in such case appoint a guardian until the infant shall attain his fourteenth year. During the joint lives of the parents, (q. v.) the father (q. v.) is alone responsible for the support of the children; and has the only control over them, except when in special cases the mother is allowed to have possession of them. 1 P. A. Browne’s Rep. 143; 5 Binn. R. 520; 2 Serg. & Rawle, 174. Vide 4 Binn. R. 492, 494.

5.—The mother of a bastard child, as natural guardian, has a right to the custody and control of such child, and is bound to maintain it. 2 Mass. 109; 12 Mass. 387, 433; 2 John. 375; 15 John. 208; 6 S. & R. 255; 1 Ashmead, 55.

MOTHER-IN-LAW. In Latin socrates, is the mother of one’s wife, or of one’s husband.

MOTION, practice, is an application to a court by one of the parties in a cause or his counsel, in order to obtain some rule or order of court, which he thinks becomes necessary in the progress of the cause, or to get relieved in a summary manner, from some matter which would work injustice.

2.—When the motion is made on some matter of fact, it must be supported by an affidavit that such facts are true; and for this purpose, the party’s affidavit will be received, though it cannot be read on the hearing. 1 Binn. R. 145; S. P. 2 Yeates’s R. 546. Vide 3 Bl. Com. 304; 2 Selk. Pr. 356; 15 Vin. Ab. 495; Grah. Pr. 542; Smith’s Ch. Pr. Index, h. t.

MOTIVE, is the inducement, cause or reason why a thing is done.

2.—When there is such a mistake in the motive, that had the truth been known, the contract would not have been made, it is generally void. For example, if a man should, after the death of Titius, of which he was ignorant, insure his life, the error of the motive would avoid the contract. Toull. Dr. Civ. Fr. liv. 3, c. 2, art. 1; or if Titius should sell to Livius his horse, which both parties supposed to be living at some distance from the place where the contract was made, when, in fact, the horse was then dead, the contract would be void. Poth. Vento, n. 4; 2 Kent, Com. 367. When the contract is entered into under circumstances of clear mistake or surprise, it will not be enforced. See the following authorities on this subject. 1 Russ. & M. 527; 1 Ves. junr. 221; 4 Price, 135; 1 Ves. jr. 210; Atkinson on Tit. 144. Vide Cause; Consideration.

3.—The motive of prosecutions is frequently an object of inquiry, particularly when the prosecutor is a witness, and in his case, as that of any other witness, when the motive is ascertained to be bad, as a desire of revenge for a real or sup-
posed injury, the credibility of the witness will be much weakened, though this will not alone render him incompetent. See Evidence; Witness.

MOURNING. This word has several significations. 1. It is the apparel worn at funerals, and for a time afterwards, in order to manifest grief for the death of some one, and to honour his memory; 2, the expenses paid for such apparel.

2.—It has been held, in England, that a demand for mourning furnished to the widow and family of the testator, is not a funeral expense, 2 Carr. & P. 207. Vide 14 Ves. 364; 1 Ves. & Bea. 364. See 2 Bell's Comm. 156.

MOVABLES, estates, are such subjects of property as attend a man's person wherever he goes, in contradiction to things immovable, (q. v.)

2.—Things movable by their nature are such as may be carried from one place to another, whether they move themselves, as cattle, or cannot be removed without an extraneous power, as inanimate things. Movable are further distinguished into such as are in possession, or which are in the power of the owner, as, a horse in actual use, a piece of furniture in a man's own house; or such as are in the possession of another, and can only be recovered by action, which are therefore said to be in action, as a debt. Vide art. Personal Property, and Fonbl. Eq. Index, h. t.; Pow. Mortg. Index, h. t; 2 Bl. Comm. 384; Civ. Code of Lo. art. 464 to 472.

MULATTO, is a person born of one white and one black parent. 7 Mass. R. 88; 2 Bailey, 558.

MULCT, punishment. A fine imposed on conviction of an offence.

MUTC, commerce. An imposition laid on ships or goods by a company of trade, for the maintenance of consuls and the like. Obsolete.

MULIER. A woman, a wife; sometimes it is used to designate a marriagable virgin, and in other cases the word mulier is employed in opposition to virgo. Poth. Pand. tom. 22, h. t. In its most proper significance it means a wife.

2.—A son or a daughter, born of a lawful wife, is called filius mulieratus or filia mulierata, a son mulier or a daughter mulier. The term is always used in contradiction to a bastard; mulier being always legitimate. Co. Litt. 243.

3.—When a man has a bastard son, and afterwards marries the mother, and has by her another son, the latter is called the mulier puisné. 2 Bl. Com. 248.

MULTIFARIOUSNESS, equity pleading. By multifariousness in a bill is understood the improperly joining in one bill distinct matters, and thereby confounding them; as, for example, the uniting in one bill several matters, perfectly distinct and unconnected, against one defendant, or the demand of several matters of distinct natures, against several defendants in the same bill. Coop. Eq. Pl. 182; Mitf. by Jeremy, 181; 2 Mason's R. 201; 15 Ves. 80; Hardr. R. 337; 4 Cowen's R. 682.

2.—In order to prevent confusion in its pleadings and decrees, a court of equity will anxiously discontinue this multifariousness. The following case will illustrate this doctrine: suppose an estate should be sold in lots to different persons, the purchasers could not join in exhibiting one bill against the vendor for a specific performance; for each party's case would be distinct, and would depend upon its own peculiar circumstances, and therefore there should be a distinct bill upon each contract; on the other hand, the vendor in the like case, would not be allowed to file one bill for a specific performance against all the purchasers of the estate, for the same reason. Coop. Eq. Pl. 182; 2 Dick. Rep. 677; 1 Madd. Rep. 88; Story's Eq. Pl. § 271 to 286. It is extremely difficult to say what constitutes multifariousness as an abstract proposition. Story, Eq. Pl. § 530, 539; 4 Blackf. 249; 2 How. S. C. Rep. 619, 642.

MULTITUDE. The meaning of this word is not very certain. By some it is said that to make a multitude there must be ten persons at least, while others contend that the law has not fixed any number. Co. Litt. 257.

MULTURE, Scotch law, is the quan-
tity of grain or meal payable to the proprie
tor of the mill, or to the multurer, his

MUNERA. The name given to grants made in the early feudal ages, which were mere tenancies at will, or during the pleasure of the granter. Dalr. Feud. 198, 199; Wright on Ten. 19.

MUNICIPAL. Strictly this word applies only to what belongs to a city. Among the Romans, cities were called municipia; these cities voluntarily joined the Roman republic in relation to their sovereignty only, retaining their laws, their liberties, and their magistrates, who were then called municipal magistrates. With us this word has a more extensive meaning; for example we call municipal law, not the law of a city only, but the law of the state. 1 Bl. Com.

MUNICIPALITY. The body of officers, taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

MUNIMENTS, are the instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. Terminus de la Ley, h. t.; 3 Inst. 170.

MURAGE. A toll formerly levied in England for repairing or building public wells.

MURDER, crim. law. This, one of the most important crimes, that can be committed against individuals, has been variously defined. Hawkins defines it to be the wilful killing of any subject whatever, with malice forethought, whether the person slain shall be an Englishman or a foreigner. B. 1, c. 13, s. 3. Russell says, murder is the killing of any person under the king’s peace, with malice prepense or aforethought, either express or implied by law. 1 Russ. Cr. 421. And Sir Edward Coke, 3 Inst. 47, defines or rather describes this offence to be, “when a person of sound mind and discretion, unlawfully killeth any reasonable creature in being, and under the king’s peace, with malice aforethought either express or implied.”

2.—This definition, which has been adopted by Blackstone, 4 Com. 195, Chitty, 2 Cr. Law, 724, and others, has been severely and perhaps justly criticized. What, it has been asked, are sound memory and understanding? What has soundness of memory to do with the act; be it ever so imperfect,—
how does it affect the guilt? If discretion is necessary, can the crime ever be committed, for, is it not the highest indiscrination in a man to take the life of another, and thereby expose his own? If the person killed be an idiot or a new born infant, is he a reasonable creature? Who is in the king’s peace? What is malice aforethought? Can there be any malice aforethought? Livingst. Syst. of Pen. Law, 186.

3.—According to Coke’s definition there must be, 1st, sound mind and memory in the agent. By this is understood there must be a will, (q. v.) and legal discretion (q. v.);—2, an actual killing, but it is not necessary that it should be caused by direct violence; it is sufficient if the acts done apparently endanger life, and eventually prove fatal. Hawk. b. 1, c. 31, s. 4; 1 Hale, P. C. 481; 1 Ashm. R. 289: 9 Car. & Payne, 356; S. C. 38 E. C. L. R. 152; 2 Palm. 545;—3, the party killed must have been a reasonable being, alive and in the king’s peace; fetocide (q. v.) would not be such a killing; he must have been in rerum natura;—4, malice, either express or implied. It is the circumstance which distinguished murder from every description of homicide. Vide art. Malice.

4.—In some of the states, by legislative enactments murder has been divided into degrees. In Pennsylvania, the act of April 22, 1794, 3 Smith’s Laws, 186, makes “all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall,
if they find the person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed by examination of witnesses, to determine the degree of the crime, and give sentence accordingly." Many decisions have been made under this act to which the reader is referred: see Whart. Dig. Criminal Law, h. t.

5.—The legislature of Tennessee has adopted the same distinction, in the very words of the act of Pennsylvania, just cited. Act of 1829, 1 Tenn. Laws, Dig. 244. Vide 3 Yerg. R. 283; 5 Yerg. R. 340.

6.—Virginia has adopted the same distinction. 6 Rand. R. 721.

Vide, generally, Bac. Ab. h. t.; 15 Vin. Ab. 500; Com. Dig. Justices, M 1, 2; Dane’s Ab. Index, h. t.; Hawk. Index, h. t.; 1 Russ. Cr. b. 3, c. 1; Rose. Cr. Ev. h. t.; Hale, P. C. Index, h. t.; 4 Bl. Com. 195; 2 Swift’s Syst. Index, h. t.; 2 Swift’s Dig. Index, h. t.; American Digests, h. t.; Wheeler’s C. C. Index, h. t.; Stark. Ev. Index, h. t.; Chit. Cr. Law, Index, h. t.; New York Rev. Stat. part 4, c. 1, t. 1 and 2.

MURDER, pleadings. In an indictment for murder, it must be charged that the prisoner “did kill and murder,” the deceased, and unless the word murder be introduced in the charge, the indictment will be taken to charge manslaughter only. Foster, 424; Yelv. 205; 1 Chit. Cr. Law, *243, and the authorities and cases there cited.

MURDRUM, old Engl. law. During the times of the Danes, and afterwards till the reign of Edward III., murdrum was the killing of a man in a secret manner, and in that it differed from simple homicide.

2.—When a man was thus killed, and he was unknown, by the laws of Canute he was presumed a Dane, and the ville was compelled to pay forty marks for his death. After the conquest, a similar law was made in favour of Frenchmen, which was abolished by 3rd Edw. 3.

3.—By murdrum was also understood the fine formerly imposed in England upon a person who had committed homicide _per infortunium or se defendendo_. Prin. Pen. Law, 219, note r.

MUSICAL COMPOSITION. The act of congress of Feb. 3, 1831, authorizes the granting of a copy-right for a musical composition. A question was formerly agitated whether a composition published on a single sheet of paper, was to be considered a book, and it was decided in the affirmative. 2 Campb. 28, n.; 11 East, 244. See Copy-Right.

TO MUSTER. In the army, by this term is understood to collect together and exhibit soldiers and their arms; it also signifies to employ recruits and put their names down in a book to enrol them.

MUSTER-ROLL, maritime law, is a written document containing the names, ages, quality, place of residence, and, above all, place of birth, of every person of the ship’s company. It is of great use in ascertaining the ship’s neutrality. Marsh. Ins. B. 1, c. 9, s. 6, p. 407; Jacobs. Sea Laws, 161; 2 Wash. C. C. R. 201.

MUSTIRO. This name is given to the issue of an Indian and a negro. Dull. S. Car. R. 174.

MUTATION, French law. This term is synonymous with change, and is particularly applied to designate the change which takes place in the property of a thing in its transmission from one person to another; permutation therefore happens when the owner of the thing sells, exchanges or gives it. It is nearly synonymous with transfer, (q. v.) Merl. Répert. h. t.

MUTATION OF LIBEL, practice, in the civil law courts, is an amendment allowed to a libel, by which there is an alteration of the substance of the libel, as by propounding a new cause of action, or when one thing is asked instead of another. Dunl. Adm. Pr. 213; Law’s Eccl. Law, 165-167; 1 Payne’s R. 435; 1 Gall. R. 123; 1 Wheat. R. 261.

MUTATIS MUTANDIS. The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like.
MUTE, persons. One who is dumb; vide Deaf and Dumb.

MUTE, STANDING MUTE, practice, crim. law. When a prisoner upon his arraignment totally refuses to answer, insists upon mere frivolous pretences, or refuses to put himself upon the country, after pleading not guilty, he is said to stand mute.

2.—In the case of the United States v. Hare, et al., Cir. Court, Maryland Dist. May sess. 1818, the prisoner standing mute was considered as if he had pleaded not guilty.

3.—The act of congress of March 3, 1825, 3 Story’s L. U. S. 2002, has since provided as follows; § 14, that if any person, upon his or her arraignment upon any indictment before any court of the United States for any offence, not capital, shall stand mute, or will not answer or plead to such indictment, the court shall, notwithstanding, proceed to the trial of the person, so standing mute, or refusing to answer or plead, as if he or she had pleaded not guilty; and upon a verdict being returned by the jury, may proceed to render judgment accordingly. A similar provision is to be found in the laws of Pennsylvania.

4.—The barbarous punishment of peine forte et dure which till lately disgraced the criminal code of England, was never known in the United States. Vide Dumb; 15 Vin. Ab. 527.

5.—When a prisoner stands mute, the laws of England arrive at the forced conclusion that he is guilty, and punish him accordingly. 1 Chit. Cr. Law, 428.

6.—By the old French law, when a person accused was mute, or stood mute, it was the duty of the judge to appoint him a curator, whose duty it was to defend him, in the best manner he could; and for this purpose, he was allowed to communicate with him privately. Poth. Procéd. Crim. s. 4, art. 2, § 1.

MUTILATION, crim. law, is the depriving a man of the use of any of those limbs, which may be useful to him in fight, the loss of which amounts to mayhem. 1 Bl. Com. 180.

MUTINY, crimes, is the unlawful resistance of a superior officer, or the raising of commotions and disturbances on board of a ship against the authority of its commander, or in the army in opposition to the authority of the officers; a sedition, (q. v.); a revolt, (q. v.)

2.—By the act for establishing rules and articles for the government of the armies of the United States, it is enacted as follows: Article 7, Any officer or soldier, who shall begin, excite, or cause, or join in, any mutiny or sedition in any troop or company in the service of the United States, or in party, post, detachment or guard, shall suffer death, or such other punishment as by a court martial shall be inflicted. Article 8, Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or coming to the knowledge of any intended mutiny, does not without delay give information thereof to his commanding officer, shall be punished by the sentence of a court martial, with death, or otherwise, according to the nature of his offence.

3.—And by the act for the better government of the navy of the United States, it is enacted as follows: Article 13, If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death; and if any person as aforesaid, shall utter any seditious or mutinous words, or shall conceal or conive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office, or being witness to any mutiny or sedition, shall not do his utmost to suppress it, he shall be punished at the discretion of a court martial. Vide 2 Stra. R. 1264.

MUTUAL. Reciprocal.

2.—In contracts there must always be a consideration in order to make them valid. This is sometimes mutual, as when one man promises to pay a sum of money to another in consideration that he shall deliver him a horse, and the latter promises to deliver him the horse in consideration of being paid the price agreed upon. When a man and a woman promise to marry each other, the
promise is mutual. It is one of the
qualities of an award, that it be mutual;
but this doctrine is not as strict now as
formerly. 3 Rand. 94; see 3 Caines,
254; 4 Day, 422; 1 Dall. 364, 365; 6
Greenl. 247; 8 Greenl. 315; 6 Pick. 148.
3.—To entitle a contracting party to
a specific performance of an agreement,
it must be mutual, for otherwise it will
not be compelled. 1 Sch. & Lef. 18;
Bunb. 111; Newl. Contr. 152. See
4.—A distinction has been made be
tween mutual debts and mutual credits.
The former term is more limited in its
signification than the latter. In bank-
rupt cases, where a person was indebted
to the bankrupt a sum payable at a future
day, and the bankrupt owed him a
smaller sum which was then due; this,
though in strictness, not a mutual debt,
was holden to be a mutual credit. 1
Atk. 228, 230; 7 T. R. 378; Burge
on Sur. 455, 457.

MUTUARY, contracts. A person
who borrows personal chattels to be con-
sumed by him, and returned to the
lender in kind; the person who receives
the benefit arising from the contract of
mutuum. Story, Bailm. § 47.

MUTUUM, or loan for consumption,
in contracts, is a loan of personal chattels
to be consumed by the borrower, and to
be returned to the lender in kind and
quantity; as a loan of corn, wine, or
money, which are to be used or con-
sumed, and are to be replaced by other
corn, wine, or money. Story on Bailm,
§ 228; Louis. Code, tit. 12, c. 2;
Ayliff's Pand. 481; Poth. Pand. tom.
22, h. t.; Dane's Ab. Index, h. t.

2.—It is of the essence of this con-
tract, 1st, that there be either a certain
sum of money, or a certain quantity of
other things, which is to be consumed
by use, which is to be the subject-matter
of the contract, and which is loaned to
be consumed. 2d, That the thing be
delivered to the borrower. 3d, That the
property in the thing be transferred to
him. 4th, That he obligates himself to
return as much. 5th, That the parties
agree on all these points. Poth. Prêt.
de Consomption, n. 1.

MYSTERY or MISTERY. This
word is said to be derived from the
French mestier now written métier, a
trade. In law it signifies a trade, art, or
occupation. 2 Inst. 668.

2.—Masters frequently bind them-
theselves in the indentures with their appren-
tices to teach them their art, trade, and
mystery. Vide 2 Hawk. c. 23, s. 11.

MYSTIC. In a secret manner; con-
cealed; as mystic testament, for a secret
testament. Vide Testament Mystic.

N.

NAIL. A measure of length, equal
to two inches and a quarter. Vide Mea-
sure.

NAME, is one or more words used to
distinguish a particular individual, as
Socrates, Benjamin Franklin.

2.—Among the Romans, the division in
races, and the subdivision of races into
families caused a great multiplicity
of names. They had first the
pronomen, which was proper to the person; then
the nomen, belonging to his race; a sur-
name or cognomen, designating the fami-
ly; and sometimes an agnomen, which
indicated the branch of that family in
which the author has become distinguish-
ed. Thus, for example, Publius Corneli-
us Scipio Africanus, Publius is the
pronomen; Cornelius, the nomen, desig-
nating the name of the race Cornelia;
Scipio, the cognomen, or surname of the
family; and Africanus, the agnomen,
which indicated his exploits.

3.—Names are divided into Christian
names, as, Benjamin, and surnames, as,
Franklin.

4.—No man can have more than one
Christian name, 1 Ld. Raym. 562; Bac.
Ab. Mismomer, A; though two or more
names usually kept separate, as John and
Peter, may undoubtedly be com-
pounded, so as to form, in contemplation
of law, but one. 5 T. R. 195. A letter put between the Christian and surname, as an abbreviation of a part of the Christian name, as, John B. Peterson, is no part of either. 4 Watts's R. 329; 5 John. R. 84; 14 Pet. R. 322; 3 Pet. R. 7; 2 Cowen, 463; Co. Litt. 3 a; 1 Ld. Raym. 562; Vin. Ab. Miseromer, C 6, pl. 5 and 6; Com. Dig. Indictmen, G 1, note (u); Willes, R. 654; Bosc. Abr. Misnomer and Addition; 3 Chit. Pr. 164 to 173; 1 Young, R. 602. But see 7 Watts & Serg. 406.

5.—In general a corporation must contract and sue and be sued by its corporate name; 8 John. R. 295; 14 John. R. 238; 19 John. R. 300; 4 Rand. R. 359; yet a slight alteration in stating the name is unimportant, if there be no possibility of mistaking the identity of the corporation suing. 12 L. R. 444.

6.—It is said that in devises if the name be mistaken, if it appear the testator meant a particular corporation, the devise will be good; a devise to “the inhabitants of the south parish,” may be enjoyed by the inhabitants of the first parish. 3 Pick. R. 232; 6 S. & R. 11; see also Hob. 33; 6 Co. 65; 2 Cowen, R. 778.

7.—As to names which have the same sound, see Bac. Ab. Miseromer, A; 7 Serg. & Rawle, 479; Hammond's Analysis of Pleading, 89; 10 East, R. 83; and article Iden Somers.

8.—As to the effect of using those which have the same derivation, see 2 Roll. Ab. 135; 1 W. C. C. R. 285; 1 Chit. Cr. Law, 108. For the effect of changing one's name, see 1 Rot. Leg. 102; 3 M. & S. 453; Com. Dig. G 1, note (x).

9.—As to the omission or mistake of the name of a legatee, see 1 Rot. Leg. 132, 147; 1 Supp. to Ves. Jr. 81, 82; 6 Ves. 42; 1 P. Wms. 425; Jacob's R. 464. As to the effect of mistakes in the names of persons in pleading, see Steph. Pl. 319. Vide, generally, 13 Vin. Ab. 13; 15 Vin. Ab. 505; Dane's Ab. Index, h. t.; Roper on Leg. Index, h. t.; 8 Com. Dig. 814; 3 Mis. R. 144; 4 McCord, 437; 5 Halst. 230; 3 Mis. R. 227; 1 Pick. 388; Merl. Repert. mot Nom; and art. Misnomer.

NAMES OF SHIPS. The act of congress of December 31, 1792; concerning the registering and recording of ships or vessels, provides,

§ 3. That every ship or vessel, hereafter to be registered, (except as is hereinafter provided,) shall be registered by the collector of the district in which shall be comprehended the port to which such ship or vessel shall belong at the time of her registry, which port shall be deemed to be that, at or nearest to which the owner, if there be but one, or, if more than one, the husband, or acting and managing owner of such ship or vessel, usually resides. And the name of the said ship or vessel, and of the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters, of not less than three inches in length. And if any ship or vessel of the United States shall be found without having her name, and the name of the port to which she belongs, painted in manner aforesaid, the owner or owners shall forfeit fifty dollars; one half to the person giving the information thereof, the other half to the use of the United States. 1 Story's L. U. S. 629.

2.—And by the act of February, 18, 1793, it is directed,

§ 11. That every licensed ship or vessel shall have her name, and the port to which she belongs, painted on her stern, in the manner as is provided for registered ships or vessels; and if any licensed ship or vessel be found without such painting, the owner or owners thereof shall pay twenty dollars. 1 Story's L. U. S. 290.

3.—By a resolution of congress, approved, March 3, 1819, it is resolved, that all the ships of the navy of the United States, now building, or hereafter to be built, shall be named by the secretary of the navy, under the direction of the president of the United States, according to the following rule, to wit: Those of the first class, shall be called after the states of this Union; those of the second class, after the rivers; and
those of the third class, after the principal cities and towns; taking care that no two vessels in the navy shall bear the same name. 3 Story's L. U. S. 1757.

NAMIM, an old word which signifies the taking or restraining another person's movable goods. 2 Inst. 140; 3 Bl. Com. 149; a distress. Dalr. Feud. Pr. 113.

NARR, pleading. An abbreviation of the word narratio; a declaration in the cause.

NARRATOR. A pleader who draws narrs; serviens narrator, a serjeant at law. Fleta, l. 2, c. 37. Obsolete.

NARROW SEAS, English law, are those seas which adjoin the coast of England. Bac. Ab. Prerogative, B, 3.

NATALE. The state or condition of a man acquired by birth.

NATIONAL or PUBLIC DOMAIN. All the property which belongs to the state is comprehended under the name of national or public domain.

2.—Care must be taken not to confound the public or national domain, with the national finances, or the public revenue, as taxes, imposts, contributions, duties, and the like, which are not considered as property, and are essentially attached to the sovereignty. Vide Domain; Eminent Domain.

NATIONALITY, is the state of a person in relation to the nation in which he was born.

2.—A man retains his nationality of origin during his minority, but, as in the case of his domicil of origin, he may change his nationality upon attaining full age; he cannot renounce his allegiance without permission of the government. See Citizen; Domicil; Expatriation; Naturalization; Fulix, Du Dr. Intern. privè, n. 26; 8 Cranch, 363; 8 Cranch, 253; Chit. Law of Nat. 31; 2 Gall. 485; 1 Gall. 545.

NATIONS. Nations or states are independent bodies politic; societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.

2.—But every combination of men who govern themselves, independently of all others, will not be considered a nation; a body of pirates, for example, who govern themselves, are not a nation. To constitute a nation another ingredient is required. The body thus formed must respect other nations in general, and each of their members in particular. Such a society has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel, Prelim. § 1, 2; 5 Pet. S. C. R. 52.

3.—It belongs to the government to declare whether they will consider a colony which has thrown off the yoke of the mother country as an independent state; and until the government have decided on the question, courts of justice are bound to consider the ancient state of things as remaining unchanged. 1 Johns. Ch. R. 543; 13 John. 141, 561; see 5 Pet. S. C. R. 1; 1 Kent, Com. 21; and Body Politic; State.

NATIVES. All persons born within the jurisdiction of the United States are considered as natives.

2.—Natives will be classed into those born before the declaration of our independence, and those born since.

3.—1. All persons, without regard to the place of their birth, who were born before the declaration of independence, who were in the country at the time it was made, and who yielded a deliberate assent to it, either express or implied, as by remaining in the country, are considered as natives. Those persons who were born within the colonies, and before the declaration of independence, removed into another part of the British dominions, and did not return prior to the peace, would not probably be considered natives, but aliens.

4.—2. Persons born within the United States, since the revolution, may be classed into those who are citizens, and those who are not.

5.—1st. Natives who are citizens are the children of citizens, and of aliens who are not representing a foreign government near our own.
6. — The act to establish an uniform rule of naturalization, approved April 14, 1802, § 4, provides that the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. But, the right of citizenship shall not descend to persons whose fathers have never resided in the United States.

7. — 2d. Natives who are not citizens are, first, the children of ambassadors, or other foreign ministers, who, although born here, are subjects or citizens of the government of their respective fathers. Secondly, Indians, in general, are not citizens. Thirdly, negroes, or descendants of the African race, in general, have no power to vote, and are not eligible to office.

8. — Native male citizens, who have not lost their political rights, after attaining the age required by law, may vote for all kinds of officers, and be elected to any office for which they are legally qualified.

9. — The constitution of the United States declares that no person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president or vice-president of the United States.

Vide, generally, 2 Cranch, 280; 4 Cranch, 209; 1 Dal. 53; 20 John. 213; 2 Mass. 236, 244, note; 2 Pick. 394, n.; 2 Kent, 35.

NATURAL AFFECTION. The affection which a husband, a father, a brother, or other near relative, naturally feels towards those who are so nearly allied to him, sometimes supplies the place of a valuable consideration in contracts; and natural affection is a good consideration in a deed. For example, if a father should covenant without any other consideration to stand seised to the use of his child, the naming him to be of kin implies the consideration of natural affection, whereupon such use will arise. Carth. 138; Dane’s Ab. Index, h. t.

NATURAL CHILDREN, in the phraseology of the English or American law, are children born out of wedlock, or bastards, and are distinguished from legitimate children; but in the language of the civil law, natural are distinguished from adoptive children, that is they are the children of the parents spoken of, by natural procreation. See Inst. lib. 3, tit. 1, § 2.

2. — In Louisiana, illegitimate children who have been acknowledged by their father, are called natural children; and those whose fathers are unknown are contradistinguished by the appellation of bastards. Civ. Code of Lo. art. 220. The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in the presence of two witnesses, whenever it shall not have been made in the registering of the birth or baptism of such child. Ib. art. 221. Such acknowledgment shall not be made in favour of the children produced by an incestuous or adulterous connexion. Ib. art. 222.

3. — Fathers and mothers owe alimony to their natural children, when they are in need. Ib. art. 256, 913. In some cases natural children are entitled to the legal succession of their natural fathers or mothers. Ib. art. 911 to 927.

4. — Natural children owe alimony to their father or mother, if they are in need, and if they themselves have the means of providing it. Ib. art. 256.

5. — The father is of right the tutor of his natural children acknowledged by him; the mother is of right the tutrix of her natural child not acknowledged by the father. The natural child, acknowledged by both, has for tutor, first the father; in default of him, the mother. Ib. art. 274.

NATURAL OBLIGATION, civ. law, is one which in honour and conscience binds the person who has contracted it, but which cannot be enforced in a court of justice. Poth. n. 173, and n. 191. See Obligation.

NATURALIZED CITIZEN, is one who being born an alien, has lawfully become a citizen of the United States under the constitution and laws.

2. — He has all the rights of a natural born citizen, except that of being eligible
as president or vice president of the United States. In foreign countries he has a right to be treated as such, and will be so considered even in the country of his birth, at least for most purposes. 1 Bos. & P. 430. See Citizen; Domicile; Inhabitant.

NATURALIZATION. The act by which an alien is made a citizen of the United States of America.

2.—The constitution of the United States, art. 1, s. 8, vests in congress the power “to establish an uniform rule of naturalization.” In pursuance of this authority congress have passed several laws on this subject, which, as they are of general interest, are here transcribed as far as they are in force.

3.—1. An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject. Approved April 14, 1802.

§ 1. Be it enacted, &c. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: First, That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years, at least, before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. Secondly, That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which pro-
ceedings shall be recorded by the clerk of the court. Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same:

4.—Provided, That the oath of the applicant shall, in no case, be allowed to prove his residence. Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court:

5.—Provided, That no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States:

6.—Provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application within the state or territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and par-
particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.

7.—And provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

8.—§ 3. And whereas, doubts have arisen whether certain courts of record, in some of the states, are included within the description of district or circuit courts: Be it further enacted, That every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien, who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

9.—§ 4. That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States:

10.—Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States:

11.—Provided also, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

12.—§ 5. That all acts heretofore passed respecting naturalization, be, and the same are hereby repealed.

13.—2. An act in addition to an act, entitled “An act to establish an uniform rule of naturalization; and to repeal the acts heretofore passed on that subject.” Approved March 26, 1804.

14.—§ 1. Be it enacted, &c. That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled “An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.”
second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all the rights and privileges as such, upon taking the oaths prescribed by law.

16.—3. An act for the regulation of seamen on board the public and private vessels of the United States.

17.—§ 12. That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission as aforesaid, have resided within the United States, without being, at any time during the said five years, out of the territory of the United States. App. March 3, 1813.


19.—§ 1. Be it enacted, &c. That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intentions to become citizens of the United States, or who, by the existing laws of the United States, were, on that day, entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times and in the manner prescribed by the laws heretofore passed on the subject: Provided, That nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the naturalization of such alien.


21.—§ 2. That nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein, without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.'" Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

22.—6. An act in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject." App. May 26, 1824.

23.—§ 1. Be it enacted, &c. That any
alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission:

24.—Provided, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

25.—§ 2. That no certificates of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to comply with the requisition of the first section of the act, entitled “An act relative to evidence in cases of naturalization,” passed the twenty-second day of March, one thousand eight hundred and sixteen.

26.—§ 3. That the declaration required by the first condition specified in the first section of the act, to which this is in addition, shall, if the same has been bona fide made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

27.—§ 4. That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; any thing in the said act, or in any subsequent act, to the contrary notwithstanding.


29.—§ 1. Be it enacted, &c. That the second section of the act, entitled “An act to establish an uniform rule of naturalization, and to repeal the acts hereunto passed on that subject,” which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled “An act relative to evidence in cases of naturalization,” passed on the twenty-second day of March, one thousand eight hundred and sixteen, be, and the same are hereby repealed.

30.—§ 2. That any alien, being a free white person, who has resided within the limits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen:

31.—Provided, That whenever any person without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses: and such continued residence within the limits and
under the jurisdiction of the United States when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

NAUFRAGE, French mar. law. When by the violent agitation of the waves, the impetuosity of the winds, the storm, or the lightening, a vessel is swallowed up, or so shattered that there remain only the pieces, the accident is called naufrage.

2.—It differs from échouement, which is when the vessel remains whole, but is grounded; or from bris, which is when it strikes against a rock or a coast; or from sombrer, which is the sinking of the vessel in the sea, where it is swallowed up, and which may be caused by any accident whatever. Pardes. n. 648. Vide Wreck.

NAUTÆ. Strictly speaking only carriers by water are comprehended under this word. But the rules which regulate such carriers have been applied to carriers by land. 2 Ld. Raym. 917; 1 Bell’s Com. 467.

NAVAL OFFICER. The name of an officer of the United States whose duties are prescribed by various acts of congress.

2.—Naval officers are appointed for the term of four years, but are removable from office at pleasure. Act of 15th of May, 1820, § 1, 3 Story, L. U. S. 1790.

3.—The act of March 2, 1799, § 21, 1 Story, L. U. S. 590, prescribes that the naval officer shall receive copies of all manifests and entries, and shall, together with the collector, estimate the duties on all goods, wares, and merchandise, subject to duty, (and no duties shall be received without such estimate,) and shall keep a separate record thereof, and shall countersign all permits, clearances, certificates, debentures, and other documents, to be granted by the collector; he shall also examine the collector’s abstracts of duties, and other accounts of receipts, bonds, and expenditures, and, if found right, he shall certify the same.

4.—And by § 68, of the same law, it is enacted, that every collector, naval officer, and surveyor, or other person specially appointed, by either of them, for that purpose, shall have full power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise, subject to duty are concealed, and therein to search for, seize, and secure, any such goods, wares, or merchandise; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place, they or either of them shall, upon proper application, on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place, (in the day time only,) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares, and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

NAVICULARIS, civil law. He who had the management and care of a ship. The same as our sea captain. Bouch. Inst. n. 359. Vide Captain.

NAVIGABLE. Capable of being navigated.

2.—In law the term navigable is applied to the sea, to arms of the sea, and to rivers in which the tide flows and re-flows. 5 Taunt. R. 705; S. C. Eng. Com. Law Rep. 240; 5 Pick. R. 199; Ang. Tide Wat. 62.

3.—In North Carolina, 1 McCord, R. 580; 2 Dev. R. 30; 3 Dev. R. 59; and in Pennsylvania, 2 Binn. R. 75; 14 S. & R. 71; the navigability of a river does not depend upon the ebb and flow of the tide, but a stream navigable by sea vessels is a navigable river.

4.—By the common law, such rivers as are navigable in the popular sense of the word, whether the tide ebb and flow in them or not, are public highways. Ang. Tide Wat. 62; Ang. Wat. Courses, 205; 1 Pick. 180; 5 Pick. 197; 1
Vide Arm of the sea; Relic; River.

NAVIGATION, whatever relates to traversing the sea in ships; the art of ascertaining the geographical position of a ship, and directing her course.

2.—It is not within the plan of this work to copy the acts of congress relating to navigation, or even an abstract of them. The reader is referred to Story’s L. U. S. Index, h. t.; Gordon’s Dig. art. 2905, et seq.

NAVY, is the whole shipping, taken collectively, belonging to the government of an independent nation: the ships belonging to private individuals are not included in the navy.

2.—The constitution of the United States, art. 1, s. 8, vests in congress the power “to provide and maintain a navy.”

3.—Anterior to the war of 1812, the navy of the United States had been much neglected, and it was not until during the late war, when it fought itself into notice, that the public attention was seriously attracted to it. Some legislation favourable to it, then took place.

4.—The act of January 2, 1813, 2 Story’s L. U. S. 1282, authorized the president of the United States, as soon as suitable materials could be procured therefor, to cause to be built, equipped and employed, four ships to rate not less than seventy-four guns, and six ships to rate forty-four guns each. The sum of two millions five hundred thousand dollars is appropriated for the purpose.

5.—And by the act of the 3d of March, 1813, 2 Sto. L. U. S. 1813, the president is further authorized to have built six sloops of war, and to have built or procured such a number of sloops of war or other armed vessels, as the public service may require on the lakes. The sum of nine hundred thousand dollars is appropriated for this purpose, and to pay two hundred thousand dollars for vessels already procured on the lakes.

6.—The act of 3 March, 1815, 2 St. L. U. S. 1511, appropriates the sum of two hundred thousand dollars annually for three years, towards the purchase of a stock of materials for ship building.

7.—The act of April 29, 1816, may be said to have been the first that manifested the fostering care of congress. By this act the sum of one million of dollars per annum for eight years, including the sum of two hundred thousand dollars per annum appropriated by the act of March 3, 1815, is appropriated. And the president is authorized to cause to be built nine ships, to rate not less than seventy-four guns each, and twelve ships to rate not less than forty-four guns each, including one seventy-four and three forty-four gun ships, authorized to be built by the act of January 2d, 1813. The third section of this act authorizes the president to procure steam-engines and all the imperishable materials for building three steam batteries.

8.—The act of March 3, 1821, 3 Story’s L. U. S. 1820, repeals the first section of the act of the 29th April, 1816, and instead of the appropriation therein contained, appropriates the sum of five hundred thousand dollars per annum for six years, from the year 1821 inclusive, to be applied to carry into effect the purposes of the said act.

9.—To repress piracy in the Gulf of Mexico, the act of 22d December, 1822, was passed, 3 St. L. U. S. 1873. It authorizes the president to purchase or construct a sufficient number of vessels to repress piracy in that gulf and the adjoining seas and territories. It appropriates one hundred and sixty thousand dollars for the purpose.

10.—The act of May 17, 1826, authorizes the suspension of the building of one of the ships above authorized to be built, and authorizes the president to purchase a ship of not less than the smallest class authorized to be built by the act of 29th April, 1816.

11.—The act of March 3, 1827, 3 St. L. U. S. 2070, appropriates five hundred thousand dollars per annum for six years for the gradual improvement of the navy of the United States, and authorizes the president to procure materials for ship building.—A further appropriation is made by the act of March 2, 1833, 4 Sharsw. con. of St. L. U. S. 2346, of five hundred thousand dollars annually for six years from and after the third of
March, 1833, for the gradual improvement of the navy of the United States; and the president is authorized to cause the above mentioned appropriation to be applied as directed by the act of March 3, 1827.

12.—For the rules and regulations of the navy of the United States, the reader is referred to the act "for the better government of the navy of the United States," 1 St. L. U. S. 761.

Vide article Names of Ships.

NE DISTURBA PAS in pleading, is the general issue in quare impedit. Hob. 162; Vide Rast. 517; Winch. Ent. 703.

NE DONA PAS, or NON DEDIT, in pleading, is the general issue in formon ; and is in the following formula: "And the said C D, by J K, his attorney, comes, defends the right, when, &c. and says, that the said E F did not give the said manor, with the appurtenances, or any part thereof, to the said G B, and the heirs of his body issuing, in manner and form as the said A B hath in his count above alleged. And of this the said C D puts himself upon the country." 10 Went. 182.

NE EXEAT REPUBLICA, practice. The name of a writ issued by a court of chancery, directed to the sheriff, requiting that the defendant in the case is indebted to the complainant, and that he designs going quickly into parts without the state, to the damage of the complainant, and then commanding him to cause the defendant to give bail in a certain sum that he will not leave the state without leave of the court, and for want of such bail that he, the sheriff, do commit the defendant to prison.

2.—This writ is used to prevent debtors from escaping from their creditors. It amounts in ordinary civil cases, to nothing more than process to hold to bail, or to compel a party to give security to abide the decree to be made in his case. 2 Kent, Com. 32; 1 Clarke, R. 551; Beames's Ne Exeat; 13 Vin. Ab. 537; 1 Supp. to Ves. jr. 33, 352, 467; 4 Ves. 577; 5 Ves. 91; Bac. Ab. Prerogative, C; 8 Com. Dig. 232; 1 Bl. Com. 138; Blake's Ch. Pr. Index, h. t.; Madd. Ch. Pr. Index, h. t.; 1 Smith's Ch. Pr. 576; Story's Eq. Index, h. t.

3.—The subject may be considered under the following heads.

4.—1. Against whom a writ of ne exeat may be issued. It may be issued against foreigners subject to the jurisdiction of the court, citizens of the same state, or of another state, when it appears by a positive affidavit that the defendant is about to leave the state, or has threatened to do so, and that the debt would be lost or endangered by his departure. 3 Johns. Ch. R. 75, 412; 7 Johns. Ch. R. 192; 1 Hopk. Ch. R. 499. On the same principle which has been adopted in the courts of law that a defendant could not be held to bail twice for the same cause of action, it has been decided that a writ of ne exeat was not properly issued against a defendant who had been held to bail in an action at law. 8 Ves. jr. 594.

5.—2. For what claims. This writ can be issued only for equitable demands. 4 Desauns. R. 108; 1 Johns. Ch. R. 2; 6 Johns. Ch. R. 138; 1 Hopk. Ch. R. 499; it may be allowed in a case to prevent the failure of justice. 2 Johns. Chanc. Rep. 191. When the demand is strictly legal, it cannot be issued, because the court has no jurisdiction. When the court has concurrent jurisdiction with the courts of common law, the writ may, in such case, issue, unless the party has been already arrested at law. 2 Johns. Ch. R. 170. In all cases, when a writ of ne exeat is claimed, the plaintiff's equity must appear on the face of the bill. 3 Johns. Ch. R. 414.

6.—3. The amount of bail. The amount of bail is assessed by the court itself; and a sum is usually directed sufficient to cover the existing debt, and a reasonable amount of future interest, having regard to the probable duration of the suit. 1 Hopk. Ch. R. 501.

NE LUMINIBUS OFFICIATUR, civil law. The name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house. Dig. 8, 4, 15, 17.

NE RECEPIATUR. That it be not
received. A caveat or words of caution given to a law officer, by a party in a cause, not to receive the next proceedings of his opponent. 1 Sell. Br. 7.

NE RELESSA PAS. The name of a replication to a plea of release, by which the plaintiff insists he did not release. 2 Buls. 55.

NE UNJUSTE VEXES, old Engl. law. The name of a writ which issued to relieve a tenant upon whom his lord had distrained for more services than he was bound to perform.

2.—It was a prohibition to the lord, not unjustly to distrain or eex his tenant. F. N. B. h. t.

NE UNQUES ACCOPPLE, pleading, is a plea by which the party denies that he ever was lawfully married to the person to whom it refers. See the form, 2 Wils. R. 118; Morg. 582; 10 Went. Prec. Pl. 158; 2 H. Bl. 145; 3 Chit. Pl. 599.

NE UNQUES EXECUTOR, pleading, is a plea by which the party who uses it denies that the plaintiff is an executor, as he claims to be; or that the defendant is executor as the plaintiff in his declaration charges him to be. 1 Chit. Pl. 484; 1 Saund. 274, n. 3; Com. Dig. Pleader, 2 D, 2; 2 Chitt. Pl. 498.

NE UNQUES SEISIE QUE DOWER, pleading, a plea by which a defendant denies the right of a widow who sues for, and demands her dower in lands, &c., late of her husband, because the husband was not on the day of her marriage with him, or any time afterwards, seised of such estate, so that she could be endowed of the same. See 2 Saund. 329; 10 Went. 159; 3 Chitt. Pl. 598, and the authorities there cited.

NE UNQUES SON RECEIVER, pleading, the name of a plea in an action of account render, by which the defendant affirms that he never was the receiver of the plaintiff. 12 Vin. Ab. 183.

NEAT or NET, contracts. Is the exact weight of an article, without the bag, box, keg or other thing in which it may be enveloped.

NEATNESS, in pleading, is the statement, in apt and appropriate words, of all the necessary facts and no more. Lawes on Pl. 62.

NECESSARIES, are such things as are proper and requisite for the sustenance of man.

2.—The term necessaries is not confined merely to what is requisite barely to support life, but includes many of the conveniences of refined society; it is a relative term, which must be applied to the circumstances and conditions of the parties. 7 S. & R. 247. Ornaments and superfluities of dress, such as are usually worn by the party's rank and situation in life have been classed among necessaries. 1 Campb. R. 120; 7 C. & P. 52; 1 Hodges, R. 31; 8 T. R. 578; 3 Campb. 326; 1 Leigh's N. P. 135.

3.—Persons incapable of making contracts generally, may nevertheless make legal engagements for necessaries for which they, or those bound to support them, will be held responsible. The classes of persons who, although not bound by their usual contracts, can bind themselves or others for necessaries, are infants and married women.

4.—1. Infants are allowed to make binding contracts whenever it is for their interest; when, therefore, they are unprovided with necessaries, which Lord Coke says include victuals, clothing, medical aid, and "good teaching and instruction, whereby he may profit himself afterwards," they may buy them, and their contracts will be binding. Co. Litt. 172 a. Necessaries for the infant's wife and children, are necessaries for himself. Str. 168; Com. Dig. Enfant, B 5; 1 Sid. 112; 2 Stark. Ev. 725; 3 Day, 37; 1 Bibb, 519; 2 Nott & McC. 524; 9 John. R. 141; 16 Mass. 31; Bae. Ab. Infancy, I.

5.—2. A wife is allowed to make contracts for necessaries and her husband is generally responsible upon them, because his assent is presumed, and even if notice be given not to trust her, still he would be liable for all such necessaries as she stood in need of, but in this case the creditor would be required to show she did stand in need of the articles furnished. 1 Salk. 118; Id. Raym. 1006. But if the wife elopes, though it be not with an
adulterer, he is not chargeable even for necessaries; the very fact of the elopement and separation, is sufficient to put persons on inquiry, and whoever gives credit to the wife afterwards, gives it at his peril. 1 Salk. 119; Str. 647; 1 Sid. 109; S. C. 1 Lev. 4; 12 John R. 293; 3 Pick. R. 289; 2 Halst. 146; 11 John R. 281; 2 Kent. Com. 123; 2 St. Ev. 696; Bac. Ab. Baron and Feme, H.; Chit. Contr. Index, h. t.; 1 Hare & Wall. Sel. Dec. 104, 106.

NECESSARY AND PROPER.—The constitution of the United States, art. 1, s. 8, vests in congress the power "to make all laws, which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, in any department or officer thereof."

2.—This power has ever been viewed with perhaps unfounded jealousy and distrust. It is a power expressly given, which, without this clause, would be implied. The plain import of the clause is, that congress shall have all incidental and instrumental powers, necessary and proper to carry into execution all the express powers. It neither enlarges any power specifically granted, nor is it a grant of any new power to congress. It is merely a declaration for the removal of all uncertainty, that the means of carrying into execution those already granted, are included in the grant.

3.—Some controversy has taken place as to what is to be considered "necessary;" it has been contended that by this must be understood what is indispensable; but it is obvious the term necessary means no more than useful, needful, requisite, incidental, or conducive to. It is in this sense the word appears to have been used, when connected with the word "proper." 4 Wheat. 418-420; 3 Story, Const. § 1231 to 1253.

NECESSARY INTROMISSION, Scotch law, is when the husband or wife, continues after the decease of his or her companion, in possession of the decedent's goods, for their preservation.

NECESSITY, is in general whatever makes the contrary of a thing impossible, whatever may be the cause of such impossibilities.

2.—Whatever is done through necessity is done without any intention, and as the act is done without will, (q. v.) and is compulsory, the agent is not legally responsible. Bac. Max. Reg. 5. Hence the maxim, necessity has no law; indeed necessity is itself a law which cannot be avoided nor infringed. Clef des Lois Rom. h. t.; Dig. IO, 3, 10, 1; Com. Dig. Pledger, 3 M 20, 3 M 30.

3.—It follows, then, that the acts of a man in violation of law, or to the injury of another, may be justified by necessity, because the actor has no will to do or not to do the thing, he is a mere tool; but, it is conceived, this necessity must be absolute and irresistible, in fact, or so presumed in point of law.

4.—The cases which are justified by necessity may be classed as follows:

1. For the preservation of life; as if two persons are on the same plank, and one must perish, the survivor is justified in having thrown off the other, who was thereby drowned. Bac. Max. Reg. 5.

5.—2. Obedience by a person subject to the power of another; for example, if a wife should commit a larceny with her husband, in this case the law presumes she acted by coercion of her husband, and, being compelled by necessity, she is justifiable. 1 Russ. Cr. 10, 20; Bac. Max. Reg. 5.

6.—3. Those cases which arise from the act of God, or inevitable accident, or from the act of man, as public enemies. Vide Act of God; Inevitable Accident; and also 15 Vin. Ab. 534; Dane's Ab. h. t.; 2 Stark. Ev. 713; Marsh. Ins. b. 1, c. 6, s. 3; Jacob's Intr. to Com. Law, Reg. 74.

7.—4. There is another species of necessity. The actor in these cases is not compelled to do the act whether he will or not, but he has no choice left but to do the act which may be injurious to another, or to lose the total use of his property. For example, when a man's lands are surrounded by those of others, so that he cannot enjoy them without trespassing on his neighbours. The way which is thus obtained, is called a way

NEGATION. Denial. Two negations are construed to mean one affirmation. Dig. 50, 16, 137.

NEGATIVE. This word has several significations. 1. It is used in contradistinction to giving *assent*; thus we say the president has put his negative upon such a bill. *Vide* Veto. 2. It is also used in contradistinction to *affirmative*; as, a negative does not always admit of the simple and direct proof of which an affirmative is capable. When a party affirms a negative in his pleadings, and without the establishment of which, by evidence, he cannot recover or defend himself, the burden of the proof lies upon him, and he must prove the negative. 8 Toul. n. 18. Vide 2 Gall. Rep. 485; 1 McCard, R. 573; 11 John. R. 513; 19 John. R. 345; 1 Pick. R. 375; Gilb. Ev. 145; 1 Stark. Ev. 376; Bull. N. P. 298; 15 Vin. Ab. 540; Bac. Ab. Pleas, &c. I.

2. Although as a general rule the affirmative of every issue must be proved, yet this rule ceases to operate the moment the presumption of law is thrown into the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. *Vide* Affirmative; Innocence.

NEGATIVE AVERMENT, pleading, evidence, is an averment in some of the pleadings in a case in which a negative is asserted.

2.—It is a general rule established for the purpose of shortening and facilitating investigations that the point in issue is to be proved by the party who asserts the affirmative, 1 Phil. Ev. 184; Bull N. P. 298; but as this rule is not founded on any presumption of law in favour of the party, but is merely a rule of practice and convenience, it ceases in all cases when the presumption of law is thrown in the opposite scale. Gilb. Ev. 145; for example, when the issue is on the legitimacy of a child born in lawful wedlock, it is incumbent on the party asserting its illegitimacy to prove it. 2 Selw. N. P. 709.

3.—Upon the same principle when the negative averment involves a charge of criminal neglect of duty, whether official or otherwise, it must be proved, for the law presumes every man to perform the duties which it imposes. 2 Gall. R. 498; 19 John. R. 345; 10 East, R. 211; 3 B. & P. 302; 3 East, R. 192; 1 Mass. R. 54; 3 Campb. R. 10; Greenl. Ev. § 80. *Vide* Onas Probandi.

NEGATIVE PREGNANT, in pleading. Such form of negative expression, in pleading, as may imply or carry within it, an affirmative.

2.—This is faulty, because the meaning of such form of expression is ambiguous. Example: in trespass for entering the plaintiff's house, the defendant pleaded, that the plaintiff's daughter gave him license to do so; and that he entered by that license. The plaintiff replied that he did not enter by her license. This was considered as a negative pregnant, and it was held the plaintiff should have traversed the entry by itself, or the license by itself, and not both together. Cro. Jac. 87.

3.—It may be observed that this form of traverse may imply, or carry within it, that the license was given, though the defendant did not enter by that license. It is therefore in the language of pleading said to be pregnant with the admission, namely, that a license was given: at the same time, the license is not expressly admitted, and the effect therefore is, to leave it in doubt whether the plaintiff means to deny the license, or to deny that the defendant entered by virtue of that license. It is this ambiguity which appears to constitute the fault. 28 H. 6, 7; Hob. 295; Style's Pr. Reg. Negative Pregnant; Steph. Pl. 381; Gould, Pl. c. 6, § 29-37.

4.—This rule, however, against a negative pregnant, appears, in modern times
at least, to have received no very strict construction; for many cases have occurred in which, upon various grounds of distinction from the general rule, that form of expression has been free from objection. See several instances in Com. Dig. Plead. (R. 6.); 1 Lev. 88; Steph. Pl. 383.—V. Arch. Civ. Pl. 213; Doct. Pl. 317; Lawe’s Civ. Pl. 114; Gould, Pl. c. 6, § 36.

NEGLIGENCE, contracts, torts. When considered in relation to contracts, negligence may be divided into various degrees, namely, ordinary, less than ordinary, more than ordinary.

2. Ordinary negligence is the want of ordinary diligence; slight or less than ordinary negligence, is the want of great diligence; and gross or more than ordinary negligence, is the want of slight diligence.

3. Three great principles of responsibility, seem naturally to follow this division.

4. In those contracts which are made for the sole benefit of the creditor, the debtor is responsible only for gross negligence, good faith alone, being required of him; as in the case of a depositary, who is a bailee without reward; Story, Bailm. § 62; Dane’s Ab. c. 17, a, 2; 14 Serg. & Rawle, 275; but to this general rule, Pothier makes two exceptions. The first, in relation to the contract of a mandate, and the second, to the quasi contract negotiorum gestorum; in these cases he says, the party undertaking to perform these engagements, is bound to use necessary care. Observation Générale, printed at the end of the Traité des Obligations.

5. In those contracts which are for the reciprocal benefit of both parties, such as those of sale, of hiring, of pledge, and the like, the party is bound to take, for the object of the contract, that care which a prudent man ordinarily takes of his affairs, and he will therefore be held responsible for ordinary neglect. Jones’s Bailment, 10, 119; 2 Lord Raym. 909; Story, Bailm. § 23; Pothier, Obs. Général. ubi supra.

6. In those contracts made for the sole interest of the party who has received, and is to return the thing which is the object of the contract, such, for example, as loan for use, or commodatum, the slightest negligence will make him responsible. Jones’s Bailm. 64, 65; Story’s Bailm. § 237; Pothier, Obs. Général. ubi supra.

7. In general, a party who has caused an injury or loss to another, in consequence of his negligence, is responsible for all the consequence. Hob. 134; 3 Wils. 126; 1 Chit. Pl. 129, 130; 2 Hen. & Munf. 423; 1 Str. 596; 3 East, R. 596. An example of this kind may be found in the case of a person who drives his carriage during a dark night on the wrong side of the road, by which he commits an injury to another. 3 East, R. 593; 1 Campb. R. 497; 2 Campb. 465; 2 New Rep. 119. Vide Gale and Whatley on Easements, Index, h. t.; 6 T. R. 659; 1 East, R. 106; 4 B. & A. 590; S. C. 6 E. C. L. R. 528; 1 Taunt. 568; 2 Stark. R. 272; 2 Bing. R. 170; 5 Esp. R. 35, 263; 5 B. & C. 550. Whether the incautious conduct of the plaintiff will excuse the negligence of the defendant, see 1 Q. B. 29; 4 P. & D. 642; 3 M. Lyr. & Sc. 9; Fault. 8. When the law imposes a duty on an officer, whether it be by common law or statute, and he neglects to perform it, he may be indicted for such neglect. 1 Salk. R. 380; 6 Mod. R. 96; and in some cases such neglect will amount to a forfeiture of the office. 4 Bl. Com. 140.

NEGLIGENT ESCAPE, is the omission to take such a care of a prisoner as a gaoler is bound to take, and in consequence of it, the prisoner departs from his confinement, without the knowledge or consent of the gaoler, and eludes pursuit.

2. For a negligent escape, the sheriff or keeper of the prison is liable to punishment in a criminal case; and in a civil case, he is liable to an action for damages at the suit of the plaintiff. In both cases, the prisoner may be retaken. 3 Bl. Com. 415.

NEGOCIATION, contracts. The deliberation which takes place between the parties touching a proposed agreement.

2. What transpires in the negotiation
makes no part of the agreement; unless introduced into it. It is a general rule that no evidence can be given to add, diminish, contradict or alter a written instrument. 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609; 7 S. & R. 114. See *Pourparoler*

**Negociation, merc. law**, is the act by which a bill of exchange or promissory is put into circulation by being passed by one of the original parties to another person.

2.—Until an accommodation bill or note has been negociated, there is no contract which can be enforced on the note: the contract, either express or implied, that the party accommodated will indemnify the other, is, till then, conditional. 2 Man. & Gr. 911.

**NEGOCIABLE.**—What is capable of being transferred by assignment; a thing the title to which may be transferred by a sale and endorsement or delivery.

2.—A chose in action was not assignable at common law, and therefore contracts or agreements could not be negociated. But exceptions have been allowed to this rule in relation to simple contracts, and others have been introduced by legislative acts. So that, now, bills of exchange, promissory notes, bills of lading, bank notes, payable to order, or to bearer, and, in some states, bonds and other specialties, may be transferred by assignment, endorsement; or by delivery, when the instrument is payable to bearer.

3.—When a claim is assigned which is not negociable at law, such, for example, as a book debt, the title to it remains at law in the assignor, but the assignee is entitled to it in equity, and he may therefore recover it in the assignor’s name. See generally Hare & Wall. Sel. Dec. 158 to 194; *Negociable paper*.

**Negociable paper, contracts.** This term is applied to bills of exchange and promissory notes, which are assignable by indorsement or delivery.

2.—The statute of 3 & 4 Anne, (the principles of which have been generally adopted in this country, either formally, or in effect,) made promissory notes payable to a person, or to his order, or bearer, negociable like inland bills, according to the custom of merchants.

3.—This negociable quality transfers the debt from the party to whom it was originally owing, to the holder, when the instrument is properly indorsed, so as to enable the latter to sue in his own name, both the maker of a promissory, or the acceptor of a bill of exchange, and the other parties to such instruments, such as the drawer of a bill, and the indorser of a bill or note, unless the holder has been guilty of laches in giving the required notice of non-acceptance or non-payment. But in order to make paper negociable, it is essential that it be payable in money only, at all events, and not out of a particular fund. 1 Cowen, 691; 6 Cowen, 105; 2 Whart. 233; 1 Bibb, 490, 503; 1 Ham. 272; 3 J. J. Marsh. 174, 542; 3 Halst. 262; 4 Blackf. 47; 6 J. J. Marsh. 170; 4 Monr. 124. See 1 W. C. C. R. 512; 1 Miles, 294; 6 Munf. 3; 10 S. & R. 94; 4 Watts, 400; 4 Whart. R. 252; 9 John. 120; 19 John. 144; 11 Verm. 268; 21 Pick. 140. Vide *Promissory note. Vide* 3 Kent, Com. Lecture 44; Com. Dig. Merchant, F 15, 16; 2 Hill, R. 59; 13 East, 509; 3 B. and C. 47; 7 Bing. 284; 5 T. R. 683; 7 Taunt. 265, 278; 3 Burr. 1516; 6 Cowen, 151.

**NEGOTORIUM GESTOR, in contracts, in the civil law; the negotorium gestor is one who spontaneously, and without authority, undertakes to act for another during his absence, in his affairs.**

2.—In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract, but the civil law raises a quasi mandate by implication, for the benefit of the owner in many such cases. Poth. App. Negot. Gest. Mandat, n. 167, &c.; Dig. 3, 5, 1, 9; Code, 2, 19, 2.

3.—Nor is an implication of this sort wholly unknown to the common law, where there has been a subsequent ratification of acts of this kind by the owner; and sometimes, when unauthorized acts are done, positive presumptions are made by law for the benefit of particular parties. For example, if a person enters upon a minor’s lands, and takes the pro-
fits, the law will oblige him to account to the minor for the profits, as his bailiff, in many cases. Dane's Abr. ch. 8, art. 2, § 10; Bac. Abr. Account; Com. Dig. Accomp., A 3.

4.—There is a case which has undergone decisions in our law, which approaches very near to that of negotiorum gestorum. A master had gratuitously taken charge of, and received on board of his vessel a box, containing doubloons and other valuables, belonging to a passenger, who was to have worked his passage, but was accidentally left behind. During the voyage, the master opened the box, in the presence of the passengers, to ascertain its contents, and whether there were contraband goods in it; and he took out the contents and lodged them in a bag in his own chest in his cabin, where his own valuables were kept. After his arrival in port, the bag was missing. The master was held responsible for the loss, on the ground that he had imposed on himself the duty of carefully guarding against all peril to which the property was exposed by means of the alteration in the place of custody, although as a bailee without hire, he might not otherwise have been bound to take more than a prudent care of them; and that he had been guilty of negligence in guarding the goods. 1 Stark. R. 237; See Story, Bailm. § 189; Story, Agency, § 142; Poth. Pand. 1. 3, t. 5, n. 1 to 14; Poth. Ob. n. 113; 2 Kent, Com. 616, 3d ed.; Ersk. Inst. B. 1, t. 3, § 52; Stair, Inst. by Brodie, B. 1, t. 8, § 3 to 6.

NEIF, old Eng. law. A woman who was born a villain or bond-woman.

NEMINE CONTRADICENTE, legislation. These words usually abbreviated *nem. con.*, are used to signify the unanimous consent of the house to which they are applied. In England they are used in the House of Commons; in the House of Lords, the words to convey the same idea are *Nemine dissentiente*.

NEPHEW, dom. rel., is the son of a person’s brother or sister. Amb. 514; 1 Jacob’s Ch. R. 207.

NEPOS. A grandson. This term is used in making genealogical tables.

NEUTRAL PROPERTY, in insurance. The words “neutral property” in a policy of insurance, have the effect of warranting that the property insured is neutral; that is, that it belongs to the citizens or subjects of a state in amity with the belligerent powers.

2.—This neutrality must be complete, hence the property of a citizen or subject of a neutral state, domiciled in the dominions of one of the belligerents, and carrying on commerce there, is not neutral property; for though such person continue to owe allegiance to his country, and may at any time by returning there recover all the privileges of a citizen or subject of that country; yet while he resides in the dominion of a belligerent he contributes to the wealth and strength of such belligerent, and is not therefore entitled to the protection of a neutral flag; and his property is deemed enemy’s property, and liable to capture as such by the other belligerent. Marsh. Ins. B. 1, c. 9, s. 6; 1 John. Cas. 363; 3 Bos. & Pull. 207, n. 4; Esp. R. 108; 1 Caines’s R. 60; 16 Johns. R. 128. See also 2 Johns. Cas. 478; 1 Caines’s C. Err. xxv.; 1 Johns. Cas. 360; 2 Johns. Cas. 191.

3.—If the warranty of neutrality be false at the time it is made, the policy will be void ab initio. But if the ship and property are neutral at the time when the risk commences, this is a sufficient compliance with a warranty of neutral property, and a subsequent declaration of war will not be a breach of it. Dougl. 705. See 1 Binn. 293; 8 Mass. 308; 14 Johns. R. 308; 5 Binn. 464; 2 Serg. & Rawle, 119; 4 Cranch, 185; 7 Cranch, 506; 2 Dall. 274.

NEUTRALITY, international law, is the state of a nation which takes no part between two or more other nations at war with each other.

2.—Neutrality consists in the observance of a strict and honest impartiality, so as not to afford advantage in the war to either party; and particularly in so far restraining its trade to the accustomed course, which is held in time of peace, as not to render assistance to one of the belligerents in escaping the effects of the other’s hostilities. Even a loan of money
to one of the belligerent parties is considered a violation of neutrality. 9 Moore’s Rep. 586. A fraudulent neutrality is considered as no neutrality.

3.—In policies of insurance there is frequently a warranty of neutrality. The meaning of this warranty is that the property insured is neutral in fact, and it shall be so in appearance and conduct; that the property does belong to neutrals; that it is or shall be documented so as to prove its neutrality, and that no act of the insured or his agents shall be done which can legally compromise its neutrality. 3 Wash. C. C. R. 117. See 1 Caines, 548; 2 S. & R. 119; Bee, R. 5; 7 Wheat. 471; 9 Cranch, 205; 2 John. Cas. 180; 2 Dall. 270; 1 Gallis. 274; Bee, R. 67.

4.—The violation of neutrality by citizens of the United States contrary to the provisions of the act of congress of April 20, 1818, § 3, renders the individual liable to an indictment. One fitting out and arming a vessel in the United States, to commit hostilities against a foreign power at peace with them, is therefore indictable. 6 Pet. 445; Pet. C. C. R. 487. Vide Marsh. Ins. 384 a; Park’s Ins. Index. h. t.; 1 Kent, Com. 115; Burlamaqui, pt. 4, c. 5, s. 16 & 17; Bynk. lib. 1, c. 9; Cobbett’s Parliamentary Debates, 406; Chitty, Law of Nat., Index, h. t.; Mann. Comm. B. 3, c. 1; Vattel, 1. 3, c. 7, § 104; Martens, Précis, liv. 8, c. 7, § 306; Bouch. Inst. n. 1826–1831.

NEW. Something not known before.

2.—To be patented an invention must be new. When an invention has been described in a printed book which has been publicly circulated, and afterwards a person takes out a patent for it, his patent is invalid because the invention was not new. 7 Mann. & Gr. 818. See New and Useful Invention.

NEW AND USEFUL INVENTION. This phrase is used in the act of congress relating to granting patents for inventions.

2.—The invention to be patented must not only be new, but useful; that is, useful in contradistinction to frivolous or mischievous inventions. It is not meant that the invention should in all cases be superior to the modes now in use for the same purposes. 1 Mason’s C. C. R. 182; 1 Mason’s C. C. R. 302; 4 Wash. C. C. R. 9; 1 Pet. C. C. R. 480, 481; 1 Paine’s C. C. R. 203; 3 Man. Gr. & Scott, 425. The law as to the usefulness of the invention is the same in France. Renouard, c. 5, s. 16, n. 1, page 177.

NEW or NOVEL ASSIGNMENT, in pleading. Declarations are conceived in very general terms, and, sometimes, from the nature of the action are so framed as to be capable of covering several injuries. The effect of this is, that, in some cases, the defendant is not sufficiently guided by the declaration to the real cause of complaint; and is, therefore, led to apply his answer to a different matter from that which the plaintiff has in view. For example, it may happen that the plaintiff has been twice assaulted by the defendant, and one of the assaults is justifiable, being in self-defense, while the other may have been committed without legal excuse. Supposing the plaintiff to bring an action for the latter; from the generality of the statement in the declaration, the defendant is not informed to which of the two assaults the plaintiff means to refer. The defendant may, therefore, suppose, or affect to suppose, that the first is the assault intended, and will plead som assault desmesne. This plea the plaintiff cannot safely traverse, because an assault was in fact committed by the defendant, under the circumstances of excuse here alleged; the defendant would have a right under the issue joined upon such traverse, to prove these circumstances, and to presume that such assault, and no other, was the cause of action. The plaintiff, therefore, in the supposed case, not being able safely to traverse, and having no ground either for demurrer, or for pleading in confession and avoidance, has no course, but, by a new pleading, to correct the mistake occasioned by the generality of the declaration, and to declare that he brought his action not for the first but for the second
assault; and this is called a new assignment. Steph. Pl. 241-243.

2.—As the object of a new assignment is to correct a mistake occasioned by the generality of the declaration, it always occurs in answer to a plea, and is therefore in the nature of a replication. It is not used in any other part of the pleading.

3.—Several new assignments may occur in the course of the same series of pleading.

4.—Thus in the above example, if it be supposed that three distinct assaults had been committed, two of which were justifiable, the defendant might plead as above to the declaration, and then, by way of plea to the new assignment, he might again justify, in the same manner, another assault; upon which it would be necessary for the plaintiff to new-assign a third; and this upon the first principle by which the first new assignment was required. 1 Chit. Pl. 614; 1 Saund 299 c.

5.—A new assignment is said to be in the nature of a new declaration. Bac. Abr. Trespass (I) 4, 2; 1 Saund. 299 c. It seems, however, more properly considered as a repetition of the declaration, 1 Chitt. Pl. 602; differing only in this, that it distinguishes the true ground of complaint, as being different from that which is covered by the plea. Being in the nature of a new or repeated declaration, it is consequently to be framed with as much certainty or specification of circumstances, as the declaration itself. In some cases, indeed, it should be even more particular. Bac. Abr. Trespass, (I) 4, 2; 1 Chitt. Pl. 610; Steph. Pl. 245. See 3 Bl. Com. 311; Arch. Civ. Pl. 280; Doct. Pl. 318; Lawes's Civ. Pl. 163.

NEW HAMPSHIRE. The name of one of the original states of the United States of America. During its provincial state, New Hampshire was governed down to the period of the revolution, by the authority of royal commissions. Its general assembly enacted the laws necessary for its welfare, in the manner provided for by the commission under which they then acted, 1 Story on the Const. Book 1, c. 5, § 78 to 81.

2.—The constitution of this state was altered and amended by a convention of delegates, held at Concord, in the said state, by adjournment, on the second Wednesday of February, 1792.

3.—The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

4.—1st. The supreme legislative power is vested in the senate and house of representatives, each of which has a negative on the other.

5.—The senate and house are required to assemble on the first Wednesday in June, and at such times as they may judge necessary; and are declared to be dissolved seven days next preceding the first Wednesday in June. They are styled The General Court of New Hampshire.

6.—1. The senate. It will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the duration of their office; and the time and place of their election.

7.—1. Every male inhabitant of each town, and parish with town privileges, and places unincorporated, in this state, of twenty-one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, have a right at the annual or other town meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells, for the senators of the county or district whereof he is a member.

8.—2. No person shall be capable of being elected a senator, who is not seized of a freehold estate, in his own right, of the value of two hundred pounds, lying within this state, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen.

9.—3. The senate is to consist of twelve members.
10.—4. The senators are to hold their offices from the first Wednesday in June next ensuing their election.—5. The senators are elected by the electors in the month of March.

11.—2. The house of representatives will be considered in relation to its constitution, under the same divisions which have been made in relation to the senate.

12.—1. The electors are the same who vote for senators.

13.—2. Every member of the house of representatives shall be chosen by ballot; and for two years at least next preceding his election, shall have been an inhabitant of this state; shall have an estate within the district which he may be chosen to represent, of the value of one hundred pounds, one-half of which to be a freehold, whereof he is seized in his own right; shall be, at the time of his election, an inhabitant of the district he may be chosen to represent, and shall cease to represent such district immediately on his ceasing to be qualified as aforesaid.

14.—3. There shall be in the legislature of this state, a representation of the people, annually elected, and founded upon principles of equality; and in order that such representation may be as equal as circumstances will admit, every town, parish, or place, entitled to town privileges, having one hundred and fifty ratable male polls, of twenty-one years of age, and upwards, may elect one representative: if four hundred and fifty ratable male polls, may elect two representatives; and so, proceeding in that proportion, make three hundred such ratable polls, the mean of increasing number, for every additional representative. Such towns, parishes, or places, as have less than one hundred and fifty ratable polls, shall be classed by the general assembly, for the purpose of choosing a representative, and seasonably notified thereof. And in every class formed for the above mentioned purpose, the first annual meeting shall be held in the town, parish, or place, wherein most of the ratable polls reside; and afterwards in that which has the next highest number; and so on, annually, by rotation, through the several towns, parishes, or places forming the district. Whenever any town, parish, or place entitled to town privileges, as aforesaid, shall not have one hundred and fifty ratable polls, and be so situated as to render the classing thereof with any other town, parish, or place very inconvenient; the general assembly may, upon application of a majority of the voters of such town, parish, or place, issue a writ for their selecting and sending a representative to the general court.

15.—4. The members are to be chosen annually.

16.—5. The election is to be in the month of March.

17.—2. The executive power consists of a governor and a council.

18.—1. Of the governor. 1. The qualifications of electors of governor, are the same as those of senators.

19.—2. The governor at the time of his election must have been an inhabitant of this state for seven years next preceding, be of the age of thirty years, have an estate of the value of five hundred pounds, one-half of which must consist of a freehold in his own right, within the state.

20.—3. He is elected annually.

21.—4. The election is in the month of March.

22.—5. His general powers and duties are as follows, namely:—1. In case of any infectious distemper prevailing in the place where the general court at any time is to convene, or any other cause whereby dangers may arise to the health or lives of the members from their attendance, the governor may direct the session to be held at some other. 2. He is invested with the veto power. 3. He is commander-in-chief of the army and navy, and is invested with power on this subject very minutely described in the constitution as follows, namely: The governor of the state for the time being shall be commander-in-chief of the army and navy, and all the military forces of this state, by sea and land: and shall have full power, by himself or by any chief commander, or other officer or officers, from time to time, to train, in—
struct, exercise, and govern the militia and navy; and for the special defence and safety of this state, to assemble in martial array, and put in warlike posture the inhabitants thereof, and to lead and conduct them, and with them encounter, repulse, repel, resist and pursue, by force of arms, as well by sea as by land, within and without the limits of this state; and also to kill, slay, destroy, if necessary, and conquer by all fitting ways, enterprise and means, all and every such person and persons as shall at any time hereafter in a hostile manner attempt or enterprise the destruction, invasion, detriment, or annoyance of this state; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, invasion, and also in rebellion, declared by the legislature to exist, as occasion shall necessarily require. And surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying this state: And, in fine, the governor is hereby entrusted with all other powers incident to the office of captain-general and commander-in-chief, and Admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land: Provided, that the governor shall not at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this state, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court, nor grant commissions for exercising the law martial in any case, without the advice and consent of the council.

23.—Whenever the chair of the governor shall become vacant, by reason of his death, absence from the state or otherwise, the president of the senate shall, during such vacancy, have and exercise all the powers and authorities which, by this constitution, the governor is visited with, when personally present; but when the president of the senate shall exercise the office of governor, he shall not hold his office in the senate.

24.—2. The council. 1. This body is elected by the freeholders and other inhabitants qualified to vote for senators.—2. No person shall be capable of being elected a councillor who has not an estate of the value of five hundred pounds within this state, three hundred pounds of which (or more) shall be a freehold in his own right, and who is not thirty years of age; and who shall not have been an inhabitant of this state for seven years immediately preceding his election; and at the time of his election an inhabitant of the county in which he is elected.—3. The council consists of five members.—4. They are elected annually.—5. The election is in the month of March.—6. Their principal duty is to advise the governor.

25.—3. The governor and council jointly. Their principal powers and duties are as follows:—1. They may adjourn the general court not exceeding ninety days at one time, when the two houses cannot agree as to the time of adjournment.—2. They are required to appoint all judicial officers, the attorney-general, solicitors, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field-officers of the militia; in these cases governor and council have a negative on each other.—3. They have the power of pardoning offences, after conviction, except in cases of impeachment.

26.—2d. The judicial power is distributed as follows:

The tenure that all commissioned officers shall have by law in their offices, shall be expressed in their respective commissions—all judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behaviour, excepting those concerning whom there is a different provision made in this constitution; Provided, nevertheless, the governor, with consent of council, may remove them upon the address of both houses of the legislature.

27.—Each branch of the legislature,
as well as the governor and council, shall have authority to require the opinions of the justices of the superior court, upon important questions of law, and upon solemn occasions.

28.—In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void at the expiration of five years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the state.

29.—All causes of marriage, divorce, and alimony, and all appeals from the respective judges of probate, shall be heard and tried by the superior court until the legislature shall by law make other provision.

30.—The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed four pounds, and title of real estate is not concerned; but with right of appeal to either party, to some other court, so that a trial by jury in the last resort may be had.

31.—No person shall hold the office of a judge in any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

32.—No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any party, or originate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.

33.—All matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probate, in such manner as the legislature have directed, or may hereafter direct; and the judges of probate shall hold their courts at such place or places, on such fixed days as the convenience of the people may require, and the legislature from time to time appoint.

34.—No judge or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending or may be brought into any court of probate in the county of which he is judge or register.

NEW JERSEY. The name of one of the original states of the United States of America. This state, when it was first settled, was divided into two provinces, which bore the names of East Jersey and West Jersey. They were granted to different proprietaries. Serious dissensions having arisen between them, and between them and New York, induced the proprietaries of both provinces to make a formal surrender of all their powers of government, but not of their lands, to Queen Anne, in April, 1702; they were immediately re-united in one province, and governed by a governor appointed by the crown, assisted by a council, and an assembly of the representatives of the people, chosen by the freeholders. This form of government continued till the American revolution.

2.—A constitution was adopted for New Jersey on the second day of July, 1776, which continued in force till the first day of September, 1844, inclusive. A convention was assembled at Trenton on the 14th of May, 1844; it continued in session till the 29th day of June, 1844, when the new constitution was adopted, and it is provided by art. 8, s. 4, that this constitution shall take effect and go into operation on the second day of September, 1844.

3.—By art. 3, the powers of the government are divided into three distinct departments, the legislative, executive and judicial. It is further provided that no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as therein expressed.

4.—§ 1. The legislative power shall be vested in a Senate and General Assembly. Art. 4, s. 1, n. 1.

5.—1st. In treating of the senate, it will be proper to consider, 1, the qualifications of senators; 2, of the electors of senators; 3, of the number of sena-
tors; 4, of the time for which they are elected.

6.—1. No person shall be a member of the senate, who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the state for four years, and of the county for which he shall be chosen one year, next before his election. And he must be entitled to suffrage at the time of his election. Art. 4, s. 1, n. 2.

7.—2. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided, that no person in the military, naval, or marine service of the United States shall be considered a resident in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

8.—3. The senate shall be composed of one senator from each county in the state. Art. 4, s. 2, n. 1.

9.—4. The senators are elected on the second Tuesday of October, for three years. Art. 4, s. 2, n. 1. As soon as the senate shall meet after the first election to be held in pursuance of this constitution, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year; and if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only. Art. 4, s. 2, n. 2.

10.—2dly. The General Assembly will be considered in the same order that has been observed in speaking of the senate.

11.—1. No person shall be a member of the general assembly, who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year next before his election. He must be entitled to the right of suffrage. Art. 4, s. 1, n. 2.

12.—2. The same persons who elect senators elect members of the general assembly.

13.—3. The general assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the general assembly shall be made by the legislature, at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; provided, that each county shall at all times be entitled to one member: and the whole number of members shall never exceed sixty.

14.—4. Members of the legislature are elected yearly on the second Tuesday of October.

15.—3dly. The powers of the respective houses are as follows:

16.—1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the governor, under such regulations as may be prescribed by law.

17.—2. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and
under such penalties as each house may provide.

18.—3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

19.—4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

20.—5. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

21.—6. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each house personally present and agreeing thereto: and the yeas and nays of members voting on such final passage shall be entered on the journal.

22.—7. Members of the senate and general assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session; and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra session by the governor, they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The president of the senate, and the speaker of the house of assembly shall, in virtue of their offices, receive an additional compensation equal to one-third of their per diem allowance as members.

23.—8. Members of the senate and of the general assembly shall, in all cases except treason, felony, and breach of peace, be privileged from arrest during their attendance at the sitting of their respective houses, 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.

24.—§ 2. By the fifth article of the constitution, the executive power is vested in a governor. It will be convenient to consider, 1, the qualifications of the governor; 2, by whom he is elected; 3, the duration of his office; 4, his powers; and, 5, his salary.

25.—1. The governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this state seven years next before his election, unless he shall have been absent during that time on the public business of the United States, or of this state.

26.—2. He is chosen by the legal voters of the state.

27.—3. The governor holds his office for three years, to commence on the third Tuesday of January next ensuing the election of governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter; and he cannot nominate nor appoint to office during the last week of his term. He is not re-eligible without an intermission of three years. Art. 5, n. 3.

28.—4. His powers are as follows: He shall be the commander-in-chief of all the military and naval forces of the state; he shall have power to convene the legislature, whenever, in his opinion, public necessity requires it; he shall communicate, by message, to the legislature at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the state, commissions to all such officers as shall be required to be commissioned.
29.—Every bill which shall have passed both houses shall be presented to the governor: if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but in neither house shall the vote be taken on the same day on which the bill shall be returned to it: and in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

30.—The governor, or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction; but this power shall not extend to cases of impeachment.

31.—The governor, or person administering the government, the chancellor, and the six judges of the court of errors and appeals, or a major part of them, of whom the governor or person administering the government shall be one, may remit fines and forfeitures, and grant pardons after conviction, in all cases except impeachment.

32.—5. The governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected.

33.—§ 3. The judicial power shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.

34.—1. The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years.

35.—2. Immediately after the court shall first assemble, the six judges shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

36.—3. Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law.

37.—4. The secretary of state shall be the clerk of this court.

38.—5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence.

39.—6. When a writ of error shall be brought, no justice who has given a judicial opinion in the cause, in favour of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmation or reversal; but the reasons for such opinion shall be assigned to the court in writing.

40.—1. The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all impeachments shall be tried by the senate: the members, when sitting for that purpose, to be on oath or affirmation “truly and impartially to try and determine the charge in question according to evidence:” and no person shall be convicted without the concurrence of two-thirds of all the members of the senate.

41.—2. Any judicial officer impeached
shall be suspended from exercising his office until his acquittal.

42. — 3. Judgment, in cases of impeachement, shall not extend farther than to removal from office and to disqualification to hold and enjoy any office of honour, profit, or trust under this state; but the party convicted shall nevertheless be liable to indictment, trial, and punishment, according to law.

43. — 4. The secretary of state shall be the clerk of this court.

44. — 1. The court of chancery shall consist of a chancellor.

45. — 2. The chancellor shall be the ordinary, or surrogate general, and judge of the prerogative court.

46. — 3. All persons aggrieved by any order, sentence, or decree of the orphans' court may appeal from the same, or from any part thereof, to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, or circuit court, if the subject matter thereof be within the jurisdiction of the orphans' court.

47. — 4. The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

48. — 1. The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two.

49. — 2. The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, or a judge appointed for that purpose; and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

50. — 3. Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals.

51. — 1. There shall be no more than five judges of the inferior court of common pleas in each of the counties in this state after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies, which shall be for the unexpired term only.

52. — 2. The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and all subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall bear date and take effect when issued.

53. — 1. There may be elected under this constitution two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants, or less, it may have one justice; when it contains more than two thousand inhabitants, and not more than four thousand, it may have two justices; and when it contains more than four thousand inhabitants, it may have four justices; provided, that whenever any township, not voting in wards, contains more than seven thousand inhabitants, such township may have an additional justice for each additional three thousand inhabitants above four thousand.

54. — 2. The population of the townships in the several counties of the state and of the several wards shall be ascertained by the last preceding census of the United States, until the legislature shall provide by law some other mode of ascertaining it.

NEW MATTER, pleading. All facts alleged in pleading, which go in avoidance of what is before pleaded, on the opposite side, are called new matter. In other words, every allegation made in the pleadings, subsequent to the declaration, and which does not go in denial of what is before alleged on the other side, is an allegation of new matter; generally all new matter must be followed by a verification, (q. v.) Gould, Pl. e. 3,
§ 195; 1 Saund. 103, n. (1); Steph. Pl. 251; Com. Dig. Plead., (E 32); 2 Lev. 5; Vent. 121; 1 Chit. Pl. 538.

NEW PROMISE, is a contract made, after the original promise has for some cause been rendered invalid, by which the promiser agrees to fulfil such original promise.

2.—When a debtor has been discharged under the bankrupt laws, the remedy against him is clearly gone, so when an infant has made a contract prejudicial to his interest, he may avoid it, and when by lapse of time a debt is barred by the act of limitations, the debtor may take advantage of the act, but in all these cases there remains a moral obligation, and if the original promiser renews the contract by a new promise, this is a sufficient consideration. See 8 Mass. 127; 2 S. & R. 208; 2 Rawle. 351; 5 Har. & John. 216; 2 Esp. C. 736; 2 H. Bl. 116; 8 Moore, 261; 1 Bing. 281; 1 Doug. 192; Cowp. 544; Bac. Ab. Infancy and Age, 1; Bac. Ab. Limitation of actions, E 8.

3.—Formerly the courts construed the slightest admission of the debtor as evidence of a new promise to pay; but of late years a more reasonable construction is put upon men’s contracts, and the promise must be express, or at least, the acknowledgment of indebtedness must not be inconsistent with a promise to pay. 4 Greenc. 41, 415; 2 Hill’s S. C. 326; 2 Pick. 368; 1 South. 153; 14 S. & R. 195; 1 McMull. R. 197; 3 Harring. 508; 7 Watts & Serg. 180; 10 Watts, 172; 6 Watts & Serg. 213; 5 Shep. 349; 5 Smad. & Marsh. 564.

NEW TRIAL, practice, is a re-examination of an issue in fact, before a court and jury, which had been tried, at least once, before the same court and a jury.

2.—The origin of the practice of granting new trials is concealed in the night of time.

3.—Formerly new trials could be obtained only with the greatest difficulties, but by the modern practice, they are liberally granted in furtherance of justice.

4.—The reasons for granting new trials are numerous, and may be classed as follows; namely:

1.—Matters which arose before and in the course of trial. These are, 1st, Want of due notice. Justice requires that the defendant should have sufficient notice of the time and place of trial; and the want of it, unless it has been waived by an appearance and making defence, will, in general, be sufficient to entitle the defendant to a new trial. 2 Bull. N. P. 327; 3 Price’s Ex. R. 72; 3 Doug. 402; 1 Wend. R. 22. But the insufficiency of the notice must have been calculated reasonably to mislead the defendant. 7 T. R. 59.—2d, The irregular impanelling of the jury; for example, if a person not duly qualified to serve be sworn, 4 T. R. 473; or if a juror not regularly summoned and returned personate another. Willes, 484; S. C. Barnes, 453. In Pennsylvania, by statutory provision, going on to trial will cure the defect, both in civil and criminal cases.—3d, The admission of illegal testimony, 3 Cowen’s Rep. 712; 2 Hall’s R. 40; 4 Chit. Pr. 35.—4th, The rejection of legal testimony, 6 Mod. 242; 3 B. & C. 494; 1 Bingh. R. 38; 1 John. R. 508; 7 Wend. R. 371; 3 Mass. 124; 5 Mass. R. 391. But a new trial will not be granted for the rejection of a witness on the supposed ground of incompetency, when another witness establishes the same fact, and it is not disputed by the other side. 2 East, R. 451; and see other exceptions in 1 John. R. 509; 4 Ohio Rep. 49; 1 Charl. B. 227; 2 John. Cas. 318. 5th, The misdirection of the judge. Vide article Misdirection, and 4 Chit. Pr. 38.

5.—2. The acts of the prevailing party, his agents or counsel. For example, when papers, not previously submitted, are surreptitiously handed to the jury, being material on the point in issue. Co. Litt. 227; 1 Sid. 235; 4 W. C. C. R. 149; or if the party, or one on his behalf directly approach a juror on the subject of the trial. Cro. Eliz. 189; 1 Serg. & Rawle, 169; 7 Serg. & Rawle, 358; 4 Binn. 150; 13 Mass. R. 218; 2 Bay R. 94; 6 Greenl. R. 140. But if the other party is aware of such attempts, and he neglects to correct
them when in his power, this will not be a sufficient reason for granting a new trial. 11 Mod. 118. When indirect measures have been resorted to, to prejudice the jury, 3 Brod. & Bing. 272; 7 Moore’s R. 87; 7 East, R. 108; or tricks practised, 11 Mod. 141; or disingenuous attempts to suppress or stifle evidence, or thwart the proceedings, or to obtain an unconscientious advantage, or to mislead the court and jury, they will be defeated by granting a new trial. Grah. N. T. 56; 4 Chit. Pr. 59.

6.—3. The misconduct of the jury, as if they acted in disregard of their oaths, Cro. Eliz. 778; drinking spirituous liquors, after being charged with the cause, 4 Cowen’s R. 26; 7 Cowen’s R. 562; or resorting to artifice to get rid of their confinement, 5 Cowen’s R. 283; and such like causes will avoid a verdict. Bunn. 51; Barnes, 438; 1 Str. 462; 2 Bl. R. 1299; Comb. 357; 4 Chit. Pr. 48 to 55. See, as to the nature of the evidence to be received to prove misconduct of the jury, 1 T. R. 11; 4 Binn. R. 150; 7 S. & R. 458.

7.—4. Cases in which the verdict is improper because it is either void, against law, against evidence, or the damages are excessive.—1. When the verdict is contrary to the record, 2 Roll. 691; 2 Co. 4; or it finds a matter entirely out of the issue, Hob. 53, or finds only a part of the issue, Co. Litt. 227; or when it is uncertain, 8 Co. 65, a new trial will be granted. 2. When the verdict is clearly against law, and injustice has been done, it will be set aside. Grah. N. T. 341, 356.—3. And so will a verdict be set aside if given clearly against evidence, and the presiding judge is dissatisfied. Grah. N. T. 368.—4. When the damages are excessive, and appear to have been given in consequence of prejudice, rather than as an act of deliberate judgment. Grah. N. T. 410; 4 Chit. Pr. 63; 1 M. & G. 222; 39 E. C. L. R. 422.

8.—5. Cases in which the party was deprived of his evidence by accident or because he was not aware of it. The non-attendance of witnesses, their mistakes, their interests, their infirmities, their bias, their partial or perverted views of facts, their veracity, their turpitude, pass in review, and in proportion as they bear upon the merits avoid or confirm the verdict. The absence of a material piece of testimony or the non-attendance of witnesses, contrary to reasonable expectation, and reasonably accounted for, will induce the court to set aside the verdict, and grant a new trial, 6 Mod. 22; 11 Mod. 1; 2 Chit. Rep. 195; 14 John. R. 112; 2 John. Cas. 318; 2 Murph. R. 384; as, if the witness absent himself without the party’s knowledge after the cause is called on, 14 John. R. 112; or is suddenly taken sick; 1 McClell. R. 179, and the like. The court will also grant a new trial, when the losing party has discovered material evidence since the trial, which would probably produce a different result: this evidence must be accompanied by proof of previous diligence to procure it. To succeed, the applicant must show four things; 1, the names of the new witnesses discovered; 2, that the applicant has been diligent in preparing his case for trial; 3, that the new facts were discovered after the trial and will be important; and, 4, that the evidence discovered will tend to prove facts which were not directly in issue on the trial, or were not then known and investigated by proof. 3 J. J. Marsh. R. 521; 2 J. J. Marsh. R. 52; 5 Serg. & Rawle, 41; 6 Greenl. R. 479; 4 Ohio Rep. 5; 2 Caines’s R. 155; 2 W. C. C. R. 411; 16 Mart. Louis. Rep. 419; 2 Aiken, Rep. 407; 1 Halst. R. 434; Grah. N. T. ch. 13.

9.—New trials may be granted in criminal as well as in civil cases, when the defendant is convicted, even of the highest offences. 3 Dall. R. 515; 1 Bay R. 372; 7 Wend. 417; 5 Wend. 39. But when the defendant is acquitted, the humane influence of the law, in cases of felony, mingling justice with mercy, in favorem vitae et libertatis, does not permit a new trial. In cases of misdemeanor, after conviction a new trial may be granted in order to fulfil the purpose of substantial justice; yet, there are no instances of new trials after ac-
quittal, unless in cases where the defendant has procured his acquittal by unfair practices. 1 Chit. Cr. Law, 854; 4 Chit. Pr. 80.

 Vide, generally, 21 Vin. Ab. 474 to 493; 3 Chit. Bl. Com. 387; 18 E. C. L. R. 74, 334; Bac. Ab. Trial, 1; 1 Sell. Pr. 482; Tidd's Pr. 934, 939; Graham on New Trials; 3 Chit. Pr. 47; Dane's Ab. h. t.; Com. Dig. Pledger, R. 17; 4 Chitty's Practice, part 7, ch. 3. The rules laid down to authorize the granting of new trials in Louisiana, will be found in the code of Practice, art. 557 to 563.

NEW WORK. In Louisiana, by a new work is understood every sort of edifice or other work, which is newly commenced on any ground whatever.

2.—When the ancient form of the work is changed, either by an addition being made to it, or by some part of the ancient work being taken away, it is styled also a new work. Civ. Code of Lo. 852; Puff. b. 8, c. 5, § 3; Nov. Rec. L. 1, tit. 32; Asso y Manuel, b. 2, tit. 6, p. 144.

NEW YORK. The name of one of the original states of the United States of America. In its colonial condition this state was governed from the period of the revolution of 1688, by governors appointed by the crown assisted by a council, which received its appointment also from the parental government, and by the representatives of the people. 1 Story, Const. B. 1, ch. 10.

2.—The present constitution of the state was adopted by a convention of the people, at Albany, on the ninth day of October, 1846, and went in force from and including the first day of January, 1847. The powers of the government are distributed among three classes of magistrates, the legislative, the executive, and the judicial.

3.—§ 1. The legislative power is vested in a senate and assembly. By the second article, section first, of the constitution, the qualifications of the electors are thus described, namely: “Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this state one year next preceding any election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of colour, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of colour shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.”

4.—The third article provides as follows:

Sect. 6. The members of the legislature shall receive for their services, a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate, three hundred dollars for per diem allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty-eight. When convened in extra session by the governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route. The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one third of his per diem allowance as a member.

Sect. 7. No member of the legislature 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 legislature, dur-
ing 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.

Sect. 8. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sect. 9. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

Sect. 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members, shall choose its own officers, and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

Sect. 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sect. 12. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

5.—1. The senate consists of thirty-two members, chosen by the electors. The state is divided into thirty-two districts, and each district elects one senator.

6.—Senators are chosen for two years.

7.—2. The assembly shall consist of one hundred and twenty-eight members. Art. 3, s 2.

8.—The state shall be divided into assembly districts as provided by the fifth section of the third article of the constitution as follows:

“The members of assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of colour not taxed, and shall be chosen by single districts.

“The several boards of supervisors in such counties of this state, as are now entitled to more than one member of assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last preceding state enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of colour not taxed, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of assembly districts.

“The legislature, at its first session after the return of every enumeration, shall re-appoint the members of assembly among the several counties of this state, in manner aforesaid, and the boards of supervisors in such counties as may be entitled, under such re-appointment, to more than one member, shall assemble at such time as the legislature making such re-appointment shall prescribe, and divide such counties into assembly districts, in the manner herein directed; and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

“Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall be hereafter
erected, unless its population shall entitle it to a member.

"The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member."

9.—The members of assembly are elected annually.

10.—§ 2. The fourth article vests the executive power as follows:

"Sect. 1. The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant-governor shall be chosen at the same time, and for the same term.

"Sect. 2. 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 years, and who shall not have been five years next preceding his election, a resident within this state.

"Sect. 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

"Sect. 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures, as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed.

He shall, at stated times, receive for his services, a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

"Sect. 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulation as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

"Sect. 6. In case of the impeachment of the governor, of his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

"Sect. 7. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall
act as governor, until the vacancy be filled, or the disability shall cease.

"Sect. 8. The lieutenant-governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

"Sect. 9. Every bill which shall have passed the senate and assembly, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered: and if approved by two-thirds of all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law."

11.—§ 3. The sixth article distributes the judicial power as follows:

"Sect. 1. The assembly shall have the power of impeachment, by the vote of a majority of all the members elected. The court for the trial of impeachments, shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant-governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before

the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honour, trust or profit under this state; but the party impeached shall be liable to indictment, and punishment according to law.

"Sect. 2. There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.

"Sect. 3. There shall be a supreme court having general jurisdiction in law and equity.

"Sect. 4. The state shall be divided into eight judicial districts, of which the city of New York shall be one: the others to be bounded by county lines, and to be compact and equal in population as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the state in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

"Sect. 5. The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law
and equity, as they have heretofore possessed.

"Sect. 6. Provision may be made by law for designating, from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold such general terms. And any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

"Sect. 7. The judges of the court of appeals and justices of the supreme court shall severally receive at stated times for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

"Sect. 8. They shall not hold any other office or public trust. All votes for either of them, for any elective office (except that of justice of the supreme court, or judge of the court of appeals,) given by the legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this state.

"Sect. 9. The classification of the justices of the supreme court; the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

"Sect. 10. The testimony in equity cases shall be taken in like manner as in cases at law.

"Sect. 11. Justices of the supreme court and judges of the court of appeals, may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly and a majority of all the members elected to the senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace, and judges and justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of, shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

"Sect. 12. The judges of the court of appeals shall be elected by the electors of the state, and the justices of the supreme court by the electors of the several judicial districts, at such times as may be prescribed by law.

"Sect. 13. In case the office of any judge of the court of appeals, or justice of the supreme court shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the governor, until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the unexpired term.

"Sect. 14. There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such jurisdiction in cases arising in justices' courts, and in special cases, as the legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

"The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

"The county judge shall receive an annual salary, to be fixed by the board
of supervisors, which shall be neither increased nor diminished during his continuance in office. The justices of the peace for services in courts of sessions, shall be paid a per diem allowance out of the county treasury.

"In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

"The legislature may confer equity jurisdiction in special cases upon the county judge.

"Inferior local courts, of civil and criminal jurisdiction, may be established by the legislature in cities; and such courts, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

"Sect. 15. The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate in cases of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

"Sect. 16. The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this constitution, in the manner provided for in the fourth section of this article, and at no other time; and they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the supreme court; but no diminution of the districts shall have the effect to remove a judge from office.

"Sect. 17. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed, (after due notice and an opportunity of being heard in their defense) by such county, city or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

"Sect. 18. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the legislature may direct.

"Sect. 19. The clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk for the court of appeals, to be ex-officio clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and his compensation shall be fixed by law and paid out of the public treasury.

"Sect. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office.

"Sect. 21. The legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction, established in a city, to be removed for review directly into the court of appeals.

"Sect. 22. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

"Sect. 23. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

"Sect. 25. The legislature at its first session after the adoption of this constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the
court far the correction of errors, and for the allowance of writs of error and appeals to the court of appeals, from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution.

12.—The sixth article, section 24, provides that the legislature, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time.

13.—In pursuance of the provisions of this section, commissioners were appointed to revise the laws on the subject of the practice, pleadings and proceedings of the courts of this state, who made a report to the legislature. This report, with some alterations was enacted into a law on the 12th of April, 1848, ch. 379, by which the forms of actions are abolished, and the whole subject is extremely simplified. How it will work in practice, time will make manifest.

NEWLY DISCOVERED EVIDENCE, is that evidence which, after diligent search for it, was not discovered until after the trial of a cause.

2.—In general a new trial will be granted on the ground that new, important and material evidence has been discovered since the trial of the cause. 2 Wash. C. C. 411; but this rule must be received with the following qualifications: 1, when the evidence is merely cumulative, it is not sufficient ground for a new trial. 1 Summ. 451; 6 Pick. 114; 4 Halst. 228; 2 Caines, 129; 4 Wend. 579; 1 A. K. Marsh. 151; 8 John. 84; 15 John. 210; 5 Ham. 375; 10 Pick. 16; 7 W. & S. 415; 11 Ohio, 147; 1 Scamm. 490; 1 Green, 177; 5 Pike, 403; 1 Ashm. 41; 2 Ashm. 69; 3 Verm. 72; 3 A. K. Marsh. 104.—2. When the evidence is not material. 5 S. & R. 41; 1 P. A. Browne, Appx. 71; 1 A. K. Marsh. 151.—3. The evidence must be discovered after the trial, for if it be known before the verdict has been rendered, it is not newly discovered. 2 Summ. 19; 7 Cowen, 369; 2 A. K. Marsh. 42.—4. The evidence must be such, that the party could not by due diligence have discovered it before trial.

2 Binn. 582; 1 Misso. 49; 5 Halst. 250; 1 South. 338; 7 Halst. 225; 1 Blackf. 367; 11 Con. 15; 1 Bay, 263, 491; 4 Yeates, 446; 2 Fairf. 218; 7 Metc. 478; Dudd. (G.) Rep. 85; 9 Shepl. 246; 14 Verm. 414, 558; 2 Ashm. 41, 69; 6 Miss. 600; 2 Pike, 133; 7 Yerg. 432; 6 Blackf. 496; 1 Harr. 410.

NEWSPAPERS, are periodical printed papers published for general distribution.

2.—To encourage their circulation the act of congress of March 3, 1825, story's L. U. S. 1994, enacts,

§ 29. That every printer of newspapers may send one paper to each and every other printer of newspapers within the United States, free of postage, under such regulations as the postmaster general shall provide.

3.—§ 30. That all newspapers conveyed in the mail shall be under cover, open at one end, and charged with the postage of one cent each, for any distance not more than one hundred miles, and one and a half cents for any greater distance: Provided, That the postage of a single newspaper, from any one place to another, in the same state, shall not exceed one cent, and the postmaster general shall require those who receive newspapers by post, to pay always the amount of one quarter's postage in advance; and should the publisher of any newspaper, after being three months previously notified that his paper is not taken out of the office, to which it is sent for delivery, continue to forward such paper in the mail, the postmaster to whose office such paper is sent, may dispose of the same for the postage, unless the publisher shall pay it. If any person employed in any department of the post office, shall improperly detain, delay, embezzle, or destroy any newspaper, or shall permit any other person to do the like, or shall open or permit any
other to open, any mail, or packet of newspapers, not directed to the office where he is employed, such offender shall, on conviction thereof, forfeit a sum, not exceeding fifty dollars, for every such offence. And if any other person shall open any mail or packet of newspapers, or shall embezzle or destroy the same, not being directed to such person, or not being authorized to receive or open the same, such offender shall, on the conviction thereof, pay a sum not exceeding twenty dollars for every such offence. And if any person shall take, or steal, any packet, bag, or mail of newspapers, from, or out of any post office, or from any person having custody thereof, such person shall, on conviction, be imprisoned, not exceeding three months, for every such offence, to be kept at hard labour during the period of such imprisonment. If any person shall enclose or conceal a letter, or other thing, or any memorandum in writing, in a newspaper, pamphlet, or magazine, or in any package of newspapers, pamphlets, or magazines, or make any writing or memorandum thereon, which he shall have delivered into any post office, or to any person for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of five dollars for every such offence; and the letter, newspaper, package, memorandum, or other thing, shall not be delivered to the person to whom it is directed, until the amount of single letter postage is paid for each article of which the package is composed. No newspapers shall be received by the postmasters, to be conveyed by post, unless they are sufficiently dried and enclosed in proper wrappers, on which, besides the direction, shall be noted the number of papers which are enclosed for subscribers, and the number for printers: Provided, That the number need not be endorsed, if the publisher shall agree to furnish the postmaster, at the close of each quarter, a certified statement of the number of papers sent in the mail, chargeable with postage. The postmaster general, in any contract he may enter into for the conveyance of the mail, may authorize the person with whom such contract is to be made, to carry newspapers, magazines, and pamphlets, other than those conveyed in the mail: Provided, That no preference shall be given to the publisher of one newspaper over that of another, in the same place.—When the mode of conveyance, and size of the mail, will admit of it, such magazines and pamphlets as are published periodically, may be transported in the mail, to subscribers, at one and a half cents a sheet, for any distance not exceeding one hundred miles, and two and a half cents for any greater distance. And such magazines and pamphlets as are not published periodically, if sent in the mail, shall be charged with a postage of four cents on each sheet, for any distance not exceeding one hundred miles, and six cents for any greater distance.

By the act of April 3, 1845, § 2, it is enacted, That all newspapers of no greater size or superficials than nineteen hundred square inches may be transmitted through the mail by the editors or publishers thereof, to all subscribers or other persons within thirty miles of the city, town, or other place in which the paper is or may be printed, free of any charge for postage whatever; and all newspapers of and under the size aforesaid, which shall be conveyed in the mail any distance beyond thirty miles from the place at which the same may be printed, shall be subject to the rates of postage chargeable upon the same under the thirtieth section of the act of congress approved the third of March, one thousand eight hundred and twenty-five, entitled, “An act to reduce into one the several acts for establishing and regulating the Post Office Department;” and upon all newspapers of greater size or superficial extent than nineteen hundred square inches, there shall be charged and collected the same rates of postage as are prescribed by this act to be charged on magazines and pamphlets.

NEXT FRIEND. One who, without being regularly appointed guardian, acts for the benefit of an infant, married woman, or other person not sui juris. Vide Amy; Prochein Amy.
NEXT OF KIN. This term is used to signify the relations of a party who has died intestate.

2.—In general no one comes within this term who is not included in the provisions of the statutes of distribution. 3 Atk. 422, 761; 1 Ves. sen. 84. A wife cannot, in general, claim as next of kin of her husband, nor a husband as next of kin of his wife. But when there are circumstances in a will which induce a belief of an intention to include them under this term, they will be so considered, though in the ordinary sense of the word, they are not. Hov. Fr. 288, 9; 1 My. & Keen, 82. Vide Branch; Kindred; Line.

NIECE, domestic relations, is the daughter of a person’s brother or sister. Amb. 514; 1 Jacob’s Ch. R. 207.

NIEF, old Engl. law, was a woman born in vassalage. In Latin she was called Nativa.

NIENT COMPRIZE. Not included. It is an exception taken to a petition because the thing desired is not contained in that deed or proceeding whereon the petition is founded. Toml. Law Dict.

NIENT CULPABLE. Not guilty; the name of plea used to deny any charge of a criminal nature, or of a tort.

NIENT DESIRE. To say nothing.

2.—These words are used to signify that judgment be rendered against a party, because he does not deny the cause of action, i. e. by default.

3. When a fair and impartial trial cannot be had in the county where the venue is laid, the practice in the English courts is, on an affidavit of the circumstances, to change it in transitory actions; or in local actions they will give leave to enter a suggestion on the roll, with a nient desire, in order to have the trial in another county. 1 Tidd’s Pr. 655, 8th ed.

NIGHT, may be defined to be that space of time during which the sun is below the horizon of the earth, except that short space which precedes its rising and follows its setting, during which, by its light, the countenance of a man may be discerned. 1 Hale, P. C. 550; 3 Inst. 63; 4 Bl. Com. 224; 1 Hawk. P. C. 101; 3 Chit. Cr. Law, 1093; 2 Leach, 710; Bac. Ab. Burglary, D; 2 East, P. C. 509; 2 Russ. Cr. 32; Rose. Cr. Ev. 278; 7 Dane’s Ab. 134.

NIGHT-WALKERS, are described to be persons who sleep by day and walk by night, 5 E. 3, c. 14; that is, persons of suspicious appearance and demeanor, who walk by night.

2.—Watchmen may undoubtedly arrest them, and it is said that private persons may also do so. 2 Hawk. P. C. 120; but see 3 Taunt. 14; Ham. N. P. 135. Vide 15 Vin. Ab. 555; Dane’s Ab. Index, h. t.

NIHIL CAPIAT PER BREVE, practice. That he takes nothing by his writ. This is the judgment against the plaintiff in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is nihil capiat per billam. Co. Litt. 363.

NIHIL DICT. He says nothing. It is the failing of the defendant to put in a plea or answer to the plaintiff’s declaration by the day assigned; and in this case judgment is given against the defendant of course, as he says nothing why it should not. Vide 15 Vin. Ab. 556; Dane’s Ab. Index, h. t.

NIHIL HABET. The name of a return made by a sheriff, marshal or other proper officer, to a scire facias or other writ, when he has not been able to serve it on the defendant. 5 Whart. 367.

2.—Two returns of nihil are in general equivalent to a service. Yelv. 112; 1 Cowen, 70; 1 Car. Law Repos. 491; 4 Blackf. 188; 2 Binn. 40.

NIL DEBET, pleading, is the general issue in debt or simple contract. It is in the following form: “And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c. and says, that he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country.” When, in debt on specialty, the deed is the only inducement to the action, the general issue is nil debet.
NIL HABUIT IN TENEMENTIS, pleading. A plea by which the defendant who is sued by his landlord in debt for rent upon a lease, but by deed indented, by which he denies his landlord’s title to the premises, that he has no interest in the tenements. 2 Lill. Ab. 214; 12 Vin. Ab. 184; 15 Vin. Ab. 556; Woodf. L. & T. 330; Com. Dig. Pleader, (2 W 48); Co. Litt. 47; b; Dane’s Ab. Index, h. t.; 3 E. C. L. R. 169, n.; 1 Holt’s R. 489.

NISI. This word is frequently used in legal proceedings to denote that something has been done, which is to be valid unless something else shall be done within a certain time to defeat it. For example, an order may be made that if on the day appointed to show cause, none be shown, an injunction will be dissolved of course, on motion, and production of an affidavit of service of the order. This is called an order nisi. Ch. Pr. 547; under the compulsory arbitration law of Pennsylvania, on the filing of the award, judgment nisi is to be entered: which judgment is to be as valid as if it had been rendered on the verdict of a jury, unless an appeal be entered within the time required by the law.

NISI PRIUS. These words which signify, unless before, are the name of a court. The name originated as follows. Formerly an action was triable only in the court where it was brought. But it was provided by Magna Charta, in case of the subject, that assises of novel dessein and mort d’ancor (then the most usual remedies,) should thereforeforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties; and for this purpose justices were to be sent into every county, once a year, to take these assises there, 1 Reeves, 246. These local trials being found convenient, were applied not only to assises but to other actions; for by the statute of 13 Edw. I. c. 30, it is provided as the general course of proceeding, that writs of venire for summoning juries in the superior courts, shall be in the following form. Precipimus tibi quod veneri facias coram justiciarii nostris apud Westm. in Octabris Seti Michaelis, nisi talis et talis, tali, die et loco ad partes illas venerint, duodecim, &c. Thus the trial was to be had at Westminster, only in the event of its not previously taking place in the county, before the justices appointed to take the assises. It is this provision of the statute of Nisi Prius, enforced by the subsequent statute of 14 Ed. III. c. 16, which authorizes, in England, a trial before the justices of assises, in lieu of the superior court, and gives it the name of a trial at nisi prius. Steph. Pl. App. xxxiv.; 3 Bl. Com. 58; 1 Reeves, 245, 382; 2 Reeves, 170; 3 Com. Dig. Courts, (D b), page 316.

2.—Where courts bearing this name exist in the United States, they are instituted by statutory provision. 4 W. & S. 404.

NISI PRIUS ROLL, Eng. practice, is a transcript of a case made from the plea roll, and includes the declaration, plea, replication, rejoinder, &c. and the issue. Eunom. Dial. 2, § 28, 29, p. 110, 111. After the nisi prius roll is returned from the trial, it assumes the name of postea, (q. v.)

NO AWARD. The name of a plea to an action or award. 1 Stew. 520; 1 Chip. R. 131; 3 Johns. 367. See Null Agard.

NO BILL. These words are frequently used by grand juries. They are endorsed on a bill of indictment when the grand jury have not sufficient cause for finding a true bill. They are equivalent to Not found, (q. v.) or Ignoramus, (q. v.) 2 Nott & MC. 558.

NOBILITY, an order of men in several countries to whom privileges are granted at the expense of the rest of the people.

2.—The constitution of the United States provides that no state shall “grant any title of nobility; and no person can become a citizen of the United States until he has renounced all titles of nobility.” The Federalist, No. 84. 2 Story, Laws U. S. 851.

3.—There is not in the constitution any general prohibition against any citizen whomsoever, whether in public or
private life, accepting any foreign title of nobility. An amendment of the constitution in this respect has been recommended by congress, but it has not been ratified by a sufficient number of states to make a part of the constitution. Rawle on the Const. 120; Story, Const. § 1346.

NOLLE PROSEQUI, practice, is an entry made on the record, by which the prosecutor or plaintiff declares that he will proceed no further.

2.—A nolle prosequi may be entered either in a criminal or a civil case. In criminal cases, a nolle prosequi may be entered at any time before the finding of the grand jury, by the attorney general, and generally after a true bill has been found; in Pennsylvania, in consequence of a statutory provision, no nolle prosequi can be entered after a bill has been found, without leave of the court, except in cases of assault and battery, fornication and bastardy, on agreement between the parties, or in prosecutions for keeping tipping houses. Act of 29 April, 1819, s. 4, 7 Smith’s Laws, 227.

3.—A nolle prosequi may be entered as to one of several defendants. 11 East, R. 307.

4.—The effect of a nolle prosequi, when obtained, is to put the defendant without day, but it does not operate as an acquittal; for he may afterwards be re-indicted, and even upon the same indictment, fresh process may be awarded. 6 Mod. 261; 1 Salk. 59; Com. Dig. Indictment, (K); 2 Mass. R. 172.

5.—In civil cases, a nolle prosequi is considered, not to be of the nature of a retraxit or release, as was formerly supposed, but an agreement only, not to proceed either against some of the defendants, or as to part of the suit. Vide 1 Saund. 207, note (2), and the authorities there cited; 1 Chit. Pl. 546. A nolle prosequi is now held to be no bar to a future action for the same cause, except in those cases where, from the nature of the action, judgment and execution against one, is a satisfaction of all the damages sustained by the plaintiff. 3 T. R. 511; 1 Wils. 98.

6.—In civil cases, a nolle persequi may be entered as to one of several counts, 7 Wend. 301; or to one of several defendants, 1 Pet. R. 80; as in the case of a joint contract, where one of two defendants pleads infancy, the plaintiff may enter a nolle prosequi as to him, and proceed against the other. 1 Pick. 500. See, generally, 1 Pet. R. 74; see 2 Rawle, 334; 1 Bibb, 337; 4 Bibb, 387, 454; 3 Cowen, 374; 5 Gill & John. 489; 5 Wend. 224; 20 John. 126; 3 Cowen, 335; 12 Wend. 110; 3 Watts, 460.

NOMEN COLLECTIVUM. This expression is used to signify that a word in the singular number is to be understood in the plural in certain cases.

2.—Misdemeanor, for example, is a word of this kind, and when in the singular, may be taken as nomen collectivum, and including several offences. 2 Barn. & Adolp. 75. Heir, in the singular, sometimes includes all the heirs.

NOMINAL, relating to a name.

2.—A nominal plaintiff is one in whose name an action is brought, for the use of another. In this case, the nominal plaintiff has no control over the action, nor is he responsible for costs. 1 Dall. 139; 2 Watts, R. 12.

3.—A nominal partner is one who without having an actual interest in the profits of a concern, allows his name to be used, or agrees that it shall be continued therein, as a partner; such nominal partner is clearly liable to the creditors of the firm, as a general partner, although the creditors were ignorant at the time of dealing, that his name was used. 2 H. Bl. 242, 246; 1 Esp. R. 31; 2 Campb. 302; 16 East, R. 174; 2 B. & C. 411.

NOMINAL PLAINTIFF, is one who is named as the plaintiff in an action, but who has no interest in it, having assigned the cause or right of action to another, for whose use it is brought.

2.—In general, he cannot interfere with the rights of his assignee, nor will he be permitted to discontinue the action, or to meddle with it. 1 Wheat. R. 293; 1 John. Cas. 411; 3 John. Cas. 242; 1 Johns. R. 532, n.; 3 Johns. R. 426; 11 Johns. R. 47; 12 John. R. 237;
NOMINÉE. contracts, is the name of a penalty incurred by the lessee to the lessor, for the non-payment of rent at the day appointed by the lease or agreement for its payment. 2 Lill. Ab. 221; it is usually a gross sum of money, though it may be any thing else, appointed to be paid by the tenant to the reversioner, if the duties are in arrear, in addition to the duties themselves, Ham. N. P. 411, 412.

2.—To entitle himself to the nomine ponens, the landlord must make a demand of the rent on the very day, as in the case of a re-entry. 1 Saund. 287 b, note; 7 Co. 28 b; Co. Litt. 202 a; 7 T. R. 117. Vide Bac. Ab. Rent, K 9; Woodf. L. & T. 253; Tho. Co. Litt. Index, h. t.; Dane’s Ab. Index, h. t.

NOMINEE. One who has been named or proposed for an office.

NON ACCEPTAVIT. The name of a plea to an action of assumpsit brought against the drawee of a bill of exchange upon a supposed acceptance by him. See 4 Mann. & Gr. 561; S. C. 43 E. C. L. R. 292.

NON-ACCESS. The non-existence of sexual intercourse is generally expressed by the words “non-access of the husband to the wife;” which expressions, in a case of bastardy, are understood to mean the same thing. 2 Stark. Ev. 218, n.

2.—In Pennsylvania, when the husband has access to the wife, no evidence short of absolute impotence of the husband, is sufficient to convict a third person of bastardy with the wife. 6 Binn. 253.

3.—In the civil law the maxim is, Pater est quem nuptiae demonstrat, Toull. tom. 2, n. 787. The Code Napoléon, art. 312, enacts, “que l’enfant concédant le mariage a pour père le mari.” See also 1 Browne’s R. Appx. xivii.


NON-AGE. By this term is understood that period of life from the birth till the arrival of twenty-one years. In another sense it means under the proper age to be of ability to do a particular thing; as, when non-age is applied to one under the age of fourteen, who is unable to marry.

NON ASSUMPSIT. in pleading, is the general issue in trespass on the case, in the species of assumpsit. Its form is, “And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake or promise, in manner and form as the said A B, hath above complained. And of this he puts himself upon the country.”

2.—Under this plea almost every matter may be given in evidence, on the ground, it is said, that as the action is founded on the contract, and the injury is the non-performance of it, evidence which disaffirms the obligation of the contract, at the time when the action was commenced, goes to the gist of the action. Gilb. C. P. 65; Salk. 279; 2 Str. 738; 1 B. & P. 481. Vide 12 Vin. Ab. 189; Com. Dig. Pledger, (2 G. 1.)

NON ASSUMPSIT INFRA SEX ANNOS. The name of plea by which the defendant avers that he did not assume to perform the assumption charged in the declaration within six years.

2.—The act of limitation bars the recovery of a simple contract debt after six years; when a defendant is sued on such a contract, and it is more than six years since he entered into the contract, he pleads this plea by the following formula: “and saith that the aforesaid plaintiff the action aforesaid hereof against him he ought not to have, because he saith that he did not under-
take, &c. and this he is ready to verify." Vide Actio non accredit infra sec annos.

NON BIS IN IDEM, civil law. This phrase signifies that no one shall be twice tried for the same offence; that is, that when a party accused has been once tried by a tribunal in the last resort, and either convicted or acquitted, he shall not again be tried. Code 9, 2, 9 & 11. Merl. Répert. h. t. Vide art. Jeopardy.

NON CEPI MODA ET FORMA, in pleading, is the general issue in repelvin. Its form is, "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not take the said cattle, (or 'goods and chattels,' according to the subject of the action,) in the said declaration mentioned, or any of them, in manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country."

2.—This issue applies to a case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them, or have them in the place mentioned in the declaration. The declaration alleges that the defendant "took certain cattle or goods of the plaintiff, in a certain place called," &c.; and the general issue states, that he did not take the said cattle or goods, "in manner and form as alleged;" which involves a denial of the taking, and of the place in which the taking was alleged to have been, the place being a material point in this action. Steph. Pl. 183, 4; 1 Chit. Pl. 490.

NON CLAIM. An omission or neglect by one entitled to make a demand within the time limited by law; as, when a continual claim ought to be made, a neglect to make such claim within a year and day.

NON COMPOS MENTIS, persons. These words signify not of sound mind, memory, or understanding. This is a generic term and includes all the species of madness, whether it arise from, 1, idiocy; 2, sickness; 3, lunacy; or 4, drunkenness, Co. Litt. 247; 4 Co. 124; 1 Phillim. R. 100; 4 Com. Dig. 613; 5 Com. Dig. 186; Shelf. on Lunatics, 1; and the articles Idiocy; Lunacy.

NON CONCESSIT, Eng. law, is the name of a plea by which the defendant denies that the crown granted to the plaintiff by letters patent, the rights which he claims as a concession from the king; as, for example, when a plaintiff sues another for the infringement of his patent right, the defendant may deny that the crown has not granted him such a right.

2.—The plea of non concessit does not deny the grant of a patent, but of the patent as described in the plaintiff's declaration. 3 Burr. 1544; 6 Co. 15, b.

NON-CONFORMISTS, English law. A name given to certain dissenters from the rites and ceremonies of the church of England.

NON CONSTAT. It does not appear. These words are frequently used, particularly in argument; as, it was moved in arrest of judgment that the declaration was not good, because non constat whether A B was seventeen years of age when the action was commenced. Sw. pt. 4, § 22, p. 331.

NON CULPABILIS, pleadings. Not guilty (q. v.) It is usually abbreviated non cul. 16 Vin. Ab. 1.

NON DAMNI FECAT, pleading. A plea to an action of debt on a bond of indemnity, by which the defendant asserts that the plaintiff has received no damage; in other words that he is not damniified. 1 B. & P. 640, n. a; 1 Taunt. R. 428; 1 Saund. 116, n. 1; 2 Saund. 81; 7 Wentw. Pl. 615, 616; 1 H. Bl. 253; 2 Lill. Ab. 224; 14 John. R. 177; 5 John. R. 42; 20 John. Rep. 153; 3 Cowen, R. 313; 10 Wheat. R. 396, 405; 3 Halst. R. 1.

NON DEDIT, in pleading, is the general issue in formolon. See Nondona pas.

NON DEMISIT, pleading. A plea proper to be pleaded to an action of debt for rent, when the plaintiff declares on a parol lease. Gilb. Debt, 436, 438; Bull. N. P. 177; 1 Chit. Pl. 477.

2.—It is improper to plead such plea when the demise is stated to have been
by indenture. Ib.; 12 Vin. Ab. 178; Com. Dig. Pleader, (2 W 48.)
NON DETINET, in pleading, is the general issue in an action of detinue. Its form is as follows: "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he does not detain the said goods and chattels (or, "deeds and writings," according to the subject of the action,) in the said declaration specified, or any part thereof, in manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country."
2.—In debt on simple contract in the case of executors and administrators, instead of pleading nil debet, the plea should be "doth not detain." 6 East. R. 549; Bae. Abr. Pleas, I; 1 Chit. Pl. 476.
3.—The plea of non detinet merely puts in issue the simple fact of detainer; when the defendant relies upon a justifiable detainer, he must plead it specially. 8 D. P. C. 347.
NON EST FACTUM, in pleading, is the general issue in debt on bond or other specialty, and is, in form, as follows: "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that the said supposed writing obligatory, (or 'indenture,' or 'articles of agreement,' according to the subject of the action,) is not his deed. And of this he puts himself upon the country." 6 Rand. Rep. 86; 1 Litt. R. 158.
2.—Though non est factum is, in most cases, the general issue in debt on specialty, yet, when the deed is only inducement to the action, the general issue is nil debet. Steph. Pl. 174, n.
3.—In covenant the general issue is non est factum; and its form is similar to that in debt on a specialty. Ib. 174.
It is, however, said, that in covenant there is, strictly speaking, no general issue, as the plea of non est factum only puts the deed in issue, as in debt on a specialty, and not the breach of covenant or any other matter of defence. 1 Chit. Pl. 482. See generally, 1 Harring. R. 230; 6 Munf. R. 462; Minor, R. 103; 1 Harr. & Gill, 324; 13 John. R. 493; 12 John. R. 337; 2 N. H. Rep. 74; 4 Wend. R. 519; 2 N. & M. 492. See Isset; Special non est factum.
NON EST INVENTUS, practice, is the sheriff's return to a writ requiring him to arrest the person of the defendant, which signifies that he is not to be found within his jurisdiction. The return is usually abbreviated N. E. I. Chit. Pr. Index, h. t.
NON-FEASANCE, torts, contracts, is the non-performance of some act which ought to be performed.
2.—When a legislative act requires a person to do a thing, its non-feasance will subject the party to punishment; as, if a statute require the supervisors of the highways to repair such highways, the neglect to repair them may be punished. Vide 1 Russ. on Cr. 48.
3.—Mere non-feasance does not imply malice; this is strongly exemplified in the case of a plaintiff who having issued a writ of capias against his debtor, afterwards received the debt, and neglected to countermand the writ, in consequence of which the defendant was afterwards arrested. On a suit brought by the former defendant against the former plaintiff, it was held that the law did not impose on the first plaintiff the duty of countermanding his writ. If he had refused to give the countermand when requested, it might have been evidence of malice, but in such case there would have been something beyond mere non-feasance, an actual refusal. 1 B. & P. 388; 3 East. R. 314; 2 Bos. & P. 129.
4.—There is a difference between non-feasance and misfeasance, (q. v.) or malfeasance, (q. v.) Vide 2 Kent, Com. 443; Story on Bailm. § 9, 165; 2 Vin. Ab. 35; 1 Hawk. P. C. 13.
NON FECIT. He did not make it. The name of a plea, for example, in an action of assumpsit on a promissory note. 3 Mann. & Gr. 446.
NON FECIT VASTUM CONTRA PROHIBITIONEM. The name of a plea to an action founded on a writ of estrepetment, that the defendant did not commit waste contrary to the prohibition. 3 Bl. Com. 226, 227.
NON INFREGIT CONVENTIONEM, a plea in an action of covenant. This plea is not a general issue, it merely denies that the defendant has broken the covenants on which he is sued. It being in the negative, it cannot be used where the breach is also in the negative. Bac. Ab. Covenant (L); 3 Lev. 19; 2 Taunt. 275; 1 Aik. R. 150; 4 Dall. 436; 7 Cowen, R. 71.

NON-JOINDER, pleading, practice. The omission of some one of the persons who ought to have been made a plaintiff or defendant along with others is called a non-joinder.

2.—In actions upon contracts where the contract has been made with several, if their interest were joint, they must all, if living, join in the action for its breach. 8 S. & R. 305; 10 S. & R. 257; Minor, 167; Hardin, 508. In such case the non-joinder must be pleaded in abatement. Ib.

NON JURORS, English law. Persons who refuse to take the oaths, required by law, to support the government. 1 Dall. 170.

NON MODERATE CASTIGAVIT. The name of a faulty replication to a plea of moderate castigavit, (q. v.) This replication, in such a case, is a negative pregnant. Gould, Pl. ch. 7, § 57.

NON OBSTANTE, Eng. law. These words which literally signify notwithstanding, are used to express the act of the English king, by which he dispenses with the law, that is, authorizes its violation.

2.—He cannot by his license or dispensation make an offence dispensable which is malum in se; but in certain matters which are mala prohibita, he may, to certain persons and on special occasions, grant a non obstante. 1 Th. Co. Litt. 76, n. 19; Vaughan 330 to 339; Lev. 217; Sid. 6, 7; 12 Co. 15; Bac. Ab. Prerogative, D 7. Vide Judgment non obstante veredicto.

NON OBSTANTE VEREDICTO. Notwithstanding the verdict. See Judgment non obstante veredicto.

NON OMITTAS, English practice, is the name of a writ directed to the sheriff; where the bailiff of a liberty or franchise, who has the return of writs, neglects or refuses to serve a process, this writ issues commanding the sheriff to enter into the franchise and execute the process himself, or by his officer, non omittas proper aliquam libertatem. For the despatch of business a non omittas is commonly directed in the first instance. 3 Chit. Pr. 190, 310.

NON PROS, or NON PROSEQUITUR. The name of a judgment rendered against a plaintiff for neglecting to prosecute his suit agreeably to law and the rules of the court. Vide Grah. Pr. 763; 3 Chit. Pr. 910; 1 Sel. Pr. 359; 1 Penna. Pr. 84; Caines's Pr. 102; 2 Arch. Pr. 204; and article Judgment of Non Pros.

NON RESIDENCE, eccles. law. The absence of spiritual persons from their benefices.

NON SUBMISSIT. The name of a plea to an action of debt or a bond to perform an award, by which the defendant pleads that he did not submit. Bac. Ab. Arbitr. &c., G.

NON SUM INFORMATUS, pleading. I am not informed. Vide Informatus non sum.

NON TENENT INSIMUL, pleadings. A plea to an action in partition, by which the defendant denies that he holds the property, which is the subject of the suit, together with the complainant or plaintiff.

NON TENURE, pleading. A plea in a real action, by which the defendant asserted, that he did not hold the land, or at least some part of it, as mentioned in the plaintiff’s declaration. 1 Mod. 250.

2.—Non tenure is either a plea in bar or a plea in abatement. 14 Mass. 239; but see 11 Mass. 216. It is in bar, when the plea goes to the tenure, as when the tenant denies that he holds of the defendant, and says he holds of some other person. But when the plea goes to the tenancy of the land, as when the defendant pleads that he is not the tenant of the land, it is in abatement only. Id. ; Bac. Ab. Pleas, &c., I 9.
NON TERM. The vacation between two terms of a court.

NON-USER, is the neglect to make use of a thing.

2.—A right which may be acquired by use, may be lost by non-user, and an absolute discontinuance of the use for twenty years affords presumption of the extinguishment of the right, in favour of some other adverse right. 5 Whart. Rep. 584; 23 Pick. 141.

3.—As an enjoyment for twenty years is necessary to found the presumption of a grant of an easement, the general rule is, there must be a similar non-user to raise the presumption of a release. But in this case the owner of the servient premises must have done some act inconsistent with, or adverse to the existence of the right. See 2 Evans's Pothier, 136; 10 Mass. R. 183; 3 Campb. R. 514; 3 Kent, Com. 359; 1 Chit. Pr. 284, 285, 757 to 759, n. (s); 1 Ves. Jr. 6, 8; 2 Supp. to Ves. Jr. 442; 2 Anstr. 603; S. C. on appeal, 1 Dowl. R. 316; 4 Ad. & Ell. 369; 6 Nev. & M. 230. But the dereliction or abandonment of rights affecting lands is not in all cases held to be evidenced by mere non-user.

4.—As an exception to the rule may be mentioned rights to mines and minerals, with the incidental privilege of boring and working them. 16 Ves. 390; 19 Ves. 156.

5.—In the civil law there is a similar doctrine: on this subject, vide Dig. 8, 6, 5; Voet, Com. ad Pand. lib. 8, tit. 6, s. 5 et 7; 3 Toull. n. 673; Merl. Répert. mot Servitude, § 30, n. 6, and § 33; Civ. Code of Louis. art. 815, 816.

6.—Every public officer is required to use his office for the public good; a non-user of a public office is therefore a sufficient cause of forfeiture. 2 Bl. Com. 153; 9 Co. 50.

NONSENSE, construction, is that which in a written agreement or will is unintelligible.

2.—It is a rule of law that an instrument shall be so construed that the whole, if possible, shall stand. When a matter is written grammatically right, but it is unintelligible, and the whole makes nonsense, some words cannot be rejected to make sense of the rest, 1 Salk. 324; but when matter is nonsense by being contrary and repugnant to some precedent sensible matter, such repugnant matter is rejected. Ib.; 15 Vin. Ab. 560; 14 Vin. Ab. 142. The maxim of the civil law on this subject agrees with this rule: Quae in testamento ita sunt scripta, ut intelligi non possint: perinde sunt, ac si scripta non essent. Dig. 50, 17, 73, 3. Vide articles Ambiguity; Construction; Interpretation.

3.—In pleading when matter is nonsense by being contradictory and repugnant to something precedent, the precedent matter, which is sense, shall not be defeated by the repugnancy which follows, but that which is contradictory shall be rejected; as in ejectment where the declaration is of a demise on the second day of January, and that the defendant posea, scilicet, on the first of January, ejected him; here the scilicet may be rejected as being expressly contrary to the posea and the precedent matter. 5 East, 255; 1 Salk. 324.

NONSUIT. The name of a judgment given against a plaintiff, when he is unable to prove his case, or when he refuses or neglects to proceed to trial of a cause after it has been put at issue, without determining such issue.

2.—It is either voluntary or involuntary.

3.—A voluntary nonsuit is an abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him.

4.—An involuntary nonsuit takes place when the plaintiff on being called, when his case is before the court for trial, neglects to appear, or when he has given no evidence upon which a jury could find a verdict. 13 John. R. 334.

5.—The courts of the United States, 1 Pet. S. C. R. 469, 476; those of Pennsylvania, 1 S. & R. 360; 2 Binn. R. 234, 245; 4 Binn. R. 84; Massachusetts, 6 Pick. R. 117; Tennessee, 2 Overton, R. 57; 4 Yerg. R. 528; and Virginia, 1 Wash. R. 87, 219, cannot order a nonsuit against a plaintiff who has given evidence of his claim. In
Alabama, unless authorized by statute, the court cannot order a nonsuit. Minor, R. 75; 3 Stew. R. 42.

6.—In New York, 13 John. R. 334; 1 Wend. R. 376; 12 John. R. 299; South Carolina, 2 Bay, R. 126, 445; 2 Bailey, R. 321; 2 McCord, R. 26; and Maine, 2 Greenl. R. 5; 3 Greenl. R. 97, a nonsuit may in general be ordered where the evidence is insufficient to support the action. Vide article Judgment of Nonsuit, and Grah. Pr. 269; 3 Chit. Pr. 910; 1 Selle. Pr. 463; 1 Arch. Pr. 787; Bac. Ab. h. t.; 15 Vin. Ab. 560.

NORTH CAROLINA. The name of one of the original states of the United States of America. The territory which now forms this state was included in the grant made in 1663 by Charles the Second to Lord Clarendon and others, of a much more extensive country. The boundaries were enlarged by a new charter granted by the same prince to the same proprietaries, in the year 1665. By this charter the proprietaries were authorized to make laws, with the assent of the freemen of the province or their delegates, and they were invested with various other powers. Being dissatisfied with the form of government, the proprietaries procured the celebrated John Locke to draw a plan of government for the colony, which was adopted and proved to be impracticable; it was highly exceptionable on account of its disregard of the principles of religious toleration and rational liberty, which are now universally admitted. After a few years of unsuccessful operation it was abandoned. The colony had been settled at two points, one called the Northern and the other the Southern settlement, which were governed by separate legislatures. In 1729 the proprietaries surrendered their charter, when it became a royal province, and was governed by commission and a form of government in substance similar to that established in other royal provinces. In 1732, the territory was divided, and the divisions assumed the names of North Carolina and South Carolina.

2.—The constitution of North Caro-
lina was adopted December 18, 1776. To this constitution amendments were made in convention, June 4, 1885, which were ratified by the people on the 9th day of November of the same year, and took effect on the 1st day of January, 1886.

3.—The powers of the government are distributed into three branches, the legislative, the executive, and the judiciary.

4.—§ 1. The legislative power is vested in a senate and in a house of commons, and both are denominated the general assembly. These will be separately considered.

5.—1st. In treating of the senate, it will be proper to take a view of, 1. The qualifications of senators; 2. Of electors of senators; 3. Of the number of senators; 4. Of the time for which they are elected.

6.—1. The first article, section 3, of the amendments, provides: All freemen of the age of twenty-one years, (except as is hereinafter declared,) who have been inhabitants of any one district within the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land, for six months next before and at the day of election, shall be entitled to vote for a member of the senate; consequently no free negro or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, can be a senator, as such persons cannot be voters. The 4th article, sec. 2, of the amendments, declares that no person who shall deny the being of God, or the truth of the Christian religion, or the divine authority of the Old or New Testament, or who shall hold religious principles incompatible with the freedom or safety of the state, shall be capable of holding any office or place of trust or profit in the civil department within this state. And the fourth section of the article directs that no person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or any other state or government, shall hold or exe-
cise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers in the militia or justices of the peace. The 31st section of the constitution provides that no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the senate, house of commons, or council of state, while he continues in the exercise of his pastoral function.—2. The first article of the amendments, provides section 3, § 2, that all free men of the age of twenty-one years, (except as hereinafter declared,) who have been inhabitants of any one district within the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land, for six months next before and at the day of election, shall be entitled to vote for a member of the senate. And § 3, no negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons.—3. The senate consists of fifty representatives. Amendm. art. 1, s. 1. —4. They are chosen biennially by ballot. Id.

7—2d. The house of commons will be considered in the same order which has been observed in speaking of the senate. 1. The sixth section of the constitution requires that each member of the house of commons shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life. The disqualifications of persons for membership in the house of commons will be found ante, under the head senate.—2. The qualifications of voters for members of the house of commons are by sect. 8, of the constitution, that all freemen of the age of twenty-one years, who have been inhabitants of any one county within the state twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons, for the county in which he resides. And by § 9, that all persons possessed of a freehold, in any town in this state, having a right of representation, and also all freemen, who have been inhabitants of any such town twelve months next before, and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons; Provided, always, that this section shall not entitle any inhabitant of such town to vote for members of the house of commons for the county in which he may reside; nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member of the said town. But mulattoes, or persons of a mixed blood are not voters. Amendm. art. 1, sect. 3, § 3.—3. The Amendments, article 1, section 1, §§ 2, 3, and 4, direct how the house of commons shall be composed, as follows: The house of commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population; that is, 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; and each county shall have at least one member in the house of commons, although it may not contain the requisite ratio of population. This apportionment shall be made by the general assembly, at the respective times and periods when the districts for the senate are hereinbefore directed to be laid off; and the said apportionment shall be made according to an enumeration to be ordered by the general assembly, or according to the census which may be taken by order of congress, next preceding the making such apportionment. In making the apportionment in the house of com-
mons, the ratio of representation shall be ascertained by dividing the amount of federal population in the state, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire federal population aforesaid, by the number of representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one representative; to each county containing twice, but not three times the said ratio, there shall be assigned two representatives, and so on progressively; and then the remaining representatives shall be assigned severally to the counties having the largest fractions.—4. They are elected biennially.

8.—§ 2. The executive power is regulated by the amendments of the constitution, article 2, as follows, namely:§ 1. The governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the general assembly are elected. § 2. He shall hold his office for the term of two years from the time of his installation, and until another shall be elected and qualified; but he shall not be eligible more than four years in any term of six years. § 3. The returns of every election for governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly. § 4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law. § 5. The governor elect shall enter on the duties of the office on the first day of January next after his election, having previously taken the oath of office in the presence of the members of both branches of the general assembly, or before the chief justice of the supreme court, who, in case the governor elect should be prevented from attendance before the general assembly, by sickness or other unavoidable cause, is authorized to administer the same.

9.—§ 3. The judicial powers are vested in supreme courts of law and equity, courts of admiralty, and justices of the peace.

NOSOCOMI, civil law. Are persons who have the management and care of hospitals for paupers. Clef Lois Rom. mot Administrateurs.

NOT FOUND. These words are endorsed on a bill of indictment by a grand jury, when they have not sufficient evidence to find a true bill; the same as Ignorumus, (q. v.)

NOT GUILTY, in pleading, is the general issue in several sorts of actions. It is the general issue.

2.—In trespass, and its form is as follows: “And the said C D, by E F, his attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the said trespasses above laid to his charge, or any part thereof, in the manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country.”

3.—Under this issue the defendant may give in evidence any matter which directly controverts the truth of any allegation, which the plaintiff on such general issue will be bound to prove, 1 B. & P. 213; and no person is bound to justify who is not, prima facie, a trespasser. 2 B. & P. 359; 2 Saund. 284, d. For example, the plea of not guilty is proper in trespass to persons, if the defendant have committed no assault, battery, or imprisonment, &c.; and in trespass to personal property, if the plaintiff had no property in the goods, or the defendant were not guilty of taking them, &c.; and in trespass to real property, this plea not only puts in issue the fact of trespass, &c., but also the title, whether freehold or possessory in the defendant, or a person under whom he claims, may be given in evidence under it, which matters show, prima facie,
that the right of possession, which is
necessary in trespass, is not in the plain-
tiff, but in the defendant or the person
under whom he justifies. 8 T. R. 493;
7 T. R. 354; Willes, 222; Steph. Pl.
178; 1 Chit. Pl. 491, 492.

4.—In trespass on the case in general;
the formula is as follows: “And the said
C D, by E F, his attorney, comes and
defends the wrong and injury when, &c.,
and says, that he is not guilty of the
premises above laid to his charge, in
manner and form as the said A B hath
above complained. And of this the said
C D puts himself on the country.”

5.—This, it will be observed, is a
mere traverse, or denial, of the facts al-
leged in the declaration; and therefore,
on principle, should be applied only to
cases in which the defence rests on such
denial. But here a relaxation has taken
place, for under this plea, a defendant is
permitted not only to contest the truth
of the declaration, but with some excep-
tions, to prove any matter of defence,
that tends to show that the plaintiff has
no cause of action, though such matters
be in confession and avoidance of the
declaration; as, for example, a release
given, or satisfaction made. Steph. Pl.
182-3; 1 Chit. Pl. 486.

6.—In trover. It is not usual in this
action to plead any other plea, except
the statute of limitations; and a release,
and the bankruptcy of the plaintiff, may
be given in evidence under the general
issue. 7 T. R. 391.

7.—In debt on a judgment suggesting
a devestavit, an executor may plead not
guilty. 1 T. R. 462.

8.—In criminal cases when the defen-
dant wishes to put himself on his trial,
he pleads not guilty.

NOT POSSESSED. A plea some-
times used in actions of trover, when the
defendant was not possessed of the goods
at the commencement of the action. 3
Mann. & Gr. 101, 103.

NOTARY or NOTARY PUBLIC,
is an officer appointed by the executive,
or other appointing power, under the
laws of different states.

2.—Their duties are generally pre-
scribed by such laws. The most usual
of which are, 1, to attest deeds, agree-
ments and other instruments, in order to
give them authenticity; 2, to protest
notes, bills of exchange, and the like;
3, to certify copies of agreements and
other instruments.

3.—Notaries are of very ancient ori-
gin; they were well known among the
Romans, and exist in every state of
Europe, and particularly on the contin-
ent.

4.—Their acts have long been re-
spected by the custom of merchants and
by the courts of all nations. 6 Toull.
n. 211, note. Vide, generally, Chit.
Bills, Index, h. t.; Chit. Pr. Index,
h. t.; Burn's Eccl. Law, h. t.; Bro.
Off. of a Not. passim; 2 Har. & John.
396; 7 Verm. 22; 8 Wheat. 326; 6 S.
& R. 484; 1 Mis. R. 434.

NOTE, estates, cond., practice, is the
fourth part of a fine of lands: it is an
abstract of the writ of covenant and con-
cord, and is only a docket taken by the
chirographer, from which he draws up
the indenture. It is sometimes taken in
the old books for the concord. Cruise,
Dig. tit. 35, c. 2, 51.

NOTE OF HAND, contracts. Another
name, less technical, for a promissory
note, (q. v.) 2 Bl. Com. 467. Vide
Bank note; Promissory note; Reissu-
able note.

NOTES, practice, are short state-
ments of what transpires on the trial of a
cause; they are generally made by the
judge and the counsel, for their own sa-
satisfaction.

2.—They are not, per se, evidence on
another trial, not being in the nature of
a deposition. 4 Binn. R. 110. But such
notes were admitted in a court of equity
as evidence of what had been stated by
a witness at the trial of an action at law.
3 Y. & C. 413. And a verdict was
amended, in a court of law, from the
notes of the judges. 11 Ad. & El. 179;
S. C. 39 Eng. C. L. R. 35; see 5 Whart.
165; 5 Watts & S. 51.

3.—Notaries formerly made notes,
matrix, by abbreviations, from which
they made their records, and engrossed
the acts which were passed before them.
This original is now called the minutes.
The notes of the prothonotaries and clerks of courts are called minutes.

NOTICE, is the information given of some act done, or the interpellation by which some act is required to be done. It also signifies, simply, knowledge; as A had notice that B was a slave. 5 How. S. C. Rep. 216; 7 Penn. Law Journ. 119.

2.—Notices should always be in writing; they should state, in precise terms their object, and be signed by the proper person, or his authorized agent, be dated, and addressed to the person to be affected by them.

3.—Notices are actual, as when they are directly given to the party to be affected by them; or constructive, as when the party by any circumstance whatever, is put upon inquiry, which amounts in judgment of law to notice, provided the inquiry becomes a duty. Vide 2 Pow. Mort. 561 to 662; 2 Stark. Ev. 987; 1 Phil. Ev. Index, h. t.; 1 Vern. 364, n.; 4 Kent, Com. 172; 16 Vin. Ab. 2; 2 Supp. to Ves. Jr. 250; Grah. Pr. Index, h. t.; Chit. Pl. Index, h. t.; 2 Mason, 531; 14 Pick. 224; 4 N. H. Rep. 397; 14 S. & R. 333.

4.—With respect to the necessity for giving notice, says Mr. Chitty, (1 Pr. 496,) the rules of law are most evidently founded on good sense and so as to accord with the intention of the parties. The giving notice in certain cases obviously is in the nature of a condition precedent to the right to call on the other party for the performance of his engagement, whether his contract were express or implied. Thus, in the familiar instance of bills of exchange and promissory notes, the implied contract of an indorser is, that he will pay the bill or note provided it be not paid, on presentment at maturity, by the acceptor or maker, (being the party primarily liable,) and provided that he (the indorser) has due notice of the dishonour, and without which he is discharged from all liability; consequently, it is essential for the holder to be prepared to prove affirmatively that such notice was given, or some facts dispensing with such notice.

5.—Whenever the defendant’s liability to perform an act depends on another occurrence, which is best known to the plaintiff, and of which the defendant is not legally bound to take notice, the plaintiff must prove that due notice was in fact given. So in cases of insurances on ships, a notice of abandonment is frequently necessary to enable the assured plaintiff to proceed as for a total loss when something remains to be saved, in relation to which, upon notice, the insurers might themselves take their own measures.

6.—To avoid doubt or ambiguity in the terms of the notice, it may be advisable to give it in writing, and to preserve evidence of its delivery, as in the case of notices of the dishonour of a bill.

7.—The form of the notice may be as subscribed, but it must necessarily vary in its terms according to the circumstances of each case. So, in order to entitle a party to insist upon a strict and exact performance of a contract on the fixed day for completing it, and a for tiori to retain a deposit as forfeited, a reasonable notice must be given of the intention to insist on precise performance, or he will be considered as having waived such strict right. So if a lessee or a purchaser be sued for the recovery of the estate, and he have a remedy over against a third person, upon a covenant for quiet enjoyment, it is expedient (although not absolutely necessary) to give the latter notice of the proceeding, referring to such covenant.

NOTICE, AVERMENT OF, in pleading, is frequently necessary, particularly in special actions of assumpsit.

2.—When the matter alleged in the pleading is to be considered as lying more properly in the knowledge of the plaintiff, than of the defendant, then the declaration ought to state that the defendant had notice thereof; as when the defendant promised to give the plaintiff as much for a commodity as another person had given, or should give for the like.

3.—But where the matter does not lie more properly in the knowledge of the plaintiff, than of the defendant,
notice need not be averred. 1 Saund. 117, n. 2; 2 Saund. 62 a, n. 4; Freeman, R. 285. Therefore, if the defendant contracted to do a thing, on the performance of an act by a stranger, notice need not be averred, for it lies in the defendant’s knowledge as much as in the plaintiff’s, and he ought to take notice of it at his peril. Com. Dig. Pledger, C. 75. See Com. Dig. Id. C. 73, 74, 75; Vin. Abr. Notice; Hardr. R. 42; 5 T. R. 621.

4.—The omission of an averment of notice, when necessary, will be fatal on demurrer or judgment by default, Cro. Jac. 482; but may be avised by verdict, 1 Str. 214; 1 Saund. 228, a; unless in an action against the drawer of a bill, when the omission of the averment of notice of non-payment by the acceptor is fatal, even after verdict. Doug. R. 679.

NOTICE OF DISHonOUR, is the notice given by the holder of a bill of exchange or promissory note, to a drawer or endorser on the same, that it has been dishonoured, either by not being accepted in the case of a bill, or paid in case of an accepted bill or note.

2.—It is proper to consider, 1, the form of the notice; 2, by whom it is to be given; 3, to whom; 4, when; 5, where; 6, its effects; 7, when a want of notice will be excused; 8, when it will be waived.

3.—§ 2. Although no precise form of words is requisite in giving notice of dishonour, yet such notice must convey, 1, a true description of the bill or note so as to ascertain its identity; but if the notice cannot mislead the party to whom it is sent, and it conveys the real fact without any doubt, although there may be a small variance, it cannot be material, either to regard his rights or to avoid his responsibility. 11 Wheat. 431, 436; Story on Bills, § 390; 11 Mees. & Wels. 809.—2. The notice must contain an assertion that the bill has been duly presented to the drawee for acceptance, when acceptance has been refused, or to the acceptor of a bill, or maker of a note for payment at its maturity, and dishonoured. 4 B. & C. 340; 7 Bing. 530; 1 Bing. N. C. 192; 1 M. & G. 76; 3 Bing. N. C. 688; 10 A. & E. 125.—3. The notice must state that the holder, or other person giving the notice, looks to the person to whom the notice is given, for reimbursement and indemnity. Story on Bills, § 301, 390. Although in strictness this may be required, where the language is otherwise doubtful and uncertain, yet, in general, it will be presumed where in other respects the notice is sufficient. 2 A. & E. N. R. 388, 416; 11 Mees. & Wels. 372; Story on P. N. § 353; 11 Wheat. 431, 437; 2 Pet. 543; 2 John. Cas. 237; 2 Hill, (N. Y.) R. 588; 1 Spear, R. 244.

4.—§ 2. In general the notice may be given by the holder or some one authorized by him. Story on Bills, § 303, 304; or by some one who is a party and liable to pay the bill or note. But notice given by a stranger is not sufficient. Chit. on Bills, 368, 8th edit.; 1 T. R. 170; 8 Miss. 704; 16 S. & R. 157, 160. On the death of the holder, his executor or administrator is required to give notice, and, if none be then appointed, the notice must be given within a reasonable time after one may be appointed. Story on P. N. § 304. When the bill or note is held by partners, notice by any of them is sufficient; and when joint-holders have the paper, and one dies, the notice may be given by the survivor; the assignee of the holder who is a bankrupt, must give notice, but if no assignee be appointed when the paper becomes due, the notice must be given without delay after his appointment; but it seems the bankrupt holder may himself give the notice. Story on P. N. § 305: If an infant be the holder the notice may be given by him, or if he has a guardian, by the latter.

5.—§ 3. The holder is required to give notice to all the parties to whom he means to resort for payment, and, unless excused in point of law, as will be stated below, such parties will be exonerated, and absolved from all liability on such bill or note. Story on P. N. § 307. But a party who purchases a bill, and,
without endorsing it, transmits it on account of goods ordered by him, is not entitled to notice of its dishonour. 1 Wend. 219; 4 Wash. C. C. 1. In cases of partnership, notice to either of the partners is sufficient. Story on Bills, § 299; Story on P. N. § 308; 20 John. 176; 2 How. Sup. Ct. R. 457. Notice should be given to each of several joint endorsers, who are not partners. 1 Conn. 368; 4 Cowen, 126; 5 Hill, (N. Y.) R. 232; Story on Bills, § 299. Notice to an absent endorser may be given to his general agent. 1 M. & Selw. 545; 16 Martin, (Lo.) R. 87. See 12 Wheat. 599; 4 Wash. C. C. 464; 3 Wend. 276.

6.—§ 4. The notice of dishonour must be given to the parties to whom the holder means to resort, within a reasonable time after the dishonour of the bill, when it is dishonoured for non-acceptance, and he must not delay giving notice until the bill has been protested for non-payment. Bull. N. P. 271; 12 East, 434; 1 Harr. & J. 187; 1 Dall. 235; 2 Dall. 219, 233; 1 Yeates, 147; 3 Wash. C. C. 396; 1 Bay, 177; 11 John. 187; 10 Wend. 304; 13 Wend. 133; 5 Halst. 139; 4 J. J. Marsh. 61; Paine, 156; 2 Hayw. 332; 2 Marsh. 616. Though formerly it was doubtful whether the court or jury were to judge as to the reasonableness of the notice in respect to time, 1 T. R. 168; yet, it seems now to be settled, that when the facts are ascertained, it is a question for the court and not for the jury. 10 Mass. 84, 86; 6 Watts & S. 399; 3 Marsh. 262; 2 Harris R. 488; Penn. 916; 1 N. H. Rep. 140; 17 Mass. 449, 453; 2 Aik. 9; Rice, R. 240; 2 Hayw. 45.

7.—§ 5. In considering as to where the notice should be given, a difference is made between cases, where the parties reside in the same town, and where they do not.—1. When both parties reside in the same town or city, the notice should either be personal or at the domicil or place of business of the party notified, so that it may reach him on the very day he is entitled to notice. 1 M. & S. 545, 554; 2 Pet. 100; 1 Pet. 578, 583; Story on Bills, §§ 284–290; 1 Rob. Lo. R. 572; 3 Rob. Lo. 261; 20 John. 372; 1 Conn. 329; 17 Mart. Lo. 187, 158, 359; 19 Mart. Lo. 492; Story on P. N. § 322. But see 25 Pick. 305; 6 Watts & Serg. 262; 2 Aik. 263; 8 Ohio, 507, 510; Rice, R. 240, 243; 1 Litt. R. 194. If the notice be put in the post office, the holder must prove it reached the endorser. 2 Pet. 121. But in those towns where they have letter carriers, who carry letters from the post office and deliver them at the houses or places of business of the parties, if the notice be put in the post office in time to be delivered on the same day, it will be sufficient. Chit. on Bills, 504, 508, 513, 8th edit.; 1 Pet. 578; 11 John. 231.

2. When the parties reside in different towns or cities, the notice may be sent by the post, or a special messenger, or a private person, or by any other suitable or ordinary conveyance. Chit. on Bills, 518, 8th ed.; Story on P. N. § 324; Bayl. on Bills, ch. 7, § 2; 1 Pet. 582.

When the post is resorted to, the holder has the whole day on which the bill becomes due to prepare his notice, and if it be put in the post office on the next day in time to go by either mails, when there is more than one, it will in general be sufficient. 17 Mass. 449, 454; 1 Hill, (N. Y.) R. 263; but see contra, 2 Rob. Lo. R. 117.

8.—§ 6. The effect of the notice of dishonour, when properly given, and when it is followed by a protest, when a protest is requisite, will render the drawer and endorsers of a bill or the endorsers of a note liable to the holder. But the drawer and endorsers may tender the money at any time before a writ has been issued, though the acceptor must pay the bill on presentment, and cannot plead a subsequent tender. 1 Marsh. 36; 5 Taunt. 240; S. C. 8 East, 168.

9.—§ 7. The same reasons which will excuse the want of a presentment, will in general excuse a want of protest. See Presentment, contracts, n. 8, 9.

10.—§ 8. A want of notice may be waived by the party to be affected, after a full knowledge of the facts that the holder has no just cause for the neglect.
or omission. Story on P. N. § 358; see Presentment, contracts, n. 9.

NOTICE TO PRODUCE PAPERS, practice, evidence. When it is intended to give secondary evidence of a written instrument or paper, which is in the possession of the opposite party, it is in general requisite to give him notice to produce the same on the trial of the cause, before such secondary evidence can be admitted.

2.—To this general rule there are some exceptions: 1st, In cases where, from the nature of the proceedings, the party in possession of the instrument has notice that he is charged with the possession of it, as in the case of trover for a bond. 14 East, R. 274; 4 Taunt. R. 865; 6 S. & R. 154; 4 Wend. 626; 1 Camp. 143. 2d, When the party in possession has obtained the instrument by fraud. 4 Esp. R. 256. Vide 1 Phil. Ev. 425; 1 Stark. Ev. 362; Rosc. Civ. Ev. 4.

3.—It will be proper to consider the form of the notice; to whom it should be given; when it must be served; and its effects.

4.—1. In general a notice to produce papers ought to be given in writing, and state the title of the cause in which it is proposed to use the papers or instruments required. 2 Stark. R. 19; S. C. 3 E. C. L. R. 222; it seems, however, that the notice may be by parol. 1 Campb. R. 440. It must describe with sufficient certainty the papers or instruments called for, and must not be too general, and by that means be uncertain. R. & M. 341; McCl. & Y. 139.

5.—2. The notice may be given to the party himself, or to his attorney. 3 T. R. 306; 2 T. R. 203, (n.); R. & M. 327; 1 M. & M. 96.

6.—3. The notice must be served a reasonable time before trial, so as to afford an opportunity to the party to search for and produce the instrument or paper in question. 1 Stark. R. 283; S. C. 2 E. C. L. R. 391; R. & M. 47, 327; 1 M. & M. 96, 335, (n.)

7.—4. When a notice to produce an instrument or paper in the cause has been proved, and it is also proved that such paper or instrument was, at the time of the notice, in the hands of the party or his privy, and upon request in court he refuses or neglects to produce it, the party having given such notice, and made such proof, will be entitled to give secondary evidence of such paper or instrument thus withheld.

8.—The 15th section of the judiciary act of the United States provides “that all the courts of the United States shall have power, in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion, to give the like judgment for the defendant, as in cases of nonsuit; and if the defendant fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion as aforesaid, to give judgment against him or her by default.”

9.—The proper course to pursue under this act, is to move the court for an order on the opposite party to produce such books or papers. See as to the rules in courts of equity to compel the production of books and papers. 1 Baldw. Rep. 388, 9; 1 Vern. 408, 425; 1 Sch. & Lef. 222; 1 P. Wms. 731, 732; 2 P. Wms. 749; 3 Atk. 360. See Evidence, secondary.

NOTICE TO QUIT. It is a request from a landlord to his tenant, to quit the premises leased, and to give possession of the same to him, the landlord, at a time therein mentioned.

2.—It will be proper to consider, 1, the form of the notice; 2, by whom it is to be given; 3, to whom; 4, the mode of serving it; 5, at what time it must be served; 6, what will amount to a waiver of it.

3.—§ 1. The form of the notice. The notice or demand of possession should
contain a request from the landlord to the tenant or person in possession, to quit the premises which he holds from the landlord, (which premises ought to be particularly described, as being situate in the street and city or place, or township and county,) and to deliver them to him on or before a day certain, generally when the lease is for a year, the same day of the year on which the lease commences. But where there is some doubt as to the time when the lease is to expire, it is proper to add, “or at the expiration of the current year of your tenancy.” 2 Esp. N. P. C. 589. It should be dated, signed by the landlord himself, or by some person in his name, who has been authorized by him, and directed to the tenant. The notice must include all the premises under the same demise; for the landlord cannot determine the tenancy as to part of the premises demised, and continue it as to the residue. For the purpose of bringing an ejectment, it is not necessary that the notice should be in writing, except when required to be so under an express agreement between the parties. Com. Dig. Estate by Grant, G 11, n. p. But it is the general and safest practice to give written notices, and it is a precaution which should always, when possible, be observed, as it prevents mistakes, and renders the evidence certain and correct. Care should be taken that the words of a notice be clear and decisive, without ambiguity, or giving an alternative to the tenant, for if it be really ambiguous or optional, it will be invalid. Adams on Ej. 122.

4. —§ 2. As to the person by whom the notice is to be given. It must be given by the person interested in the premises or his agent properly appointed. Adams on Ej. 120. As the tenant is to act upon the notice at the time it is given to him, it is necessary that it should be such as he may act upon with security, and should, therefore, be binding upon all the parties concerned at the time it is given. Where, therefore, several persons are jointly interested in the premises, they all must join in the notice; and if any of them be not a party at the time, no subsequent ratification by him will be sufficient by relation to render the notice valid. 5 East, 491; 2 Phil. Ev. 184. But if the notice be given by an agent, it is sufficient if his authority is afterwards recognized. 3 B. & A. 689.

5.—§ 3. As to the person to whom the notice should be given. When the relation of landlord and tenant subsists, difficulties can seldom occur as to the party upon whom the notice should be served. It should invariably be given to the tenant of the party serving the notice, notwithstanding a part may have been underlet, or the whole of the premises may have been assigned. Adams on Ej. 119; 2 New Rep. 330, and vide 14 East, 234; unless, perhaps, the lessor has recognized the sub-tenant as his tenant. 10 Johns. 270. When the premises are in possession of two or more as joint-tenants or tenants in common, the notice should be to all; a notice addressed to all, and served upon one only, will, however, be a good notice. Adams on Ej. 123.

6.—§ 4. As to the mode of serving the notice. The person about serving the notice should make two copies of it, both signed by the proper person, then procure one or more respectable persons for witnesses, to whom he should show the copies, who, upon comparing them, and finding them alike, are to go with the person who is to serve the notice. The person serving the notice then in their presence, should deliver one of these copies to the tenant personally, or to one of his family, at his usual place of abode, although the same be not upon the demised premises, 2 Phil. Ev. 185; or serve it upon the person in possession, and where the tenant is not in possession, a copy may be served on him if he can be found, and another on the person in possession. The witnesses should then for the sake of security, sign their names on the back of the copy of the notice retained, or otherwise mark it so as to identify it, and they should also state the manner in which the notice was served. In the case of a joint demise to two defendants, of whom one alone
resided upon the premises, proof of the service of the notice upon him has been held to be sufficient ground for the jury to presume that the notice so served upon the premises, has reached the other who resided in another place. 7 East, 553; 5 Esp. N. P. C. 196.

7.—§ 5. At what time it must be served. It must be given three months before the expiration of the lease. Difficulties sometimes arise as to the period of the commencement of the tenancy, and when a regular notice to quit on any particular day is given, and the time when the term began is unknown, the effect of such notice as to its being evidence or not of the commencement of the tenancy, will depend upon the particular circumstances of its delivery; if the tenant having been applied to by his landlord respecting the time of the commencement of the tenancy, has informed him it began on a certain day, and in consequence of such information a notice to quit on that day is given at a subsequent period, the tenant is concluded by his act, and will not be permitted to prove that in point of fact, the tenancy has a different commencement; nor is it material whether the information be the result of design or ignorance, as the landlord is in both instances equally led into error. Adams on Ej. 130; 2 Esp. N. P. C. 635; 2 Phil. Ev. 186. In like manner if the tenant at the time of delivery of the notice, assent to the terms of it, it will waive any irregularity as to the period of its expiration, but such assent must be strictly proved. 4 T. R. 361; 2 Phil. Ev. 183. When the landlord is ignorant of the time when the term commenced, a notice to quit may be given not specifying any particular day, but ordering the tenant in general terms to quit and deliver up the possession of the premises, at the end of the current year of his tenancy thereof, which shall expire next after the end of three months from the date of the notice. See 2 Esp. N. P. C. 589.

8.—§ 6. What will amount to a waiver of the notice. The acceptance of rent accruing subsequently to the expiration of the notice is the most usual means by which a waiver of it may be produced, but the acceptance of such rent is open to explanation; and it is the province of the jury to decide with what views, and under what circumstances the rent is paid and received. Adams on Ej. 139. If the money be taken with an express declaration that the notice is not thereby intended to be waived, or accompanied by other circumstances which may induce an opinion that the landlord did not intend to continue the tenancy, no waiver will be produced by the acceptance; the rent must be paid and received as rent, or the notice will remain in force. Cowp. 243. The notice may also be waived by other acts of the landlord; but they are generally open to explanation, and the particular act will or will not be a waiver of the notice, according to the circumstances which attend it. 2 East, 236; 10 East, 13; 1 T. R. 53. It has been held that a notice to quit at the end of a certain year is not waived by the landlord’s permitting the tenant to remain in possession an entire year after the expiration of the notice, notwithstanding the tenant held by an improving lease, that is, to clear and fence the land and pay the taxes. 1 Binn. 333. In cases, however, where the act of the landlord cannot be qualified, but must of necessity be taken as a confirmation of the tenancy, as if he detain for rent accruing after the expiration of the notice, or recover in an action for use and occupation, the notice of course will be waived. Adams on Ej. 144; 1 H. Bl. 311.

NOTING, is the name of the minute made by a notary on a bill of exchange, after it has been presented for acceptance or payment, consisting of the initials of his name, the date of the day, month and year when such presentment was made, and the reason, if any has been assigned, for non-acceptance or non-payment, together with his charge. The noting is not indispensable, it being only a part of the protest; it will not supply the protest. 4 T. R. 175; Chit. on Bills, 280, 398. See Protest.

NOTORIETY, evidence, is that which is generally known.
2.—This notoriety is of fact or of law. In general the notoriety of a fact is not sufficient to found a judgment or to rely on its truth; 1 Ohio Rep. 207; but there are some facts of which, in consequence of their notoriety, the court will, suo motu, take cognizance; for example, facts stated in ancient histories, Skin. R. 14; 1 Ventr. R. 149; 2 East, Rep. 464; 9 Ves. jr. 347; 10 Ves. jr. 354; 3 John. Rep. 385; 1 Binn. R. 399; recitals in statutes, Co. Litt. 19 b; 4 M. & S. 542; and in the law text books, 4 Inst. 240; 2 Russ. 313; and the journals of the legislatures, are considered of such notoriety that they need not be otherwise proved.

3.—The courts of the United States take judicial notice of the ports and waters of the United States, in which the tide ebb and flows. 3 Dall. 297; 9 Wheat. 374; 10 Wheat. 428; 7 Pet. 342. They take like notice of the boundaries of the several states and judicial districts. It would be altogether unnecessary, if not absurd, to prove the fact that London in Great Britain or Paris in France is not within the jurisdiction of an American court, because the fact is notoriously known.

4.—It is difficult to say what will amount to such notoriety as to render any other proof unnecessary. This must depend upon many circumstances; in one case, perhaps upon the progress of human knowledge in the fields of science, in another, on the extent of information on the state of foreign countries, and in all such instances upon the accident of their being little known or publicly communicated. The notoriety of the law is such that the judges are always bound to take notice of it; statutes, precedents and text books are therefore evidence without any other proof than their production. Gresley, Ev. 293. The courts of the United States take judicial notice of all laws and jurisprudence of the several states, in which they exercise original or appellate jurisdiction. 9 Pet. 607, 624.

5.—The doctrine of the civil and canon laws is similar to this. Boehmer in tit. 10, de probat. lib. 2, t. 19, n. 2; Mascardus, de probat. conclus. 1106, 1107, et seq.; Menock. de presumpt. lib. 1, quaest. 63, &c.; Toullier, Dr. Civ. Fran. liv. 3, c. 6, n. 13; Dict. de Jurisp. mot Notorieté; 1 Th. Co. Litt. 26, n. 16; 2 Id. 63, n. (A); Id. 334, n. 6; Id. 513, u. (T 3); 9 Dana, 23; 12 Vern. 178; 5 Port. 382; 1 Chit. Pl. 216, 225.

NOVA CUSTOMA. The name of an imposition or duty in England. Vide Antiqua Customa.

NOVA STATUTA. New Statutes. The name given to the statutes commencing with the reign of Edward III. Vide Veta Statuta.

NOVÆ NARRATIONES. The title of an ancient English book, written during the reign of Edward III. It consists of declarations and some other pleadings.

NOVATION, in the civil law. 1. Novation is a substitution of a new for an old debt. The old debt is extinguished by the new one contracted in its stead; a novation may be made in three different ways, which form three distinct kinds of novations.

2.—The first takes place, without the intervention of any new person where a debtor contracts a new engagement with his creditor, in consideration of being liberated from the former. This kind has no appropriate name, and is called a novation generally.

3.—The second is that which takes place by the intervention of a new debtor, where another person becomes a debtor instead of a former debtor, and is accepted by the creditor, who thereupon discharges the first debtor. The person thus rendering himself debtor for another, who is in consequence discharged, is called expromissor; and this kind of novation is called expromissio.

4.—The third kind of novation takes place by the intervention of a new creditor where a debtor, for the purpose of being discharged from his original creditor, by order of that creditor, contracts some obligation in favour of a new creditor. There is also a particular kind of novation called a delegation. Poth. Obl. pt. 3, c. 2, art. 1. See Delegation.

5.—2. It is a settled principle of the common law, that a mere agreement to
substitute any other thing in lieu of the original obligation is void, unless actually carried into execution and accepted as satisfaction. No action can be maintained upon the new agreement, nor can the agreement be pleaded as a bar to the original demand. See Accord. But where an agreement is entered into by deed, that deed gives, in itself, a substantive cause of action, and the giving such deed may be sufficient accord and satisfaction for a simple contract debt.

1 Burr. 9; Co. Litt. 212, b.

6.—The general rule seems to be that if one indebted to another by simple contract, give his creditor a promissory note, drawn by himself, for the same sum, without any new consideration, the new note shall not be deemed a satisfaction of the original debt, unless so intended and accepted by the creditor. 15 Serg. & Rawle, 162; 1 Hill's (N. Y.) R. 516; 2 Wash. C. C. Rep. 191; 1 Wash. C. C. R. 156, 321; 2 John. Cas. 435; Pet. C. C. Rep. 266; 2 Wash. C. C. R. 24, 512; 3 Wash. C. C. R. 396; Addis. 39; 5 Day, 511; 15 John. 224; 1 Cowen, 711; see 8 Greenl. 298; 2 Greenl. 121; 4 Mason, 343; 9 Watts, 273; 10 Pet. 532; 6 Watts & Serg. 165, 168. But if he transfer the note, he cannot sue on the original contract as long as the note is out of his possession. 1 Peters's R. 267. See generally Discharge; 4 Mass. Rep. 93; 6 Mass. R. 371; 1 Pick. R. 415; 5 Mass. R. 11; 13 Mass. R. 148; 2 N. H. Rep. 525; 9 Mass. 247; 8 Pick. 522; 8 Cowen, 390; Coop. Just. 582; Gow on Partn. 185; 7 Vin. Abr. 367; Louis. Code, art. 2181 to 2194; 3 Watts & S. 276; 9 Watts, 280; 10 S. & R. 307; 4 Watts, 378; 4 Watts & Serg. 94; Toull. h. t.; Domat, h. t.; Dalloz, Diet. h. t.; Merlin. Rép. h. t.; Clef des Lois Romaines, h. t.; Azo & Man. Inst. t. 11, c. 2, § 4; Burge on Sur. B. 2, c. 5, p. 166.

NOVEL ASSIGNMENT. Vide New Assignment.

NOVEL DISSEISIN, the name of an old remedy which was given for a new or recent disseisin.

2.—When tenant in fee simple, fee tail, or for term of life, was put out, and disseised of his lands or tenements, rents, and the like, he might sue out a writ of assize or novel disseisin; and, if upon trial, he could prove his title, and his actual seisin, and the disseisin by the present tenant, he was entitled to have judgment to recover his seisin and damages for the injury sustained. 3 Bl. Com. 187. This remedy is obsolete.

NOVELLE LEONIS. The ordinances of the emperor Leo, which were made from the year 887 till the year 893, are so called. These novels changed many rules of the Justinian law. This collection contains one hundred and thirteen novels, written originally in Greek, and afterwards, in 1560, translated into Latin, by Agileus.

NOVELS, civil law. The name given to some constitutions or laws of some of the Roman emperors; this name was so given because they were new or posterior to the laws which they had before published. The novels were made to supply what had not been foreseen in the preceding laws, or to amend or alter the laws in force.

2.—Although the Novels of Justinian are the best known, and when the word Novels only is mentioned, those of Justinian are always intended, he was not the first who gave the name of Novels to his constitutions and laws. Some of the acts of Theodosius, Valentinien, Leo, Severus, Anthemius, and others, were also called Novels. But the Novels of the emperors who preceded Justinian had not the force of law, after the enactment of the law by order of that emperor. Those Novels are not, however, entirely useless, because the Code of Justinian having been composed mainly from the Theodosian Code and the Novels, the latter frequently remove doubts which arise on the construction of the Code. The Novels of Justinian form the fourth part of the Corpus Juris Civilis. They are directed either to some officer, or an archbishop or bishop, or to some private individual of Constantinople; but they all had the force and authority of law. The number of the Novels is uncertain. The 118th Novel is the foundation and groundwork of the English statute of
distribution of intestates' effects, which has been copied into many states of the Union. Vide 1 P. Wms. 27; Pr. in Chan. 503.

NOVUS HOMO, a new man; this term is applied to a man who has been pardoned of a crime, by which he is restored to society, and is rehabilitated.

NOXAL ACTION, civil law, is a personal, arbitrary, and indirect action in favour of one who has been injured by the slave of another, by which the owner or master of the slave was compelled either to pay the damages or abandon the slave. Vide Abandonment for torts, and Inst. 4, 8; Dig. 9, 4; Code, 3, 41.

NUBILIS, civil law. One who is of a proper age to be married. Dig. 32, 51.

NUDE. Naked. Figuratively, this word is applied to various subjects.

2. A nude contract, nudum pactum, (q. v.) is one without a consideration; nude matter, is a bare allegation of a thing done, without any evidence of it.

NUDE MATTER. A bare allegation unsupported by evidence.

NUDUM PACTUM, contracts, is a contract made without a consideration; it is called a nude or naked contract, because it is not clothed with the consideration required by law, in order to give an action.

2. There are some contracts which, in consequence of their forms, import a consideration, as sealed instruments, and bills of exchange, and promissory notes, which are generally good although no consideration appears.

3. A nudum pactum may be avoided, and is not binding.

4. Whether the agreement be verbal or in writing, it is still a nude pact. This has been decided in England, 7 T. R. 350, note; 7 Bro. P. C. 550; and in this country, 4 John. R. 235; 5 Mass. R. 301, 392; 2 Day's R. 22. It is a rule that no action can be maintained upon a naked contract; ex nudo pacto non oritur actio. 2 Bl. Com. 445; 16 Vin. Ab. 16.

5. This term is borrowed from the civil law, and the rule which decides upon the nullity of its effects, yet the common law has not in any degree been influenced by the notions of the civil law, in defining what constitutes a nudum pactum. Dig. 19, 5, 5; see on this subject a learned note in Fonbl. Eq. 335, and 2 Kent, Com. 364. Toullier defines nudum pactum to be an agreement not executed by one of the parties, tom. 6, n. 13, page 10. Vide 16 Vin. Ab. 16; 1 Supp. to Ves. jr. 514; 3 Kent, Com. 364; 1 Chit. Pr. 118; and art. Consideration.

NUISANCE, crim. law, torts. This word means literally annoyance; in law, it signifies, according to Blackstone, "anything that worketh hurt, inconvenience or damage." 3 Comm. 216.

2. Nuisances are either public or common, or private nuisances.

3. A public or common nuisance is such an inconvenience or troublesome offence, as annoys the whole community in general, and not merely some particular person. 1 Hawk. P. C. 197; 4 Bl. Com. 166–7. To constitute a public nuisance, there must be such a number of persons annoyed, that the offence can no longer be considered a private nuisance: this is a fact, generally, to be judged of by the jury. 1 Burr. 337; 4 Esp. C. 200; 1 Str. 686, 704; 2 Chit. Cr. Law, 607, n. It is difficult to define what degree of annoyance is necessary to constitute a nuisance. In relation to offensive trades, it seems that when such a trade renders the enjoyment of life and property uncomfortable, it is a nuisance, 1 Burr. 333; 4 Reg. Rec. 87; 5 Esp. C. 217; for the neighbourhood have a right to pure and fresh air. 2 Car. & P. 485; S. C. 12 E. C. L. R. 226; 6 Rogers's Rec. 61.

4. A thing may be a nuisance in one place, which is not so in another; therefore the situation or locality of the nuisance must be considered. A tallow chandler setting up his business among other tallow chandlers, and increasing the noxious smells of the neighbourhood, is not guilty of setting up a nuisance, unless the annoyance is much increased by the new manufactory. Peake's Cas. 91. Such an establishment might be a nuisance in a thickly populated town of
merchants and mechanics, where no such business was carried on.

5.—Public nuisances arise in consequence of following particular trades, by which the air is rendered offensive and noxious. Cro. Car. 510; Hawk. B. 1, c. 75, s. 10. 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686; or from acts of public indecency: as bathing in a public river, in sight of the neighbouring houses, 1 Russ. Cr. 302; 2 Campb. R. 89; Sid. 168; or for acts tending to a breach of the public peace, as for drawing a number of persons in a field for the purpose of pigeon-shooting, to the disturbance of the neighbourhood, 3 B. & A. 184; S. C. 23 Eng. C. L. R. 52; or keeping a disorderly house, 1 Russ. Cr. 295; or a gaming house, 1 Russ. Cr. 299; Hawk. b. 1, c. 75, s. 6; or a bawdy house, Hawk. b. 1, c. 74, s. 1; Bac. Ab. Nuisance, A; 9 Conn. R. 350; or a dangerous animal, known to be such, and suffering him to go at large, as a large bull-dog accustomed to bite people, 4 Burn's Just. 578; or exposing a person having a contagious disease, as the small-pox, in public, 4 M. & S. 73, 272, and the like.

6.—A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. 3 Bl. Com. 215; Finch, L. 188.

7.—These are such as are injurious to corporeal inheritances; as, for example, if a man should build his house so as to throw the rain water which fell on it, on my land, F. N. B. 184; or erect his building, without right, so as to obstruct my ancient lights, 9 Co. 58; keep hogs or other animals so as to inconvenience his neighbour and render the air unwholesome. 9 Co. 58.

8.—Private nuisances may also be injurious to incorporeal hereditaments. If, for example, I have a way annexed to my estate, across another man's land, and he obstruct me in the use of it, by plowing it up, or laying logs across it, and the like. F. N. B. 183; 2 Roll. Ab. 140.


NUL, law French, a barbarous word which means to convey a negative; as, Nul tiel record, Nul tiel award.

NUL AGARD. No award. A plea to an action on an arbitration bond, when the defendant avers that there was no legal award made. 3 Burr. 1730; 2 Stra. 923.

NUL DISSEISIN, pleading. No disseisin. A plea in a real action, by which the defendant denies that there was any disseisin: it is a species of the general issue.

NUL TIEL RECORD, pleading. No such record.

2.—When a party claims to recover on the evidence of a record, as in an action on scire facias, or when he sets up his defence on matter of record, as a former acquittal or former recovery, the opposite party may plead or reply nul tiel record, there is no such record; in which case the issue thus raised is called an issue of nul tiel record, and it is tried by the court by the inspection of the record. Vide 1 Saund. 92, n. 3; 12 Vin. Ab. 188; 1 Phil. Ev. 307, 8; Com. Dig. Bail, R 8—Certiorari, A 1—Plead. 2 W 13, 38—Record, C; 2 McLean, 511; 7 Port. 110; 1 Spencer, 114.

NUL TORT, pleading. No wrong.

2.—This is a plea to a real action, by which the defendant denies that he committed any wrong. It is a species of general issue.

NUL WASTE, pleading. This is the general issue in an action of waste. Co. Entr. 700 a, 708 a. The plea of nul waste admits nothing, but puts the whole declaration in issue; and in support of this plea the defendant may give in evidence any thing which proves that the act charged is no waste, as that it happened by tempest, lightning, and the
like. Co. Litt. 283 a; 3 Saund. 238, n. 5.

NULL, is properly what does not exist, what is not in the nature of things. In a figurative sense it signifies what has no more effect than if it did not exist. 8 Toull. n. 320.

NULLITY, signifies properly what does not exist; what is not properly in the nature of things. In a figurative sense, and in law, it means that which has no more effect than if it did not exist, and also the defect which prevents it from having such effect. What is absolutely void.

2.—It is a rule of law that what is absolutely null produces no effects whatever; as, if a man had a wife in full life, and both aware of the fact, he married another woman, such second marriage would be null and without any legal effect. Vide Chit. Contr. 228; 3 Chit. Pr. 522; 2 Archb. Pr. K. B. 4th edit. 888; Bayl. Ch. Pr. 97.

3.—Nullities have been divided into absolute and relative. Absolute nullities are those which may be insisted upon by any one having an interest in rendering the act, deed or writing null, even by the public authorities, as a second marriage while the former was in full force. Everything fraudulent is null and void. Relative nullities can be invoked only by those in whose favor the law has been established, and, in fact, such power is less a nullity of the act than a faculty which one or more persons have to oppose the validity of the act.

4.—The principal causes of nullities are,

1. Defect of form; as, for example, when the law requires that a will of lands shall be attested by three witnesses, and it is only attested by two. Vide Will.

2. Want of will; as if a man be compelled to execute a bond by duress, it is null and void. Vide Duress.

3. The incapacities of the parties; as in the cases of persons non compositi, of married women's contracts, and the like.

4. The want of consideration in simple contracts; as a verbal promise without consideration.

5.—5. The want of recording when the law requires that the matter should be recorded; as, in the case of judgment.

6.—6. Defect of power in the party who entered into a contract in behalf of another; as, when an attorney for a special purpose makes an agreement for his principal in relation to another thing. Vide Attorney; Authority.

7.—7. The loss of a thing which is the subject of a contract; as, when A sells B his horse, both supposing him to be alive, when in fact he was dead. Vide Contract; Sale.

Vide Perrin, Traité des Nullités; Henrion, Pouvoir Municipal, liv. 2, c. 18; Merl. Rép. h. t.; Dalloz, Dict. h. t. And see art. Void.

NULLIUS FILIUS. The son of no one; a bastard.

2.—A bastard is considered nullius filius as far as regards his right to inherit. But the rule of nullius filius does not apply in other respects.


4.—The putative father, too, is entitled to the custody of the child as against all but the mother. 1 Ashm. 55. And, it seems, that the putative father may maintain an action, as if his child were legitimate, for marrying him without his consent, contrary to law. Addis. 212. See Bastard; Child; Father; Mother; Putative Father.

NULLAM ARBITRUM, pleading. The name of a plea to an action on an arbitration bond for not fulfilling the award, by which the defendant asserts there is no award.

NULLAM FECERUNT ARBITRIUM. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, &c. Bac. Ab. Arbitr. &c. G.

NUNC PRO TUNC, practice. This phrase which signifies now for then, is
used to express that a thing is done at one time which ought to have been performed another. Leave of court must be obtained to do things nunc pro tune, and this is granted to answer the purposes of justice, but never to do injustice. A judgment nunc pro tune can be entered only when the delay has arisen from the act of the court. 3 Man. Gr. & Sc. 970; Vide 1 V. & B. 312; 1 Moll. R. 462: 13 Price, R. 604: 1 Hogan, R. 110.

NUNCIUS, _international law._ A messenger, a minister; the pope’s legate, commonly called a _nuncio._

NUNČUPTATIVE, used to express that a will or testament has been made verbally, and not in writing. Vide Testament, nuncupative; Will, nuncupative; 1 Williams on Exec. 59; Swimb. Index, h. t.; Ayl. Pand. 359; 1 Bro. Civ. Law, 288; Roberts on Wills, h. t.; 4 Kent, Com. 504.

NUNQUAM INDEBITATUS, pleading. A plea to an action of indebitatus assumpsit, by which the defendant asserts that he is not indebted to the plaintiff. 6 Carr. & P. 545; S. C. 25 English Com. Law Rep. 535; 1 Mees. & Wels. 542; 1 Q. B. 77.

NUPER OBIT, practice. He or she lately died. The name of a writ, which in the English law, lies for a sister co-heiress, dispossessed by her coparcener, whereof their father, brother, or any common ancestor died seised of an estate in fee simple. Terms de la Ley, h. t.; F. N. B. 197.

NURTURE, is the act of taking care of children and educating them: the right to the nurture of children generally belongs to the father till the child shall arrive at the age of fourteen years, and not longer. Till then, he is guardian by nurture. Co. Litt. 38 b. But in special cases the mother will be preferred to the father, 5 Binn. R. 520; 2 S. & R. 174; and after the death of the father, the mother is guardian by nurture, Fl. l. 1, c. 6; Com. Dig. Guardian, D.

OATH, is a declaration made according to law, before a competent tribunal or officer, to tell the truth; or it is the act of one who, when lawfully required to tell the truth, takes God to witness what he says is true. It is a religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or in other words to punish his perjury if he shall be guilty of it. 10 Toull. n. 343 à 348; Puff. book 4, c. 2, s. 4; Grot. book 2, c. 13, s. 1; Ruth. Inst. book 1, ch. 14, s. 1; 1 Stark. Ev. 80; Merl. Répert. Convention; Dalloz, Dict. Serment; Dur. n. 592, 593.

2.—It is proper to distinguish two things in oaths: 1, the invocation by which the God of truth, who knows all things, is taken to witness; 2, the imprecation by which he is asked as a just and all-powerful being, to punish perjury.

3.—The commencement of an oath is made by the party taking hold of the book, after being required by the officer to do so, and ends generally with the words, “so help you God,” and kissing the book, when the form used is that of swearing on the Evangelists. 9 Car. & P. 137.

4.—Oaths are taken in various forms: the most usual is upon the Gospel by taking the book in the hand; the words commonly used are, “You do swear that,” &c., “so help you God,” and then kissing the book. The origin of this oath may be traced to the Roman law, Nov. 8, tit. 3; Nov. 74, cap. 5; Nov. 124, cap. 1; and the kissing the book is said to be an imitation of the priests kissing the ritual as a sign of reverence, before he reads it to the people. Rees, Cyc. h. v.

5.—Another form is by the witness or party promising holding up his right hand while the officer repeats to him, “You do swear by Almighty God, the
searcher of hearts, that, &c. "And this as you shall answer to God at the great day."

6.—In another form of attestation commonly called an affirmation, (q. v.) the officer repeats, "You do solemnly, sincerely, and truly declare and affirm, that," &c.

7.—The oath, however, may be varied in any other form, in order to conform to the religious opinions of the person who takes it. 16 Pick. 154, 156, 157; 6 Mass. 262; 2 Gallis. 346; Ry. & Mo. N. P. Cas. 77; 2 Hawks, 458.

8.—Oaths may conveniently be divided into promissory, assertory, judicial and extra-judicial.

9.—Among promissory oaths may be classed all those taken by public officers on entering in office, to support the constitution of the United States, and to perform the duties of the office.

10.—Custom-house oaths and others required by law, not in judicial proceedings, nor from officers entering into office, may be classed among the assertory oaths, when the party merely asserts the fact to be true.

11.—Judicial oaths, or those administered in judicial proceedings.

12.—Extra-judicial oaths are those taken without authority of law, which though binding in foro conscientiae, do not render the persons who take them liable to the punishment of perjury, when false.

13.—Oaths are also divided into various kinds with reference to the purpose for which they are applied; as oath of allegiance, oath of calumny, oath ad litem, decisory oath, oath of supremacy, and the like. As to the persons authorized to administer oaths, see Gilp. R. 439; 1 Tyler, 347; 1 South. 297; 4 Wash. C. C. R. 555; 2 Blacksf. 35.

14.—The act of congress of June 1, 1789, 1 Story's L. U. S. p. 1, regulates the time and manner of administering certain oaths as follows:—

§ 1. Be it enacted, &c., That the oath or affirmation required by the sixth article of the constitution of the United States, shall be administered in the form following, to wit, "I, A B, do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States." The said oath or affirmation shall be administered within three days after the passing of this act, by any one member of the senate, to the president of the senate, and by him to all the members, and to the secretary; and by the speaker of the house of representatives, to all the members who have not taken a similar oath, by virtue of a particular resolution of the said house, and to the clerk; and in case of the absence of any member from the service of either house, at the time prescribed for taking the said oath or affirmation, the same shall be administered to such member when he shall appear to take his seat.

15.—§ 2. That at the first session of congress after every general election of representatives, the oath or affirmation aforesaid shall be administered by any one member of the house of representatives to the speaker; and by him to all the members present, and to the clerk, previous to entering on any other business; and to the members who shall afterwards appear, previous to taking their seats. The president of the senate for the time being, shall also administer the said oath or affirmation to each senator who shall hereafter be elected, previous to his taking his seat; and in any future case of a president of the senate, who shall not have taken the said oath or affirmation, the same shall be administered to him by any one of the members of the senate.

16.—§ 3. That the members of the several state legislatures, at the next sessions of the said legislatures respectively, and all executive and judicial officers of the several states, who have been heretofore chosen or appointed, or who shall be chosen or appointed before the first day of August next, and who shall then be in office, shall, within one month thereafter, take the same oath or affirmation, except where they shall have taken it before; which may be administered by any person authorized by the law of the state, in which such office shall be held, to administer oaths. And the members
of the several state legislatures, and all executive and judicial officers of the several states, who shall be chosen or appointed after the said first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall be administered by the person or persons, who, by the law of the state, shall be authorized to administer the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner as, by the law of the state, he or they shall be directed to record or certify the oath of office.

17.—§ 4. That all officers appointed, or hereafter to be appointed, under the authority of the United States, shall, before they act in their respective offices, take the same oath or affirmation, which shall be administered by the person or persons who shall be authorized by law to administer to such officers their respective oaths of office; and such officers shall incur the same penalties in case of failure, as shall be imposed by law in case of failure in taking their respective oaths of office.

18.—§ 5. That the secretary of the senate, and the clerk of the house of representatives, for the time being, shall, at the time of taking the oath or affirmation aforesaid, each take an oath or affirmation in the words following, to wit; "I, A B, secretary of the senate, or clerk of the house of representatives (as the case may be) of the United States of America, do solemnly swear or affirm, that I will truly and faithfully discharge the duties of my said office, to the best of my knowledge and abilities."

19.—There are several kinds of oaths, some of which are enumerated below.

20.—Oath of calumny. This term is used in the civil law. It is an oath which a plaintiff was obliged to take that he was not actuated by a spirit of chicanery in commencing his action, but that he had bona fide a good cause of action. Poth. Pand. lib. 5, t. 16 and 17, s. 124. This oath is somewhat similar to our affidavit of a cause of action. Vide Dunlap’s Adm. Pr. 289, 290.

21.—No instance is known in which the oath of calumny has been adopted in practice in the admiralty courts of the United States. Dunl. Adm. Pr. 290; and by the 102d of the rules of the district court for the southern district of New York, the oath of calumny shall not be required of any party in any stage of a cause. Vide Inst. 4, 16, 1; Code, 2, 59, 2; Dig. 10, 2, 44; 1 Ware’s R. 427.

22.—Decisory oath. By this term in the civil law is understood an oath which one of the parties defers or refers back to the other, for the decision of the cause.

23.—It may be deferred in any kind of civil contest whatever, in questions of possession or of claim; in personal actions and in real. The plaintiff may defer the oath to the defendant, whenever he conceives he has not sufficient proof of the fact which is the foundation of his claim; and in like manner, the defendant may defer it to the plaintiff when he has not sufficient proof of his defence. The person to whom the oath is deferred, ought either to take it or refer it back, and if he will not do either, the cause should be decided against him. Poth. on Oblig. P. 4, c. 3, s. 4.

24.—The decisory oath has been practically adopted in the district court of the United States, for the district of Massachusetts, and admiralty causes have been determined in that court by the oath decisory; but the cases in which this oath has been adopted, have been where the tender has been accepted; and no case is known to have occurred there in which the oath has been refused and tendered back to the adversary. Dunl. Adm. Pr. 290, 291.

25.—A judicial oath is a solemn declaration made in some form warranted by law, before a court of justice or some officer authorized to administer it, by which the person who takes it promises to tell the truth, the whole truth, and nothing but the truth, in relation to his knowledge of the matter then under examination, and appeals to God for his sincerity.
26.—In the civil law, a judicial oath is that which is given in judgment by one party to another. Dig. 12, 2, 25.
27.—Oath in item, in the civil law, is an oath which was deferred to the complainant as to the value of the thing in dispute on failure of other proof, particularly when there was a fraud on the part of the defendant, and he suppressed proof in his possession. See Greenl. Ev. § 348; Tait on Ev. 280; 1 Vern. 207; 1 Eq. Cas. Ab. 229; 1 Greenl. R. 27; 1 Yeates, R. 34; 12 Vin. Ab. 24.

28.—A promissory oath is an oath taken, by authority of law, by which the party declares that he will fulfill certain duties therein mentioned, as the oath which an alien takes on becoming naturalized, that he will support the constitution of the United States; the oath which a judge takes that he will perform the duties of his office. The breach of this does not involve the party in the legal crime or punishment of perjury.

29.—A suppletory oath in the civil and ecclesiastical law, is an oath required by the judge from either party in a cause, upon half proof already made, which being joined to half proof, supplies the evidence required to enable the judge to pass upon the subject. Vide Str. 80; 3 Bl. Com. 270.

30.—A purgatory oath is one by which one destroys the presumptions which were against him, for he is then said to purge himself, when he removes the suspicions which were against him; as, when a man is in contempt for not attending court as a witness, he may purge himself of the contempt, by swearing to a fact which is an ample excuse. See Purgation.

Obedience, is the performance of a command.

2.—Officers who obey the command of their superiors, having jurisdiction of the subject-matter, are not responsible for their acts. A sheriff may therefore justify a trespass under an execution, when the court has jurisdiction, although irregularly issued. 3 Chit. Pr. 75; Ham. N. P. 48.

3.—A child, an apprentice, a pupil, a mariner, and a soldier, owe respectively obedience to the lawful commands of the parent, the master, the teacher, the captain of the ship, and the military officer having command; and in case of disobedience, submission may be enforced by correction, (q.v.)

OBIT. That particular solemnity or office for the dead, which the Roman Catholic church appoints to be read or performed over the body of a deceased member of that communion before interment; also the office which, upon the anniversary of his death, was frequently used as a commemoration or observance of the day. 2 Cro. 51; Dyer, 313.

OBLIGATION, ecc. law, is in a general sense the property which accrues to the church by any right or title whatever; but, in a more limited sense, it is that which the priest receives at the altar, at the celebration of the eucharist. Ayl. Par. 392.

OBLIGATION. In its general and most extensive sense, obligation is synonymous with duty. In a more technical meaning, it is a tie which binds us to pay or demand anything agreeably to the laws and customs of the country in which the obligation is made. Just. Inst. l. 3, t. 14. The term obligation also signifies the instrument or writing by which the contract is witnessed. And in another sense, an obligation is said to be a bond containing a penalty, with a condition annexed for the payment of money, performance of covenants or the like; it differs from a bill, which is generally without a penalty or condition, though it may be obligatory. Co. Litt. 172. It is also defined to be a deed whereby a man binds himself under a penalty to do a thing. Com. Dig. Obligation, A. The word obligation, in its most technical signification, ex vi termini, imports a sealed instrument. 2 S. & R. 502; 6 Vern. 40; 1 Blackf. 241; Harp. R. 434; 2 Porter, 19; 1 Bald. 129. See 1 Bell’s Com. b. 3, p. 1, c. 1, page 293.

2.—Obligations are divided into imperfect obligations, and perfect obligations.
3. — *Imperfect* obligations are those which are not binding on us as between man and man, and for the non-performance of which we are accountable to God only; such as charity or gratitude. In this sense an obligation is a mere duty. Poth. Ob. art. Prèl. n. 1.

4. — A *perfect* obligation is one which gives a right to another to require us to give him something, or to do or not to do something. These obligations are either natural or moral, or they are civil.

5. — A *natural* or *moral* obligation is one which cannot be enforced by action, but which is binding on the party who makes it, in conscience and according to natural justice. As for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished. 5 Binn. 573. Although natural obligations cannot be enforced by action, they have the following effect: 1. No suit will lie to recover what has been paid, or given in compliance with a natural obligation. 1 T. R. 285; 1 Dall. 184. 2. A natural obligation is a sufficient consideration for a new contract. 5 Binn. 33; 2 Binn. 591; Yelv. 41, a, n. 1; Cwpp. 290; 2 Bl. Com. 445; 3 B. & P. 249, n.; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; Yelv. 41, b. note; 3 Pick. 207; Chit. Contr. 10.

6. — A *civil* obligation is one which has a binding operation in law, *vinculum juris*, and which gives to the obligee the right of enforcing it in a court of justice; in other words, it is an engagement binding on the obligor. 12 Wheat. R. 318, 337; 4 Wheat. R. 197.

7. — Civil obligations are divided into express and implied, pure and conditional, principal and accessory, absolute and alternative, determinate and indeterminate, divisible and indivisible, single and penal, and joint and several. They are also purely personal, purely real, and both real and mixed at the same time.

8. — *Express* or *conventional* obligations are those by which the obligor binds himself in express terms to perform his obligation.

9. — An *implied* obligation is one which arises by operation of law; as, for example, if I send you daily a loaf of bread, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay me the value of the bread.

10. — A *pure* or *simple* obligation is one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, it has been fulfilled.

11. — A *conditional* obligation is one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

12. — A *primitive* obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should, itself, be the first fulfilled.

13. — A *secondary* obligation is one which is contracted, and is to be performed, in case the *primitive* cannot be. For example, if I sell you my house, I bind myself to give a title, but I find I cannot, as the title is in another, then my *secondary* obligation is to pay you damages for my non-performance of my obligation.

14. — A *principal* obligation is one which is the most important object of the engagement of the contracting parties.

15. — An *accessory* obligation is one which is dependent on the principal obligation; for example, if I sell you a house and lot of ground, the principal obligation on my part is to make you a title for it; the accessory obligation is to deliver you all the title paper which I have relating to it; to take care of the estate till it is delivered to you, and the like.

16. — An *absolute* obligation is one which gives no alternative to the obligor, but he is bound to fulfil it according to his engagement.

17. — An *alternative* obligation, where a person engages to do, or to give several things in such a manner that the payment of one will acquit him of all; as if A agrees to give B, upon a sufficient
consideration, a horse, or one hundred dollars. Poth. Obl. Pt. 2, c. 8, art. 6, No. 245.

18.—In order to constitute an alternative obligation, it is necessary that two or more things should be promised disjunctively; where they are promised conjunctively, there are as many obligations as the things which are enumerated, but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment of any of them.

19.—The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor. Dougl. 14; 1 Lord Raym. 279; 4 N. S. 107. If one of the acts is prevented by the obligee, or the act of God, the obligor is discharged from both. See 2 Evans’s Poth. Ob. 52 to 54; Vin. Ab. Condition, S b; and articles Conjoinctive; Disjunctive; Election.

20.—A determinate obligation, is one which has for its object a certain thing; as an obligation to deliver a certain horse named Bucephalus. In this case the obligation can only be discharged by delivering the identical horse.

21.—An indeterminate obligation is one where the obligor binds himself to deliver one of a certain species; as, to deliver a horse, the delivery of any horse will discharge the obligation.

22.—A divisible obligation is one which being a unit may nevertheless be lawfully divided with or without the consent of the parties. It is clear it may be divided by consent, as those who made it, may modify or change it as they please. But some obligations may be divided without the consent of the obligor; as, where a tenant is bound to pay two hundred dollars a year rent to his landlord, the obligation is entire, yet, if his landlord dies and leaves two sons, each will be entitled to one hundred dollars; or if the landlord sells one undivided half of the estate yielding the rent, the purchaser will be entitled to receive one hundred dollars, and the seller the other hundred. See Apportionment.

23.—An indivisible obligation is one which is not susceptible of division, as, for example, if I promise to pay you one hundred dollars, you cannot assign one half of this to another, so as to give him a right of action against me for his share. See Divisible.

24.—A single obligation is one without any penalty; as, where I simply promise to pay you one hundred dollars. This is called a single bill, when it is under seal.

25.—A penal obligation is one to which is attached a penal clause which is to be enforced, if the principal obligation be not performed. In general equity will relieve against a penalty, on the fulfilment of the principal obligation. See Liquidated damages; Penalty.

26.—A joint obligation is one by which several obligors promise to the obligee to perform the obligation. When the obligation is only joint and the obligors do not promise separately to fulfill their engagement they must be all sued, if living, to compel the performance; or, if any be dead, the survivors must all be sued. See Parties to actions.

27.—A several obligation is one by which one individual, or if there be more, several individuals bind themselves separately to perform the engagement. In this case each obligor may be sued separately, and if one or more be dead, their respective executors may be sued. See Parties to actions.

28.—The obligation is purely personal when the obligor binds himself to do a thing; as if I give my note for one thousand dollars, in that case my person only is bound, for my property is liable for the debt only while it belongs to me, and, if I lawfully transfer it to a third person, it is discharged.

29.—The obligation is personal in another sense, as when the obligor binds himself to do a thing, and he provides his heirs and executors shall not be bound; as, for example, when he promises to pay a certain sum yearly during his life, and the payment is to cease at his death.

30.—The obligation is real when real estate, and not the person, is liable to
the obligee for the performance. A familiar example will explain this: when an estate owes an easement, as a right of way, it is the thing and not the owner who owes the easement. Another instance occurs when a person buys an estate which has been mortgaged, subject to the mortgage, he is not liable for the debt, though his estate is. In these cases the owner has an interest only because he is seized of the servient estate, or the mortgaged premises, and he may discharge himself by abandoning or parting with the property.

31.—The obligation is both personal and real when the obligor has bound himself, and pledged his estate for the fulfilment of his obligation.

OBLIGATION OF CONTRACTS.
By this expression, which is used in the constitution of the United States, is meant a legal and not merely a moral duty. 4 Wheat. 107. The obligation of contracts consists in the necessity under which a man finds himself to do, or to refrain from doing something. This obligation consists generally both in foro legis and in foro conscientia, though it does at times exist in one of these only. It is certainly of the first, that in foro legis, which the framers of the constitution spoke, when they prohibited the passage of any law impairing the obligation of contracts. 1 Harr. Lond. Rep. (Lo.) 161. See Impairing the obligation of contracts.

OBLIGEE or CREDITOR, in contracts, is the person in favour of whom some obligation is contracted, whether such obligation be to pay money, or to do, or not to do, something. Louis. Code, art. 3522, No. 11.

2.—Obligees are either several or joint; an obligee is several when the obligation is made to him alone; obligees are joint when the obligation is made to two or more, and, in that event, each is not a creditor for his separate share, unless the nature of the subject, or the particularity of the expression in the instrument lead to a different conclusion. 2 Evans’s Poth. 56; Dyer, 350 a, pl. 20; Hob. 172; 2 Brownl. 207; Yelv. 177; Cro. Jac. 251.

OBLIGATOR or DEBTOR, is the person who has engaged to perform some obligation. Louis. Code, art. 3522, No. 12. The word obligor, in its more technical signification, is applied to designate one who makes a bond.

2.—Obligors are joint and several. They are joint when they agree to pay the obligation jointly, and then the survivors only are liable upon it at law, but in equity the assets of a deceased joint obligor may be reached. 1 Bro. C. R. 29; 2 Ves. 101; Id. 371. They are several when one or more bind themselves each of them separately to perform the obligation. In order to become an obligor, the party must actually, either himself or by his attorney, enter into the obligation, and execute it as his own. If a man sign and seal a bond as his own, and delivers it, he will be bound by it although his name be not mentioned in the bond. 4 Stew. R. 479; 4 Hayw. R. 239; 4 McCord, R. 203; 7 Cowen, R. 484; 2 Bail. R. 190; Brayt. 358; 2 H. & M. 398; 5 Mass. R. 558; 2 Dana, R. 463; 4 Munf. R. 380; 4 Dev. 272. When the obligor signs between the penal part and the condition, still the latter will be a part of the instrument. 7 Wend. Rep. 345; 3 H. & M. 144.

3.—The execution of a bond by the obligor with a blank, and a verbal authority to fill it up, and it is afterwards filled up, does not bind the obligor, unless it is re-delivered, or acknowledged or adopted. 1 Yerg. R. 69, 149; 1 Hill, Rep. 267; 2 N. & M. 125; 2 Brock. R. 64; 1 Ham. R. 368; 2 Dev. R. 369; 6 Gill & John. 250; but see contra, 17 Ser. & R. 438; and see 6 Serp. & Rawle, 308; Wright, R. 742.

OBREPTION, civil law. Surprise. Dig. 3, 5, 8, 1. Vide Surprise.

OBSCENITY, crim. law. Such indecency as is calculated to promote the violation of the law, and the general corruption of morals.

2.—The exhibition of an obscene picture is an indictable offence at common law, although not charged to have been exhibited in public, if it be averred that the picture was exhibited to sundry per-
sons, for money. 2 Serg. & Rawle, 91.

TO OBSERVE, civil law. To perform what has been prescribed by some law or usage. Dig. 1, 3, 32.

OBSEIQUE. This term is applied to those laws which have lost their efficacy, without being repealed.

2.—A positive statute, unrepealed, can never be repealed by non-user alone. 4 Yeates, Rep. 181; Id. 215; 1 Browne's Rep. Appx. 28; 13 Serg. & Rawle, 447. The disuse of a law is at most only presumptive evidence that society has consented to such a repeal; however this presumption may operate on an unwritten law, it cannot in general act upon one which remains as a legislative act on the statute book, because no presumption can set aside a certainty. A written law may indeed become obsolete when the object to which it was intended to apply, or the occasion for which it was enacted, no longer exists. 1 P. A. Browne's R. App. 28. "It must be a very strong case," says Chief Justice Tilghman, "to justify the court in deciding, that an act standing on the statute book, unrepealed, is obsolete and invalid. I will not say that such case may not exist—where there has been a non-user for a greater number of years—where, from a change of times and manners, an ancient sleeping statute would do great mischief, if suddenly brought into action—where a long practice inconsistent with it has prevailed, and, specially, where from other and later statutes it might be inferred that in the apprehension of the legislature, the old one was not in force." 13 Serg. & Rawle, 452; Rutherf. Inst. B. 2, c. 6, s. 19; Merv. Répért. mot Désuetude.

OBSTRUCTING PROCESS, crim. law, is the act by which one or more persons attempt to prevent or do prevent the execution of lawful process.

2.—The officer must be prevented by actual violence, or by threatened violence, accompanied by the exercise of force, or having capacity to employ it, by which the officer is prevented from executing his writ; the officer is not required to expose his person by a personal conflict with the offender. 2 Wash. C. C. R. 169. See 3 Wash. C. C. R. 335.

3.—This is an offence against public justice of a very high and presumptuous nature; and more particularly so where the obstruction is of an arrest upon criminal process: a person opposing an arrest upon criminal process becomes thereby paticps criminis; that is an accessory in felony, and a principal in high treason. 4 Bl. Com. 128; 2 Hawk. c. 17, s. 1; 1 Russ. on Cr. 360; vide Ing. Dig. 159; 2 Gallis. Rep. 19; 2 Chit. Criminal Law, 145, note (a).

OCCUPANCY, is the taking possession of those things corporeal which are without an owner, with an intention of appropriating them to one's own use. Pothier defines it to be the title by which one acquires property in a thing which belongs to nobody, by taking possession of it, with design of acquiring it. Tr. du Dr. de Propriété, n. 20. The Civil Code of Lo. art. 3375, nearly following Pothier, defines occupancy to be "a mode of acquiring property by which a thing, which belongs to nobody, becomes the property of the person who took possession of it, with an intention of acquiring a right of ownership upon it.

2.—To constitute occupancy there must be a taking of a thing corporeal, belonging to nobody, with an intention of becoming the owner of it.

3.—1. The taking must be such as the nature of the thing requires; if, for example, two persons walking on the sea-shore, one of them should perceive a precious stone, and say he claimed it as his own, he would acquire no property in it by occupancy, if the other seized it first.

4.—2. The thing must be susceptible of being possessed; an incorporeal right, therefore, as an annuity, could not be claimed by occupancy.

5.—3. The thing taken must belong to nobody; for if it was in the possession of another the taking would be larceny, and if it had been lost and not abandoned, the taker would have only a qualified property in it, and would hold the possession for the owner.

6.—4. The taking must have been
with an intention of becoming the owner; if therefore a person non componens mentis should take such a thing he would not acquire a property in it, because he had no intention to do so. Co. Litt. 41 b.

7.—Among the numerous ways of acquiring property by occupancy, the following are considered as the most usual.

8.—1. Goods captured in war, from public enemies, were, by the common law, adjudged to belong to the captors. Finch's Law, 28, 178; 1 Wills. 211; 1 Chit. Com. Law, 377 to 512; 2 Wooddes. 435 to 457; 2 Bl. Com. 401. But by the law of nations such things are now considered as primarily vested in the sovereign, and as belonging to individual captors only to the extent and under such regulations as positive laws may prescribe. 2 Kent's Com. 290. By the policy of law, goods belonging to an enemy are considered as not being the property of any one. Leçon's Elem. du Dr. Rom. § 348; 2 Bl. Com. 401.

9.—2. When movables are casually lost by the owner and unreclaimed, or designedly abandoned by him, they belong to the fortunate finder who seizes them by right of occupancy.

10.—3. The benefit of the elements, the light, air, and water, can only be appropriated by occupancy.

11.—4. When animals ferre naturae are captured, they become the property of the occupant while he retains the possession; for if an animal so taken should escape, the captor loses all the property he had in it. 2 Bl. Com. 403.

12.—5. It is by virtue of his occupancy that the owner of lands is entitled to the emblems.

13.—6. Property acquired by accession, is also grounded on the right of occupancy.

14.—7. Goods acquired by means of confusion may be referred to the same right.

15.—8. The right of inventors of machines or the authors of literary productions are also founded on occupancy. Vide, generally, Kent, Com. Lect. 36; 16 Vin. Ab. 69; Bae. Ab. Estate for life and occupancy; 1 Brown's Civ. Vol. II.—16

Law, 234; 4 Toull. n. 4; Leçons du Droit Rom. § 342, et seq.

OCCUPANT or OCCUPIER. One who has the actual use or possession of a thing.

2.—He derives his title of occupancy either by taking possession of a thing without owner, or by purchase, or gift of the thing by the owner, or it descends to him by due course of law.

3.—When the occupiers of a house are entitled to a privilege in consequence of such occupation, as to pass along a way, to enjoy a pew, and the like, a person who occupies a part of such house, however small, is entitled to some right, and cannot be deprived of it. 2 B. & A. 164; S. C. Eng. C. L. R. 50; 1 Chit. Pr. 209, 210; 4 Com. Dig. 64; 5 Com. Dig. 199.

OCCUPATION. Use or tenure; as, the house is in the occupation of A B. A trade, business or mystery; as, the occupation of a printer. Occupancy, (q. v.)

2.—In another sense occupation signifies a putting out of a man's freehold in time of war. Co. Litt. s. 412 See Dependency; Possession.

OCCUPAVIT. The name of a writ, which lies to recover the possession of lands, when they have been taken from the possession of the owner by occupation, (q. v.) 3 Tho. Co. Litt. 41.

OCCUPIER. One who is in the enjoyment of a thing.

2.—He may be the occupier by virtue of a lawful contract, either express or implied, or without any contract. The occupier is, in general, bound to make the necessary repairs to premises he occupies: the cleansing and repairing of drains and sewers, therefore, is primarily the duty of him who occupies the premises. 3 Q. B. R. 449; S. C. 43 Eng. C. L. R. 814.

OCHLOCRACY. A government where the authority is in the hands of the multitude; the abuse of a democracy. Vaumène, Dict. du language politique.

ODHALL RIGHT, signifies the same as alodial.

OFFENCE, crimes, is the doing what
a penal law forbids to be done, or omitting to do what it commands; in this sense it is nearly synonymous with crime, (q. v.) In a more confined sense, it may be considered as having the same meaning with misdemeanor, (q. v.) but it differs from it in this, that it is not indictable, but punishable summarily by the forfeiture of a penalty. 1 Chit. Prac. 14.

OFFER, contracts, is a proposition to do a thing.

2.—An offer ought to contain a right, if accepted, of compelling the fulfillment of the contract, and this right when not expressed, is always implied.

3.—By virtue of his natural liberty, a man may change his will at any time, if it is not to the injury of another; he may, therefore, revoke or recall his offers, at any time before they have been accepted; and, in order to deprive him of this right, the offer must have been accepted on the terms in which it was made.

4.—Any qualification of, or departure from those terms, invalidates the offer, unless the same be agreed to by the party who made it. 4 Wheat. R. 225; 3 John. R. 534; 7 John. 470; 6 Wend. 103.

5.—When the offer has been made, the party is presumed to be willing to enter into the contract for the time limited, and, if the time be not fixed by the offer, then until it is expressly revoked, or rendered nugatory by a contrary presumption. 6 Wend. 103. See 8 S. & R. 243; 1 Pick. 278; 10 Pick. 326; 12 John. 190; 9 Porter, 605; 1 Bell's Com. 326, 5th ed.; Poth. Vente, n. 32; and see Acceptance of contracts; Assent; Bid.

OFFICE. An office is a right to exercise a public function or employment, and to take the fees and emoluments belonging to it. Shelf. on Mortm. 797; Cruise, Dig. Index, h. t.; 3 Serg. & R. 149.

2.—Offices may be classed into civil and military.

3.—1. Civil offices may be classed into political, judicial and ministerial.

4.—1. The political offices are such as are not connected immediately with the administration of justice, or the execution of the mandates of a superior officer; the office of the president of the United States, of the heads of departments, of the members of the legislature, are of this number.

5.—2. The judicial offices are those which relate to the administration of justice, and which must be exercised by persons of sufficient skill and experience in the duties which appertain to them.

6.—3. Ministerial offices are those which give the officer no power to judge of the matter to be done, and require him to obey the mandates of a superior. 7 Mass. 250. See 5 Wend. 170; 10 Wend. 514; 8 Verm. 512; Breeze, 280. It is a general rule, that a judicial office cannot be exercised by deputy, while a ministerial may.

7.—In the United States, the tenure of office never extends beyond good behaviour. In England, offices are public or private. The former affect the people generally, the latter are such as concern particular districts, belonging to private individuals. In the United States, all offices according to the above definition are public; but in another sense, employments of a private nature are also called offices; for example, the office of president of a bank, the office of director of a corporation. For the incompatibility of office, see Incompatibility; 4 S. & R. 277; 4 Inst. 100; Com. Dig. h. t., B 7; and vide, generally, 3 Kent, Com. 362; Cruise, Dig. tit. 25; Ham. N. P. 283; 16 Vin. Ab. 101; Ayliffe's Parerg. 395; Poth. Traité des Choses, §2; Amer. Dig. h. t.; 17 S. & R. 219.

8.—2. Military offices consist of such as are granted to soldiers or naval officers.

9.—The room in which the business of an officer is transacted is also called an office, as the land office. Vide Officer.

OFFICE book, evidence, is a book kept in a public office, not appertaining to a court, authorized by law of any state.

2.—An exemplification, (q. v.) of any such office book, when authenticated under the act of congress of 27th March, 1804, Ingers. Dig. 77, is to have such
faith and credit given to it in every court and office within the United States, as such exemplification has by law or usage in the courts or offices of the state from whence the same has been taken.

OFFICE COPY. A transcript of a record or proceeding filed in an office established by law, certified under the seal of the proper officer.

OFFICE FOUND, Eng. law. When an inquisition is made to the king's use of any thing, by virtue of office of him who inquires, and the inquisition is found, it is said to be office found.

OFFICE, INQUEST OF. An examination into a matter by an officer in virtue of his office. Vide Inquisition.

OFFICER, he who is lawfully invested with an office.

2.—Officers may be classed into, 1, executive officers; as the president of the United States of America, the several governors of the different states. Their duties are pointed out in the national constitution, and the constitutions of the several states, but they are required mainly to cause the laws to be executed and obeyed.

3.—2. The legislative; such as members of congress; and of the several state legislatures. These officers are confined in their duties by the constitution, generally to make laws, though sometimes in cases of impeachment, one of the houses of the legislature exercises judicial functions, somewhat similar to those of a grand jury, by presenting to the other articles of impeachment; and the other house acts as a court in trying such impeachments. The legislatures have, besides, the power to inquire into the conduct of their members, judge of their elections, and the like.

4.—3. Judicial officers; whose duties are to decide controversies between individuals, and accusations made in the name of the public against persons charged with a violation of the law.

5.—4. Ministerial officers, or those whose duty it is to execute the mandates, lawfully issued, of their superiors.

6.—5. Military officers who have commands in the army; and

7.—6. Naval officers, who are in command in the navy.

8.—Officers are required to exercise the functions which belong to their respective offices. The neglect to do so may, in some cases, subject the offender to an indictment, 1 Yeates, R. 519; and in others, he will be liable to the party injured, 1 Yeates, R. 506.

9.—Officers are also divided into public officers and those who are not public. Some officers may bear both characters, for example, a clergyman is a public officer when he acts in the performance of such a public duty as the marriage of two individuals, 4 Conn. 209, and he is merely a private person when he acts in his more ordinary calling of teaching his congregation. See 4 Conn. 134; 1 Apple. 155.

OFFICIAL, civil and canon laws. In the ancient civil law, the person who was the minister of, or attendant upon a magistrate, was called the official.

2.—In the canon law, the person to whom the bishop generally commits the charge of his spiritual jurisdiction, bears this name. Wood's Inst. 30, 505; Merl. Répert. h. t.

OFFICINA JUSTITIÆ, Eng. law. The chancery is so called because all writs issue from it, under the great seal, returnable into the courts of common law.

OFFICIO, EX. By virtue of one's office. Vide Ex officio; 3 Bl. Com. 447.

OHIO. 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 to enable the people of the eastern division of the territory north-west of the river Ohio, 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, and for other purposes," approved, May 30, 1802, 2 Story's L. U. S. 869; by which it is enacted,

§ 1. That the inhabitants of the eastern division of the territory north-west of the river Ohio be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem pro-
per; and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

2.—§ 2. That the said state shall consist of all the territory included within the following boundaries, to wit: bounded on the east by the Pennsylvania line, on the south by the Ohio river, to the mouth of the Great Miami river, on the west by the line drawn due north from the mouth of the Great Miami aforesaid, and on the north by an east and west line drawn through the southerly extreme of lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect lake Erie, or the territorial line, and thence, with the same, through lake Erie, to the Pennsylvania line aforesaid: Provided, That congress shall be at liberty, at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami aforesaid to the territorial line, and north of an east and west line drawn through the southerly extreme of lake Michigan, running east as aforesaid to lake Erie, to the aforesaid state, or dispose of it otherwise, in conformity to the fifth article of compact between the original states and the people and states to be formed in the territory north-west of the river Ohio.

3.—By virtue of the authority given them by the act of congress, the people of the eastern division of said territory met in convention at Chillicothe, on Monday, the first day of November, 1802, by which they did ordain and establish the constitution and form of government, and did mutually agree with each other to form themselves into a free and independent state, by the name of The State of Ohio. The powers of the government are separated into three distinct branches, the legislative, the executive, and the judicial.

4.—1st. The legislative authority is vested in a general assembly, which consists of a senate and house of representatives, both elected by the people.

5.—1. The senate will be considered with regard, 1, to the qualifications of the electors; 2, the qualifications of senators; 3, the number of senators; 4, the duration of their office; 5, the time and place of their election.

6.—1. In all elections, all white male inhabitants, above the age of twenty-one years, having resided in the state one year next preceding the election, and who have paid, or are charged with, a state or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or district in which he shall actually reside at the time of the election. Art. 4, s. 1.

7.—2. No person shall be a senator who has not arrived at the age of thirty years, and is a citizen of the United States; shall have resided two years in the district or county immediately preceding his election, unless he shall have been absent on the public business of the United States or of this state, and shall, moreover, have paid a state or county tax. Art. 1, s. 7.

8.—3. The number of senators shall, at the several periods of making the enumeration mentioned below, be fixed by the legislature and apportioned among the several counties or districts to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one third nor more than one half of the number of representatives. Art. 1, s. 6.

9.—4. The senators shall be chosen biennially, by qualified voters for representatives: and, on their being convened in consequence of the first election, they shall be divided by lot from their respective counties or districts, as near as can be, in two classes; the seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year; so that one half thereof, as near as possible, may be annually chosen for ever thereafter. Art. 1, s. 5.

10.—5. Senators are chosen biennially, at the time representatives are elected.

11.—2. The house of representatives will be considered in the same manner that the senate has been.
12.—1. The qualifications of the electors are the same as of electors of the senate.

13.—2. No person shall be a representative who shall not have attained the age of twenty-five years, and be a citizen of the United States, and an inhabitant of this state; shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax. Art. 1, s. 4.

14.—3. Within one year after the first meeting of the general assembly, and within every subsequent term of four years, an enumeration of all the white male inhabitants above twenty-one years of age shall be made, in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age in each; and shall never be less than twenty-four nor greater than thirty-six, until the number of white male inhabitants of above twenty-one years of age shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed seventy-two. Art. 1, s. 2.

15.—4. The representatives are chosen annually.—5. They are elected by the citizens of each county respectively, on the second Tuesday of October.

16.—2d. The supreme executive power is vested in a governor. The subject may be considered in reference to the qualifications of the electors; the qualifications of the governor; duration of his office; time and place of his election; and the powers and duties of the governor. —1. He is elected by the electors of members of the general assembly.—2. He shall be at least thirty years of age, and have been a citizen of the United States twelve years, and an inhabitant of this state four years next preceding his election. Art. 2, s. 3.—No member of congress, or person holding office under the United States, or this state, shall execute the office of governor. Art. 2, s. 13.—3. He holds his office for the term of two years, and until another governor shall be elected and qualified; he is not eligible more than six years in any term of eight years. Ib.—4. His election is on the second Tuesday in October in the same places that members of assembly are chosen.—5. He is required to give to the general assembly such information of the state of the government as he can, and recommend such measures as he may deem expedient—has the power to grant reprieves and pardons, after conviction, except in the case of impeachment—may require information from the executive departments, and shall cause the laws to be faithfully executed—may fill vacancies during the recess of the legislature—may, on extraordinary occasions, convene the general assembly by proclamation—is commander-in-chief of the army and navy of the state, and of the militia, except when in the service of the United States—may, on the disagreement of the two houses, as to the time of adjournment, adjourn the general assembly to such time as he may think proper, provided it be not a period beyond the annual meeting of the legislature.

17.—In case of the death, impeachment, resignation, or the removal of the governor from office, the speaker of the senate shall exercise the office of governor until he be acquitted, or another governor shall be duly qualified. In case of impeachment of the speaker of the senate, or his death, removal from office, resignation, or absence from the state, the speaker of the house of representatives shall succeed to the office, and exercise the duties thereof, until a governor shall be elected and qualified. Art. 2, s. 12.

18.—3d. The judicial power is conferred by the 3d article of the constitution, as follows:

§ 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, in
courts of common pleas for each county, in justices of the peace, and in such other courts as the legislature may, from time to time establish.

19.—§ 2. The supreme court shall consist of three judges, any two of whom shall be a quorum. They shall have original and appellate jurisdiction, both in common law and chancery, in such cases as shall be directed by law; provided that nothing herein contained, shall prevent the general assembly from adding another judge to the supreme court after the term of five years, in which cases the judges may divide the state into two circuits, within which any two of the judges may hold a court.

20.—§ 3. The several courts of common pleas shall consist of a president and associate judges. The state shall be divided by law into three circuits; there shall be appointed in each circuit a president of the courts, who, during his continuance in office, shall reside therein. There shall be appointed in each county not more than three nor less than two associate judges, who, during their continuance in office shall reside therein. The president and associate judges, in their respective counties, any three of whom shall be a quorum, shall compose the court of common pleas, which court shall have common law and chancery jurisdiction, in all such cases as shall be directed by law; provided, that nothing herein contained, shall be construed to prevent the legislature from increasing the number of circuits and presidents after the term of five years.

21.—§ 4. The judges of the supreme court and of the court of common pleas, shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

22.—§ 5. The court of common pleas in each county shall have jurisdiction of all probate and testamentary matters, granting administration, and the appointment of guardians, and such other cases as shall be prescribed by law.

23.—§ 6. The judges of the court of common pleas, shall, within, their respective counties, have the same powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

24.—§ 7. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state. The presidents of the court of common pleas, shall, by virtue of their offices, be conservators of the peace in their respective circuits, and the judges of the court of common pleas shall, by virtue of their offices, be conservators of the peace in their respective counties.

25.—§ 8. The judges of the supreme court, the presidents, and the associate judges of the courts of common pleas, shall be appointed by a joint ballot of both houses of the general assembly, and shall hold their offices for the term of seven years, if so long they behave well. The judges of the supreme court, and the presidents of the courts of common pleas, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the authority of this state or the United States.

26.—§ 9. Each court shall appoint its own clerk, for the term of seven years; but no person shall be appointed clerk, except pro tempore, who shall not produce to the court appointing him a certificate from a majority of the judges of the supreme court, that they judge him to be well qualified to execute the duties of the office to any court of the same dignity, with that for which he offers himself. They shall be removable for breach of good behaviour, at any time, by the judges of the respective courts.

27.—§ 10. The supreme court shall be held once a year, in each county; and the courts of common pleas shall be holden in each county at such times and places as shall be prescribed by law.

28.—§ 11. 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 three years; whose powers and
duties shall, from time to time, be regulated and defined by law.

29.—§ 12. The style of all process shall be, The State of Ohio; and all prosecutions shall be carried on in the name, and by the authority of the state of Ohio; and all indictments shall conclude, against the peace and dignity of the same.

OLD AGE. This needs no definition. Sometimes old age is the cause of loss of memory and of the powers of the mind, when the party may be found non compos mentis. See Aged witness; Senility.

OLD NATURA BREVIUM, the title of an old English book, (usually cited Vet. N. B.) so called to distinguish it from the F. N. B. It contains the writs most in use in the reign of Edward III., together with a short comment on the application and properties of each of them.

OLD TENURES. The title of a small tract, which, as its title denotes, contains an account of the various tenures by which land was held in the reign of Edward III. This tract was published in 1719, with notes and additions, with the eleventh edition of the First Institutes, and reprinted in 8vo. in 1764, by Serjeant Hawkins, in a Selection of Coke’s Law Tracts.

OLERON LAWS. The name of a maritime code. Vide Laws of Oleron.

OLIGARCHY. This name is given to designate the power which a few citizens of a state have usurped, which ought by the constitution to reside in the people. Among the Romans the government degenerated several times into an oligarchy, for example, under the decrevirs when they became the only magistrates in the commonwealth.

OLOGRAPH. When applied to wills or testaments, this term signifies that they are wholly written by the testator himself. Vide Civil Code of Louisiana, art. 1581: Code Civil, 970; 5 Toull. n. 357; 1 Stuart’s (L. C.) R. 327; and see Testament, Olographic; Will, Olographic.

OMISSION. An omission is the neglect to perform what the law requires.

2.—When a public law enjoins on certain officers duties to be performed by them for the public, and they omit to perform them, they may be indicted; for example, supervisors of the highways are required to repair the public roads, the neglect to do so will render them liable to be indicted.

OMNIUM, mercant. law. A term used to express the aggregate value of the different stocks in which a loan is usually funded. 2 Esp. Rep. 361; 7 T. R. 630.

ONERARI NON. The name of a plea by which the defendant says that he ought not to be charged. It is used in an action of debt. 1 Saund. 290, n. a.

ONERIS FERENDI, civil law. The name of a servitude by which the wall or pillar of one house is bound to sustain the weight of the buildings of the neighbour.

2. The owner of the servient building is bound to repair and keep it sufficiently strong for the weight it has to bear. Dig. 8, 2, 23.

ONERIOUS CAUSE, civil law, a valuable consideration.

ONEROUS CONTRACT, civil law, is one made for a consideration given or promised, however small. Civ. Code of Lo. art. 1767.

ONEROUS GIFT, civil law. Is the gift of a thing subject to certain charges which the giver has imposed on the donee. Poth. h. t.

ONUS PROBANDI, evidence, is the burden of the proof.

2.—It is a general rule that the party who alleges the affirmative of any proposition shall prove it. It is also a general rule that the onus probandi lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant; for example, when to a plea of infancy, the plaintiff replies a promise after the defendant had attained his age, it is sufficient for the plaintiff to prove the promise, and it lies on the defendant to show that he was not of age at the time. 1 Term. Rep. 648. But where the negative involves a criminal omission by the party, and consequently where the law, by virtue of the general
principle, presumes his innocence, the affirmative of the fact is also presumed. Vide 11 Johns. R. 513; 19 Johns. R. 345; 9 M. R. 48; 3 N. S. 576.

3.—In general, wherever the law presumes the affirmative, it lies on the party who denies the fact, to prove the negative; as, when the law raises a presumption as to the continuance of life; the legitimacy of children born in wedlock; or the satisfaction of a debt. Vide, generally, 1 Phil. Ev. 156; 1 Stark. Ev. 376; Roscoe’s Civ. Ev. 51; Roscoe’s Cr. Ev. 55; B. N. P. 298; 2 Gall. 485; 1 McCard, 573; 12 Vin. Ab. 201.

4.—The party on whom the onus probandi lies is entitled to begin, notwithstanding the technical form of the proceedings. 1 Stark. Ev. 584.

TO OPEN—OPENING. To open a case is to make a statement of the pleadings in a case, which is called the opening.

2.—The opening should be concise, very distinct and perspicuous. Its use is to enable the judge and jury to direct their attention to the real merits of the case, and the points in issue. 1 Stark. R. 439; S. C. 2 E. C. L. R. 462; 2 Stark. R. 31; S. C. 3 Eng. C. L. R. 230.

3.—The opening address or speech is that made immediately after the evidence has been closed; such address usually states, 1st, the full extent of the plaintiff’s claims, and the circumstances under which they are made, to show that they are just and reasonable; 2dly, at least an outline of the evidence by which those claims are to be established; 3dly, the legal grounds and authorities in favour of the claim or of the proposed evidence; 4thly, an anticipation of the expected defence, and statement of the grounds on which it is futile, either in law or justice, and the reasons why it ought to fail. 3 Chit. Pr. 881. To open a judgment, is to set it aside.

TO OPEN A CREDIT. When a banker accepts or pays a bill of exchange drawn on him, by a correspondent, who has not furnished him with funds, he is said to open a credit with the drawer. Pardess. n. 29.

OPEN COURT. The term sufficiently explains its meaning. By the constitution of some states, and by the laws and practice of all the others, the courts are required to be kept open, that is, free access is admitted in courts to all persons who have a desire to enter there, while it can be done without creating disorder.

2.—In England, formerly, the parties and probably their witnesses were admitted freely in the courts, but all other persons were required to pay in order to obtain admittance. Stat. 13 Edw. I. c. 42, and 44; Barr. on the Stat. 126, 7. See Prin. of Pen. Law, 165.

OPENING A JUDGMENT, is the act of the court by which a judgment is so far annulled that it cannot be executed, but which still retains some qualities of a judgment, as, for example, its binding operation or lien upon the real estate of the defendant.

2.—The opening of the judgment takes place when some person having an interest makes affidavit to facts, which if true would render the execution of such judgment inequitable. The judgment is opened so as to be in effect an award of a collateral issue to try the facts alleged in the affidavit. 6 Watts & Serg. 493, 494.

OPERATIVE. A workman; one employed to perform labour for another.

2.—This word is used in the bankrupt law of 19th August, 1841, s. 5, which directs that any person who shall have performed any labour as an operative in the service of any bankrupt shall be entitled to receive the full amount of wages due to him for such labour, not exceeding twenty-five dollars; provided that such labour shall have been performed within six months next before the bankruptcy of his employer.

3.—Under this act it has been decided that an apprentice who had done work beyond a task allotted to him by his master, commonly called overwork, under an agreement on the part of the master to pay for such work, was entitled as an operative. 1 Penn. Law Journ. 368. See 3 Rob. Adm. R. 237; 2 Cranch, 240, 270.
OPINION, practice, is a declaration by a counsel to his client of what the law is, according to his judgment, on a statement of facts submitted to him. The paper upon which an opinion is written is, by a figure of speech, also called an opinion.

2.—The counsel should as far as practicable give, 1, a direct and positive opinion, meeting the point and effect of the question; and separately, if the questions proposed were properly divisible into several. 2. The reasons, succinctly stated, in support of such opinion. 3. A reference to the statute, rule or decision on the subject. 4. When the facts are susceptible of a small difference in the statement, a suggestion of the probability of such variation. 5. When some important fact is stated as resisting principally on the statement of the party interested, a suggestion ought to be made to inquire how that fact is to be proved. 6. A suggestion of the proper process or pleadings to be adopted. 7. A suggestion of what precautionary measures ought to be adopted. As to the value of an opinion, see 4 Penn. St. R. 28.

OPINION, evidence, is an inference made, or conclusion drawn, by a witness from facts known to him.

2.—In general a witness cannot be asked his opinion upon a particular question, for he is called to speak of facts only. But to this general rule there are exceptions; where matters of skill and judgment are involved, a person competent particularly to understand such matters, may be asked his opinion, and it will be evidence. 4 Hill, 129; 1 Denio, 281; 2 Scam. 297; 2 N. H. Rep. 480; 2 Story, R. 421; see 8 W. & S. 61; 1 McMullan, 56. For example, an engineer may be called to say what, in his opinion, is the cause that a harbour has been blocked up. 3 Doug. R. 157; S. C. 26 Eng. C. L. Rep. 63; 1 Phil. Ev. 276; 4 T. R. 498. A shipbuilder may be asked his opinion on a question of sea-worthiness. Peake, N. P. C. 25; 10 Bingham. R. 57; 25 Eng. Com. Law Rep. 28.

3.—Medical men are usually examined as to their judgment with regard to the cause of a person's death, who has suffered by violence. Vide Death. Of the sanity, 1 Addams, 244, or impotency, 3 Phillim. 14, of an individual. Professional men are, however, confined to state facts and opinions within the scope of their professions, and are not allowed to give opinions on things of which the jury can as well judge. 5 Rogers's Rec. 26; 4 Wend. 320; 3 Fairf. 398; 3 Dana, 382; 1 Penn. 161; 2 Halst. 244; 7 Verm. 161; 6 Rand. 704; 4 Yeates, 262; 9 Conn. 102; 3 N. H. Rep. 349; 5 H. & J. 488.


OPINION, judgment, is a collection of reasons delivered by a judge for giving the judgment he is about to pronounce; the judgment itself is sometimes called an opinion.

2.—Such an opinion ought to be a perfect syllogism, the major of which should be the law; the minor, the fact to be decided; and the consequence, the judgment which declares that to be conformable or contrary to law.

3.—Opinions are judicial or extrajudicial; a judicial opinion is one which is given on a matter which is legally brought before the judge for his decision; an extrajudicial opinion, is one which although given in court, is not necessary to the judgment, Vaughan,
382; 1 Hale's Hist. 141; and whether
given in or out of court, is no more than
the prolatum of him who gives it, and
has no legal efficacy. 4 Penn. St. R.

OPPOSITION. practice, is the act of
a creditor who declares his dissent to a
debtor’s being discharged under the in-
solvent laws.

OPPRESSOR. One who having pub-
lic authority uses it unlawfully to tyran-
nize over another; as, if he keep him in
prison until he shall do something which
he is not lawfully bound to do.
2.—To charge a magistrate with being
an oppressor, is therefore actionable. 1
Stark. Sland. 185.

OPPROBRIUM, civil law, ignominy;
shame; infamy, (q. v.)

OPTION. Choice; Election; (q. v.)
where the subject is considered.

OR, in the termination of words, has
an active signification, and usually de-
notes the doer of any act; as, the grantor,
he who makes a grant; the vendor, he
who makes a sale; the feoffor, he who
makes a feoffment. Litt. s. 57; 1 Bl.
Com. 140, n.

ORACULUM, civil law. The name
of a kind of decisions given by the Ro-
man emperors.

ORAL. Something spoken in con-
tradistinction to something written; as
oral evidence, which is evidence delivered
verbally by a witness.

ORATOR, practice, is a good man,
skilful in speaking well, and who em-
ployed a perfect eloquence to defend causes
either public or private. Dupin, Pro-

2.—In chancery, the party who files
a bill calls himself in those pleadings
your orator. Among the Romans, ad-
vocates were called orators. Code, 1, 3,
33, 1.

ORDAIN. To ordain is to make an
ordinance, to enact a law.
2.—In the constitution of the United
States, the preamble declares that the
people “do ordain and establish this
constitution for the United States of
America.” The 3d article of the same
constitution declares, that “the judicial
power shall be vested in one supreme
court, and in such inferior courts as the
congress may from time to time ordain
and establish.” See 1 Wheat. R. 304,
324; 4 Wheat. R. 316, 402.

ORDEAL. An ancient superstitious
mode of trial. When in a criminal case
the accused was arraigned, he might se-
lect the mode of trial either by God and
his country, that is, by jury; or by God
only, that is by ordeal.

2.—The trial by ordeal was either by
fire or by water. Those who were tried
by the former passed barefooted and
blindfolded over nine hot glowing plough-
shares; or were to carry burning irons
in their hands; and accordingly as they
escaped or not, they were acquitted or
condemned. The water ordeal was per-
formed either in hot or cold water. In
cold water, the parties suspected were
adjudged innocent, if their bodies were
not borne up by the water contrary to
the course of nature; in hot water they
were to put their bare arms or legs into
scalding water, and if they came out un-
hurt, they were taken to be innocent of
the crime.

3.—It was impiously supposed that
God would, by the mere contrivance of
man, be called upon to exercise his
power in favour of the innocent. 4 Bl.

ORDER, government. By this ex-
pression is understood the several bodies
which compose the state. In ancient
Rome, for example, there were three dis-
tinct orders; namely, that of the sena-
tors, that of the patricians, and that of
the plebeians.

2.—In the United States there are no
orders of men, all men are equal in the
eye of the law, except that in some
states slavery has been entailed on them
while they were colonies, and it still ex-
ists, in relation to some of the African
race; but these have no political rights. 
Vide Rank.

ORDER, contracts, is an indorsement
or short writing put upon the back of a
negociable bill or note, for the purpose
of passing the title to it, and making it
payable to another person.

2.—When a bill or note is payable to
order, which is generally expressed by
this formula, “to A B, or order,” or “to the order of A B,” in this case the payee, A B, may either receive the money secured by such instrument, or by his order, which is generally done by a simple indorsement, (q. v.) pass the right to receive it to another. But a bill or note wanting these words, although not negotiable, does not lose the general qualities of such instruments. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines, 137; 9 John. 217. Vide Bill of Exchange; Indorsement.

3.—An informal bill of exchange or a paper which requires one person to pay or deliver to another goods on account of the maker to a third party, is called an order.

ORDER, French law. The act by which the rank of preferences of claims, among creditors who have liens over the price which arises out of the sale of an immovable subject, is ascertained, is called order. Dalloz, Dict. h. t.

ORDER OF FILLATION, is the name of a judgment rendered by two justices, having jurisdiction in such case, in which a man therein named is adjudged to be the putative father of a bastard child; and it is further adjudged that he pay a certain sum for his support.

2.—The order must bear upon its face, 1st, that it was made upon the complaint of the township, parish, or other place, where the child was born and is chargeable; 2d, that it was made by justices of the peace having jurisdiction. Salk. 122, pl. 6; 2 Ld. Raym. 1197; 3d, the birth place of the child; 4th, the examination of the putative father and of the mother; but, it is said, the presence of the putative father is not requisite, if he has been summoned, Cald. R. 305; 5th, the judgment that the defendant is the putative father of the child, Sid. 363; Stile, 154; Dalt. 52; Doug. 662; 6th, that he shall maintain the child as long as he shall be chargeable to the township, parish, or other place, which must be named. Salk. 121, pl. 2; Comb. 232.

But the order may be that the father shall pay a certain sum weekly as long as the child is chargeable to the public.

Stile, 134; Vent. 210; 7th, it must be dated, signed and sealed by the justices. Such order cannot be vacated by two other justices. 15 John. R. 208; see 8 Cowen, R. 623; 4 Cowen, R. 253; 12 John. R. 195; 2 Blackft. R. 42.

ORDER Nisi, is a conditional order which is to be confirmed unless something be done, which has been required, by a time specified. Eden. Inj. 122.

ORDERS. Rules made by a court or other competent jurisdiction. The formula is generally in these words: It is ordered, &c.

2.—Orders also signify the instructions given by the owner to the captain or commander of a ship which he is to follow in the course of the voyage.

ORDINANCE, legislation. A law, a statute, a decree.

2.—This word is more usually applied to the laws of a corporation, than to the acts of the legislature; as the ordinances of the city of Philadelphia. The following account of the difference between a statute and an ordinance is extracted from Bac. Ab. Statute, A. “Where the proceeding consisted only of a petition from parliament, and an answer from the king, these were entered on the parliament roll; and if the matter was of a public nature, the whole was then styled an ordinance; if, however, the petition and answer were not only of a public, but a novel nature, they were then formed into an act by the king, with the aid of his council and judges, and entered on the statute roll.” See Harg. & But. Co. Litt. 159 b, notis; 3 Reeves, Hist. Eng. Law, 146.

3.—According to Lord Coke, the difference between a statute and an ordinance is, that the latter has not had the assent of the king, lords, and commons, but is made merely by two of those powers. 4 Inst. 25. See Barr. on Stat. 41, note (x).

ORDINANCE OF 1787. An act of congress which regulates the territories of the United States. It is printed in 3 Story, L. U. S. 2073. Some parts of this ordinance were designed for the temporary government of the territory,
while other parts were intended to be permanent, and are now in force. 1 McLean, R. 337; 2 Missouri R. 20; 2 Missouri R. 144; 2 Missouri R. 214; 5 How. U. S. R. 215.

ORDINARY, civil and eccles. law, An officer who has original jurisdiction in his own right and not by deputation.

2.—In England the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344.

3.—In the United States, the ordinary possesses, in those states where such officer exists, powers vested in him by the constitution and acts of the legislature. In South Carolina, the ordinary is a judicial officer. 1 Rep. Const. Ct. 267; 2 Rep. Const. Ct. 384.

ORDINATION, civil and eccles. law. The act of conferring the orders of the church upon an individual. Nov. 137.

ORE TENUS. Verbally; orally. Formerly the pleadings of the parties were ore tenus, and the practice is said to have been retained till the reign of Edward the Third. 3 Reeves, 95; Steph. Pl. 29; and vide Bract. 372, b.

2.—In chancery practice, a defendant may demur at the bar ore tenus; 3 P. Wms. 370; if he has not sustained the demurrer on the record. 1 Swanst. R. 288; Mitf. Pl. 176; 6 Ves. 779; 8 Ves. 405; 17 Ves. 215, 216.

OREGON. The name of a territory of the United States of America. This territory was established by the act of congress of August 14, 1848; and this act is the fundamental law of the territory.

2.—Sect. 2. The executive power and authority in and over said territory of Oregon shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, he may grant pardons and reprieves for offences against the laws of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

3.—Sec. 3. There shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July, in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

4.—Sect. 4. The legislative power and authority of said territory shall be vested in a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the members of council of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year, so
that one third may be chosen every year; and if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly from time to time, in proportion to the increase of qualified voters: Provided, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in and be inhabitants of the district, or county or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons, and in such mode, as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election, and the returns thereof, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: Provided, That, in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur, in either branch of the legislative assembly, the governor shall order a new election, and the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Provided, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

5.—Sect. 5. Every white male inhabitant, above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: Provided, That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act: And, further, provided, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, un-
less said territory is and has been for the period of six months his permanent domicile: Provided further, That no person belonging to the army or navy of the United States shall ever be elected to, or hold any civil office or appointment in, said territory.

6. — Sect. 6. The legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect: Provided, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange or obligations, or granting any other banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt by said territory, in any mode or manner whatever, except certificates for services to said territory; and all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void; and all taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

7.— Sect. 7. All township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, in such manner as shall be provided by the legislative assembly of the territory of Oregon.

8.— Sect. 8. No member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

9.— The 16th section of the act authorizes the qualified voters to elect a delegate to the house of representatives of the United States, who shall have and exercise all the rights and privileges as have been heretofore exercised and enjoyed by the delegates from the other territories of the United States to the said house of representatives. Vide Courts of the United States.

ORIGINAL, contracts, practice, evidence, is an authentic instrument of something, and which is to serve as a model or example to be copied or imitated. It also means first, or not deriving any authority from any other source: as, original jurisdiction, original writ, original bill, and the like.

2.— Originals are single or duplicate. Single, when there is but one; duplicate, when there are two. In the case of printed documents, all the impressions are originals, or in the nature of duplicate originals, and any copy will be primary evidence. Watson’s case, 2 Stark. R. 130; sed vide 14 Serg. & Rawle, 200.

3.— When an original document is not evidence at common law, and a copy of
such original is made evidence by an act of the legislature, the original is not, therefore, made admissible evidence by implication. 2 Camp. R. 121, n.

Original entry, is the first entry made by a merchant, tradesman, or other person in his account books, charging another with merchandise, materials, work or labour, or cash, on a contract made between them.

2.—This subject will be divided into three sections. 1. The form of the original entry; 2. The proof of such entry; 3. The effect.

3.—§ 1. To make a valid original entry it must possess the following requisites, namely: 1. It must be made in a proper book; 2. It must be made in proper time; 3. It must be intelligible and according to law; 4. It must be made by a person having authority to make it.

4.—1. In general the books in which the first entries are made, belonging to a merchant, tradesman, or mechanic, in which are charged goods sold and delivered, or work and labour done, are received in evidence. There are many books which are not evidence, a few of which will be here enumerated. A book made up by transcribing entries made on a slate by a journeyman, the transcript being made on the same evening, or sometimes not until nearly two weeks after the work was done, was considered as not being a book of original entries. 1 Rawle, R. 455; 2 Watts, R. 451; 4 Watts, R. 258; 1 Browne’s, R. 147; 6 Whart. R. 189; 5 Watts, 432; 4 Rawle, 408; 2 Miles, 268. A book purporting to be a book of original entries, containing an entry of the sale of goods when they were ordered but before they were delivered is not a book of original entries. 4 Rawle, 404. And unconnected scraps of paper containing, as alleged, original entries of sales by an agent, on account of his principal, and appearing on their face to be irregularly kept, are not to be considered as a book of original entries. 13 S. & R. 126. See 2 Whart. R. 33; 4 M‘ Cord, R. 76; 20 Wend. 72; 2 Miles, R. 268; 1 Yeates, R. 198; 4 Yeates, R. 341.

5.—2. The entry must be made in the course of business, and with the intention of making a charge for goods sold or work done; they ought not to be made after the lapse of one day. 8 Watts, 545; 1 Nott & M‘ Cord, 130; 4 Nott & M‘ Cord, 77; 4 S. & R. 5; 2 Dall. 217; 9 S. & R. 285; and a book in which the charges are made when the goods are ordered is not admissible. 4 Rawle, 404; 3 Dev. 449.

6.—3. The entry must be made in an intelligible manner, and not in figures or hieroglyphics which are understood by the seller only. 4 Rawle, 404; and a charge made in the gross as “190 days’ work,” 1 Nott & M‘ Cord, 130, or “for medicine and attendance,” or “thirteen dollars for medicine and attendance on one of the general’s daughters in curing the hooping cough,” 2 Const. Rep. 745, were rejected. An entry of goods without carrying out any prices, proves, at most, only a sale, and the jury cannot, without other evidence, fix any price. 1 South. 370. The charges should be specific and denote the particular work or service charged, as it arises daily, and the quantity, number, weight, or other distinct designation of the materials, or articles sold or furnished, and attach the price and value to each item. 2 Const. Rep. 745; 2 Bail. R. 449; 1 Nott & M‘ Cord, 130.

7.—4. The entry must of course have been made by a person having authority to make it, 4 Rawle, 404, and with a view to charge the party. 8 Watts, 535.

8.—§ 2. The proof of the entry must be made by the person who made it. If made by the seller, he is competent to prove it from the necessity of the case, although he has an interest in the matter in dispute. 5 Conn. 496; 12 John. R. 461; 1 Dall. 239. When made by a clerk, it must be proved by him. But, in either case, when the person who made the entry is out of the reach of the process of the court, as in the case of death, or absence out of the state, the handwriting may be proved by a person acquainted with the handwriting of the person who made the entry. 2 Watts
& Serg. 137. But the plaintiff is not competent to prove the handwriting of a deceased clerk who made the entries. 1 Browne's R. App. liii.

9.—§ 3. The books and original entries, when proved by the supplementary oath of the party is no prima facie evidence of the sale and delivery of goods, or of work and labour done. 1 Yeates, 347; Swift's Ev. 84; 3 Vern. 463; 1 M'Cord, 481; 1 Aik. 355; 2 Root, 59; Cooke's R. 38. But they are not evidence of money lent, or cash paid. Id.; 1 Day, 104; 1 Aik. 73, 74; Kirby, 289. Nor of the time a vessel laid at the plaintiff's wharf, 1 Browne's Rep. 257; nor of the delivery of goods to be sold on commission. 2 Wharton, 33.

Original Jurisdiction, practice, is that which is given to courts to take cognizance of cases which may be instituted in those courts in the first instance. The constitution of the United States gives the supreme court of the United States original jurisdiction in cases which affect ambassadors, other public ministers and consuls, and to those in which a state is a party. Art. 3, s. 2; 1 Kent, Com. 314.

Original writ, practice in the English law, is a mandatory letter issued in the king's name, sealed with his great seal, and directed to the sheriff of the county wherein the injury is committed or supposed to be, requiring him to command the wrongdoer or party accused, either to do justice to the complainant or else to appear in court, and answer the accusation against him. This writ is deemed necessary to give the courts of law jurisdiction.

2.—In modern practice, however, it is often dispensed with, by recourse, as usual, to fiction, and a proceeding by bill is substituted. In this country, our courts derive their jurisdiction from the constitution, and require no original writ to confer it. Improperly speaking, the first writ which is issued in a case, is sometimes called an original writ, but is not so in the English sense of the word. Vide 3 Bl. Com. 273; Walk. Intr. to Amer. Law, 514.

Originalia, Engl. law. The transcripts and other documents sent to the office of the treasurer-remembrancer in the exchequer, are called by this name to distinguish them from recorda, which contain the judgments of the barons.

ORNAMENT, embellishment. When a question arises as to which of two things, the one is the principal and the other is the accessory, it is a rule, that an ornament shall be considered as the accessory. Vide Accessory; Principal.

ORPHAN. A minor or infant who hath lost both of his or her parents. Sometimes the term is applied to such a person who has lost only one of his or her parents. 3 Mer. 48; 2 Sim. & Stu. 93; As. & Manor. Inst. B. 1, t. 2, c. 1. See Hazzard's Register of Pennsylvania, vol. 14, pages 188, 189, for a correspondence between the Hon. Joseph Hopkinson and ex-president J. Q. Adams as to the meaning of the word Orphan, and Hob. 247.

Orphanage, Engl. law. By the custom of London when a freeman of that city dies, his estate is divided into three parts, as follows, one third part to the widow; another, to the children advanced by him in his lifetime, which is called the orphans; and the other third part may be by him disposed of by will. Now, however, a freeman may dispose of his estate as he pleases, but in cases of intestacy, the statute of distribution expressly excepts and reserves the custom of London. Lov. on Wills, 102, 104; Bac. Ab. Custom of London, C. Vide Legitime.

Orphans' Court. The name of a court in some of the states, having jurisdiction of the estates and persons of orphans.

Orphanotroph, civil law.—Are persons who have the charge of administering the affairs of houses destined for the use of orphans. Clef des Lois Rom. mot Administrateurs.

Ostensible Partner. One whose name appears in a firm as a partner, and who is really such.

Other Wrongs, pleading, evidence. In actions of trespass, the declaration concludes by charging generally, that the defendant did other wrongs to
the plaintiff to his great damage. When the injury is a continuation or consequence of the trespass declared on, the plaintiff may give evidence of such injury under this averment of other wrongs. Rep. Temp. Holt, 699; 2 Salk. 642; 6 Mod. 127; Bull. N. P. 89; 2 Stark. N. P. C. 318.

OUNCE. The name of a weight. An ounce avoirdupois weight is the sixteenth part of a pound; an ounce troy weight is the twelfth part of a pound. Vide Weights.

OUSTER, torts. An ouster is the actual turning out, or keeping excluded, the party entitled to possession of any real property corporeal.

2.—An ouster can properly be only from real property corporeal, and cannot be committed of any thing movable, 1 Car. & P. 128; S. C. 11 Eng. Com. Law R. 339; 1 Chit. Pr. 148, note (r); nor is a mere temporary trespass considered as an ouster. Any continuing act of exclusion from the enjoyment, constitutes an ouster, even by one tenant in common of his co-tenant. Co. Litt. 199 b, 200 a. Vide 3 Bl. Com. 167; Arch. Civ. Pl 6, 14; 1 Chit. Pr. 374, where the remedies for an ouster are pointed out. Vide Judgment of Respondent Ouster.

OUSTER LE MAIN. In law-French, this signifies, to take out of the hand. In the old English law, it signified a livery of lands out of the hands of the lord, after the tenant came of age. If the lord refused to deliver such lands, the tenant was entitled to a writ to recover the same from the lord; this recovery out of the hands of the lord was called ouster le main.

OUTFIT. Is an allowance made by the government of the United States to a minister plenipotentiary, or chargé des affaires, or going from the United States to any foreign country.

2.—The outfit can in no case exceed one year's full salary of such minister or chargé des affaires. No outfit is allowed to a consul. Act of Cong. May 1, 1810, s. 1. Vide Minister.

OUT-HOUSES. Buildings adjoining to or belonging to dwelling-houses.

2.—It is not easy to say what comes within and what is excluded from the meaning of out-house. It has been decided that a school-room, separated from the dwelling-house by a narrow passage about a yard wide, the roof of which was partly upheld by that of the dwelling-house, the two buildings, together with some other, and the court which enclosed them, being rented by the same person, was properly described as an out-house. Russ. & R. C. C. 295; see, for other cases, 3 Inst. 67; Burn's Just., Burning, II; 1 Leach, 49; 2 East's P. C. 1020, 1021. Vide House.

OUT-RIDERS, Engl. law. Bailiffs errant, employed by the sheriffs and their deputies, to ride to the furthest places of their counties or hundreds to summon such as they thought good, to attend their county or hundred court.

OUTLAW, Engl. law, is one who is put out of the protection or aid of the law. 22 Vin. Ab. 316; 1 Phil. Ev. Index, h. t.; Bae. Ab. Outlawry; 2 Sell. Pr. 277; Doct. Pl. 331; 3 Bl. Com. 283, 4.

OUTLAWRY, Engl. law, is the act of being put out of the protection of the law, by process regularly sued out against a person who is in contempt in refusing to become amenable to the court having jurisdiction. The proceedings themselves are also called the outlawry.

2.—Outlawry may take place in criminal or in civil cases. 3 Bl. Com. 283; Co. Litt. 128.

3.—In the United States, outlawry in civil cases is unknown, and if there are any cases of outlawry in criminal cases they are very rare. Dane's Ab. ch. 193, a, 34. Vide Bae. Ab. Abatement, B; Id. h. t.; Gilb. Hist. C. P. 196, 197; 2 Virg. Cas. 244; 2 Dal. 92.

OUTRAGE. A grave injury; a serious wrong. This is a generic word which is applied to every thing which is injurious, in a great degree, to the honour or rights of another.

TO OVERDRAW, is to draw bills or checks upon an individual, bank or other corporation for a greater amount of funds than the party who draws is entitled to.

2.—When a person has overdrawn
his account without any intention to do so, and afterwards gives a check on a bank, the holder is required to present it, and on refusal of payment to give notice to the maker, in order to hold him bound for it; but when the maker had overdrawn the bank knowingly and had no funds there between the time the check was given and its presentment, the notice is not requisite. 2 N. & McC. 433.

OVERDUE. A bill, note, bond or other contract for the payment of money at a particular day, when not paid upon the day, is overdue.

2.—The indorsement of a note or bill overdue, is equivalent to drawing a new bill payable at sight. 2 Conn. 419; 18 Pick. 260; 9 Alab. R. 153.

3.—A note when passed or assigned when overdue, is subject to all the equities between the original contracting parties. 6 Conn. 5; 10 Conn. 30, 55; 3 Har. (N. J.) Rep. 222.

OVERPLUS. What is left beyond a certain amount; the residue, the remainder of a thing. The same as Surrplus, (q. v.)

2.—The overplus may be certain or uncertain. It is certain, for example, when an estate is worth three thousand dollars, and the owner asserts it to be so in his will, and devises of the proceeds one thousand dollars to A, one thousand dollars to B, and the overplus to C, and in consequence of the deterioration of the estate, or from some other cause, it sells for less than three thousand dollars, each of the legatees A, B and C shall take one third: the overplus is uncertain where, for example, a testator does not know the value of his estate, and gives various legacies and the overplus to another legatee, the latter will be entitled only to what may be left. 18 Ves. 466. See Residue; Surplus.

TO OVERRULE. To annul, to make void. This word is frequently used to signify that a case has been decided directly opposite to a former case; when this takes place, the first decided case is said to be overruled as a precedent, and cannot any longer be considered as of binding authority.

2.—Mr. Greenleaf has made a very valuable collection of overruled cases, of great service to the practitioner.

3.—The term overrule also signifies that a majority of the judges have decided against the opinion of the minority, in which case the latter are said to be overruled.

OVERSEEERS OF THE POOR, are persons appointed or elected to take care of the poor with moneys furnished to them by the public authority.

2.—The duties of these officers are regulated by local statutes. In general the overseers are bound to perform those duties, and the neglect of them will subject them to an indictment. Vide 1 Bl. Com. 360; 16 Vin. Ab. 150; 1 Mass. 459; 3 Mass. 436; 1 Penning. R. 6, 136; Com. Dig. Justices of the Peace, B 63, 64, 65.

OVERSMAN, in the Scotch law, is a person commonly named in a submission, to whom power is given to determine, in case the arbiters cannot agree in the sentence; sometimes the nomination of the overseman is left to the arbiters. In either case the overseman has no power to decide, unless the arbiters differ in opinion. Ersk. Pr. L. Scot. 4, 3, 16. The office of an overseman very much resembles that of an umpire.

OVERT. Open. An overt act in treason is proof of the intention of the traitor, because it opens his designs; without an overt act treason cannot be committed. 2 Chit. Cr. Law, 40; an overt act, then, is one which manifests the intention of the traitor, to commit treason. Archb. Cr. Pl. 379; 4 Bl. Com. 79.

2.—The mere contemplation or intention to commit a crime, although a sin in the sight of heaven, is not an act amenable to human laws. The mere speculative wantonness of a licentious imagination, however dangerous, or even sanguinary in its object, can in no case amount to a crime. But the moment that any overt act is manifest, the offender becomes amenable to the laws. Vide Attempt; Conspiracy; and Cro. Car. 577.

OWELTY. The difference which is paid or secured by one co-parceener to
another, for the purpose of equalizing a partition. Hugh. Ab. Partition and Partner, § 2, n. 8; Litt. s. 251; Co. Litt. 169 a; 1 Watts, R. 255; 1 Whart. 292; 3 Penna. 115; Cruise, Dig. tit. 19, § 32; Co. Litt. 10 a; 1 Vern. 133; Plow. 134; 16 Vin. Ab. 223, pl. 3; Bro. Partition, § 5.

OWING. Something unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not.

2.—In affidavits to hold to bail it is usual to state that the debt on which the action is founded is due, owing and unpaid. 1 Penn. Law Jo. 210.

OWLER, Engl. law. One guilty of the offence of owling.

OWLING, Engl. law. The offence of transporting wool or sheep out of the kingdom.

2.—The name is said to owe its origin to the fact that this offence was carried on in the night, when the owl was abroad.

OWNER, property. The owner is he who has dominion of a thing real or personal, corporeal or incorporeal, which he has a right to enjoy and to do with it what he pleases, even to spoil or destroy it, as far as the law permits, unless he is prevented by some agreement or covenant which restrains his right.

2.—The right of the owner is more extended than that of him who has only the use of the thing. The owner of an estate may, therefore, change the face of it; he may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper, for minerals, stone, plaster, and similar things. He may commit what would be considered waste if done by another.

3.—The owner continues to have the same right although he performs no acts of ownership, or is disabled from performing them, and although another performs such acts, without the knowledge or against the will of the owner. But the owner may lose his right in a thing, if he permit it to remain in the possession of a third person, for a sufficient time to enable the latter to acquire a title to it by prescription, or lapse of time. See Civil Code of Louis. B. 2, t. 2, e. 1; Encyclopédie de M. D'Alembert, Propriétaire.

4.—When there are several joint owners of a thing, as for example, of a ship, the majority of them have the right to make contracts in respect of such thing, in the usual course of business or repair, and the like, and the minority will be bound by such contracts. Holt, 586; 1 Bell's Com. 519, 5th ed. See 5 Whart. R. 366.

OWNERSHIP, title to property, is the right by which a thing belongs to some one in particular, to the exclusion of all other persons. Louis. Code, art. 480.

OXGANG OF LAND, old Engl. law, is an uncertain quantity of land, but, according to some opinious, it contains fifteen acres. Co. Litt. 69 a.

OYER, pleading. Oyer is a French word, signifying to hear; in pleading it is a prayer or petition to the court, that the party may hear read to him the deed, &c. stated in the pleadings of the opposite party, and which deed is by intention of law in court, when it is pleaded with a profert.

2.—The origin of this form of pleading, we are told, is that the generality of defendants, in ancient times, were themselves incapable of reading. 3 Bl. Com. 299.

3.—Oyer is in some cases demandable of right, and in others it is not. It may be demanded of any specialty or other written instrument, as bonds of all sorts, deeds poll, indentures, letters testamentary, and of administration, and the like, of which a profert in curiam is necessarily made by the adverse party. But if the party be not bound to plead the specialty or instrument with a profert, and he pleads it with one, it is but surplusage, and the court will not compel him to give oyer of it. 1 Salk. 497. Oyer is not now demandable of the writ, and if it be demanded, the plaintiff may proceed as if no such demand were made. Doug. 227; 3 B. & P. 398; 1 B. & P. 646, n. b; nor is oyer demandable of a record, yet if a judgment or other record be pleaded in its own court, the party pleading it must give a
notice in writing of the term and number roll whereon such judgment or matter of record is entered or filed, in default of which the plea is not to be received. Tidd’s Pr. 529.

4.—To deny oyer when it ought to be granted is error; and in such case the party making the claim, should move the court to have it entered on record, which is in the nature of a plea, and the plaintiff may counterplead the right of oyer, or strike out the rest of the pleading, following the oyer, and demur, 1 Saund. 9 b. n. 1; Bac. Abr. Pleas, 1; upon which the judgment of the court is either that the defendant have oyer, or that he answer without it. Id. ibid.; 2 Lev. 142; 6 Mod. 28. On the latter judgment, the defendant may bring a writ of error, for to deny oyer when it ought to be granted, is error, but not e converso. Id. ibid.; 1 Blackf. R. 126.

See, in general, 1 Saund. 9, n. (1); 289, n. (2); 2 Saund. 9, n. (12); (13); 46, n. (7); 366, n. (1); 405, n. (1); 410, n. (2); Tidd’s Pr. 8 ed. 635 to 638, and index, tit. Oyer; 1 Chit. Pl. 369 to 375; Lawes on Civ. Pl. 96 to 101; 16 Vin. Ab. 157; Bac. Abr. Pleas, &c. I 12, n. 2; Arch. Civ. Pl. 185; 1 Sell. Pr. 260; Doct. Pl. 344; Com. Dig. Pleader, P; Abatement, I 22; 1 Blackf. R. 241.

OYER AND TERMINER. The name of a court authorized to hear and determine all treasons, felonies and misdemeanors; and, generally, invested with other power in relation to the punishment of offenders.

OYEZ, practice. Hear; do you hear. In order to attract attention immediately before he makes proclamation, the cry of the court cries Oyez, Oyez, which is generally corruptly pronounced O yes.

PACE, a measure of length containing two feet and a half; the geometrical pace is five feet long. The common pace is the length of a step; the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

PACIFICATION. The act of making peace between two countries which have been at war; the restoration of public tranquillity.

TO PACK. To deceive by false appearance; to counterfeit; to delude; as packing a jury, (q. v.) Bac. Ab. Juries, M; 12 Comm. R. 262.

PACT, civil law, is an agreement made by two or more persons on the same object, in order to form some engagement, or to dissolve or modify one already made; conventio est duorum in ideam placitum consensus de re solvenda, id est faciend@ vel praestand@. Dig. 2; 14; Clef des Lois Rom. h. t.; Ayl. Pand. 558; Merl. Rép. Pacte, h. t.

PACTUM CONSTITUTÆ PECUNIAE, a term used in the civil law, was an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or it may be defined, simply an agreement by which a person promises a creditor to pay him.

2.—When a person by this pact promises his own creditor to pay him, there arises a new obligation which does not destroy the former by which he was already bound, but which is accessory to it; and by this multiplicity of obligations the right of the creditor is strengthened. Poth. Ob. Pt. 2, c. 6, s. 9.

3.—There is a striking conformity between the pactum constitutæ pecuniae, as above defined, and our indebitatus assumpsit. The pactum constitutæ pecuniae was a promise to pay a subsisting debt whether natural or civil; made in such a manner as not to extinguish the preceding debt, and introduced by the pretor to obviate some formal difficulties. The action of indebitatus assumpsit was brought upon a promise for the payment of a debt, it was not subject to the wager of law and other technical difficulties of the regular action of debt; but by such