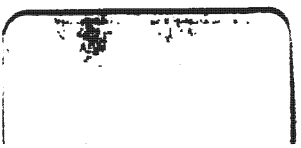


A

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.

SECOND EDITION.

VOL. II.

PHILADELPHIA:
T. & J. W. JOHNSON, LAW BOOKSELLERS,
SUCCESSORS TO NICKLIN & JOHNSON,
No. 5 MINOR STREET.

1843.

"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.

A

LAW DICTIONARY.

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

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

LAGAN. Vide *Ligan*.

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

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, furze and heath. It has an indefinite extent upwards as well as downwards; therefore land, legally includes all houses and other build-

ings 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. 535. 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.

Land, as above observed, includes in general all the buildings erected upon it; 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 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. 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. He is bound to perform certain duties and is entitled to rights, as such, which will here be 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. 505; 1 T. R. 312; 1 Sim. R. 146. —2d. 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 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.

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. 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, plead-

ings, and all law proceedings are in the English language, except certain technical terms which retain their ancient French and Latin dresses.

Agreements, contracts, wills and other instruments, may be made in any lagnuage, 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.

Among diplomatists, 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 ascendancy, 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.

Vide, generally, 3 Bl. Com. 323; 1 Chit. Cr. Law, *415; 2 Rey, Institutions Judiciaires de l'Angleterre, 211, 212.

LANGUIDUS, *practice.* The name 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 *languidus*, 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. Parerg. 331.

LAPSED LEGACY. 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. To constitute larceny, several ingredients are necessary. 1st. 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. 2d. 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. 3d. 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. C. L. R. 23; 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. 4th. 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. 5th. 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 emblements 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. 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. 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. 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. 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.) 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 actions, 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.

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***, and ***municipal law***.

LAW BOOKS, are those which treat of law. They may be divided into three classes; 1. Acts of the legislature; 2. Reports of the decisions of the courts; and 3. Treatises, abridgments and all other books written on the subject of law. For a list of the abbreviations which are made in citing them, see ***Abbreviations;*** for a complete catalogue of the reports, in chronological order, vide article ***Reports;*** and for foreign law-books, 2 Dupin, Profession d'Avocat.

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. 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 disordantium 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 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 Eccl. Law, by Thyrwhitt, 22; Hale's Hist. C. L. 26–29; 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 as 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. The *Institutes* contain the elements 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. 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 politest nations.

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.

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

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.*

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; Encyclopédie, art. Droit Civil, Droit Romain; Domat, Les Loix Civiles; Ferriere's Dict.; Brown's Civ. Law; Halifax's Analys. Civ. Law; Wood's Civ. Law; Ayliffe's Pandects; Heinec. Elem. Jur.; Erskine's Institutes; Pothier; 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 any 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. 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 superceded by the constitutions 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 consonant to the genius and manners of the people. 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. 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. 32; 1 Wheat. R. 415; 3 Wheat. 223; 1 Blackf. R. 205; 8 Pet. R. 658; 5 Cowen, R. 628; 2 Stew. R. 362.

LAW, FOREIGN. 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. Toullier, Droit Français, tit. prel. § 12.

LAW, MARTIAL. Martial law is a code established for the government of the army and navy of the United States. 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.) Vide Hale's Hist. C. L. 39; 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 Beawes 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 huitième siècle, par Dupin; Capmany, Costumbres maritimas; Il Consolato del mare; Us et coutumes de la mer; Piantanida, Della Giurisprudenze maritima commerciale, antica e moderna; Valin, Commentaire sur l'ordonnance de la marine, du mois d'août, 1681; 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.

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 betwen nations or states, and the obligations correspondent to

those rights. Vattel's Law of Nat. Prelim. § 3. 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 word; 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.

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, 1st. The voluntary law of nations, derived from the presumed consent of nations, arising out of their general usage. 2d. The Conventional law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts. 3d. 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.

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, negociations, 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, c. 1, § 14.

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.

Among the Romans there were two sorts of laws of nations, namely, the primitive, called *primarium*, and the other known by the name of *secundarium*. The *primarium*, 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 agree-

ment, and the like. The law of nations called *secundarium*, 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.

As to the law of nations generally, see Vattel's Law of Nations; Wheat. on Intern. Law; Marten's Law of Nations; Chitty's Law of Nations; Puffend. Law of Nature and of Nations, book 3; Burlamaqui's Natural Law, part 2, c. 6; Principles of Penal Law, ch. 13; Mann. Comm. on the Law of Nations; Leibnitz, Codex Juris Gentium Diplomaticus; Binkershoek, Quœstionis Juris Publici, a translation of the first book of which, made by Mr. Duponceau, is published in the third volume of Hall's Law Journal; Klüber, Droit des Gens Moderne de l'Europe; Dumont, Corps Diplomatique; Mably, Droit Public de l'Europe. Kent's Comm. Lecture 1.

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.

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.

1. When man in 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.

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.

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.

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 own wants, and to use coercive means for its good, when requisite.

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.

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, POSITIVE. Positive law, as used in opposition to natural law, may be 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 general, and by the manifest utility of the rules themselves. 2. The *customary* law, or that which, from motives of convenience, has, by tacit, but implied agreement, prevailed, not generally indeed among all nations, nor with so permanent an utility as to become a portion of the *universal* voluntary law, but enough to have acquired a *prescriptive* obligation among certain states so situated as to be mutually benefitted 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 parties among whom such treaties are in force. 1 Chit. Comm. Law, 28.

LAW, RETROSPECTIVE. A retrospective law is one that is to take effect, in point of time, before it was passed. Whenever a law of this kind impairs 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, 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 Wisbuy; Laws of the Hanse Towns.*

LAW, STATUTE, or legis scriptæ. A statute is either general or special, public or private. A general or public act is an universal rule, that regards the whole community. Special or private acts are rather exceptions than rules, being those which operate only upon particular persons and private concerns. 1 Bl. Com. 85, 6. See *Constitution; Statute.*

LAW, WRITTEN, lex scripta, consists of the constitution of the United States; the constitutions of the several states; the acts of the legislative assemblies, as the acts of congress and of the legislatures of the several states; and of treaties. See *Law, Statute.*

Law, unwritten, or lex non scripta, is composed of the law of nature, the law of nations, and of the common law. See *Law of Nature; Law of Nations; Law, Common.*

LAW OF THE TWELVE TABLES. Laws of ancient Rome composed 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 foundation 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, c. 44.

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

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. Declar. of Rights, Mass. part 1, s. 24; Declar. of Rights, Maryl. art. 15. By the constitution 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.

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.

Laws under the following circumstances 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 annexed 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.

The policy, the reason and humanity of the prohibition against passing ex post facto laws, do not extend to civil cases, to cases that merely affect the private property of citizens. Some of the most necessary acts of legislation are, on the contrary, founded upon the principles 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 OLERON, *in maritime law*, a code of sea laws of deserved celebrity. It was originally promulgated by Eleonor, duchess of Guienne, the mother of Richard the First, of England. Returning from the Holy Land, and familiar with the maritime regulations of the Archipelago, she enacted these laws at Oleron in Guienne, 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 I., of England, who inherited the dukedom of Guienne from his mother, improved 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 Civ. and Adm. Law, vol. ii. p. 40. These laws are inserted in the beginning of the book entitled, "Us et coutumes de la mer," with a very excellent commentary on each section by Clairac, the learned editor. A translation is to be

found in the Appendix to 1 Pet. Adm. Dec.; Marsh. Ins. B. 1, c. 1, p. 16. See *Laws of Wisbuy; 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 Gothland, an island in the Baltic sea, anciently much celebrated for its commerce and wealth, now an obscure and inconsiderable place. Malyne, in his collection of sea laws, p. 44, says that the laws of Oleron were translated into Dutch by the people of Wisbuy for the use of the Dutch coast. By Dutch, he probably means German, and it cannot be denied that many of the provisions contained in the Laws of Wisbuy, are precisely 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. Clairac treats this notion with contempt. and declares that at the time of the promulgation 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 northern part of Europe. "Lex Rhodia navalis," says Grotius, "pro jure gentium, in illo mare Mediteraneo vigebat; sicut apud Gallium leges Oleronis, et apud omnes transrhenanos, leges Wisbuenses." Grotius de Jure bel. lib. 2, c. 3.

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

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. 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.

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

LÆSÆ 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. Vide *Veto.*

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. 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. Even 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. In cross-examinations, the examiner has generally the right to put leading

questions. 1 Stark. Ev. 132; 3 Chit. Pr. 892; Rosc. 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, 195. Vide *Cannon Shot*.

LEAGUE, *crim. law*, *contracts*. In criminal law, a league is a conspiracy to do an unlawful act. The term is but little used. 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 merchants 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 its escaping out of the casks or vessels in which it was kept. 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 guage 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 tale, at the option of the importer, to be made at the time of entry.

LEAP YEAR. Vide *Bissextile*.

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. 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*.

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 rei*, 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.

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; Cro. 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.

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.

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.

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 *reddendum;* 5, The *covenants;* 6, The *conditions;* 7, The *warranty.* See *Deed.*

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.

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

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.

2. It may be avoided by matter arising after its delivery; as, 1st, by erasure, interlineation, or other alter-

ation 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 bargainee. This, without any enrolment, makes the bargainor 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. 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, evidence*, 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, Répertoire, mot Legs, s. 1; Swinb. 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. 268; 7 Ves. 522; Ib. 391; 2 Cain. R. 345. Devise is the term more properly applied to gifts of real estate. Godolph. 271.

As the testator is presumed at the time of making his will to be *inops concilii*, 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.

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 procure it for the

legatee. Cas. Temp. Talb. 227; Ambl. 57; 4 Ves. jr. 675; 7 Ves. jr. 399.—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.

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.—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.

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. —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 Rop. Leg. 404, 5, 580. It seems that a bequest for life, if specific of things *quæ ipso usu consumuntur*, is a gift of the property and that there cannot be a limitation over, after a life interest in such articles. 3 Meriv. 194.—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.

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.

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 Rop. Leg. ch. 8, p. 319 to 341. 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.

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 Rop. Leg. 463.—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 apply the residue among the legatees according to their several rights and interests. 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. As to the persons to whom payment is to be made, see where the legacy is given to an infant, 1 Rop. Leg. 589; 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 Rop. Leg. 595; Lownd. Leg. 399; where the legacy is given to a lunatic, 1 Rop. 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; Bac. 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‡.

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.—2. The legacy under an universal title, is that by which a testator bequeaths 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.—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 Rop. Leg. 19.

LEGACY, ADDITIONAL.—An additional legacy is one which is given by a codocil, 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. jr. 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; Rop. 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 Rop. 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. 597.

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 Rop. 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 Rop. 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 authorised 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.

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

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.*

§ 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; Ambl. 397; 2 Cox, 291; 4 Bro. C. C. 55; 3 Bro. C. C. 148; 2 Cox, 384.—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. 351; Amb. 448; 1 Ves. sen. 485; 5 Binn. 607.—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. 85; 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*.—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. 690; 3 Ves. 730; 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. 537; 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.—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.

§ 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.—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.—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.—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.—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.—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.

§ 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. 403; 4 Ves. 649; 1 Jac. & Walk. 388.—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; 1 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.

§ 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.—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 life-time, by the substitution of their issue; in such case although the word will include 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.—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.

§ 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; Ambl. 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," Ambl. 636.—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.; Ambl. 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. Ambl. 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.—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; Coop. 275; 1 Bro. C. C. 293; and see 1 Ves. sen. 337; Ambl. 70; to testator's relations of his name, 1 Ves. sen. 336; or stock, or blood, 15 Ves. 107.—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.

§ 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.—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.—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.—4. *Nearest* of kin will alone be entitled under a bequest to the next of kin in equal degree. 12 Ves. 433; 1 Madd. 36.

§ 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. 5 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 personæ designated by the law. 2 Mad. 155.—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. —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.—4. The same words were held to mean children, grandchildren, &c. to the exclusion of those persons who technically answer the description of "personal representatives." 3 Ves. 383.—5. A husband or wife may take as such if there is a manifest intention in the will that they should; and if either be clothed with the character of executor or administrator of the other, the *prima facie* legal title attaches to the office, which will prevail, unless an intention to the contrary be expressed or clearly apparent in the instrument. See 14 Ves. 382; 18 Ves. 49; 3 Ves. 231; 1 Ves. sen. 84; 3 Atk. 758; 1 Rop. Husb. & Wife, 326; 2 Rop. Husb. & Wife, 64.

§ 8. *The construction of bequests when limited to executors and administrators.* 1. Where personal estate is given to B, his executors and administrators, the law transfers to B the absolute interest in the legacy. 15 Ves. 537; 2 Mad. 155.—2. If no interest were given to B, and the bequest were to his executors and administrators, it should seem that the individual answering the description would be beneficially entitled as *personæ designatæ;* in analogy to the devise of real estate to the heir of B, without a previous limitation to B, whose heir would take by purchase in his own right, and not by force of the word "heir" considered as a term of limitation. 2 Mad. 155. See 8 Com. Dig. Devise of Personal Property, xxxvi.

§ 9. *Legacies to descendants.* 1. A legacy to the descendants of A, will comprehend all his 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.

§ 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 Meriv. 689.

§ 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.—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.

§ 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 1000*l.* 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. Ambl. 397.—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 & Beat. 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.—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. 469; 15 Ves. 27; 4 Vin. Abr. 485, pl. 16; 8 Ves. 38; 5 Binn. 606; see 6 Munf. 47.

§ 13. *When the fund given to legatees, by the description of "family," "relations," "next of 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.—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 these 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.—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 grand children, &c. will divide each parent's share among them equally *per capita*. 1 Ves. sen. 196.

§ 14. *The effect of a mistake in the names of legatees.* 1. 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 testor 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.

§ 15. *The effect of mistakes in the descriptions of legatees, and the admission of parol evidence in those cases.* 1. 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.—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 motive for such bounty can be supposed, the law will not, in either case, permit the legatee to avail himself of the description, and therefore he cannot demand his legacy. See 4 Ves. 802; 4 Bro. C. C. 20.—3. The same principle which has established the admissibility of parol evidence to correct errors in naming legatees, authorises its allowance to rectify mistakes in the description of them. Ambl. 374; 1 Ves. jr. 266; 1 Meriv. 384.—4. If neither the will nor extrinsic 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.

§ 16. *The consequences of* imperfect *descriptions of, or reference to legatees, appearing* upon the face of wills, *and when* parol evidence *is admissible.* 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 written merely 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. 1. When a blank is left for the Christian name of the legatee, evidence is admissible to supply the omission. 4 Ves. 630.—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.—3. When a legatee is described by the initials of his name only, parol evidence may be given to prove his identity. 3 Ves. 148.—When a patent ambiguity 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 lawful man. One who stands *rectus in curia*, not outlawed nor infamous. In this sense are the words *probi et legales homines.*

LEGATARY. 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 mission. 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. 531; 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 London, the third part of a freeman's personal 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.

LEGISLATOR, one who makes laws. 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 conse-

quence of some extraordinary case, laws sometimes operate very unequally. Vide 1 Kent, Com. 227 ; and Le Magazin 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. By the constitution of the United States, art. 1, s. 1, all legislative powers granted by it are vested in a congress of the Uuited States which shall consist of a senate and house of representatives. 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. 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. Marriage is considered by all civilized nations as the only source of legitimacy; the qualities of husband and wife must be possessed by the parents in order to make the offspring legitimate; and furthermore the marriage must be lawful, for if it is void ab initio, the children who may be the offspring of such marriage are not legitimate. 1 Phil. Ev. Index, h. t.; Civ. Code L. art. 203 to 216. In Virginia it is provided by statute of 1787, " that the issue of marriages deemed null in law, shall nevertheless be legitimate." 3 Hen. & Munf. 228, n. Vide *Bastard ; Bastardy ; Paternity ; Pregnancy.*

LEGITIMATE. That which is according to law; as, legitimate children, are lawful children, born in wedlock, in contradistinction to bastards; legitimate authority, or lawful power, in opposition to usurpation.

LEGITIMATION. The act of giving the character of legitimate children to those who were not so born. In Louisiana, the Civil Code, art. 217, enacts that " children born out of marriage, except those who are born of an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother whenever the latter have legally acknowledged them for their children, either before their marriage, or by the contract of marriage itself." In most of the other states the character of legitimate children is given to those who are not so, by special acts of assembly. In Georgia, real estate may descend from a mother to her illegitimate children and their representatives, and from such child, for want of descendants, to brothers and sisters, born of the same mother, and their representatives. Prince's Dig. 202 ; in Alabama, Kentucky, Mississippi, Vermont and Virginia, subsequent marriages of parents, and recognition by the father, legitimatize an illegitimate child; and in Massachusetts, for all purposes except inheriting from their kindred. Mass. Rev. St. 414. The subsequent marriage of parents legitimatizes the child in Illinois, but he must be afterwards acknowledged. 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 ap-

plication 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; Bastardy; Descent.*

LEGITIME, *civil law*, is that portion of a parent's estate of which he cannot disinherit his children, without a legal cause. The civil code of Louisiana declares, that donations *inter vivos* or *mortis causâ* 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. Donation *inter vivos* or *mortis causâ* 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 causâ*, 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. In Holland, Germany, and Spain, the principles of the Falcidian law, more or less limited, have been generally adopted. Coop. Just. 516.

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 *e converso* 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. Glanv. 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. 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; Bac. Abr. Trespass, C 2; id. Trover, C 2.

And in this the civil agrees with the commom law. Dig. 13, 6, 6, 8; Pothier, Prêt à Usage, ch. 1, § 1, art. 2, n. 4; art. n. 9; Ayliffe's Pand. 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.

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; Commodate;* Story, Bailm. ch. 4; Domat, Liv. 2, tit. 5.

LESION, *contracts.* In the civil law this term is used to signify the injury suffered, in consequence of inequality of situation, by one who does not receive a full equivalent for what he gives in a commutative contract. The remedy given for this injury, is founded on its being the effect of implied error or imposition; for in every commutative contract, equivalents are supposed to be given and received. Louis. Code, 1854. Persons of full age, however, are not allowed in point of law to object to their agreements as being injurious, unless the injury be excessive. Poth. Oblig. P. 1, c. 1, s. 1, art. 3, § 4. But minors are admitted to restitution, not only against any excessive inequality, but against any inequality whatever. Poth. Oblig. P. 1, c. 1, s. 1, art. 3, § 5; Louis. Code, art. 1858.

Courts of chancery relieve upon terms of redemption and set aside contracts entered into by expectant heirs dealing for their expectancies, on the ground of mere inadequacy of price. 1 Vern. 167; 2 Cox, 80; 2 Cas. in Ch. 136; 1 Vern. 141; 2 Vern. 121; 2 Freem. 111; 2 Vent. 359; 2 Vern. 14; 2 Rep. in Ch. 396; 1 P. W. 312; 1 Bro. C. C. 7; 3 P. Wms. 393, n; 2 Atk. 133; 2 Ves. 125; 1 Atk. 301; 1 Wils. 286; 1 Wils. 320; 4 Bro. P. C. ed. Toml. 198; 1 Bro. C. C. 1; 16 Ves. 512; Sugd. on Vend. 231, n. k.; 1 Ball & B. 330; Wightw. 25; 3 Ves. & Bea. 117; 2 Swanst. R. 147, n.; Fonb. notes to the Treatise of Equity,

B. 1, c. 2, s. 9. A contract cannot stand where the party has availed himself of a confidential situation, in order to obtain some selfish advantage. Note to Crowe v. Ballard, 1 Ves. jun. 125; 1 Hov. Supp. 66, 7. Note to Wharton v. May, 5 Ves. 27; 1 Hov. Supp. 378. See *Catching bargain; Fraud; Sale.*

LESSEE, *contracts.* He to whom a lease is made. A tenant for years may, unless restrained, either assign his lease or underlet the premises. 1 Cruise, Dig. 174. An assignment of a lease, is the transfer by the lessee of all interest in the estate to another person; an underletting, on the contrary, is but a partial transfer of the property leased, the lessee retaining a reversion to himself. Vide *Estate for years; Lease; Notice to quit; Tenant for years; Underlease.*

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

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

§ 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, enacts, 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 U. 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, authorised 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.

§ 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. Vide *Dead Letter; Jeopardy; Mail; Newspaper; Postage; Post Master General.*

LETTER, *contracts*, called in the civil law, *locator*, and in the French law, *locateur*, *loueur*, or *bailleur*, 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.

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, according 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;* Dougl. 744, 748; 1 Saund. 321, 323, and ibid. note 7; 4 T. R. 318.

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. 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. 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. 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. 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. The act of congress of July 2, 1836, 4 Sharsw. Cont. of Story, L. U. S. 2475, directs, § 41, That the post master general shall be authorised, 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 post master, to be retained in the post office; and for the receipt of letters at such places in the said city as the post master general may direct, and for the deposite 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 post master general so 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. 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; Wicquefort, 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 or 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. 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 fulfil 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 Mer. 607; Hall's Adm. Pr. 14; 4 Ohio R. 197; 1 Wilc. R. 510.

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 exchange 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, 236.

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. By the constitution, art. 1, s. 8, cl. 11, congress have 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 subpœna 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. Eccl. 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. 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. 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.

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

§ 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, *durante minori ætate*, 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 *durante absentia*, are grant-

ed 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.

§ 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.

1. Letters testamentary are conclusive as to personal property, while they remain unrevoked; as to realty they are merely *prima 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.

2. The effect of letters testamentary, and of administration granted in some one of the United 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.

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.

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.

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.

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 20*l.*, 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.

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.

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.

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 producing authenticated copies of such letters and filing them with the clerk of the court in which such suits are to be brought. Rev. Code, c. 24, Feb. 17, 1838, sec. 44.

Kentucky. Executors and administrators appointed in other states, may sue in Kentucky "upon filing with the clerk of the court, where the suit is brought, an authenticated copy of the certificate of probate, or orders granting letters of administration of said estate, given in such non-resident's state." 1 Dig. Stat. 536; 2 Litt. 194; 3 Litt. 182.

Louisiana. Executors or administrators of other states must take out *letters of curatorship* in this state. Exemplifications of wills and testaments are evidence. 4 Griff. L. R. 683; 8 N. S. 586.

Maine. Letters of administration must be taken from some court of probate in this state. Copies of wills

which have been proved in a court of probate in any of the United States, or in a court of probate of any other state or kingdom, with a copy of the probate thereof, under the seal of the court where such wills have been proved, may be filed and recorded in any probate court in this state, which recording shall be of the same force as the recording and proving the original will. Rev. Stat. T. 9, c. 107, § 20; 3 Mass. 514: 9 Mass. 337; 11 Mass. 256; 1 Pick. 80; 3 Pick. 128.

Maryland. Letters testamentary or of administration granted out of Maryland have no effect in this state, except only such letters issued in the District of Columbia, and letters granted there authorise executors or administrators to claim and sue in this state. Act of April 1813, chap. 165. By the act of 1839, chap. 41, when non-resident owners of any public or state of Maryland stocks, or stocks of the city of Baltimore, or any other corporation in this state die, their executors or administrators constituted under the authority of the state, district, territory or country, where the deceased resided at his death, have the same power as to such stocks, as if they were appointed by authority of the state of 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.

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.

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.

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.

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.

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.

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 authorised 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.

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.

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.

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."

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. 384.

Pennsylvania. Letters testamentary or of administration, or otherwise purporting to authorise 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 passage of the said act of March 15, 1832, s. 6, unless the by-laws, rules and regulations 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 Pennsylvania. 1 Dall. 456.

Rhode Island. It does not appear to be settled whether executors and administrators appointed in another state, may, by virtue of such appointment sue in this. 3 Griff. L. R. 107, 8.

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.

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 administration 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 agreeable to the laws of the state or territory in which such letters of administration were granted.

§ 2. When any executor or executors may prove the last will and testament of any deceased person, and take on him or themselves the execution of said will in any state in the United States, or in any territory thereof, such person or persons shall be enabled to prosecute suits in any court in this state, in the same manner 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 testamentary 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 chairman of such court, that the clerk's certificate 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.

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, administration 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 deceased in this state, and shall exclude the jurisdiction of the probate court of every other district. Rev. Stat. tit. 12, c. 47, s. 2.

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 corporation, 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 Virginia, give any such executor or administrator 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 probate 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 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 Leviticus, 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. 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 a manner as to apprize 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. 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, Pamphl. 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 *Legitime*, and Coop. Just. 486; Rob. Frauds, 290, note (113).

LEX FORI, *practice.* The law of the court or forum. The forms of remedies, the modes of proceeding, and the execution of judgments, are to be regulated solely and exclu-

sively 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. 132; 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. 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 every where. Story, Confl. of Laws, § 242, and the cases there cited. And *vice versa*, if void or illegal there, it is generally void every where. 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. 585; 6 N. S. 76; 6 L. R. 676; 6 N. S. 631; 4 Blackf. R. 89. 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. When the contract is entered into in one place, to be executed in another, there are two *loci contractus*; the *locus celebrati contractus*, and the *locus solutionis*; the former governs in every thing which relates to the mode of construing 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 polity. 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. 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. 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. 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.

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.)

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, 533. 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, coram quo, quo jure petatur, et a quo,
Rectè compositus quique libellus habet:

which has been translated,

Each plaintiff and defendant's name,
And eke the judge who trics 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.

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.

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,

1. The address to the court; as, To the Honorable Archibald Randall, Judge of the district court of the United States, within and for the eastern district of Pennsylvania.

2. The names and descriptions of the parties. Persons competent to sue at common law may be parties libellants, 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 cor-

porations are represented and proceeded against as at common law.

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; Hed's Pr. 126; Dunl. Adm. Pr. 113; 7 Cranch, 394.

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.

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; Ld. Raym. 416; 4 T. R. 126; 4 Mass. R. 168; 2 Pick. R. 115; 2 Kent, Com. 13.

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

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 ignominous manner, is a libel. Hawk. b. 1, c. 73, s. 2; 11 East, R. 227.

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. & Rawle, 394; Holt on Libels, 74; 8 Johns. R. 290; Vent. 293; Keb. 607; all writings subversive of morality and tending to inflame the passions by indecent language, are indictable at common law. 2 Str. 790; Holt on Libels, 82; 4 Burr. 2527. In order to constitute a libel, it is not necessary that any thing *criminal* should be imputed to the party injured; it is enough if the writer has exhibited him in a ludicrous point of view, has pointed him

out as an object of ridicule or disgust; has, in short, done that which has a natural tendency to excite him to revenge. 2 Wils. 403; Bacon's Abr. Libel, A 2; 4 Taunt. 355; 3 Camp. 214; Hardw. 470; 5 Binn. 349. The case of Villars v. Monsley, 2 Wils. 403, above cited, was grounded upon the following verses, which were held to be libellous, namely:—

"Old Villars so strong of brimstone you smell,
As if not long since you had got out of hell,
But this damnable smell I no longer can bear,
Therefore I desire you would come no more here;
You old stinking, old nasty, old itchy, old toad,
If you come any more you shall pay for your board,
You'll therefore take this as a warning from me,
And never enter the doors, while they belong to J. P.
Wilnecot, December 4, 1767."

Libels against the memory of the dead, which have a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult of the family, render their authors liable to legal animadversion. 5 Co. 123; 5 Binn. 281; 2 Chit. Cr. Law, 868; 4 T. R. 186.

3. If the matter be understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libellous, however it may be expressed. 5 East, 463; 1 Price, 11, 17; Hob. 215; Chit. Cr. Law, 868; 2 Campb. 512.

4. The malicious reading of a libel to one or more persons; it being on the shelves in a bookstore, as other books, for sale; and where the defendant directed the libel to be printed, took away some and left others; these several acts have been held to be publications. The sale of each copy, where several 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.

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, I.; 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.

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 Cor-

pus Juris Civilis. Giannone, B. 13, c. 3; Cruise's Dig. Prel. Diss. c. 1, § 31.

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.

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. Leç. El. Dr. Rom. § 93.

LIBERTY, *Engl. law*. 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.

LIBERTY, (CIVIL.) Civil liberty, is that of a member of society, and 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. 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.

LIBERTY, (NATURAL.) 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, c. 3, s. 15; 1 Bl. Com. 125.

LIBERTY, (PERSONAL.) Personal liberty 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.

LIBERTY, (POLITICAL.) 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.

LIBERTY OF THE PRESS, is the right to print and publish the truth, from good motives, and for justifiable ends. 3 Johns. Cas. 394. This right is secured by the constitution of the United States. Amendments, 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.*

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.

LIBERUM TENEMENTUM, *estate*, the same as freehold, (q. v.) or frank tenement.

LICENSE, *contracts*, is a right given by some competent authority to do an act, which without such authority would be illegal. The instrument or writing which secures this right, is also called a license. Vide Ayl. Parerg. 353; 15 Vin. Ab. 92; Ang. Wat. Co. 61, 85. A license is express or implied. An express license is one which in direct terms authorises the performance of a certain act; as a license to keep a tavern given by public authority. An implied license is one which though not expressly given, may be presumed from the acts of the party having a right to give it. The following are examples of such licenses: 1. When a man knocks at another's door, and it is opened, the act of opening the door licenses the former to enter the house for any lawful purpose. See Hob. 62. 2. A servant is, in consequence of his employment, licensed to admit to the house those who come on his master's business, but only such persons. Selw. N. P. 999; Cro. Eliz. 246. It may, however, be inferred from circumstances that the servant has authority to invite whom he pleases to the house, for lawful purposes. A license is either a bare authority, without interest, or it is coupled with an interest. 1. A bare license must be executed by the party to whom it is given in person, and cannot be made over or assigned by him to another; and, being without consideration, may be revoked at pleasure, as long as it remains executory, 39 Hen. 6, M. 12, page 7; but when carried into effect, either partially or altogether, it can only be rescinded, if in its nature it will admit of revocation, by placing the other side in the same situation in which he stood before he entered on its execution. 8 East, R. 308; Palm. 71; S. C. Poph. 151; S. C. 2 Roll. Rep. 143, 152.—2. When the license is coupled with an interest, the authority conferred is not properly a mere permission, but amounts to a grant, which cannot be revoked, and it may then be assigned to a third person. 5 Hen. 5, M. 1, page 1; 2 Mod. 317. 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. & Ell. 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. 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.

LICENTIA CONCORDANDI, *estates, conveyancing, practice.* When an action is brought for the purpose of levying a fine, the defen-

dant 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. 35, c. 2, 22.

LICET SÆPIUS REQUISITUS, *pleading, practice*. Although often requested. It is usually alleged in the declaration that the defendant *licet sæpius requisitus*, &c. he 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, pœnam non meretur.

LIDFORD LAW. Vide *Lynch Law*.

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. The right of lien generally arises by operation of law, but in some cases it is created by express contract. 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.

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.

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.

2. *The debts or claims to which liens property 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.

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.

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.

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 elegit 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.

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 remaining unpaid, is a familiar example of an equitable lien. Math. on Pres. 392. Vide *Purchase money*.

Vide, generally, Yelv. 67, a; 2 Kent, Com. 495; Pal. Ag. 107; Whit. on Liens; Story on Ag. ch. 14, § 351, et seq.; Hov. Fr. 35.

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. 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, sub-contractors have the same right. 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 POUSTIE, *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. 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 fœtus. 1 Beck's Med. Jur. 291. For many purposes, however, life is considered as begun from the moment of conception, vide *Fœtus; 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, Méd. Lég. 1ere partie, c. 6, art. 1. 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, 340, 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.

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.

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.

LIGHTERS, *commerce*, are small vessels employed in loading and unloading larger vessels. 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. 285; 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 excused; 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.

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 personalis 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 lands, 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.

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 untrammelled 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. 53; 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.

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 the Limitation of Actions.

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, femes covert, and persons non compos mentis, so that they may sue within three years after disability removed. Act of April 10, 1806, s. 1.—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.—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.—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.

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.

2. *As to personal actions.* 1. Actions of trespass, *quare clausum fregit;* 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. 2. Actions of trespass for assaults, menace, battery, wounding and imprisonment, or any of them, are limited to two years. 3. Actions for words to one year. 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. 5. Judgments cannot be revived after twenty years. 6. A new action must be brought within one year, when the former has been reversed on error, or the judgment has been arrested. 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. 8. Writs of error must be sued out within three years after final judgment.

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 seised 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. 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.

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 on 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.—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.—3. All actions against sheriffs or other officers, for the escape of any person imprisoned on civil process, shall be commenced within one year from the time of such escape, and not after. Ib. s. 8.—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.—5. All actions upon penal statutes, 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.—6. All actions not included in the foregoing provisions, shall be commenced within five years after the cause of action shall have accrued. Id. s. 11.—7. In all actions of debt, account 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 account. Id. s. 12.—The *savings* are as follows: 1. If any person entitled to bring any action in the preceding seven sections mentioned, 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.—2. If any person entitled to bring an action in the preceding provisions 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 administrators 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.—3. If at any time when any cause of action specified in this act accrues against any person, he be out of the state, such action may be commenced within the times herein respectively 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 person, by leaving the county, absconding or concealing himself, or any other improper act of his own, prevent the commencement 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.—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 corporation. Id. s. 18.

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 afterwards 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.

2. *As to personal actions.* 1. In actions on specialties and promissory notes, not negotiable, the limitation is seventeen years, with a saving that "persons 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." 2. Actions of account, of debt on book, on simple contract, or assumpsit, founded on an implied contract, or upon any contract in writing, not under seal, (except promissory notes not negotiable,) within six years, saving as above three

years. 3. In trespass on the case, six years, but no savings. 4. Actions founded upon express contracts not reduced to writing; upon trespass; or upon the case for words; three years and no savings. 5. Actions founded on penal statutes one year after the commission of the offence. 6. A new suit must be commenced within one year after reversal of the former, or when it was arrested.

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.

2. *As to personal actions.* All actions of trespass 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. 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. 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 before 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. In section 6th, there is a saving of the rights or demands of infants, feme coverts, persons of insane memory, or imprisoned, so their accounts be proved and their claims prosecuted within one year after the removal of such disability. 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. 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. 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, feme covert, non compos mentis, or a prisoner. 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, feme covert, non compos mentis or a prisoner, and then within five years exclusive of the time of such disability. Constitution, article 5, s. 13.

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.

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.

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.

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

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.

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

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 specialty; 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.

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 ejectment 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 feme covert, non compos 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.

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.

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.

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, femes covert, persons non compos mentis, or without the jurisdiction of the United States, until one year after their several disabilities are removed."—Sec. 12.

5. *Savings.* Provided that no statute of limitation shall ever be pleaded 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.

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.

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. 380, and Sessions acts 1833–9, page 330. In the action of ejectment there is a saving in favour of infants; persons insane or imprisoned; femes 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; Id. 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.

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.

Savings in such actions of simple contracts, tort, slander, and upon store accounts, in favour of infants, femes 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.

Louisiana.—The Civil Code, book 3, title 23, chapter 1, section 3, provides as follows:

§ 1. *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.

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.

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.

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.

§ 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 sala-

ries 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.

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.

§ 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 negociable or transferable by endorsement or delivery, are prescribed by five years, reckoning from the day when these engagements were payable.

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.

3507.—The action of nullity or rescision of contracts, testaments or other acts; that for the reduction of excessive donations; that for the rescision 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.

§ 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.

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

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.

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.

§ 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.

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

§ 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.

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.

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.

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.

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

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

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.

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 all writs of right and of formedon are abolished after that time. Rev. Stat. ch. 145, § 1.

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.

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.

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.

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

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 fregit; 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 pleadable, 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.

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.

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.

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

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

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 U. States, or of this, or some other of the United States:

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

Thirdly, all actions for arrears of rent:

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

Fifthly, all actions for waste and for trespass upon land:

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

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

§ 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.

§ 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.

§ 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.

§ 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 acrued, at the time of the last item proved in such account.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 commmenced 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.

§ 11. 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 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.

§ 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.

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 seised or possessed of the premises except as specified below.

Sec. 2. If the right or title accrued to an ancestor or predecessor 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.

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 disseised, at the time of such disseisin.

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 devisor, 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.

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.

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.

Sec. 4. If any minister or other sole corporation shall be disseised, 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 disseised, notwithstanding the twenty-five years after such disseisin shall have expired.

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.

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.

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.

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:

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.

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

3d. All actions for arrears of rent.

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

5th. All actions for waste.

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

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

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.

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.

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.

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.

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 accrues 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.

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.

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.

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.

Sec. 10. If any person entitled to bring any of the actions before men-

tioned 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 the granting of the letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

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.

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.

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.

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.

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. 666, sec. 15.

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 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.

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.

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.

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.

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.

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.

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.

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.

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 wilful murder, arson, forgery, counterfeiting and larceny; as to which there is no limitation.) How. & Hutch. p. 668, ch. 49, sec. 19, L. 1822.

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 1818. Infants, femes covert, 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.

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 fregit, shall be brought within five years after the cause of action shall accrue.

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.

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.

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

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.

New Hampshire.—1. *As to lands.* No action can be maintained for the recovery of lands, unless upon a seisin 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.

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.

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.

§ 2. And that thirty years' actual possession of lands, &c. uninterruptedly continued as aforesaid, whereever such possession commenced or is founded upon a proprietory 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.

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, feme 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, discoverture, coming of sound mind, enlargement out of prison, or coming within any of the United States, and at no other time.

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.

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.

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, feme covert, or insane, shall not be computed as part of the said limited period of twenty years.

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, tenements 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.

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, feme covert, or insane, shall not be computed as part of the said twenty years.

Section 11. That if a mortgagee, and those under him, be in possession 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.

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.

2. *As to personal actions.*—It is enacted that all actions of trespass *quare clausum fregit;* trespass; detinue; trover; replevin; debt, founded on any lending or contract without specialty, or for arrearages of rent due on a parol demise; of account, (except such actions as concern the trade of merchandise between merchant and merchant, their factors, agents and servants;) and on the case, (except actions for slan-

der,) 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, femes 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, discoverture, or sane memory.

The act of February 7, 1799, s. 6, provides that every action of debt, or covenant for rent, or arrearages 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, feme covert, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

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.

4. *As to penal actions.* By the statute of Feb. 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.

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:

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.

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 seised or possessed of the premises in question within twenty years before the commencement of such action.

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 seised or possessed of the premises in question, within twenty years before committing the act, in defence of which the avowry or cognizance is made.

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.

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.

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.

2. *As to personal actions.* The time for the commencing actions for the recovery of any debt or demand, or for damages is regulated by the 2d art. of tit. 2, c. 4, part 3d of the Revised Statutes. It is thereby enacted as follows:

§ 18. The following actions shall be commenced within six years, next after the cause of such action accrued, and not after:

1. All actions of debt founded on any contract, obligation, 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 state:

2. All actions upon judgments rendered in any court, not being a court of record:

3. All actions of debt for arrearages of rent, not reserved by some instrument under seal:

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

5. All actions for trespass upon land:

6. All actions for taking, detaining, or injuring any goods or chattels, including actions of replevin:

7. All special actions on the case for criminal conversation, for libels, or for any other injury to the persons or rights of any, except as are specified in the two next sections.

§ 19. The following actions shall be commenced within four years after the cause of action accrued, and not after:

1. All actions for assault and battery:

2. All actions for false imprisonment:

§ 20. The following actions shall be commenced within two years next

after the cause of action accrued, and not after:

1. Actions for words spoken, slandering the character or title of any person:

2. Actions for words spoken, whereby damages are sustained.

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

§ 24. If any person entitled to bring any action in this article specified (excepting against sheriffs, &c.,) shall at the time the cause of action accrued, be, 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 for his natural life; or, 4, a married woman; such person shall be at liberty to bring such actions within the respective times in this article limited, after such disability removed.

§ 25. None of the provisions of this article, shall apply to suits brought to enforce payment on bills, notes, or other evidences of debt issued by moneyed corporations.

§ 26. Provides for the case of a party who dies before the operation of the statute, and gives an additional year to his executors or administrators.

§ 27. Provides for the absence of the defendant; the statute does not run during such absence from the state.

§ 28. Actions brought by the people, or for the benefit of the people, are barred in the same manner as actions brought by citizens.

3. *As to penal actions.* The third article treats of the time of commencing actions for penalties and forfeitures, substantially as follows:

§ 29. All actions upon any statute made, or to be made, for any forfeiture or penalty, to the people of this state, shall be commenced within two years after the offence shall have been committed, and not after.

§ 30. All actions upon any statute made, or to be made, for any forfeiture or penalty, given in whole or in part, to any person who will prosecute for the same, shall be commenced within one year after the offence shall have been committed, and not after, and in case such action shall not be commenced within that time by any private citizen, then the same shall be commenced within two years after that year ended, in behalf of the people of this state, by the attorney general or the district attorney of the county where the offence was committed, and not after.

4. *Presumptions of payment.* The fifth article declares the presumption of payment of judgments and instruments under seal after the expiration of twenty years.

5. *Suits in courts of equity.* The sixth article treats of the time of commencing suits in courts of equity, substantially as follows:

§ 49. Provides that when courts of law and equity have concurrent jurisdiction, the limitation shall be the same as it is to an action at law.

§ 51. Bills for relief, on the ground of fraud, must be filed within six years after the discovery, by the aggrieved party, of the facts constituting such fraud, and not after.

§ 52. Bills for relief, in case of the existence of a trust not cognizable by the courts of common law, and in all other cases not hereinbefore provided for, shall be filed within ten years after the cause thereof shall accrue, and not after.

§ 53. Provides for disabilities, and extends the times.

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

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 hereafter 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, discoverture, 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.

§ 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.

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 *quare clausum fregit*, within three years next after the cause of such action or suit, and not after; except such accompts 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.

§ 4. Provided nevertheless, that if, on any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by 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 accompt and upon the case, actions of debt for arrearages of rent, actions of debt grounded upon any lending or contract without specialty, actions of assault, menace, battery, wounding and imprisonment, actions of trespass *quare clausum fregit*, 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, discovert, 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.

§ 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.

3. *As to penal actions.* § 6. 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.

Ohio.—1. *As to lands.* Twenty-one years' adverse possession of lands operates a bar, with a saving in favour of infants, femes covert, per-

sons 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.

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.

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.

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

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.

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

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.

7th. Infants, femes 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.

8th. Actions, founded on contracts 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.

9th. In all actions on contract express or implied, in case of payment of any part, principal or interest, acknowledgment 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, acknowledgment or promise.

10th. If judgment be arrested or reversed, the suit abate or the plaintiff 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 nonsuit.

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.

This act only operates upon causes of action accruing after the act took effect, and all causes of action previously subsisting are governed by the statutes (and there have been several) in force when the respective causes of action accrued, none of the statutes being retrospective in their operation. 7 O. R. p. 2, 235, West's Adm'r. vs. Hymer; Ib. 153, Haz-

lett et al. vs. Critchfield et al.; 6 Ib. 96, Bigelow's Ex'r. vs. Bigelow's Adm'r.

3. *As to penal actions.* Prosecutions for any forfeitures under a penal statute, must be instituted within two years unless otherwise specially provided for.

Pennsylvania.—1. *As to lands.* From henceforth no person or persons whatsoever, shall make entry into any manors, lands, tenements or hereditaments, 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 persons whatsoever have or maintain any writ of right, or any other real or possessory 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 ancestors 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.

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, discoverture, 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 persons shall die within the said term of ten years, under any of the disabilities aforesaid, the heir or heirs of such person or persons shall have the same benefit, that such person or persons could or might have had, by living until the disabilities 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.

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.

2. *As to personal actions.* All actions of trespass *quare 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 merchandise 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 *quare 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.

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.

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.

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 compos mentis*, imprisoned or beyond the sea, 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, discoverture, of sound memory, at large, or returning into this province as other persons. Ib. s. 5.

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.

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 seas, 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.

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, discovert, of sane memory, at large, or returned from beyond sea.

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.

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.

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.

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 *quare 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.

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

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.

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.

§ 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.

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 respective 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.

§ 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.

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

2. *As to personal actions.* Actions of account render; upon the case; debt for arrearages of rent; detinue; replevin; and trespass quare clausum fregit; 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, femes 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.

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.

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.

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 compotes, and femes 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Sect. 9. 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, but the action, in such case, shall be commenced within fourteen years next after the cause of action shall accrue thereon, and not afterwards.

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 aftewards.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 thereto, had been herein contained.

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.

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, femes 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.

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.

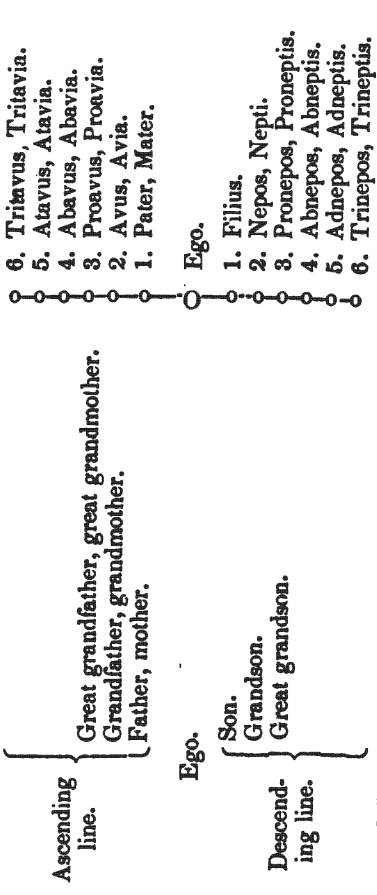
2. *As to personal actions.* The provisions in relation to personal actions are as follows:

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, femes 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.

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,

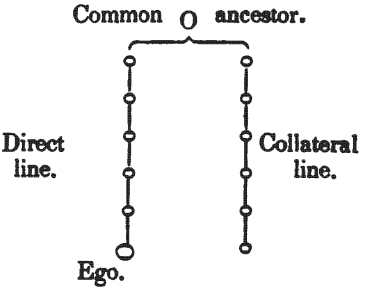
to bring suit for any debt due on account of any contract or dealing with such factor. 1 Rev. Code, 489–491.

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.*



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 the 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.

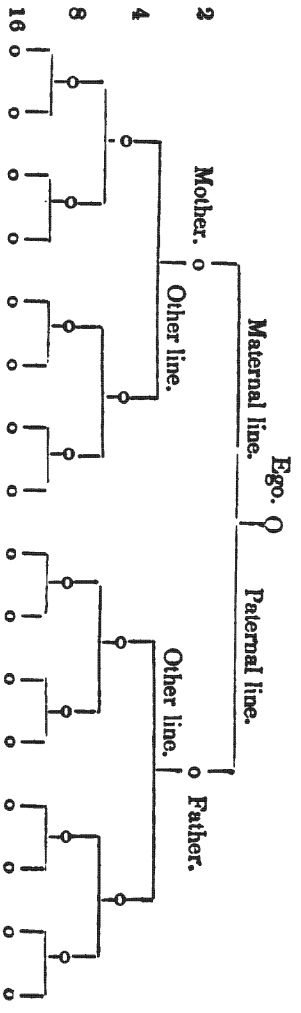
The collateral line considered by itself, and in relation to the common ancestor, is a direct line; it becomes collateral when placed along side of another line below the common ancestor, in whom both lines unite, for example:



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.

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 ascendants, there are many others who must be imagined. The number of ascendants is double at each degree, as is shown by the following table:



Vide 2 Bl. Com. 200, bk. 2, c. 14; Poth. Des Successions, ch. 1, art. 3, § 2; and article *Ascendants*.

9*

LINE, *measures*. A line is a lineal measure containing the one-twelfth part of an inch. This word is used also in another sense; it signifies the division between two estates. 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. Lines fixed by compact between nations are binding on their citizens and subjects. 11 Pet. 209; 1 Overt. 269.

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.

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.*

LIQUIDATION, is a fixed and determinate valuation of things which before were uncertain.

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 instituted and finally decided. It has been decided that the mere serving of a subpœna 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 subpœna, 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. It is a general rule that *lis pendens* is a general notice of an equity to all the world, 3 Atk. 343; 2 P. Wms. 282; Amb. 676; 1 Vern. 286. Vide 2 Fonbl. Eq. 152, note; 1 Supp. to Ves. jr. 284; 3 Rawle, R. 14; Pow. Mortg. Index, h. t.; 1 John. Ch. R. 566; 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 Desaus. R. 167, 170; 2 Edw. R. 115; 1 Hogan, R. 69; 6 Har. & John. 21; 2 Dana, R. 480; Jac. R. 202; 1 Russ. & My. 617; Com. Dig. Chancery, 4 C 3; 2 Bell's Com. 152, 5th ed.

When a defendant is arrested pending a former suit or action, in which he was held to bail, he will not, in general, 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 *nul tiel record* to a plea of *autre action pendant* in the second suit. Grah. Pr. 98; and see 1 John. Cas. 397; 7 Taunt. 151; 1 Marsh. R. 395; Merl. Rép. Litispendance; 5 Ohio R. 462; 6 Ohio R. 225; 1 Blackf. R. 53; Id. 315; *Autre action pendent; Bail; Litigiosity.*

LISTERS. This word is used in some of the states to designate the persons appointed to make lists of taxables. See Verm. Rev. Stat. 538.

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. Leç 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. Vide *Copyright.*

LITIGATION. A contest in a court of justice. 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 *Lis Pendens*.

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; Troplong, 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.

LITRE. A French measure of capacity. It is of the size of a décimètre, or one tenth part of a cubic mètre. 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. 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. c. 26, s. 4; 1 Misso. R. 553; 1 Pet. R. 508; 1 Bay's R. 107; 5 Har. & John. 158; 2 Fairf. R. 318; Dane's Abridgement, 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.

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. 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. 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 USE, or COMMODATUM, *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.

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.

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. 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. 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. 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.

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.

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.

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.

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.

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*.

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 MERCIUM VEHENDARUM, *in contracts*, a term used in the civil law, to signify the carriage of goods for hire. 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. 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 custodiæ*, 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.

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 bstween 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. See *Bailment; Hire; Hirer; 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.

LOCO PARENTIS. In the place of a parent. 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. 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 Atk. 492, takes an orphan child under his care, or supports him, he assumes the office of a parent. The law places a master in *loco parentis* in relation to his apprentice.

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 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 PŒNITENTIÆ, *contracts, crim. law.* Literally 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 completed. 2 Bro. C. R. 569; Ersk. Laws of Scotl. 290. Vide article *Attempt.*

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 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 Sumn. R. 373; 2 Sumn. 19, 78; 4 Mason, R. 544; 1 Esp. R. 427.

LOQUELA, *practice*. An imparlance. *Loquela sine die*, a respite in law to an indefinite time.

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. 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 others shall, *inter sesse*, be exempted from all liabilities for losses. Colly. Partn. 11; Gow, Partn. 9; 3 M. & Wels. 357; 5 Barn. & Ald. 954; Story, Partn. § 23.

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. 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.

Every loss is either total or partial.

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 be saved, be less than the freight. See Dougl. 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.

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. 318; 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.

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*.

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. *Salvage*; 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, occasioned by the perils enumerated in the policy, is a loss for. which the underwriters are liable. Not so, if it be occasioned 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.

LOTTERY, a scheme for the distribution of prizes by chance. In most, if not all of the United States, lotteries not specially authorised 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, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont and Virginia. In Louisiana, a license is granted to sell tickets in a lottery not authorised 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 authorised 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 follows, namely:

Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," 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 degree 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 gulph 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 hundred 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 government, 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 constitution 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 gulph 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.

The constitution of the state was adopted in convention, at New Orleans, the 22d day of the month of January, in the year of our Lord, 1812. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit, those which are legislative to one; those which are executive to another; and those which are judiciary, to another.

1st. The *legislative* power is vested in two distinct branches; the one called the house of representatives, the other the senate, and both together the general assembly of the state of Louisiana.

1. The *house of representatives* may be considered with reference to the qualifications of the electors; the qualifications of members; the number of members; the length of time for which they are elected; and the time and place of election. 1.

In all elections for representatives, every free white male citizen of the United States, who, at the time being, hath attained to the age of twenty-one years, and resided in the county in which he offers to vote for one year next preceding the election, and who in the last six months prior to the said election shall have paid a state tax, shall enjoy the rights of an elector: Provided, however, that every free white male citizen of the United States, who shall have purchased lands from the United States, shall have the right of voting whenever he shall have the other qualifications of age and residence above prescribed. Electors shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to, or returning from elections. 2. No person shall be a representative, who, at the time of his election, is not a free white male citizen of the United States, and hath not attained the age of twenty-one years, and resided in this state two years next preceding his election, and the last year thereof in the county of which he may be chosen, or in the district for which he is elected, in case the said counties may be divided into separate districts of election, and has not held for one year in the said county or district, landed property to the value of five hundred dollars, agreeably to the tax list. 3. The number of representatives is to be fixed by law, and cannot be less than twenty-five, nor more than fifty. 4. The members are elected for two years from the day of the commencement of the general election. 5. Representatives are chosen the first Monday of July, every two years. Art. 2.

2. The *senate* will be considered in the same manner that the house of representatives has been considered. 1. The qualifications of the electors of senators, is the same as those of electors of representatives. 2. No person shall be a senator who, at the time of his election, is not a citizen of the United States, and who hath not attained to the age of twenty-seven years; resided in this state four years next preceding his election, and one year in the district in which he may be chosen; and unless he holds within the same a landed property of the value of one thousand dollars agreeably to the tax list. 3. The state shall be divided into fourteen senatorial districts, which shall forever remain indivisible, as follows: the parish of St. Bernard and Plaquemine; including the country above as far as the canal (des pecheurs) on the east of the Mississippi, and on the west as far as Bernody's canal, shall form one district. The city of New Orleans, beginning at the Nuns' Plantation above, and extending below as far as the above mentioned canal, (des pecheurs) including the inhabitants of the Bayou St. John, shall form the second district. The remainder of the county of Orleans shall form the third district. The counties of German Coast, Acadia, Lafourche, Iberville, Point Coupee, Concordia, Attakapos, Oppelousas, Rapides, Natchitoches and Ouachitta, shall each form one district, and each district shall elect a senator. 4. The members of the senate are chosen for the term of four years. 5. The senators are elected biennially, one half of the members at each election. Art. 2.

2d. The supreme *executive* power of this state is vested in a chief magistrate, who is styled the governor of the state of Louisiana. 1. He is elected by the citizens entitled to vote for representatives. 2. He must be at least thirty-five years of age, and a citizen of the United States; and have been an inhabitant of this state at least six years preceding his election, and hold, in his own right,

a landed estate of five thousand dollars value, agreeably to the tax list. No member of congress, or person holding office under the United States, or minister of any religious society, is eligible to the office of governor.—3. He is elected for the term of four years, and he is ineligible for the succeeding four years, at the expiration for which he shall have been elected.—4. His election takes place at the time and place of voting for representatives and senators.—5. His powers and duties are as follows, namely; he is commander in chief of the army and navy of the state, and of the militia thereof, unless when in the service of the United States, but he cannot command personally in the field, unless he shall be advised so to do by a resolution of the general assembly. He appoints, with the consent of the senate, officers whose appointment is not otherwise provided for. May fill vacancies during the recess of the legislature. May remit fines and forfeitures, and, except in cases of impeachment, grant reprieves and pardons, with the approbation of the senate. May require information from officers of the executive department. Shall give information to the general assembly, and recommend measures he may deem expedient. Convene the general assembly at the seat of government, or any other place, when necessary in consequence of war and pestilence. May adjourn both houses when they cannot agree as to the time of adjournment, not exceeding four months. Shall take care that the laws be faithfully executed. And it shall be his duty to visit the different counties, at least once every two years. Art. 3.

In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached shall return or be acquitted.

3d. The *judicial* power of the state is distributed by the 4th article of the constitution as follows:

§ 1. The judiciary power shall be vested in a supreme court and inferior courts.

§ 2. The supreme court shall have appellate jurisdiction only, which jurisdiction shall extend to all civil cases, when the matter in dispute shall exceed the sum of three hundred dollars.

§ 3. The supreme court shall consist of not less than three judges, nor more than five; the majority of whom shall form a quorum: each of said judges shall receive a salary of five thousand dollars annually. The supreme court shall hold its sessions at the places hereinafter mentioned, and for that purpose the state is hereby divided into two districts of appellate jurisdiction, in each of which the supreme court shall administer justice, in the manner hereafter prescribed. The eastern district to consist of the counties of New Orleans, German Coast, Acadia, Lafourche, Iberville and Pointe Coupée. The western district to consist of the counties of Attakapas, Oppelousas, Rapides, Concordia, Natchitoches, and Ouachitta. The supreme court shall hold its sessions in each year, for the eastern district, in December, January, February, March, April, May, June and July; and for the western district, at the Oppelousas during the months of August, September, and October, for five years: Provided, however, that every five years, the legislature may change the place of holding said court in the western district. The said court shall appoint its own clerks.

§ 4. The legislature is authorised to establish such inferior courts as may be convenient to the administration of justice.

§ 5. The judges, both of the supreme and inferior courts, shall hold their offices during good behavour; but, for any reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of three-fourths of each house of the general assembly; Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in the address, and inserted on the journal of each house.

§ 12. The judges of all courts within this state shall, as often as it may be possible so to do, in every definite judgment, refer to the particular law, in virtue of which such judgment is founded.

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.

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. 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'Aguesseau, "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 lightening, 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-establishment 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.

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.

Medical men have doubted of the existence of a lucid interval, in which the mind was completely restored to its sane 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. Jur. of Insanity, 224; Fodéré, De Médecine Légale, tom. 1, p. 205, § 140; Georget, Des Maladies Mentales, 46; 2 Phillim. R. 90; 2 Hagg. Eccl. R. 433; 1 Phillim. 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.

LUCRI CAUSA. This is a Latin expression which signifies that the thing to which it applies is done for the sake of gain. 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 *fraudulenter*, with intent to wholly deprive the owner of the property. Russ. & Ry. 292; 2 Russ. on Cr. 92. Vide Inst. lib. 4, t. 1, s. 1.

LUGGAGE. 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. 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 compos mentis*, or *of unsound mind*. 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.

The following extract from a late work, (Stock on the Law of Non Compotes 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 coextensive 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 con-

tempt. It may find satisfaction in the most innocent folly, or draw delight from the most atrocious crime. It may lurk so deeply 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.

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 equilibrium. 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 examples 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 accurate 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."

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. Idiots, &c. (A); 1 Russ. on Crimes, 8; Shelf. on Lun. 4; Merlin, mot Démence; Fonb. Eq. Index, h. t.; 15 Vin. Ab. 131; 8 Com. Dig. 721; 1 Supp. to Ves. jr. 94, 130, 369, 404; 2 Supp. to Ves. jr. 51, 106, 151, 360; 1 Vern. 9, 137, 262; Louis. Code, tit. 9, c. 1; and articles *Lucid Interval; Lunacy.*

LYING IN GRANT. Incorporeal rights and things which cannot be transferred by livery of possession, but which exist only in idea, in contemplation of law, are said to lie in grant, and pass by the mere delivery of the deed. Vide *Grant; Livery of Seisin; Seisin.*

LYING IN WAIT, being in ambush for the purpose of murdering another. Lying in wait is evidence of deliberation and intention. Where murder is divided into degrees, as in Pennsylvania, lying in wait is such evidence of malice, that it makes the killing, when it takes place, murder in the first degree. Vide Dane's Ab. Index, h. t.

LYNCH-LAW. A common phrase used to express the vengeance of a mob, inflicting an injury, and committing an outrage upon a person suspected of some offence. In England this is called *Lidford Law.* Toml. L. Dict. art. Lidford Law.

M.

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.

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. 1, c. 2, § 12, note. Vide *Catching bargain; Post obit.*

MADE KNOWN. These words are used as a return to a *scire 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 judiciary, 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. The president of the United States is the chief magistrate of this nation; the governors are the chief magistrates of their respective states. 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 CARTA. 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. 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 derrein 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 castleguard.—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 *præcipe 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 escuage and subsidy.—38. Confirms every article of the charter. See a copy of Magna Carta 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 Carta, beginning at the passage, *Nullus liber homo capietur 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.

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. The laws of the United States have provided for the punishment of robberies or wilful injuries to the mail; the act of March 3, 1825, 3 Story's Laws, U. S. 1985, 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.

§ 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.

§ 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.

§ 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. 3 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. 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.

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.

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 & 2.

3. The *judicial* power of the state is distributed by the 6th article of the constitution as follows:

§ 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.

§ 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.

§ 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.

§ 4. All judicial officers, except justices of the peace, shall hold their offices during good behaviour, but not beyond the age of seventy years.

§ 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.

§ 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*. 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 *pris ove maynovere*, or *ove 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. 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. Mainprise differs from bail in this, that a man's mainpernors are barely 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. 231; 7 Mod. 77, 85, 98; Ld. Raym. 706; 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. 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. Bac. Ab. Maintenance; Bro. Maintenance. This offence is punishable by fine and imprisonment. 4 Black. Com. 124; 2 Swift's Dig. 328; Bac. 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; Bac. 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.

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.

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.) 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. 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. 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.

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. This offence is a great 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. See forms of indictment for mala praxis, 3 Chitty Crim. Law, 863; 4 Wentw. 360; Vet. Int. 231; Trem. P. C. 242. Vide also, 2 Russ. on Cr. 288; 1 Chit. Pr. 43; Com. Dig. Physician; Vin. Ab. Physician.

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. 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. 3. Ignorant malpractice, which is the admin-

istration 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. See M. & Rob. 107; 1 Saund. 312, n. 2; 1 Ld. Raym. 213; 1 Briand, Méd. Lég. 50.

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.

MALEFICIUM, *civil law.* Waste, damage, torts, injury. Dig. 5, 18, 1.

MALFEASANCE, *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, happen to eat it, and die, A will be guilty of murdering C with malice aforethought. Bac. Max. Reg. 15; 2 Chit. Cr. Law, 727; 3 Chit. Cr. Law, 1104. 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. 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. 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 without a just cause. This term, as applied to torts, does not 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. 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. 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. 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 ABANDONMENT. 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.

MALICIOUS PROSECUTION, or MALICIOUS ARREST, *torts*, or *remedies*. These terms import a wanton prosecution or arrest, made without cause, by *regular* process and proceeding, which the facts did not warrant, as appears by the result; for example, when the warrant to imprison the party was perfectly regular and proper, but he was innocent of the supposed crime and was ultimately acquitted; or when there was a sufficient affidavit to hold to bail, and a valid writ, but when, in fact, no debt was due, and so established on the trial or determination of the suit. The compensation for imprisonment under colour of regular criminal or civil process is by action on the case and is subjected to certain qualifications, even if it turn out, in the result of the prosecution, that the party imprisoned be acquitted, or that in an action he obtain a verdict or nonsuit, it does not necessarily follow that he can recover a compensation for the intervening imprisonment. To entitle the plaintiff to recover, it must be established that the defendant had no *probable cause* or reasonable ground, for instituting the original prosecution or action. There is a difference between a false imprisonment, which means an imprisonment made without any process whatever, or under colour of process wholly illegal. Vide Gilb. L. & T. 185; 12 Mod. 208; 1 T. R. 493 to 551; 1 Saund. 228; Bull. N. P. 11; Chit. Bl. Com. 126, n. 21; *Probable causes; Regular and irregular process.*

MALUM IN SE. Evil in itself. 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 sesse. 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 corruption, exactions, extortions, and larceny. Merl. Répert. 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 *sub-*

ject." 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. 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 acceptation 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 authorised to manage its affairs. 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. The persons appointed on the part of the house of representatives to prosecute impeachments before the senate are called managers.

MANBOTE. In a barbarous age, when impunity could be purchased with money the compensation which was paid for homicide was called manbote.

MANDAMUS, *practice*, is the name of a writ, the principal word of which when the proceedings were in Latin, was *mandamus, we command* 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. This writ 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. 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.

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, authorising 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 constitu-

tion, and void. 1 Cranch, R. 175. 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.; and the article *Courts of the United States*.

MANDANT. The principal in the contract of mandate is so called. Story, Ag. § 337.

MANDATARY, *in contracts*, is the person who undertakes to perform a mandate. Jones's Bailm. 53; Story on Bailm. § 138. Dr. Halifax calls him mandatee. Halif. Anal. Civ. Law, 70, §§ 16, 17. It is the duty of a mere mandatary, 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. 373; 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.

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, § 2. 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.

As to the degree of diligence which the mandatary is bound to exercise, see *Mandatary; Negligence;* Pothier, Mandat, h. t.; Louis. Code, tit. 15; Code Civ. tit. 13, c. 2; Story on Bailm. § 163 to 195.

As to the duties and obligations of the mandator, see Story on Bailm.

§ 196 to 201; Code Civ. tit. 13, c. 3; Louis. Code, tit. 15, c. 4.

The contract of mandate may be dissolved in various ways: 1. It may be dissolved by the mandatary 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 mandator. 2. It may be dissolved by the death of the mandatary; 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. 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 mandatary 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. 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 mandatary. Story on Bailm. §§ 204, 205. 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. 4. It may be dissolved by a revocation of the authority, either by operation of law, or by the act of the mandator. 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. So, if the mandator sells the property, it ceases upon the sale, if it is made known to the mandatary. 7 Ves. jr. 276; Story on Bailm. § 207. 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. 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.

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.

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.

§ 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.* 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 calmness, 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 derangement in this form of mania is not confined to the intellectual faculties, but not unfrequently extends to the moral powers of the mind.

2dly. Partial intellectual mania is generally known by the name of *monomania,* (q. v.) In its most usual and simplest form, the patient has imbibed 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.

2. 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. 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 charac-

ter; 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 gesticulation, 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, Pract. Obs. on Insanity; see cases of this kind of madness cited in Ray, Med. Jur. § 112 to 119; Combe's Moral Philos. lect. 12.

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 impropriety 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.

§ 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 Addams, R. 79; 1 Litt. R. 371.

MANIA A POTU. Vide *Delirium Tremens.*

MANIFEST, *com. law*, is a written instrument containing a true account of the cargo of a ship or commercial vessel. 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 manfest 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, whether leaguer, pipe, butt, puncheon, hogshead, 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 teas, 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. The want of a manifest, where one is required, or when it is false, is severely punished.

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 Pennsyl. 195.

MANSION. This term is synonymous with house, (q. v.) 1 Chit. Pr. 167; 2 T. R. 502; 1 Tho. Co. Litt. 215, n. 35; 9 B. & C. 681; S. C. 17 E. C. L. R. 472, and the cases there cited; Com. Dig. Justices, P 5; 3 Serg. & Rawle, 199. A portion only of a building may come under the description of a mansion-house. 1 Leach, 89, 428; 1 East, P. C. c. 15, s. 19.

MANSLAUGHTER, *crim. law*, is the unlawful killing of another without malice either express or implied. 4 Bl. Com. 190; 1 Hale, P. C. 466; the distinctions between manslaughter and murder consist in the following. In the former though the act which occasions the death be unlawful, or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter. 1 East, P. C. 218; Foster, 290. It also differs from murder in this, that there can be no accessaries before the fact, there having been no time for premeditation. 1 Hale, P. C. 437; 1 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. 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.—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, 132; 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.—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. 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. 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. 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. 632; 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 im-

port. Dane's Ab. ch. 132, a. 6; ch. 203, a. 12.

MANU OPERA. This has the same meaning with mannopus, (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 mainpernors, (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.

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. 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.

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*. Leç. El. Dr. Rom. § 94.

MANUSCRIPT. A writing; a writing which has never been printed. 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 authorises the courts to enjoin the publisher. See *Copy-right*. The rights of the author to his manuscripts, at common law, cannot be contested. 4 Burr. 2396. These rights will be considered as abandoned if the author publishes his manuscripts, without securing the copy-right under the acts of congress. See *Copy-right*.

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.

MARCHES, *Engl. 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 appled 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 jurists among other things, charter parties, affreightments, marine hypothecations, 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, Pret 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. Vide *Seamen; Shipping articles.*

MARITAGIUM. Anciently that portion which was given with a daughter in marriage. 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.

MARITAL. What belongs to marriage; as marital rights, marital duties. 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. Contr. 424; 1 Vern. 408; 2 Vern. 17; 2 P. Wms. 357, 674; 2 Bro. C. C. 345.

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 *Bottomry; 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 mark is two-thirds of a pound sterling, or 13*s.* 4*d.*, and the Scotch mark is of equal value in Scotch money of account. Encyc. Amer. h. t.

MARK BANCO, *comm. law*, a denomination of money of Hamburg. It is to be computed in the ad valorem duty upon goods at thirty-three and one-third cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign Coins.*

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. Markets are generally regulated by local laws. 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. In London every day except Sunday, is market day. In the country particular days are fixed for market days. 2 Bl. Com. 449. It is a general rule that sales of vendible articles made in market overt, 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. There is no law recognising the effect of a sale in market overt in Pennsylvania, 3 Yeates, R. 347; 5 Serg. & Rawle, 130; 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.

MARQUE AND REPRISAL. 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. Parer. 359; Stair, Inst. tit. 4, s. 1; Shelford on Mar. and Div. c. 1, s. 1.

To make a valid marriage, the parties must be willing to contract, able to contract, and have actually contracted.

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. There is no will when there is error in the 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. Poynt. on Marr. and Div. ch. 9. 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 Mar. and Div. 199; 2 Hagg. Cons. R. 246.

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. 1. The previous marriage of the party to another person who is still living.—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 Poynt. on Mar. and Div. ch. 7.—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.—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.

3. The parties must not only be willing and able, but *must have actually contracted* in due form of law. 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; Dougl. 171; Burr. Settl. Cas. 509; 1 Dow, 148; 2 Dow, 482; 4 John. 2; 18 John. R. 346; 6 Binn. 405; 1 Penna. R. 452; 2 Watts, R. 9. 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 regulation. 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; 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 authorised 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 recognised 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 authorised to celebrate marriage. 6 L. R. 470.

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.

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.

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*. 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; 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; Dougl. 174; Cowp. 594; 3 Swans. R. 400; 8 S. & R. 159; 2 Hayw. R. 3; 1 Taylor, R. 121; 1 H. & McH. 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. Cowp. 591; 6 T. R. 330.

The civil effects of marriage are the following; 1. It confirms all matrimonial agreements between the parties. 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. 3. It creates the civil affinity which each contract towards the relations of the other. 4. It gives the husband marital authority over the person of his wife. 5. The wife ac-

quires thereby the name of her husband, as they are considered as but one, of which he is the head: *erunt duo in carne unâ*. 6. In general the wife follows the condition of her husband. 7. The wife, on her marriage, loses her domicil and gains that of her husband. 8. One of the effects of marriage is to give paternal power over the issue. 9. The children acquire the domicil of their father. 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. 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 Sell. Pr. 194; Ayl. Parergon, 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 contract de Marriage; Toullier, h. t.; Chit. Pract. Index, h. t.; Dane's Ab. Index, h. t.; Burge on the Confl. of Laws, Index, h. t.

MARRIAGE BROKAGE. By this expression is meant the act by which a person interferes 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. 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 Fonb. Eq. B. 1, ch. 4, s. 10, note (s); 1 Story, Eq. Jur. § 263; Newl. on Contr. 469.

MARRIAGE PORTION. Vide *Dowry*.

MARRIAGE, PROMISE OF.—Vide *Promise of Marriage*.

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.

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."

§ 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 authorised 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.

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.

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.

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.

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.

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.

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 du-

ties of marshals in procuring prisons, and detaining and keeping prisoners.

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.*

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. Wms. 680.

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. 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 specialty 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. 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. 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 Chalmer's Annals, 203. 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. 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 abolished, unless a bill so to alter, change or abolish the same shall pass the general assembly, and be published 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." 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. The powers of the government are distributed into the legislative, the executive, and the judicial.

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.

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, Amend. art. 17, s. 2.

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. The musculine 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 Testamens 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.

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 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.—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. The style and name of the state is *The Commonwealth of Massachusetts.* The government is distributed into a legislative, executive and judicial power.

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.—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.—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.

2d. The *executive* power is vested in a governor, lieutenant governor and council. 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. —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 & 3.—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.

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.

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.

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.

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.

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. Master is one who is employed in teaching children, known generally as a school master; as to his powers, see *Correction*.—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. 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. Vide *Agent; Agency; Driver; Servant.*

MASTER IN CHANCERY, is an officer of the court of chancery. 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. In England there are two kinds of masters in chancery, the ordinary, and the extraordinary. 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.—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 Maister of the Chauncerie.

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. 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.) 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. He has the right to sue in the admiralty as a common mariner for wages. 1 Pet. Adm. Dec. 246. 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.

MATERIALITY. That which is important; that which is not merely of form but of substance. When a bill for discovery has been filed, for example, the defendant must answer every material 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.

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 *Perjury.*

MATERIALS. Every thing employed in constructing. 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. 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.

MATRIMONIUM. By this word is understood the inheritance descending to a man, *ex parti matris*. It is but little used. 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.

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 *Estoppel*.

MAXIM. Is a rule or principle of law universally admitted, as being just and consonant with reason. Maxims are in law somewhat like axioms in geometry. 1 Bl. Comm. 68; Co. Litt. 11, 67. 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.

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 quæ rem, quæ est, breviter enarat*. 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.

MAY. To be permitted; to be at liberty; to have the power. 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. 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. These and other severe personal injuries are punished by the Coventry act, (q. v.) which has been re-enacted in substance in several of the states. Ryan's Med. Jurispr. 191, Philad. ed. 1832; and by con-

gress, 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.

MAYOR, *officer*. The chief or executive magistrate of a city who bears this title. 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. 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. 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. 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.

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
5½ yards = 1 rod or pole
40 poles = 1 furlong
8 furlongs = 1 mile
69 $\frac{1}{12}$ 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 eighths. 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 = 2¼ 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 $\frac{92}{100}$ inches.
1 chain = 100 links.

2. MEASURES OF SURFACE.

144 square inches=1 square foot
9 square feet=1 square yard
30¼ square yards=1 perch or rod
40 perches=1 rood
4 roods or 160 perches=1 acre
640 acres=1 square mile.

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=34⅔ cubic in. nearly.
2 pints=1 quart=69⅓ " " "
4 quarts=1 gallon=277¼ " " "
2 gallons=1 peck=554½ " " "
8 gallons=1 bushel=2218 " "
8 bushels=1 quarter=10¼ cubic ft. [nearly.
5 quarters=1 load=51¼ cub. 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, runlet, 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 guage 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=2815½ " "
3 bushels=1 sack=4⅘ cubic feet, [nearly.
12 sacks=1 chaldron=58⅔ " "

4. MEASURES OF WEIGHTS.

See art. *Weights.*

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.

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.

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.

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 lineal measure and is equal to 3 feet, 0 inches, $11\frac{44}{100}$ lines, Paris measure, or 3 feet, 3 inches, $\frac{370}{1000}$ 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.

The *litre*. This is the *decimètre;* or one-tenth part of a 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.

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.

The *are*, 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.

The *stère* used in measuring firewood. 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, hundreth, &c. of such a cube.

6. MONEY.

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 *decime*, and its hundredth part a *centime*.

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.

It has already been stated, that the divisions of these measures are all uniform, namely by tens, or decimal fraction, 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.

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 *déci*, for tenth, *centi*, for hundredth, and *milli*, for thousandth. They are thus expressed, a décimètre, a décilitre, a decigramme, a décistère, a déciare, 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.

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 *décalitre*, &c.; a *hectomètre*, a *hectogramme*, &c.; a *kilomètre*, a *kilogramme*, &c.

The following table will facilitate the reduction of these weights and measures into our own.

The *Mètre*, is 3.28 feet, or 39.371 in.
Are, is 1076.441 square feet.
Litre, is 61.028 cubic inches.
Stère, is 35.317 cubic feet.
Gramme, is 15.4441 grains troy, or 5.6481 drams, avoirdupois.

MEAN. This word is sometimes used for mesne, (q. v.)

MEASON-DUE. A corruption of *Maison de Dieu*, (q. v.)

MEDIATE POWERS, are those incident 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. 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, Fal-

ret, Trebuchet, Marc, and others have written treatises or published papers on this subject; the learned Foderé published a work entitled "Les Lois eclairées par les sciences physiques, ou Traité de Médécine Legale et d'hygiène publique;" the "Annale d'hygiène et de Mêdecine 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. 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. 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; Bac. Ab. Juries, (E 8).

MELANCHOLIA, *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*.

MELIUS INQUIRENDUM VEL INQUIRENDO, in English practice, is a writ which in certain cases issues after an imperfect inquisition returned on a *capias utlugatum* in outlawry. This *melius inquirendum* commands the sheriff to summon an-

other 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 defence. See *Limbs.* 2. An individual who belongs to a firm, partnership, company or corporation. Vide *Corporation; Partnership.* 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. 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.) They are authorised to frank letters and receive them free of postage for sixty days before, during, and for sixty days after the session. 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. 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.

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. 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 Lun. Intr. 29, 30. 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. 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. 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 necessaries for livelihood. *Obsolete*.

MENSA ET THORO. The phrase *à mensa et thoro* is applied to a divorce which separates the husband and wife, but does not dissolve the marriage. Vide *Divorce*.

MERCHANDISE. 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.

MERCHANT, is one whose business it is to buy and sell merchandise; this applies to all persons who habitually trade in merchandise. 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. 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, 2 Salk. R. 445; Bac. Ab. h. t.; Com. Dig. h. t.; 1 Bl. Com. 75, 260.

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 merchandize between merchant and merchant, their factors or servants. This exception, it has been holden, 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. 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. 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, *crim. law.* When a man commits a great crime which includes a lesser, the latter is merged in the former. 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. 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. When there is a confusion of rights and the debtor and creditor becomes the same person, there can be no right to put in exertion; 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. 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; Lofft, 88; 2 T. R. 750; 3 Greenl. 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; Ib. 336. Vide *Civil Remedy; Injury.* 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. 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.

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 extremes, that part between the commencement and the end, as it relates to time. 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 process,* (q. v.) In England the word mesne also applies to a dignity: those persons who hold lordships or manors of some superior who is called lord paramount, and grant the same to inferior persons, they are called mesne lords.

MESNE PROCESS. See *Process, mesne.*

MESNE PROFITS, *torts, remedies,* are the value of the premises, recovered in ejectment, during the time that the lessor of the plaintiff has been illegally kept out of the possession of his estate, by the defendant; such are properly recovered by an action of trespass, *quare clausum fregit,* after a recovery in ejectment. 11 Serg. & Rawle, 55; Bac. Ab. Ejectment, H; 3 Bl. Com. 205. 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. 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 improvements. 2 W. C. C. R. 165. Vide, generally, Bac. Ab. Ejectment, H; Woodf. L. & T. ch. 14, s. 3; 2 Sell. Pr. 140; Foubl. 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.

MESSENGER. A person appointed to perform certain duties, generally of a ministerial character. In England, a messenger appointed under the bankrupt laws is an officer who is authorised 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 appurtenances, 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, 321; 2 T. R. 502; 1 Tho. Co. Litt. 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 Salk. 256; 8 B. & Cress. 25; S. C. 15 Engl. Com. L. Rep. 151. Et vide 3 Wils. 141; 2 Bl. Rep. 726.

METHOD. The mode of operating or the means of attaining an object. 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 Burr. 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. This is the standard of French measure. 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 of the length of the mètre. The mètre is equal to 3.28 feet, or 39.371 inches. Vide *Measure*.

MICEL GEMOT, *Eng. law*. In Saxon times, the great council of the nation bore this name, sometimes also called the *witena gemot*, or assembly of wise men; in aftertimes, this assembly assumed the name of parliament. Vide 1 Bl. Commentar. 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."

The constitution of this state was adopted by a convention of the people, begun and held at the capitol 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, ex-

cept in such cases as are expressly provided for in this constitution.

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.

§ 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.

§ 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.

§ 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.

§ 11. Each house shall determine the rules of its proceeding, 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.

§ 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.

§ 13. In all elections by either or both houses, the votes shall be given *viva voce;* and all votes on nominations made to the senate shall be taken by yeas and nays, and published with the journals of its proceedings.

§ 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.

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.

1. The representatives must be citizens of the United States, and qualified 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 entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of the state at the time of the signing of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the district, 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 representatives 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.

2d. The *senate* will be considered 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 representatives. Art. 2, s. 1.—3. The senate shall, at all times, equal in number one-third of the house of representatives, 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.

2. The *executive* department is regulated by the fifth article of the constitution as follows, namely:

§ 1. The supreme executive power shall be vested in a governor, who shall hold his office for two years; and a lieutenant-governor shall be chosen at the same time and for the same term.

§ 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.

§ 3. The governor and lieutenant-governor shall be elected by the electors at the times and places of choosing members of the legislature. The persons having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more have an equal and the highest number of votes for governor or lieutenant-governor, the legislature shall by joint vote choose one of the said persons, so having an equal and the highest number of votes for governor or lieutenant-governor.

§ 4. The returns of every election for governor and lieutenant-governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses.

§ 5. The governor shall be commander-in-chief of the militia, and of the army and navy of this state.

§ 6. He shall transact all executive business with the officers of government, 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.

§ 7. He shall take care that the laws be faithfully executed.

§ 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.

§ 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.

§ 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.

§ 11. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

§ 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.

§ 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.

§ 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.

§ 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.

§ 16. No member of congress, nor any other person holding office under the United States, or this state, shall execute the office of governor.

§ 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.

§ 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.

§ 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.

§ 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.

§ 21. All grants and commissions shall be in the name, and by the authority, of the people of the state of Michigan.

3. The *judicial* department is regulated by the sixth article as follows, namely:

§ 1. The judicial power shall be vested in one supreme court, and in such other courts as the legislature may from time to time establish.

§ 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 profit or trust under the authority of this state, or of the United States.

§ 3. A court of probate shall be established in each of the organized counties.

§ 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.

§ 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.

§ 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. 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 *accoucheuse*. 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. 19 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. 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. 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. The constitution of the United States provides on this subject as follows:

Art. 1, 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.

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 author-

ity of training the militia, according to the discipline prescribed by congress.

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.

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.

3. It is presumable the framers of the constitution contemplated a full exercise of all the powers of organising, 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.

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.

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.

6. The same legislating power may impose cumulative punishments; but not different legislating powers.

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.

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.

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.

The acts of the national legislature 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. 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. 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. 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. 168; S. C. 1 Brod. & Bing. 506. In England the law appears not to be settled, 1 Bell's Com. 754, note 4, 5th ed. In this note are given the opinions of Sir Samuel Romilly and Mr. Leech, on a question whether a mortgage of a piece of land on which a mill was erected, would operate as a mortgage of the machinery. Sir Samuel was clearly of opinion that such a mortgage would bind the machinery, and Mr. Leech was of a directly opposite opinion. The American law on this subject, appears not to be entirely fixed. 1 Hill. Ab. 16; 1 Bailey's R. 540; 3 Kent, Com. 440; see Amos & Fer. on Fixt. 188, et seq.; 1 Atk. 165; 1 Ves. 348; Sugd. Vend. 30; 6 John. 5; 10 Serg. & Rawle, 63; 2 Watts & Serg. 88. Vide 15 Vin. Ab. 398; Dane's Ab. Index, h. t.

MILL, *money*, is an imaginary money, of which ten are equal to one cent, one hundred equal to a dime, and one thousand equal to a dollar. There is no coin of this denomination. Vide *Coin; Money.*

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.

MILREE, *com. law*, a denomination of money of Portugal. In the computation of ad valorem duties on goods, &c. it is valued at one dollar and twenty-four cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign coins*.

MINE. An excavation made for obtaining minerals from the bowels of the earth; and the minerals themselves are known by the name of mine. 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. 388; 3 Tho. Co. Litt. 237; 10 Pick. R. 460. A mine not opened, cannot be opened by a tenant for years unless authorised, nor even a tenant for life, without being guilty of waste. 5 Co. 12. 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.

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.

§ 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.

§ 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.

§ 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.

§ 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 writ-

ing, 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.

§ 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.

§ 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 land 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. Ministers are responsible to the king or other supreme magistrate who has appointed them.

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. 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. 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.

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, (auprès 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; Protocol du Congrès d'Aix la Chapelle, du 21 Novembre, 1818; Wheat. Intern. Law, pt. 3, c. 1, § 6.

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.

§ 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 hereinbefore 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 authorised to make such appointments, which shall be submitted to the senate at the next session thereafter, for their advice and consent; and no compensation 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 authorise any appointment of a secretary to any chargé des affaires, or to any consul residing on the Barbary coast, or to sanction any claim against the United States for expense incident to the same, any usage or custom to the contrary notwithstanding. 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. Ministers are authorised 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.

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. 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 au-

thority of the government of the United States. 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. 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. 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. 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. 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 1642, 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.

MIS. A syllable which prefixed to some word signifies some fault or defect; as, misadventure, misprision, mistrial, and the like.

MISADVENTURE, *crim. law, torts*, is an accident by which an injury occurs to another. 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.

MISCARRIAGE, *med. jurisp.* 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 fœtus at any time before birth, is termed in law procuring miscarriage. Chit. Med. Jur. 410; 2 Dunglison's Human Physiology, 364. Vide *Abortion; Fœtus.*

MISCOGNISANT. 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 acceptation 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. 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. And see *Offence.*

MISDIRECTION, *practice,* is an error made by a judge in charging the jury in a special case. Such misdirection is either in relation to matters of law or matters of fact. 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. 269; 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.—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 M'Cl. & Y. 286.—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. 338; 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. 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 damna sua* for such value, and *pro misis et custagiis* 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. 5eme part., ch. 1, § 1; Louis. Code, 2935.

MISERICORDIA, mercy. An arbitrary or discretionary amercement. To be in mercy, is to be liable to such punishment as the judge may in his discretion inflict.

MISFEASANCE, *torts, contracts,* is the performance of an act which might lawfully be done, in an

improper manner, by which another person receives an injury. It differs from malfeasance, (q. v.) or nonfeasance, (q. v.) Vide, generally, 2 Vin. Ab. 35; 2 Kent, Com. 443; Doct. Pl. 62; Story, Bail. § 9. 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.

MISJOINDER, *pleading*. Misjoinder 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; 2 Serg. & Rawle, 358; Dane's Ab. Index, h. t. Misjoinder of parties, consists in joining as plaintiffs or defendants, persons who have not a joint interest. When the misjoinder 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. When in actions *in 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. 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. Misnomers may be considered with regard to contracts, to devises and bequests, and to suits or actions. 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.—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," 1000*l*. 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, l. 4, t. 2, s. 1, n.

22; 1 Rop. Leg. 131.—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; Coxe, 138; 6 Munf. 219; 2 Wash. C. C. R. 200; 2 Penna. R. 984; 5 Halst. R. 295; 1 Pen. R. 75, 137; 6 Munf. 580; 3 Caines, 170; 1 Tayl. R. 148; 8 Yerg. 101; Harp. R. 49; 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. 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. Rosc. 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; Archb. Civ. Pl. 305; 1 Metc. & Perk. Dig. Abatement, V; and this Dictionary, ***Abatement; Contracts; Parties to Contracts; Parties to Actions.***

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 misprision is contained in every treason or felony whatever. 2. In its narrower sense it is the concealment of a crime. ***Misprision 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. ***Misprision 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; for if any aid be given him, the party becomes an accessary after the fact. 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 misprision. 1 Russ. on Cr. 43; Hawk. P. C. c. 59, s. 6; Ib. Book 1, c. 5, s. 1; 4 Bl. Com. 119. Misprisions which are merely positive, are denominated contempts 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. 537.

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. 5, 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. 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 misrepresention which will make a party liable; when a mere misstatement of a fact has been erroneously made, without fraud, in a casual, improvident communication, respecting 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; 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 Bulstr. 93; 6 Ves. 183; 3 Ves. & Bea. 110; 4 Dall. R. 250. Vide *Concealment; Representation.*

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. 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 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."—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.

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.

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.

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."

The following regulations contained in the third article of the constitution apply to both branches of the legislature.

§ 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 necessa-

ry for a branch of the legislature of a free and independent state.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 24. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

§ 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.

§ 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.

§ 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.

§ 28. No person who hath heretofore 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.

§ 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.

§ 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.

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 qualification 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.

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.

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.

§ 2. The high court of errors and appeals shall consist of three judges, any two of whom shall form a quo-

rum. 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.

§ 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.

§ 4. The high court of errors and appeals shall have no jurisdiction, but such as properly belongs to a court of errors and appeals.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 13. The state shall be divided into convenient districts, and each district shall contain not less than three nor more than twelve counties.

§ 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.

§ 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.

§ 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.

§ 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."

§ 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 idiotcy 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 the qualified voters of their respective districts, whose compensation and term of service shall be prescribed by law.

§ 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.

§ 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 vote on such address shall be taken by yeas and nays, and entered on the journals of each house.

§ 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.

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. 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.—2. The governor shall be elected by the qualified electors of the state. Art. 5, s. 2.—3. He shall hold his office for two years from the time of his installation. Art. 5, s. 1.—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.—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.—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.—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.—8. He shall from time to time give to the legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient. Art. 5, s. 8.—9. He shall take care that the laws be faithfully executed. Art. 5, s. 9.—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.—11. All commissions shall be in the name and by the authority of the state of Mississip-

pi; 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. Article 5, s. 15 and 16. —5. 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.

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. 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.'" The powers of the government are divided into three distinct departments, each of which is confided to a separate magistracy. Art. 2.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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. In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 Atk. 203; Mitf. Pl. 116; 4 Vin. Ab. 277; 13 Vin. Ab. 41; 18 E. Com. Law Reps. 14; 8 Com. Digest, 75; Madd. 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*. 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. 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. 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. 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. 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. 278; 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 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 PROPERTY, is that kind of property which is not altogether real nor personal, but a compound of both. Heir-looms, 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 Engl. 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. 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 Ass & 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 behaviour of a single individual. Alison, Prin. Cr. Law of Scotl. c. 23, p. 509.

MODEL. A machine made on a small scale to show the manner in which it is to be worked or employed. 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. 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. Their legal effect is to put in issue all material circumstances and no other, they may therefore be always used with safety. 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; Hardr. 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.

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. 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.

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 commonty, or of controverted marches. Ersk. Prin. B. 4, t. 1, n. 24.

MOLITER MANUS IMPOSUIT, *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, *molitur manus imposuit.* This plea may be used whenever the defendant laid hold of the plaintiff to prevent his committing a breach of the peace. 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.

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 Pardess. n. 22. 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. 395; and negociable notes, 3 Mass. 405; will be so considered. The constitution of the United States has vested in congress the power "to coin money, and regulate the value thereof." Art. 1, s. 8. 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-fifth 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-fifth parts of a grain of standard, silver. Cents: each to be of the value of the one-hundreth 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.

§ 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.

§ 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.

§ 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.

§ 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 hun-

dred 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.

2. Act of June 28, 1834, 4 Sharsw. cont. of Story's Laws U. S. 2376.

§ 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.

§ 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, deducting 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.

§ 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.

3. Act of January 18, 1837, 4 Sharsw. cont. of Story's Laws U. S. 2524.

§ 9. That of 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.

§ 10. That of 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.

§ 11. That the silver coins heretofore 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.

§ 12. That of 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.

§ 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.

§ 38. That all acts or parts of acts heretofore 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.

4. Act of March 3, 1825, 3 Story's L. U. S. 2005.

§ 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, forging, 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.

§ 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.

MONEY BILLS, *legislation*, are bills or projects of laws providing for raising revenue, and for making grants or appropriations of the public treasure. 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 con-

cur with amendments, as on other bills." Vide Story on the Const. § 871 to 877. 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.

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.). 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. 182; 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.

MONITION, *pratice.* 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. 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.—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.—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.

MONOMANIA, *med. jur.*, is insanity only upon a particular subject, and with a single delusion of the mind. 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, § 203; 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. de la 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, all combinations among merchants to raise the price of merchandise to the injury of the public, is also said to be a monopoly; 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. 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. Dunglisson's Human Physiol. vol. 2, p. 422. 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. No living human birth, however much it may differ from human shape, can be lawfully destroyed. Traill, Med. Jur. 47; see Briand, Méd. Lég. 1ere part. c. 6, art. 2, § 3.

MONTH, is a space of time variously computed, as it is applied to astronomical, civil or solar, or lunar months. 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. 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. 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. 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. 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. 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; Dougl. R. 446, 463. 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 computed by the calendar. 3 Burr. R. 1455; 1 M. & S. 111.

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, 465; 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; 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 land marks established for the purpose of ascertaining boundaries. 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. 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. 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 morâ, 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 Morâ.

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 manaical hallucination. Prichard, art. Insanity, in Cyclopædia of Practical Medicine. It is contended that some human beings exist, who in consequenee 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. 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 irrascibility. 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 Beck, 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 plebian 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 Marriage, part. 1, c. 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, conveyancing.* 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.

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.

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. It is an universal rule in equity that once a mortgage, always a mortgage. 2 Cowen, R. 324; 1 Yeates, R. 534; every attempt, therefore, to defeat the equity of redemption must fail. See *Equity of Redemption.* 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. 152; 12 Mass. 456. 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. 183, 268, 394; Prec. Ch. 95; 1 Wash. R. 126; 2 Mass. R. 493; 4 John. R. 186; 2 Cain. Er. 124. 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. 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.

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 a equitable mortgage. 1 Rawle, Rep. 328; 5 Wheat. R. 284; 1 Cox's Rep. 211. 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.

A mortgage of goods is distinguishable from a mere pawn. 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. Vide, generally, Powell on Mortgages; Cruise, Dig. tit. 15; Viner, Ab. h. t.; Bac. Ab. h. t.; Com. Dig. h. 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. 297; 5 Greenl. 96; 14 Pick. 497; 3 Wend. 348; 2 Hall, 63; 2 Leigh, 401; 15 Wend. 244. 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. 56; 2 Ball & Beat. 274. In cases of doubt, however, courts of equity will always lean in favour of a mortgage. 7 Cranch, R. 237; 2 Desaus. 564.

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. Mortgage is conventional, legal or judicial. 1st. 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.—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 absentees, 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.—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.

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.

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. 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. 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 mortgagee. As between the mortgagor and third persons, the mortgagor is owner of the land. Dougl. 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. He can, however, do nothing which will defeat the rights of the mortgagee, as, to make a lease to bind him. Dougl. 21. Vide *Mortgagee*; 2 Jac. & Walk. 194.

MORTMAIN, is an 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.

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.

MOTHER, *domestic relations.* A woman who has a child. 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. 366; 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. 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. 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. 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.

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. 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 Sell. Pr. 356; 15 Vin. Ab. 495; Grah. Pr. 542; Smith's Ch. Pr. Index, h. t.

MOTIVE, *contracts*, is the cause or reason why a contract is made. 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. Vente, 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 Titl. 144. Vide *Cause; Consideration.*

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. 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.

MOVABLES, *estates*, are such subjects of property as attend a man's person wherever he goes, in contradiction to things immovable, (q. v.) 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. Movables 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.

MULCT, *punishment*. A fine imposed on conviction of an offence.

MULCT, *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 marriageable virgin, and in other cases the word *mulier* is employed in opposition to *virgo*. Poth. Pand. tom. 22, h. t. In its most proper signification it means a wife. 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. 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; 18 Ves. 80; Hardr. R. 337; 4 Cowen's R. 682. In order to prevent confusion in its pleadings and decrees, a court of equity will anxiously discountenance 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.

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

quantity of grain or meal payable to the proprietor of the mill, or to the multurer, his tacksman. Ersk. Prin. Laws of Scotl. B. 2, to 9, n. 12.

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 thence 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. Termes de la Ley, h. t.; 3 Inst. 170.

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 a 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." This definition, which has been adopted by Blackstone, 4 Com. 195, Chitty, 2 Cr. Law, 724, and others, has been severely and perhaps justly criticised. 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 indiscretion 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. 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. 431; 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; fœticide (q. v.) would not be such a killing; he must have been *in rerum naturâ*;—4, malice, either express or implied. It is the circumstance which distinguished murder from every description of homicide. Vide art. *Malice*.

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

perpretration 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.

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.

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; Rosc. 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. When a man was thus killed, and he was unknown, by the laws of Canute he was presumed a Dane, and the vill 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. 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*.

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.

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 Paine'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, 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. 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. 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. 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. 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.

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.

MUTE, *persons.* One who is dumb; vide *Deaf and Dumb.*

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. 130.

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.) 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 any 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. 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 assem-

bly, 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 connive 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. 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. 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 Rosc. Civ. Ev. 261.

A distinction has been made between mutual debts and mutual credits. The former term is more limited in its signification than the latter. In bankrupt 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.

MUTUARY, *contracts.* A person who borrows personal chattels to be consumed 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 consumed, and are to be replaced by other corn, wine, or money. Story on Bailm. § 228; Louis. Code, tit. 12, c. 2; Ayliffe's Pand. 481; Poth. Pand. tom. 22, h. t.; Dane's Ab. Index, h. t. It is of the essence of this contract, 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 *mêtier*, a trade. In law it signifies a trade, art, or occupation. 2 Inst. 668. Masters frequently bind themselves in the indentures with their apprentices to teach them their art, trade, and *mystery*. Vide 2 Hawk. c. 23, s. 11.

N.

NAIL. A measure of length, equal to two inches and a quarter. Vide *Measure*.

NAME, is one or more words used to distinguish a particular individual, as Socrates, Benjamin Franklin. Names are divided into Christian names, as, Benjamin, and surnames, as, Franklin. No man can have more than one Christian name, 1 Ld. Raym. 562; Bac. Ab. Misnomer, A; though two or more names usually kept separate, as John and Peter, may undoubtedly be compounded, 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. Misnomer, C 6, pl. 5 and 6; Com. Dig. Indictment, G 1, note (u); Willes, R. 654; Bac. Abr. Misnomer and Addition; 3 Chit. Pr. 164 to 173; 1 Young, R. 602. 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. 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. As to names which have the same sound, see Bac. Ab. Misnomer, A; 7 Serg. & Rawle, 479; Hammond's Analysis of Pleading, 89; 10 East, R. 83; and article *Idem Sonans*. 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 Rop. Leg. 102; 3 M. & S. 453; Com. Dig. G 1, note (x). As to the omission or mistake of the name of a legatee, see 1 Rop. Leg. 132, 147; 1 Supp. to Ves. Jr. 81, 82; 6 Ves. 42; 1 P. Wms. 425; Jacob's R. 464. Vide, generally, 13 Vin. Ab. 13; 15 Vin. Ab. 595; Dane's Ab. Index, h. t.; Roper on Leg. Index, h. t.; 8 Com. Dig. 814; Merl. Répert. 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 informa-

tion thereof, the other half to the use of the United States. 1 Story's L. U. S. 269.

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.

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.

NAMIUM, an old word which signifies the taking or distraining another person's movable goods. 2 Inst. 140; 3 Bl. Com. 149.

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.

NATALE. The state or condition of a man acquired by birth.

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. 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. 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. These may be divided into those who were born before the declaration of independence, and those born after. A person born before our independence, and who, before that period withdrew into another part of the British dominions and never returned prior to the peace, would probably be considered as an alien. Those born before our independence, who remained in the country at that period are considered as natives. And those persons who were resident in the United States at the declaration of independence, though born elsewhere, are considered as natives if they deliberatively yielded to that act an express or implied sanction. 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. Art. 2, s. 1. Vide, generally, 2 Cranch, R. 280; 4 Cranch, R. 209; 1 Dall. R. 53; 20 John. R. 313; 2 Mass. R. 236, 244, note; 2 Pick. R. 394, n.; 2 Kent, Com. 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 and 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.

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.

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.

Natural children owe alimony to their father and mother, if they are in need, and if they themselves have the means of providing it. Ib. art. 256.

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*.

NATURALIZATION. The act by which an alien is made a citizen of the United States of America. 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.

[2] 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 proceedings 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:

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 renounciation 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:

[3] 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:

[4] 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 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:

[5] 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.

[6] § 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 as 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.

[7] § 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:

[8] Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States:

[9] 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.

[10] § 5. That all acts heretofore passed respecting naturalization, be, and the same are hereby repealed.

[11] 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.

[12] § 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."

[13] § 2. That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the 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.

[14] 3. An act for the regulation of seamen on board the public and private vessels of the United States.

[15] § 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.

[16] 4. An act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization. App. July 30, 1813.

[17] § 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.

[18] 5. An act relative to evidence in case of naturalization. App. March 22, 1816.

[19] § 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.

[20] 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.

[21] § 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:

[22] 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.

[23] § 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.

[24] § 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.

[25] § 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.

[26] 7. An act to amend the acts concerning naturalization. App. May 24, 1828.

[27] § 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 heretofore 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.

[28] § 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:

[29] 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.

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NAUFRAGE, *French mar. law.* When by the violent agitation of the waves, the impetuosity of the winds, the storm, or the lightning, a vessel is swallowed up, or so shattered that there remain only the pieces, the accident is called *naufrage*. 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. 643. Vide *Wreck*.

NAVAL OFFICER. The name of an officer of the United States whose duties are prescribed by various acts of congress. 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. 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.

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. In law the term navigable is applied to the sea, to arms of the sea, and to rivers in which the tide flows and reflows. 5 Taunt. R. 705; S. C. Eng. Com. Law Rep. 240; 5 Pick. R. 199; Ang. Tide Wat. 62. 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. 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. Vide *Arm of the sea; Reliction; River.*

NAVIGATION, whatever relates to traversing the sea in ships; the art of ascertaining the geographical position of a ship, and directing her course. 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. The constitution of the United States, art. 1, s. 8, vests in congress the power "to provide and maintain a navy."

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. The act of January 2, 1813, 2 Story's L. U. S. 1282, authorised 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. And by the act of the 3d of March, 1813, 2 Sto. L. U. S. 1813, the president is further authorised 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. The act of 3d 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. 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 authorised 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, authorised to be built by the act of January 2d, 1813. The third section of this act authorises the president to procure steam-engines and all the imperishable materials for building three steam batteries. 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.—To repress piracy in the Gulf of Mexico, the act of 22d December, 1822, was passed, 3 St. L. U. S. 1873. It authorises 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.—The act of May 17, 1826, authorises the suspension of the building of one of

the ships above authorised to be built, and authorises the president to purchase a ship of not less than the smallest class authorised to be built by the act of 29th April, 1816.—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 authorises 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 authorised to cause the above mentioned appropriation to be applied as directed by the act of March 3, 1827.

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 formedon; 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, reciting 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. 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.

The subject may be considered under the following heads.

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.

2. *For what claims.* This writ can be issued only for equitable demands. 4 Desaus. 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.

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. Pr. 7.

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. It was a prohibition to the lord, *not unjustly* to distrain or *vex* his tenant. F. N. B. h. t.

NE UNQUES ACCOUPLE, *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. 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. Orna-

ments 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. 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. 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; Bac. Ab. Infancy, I. —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; Ld. 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.

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." 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. 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 impossibility: 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 or infringed. Clef des Lois Rom. h. t.; Dig. 10, 3, 10, 1; Com. Dig. Pleader, 3 M 20, 3 M 30. 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. 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.

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. 16, 20; Bac. Max. Reg. 5.

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.

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 of necessity*. Gale and Whatley on Easements, 71; 11 Co. 52; Hob. 234; 1 Saund. 323, note. See 3 Rawle, R. 495; 3 M'Cord, R. 131; Id. 170; 14 Mass. R. 56; 2 B. & C. 96; 2 Bing. R. 76; 8 T. R. 50; Cro. Jac. 170; 2 Roll. Ab. 60; 3 Kent, Com. 423; 3 Rawle's R. 492; 1 Taunt. R. 279; 8 Taunt. R. 24; 8 T. R. 50; Ham. N. P. 198; Cro. Jac. 170.

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 Toull. n. 18. Vide 2 Gall. Rep. 485; 1 M'Cord, 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. 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. 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. 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 *Onus Probandi.*

NEGATIVE PREGNANT, *in pleading*. Such form of negative expression, in pleading, as may imply or carry within it, an affirmative. 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. 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; Styles's Pr. Reg. Negative Pregnant; Steph. Pl. 381; Gould, Pl. c. 6, § 29–37. 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. Pleader, (R. 6.); 1 Lev. 88; Steph. Pl. 383.—V. Arch. Civ. Pl. 213; Doct. Pl. 317; Lawes'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. 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. Three great principles of responsibility, seem naturally to follow this division. 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. 2. 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. Génér. ubi supra. 3. 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. Gén. ubi supra.

In general, a party who has caused an injury or loss to another, in consequence of his negligence, is responsible for all the consequences. 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; *Fault*.

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. 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.

NEGOTIABLE PAPER, *contracts*. This term is applied to bills of exchange and promissory notes, which are assignable by indorsement or delivery. 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, negotiable like inland bills, according to the custom of merchants. This negotiable 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 negoti-

able, 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, 108; 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.

NEGOTIORUM GESTOR, *in contracts*, in the civil law; the negotiorum gestor is one who spontaneously, and without authority, undertakes to act for another during his absence, in his affairs. 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. 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 unauthorised 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 profits, 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. Accompt, A 3. 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.

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.

NEUTRAL PROPERTY, *in insurances*. 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.

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.

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. 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. 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, l. 3, c. 7, § 104; Martens, Précis, liv. 8, c. 7, § 306; Bouch. Inst. n. 1826-1831.

NEW AND USEFUL INVENTION. This phrase is used in the act of Congress relating to granting patents for inventions. 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. 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-defence, 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, there-

fore, suppose, or affect to suppose, that the first is the assault intended, and will plead *son assault demesne*. 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.

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.

Several new assignments may occur in the course of the same series of pleading.

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.

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. 286; 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. 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. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

1st. The supreme *legislative* power is vested in the senate and house of representatives, each of which has a negative on the other. 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*.

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.—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.—2. No person shall be capable of being elected a senator, who is not seised 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.—3. The senate is to consist of twelve members.—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.

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.—1. The electors are the same who vote for senators.—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 seised 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.—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.—4. The members are to be chosen annually.—5. The election is to be in the month of March.

2. The *executive* power consists of a governor and a council.

1. Of the *governor*. 1. The qualifications of electors of governor, are the same as those of senators.—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.—3. He is elected annually.—4. The election is in the month of March.—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 holden 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 decribed 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, instruct, 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.

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 vested 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.

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 counsellor 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.

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.

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.

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.

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.

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.

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.

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.

No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any party, or origi-

nate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.

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 conveniency of the people may require, and the legislature from time to time appoint.

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 dissentions 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.

The constitution of New Jersey was adopted on the second day of July, 1776. The powers of the government are divided into three great branches, the executive, the legislative and the judicial.

1. The governor is invested with the supreme executive power, sect. 8; is president of the council, has a casting vote in their proceedings. He is elected by the joint vote of the council and general assembly, at their first meeting after the annual election and shall continue in office for one year, sect. 7. The council are required to elect a vice-president of their own body, who, in the absence of the governor is to exercise his powers, secs. 7 and 8.

2. The legislature is composed of two houses—1st. The legislative council, which consists of one member from each county, to be elected yearly on the second Tuesday of October.—2. The assembly, which consists of three members from each county, to be elected by the council. These two houses are required to meet separately, and their consent is necessary to the passage of any law, and there must be a majority of all the representatives of each body personally present and agreeing thereto. Sect. 3.

3. The judiciary is to consist, 1st. of a chancellor. The governor of the state is ex-officio, chancellor; 2d, of a court of appeals in the last resort in all causes of law, composed of "the governor and council, seven whereof shall be a quorum;" 3d, of a supreme court, the judges of which shall continue in office for seven years; 4th, of inferior courts of common pleas, in the several counties, the judges to continue in office for five years; 5th, of courts of quarter sessions; 6th, of justices of the peace. The judges are appointed by the legislature, and commissioned by the governor. Sect. 12.

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, sub-

sequent 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. c. 3, § 195; 1 Saund. 103, n. (1); Steph. Pl. 251; Com. Dig. Pleader, (E 32); 2 Lev. 5; Vent. 121; 1 Chit. Pl. 538.

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. The origin of the practice of granting new trials is concealed in the night of time. Formerly new trials could be obtained only with the greatest difficulties, but, by the modern practice, they are liberally granted in furtherance of justice. 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 Dougl. 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 impannelling 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. 33.—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. R. 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 Charlt. R. 227; 2 John. Cas. 318. 5th, The misdirection of the judge. Vide article *Misdirection*, and 4 Chit. Pr. 38.

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, 458; 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.

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. Bunb. 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.

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.

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.

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 vitæ 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 acquittal, unless in cases where the defendant has procured his acquittal by unfair practices. 1 Chit. Cr. Law, 654; 4 Chit. Pr. 80.

Vide, generally, 21 Vin. Ab. 474 to 493; 3 Chit. Bl. Com. 387, n.; 18 E. C. L. R. 74, 334; Bac. Ab. Trial, L; 1 Sell. Pr. 482; Tidd's Pr. 934, 939; Graham on New Trials; 3 Chit. Pr. 47; Dane's Ab. h. t.; Com. Dig. Pleader, R, 17; 4 Chitty's Practice, part 7, ch. 3. The rules laid down to authorise 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. 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 ỹ 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. The present constitution of New York was adopted on the 10th of November, 1821. The powers of the government are distributed among the legislative, executive and judicial officers.

1. The legislative power of the state is vested in a senate and an assembly. 1st. The senate consists of thirty-two members. The state is divided into eight districts, called senate districts, each of which elects four senators for the term of four years; that is, one senator is elected every year, one-fourth of the whole senate being renewed every year. Art. 1, s. 5. 2d. The assembly consists of one hundred and twenty-eight members who are annually elected. Art. 1, s. 2. The members of assembly are chosen by counties, and are apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour not taxed. Art. 1, s. 7.

2. The executive consists of a governor and lieutenant-governor. 1st. The executive power is vested in a governor; he is elected by the voters at the times and places of choosing members of the legislature, and holds his office for two years. He is, ex officio, commander-in-chief of all the militia, and admiral of the navy of the state. He is invested with the veto power, and by and with the consent of the senate he appoints all judicial officers, except justices of the peace.—2d. The lieutenant-governor is elected by the same persons, at the same time, and in the same manner as the governor. He is president of the senate, but he has only a casting vote in its deliberations. In case of a vacancy in the office of governor, the duties of his office devolve on the lieutenant-governor; and in case of a vacancy in the office of lieutenant-governor, his duties devolve on a president of the senate to be appointed or elected by that body.

3. The judicial power of the state is vested in the following tribunals. 1st. The court for the trial of impeachments, and the corrections of errors; it consists of the president of the senate, the senators, the chancellors, and the justices of the supreme court, or the major part of them. 2d. A chancellor. 3d. A supreme court, to consist of a chief justice and two justices, any of whom may hold a court. 4th. Circuit courts, for each of which a circuit

judge is appointed and who possesses the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and in the courts of oyer and terminer and jail delivery, and with such equity powers as the legislature may invest them with. 5th. County courts. 6th. Recorders of cities.

NEWSPAPERS, are periodical printed papers published for general distribution. To encourage their circulation the act of congress of March 3, 1825, 3 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.

§ 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 authorised 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: Pro-

vided, 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 authorise 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 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.

NEXT FRIEND. Vide *Amy; Prochein Amy.*

NEXT OF KIN. This term is used to signify the relations of a party who has died intestate. 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 COMPRISE. 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 DEDIRE. To say nothing. 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. 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 dedire*, 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, and 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; Rosc. 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. Watchmen may undoubtedly arrest them, and it is said that pri-

vate 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 DICIT. 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 return of a sheriff to a scire facias or other writ. 5 Whart. R. 367.

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 only inducement to the action, the general issue is ***nil debet***. Stephen on Pleading, 174, n.; Dane's Ab. Index, h. t.

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 Carta, in ease of the subject, that assises of novel desseisin and mort d'ancestor (then the most usual remedies,) should thenceforward, 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. Præcipimus tibi quod veneri facias coram justiciariis nostris apud Westm. in Octabis Scti 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 authorises, 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. Where courts bearing this name exist in the United States, they are instituted by statutory provision.

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.)

NOBILITY, an order of men in several countries to whom privileges are granted at the expense of the rest of the people. 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. 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. 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 tippling houses. Act of 29 April, 1819, s. 4, 7 Smith's Laws, 227. A nolle prosequi may be entered as to one of several defendants. 11 East, R. 307. 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. 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.

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. 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. 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. 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. 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. 233; 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; 1 Phil. Ev. 90, Cowen's note 172; Greenl. Ev. § 173; 7 Cranch, 152.

NOMINATION. This word has several significations; 1, an appointment; as, I nominate A B, executor of this my last will. 2. A proposition; the word nominate is used in this sense in the constitution of the United States, art. 2, s. 2, the president, "shall nominate, and by and with the consent of the senate, shall appoint ambassadors," &c.

NOMINE PŒNÆ, *contracts*, is the name of a penalty incurred by the lessee to the lessor, for the nonpayment 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. To entitle himself to the *nomine pœnæ*, 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 4; Woodf. L. & T. 253; Tho. Co. Litt. Index, h. t.; Dane's Ab. Index, h. t.

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. 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. 283. In the civil law the maxim is, *Pater is est quem nuptiæ demonstrant*, Toull. tom. 2, n. 787. The Code Napoleon, art. 312, enacts, "que l'enfant conçu pendant le mariage a pour père le mari." See also 1 Browne's R. Appx. xlvii. A married woman cannot prove the non-access of her husband. Ib. See 8 East, 202; 4 T. R. 251; 11 East, 132; 13 Ves. 58; 8 East, R. 193; 12 East, R. 550; 4 T. R. 251, 336; 11 East, R. 132; 6 T. R. 330.

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." 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. Pleader, (2 G 1.)

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 CEPIT MODA ET FORMA, *in pleading*, is the general issue in replevin. 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." 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-CONFORMISTS, *English law*. A name given to certain dissenters from the rites and ceremonies of the church of England.

NON CULPABILIS, *pleadings*. Not guilty (q. v.) It is usually abbreviated *non cul*. 16 Vin. Ab. 1.

NON DAMNIFICATUS, *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 damnified*. 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 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. 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." 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; Bac. Abr. Pleas, I; 1 Chit. Pl. 476. 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. 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.

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. 480; 12 John. R. 337; 2 N. H. Rep. 74; 4 Wend. R. 519; 2 N. & M. 492.

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. 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. 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. 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 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. 278; 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. 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. 308; 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.

NON OBSTANTE, *Engl. 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, authorises its violation. He cannot by his license or dispensation make an offence dispunishable 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; Vaugh. 330 to 359; Lev. 217; Sid. 6, 7; 12 Co. 18; Bac. Ab. Prerogative, D 7. Vide *Judgment non obstante veredicto.*

NON OBSTANTE VEREDICTO. 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 propter 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 Sell. 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 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 an 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.

NON TERM. The vacation between two terms of a court.

NON-USER, is the neglect to make use of a thing. 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. 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. But the dereliction or abandonment of rights affecting lands is not in all cases held to be evidenced by mere non-user. 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. 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.—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. 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. Vide articles *Ambiguity; Construction; Interpretation.*

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. It is either voluntary or involuntary. A voluntary nonsuit is an abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him. 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. The courts of the United States, 1 Pet. S. C. R. 469, 476; those of Pennsylvania, 1 S. & R. 360; 2 Binn. R. 234, 248; 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. 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 Sell. 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.—The constitution of North Carolina was adopted December 18, 1776. To this constitution amendments were made in convention, June 4, 1835, 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, 1836.

The powers of the government are distributed into three branches, the legislative, the executive, and the judiciary.

§ 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.

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.

1. The first article, section 3, of the amendments, provides: All free men 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 exercise 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.

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 commons, 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.

§ 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 authorised to administer the same.

§ 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 GUILTY, *in pleading*, is the general issue in several sorts of actions. It is the general issue,

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 tres-

passes 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." 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 plaintiff, but in the defendant or the person under whom he justifies. 8 T. R. 403; 7 T. R. 354; Willes, 222; Steph. Pl. 178; 1 Chit. Pl. 491, 492.

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." This, it will be observed, is a mere traverse, or denial, of the facts alleged 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 exceptions, 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.

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.

In *debt* on a judgment suggesting a *devastavit*, an executor may plead not guilty. 1 T. R. 462.

In *criminal cases* when the defendant wishes to put himself on his trial, he pleads not guilty.

NOTARY or NOTARY PUBLIC, is an officer appointed by the executive, or other appointing power, under the laws of different states. Their duties are generally prescribed by such laws. The most usual of which are, 1, to attest deeds, agreements 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. Notaries are of very ancient origin: they were well known among the Romans, and exist in every state of Europe, and particularly on the continent. Their acts have long been respected 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*.

NOTE, *estates, conv., practice*, is the fourth part of a fine of lands: it is an abstract of the writ of covenant and concord, and is only a docquet 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; Reissuable note.*

NOTES, *practice*, are short statements of what transpires on the trial of a cause; they are generally made by the judge and the counsel, for their own satisfaction. 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. & Ell. 179; S. C. 39 Eng. C. L. R. 38; see 5 Whart. 156. 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. Notices should always be in writing; they should state, in precise terms their object, and be signed by the proper person, or his authorised agent, be dated, and addressed to the person to be affected by them. 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. Mortg. 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. 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. 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. 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. 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 fortiori* 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. 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. 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 the plaintiff's, and he ought to take notice of it at his peril. Com. Dig. Pleader, C. 75. See Com. Dig. Id. C. 73, 74, 75; Vin. Abr. Notice; Hardr. R. 42; 5 T. R. 621. The omission of an averment of notice, when necessary, will be fatal on demurrer or judgment by default, Cro. Jac. 432; but may be aided 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 nonpayment by the acceptor is fatal, even after verdict. Doug. R. 679.

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. 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. 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.

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; M'Cl. & Y. 139.

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.

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.)

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. 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. 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.

§ 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 authorised 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.

§ 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.

§ 3. *As to the person to whom the notice should be given.* When the relation of landlord and tenant sub-

sists, 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.

§ 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.

§ 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 own 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.

§ 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 distrain 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.

NOTORIETY, *evidence*, is that which is generally known. 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. 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. 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. Grisley, Ev. 293. 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 præsumpt. lib. 1, quæst. 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, n. (T 3).

NOVA STATUTA. New Statutes. The name given to the statutes commencing with the reign of Edward III. Vide *Vetera 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 debt for an old. 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. 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. 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*. 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*.

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. 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. 438; 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. 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; 1 Watts & Serg. 94; Toull. h. t.; Domat, h. t.; Dalloz, Dict. h. t.; Merl. Rép. h. t.; Clef des Lois Romaines, h. t.; Azo & Man. Inst. t. 11, c. 2, § 4.

NOVEL ASSIGNMENT. Vide *New Assignment*.

NOVEL DISSEISIN, the name of an old remedy which was given

for a new or recent disseisin. 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.

NOVELLÆ 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 Agilœus.

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.

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. 593.

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. 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. 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. A nudum pactum may be avoided, and is not binding. 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, 302; 2 Day's R. 22. It is a rule that no action can be maintained on a naked contract; *ex nudo pacto non oritur actio.* 2 Bl. Com. 445; 16 Vin. Ab. 16. 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. 113; 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. Nuisances are either public or common, or private nuisances.

1. 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 Rog. 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. 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. 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. 298; 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.

2. 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. 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 incommode his neighbour and render the air unwholesome. 9 Co. 58. 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. Vide, generally, Com. Dig. Action on the case for a nuisance; Bac. Ab. h. t.; Vin. Ab. h. t.; Nels. Ab. h. t.; Selw. N. P. h. t.; 3 Bl. Com. c. 13; Russ. Cr. b. 2, c. 30; 10 Mass. R. 72; 7 Pick. R. 76; 1 Root's Rep. 129; 1 John. R. 78; 1 S. & R. 219; 3 Yeates's R. 447; 3 Amer. Jurist, 185; 3 Harr. & McH. 441; Rosc. Cr. Ev. h. t.; Chit. Cr. L. Index, h. t.; Chit. Pr. Index, h. t., and vol. 1, p. 383.

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. 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—Pleader 2 W 13, 38—Record, C.

NUL TORT, *pleading*. No wrong. 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 anything which proves that the act charged is no waste, as that it happened by tempest, lightening, and the like. Co. Litt. 283 a; 3 Saund. 238, n. 5.

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. It is a rule of law that what is absolutely nul 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 nul 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.

Nullities have been divided into absolute and relative. Absolute nul-

lities 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. Every thing fraudulent is null and void. Relative nullities can be invoked only by those in whose favour 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. 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 compos mentis, of married women's contracts, and the like.

4. The want of consideration in simple contracts; as a verbal promise without consideration.

5. The want of recording when the law requires that the matter should be recorded; as, in the case of judgment.

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. 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. 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. The mother of a bastard, during its age of nurture, is entitled to the custody of her child, and is bound to maintain it. 6 S. & R. 255; 2 John. R. 375; 15 John. R. 208; 2 Mass. R. 109; 12 Mass. R. 387, 433; 1 New Rep. 148; sed vide 5 East, 224 n. 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*.

NULLUM 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*.

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 at another. Leave of court must be obtained to do things nunc pro tunc, and this is granted to answer the purposes of justice, but never to do injustice. 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*.

NUNCUPATIVE, 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; Swinb. 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 Common Law Reports, 535; 1 Mees. & Wels. 542.

NUPER OBIIT, *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. Termes 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.

O.

OATH, *in practice*. An oath is a solemn promise by which he who makes it, declares that he will tell the truth, the whole truth, and nothing but the truth, in relation to the matter in question; and by which the party who takes it, renounces the mercy or imprecates the vengeance of heaven, if he speak not the truth. Puff. book 4, c. 2, s. 4; Grot. b. 2, c. 13, s. 1; Ruth. Inst. b. 1, c. 14, s. 1; 1 Stark. Ev. 80; Merl. Rép. mot Convention; 10 Toull. n. 348 à 348; Dalloz, Dict. mot Serment; Dur. n. 592, 593. The commencement of an oath is made by the juror's taking hold of the book, after being requested by the proper officer of the court to do so, 9 C. & P. 137, and ends, generally, with the words "so keep you God." Oaths are taken in various forms, upon the gospel, by taking the book in the hand, which is called a corporal oath; by holding up the hand, 1 Breese's R. 28; and by a simple affirmation, (q. v.) Vide Cowp. 389; 1 Lord Raym. 282; Str. 1104; 1 Atk. 21.

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.

§ 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 pre-

sent, 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.

§ 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 authorised by the law of the state, in which such office shall be holden, 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 authorised 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.

§ 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 authorised 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.

§ 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."

OATH OF CALUMNY, *in the civil law*, 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. 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.

OATH, DECISORY, a term used in the civil law. A decisory oath is that which one of the parties defers

or refers back to the other, for the decision of the cause. 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. 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.

OATH, JUDICIAL. A judicial oath is a solemn declaration made in some form warranted by law, before a court of justice or some officer authorised 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. In the civil law, a judicial oath is that which is given in judgment by one party to another. Dig. 12, 2, 25.

OATH IN LITEM, *in the civil law*, is that 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.

OATH PROMISSORY, is an oath taken, by authority of law, by which the party declares that he will fulfil 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.

OATH, SUPPLETORY, *civil and eccles. 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.

OBEDIENCE, is the performance of a command. 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. 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, *in contracts.* In its general and most extensive sense an obligation is synonymous with duty. Obligations are of three kinds: imperfect obligations, natural or moral obligations, and civil or perfect obligations.

Those obligations are called *imperfect*, for which we are accountable to God only; and of which no person has a right to require the performance; such are the duties of charity and gratitude. Poth. Oblig. Prelim. art.; 1 Bl. Com. 124.

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 back what has been paid, or given in compliance with a natural obligation. 1 T. R. 285; 1 Dall. 148. 2. A natural obligation is a sufficient consideration for a new contract. 5 Binn. 33; 2 Binn. 591; Yelv. 41, a, n. 1; Cowp. 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.

Civil or *perfect* obligations. The term obligation, in a more proper and confined sense, comprises only perfect obligations, which are also called personal engagements, and which give the person with whom they are contracted, a right to demand their performance. 12 Wheat. R. 318, 337; 4 Wheat. R. 197. These obligations are divided into conventional obligations, or express contracts, and into such as are created by the operation of law, or implied contracts. Justinian defines an obligation to be a tie which binds us, necessarily, to pay or do something agreeably to the laws and customs of the country in which we reside. Just. Inst. lib. 3, t. 14. See *Contract.*

The term obligation also means 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 Verm. R. 40; 1 Blackf. R. 241; Harp. R. 434; 2 Porter, R. 19; 1 Bald. R. 129. See 1 Bell's Com. B. 3, p. 1, c. 1, page 293.

See generally, 16 Vin. Ab. 50; Bac. Ab. h. t.; Com. Dig. Obligation; Code of Louis. tit. 3, 4, 5; and this Dictionary, *Alternative Obligation; Bond; Civil Obligation; Conditional Obligation; Contract; Natural Obligation; Principal Obligation; Pure or Simple Obligation.*

OBLIGATION, ALTERNATIVE, *in contracts.* 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. 3, art. 6, No. 245. 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.

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. 167. 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 *Conjunctive; Disjunctive; Election.*

OBLIGATION OF CONTRACTS. 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. 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 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.

OBLIGOR 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. 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. 1 Stew. R. 479; 4 Hayw. R. 239; 4 McCord, R. 203; 7 Cowen, R. 484; 2 Bail. R. 199; Brayt. 38; 2 H. & M. 398; 5 Mass. R. 538; 2 Dana, R. 462; 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. 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 redelivered, 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 Serg. & R. 438; and see 6 Serg. & Rawle, 308; Wright, R. 742.

OBREPTION, *civil law.* Surprise. Dig. 3, 5, 8, 1. Vide *Suprise.*

OBSCENITY, *crim. law.* Such indecency as is calculated to promote the violation of the law, and the general corruption of morals. 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 persons, 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.

OBSOLETE. This term is applied to those laws which have lost their efficacy, without being repealed. 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; Merl. Répert. 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. 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. 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 *particeps criminis;* that is an accessary 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. 15; 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. To constitute occupancy there must be a taking of a thing corporeal, belonging to nobody, with an intention of becoming the owner of it. 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. 2. The thing must be susceptible of being possessed; an incorporeal right, therefore, as an

annuity, could not be claimed by occupancy. 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. 4. The taking must have been with an intention of becoming the owner; if therefore a person non compos 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. Among the numerous ways of acquiring property by occupancy, the following are considered as the most usual.

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 Wils. 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. Leçons Elem. du Dr. Rom. § 348; 2 Bl. Com. 401.

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.

3. The benefit of the elements, the light, air, and water, can only be appropriated by occupancy.

4. When animals feræ naturæ 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.

5. It is by virtue of his occupancy that the owner of lands is entitled to the emblements.

6. Property acquired by accession, is also grounded on the right of occupancy.

7. Goods acquired by means of confusion may be referred to the same right.

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; Bac. Ab. Estate for life and occupancy; 1 Brown's Civ. 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. 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. 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.) In another sense occupation signifies a putting out of a man's freehold in time of war. Co. Litt. s. 412. See *Dependency; Possession.*

ODHALL RIGHT, signifies the same as allodial.

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. Pract. 14.

OFFER, *contracts*, is a proposition to do a thing. An offer ought to contain a right, if accepted, of compelling the fulfilment of the contract, and this right when not expressed, is always implied. By virtue of his natural liberty, 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. 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. 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. Offices may be classed into civil and military.

1. Civil offices may be classed into political, judicial and ministerial. 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. 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. 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. Some offices may inherently be both judicial and ministerial. The office of sheriff is of this character. It is ministerial for most purposes, but it is judicial in others, as in executing a writ of inquiry. It is a general rule, that a judicial office cannot be exercised by deputy, while a ministerial may. 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.

2. Military offices consist of such as are granted to soldiers or naval officers.

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, authorised by law of any state. 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 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. Vide *Inquisition*.

OFFICER, he who is lawfully invested with an office. 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; 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; 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; 4, ministerial officers, or those whose duty it is to execute the mandates, lawfully issued, of their superiors; 5, military officers who have commands in the army; and 6, naval officers, who are in command in the navy.

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.

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*. 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.

OFFICIO, EX. Vide *Ex officio*, and 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, authorised to form for themselves a constitution and state

government, and to assume such name as they shall deem proper; 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. 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 Miama 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 aforsesaid 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 northwest of the river Ohio.

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.

1st. The *legislative* authority is vested in a general assembly, which consists of a senate and house of representatives, both elected by the people.

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. 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.—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.—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.—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 forever thereafter. Art. 1, s. 5.—5. Senators are chosen biennially, at the time representatives are elected.

2. The *house of representatives* will be considered in the same manner that the senate has been. 1. The qualifications of the electors are the same as of electors of the senate. —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.—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 ago 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.—4. The representatives are chosen annually.—5. They are elected by the citizens of each county respectively, on the second Tuesday of October.

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 assem-

bly 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.

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.

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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 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 holden 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. Vide *Laws of Oleron.*

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. 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.

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. 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.

ONEROUS 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. 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. 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 McCord, 573; 12 Vin. Ab. 201. 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. 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. 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.

OPEN COURT. The term sufficiently explains its meaning. By the constitutions 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 disor-

der. 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.

OPERATIVE. A workman; one employed to perform labour for another. 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. 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. 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, succintly 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 resting 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.

OPINION, *evidence*, is an inference made, or conclusion drawn, by a witness from facts known to him. 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. For example, an engineer may be called to say what, in his opinion, is the cause that a harbour has been blocked up. 3 Dougl. R. 157; S. C. 26 Eng. C. L. Rep. 63; 1 Phil. Ev. 276; 4 T. R. 498. A ship builder may be asked his opinion on a question of sea-worthiness. Peake, N. P. C. 25; 10 Bingh. R. 57; 25 Eng. Com. Law Rep. 28. 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*. 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. The unwritten or common law of foreign countries may be proved by the opinion of witnesses possessing professional skill. Story's Confl. of Laws, 530; 1 Cranch, 12, 38; 2 Cranch, 236; 6 Pet. Rep. 763; Pet. C. C. R. 225; 2 Wash. C. C. R. 175; Id. 1; 5 Wend. Rep. 375; 2 Id. 411; 3 Pick. Rep. 293; 4 Conn. R. 517; 6 Conn. R. 486; 4 Bibb, R. 73; 2 Marsh. Rep. 609;

5 Harr. & John. 86; 1 Johns. Rep. 385; 3 Johns. Rep. 105; 14 Mass. R. 455; 6 Conn. R. 508; 1 Verm. R. 336; 15 Serg. & Rawle, 87; 1 Louis. R. 153; 3 Id. 53; 6 Cranch, 274. Vide also 14 Serg. & Rawle, 137; 3 N. Hamp. R. 349; 3 Yeates, 527; 1 Wheel. C. C. Rep. 205; 6 Rand. R. 704; 2 Russ. on Cr. 623; 4 Camp. R. 155; Russ. & Ry. 456; 2 Esp. C. 58; *Foreign Laws*; 3 Phillim. R. 449; 1 Eccl. R. 291.

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. 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. 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. Vide *Reason*.

OPPOSITION, *practice*, is the act of a creditor who declares his dissent to a debtor's being discharged under the insolvent laws.

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 denotes 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 Roman emperors.

ORATOR, *practice*, is a good man, skilful in speaking well, and who employs a perfect eloquence to defend causes either public or private. Dupin, Profession d'Avocat, tom. 1, p. 19. In chancery, the party who files a bill or answer calls himself in those pleadings *your orator*. Among the Romans, advocates were called orators. Code, 1, 3, 33, 1.

ORDAIN. To ordain is to make an ordinance, to enact a law. 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 select the mode of trial either by God and his country, that is, by jury; or by God only, that is by ordeal. 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 they or not were acquitted or condemned. The water ordeal was performed 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 unhurt, they were taken to be innocent of the crime. It was impiously supposed that God would, by the mere contri-

vance of man, be called upon to exercise his power in favour of the innocent. 4 Bl. Com. 342; 2 Am. Jur. 280.

ORDER, *government*. By this expression is understood the several bodies which compose the state. In ancient Rome, for example, there were three distinct orders; namely, that of the senators, that of the patricians, and that of the plebians. 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 exists, 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. 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 negociable, 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*. 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 FILIATION, 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. 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. 308; 5th, the judgment that the defendant is the putative father of the child, Sid. 363; Stile, 154; Dalt. 52; Dougl. 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 Blackf. R. 42.

ORDERS. Rules made by a court or other competent jurisdiction. The formula is generally in these words: *It is ordered, &c.* 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. 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. 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.

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.

ORDINARY, *civil and eccles. law*. An officer who has original jurisdiction in his own right and not by deputation. In England the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344. 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. 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.

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. 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. 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.

This subject will be divided into three sections. 1, The form of the original entry; 2, The proof of such entry; 3, The effect.

§ 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.—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. 435; 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. 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.—3. The entry must be made in an intelligible manner, and not in figures or hierogliphics 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. —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.

§ 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.

§ 3. The books and original en-

tries, when proved by the supplementary oath of the party is *prima facie* evidence of the sale and delivery of goods, or of work and labour done. 1 Yeates, 347; Swift's Ev. 84; 3 Verm. 463; 1 M'Cord, 481; 1 Aik. 355; 2 Root, 59; Cooke's R. 38. But it is 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. 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; Aso & Man. Inst. B. 1, t. 2, c. 1.

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 *orphanage;* 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.

ORPHANOTROPHI, *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.

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. Vide *Weights.*

OUSTER, *torts.* An ouster is the actual turning out, or keeping excluded, the party entitled to possession of any real property corporeal. An ouster can properly be only from real property corporeal, and cannot be committed of any thing movable, 1 Car. & P. 123; 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 Respondeat 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, on going from the United States to any foreign country. 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. 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.; Bac. 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. Outlawry may take place in criminal or in civil cases. 3 Bl. Com. 283; Co. Litt. 128. 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 Bac. Ab. Abatement, B; Id. h. t.; Gilb. Hist. C. P. 196, 197.

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 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. Mr. Greenleaf has made a very valuable collection of overruled cases, of great service to the practitioner. 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.

OVERSEERS OF THE POOR, are persons appointed or elected to take care of the poor with moneys furnished to them by the public authority. 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 oversman is left to the arbiters. In either case the oversman has no power to decide, unless the arbiters differ in opinion. Ersk. Pr. L. Scot. 4, 3, 16. The office of an oversman 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. 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-parcener 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. 265; 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. 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, *Eng. law*, the offence of transporting wool or sheep out of the kingdom. 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.

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.

The owner continues to have the same right although he perform no acts of ownership, or is disabled from performing them, and although another perform 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, c. 1; Encyclopédie de M. D'Alembert, Proprietaire.

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 Eng. law*, is an uncertain quantity of land, but, according to some opinions, 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 intendment of law in court, when it is pleaded with a profert. 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. 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. Dougl. 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 note 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.

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, I; 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 authorised 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 cryer of the court cries *Oyez*, *Oyez*, which is generally corruptly pronounced *O yes.*

P.

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 idem placitum consensus de re solvenda, id est faciendâ vel præstandâ. Dig. 2, 14; Clef des Lois Rom. h. t.; Ayl. Pand. 558; Merl. Répert, h. t.

PACTUM CONSTITUTÆ PECUNIÆ, 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. 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. There is a striking conformity between the *pactum constitutæ pecuniæ*, as above defined, and our *indebitatus assumpsit.* The *pactum constitutæ pecuniæ* 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 prætor 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 promise, the right to the action of debt was not extinguished nor varied. 4 Rep. 91 to 95; see 1 H. Bl. 550 to 555; Doug. 6, 7; 3 Wood. 168, 169, n. c; 1 Vin. Abr. 270; Bro. Abr. Action sur le case, pl. 7, 69, 72; Fitzh. N. B. 94 A, n. a, 145 G; 1 New Rep. 295; Bl. Rep. 850; 1 Chit. Pl. 89; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 388, 396.

PAGODA, *comm. law*, a denomination of money in Bengal. In the computation of ad valorem duties, it is valued at one dollar and ninety-four cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign Coins.*

PAIS, or PAYS, more properly, *Païs.* A French word signifying country. In law, matter *in pais* is matter of fact in opposition to matter of record: a trial *per pais*, is a trial by the country, that is, by a jury.

PALFRIDUS. A palfrey; a horse

to travel on. 1 Tho. Co. Litt. 471; F. N. B. 93.

PANDECTS, *civil law.* The name of an abridgment or compilation of the civil law, made by order of the Emperor Justinian, and to which he gave the force of law. It is also known by the name of Digest, (q. v.)

PANEL, *practice.* A schedule or roll containing the names of jurors, summoned by virtue of a writ of *venire facias*, and annexed to the writ. It is returned into the court whence the *venire* issued. Co. Litt. 158, b.

PANNEL, *Scotch law.* A person accused of a crime; one indicted.

PAPER-BOOK, *practice*, is a book or paper containing an abstract of all the facts and pleadings necessary to the full understanding of a case. Courts of error and other courts, on arguments, require that the judges shall each be furnished with such a paper-book. In the court of king's bench, in England, the transcript containing the whole of the proceedings, filed or delivered between the parties, when the issue joined, is an issue in fact, is called the *paper-book.* Steph. on Pl. 95; 3 Bl. Com. Dig. 317; 3 Chit. Pr. 521; 2 Str. 1131, 1266; 1 Chit. R. 277; 2 Wils. R. 243; Tidd, Pr. 727.

PAR, *comm. law*, equal. It is used to denote a state of equality or equal value. Bills of exchange, stocks, and the like, are at par when they sell for their nominal value; *above* par, or *below* par, when they sell for more or less.

PARAGE. Equality of name or blood, but more especially of land in the partition of an inheritance among co-heirs, hence comes disparage and disparagement. Co. Litt. 166.

PARAGIUM. A Latin term which signifies equality. It is derived from the adjective *par*, equal, and made a substantive by the addition of *agium.* 1 Tho. Co. Litt. 681.

PARAMOUNT. That which is superior. It is usually applied to the highest lord of the fee, of lands, tenements, or hereditaments. F. N. B. 135. Where A lets lands to B, and he underlets them to C, in this case A is the paramount, and B is the mesne landlord. Vide *Mesne*, and 2 Bl. Com. 91; 1 Tho. Co. Litt. 484, n. 79; Id. 485, n. 81.

PARAPHERNALIA. The name given to all such things as a woman has a right to retain as her own property, after her husband's death, which she used personally during his life: they consist generally of her clothing, jewels and ornaments suitable to her condition in life. These, when not extravagant, she has a right to retain even against creditors; and, although in his lifetime the husband might have given them away, he cannot bequeath such ornaments and jewels by his will. 2 Bl. Com. 430; 2 Supp. to Ves. jr. 376; 5 Com. Dig. 230; 2 Com. Dig. 212; 11 Vin. Ab. 176.

PARATITLA, *civil law.* An abbreviated explanation of some titles or books of the Code of Digest.

PARAVAIL. Tenant paravail is the lowest tenant of the fee, or he who is the immediate tenant to one who holds of another. He is called tenant paravail, because it is presumed he has the avails or profits of the land. F. N. B. 135; 2 Inst. 296.

PARCEL, *estates*, is a part of the estate. 1 Com. Dig. Abatement, H 51, p. 133; 5 Com. Dig. Grant, E 10, p. 545. To parcel is to divide an estate. Bac. Ab. Conditions, O.

PARCENARY. The state or condition of holding title to lands jointly by parceners, before the common inheritance has been divided. Litt. sect. 56. Vide 2 Bl. Com. 187;

Coparcenary; Estate in coparcenary.

PARCENERS, *Engl. law*, are the daughters of a man or woman seised of lands and tenements in fee simple or fee tail, on whom, after the death of such ancestor, such lands and tenements descend, and they enter. Litt. s. 243; Co. Litt. 164.

PARCO FRACTO, *Engl. law.* The name of a writ against one who violently breaks a pound, and takes from thence beasts which, for some trespass done, or some other just cause, were lawfully impounded.

PARDON, *crim. law, pleading.* A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. 7 Pet. S. C. Rep. 160. Every pardon granted to the guilty is in derogation of the law; if the pardon is equitable, the law is bad; for where legislation is perfect, pardons must be a violation of the law. Pardons are general or special. The former are granted by an act of the legislature to all persons and for all offences therein mentioned; of this the court are bound to take notice *ex officio.* Such general pardon cannot be waived by the criminal, because by his admittance, no one can give the court a power to punish him, when it judicially appears there is no law to do it. Special pardons are those granted by the pardoning power for a particular case. This, to avail the criminal, must be accepted and specially pleaded. 7 Pet. S. C. Rep. 162. The constitution of the United States gives to the president, in general terms, "the power to grant reprieves and pardons for offences against the United States;" and the same power is given by the constitution of Pennsylvania to the governor "to grant reprieves and pardons, except in cases of impeachment." Art, 2, s. 9. In some states the consent of the legislature is required. Vide, generally, Bac. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; 13 Petersd. Ab. 82; Vin. Ab. h. t.; 3 Inst. 233 to 240; Hawk. B. 2, c. 37; 1 Chit. Cr. Law, 762 to 778; 2 Russ. on Cr. 595; Arch. Cr. Pl. 92; Stark. Cr. Pl. 368, 380. A pardon is either absolute or conditional. When a condition is attached to it, it must be performed before the pardon can have any effect. Bac. Ab. Pardon (E); 2 Caines's R. 57.

A pardon may be granted for any offence, and for any sentence or judgment, except in cases of impeachments. Vide 2 Whart. 453.

A pardon has the effect of restoring the convict to all his rights. He may be examined as a witness, except in cases of perjury, and he may maintain an action against any who shall afterwards accuse him of being guilty of the crime of which he has been pardoned. Bac. Ab. Pardon, H.

PARENTAGE, kindred. Vide *Branch; Line.*

PARENTS, are the lawful father and mother of the party spoken of. The term parent differs from that of ancestor, the latter embracing not only the father and mother, but every person in an ascending line; it differs also from predecessor, which is applied to corporators. Wood's Inst. 68; 7 Ves. 522; 1 Murph. 336; 6 Binn. 255. See *Father; Mother.* By the civil law, grandfathers and grandmothers and other ascendants were in certain cases considered parents. Dict. de Jurisp. Parenté. Vide 1 Ashm. R. 55; 2 Kent, Com. 159; 5 East, R. 223.

PARES, a man's equals; his peers, (q. v.); 3 Bl. Com. 349.

PARI DELICTO, *crim. law.* In a similar offence or crime; equal in guilt. A person who *in pari delicto*

with another, differs from a *particeps criminis* in this, that the former always includes the latter, but the latter does not always include the former. 8 East, 381, 2.

PARI PASSU. By the same gradation.

PARISH. A district of country of different extents. In the ecclesiastical law it signified the territory committed to the charge of a parson, vicar or other minister. Ayl. Parerg. 404; 2 Bl. Com. 112. In Louisiana, the state is divided into parishes.

PARK, *Engl. law*, in an enclosed chase, (q. v.) extending only over a man's own grounds. The term *park* signifies an enclosure, 2 Bl. Com. 38.

PARLIAMENT. This word, derived from the French, *parlement*, in the English law, is used to designate the legislative branch of the government of Great Britain, composed of the house of lords, and the house of commons.

PAROL, or, more properly *parole*, is a French word which means literally, word or speech. It is used to distinguish contracts which are made verbally or in writing not under seal, which are called parol contracts, from those which are under seal, which bear the name of deeds or specialties, (q. v.) 1 Chit. Contr. 1; 7 Term. R. 350, 351, n.; 3 Johns. Cas. 60; 1 Chit. Pl. 88. Pleadings are frequently denominated the *parol*. In some instances the term parol is used to denote the entire pleadings in a cause; as, when in action, brought by an infant heir, on an obligation of his ancestor's, he prays that parol may demur, i. e. the pleadings may be stayed, till he shall attain full age. 3 Bl. Com. 300; 4 East, 485; 1 Hoffm. R. 178. Parol evidence is evidence verbally delivered by a witness. As to the cases when such evidence will be received or rejected, vide Stark. Ev. pt. 4, p. 995 to 1055; 1 Phil. Ev. 466, ch. 10, s. 1; Sugd. Vend. 97.

PAROL LEASES. An agreement made verbally, not in writing, between the parties, by which one of them leases to the other a certain estate. By the English statute of frauds of 29 Car. 2, c. 3, s. 1, 2, and 3, it is declared that "all leases, estates, or terms of years, or any uncertain interest in lands, created by livery only, or by parol, and not put in writing, and signed by the party, should have the force and effect of leases or estates at will only, except leases not exceeding the term of three years, whereupon the rent reserved during the term shall amount to two third parts of the full improved value of the thing demised." "And that no lease or estate, either of freehold or term of years, should be assigned, granted or surrendered, unless in writing." The principles of this statute have been adopted, with some modifications, in nearly all the states of the union. 4 Kent, Com. 95; 1 Hill. Ab. 130.

PARRICIDE, a term used in the civil law, is one who murders his father; it is applied by extension to one who murders his mother, his brother, his sister or his children. The crime committed by such person is also called parricide. Merlin, Répertoire, mot Parricide; Dig. 48, 9, 1, l. 3, l. 4. This offence is defined almost in the same words in the penal code of China. Penal Laws of China, B. 1, s. 2, § 4. The criminal was punished by being scourged, and afterwards sewed in a sort of sack with a dog, a cock, a viper and an ape, and then thrown into the sea or in a river; or if there was no water he was thrown in this manner to wild beasts. Dig. 48, 9, 9; C. 9, 17, 1, l, 4, 18, 6; Bro. Civ. Law, 423; Wood's Civ. Law, B. 3, c. 10, s. 9.

By the laws of France parricide

is the crime of him who murders his father or mother, whether they be the legitimate, natural or adopted parents of the individual, or the murder of any other legitimate ascendant. Code Pénal, art. 299. This crime is there punished by the criminal's being taken to the place of execution without any other garment than his shirt, barefooted, and with his head covered with a veil. He is then exposed on the scaffold while an officer of the court reads his sentence to the spectators; his right hand is then cut off, and he is immediately put to death. Ib. art. 13.

The common law does not define this crime, and makes no difference between its punishment, and the punishment of murder. 1 Hale's P. C. 380; Prin. Penal Law, c. 18, § 8, p. 243; Dalloz, Dict. mot Homicide, § 3.

PARSON, *eccles. law.* One who has full possession of all the rights of a parochial church. He is so called because by his *person* the church, which is an invisible body, is represented: in England he is himself a body corporate in order to protect and defend the church (which he personates) by a perpetual succession. Co. Litt. 300; 1 Tho. Co. Lit. 101. Fortunately in the U. States, where religion is generally well supported, we have no national church, and, therefore, no parsons known as such to the law.

PART. A share; a purpart, (q. v.) This word is also used in contradistinction to counterpart; covenants were formerly made in a script and rescript, or *part* and *counterpart.*

PARTICEPS CRIMINIS, *in crim. law*, are partners in crime, whether in the same degree or in *pari delicto*, (q. v.) or in different degree: for one may be a principal and the other an accessary. Russ. on Cr. 21; 8 East, 381, 2; 2 Supp. to Ves. jun. 122, 398; 5 Com. Dig. 346.

PARTICEPS FRAUDIS. Participators in fraud. It is a general rule of law; *in pari delicto, potior est conditio defendentis*, and the courts will help neither party; but this rule operates only in cases where the refusal of the courts to aid either party, frustrates the objects of the transactions, and takes away the the temptation to engage in contracts *contra bonos mores*, or violating the policy of the laws. If it be necessary, in order to discountenance such transactions, to enforce such contract at law, or to relieve against it in equity, it will be done through both parties be *in pari delicto.* The party is not allowed to allege his own turpitude in such cases, when defendant at law, or prevented from alleging it, when plaintiff in equity, whenever the refusal to execute the contract at law, or the refusal to relieve against it in equity, would give effect to the original purpose, and encourage the parties engaged in such transactions. 4 Rand. R. 372; 1 Black. R. 363; 2 Freem. 101.

PARTICULAR AVERAGE.—This term, particular average, has been condemned as not being exact; see *Average.* It denotes, in general, every kind of expense or damage, short of total loss, which regards a particular concern, and which is to be borne by the proprietor of that concern alone. Between the insurer and insured, the term includes losses of this description, as far as the underwriter is liable. Particular average must not be understood as a total loss of a part; for these two kinds of losses are perfectly distinct from each other. A total loss of a part may be recovered, where a particular average would not be recoverable. See Stev. on Av. 77.

PARTICULAR ESTATE, is an estate which is carved out of a larger and which precedes a remainder; as, an estate for years to A, remainder

to B for life; or an estate for life to A, remainder to B in tail: this precedent estate is called the particular estate. 2 Bl. Comm. 165; 4 Kent, Comm. 226; 16 Vin. Abr. 216; 4 Com. Digest, 32; 5 Com. Digest, 346.

PARTIES TO ACTIONS. Those persons who institute actions for the recovery of their rights, and those persons against whom they are instituted, are the parties to the actions; the former are called plaintiffs, and the latter, defendants. The term parties is understood to include all persons who are directly interested in the subject-matter in issue, who have right to make defence, control the proceedings, or appeal from the judgment. Persons not having these rights are regarded as strangers to the cause. 20 How. St. Tr. 538, n.; Greenl. Ev § 523. It is of the utmost importance in bringing actions to have proper parties, for however just and meritorious the claim may be, if a mistake has been made in making wrong persons, either plaintiffs or defendants, or including too many or too few persons as parties, the plaintiff may in general be defeated. Actions are naturally divided into those which arise upon contracts, and those which do not, but accrue to the plaintiff in consequence of some wrong or injury committed by the defendant. This article will therefore be divided into two parts, under which will be briefly considered, first, the parties to actions arising upon contracts; and, secondly, the parties to actions arising upon injuries or wrongs, unconnected with contracts, committed by the defendant.

Part I. *Of parties to actions arising on contracts.* These are the plaintiffs and the defendants.

Sect. 1. *Of the plaintiffs.* These will be considered as follows:

§ 1. *Between the original contracting parties.* An action on a contract, whether express or implied, or whether it be by parol, or under seal, or of record, must be brought in the name of the party in whom the legal interest is vested. 1 East, R. 497; and see Yelv. 25, n. (1); 13 Mass. Rep. 105; 1 Pet. C. C. R. 109; 1 Lev. 235; 3 Bos. & Pull. 147; 1 H. Bl. 84; 5 Serg. & Rawle, 27; Hamm. on Par. 32; 2 Bailey's R. 55; 16 S. & R. 237; 10 Mass. 287; 15 Mass. 286; 10 Mass. 230; 2 Root, R. 119.

§ 2. *Of the number of plaintiffs who must join.* When a contract is made with *several*, if their legal interests were joint, they must all, if living, join in the action for the breach of the contract. 1 Saund. 153, note 1; 8 Serg. & Rawle, 308; 10 Serg. & Rawle, 257; 10 East, 418; 8 T. R. 140; Arch. Civ. Pl. 58; Yelv. 177, note (1).

§ 3. *When the interest of the contract has been assigned.* Some contracts are assignable at law; when these are assigned, the assignee may maintain an action in his own name. Of this kind are promissory notes, bills of exchange, bail-bonds, replevin-bonds, Hamm. on Part. 108; and covenants running with the land pass with the tenure, though not made with assigns. 5 Co. 24; Cro. Eliz. 552; 3 Mod. 338; 1 Sid. 157; Hamm. Part. 116; Bac. Abr. Covenant, E 5. When a contract not assignable at law has been assigned, and a recovery on such contract is sought, the action must be in the name of the assignor for the use of the assignee.

§ 4. *When one or more of several obligees, &c., is dead.* When one or more of several obligees, covenantees, partners or others, having a *joint* interest in the contract, not running with the land, dies, the action must be brought in the name of the survivor, and that fact averred in the declaration. 1 Dall. 65, 248; 1 East,

R. 497; 2 John. Cas. 374; 4 Dall. 354; Arch. Civ. Pl. 54, 5.

§ 5. *In the case of executors and administrators.* When a personal contract, or a covenant not running with the land, has been made with one person only, and he is dead, the action for the breach of it must be brought in the name of the executor or administrator in whom the legal interest in the contract is vested, 2 H. Bl. 310; 3 T. R. 393; and all the executors or administrators must join. 2 Saund. 213; Went. 95; 1 Lev. 161; 2 Nott & M'Cord, 70; Hamm. on Part. 272.

§ 6. *In the case of bankruptcy or insolvency.* In the case of the bankruptcy or insolvency of a person who is beneficially interested in the performance of a contract made before the act of bankruptcy or before the assignment under the insolvent laws, the action should be brought in the name of his assignees. 1 Chitt. Pl. 14; 2 Dall. 276; 3 Yeates, 520; 7 S. & R. 182; 5 S. & R. 394; 9 S. & R. 434. See 3 Salk. 61; 3 T. R. 779; Ib. 433; Hamm. on Part. 167; Com. Dig. Abatement, E 17.

§ 7. *In case of marriage.* This part of the subject will be considered with reference to those cases, 1st. when the husband and wife must join; 2d, when the husband must sue alone; 3d, when the wife must sue alone; 4th, when they may join or not at their election; 5th, who is to sue in the case of the death of the husband or wife; 6th, when a woman marries, *lis pendens.*

1. To recover the choses in action of the wife, the husband must, in general, join, when the cause of action would survive. 3 T. R. 348; 1 M. & S. 180; Com. Dig. Baron & Feme, V; Bac. Ab. Baron & Feme, K; 1 Yeates's R. 551; 1 P. A. Browne's R. 263; 1 Chit. Pl. 17.

2. In general the wife cannot join in any action upon a contract made during coverture, as for work and labour, money lent, or goods sold by her during that time. 2 Bl. Rep. 1239; and see 1 Salk. 114; 2 Wils. 424; 9 East, 472; 1 Str. 612; 1 M. & S. 180; 4 T. R. 516; 3 Lev. 103; Carth. 462; Ld. Raym. 368; Cro. Eliz. 61; Com. Dig. Baron & Feme, W.

3. When the husband is *civiliter mortuus*, see 4 T. Rep. 361; 2 Bos. & Pull. 165; 4 Esp. R. 27; 1 Selw. N. P. 286; Cro. Eliz. 519; 9 East, R. 472; Bac. Ab. Baron & Feme, M; or, as has been decided in England, when he is an alien and has left the country, or has never been in it, the wife may, on her own separate contracts, sue alone. 2 Esp. R. 554; 1 Bos. & Pull. 357; 2 Bos. & Pull. 226; 1 N. R. 80; 11 East, R. 301; 3 Camp. R. 123; 5 T. R. 679.

4. When a party being indebted to a wife *dum sola*, after the marriage gives a bond to the husband and wife in consideration of such debt, they may join, or the husband may sue alone on such contract. 1 M. & S. 180; 4 T. R. 616; 1 Chit. Pl. 20.

5. Upon the death of the wife, if the husband survive, he may sue for any thing he became entitled to during the coverture; as for rent accrued to the wife during the coverture. 1 Rolle's Ab. 352, pl. 5; Com. Dig. Baron & Feme, Z; Co. Litt. 351 a, n. 1. But the husband cannot sue in his own right for the choses in action of the wife, belonging to her before coverture. Hamm. on Part. 210 to 215.

When the wife survives the husband, she may sue on all contracts entered into with her before coverture, which remain unsatisfied; and she may recover all arrears of rent of her real estate, which became due during the coverture, on their joint demise. 2 Taunt. 181; 1 Roll's Ab. 350 d.

6. When a suit is instituted by a single woman, or by her and others, and she afterwards marries, *lis pendens*, the suit abates. 1 Chit. Pl. 437; 14 Mass. R. 295; Brayt. R. 21.

§ 8. *When the plaintiff is a foreign government*, it must have been recognized by the government of this country to entitle it to bring an action. 3 Wheat. R. 324; Story, Eq. Pl. § 55; see 4 Cranch, 272; 9 Ves. 347; 10 Ves. 354; 11 Ves. 283. See Harr. Dig. 2276.

Sect. 2. *Of the defendants.* These will be considered in the following order.

§ 1. *Between the original parties.* The action upon an express contract, must in general be brought against the party who made it. 8 East, R. 12. On implied contracts against the person subject to the legal liability. Hamm. Part. 48; 2 Hen. Bl. 563. Vide 6 Mass. R. 253; 8 Mass. Rep. 198; 11 Mass. R. 335; 6 Binn. R. 234; 1 Chit. Pl. 24.

§ 2. *Of the number of defendants.* For the breach of a joint contract made by several parties, they should all be made defendants. 1 Saund. 153, note 1; Ib. 291 b, n. 4; even though one be a bankrupt or insolvent, 2 M. & S. 23. Even an infant must be joined, unless the contract as to him be entirely void. 3 Taunt. 307; 5 John. R. 160. Vide 5 John. R. 280; 11 John. R. 101; 5 Mass. R. 270; 1 Pick. 500. When a joint contractor is dead, the suit should be brought against the survivor. 1 Saund. 291, note 2.

§ 3. *In case of a change of credit, and of covenants running with the land, &c.* In general in the case of a mere personal contract, the action for the breach of it, cannot be brought against the person to whom the contracting party has assigned his interest, and the original party can alone be sued; for example, if two partners dissolve their partnership, and one of them covenant with the other that he will pay all the debts, a creditor may nevertheless sue both. Upon a covenant running with land, which must concern real property, or the estate therein, 3 Wils. 29; 2 H. Bl. 133; 10 East, R. 130; the assignee of the lessee is liable to an action for a breach of the covenant after the assignment of the estate to him, and while the estate remains in him, although he have not taken possession. Bac. Ab. Covenant, E 34; 3 Wils. 25; 2 Saund. 304, n. 12; Woodf. L. & T. 113; 7 T. R. 312; Bull. N. P. 159; 3 Salk. 4; 1 Dall. R. 210; 1 Fonbl. Eq. 359, note (y); Hamm. N. P. 136.

§ 4. *When one of several obligees, &c. is dead.* When the parties were bound by a *joint contract*, and one of them dies, his executor or administrator is at law discharged from liability, and the survivor alone can be sued. Bac. Ab. Obligation, D 4; Vin. Ab. Obligation, P 20; Carth. 105; 2 Burr. 1196. And when the deceased was a mere surety, his executors are not liable even in equity. Vide 1 Binn. R. 123.

§ 5. *In the case of executors and administrators.* When the contracting party is dead, his executor or administrator, or, in case of a joint contract, the executor or administrator of the survivor, is the party to be made defendant. Ham. on Part. 156. All the executors must be sued jointly; when administration is taken on the debtor's estate, all his administrators must be joined, and if one be a married woman, her husband must also be a party. Cro. Jac. 519.

§ 6. *In the case of bankruptcy or insolvency.* A discharged bankrupt cannot be sued. A discharge under the insolvent laws does not protect the property of the insol-

vent, and he may in general be sued on his contracts, though he is not liable to be arrested for a debt which was due and not contingent at the date of his discharge. Dougl. 93; 8 East, R. 311; 1 Saund. 241, n. 5; Ingrah. on Insolv. 377.

§ 7. *In case of marriage.* This head will be divided by considering, 1, when the husband and wife must join; 2, when the husband must be sued alone; 3, when the wife must be sued alone; 4, when the husband and wife may be joined or not at the election of the plaintiff; 5, who is to be sued in case of the death of the husband or wife; 6, of actions commenced against the wife *dum sola*, which are pending at her marriage.

1. When a feme sole who has entered into a contract marries, the husband and wife must in general be jointly sued. 7 T. R. 348; All. 72; 1 Keb. 281; 2 T. R. 480; 3 Mod. 186; 1 Taunt. 217; 7 Taunt. 432; 1 Moore, 126; and see 8 Johns. R. (2d ed.) 115; 15 Johns. R. 403, 483; 17 Johns. Rep. 167; 7 Mass. R. 291; Com. Dig. Pleader, 2 A 2; 1 Bingh. R. 50.

2. When the wife cannot be considered either in person or property as creating the cause of action, as in the case of a mere personal contract made during the coverture, the husband must be sued alone. Com. Dig. Pleader, 2 A 2; 8 T. R. 545; 2 B. & P. 105; Palm. 312; 1 Taunt. 217; 4 Price, 48; 16 Johns. R. 281.

3. The wife can in general be sued alone, in the same cases where she can sue alone, the cases being reversed.

4. When the husband in consequence of some new consideration, undertakes to pay a debt of the wife dum sola, he may be sued alone, or the husband and wife may be made joint defendants. All. 73; 7 T. R. 349; vide other cases in Com. Dig. Baron & Feme, Y; 1 Rolle's Ab. 348, pl. 45, 50; Bac. Ab. Baron & Feme, L.

5. Upon the death of the wife her executor, when she has appointed one under a power, or her administrator, is alone responsible for a debt or duty she contracted *dum sola*. The husband, as such, is not liable. Com. Dig. Baron & Feme, 2 C; 3 Mod. 186; Rep. Temp. Talb. 173; 3 P. Wms. 410. When the wife survives, she may be sued for her contracts made before coverture. 7 T. R. 350; 1 Camp. R. 189.

6. When a single woman being sued, marries *lis pendens*, the plaintiff may proceed to judgment, as if she were a feme sole. 2 Rolle's R. 53; 2 Str. 811.

Part 2. *Of parties to actions in form ex delicto.* These are plaintiffs and defendants.

Sect. 1. *Of plaintiffs.* These will be separately considered as follows:

§ 1. *With reference to the interest of the plaintiff.* The action for a tort must, in general, be brought in the name of the party whose legal right has been affected. 8 T. R. 330; vide 7 T. R. 47; 1 East, R. 244; 2 Saund. 47 d; Hamm. on Part. 35, 6; 6 Johns. R. 195; 10 Mass. R. 125; 10 Serg. & Rawle, 357.

§ 2. *With reference to the number of plaintiffs.* It is a general rule that when an injury is done to the property of two or more joint owners, they must join in the action; and even when the property is several, yet when the wrong has caused a joint damage the parties must join in the action. 1 Saund. 291, g. When suits are brought by tenants in common against strangers for the recovery of the land, inasmuch as they have several titles, they cannot, agreeably to the rules of the common law, join, but must bring separate actions; and this seems to

be the rule in Missouri. 1 Misso. R. 746. This rule has been changed in some of the states. In Connecticut, when the plaintiff claims on the title of all the tenants, he recovers for their benefit, and his possession will be theirs. 1 Swift's Dig. 103. In Massachusetts, Mass. Rev. St. 611, and Rhode Island, R. I. Laws, 208, all the tenants or any two may join, or any one may sue alone. In Tennessee they usually join. 2 Yerg. R. 228.

When personal reputation is the object affected, two or more cannot join as plaintiffs in the action, although the mode of expression in which the slander was couched comprehended them all, as when a man addressing himself to three, said, you have murdered Peter. Dyer, 191, pl. 112; Cro. Car. 510; Goulds. pl. 6, p. 78. The reason of this is obvious, no one has any interest in the character of the others, the damages are, therefore, several to each.

§ 3. In general, rights or causes of action arising ex delicto are not assignable.

§ 4. *When one of several parties who had an interest is dead.* In such case the action must be instituted by the survivor. 1 Show. 188; S. C. Carth. 170.

§ 5. *When the party injured is dead*, the executors or administrators cannot in general recover damages for a tort, when the action must be *ex delicto*, and the plea to it is not guilty. Vide the article *Actio personalis moritur cum persona*, where the subject is more fully examined.

§ 6. *In case of insolvency*, the statutes generally authorise the trustee or assignee of an insolvent to institute a suit in his own name for the recovery of the rights and property of the insolvent. 6 Binn. 189; 8 Serg. & Rawle, 124. But for torts to the person of the insolvent, as for slander, the trustee or assignee cannot sue. W. Jones's Rep. 215.

§ 7. *When the tort has been committed against a woman dum sola who afterwards married.* A distinction is made between those injuries committed *before* and those which take place *during* coverture. For injuries to the person, personal or real property of the wife committed before coverture, when the cause of action would survive to the wife, she must join in the action. 3 T. R. 627; Rolle's Ab. 347; Com. Dig. Baron & Feme, V. For an injury to the person of the wife during coverture, by battery, or to her character, by slander, or for any other such injury, the wife must be joined with her husband in the suit; when the injury is such that the husband receives a separate injury or loss, as if in consequence of the battery, he has been deprived of her society or been put to expense, he may bring a separate action in his own name; and for slander of the wife, when the words are not actionable of themselves, and the husband has received some special damages, the husband must sue alone. 1 Lev. 140; 1 Salk. 119; 3 Mod. 120.

Sect. 2. *Of the defendants.* § 1. *Between the original parties.* All natural persons are liable to be sued for their tortious acts, unconnected with or in disaffirmance of a contract; an infant is, therefore, equally liable with an adult for slander, assaults and batteries, and the like; but the plaintiff cannot bring an action *ex delicto*, which arose out of a contract, and by that means charge an infant for a breach of a contract. The form is of no consequence; the only question is whether the action arose out of a contract or otherwise. A plaintiff who hired a horse to an infant, and the infant by hard, improper and injudicious driving, killed the horse, cannot maintain an action

ex delicto to recover damages for a breach of this contract. 3 Rawle's R. 351; 6 Watts's R. 9; 8 T. R. 335; Hamm. N. P. 267. But see contra, 6 Cranch, 226; 15 Mass. 359; 4 McCord, 387. Vide *Infant.*

§ 2. *As to the number of defendants.* There are torts which, when committed by several, may authorise a joint action against all the parties; but when in legal contemplation several cannot concur in the act complained of, separate actions must be brought against each; the cases of several persons joining in the publication of a libel, a malicious prosecution, or an assault and battery, are cases of the first kind; verbal slander is of the second. 6 John. R. 32. In general, when the parties have committed a tort which might be committed by several, they may be jointly sued, or the plaintiff may sue one or more of them, and not sue the others, at his election. Bac. Ab. Action Qui Tam, D; Roll. Ab. 707; 3 East, R. 62.

§ 3. *When the interest has been assigned.* A liability for a tort cannot well be assigned; but an estate may be assigned on which was erected a nuisance, and the assignee will be liable for continuing it, after having possession of the estate. Com. Dig. Case, Nuisance, B; Bac. Ab. Actions, B; 2 Salk. 460; 1 B. & P. 409.

§ 4. *When the wrongdoer is dead,* the remedy for wrongs *ex delicto,* and unconnected with contract, cannot in general be maintained. Vide *Actio personalis moritur cum persona.*

§ 5. *In case of insolvency.* Insolvency does not discharge the right of action of the plaintiff in any case; it merely liberates the defendant from arrest when he has received the benefit of, and been discharged under, the insolvent laws; an insolvent may therefore be sued for his torts committed before his discharge.

§ 6. *In case of marriage.* Marriage does not affect or change the liabilities of the husband, and he is alone to be sued for his torts committed either before or during the coverture. But it is otherwise with the wife; after her marriage she has no personal property to pay the damages which may be recovered, and she cannot even appoint an attorney to defend her. For her torts committed by her before the marriage, the action must be against the husband and wife jointly. Bac. Ab. Baron and Feme, L; 5 Binn. 43. They must also be sued jointly for the torts of the wife during the coverture, as for slander, assault and battery, &c. Bac. Ab. Baron and Feme, L.

PARTIES, *in contracts,* are those persons who engage themselves to do, or not to do, the matters and things contained in the agreement. All persons generally can be parties to contracts, unless they labour under some disability. Consent being essential to all valid contracts, it follows that persons who want, first, understanding; or secondly, freedom to exercise their will, cannot be parties to contracts. Thirdly, persons who in consequence of their situation are incapable to enter into some particular contract. These will be separately considered.

§ 1. Those persons who want understanding, are idiots and lunatics; drunkards and infants.

1. The contracts of idiots and lunatics are not binding; as they are unable from mental infirmity, to form any accurate judgment of their actions, and consequently, cannot give a serious and sufficient consideration to any engagement. And although it was formerly a rule that the party could not stultify himself, 39 H. 6, 42; Newl. on Contr. 19; 1 Fonb. Eq. 46, 7; yet this rule has been so

relaxed, that the defendant may now set up this defence. 3 Camp. 128; 2 Atk. 412; 1 Fonb. Eq. n. d.; and see Highm. on Lun. 111, 112; Long on Sales, 14; 3 Day's Rep. 90; Chit. on Contr. 29, 257, 8; 2 Str. 1104.

2. A person in a state of complete intoxication has no agreeing mind, Bull. N. P. 172; 3 Campb. 33; Sugd. Vend. 154; 1 Stark. Rep. 126; and his contracts are therefore void, particularly if he has been made intoxicated by the other party. 1 Hen. & Munf. 69; 1 South. Rep. 361; 2 Hayw. 394; see Louis. Code, art. 1781; 1 Clarke's R. 408.

3. In general the contract of an infant, however fair and conducive to his interest it may be, is not binding on him, unless the supply of necessaries to him be the object of the agreement, Newl. Contr. 2; 1 Eq. Cas. Ab. 286; 1 Atk. 489; 3 Atk. 613; or unless he confirm the agreement after he shall be of full age. Bac. Abr. Infancy, I 3. But he may take advantage of contracts made with him, although the consideration were merely the infant's promise, as in an action on mutual promises to marry. Bull. N. P. 155; 2 Str. 907; 1 Marsh. (Ken.) Rep. 76; 2 M. & S. 205. See Stark. Ev. pt. iv. p. 724; 1 Nott & M'Cord, 197; 6 Cranch, 226; Com. Dig. Infant; Bac. Abr. Infancy and Age; 9 Vin. Ab. 393, 4; Fonbl. Eq. b. 1, c. 2, § 4, note (*b*); 3 Burr. 1794; 1 Mod. 25; Stra. 937; Louis. Code, article 1778.

§ 2. Persons who have understanding, but who, in law, have not freedom to exercise their will, are married women; and persons under duress.

1. A married woman has, in general, no power or capacity to contract, during the coverture. Com. Dig. Baron & Feme, (W.); Pleader, (2 A 1.) She has in legal contemplation no separate existence, her husband and herself being in law but one person. Litt. section 28; see Chitty on Cont. 39, 40. But a contract made with a married woman, and for her benefit, where she is the meritorious cause of action, as in the instance of an express promise to the wife, in consideration of her personal labour, as that she would cure a wound. Cro. Jac. 77; 2 Sid. 128; 2 Wils. 424; or of a bond or promissory note, payable on the face thereof to her, or to herself and husband, may be enforced by the husband and wife, though made during the coverture. 2 M. & S. 396, n. (b.); 2 Bl. Rep. 1236; 1 H. Black. 108. A married woman has no original power or authority by virtue of the marital tie, to bind her husband by any of her contracts. The liability of a husband on his wife's engagements rests on the idea that they were formed by his authority; and if his assent do not appear by express evidence or by proof of circumstances from which it may reasonably be inferred, he is not liable. 1 Mod. 125; 3 B. & C. 631; see Chitty on Cont. 39 to 50.

2. Contracts may be avoided on account of duress. See that word, and also Poth. Obl. P. 1, c. 1, s. 1, art. 3, § 2.

§ 3. Trustees, executors, administrators, guardians, and all other persons who make a contract for and on behalf of others, cannot become parties to such contract on their own account; nor are they allowed in any case to purchase the trust estate for themselves. 1 Vern. 465; 2 Atk. 59; 10 Ves. 3; 9 Ves. 234; 12 Ves. 372; 3 Mer. Rep. 200; 6 Ves. 627; 8 Bro. P. C. 42; 10 Ves. 381; 5 Ves. 707; 13 Ves. 156. As to the transactions between attorneys and others in relation to client's property, see 2 Ves. jr. 201; 1 Madd. Ch. 114; 15 Ves. 42; 1 Ves. 379;

2 Ves. 259. The contracts of alien enemies may in general be avoided, except when made under the license of the government, either express or implied. 1 Kent, Com. 104. See 15 John. 6; Dougl. 641.

As to the persons who may make contracts in equity, see Newl. Cont. c. 1, pp. 1 to 33.

PARTIES TO A SUIT IN EQUITY. The person who seeks a remedy in chancery by suit, commonly called a plaintiff, and the person against whom the remedy is sought, usually denominated the defendant, are the parties to a suit in equity. It is of the utmost importance, that there should be proper parties; and therefore no rules connected with the science of equity pleading, are so necessary to be attentively considered and observed, as those which relate to the persons who are to be made parties to a suit, for when a mistake in this respect is discovered at the hearing of the cause, it may sometimes be attended with defeat, and will, at least, be followed by delay and expense. 3 John. Ch. R. 555; 1 Hopk. Ch. R. 566; 10 Wheat. R. 152. A brief sketch will be here given by considering, 1, who may be plaintiffs; 2, who may be made defendants; and, 3, the number of the parties.

§ 1. *Of the plaintiff.* Under this head will be considered who may sue in equity; and

1. The government, or as the style is in England, the crown, may sue in a court of equity, not only in suits strictly on behalf of the government, for its own peculiar rights and interest, but also on behalf of the rights and interest of those, who partake of its prerogatives, or claim its peculiar protection. Mitf. Eq. Plead. by Jeremy, 4, 21–24; Coop. Eq. 21, 101. Such suits are usually brought by the attorney-general.

2. As a general rule, all persons whether natural or artificial, as corporations, may sue in equity; the exceptions are persons who are not *sui juris*, as a person not of full age, a feme covert, an idiot, or lunatic. The incapacities to sue are either absolute, or partial. The absolute, disable the party to sue during their continuance; the partial, disable the party to sue by himself alone, without the aid of another. In the United States, the principal absolute incapacity, is alienage. The alien, to be disabled to sue in equity, must be an alien enemy, for an alien friend may sue in chancery. Mitf. Equity Pl. 129; Coop. Equity Pl. 27. But still the subject-matter of the suit may disable an alien to sue. Coop. Eq. Pl. 25; Co. Litt. 129 b. An alien sovereign, or an alien corporation may maintain a suit in equity in this country. 2 Bligh's Rep. 1, N. S.; 1 Dow. Rep. 179, N. S.; 1 Sim. R. 94; 2 Gall. R. 105; 8 Wheat. Rep. 464; 4 John. Ch. Rep. 370. In case of a foreign sovereign, he must have been recognized by the government of this country, before he can sue. Story's Eq. Pl. § 55; 3 Wheat. Rep. 324; Coop. Eq. Pl. 119. Partial incapacity to sue exists in the case of infants, of married women, of idiots and lunatics, or other persons who are incapable, or are by law specially disabled, to sue in their own names; as for example, in Pennsylvania and some other states, habitual drunkards, who are under guardianship. 1. An infant cannot, by himself, exhibit a bill, not only on account of his want of discretion, but because of his inability to bind himself for costs. Mitf. Eq. Pl. 25. And when an infant sues, he must sue with his next friend. Coop. Eq. 27; 1 Sm. Chan. Pl. 54. But as the next friend may sometimes bring a bill from improper motives, the court will upon a proper application, direct the master to

make inquiry on this subject, and if there is reason to believe it is not brought for the benefit of the infant, the proceedings will be stayed. 3 P. Wms. 140; Mitf. Eq. Pl. 27; Coop. Eq. Pl. 28.—2. A feme covert must, generally, join with her husband; but when he has abjured the realm, been transported for felony, or when he is civilly dead, she may sue as a feme sole. And when she has a separate claim, she may even sue her husband, with the assistance of a next friend of her own selection. Story's Eq. Pl. § 61; Story's Eq. Jur. § 1368; Fonbl. Eq. b. 1, c. 2, § 6, note (*p*). And the husband may himself sue the wife. 3. Idiots and lunatics are generally under the guardianship of persons who are authorised to bring a suit in the idiot's name, by their guardian or committee.

§ 2. *Of the defendant.* 1. In general, those persons who may sue in equity, may be sued. Persons *sui juris*, may defend themselves, but those under an absolute or partial inability, can make defence only in a particular manner. A bill may be exhibited against all bodies politic or corporate, against all persons not labouring under any disability, and all persons subject to such incapacity, as infants, married women, and lunatics, or habitual drunkards.

2. The government or the state, like the king in England, cannot be sued. Story, Eq. Pl. § 69.

3. Bodies politic or corporate, like persons *sui juris*, defend a suit by themselves.

4. Infants institute a suit, as has been seen, by next friend, but they must defend a suit by guardian appointed by the court, who is usually the nearest relation, not concerned in interest, in the matter in question. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 20, 109; 9 Ves. 357; 10 Ves. 159; 11 Ves. 563; 1 Madd. R. 290. Vide *Guardian*, n. 6.

5. Idiots and lunatics defend by their committees, who, in ordinary circumstances, are appointed guardians *ad litem*, for that purpose, as a matter of course. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 30, 32; Story's Eq. Pl. § 70; Shelf. on Lun. 425; and vide 2 John. Ch. R. 242, where Chancellor Kent held, that the idiot need not be made a party as defendant to a bill for the payment of his debts, but his committee only. When the idiot or lunatic has no committee, or the latter has an interest adverse to that of the lunatic or idiot, a guardian *ad litem* will be appointed. Mitf. Eq. Pl. 103; Story's Eq. Pl. § 70.

6. In general, a married woman, when she is sued, must be joined with her husband, and their answer must also be joint. But there are exceptions to this rule in both its requirements. 1. A married woman may be made a defendant, and answer as a feme sole, in some instances, as, when her husband is plaintiff in the suit, and sues her as defendant, and from the like necessity, when the husband is an exile or has abjured the realm, or has been transported under a criminal sentence, or is an alien enemy. She may be sued and answer as a feme sole, Mitf. Eq. Pl. 104, 105; Coop. Eq. Pl. 30.—2. When her husband is joined, or ought to be joined, she cannot make a separate defence, without a special order of court. The following are instances where such orders will be made. When a married woman claims as defendant in opposition to her husband, or lives separate from him, or disapproves of the defence he wishes her to make, she may obtain an order of court for liberty to answer, and defend the suit separately. And when the husband is abroad, the plaintiff may obtain an order that she shall answer separately; and if a woman obstinately refuses to join a defence with her

husband, the latter may obtain an order to compel her to make a separate answer. Mitf. Eq. Pl. 104; Coop. Eq. Pl. 30; Story's Eq. Pl. § 71.

§ 3. *As to the number of parties.* It is a general rule that every person who is at all interested in the subject-matter of the suit, must be made a party. It is the constant aim of a court of equity, to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and to prevent future litigation. For this purpose, all persons materially interested in the subject, ought to be parties to the suit, plaintiffs or defendants, however numerous they may be, so that a complete decree may be made binding those parties. Mitford's Eq. Pl. 144; 1 John. Ch. R. 349; 9 John. R. 442; 2 Paige's C. R. 278; 2 Bibb, 184; 3 Cowen's R. 537; 4 Cowen's R. 682; 9 Cowen's R. 321; 2 Eq. Cas. Ab. 170; 3 Swans. R. 139. When a great number of individuals are interested, as in the instance of creditors, seeking an account of the estate of their deceased debtor for payment of their demands, a few suing on behalf of the rest may substantiate the suit, and the other creditors may come in under the decree. 2 Ves. 312, 313. In such case, the bill should expressly show that it is filed as well on the behalf of other members as those who are really made the complainants; and the parties must not assume a corporate name, for if they assume the style of a corporation, the bill cannot be sustained. 6 Ves. Jr. 773; Coop. Eq. Pl. 40; 1 John. Ch. R. 349; 13 Ves. Jr. 397; 16 Ves. Jr. 321; 2 Ves. Sen. 312; S. & S. 18; Ib. 184. In some cases, however, when all the persons interested are not made parties, yet if there be such privity between the plaintiffs and defendants, that a complete decree may be made, the want of parties is not a cause of demurrer. Mitf. Eq. Pl. 145. Vide Calvert on Parties to Suits in Equity; Edwards on Parties to Bills in Chancery.

PARTITION, *conveyancing.* A deed of partition is one by which lands held in joint tenancy, co-parcenary, or in common, are divided into distinct portions, and allotted to the several parties, who take them in severalty. In the old deeds of partition, it was merely agreed that one should enjoy a particular part, and the other, another part, in severalty; but it is now the practice for the parties mutually to convey and assure to each other the different estates which they are to take in severalty, under the partition. Cruise, Dig. t. 32, c. 6, s. 15.

PARTITION, *estates,* is the division which is made between several persons, of lands, tenements or hereditaments, or of goods and chattels which belong to them as co-heirs or co-proprietors. The term is more technically applied to the division of real estate made between co-parceners, tenants in common or joint tenants. The act of partition ascertains and fixes what each of the co-proprietors is entitled to have in severalty. Partition is either voluntary, or involuntary, by compulsion. Voluntary partition is made by the owners of the estate, and by a conveyance or release of that part to each other which is to be held by him in severalty. Compulsory partition is made by virtue of special laws providing that remedy. "It is presumed," says Chancellor Kent, 4 Com. 360, "that the English statutes of 31 and 32 Henry VIII. have been generally re-enacted and adopted in this country, and, probably, with increased facilities for partition." In

some states the courts of law have jurisdiction; the courts of equity have for a long time exercised jurisdiction in awarding partition. 1 Johns. Ch. R. 113; 1 Johns. Ch. R. 302; 4 Randolph's R. 493; State Eq. Rep. S. C. 106. In Massachusetts, the statute authorises a partition to be effected by petition without writ. 15 Mass. R. 155; 2 Mass. Rep. 462. In Pennsylvania, intestates' estates may be divided upon petition to the orphans' court. By the civil code of Louisiana, art. 1214, et seq., partition of a succession may be made. Vide, generally, Cruise's Dig. tit. 32, ch. 6, s. 15; Com. Dig. Pleader, 3 F; Ib. Parcener, C; Ib. vol. viii. Append. h. t.; 16 Vin. Ab. 217; 1 Supp. to Ves. Jr. 168, 171; Civ. Code of Louis. B. 3, t. 1, c. 8.

PARTNERS, *in contracts*, are persons who have united together and formed a partnership. Partners are considered as ostensible, dormant, or nominal partners.

1. An actual ostensible partner is a party who not only participates in the profits and contributes to the losses, but who appears and exhibits himself to the world as a person connected with the partnership, and as forming a component member of a firm. He is clearly answerable for the debts and engagements of the partnership; his right to a share of the profits, or the permitted exhibition of his name as partner would be sufficient to render him responsible. 6 Serg. & Rawle, 259, 337; Barnard. 343; 2 Blackst. R. 998; 17 Ves. 404; 18 Ves. 301; 1 Rose, 297; 16 Johns. R. 40; 3 Hayw. R. 78.

2. A dormant partner is one who is a participant in the profits of the trade, but his name being suppressed and concealed from the firm, his interest is consequently not apparent. He is liable as a partner, because he receives and takes from the creditors a part of that fund which is the proper security to them for the satisfaction of debts, and upon which they rely for payment. 16 Johns. R. 40. Another reason assigned for subjecting a dormant partner to responsibility is, that if he were exempted he would receive usurious interest for his capital, without its being attended with any risk. 1 Dougl. 371; 4 East, R. 143; 10 Johns. R. 226; 4 B. & A. 663.

3. A nominal partner is one who has not any actual interest in the trade or its profits, but, by allowing his name to be used, he holds himself out to the world as having an apparent interest. He is liable as a partner, because of the false appearance he holds forth to the world in representing himself to be jointly concerned in interest with those with whom he is apparently associated. 2 H. Bl. 235; 1 Esp. N. P. C. 29; 6 Serg. & R. 338; Wats. Partn. 26.

As between the members of a firm and the persons having claims upon it, each individual member is answerable *in solido* for the amount of the whole of the debts contracted by the partnership, without reference either to the extent of his own separate beneficial interest in the concern, or to any private arrangement or agreement that may exist between himself and his copartners, stipulating for a restricted responsibility. 1 Ves. & Bea. 157; 9 East, 527; 5 Burr. 2611; 2 Bl. R. 947; 1 East, R. 20; 1 Ves. sen. 497; 2 Desaus. R. 148; 4 Serg. & Rawle, 356; 6 Serg. & Rawle, 333; Kirby, 53, 77, 147. In Louisiana, ordinary partners are not bound *in solido* for the debts of the partnership. Civ. Code of La. art. 2843; each partner is bound for his share of the partnership debts, calculating such share in proportion to the number of the partners, without any attention to the proportion of the stock or profits each is entitled to. Ib. art. 2844.

Partners are bound by what is done by one in the course of the business of the partnership. Their liability under contracts is commensurate and co-extensive with their rights. Although the general rule of law is, that no one is liable upon any contract except such as are privy to it; yet this is not contravened by the liability of partners, as they are imagined virtually present at and sanctioning the proceedings they singly enter into in the course of trade; or as each is vested with a power enabling him to act at once as principal and as the authorised agent of his co-partners. Wats. Partn. 167; Gow. Partn. 53. It is doubtful, however, whether one can close the business by a general assignment of the partnership property for the benefit of creditors. Pierpont and Lord v. Graham, Cir. Court, April, 1820, MS. Whart. Dig. 453, 1st ed.; 4 Wash. C. C. R. 232; see 1 Brock. R. 456; 3 Paige's R. 517; 5 Paige's R. 30; 1 Desaus. R. 537; 4 Day's R. 425; 5 Cranch, 300; 1 Hoffm. R. 68, 511; Stor. Partn. § 101.

One partner can, in simple contracts, bind his co-partners in transactions relative to the partnership. 7 T. R. 207; 4 Dall. 286; 1 Dall. 269. But a security given by one partner, in the partnership name, known to be for his individual debt, does not bind the firm. 2 Caines's R. 246; 4 Johns. R. 251; 4 Johns. R. 262, in note; 2 Johns. R. 300; 16 Johns. R. 34; 4 Serg. & Rawle, 397. Nor can one partner bind his co-partners by deed; and this both for technical reasons and the general policy of the law. Wats. Partn. 218; Gow on Partn. 83; 3 Johns. Cas. 180; Taylor's R. 113; 2 Caines's R. 254; 2 Caines's Err. 1; 2 Johns. R. 213; 19 Johns. R. 513; 1 Dall. 119. It seems to be an admitted principle, that one partner has no power to submit to arbitration any matters whatsoever, concerning or arising out of the partnership business. Story, Partn. § 114; Com. Dig. Arbitrament, D 2; 3 Bing. R. 101; 1 C. M. & R. 681; 1 Pet. R. 222; 19 John. R. 137; 3 Kent, Com. 49, 4th ed. But in Pennsylvania, 12 S. & R. 243, and Kentucky, 3 Monr. R. 433, one partner may by an unsealed instrument refer any partnership matter to arbitration.

With regard to the right of the majority of the partners, when there is a dissent among them, it may be laid down, 1, that when there are stipulations on this subject, they must govern. Turn. & Russ. 496, 517. 2. In the absence of all agreement on the subject, each partner has an equal voice, though their interests be different, and a majority have a right to conduct the business. 3 John. Ch. R. 400; 3 Chit. Comm. Law, 236; Colly. Partn. B. 2, c. 2, s. 1; Id. B. 3, c. 1, s. 262; Story, Partn. § 123. 3. When there are only two partners, and they dissent, neither can bind the partnership, when the person with whom they deal has notice of such disagreement. 1 Stark. R. 164. See 1 Camp. R. 403; 10 East, R. 264; 7 Price, Rep. 193; 6 Ves. 777; 16 Vin. Ab. 244. But this right of the majority is confined to transactions in the usual scope of the business, and not to a change of the articles of the partnership, for in such case all the partners must consent. 4 John. Ch. R. 573.

The stock used in a joint undertaking by way of partnership in trade, is always considered in common and not as joint property, and consequently there is no survivorship therein; *jus accrescendi inter mercatores, pro beneficio commercii locum non habet.* On the death of one partner, therefore, his representatives become tenants in common with the survivor, of all the partner-

ship effects in possession. But with respect to *choses in action*, survivorship so far exists at law, as that the remedy or right to reduce them into possession vests exclusively in the survivor; although when they are recovered, the representatives of the deceased partner have, in equity, the same right of sharing and participating in them which their testator or intestate would have possessed had he been living. 1 Ld. Raym. 340. See 2 Dall. 65, 66, in note; 1 Dall. 248; 4 Dall. 354; 2 Serg. & Rawle, 494.

See, generally, as to partners, 5 Com. Dig. Merchant, D; Bac. Abr. Merchant, C; Wats. on Partn. *passim*; Gow on Partn. *passim*; Supp. to Ves. jr. vol. 1, p. 36, 279, 281, 312, 389, 449, 503; Ib. vol. 2, p. 40, 314, 315, 317, 362, 364, 377, 384, 456; 1 Salk. 291, ‡392; 1 Swanst. R. 506, 9; 10 East, R. 265; 4 Ves. 396; Civ. Code of La. B. 3, t. 11; Code Civ. L. 3, t. 9; Code de Proc. Civ. L. 1, t. 3; Chit. Contr. 66 to 82; Poth. Contrat de Societé. Vide *Articles of Partnership; Death of a partner; Dissolution; Firm; Partnership.*

PARTNERSHIP, *in contracts*, is an agreement between two or more persons, for joining together their money, goods, labour and skill, or either or all of them, and that the gain or loss shall be divided proportionally between them, and having for its object the advancement and protection of fair and open trade. Watson on Partn. 1; Gow on Partn. 2; see Civ. Code of Lo. art. 2772; Code Civ. art. 1832; Forbes, Inst. of Scotch Law, part 2, B. 3, s. 3, p. 184; edit. Edin. 1722, 12mo.; Domat, Civ. Law, vol. 1, p. 85; 9 John. R. 488; Puffend. B. 5, c. 8; 2 H. Bl. 246; 1 H. Bl. 37; Ersk. Inst. B. 3, t. 3, § 18; Tapia, Elementos de Jurisp. Mercantil, p. 86; 5 Duv. Dr. Civ. Fr. tit. 9, c. 1, n. 17; 4 Pard. Dr. Com. n. 966; 2 Bell's Com. 611, 5th ed.; Aso & Man. Inst. B. 2, tit. 15. Sometimes partnership signifies a moral being composed of the reunion of all the partners. 4 Pard. n. 966.

In respect to their character and extent, as they regard property, partnerships may be divided into three classes, namely; universal partnerships; general partnerships; and limited or special partnerships. 1. A universal partnership is one where the parties agree to bring into the firm all their property, real, personal and mixed, and to employ all their skill, labour, and services, in the trade or business, for their common benefit. This kind of partnership is perhaps unknown in the United States. 5 Mason, R. 176.—2. General partnerships are properly such, where the parties carry on all their trade and business for their joint benefit and profit; and it is not material whether the capital stock be limited or not, or the contributions of the partners be equal or unequal. Cowp. 814. The same appellation is given to a partnership where the parties are engaged in one branch of trade only.—3. Special partnerships are those formed for a special or particular branch of business, as contradistinguished from the general business or employment of the parties, or of one of them. When they extend to a single transaction or adventure only, such as the purchase and sale of a particular parcel of goods, they are more commonly called limited partnerships. The appellation is however given to both classes of cases indiscriminately. Story, Partn. § 75.

When considered in relation to the number and character of the parties, partnerships are divided into private partnerships and public companies. 1. Private partnerships are those which consist of two or more partners for some private undertaking, trade,

or business.—2. Public companies are those where a greater number of persons are concerned, and the stock is divided into a considerable number of shares, the object embracing generally public as well as private interests. This term is however, perhaps loosely applied, as these companies have for the most part the character of private associations. They are either incorporated or not. The incorporated are to be governed by the rules established in their respective charters. See *Corporation*. The unincorporated are in general subject to all the regulations of a common private partnership.

In the French law partnerships are divided into three kinds, namely; 1. Partnerships under a collective name, that is, where the name of the firm contains the names of all or some of the partners. — 2. Partnerships en commandite or *in commendam;* these are limited partnerships, where one or more persons are general partners, and are jointly and severally responsible with all their estates, and one or more other persons who furnish a part or the whole of the capital, who are liable only to the extent of the capital they have furnished. The business is carried on in the name of the general partners. This species of partnership, with some modifications, has been adopted in several of the states of the American union. 3 Kent, Com. 34, 4th ed.—3. Anonymous partnerships are those in which all the partners are engaged in the business, but there is no social name or firm, but a name designating the object of the association. The business is managed by syndics or directors. Vide Poth. de Societé, h. t.; 5 Duv. Dr. Civ. Fr. h. t.; Pardes. Dr. Com. h. t.; Code de Com. h. t.; Merl. Répert. h. t. In Louisiana a similar division has been made. Civ. Code of Lo. h. t.

Every person *sui juris* is competent to contract the relation of a partner. An infant may by law be a partner, 5 B. & A. 159; but a feme covert, not being able of contracting, cannot enter into partnership: and although married women are not unfrequently entitled to shares in banking houses, and other mercantile concerns, under positive covenants, yet when this happens, their husbands are entitled to such shares, and become partners in their steads. Whether a feme sole trader in Pennsylvania could enter into such contract, seems not settled. See 2 Serg. & Rawle, 189; see also 2 Nott & M'C. R. 242; 2 Bay, 162, 333; Code Civ. par Sirey, art. 220.

Partnerships are created by the mere act of the parties; and in this they differ from corporations which require the sanction of public authority, either express or implied. Ang. & Ames on Corp. 23. The consent of the parties may be testified, either in express terms, as by articles of partnership, or positive agreement; or the assent may be tacit, and to be implied solely from the act of the parties. An implied or presumptive assent has equal operation with one that is express and determined. And it may be laid down as a general and undeniable proposition, that persons having a mutual interest in the profits and loss of any business, or particular branch of business, carried on by them, or persons appearing ostensibly to the world as joint traders, are to be recognized and treated as partners, whatever may be the nature of the agreement under which they act, or whatever motive or inducement may prompt them to such an exhibition. 1 Dall. 269.

A community of property does not of itself create a partnership, however that property may be acquired, whether by purchase, donation, accession, inheritance or prescription. Civ. Code of Louis. art. 2777. Hence

joint tenants or tenants in common of lands, goods, or chattels, under devises or bequests in last wills or testaments, and deeds or donations *inter vivos*, and inheritances or successions, are not partners. Story, Partn. § 3. Joint owners of ships are not, in consequence of such ownership, to be considered as partners. Abbott on Ship. 68; 3 Kent, Com. 25, 4th ed.; 15 Wend. 187; and see Poth. De Societé, n. 2; 4 Pard. Dr. Com. n. 969; 17 Dur. Dr. Fr. n. 320; 5 Duv. Dr. Civ. Fr. n. 33. The free and personal choice of the contracting parties is so essentially necessary to the constituting of a partnership, that even executors and representatives of deceased partners do not, in their representative capacity, succeed to the state and condition of partners, 2 Ves. Sen. 34; Wats. on Partn. 6; although a community of interest necessarily exists between them and the surviving partners, until the affairs of the partnership are wound up. 11 Ves. 3. When there is a positive agreement at the commencement of the partnership, that the personal representative or heir of a partner shall succeed him in the partnership, the obligation will be considered valid. Coll. on Part. B. 1, ch. 1, § 1; Story, Partn. § 5.

The object of the partnership must be legal. All partnerships, therefore, which are formed for any purpose forbidden by law or good morals, are null and void. But all the partners in such a partnership are jointly liable to third persons who may contract with them without a knowledge of the illegal or immoral object of the partnership. Civ. Code of Lo. art. 2775; 5 B. & A. 341; 2 B. & P. 371; 3 T. R. 454; Poth. Oblig. by Evans, vol. 2, p. 3; Gow on Partn. 8; Wats. Partn. 131. Partnerships are not confined to mere commercial trade or business; but generally extend to manufactures and to all other lawful occupations and employments, or to profession or other business. They may extend to all the business of the parties; to a single branch of such business; to a single adventure; or to a single thing. But there cannot lawfully be a partnership in a mere personal office, especially when it is of a public nature, requiring the personal confidence in the skill and integrity of the officer. Story, Partn. § 81; Colly. Partn. 31.

Partnerships may be formed to last for life, or for a specific period of time; they may be conditional or indefinite in their duration, or for a single adventure or dealing; this depends altogether on the will of the parties. The period of duration is either expressed or implied, but the law will not presume that it shall last beyond life. 1 Swanst. R. 521; 1 J. Wils. R. 181. When a particular term is fixed, it is presumed to endure until the period has elapsed; when no term is fixed, it is presumed to endure for the life of the parties, unless previously dissolved by the acts of one of them, by mutual consent, or by operation of law. Story, Partn. § 84.

A partnership may be dissolved in several ways: when the partnership is formed for a single dealing or transaction, it follows that it is at an end so soon as the dealing or transaction in which the partners jointly engaged is completed. Gow on Partn. 268; Inst. Lib. 3, tit. 26, s. 6. Where a general partnership is formed, either for a definite or an indefinite period of time, the causes which may operate a destruction of it, are various. In the case of a partnership limited as to its duration, it may, in the intermediate time, before the restricted period of its termination arrives, be dissolved either by the death, the confirmed insanity, the bankruptcy of all or one of the partners, or it may endure the stipulated period, and ex-

pire with the effluxion of time; but where the partnership is unlimited as to its existence, although in the instances of death or bankruptcy, it is determined, yet if they do not intervene any partner may withdraw himself from it whenever he thinks proper. Code, lib. 4, t. 37, 1, 5. Besides the causes above stated for a dissolution, a partnership, limited or unlimited as to its duration, may be dissolved by the decree of a court of equity, where the conduct of some or all of the partners has been such as not to carry on the trade or undertaking on the terms stipulated. Gow on Partn. 269; or by the voluntary or compulsory sale or transfer of the partnership interest of any one of the partners, 17 John. R. 525. In New York, it has been held that there is no such thing as an indissoluble partnership, and that, therefore, any partner may withdraw at any time, and by that act the partnership will be dissolved; the other party having his action against the withdrawing partner upon his covenant to continue the partnership. 19 Johns. R. 538. This doctrine is not in accordance with the English law. Indeed it is even doubtful in New York. Story, Eq. Jur. § 668; Story, Partn. § 275; 3 Kent, Com. 61, 4th ed.; 1 Hoffm. Ch. R. 534. See Gow on Partn. 303, 305, and 4 Wash. C. C. R. 232. It may also be dissolved by the extinction of the thing or object of the partnership; or by the agreement of the parties. See Civ. Code of Louis. art. 2847; Code Civ. B. 3, tit. 9, c. 4, art. 1865 to 1872; 2 Bell's Com. 631 to 644, 5th ed.

The effect of the dissolution of the partnership is to disable any one of the partners from contracting new obligations or engagements on account of the firm. But notwithstanding the dissolution there remain, with each of the partners, certain powers, rights, duties, authorities, and relations between them, which are indispensable to the complete arrangement and final settlements of the affairs of the firm. The partnership must, therefore, subsist for many purposes, notwithstanding the dissolution. Among these are, 1st. The completion of all the unperformed engagements of the partnership; 2dly. The conversion of all the property, means and assets of the partnership, existing at the time of the dissolution, for the benefit of those who were partners, according to their respective shares; 3dly. The application of the partnership funds, to the liquidation of the partnership debts. Story, Partn. § 324.

By the laws of Louisiana, partnerships are divided, as to their object, into commercial partnerships and ordinary partnerships. Commercial partnerships are such as are formed, 1, for the purchase of any personal property, and the sale thereof either in the same state or changed by manufacture; 2, for buying and selling any personal property whatsoever, as factors or brokers; 3, for carrying personal property for hire, in ships or other vessels. Civ. Code of Lo. art. 2796. Ordinary partnerships are such as are not commercial; they are divided into universal or particular partnerships. Ib. art. 2797.

Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real and personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock, or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common

stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void. Code Civ. of Lo. art. 2800.

Particular partnerships are such as are formed for any business not of a commercial nature. Ib. art. 2806. The business of this partnership must be conducted in the name of all the persons concerned, unless a firm is adopted by the articles of partnership reduced to writing, and recorded as is prescribed with respect to partnerships *in commendam*. Ib. art. 2808.

There is also a species of partnership which may be incorporated with either of the other kinds, called partnership *in commendam*, or limited partnership. Ib. art. 2799. Partnership *in commendam* is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Ib. art. 2810. Every species of partnership may receive such partners. It is therefore a modification of which the several kinds of partnerships are susceptible, rather than a separate division of partnerships. Vide *Firm*.

PARTOWNERS, are persons who hold real or personal property by the same title, either as tenants in common, joint tenants, or coparceners. They are sometimes called *quasi partners*, and differ from partners in this, that they are either joint owners, or tenants in common, each having an independent, although an undivided interest in the property: neither can transfer or dispose of the whole property nor act for the others in relation to it, but merely for his own share, and to the extent of his own several right and interest. In joint tenancy of goods or chattels, it is true, the joint tenants are seised *per my et per tout*, but still each one has an independent, and to a certain extent a distinct right during his lifetime, which he can dispose of and sever the tenancy. Tenants in common hold undivided portions of the property by several titles, or in several rights, although by one title. Their possession, however, they hold in common and undivided. Whereas in partnerships, the partners are joint owners of the property and each has a right to sell or dispose of the whole, unless otherwise provided for in the articles of partnership. Colly. Partn. 76; Wats. Partn. 66; Story, Partn. § 91.

At common law each of the owners of a chattel has an equal title and right to possess and use it; and in the case of common chattels the law has generally left this right to the free discretion of the several owners, but in regard to ships, the common law has adopted and followed out the doctrine of the courts of admiralty. It authorises the majority in value and interest to employ the ship upon any probable design. This is done, not without guarding the rights of the minority. When the majority desire to employ a ship upon any particular voyage or adventure, they have a right to do so, upon giving security by stipulation to the minority, if required to bring back, and restore the ship to them, or in case of her loss, to pay them the value of their shares. Abbott, Shipp. 70; 3 Kent, Com. 151, 4th ed.; 2 Bro. Civ. Law, 131; Molloy, B. 2, c. 1, § 3; 2 Pet. Adm. R. 288; Story, Partn. 428; 11 Pet. R. 175. When the majority do not choose to employ the ship, the minority have the same right, upon giving similar security, 11 Pet. R. 175; 1

Hagg. Adm. R. 306; Jacobs. Sea Laws, 442.

When partowners are equally divided as to the employment upon any particular voyage, the courts of admiralty have manifested a disposition to support the right of the court to order a sale of the ship. Story, Partn. § 439; Bee's Adm. R. 2; Gilpin, R. 10; 18 Am. Jur. 486.

PARTURITION. The act of giving birth to a child. Sometimes questions arise how far means may be employed to promote parturition which cause, or are likely to cause, the death of the fœtus. These means in cases of deformed pelvis, are abortion in the early months, by embryotomy, by symphysotomy, and by the Cæsarian section. These means are justifiable to save the life of the mother, and sometimes some of them have saved the lives of both. Vide *Cæsarian operation; Delivery; Pregnancy.*

PARTY, *practice, contracts.*—When applied to practice, by party is understood either the plaintiff or defendant. In contracts a party is one or more persons who engage to perform or receive the performance of some agreement. Vide *Parties to Contracts; Parties to actions; Parties to a suit in equity.*

PARTY-JURY. An ancient word used to signify a jury *de medietas linguæ*, (q. v.) or one composed one half of natives, and the other of foreigners. Lexic. Techn. h. t.

PARTY WALL. A wall erected on the line between two adjoining estates. Party walls are generally regulated by acts of the local legislatures. The principles of these acts generally are, that the wall shall be built equally on the lands of the adjoining owners, at their joint expense, but when only one owner wishes to use such wall, it is built at his expense, and when the other wishes to make use of it, he pays one half of its value; each owner has a right to place his joists in it, and use it for the support of his roof. When the party wall has been built, and the adjoining owner is desirous of having a deeper foundation, he has a right to undermine such wall, using due care and diligence to prevent any injury to his neighbour, and having done so, he is not answerable for any consequential damages which may ensue. 17 John. R. 92; 12 Mass. 220; 2 N. H. Rep. 534. Vide 1 Dall. 346; 5 S. & R. 1. When such wall exists between two buildings, belonging to different persons, and one of them takes it down with his buildings, he is required to erect another in its place in a reasonable time, and with the least inconvenience; the other owner must contribute to the expense, if the wall required repairs, but such expense will be limited to the costs of the old wall, 3 Kent, Com. 436. When the wall is taken down, it must be done with care; but it is not the duty of the person taking it down to shore up or prop the house of his neighbour, to prevent it from falling; if, however, the work be done with negligence, by which injury accrues to the neighbouring house, an action will lie. 1 Moody & M. 362. Vide 4 C. & P. 161; 9 B. & C. 725; 12 Mass. R. 220; 4 Paige's R. 169; 1 C. & J. 20. In the excellent treatise of M. Lepage, entitled "Lois des Bâtimens, part. 1, c. 3, s. 2, art. 1, will be found a very minute examination of the subject of party walls, with many cases well calculated to illustrate our law. See also Poth. Contr. de Societé, prem. app. n. 207; 2 Hill. Ab. 119.

PASS. In the slave states this word signifies a certificate given by the master or mistress to a slave, in which it is stated that he is permitted to leave his home with the authority of his master or mistress. The paper

on which such certificate is written is also called a pass.

PASS-BOOK, *com. law.* A book used by merchants with their customers, in which an entry of goods sold and delivered to a customer is made. It is kept by the buyer and sent to the merchant whenever he wishes to purchase any article. It ought to be a counterpart of the merchant's books, as far as regards the customer's account.

PASSAGE. A way over water: a voyage made over the sea or great river, as, the Sea-Gull had a quick passage; the money paid for the transportation of a person over the sea, as, my passage to Europe was one hundred and fifty dollars.

PASSAGE-MONEY, *contracts*, is the sum claimable for the conveyance of a person, with or without luggage, on the water. The difference between *freight* and *passage-money* is this, that the former is claimable for the carriage of goods, and the latter for the carriage of the person. The same rules which govern the claim for freight affect that for passage-money. 3 Chit. Com. Law, 424. 1 Pet. Adm. Dec. 126.

PASSPORT, SEA-BRIEF, or SEA-LETTER, *in maritime law*, is a paper containing a permission from the neutral state to the captain or master of a ship or vessel to proceed on the voyage proposed; it usually contains his name and residence; the name, property, description, tonnage and destination of the ship; the nature and quantity of the cargo; the place from whence it comes, and its destination; with such other matters as the practice of the place requires. This document is indispensably necessary in time of war for the safety of every neutral vessel. Marsh. Ins. B. 1, c. 9, s. 6, p. 406, b. In most countries of continental Europe passports are given to travellers; these are intended to protect them on their journey from all molestation, while they are obedient to the laws. Passports are also granted by the secretary of state to persons travelling abroad, certifying that they are citizens of the United States. 9 Pet. 692. Vide 1 Kent, Com. 162, 182; Merl. Répert. h. t.

PASSENGER, *cont.* One who has taken a place in a public conveyance, for the purpose of being transported from one place to another. The laws of the United States require that the master of a vessel shall not take more than two passengers for every five tons of the ship's custom house measurement; and that the quantity of water and provisions, which shall be taken on board and secured under deck, by every ship bound from the United States to any port on the continent of Europe, shall be sixty gallons of water, one hundred pounds of salted provisions, one gallon of vinegar, and one hundred pounds of wholesome ship bread, for each passenger, besides the stores of the crew. Act of March 2, 1819, 3 Story's L. U. S. 1722. No deduction is to be made, in estimating the number of passengers in a vessel, for children or persons not paying. Gilp. R. 334. For his rights and duties, vide *Common Carriers*.

PASTURES, *pasturæ*, signifies the land on which beasts are fed; and by a grant of pastures the land itself passes. 1 Thom. Co. Litt. 202.

PATENT, *construction*. That which is open or manifest. This word is usually applied to ambiguities which are said to be latent or patent. A patent ambiguity is one which is produced by the uncertainty, contradictariness or deficiency of the language of an instrument, so that no discovery of facts or proof of declaration can restore the doubtful or smothered sense, without adding ideas which the actual words will not of themselves sustain. Bac.

Max. 99; T. Raym. R. 411; Roberts on Fr. 15. A latent ambiguity may be explained by parol evidence, but the rule is different with regard to a patent ambiguity, which cannot be explained by parol proof. The following instance has been proposed by the court as a patent ambiguity: "If A B, by deed, give goods to *one* of the sons of J S, who has several sons, he shall not aver which was intended; for by judgment of law upon this deed, the gift is void for uncertainty, which cannot be supplied by averment." 8 Co. 155 a; and no difference exists between a deed and a will upon this subject. 2 Atk. 239. This rule, which allows an explanation of latent ambiguities, and which forbids the use of parol evidence to explain a patent ambiguity, is difficult of application. It is attended, in some instances, with very minute nicety of discrimination, and becomes a little unsteady in its application. When a bequest is made "to Jones, son of Jones," or "to Mrs. B," it is not easy to show that the ambiguity which this imperfect designation creates, is not ambiguity arising upon the face of the will, and as such, an ambiguity *patent*, yet parol evidence is admitted to ascertain the persons intended by those ambiguous terms. The principle upon which parol testimony is admitted in those cases, is probably, in the first of them, a presumption of possible ignorance in the testator of the Christian name of the legatee; and in the second, a similar presumption of his being in the habit of calling the person by the name of Mrs. B. Presumptions, which being raised upon the face of the will, may be confirmed and explained by extrinsic evidence. Rob. on Fr. 15, 27; 2 Vern. 624, 5; 1 Vern. by Raithby. 31, note (2); 1 Rop. Leg. 147; 3 Stark. Ev. 1000; 3 Bro. C. C. 311; 2 Atk. 239; 3 Atk. 257; 3 Ves. Jr. 547. Vide arts. *Ambiguity; Latent.*

PATENT, *contracts.* [1] A patent for an invention is a grant made by the government of the United States to the inventor of any new or useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer; securing to him for a limited time, therein expressed, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery, on certain conditions, among which is the one of at once giving up his secret, and making public his discovery or invention, and the manner of making and using the same, so that at the expiration of his privilege, it may become public property. The instrument securing this grant is also called a patent. The subject will be considered by taking a succinct view of, 1, the legislation of the United States on the subject; 2, the patentee; 3, the subject to be patented; 4, the caveat and preliminary proceedings; 5, the proceedings to obtain a patent; 6, the patent; 7, the duty or tax on patents; 8, courts having jurisdiction in patent cases; 9, actions for violations of patents.

§ 1. *Legislation of the United States.*

[2] The constitution of the United States authorises congress to pass laws "to promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right of their respective writings and discoveries." Art. 1, s. 8, n. 8. The first act

passed under this power is that which established the patent office on the 10th of April, 1790, 1 Story, L. U. S. 80. There were several supplements and modifications to this first law, namely, the acts passed February 7, 1793, Idem, 300; June 7, 1794, Idem, 363; April 17, 1800, Idem, 753; July 3, 1832, 4 Sharsw. cont. of Story, L. U. S. 2300; July 13, 1832, Idem, 2313.

[3] These acts were repealed by the act of July 4, 1836, 4 Sharsw. cont. Story, L. U. S. 2504, which enacts:

§ 21. That all acts and parts of acts heretofore passed on this subject, be, and the same are hereby repealed: Provided, however, That all actions and processes in law or equity sued out prior to the passage of this act, may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action, of the provisions of the fourteenth and fifteenth sections of this act, so far as they may be applicable thereto. And provided, also, That all applications and petitions for patents, pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof.

[4] The existing laws on the subject of patents are the act of July 4, 1836, already mentioned; the acts of March 3, 1837, Idem, 2546; March 3, 1839, 9 Laws U. S. 1019; August 29, 1842, ch. 263, Pamph. Laws, 171.

§ 2. *Of the patentee.*

[5] Any person or persons having discovered or invented the thing to be patented, whether he be a citizen of the United States or an alien, is entitled to a patent on fulfilling the requirements of the law. Act of July 4, 1836, s. 6.

[6] By the 10th section of the same act it is provided, That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might by virtue of this act be granted, and such person shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs at law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such in his or her lifetime; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the sixth section of this act, shall be so varied as to be applicable to them.

[7] And by the act of March 3, 1837, section 6, it is enacted, That any patent hereafter to be issued, may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specification duly sworn to by the inventor. And in all cases hereafter, the applicant for a patent shall be held to furnish duplicate drawings, whenever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and considered a part of the specification.

§ 3. *The subject to be patented.*

[8] Patents are granted, 1, for inventions and discoveries; and, 2, for importations.

1. *Patents for inventions and discoveries.*

By the act of July 4, 1836, sect. 6, it is enacted, That any person or

persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer, and shall desire to obtain an exclusive property therein, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner on due proceedings had, may grant a patent therefor.

[9] The thing to be patented must be an *invention* or *discovery;* it must be *new* and *useful.*

1. The invention or discovery must be something which the inventor has himself found out; some peculiar device or manner of producing any given effect. A patent cannot, therefore, be taken out for the elementary principles of motion, which philosophy and science have discovered, but only for the manner of applying them. 1 Gallis. 478; 2 Gallis. 51. A patent may be taken out for an improvement on a machine which is known and used, 3 Wheat. 454; but a mere change of former proportions, will not entitle a party to a patent, 1 Gallis. 438; 2 Gallis. 51. It is provided by the act of July 4, 1836, s. 13, that whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification. And by the act of March 3, 1837, s. 8, that, whenever application shall be made to the commissioner for any addition of a newly discovered improvement to be made on an existing patent, or whenever a patent shall be returned for correction and re-issue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the commissioner shall not add any such improvement to the patent in the one case, nor grant the re-issue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the commissioner; and in all such cases the applicant, if dissatisfied with such decision, shall have the same remedy and be entitled to the benefit of the same privileges and proceedings as are provided by law in the case of original applications for patents.

[10] 2. The thing patented must be a *new* and *useful* invention, discovery or improvement. Among inventors, he who is first in time, has a prior right to the patent for the invention. Pet. C. C. R. 394. But by the act of March 3, 1839, sect. 7, it is provided, that every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific ma-

chine, manufacture, or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent. By the term useful invention is meant an invention which may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to morals, to the health, or good order of society. 1 Mason, C. C. R. 302; 4 Wash. C. C. R. 9; the term is also opposed to that which is frivolous or mischievous. 1 Mason, C. C. R. 182; Renouard, 177; Perpigna, Man. des Inv. c. 2, s. 1, p. 50. See 3 Car. & P. 502; 1 Pet. C. C. R. 480; 1 U. S. Law Journ. 563; 1 Paine, 203; 2 Kent, Com. 368, n.; Phill. on Pat. c. 7, s. 14.

The act of August 29, 1842, sect. 3, provides, that any citizen or citizens, or alien or aliens, having resided one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woollen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire or obtain an exclusive property or right therein to make, use, and sell and vend the same, or copies of the same, to others, by them made, used, and sold, may make application in writing to the commissioner of patents expressing such desire, and the commissioner, on due proceedings had, may grant a patent therefor, as in the case now of application for a patent: Provided, That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one-half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provisions of this act, shall apply to applications under this section.

2. *Patents for importations.*

[11] It is enacted by the act of March 3, 1839, s. 6, that no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which this is additional, by reason of the same having been patented in a foreign country, more than six months prior to his application: Provided, That the same shall not have been introduced into public and common use, in the United States, prior to the application for such patent: And provided also, That in all cases every such patent shall be limited to the term of fourteen years from the date or publication of such foreign letters-patent.

[12] And by the act of July 4, 1836, s. 8, it is provided, that nothing in this act contained shall be construed to deprive an original and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters-patent therefor in a foreign country, and the same having been published, at any time within six months next preceding the filing of his specification and drawing.

§ 4. *Of the caveat, and other preliminary proceedings.*

[13] The act of July 4, 1836, s. 12, provides that any citizen of the United States, or alien who shall have been resident in the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the patent office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention; which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application, who shall, within three months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specifications, drawings and model; and if, in the opinion of the commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications: Provided, however, That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favour of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court in any action in which its validity may come in question.

[14] And the same act, s. 8, directs, that whenever the applicant shall request it, the patent shall take date from the time of the filing of the specification and drawings, not however, exceeding six months prior to the actual issuing of the patent; and on like request, and the payment of the duty herein required, by any applicant, his specification and drawings shall be filed in the secret archives of the office until he shall furnish the model and the patent be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering applications.

§ 5. *Of the proceedings to obtain a patent.*

[15] This section will be divided by considering the proceedings when there is no opposition, and when there are conflicting claims.

1. *Proceedings without opposition.*

The sixth section of the act of July 4, 1836, directs, that before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of

his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same; and in case of any machine, he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions; and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing, or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor and attested by two witnesses, shall be filed in the patent office; and he shall moreover furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original and first inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent, and that he does not know or believe that the same was ever before known or used; and also of what country he is a citizen; which oath or affirmation may be made before any person authorised by law to administer oaths.

[16] The fourth section of the act of August 29, 1842, provides that the oath required for applicants for patents, may be taken, when the applicant is not for the time being, residing in the United States, before any minister plenipotentiary, chargé d'affaires, consul, or commercial agent, holding a commission under the government of the United States, or before any notary public of the country in which such applicant may be. And the act of March 3, 1837, sect. 13, provides, that in all cases in which an oath is required by this act, or by the act to which this is additional, if the person of whom it is required shall be conscientiously scrupulous of taking an oath, affirmation may be substituted therefor.

[17] The seventh section of the act of July 4, 1836, further enacts, that on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the commissioner shall make or cause to be made, an examination of the alleged new invention or discovery; and if, on any such examination, it shall not appear to the commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant's consent or allowance prior to the application, if the commissioner shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever on such examination it shall appear to the commissioner that the applicant was not the original and first inventor or discoverer thereof, or that any part of that which is claimed as new had before been invented or discovered, or patented, or described in any printed publication in this or any

foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information and references as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinguishing his claim to the model, he shall be entitled to receive back twenty dollars, part of the duty required by this act, on filing a notice in writing of such election in the patent office, a copy of which, certified by the commissioner, shall be a sufficient warrant to the treasurer for paying back to the said applicant the said sum of twenty dollars. But if the applicant in such case shall persist in his claim for a patent, with or without any alteration of his specification, he shall be required to make oath or affimation anew in manner as aforesaid. And if the specification and claim shall not have been so modified as in the opinion of the commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the secretary of state, one of whom at least, to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains; who shall be under oath or affimation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing, of the opinion and decision of the commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the said board shall give reasonable notice to the applicant, as well as to the commissioner, of the time and place of their meeting, that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to a just decision; and it shall be the duty of the commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the commissioner, either in whole or in part; and their opinion being certified to the commissioner, he shall be governed thereby, in the further proceedings to be had on such application: Provided, however, That before a board shall be instituted in any such case, the applicant shall pay to the credit of the treasury, as provided in the ninth section of this act, (see [36]) the sum of twenty-five dollars, and each of said persons so appointed shall be entitled to receive for his services in each case, a sum not exceeding ten dollars, to be determined and paid by the commissioner out of any moneys in his hands, which shall be in full compensation to the persons who may be so appointed, for their examination and certificate as aforesaid.

[18] By the twelfth section of the act of March 3, 1839, the commissioner of patents is vested with power to make all such regulations in respect to taking of evidence to be used in contested cases before him, as may be just and reasonable. And so much of the act of July 4, 1836, as provides for a board of examiners is thereby repealed.

[19] And by the same act, sect.

11, it is provided, that in all cases where an appeal is now allowed by law from the decision of the commissioner of patents to a board of examiners provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the chief justice of the district court of the United States for the District of Columbia, by giving notice thereof to the commissioner, and filing in the patent office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing, and also paying into the patent office, to the credit of the patent fund, the sum of twenty-five dollars. And it shall be the duty of said chief justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary manner, on the evidence produced before the commissioner, at such early and convenient time as he may appoint, first notifying the commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the commissioner and the examiners in the patent office, may be examined under oath, in explanation of the principles of the machine, or other thing for which a patent, in such case, is prayed for. And it shall be the duty of said judge after a hearing of any such case, to return all the papers to the commissioner, with a certificate of his proceedings and decision, which shall be entered of record in the patent office; and such decision, so certified shall govern the further proceedings of the commissioner in such case: Provided, however, That no opinion or decision of the judge in any such case, shall preclude any person interested in favour or against the validity of any patent, which has been or may hereafter be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

2. *When there are conflicting claims.*

[20] It is enacted by the 8th section of the act of July 4, 1836, that whenever an application shall be made for a patent which, in the opinion of the commissioner, would interfere with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the commissioner to give notice thereof to such applicants, or patentees, as the case may be; and if either shall be dissatisfied with the decision of the commissioner on the question of priority of right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act; and like proceedings shall be had, to determine which, or whether either of the applicants is entitled to receive a patent as prayed for.

[21] And by the 16th section of the same act, that whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such appli-

cant in the other, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge and declare either the patents void in whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall in any such case be made to appear. And such adjudication, if it be in favour of the right of such applicant, shall authorise the commissioner to issue such patent, on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act. Provided, however, that no such judgment or adjudication shall affect the rights of any persons except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment. And the commissioner is vested by the 12th section of the act of March 3, 1839, with powers to make such rules and regulations in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable.

[22] The act of March 3, 1839, section 10, provides, that the provisions of the sixteenth section of the before recited act shall extend to all cases where the patents are refused for any reason whatever, either by the commissioner of patents or by the chief justice of the District of Columbia, upon appeals from the decision of said commissioner, as well as where the same shall have been refused on account of, or by reason of interference with a previously existing patent; and in all cases where there is no opposing party, a copy of the bill shall be served upon the commissioner of patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favour or otherwise.

§ 6. *Of the patent.*

[23] This section will be divided by considering, 1, the form of the patent; 2, the correction of the patent; 3, the special provisions of the acts of congress occasioned by the burning of the patent office; 4, the disclaimer; 5, the assignment of patents; 6, the extension of the patent; and, 7, the requisites to be observed after the granting of a patent to secure it.

1. *Form of the patent.*

[24] The patent is to be issued in the form prescribed by the act of congress. The fifth section of the act of July 4, 1836, directs, that all patents issuing from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the secretary of state, and countersigned by the commissioner of the said office, and shall be recorded, together with the descriptions, specifications and drawings, in the said office, in books to be kept for that purpose. Every such patent shall contain a short description or title of the invention or discovery, correctly indicating its nature and design, and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his

invention or discovery. It is usually dated at the time of issuing it, but by a provision of the last mentioned act, section 8, whenever the applicant shall request it, the patent shall take date from the time of filing the specification and drawings, not, however, exceeding six months prior to the actual issuing of the patent.

2. *Correction of patent.*

[25] It is provided by the thirteenth section of the act of July 4, 1836, that whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in the event of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions, hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification.

[26] And it is enacted by the act of March 3, 1837, section 5, that, whenever, a patent shall be returned for correction and reissue under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued: Provided, however, that no patent made prior to the aforesaid fifteenth day of December, 1836, shall be corrected and reissued until a duplicate of the model and drawing of the thing as originally invented, verified by oath as shall be required by the commissioner, shall be deposited in the patent office:— Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee, or possessor, of a patent therefor, nor any disclaimer be admitted to record until a duplicate model and drawing of the thing

originally intended, verified as aforesaid, shall have been deposited in the patent office, if the commissioner shall require the same; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the commissioner, shall, in like manner, be deposited in the patent office:

And in all such cases, as well as in those which may arise under the third section of this act, the question of compensation for such models and drawings, shall be subject to the judgment and decision of the commissioners provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.

3. *Special provisions occasioned by the burning of the patent office.*

[27] The act of March 3, 1837, was passed to remedy the inconveniences arising from the burning of the patent office. It is enacted

[28] Sect. 1. That any person who may be in possession of, or in any way interested in, any patent for an invention, discovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, or in an assignment of any patent, or interest therein, executed, and recorded prior to the said fifteenth day of December, may, without charge, on presentation or transmission thereof to the commissioner of patents, have the same recorded anew in the patent office, together with the descriptions, specifications of claim and drawings annexed or belonging to the same; and it shall be the duty of the commissioner to cause the same, or any authenticated copy of the original record, specification, or drawing which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and wherever a drawing was not originally annexed to the patent and referred to in the specification and drawing produced as a delineation of the invention, being verified by oath in such manner as the commissioner shall require, may be transmitted and placed on file or copied as aforesaid, together with the certificate of the oath; or such drawings may be made in the office, under the direction of the commissioner, in conformity with the specification. And it shall be the duty of the commissioner to take such measures as may be advised and determined by the board of commissioners provided for by the fourth section of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States, to transmit, as soon as may be, to the commissioner of the patent office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said commissioner, for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by said commissioner.

[29] Sect. 2. That copies of such record and drawings, certified by the commissioner, or, in his absence, by the chief clerk, shall be prima facie evidence of the particulars of the invention and of the patent granted therefor, in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of

such originals; and no patent issued prior to the aforesaid fifteenth day of December shall, after the first day of June next, be received in evidence in any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as aforesaid, deposited in the patent office; nor shall any written assignment of any such patent, executed and recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

[30] Sect. 3. That whenever it shall appear to the commissioner that any patent was destroyed by the burning of the patent office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application therefor by the patentee or other person interested therein, to issue a new patent for the same invention or discovery bearing the date of the original patent, with his certificate thereon that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record: Provided, however, That before such patent shall be issued, the applicant therefor shall deposit in the patent office a duplicate, as near as may be, of the original model, drawings, and description, with specification of the invention or discovery, verified by oath, as shall be required by the commissioner; and such patent and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs and assigns, to the extent only in which they would have been protected by the original patent and specification.

[31] The act of August 29, 1842, sect. 2, extends the provisions of the last section to patents granted prior to the said fifteenth day of December, though they may have been lost subsequently; provided, however, the same shall not have been recorded anew under the provisions of said act.

4. *Of the disclaimer.*

[32] The act of March 3, 1837, section 7, authorises any patentee who shall have, through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material and substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether of the whole or of a sectional interest therein, may make disclaimer of such parts of the thing patented as the disclaimant shall not claim to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office, on payment by the person disclaiming, in manner as other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the original specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him subsequent to the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same.

5. *Assignment of patents.*

[33] By virtue of the act of July 4, 1836, sect. 11, every patent shall be assignable in law, either as to the whole interest, or any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use, and to grant to others to make and use, the thing patented within and throughout any specified part or portion of the United States, shall be recorded in the patent office within three months from the execution thereof. This act required the payment of a fee of three dollars to be paid by the assignee, but this provision has been repealed by the act of March 3, 1839, s. 8, and such assignments, grants, and conveyances shall, in future, be recorded without any charge whatever.

6. *The extension of the patent.*

[34] The act of July 4, 1836, sect. 18, directs, That whenever any patentee of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, he may make application therefor, in writing, to the commissioner of the patent office, setting forth the grounds thereof; and the commissioner shall, on the applicant's paying the sum of forty dollars to the treasury, as in the case of an original application for a patent, cause to be published, in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. And the secretary of state, the commissioner of the patent office, and the solicitor of the treasury, shall constitute a board to hear and decide upon the evidence produced before them both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that the term of the patent should be extended, by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the commissioner to renew and extend the patent, by making a certificate thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a certificate of said board of their judgment and opinion as aforesaid, shall be entered on record in the patent office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty-one years. And the benefit of such renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interest therein: Provided, however, That no extension of a patent shall be granted after the expiration of the term for which it was originally issued.

7. *Requisites to secure the patent.*

[35] The act of August 29, 1842, section 6, requires, That all patentees and assignees of patents hereafter granted, are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act. See [38].

§ 7. *Duty or tax on patents.*

[36] The tax or duty on patents is not the same in all cases, foreigners being required to pay a greater sum than citizens, and the subjects of the king of Great Britain a greater sum than other foreigners. The ninth section of the act of July 4, 1836, requires, That before any application for a patent can be considered by the commissioner as aforesaid, the applicant shall pay into the treasury of the United States, or into the patent office, or into any of the deposit banks to the credit of the treasury, if he be a citizen of the United States, or an alien, and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of thirty dollars; if a subject of the king of Great Britain, the sum of five hundred dollars; and all other persons the sum of three hundred dollars; for which payment duplicate receipts shall be taken, one of which to be filed in the office of the treasurer. And the moneys received into the treasury under this act, shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the patent office, and to be called the patent fund.

[37] When an applicant withdraws his application before the issuing of the patent, he is entitled to receive back twenty dollars of the sum he may have paid into the treasury. Act of July 4, 1836, sect. 7. And the act of March 3, 1837, section 12, enacts, That whenever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh section of the act to which this is additional, the certificate thereof of the commissioner shall be a sufficient warrant to the treasurer to pay back to such applicant two-thirds of the duty he shall have paid into the treasury on account of such application.

When money has been paid by mistake, as for fees accruing at the patent office, it must, by the direction of the act of August 29, 1842, section 1, be refunded.

§ 8. *Penalty for use of patentee's marks.*

[38] The act of August 29, 1842, s. 5, declares, That if any person or persons shall paint or print, or mould, cast, carve, or engrave, or stamp, upon any thing made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters-patent, the name or any imitation of the name of any other person who hath or shall have obtained letters-patent for the sole making and vending of such thing, without consent of such patentee, or his assigns or legal representatives; or if any person, upon any such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write, paint, print, mould, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters-patent," or the word

"patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall affix the same or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offence, to a penalty of not less than one hundred dollars, with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States, having the powers and jurisdiction of a circuit court; one half of which penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

§ 9. *Courts having jurisdiction in patent cases.*

[39] It is enacted by the 17th section of the act of July 4, 1836, That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court; which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States on such terms and conditions as said courts may deem reasonable: Provided, however, That from all judgments and decrees, from any such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the same.

§ 10. *Actions for violation of patent rights.*

[40] The act of July 4, 1836, section 14, provides, That, whenever in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentee, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States.

[41] Sect. 15. That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thirty days before trial, tending to prove that the description and specification filed by plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, or that the patentee was not the original and first inventor or

discoverer of the thing patented, or of a substantial and material part thereof claimed as new, or that it had been described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use, or on sale with the consent and allowance of the patentee before his application for a patent, or that he had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or that the patentee, if an alien at the time the patent was granted, had failed and neglected for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; in either of which cases judgment shall be rendered for the defendant, with costs. And whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, he shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing and where the same had been used: Provided, however, that whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery or any part thereof having been before known or used in any foreign country, it not appearing that the same or any substantial part thereof had before been patented or described in any printed publication. And provided, also, that whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award as to costs as may appear to be just and equitable.

[42] This last section has been modified by the act of March 3, 1837, which enacts as follows:—Section 9, That any thing in the fifteenth section of the act to which this is additional to the contrary notwithstanding, That, whenever by mistake, accident, or inadvertence, and without any wilful default or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same, in every such case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and bona fide his own: Provided, it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. And every such patentee, his executors, administrators and assigns, whether of the whole or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or discovery as shall be bona fide his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. But, in every such case in which a judgment or verdict shall be rendered for the plaintiff he shall not be entitled to

recover costs against the defendant, unless he shall have entered at the patent office, prior to the commencement of the suit, a disclaimer of all that part of the thing patented which was so claimed without right: Provided, however, that no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the patent office a disclaimer as aforesaid.

See Bac. Ab. Monopoly; Id. Prerogative, F 4; Phill. on Pat.; Fessend. on Pat; Carpm. on Pat.; Hand on Pat.; Webst. on Pat.; Coll. on Pat.; Gods. on Pat.; Holr. on Pat.; Smith on Pat.; Drewry's Patent Law Amendment Act; Davies's Collection of cases on the law of Patents; Rankin's Analysis of the law of Patents. Among the French writers see Perpigna on Patents, written in English; and the Manuel of the same author, in French; and the works of Renouard, Dalloz, Molard, and Regnault. See the various digests, h. t. and particularly Peters's Digest, h. t.

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PATENT, FRENCH. The following points in relation to the patent laws of France will be found useful to those who have invented valuable machinery, and who are desirous of availing themselves of the patent laws of that country :—

§ 1. *To whom patents are granted.* All persons may obtain patents in this country, whether they are men or women, adults or infants, Frenchmen or foreigners, and in general all persons who fulfil the conditions required by the law in order to obtain patents.

It is not requisite the applicant should be present, but the application must be made in his name.

§ 2. *The different kinds of patents.* There are three principal kinds of patents; 1, patents for inventions, (brevets d'invention;) 2, patents for improvements, (brevets de perfectionnement;) and, 3, patents for importations, (brevets d'importations.) But as patents may be taken for a combination of the above, there may be added, by such combination, four others, namely: 5, patents for invention and improvement, (brevets d'invention et de perfectionnement;) 6, patents for invention and importation, (brevets d'invention, et perfectionnement et d'importation;) 7, patents for importation and improvement, (brevets d'importation et de perfectionnement.)

The forms prescribed to obtain these several kinds of patents are exactly the same, the only difference consists in the declaration of the applicant which must be in conformity with the kind of patent he desires to obtain.

The applicant himself has the right to fix the number of years for which he desires to have his patent, when he applies to have his request registered at the perfecture. He may have it for five, ten or fifteen years. And this period he has a right to change until the patent has been signed. But with regard to patents for importations, the duration of the patent cannot extend beyond the period for which there is a patent in the country, from which the importation has been made.

Patents, other than for importation, may be extended as to time. There are two species of prolongation; the first, within fifteen years; the second, beyond fifteen years.

§ 3. *Cost of patents.* The tax, as it is called, which must be paid in order to obtain a patent, varies according to the duration of the patent. This tax may be paid in cash or by instalments. When paid in cash, it is as follows:

1. For five years, 300 francs, about 56 dollars and 40 cents.

2. For ten years, 800 francs, about 94 dollars.

3. For fifteen years, 1500 francs, about 282 dollars; besides some office expenses, amounting to from ten to fifteen dollars.

§ 4. *Foreign patents.* The patentee in France cannot obtain a patent in a foreign country, without losing his rights in France; but this provision is easily eluded by another person taking out the patent in the foreign country, when patents for importations are granted. Perpigna, Manuel des Inventeurs, &c. c. 3, s. 5, p. 90.

PATENT LAWS OF GREAT BRITAIN AND IRELAND. The patent laws of Great Britain and Ireland will be briefly considered by taking a view of the persons to whom patents will be granted; the different kinds of patents; the time for which they are granted; and the expenses attending them.

§ 1. *To whom patents are granted.* Both foreigners and subjects may obtain letters-patent; but inasmuch as the applicant must accompany his petition by a declaration made before a master in chancery, or a master extraordinary in chancery, that he has made such an invention; that he is the true and first inventor thereof; or that it is new in the kingdom, according to the special circumstances of the case, the applicant must be present in Great Britain.

§ 2. *The different kinds of patents.* This will be considered by taking a view, first of the object of a patent, and secondly, the territory over which a patent extends.

1. The thing patented must be, 1, a discovery or invention made by the applicant himself, in the United Kingdom; or, 2, the introduction or importation of an invention known abroad, and in this case, the introducer is the true and first inventor, within the realm; or 3, though not absolutely the true and first inventor, by reason of some one else having made the same invention and kept it secret, yet the invention must have been made public by the applicant, and as the first publisher, the applicant will be entitled to letters-patent. Novelty and utility are essential conditions of the grant, but it is of no consequence whether the discovery was known or not, in a country foreign to the United Kingdom. Webst. on Pat. 11 and 70, note (*w*).

2. Separate patents are granted for the three countries of England, Scotland and Ireland. When requested, the English patent includes, besides England, Wales and Berwick upon Tweed, the channel islands of Guernsey, Jersey, Alderney, Sark and Man, and the English colonies and plantations.

§ 3. *The length of time for which they are granted.* The patent is in the first place granted for fourteen years; but it may be extended under certain circumstances, for a period not exceeding seven years. The time begins to run from the date of the patent.

§ 4. *Expenses of a patent, and the time occupied in procuring it.* The time occupied in procuring a patent for England, is from one month to six weeks, and the expense about one hundred and ten pounds sterling. When the channel islands and the plantations are included, there is an additional expense of about seven pounds.

The time of obtaining an Irish

patent is from five to six weeks, and the expense one hundred and thirty pounds.

The time requisite for a Scotch patent is about six weeks, and the expense eighty pounds.

The whole expense of letters-patent for the three countries, is about three hundred and fifty pounds, exclusive of the cost of the specification and its stamps. The specification requires a stamp of five pounds, and when it contains 2160 words or upwards, an additional one pound stamp for every entire quantity of 1080, over and above the first 1080. The stamp for the specification for Ireland is one pound.

PATENT, PRUSSIAN. This subject will be considered by taking a view of the persons who may obtain patents; the nature of the patent; and the duration of the right.

§ 1. *Of the persons who may obtain patents.* Prussian citizens or subjects are alone entitled to a patent. Foreigners cannot obtain one.

§ 2. *Nature of the patents.* Patents are granted in Prussia for an invention, when the thing has been discovered or invented by the applicant. For an improvement when considerable improvement has been made to a thing before known. And for importation when the thing has been brought from a foreign country and put in use in the kingdom. Patents may extend over the whole country or only over a particular part.

§ 3. *Duration of patents.* The patent may at the choice of the applicant be for any period not less than six months nor more than fifteen years.

PATENT, ROMAN. The Roman patents will be considered by taking a view of the persons to whom they may be granted; the different kinds of patents; the cost of a patent; and the obligations of the patentee.

§ 1. *To whom patents are granted.* Every person whether citizen of the estates of the pope or foreigner, man or woman, adult or infant may obtain a patent for an invention, for an improvement, or for importation, by fulfilling the conditions prescribed in order to obtain a grant of such titles. Persons who have received a patent from the Roman government may, afterwards, without any compromise of their rights or privileges, receive a patent in a foreign country.

§ 2. *The different kinds of patents.* In the Roman estates there are granted patents for invention, for improvements, and for importations.

1st. Patents for inventions are granted for, 1, a new kind of important culture; 2, a new and useful art, before unknown; 3, a new and useful process of culture or of manufacture; 4, a new natural production; 5, a new application of a means already known.

2d. Patents for improvements may be granted for any useful improvement made to inventions already known and used in the Roman states.

3d. Patents for importations are granted in two cases, namely; 1, for the introduction of inventions already patented in a foreign country, and the privilege of which patent yet continues; 2, for the introduction of an invention known and freely used in a foreign country, but not yet used or known in the Roman states.

§ 3. *Cost of a patent.* The cost of a patent is fixed at a certain sum per annum, without regard to the length of time for which it may have been granted. It varies in relation to patents for inventions and importation. It is ten Roman crowns per annum for a patent for invention and improvement, and of fifteen crowns a year for a patent for importation.

§ 4. *Obligation of the patentee.* He is required to bring into use his invention within one year after the grant of the patent, and not to sus-

pend the supply for the space of one year during the time the privilege shall last.

He is required to pay one half of the tax or expense of his patent on receiving his patent, and the other half during the first month of the second portion of its duration.

PATENT-OFFICE. An office bearing this name was established by law, and by the act of congress of July 4, 1836, which repeals all acts theretofore passed in relation to patents, 4 Sharsw. cont. of Story's L. U. S. 2504, it is provided, § 1. That there shall be established and attached to the department of state, an office to be denominated the patent-office; the chief officer of which shall be called the commissioner of patents, to be appointed by the president, by and with the advice and consent of the senate, whose duty it shall be, under the direction of the secretary of state, to superintend, execute, and perform, all such acts and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements, as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said commissioner shall receive the same compensation as is allowed by law to the commissioner of the Indian department, and shall be entitled to send and receive letters and packages by mail, relating to the business of the office, free of postage.

§ 2. That there shall be, in said office, an inferior officer, to be appointed by the said principal officer, with the approval of the secretary of state, to receive an annual salary of seventeen hundred dollars, and to be called the chief clerk of the patent office; who, in all cases during the necessary absence of the commissioner, or when the said principal office shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things belonging to the said office, and shall perform the duties of commissioner during such vacancy. And the said commissioner may also, with like approval, appoint an examining clerk, at an annual salary of fifteen hundred dollars; two other clerks at twelve hundred dollars each, one of whom shall be a competent draughtsman; one other clerk at one thousand dollars; a machinist at twelve hundred and fifty dollars; and a messenger at seven hundred dollars. And said commissioner, clerks, and every other person appointed and employed in said office, shall be disqualified and interdicted from acquiring or taking, except by inheritance, during the period for which they shall hold their appointments, respectively, any right or interest, directly or indirectly, in any patent for an invention or discovery which has been, or may hereafter be, granted.

§ 3. That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation, truly and faithfully to execute the trust committed to him. And the said commissioner and the chief clerk shall also, before entering upon their duties, severally give bond with sureties to the treasurer of the United States, the former in the sum of ten thousand dollars, and the latter, in the sum of five thousand dollars, with condition to render a true and faithful account to him or his successor in office, quarterly, of all moneys which shall be by them respectively received for duties on patents, and for copies of records, and drawings, and all other

moneys received by virtue of said office.

§ 4. That the said commissioner shall cause a seal to be made and provided for the said office, with such device as the president of the United States shall approve, and copies of any records, books, papers, or drawings, belonging to the said office, under the signature of the said commissioner, or when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all cases in which the original records, books, papers, or drawing, could be evidence. And any person making application therefor, may have certified copies of the records, drawings, and other papers deposited in said office, on paying, for the written copies, the sum of ten cents for every page of one hundred words; and for copies of drawing, the reasonable expense of making the same.

PATENTEE. He to whom a patent has been granted. The term is usually applied to one who has obtained letters-patent for a new invention. His rights are, 1, to make, sell and enjoy the profits, during the existence of his rights, of the invention or discovery patented; 2, to recover damages for a violation of such rights; 3, to have an injunction to prevent any infringement of such rights. His duties are to supply the public, upon reasonable terms, with the thing patented.

PATER FAMILIAS, *civil law*. One who was *sui juris*, and consequently was not either under parental power, nor under that of a master; a child in his cradle, therefore, could have been pater familias, if he had neither a master nor a father. Leç. Elem. § 127, 128.

PATERNA PATERNIS. This expression is used in the French law to signify that in a succession, the property coming from the father of the deceased, descends to his paternal relations.

PATERNAL. What belongs to the father or comes from him; as, paternal power, paternal relation, paternal estate, paternal line. Vide *Line*.

PATERNAL PROPERTY, is that which descends or comes from the father and other ascendants, or collaterals of the paternal stock. Domat. Liv. Prel. tit. 3, s. 2, n. 11.

PATERNITY. The state or condition of a father. The husband is prima facie presumed to be the father of his wife's children, born during coverture, or within a competent time afterwards; *pater is est quem nuptiæ demonstrant*. 7 N. S. 553. But this presumption may be rebutted by showing circumstances which render it impossible that the husband can be the father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; Hardin's R. 479; 8 East, R. 193; Stra. 51, 940; 4 T. R. 356; 2 M. & K. 349; 3 Paige's R. 139; 1 Sim. & Stu. 150; Turn. & Russ. 138. The declarations of both or one of the spouses, however, cannot affect the condition of a child born during the marriage. 7 N. S. 553; 3 Paige's R. 139. Vide *Bastard; Bastardy; Legitimacy; Maternity; Pregnancy*.

PATHOLOGY, *med. jur.*, signifies the science or doctrine of diseases. In cases of homicides, abortions, and the like, it is of great consequence to the legal practitioner to be acquainted, in some degree, with pathology. 2 Chit. Pr. 42, note.

PATRIA. The country; the men of the neighbourhood competent to serve on a jury; a jury. This word is nearly synonymous with *pais*, (q. v.)

PATRIMONY, *estates*, is sometimes understood to mean all kinds of property; but its more limited signification, includes only such estate as has descended in the same family;

and in a still more confined sense, it is only what has descended or been devised in a direct line.

PATRON, *eccles. law.* He who has the disposition and gift of an ecclesiastical benefice. In the Roman law it signified the former master of a freedman. Dig. 2, 4, 8, 1.

PATRONAGE. The right of appointing to office; as the patronage of the president of the United States, if abused, may endanger the liberties of the people. In the ecclesiastical law, it signifies the right of presentation to a church or ecclesiastical benefice. 2 Bl. Com. 21.

PAUPER. One so poor that he must be supported at the public expense. The statutes of the several states make ample provisions for the support of the poor. It is not within the plan of this work to give even an abstract of such extensive legislation. Vide 16 Vin. Ab. 259; Botts on the Poor Laws; Woodf. Landl. & Ten. 201.

PAVIAGE. Contribution or tax for paving the streets or highways.

PAWN. Vide *Pledge.*

PAWN-BROKER. One who is lawfully authorised to lend money, and actually lends it, usually in small sums, upon pawn or pledge.

PAYEE. The person in whose favour a bill of exchange is made payable. Vide *Bills of Exchange.*

PAYMENT, *contracts.* What is given to execute what has been promised; or it is the fulfilment of a promise. This subject will be considered by taking a separate view of the person by whom the payment may be made; to whom it may be made; when and where it ought to be made; how it ought to be made; the effect of the payment.

1. The payment may be made by the real debtor and other persons from whom the creditor has a right to demand it; an agent may make payment for his principal; and any mode of payment by the agent, accepted and received as such by the creditor, as an absolute payment, will have the effect to discharge the principal, whether known or unknown, and whether it be in the usual course of business or not. If, for example, a factor or other agent should be employed to purchase goods for his principal, or should be entrusted with money to be paid for him, and, instead of receiving the money, the creditor or seller should take the note of the factor or agent, payable at a future day, as an absolute payment, the principal would be discharged from the debt. 3 Chit. Com. Law, 204; 1 B. & Ald. 14; 6 B. & C. 160; 7 B. & C. 17. When such a note has been received conditionally and not as an absolute payment, it would not have the effect of a payment by the principal; and whether so received or not is a fact to be decided by the jury. 1 Cowen, R. 259, 383; 9 John. R. 310; 6 Cowen, R. 181; 7 John. R. 311; 15 John. R. 276; 3 Wend. R. 83; 6 Wend. R. 475; 10 Wend. R. 271; 5 John. R. 68; 1 Liverm. Ag. 207. Payment may also be made by a third person a stranger to the contract. In the payment of mortgages, it is a rule that the personal estate shall be applied to discharge them when made by the testator or intestate himself, to secure the payment of a debt due by him, because the personal estate was benefitted by the money borrowed; and it makes no difference whether the mortgaged lands have been devised, or come to the heir by descent. 2 Cruise, Dig. 147. The testator may, however, exempt the personal estate from the payment, and substitute the real in its place. But when the mortgage was not given by the deceased, but he acquired the real estate subject to it, it never was his debt, and therefore his personal estate is not bound to pay the mortgage debt, but it must be paid by the real

estate. 2 Cruise, Dig. 164–8; 3 John. Chan. R. 252; 2 P. Wms. 664, n. 1; 2 Bro. C. C. 57; 2 Bro. C. C. 101, 152; 5 Ves. jr. R. 534; 14 Ves. 417.

2. It must be made to the creditor himself, or his assigns, if known, or some person authorised by him, either expressly or by implication; a factor, Cowp. 251; a broker, 1 Maul. & Selw. 576; 4 Ib. 566; 4 Taunt. 242; 1 Stark. Ca. 233. In the case of partners and other joint creditors, or joint executors or administrators, payment to one is generally a valid payment. When an infant is a creditor, payment must be made to his guardian. A payment may be good when made to a person who had no authority to receive it, if the creditor shall afterwards ratify it. Poth. Obl. n. 528.

3. Time and place of payment: first, as to the time. When the contract is, that payment shall be made at a future time, it is clear that nothing can be demanded until after it has elapsed, or other condition to which the payment is subject, has been fulfilled; and in a case where the goods had been sold at six or nine months, the debtor had the option as to these two terms. 5 Taunt. 338. When no time of payment is mentioned in the agreement, the money is payable immediately. 1 Pet. 455; 4 Rand. 346. Secondly, the payment must be made at the place agreed upon in the contract; but in the absence of such agreement, it must be made agreeably to the presumed intention of the parties, which among other things, may be ascertained by the nature of the thing to be paid or delivered, or by the custom in such cases.

4. How the payment ought to be made. To make a valid payment, so as to compel the receiver to take it, the whole amount due must be paid; Poth. Obl. n. 499, or n. 534, French edition; when a part is accepted, it is a payment *pro tanto*.

5. The payment, when properly made, discharges the debtor from his obligation. Sometimes a payment extinguishes several obligations; this happens when the thing given to discharge an obligation, was the same which is the object of another obligation. Poth. Obl. 552. A single payment may discharge several debts, as, for example, if Peter be indebted to Paul one thousand dollars, and Paul, being indebted to James, Paul give an order to Peter to pay James this money; the payment made by Peter to James discharges both the obligations due by Peter to Paul, and by Paul to James. Poth. Ob. n. 553. This rule, that a payment made in order to acquit or discharge an obligation, extinguishes the other obligations which have the same object, takes place also when there are several debtors as regards the whole of them. If, for example, Peter trust Paul on the credit of James, a payment by Paul discharges both himself and James. Poth. Obl. n. 554. But in case money or other things have been delivered to a person who was supposed to be entitled to them as a creditor, when he was not, this is not a payment, and the whole, if nothing was due, or if the debt was less than the amount paid, the surplus, may be recovered in action for money had and received.

Vide, generally, 1 Com. Dig. 473; 8 Com. Dig. 607; 16 Vin. Ab. 296; 1 Vern. by Raith. 3, 150 n.; Yelv. 11 a; 1 Salk. 22; 15 East, 12; 8 East, R. 111; 2 Ves. jr. 11; Phil. Ev. Index, h. t.; Stark. Ev. h. t.; Louis. Code, art. 2129; Ayl. Pand. 565; 1 Sell. Pr. 277; Dane's Ab. Index, h. t.; Toull. lib. 3, tit. 3, c. 5; Pardes. part 2, tit. 2, c. 1; Merl. Répert. h. t.; Chit. Contr. Index, h. t.; 3 Eng. C. L. Rep. 130. As to what transfer will amount to an assignment or a payment

and extinguishment of a claim, see 6 John. Ch. R. 395; Id. 425; 2 Ves. jr. 261; 18 Ves. jr. 384; 1 N. H. Rep. 167; 1 N. H. Rep. 252; 2 N. H. Rep. 300; 3 John. Ch. R. 53.

PAYS. The country. Trial per pays, is a trial by the country, that is, by jury. Vide *Païs*.

PEACE, is the tranquillity enjoyed by a political society, internally, by the good order which reigns among its members, and externally, by the good understanding it has with all other nations. Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security, as opposed to one of violence and warfare, but likewise a state of public order and decorum. Ham. N. P. 139; 12 Mod. 566. Vide, generally, Bac. Ab. Prerogative, D 4; Hale, Hist. P. C. 160; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Esp. R. 294; Harr. Dig. Officer, V 4; 2 Benth. Ev. 319, note.

PECK. A measure of capacity, equal to two gallons. Vide *Measure*.

PECULATION, *civil law*. Is the unlawful appropriation by a depositary of public funds, to his own use or that of others, of the property of the government entrusted to his care. Domat, Suppl. au Droit Public, liv. 3, tit. 5.

PECULIAR, *eccles. law*. In England is a particular parish or church, which has, within itself, independent of the ordinary jurisdiction, power to grant probate of wills, and the like. 1 Eng. Eccl. R. 72, note; Shelf. on Mar. & Div. 538. Vide *Court of peculiars*.

PECULIUM, *civil law*. The savings which were made by a son or slave with the consent of his father or master. Inst. 2, 9, 1; Dig. 15, 1, 5, 3; Poth. ad Pand. lib. 50, tit. 17, c. 2, art. 3. A master is not entitled to the extraordinary earnings of his apprentice, which do not interfere with his services so as to affect his master's profits. An apprentice was therefore decreed to be entitled to salvage in opposition to his master's claim for it. 2 Cranch, 270.

PECUNIA, *civil law*, *property*. By this term was understood, 1, money; and 2, every thing which constituted the private property of an individual, or which was a part of his fortune; a slave, a field, a house, and the like, were so considered. It is in this sense the law of the twelve tables said; *Uti quisque pater familias legassit super pecuniâ tutelare rei suæ; ità jus esto*. In whatever manner a father of a family may have disposed of his *property*, or of the tutorship of his things, let this disposition be law. 1 Leçons Elem. du Dr. Civ. Rom. 288. Flocks were the first riches of the ancients, and it is from *pecus* that the words *pecunia*, *peculium*, *peculatus*, are derived. Co Litt. 207.

PECUNIARY. That which relates to money. Pecuniary punishment, is one which imposes a fine on a convict; a pecuniary legacy is one which entitles the legatee to receive a sum of money, and not a specific chattel.

PEDIGREE, *descents*, is a succession of degrees from the origin; it is the state of the family as far as regards the relationship of the different members, their births, marriages and deaths; this term is applied to persons or families, who trace their origin or descent. On account of the difficulty of proving in the ordinary manner by living witnesses, facts which occurred in remote times, *hearsay evidence* (q. v.) has been admitted to prove a pedigree. 1 Phil. Ev. 186; 1 Stark. Ev. 55; 10 Serg. & Rawle, 383; 2 Supp. to Ves. Jr. 110; 8 Com. Dig. 583; 1 Pet. 337; 5 Pet. 81; 13 Pet. 209; 1 Wheat. 6; 3 Wash. C. C. R. 243;

4 Wash. C. C. R. 186. Vide *Descent; Line.*

PEDLARS, are persons who travel about the country with merchandise, for the purpose of selling it. They are obliged under the laws of perhaps all the states to take out licenses; and to conform to the regulations which those laws establish.

PEER. Equal. A man's peers are his equals. A man is to be tried by his peers. In England and some other countries, this is a title of nobility; as, peers of the realm. In the United States, this equality is not so much political as civil. A man who is not a citizen, is nevertheless to be tried by citizens. *Peeress* is a noblewoman, the wife of a peer.

PEINE FORTE ET DURE, *Eng. law*, a punishment formerly inflicted in England, on a person who, being arraigned of felony, refused to plead and put himself on his trial, and stubbornly stood mute. He was to be laid down and as much weight was to be put upon him as he could bear, and more, until he died. This barbarous punishment has been abolished. Vide *Mute.*

PELT WOOL. The wool pulled off the skin or pelt of a dead ram.

PENAL STATUTES. Are those which inflict a penalty for the violation of some of their provisions. It is a rule of law that such statutes must be construed strictly. 1 Bl. Com. 88; Esp. on Pen. Actions, 1; Bosc. on Conv.; Cro. Jac. 415; 1 Com. Dig. 444; 5 Com. Dig. 360; 1 Kent, Com. 467. They cannot, therefore, be extended by their spirit or equity to other offences than those clearly described and provided for. Paine, R. 32; 6 Cranch, 171.

PENALTY, *contr.*, is a clause in an agreement, by which the obligor agrees to pay a certain sum of money, if he shall fail to fulfil the contract contained in another clause of the same agreement. A penal clause in an agreement supposes two obligations, one of which is the primitive or principal; and the other, is conditional or accessory. The penal obligation differs from an alternative obligation, for this is but one in its essence; while a penalty always includes two distinct engagements, and, when the first is fulfilled, the second is void. When a breach has taken place the obligee has his option to require the fulfilment of the first obligation, or the payment of the penalty, in those cases which cannot be relieved in equity, when the penalty is considered as liquidated damages. Dalloz, Dict. mots Obligation avec clause pénale. It is difficult, in many cases, to distinguish between a penalty and liquidated damages. In general, the courts have inclined to consider the sum reserved by such agreement to be a penalty, rather than as stipulated damages, (q. v.) When from the *form* of the instrument, as the case of a money bond, or when the parties agreed not to do a particular act under "a *penalty* of 100 dollars," it is sufficiently clear a penalty was intended. But in a case where a party binds himself to pay a certain sum of money, if he should violate his agreement, which "sum mentioned is to be considered as liquidated damages, such sum will not be considered as a penalty." 1 Holt N. P. C. 43; 1 Bing. R. 302; S. C. 8 Moore, 244; 4 Burr. 2229. Vide 3 John. Cas. 297; 1 Pick. R. 451; 15 Mass. 488; 7 John. 72; 4 Mass. 433; 8 Mass. 223; 8 Com. Dig. 846; 16 Vin. Ab. 301; 1 Vern. 83, n.; 1 Saund. 58, n.; 1 Swans. 318.

PENETRATION, *crimes*, the act of inserting the penis in the female organs of generation. 9 Car. & Payne, 118; S. C. 38 E. C. L. R. 63. See 8 Car. & Payne, 614; 34 E. C. L. R. 562; 5 C. & P. 321;

S. C. 24 E. C. L. R. 339; 9 C. & P. 31; Id. 752; 38 E. C. L. R. 320. This has been denied to be sufficient to constitute a rape without emission. (q. v.) See on this subject, 12 Co. 37; Hawk. bk. 1, c. 41, s. 3; 1 Hale, P. C. 628; 1 East, P. C. 437, 8; Russ. & Ry. C. C. 519; 6 C. & P. 351; 5 C. & P. 297, 321; S. C. 24 E. C. L. R. 339; 1 Chit. Med. Jur. 386 to 395; 1 Virg. Cas. 307; 4 Mood. Cr. Cas. 142, 337; 4 Car. & P. 249; 1 Par. & Fonbl. 433; 2 Mood. & M. C. N. P. 122; 1 Russ. C. & M. 560; 1 East, P. C. 437.

PENITENTIARY. A prison for the punishment of convicts. There are two systems of penitentiaries in the United States, each of which is claimed to be the best by its partizans. The Pennsylvania system and the New York system. By the former, convicts are lodged in separate, well lighted, and well ventilated cells, where they are required to work, during stated hours, during the whole time of their confinement; they are never permitted to see or speak with each other. Their usual employments are shoemaking, weaving, winding yarn, picking wool, and such like business. The only punishments to which convicts are subject, are the privation of food for short periods, and confinement *without labour* in dark, but well aired cells; this discipline has been found sufficient to keep perfect order; the whip and all other corporal punishments are prohibited. The advantages of the plan are numerous. Men cannot long remain in solitude without labour; convicts, when deprived of it, ask it as a favour, and in order to retain it, use, generally, their best exertions to do their work well; being entirely secluded, they are of course unknown to their fellow prisoners, and can form no combination to escape while in prison, or associations to prey upon society when they are out; being treated with kindness, and afforded books for their instruction and amusement, they become satisfied that society does not make war upon them, and more disposed to return to it, which they are not prevented doing by the exposure of their fellow prisoners, when in a strange place; the labour of the convicts tends greatly to defray the expenses of the prison. The disadvantages which were anticipated have been found to be groundless. Among these were, that the prisoners would be unhealthy; experience has proved the contrary; that they would become insane, this has also been found to be otherwise; that solitude is incompatible with the performance of business; that obedience to the discipline of the prison could not be enforced. These and all other objections to this system are, by its friends, believed to be without force.

The New York system adopted at Auburn, which was probably copied from the penitentiary at Ghent, in the Netherlands, called La Maison de Force, is founded on the system of isolation and separation as well as that of Pennsylvania, but with this difference, that in the former the prisoners are confined to their separate cells during the night only; during the working hours in the day time they labour together in work-shops appropriated to their use. They eat their meals together, but in such a manner as not to be able to speak with each other. Silence is also imposed upon them at their labour. They perform the labour of carpenters, blacksmiths, weavers, shoemakers, tailors, coopers, gardeners, wood sawyers, &c. The discipline of the prison is enforced by stripes, inflicted by the assistant keepers on the backs of the prisoners, though this punishment is rarely exercised. The advantages of this plan

are, that the convicts are in solitary confinement during the night; that their labour, by being joint, is more productive; that, inasmuch as a clergyman is employed to preach to the prisoners, the system affords an opportunity for mental and moral improvements. Among the objections made to it are, that the prisoners have opportunities of communicating with each other, and of forming plans of escape, and when they are out of prison, of associating together in consequence of their previous acquaintance, to the detriment of those who wish to return to virtue, and to the danger of the public; that the discipline is degrading, and that it engenders bitter resentment in the mind of the convict.

Vide, generally, on the subject of penitentiaries, Report of the Commissioners, (Messrs. King, Shaler and Wharton,) on the Penal Code of Pennsylvania; De Beaumont and De Toqueville, on the Penitentiary System of the United States; Mease on the Penitentiary System of Pennsylvania; Carey on ditto; Reports of the Boston Prison Discipline Society; Livingston's excellent Introductory Report to the Code of Reform and Prison Discipline, prepared for the state of Louisiana; Encycl. Americ. art. Prison Discipline; De l'Etat actuel des Prisons en France, par L. M. Moreau Christophe; Dalloz, Dict. mot Peine, § 1, n. 3, and Supplem. mots Prisons et Bagnes.

PENNSYLVANIA. The name of one of the original states of the United States of America. Pennsylvania was occupied by planters of various nations, Dutch, Swedes, English and others, but obtained no separate name until the year 1681, when Charles II. granted a charter to William Penn, by which he became its proprietary, saving, however, allegiance to the crown, which retained the sovereignty of the country. This charter authorised the proprietary, his heirs and successors, by and with the assent of the freemen of the country, or their deputies assembled for the purpose, to make laws. Their laws were required to be consonant to reason, and not repugnant or contrary, but as near as conveniently could be to the laws and statutes of England. Pennsylvania was governed by this charter till the period of the revolution.

The constitution of the state was adopted on the second day of September, 1790, and amended by a convention selected by the people, on the twenty-second day of February, 1838. The powers of the government are divided into three distinct branches: the legislative, the executive and the judiciary.

1st. The *legislative* power is vested in a general assembly, which consists of a senate and house of representatives.

1. The *senate* will be considered with reference to the qualification of the electors; the qualification of the members; the length of time for which they are elected; and the time of their election. 1. In elections by the citizens, every white freeman of the age of twenty-one years having resided in this state one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this state and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the state six months: *Provided*, that white freemen, citizens of the United States, between the ages of twenty-

one and twenty-two years, and having resided in the state one year, and in the election district ten days as aforesaid, shall be entitled to vote although they shall not have paid taxes. Art. 3, s. 1.—2. No person shall be a senator who shall not have attained the age of twenty-five years and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state; and no person elected as aforesaid, shall hold the said office after he shall have removed from such district. Art. 1, s. 8.—3. The number of senators shall never be less than one-fourth, nor greater than one-third of the number of representatives. Art. 1, s. 6.—4. The senators hold their office for three years.—5. Their election takes place on the second Tuesday of October, one-third of the senate each year.

2. The *house of representatives* will be treated of in the same manner which has been observed in considering the senate. 1. The electors are qualified in the same manner as the electors of the senate.—2. No person shall be a representative who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state three years next preceding his election, and the last year thereof an inhabitant of the district in and for which he shall be chosen a representative, unless he shall have been absent on the public business of the United States or of this state. Art. 1, s. 3.—3. The number of representatives shall never be less than sixty, nor greater than one hundred. Art. 1, s. 4.—4. They are elected yearly.—5. Their election is on the second Tuesday of October, yearly.

2d. The *supreme executive* power of this commonwealth is vested in a governor. 1. He is elected by the electors of the legislature.—2. He must be at least thirty years of age, and have been a citizen and an inhabitant of the state seven years next before his election, unless he shall have been absent on the public business of the United States or of this state. Art. 2, s. 4.—3. The governor shall hold his office during three years from the third Tuesday of January next ensuing his election, and shall not be capable of holding it longer than six in any term of nine years. Art. 2, s. 3.—4. His principal duties are enumerated in the second article of the constitution, as follows: 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. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the actual service of the United States. He shall appoint a secretary of the commonwealth during pleasure; and he shall nominate, and by and with the advice and consent of the senate appoint, all judicial officers of courts of record, unless otherwise provided for in this constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the senate, by granting commissions which shall expire at the end of their next session: Provided, that in acting on executive nominations the senate shall sit with open doors, and in confirming or rejecting the nominations of the governor, the vote shall be taken by yeas and nays. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment. He may require information

in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall judge expedient. He may, on extraordinary occasions, convene the general assembly; 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 exceeding four months. He shall take care that the laws be faithfully executed. In case of the death or resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor until another governor shall be duly qualified; but in such case another governor shall be chosen at the next annual election of representatives, unless such death, resignation or removal shall occur within three calendar months, immediately preceding such next annual election, in which case a governor shall be chosen at the second succeeding annual election of representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next ensuing the election of governor, the governor of the last year, or the speaker of the senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a governor shall be duly qualified as aforesaid.

3d. The *judicial* power of the commonwealth is vested by the fifth article of the constitution, as follows:

§ 1. The judicial power of this commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace, for each county; in justices of the peace, and in such other courts as the legislature may from time to time establish.

§ 2. The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the governor, and by and with the consent of the senate appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years if they shall so long behave themselves well. The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. But for any reasonable cause which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature. The judges of the supreme court and the presidents of the several 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 under this commonwealth.

§ 3. Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

§ 4. The jurisdiction of the su-

preme court shall extend over the state; and the judges thereof, shall by virtue of their offices, be justices of oyer and terminer and general jail delivery, in the several counties.

§ 5. The judges of the court of common pleas, in each county, shall by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail delivery, in any county, when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

§ 6. The supreme court, and the several courts of common pleas, shall, besides the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those who are non compotes mentis. And the legislature shall vest in the said courts such other powers to grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

§ 7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof: and the register of wills, together with the said judges, or any two of them, shall compose the register's court of each county.

§ 8. The judges of the courts of common pleas shall, within their respective counties have the like 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.

§ 9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters.

§ 10. A register's office, for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

§ 11. The style of all process shall be "The commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude, "against the peace and dignity of the same."

PENNYWEIGHT. A troy weight which weighs twenty-four grains, or one-twentieth part of an ounce. Vide *Weights*.

PENSION. It is a stated and certain allowance granted by the government to an individual, or those who represent him, for valuable services performed by him for the country. The government of the United States, has, by general laws, granted pensions to revolutionary soldiers, vide 1 Story's Laws U. S. 68, 101, 224, 304, 363, 371, 451; 2 Ibid. 903, 915, 983, 1008, 1240; 3 Ibid. 1662, 1747, 1778, 1794, 1825, 1927; 4 Ib. 2112, 2270, 2329, 2336, 2366; to naval officers and sailors, 1 Stor. L. U. S. 474, 677, 769; 2 Ibid. 1284; 3 Ibid. 1565; to the army generally, 1 Ib. 360, 412, 448; 2 Ib. 833; 3 Ib. 1573; to the militia generally, 1 Ib. 255, 360, 412, 488;

2 Ib. 1382; 3 Ib. 1873; in the Seminole war, 3 Ib. 1706.

PENSIONER. One who is supported by an allowance at the will of another. It is more usually applied to him who receives an annuity or pension from the government.

PEOPLE. It signifies a state, as, the people of the state of New York; a nation in its collective and political capacity. 4 T. R. 783; see 6 Pet. S. C. Rep. 467. The word people occurs in a policy of insurance. The insurer insures against "detainments of all kings, princes and people." He is not by this understood to insure against any promiscuous or lawless rabble which may be guilty of attacking or detaining a ship. 2 Marsh. Ins. 508. Vide *Body Politic; Nation.*

PER CAPITA, by the head or polls. This term is applied when an estate is to be divided share and share alike. Vide 1 Rop. on Leg. 126, 130.

PER INFORTUNIUM, *criminal law.* Homicide *per infortunium*, or by misadventure, is said to take place when a man in doing a lawful act, without any intent to hurt, unfortunately kills another. Hawk. bk. 1, c. 11; Foster, 258, 259; 3 Inst. 56.

PER MY ET PER TOUT. By every part or parcel and by the whole. A joint tenant of lands is said to be seised *per my et per tout.* Litt. s. 288.

PER QUOD, *pleading*, by which; whereby. When the plaintiff sues for an injury to his relative rights, as for beating his wife, his child, or his servant, it is usual to lay the injury with a *per quod*. In such case after complaining of the injury, say to the wife, the declaration proceeds, "insomuch that the said E F, (the wife,) *by* means of the premises, then and there became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, hitherto, *whereby* he, the said A B, (the plaintiff,) lost," &c. 2 Chit. Pl. 422; 3 Bl. Com. 140. It seems that the *per quod* is not traversable. 1 Saund. 298; 1 Ld. Raym. 410; 2 Keb. 607; 1 Saund. 23, note 5.

PER STIRPES, by stock; by roots. When, for example, a man dies intestate, leaving children and grandchildren, whose parents are deceased, the estate is to be divided not *per capita*, that is by each of the children and grandchildren taking a share, but *per stirpes*, by each of the children taking a share, and the grandchildren, the children of a deceased child, taking a share to be afterwards divided among themselves *per capita.*

PERCH, *measure.* The length of sixteen feet and a half: a pole or rod of that length. Forty perches in length and four in breadth make an acre of land.

PERDONATIO UTLAGARIÆ, *Engl. law.* A pardon for a man who, for contempt in not yielding obedience to the process of the king's courts, is outlawed, and afterwards, of his own accord, surrenders.

PEREMPTORY. Absolute; positive. A final determination to act without hope of renewing or altering. Joined to a substantive, this word is frequently used in law; as peremptory action, F. N. B. 35, 38, 104, 108; peremptory nonsuit, Ib. 5, 11; peremptory exception, Bract. lib. 4, c. 20; peremptory undertaking, 3 Chit. Pract. 112, 793; peremptory challenge of jurors, which is the right to challenge without assigning any cause. Inst. 4, 13, 9; Code, 7, 50, 2; Id. 8, 36, 8; Dig. 5, 1, 70 et 73.

PERFECT. Something complete. This term is applied to obligations in order to distinguish those which may be enforced by law, which are called *perfect*, from those which cannot be so enforced, which are said to be

imperfect. Vide *Imperfect; Obligations.*

PERFORMANCE. The act of doing something; the thing done is also called performance; as, Paul is exonerated from the obligation of his contract by its performance. When a contract has been made by parol, which, under the statute of frauds and perjuries, could not be enforced, because it was not in writing, and the party seeking to avoid it, has received the whole or a part performance of such agreement, he cannot afterwards avoid it, 14 John. 15; S. C. 1 John. Ch. R. 273; and such part performance will enable the other party to prove it aliunde. 1 Pet. C. C. R. 380; 1 Rand. R. 165; 1 Blackf. R. 58; 2 Day, R. 255; 1 Desaus. R. 350; 5 Day, R. 67; 1 Binn. R. 218; 3 Paige, R. 545; 1 John. Ch. R. 131, 146. Vide *Specific Performance.*

PERIL, is the accident by which a thing is lost. Leç. Dr. Rom. § 911.

PERILS OF THE SEA, *in contracts.* Bills of lading generally contain an exception that the carrier shall not be liable for "perils of the sea." What is the precise import of this phrase is not perhaps very exactly settled. In a strict sense, the words perils of the sea, denote the natural accidents peculiar to that element; but in more than one instance they have been held to extend to events not attributable to natural causes. For instance, they have been held to include a capture by pirates on the high sea; and a case of loss by collision by two ships, where no blame is imputable to either, or at all events not to the injured ship. Abbott on Sh. P. 3, c. 4, § 1, 2, 3, 4, 5, 6; Park. Ins. c. 3; Marsh. Ins. B. 1, c. 7, p. 214; 1 Bell's Comm. 579; 3 Kent's Comm. 251, n. (a); 3 Esp. R. 67. It has indeed been said, that by perils of the sea are properly meant no other than inevitable perils or accidents upon that element, and, that by such perils or accidents common carriers are, *prima facie*, excused, whether there is a bill of lading containing the expression of "peril of the sea," or not. 1 Conn. Rep. 487. It seems that the phrase *perils of the sea*, on the western waters of the United States, signifies and includes *perils of the river.* 3 Stew. & Port. 176. If the law is so, then the decisions upon the meaning of these words become important in a practical view in all cases of maritime or water carriage. It seems that a loss, occasioned by leakage, which is caused by rats gnawing a hole in the bottom of the vessel, is not, in the English law, deemed a loss by peril of the sea, or by inevitable casualty. 1 Wils. R. 281; 4 Campb. R. 203. But if the master had used all reasonable precautions to prevent such loss, as by having a cat on board, it seems agreed, it would be a peril of the sea, or inevitable accident. Abbott on Shipp. p. 3, c. 3, § 9; but see 3 Kent's Comm. 243, and note (c). In conformity to this rule, the destruction of goods at sea by rats has, in Pennsylvania, been held a peril of the sea, where there has been no default in the carrier. 1 Binn. 592; but see 6 Cowen, R. 266, and 3 Kent's Com. 248, n. (c.) On the other hand, the destruction of a ship's bottom by worms in the course of a voyage, has, both in America and England, been deemed not to be a peril of the sea, upon the ground, it would seem, that it is a loss by ordinary wear and decay. Park. on Ins. c. 3; 1 Esp. R. 444; 2 Mass. R. 429; but see 2 Cain. R. 85. See generally, *Act of God; Fortuitous Event;* Marsh. Ins. ch. 7; and ch. 12, § 1.

PERIPHRASIS. Circumlocution; the use of other words to express the

sense of one. Some words are so technical in their meaning that in charging offences in indictments they must be used or the indictment will not be sustained; for example, an indictment for treason must contain the word *traitorously*, (q. v.); an indictment for burglary, *burglariously*, (q. v.); and *feloniously*, (q. v.) must be introduced into every indictment for felony. 1 Chitty's Cr. Law, 242; 3 Inst. 15; Carth. 319; 2 Hale, P. C. 172, 184; 4 Bl. Com. 307; Hawk. B. 2, c. 25, s. 55; 1 East, P. C. 115; Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; Cro. C. C. 37.

TO PERISH. To come to an end; to cease to be; to die. What has never existed cannot be said to have perished. When two or more persons die by the same accident, as a shipwreck, no presumption arises that one perished before the other. Vide *Death; Survivorship.*

PERISHABLE GOODS. Vide *Bona Peritura.*

PERJURY, *crim. law.* This offence at common law is defined to be a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceedings, swears absolutely in a matter material to the point in question, whether he be believed or not. If we analyse this definition we will find, 1st, that the oath must be wilful; 2d, that it must be false; 3d, that the party was lawfully sworn; 4th, that the proceeding was judicial; 5th, that the assertion was absolute; 6th, that the falsehood was material to the point in question.

1. *The intention must be wilful.* The oath must be taken and the falsehood asserted with deliberation, and a consciousness of the nature of the statement made; for if it has arisen in consequence of inadvertency, surprise or mistake of the import of the question, there was no corrupt motive, Hawk. B. 1, c. 69, s. 2; but one who swears wilfully and deliberately to a matter which he rashly believes, which is false, and which he had no probable cause for believing, is guilty of perjury. 6 Binn. R. 249.

2. *The oath must be false.* The party must believe what he is swearing is fictitious; for, if intending to deceive, he asserts that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him. 3 Inst. 166; Hawk. B. 1, c. 69, s. 6.

3. *The party must be lawfully sworn.* The person by whom the oath is administered must have competent authority to receive it; an oath, therefore, taken before a private person, or before an officer having no jurisdiction, will not amount to perjury. 3 Inst. 166; 1 Johns. R. 498; 9 Cowen, R. 30; 3 M'Cord, R. 308; 4 M'Cord, R. 165; 2 Russ. on Cr. 520; 3 Carr. & Payne, 419; S. C. 14 Eng. Com. Law Rep. 376; 2 Chitt. Cr. Law, 304.

4. *The proceedings must be judicial.* Proceedings before those who are in any way entrusted with the administration of justice, in respect of any matter regularly before them, are considered as judicial for this purpose. 2 Chitt. Crim. C. 303; 2 Russ. on Cr. 518; Hawk. B. 1, c. 69, s. 3. Vide, 3 Yeates, R. 414; 9 Pet. Rep. 238.

5. *The assertion must be absolute.* If a man, however, swears that he *believes* that to be true which he knows to be false, it will be perjury. 2 Russ. on Cr. 518; 3 Wils. 427; 2 Bl. Rep. 881; 1 Leach, 242; 6 Binn. Rep. 249; Lofft's Gilb. Ev. 662.

6. *The oath must be material to the question depending.* Where the facts sworn to are wholly foreign from the purpose and altogether im-

material, to the matter in question, the oath does not amount to a legal perjury. 2 Russel on Cr. 521; 3 Inst. 167; 6 Ves. jun. 35; 2 Rolle, 41, 42, 369; 1 Hawk. B. 1, c. 69, s. 8; Bac. Ab. Perjury, (A).—It is not within the plan of this work to cite all the statutes passed by the general government, or the several states on the subject of perjury. It is proper, however, here to transcribe a part of the 13th section of the act of congress of March 3, 1825, which provides as follows: "If any person in any case, matter, hearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered under or by any law or laws of the United States, shall, upon the taking of such oath or affirmation, knowingly and willingly swear or affirm falsely, every person, so offending, shall be deemed guilty of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labour, not exceeding five years, according to the aggravation of the offence. And if any person or persons shall knowingly or willingly procure any such perjury to be committed, every person so offending shall be deemed guilty of subornation or perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labour, not exceeding five years, according to the aggravation of the offence."

In general it may be observed that an affirmation when if it were an oath would be perjury, is also a perjury. Vide generally, 16 Vin. Abr. 307; Bac. Abr. h. t.; Com. Dig. Justices of the Peace, B. 102 to 106; 4 Bl. Comm. 137 to 139; 3 Inst. 163 to 168; Hawk. B. 1, c, 69; Russ. on Cr. B. 5, c. 1; 2 Chitt. Cr. L. c. 9; Roscoe on Cr. Ev. h. t.; Burn's J. h. t.; Williams's J. h. t.

PERMIT. A license or warrant to do something not forbidden by law; as, to land goods imported into the United States, after the duties have been paid or secured to be paid. Act of cong. of 2d March, 1799, s. 49, cl. 2. See form of such a permit, Gord. Dig. Appendix, No. II. 46.

PERMUTATION, *civil law*, exchange; barter. This contract is formed by the consent of the parties, but delivery is indispensable; for, without it, it is a mere agreement. Dig. 31, 77, 4; Code, 4, 64, 3. Permutation differs from sale in this, that in the former a delivery of the articles sold must be made, while in the latter it is unnecessary. It agrees with the contract of sale, however, in the following particulars: 1, that he to whom the delivery is made acquires the right or faculty of prescribing. Dig. 41, 3, 4, 17; 2, that the contracting parties are bound to guaranty to each other the title of the things delivered, Code, 4, 64, 1; 3, that they are bound to take back the things delivered, when they have latent defects which they have concealed. Dig. 21, 1, 63. See Ase & Man, Inst. B. 2, t. 16, c. 1; *Mutation; Transfer*.

PERNANCY. This word, which is derived from the French *prendre*, to take, signifies a taking or receiving.

PERNOR OF PROFITS, he who receives the profits of lands, &c. A *cestui que use*, who is legally entitled and actually does receive the profits, is the pernor of profits.

PERPETUATING TESTIMONY. Vide *Bill to perpetuate testimony*.

PERPETUITY, *in estates*, may be defined to be any limitation tending to take the subject of it out of commerce for a longer period, than a life or lives in being, and twenty,

one years beyond; and in case of a posthumous child, a few months more, allowing for the term of gestation, Randell on Perpetuities, 48; or it is such a limitation of property as renders it unalienable beyond the period allowed by law. Gilbert on Uses, by Sugden, 260, note.

Mr. Justice Powell, in Scattergood v. Edge, 12 Mod. 278, distinguished perpetuities into two sorts, absolute and qualified; meaning thereby, as it is apprehended, a distinction between a plain, direct and palpable perpetuity, and the case where an estate is limited on a contingency, which might happen within a reasonable compass of time, but where the estate nevertheless, from the nature of the limitation, might be kept out of commerce longer than was thought agreeable to the policy of the common law. But this distinction would not now lead to a better understanding or explanation of the subject; for whether an estate be so limited that it cannot take effect, until a period too much protracted, or whether on a contingency which may happen within a moderate compass of time, it equally falls within the line of perpetuity and the limitation is therefore void; for it is not sufficient that an estate may vest within the time allowed, but the rule requires that it must. Randell on Perp. 49. Vide Cruise, Dig. tit. 32, c. 23; 1 Supp. to Ves. Jr. 406; 2 Ves. Jr. 357; 3 Saund. 388 h. note; Com. Dig Chancery, (4 G 1); 3 Chan. Cas. 1.

PERQUISITES. In its most extensive sense, perquisites signifies any thing gotten by industry, or purchased with money, different from that which descends from a father or ancestor. Bract. lib. 2, c. 30, n. 3; et lib. 4, c. 22. In a more limited sense it means something gained by a place or office beyond the regular salary or fee.

PERSON. This word is applied to men, women, and children, who are called natural persons. It is also used to denote a corporation, which is an artificial person. 1 Bl. Com. 123; 4 Bing. 669; S. C. 33 Eng. C. L. R. 488; Wooddes. Lect. 116; Bac. Us. 57; 1 Mod. 164. But when the word "persons" is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons. 1 Scam. R. 178.

Natural persons are divided into males, or men; and females, or women. Men are capable of all kinds of engagements and functions, unless by reasons applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising. Civ. Code of Lo. art. 25.

They are also sometimes divided into free persons and slaves. Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing what is not forbidden by the law. A slave is one who is in the power of a master to whom he belongs. Slaves are sometimes ranked not with persons but things. Vide *Man*.

Persons are also divided into citizens, (q. v.) and aliens, (q. v.) when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are either living or civilly dead. Vide *Civil Death;* outlaws; and infamous persons. Persons are divided into legitimates or bastards, when examined as to their rights by birth. When viewed in their domestic relations, they are divided into parents and children; husbands and wives; guardians and wards; and masters and servants.

PERSONABLE. Having the ca-

pacities of a person; for example, the defendant was judged *personable* to maintain this action. Old Nat. Brev. 142. This word is obsolete.

PERSONAL, belonging to the person. This adjective is frequently employed in connexion with substantives, things, goods, chattels, actions, right, duties, and the like; as personal estate, put in opposition to real estate; personal actions, in contradistinction to real actions; personal rights are those which belong to the person; personal duties are those which are to be performed in person.

PERSONAL ACTIONS. Vide *Actions*, and 1 Com. Dig. 206, 450; 1 Vin. Ab. 197.

PERSONAL PROPERTY, is the right or interest which a man has in things personal; it consists of things temporary and movable, and includes all subjects of property not of a freehold nature, nor descendable to the heirs at law. Things of a movable nature, when a right can be had in them, are personal property, but some things movable are not the subject of property; as light and air. Under the term personal property, is also included some property which is in its nature immovable, distinguished by the name of chattels real, as an estate for years; and fixtures, (q. v.) are sometimes classed among personal property. It is a general principle of American law, that stock held in corporations is to be considered as personal property. Walk. Introd. 211; 4 Dane's Ab. 670; Sull. on Land Tit. 71; 1 Hill. Ab. 18; though it was held that such stock was real estate, 2 Conn. R. 567; but, this being found inconvenient, the law was changed by the legislature. Property in personal chattels is either absolute or qualified; absolute, when the owner has a complete title and full dominion over it; qualified, when he has a temporary or special interest, liable to be totally divested on the happening of some particular event; 2 Kent, Com. 281. Considered in relation to its use, personal property is either in possession, that is in the actual enjoyment of the owner, or, in action, that is, not in his possession, but in the possession of another, and recoverable by action. Title to personal property is acquired, 1st, by original acquisition by occupancy, as, by capture in war, by finding a lost thing; 2d, by original acquisition by accession; 3d, by original acquisition, by intellectual labour, as copy-rights and patents for inventions; 4th, by transfer which is by act of law; 1, by forfeiture; 2, by judgment; 3, by insolvency; 4, by intestacy; 5, by transfer by act of the party, 1, Gifts, 2, Sale. Vide, generally, 16 Vin. Ab. 335; 8 Com. Dig. 474; Ib. 562; 1 Supp. to Ves. Jr. 49, 121, 160, 198, 255, 368, 9, 399, 412, 478; 2 Ibid. 10, 40, 129, 290, 291, 341; 1 Vern. 3, 170, 412; 2 Salk. 449; 2 Ves. Jr. 59, 336, 176, 261, 271, 683; 7 Ves. 453.

PERSONAL REPRESENTATIVES. These words are construed to mean the *executors* or *administrators* of the person deceased. 6 Mad. R. 159; 2 Mad. R. 155; 5 Ves. 402; 1 Madd. Ch. 108.

TO PERSONATE, *crim. law.* The act of assuming the character of another without lawful authority, and, in such character, doing something to his prejudice, or to the prejudice of another, without his will or consent. The bare fact of personating another for the purposes of fraud, is no more than a cheat or misdemeanor at common law, and punishable as such. 2 East, P. C. 1010; 2 Russ. on Cr. 479. By the act of congress of the 30th April, 1790, s. 15, 1 Story's Laws U. S. 86, it is enacted, that "if any person shall acknowledge, or procure to be acknowledged, in any court of the United States, any recognizance, bail

or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and whipped not exceeding thirty-nine stripes. Provided nevertheless, that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be had or given." Vide, generally, 2 John. Cas. 293; 16 Vin. Ab. 336; Com. Dig. Action on the case for a deceit, A 3.

TO PERSUADE, PERSUADING. To persuade is to induce to act: persuading is inducing others to act. Inst. 4, 6, 23; Dig. 11, 3, 1, 5. In the act of the legislature which declared that "if any person or persons knowingly and willingly shall aid or assist any enemies at open war with this state, &c. by *persuading* others to enlist for that purpose, &c. he shall be adjudged guilty of high treason;" the word persuading, thus used, means to succeed; and there must be an actual enlistment of the person persuaded, in order to bring the defendant within the intention of the clause. 1 Dall. R. 39; Carr. Crim. L. 237; 4 Car. & Payne, 369; S. C. 19 E. C. L. R. 425; 9 Car. & P. 79; and article *Administering*, vide 2 Lord Raym. 889. It may be fairly argued, however, that the attempt to persuade without success would be a misdemeanor. 1 Russ. on Cr. 44. In England it has been decided, that to incite and procure a person to commit suicide, is not a crime for which the party could be tried. 9 C. & P. 79; 38 E. C. L. R. 42; M. C.C. 356. Vide *Attempt*; *Solicitation*.

PERSUASION. The act of influencing by expostulation or request. While the persuasion is confined within those limits which leave the mind free, it may be used to induce another to make his will, or even to make it in his own favour; but if such persuasion should so far operate on the mind of the testator, that he would be deprived of a perfectly free will, it would vitiate the instrument. 3 Serg. & Rawle, 269; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323.

PERTINENT, *evidence*, those facts which tend to prove the allegations of the party offering them, are called pertinent; those which have no such tendency are called impertinent. 8 Toull. n. 22.

PERTURBATION. This is a technical word which signifies disturbance, or infringement of a right. It is usually applied to the disturbance of pews, or seats in a church. Vide *Pew*.

PESAGE, *mer. law*. In England a toll bearing this name is charged for weighing avordupois goods other than wool. 2 Chit. Com. Law. 16.

PETIT, sometimes corrupted into *petty*. A French word signifying little, small. It is frequently used, as petit larceny, petit jury, petit treason.

PETITION, is an instrument of writing or printing containing a prayer from the person presenting it, called the petitioner, to the body or person to whom it is presented, for the redress of some wrong, or the grant of some favour, which the latter has the right to give. By the constitution of the United States the right "to petition the government for a redress of grievances," is secured to the people. Amendm. Art. 1. Petitions are frequently presented to the courts in order to bring some matters before them. It is a general rule, in such cases, that an affidavit should be made that the facts therein contained are true as far as known to

the petitioner, and that those facts which he states as knowing from others he believes to be true.

PETTY AVERAGE. Vide *Average.*

PETTY-BAG. *Engl. law.* An office in the court of chancery, appropriated for suits against attorneys and officers of the court; and for process and proceedings, by extent on statutes, recognizances, *ad quod damnum*, and the like. T. de la Ley.

PETTY-FOGGER. One who pretends to be a lawyer, but possessing neither knowledge, law, nor conscience.

PEW, is a seat in a church separated from all others, with a convenient space to stand therein. It is an incorporeal interest in the real property. And, although a man has the exclusive right to it, yet, it seems, he cannot maintain trespass against a person entering it; 1 T. R. 430; but case is the proper remedy. 5 B. & Ald. 361; 8 B. & C. 294; S. C. 15 Eng. C. L. R. 221. The right to pews is limited and usufructuary, and does not interfere with the right of the parish or congregation to pull down and rebuild the church. 4 Ohio R. 541; 5 Cowen's R. 496; 17 Mass. R. 435; 1 Pick. R. 102; 3 Pick. R. 344; 6 S. & R. 508; 9 Wheat. R. 445; 9 Cranch, R. 52; 6 John. R. 41; 4 Johns. Ch. R. 596; 6 T. R. 396. Vide Pow. Mortgages, Index, h. t.; 2 Bl. Com. 429; 1 Chit. Pr. 208, 210; 1 Pow. Mort. 17 n. In Connecticut and Maine, and in Massachusetts, (except in Boston,) pews are considered real estate: in Boston they are personal chattels. In New Hampshire they are personal property. 1 Smith's St. 145. The precise nature of such property does not appear to be well settled in New York. 15 Wend. R. 218; 16 Wend. R. 28; 5 Cowen's R. 494. See Rev. St. Mass. 413; Conn. L. 432; 10 Mass. R. 323; 17 Mass. 438; 7 Pick. R. 138; 4 N. H. Rep. 180; 4 Ohio R. 515; Harr. Dig. Ecclesiastical Law, V.

PHAROS. A light house or beacon. It is derived from *Pharus*, a small island at the mouth of the Nile, on which was built a watch-tower.

PHYSICIAN. One engaged in the practice of medicine. A physician in England cannot recover for fees, as his practice is altogether honorary. Peake C. N. P. 96, 123; 4 T. R. 317. But in Pennsylvania, and perhaps in all the United States, he may recover for his services. 5 Serg. & Rawle, 416. The law implies, therefore, a contract on the part of a medical man, as well as those of other professions, to discharge their duty in a skilful and attentive manner; and the law will redress the party injured by their neglect or ignorance. 1 Saund. 312, a; 1 Ld. Raym. 213; 2 Wils. 359; 8 East, 348. They are sometimes answerable criminally for *mala praxis*, (q. v.) 2 Russ. on Cr. 288; Ayl. Pand. 213; Com. Dig. h. t.; Vin. Ab. h. t.

PHYSIOLOGY, *med. jur.*, is the science which treats of the functions of animals; it is the science of life. The legal practitioner who expects to rise to eminence, must acquire some acquaintance with physiology. This subject is intimately connected with gestation, birth, life and death. Vide 2 Chit. Pr. 42, n.

PIGNORATION, *civil law.* This word is used by Justinian in the title of the 52d novel, and signifies not only a pledge of property, but an engagement of the person.

PIGNORATIVE CONTRACT, *civil law.* Is a contract by which the owner of an estate engages it to another for sum of money, and grants to him and his successors the right to enjoy it, until he shall be reimbursed, voluntarily, that sum of money. Poth. h. t.

PIGNUS, *civil law*. This word signifies in English, pledge or pawn, (q. v.) It is derived from *pugnum*, the fist, because what is delivered in pledge is delivered in hand. Dig. 50, 16, 238, 2.

PILLORY, *punishment*, is a wooden machine in which the neck of the culprit is inserted. This punishment has been superseded by the adoption of the penitentiary system in most of the states. Vide 1 Chit. Cr. Law, 797. The punishment of standing in the pillory so far as the same was provided by the laws of the United States, was abolished by the act of congress of 28 February 1839, s. 5. See Barr. on the Stat. 48, note.

PILOT, *mer. law*. This word has two meanings. It signifies, first, an officer serving on board of a ship during the course of a voyage, and having the charge of the helm and of the ship's route; and, secondly, an officer authorised by law, who is taken on board at a particular place, for the purpose of conducting a ship through a river, road or channel, or from or into port. Pilots of the second description are established by legislative enactments at the principal seaports in this country, and have rights, and are bound to perform duties, agreeably to the provisions of the several laws establishing them. Pilots have been established in all maritime countries. After due trial and experience of their qualifications, they are licensed to offer themselves as guides in difficult navigation; and they are usually, on the other hand, bound to obey the call of a ship-master to exercise their functions. Abbott on Ship. 180; 1 John. R. 305; 4 Dall. 205; 2 New R. 82; 5 Rob. Adm. Rep. 308; 6 Rob. Adm. R. 316; Laws of Oler. art. 23; Molloy, B. 2, c. 9, s. 3 and 7; Wesk. Ins. 395; Act of congress of 7th August, 1789, s. 4; Merl. Répert. h. t.; Pardessus, n. 637.

PILOTAGE, *contracts*, is the compensation given to a pilot for conducting a vessel in or out of port. Poth. Des Avaries, n. 147. Pilotage is a lien on the ship, when the contract has been made by the master or quasi master of the ship, or some other person lawfully authorised to make it. 1 Mason, R. 508; and the admiralty court has jurisdiction, when services have been performed at sea. Id.; 10 Wheat. 428; 6 Pet. 682; 10 Pet. 108; and see 1 Pet. Adm. Dec. 227.

PIN MONEY, is money allowed by a man to his wife to spend for her own personal comforts. When pin money is given to, but not spent by the wife, on his death it belongs to his estate. 4 Vin. Ab. 133, tit. Baron and Feme, (E. a. 8); 2 Eq. Cas. Ab. 156; 2 P. Wms. 341; 3 P. Wms. 353; 1 Ves. 267; 2 Ves. 190; 1 Madd. Ch. 489, 490. In the French law the term *Epingles*, pins, is used to designate the present which is sometimes given by the purchaser of an immovable to the wife or daughters of the seller to induce them to consent to the sale. This present is not considered as a part of the consideration, but a purely voluntary gift. Dict. de Jur. mot Epingles. In England it was once adjudged that a promise to a wife, by the purchaser, that if she would not hinder the bargain for the sale of the husband's lands, he would give her ten pounds, was valid, and might be enforced by an action of assumpsit, instituted by husband and wife. Roll. Ab. 21, 22. It has been conjectured that the term *pin money*, has been applied to signify the provision for a married woman, because anciently there was a tax laid for providing the English queen with pins. Barringt. on the Stat. 181.

PINT, a liquid measure containing half a quart or the eighth part of a gallon.

PIPE, *Engl. law.* The name of a roll in the exchequer otherwise called the *Great Roll.*

PIRACY, *crim. law*, is robbery, or a forcible depredation on the high seas, without lawful authority, done *animo furandi*, in the spirit and intention of universal hostility. 5 Wheat. 153, 163. This is the definition of this offence by the laws of nations. 1 Kent, Com. 183. Congress may define and punish piracies and felonies on the high seas, and offences against the laws of nations. Const. U. S. Art. 1, s. 7, n. 10; 5 Wheat. 184, 153, 76; 3 Wheat. 336. In pursuance of the authority thus given by the constitution, it was declared by the act of congress of April 30, 1790, s. 8, 1 Story's Laws U. S. 84, that murder or robbery committed on the high seas, or in any river, haven, or bay, out of the jurisdiction of any particular state, or any offence, which, if committed within the body of a country, would, by the laws of the United States be punishable with death, should be adjudged to be piracy and felony, and punishable with death. It was further declared, that if any captain or mariner should piratically and feloniously run away with a vessel, or any goods or merchandise of the value of fifty dollars; or should yield up such vessel voluntarily to pirates; or if any seaman should forcibly endeavour to hinder his commander from defending the ship or goods committed to his trust, or should make revolt in the ship; every such offender should be adjudged a pirate and felon, and be punishable with death. Accessaries before the fact are punishable as the principal; those after the fact with fine and imprisonment. By a subsequent act, passed March 3, 1819, 3 Story, 1739, made perpetual by the act of 15 May, 1820, 1 Story, 1798, congress declared, that if any person upon the high seas, should commit the crime of piracy as defined by the law of nations, he should, on conviction, suffer death. And again by the act of 15 May, 1820, s. 3, 1 Story, 1798, congress declared that if any person should, upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river where the sea ebbs and flows, commit the crime of robbery in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person should be adjudged to be a pirate, and suffer death. And if any person engaged in any piratical cruise or enterprise, or being of the crew or ship's company of any piratical ship or vessel, should land from such ship or vessel, and, on shore, should commit robbery, such person should be adjudged a pirate and suffer death. Provided that the state in which the offence may have been committed should not be deprived of its jurisdiction over the same, when committed within the body of a county, and that the courts of the United States should have no jurisdiction to try such offenders, after conviction or acquittal, for the same offence, in a state court. The 4th and 5th sections of the last mentioned act declare persons engaged in the slave trade or in forcibly detaining a free negro or mulatto and carrying him in any ship or vessel into slavery, piracy, punishable with death. Vide 1 Kent, Com. 183; Beaussant, Code Maritime, t. 1, p. 244; Dalloz, Dict. Supp. h. t.; Dougl. 613; Park's Ins. Index, h. t.; Bac. Ab. h. t.; 16 Vin. Ab. 346; Ayl. Pand. 42; 11 Wheat. R. 39; 1 Gall. R. 247; Id. 624; 3 W. C. C. R. 209, 340; 1 Pet. C. C. R. 118, 121.

PIRACY, *torts.* By piracy is understood the plagiarism of a book, engraving or other work for which a copy-right has been taken out. When

a piracy has been made of such a work, an injunction will be granted. 5 Ves. 709; 4 Ves. 681; 12 Ves. 270. Vide *Copy-right.*

PIRATE. One guilty of the crime of piracy. Merl. Répert. h. t.

PIRATICALLY, *pleadings.*—This is a technical word, essential to charge the crime of piracy in an indictment, which cannot be supplied by another word, or any circumlocution. Hawk. B. 1, c. 37, s. 15; 3 Inst. 112; 1 Chit. Cr. Law, *244.

PISCARY, is the right of fishing in the waters of another. Bac. Ab. h. t.; 5 Com. Dig. 366. Vide *Fishery.*

PISTAREEN. A small Spanish coin. It is not a coin made current by the laws of the United States. 10 Pet. 618.

PLACE, *pleading, evidence.* A particular portion of space; locality. In local actions, the plaintiff must lay his venue in the county in which the action arose. It is a general rule, that the place of every traversable fact, stated in the pleading must be distinctly alleged. Com. Dig. Pleader, c. 20; Cro. Eliz. 78, 98; Lawes's Pl. 57; Bac. Ab. Venue, B; Co. Litt. 303 a; and some place must be alleged for every such fact; this is done by designating the city, town, village, parish or district, together with the county in which the fact is alleged to have occurred; and the place, thus designated, is called the venue, (q. v.) In transitory actions, the place laid in the declaration, need not be the place where the cause of action arose, unless when required by statute. In local actions, the plaintiff will be confined in his proof to the county laid in the declaration. In criminal cases the facts must be laid and proved to have been committed within the jurisdiction of the court, or the defendant must be acquitted. 2 Hawk. c. 25, s. 84; Arch. Cr. Pl. 40, 95. Vide generally, Gould on Pl. c. 3, 102–104; Arch. Civ. Pl. 366; Hamm. N. P. 462; 1 Saund. 347, n. 1; 2 Saund. 5 n.

PLACITUM, a plea. This word is *nomen generalissimum*, and refers to all the pleas in the case. 1 Saund. 388, n. 6; Skinn. 554; S. C. Carth. 334; Yelv. 65. By *placitum* is also understood the subdivisions in abridgments and other works, where the point decided in a case is set down, separately, and generally numbered. In citing, it is abbreviated as follows: Vin. Ab. Abatement, pl. 3. *Placita*, is the style of the English courts at the beginning of the record of Nisi Prius; in this sense, placita are divided into pleas of the crown, and common pleas.

PLAGIARIUS, *civil law.* He who fraudulently concealed a freeman or slave who belonged to another. The offence itself was called *plagium.* It differed from larceny or theft in this, that larceny always implies that the guilty party intended to make a profit, whereas the plagiarius did not intend to make any profit. Dig. 48, 15, 6; Code, 9, 20, 9 and 15.

PLAGIUM, manstealing, kidnapping. This offence is the crimen plagii of the Romans. Alis. Pr. Cr. Law, 280, 281.

PLAINT, *Eng. law*, is the exhibiting of any action, real or personal, in writing; the party making his plaint is called the plaintiff.

PLAINTIFF, *practice*, he who, in a personal action, seeks a remedy for an injury to his rights. Ham. on Parties, h. t.; 1 Chit. Pl. Index, h. t.; Chit. Pr. Index, h. t.; 1 Com. Dig. 36, 205, 308. Plaintiffs are legal or equitable. The legal plaintiff is he in whom the legal title or cause of action is vested. The equitable plaintiff is he who, not having the legal title, yet, is in equity entitled to the thing sued for; for example,

when a suit is brought by Benjamin Franklin for the use of Robert Morris, Benjamin Franklin is the legal, and Robert Morris, the equitable plaintiff. This is the usual manner of bringing suit, when the cause of action is not assignable at law, but it is so in equity. Vide *Parties to Actions.*

PLANTATIONS. Colonies, (q. v.); dependencies, (q. v.); 1 Bl. Com. 107.

PLAT. A map of a piece of land, in which are marked the courses and distances of the different lines, and the quantity of land it contains. Such a plat may be given in evidence in ascertaining the position of the land, and what is included, and may serve to settle the figure of a survey, and correct mistakes. 5 Monr. 160. See 17 Mass. 211; 5 Greenl. 219; 7 Greenl. 61; 4 Wheat. 444; 14 Mass. 149.

PLEA, *in chancery practice.* "A plea," says Lord Bacon, speaking of proceedings in courts of equity, "is a foreign matter to discharge or stay the suit." Ord. Chan. (ed. Beam.) p. 26. Lord Redesdale defines it to be "a special answer showing or relying upon one or more things as a cause why the suit should be either dismissed, delayed or barred." Mitf. Tr. Ch. 177; see Coop. Eq. Pl. 223; Beames's Pl. Eq. 1. A plea is a special answer to a bill, and differs in this from an answer in the common form, as it demands the judgment of the court in the first instance, whether the matter urged by it does not debar the plaintiff from his title to that answer which the bill requires. 2 Sch. & Lef. 721.

Pleas are of three sorts; 1, to the jurisdiction of the court; 2, to the person of the plaintiff; 3, in bar of the plaintiff's suit. Blake's Ch. Pr. 112.

See, generally, Beames's Elem. of Pleas in Eq.; Mitf. Tr. Cha. ch. 2, s. 2, pt. 2; Coop. Eq. Pl. ch. 5; 2 Madd. Ch. Pr. 295 to 331; Blake's Ch. Pr. 112 to 114.

PLEA, *in practice*, is the defendant's answer by matter of *fact*, to the plaintiff's declaration. It is distinguished from a demurrer which opposes matter of *law* to the declaration. Steph. Pl. 62.

Pleas are divided into pleas dilatory and peremptory; and this is the most general division to which they are subject. Subordinate to this is another division; they are either to the jurisdiction of the court, in suspension of the action; in abatement of the writ; or, in bar of the action. The first three of which belong to the dilatory class, the last is of the peremptory kind. Steph. Pl. 63; 1 Chit. Pl. 425; Lawes, Pl. 36.

The law has prescribed and settled the order of pleading, which the defendant is to pursue, to wit,

1st. To the jurisdiction of the court.

2dly. To the disability, &c. of the person; 1st, of the plaintiff; 2dly, of the defendant.

3dly. To the count or declaration.

4thly. To the writ; 1st. To the form of the writ; first, Matter apparent on the face of it; secondly, Matter dehors. 2dly. To the action of the writ.

5thly. To the action itself in bar.

This is said to be the natural order of pleading, because each subsequent plea admits that there is no foundation for the former. Such is the English law, 1 Ch. Plead. 425. The rule is different with regard to the plea of jurisdiction in the courts of the United States and those of Pennsylvania. 1 Binn. 138; Ib. 219; 2 Dall. 368; 3 Dall. 19; 10 Serg. & Rawle, 229.

2. Plea, in its ancient sense, means suit or action, and it is sometimes still used in that sense; for example, A B was summoned to answer C D

of a *plea* that he render, &c. Steph. Pl. 38, 39, n. (9); Warr. Law Studies, 272, note (n.)

3. This variable word, *to plead*, has still another and more popular use, importing forensic argument in a cause, but it is not so employed by the profession. Steph. Pl. App. note (1).

PLEA IN ABATEMENT, is when for any default, the defendant prays that the writ or plaint do abate, that is, cease against him for that time. Com. Dig. Abatement, B. Hence it may be observed, 1st, that the defendant may plead in abatement for faults apparent on the writ or plaint itself, or for such as are shown *dehors*, or out of the writ or plaint; and 2dly, that a plea in abatement is never perpetual, but only a temporary plea, in form at least, and if the cause revived, the plaintiff may sue again. If the defendant plead a plea in abatement, in his plea he ought generally to give a better writ to the plaintiff, that is, show him what other and better writ can be adopted. Com. Dig. Abatement, I 1; but if the plea go to the matter and substance of the writ, &c. he need not give the plaintiff another writ. Nor need he do so when the plea avoids the whole cause of the action. Id. I 2. Pleas in abatement are divided into those relating, first, to the disability of the plaintiff or defendant; secondly, to the count or declaration; thirdly, to the writ. 1 Chit. Pl. 435.

PLEA IN ABATEMENT TO THE PERSON OF THE PLAINTIFF. Pleas of this kind are either that the plaintiff is not in existence, being only a fictitious person, or dead; or else, that being in existence, he is under some disability to bring or maintain the action, as by being an alien enemy, Com. Dig. Abatement, E 4; Bac. Abr. Abatement, B 3; 1 Chit. Pl. 436; or the plaintiff is a married woman, and she sues alone. See 3 T. R. 631; 6 T. R. 265.

PLEA IN ABATEMENT TO THE PERSON OF DEFENDANT. These pleas are coverture, and, in the English law, infancy, when the parol shall demur. When a feme covert is sued, and the objection is merely that the husband ought to have been sued jointly with her; as when since entering into the contract or committing the tort, she has married; she must, when sued alone, plead her coverture in abatement, and aver that her husband is living. 3 T. R. 627; 1 Chit. Pl. 437, 8.

PLEA IN ABATEMENT TO THE FORM OF THE WRIT. Such pleas are for some apparent uncertainty, repugnancy, or want of form; variance from the record, specialty, &c. mentioned therein, or misnomer of the plaintiff or defendant. Lawes Civ. Pl. 106; 1 Chit. Pl. 440.

PLEA IN ABATEMENT TO THE ACTION OF THE WRIT. Pleas of this kind are pleaded when the action is misconceived, or was prematurely commenced before the cause of action arose; or that there is another action depending for the same cause. Tidd's Pr. 579. But as these matters are ground for demurrer or nonsuit, it is now very unusual to plead them in abatement. See 2 Saund. 210, a.

PLEA IN ABATEMENT TO THE COUNT, such pleas are for some uncertainty, repugnancy, or want of form, not appearing on the face of the writ itself, but apparent from the recital of it in the declaration only; or else for some variance between the writ and declaration. But it was always necessary to obtain oyer of the writ before the pleading of these pleas; and since oyer cannot now be had of the original writ for the purpose of pleading

them, it seems that they can no longer be pleaded. See *Oyer*.

PLEA IN AVOIDANCE, is one which confesses the matters contained in the declaration, and avoids the effect of them by some new matter which shows that the plaintiff is not entitled to maintain his action. For example, the plea may admit the contract declared upon, and show that it was void or voidable, because of the inability of one of the parties to make it, on account of coverture, infancy, or the like. Lawes Pl. 122.

PLEA IN BAR, is one that denies that the plaintiff has any cause of action. 1 Ch. Pl. 459; Co. Litt. 303 b; 6 Co. 7. Or it is one which shows some ground for barring or defeating the action; and makes prayer to that effect. Steph. Pl. 70; Britton, 92. See *Bar*. A plea in bar, is therefore, distinguished from all pleas of the dilatory class, as impugning the right of the action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ. It is in short a substantial and conclusive answer to the action. It follows, from this property, that in general, it must either deny all, or some essential part of the averments of fact in the declaration; or, admitting them to be true, allege new facts, which obviate and repel their legal effect. In the first case, the defendant is said, in the language of pleading, to traverse the matter of the declaration; in the latter, to confess and avoid it. Pleas in bar are consequently divided into pleas by way of traverse, and pleas by way of confession and avoidance. Steph. Pl. 70, 71.

Pleas in bar are also divided into general or special. *General* pleas in bar deny or take issue either upon the whole or part of the declaration, or contain some new matter which is relied upon by the defendant in his defence. Lawes Pl. 110. *Special* pleas in bar are very various, according to the circumstances of the defendant's case; as in personal actions, the defendant may plead any special matter in denial, avoidance, discharge, excuse or justification of the matter alleged in the declaration, and which destroys or bars the plaintiff's action; or he may plead any matter which estops, or precludes him from averring or insisting on any matter relied upon by the plaintiff in his declaration. The latter sort of pleas are called pleas in *estoppel*. In real actions, the tenant may plead any matter which destroys and bars the demandant's title; as a general release. Ib. 115, 116.

The general qualities of a plea in bar, are, 1, That it be adapted to the nature and form of the action, and also conformable to the count, Co. Litt. 303, a, 285 b; Bac. Abr. Pleas, I; 1 Roll. Rep. 216.—2. That it answer all it assumes to answer, and no more, Co. Litt. 303, a; Com. Dig. Pleader, E 1, 36; 1 Saund. 28, n. 1, 2, 3; 2 Bos. & Pull. 427; 3 Bos. & Pull. 174.—3. In the case of a special plea, that it confess and admit the fact, 3 T. R. 298; 1 Salk. 394; Carth. 380; 1 Saund. 28, n. and 14 n. 3; 10 Johns. R. 289.—4. That it be single, Co. Litt. 304; Bac. Ab. Pleas, K, 1, 2; Com. Dig. Plead. E 2; 2 Saund. 49, 50; Plowd. Com. 140, d.—5. That it be certain, Com. Dig. Pleader, E 5, 7, 8, 9, 10, 11; C 41; This Dict. *Certainty; Pleading*.—6. It must be direct, positive, and not argumentative. See 6 Cranch, 126; 9 Johns. R. 313.—7. It must be capable of trial.—8. It must be true and capable of proof. See *Plea, sham*.

The parts of a plea in bar may be considered with reference to,

1. The title of the court in which it is pleaded.

2. The title of the term.

3. The names of the parties in the margin. These, however, do not constitute any part of the plea. The sirnames only are usually inserted, and that of the defendant precedes the plaintiff's, as "Roe ats. Doe."

4. The commencement; which includes the statement of, 1, the name of the defendant; 2, the appearance; 3, the defence; see *Defence;* 4, the actio non; see *Actio non.*

5. The body, which may contain, 1, the inducement; 2, the protestation; 3, the ground of defence; 4, *quæ est eadem;* 5, the traverse.

6. The conclusion.

PLEA, DILATORY. Dilatory pleas are such as delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought. Dilatory pleas are divided by Sir William Blackstone, into three kinds:—1. Pleas to the jurisdiction of the court; as, that the cause of action arose out of the limits of the jurisdiction of the court, when the action is local. 2. Pleas to the disability of the plaintiff, or, as they are usually termed, to the person of the plaintiff; as, that he is an alien enemy. 3. Pleas in abatement of the writ, or count; these are founded upon some defect or mistake, either in the writ itself; as, that the defendant is misnamed in it, or the like; or in the mode in which the count pursues it; as, that there is some variance or repugnancy between the count and the writ; in which case, the fault in the count furnishes a cause for abating the writ. 3 Bl. Com. 301; Com. Dig. Abatement, G 1, 8; Ib. Pleader, C 14, 15; Bac. Ab. Pleas, F 7. All dilatory pleas are sometimes called pleas in abatement, as contradistinguished to pleas to the action; this is perhaps not strictly proper, because though all pleas in abatement are dilatory pleas, yet all dilatory pleas are not pleas in abatement. Gould on Pl. ch. 2, § 35; vide 1 Chit. Pl. ch. 6. Bac. Ab. Abatement, O; 1 Mass. 358; 1 John. Cas. 101.

PLEA IN DISCHARGE, as distinguished from a plea in avoidance, is one which admits the demand, and instead of avoiding the payment or satisfaction of it, shows that it has been discharged by some matter of fact. Such are pleas of payment, release and the like.

PLEA IN EXCUSE, is one which admits the demand or complaint stated in the declaration, but excuses the non-compliance of the plaintiff's claim, or the commission of the act of which he complains, on account of the defendant having done all in his power to satisfy the former, or not having been the culpable author of the latter. A plea of tender is an example of the former, and a plea of *son assault demesne*, an instance of the latter.

PLEA, FOREIGN. A foreign plea is one which takes the cause out of the court where it is pleaded, by shewing a want of jurisdiction in that court. 2 Lill. Pr. Reg. 374; Carth. 402. See the form of the plea in Lill. Ent. 475.

PLEA, (SHAM.) A sham plea is one which is known to the pleader to be false, and is entered for the purpose of delay. There are certain pleas of this kind, which in consequence of their having been long and frequently used in practice, have obtained toleration from the courts; and, though discouraged, are tacitly allowed; as, for example, the common plea of *judgment recovered*, that is, that judgment has been already recovered by the plaintiff, for the same cause of action. Steph. on Pleading, 444, 445; 1 Chit. Pl. 505, 506.

PLEA IN SUSPENSION OF THE ACTION. Such a plea is

one which shows some ground for not proceeding in the suit at the present period, and prays that the pleading may be stayed, until that ground be removed. The number of these pleas is small. Among them is that which is founded on the nonage of the parties, and termed parol demurrer. Stephen on Pleading, 64.

PLEA OF JUSTIFICATION, is one in which the defendant professes purposely to have done the acts which are the subject of the plaintiff's suit, in order to exercise that right which he considers he might in point of law exercise, and in the exercise of which he conceives himself not merely excused, but justified.

PLEA PUIS DARREIN CONTINUANCE. Under the ancient law, there were continuances, i. e. adjournments of the proceedings for certain purposes, from one day or one term to another; and, in such cases, there was an entry made on the record, expressing the ground of the adjournment, and appointing the parties to re-appear at a given day.

In the interval between such continuance and the day appointed, the parties were of course out of court, and, consequently not in a situation to plead. But it sometimes happened, that after a plea had been pleaded, and while the parties were out of court, in consequence of such continuance, a new matter of defence arose, which did not exist, and which the defendant had consequently no opportunity to plead, before the last continuance. This new defence he was therefore entitled, at the day given for his re-appearance, to plead as a matter that had happened after the last continuance, puis darrein continuance. In the same cases that occasioned a continuance in the ancient common law, but in no other, a continuance shall take place. At the time indeed, when the pleadings are filed and delivered, no record exists, and there is, therefore, no entry at that time, made on the record, of the award of a continuance; but the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended, till the day arrives to which, by the ancient practice, the continuance would extend. At that day, the defendant is entitled, if any new matter of defence has arisen in the interval, to plead it according to the ancient plan, *puis darrein continuance.*

A plea puis darrein continuance, is not a departure from, but is a waiver of the first plea, and is always pleaded by way of substitution for it, on which no proceeding is afterwards had. 1 Salk. 178; 2 Stran. 1195; Hob. 81; 4 Serg. & Rawle, 239. Great certainty is requisite in pleas of this description. Doct. Pl. 297; Yelv. 141; Cro. Jac. 261; Freem. 112; 2 Lutw. 1143; 2 Salk. 519; 2 Wils. 139; Co. Entr. 517 b. It is not sufficient to say generally that after the last continuance such a thing happened, but the day of the continuance must be shown, and also the time and place must be alleged where the matter of defence arose. Id. ibid. Bull. N. P. 309.

Pleas puis darrein continuance are either in bar or abatement, Com. Dig. Abatement, I 24; and are followed, like other pleas, by a replication and other pleadings, till issue is attained upon them. Such pleas must be verified on oath before they are allowed. 2 Smith's R. 396; Freem. 252; 1 Strange, 493.

See, generally, Bac. Abr. Pleas, Q; Com. Dig. Abatement, I 24, 34; Doct. Pl. 297; Bull. N. P. 309; Lawes Civ. Pl. 173; 1 Chit. Pl. 634; Steph. Pl. 81.

PLEADING, *in practice*, is the

statement in a logical and legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; it is the formal mode of alleging that on the record, which would be the support, or the defence of the party in evidence. 3 T. R. 159; Dougl. 278; Com. Dig. Pleader, A; Bac. Abr. Pleas and Pleading; Cowp. 682, 3. In a general sense it is what either party to a suit at law alleges for himself in a court, with respect to the subject-matter of the cause, and the mode in which it is carried on, including the demand which is made by the plaintiff; but in strictness, it is no more than setting forth those facts or arguments which show the justice or legal sufficiency of the plaintiff's demand, and the defendant's defence, without including the statement of the demand itself, which is contained in the declaration or count. Bac. Abr. Pleas and Pleading. The science of pleading was designed only to render the facts of each party's case plain and intelligible, and to bring the matter in dispute between them to judgment. Steph. Pl. 1. It is, as has been well observed, admirably calculated for analyzing a cause, and extracting, like the roots of an equation, the true points in dispute; and referring them with all imaginable simplicity, to the court and jury. 1 Hale's C. L. 301, n.

The parts of pleading have been considered as arrangeable under two heads; first, the regular, or those which occur in the ordinary course of a suit; and secondly, the irregular, or collateral, being those which are occasioned by mistakes in the pleadings on either side.

The regular parts are, 1st, The *declaration* or count; 2dly, The *plea*, which is either to the jurisdiction of the court, or suspending the action, as in the case of a parol demurrer, or in abatement, or in bar of the action, or in replevin, an avowry or cognizance; 3dly, The *replication*, and, in case of an evasive plea, a *new assignment*, or in replevin the *plea in bar* to the avowry or cognizance; 4thly, The *rejoinder*, or, in replevin, the replication to the plea in bar; 5thly, The *sur-rejoinder*, being in replevin, the rejoinder; 6thly, The *rebutter*; 7thly, The *sur-rebutter*, Vin. Abr. Pleas and Pleading, C; Bac. Abr. Pleas and Pleadings, A; 8thly, Pleas *puis darrien continuance*, when the matter of defence arises pending the suit.

The irregular or collateral parts of pleading are stated to be, 1st, *Demurrers* to any part of the pleadings above mentioned; 2dly, *Demurrers to evidence* given at trials; 3dly, *Bills of exceptions*; 4thly, *Pleas* in *scire facias*; and, 5thly, *Pleas in error*. Vin. Abr. Pleas and Pleadings, C.

PLEADING, (SPECIAL). By special pleading is meant the allegation of special or new matter, as distinguished from a direct denial of matter previously alleged on the opposite side. Gould on Pl. c. 1, s. 18.

PLEAS OF THE CROWN, *Eng. law.* This phrase is now employed to signify criminal causes in which the king is a party. Formerly it signified royal causes for offences of a greater magnitude than were misdemeanors. These were left to be tried in the courts of the barons, whereas the greater offences, or royal causes, were to be tried in the king's courts, under the appellation of pleas of the crown. Robertson's Hist. of Charles V., vol. 1, p. 48.

PLEAS ROLL, *Eng. practice*, is a record which contains the declaration, plea, replication, rejoinder, and other pleadings, and the issue. Eunom. Dial. 2, § 29, p. 111.

PLEBISCIT, *civil law.* This is an anglicised word from the Latin

plebiscitum, which is composed or derived from *plebs* and *scire*, and signifies, to establish or ordain. A plebiscit was a law which the people, separated from the senators and the patricians, made on the requisition of one of their magistrates, that is, a tribune. Inst. 1, 2, 4.

PLEDGE or PAWN, *in contracts;* these words seem indifferently used to convey the same idea. Story on Bailm. § 286. In the Civil Code of Louisiana, however, they appear not to have exactly the same meaning. It is there said that pledges are of two kinds, namely, the pawn, and the antichresis. Louis. Code, art. 3101. Sir William Jones defines a pledge to be a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. Jones's Bailm. 117; Id. 36. Chancellor Kent, 2 Kent's Com. 449, follows the same definition, and see 1 Dane's Abr. c. 17, art. 4. Pothier, De Nantissement, art. prelim. 1, defines it to be a contract by which a debtor gives to his creditor a thing to detain as security for his debt. The Code Napoleon has adopted this definition, Code Civ. art. 2071, and the Civil Code of Louisiana has followed it. Louis. Code, 3100. Lord Holt's definition is, when goods or chattels are delivered to another as a pawn, to be security for money borrowed of him by the bailor; and this, he adds, is called in Latin *vadium*, and in English, a pawn or pledge. Ld. Raym. 909, 913. The foregoing definitions are sufficiently descriptive of the nature of a pawn or pledge; but they are in terms limited to cases where a thing is given as a security for a debt; but a pawn may well be made as security for any other engagement. 2 Bulst. 306; Pothier, De Nantissement, n. 11. The definition of Domat is, therefore, more accurate, because it is more comprehensive, namely, that it is an appropriation of the thing given for the security of an engagement. Domat, B. 3, tit. 1, § 1, n. 1. And, according to Judge Story, it may be defined to be a bailment of personal property, as security for some debt or engagement. Story on Bailm. § 286.

The term pledge or pawn is confined to personal property; and where real or personal property is transferred by a conveyance of the title, as a security, it is commonly denominated a mortgage.

A mortgage of goods is, in the common law, distinguishable from a mere pawn. By a grant or a 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, 1 Atk. 167; 6 East, 25; 2 Caines's C. Err. 200; 1 Pick. 389; 1 Pet. S. C. R. 449; 2 Pick. R. 610; 5 Pick. R. 60; 8 Pick. R. 236; 9 Greenl. R. 82; 2 N. H. Rep. 13; 5 N. H. Rep. 545; 5 John. R. 258; 8 John. R. 97; 10 John. R. 471; 2 Hall, R. 63; 6 Mass. R. 425; 15 Mass. R. 480. A mortgage may be without possession, but a pledge cannot be without possession. 5 Pick. 59, 60; and see 2 Pick. 607.

Things which are the subject of a pledge or pawn are ordinarily goods and chattels, but money, negotiable instruments, choses in action, and indeed any other thing valuable of a personal nature, such as patent-rights and manuscripts, may, by the common law, be delivered in pledge. 10 Johns. R. 471, 475; 12 Johns. R. 146; 10 Johns. R. 389; 2 Blackf. R. 198; 7 Greenl. R. 28; 2 Taunt. R. 268; 13 Mass. 105; 15 Mass. 389; Ib. 534; 2 Caines's C. Err.

200; 1 Dane's Abr. ch. 17, art. 4, § 11. See Louis. Code, art. 3121.

It is of the essence of the contract, that there should be an actual delivery of the thing. 6 Mass. 422; 15 Mass. 477; 14 Mass. 352; 2 Caines's C. Err. 200; 2 Kent's Com. 452; Bac. Abr. Bailment, B; 2 Rolle R. 439; 6 Pick. R. 59, 60; Pothier, De Nantissement, n. 8, 9; Louis. Code, 3129. What will amount to a delivery, is matter of law. See *Delivery*.

It is essential that the thing should be delivered as a security for some debt or engagement. Story on Bailm. § 300. And see 3 Cranch, 73; 7 Cranch, 34; 2 Johns. Ch. R. 309; 1 Atk. 236; Prec. in Ch. 419; 2 Vern. 691; Gilb. Eq. R. 104; 6 Mass. 339; Pothier, Nantissement, n. 12; Civ. Code of La. art. 3119; Code Civ. art. 2076.

In virtue of the pawn the pawnee acquires, by the common law, a special property in the thing, and is entitled to the possession of it exclusively, during the time and for the objects for which it is pledged. 2 Bl. Com. 396; Jones's Bailm. 80; Owen R. 123, 124; 1 Bulst. 29; Yelv. 178; Cro. Jac. 244; 2 Ld. Raym. 909, 916; Bac. Abr. Bailment, B; 1 Dane's Abr. ch. 17, art. 4, § § 1, 6; Code Civ. art. 2082; Civ. Code of La. art. 3131. And he has a right to sell the pledge, when there has been a default in the pledger in complying with his engagement. Such a default does not divest the general property of the pawner, but still leaves him a right of redemption. But if the pledge is not redeemed within the stipulated time, by a due performance of the contract for which it is a security, the pawnee has then a right to sell it, in order to have his debt or indemity. And if there is no stipulated time for the payment of the debt, but the pledge is for an indefinite period, the pawnee has a right, upon request, to a prompt fulfilment of the agreement; and if the pawner refuses to comply, the pawnee may, upon demand and notice to the pawner, require the pawn to be sold. 2 Kent's Com. 452; Story on Bailm. § 308.

The pawnee is bound to use ordinary diligence in keeping the pawn, and consequently is liable for ordinary neglect in keeping it. Jones's Bailm. 75; 2 Kent's Com. 451; 1 Dane's Abr. ch. 17, art. 12; 2 Ld. Raym. 909, 916; Domat, B. 1, tit. 1, § 4, n. 1.

The pawner has the right of redemption. If the pledge is conveyed by way of mortgage, and thus passes the legal title, unless he redeems the pledge at a stipulated time, the title of the pledges becomes absolute at law; and the pledger has no remedy at law, but only a remedy in equity to redeem. 2 Ves. Jr. 378; 2 Caines's C. Err. 200. If, however, the transaction is not a transfer of ownership, but a mere pledge, as the pledger has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the condition of his contract. Com. Dig. Mortgage, B; 1 Pow. on Mortg. by Coventry & Rand. 401, and notes, ibid. See further, as to the pawner's right of redemption, Story on Bailm. §§ 245 to 249.

By the act of pawning, the pawner enters into an implied agreement or warranty that he is the owner of the property pawned, and that he has a good right to pass the title. Story on Bailm. § 354.

As to the manner of extinguishing the contract of pledge or mortgage of personal property, see Story on Bailm. §§ 359 to 366.

PLEDGES, *pleading*. It was anciently necessary to find pledges or sureties to prosecute a suit, and the names of the pledges were added

at the foot of the declaration; but in the course of time it became unnecessary to find such pledges because the plaintiff was no longer liable to be amerced, *pro falsa clamora*, and the pledges were merely nominal persons, and now John Doe and Richard Roe are the universal pledges; but they may be omitted altogether. 1 Tidd's Pr. 455; Arch. Civ. Pl. 171.

PLENARY. Full, complete. In the courts of admiralty, and in the English ecclesiastical courts, causes or suits in respect of the different course of proceeding in each, are termed plenary or summary. Plenary, or full and formal suits, are those in which the proceedings must be full and formal: the term summary is applied to those causes where the proceedings are more succinct and less formal. Law's Oughton, 41; 2 Chit. Pr. 481.

PLENARTY, *eccl. law*. Signifies that a benefice is full. Vide *Avoidance*.

PLENE ADMINISTRAVIT, *pleading*, is a plea in bar entered by an executor or administrator by which he affirms that he had not in his possession, at the time of the commencement of the suit, nor has had at any time since, any goods of the deceased to be administered; when the plaintiff replies that the defendant had goods, &c. in his possession at that time, and the parties join issue, the burden of the proof will be on the plaintiff. Vide 15 John. R. 323; 6 T. R. 10; 1 Barn. & Ald. 254; 11 Vin. Ab. 349; 12 Vin. Ab. 185; 2 Phil. Ev. 295; 3 Saund. (a) 315, n. 1; 6 Com. Dig. 311.

PLENE COMPUTAVIT, *pleading*. A plea in an action of account render, by which the defendant avers that he has fully accounted. Bac. Ab. Accompt, E. This plea does not admit the liability of the defendant to account. 15 S. & R. 153.

PLOUGH-BOTE, is an allowance made to a rural tenant of wood sufficient for ploughs, harrows, carts, and other instruments of husbandry.

PLOUGH-LAND, *old Eng. law*, an uncertain quantity of land, but, according to some opinions it contains one hundred and twenty acres. Co. Litt. 69 a.

PLUNDERAGE, *mar. law*. The embezzlement of goods on board of a ship, is known by the name of plunderage. The rule of the maritime law in such cases is, that the whole crew shall be responsible for the property thus embezzled, because there must be some negligence in finding out the depredator. Abbott on Ship. 457; 3 John. Rep. 17; 1 Pet. Adm. Dec. 243; 1 New Rep. 347; 1 Pet. Adm. Dec. 200, 239.

PLURAL. A term used in grammar, which signifies more than one. Sometimes, however, it may be so expressed that it means only one, as, if a man were to devise to another all he was worth, if he, the testator, died without children, and he died leaving one child, the devise would not take effect. See Dig. 50, 16, 148; Id. 35, 1, 101, 1; Id. 36, 1, 17, 4; Code, 6, 49, 6, 2. See *Singular*.

PLURALITY, *government*, is the greater number of votes given at an election; it is distinguished from a *majority*, (q. v.) which is a plurality of all the votes which might have been given; though in common parlance majority is used in the sense here given to plurality.

PLURIES, *in practice*, is a term by which a writ issued subsequently to an *alias* of the same kind is denominated. The pluries writ is made by adding after we command you, the words, "as often times we have commanded you." This is called the first pluries, the next is called the second pluries, &c.

POINDING, in the Scotch law, is that diligence, affecting movable

subjects, by which their property is carried directly to the creditor. Poinding is real or personal. Ersk. Pr. L. Scot. 3, 6, 11.

POINDING, PERSONAL, in the Scotch law, is a poinding of the goods belonging to the debtor, and of those goods only. It may have for its warrant either letters of horning, containing a clause for poinding, and then it is executed by messengers; or precepts of poinding, granted by sheriffs, commissaries, &c. which are executed by their proper officers. No cattle pertaining to the plough, nor instruments of tillage can be poinded in the time of labouring or tilling the ground, unless where the debtor has no other goods that may be poinded. Ersk. Pr. L. Scot. 3, 6, 11. See *Distress*, to which this process is somewhat similar.

POINDING, REAL, or *poinding of the ground*, in the Scotch law, though it be properly a diligence, is generally considered by lawyers as a species of real action, and is so called to distinguish it from personal poinding, which is founded merely on an obligation to pay. Every *debitum fundi*, whether legal or conventional, is a foundation for this action. It is therefore competent to all creditors in debts which make a real burden on lands. As it proceeds on a real right, it may be directed against all goods that can be found on the lands burdened; but, 1, goods brought upon the ground by strangers are not subject to this diligence; and, 2, even the goods of a tenant cannot be poinded for more that his term's rent. Ersk. Pr. L. Scot. 4, 1, 3.

POINT, *practice*, is a proposition or question arising in a case. It is the duty of a judge to give an opinion on every point of law, properly arising, out of the issue, which is propounded to him. Vide *Resolution*.

POINTS, *construction*. Marks in writing and in print, to denote the stops that ought to be made in reading, and to point out the sense. Points are not usually put in legislative acts or in deeds, Eunom. Dial. 2, § 33, p. 239; yet, in construing them, the courts must read them with such stops as will give effect to the whole. 4 T. R. 65. The points are the comma, the semi-colon, the colon, the full point, the point of interrogation, of exclamation. Barr. on the Stat. 294, note; vide *Punctuation*.

POISON, *crim. law*. Those substances which, when applied to the organs of the body, are capable of altering or destroying, in a majority of cases, some or all of the functions necessary to life, are called poisons. 3 Fodéré, Traite de Med. Leg. 449. When administered with a felonious intent of committing murder, if death ensues, is is murder the most detestable, because it can of all others, be least prevented by manhood or forethought. It is a deliberate act necessarily implying malice. 1 Russ. Cr. 429. For the signs which indicate poisoning, vide 2 Beck's Med. Jurisp. ch. 16, p. 236 et seq.; Cooper's Med. Jurisp. 47; Ryan's Med. Jurisp. ch. 15, p. 202, et seq.; Traill, Med. Jur. 109.

POLE. A measure of length, equal to five yards and a half. Vide *Measure*.

POLICE. That species of superintendence by magistrates which has principally for its object to maintain public tranquillity among the citizens. The officers who are appointed for this purpose are also called the police. The word *police* has three significations, namely; 1. The first relates to the measures which are adopted to keep order, the laws and ordinances on cleanliness, health, the markets, &c. 2. The second has for its object to procure to the authorities the means of detecting even the smallest attempts to commit crime, in order that the

guilty may be arrested before their plans are carried into execution, and delivered over to the justice of the country. 3. The third comprehends the laws, ordinances and other measures which require the citizens to exercise their rights in a particular form. Police has also been divided into *administrative police* which has for its object to maintain constantly public order in every part of the general administration; and into *judiciary police*, which is intended principally to prevent crimes by punishing the criminals. Its object is to punish crimes which the administrative police has not been able to prevent.

POLICY OF INSURANCE, *in contracts*, is an instrument in writing by which the contract of insurance is effected and reduced into form. The term policy of insurance, or assurance, as it is sometimes called, is derived from the Italian *polizza di assecurazione*, or *di securanza*, or *di securta*; and in that language signifies a *note* or *bill of security* or indemnity. The policy is always considered as being made upon an *executed* consideration, namely, the payment or security for the payment of the premium, and contains only the promise of the underwriters, without any thing in nature of a counter promise on the part of the insured. The policy may be effected by the owner of the property insured, his broker or agent.

As to its form the policy has been considered in courts of laws as an absurd and incoherent instrument, 4 T. R. 210; but courts of justice have always construed it according to the intention of the parties, and so that the indemnity of the insured, and the advancement of trade, which are the great objects of insurance, may be attained. It should contain, 1, the names of the parties; 2, the name of the vessel insured, in order to identify it; but to prevent the ill consequence that might result from a mistake in the name of the vessel or master, there are usually inserted in policies these words, "or by what soever name or names the same ship or the master thereof is, or shall be, named or called;" 3, a specification of the subject-matter of the insurance, whether it be goods, ship, freight, respondentia or bottomry securities, or other things, Marsh. Ins. 315; 3 Mass. Rep. 476; 4, a description of the voyage, with the commencement and end of the risk; 5, a statement of the perils insured against; 6, a power in the insured to save goods in case of misfortune, without violating the policy; 7, the promise of the insurers, and an acknowledgment of their receipt of the premium; 8, the common memorandum; 9, the date and subscription.

Policies, with reference to the reality of the interest insured, are distinguished into *interest* and *wager* policies; with reference to the *amount* of interest, into *open* and *valued*.

An *interest policy*, is where the insured has a real, substantial, assignable interest in the thing insured; in which case only it is a contract of indemnity.

A *wager policy*, is a pretended insurance, founded on an ideal risk, where the insured has no interest in the thing insured, and can therefore sustain no loss, by the happening of any of the misfortunes insured against. These policies are strongly reprobated in Pennsylvania, Massachusetts and in England, while in New York they are considered valid. 3 Kent, Com. 225.

An *open policy*, is where the amount of the interest of the insured is not fixed by the policy; but is left to be ascertained by the insured in case a loss shall happen.

A *valued policy*, is where a value has been set on the ship or goods in-

sured, and this value inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case of loss. Marsh. Ins. 287; and see Kent, Com. Lecture 48; Marsh. Ins. ch. 8; 16 Vin. Ab. 402; 1 Supp. to Ves. jr. 305; Park, Ins. 1, 14; Wescott, Ins. 400; Pardes. h. t.; Poth. h. t.; Boulay Paty, h. t.

POLICY, PUBLIC. By public policy is meant what the law encourages for the promotion of the public good. What is against public policy is generally unlawful. For example, to restrain an individual from marrying, or from engaging in business, when the restraint is general, in the first case, to all persons, and, in the second, to all trades, business, or occupations. But if the restraint be only partial as that Titius shall not marry Mœvia, or that Caius shall not engage in a particular trade in a particular town or place, the restraint is not against public policy, and therefore valid. 1 Story, Eq. Jur. § 274. See Newl. Contr. 472.

POLL. A head. Hence poll tax is the name of a tax imposed upon the people at so much a head. To póll a jury is to require that each juror shall himself declare what is his verdict. This may be done at the instance of either party, at any time before the verdict is recorded. 3 Cowen, R. 23; see 18 John. R. 188.

POLLICITATION, *civil law*. A pollicitation is a promise not yet accepted by the person to whom it is made; it differs from a contract, inasmuch as the latter includes a concurrence of intention in two parties, one of whom promises something to the other, who accepts on his part of such promise. L. 3, ff. Pollicit.; Grotius, lib. 2, c. 2; Poth. on Oblig. P. 1, c. 1, s. 1, art. 1, § 2. An offer to guaranty, but not accepted, is not a contract on which an action will lie. 1 Stark. C. 10; 1 M. & S. 557; 3 B. & C. 668, 690; 5 D. & R. 512, 586; 7 Cranch, 69; 17 John. R. 134; 1 Mason's R. 323, 371; 16 John. R. 67; 3 Conn. R. 438.

POLLS, the place where electors cast in their votes.

POLYANDRY. The state of a woman who has several husbands. Polyandry is legalized only in Thibet. This is inconsistent with the law of nature. Vide *Law of Nature*.

POLYGAMY, *crim. law*, is the act of a person who knowing he has two or more wives, or she has two or more husbands living, marries another. It differs from bigamy, (q. v.) Com. Dig. Justices, S 5; Dict. de Jur. h. t.

PONE, *English practice*, is an original writ issuing out of chancery for the purpose of removing a plaint from an inferior court into the superior courts at Westminster. The word signifies "put;" put by gages, &c. See F. N. B. 69, 70 a; Wilkinson on Replevin, Index.

PONTAGE. A contribution towards the maintenance, rebuilding or repairs of a bridge. The toll taken for this purpose also bears this name. Obsolete.

POOL. A small lake of standing water. By the grant of a pool, it is said, both the land and water will pass. Co. Litt. 5. Vide *Stagnum; Water*. Undoubtedly the right to fish, and probably the right to use hydraulic works will be acquired by such grant. 2 N. Hamps. Rep. 259; Ang. on Wat. Courses, 47; Plowd. 161; Vaugh. 103; Bac. Ab. Grants, H 3; Com. Dig. Grant, E 5; 5 Cowen, 216; Cro. Jac. 150; 1 Lev. 44; Co. Litt. 5.

POPE'S FOLLY. The name of a small island, situated in the Bay of Passamaquoddy, which, it has been decided, is within the jurisdiction of the United States. 1 Ware's R. 26.

POPULAR ACTION, *punish*.

ment. An action given by statute to any one who will sue for the penalty. A qui tam action. Dig. 47, 23, 1.

PORT. A place to which the officers of the customs are appropriated, and which include the privileges and guidance of all members and creeks which are allotted to them. 1 Chit. Com. Law, 726; Postlewaith's Com. Dict. h. t.; 1 Chit. Com. L. Index, h. t. According to Dalloz, a port is a place within land, protected against the waves and winds, and affording to vessels a place of safety. Dict. Supp. h. t. A port differs from a haven, (q. v.) and includes something more. 1st. It is a place at which vessels may arrive and discharge, or take in their cargoes; 2. It comprehends a ville, city or borough called in Latin *caput corpus*, for the reception of mariners and merchants, for securing the goods, and bringing them to market, and for victualling the ships; 3. It is impressed with its legal character by the civil authority. Hale de Portibus Mar. c. 2; 1 Harg. 46, 73; Bac. Ab. Prerogative, D 5; Com. Dig. Navigation, E; 4 Inst. 148; Callis on Sewers, 56; 2 Chit. Com. Law, 2; Dig. 50, 16, 59; Id. 43, 12, 1, 13; Id. 47, 10, 15, 7; Id. 39, 4, 15.

PORT-REEVE, *Engl. law.* In some places in England an officer bearing this name is the chief magistrate of a port-town. Jacob's Dict. h. t.

PORT TOLL, *mer. law.* By this phrase is understood the money paid for the privilege of bringing goods into a port.

PORTION, is that part of a parent's estate, or the estate of one standing, in loco parentis, which is given to a child. 1 Vern. 204. Vide 8 Com. Dig. 539; 16 Vin. Ab. 432; 1 Suppl. to Ves. Jr. 34, 58, 303, 308; 2 Ib. 46, 370, 404.

POSSE. This word is used substantively to signify a possibility. For example, such a thing is *in posse*, that is, such a thing may possibly be; when the thing is in being, the phrase to express it, is, *in esse*, (q. v.)

POSSE COMITATUS. These Latin words signify the power of the county; the sheriff has authority by the common law while acting under the authority of the writ of the United States, commonwealth or people, as the case may be, and for the purpose of preserving the public peace to call to his aid the *posse comitatus*. But with respect to writs which issue, in the first instance, to arrest in civil suits the sheriff is not bound to take the *posse comitatus* to assist him in the execution of them; though he may, if he pleases, on forcible resistance to the execution of the process. 2 Inst. 193; 3 Inst. 161. Having the authority to call in the assistance of all, it seems to follow, that he may equally require that of any individual; but to this general rule there are some exceptions, persons of infirm health, or who want understanding, minors under the age of fifteen years, women, and perhaps some others, it seems, cannot be required to assist the sheriff, and are therefore not considered as a part of the power of the county. Vin. Ab. Sheriff, B. Although the sheriff is acting without authority, yet it would seem that any person who obeys his command, unless aware of that fact, will be protected. Whether an individual not enjoined by the sheriff to lend his aid, would be protected in his interference, seems questionable; in a case where the defendant assisted sheriff's officers in executing a writ of replevin without their solicitation, the court held him justified in so doing. 2 Mod. 244. Vide Bac. Ab. Sheriff, N; Hamm. N. P. 63; 5 Whart. R. 437, 440.

POSSESSIO FRATRIS, the brother's possession. This is a technical

phrase which is applied in the English law relating to descents. By the common law, the ancestor from whom the inheritance was taken by descent, must have had actual seisin of the lands, either by his own entry, or by the possession of his own, or his ancestor's lessee for years, or by being in the receipt of rent from the lessee of the freehold. But there are qualifications as to this rule, one of which arises from the doctrine of *possessio fratris*. The possession of a tenant for years, guardian or brother, is equivalent to that of the party himself, and is termed in law *possessio fratris*. Litt. sect. 8; Co. Litt. 15 a; 3 Wils. 516; 7 T. R. 386; 2 Hill. Ab. 206. In Connecticut, Delaware, Georgia, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and probably in other states, the real and personal estates of intestates are distributed among the heirs, without any reference or regard to the actual seisin of the ancestor. Reeve on Des. 377 to 379; 4 Mason's R. 467; 3 Day's R. 166; 2 Pet. R. 59. In Maryland, New Hampshire, North Carolina, and Vermont, the doctrine of possessio fratris, it seems, still exists. 2 Peters's Rep. 625; Reeve on Desc. 377; 4 Kent, Com. 384, 5.

POSSESSION, *intern. law*. By possession is meant a country which is held by no other title than mere conquest. In this sense *possession* differs from a *dependency*, which belongs rightfully to the country which has dominion over it; and from *colony*, which is a country settled by citizens or subjects of the mother country. 3 Wash. C. C. R. 286.

POSSESSION, *property*, is the detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. In order to complete a possession two things are required; 1st, that there be an occupancy, *apprehension*, (q. v.) or taking; and, 2dly, that the taking be with an intent to possess (animus possidendi), hence persons who have no legal wills, as children and idiots, cannot possess or acquire possession. Poth. h. t.; Etienne, h. t. See Mer. R. 358; Abbott on Shipp. 9, et seq. But an infant of sufficient understanding may lawfully acquire the possession of a thing. Possession is natural or civil; natural, when a man detains a thing corporeal, as by occupying a house, cultivating grounds or retaining a movable in his custody; possession is civil, when a person ceases to reside in the house, or on the land which he occupied, or to detain the movable he possessed, but without intending to abandon the possession. See as to possession of lands, 2 Bl. Com. 116; Hamm. Parties, 178; 1 McLean's R. 214, 265. Possession is also actual or constructive; actual, when the thing is in the immediate occupancy of the party; constructive, when a man claims to hold by virtue of some title, without having the actual occupancy, as, when the owner of a lot of land, regularly laid out is in possession of any part, he is considered constructively in possession of the whole. 11 Verm. R. 129; what removal of property or loss of possession will be sufficient to constitute larceny. 2 Chit. Cr. Law, 919. Vide 19 Jurist, 14; Etienne, h. t.; Civ. Code of Louis. 3391, et seq.

Possession, in the civil law, is divided into natural and civil. The same division is adopted by the Civil Code of Louisiana.

Natural possession is that by which a man detains a thing corporeal, as by occupying a house, cultivating ground, or retaining a movable in his possession. Natural possession is also defined to be the corporeal detention of a thing, which we

possess as belonging to us, without any title to that possession, or with a title which is void. Civ. Code of Lo. art. 3391, 3393.

Possession is civil, when a person ceases to reside in a house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession. It is the detention of a thing, by virtue of a just title, and under the conviction of possessing as owner. Ib. art. 3392, 3394.

Possession applies properly only to corporeal things, movables and immovables. The possession of incorporeal rights, such as servitudes and other rights of that nature, is only a quasi possession, and is exercised by a species of possession of which these rights are susceptible. Ib. art. 3395.

Possession may be enjoyed by the proprietor of the thing, or by another for him; thus the proprietor of a house possesses it by his tenant or farmer.

To acquire possession of a property, two things are requisite; 1, the intention of possessing as owner; 2, the corporeal possession of the thing. Ib. art. 3399.

Possession is lost with or without the consent of the possessor. It is lost *with* his consent, 1, when he transfers this possession to another with the intention to divest himself of it; 2, when he does some act, which manifests his intention of abandoning possession, as when a man throws into the street furniture, or clothes, of which he no longer chooses to make use. Ib. art. 3411. A possessor of an estate loses the possession *against* his consent; 1, when another expels him from it, whether by force in driving him away, or by usurping possession during his absence, and preventing him from re-entering; 2, when the possessor of an estate allows it to be usurped, and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession. Ib. art. 3412.

As to the effects of the purchaser's taking possession, see Sugd. Vend. 8, 9; 3 P. Wms. 193; 1 Ves. Jr. 226; 12 Ves. Jr. 27; 11 Ves. Jr. 464. Vide, generally, 5 Harr. & John. 230, 263; 6 Har. & John. 336; 1 Har. & John. 18; 1 Greenl. R. 109; 2 Har. & McH., 60, 254, 260; 3 Bibb, R. 209; 1 Har. & McH., 210; 4 Bibb, R. 412; 6 Cowen, R. 632; 9 Cowen, R. 241; 5 Wheat. R. 116, 124; Cowp. 217; Code Nap. art. 2228; Code of the Two Sicilies, art. 2134; Bavarian Code, B. 2, c. 4, n. 5; Prus. Code, art. 579; Domat, Lois. Civ. liv. 3, t. 7, s. 1; Vin. Ab. h. t.

POSSESSORY ACTION. In Louisiana, by this term is understood an action by which one claims to be maintained in the possession of an immovable property, or of a right upon or growing out of it, when he has been disturbed: or to be reinstated to that possession, when he has been divested or evicted. Code of Practice, art. 6; 2 L. R. 227, 454.

POSSIBILITY, is an uncertain thing which may or may not happen, Lilly's Reg. h. t.; or it is a contingent interest in real or personal estate. 1 Madd. Ch. 549. Possibilities are near, as when an estate is limited to one after the death of another; or remote, as that one man shall be married to a woman, and then that she shall die, and he be married to another. 1 Fonb. Eq. 212, n. (*e*); 16 Vin. Ab. h. t., p. 460; 2 Co. 51 a. Possibilities are also divided into, 1. A possibility coupled with an interest. This may, of course, be sold, assigned, transmitted or devised; such a possibility occurs in executory devises, and in

contingent, springing or executory uses. 2. A bare possibility, or hope of succession; this is the case of an heir apparent, during the life of his ancestor. It is evident that he has no right which he can assign, devise, or even release. 3. A possibility or mere contingent interest, as a devise to Paul if he survive Peter. Dane's Ab. c. 1, a 5, § 2, and the cases there cited.

POST DATE. To date an instrument a time after that on which it is made. Vide *Date*.

POST DISSEISIN, *Engl. law*. The name of a writ which lies for him who, having recovered lands and tenements by force of a novel disseisin, is again disseised by a former disseisor. Jacob.

POST ENTRY, *maritime law*. When a merchant makes an entry on the importation of goods, and at the time he is not able to calculate exactly the duties which he is liable to pay, gave rise to the practice of allowing entries to be made after the goods have been weighed, measured or guaged, to make up the deficiency of the original or prime entry; the entry thus allowed to be made is called a *post entry*. Chit. Com. Law, 746.

POST FACTO, after the fact. Vide *Ex post facto*.

POST NOTES. A species of bank notes payable at a distant period, and not on demand. 2 Watts & Serg. 463.

POST OBIT, *contract*, is an agreement, by which the obligor borrows a certain sum of money and promises to pay a larger sum, exceeding the lawful rate of interest, upon the death of a person, from whom he has some expectation, if the obligor be then living. 7 Mass. R. 119; 6 Madd. R. 111; 5 Ves. 57; 19 Ves. 628. Equity will in general relieve a party from these unequal contracts, as they are fraudulent on the ancestor. See 1 Story, Eq. § 342; 2 P. Wms. 182; 2 Sim. R. 183, 192; 5 Sim. R. 524. But relief will be granted only on equitable terms, for he who seeks equity, must do equity. 1 Fonb. B. 1, c. 2, § 13, note (p); 1 Story, Eq. § 344. See *Catching Bargain; Macedonian Decree*.

POST OFFICE. A place where letters are received to be sent to the persons to whom they are addressed. The post office establishment of the United States is of the greatest importance to the people and to the government. The constitution of the United States has invested congress with power to establish post offices and post roads. Art. 1, s. 8, n. 7.

By virtue of this constitutional authority, congress passed several laws anterior to the third day of March, 1825, when an act entitled, "An act to reduce into one the several acts establishing and regulating the post office department," was passed. 3 Story, U. S. 1985. It is thereby enacted,

§ 1. That there be established, at the seat of the government of the United States, a general post office, under the direction of a postmaster general. The postmaster general shall appoint two assistants, and such clerks as may be necessary for the performance of the business of his office, and as are authorized by law; and shall procure, and cause to be kept, a seal for the said office, which shall be affixed to commissions of postmasters, and used to authenticate all transcripts and copies which may be required from the department. He shall establish post offices, and appoint postmasters, at all such places as shall appear to him expedient, on the post roads that are, or may be, established by law. He shall give his assistants, the postmasters, and all other persons whom he shall employ, or who may be employed, in any of

the departments of the general post office, instructions relative to their duty. He shall provide for the carriage of the mail on all post roads that are, or may be, established by law, and as often as he, having regard to the productiveness thereof, and other circumstances, shall think proper. He may direct the route or road, where there are more than one, between places designated by law for a post road, which route shall be considered the post road. He shall obtain, from the postmasters, their accounts and vouchers for their receipts and expenditures, once in three months, or oftener, with the balances thereon arising, in favour of the general post office. He shall pay all expenses which may arise in conducting the post office, and in the conveyance of the mail, and all other necessary expenses arising on the collection of the revenue, and management of the general post office. He shall prosecute offences against the post office establishment. He shall, once in three months, render, to the secretary of the treasury, a quarterly account of all the receipts and expenditures in the said department, to be adjusted and settled as other public accounts. He shall, also, superintend the business of the department, in all the duties that are, or may be assigned to it: Provided, That, in case of the death, resignation, or removal from office, of the postmaster-general, all his duties shall be performed by his senior assistant, until a successor shall be appointed, and arrive at the general post office, to perform the business.

§ 2. That the postmaster general, and all other persons employed in the general post office, or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them, or the execution of their trusts and before they shall be entitled to receive any emolument therefor, respectively take and subscribe the following oath, or affirmation, before some magistrate, and cause a certificate thereof to be filed in the general post office: "I, A B, do swear or affirm, (as the case may be,) that I will faithfully perform all the duties required of me, and abstain from every thing forbidden by the laws in relation to the establishment of the post office and post roads within the United States." Every person who shall be, in any manner, employed in the care, custody, or conveyance, or management of the mail, shall be subject to all pains, penalties and forfeitures, for violating the injunctions, or neglecting the duties, required of him by the laws relating to the establishment of the post office and post roads, whether such person shall have taken the oath or affirmation, above prescribed, or not.

§ 3. That it shall be the duty of the postmaster general, upon the appointment of any postmaster, to require, and take, of such postmaster, bond, with good and approved security, in such penalty as he may judge sufficient, conditioned for the faithful discharge of all the duties of such postmaster, required by law, or which may be required by any instruction, or general rule, for the government of the department: Provided, however, That, if default shall be made by the postmaster aforesaid, at any time, and the postmaster general shall fail to institute suit against such postmaster, and said sureties, for two years from and after such default shall be made, then, and in that case, the said sureties shall not be held liable to the United States, nor shall suit be instituted against them.

§ 4. That the postmaster general shall cause a mail to be carried from the nearest post office, on any established post road, to the court house

of any county which is now, or may hereafter be established in any of the states or territories of the United States, and which is without a mail; and the road, on which such mail shall be transported, shall become a post road, and so continue, until the transportation thereon shall cease. It shall also be lawful for the postmaster general to enter into contracts, for a term not exceeding four years, for extending the line of posts, and to authorize the persons, so contracting, as a compensation for their expenses, to receive, during the continuance of such contracts, at rates not exceeding those for like distances, established by this act, all the postage which shall arise on all letters, newspapers, magazines, pamphlets, and packets, conveyed by any such posts; and the roads, designated in such contracts, shall, during the continuance thereof, be deemed and considered as post roads, within the provision of this act: and a duplicate of every such contract shall, within sixty days after the execution thereof, be lodged in the office of the comptroller of the treasury of the United States.

§ 5. That the postmaster general be authorized to have the mail carried in any steam boat, or other vessel, which shall be used as a packet, in any of the waters of the United States, on such terms and conditions as shall be considered expedient: Provided, That he does not pay more than three cents for each letter, and more than one half cent for each newspaper, conveyed in such mail.

§ 8. That, whenever it shall be made appear, to the satisfaction of the postmaster general, that any road established, or which may hereafter be established as a post road, is obstructed by fences, gates, or bars, or other than those lawfully used on turnpike roads to collect their toll, and not kept in good repair, with proper bridges and ferries, where the same may be necessary, it shall be the duty of the postmaster general to report the same to congress, with such information as can be obtained, to enable congress to establish some other road instead of it, in the same main direction.

§ 39. That it it shall be the duty of the postmaster general to report, annually, to congress, every post road which shall not, after the second year from its establishment, have produced one third of the expense of carrying the mail on the same.

The act "to change the organization of the post office department, and to provide more effectually for the settlement of the accounts thereof, passed July 2, 1836, 4 Sharsw. cont. of Story L. U. S. 2464, contains a variety of minute provisions for the settlement of the revenue of the post office department. Among other things the act provides, § 8, for the appointment of an auditor of the treasury for the post office department, whose duties are pointed out by the act. It provides also, § 20, That there shall be employed by the postmaster general, a third assistant postmaster general, who may receive and send letters and packets free of postage, and in lieu of the clerks now employed in the department, one chief clerk, three principal clerks, and thirty-three other clerks, one messenger, and three assistant messengers, and two watchmen.

Finding roads in use throughout the country, congress has established, that is, selected such as suited the convenience of the government, and which the exigencies of the people required, to be post roads. It has seldom exercised the power of making new roads, but examples are not wanting of roads having been made under the express authority of congress. Story, Const. § 1133.

Vide *Dead Letter; Jeopardy;*

Letter; Mail; Newspaper; Postage; Postmaster; Postmaster general.

POSTAGE. The money charged by law for carrying letters, packets and documents by mail. By the act of congress of the 3d March, 1825, 3 Story, 1988, the following rates, are chargeable:

§ 13. That the following rates of postage be charged upon all letters and packets, (excepting such as are excepted by law) conveyed in the mail of the United States, viz.: For every letter composed of a single sheet of paper, conveyed not exceeding thirty miles, six cents. Over thirty, and not exceeding eighty, ten cents. Over eighty, and not exceeding one hundred and fifty, twelve and a half cents. Over one hundred and fifty, and not exceeding four hundred, eighteen and three quarters of a cent. Over four hundred, twenty-five cents. And for every double letter, or letter composed of two pieces of paper, double those rates; and for every triple letter, or letter composed of three pieces of paper, triple those rates; and for every packet composed of four or more pieces of paper, or one or more other articles, and weighing one ounce avoirdupois, quadruple those rates; and in that proportion for all greater weights: Provided, That no packet of letters, conveyed by the water mails, shall be charged with more than quadruple postage, unless the same shall contain more than four distinct letters. No postmaster shall receive, to be conveyed by the mail, any packet which shall weigh more than three pounds; and the postage marked on any letter or packet, and charged in the post bill which may accompany the same, shall be conclusive evidence in favour of the postmaster who delivers the same, of the lawful postage thereon; unless such letter or packet shall be opened in the presence of the postmaster or his clerk. Every four folio pages, or eight quarto pages, or sixteen octavo, or twenty-four duodecimo pages, or pages less than that of a pamphlet size, or magazine, whatever be the size of the paper of which it is formed, shall be considered a sheet, and the surplus pages of any pamphlet or magazine, shall also be considered a sheet; and the journals of the legislatures of the several states, not being bound, shall be liable to the same postage as pamphlets. Any memorandum, which shall be written on a newspaper, or other printed paper, pamphlet or magazine, and transmitted by mail, shall be charged with letter postage. Provided, The publisher of a newspaper may send a printed or written notice to a subscriber, stating the amount due on his subscription; which notice shall be attached to the margin of the newspaper, and the postmaster who delivers the paper, shall charge for such notice the same postage as for a newspaper.

§ 15. That every letter or packet brought into the United States, or carried from one port therein to another, in any private ship or vessel, shall be charged with six cents, if delivered at the post office where the same shall arrive; and if destined to be conveyed by post to any place, with two cents added to the ordinary rates of postage.

It is enacted by the act amendatory of the act regulating the post-office department, approved March 2, 1827, 3 Story's L. U. S. 2066,

§ 5. That one or more pieces of paper, mailed as a letter, and weighing one ounce, shall be charged with quadruple postage, and at the same rate, should the weight be greater; and quadruple postage shall be charged on all packets containing four pieces of paper. Every printed pamphlet or magazine which con-

tains more than twenty-four pages on a royal sheet, or any sheet of less dimensions, shall be charged by the sheet, and small pamphlets printed on a half or quarter sheet of royal, or less size, shall be charged with half the amount of postage charged on a full sheet; and there shall be printed or written, on one of the outer pages of all pamphlets and magazines to be sent by mail, the number of sheets they contain; and if such number shall not be truly stated, double postage shall be charged.

POSTEA, *in practice.* Afterwards. The endorsement on the *nisi prius* record purporting to be the return of the judge before whom a cause is tried, of what has been done in respect of such record. It states the day of trial, before what judge, by name, the cause is tried, and also who is or was an associate of such judge; it also states the appearance of the parties by their respective attorneys, or their defaults; and the summoning and choice of the jury, whether those who were originally summoned or those who were tales, or taken from the standers by; it then states the finding of the jury upon oath, and, according to the description of the action, and the assessment of the damages with the occasion thereof, together with the costs. These are the usual matters of fact contained in the *postea*, but it varies with the description of the action. See Lee's Dict. Postea; 2 Lill. P. R. 337; 16 Vin. Abr. 465; Bac. Use of the Law, Tracts, 124, 5. When the trial is decisive and neither the law nor the facts can afterwards be controverted, the postea is delivered by the proper officer to the attorney of the victorious party, to sign his judgment; but it not unfrequently happens that after a verdict has been given, there is just cause to question its validity, in such case the postea remains in the custody of the court. Eunom. Dial. 2, § 33, p. 116.

POSTERIORITY, *rights.* Being or coming after. It is a word of comparison, the correlative of which is *priority:* as, when a man holds lands from two landlords, he holds from his ancient landlord by priority, and from the other by posteriority. 2 Inst. 392. These terms, priority and posteriority, are also used in cases of liens; the first are prior liens, and are to be paid in the first place; the last are posterior liens, and are not entitled to payment until the former have been satisfied.

POSTERITY, *descents.* All the descendants of a person in a direct line.

POSTHUMOUS CHILD, is one born after the death of its father, or when the cæsarian operation is performed, after that of the mother. Posthumous children are entitled to take by descent as if they had been born at the time of their deceased ancestor. When a father has made a will without providing for a posthumous child, such a will is in some states, as in Pennsylvania, revoked pro tanto by implication. 4 Kent, Com. 506; Dig. 28, 5, 92; Ferrière, Com. h. t.; Domat, Lois Civiles, part 2, liv. 2, t. 1, s. 1; Merl. Rép. h. t.

POSTILS, *postillæ.* Marginal notes made in a book or writing for references to other parts of the same, or some other book or writing.

POSTLIMINIUM, is that right in virtue of which persons and things taken by the enemy are restored to their former state, when coming again under the power of the nation to which they belong. Vatt. Liv. 3, c. 14, s. 204; Chit. Law of Nat. 93 to 104; Lee on Captures, ch. 5; Mart. Law of Nat. 305; 2 Wooddes. p. 441, s. 34; 1 Rob. Rep. 134; 3 Rob. Rep. 236; Ib. 97; 2 Burr. 683; 10 Mod. 79; 6 Rob. R. 45; 2 Rob. Rep. 77; 1 Rob. Rep. 49; 1 Kent, Com. 108. The *jus postlimini* was a fiction of the Roman law. Inst.

1, 12, 5. It is a right recognized by the law of nations, and contributes essentially to mitigate the calamities of war. When, therefore, property taken by the enemy is either recaptured or rescued from him, by the fellow subjects or allies of the original owner, it does not become the property of the recaptor or rescuer, as if it had been a new prize, but it is restored to the original owner by right of postliminy, upon certain terms.

POSTMASTER, or Deputy Postmaster, is an officer of the United States appointed by the postmaster general to hold his office during the pleasure of the former. Before entering on the duties of his office, he is required to give bond with surety to be approved by the postmaster general. Act of 3d March, 1825, s. 3. Every postmaster is required to keep an office in the place for which he may be appointed; and it is his duty to receive and forward by mail, without delay, all letters, papers, and packets as directed; to receive the mails and deliver, at all reasonable hours, all letters, papers and packets to the persons entitled thereto. The postmaster general may allow to each postmaster such commission on the postage by him collected, as shall be adequate to his services and expenses; provided his commission shall not exceed the following several rates on the amount received in one quarter, viz: on a sum not exceeding one hundred dollars, thirty per cent.; on any sum over and above the first hundred dollars, and not exceeding four hundred dollars, twenty-five per cent. On any sum over and above the first four hundred, and not exceeding two thousand four hundred dollars, twenty per cent. On any sum over and above the first two thousand four hundred dollars, eight per cent. Besides these commissions, postmasters employed in receiving and despatching foreign mails, are allowed an extra compensation. But whenever the annual emoluments of any postmaster, after deducting therefrom the necessary expenditures incidental to his office, shall amount to more than two thousand dollars, the surplus shall be accounted for. Act of 3d March, 1825, s. 41. Although not subject to all the responsibilities of a common carrier, yet, a postmaster is liable for all losses and injuries occasioned by his own default in office. 3 Wils. Rep. 443; Cowp. 754; 5 Burr. 2709; 1 Bell's Com. 468; 2 Kent, Com. 474; Story on Bailm. § 463. Whether a postmaster is liable for the acts of his clerks or servants seems not to be settled. 1 Bell's Com. 468, 9. In Pennsylvania it has been decided that he is not responsible for their secret delinquencies, though perhaps he is answerable for want of attention to the official conduct of his subordinates. 8 Watts, R. 453. Vide *Frank; Post Office.*

POSTMASTER GENERAL.—The chief officer of the post-office department of the United States. Various duties are imposed upon this officer by the acts of congress of March 3, 1825, and July 2, 1836, which will be found under the articles *Mail; Post Office* and *Postage.*

The act of February 20, 1819, 3 Story's L. U. S. 1720, gives the postmaster general a salary of four thousand dollars per annum; and that of March 2, 1827, 3 Story's L. U. S. 2076, declares there shall be paid, annually, to the postmaster general, two thousand dollars, in addition to his present salary.

POST-NATI. Born after. This term is applied to persons who came to reside in the United States after the declaration of independence. They are generally considered aliens, unless they become naturalized, or are otherwise so declared by law. In Massachusetts by statutory provi-

sion, and in Connecticut, by decision, a person born abroad, if he went there to reside before the treaty of peace of the 3d of September, 1783, is considered a citizen. 2 Pick. R. 394; 5 Day, R. 169; 2 Kent, Com. 51, 2.

POT-DE-VIN, *French law*, is a sum of money frequently paid, at the moment of entering into a contract, beyond the price agreed upon. It differs from *arrha*, (q. v.) in this, that it is no part of the price of the thing sold, and, that the person who has received it, cannot by returning double the amount, or the other party by losing what he has paid, rescind the contract. 18 Toull. n. 52.

POTESTAS, *civil law*. A Latin word which signifies power; authority; domination; empire. It has several meanings; 1. It signifies *imperium*, or the jurisdiction of magistrates; 2. The power of the father over his children, *patria potestas*. 3. The authority of masters over their slaves, which makes it nearly synonymous with *dominium*. See Inst. 1, 9, et 12; Dig. 2, 1, 13, 1; Id. 14, 1; Id. 14, 4, 1, 4.

POUND, *weight*. There are two kinds of weights, namely, the troy, and the avoirdupois. The pound avoirdupois is greater than the troy pound, in the proportion of seven thousand to five thousand seven hundred and sixty. The troy pound contains twelve ounces, that of avoirdupois sixteen ounces.

POUND, *Eng. law*. A place enclosed to keep in strayed animals.

POUND, *money*, the sum of twenty shillings. Previous to the establishment of the federal currency the different states made use of the pound in computing money; it was of different value in the several states.

POUND STERLING, *com. law*, a denomination of money of Great Britain. To be computed in the ad valorem duty upon goods, &c. at the rate of four dollars and forty-four cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. By the act of July 14, 1832, s. 16, 4 Sharsw. cont. Story's L. U. S. 2326, the mode of computing the value of the pound sterling is changed. It is thereby enacted that from and after the 3d day of March, 1833, in calculating the rates of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents. Vide *Foreign coins*. The pound sterling of Ireland is to be computed at four dollars and ten cents. Ib.

POUNDAGE, *in practice*, is the amount allowed to the sheriff, or other officer, for commissions on the money made by virtue of an execution. This allowance varies in different states, and to different officers.

POURPARLER, in the French law, is used to signify the conversations and negotiations which have taken place between the parties in order to make an agreement. These form no part of the agreement. Pard. Dr. Com. 142. The general rule in the common law is the same, parol proof, cannot therefore be given to contradict, alter, add to, or diminish a written instrument, except in some particular cases. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609; 7 Serg. & Rawle, 114.

POURSUIVANT. A follower. In the ancient English law, it signified an officer who attended upon the king in his wars, at the council table, exchequer, in his court, &c. to be sent as a messenger. A poursuivant was therefore a messenger of the king.

POWER is either inherent or derivative. The former is the right, ability or faculty of doing something, without receiving that right, ability or faculty from another. The people have the power to establish a form of government, or to change one

already established. A father has the legal power to chastise his son; a master, his apprentice. Derivative power, which is usually known by the technical name of power, is an authority by which one person enables another to do an act for him. Powers of this kind were well known to the common law, and were divided into two sorts; naked powers or bare authorities, and powers coupled with an interest. There is a material difference between them. In the case of the former, if it be exceeded in the act done, it is entirely void; in the latter it is good for so much as is within the power, and void for the rest only.

Powers derived from the doctrine of uses may be defined to be an authority, enabing a person, through the medium of the statute of uses, to dispose of an interest, vested either in himself or another person. The New York Revised Statutes define a power to be an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power might himself lawfully perform. They are powers of revocation and appointment which are frequently inserted in conveyances which owe their effect to the statute of uses; when executed, the uses originally declared cease, and new uses immediately arise to the persons named in the appointment, to which uses the statute transfers the legal estate and possession. Powers being found to be much more convenient than conditions, were generally introduced into family settlements. Although several of these powers are not usually called powers of revocation, such as powers of jointuring, leasing, and charging settled estates with the payment of money, yet all these are powers of revocation, for they operate as revocations, *pro tanto*, of the preceding estates. Powers of revocation and appointment may be reserved either to the original owners of the land or to strangers; hence the general division of powers into those which *relate to the land*, and those which are *collateral* to it. *Powers relating to the land* are those given to some person having an interest in the land over which they are to be exercised. These again are subdivided into powers appendant and in gross. A *power appendant* is where a person has an estate in land, with a power of revocation and appointment, the execution of which falls within the compass of his estate; as where a tenant for life has a power of making leases in possession. A *power in gross* is where a person has an estate in the land, with a power of appointment, the execution of which falls out of the compass of his estate, but notwithstanding is annexed in privity to it, and takes effect in the appointee, out of an interest vested in the appointor; for instance, where a tenant for life has a power of creating an estate, to commence after the determination of his own, such as to settle a jointure on his wife, or to create a term of years to commence after his death, these are called powers in gross, because the estate of the person to whom they are given, will not be affected by the execution of them. *Powers collateral*, are those which are given to mere strangers, who have no interest in the land: powers of sale and exchange given to trustees in a marriage settlement are of this kind. Vide, generally, Powell on Powers, *passim;* Sugden on Powers, *passim;* Cruise, Dig. tit. 32, ch. 13; Vin. Ab. h. t.; Com. Dig. Poiar; 1 Supp. to Ves. jr. 40, 92, 201, 307; 2 Ib. 166, 200; 1 Vern. by Raithby, 406; 3 Stark. Ev. 1199; 4 Kent, Com. 309; 2 Lilly's Ab. 339; Whart. Dig. h. t. See 1

Story, Eq. Jur. § 169, as to the execution of a power, and when equity will supply the defect of execution.

This classification of powers is admitted to be important only with reference to the ability of the donee to suspend, extinguish or merge the power. The general rule is that a power shall not be exercised in derogation of a prior grant by the appointer. But this whole division of powers has been condemned as too artificial and arbitrary. Mr. Powell divides powers into general and particular powers. General powers are those to be exercised in favour of any person whom the appointer chooses. Particular powers are those which are to be exercised in favour of specific objects. 4 Kent, Com. 311. Vide *Mediate powers; Primary powers.*

POWER OF ATTORNEY.—Vide *Letter of attorney*, and 1 Mood. Cr. Cas. 57, 58.

POYNING'S LAW, *Eng. law.* The name usually given to an act which was passed by a parliament holden in Ireland in the tenth of Henry the Seventh; it enacts that all statutes made in the realm of England before that time should be in force and put in use in the realm of Ireland. Irish Stat. 10 H. 7, c. 22; Co. Litt. 141 b, Harg. n. 3.

PRACTICE. The form, manner and order of conducting and carrying on suits or prosecutions in the courts through their various stages, according to the principles of law, and the rules laid down by the respective courts. By practice is also meant the business which an attorney or counsellor does; as, A B has a good practice. The books on practice are very numerous; among the most popular are those of Tidd, Chitty, Archbold, Sellon, Graham, Dunlap, Caines, Troubat & Haly, Blake, Impey.

A settled, uniform and long continued practice, without objection, is evidence of what the law is, and such practice is based on principles which are founded in justice and convenience. Buck, 279; 2 Russ. R. 19, 570; 2 Jac. R. 232; 5 T. R. 380; 1 Y. & J. 167, 168; 2 Crompt. & M. 55; Ram on Judgm. ch. 7.

PRÆCIPE or PRECIPE, *in practice*, is the name of the written instructions given by an attorney or plaintiff to the clerk or prothonotary of a court, whose duty it is to make out the writ, for the making of the same.

PRÆDIAL. What arises immediately from the ground; as, grain of all sorts, hay, wood, fruits, herbs, and the like.

PRÆDIUM RUSTICUM, *civil law.* By this is understood all heritages which are not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.

PRÆDIUM URBANUM, *civil law.* By this term is understood buildings and edifices intended for the habitation and use of man whether they be built in cities or whether they be constructed in the country.

PRÆMUNIRE. In order to prevent the pope from assuming the supremacy in granting ecclesiastical livings, a number of statutes were made in England during the reigns of Edward I., and his successors, punishing certain acts of submission to the papal authority, therein mentioned. In the writ for the execution of these statutes the words *præmunire facias* being used to command a citation of the party, gave not only to the writ, but the offence itself, of maintaining the papal power, the name of *præmunire*. Co. Litt. 129; Jacob's L. D. h. t.

PRÆTOR, *civil law.* The name of an officer appointed to administer justice in Rome; this name was

also given to an officer authorised to govern in certain provinces. Till lately there were officers in certain cities of Germany denominated prætors. Vide 1 Kent, Com. 528.

PRAGMATIC SANCTION,—*French law.* This expression is used to designate those ordinances which concern the most important objects of the civil or ecclesiastical administration. Merl. Répert. h. t. In the civil law, the answer given by the emperors on questions of law, when consulted by a corporation or the citizens of a province, or of a municipality, was called a pragmatic sanction. Leçons El. du Dr. Civ. Rom. § 53. This differed from a rescript, (q. v.)

PRAYER, *chanc. pleadings*, is that part of a bill which asks for relief. The skill of the solicitor is to be exercised in framing this part of the bill. An accurate specification of the matters to be decreed in complicated cases, requires great discernment and experience; Coop. Eq. Pl. 13; it is varied as the case is made out, concluding always with a prayer of general relief, at the discretion of the court. Mitf. Pl. 45.

PREAMBLE, a preface, an introduction or explanation of what is to follow: that clause at the head of acts of congress or other legislatures which explains the reasons why the act is made. Preambles are also frequently put in contracts to explain the motives of the contracting parties. A preamble is said to be the key of a statute, to open the minds of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statute. It cannot amount, by implication, to enlarge what is expressly given. 1 Story on Const. B. 3, c. 6. How far a preamble is to be considered evidence of the facts it recites, see 4 M. & S. 532; 1 Phil. Ev. 239; 2 Russ. on Cr. 720; and see, generally, Ersk. L. of Scotl. 1, 1, 18; Toull. liv. 3, n. 318; 2 Supp. to Ves. jr. 239; 4 L. R. 55; Barr. on the Stat. 353, 370.

PRECARIUM. The name of a contract among civilians, by which the owner of a thing at the request of another person, gives him a thing to use as long as the owner shall please. Poth. h. t. n. 87; see Yelv. 172; Cro. Jac. 236; 9 Cowen, 687; Roll. R. 128; Bac. Ab. Bailment, C; Ersk. Prin. B. 3, t. 1, n. 9.

PRECEDENCE, is the right of being first placed in a certain order; the first rank being supposed the most honourable. In this country no precedence is given by law to men. Nations, in their intercourse with each other, do not admit any precedence; hence in their treaties in one copy one is named first, and the other in the other. In some cases of officers when one must of necessity act as the chief, the oldest in commission will have precedence; as when the president of a court is not present, the associate who has the oldest commission will have a precedence; or if their commissions bear the same date, then the oldest man. In the army and navy there is an order of precedence which regulates the officers in their command.

PRECEDENTS, are the decisions of courts of justice: when exactly in point with a case before the court, they are generally held to have a binding authority, as well to keep the scale of justice even and steady, as because the law in that case has been solemnly declared and determined. 9 M. R. 355. To render precedents valid, they must be founded in reason and justice, Hob. 270; must have been made upon argument, and be the solemn decision of the court, 4 Co. 94; and in order to give them binding effect, there must be a current of decisions. Cro. Car.

528; Cro. Jac. 386; 8 Co. 163. According to Lord Talbot, it is "much better to stick to the known general rules, than to follow any one particular precedent, which may be founded on reason, unknown to us." Cas. Temp. Talb. 26. Blackstone, 1 Com. 70, says, that a former decision is in general to be followed unless "manifestly absurd or unjust," and, in the latter case, it is declared, when overruled, not that the former sentence was *bad law*, but that it was *not* law. Vide 16 Vin. Ab. 499; Wesk. on Inst. h. t.; 2 Swanst. 163; 2 Jac. & W. 318; 3 Ves. 527; 2 Atk. 559; 2 P. Wms. 258; 2 Bro. C. C. 86; 1 Ves. junr. 11; and 2 Evans's Poth. 377, where the author argues against the policy of making precedents binding when contrary to reason. See also 1 Kent, Comm. 475–477; Liv. Syst. 104, 5; Gresl. Ev. 300; 16 Johns. R. 402; 20 Johns. R. 722; Cro. Jac. 527; 33 H. 7, 41; Jones, Bailment, 46; and the articles *Reason* and *Stare decisis*.

PRECEPT. A writ directed to the sheriff or other officer, commanding him to do something. The term is derived from the operative *præcepionus*, we command you.

PRECINCT. The district for which a high or petty constable is appointed, is in England, called a precinct. Willc. Office of Const. xii. In day time all persons are bound to recognize a constable acting within his own precincts; after night the constable is required to make himself known, and it is, indeed, proper he should do so at all times. Ibid. n. 265, p. 93.

PRECIPUT, *French law*. An object which is ascertained by law or the agreement of the parties, and which is first to be taken out of property held in common, by one having a right, before a partition takes place. The preciput is an advantage, or a principal part to which some one is entitled, *præcipium jus*, which is the origin of the word preciput. Dict. de Jur. h. t.; Poth. h. t. By preciput is also understood the right to sue out the preciput.

PRECLUDI NON, *pleading*, is a technical allegation contained in a replication which denies or confesses and avoids the plea. It is usually in the following form; "And the said A B, as to the plea of the said C D, by him secondly above pleaded, says, that he the said A B, by reason of any thing by the said C D, in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said C D, because he says that," &c. 2 Wils. 42; 1 Chit. Pl. 573.

PRECOGNITION, *Scotch law*, is the examination of witnesses who were present at the commission of a criminal act, upon the special circumstances attending it, in order to know whether there is ground for a trial, and to serve for direction to the prosecutor. But the persons examined may insist on having their declaration cancelled before they give testimony at the trial. Ersk. Princ. B. 4, t. 4, n. 49.

PRECONTRACT, is an engagement entered into by a person, which renders him unable to enter into another; as a promise or covenant of marriage to be had afterwards. When made *per verba de presenti*, it is in fact a marriage, and in that case the party making it cannot marry another person.

PRE-EMPTION, *internal law*. The right of pre-emption is the right of a nation to detain the merchandize of strangers passing through her territories or seas, in order to afford to her subjects the preference of purchase; 1 Chit. Com. Law, 103; 1 Bl. Com. 287. This right is sometimes regulated by treaty. In that which was made between the United States

and Great Britain bearing date the 19th day of November 1794, ratified in 1795, it was agreed, art. 18, after mentioning that the usual munitions of war, and also naval materials should be confiscated as contraband, that "whereas the difficulty of agreeing on precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise. It is further agreed that whenever any such articles so being contraband according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or in their default the government under whose authority they act, shall pay to the masters or owners of such vessel the full value of all articles, with a reasonable mercantile profit thereon, together with the freight, and also the damages incident to such detention." See Mann. Com. B. 3, c. 8. By the laws of the U. States the right given to settlers of public lands, to purchase them in preference to others, is called the pre-emption right. See act of April 29, 1830, 4 Sharsw. Cont. of Story L. U. S. 2212.

PREFECT, *French law.* A chief officer invested with the superintendence of the administration of the laws in each department. Merl. Répert. h. t.

PREFERENCE. Vide *Insolvent; Priority.*

PREGNANCY, *med. jurisp.* It is defined by medical writers to be the state of a female who has within her ovary or womb, a fecundated germ which gradually becomes developed in the latter receptacle. Dunglison's Med. Dict. h. t. The subject may be considered with reference to the signs of pregnancy; its duratition; and the laws relating to it.

§ 1. The fact that women sometimes *conceal* their state of pregnancy in order to avoid disgrace, and to destroy their offspring in its mature or immature state; and that in other cases to gratify the wishes of relations, the desire to deprive the legal successor of his just claims, to gratify their avarice by extorting money, and to avoid or delay execution, pregnancy is *pretended*, renders it necessary that an inquiry should take place to ascertain whether a woman has or has not been pregnant. There are certain signs which usually indicate this state; these have been divided into those which affect the system generally, and those which affect the uterus. 1. The changes observed in the *system* from conception and pregnancy, are principally the following; namely, increased irritability of temper, melancholy, a languid cast of countenance, nausea, heart-burn, loathing of food, vomiting in the morning, an increased salivary discharge, feverish heat, with emaciation and costiveness, occasionally depravity of appetite, a congestion in the head, which gives rise to spots on the face, to headache, and erratic pains in the face and teeth. The pressure of increasing pregnancy, occasions protrusion of the umbilicus, and, sometimes, varicose tumours or anasarcous swellings of the lower extremities. The breasts also enlarge, an areola, or brown circle is observed around the nipples, and a secretion of lymph, composed of milk and water takes place. It should be remembered that these do not occur in every pregnancy, but many of them in most cases. 2. The changes which affect the *uterus*, are a suppression and cessation of the menses; an augmentation in size of the womb, which becomes perceptible be-

tween the eighth and tenth weeks; as time progresses, the enlargement continues; about the middle of pregnancy, the woman feels the motion of the child, and this is called *quickening*, (q. v.) The vagina is also subject to alteration, as its glands throw out more mucus, and apparently prepare the parts for the passage of the fœtus. Ryan's Med. Jur. 112, 113; 1 Beck's Med. Jur. 157, 158; 2 Dunglison's Human Physiology, 361. These are the general signs of pregnancy; it will be proper to consider them more minutely, though briefly, in detail.

1. *The expansion and enlargement of the abdomen.* This sign is not visible during the early months of pregnancy, and by art in the disposition of the dress and the use of stays, it may be concealed for a much longer period. The corpulency of the woman, or the peculiarity of her form, may also contribute to produce the same effect. In common cases, where there is no such obstacle, this sign is generally manifest at the end of the fourth month, and continues till delivery. But the enlargement may originate from disease; from suppression or retention of the menses; tympanites; dropsy; or schirrosity of the liver and spleen. Patient and assiduous investigation and professional skill, are requsite to pronounce as to this sign, and all these may fail. Foderé, tome i, p. 443. Cyclop. of Practical Medicine, h. t.; Cooper's Lect. vol. ii. p. 163.

2. *Change in the state of the breasts.* They are said to grow larger and more firm; but this enlargement occurs in suppressed menses, and sometimes at the period of the cessation of the menses; and sometimes they do not enlarge till after delivery. The dark appearance of the *areola* is no safe criterion; and the milky fluid may occur without pregnancy.

3. *The suppression of the menses.* Although this usually follows conception, yet in some cases menstruation is carried on till within a few weeks of delivery. When the suppression takes place, it is not always the effect of impregnation; it may, and frequently does, arise from disease. Some medical authors, however, deem the suppression to be a never-failing consequence of conception.

4. *The loss of appetite, nausea, vomiting, &c.*, although attendant upon pregnancy in many cases, are very equivocal signs.

5. *The motion of the fœtus in the mother's womb.* In the early months of pregnancy this is wanting, but afterwards it can be ascertained. In cases of concealed pregnancy it cannot be ascertained from the declarations of the mother, and the examiner must discover it by other means. When the fœtus is alive, the sudden application of the hand, immediately after it has been dipped in cold water, over the regions of the uterus, will generally produce a motion of the fœtus; but this is not an infallible test, the fœtus may be dead, or there may be twins; in the first case, then there will be no motion, and in the latter, the motion is not felt sometimes until a late period. Vide *Quickening.*

6. *Alteration in the state of the uterus.* This is ascertained by what is technically called the *touch.* This is an examination, made with the hand of the examiner, of the uterus.

7. By the application of *auscultation* to the impregnated uterus, it is said certainty can be obtained. The indications of the presence of a living fœtus in the womb, as derived from auscultation, are two:—1. *The action of the fœtal heart.* This is marked by double pulsations; that of the fœtus generally exceeds in frequency the maternal pulse. These pulsa-

tions may be perceived at the fifth or between the fifth and sixth months. Their situation varies with that of the child.—2. The other auscultatory sign to denote the presence of the fœtus has been variously denominated the *placental bellows sound*, the *placental sound*, and the *utero placental soufflet*. It is generally agreed that its seat is in the enlarged vessels of the portion of the uterus which is immediately connected with the placenta. According to Lænnec, it is an arterial pulsation perfectly isochronous with the pulse of the mother, and accompanied by a rushing noise, resembling the blast of a pair of bellows. It commonly begins to be heard with the aid of the stethoscope, (an instrument invented by Professor Lænnec, of Paris, for examining the chest) at the end of the fourth month of pregnancy. In the case of twins Lænnec detected the pulsation of two fœtal hearts before delivery, by means of this instrument.

8. Another sign of pregnancy has been discovered, which is said by M. Jacquemin never to fail. It is the peculiar dark colour which the mucuous membrane of the vagina acquires during this state. It was only after an examination of four thousand five hundred women that M. Jacquemin came to the conclusion which he formed of the certainty of this sign. Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 3, § 5.

It is always difficult though perhaps not impossible to ascertain the presence of the fœtus, and on the other hand, many of the signs which would indicate such presence, have been known to fail. 1 Beck's Med. Jur. ch. 6; Chit. Med. Jur. h. t.; Ryan's Med. Jur. 112, 113; Alison's Princ. of the Cr. Law of Scotl. ch. 3, p. 153; 1 Briand, Méd. Lég. c. 3.

§ 2. The *duration* of human pregnancy is not certain, and probably is not the same in every woman. It may perhaps be safely stated that forty weeks is the ordinary duration, though much discussion has taken place among medico-legal writers on this subject, and opinions fluctuate largely. 1 Beck's Med. Jur. 363. This is occasioned perhaps by the difficulty of ascertaining the time from which this period begins to run. Chit. Med. Jur. 409; Dewees, Midwifery, 125; 1 Paris & Fonbl. 218, 230, 245; 2 Dunglison's Human Physiology, 362; Ryan's Med. Jur. 121.

§ 3. *The laws relating to pregnancy* are to be considered, first, in reference to the fact of pregnancy; and, secondly, in relation to its duration.

1. As to the *fact of pregnancy*. There are two cases where the fact whether a woman is or has been pregnant is of importance; when it is supposed she pretends pregnancy, and when she is charged with concealing it.

1st. Pretended pregnancy may arise from two causes: the one when a widow feigns hereif with child, in order to produce a supposititious heir to the estate. In this case in England the heir presumptive may have a writ *de ventre inspiciendo*, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered; but if, upon examination, the widow be found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again on the birth of a child within forty weeks from the death of the husband. 1 Bl. Com. 456; Cro. Eliz. 566; 4 Bro. C. C. 90; 2 P. Wms. 591; Cox's C. C. 297. In the civil law there was a similar practice. Dig. 25, 4. The second cause of pretended pregnancy occurs when a woman has been sentenced to death, for the commission of a crime. At common

law in case this plea be made before execution, the court must direct a jury of twelve matrons, or discreet women, to ascertain the fact, and if they bring in their verdict *quick with child*, execution shall be staid generally till the next session of the court, and so from session to session till either she is delivered, or proves by the lapse of time, not to have been with child at all. 4 Bl. Com. 394, 395. It is proper to remark that a verdict of the matrons that the woman is pregnant is not sufficient, she must be found to be *quick with child*, (q. v.) Whether under the English law a woman would be hanged who could be proved to be privement enceinte, beyond all doubt, is not certain; but in this country, it is presumed if it could be made to appear, indubitably, that the woman was pregnant, though not quick with child, the execution would be respited until after delivery. Fatal errors have been made by juries of matrons. A case occurred at Norwich in England in the month of March, 1833, of a murderess who pleaded pregnancy. Twelve married women were impanelled on the jury; after an hour's examination, they returned a verdict that she was not quick with child. She was ordered for execution. Fortunately three of the principal surgeons in the place, fearing some error, waited upon the convict, and examined her; they found her not only pregnant, but quick with child. The matter was represented to the judge, who respited the execution, and on the 11th day of July she was safely delivered of a living child. London Medical Gazette, vol. xii. p. 24, 585. In New York it is provided by legislative enactment, (2 Rev. Stat. 658,) that "if a female convict, sentenced to the punishment of death, be pregnant, the sheriff shall summon a jury of six physicians, and shall give notice to the district attorney, who shall have power to subpœna witnesses. If, on such inquisition, it shall appear that the female is quick with child, the sheriff shall suspend the execution, and transmit the inquisition to the governor. Whenever the governor shall be satisfied that she is no longer quick with child, he shall issue his warrant for execution, or commute it, by imprisonment for life in the state prison." By the laws of France. "if a woman condemned to death declares herself to be pregnant, and it is verified that she is pregnant, she shall not suffer her punishment till after her delivery. Code Pénal, art. 27.

2d. Concealed pregnancy seldom takes place except for the criminal purpose of destroying the life of the fœtus in utero, or of the child immediately after its birth. The extreme facility of extinguishing the infant life, at the time, or shortly after birth, and the experienced difficulty of proving this unnatural crime, has induced the passage of laws, in perhaps all the states, as well as in England and other countries, calculated to facilitate the proof, and also to punish the very act of concealment of pregnancy and death of the child, when, if born alive, it would have been a bastard. The English statute of 21 Jac. 1, c. 27, required that any mother of such child who had endeavoured to conceal its birth, should prove, by one witness at least, that the child was actually born dead; and for want of such proof it arrived at the forced conclusion that the mother murdered it. But it was considered a blot upon even the English code, and it was therefore repealed by 43 Geo. 3, c. 58, s. 3. An act of assembly of Pennsylvania, of the 31st May, 1781, made the concealment of the death of a bastard child conclusive evidence to convict the mother of murder; which was repealed by the act of 5th of April,

1790, s. 6, which declared that the constrained presumption that the child whose death is concealed, was therefore murdered by the mother, shall not be sufficient to convict the party indicted, without probable presumptive proof is given that the child was born alive. The law was further modified by the act of 22d of April, 1794, s. 18, which declares that the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such a child. The last mentioned act, section 17, punishes the concealment of the death of a bastard child by fine and imprisonment. See for the law of Connecticut on the subject, 2 Swift's Digest, 296. See Alison's Principles of the Criminal Law of Scotland, ch. 3.

2. *As to the duration of pregnancy.* Lord Coke lays down the peremptory rule that forty weeks is the longest time allowed by law for gestation; Co. Litt. 123. There does not however appear to be any time fixed by the law as to the duration of pregnancy. Note by Hargr. & Butler, to 1 Inst. 123, b; 1 Rolle's Ab. 356, l. 10; Cro. Jac. 541; Palm. 9. The civil code of Louisiana provides that the child capable of living, which is born before the one hundred and eightieth day after the marriage, is not presumed to be the child of the husband; every child born alive more than six months after conception, is presumed to be capable of living. Art. 205.—The same rule applies with respect to the child born three hundred days after the dissolution of the marriage, or after sentence of separation from bed and board. Art. 206. The Code Civil of France contains the following provision. The child conceived during the marriage, has the husband for its father. Nevertheless the husband may disavow the child, if he can prove that during the time that has elapsed between the three hundredth and the one hundred and eightieth day before its birth he was prevented either by absence, or in consequence of some accident, or on account of some physical impossibility, from cohabiting with his wife. Art. 312. A child born before the one hundred and eightieth day after the marriage cannot be disavowed by the husband in the following cases:—1. When he had knowledge of the pregnancy before the marriage; 2. When he has assisted in writing the act of birth, [a certificate stating the birth and sex of the child, the time when born, &c. required by law to be filed with a proper officer and recorded,] and when that act has been signed by him, or when it contains his declaration that he cannot sign; 3. When the child is not declared capable of living. Art. 314. And the legitimacy of a child born three hundred days after the dissolution of the marriage may be contested. Art. 315.

PREJUDICE. To decide before hand; to lean in favour of one of a cause for some reason or other than its justice. A judge ought to be without prejudice, and cannot therefore sit in a case where he has any interest, or when a near relation is a party, or where he has been of counsel for one of the parties. Vide *Judge*. In the civil law prejudice signifies a tort or injury; as the act of one man should never prejudice another. Dig. 50, 17, 74.

PRELEVEMENT, *French law.* Is the portion which a partner is entitled to take out of the assets of a firm before any division shall be made of the remainder of the assets, between the partners. The partner

who is entitled to a prélèvement is not a creditor of the partnership; on the contrary he is a part owner, for if the assets should be deficient, the creditor has a preference over the partner; on the other hand, should the assets yield any profit, the partner is entitled to his portion of it, whereas he is entitled to no part of it, but he has a right to charge interest, when he is in other respects entitled to it.

PREMISES. That which is put before. This word has several significations; sometimes it means the statements which have been before made; as, I act upon these premises; in this sense, this word may comprise a variety of subjects, having no connexion among themselves, 1 East, R. 456; it signifies a formal part of a deed; and it is made to designate an estate.

PREMISES, *estates*. Lands and tenements are usually called premises, when particularly spoken of, as, the premises will be sold without reserve.

PREMISES, *conveyancing*, is that part in the beginning of a deed, in which are set forth the names of the parties, with their titles and additions, and in which are recited such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the contract then entered into is founded; and it is here also the consideration on which it is made, is set down, and the certainty of the thing granted. 2 Bl. Com. 298. The technical meaning of the premises in a deed, is every thing which precedes the *habendum*. 8 Mass. R. 174; 6 Conn. R. 289. Vide *Deed*.

PREMIUM, *contracts*, is the consideration paid by the insured to the insurer for making an insurance. It is so called because it is paid *primo*, or before the contract shall take effect. Poth. h. t. n. 81; Marsh. Inst. 234. In practice, however, the premium is not always paid when the policy is underwritten; for insurances are frequently effected by brokers, and open accounts are kept between them and the underwriters, in which they make themselves debtors for all premiums; and sometimes notes or bills are given for the amount of the premium. The French writers, when they speak of the consideration given for maritime loans, employ a variety of words in order to distinguish it according to the nature of the case. Thus, they call it *interest* when it is stipulated to be paid by the month or at other stated periods. It is a *premium*, when a gross sum is to be paid at the end of a voyage, and here the risk is the principal object which they have in view. When the sum is a per centage on the money lent, they denominate it *exchange*, considering it in the light of money lent in one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference of time and place. When they intend to combine these various shades into one general denomination, they make use of the term *maritime profit*, to convey their meaning. Hall on Mar. Loans, 56, n. Vide Park, Ins. h. t.; Poth. h. t.; 3 Kent, Com. 285; 15 East, R. 309, Day's note, and the cases there cited.

PREMIUM PUDICITIÆ, *contracts*. Literally the price of chastity. This is the consideration of a contract by which a man promises to pay to a woman with whom he has illicit intercourse a certain sum of money. When the contract is made as the payment of *past* cohabitation, as between the parties it is good, and will be enforced against the obligor, his heirs, executors and administrators, but it cannot be paid, on a deficiency of assets, until all creditors are paid,

though it has a preference over the heir, next of kin, or devisee. If the contract be for future cohabitation, it is void. Chit. Contr. 215; 1 Story, Eq. Jur. § 296; 5 Ves. 286; 2 P. Wms. 432; 1 Black. R. 517; 3 Burr. 1568; 1 Fonbl. Eq. B. 1, c. 4, § 4, and notes (*s*) and (*y*); 1 Ball & Beat. 360; 7 Ves. 470; 11 Ves. 535; Rob. Fraud. Conv. 428; Cas. Temp. Talb. 153; and the cases there cited; 6 Ham. R. 21; 5 Cowen, R. 253; Harper, R. 201; 3 Monr. R. 35; 2 Rep. Const. Ct. 279; 11 Mass. R. 368; 2 N. & M. 251.

PRENDER or PRENDRE, to take. This word is used to signify the right of taking a thing before it is offered; hence the phrase of law, it lies in render, but not in prender. Vide *A prendre;* and Gale and Whatley on Easements, 1.

PREPENSE, the same as aforethought, (q. v.) Vide 2 Chit. Cr. Law, *784.

PREROGATIVE, *civil law*, is the privilege, pre-eminence, or advantage which one person has over another; thus a person vested with an office, is entitled to all the rights, privileges, *prerogatives*, &c. which belong to it.

PREROGATIVE, *English law*. The royal prerogative is an arbitrary power vested in the executive to do good and not evil. Rutherf. Inst. 279; Co. Litt. 90; Chit. on Prerog.; Bac. Ab. h. t.

PREROGATIVE COURT, *in eccles. law*. The name of a court in England in which all testaments are proved and administrations granted, when the deceased has left *bona notabilia* in the province in some other diocese than that in which he died. 4 Inst. 335. The testamentary courts of the two archbishops, in their respective provinces, are styled prerogative courts, from the prerogative of each archbishop to grant probates and administrations, where there are *bona notabilia;* but still these are only inferior and subordinate jurisdictions; and the style of these courts has no connexion with the royal prerogative. Derivately, these courts are the king's ecclesiastical courts; but immediately, they are only the courts of the ecclesiastical ordinary. The ordinary, and not the crown, appoints the judges of these courts; they are subject to the control of the king's courts of chancery and common law, in case they exceed their jurisdiction; and they are subject in some instances, to the command of these courts, if they decline to exercise their jurisdiction, when by law they ought to exercise it. Per Sir John Nicholl, In the Goods of Geo. III. 1 Addams, R. 255; S. C. 2 Eng. Eccl. R. 112.

PRESCRIPTION, is the manner of acquiring property by use during the time required by law. The law presumes a grant before the time of legal memory when the party claiming by prescription, or those from whom he holds, have had adverse or uninterrupted possession of the property or rights claimed by prescription. This presumption may be a mere fiction, the commencement of the user being tortious; no prescription can, however, be sustained, which is not consistent with such a presumption. Twenty years uninterrupted user of a way is prima facie evidence of a prescriptive right. 1 Saund. 323, a; 10 East, 476; 2 Br. & Bing. 403; Cowp. 215; 2 Wils. 53. The subjects of prescription are the several kinds of incorporeal rights. Vide, generally, 2 Chit. Bl. 35, n. 24; Amer. Jurist, No. 37, p. 96; 17 Vin. Ab. 256; 7 Com. Dig. 93; Rutherf. Inst. 63; Co. Litt. 113; 2 Conn. R. 584; 9 Conn. R. 162.

The Civil Code Louisiana, art. 3420, defines a prescription to be a manner of acquiring property, or of discharging debts, by the effect of

time, and under the conditions regulated by law. For the law relating to prescription in that state, see Code, art. 3420 to 3521. For the difference between the meaning of the term prescription as understood by the common law, and the same term in the civil law, see 1 Bro. Civ. Law, 246.

The prescription which has the effect to liberate a creditor, is a mere bar which the debtor may oppose to the creditor, who has neglected to exercise his rights, or procured them to be acknowledged during the time prescribed by law. The debtor acquires this right without any act on his part, it results entirely from the negligence of the creditor. The prescription does not extinguish the debt, it merely places a bar in the hands of the debtor, which he may use or not at his choice against the creditor. The debtor may therefore abandon this defence, which has been acquired by mere lapse of time, either by paying the debt, or acknowledging it. If he pay it, he cannot recover back the money so paid, and, if he acknowledge it, he may be constrained to pay it. Poth. Intr. au titre xiv. des Prescriptions, sect. 2. Vide *Limitations.*

PRESENCE. The existence of a person in a particular place. In many contracts and judicial proceedings it is necessary that the parties should be present in order to render them valid; for example, a party to a deed when it is executed by himself, must personally acknowledge it, when such acknowledgment is required by law, to give it its full force and effect, and his presence is indispensable, unless, indeed, another person represent him as his attorney, having authority from him for that purpose. In the criminal law, presence is actual or constructive. When a larceny is committed in a house by two men, united in the same design, and one of them goes into the house, and commits the crime, while the other is on the outside watching to prevent a surprise, the former is actually, and the latter constructively, present. It is a rule in the civil law, that he who is incapable of giving his consent to an act, is not to be considered present, although he be actually in the place; a lunatic, or a man sleeping, would not therefore be considered present. Dig. 41, 2, 1, 3.

PRESENT. A gift. It is provided by the constitution of the United States, art. 1, s. 9, n. 7, that "no person holding any office of profit or trust under them, [the United States] shall, without the consent of congress, accept of any present, emolument, or office, or title of any kind whatever, from any king, prince, or foreign state."

PRESENTMENT, *crim. law, practice*, properly speaking, is the notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government, 4 Bl. Com. 301; upon such presentment, when proper, the officer employed to prosecute, afterwards frames a bill of indictment, which is then sent to the grand jury, and they find it to be a true bill. In an extended sense presentments include not only what is properly so called, but also inquisitions of office, and indictments found by a grand jury. 2 Hawk. c. 25, s. 1. The difference between a presentment and an iniquisition, (q. v.) is this, that the former is found by a grand jury authorised to inquire of offences generally, whereas the latter is an accusation found by a jury specially returned to inquire concerning the particular offence. 2 Hawk. c. 25, s. 6. Vide, generally, Com. Dig. Indictment, (B); Bac. Ab. Indictment, (A); 1 Chit. Cr. Law, 163; 7 East, R. 387. The

writing which contains the accusation so presented by a grand jury, is also called a presentment. Vide 1 Brock. C. C. R. 156; *Grand Jury.*

PRESENTMENT, *contracts*, is the production of a bill of exchange or promissory note to the party on whom the former is drawn, for his acceptance, or to the person bound to pay either, for payment. The holder of a bill is bound, in order to hold the parties to it responsible to him, to present it in due time for acceptance, and to give notice, if it be dishonoured, to all the parties he intends to hold liable. And when a bill or note becomes payable, it must be presented for payment. The principal circumstances concerning presentment, are the person to whom, the place where, and the time when, it is to be made. 1. In general the presentment for payment should be made to the maker of a note, or the drawee of a bill for acceptance, or to the acceptor, for payment; but a presentment made at a particular place, when payable there, is in general sufficient. A personal demand on the drawee or acceptor is not necessary; a demand at his usual place of residence of his wife or other agent is sufficient, 2 Esp. Cas. 509; 5 Esp. Cas. 265; Holt's N. P. Cas. 313.—2. When a bill or note is made payable at a particular place, a presentment, as we have seen, may be made there; but when the acceptance is general, it must be presented at the house or place of business of the acceptor. 3 Kent, Com. 64, 65.—3. In treating of the time for presentment, it must be considered with reference, 1st, to a presentment for acceptance; 2dly, to one for payment. 1st. When the bill is payable at sight, or after sight, the presentment must be made in reasonable time; and what this reasonable time is depends upon the circumstances of each case. 7 Taunt. 397; 1 Dall. 255; 2 Dall. 192; Ibid. 232; 4 Dall. 165; Ibid. 129; 1 Yeates, 531; 7 Serg. & Rawle, 324; 1 Yeates, 147. 2dly, The presentment of a note or bill for payment ought to be made on the day it becomes due, and notice of non-payment given, otherwise the holder will lose the security the drawer and endorsers of a bill and the endorsers of a promissory note, and in case the note or bill be payable at a particular place and the money lodged there for its payment, the holder would probably have no recourse against the maker or acceptor, if he did not present them on the day, and the money should be lost. 5 Barn. & Ald. 244. Vide 5 Com. Dig. 134; 2 John. Cas. 75; 3 John. R. 230; 2 Caines's Rep. 343; 18 John. R. 230; 2 John. R. 146, 168, 176; 2 Wheat. 373; Chit. on Bills, Index, h. t.; Smith on Mer. Law, 138; Byles on Bills, 102.

PRESERVATION. Keeping safe from harm; avoiding injury. This term always presupposes a real or existing danger. A jettison which is always for the preservation of the remainder of the cargo, must therefore be made only when there is a real danger existing. See *Average; Jettison.*

PRESIDENT, is an officer of a company who is to direct the manner in which business is to be transacted. From the decision of the president there is appeal to the body over which he presides.

PRESIDENT OF THE UNITED STATES OF AMERICA. This is the title of the executive officer of this country. The constitution directs that the executive power shall be vested in a president of the United States of America. Art. 2, s. 1. This subject will be examined by considering, 1, His qualifications; 2, His election; 3, The duration of his office; 4, His compensation; 5, His powers.

§ 1. 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; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. Art. 2, s. 1, n. 5. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may by law provide for the removal, death, resignation, or inability both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected. Art. 2, s. 1, n. 6.

§ 2. He is chosen by electors of president, (q. v.) See Const. U. S. art. 2, s. 1, n. 2, 3, and 4; 1 Kent, Com. 273; Story on the Constit. § 1447, et seq. After his election and before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States." Article 2, s. 1, n. 8 and 9.

§ 3. He holds his office for the term of four years; art. 2, s. 1, n. 1; he is re-eligible for successive terms, but no one has ventured, contrary to public opinion, to be a candidate for a third term.

§ 4. The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them. Art. 2, sect. 1, n. 7. The act of the 24th September, 1789, ch. 19, fixed the salary of the president at twenty-five thousand dollars. This is his salary now.

§ 5. The powers of the president are to be exercised by him alone, or by him with the concurrence of the senate. 1. The constitution has vested in him *alone*, the following powers: he is commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officers of each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have the power to grant reprieves and pardons for offences against the U. States, except in cases of impeachment. Art. 2, s. 2, n. 2. He may appoint all officers of the United States, whose appointments are not otherwise provided for in the constitution, and which shall be established by law, when congress shall vest the appointment of such officers in the president alone. Art. 2, s. 2, n. 2. He shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session. Art. 2, sect. 2, n. 3. He shall from time to time give congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public minis-

ters; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.—2. His power, with the concurrence of the senate, is as follows: to make treaties, provided two-thirds of the senators present concur; nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not provided for in the constitution, and which have been established by law; but the congress may by law vest the appointment of such inferior officers, as they shall think proper, in the president alone, in the courts of law, or in the heads of departments. Art. 2, s. 2, n. 2. Vide 1 Kent, Com. Lect. 13; Story on the Const. B. 3, ch. 36; Rawle on the Const. Index, h. t.; Serg. Const. L. Index. h. t.

PRESS. By a figure this word signifies the art of printing. The press is free. All men have a right to print and publish whatever they may deem proper, unless by doing so they infringe the rights of another, as in the case of copy-rights, (q. v.) when they may be enjoined. For any injury they may commit against the public or individuals they may be punished, either by indictment, or by a civil action at the suit of the party injured, when the injury has been committed against a private individual. Vide Const. of the U. S. Amendm. art. 1, and *Liberty of the Press.*

PRESUMPTION, *evidence*, is an inference as to the existence of one fact, from the existence of some other fact, founded on a previous experience of their connexion. 3 Stark. Ev. 1234; 1 Phil. Ev. 116; Gilb. Ev. 142; Poth. Tr. des Ob. part. 4, c. 3, s. 2, n. 840. To constitute such a presumption, a previous experience of the connexion between the known and inferred facts is essential, of such a nature that as soon as the existence of the one is established, admitted or assumed, the inference as to the existence of the other immediately arises, independently of any reasoning upon the subject. It follows that an inference may be *certain* or not certain, but merely, *probable*, and therefore capable of being rebutted by contrary proof. Presumptions are either legal and artificial, or natural.

1. Legal or artificial presumptions are such as derive from the law a technical or artificial operation and effect, beyond their mere natural tendency to produce belief, and operate uniformly, without applying the process of reasoning on which they are founded, to the circumstances of the particular case. For instance, at the expiration of twenty years, without payment of interest on a bond, or other acknowledgment of its existence, satisfaction is to be presumed; but if a single day less than twenty years has elapsed, the presumption of satisfaction from mere lapse of time, does not arise; this is evidently an artificial and arbitrary distinction. 4 Greenl. 270; 10 John. R. 338; 9 Cowen, R. 653; 2 M'Cord, R. 439; 4 Burr. 1963; Lofft, 320; 1 T. R. 271; 6 East, R. 215; 1 Camp. R. 29.

Legal presumptions are of two kinds: first, such as are made by the law itself, or presumptions of *mere law;* secondly, such as are to be made by a jury, or presumptions of *law and fact.* 1. Presumptions of *mere law*, are either absolute and conclusive, as, for instance, the presumption of law that a bond or other specialty was executed upon a good consideration, cannot be rebutted by evidence, so long as the instrument is not impeached for fraud; 4 Burr. 2225; or they are not absolute, and

may be rebutted by evidence; for example, the law presumes that a bill of exchange was accepted on a good consideration, but that presumption may be rebutted by proof to the contrary. 2. Presumptions of *law and fact* are such artificial presumptions as are recognised and warranted by the law as the proper inferences to be made by juries under particular circumstances; for instance, an unqualified refusal to deliver up the goods on demand made by the owner, does not fall within any definition of a conversion, but inasmuch as the detention is attended with all the evils of a conversion to the owner, the law makes it, in its effects and consequences, equivalent to a conversion, by directing or advising the jury to infer a conversion from the facts of demand and refusal.

2. *Natural* presumptions depend upon their own form and efficacy in generating belief or conviction on the mind, as derived from those connexions which are pointed out by experience; they are wholly independent of any artificial connexions and relations, and differ from mere presumptions of law in this essential respect, that those depend, or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, from the course of nature and the ordinary habits of society.

Vide, generally, Stark. Ev. h. t.; 1 Phil. Ev. 116; Civ. Code of La. 2263 to 2267; 17 Vin. Ab. 507; 12 Ib. 124; 1 Supp. to Ves. jr. 37, 188, 489; 2 Ib. 51, 223, 442; Bac. Ab. Evidence, H; Arch. Civ. Pl. 384; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, s. 3; Poth. Tr. des Obl. part. 4, c. 3, s. 2; Matt. on Pres.; Gresl. Eq. Ev. pt. 3, c. 4, p. 363; 2 Poth. Ob. by Evans, 340.

PRESUMPTIVE HEIR. One who, if the ancestor should die immediately, would under the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born, as a brother, who is the presumptive heir, may be defeated by the birth of a child to the ancestor. 2 Bl. Com. 208.

PRETENTION. *French law*, is the claim made to a thing which a party believes himself entitled to demand, but which is not admitted or adjudged to be his. The words *rights*, *actions* and *pretensions*, are usually joined, not that they are synonymous, for *right* is something positive and certain, *action* is what is demanded, while *pretention* is sometimes not even accompanied by a demand.

PRETERITION, *civil law*, is the omission by a testator of some one of his heirs who is entitled to a legitime, (q. v.) in the succession. Among the Romans, the preterition of children when made by the mother were presumed to have been made with design; the preterition of sons by any other testator was considered as a wrong and avoided the will, except the will of a soldier in service, which was not subject to so much form.

PRETIUM AFFECTIONIS.—An imaginary value put upon a thing by the fancy of the owner in his affection for it, or for the person from whom he obtained it. Bell's Dict. h. t. When an injury has been done to an article, it has been questioned whether in estimating the damage, there is any just ground, in any case, for admitting the *pretium affectionis?* It seems that when the injury has been done accidentally by culpable negligence, such an estimation of damages would be unjust, but when the mischief has been intentional, it ought to be admitted. Kames on Eq. 74, 75.

PREVARICATION. *Prævaricatio, civil law*, signifies the acting with unfaithfulness and want of probity. The term is applied principally to the act of concealing a crime. Dig. 47, 15, 6.

PREVENTION. *Civil and French law*, is the right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge. In Pennsylvania it has been ruled that a justice of the peace cannot take cognizance of a cause which has been previously decided by another justice. 2 Dall. 77; Ib. 114.

PRICE, *contracts*, is the consideration in money given for the purchase of a thing. There are three requisites to the quality of a price in order to make a sale. 1. It must be serious, and such as may be demanded; if, therefore, a person were to sell me an article, and by the agreement, reduced to writing, he were to release me from the payment, the transaction would no longer be a sale, but a gift. Poth. Vente, n. 18. 2. The second quality of a price is that the price be certain and determinate; but what may be rendered certain is considered as certain; if, therefore, I sell a thing at a price to be fixed by a third person, this is sufficiently certain, provided the third person make a valuation and fix the price. Poth. Vente, n. 23, 24. 3. The third quality of a price is, that it consists in money, to be paid down, or at a future time, for if it be of any thing else, it will no longer be a price, nor the contract a sale, but exchange or barter. Poth. Vente n. 30; 16 Toull. n. 147. The true price of a thing is that for which things of a like nature and quality are usually sold in the place where situated, if real property; or in the place where exposed to sale, if personal. Poth. Contr. de Vente, n. 243. The first price or cost of a thing does not always afford a sure criterion of its value. It may have been bought very dear or very cheap. Marsh. Ins. 620 et seq.; Ayliffe's Pand. 447; Mérlin, Répert. h. t.; 4 Pick. 179; 8 Pick. 252; 16 Pick. 227. Vide *Adjustment; Inadequacy of price; Pretium affectionis.*

PRIMA FACIE. The first blush; the first view or appearance of the business; as, the holder of a bill of exchange, indorsed in blank, is prima facie its owner.

PRIMAGE, *merc. law.* A duty payable to the master and mariner of a ship or vessel; to the master for the use of his cables and ropes to discharge the goods of the merchant; to the mariners for lading and unlading in any port or haven. Merch. Dict. h. t.; Abb. on Ship. 270. This payment appears to be of very ancient date, and to be variously regulated in different voyages and trades. It is sometimes called the master's hat-money. 3 Chit. Com. Law. 431.

PRIMARY POWERS. The principal authority given by a principal to his agent; it differs from *mediate powers*, (q. v.) Story, Ag. § 58.

PRIMATE, *eccles. law.* An archbishop who has jurisdiction over one or several other metropolitans.

PRIMER ELECTION. A term used to signify first choice. In England, when coparcenary lands are divided, unless it is otherwise agreed, the eldest sister has the first choice of the purparts; this part is called the *enitia pars*, (q. v.) Sometimes the oldest sister makes the partition, and, in that case, to prevent partiality, she takes the last choice. Hob. 107; Litt. §§ 243, 244, 245; Bac. Ab. Coparceners, (C.)

PRIMER SEISIN, *Eng. law.* It was the right which the king had, when any of his tenants died seised of a knight's fee, to receive of the heir, provided he were of full age, one whole year's profits of the lands, if

they were in immediate possession; and half a year's profits, if the lands were in reversion, expectant on an estate for life. 2 Bl. Com. 66.

PRIMOGENITURE, the state of being first born; the eldest. Formerly primogeniture gave a title in cases of descent to the oldest son in preference to the other children; this unjust distinction has been generally abolished in the United States.

PRIMOGENITUS. The first born. 1 Ves. 290; and see 3 M. & S. 25; 8 Taunt. 468; 3 Vern. 660.

PRINCIPAL. This word has several meanings. It is used in opposition to *accessary*, to show the degree of crime committed by two persons; thus we say, the principal is more guilty than the accessary after the fact. In estates, principal is used as opposed to *incident* or *accessory*; as in the following rule, "the incident shall pass by the grant of the principal, but not the principal by the grant of the incident. Accessorium non ducit, sed sequitur suum principale." Co. Litt. 152, a. It is used in opposition to *agent*, and in this sense it signifies that the principal is the prime mover. It is used in opposition to *interest*; as, the principal being secured the interest will follow. It is used also in opposition to *surety*; thus we say the principal is answerable before the surety. Principal is used also to denote the more important; as the principal person. In the English law, the chief person in some of the inns of chancery is called principal of the house. Principal is also used to designate the best of many things, as, the best bed, the best table, and the like.

PRINCIPAL, *contracts*, is one who being competent to contract, and who is *sui juris*, employs another to do any act for his own benefit or on his own account. As a general rule it may be said, that every person, *sui juris*, is capable of being a principal, for in all cases where a man has power as owner, or in his own right to do any thing, he may do it by another. 16 John. 86; 9 Co. 75; Com. Dig. Attorney, C 1; Heinec. ad Pand. P. 1, lib. 3, tit. 1, § 424. Married women, and persons who are deprived of understanding, as idiots, lunatics, and others not *sui juris*, are wholly incapable of entering into any contract, and, consequently, cannot appoint an agent. Infants and married women are generally, incapable, but under special circumstances they may make such appointments. For instance, an infant may make an attorney, when it is for his benefit; but he cannot enter into any contract which is to his prejudice. Com. Dig. Enfant, C 2; Perk. 13; 9 Co. 75; 3 Burr. 1804. A married woman cannot in general appoint an agent or attorney, and when it is requisite that one should be appointed, the husband generally appoints for both. Perhaps for her separate property she may with her husband appoint an agent or attorney, Cro. Car. 165; 2 Leon. 200; 2 Buls. R. 13; but this seems to be doubted. Cro. Jac. 617; Yelv. 1; 1 Brownl. 134; 2 Brownl. 248; Adams's Ej. [174]; Runn. Ej. 148.

A principal has rights which he can enforce, and is liable to obligations which he must perform. These will be briefly considered:

1. The *rights* to which principals are entitled arise from obligations due to them by their agents, or by third persons.—1st. *The rights against their agents*, are, 1. To call them to an account at all times in relation to the business of their agency. 2. When the agent violates his obligations to his principal, either by exceeding his authority or by positive misconduct, or by mere negligence or omissions in the discharge of the functions of his agency, or in any other manner, and any

loss or damage falls on his principal, the latter will be entitled to full indemnity. Paley on Ag. by Lloyd, 7, 71, 74, and note 2; 12 Pick. 328; 1 B. & Adolph. 415; 1 Liverm. Ag. 398. 3. The principal has a right to supersede his agent, where each may maintain a suit against a third person, by suing in his own name; and he may, by his own intervention, intercept, suspend or extinguish the right of the agent under the contract. Paley Ag. by Lloyd, 362; 7 Taunt. 237, 243; 1 M. & S. 576; 1 Liverm. Ag. 226–228; 2 W. C. C. R. 283; 3 Chit. Comm. Law, 201–203.—2dly. *The principal's rights against third persons.* 1. When a contract is made by the agent with a third person in the name of his principal the latter may enforce it by action. But to this rule there are some exceptions; 1st, when the instrument is under seal, and it has been exclusively made between the agent and the third person; as, for example, a charter party or bottomry bond; in this case the principal cannot sue on it. See 1 Paine, Cir. R. 252; 3 W. C. C. R. 560; 1 M. & S. 573; Abbott, Ship. pt. 3, c. 1, s. 2. 2dly, When an exclusive credit is given to and by the agent, and therefore the principal cannot be considered in any manner a party to the contract, although he may have authorised it, and be entitled to all the benefits arising from it. The case of a foreign factor, buying or selling goods, is an example of this kind: he is treated as between himself and the other party, as the sole contractor, and the real principal cannot sue or be sued on the contract. This, it has been well observed, is a general rule of commercial law, founded upon the known usage of trade; and it is strictly adhered to for the safety and convenience of foreign commerce. Story, Ag. § 423; Smith, Mer. Law, 66; 15 East, R. 62; 9 B. & C. 87. 3dly, When the agent has a lien or claim upon the property bought or sold, or upon its proceeds, when it equals or exceeds the amount of its value. Story, Ag. §§ 407, 408, 424. 2. But contracts are not unfrequently made without mentioning the name of the principal; in such case he may avail himself of the agreement, for the contract will be treated as that of the principal as well as of the agent. Story, Ag. § 109, 111, 403, 410, 417, 440; Paley, Ag. by Lloyd, 21, 22; Marsh. Ins. b. 1, c. 8, § 3, p. 311; 2 Kent's Com. (3d edit.) 630; 3 Chit. Comm. Law, 201; vide 1 Paine's C. C. Rep. 252. 3. Third persons are also liable to the principal for any tort or injury done to his property or rights in the course of the agency. Pal. Ag. by Lloyd, 363; Story, Ag. § 436; 3 Chit. Comm. Law, 205, 206; 15 East, R. 38.

2. The *liabilities* of the principal are either to his agent or to third persons. 1st. *The liabilities of the principal to his agent*, are, 1. To reimburse him all expenses he may have lawfully incurred about the agency. Story, Ag. § 335; Story, Bailm. § 196, 197; 2 Liv. Ag. 11 to 33. 2. To pay him his commissions as agreed upon, or according to the usage of trade, except in cases of gratuitous agency. Story, Ag. § 323; Story, Bailm. 153, 154, 196 to 201. 3. To indemnify the agent when he has sustained damages in consequence of the principal's conduct; for example, when the agent has innocently sold the goods of a third person under the direction or authority of his principal, and a third person recovers damages against the agent, the latter will be entitled to reimbursement from the principal. Pal. Ag. by Lloyd, 152, 301; 2 John. Cas. 54; 17 John. 142; 14 Pick. 174.—2dly. *The liabilities of*

the principal to third persons, are, 1. To fulfil all the engagements made by the agent, for or in the name of the principal, and which come within the scope of his authority. Story, Ag. § 126. 2. When a man stands by and permits another to do an act in his name, his authority will be presumed. Vide *Authority*, and 2 Kent, Com. (3d ed.) 614; Story, Ag. § 89, 90, 91; and articles *Assent; Consent*. 3. The principal is liable to third persons for the misfeasance, negligence, or omission of duty of his agent; but he has a remedy over against the agent, when the injury has occurred in consequence of his misconduct or culpable neglect. Story, Ag. § 308; Paley, Ag. by Lloyd, 152, 3. Vide *Agency; Agent*.

PRINCIPAL, *crim. law*. A principal is one who is the actor in the commission of a crime. Principals are of two kinds; namely, 1. *Principals in the first degree*, are those who have actually with their own hands committed the fact, or have committed it through an innocent agent incapable himself, of doing so; as an example of the latter kind, may be mentioned the case of a person who incites a child wanting discretion, or a person non compos, to the commission of murder or any other crime, the incitor, though absent, when the crime was committed, is, *ex necessitate*, liable for the acts of his agent and a principal in the first degree. Fost. 340; 1 East, P. C. 118; 1 Hawk. c. 31, s. 7; 1 N. R. 92; 2 Leach, 978. It is not requisite that each of the principals should be present at the entire transaction. 2 East, P. C. 767. For example, where several persons agree to forge an instrument, and each performs some part of the forgery in pursuance of the common plan, each is principal in the forgery although one may be away when it is signed. R. & R. C. C. 304; Mo. C. C. 304, 307.—2. *Principals in the second degree*, are those who were present aiding and abetting the commission of the fact. They are generally termed aiders and abettors, and sometimes, improperly, accomplices, (q. v.) The presence which is required in order to make a man principal in the second degree, need not be a strict actual, immediate presence, such a presence as would make him an eye or ear witness of what passes, but may be a constructive presence. It must be such as may be sufficient to afford aid and assistance to the principal in the first degree. 9 Pick. R. 496; 1 Russell, 21; Foster, 350. It is evident from the definition that to make a man a principal, he must be an actor in the commission of the crime, and, therefore, if a man happen merely to be present when a felony is committed without taking any part in it, or aiding those who do, he will not, for that reason, be considered a principal. 1 Hale, P. C. 439; Foster, 350.

PRINCIPAL CONTRACT, is one entered into by both parties, on their accounts, or in the several qualities they assume. It differs from an accessory contract, (q. v.) Vide *Contract*.

PRINCIPAL OBLIGATION, is that obligation which arises from the principal object of the engagement which has been contracted between the parties. It differs from an accessory obligation, (q. v.) For example, in the sale of a horse, the principal obligation of the seller is to deliver the horse; the obligation to take care of him till delivered is an accessory engagement. Poth. Obl. n. 182. By principal obligation is also understood the engagement of one who becomes bound for himself and not for the benefit of another. Poth. Obl. n. 186.

PRINCIPLE. By this term is

understood the element or rudiment of sciences and the arts. It is said it may mean a mere elementary truth, but it may also mean constituent parts. 8 T. R. 107; see 2 H. Bl. 478. In the sense first mentioned, as an elementary power, a principle cannot be patented; but when by the principle of a machine is meant the *modus operandi*, the peculiar device or manner of producing any given effect, the application of the principle may be patented. 1 Mason, 470; 1 Gallis. 478; Fessend. on Pat. 130; Phil. on Pat. 95, 101; Perpigna, Manuel des Inventeurs, &c. ch. 2, s. 1.

PRINTING. See *Liberty of the Press; Press.*

PRIORITY, going before; opposed to posteriority, (q. v.) He who has the precedency in time has the advantage in right, is the maxim of the law; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards. 1 Fonb. Eq. 320. In the payment of debts, the United States are entitled to priority when the debtor is insolvent, or dies and leaves an insolvent estate. The priority was declared to extend to cases in which the insolvent debtor had made a voluntary assignment of all his property, or in which his effects had been attached as an absconding or absent debtor, on which an act of legal bankruptcy had been committed. 1 Kent, Com. 243; 1 Law Intell. 219, 251; and the cases there cited. Among common creditors, he who has the oldest lien has the preference; it being a maxim both of law and equity, *qui prior est tempore, potior est jure.* 2 John. Ch. R. 608. Vide *Insolvency;* and Serg. Const. Law, Index, h. t.

PRISON. A legal prison is the building designated by law, or used by the sheriff, for the confinement, or detention of those whose persons are judicially ordered to be kept in custody. But in cases of necessity, the sheriff may make his own house, or any other place, a prison, 6 John. R. 22. An illegal prison is one not authorised by law, but established by private authority; when the confinement is illegal, every place where the party is arrested is a prison; as, the street, if he be detained in passing along. 4 Com. Dig. 619; 2 Hawk. P. C. c. 18, s. 4; 1 Russ. Cr. 378; 2 Inst. 589.

PRISON BREAKING. The act by which a prisoner, by force and violence, escapes from a place where he is lawfully in custody. This is an offence at common law. To constitute this offence, there must be, 1st, a lawful commitment of the prisoner; vide *Regular and Irregular process;* 2, an actual breach with force and violence of the prison, (q. v.) by the prisoner himself or by others with his privity and procurement, Russ. & Ry. 458; 1 Russ. Cr. 380; 3, the prisoner must escape. 2 Hawk. P. C. c. 18, s. 12; vide 1 Hale P. C. 607; 4 Bl. Com. 130; 2 Inst. 500. 2 Swift's Dig. 327; Alis. Prin. 555; Dalloz, Dict. mot Effraction.

PRISONER, one held in confinement against his will. Prisoners are of two kinds, those lawfully confined, and those unlawfully imprisoned. Lawful prisoners are either prisoners charged with crimes, or for a civil liability. Those charged with crimes are either persons accused and not tried, and these are considered innocent, and are therefore entitled to be treated with as little severity as possible, consistently with the certain detention of their persons; they are entitled to their discharge on bail, except in capital cases, when the proof is great; or those who have been convicted of crimes, whose im-

prisonment, and the mode of treatment they experience, is intended as a punishment, these are to be treated agreeably to the requisitions of the law, and in the United States, always with humanity. Vide *Penitentiary*. Prisoners in civil cases, are persons arrested on original or mesne process, and these may generally be discharged on bail; and prisoners in execution, who cannot be discharged, except under the insolvent laws. Persons unlawfully confined, are those who are not detained by virtue of some lawful, judicial, legislative, or other proceeding. They are entitled to their immediate discharge on *habeas corpus*. For the effect of a contract entered into by a prisoner, see 1 Salk. 402, n.; 6 Toull. 82.

By the resolution of congress, of 23d September, 1789, it was recommended to the legislatures of the several states, to pass laws, making it expressly the duty of the keepers of these jails to receive and safely keep therein, all persons committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively. And by the resolution of March 3, 1791, it is provided, that if any state shall not have complied with the above recommendation, the marshal in such state, under the direction of the judge of the district, shall be authorized to hire a convenient place to serve as a temporary jail. See 9 Cranch, R. 80.

PRISONER OF WAR, is one who has been captured while fighting under the banner of some state. He is a prisoner, although never confined in a prison. In modern times, prisoners are treated with more humanity than formerly; the individual captor has now no personal right to his prisoner. Prisoners are under the superintendence of the government, and they are now frequently exchanged. Vide 1 Kent, Com. 14.

PRIVATEER, *war*, is a vessel owned by one or by a society of private individuals, armed and equipped at his or their expense, for the purpose of carrying on a maritime war, by the authority of one of the belligerent parties. For the purpose of encouraging the owners of private armed vessels, they are usually allowed to appropriate to themselves the property they capture, or, at least, a large proportion of it. 1 Kent, Com. 96; Poth. Du Dr. de Propr. n. 90, et seq. See 2 Dall. 36; 3 Dall. 334; 4 Cranch, 2; 1 Wheat. 46; 3 Wheat. 546; 2 Gall. R. 19; Id. 526; 1 Mason, R. 365; 3 Wash. C. C. R. 209; 2 Gall. R. 56; 5 Wheat. 338; Mann. Comm. 116.

PRIVEMENT ENCEINTE. This term is used to signify that a woman is pregnant, but not *quick with child*, (q. v.); and vide Wood's Inst. 662; *Enceinte; Fœtus; Pregnancy*.

PRIVIES, are persons who are partakers, or have an interest in any action or thing, or any relation to another. Wood, Inst. b. 2, c. 3, p. 255; 2 Tho. Co. Litt. 506; Co. Litt. 271 a. There are several kinds of privies, namely, privies in blood, as the heir is to the ancestor, privies in representation, as is the executor or administrator to the deceased; privies in estate, as the relation between the donor and donee, lessor and lessee; privies in respect to contracts; and privies on account of estate and contract together. Tho. Co. Lit. 506; Prest. Conv. 327 to 345. Privies have also been divided into privies in fact, and privies in law. 8 Co. 42 b. Vide Vin. Ab. Privity; 5 Com. Dig. 347; Ham. on Part. 131; Woodf. Land. & Ten. 279; 1 Dane's Ab. c. 1, art. 6.

PRIVILEGE, *in the civil law*, is a right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Louis. Code, art. 3153; Dict. de Juris. art. Privilege. Domat, Lois Civ. liv. 2, t. 1, s. 4, n. 1. Creditors of the same rank of privileges, are paid in concurrence, that is, on an equal footing. Privileges may exist either in movables, or immovables, or both at once. They are general or special on certain movables. The debts which are privileged on *all the movables in general*, are the following, which are paid in this order. 1. Funeral charges; 2. Law charges, which are such as are occasioned by the prosecution of a suit before the courts. But this name applies more particularly to costs, which the party cast has to pay to the party gaining the cause. It is in favour of these only that the law grants the privilege; 3. Charges, of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due; see *Last Sickness*. 4. The wages of servants for the year past, and so much as is due for the current year; 5. Supplies of provisions made to the debtor or his family, during the last six months, by retail dealers, such as bakers, butchers, grocers; and during the last year by keepers of boarding houses and taverns; 6. The salaries of clerks, secretaries and other persons of that kind; 7. Dotal rights, due to wives by their husbands.

The debts which are privileged on *particular movables*, are, 1. The debt of a workman or artizan for the price of his labour, on the movable which he has repaired, or made, if the thing continues still in his possession; 2. That debt on the pledge which is in the creditor's possession; 3. The carrier's charges and accessory expenses on the thing carried; 4. The price due on movable effects, if they are yet in the possession of the purchaser; and the like. See *Lien*.

Creditors have a privilege on immovables, or real estate in some cases, of which the following are instances; 1. The vendor on the estate by him sold, for the payment of the price, or so much of it as is due whether it be sold on or without a credit; 2. Architects and undertakers, bricklayers and other workmen employed in constructing, rebuilding or repairing houses, buildings, or making other works on such houses, buildings, or works by them constructed, rebuilt or repaired. 3. Those who have supplied the owner with materials for the construction or repair of an edifice or other work, which he has erected or repaired out of these materials, on the edifice or other work constructed or repaired. Louis. Code, art. 3216.

See generally, as to privilege, Louis. Code, tit. 21; Code Civ. tit. 18; Dict. de Juris. tit. Privilege; *Lien; Last sickness; Preference*.

PRIVILEGE, *mar. law*, is an allowance to the master of a ship of the general nature with primage, (q. v.) being compensation or rather a gratuity customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties 3 Chit. Com. Law, 431.

PRIVILEGE, *rights*. This word taken in its active sense is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law. Examples of privilege may be found in all systems of law: members of congress and of the several

legislatures, during a certain time, parties and witnesses while attending court, and coming to and returning from the same, electors, while going to the election, remaining on the ground, or returning from the same, are all privileged from arrest, except for treason, felony or breach of the peace.

Privileges from arrest for civil cases are either general and absolute, or limited and qualified as to time or place. 1. In the first class may be mentioned ambassadors, and their servants, when the debt or duty has been contracted by the latter since they entered into the service of such ambassador; insolvent debtor's duly discharged under the insolvent laws; in some places, as in Pennsylvania, women for any debt by them contracted; and in general executors and administrators, when sued in their representative character, though they have been held to bail. 2 Binn. 440. 2. In the latter class may be placed, 1st, members of congress; this privilege is strictly personal, and is not only his own, or that of his constituent, but also that of the house of which he is a member, which every man is bound to know, and must take notice of. Jeff. Man. § 3; 2 Wils. R. 151; Com. Dig. Parliament, D 17. The time during which the privilege extends includes all the period of the session of congress, and a reasonable time for going to, and returning from the seat of government. Jeff. Man. § 3; Story, Const. §§ 856 to 862; 1 Kent, Com. 221; 1 Dall. R. 296. The same privilege is extended to the members of the different state legislatures. 2dly. Electors under the constitution and laws of the United States, or of any state, are protected from arrest for any civil cause, or for any crime except treason felony or a breach of the peace, and eundo, mŏrando, et redeundo, that is, going to, staying at, or returning from the election. 3dly. Militia men, while engaged in the performance of military duty, under the laws, and eundo, mŏrando et redeundo. 4thly. All persons who, either necessarily or of right are attending any court or forum of justice, whether as judge, juror, party interested or witness, and eundo, mŏrando et redeundo. See 6 Mass. R. 245; 4 Dall. R. 329, 487; 2 John. R. 294; 1 South. R. 366; 11 Mass. R. 11; 3 Cowen, R. 381; 1 Pet. C. C. R. 41.

Ambassadors are wholly exempt from arrest for civil or criminal cases. Vide *Ambassador*.

See, generally, Bac. Ab. h. t.; 2 Rolle's Ab. 272; 2 Lilly's Reg. 369; Brownl. 15; 13 Mass. R. 288; 1 Binn. R. 77; 1 H. Bl. 636.

PRIVITY OF CONTRACT, is the relation which subsists between two contracting parties. Hamm. on Part. 132. From the nature of the covenant entered into by him, a lessee has both privity of contract and of estate; and though by an assignment of his lease he may destroy his privity of estate, still the privity of contract remains, and he is liable on his covenant notwithstanding the assignment. Dougl. 458, 764; Vin. Ab. h. t. Vide *Privies*.

PRIVITY OF ESTATE, is the relation which subsists between a landlord and his tenant. It is a general rule that a termor cannot transfer the tenancy or privity of estate between himself and his landlord, without the latter's consent: an assignee, who comes in only in privity of estate, is liable only while he continues to be legal assignee; that is while in possession under the assignment. Bac. Ab. Covenant, E 4; Woodf. L. & T. 279; Vin. Ab. h. t. Vide *Privies*.

PRIZE, *mar. law*, *war*, is the apprehension and detention at sea, of ship or other vessel, by authority

of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo. 1 Rob. Adm. R. 228. The vessel or goods thus taken are also called a prize. Goods taken on land from a public enemy, are called booty, (q. v.) and the distinction between a prize and a booty consists in this, that the former is taken at sea and the latter on land. In order to vest the title of the prize in the captors, it must be brought with due care into some convenient port for adjudication by a competent court. The condemnation must be pronounced by a prize court of the government of the captor sitting in the country of the captor, or his ally; the prize court of an ally cannot condemn. Strictly speaking, as between the belligerent parties the title passes, and is vested when the capture is complete; and that was formerly held to be complete and perfect when the battle was over, and the *spes recuperandi* was gone. 1 Kent, Com. 100; Abbott on Shipp. Index, h. t.; 13 Vin. Ab. 51; 8 Com. Dig. 885; 2 Bro. Civ. Law, 444; Harr. Dig. Ship and Shipping, X; Merl. Répert. h. t. Vide *Infra præsidia*.

PRIZE COURT, *Engl. law*, the name of a court which has jurisdiction of all captures made in war on the high seas. In England this is a separate branch of the court of admiralty, the other branch being called the *instance court*, (q. v.) The district courts of the United States have jurisdiction both as instance and prize courts, there being no distinction in this respect as in England. 3 Dall. 6; vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 6 & 7; 1 Kent, Com. 356; Mann. Comm. B. 3, c. 12.

PRO. A Latin preposition signifying for. As to its effects in contracts, vide Plowd. 412.

PRO CONFESSO, *chan. pract.* For confessed. When the defendant has been served personally with a subpœna, or when not being so served has appeared, and afterwards neglects to answer the matter contained in the bill, it shall be taken *pro confesso*, as if the matter were confessed by the defendant. Blake's Ch. Pr. 80; Newl. Ch. Pr. ch. 1, s. 12; 1 Johns. Ch. Rep. 8. It may also be taken *pro confesso* if the manner is insufficient. 4 Vin. Ab. 446; 2 Atk. 24; 3 Ves. 209; Harr. Ch. Pr. 154. Vide 4 Ves. 619, and the cases there cited.

PRO-CURATORS — PRO-TUTORS. Are persons who act as curators or tutors, without being lawfully authorised. They are, in general, liable to all the duties of curators or tutors, and are entitled to none of the advantages which legal curators or tutors can claim.

PRO INDIVISO. For an undivided part. The possession or occupation of lands or tenements belonging to two or more persons, and consequently neither knows his several portion till divided. Bract. l. 5.

PRO RATA. According to the rate, proportion or allowance. A creditor of an insolvent estate, is to be paid *pro rata* with creditors of the same class.

PRO TANTO. For so much. See 17 Serg. & Rawle, 400.

PROBABLE. What has the appearance of truth; what appears to be founded in reason.

PROBABLE CAUSE. When there are grounds for suspicion, that a person has committed a crime or misdemeanor, and public justice and the good of the community require that the matter should be examined, there is said to be a *probable cause* for making a charge against the accused, however malicious the intention of the accuser may have been. Cro. Eliz. 70; 2 T. R. 231. And

probable cause will be presumed till the contrary appears. In an action, then, for a malicious prosecution, the plaintiff is bound to show total absence of probable cause, whether the original proceedings were civil or criminal. 5 Taunt. 580; 1 Camp. N. P. C. 199; 2 Wils. 307; 1 Chit. Pr. 48; Hamm. N. P. 273. Vide *Malicious prosecution*, and 7 Cranch, 339; 1 Mason's R. 24; Stewart's Adm. R. 115; 11 Ad. & El. 483; 39 E. C. L. R. 150; 24 Pick. 81; 8 Watts, 240; 3 Wash. C. C. R. 31.

PROBATE OF A WILL, is the proof before an officer appointed by law, that an instrument offered to be recorded is the act of the person whose last will and testament it purports to be. Upon proof being so made, and security being given when the laws of the state require such security, the officer grants to the executors or administrators cum testamento annexo, when there are no executors, letters testamentary, or of administration. The officer who takes such probate is variously denominated, in some states he is called judge of probate, in others, register, and surrogate in others. Vide 11 Vin. Ab. 58; 12 Vin. Ab. 126; 2 Supp. to Ves. jr. 227; 1 Salk. 302; 1 Phil. Ev. 298; 1 Stark. Ev. 231, note, and the cases cited in the note, and also, 12 John. R. 192; 14 John. R. 407; 1 Edw. R. 266; 5 Rawle, R. 80; 1 N. & McC. 326; 1 Leigh, R. 287; Penn. R. 42; 1 Pick. R. 114; 1 Gallis. R. 662, as to the effect of a probate on real and personal property. In England, the ecclesiastical courts, which take the probate of wills, have no jurisdiction of devises of land. In a trial at common law, therefore, the original will must be produced, and the probate of a will is no evidence. This rule has been somewhat changed in some of the states. In New York it has been adopted, but provision is made for perpetuating the evidence of a will. 12 John. Rep. 192; 14 John. R. 407. In Massachusetts, Connecticut, North Carolina, and Michigan, the probate is conclusive of its validity, and a will cannot be used in evidence till proved. 1 Pick. R. 114; 1 Gallis. R. 622; 1 Mich. Rev. Stat. 275. In Pennsylvania, the probate is not conclusive as to lands, and, although not allowed by the Register's court, it may be read in evidence. 5 Rawle's R. 80. In North Carolina, the will must be proved *de novo* in the court of common pleas, though allowed by the ordinary. 1 Nott & McCord, 326. In New Jersey, probate is necessary, but it is not conclusive. Penn. R. 42. The probate is a judicial act, and while unimpeached, authorises debtors of the deceased in paying the debts they owed him, to the executors, although the will may have been forged. 3 T. R. 125; see 8 East, Rep. 187. Vide *Letters testamentary*.

PROBATION. Is the evidence which proves a thing. It is either by record, writing, the party's own oath, or the testimony of witnesses. Proof, (q. v.) It also signifies the time of a novitiate; a trial. Nov. 5.

PROBATOR. *Ancient English law.* Strictly meant an accomplice in felony, who to save himself confessed the fact, and charged or accused any other as principal or accessary, against whom he was bound to make good his charge. It also signified an approver, or one who undertakes to prove a crime charged upon another. Jacob's Law Dict. h. t.

PROBATORY TERM. In the British courts of admiralty, after the issue is formed between the parties, a time for taking the testimony is assigned, this is called a probatory term. This term is common to both parties, and either party may exa-

mine his witnesses. When good cause is shown the term will be enlarged. 2 Bro. Civ. and Adm. Law, 418; Dunl. Pr. 217.

PROCEDENDO, *in practice*, is a writ which issues where an action is removed from an inferior to a superior jurisdiction by *habeas corpus*, *certiorari* or *writ of privilege*, and it does not appear to such superior court that the suggestion upon which the cause has been removed, is sufficiently proved; in which case the superior court by this writ remits the cause to the court from whence it came, commanding the inferior court to *proceed* to the final hearing and determination of the same. See 1 Chit. R. 575; 2 Bl. R. 1060; 1 Str. R. 527; 6 T. R. 365; 4 B. & A. 535; 16 East, R. 387.

PROCES VERBAL, *French law*, is a true relation in writing in due form of law of what has been done and said verbally in the presence of a public officer, and what he himself does upon the occasion. It is a species of inquisition of office.

The *procès verbal* should be dated, contain the name, qualities, and residence of the public functionary who makes it; the cause of complaint, the existence of the crime, and what it is, (when its object is of a criminal,) point its nature, the time, the place, the circumstances, state the proofs and presumptions, describe the place, in a word, every thing calculated to ascertain the truth. It must be signed by the officer. Dall. Dict. h. t.

PROCESS, *practice*, is so denominated because it *proceeds* or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writ or judicial means by which he is brought to answer. In the English law process in civil causes is called *original* process, when it is founded upon the original writ; and also to distinguish it from *mesne* or intermediate process, which issues pending the suit, upon some collateral interlocutory matter, as, to summon juries, witnesses, and the like; *mesne* process is also sometimes put in contradistinction to *final* process, or process of execution; and then it signifies all process which intervenes between the beginning and end of a suit. 3 Bl. Com. 279. In criminal cases that proceeding which is called a warrant, before the finding of the bill, is termed process when issued after the indictment has been found by the jury. Vide 4 Bl. Com. 319; Dalt. J. c. 193; Com. Dig. Process, A 1; Burn's Dig. Process; Williams, J., Process; 1 Chit. Cr. Law, 338; 17 Vin. Ab. 535. The word *process* in the 12th section of the 5th article of the constitution of Pennsylvania, which provides that "the style of all process shall be *The Commonwealth of Pennsylvania*," was intended to refer to such writs only as should become necessary to be issued in the course of the exercise of that *judicial power* which is established and provided for in the article of the constitution, and forms exclusively the subject-matter of it. 3 Penns. R. 99.

PROCESS, *rights*. The means or method of accomplishing a thing. It has been said that the word manufacture, (q. v.) in the patent laws, may, perhaps extend to a new process, to be carried on by known implements, or elements, acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. 2 B. & Ald. 349. See Perpigna, Manuel des Inventeurs, &c., c. 1, s. 5, § 1, p. 22, 4th ed.; *Manufacture; Method*.

PROCESS, MESNE, *in practice;* by this term is generally understood

any writ issued in the course of a suit between the original process and execution. By this term is also meant the writ or proceedings in an action to summon or bring the defendant into court, or compel him to appear or put in bail, and then to hear and answer the plaintiff's claim. 3 Chit. Pr. 140.

PROCESSIONING. A term used in Tennessee to signify the manner of ascertaining the boundaries of land, as provided for by the laws of that state. Carr. & Nich. Comp. of Stat. of Tenn. 348.

PROCHEIN. Next. This word is frequently used in composition; as, prochein amy, prochein cousin, and the like. Co. Lit. 10.

PROCHEIN AMY, more correctly *prochain ami*. Next friend. He who, without being appointed guardian, sues in the name of an infant for the recovery of the rights of the latter, or does such other acts as are authorised by law; as, in Pennsylvania, to bind the infant apprentice. 3 Serg. & Rawle, 172; 1 Ashm. Rep. 27. For some of the rules with respect to the liability or protection of a prochein amy, see 4 Madd. 461; 2 Str. 709; 3 Madd. 468; 1 Dick. 346; 1 Atk. 570; Mosely, 47, 85; 1 Ves. jr. 409; 10 Ves. 184; 7 Ves. 425; Edw. on Parties, 182 to 204.

PROCLAMATION, *evidence*, the act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority; as the president's proclamation, the governor's, the mayor's proclamation. The word proclamation is also used to express the public nomination made of any one to a high office; as, such a prince was *proclaimed* emperor. The president's proclamation has not the force of law, unless when authorised by congress; as if congress were to pass an act, which should take effect upon the happening of a contingent event, which was to be declared by the president by proclamation to have happened: in this case the proclamation would give the act the force of law, which, till then, it wanted. How far a proclamation is evidence of facts, see Bac. Ab. Ev. F; Dougl. 594, n.; B. N. P. 226; 12 Mod. 216; 8 State Tr. 212; 4 M. & S. 546; 2 Camp. Rep. 44; Dane's Ab. ch. 97, a. 2, 3 and 4; 1 Scam. R. 577; Bro. h. t.

PROCLAMATION, *practice*, is the declaration made by the cryer, by authority of the court, that something is about to be done. It usually commences with the French word *Oyez, do you hear*, in order to attract attention; it is particularly used on the meeting or opening of the court, and at its adjournment; it is also frequently employed to discharge persons who have been accused of crimes or misdemeanors.

PROCLAMATION OF EXIGENTS, *Engl. law*. On awarding an *exigent*, in order to outlawry, a writ of proclamation issues to the sheriff of the county where the party dwells, to make three proclamations for the defendant to yield himself, or be outlawed.

PROCLAMATION OF REBELLION, *Engl. law*. When a party neglects to appear upon a *subpœna*, or an attachment in the chancery, a writ bearing this name issues, and if he does not surrender himself by the the day assigned, he is reputed and declared a rebel.

PROCREATION, is the generation of children; it is an act authorised by the law of nature: one of the principal ends of marriage is the procreation of children. Inst. tit. 2, in pr.

PROCTOR, is one appointed to represent in judgment the party who

empowers him, by writing under his hand called a *proxy*. The term is used chiefly in the courts of civil and ecclesiastical law. The proctor is somewhat similar to the attorney. Ayl. Parerg. 421.

PROCURATION, *civil law*, is the act by which one person gives power to another to act in his place, as he could do himself. A letter of attorney. Procurations are either express or implied; an express procuration is one made by the express consent of the parties; the implied or tacit takes place when an individual sees another managing his affairs, and does not interfere to prevent it. Dig. 17, 1, 6, 2; Id. 50, 17, 60; Code 7, 32, 2. Procurations are also divided into those which contain absolute power, or a general authority, and those which give only a limited power. Dig. 3, 3, 58; Id. 17, 1, 60, 4. The procurations are ended in three ways: first, by the revocation of the authority; secondly, by the death of one of the parties; thirdly, by the renunciation of the mandatory, when it is made in proper time and place, and it can be done without injury to the person who gave it. Inst. 3, 27; Dig. 17, 1; Code, 4, 35; and see *Authority; Letter of Attorney; Mandate.*

PROCURATIONS, *eccles. law*, are certain sums of money which parish priests pay yearly to the bishops or archdeacons *ratione visitationis*. X 3, 39, 25; Ayl. Parerg. 429; 17 Vin. Ab. h. t., p. 544.

PROCURATOR, *civil law*. A proctor; a person who acts for another by virtue of a procuration. *Procurator est, qui aliena negotia mandata Domini administrat.* Dig. 3, 3, 1. Vide *Attorney; Authority.*

PROCURATORIUM, the proxy or instrument by which a proctor is constituted and appointed.

PRODIGAL, *civil law*, *persons*. Prodigals were persons who, though of full age, were incapable of managing their affairs, and of the obligations which attended them, in consequence of their bad conduct, and for whom a curator was therefore appointed. In Pennsylvania, by act of assembly, a habitual drunkard is deprived of the management of his affairs, when he wastes his property, and his estate is placed in the hands of a committee.

PRODITORY, treasonably. This is a technical word formerly used in indictments for treason, when they were written in Latin.

PRODUCENT. He who produces a witness to be examined. The term is used in the ecclesiastical courts.

PROFANE. What has not been consecrated. By a profane place is understood one which is neither sacred, nor sanctified, nor religious. Dig. 11, 7, 2, 4. Vide *Things.*

PROFANENESS or PROFANITY, *crim. law*. A disrespect to the name of God, or his divine providence. This is variously punished by statute in the several states.

PROFECTITIUS, *civil law*.—What descends to us from our ascendants. Dig. 23, 3, 5.

PROFERT IN CURIA, *plead*. Produces in court. When the plaintiff declares on a deed, or the defendant pleads a deed, and makes title under it, he must do it with a *profert in curiâ*, by declaring that he "brings here into court, the said writing obligatory," or other deed. The object of this is to enable the court to inspect the instrument pleaded, the construction and legal effect of which is matter of law, and to entitle the adverse party to oyer of it, 10 Co. 92, b.; 1 Chitt. Pl. 414; 1 Archb. Pr. 164; but one who pleads a deed of any kind, *without making title under it*, is not bound to make profert of it. Gould on Pl. ch. 7, part 2, § 47. To the above rule that he who declares

on, or pleads a deed, and makes title under it, must make profert of it, there are several exceptions, all of which are founded on the pleader's actual or presumed inability to produce the instrument. A stranger to a deed, therefore, may in general plead it, and make title under it, without profert. Com. Dig. Pleader, O 8; Cro. Jac. 217; Cro. Car. 441; Carth. 316. Also he who claims title by operation of law, under a deed to another, may plead the deed without profert. Co. Litt. 225; Bac. Abr. Pleas, I 12; 5 Co. 75. When the deed is in the hands of the opposite party, or destroyed by him, no profert need be made; or when it has been lost or destroyed by time or casualty. In all these, to excuse the want of a profert, the special facts which bring the case within the exception, should be alleged in the party's pleadings. Vide Gould, Pl. ch. 8, part 2; Lawes's Pl. 96; 1 Saund. 9, a, note.

PROFESSION. This word has several significations. 1. It is a public declaration respecting something. Code, 10, 41, 6;—2. It is a state, art, or mystery; as, the legal profession. Dig. 1, 18, 6, 4. Domat, Dr. Pub. l. 1, t. 9, s. 1, n. 7.—3. In the ecclesiastical law, it is the act of entering into a religious order. See 17 Vin. Ab. 545.

PROFITS. In general, by this term is understood the benefit which a man derives from a thing. It is more particularly applied to such benefit as arises from his labour and skill. It has, however, several other meanings. 1. Under the term profits, is comprehended the produce of the soil, whether it arise above or below the surface; as herbage, wood, turf, coals, minerals, stones, also fish in a pond or running water. Profits are divided into *profits a prendre*, or those taken and ejoyed by the mere act of the proprietor himself; and *profits a rendre*, namely such as are received at the hands of, and rendered by another. Ham. N. P. 172.—2. When land is devised to pay debts and legacies out of rents and profits, the land may be sold; otherwise, if out of the annual rents and profits. 1 Vern. 104, ca. 90.—3. The natural meaning of raising by rents and profits, is by the yearly profits; but to prevent an inconvenience the word profits has, in some particular instances, been extended to any profits the land will yield, either by sale or mortgage; 1 Ch. Ca. 176; 2 Ch. Ca. 205; 2 Vern. 420; 1 P. Wms. 468; Pre. Ch. 586; 2 P. Wms. 19; 2 Ves. Jr. 481, n.; 2 Bro. Par. Cas. 418; 1 Atk. 506; Ib. 550; 2 Atk. 358, where cases on raising portions in the life of parents and to the prejudice of the remainder-man are considered; and vide Powell on Mort. 90 et seq. But in no case where there are subsequent restraining words, has the word profit been extended. Pre. Ch. 586, note, and the cases cited there; 1 Atk. 506; 2 Atk. 105.—4. A devise of profits is even considered, at law and in equity, a devise of the land itself. 1 Atk. 506; 1 Ves. 171; et vide 1 Ves. 42; 2 Atk. 358; 1 Bro. Ch. R. 310; 9 Mass. R. 372; 1 Pick. R. 224; 2 Pick. R. 425; 4 Pick. R. 203.—5. Where an assignment of rents and profits recites the intention of the parties then to make a security for money borrowed, and there is a covenant for further assurance, this amounts to an equitable lien, and would entitle the assignee to insist upon a mortgage. 2 Cox, 233; S. C. 1 Ves. Jr. 162; see also 3 Bro. C. C. 538; S. C. 1 Ves. Jr. 477.—6. Much doubt has arisen upon the question, whether the profit expected to arise upon maritime commerce be a proper subject of insurance. 1 Marsh. on Ins. 94. In some countries, as Holland and France, Code de Com. 347, it is illegal to insure

profits; but in England, profits expected to arise from a cargo of goods may be insured. 1 Marsh. on Ins. 97.—7. Personal representatives and trustees are generally bound to account for all the profits they make out of the assets entrusted to them. See Toll. Ex. 486; 1 Serg. & Rawle, 245; 1 T. R. 295; 1 M. & S. 412; Supp. to Ves. Jr., Notes to Wilkinson v. Strafford, 1 Ves. Jr. 32; Paley on Agency, 48, 9.—8. In cases of breach of contract, the plaintiff cannot in general recover damages for the profits he might have made. 1 Pet. R. 85, 94; S. C. 3 W. C. C. R. 184; 1 Pet. R. 172; see also 1 Yeates, 36; 11 Serg. & Rawle, 445. —9. It is a general rule that any participation in the profits of a trade or business, makes a person receiving such profits responsible as a partner. Gow on Part.; 6 Serg. & Rawle, 259; 1 Com. on Contr. 287 to 293. See generally on this subject, 3 W. C. C. R. 110; 15 Serg. & Rawle, 137; Chit. on Contr. 67. When there are no stipulations to the contrary, the profits are to be enjoyed, and the losses borne by all the partners in equal proportions. Wats. Parn. 59, 60; Colly. Partn. 105; 6 Wend. 263; Story, Partn. § 24; 7 Bligh, R. 432; Wilson and Shaw, 16.—10. A purchaser is entitled to the profits of the estate from the time fixed upon for completing the contract, whether he does or does not take possession of the estate. Sugd. on Vend. 353. See 6 Ves. Jr. 143, 352.

Profits among merchants are divided into *gross profits* and *net profits*. The former are the profits without any deduction for losses; the latter are the same profits, after having deducted all the losses. Story, Partn. § 34.

PROGRESSION, is that state of a business which is neither the commencement nor the end. Some act done after the matter has commenced and before it is completed. Plowd. 343. Vide *Consummation; Inception.*

PROHIBITION, *practice*, is the name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court. 3 Bl. Com. 112; Com. Dig. h. t.; Bac. Ab. h. t.; Saund. Index, h. t.; Vin. Ab. h. t.; 2 Sell. Pr. 308; Ayliffe's Parerg. 434; 2 Hen. Bl. 533. The writ of prohibition may also be issued when, having jurisdiction, the court has attempted to proceed by rules differing from those which ought to be observed. Bull. N. P. 219; or when by the exercise of its jurisdiction, the inferior court would defeat a legal right. 2 Chit. Pr. 355.

PROJET. In international law, the draft of a proposed treaty or convention is called a projet.

PROLES. Progeny; such issue as proceeds from a lawful marriage; and, in its enlarged sense, it signifies any children.

PROLICIDE, *med. jurisp.* Medical jurists have employed this word to designate the destruction of the human offspring, and divided the subject into *fœticide*, (q. v.) or the destruction of the fœtus in utero; and *infanticide*, (q. v.) or the destruction of the new born infant. Ryan, Med. Jur. 137.

PROLOCUTOR. In the ecclesiastical law, signifies a president or chairman of a convocation.

PROLONGATION. Time added to the duration of something. When the time is lengthened during which a party is to perform a contract, the sureties of such a party are in gene-

ral discharged, unless the sureties consent to such prolongation. See *Giving time.* In the civil law the prolongation of time to the principal did not discharge the surety. Dig. 2, 14, 27; Id. 12, 1, 40.

PROMISE, *contr.*, is an engagement which the promisor contracts towards another to perform or do something to the advantage of the latter. When a promise is reduced to the form of a written agreement under seal, it is called a covenant. In order to be binding on the promisor, the promise must be made upon a sufficient consideration; when made without consideration, however it may be binding in *foro conscientiæ*, it is not obligatory in law, being *nudum pactum.* Rutherf. Inst. 85; 18 Eng. C. L. Rep. 180, note (a); Merl. Rép. h. t. When a promise is made, all that is said at the time, in relation to it, must be considered; if, therefore, a man promise to pay all he owes, accompanied by a denial that he owes any thing, no action will lie to enforce such a promise. 15 Wend. 187. And when the promise is conditional, the condition must be performed before it becomes of binding force. 7 John. 36; vide *Condition.* Promises are express or implied. Vide *Undertaking*, and 5 East, 17; 2 Leon. 224, 5; 4 B. & A. 595.

PROMISE OF MARRIAGE, is a contract mutually entered into by a man and a woman capable of contracting matrimony, that they will marry each other. When one of the contracting parties violates his or her promise to the other, the latter may support an action against the former for damages, which are sometimes very liberally given. To entitle the plaintiff to recover damages, however, the defendant must not have been incapable of making the contract at the time, and such incapacity known to the opposite party; as, if a married man were to promise to marry a woman, and he afterwards refused to do so. The canon law punished these breaches of promises by ecclesiastical censures. According to the ancient jurisprudence of France, damages could have been recovered for the inexecution of this engagement, and cases are reported which show a considerable liberality on this subject. M. Maynon, counseller in the parliament of Paris, was condemned to sixty thousand livres damages; and a M. Hebert to fourteen thousand livres. D'Héricourt, Lois Ecclesiastiques, titre du Mariage, art. 1, n. 13. By the modern law of France, damages may be recovered for the violation of this contract. In Germany and Holland damages may also be recovered. Voet, in Pandectas, tit. de sponsalibus, n. 12; Huberus, in Pandectas, eod. tit. n. 19. And the Prussian code regulates the amount of damages to be paid under a variety of circumstances. Part 1, b. 2, tit. 2. Vide 2 Chit. Pr. 52; Rosc. Civ. Ev. 193; 2 Carr. & P. 631; 4 Esp. R. 258; 1 C. & P. 350; Holt, R. 151; S. C. 3 E. C. L. R. 57.

PROMISES, *evidence.* When a defendant has been arrested, he is frequently induced to make confessions in consequence of promises made to him, that if he will tell the truth, he will be either discharged or favoured: in such a case evidence of the confession cannot be received, because being obtained by the flattery of hope, it comes in so questionable a shape, when it is to be considered evidence of guilt, that no credit ought to be given to it; 1 Leach, 263; this is the principle, but what amounts to a promise is not so easily defined. Vide *Confession.*

PROMISSORY NOTE, *contracts*, is a written promise to pay a certain sum of money, at a future time, unconditionally. In its form it usually contains a promise to pay, at

a time therein expressed, a sum of money to a certain person therein named, or to his order, for value received. It is dated and signed by the maker. It is never under seal. He who makes the promise is called the *maker*, and he to whom it is made is the payee. Bayley on Bills, 1; 3 Kent, Com. 46. Although a promissory note, in its original shape, it bears no resemblance to a bill of exchange; yet, when indorsed, it is exactly similar to one; for then it is an order by the indorser of the note upon the maker to pay to the indorsee. The indorser is as it were the drawer; the maker, the acceptor; and the indorsee, the payee. 4 Burr. 669; 4 T. R. 148; Burr. 1224. Most of the rules applicable to bills of exchange, equally affect promissory notes. No particular form is requisite to these instruments; a promise to deliver the money, or to be accountable for it, or that the payee shall have it, is sufficient. Chit. on Bills, 53, 54. There are two principal qualities essential to the validity of a note; first, that it be payable at all events, not dependent on any contingency, nor payable out of any particular fund; and, secondly, it is required that it be for the payment of money only, 10 Serg. & Rawle, 94; 4 Watts, R. 400; 11 Verm. R. 268; and not in bank notes, though it has been held differently in the state of New York. 9 Johns. R. 120; 19 Johns. R. 144. A promissory note payable to order or bearer passes by indorsement, and although a chose in action, the holder may bring suit on it in his own name. Although a simple contract, a sufficient consideration is implied from the nature of the instrument. Vide 5 Com. Dig. 133, n., 151, 472; Smith on Merc. Law, B. 3, c. 1; 4 B. & Cr. 235; 7 D. P. C. 593; 8 D. P. C. 441. Vide *Bank note; Note; Re-issuable note.*

PROMOTERS. In the English law, are those who in popular or penal actions prosecute in their own names and the king's, having part of the fines and penalties.

PROMULGATION is the order given to cause a law to be executed, and to make it public; it differs from publication, (q. v.) 1 Bl. Com. 45; Stat. 6 H. 6, c. 4.

PROMUTUUM, *civil law*, is a quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of returning him as much. Poth. De l'Usure, 3eme part. s. 1, a. 1. This contract is called *promutuum* because it has much resemblance to that of *mutuum*, (q. v.) This resemblance consists, 1st, that in both a sum of money or some fungible things are required; 2d, that in both there must be a transfer of the property in the thing; 3d, that in both there must be returned the same amount or quantity of the thing received. Poth. h. t. n. 133. But though there is this general resemblance between the two, the *mutuum* differs essentially from the *promutuum*. The former is the actual contract of the parties, made expressly, but the latter is a quasi-contract, which is the effect of an error or mistake. Ib. 134.

PRONEPOS. Great grandson.

PRONOTARY. An ancient word which signified *first notary*. The same as prothonotary. (q. v.)

PRONURUS. The wife of a great grandson.

PROOF, *practice*, is the conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged; as, *to prove*, is to determine or persuade that a thing does or does not exist. 8 Toull. n. 2; Ayl. Parerg. 442; 2 Phil. Ev. 44, n. (a).

Ayliffe defines *judicial proof* to be a clear and evident declaration or demonstration, of a matter which was before doubtful, conveyed in a judicial manner by fit and proper arguments, and likewise by all other legal methods; first, by proper arguments, such as conjectures, presumptions, indicia, and other adminicular ways and means; and, secondly, by legal method, or methods according to law, such as witnesses, public instruments and the like. Parerg. 442; Aso & Man. Inst. B. 3, t. 7.

PROPERTY, is the right and interest which a man has in lands and chattels. 6 Binn. 98; 4 Pet. 511; 17 Johns. 283; 14 East, 370; 11 East, 290, 518. It is divided into real property, (q. v.) and personal property, (q. v.) All things are not the subject of property; the sea, the air and the like cannot be appropriated; every one may enjoy them, but he has no exclusive right in them. When things are fully our own, or when all others are excluded from meddling with them, or from interfering about them; it is plain that no person besides the proprietor, who has this exclusive right, can have any claim either to use them, or to hinder him from disposing of them as he pleases; so that property, considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person, without any consideration, or even throwing them away. Rutherf. Inst. 20; Domat, liv. prél. tit. 3; Poth. Des Choses; 18 Vin. Ab. 63; 7 Com. Dig. 175; Com. Dig. Biens. See also 2 B. & C. 281; S. C. 9 E. C. L. R. 87; 3 D. & R. 394; 9 B. & C. 396; S. C. 17 E. C. L. R. 404; 1 C. & M. 39; 4 Call, 472; 18 Ves. 193; 6 Bing. 630.

Property is also divided, when it consists of goods and chattels, into *absolute* and *qualified*. Absolute property is that which is our own, without any qualification whatever; as when a man is the owner of a watch, a book, or other inanimate thing; or of a horse, a sheep, or other animal which never had its natural liberty in a wild state. Qualified property consists in the right which men have over wild animals which they have reduced to their own possession, and which are kept subject to their power; as a deer, a buffaloe, and the like, which are his own while he has possession of them, but as soon as his possession is lost, his property is gone, unless the animals, go *animo revertendi*. 2 Bl. Com. 396; 3 Binn. 546. But property in personal goods may be absolute or qualified without any relation to the nature of the subject-matter, but simply because more persons than one have an interest in it, or because the right of property is separated from the possession. A bailee of goods, though not the owner, has a qualified property in them; while the owner has the absolute property. Vide *Bailee; Bailment.*

Personal property is further divided into property in possession, and property or choses in action, (q. v.)

Property is lost, in general, in three ways, by the act of man, by the act of law, and by the act of God.

1. It is lost by the act of man by, 1st, alienation; but in order to do this, the owner must have a legal capacity to make a contract; 2d, by the voluntary abandonment of the thing; but unless the abandonment be purely voluntary the title to the property is not lost, as, if things be thrown into the sea to save the ship, the right is not lost. Poth. h. t. n. 270; 3 Toull. n. 346. But even a voluntary abandonment does not deprive the former owner from taking

possession of the thing abandoned, at any time before another takes possession of it.

2. The title to property is lost by operation of law. 1st. By the forced sale, under a lawful process, of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfil his obligations. 2d. By confiscation, or sentence of a criminal court. 3d. By prescription. 4th. By civil death. 5th. By capture of a public enemy.

3. The title to property is lost by the act of God, as, in the case of the death of slaves or animals, or in the total destruction of a thing, for example, if a house be swallowed up by an opening in the earth during an earthquake.

It is proper to observe that in some cases, the moment that the owner loses his possession, he also loses his property or right in the thing: animals *feræ naturæ*, as mentioned above, belong to the owner only while he retains the possession of them. But, in general, the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law.

PROPINQUITY. Kindred, parentage. Vide *Affinity; Consanguinity; Next of kin.*

PROPONENT, *Ecol. law.* One who propounds a thing; as "the party proponent doth allege and propound." 6 Eng. Ecclesiastical R. 356, n.

PROPOSITION. An offer to do something. Until it has been accepted, a proposition may be withdrawn by the party who makes it; and to be binding the acceptance must be in the same terms, without any variariation. Vide *Acceptance; Offer; To retract;* and 1 L. R. 190; 4 L. R. 80.

TO PROPOUND. To offer, to propose; as, the *onus probandi* in every case lies upon the party who propounds a will. 1 Curt. R. 637; 6 Eng. Eccl. R. 417.

PROPRES, *French law.* The term *propres* or *biens propres* is used to denote that property which has come to an individual from his relations, either in a direct line, ascending or descending, or from a collateral line, whether the same have come by operation of law or by devise. *Propres* is used in opposition to *acquets.* Poth. Des Propres; 2 Burge, Confl. of Laws, 61; 2 L. R. 8.

PROPRIETARY. It its strict sense this word signifies one who is master of his actions, and who has the free disposition of his property. During the colonial government of Pennsylvania, William Penn was called the proprietary. The domain which William Penn and his family had in the state, was, during the revolutionary war, divested by the act of 28th of June, 1779, from that family and vested in the commonwealth for the sum which the latter paid to them of one hundred and thirty thousand pounds sterling.

PROPRIETATE PROBANDA. See *De proprietate probanda.*

PROPRIETOR. The owner, (q v.)

PROROGATED JURISDICTION, *Scotch law*, is that jurisdiction, which by the consent of the parties, is conferred upon a judge, who, without such consent would be incompetent. Ersk. Prin. B. 1, t. 2, n. 15. At common law, when a party is entitled to some privilege or exemption from jurisdiction, he may waive it, and then the jurisdiction is complete; but the consent cannot give jurisdiction.

PROROGATION. To put off to another time. It is generally applied to the English parliament, and means the continuance of it from one day to another; it differs from adjournment which is a continuance of

it from one day to another in the same session. 1 Bl. Com. 186. In the civil law, prorogation signifies the time given to do a thing beyond the term prefixed. Dig. 2, 14, 27, 1. See *Prolongation.*

PROSCRIBED, *civil law.*—Among the Romans a man was said to be proscribed when a reward was offered for his head; but the term was more usually applied to those who were sentenced to some punishment which carried with it the consequences of civil death. Code, 9, 49.

PROSECUTION, *crim. law*, is the means adopted to bring a supposed offender to justice and punishment by due course of law. Prosecutions are carried on in the name of the government and have for their principal object the security and happiness of the people in general. Hawk. B. 2, c. 25, s. 3; Bac. Ab. Indictment, A 3. The modes most usually employed to carry them on, are by indictment, 1 Chit. Cr. Law, 132; presentment of a grand jury, Ibid. 133; coroner's inquest, Ibid. 134; and by an information. Vide Merl. Répert. mot, *Accusation.*

PROSECUTOR, *practice.* He who prosecutes another for a crime in the name of the government. Prosecutors are public or private. The public prosecutor is an officer appointed by the government to prosecute all offences; he is the attorney general or his deputy. A private prosecutor is one who prefers an accusation against a party whom he suspects to be guilty. Every man may become a prosecutor, but no man is bound except in some few of the more enormous offences, as treason, to be one; but if the prosecutor should compound a felony he will be guilty of a crime. The prosecutor has an inducement to prosecute, because he cannot, in many cases have any civil remedy until he has done his duty to society by an endeavour to bring the offender to justice. If a prosecutor act from proper motives, he will not be responsible to the party in damages, though he was mistaken in his suspicions; but if from a motive of revenge, he institute a criminal prosecution without any reasonable foundation, he may be punished by being mulct in damages, in an action for a malicious prosecution. In Pennsylvania a defendant is not bound to plead to an indictment, where there is a private prosecutor, until his name shall have been indorsed on the indictment as such, and on acquittal of the defendant, in all cases except where the charge is for a felony, the jury may direct that he shall pay the costs. Vide 1 Chit. Cr. Law, 1 to 10; 1 Phil. Ev. Index, h. t.; and the article *Informer.*

PROTECTION, *merc. law.* The name of a document generally given by notaries public, to sailors and other persons going abroad, in which is certified that the bearer therein named, is a citizen of the United States.

PROTECTION, *government*, is that benefit or safety which the government affords to the citizens.

PROTEST, *mar. law*, is a writing, attested by a justice of the peace or a consul, drawn by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing it was not owing to the neglect or misconduct of the master. Vide Marsh. Ins. 715, 716. See 1 Wash. C. C. R. 145; Id. 238; Id. 408 n.; 1 Pet. C. C. R. 119; 1 Dall. 6; Id. 10; Id. 317; 2 Dall. 196; 3 Watts & Serg. 144; 3 Binn. 228, n.; 1 Yeates, 201.

PROTEST, *legislation*, is a declaration made by one or more members of a legislative body that they do not agree with some act or reso-

lution of the body; it is usual to add the reasons which the protestants have for such a dissent.

PROTEST, *contracts*, is a notarial act, made for want of payment of a promissory note, or for want of acceptance or payment of a bill of exchange, by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, exchanges, re-exchanges, &c. There are two kinds of protest, namely, protest for non-acceptance, and protest for non-payment. When a protest is made and notice of the non-payment or non-acceptance given to the parties in proper time, they will be held responsible. 3 Kent, Com. 63; Chit. on Bills. 278; 3 Pardes. n. 418 to 441; Merl. Répert. h. t.; Com. Dig. Merchant, F 8, 9, 10; Bac. Ab. Merchant, &c. M 7.

There is also a species of protest, common in England, which is called protest for better security. It may be made when a merchant who has accepted a bill becomes insolvent, or is publicly reported to have failed in his credit, or absents himself from 'Change, before the bill he has accepted becomes due, or when the holder has any just reason to suppose it will not be paid; and on demand the acceptor refuses to give it. Notice of such protest must, as in other cases, be sent by the first post. 1 Ld. Raym. 745; Mar. 27.

In making the protest, three things are to be done, the noting; demanding acceptance or payment; or, as above, better security; and drawing up the protest. 1. The noting, (q. v.), is unknown to the law as distinguished from the protest. 2. The demand, (q. v.) which must be made by a person having authority to receive the money. 3. The drawing up of the protest, which is a mere matter of form. Vide *Acceptance; Bills of Exchange.*

PROTESTANDO, *in pleading*, is, according to Lord Coke, Co. Litt. 124, an exclusion of a conclusion. It has been more fully defined to be a saving to the party who takes it, from being concluded by any matter alleged or objected against him, upon which he cannot join issue. Plowd. 276, b; Finch's L. 359, 366; Lawes, Pl. 141. Matter on which issue may be joined, whether it be the gist of the action, plea, replication, or other pleading, cannot be taken by protestation. Plowd. Com. 276, b; although a man may take by protestation matter that he cannot plead, as in an action for taking goods of the value of one hundred dollars, the defendant may make protestation that they were not worth more than fifty dollars. It is obvious that protestation, repugnant to or inconsistent with the gist of the plea, &c. cannot be of any benefit to the party making it. Bro. Abr. tit. Protestation, pl. 1, 5. It is also idle and superfluous to make protestation of the same thing that is traversed by the plea. Plowd. 276, b; or of any matter of fact which must necessarily depend upon another fact protested against; as, to protest that A made no will, and that he made no executor, which he could not do if there was no will. Ib. The common form of making a protestando is in these words, "Because protesting that," &c. excluding such matters of the adversary's pleading as are intended to be excluded in the protestando, if it be matter of fact; or if it be against the legal sufficiency of his pleading, "Because protesting that the plea by him above pleaded in bar, or by way of reply, or rejoinder, &c. as the case may be, is wholly insufficient in law." No answer is necessary to a protestando, because it is never to be tried in the action in which it is made, but of such as is excluded from any manner of consi-

deration in that action. Lawes's Civ. Pl. 143.

Protestations are of two sorts; first, when a man pleads any thing which he dares not directly affirm, or cannot plead for fear of making his plea double; as if in conveying to himself by his plea a title to land, the defendant ought to plead divers descents from several persons, but dares not affirm that they were all seised at the time of their death; or, although he could do so, it would make his plea double to allege *two descents*, when *one* descent would be a sufficient bar, then the defendant ought to plead and allege the matter introducing the word "protesting," thus, protesting that such a one died seised, &c. and this the adverse party cannot traverse. The other sort of protestation is, when a person is to answer two matters, and yet by law he can only plead one of them, then in the beginning of his plea he may say, *protesting or not acknowledging such part of the matter to be true*, and add, "*but for plea in this behalf*," &c. and so take issue, or traverse, or plead to the other part of the matter; and by this he is not concluded by any of the rest of the matter, which he has by protestation so denied, but may afterwards take issue upon it. Reg. Plac. 70, 71; 2 Saund. 103 a, n. (1). See 1 Chit. Pl. 534; Arch. Civ. Pl. 245; Doct. Pl. 402; Com. Dig. Pleader, N; Vin. Abr. Protestation; Steph. Pl. 235.

PROTHONOTARY. The title given to an officer who officiates as principal clerk of some courts. Vin. Ab. h. t. In the ecclesiastical law, the name of prothonotary is given to an officer of the court of Rome, he is so called because he is the *first notary*; the Greek word πρῶτος signifying *primus* or first. These notaries have pre-eminence over the other notaries, and are put in the rank of prelates. There are twelve of them. Dict. de Jur. h. t.

PROTOCOL, *civil law*, *international law*. A record or register. Among the Romans, *protocollum* was a writing at the head of the first page of the paper used by the notaries or tabellions. Nov. 44. In France the minutes of notarial acts were formerly transcribed on registers which were called protocols. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, s. 1, n. 413. By the German law it signifies the minutes of any transaction. Encyc. Amer. Protocol. In the latter sense the word has of late been received into international law. Ibid.

PROTUTOR, *civil law*, is he who not being the tutor of a pupil or minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor or not. He who marries a woman who is tutrix, becomes, by the marriage, a protutor. The protutor is equally responsible as the tutor.

PROVINCE. Sometimes this signifies the district into which a country has been divided, as, the province of Canterbury, in England; the province of Languedoc, in France; sometimes it means a dependency or colony, as the province of New Brunswick; it is sometimes used figuratively to signify power or authority, as it is the province of the court to judge of the law, that of the jury, to decide on the facts.

PROVISION, *comm. law*, is the property which a drawer of a bill of exchange places in the hands of a drawee; as, for example, by remittances, or when the drawee is indebted to the drawer when the bill becomes due, provision is said to have been made. Acceptance always presumes a provision. See Code de Comm. art. 115, 116, 117.

PROVISION, *French law*. An

allowance granted by a judge to a party for his support; which is to be paid before there is a definitive judgment. In a civil case, for example, it is an allowance made to a wife who is separated from her husband. Dict. de Jurisp. h. t.

PROVISIONAL SEISURE. A term used in Louisiana, which signifies nearly the same as attachment of property. It is regulated by the Code of Practice as follows, namely:

Art. 284. The plaintiff may, in certain cases, hereafter provided, obtain the provisional seizure of the property which he holds in pledge, or on which he has a privilege, in order to secure the payment of his claim.

Art. 285. Provisional seizure may be ordered in the following cases:— 1. In executory proceedings, when the plaintiff sues on a title importing confession of judgment. 2. When a lessor prays for the seizure of furniture or property used in the house, or attached to the real estate which he has leased. 3. When a seaman, or another person, employed on board of a ship or water craft, navigating within the state, or persons having furnished materials for, or made repairs to such ship, or water craft, prays that the same may be seized, and prevented from departing, until he has been paid the amount of his claim. 4. When the proceedings are *in rem*, that is to say, against the thing itself, which stands pledged for the debt, when the property is abandoned, or in cases where the owner of the thing is unknown or absent. Vide 6 N. S. 168; 8 N. S. 320; 7 N. S. 153; 1 Martin, R. 168; 12 Martin, R. 32.

PROVISIONS, food for man; victuals. As good provisions contribute so much to the health and comfort of man, the law requires that they shall be wholesome; he who sells unwholesome provisions, may therefore be punished for a misdemeanor. 2 East, P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10; 4 M. & S. 214. And in the sale of provisions, the rule is that the seller impliedly warrants that they are wholesome. 3 Bl. Com. 166.

PROVISO, is the name of a clause inserted in an act of the legislature, a deed, a written agreement, or other instrument, which generally contains a condition that a certain thing shall or shall not be done, in order that an agreement contained in another clause shall take effect. It always implies a condition, unless subsequent words change it to a covenant; but when a proviso contains the mutual words of the parties to a deed, it amounts to a covenant. 2 Co. 72; Cro. Eliz. 242; Moore, 707; Com. on Cov. 105; Lilly's Reg. h. t.; 1 Lev. 155; a proviso differs from an exception, 1 Barn. & Ald. 99. An exception *exempts*, absolutely, from the operation of an engagement or an enactment; a proviso defeats their operation *conditionally*. An exception takes out of an engagement or enactment, something which would otherwise be part of the subject-matter of it; a proviso avoids them by way of defeasance or excuse. 8 Amer. Jurist, 242; Plowd. 361; Carter, 99; 1 Saund. 234 a, note; Lilly's Reg. h. t.; and the cases there cited. Vide, generally, Amer. Jurist, No. 16, art. 1; Bac. Ab. Conditions, A; Com. Dig. Condition, A 1, A 2; Dwar. on Stat. 660.

PROVOCATION. The act of inciting another to do something. Provocation simply, unaccompanied by a crime or misdemeanor, does not justify the person provoked to commit an assault and battery. In cases of homicide, it may reduce the offence from murder to manslaughter. The unjust provocation by a wife of her

husband, in consequence of which she suffers from his ill usage, will not entitle her to a divorce on the ground of cruelty; her remedy, in such cases, is by changing her manners. 2 Lee, R. 172; 1 Hagg. Cons. Rep. 155. Vide *Cruelty; To Persuade;* 1 Russ. on Cr. B. 3, c. 1, s. 1, page 434, and B. 3, c. 3, s. 1, page 486.

PROVOST, is a title given to the chief of some corporations or societies. In France, this title was formerly given to some presiding judges. The word is derived from the Latin *præpositus*.

PROXENETÆ, *civ. law*. Among the Romans these were persons whose functions somewhat resembled the brokers of modern commercial nations. Dig. 50, 14, 3; Domat, l. 1, t. 17, § 1, art. 1.

PROXIMITY. Kindred between two persons. Dig. 38, 16, 8.

PROXY, a person appointed in the place of another to represent him. In the ecclesiastical law, a judicial proctor, or one who is appointed to manage another man's law concerns, is called a proxy. Ayl. Parerg. The instrument by which a person is appointed so to act, is likewise called a proxy. Proxies are also annual payments, made by the parochial clergy to the bishop, &c., on visitations. Toml. Law Dictionary, h. t. Vide Rutherf. Inst. 253; Hall's Pr. 14. The right of voting at an election of an incorporated company by proxy, is not a general right, and the party claiming it, must show a special authority for that purpose. Ang. on Corp. 67–69; 1 Paige's Ch. Rep. 590; 5 Day's Rep. 329; 5 Cowen, Rep. 426.

PUBERTY, *in the civil law*, is the age in boys, after fourteen years until full age, and in girls, after twelve years until full age. Ayl. Pand. 63; Hall's Pract. 14; Toull. Dr. Civ. Fr. tom. 6, p. 100; Inst. 1, 22; Dig. 1, 7, 40, 1; Code, 5, 60, 3.

PUBLIC. By the term the *public*, is meant the whole body politic, or all the citizens of the state; sometimes it signifies the inhabitants of a particular place, as the New York public. A distinction has been made between the terms *public* and *general*, they are sometimes used as synonymous. The former term is applied strictly to that which concerns all the citizens and every member of the state; while the latter includes a lesser, though still a large portion of the community. Greenl. Ev. § 128. When the public interest and its rights, conflict with those of an individual, the latter must yield. Co. Litt. 181. If, for example, a road is required for public convenience, and in its course it passes on the ground occupied by a house, the latter must be torn down, however valuable it may be to the owner. In such case the law and justice require that the owner shall be fully indemnified. This term is sometimes joined to other terms, to designate those things which have a relation to the public; as, a public officer, a public road, a public passage, a public house.

PUBLIC DEBT. What is due or owing by the government. The constitution of the United States provides, art. 6, s. 1, that "all debts contracted or engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation." It has invariably been the policy since the revolution, to do justice to the creditors of the government. The public debt has sometimes been swelled to a large amount, and at other times it has been reduced to almost nothing.

PUBLIC PASSAGE. This term is synonymous with public highway, with this difference; by the latter is understood a right to pass over the land of another; by the former is meant the right of going over the

water which is on another's land. Carth. 193; Hamm. N. P. 195. See *Passage*.

PUBLICAN, *civil law*. A farmer of the public revenue; one who held a lease of some property from the public treasury. Dig. 39, 4, 1, 1; Id. 39, 4, 12, 3; Id. 39, 4, 13.

PUBLICATION, is the act by which a thing is made public. It differs from promulgation, (q. v.) and see also Toullier, Dr. Civ. Fr. Titre préliminaire, n. 59, for the difference in the meaning of these two words. Publication has different meanings. When applied to a law, it signifies the rendering public, the existence of the law; when it relates to the opening the depositions taken in a case in chancery, it means that liberty is given to the officer in whose custody the depositions of witnesses in a cause are lodged, either by consent of parties, or by the rules or orders of the court, to show the depositions openly, and to give out copies of them. Pract. Reg. 297, 1 Harr. Ch. Pr. 345; Blake's Ch. Pr. 143. When it refers to a libel, it is its communication to a second or third person, or a greater number. Holt on Libels, 254, 255, 290; Stark. on Slander, 350; Holt's N. P. Rep. 299. And when spoken of a will, it signifies that the testator has done some act from which it can be concluded that he intended the instrument to operate as his will. Cruise, Dig. tit. 38, c. 5, s. 47; 3 Atk. 161; 4 Greenl. R. 220; 3 Rawle, R. 15; Com. Dig. Estates by devise, (E 2.) Vide Com. Dig. Chancery, (Q); Id. Libel, (B 1); Ibid. Action upon the case for defamation, (G 4); Roscoe's Cr. Ev. 529; Bac. Ab. Libel, B; Hawk. P. C. B. 1, c. 73, s. 10; 3 Yeates's R. 128; 10 Johns. R. 442. As to the publication of an award, see 6 N. H. Rep. 36.

PUBLICIANA, *civil law*. The name of an action introduced by the prætor Pulicius, the object of which was to recover a thing which had been lost. Inst. 4, 6, 4; Dig. 6, 2, 1, 16 et 17. Its effects were similar to those of our action of trover.

PUDZELD, *old Engl. law*, is to be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as *Woodgeld*, (q. v.).

PUER. In its enlarged sense this word signifies a child of either sex; though in its restrained meaning it is applied to a boy only. A case once arose which turned upon this question whether a daughter could take lands under the description of *puer*, and it was decided by two judges against one that she was entitled. Dy. 337 b; in another case, it was ruled the other way. Hob. 33.

PUERILITY, *in the civil law*, commenced at the age of seven years, the end of the age of infancy, and lasted till the age of puberty, (q. v.) that is in females till the accomplishment of twelve years, and in males, till the age of fourteen years fully accomplished. Ayl. Pand. 63; the ancient Roman lawyers divided puerility into *proximus infantiæ* as it approached infancy, and into *proximus pubertati*, as it became nearer to puberty. 6 Toullier, n. 100.

PUFFER, *commerce, contracts*, is a person employed by the owner of property which is sold at auction to bid it up, and does so accordingly, for the purpose of raising the price upon bona fide bidders. This is a fraud which at the choice of the purchaser invalidates the sale. 5 Madd. R. 37, 440; 3 Madd. R. 112; 12 Ves. 483; 1 Fonb. Eq. 227, n; 2 Kent, Com. 423; 11 Serg. & Rawle, 86; Cowp. 395; 3 Ves. jun. 628; 6 T. R. 642; 2 Bro. C. C. 326; 3 T. R. 93, 95; 1 P. A. Browne, Rep. 346; 2 Hayw. R. 328; Sugd. Vend. 16; 4 Harr. & McH. 282; 2 Dev.

126; 2 Const. Rep. 821; 3 Marsh. 526.

PUIS DARREIN CONTINUANCE, *pleading*. These old French words signify *since the last continuance*. Formerly there were formal adjournments or continuances of the proceedings in a suit, for certain purposes, from one term to another; and during the interval the parties were of course out of court. When any matter arose, which was a ground of defence, since the last continuance, the defendant was allowed to plead it, which allowance was an exception to the general rule that the defendant can plead but one plea of one kind or class. By the modern practice the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended till the day arrives to which, by the ancient practice, the continuance would extend; at that day, the defendant is entitled, if any new matter of defence has arisen in the interval, to plead it, according to the ancient plan *puis darrein continuance*, before the next continuance. Pleas of this kind may be either in abatement or in bar; and may be pleaded, even after an issue joined, either in fact or in law, if the new matter has arisen after the issue was joined, and is pleaded before the next adjournment. Gould on Pl. c. 6, § 123–126; Steph. Pl. 81, 398; Lawes on Pl. 173; 1 Chit. Pl. 637; 5 Peters, Rep. 232; 3 Bl. Com. 316; Arch. Civ. Pl. 353; Bac. Ab. Pleas, Q; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Verm. 545; 11 John. 424; 1 S. & R. 310.

PUISNE, since born; the younger; as, a *puisne judge*, is an associate judge.

PUNCTUATION, *construction*. The act or method of placing points (q. v.) in a written or printed instrument. By the word point is here understood all the points in grammar, as the comma, the semicolon, the colon, and the like. All such instruments are to be construed without any regard to the punctuation; and in a case of doubt, they ought to be construed in such a manner that they may have some effect, rather than in one in which they would be nugatory. Vide Toull. liv. 3, t. 2, c. 5, n. 430; 4 T. R. 65; Barringt. on the Stat. 394, n. Vide article *Points*.

PUNISHMENT, *crim. law*, is some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanor, by the judgment and command of some lawful court.

The right of society to punish, is derived by Beccaria, Mably, and some others, from a supposed agreement which the persons who composed the primitive societies entered into, in order to keep order, and, indeed, the very existence of the state. According to others, it is the interest and duty of man to live in society; to defend this right, society may exert this principle, in order to support itself, and this it may do, whenever the acts punishable would endanger the safety of the whole. And Bentham is of opinion that the foundation of this right is laid in public utility or necessity. Delinquents are public enemies, and they must be disarmed and prevented from doing evil, or society must be destroyed. But, if the social compact has ever existed, says Livingston, its end must have been the preservation of the natural rights of the members; and, therefore the effects of this fiction are the same with those of the theory which takes abstract justice as the foundation of the right to punish; for this justice, if well considered, is that which assures to each member of the state, the free exercise of his rights. And if it should be found that utility,

the last source from which the right to punish is derived, is so intimately united to justice that it is inseparable from it in the practice of law, it will follow that every system founded on one of these principles must be supported by the others.

To attain their social end, punishments should be *exemplary*, or capable of intimidating those who might be tempted to imitate the guilty; *reformatory*, or such as should improve the condition of the convicts; *personal*, or such as are least calculated to wound the feelings or affect the rights of the relations of the guilty; *divisible*, or capable of being graduated and proportioned to the offence, and the circumstances of each case; *reparable*, on account of the fallibility of human justice.

Punishments are either corporal or not corporal. The former are death, which is usually denominated capital punishment; imprisonment, which is either with or without labour; vide *Penitentiary;* whipping, in some states, though to the honour of several of them, it is not tolerated in them; banishment and death. The punishments which are not corporal, are fines; forfeitures; suspension or deprivation of some political or civil right; deprivation of office, and being rendered incapable to hold office; compulsion to remove nuisances. The object of punishment is to reform the offender; to deter him and others from committing like offences; and to protect society. Vide 4 Bl. Com. 7; Rutherf. Inst. B. 1, ch. 18. Punishment to be just, ought to be graduated to the enormity of the offence. It should never exceed what is requisite to reform the criminal and to protect society; for whatever goes beyond this, is cruelty and revenge, the relic of a barbarous age. All the circumstances under which the offender acted should be considered. Vide *Moral Insanity*. The constitution of the United States, Amendments, art. 8, forbids the infliction of "cruel and unusual punishments." It has been well observed by the author of Principles of Penal Law, that "when the rights of human nature are not respected, those of the citizen are gradually disregarded. Those eras are in history found fatal to liberty, in which cruel punishments predominate. Lenity should be the guardian of moderate governments; severe penalties, the instruments of despotism, may give a sudden check to temporary evils, but they have a tendency to extend themselves to every class of crimes, and their frequency hardens the sentiments of the people. *Une loi rigoureuse produit des crimes.* The excess of the penalty flatters the imagination with the hope of impunity, and thus becomes an advocate with the offender for the perpetrating of the offence." Vide Théorie des Lois Criminelles, ch. 2; Bac. on Crimes and Punishments; Merl. Rép. mot Peine; Dalloz, Dict. mot Peine; and *Capital crimes.*

Punishments are infamous or not infamous. The former continue through life, unless they have been pardoned, and are not dependent on the length of time for which the party has been sentenced to suffer imprisonment; a person convicted of a felony, perjury, and other infamous crimes, cannot, therefore, be a witness, nor hold any office, although the period he may have been sentenced to imprisonment, may have expired by lapse of time. As to the effect of a pardon, vide *Pardon*. Those punishments which are not infamous, are such as are inflicted on persons for misdemeanors, such as assaults and batteries, libels, and the like. Vide *Crimes; Infamy; Penitentiary.*

PUPIL, *civil law.* One who is in his or her minority. Vide Dig. 1, 7; Id. 26, 7, 1, 2; Code, 6, 30, 18;

Dig. 50, 16, 239. One who is in ward or guardianship.

PUPILLARITY, *civil law*. That age of a person's life which included infancy and puerility, (q. v.)

PUR, a corruption of the French word *par*, by or for. It is frequently used in old French law phrases; as, pur autre vie. It is also used in the composition of words, as, purparty, purlieu, purview.

PUR AUTRE VIE, *tenures;* these old French words signify, *for another's life*. An estate is said to be *pur autre vie*, when a lease is made of lands or tenements to a man, to hold for the life of another person. 2 Bl. Com. 259; 10 Vin. Ab. 296; 2 Supp. to Ves. Jr. 41.

PURCHASE, in its most enlarged and technical sense, signifies the lawful acquisition of real estate by any means whatever, except by descent. It is thus defined by Littleton, sec. 12, "purchase is called the possession of lands or tenements that a man hath by his own deed or agreement, unto which possession he cometh, not by title of descent from any of his ancestors or cousins, but by his own deed." It follows, therefore, that not only when a man acquires an estate by buying it for a good or valuable consideration, but also when it is given or devised to him he acquires it by purchase. 2 Bl. Com. 241. There are six ways of acquiring title by purchase, namely, 1, by deed; 2, by devise; 3, by execution; 4, by prescription; 5, by possession or occupancy; 6, by escheat. In its more limited sense, purchase is applied only to such acquisitions of lands as are obtained by way of bargain and sale for money, or some other valuable consideration. Ib. Cruise, Dig. tit. 30, s. 1 to 4; 1 Dall. R. 20. In common parlance, purchase signifies the buying of real estate and of goods and chattels.

PURCHASER, *in contracts*, a buyer, a vendee. It is a general rule that all persons, capable of entering into contracts, may become purchasers both of real and personal property. But to this rule there are several exceptions. 1. There is a class of persons who are incapable of purchasing except *sub modo;* and, 2, another class, who, in consequence of their peculiar relation with regard to the owners of the thing sold, are totally incapable of becoming purchasers, while that relation exists.

1. To the first class belong, 1st, *infants* under the age of twenty-one years, who may purchase, and at their full age bind themselves by agreeing to the bargain, or waive the purchase without alleging any cause for so doing. If they do not agree to the purchase after their full age, their heirs may waive it in the same manner they themselves could have done. Cro. Jac. 320; Rolle's Ab. 731 (K); Co. Litt. 2 b; 6 Mass. R. 80; 6 John. R. 257.—2dly, *Femes covert*, who are capable of purchasing, but their husbands may disagree to the contract, and divest the whole estate; the husband may further recover back the purchase-money. 1 Ld. Raym. 224; 1 Madd. Ch. R. 258; 6 Binn. R. 429. When the husband neither agrees nor disagrees, the purchase will be valid. After the husband's death, the wife may waive the purchase without assigning any cause for it, although the husband may have agreed to it; and if, after her husband's death, she do not agree to it, her heirs may waive it. Co. Litt. 3 a; Dougl. R. 452.—3dly. *Lunatics or idiots*, who are capable of purchasing. It seems that although they recover their senses, they cannot of themselves waive the purchase; yet if, after recovering their senses, they agree to it, their heirs cannot set it aside. 2 Bl. Com. 291, and see 3 Day's R. 101. Their heirs may avoid the purchase when they die

during their lunacy or idiocy. Co. Litt. 2 b.

2. It is a general rule that trustees, 2 Bro. C. C. 400; 3 Bro. C. C. 483; 1 John. Ch. R. 36; 3 Desaus. Ch. R. 26; 3 Binn. R. 59; unless they are nominally so, to preserve contingent remainders, 11 Ves. Jr. 226; agents, 8 Bro. P. C. 42; 13 Ves. Jr. 95; Story, Ag. § 9; commissioners of bankrupts; assignees of bankrupts; solicitors to the commission, 6 Ves. jr. 630, n. b; auctioneers and creditors who have been consulted as to the mode of sale, 6 Ves. jr. 617; 2 Johns. Ch. R. 257, or any other persons who, by their connexion with the owner, or by being employed concerning his affairs, have acquired a knowledge of his property, are generally incapable of purchasing such property themselves. And so stern is the rule, that when a person cannot purchase the estate himself, he cannot buy it as agent for another, 9 Ves. Jr. 248, nor perhaps employ a third person to bid for it on behalf of a stranger, 10 Ves. Jr. 381, for no court is equal to the examination and ascertainment of the truth in a majority of such cases. 8 Ves. Jr. 345.

The obligations of the purchaser resulting from the contract of sale, are, 1, to pay the price agreed upon in the contract; 2, to take away the thing purchased, unless otherwise agreed upon; and 3, to indemnify the seller for any expenses he may have incurred to preserve it for him. Vide Sugd. on Vend. Index, h. t.; Ross on Vend. Index, h. t.; Long on Sales, Index, h. t.; 2 Supp. to Ves. jr. 449, 267, 478; Yelv. 45; 2 Ves. jr. 100; 8 Com. Dig. 349; 3 Com. Dig. 108.

PURCHASE-MONEY, is the consideration which is agreed to be paid by the purchaser of a thing in money. It is the duty of the purchaser to pay the purchase-money as agreed upon in making the contract, and, in case of conveyance of an estate before it is paid, the vendor is entitled according to the laws of England, which have been adopted in several of the states, to a lien on the estate sold for the purchase-money so remaining unpaid. This is called an equitable lien. This doctrine has been derived from the civil law, Dig. 18, 1, 19. The case of Chapman v. Tanner, 1 Vern. 267, decided in 1684, is the first where this doctrine was adopted. 7 S. & R. 73. It was strongly opposed, but it is now firmly established in England, and in the United States. 6 Yerg. R. 50; 4 Bibb, R. 239; 1 John. Ch. R. 308; 7 Wheat. R. 46, 50; 5 Monr. R. 287; 1 Har. & John. 106; 4 Har. & John. 522; 1 Call, R. 414; 1 Dana, R. 576; 5 Munf. R. 342; Dev. Eq. R. 163; 4 Hawks, R. 256; 5 Conn. 468; 2 J. J. Marsh. 330; 1 Bibb, R. 590. But the lien of the seller exists only between the parties and those having notice that the purchase-money has not been paid. 3 J. J. Marsh. 557; 3 Gill & John. 425; 6 Monr. R. 198.

PURE DEBT, in Scotland, this name is given to a debt actually due, in contradistinction to one which is to become due at a future day certain, which is called a future debt; and one, due provisionally, in a certain event, which is called a contingent debt. 1 Bell's Com. 315, 5th ed.

PURE or SIMPLE OBLIGATION, is one which is not suspended by any condition, whether it has been contracted without any condition, or, when thus contracted, the condition has been performed. Poth. Obl. n. 176.

PURGATION, is the clearing one's self of an offence charged, by denying the guilt on oath or affirmation. A man cannot purge himself of every offence, but in some which are exclusively within his own knowledge, as to his motives and intention, he may; for example, he may purge

himself of a contempt of court, when in doing the act charged, he did not intend to commit a contempt.

PURLIEU, *Engl. law.* That ground near a forest, which was free and pure from the ordinances of the forest. Cunn. L. D. h. t.

PURPARTY. That part of an estate, which having been held in common by parceners, is by partition allotted to any of them. To make purparty is to divide and sever the lands which fall to parceners. Old Nat. Br. 11.

PURPORT, *pleading.* This word means the substance of a writing, as it appears on the face of it, to the eye that reads it; it differs from tenor, (q. v.) 2 Russ. on Cr. 365; 1 Chit. Cr. Law, 235; 1 East, R. 179, and the cases in the notes.

PURPRESTURE, is, according to Lord Coke, a close or enclosure, that is, when one encroaches or makes several to himself that which ought to be in common to many. 2 Inst. 28; and see Skene, verbo Pourpresture; Glanville, lib. 9, ch. 11, p. 239, note; Spelm. Gloss. Purpresture; Hale, de Port. Mar.; Harg. Law Tracts, 84; 2 Anstr. 606; Call. on Sew. 174; Redes. Tr. 117.

PURSE. In Turkey the sum of five hundred dollars is called a purse. Merch. Dict. h. t.

PURSUER, *canon law.* The name by which the complainant or plaintiff is known in the ecclesiastical courts. 3 Eng. Eccl. R. 350.

PURVEYOR. One employed in procuring provisions. Vide Code, 1, 34.

PURVIEW. That part of an act of the legislature which begins with the words, "Be it enacted," &c. According to Cowell, this word also signifies a conditional gift or grant. It is said to be derived from the French *pourvu*, provided. It always implies a condition. Interpreter, h. t.

PUTATIVE. Reputed to be that which is not. This word is frequently used, as putative father, (q. v.), putative marriage, putative wife, and the like. And Toullier, tome 7, n. 29, uses the words putative owner, *propriétaire putatif.* Lord Kames uses the same expression. Princ. of Eq. 391.

PUTATIVE FATHER. The reputed father. This term is most usually applied to the father of a bastard child. The putative father is bound to support his children, and is entitled to the guardianship and care of them in preference to all persons but the mother. 1 Ashm. R. 55; and vide 7 East, 11; 5 Esp. R. 131; 1 B. & A. 491; Bott, P. L. 499; 1 C. & P. 268; 1 B. & B. 1; 3 Moore, R. 211; Harr. Dig. Bastards, VII.; 3 C. & P. 36.

PUTATIVE MARRIAGE. This marriage is described by jurists as "matrimonium putativum, id est, quod bonâ fide et solemnitur saltem, opinione conjugis unius justâ contractum inter personas vetitas jungi." Hertius, h. t. It is a marriage contracted in good faith, and in ignorance of the existence of those facts which constituted a legal impediment to the intermarriage. Three circumstances must concur to constitute this species of marriage. 1st. There must be a bona fides. One of the parties, at least, must have been ignorant of the impediment, not only at the time of the marriage, but must also have continued ignorant of it during his or her life, because, if he became aware of it, he was bound to separate himself from his wife. 2d. The marriage must be duly solemnized. 3d. The marriage must have been considered lawful in the estimation of the parties, or of that party who alleges the *bona fides.* A marriage in which these three circumstances concur, although null and void, will have the effect of entitling the wife, if she be in good faith, to enforce the rights

of property, which would have been competent to her if the marriage had been valid, and of rendering the children of such marriage legitimate. This species of marriage was not recognized by the civil law; it was introduced by the canon law. It is unknown to the law of the United States and in England and Ireland. In France it has been adopted by the Code Civil, art. 201, 202. In Scotland, the question has not been settled. Burge on the Confl. of Laws, 151, 2.

PUTTING IN FEAR. These words are used in the definition of a robbery from the person; the offence must have been committed by *putting in fear* the person robbed. 3 Inst. 68; 4 Bl. Com. 243. This is the circumstance which distinguishes robbery from all other larcenies. But what force must be used, or what kind of fears excited, are questions very proper for discussion. The goods must be taken *against the will*, (q. v.) of the possessor. For. 123. There must either be a putting in fear or actual violence, though both need not be positively shown; for the former will be inferred from the latter, and the latter is sufficiently implied in the former. For example, when a man is suddenly knocked down, and robbed while he is senseless, there is no fear, yet in consequence of the violence, it is presumed. 2 East, P. C. 711; 4 Binn. Rep. 379; 3 Wash. C. C. Rep. 209; 2 Chit. Cr. Law, 803.

Q.

QUACK. One who, without sufficient knowledge, study or previous preparation, and without the diploma of some college or university, undertakes to practice medicine or surgery, under the pretence that he possesses secrets in those arts, which he applies indiscrimately. He is criminally answerable for his unskilful practice, and also, civilly to his patient in certain cases. Vide *Mala praxis; Physician.*

QUADRANS, *civil law.* The fourth part of the whole. Hence the heir *ex quadrante;* that is to say, for the fourth part of the whole.

QUADRANT. In angular measures, a quadrant is equal to ninety degrees. Vide *Measure.*

QUADRIENNIUM UTILE.—*Scotch law.* The four years of a minor between his age of twenty-one and twenty-five years, are so called. During this period he is permitted to impeach contracts made against his interest previous to his arriving at the age of twenty-one years. Ersk. Pri n. B. 1, t. 7, n. 19; 1 Bell's Com. 135, 5th ed.

QUADRUPLICATION, *pleading.* Formerly this word was used instead of surrebutter. 1 Bro. Civ. Law, 469, n.

QUÆ EST EADEM, *pleading.* Which is the same. When the defendant in trespass justifies, and the matter of the plea is concluded, the trespass justified is the same as that complained of in the declaration; this clause is called *quæ est eadem.* Gould, Pl. c. 3, s. 79, 80. The form is as follows: "which are the same assaulting, beating and ill treating, the said John, in the said declaration mentioned, and whereof the said John hath above thereof complained against the said James." Vide 1 Saund. 14, 208, n. 2; 2 Ib. 5, a, n. 3; Archb. Civ. Pl. 217.

QUÆRE, *practice.* A word frequently used to denote that an inquiry ought to be made of a doubtful thing. 2 Lill. Ab. 406.

QUÆRENS NON INVENIT PLEGIUM, *practice.* The plaintiff has not found pledge. The return made by the sheriff to a writ directed to him with this clause, namely, *si A fecerit B securum de clamore suo prosequando*, when the plaintiff has neglected to find sufficient security. F. N. B. 38.

QUÆSTOR. The name of a magistrate of ancient Rome.

QUAKERS. A sect of christians. Formerly they were much persecuted on account of their peaceable principles which forbade them to bear arms, and they were refused many rights because they refused to make corporal oath. They are relieved in a great degree from the consequent penalties for refusing to bear arms; and their affirmations are every where in the United States, as is believed, taken instead of their oaths.

QUALIFICATION. Having the requisite qualities for a thing; as to be president of the United States, the candidate must possess certain qualifications. See *President of the U. S.*

QUALIFIED. This term is frequently used in law. A man has a qualified property in animals feræ naturæ, while they remain in his power, but, as soon as they regain their liberty, his property in them is lost. A man has a qualified right to recover property of which he is not the owner, but which was unlawfully taken out of his possession. But this right may be defeated by the owner bringing a suit or claiming the property. Vide *Animals; Trover.*

QUALITY, *persons.* The state or condition of a person. Two contrary qualities cannot be in the same person at the same time. Dig. 41, 10, 4. Every one is presumed to know the quality of the person with whom he is contracting. In the United States, the people happily are all upon an equality in their civil and political rights.

QUALITY, *pleading.* What distinguishes one thing from another of the same kind. It is in general necessary, when the declaration alleges an injury to the goods and chattels, or any contract relating to them, that the quality should be stated; and it is also essential, in an action for the recovery of real estate, that its quality should be shown; as, whether it consists of houses, lands, or other hereditaments, whether the lands are meadow, pasture or arable, &c. The same rule requires that, in an action for an injury to real property, the quality should be shown. Steph. Pl. 214, 215. Vide, as to the various qualities, Ayl. Pand. [60].

QUAMDIU SE BENE GESSERIT, as long as he shall behave himself well. A clause inserted in commissions, when such instruments were written in Latin, to signify the tenure by which the officer held his office.

QUANDO ACCIDERINT, *in pleading, practice.* When they may happen. When a defendant, executor, or administrator pleads *plene administravit*, the plaintiff may pray to have judgment of assets *quando acciderint.* Bull. N. P. 169; Bac. Ab. Executor, M. By taking a judgment in this form the plaintiff admits that the defendant has fully administered to that time. 1 Pet. C. C. R. 442, n. Vide 11 Vin. Ab. 379; Com. Dig. Pleader, 2 D 9.

QUANTITY, *pleading.* That which is susceptible of measure. It is a general rule that, when the declaration alleges an injury to goods and chattels, or any contract relating to them, their quantity should be stated. And in actions for the recovery of real estate, the quantity of the land should be specified. Bract. 431, a; 11 Co. 25 b, 55 a; Doct.

Pl. 85, 86; 1 East, R. 441; 8 East, R. 357; 13 East, R. 102; Steph. Pl. 314, 315.

QUANTUM MERUIT, *pleading*. As much as he has deserved. When a person employs another to do work for him, without any agreement as to his compensation, the law implies a promise from the employer to the workman that he will pay him for his services, as much as he may deserve or merit. In such case the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth such a sum of money, which the defendant has omitted to pay. This is called an assumpsit on a *quantum meruit*. 3 Bl. Com. 162, 3; 1 Vin. Ab. 346; 2 Phil. Ev. 82. When there is an express contract for a stipulated amount and mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for a quantum meruit on an implied assumpsit. 18 John. R. 169; 14 John. R. 326; 10 Serg. & Rawle, 236. Sed vide 7 Cranch, 299; Stark. R. 277; S. C. Holt's N. P. 236; 10 John. Rep. 36; 12 John. R. 374; 13 John. R. 56, 94, 359; 14 John. R. 326.

QUANTUM VALEBAT, *pleading*. As much as it was worth. When goods are sold, without specifying any price, the law implies a promise from the buyer to the seller that he will pay him for them as much as they were worth. The plaintiff may, in such case, suggest in this declaration that the defendant promised to pay him as much as the said goods were worth, and then aver they were worth so much, which the defendant has refused to pay. Vide the authorities cited under the article *Quantum meruit*.

QUARANTINE, *commerce, crim. law*, is the space of forty days, or a less quantity of time, during which the crew of a ship or vessel coming from a port or place infected or supposed to be infected with disease, are required to remain on board after their arrival, before they can be permitted to land. The object of the quarantine is to ascertain whether the crew are infected or not. To break the quarantine without legal authority is a misdemeanor. 1 Russ. on Cr. 133. In cases of insurance of ships, the insurer is responsible when the insurance extends to her being moored in port 24 hours in safety, although she may have arrived, if before the 24 hours are expired she is ordered to perform quarantine, if any accident contemplated by the policy occur. 1 Marsh. on Ins. 264.

QUARANTINE, *inheritances, rights*, is the space of forty days during which a widow has a right to remain in her late husband's principal mansion, immediately after his death. The right of the widow is also called her quarantine. In some, perhaps all the states of the United States, provision has been expressly made by statute securing to the widow this right for a greater or lesser space of time. In Massachusetts, Mass. Rev. St. 411, and New York, 4 Kent, Com. 62, the widow is entitled to the mansion house for forty days. In Ohio, for one year, Walk. Intr. 231, 324. In Alabama, Indiana, Illinois, Kentucky, Missouri, New Jersey, Rhode Island and Virginia, she may occupy till dower is assigned; in Indiana, Illinois, Kentucky, Missouri, New Jersey and Virginia, she may also occupy the plantation or messuage. In Pennsylvania the statute of 9 Hen. 3, c. 7, is in force, Rob. Dig. 176, by which it is declared that "a widow shall tarry in the chief house of her husband forty days after his death, within which her dower shall be as-

signed her." In Massachusetts the widow is entitled to support for forty days; in North Carolina for one year. Quarantine is a personal right, forfeited by implication of law, by a second marriage. Co. Litt. 32. See Ind. Rev. L. 209; 1 Virg. Rev. C. 170; Ala. L. 260; Misso. St. 229; Ill. Rev. L. 237; N. J. Rev. C. 397; 1 Ken. Rev. L. 573. See Bac. Ab. Dower, B; Co. Litt. 32, b; Id. 34, b; 2 Inst. 16, 17.

QUARE EJECIT INFRA TERMINUM. Wherefore did he eject within the term. The name of a writ which lies for a lessee, who has been turned out of his farm before the expiration of his term or lease, against the feoffee of the land, or the lessor who ejects him. This has given way to the action of ejectment. 3 Bl. Com. 207.

QUARREL. A dispute; a difference. In law, particularly in releases, which are taken most strongly against the releasor, when a man releases all quarrels he is said to release all actions, real and personal. 8 Co. 153.

QUARRY. A place whence stones are dug for the purpose of being employed in building, making roads, and the like. When a farm is let with an open quarry, the tenant may, when not restrained by his contract, take out the stone, but he has no right to *open* new quarries. Vide *Mines; Waste.*

QUART, *measures.* A quart is a liquid measure containing one-fourth part of a gallon.

QUARTER. A measure of length, equal to four inches. Vide *Measure.*

TO QUARTER. A barbarous punishment formerly inflicted on criminals by tearing them to pieces by means of four horses, one attached to each limb.

QUARTER DOLLAR, *money*, a silver coin of the United States of the value of twenty-five cents. It weighs one hundred and three and one-eighth grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. L. U. S. 2523, 4. Vide *Money.*

QUARTER EAGLE, *money*, a gold coin of the United States of the value of two dollars and a half. It weighs sixty-four and one-half grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of alloy. Act of January 18, 1837, s. 8 and 10, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide *Money.*

QUARTER SESSIONS. A court bearing this name, mostly invested with the trial of criminals. It takes its name from sitting quarterly or once in three months. The English courts of quarter sessions were erected during the reign of Edward III. Vide Stat. 36 Edw. 3; Crabb's Eng. L. 278.

QUARTER YEAR. In the computation of time, a quarter year consists of ninety-one days. Co. Litt. 135 b; 2 Roll. Ab. 521, l. 40; Rev. Stat. of N. Y. part 1, c. 19, t. 1, § 3.

QUARTERING OF SOLDIERS. The constitution of the United States, Amendm. art. 3, provides that "no soldier shall in time of peace be quartered, in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law." By quartering is understood boarding and lodging or either. Encycl. Amer. h. t.

TO QUASH, *practice*, is to overthrow or annul. When proceedings are clearly irregular and void the courts will quash them, both in civil and criminal cases: for example, when the array is clearly irregular, as if the jurors have been selected by persons not authorised by law, it will be quashed. In criminal cases,

when an indictment is so defective that no judgment can be given upon it, should the defendant be convicted, the court, upon application, will in general, quash it; as if it have no jurisdiction of the offence charged, or when the matter charged is not indictable. 1 Burr. 516, 543; Andr. 226. When the application to quash is made on the part of the defendant, the court generally refuses to quash the indictment when it appears some enormous crime has been committed. Com. Dig. Indictment, H; Wils. 325; 1 Salk. 372; 3 T. R. 621; 6 Mod. 42; 3 Burr. 1841; 5 Mod. 13; Bac. Abr. Indictment, K; when the application is made on the part of the prosecution, the indictment will be quashed whenever it is defective so that the defendant cannot be convicted, and the prosecution appears to be *bona fide*. If the prosecution be instituted by the attorney general, he may, in some states, enter a *nolle prosequi*, which has the same effect. 1 Dougl. 239, 240. The application should be made before plea pleaded. Leach, 11; 4 St. Tr. 232; 1 Hale, 35; Fost. 231; and before the defendant's recognizance has been forfeited. 1 Salk. 380. Vide *Cassetur Breve*.

QUASI, a Latin word in frequent use in the civil law, signifying *almost*. It marks the resemblance, and supposes a little difference between two objects. Dig. b. 11, t. 7, l. 8, § 1. Civilians use the expressions quasi-contractus, quasi-delictum, quasi-possessio, quasi-traditio, &c.

QUASI-CONTRACTUS, a term used in the civil law. A quasi-contract is the act of a person, permitted by law, by which he obligates himself towards another, or by which another binds himself to him, without any agreement between them. By article 2272 of the Civil Code of Louisiana, which is translated from article 1371 of the Code Civil, quasi contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties." In contracts, it is the consent of the contracting parties which produces the obligation: in quasi-contracts no consent is required, and the obligation arises from the law or natural equity, on the facts of the case. These acts are called quasi-contracts, because, without being contracts, they bind the parties as contracts do.

Quasi-contracts may be multiplied almost to infinity. They are, however, divided into five classes: such as relate to the voluntary and spontaneous management of the affairs of another, without authority; the administration of tutorship; the management of common property; the acquisition of an inheritance; and the payment of a sum of money or other thing by mistake, when nothing was due.

1. *Negotiorum gestio.* When a man undertakes, of his own accord, to manage the affairs of another, the person assuming the agency contracts the tacit engagement to continue it, and complete it, until the owner shall be in a condition to attend to it himself. The obligation of such a person is, 1st, to act for the benefit of the absentee; 2dly, he is commonly answerable for the slightest neglect; 3dly, he is bound to render an account of his management. Equity obliges the proprietor, whose business has been well managed, 1st, to comply with the engagements contracted by the manager in his name; 2dly, to indemnify the manager in all the engagements he has contracted; and, 3dly, to reimburse him all useful and necessary expenses.

2. Tutorship or guardianship, is

the second kind of quasi-contracts, there being no agreement between the tutor and minor.

3. When a person has the management of a common property owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi-contract which is created by his act, called *communio bonorum*.

4. The fourth class is the *aditio hæreditatis*, by which the heir is bound to pay the legatees, who cannot be said to have any contract with him or with the deceased.

5. *Indebiti solutio*, or the payment to one of what is not due to him, if made through any mistake in fact, or even in law, entitles him who made the payment to an action against the receiver for repayment, *condictio indebiti*. This action does not lie, 1, if the sum paid was due *ex equitate*, or by a natural obligation; 2, if he who made the payment knew that nothing was due, for *qui consulto dat quod non debebat, præsumitur donare*.

Each of these quasi contracts has an affinity with some contract; thus, the management of the affairs of another without authority, and tutorship, are compared to a mandate; the community of property, to a partnership; the acquisition of an inheritance, to a stipulation; and the payment of a thing which is not due, to a loan.

All persons, even infants and persons destitute of reason, who are consequently incapable of consent, may be obliged by the quasi-contract, which results from the act of another, and may also oblige others in their favour; for it is not consent which forms these obligations; they are contracted by the act of another, without any act on our part. The use of reason is indeed required in the person whose act forms the quasi-contract, but it is not required in the person by whom or in whose favour the obligations which result from it are contracted. For instance, if a person undertakes the business of an infant or a lunatic; this is a quasi-contract, which obliges the infant or the lunatic to the person undertaking his affairs, for what he has beneficially expended, and reciprocally obliges the person to give an account of his administration or management.

There is no term in the common law which answers to that of quasi-contract; many quasi-contracts may doubtless be classed among implied contracts; there is, however, a difference between them, which an example will make manifest. In case money should be paid by mistake to a minor, it may be recovered from him by the civil law, because his consent is not necessary to a quasi-contract; but by the common law, if it can be recovered, it must be upon an agreement to which the law presumes he has consented, and it is doubtful, upon principle, whether such a recovery could be had.

See generally, Just. Inst. b. 3, t. 28; Dig. b. 3, tit. 5; Ayl. Pand. b. 4; tit. 31; 1 Bro. Civil Law, 386; Ersk. Pr. Laws of Scotl. b. 3, tit. 3, s. 16; Pardessus, Dr. Com. n. 192, et seq.; Poth. Ob. n. 113, et seq.; Merlin, Rép. mot Quasi-contract; Menestrier, Leçons Elem. du Droit Civil Romain, liv. 3, tit. 28; Civil Code of Louisiana, b. 3, tit. 5; Code Civil, liv. 3, tit. 4, c. 1.

QUASI CORPORATIONS. This term is applied to such bodies or municipal societies, which though not vested with the general powers of corporations, are yet recognised by statutes, or immemorial usage as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may

be maintained by suits at law. They may be considered *qua* corporations, with limited powers, co-extensive with the duties imposed upon them by statute or usage; but restrained from a general use of the authority, which belongs to those metaphysical persons by the common law. Among quasi corporations may be ranked towns, townships, parishes, hundreds, and other political divisions of counties, which are established without an express charter of incorporation; commissioners of a county, supervisors of highways, overseers of the poor, loan officers of a county, and the like, who are invested with corporate powers *sub modo*, and for a few specified purposes only. But not such a body as the General Assembly of the Presbyterian church, which has not the capacity to sue and be sued. 4 Whart. 531. See 2 Kent, Comm. 224; Ang. on Corp. 16; 13 Mass. 192; 18 John. R. 422; 1 Cowen, R. 259, and the note; 2 Wend. R. 109; 7 Mass. R. 187; 2 Pick. R. 352; 9 Mass. Rep. 250; 1 Greenl. R. 363; 2 John. Ch. Rep. 325; 1 Cowen, 680; 4 Wharton, R. 531, 598.

QUASI-OFFENCES, *torts*, a term used in the civil law, are those acts which although not committed by the persons responsible for them, are by implication of law supposed to have been committed by their command, by other persons for whom they are answerable. They are also injuries which have been caused by one person to another, without any intention to hurt them.

Of the first class of quasi-offences are the injuries occasioned by agents or servants in the exercise of their employments. A master is, therefore liable to be sued for injuries occasioned by the neglect or unskilfulness of his servant while in the course of his employment, though the act was obviously tortious and against the master's consent; as, for fraud, deceit, or other wrongful act, 1 Salk. 280; Cro. Jac. 473; 1 Str. 653; Roll. Abr. 95, l. 15; 1 East, 106; 2 H. Bl. 442; 3 Wills. 313; 2 Bl. Rep. 845; 5 Binn. 540; sed vide, Com. Dig. tit. Action on the case for deceit, B. A master is liable for a servant's negligent driving of a carriage or navigating a ship; 1 East, 105; or for a libel inserted in a newspaper of which defendant was proprietor. 1 B. & P. 409. The master is also liable not only for the acts of those immediately employed about him, but even for the acts of a sub-agent, however remote, if committed in the course of his service, 1 Bos. & P. 404; 6 T. R. 411; and a corporate company are liable to be sued for the wrongful acts of their servants; 3 Camp. 403; when not, see 4 M. & S. 27. But the wrongful or unlawful acts must be committed in the course of the servant's employment, and while the servant is acting as such; therefore a person who hires a post-chaise is not liable for the negligence of the driver, but the action must be against the driver or owner of the chaise and horses, 5 Esp. Cas. 35; 4 Barn. & A. 409; sed vide 1 B. & P. 409.

A master is not in general liable for the criminal acts of his servant wilfully committed by him. 2 Str. 885. Neither is he liable if his servant wilfully commit an injury to another; as if a servant wilfully drive his master's carriage against another's, or ride or beat a distress damage feasant. 1 East, 106; Rep. T. Hard. 87; 3 Wils. 217; 1 Salk. 289; 2 Roll. Abr. 553; 4 B. & A. 590. In some cases, however, where it is the duty of the master to see that the servant acts correctly, he may be liable criminally for what the servant has done; as where a baker's servant introduced noxious materials in his bread. 3 M. & S.

11; Ld. Raymond, 264; 4 Camp. 12. And, on principles of public policy, a sheriff is liable civilly for the trespass, extortion or other wilful misconduct of his bailiff. 2 T. Rep. 154; 3 Wils. 317; 8 T. R. 431.

In Louisiana, the father, or after his decease, the mother is responsible for the damages occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. Code art. 2297. The curators of insane persons are answerable for the damage occasioned by those under their care. Ib. 2298. Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed; teachers and artisans, for the damage caused by their scholars and apprentices, while under their superintendence. In the above cases responsibility attaches, when the master or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it. Ib. 2299. The owner of an animal is answerable for the damage he has caused; but if the animal has been lost or strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury; except where the master has turned loose a dangerous or noxious animal; for then he must pay all the harm done without being allowed to make the abandonment. Ib. 2301.

QUASI PARTNERS. Partners of lands, goods, or chattels, who are not actual partners, are sometimes so called. Poth. De Societé, App. n. 184. Vide *Part owners*.

QUASI POSTHUMOUS CHILD, *civil law*, is one who, born during the life of his grandfather, or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his lifetime. Inst. 2, 13, 2; Dig. 28, 3, 13.

QUAY, *estates*. A wharf at which to load or land goods, sometimes spelled *key*. In its enlarged sense the word *quay*, means the whole space between the first row of houses of a city, and the sea or river. 5 L. R. 152, 215. So much of the quay as is requisite for the public use of loading and unloading vessels, is public property, and cannot be appropriated to private use, but the rest may be private property. Ibid. 201.

QUE EST MESME. Which is the same. Vide *Quæ est eadem*.

QUE ESTATE. These words literally translated signify *quem statum*, or *which estate*. At common law, it is a plea by which a man prescribes in himself and those whose estate he holds. 2 Bl. Com. 270; 18 Vin. Ab. 133–140.

QUEEN. There are several kinds of queens in some countries. 1. Queen regnant, is a woman who possesses in her own right the executive power of the country; 2, Queen consort, is the wife of a king; 3. Queen dowager, is the widow of a king. In the United States there is no one with this title.

QUERELA. An action preferred in any court of justice, in which the plaintiff was called *querens* or complainant, and his brief, complaint, or declaration, was called *querela*, Jacob's Dict. h. t.

QUESTION, *punishment, crim. law*, is a means sometimes employed, in some countries, by means of torture, to compel supposed great criminals to disclose their accomplices, or to acknowledge their crimes. This torture is called *question*, because as the unfortunate person accused is made to suffer

pain, he is *asked questions* as to his supposed crime or accomplices. The same as torture. This is unknown in the United States.

QUESTION, *evidence*, is an interrogation put to a witness, requesting him to declare the truth of certain facts as far as he knows them. Questions are either *general* or *leading*. By a *general* question is meant such an one as requires the witness to state all he knows without any suggestion being made to him, as, *who gave the blow?* A leading question is one which leads the mind of the witness to the answer, or suggests it to him, as, *did A B give the blow?* The Romans called a question, by which the fact or supposed fact which the interrogator expected, or wished to find asserted, in and by the answer made to the proposed respondent, a *suggestive* interrogation, as, *is not your name A B?* Vide *Leading Question.*

QUESTION, *practice*, is a point on which the parties are not agreed, and which is submitted to the decision of a judge or jury. When the doubt or difference arises as to what the law is on a certain state of facts, this is said to be a *legal question*, and when the party demurs, this is to be decided by the court; when it arises as to the truth or falsehood of facts, this is a *question of fact*, and is to be decided by the jury.

QUESTOR or QUÆSTOR, *civil law*. The Romans gave this title to the magistrate who kept the public treasury, and exercised various other functions. There were questors of cities, and questors in the army; the latter filled the office of general officers; there were also questors in the provinces, who possessed great power under the proctors and proconsuls.

QUI TAM, *remedies*. Who as well. When a statute imposes a penalty, for the doing or not doing an act, and gives that penalty in part to whosoever will sue for the same, and the other part to the commonwealth, or some charitable, literary, or other institution, and makes it recoverable by action, such actions are called *qui tam* actions, the plaintiff describing himself as suing *as well* for the commonwealth (for example,) as for himself. Espin. on Pen. Act. 5, 6; 1 Vin. Ab. 197; 1 Salk. ‡29 n.; Bac. Ab. h. t.

QUIA TIMET, *remedies*. Because he fears. According to Lord Coke, "there be six writs of law that may be maintained *quia timet*, before any molestation, distress or impleading; as, 1. A man may have his writ or mesne, before he be distrained; 2. A *warrantia chartæ*, before he be impleaded; 3. A *monstraverunt*, before any distress or vexation; 4. An *audita querela*, before any execution sued; 5. A *curia claudenda*, before any default of inclosure; 6. A *ne juste vexes*, before any distress or molestation. And these called *brevia anticipantia*, writs of prevention." Co. Litt. 100; and see 7 Bro. P. C. 125. These writs are generally obsolete. In chancery, when it is contemplated to prevent an expected injury, a *Bill quia timet* (q. v.) is filed. Vide 1 Fonb. 41; 18 Vin. Ab. 141. *Bill quia timet.*

QUIBBLE. A slight difficulty raised without necessity or propriety; a cavil. No justly eminent member of the bar will resort to a quibble in his argument. It is contrary to his oath, which is to be true to the court as well as to the client; and bad policy, because by resorting to it, he will lose his character as a man of probity.

QUICK WITH CHILD, or QUICKENING, *med. jurisp.* The motion of the fœtus, when felt by the

mother, is called *quickening*, and the mother is then said to be *quick with child*. 1 Beck's Med. Jurisp. 172; 1 Russ. on Cr. 553. This happens at different periods of pregnancy in different women, and in different circumstances, but most usually about the fifteenth or sixteenth week after conception. 3 Camp. Rep. 97. It is at this time that in law, life (q. v.) is said to commence. By statute, a distinction is made between a woman quick with child, and one who, though pregnant, is not so, when she is said to be privement enciente, (q. v.) 1 Bl. Com. 129. Procuring the abortion (q. v.) of a woman quick with child, is a misdemeanor. When a woman is capitally convicted, if she be enceinte, it is said by Lord Hale, 2 P. C. 413, that unless she be quick with child, it is no cause for staying execution, but that if she be enceinte, and quick with child, she may allege that fact *in retardationem executionis*. The humanity of the law of the present day would scarcely sanction the execution of a woman whose pregnancy was undisputed, although she might not be quick with child; for physiologists, perhaps not without reason, think the child is a living being from the moment of conception. 1 Beck, Med. Jur. 291.

QUID PRO QUO. This phrase signifies verbatim, *what for what*. It is applied to the consideration of a contract.

QUIDAM, some one; somebody. *French law*. This Latin word is used to express an unknown person, or one who cannot be named. A *quidam* is usually described by the features of his face, the colour of his hair, his height, his clothing, and the like, in any process which may be issued against him. Merl. Répert. h. t.; Encyclopédie, h. t. A warrant directing the officer to arrest the "associates" of persons named, without naming them, is void. 3 Munf. 458.

QUIETUS, *Eng. law*. A discharge; an acquittance. It is an instrument by the clerk of the pipe, and auditors in the exchequer, as proof of their acquittance or discharge to accountants. Cow. Int. h. t.

QUINTAL. A weight of one hundred pounds.

QUIT CLAIM, *conveyancing*. By the laws of Connecticut, it is the common practice there for the owner of land to execute a quit claim deed to a purchaser who has neither possession nor pretence of claim, and as by the laws of that state the delivery of the deed amounts to the delivery of possession, this operates as a conveyance without warranty. It is, however, essential that the land should not, at the time of the conveyance, be in the possession of a stranger, holding adversely to the title of the grantor. 1 Swift's Dig. 133; 2 N. H. R. 402; and vide *Release*.

QUIT-CLAIM, *contracts*, is a release or acquittal of a man from all claims which the releasor has against him.

QUIT RENT. A rent paid by the tenant of the freehold, by which he goes quit and free, that is, discharged from any other rent. 2 Bl. Com. 42. In England quit-rents, were rents reserved to the king or a proprietor, on an absolute grant of waste land, for which a price in gross was at first paid, and a mere nominal rent reserved as a feudal acknowledgment of tenure. Inasmuch as no rent of this description can exist in the United States, when a quit-rent is spoken of, some other interest must be intended. 5 Call, R. 364. A perpetual rent reserved on a conveyance in fee simple, is sometimes known by the name of quit-rent in Massachusetts. 1 Hill. Ab. 150. *Ground-rent; Rent*.

QUO WARRANTO, *remedies.* By what authority or warrant. The name of a writ issued in the name of a government against any person or corporation that usurps any franchise or office, commanding the sheriff of the county to summon the defendant to be and appear before the court whence the writ issued, at a time and place therein named, to show "quo warranto" he claims the franchise or office mentioned in the writ. Old Nat. Br. 149. This writ has become obsolete, having given way to informations in the nature of a quo warranto at the common law, Ang. on Corp. 469; it is authorised in Pennsylvania by legislative sanction. Act 14 June, 1836, Purd. Dig. Stroud's ed. 848. Vide 1 Vern. 156; Yelv. 190; 7 Com. Dig. 189; 17 Vin. Ab. 177. An information in the nature of a *quo warranto*, although a criminal proceeding in *form*, in substance, in a *civil* one. 1 Serg. & Rawle, 382.

QUOAD HOC, as to this; with respect to this. A term frequently used to signify, *as to the thing named*, the law is so and so.

QUOD CUM, *pleading.* It is a general rule in pleading, regulating alike every form of action, that the plaintiff shall state his complaint in positive and direct terms, and not by way of recital. "For that," is a positive allegation; "for that whereas," in Latin "quod cum," is a recital. Matter of inducement may with propriety be stated with a *quod cum*, by way of recital; being but introductory to the breach of the promise, and the supposed fraud or deceit in the defendant's non-performance of it. Therefore, where the plaintiff declared that *whereas* there was a communication and agreement concerning a horse race, and whereas in consideration that the plaintiff promised to perform his part of the agreement, the defendant promised to perform his part thereof, and then alleged the performance in the usual way; it was held that the inducement and promise were alleged certainly enough, and that the word "whereas" was as direct an affirmation as the word "although," which undoubtedly makes a good averment; and it was observed that there were two precedents in the new book of entries, and seven in the old, where a *quod cum* was used in the very clause of the promise. Ernly v. Doddington, Hard. 1. So where the plaintiff declared on a bill of exchange against the drawer, and on demurrer to the declaration, it was objected that it was with a *quod cum*, which was argumentative, and implied no direct averment; the objection was overruled, because assumpsit is an action on the case, although it might have been otherwise in trespass *vi et armis.* March v. Southwell, 2 Show. 180. The reason of this distinction is, that in assumpsit or other action on the case, the statement of the *gravamen*, or grievance, always follows some previous matter, which is introduced by the *quod cum*, and is dependent or consequent upon it; and the *quod cum* only refers to that introductory matter, which leads on to the subsequent statement, which statement is positively and directly alleged. For example, the breach in an action of assumpsit is always preceded by the allegation of the consideration or promise, or some inducement thereto, which leads on to the breach of it, which is stated positively and directly; and the previous allegations only, which introduce it, are stated with a *quod cum*, by way of recital. But in trespass *vi et armis*, the act of trespass complained of, is usually stated without any introductory matter having reference to it, or to which a *quod cum* can be referred; so that if a *quod cum* be used, there

is no positive or direct allegation of that act. Sherland v. Heaton, 2 Bulst. 214. After verdict the *quod cum* may be considered as surplusage, the defect being cured by the verdict. Horton v. Monk, 1 Browne's R. 68; Com. Dig. Pleader, C 86.

QUOD EI DEFORCEAT, *Eng. law.* The name of a writ for tenant in tail, tenant in dower, by the curtesy, or for term of life, who having lost his lands through his default, to enable him to recover them back from him who had recovered them, or from his heir. 2 Bl. Com. 193.

QUOD PERMITTAT, that he permit. *Engl. law.* The name of a writ which lies for the heir of him who is disseised of his common of pasture, against the heir of the disseisor, he being dead. Termes de la Ley.

QUOD PERMITTAT PROSTERNERE, that he give leave to demolish. *Engl. law.* The name of a writ which commands the defendant to permit the plaintiff to abate the nuisance of which complaint is made, or otherwise to appear in court and to show cause why he will not. On proof of the facts the plaintiff is entitled to have judgment to abate the nuisance and to recover damages. This proceeding, on account of its tediousness and expense, has given way to a special action on the case.

QUORUM, used substantively, signifies the number of persons belonging to a legislative assembly, a corporation, society, or other body, required to transact business; there is a difference between an act done by a definite number of persons, and one performed by an indefinite number: in the first case a majority is required to constitute a quorum, unless the law expressly directs that another number may make one; in the latter case any number who may be present may act, the majority of those present having, as in other cases, the right to act. 7 Cowen, 402; 9 B. & C. 648; Ang. on Corp. 281. Sometimes the law requires a greater number than a bare majority to form a quorum, in such case no quorum is present until such a number convene. When an authority is confided to several persons for a private purpose, all must join in the act, unless otherwise authorised. 6 John. R. 38. *Authority; Majority; Plurality.*

QUOT, *Scotch law.* The twentieth part of the movables, computed without computation of debts, was so called. Formerly the bishop was entitled, in all confirmations, to the quot of the testament. Ersk. Prin. B. 3, t. 9, n. 11.

QUOTA, is that part which each one is to bear of some expense, as, his quota of this debt; that is, his proportion of such debt.

QUOTATION, *practice*, is the allegation of some authority or case, or passage of some law, in support of a position which it is desired to establish. Quotations when properly made, assist the reader, but, when misplaced, they are inconvenient. As to the manner of quoting or citing authorities, see *Abbreviations; Citations.*

R.

RACK, *punishments*, is an engine with which to torture a supposed criminal in order to extort a confession of his supposed crime, and the names of his supposed accomplices. Unknown in the United States. This

instrument, known by the nick-name of the Duke of Exeter's daughter, was in use in England. Barr. on the Stat. 366; 12 S. & R. 227.

RACK RENT, *Engl. law*, is the full extended value of land let by lease, payable by tenant for life or years. Wood's Inst. 192.

RAIN WATER. The water which naturally falls from the clouds. No one has a right to build his house so as to cause the rain water to fall over his neighbour's land. 1 Rolle's Ab. 107; 2 Leo. 94; 1 Str. 643; Fortesc. 212; Bac. Ab. Action on the case, F; 5 Co. 101; 2 Rolle, Ab. 565, l. 10; 1 Com. Dig. Action upon the case for a nuisance, A; unless he has acquired a right by a grant or prescription. When the land remains in a state of nature, says a learned writer, and by the natural descent, the rain water would descend from the superior estate over the lower, the latter is necessarily subject to receive such water. 1 Lois des Bâtimens, 15, 16. Vide 2 Roll. 140; Dig. 39, 3.

RANGE. This word is used in the land laws of the United States to designate the order of the location of such lands, and in patents from the United States to individuals they are described as being within a certain range.

RANK. The order or place in which certain officers are placed in the army and navy, in relation to others, is called their rank. It is a maxim, that officers of an inferior rank are bound to obey all the lawful commands of their superiors, and are justified for such obedience.

RANSOM, *contracts, war*, is an agreement made between the commander of a capturing vessel with the commander of a vanquished vessel, at sea, by which the former permits the latter to depart with his vessel, and gives him a safe-conduct, in consideration of a sum of money, which the commander of the vanquished vessel, in his own name, and in the name of the owners of his vessel and cargo, promises to pay at a future time named, to the other. This contract is usually made in writing in duplicate, one of which is kept by the vanquished vessel, which is its safe-conduct; and the other by the conquering vessel which is properly called *ransom-bill*. This contract, when made in good faith, and not locally prohibited, is valid, and may be enforced. Such contracts have never been prohibited in this country. 1 Kent, Com. 105; in England they are generally forbidden. Chit. Law of Nat. 90, 91; Poth. Tr. du Dr. de Propr. n. 127. Vide 2 Bro. Civ. Law, 260; Wesk. 435; 7 Com. Dig. 201; Marsh. Ins. 431; 2 Dall. 15; 15 John. 6; 3 Burr. 1734. The money paid for the redemption of such property is also called the ransom.

RAPE, *crim. law*, is the carnal knowledge of a woman by a man forcibly and against her will. By the term man here is meant a male of the human species of the age of fourteen years and upwards, for an infant under fourteen years is supposed by law incapable of committing this offence. 1 Hale, P. C. 631; 8 C. & P. 736. It must be against the will of the woman, and, if she is under ten years of age, she is incapable of giving her consent. Stat. 18 Eliz. c. 7. Penetration, (q. v.) and emission (q. v.) are necessary to constitute the offence. 4 Chit. Bl. Com. 213, n. 8. As to the possibility or impossibility of committing a rape, and as to the signs which indicate it, see 1 Beck's Med. Jur. 111 et seq.; Ryan's Med. Jur. ch. 12; Merlin Répert, mot Viol; 1 Briand, Méd. Lég. 1ere part. c. 1, p. 66; Biessy, Manuel médico-légal, &c. p. 149; Parent Duchatellet, Da la prostitution dans la ville de Paris, c. 3, § 5;

Barr. on the Stat. 123; 9 Carr. & P. 752; 38 Eng. C. L. R. 321, n.; and *Emission; Penetration.*

RAPE, *division of a country;* in the English law, this is a district similar to that of a hundred; but oftentimes containing in it more hundreds than one.

RAPINE, *crim. law*, is almost indistinguishable from *robbery*, (q. v.) It is the felonious taking of another man's personal property, openly and by violence, against his will. The civilians define rapine to be the taking with violence, the movable property of another, with the fraudulent intent to appropriate it to one's own use. Lec. El. Dr. Rom. § 1071.

RAPPORT A SUCCESSION. A French term used in Louisiana, which is somewhat similar in its meaning to our homely term *hotchpot*. It is the reunion to the mass of the succession, of the things given by the deceased ancestor to his heir, in order that the whole may be divided among the co-heirs. The obligation to make the rapport has a triple foundation; 1. It is to be presumed that the deceased intended in making an advancement, to give only a portion of the inheritance. 2. It establishes the equality of a division, at least, with regard to the children of the same parent, who all have an equal right to the succession. 3. It preserves in families that harmony, which is always disturbed by unjust favours to one who has only an equal right. Dall. Dict. h. t. See *Advancement; Collation; Hotchpot.*

RASURE, is the scratching or scraping a writing, so as to prevent some part of it from being read. The word writing here is intended to to include printing. Vide *Addition; Erasure* and *Interlineation.* Also 8 Vin. Ab. 169; 13 Vin. Ab. 37; Bac. Ab. Evidence, F.; 4 Com. Dig. 294; 7 Id. 202.

RATE. A public valuation or assessment of every man's estate; or the ascertaining how much tax every one shall pay. Vide Pow. Mortg. Index, h. t.; Harr. Dig. h. t.

RATIFICATION, *contracts.* An agreement to adopt an act performed by another for us. Ratifications are either express or implied. The former are made in express and direct terms of assent; the latter are such as the law presumes from the acts of the principal; as if Peter buy goods for James, and the latter, knowing the fact, receive them and apply them to his own use. By ratifying a contract a man adopts the agency altogether, as well what is detrimental as that which is for his benefit, 2 Str. R. 859; 1 Atk. 128; 4 T. R. 211; 7 East, R. 164; 16 M. R. 105; 1 Ves. 509; Smith on Mer. L. 60; Story, Ag. § 250; 9 B. & Cr. 59. As a general rule, the principal has the right to elect whether he will adopt the unauthorised act or not. But having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and the principal becomes bound as if he had originally authorised the act. Story, Ag. § 250; Paley, Ag. by Lloyd, 171; 3 Chit. Com. Law, 197. The ratification of a lawful contract has a retrospective effect, and binds the principal from its date, and not only from the time of the ratification, for the ratification is equivalent to an original authority, according to the maxim, that *omnis ratihabitio mandate æquiparatur.* Poth. Ob. n. 75; Ld. Raym. 930; Comb. 450; 5 Burr. 2727; 2 H. Bl. 623; 1 B. & P. 316; 13 John. R. 367; 2 John. Cas. 424; 2 Mass. R. 106. Such ratification will, in general, relieve the agent from all responsibility on the contract, when he would otherwise have been liable. 2 Brod. & Bing. 452. See 16 Mass. R. 461; 8 Wend. R. 494; 10 Wend. R. 399;

Story, Ag. § 251. Vide *Assent*, and Ayl. Pand. *386; 18 Vin. Ab. 156; 1 Liv. on Ag. c. 2, § 4, p. 44, 47; Story on Ag. § 239; 3 Chit. Com. L. 197; Paley on Ag. by Lloyd, 324; Smith on Mer. L. 47, 60; 2 John. Cas. 424; 13 Mass. R. 178; Id. 391; Id. 379; 6 Pick. R. 198; 1 Bro. Ch. R. 101, note; S. C. Ambl. R. 770; 1 Pet. C. C. R. 72.

RATIFICATION OF TREATIES. The constitution of the United States, art. 2, s. 2, declares that the president shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur. No treaty is therefore of any validity to bind the nation unless it has been ratified by two-thirds of the members present in the senate at the time its expediency or propriety may have been discussed. Vide *Treaty*.

RATIHABITION, *contracts*,—confirmation; approbation of a contract; ratification. Vin. Ab. h. t.; *Assent*, (q. v.)

RAVISHED, *pleadings*. In indictments for rape, this technical word must be introduced, for no other word, nor any circumlocution will answer the purpose. The defendant should be charged with having "*feloniously ravished*" the prosecutrix, or woman mentioned in the indictment. Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; Hawk. B. 2, c. 25, s. 56; Cro. C. C. 37; 1 Hale, 628; 2 Hale, 184; Co. Litt. 184, n. p.; 2 Inst. 180; 1 East, P. C. 447. The words "feloniously did ravish and carnally know," imply that the act was done forcibly and against the will of the woman. 12 S. & R. 70. Vide 3 Chit. Cr. Law, 812.

RAVISHMENT, *crim. law*.—This word has several meanings. 1. It is an unlawful taking a woman, or an heir in ward. 2. It is sometimes used synonymously with rape.

REAL, is a term which is applied to land in its most enlarged signication. *Real security*, therefore, means the security of mortgages or other incumbrances affecting lands. 3 Atk. 806; S. C. 2 Ves. sen. 547.

REAL ACTIONS, are those which concern the realty only, being such by which the demandant claims title to have any lands or tenements, rents, or other hereditaments, in fee simple, fee tail, or for term of life. 3 Bl. Com. 117. Vide *Actions*. In the civil law by real actions, are meant those which arise from a right in a thing, whether it be movable or immovable.

REAL CONTRACT. *com. law*. By this term are understood contracts in respect to real property. 3 Rawle, 225.

REAL CONTRACTS, *in the civil law*, are those which require the interposition of a thing (rei,) as the subject of them; for instance, the loan for goods to be *specifically returned*. By that law, contracts are divided into those which are formed by the mere consent of the parties, and therefore are called consensual; such as sale, hiring and mandate; and those in which it is necessary that there should be something more than mere consent, such as the loan of money, deposit or pledge, which from their nature, require the delivery of the *thing*; whence they are called real. Poth. Obl. p. 1, c. 1, s. 1, art. 2.

REAL PROPERTY, is that which consist of land, and of all rights and profits arising from and annexed to land, of a permanent, immovable nature. It is usually comprised under the words, lands, tenements, and hereditaments. Real property is corporeal, or incorporeal. *Corporeal* consists wholly of substantial, permanent objects, which

may all be comprehended under the general denomination of land. There are some chattels which are so annexed to the inheritance, that they are deemed a part of it, and are called heir looms, (q. v.) Money agreed or directed to be laid out in land, is considered as real estate. Newl. on Contr. chap. 3; Fonb. Eq. B. 1, c. 6, § 9; 3 Wheat. Rep. 577. *Incorporeal* property, consists of certain inheritable rights, which are not, strictly speaking, of a corporeal nature, or land, although they are by their own nature or by use, annexed to corporeal inheritances, and are rights issuing out of them, or which concern them. These distinctions agree with the civil law. Just. Inst. 2, 2; Poth. Traité de la Communauté, part. 1, c. 2, art. 1. The incorporeal hereditaments which subsist by the laws of the several states are fewer than those recognized by the English law. In the U. States, there are fortunately no advowsons, tithes, nor dignities, as inheritances. The most common incorporeal hereditaments, are, 1, Commons; 2, Ways; 3, Offices; 4, Franchises; 5, Annuities; and 6, Rents. For authorities of what is real or personal property, see 8 Com. Dig. 564; 1 Vern. Rep. by Raithby, 4, n.; 2 Kent, Comm. 277; 3 Ib. 331; 4 Watts's R. 341; Bac. Ab. Executors, H, 3; 1 Mass. Dig. 394; 5 Mass. R. 419, and the references under the article *Personal Property*, (q. v.) and *Property*, (q. v.)

REALM. A kingdom; a country. 1 Taunt. 270; 4 Campb. 289; Rose, R. 387.

REALTY, an abstract of real, as distinguished from personalty. Realty relates to lands and tenements, rents or other hereditaments. Vide *Real Property*.

REASON. By reason is usually understood that power by which we distinguish truth from falsehood, and right from wrong; and by which we are enabled to combine means for the attainment of particular ends. Encyclopédie, h. t.; Shef. on Lun. Introd. xxvi. A man deprived of reason is not criminally responsible for his acts, nor can he enter into any contract. Reason is called the *soul of the law;* for when the reason ceases, the law itself ceases. Co. Litt. 97, 183; 1 Bl. Com. 70; 7 Toull. n. 566. In Pennsylvania, the judges are required in giving their opinions, to give the reasons upon which they are founded. A similar law exists in France, which Toullier says is one of profound wisdom, because, he says, les arrêts ne sont plus comme autre fois des oracles muets qui commandent une obéissance passive; leur autorité irréfragable pour ou contre ceux qui les ont obtenus, devient soumise à la censure de la raison, quand on prétend les ériger en règles à suivre en d'autres cas semblables, vol. 6, n. 301; judgments are not as formerly silent oracles which require a passive obedience; their irrefragable authority, for or against those who have obtained them, is submitted to the censure of reason, when it is pretended to set them up as rules to be observed in other similar cases.

REASONABLE ACT. This term signifies such an act as the law requires. When an act is unnecessary, a party will not be required to perform it as a reasonable act. 9 Price's Rep. 43; Yelv. 44; Platt. on Cov. 342, 157.

REASONABLE TIME. The English law, which, in this respect, has been adopted by us, frequently requires things to be done within a reasonable time; but what a reasonable time is, it does not define. This indefinite requisition is the source of much litigation. A bill of exchange, for example, must be presented within a reasonable time; Chitty, Bills, 197–202. An abandonment must

be made within a reasonable time after advice received of the loss. Marsh. Insurance, 589. The Commercial Code of France fixes a time in both these cases, which varies in proportion to the distance. See Code de Com. L. 1, t. 8, s. 1, § 10, art. 160; lb. L. 5, t. 10, s. 3, art. 373. Vide, generally, 6 East, 3; 7 East, 385; 3 B. & P. 599; Bayley on Bills, 239; 7 Taunt. 159, 397; 15 Pick. R. 92; 3 Watts, R. 339; 10 Wend. R. 304; 13 Wend. R. 549; 1 Hall's R. 56; 6 Wend. R. 369; Id. 443; 1 Leigh's N. P. 435; Co. Litt. 56 b.

REBATE, *mer. law.* Discount; the abatement of interest in consequence of prompt payment. Merch. Dict. h. t.

REBEL. A citizen or subject who unjustly and unlawfully takes up arms against the constituted authorities of the nation, to deprive them of the supreme power, either by resisting their lawful and constitutional orders, in some particular matter, or to impose on them conditions. Vattel, Droit des Gens, liv. 3, § 328. In another sense it signifies a refusal to obey a superior, or the commands of a court. Vide *Commission of Rebellion.*

REBELLION, *crim. law.* The taking up arms traitorously against the government; and, in another sense, rebellion signifies the forcible opposition and resistance to the laws and process lawfully issued. If the rebellion amount to treason, it is punished by the laws of the United States with death. If it be a mere resistance of process, it is generally punished by fine and imprisonment. See Dalloz, Dict. h. t.; Code Pénal, 209.

REBELLION, COMMISSION OF. Vide *Commission of Rebellion.*

REBUTTER, *pleadings.* The name of the defendant's answer to the plaintiff's surrrejoinder. It is governed by the same rules as the rejoinder, (q. v.) 6 Com. Dig. 185.

RECAPTURE, *war.* By this term is understood the recovery from the enemy, by a friendly force, of a prize by him captured. It differs from rescue, (q. v.) It seems incumbent on fellow citizens, and it is of course equally the duty of allies, to rescue each other from the enemy when there is a reasonable prospect of success. 3 Rob. Rep. 224. The recaptors are not entitled to the property captured, as if it were a new prize; the owner is entitled to it by the right of postliminium, (q. v.)

RECAPTION, *remedies*, is the act of a person who has been deprived of the custody of another, to which he is legally entitled, by which he regains the peaceable custody of such person; or of the owner of personal or real property who has been deprived of his possession, by which he retakes possession, peaceably. In each of these cases the law allows the recaption of the person or of the property, provided he can do so without occasioning a breach of the peace, or an injury to a third person who has not been a party to the wrong. 3 Inst. 134; 2 Rolle, Rep. 55, 6; Id. 208; 2 Rolle, Abr. 565; 3 Bl. Comm. 5. Recaption may be made of a person, of personal property, of real property: each of these will be separately examined.

1. The right of recaption of a person is confined to a husband, in retaking his wife; a parent, his child, of whom he has the custody; of a master, his apprentice; and, according to Blackstone, of a master, his servant; but this must be limited to a servant who assents to the recaption; in these cases, the party injured may peaceably enter the house of the wrongdoer, without a demand being first made, the outer door being open, and take and carry

away the person wrongfully detained. He may also enter peaceably into the house of a person harbouring, who was not concerned in the original abduction. 8 Bing. R. 186; S. C. 21 Engl. C. L. Rep. 265.

2. The same principles extend to the right of recaption of personal property. In this sort of recaption, too much care cannot be observed to avoid any personal injury or breach of the peace.

3. In the recaption of real estate, the owner may, in the absence of the occupier, break open the outer door of a house and take possession; but if, in regaining his possession, the party be guilty of a forcible entry and breach of the peace, he may be indicted; but the wrongdoer, or person who had no right to the possession, cannot sustain any action for such forcible regaining possession merely. 1 Chit. Pr. 646.

RECEIPT, *contracts*. A receipt is an acknowledgment in writing, that the party giving the same has received from the person therein named, the money or other thing therein specified. Although expressed to be in full of all demands, it is only prima facie evidence of what it purports to be, and upon satisfactory proof being made that it was obtained by fraud, or given either under a mistake of facts or an ignorance of law, it may be inquired into and corrected in a court of law as well as in equity. 1 Pet. C. C. R. 182; 3 Serg. & Rawle, 355; S. P. 7 Serg. & Rawle, 309; 3 Serg. & Rawle, 564, 589; 12 Serg. & Rawle, 131; 1 Sid. 44; 1 Lev. 43; 1 Saund. 285; 2 Lutw. 1173; Co. Lit. 373; 2 Stark. C. 382; 1 W. C. C. R. 328; 2 Mason's R. 541; 11 Mass. 27; 1 Johns. Cas. 145; 9 John. R. 310; 8 Johns. R. 389; 5 Johns. R. 68; 4 Har. & McH. 219; 3 Har. & McH. 433; 2 Johns. R. 378; 2 Johns. R. 319. A receipt in full, given with a full knowledge of all the circumstances, and in the absence of fraud, seems to be conclusive. 1 Esp. C. 172; Benson v. Bennet, 1 Camp. 394, n.

A receipt sometimes contains an acknowledgment of having received a thing, and also an agreement to do another. It is only *prima facie* evidence as far as the receipt goes, but it cannot be contradicted by parol evidence in any part by which the party engages to perform a contract. A bill of lading, for example, partakes of both these characters; it may be contradicted or explained as to the facts stated in the recital, as that the goods were in good order and well conditioned; but, in other respects, it cannot be contradicted in any other manner than a common written contract. 7 Mass. R. 297; 1 Bailey, R. 174; 4 Ohio, R. 334; 3 Hawks, R. 580. 1 Phil. & Am. on Ev. 388; Greenl. Ev. § 305. Vide, generally, 1 B. & C. 704; S. C. 8 E. C. L. R. 193; 2 Taunt. R. 141; 2 T. R. 366; 5 B. & A. 607; 7 E. C. L. R. 206; 3 B. & C. 421; 1 East, R. 460.

If a man by his receipt acknowledges that he has received money from an agent on account of his principal, and thereby accredits the agent with the principal to that amount, such receipt is, it seems, conclusive as to the payment by the agent. For example, the usual acknowledgment in a policy of insurance of the receipt of premium from the assured, is conclusive of the fact as between the underwriter and the assured; Dalzell v. Mair, 1 Camp. 532; although such receipt would not be so between the underwriter and the broker. And if an agent empowered to contract for sale, sell and convey land, enter into articles of agreement by which it is stipulated that the vendor shall clear, make improvements, pay the purchase-money by instal-

ments, &c., and on the completion of the covenants to be performed by him, receive from the vendor or his legal representatives, a good and sufficient warranty deed in fee for the premises, the receipt of the agent for such parts of the purchase-money as may be paid before the execution of the deed, is binding on the principal. 6 Serg. & Rawle, 146. See 11 Johns. R. 70. A receipt on the back of a bill of exchange is prima facie evidence of payment by the acceptor. Peake's C. 25. The giving of a receipt does not exclude parol evidence of payment. 4 Esp. N. P. C. 214.

In Pennsylvania it has been holden that a receipt, not under seal, to one of several joint debtors, for his proportion of the debt, discharges the rest. 1 Rawle, 391.

RECEIPTOR. In Massachusetts this name is given to the person who, on a trustee process being issued and goods attached, becomes surety to the sheriff to have them forthcoming on demand, or in time to respond the judgment, when the execution shall be issued. Upon which the goods are bailed to him. Story, Bailm. § 124, and see *Attachment; Remedies.*

TO RECEIVE. Voluntarily to take from another what is offered. A landlord, for example, could not be said to receive the key from his tenant, when the latter left it at his house without his knowledge, unless by his acts, afterwards, he should be presumed to have given his consent.

RECEIVER, *chancery practice*, is a person appointed by a court possessing chancery jurisdiction to receive the rents and profits of land, or the profits or produce of other property in dispute. The power of appointing a receiver is a discretionary power exercised by the court. The appointment is provisional, for the more speedy getting in of the estate in dispute, and securing it for the benefit of such person as may be entitled to it, and does not affect the right. 3 Atk. 564. It is not within the compass of this work to state in what cases a receiver will be appointed; on this subject, see 2 Madd. Ch. 233. The receiver is an officer of the court, and, as such, responsible for good faith and reasonable diligence. When the property is lost or injured by any negligence or dishonest execution of the trust, he is liable in damages; but he is not, as of course, responsible because there has been an embezzlement or theft. He is bound to such ordinary diligence, as belongs to a prudent and honest discharge of his duties, and such as is required of all persons who receive compensation for their services. Story, Bailm. § 620, 621; and the cases there cited. Vide, generally, 2 Madd. Ch. 232; Newl. Ch. Pr. 88; 8 Com. Dig. 890; 18 Vin. Ab. 160; 1 Supp. to Ves. jr. 455; 2 Ib. 57, 58, 74, 75, 442, 455.

RECEIVER OF STOLEN GOODS, *crim. law.* By statutory provision the receiver of stolen goods knowing them to have been stolen may be punished as the principal, in perhaps all the United States. To make this offence complete, the goods received must have been stolen, and the receiver must know that fact. It is almost always difficult to prove guilty knowledge; and that must in general be collected from circumstances. If such circumstances are proved which to a person of common understanding and prudence, and situated as the prisoner was, must have satisfied him they were stolen, this is sufficient. For example, the receipt of watches, jewellery, large quantities of money, bundles of clothes of various kinds, or personal property of any sort, to a considerable value, from boys or persons destitute of property, and without any

lawful means of acquiring them; and specially if bought at untimely hours, the mind can arrive at no other conclusion than that they were stolen. This is further confirmed if they have been bought at an undervalue, concealed, the marks defaced, and falsehood resorted to in accounting for the possession of them. Alison's Cr. Law, 330; 2 Russ. Cr. 253; 2 Chit. Cr. Law, 951; Roscoe Cr. Ev. h. t.; 1 Wheel. C. C. 202. At common law receiving stolen goods, knowing them to have been stolen, is a misdemeanor. 2 Russ. Cr. 253.

RECIDIVE. *French law.* The state of an individual who commits a crime, or misdemeanor, after having once been condemned for a crime or misdemeanor; a relapse. Many states provide, that for a second offence, the punishment shall be increased; in those cases the indictment should set forth the crime or misdemeanor as a second offence.

RECIPROCAL CONTRACT, *civil law*, is one in which the parties enter into mutual engagements. They are divided into perfect and imperfect. When they are perfectly reciprocal, the obligation of each of the parties is equally a principal part of the contract, such as sale, partnership, &c. Contracts imperfectly reciprocal are those in which the obligation of one of the parties only is a principal obligation of the contract; as, mandate, deposit, loan for use, and the like. In all reciprocal contracts the consent of the parties must be expressed. Poth. Obl. n. 9; Civil Code of Louis. art. 1758, 1759.

RECIPROCITY. Mutuality;—state, quality or character of what is reciprocal. The states of the Union are bound to many acts of reciprocity. The constitution requires that they shall deliver to each other fugitives from justice; that the records of one state, properly authenticated, shall have full credit in the other states; that the citizens of one state shall be citizens of any state into which they may remove. In some of the states, as in Pennsylvania, the rule with regard to the effect of a discharge under the insolvent laws of another state, are reciprocated; the discharges of those courts which respect the discharges of the courts of Pennsylvania, are respected in that state.

RECITAL, *contracts, pleading*, is the repetition of some former writing, or the statement of something which has been done. Touchst. 76. Recitals are used to explain those matters of fact which are necessary to make the transaction intelligible. 2 Bl. Com. 298. It is said that when a deed of defeasance recites the deed which it is meant to defeat, it must recite it truly. Cruise, Dig. tit. 32, c. 7, s. 28. In other cases it need not be so particular. 3 Penns. Rep. 324; 3 Chan. Cas. 101; Co. Litt. 352 b; Com. Dig. Fait, (E 1). A party who executes a deed reciting a particular fact is estopped from denying such fact; as, when it was recited in the condition of a bond that the obligor had received divers sums of money for the obligee which he had not brought to account, and acknowledged that a balance was due to the obligee, it was holden that the obligor was estopped to say that he had not received any money for the use of the obligee. Willes, 9, 25; Rolle's Ab. 872, 3. In pleading, when public statutes are recited, a small variance will not be fatal, where by the recital the party is not "tied up to the statute;" that is, if the conclusion be *contra formam statuti prædicti*. Sav. 42; 1 Chit. Crim. Law, 276; Esp. on Penal Stat. 106. Private statutes must be recited in pleading, and proved by an exemplified copy, unless the opposite party, by his pleading admit them. By the plea of *nul tiel record*,

the party relying on a private statute is put to prove it as recited, and a variance will be fatal. See 4 Co. 76; March, Rep. 117, pl. 193; 3 Harr. & M'Hen. 388. Vide, generally, 12 Vin. Ab. 129; 13 Vin. Ab. 417; 18 Vin. Ab. 162; 8 Com. Dig. 584; Com. Dig. Testemoigne —Evid. (B 5); 4 Binn. R. 231; 1 Dall. R. 67; 3 Binn. R. 175; 3 Yeates, R. 287; 4 Yeates, R. 362, 577; 9 Cowen, R. 86; 4 Mason, R. 268; Yelv. R. 127 a, note (1); Cruise, Dig. tit. 32, c. 20, s. 23; 5 Johns. Ch. Rep. 23; 7 Halst. R. 22; 2 Bailey's R. 101; 6 Harr. & Johns. 336; 9 Cowen's R. 271; 1 Dana's R. 327; 15 Pick. R. 68; 5 N. H. Rep. 467; 12 Pick. R. 157; Toullier in his Droit Civil Français, liv. 3, t. 3, c. 6, n. 157 et seq. has examined this subject with his usual ability. 2 Hill. Ab. c. 29, s. 30; 2 Bail. R. 430; 2 B. & A. 625; 2 Y. & J. 407; 5 Harr. & John. 164; Cov. on Conv. Ev. 298, 315; Hurl. on Bonds, 33.

RECOGNITION, *contracts*, is an acknowledgment that something which has been done by one man in the name of another, was done by authority of the latter. A recognition by the principal of the agency of another in the particular instance, or in similar instances, is evidence of the authority of the agent, so that the recognition may be either express or implied. As an instance of an implied recognition may be mentioned the case of one who subscribes policies in the name of another, and, upon a loss happening, the latter pays the amount. 1 Camp. R. 43, n. (a); 1 Esp. Cas. 61; 4 Camp. R. 88.

RECOGNITORS, *Engl. law.*—The name by which the jurors impanelled on an assize are known.

RECOGNIZANCE, *contracts*, is an obligation of record, entered into before a court or officer duly authorised for that purpose, with a condition to do some act required by law, which is therein specified. 2 Bl. Com. 341; Bro. Ab. h. t.; Dick. Just. h. t.; 1 Chit. Cr. Law, 90. Recognizances relate either to criminal or civil matters. 1. Recognizances in criminal cases, are either that the party shall appear before the proper court to answer to such charges as are or shall be made against him, that he shall keep the peace or be of good behaviour. Witnesses are also required to be bound in a recognizance to testify. 2. In civil cases recognizances are entered into by bail, conditioned that they will pay the debt, interest and costs recovered by the plaintiff under certain contingencies. There are also cases where recognizances are entered into under the authority and requirements of statutes.—As to the form. The party need not sign it, the court, judge or magistrate having authority to take the same, makes a short memorandum on the record which is sufficient. 2 Binn. R. 431; 1 Chit. Cr. Law, 90. Vide, generally, Com. Dig. Forcible Entry, (D 27); Ib. Obligation, (K); Whart. Dig. h. t.; Vin. Ab. h. t.; Rolle's Ab. h. t.; 2 Wash. C. C. Rep. 422; Ib. 29; 2 Yeates, R. 437; 1 Binn. R. 98 note; 1 Serg. & Rawle, 328; 3 Yeates, R. 93; Burn. Just. h. t.; Vin. Ab. h. t.; 2 Sell. Pract. 45.

RECOGNISOR, *contracts*, is he who enters into a recognizance.

RECOLEMENT, *in the French law*, is the reading and re-examination by a witness of a deposition, and his persistance in the same, or his making such alteration, as his better *recollection* may enable him to do, after having read his deposition. Without such re-examination the deposition is void. Poth. Procéd. Cr. s. 4, art. 4.

RECOMMENDATION. Is the giving to a person a favourable character of another. When the party giving the character has acted in good faith, he is not responsible for the injury which a third person, to whom such recommendation was given, may have sustained in consequence of it, although he was mistaken. But when the recommendation is knowingly untrue, and an injury is sustained, the party recommending is civilly responsible for damages, 3 T. R. 51; 7 Cranch, 69; whether it was done merely for the purpose of benefitting the party recommended, or the party who gives the recommendation. And in case the party recommended was a debtor to the one recommending, and it was agreed, prior to the transaction, that the former should, out of the property to be obtained by the recommendation, be paid; or in case of any other species of collusion, to cheat the person to whom the credit is given, they may both be criminally prosecuted for the conspiracy. Vide *Character*, and Fell on Guar. ch. 8; 6 Johns. R. 181; 1 Day's Ca. Er. 22; 13 Johns. R. 224.

RECOMPENSATION, *Scotch law*. When a party sues for a debt, and the defendant pleads compensation, or set-off, the plaintiff may allege a compensation on his part, and this is called a recompensation. Bell's Dict. h. t.

RECOMPENSE, a reward for services; remuneration for goods or other property. In maritime law there is a distinction between *recompense* and *restitution*, (q. v.) When goods have been lost by jettison, if at any subsequent period of the voyage the remainder of the cargo be lost, the owner of the goods lost by jettison cannot claim restitution from the owners of the other goods; but in the case of expenses incurred with a view to the general benefit, it is clear that they ought to be made good to the party, whether he be an agent employed by the master in a foreign port or the ship owner himself.

RECONCILIATION, *contracts*, is the act of bringing persons to agree together, who before had had some difference. A renewal of cohabitation between husband and wife, is proof of reconciliation, and such a reconciliation destroys the effect of a deed of separation. 4 Eccl. R. 238.

RECONDUCTION, *civ. law*. A renewing of a former lease; relocation, (q. v.) Dig. 19, 2, 13, 11; Code Nap. art. 1737–1740.

RECONVENTION, *civ. law*. An action brought by a party who is defendant against the plaintiff, before the same judge. Vide *Demand in reconvention*.

RECORD, *evidence*. A written memorial made by a public officer authorised by law to perform that function, and intended to serve as evidence of something written, said, or done. Records may be divided into those which relate to the proceedings of congress and the state legislatures—the courts of common law—the courts of chancery—and those which are made so by statutory provisions. 1. Legislative acts. The acts of congress and of the several legislatures, are the highest kind of records. The printed journals of congress have been so considered. 1 Whart. Dig. tit. Evidence, pl. 112; and see Dougl. 593; Cowp. 17.—2. The proceedings of the courts of common law are records. But every minute made by a clerk of a court for his own future guidance in making up his record, is not a record. 4 Wash. C. C. Rep. 698. —3. Proceedings in courts of chancery are said not to be, strictly speaking, records; but they are so considered. Gresley on Ev. 101.—4. The legislatures of the several

states have made the enrolment of certain deeds and other documents necessary in order to perpetuate the memory of the facts they contain, and declared that the copies thus made should have the effect of records.

By the constitution of the United States, art. 4, s. 1, it is declared that "full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state; and the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." In pursuance of this power, congress have passed several acts directing the manner of authenticating public records, which will be found under the article *Authentication*.

Numerous decisions have been made under these acts some of which are here referred to. 7 Cranch, 471; 3 Wheat. 234; 4 Cowen, 292; 1 N. H. Rep. 242; 1 Ohio Reports, 2β4; 2 Verm. R. 263; 5 John. R. 37; 4 Conn. R. 380; 9 Mass. 462; 10 Serg. & Rawle, 240; 1 Hall's N. York Rep. 155; 4 Dall. 412; 5 Serg. & Rawle, 523; 1 Pet. S. C. Rep. 352.

Vide, generally, 18 Vin. Ab. 170; 1 Phil. Ev. 288; Bac. Ab. Amendment, &c., H; 1 Kent, Com. 260; Archb. Civ. Pl. 395; Gresley on Ev. 99; Stark. Ev. Index, h. t.; Dane's Ab. Index, h. t.; Co. Litt. 260; 10 Pick. R. 72.

TO RECORD, the act of making a record. Sometimes questions arise as to when the act of recording is complete, as in the following case. A deed of real estate was acknowledged before the register of deeds and handed to him to be recorded, and at the same instant a creditor of the grantor attached the real estate; in this case it was held the act of recording was incomplete without a certificate of the acknowledgment, and wanting that, the attaching creditor had the preference. 10 Pick. Rep. 72. The fact of an instrument being recorded is held to operate as a constructive notice upon all subsequent purchasers of any estate, legal or equitable, in the same property. 1 John. Ch. R. 394. But all conveyances and deeds which may be *de facto* recorded, are not to be considered as giving notice; in order to have this effect the instruments must be such as are authorised to be recorded, and the registry must have been made in compliance with the law, otherwise the registry is to be treated as a mere nullity, and it will not affect a subsequent purchaser or encumbrancer unless he has such actual notice as would amount to a fraud. 2 Sch. & Lef. 68; 1 Sch. & Lef. 157; 4 Wheat. R. 466; 1 Binn. R. 40; 1 John. Ch. R. 300; 1 Story, Eq. Jur. § 403, 404.

RECORDARI FACIAS LOQUELAM, *English practice*. A writ commanding the sheriff, that he cause the plaint to be recorded which is in his county, without writ, between the parties, there named, of the cattle, goods, and chattels of the complainant taken and unjustly distrained as it is said, and that he have the said record before the court on a day therein named, and that he prefix the same day to the parties, that then they may be there ready to proceed in the said plaint. 2 Sell. Pr. 166.

RECORDER. 1. A judicial officer of some cities, possessing generally the powers and authority of a judge. 3 Yeates's R. 300; 4 Dall. Rep. 299; but see 1 Rep. Const. Ct. 45. Anciently, *recorder* signified to recite or testify on recollection as occasion might require what had previously passed in court, and this was the duty of the judges, thence called *recordeurs*. Steph. Plead. note 11.

—2. An officer appointed to make record or enrolment of deeds and other legal instruments, authorised by law to be recorded.

TO RECOUPE. This word is derived from the French *recouper*, to cut again. In law it signifies the right and the act of making a set-off, defalcation or discount, by the defendant to the claim of the plaintiff. 21 Wend. R. 342.

RECOVERY. A recovery in its most extensive sense, is the restoration of a former right, by the solemn judgment of a court of justice. A recovery is either *true* or *actual*, or it is *feigned* or *common*. A true recovery, usually known by the name of recovery simply, is the procuring a former right by the judgment of a court of competent jurisdiction; as, for example, when judgment is given in favour of the plaintiff when he seeks to recover a thing or a right. A common recovery is a judgment obtained in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in such suit. Bac. Tracts, 148. Common recoveries are considered as mere forms of conveyance or common assurances; although a common recovery is a fictitious suit, yet the same mode of proceeding must be pursued, and all the forms strictly adhered to, which are necessary to be observed in an adversary suit. The first thing therefore necessary to be done in suffering a common recovery is, that the person who is to be the demandant, and to whom the lands are to be adjudged, should sue out a writ or *præcipe*, against the tenant of the freehold; whence such tenant is usually called the tenant to the *præcipe*. In obedience to this writ the tenant appears in court, either in person or by his attorney; but, instead of defending the title to the land himself, he calls on some other person, who upon the original purchase is supposed to have warranted the title, and prays that the person may be called in to defend the title which he warranted, or otherwise to give the tenant lands of equal value to those he shall lose by the defect of his warranty. This is called the voucher, *vocatia*, or calling to warranty. The person thus called to warrant, who is usually called the vouchee, appears in court, is impleaded, and enters into the warranty, by which means he takes upon himself the defence of the land. The defendant then desires leave of the court to imparl, or confer with the vouchee in private, which is granted of course. Soon after the demandant returns into court, but the vouchee disappears or makes default, in consequence of which it is presumed by the court, that he has no title to the lands demanded in the writ, and therefore cannot defend them; whereupon judgment is given for the demandant, now called the recoverer, to recover the lands in question against the tenant, and for the tenant to recover against the vouchee, lands of equal value, in recompense for those so warranted by him, and now lost by his default. This is called the recompense of recovery in value; but as it is customary for the crier of the court to act, who is hence called the common vouchee, the tenant can only have a nominal, and not a real recompense, for the land thus recovered against him by the demandant. A writ of *habere facias* is then sued out, directed to the sheriff of the county in which the lands thus recovered are situated; and, on the execution and return of the writ, the recovery is completed. The recovery here described is with single voucher; but a recovery may, and is frequently suffered with double, treble, or further voucher, as the exigency of the

case may require, in which case there are several judgments against the several vouchees.

Common recoveries were invented by the ecclesiastics in order to evade the statute of mortmain, by which they were prohibited from purchasing, or receiving under the pretence of a free gift, any land or tenements whatever. They have been used in some states for the purpose of breaking the entail of estates. Vide, generally, Cruise, Digest, tit. 36; 2 Saund. 42, n. 7; 4 Kent, Com. 487; Pigot on Common Recoveries, *passim*. All the learning in relation to common recoveries is nearly obsolete, as they are out of use. Rey, a French writer, in his work, Des Institutions Judicaire de l'Angleterre, tom. ii. p. 221, points out what appears to him the absurdity of a common recovery. As to common recoveries, see 9 S. & R. 330; 3 S. & R. 435; 1 Yeates, 244; 4 Yeates, 413; 1 Whart. 139, 151; 2 Rawle, 168; 2 Halst. 47; 5 Mass. 438; 6 Mass. 328; 8 Mass. 34; 3 Harr. & John. 292.

RECREANT. Coward; a poltroon. 3 Bl. Com. 340.

RECRIMINATION, *crim. law.* An accusation made by a person accused against his accuser, either of having committed the same offence, or another. In general recrimination does not excuse the person accused, nor diminish his punishment, because the guilt of another can never excuse him. But in applications for divorce on the ground of adultery, if the party, defendant, can prove that the plaintiff or complainant has been guilty of the same offence, the divorce will not be granted. 1 Hagg. C. Rep. 144; S. C. 4 Eccl. Rep. 360. The laws of Pennsylvania contain a provision to the same effect. Vide 1 Hagg. Eccl. R. 790; 3 Hagg. Eccl. R. 77; 1 Hagg. Cons. R. 147; 2 Hagg. Cons. R. 297; Shelf. on Mar. and Div. 440; Dig. 24, 3, 39; Dig. 48, 5, 13, 5; 1 Addams, R. 411; *Compensation; Condonation; Divorce.*

RECRUIT. A newly made soldier.

RECTO. Right, (q. v.). *Breve de recto*, writ of right, (q. v.)

RECTUS IN CURIA, right in court. One who stands at the bar, and one objects any offence, or prefers any charge against him. When a person outlawed has reversed his outlawry, so that he can have the benefit of the law, he is said to be rectus in curia. Jacob, L. D. h. t.

RECUSATION, *civil law.* A plea or exception by which the defendant requires that the judge having jurisdiction of the cause, should abstain from deciding upon the ground of interest, or for a legal objection to his prejudice. A recusation is not a plea to the jurisdiction of the court, but simply to the person of the judge. It may, however, extend to all the judges, as when the party has a suit against the whole court. Poth. Procéd. Civ. 1ere part., ch. 2, s. 5. It is a personal challenge of the judge for cause. It is a maxim of every good system of law, that a man shall not be judge in his own cause. 2 L. R. 390; 6 L. R. 134. Ayl. Parerg. 451; Dict. de Jur. h. t.; Merl. Répert. h. t.; vide Jacob's Intr. to the Com. Civ. and Can. L. 11; 8 Co. 118; Dyer, 65; Dall. Dict. h. t. By recusation is also understood the challenge of jurors. Code of Practice of Louis. art. 499, 500. Recusation is also an act, of what nature soever it may be, by which a strange heir, by deeds or words, declares he will not be heir. Dig. 29, 2, 95. See, generally, 1 Hopk. Ch. R. 1; 5 Mart. Lo. R. 292; and *Challenge.*

REDDENDO SINGULA SINGULIS, *construction.* By rendering each his own; for example, when

two descriptions of property are given together in one mass, both the next of kin and the heir cannot take, unless in cases where a construction can be made, *reddendo singula singulis*, that the next of kin shall take the personal estate and the heir at law the real estate. 14 Ves. 490. Vide 11 East, 513, n.; Bac. Ab. Conditions, L.

REDDENDUM, *in contracts*, is a word used substantively, and is a clause in a deed by which the grantor reserves something new to himself out of that which he granted before, and this usually follows the *tenendum*, and is generally in these words "yielding and paying." In every good *reddendum* or reservation these things must concur; namely, 1, it must be by apt words; 2, it must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of something issuing out of another thing; 3, it must be of such thing on which the grantor may resort to distrain; 4, it must be made to one of the grantors, and not to a stranger to the deed. Vide 2 Bl. Com. 299; Co. Litt. 47; Touchs. 80; Cruise, Dig. tit. 32, c. 24, s. 1; Dane's Ab. Index, h. t.

REDEMPTION, *contracts*. The act of taking back by the seller from the buyer, a thing which had been sold subject to the right of redemption. The right of redemption then is an agreement by which the seller reserves to himself the power of taking back the thing sold by returning the price paid for it. As to the fund out of which a mortgaged estate is to be redeemed, see *Payment*. Vide *Equity of redemption*.

REDHIBITION, *civil law, and in Louisiana*. It is the avoidance of a sale on account of some vice or defect in the thing sold, which renders it absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice. Civ. Code of Lo. 2496. Redhibition is also the name of an action which the purchaser of a defective movable thing may bring to cause the sale to be annulled, and to recover the price he has paid for it. Vide Dig. 21, 1. The rule of *caveat emptor*, (q. v.) in the common law, places a purchaser in a different position from his situation under the like circumstances under the civil law; unless there is an express warranty he can seldom annul a sale or recover damages on account of a defect in the thing sold. Chitty, Contr. 133, et seq.; Sugd. Vend. 222.

REDITUS ALBI. Vide *Alba firma*.

REDITUS NIGRI. Vide *Alba Firma*.

REDRAFT, *comm. law*, is a bill of exchange drawn at the place where another bill was made payable, and where it was protested, upon the place where the first bill was drawn, or when there is no regular commercial intercourse rendering that practicable, then in the next best or most direct practicable course. 1 Bell's Com. 406, 5th ed. Vide *Re-exchange*.

REDRESS. The act of receiving satisfaction for an injury sustained. For the mode of obtaining redress, vide *Remedies*; 1 Chit. Pr. Anal. Table.

REDUBBERS, *crim. law*. Those who bought stolen cloth, and dyed it of another colour to prevent its being identified, were anciently so called. 3 Inst. 134.

RE-ENTRY, *estates*, the resuming or retaking possession of land which the party lately had.

Ground-rent deeds and leases frequently contain a clause authorising the landlord to re-enter on the non-payment of rent, or the breach of some covenant, when the estate is forfeited. Story, Eq. Jur. § 1315;

1 Fonbl. Eq. B. 1, c. 6, § 4, note (h). Forfeitures for the non-payment of rent being the most common will here alone be considered. When such a forfeiture has taken place, the lessor or his assigns have a right to repossess themselves of the demised premises. Great niceties must be observed in making such re-entry. Unless they have been dispensed with by the agreement of the parties, several things are required by law to be previously done by the landlord or reversioner to entitle him to re-enter. 1. There must be a demand of rent. Com. Dig. Rent, D 3 a; 18 Vin. Ab. 482; Bac. Ab. Rent, H.—2. The demand must be of the precise rent due, for the demand of a penny more or less will avoid the entry. Com. Dig. Rent, D 5. If a part of the rent be paid, a re-entry may be made for the part unpaid. Bac. Ab. Conditions, O 4; Co. Litt. 203; Cro. Jac. 511.—3. It must be made precisely on the day when the rent is due and payable by the lease to save the forfeiture; 7 T. R. 117; as where the lease contains a proviso that if the rent shall be behind and unpaid, for the space of thirty, or any other number of days, it must be made on the thirtieth or last day. Com. Dig. Rent, D 7; Bac. Abr. Rent, I.—4. It must be made a convenient time before sunset, that the money may be counted and a receipt given, while there is light enough reasonably to do so; therefore proof of a demand in the afternoon of the last day, without showing in what part of the afternoon it was made, and that it was towards sunset or late in the afternoon, is not sufficient. Jackson v. Harrison, 17 Johns. 66; Com. Dig. Rent, D 7; Bac. Abr. Rent, I.—5. It must be made upon the land, and at the most notorious place of it. 6 Bac. Abr. 31; 2 Roll. Abr. 428; see 16 Johns. 222. Therefore if there be a dwelling-house upon the land the demand must be made at the front door, though it is not necessary to enter the house, notwithstanding the door be open; if woodland be the subject of the lease, a demand ought to be made at the gate, or some highway leading through the woods as the most notorious. Co. Litt. 202; Com. Dig. Rent D 6.—6. Unless a place is appointed where the rent is payable, in which case a demand must be made at such place; Com. Dig. Rent, D 6; for the presumption is the tenant was there to pay it. Bac. Abr. Rent, I.—7. A demand of the rent must be made in fact, although there should be no person on the land ready to pay it. Bac. Ab. Rent, I.—8. If after these requisities have been performed by the lessor or reversioner, the tenant neglects or refuses to pay the rent, and no sufficient distress can be found on the premises, then the lessor or reversioner is to re-enter. 6 Serg. & Rawle, 151; 8 Watts, R. 51; 1 Saund. 287, n. 16. He should then openly declare, before the witnesses he may have provided for the purpose, that for the want of a sufficient distress, and because of the non-payment of the rent demanded, mentioning the amount, he re-enters and re-possesses himself of the premises.

A tender of the rent by the tenant to the lessor, made on the last day, either on or off the premises, will save the forfeiture.

It follows as a necessary inference from what has been premised, that a demand made *before or after* the last day which the lessee has to pay the rent, in order to prevent the forfeiture, or *off* the land, will not be sufficient to defeat the estate. 7 T. R. 117.

The forfeiture may be waived by the lessor, in the case of a lease for years, by his acceptance of rent, accruing since the forfeiture, provided he knew of the cause. 3 Rep. 64.

A re-entry cannot be made for non-payment of rent if there is any distrainable property on the premises, which may be taken in satisfaction of the rent, and every part of the premises must be searched. 2 Phil. Ev. 180.

The entry may be made by the lessor or reversioner himself, or by attorney, Cro. Eliz. 601; 7 T. R. 117; the entry of one joint-tenant or tenant in common, enures to the benefit of the whole. Hob. 120.

After the entry has been made, evidence of it ought to be perpetuated.

Courts of chancery will generally make the lessor account to the lessee for the profits of the estate, during the time of his being in possession; and will compel him, after he has satisfied the rent in arrear, and the costs attending his entry, and detention of the lands, to give up the possession to the lessee, and to pay him the surplus profits of the estate. 1 Co. Litt. 203 a, n. 3; 1 Lev. 170; T. Raym. 135, 158; 3 Cruise, 299, 300. See also 6 Binn. 420; 18 Ves. 60; Bac. Ab. Rent, K; 3 Call, 491; 18 Ves. 58; 2 Story, Eq. Jur. § 1315; 4 Bing. R. 178; 33 Eng. C. L. R. 312.

REEVE. The name of an ancient English officer of justice, inferior in rank to an alderman. He was a ministerial officer, appointed to execute process, keep the king's peace, and put the laws in execution. He witnessed all contracts and bargains; brought offenders to justice, and delivered them to punishment; took bail for such as were to appear at the county court, and presided at the court or folimote. He was also called *gerefa*. There were several kinds of reeves; as the *shire-gerefa*, shire-reeve or sheriff; the *heh gerefa*, or high-sheriff, tithing-reeve, burgh or borough-reeve.

RE-EXCHANGE, *contracts*, *commerce*, is the expense incurred by a bill's being dishonoured in a foreign country where it is made payable, and returned to that country in which it was made or indorsed, and there taken up; the amount of this depends upon the course of exchange between the two countries, through which the bill has been negotiated. In other words, re-exchange is the difference between the draft and re-draft. The drawer of a bill is liable for the whole amount of re-exchange occasioned by the circuitous mode of returning the bill through the various countries in which it has been negotiated, as much as for that occasioned by a direct return. Maxw. L. D. h. t.; 5 Com. Dig. 150. In some states, legislative enactments have been made which regulate damages on re-exchange. These damages are different in the several states, and this want of uniformity, if it does not create injustice, must be admitted to be a serious evil. 2 Amer. Jur. 79. See Chit. on Bills, (ed. of 1836,) 666. See *Damages on Bills of Exchange*.

REFALO, a word composed of the three initial syllables re. fa. lo., for *recordari facias loquelam*, (q. v.) 2 Sell. Pr. 160.

REFECTION, *civil law*. Reparation, re-establishment of a building. Dig. 19, 1, 6, 1.

REFEREE. A person to whom has been referred a matter in dispute, in order that he may settle it. His judgment is called an award. Vide *Arbitrator; Reference*.

REFERENCE, *contracts*. An agreement to submit to certain arbitrators, matters in dispute between two or more parties, for their decision and judgment. The persons to whom such matters are referred are sometimes called referees.

REFERENCE, *mercantile law*, is a direction or request by a party who asks a credit to the person from

whom he expects it, to call on some other person named in order to ascertain the character or mercantile standing of the former.

REFERENCE, *practice.* The act of sending any matter by a court of chancery, or one exercising equitable powers, to a master or other officer, in order that he may ascertain facts and report to the court. By reference is also understood that part of an instrument of writing where it points to another for the matters therein contained. For the effect of such reference, see 1 Pick. R. 27; 17 Mass. R. 443; 15 Pick. R. 66; 7 Halst. R. 25; 14 Wend. R. 619; 10 Conn. R. 422; 4 Greenl. R. 14, 471; 3 Greenl. R. 393; 6 Pick. R. 460; the thing referred to, is also called a reference.

REFORMATION, *criminal law*, the act of bringing back a criminal to such a sense of justice, so that he may live in society without any detriment to it. The object of the criminal law ought to be to reform the criminal, while it protects society by his punishment. One of the best attempts at reformation is the plan of solitary confinement in a penitentiary. While the convict has time to reflect, he cannot be injured by evil example or corrupt communication.

TO REFUND. To pay back by the party who has received it, to the party who has paid it, money which ought not to have been paid. On a deficiency of assets, executors and administrators cum testamento annexo, are entitled to have refunded to them legacies which they may have paid, or so much as may be necessary to pay the debts of the testator; and in order to insure this, they are generally authorised to require a refunding bond. Vide 8 Vin. Ab. 418; 18 Vin. Ab. 273; Bac. Ab. Legacies, H.

REFUSAL. The act of declining to receive or to do something. A grantee may refuse a title, vide *Assent;* one appointed executor may refuse to act as such. In some cases, a neglect to perform a duty which the party is required by law or his agreement to do, will amount to a refusal.

REGENCY, in monarchical countries, is the authority of the person invested with the right of governing the state in the name of the monarch, during his minority absence, sickness, or other inability.

REGIAM MAJESTATEM. The name of an ancient law book, ascribed to David I. of Scotland. It is, according to Dr. Robertson, a servile copy of Glanville. Robertson's Hist. of Charles V., vol. 1, note 25, p. 262; Ersk. Prin. B. 1, t. 1, n. 13.

REGICIDE. The killing of a king, and, by extension, of a queen. Théorie des Lois Criminelles, vol. 1, p. 300.

REGISTER or REGITRAR. An officer authorised by law to keep a record called a register or registry; as the register for the probate of wills.

REGISTER, *evidence.* A book containing a record of facts as they occur, kept by public authority; a register of births, marriages and burials. Although not originally intended for the purposes of evidence, public registers are in general admissible to prove the facts to which they relate. In Pennsylvania, the registry of births, &c. made by any religious society in the state, is evidence by act of assembly, but it must be proved as at common law. 6 Binn. R. 416. A copy of the register of births and deaths of the Society of Friends in England, proved before the lord mayor of London by an *ex parte* affidavit, was allowed to be given in evidence to prove the death of a person; 1 Dall. 2; and a copy of a parish register in Barba-

does, certified to be a true copy by the rector, proved by the oath of a witness, taken before the deputy secretary of the island and notary public, under his hand and seal, was held admissible to prove pedigree; the handwriting and office of the secretary being proved. 10 Serg. & Rawle, 383. In North Carolina, a parish register of births, marriages and deaths, kept pursuant to the statute of that state, is evidence of pedigree. 2 Murphey's R. 47. In Connecticut, a parish register has been received in evidence. 2 Root, R. 99. See 15 John. R. 226. Vide 1 Phil. Ev. 305; 1 Curt. R. 755; 6 Eng. Eccl. R. 452; Cov. on Conv. Ev. 304.

REGISTER FOR THE PROBATE OF WILLS. An officer in Pennsylvania, who has generally the same powers that judges of probate and surrogates have in other states, and the ordinary has in England, in admitting the wills of deceased persons to probate.

REGISTER OF WRITS. This is a book in which were entered, from time to time, and preserved in the English court of chancery, all forms of writs once issued. It was first printed and published in the reign of Henry VIII. This book is still in authority, as containing, in general, an accurate transcript of the forms of all writs as then framed, and as they ought still to be framed in modern practice. It seems, however, that a variation from the register is not conclusive against the propriety of a form, if other sufficient authority can be adduced to prove its correctness. Steph. Pl. 7, 8.

REGISTRARIUS. An ancient name given to a notary. In England this name is confined to designate the officer of some court, the records or archives of which are in his custody.

REGRATING, *crim. law*. Every practice or device by act, conspiracy, words or news to enhance the price of victuals or other merchandise, is so denominated. 3 Inst. 196; 1 Russ. on Cr. 169. In the Roman law, persons who monopolized grain, and other produce of the earth, were called *dardanarii*, and were variously punished. Dig. 47, 11, 6.

REGRESS. Returning; going back; opposed to *ingress*, (q. v.)

REGULAR AND IRREGULAR PROCESS. Regular process is that which has been lawfully issued by a court or magistrate, having competent jurisdiction. Irregular process is that which has been illegally issued. When the process is *regular*, and the defendant has been damnified, as in the case of a malicious arrest, his remedy is by action on the case, and not trespass; when it is *irregular*, the remedy is by action of trespass. If the process were *wholly* illegal or *misapplied* as to the *person* intended to be arrested, without regard to any question of fact, or whether innocent or guilty, or the existence of any debt, then the party imprisoned may legally resist the arrest and imprisonment, and may escape, be rescued, or even break prison; but if the process and imprisonment were in form legal, each of these acts would be highly punishable, however innocent the defendant might be, for he ought to submit to legal process, and obtain his release by due course of law. 1 Chit. Pr. 637; 5 East, R. 304, 308; S. C. 1 Smith's Rep. 555; 6 T. R. 234; Foster, C. L. 312; 2 Wils. 47; 1 East, P. C. 310; Hawk. B. 2, c. 19, s. 1 & 2. When a party has been arrested on process which has afterwards been set aside for irregularity, he may bring an action of trespass and recover damages as well against the attorney who issued it, as the party, though such process will justify the officer who executed it. 8 Adolph. & Ell. 449; S. C. 35 E. C. L. R. 433; 15 East, R.

615, note (c); 1 Stra. 509; 2 W. Bl. Rep. 845; 2 Conn. R. 700; 9 Conn. 141; 11 Mass. 500; 6 Greenl. 421; 3 Gill & John. 377; 1 Bailey, R. 441; 2 Litt. 234; 3 S. & R. 139; 12 John. 257; 3 Wils. 376; and vide *Malicious prosecution.*

REHABILITATION. The act by which a man is restored to his former ability, of which he had been deprived by a conviction, sentence or judgment of a competent tribunal.

REHEARING, is a second consideration which the court give to a cause, on a second argument. A rehearing takes place principally when the court has doubts on the subject to be decided; but it cannot be granted by the supreme court after the cause has been remitted to the court below to carry into effect the decree of the supreme court. 7 Wheat. 58.

RE-INSURANCE, *mar. contr.* is an insurance made by a former insurer, his executors, administrators or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance. It differs from a double insurance (q. v.) in this, that in the latter cases, the insured makes two insurances on the same risk and the same interest. The insurer on a re-insurance is answerable only to the party whom he has insured, and not to the original insured, who can have no remedy against him in case of loss, even though the original insurer become insolvent, because there is no privity of contract between them and the original insured. 3 Kent, Com. 227; Park on Ins. c. 15, p. 276; Marsh. Ins. B. 1, c. 4, s. 4.

REISSUABLE NOTES. Bank notes, which after having been once paid, may again be put into circulation, are so called. They cannot properly be called valuable securities, while in the hands of the maker, but, in an indictment, may properly be called goods and chattels. Ry. & Mood. C. C. 218; Vide 5 Mason's R. 537; 2 Russ. on Cr. 147. And such notes would fall within the description of *promissory* notes. 2 Leach, 1090, 1093; Russ. & Ry. 232. Vide *Bank note; Note; Promissory note.*

REJOINDER, *pleadings*, is the name of the defendant's answer to the plaintiff's replication. The general requisites of a rejoinder, are, 1, it must be triable; 2, it must not be double, nor will several rejoinders be allowed to the same declaration; 3, it must be certain; 4, it must be direct and positive, and not merely by way of recital or argumentative; 5, it must not be repugnant or insensible; 6, it must be conformable to, and not depart from the plea. Co. Litt. 304; 6 Com. Dig. 185; Archb. Civ. Pl. 278.

RELATION, *civil law.* The report which the judges made of the proceedings in certain suits to the prince were so called. These relations took place when the judge had no law to direct him, or when the laws were susceptible of difficulties; it was then referred to the prince who was the author of the law to give the interpretation. These reports were made in writing, and contained the pleadings of the parties, and all the proceedings, together with his opinion, and prayed the emperor to order what should be done. The ordinance of the prince thus required was called a rescript, (q. v.) The use of these relations was abolished by Justinian, Nov. 125.

RELATION, *contracts, construction.* When an act is done at one time, and it operates upon the thing as if done at another time, it is said to do so by relation; as, if a man deliver a deed as an escrow, to be delivered by the party holding it, to the grantor, on the performance of

some act, the delivery to the latter will have relation back to the first delivery. Termes de la Ley. Again, if a partner be adjudged a bankrupt, the partnership is dissolved, and such dissolution relates back to the time when the commission issued. 3 Kent, Com. 33. Vide 18 Vin. Ab. 285; 4 Com. Dig. 245; 5 Id. 339; and the article *Fiction*.

RELATIONS, *kindred*. In its most extensive signification, this term includes all the kindred of the person spoken of. In a more limited sense, it signifies those persons who are entitled as next of kin under the statute of distribution. A legacy to "relations" generally, or to "relations by blood or marriage," without enumerating any of them, will, therefore, entitle to a share, such of the testator's relatives as would be entitled under the statute of distributions in the event of intestacy. 1 Madd. Ch. R. 45; 1 Bro. C. C. 33. See the cases referred to under the word Relations, article *Construction*. Relations to either of the parties, even beyond the ninth degree, have been holden incapable to serve on juries. 3 Chit. Pr. 795, note (c). Relationship or affinity is no objection to a witness, unless in the case of husband and wife. See *Witness*.

RELATOR. A rehearser or teller; one who, by leave of court, brings an information in the nature of a *quo warranto*. At common law, strictly speaking, no such person as a relator to information is known; he being a creature of the statute 9 Anne, c. 20. In this country, even where no statute similar to that of Anne prevails, informations are allowed to be filed by private persons desirous to try their rights, in the name of the attorney general, and these are commonly called relators; though no judgment for costs can be rendered for or against them. 2 Dall. 112; 5 Mass. 231; 15 Serg. & Rawle, 127; 3 Serg. & Rawle, 52; Ang. on Corp. 470.

RELEASE. Releases are of two kinds. 1. Such as give up, discharge, or abandon a right of action. 2. Such as convey a man's interest or right to another, who has possession of it, or some estate in the same. Touch. 320; Litt. sec. 444; Nels. Ab. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Rolle's Ab. h. t.; Com. Dig. h. t.

RELEASE, *contracts*. A release is the giving or discharging of a right of action which a man has or may claim against another, or that which is his. Touchs. 320; Bac. Ab. h. t.; Co. Litt. 264 a. This kind of a release is different from that which is used for the purpose of conveying real estate. Here a mere right is surrendered, in the other case not only a right is given up, but an interest in the estate is conveyed, and becomes vested in the releasee. Releases may be considered, as to their form, their different kinds, and their effect.—1. The operative words of a release are remise, release, quitclaim, discharge and acquit; but other words will answer the purpose. Sid. 265; Cro. Jac. 696; 9 Co. 52; Show. 331.—2. Releases are either express, or releases in deed; or those arising by operation of law. An express release is one which is distinctly made in the deed; a release by operation of law, is one which though not expressly made, the law presumes in consequence of some act of the releasor; for instance, when one of several joint obligors is expressly released, the others are also released by operation of law. 3 Salk. 298; Hob. 10; Ib. 66; Noy, 62; 4 Mod. 380; 7 Johns. Rep. 207. A release may also be implied; as, if a creditor voluntarily deliver to his debtor the bond, note, or other evidence of his claim. And when the debtor is in

possession of such surety, it will be presumed that it has been delivered to him. Poth. Obl. n. 608, 609.—3. As to their effect, releases 1st, acquit the releasee; and, 2dly, enable him to be examined as a witness. 1st, Littleton says a release of all *demands* is the best and strongest release. Sect. 508. Lord Coke, on the contrary, says *claims* is a stronger word. Co. Lit. 291, b. In general the words of a release will be restrained by the particular occasion of giving it. 3 Lev. 273; 1 Show. 151; 2 Mod. 108, n.; 2 Show. 47; T. Raym. 399; 3 Mod. 277; Palm. 218; 1 Lev. 235. The reader is referred to the following cases where a construction has been given to the expressions mentioned. A release of "all actions, suits and demands," 3 Mod. 277; "all actions, debts, duties and demands," Ibid. 1 and 64; 3 Mod. 185; 8 Co. 150 b; 2 Saund. 6 a; "all demands," 5 Co. 70, b; 2 Mod. 281; 3 Mod. 278; 1 Lev. 99; Salk. 578; 2 Rolle's Rep. 20; 12 Mod. 455; 2 Conn. Rep. 120; "all actions, quarrels, trespasses," Dy. 2171 pl. 2; Cro. Jac. 487; "all errors, and all actions, suits, and writs of error whatsoever," T. Ray. 399; "all suits," 8 Co. 150; "of covenants," 5 Co. 70 b; 2dly, A release by a witness where he has an interest in the matter which is the subject of the suit; or release by the party on whose side he is interested, renders him competent. 1 Phil. Ev. 102, and the cases cited in n. (*a*). Vide 2 Chitt. R. 329; 1 D. & R. 361; Harr. Dig. h. t.

RELEASE, *estates*, is the "conveyance of a man's interest or right, which he hath unto a thing, to another that hath the possession thereof, or some estate therein." Touch. 320. The words generally used in such conveyance, are, "remised, released, and forever quit claimed."

Litt. sec. 445. Releases of land are, in respect of their operation, divided into four sorts. 1. Releases that enure by way of passing the estate, or *mitter l'estate*, (q. v.) 2. Releases that enure by way of passing the right, or *mitter le droit*. 3. Releases that enure by enlargement of the estate; and 4. Releases that enure by way of extinguishment. Vide 4 Cruise, 71; Co. Litt. 264; 2 Marsh. Decis. 185; Gilb. Ten. 72; 2 Sumn. R. 487; 10 Pick. R. 195; 10 John. R. 456; 7 Mass. R. 381; 8 Pick. R. 143; 5 Har. & John. 158; 2 N. H. Rep. 402; 5 Paige's R. 299.

RELEGATION, *civil law*.—Among the Romans relegation was a banishment to a certain place, and consequently was an interdiction of all places except the one designated. It differed from deportation (q. v.) Relegation and deportation agree in these particulars: 1, neither could be in a Roman city or province; 2, neither caused the party punished to lose his liberty. Inst. 1, 16, 2; Digest, 48, 22, 4; Code, 9, 47, 26. Relegation and deportation differed in this, 1, because deportation deprived of the right of citizenship, which was preserved notwithstanding the relegation; 2, because deportation was always perpetual, and relegation was generally for a limited time; 3, because deportation was always attended with confiscation of property, although not mentioned in the sentence; while a loss of property was not a consequence of relegation unless it was perpetual, or made a part of the sentence. Inst. 1, 12, 1 & 2; Dig. 48, 20, 7, 5; Ib. 48, 22, 1 to 7; Code, 9, 47, 8.

RELEVANCY. By this term is understood the evidence which is applicable to the issue joined; it is *relevant* when it is applicable to the issue, and ought to be admitted; it is *irrelevant*, when it does not apply;

and it ought then to be excluded. 3 Hawks, 122; 4 Litt. Rep. 272; 7 Mart. Lo. R. N. S. 198. See Greenl. Ev. § 49, et seq.; 1 Phil. Ev. 169; 11 S. & R. 134; 7 Wend. R. 359; 1 Rawle, R. 311; 3 Pet. R. 336; 5 Harr. & Johns. 51, 56; 1 Watts & Serg. 362; 6 Watts, R. 266; 1 S. & R. 298.

RELICTA VERIFICATIONE. When a judgment is confessed by *cognovit actionem*, after plea pleaded, and then the plea is withdrawn, it is called a confession or *cognovit actionem relicta verificatione*. He acknowledges the action having abandoned his plea.

RELICTION. An increase of the land by the sudden retreat of the sea or a river. Relicted lands arising from the sea and in *navigable* rivers, (q. v.) generally belong to the state; and all relicted lands of *unnavigable* rivers generally belong to the proprietor of the estate to which such rivers act as boundaries. Schultes on Aqu. Rights, 138; Ang. on Tide Wat. 75. But this reliction must be from the sea in its usual state; for if it should inundate the land, and then recede, this would be no reliction. Harg. Tr. 15. Vide Ang. on Wat. Co. 220. Reliction differs from avulsion, (q. v.) and from alluvion, (q. v.)

RELIEF, *Eng. law*. A relief was an incident to every feudal tenure, by way of fine or composition with the lord for taking up the estate which was lapsed or fallen in by the death of the last tenant. At one time the amount was arbitrary; but afterwards the relief of a knight's fee became fixed at one hundred shillings. 2 Bl. Com. 65.

RELIEF, *practice*, is that assistance which a court of chancery will lend to a party, to annul a contract tinctured with fraud, or where there has been a mistake or accident; courts of equity grant relief to all parties in cases where they have rights, *ex æquo et bono*, and modify and fashion that relief according to circumstances.

RELIGION. Vide *Christianity; Religious test*.

RELIGIOUS TEST. The constitution of the United States, art. 6, s. 3, declares that "no religious test shall ever be required as a qualification to any office, or public trust under the United States." This clause was introduced for the double purpose of satisfying the scruples of many respectable persons, who feel an invincible repugnance to any religious test or affirmation, and to cut off forever every pretence of any alliance between church and state in the national government. Story on the Const. § 1841.

RELINQUISHMENT, *practice*. A forsaking, abandoning, or giving over a right; for example, a plaintiff may relinquish a bad count in a declaration, and proceed on the good: a man may relinquish a part of his claim in order to give a court jurisdiction.

RELOCATION, *Scotch law, contracts*. To let again; to renew a lease, is called relocation. When a tenant holds over after the expiration of his lease, with the consent of his landlord, this will amount to a relocation.

REMAINDER, *estates*, is the remnant of an estate in lands or tenements expectant on a particular estate, created together with the same, at one time. Co. Litt. 143 a. Remainders are either vested or contingent. A vested remainder is one by which a present interest passes to the party, though to be enjoyed in future; and by which the estate is invariably fixed to remain to a determinate person, after the particular estate has been spent. Vide 2 Johns. R. 288; 1 Yeates, R. 340. A contingent remainder is one which

is limited to take effect on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding particular estate; in which case such remainder never can take effect. According to Mr. Fearne, contingent remainders may properly be distinguished into four sorts: 1. Where the remainder depends entirely on a contingent determination of the preceding estate itself. 2. Where the contingency on which the remainder is to take effect, is independent of the determination of the preceding estate, 3. Where the condition upon which the remainder is limited, is certain in event, but the determination of the particular estate may happen before it. 4. Where the person, to whom the remainder is limited, is not yet ascertained, or not yet in being. Fearne, 5. The pupillary substitutions of the civil law somewhat resembled contingent remainders. 1 Brown's Civ. Law, 214, n.; Burr. 1623. Vide, generally, Viner's Ab. h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; 4 Kent, Com. 189; Yelv. 1, n.; Cruise, Dig. tit. 16; 1 Supp. to Ves. jr. 184.

REMANDING A CAUSE, *practice*, is sending it back to the same court out of which it came, for the purpose of having some action on it there. March, R. 100.

REMANENT PRO DEFECTU EMPTORUM, *practice*, the return made by the sheriff to a writ of execution when he has not been able to sell the property seised, that the same *remains unsold for want of buyers:* in that case the plaintiff is entitled to a *venditioni exponas*. Com. Dig. Execution, C 8.

REMANET, *practice*. The causes which are entered for trial, and which cannot be tried during the terms are *remanets*. Lee's Dict. Trial, vii.; 1 Sell. Pr. 434; 1 Phill. Ev. 4.

REMEDY. The means employed to enforce a right or redress an injury. The importance of selecting a proper remedy is made strikingly evident by the following statement. "Recently a *common law barrister*, very eminent for his legal attainments, sound opinions, and great practice, advised that there was *no remedy whatever* against a married woman, who, having a considerable separate estate, had joined with her husband in a promissory note for 2500*l*., for a debt of her husband, because he was of opinion that the contract of a married woman is absolutely void, and referred to a decision to that effect, viz. Marshall v. Rutton, 8 T. R. 545, he not knowing, or forgetting, that in *equity*, under such circumstances, payment might have been enforced out of the separate estate. And afterwards, a very eminent *equity counsel*, equally erroneously advised, in the same case, that the remedy was *only in equity*, although it appeared upon the face of the case, *as then stated*, that, after the death of her husband, the wife had *promised* to pay, in consideration of forbearance, and upon which promise she might have been *arrested and sued at law*. If the common law counsel had properly advised proceedings in equity, or if the equity counsel had advised proceedings by arrest *at law*, upon the promise, after the death of the husband, the whole debt would have been paid. But, upon this latter opinion, a bill in chancery was filed, and so much time elapsed before decree, that a great part of the property was dissipated, and the wife escaped, with the residue, into France, and the creditor thus wholly *lost his debt*, which would have been recovered, if the proper proceedings had been adopted in the first or even second instance. This is one of the *very numerous* cases almost daily occurring, illustrative of the consequences

of the want of, at least, a *general* knowledge of *every* branch of law."

Remedies may be considered in relation to 1, the enforcement of contracts; 2, the redress of torts or injuries.

§ 1. The remedies for the enforcement of contracts are generally by action. The form of these depend upon the nature of the contract. They will be briefly considered, each separately.

1. The breach of parol or simple contracts, whether verbal or written, —express or implied—for the payment of money, or for the performance or omission of any other act, is remediable by action of assumpsit, (q. v.) This is the proper remedy, therefore, to recover money lent, paid, and had and received to the use of the plaintiff; and in some cases though the money have been received tortiously or by duress of the person or goods, it may be recovered in this form of action, as, in that case, the law implies a contract. 2 Ld. Raym. 1216; 2 Bl. R. 827; 3 Wils. R. 304; 2 T. R. 144; 3 Johns. R. 183. This action is also the proper remedy upon wagers, feigned issues, and awards when the submission is not by deed, and to recover money due on foreign judgments, 4 T. R. 493; 3 East, R. 221; 11 East, R. 124; and on by-laws, 1 B. & P. 98.

2. To recover money due and unpaid upon legal liabilities, Hob. 206; or upon simple contracts either express or implied, whether verbal or written, and upon contracts under seal or of record, Bull. N. P. 167; Com. Dig. Debt, A 9; and on statutes by a party grieved, or by a common informer, whenever the demand is for a sum certain, or is capable of being readily reduced to a certainty, 7 Mass. R. 202; 8 Mass. R. 309, 310; the remedy is by action of debt. Vide *Debt.*

3. When a covenantee has sustained damages in consequence of the non performance of a *promise under seal*, whether such promise be contained in a deed poll, indenture, or whether it be express, or implied by law from the terms of the deed; or whether the damages be liquidated or unliquidated, the proper remedy is by action of covenant. Vide *Covenant.*

4. For the detention of a chattel, which the party obtained by virtue of a contract, as a bailment, or by some other lawful means, as by finding, the owner may in general support an action of detinue, (q. v.) replevin, (q. v.) or when he has converted the property to his own use, trover and conversion, (q. v.)

§ 2. Remedies for the redress of injuries. These remedies are either public, by indictment, when the injury to the individual, or to his property affects the public; or private, when the tort is only injurious to the individual. There are three kinds of remedies, namely, 1, the *preventive;* 2, that which seeks for a *compensation;* 3, that which has for its object *punishment.*—1. The preventive, or removing, or abating remedies, are those which may be by acts of the party aggrieved, or by the intervention of legal proceedings; as, in the case of injuries to the person, or to personal or real property, defence, resistance, recaption, abatement of nuisance, and surety of the peace, or injunction in equity, and perhaps some others.—2. Remedies for compensation are those which may be either by the acts of the party aggrieved, or summarily before justices, or by arbitration, or action, or suit at law or in equity.—3. Remedies which have for their object punishments, or compensation and punishments, are either summary proceedings before magistrates, or indictment, &c. The party injured in

many cases of private injuries, which are also a public offence, as, batteries and libels, may have both remedies, a public indictment for the criminal offence, and a civil action for the private wrong. When the law gives several remedies, the party entitled to them may select that best calculated to answer his ends. Vide 2 Atk. 344; 4 Johns. Ch. R. 140; 6 Johns. Ch. Rep. 78; 2 Conn. R. 353; 10 Johns. R. 481; 9 Serg. & Rawle, 302. In felony and some other cases, the private injury is so far merged in the public crime that no action can be maintained for it, at least until after the public prosecution shall have been ended. Vide *Civil remedy*. It will be proper to consider, 1, the private remedies, as they seek the prevention of offences, compensation for committing them, and the punishment of their authors; and, 2, the public remedies, which have for their object protection and punishment.

1. *Private remedies.* When the right invaded and the injury committed are merely private, no one has a right to interfere or seek a remedy except the party immediately injured and his professional advisers. But when the remedy is even nominally public, and prosecuted in the name of the commonwealth, any one may institute the proceedings, although not privately injured. 1 Salk. 174; 1 Atk. 221; 3 M. & S. 71. Private remedies are, 1, by the act of the party, or by legal proceedings to prevent the commission or repetition of an injury, or to remove it; or 2, they are to recover compensation for the injury which has been committed.—1. The *preventive* and *removing* remedies are principally of two descriptions, namely, 1st, those by the act of the *party* himself, or of certain relations or third persons permitted by law to interfere, as with respect to the *person*, by self-defence, resistance, escape, rescue, and even prison-breaking, when the imprisonment is clearly illegal; or in case of *personal property*, by resistance or recaption; or in case of *real property*, by resistance or turning a trespasser out of his house or off his land, even with force. 1 Saund. 81, 140, note 4; or by apprehending a wrong-doer, or by re-entry and regaining possession, taking care not to commit a forcible entry, or a breach of the peace; or, in case of nuisances, public or private, by abatement; vide *Abatement of nuisances;* or remedies by distress, (q. v.); or by set-off or retainer. See as to remedies by act of the parties, 1 Dane's Ab. c. 2, p. 130.—2. When the injury is complete or continuing, the remedies to obtain *compensation* are either specific or in damages. These are summary before justices of the peace or others; or formal, either by action or suit in courts of law or equity, or in the admiralty courts. As an example of *summary* proceedings may be mentioned the manner of regaining possession by applying to magistrates against forcible entry and detainer, where the statutes authorise the proceedings. *Formal* proceedings are instituted when certain rights have been invaded. If the injury affect a *legal* right, then the remedy is in general by action in a court of law; but if an equitable right, or if it can be better investigated in a court of equity, then the remedy is by bill. Vide *Chancery*.

2. *Public remedies.* These may be divided into such as are intended to *prevent* crimes, and those where the object is to *punish* them. 1. The preventive remedies may be exercised without any warrant either by a constable, (q. v.) or other officer or even by a private citizen. Persons in the act of committing a felony or a breach of the peace may be arrested by any one. Vide *Arrest*. A public

nuisance may be abated, without any other warrant or authority than that given by the law. Vide *Nuisance*. 2. The proceedings intended as a punishment for offences, are either *summary*, (vide *Conviction*) or by indictment, (q. v.) Vide Bac. Ab. Actions in general, B; *Actions; Arrest; Civil remedy; Election of Actions*.

REMISE, is a French word, which literally means a surrendering or returning a debt or duty. It is frequently used in this sense in releases; as, "*remise*, release and forever quit-claim." In the French law the word remise is synonymous with our word *release*. Poth. Du Contr. de Change, n. 176; Dalloz, Dict. h. t.; Merl. Rép. h. t.

REMISSION, *civil law*. A release. The remission of the debt is either conventional, when it is expressly granted to the debtor by a creditor having a capacity to alienate; or tacit, when the creditor voluntarily surrenders to his debtor the original title under private signature constituting the obligation. Civ. Code of Lo. art. 2195.

REMITTANCE, *comm. law*.—Money sent by one merchant to another, either in specie, bill of exchange, draft or otherwise.

REMITTEE, *in contracts*, is a person to whom a remittance is made. Story on Bailm. § 75.

REMITTER, *estates*, to be placed back in possession. When one having a right to lands is out of possession, and afterwards the freehold is cast upon him by some defective title, and he enters by virtue of that title, the law *remits* him to his ancient and more certain right, and, by an equitable fiction, supposes him to have gained possession under it. 3 Bl. Com. 190; 18 Vin. Ab. 431; 7 Com. Dig. 234.

REMITTOR, *contracts*, a person who makes a remittance to another.

REMITTITUR DAMNUM, or DAMNA, *in practice*, is the act of the plaintiff put upon the record, whereby he abates or remits the excess of damages found by the jury beyond the sum laid in the declaration. See 1 Saund. 285, n. 6.

REMOTE. At a distance; afar off; not immediate. A remote cause is not in general sufficient to charge a man with the commission of a crime, nor with being the author of a tort. Vide *Cause*.

REMOVER, *practice*, is when a suit or cause is removed out of one court into another, which is effected by writ of error, certiorari, and the like. 11 Co. 41.

REMUNERATION. Reward; recompense; salary. Dig. 17, 1, 7.

RENDER. To yield; to return; to give again: it is the reverse of *prender*.

RENDEZVOUS. A place appointed for meeting. Among seamen it is usual when vessels sail under convoy, to have a rendezvous, in case of dispersion by storm, an enemy or other accident. The place where military men meet and lodge, is also called a rendezvous.

TO RENOUNCE, to give up a right: for example, an executor may renounce the right of administering the estate of the testator; a widow the right to administer to her intestate husband's estate. There are some rights which a person cannot renounce; as, for example, to plead the act of limitation. Before a person can become a citizen of the United States, he must renounce all titles of nobility. Vide *Naturalization*.

RENT, *estates, contracts*. A certain profit in money, provisions, chattels, or labour, issuing out of lands and tenements in retribution for the use. 2 Bl. Com. 41; 14 Pet. Rep. 526; Gilb. on Rents, 9; Co. Litt. 142 a; Civ. Code of Lo. art.

2750; Com. on L. & T. 95; 3 Kent, Com. 367; Bradb. on Distr. 24; Bac. Ab. h. t. A rent somewhat resembles an annuity, (q. v.) their difference consists in the fact that the former issues out of lands, and the latter is a mere personal charge. At common law there were three kinds of rents; namely, rent-service, rent-charge, and rent seck. When the tenant held his land by fealty or other corporeal service, and a certain rent, this was called *rent-service*; a right of distress was inseparably incident to this rent. A *rent-charge*, is when the rent is created by deed and the fee granted; and as there is no fealty annexed to such a grant of rent, the right of distress is not an incident; and it requires an express power of distress to be annexed to the grant, which gives it the name of a rent-charge, because the lands are, by the deed, charged with a distress. Co. Litt. 143 b. *Rent-seok*, or a dry or barren rent, was rent reserved by deed, without a clause of distress, and in a case in which the owner of the rent had no future interest or reversion in the land, he was driven for a remedy to a writ of annuity or writ of assise. But the statute of 4 Geo. 2, c. 28, abolished all distinction in the several kinds of rent, so far as to give the remedy by distress in cases of rents seck, rents of assise, and chief rents, as in the case of rents reserved upon a lease. In Pennsylvania, a distress is inseparably incident to every species of rent that may be reduced to a certainty. 2 Rawle's Rep. 13. In New York, it seems the remedy by distress exists for all kinds of rent. 3 Kent, Com. 368. Vide *Distress*; 18 Viner's Abr. 472; Woodf. L. & T. 184; Gilb. on Rents; Com. Dig. h. t.; Dane's Ab. Index, h. t.

As to the time when the rent becomes due, it is proper to observe, that there is a distinction to be made. It becomes due for the purpose of making a demand to take advantage of a condition of re-entry, or to tender it to save a forfeiture, at sunset of the day on which it is due; but it is not actually due till midnight, for any other purpose. An action could not be supported which had been commenced on the day it became due, although commenced after sunset; and if the owner of the fee died between sunset and midnight of that day, the heir and not the executor would be entitled to the rent. 1 Saund. 287; 10 Co. 127 b; 2 Madd. Ch. R. 268; 1 P. Wms. 177; S. C. 1 Salk. 578.

See, generally, Bac. Ab. h. t.; and *Distress*; *Re-entry*.

RENTE FONCIERE. This is a technical phrase used in Louisiana. It is a rent which issues out of land, and it is of its essence that it be perpetual, for if it be made but for a limited time, it is a lease. It may however be extinguished. Civ. Code of Lo. art. 2750, 2759. Poth. h. t. Vide *Ground-rent*.

RENTE VIAGERE, *French law*. This term which is used in Louisana, signifies an annuity for life. Civ. Code of Lo. art. 2764; Poth. Du Contract de Constitution de Rente, n. 215.

REPAIRS. That work which is done to an estate to keep it in good order. What a party is bound to do when the law imposes upon him the duty to make necessary repairs, does not appear to be very accurately defined. Natural and unavoidable decay in the buildings must always be allowed for, when there is no express covenant to the contrary; and it seems, the lessee will satisfy the obligation the law imposes on him, by delivering the premises at the expiration of his tenancy, in a habitable state. Questions in relation to repairs most frequently arise between the landlord and tenant.

When there is no express agreement between the parties, the tenant is always required to do the necessary repairs. Woodf. L. & T. 244. He is therefore bound to put in windows or doors that have been broken by him, so as to prevent any decay of the premises, but he is not required to put a new roof on an old worn out-house. 2 Esp. N. P. C. 590.

An express covenant on the part of the lessee to keep a house in repair, and leave it in as good a plight as it was when the lease was made, does not bind him to repair the ordinary and natural decay. Woodf. L. & T. 256. And it has been held that such a covenant does not bind him to rebuild a house which had been destroyed by a public enemy. 1 Dall. 210.

As to the time when the repairs are to be made, it would seem reasonable that when the lessor is bound to make them, he should have a right to enter and make them, when a delay until after the expiration of the lease would be injurious to the estate; but when no such damage exists, the landlord should have no right to enter without the consent of the tenant. See 18 Toull. n. 297. When a house has been destroyed by accidental fire, neither the tenant nor the landlord is bound to rebuild unless bound by some agreement so to do. 4 Paige R. 355; 1 T. R. 708; Fonbl. Eq. B. 1, c. 5, s. 8. Vide 6 T. R. 650; 4 Camp. R. 275; Harr. Dig. Covenant VII.

Vide Com. Rep. 627; 6 T. R. 650; 2 Show. 401; 3 Ves. jr. 34; Co. Litt. 27 a, note 1; 3 John. R. 44; 6 Mass. R. 63; Platt on Cov. 266; Com. L. & T. 200; Com. Dig. Condition, L 12; Civil Code of Louis. 2070; 1 Saund. 322, n. 1; Ib. 323, n. 7; 2 Saund. 158 b, n. 7 & 10.

REPARATION. The redress of an injury; amends for a tort inflicted; vide *Remedy; Redress.*

REPEAL, *legislation.* The abrogation or destruction of a law, by a legislative act. A repeal is express, as when it is literally declared by a subsequent law; or, implied, when the new law contains provisions contrary to, or irreconcilable with those of the former law. It is a rule of the common law, that when a law repeals a former, and afterwards the repealing law is repealed, the first law is revived. This rule is changed in some of the states; in Ohio, and Louisiana, Civil Code of Louis. art. 23. The repeal of a law leaves all civil rights acquired under the law, unaffected. 3 L. R. 337; 4 L. R. 191. Vide *Abrogation;* and 18 Vin. Ab. 118.

REPERTORY. This word is nearly synonymous with inventory, and is so called because its contents are arranged in such order as to be easily found. Clef des Lois Rom. h. t.; Merl. Répertoire, h. t. In the French law, this word is used to denote the inventory or minutes which notaries are required to make of all contracts which take place before them. Dict. de Jur. h. t.

REPETITION, in the construction of wills. A repetition takes place when the same testator, by the same testamentary instrument, gives to the same legatee legacies of equal amount and of the same kind; in such case the latter is considered a repetition of the former, and the legatee is entitled to one only. For example, a testator gives to a legatee "30*l.* a year during his life;" and in another part of the will he gives to the same legatee "an annuity of 30*l.* for his life payable quarterly," he is entitled to only one annuity of thirty pounds a year. 4 Ves. 79, 90; 1 Bro. C. C. 30, note.

REPETITION, *civil law*, the act by which a person demands and

seeks to recover what he has paid by mistake, or delivered on a condition which has not been performed. Dig. 12, 4, 5. The name of an action which lies to recover the payment which has been made by mistake, when nothing was due. Repetition is never admitted in relation to natural obligations which have been voluntarily acquitted, if the debtor had capacity to give his consent. 6 Toull. n. 886. The same rule obtains in our law. A person who has voluntarily acquitted a natural or even a moral obligation, cannot recover back the money by an action for money had and received, or any other form of action. D. &. R. N. P. C. 254; 2 T. R. 763; 7 T. R. 269; 4 Ad. & Ell. 858: 1 P. & D. 253; 2 L. R. 431; Cowp. 290; 3 B. & P. 249 note; 2 East, R. 506; 3 Taunt. R. 311; 5 Taunt. R. 36; Yelv. 41 b, note; 3 Pick. R. 207; 13 John. R. 259.

In order to entitle the payer to recover back money paid by mistake, it must have been paid by him to a person to whom he did not owe it, for otherwise he cannot recover it back, the creditor having in such case the just right to retain the money. *Repetitio nulla est ab eo qui suum recepit.*

How far money paid under a mistake of law is liable to repetition, has been discussed by civilians, and opinions on this subject are divided. 2 Poth. Ob. by Evans, 369, 408 to 437; 1 Story, Eq. Pl. § 111, note 2.

REPETITION, *Scotch law.* The act of reading over a witness's deposition, in order that he may adhere to it or correct it at his choice. The same as *Recolement*, (q. v.) in the French law. 2 Benth. on Ev. B. 3, c. 12, p. 239.

REPLEADER, *in practice.*—When an immaterial issue has been formed, the court will order the parties to plead de novo, for the purpose of obtaining a better issue; this is called a repleader. In such case, they must begin to replead at the first fault. If the declaration, plea and replication be all bad, the parties must begin de novo; if the plea and replication be both bad, and a repleader is awarded, it must be as to both; but if the declaration and plea be good, and the replication only bad, the parties replead from the replication only. In order to elucidate this point, it may be proper to give an instance, where the court awarded a repleader, for a fault in the plea, which is the most ordinary cause of a repleader. An action was brought against husband and wife, for a wrong done by the wife alone, before the marriage, and both pleaded that they were not guilty of the wrong imputed to them, which was held to be bad, because there was no wrong alleged to have been committed by the husband, and therefore a repleader was awarded, and the plea made that the wife only was not guilty. Cro. Jac. 5; see other instances in Hob. 113; 5 Taunt. 396.

The following rules as to repleaders, were laid down in the case of Staples v. Haydon, 2 Salk. 579; *first*, that at common law, a repleader was allowed before trial, because a verdict did not cure an immaterial issue, but now a repleader ought not to be allowed till after trial, in any case when the fault of the issue might be helped by the verdict, or by the statute of jeofails; *secondly*, that if a repleador be allowed where it ought not to be granted, or vice versa, it is error; *thirdly*, that the judgment of repleader is general, *quod partes replacitent*, and the parties must begin at the first fault, which occasioned the immaterial issue; *fourthly*, no costs are allowed on either side; *fifthly*, that a repleader cannot be awarded after a default at *nisi prius*; to which may be

added, that in general a repleader cannot be awarded after a demurrer or writ of error, without the consent of the parties, but only after issue joined; where, however, there is a bad bar, and a bad replication, it is said that a repleader may be awarded upon a demurrer; a repleader will not be awarded, where the court can give judgment on the whole record, and it is not grantable in favour of the person who made the first fault in pleading. See Com. Dig. Pleader, R. 18; Bac. Abr. Pleas, M; 2 Saund. 319 b, n. 6; 2 Vent. 196; 2 Str. 847; 5 Taunt. 386; 8 Taunt. 413; 2 Saund. 20; 1 Chit. Pl. 632; Steph. Pl. 119; Lawes, Civ. Pl. 175.

The difference between a repleader and a judgment *non obstante veredicto*, is this, that a plea is good in form, though not in fact, or in other words, if it contain a defective title, or ground of defence by which it is apparent to the court, upon the defendant's own showing, that in any way of putting it, he can have no merits, and the issue joined thereon be found for him there, as the awarding of a repleader could not mend the case, the court for the sake of the plaintiff, will at once give judgment *non obstante veredicto*; but where the defect is not so much in the title, as in the manner of stating it, and the issue joined thereon is immaterial, so that the court know not for whom to give judgment, whether for the plaintiff or defendant, there for their own sake they will award a repleader; a judgment, therefore, *non obstante veredicto*, is always upon the merits, and never granted but in a very clear case; a repleader is upon the *form* and manner of pleading. Tidd's Pr. 813, 814; Com. Dig. Pleader, R. 18; Bac. Abr. Pleas, M.; 18 Vin. Ab. 567; 2 Saund. 20; Doct. Plac. h. t. Arch. Civ. Pl. 358; 1 Chit. Pl. 632.

REPLEGIARE. To redeem a thing detained or taken by another, by putting in legal sureties. See *Replevin*.

REPLEVIN, *remedies*, is the name of an action for the recovery of goods and chattels. It will be proper to consider, 1, for what property this action will lie; 2, what interest the plaintiff must have in the same; 3, for what injury; 4, the pleadings; 5, the judgment.

1. To support replevin, the property affected must be a *personal* chattel, and not an injury to the freehold, or to any matter which is annexed to it, 4 T. R. 504; nor for any thing which has been turned into a chattel by having been separated from it by the defendant, and carried away at one and the same time. 2 Watts, R. 126; 3 S. & R. 509; 6 S. & R. 476; 10 S. & R. 114; 6 Greenl. R. 427; nor for writings which concern the realty. 1 Brownl. 168. The chattel also must possess *indicia* or ear-marks, by which it may be distinguished from all others of the same description; otherwise the plaintiff would be demanding of the law, what it has not in its power to bestow; replevin for loose money, cannot, therefore, be maintained; but it may be supported for money tied up in a bag, and taken in that state from the plaintiff. 2 Mod. R. 61. Vide 1 Dall. 157; 6 Binn. 2; 3 Serg. & Rawle, 562; 2 P. A. Browne's R. 160; Addis. R. 134; 10 Serg. & Rawle, 114; 4 Dall. Appx. i.; 2 Watts's R. 126; 2 Rawle's R. 423.

2. The plaintiff, at the time of the caption, must have been possessed, or, which amounts to the same thing, have had absolute property, and be entitled to the possession of the chattel, or it could not have been taken from him. He must, in other words, have had a general property, or a special property, as the bailee of the goods. His right to the possession

must also be continued down to the time of judgment pronounced, otherwise he has no claim to the restoration of the property. Co. Litt. 145, b; it has, however, been doubted whether on a mere naked bailment for safe keeping, the bailee can maintain replevin. 1 John. R. 380; 3 Serg. & Rawle, 20.

3. This action lies to recover any goods which have been illegally taken. 7 John. R. 140; 5 Mass. R. 283; 14 John. R. 87; 1 Dall. R. 157; 6 Binn. R. 2; 3 Serg. & Rawle, 562; Addis. R. 134. The primary object of this action, is to recover back the chattel itself, and damages for taking and detaining it, are consequent on the recovery. When the property has been restored, this action cannot, therefore, be maintained. But the chattel is considered as detained, notwithstanding the defendant may have destroyed it before the suit was commenced; for he cannot take advantage of his own wrong.

4. This being a local action, the declaration requires certainty in the description of the place where the distress was taken. 2 Chit. Pl. 411, 412; 10 John. R. 53; but it has been held in Pennsylvania, that the declaration is sufficient, if the taking is laid to be in the county. 1 P. A. Browne's Rep. 60. The strictness which formerly prevailed on this subject, has been relaxed. 2 Saund. 74, b. When the distress has been taken for rent, the defendant usually avows or makes cognizance, in order to obtain a return of the goods, to which avowry or cognizance the plaintiff pleads in bar, or the defendant may, in proper cases, plead *non cepit*, *cepit in alio loco*, or *not guilty*. 1 Chit. Pl. 490, 491.

5. As to the judgment, vide article *Judgment in Replevin*.

Vide, generally, Bac. Ab. h. t.; 1 Saund. 347, n. 1; 2 Sell. Pr. 153; Doct. Pl. 414; Com. Dig. h. t.; Dane's Ab. h. t.; Petersd. Ab. h. t.; 18 Vin. Ab. 576; Yelv. 146, a; 1 Chit. Pl. 157; Ham. N. P. ch. 3, p. 372 to 498; Amer. Dig. h. t.; Harr. Dig. h. t. As to the evidence required in replevin, see Roscoe's Civ. Ev. 353. Vide also article *Detinuit*.

REPLICATION, *pleading*, is the plaintiff's answer to the defendant's plea. Replications will be considered, 1, with regard to their several kinds; 2, to their form; and, 3, to their qualities.

§ 1. They are to pleas in abatement and to pleas in bar.

1. When the defendant pleads to the jurisdiction of the court, the plaintiff may reply, and in this case the replication commences with a statement, that the writ ought not to be quashed, or that the court ought not to be ousted of their jurisdiction, because, &c., and concludes to the country, if the replication merely deny the subject-matter of the plea. Rast. Entr. 101; Thomps. Entr. 2; Clift's Entr. 17; 1 Chit. Pl. 434. As a general rule when the plea is to the misnomer of the plaintiff or defendant, or when the plea consists of matter of fact which the plaintiff denies, the replication may begin without any allegation that the writ or bill ought not to be quashed. 1 Bos. & Pull. 61.

2. The replication is in general governed by the plea, and most frequently denies it. When the plea concludes to the country, the plaintiff must in general reply by adding a similiter; but when the plea concludes with a verification, the replication must either, 1, conclude the defendant by matter of estoppel; or, 2, may deny the truth of the matter alleged in the plea, either in whole or in part; or, 3, may confess and avoid the plea; or, 4, in the case of an evasive plea, may new assign the cause of action. For the several

kinds of replication as they relate to the different forms of action, see 1 Chit. Pl. 551, et seq.; Arch. Civ. Pl. 258.

§ 2. The form of the replication will be considered with regard to, 1, the title; 2, the commencement; 3, the body; and, 4, the conclusion.

1. The replication is usually entitled in the court and of the term of which it is pleaded, and the names of the plaintiff and defendant are stated in the margin, thus: "A B against C D." 2 Chit. Pl. 641.

2. The commencement is that part of the replication which immediately follows the statement of the title of the court and term, and the names of the parties. It varies in form when it replies to matter of estoppel from what it does when it denies, or confesses and avoids the plea; in the latter case it commences with an allegation technically termed the *precludi non*, (q. v.) It generally commences with the words, "And the said plaintiff saith that the said defendant," &c. 1 Chit. Pl. 573.

3. The body of the replication ought to contain either, 1, matter of estoppel; 2, denial of the plea; 3, a confession and avoidance of it; or, 4, in case of an evasive plea, a new assignment.—1st. When the matter of estoppel does not appear from the anterior pleading, the replication should set it forth; as, if the matter has been tried upon a particular issue in trespass, and found by the jury, such finding may be replied as an estoppel. 3 East, R. 346; vide 4 Mass. R. 443.—2. The second kind of replication is that which denies or traverses the truth of the plea, either in part or in whole. Vide *Traverse*, and 1 Chit. Pl. 576, note (a.)—3d. The third kind of replication admits, either in words or in effect, the fact alleged in the plea, and avoids the effect of it by stating new matter; if, for example, infancy be pleaded, the plaintiff may reply that the goods were necessaries, or that the defendant, after he came of full age, ratified and confirmed the promise. Vide *Confession and Avoidance*.—4. When the plea is such as merely to evade the allegation in the declaration, the plaintiff in his replication may re-assign it. Vide *New Assignment*, and 1 Chit. Pl. 601.

4. With regard to the conclusion, it is a general rule that when the replication denies the whole of the defendant's plea, containing matter of fact, it should conclude to the country. There are other conclusions in particular cases, which the reader will find fully stated in 1 Chit. Pl. 615, et seq.; Com. Dig. Pleader, F 5; vide 1 Saund. 103, n.; 2 Caines's R. 60; 2 John. R. 428; 1 John. R. 516; Arch. Civ. Pl. 258; 19 Vin. Ab. 29; Bac. Ab. Trespass, I 4; Doct. Pl. 428; Beames's Pl. in Eq. 247, 325, 326.

§ 3. The qualities of a replication are, 1, that it must answer so much of the defendant's plea as it professes to answer, and that if it be bad in part, it is bad for the whole. Com. Dig. Pleader, F 4, W 2; 1 Saund. 338; 7 Cranch's Rep. 156;—2, it must not depart from the allegations in the declaration in any material matter. Vide *Departure*, and 2 Saund. 84 a, note 1; Co. Litt. 304 a. See also 3 John. Rep. 367; 10 John. R. 259; 14 John. R. 132; 2 Caines's R. 320;—3, it must be certain. Vide *Certainty*;—4, it must be single. Vide *Duplicity*; *Pleadings*.

REPORT, *legislation*. A statement made by a committee to a legislative assembly, of facts of which they were charged to inquire.

REPORT, *practice*, is a certificate to the court made by a master in chancery, commissioner or other person appointed by the court, of the

facts or matters to be ascertained by him, or of something of which it is his duty to inform the court. If the parties in the case accede to the report, and no exceptions are filed, it is in due time confirmed; if exceptions are filed to the report, they will, agreeably to the rules of the court, be heard, and the report will either be confirmed, set aside, or referred back for the correction of some error. 2 Madd. Ch. 505; Blake's Ch. Pr. 230; Vin. Ab. h. t.

REPORTER. A person employed in making out and publishing the history of cases decided by the courts. The act of congress of August 26, 1842, sect. 2, enacts, that in the Supreme Court of the United States one reporter shall be appointed by the court, with the salary of twelve hundred and fifty dollars; provided that he deliver to the secretary of state, for distribution, one hundred and fifty copies of each volume of reports that he shall hereafter prepare and publish, immediately after the publication thereof, which publication shall be made annually, within four months after the adjournment of the court at which the decisions are made.

In some of the states the reporters are appointed by authority of law, in others, they are volunteers.

REPORTS, are law books, containing a statement of the facts and law of each case which has been decided by the courts; they are generally the most certain proof of the judicial decisions of the courts, and contain the most satisfactory evidence, and the most authoritative and precise application of the rules of the common law. Litt. s. 514; Co. Litt. 293 a; 4 Co. Pref.; 1 Bl. Com. 71; Ram on Judgm. ch. 13. The number of reports has increased to an inconvenient extent, and should they multiply in the same ratio which of late they have done, they will soon so crowd our libraries as to become a serious evil. The indiscriminate report of cases of every description is deserving of censure. Cases where first principles are declared to be the law, are reported with as much care as those where the most abstruse questions are decided. But this is not all; sometimes two reporters, with the true spirit of book-making, report the same set of cases, and thereby not only unnecessarily increase the lawyer's already encumbered library, but create confusion by the discrepancies which occasionally appear in the report of the same case.

The modern reports are too often very diffuse and inaccurate. They seem too frequently made up for the purpose of profit and sale, much of the matter they contain being either useless or a mere repetition, while they are deficient in stating what is really important. A report ought to contain, 1, The name of the case; 2, The court in which it originated, and when it has been taken to another by appeal, certiorari, or writ of error, it ought to mention by whom it was so taken, and by what proceeding; 3, The state of the facts, including the pleadings as far as requisite; 4, The true point before the court; 5, The manner in which that point has been determined, and by whom; 6, The date.

The following is believed to be a correct list of the American and English Reports. The latter are arranged in chronological order; the former under the heads of the respective states. It is hoped this list will be useful to the student.

AMERICAN REPORTS.

UNITED STATES.

1. *Supreme Court.*

Dallas's Reports. From August term, 1790, to August term, 1800. 4 vols.

Cranch's Reports. From 1800 to February term, 1815. 9 vols.

Wheaton's Reports. From February

term, 1816, to January term, 1827, inclusive. 12 vols.

Peters's Reports. From 1827 to the present time. 16 vols.

Peters's Condensed Reports of Cases in the Supreme Court of the United States. These volumes contain condensed reports of all the cases in second, third and fourth Dallas, the nine volumes of Cranch, and the twelve volumes of Wheaton.

2. *Circuit Courts.—First Circuit.*

Gallison's Reports. From 1812 to 1815, inclusive. 2 vols.

Mason's Reports. From 1816 to 1830, inclusive. 5 vols.

Sumner's Reports. From 1830 to 1837. 2 vols.

Story's Reports, vol. 1.

Second Circuit.

Paine's Reports. From 1810 to 1826. 1 vol.

Third Circuit.

Dallas's Reports. The second, third and fourth volumes contain cases decided in this court, from April term, 1792, to October term, 1806, inclusive.

Washington's C. C. Reports. From 1803 to 1827. 4 vols.

Peters's C. C. Reports. From 1803 to 1818. 1 vol.

Baldwin's Reports. From October term, 1829, to April term, 1833, inclusive. 1 vol.

Wallace's Reports, include the cases of May Sessions, 1801. 1 vol.

Fourth Circuit.

Marshall's Decisions. From 1802 to 1832, published since the death of Chief Justice Marshall, from his manuscripts, by John M. Brockenbrough. 2 vols.

Seventh District.

McLean's Reports.

3. *District Courts.—District of New York.*

Van Ness's Reports. 1 vol.

District of Pennsylvania.

Peters's Admiralty Decisions. From 1792 to 1807. 2 vols.

Eastern District of Pennsylvania.

Gilpin's Reports. From November term, 1828, to February term, 1836, inclusive. 1 vol.

District of South Carolina.

Bee's Admiralty Reports. From 1792 to 1805. 1 vol.

District of Maine.

Reports of cases argued and determined, in the District Court of the United States, for the District of Maine, from 1822 till 1839. 1 vol. Cited Ware's Reports.

STATE REPORTS.

Alabama.

Alabama Reports. By Henry Minor. From 1820 to 1826 1 vol.

Stewart's Reports. From 1827 to 1831. 3 vols.

Stewart & Porter's Reports. From 1831 to 1833. 5 vols.

Porter's Reports. From 1834 to the present time. 9 vols.

Judges' Reports. 3 vols.

Arkansas.

Pike's Reports. 3 vols.

Connecticut.

Kirby's Reports. From 1785 to 1788. 1 vol.

Root's Reports. From 1789 to 1798. 2 vols.

Day's Reports. From 1802 to 1810. 5 vols.

Connecticut Reports. By Thomas Day. From June, 1814, to the present time. 13 vols.

Delaware.

Harrington's Reports. From 1832 to 1841. 2 vols.

Georgia.

T. U. P. Charlton's Reports. Cases decided previous to 1810. 1 vol.

Dudley's Reports. From 1831 to 1833. 1 vol.

R. M. Charlton's Reports. From 1811 to 1837. 1 vol.

Illinois.

Breese's Reports. From 1819 to 1830. 1 vol.

Scammond's Reports. 2 vols.

Indiana.

Blackford's Reports. From May, 1817, to May, 1838, inclusive. 4 vols.

Kentucky.

Hughes's Reports. From 1785 to 1801. 1 vol.

Kentucky Decisions. From 1801 to 1806. 1 vol.

Hardin's Reports. From 1805 to 1808. 1 vol.

Bibb's Reports. From 1808 to 1817. 4 vols.

A. Marshall's Reports. From 1817 to 1821. 3 vols.

Littel's Reports. From 1822 to 1824. 6 vols.

Littel's Select Cases. From 1795 to 1821. 1 vol.

Munroe's Reports. From 1824 to 1828. 7 vols.

J. J. Marshall's Reports. From 1829 to 1832. 7 vols.

Dana's Reports. From 1833 to 1840. 9 vols.

B. Monroe's Reports. 2 vols.

Louisiana.

Orleans Term Reports, by Martin. From 1809 to 1812. 2 vols. in 1.

Louisiana Term Reports, by Martin. From 1812 to 1823. 10 vols.

Martin's Reports, N. S. (sometimes cited simply New Series,) 1823 to 1830. 8 vols.

☞ The whole of Martin's Reports amount to twenty volumes; the first twelve, namely, the Orleans and the Louisiana Term Reports, are cited as Martin's Reports; from the twelfth, they are sometimes cited as first, second, &c., Martin's New Series, and sometimes simply New Series.

Louisiana Reports. 13 vols. The first five volumes from 1830 to August term, 1834, and the first part of the sixth volume, are the work of Branch W. Miller. The remainder were reported by Mr. Currey, and are continued to June term, 1839. The whole of the 13 volumes are cited Louisiana Reports.

Maine.

Greenleaf's Reports. From 1820 to 1832. 9 vols.

Fairfield's Reports. From 1833 to 1835. 3 vols.

Shepley's Reports. From April term, 1836 to May term, 1841. 7 vols.

☞ By a resolve of the legislature, passed in 1836, each volume subsequent to the third volume of Fairfield's Reports, shall be entitled and lettered upon the back thereof, "Maine Reports;" and the first volume subsequent to the third volume of Fairfield's, shall be numbered the thirteenth volume of Maine Reports.

Mr. Appleton has added two volumes, which bear his name.

Maryland.

Harris & McHenry's Reports. From 1700 to 1799. 4 vols. Sometimes cited Maryland Reports.

Harris & Johnson. From 1800 to 1826. 7 vols.

Harris & Gill. From 1826 to 1829. 2 vols.

Gill & Johnson. From 1829 to 1839. 10 vols.

Bland's Reports. From 1824 to the present time. 2 vols.

Massachusetts.

Massachusetts Reports.

☞ The first volume is reported by Ephraim Williams. His reports commenced with September term, 1804, in Berkshire, and terminate with June term, 1805, in Hancock. The sixteen volumes from the second to the seventeenth inclusive, are reported by Dudley Atkins Tyng, and embrace from March term, 1806, in Suffolk, to March term, 1822, in Suffolk. The reports of Williams and Tyng are cited Massachusetts Reports.

Pickering's Reports. From 1832 to March, 1840. 24 vols.

Metcalf's Reports. 3 vols.

Mississippi.

Walker's Reports. From 1818 to 1832. 1 vol.

Howard's Reports. 5 vols.

Missouri.

Missouri Reports. 4 vols.

New Hampshire.

New Hampshire Reports. 9 vols.

☞ Nathaniel Adams reported cases from 1816 to 1819, which makes the first volume of N. H. Rep. Levi Woodbury and William Richardson reported the cases from 1819 to 1823; and William Richardson from 1823 to 1832, making the third, fourth and fifth volumes of N. H. Rep. They are continued under the direction of the supreme court, and already make nine volumes.

New Jersey.

Coxe's Reports. From 1790 to 1795. 1 vol.

Pennington's Reports. From 1806 to 1813. 2 vols.

Southard's Reports. From 1816 to 1820. 2 vols.

Halstead's Reports. From 1821 to 1831. 7 vols.

Green's Reports. From 1831 to 1836. 3 vols.

Harrison's Reports. 1837 and 1838. 1 vol.

Saxton's Chancery Reports. 1 vol.

Green's Chancery Reports. 1 vol.

New York.

Coleman's Cases. From 1794 to 1800. 1 vol.

Coleman and Caines's Cases. From 1794 to 1805. 1 vol.

Caines's Reports. From 1803 to 1805. 3 vols.

Caines's Cases. For 1804 and 1805. 2 vols.

Johnson's Cases. From 1799 to 1803. 3 vols.

Johnson's Reports. From 1806 to 1823. 20 vols.

Johnson's Chancery Reports. From 1814. to 1823. 7 vols.

Cowen's Reports. From 1823 to 1828. 9 vols.

Wendell's Reports. From 1828 to 1841. 26 vols.

Hopkins's Chancery Reports. From 1823 to 1826. 1 vol.

Paige's Chancery Reports. From 1828 to 1841. 8 vols.

Hill's Reports. 3 vols.

Hoffman's Vice Chancery Reports. 1 vol.

Clarke's Chancery Reports. 1 vol.

Yeates's Select Cases. Published in 1811. 1 vol.

Anthon's Nisi Prius Cases. From 1808 to 1818. 1 vol.

Rogers's New York City Hall Recorder. From 1816 to 1821. 6 volumes usually bound in two.

Wheeler's Criminal Cases. 3 vols.

Hall's Reports of cases in the superior court of the city of New York, for the years 1828 and 1829. 2 vols.

Edward's Chancery Reports of cases decided in the first circuit of the state of New York. From 1831 to 1842. 3 vols.

North Carolina.

Martin's Reports. 1 vol.

Heywood's Reports. From 1789 to 1806. 2 vols.

Taylor's Reports. From 1789 to 1802. 1 vol.

North Carolina Term Reports, (sometimes bound and lettered and cited as the third Law Repository.) It is a second volume of Reports by John Louis Taylor; it contains cases from 1816 to 1818. 1 vol.

Conference Reports, by Cameron and Norwood. From 1800 to 1804. 1 vol.

Murphy's Reports. From 1804 to 1819. 3 vols.

Carolina Law Repository. From 1813 to 1816. 2 vols.

Hawks's Reports. From 1820 to 1826. 4 vols.

Devereux's Reports. From 1826 to 1834. 4 vols.

Devereux's Equity Reports. From 1826 to 1834. 2 vols.

Devereux and Battle's Reports. From 1834 to 1836. 2 vols.

Iredell's Reports, Law. 2 vols.

Iredell's Reports, Chancery. 1 vol.

Ohio.

Ohio Reports. (Sometimes cited Hamm. Rep.) 9 vols.

Wright's Reports. From 1831 to 1834. 1 vol.

Wilcock's Reports. 1 vol.

Pennsylvania.

Dallas's Reports. 4 vols. Vide *Supra.*

Yeates's Reports. From 1791 to 1808. 4 vols.

Binney's Reports. From 1799 to 1814. 6 vols.

Sergeant and Rawle's Reports. From 1818 to 1829. 17 vols.

Rawle's Reports. From 1828 to 1835. 5 vols.

Wharton's Reports. From 1835 to 1841. 6 vols.

Pennsylvania Reports, reported by Wm. Rawle, Charles B. Penrose and Frederick Watts. From 1829 to 1832. 3 vols.

Watts's Reports. From 1832 to 1840. 10 vols.

Watts and Sergeant's Reports. 4 vols.

Browne's Reports. From 1806 to 1814. 2 vols.

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South Carolina.

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Desaussure's Equity Reports. From the revolution to 1813. 4 vols.

South Carolina Reports. From 1812 to 1816. 2 vols.

Constitutional Court Reports. For the year 1817. 2 vols.

Nott and M'Cord's Reports. From 1817 to 1820. 2 vols.

Constitutional Reports. From 1812 to 1816. 2 vols.

Constitutional Reports, N. S. For 1817 and 1818. 2 vols.

Harper's Reports. For 1823 and 1824, 1 vol.

Harper's Equity Reports. 1824. 1 vol.

M'Cord's Reports. From 1820 to 1828. 4 vols.

M'Cord's Chancery Reports. From 1825 to 1827. 2 vols.

Bailey's Reports. From 1828 to 1832. 2 vols.

Bailey's Chancery Reports. 1 vol.

Hill's Reports. From 1833 to 1842. 3 vols.

Hill's Chancery Reports. 2 vols.

Rice's Reports. 1 vol.

Rice's Chancery Reports. 1 vol.

Brevard's Reports. 3 vols.
M'Mullin's Law Reports. 1 vol.
M'Mullin's Equity Reports. 1 vol.

Tennessee.

Tennessee Reports. From 1791 to 1815. 2 vols. These cases were reported by John Overton. They are cited Tenn. Rep.
Cooke's Reports. From 1811 to 1814. 1 vol.
Heywood's Reports. From 1816 to 1818. 3 vols. These volumes are numbered three, four and five, in a series with Judge Heywood's North Carolina Reports, volumes one and two.
Peck's Reports. From 1822 to 1824. 1 vol.
Martin and Yerger's Reports. From 1825 to 1828. 1 vol.
Yerger's Reports. From 1832 to 1835. 10 vols.
Meigs's Reports. 1 vol.
Humphrey's Reports. 2 vols.

Vermont.

N. Chipman's Reports. From 1789 to 1791. 1 vol.
Tyler's Reports. From 1801 to 1803. 2 vols.
Brayton's Reports. From 1815 to 1819. 1 vol.
D. Chipman's Reports, containing select cases from N. Chapman's Reports, and cases down to 1825. 2 vols.
Aiken's Reports. For 1826 and 1827. 2 vols.
Vermont Reports. From 1826 to 1837. 9 vols.
Shaw's Reports. 2 vols.
Weston's Reports. 2 vols.

Virginia.

Wythe's Reports. From 1790 to 1795. 1 vol.
Washington's Reports. From 1790 to 1796. 2 vols.
Call's Reports. From 1790 to 1818. 6 vols.
Henning and Munford's Reports. From 1806 to 1809. 4 vols.
Munford's Reports. From 1810 to 1820. 6 vols.
Gilmer's Reports, (sometimes cited Virginia Reports.) During 1820 and 1821. 1 vol.
Randolph's Reports. From 1821 to 1828. 6 vols.
Leigh's Reports. From 1829 to 1841. 11 vols.
Jefferson's Reports. From 1730 to 1772. 1 vol.
Virginia Cases. From 1789 to 1826. 2 vols. The first of these volumes is by Judges Brockenbrough and Holmes, and contains cases decided from 1789 to 1814; the second volume by Judge Brockenbrough, and contains cases decided from 1815 to 1826.

ENGLISH REPORTS.

The following is a chronological list of English and Irish contemporary reports, alphabetically arranged under each reign.

Henry III.—(*Oct.* 19) 1216. (*Nov.* 16) 1272.
Jenkins, Ex., 4, 19, 21.

Edward I.—(*Nov.* 16) 1272. (*July* 7) 1307.
Jenkins, Ex., 18, 34.
Keilwey, K. B. and C. P., 6.
Year Book, K. B., C. P. and Exchequer, part 1.

Edward II.—(*July* 7) 1307. (*Jan.* 25) 1327.
Jenkins, Ex., 5, 15, 18.
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Edward III.—(*Jan.* 25) 1327. (*June* 21) 1377.
Benloe, K. B. and C. P., 32.
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Keilwey, K. B. and C. P. 1 to 47.
Year Book, K. B. and C. P., part 2—1 to 10.
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Year Book, K. B. and C. P. part 4—40 to 50.
Year Book, part 5—Liber Assisarum 1 to 51.

Richard II.—(*June* 21) 1377. (*Sept.* 29) 1399.
Bellewe, K. B. and C. P. 1 to 22.
Jenkins, Ex., 1 to 22.

Henry IV.—(*Sept.* 29) 1399. (*Mar.* 20) 1413.
Jenkins, Ex., 1 to 14.
Year Book, K. B. and C. P. part 6—1 to 14.

Henry V.—(*Mar.* 20) 1413. (*Aug.* 31) 1422.
Jenkins, Ex., 1 to 10.
Year Book, K. B. and C. P. part 6—1, 2, 5, 7 to 10.

Henry VI.—(*Aug.* 31) 1422. (*Mar.* 4) 1461.
Benloe, K. B. and C. P., 2, 18.

Jenkins, Ex., 1 to 39.
Year Book, K. B. and C. P. parts 7 and 8—1 to 4, 7 to 12, 14, 18 to 22, 27, 28, 30 to 39.

Edward IV.—(*Mar.* 4) 1461. (*April* 9) 1483.
Jenkins, Ex., 1 to 22.
Year Book, K. B. and C. P., part 9—1 to 22.
Year Book, K. B., C. P. and Ex., part 10—5.

Edward V.—(*April* 9) 1483. (*June* 22) 1483.
Jenkins, Ex.
Year Book, K. B. and C. P., part 11.

Richard III.—(*June* 22) 1483. (*Aug.* 22) 1485.
Jenkins, Ex., 1, 2.
Year Book, K. B. and C. P., part 11—1, 2.

Henry VII.—(*Aug.* 22) 1485. (*April* 22) 1509.
Benloe, K. B. and C. P., 1.
Jenkins Ex., 1 to 21.
Keilway, K. B. and C. P., 12, 13, 17 to 24.
Moore, K. B., C. P., Ex. and Chan., 1 to 24.
Year Book, K. B. and C. P., part 11—1 to 16, 20 to 24.

Henry VIII.—(*April* 22) 1509. (*Jan.* 28) 1547.
Anderson, C. P., 25, &c.
Benloe, C. P., 1 to 38.
Benloe, (New), K. B., C. P. and Ex., 22, &c.
Benloe, Keilwey and Ashe, K. B., C. P. and Ex.
Brooke's New Cases, K. B., C. P. and Exchequer.
Dalison, C. P., 38.
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Jenkins, Ex., 1 to 38.
Keilwey, K. B. and C. P. 1 to 11, and 21.
Moore, K. B., C. P., Ex. and Chan., 3.
Year Book, K. B. and C. P., part 11—13, 14, 18, 19, 26, 27, 29 to 38.

Edward VI.—(*Jan.* 28) 1547. (*July* 6) 1553.
Anderson, C. P. 1 to 6.
Benloe and Dalison, C. P., 2.
Brooke's New Cases, K. B., C. P. and Ex.
Benloe (New), K. B., C. P. and Ex. 1 to 6.
Dyer, K. B., C. P., Ex. and Chan. 1 to 6.
Jenkins, Ex., 1 to 6.
Moore, K. B., C. P., Ex. and Chan., 1 to 6.
Plowden, K. B., C. P. and Exchequer, 4 to 6.

Mary.—(*July* 6) 1553. (*Nov.* 17) 1558.
Anderson, C. P., 1 to 6.
Benloe and Dalison, C. P. 1 to 5.
Benloe in Keilwey and Ashe, K. B., C. P. and Ex., 1 to 5.
Benloe (New), K. B., C. P. and Ex., 1 to 5.
Brooke's New Cases, K. B., C. P. and Ex., 1 to 5.
Cary, Chan., 5.
Dyer, K. B., C. P., Ex. and Chan., 1 to 5.
Dalison, in Keilwey and Ashe, C. P., 1, 4, 5.
Jenkins, Ex., 1 to 5.
Leonard, K. B., C. P. and Ex., 1 to 5.
Owen, K. B. and C. P., 4, 5.
Plowden, K. B., C. P. and Ex. 1 to 5.

Elizabeth.—(*Nov.* 17) 1558. (*Mar.* 24) 1603.
Anderson, C. P., 1 to 45.
Benloe in Keilwey and Ashe, K. B., C. P. and Ex., 2 to 20.
Benloe, K. B., C. P. and Ex., 1 to 17.
Benloe, C. P., 1 to 21.
Brownlow and Goldesborough, C. P., 11 to 45.
Cary, Chan., 1 to 45.
Coke, K. B., C. P., Ex. and Chan. 14 to 45.
Croke, K. B. and C. P., 24 to 45.
Dalison, C. P. 1 to 16.
Dalison in Keilwey and Ashe, C. P., 2 to 7.
Dickens, Chan., a few cases.
Dyer, K. B. and C. P., 1 to 23.
Godbolt, K. B. &c., 17 to 45.
Goldesborough, K. B. &c. 28 to 31, 39 to 43.
Hobart, K. B. &c. a few cases.
Hutton, C. P., 26 to 38.
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Leonard, K. B., C. P. and Ex., 1 to 45.
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Noy, K. B. and C. P., 1 to 45.
Owen, K. B. and C. P., 1 to 45.
Plowden, K. B., C. P. and Ex., 1 to 21.
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Yelverton, K. B. 44, 45.

James I.—(*Mar.* 24) 1603. (*Mar.* 27) 1625.
Anderson, C. P., 1.
Benloe, K. B., C. P. and Ex., 19 to 23.
Bridgman, C. P. 12 to 19.
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Bulstrode, K. B., 7 to 15.
Cary, Chan., 1.
Coke, K. B., C. P., Ex. and Chan. 1 to 13.
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Hobart, K. B. &c. 1 to 23.
Hutton, C. P., 10 to 23.
Jenkins, Ex., 1 to 21.
Jones (W.) K. B. and C. P., 18 to 23.
Lane, Ex., 3 to 9.
Leonard, K. B., C. P. and Ex., 1 to 12.
Ley, K. B., C. P., Ex. and Court of Wards, 6 to 23.
Moore, K. B., C. P., Ex. and Chan., 1 to 18.
Noy, K. B. and C. P., 1 to 23.
Owen, K. B. and C. P., 1 to 12.
Palmer, K. B., 17 to 23.
Popham, K. B., C. P., and Chan., 15 to 23.
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Winch, C. P., 19 to 23.
Yelverton, K. B., 1 to 10.

Charles I.—(*Mar.* 27) 1625. (*Jan.* 30) 1649.
Aleyn, K. B., 22 to 24.
Benloe, K. B., C. P. and Ex., 1 to 3.
Bulstrode, K. B., 1 to 14.
Clayton, Pleas of As. York, 7 to 24.
Croke, K. B. and C. P., 1 to 16.
Godbolt, K. B. &c., 1 to 13.
Hetley, C. P., 3 to 7.
Hutton, C. P., 1 to 14.
Jones, (W.) K. B. and C. P., 1 to 16.
Latch, K. B., 1 to 3.
Ley, K. B., C. P., Ex. and Court of Wards, 1 to 4.
Littleton, C. P. and Ex., 2 to 7.
Marsh, K. B. and C. P., 15 to 18.
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Noy, K. B. and C. P., 1 to 24.
Palmer, K. B. and C. P., 1 to 4.
Popham, K. B., C. P. and Chan., 1, 2.
Reports in Chancery, 1 to 24.
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Charles II.—(*May* 29) 1660. (*Feb.* 6) 1685.
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Carter, C. P., 16 to 27.
Cases in Chancery, part 1—12 to 30.
Cases in Chancery, part 2—26 to 37.
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Dickens, Chan., a few cases.
Finch, Chan., 25 to 32.
Freeman, K. B., C. P. Ex. and Chan., 22 to 37.
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Kreble, K. B., 13 to 30.
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Vaughan, C. P., 17 to 25.
Ventris, K. B., C. P., Ex. and Chan., 20 to 37.
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James II.—(*Feb.* 6) 1685. (*Feb.* 13) 1689.
Carthew, K. B., 2 to 4.
Cases in Chancery, part 2—1 to 3.
Cases of Settlement, K. B., 2 to 4.
Comberbach, K. B., 1 to 4.
Freeman, K. B., C. P., Ex. and Chan., 1 to 4.
Levinz, K. B. and C. P. 1; 2.
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Modern, K. B., C. P., Ex. and Chan., vol. 3—1 to 4.
Parker, Ex. 3, 4.
Reports in Chancery, 1 to 3.
Shower, K. B., 1 to 4.
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Ventris, K. B., C. P., Ex. and Chan., 1 to 4.
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William III. & Mary.—(*Feb.* 13) 1689 (*Mar.* 8) 1702.
Carthew, K. B., 1 to 12.
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Colles, Parliamentary Cases, 9 to 14.
Comberbach, K. B., 1 to 10.
Comyns, K. B., C. P., Ex. Chan. and before the Delegates, 7 to 14.
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Freeman, K. B., C. P., Ex. and Chan., 1 to 14.
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Levinz, K. B. and C. P., 1 to 18.
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Modern, K. B., C. P., Ex. and Chan., vol. 4—3 to 7.
Modern, K. B., C. P., Ex. and Chan., vol. 5—5 to 11.
Modern, K. B., C. P., Ex. and Chan., vol. 12—2 to 14.
Parker, Ex., 4 to 13.
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Precedents in Chancery, 1 to 4.
Raymond, (Lord) K. B. and C. P., 4 to 14.
Reports in Chancery, vol. 2—5.
Reports temp. Holt, K. B., C. P., Ex. and Chan., 1 to 14.
Salkeld, K. B., C. P., Ex. and Chan., 1 to 14.
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Ventris, K. B., C. P., Ex. and Chan., 1, 2.
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Anne.—(*Mar.* 8) 1702. (*Aug.* 1) 1714.
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Banbury, Ex. 12, 13.
Cases concerning Settlements, K. B., 1 to 13.
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Comyns, K. B., C. P., Ex. Chanc. and before the Delegates, 1 to 13.
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George 1.—(*Aug.* 1) 1714. (*June* 11) 1727.
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Brown's Parliamentary Cases, 1 to 13.
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Cases concerning Settlements, K. B., 1 to 13.
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George II.—(*June* 11) 1727. (*Oct.* 25) 1760.
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Bingham, C. P., 3, &c.
Bligh, H. of Lords, 1, &c.
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Broderip & Bingham, C. P., 1 to 3.
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Hayes, Exch., (*Ireland*), 1 to 3.
Knapp, Appeal Cases, 1 to
Knapp and Ombler, Election Cases, 5 to
Lloyd and Goold, Irish Chan., 5 to
Manning and Ryland, K. B., 1 to
Meeson and Welsby, 6.
Montagu and Bligh, Bankruptcy, 2 & 3.
Montagu and Ayrton, Bankruptcy, 3 to
Moody and Malkin, N. P., 1 to
Moore and Payne, C. P., 1 to
Moore and Scott, C. P., 1 to
Mylne and Craig.
Mylne and Keen, Chan., 3 to
Neville and Manning, K. B., 3 to
Perry and Knapp, Election Cases, 3 to 5.
Russell and Mylne, Chan., 1 to 3.
Scott, C. P., 5 to
Simons, Vice-Chan., 1 to
Tamlyn, Rolls, 1 to
Tyrwhitt, Exch., 1 to
Tyrwhitt and Granger.
Wilson and Shaw, H. of Lords, 1 to
Wilson and Courtenay, H. of Lords, 2 to
Younge, Equity Exch., 1 to
Younge and Collyer, Equity Exch., 4 to

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Adolphus and Ellis, K. B.
Adolphus and Ellis, New Series.
Alcock and Napier, K. B., (*Ireland.*)
Beavan, Rolls court.
Bingham, C. P., 1 to
Bligh, House of Lords.
Bligh, New Series.
Carrington and Maishman, N. P., C. P. and Exch.
Carrington and Payne, N. P.
Clark and Finnelly, H. of Lords.
Cooper, Chancery Practice Cases.
Curteis, Ecclesiastical.
Deacon, Bankruptcy.
Dowling, Practice Cases.
Dowling, New Series.
Drury and Walsh, Chancery, (*Ireland.*)
Falconer and Fitzherbert, Election.
Gale and Davison, K. B.
Haggard, Admiralty.
Jebb and Tymes, K. B. (*Ireland.*)
Keen, Rolls.
Manning & Granger, C. P.
Meeson and Welsby, Exch.
Montagu and Ayrton, Bankruptcy.
Montagu and Chitty, Bankruptcy.
Montagu and Neale, Election.
Moody, N. P. and Crown Cases.
Moody and Robinson, Nisi Prius.
Moore, Appeal Cases.
Moore, East India Appeals.
Moore, Privy council.
Mylne and Craig, Chancery.
Neville and Perry, K. B.
Perry and Davison, K. B.
Robertson, House of Lords.
Sausse and Scully, Rolls, (*Ireland.*)
Scott, C. P.
Scott, New Series.

Shaw and Maclean, House of Lords.
Simons, Vice Chancellor.
West, Parl. Reports.
Younge and Collyer, Equity Ex.

REPRESENTATIVE. One who represents or is in the place of another. In legislation it signifies one who has been elected a member of that branch of the legislature called the house of representatives. A representative of a deceased person, sometimes called a "personal representative," or "legal personal representative," is one who is executor or administrator of the person described. 6 Madd. 159; 5 Ves. 402.

REPRESENTATION, *insurances.* A representation is a collateral statement, either by writing, not inserted in the policy, or by parol, of such facts or circumstances relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risk.

A representation, like a warranty, may be either *affirmative*, as where the insured avers the existence of some fact or circumstance which may affect the risk; or *promissory*, as where he engages the performance of something executory.

There is a material difference between a representation and a warranty. A warranty, being a condition upon which the contract is to take effect, is always a part of the written policy, and must appear on the face of it. Marsh. Ins. c. 9, § 2. Whereas a representation is only a matter of collateral information or intelligence on the subject of the voyage insured, and makes no part of the policy. A warranty, being in the nature of a condition precedent, must be strictly and literally complied with; but it is sufficient if the representation be true in substance. Whether a warranty be material to the risk or not, the insured stakes his claim of indemnity upon the precise truth of it, if it be affirmative, or upon the exact performance of it, if executory; but it is sufficient if a representation be made without fraud, and be not false in any material point, or if it be substantially, though not literally, fulfilled. A false warranty avoids the policy, as being a breach of the condition upon which the contract is to take effect; and the insurer is not liable for any loss though it do not happen in consequence of the breach of the warranty; a false representation is no breach of the contract, but if material, avoids the policy on the ground of fraud, or at least because the insurer has been misled by it. Marsh. Insur. B. 1, c. 10, s. 1; Dougl. R. 247; 4 Bro. P. C. 482.

See 2 Caines's R. 155; 1 Johns. Cas. 408; 2 Caines's Cas. 173, n.; 3 Johns. Cas. 47; 1 Caines's Rep. 288; 2 Caines's R. 222; Ib. 329; Sugd. Vend. 5; and *Concealment; Misrepresentation.*

REPRESENTATION, *Scotch law.* The name of a plea or statement presented to a lord ordinary of the court of sessions, when his judgment is brought under review.

REPRESENTATION OF PERSONS, is a fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented. The heir represents his ancestor. Bac. Abr. Heir and Ancestor, A. The devisee, his testator; the executor, his testator; the administrator, his intestate; the successor in corporations, his predecessor. And generally speaking they are entitled to the rights of the persons whom they represent, and bound to fulfil the duties and obligations, which were binding upon them in those characters. Representation was unknown to the Romans, and was invented by the commentators and doctors of the civil law. Toull. Dr. Civ. Fr. liv.

3, t. 1, c. 3, n. 180. Vide Ayl. Pand. 397; Dall. Dict. mot Succession, art. 4, § 2.

REPRIEVE, *criminal law, practice;* this term is derived from reprendre, to take back, and signifies the withdrawing of a sentence for an interval of time, and operates in delay of execution. 4 Bl. Com. 394. It is granted by the favour of the pardoning power, or by the court who tried the prisoner. Reprieves are sometimes granted *ex necessitate legis;* for example, when a woman is convicted of a capital offence, after judgment she may allege pregnancy in delay of execution. In order however to render this plea available she must be *quick with child*, (q. v.) the law presuming, perhaps absurdly enough, that before that period, life does not commence in the fœtus. 3 Inst. 17; 2 Hale, 413; 1 Hale, 368; 4 Bl. Com. 395.

The judge is also bound to grant a reprieve when the prisoner becomes insane. 4 Harg. St. Tr. 205, 6; 3 Inst. 4; Hawk. B. 1, c. 1, s. 4; 1 Chit. Cr. Law, 757.

REPRIMAND, *punishment*, is the censure which in some cases a public officer pronounces against an offender. This species of punishment is used by legislative bodies to punish their members or others who have been guilty of some impropriety of conduct towards them. The reprimand is usually pronounced by the speaker.

REPRISALS, *war*. The forcibly taking a thing by a nation which belonged to another, in return or satisfaction for an injury committed by the latter on the former. Vatt. B. 2, ch. 18, s. 342; 1 Bl. Com. ch. 7. Reprisals are used between nation and nation to do themselves justice, when they cannot otherwise obtain it. Congress have the power to grant letters of marque (q. v.) and reprisal. Const. art. 1, s. 8, cl. 11. Reprisals are made in two ways, either by embargo, in which case the act is that of the state; or, by letters of marque and reprisals, in which case the act is that of the citizen, authorised by the government. Vide 2 Bro. Civ. Law, 334.

Reprisals are divided into *negative*, when a nation refuses to fulfil a perfect obligation which it has contracted, or to permit another state to enjoy a right which it justly claims; or *positive*, when they consist in seizing the persons and effects belonging to the other nation, in order to obtain satisfaction. They are also *general* or *special*. They are *general* when a state which has received, or supposes it has received, an injury from another nation delivers commissions to its officers and subjects to take the persons and property belonging to the other nation, in retaliation for such acts, wherever they may be found. It usually amounts to a declaration of war. *Special* reprisals are such as are granted in times of peace, to particular individuals who have suffered an injury from the citizens or subjects of the other nation. Bynker. Quæst. Jur. Pub. lib. 1, Duponceau's translation, p. 182, note.

The property seized in making reprisals is preserved, while there is any hope of obtaining satisfaction or justice; as soon as that hope disappears, it is confiscated, and then the reprisal is complete. Vattel, B. 2, c. 18, § 342.

REPRISES. The deductions, and payments out of lands, annuities, and the like, are called reprises, because they are *taken back;* when we speak of the clear yearly value of an estate, we say it is worth so much a year *ultra reprises*, besides all reprises. In Pennsylvania, lands are not to be sold when the rents can pay the encumbrances in seven years, beyond all reprises.

REPUBLIC. A commonwealth; that form of government in which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government. 1 Toull. n. 28, and n. 202, note. In this sense, it is used by Ben Jonson.

Those that by their deeds make it known,
Whose dignity they do sustain;
And life, state, glory, all they gain,
Count the *Republic's*, not their own.

Vide *Body Politic; Nation; State.*

REPUBLICAN GOVERNMENT. A government in the republican form; a government of the people; it is usually put in opposition to a monarchical or aristocratic government. The fourth section of the fourth article of the constitution, directs that "the United States shall guaranty to every state in the Union a republican form of government." The form of government is to be *guarantied*, which supposes a form already *established*, and this is the republican form of government the United States have undertaken to protect. See Story, Const. § 1807.

REPUBLICATION. An act done by a testator, from which it can be concluded that he intended an instrument which had been revoked by him, should operate as his will; or it is the re-execution of a will by the testator, with a view of giving it full force and effect. The republication is express or implied. It is express when there has been an actual re-execution of it. 1 Ves. 440; 2 Rand. R. 192; 9 John. R. 312; it is implied, when, for example, the testator by a codicil executed according to the statute of frauds, reciting that he had made his will, added, "I hereby ratify and confirm my said will, except in the alterations after mentioned." Com. R. 381; 3 Bro. P. C. 85. The will might be at a distance, or not in the power of the testator, and it may be thus republished. 1 Ves. 437; 3 Bing. 614; 1 Ves. Jr. 486; 4 Bro. C. C. 2. The republication of a will has the effect, 1st, to give it all the force of a will made at the time of the republication; if, for example, a testator by his will devise "all his lands in A," then revokes his will, and afterwards buys other lands in A, the republication, made after the purchase, will pass all the testator's lands in A. Cro. Eliz. 493. See 1 P. Wms. 275; 2dly, it sets up a will which had been revoked. See, generally, 2 Hill. Ab. 509; 3 Lomax, Dig. tit. 28, c. 6.

REPUGNANCY, *in pleading*, is where the material facts stated in a declaration or other pleading, are inconsistent one with another; for example, where in an action of trespass, the plaintiff declared for taking and carrying away certain timber, lying in a certain place, for the completion of a house then lately built; this declaration was considered bad, for repugnancy; for the timber could not be for the building of a house already built. 1 Salk. 213. Repugnancy of immaterial facts, and what is merely redundant, and which need not have been put into the sentence, and contradicting what was before alleged, will not, in general, vitiate the pleading. Gilb. C. P. 131; Co. Litt. 303 b; 10 East, R. 142; 1 Chit. Pl. 233. See Lawes, Pl. 64; Steph. Pl. 378; Com. Dig. Abatement, (H 6); 1 Vin. Ab. 36; 19 Ib. 45; Bac. Ab. Amendment, &c. E 2; Bac. Ab. Pleas, &c. I 4; Vin. Ab. h. t.

REPUTATION, *evidence*, is the opinion generally entertained by persons who know another, as to his *character*, (q. v.); or it is the opinion generally entertained by persons who know a family as to its pedigree, and the like. In general, reputation is evidence to prove, 1st, a man's

character in society; 2d, a *pedigree*, (q. v.); 3d, certain prescriptive or customary rights and obligations, and matters of public *notoriety*, (q. v.) But as such evidence is in its own nature very weak, it must be supported, 1st, when it relates to the exercise of a right or privilege, by proof of acts of enjoyment of such right or privilege, within the period of living memory. 1 Maule & Selw. 679; 5 T. R. 32; afterwards evidence of reputation may be given. 2d, The fact must be of a public nature. 3d, It must be derived from persons likely to know the facts. 4th, The facts must be general and not particular. 5th, They must be free from suspicion. 1 Stark. Ev. 54 to 65. Vide 1 Har. & M'H. 152; 2 Nott & M'C. 114; 5 Day, R. 290; 4 Hen. & M. 507; 1 Tayl. R. 121; 2 Hayw. 3; 8 S. & R. 159; 4 John. R. 52; 18 John. R. 346; 9 Mass. R. 414; 4 Burr. 2057; Dougl. 174; Cowp. 594; 3 Swanst. 400; and arts. *Character; Memory.*

REQUEST, *pleading*, is the statement in the plaintiff's declaration that a demand or request has been made by the plaintiff from the defendant, to do some act which he was bound to perform, and for which the action is brought. A request is general or special. The former is called the *licet sæpius requisitus*, (q. v.) or "although often requested so to do;" though generally inserted in the common breach, to the money counts, it is of no avail in pleading, and the omission of it will not vitiate the declaration. 2 Hen. Bl. 131; 1 Bos. & Pull. 59, 60; and see 1 John. Cas. 100. Whenever it is essential to the cause of action, that the plaintiff should have requested the defendant to perform his contract, such request must be stated in the declaration and proved. The special request must state by whom, and the time and place when it was made, in order that the court may judge of its sufficiency. 1 Str. 89. Vide Com. Dig. Pleader, C 69, 70; 1 Saund. 33; 2 Ventr. 75; 3 Bos. & Pull. 438; 3 John. R. 207; 1 John. Cas. 319; 10 Mass. R. 230; 3 Day's R. 327; and the articles *Demand; Licet sæpius requisitus.*

RES, *property*. Things. The terms "Res," "Bona," "Biens," used by jurists who have written in the Latin and French languages, are intended to include movable or personal, as well as immovable or real property. 1 Burge, Confl. of Laws, 19.

RES GESTA, *evidence*. The subject-matter; things done. When it is necessary in the course of a cause to inquire into the nature of a particular act, or the intention of the person who did the act, proof of what the person said at the time of doing it, is admissible evidence, as part of the *res gesta*, for the purpose of showing its true character. On an indictment for a rape, for example, what the girl said so recently after the fact as to exclude the possibility of practising on her, has been held to be admissible evidence, as a part of the transaction. East, P. C. 414; 2 Stark. Cas. 241; 1 Stark. Ev. 47; 1 Phil. Ev. 218.

RES INTEGRA. An entire thing; an entirely new or untouched matter. This term is applied to those points of law which have not been decided, which are "untouched by dictum or decision." 3 Meriv. R. 268; 1 Burge on the Confl. of Laws, 241.

RES INTER ALIOS ACTA, *evidence*, this is a technical phrase which signifies acts of others, or transactions between others. Neither the declarations, nor any other acts of those who are mere strangers, or, as it is usually termed, any *res inter alios acta*, are admissible in evidence against any one; when the party

against whom such acts are offered in evidence, was privy to the act, the objection ceases; it is no longer res inter alios. 1 Stark. Ev. 52; 3 Ib. 1300.

RES JUDICATA, *in practice*, is the decision of a legal or equitable issue, by a court of competent jurisdiction. It is a general principle that such decision is binding and conclusive upon all other courts of concurrent power. This principle pervades not only our own, but all other systems of jurisprudence, and has become a rule of universal law, founded on the soundest policy.. If, therefore, Paul sue Peter to recover the amount due to him upon a bond, and on the trial the plaintiff fails to prove the due execution of the bond by Peter, in consequence of which a verdict is rendered for the defendant, and judgment is entered thereupon, this judgment, till reversed on error, is conclusive upon the parties, and Paul cannot recover in a subsequent suit, although he may then be able to prove the due execution of the bond by Peter, and that the money is due to him, for, to use the language of the civilians, *res judicata facit ex albo nigrum, ex nigro album, ex curvo rectum, ex recto curvum.* The constitution of the United States and the amendments to it declare, that no fact, once tried by a jury, shall be otherwise re-examinable in any court of the United States, than according to the rules of the common law. 3 Pet. 433; Dig. 44, 2; and Voet. ibid.; Kaimes's Equity, vol. 2, p. 367; 1 Johns. Ch. R. 95; 2 M. R. 142; 3 M. R. 623; 4 M. R. 313, 456, 481; 5 M. R. 282, 465; 9 M. R. 38; 11 M. R. 607; 6 N. S. 292; 5 N. S. 664; 1 L. R. 318; 8 L. R. 187; 11 L. R. 517. Toullier, Droit Civil Français, vol. 10, No. 65 to 259. Vide *Things adjudged.*

RESCISSION OF A CONTRACT, is the destruction or annulling of a contract. The right to rescind a contract seems to suppose that the contract has existed only in appearance; but that it has never had a real existence on account of the defects which accompanied it; or which prevented its actual execution. 7 Toul. n. 551; 17 Id. n. 114. A contract cannot, in general, be rescinded by one party unless both parties can be placed in the same situation, and can stand upon the same terms as existed when the contract was made. 5 East, 449; 15 Mass. 319; 5 Binn. 355; 3 Yeates, 6. The most obvious instance of this rule is, where one party by taking possession, &c. has received a partial benefit from the contract. Hunt v. Silk, 5 East, 449. A contract cannot be rescinded in part. It would be unjust to destroy a contract in toto, when one of the parties has derived a partial benefit, by a performance of the agreement. In such case it seems to have been the practice formerly to allow the vendor to recover the stipulated price, and the vendee recovered, by a cross-action, damages for the breach of the contract. 7 East, 480, in the note. But according to the later and more convenient practice, the vendee, in such case, is allowed, in an action for the price, to give evidence of the inferiority of the goods in reduction of damages, and the plaintiff who has broken his contract is not entitled to recover more than the value of the benefit the defendant has actually derived from the goods or labour; and where the latter has derived no benefit the plaintiff cannot recover at all. Stark. on Evidence, part 4, tit. Goods sold and delivered. Chitty on Contr. 276. See 7 East, 484; 1 Mass. R. 101; 14 Mass. 282; Wharton's Dig. 119, 120; 10 East, 564; 1 Campb. 78, 190; 3 Campb. 451; 3 Starkie, 32; 1 Stark. R. 108; 2 Taunt. 2; 2 New Rep. 136; 6 Moore, 114; 3 Chit. Com. L. 153;

1 Saund. 320, b. note; 1 Mason, 437; 1 Chip. R. 159; 2 Stark. Ev. 97, 280; 3 Ib. 1614, 1645; 3 New Hamp. R. 455; 2 South. R. 780; Day's note to Templer v. M'Lachlan, 2 N. R. 141; 1 Mason, 93; 20 Johns. 196; 5 Com. Dig. 631, 636; and Com. Dig. Action upon the case upon Assumpsit, A 1, note (*x*) p. 829, for a very full note; Com. Dig. Biens, (D 3) n. (*s*).

As to the cases where a contract will be rescinded in equity on the ground of mistake, see Newl. Cont. 432; or where heirs are dealing with their expectancies, Ibid. 435; sailors with their prize money, Ibid. 443; children dealing with their parents, Ibid. 445; guardians with their wards, Ibid. 448; attorney with his client, Ibid. 453; cestui que trust, with trustee, Ibid. 459; where contracts are rescinded on account of the turpitude of their consideration, Ibid. 469; in fraud of marital rights, Ibid. 424; in fraud of marriage agreement, Ibid. 417; on account of imposition, Ibid. 351; in fraud of creditors, Ib. 369; in fraud of purchasers, Ib. 391; in fraud of a deed of composition by creditors, Ib. 409.

RESCEIT or RECEIT. The admission or receiving of a third person to plead his right in a cause formerly commenced between two other persons; as, when an action is brought against a tenant for life or years, or any other particular tenant, and he makes default, in such case the reversioner may move that he may be received to defend his right, and to plead with the demandant. Jacob, L. D. h. t. Resceit is also applied to the admittance of a plea, when the controvery is between the same two persons. Co. Litt. 192; 3 Nels. Ab. 146.

RESCOUS, *crim. law, torts.*—This word is used synonymously with rescue, (q. v.) and denotes the illegal taking away and setting at liberty a distress taken, or a person arrested by due process of law. Co. Litt. 160. In civil cases when a defendant is rescued the officer will or will not be liable, as the process under which the arrest is made, is or is not final. When the sheriff executes a *fi. fa.* or *ca. sa.* he may take the *posse comitatus*, Show. 180, and, neglecting to do so, he is responsible; but on mesne or original process, if the defendant rescue himself, *vi et armis*, the sheriff is not answerable. 1 Holt's R. 537; 3 Engl. Com. Law Rep. 179, S. C. Vide Com. Dig. h. t.; Yelv. 51; 2 T. R. 156; Woodf. L. & T. 521; Bac. Ab. Rescue, D; Doct. Pl. 433.

RESCRIPT, *conv.* A counterpart. Vide *Chirograph; Counterpart; Part.*

RESCRIPTION, *French law.* A rescription is a letter by which the maker requests some one to pay a certain sum of money, or to account for him to a third person for it. Poth. Du Contr de Change, n. 225. According to this definition, bills of exchange are a species of rescription. The difference appears to be this, that a bill of exchange is given when there has been a contract of exchange between the drawer and the payee; whereas the rescription is sometimes given in payment of a debt, and at other times it is lent to the payee. Id.

RESCRIPTS, *civ. law*, were the answer of the prince at the request of the parties, respecting some matter in dispute between them, or to magistrates in relation to some doubtful matter submitted to him. The rescript was differently denominated, according to the character of those who sought it. They were called *annotations* or *subnotations*, when the answer was given at the request of private citizens; *letters* or *epistles*, when he answered the consultation of magistrates; *pragmatic sanctions*,

when he answered a corporation, the citizens of a province, or a municipality. Leçons El. du Dr. Rom. § 53; Code, 1, 14, 3.

RESCUE, *crim. law*, is a forcible setting at liberty against law of a person duly arrested. Co. Litt. 160; 1 Chitty's Cr. Law, *62; 1 Russ. on Cr. 383; the person who rescues the prisoner is called the rescuer. If the rescued prisoner were arrested for felony, then the rescuer is a felon; if for treason, a traitor; and if for a trespass, he is liable to a fine as if he had committed the original offence. Hawk. B. 5, c. 21. If the principal be acquitted, the rescuer may nevertheless be fined for the misdemeanor in the obstruction and contempt of public justice. 1 Hale, 598. In order to render the rescuer criminal, it is necessary he should have knowledge that the person whom he sets at liberty has been apprehended for a criminal offence, if he is in the custody of a private person; but if he be under the care of a public officer, then he is to take notice of it at his peril. 1 Hale, 606. For the law of the United States on this subject, vide Ing. Dig. 150. Vide, generally, 19 Vin. Ab. 94.

RESCUE, *mar. war*, is the retaking by a party captured of a prize made by the enemy. There is still another kind of rescue which partakes of the nature of a recapture; it occurs when the weaker party before he is overpowered, obtains relief from the arrival of fresh succours, and is thus preserved from the force of the enemy. 1 Rob. Rep. 224; 1 Rob. Rep. 271. Rescue differs from recapture, (q. v.) The rescuers do not by the rescue become owners of the property, as if it had been a new prize; but the property is restored to the original owners by the right of postliminium, (q. v.)

RESCUSSOR. The party making a rescue, is sometimes so called, but more properly he is a rescuer.

RESERVATION, *contracts*. Is that part of a deed or other instrument which reserves a thing not in esse at the time of the grant but newly created. 2 Hill. Ab. 359; 3 Pick. R. 272. It differs from an exception, (q. v.) See 4 Verm. 622; Brayt. R. 230; 9 John. R. 73; 20 John. R. 87.

RESET OF THEFT, *Scotch law*, is the receiving and keeping of stolen goods, knowing them to be stolen, with a design of feloniously retaining them from the real owner. Alis. Pr. Cr. Law, 328.

RESETTER, *Scotch law*. A receiver of stolen goods, knowing them to have been stolen.

RESIDENCE. The place of one's domicil, (q. v.) In some cases the law requires that the residence of an officer shall be in the district in which he is required to exercise his functions. Fixing his residence elsewhere, without an intention of returning would violate such law. Vide the cases cited under the article *Domicil*.

RESIDENT, *international law*, is a minister, according to diplomatic language, of a third order, less in dignity than an ambassador or an envoy. This term formerly related only to the continuance of the minister's stay, but now it is confined to ministers of this class. The resident does not represent the prince's person in his dignity, but only his affairs. His representation is in reality of the same nature as that of the envoy; hence he is often termed, as well as the envoy, a minister of the second order, thus distinguishing only two classes of public ministers, the former consisting of ambassadors who are invested with the representative character in pre-eminence, the latter comprising all other ministers, who do not possess that exalted character. This is the most necessary

distinction, and indeed the only essential one. Vattel, liv. 4, c. 6, § 73.

RESIDUARY LEGATEE, is he to whom the residuum of the estate is devised or bequeathed by will. Roper on Leg. Index, h. t.; Powell Mortg. Index, h. t.; 8 Com. Dig. 444.

RESIDUE. That which remains of something after taking away a part of it; as, the residue of an estate, which is what has not been particularly devised by will. A will bequeathing the general residue of personal property, passes to the residuary legatee every thing not otherwise effectually disposed of, and it makes no difference whether a legacy falls into the estate by lapse, or as void at law, the next of kin is equally excluded. 15 Ves. 416; 2 Mer. 392. Vide 7 Ves. 391; 4 Bro. C. C. 55; 1 Bro. C. C. 589; Rop. on Leg. Index, h. t.

RESIGNATION. The act of an officer by which he declines his office, and renounces the further right to use it. It differs from abdication, (q. v.)

RESOLUTION. A solemn judgment or decision of a court. This word is frequently used in this sense, in Coke and some of the more ancient reporters. It also signifies an agreement to a law or other thing adopted by a legislature or popular assembly. Vide Dict. de Jurisp. h. t.

RESOLUTION, *civil law*. Is the act by which a contract which existed and was good, is rendered null. Resolution differs essentially from rescision. The former presupposes the contract to have been valid, and it is owing to a cause posterior to the agreement that the resolution takes place; while rescision, on the contrary, supposes that some vice or defect annulled the contract from the beginning. Resolution may be by consent of the parties or by the decision of a competent tribunal; rescision must always be by the judgment of a court. 7 Troplong, de la Vente, n. 689; 7 Toull. 551; Dall. Dict. h. t.

RESORT. The authority or jurisdiction of a court. The supreme court of the United States, is a court of the last resort.

RESPIRATION, *med. jur.*— Breathing, which consists of the drawing into, inhaling, or more technically, *inspiring*, atmospheric air into the lungs, and then forcing out, expelling, or technically *expiring*, from the lungs the air therein. Chit. Med. Jur. 92 and 416, note (n).

RESPITE, *in contracts, in the civil law*, is an act by which a debtor who is unable to satisfy his debts at the moment, transacts (i. e. compromises,) with his creditors and obtains from them time or delay for the payment of the sums which he owes to them. Louis. Code, 3051. The respite is either voluntary or forced; it is voluntary when all the creditors consent to the proposal, which the debtor makes to pay in a limited time the whole or a part of his debt; it is forced when a part of the creditors refuse to accept the debtor's proposal, aud when the latter is obliged to compel them, by judicial authority, to consent to what the others have determined in the cases directed by law. Ib. 3052; Poth. Procéd. Civ. 5eme partie, ch. 3.

In Pennsylvania there is a provision in the insolvent act of the 26th of March, 1814, s. 14, somewhat similar to involuntary respite. It is enacted, that it shall be lawful for the court by whom any debtor shall have been discharged under that act, to make an order, that whenever a majority in number and value of his creditors residing in the United States, or having a known attorney therein, consent in writing thereto, he shall be released from all suits,

and the estate and property which he may afterwards acquire shall be exempted from execution for any debt contracted or cause of action created previous to such discharge, and for seven years thereafter; and if, after such order shall be so made, and a majority in number and value of the creditors shall have consented as aforesaid, any action shall be commenced, or execution issued for such debt or cause of action, it shall be the duty of any judge of the court from which the process issued, to set aside the same with costs.

Respite also signifies a delay, forbearance or continuation of time.

RESPONDEAT OUSTER.—Vide *Judgment of Respondeat Ouster.*

RESPONDENT, *practice.* The party who makes an answer to a bill or other proceeding in chancery.

RESPONDENTIA, *in maritime law*, is a loan of money on goods laden on board of a ship, which in the course of the voyage must, from their nature, be sold or exchanged, on maritime interest, upon this condition, that if the goods should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed upon. The contract is called *respondentia*, because the money is lent on the personal responsibility of the borrower. It differs principally from bottomry, in the following circumstances: bottomry is a loan on the ship; respondentia is a loan upon the goods. The money is to be repaid to the lender, with maritime interest, upon the arrival of the ship, in the one case; and of the goods, in the other. In all other respects the contracts are nearly the same, and are governed by the same principles. In the former the ship and tackle, being hypothecated, are liable, as well as the person of the borrower; in the latter the lender has, in general, only the personal security of the borrower. Marsh. Ins. B. 2, c. 1, p. 734. See Lex. Mer. Amer. 354; Com. Dig. Merchant, E 4; 1 Fonb. Eq. 247, n. l.; Ib. 252, n. o.; 2 Bl. Com. 457; Park, Ins. ch. 21; Wesk. Ins. 44; Beawes's Lex. Mex. 143; 3 Chitty's Com. Law, 445 to 536; Bac. Abr. Merchant and Merchandize, K; *Bottomry.*

RESPONSALIS, *old Engl. law.* One who appeared for another in court. Fleta, lib. 6, c. 21. In the ecclesiastical law, this name is sometimes given to a proctor.

RESPONSIBILITY. The obligation to answer for an act done, and to repair any injury it may have caused. This obligation arises without any contract, either on the part of the party bound to repair the injury, or of the party injured. The law gives to the person who has suffered loss, a compensation in damages. Vide *Damages; Injury; Loss.*

RESTITUTION, *maritime law*, is the placing back or restoring articles which have been lost by jettison; this is done when the remainder of the cargo has been saved, at the general charge of the owners of the cargo; but when the remainder of the goods are afterwards lost, there is not any restitution. Stev. on Av. part 1, c. 1, s. 1, art. 1, n. 8. Vide *Recompense.*

RESTITUTION, *practice.* The return of something to the owner of it, or to the person entitled to it. After property has been taken into execution, and the judgment has been reversed or set aside, the party against whom the execution was sued out shall have restitution, and this is enforced by a writ of restitution. Cro. Jac. 698; 4 Mod. 161. When the thing levied upon under an execution has not been sold, the thing itself shall be

restored; when it has been sold, the price for which it is sold is to be restored. Roll. Ab. 778; Bac. Ab. Execution, Q; 1 M. & S. 425. The phrase *restitution of conjugal rights* frequently occurs in the ecclesiastical courts. A suit may there be brought for this purpose whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without sufficient reason; by which the party injured may compel the other to return to cohabitation. 1 Bl. Com. 94; 1 Addams, R. 305; 3 Hagg. Eccl. R. 619.

TO RESTORE. To return what has been unjustly taken; to place the owner of a thing in the state in which he formerly was. By restitution is understood not only the return of the thing itself, but all its accessories. It is to return the thing and its fruits. Dig. 50, 16, 35, 75 et 246, § 1.

RESULTING TRUSTS, *estates.* Resulting, implied or constructive trusts, are those which arise in cases where it would be contrary to the principles of equity that he in whom the property becomes vested, should hold it otherwise than as a trustee. As an illustration of this description of a resulting trust, may be mentioned the case of a contract made for the purchase of a real estate; on the completion of the contract, a trust immediately results to the purchaser, and the vendor becomes a trustee for him till the conveyance of the legal estate is made. Again, when an estate is purchased in the name of one person, and the purchase money is paid by another, there is a resulting trust in favour of the person who gave or paid the consideration. Willis on Tr. 55; 1 Cruise, Dig. tit. 12, s. 40, 41; Ch. Ca. 39; 9 Mod. 78; 7 Ves. 725; 3 Hen. & Munf. 367; 1 Supp. to Ves. jr. 11; Pow. Mortg. Index, h. t.; 2 John. Ch. R. 409, 450; 3 Bibb, R. 15, 506; 4 Munf. R. 222; 1 John. Ch. Rep. 450, 582; Sugd. on Vend. ch. 15, s. 2; 2 Cox, Ch. Rep. 93; Bac. Ab. Trusts, (C); Vide *Trusts; Use.*

RESULTING USE, *estate,* is one which having been limited by deed, expires or cannot vest; it then returns back to him who raised it, after such expiration, or during such impossibility. When the legal seisin and possession of land is transferred by any common law conveyance, and no use is expressly declared, nor any consideration, nor evidence of intent to direct the use, such use shall result back to the original owner of the estate; for in such case, it cannot be supposed that it was intended to give away the estate. 2 Bl. Com. 335; Cruise, Dig. t. 11, c. 4, s. 20, et seq.; Bac. Tracts, Read. on Stat. of Uses, 351; Co. Litt. 23, a; Ib. 271, a; 2 Binn. R. 387; 3 John. R. 396.

RESUMPTION. Is to reassume; to promise again; as, the resumption of payment of specie by the banks is general. It also signifies to take things back; as, the government has resumed the possession of all the lands which have not been paid for according to the requisitions of the law, and the contract of the purchasers. Cow. Int. h. t.

RETAIL. To sell by retail, is to sell by small parcels, and not in the gross.

RETAILER OF MERCHANDISE, is one who deals in merchandise by selling it in smaller quantities than he buys, generally with a view to profit. A retailer of merchandise may be made a bankrupt by adverse proceedings against him. Act of Congress of 19 Aug. 1841.

TO RETAIN, *practice,* to engage the services of an attorney or counsellor to manage a cause, when it it usual to give him a fee, called the retaining fee. The act by which the attorney is authorised to act in the case is called a retainer. Al-

though it is not indispensable that the retainer should be in writing, unless required by the other side, it is very expedient. It is therefore recommended, particularly when the client is a stranger, to require from him, a written retainer, signed by himself; and, in order to avoid the insinuation that it was obtained by contrivance, it should be witnessed by one or more respectable persons. When there are several plaintiffs, it should be signed by all, and not by one for himself and the others, especially if they are trustees or assignees of a bankrupt or insolvent. The retainer should also state whether it be given for a general or a qualified authority. Vide the form of a retainer in 3 Chit. Pr. 116 note (*m*). There is an implied contract on the part of an attorney who has been retained, that he will use due diligence in the course of legal proceedings, but it is not an undertaking to recover a judgment. Wright, R. 446. An attorney is bound to act with the most scrupulous honour, he ought to disclose to his client if he has any adverse retainer which may affect his judgment, or his client's interest; but the concealment of the fact does not necessarily imply fraud. 3 Mason's R. 305.

RETAINER. The act of withholding what one has in one's own hands by virtue of some right. An executor or administrator is entitled to retain in certain cases, for a debt due to him by the estate of a testator or intestate. It is proposed to inquire, 1, who may retain; 2, against whom; 3, on what claims; and, 4, what amount may be retained.

I. In inquiring who may retain, it is natural to consider, 1st, those cases where there is but one executor or administrator; and 2dly, where there are several, and one of them only has a claim against the estate of the deceased.

1. A *sole* executor may retain in those cases where if the debt had been due to a stranger, such stranger might have sued the executor and recovered judgment; or where the executor might, in the due administration of the estate, have paid the same. 3 Burr. 1380. He may, therefore, retain a debt due to himself; 3 Bl. Com. 18; or to himself in right of another, 3 Burr. 1380; or to another in trust for him, 2 P. Wms. 298; the debt may be retained when administration is committed to another for the use of the creditor who is a lunatic, 3 Bac. Abr. 10, n; Com. Dig. Administration, C 2; or an infant, 4 Ves. 763, entitled to administration. An executor may retain if he is the executor of the first testator, but an executor of one of the executors of the first testator, the other executor being still living, is not an executor of the first testator, and therefore cannot retain. 11 Vin. Abr. 363. An executor may retain before he has proved the will, and if he die after having intermeddled with the goods of the testator and before probate, his executor has the same power. 3 P. Wms. 183, and note B.; 11 Vin. Abr. 263.—2. Where there are *several* executors, and one has a claim against the estate of the deceased, he may retain with or without the consent of the others, Off. Ex. 33; but where several of them have debts of equal degree they can retain only *pro rata*. Bac. Abr. Executors, A 9.

II. *Against whom.* In those cases, 1, where the deceased was alone bound; 2, where he was bound with others; 3, where the executor of the obligee is also his executor. 1. Where the deceased was sole obligor, his executor may clearly retain. —2. Where two are jointly and severally bound, and one of them appoints the obligee his executor,

Hob. 10; 2 Lev. 73; Bac. Abr. Executors, A 9; Com. Dig. Administration, C 1; or the obligee takes out letters of administration to him, the debt is immediately satisfied by way of retainer, if the executor or administrator have sufficient assets.—3. If the obligee make the administrator of the obligor his executor, it is a discharge of the debt, if the administrator have assets of the estate of the obligor; but if he have fully administered, or if no assets to pay the debt came to his hands, it is no discharge for there is nothing for him to retain. 8 Serg. & Rawle, 17.

III. *On what claims.* 1. As to the *priority* of the claim; 2, as to its *nature*. 1. In the payment of the debts of a decedent the law gives a preference to certain debts over others, an executor cannot therefore retain his debt, while there are unpaid debts of a superior degree, because if he could have brought an action for the recovery of his claim, he could not have recovered in prejudice of such a creditor. 5 Binn. 167; Bac. Ab. Executors, A 9; Com. Dig. Administration, C 2; 1 Hayw. 413. He may retain only where he has superior claim, or one of equal degree. 3 Bl. Com. 18; 11 Vin. Abr. 261; Com. Dig. Administration, C 1. And in a case where two men were jointly bound in a bond, one as principal, the other as surety, after which the principal died intestate and the surety took out administration to his estate, the bond being forfeited the administrator paid the debt; it was held he could not retain as a specialty creditor because being a party to the bond it became his own debt, 11 Vin. Abr. 265; Godb. 149, pl. 194; but see 7 Serg. & Rawle, 9; after having paid the debt, however, he became a simple contract creditor, and might retain it as such. Com. Dig. Administration, C 2, n.—2. As to the *nature* of the claim for which an executor may retain, it seems that damages which are in their nature arbitrary cannot be retained, because, till judgment, no man can foretel their amount; such are damages upon torts. But where damages arise from the breach of a pecuniary contract, there is a certain measure for them, and such damages may well be retained. 2 Bl. Rep. 965; and see 3 Munf. 222. A debt barred by the act of limitation may be retained, for the executor is not bound to plead the act against others, and it shall therefore not operate against him. 1 Madd. Ch. 583.

IV. What amount may be retained. 1. By the common law an executor is entitled to retain his debt in preference to all other creditors in an equal degree. 3 Bl. Com. 18; 11 Vin. Abr. 261. This he might do because he is to be placed in the situation of the most vigilant creditor, who by suing and obtaining a judgment might have obtained a preference. Where, however, the executor cannot by bringing suit obtain a preference the reason seems changed, and therefore in Pennsylvania, when no such preference can be obtained the executor is entitled to retain only pro rata with creditors of the same class. 8 Serg. & Rawle, 17; 5 Binn. 167. A creditor cannot obtain a preference by bringing suit and obtaining judgment against executors in the following states, namely, Alabama, 4 Griff. L. R. 582; Connecticut, 3 Griff. L. R. 75; Illinois, Id. 422; Louisiana, 4 Griff. L. R. 693; Maine, Id. 1004; Maryland, Id. 938; Massachusetts, 3 Griff. L. R. 516; Mississippi, 4 Griff. L. R. 669; Missouri, Id. 625; New Hampshire, 3 Griff. L. R. 46; Ohio, Id. 402; Pennsylvania, Id. 262; 8 Serg. & Rawle, 17; 5 Binn. 167; Rhode Island, 3 Griff. L. R.

114; South Carolina, 4 Griff. L. R. 860; Vermont, 3 Griff. L. R. 20. Such a preference can be given by the laws of the following states, namely, Delaware, 4 Griff. L. R. 1064; Kentucky, Id. 1135; North Carolina, 3 Griff. L. R. 221; New Jersey, 4 Griff. L. R. 1282; New York, 3 Griff. L. R. 141; Tennessee, 4 Griff. L. R. 791; Virginia, 3 Griff. L. R. 360. In Georgia, 3 Griff. L. R. 444; and Indiana, Id. 467; the matter is doubtful.—2. Where the estate is solvent an executor may of course retain for the whole of his debt with interest.

RETAKING. Vide *Recaption; Recapture; Rescue.*

RETALIATION. The act by which a nation or individual treat another in the same manner that the latter has treated them. For example, if a nation should lay a very heavy tariff on American goods, the United States would be justified in return to lay heavy duties on the manufactures and productions of such country. Vatt. Dr. des Gens, liv. 2, c. 18, § 341. Vide *Lex talionis.*

RETENTION, *Scottish law*, is the right which the possessor of a movable has of holding the same until he shall be satisfied for his claim either against such movable or the owner of it; a lien. The right of retention is of two kinds, namely special or general. 1. Special retention is the right of withholding or retaining property or goods which are in one's possession under a contract, till indemnified for the labour or money expended on them.—2. General retention is the right to withhold or detain the property of another, in respect of any debt which happens to be due by the proprietor to the person who has the custody; or for a general balance of accounts, arising on a particular train of employment. 2 Bell's Com. 90, 91, 5th ed. Vide *Lien.*

RETORNO HABENDO. Vide *Writ pro retorno habendo.*

RETORSION, *war*. The name of the act employed by a government to impose the same hard treatment of the citizens or subjects of a state, that the latter has used towards the citizens or subjects of the former, for the purpose of obtaining the removal of the obnoxious measures. Vattel, liv. 2, c. 18, § 341; De Martens, Précis, liv. 8, c. 2, § 254; Klüber, Droit des Gens, s. 2, c. 1, § 234; Mann. Comm. 105.

TO RETRACT, is to withdraw a proposition or offer before it has been accepted. This the party making it has a right to do as long as it has not been accepted; for no principle of law or equity can, under these circumstances, require him to persevere in it. The retraction may be express, as when notice is given that the offer is withdrawn, or tacit as by the death of the offering party, or his inability to complete the contract; for then the consent of the parties has been destroyed, before the other has acquired any existence; there can therefore be no agreement. 16 Toull. 55. After pleading guilty, a defendant will in certain cases, where he has entered that plea by mistake or in consequence of some error, be allowed to retract it. But where a prisoner pleaded guilty to a charge of larceny, and upon whom sentence has been passed, will not be allowed to retract his plea, and plead not guilty. 9 C. & P. 346; S. C. 38 E. C. L. R. 146; Dig. 12, 4, 5.

RETRAXIT, *practice*, is the act by which a plaintiff withdraws his suit; it is so called from the fact that this was the principal word used when the law entries were in Latin. A retraxit differs from a nonsuit; the former being the act of the plaintiff himself, for it cannot even be entered by attorney, 8 Co. 58; 3

Salk. 245; while the latter occurs in consequence of the neglect merely of the plaintiff. A retraxit also differs from a *nolle prosequi*, (q. v.) The effect of *retraxit* is a bar to all actions of a like or a similar nature, Bac. Ab. Nonsuit, A; a *nolle prosequi* is not a bar even in a criminal prosecution. 2 Mass. R. 172. Vide 2 Sell. Pr. 338; Bac. Abr. Nonsuit; Com. Dig. Pleader, X 2. Vide article *Judgment of retraxit*.

RETROCESSION, *civil law*.—When the assignee of heritable rights. conveys his rights back to the cedent, it is called a retrocession. Erskine, Prin. B. 3, t. 5, n. 1; Dict de Jur. h. t.

RETROSPECTIVE, looking backwards. This word is usually applied to those acts of the legislature, which are made to operate upon some subject, contract or crime which existed before the passage of the acts, and they are therefore called *retrospective laws*. These laws are generally unjust, and are, to a certain extent, forbidden by that article in the constitution of the United States which prohibits the passage of *ex post facto* laws or laws impairing contracts. The right to pass retrospective laws, with the exceptions above mentioned, exists in the several states, according to their own constitutions, and become obligatory if not prohibited by the latter. 4 S. & R. 364; 3 Dall. R. 396; 1 Bay, R. 179; 7 John. R. 477; vide 4 S. & R. 403; 1 Binn. R. 601; 3 S. & R. 169; 2 Cranch, R. 272; 2 Pet. 414; 8 Pet. 110; 11 Pet. 420; 1 Bald. R. 74. An instance may be found in the laws of Connecticut. In 1795, the legislature passed a resolve, setting aside a decree of a court of probate disapproving of a will and granted a new hearing; it was held that the resolve not being against any constitutional principle in that state, was valid. 3 Dall. 386. And in Pennsylvania, a judgment was opened by the act of April 1, 1837, which was holden by the supreme court to be constitutional. 2 Watts & Serg. 271. Laws should never be considered as applying to cases which arose previous to their passage, unless the legislature have clearly declared such to be their intention. 12 L. R. 352. Vide Barringt. on the Stat. 466, n.; 7 John. R. 477; 1 Kent, Com. 455; Tayl. Civil Law, 168; Code, 1, 14, 7; Bracton, lib. 4, fo. 228; Story, Cons. § 1393; 1 McLean, Rep. 40; 1 Meigs, Rep. 437; 3 Dall. 391; 1 Blackf. R. 193; 2 Gallis. R. 139; 1 Yerg. R. 360; 5 Yerg. R. 320; 12 S. & R. 330; and see *Ex post facto*.

RETURN, *contracts*, *remedies*. Persons who are beyond the sea, are exempted from the operation of the statute of limitations of Pennsylvania, and of other states, till after a certain time has elapsed after their *returning*. As to what shall be considered a return, see 14 Mass. 203; 1 Gall. 342; 3 Johns. 263; 3 Wils. 145; 2 Bl. Rep. 723; 3 Littell's Rep. 48; 1 Harr. & Johns. 89, 350; 17 Mass. 180.

RETURN OF WRITS, *practice*, is a short account, in writing, made by the sheriff, or other ministerial officer, of the manner in which he has executed a writ. Steph. on Pl. 24. It is the duty of such officer to return all writs on the return day; on his neglecting to do so, a rule may be obtained on him to return the writ, and, if he do not obey the rule, he may be attached for contempt. See 19 Vin. Ab. 171; Com. Dig. Return; 2 Lilly's Abr. 476; Wood. b. 1, c. 7; 1 Penna. R. 497; 1 Rawle, R. 420; 3 Yeates, 17; 4 Yeates, 47; 1 Dall. 439.

REUS, *civil law*. This word has two different meanings: 1. A party to a suit, whether plaintiff or defend-

ant; *Reus est qui cum altero litem contestatem habet, sive is egit, sive cum eo actum est.* 2. A party to a contract; *reus credendi* is he to whom something is due, by whatever title it may be; and *reus debendi* is he who owes, for whatever cause. Poth. Pand. lib. 50, h. t.

REVENDICATION, *civil and French law*, is an action by which a man demands a thing of which he claims to be the owner. It applies to immovables as well as movables; to corporeal or incorporeal things. Merlin, Répert. h. t. By the civil law, he who has sold goods for cash or on credit may demand them back from the purchaser, if the purchase-money is not paid according to contract. The action of *revendication* is used for this purpose. See an attempt to introduce the principle of revendication into our law, in 2 Hall's Law Journal, 181. Revendication in another sense, corresponds, very nearly, to the *stoppage in transitu* (q. v.), of the common law. It is used in that sense in the Code de Commerce, art. 577. Revendication, says that article, can take place only when the goods sold are on the way to their place of destination, whether by land or water, and before they have been received into the warehouse of the insolvent, (failli,) or that of his factor or agent, authorised to sell them on account of the insolvent. See Dig. 14, 4, 15; Dig. 18, 1, 19, 53; Dig. 19, 1, 11.

REVENUE, is the income of the government, arising from taxation, duties, and the like: and, according to some correct lawyers, under the idea of revenue is also included the proceeds of the sale of stocks, lands, and other property owned by the government. Story, Const. § 877. Vide *Money Bills*. By revenue is also understood the income of private individuals and corporations.

TO REVERSE, *practice*, is the decision of a superior court by which the judgment, sentence or decree of the inferior court is annulled. After a judgment, sentence or decree has been rendered by the court below, a writ of error may be issued from the superior to the inferior tribunal, when the record and all proceedings are sent to the supreme court on the return to the writ of error. When on the examination of the record, the superior court gives a judgment different from the inferior court, they are said to reverse the proceeding. As to the effect of a reversal, see 9 C. & P. 513; S. C. 38 E. C. L. Rep. 201.

REVERSION, *estates*, is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him: it is also defined to be the return of land to the grantor, and his heirs, after the grant is over. Co. Litt. 142, b. The reversion arises by operation of law, and not by deed or will, and it is a vested interest or estate, and in this it differs from a remainder, which can never be limited unless by either deed or devise. 2 Bl. Comm. 175; Cruise, Dig. tit. 17; Plowd. 151; 4 Kent, Comm. 349; 19 Vin. Ab. 217; 4 Com. Dig. 27; 7 Com. Dig. 289; 1 Bro. Civil Law, 213; Wood's Inst. 151; 2 Lill. Ab. 483. A reversion is said to be an incorporeal hereditament. Vide 4 Kent, Com. 354. See, generally, 1 Hill. Ab. c. 52, p. 418.

REVERSIONER, *estates*, one entitled to a reversion. Although not in actual possession, the reversioner having a vested interest in the reversion, is entitled to his action for an injury done to the inheritance, 4 Burr. 2141. The reversioner is entitled to the rent, and this important incident passes with a grant or assignment of the reversion. It is not inseparable from it, and may be

severed and excepted out of the grant by special words. Co. Litt. 143, a, 151, a, b; Cruise, Digest, t. 17, s. 19.

REVERSOR, *in the law of Scotland*, is a debtor who makes a wadset, and to whom the right of reversion is granted. Ersk. Pr. L. Scotl. B. 2, t. 8, sect. 1. A reversioner. Jacob, L. D. h. t.

REVERTER. Vide *Formedon*.

REVIEW, *practice*, is a second examination of a matter. For example, by the laws of Pennsylvania, the courts having jurisdiction of the subject may grant an order for a view of a proposed road; the viewers make a report, which when confirmed by the court would authorise the laying out of the same. After this, by statutory provision, the parties may apply for a review, or second examination; and the last viewers may make a different report. For the practice of reviews, in chancery practice, the reader is referred to *Bill of Review*, and the cases there cited.

REVIVAL, *contracts*. An agreement to renew the legal obligation of a just debt, after it has been barred by the act of limitation or lapse of time is called its revival. Vide *Promise*.

REVIVOR. Vide *Bill of Revivor*.

REVOCATION, is the act by which a person having authority, calls back or annuls a power, gift, or benefit, which had been bestowed upon another. For example, a testator may revoke his testament; a constituent may revoke his letter of attorney; a grantor may revoke a grant made by him, when he has reserved the power in the deed. Revocations are expressed or implied. An express revocation of a will must be as formal as the will itself. 2 Dall. 289; 2 Yeates, R. 170. But this is not the rule in all the states. See 2 Conn. Rep. 67; 2 Nott & McCord, Rep. 485; 14 Mass. 208; 1 Harr. & McHenry, R. 409; Cam. & Norw. Rep. 174; 2 Marsh. Rep. 17. Implied revocations take place, by marriage and birth of a child, by the English law, 4 Johns. Ch. R. 506, and the cases there cited by Chancellor Kent; 1 Wash. Rep. 140; 3 Call, Rep. 341; Cooper's Just. 497, and the cases there cited. In Pennsylvania, marriage *or* birth of a child, is a revocation as to them. 3 Binn. 498. A woman's will is revoked by her subsequent marriage, if she dies before her husband. Cruise, Dig. tit. 38, c. 6, s. 51. An alienation of the estate by the devisor, has the same effect of revoking a will. 1 Roll. Ab. 615. See generally as to revoking wills, Lovelass on Wills, ch. 3, p. 177; Fonbl. Eq. c. 2, s. 1; Roberts on Wills, ch. 2, part 1. Revocation of wills may be effected, 1, by cancellation or obliteration; 2, by a subsequent testamentary disposition; 3, by an express revocation contained in a will or codicil, or in any other distinct writing; 4, by the republication of a prior will; by presumptive or implied revocation. Williams on Wills, 67; 3 Lom. on Ex'rs. 59. Vide Domat, Loix Civ. liv. 3, t. 1, s. 5.

The powers and authority of an attorney or agent may be revoked or determined by the acts of the principal; by the acts of the attorney or agent, and by operation of law.

1. By the acts of the principal, which may be express or implied. An express revocation is made by a direct and formal and public declaration, or by an informal writing, or by parol. An implied revocation takes place when such circumstances occur as manifest the intention of the principal to revoke the authority; such, for example, as the appointment of another agent or attorney to perform

acts which are incompatible with the exercise of the power formerly given to another; but this presumption arises only when there is such incompatibility, for if the original agent has a general authority, and the second only a special power, the revocation will only operate *pro tanto*. The performance by the principal himself of the act which he has authorised to be done by his attorney, is another example; as, if the authority be to collect a debt, and afterwards the principal receive it himself.

2. The renunciation of the agency by the attorney will have the same effect to determine the authority.

3. A revocation of an authority takes place by operation of law. This may be done in various ways: 1. When the agency terminates by lapse of time; as, when it is created to endure for a year, it expires at the end of that period; or when a letter of attorney is given to transact the constituent's business during his absence, the power ceases on his return. Poth. de Mandat, n. 119; Poth. Ob. n. 500.—2. When a change of condition of the principal takes place, so that he is rendered incapable of performing the act himself, the power he has delegated to another to do it must cease. Liverm. Ag. 306; 8 Wheat. R. 174. If an unmarried woman give a power of attorney, and afterwards marry, the marriage does, ipso facto, operate as a revocation of the authority. 2 Kent, Com. 645, 3d edit. Story Bailm. § 206; Story, Ag. § 481; 5 East, R. 206; or, if the principal become insane, at least after the establishment of the insanity by an inquisition. 8 Wheat. R. 174, 201 to 204. When the principal becomes a bankrupt, his power of attorney, in relation to property or rights of which he was divested by the bankruptcy, is revoked by operation of law. 2 Kent. Com. 644, 3d edit.; 16 East, R. 382.

4. The death of the principal will also have the effect of a revocation of the authority. Co. Litt. 52; Paley, Ag. by Lloyd, 185; 2 Liverm. Ag. 301; Story, Ag. § 488; Story, Bailm. § 203; Bac. Ab. Authority, E; 2 Kent, Com. 545; 3d edit.; 3 Chit. Com. Law, 223.—4. When the condition of the agent or attorney has so changed as to render him incapable to perform his obligation towards the principal. When a married woman is prohibited by her husband from the exercise of an authority given to her, it thereby determines. When the agent becomes a bankrupt, his authority is so far revoked, that he cannot receive any money on account of his principal. 5 B. & Ald. 27; Story, Bailm. § 211; 2 Kent, Com. 645, 3d edit.; but for certain other purposes, the bankruptcy of the agent does not operate as a revocation. 3 Meriv. 322; Story, Ag. § 486. The insanity of the agent would render him unfit to act in the business of the agency, and would determine his authority.—5. The death of the agent of course put an end to the agency. Litt. § 66.—6. The extinction of the subject-matter of the agency, or of the principal's power over it, or the complete execution of the trust confided to the agent, will put an end to and determine the agency.

It must be remembered that an authority, coupled with an interest, cannot be revoked either by the acts of the principal, or by operation of law. 2 Mason's R. 244, 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Esp. R. 565; 10 B. & Cr. 731; Story, Ag. § 477, 483.

It is true in general, a power ceases with the life of the person making it; but if the interest or estate passes with the power, and vests in the person by whom the power is exercised, such person acts in his own name. The estate being in him, passes from

him by a conveyance in his own name. He is no longer a substitute acting in the name of another, but is the principal acting in his own name, in pursuance of powers which limit the estate. The legal reason which limits the power to the life of the person giving it, exists no longer, and the rule ceases with the reason on which it is founded. 8 Wheat. R. 174.

The revocation of the agent is a revocation of any substitute he may have appointed. Poth. Mandat, n. 112; 2 Liverm. Ag. 307; Story, Ag. § 469. But in some cases, as in the case of the master of a ship, his death does not revoke the power of the mate whom he had appointed; and in some cases of public appointments, on the death, or removal of the principal officer, the deputies appointed by him are, by express provisions in the laws, authorised to continue in the performance of their duties.

The time when the revocation takes effect must be considered, first, with regard to the agent, and secondly, as it affects third persons. 1. When the revocation can be lawfully made, it takes effect, as to the agent, from the moment it is communicated to him. 2. As to third persons, the revocation has no effect until it is made known to them; if, therefore, an agent, knowing of the revocation of his authority, deal with a third person in the name of his late principal, when such person was ignorant of the revocation, both the agent and the principal will be bound by his acts. Story, Ag. § 470; 2 Liverm. Ag. 306; 2 Kent, Com. 644, 3d edit.; Paley, Ag. by Lloyd, 108, 570; Story, Bailm. § 208; 5 T. R. 215. A note or bill signed, accepted or endorsed by a clerk, after his discharge, who had been authorised to sign, indorse, or accept bills and notes for his principal while in his employ, will be binding upon the latter, unless notice has been given of his discharge and the revocation of the authority. 3 Chit. Com. Law, 197.

REVOLT, *crim. law.* The act of congress of April 30, 1790, s. 8, 1 Story's L. U. S. 84, punishes with death any seaman who shall lay violent hands upon his commander, thereby to hinder or prevent his fighting in defence of his ship, or goods committed to his trust, or shall make a revolt in the ship. What is a revolt is not defined in the act of congress, nor by the common law; it was therefore contended, that it could not be deemed an offence for which any person could be punished. 1 Pet. R. 118. In a case which occurred in the circuit court for the eastern district of Pennsylvania, the defendants were charged with an endeavour to make a revolt. The judges sent up the case to the supreme court upon a certificate of division of opinion of the judges, as to the definition of the word revolt. 4 W. C. C. R. 528. The opinion of the supreme court was delivered by Washington, J., and is in these words:—

"This case comes before the court upon a certificate of division of the opinion of the judges of the circuit court for the eastern district of Pennsylvania, upon the following point assigned by the defendants as a reason in arrest of judgment, viz. 'that the act of congress does not define the offence of endeavouring to make a revolt; and it is not competent to the court to give a judicial definition of an offence heretofore unknown.'

"This court is of opinion that although the act of congress does not define this offence, it is nevertheless, competent to the court to give a judicial definition of it. We think that the offence consists in the endeavour of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from

his command; or against his will to take possession of the vessel by assuming the government and navigation of her; or by transferring their obedience from the lawful commander to some other person." 11 Wheat. R. 417. Vide 4 W. C. C. R. 528, 405; Mason's R. 147; 4 Mason, R. 105; 4 Wash. C. C. R. 548; 1 Pet. C. C. R. 213; 5 Mason, R. 464; 1 Sumn. 448; 3 Wash. C. C. R. 525.

REWARD, is an offer of recompense given by authority of law for the performance of some act for the public good; which, when the act has been performed, is to be paid; or it is the recompense actually paid. A reward may be offered by the government, or by a private person. In criminal prosecutions, a person may be a competent witness although he expects, on conviction of the prisoner, to receive a reward. 1 Leach, 314, (n.); 9 Barn. & Cresw. 556; S. C. Eng. C. L. R. 441; 1 Leach, 134; 1 Hayw. Rep. 3; 1 Root, R. 249; Stark. Ev. pt. 4, p. 772, 3; Roscoe's Cr. Ev. 104; 1 Chit. Cr. Law, 881; Hawk. B. 2, c. 12, s. 21 to 38; 4 Bl. Com. 294; Burn's Just. Felony, iv. By the common law, informers, who are entitled under penal statutes to part of the penalty, are not in general competent witnesses. But when a statute can receive no execution, unless a party interested be a witness, then it seems proper to admit him, for the statute must not be rendered ineffectual for want of proof. Gilb. 114. In many acts of the legislature there is a provision that the informer shall be a witness, notwithstanding the reward. 1 Phil. Ev. 92, 99.

RHODE ISLAND. The name of one of the original states of the United States of America. This state was settled by emigrants from Massachusetts, who assumed the government of themselves by a voluntary association, which was soon discovered to be insufficient for their protection. In 1643, a charter of incorporation of Providence Plantations was obtained; and in 1644, the two houses of parliament, during the forced absence of Charles the First, granted a charter for the incorporation of the towns of Providence, Newport and Portsmouth, for the absolute government of themselves, according to the laws of England. Soon after the restoration of Charles the Second, in July, 1663, the inhabitants obtained a new charter from the crown. Upon the accession of James, the inhabitants were accused of a violation of their charter; and a *quo warranto* was filed against them, when they resolved to surrender it. In 1686, their government was dissolved, and Sir Edward Andros assumed, by royal authority, the administration of the colony. The revolution of 1688 put an end to his power, and the colony immediately resumed its charter, which, with some interruptions, it continued to maintain and exercise its powers down to the period of the American revolution.

This charter remained as the fundamental law of the state until the first Tuesday of May, one thousand eight hundred and forty-three. A convention of the people assembled in November, 1842, and adopted a constitution which went into operation in May, 1843, as above mentioned.

By the third article of the constitution the powers of the government are distributed into three departments; the legislative, the executive, and the judicial.

§ 1. The fourth article regulates the *legislative* power as follows, to wit:

Sect. 1. This constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void. The general assembly shall pass all laws necessary to carry this constitution into effect.

Sect. 2. The legislative power, under this constitution shall be vested in two houses, the one to be called the senate, the other the house of representatives; and both together the general assembly. The concurrence of the two houses shall be necessary to the enactment of laws. The style of their laws shall be, *It is enacted by the general assembly as follows.*

Sect. 3. There shall be two sessions of the general assembly holden annually; one at Newport, on the first Tuesday of May, for the purposes of election and other business; the other on the last Monday of October, which last session shall be holden at South Kingstown once in two years, and the intermediate years alternately at Bristol and East Greenwich; and an adjournment from the October session shall be holden annually at Providence.

Sect. 4. No member of the general assembly shall take any fee, or be of counsel in any case pending before either house of the general assembly, under penalty of forfeiting his seat, upon proof thereof to the satisfaction of the house of which he is a member.

Sect. 5. The person of every member of the general assembly shall be exempt from arrest and his estate from attachment, in any civil action, during the session of the general assembly, and two days before the commencement, and two days after the termination thereof; and all process served contrary hereto shall be void. For any speech in debate in either house, no member shall be questioned in any other place.

Sect. 6. Each house shall be the judge of the elections and qualifications of its members; and a majority 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 may be prescribed by such house or by law. The organization of the two houses may be regulated by law, subject to the limitations contained in this constitution.

Sect. 7. Each house may determine its rules of proceeding, punish contempts, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

Sect. 8. Each house shall keep a journal of its proceedings. The yeas and nays of the members of either house, shall, at the desire of one-fifth of those present, be entered on the journal.

Sect. 9. Neither house shall, during a session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which they may be sitting.

Sect. 10. The general assembly shall continue to exercise the powers they have heretofore exercised, unless prohibited in this constitution.

Sect. 11. The senators and representatives shall receive the sum of one dollar for every day of attendance, and eight cents per mile for travelling expenses in going to and returning from the general assembly. The general assembly shall regulate the compensation of the governor and all other officers, subject to the limitations contained in this constitution.

Sect. 12. All lotteries shall hereafter be prohibited in this state, except those already authorized by the general assembly.

Sect. 13. The general assembly shall have no power hereafter, without the express consent of the people, to incur state debts to an amount exceeding fifty thousand dollars, except in time of war, or in case of insurrection or invasion, nor shall they in any case, without such consent, pledge the faith of the state for the

payment of the obligations of others. This section shall not be construed to refer to any money that may be deposited with this state by the government of the United States.

Sect. 14. The assent of two-thirds of the members elected to each house of the general assembly shall be required to every bill appropriating the public money or property for local or private purposes.

Sect. 15. The general assembly shall, from time to time, provide for making new valuations of property for the assessment of taxes, in such manner as they may deem best. A new estimate of such property shall be taken before the first direct state tax after the adoption of this constitution, shall be assessed.

Sect. 16. The general assembly may provide by law for the continuance in office of any officers of annual election or appointment, until other persons are qualified to take their places.

Sect. 17. Hereafter, when any bill shall be presented to either house of the general assembly, to create a corporation for any other than for religious, literary or charitable purposes, or for a military or fire company, it shall be continued until another election of members of the general assembly shall have taken place, and such public notice of the pendency thereof shall be given as may be required by law.

Sect. 18. It shall be the duty of the two houses upon the request of either, to join in grand committee for the purpose of electing senators in congress, at such times and in such manner as may be prescribed by law for said elections.

Having disposed of the rules which regulate both houses, a detailed statement of the powers of the house of representatives will here be given.

1. The *house of representatives* is regulated by the fifth article as follows:

Sect. 1. The house of representatives shall never exceed seventy-two members, and shall be constituted on the basis of population, always allowing one representative for a fraction, exceeding half the ratio; but each town or city shall always be entitled to at least one member; and no town or city shall have more than one-sixth of the whole number of members to which the house is hereby limited. The present ratio shall be one representative to every fifteen hundred and thirty inhabitants, and the general assembly may, after any new census taken by the authority of the United States or of this state, re-apportion the representation by altering the ratio; but no town or city shall be divided into districts for the choice of representatives.

Sect. 2. The house of representatives shall have authority to elect its speaker, clerks, and other officers. The senior member from the town of Newport, if any be present, shall preside in the organization of the house.

2. The *senate* is the subject of the sixth article, as follows:

Sect. 1. The senate shall consist of the lieutenant-governor and of one senator from each town or city in the state.

Sect. 2. The governor, and, in his absence the lieutenant-governor, shall preside in the senate and in grand committee. The presiding officer of the senate and grand committee shall have a right to vote in case of equal division, but not otherwise.

Sect. 3. If, by reason of death, resignation, absence, or other cause, there be no governor or lieutenant-governor present, to preside in the senate, the senate shall elect one of their own members to preside during such absence or vacancy; and until such election is made by the senate, the secretary of state shall preside.

Sect. 4. The secretary of state shall, by virtue of his office, be secretary of the senate, unless otherwise provided by law; and the senate may elect such other officers as they may deem necessary.

§ 2. The seventh article regulates the *executive power*. It provides,

Sect. 1. The chief executive power of this state shall be vested in a governor, who, together with a lieutenant-governor, shall be annually elected by the people.

Sect. 2. The governor shall take care that the laws be faithfully executed.

Sect. 3. He shall be captain-general and commander-in-chief of the military and naval force of this state, except when they shall be called into the service of the United States.

Sect. 4. He shall have power to grant reprieves after conviction, in all cases except those of impeachment, until the end of the next session of the general assembly.

Sect. 5. He may fill vacancies in office not otherwise provided for by this constitution, or by law, until the same shall be filled by the general assembly, or by the people.

Sect. 6. In case of disagreement between the two houses of the general assembly, respecting the time or place of adjournment, certified to him by either, he may adjourn them to such time and place as he shall think proper; provided that the time of adjournment shall not be extended beyond the day of the next stated session.

Sect. 7. He may, on extraordinary occasions, convene the general assembly at any town or city in this state, at any time not provided for by law; and in case of danger from the prevalence of epidemic or contagious disease, in the place in which the general assembly are by law to meet, or to which they may have been adjourned; or for other urgent reasons, he may, by proclamation, convene said assembly, at any other place within this state.

Sect. 8. All commissions shall be in the name and by authority of the state of Rhode-Island and Providence Plantations; shall be sealed with the state seal, signed by the governor and attested by the secretary.

Sect. 9. In case of vacancy in the office of governor, or of his inability to serve, impeachment, or absence from the state, the lieutenant-governor shall fill the office of governor and exercise the powers and authority appertaining thereto, until a governor is qualified to act, or until the office is filled at the next annual election.

Sect. 10. If the offices of governor and lieutenant-governor be both vacant by reason of death, resignation, impeachment, absence, or otherwise, the person entitled to preside over the senate for the time being, shall in like manner fill the office of governor during such absence or vacancy.

Sect. 11. The compensation of the governor and lieutenant-governor shall be established by law, and shall not be diminished during the term for which they are elected.

Sect. 12. The duties and powers of the secretary, attorney general, and general treasurer, shall be the same under this constitution as are now established, or as from time to time may be prescribed by law.

§ 3. The *judicial power* is regulated by the tenth article as follows:

Sect. 1. The judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may from time to time, ordain and establish.

Sect. 2. The several courts shall have such jurisdiction as may from time to time be prescribed by law. Chancery powers may be conferred on the supreme court, but on no

other court to any greater extent than is now provided by law.

Sect. 3. The judges of the supreme court shall in all trials, instruct the jury in the law. They shall also give their written opinion upon any question of law whenever requested by the governor, or by either house of the general assembly.

Sect. 4. The judges of the supreme court shall be elected by the two houses in grand committee. Each judge shall hold his office until his place be declared vacant by a resolution of the general assembly to that effect; which resolution shall be voted for by a majority of all the members elected to the house in which it may originate, and be concurred in by the same majority of the other house. Such resolution shall not be entertained at any other than the annual session for the election of public officers: and in default of the passage thereof at said session, the judge shall hold his place as herein provided. But a judge of any court shall be removed from office, if, upon impeachment, he shall be found guilty of any official misdemeanor.

Sect. 5. In case of vacancy by death, resignation, removal from the state or from office, refusal or inability to serve, of any judge of the supreme court, the office may be filled by the grand committee, until the next annual election, and the judge then elected shall hold his office as before provided. In cases of impeachment, or temporary absence or inability, the governor may appoint a person to discharge the duties of the office during the vacancy caused thereby.

Sec. 6. The judges of the supreme court shall receive a compensation for their services, which shall not be diminished during their continuance in office.

Sec. 7. The towns of New Shoreham and Jamestown may continue to elect their wardens as heretofore. The other towns and the city of Providence, may elect such number of justices of the peace resident therein, as they may deem proper. The jurisdiction of said justices and wardens shall be regulated by law. The justices shall be commissioned by the governor.

RHODIAN LAW. Vide *Law Rhodian.*

RIAL OF PLATE and RIAL OF VELLON, *comm. law*, denominations of money of Spain. In the ad valorem duty upon goods, &c. the former are computed at ten cents, and the latter at five cents each. Act of March 2, 1799, s. 61, 1 Story's Laws U. S. 626. Vide *Foreign Coins.*

RIBAUD. A rogue; a vagrant or whoremonger. It is not used.

RIDER, *practice, legislation*, is a schedule or small piece of paper or parchment, added to some part of the record; as, when, on the reading of a bill in the legislature, a new clause is added, this is tacked to the bill on a separate piece of paper, and is called a rider.

RIEN. This is a French word which signifies *nothing*. It has generally this meaning; as, *rien in arrere; rien passe per le fait*, nothing passes by the deed; *rien per descent*, nothing by descent; it sometimes signifies not, as *rien culpable*, not guilty. Doct. Plac. 435.

RIEN EN ARRERE, *pleading*. Nothing in arrear; nothing remaining due and unpaid. The plea in an action of debt for rent, may be *rien en arrere*. This is a good general issue. Cowp. 588; Bac. Ab. Pleas, (I 1); 2 Saund. 297, n. 1; 2 Lord Raym. 1503; 2 Chit. Pl. 486.

RIGHT. This word is used in various senses: 1. Sometimes it signifies a law, as when we say that natural right requires us to keep our promises, or that it commands res-

titution, or that it forbids murder. In our language it is seldom used in this sense. 2. It sometimes means that quality in our actions by which they are denominated just ones. This is usually denominated rectitude. 3. It is that quality in a person which he has to do certain actions, or to possess certain things which belong to him by virtue of some title. In this sense we use it when we say that a man has a right to his estate, or a right to defend himself. Ruth. Inst. c. 2, § 1, 2, 3; Merlin, Répert. de Jurisp. mot Droit. See Wood's Inst. 119.

Rights are perfect and imperfect. When the things which we have a right to possess, or the actions we have a right to do, are or may be fixed and determinate, the right is a perfect one; but when the thing or the actions are vague and indeterminate, the right is an imperfect one; If a man demand his property, which is withheld from him, the right that supports his demand is a perfect one; because the thing demanded is, or may, be fixed and determinate. But if a poor man ask relief from those from whom he has reason to expect it, the right, which supports his petition, is an imperfect one; because the relief which he expects, is a vague indeterminate thing. Ruth. Inst. c. 2, § 4; Grot. lib. 1, c. 1, § 4.

Rights are also absolute and qualified. A man has an absolute right to recover property which belongs to him; an agent has a qualified right to recover such property, when it had been entrusted to his care, and which has been unlawfully taken out of his possession. Vide *Trover*.

Rights might with propriety be also divided into natural and civil rights; but as all the rights which man has received from nature, have been modified and acquired anew from the civil law, it is more proper, when considering their object, to divide them into political and civil rights.

Political rights consist in the power to participate, directly or indirectly, in the establishment or management of government. These political rights are fixed by the constitution. Every citizen has the right of voting for public officers, and of being elected; these are the political rights which the humblest citizen possesses.

Civil rights are those which have no relation to the establishment, support, or management of the government. These consist in the power of acquiring and enjoying property, of exercising the paternal and marital powers, and the like. It will be observed that every one, unless deprived of them by a sentence of civil death, is in the enjoyment of his civil rights, which is not the case with political rights; for an alien, for example, has no political, although in the full enjoyment of his civil rights. These latter rights are divided into absolute and relative. The absolute rights of mankind may be reduced to three principal or primary articles: the right of personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation; the right of personal liberty, which consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's inclination may direct, without any restraint, unless by due course of law; the right of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. 1 Bl. 124 to 139. The relative rights are public or private: the first are those which subsist between the people and the government, as the right of protec-

tion on the part of the people, and the right of allegiance which is due by the people to the government; the second are the reciprocal rights of husband and wife, parent and child, guardian and ward, and master and servant.

RIGHT OF DISCUSSION,—*Scottish law*, is the right which the cautioner (surety) has to insist that the creditor shall do his best to compel the performance of the contract by the principal debtor, before he shall be called upon. 1 Bell's Com. 347, 5th ed. Vide 8 Serg. & Rawle, 116; 15 Serg. & Rawle, 29, 30; and the articles *Surety; Suretyship.*

RIGHT OF DIVISION, *Scottish law*, is the right which each of several cautioners (sureties) has to refuse to answer for more than his own share of the debt. To entitle the cautioner to this right, the other cautioners must be solvent, and there must be no words in the bond to exclude it. 1 Bell's Com. 347, 5th ed.

RIGHT OF HABITATION, by this term in Louisiana, is understood the right of dwelling gratuitously in a house, the property of another. Civ. Code, art. 623; 3 Toull. ch. 2, p. 325; 14 Toull. n. 279, p. 330; Poth. h. t. n. 22–25.

RIGHT OF RELIEF, *Scottish law*, is the right which the cautioner (surety) has against the principal debtor, when he has been forced to pay his debt. 1 Bell's Com. 347, 5th ed.

RIGHT, WRIT OF. Breve de recto. Vide *Writ of right.*

RING DROPPING, *crim. law.* This phrase is applied in England to a trick frequently practised in committing larcenies. It is difficult to define it; it will be sufficiently exemplified by the following cases. The prisoner, with some accomplices, being in company with the prosecutor, pretended to find a valuable ring wrapped up in a paper appearing to be a jeweller's receipt for "a rich brilliant diamond ring." They offered to leave the ring with the prosecutor, if he would deposit some money and his watch as a security. The prosecutor having accordingly laid down his watch and money on a table, was beckoned out of the room by one of the confederates, while the others took away his watch and money. This was held to amount to a larceny. 1 Leach, 238; 2 East, P. C. 678. In another case under similar circumstances, the prisoner procured from the prosecutor twenty guineas, promising to return them the next morning, and leaving the false jewel with him. This was also held to be larceny. 1 Leach, 314; 2 East, P. C. 679. In these cases the prosecutor had no intention of parting with the property in the money or goods stolen. It was taken, in the first case, while the transaction was proceeding, without his knowledge; and, in the last, under the promise that it should be returned. Vide 2 Leach, 640.

RINGING THE CHANGE,—*crim. law.* A trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in the following case: The prosecutor having bargained with the prisoner, who was selling fruit about the streets, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to bite it in order to try its goodness, and, returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling, which he also affected to bite, and then returned another shilling, saying it was a bad one. The prosecutor gave him another good shilling, with which

he practised this trick a third time; the shillings returned by him being, in every instance, bad. 2 Leach, 64. This was held to be an uttering of false money. 1 Russ. on Cr. 114.

RIOT, *crim. law.* At common law a riot is a tumultuous disturbance of the peace, by three persons or more assembling together of their own authority, with an intent, mutually, to assist each other against any who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. In this case there must be proved, first, an unlawful assembling; for if a number of persons lawfully met together, as, for example, at a fire, in a theatre or a church, should suddenly quarrel and fight, the offence is an affray and not a riot, because there was no unlawful assembling; but if three or more being so assembled, on a dispute occurring, they form into parties with promises of mutual assistance, which promises may be express, or implied from the circumstances, then the offence will no longer be an affray, but a riot; the unlawful combination will amount to an assembling within the meaning of the law. In this manner any lawful assembly may be converted into a riot. Any one who joins the rioters after they have actually commenced, is equally guilty as if he had joined them while assembling. Secondly, proof must be made of actual violence and force on the part of the rioters, or of such circumstances as have an apparent tendency to force and violence, and calculated to strike terror into the public mind. The definition requires that the offenders should assemble of their own authority, in order to create a riot; if, therefore, the parties act under the authority of the law, they may use any necessary force to enforce their mandate, without committing this offence. Thirdly, evidence must be given that the defendants acted in the riot, and were participants in the disturbance. Vide 1 Russ. on Cr. 247; Vin. Ab. h. t.; Hawk. c. 65, s. 1, 8, 9; 3 Inst. 176; 4 Bl. Com. 146; Com. Dig. h. t.; Chit. Cr. Law, Index, h. t.; Roscoe, Cr. Ev. h. t.

RIOTOUSLY, *pleadings*, is a technical word properly used in an indictment for a riot, and *ex vi termini*, implies violence. 2 Sess. Cas. 13; 2 Str. 834; 2 Chit. Cr. Law, 489.

RIPA. The bank of a river, or the place beyond which the waters do not in their natural course overflow. An extraordinary overflow does not change the banks of the river. Poth. Pand. lib. 50, h. t. See *Banks of rivers; Raparian proprietors; Rivers.*

RIPARIAN PROPRIETORS,—*estates.* This term, used by the civilians, has been adopted by the common lawyers. 4 Mason's Rep. 397. Those who own the land bounding upon a water course, are so called. Each riparian proprietor owns that portion of the bed of the river (not navigable) which is adjoining his land *usque ad filium aquæ;* or, in other words, to the thread or central line of the stream. Harg. Tr. 5; Holt's R. 499; 3 Dane's Dig. 4; 7 Mass. R. 496; 5 Wend. R. 423; 3 Caines, 319; 2 Conn. 482; 20 Johns. R. 91; Angell, Water-courses, 3 to 10; 9 Porter, R. 577; Kames, Eq. part 1, c. 1, s. 1; 26 Wend. R. 404. Vide *River.*

RIPUARIAN LAW. A code of laws of the Franks, who occupied the country upon the Rhine, the Meuse and Scheldt, who were collectively known by the name Ripuarians, and their laws as Ripuarian law.

RISKS, *insurance*, *contracts*, are perils which are incident to a sea voyage, 1 Marsh. Inst. 215; or those fortuitous events which may happen in the course of the voyage. Poth. Cont. d'assur. n. 49; Pardes. Dr. Com. n. 770. There are, however, some exceptions, founded on public policy, which require that in certain cases, men shall not be permitted to protect themselves against some particular perils by insurance; among these are, first, that no man can insure any loss or damage proceeding directly from his own fault. 1 John. Cas. 337; Poth. h. t. n. 65; Pardes. h. t. n. 171; Marsh. Ins. 215. Secondly, nor can he insure risks or perils of the sea upon a trade forbidden by the laws. Thirdly, the risks excluded by the usual *memorandum* (q. v.) contained in the policy. Marsh. Ins. 221.

The commencement and end of the risk depend upon the words of the policy. The insurer may take and modify what risks he pleases. The policy may be on a voyage *out*, or a voyage *in*, or it may be for *part* of the route, or for a *limited time*, or from *port to port*. See 3 Kent, Comm. 254; 1 Binn. Rep. 592; 6 Cowen, R. 270; 1 Atk. R. 548; 2 Cain. Cas. 172; Pardes. Dr. Com. n. 775. Marsh. Ins. 246. The duration of the risk may be considered with regard to insurances, 1, upon goods, Marsh. Ins. 247, a; 2, upon the ship, Ib. 260; 3, upon freight, Ib. 278; 12 Wheat. R. 383.

In sales, the risks to which property is exposed and the loss which may occur, before the contract is fully complete, must be borne by him in whom the title resides; when the bargain, therefore, is made and rendered binding by giving earnest, or by part payment, or part delivery, or by a compliance with the requisitions of the statute of frauds, the property, and with it the risk attaches to the purchaser. 2 Kent, Com. 392. In Louisiana, as soon as the contract of sale is completed, the thing sold is at the risk of the buyer, but with the following modifications: Until the thing sold is delivered to the buyer, the seller is obliged to guard it as a faithful administrator, and, if, through his want of care, the thing is destroyed, or its value diminished, the seller is responsible for the loss. He is released from this degree of care, when the buyer delays obtaining the possession; but he is still liable for any injury which the thing sold may sustain through gross neglect on his part. If it is the seller who delays to deliver the thing, and it be destroyed, even by a fortuitous event, it is he who sustains the loss, unless it appears that the fortuitous event would equally have occasioned the destruction of the thing in the buyer's possession, after delivery. Art. 2442–2445. For the rules of the civil law on this subject, see Inst. 2, 1, 41; Poth. Contr. de Vente, 4eme partie, n. 308, et seq.

RIVER. A natural collection of waters, arising from springs or fountains, which flow in a bed or canal of considerable width and length, towards the sea. Rivers may be considered as public or private. Public rivers are those in which the public have an interest. They are either navigable, which, technically understood, signifies such rivers in which the tide flows, or not navigable. The soil or bed of such a navigable river, understood in this sense, belongs not to the riparian proprietor, but to the public. 3 Caines's Rep. 307; 10 John. R. 236; 17 John. R. 151; 20 John. R. 90; 5 Wend. R. 423; 6 Cowen, R. 518; 14 Serg. & Rawle, 9; 1 Rand. Rep. 417; 3 Rand. R. 33; 3 Greenl. R. 269; 2 Conn. R. 481; 5 Pick. 199. Public rivers, not navigable, are those which belong to the people in general, as

public highways. The soil of these rivers belongs generally, to the riparian owner, but the public have the use of the stream, and the authors of such nuisances and impediments over such a stream are indictable. Ang. on Water Courses, 202; Davies's Rep. 152; Callis on Sewers, 78; 4 Burr. 2162. By the ordinance of 1787, art. 4, relating to the North-western Territory, it is provided that the navigable waters, leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free. 3 Story, L. U. S. 2077. A private river, is one so naturally obstructed, that there is no passage for boats; for if it be capable of being so navigated, the public may use its waters. 1 McCord's Rep. 580; the soil in general belongs to the riparian proprietors, (q. v.) A river, then, may be considered, 1st, as private, in the case of shallow and obstructed streams; 2dly, as private property, but subject to public use, when it can be navigated; and, 3dly, as public, both with regard to its use and property. Some rivers possess all these qualities. The Hudson is mentioned as an instance; in one part it is entirely private property; in another the public have the use of it; and it is public property from the mouth as high up as the tide flows. Ang. Wat. Co. 205, 6. In Pennsylvania, it has been held that the great rivers of that state, as the Susquehanna, belong to the public, and that the riparian proprietor does not own the bed or canal. 2 Binn. R. 75; 14 Serg. & Rawle, 71. Vide generally, Civ. Code of Lo. 444; Bac. Ab. Prerogatives, B 3; 7 Com. Dig. 291; 1 Bro. Civ. Law, 170; Merl. Répert. h. t.; Jacobsen's Sea Laws, 417. 2 Hill. Abr. c. 13; 2 Fairf. R. 278; 3 Ohio Rep. 496; 6 Mass. R. 435; 15 John. R. 447; 1 Pet. C. C. Rep. 64; 1 Paige's Rep. 448; 3 Dane's R. 4; 7 Mass. Rep. 496; 17 Mass. Rep. 289; 5 Greenl. R. 69; 10 Wend. R. 260; Kames, Eq. 38; as to the boundaries of rivers, see Metc. & Perk. Dig. Boundaries, IV.

RIX DOLLAR, *com. law*, a denomination of money of Denmark. It is computed in the ad valorum duty on goods, &c. at one hundred cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign Coins*.

RIXA, *civil law*. A dispute; a quarrel. Dig. 48, 8, 17.

RIXATRIX. A common scold, (q. v.)

ROAD. A passage through the country for the use of the people. Roads are public or private. Public roads are laid out by public authority, or dedicated by individuals to public use. The public have the use of such roads, but the owner of the land over which they are made, and the owners of land bounded on the highway, have, *prima facie*, a fee in such highway, *ad medium filum viæ*, subject to the easement in favour of the public. 1 Conn. 103; 11 Conn. 60; 2 John. 357; 15 John. 447. But where the boundary excludes the highway, it is, of course, excluded. 11 Pick. 193. See 13 Mass. 259. The proprietor of the soil, is therefore entitled to all the fruits which grow by its side, 16 Mass. 366, 7, and to all the mineral wealth it contains. 1 Rolle, 392, l. 5; 4 Day, R. 328; 1 Conn. Rep. 103; 6 Mass. R. 454; 4 Mass. R. 427; 15 Johns. Rep. 447, 583; 2 Johns. R. 357; Com. Dig. Chimin, A 2. There are public roads, such as turnpikes and railroads, which are constructed by public authority, by corporations. These are kept in good order by the respective companies to which they belong, and persons travelling on them, with animals and vehicles, are required to pay toll.

In general these companies have only a right of passage over the land, which remains the property, subject to the easement of the owner at the time the road was made, or to his heirs or assigns. Private roads are such as are used for private individuals only, and are not wanted for the public generally. Sometimes roads of this kind are wanted for the accommodation of land otherwise enclosed and without access to public roads. The soil of such roads belongs to the owner of the land over which they are made. Public roads are kept in repair at the public expense, and private roads by those who use them. Vide *Domain; Way.* 13 Mass. 256; 1 Sumn. Rep. 21; 2 Hill. Ab. c. 7; 1 Pick. R. 122; 2 2 Mass. R. 127; 6 Mass. R. 454; 4 Mass. R. 427; 15 Mass. Rep. 33; 3 Rawle, R. 495; 1 N. H. Rep. 16; 1 McCord, R. 67; 1 Conn. R. 103; 2 John. R. 357; 1 John. Rep. 447; 15 John. R. 483; 4 Day, Rep. 330; 2 Bailey, Rep. 271; 1 Burr. 133; 7 B. & Cr. 304; 11 Price, R. 736; 7 Taunt. R. 39; Str. 1004; 1 Shepl. R. 250; 5 Conn. Rep. 528; 8 Pick. R. 473.

ROAD, *mar. law.* A road is defined by Lord Hale to be an open passage of the sea, which, from the situation of the adjacent land, and its own depth and wideness, affords a secure place for the common riding and anchoring of vessels. Hale de Port. Mar. p. 2, c. 2. This word, however, does not appear to have a very definite meaning. 2 Chit. Com. Law, 4, 5.

ROARING, a disease among horses occasioned by the circumstance of the neck of the wind pipe being too narrow for accelerated respiration; the disorder is frequently produced by sore throat or other topical inflammation. A horse affected with this malady is rendered less serviceable and he is therefore unsound. 2 Stark. R. 81; S. C. 3 Engl. Com. Law Rep. 255; 2 Camp. R. 523.

ROBBERY, *crimes*, is the felonious and forcible taking from the person of another, goods or money to any value, by violence or putting him in fear. 4 Bl. Com. 243; 1 Bald. 102. By "taking from the person" is meant not only the immediate taking from his person, but also from his presence when it is done with violence and against his consent. 1 Hale, P. C. 533; 2 Russ. Crimes, 61. The taking must be by violence or putting the owner in fear, but both these circumstances need not concur, for if a man should be knocked down and then robbed while he is insensible, the offence is still a robbery. 4 Binn. R. 379. And if the party be put in fear by threats and then robbed, it is not necessary there should be any greater violence. This offence differs from a larceny from the person in this, that in the latter, there is no violence, while in the former the crime is incomplete without an actual or constructive force. Ib. Vide 2 Swift's Dig. 298. Prin. Pen. Law, ch. 22, § 4, p. 285; and *Carrying away; Invito Domino; Larceny; Taking.*

ROD. A measure sixteen feet and a half long; a perch.

ROGATORY, LETTERS. Vide *Letters Rogatory.*

ROGUE. A French word, which in that language signifies, proud, arrogant. In some of the ancient English statutes it means an idle, sturdy beggar, which is its meaning in law. Rogues are usually punished as vagrants.

ROLE D'EQUIPAGE. The list of a ship's crew; the muster roll.

ROLL. A schedule of parchment which may be turned up with the hand in the form of a pipe or tube. Jacob, L. D. h. t. In early times, before paper came in common use,

parchment was the substance employed for making records, and, as the art of bookbinding was but little used, economy suggested as the most convenient mode of adding sheet to sheet, as were found requisite, and they were tacked together in such manner that the whole length might be wound up together in the form of spiral rolls. Figuratively it signifies the records of a court or office. In Pennsylvania the master of the rolls was an officer in whose office were recorded the acts of the legislature. 1 Smith's Laws, 46.

ROOD OF LAND. The fourth part of an acre.

ROOT. That part of a tree or plant under ground from which it draws most of its nourishment from the earth. When the roots of a tree planted in one man's land extend into that of another, this circumstance does not give the latter any right to the tree, though such is the doctrine of the civil law, Dig. 41, 1, 7, 13, but such person has a right to cut off the roots up to his line. Rolle's R. 394, vide *Tree*. In a figurative sense, the term *root* is used to signify the person from whom one or more others are descended. Vide *Descent; Per Stirpes*.

ROSTER. A list of persons who are in their turn to perform certain duties, required of them by law. Tytler on Courts Mart. 93.

ROUT, *crim. law*, is a disturbance of the peace by persons assembling together with an intention to do a thing, which, if executed, would have made them rioters, and actually making a motion towards the execution of their purpose. It generally agrees in all particulars with a riot, except only in this, that it may be a complete offence without the execution of the intended enterprise. Hawk. c. 65, s. 14; 1 Russ. on Cr. 253; 4 Bl. Com. 140; Vin. Abr. Riots, &c. (A 2); Com. Dig. Forceable Entry, (D 9).

ROUTOUSLY, *pleadings*, is a technical word properly used in indictments for a rout as descriptive of the offence. 2 Salk. 593.

ROYAL HONOURS. In diplomatic language by this term is understood the rights enjoyed by every empire or kingdom in Europe, by the pope, the Grand duchies of Germany, and the Germanic and Swiss confederations, to precedence over all others who do not enjoy the same rank, with the exclusive right of sending to other states public ministers of the first rank, as ambassadors, together with other distinctive titles and ceremonies. Vattel, Law of Nat. B. 2, c. 3, § 38; Wheat. Intern. Law, pt. 2, c. 3, § 2.

RUBRIC, *civil law*. The title or inscription of any law or statute, because the copyists formerly drew and painted the title of laws and statutes *rubro colore*, in red letters. Ayl. Pand. B. 1, t. 8; Dict. de Juris. h. t.

RUDENESS, *crim. law*. An impolite action; contrary to the usual rules observed in society, committed by one person against another. This is a relative term which it is difficult to define: those acts which one friend might do to another, could not be justified by persons altogether unacquainted; persons moving in polished society could not be permitted to do to each other, what boatmen, hostlers, and such persons might perhaps justify. 2 Hagg. Eccl. R. 73. An act done by a gentleman towards a lady, might be considered rudeness, which if done by one gentleman to another might not be looked upon in that light. Russ. & Ry. 130. A person who touches another with rudeness is guilty of a battery, (q. v.)

RULE OF LAW. Rules of law are general maxims, formed by the courts, who having observed what is common to many particular cases,

announce this conformity by a maxim, which is called a rule; because in doubtful and unforeseen cases, it is a rule for their decision, it embraces particular cases within general principles. Toull. Tit. prel. n. 17; 1 Bl. Com. 44; Domat, liv. prel. t. 1, s. 1; Ram on Judgm. 30; 3 Barn. & Adol. 34; 2 Russ. R. 216, 580, 581; 4 Russ. R. 305; 10 Price's R. 218, 219, 228; 1 Barn. & Cr. 86; 7 Bing. R. 280; 1 Ld. Raym. 728; 5 T. R. 5; 4 M. & S. 348.

RULE OF COURT. An order made by a court having competent jurisdiction. Rules of court are either general or special; the former are the laws by which the practice of the court is governed: the latter are special orders made in particular cases. Disobedience to these is punished by giving judgment against the disobedient party, or by attachment for contempt.

RULE OF THE WAR, 1756, *comm. law, war.* A rule relating to neutrals was the first time practically established in 1756, and universally promulgated, that "neutrals are not to carry on in times of war, a trade which was interdicted to them in times of peace." Chit. Law of Nat. 166; 2 Rob. R. 186; 4 Rob. App.; Reeve on Shipp. 271; 1 Kent, Com. 82; Mann. Law Nat. 196, to 202.

RULE, TERM, *in English practice;* a term rule is in the nature of a day rule by which a prisoner is enabled by the terms of one rule, instead of a daily rule, to quit the prison or its rules for the purpose of transacting his business. It is obtained in the same manner as a day rule. See *Rules.*

RULES, *in English law.* The rules of the King's Bench and Fleet are certain limits without the actual walls of the prisons, where the prisoner, on proper security previously given to the marshal of the King's Bench, or warden of the Fleet, may reside; those limits are considered, for all legal and practical purposes, as merely a further extension of the prison walls. The rules or permission to reside without the prison, may be obtained by any person not committed criminally, 2 Str. R. 845; nor for contempt, Id. 817; by satisfying the marshal or warden of the security with which he may grant such permission.

RULES OF PRACTICE, are certain orders made by the courts for the purpose of regulating the practice of members of the bar and others. Every court of record has an inherent power to make rules for the transaction of its business; which rules they may from time to time change, alter, rescind or repeal. While they are in force they must be applied to all cases which fall within them; they can use no discretion, unless such discretion is authorised by the rules themselves. Rules of court cannot, of course, contravene the constitution or the law of the land. 3 Pick. R. 512; 2 Har. & John. 79; 1 Pet. S. C. R. 604; 3 Binn. 227, 417; 3 S. & R. 253; 8 S. & R. 336; 2 Misso. R. 98; 11 S. & R. 131; 5 Pick. R. 187.

RUNCINUS. A nag. 1 Tho. Co. Litt. 471.

RUNNING DAYS. In settling the lay days, (q. v.) or the days of demurrage, (q. v.) the contract sometimes specifies "running days;" by this expression is, in general, understood, that the days shall be reckoned like the days in a bill of exchange. 1 Bell's Comm. 577, 5th ed.

RUNNING WITH THE LAND. A technical expression applied to covenants real, which affect the land; and if a lessee covenants that he and his assigns will repair the house demised, or pay a ground-rent, and the lessee grants over the term, and the

assignee does not repair the house or pay the ground-rent, an action lies against the assignee at common law, because this covenant runs with the land. Bro. Covenant, 32; Rolle's Ab. 522; Bac. Ab. Covenant, E 4. Vide *Covenant.*

RUPEE, *comm. law*, a denomination of money in Bengal. In the computation of ad valorem duties, it is valued at fifty-five and one-half cents. Act of March 2, 1799, s. 61; 1 Story's L. U. S. 627. Vide *Foreign Coins.*

RURAL. What relates to the country, as rural servitudes. See *Urban.*

RUTA, *civ. law.* The name given to those things which are extracted or taken from land, as sand, chalk, coal, and such other things. Poth. Pand. liv. 50, h. t.

S.

SABBATH, the same as Sunday, (q. v.)

SABINIANS. A sect of lawyers, whose first chief was Atteius Capito, and the second, Cælius Sabinus, from whom they derived their name. Clef des Lois Rom. h. t.

SACRAMENTUM. An oath; as, *qui dicunt supra sacramentum suum.*

SACQUIER, *maritime law.* The name of an ancient officer, whose business "was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating of his merchandize otherwise." Laws of Oleron, art. 11, published in an English translation in an Appendix to 1 Pet. Adm. R. XXV. See *Arrameur; Stevedore.*

SACRILEGE. The act of stealing from the temples or churches dedicated to the worship of God, articles consecrated to divine uses. Pen. Code of China, B. 1, s. 2, § 6.

SAFE-CONDUCT, *comm. law, war.* It is a passport or permission from a neutral state to persons who are thus authorised to go and return in safety, and, sometimes, to carry away certain things in safety. According to common usage, the term *passport* is employed on ordinary occasions, for the permission given to persons where there is no reason why they should not go where they please; and *safe-conduct* is the name given to the instrument which authorises certain persons, as enemies, to go into places where they could not go without danger, unless thus authorised by the government. A safe-conduct is also the name of an instrument given to the captain or master of a ship to proceed on a particular voyage: it usually contains his name and residence, the name, description and destination of the ship with such other matters as the practice of the place requires. This document is indispensably necessary for the safety of every neutral ship. The act of congress of April 30th, 1790, s. 27, punishes the violation of any safe-conduct or passport, granted under the authority of the United States, on conviction, with imprisonment, not exceeding three years, and a fine at the discretion of the court. Vide *Conduct; Passport*, and 18 Vin. Ab. 272.

SAILING INSTRUCTIONS, *mar. law*, are written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous ap-

pointed for the fleet, in case of dispersion by storm, by an enemy, or by any other accident. Without sailing instructions no vessel can have the full protection and benefit of convoy. Marsh. Ins. 368.

SAILORS. Vide *Seamen; Shipping articles.*

SAISIE-EXECUTION, *French law.* This term is used in Louisiana. It is a writ of execution by which the creditor places under the custody of the law, the movables, which are liable to seisure, of his debtor, in order that out of them he may obtain payment of the debt due to him. Code of Practice, art. 641; Dall. Dict. h. t. It is a writ very similar to the *fieri facias.*

SAISIE-GAGERIE, *French law.* It is a conservatory act of execution, by which the owner, or principal lessor, of a house or farm, causes the furniture of the house or farm leased, and on which he has a lien, to be seized, in order to obtain the rent due to him. It is similar to the *distress* of the common law. Dall. Dict. h. t.

SAISIE-IMMOBILIERE. It is a writ by which the creditor puts in the custody of the law the immovables of his debtor, that out of the proceeds of their sale, he may be paid his demand. The term is French, and is used in Louisiana.

SALARY, a reward or recompense for services performed. It is usually applied to the reward paid to a public officer for the performance of his official duties. The salary of the president of the United States is twenty-five thousand dollars per annum, Act of 18th Feb. 1793; and the constitution, art. 2, s. 1, provides that the compensation of the president shall not be increased nor diminished, during the time for which he shall have been elected. Salary is also applied to the reward paid for the performance of other services; but if it be not fixed for each year, it is called honorarium. Poth. Pand. h. t. According to M. Duvergier, the distinction between honorarium and salary is this. By the former is understood the reward given to the most elevated professions for services performed; and that the latter is the price of hiring of domestic servants and workmen. 19 Toull. n. 268, p. 292, note.

SALE, *contracts*, is an agreement by which one man gives a thing for a price in current money, and the other gives the price in order to have the thing itself, or agrees to pay it at a future time. Pard. Dr. Com. n. 6; Noy's Max. ch. 42; Shep. Touch. 224; 2 Kent, Com. 363; Poth. h. t. This contract differs from a barter or exchange in this, that in the latter the price instead of being paid in money, is paid in goods or merchandise susceptible of valuation. To constitute a valid sale there must be a thing sold; hence if the object of the sale be a thing not in commerce, as the water of the sea, or the air, or not in esse, there is no contract; there must be a price or consideration; and the agreement must be mutually binding upon the parties. Chit. Contr. 3, 4, 108; Civil Code of Louis. t. 7; Com. Dig. Biens, (D 3); 2 Kent, Com. 363.

SALIQUE LAW. The name of a code of laws so called from the Salians, a people of Germany, who settled in Gaul under their king Pharamond. The most remarkable law of this code is that which regards succession. De terrâ vero salicâ nulla portio hæreditatis transit in mulierem, sed hoc virilis sextus acquirit, hoc est filii in ipsâ hæreditate succedunt; no part of the salique land passes to females, but the males alone are capable of taking, that is the sons succeed to the inheritance. This rule has ever excluded females from the throne of France.

SALVAGE, *in maritime law,*

originally meant the thing or goods saved from shipwreck or other loss; and in that sense it is generally to be understood in our old books. But it is at present more frequently understood to mean the compensation made to those by whose means the ship or goods have been saved from the effects of shipwreck, fire, pirates, enemies or any other loss or misfortune. 1 Cranch, 1. This compensation, which is now usually made in money, was, before the use of money became general, made by a delivery of part of the effects saved. Marsh. Ins. B. 1, c. 12, s. 8; Pet. Adm. Dec. 425; 2 Taunt. 302; 3 B. & P. 612; 4 M. & S. 159; 1 Cranch, 1; 2 Cranch, 240; 8 Cranch, 221; 3 Dall. 188; 4 Wheat. 98; 9 Cranch, 244; 3 Wheat. 91; 1 Day, 193; 1 Johns. R. 165; 4 Cranch, 347; Com. Dig. Salvage; 3 Kent, Com. 196. Vide *Salvors*.

SALVAGE CHARGES. The expenses incurred to remunerate services rendered to a ship and cargo, which have prevented its being a total loss. Stev. on Av. c. 2, s. 1.

SALVAGE LOSS. By salvage loss is understood the difference between the amount of salvage, after deducting the charges, and the original value of the property. Stev. on Av. c. 2, s. 1.

SALVORS, *mar. law*. When a ship and cargo, or any part thereof, are saved at sea by the exertions of any person from impending perils, or are recovered after an actual abandonment or loss, such persons are denominated salvors; they are entitled to a compensation for their services which is called salvage, (q. v.) As soon as they take possession of property for the purpose of preserving it, as if they find a ship direlict at sea, or if they recapture it, or if they go on board a ship in distress, and take possession with the assent of the master or other person in possession, they are deemed bonâ fide possessors, and their possession cannot be lawfully displaced. 1 Dodson's Rep. 414. They have a lien on the property for their salvage, which the laws of all maritime countries will respect and enforce. Salvors are responsible not only for good faith, but for reasonable diligence in their custody of the salvage property. Story, Bail. § 623.

SAMPLE, *contracts*. A small quantity of any commodity or merchandise exhibited as a specimen of a larger quantity called the bulk, (q. v.) When a sale is made by sample, and it afterwards turn out that the bulk does not correspond with it, the purchaser is not in general bound to take the property on a compensation being made to him for the difference. 1 Campb. R. 113; vide 2 East, 314; 4 Campb. R. 22.

SANCTION. That part of a law which inflicts a penalty for its violation, or bestows a reward for its observance. They are of two kinds, those which redress civil injuries, called civil sanctions; and those which punish crimes, called penal sanctions. 1 Hoffm. Leg. Outl. 279; Just. Inst. lib. 2, t. 1, § 10; Ruthf. Inst. b. 2, c. 6, s. 6; Toull. tit. prel. 86; Ferguss. Inst. of Mor. Phil. p. 4, c. 3, s. 13, and p. 6, c. 1, et seq.; 1 Bl. Comm. 56.

SANCTUARY. A place of refuge, where the process of the law cannot be executed. Sanctuaries may be divided into religious and civil. The former were very common in Europe; religious houses affording protection from arrest to all persons, whether accused of crime, or pursued for debt. This kind was never known in the United States. Civil sanctuary, or that protection which is afforded to a man by his own house, was always respected in this country. The house protects the owner from the service of all civil

process in the first instance, but not if he is once lawfully arrested and he takes refuge in his own house. Vide *Door; House.* No place affords protection from arrest in criminal cases; a man may, therefore, be arrested in his own house in such cases, and the doors may be broken for the purpose of making the arrest. Vide *Arrest in criminal cases.*

SANE MEMORY. By this is meant that understanding which enables a man to make contracts and his will, and to perform such other acts as he is authorised by law. Vide *Lunacy; Memory; Non compos mentis.*

SANG or SANC. Blood. These words are nearly obsolete.

SANITY, *med. jur.*, is the state of a person who has a sound understanding; the reverse of insanity. The sanity of an individual is always presumed. 5 John. R. 144; 1 Pet. R. 163; 1 Hen. & M. 476; 4 Cowen, R. 207; 4 W. C. C. R. 262.

SANS CEO QUE. The same as *Absque hoc*, (q. s.)

SANS RECOURS. Without recourse. These words are sometimes put on a bill before the payee endorses it; they have the effect of transferring the bill without responsibility to the endorser. Chit. on Bills, 179; 7 Taunt. 160; 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 S. & R. 325.

SATISDACTION, *civil law.*—This word is derived from the same root as satisfaction; for, in the same manner that to fulfil the demand which is made upon us, is called satisfaction, so satisdaction takes place when he who demands something has agreed to receive sureties instead of the thing itself. Dig. 2, 8, 1.

SATISFACTION, *practice*, an entry made on the record by which a party in whose favour a judgment was rendered, declares that he has been satisfied and paid. In Alabama, Delaware, Illinois, Indiana, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, South Carolina, and Vermont, provision is made by statute, requiring the mortgagee to discharge a mortgage upon the record, by entering satisfaction in the margin. The refusal or neglect to enter satisfaction after payment and demand, renders the mortgagee liable to an action, after the time given him by the respective statutes for doing the same has elapsed, and subjects him to the payment of damages, and in some cases, treble costs. In Indiana and New York, the register or recorder of deeds may himself discharge the mortgage upon the record on the exhibition of a certificate of payment and satisfaction signed by the mortgagee or his representatives, and attached to the mortgage, which shall be recorded. Ind. St. 1836, 64; 1 N. Y. Rev. St. 761.

SATISFACTION, *in construction by courts of equity.* Where a person indebted bequeaths to his creditor a legacy, equal to, or exceeding the amount of the debt which is not noticed in the will, courts of equity, in the absence of any intimation of a contrary intention, have adopted the rule that the testator shall be presumed to have meant the legacy as a satisfaction of the debt.

When a testator being indebted, bequeaths to his creditor a legacy, *simpliciter*, and of the same nature as the debt, and not coming within the exceptions stated in the next paragraph, it has been held a satisfaction of the debt, when the legacy is equal to, or exceeds the amount of the debt. Pre. Ch. 240; 3 P. Wms. 353.

The following are exceptions to the rule: 1, Where the legacy is of *less* amount than the debt, it shall not be deemed a part payment or satisfaction. 1 Ves. Sen. 263.—2, Where, though the debt and legacy are of

equal amount, there is a difference *in the times of payment*, so that the legacy may not be equally beneficial to the legatee as the debt. Prec. Ch. 236; 2 Atk. 300; 2 Ves. Sen. 635; 3 Atk. 96; 1 Bro. C. C. 129; 1 Bro. C. C. 295; 1 M'Clel. & Y. Rep. Exch. 41; 1 Swans. R. 219.—3, When the legacy and the debt are of a *different nature*, either with reference to the subjects themselves, or with respect to the interests given. 2 P. Wms. 614; 1 Ves. jr. 298; 2 Ves. jr. 463.—4. When the provision by the will is expressed to be given for a *particular purpose*, such purpose will prevent the testamentary gift being construed a satisfaction of the debt, because it is given *diverso intuitu*. 2 Ves. Sen. 635.—5. When the debt of the testator is contracted *subsequently* to the making of the will; for in that case, the legacy will not be deemed a satisfaction. 2 Salk. 508.—6. When the legacy is uncertain or contingent. 2 Atk. 300; 2 P. Wms. 343.—7. Where the *debt* itself is contingent, as where it arises from a running account between the testator and legatee, 1 P. Wms. 296; or it is a negotiable bill of exchange. 3 Ves. jr. 561.—8. Where there is an express direction in the will for the payment of *debts and legacies*, the court will infer from the circumstance, that the testator intended that both the debt owing from him to the legatee, and the legacy should be paid. 1 P. Wms. 408; 2 Roper, Leg. 54.

See, generally, Tr. of Eq. 333; Yelv. 11, n.; 1 Swans. R. 221; 18 Eng. Comm. Law Rep. 201; 4 Ves. jr. 301; 7 Ves. jr. 507; 1 Suppl. to Ves. jun. 204, 308, 311, 342, 348, 329; 8 Com. Dig. Appen. tit. Satisfaction, p. 917; Rob. on Frauds, 46, n. 15; 2 Suppl. to Ves. jun. 22, 46, 205; 1 Vern. 346; Roper, Leg. ch. 17; 1 Roper on Husb. & Wife, 501 to 511; 2 Ib. 53 to 63; Math. on Pres. ch. 6, p. 107; 1 Desaus. R. 314; 2 Munf. Rep. 413; Stallm. on El. and Sat.

SCANDAL. A scandalous verbal report or rumour respecting some person. The remedy is an action on the case. In chancery practice, when a bill or other pleading contains scandal, it will be referred to a master to be expunged, and till this has been done, the opposite party need not answer. 3 Bl. Com. 442. Nothing is considered scandalous which is positively relevant to the cause, however harsh and gross the charge may be. The degree of relevancy is not deemed material. Coop. Eq. Pl. 19; 2 Ves. 24; 6 Ves. 514; 11 Ves. 526; 15 Ves. 477; Story, Eq. Pl. § 269. Vide *Impertinent*.

SCANDALUM MAGNATUM, great scandal or slander. In England it is the slander of the great men, the nobility of the realm.

SCHEDULE, *practice*. When an indictment is returned from an inferior court in obedience to a writ of certiorari, the statement of the previous proceedings sent with it, is termed the schedule. 1 Saund. 309 a, n. 2. Schedules are also frequently annexed to answers in a court of equity, and to depositions and other documents, in order to show more in detail the matter they contain, than could otherwise be conveniently shown. The term is frequently used instead of inventory.

SCHOOLMASTER. One employed in teaching a school. A schoolmaster stands *in loco parentis* in relation to the pupils committed to his charge, while they are under his care, so far as to enforce obedience to his commands, lawfully given in his capacity of schoolmaster, and he may therefore enforce them by moderate correction. Com. Dig. Pleader, 3 M 19; Hawk. c. 60, sect. 23. Vide *Correction*. The schoolmaster is justly entitled to be paid for his

important and arduous services by those who employ him. See 1 Bing. R. 357; 8 Moore's Rep. 368. His duties are to teach his pupils what he has undertaken, and to have a special care over their morals. See 1 Stark. R. 421.

SCIENTER, knowingly. A man may do many acts which are justifiable or not, as he is ignorant or not ignorant of certain facts. He may pass a counterfeit coin, when he is ignorant of its being counterfeit, and is guilty of no offence; but if he knew the coin to be counterfeit, which is called the scienter, he is guilty of passing counterfeit money. A man who keeps an animal which injures some person, or his property, is answerable for damages, or in some cases he may be indicted if he had a knowledge of such animal's propensity to do injury. 3 Blackst. Comm. 154; 2 Stark. Ev. 178; 4 Campb. 198; 2 Str. 1264; 2 Esp. 482; Bull. N. P. 77; Burr. 2092; 2 Lev. 172; Lord Raym. 110; 1 B. & A. 620; 2 C. M. & R. 496; 5 C. & P. 1; S. C. 24 E. C. L. R. 187; 1 Leigh, N. P. 552, 553; 7 C. & P. 755. In this respect the civil law agrees with our own. Domat, Lois Civ. liv. 2, t. 8, s. 2. As to what evidence may be given to prove guilty knowledge, see Archb. Cr. Pl. 109. Vide *Animal; Dog.*

SCILICET. A Latin adverb signifying, that is to say, to wit, namely. It is a clause to usher in the sentence of another, to particularise that which was too general before, distribute what was too gross, or to explain what was doubtful and obscure. It neither increases nor diminishes the premises or *habendum*, for it gives nothing of itself; it may make a restriction when the preceding words may be restrained. Hob. 171; 1 P. Wms. 18; Co. Lit. 180 b, note (1). When the scilicet is repugnant to the precedent matter, it is void; for example, when a declaration in trover states that the plaintiff on the *third* day of May was possessed of certain goods which on the fourth day of May came to the defendant's hands, who afterwards, to wit, on the *first* day of May converted them, the scilicet was rejected as surplusage. Cro. Jac. 428; and vide 6 Binn. 15; 3 Saund. 291, note (1), and the cases there cited. This word is sometimes abbreviated, *ss.* or *sst.*

SCIRE FACIAS, *remedies, practice.* The name of a judicial writ, founded upon some record, and requiring the defendant to *show cause* why the plaintiff should not have the advantage of such record, or, when it is issued to repeal letters-patent, why the record should not be annulled and vacated. 3 Sell. Pr. 167; Grah. Pr. 649; 2 Tidd's Pr. 982; 2 Arch. Pr. 76; Bac. Abr. h. t. It is, however, considered as an action, and in the nature of a new original. Skin. 682; Com. 455. The scire facias against a bail, against pledges in replevin, to repeal letters-patent, or the like, is an original proceeding; but when brought to revive a judgment after a year and a day, or upon the death or marriage of the parties, when in the latter case one of them is a woman, or when brought on a judgment *quando*, &c., against an executor, it is but a continuation of the original action. Vide 1 T. R. 388. Vide, generally, 11 Vin. Ab. 1; 19 Vin. Ab. 280; Bac. Ab. Execution, H; Bac. Ab. h. t.; 2 Saund. 72 e, note 3; Doct. Pl. 436.

SCIRE FACIAS AD DISPROBANDUM DEBITUM. The name of a writ in use in Pennsylvania, which lies by a defendant in foreign attachment against the plaintiff, in order to enable him, within a year and a day next ensuing the time of payment to the plaintiff in the attachment, to disprove or avoid the debt

recovered against him. Act relating to the Commencement of actions, s. 61, passed June 13th, 1836.

SCIRE FECI, *in practice*, is the return of the sheriff, or other proper officer, to the writ of *scire facias*, when it has been served; *scire feci*, "I have made known."

SCITE. The setting or standing of any place. The seat or situation of a capital messuage, or the ground on which it stood. Jacob, L. D. h. t.

SCOLD. Vide *Common Scold.*

SCRIPT, *conv.* The original or principal instrument, where there are part and counterpart. Vide *Chirograph; Part; Rescript.*

SCRIVENER. A person whose business it is to write deeds and other instruments for others; a conveyancer. Money scriveners are those who are engaged in procuring money to be lent on mortgages and other securities, and lending such money accordingly. They act also as agents for the purchase and sale of real estates. To be considered a money scrivener, a person must be concerned in carrying on the trade or profession as a means of making a livelihood. He must in the course of his occupation receive other men's moneys into his trust and custody, to lay out for them as occasion offers. 3 Camp. R. 538; 2 Esp. Cas. 555.

SCROLL, is a mark made with a pen or other instrument on a writing which is to supply the place of a seal. In some of the states this has all the efficacy of a seal. Vide *Seal;* 2 Serg. & Rawle, 504; 2 Rep. 5 a; Perk. § 129. In others, a scroll has no such effect; and when a suit is brought on an instrument sealed with a scroll, the act of limitations may be pleaded to it, as to a simple contract. Griff. Law Reg. answers to question No. 110.

SCYREGEMOTE. The name of a court among the Saxons. It was the court of the shire, in Latin called *curia comitatus*, and the principal court among the Saxons. It was holden twice a year for determining all causes both ecclesiastical and secular.

SE DEFENDENDO, *criminal law*, defending himself. Homicide, se defendendo, is that which takes place upon a sudden recounter, where two persons upon a sudden quarrel, without premeditation or malice, fight upon equal terms, and one, before a mortal stroke has been given, declines any further combat, and retreats as far as he can with safety, and kills his adversary, through necessity, to avoid immediate death. 2 Swift's Dig. 289; Pamphl. Rep. of Selfridge's Trial in 1805; Hawk. bk. 1, c. 11, s. 13; 1 Russ. on Cr. 543; Bac. Ab. Murder, &c., F 2.

SEA. The ocean; the great mass of waters which surrounds the land, and which probably extends from pole to pole, covering nearly three quarters of the globe. Waters within the ebb and flow of the tide, are to be considered the sea. Gilp. R. 526. The sea is public and common to all people, and every person has an equal right to navigate it, or to fish there, Ang. on Tide Wat. 44 to 49; Dane's Abr. c. 68, a. 3, 4; Inst. 2, 1, 1; and to land upon the *sea shore*, (q. v.) Every nation has jurisdiction to the distance of a *cannon shot*, (q. v.), or marine league over the water adjacent to its shore. 2 Cranch, 187, 234; 1 Circuit Rep. 62; Bynk. Qu. Pub. Juris. 61; 1 Azuni Mar. Law, 204; Ib. 185; Vattel, 207.

SEA LETTER or SEA BRIEF, *maritime law*, is a document which should be found on board of every neutral ship; it specifies the nature and quantity of the cargo, the place from whence it comes, and its destination. Chit. Law of Nat. 197.

SEA SHORE, *property*, is that space of land, on the border of the sea, which is alternately covered

and left dry, by the rising and falling of the tide; or, in other words, that space of land between high and low water marks. Hargr. Tr. 12. Generally, the sea shore belongs to the public. Angell on Tide Wat. 34, 5; 3 Kent's Com. 347. By the Roman law, the shore included the land as far as the greatest wave extended in winter; *est autem littus maris, quatenus hibernus, fluctus maximus excurrit.* Inst. lib. 2, t. 1, s. 3. *Littus publicam est eatenus qua maxime fluctus exeastuat.* Dig. lib. 50, t. 16, s. 112. The Civil Code of Louisiana seems to have followed the law of the Institutes and the Digest, for it enacts, art. 442, that the "sea shore is that space of land over which the waters of the sea are spread in the highest water, during the winter season." Vide 5 Rob. Adm. R. 182; Dougl. 425; 1 Halst. R. 1; 2 Roll. Ab. 170; Dyer, 326; 5 Co. 107; Bac. Ab. Courts of Admiralty, A; 1 Am. Law Mag. 76; 16 Pet. R. 234, 367; Ang. on Tide Waters, Index, tit. Shore; 2 Bligh's N. S. 146; 5 M. & W. 327; Merl. Quest. de Droit, mots Rivage de la mer; Inst. 2, 1, 1. For the law of Mass. vide Dane's Ab. c. 68, a 3, 4.

SEA WEED. A species of grass which grows in the sea. When cast upon land, it belongs to the owner of the land adjoining the sea shore; upon the grounds that it increases gradually, that it is useful as manure and a protection to the ground, and that it is some compensation for the encroachments of the sea upon the land. 2 John. R. 313, 323. Vide 5 Verm. R. 223. The French differs from our law in this respect, as sea weeds there, when cast on the beach, belong to the first occupant. Dall. Dict. Propriété, art. 3, § 2, n. 128.

SEA-WORTHINESS, *mer. law*, is the ability of a ship or other vessel to make a sea voyage with probable safety: there is, in every insurance, whether on ship or goods, an implied warranty that the ship shall be worthy when she sails on the voyage insured; that is, that she shall be "tight, staunch, and strong, properly manned, provided with all necessary stores, and in all respects fit for the intended voyage." Marsh. Ins. 153; 2 Phil. Ev. 60; 10 Johns. R. 58.

The following rules have been established in regard to the warranty of sea-worthiness.

1. That it is of no consequence whether the insured was aware of the condition of the ship, or not. His innocence or ignorance is no answer to the fact that the ship was not sea-worthy.

2. The opinion of carpenters who have repaired the vessel, however they may strengthen the presumption that the ship is sea-worthy, when it is favourable, is not conclusive of the fact of sea-worthiness. 4 Dow's Rep. 269.

3. The presumption, prima facie, is for sea-worthiness. 1 Dow's R. 336.

4. Any sort of disrepair left in the ship, by which she or the cargo may suffer, is a breach of the warranty of sea-worthiness.

5. A deficiency of force in the crew, or of skill in the master, mate, &c. is a want of sea-worthiness. 1 Campb. 1; 14 East, R. 481. But if there was once a sufficient crew, their temporary absence will not be considered a breach of the warranty. 2 Barn. & Ald. 73.

6. A vessel may be rendered not sea-worthy by being overloaded. 2 Barn. & Ald. 320.

7. When the sea-worthiness arises from justifiable ignorance of the cause of the defect, and is discovered and remedied before any injury occurs, it is not to be considered as a defect. Ib.

SEAL, *conveyancing, contracts.* A seal is an impression upon wax, wafer, or some other tenacious substance capable of being impressed. 5 Johns. R. 239. Lord Coke defines a seal to be wax, with an impression. 3 Inst. 169. "*Sigillum*," says he, "*est cera impressa, quia cera sine impressione non est sigillum.*" This is the common law definition of a seal. Perk. 129; 134; Bro. tit. Faits, 17, 30; 2 Leon. 21; 5 John. 239; 2 Caines, R. 362; 21 Pick. R. 417. But in Pennsylvania, New Jersey, and the southern and western states generally, the impression upon wax has been disused, and a circular, oval, or square mark, opposite the name of the signer has the same effect as a seal: the shape of it however is indifferent; and it is usually written with a pen. 2 Serg. & Rawle, 503; 1 Dall. 63; 1 Serg. & Rawle, 72; 1 Watts, R. 322; 2 Halst. R. 272. A notary must use his official seal, to authenticate his official acts, and a scroll will not answer. 4 Blackf. R. 185. As to the effects of a seal, vide Phil. Ev. Index, h. t. Vide, generally, 13 Vin. Ab. 19; 4 Kent, Com. 444; 7 Caines's Cas. 1; Com. Dig. Fait, (A 2.) Merlin defines a seal to be a plate of metal with a flat surface on which is engraved the arms of a prince or nation or private individual, or other device, with which an impression may be made on wax or other substance on paper or parchment, in order to authenticate them: the impression thus made is also called a seal. Répert. mot Sceau; 3 M'Cord's R. 583; 5 Whart. R. 563. When a seal is affixed to an instrument, it makes it a specialty, (q. v.) and whether the seal be affixed by a corporation or an individual the effect is the same. 15 Wend. 256. Vide *Scroll.*

SEAL OFFICE, *in English practice,* is the office at which certain judicial writs are sealed with the prerogative seal, and without which they are of no authority. The officer whose duty it is to seal such writs is called "sealer of writs."

SEAL OF THE UNITED STATES, *government.* The seal used by the United States in congress assembled, shall be the seal of the United States, viz.: ARMS paleways of thirteen pieces argent and gules; a chief azure; the escutcheon on the breast of the American eagle displayed proper, holding in his dexter talon, an olive branch, and in his sinister, a bundle of thirteen arrows, all proper, and in his beak a scroll, inscribed with this motto "*E pluribus unum.*"—For the CREST: over the head of the eagle which appears above the escutcheon, a glory, or breaking through a cloud, proper, and surrounding thirteen stars, forming a constellation argent on an azure field.—REVERSE, a pyramid unfinished. In the zenith an eye in a triangle, surrounded with a glory proper: over the eye, these words, "*Annuit cœptis.*" On the base of the pyramid the numerical letters MDCCLXXVI; and underneath the following motto, "Novus ordo sectorum."—Resolution of congress, June 20, 1782; Gordon's Dig. art. 207.

SEALS, *in matters of succession.* On the death of a person, according to the laws of Louisiana, if the heir wishes to obtain the benefit of inventory, and the delays for deliberating, he is bound as soon as he knows of the death of the deceased to whose succession he is called, and before committing any act of heirship, to cause the seals to be affixed on the effects of the succession, by any judge or justice of the peace. Civ. Code of Lo. art. 1027. In ten days after this affixing of the seals, the heir is bound to present a petition to the judge of the place in which the succession is opened, praying for the

removal of the seals, and that a true and faithful inventory of the effects of the succession be made. Ib. art. 1028.

In case of vacant estates, and estates of which the heirs are absent and not represented, the seals, after the decease, must be affixed by a judge or justice of the peace within the limits of his jurisdiction, and may be fixed by him either *ex officio*, or at the request of the parties. Civ. Code of Lo. art. 1070. The seals are affixed at the request of the parties, when a widow, a testamentary executor, or any other person who pretends to have an interest in a succession or community of property, requires it. Ib. art. 1071. They are affixed *ex officio*, when the presumptive heirs of the deceased do not all reside in the place where he died, or if any of them happen to be absent. Ib. art. 1072.

The object of placing the seals on the effect of a succession, is for the purpose of preserving them, and for the interest of third persons. Ib. art. 1068.

The seals must be placed on the bureaus, coffers, armoires and other things, which contain the effects and papers of the deceased, and on the doors of the apartments which contain these things, so that they cannot be opened without tearing off, breaking or altering the seals. Ib. art. 1069.

The judge or justice of the peace who affixes the seals, is bound to appoint a guardian, at the expense of the succession, to take care of the seals and of the effects of which an account is taken at the end of the procès-verbal of the affixing of the seals; the guardian must be domiciliated in the place where the inventory is taken. Ib. art. 1079. And the judge when he retires must take with him the keys of all things and apartments upon which the seals have been affixed. Ib.

The raising of the seals is done by the judge of the place, or justice of the peace appointed by him to that effect, in the presence of the witnesses of the vicinage, in the same manner as for the affixing of the seals. Ib. art. 1084.

See, generally, *Benefit of Inventory; Succession;* Code de Pro. Civ. 2e part, lib. 1, t. 1, 2, 3; Dict. de Jurisp. Scellé.

SEAMAN. A sailor; a mariner; one whose business is navigation. 2 Boulay-Paty, Dr. Com. 232; Code de Commerce, art. 262; Laws of Oleron, art. 7; Laws of Wisbuy, art. 19. The term seamen, in its most enlarged sense, includes the captain as well as other persons of the crew; in a more confined signification it extends only to the common sailors, 3 Pardes. n. 667; the mate, 1 Pet. Adm. Dec. 246; the cook and steward, 2 Id. 268, are considered as to their rights to sue in the admiralty, as common seamen; and persons employed on board of steamboats and lighters, engaged in trade or commerce, on tide water, are within the admiralty jurisdiction, while those employed in ferry boats are not. Gilp. R. 203, 532; and persons who do not contribute their aid in navigating the vessel or to its preservation in the course of their occupation, as musicians, are not to be considered as seamen with a right to sue in the admiralty for their wages. Gilp. R. 516. See 1 Bell's Com. 509, 5th ed.; 2 Rob. Adm. R. 232; Dunl. Adm. Pr. h. t. Seamen are employed either in merchant vessels for private service, or in public vessels for the service of the United States. 1. Seamen in the merchant vessels are required to enter into a contract in writing commonly called shipping articles, (q. v.) This contract being entered into, they are bound under severe penalties, to render themselves on board the vessel according to the

agreement: he is not at liberty to leave the ship without the consent of the captain or commanding officer, and for such absence, when less than forty-eight hours, he forfeits three days' wages for every day of absence; and when the absence is more than forty-eight hours, at one time, he forfeits all the wages due to him, and all his goods and chattels which were on board the vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the vessel and liable for damages for hiring other hands. They may be imprisoned for desertion until the ship is ready to sail.

On board a seaman is bound to do his duty to the utmost of his ability; and when his services are required for extraordinary exertions, either in consequence of the death of other seamen, or on account of unforeseen perils, he is not entitled to an increase of wages, although it may have been promised to him. 2 Campb. 317; Peake's N. P. Rep. 72; 1 T. R. 73. For disobedience of orders he may be imprisoned or punished with stripes, but the correction (q. v.) must be reasonable; and, for just cause, may be put ashore in a foreign country. 1 Pet. Adm. R. 186; 2 Ibid. 268; 2 East, Rep. 145.

Seamen are entitled to their wages, of which one third is due at every port at which the vessel shall unlade and deliver her cargo, before the voyage be ended; and at the end of the voyage an easy and speedy remedy is given them to recover all unpaid wages. When taken sick a seaman is entitled to medical advice and aid at the expense of the ship; such expense being considered in the nature of additional wages, and as constituting a just remuneration for his labour and services. 2 Mass. R. 541. When destitute in foreign ports, American consuls and commercial agents are required to provide for them, and for their passages to some port of the United States, in a reasonable manner, at the expense of the United States; and American vessels are bound to take such seamen on board at the request of the consul, but not exceeding two men for every hundred tons of the ship, and transport them to the United States, on such terms, not exceeding ten dollars for each person, as may be agreed on. Vide, generally, Story's Laws U. S. Index, h. t.; 3 Kent, Com. 136 to 156; Marsh. Ins. 90; Poth. Mar. Contr. translated by Cushing, Index, h. t.; 2 Bro. Civ. and Adm. Law, 155.

2. Seamen in the public service are governed by particular laws.

SEAMEN'S FUND. By the act of 16 July, 1798, a provision is made for raising a fund for the relief of disabled and sick seamen: the master of every vessel arriving from a foreign port into the United States is required to pay to the collector of customs at the rate of twenty cents per month for every seaman employed on board of his vessel, which sum he may retain out of the wages of such seaman; vessels engaged in the coasting trade, and boats, rafts or flats navigating the Mississippi, with intention to proceed to New Orleans, are also laid under similar obligations. The fund thus raised is to be employed by the president of the United States as circumstances shall require, for the benefit and convenience of sick and disabled American seamen. Act of 3 March, 1802, s. 1. By the act of congress, passed February 28, 1803, c. 62, 2 Story's L. U. S. 884, it is provided that when a seaman is discharged in a foreign country with his own consent, or when the ship is sold there, he shall, in addition to his usual wages, be paid three months' wages into the

hands of the American consul, two thirds of which are to be paid to such seaman, on his engagement on board any vessel to return home, and the remaining one third is retained in aid of a fund for the relief of distressed American seamen in foreign ports. See 11 John. R. 66; 12 John. Rep. 143; 1 Mason, R. 45; 4 Mason, R. 541; Edw. Adm. R. 239.

SEARCH, *crim. law.* An examination of a man's house, premises or person, for the purpose of discovering proof of his guilt in relation to some crime or misdemeanor of which he is accused. The constitution of the United States, Amendments, art. 4, protects the people from unreasonable searches, and seizures. 3 Story, Const. § 1895; Rawle, Const. ch. 10, p. 127; 10 John. R. 263; 11 John. R. 500; 3 Cranch, 447.

By the act of March 2, 1799, s. 68, 1 Story's L. U. S. 632, 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.

SEARCH, *practice.* An examination made in the proper lien office for mortgages, liens, judgments, or other encumbrances against real estate. The certificate given by the officer as to the result of such examination is also called a search. Conveyancers and others who cause searches to be made ought to be very careful that they should be correct, with regard, 1, to the time during which the person against whom the search has been made owned the premises; 2, to the property searched against, which ought to be properly described; 3, to the form of the certificate of search.

SEARCH, RIGHT OF, *mar. law.* The right existing in a belligerent to examine and inspect the papers of a neutral vessel at sea. On the continent of Europe, this is called the right of visit. Dalloz, Dict. mots Prises Maritimes, n. 104–111. The right does not extend to examine the cargo; nor does it extend to a ship of war, it being strictly confined to the searching of merchant vessels. The exercise of the right is to prevent the commerce of contraband goods. Although frequently resisted by powerful neutral nations, yet this right appears now to be fixed beyond contravention. The penalty for violently resisting this right is the confiscation of the property so withheld from visitation. Unless in extreme cases of gross abuse of his right by a belligerent, the neutral has no right to resist a search. 1 Kent, Com. 154; 2 Bro. Civ. and Adm. Law, 319; Mann. Comm. B. 3, c. 11.

SEARCH WARRANT, *crim. law, practice*, is a warrant (q. v.) requiring the officer to whom it is addressed, to search a house or other place therein specified, for property alleged to have been stolen; and if the same shall be found upon such search, to bring the goods so found,

together with the body of the person occupying the same, who is named, before the justice or other officer granting the warrant, or some other justice of the peace, or other lawfully authorised officer. It should be given under the hand and seal of the justice, and dated. The constitution of the United States, amendments, art. 4, declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." Lord Hale, 2 P. C. 149, 150, recommends great caution in granting such warrants. 1. That they be not granted without oath made before a justice of a felony committed, and that the complainant has probable cause to suspect they are in such a house or place, and his reasons for such suspicion. 2. That such warrants express that the search shall be made in daytime. 3. That they ought to be directed to a constable or other proper officer, and not to a private person. 4. A search warrant ought to command the officer to bring the stolen goods and the person in whose custody they are, before some justice of the peace. Vide 1 Chit. Cr. Law, 57, 64; 4 Inst. 176; Hawk. B. 2, c. 13, s. 17, n. 6; 11 St. Tr. 321; 2 Wils. 149, 291; Burn's Just. h. t.; Williams's Just. h. t.

SECK. This word has two significations, 1, it means a warrant of remedy by distress. Litt. s. 218; and vide *Rent*. 2. It imports want of present fruit or profit, as in the case of the reversion without rent or other service except fealty. Co. Litt. 151 b, note (5).

SECOND. A measure equal to one sixtieth part of a minute. Vide *Measure*.

SECOND DELIVERANCE,—*practice*, is the name of a writ given by statute of Westminster the second, 13 Edw. 1, c. 2, founded on the record of a former action of replevin. 2 Inst. 341. It commands the sheriff, if the plaintiff make him secure of prosecuting his claim, and returning the chattels which were adjudged to the defendant by reason of the plaintiff's default, to make deliverance. On being nonsuited, the plaintiff in replevin might, at common law, have brought another replevin, and so in *infinitum*, to the intolerable vexation of the defendant. The statute of Westminster restrains the plaintiff when nonsuited from so doing, but allows him this writ, issuing out of the original record, in order to have the same distress delivered again to him, on his giving the like security as before. 3 Bl. Com. 150; Hamm. N. P. 495; F. N. B. 68; 19 Vin. Ab. 1.

SECONDARY, *Engl. law*. An officer who is second or next to the chief officer; as secondaries to the prothonotaries of the courts of king's bench or common pleas; secondary of the remembrancer in the exchequer, &c. Jacob, L. D. h. t.

SECONDS, *crim. law*, are those persons who assist, direct and support others engaged in fighting a duel. As they are often much to blame in inciting the duellists to their rash act, and as they are always assisting in the commission of the crime, the laws generally punish them with severity; but, in consequence of the false ideas too generally entertained on the subject of honour, they are too seldom enforced.

SECRET, that which is not to be revealed. Attorneys and counsellers, who have been trusted professionally with the secrets of their

clients, are not allowed to reveal them in a court of justice. The right of secrecy belongs to the client, and not to the attorney and counsellor. As to the matter communicated, it extends to all cases where the client applies for professional advice or assistance; and it does not appear that the protection is qualified by any reference to proceedings pending or in contemplation. Story, Eq. Pl. § 600; 1 Milne & K. 104; 3 Sim. R. 467. Documents confided professionally to the counsel cannot be demanded, unless indeed the party would himself be bound to produce them. Hare on Discov. 171. Grand jurors are sworn the commonwealth's secrets, their fellows and their own to keep. Vide *Confidential communications; Witness.*

SECRET, *rights.* It is a knowledge of something which is unknown to others, out of which a profit may be made; for example, an invention of a machine, or the discovery of the effect of the combination of certain matters. Instances have occurred of secrets of that kind being kept for many years, but they are liable to constant detection. As such secrets are not property, the possessors of them in general prefer making them public, and securing the exclusive right for years, under the patent laws, to keeping them in an insecure manner, without them. See Phil. on Pat. ch. 15; Gods. on Pat. 171; Dav. Pat. Cas. 429; 8 Ves. 215; 2 Ves. & B. 218; 2 Mer. 446; 3 Mer. 157; 1 Jac. & W. 394; 1 Pick. 443; 4 Mason, 15; 3 B. & P. 630.

SECRETARY. An officer who, by order of his superior, writes letters and other instruments. He is so called because he is possessed of the *secrets* of his employer. This term was used in France in 1343, and in England the term secretary was first applied to the clerks of the king, who being always near his person were called *clerks of the secret*, and in the reign of Henry VIII. the term secretary of state came into use.

SECRETARY OF LEGATION, is an officer employed to attend a foreign mission, and to perform certain duties as clerk. His salary is fixed by the act of congress of May 1, 1810, s. 1, at such a sum as the president of the United States may allow, not exceeding two thousand dollars. The salary of a secretary of embassy, or the secretary of a minister plenipotentiary is the same as that of a secretary of legation.

SECRETARY OF THE NAVY, *government.* This officer is appointed by the president. His duties are to execute all such orders as he shall receive from the president, relative to the procurement of naval stores and materials, and the construction, armament, equipment and employment of vessels of war; as well as all other matters connected with the naval establishment of the United States; act of 30th April, 1798, s. 1, 1 Story's Laws, 498; he appoints his own clerks and subordinate officers. Various other duties are imposed upon him by sundry acts of congress. Vide Gordon's Dig. art. 370 to 375. His salary is six thousand dollars. Act of 20th Feb. 1819, 3 Story's Laws, 1720.

SECRETARY OF STATE OF THE UNITED STATES, *government.* He is the principal officer in the *Department of State*, (q. v.) He shall perform such duties as shall be enjoined on or entrusted to him by the president, agreeably to the constitution, relative to the correspondences, commissions or instructions to or with public ministers or consuls from the United States, or to negotiations with foreign states or princes, or to memorials or other applications from foreign public ministers or foreigners, or to such

other matters respecting foreign affairs as the president of the United States shall assign to such department. The secretary shall conduct the business of his department in such manner as the president shall, from time to time, order or instruct. Act of 27th July, 1789; act of 15th Sept. 1789, s. 1. Besides these general, there are various laws which impose upon him inferior and less important duties. His salary is six thousand dollars per annum. Act of 20th Feb. 1819.

SECRETARY OF THE TREASURY OF THE UNITED STATES, *government*. He is an officer appointed by the president. His principal duties are, 1, to superintend the collection of the revenue; 2, to digest, prepare, and lay before congress at the commencement of every session, a report on the subject of finance; 3, to annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former acts; 4, to give such information to either house of congress, respecting all matters connected with his office. Besides these, there are other minor duties imposed upon him by various acts of congress. His salary is six thousand dollars. Gord. Dig. art. 249 to 262.

SECRETARY FOR THE DEPARTMENT OF WAR, *government*. This officer is appointed by the president. He is required to perform and execute such duties as shall, from time to time, be enjoined on or entrusted to him by the president, agreeably to the constitution, relative to military commissions or to the land forces, or warelike stores of the United States, or to such other matters respecting military affairs as the president shall assign to the *Department of war*, (q. v.), or relative to granting of lands to persons entitled thereto for military services rendered to the United States, or relative to Indian affairs. Act of 27th Aug. 1789, 1 Story's Laws, 31. His salary is six thousand dollars per annum. Act of 20th Feb. 1819, 3 Story's Laws, 1720. Various other duties are imposed upon this secretary by sundry acts of congress. Vide Story's Laws, Index, Departments, &c.; Gordon's Dig. art. 368 to 382.

SECTA, *pleading*. In ancient times the plaintiff was required to establish the truth of his declaration in the first instance, and before it was called in question upon the pleading, by the simultaneous production of his *secta*, that is, a number of persons prepared to confirm his allegations. Bract. 214, a. The practice of thus producing a secta, gave rise to the very ancient formula almost invariably used at the conclusion of a declaration, as entered on the record, *et inde producit sectam;* and, though the actual production has, for many centuries, fallen into disuse, the formula still remains. Accordingly, except the count on a writ of right, and in dower, all declarations constantly conclude thus, "And therefore he brings his suit," &c. The court on a writ of right, did not, in ancient times, conclude with the ordinary production of suit, but with the following formula peculiar to itself, 'Et quod tale sit jus suum offert disrationare per corpus talis liberi hominis,' &c. and it concludes, at the present day, with an abbreviated translation of the same phrase. "And that such is his right, he offers," &c. The count in dower is an exception to the rule in question, and concludes without any production of suit, a peculiarity which appears always to have belonged to that action. Steph. Pl. 427, 8; 3

Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399.

SECTION OF LAND. The lands of the United States are surveyed into parcels of six hundred and forty acres; each such parcel is called a section. 1 Story's L. U. S. 422. These sections are divided in half sections, each of which contains three hundred and twenty acres, and into quarter sections of one hundred and sixty acres each.

TO SECURE. To protect, insure, or save a right. The constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science and the useful arts by *securing*, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries." The inventor of a machine, has the right to it exclusively, at common law, and the author a right to his manuscript. But they may abandon the right by publishing the book without having secured a copy-right, (q. v.) or by using publicly the machine, and suffering others to use it, without having obtained a patent. (q. v.) Vide *Secret*.

SECURITY. That which renders a matter sure; an instrument which renders certain the performance of a contract. The term is also sometimes applied to designate a person who becomes the surety for another, or who engages himself for the performance of another's contract. See 3 Blackf. R. 431.

SECURITY FOR COSTS, *in practice*. In some courts there is a rule that when the plaintiff resides abroad he shall give security for costs, and until that has been done, when demanded, he cannot proceed in his action. This is a right which the defendant must claim in proper time, for if he once waives it, he cannot afterwards claim it; the waiver is seldom, or perhaps never expressly made, but is generally implied from the acts of the defendant. When the defendant had undertaken to accept short notice of trial, 2 Hen. Bl. 593; 3 Taunt. 272; or after issue joined, and when he knew of plaintiff's residence abroad; or, with such knowledge, when the defendant takes any step in the cause; these several acts will amount to a waiver. 5 Barn. & Ald. 702; S. C. 1 Dow. & Ryl. 348; 1 M. & P. 30; S. C. 17 E. C. L. R. 164. Vide 3 John. Ch. R. 520; 1 John. Ch. Rep. 202; 1 Ves. jun. 396. The fact that the defendant is out of the jurisdiction of the court, will not, alone, authorise the requisition of security for costs; he must have his domicil abroad. 1 Ves. jr. 396. When the defendant resides abroad, he will be required to give such security, although he is a foreign prince. 33 E. C. L. Rep. 214. Vide 11 S. & Rawle, 121; 1 Miles, R. 321; 2 Miles, 402.

SEDITION, *crimes*, consists in the raising commotions or disturbances in the state; it is a revolt against legitimate authority. Erskine, Princ. Laws Scotl. b. 4, t. 4, s. 14; Dig. Lib. 49, t. 16, l. 3, § 19. The distinction between sedition and treason consists in this, that though its ultimate object is a violation of the public peace, or at least such a course of measures as evidently engenders it, yet it does not aim at direct and open violence against the laws, or the subversion of the constitution. Alis. Crim. Law of Scotl. 580. The obnoxious and obsolete act of July 14, 1798, 1 Story's Laws U. S. 543, was called the *sedition law*, because its professed object was to prevent disturbances. In the Scotch law, sedition is either verbal or real. Verbal is inferred from the uttering of words tending to create discord between the king and his people; real sedition is generally committed by convocating together any considerable number of people, without

lawful authority, under the pretence of redressing some public grievance, to the disturbing of the public peace. Ersk. ut supra.

SEDUCTION. The offence of a man who abuses the simplicity and confidence of a woman to obtain by false promises what she ought not to grant. The woman being *particeps criminis*, has no remedy for the mere seduction, nor is there, to the discredit of the law, a direct remedy in her parents. The seducer may be sued, though not directly or ostensibly for the seduction; but for the consequent inability to perform those services for which she was accountable to her master, or to her parent, who, for this purpose, is obliged to assume that less endearing relation; and if it cannot be proved that she filled that office, the action cannot be sustained. Vide 10 John. R. 115; 9 John. R. 387; 2 New Reports, 476; 6 East, 387; Peake's Rep. 253; 11 East, 24; 5 East, 45; 2 T. R. 4; 2 Selw. N. P. 1001; 2 Phil. Ev. 156; 3 Chitt. Bl. Com. 140, n.; 7 Com. Dig. 318; 6 M. & W. 55.

SEIGNIOR or SEIGNEUR, among the feudists, signified lord of the fee. F. N. B. 23. The most extended signification of this word includes not only a lord or peer of parliament, but is applied to the owner or proprietor of a thing; hence, the owner of a hawk, and the master of a fishing vessel, is called a seigneur. 37 Edw. 3, c. 19; Barr. on the Stat. 258.

SEISIN, *estates*, is the possession of an estate of freehold, 8 N. H. Rep. 57; seisin was used in contradistinction to that precarious kind of possession by which tenants in villenage held their lands, which was considered to be the possession of their lords in whom the freehold continued. Seisin is either in *fact* or in *law*. Where a freehold estate is conveyed to a person by feoffment, with livery of seisin, or by any of those conveyances which derive their effect from the statute of uses, he acquires a seisin in deed or in fact, and a freehold in deed: but where the freehold comes to a person by act of law, as by descent, he only acquires a seisin in law, that is, a right of possession, and his estate is called a freehold in law. The seisin in law, which the heir acquires on the death of his ancestor, may be defeated by the entry of a stranger, claiming a right to the land, which is called an abatement, (q. v.) The actual seisin of an estate may be lost by the forcible entry of a stranger who thereby ousts or dispossesses the owner: this act is called a disseisin, (q. v.) According to Lord Mansfield, the various alterations which have been made in the law for the last three centuries, "have left us but the name of feoffment, *seisin*, tenure, and freeholder, without any precise knowledge of the thing originally signified by these sounds." In the United States, a conveyance by deed executed and acknowledged, and properly recorded according to law, and the descent cast upon the heir, are, in general, considered as a seisin in deed without entry; and a grant by letters-patent from the commonwealth has the same effect. 4 Mass. R. 546; 7 Mass. R. 494; 15 Mass. R. 214; 1 Munf. R. 170. The recording of a deed is equivalent to livery of seisin. 4 Mass. 546. In Pennsylvania, Connecticut, Massachusetts and Ohio, seisin means merely ownership, and the distinction between seisin in deed and in law is not known in practice. Walk. Intr. 324, 330; 1 Hill. Abr. 24; 4 Day, R. 305; 4 Mass. R. 489; 14 Pick. R. 224. A patent by the commonwealth, in Kentucky, gives a right of entry, but not actual seisin. 3 Bibb, Rep. 57. Vide 1 Inst. 31; 19 Vin. Ab. 306; Dane's Abr. c. 104, a. 3; 4 Kent, Com. 2, 381; Cruise's

Dig. t. 1, § 23; Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 1, n. 80; Poth. Traité des Fiefs, part 1, c. 2; 3 Sumn. R. 170. Vide *Livery of Seisin.*

SEIZURE, *practice.* The act of taking possession of the property of a person condemned by the judgment of a competent tribunal, to pay a certain sum of money, by a sheriff, constable, or other officer, lawfully authorised thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment. The seizure is complete as soon as the goods are within the power of the officer. 3 Rawle's Rep. 401; 16 Johns. Rep. 287; 2 Nott & McCord, 392; 2 Rawle's Rep. 142; Wats. on Sher. 172; Com. Dig. Execution, C 5. The taking of part of the goods in a house, however, by virtue of a fieri facias in the name of the whole, is a good seizure of all. 8 East, R. 474. As the seisure must be made by virtue of an execution, it is evident that it cannot be made after the return day. 2 Caines's Rep. 243; 4 John. R. 450. Vide *Door; House; Search Warrant.*

SELF DEFENCE, *crim. law*, is the right to protect one's person and property from injury. Even homicide may be excused, *se defendendo*, where a man has no other probable means of preserving his life from one who attacks him on a sudden quarrel, or who beats him, if reduced to this inevitable necessity. Hawk. bk. 2, c. 11, sect. 13. When so reduced he cannot call to his aid the power of society or the commonwealth, and being unprotected by the law, he reassumes his natural rights, which the law sanctions, of killing his adversary to protect himself. Toull. Dr. Civ. Français, liv. 1, t. 1, n. 210; see Pamph. Report of Selfridge's Trial in 1806; 2 Swift's Dig. 283. A man may also repel force by force in defence of his person, habitation or property, against any one who manifestly endeavours or intends by violence or surprise to commit a felony; such as murder, rape, robbery, arson, burglary or the like; in these cases he is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger, and if he kill him in so doing it will be excusable self-defence. 2 Sw. Dig. 283, 4. See *Battery; Trespass.*

SELECTMEN. The name of certain officers in several of the U. States, who are invested by the statutes of the several states with various power.

SELLER, *contracts.* One who disposes of a thing in consideration of money; a vendor. This term is more usually applied in the sale of chattels, that of vendor in the sale of estates. The duties of the seller are 1, to deal with fairness; 2, to deliver the thing sold at the time and place appointed, and to take care of it until delivery; but when every thing the seller has to do with the goods is complete, the property and the risk of accident to the goods, rests in the buyer, even before delivery or payment. Noy's Max. ch. 24; 7 East, 571; 2 Bl. Com. 448; 3, to warrant the title of personal property when he sells it as his own, when it is in his possession. 2 Kent, Com. 374; 1 Lord Raym. 593; 1 Salk. 210. Vide *Purchaser*, and the authorities there cited.

SEMBLE. A French word which signifies *it seems.* It is commonly used before the statement of a point of law which has not been directly settled, but about which the court have expressed an opinion, and intimated what it is.

SEMI-PROOF, *civ. law.* Presumptions of fact are so called. This degree of proof is thus defined: "Non est ignorandum, probationem semiplenam eam esse, per quam rei

gestæ fides aliqua fit judici; non tamen tanta ut jure debeat in pronuncianda sententia eam sequi." Mascardus, De Prob. vol. 1, Quæst. 11, n. 1, 4.

SEMINAUFRAGIUM. A term used by Italian lawyers, which literally signifies, *half-shipwreck*, and by which they understand the jetsam, or casting merchandise into the sea to prevent shipwreck. Locré, Esp. du Code de Com. art. 409. It also signifies the state of a vessel which has been so much injured by tempest or accident, that to repair the damages, after being brought into port, and prepare her for sea, would cost more than her worth. 4 Law Rep. 120.

SEN. This is said to be an ancient word which signified justice. Co. Litt. 61 a.

SENATE, *government*, is the less numerous branch of the legislature. The constitution of the United States, article 1, s. 3, cl. 1, directs that "the senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote." "The vice-president of the United States," to use the language of the constitution, art. 1, s. 3, cl. 4, "shall be president of the senate, but shall have no vote, unless they be equally divided." In the senate each state, in its political capacity, is represented upon a footing of perfect equality, like a congress of sovereigns or ambassadors, or like an assembly of peers. It is unlike the house of representatives where the people are represented. Story, Const. ch. 10.

The senate of the United States is invested with legislative, executive and judicial powers. 1. It is a legislative body whose concurrence is requisite to the passage of every law. It may originate any bill, except those for raising revenue, which shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. Const. art. 1, s. 7, cl. 1.—2. The senate is invested with executive authority in concluding treaties and making appointments. Vide *President of the United States of America*.—3. It is invested with judicial power when it is formed into a court for the trial of impeachments. See *Courts of the United States*.

In most of the states the less numerous branch of the legislature bears the title of senate. In such a body the people are represented as well as in the other house. Vide article *Congress;* and, for the senates of the several states, the name of each state. See, also, articles *Courts of the United States*, I; *House of Representatives; Vice-President of the United States*.

SENATOR, *government*, is one who is a member of a senate. "No person shall be a senator [of the national senate] who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that state for which he shall be chosen." Const. U. S. art. 1, s. 3, cl. 5. Vide 1 Kent, Com. 224; Story on the Const. § 726 to 730.

SENATUS CONSULTUM, *civ. law*. A decree or decision of the Roman senate, which had the force of law. When the Roman people had so increased that there was no place where they could meet, it was found necessary to consult the senate instead of the people, both on public affairs and those which related to individuals. The opinion which was rendered on such an occasion was called *senatus consultum*. Inst. 1, 2, 5; Clef des Lois Rom. h. t.; Merl. Répert. h. t. These decrees frequently derived their titles from the names of the consuls or

magistrates who proposed them; as, senatus-consultum Claudianum, Libonianum, Velleianum, &c. from Claudius, Libonius, Valleius. Ayl. Pand. 30.

SENESCHALLUS. A steward. Co. Litt. 61 a.

SENTENCE. A judgment or judicial declaration made by a judge in a cause. The term judgment is more usually applied to civil, and sentence to criminal proceedings. Sentences are final, when they put an end to the case; or interlocutory, when they settle only some incidental matter which has arisen in the course of its progress. Vide Aso & Man. Inst. B. 3, t. 8, c. 1.

SEPARATE MAINTENANCE, *contracts.* An allowance made by a husband to his wife for her separate support and maintenance. When this allowance is regularly paid, and notice of it has been given, no person who has received such notice will be entitled to recover against the husband for necessaries furnished to the wife, because the liability of the husband depends on a presumption of authority delegated by him to the wife, which is negatived by the facts of the case. 2 Stark. Ev. 699.

SEPARATE TRIAL, *practice.* The trial of one person by himself, when he is jointly indicted with others, for an alleged offence. On a joint indictment against two or more defendants for a crime or misdemeanor, it is in the discretion of the court whether to allow a separate trial for each prisoner, or to order the whole of them to be tried together. 1 Baldw. Rep. 81; 12 Wheat. 480; 5 Serg. & Rawle, 60; but see 1 Pet. C. C. Rep. 118.

SEPARATION, *in contracts.*—When the husband and wife agree to live apart they are said to have made a separation. Contracts of this kind are generally made by the husband for himself and by the wife with trustees. 4 Paige's R. 516; 3 Paige's R. 483; 5 Bligh, N. S. 339; 1 Dow & Clark, 519. This contract does not affect the marriage, and the parties may at any time agree to live together as husband and wife. The husband who has agreed to a *total* separation cannot bring an action for criminal conversation with the wife. Roper, Husb. and Wife, *passim;* 4 Vin. Ab. 173; 2 Stark. Ev. 698; Shelf. on Mar. & Div. ch. 6, p. 608. Reconciliation after separation supersedes special articles of separation in courts of law and equity. 1 Dowl. P. C. 245; 2 Cox, R. 105; 3 Bro. C. C. 619, n.; 11 Ves. 532. Public policy forbids that parties should be permitted to make agreements for themselves to hold good whenever they chose to live separate. 5 Bligh, N. S. 367, 375; and see 1 Carr. & P. 36. See 5 Bligh, N. S. 339; 2 Dowl. P. C. 332; 2 C. & M. 388; 3 John. Ch. R. 521; 2 Sim. & Stu. 372; 1 Edw. R. 380; Desaus. R. 45, 198; 1 Y. & C. 28; 11 Ves. 526; 2 East, R. 283; 8 N. H. Rep. 350; 1 Hoff. R. 1.

SEPULCHRE. The place where a corpse is buried. The violation of sepulchres is a misdemeanor at common law. Vide *Dead bodies.*

TO SEQUESTER, *civil and eccles. law.* To renounce. Example, when a widow comes into court and disclaims having any thing to do, or to intermeddle with her deceased husband's estate, she is said to sequester. Jacob, L. D. h. t.

SEQUESTRATION, *in chancery practice.* The process of sequestration is a writ of commission, sometimes directed to the sheriff, but most usually, to four or more commissioners of the complainant's own nomination, authorising them to enter upon the real or personal estate of the defendant, and to take the rents, issues and profits into their own hands, and keep possession of,

or pay the same as the court shall order and direct, until the party who is in contempt shall do that which he is enjoined to do, and which is specially mentioned in the writ. 1 Harr. Ch. 191; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

Upon the return of *non est inventus* to a commission of rebellion, a sergeant-at-arms may be moved for; and if he certifies that the defendant cannot be taken, a motion may be made upon his certificate, for an order for a sequestration. 2 Madd. Chan. 203; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

Under a sequestration upon mesne process, as in respect of a contempt for want of appearance or answer, the sequestrators may take possession of the party's personal property, and keep him out of possession, but no sale can take place, unless perhaps to pay expenses; for this process is only to form the foundation of taking the bill *pro confesso*. After a decree it may be sold. See 3 Bro. C. C. 72; 2 Cox, 224; 1 Ves. jr. 86; 3 Bro. C. C. 372; 2 Madd. Ch. Pr. 206.

See generally as to this species of sequestration, 19 Vin. Abr. 325; Bac. Ab. h. t.; Com. Dig. Chancery, (D 7), (Y 4); 1 Hov. Supp. to Ves. jr. 25 to 29; 1 Vern. by Raith. 58, note (1); Id. 421, note (1).

SEQUESTRATION, *in contracts*, is a species of deposit, which two or more persons, engaged in litigation about any thing, make of the thing in contest to an indifferent person, who binds himself to restore it when the issue is decided, to the party to whom it is adjudged to belong. Louis. Code, art. 2942; Story on Bailm. § 45. Vide 19 Vin. Ab. 325; 1 Supp. to Ves. Jr. 29; 1 Vern. 58, 420; 2 Ves. Jr. 23; Bac. Ab. h. t. This is called a conventional sequestration, to distinguish it from a judicial sequestration, which is considered in the preceding article. See Dalloz, Dict. mot Sequestre.

SEQUESTRATION, *Louisiana practice*. The Code of Practice in civil cases in Louisiana, defines and makes the following provisions on the subject of sequestration.

Art. 269. Sequestration is a mandate of the court, ordering the sheriff, in certain cases, to take in his possession, and to keep, a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that thing. This is what is properly called a judicial sequestration. Vide 1 Mart. R. 79; 1 L. R. 439; Civil Code of Lo. 2941, 2948.

Art. 270. In this acceptation, the word sequestration does not mean *a judicial deposit*, because sequestration may exist together with the right of administration, while mere deposit does not admit it.

Art. 271. All species of property, real or personal, as well as the revenue proceeding from the same, may be sequestered.

Art. 272. Obligations and titles may also be sequestered, when their ownership is in dispute.

Art. 273. Judicial sequestration is generally ordered only at the request of one of the parties to a suit; there are cases, nevertheless, where it is decreed by the court without such request, or is the consequence of the execution of judgments.

Art. 274. The court may order, ex officio, the sequestration of real property in suits, where the ownership of such property is in dispute, and when one of the contending parties does not seem to have a more apparent right to the possession than the other. In such cases, sequestration may be ordered to continue, until the question of ownership shall have been decided.

Art. 275. Sequestration may be ordered, at the request of one of the parties in a suit, in the following cases: 1. When one, who had possessed for more than one year, has been evicted through violence, and sues to be restored to his possession. 2. When one sues for the possession of movable property, or of a slave, and fears that the party having possession, may ill treat the slave, or send either that slave, or the property in dispute, out of the jurisdiction of the court, during the pendency of the suit. 3. When one claims the ownership, or the possession of real property, and has good ground to apprehend, that the defendant may make use of his possession, to dilapidate, or to waste the fruits or revenues produced by such property, or convert them to his own use. 4. When a woman sues for a separation from bed and board, or only for a separation of property from her husband, and has reason to apprehend that he will ruin her dotal property, or waste the fruits or revenues produced by the same during the pendency of the action. 5. When one has petitioned for a stay of proceedings, and a meeting of his creditors, and such creditors fear that he may avail himself of such stay of proceedings, to place the whole, or a part of his property, out of their reach. 6. A creditor by special mortgage shall have the power of sequestering the mortgaged property, when he apprehends that it will be removed out of the state before he can have the benefit of his mortgage, and will make oath of the facts which induced his apprehension.

Art. 276. A plaintiff, wishing to obtain an order of sequestration in any one of the cases above provided, must annex to the petition in which he prays for such an order, an affidavit, setting forth the cause for which he claims such order: he must, besides, execute his obligation in favour of the defendant, for such sum as the court shall determine, with the surety of one good and solvent person, residing within the jurisdiction of the court, to be responsible for such damages as the defendant may sustain, in case such sequestration should have been wrongfully obtained.

Art. 277. When security is given, in order to obtain the sequestration of real property which brings a revenue, the judge must require that it be given for an amount sufficient to compensate the defendant, not only for all damage which he may sustain, but also for the privation of such revenue, during the pendency of the action.

Art. 278. The plaintiff, when he prays for a sequestration of the property of one who has failed, is not required to give such security, though that property bring in a revenue.

Art. 279. A defendant, against whom a mandate of sequestration has been obtained, except in cases of failure, may have the same set aside, by executing his obligation in favour of the sheriff, with one good and solvent surety, for whatever amount the judge may determine, as being equal to the value of the property to be left in his possession.

Art. 280. The security thus given by the defendant, when the property sequestrated consists in movables or in slaves, shall be responsible that he shall not send away the same out of the jurisdiction of the court; that he shall not make an improper use of them; and that he will faithfully present them, after definitive judgment, in case he should be decreed to restore the same to the plaintiff.

Art. 281. As regards landed property, this security is given to prevent the defendant, while in possession, from wasting the property, and for the faithful restitution of the fruits

that he may have received since the demand, or of their value in the event of his being cast in the suit.

Art. 282. When the sheriff has sequestered property pursuant to an order of the court, he shall, after serving the petition and the copy of the order of sequestration on the defendant, send his return in writing to the clerk of the court which gave the order, stating in the same in what manner the order was executed, and annex to such return a true and minute inventory of the property sequestered, drawn by him, in the presence of two witnesses.

Art. 283. The sheriff, while he retains possession of sequestered property, is bound to take proper care of the same, and to administer the same, if it be of such nature as to admit of it, as a prudent father of a family administers his own affairs. He may confide them to the care of guardians or overseers, for whose acts he remains responsible, and he will be entitled to receive a just compensation for his administration, to be determined by the court, to be paid to him out of the proceeds of the property sequestered, if judgment be given in favour of the plaintiff.

SEQUESTRATOR, one to whom a sequestration is made. A depositary of this kind cannot exonerate himself from the care of the thing sequestrated, in his hands, unless for some cause rendering it indispensable that he should resign his trust. Louis. Code, art. 2947. See *Stakeholder*. Sequestrators are also officers appointed by a court of chancery, and named in a writ of sequestration. As to their powers and duties, see 2 Madd. Ch. Pr. 205, 6; Blake's Ch. Pr. 103; Newl. Ch. Pr. 18, 19; 1 Harr. Ch. 191.

SERF. During the feudal times certain persons who were bound to perform very onerous duties towards others, were so called. Poth. Des Personnes, p. 1, t. 1, a. 6, s. 4.

SERGEANT or SERJEANT, *Engl. law.* An officer in the courts of the highest grade among the practitioners of the law.

SERGEANT or SERJEANT, *in the army.* An inferior officer of a company of foot, or troop of dragoons, appointed to see discipline observed, to teach the soldiers the exercise of their arms, and to order, straighten and form ranks, files, &c.

SERJEANTY, *Engl. law.* A species of service which cannot be due or performed from a tenant to any lord but the king; and is either grand or petit serjeanty.

SERVANTS, (negro or mulatto), *in Pennsylvania.* By the fourth section of the act for the gradual abolition of slavery, passed the first day of March, 1780, 1 Smith's Laws of Penn. 492, it is "provided that every negro or mulatto child, born within this state after the passing of this act, (who would in case this act had not been made, have been a servant for years, or life, or a slave) shall be by virtue of this act the servant of such person, or his assigns who would in such case have been entitled to the service of such child, until such child attain unto the age of twenty-eight years, in the manner and on the conditions, whereon servants bound by indenture for four years are or may be retained or holden; and shall be liable to like correction and punishment, and entitled to like relief, in case he be evilly treated by his master, and to like freedom dues and privileges, as servants bound by indenture for four years are entitled, unless the person to whom such services belong shall abandon his claim to the same; in which case the overseers of the poor where such child shall be abandoned shall by indenture bind out every such child so abandoned as an apprentice for a time not exceeding the

age hereinbefore limited for the service of such children." And by the thirteenth section it is enacted, "that no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer time than seven years, unless such servant or apprentice were at the commencement of such servitude or apprenticeship, under the age of twenty-one years, in which case such negro or mulatto may be holden as a servant or apprentice, respectively, according to the covenant, as the case shall be, until he shall attain the age of twenty-eight years, but no longer." See 6 Binn. 204; 1 Browne's R. 369, n. The act requires that a register of such children as would have been slaves shall be kept by a public officer therein designated. The want of registry entitles such child to freedom.

SERVANTS, *in Louisiana*, are divided into free servants and slaves. See *Slaves; Slavery*. Free servants are in general all free persons who let, hire or engage their services to another in the state, to be employed therein at any work, commerce or occupation whatever, for the benefit of him who has contracted with them, for a certain sum or retribution, or upon certain conditions. There are three kinds of free servants in the state, to wit:

1. Those who only hire out their services by the day, week, month or year, in consideration of certain wages.

2. Those who engage to serve for a fixed time for a certain consideration, and who are therefore considered not as having hired out, but as having sold their services.

3. Apprentices, that is, those who engage to serve any one, in order to learn some art, trade or profession. Civ. Code of Lo. art. 155, 156, 157.

SERVANTS, (*menial*), or domestics, are those who receive wages, and who are lodged and fed in the house of another, and who are employed in his services. Such servants are not particularly recognized by law. They are called menial servants or domestics from living infra mœnia, within the walls of the house. 1 Bl. Com. 324; Wood's Inst. 53; 1 Sw. Syst. 218. The right of the master to their services in every respect is grounded on the contract between them. Labourers or persons hired by the day's work or any longer time, are not considered servants. 1 Sw. Syst. 218; 5 Binn. 167; 3 Serg. & Rawle, 351: Vide 12 Ves. 114; 2 Vern. 546; 16 Ves. 486; 1 Rop. on Leg. 121; 3 Deac. & Chit. 332; 1 Mont. & Bligh, 413; Poth. Proc. Civ. sect. 2, art. 5, § 5; Poth. Ob. n. 710, 828, French ed.; 9 Toull. n. 314; *Domestic; Operative*.

SERVICE, *contracts*. The being employed to serve another. In cases of seduction, the gist of the action is not injury which the seducer has inflicted on the parent by destroying his peace of mind, and the reputation of his child, but for the consequent inability to perform those services for which she was accountable to her master, or her parent, who assumes this character for the purpose. Vide *Seduction*, and 2 Mees. & W. 539; 7 Car. & P. 528.

SERVICE, *feudal law*. That duty which the tenant owes to his lord, by reason of his fee or estate. The services, in respect of their quality, were either free or base, and in respect of their quantity and the time of exacting them, were either certain or uncertain. 2 Bl. Com. 62. In the civil law by service is sometimes understood servitude, (q. v.).

SERVICE, *practice*. To execute a writ or process, as, to serve a writ of capias signifies to arrest a defendant under the process; Kirby,

48; 2 Aik. R. 338; 11 Mass. 181; to serve a summons, is to deliver a copy of it at the house of the party, or to deliver it to him personally, or to read it to him; notices and other papers are served by delivering the same at the house of the party, or to him in person. When the service of a writ is prevented by the act of the party on whom it is to be served, it will in general be sufficient if the officer do every thing in his power to serve it. 39 Eng. C. L. R. 431; 1 M. & G. 238.

SERVIENT, *civil law*, is a term applied to an estate or tenement by which a servitude is due to another estate or tenement. See *Dominant; Servitude.*

SERVITUDE, *in the civil law*, is a term which indicates the subjection of one person to another person, or of a person to a thing, or of a thing to a person, or of a thing to a thing. Hence servitudes are divided into real, personal and mixed. Lois des Bât. P. 1, c. 1.

A real or predial servitude is a charge laid on an estate for the use and utility of another estate belonging to another proprietor. Louis. Code, art. 643. When used without any adjunct, the word servitude means a real or predial servitude. Lois des Bât. P. 1, c. 1.

The subjection of one person to another is a purely personal servitude; if it exists in the right of property which a person exercises over another, it is slavery. When the subjection of one person to another is not slavery, it consists simply in the right of requiring of another what he is bound to do, or not to do; this right arises from all kinds of contracts or quasi-contracts. Lois des Bât. P. 1, c. 1, art. 1.

The subjection of persons to things or of things to persons, are mixed servitudes. Lois des Bât. P. 1, c. 1, art. 2.

Real servitudes are divided into rural and urban. Rural servitudes are those which are due by an estate to another estate, such as the right of passage over the serving estate or that which owes the servitude, or to draw water from it, or water cattle there, or to take coal, lime and wood from it, and the like. Urban servitudes are those which are established over a building for the convenience of another, such as the right of resting the joists in the wall of the serving building, of opening windows which overlook the serving estate, and the like. Dict. de Jurisp. tit. Servitudes.

See, generally, Lois des Bât. Part. 1; Louis. Code, tit. 4; Code Civil, B. 2, tit. 4. This Dict. tit. *Ancient Lights; Easements; Ways;* Lalure, Des Servitudes, *passim.*

SERVITUDES, NATURAL, *civ. law*, are those servitudes which arise in consequence of the nature of the soil. By law the inferior heritages are submitted in relation to the natural flow of waters, and the like, to the superior. An inferior field is therefore subject to the injury or prejudice which the situation of the ground, in its natural state, may cause it.

SERVITUDES, *personal*, in Scotland, are those by which the property of a subject is burdened, in favour, not of a tenement, but of a person. Ersk. Pr. L. Scot. B. 2, t. 9, s. 23. Life-rent is the only personal servitude there.

SERVITUS LUMINUM, *civil law.* The name of a servitude by which an obligation is imposed on the owner of a house to allow windows or lights to be put in his wall by the owner of the adjoining house. Dig. 4, 14, 40.

SERVITUS STILLICIDII, *civ. law.* The name of a servitude which obliges the owner of an estate to receive, or his right to turn aside, the droppings or stream from his

neighbour's house. Dig. 8, 2, 20 & 21, 41; Voet, h. t. n. 13. Vide *Stillicidium*.

SERVITUS TIGNI IMMITTENDI, *civil law*. The name of a servitude which consists in requiring him who owes it, to permit his neighbour to place his joists on his wall. It differs from the servitude *Oneris ferendi*, (q. v.) in this, that in the former the owner of the servient building is bound to repair and rebuild the wall, whereas, in the latter he is not. Dig. lib. 8, § 2.

SESSION. The time during which a legislative body, a court or other assembly sit for the transaction of business; as, a session of congress, which commences on the day appointed by the constitution, and ends when congress finally adjourn before the commencement of the next session; the session of a court which commences at the day appointed by law, and ends when the court finally rise; a term.

SESSION COURT, or Court of Session, in Scotland, is the highest civil court in the kingdom; the judges, called lords of the session, are fifteen in number. It has extensive original jurisdiction, and its powers of review as a court of appeal have no limits. In 1808, it was divided into two chambers, called the first and second division; the lord president and seven judges constituting the former, and the lord justice clerk, who is head of the court of justiciary, with six judges the latter. These divisions have independent but co-ordinate jurisdiction. The high court of justiciary or supreme criminal jurisdiction for Scotland, consists of six judges, who are lords of the session, the lord justice clerk presiding. In this court the number of the jury is fifteen, and a majority decides. The court of session is divided into the inner house and outer house, with appeal from the latter to the former, and from the former to the house of lords of the United Kingdom. Encycl. Amer.

SET, *contracts*. Foreign bills of exchange are generally drawn in parts; as, "pay this my first bill of exchange, second and third of the same tenor and date not paid;" the whole of these parts, which make but one bill, are called a set. Chit. Bills, 175, 6, (edition of 1836); 2 Pardess. n. 342.

SET-OFF, *contracts*, *practice*. Defalcation, (q. v.); a demand which a defendant makes against the plaintiff in the suit for the purpose of liquidating the whole or a part of his claim. A set-off was unknown to the common law, according to which mutual debts were distinct and inextinguishable except by actual payment or release. 1 Rawle's R. 293; Babb. on Set-off, 1. The statute 2 Geo. 2, c. 22, which has been generally adopted in the United States, however, with some modifications, allowed, in cases of mutual debts, the defendant to set his debt against the other, either by pleading it in bar, or giving it in evidence, when proper notice had been given of such intention, under the general issue. The statute being made for the benefit of the defendant, is not compulsory; 8 Watts, R. 39; the defendant may waive his right, and bring a cross action against the plaintiff. 2 Campb. 594; 5 Taunt. 148; 9 Watts, R. 179. It seems, however, that in some cases of intestate estates, and of insolvent estates, perhaps owing to the peculiar wording of the law, the statute has been held to operate on the rights of the parties before action brought, or an act done by either of them. 1 Rawle's R. 293; 3 Binn. Rep. 135; Bac. Ab. Bankrupt (K.) Set-off takes place only in actions on contracts for the payment of money, as assumpsit, debt and covenant. A set-off is not allowed in actions aris-

ing *ex delicto*, as, upon the case, trespass, replevin or detinue. Bull. N. P. 181. The matters which may be set off, may be mutual liquidated debts or damages, but unliquidated damages cannot be set off. 1 Black. R. 394. The statutes refer only to mutual unconnected debts; for at common law, when the nature of the employment, transaction or dealings necessarily constitutes an account consisting of receipts and payments, debts and credits, the balance only is considered to be the debt, and therefore in an action, it is not necessary in such cases either to plead or give notice of set-off. 4 Burr. 2221. Vide *Compensation;* and also Montagu on Set-off; Babington on Set-off; 3 Stark. Ev. h. t.; Amer. Dig. h. t.; Whart. Dig. h. t.; 3 Chit. Bl. Com. 304, n.; 1 Chit. Pl. Index, h. t.; 8 Vin. Ab. 556; Bac. Ab. h. t.; 1 Sell. Pr. 321; 5 Com. Dig. 595; 6 Ibid. 335; 7 Ibid. 336; 8 Ibid. 927; Chit. Pr. Index, h. t. Vide *Factor*.

SETTLEMENT, *domicil*, is the right which a person has of being considered as resident of a particular place. It is obtained in various ways, to wit: 1, by birth; 2, by the legal settlement of the father, in the case of minor children; 3, by marriage; 4, by continued residence; 5, by the payment of requisite taxes; 6, by the lawful exercise of a public office; 7, by hiring and service for a year; 8, by serving an apprenticeship; and perhaps some others which depend upon the local statutes of the different states. Vide 1 Bl. Com. 363; 1 Dougl. 9; 2 Watts's Rep. 44, 342; 2 Penna. R. 432; 5 Serg. & Rawle, 417; 2 Yeates's R. 51; 5 Binn. R. 81; 3 Binn. R. 22; 6 Serg. & Rawle, 103, 565; 10 Serg. & Rawle, 179. Vide *Domicil*.

SETTLEMENT, *contracts*, is the conveyance of an estate, for the benefit of some person or persons. It is usually made on the prospect of marriage, for the benefit of the married pair, or one of them, or for the benefit of some other persons, as their children. Such settlements vest the property in trustees upon specified terms, usually for the benefit of the husband and wife during their joint lives, and then for the benefit of the survivor for life, and afterwards for the benefit of children. Ante-nuptial agreements of this kind will be enforced in equity by a specific performance of them, provided they are fair and valid, and the intention of the parties consistent with the principles and policy of law. Settlements after marriage, if made in pursuance of an agreement in writing entered into prior to the marriage, are valid, both against creditors and purchasers. When made without consideration, after marriage, and the property of the husband is settled upon his wife and children, the settlement will be valid against subsequent creditors, if, at the time of the settlement being made, he was not indebted; but, if he was then indebted, it will be void as to the creditors existing at the time of the settlement, 3 John. Ch. R. 481; 8 Wheat. R. 229; unless in cases where the husband received a fair consideration in value of the thing settled, so as to repel the presumption of fraud. 2 Ves. 16; 10 Ves. 139. Vide 1 Madd. Ch. 459; 1 Chit. Pr. 57; 2 Kent, Com. 145; 2 Supp. to Ves. jr. 80, 375; Rob. Fr. Conv. 188. See Atherl. on Mar. *passim*.

The term settlement is also applied to an agreement by which two or more persons, who have dealings together, so far arrange their accounts, as to ascertain the balance due from one to the other; and settlement sometimes signifies a payment in full.

SEVERAL. A state of separation or partition. A several agreement or covenant, is one entered into by two or more persons separately, each binding himself for the whole;

a several action is one in which two or more persons are separately charged; a several inheritance, is one conveyed so as to descend, or come to two persons separately by moieties. Several is usually opposed to joint. Vide 3 Rawle, 306.

SEVERALTY, *title to an estate.* An estate in severalty is one which is held by the tenant in his own right only, without any other being joined or connected with him in point of interest, during the continuance of his estate. 2 Bl. Com. 179; Cruise, Dig. 479, 480.

SEVERANCE, *pleading.* When an action is brought in the name of several plaintiffs, in which the plaintiffs must of necessity join, and one or more of the persons so named do not appear, or make default after appearance, the other may have judgment of severance, or, as it is technically called, judgment *ad sequendum solum.* But in personal actions, with the exception of those by executors, and of detinue for charters, there can be no summons and severance. Co. Litt. 139. After severance, the party severed can never be mentioned in the suit, nor derive any advantage from it.

When there are several defendants, each of them may use such plea as he may think proper for his own defence; and they may join in the same plea, or sever at their discretion, Co. Litt. 303 a; except perhaps, in the case of dilatory pleas, Hob. 245, 250. But when the defendants have once united in the plea, they cannot afterwards sever at the rejoinder, or other later stage of the pleading. Vide, generally, Bro. Summ. and Sev.; 2 Rolle, 488; Archb. Civ. Pl. 59.

SEVERANCE, *estates.* The act by which any one of the unities of a joint tenancy is effected, is so called; because the estate is no longer a joint tenancy, but is severed. A severance may be effected in various ways; namely, 1, by partition, which is either voluntary or compulsory; 2, by alienation of one of the joint-tenants, which turns the estate into a tenancy in common; 3, by the purchase or descent of all the shares of the joint-tenants, so that the whole estate becomes vested in one only. Com. Dig. Estates by Grant, K 5; 1 Binn. R. 175.

SEX. The physical difference between male and female in animals. In the human species the male is called *man*, (q. v.), and the female *woman*, (q. v.) Some human beings whose sexual organs are somewhat imperfect, have acquired the name of *hermaphrodite*, (q. v.) In the civil state the sex creates a difference among individuals. Women cannot generally be elected or appointed to offices, or service in public capacities. In this our law agrees with that of other nations. The civil law excluded women from all offices civil or public: *Fœminæ ab omnibus officiis civilibus vel publicis remotæ sunt.* Dig. 50, 17, 2. The principal reason of this exclusion is to encourage that modesty which is natural to the female sex, and which renders them unqualified to mix and contend with men; the pretended weakness of the sex is not probably the true reason. Poth. Des Personnes, tit. 5; Wood's Inst. 12; Civ. Code of Louis. art. 24; 1 Beck's Med. Juris. 94. Vide *Gender; Male; Man; Women; Worthiest of blood.*

SHAM PLEA, is one entered for the mere purpose of delay; it must be of a matter which the pleader knows to be false; as judgment recovered, that is, that judgment has already been recovered by the plaintiff for the same cause of action. These sham pleas are generally discouraged, and in some cases are treated as a nullity. Barn. & Ald. 197, 199; 5 Ibid. 750; 1 Barn. &

Cr. 286; Archb. Civ. Pl. 249; 1 Chit. Pl. 401.

SHEEP. A wether more than a year old. 4 Car. & Payne, 216; 19 Engl. Com. Law Rep. 351, S. C.

SHELLY'S CASE. This case reported in 1 Rep. 93, contains a rule usually known as the rule in Shelly's case, which has caused more commentaries perhaps than any other case. It has been expressed with great precision, though not with much elegance to be "in any instrument, if a freehold be limited to the ancestor for life, and the inheritance to his heirs, either mediately or immediately, the first taker takes the whole estate; if it be limited to the heirs of his body, he takes a fee tail; if to his heirs, a fee simple." Co. Litt. 376, b; and Mr. Butler's note (1); 3 Binn. R. 139; 1 Day, Rep. 299; 1 Prest. on Estates, ch. 3; 4 Kent, Com. 206; Cruise, Dig. tit. 32, c. 22; 2 Yeates, R. 410; 1 Hargr. Law Tracts, article "Observations concerning the rule in Shelly's case, chiefly with a view to the application of that rule in Last Wills;" 5 Ohio R. 465.

SHERIFF. The name of the chief officer of the county. In Latin he is called *vice comes*, because in England he represented the *comes* or earl. His name is said to be derived from the Saxon *scyre*, shire or county, and *reve*, keeper, bailiff, or guardian. The general duties of the sheriff are, 1st, to keep the peace within the county; he may apprehend, and commit to prison all persons who break the peace or attempt to break it, and bind any one in a recognizance to keep the peace. He is required, *ex officio*, to pursue and take all traitors, murderers, felons and rioters. He has the keeping of the county gaol, and he is bound to defend it against all attacks. He may command the *posse comitatis*, (q. v.)—2dly. In his ministerial capacity, the sheriff is bound to execute within his county or bailiwick, all process issuing from the courts of the commonwealth.—3dly. The sheriff also possesses a judicial capacity, but this is very much circumscribed to what it was at common law in England. It is now generally confined to ascertain damages on writs of inquiry and the like.—Generally speaking the sheriff has no authority out of his county, 2 Rolle's Rep. 163; Plowd. 37 a. He may, however, do mere ministerial acts out of his county, as making a return. Dalt. Sh. 22. Vide, generally, the various Digest and Abridgments, h. t.; Dalt. Sher.; Wats. Off. and Duty of Sheriff; Wood's Inst. 75; 18 Engl. Com. Law Rep. 177; 2 Phil. Ev. 213; Chit. Pr. Index, h. t.; Chit. Cr. Law, Index, h. t.

SHERIFFALTY. The office of sheriff, the time during which a sheriff is to remain in office.

SHIFTING USE, *estates*, is one which takes effect in derogation of some other estate, and is either limited by the deed creating it, or authorised to be created by some person named in it. This is sometimes called a secondary use. The following is an example: If an estate be limited to A and his heirs, with a proviso that if B pay to A one hundred dollars by a time named, the use to A shall cease, and the estate go to B in fee; the estate is vested in A subject to the shifting or secondary use in fee in B. Again, if the proviso be that C may revoke the use to A, and limit it to B, then A is seised in fee, with a power in C of revocation and limitation of a new use. These shifting uses must be confined within proper limits, so as not to create a perpetuity. 4 Kent, Com. 291; Cornish on Uses, 91; Bac. Ab. Uses and Trusts, K. Vide *Use*.

SHIP. This word in its most enlarged sense, signifies a vessel of

any kind employed in navigation; for example, the terms the ship's papers, the ship's husband, shipwreck, and the like, are employed whether the vessel referred to be a brig, a sloop, or a three-masted vessel. In a more confined sense, it means such a vessel with three masts; 4 Wash. C. C. Rep. 530; Wesk. Inst. h. t. p. 514; the boats and rigging; 2 Marsh. Ins. 727; together with the anchors, masts, cables, pullies, and such like objects, are considered as part of the ship. Pard. n. 599; Dig. 22, 2, 44. The capacity of a ship is ascertained by its tonnage, or the space which may be occupied by its cargo. Vide Story's Laws U. S. Index, h. t.; Gordon's Dig. h. t.; Abbott on Ship. Index, h. t.; Park. Ins. Index, h. t.; Phil. Ev. Index, h. t.; Bac. Ab. Merchant, N; 3 Kent, Com. 93; Molloy, Jure Mar. Index, h. t.; 1 Chit. Pr. 91; Whart. Dig. h. t.; 1 Bell's Com. 496 — 624; and see *General Ships; Names of Ships.*

SHIP'S HUSBAND, *mar. law*, is an agent appointed by the owner of a ship, and invested with authority to make the requisite repairs, and attend to the management, equipment, and other concerns of the ship; he is usually authorised to act as the general agent of the owners, in relation to the ship in her home port. By virtue of his agency, he is authorised to direct all proper repairs, equipments and oufits of the ship; to hire the officers and crew; to enter into contracts for the freight or charter of the ship, if that is her usual employment; and to do all other acts necessary and proper to prepare and despatch her for and on her intended voyage. 1 Liverm. on Ag. 72, 73; Story on Ag. § 35. By some authors it is said the ship's husband must be a part owner. Hall on Mar. Loans, 142, n.; Abbott on Ship. part 1, c. 3, s. 2.

Mr. Bell (Comm. 410, § 428,) 5th ed. p. 503, points out the duties of the ship's husband as follows, namely:

1. To see to the proper outfit of the vessel, in the repairs adequate to the voyage, and in the tackle and furniture necessary for a sea-worthy ship.

2. To have a proper master, mate and crew for the ship, so that, in this respect, it shall be sea-worthy.

3. To see the due furnishing of provisions and stores, according to the necessities of the voyage.

4. To see to the regularity of the clearances from the custom house, and the regularity of the registry.

5. To settle the contracts and provide for the payment of the furnishings, which are requisite to the performance of those duties.

6. To enter into proper charter parties, or engage the vessel for general freight, under the usual conditions; and to settle for freight, and adjust averages with the merchant; and,

7. To preserve the proper certificates, surveys and documents, in case of future disputes with insurers and freighters; and to keep regular books of the ship.

These are his general powers, but of course they may be limited or enlarged by the owners; and it may be observed, that without special authority he cannot, in general, exercise the following enumerated acts:

1. He cannot borrow money generally for the use of the ship; though, as above observed, he may settle the accounts for furnishings, or grant bills for them, which form debts against the concern, whether or not he has funds in his hands with which he might have paid them. 1 Bell, Com. 411, § 429.

2. Although he may, in general, levy the freight, which is, by the bill of lading, payable on the delivery of the goods, it would seem that he

would not have power to take bills for the freight, and give up the possession of the lien over the cargo, unless it has been so settled by the charter-party. Ib.

3. He cannot insure, or bind the owners for premiums. Ib.; 5 Burr. 2727; Paley on Ag. by Lloyd, 23, note 8; Abb. on Ship. part 1, c. 3, s. 2; Marsh. Ins. b. 1, c. 8, s. 2; Liv. on Ag. 72, 73.

As the power of the master to enter into contracts of affreightments is superseded in the port of the owners, so it is by the presence of the ship's husband, or the knowledge of the contracting parties that a ship's husband has been appointed. Bell's Com. *ut supra*.

SHIP'S PAPERS. These documents which are required on board of neutral ships, as evidence of their neutrality. These are the passport, sea-letter, muster-roll, charter party, bill of lading, invoices, log book, bill of health, register, and papers containing proofs of property. 1 Chit. Com. Law, 487. The want of these papers, or either of them, renders the character of a vessel suspicious. Vide *Clearance*, and 2 Boulay Paty, Dr. Com. 14.

SHIPPING ARTICLES, *contr. mar. law*. The act of congress of 20th July, 1790, s. 1, directs that the master of any vessel bound from a port in the United States to any foreign port, or of any vessel of fifty tons or upwards, bound from a port in one state to a port in any other than an adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print, with every seaman or mariner on board such vessel, (except such as shall be apprenticed or servant to himself or owners,) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. And by sect. 2, it is required that at the foot of every such contract, there shall be a memorandum in writing, of the day and the hour on which such seamen or mariner who shall so ship and subscribe, shall render himself on board to begin the voyage agreed upon. This instrument is called the shipping articles. For want of which, the seaman is entitled to the highest wages which have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage, within three months next before the time of such shipping, on his performing the service, or during the time he shall continue to do duty on board such vessel, without being bound by the regulations, nor subject to the penalties and forfeitures contained in the said act of congress; and the master is further liable to a penalty of twenty dollars. Vide *Seaman*.

SHIPWRECK. Vide *Wreck*.

SHIRE, *Eng. law*, is a district or division of country. Co. Litt, 50 a.

SHOP BOOK. Vide *Original entry*.

SI FACERIT TE SECUREM, if he make you secure. These words occur in the form of writs, which originally required, or still require, that the plaintiff should give security to the sheriff that he will prosecute his claim, before the sheriff can be required to execute such writ.

SICKNESS. By sickness is understood any affection of the body which deprives it temporarily of the power to fulfil its usual functions. Sickness is either such as affects the body generally, or only some parts of it. Of the former class, a fever is an example; of the latter, blindness. When a process has been issued against an individual for his arrest, the sheriff or other officer is authorised, after he has arrested him, to let him remain where he found him, and to return the facts at large, or simply *languidus*, (q. v.)

SIDE BAR RULES, *Eng. practice*, are rules which were formerly moved for by attorneys on the side bar of the court; but now may be had of the clerk of the rules, upon a *præcipe*. These rules are that the sheriff return his writ; that he bring in the body; for special imparlance; to be present at the taxing of costs, and the like.

SIENS. An obsolete word formerly used for scion, which figuratively signified a person who descended from another. "The sien," says Lord Coke "takes all his nourishment from the stocke, and yet it produceth his own fruit." Co. Litt. 123 a. Vide *Branch*.

SIGILLUM, seal, (q. v.) Vide *Scroll*.

SIGHT, *contracts*. Bills of exchange are frequently made payable at sight, that is, on presentment, which might be taken naturally to mean that the bill should then be paid without further delay; but although the point be not clearly settled, it seems the drawee is entitled to the days of grace. Beaw. Lex Mer. pl. 256; Kyd on Bills, 10; Chit. on Bills, 343, 4; Bayley on Bills, 42, 109, 110; Selw. N. P. 339. The holder of a bill payable at sight, is required to use due diligence to put it into circulation, or have it presented for acceptance within a reasonable time. 20 John. 146; 7 Cowen, 705; 12 Pick. 399; 13 Mass. 137; 4 Mason, 336; 5 Mason, 118; 1 McCord, 322; 1 Hawks, 195. When the bill is payable any number of days after sight, the time begins to run from the period of presentment and acceptance, and not from the time of mere presentment. 1 Mason, 176; 20 John. 176.

SIGN, *contracts*, *evidence*, is a token of any thing; a note or token given without words. Contracts are express or implied. The express are manifested *viva voce*, or by writing; the implied are shown by silence, by acts, or by *signs*. Among all nations and at all times, certain signs have been considered as proof of assent or dissent, for example, the nodding of the head, and the shaking of hands, 2 Bl. Com. 448; silence and inaction, facts and signs are sometimes very strong evidence of cool reflection, when following a question. I ask you to lend me one hundred dollars; without saying a word you put your hand in your pocket, and deliver me the money. I go into a hotel, and I ask the landlord if he can accommodate me and take care of my trunk; without speaking he takes it out of my hands and sends it into his chamber. By this act he doubtless becomes responsible to me as a bailee. At the expiration of a lease, the tenant remains in possession, without any objection from the landlord; this may be fairly interpreted as a sign of a consent that the lease shall be renewed. 13 Serg. & Rawle, 60.

SIGN, *measures*. In angular measures, a sign is equal to thirty degrees. Vide *Measure*.

SIGN, *mer. law*. A board, tin or other substance on which is painted the name and business of a merchant or tradesman. Every man has a right to adopt such a sign as he may please to select, but he has no right to use another's name, without his consent. See Dall. Dict. mot Propriété Industrielle, and the article *Trade marks*.

TO SIGN. To write one's name to an instrument of writing in order to give the effect intended; the name thus written is called a signature. The signature is usually made at the bottom of the instrument, but in wills it has been held that when a testator commenced his will with these words, "I, A B, make this my will," it was a sufficient signing. 3 Lev. 1; and vide Rob. on Wills, 122; 1

Will. on Wills, 49, 50; Chit. Cont. 212; Newl. Contr. 173; Sugd. Vend. 71; 2 Stark. Ev. 605, 613; Rob. on Fr. 121; but this decision is said to be absurd. 1 Bro. Civ. Law, 278, n. 16. Vide Merl. Repert. mot Signature, for a history of the origin of signatures; and also 4 Cruise, Dig. h. t. 32, c. 2, s. 73 et seq.; see, generally, 8 Toull. n. 94–96; 1 Dall. 64. 5 Whart. R. 386.

SIGNIFICATION. *French law.* The notice given of a decree, sentence or other judicial act.

SIGNIFICAVIT, *eccl. law.* When this word is used alone, it means the bishop's certificate into the court of chancery, in order to obtain the writ of excommunication; but where the words *writ of significavit* are used, the meaning is the same as writ de excommunicato capiendo. 2 Burn's Eccl. L. 248; Shelf. on Mar. & Div. 502.

SILENCE, state of a person who does not speak, or one who refrains from speaking. Pure and simple silence cannot be considered as a consent to a contract, except in cases when the silent person is bound in good faith to explain himself, in which case, silence gives consent. 6 Toull. liv. 3, t. 3, n. 32, note; 14 Serg. & Rawle, 393; 2 Supp. to Ves. Jr. 442; 1 Dane's Ab. c. 1, art. 4, § 3; 8 T. R. 483; but no assent will be inferred from a man's silence, unless, 1st, he knows his rights, and knows what he is doing; and, 2dly, his silence is voluntary. When any person is accused of a crime, or charged with any fact, and he does not deny it, in general, the presumption is very strong that the charge is correct. The rule does not extend to the silence of a prisoner, when on his examination before a magistrate he is charged by another prisoner with having joined him in the commission of an offence. 3 Stark. C. 33. When an oath is administered to a witness, instead of expressly promising to keep it, he gives his assent by his silence, and kissing the book. The person to be affected by the silence must be one not disqualified to act, as a non compos, an infant, or the like, for even the express promise of such a person would not bind him to the performance of any contract. The rule of the civil law is, that silence is not an acknowledgment or denial in every case, qui tacet, non utique fatetur; sed tamen verum est, eum non negare. Dig. 50, 17, 142.

SIMILITER, *pleading.* When the defendant's plea contains a direct contradiction of the declaration, and concludes with referring the matter to be tried by a jury of the country, the plaintiff must do so too; that is, he must also submit the matter to be tried by a jury, without offering any new answer to it, and must stand or fall by his declaration. Co. Litt. 126 a. In such case, he merely replies that as the defendant has put himself upon the country, that is, has submitted his cause to be tried by a jury of the country, he, the plaintiff, does so likewise, or the like. Hence this sort of replication is called a *similiter*, that having been the effective word when the proceedings were in Latin. 1 Chit. Pl. 549; Arch. Civ. Pl. 250. See Steph. Pl. 255; 2 Saund. 319, b.; Cowp. 407; 1 Str. Rep. 551; 11 S. & R. 32.

SIMONY, *eccl. law*, is the selling and buying of holy orders, or an ecclesiastical benefice. Bac. Ab. h. t.; 1 Harr. Dig. 556.

SIMPLE CONTRACT, is one the evidence of which is merely oral, or in writing not under seal, nor of record. 1 Chit. Contr. 1; 1 Chit. Pl. 88; and vide 11 Mass. R. 30; 11 East, R. 312; 4 Barn. & Ald. 588; 3 Stark. Ev. 995; 2 Bl. Com. 472.

SIMPLEX, simple or single; as,

charta simplex, is a deed-poll, or single deed. Jacob's L. Dict. h. t.

SIMUL CUM, *pleading*. Together with. These words are used in indictments and declarations of trespass against several persons, when some of them are known and others are unknown. In cases of riots it is usual to charge that A B together with others unknown did the act complained of. 2 Chit. Cr. Law, 488; 2 Salk. R. 593. When a party sued with another pleads separately, the plea is generally entitled in the name of the person pleading, adding "sued with ——," naming the other party. When this occurred, it was, in the old phraseology, called pleading with a *simul cum*.

SIMULATION. *French law*. This word is derived from the Latin *simul*, together. It indicates agreeably to its etymology, the concert or agreement of two or more persons to give to one thing the appearance of another, for the purpose of fraud. Merl. Répert, h. t. With us such act might be punished by indictment for a conspiracy; by avoiding the pretended contract; or by action to recover back the money or property which may have been thus fraudulently obtained.

SINE DIE. Without day. Sometimes a case is adjourned sine die, that is, the defendant is finally discharged, there being no day to which the cause is continued. When the court or other body rise at the end of a session or term they adjourn sine die.

SINECURE. In the ecclesiastical law, this term is used to signify that an ecclesiastical officer is without a charge or cure. In common parlance it means the receipt of a salary for an office when there are no duties to be performed.

SINGLE. By itself, unconnected. A single bill is one without any condition, and does not depend upon any future event to give it validity. Vide *Simplex*.

SINGULAR, *construction*. In grammar the singular is expressing only one, not plural. Johnson. In law, the singular frequently includes the plural. A bequest to "*my nearest relation*," for example, will be considered as a bequest to all the relations in the same degree, who are nearest to the testator. 1 Ves. Sen. 337; 1 Bro. C. C. 293. A bequest made to "*my heir*," by a person who had three heirs, will be construed in the plural. 4 Russ. C. C. 384. The same rule obtains in the civil law: *In usu juris frequenter uti nos singulari appellatione, cùm plura significari vellemus*. Dig. 50, 16, 158.

SISTER. A woman who has the same father and mother with another, or has one of them only. In the first case she is called sister, simply; in the second, half sister. Vide *Brother; Children; Descent; Father; Mother*.

SITUS. Situation; location. Real estate has always a fixed situs, while personal estate has no such fixed situs; the law *rei sitæ* regulates real but not the personal estate. Story, Confl. of Laws, § 379.

SKELETON BILL, *comm. law*, is a blank paper, properly stamped, in those countries where stamps are required, with the name of a person signed at the bottom. In such case the person signing the paper will be held as the drawer or acceptor, as it may be, of any bill which shall afterwards be written above his name to the sum of which the stamp is applicable. 1 Bell's Com. 390, 5th ed.

SKILL, *contracts*. The art of doing a thing as it ought to be done. Every person who purports to have skill in a business, and undertakes for hire to perform it, is bound to do it with ordinary skill, and is respon-

sible civilly in damages for the want of it, and sometimes he is responsible criminally. Vide *Mala Praxis;* 2 Russ. on Cr. 288. The degree of skill and diligence required, rises in proportion to the value of the article, and the delicacy of the operation: more skill is required, for example, to repair a very delicate mathematical instrument, than upon a common instrument. Jones's Bailm. 91; 2 Kent, Com. 458, 463; 1 Bell's Com. 459; 2 Ld. Raym. 909, 918; Domat, liv. 1, t. 4, § 8, n. 1; Poth. Louage, n. 425; Pardess. n. 528; Ayl. Pand. B. 4, t. 7, p. 466; Ersk. Inst. B. 3, t. 3, § 16; 1 Rolle, Ab. 10; Story's Bailm. § 431, et seq.

SLANDER, *torts*, is the malicious publication of words, by speaking, writing, or printing, by reason of which the person to whom they relate becomes liable to suffer corporal punishment, or to sustain some damage. Bac. Abr. Slander. Written or printed slanders are libels, (see that word;) here it is proposed to treat of verbal slander, only, which may be considered with reference to 1st, the nature of the accusation; 2d, the falsity of the charge; 3d, the mode of publication; 4th, the occasion; and 5th, the malice or motive of the slander.

§ 1. Actionable words are of two descriptions, first, those actionable in themselves, without proof of special damages; and, secondly, those actionable only in respect of some actual consequential damages.

1. Words of the first description must impute:

1st. The guilt of some offence for which the party, if guilty, might be indicted and punished by the criminal courts; as to call a person a "traitor," "thief," "highwayman;" or to say that he is guilty of "perjury," "forgery," "murder," and the like. And although the imputation of guilt be general, without stating the particulars of the pretended crime, it is actionable. Cro. Jac. 114, 142; 6 T. R. 694; 3 Wils. 186; 2 Vent. 266; 2 New Rep. 335. See 3 Serg. & Rawle, 255; 7 Serg. & Rawle, 451; 1 Binn. 452; 5 Binn. 218; 3 Serg. & Rawle, 261; 2 Binn. 34; 4 Yeates, 423; 10 Serg. & Rawle, 44; Stark. on Slander, 13 to 42; 8 Mass. 248; 13 Johns. 124; Ib. 275.

2dly. That the party has a disease or distemper which renders him unfit for society. Bac. Abr. Slander, B 2. An action can therefore be sustained for calling a man a leper. Cro. Jac. 144; Stark. on Slander, 97. But charging another with *having had* a contagious disease is not actionable, as he will not, on that account, be excluded from society. 2 T. R. 473, 4; 2 Str. 1189; Bac. Abr. tit. Slander, B 2. A charge which renders a man ridiculous, and impairs the enjoyment of general society, and injures those imperfect rights of friendly intercourse and mutual benevolence which man has with respect to man, is also actionable. Holt on Libels, 221.

3dly. Unfitness in an officer, who holds an office to which profit or emolument is attached, either in respect of morals or inability to discharge the duties of the office; in such a case an action lies. 1 Salk. 695, 698; Rolle, Ab. 65; 2 Esp. R. 500; 5 Co. 125; 4 Co. 16 a; 1 Str. 617; 2 Ld. Raym. 1369; Bull. N. P. 4; Holt on Libels, 207; Stark. on Slander, 100.

4thly. The want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business, in which the party is engaged, are actionable, 1 Mal. Entr. 244; as to accuse an attorney or artist, of inability, inattention, or want of integrity, 3 Wils. 187; 2 Bl. Rep. 750; or a clergyman of being a drunkard, 1 Binn. 178, is

actionable. See Holt on Libels, 210; Ib. 217.

2. Of the second class are words which are actionable only in respect of special damages sustained by the party slandered. Though the law will not permit in these cases the inference of damage, yet when the damage has actually been sustained, the party aggrieved may support an action for the publication of an untruth, 1 Lev. 53; 1 Sid. 79, 80; 3 Wood. 210; 2 Leon. 111; unless the assertion be made for the assertion of a supposed claim. Com. Dig. tit. Action upon the case for Defamation, D 30; Bac. Ab. Slander, B; but it lies if maliciously spoken. See 1 Rolle, Ab. 36; 1 Saund. 243; Bac. Abr. Slander, C; 8 T. R. 130; 8 East, R. 1; Stark. on Slander, 157.

§ 2. The charge must be false, 5 Co. 125, 6; Hob. 253; the falsity of the accusation is to be implied till the contrary is shown, 2 East, R. 436; 1 Saund. 242. The instance of a master making an unfavourable representation of his servant, upon an application for his character, seems to be an exception, in that case there being a presumption from the occasion of the speaking, that the words were true. 1 T. R. 111; 3 B. & P. 587; Stark. on Slander, 44, 175, 223.

§ 3. The slander must, of course, be published, that is communicated to a third person; and if verbal then in a language which he understands, otherwise the plaintiff's reputation is not impaired. 1 Rolle, Ab. 74; Cro. Eliz. 857; 1 Saund. 242, n. 3; Bac. Abr. Slander, D 3. A letter addressed to the party, containing libellous matter is not sufficient to maintain a civil action, though it may subject the libeller to an indictment, as tending to a breach of the peace, 2 Bl. R. 1038; 1 T. R. 110; 1 Saund. 132, n. 2; 4 Esp. N. P. R. 117; 2 Esp. N. P. R. 623; 2 East, R. 361; the slander must be published respecting the plaintiff; a mother cannot maintain an action for calling her daughter a bastard, 11 Serg. & Rawle, 343. As to the case of a man who repeats the slander invented by another, see Stark. on Slander, 213; 2 P. A. Bro. R. 89; 3 Yeates, 508; 3 Binn. 546.

§ 4. To render words actionable, they must be uttered without legal occasion. On some occasions it is justifiable to utter slander of another, in others it is excusable, provided it be uttered without express malice. Bac. Ab. Slander, D 4; Rolle, Ab. 87; 1 Vin. Ab. 540. It is justifiable for an attorney to use scandalizing expressions in support of his client's cause and pertinent thereto. 1 M. & S. 280; 1 Holt's R. 531; 1 B. & A. 232; see 2 Serg. & Rawle, 469; 1 Binn. 178; 4 Yeates, 322; 1 P. A. Browne's R. 40; 11 Verm. R. 536; Stark. on Slander, 182. Members of congress and other legislative assemblies cannot be called to account for any thing said in debate.

§ 5. Malice is essential to the support of an action for slanderous words. But malice is in general to be presumed until the contrary is proved. 4 B. & C. 247; 1 Saund. 242, n. 2; 1 T. R. 111, 544; 1 East, R. 563; 2 East, R. 436; 2 New Rep. 335; Bull. N. P. 8; except in those cases where the occasion prima facie excuses the publication, 4 B. & C. 247. See 14 Serg. & Rawle, 359; Stark. on Slander, 201.

See, generally, Com. Dig. tit. Action upon the case for Defamation; Bac. Abr. Slander; 1 Vin. Abr. 187; 1 Phill. Ev. ch. 8; Yelv. 28, n.; Doctr. Plac. 53; Holt's Law of Libels; Starkie on Slander; Ham. N. P. ch. 2, s. 8.

SLANDERER, a calumniator, who maliciously and without reason imputes a crime or fault to another,

of which he is innocent. For this offence, when the slander is merely verbal, the remedy is an action on the case for damages; when it is reduced to writing or printing, it is a *libel*, (q. v.)

SLAVE. A man who is by law deprived of his liberty for life, and becomes the property of another. A slave has no political rights, and generally has no civil rights. He can enter into no contract, unless specially authorised by law; what he acquires generally, belongs to his master. The children of female slaves follow the condition of their mothers, and are themselves slaves. In Maryland, Missouri and Virginia slaves are declared by statute to be personal estate, or treated as such. Anth. Shep. To. 428, 494; Misso. Laws, 558. In Kentucky, the rule is different, and they are considered real estate. 1 Kty. Rev. Laws, 566; 1 Dana's R. 94. Vide Stroud on Slavery.

SLAVE TRADE, *criminal law*. The infamous traffic in human flesh, though not prohibited by the law of nations, is now forbidden by the laws and treaties of most civilized states. By the constitution of the United States, art. 1, s. 9, it is provided, that the "migration or importation of such persons as any of the states now existing (in 1789,) shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight." Previously to that date several laws were enacted, which it is not within the plan of this work to cite at large or to analyse; they are here referred to, namely: act of 1794, c. 11, 1 Story's Laws U. S. 319; act of 1800, c. 51, 1 Story's Laws U. S. 780; act of 1803, c. 63, 2 Story's Laws U. S. 886; act of 1807, c. 77, 2 Story's Laws U. S. 1050; these several acts forbid citizens of the United States, under certain circumstances, to equip or build vessels for the purpose of carrying on the slave trade, and the last mentioned act makes it highly penal to import slaves into the United States after the first day of January, 1808. The act of 1818, c. 86, 3 Story's Laws U. S. 1698; the act of 1819, c. 224, 3 Story's Laws, U. S. 1752; and the act of 1820, c. 113, 3 Story's Laws U. S. 1798, contain further prohibition of the slave trade, and punish the violation of their several provisions with the highest penalties of the law. Vide, generally, 10 Wheat. R. 66; 2 Mason, R. 409; 1 Acton, 240; 1 Dodson, 81, 91, 95; 2 Dodson, 238; 6 Mass. R. 358; 2 Cranch, 336; 3 Dall. R. 297; 1 Wash. C. C. Rep. 522; 4 Ib. 91; 3 Mason, R. 175; 9 Wheat. R. 391; 6 Cranch, 330; 5 Wheat. R. 338; 8 Ib. 380; 10 Ib. 312; 1 Kent, Com. 191.

SLAVERY, the state or condition of a slave. Slavery exists in most of the southern states. In Pennsylvania, by the act of March, 1780, for the gradual abolition of slavery, it has been almost entirely removed; in Massachusetts it was held, soon after the revolution, that slavery had been abolished by their constitution, 4 Mass. 128; in Connecticut, slavery has been totally extinguished by legislative provisions; Reeve's Dom. Rel. 340; the states north of Delaware, Maryland and the river Ohio, may be considered as free states, where slavery is not tolerated. Vide Stroud on Slavery; 2 Kent, Com. 201; Rutherf. Inst. 238.

SMUGGLING. The fraudulent taking into a country, or out of it, merchandize which is lawfully prohibited. Bac. Ab. h. t.

SOCAGE, *Engl. law*. A tenure of lands by certain inferior services in husbandry, and not knight's service, in lieu of all other services. Litt. sect. 117.

SOCIETAS LEONINA, among the Roman lawyers signified that kind of society or partnership by which the entire profits should belong to some of the partners in exclusion of the rest. It was so called in allusion to the fable of the lion and other animals, who, had entered into partnership for the purpose of hunting, and he appropriated all the prey to himself. Dig. 17, 2, 29, 2; Poth. Traité de Societé, n. 12. See 2 McCord's R. 421; 6 Pick. 372.

SOCIETE EN COMMENDITE. This term is borrowed from the laws of France, and is used in Louisiana; the *societé en commendite*, or partnership *in commendam*, is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Civ. Code of Lo. art. 2810; Code de Comm. 26, 33; 4 Pard. Dr. Com. n. 1027; Dall. Dict. mots Societé Commerciale, n. 166. Vide *Commendam; Partnership.*

SOCIETY. A society is a number of persons united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose. Societies are either incorporated and known to the law, or unincorporated, of which the law does not generally take notice. By *civil society* is usually understood a state, (q. v.) a nation, (q. v.) or a body politic, (q. v.) Rutherf. Inst. c. 1 and 2. In the civil law, by society is meant a partnership. Inst. 3, 26; Dig. 17, 2; Code, 4, 37.

SODOMY, *crim. law.* The crime against nature, committed either with man or beast. It is a crime not fit to be named; peccatum illud horribile, inter christianum non nominandum. 4 Bl. Com. 215; 1 East, P. C. 480, 487; Bac. Ab. h. t.; Hawk. b. 1, c. 4; 1 Hale, 669; Com. Dig. Justices, S 4; Russ. & Ry. 331. This crime was punished with great severity by the civil law. Nov. 141; Nov. 77; Inst. 4, 18, 4. See 1 Russ. on Cr. 568; R. & R. C. C. 331, 412; 1 East, P. C. 437.

SOIL, the superficies of the earth on which buildings are erected, or may be erected. The soil is the principal, and the building, when erected, is the accessory. Vide Dig. 6, 1, 49.

SOLD NOTE, *contracts*, is the name of an instrument in writing, given by a broker to a buyer of merchandise, in which it is stated that the goods therein mentioned have been sold to him. 1 Bell's Com. (5th ed.) 435; Story on Ag. § 28. Vide *Bought Note.*

SOLDIER. A military man; a private in the army. The constitution of the United States, Amendm. art. 3, directs that no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SOLEMNITY. The formality established by law to render a contract, agreement, or other act valid. A marriage, for example, would not be valid if made in jest, and without solemnity. Vide *Marriage*, and Dig. 4, 1, 7; Id. 45, 1, 30.

SOLICITATION OF CHASTITY. Asking a person to commit adultery or fornication. This, of itself, is not an indictable offence. Salk. 382; 2 Chit. Pr. 478. The contrary doctrine, however, has been held in Connecticut. 7 Conn. Rep. 267. In England, the bare solicitation of chastity is punished in the ecclesiastical courts. 2 Chit. Pr.

478. Vide Str. 1100; 10 Mod. 384; Sayer, 33; 1 Hawk. ch. 74; 2 Ld. Raym. 809. The civil law punished arbitrarily the person who solicited the chastity of another. Dig. 47, 11, 1. Vide *To persuade;* 3 Phill. R. 508.

SOLICITOR. A person whose business is to be employed in the care and management of suits depending in courts of chancery. A solicitor, like an attorney, (q. v.) will be required to act with perfect good faith towards his clients. He must conform to the authority given him. It is said that to institute a suit he must have a special authority, although a general authority will be sufficient to defend one. The want of a written authority may subject him to the expenses incurred in a suit. 3 Mer. R. 12; Hov. Fr. ch. 2, p. 28 to 61. Vide 1 Phil. Ev. 102; 19 Vin. Ab. 482; 7 Com. Dig. 357; 8 Com. Dig. 935; 2 Chit. Pr. 2. See *Attorney at law; Counsellor at law; Proctor.*

SOLICITOR OF THE TREASURY. The title of one of the officers of the United States, created by the act of May 29, 1830, 4 Sharsw. cont. of Story, L. U. S. 2206, which prescribes his duties and his rights.

1. His powers and duties are, 1, those which were by law vested and required from the agent of the treasury of the United States. 2. Those which theretofore belonged to the commissioner, or acting commissioner of the revenue, as relate to the superintendence of the collection of outstanding direct and internal duties. 3. To take charge of all lands which shall be conveyed to the United States, or set off to them in payment of debts, or which are vested in them by mortgage or other security; and to release such lands which had, at the passage of the act, become vested in the United States, on payment of the debt for which they were received. 4. Generally to superintend the collection of debts due to the United States, and receive statements from different officers in relation to suits or actions commenced for the recovery of the same. 5. To instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings appertaining to suits in which the United States are a party or interested, and to cause them to report to him any information he may require in relation to the same. 6. To report to the proper officer from whom the evidence of debt was received, the fact of its having been paid to him, and also all credits which have by due course of law been allowed on the same. 7. To make rules for the government of collectors, district attorneys and marshals, as may be requisite. 8. To obtain from the district attorneys full accounts of all suits in their hands, and submit abstracts of the same to congress.

2. His rights are, 1, to call upon the attorney-general of the United States for advice and direction as to the manner of conducting the suits, proceedings and prosecutions aforesaid. 2. To receive a salary of three thousand five hundred dollars per annum. 3. To employ, with the approbation of the secretary of the treasury, a clerk, with a salary of $1500; and a messenger, with a salary of $500. To receive and send all letters, relating to the business of his office, free of postage.

SOLIDO, IN. *Civil law.* In solido is a term used to designate those contracts in which the obligors are bound jointly and severally, or in which several obligees are each entitled to demand the whole of what is due. 1. There is an obligation in solido on the part of debtors, when they are all obliged to the same thing, so that each may be compelled to pay the whole, and when the pay-

ment which is made by one of them, exonerates the others towards the creditor. 2. The obligation is in solido, or joint and several between several creditors, when the title expressly gives to each of them the right of demanding payment of the total of what is due, and when the payment to any one of them discharges the debtor. Civ. Code of La. 2083, 2086; Merl. Répert. h. t.; Domat, Index, h. t. See *In solido*.

SOLITARY IMPRISONMENT. The punishment of separate confinement has been adopted in Pennsylvania with complete success. Vide *Penitentiary*.

SOLUTION, *civil law*. Payment. By this term is understood every species of discharge or liberation, which is called satisfaction, and with which the creditor is satisfied. Dig. 46, 3, 54; Code, 8, 43, 17; Inst. 3, 30. This term has rather a reference to the substance of the obligation, than to the numeration or counting of the money. Dig. 50, 16, 176. Vide *Discharge of a contract*.

SOLVENCY. The state of a person who is able to pay all his debts; the opposite of *insolvency*, (q. v.)

SOLVIT AD DIEM, *pleading*. The name of a plea to an action on a bond, or other obligation to pay money, by which the defendant pleads that he paid the money on the day it was due. Vide 1 Stra. 652; Rep. Temp. Hardw. 133; Com. Dig. Pleader, 2 W 29. This plea ought to conclude with an averment, and not to the country. 1 Sid. 215; 12 John. R. 253; vide 2 Phil. Ev. 92; Coxe, R. 467.

SOLVIT POST DIEM, *pleading*. The name of a special plea in bar to an action of debt on a bond, by which the defendant asserts that he paid the money after the day it became due. 1 Chit. Pl. 480, 555; 2 Phil. Ev. 93.

SOMNAMBULISM, *med. juris*. Sleep walking. This is sometimes an inferior species of insanity, the patient being unconscious of what he is doing. A case is mentioned of a monk who was remarkable for simplicity, candour and probity, while awake, but who during his sleep in the night, would steal, rob and even plunder the dead. Another case is related of a pious clergyman who during his sleep would plunder even his own church. And a case occurred in Maine, where the somnambulist attempted to hang himself, but fortunately tied the rope to his feet, instead of his neck. Ray, Med. Jur. § 294. It is evident that if an act should be done by a sleep walker while totally unconscious of his act, he would not be liable to punishment, because the intention (q. v.) and will (q. v.) would be wanting. Take, for example, the following singular case. A monk late one evening, in the presence of the prior of the convent, while in a state of somnambulism, entered the room of the prior, his eyes open but fixed, his features contracted into a frown, and with a knife in his hand. He walked straight up to the bed, as if to ascertain if the prior were there, and then gave three stabs which penetrated the bed clothes, and a mat which served for the purpose of a mattress; he returned with an air of satisfaction, and his features relaxed. On being questioned the next day by the prior as to what he had dreamed the preceding night, the monk confessed he had dreamed that his mother had been murdered by the prior, and that her spirit had appeared to him and cried for vengeance, that he was transported with fury at the sight, and ran directly to stab the assassin; that shortly after he awoke covered with perspiration, and rejoiced to find it was only a dream. Georget, Des Maladies Mentales, 127.

SON, *kindred*. An immediate

male descendant. In its technical meaning in devises, this is a word of purchase, but the testator may make it a word of descent. Sometimes it is extended to more remote descendants.

SON ASSAULT DEMESNE, *pleading*. His own first assault. A form of a plea to justify an assault and battery, by which the defendant asserts that the plaintiff committed an assault upon him, and the defendant merely defended himself. When the plea is supported by evidence, it is a sufficient justification, unless the retaliation by the defendant were excessive, and bore no proportion to the necessity, or to the provocation received. 1 East, P. C. 406; 1 Chit. Pr. 595.

SOUND MIND. That state of a man's mind which is adequate to reason and come to a judgment upon ordinary subjects, like other rational men. The law presumes that every person who has acquired his full age is of sound mind, and consequently competent to make contracts and perform all his civil duties; and he who asserts to the contrary must prove the affirmation of his position by explicit evidence, and not by conjectural proof. 2 Hagg. Eccl. R. 434; 3 Addams's R. 86; 8 Watts, R. 66. Vide *Unsound mind*.

SOUNDING IN DAMAGES. When an action is brought, not for the recovery of lands, goods, or sums of money, (as is the case in real or mixed actions, or the personal action of debt or detinue,) but for damages only, as in covenant, trespass, &c., the action is said to be *sounding in damages*. Steph. Pl. 126, 127.

SOUNDNESS. In usual health; without any permanent disease. In the sale of slaves and animals they are sometimes warranted by the seller to be sound, and it becomes important to ascertain what is soundness. Roaring, (q. v.); a temporary lameness, which renders a horse less fit for service, 4 Campb. 271, sed vide 2 Esp. Cas. 573; a cough, unless proved to be of a temporary nature, 2 Chit. R. 245, 416; and a nerved horse, have been held to be unsound. But crib-biting is not a breach of a general warranty of soundness. Holt, Cas. 630. An action on the case is the proper remedy for a verbal warrant of soundness. 1 H. Bl. R. 17; 3 Esp. 82; 9 B. & Cr. 259; 2 Dow. & Ry. 10; 1 Bing. 344; 5 Dow. & R. 164; 1 Taunt. 566; 7 East, 274; Bac. Ab. Action of the Case, (E).

SOUTH CAROLINA. The name of one of the original states of the United States of America. For an account of its colonial history, see article *North Carolina*. The constitution of this state was adopted the third day of June, 1790, to which two amendments have been made, one, ratified December 17, 1808, and the other, December 19, 1816. The powers of the government are distributed in three branches, the legislative, the executive, and the judicial.

1st. The *legislative* authority is vested in a general assembly, which consist of a senate and house of representatives.

1. The *senate* 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 of their election. 1. Every free white man, of the age of twenty-one years, being a citizen of this state, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been legally seised and possessed, at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district, in which he offers to give his vote, six

months before the said election, and hath paid a tax the preceding year of three shillings sterling towards the support of this government, shall have a right to vote for a member or members, to serve in either branch of the legislature, for the election district in which he holds such property, or is so resident. 2. No person shall be eligible to a seat in the senate, unless he is a free white man, of the age of thirty years, and hath been a citizen and resident in this state five years previous to his election. If a resident in the election district, he shall not be eligible unless he be legally seized and possessed, in his own right, of a settled freehold estate of the value of three hundred pounds sterling, clear of debt. If a non-resident in the election district, he shall not be eligible unless he be legally seized and possessed, in his own right, of a settled freehold estate, in the said district, of the value of one thousand pounds sterling, clear of debt. 3. The senate is composed of one member from each district as now established for the election of the house of representatives, except the district formed by the districts of the parishes of St. Philip and St. Michael, to which shall be allowed two senators as heretofore. Amend. of Dec. 17, 1808.—4. They are elected for four years. Ibid.—5. The election takes place on the second Monday in October, art. 1, s. 10.

2. The *house of representatives*, will be considered in the same order which has been observed in considering the senate. 1. The qualifications of electors are the same as those of electors of senators.—2. No person shall be eligible to a seat in the house of representatives, unless he is a free white man, of the age of twenty-one years, and hath been a citizen and resident in this state three years previous to his election. If a resident in the election district, he shall not be eligible to a seat in the house of representatives, unless he be legally seized and possessed, in his own right, of a settled freehold estate of five hundred acres of land, and ten negroes; or of a real estate, of the value of one hundred and fifty pounds sterling, clear of debt. If a non-resident, he shall be legally seised and possessed of a settled freehold estate therein, of the value of five hundred pounds sterling, clear of debt.—3. The house consists of one hundred and twenty-four members. Amend. of Dec. 17, 1808.—4. The members are elected for two years. Art. 1, s. 2.—5. The election is at the same time that the election of senators is held.

2. The *executive* authority is vested in a governor, and, in certain cases, a lieutenant-governor.

1. Of the *governor*. It will be proper to consider his qualifications; by whom he is to be elected; when to be elected; duration of his office; and his powers and duties.—1. No person shall be eligible to the office of governor, unless he hath attained the age of thirty years, and hath resided within this state, and been a citizen thereof, ten years, and unless he be seized and possessed of a settled estate within the same, in his own right, of the value of fifteen hundred pounds sterling, clear of debt. Art. 2, s. 2.—2. He is elected by the senate and house of representatives jointly, in the house of representatives. Art. 2, sect. 1.—3. He is to be elected whenever a majority of both houses shall be present. Ib.—4. He is elected for two years, and until a new election shall be made. Ibid.—5. The governor is commander-in-chief of the army and navy of the state, and of the militia, except when they shall be called into the actual service of the United States. He may grant reprieves

and pardons, after conviction, except in cases of impeachment, and remit fines and forfeitures, unless otherwise directed by law—shall cause the laws to be faithfully executed in mercy—may prohibit the exportation of provisions, for any time not exceeding thirty days—may require information from the executive departments—shall recommend such measures as he may deem necessary, and give the assembly information as to the condition of the state—may on extraordinary occasions convene the assembly, 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 fourth Monday in the month of November then next ensuing.

2. A *lieutenant-governor* is to be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the governor. Art. 2, sect. 3. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall succeed to his office. And in case of the impeachment of the lieutenant-governor, or his removal from office, death, resignation, or absence from the state, the president of the senate shall succeed to his office, till a nomination to those offices respectively shall be made by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was elected. Art. 2. s. 5.

3d. The *judicial* power shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish. The judges of each shall hold their commissions during good behaviour; and judges of the superior courts shall, at stated times, receive a compensation for their services, which shall neither be increased nor 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 this state, the United States, or any other power. Art. 3, sect. 1. The judges are required to meet at such times and places, as shall be prescribed by the act of the legislature, and sit for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them. Amend. of Dec. 19, 1816.

SOVEREIGN. A chief ruler with supreme power; one possessing *sovereignty*, (q. v.) It is also applied to a king or other magistrate with limited powers. In the United States the sovereignty resides in the body of the people. Vide Rutherf. Inst. 282.

SOVEREIGNTY, is the union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do every thing in a state without accountability; to make laws, to execute and to apply them; to impose and collect taxes, and levy contributions; to make war or peace; to form treaties of alliance or of commerce with foreign nations, and the like. Story on the Const. § 207. Abstractedly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation. When analysed, sovereignty is naturally divided into three great powers; namely, the legislative, the executive, and the judiciary; the first is the power to make new laws, and to correct and repeal the old; the second is the power to execute the laws

both at home and abroad; and the last is the power to apply the laws to particular facts; to judge the disputes which arise among the citizens, and to punish crimes. Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation, (q. v.); and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state, (q. v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. § 208; 1 Toull. n. 20; Merl. Réper. h. t.

SPADONES, *civil law*. Those who, on account of their temperament or some accident they have suffered, are unable to procreate. Inst. 1, 11, 9; Dig. 1, 7, 2, 1; and vide *Impotence*.

TO SPEAK. This term is used in the English law, to signify the permission given by a court to the prosecutor and defendant in some cases of misdemeanor, to agree together, after which the prosecutor comes into court and declares himself to be satisfied; when the court pass a nominal sentence. 1 Chit. Pr. 17.

SPEAKER. The presiding officer of the house of representatives of the United States is so called. The presiding officer of either branch of the state legislatures generally bears this name.

SPECIAL DAMAGES. Vide *Damages, Special;* and 1 Chit. Pl. 385; Com. Dig. Action on the case for Defamation, D 30—G 11.

SPECIAL PLEADER, *Engl. Practice*. A special pleader is a lawyer whose professional occupation is to give verbal or written opinions upon statements submitted to him, either in writing or verbally, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the general course. 2 Chit. Pr. 42.

SPECIAL PLEADING. Vide *Pleading, Special;* and Co. Litt. 282; 3 Wheat. R. 246; Com. Dig. Pleader, E 15.

SPECIAL TRAVERSE, *pleading*. A technical special traverse begins in most cases, with the words *absque hoc*, (without this), which words in pleading form a technical form of negation. Lawes's Pl. 116 to 120. A traverse commencing with these words is special, because, when it thus commences, the inducement and the negation are, regularly both special; the former consisting of new matter, and the latter pursuing, in general, the words of the allegation traversed, or at least those of them which are material. For example, if the defendant pleads title to land in himself, by alleging that Peter devised the land to him, and then died seised in fee; and the plaintiff replies that Peter died seised in fee intestate, and alleges title in himself, as heir of Peter, *without this*, that Peter devised the land to the defendant; the traverse is special. Here the allegation of Peter's intestacy, &c. forms the special inducement; and the *absque hoc*, with what follows it, is a special denial of the alleged devise; *i. e.* a denial of it in the words of the allegation. Lawes on Pl. 119, 120; Gould, Pl. ch. 7, § 6, 7; Steph. Pl. 188. Vide *Traverse; General Traverse*.

SPECIAL VERDICT, *practice*. Vide *Verdict, Special;* Bac. Ab. Verdict, D.

SPECIALTY, *contracts*, is a writing sealed and delivered, containing some agreement. 2 Serg. & Rawle, 503; 1 Binn. Rep. 261; Willes, 189; 1 P. Wms. 130. In a more confined meaning, it signifies a writing sealed and delivered, which is given as a security for the payment of a debt, in which such debt is par-

ticularly specified. Bac. Ab. Obligation, A. Although in the body of the writing it is not said, that the parties have set their hands and seals, yet if the instrument be really sealed it is a specialty, and if it be not sealed, it is not a specialty, although the parties in the body of the writing make mention of a seal. 2 Serg. & Rawle, 504; 2 Rep. 5 a; Perk. § 129. Vide *Bond; Debt; Obligation.*

SPECIE, metallic money issued by public authority. This term is used in contradistinction of paper money, which in some countries is emitted by the government, and is a mere engagement which represents specie. Bank paper in the United States is also called paper money. Specie is the only constitutional money in this country.

SPECIFIC LEGACY, is a bequest of a particular thing. It follows that a specific legacy may be of animals or inanimate things, provided they are specified and separated from all other things; a specific legacy may therefore be of money in a bag, or of money marked and so described, as, I give two eagles to A B, on which are engraved the initials of my name. A specific legacy may also be given out of a general fund. Touch. 433; Amb. 310; 4 Ves. 565; 3 Ves. & Bea. 5. If the specific article given be not found among the assets of the testator, the legatee loses his legacy; but on the other hand, if there is a deficiency of assets, the specific legacy will not be liable to abate with the general legacies. 1 Vern. 31; 1 P. Wms. 422; 3 P. Wms. 365; 3 Bro. C. C. 160; vide 1 Roper on Leg. 150; 1 Supp. to Ves. jr. 209; Ib. 231; 2 Ib. 112; and articles *Legacy; Legatee.*

SPECIFIC PERFORMANCE, *remedies*, is the actual accomplishment of a contract by the party bound to fulfil it. Many contracts are entered into by parties to fulfil certain things, and then the contracting parties neglect or refuse to fulfil their engagements. In such cases the party grieved has generally a remedy at law, and he may recover damages for the breach of the contract; but, in many cases, the recovery of damages is an incompetent remedy, and the party seeks to recover a specific performance of the agreement. It is a general rule, that courts of equity will entertain jurisdiction for a specific performance of agreements, whenever courts of law can give but an inadequate remedy; and it is immaterial whether the subject relate to real or personal estate. 1 Madd. Ch. Pr. 295; 2 Story on Eq. § 717; 1 Sim. & Stu. 607; 1 P. Wms. 570; 1 Sch. & Lef. 553; 1 Vern. 159. But the rule is confined to cases where courts of law cannot give an adequate remedy. 2 Story on Eq. § 718; Eden on Inj. ch. 3, p. 27. Vide, generally, 2 Story on Eq. ch. 18, § 712 to 792; 1 Supp. to Ves. jr. 96, 148, 184, 211, 495; 2 Supp. to Ves. jr. 65, 164; Fonb. Eq. b. 1, c. 1, s. 5; Sugd. Vend. 145.

SPECIFICATION, *civil law*, a term used in the civil law, by which is meant a person's making a new species or subject from materials belonging to another. When the new species can be again reduced to the matter of which it was made, the law considers the former mass as still existing, and, therefore, the new species as an accessory to the former subject; but where the thing made cannot be so reduced, as in the case of wine, which cannot be again turned into grapes, there is no place for the *fictio juris*; and, there, the workmanship draws after it the property of the materials. Inst. 2, 1, 25; Dig. 41, 1, 7, 7. See *Accession; Confusion; Mixtion;* and Aso & Man. Inst. B. 2, t. 2, c. 8.

SPECIFICATION, *in practice, contracts.* It is a particular and detailed account of a thing: example, in order to obtain a patent for an invention, it is necessary to file a specification or an instrument of writing, which must lay open and disclose to the public every part of the process by which the invention can be made useful; if the specification does not contain the whole truth relative to the discovery, or contains more than is requisite to produce the desired effect, and the concealment or addition was made for the purpose of deception, the patent would be void; for if the specification were insufficient on account of its want of clearness, exactitude or good faith, it would be a fraud on society that the patentee should obtain a monopoly without giving up his invention. 2 Kent, Com. 300; 1 Bell's Com. part 2, c. 3, s. 1, p. 112; Perpigna on Pat. 67; Renouard, Des Brevets d'Inv. 252. In charges against persons accused of military offences, they must be particularly described and clearly expressed, this is called the specification. Tytl. on Courts Mart. 109.

SPECIMEN. A sample; a part of something by which the other may be known. The act of congress of July 4, 1836, section 6, requires the inventor or discoverer of an invention or discovery to accompany his petition and specification for a patent with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of the composition of matter.

SPECULATION, *contracts.* The hope or desire of making a profit by the purchase and resale of a thing Pard. Dr. Com. n. 12. The profit so made; as, he made a good speculation.

SPENDTHRIFT is defined by the Rev. Stat. of Vermont, tit. 16, c. 65, s. 9, to be a person who by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense, for support of himself or family.

SPINSTER, an addition given, in legal writings, to a woman who never was married. Lovel. on Wills, 269.

SPONSIONS, *international law,* are agreements or engagements made by certain public officers, as generals or admirals, in time of war, either without authority, or by exceeding the limits of authority under which they purport to be made. Before these conventions can have any binding authority on the state, they must be confirmed by express or tacit ratification. The former is given in positive terms and in the usual forms; the latter is justly implied from the fact of acting under the agreement as if bound by it, and from any other circumstance from which an assent may be fairly presumed. Wheat. Intern. Law, pt. 3, c. 2, § 3; Grotius, de Jur. Bel. ac Pac. l. 2, c. 15, § 16; Id. l. 3, c. 22, § 1—3; Vattel, Law of Nat. B. 2, c. 14, §§ 209–212.

SPONSOR, *civil law.* He who intervenes for another voluntarily and without being requested. The engagement which he enters into is only accessory to the principal. Vide Dig. 17, 1, 18; Nov. 4, ch. 1; Code de Com. art. 158, 159; Code Nap. 1236.

SPRING, a fountain. The owner of the soil has the exclusive right to use a spring arising on his grounds. When another has an easement, or right to draw water from such a spring, acquired by grant or prescription, if the spring fails the easement ceases, but if it returns, the right revives. Vide *Jus Aquæductus; Pool;*

Stagnum; Water Course; Ham. N. P. 199; 1 Dall. 211; 3 Rawle's R. 256.

SPRINGING USE, *estates*, is one to arise on a future event, when no preceding estate is limited, and does not take effect in derogation of any preceding interest. Example: a grant is made by A in fee, to the use of B in fee, after the fourth of July; no use arises till the limited period. The use in the mean time results to the grantor, who has a determinable fee. A springing use differs from a resulting use, (q. v.), or a shifting use, (q. v.) 4 Kent, Com. 292; Com. Dig. Uses, K 7; Wils. on Springing Uses; Corn. on Uses, 91.

SPY. One who goes into a place for the purpose of ascertaining the best way of doing an injury there. The term is mostly applied to an enemy who comes into the camp for the purpose of ascertaining its situation in order to make an attack upon it. The punishment for this crime is death. See Articles of War, 1 Story's Laws U. S. 992; Vattel, Droit des Gens, liv. 3, § 179.

STAGNUM, *estates*, a pool. It is said to consist of land and water, and therefore by the name of stagnum, the water and the land may be passed. Co. Litt. 5.

STAKEHOLDER, *contracts*, is a third person, chosen by two or more persons, to keep in deposit property, the right or possession of which is contested between them, and to be delivered to the one who shall establish his right to it. Thus each of them is considered as depositing the whole thing. This distinguishes this contract from that which takes place when two or more tenants in common deposit a thing with a bailee. Domat, Lois Civ. liv. 1, t. 7, s. 4; 1 Vern. R. 144, n. (1). A person having in his hands money or other property claimed by several others, is considered in equity as a stakeholder. 1 Vern. R. 144.

STAMP, *revenue*, is an impression made on paper, by order of the government, which must be used in reducing certain contracts to writing, for the purpose of raising a revenue. Vide Stark. Ev. h. t.; 1 Phil. Ev. 444. In the United States there are now no stamp duties.

STANDARD, *in war*, an ensign or flag used in war.

STANDARD, *measure*. A weight or measure of certain dimensions, to which all other weights and measures must correspond; as, a standard bushel. Also the quality of certain metals, to which all others of the same kind ought to be made to conform; as, standard gold, standard silver. Vide *Dollar; Eagle; Money*.

STAPLE, *intern. law*. The right of staple, as exercised by a people upon foreign merchants, is defined to be, that they may not allow them to set their merchandizes and wares to sale but in a certain place. This practice is not in use in the United States. 1 Chit. Com. Law, 103.

STAR CHAMBER, *Engl. law*. A court which formerly had great jurisdiction and power, but which was abolished by stat. 16 C. 1, c. 10, on account of its usurpations and great unpopularity. It consisted of several of the lords spiritual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of a jury. Their legal jurisdiction extended over riots, perjuries, misbehaviour of public officers, and other great misdemeanors. The judges afterwards assumed powers, and stretched those they possessed to the utmost bounds of legality. 4 Bl. Com. 264.

STARE DECISIS. To abide or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms

a precedent which is not afterwards to be departed from. The doctrine of *stare decisis* is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports. Mr. Greenleaf has made a collection of such cases, to which the reader is referred. Vide 1 Kent, Com. 477; Livingst. Syst. of Pen. Law, 104, 5.

STARE IN JUDICIO, is the act of appearing before a tribunal, either as plaintiff or defendant. Vide *Ester en jugement.*

STATE, *government.* This word is used in various senses. In its most enlarged sense, it signifies a self-sufficient body of persons united together in one community for the defence of their rights, and to do right and justice to foreigners. In this sense, the state means the whole people united into one *body politic*, (q. v.); and the state, and the people of the state, are equivalent expressions. 1 Pet. Cond. Rep. 37 to 39; 3 Dall. 93; 2 Dall. 425; 2 Wilson's Lect. 120; Dane's Appx. § 50, p. 63; 1 Story, Const. § 361. In a more limited sense, the word state expresses merely the positive or actual organization of the legislative, or judicial powers; thus the actual government of the state is designated by the name of the state; hence the expression, the state has passed such a law, or prohibited such an act. State also means the section of territory occupied by a state, as the state of Pennsylvania.

By the word state is also meant, more particularly, one of the commonwealths which form the United States of America. The constitution of the United States makes the following provisions in relation to the states.

Art. 1, s. 9, § 5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

§ 6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

§ 7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Art. 1, s. 10, § 1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-posto-facto law, or law impairing the obligation of contracts; or grant any title of nobility.

§ 2. No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress. No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in

war, unless actually invaded, or in such imminent danger as will not admit of delay.

The District of Columbia and the territorial districts of the United States, are not states within the meaning of the constitution and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat. 91.

Vide, generally, Mr. Madison's report in the legislature of Virginia, January, 1800; 1 Story's Com. on Const. § 208; 1 Kent, Com. 189, note b; Grotius, B. 1, c. 1, s. 14; Ib. B. 3, c. 3, s. 2; Burlamaqui, vol. 2, pt. 1, c. 4, s. 9; Vattel, B. 1, c. 1; 1 Toull. n. 202, note (1); *Nation;* Cicer. de Repub. l. 1, s. 25.

STATE, *status, condition of man*, is that quality which belongs to man in society, and which secures to him different rights, in consequence of the difference of that quality. Slaves, aliens and citizens exercise rights of a different nature, because they do not enjoy the same state. State is natural or civil; natural, when it arises in nature, which marks the differences of sex, age, strength, &c.; it derives its power from the civil or municipal law, when it distinguishes men into citizens, aliens and slaves. Vide 3 Bl. Com. 396.

STATEMENT, *in pleading and in practice*, in the courts of Pennsylvania. By the act to regulate arbitrations and proceedings in courts of justice, passed 21st March, 1806, 4 Smith's Laws of Penn. 328, it is enacted, "that in all cases where a suit may be brought in any court of record for the recovery of any debt founded on a verbal promise, book account, note, bond, penal or single bill, or all or any of them, and which from the amount thereof may not be cognizable before a justice of the peace, it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the prothonotary a statement of his, her or their demand, on or before the third day of the term to which the process issued is returnable, particularly specifying the date of the promise, book account, note, bond, penal or single bill or all or any of them, on which the demand is founded, and the whole amount which he, she, or they believe is justly due to him, her or them from the defendant." This statement stands in the place of a declaration, and is not restricted to any particular form; 3 Serg. & Rawle, 405; it is an immethodical declaration, stating in substance the time of the contract, the sum, and on what founded, with (what is an important principle in a statement, 6 Serg. & Rawle, 21,) a certificate of the belief of the plaintiff or his agent, of what is really due. 6 Serg. & Rawle, 28. See 6 Serg. & Rawle, 53; 8 Serg. & Rawle, 567; 2 Serg. & Rawle, 537; 2 Browne's R. 40; 8 Serg. & R. 316.

STATION, *civ. law.* A place where ships may ride in safety. Dig. 49, 12, 1, 13; Id. 50, 16, 59.

STATU LIBERI, *in Louisiana*, are slaves for a time, who have acquired the right of being free at a time to come, or on a condition which is not fulfilled, or in a certain event which has not happened, but who, in the mean time, remain in a state of slavery. Code, art. 37. See 8 M. R. 219; 3 L. R. 176; 6 L. R. 571; 4 N. S. 102; 7 N. S. 351. This is substantially the definition of the civil law. Hist. de la Jur. l. 40; Dig. 40, 7, 1; Code, 7, 2, 13.

STATUTE. The written will of the legislature, solemnly expressed according to the forms prescribed in the constitution; an act of the legislature. This word is used in contradistinction to the common law. Statutes acquire their force from the

time of their passage unless otherwise provided. 7 Wheat. R. 104; 1 Gall. R. 62. It is a general rule that when the provision of a statute is general, every thing which is necessary to make such provision effectual is supplied by the common law, Co. Litt. 235; 2 Inst. 222; Bac. Ab. h. t. (B); and when a power is given by statute, every thing necessary for making it effectual is given by implication: *quando lex aliquid concedit, concedere videtur et id per quod devenitur ad alliud.* 12 Co. 130, 131; 2 Inst. 306. Statutes are of several kinds; namely,

Public or *private.* 1. Public statutes are those of which the judges will take notice without pleading; as, those which concern all officers in general; acts concerning trade in general, or any specific trade; acts concerning all persons generally.—2. Private acts, are those of which the judges will not take notice without pleading; such as concern only a particular species, or person; as, acts relating to any particular place, or to several particular places, or to one or several particular counties. Private statutes may be rendered public by being so declared by the legislature. Bac. Ab. h. t. (F); 1 Bl. Com. 85.

Declaratory or *remedial.* 1. A declaratory statute is one which is passed in order to put an end to a doubt as to what the common law is, and which declares what it is, and has ever been.—2. Remedial statutes are those which are made to supply such defects, and abridge such superfluities in the common law which may have been discovered. 1 Bl. Com. 86. These remedial statutes are themselves divided into *enlarging* statutes, by which the common law is made more comprehensive and extended than it was before; and in *restraining* statutes, by which it is narrowed down to what is just and proper. The term *remedial statute* is also applied to those acts which give the party injured a remedy, and in some respects those statutes are penal. Esp. Pen. Act. 1.

Temporary or *perpetual.* 1. A temporary statute is one which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed.—2. A perpetual statute is one for the continuance of which there is no limited time, although it be not expressly declared to be so. If, however, a statute which did not itself contain any limitation, is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter. Bac. Ab. h. t. (D).

Affirmative or *negative.* 1. An affirmative statute is one which is enacted in affirmative terms; such a statute does not take away the common law. If, for example, a statute without negative words, declares that when certain requisites shall have been complied with, deeds shall have in evidence a certain effect, this does not prevent their being used in evidence, though the requisites have not been complied with, in the same manner as they might have been before the statute was passed. 2 Cain. R. 169.—2. A negative statute is one expressed in negative terms, and so controls the common law, that it has no force in opposition to the statute. Bro. Parl. pl. 72; Bac. Ab. h. t. (G).

Penal statutes are those which order or prohibit a thing under a certain penalty. Esp. Pen. Actions, 5; Bac. Ab. h. t. (I), 9.

Vide, generally, Bac. Ab. h. t.; Com. Dig. Parliament; Vin. Ab. h. t.; Dane's Ab. Index, h. t.; Chit. Pr. Index, h. t.; 1 Kent, Com. 447–

459; Barrington on the Statutes; Boscaw. on Pen. Stat.; Esp. on Penal Actions and Statutes.

Among the civilians the term statute is generally applied to all sorts of laws and regulations; every provision of law which ordains, permits or prohibits any thing is a statute; without considering from what source it arises. Sometimes the word is used in contradistinction to the imperial Roman law, which by way of eminence civilians call the common law. They divide statutes into three classes, personal, real and mixed.

Personal statutes are those which have principally for their object the person, and treat of property only incidentally; such are those which regard birth, legitimacy, freedom, the right of instituting suits, majority as to age, incapacity to contract, to make a will, to plead in person, and the like. A personal statute is universal in its operation, and in force every where.

Real statutes are those which have principally for their object property, and which do not speak of persons, except in relation to property; such are those which concern the disposition, which one may make of his property either alive or by testament. A real statute, unlike a personal one, is confined in its operation to the country of its origin.

Mixed statutes, are those which concern at once both persons and property. But in this sense almost all statutes are mixed, there being scarcely any law relative to persons, which does not at the same time relate to things.

Vide Merl. Répert. mot Statut; Poth. Cout. d'Orléans, ch. 1; 17 Martin's Rep. 569–589; Story's Confl. of Laws, § 12, et seq.

STATUTE MERCHANT, *in the English law*, is a security entered before the mayor of London, or some chief warden of a city, in pursuance of 13 Edw. I. stat. 3, c. 1, whereby the lands of the debtor are conveyed to the creditor, till out of the rents and profits of them, his debt may be satisfied. Cruise, Dig. t. 14, s. 7; 2 Bl. Com. 160.

STATUTE STAPLE, *in the English law*. The statute of the staple, 27 Edw. III. stat. 2, confined the sale of all commodities to be exported to certain towns in England, called *estaple* or *staple* where foreigners might resort. It authorised a security for money, commonly called statute staple, to be taken by traders for the benefit of commerce; the mayor of the place is entitled to take a recognizance of a debt, in proper form, which has the effect to convey the lands of the debtor to the creditor, till out of the rents and profits of them he may be satisfied. 2 Bl. Com. 160; Cruise, Dig. tit. 14, s. 10: 2 Rolle's Ab. 446; Bac. Ab. Execution, B 1; 4 Inst. 238.

STAY OF EXECUTION, *practice*. A term during which no execution can issue on a judgment. It is either conventional, when the parties agree that no execution shall issue for a certain period; or it is granted by law, usually on condition of entering bail or security for the money. An execution issued before the expiration of the stay is irregular and will be set aside; and the plaintiff in such case may be liable to an action for damages. What is said above refers to civil cases. In criminal cases when a woman is capitally convicted, and she is proved to be *enciente*, (q. v.) there shall be a stay of execution till after her delivery. Vide *Pregnancy*.

STAYING PROCEEDINGS.—The suspension of an action. Proceedings are stayed absolutely or conditionally. 1. They are peremptorily stayed when the plaintiff is wholly incapacitated from suing; as,

for example, when the plaintiff is not the holder, nor beneficially interested in a bill on which he has brought his action. 2 Cr. & M. 416; 2 Dowl. 336; Chitty on Bills, 335; 3 Chitty, Pr. 628; or when the plaintiff admits in writing, that he has no cause of action. 3 Chit. Prac. 370, 630; or when an action is brought contrary to good faith, Tidd's Prac. 515, 529, 1134; 3 Chit. Pr. 633—2. Proceedings are sometimes stayed until some order of the court shall have been complied with; as, when the plaintiff resides in a foreign country, or in another state, or is insolvent, and he has been ruled to give security for costs, the proceedings are stayed until such security shall be given. See *Security for Costs;* 3 Chit. Pr. 633, 635; or until the payment of costs in a former action. 1 Chit. R. 195; 18 E. C. L. R. 64.

STEALING. This term imports, *ex vi termini*, nearly the same as larceny; but in common parlance, it does not always import a felony; as, for example, you stole an acre of my land. In slander cases, it seems that the term stealing takes its complexion from the subject-matter to which it is applied, and will be considered as intended of a felonious stealing, if a felony could have been committed of such subject-matter. Stark. on Slan. 80; 12 Johns. Rep. 239; 3 Binn. R. 546; Whart. Dig. tit. Slander.

STELLIONATE, *civil law*. A name given generally to all species of frauds committed in making contracts. This word is said to be derived from the Latin *stellio*, a kind of lizard remarkable for its cunning and the change of its colour, because those guilty of frauds used every art and cunning to conceal them. But more particularly it was the crime of a person who fraudulently assigned, sold, or engaged the thing which he had before assigned, sold, or engaged to another, unknown to the person with whom he was dealing. Dig. 47, 20, 3; Code, 9, 34, 1; Merl. Répert. h. t.; Code Civil, art. 2069; 1 Bro. Civ. Law, 426. In South Carolina and Georgia, a mortgagor who makes a second mortgage without disclosing in writing, to the second mortgagee, the existence of the first mortgage, is not allowed to redeem; and, in the former state, when a person suffers a judgment, or enters into a statute or recognizance binding his land, and afterwards mortgages it, without giving notice, in writing, of the prior incumbrance, he shall not be allowed to redeem, unless, within six months from a written demand he discharges such incumbrance. Prin. Dig. 161; 1 Brev. Dig. 166–8. In Ohio a fraudulent conveyance is punished as a crime. Walk. Intr. 350; and, in Indiana, any party to a fraudulent conveyance is subjected to a fine and to double damages. Ind. Rev. Laws, 189. See 12 Pet. 773.

STERE. A French measure of solidity, used in measuring wood. It is a cubic mètre. Vide *Measure*.

STET PROCESSUS, *in practice*, is an order made, upon proper cause shown, that the *process remain stationary*. As where a defendant having become insolvent, would, by moving judgment in the case of nonsuit, compel a plaintiff to proceed, the court will, on an affidavit of the fact of insolvency, award a *stet processus*. See 7 Taunt. Rep. 180; 1 Chit. Rep. 738; 10 Wentw. Pl. 43.

STEVEDORE. A person employed in loading and unloading vessels. Dunl. Adm. Pr. 98. Vide *Arrameurs; Sacquiers*.

STEWARD OF ALL ENGLAND, senaschallus totius Angliæ, was an officer among the English who was invested with various powers, and, among others, it was his duty to preside on the trial of peers.

STEWS, *Engl. law*, were places

formerly permitted, in England, to women of professed lewdness, and who, for hire, would prostitute their bodies to all comers. These places were so called because the dissolute persons who visited them, prepared themselves by bathing; the word stews being derived from the old French *estuves*, stove, or hot bath. 3 Inst. 205.

STILLICIDIUM, *civ. law*. The rain water that falls from the roof or eaves of a house by scattered drops. When it is gathered into a spout it is called *flumen*. Without the constitution of one or other of these servitudes, no proprietor can build so as to throw the rain that falls from his house directly on his neighbour's grounds; for it is a restriction upon all property, *nemo potest immitere in alienum;* and he who in building breaks through that restraint, truly builds on another man's property; because to whomsoever the area belongs, to him also belongs whatever is above it: *cujus est solum, ejus est usque ad cœlum*. 3 Burge on the Confl. of Laws, 405. Vide *Servitus Stillicidii*. Inst. 3, 2, 1; Dig. 8, 2, 2.

STINT, *Eng. law.*, is the proportionable part of a man's cattle, which he may keep upon the common. To use a thing without stint, is to use it without limit.

STIPULATED DAMAGES, *in contracts*, is the sum agreed by the parties to be paid, on a breach of a contract, by the party violating his engagement to the other. It is difficult to distinguish, in some cases, between stipulated damages and a penalty, (q. v.) 3 Chitty's Commer. Law, 627; 2 Bos. & Pull. 346. The effect of inserting stipulated damages, either at law or equity, appears to be, that both parties must abide by the stipulation, and the prescribed sum must be given. Holt, C. N. P. P. 46; Newl. Contr. 313; see 5 Taunt. Rep. 247. Vide *Damages, Liquidated*

STIPULATION, *in contracts*. In the Roman law, the contract of stipulation was made in the following manner, namely; the person to whom the promise was to be made, proposed a question to him from whom it was to proceed, fully expressing the nature and extent of the engagement; and, the question so proposed being answered in the affirmative, the obligation was complete. It was essentially necessary that both parties should speak, (so that a dumb man could not enter into a stipulation,) that the person making the promise should answer conformably to the specific question proposed, without any material interval of time, and with the intention of contracting an obligation. From the general use of this mode of contracting, the term stipulation has been introduced into common parlance, and, in modern language, frequently refers to any thing which forms a material article of an agreement; though it is applied more correctly and more conformably to its original meaning to denote the insisting upon and requiring any particular engagement. 2 Evans's Poth. on Oblig. 19. In this contract the Roman law dispensed with an actual consideration. See, generally, Poth. Oblig. P. 1, c. 1, s. 1, art. 5. In the admiralty courts, the first process is frequently to arrest the defendant, and then they take the recognizances or stipulation of certain fide jussors in the nature of bail. 3 Bl. Comm. 108; vide Dunlap's Adm. Practice, Index, h. t. These stipulations are of three sorts, namely; 1 *Judicatum solvi*, by which the party is absolutely bound to pay such sum as may be adjudged by the court. 2. *De judicio sisti*, by which he is bound to appear from time to time, during the pendency of the suit, and to abide

the sentence. 3. *De ratio*, or *De rato*, by which he engages to ratify the acts of his proctor: this stipulation is not usual in the admiralty courts of the United States. The securities are taken in the following manner, namely: 1. *Cautio fide jussoria*, by sureties. 2. *Pignoratitia*, by deposit. 3. *Juratoria*, by oath: this security is given when the party is too poor to find sureties, at the discretion of the court. 4. *Nudè promissoria*, by bare promise: this security is unknown in the admiralty courts of the United States. Hall's Adm. Pr. 12; Dunl. Adm. Pr. 150, 151.

STIRPES, *descents*, the root, stem, or stock of a tree. Figuratively, it signifies, in law, that person from whom a family is descended, and also the kindred or family. It is chiefly used in estimating the several interests of the different kindred, in the distribution of an intestate's estate. 2 Bl. Com. 517; and vide *Descent; Line.*

STOCK, *mer. law.* The capital of a merchant, tradesman, or other person, including his merchandise, money and credits. In a narrower sense it signifies only the goods and wares he has for sale and traffic. The capital of corporations is also called stock; this is usually divided into shares of a definite value, as one hundred dollars, fifty dollars per share. The stock held by individuals in corporations is generally considered as personal property. 4 Dane's Ab. 670; Sull. on Land Titl. 71; Walk. Introd. 211; 1 Hill. Ab. 18.

STOCK, *descents.* This is a metaphorical expression which designates, in the genealogy of a family, the person from whom others are descended: those persons who have so descended are called branches. Vide 1 Roper on Leg. 103; 2 Suppl. to Ves. 307; and *Branch; Descent; Line; Stirpes.*

STOCKS, *crim. law.* A machine commonly made of wood, with holes in it in which to confine persons accused of or guilty of a crime. It was used either to confine unruly offenders by way of security, or convicted criminals for punishment. This barbarous punishment has been generally abandoned in the United States.

STOPPAGE IN TRANSITU, *contracts.* This is the name of that act of a vendor of goods, upon a credit, who, on learning that the buyer has failed, resumes the possession of goods, while they are in the hands of a carrier or middle-man, in their transit to the buyer, and before they get in his actual possession. The subject will be considered with reference to, 1, the person who has a right to stop goods in transitu; 2, the property which may be stopped; 3, the time when to be stopped; 4, the manner of stopping; 5, the failure of the buyer; 6, the effect of stopping.

1. The right of stopping property in transitu is confined to cases in which the consignor is substantially the seller; and does not extend to a mere surety for the price, nor to any person who does not rest his claim on a proprietor's right. 6 East, R. 371; 4 Burr. 2047; 3 T. R. 119, 783; 1 Bell's Com. 224.

2. The property stopped must be personal property actually sold or bartered, on a credit. 2 Dall. 180; 1 Yeates, 177.

3. It must be stopped *during the transitu*, and while something remains to be done to complete the delivery; for the actual or symbolical delivery of the goods to the buyer puts an end to the right of the seller to stop the goods in transitu, 3 T. R. 464; 8 T. R. 199; but it has been decided that if, before delivery, the seller annex a condition that security shall be given before taking possession; or that the price shall be paid

in ready money; or that a bill shall be delivered; the property will not pass by the mere act of the buyer's attaining the possession. 3 Esp. Rep. 58. When the seller has given the buyer documents sufficient to transfer the property, and the buyer, upon the strength of such documents, has sold the goods to a *bona fide* purchaser without notice, the seller is divested of his rights, 2 W. C. C. R. 283; but a resale by the buyer does not, of itself, and without other circumstances, destroy the vendor's right of stoppage in transitu. 6 Taunt. R. 433. Vide *Delivery;* and 1 Rawle's R. 9; 1 Ashm. R. 103; Harr. Dig. Sale, III. 4; 7 Taunt. R. 59; 2 Marsh. R. 366; Holt's R. 248; 1 Moore's R. 526; 3 B. & P. 320; Id. 119; 5 East, R. 175.

4. The manner of stopping the goods, is usually by taking corporal possession of them; but this is not the only way it may be done; the seller may put in his claim or demand of his right to the goods either verbally or in writing. 2 B. & P. 257, 462; 2 Esp. R. 613; Co. Bankr. Law, 494; Holt's Cases, N. P. 338. Vide *Corporal Touch.*

5. The buyer must have actually failed, or be in actual and immediate danger of insolvency.

6. The stopping of goods *in transitu* does not of itself rescind the contract. 1 Atk. 245; Co. B. L. 394; 6 East, R. 27, n. The seller may, therefore, upon offering to deliver them, recover the price. 1 Campb. 109; 6 Taunt. 162. But inasmuch as the seller is permitted in equity to annul the transfer he had made, by stopping the goods on their transit, and by that means to deprive the general creditors of the buyer of property, which, in strict law, has passed to their debtor, it has been considered as equitable, on the other hand, that this act should be accompanied by a rescinding of the whole contract, and a renunciation of any further claim; since it would be a great hardship to give a preference to the seller over the other creditors, and subject the divisible funds, which have derived no benefit from the contract, to a further claim of indemnification. 1 Bell's Com. B. 2, pt. 3, c. 2, s. 2, § 5.

Vide, generally, 2 Kent, Com. 427; Bac. Abr. Merchant, L; Ross on Vend. Index, h. t.; 2 Selw. N. P. 1206; Whitaker on Stoppage in Transitu; Abbott on Ship. 351; 3 Chit. Comm. Law, 340; Chit. on Contr. 124–126; 2 Com. Dig. 268; 8 Com. Dig. 952; 2 Supp. to Ves. jr. 231, 481; 2 Leigh's N. P. 1472.

STOUTHRIEFF, *Scotch law.*—Formerly this word included in its signification every species of theft, accompanied with violence to the person; but of late years it has become the *vox signata* for forcible and masterful depradation within or near the dwelling-house; while robbery has been more particularly applied to violent depradation on the highway, or accompanied by housebreaking. Alison, Princ. Cr. Law of Scotl. 227.

STOWAGE, *mar. law,* is the proper arrangement in a ship, of the different articles of which a cargo consists, so, that they may not injure each other by friction, or be damaged by the leakage of the ship. The master of the ship is bound to attend to the stowage, unless by custom or agreement, this business is to be performed by persons employed by the merchant. Abbott on Shipp. 228; Pardes. Dr. Com. n. 721.

STRANDING, *in maritime law,* is the running of a ship or other vessel on shore; it is either accidental or voluntary. It is accidental where the ship is driven on shore by the winds and waves; it is voluntary where she is run on shore, either to

preserve her from a worse fate, or for some fraudulent purpose. Marsh. Ins. B. 1, c. 12, s. 1. It is of great consequence to define accurately what shall be deemed a stranding, but this is no easy matter. In one case a ship having run on some wooden piles, four feet under water, erected in Wisbeach river, about nine yards from shore, which were placed there to keep up the banks of the river, and having remained on these piles until they were cut away, was considered by Lord Kenyon to be a stranding. Marsh. Ins. B. 7, s. 3. In another case, a ship arrived in the river Thames, and, upon coming up to the Pool, which was full of vessels, one brig ran foul of her bow, and another of her stern, in consequence of which she was driven aground, and continued in that situation an hour, during which period several other vessels ran foul of her; this, Lord Kenyon told the jury, that unskilled as he was in nautical affairs, he thought he could safely pronounce to be no stranding. Ib.; 1 Camp. 131; 3 Camp. 431; 4 M. & S. 503; 7 B. & C. 224; 5 B. & A. 225; 4 B. & C. 736. See *Perils of the Sea*.

STRANGER, *persons*, *contracts*. This word has several significations. 1. A person born out of the United States; but in this sense the term alien is more properly applied, until he becomes naturalized. 2. A person who is not privy to an act or contract; example, he who is a *stranger* to the issue, shall not take advantage of the verdict. Bro. Ab. Record, pl. 3; Vin. Ab. h. t. pl. 1; and vide Com. Dig. Abatement, H 54. When a man undertakes to do a thing, and a stranger interrupts him, this is no excuse. Com. Dig. Condition, L 14. When a party undertakes that a stranger shall do a certain thing, he becomes liable as soon as the stranger refuses to perform it. Bac. Ab. Conditions, Q 4.

STREET. A road in a village or city. In common parlance the word street is equivalent to highway. 4 Serg. & Rawle, 108. A permission to the public for the space of eight, or even of six years, to use a street without bar or impediment, is evidence from which a dedication to the public may be inferred. 11 East, R. 376. See 2 N. Hamp. 513; 4 B. & A. 447; 3 East, R. 294; 1 Law Intell. 134; 2 Smith's Lead. Cas. 94, n.; 2 Pick. R. 162; 2 Verm. R. 480; 5 Taunt. R. 125; S. C. 1 E. C. L. R. 34; 4 Camp. R. 169; 1 Camp. R. 260; 7 B. & C. 257; S. C. 14 E. C. L. R. 39; 5 B. & Ald. 454; S. C. 7 E. C. L. R. 159; 1 Blackf. 44; 2 Wend. 472; 8 Wend. 85; 11 Wend. 486; 6 Pet. 431; 1 Paige, 510; and the article *Dedication*.

STRUCK, *pleadings*. In an indictment for murder, when the death arises from any wounding, beating or bruising, it is said, that the word "struck" is essential. 1 Bulstr. 184; 5 Co. 122; 3 Mod. 202; Cro. Jac. 655; Palm. 282; 2 Hale, 184, 6, 7; Hawk. B. 2, c. 23, s. 82; 1 Chit. Cr. Law, *243; 6 Binn. R. 179.

STRUMPET. A whore, a harlot, or courtesan: this word was formerly used as an addition. Jacob's Law Dict. h. t.

TO STULTIFY, to make or declare insane. It is a general rule in the English law, that a man shall not be permitted to stultify himself; that is, he shall not be allowed to plead his insanity to avoid a contract. 2 Bl. Com. 291; Fonbl. Eq. b. 1, c. 2, § 1; Pow. on Contr. 19. In the United States, this rule seems to have been exploded, and the party may himself avoid his acts except those of record, and contracts for necessaries and services rendered, by allegation and proof of insanity.

5 Whart. R. 371, 379; 2 Kent, Com. 451; 3 Day, R. 90; 3 Conn. R. 203; 5 Pick. R. 431; 5 John. R. 503. Vide Fonbl. Eq. b. 1, c. 2, § 1, note 1; 2 Str. R. 1104; 3 Camp. R. 125; 7 Dowl. & Ryl. 614; 3 C. & P. 30; 1 Hagg. C. R. 414.

STUPIDITY, *med. jur.*, is that state of the mind which cannot perceive and embrace the data presented to it by the senses; and therefore the stupid person can, in general, form no correct judgment. It is a want of the perceptive powers. Ray, Med. Jur. c. 3, § 40. Vide *Imbecility*.

STUPRUM, *civ. law*. The criminal sexual intercourse which took place between a man and a single woman, maid or widow, who before lived honestly. Inst. 4, 18, 4; Dig. 48, 5, 6; Ib. 50, 16, 101.

SUB-AGENT, is a person appointed by an agent to perform some duty, or the whole of the business relating to his agency. Sub-agents may be considered in two points of view; 1, with regard to their rights and duties or obligations, towards their immediate employers; 2, as to their rights and obligations towards their superior or real principals.

1. A sub-agent is generally invested with the same rights, and incurs the same liabilities in regard to his immediate employers, as if he were the sole and real principal. To this general rule there are some exceptions; for example, where by the general usage of trade or the agreement of the parties, sub-agents are ordinarily or necessarily employed, to accomplish the ends of the agency, there if the agency is avowed, and the credit is exclusively given to the principal, the intermediate agent may be entirely exempted from all liability to the sub-agent. The agent, however, will be liable to the sub-agent, unless such exclusive credit has been given, although the real principal or superior may also be liable. Story on Ag. § 386; Paley on Ag. by Lloyd, 49. When the agent employs a sub-agent to do the whole, or any part of the business of the agency, without the knowledge or consent of his principal, either express or implied, the latter will only be entitled to recover from his immediate employer, and his sole responsibility is also to him. In this case the superior or real principal is not responsible to the sub-agent because there is no privity between them. Story on Ag. § 13, 14, 15, 217, 387.

2. Where by an express or implied agreement of the parties, or by the usages of trade, a sub-agent is to be employed, a privity exists between the principal and the sub-agent, and the latter may justly maintain his claim for compensation, both against the principal and his immediate employer, unless exclusive credit is given to one of them; and, in that case, his remedy is limited to that party. 1 Liv. on Ag. 64; 6 Taunt. R. 147.

SUBINFEUDATION, *estates, Engl. law*. The act of an inferior lord by which he carved out a part of an estate which he held of a superior, and granted it to an inferior tenant to be held of himself. It was an indirect mode of transferring the fief, and resorted to as an artifice to elude the feudal restraint upon alienation: this was forbidden by the statute of Quia Emptores, 18 Ed. 1. 2 Bl. Com. 91; 3 Kent, Com. 406.

SUBJECT, *contracts*, is the thing which is the object of an agreement. This term is used in the laws of Scotland.

SUBJECT, *persons, government*, is an individual member of a nation, who is submitted to the laws; this term is used in contradistinction to *citizen*, which is applied to the same individual when considering his political rights. In monarchical gov-

ernments, by subject is meant one who owes permanent allegiance to the monarch. Vide *Body politic.* Greenl. Ev. § 286; Phil. & Am. on Ev. 732, n. (1).

SUBJECTION. The obligation of one or more persons to act at the discretion, or according to the judgment and will of others. Subjection is either private or public. By the former is meant the subjection to the authority of private persons; as, of children to their parents, of apprentices to their masters, and the like. By the latter is understood the subjection to the authority of public persons. Rutherf. Inst. B. 2, c. 8.

SUBMISSION, *contracts*, is an agreement by which persons who have a lawsuit or difference with one another, name arbitrators to decide the matter, and bind themselves reciprocally to perform what shall be arbitrated. The submission may be by the act of the parties simply, or through the medium of a court of law or equity. When it is made by the parties alone it may be in writing or not in writing. Kyd on Aw. 11; Caldw. on Arb. 16; 6 Watts's R. 357. When it is made through the medium of a court, it is made a matter of record by rule of court. The extent of the submission may be various according to the pleasure of the parties; it may be of only one, or of all civil matters in dispute, but no criminal matter can be referred. It is usual to put in a time within which the arbitrators shall pronounce their award. Caldw. on Arb. ch. 3; Kyd on Awards, ch. 1; Civ. Code of Lo. tit. 19; 3 Vin. Ab. 131; 1 Supp. to Ves. Jr. 174; 6 Toull. n. 827; 8 Toull. n. 332; Merl. Répert. mot Compromis; 1 S. & R. 24; 5 S. & R. 51; 8 S. & R. 9; 1 Dall. 164; 6 Watts, R. 134; 7 Watts, R. 362; 6 Binn. 333, 422; 2 Miles, R. 169.

SUBORNATION OF PERJURY, *crim. law*, is the procuring another to commit legal perjury, who in consequence of the persuasion takes the oath to which he has been incited. Hawk. B. 1, c. 69, s. 10. To complete the offence, the false oath must be actually taken, and no abortive *attempt* (q. v.) to solicit will complete the crime. Vide *To Dissuade; To Persuade.* But the criminal solicitation to commit perjury, though unsuccessful, is a misdemeanor at common law. 2 East, Rep. 17; 6 East, R. 464; 2 Chit. Crim. Law, 317; 20 Vin. Ab. 20. For a form of an indictment for an attempt to suborn a person to commit perjury, vide 2 Chit. Cr. Law, 480; Vin. Ab. h. t. The act of congress of March 3, 1825, § 13, provides, that if any person shall knowingly or wilfully procure any such perjury, mentioned in the act, to be committed, every such person so offending, shall be guilty of subornation of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labour, not exceeding five years, according to the aggravation of the offence.

SUBPŒNA, *practice, evidence.* A process to cause a witness to appear and give testimony, commanding him to lay aside all pretences and excuses and appear before a court or magistrate therein named, at a time therein mentioned, to testify for the party named, under a penalty therein mentioned. On proof of service of a subpœna upon the witness, and that he is material, an attachment may be issued against him for a contempt, if he neglect to attend as commanded.

SUBPŒNA, *chancery practice*, is a mandatory writ or process, directed to and requiring one or more persons to appear at a time to come, and answer the matters charged against him or them; the writ of

subpœna was originally a process in the courts of common law, to enforce the attendance of a witness to give evidence; but this writ was used in the court of chancery for the same purpose as a citation in the courts of civil and canon law, to compel the appearance of a defendant, and to oblige him to answer upon oath the allegations of the plaintiff. This writ was invented by John Waltham, bishop of Salisbury, and chancellor to Rich. II. under the authority of the statutes of Westminister 2, and 13 Edw. I. c. 34, which enabled him to devise new writs. 1 Harr. Prac. 154; Cruise, Dig. t. 11, c. 1, sect. 12.—17. Vide Vin. Ab. h. t.; 1 Swanst. Rep. 209.

SUBPŒNA DUCES TECUM, *practice*. A writ or process of the same kind as the *subpœna ad testificandum*, including a clause requiring the witness to bring with him and produce to the court, books, papers, &c., in his hands, tending to elucidate the matter in issue. 3 Bl. Com. 382.

SUBREPTION, *French law*. By this word is understood the fraud committed to obtain a pardon, title, or grant, by alleging facts contrary to truth.

SUBROGATION, *civil law, contracts*. The act of putting, by a transfer, a person in the place of another, or a thing in the place of another thing. It is the substitution (q. v.) of a new for an old creditor, and the succession to his rights, which is called subrogation; *transfusio unius creditoris in alium*. It is precisely the reverse of delegation, (q. v.) There are three kinds of subrogation: 1, that made by the owner of a thing of his own free will; example, when he voluntarily assigns it; 2, that which arises in consequence of the law, even without the consent of the owner; example, when a man pays a debt which could not be properly called his own, but which nevertheless it was his interest to pay, or which he might have been compelled to pay for another, the law subrogates him in all the rights of the creditor; vide 2 Binn. Rep. 382; 3, that which arises by the act of law joined to the act of the debtor; as, when the debtor borrows money expressly to pay off his debt, and with the intention of substituting the lender in the place of the old creditor. 7 Toull. liv. 3, t. 3, c. 5, § 2. Vide Civ. Code of Louisiana, art. 2155 to 2158; Merl. Répert. h. t.; Dig. lib. 20; Code, lib. 8, t. 18 et 19; 9 Watts, R. 451.

SUBSCRIPTION, *contracts*, is the placing a signature at the bottom of a written or printed engagement. Vide *To Sign*. By subscription is also understood the act by which a person contracts, in writing, to furnish a sum of money for a particular purpose; as, a subscription to a charitable institution, a subscription for a book, for a newspaper, and the like.

SUBSIDY, *Engl. law*. An aid, tax or tribute granted by parliament to the king for the urgent occasions of the kingdom, to be levied on every subject of ability according to the value of his lands or goods. Jacob's Law Dict. h. t. The assistance given in money by one nation to another to enable it the better to carry on a war, when such nation does not join directly in the war, is called a subsidy. Vattel, liv. 3, § 82. See *Neutrality*.

SUBSTANCE, *evidence*. That which is essential; it is used in opposition to form. It is a general rule, that on any issue it is sufficient to prove the substance of the issue. For example, in a case where the defendant pleaded payment of the principal sum and all interest due, and it appeared in evidence that a gross sum was paid, not amounting to the full interest, but accepted by

the plaintiff as full payment, the proof was held to be sufficient. 2 Str. 690; 1 Phil. Ev. 161.

SUBSTITUTE, *contracts*, one placed under another to transact business for him; in letters of attorney, power is generally given to the attorney to nominate and appoint a substitute. Without such power, the authority given to one person cannot in general be delegated to another, because it is a personal trust and confidence, and is not therefore transmissible. The authority is given to him to exercise his judgment and discretion, and it cannot be said that the trust and confidence reposed in him shall be exercised at the discretion of another. 2 Atk. 88; 2 Ves. 645. But an authority may be delegated to another, when the attorney has express power to do so. Bunb. 166; T. Jones, 110. See Story, Ag. §§ 13, 14. When a man is drawn in the militia, he may, in some cases, hire a substitute.

SUBSTITUTES, *in the Scotch law;* where an estate is settled on a long series of heirs substituted one after another, in tailzie, the person first called in the tailzies, is the institute; the rest, the heirs of tailzie; or the substitutes. Ersk. Princ. L. Scotl. 3, 8, 8. See *Tailzie; Institute.*

SUBSTITUTION, *civil law.* In the law of devises, it is the putting of one person in the place of another, so that he may, in default of ability in the former, or after him, have the benefit of a devise or legacy. It is a species of subrogation made in two different ways; the first is *direct* substitution, and the latter a trust or *fidei commissary* substitution. The first, or direct substitution, is merely the institution of a second legatee, in case the first should be either incapable or unwilling to accept the legacy; for example, if a testator should give to Peter his estate, but in case he cannot legally receive it, or he wilfully refuses it, then I give it to Paul; this is a direct substitution. Fidei commissary substitution is that which takes place when the person substituted is not to receive the legacy until after the first legatee, and consequently must receive the thing bequeathed from the hands of the latter; for example, I institute Peter my heir, and I request that at his death he shall deliver my succession to Paul. Merl. Répert. h. t.; 5 Toull. 14.

SUBSTITUTION, *in chancery practice*, takes place in a case where a creditor has a lien on two different parcels of land, and another creditor has a subsequent lien on one only of the parcels, and the prior creditor elects to have his whole demand out of the parcel of land on which the subsequent creditor takes his lien; the latter is entitled, by way of substitution, to have the prior lien assigned to him for his benefit; 1 Johns. Ch. R. 409; 2 Hawk's Rep. 623; 2 Mason, R. 342; and in a case where a bond creditor exacts the whole of the debt from one of the sureties, that surety is entitled to be substituted in his place, and to a cession of his rights and securities, as if he were a purchaser, either against the principal or his co-sureties. Ib. 413; 1 Paige's R. 185; 7 John. Ch. Rep. 211; 10 Watts, R. 148.

A surety on paying the debt, is entitled to stand in the place of the creditor, and to be subrogated to all his rights against the principal. 2 Johns. Ch. R. 454; 4 Johns. Ch. R. 123; 1 Edw. R. 164; 17 John. R. 584; 3 Paige's R. 117; 2 Call, R. 125; 2 Yerg. R. 346; 1 Gill & John. 346; 6 Rand. R. 98; 8 Watts, R. 384. In Pennsylvania it is provided by act of assembly, that in all cases where a constable shall be entrusted with the execution of any

process for the collection of money, and by neglect of duty shall fail to collect the same, by means whereof the bail or security of such constable shall be compelled to pay the amount of any judgment, such payment shall vest in the person paying, as aforesaid, the equitable interest in such judgment, and the amount due upon any such judgment may be collected in the name of the plaintiff for the use of such person. Pamphlet Laws, 1828-29 p. 370. Vide 2 Binn. R. 382, and *Subrogation.*

SUBSTRACTION, *French law.* The act of taking something fraudulently; it is generally applied to the taking of the goods of the estate of a deceased person fraudulently. Vide *Expilation.*

SUCCESSION, *in Louisiana*, is the right and transmission of the rights and obligations of the deceased to his heirs. Succession signifies also the estate, rights and charges which a person leaves after his death, whether the property exceeds the charges, or the charges exceed the property, or whether he has left only charges without property. The succession not only includes the rights and obligations of the deceased, as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also of the new charges to which it becomes subject. Finally, succession signifies also that right by which the heir can take possession of the estate of the deceased, such as it may be. There are three sorts of successions, to wit: testamentary succession; legal succession; and, irregular succession. 1. Testamentary succession is that which results from the constitution of the heir, contained in a testament executed in the form prescribed by law.—2. Legal succession is that which is established in favour of the nearest relations of the deceased.—3. Irregular succession is that which is established by law in favour of certain persons or of the state in default of heirs either legal or instituted by testament. Civ. Code, art. 867-874. Vide Poth. Traité des Successions; Ibid. Coutumes d'Orleans, tit. 17; Ayl. Pand. 348; Toull. liv. 3, tit. 1; Domat, h. t.; Merl. Répert. h. t.

SUCCESSION, *common law.* The mode by which one set of persons, members of a corporation aggregate, acquire the rights of another set which preceded them. This term in strictness is to be applied only to such corporations. 2 Bl. Com. 430.

SUCCESSOR. One who follows or comes into the place of another. This term is applied more particularly to a sole corporation, or to any corporation. The word heir is more correctly applicable to a common person who takes an estate by descent; 12 Pick. R. 322; Co. Litt. 8 b. It is also used to designate a person who has been appointed or elected to some office, after another person.

SUFFRAGE, *government.* Vote; the act of voting. The right of suffrage is given by the constitution of the United States, art. 1, s. 2, to the electors in each state, as shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Vide 2 Story on the Const. § 578, et seq.; Amer. Citiz. 201; 1 Bl. Com. 171; 2 Wils. Lect. 130; Montesq. Esp. des Lois, liv. 11, c. 6; 1 Tucker's Bl. Com. App. 52, 3.

SUFFRANCE. Vide *Estates at suffrance.*

SUGGESTIO FALSI. A statement of a falsehood. This amounts to a fraud whenever the party making it was bound to disclose the truth. Vide *Concealment; Misrepresentation; Representation; Suppressio falsi.*

SUGGESTION. In its literal

sense this word signifies to inform, to insinuate, to instruct, to cause to be remembered, to counsel. In practice it is used to convey the idea of information; as, the defendant suggests the death of one of the plaintiffs. 2 Sell. Pr. 191. In wills when suggestions are made to a testator for the purpose of procuring a devise of his property in a particular way, and when such suggestions are false, they generally amount to a fraud. Bac. Ab. Wills, G 3.

SUGGESTIVE INTERROGATION. This phrase has been used by some writers to signify the same thing as *leading question*, (q. v.) 2 Benth. on Ev. b. 3, c. 3. It is used in the French law. Vide *Question*.

SUI JURIS. One who has all the rights to which a freeman is entitled; one who is not under the power of another, as a slave, a minor, and the like. To make a valid contract, a person must, in general, be *sui juris*. Every one of full age is presumed to be *sui juris*. Story on Ag. p. 10.

SUICIDE, *crimes, med. jur.*, is the act of malicious self murder; *felo de se*, (q. v.) It is not punishable it is believed in any of the United States, as the unfortunate object of this offence is beyond the reach of human tribunals, and to deprive his family of the property he leaves would be unjust. In cases of sudden death, it is of great consequence to ascertain, on finding the body, whether the deceased has been murdered, died suddenly of a natural death, or whether he has committed suicide. By a careful examination of the position of the body, and of the circumstances attending it, it can be generally ascertained whether the deceased committed suicide, was murdered, or died a natural death. But there are sometimes cases of suicide which can scarcely be distinguished from those of murder. A case of suicide is mentioned by Doctor Devergie, (Annales d'hygiène, transcribed by Trebuchet, Jurisprudence de la Médicine, p. 40,) which bears a striking analogy to a murder. The individual went to the cemetery of Père Lachaise, near Paris, and with a razor inflicted a wound on himself immediately below the *os hyoïde*; the first blow penetrated eleven lines in depth; a second, in the wound made by the first, pushed the instrument to the depth of twenty-one lines; a third extended as far as the posterior of the pharynx, cutting the muscles which attached the tongue to the *os hyoïde*, and made a wound of two inches in depth. Imagine an enormous wound, immediately under the chin, two inches in depth, and three inches and three lines in width, and a foot in circumference; and then judge whether such wound could not be easily mistaken as having been made by a stranger, and not by the deceased. Vide *Death*, and 1 Briand, Méd. Leg. 2e partie, c. 1, art. 6.

SUIT. An action. The word *suit* in the 25th section of the judiciary act of 1789, applies to any proceeding in a court of justice, in which the plaintiff pursues, in such court, the remedy which the law affords him. An application for a prohibition is therefore a suit. 2 Pet. 449. According to the code of practice of Louisiana, art. 96, a suit is a real, personal or mixed demand, made before a competent judge, by which the parties pray to obtain their rights, and a decision of their disputes. In that acceptation, the words suit, process and cause, are in that state almost synonymous. Vide *Secta*, and Steph. Pl. 427; 3 Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399; Wood's Civ. Law, b. 4, c. p. 315; 4 Mass. 263; 18 John. 14; 4 Watts, R. 154; 3 Story, Const. § 1719.

SUMMARY PROCEEDINGS.—When cases are to be adjudged promptly, without any unnecessary

form, the proceedings are said to be summary. In no case can the party be tried summarily unless when such proceedings are authorised by legislative authority, except perhaps in the cases of contempts, for the common law is a stranger to such a mode of trial. 4 Bl. Com. 280; 20 Vin. Ab. 42; Boscawen on Conv.; Paley on Convict.; vide *Convictions*.

SUMMING UP, *practice*. The act of making a speech before a court and jury, after all the evidence has been heard, in favour of one of the parties in the cause, is called summing up. When the judge delivers his charge to the jury, he is also said to sum up the evidence in the case. 6 Harg. St. Tr. 832; 1 Chit. Cr. Law, 632. In summing up, the judge should with much precision and clearness, state the issues joined between the parties, and what the jury are required to find, either in the affirmative or negative. He should then state the substance of the plaintiff's claim, and of the defendant's ground of defence, and so much of the evidence as is adduced for each party, pointing out as he proceeds, to which particular question or issue it respectively applies, taking care to abstain as much as possible from giving an opinion as to the facts. It is his duty clearly to state the law arising in the case in such terms as to leave no doubt as to his meaning, both for the purpose of directing the jury, and with a view of correcting, on a review of the case on a motion for a new trial, or on a writ of error, any error he may, in the hurry of the trial, have committed. Vide 8 S. & R. 150; 1 S. & R. 515; 4 Rawle, R. 100, 195, 356; 2 Penna. R. 27; 2 S. & R. 464. Vide *Charge; Opinion*, (*Judgment.*)

SUMMONERS. Petty officers who cite men to appear in any court.

SUMMONS, *practice*. The name of a writ commanding the sheriff, or other authorised officer, to notify a party to appear in court to answer a complaint made against him and in the said writ specified, on a day therein mentioned. 21 Vin. Ab. 42; 2 Sell. Pr. 356; 3 Bl. Com. 279.

SUMMONS AND SEVERANCE. Vide *Severance*; and 20 Vin. Ab. 51; Bac. Ab. h. t.; Archb. Civ. Plead. 59.

SUMPTUARY LAWS, are those relating to expenses, and made to restrain excess in apparel. In the United States the expenses of every man are left to his own good judgment, and not regulated by arbitrary laws.

SUNDAY. The first day of the week. In some of the New England states it begins at sun setting on Saturday, and ends at the same time the next day. But in other parts of the United States, it generally commences at twelve o'clock on the night between Saturday and Sunday, and ends in twenty-four hours thereafter. 6 Gill & John. 268; and vide Bac. Ab. Heresy, &c. D; Id. Sheriff, N 4; 1 Salk. 78; 1 Sell. Pr. 12; Hamm. N. P. 140. The *Sabbath*, the *Lord's Day*, and *Sunday*, all mean the same thing. 6 Gill & John. 268; see 6 Watts, 231; 3 Watts, 56, 59. In some states, owing to statutory provisions, contracts made on Sunday are void, 6 Watts, R. 231; Leigh, N. P. 14; 1 P. A. Browne, 171; 5 B. & C. 406; 4 Bing. 84; but in general they are binding, although made on that day, if good in other respects. 1 Crompt. & Jervis, 130; 3 Law Intell. 210; Chit. on Bills, 59; Wright's R. 754; 10 Mass. 312; 1 Cowen, R. 76, n.; Cowp. 640; 1 Bl. Rep. 499; 1 Str. 702; see 8 Cowen, R. 27. Sundays are computed in the time allowed for the performance of an act, but if the last day happen to be a Sunday, it is to be excluded, and the act must in general be performed on Saturday.

3 Penna. R. 201; 3 Chit. Pr. 110; promissory notes and bills of exchange, when they fall due on Sunday, are generally paid on Saturday.

SUPERCARGO, *mar. law*, is a person specially employed by the owner of a cargo to take charge of the merchandize which has been shipped, to sell it to the best advantage, and to purchase returning cargoes, and to receive freight, as he may be authorised. Supercargoes have complete control over the cargo, and every thing which immediately concerns it, unless their authority is either expressly or impliedly restrained. 12 East, R. 381; but the supercargo has no power to interfere with the government of the ship. 3 Pardes. n. 646; 1 Boulay-Paty, Dr. Com. 421.

SUPERFŒTATION, *med. jur.* The conception of a second embryo, during the gestation of the first, or that a woman who has advanced to any period of one pregnancy, is capable of conceiving another child. This doctrine, though doubted, seems to be established by numerous cases. 1 Beck's Med. Jur. 193; Cassan on Superfœtation; New York Medical Repository; 1 Briand, Méd. Leg. prem. partie, c. 3, art. 4.

SUPERSEDEAS, *practice, actions.* The name of a writ containing a command to stay the proceedings at law. It is granted on good cause shown that the party ought not to proceed. F. N. B. 236. There are some writs which though they do not bear this name have the effect to supercede the proceedings, namely, a writ of error, when bail is entered, operates as a supersedeas, and a writ of certiorari to remove the proceedings of an inferior into a superior court has, in general, the same effect. 8 Mod. 373; 1 Barnes, 260; 6 Binn. R. 461. But, under special circumstances, the *certiorari* has not the effect to stay the proceedings, particularly where summary proceedings, as to obtain possession under the landlord and tenant law, are given by statute. 6 Binn. R. 460; 1 Yeates, R. 49; 4 Dall. R. 214; 1 Ashm. R. 230. Vide Vin. Ab. h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; Yelv. R. 6, note.

SUPERVISOR, an overseer; a surveyor. There are officers who bear this name whose duty it is to take care of the highways.

SUPPLICAVIT, *Engl. law.* The name of a writ issuing out of the king's bench or chancery, for taking sureties of the peace; it is commonly directed to the justices of the peace, when they are averse to acting in the affair in their judicial capacity. 4 Bl. Com. 233; vide Vin. Ab. h. t.; Com. Dig. Chancery, 4 R; Ib. Forceable Entry, D 16, 17.

SUPPLIES, *Engl. law.* Extraordinary grants to the king by parliament, to supply the exigencies of the state. Jacob's Law Dict. h. t.

SUPPORT. The right of support is an easement which one man, either by contract or prescription, enjoys to rest the joists or timbers of his house upon the wall of an adjoining building, owned by another person. 3 Kent, Com. 435. Vide Lois des Bât. part. 1, c. 3, s. 2, a. 1, § 7; *Party wall.*

SUPPRESSIO VERI, concealment of truth. In general a suppression of the truth, when a party is bound to disclose it, vitiates a contract. In the contract of insurance a knowledge of the facts is required to enable the underwriter to calculate the chances and form a due estimate of the risk; and, in this contract perhaps more than any other the parties are required to represent every thing with fairness. 1 Bla. Rep. 594; 3 Burr. 1809. *Suppressio veri* as well as *suggestio falsi*, is a ground to rescind an agreement, or at least not to carry into execution. 3 Atk.

383: Prec. Ch. 138; 1 Fonb. Eq. c. 2, s. 8; 1 Ball & Beatty, 241; 3 Munf. 232; 1 Pet. 383. Vide *Concealment; Misrepresentation; Representation; Suggestio falsi.*

SUPRA PROTEST. Under protest. Vide *Acceptance supra protest; Acceptor supra protest; Bills of Exchange.*

SUPREMACY. Sovereign dominion, authority, and pre-eminence; the highest state. In the United States, the supremacy resides in the people, and is exercised by their constitutional representatives, the president and congress. Vide *Sovereignty.*

SUPREME COURT. The court of the highest jurisdiction in the United States, having appellate jurisdiction over all the other courts of the United States, is so called. Its powers are examined under the article *Courts of the United States.* The following list of the judges who have had seats on the bench of this court is given for the purpose of reference.

Chief Justices.

John Jay, appointed September 26, 1789, resigned in 1795.

John Rutledge, appointed July 1, 1795, resigned in 1796.

Oliver Ellsworth, appointed March 4, 1796, resigned in 1801.

John Marshall, appointed January 31, 1801, died July 6, 1835.

Roger B. Taney, appointed March 15, 1836.

Associate Justices.

William Cushing, appointed September 27, 1789, died in 1811.

James Wilson, appointed September 29, 1789, died in 1798.

John Blair, appointed September 30, 1789, died in 1796.

James Iredell, appointed February 10, 1790, died in 1799.

Thomas Johnson, appointed November 7, 1791, resigned in 1793.

William Patterson, appointed March 4, 1793, in the place of Judge Johnson, died in 1806.

Samuel Chase, appointed January 7, 1796, in the place of Judge Blair, died in 1811.

Bushrod Washington, appointed December 20, 1798, in the place of Judge Wilson, died November 26, 1829.

Alfred Moore, appointed December 10, 1799, in the place of Judge Iredell, resigned in 1804.

William Johnson, appointed March 6, 1804, in the place of Judge Moore, died in 1835.

Brockholst Livingston, appointed November 10, 1806, in the place of Judge Patterson, died in 1823.

Thomas Todd, appointed March 3, 1807, under the act of congress of February 1807, providing for an additional justice, died in 1826.

Gabriel Duval, appointed November 18, 1811, in the place of Judge Chase, resigned in January, 1835.

Joseph Story, appointed November 18, 1811, in the place of Judge Cushing.

Smith Thompson, appointed December 9, 1823, in the place of Judge Livingston, deceased.

Robert Trimble, appointed May 9, 1826, in the place of Judge Todd, died in 1829.

John McLean, appointed March 1829, in the place of Judge Trimble, deceased.

Henry Baldwin, appointed January 1830, in the place of Judge Washington, deceased.

James M Wayne, appointed January 9, 1835, in the place of Judge Johnson, deceased.

Philip P. Barbour, appointed March 15, 1836, died February 25, 1841.

John Catron, appointed March 8, 1837, under the act of congress providing for two additional judges.

John McKinley, appointed September 25, 1837, under the last mentioned act.

Peter V. Daniel, appointed March 3, 1841, in the place of Judge Barbour, deceased.

The present judges of the supreme court are

Chief Justice.—Roger B. Taney.

Associate Justices.—Joseph Story, Smith Thompson, John McLean, Henry Baldwin, James M. Wayne, John Catron, John McKinley, and Peter V. Daniel.

In the several states there are also supreme courts; their powers and jurisdiction will be found under the names of the several states.

SUR, a French word which signifies *on*. It is very frequently used in connection with other words; as, sur rule to take deposition, sur trover and conversion, and the like.

SUR CUI ANTE DIVORTIUM. The name of a writ issued in favour of the heir of the wife, where the husband alienated the wife's lands during the coverture, and afterwards they were divorced and she died, to recover the lands from the alienee. Vide *Cui ante divortium.*

SURETY, *contracts*, is a person who binds himself for the payment of a sum of money or for the performance of something else, for another, who is already bound for the same. The surety differs from bail in this, that the latter actually has, or is by law presumed to have, the custody of his principal, while the former has no control over him. The bail may surrender his principal in discharge of his obligation; the surety cannot be discharged by such surrender. In Pennsylvania it has been decided that the creditor is bound to sue the principal when requested by the surety, and the debt is due; and that when proper notice is given by the surety that unless the principal be sued, he will consider himself discharged, he will be so considered, unless the principal be sued. 8 Serg. & Rawle, 116; 15 Serg. & Rawle, 29, 30; S. P. in Alabama, 9 Porter, R. 509. Vide *Suretyship.*

SURETY OF THE PEACE,—*crim. law*, is a security entered into before some competent court or officer, by a party accused, together with some other person, in the form of recognizance to the commonwealth in a certain sum of money, with a condition that the accused shall keep the peace towards all the citizens of the commonwealth. A security for good behaviour is a similar recognizance with a condition that the accused shall be of good behaviour. This security may be demanded by a court or officer having jurisdiction from all persons who threatened to kill or to injure others, or who by their acts give reason to believe they will commit a breach of the peace. And even after an acquittal a prisoner may be required to give security of the peace or good behaviour, when the circumstances of the case justify a court in believing the public good requires it. 2 Yeates, R. 437; Bac. Ab. h. t.; 1 Binn. R. 98, note; Com. Dig. h. t.; Vin. Ab. h. t.; Bl. Com. B. 4, c. 18, p. 251.

SURETYSHIP, *contracts*, is an accessory agreement by which a person binds himself for another already bound, and promises to the creditor to satisfy the obligation, if the debtor does not. It can be given only for valid contracts; a man may, however, become surety for an obligation of which the principal debtor might get a discharge by an exception merely personal to him, such as that of being a minor or a married woman. A surety is discharged if the creditor and the principal debtor change the nature of the original contract in any degree, without the consent of the surety. 15 East, R. 617, n. and vide Yelv. 47 n.; 20 Vin. Ab. 101; 1 Supp. to Ves. jr. 220, 498, 9; Ayliffe's Pand. 559; Poth. Obl. part 2, c. 6. Vide 1 Bell's Com.

359, 5th ed.; *Giving time; Principal; Surety.*

SURGERY, *med. jur.* The part of the healing art which relates to external diseases; their treatment; and, specially, to the manual operations adopted for their cure. Every lawyer should have some acquaintance with surgery; his knowledge on this subject will be found useful in cases of homicide and wounds.

SURPLUSAGE, *in pleading*, is a superfluous and useless statement of matter wholly foreign and impertinent to the cause. Such matter need not be proved, nor will it vitiate, it being a maxim that *utile per inutile non vitiatur*, 4 East, R. 400; Gilb. C. P. 131; see Com. Dig. Pleader, C 28; Bac. Ab. Pleas, 1, 4; Co. Litt. 303 b; 2 Saund. 306, n. 14; 5 East, Rep. 444; 1 Chit. Pl. 232; Lawes on Pl. 63; 7 Johns. R. 462; 3 Day, 472; 2 Mass. R. 283; 13 Johns. R. 80; except where by the unnecessary allegation, the plaintiff shows that he has no cause of action. Com. Dig. Pleader, C 29; Bac. Ab. Pleas, 1, 4; see 2 East, R. 451; Dougl. 667; 2 Bl. Rep. 842; 4 East, R. 400; 3 Cranch, 193; 2 Dall. R. 300; 1 Wash. Rep. 257.

SURPRISE. This term is frequently used in courts of equity and by writers on equity jurisprudence. It signifies the act by which a party who is entering into a contract is taken unawares, by which sudden confusion or perplexity is created, which renders it proper that a court of equity should relieve the party so surprised. 2 Bro. Ch. R. 150; 1 Story, Eq. Jur. § 120, note. Mr. Jeremy, Eq. Jur. 366, seems to think that the word surprise is a technical expression, and nearly synonymous with fraud. Page 383, note. It is sometimes used in this sense when it is deemed presumptive of, or approaching to fraud. 1 Fonbl. Eq. 123; 3 Chan. Cas. 56, 74, 103, 114. Vide 6 Ves. R. 327, 338; 2 Bro. Ch. R. 326; 16 Ves. R. 81, 86, 87; 1 Cox, R. 340; 2 Harr. Dig. 92. In practice, by surprise is understood that situation in which a party is placed, without any default of his own, which will be injurious to his interest. The courts always do every thing in their power to relieve a party from the effects of a surprise, when he has been diligent in endeavouring to avoid it. 1 Clarke's R. 162.

SURREBUTTER, *in pleading.* The plaintiff's answer to the defendant's rebutter. It is governed by the same rules as the replication, (q. v.) Vide 6 Com. Dig. 185; 7 Com. Dig. 389.

SURREJOINDER, *in pleading.* The plaintiff's answer to the defendant's rejoinder. It is governed in every respect by the same rules as the replication, (q. v.) Steph. Pl. 77; Arch. Civ. Pl. 284; 7 Com. Dig. 389.

SURRENDER, *estates, conveyancing*, is a yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, by which the lesser estate is merged into the greater by mutual agreement. Co. Litt. 337, b. A surrender is of a nature directly opposite to a release; for, as the latter operates by the greater estate descending upon the less, the former is the falling of a less estate into a greater, by deed. A surrender immediately divests the estate of the surrenderor, and vests it in the surrenderee, even without the assent (q. v.) of the latter. Touchs. 300, 301. The technical and proper words of this conveyance are, surrender and yield up; but any form of words, by which the intention of the parties is sufficiently manifested, will operate as a surrender. Perk. § 607; 1 Term Rep. 441; Com. Dig. Surrender, A. The surrender may be express or implied. The

latter is when an estate, incompatible with the existing estate, is accepted; or the lessee takes a new lease of the same lands. 16 Johns. Rep. 28; 2 Wils. 26; 1 Barn. & A. 50; 2 Barn. & A. 119; 5 Taunt. 518; and see 6 East, R. 86; 9 Barn. & Cr. 288; 7 Watts, R. 123. Vide, generally, Cruise, Dig. tit. 32, c. 7; Com. Dig. h. t.; Vin. Ab. h. t.; 4 Kent, Com. 102; Nels. Ab. h. t.; Rolle's Ab. h. t.; 11 East, R. 317, n. The deed or instrument by which a surrender is made, is also called a surrender. For the law of presumption of surrenders, see Math. on Pres. ch. 13, p. 236.

SURRENDER OF CRIMINALS. Vide *Extradition; Fugitives from justice.*

SURRENDEREE. One to whom a surrender has been made.

SURRENDEROR. One who makes a surrender; as when the tenant gives up the estate and cancels his lease before the expiration of the term; one who yields up a freehold estate for the purpose of conveying it.

SURROGATE. In some of the states, as in New Jersey, this is the name of an officer who has jurisdiction in granting letters testamentary and letters of administration. In some states, as in Pennsylvania, this officer is called register of wills and for granting letters of administration; in others, as in Massachusetts, he is called judge of probates.

SURVEY. The act by which the quantity of a piece of land is ascertained; the paper containing a statement of the courses, distances, and quantity of land, is also called a survey. A survey made by authority of law, and duly returned into the land-office, is a matter of record, and of equal dignity with the patent. 3 Marsh. 226; 2 J. J. Marsh. 160. See 3 Greenleaf, 126; 5 Greenleaf, 24; 14 Mass. 149; 1 Harr. & John. 201; 1 Overt. 199; 1 Dev. & Bat. 76. By survey is also understood an examination; as, a survey has been made of your house, and now the insurance company will insure it.

SURVIVOR. The longest liver of two or more persons. In cases of partnership the surviving partner is entitled to have all the effects of the partnership, and is bound to pay all the debts owing by the firm. Gow on Partn. 157; Watson on Partn. 364. He is, however, bound to account for the surplus to the representatives of his deceased partners, agreeably to their respective rights. A surviving trustee is generally vested with all the powers of all the trustees, and the surviving administrator is authorised to act for the estate as if he had been sole administrator. As to the presumption of survivorship, when two or more persons have perished by the same event, see Civ. Code of Lo. art. 930 to 933; and vide *Death;* Cro. Eliz. 503; 1 Bl. Rep. 610; 2 Phill. Rep. 261; S. C. 1 Eccles. Reports, 250; Fearne on Rem. iv.; Poth. on Obli. by Evans, vol. 2, p. 346; 8 Ves. 10; 14 Ves. 578; 17 Ves. 482; 6 Taunt. 213; Cowp. 257; 5 Ves. 485. Vide, generally, 2 Fonbl. Eq. 102; 8 Vin. Ab. 323; 20 Vin. Ab. 146; 8 Com. Dig. 475, 594; 1 Suppl. to Ves. jun. 115, 186, 407, 8; 2 Suppl. to Ves. jun. 47, 296, 340, 391, 477. The right of survivorship among joint-tenants has been abolished, except as to estates held in trust, in Pennsylvania, New York, Kentucky, Virginia, Indiana, Missouri, Tennessee, Alabama, Georgia, North and South Carolina. Vide *Estates in Joint-tenancy.* In Connecticut it never existed. 1 Swift's Dig. 102; see 1 Hill. Ab. 440. See *Death; Estates in Joint-tenancy; Joint-tenants; Partnership.*

SUS' PER COLL', *Engl. law.* In the English practice, a calendar

is made out of attainted criminals, and the judge signs the calendar with their separate judgments in the margin. In the case of a capital felony, it is written opposite the prisoner's name, "let him be hanged by the neck," which, when the proceedings were in Latin, was, "suspendatur per collum," or, in the abbreviated form, "sus' per coll'." 4 Bl. Comm. 403.

SUSPENDER, in the Scotch law, is he in whose favour a suspension is made. In general a suspender is required to give caution to pay the debt in the event it shall be found due. Where the suspender cannot, from his low or suspected circumstances, procure unquestionable security, the lords admit juratory caution; but the reasons of suspension are in that case, to be considered with particular accuracy at passing the bill. Act S. 8 Nov. 1682; Ersk. Prin. L. Scot. 4, 3, 6.

SUSPENSE, takes effect when a rent, profit a prendre, and the like, are, in consequence of the unity of possession of the rent, &c., of the land out of which they issue, not in esse for a time; for then they are said to be in suspense, *tunc dormiunt*, but they may be revived or awakened. Co. Litt. 313 a.

SUSPENSION. A temporary stop of a right, of a law, and the like. In times of war the habeas corpus act may be suspended by lawful authority. There may be a suspension of an officer's duties or powers, when he is charged with crimes. Wood's Inst. 510.

SUSPENSION, *Scotch law*, is that form of law by which the effect of a sentence-condemnatory, that has not yet received execution, is stayed or postponed, till the cause be again considered. Ersk. Prin. L. Scotl. 4, 3, 5. Suspension is competent also, even where there is no decree, for putting a stop to any illegal act whatsoever. Ibid. 4, 3, 7. Letters of suspension bear the form of a summons, which contains a warrant to cite the charger. Ib.

SUSPICION. A belief to the disadvantage of another, accompanied by a doubt. Without proof, suspicion, of itself, is evidence of nothing. When a crime has been committed, an arrest may be made when, 1st, there are such circumstances as induce a strong presumption of guilt; as being found in possession of goods recently stolen, without giving a probable account of having obtained the possession honestly; 2dly, the absconding of the party accused; 3dly, being found in company of known offenders; 4thly, living an idle, disorderly life, without any apparent means of support. And in such cases the arrest must be made as in other cases. Vide 20 Vin. Ab. 150. 4 Bl. Com. 290.

SUTLER. A man whose employment is to sell provisions and liquor to a camp. By the articles of war, art. 29, no sutler is permitted to sell any kind of liquor or victuals, or to keep his house or shop open for the entertainment of soldiers after nine at night, or before the beating of the reveillée, or upon Sundays during divine service or sermon, on penalty of being dismissed all future sutling. And by art. 60, all sutlers are to be subject to orders according to the rules and discipline of war.

TO SWEAR. To take an oath, judicially administered. Vide *Affirmation; Oath*. To swear also signifies to use such profane language as is forbidden by law. This is generally punished by statutory provisions in the several states.

SWINDLER, *criminal law*. A cheat; one guilty of defrauding divers persons. 1 Term Rep. 748; 2 H. Blackst. 531; Stark. on Sland. 135. Swindling is usually applied to a transaction, where the guilty party

procures the delivery to him, under a pretended contract, of the personal property of another, with the felonious design of appropriating it to his own use. 2 Russel on Crimes, 130; Alison, Princ. Cr. Law of Scotland, 250.

SYNALLAGMATIC CONTRACT, *civil law.* A synallagmatic or bilateral contract, is one by which each of the contracting parties binds himself to the other; such are the contracts of sale, hiring, &c. Poth. Ob. n. 9. Vide *Contract.*

SYNDIC a term used in the French law, which answers in one sense to our word *assignee*, when applied to the management of bankrupt's estates: it has also a more extensive meaning; in companies and communities, syndics are they who are chosen to conduct the affairs and attend to the concerns of the body corporate or community; and in that sense the word corresponds to director or manager. Rodman's Notes to Code de Com. p. 351; Civ. Code of Louis. art. 429; Dict. de Jurisp. art. Syndic.

SYNGRAPH. A deed, bond or other instrument of writing under the hand and seal of all the parties. It was so called because the parties *wrote together.* Formerly such writings were attested by the subscription and crosses of the witnesses; afterwards, to prevent frauds and concealments, they made deeds of mutual covenant in a script and rescript, or in a *part* and *counterpart*, and in the middle between the two copies they wrote the words *syngraphus* in large letters, which being cut through the parchment, and one being delivered to each party, and these being afterwards put together proved their authenticity. Deeds thus made were denominated *syngraphs* by the canonists, and by the common lawyers *chirographs*, (q. v.) 2 Blackstone's Commentaries, 296.

SYNOD. An ecclesiastical assembly.

T.

TABELLION, an officer among the Romans, who reduced to writing and in proper form agreements, contracts, wills, and other instruments, and witnessed their execution. The term tabellion is derived from the Latin *tabula, seu, tabella*, which, in this sense, signified those tables or plates covered with wax which were then used instead of paper. 8 Toull. n. 53; Delaurière, sur Ragneau, mot Notaire.

Tabellions differed from notaries in many respects: they had judicial jurisdiction in some cases, and from their judgments there were no appeals. Notaries were then the clerks or aiders of the tabellions, they received the agreements of the parties, which they reduced to short *notes*; and these contracts were not binding until they were written *in extenso*, which was done by the tabellions. Encyclopédie de M. D'Alembert, mot Tabellion; Jac. Law Dict. Tabellion; Merlin, Repértoire, mot Notaire, § 1.

TABLES. Vide *Law of the Twelve Tables.*

TACIT, it is said of that which, although not expressed, is understood from the nature of the thing, or from the provision of the law; implied.

TACK, *Scotch law*, is a contract of location by which the use of land, or any other immovable subject, is set to the lessee or tacksman for a

certain yearly rent, either in money, the fruits of the ground, or services. Ersk. Prin. Laws of Scot. B. 2, t. 6, n. 8; 1 Tho. Co. Litt. 209. This word is nearly synonymous with lease.

TACKING, *Engl. law*, is the union of securities given at different times, so as to prevent any intermediate purchasers claiming title to redeem, or otherwise discharge one lien, which is prior, without redeeming or discharging other liens also, which are subsequent to his own title. Jer. Eq. Jur. B. 1, c. 2, § 1, p. 188 to 191; 1 Story, Eq. Jur. § 412. It is an established doctrine in the English chancery that a bonâ fide purchaser and without any notice of a defect in his title at the time of the purchase, may lawfully buy any statute, mortgage, or encumbrance, and if he can defend by those at law, his adversary shall have no help in equity to set those encumbrances aside, for equity will not disarm such a purchaser. And as mortgagees are considered in equity as purchasers *pro tanto*, the same doctrine has extended to them, and a mortgagee who has advanced his money without notice of any prior encumbrance, may, by getting an assignment of a statute, judgment, or recognizance, protect himself from any encumbrance subsequent to such statute, judgment or recognizance, though prior to his mortgage; that is, he will be allowed to *tack* or unite his mortgage to such old security, and will by that means be entitled to recover all moneys for which such security was given, together with the money due on his mortgage, before the prior mortgagees are entitled to recover any thing. 2 Fonbl. Eq. 306; 2 Cruise, t. 15, c. 5, s. 27; Powell on Morg. Index, h. t.; 1 Vern. 188; 8 Com. Dig. 953; Madd. Ch. Index, h. t. This doctrine is inconsistent with the laws of the several states, which require the recording of mortgages. Caines's Cas. Er. 112; 1 Hopk. C. R. 231; 3 Pick. 50; 2 Pick. 517. This doctrine of *tacking* seems to have been acknowledged in the civil law, Code, 8, 27, 1; but see Dig. 13, 7, 8. And see 7 Toull. n. 110. But this tacking could not take place to the injury of intermediate encumbrancers. Story on Eq. § 1010, and the authorities cited in the note.

TAIL. An estate tail is an estate of inheritance, to a man or a woman and his or her heirs of his or her body, or heirs of his body of a particular description, or to several persons and the heirs of their bodies, or the heirs generally or specially of the body or bodies of one person, or several bodies. Prest. on Estates, 355; Cruise, tit. 2, c. 1, s. 12. Estates tail, as qualified in their limitation and extent, are of several sorts. They have different denominations, according to the circumstances under which, or the persons to whom they are limited. They are usually divided into estates tail general or special. But they may be more advantageously arranged under the following classes. 1. As to the extent of the degree to which the estates may descend, they are, 1st, general; 2d, qualified:—2. As to the sex of the person who may succeed, they are, 1st, general, as extending to males or females of the body, without exception; 2dly, special, as admitting only one sex to the succession, and excluding the other sex.—3. As to the person by whom or by whose body those heirs are to be begotten, they are either, 1st, general, as to all the heirs of the body of a man or woman; 2dly, special, as to the heirs of the body of a man or woman begotten by a particular person, or to the heirs of the two bodies of a man and woman. On the several species of estates tail

noticed under this division, it may be observed, that the same estate may, at the same time, be general in one respect; as, for example, to all the heirs of the body in whatever degree they are related; and may be special in another respect, as that these heirs shall be males, &c. Prest. on Estates, 383, 4.

The law relating to entails is diversified in the several states. In Indiana and Louisiana they never existed; they are unknown in Illinois and Vermont. In Ohio, Virginia, Tennessee, Kentucky, and New York, estates tail are converted into estates in fee simple by statute; and they may be barred by a simple conveyance in Pennsylvania. In Alabama, Missouri, Mississippi, New Jersey, Connecticut and North Carolina, they have been modified, and in Georgia they have been abolished without reservation. Griff. Reg. h. t.

Vide, generally, 8 Vin. Ab. 227 to 272; 10 lb. 257 to 269; 20 lb. 163; Bac. Ab. Estate in tail; 4 Com. Dig. 17; 4 Kent, Com. 12; and 1 Bro. Civ. Law, 188, where an attempt is made to prove that an estate resembling an estate tail was not unknown to the Romans.

TAKING, *crim. torts*, the act of laying hold upon an article, with or without removing the same: a felonious taking is not sufficient without a carrying away, to constitute the crime of larceny, (q. v.) And when the taking has been legal, no subsequent act will make it a crime. 1 Moody, Cr. Cas. 160. The taking is either actual or constructive. The former is when the thief takes, without any pretence of a contract, the property in question. A constructive felonious taking occurs when, under pretence of a contract, the thief obtains the felonious possession of goods; as, when under the pretence of hiring, he had a felonious intention at the time of the pretended contract, to convert the property to his own use. The court of criminal sessions for the city and county of Philadelphia have decided that in the case of a man who found a quantity of lumber, commonly called a raft, floating on the river Delaware and fastened to the shore, and he sold it to another person, at so low a price as to enable the purchaser to remove it, and did no other act himself, but afterwards the purchaser removed it, that this was a taking by the thief, and he was actually convicted and sentenced to two years imprisonment in the penitentiary. Hill's case, Aug. Sessions, 1838. It cannot be doubted, says Pothier, Contr. de Vente, n. 271, that by selling and delivering a thing which he knows does not belong to him, the party is guilty of theft. When property is left through inadvertence with a person and he conceals it *animo furandi*, he is guilty of a felonious taking and may be convicted of larceny. 17 Wend. 460. But when the owner parts with the property willingly, under an agreement that he is never to receive the same identical property, the taking is not felonious; as when a person delivered to the defendant a sovereign to get it changed, and the defendant never returned either with the sovereign or the change, this was not larceny. 9 C. & P. 741. See 1 Moody, C. C. 179; Id. 185; 1 Hill. R. 94; 2 Bos. & P. 508; 2 East, P. C. 554; 1 Hawk. c. 33, s. 8; 1 Hale, P. C. 507; 3 Inst. 408; and *Carying away; Invito Domino; Larceny; Robbery.*

The wrongful taking of the personal property of another, when in his actual possession, or such taking of the goods of another who has the right of immediate possession, subject the tort feasor to an action. For example, such wrongful taking will be evidence of a conversion, and an action of trover may be maintained.

2 Saund. 47 k; 3 Willes, 55; and trespass is a concurrent remedy in such a case. 3 Wils. 336. Replevin may be supported by the unlawful taking of a personal chattel. 1 Chit. Pl. 158.

TALE, *comm. law*, a denomination of money in China. In the computation of the ad valorem duty on goods, &c. it is computed at one dollar and forty-eight cents. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide *Foreign Coins*.

TALES. *Eng. law*. The name of a book kept in the king's bench office, of such jurymen as were of the tales. See *Tales de circumstantibus*.

TALES DE CIRCUMSTANTIBUS, *practice*, such persons as are standing round. Whenever the panel of the jury is exhausted, the court order that the jurors wanted shall be selected from among the by-standers, which order bears the name of *tales de circumstantibus*. Bac. Ab. Juries, C. The judiciary act of Sept. 24, 1789, 1 Story, L. U. S. 64, provides, § 29, that when from challenges, or otherwise, there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return jurymen de talibus circumstantibus sufficient to complete the panel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the court shall appoint.

TALLIES, *evidence*, are the parts of a piece of wood cut in two, which persons use to denote the quantity of goods supplied by one to the other. Poth. Obl. pt. 4, c. 1, art. 2, § 7.

TALZIE, HEIR IN. *Scotch law*. Heirs of talzie or tailzie, are heirs of estates entailed. 1 Bell's Com. 47.

TARDE VENIT, *practice*, the name of a return made by the sheriff to a writ, when it *came into his hands too late* to be executed before the return day. The sheriff is required to show that he has yielded obedience to the writ, or give a good excuse for his omission; and he may say, quod breve adeo tarde venit quod exequi non possunt. It is usual to return the writ with an indorsement of *tarde venit*. Com. Dig. Retorn, D 1.

TARE, *weights*, is an allowance in the purchase and sale of merchandise, for the weight of the box, bag, or cask, or other thing, in which the goods are packed. It also is an allowance made for any defect, waste, or diminution in the weight, quality or quantity of goods. It differs from *tret*, (q. v.)

TARIFF, customs, duties, toll or tribute payable upon merchandise to the general government, is called tariff; the rate of customs, &c. also bears this name, and the list of articles liable to duties is also called the tariff. For the tariff of duties imposed on the importation of foreign merchandise into the United States, see 3 Story's L. U. S. 1587, 1647, 1633, 1705, 1706, 1708, 1740, 1942.

TAVERN, a place of entertainment, a house kept up for the accommodation of strangers. These are regulated by various local laws. For the liabilities of tavern keepers, vide Story on Bailm. art. 7; 2 Kent, Com. 458; 12 Mod. 487; Jones's Bailm. 94; 1 Bl. Com. 430; 1 Roll. Ab. 3, F; Bac. Ab. Inn, &c.; and the articles *Inn; Inn-keeper*.

TAXES. This term in its most extended sense includes all contributions imposed by the government upon individuals for the service of the state, by whatever name they are called or known, whether by the name of tribute, tithe, talliage, impost, duty, gabel, custom, subsidy, aid, supply, excise, or other name. The 8th section of art. 1, Const. U. S. provides, that "congress shall have power to

lay and collect taxes, duties, imposts, and excises, to pay," &c. "But all duties, imposts and excises shall be uniform throughout the United States." In the sense above mentioned, taxes are usually divided into two great classes, those which are direct, and those which are indirect. Under the former denomination are included taxes on land or real property, and under the latter taxes on articles of consumption. 5 Wheat. R. 317. Congress have plenary power over every species of taxable property, except exports. But there are two rules prescribed for their government, the rule of uniformity and the rule of apportionment. Three kinds of taxes, namely, duties, imposts and excises are to be laid by the first rule; and capitation and other direct taxes, by the second rule. Should there be any other species of taxes, not direct, and not included within the words duties, imposts or customs, they might be laid by the rule of uniformity or not, as congress should think proper and reasonable. Ib. The word taxes is, in a more confined sense, sometimes applied in contradistinction to duties, imposts and excises. Vide, generally, Story on the Const. ch. 14; 1 Kent. Com. 254; 3 Dall. 171; 1 Tuck. Black. App. 232; 1 Black. Com. 308; The Federalist, No. 21, 36; Woodf. Landl. and Ten. 197, 254.

TAXING COSTS, *practice*, is the act by which it is ascertained to what costs a party is entitled. It is a rule that the jury must assess the damages and costs separately, so that it may appear to the court that the costs were not considered in the damages; and when the jury give costs in an amount insufficient to answer the costs of the suit, the plaintiff may pray that the officer may tax the costs, and such taxation is inserted in the judgment: this is said to be done ex assensu of the plaintiff, because at his prayer. Bac. Ab. Costs, K. The costs are taxed, in the first instance, by the prothonotary or clerk of the court. See 2 Wend. R. 244; 1 Cowen, R. 591; 7 Cowen, R. 412; 2 Yerg. R. 245, 310; 6 Yerg. R. 412; Harp. R. 326; 1 Pick. R. 211; 10 Mass. R. 26; 16 Mass. R. 370; and a bill of costs having been once submitted to such an officer for taxation, it cannot be withdrawn from him and referred to another. 2 Wend. R. 252.

TECHNICAL. What properly belongs to an art. In the construction of contracts, it is a general rule that technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to which it relates, unless they have manifestly been understood in another sense by the parties. 2 B. & P. 164; 6 T. R. 320; 3 Stark. Ev. 1036, and the article *Construction*.

The law, like other professions, has a technical language. "When a mechanic speaks to me of the instruments and operations of his trade," says Mr. Wynne, Eunom. Dial. 2, s. 5, "I shall be as unlikely to comprehend him, as he would me in the language of my profession, though we both of us spoke English all the while. Is it wonderful then, if in systems of law, and especially among the hasty recruits of commentators, you meet (to use Lord Coke's expression) with a whole army of words that cannot defend themselves in a grammatical war? Technical language, in all cases, is formed from the most intimate knowledge of any art. One word stands for a great many, as it is always to be resolved into many ideas by definitions. It is, therefore, unintelligible, because it is concise, and it is useful for the same reason." Vide *Language*.

TEINDS, in the Scotch law, are that liquid proportion of the rents or

goods of the people, which is due to churchmen for performing divine service, or exercising the other spiritual functions proper to their several offices. Ersk. Pr. L. Scot. B. 2, t. 10, s. 2. See *Tithes*.

TELLER, an officer in a bank or other institution. He is said to take that name from *tallier*, or one who kept a tally, because it is his duty to keep the accounts between the bank or other institution and its customers, or to make their accounts tally.

TENANCY or TENANTCY, the state or condition of a tenant; the estate held by a tenant, as a tenant at will, a tenancy for years.

TENANT, *estates*. One who holds or possesses lands or tenements by any kind of title, either in fee, for life, for years, or at will.

TENANT IN COMMON, *estates*. Tenants in common are such as hold by several and distinct titles, but by unity of possession. 2 Bl. Com. 191. See *Estate in common*. 7 Cruise, Dig. Ind. tit. Tenancy in Common; Bac. Abr. Joint-tenants and Tenants in Common; Com. Dig. Abatement, E 10; F 6; Chancery, 3 V 4; Devise, N 8; Estates, K 8, K 2; Supp. to Ves. Jr. vol. 1, 272, 315; 1 Vern. R. 353; Arch. Civ. Pl. 53, 73. Tenants in common may have title as such to real or personal property; they may be tenants of a house, land, a horse, a ship, and the like. Tenants in common are bound to account to each other; but they are bound to account only for the value of the property as it was when they entered, and not for any improvement or labour they put upon it, at their separate expense. 1 McMull. R. 298. Vide *Estates in common*; and 4 Kent, Com. 363.

TENANT BY THE CURTESY, *in estates*, is where a man marries a woman seised of an estate of inheritance, that is, of lands and tenements in fee simple or fee tail; and has by her issue born alive, which was capable of inheriting her estate. In this case he shall, on the death of the wife, hold the lands for life, as tenant by the curtesy. Co. Litt. 29, a; 2 Lilly's Reg. 556; 2 Bl. Com. 126. See *Curtesy*.

TENANT IN DOWER, *estates*, is where the husband of a woman is seised of an estate of inheritance, and dies; in this case, the wife shall have the third part of the lands and tenements of which he was seised at any time during the coverture, to hold to herself during the term of her natural life. 2 Bl. Com. 129; Com. Dig. Dower, A 1. See *Dower*.

TENANTS, JOINT, *estates*. Jointenants, or rather joint-tenants, are such as hold lands or tenements by joint-tenancy. See *Estate in joint-tenancy*. 7 Cruise, Dig. Ind. tit. Joint-tenancy; Bac. Abr. Joint-tenants and tenants in common; Com. Dig. Estates, K 1; Chancery, 3 V 1; Devise, N 7, N 8; 2 Saund. Ind. Joint-tenants; Preston on Estates; 2 Bl. Com. 179.

TENANT FOR LIFE, *estates*, is he to whom lands or tenements are granted, or to which he derives by operation of law a title for the term of his own life, or for that of any other person, or for more lives than one. He is called tenant for life, except when he holds the estate by the life of another, when he is called tenant *per auter vie*. 2 Bl. Com. 84; Com. Dig. Estates, E 1; Bac. Ab. Estates, B. See *Estate for life*; 2 Lilly's Reg. 557.

TENANT TO THE PRÆCIPE, *practice*, is he against whom the writ of præcipe is brought, in suing out a common recovery, and must be the tenant or seised of the freehold. 2 Bl. Com. 362.

TENANT IN SEVERALTY, *in estates*, is he who holds lands and tenements in his own right only, without any other person being join-

ed or connected with him in point of interest, during his estate therein. 2 Bl. Com. 179.

TENANT AT SUFFERANCE, *estates*, is he who comes into possession by a lawful demise, and after his term is ended, continues the possession wrongfully, and holds over. Co. Litt. 57, b; 2 Leo. 46; 3 Leo. 153. See 1 Johns. Cas. 123; 5 Johns. R. 128; 4 Johns. R. 150; Ib. 312.

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT, *estates*, is where one is tenant in special tail, and a person from whose body the issue was to spring, dies without issue; or having left issue, that issue becomes extinct; in these cases the survivor becomes tenant in tail after possibility extinct. 2 B. Com. 124; and vide *Estate tail after possibility extinct.*

TENANT AT WILL, *estates*, is when lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which the lessee is in possession. In this case the lessee is called tenant at will. Every lease at will must be at the will of both parties. Co. Litt. 55; 2 Lilly's Reg. 555; 2 Bl. Com. 145. See Com. Dig. Estates, H 1; 12 Mass. 325; 1 Johns. Cas. 33; 2 Caines's C. Err. 314; 2 Caines's R. 169; 17 Mass. R. 282; 9 Johns. R. 331; 13 Johns. R. 235. Such a tenant may be ejected by the landlord at any time. 1 Watts & Serg. 90.

TENANT FROM YEAR TO YEAR, *estates*, is he to whom another has let lands or tenements without limiting any certain or determinate estate; especially if an annual rent be reserved. Com. Dig. Estates, H 1. The distinction made between a tenant from year to year and a tenant for years, is rather a distinction in words than in substance. Woodf. Landl. & Ten. 163.

TENANT FOR YEARS, *estates*, is he to whom another has let lands, tenements and hereditaments for a term of certain years, or for a lesser definite period of time, and the lessee enters thereon. 2 Bl. Com. 140; Com. Dig. Estates by grant, G. A tenant for years has incident to and inseparable from his estate, unless by special agreement, the same estovers to which a tenant for life is entitled. See *Estate for life.* With regard to the crops or emblements, the tenant for years is not in general entitled to them after the expiration of his term. 2 Bl. Com. 144. But in Pennsylvania the tenant is entitled to the way-going crop. 2 Binn. 487; 5 Binn. 285, 289; 2 S. & R. 14. See 5 B. & A. 768; this Dict. *Distress; Estate for years; Lease; Lessee; Notice to quit; Underlease.*

TENDER, *contracts, pleadings.* A tender is an offer to do or perform an act which the party offering is bound to perform to the party to whom the offer is made. To make a valid tender the following requisites are necessary:

1. It must be made by a person capable of paying; for if it be made by a stranger without the consent of the debtor, it will be insufficient. Cro. Eliz. 48, 132; 2 M. & S. 86; Co. Litt. 206.

2. It must be made to the creditor having capacity to receive it, or to his authorised agent. 1 Campb. 477; Dougl. 632; 5 Taunt. 307; S. C. 1 Marsh. 55; 6 Esp. 95; 3 T. R. 683; 14 Serg. & Rawle, 307; 1 Nev. & M. 398; S. C. 28 E. C. L. R. 324; 4 B. & C. 29; S. C. 10 E. C. L. R. 272; 3 C. & P. 453; S. C. 14 E. C. L. R. 386; 1 M. & W. 310; M. & M. 238; 1 Esp. R. 349; 1 C. & P. 365.

3. The whole sum due must be offered, in the lawful coin of the United States, or foreign coin made

current by law; and the offer must be unqualified by any circumstance whatever. 2 T. R. 305; 1 Campb. 131; 3 Campb. 70; 6 Taunt. 336; 3 Esp. C. 91; Stark. Ev. pt. 4, page 1392, n. (g); 4 Campb. 156; 2 Campb. 21; 1 M. & W. 310. But a tender in bank notes if not objected to on that account will be good. 3 T. R. 554; 2 B. & P. 526; 1 Leigh's N. P. c. 1, s. 20. But in such case, the amount tendered must be what is due exactly, for a tender of a five dollar note, demanding change, would not be a good tender of four dollars. 3 Campb. R. 70; 6 Taunt. R. 336; 2 Esp. R. 710; 2 D. & R. 305; S. C. 16 E. C. L. R. 87. And a tender was held good when made by a check contained in a letter, requesting a receipt in return, which the plaintiff sent back demanding a larger sum without objecting to the nature of the tender. 8 D. P. C. 442. When stock is to be tendered, every thing must be done by the debtor to enable him to transfer it, but it is not absolutely requisite that it should be transferred. Str. 504, 533, 579.

4. If a term had been stipulated in favour of a creditor, it must be expired: the offer should be made at the time agreed upon for the performance of the contract; if made afterwards it only goes in mitigation of damages, provided it be made before suit brought. 7 Taunt. 487; 8 East, R. 168; 5 Taunt. 240; 1 Saund. 33 a, note 2.

5. The condition on which the debt was contracted must be fulfilled.

6. The tender must be made at the place agreed upon for the payment, or, if there be no place appointed for that purpose, then to the creditor or his authorised agent. Bac. Ab. h. t. (c.)

Vide, generally, 20 Vin. Ab. 177; Bac. Ab. h. t.; 1 Sell. 314; Com. Dig. Action upon the case upon Assumpsit, H 8—Condition, L 4—Pleader, 2 G 2—2 W 28, 49—3 K 23—3 M 36; Chipm. on Contr. 31, 74; Ayl. Pand. B. 4, t. 29.

TENEMENT, *estates*, in its most extensive signification comprehends every thing which may be *holden*, provided it be of a *permanent* nature; and not only lands and inheritances which are holden, but also rents and profits *a prendre* of which a man has any franktenement, and of which he may be seised *ut de libero tenemento*, are included under this term. Co. Litt. 6 a; 1 Tho. Co. Litt. 219; Perk. s. 114; 2 Bl. Com. 17. In its more confined and vulgar acceptation, it means a house or building. Ibid. and 1 Prest. on Est. 8. Vide 4 Bing. 293; S. C. 11 Engl. C. L. Rep. 207; 1 T. R. 358; 3 T. R. 772; 3 East, R. 113; 5 East, R. 239; Burn's Just. Poor, 525 to 541; 1 B. & Adolph. 161; S. C. 20 Engl. C. L. Rep. 368; Com. Dig. Grant, E 2; Trespass, A 2; Wood's Inst. 120; Babington on Auctions, 211, 212.

TENENDAS, *Scotch law*. The name of a clause in charters of heritable rights which derives its name from its first words *tenandas prædictas terras*, and expresses the particular tenure by which the lands are to be holden. Ersk. Prin. B. 2, t. 3, n. 10.

TENENDUM, *conveyancing*.—This is a Latin word which signifies *to hold*. It was formerly that part of a deed which was used to express the tenure by which the estate granted was holden; but since all freehold tenures were converted into socage, the tenendum is of no further use even in England, and is therefore joined to the *habendum* in this manner, "to have and to hold." The words "to hold" have now no meaning in our deeds. 2 Bl. Com. 298. Vide *Habendum*.

TENERI, *contracts*. That part of a bond where the obligor declares

himself to be held and firmly bound to the obligee, his heirs, executors, administrators and assigns, is called the *teneri*. 3 Call, 350.

TENNESSEE. The name of one of the new states of the United States of America. This state was admitted into the Union by virtue of the "act for the admission of the state of Tennessee into the Union," approved June 1, 1796, 1 Story's L. U. S. 450, which recites and enacts as follows:

Whereas, by the acceptance of the deed of cession of the state of North Carolina, congress are bound to lay out, into one or more states, the territory thereby ceded to the U. States:

§ 1. *Be it enacted, &c.* That the whole of the territory ceded to the United States by the state of North Carolina, shall be one state, and the same is hereby declared to be one of the United States of America, on an equal footing with the original states in all respects whatever, by the name and title of the state of Tennessee. That, until the next general census, the said state of Tennessee shall be entitled to one representative in the house of representatives of the United States; and, in all other respects, as far as they may be applicable, the laws of the United States shall extend to, and have force in, the state of Tennessee, in the same manner as if that state had originally been one of the United States.

The constitution was adopted on the sixth day of February, 1796; and amended by a convention which sat at Nashville, on the 30th day of August, 1834. The powers of the government are divided into three distinct departments; the legislative, executive, and judicial. Art. 2, 1.

1st. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives, both dependent on the people.

1. The *senate* will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the length of time for which they are elected; and, the time of their election. 1. Every free white man of the age of twenty-one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote, six months next preceding the day of his election, shall be entitled to vote for members of the general assembly, and other civil officers, for the county and district in which he resides; provided, that no person shall be disqualified from voting on account of colour, who is now, by the laws of this state, a competent witness in a court of justice against a white man. Art. 4, sect. 1.—2. No person shall be a senator, unless he be a citizen of the United States, of the age of thirty years, and shall have resided three years in this state, and one year in the county or district, immediately preceding the election. Art. 2, s. 10. —3. The number of senators shall not exceed one-third of the number of representatives. Art. 2, s. 6.—4. Senators shall hold their office for the term of two years. Art. 2, s. 7. —5. Their election takes place on the first Thursday of August, 1835, and every second year thereafter. Art. 2, s. 7.

2. The *house of representatives* will be considered in the same order which has been observed in considering the senate. 1. The qualifications of the electors of representatives are the same as those of senators.— 2. To be elected a representative, the candidate must be a citizen of the United States, of the age of twenty-one years, and must have been a citizen of the state for three years, and a resident of the county he represents one year immediately preceding the election. Art. 2, s. 9.—

3. The number of representatives shall not exceed seventy-five, until the population of the state shall exceed one million and a half; and shall never thereafter exceed ninety-nine. Art. 2, s. 5.—4. They are elected for two years. Art. 2, s. 7. —5. The election is to be at the same time as that of senators. Art. 2, s. 7.

2d. The *supreme executive power* of this state is vested in a governor. Art. 3, s. 1.—1. He is chosen by the electors of the members of the general assembly. Art. 3, s. 2.—2. He shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a citizen of this state seven years next before his election. Id. sect. 3. He shall hold his office for two years, and until his successor shall be elected and qualified. He shall not be eligible more than six years in any term of eight. Id. sect. 4.—3. He shall be elected by the electors of the members of the general assembly, at the times and places where they respectively vote for the members thereof. Id. s. 2.—4. He shall be commander-in-chief of the army and navy of the state, and of the militia, except when they are called into the service of the United States; shall have the power to grant reprieves and pardons, except in cases of impeachment;—may convene the legislature on extraordinary occasions, by proclamation;—take care that the laws be faithfully executed;—from time to time give to the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient;—may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices. Id. s. 5 to 11.—5. He shall, at stated times, receive a compensation for his services, which shall not be increased nor diminished during the period for which he shall have been elected. Id. s. 7.—6. In case of the removal of the governor from office, or of his death or resignation, the duties of the office shall devolve on the speaker of the senate; and in case of a vacancy in the office of the latter, on the speaker of the house of representatives. Id. s. 12.

3d. The *judicial* power of the state, is vested, by the sixth article of the constitution, in one supreme court; in such inferior courts as the legislature shall, from time to time, ordain and establish, and the judges thereof; and in justices of the peace. The legislature may also vest such jurisdiction as may be deemed necessary in corporation courts.

1. The supreme court shall be composed of three judges; one of whom shall reside in each of the grand divisions of the state. The judges shall be thirty-five years of age, and shall be elected for the term of twelve years. The jurisdiction of the supreme court shall be appellate only, under such restrictions and regulations as may, from time to time, be prescribed by law: but it may possess such other jurisdiction as is now conferred by law on the present supreme court. The concurrence of two of the judges shall be necessary to a decision. Said courts shall be held at one place, and at one place only, in each of the three grand divisions of the state.

2. The judges of such inferior courts as the legislature may establish, shall be thirty-five years of age, and shall be elected for eight years. The jurisdiction of such inferior courts shall be regulated by law. The judges shall not charge juries with regard to matters of fact, but may state the testimony and declare the law. They shall have power in all civil cases to issue writs of *certiorari* to remove any cause or tran-

script thereof, from any inferior jurisdiction, into said court, on sufficient cause, supported by oath or affirmation.

3. Judges of the courts of law and equity are appointed by a joint vote of both houses of the general assembly; but courts may be established to be holden by justices of the peace.

4. The judges of the supreme court and inferior courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased nor diminished, during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States.

TENOR, *pleading*. This word applied to an instrument in pleading, signifies an exact copy; it differs from purport, (q. v.); 2 Phil. Ev. 99; 2 Russ. on Cr. 365; 1 Chit. Cr. Law, 235; 1 East, R. 180, and the cases cited in the notes. In chancery practice by tenor is understood a certified copy of records of other courts removed into chancery by certiorari. Gresl. Ev. 309.

TENURE, *estates*, is the manner in which lands or tenements are holden. According to the English law, all lands are held mediately or immediately from the king, as lord paramount and supreme proprietor of all the lands in the kingdom. Co. Litt. 1 b, 65 a; 2 Bl. Com. 105. The idea of tenure pervades, to a considerable degree, the law of real property in the several states; the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language, his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 289, 290. In the states formed out of the North Western Territory, it seems that the doctrine of tenures is not in force, and that real estate is owned by an absolute and allodial title. This is owing to the wise provisions on this subject contained in the celebrated Ordinance of 1787. Am. Jur. No. 21, p. 94, 5. In New York, 1 Rev. St. 718; Pennsylvania, 5 Rawle, R. 112; Connecticut, 1 Rev. L. 348; and Michigan, Mich. L. 393, feudal tenures have been abolished, and lands are held by allodial titles. South Carolina has adopted the statute, 12 C. 2, c. 24, which established in England the tenure of free and common socage. 1 Brev. Dig. 136. Vide Wright on Tenures; Bro. h. t.; Treatises of Feuds and Tenures by Knight's service; 20 Vin. Ab. 201; Com. Dig. h. t.; Bac. Ab. h. t.; Thom. Co. Litt. Index, h. t.; Sulliv. Lect. Index, h. t.

TENSE. A term used in grammar to denote the distinction of time. The acts of a court of justice ought to be in the present tense; as, "præceptum est," not "præceptum fuit;" but the acts of the party may be in the preterperfect tense, as "venit et protulit hic in curiâ quandam querelam suam;" and the continuances are in the preterperfect tense; as, "venerunt," not "veniunt." 1 Mod. 81. The contract of marriage should be made in language in the present tense. 6 Binn. Rep. 405. Vide 1 Saund. 393, n. 1.

TERCE, *in the law of Scotland*, is a life-rent competent by law to widows who have not accepted of special provisions in the third of the heritable subjects in which the husband died infeft. The terce takes place only where the marriage has subsisted for a year and day, or where a child has been born alive of it. No terce is due out of lands in which the husband was not infeft, unless in case of a fraudulent omission. Cr. 423, § 27; St. 2, 6, 16. The terce is not limited to lands, but

extends to teinds, and to servitudes and other burdens affecting lands. Ersk. Pr. L. Scot. B. 2, t. 9, s. 26, 27; Burge on the Confl. of Laws, 429 to 435.

TERM, *construction*. Word; expression; speech. Terms or words are characters by which we announce our sentiments, and make known to others things with which we are acquainted. These must be properly construed or interpreted in order to understand the parties using them. Vide *Construction; Interpretation; Word*.

TERM, *in contracts*. This word is used in the civil law to denote the space of time granted to the debtor for discharging his obligation; there are express terms resulting from the positive stipulations of the agreement, as, where one undertakes to pay a certain sum on a certain day; and also terms which tacitly result from the nature of the things which are the object of the engagement, or from the place where the act is agreed to be done. For instance, if a builder engage to construct a house for me, I must allow a reasonable time for fulfilling his engagement. A term is either of right or of grace; when it makes part of the agreement and is expressly or tacitly included in it, it is of right; when it is not part of the agreement, it is of grace; as if it is not afterwards granted by the judge at the requisition of the debtor. Poth. on Oblig. P. 2, c. 3, art. 3.

TERM, *estates*, signifies the limitation of an estate, as a term for years, for life, and the like. The word *term* does not merely signify the time specified in the lease, but the estate also and interest that passes by that lease; and therefore the *term* may expire during the continuance of the time, as by surrender, forfeiture and the like. 2 Bl. Com. 145.

TERM, *practice*. The space of time during which a court holds a session; sometimes the term is a monthly, at others it is a quarterly period, according to the constitution of the court. The whole term is considered as but one day, so that the judges may at any time during the term, revise their judgments. In the computation of the term all adjournments are to be included. 9 Watts, R. 200. Courts are presumed to know judicially when their terms are required to be held by public law. 4 Dev. R. 427. See, generally, Peck, R. 82; 6 Yerg. R. 395; 7 Yerg. R. 365; 6 Rand. R. 704; 2 Cowen, R. 445; 1 Cowen, R. 58; 5 Binn. R. 389; 4 S. & R. 507; 5 Mass. R. 195, 435.

TERM ATTENDANT ON THE INHERITANCE. This phrase is used in the English courts of equity, to signify that when a term has been created for a particular purpose, which is satisfied, and the instrument by which it is created does not provide for a cesser of the term, on the happening of the event, the benefit in it becomes subject to the rules of equity, and must be moulded and disposed of according to the equitable interests of all persons having claims upon the inheritance; and, when the purposes of the trust are satisfied, the ownership of the term belongs in equity, to the owner of the inheritance, whether declared by the original conveyance to attend it or not. Terms attendant on the inheritance are but little known in the United States. 1 Hill. Ab. 243.

TERM PROBATORY. Vide *Probatory term*.

TERM FOR YEARS. An *estate for years*, (q. v.) and the *time* during which such estate is to be held, are each called a term; hence the term may expire before the time, as by a surrender. Co. Litt. 45. If, for example, a conveyance be made to Peter for three years, and after the

expiration of the said *term*, to Paul for six, and Peter surrenders or forfeits his term after one year, Paul's estate takes effect immediately; if, on the contrary, the language had been after the expiration of the said time, or of the said three years, the result would have been different, and Paul's estate would not have taken effect till the end of such time, notwithstanding the forfeiture or surrender. Vide *Estate for years; Leases.*

TERMOR. One who holds lands and tenements for a term of years or life. Litt. sect. 100.

TERRE-TENANT, or improperly, *tertenant*. One who has the actual possession of land; for example, the lessee of land, when in actual possession, is the terre-tenant, and not the lessor. But it has been holden that mere occupiers of land are not terre-tenants, and those only who own the fee are such. Vide 16 Serg. & Rawle, 432; 3 Penn. 229; 2 Saund. 7, n. 4.

TERRIER, *Engl. law*. A roll, catalogue or survey of lands, belonging either to a single person or a town, in which are stated the quantity of acres, the names of the tenants, and the like. By the ecclesiastical law an inquiry is directed to be made from time to time, of the temporal rights of the clergyman of every parish, and to be returned into the registry of the bishop; this return is denominated a terrier. 1 Phil. & Am. Ev. 602, 603.

TERRITORIAL COURT. Vide *Courts of the United States.*

TERRITORY, is a part of a country, separated from the rest, and subject to a particular jurisdiction. In the sense it is used in the constitution of the United States, it signifies a portion of the country subject to and belonging to the United States, which is not within the boundary of any of them. The constitution of the United States, art. 4, s. 3, provides, that "the congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States; and nothing in this constitution shall be construed, so as to preclude the claims of the United States or of any state." Congress possesses the power to erect territorial governments within the territory of the United States; the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory, as far as it may be affected by stipulations in the cessions, or by the ordinance of 1787, 3 Story's L. U. S. 2073, under which any part of it has been settled. Story on the Const. § 1322; Rawle on the Const. 237; 1 Kent's Com. 243, 359; 1 Pet. S. C. Rep. 511, 542, 517. The present organized territories of the United States, are Florida, (q. v.); Iowa, (q. v.) and Wisconsin, (q. v.) Vide *Courts of the United States.*

TERROR. That state of the mind which arises from the event or phenomenon that may serve as a prognostic of some catastrophe; affright from apparent danger. One of the constituents of the offence of riot is that the acts of the persons engaged in it should be to the terror of the people, as a show of arms, threatening speeches, or turbulent gestures; but it is not requisite, in order to constitute this crime, that personal violence should be committed. 3 Campb. R. 369; 1 Hawk. P. C. c. 65, s. 5; 4 C. & P. 373; S. C. 19 E. C. L. R. 425; 4 C. & P. 538; S. C. 19 E. C. L. R. 516. Vide Rolle's R. 109; Dalt. Just. c. 186; 19 Vin. Ab. Riots (A) 8. To constitute a forcible entry, 1 Russ. Cr. 287, the act must be accompanied with circumstances of violence or terror; and in order to make the crime of robbery, there must be violence or putting in

fear, but both these circumstances need not concur. 4 Binn. R. 379. Vide *Riot; Robbery; Putting in fear.*

TEST. Vide *Religious Test.*

TESTAMENT, a term used in the civil law, is the appointment of an executor or testamentary heir, according to the formalities prescribed by law. Domat, Liv. 1, tit. 1, s. 1.

At first there were only two sorts of testaments among the Romans; that called *calatis comitiis*, and another called *in procinctu.* (See below.) In the course of time these two sorts of testament having become obsolete, a third form was introduced, called *per æs et libram*, which was a fictitious sale of the inheritance to the heir apparent. The inconveniences which were experienced from these fictitious sales again changed the form of testaments; and the prætor introduced another which required the seal of seven witnesses. The emperors having increased the solemnities of these testaments, they were called written or solemn testaments, to distinguish them from nuncupative testaments which could be made without writing. Afterwards military testaments were introduced in favour of soldiers actually engaged in military service. Vide article *Will.*

TESTAMENT, COMMON, a term used in the civil law. A common testament is one which is made jointly by several persons. Such testaments are forbidden in Louisiana, Civ. Code of Lo. art. 1565, and by the laws of France, Code Civ. 968, in the same words, namely, "A testament cannot be made by the same act, by two or more persons, either for the benefit of a third person, or under the title of a reciprocal or mutual disposition."

TESTAMENT, CIVIL, a term used in the civil law. A civil testament is one made according to all the forms prescribed by law, in contradistinction to a military testament, in making which some of the forms may be dispensed with. Civil testaments are more ancient than military ones; the former were in use during the time of Romulus, the latter were introduced during the time of Coriolanus. See Hist. de la Jurisp. Rom. de M. Terrason, p. 119.

TESTAMENT CALATIS COMITIIS, or made in the comitia, that is, the assembly of the Roman people, was an ancient manner of making wills used in times of peace among the Romans. The comitia met twice a year for this purpose. Those who wished to make such testaments caused to be convoked the assembly of the people by these words, calatis comitiis. None could make such wills that were not entitled to be at the assemblies of the people. This form of testament was repealed by the law of the Twelve Tables.

TESTAMENT, OLOGRAPHIC, a term used in the civil law. The olographic testament is that which is written wholly by the testator himself. In order to be valid, it must be entirely written, dated, and signed by the hand of the testator. It is subject to no other form. See Civil Code of Lo. art. 1581.

TESTAMENT AB IRATO, a term used in the civil law. A testament *ab irato*, is that made in a gust of passion or hatred against the presumptive heir, rather than from a desire to benefit the devisee. When the facts of unreasonable anger are proved, the will is annulled as unjust, and as not having been freely made. Vide *Ab irato.*

TESTAMENT, NUNCUPATIVE, a term used in the civil law. A nuncupative testament was one made verbally, in the presence of seven witnesses; it was not necessary that it should have been in

writing; the proof of it was by parol evidence.

In Louisiana, testaments, whether nuncupative or mystic, must be drawn up in writing, either by the testator himself, or by some other person under his dictation. Civil Code of Lo. art. 1568. The custom of making verbal testaments, that is to say, resulting from the mere deposition of witnesses, who were present when the testator made known to them his will, without his having committed it, or caused it to be committed to writing, is abrogated. Ib. art. 1569. Nuncupative testaments may be made by public act, or by act under private signature. Ib. art. 1570. See *Will, nuncupative.*

TESTAMENT, MYSTIC, *a term used in the civil law.* A mystic testament is also called a solemn testament, because it requires more formality than a nuncupative testament; it is a form of making a will, which consists principally in enclosing it in an envelope and sealing it in the presence of witnesses.

This kind of testament is used in Louisiana. The following are the provisions of the Civil Code of that state on the subject, namely: the mystic or secret testament, otherwise called the close testament, is made in the following manner: The testator must sign his dispositions, whether he has written them himself, or has caused them to be written by another person. The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and to seven witnesses, or he shall cause it to be closed and sealed in their presence; then he shall declare to the notary, in the presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Art. 1577. 5 M. R. 182. All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the testament, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof, without its being necessary, in that case, to increase the number of witnesses. Art. 1578. Those who know not how, or are not able to write, and those who know not how or are not able to sign their names, cannot make dispositions in the form of the mystic will. Art. 1579. If any one of the witnesses to the act of superscription knows not how to sign, express mention shall be made thereof. In all cases the act must be signed by at least two witnesses. Art. 1580.

TESTATE, one who dies having made a testament; a testator. This word is used in this sense, in the act of the legislature of Pennsylvania, entitled "An act relative to dower and for other purposes." Sect. 2. 5 Sm. Laws, 257.

TESTATOR. One who has made a testament or will. In general all persons may be testators. But to this rule there are various exceptions. First, persons who are deprived of understanding cannot make wills; idiots, lunatics and infants, are among this classs. Secondly, persons who have understanding, but being under the power of others, cannot freely exercise their will; and this the law presumes to be the case with a married woman, and, therefore, she cannot make a will without the express consent of her husband to the par-

ticular will. When a woman makes a will under some general agreement on the part of the husband that she shall make a will, the instrument is not properly a will, but a writing in the nature of a will or testament. Thirdly, persons who are deprived of their free will cannot make a testament; as, a person in duress. 2 Bl. Com. 497. See *Devisor; Duress; Feme covert; Idiot; Influence; Parties to Contracts; Testament; Wife; Will.*

TESTATUM, *practice*, is the name of a writ which is issued by the court of one county, to the sheriff of another county, in the same state, when the defendant cannot be found in the county where the court is located; for example, after a judgment has been obtained, and a *ca. sa.* has been issued, which has been returned *non est inventus*, a *testatum ca. sa.* may be issued by the sheriff of the county where the defendant is. Vide 20 Vin. Ab. 259; 7 Com. Dig. 424.

TESTE, *practice*. The teste of a writ is the concluding clause, commencing with the word *witness*, &c. The act of congress of May 8, 1792, 1 Story's Laws U. S. 257, directs that all writs and process issuing from the supreme or a circuit court, shall bear test of the chief justice of the supreme court, or if that office be vacant, of the associate justice next in precedence; and that all writs or process issuing from a district court, shall bear test of the judge of such court, or if the said office be vacant, of the clerk thereof. Vide Serg. Const. Law, Index, h. t.; 20 Vin. Ab. 262; Steph. Plead. 25.

TESTIMONIAL PROOF, *civ. law*. This word is used in the same sense we use *parol evidence*, and in contradistinction to *literal proof*, which is written evidence.

TESTIMONY, *evidence*, the statement made by a witness under oath or affirmation. Vide *Bill to perpetuate testimony.*

TESTMOIGNE. This is an old and barbarous French word signifying in the old books, evidence. Com. Dig. h. t.

THEFT, *crimes*. This word is sometimes used as synonymous with *larceny*, (q. v.) but it is not so technical. Ayliffe's Pand. 581; 2 Swift's Dig. 309. In the Scotch law, this is a proper and technical word, and signifies the secret and felonious abstraction of the property of another for sake of lucre, without his consent. Alison, Princ. Cr. Law of Scotl. 250.

THEFT-BOTE. The act of receiving a man's goods from the thief, after they had been stolen by him, with the intent that he shall escape punishment. This is an offence punishable at common law by fine and imprisonment. Hale's P. C. 130. Vide *Compounding a felony.*

THEOCRACY. A species of government which claims to be immediately directed by God. La religion qui, dans l'antiquité, s'associa souvent au despotisme, pour regner par son bras on à son ombrage, a quelquefois tenté de regner seule. C'est ce qu'elle appelait le regne de Dieu, la *théocratie*. Matter, De l'influence des Mœurs sur les lois, et de l'influence des Lois sur les mœurs, 189.

THIEF, *crimes*. One who has been guilty of larceny or theft.

THING ADJUDGED, *res judicata*, (q. v.) is said of that which has been decided by a final judgment, by a tribunal of competent jurisdiction, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for the appealing has elapsed, or because it has been confirmed on the appeal. The Roman law agrees with ours, for it requires a final judgment or sentence before the decision acquires the force of the thing

adjudged. Dig. 42, 1; Code, 7, 52; Extravag. 2, 27.

THINGS. By this word is understood every object, except man, which may become an active subject of right. Code du Canton de Berne, art. 332. In this sense it is opposed, in the language of the law, to the word persons, (q. v.) Things by the common law, are divided into, 1, things *real*, which are such as are permanent, fixed and immovable, and which cannot be carried from place to place; they are usually said to consist in lands, tenements and hereditaments. 2 Bl. Com. 16; Co. Litt. 4 a to 6 b.—2. Things *personal*, include all sorts of things movable, which attend a man's person wherever he goes. Things personal include not only things movable, but also something more, the whole of which is generally comprehended under the name of chattels. Chattels are distinguished into two kinds, namely, chattels real and chattels personal. See *Chattel*.

It is proper to remark that sometimes it depends upon the destination of certain objects, whether they are to be considered personal or real property. See Dalloz, Dict. choses, art. 1, § 2. *Destination; Fixtures; Mill.*

Formerly, in England, a very low and contemptuous opinion was entertained of personal property, which was regarded as only a transient commodity. But of late years different ideas have been entertained of it; and the courts, both in that country, and in this, now regard a man's personal property in a light, nearly, if not quite equal, to his realty; and have adopted a more enlarged and less technical mode of considering the one than the other, frequently drawn from the rules which they found already established by the Roman law, wherever those rules appear to be well-grounded and apposite to the case in question, but principally from reason and convenience, adapted to the circumstances of the times. 2 Bl. Com. 385.

By the Roman or civil law, things are either *in patrimonio*, capable of being possessed by single persons exclusive of others; or *extra patrimonium*, incapable of being so possessed.

Things *in patrimonio* are divided into corporeal and incorporeal, and the corporeal again into movable and immovable.

Corporeal things are those which are visible and tangible, as lands, houses, horses, jewels, and the like; incorporeal are not the object of sensation, but are the creatures of the mind, being rights issuing out of a thing corporeal, or concerning or exercisable within the same; as, an obligation, a hypothecation, a servitude, and, in general, what consists only in a certain right. Domat, Lois Civ. Liv. Prel. t. 3, s. 2, § 3; Poth. Traité des Choses, *in princ.*

Corporeal things are either movable or immovable. The movable are those which have been separated from the earth, as felled trees, or gathered fruits, or stones dug out from quarries; or those which are naturally separated, as animals. Immovable things are those parts of the surface of the earth, in whatever manner they may be distinguished, either as buildings, woods, meadows, fields, or otherwise, and to whomsoever they may belong. Under the name of immovables is included every thing which adheres to the surface of the earth, either by its nature, as trees; or which has been erected by the hands of man, as houses, and other buildings, although by being separated, such things may become movables. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, § 5 & 6. See *Movables; Immovables.*

Things *extra patrimonium* are, 1,

common; 2, public; 3, res universatis; 4, res nullius.

1. Things common are the heavens, light, air, and the sea, which cannot be appropriated by any man or set of men, so as to deprive others from the use of them. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, § 1; § 1 Inst. de rer. div.; L. 2, § 1, ff. de rer. div.; Ayliffe, Pand. B. 2, t. 1, *in med.*

2. Things public, *res publicæ*, the property of which was in the state, and their use common to all the members of it, as navigable rivers, ways, bridges, harbours, banks, and the right of fishing.

3. *Res universatis*, or things belonging to cities or bodies politic. Such things belong to the corporation or body politic in respect of the *property* of them; but as to their *use*, they appertain to those persons that are of the corporation or body politic: such may be theatres, market-houses, and the like. They differ from things public, inasmuch as the latter belong to a nation. The lands or other revenue belonging to a corporation, do not fall under this class, but are *juris privati*.

4. *Res nullius*, or things which are not the property of any man or number of men, are principally those of divine right; they are of three sorts—things sacred, things religious and things sanct. Things sacred were those which were duly and publicly consecrated by the priests, as churches, their ornaments, &c. Things religious were those places which became so by burying in them a dead body, even though no consecration of these spots by a priest had taken place. Things sanct were those which by certain reverential awe arising from their nature, sometimes augmented by religious ceremonies, were guarded and defended from the injuries of men; such were the gates and walls of a city, offences against which were capitally punished. 1 Bro. Civ. Law, B. 2, c. 1, p. 172.

See, in general, Domat, Lois Civ. Liv. Prel. tit. 3; 1 Bro. Civ. Law, B. 2, c. 1; Poth. Traité des Choses; Ersk. Pr. Law Scot. B, 2, tit. 1; Toullier, Droit Français, Liv. 2, tit. 1; Ayliffe, Pand. B. 3, t. 1; Inst. 2, 1, 2; Dig. 1, 8.

THIRD PARTIES. This term includes all persons who are not parties to the contract, agreement or instrument of writing, by which their interest in the thing conveyed is sought to be affected. 1 N. S. 384. See also 2 L. R. 425; 6 M. R. 528. But it is difficult to give a very definite idea of *third persons*, for sometimes, those who are not parties to the contract, but who represent the rights of the original parties, as executors, are not to be considered third persons. See Duverg. tome 16, n. 34, 35, 36, et idem, tome 17, n. 190.

THIRLAGE, *Scotch law*. The name of a servitude, by which lands are astricted or thirled, to a particular mill, and the possessors bound to grind their grain there, for the payment of certain multures and sequels as the agreed price of grinding. Ersk. Prin. B. 2, t. 9, n. 12.

THREAD. A figurative expression used to signify the central line of a stream or water-course. Harg. Tracts, 5; 4 Mason's Rep. 397; Holt's R. 490. Vide *Filum aquæ; Island; Water-course; River*.

THREAT, *crim. law*, a menace of destruction or injury to the lives or property of those against whom it is made. Sending threatening letters to persons for the purpose of extorting money, is said to be a misdemeanor at common law. Hawk. B. 1. c. 53, s. 1; 2 Russ. on Cr. 575; 2 Chit. Cr. L. 841; 4 Bl. Com. 126. To be indictable, the threat must be of a nature calculated to overcome a firm and prudent man. The party

who makes a threat may be held to bail for his good behaviour. Vide Com. Dig. Battery, (D); 13 Vin. Ab. 357.

THREAT, *evidence*, menace. When a confession is obtained from a person accused of crime, in consequence of a threat, evidence of such confession cannot be received, because, being obtained by the torture of fear, it comes in so questionable a shape, that no credit ought to be given to it; 1 Leach, 263; this is the general principle, but what amounts to a threat is not so easily defined. It is proper to observe, however, that the threat must be made by a person having authority over the prisoner, or by another in the presence of such authorised person, and not dissented from by the latter. 8 C. & P. 733. Vide *Confession*, and the cases there cited.

THROAT, *med. jurisp.* The anterior part of the neck. Dungl. Med. Dict. h. t.; Coop. Dict. h. t.; 2 Good's Study of Med. 302; 1 Chit. Med. Jur. 97, n. The word *throat*, in an indictment which charged the defendant with murder, by "cutting the throat of the deceased," does not mean, and is not to be confined to that part of the neck which is scientifically called the throat, but signifies that which is commonly called the throat. 6 Carr. & Payne, 401; S. C. 25 Engl. Com. Law Rep. 458.

TICK, *contracts*. Credit; as, if a servant usually buy for the master upon tick, and the servant buy something without the master's order, yet if the master were trusted by the trader, he is liable. 1 Show. 95; 3 Keb. 625; 10 Mod. 111; 3 Esp. R. 214; 4 Esp. R. 174.

TIDE. The ebb and flow of the sea. Arms of the sea, bays, creeks, coves or rivers, where the tide ebbs and flows, are public, and all persons may use the same for the purposes of navigation and for fishing, unless restrained by law. To give these rights at common law, the tide must ebb and flow; the flowing of the waters of a lake into a river, and their reflowing, being not the flux and reflux of the tides, but mere occasional and rare instances of a swell in the lake, and a setting up of the waters into the river, and the subsiding of such swells, is not to be considered an ebb and flow of the tide, so as to constitute a river technically navigable. 20 John. R. 98. See 17 John. R. 195; 2 Conn. R. 481. In Pennsylvania, the common law principle that the flux and reflux of the tide, ascertain the character of the river has been rejected. 2 Binn. R. 475. Vide *Arm of the sea; Navigable river; Sea shore.*

TIE. When two persons receive an equal number of votes at an election, it is said there is a tie. In that case neither is elected. When the votes are given on any question to be decided by a deliberative assembly, and there is a tie, the question is lost. Vide *Majority*.

TIERCE, *measures*. A liquid measure containing the third part of a pipe, or forty-two gallons.

TIGNI IMMITENDI, *civil law*. The name of a servitude; it is the right of inserting a beam or timber from the wall of one house into that of a neighbouring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight. Dig. 8, 2, 36; Ibid. 8, 5, 14.

TIMBER TREES. According to Blackstone, oak, ash, elm, and such other trees as are commonly used for building, are considered timber. 2 Comm. 28. But it has been contended, *arguendo* that to make it timber, the trees must be felled and severed from the stock. 6 Mod. 23; Stark. on Slander, 79. Vide 12 Johns. R. 239; 2 Suppl. to Ves. jr.

TIME, *contracts, evidence, practice.* The measure of duration. It is divided into years, months, days, (q. v.) hours, minutes and seconds. It is also divided into day and night, (q. v.) Time is frequently of the essence of contracts and crimes, and sometimes it is altogether immaterial. Lapse of time alone is often presumptive evidence of facts which are otherwise unknown; an uninterrupted enjoyment of certain rights for twenty or twenty-one years, is evidence that the party enjoying them is legally entitled to them; after such a length of time, the law presumes payment of a bond or other specialty. 10 S. & R. 63, 383; 3 S. & R. 493; 6 Munf. R. 532; 2 Cranch, R. 180; 7 Wheat. R. 535; 2 W. C. C. R. 323; 4 John. R. 202; 7 John. R. 556. In the computation of time, it is laid down, generally, that where the computation is to be made from an act done, the day when such act was done is included. Dougl. 463. Sed vide 15 Ves. 248; 1 Ball & B. 196. In general, one day is taken inclusively and the other exclusively. 2 Browne, Rep. 18. Vide 2 Chitt. Bl. 140, n. (2); 2 Evans's Poth. 50; 13 Vin. Abr. 52, 499; 15 Vin. Ab. 554; 20 Vin. Ab. 266; Com. Dig. Temps; 1 Rop. Legacy, 518; 2 Suppl. to Ves. jr. 229; Graham's Pract. 185; 1 Fonbl. Equity, 430; Wright, R. 580; 7 John. R. 476; 1 Bailey, R. 89; Coxe, Rep. 363; 1 Marsh. Keny. Rep. 321; 3 Marsh. Keny. Rep. 448; 3 Bibb, R. 330; 6 Munf. R. 394.

TIME, *pleading.* The averment of time is generally necessary in pleading; the rules are different in different actions. 1. In *personal* actions, the pleadings must allege the time; that is, the day, month and year when each traversable fact occurred; and when there is occasion to mention a continuous act, the period of its duration ought to be shown. The necessity of laying a time extends to traversable facts only; time is generally considered immaterial, and any time may be assigned to a given fact. This option, however, is subject to certain restrictions. 1st. Time should be laid under a videlicit, or the party pleading it will be required to prove it strictly. 2d. The time laid should not be intrinsically impossible, or inconsistent with the fact to which it relates. 3d. There are some instances in which time forms a material point in the merits of the case; and, in these instances, if a traverse be taken, the time laid is of the substance of the issue, and must be strictly proved. With respect to all facts of this description, they must be truly stated, at the peril of a failure for variance; Cowp. 671; and here a videlicit will give no help. Id. 6 T. R. 463; 5 Taunt. 2; 4 Serg. & Rawle, 576; 7 Serg. & Rawle, 405. Where the time needs not to be truly stated, (as is generally the case,) it is subject to a rule of the same nature with one that applies to venues in transitory matters, namely, that the plea and subsequent pleadings should follow the day alleged in the writ or declaration; and if in these cases no time at all be laid, the omission is aided after verdict or judgment by confession or default, by operation of the statute of jeofails. But where, in the plea or subsequent pleadings, the time happens to be material, it must be alleged, and there the pleader may be allowed to depart from the day in the writ and declaration.—2. In *real* or *mixed* actions, there is no necessity for alleging any particular day in the declaration. 3 Bl. Com. App. No. 1, § 6; Lawes's Pl. App. 212; 3 Chit. Pl. 620–635; Cro. Jac. 311; Yelv. 182 a, note; 2 Chitt. Pl. 396, n. (r); Gould, Pl. c. 3, § 99, 100; Steph. Pl. 314; Com. Dig. Pleader, (C 19.)—3. In *crimi-*

nal pleadings, it is requisite, generally, to show both the day and the year on which the offence was committed; but the indictment will be good, if the day and year can be collected from the whole statement, though they be not expressly averred. Com. Dig. Indictm. (G 2); 5 Serg. & Rawle, 315. Although it is necessary that a day certain should be laid in the indictment, the prosecutor may give evidence of an offence committed on any other day, previous to the finding of the indictment. 5 Serg. & Rawle, 316; Arch. Cr. Pl. 95; 1 Phil. Evid. 203; 9 East, Rep. 157. This rule, however, does not authorise the laying of a day subsequent to the trial. Addis. R. 36.

TIPSTAFF. 1. An officer appointed by the marshal of the court of king's bench, to attend upon the judges, with a kind of rod or *staff tipped* with silver.—2. In the United States, the courts sometimes appoint an officer who is known by this name, whose duty it is to wait on the court and serve its process.

TITHES, in the English law, may be described to be a right to the tenth part of the produce of lands, the stocks upon lands, and the personal industry of the inhabitants. These tithes are raised for the support of the clergy. Fortunately, in the United States, the clergy can be supported by the zeal of the people for religion, and there are no tithes. Vide Cruise, Dig. tit. 22; Ayliffe's Parerg. 504.

TITHING, *Engl. law.* Formerly a district containing ten men with their families. In each tithing there was a tithingman whose duty it was to keep the peace as a constable now is bound to do.

TITLE, *estates.* A title is defined by Lord Coke to be the means whereby the owner of lands hath the just possession of his property. Co. Lit. 345; 2 Bl. Com. 195. Vide 1 Ohio Rep. 349. This is the definition of title to lands only. There are several stages or degrees requisite to form a complete title to lands and tenements; 1st. The lowest and most imperfect degree of title is the *mere possession*, or actual occupation of the estate, without any apparent right, or any shadow or pretence of right, to hold or continue such possession; this happens when one man disseises another. 2 Bl. Com. 195. 2dly. The next step to a good and perfect title is the *right of possession*, which may reside in one man, while the actual possession is not in himself, but in another. This right of possession is of two sorts; an *apparent* right of possession, which may be defeated by proving a better; and an *actual* right of possession, which will stand the test againt all opponents. Ibid. 196. 3dly, The mere *right of property*, the *jus proprietatis*, without either possession or the right of possession. Ib. 197. Title to real estate is acquired by two methods, namely, by descent and by purchase. (See these words.)

Title to personal property may accrue in three different ways; 1. By original acquisition; 2. By transfer, by act of law; 3. By transfer, by act of the parties.

§ 1. Title by original acquisition is acquired, 1st, By occupancy. This mode of acquiring title has become almost extinct in civilized governments, and it is permitted to exist only in those few special cases, in which it may be consistent with the public good. First, Goods taken by capture in war, were, by the common law, adjudged to belong to the captor, but now goods taken from enemies in time of war, vest primarily in the sovereign, and they belong to the individual captors only to the extent and under such regulations, as positive laws may prescribe. Finch's Law, 28, 178; Bro. tit. Property, pl.

18, 38; 1 Wilson, 211; 2 Kent, Com. 290, 95. Secondly, Another instance of acquisition by occupancy, which still exists under certain limitations, is that of goods casually lost by the owner, and unreclaimed, or designedly abandoned by him; and in both these cases they belong to the fortunate finder. 1 Bl. Com. 296. See *Derelict*. 2dly, Title by original acquisition is acquired by accession. See *Accession*. 3dly, It is acquired by intellectual labour. It consists of literary property, as the construction of maps and charts, the writing of books and papers. The benefits arising from such labour are secured to the owner, 1, by patent-rights for inventions. See *Patents*. 2. By copy-rights. See *Copy-rights*.

§ 2. The title to personal property is acquired and lost by transfer, by act of law, in various ways. 1. By forfeiture. 2. By succession. 3. By marriage. 4. By judgment. 5. By insolvency. 6. By intestacy.

§ 3. Title is also acquired and lost by transfer by the act of the party. 1. By gift. 2. By contract or sale.

In general possession constitutes the criterion of title of *personal* property, because no other means exist by which a knowledge of the fact to whom it belongs can be attained. A seller of a chattel is not, therefore, required to show the origin of his title, nor, in general, is a purchaser, without notice of the claim of the owner, compellable to make restitution; but, it seems, that a purchaser from a tenant for life of personal chattels, will not be secure against the claims of those entitled in remainder. Cowp. 432; 1 Bro. C. C. 274; 2 T. R. 376; 3 Atk. 44; 3 V. & B. 16.

To the rule that possession is the criterion of title of property may be mentioned the case of ships, the title of which can be ascertained by the register. 15 Ves. 60; 17 Ves. 251; 8 Price, R. 256, 277.

TITLE, *legislation*. Is that part of an act of the legislature by which it is known, and distinguished from other acts; the name of the act. A practice has prevailed of late years to crowd into the same act a mass of heterogeneous matter, so that it is almost impossible to describe, or even to allude to it in the title of the act. This practice has rendered the title of little importance, yet, in some cases, it is material in the construction of an act. 7 East, R. 132, 134. See Ld. Raym. 77; Hard. 324; Barr. on the Stat. 499, n.

TITLE, *persons*. Titles are distinctions by which a person is known. The constitution of the United States forbids the grant by the United States or any state of any title of nobility, (q. v.) Titles are bestowed by courtesy on certain officers; the president of the United States sometimes receives the title of *excellency*; judges and members of congress that of *honourable*; and members of the bar and justices of the peace are called *esquires*. Cooper's Justinian, 416; Brackenridge's Law Miscell. Index, h. t. Titles are assumed by foreign princes, and, among their subjects they may exact these marks of honour, but in their intercourse with foreign nations they are not entitled to them as a matter of right. Wheat. Intern. Law, pt. 2, c. 3, § 6.

TITLE OF A DECLARATION, *in pleading*. At the top of every declaration the name of the court is usually stated, with the term of which the declaration is filed, and in the margin the venue, namely, the city or county where the cause is intended to be tried is set down. The first two of these compose what is called the title of the declaration. 1 Tidd's Pr. 366.

TITLE, DOUBTFUL, *chancery practice*. A doubtful title is one

which the court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568; 9 Cowen, R. 344; vide *Title, Marketable.* At common law, doubtful titles are unknown; there every title must be either good or bad. Atkins on Tit. 17. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

TITLE, MARKETABLE, *in chancery practice.* A marketable title is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser. The ordinary acceptation of the term *marketable title*, would convey but a very imperfect notion of its legal and technical import. To common apprehension, unfettered by the technical and conventional distinction of lawyers, all titles being either good or bad, the former would be considered marketable, the latter non-marketable. But this is not the way they are regarded in courts of equity, the distinction taken there being, not between a title which is absolutely good, or absolutely bad, but between a title, which the court considers to be so clear that it will enforce its acceptance by a purchaser, and one which the court will not go so far as to declare a bad title, but only that it is subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568. In short, whatever may be the private opinion of the court, as to the goodness of the title, yet if there be a reasonable doubt either as to a matter of law or fact involved in it, a purchaser will not be compelled to complete; and such a title, though it may be perfectly secure and unimpeachable as a holding title, it is said, in the current language of the day, to be unmarketable. Atkins on Tit. 2. The doctrine of marketable titles is purely equitable and of modern origin. Ib. 26. At law every title not bad is marketable. 6 Taunt. R. 263; 5 Taunt. R. 625; S. C. 1 Marsh. R. 258. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

TO WIT. That is to say; namely; scilicet, (q. v.); videlicet, (q. v.)

TOFT. A place or piece of ground on which a house formerly stood, which has been destroyed by accident or decay; it also signifies a messuage.

TOKEN, *contracts, crimes,* is a document or sign of the existence of a fact. Tokens are either public or general, or privy tokens. They are true or false. When a token is false and indicates a general intent to defraud, and it is used for that purpose, it will render the offender guilty of the crime of cheating, 12 John. 292; but if it is a mere privy token, as counterfeiting a letter in another man's name, in order to cheat but one individual, it would not be indictable. 9 Wend. Rep. 182; 1 Dall. R. 47; 2 Rep. Const. Cr. 139; 2 Virg. Cas. 65; 4 Hawks, R. 348; 6 Mass. R. 72; 1 Virg. Cas. 150; 12 John. 293.

TOKEN, *commercial law.* In England this name is given to pieces of metal, made in the shape of money, passing among private persons by consent at a certain value. 2 Adolph. P. S. 175; 2 Chit. Com. Law, 182.

TOLL, *contracts,* is a sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature. Toll is also the compensation paid to a miller for grinding another person's grain. The rate of taking toll for grinding is regulated

by statute in most of the states. See 2 Hill. Ab. ch. 17.

TO TOLL, *estates, rights.* To bar, defeat, or take away; as to toll an entry into lands, is to deny or take away the right of entry.

TOLLS, signify, in a general sense, any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any wares or merchandises, to be taken of the buyer. 2 Inst. 58.

TON. Twenty hundred weight, each hundred weight being one hundred and twelve pounds avoirdupois. See act of congress of Aug. 30, 1842, c. 270, s. 20.

TONNAGE, *mar. law*, is the capacity of a ship or vessel. The act of congress of March 2, 1799, s. 64, 1 Story's L. U. S. 630, directs that to ascertain the tonnage of any ship or vessel, the surveyor, &c. shall, if the said ship or vessel be double decked, take the length thereof from the forepart of the main stem, to the afterpart of the stern post, above the upper deck, the breadth thereof, at the broadest part above the mainwales, half of which breadth shall be accounted the depth of such vessel, and then deduct from the length three-fifths of the breadth, multiply the remainder by the breadth and the product of the depth, and shall divide this last product by ninety-five, the quotients whereof shall be deemed the true contents or tonnage of such ship or vessel. And if such ship or vessel shall be single decked, the said surveyor shall take the length and breadth as above directed, in respect to a double deck ship or vessel, and shall deduct from the length three-fifths of the breadth, and taking the depth from the underside of the deck plank to the ceiling of the hold, shall multiply and divide as aforesaid, and the quotient shall be deemed the tonnage of such ship or vessel.

The duties paid on the tonnage of a ship or vessel are also called *tonnage*. These duties are altogether abolished in relation to American vessels by the act of May 31, 1830, s. 1, 4 Story's Laws U. S. 2216. And by the second section of the same act, all tonnage duties on foreign vessels are abolished, provided the president of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished.

The constitution of the United States provides, art. 1, s. 10, n. 2, that no state shall, without the consent of congress, lay any duty on tonnage.

TONTINE, *French law.* The name of a partnership composed of creditors or recipients of perpetual or life-rents or annuity, formed on the condition that the rents of those who may die, shall accrue to the survivors, either in whole or in part. This kind of partnership took its name from *Tonti*, an Italian, who first conceived the idea and put it in practice. Merl. Répert. h. t.; Dall. Dict. h. t.

TOOK AND CARRIED AWAY, *pleadings.* In an indictment for simple larceny, the words "feloniously took and carried away," the goods stolen, are indispensable. Bac. Abr. Indictment, G 1; Com. Dig. Indictment, G 6; Cro. C. C. 37; 1 Chit. Cr. Law, *244. Vide *Taking*.

TOOLS. The Massachusetts act of assembly of 1805, c. 100, which provided that "the tools of any debtor necessary for his trade and occupation, should be exempted from execution," was held to designate those implements which are commonly used by the hand of one man, in some manual labour necessary for his subsistence. The apparatus of a printing office, such as types, presses,

&c. are not therefore included under the term *tools*. 13 Mass. Rep. 82: 10 Pick. 423; 3 Verm. 133; and see 2 Pick. 80; 5 Mass. 313. By the forty-sixth section of the act of the 2d of March, 1799, 1 Story's Laws U. S. 612, the tools or implements of a mechanical trade of persons who arrive in the United States, are free and exempted from duty.

TORT. An injury; a wrong, (q. v.); hence the expression an executor *de son tort*, of his own wrong. Co. Litt. 158. Torts may be committed with force, as trespasses, which may be an injury to the person, such as assault, battery, imprisonment; to the property in possession; or they may be committed without force. Torts of this nature are to the absolute or relative rights of persons, or to personal property in possession or reversion, or to real property, corporeal or incorporeal, in possession or reversion: these injuries may be either by nonfeasance, malfeasance, or misfeasance. 1 Chit. Pl. 133, 4. Vide 1 Fonb. Eq. 4; and the article *Injury*.

TORTFEASOR. A wrong-doer, one who does wrong; one who commits a trespass or is guilty of a tort.

TORTURE, *punishments*. A punishment inflicted in some countries on supposed criminals to induce them to confess their crimes, and to reveal their associates. This absurd and tyrannical practice never was in use in the United States; for no man is bound to accuse himself. Vide *Question*.

TOTAL LOSS, is a technical expression, and imports an utter loss of the property for the voyage, and no more. 1 T. R. 187. Vide *Loss*, and 2 Phil. Ev. 54, n.; 16 East, R. 214; Park's Ins. Index, h. t.; Marsh. Ins. 486.

TOTIES QUOTIES. As often as the thing shall happen.

TOUR D'ECHELLE, *French law*. Tour d'échelle is a right which the owner of an estate has of placing ladders on his neighbour's property to facilitate the reparation of a party wall, or of buildings which are supported by that wall. It is a species of servitude. Lois des Bât. part. 1, c. 3, sect. 2, art. 9, § 1. In another sense by this term, or *échellage*, is understood the space of ground left unoccupied around a building for the purpose of enabling the owner to repair it with convenience; this is not a servitude, but an actual corporeal property. Id. part. 1, c. 3, sect. 2, art. 9, § 2.

TOUT TEMPS PRIST, *pleading*. These old French words signify *always ready*. The name of a plea to an action where the defendant alleges that he has always been ready to perform what is demanded of him; and he adds that he is still ready, *uncore prist*, (q. v.) 3 Bl. Com. 303; 20 Vin. Ab. 306; Com. Dig. Pleader, 2 Y 5.

TOWAGE, *contracts*, is that which is given for towing ships in rivers. Guidon de la mer, ch. 16; Poth. Des Avaries, n. 147; 2 Chit. Com. Law, 16.

TOWN. This word is used differently in different parts of the United States. In Pennsylvania and some others of the middle states, it signifies, a village or a city. In some of the north-eastern states it denotes a subdivision of a county called in other places a township.

TRADE. In its most extensive signification this word includes all sorts of dealings by way of sale or exchange. In a more limited sense it signifies the dealings in a particular business, as the India trade; by trade is also understood the business of a particular mechanic, hence boys are said to be put apprentices to learn a trade, as the trade of a carpenter, shoemaker, and the like. Bac. Ab. Master and Servant, D 1. Trade

differs from art, (q. v.) It is the policy of the law to encourage trade, and therefore all contracts which restrain the exercise of man's talents in trade are detrimental to the commonwealth, and therefore void; though he may bind himself not to exercise a trade in a particular place, for, in this last case, as he may pursue it in another place, the commonwealth has the benefit of it. 8 Mass. 223; 9 Mass. 522. Vide Ware, R. 257, 260; Com. Dig. h. t.; Vin. Ab. h. t.

TRADE MARKS, are signs, writings or tickets put upon manufactured goods to distinguish them from others. It seems at one time to have been thought that no man acquired a right in a particular mark or stamp. 2 Atk. 484. But it was afterwards considered that for one man to use as his own another's name or mark, would be a fraud for which an action would lie. 3 Dougl. 293; 3 B. & C. 541; 4 B. & Ad. 410; and a court of equity will restrain a party from using the marks of another. Eden, Inj. 314; 2 Keene, 213; 3 Mylne & C. 338.

The Monthly Law Magazine for December 1840, in an article copied into the American Jurist, vol. 25, p. 279, says, "the principles to be extracted, after an examination of these cases, appear to be the following:

First, that the first producer or vendor of any article gains no right of property in that article so as to prevent others from manufacturing, producing, or vending it.

Secondly, that although any other person may manufacture, produce, and sell any such article, yet he must not, in any manner, either by using the same or similar marks, wrappers, labels, or devices, or colourable imitations thereof, or otherwise, hold out to the public that he is manufacturing, producing, or selling the identical article, prepared, manufactured, produced, or sold by the other; that is to say, he may not make use of the name or reputation of the other in order to sell his own preparation.

Thirdly, the right to use, or restrain others from using any mark or name of a firm, is in the nature of good-will, and therefore goes to the surviving or continuing partner in such firm, and the personal representative of a deceased partner has an interest in it.

Fourthly, that courts of equity in these cases only act as auxiliary to the legal right, and to prevent injury, and give a relief by account, when damages at law would be inadequate to the injury received; and they will not interfere by injunction in the first instance, unless a good legal title is shown, and even then they never preclude the parties from trying the right at law, if desired.

Fifthly, if the legal title be so doubtful as not to induce the court to grant the injunction, yet it will put the parties in a position to try the legal right at law, notwithstanding the suit.

Sixthly, that before the party is entitled to relief in equity, he must truly represent his title, and the mode in which he became possessed of the article for the vending of which he claims protection; it being a clear rule of courts of equity, not to extend their protection to persons whose case is not founded on truth."

In France the law regulates the rights of merchants and manufacturers as to their trade marks with great minuteness. Dall. Dict. mot Propriété Industrielle.

TRADITION, *civil law*. This term is equivalent to delivery.

TRADITION, *contracts, in the civil law*, is the act by which a thing is delivered by one or more persons to one or more others. In sales it is the delivery of possession by the proprietor with an intention to trans-

fer the property to the receiver. Two things are therefore requisite in order to transmit property in this way: 1. The intention or consent of the former owner to transfer it; and, 2, the actual delivery in pursuance of that intention. Tradition is either real or symbolical. The first is where the *ipsa corpora* of movables are put into the hands of the receiver: symbolical tradition is used where the thing is incapable of real delivery, as, in immovable subjects, such as lands and houses; or such as consist *in jure* (things incorporeal) as things of fishing and the like. The property of certain movables, though they are capable of real delivery may be transferred by symbol. Thus, if the subject be under lock and key, the delivery of the key is considered as a legal tradition of all that is contained in the repository. Cujas, Observations, liv. 11, ch. 10; Inst. lib. 2, t. 1, § 40; Dig. lib. 41, t. 1, l. 9; Ersk. Princ. Laws of Scotl. bk. 2, t. 1, s. 10, 11; Civil Code Lo. art. 2452, et seq. In the common law the term used in the place of tradition is *delivery*, (q. v.)

TRAITOR, *crimes*. One guilty of treason. The punishment of a traitor is death.

TRAITOROUSLY, *pleadings*. This is a technical word which is essential in an indictment for treason in order to charge the crime, and which cannot be supplied by any other word, or any kind of circumlocution. Having been well laid in the statement of the treason itself, it is not necessary to state every overt act to have been traitorously committed. Vide Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; Hawk. B. 2, c. 25, s. 55; 1 East's P. C. 115; 2 Hale, 172, 184; 4 Bl. Com. 307; 3 Inst. 15; Cro. C. C. 37; Carth. 319; 2 Salk. 633; 4 Harg. St. Tr. 701; 2 Ld. Raym. 870; Comb. 259; 2 Chit. Cr. Law, 104, note (*b*).

TRANSACTION, *contracts, in the civil law*, is an agreement between two or more persons, who for the purpose of preventing or putting an end to a law suit, adjust their differences by mutual consent, in the manner which they agree on; in Louisiana this contract must be reduced to writing. Civil Code of Louis. 3038. Transactions regulate only the differences which appear to be clearly comprehended in them by the intentions of the parties, whether they be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them. Ib. 3040. To transact, a man must have the capacity to dispose of the things included in the transaction. Ib. 3039; 1 Domat, Lois Civiles, liv. 1, t. 13, s. 1; Dig. lib. 2, t. 15, l. 1; Code, lib. 2, t. 4, l. 41. In the common law this is called a compromise, (q. v.)

TRANSCRIPT. A copy of an original writing or deed. In Pennsylvania the act of assembly of 20th March, 1810, s. 10, calls a copy of the proceedings before a justice of the peace in any case, a transcript: the proper term would be an exemplification.

TRANSFER, *contracts*, is the act by which the owner of a thing delivers it to another person, with the intent of passing the rights which he has in it to the latter.

TRANSFERENCE, *Scotch law*. The name of an action by which, a suit which was pending at the time the parties died, is transferred from the deceased to his representatives, in the same condition in which it stood formerly. If it be the pursuer who is dead, the action is called a transference *activè*; if the defender, it is

a transference *passivè*. Ersk. Prin. B. 4, t. 1, n. 32.

TRANSHIPMENT, *mar. law*. The act of taking the cargo out of one ship and loading it in another. When this is done from necessity, it does not affect the liability of an insurer on the goods. 1 Marsh. Ins. 166; Abbott on Shipp. 240. But when the master transhipsgoods without necessity, he is answerable for the loss of them by capture by public enemies. 1 Gallis. R. 443.

TRANSIRE, *Engl. law*. A warrant for the custom-house to let goods pass; a permit, (q. v.)

TRANSITORY ACTION, *practice, pleadings*. Actions are transitory when the venue may lawfully be laid in any county, though the cause of action arose out of the jurisdiction of the court. Vide *Actions*, and 1 Chit. Pl. 273; Com. Dig. Actions, N 12; Cowp. 161; 9 Johns. R. 67; 14 Johns. R. 134; 3 Bl. Com. 294. Vide Bac. Ab. Actions Local and transitory.

TRANSLATION. The copy made in one language of what has been written or spoken in another. In pleading, when a libel or an agreement, written in a foreign language, must be averred, it is necessary that a translation of it should also be given. In evidence, when a witness is unable to speak the English language so as to convey his ideas, a translation of his testimony must be made. In that case, an interpreter should be sworn to translate to him, on oath, the questions propounded to him, and to translate to the court and jury, his answers. 4 Mass. 81; 5 Mass. 219; 2 Caines's Rep. 155; Louis. Code of Pr. 784, 5. In the ecclesiastical law, translation denotes the removal from one place to another; as, the bishop was translated from the diocese of A, to that of B. In the civil law, translation signifies the transfer of property. Clef des Lois Rom. h. t. Swinburne applies the term translation to the bestowing of a legacy which had been given to one, on another; this is a species of ademption, (q. v.) but it differs from it in this, that there may be an ademption without a translation, but there can be no translation without an ademption. Bac. Ab. Legacies, C. Vide *Interpreter*.

TRANSMISSION, *civ. law*, is the right which heirs or legatees may have of passing to their successors, the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights. Domat, liv. 3, t. 1, s. 10; 4 Toull. n. 186; Dig. 50, 17, 54; Code, 6, 51.

TRANSPORTATION, *punishment*. In the English law, this punishment is inflicted by virtue of sundry statutes; it was unknown to the common law. 2 H. Bl. 223. It is a part of the judgment or sentence of the court, that the party shall be transported or sent into exile. 1 Ch. Cr. Law, 789 to 796. Princ. of Pen. Law, c. 4, § 2.

TRAVAIL. The act of child bearing. A woman is said to be in her travail from the time the pains of child bearing commence until her delivery. 5 Pick. 63; 6 Greenl. R. 460. In some states to render the mother of a bastard child a competent witness in the prosecution of the alleged father, she must have accused him of being the father during the time of her travail. 2 Root, R. 490; 1 Root, R. 107; 2 Mass. R. 443; 5 Mass. R. 518; 8 Greenl. R. 163; 3 N. H. Rep. 135; 6 Greenl. R. 460. But in Connecticut, when the state prosecutes, the mother is competent, although she did not accuse the father during her travail. 1 Day, R. 278.

TRAVERSE, *crim. law, practice*. This is a technical term which means to turn over: it is applied to an issue taken upon an indictment

for a misdemeanor, and means nothing more than turning over or putting off the trial to a following sessions or assize; it has, perhaps with more propriety, been applied to the denying or taking issue upon an indictment, without reference to the delay of trial. Dick. Sess. 151; Burn's Just. h. t.; 4 Bl. Com. 351.

TRAVERSE, from the French *traverser*, in pleading, signifies to deny or controvert any thing which is alleged in the declaration, plea, replication or other pleadings; Lawes's Civ. Plead. 116, 117; there is no real distinction between traverses and denials, they are the same in substance. Willes, R. 224. However, a traverse, in the strict technical meaning, and more ordinary acceptation of the term, signifies a direct denial in formal words, "*without this that*," &c. Summary of Pleadings, 75; 1 Chit. Pl. 576, n. a. All issues are traverses, although all traverses cannot be said to be issues, and the difference is this: issues are where one or more facts are affirmed on one side, and directly and merely denied on the other; but special traverses are where the matter asserted by one party is not directly and merely denied or put in issue by the other, but he alleges some new matter or distinction inconsistent with what is previously stated, and then distinctly excludes the previous statement of his adversary. The new matter so alleged is called the inducement to the traverse, and the exclusion of the previous statement, the traverse itself. Lawes's Civ. Pl. 117. See, in general, 20 Vin. Abr. 339; Com. Dig. Pleader, G; Bac. Abr. Pleas, H; Yelv. R. 147, 8; 1 Saund. 22, n. 2; Gould. on Pl. ch. 7.

A traverse upon a traverse is one growing out of the same point, or subject-matter, as is embraced in a preceding traverse on the other side. Gould on Pl. ch. 7, § 42, n. It is a general rule, that a traverse, well tendered on one side, must be accepted on the other. And hence it follows, as a general rule, that there cannot be a traverse upon a traverse, if the first traverse is material. The meaning of the rule is, that when one party has tendered a material traverse, the other cannot leave it and tender another of his own to the same point upon the inducement of the first traverse, but must join in that first tendered; otherwise the parties might alternately tender traverses to each other, in unlimited succession, without coming to an issue. Gould on Pl. ch. 7, § 42. In cases where the first traverse is immaterial, there may be a traverse upon a traverse. Ib. ch. 7, § 43. And where the plaintiff might be ousted of some right or liberty the law allows him, there may be a traverse upon a traverse, although the first traverse include what is material. Poph. 101; Mo. 350; Com. Dig. Pleader, G 18; Bac. Abr. Pleas, H 4; Hob. 104, marg.; Cro. Eliz. 99, 418; Gould on Pl. ch. 7, § 44.

Traverses may be divided into General Traverses (q. v.), and Special Traverses, (q. v.)

TREASON, *crim. law.* This word imports a betraying, treachery, or breach of allegiance. 4 Bl. Com. 75. The constitution of the United States, art. 3, s. 3, defines treason against the United States to consist only in levying war (q. v.) against them, or in adhering to their enemies giving them aid or comfort. This offence is punished with death. Act of 30th April, 1790, 1 Story's Laws U. S. 83. By the same article of the constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Vide, generally, 3

Story on the Const. ch. 39, p. 667; Serg. on the Const. ch. 30; United States v. Fries, Pamph.; 1 Tucker's Blackst. Comm. Appen. 275, 276; 3 Wils. Law Lect. 96 to 99; Foster, Disc. 1.; Burr's Trial; 4 Cranch, R. 126, 469 to 508; 2 Dall. R. 246, 355; 1 Dall. Rep. 35; 3 Wash. C. C. Rep. 234; 1 John. Rep. 553; 11 Johns. R. 549; Com. Dig. Justices, (K); 1 East, P. C. 37 to 158; 2 Chitt. Crim. Law, 60 to 102; Arch. Cr. Pl. 378 to 387.

TREASURE-TROVE, found treasure. This name is given to such money or coin, gold, silver, plate, or bullion, which, having been hidden or concealed in the earth or other private place, so long that its owner is unknown, has been discovered by accident. Should the owner be found it must be restored to him; and in case of not finding him, the property, according to the English law, belongs to the king. In the latter case, by the civil law, when the treasure was found by the owner of the soil, he was considered as entitled to it by the double title of owner and finder; when found on another's property, one-half belonged to the owner of the estate, and the other to the finder; when found on public property it belonged one-half to the public treasury, and the other to the finder. Leçons du Dr. Rom. § 350-352. This includes not only gold and silver, but whatever may constitute riches, as vases, urns, statues, &c. The Roman definition includes the same things under the word *pecunia;* but the thing found must have a commercial value; for ancient tombs would not be considered a treasure. The thing must have been hidden or concealed in the earth; and no one must be able to establish his right to it. It must be found by a pure accident, and not in consequence of search. Dall. Dict. Propriété, art. 3, s. 3.

According to the French law, le trésor est toute chose cachée ou enfouie, sur laquelle personne ne peut justifier sa proprieté, et qui est decouverte par le pur effet du hasard. Code Civ. 716. Vide 4 Toull. n. 34. Vide, generally, 20 Vin. Abr. 414; 7 Com. Dig. 649; 1 Bro. Civ. Law, 237; 1 Blackstone's Comm. 295; Poth. Traité du Dr. de Propriété, art. 4.

TREASURER. An officer entrusted with the treasures or money either of a private individual, a corporation, a company, or a state. It is his duty to use ordinary diligence in the performance of his office, and to account with those whose money he has.

TREASURER OF THE MINT. An officer created by the act of January 18, 1837, whose duties are prescribed as follows: The treasurer shall receive and safely keep all moneys which shall be for the use and support of the mint; shall keep all the current accounts of the mint, and pay all moneys due by the mint, on warrants from the director. He shall receive all bullion brought to the mint for coinage; shall be the keeper of all bullion and coin in the mint, except while the same is legally placed in the hands of other officers, and shall, on warrants from the director, deliver all coins struck at the mint to the persons to whom they shall be legally payable. And he shall keep regular and faithful accounts of all the transactions of the mint, in bullion and coins, both with the officers of the mint and the depositors; and shall present, quarterly, to the treasury department of the United States, according to such forms as shall be prescribed by that department, an account of the receipts and disbursements of the mint, for the purpose of being adjusted and settled.

This officer is required to give

bond to the United States with one or more sureties to the satisfaction of the secretary of the treasury, in the sum of ten thousand dollars. His salary is two thousand dollars.

TREASURER OF THE UNITED STATES, *government.* Before entering on the duties of his office, the treasurer is required to give bond with sufficient sureties, approved by the secretary of the treasury and the first comptroller, in the sum of one hundred and fifty thousand dollars, payable to the United States, with condition for the faithful performance of the duties of his office, and for the fidelity of the persons by him employed. Act of 2d September, 1789, s. 4. His principal duties are, 1. To receive and keep the moneys of the United States, and disburse the same by warrants drawn by the secretary of the treasury, countersigned by the proper officer, and recorded according to law. Ib. s. 4. 2. To take receipts for all moneys paid by him. 3. To render his account to the comptroller quarterly, or oftener if required, and transmit a copy thereof, when settled, to the secretary of the treasury. 4. To lay before each house, on the third day of each session of congress, fair and accurate copies of all accounts by him, from time to time, rendered to and settled with the comptroller, and a true and perfect account of the state of the treasury. 5. To submit at all times, to the secretary of the treasury and the comptroller, or either of them, the inspection of the moneys in his hands. Ib. s. 4. His compensation is three thousand dollars per annum. Act of 20th February, 1804, s. 1.

TREASURY. The place where treasure is kept; the office of a treasurer. The term is more usually applied to the public than to a private treasury. Vide *Department of the Treasury of the United States.*

TREATY, *international law.* A treaty is a compact made between two or more independent nations with a view to the public welfare; treaties are for a perpetuity or for a considerable time. Those matters which are accomplished by a single act, and are at once perfected in their execution are called agreements, conventions and pactions. On the part of the United States, treaties are made by the president, by and with the consent of the senate, provided two-thirds of the senators present concur. Const. article 2, s. 2, n. 2. No state shall enter into any treaty, alliance or confederation, Const. art. 1, s. 10, n. 1; nor shall any state, without the consent of congress, enter into any agreement or compact with another state, or with a foreign power. Ib. art. 1, sec. 10, n. 2; 3 Story on the Const. § 1395. A treaty is declared to be the supreme law of the land, and is therefore obligatory on courts, 1 Cranch, R. 103, whenever it operates of itself without the aid of a legislative provision; but when the terms of the stipulation import a contract, and either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule of the court. 2 Pet. S. C. Rep. 314. Vide Story on the Constitut. Index, h. t.; Serg. Constit. Law, Index, h. t.; 4 Hall's Law Journal, 461; 6 Wheat. 161; 3 Dall. 199; 1 Kent, Comm. 165, 284.

Treaties are divided into personal and real. The *personal* relate exclusively to the persons of the contracting parties, such as family alliances, and treaties guarantying the throne to a particular sovereign and his family. As they relate to the persons they expire of course on the death of the sovereign or the extinction of his family. *Real* treaties re-

late solely to the subject-matters of the convention, independently of the persons of the contracting parties, and continue to bind the state, although there may be changes in its constitution, or in the persons of its rulers. Vattel, Law of Nat. b. 2, c. 12, §§ 183–197.

TREATY OF PEACE. A treaty of peace is an agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace, and regulate the manner in which it is to be restored and supported. Vatt. lib. 4, c. 2, § 9.

TREBLE COSTS, *remedies.* By treble costs, in the English law, is understood, 1st, the usual taxed costs; 2d, half thereof; 3d, half the latter; so that in effect the treble costs amount only to the taxed costs, and three-fourths thereof. 1 Chitty, R. 137; 1 Chitt. Pract. 27. Treble costs are sometimes given by statutes, and this is the construction put upon them. In Pennsylvania the rule is different; when an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception, that the fees of the officers are not to be trebled, when they are not regularly or usually payable by the defendant. 2 Rawle, R. 201. And in New York the directions of the statute are to be strictly pursued, and the costs are to be trebled. 2 Dunl. Pr. 731.

TREBLE DAMAGES, *remedies.* In actions arising *ex contractu* some statutes give treble damages; and these statutes have been liberally construed to mean actually treble damages; for example, if the jury give $20 damages for a forcible entry, the court will award $40 more, so as to make the total amount of damages $60. 4 B. & C. 154; M'Clell. Rep. 567. The construction on the words *treble damages*, is different from that which has been put on the words *treble costs*, (q. v.) Vide 6 S. & R. 288; 1 Browne, R. 9; 1 Cowen, R. 160, 175, 176, 584; 8 Cowen, 115.

TREBUCKET. The name of an engine of punishment, said to be synonymous with *tumbrel*, (q. v.)

TREE. A woody plant, which in respect of thickness and height grows greater than any other plant. Trees are part of the real estate while growing, and before they are severed from the freehold, but as soon as they are cut down, they are personal property. Some trees are timber trees, while others do not bear that denomination. Vide *Timber*, and 2 Bl. Com. 281. Trees belong to the owner of the land where they grow, but if the roots go out of one man's land into that of another, or the branches spread over the adjoining estates, such roots or branches may be cut off by the owner of the land into which they thus grow. Rolle's R. 394; 3 Bulstr. 198; Vin. Ab. Trees, E; and tit. Nuisance, W 2, pl. 3; 8 Com. Dig. 983; 2 Com. Dig. 274; 10 Vin. Ab. 142; 20 Vin. Ab. 415; 22 Vin. Ab. 583; 1 Supp. to Ves. Jr. 138; 2 Supp. to Ves. Jr. 162, 448; 6 Ves. 109. When the roots grow into the adjoining land, the owner of such land may lawfully claim a right to hold the tree in common with the owner of the land where it was planted; but if the branches only overshadow the adjoining land, and the roots do not enter into it, the tree wholly belongs to the owner of the estate where the roots grow. 1 Swift's Dig. 104; 1 Hill. Ab. 6; 1 Ld. Raym. 737. Vide 13 Pick. R. 44; 1 Pick. R. 224; 4 Mass. R. 266; 6 N. H. Rep. 430; 3 Day, 476; 11 Co. 50; Hob. 310; 2 Rolle, R. 141; Moo. & Mal. 112; 11 Conn. R. 177; 7 Conn. 125; 8 East, R. 394; 5 B. & Ald. 600; 1 Chit. Gen. Pr. 625; 2 Phil. Ev. 138; Gale & What. on

Easem. 210; Code Civ. art. 671; Pardes. Tr. des Servitudes, 297; Bro. Ab. Demand, 20; Dall. Dict. mot Servitudes, art. 3, § 8.

TRESAILE or TRESAYLE, *domestic relations.* The grandfather's grandfather. 1 Bl. Com. 186.

TRESPASS, *torts*, is an unlawful act committed with violence, *vi et armis*, to the person, property or relative rights of another. The following rules characterise the injuries which are denominated trespasses, namely; 1. To determine whether an injury is a trespass, due regard must be had to the nature of the right affected. A wrong with force can only be offered to the absolute rights of personal liberty and security, and to those of property corporeal; those of health, reputation and in property incorporeal, together with the relative rights of persons, are, strictly speaking, incapable of being injured with violence, because the subject-matter to which they relate, exists in either case only in idea, and is not to be seen or handled. An exception to this rule, however, often obtains in the very instance of injuries to the relative rights of persons; and wrongs offered to these last are frequently denominated trespasses, that is, injuries with force.—2. Those wrongs alone are characterised as trespasses the immediate consequences of which are injurious to the plaintiff; if the damage sustained is a remote consequence of the act, the injury falls under the denomination of trespass on the case.—3. No act is injurious but that which is unlawful; and, therefore, where the force applied to the plaintiff's property or person is the act of the law itself, it constitutes no cause of complaint. Hamm. N. P. 34; 2 Phil. Ev. 131; Bac. Abr. h. t.; 15 East, R. 614. As to what will justify a trespass, see *Battery*.

TRESPASS, *remedies*, is the name of an action, instituted for the recovery of damages, for a wrong committed against the plaintiff, with immediate force; as an assault and battery against the person; an unlawful entry into his land, and an unlawful injury with direct force to his personal property. It does not lie for a mere non-feasance, nor when the matter affected was not tangible. It will be proper to consider this subject with reference to injuries, 1, to the person; 2, to personal property; 3, to real property; and 4, when trespass can or cannot be justified by legal proceedings.

1. Trespass is the proper remedy for an assault and battery, wounding, imprisonment, and the like; and it also lies for an injury to the relative rights when occasioned by force; as, for beating, wounding, and imprisoning a wife or servant, by which the plaintiff has sustained a loss. 9 Co. 113; 10 Co. 130. Vide *Parties to actions; Per quod*, and 1 Chit. Pr. 37.

2. The action of trespass is the proper remedy for injuries to personal property, which may be committed by the several acts of unlawfully striking, chasing, if alive, and carrying away to the damage of the plaintiff, a personal chattel, 1 Saund. 84, n. 2, 3; F. N. B. 86; Bro. Trespass, pl. 407; Toll. Executors, 112; Cro. Jac. 362, of which another is the owner and in possession; but a naked possession or right to immediate possession, is a sufficient title to support this action. 1 T. R. 480; and see 8 John. R. 432; 7 John. R. 535; 11 John. R. 377; Cro. Jac. 46; 1 Chit. Pl. 165.

3. Trespass is the proper remedy for the several acts of breaking through an enclosure, and coming into contact with any corporeal hereditament, of which another is the owner and in possession, and by which a damage has ensued. There

is an ideal fence, reaching in extent upwards, *a superficie terræ usque ad cælum*, which encircles every man's possessions, when he is owner of the surface, and downwards as far as his property descends; the entry, therefore, is breaking through this enclosure, and this generally constitutes, by itself, a right of action. The plaintiff must be the owner, and in possession. 5 East, R. 485; 9 John. R. 61; 12 John. R. 183; 11 John. R. 385; Ib. 140; 3 Hill, R. 26. There must have been some injury, however, to entitle the plaintiff to recover, for a man in a balloon may legally be said to break the close of the plaintiff, when passing over it, as he is wafted by the wind, yet as the owner's possession is not by that act incommoded, trespass could not probably be maintained; yet, if any part of the machinery were to fall upon the land, the areonaut could not justify an entry into it to remove it, which proves that the act is not justifiable. 19 John. 381. But the slightest injury, as treading down the grass, is sufficient. Vide 1 Chit. Pl. 173; 2 John. R. 357; 9 John. R. 113, 377; 2 Mass. R. 127; 4 Mass. R. 266; 4 John. R. 150.

4. It is a general rule that when the defendant has acted under regular process of a court of competent jurisdiction, or of a single magistrate having jurisdiction of the subject-matter, it is a sufficient justification to him; but when the court has no jurisdiction and the process is wholly void, the defendant cannot justify under it. Vide *Irregularity; Regular and Irregular process.*

Vide, generally, Bro. Ab. h. t.; Nelson's Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Com. Dig. h. t.; Vin. Ab. h. t.; the various American and English Digests, h. t.; 2 Phil. Ev. 131; Ham. N. P. 33 to 265; Chit. Pr. Index, h. t.; Rosc. Civ. Ev. h. t.; Stark. Ev. h. t.

TRESPASSER. One who commits a trespass. A man is a trespasser by his own direct act when he acts without any excuse; or he may be a trespasser in the execution of a legal process in an illegal manner, 1 Chit. Pl. 183; 2 John. Cas. 27; or when the court has no jurisdiction over the subject-matter; when the court has jurisdiction but the proceeding is defective and void; when the process has been misapplied, as, when the defendant has taken A's goods on an execution against B; when the process has been abused, 1 Chit. Pl. 183-187; in all these cases a man is a trespasser *ab initio*. And a person capable of giving his assent may become a trespasser, by an act subsequent to the tort. If, for example, a man take possession of land for the use of another, the latter may afterwards recognize and adopt the act; by so doing he places himself in the situation of one who had previously commanded it, and consequently is himself a trespasser, if the other had no right to enter, nor he to command the entry. 4 Inst. 317; Ham. N. P. 215. Vide 1 Rawle's R. 121.

TRET, *weights and measures*, is an allowance made for the water or dust that may be mixed with any commodity. It differs from *tare*, (q. v.)

TRIAL, *practice*, is the examination before a competent tribunal, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue. There are various kinds of trial, the most common of which is

Trial by jury. To insure fairness this mode of trial must be in public; it is conducted by selecting a jury in the manner prescribed by the local statutes, who must be sworn to try the matter in dispute according to law, and the evidence. Evidence is then given by the party on whom

rests the *onus probandi* or burden of the proof: as the witnesses are called by a party they are questioned by him, and after they have been examined, which is called an examination in chief, they are subject to a cross-examination by the other party as to every part of their testimony. Having examined all his witnesses, the party who supports the affirmative of the issue closes; and the other party then calls his witnesses to explain his case or support his part of the issue; these are in the same manner liable to a cross-examination. In case the parties should differ as to what is to be given in evidence, the judge must decide the matter, and his decision is conclusive upon the parties so far as regards the trial; but, in civil cases, a *bill of exceptions*, (q. v.) may be taken, so that the matter may be examined before another tribunal. When the evidence has been closed, the counsel for the party who supports the affirmative of the issue, then addresses the jury, by recapitulating the evidence and applying the law to the facts, and showing on what particular points he rests his case. The opposite counsel then addresses the jury enforcing in like manner the facts and the law as applicable to his side of the case; to which the other counsel has a right to reply. It is then the duty of the judge to sum up the evidence and explain to the jury the law applicable to the case; this is called his charge, (q. v.) The jurors then retire to deliberate upon their verdict, and, after having agreed upon it, they come into court and deliver it in public. In case they cannot agree they may, in cases of necessity, be discharged; but, it is said, in capital cases they cannot be. Very just and merited encomiums have been bestowed on this mode of trial, particularly in criminal cases. Livingston's Rep. on the Plan of a Penal Code, 13; 3 Story, Const. § 1773. The learned Duponceau has given a beautiful sketch of this tribunal: "twelve invisible judges," said he, "whom the eye of the corruptor cannot see, and the influence of the powerful cannot reach, for they are nowhere to be found, until the moment when the balance of justice being placed in their hands, they hear, weigh, determine, pronounce, and immediately disappear, and are lost in the crowd of their fellow citizens." Address at the opening of the Law Academy at Philadelphia. Vide, generally, 4 Com. Dig. 783; 7 Ib. 522; 21 Vin. Ab. 1; Bac. Ab. h. t.; 1 Sell. Pr. 405; 4 Bl. Com. ch. 27; Chit. Pr. Index, h. t.; 3 Bl. Com. ch. 22; 15 Serg. & R. 61; 22 Vin. Ab. h. t.

TRIAL BY CERTIFICATE,—*in the English law*, is a mode of trial allowed in such cases, where the evidence of the person certifying is the only proper criterion of the point in dispute. For, when the fact in question lies out of the cognizance of the court, the judges must rely on the solemn averments or information of persons in such station, as affords them the most clear and complete knowledge of the truth. As therefore such evidence, if given to a jury, must have been conclusive, the law, to save trouble and circuity, permits the fact to be determined upon such certificate merely. 3 Bl. Com. 333; Steph. Pl. 122.

TRIAL BY THE GRAND ASSISE, *English law;* this kind of trial is very similar to the common trial by jury. There is only one case in which it appears ever to have been applied, and there it is still in force. In a writ of right, if the defendant by a particular form of plea appropriate to the purpose, (see the plea, 3 Chitty, 652,) denied the right of the demandant, as claimed, he had the option, till the recent abolition of

the extravagant and barbarous method of wager by battel, of either *offering battel*, or *putting himself on the grand assise*, to try whether he or the demandant "had the greater right." The latter course, he may still take; and, if he does, the court award a writ for summoning four knights to make the election of twenty other recognitors. The four knights and twelve of the recognitors so elected, together making a jury of sixteen, constitute what is called the grand assise; and when assembled, they proceed to try the issue, or (as it is called in this case,) the mise, upon the question of right. The trial, as in the case of a common jury, may be either at the bar or nisi prius; and if at nisi prius, a nisi prius record is made up; and the proceedings are in either case, in general, the same as where there is a common jury. See Wils. R. 419, 541; 1 Holt's N. P. Rep. 657; 3 Chitty's Pl. 635; 2 Saund. 45 e; 1 Arch. 402. Upon the issue or mise of right, the wager of battel or the grand assise was, till the abolition of the former, and the latter still is, the only legitimate method of trial; and the question cannot be tried by a jury in the common form. 1 B. & P. 192. See 3 Bl. Com. 351.

TRIAL BY INSPECTION or EXAMINATION, *in practice*, is when for the greater expedition of a cause, in some point or issue being either the principal question or arising collaterally out of it, being evidently the object of sense, the judges of the court, upon the testimony of their own senses, shall decide the point in dispute. For, where the affirmative or negative of a question is matter of such obvious determination, it is not thought necessary to summon a jury to decide it; who are properly called in to inform the conscience of the court in respect of dubious facts, and, therefore, when the fact, from its nature, must be evident to the court either from occular demonstration or other irrefragable proof, there the law departs from its usual resort, the verdict of twelve men, and relies on the judgment alone. For example, if a defendant pleads in abatement of the suit that the plaintiff is dead, and one appears and calls himself the plaintiff, which the defendant denies; in this case the judges shall determine by inspection and examination whether he be the plaintiff or not. 9 Co. 30; 3 Bl. Com. 331; Steph. Pl. 123. Judges of courts of equity frequently decide facts upon mere inspection. The most familiar examples are those of cases where the plaintiff prays an injunction on an allegation of piracy or infringement of a patent or copy-right. 5 Ves. 709; 12 Ves. 270, and the cases there cited. And see 2 Atk. 141; 2 B. & C. 80; 4 Ves. 681; 2 Russ. R. 385; 1 V. & B. 67; Cro. Jac. 230; 1 Dall. 166.

TRIAL BY THE RECORD,—*practice*. This trial applies to cases where an issue of *nul tiel record* is joined in any action. If, on one side, a record be asserted to exist, and the opposite party deny its existence, under the form of traverse, that there is no such record remaining in court, as alleged, and issue be joined thereon, this is called an issue of *nul tiel record*; and the court awards, in such case, a trial by inspection and examination of the record. Upon this the party affirming its existence, is bound to produce it in court, on a day given for the purpose, and, if he fail to do so, judgment is given for his adversary. The trial by record, is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country. Steph. Pl. 122; 2 Bl. Com. 330.

TRIAL BY WAGER OF BAT-

TEL, *in the old English law*, was a barbarous mode of trying facts, among a rude people, founded on the supposition that heaven would always interpose, and give the victory to the champions of truth and innocence. This mode of trial was abolished in England as late as the stat. 59 Geo. III. c. 46, A. D. 1818. It never was in force in the United States. See 3 Bl. Com. 337; 1 Hale's Hist. 188; see a modern case, 1 B. & A. 405.

TRIAL BY WAGER OF LAW, *practice*. This mode of trial has fallen into complete disuse; but in point of law, it seems, in England, to be still competent in most cases to which it anciently applied. The most important and best established of these cases, is, the issue of *nil debet*, arising in action of debt on simple contract, or the issue of *non detinet*, in an action of detinue. In the declaration in these actions, as in almost all others, the plaintiff concludes by offering *his suit* (of which the ancient meaning was *followers* or witnesses, though the words are now retained as mere form,) to prove the truth of his claim. On the other hand, if the defendant, by a plea of nil debet or non detinet, deny the debt or detention, he may conclude by offering to establish the truth of such plea, "*against* the plaintiff and his suit, in such manner as the court shall direct." Upon this the court awards the wager of law, Co. Ent. 119 a; Lill. Ent. 467; 3 Chit. Pl. 479; and the form of this proceeding, when so awarded, is that the defendant brings into court with him eleven of his neighbours, and for himself, makes oath that he does not owe the debt or detain the property alleged; and then the eleven also swear that they believe him to speak the truth; and the defendant is then entitled to judgment. 3 Bl. Com. 343; Steph. Pl. 124. Backstone compares this mode of trial to the canonical purgation of the Catholic clergy, and to the decisory oath of the civil law. See *Oath, decisory*.

TRIAL BY WITNESSES, *practice*. This species of trial by witnesses, or per testes, is without the intervention of a jury. This is the only method of trial known to the civil law, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but it is very rarely used in the common law, which prefers the trial by jury in almost every instance. In England when a widow brings a writ of dower, and the tenant pleads that the tenant is not dead, this being looked upon as a dilatory plea, is, in favour of the widow, and for greater expedition, allowed to be tried by witnesses examined before the judges; and so, says Finch, shall no other case in our law. Finch's Law, 423. But Sir Edward Coke mentions others; as to try whether the tenant in a real action was duly summoned; or the validity of a challenge to a juror; so that Finch's observation must be confined to the trial of direct and not collateral issues. And in every case, Sir Edward Coke lays it down, that the affirmative must be proved by two witnesses at least. 3 Bl. Com. 336.

TRIBUNAL, is the seat of a judge; the place where he administers justice; but by this term is more usually understood the whole body of judges who compose a jurisdiction; sometimes it is taken for the jurisdiction which they exercise. This term is Latin, and derives it origin from the elevated seat where the tribunes administered justice.

TRIORS, *practice*. Persons appointed according to law to try whether a person challenged to the favour is or is not qualified to serve on the jury. They do not exceed

two in number without the consent of the prosecutor and defendant, or some special case is alleged by one of them, or when only one juror has been sworn and two triors are appointed with him. Co. Litt. 158 a; Bac. Ab. Juries, E 12. Where the challenge is made to the first juror, the court will appoint two indifferent persons to be triors; if they find him indifferent he shall be sworn, and join the triors in determining the next challenge. But when two jurors have been found impartial and have been sworn, then the office of the triors will cease, and every subsequent challenge will be decided upon by the jurymen. If more than two jurymen have been sworn, the court may assign any two of them to determine the challenges. To the triors thus chosen no challenges can be admitted. The following oath or affirmation is administered to them: "You shall well and truly try whether A B, (the juror challenged) stands indifferent between the parties to this issue, so help you God;" or to this you affirm. The trial then proceeds by witnesses before them; and they may examine the juryman challenged on his *voire dire*, but he cannot be interrogated as to circumstances which may tend to his own disgrace, discredit, or the injury of his character. The finding of the triors is final. Being officers of the court, the triors may be punished for any misbehaviour in their office. Vide 2 Hale, 275; 4 Bl. Com. by Chitty, 353, n. 8; Tr. per Pais, 200; 1 Chit. Cr. Law, 549, 550; 4 Harg. St. Tr. 740, 750; 15 Serg. & Rawle, 156.

TRIPARTITE. Consisting of three parts, as a deed *tripartite*, between A of the first part, B of the second part, and C of the third part.

TRIPLICATION, *in pleading*. This was formerly used in pleading, instead of rebutter. 1 Bro. Civ. Law, 469, n.

TRONAGE, *Engl. law*. A customary duty or toll for weighing wool, so called because it was weighed by a common *trona*, or beam. Fleta, lib. 2, c. 12.

TROVER, *remedies*. Trover signifies finding. The remedy is called an action of trover; it is brought to recover the value of personal chattels, wrongfully converted by another to his own use; the form supposed that the defendant might have acquired the possession of the property lawfully, namely, by finding, but if he did not, by bringing the action the plaintiff waives the trespass, no damages can therefore be recovered for the taking, all must be for the conversion. It will be proper to consider the subject with reference, 1, to the thing converted; 2, the plaintiff's right; 3, the nature of the injury; 4, the pleadings; and 5, the judgment.

1. The property affected must be some personal chattel; 3 Serg. & Rawle, 513; and it has been decided that trover lies for title deeds, 2 Yeates, R. 537; and for a copy of a record, Hardr. 111. Vide 2 T. R. 788; 2 Salk. 654; 2 New Rep. 170; 3 Campb. 417; 3 Johns. R. 432; 10 Johns. R. 172; 12 Johns. R. 484; 6 Mass. R. 394; 17 Serg. & Rawle, 285; 2 Rawle, R. 241. Trover will be sustained for animals *feræ naturæ*, reclaimed. Hugh. Ab. Action upon the case of Trover and Conversion, pl. 3. But trover will not lie for personal property in the custody of the law, nor when the title to the property can be settled only by a peculiar jurisdiction; as, for example, property taken on the high seas, and claimed as lawful prize, because in such case, the courts of admiralty have exclusive jurisdiction. Cam. & N. 115, 143; but see 14 John. 273. Nor will it lie where

the property bailed has been lost by the bailee, or stolen from him, or been destroyed by accident or from negligence; case is the proper remedy. 2 Iredell, 98.

2. The plaintiff must at the time of the converson have had a property in the chattel either general or special, 1 Yeates, R. 19; 3 S. & R. 509; 15 John. R. 205, 349; 16 John. R. 159; 1 Humph. R. 199; he must also have had actual possession or right to immediate possession. The person who has the absolute or general property in a personal chattel may support this action, although he has never had possession, for it is a rule that the general property of personal chattels creates a constructive possession. 2 Saund, 47 a, note 1; Bac. Ab. Trover, C; 4 Rawle, R. 185.

3. There must have been a conversion, which may have been effected, 1st, by the wrongful taking of a personal chattel; 2d, by some other illegal assumption of ownership, or by illegally using or misusing it; or, 3d, by a wrongful detention. Vide *Conversion*.

4. The declaration should state that the plaintiff was possessed of the goods (describing them) as of his own property, and that they came to the defendant's possession by finding; and the conversion should be properly averred, as that is the gist of the action. Vide form 2 Chitty's Pl. 370, 371. The usual plea is not guilty, which is the general issue. Bull. N. P. 48.

5. As to the judgment, vide *Judgment in trover*.

Vide, generally, 1 Chit. Pl. 147 to 157; Chit. Pr. Index, h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Vin. Ab. h. t.; Com. Dig. Action upon the case upon trover; Ib. Pleader, 2 I; Doct. Pl. 494; Amer. Digests, h. t. As to the evidence to be given in actions of trover, see Rosc. Civ. Ev. 395 to 412.

TROY WEIGHT, is a weight less ponderous than the avoirdupois weight, in the proportion of seven thousand, for the latter, to five thousand seven hundred and sixty, to the former. Dane's Ab. Index, h. t. Vide *Weights*.

TRUCE, *intern. law*, is an agreement between belligerent parties, by which they mutually engage to forbear all acts of hostility against each other for some time, the war still continuing. Burlamaqui's N. & P. Law, part 4, c. 11, § 1. Truces are of several kinds: *general*, extending to all the territories and dominions of both parties; and *particular*, restrained to particular places, as, for example, by sea and not by land, &c. Ib. part 4, c. 11, § 5. They are also *absolute, indeterminate and general*; or *limited and determined* to certain things, for example, to bury the dead. Ib. idem. Vide 1 Kent, Com. 159; Com. Dig. Admiralty (E 8); Bac. Ab. Prerogative, D 4; *League; Peace; War*.

TRUE BILL, *practice*. These words are endorsed on a bill of indictment when a grand jury, after having heard the witnesses for the government, are of opinion there is sufficient cause to put the defendant on his trial. Formerly, the endorsement was *Billa vera*, when legal proceedings were in Latin; it is still the practice to write on the back of the bill *Ignoramus*, when the jury do not find it to be a true bill. Vide *Grand Jury*.

TRUST, *contracts, devises*, is a personal obligation for paying, delivering or performing any thing, where the person trusting has no real right or security, for by that act he confides altogether to the faithfulness of those intrusted. This is its most general meaning, and includes deposits, bailments, and the like. In its more technical sense, it may be defined to be an obligation upon a

person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. Willis on Trustees, 1; 4 Kent, Com. 295; 2 Fonb. Eq. 1; 1 Saund. Uses and Tr. 6; Coop. Eq. Pl. Introd. 27; 3 Bl. Com. 431. For the origin of trusts in the civil law, see 5 Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 18; 1 Brown's Civ. Law, 190. Vide *Resulting Trusts*.

TRUSTEE, *estates*. A trustee is one to whom an estate has been conveyed in trust. The trust estate is not subject to the specialty or judgment debts of the trustee, to the dower of his wife, or the curtesy of the husband of a female trustee. With respect to the duties of trustees, it is held, in conformity to the old law of uses, that pernancy of the profits, execution of estates, and defence of the land, are the three great properties of a trust; so that the courts of chancery will compel trustees, 1, to permit the cestui que trust to receive the rents and profits of the land; 2, to execute such conveyances, in accordance with the provisions of the trust, as the *cestui que trust* shall direct; 3, to defend the title of the land in any court of law or equity. Cruise, Dig. tit. 12, c. 4, s. 4. Vide Vin. Ab. tit. Trusts, O, P, Q, R, S, T.

TRUSTEE PROCESS, *in practice*. In Massachusetts there is a process given by statute, in imitation of the foreign attachment of the English law. By this process, a creditor may attach any property or credits of his debtor in the hands of a third person. This third person is, in the English law, called the *garnishee*; in Massachusetts he is called the *trustee*. White's Dig. tit. 148. Vide *Attachment*.

TRUTH, is the actual state of things. In contracts, the parties are bound to tell the truth in their dealings, and a deviation from it will generally avoid the contract; Newl. on Contr. 352, 3; 2 Burr. 1011; 3 Campb. 285; and even concealment, or *suppressio veri*, will be considered fraudulent in the contract of insurance. 1 Marsh. on Ins. 464; Peake's N. P. C. 115; 3 Campb. 154, 506. In giving his testimony, a witness is required to tell the truth, the whole truth, and nothing but the truth; for the object in the examination of matters of fact, is to ascertain truth. When a defendant is sued civilly for slander or a libel, he may justify by giving the truth in evidence; but when a criminal prosecution is instituted by the commonwealth for a libel, he cannot generally justify by giving the truth in evidence. The constitutions of several of the United States have made special provision in favour of giving the truth in evidence in prosecutions for libels, under particular circumstances. In the constitutions of Pennsylvania, Delaware, Tennessee, Kentucky, Ohio, Indiana and Illinois, it is declared, that in publications for libels on men in respect to their public official conduct, the truth may be given in evidence, when the matter published was proper for public information. The constitution of New York declares, that in all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous, is true, and was published with good motives and for justifiable ends, the party shall be acquitted. By constitutional provision in Mississippi and Missouri, and by legislative enactment in New Jersey, the right to give the truth in evidence has been more extended; it applies to all prosecutions or indictments for libels, without any qualifications annexed in restraint of the privilege.

TUB, *measures*. In mercantile

law, a tub is a measure containing sixty pounds weight of tea; and from fifty-six to eighty-six pounds of camphire. Jacob's Law Dict. h. t.

TUMBREL, *punishment.* A species of cart; according to Lord Coke, a dung-cart. This instrument, like the pillory, was used as a means of exposure; and according to some authorities, it seems to have been synonymous with the trebucket or ducking stool. 1 Chit. Cr. Law, 797; 3 Inst. 219; 12 Serg. & Rawle, 220. Vide Com. Dig. h. t.; Burns's Just. Pillory and Tumbrel.

TUN, *measure.* A vessel of wine or oil, containing four hogsheads.

TURNKEY. A person under the superintendence of a jailor, whose employment is to open and fasten the prison doors and to prevent the prisoners from escaping. It is his duty to use due diligence, and he may be punished for gross neglect or wilful misconduct in permitting prisoners to escape.

TURNPIKE. A public road paved with stones or other hard substance. Turnpike roads are usually made by corporations to which a power to make them has been granted. The grant of such power passes not only an easement for the road itself, but also so much land as is connected with it; as, for instance, for a toll house and a cellar under it, and a well for the use of the family. 9 Pick. R. 109. A turnpike is a public highway, and a building erected before the turnpike was made, though upon a part out of the travelled path, if continued there, is a nuisance. 16 Pick. R. 175. Vide *Road; Street; Way.*

TURPIS CAUSA, *contracts.* A base or vile consideration, forbidden by law, which makes the contract void; as a contract the consideration of which is the future illegal cohabitation of the obligee with the obligor.

TUTOR, *civil law.* A person who has been lawfully appointed to the care of the person and property of a minor. By the laws of Louisiana minors under the age of fourteen years, if males, and under the age of twelve years, if females, are both as to their persons and their estates, placed under the authority of a tutor. Civ. Code, art. 263. Above that age, and until their majority or emancipation, they are placed under the authority of a curator. Ib.

TUTORSHIP, is the power which an individual, sui juris, has to take care of the person of one who is unable to take care of himself. Tutorship differs from curatorship, (q. v.) Vide *Pro-curator; Pro-tutor; Under-tutor.*

TWELVE TABLES. Vide *Law of the Twelve Tables.*

TYBURN TICKET, *Eng. law.* A certificate given to the prosecutor of a felon to conviction, is so called. By the 10 & 11 W. 3, c. 23, the original proprietor or first assignee of such certificate is exempted from all and all manner of parish and ward offices within the parish or ward where the felony shall have been committed. Bac. Ab. Constable (C).

TYRANNY, *in government*, is the violation of those laws which regulate the division and the exercises of the sovereign power of the state. It is a violation of its constitution.

TYRANT, *in government*, is the chief magistrate of the state, whether legitimate or otherwise, who violates the constitution to act arbitrarily contrary to justice. Toull. tit. prel. n. 32. The term tyrant and usurper are sometimes used as synonymous, because usurpers are almost always tyrants; usurpation is itself a tyrannical act, but properly speaking the words usurper and tyrant convey different ideas. A king may become

a tyrant, although legitimate, when he acts despotically; while a usurper may cease to be a tyrant by governing according to the dictates of justice. This term is sometimes applied to persons in authority who violate the laws and act arbitrarily towards others. Vide *Despotism*.

U.

ULLAGE, *comm. law*. When a cask is guaged, what it wants of being full is called ullage.

UMPIRE. A person selected by two or more arbitrators, when they are authorised to do so by the submission of the parties, and they cannot agree as to the subject-matter referred to them, whose duty it is to decide the matter in dispute. Sometimes the term is applied to a single arbitrator selected by the parties themselves. Kyd on Awards, 6, 75, 77; Caldw. on Arb. 38; Dane's Ab. Index, h. t.; 3 Vin. Ab. 93; Com. Dig. Arbitrament, F; 4 Dall. 271, 432.

UNALIENABLE. The state of a thing or right which cannot be sold. Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are unalienable.

UNANIMITY, the agreement of all the persons concerned in a thing in design and opinion. Generally a simple *majority*, (q. v.) of any number of persons is sufficient to do such acts that the whole number can do; for example, a majority of the legislature can pass a law; but there are some cases in which unanimity is required; for example, a traverse jury, composed of twelve individuals, cannot decide an issue submitted to them, unless they are unanimous.

UNCERTAINTY. Vide *Certainty*.

UNCONSTITUTIONAL. What is contary to the constitution. When an act of the legislature is repugnant or contrary to the constitution, it is, *ipso facto*, void. 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18. The courts have the powers, and it is their duty, when the act is unconstitutional, to declare it to be so; but this will not be done except in a clear case, and, as an additional guard against error, the supreme court of the United States refuses to take up a case involving constitutional questions, when the court is not full. 9 Pet. 85. Vide 6 Cranch, 128; 1 Binn. 419; 5 Binn. 355; 2 Pennsyl. 184; 3 S. & R. 169; 7 Pick. 466; 13 Pick. 60; 2 Yeates, 493; 1 Virg. Cas. 20; 1 Blackf. 206; 6 Rand. 245; 1 Murph. 58; Harper, 385; 1 Breese, 209; Pr. Dec. 64, 89; 1 Rep. Cons. Ct. 267; 1 Car. Law Repos. 246; 4 Munr. 43; 5 Hayw. 271; 1 Cowen, 550; 1 South. 192; 2 South. 466; 7 N. H. Rep. 65, 66; 1 Chip. 237, 257; 10 Conn. 522; 7 Gill & John. 7; 2 Litt. 90; 3 Desaus. 476.

UNCORE PRIT, *pleading*. This barbarous phrase of old French, which is the same with *encore prêt*, yet ready, is used in a plea in bar to an action of debt on a bond due at a day past; when the defendant pleads a tender on the day it became due, and adds that he is *uncore prit*, still ready to pay the same. 3 Bl. Com. 303; Doct. Pl. 526; Dane's Ab. Index, h. t. Vide *Tout temps prist*.

UNDERLEASE, *contracts*, is an alienation by a tenant of a part of

his lease, reserving to himself a reversion; it differs from an assignment which is a transfer of all the tenant's interest in the lease. 3 Wils. 234; S. C. Bl. Rep. 766. And even a conveyance of the *whole* estate by the lessee, reserving to himself the rent with a power of reentry for non-payment, was held to be, not an assignment, but an underlease. Str. 405. In Ohio it has been decided that the transfer of only a part of the lands though for the whole term, is an underlease, 2 Ohio R. 216; in Kentucky such a transfer, on the contrary, is considered as an assignment. 4 Bibb, R. 538.

The underlessor has a right to distrain for the rent due him, which the assignor of a lease has not. The underlessee is not liable personally to the original lessor, nor is his property subject to his claim for rent longer than while it is on the leased premises, when it may be distrained upon. The assignee of the lessee stands in a different situation. He is liable to an action by the landlord or his assignee for the rent, upon the ground of privity of estate. 1 Hill. Ab. 125, 6; 4 Kent, Com. 95; 9 Pick. R. 52; 14 Mass. 487; 5 Watts, R. 134. Vide 2 Bl. R. 766; 3 Wils. 234; 4 Campb. 73; *Estate for years; Lease; Lessee; Notice to quit; Tenant for years.*

UNDER-SHERIFF. A deputy of a sheriff. The principal is called high-sheriff, and the deputy the under-sheriff. Vide 1 Phil. Ev. Index, h. t.

UNDERTAKING, *contracts*, is an engagement by one of the parties to a contract to the other, and not the mutual engagement of the parties to each other; a promise. 5 East, R. 17; 2 Leon. 224, 5; 4 B. & A. 595.

UNDERTOOK. Assumed; promised. This is a technical word which ought to be inserted in every declaration of assumpsit, charging that the defendant undertook to perform the promise which is the foundation of the suit; and this though the promise be founded on a legal liability, or it would be implied in evidence. Bac. Ab. Assumpsit, F; 1 Chit. Pl. 88, note (p).

UNDER-TUTOR, in Louisiana. In every tutorship, there shall be an under-tutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor. It is the duty of the under-tutor to act for the minor, whenever the interest of the minor is in opposition to the interest of the tutor. Civil Code, art. 300, 301; 1 N. S. 462; 9 M. R. 643; 11 L. R. 189; Poth. Des Personnes, partie prém. tit. 6, s. 5, art. 2. Vide *Procurator; Pro-tutor.*

UNDERWRITER, *insurances*, is one who signs a policy of insurance by which he becomes an insurer. By this act he places himself as to his responsibility in the place of the insured. He may cause a reinsurance (q. v.) to be made for his benefit; and it is his duty to act with good faith, and without quibbling, to pay all just demands against him for losses. Marsh. Ins. 45.

UNDIVIDED, what is held by the same title by two or more persons, whether their rights are equal, as to value or quantity, or unequal. Tenants in common, joint-tenants and partners, hold an undivided right in their respective properties, until partition has been made. The rights of each owner of an undivided thing extends over the whole and every part of it, *totum in toto, et totum in qualibet parte.* Vide *Partition; Per my et per tout.*

UNICA TAXATIO, *in practice.* The ancient language of a special award of *venire*, where of several defendants, one pleads, and one lets judgment go by default, whereby the

jury, who are to try and assess damages, on the issue, are also to assess damages against the defendant suffering judgment by default. Lee's Dict. h. t.

UNILATERAL CONTRACT, *civil law*. When the party to whom an engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758; Code Nap. 1103; a loan of money, and a loan for use are of this kind. Poth. Obl. part. 1, c. 1, s. 1, art. 2; Leç. Elem. § 781.

UNINTELLIGIBLE. What cannot be understood. When a law, a contract, or will, is unintelligible, it has no effect whatever. Vide *Construction*, and the authorities there referred to.

UNIO PROLIUM. A species of adoption used among the Germans; it signifies *union of descent*. It takes place when a widower, having children, marries a widow, who also has children. These parents then agree that the children of both marriages shall have the rights to their succession, as those which may be the fruit of their marriage. Leç. Elem. § 187.

UNITED STATES OF AMERICA. The name of this country. The United States, now twenty-six in number, are Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia. The territory of which these states are composed was at one time dependent generally on the crown of Great Britain, though governed by the local legislatures of the country. It is not within the plan of this work to give a history of the colonies, on this subject the reader is referred to Kent's Com. sect. 10; Story on the Constitution, Book 1; 8 Wheat. Rep. 543; Marshall, Hist. Colon.

The neglect of the British government to redress grievances which had been felt by the people, induced the colonies to form a closer connexion than their former isolated state, in the hopes that by a union they might procure what they had separately endeavoured in vain to obtain. In 1774, Massachusetts recommended that a congress of the colonies should be assembled to deliberate upon the state of public affairs; and on the fourth of September of the following year, the delegates to such a congress assembled in Philadelphia. Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia were represented by their delegates; Georgia alone was not represented. This congress, thus organised, exercised, *de facto* and *de jure*, a sovereign authority, not as the delegated agents of the governments *de facto* of the colonies, but in virtue of the original powers derived from the people. This, which was called the revolutionary government, terminated only when superceded by the confederated government under the articles of confederation, ratified in 1781. Serg. on the Const. Intr. 7, 8. The state of alarm and danger in which the colonies then stood induced the formation of a second congress. The delegates, representing all the states, met in May, 1775. This congress put the country in a state of defence, and made provisions for carrying on the war with the mother country; and for the internal regulations of which they were then in need; and on the fourth day of July, 1776, adopted and issued the Declaration

of Independence, (q. v.) The articles of confederation, (q. v.) adopted on the first day of March, 1781, 1 Story on the Const. § 225; 1 Kent's Comm. 211, continued in force until the first Wednesday in March, 1789, when the present constitution was adopted. 5 Wheat. 420.

The United States of America are a corporation endowed with the capacity to sue and be sued, to convey and receive property. 1 Marsh. Dec. 177, 181. But it is proper to observe that no suit can be brought against the United States without authority of law.

The states, individually, retain all the powers which they possessed at the formation of the constitution, and which have not been given to congress, (q. v.)

Besides the states which are above enumerated, there are various territories, (q. v.) which are a species of dependencies of the United States. New states may be admitted by congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of congress. Const. art. 4, s. 3. And the United States shall guaranty to every state in this union, a republican form of government. Ib. art. 4, s. 4.

See the names of the several states; and *Constitution of the United States.*

UNITY, *estates*, is an agreement or coincidence of certain qualities in the title of a joint estate or an estate in common. In a joint estate there must exist four unities; that of *interest*, for a joint-tenant cannot be entitled to one period of duration or quantity of interest in lands, and the other to a different; one cannot be tenant for life, and the other for years: that of *title*, and therefore, their estate must be created by one and the same act: that of *time*, for their estates must be vested at one and the same period, as well as by one and the same title; and, lastly, the unity of *possession:* hence joint-tenants are seised *per my et per tout*, or by the *half* or *moiety* and by *all;* that is, each of them has an entire possession, as well of every *parcel* as of the *whole.* 2 Bl. Com. 179–182; Co. Litt. 188. Coparceners must have the unities of interest, title, and possession. In tenancies in common, the unity of possession is alone required. 2 Bl. Comm. 192. Vide *Estate in Common; Estate in Joint-tenancy; Joint-tenants; Tenant in Common; Tenants, Joint.*

UNITY OF POSSESSION. This term is used to designate the possession by one person of several estates or rights. For example, a right to an estate to which an easement is attached, or the dominant estate, and estate which an easement encumbers, or the servient estate, in such case the easement is extinguished, 3 Mason, Rep. 172; Poph. 166; Latch, 153; and vide Cro. Jac. 121. But a distinction has been made between a thing that has being by prescription, and one that has its being *ex jure naturæ;* in the former case unity of possession will extinguish the easement, in the latter, for example, the case of a water-course, the unity will not extinguish it. Poth. 166. By the civil code of Louisiana, art. 801, every servitude is extinguished, when the estate to which it is due, and the estate owing it, are united in the same hands. But it is necessary that the whole of the two estates should belong to the same proprietor; for if the owner of one estate only acquires the other in part or in common with another person, confusion does not take effect. Vide *Merger.*

UNIVERSAL LEGACY. A term used among civilians. 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. Civil Code of Lo. art. 1599; Code Civ. art. 1003; Poth. Donations testamentaires, c. 2, sect. 1, § 2.

UNIVERSAL PARTNERSHIP, the name of a species of partnership by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire. Poth. Du Contr. de Societé, n. 29.

UNKNOWN. When goods have been stolen from some person unknown, they may be so described in the indictment; but if the owner be really known, an indictment alleging the property to belong to some person unknown is improper. 2 East's P. C. 651; 1 Hale, P. C. 512; Holt's N. P. C. 596; S. C. 3 Engl. Common Law Rep. 191; 8 C. & P. 773. Vide *Indictment; Quidam.*

UNLAWFUL, is that which is contrary to law. There are two kinds of contracts which are unlawful; those which are void, and those which are not. When the law expressly prohibits the transaction in respect of which the agreement is entered into and declares it to be void, it is absolutely so. 3 Binn. R. 533. But when it is merely prohibited, without being made void, although unlawful, it is not void. 12 Serg. & Rawle, 237; Chitty, Contr. 230; 23 Amer. Jur. 1 to 23; 1 Mod. 35; 8 East, R. 236, 237; 3 Taunt. R. 244; Hob. 14. Vide *Condition; Void.*

UNLAWFUL ASSEMBLY, *in crim. law*, is a disturbance of the public peace by three or more persons who meet together with an intent mutually to assist each other in the execution of some enterprise of a private nature, with force and violence; if they move forward towards its execution, it is then a rout, (q. v.); and if they actually execute their design, it amounts to a riot, (q. v.) 4 Bl. Com. 140; 1 Russ. on Cr. 254; Hawk. c. 65, s. 9; Com. Dig. Forcible Entry, (D 10); Vin. Abr. Riots, &c., (A).

UNLAWFULLY, *pleadings.*—This word is frequently used in indictments in the description of the offence; it is necessary when the crime did not exist at common law, and when a statute, in describing an offence which it creates, uses the word; 1 Moody, Cr. Cas. 239; but it is unnecessary whenever the crime existed at common law, and is manifestly illegal. 1 Chitty, Crim. Law, *241; Hawk. B. 2, c. 25, s. 96; 2 Roll. Ab. 82; Bac. Abr. Indictment, G 1; Cro. C. C. 38, 43.

UNQUES, *law French*, yet. This barbarous word is frequently used in pleas; as, Ne unques executor, Ne unques guardian, Ne unques accouple; and the like.

UNSOUND MIND; UNSOUND MEMORY. These words have been adopted in several statutes, and sometimes indiscriminately used to signify, not only lunacy, which is periodical madness, but also a permanent adventitious insanity as distinguished from idiocy. 1 Ridg. Parl. Cases, 518; 3 Atk. 171. The term *unsound mind* seems to have been used in those statutes in the same sense as insane; but they have been said to import that the party was in some such state as was contradistinguished from idiocy and from lunacy, and yet such as made him a proper subject of a commission to inquire of idiocy and lunacy. Shelf. on Lun. 5; Ray, Med. Jur. Prel. § 8; Hals. Med. Jur. 336; 8 Ves. 66; 19 Ves. 286; 1 Beck's Med. Jur. 573; Coop. Ch. Cas. 108; 12 Ves. 447; 2 Mad. Ch. Pr. 731, 732.

UNSOUNDNESS. Vide *Cribbiting; Roaring; Soundness.*

URBAN. Relating to a city; but in a more general sense it signifies relating to houses. It is used in this latter sense in the civil code of Louisiana, articles 706 and 707. All servitudes are established either for the use of houses or for the use of lands. Those of the first kind are called urban servitudes, whether the buildings to which they are due be situated in the city or in the country. Those of the second kind are called rural servitudes. The principal kinds of urban servitudes are the following: the right of support; that of drip; that of drain, or of preventing the drain; that of view or of lights, or of preventing the view or lights from being obstructed; that of raising buildings or walls; or of preventing them from being raised; that of passage; and that of drawing water. Vide 3 Toull. p. 441; Poth. Introd. au tit. 13 de la coutume d'Orléans, n. 2; Introd. Id. n. 2.

USAGE. Long and uniform practice. Evidence of a few instances that a certain thing has been done, does not establish a usage. The usage of trade affords ground upon which a proper construction may be given to contracts. Park on Ins. 30; 1 Marsh. Ins. 186, n. (20); 3 Wash. C. C. R. 150; 3 Watts, 178; 1 Caines, 45; 1 Gallis. 443; Gilpin, 356, 486; 1 Edw. Ch. R. 147; 1 N. & M. 519; 15 Mass. 433; 1 Hill, R. 270; Wright, 573; Pet. C. C. R. 230; 5 Ham. 436; 6 Pet. 715; 6 Porter, 123; 2 Pet. 148; 3 Conn. 9; 1 Hall, 612; 5 Binn. 287; 4 Mass. 245; 9 Mass. 155; 17 Mass. 449; 9 Wheat. 582; 11 Wheat. 430; 1 Pet. 25, 89; 3 Pick. 414. Usage differs from custom, (q. v.) or prescription, (q. v.) Vide Wesk. Inst. h. t.; 3 Chit. Pr. 55; Story, Confl. of Laws, § 270; 1 Dall. 178; Vaugh. 169, 383. As to the effect which usage has upon the construction of particular contracts, see Story on Ag. § 77; 2 Kent, Com. 662, 3d ed.; 5 Wheat. R. 326; 2 Sumn. R. 567; 2 Car. & P. 525; 3 B. & Ad. 728.

USANCE, *commercial law.* The term *usance* comes from *usage*, and signifies the time which by usage or custom is allowed in certain countries, for the payment of a bill of exchange. Poth. Contr. du Change, n. 15. The time of *one*, *two* or *three* months after the date of the bill, according to the custom of the places between which the exchanges run. Double or treble, is double or treble the usual time, and half usance is half the time. Where it is necessary to divide a month upon a half usance, which is the case when the usance is for one month or three, the divisions, notwithstanding the difference in the length of the months, contains fifteen days.

USE, *estates*, is defined to be a confidence reposed in another, who was made tenant of the land or terretenant, that he should dispose of the land according to the intention of the *cestui que use*, or him to whose use it was granted, and suffer him to take the profits. Plowd. 352; Gilb. on Uses, 1; Bac. Tr. 306; Cornish on Uses, 13; 1 Fonb. Eq. 363; 2 Ib. 7; Sanders on Uses, 2; Co. Litt. 272, b; 1 Co. 121; 2 Bl. Com. 328. In order to create a use, there must always be a good consideration; though, when once raised, it may be passed by grant to a stranger, without consideration. Doct. & Stu., Dial. 2, ch. 22, 23; Rob. Fr. Conv. 87, n. Uses were borrowed from the *fidei commissum* (q. v.) of the civil law; it was the duty of a Roman magistrate, the prætor *fidei commissarius*, whom Bacon terms the particular chancellor for uses, to enforce the observance of this confidence. Inst. 2, 23, 2.

Uses were introduced into England by the ecclesiastics in the reign of Edward III. or Richard II., for the purpose of avoiding the statutes of mortmain; and the clerical chancellors of those times held them to be *fidei commissa*, and binding in conscience. To obviate many inconveniences and difficulties, which had arisen out of the doctrine and introduction of uses, the statute of 27 Henry VIII., c. 10, commonly called the statute of uses, or in conveyances and pleadings, the statute for transferring uses into possession, was passed. It enacts, that "when any person shall be seised of lands, &c. to the use, confidence or trust of any other person or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life, or years, or otherwise, shall from thenceforth stand and be seised or possessed of the land, &c. of and in the like estate as they have in the use, trust or confidence; and that the estates of the persons so seised to the uses, shall be deemed to be in him or them that have the use, in such quality, manner, form and condition, as they had before in the use." The statute thus executes the use; that is, it conveys the possession to the use, and transfers the use to the possession; and, in this manner, making the *cestui que use* complete owner of the lands and tenements, as well at law as in equity. 2 Bl. Com. 333; 1 Saund. 254, note (6).

A modern use has been defined to be an estate of right, which is acquired through the operation of the statute of 27 Hen. 8, c. 10; and which, when it may take effect according to the rules of the common law, is called the legal estate; and when it may not, is denominated a use, with a term descriptive of its modification. Cornish on Uses, 35.

The common law judges decided, in the construction of this statute, that a use could not be raised upon a use, Dyer, 155 A; and that on a feoffment to A and his heirs, to the use of B and his heirs, in trust for C and his heirs, the statute executed only the first use, and that the second was a mere nullity. The judges also held that, as the statute mentioned only such persons as were *seised* to the use of others, it did not extend to a term of years, or other chattel interests, of which a termor is not seised but only possessed. Bac. Tr. 335; Poph. 76; Dyer, 369; 2 Bl. Com. 336. The rigid literal consruction of the statute by the courts of law again opened the doors of the chancery courts. 1 Madd. Ch. 448, 450.

USE, *civ. law*, is a right of receiving so much of the natural profits of a thing as is necessary to daily sustenance; it differs from usufruct, which is a right not only to use but to enjoy. 1 Browne's Civ. Law, 184; Leçons Elem. du Dr. Civ. Rom. § 414, 416.

USE AND OCCUPATION.—When a contract has been made, either by express or implied agreement, for the use of a house or other real estate, where there was no amount of rent fixed and ascertained, the landlord can recover a reasonable rent in an action of assumpsit for use and occupation. 1 Munf. R. 407; 2 Aik. R. 252; 7 J. J. Marsh. 6; 4 Day, R. 228; 13 John. R. 240; 13 John. R. 297; 4 H. & M. 161; 15 Mass. R. 270; 2 Whart. R. 42; 10 S. & R. 251. The action for use and occupation is founded not on a privity of estate, but on a privity of contract. 3 S. & R. 500; C. & N. 19; therefore it will not lie where the possession is tortious. 2 N. & M. 156; 3 S. & R. 500; 6 N. H. Rep. 298; 6 Ham. R. 371; 14 Mass. R. 95.

USEFUL. That which may be put into beneficial practice. The

patent act of congress of July 4, 1836, sect. 6, in describing the subjects of patents, mentions "new and *useful* art," and "new and *useful* improvement." To entitle the inventor to a patent, his invention must, to a certain extent, be beneficial to the community, and not be for an unlawful object, or frivolous, or insignificant. 1 Mason, 182; 1 Pet. C. C. R. 322.

USUCAPION, *civil law*, signifies the manner of acquiring the property in things by the lapse of time required by law. It differs from prescription, which has the same sense, and means, in addition, the manner of acquiring and losing, by the effect of time regulated by law, all sorts of rights and actions. Merl. Répert. mot. Prescription, tom. xii. page 671; Ayl. Pand. 320; Wood's Inst. Civ. Law, 165; Leçons Elem. du Dr. Rom. § 437; 1 Browne's Civ. Law, 264, n.; Vattel, B. 2, c. 2, § 140.

USUFRUCT, *in the civil law*, is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing. The obligation of not altering the substance of the thing, however, takes place only in the case of a complete usufruct. Usufructs are of two kinds; perfect and imperfect.—*Perfect usufruct*, which is of things which the usufructuary can enjoy without altering their substances, though their substance may be diminished or deteriorated naturally by the time or by the use to which they are applied; as a house, a piece of land, animals, furniture and other movable effects. —*Imperfect or quasi usufruct*, which is of things which would be useless to the usufructuary if he did not consume and expend them, or change the substance of them, as money, grain, liquors. Civ. Code of Louis. art. 525 et seq.; 1 Browne's Civ. Law, 184; Poth. Tr. du Douaire, n. 194; Ayl. Pand. 319; Poth. Pand. tom. 6, p. 91; Leçons El. du Dr. Civ. Rom. § 414; Inst. lib. 2, t. 4; Dig. lib. 7, t. 1, l. 1; Code, lib. 3, t. 33.

USUFRUCTUARY, *in the civil law*. One who has the right and enjoyment of an usufruct. Domat, with his usual clearness, points out the duties of the usufructuary, which are, 1, to make an inventory of the things subject to the usufruct, in the presence of those having an interest in them; 2, to give security for their restitution, when the usufruct shall be at an end; 3, to take good care of the things subject to the usufruct; 4, to pay all taxes, and claims which arise while the thing is in his possession, as a ground-rent; 5, to keep the thing in repair at his own expense. Lois Civ. liv. 1, t. 11, s. 4.

USURPATION, *torts*. The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Toml. Law Dict. h. t. According to Lord Coke, there are two kinds of usurpation; 1, when a stranger, without right, presents to a church, and his clerk is admitted; and, 2, when a subject uses a franchise of the king without lawful authority. Co. Litt. 277 b.

USURPATION, *government*, is the tyrannical assumption of the government by force, contrary to and in violation of the constitution of the country.

USURPED POWER, *in insurance*. By an article of the printed proposals which are considered as making a part of the contract of insurance it is provided that, "No loss or damage by fire, happening by any invasion, foreign enemy, or any military or usurped power whatsoever, will be made good by this company." Lord Chief J. Wilmot, Mr. Justice Clive, and Mr. Justice

Bathurst, against the opinion of Mr. Justice Gould, determined that the true import of the words *usurped power* in the proviso, was an invasion from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable; but that those words could not mean the power of a common mob. 2 Marsh. Ins. 390.

USURPER, *government*, is one who assumes the right of government by force contrary to and in violation of the constitution of the country. Toull. Dr. Civ. n. 32. Vide *Tyranny*.

USURY, *contracts*, is the illegal profit which is required and received by the lender of a sum of money from the borrower, for its use. In a more extended and improper sense, it is the receipt of any profit whatever for the use of money: it is only in the first of these senses that usury will be here considered. To constitute a usurious contract the following are the requisites: 1. A loan express or implied; 2, an agreement that the money lent shall be returned at all events; 3, not only that the money lent shall be returned, but that for such loan a greater interest than that fixed by law shall be paid.

1. There must be a loan in contemplation of the parties, 7 Pet. S. C. Rep. 109; 1 Clarke, R. 252; and, if there be a loan, however disguised, the contract will be usurious, if it be so in other respects. Where a loan was made of depreciated bank notes to be repaid in sound funds, to enable the borrower to pay a debt he owed dollar for dollar, it was considered as not being usurious. 1 Meigs, R. 585. The bona fide sale of a note, bond or other security at a greater discount than would amount to legal interest, is not, per se, a loan, although the note may be indorsed by the seller, and he remains responsible, 9 Pet. S. C. Rep. 103; 1 Clarke, R. 30. But if a note, bond or other security be made with a view to evade the laws of usury, and afterwards sold for a less amount than the interest, the transaction will be considered a loan, 2 Johns. Cas. 60; 3 Johns. Cas. 66; 15 Johns. R. 44; 2 Dall. 92; 12 Serg. & Rawle, 46; and a sale of a man's own note, indorsed by himself, will be considered a loan. It is a general rule that a contract, which, in its inception, is unaffected by usury, can never be invalidated by any subsequent usurious transaction. 7 Pet. S. C. Rep. 109. On the contrary, when the contract was originally usurious, and there is a substitution by a new contract, the latter will generally be considered usurious. 15 Mass. R. 96.

2. There must be a contract for the return of the money at all events; for if the return of the principal with interest, or of the principal only, depend upon a contingency, there can be no usury; but if the contingency extend only to interest, and the principal be beyond the reach of hazard, the lender will be guilty of usury, if he received interest beyond the amount allowed by law. As the principal is put to hazard in insurances, annuities and bottomry, the parties may charge and receive greater interest than is allowed by law in common cases, and the transaction will not be usurious.

3. To constitute usury the borrower must not only be obliged to return the principal at all events, but more than lawful interest: this part of the agreement must be made with full consent and knowledge of the contracting parties. 3 Bos. & Pull. 154. When the contract is made in a foreign country the rate of interest allowed by the laws of that country may be charged, and it will not be usurious although greater than

the amount fixed by law in this. Story, Confl. of Laws, § 292.

Vide, generally, Com. Dig. h. t.; Bac. Ab. h. t.; 8 Com. Dig. h. t.; Lilly's Regist. h. t.; Dane's Ab. h. t.; Petersdorff's Ab. h. t.; Vin. Ab. h. t.; 2 Bl. Com. 454; Comyn on Usury, *passim*; 1 Pet. S. C. Rep. Index, h. t.; 1 Supp. to Ves. Jr. 307, 337; Yelv. 47; 1 Ves. jr. 527; 1 Saund. 295, note 1; Poth. h. t.; and the article *Anatocism; Interest.*

UTERINE BROTHER, *domestic relations.* A brother by the mother's side.

TO UTTER, *crim. law*, is to offer; to publish. To utter and publish a counterfeit note is to assert and declare, directly or indirectly, by words or actions, that the note offered is good. It is not necessary that it should be *passed* in order to complete the offence of uttering. 2 Binn. R. 338, 9. It seems that reading out a document, although the party refuses to show it, is a sufficient uttering. Jebb's Ir. Cr. Cas. 282. Vide East, P. C. 179; Leach, 251; 2 Stark. Ev. 378; 1 Moody, C. C. 166; 2 East, P. C. 974; Russ. & Ry. 113; 1 Phil. Ev. Index, h. t.; Roscoe's Cr. Ev. 301. The merely showing a false instrument with intent to gain a credit, when there was no intention or attempt made to pass it, it seems would not amount to an uttering. Russ. & Ry. 200. Vide *Ringing the change.*

UXOR, *civil law.* A woman lawfully married.

V.

VACANCY. A place which is empty. The term is principally applied to cases where an office is not filled. By the constitution of the United States, the president has the power to fill up vacancies that may happen during the recess of the senate. Whether the president can create an office and fill it during the recess of the senate, seems to have been much questioned. Story, Const. § 1553. See Serg. Const. Law, ch. 31.

VACANT POSSESSION, *estates*, is an estate which has been abandoned by the tenant; the abandonment must be complete in order to make the possession vacant, and therefore if the tenant have goods on the premises, it will not be so considered. 2 Chit. Rep. 177; 2 Str. 1064; Bull. N. P. 97; Comyn on Landl. & Ten. 507, 517.

VACATION, is that period of time between the end of one term and beginning of another. During vacation rules and orders are made in such cases as are urgent, by a judge at his chambers.

VACCARIA, *old Engl. law*, is a word which is derived from *vacca*, a cow; and signifies a dairy-house. Co. Litt. 5 b.

VADIUM, *contracts.* A pledge or surety.

VADIUM MORTUUM, *contracts.* A mortgage or *dead pledge*: it is a security given by the borrower of a sum of money, by which he grants to the lender an estate in fee, on condition that if the money be not repaid at the time appointed, the estate so put in pledge shall continue to the lender as dead or gone from the mortgagor. 2 Bl. Com. 157; 1 Pow. Mortg. 4.

VADIUM VIVUM, *contracts.* A species of security by which the borrower of a sum of money, made over his estate to the lender, until he had received that sum out of the issues and profits of the land; it was

so called because neither the money nor the lands were lost, and were not left in dead pledge, but this was a *living* pledge, for the profits of the land were constantly paying off the debt. Litt. sect. 206; 1 Pow. on Mort. 3; Termes de la Ley, h. t.

VAGABOND, one who wanders about idly, who has no certain dwelling. The ordonnances of the French define a vagabond almost in the same terms. Dalloz, Dict. Vagabondage. See Vattel, liv. 1, § 219, n.

VAGRANT. Generally by the word vagrant is understood a person who lives idly, without any settled home; but this definition is much enlarged by some statutes, and it includes those who refuse to work, or go about begging. See 1 Wils. R. 331; 5 East, R. 339; 8 T. R. 26.

VALUABLE CONSIDERATION, *contracts*, is an equivalent for a thing purchased. Vide Vin. Ab. Consideration, B; *Consideration;* and 2 Bl. Com. 297.

VALUATION. The act of ascertaining the worth of a thing; or it is the estimated worth of a thing. It differs from price which does not always afford a true criterion of value, for a thing may be bought very dear or very cheap. In some contracts as in the case of bailments, or insurances, the thing bailed or insured is sometimes valued at the time of making the contract, so that if lost, no dispute may arise as to the amount of the loss. 2 Marsh. Ins. 620; 1 Caines, 80; 2 Caines, 30; Story, Bailm. § 253, 4; Park. Ins. 98; Wesk. Ins. h. t.; Stev. on Av. part 2; Ben. on Ins. ch. 4.

VALUE, *comm. law*, has two different meanings. It sometimes expresses the utility of an object, and sometimes the power of purchasing other goods with it. The first may be called value in use, the latter value in exchange. Value differs from price. The latter is applied to live cattle and animals; in a declaration, therefore, for taking cattle they ought to be said to be of such a price; and in a declaration for taking dead chattels or those which never had life, it ought to lay them to be of such a value. 2 Lilly's Ab. 629.

VARIANCE, *pleading*, *evidence*, is a disagreement or difference between two parts of the same legal proceeding, which ought to agree together. Variances are between the writ and the declaration, and between the declaration and the evidence. 1. When the variance is a matter of *substance*, as if the writ sounds in contract, and the other in tort, and *è converso*, or if the writ demands one thing or subject, and the declaration another, advantage may be taken of it, even in arrest of judgment; for it is the writ which gives authority to the court to proceed in any given suit, and, therefore, the court can have no authority to hear and determine a cause substantially different from that in the writ. Hob. 279; Cro. Eliz. 722. But if the variance is in matter of mere *form*, as in time or place, when that circumstance is immaterial, advantage can only be taken of it by plea in abatement. Yelv. 120; Latch. 173; Bac. Ab. Abatement, I; Gould, Pl. c. 5, § 98; 1 Chit. Pl. 438.—2. A variance by disagreement in some particular point or points only between the allegation and the evidence, when upon a *material* point, is as fatal to the party on whom the proof lies, as a total failure of evidence. For example; the plaintiff declared in covenant for not repairing, pursuant to the covenant in a lease, and stated the covenant, as a covenant to "repair when and as need should require;" and issue was joined on a traverse of the deed alleged. The plaintiff at the trial produced the deed in proof, and it appeared that the covenant was to

"repair when and as need should require, *and at farthest after notice;*" the latter words having been omitted in the declaration. This was held to be a variance, because the additional words were material, and qualified the effect of the contract. 7 Taunt. 385. But a variance in mere *form*, or in *matter quite immaterial*, will not be regarded. Str. 690. Vide 1 Vin. Ab. 41; 12 Vin. Ab. 63; 21 Vin. Ab. 538; Com. Dig. Abatement, G 8, H 7; Ib. Amendment, D 7, 8, V 3; Bail, R 7; Obligation, B 4; Pleader, C 14, 15, L 24, 30; Record, C, D, F; Phil. Ev. Index, h. t.; Stark. Ev. Index, h. t.; Roscoe's Ev. Index, h. t.; 18 Engl. Com. L. Rep. 139, 149, 153; 1 Dougl. 194; 2 Salk. 659; Harr. Dig. h. t.; Chit. Pl. Index, h. t.

VASSAL, *feudal law*. This was the name given to the holder of a fief, bound to perform feudal service; this word was then always correlative to that of lord, entitled to such service. The vassal himself might be lord of some other vassal. In aftertimes, this word was used to signify a species of slave who owed servitude, and was in a state of dependency on a superior lord. 2 Bl. Com. 53; Merl. Répert. h. t.

VEJOURS. An obsolete word which signified viewers or experts, (q. v.)

VENDEE, *contracts*, a purchaser, (q. v.); a buyer.

VENDITION. A sale; the act of selling.

VENDITIONI EXPONAS, *practice*, that you expose to sale. The name of a writ of execution, directed to the sheriff, commanding him to sell goods or chattels, and, in some states, lands, which he has taken in execution by virtue of a *fieri facias*, and which remain unsold. Under this writ the sheriff is bound to sell the property in his hands, and he cannot return a second time, that he can get no buyers. Cowp. 406; and see 2 Saund. 47, l.; 2 Chit. Rep. 390; Com. Dig. Execution, C 8; Grah. Pr. 359.

VENDOR, *contracts*. A seller, (q. v.) One who disposes of a thing in consideration of money. Vide *Purchaser; Seller*.

VENIRE FACIAS, *practice, crim. law*. According to the English law, the proper process to be issued on an indictment for any petit misdemeanor, on a penal statute, is a writ called *venire facias*. It is in the nature of a summons to cause the party to appear. 4 Bl. Com. 18; 1 Chit. Cr. Law, 351.

VENIRE, or VENIRE FACIAS JURATORES, *practice*. The name of a writ directed to the sheriff, commanding him to cause to *come* from the body of the county, before the court from which it issued, on some day certain and therein specified, a certain number of qualified citizens who are to act as jurors in the said court. Steph. Pl. 104; 2 Graydon's Forms, 314; and see 6 Serg. & Rawle, 414; 21 Vin. Ab. 291; Com. Dig. Enquest, C 1, &c.; Ib. Pleader, 2 S 12, 3 O 20; Ib. Process, D 8; 3 Chit. Pr. 797.

VENIRE FACIAS DE NOVO, *practice*. The name of a new writ of venire facias; this is awarded when, by reason of some irregularity or defect in the proceeding on the first venire, or the trial, the proper effect of that writ has been frustrated, or the verdict become void in law; as, for example, when the jury has been improperly chosen, or an uncertain, ambiguous or defective verdict has been rendered. Steph. Pl. 120; 21 Vin. Ab. 466; 1 Sell. Pr. 495.

VENTE A REMERE. A term used in Louisiana, which signifies a sale made reserving a right to the seller to repurchase the property

sold by returning the price paid for it. The time during which a repurchase may be made cannot exceed ten years, and, if by the agreement it so exceed, it shall be reduced to ten years. The time fixed for redemption must be strictly adhered to, and cannot be enlarged by the judge, nor exercised afterwards. Code 2545–1549. The following is an instance, of a *vente à réméré*. A sells to B, for the purpose of securing B against endorsements, with a clause that "whenever A should relieve B from such endorsements, without B's having recourse on the land, then B would reconvey the same to A, for A's own use." This is a *vente à rémêré*, and until A releases B. from his endorsements, the property is B's and forms no part of A's estate. 7 N. S. 278. See 1 N. S. 528; 3 L. R. 153; 4 L. R. 142; Troplong, Vente, ch. 6; 6 Toull. p. 257.

VENTER or VENTRE, literally signifies the belly. In law it is used figuratively for the wife: for example, a man has three children by the first, and one by the second venter. A child is said to be *in ventre sa mere* before it is born; while it is a fœtus.

VENTER INSPICIENDO, *Engl. law*, is a writ directed to the sheriff, commanding him that, in the presence of twelve men and as many women, he cause examination to be made, whether a woman therein named is with child or not; and if with child, then about what time it will be born; and that he certify the same. It is granted in a case when a widow, whose husband had lands in fee simple, marries again soon after her husband's death, and declares herself pregnant by her first husband, and, under that pretext, withholds the lands from the next heir. Cro. Eliz. 506.

VENUE, *pleading*. The venue is the county from which the jury are to come, who are to try the issue. Gould, Pl. c. 3, § 102; Archb. Civ. Pl. 86. As it is a general rule, that the place of every traversable fact stated in the pleadings must be distinctly alleged, or at least that some certain place must be alleged for every such fact, it follows that a venue must be stated in every declaration. In local actions, in which the subject or thing to be recovered is local, the true venue must be laid; that is, the action must be brought in that county where the cause of action arose: among these are all real actions, and actions which arise out of some local subject, or the violation of some local rights or interest; as the common law action of waste, trespass *quare clausum fregit*, trespass for nuisances to houses or lands, disturbance of right of way, obstruction or diversion of ancient watercourses, &c. Com. Dig. Action, N 4; Bac. Abr. Actions, Local, A a. In a transitory action, the plaintiff may lay the venue in any county he pleases; that is, he may bring suit wherever he may find the defendant, and lay his cause of action to have arisen there, even though the cause of action arose in a foreign jurisdiction. Cowp. 161; Cro. Car. 444; 9 Johns. R. 67; Steph. Pl. 306; 1 Chitty, Pl. 273; Archb. Civ. Pl. 86. Vide, generally, Chitt. Pl. Index, h. t.; Steph. Pl. Index, h. t.; Tidd's Pr. Index, h. t.; Graham's Practice, Index, h. t.; Com. Dig. Abatement, H 13; Ib. Action, N 13; Ib. Amendment, H 1; Ib. Pleader, S 9; 21 Vin. Ab. 85 to 169; 1 Vern. 178; Yelv. 12 a; Bac. Ab. Actions Local and transitory, B. *Local Actions; Transitory Actions.*

VERBAL. Parol; by word of mouth; as verbal agreement; verbal evidence. Not in writing.

VERBAL PROCESS. In Louisiana, by this term is understood a

written account of any proceeding or operation required by law, signed by the person commissioned to perform the duty, and attested by the signature of witnesses. Vide *Procès Verbal.*

VERDICT, *practice.* Is the unanimous decision made by a jury and reported to the court on the matters lawfully submitted to them in the course of the trial of a cause. Verdicts are of several kinds, namely, privy and public, general, partial, and special.

A *privy* verdict is one delivered privily to a judge out of court. A verdict of this kind is delivered to the judge after the jury have agreed, for the convenience of the jury, who after having given it separate. This verdict is of no force whatever; and this practice being exceedingly liable to abuse, is seldom, if ever, allowed in the United States.

A *public* verdict is one delivered in open court. This verdict has its full effect, and unless set aside is conclusive on the facts, and when judgment is rendered upon it, bars all future controversy, in personal actions. A private verdict must afterwards be given publicly in order to give it any effect.

A *general* verdict is one by which the jury pronounce at the same time on the fact and the law, either in favour of the plaintiff or defendant. Co. Litt. 228; 4 Bl. Com. 461; Code of Prac. of Lo. art. 519. The jury may find such a verdict whenever they think fit to do so.

A *partial* verdict in a criminal case, is one by which the jury acquit the defendant of a part of the accusation against him, and find him guilty of the residue: the following are examples of this kind of a verdict, namely: when they acquit the defendant on one count and find him guilty on another, which is indeed a species of general verdict, as he is generally acquitted on one charge and generally convicted on another; when the charge is of an offence of a higher and includes one of an inferior degree, the jury may convict of the less atrocious by finding a partial verdict. Thus, upon an indictment for burglary, the defendant may be convicted of larceny, and acquitted of the nocturnal entry; upon an indictment for murder he may be convicted of manslaughter; robbery may be softened to simple larceny; a battery, into a common assault. 1 Chit. Cr. Law, 638, and the cases there cited.

A *special* verdict is one by which the facts of the case are put on the record, and the law is submitted to the judges. The jury have an option, instead of finding the negative or affirmative of the issue, as in a general verdict, to find all the facts of the case as disclosed by the evidence before them, and, after so setting them forth, to conclude to the following effect: "that they are ignorant, in point of law, on which side they ought upon those facts to find the issue; that if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at such a sum, &c.; but if the court are of an opposite opinion, then they find vice versâ." This form of finding is called a *special verdict.* In practice they have nothing to do with the formal preparation of the special verdict. When it is agreed that a verdict of that kind is to be given, the jury merely declare their opinion as to any fact remaining in doubt, and then the verdict is adjusted without their further interference. It is settled, under the correction of the judge, by the counsel and attorneys on either side, according to the state of the facts as found by the jury, with respect to all particulars on which they have deli-

vered an opinion, and, with respect to other particulars, according to the state of facts which, it is agreed, that they ought to find upon the evidence before them. The special verdict, when its form is thus settled, is, together with the whole proceedings on the trial, then entered on record; and the question of law, arising on the facts found, is argued before the court in bank, and decided by that court as in case of a demurrer. If either party be dissatisfied with their decision, he may afterwards resort to a court of error. Steph. Pl. 113; 1 Archb. Pr. 189; 3 Bl. Com. 377; Bac. Abr. Verdict, D, E. There is another method of finding a special verdict; this is when the jury find a verdict generally for the plaintiff, but subject nevertheless to the opinion of the judges or the court above on a *special case* stated by the counsel on both sides with regard to a matter of law. 3 Bl. Com. 378; and see 10 Mass. R. 64; 11 Mass. R. 358.

VERIFICATION, *in pleading*. Whenever new matter is introduced on either side, the plea must conclude with a verification or averment, in order that the other party may have an opportunity of answering it. Carth. 337; 1 Lutw. 201; 2 Wils. 66; Dougl. 60; 2 T. R. 576; 1 Saund. 103, n. (1); Com. Dig. Pleader, E. The usual verification of a plea containing matter of fact, is in these words, "*And this he is ready to verify*," &c. See 1 Chit. Pl. 537, 616; Lawes, Civ. Pl. 144; 1 Saund. 103, n. (1); Willes, R. 5; 3 Bl. Com. 309.

In one instance, however, new matter need not conclude with a verification, and then the pleader may pray judgment without it; for example when the matter pleaded is merely negative. Willes, R. 5; Lawes on Pl. 145. The reason of it is evident, a negative requires no proof; and it would therefore be impertinent or nugatory for the pleader, who pleads a negative matter, to declare his readiness to prove it.

VERIFICATION, *practice*. The examination of the truth of a writing; the certificate that the writing is true. Vide *Authentication*.

VERMONT. The name of one of the new states of the United States of America. It was admitted by virtue of "An act for the admission of the state of Vermont into this Union," approved February 18, 1791, 1 Story's L. U. S. 169, by which it is enacted, that the state of Vermont having petitioned the congress to be admitted a member of the United States, *Be it enacted, &c.* That on the fourth day of March, one thousand seven hundred and ninety-one, the said state, by the name and style of "the state of Vermont," shall be received and admitted into this Union, as a new and entire member of the United States of America.

The constitution of this state was adopted by a convention holden at Windsor, on the ninth day of July, one thousand seven hundred and ninety-three. The powers of the government are divided into three distinct branches; namely, the legislative, the executive and the judicial.

1. The supreme legislative power is vested in a house of representatives of the freemen of the commonwealth or state of Vermont, ch. 2, § 2. The house of representatives of the freemen of this state shall consist of persons most noted for wisdom and virtue, to be chosen by ballot, by the freemen of every town in this state, respectively, on the first Tuesday in September, annually forever. Ch. 2, § 8. The representatives so chosen, a majority of whom shall constitute a quorum for transacting any other business than raising a state tax, for which two-thirds of the members elected shall be present, shall meet on the second

Thursday of the succeeding October, and shall be styled The General Assembly of the State of Vermont: they shall have power to choose their speaker, secretary of state, their clerk, and other necessary officers of the house—sit on their own adjournments — prepare bills, and enact them into laws—judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their own constituents antecedent to their elections; they may administer oaths and affirmations in matters depending before them, redress grievances, impeach state criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties: they may, annually, on their first session after their election, in conjunction with the council, or oftener if need be, elect judges of the supreme and several county and probate courts, sheriffs, and justices of the peace; and also, with the council may elect major generals and brigadier generals, from time to time, as often as there shall be occasion; and they shall have all other powers necessary for the legislature of a free and sovereign state: but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. Ch. 2, § 9.

2. The supreme executive power is vested in a governor, or in his absence, a lieutenant-governor, and council. Ch. 2, § 3. The duties of the executive are pointed out by the second chapter of the constitution as follows:

§ 10. The supreme executive council of this state shall consist of a governor, lieutenant-governor, and twelve persons, chosen in the following manner, viz. The freemen of each town shall, on the day of the election, for choosing representatives to attend the general assembly, bring in their votes for governor, with his name fairly written, to the constable, who shall seal them up, and write on them, *votes for the governor*, and deliver them to the representatives chosen to attend the general assembly; and at the opening of the general assembly there shall be a committee appointed out of the council and assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count the votes for the governor, and declare the person who has the major part of the votes to be governor for the year ensuing. And if there be no choice made, then the council and general assembly, by their joint ballot, shall make choice of a governor. The lieutenant-governor and treasurer shall be chosen in the manner above directed. And each freeman shall give in twelve votes, for twelve counsellors, in the same manner, and the twelve highest in nomination shall serve for the ensuing year as counsellors.

§ 11. The governor, and, in his absence, the lieutenant-governor, with the council, a major part of whom, including the governor, or lieutenant-governor, shall be a quorum to transact business, shall have power to commission all officers, and also to appoint officers, except where provision is, or shall be otherwise made by law, or this frame of government; and shall supply every vacancy in any office, occasioned by death, or otherwise, until the office can be filled in the manner directed by law or this constitution.

They are to correspond with other states, transact business with officers of government, civil and military, and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the judges of the supreme court. And

shall have power to grant pardons, and remit fines, in all cases whatsoever, except in treason and murder; in which they shall have power to grant reprieves, but not to pardon, until after the end of the next session of the assembly; and except in cases of impeachment, in which there shall be no remission or mitigation of punishment, but by act of the legislature.

They are also to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by the general assembly. And they may draw upon the treasury for such sums as may be appropriated by the house of representatives. They may also lay embargoes, or prohibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the house only. They may grant such licenses as shall be directed by law: and shall have power to call together the general assembly, when necessary, before the day to which they shall stand adjourned. The governor shall be captain general and commander-in-chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. And the lieutenant-governor shall, by virtue of his office, be lieutenant-general of all the forces of the state. The governor, or lieutenant-governor, and the council, shall meet at the time and place with the general assembly; the lieutenant-governor shall, during the presence of the commander-in-chief, vote and act as one of the council: and the governor, and, in his absence, the lieutenant-governor, shall, by virtue of their offices, preside in council, and have a casting, but no other vote. Every member of the council shall be a justice of the peace, for the whole state, by virtue of his office. The governor and council shall have a secretary, and keep fair books of their proceedings, wherein any counsellor may enter his dissent, with his reasons to support it; and the governor may appoint a secretary for himself and his council.

§ 16. To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations, as much as possible, prevented, all bills which originate in the assembly shall be laid before the governor and council for their revision and concurrence, or proposals of amendment; who shall return the same to the general assembly, with their proposals of amendment, if any, in writing; and if the same are not agreed to by the assembly, it shall be in the power of the governor and council to suspend the passing of such bill until the next session of the legislature: Provided, that if the governor and council shall neglect or refuse to return any such bill to the assembly, with written proposals of amendment, within five days, or before the rising of the legislature, the same shall become a law.

§ 24. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for mal-administration. All impeachments shall be before the governor, or lieutenant-governor, and council, who shall hear and determine the same, and may award costs; and no trial or impeachment shall be a bar to a prosecution at law.

3. The judicial power is regulated by the second chapter of the constitution, as follows:

§ 4. Courts of justice shall be maintained in every county in this state, and also in new counties, when formed; which courts shall be open

for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay. The judges of the supreme court shall be justices of the peace throughout the state; and the several judges of the county courts, in their respective counties, by virtue of their office, except in the trial of such causes as may be appealed to the county court.

§ 5. A future legislature may, when they shall conceive the same to be expedient and necessary, erect a court of chancery, with such powers as are usually exercised by that court, or as shall appear for the interest of the commonwealth: Provided, they do not constitute themselves the judges of the said court.

VERT. Every thing bearing green leaves in a forest. Bac. Ab. Courts of the Forest; Manwood, 146.

TO VEST, *estates*, is to give an immediate fixed right of present or future enjoyment; an estate is vested in possession, when there exists a right of present enjoyment; and an estate is vested in interest, when there is a present fixed right of future enjoyment. Fearne on Rem. 2; vide 2 Rop. on Leg. 757; 8 Com. Dig. App. h. t.; 1 Vern. 323, n.; 10 Vin. Ab. 230; 1 Suppl. to Ves. jr. 200, 242, 315, 434; 2 Ib. 157; 5 Ves. 511.

VESTURE OF LAND. By this phrase is meant all things, trees excepted, which grow upon the surface of the land, and clothe it externally. He who has the vesture of land has a right, generally, to exclude others from entering upon the superficies of the soil. 1 Inst. 4, b; Hamm. N. P. 151; see 7 East, R. 200; 1 Ventr. 393; 2 Roll. Ab. 2.

VETERA STATUTA. The name of *vetera statuta*, ancient statutes, has been given to the statutes commencing with Magna Carta, and ending with those of Edward II. Crabb's Eng. Law, 222.

VETO, *legislation*. This is a Latin word signifying, *I forbid*. It is usually applied to the power of the president of the United States to negative a bill which has passed both branches of the legislature. The act of refusing to sign such a bill, and the message which is sent to congress assigning the reasons for a refusal to sign it, are each called a veto. When a bill is engrossed, and has received the sanction of both houses it is transmitted to the president for his approbation. If he approves of it, he signs it. If he does not, he sends it, with his objections, to the house in which it originated, and that house enter the objections on their journals, and proceed to reconsider the bill. Const. U. S. art. 1, s. 7, cl. 2. Vide Story on the Const. § 878; 1 Kent, Com. 239. The governors of the several states have generally a negative on the acts of the legislature. When exercised with due caution, the veto power is some additional security against inconsiderate and hasty legislation, or where bills have passed through prejudice or want of due reflection. It was, however, mainly intended as a weapon in the hands of the chief magistrate to defend the executive department from encroachment and usurpation, as well as a just balance of the constitution.

VEXATIOUS SUIT, *torts*. A vexatious suit is one which has been instituted maliciously, and without probable cause, whereby a damage has ensued to the defendant.

The *suit* is either a criminal prosecution, a conviction before a magistrate, or a civil action. The suit need not be altogether without foundation; if the part which is groundless has subjected the party to an inconvenience, to which he would

not have been exposed had the valid cause of complaint alone have been insisted on, it is injurious. 4 Taunt. 616; 4 Rep. 14; 1 Pet. C. C. Rep. 210; 4 Serg. & Rawle, 19, 23.

To make it vexatious, the suit must have been instituted *maliciously*. As malice is not in any case of injurious conduct necessarily to be inferred from the total absence of probable cause for exciting it, and in the present instance the law will not allow it to be inferred from that circumstance, for fear of being mistaken, but it casts upon the suffering party the *onus* of proving express malice. 2 Wils. R. 307; 2 Bos. & Pull. 129; Carth. 417; but see what Gibbs, C. J., says in Berley v. Bethune, 5 Taunt. 583; see also 1 Pet. C. C. R. 210; 2 Browne's R. Appx. 42, 49; Add. R. 270.

It is necessary that the prosecution should have been carried on *without probable cause*. The law presumes that probable cause existed until the party aggrieved can show to the contrary. Hence he is bound to show the total absence of probable cause. 5 Taunt. 580; 1 Campb. R. 199. See 3 Dow. Rep. 160; 1 T. Rep. 520; Bul. N. P. 14; 4 Burr. 1974; 2 Bar. & C. 693; 4 Dow. & R. 107; 1 Car. R. 138, 204; 1 Gow, Rep. 20; 1 Wils. 232; Cro. Jac. 194. He is also under the same obligation when the original proceeding was a civil action. 2 Wils. 307.

The *damage* which the party injured sustains from a vexatious suit for a crime, is either to his person, his reputation, his estate, or his relative rights.—1. Whenever imprisonment is occasioned by a malicious unfounded criminal prosecution, the injury is complete, although the detention may have been momentary, and the party released on bail. Carth. 416.—2. When the bill of indictment contains scandalous aspersions likely to impair the reputation of the accused, the damage is complete. See 12 Mod. 210; 2 B. & A. 494; 3 Dow. & R. 669.—3. Notwithstanding his person is left at liberty, and his character is unstained by the proceedings, (as where the indictment is for a trespass, Carth. 416,) yet if he necessarily incurs expense in defending himself against the charge, he has a right to have his losses made good. 10 Mod. 148; Ib. 214; Gilb. 185; S. C. Str. 978. 4. If a master loses the services and assistance of his domestics, in consequence of a vexatious suit, he may claim a compensation. Ham. N. P. 275. With regard to a damage resulting from a *civil* action, when prosecuted in a court of competent jurisdiction, the only detriment the party can sustain, is the imprisonment of his person, or the seizure of his property, for as to any expense he may be put to, this, in contemplation of law, has been fully compensated to him by the costs adjudged. 4 Taunt. 7; 2 Mod. 306; 1 Mod. 4. But where the original suit was *coram non judice*, the party as the law formerly stood, necessarily incurred expense without the power of remuneration unless by this action, because any award of costs the court might make would have been a nullity. However, by a late decision such an adjudication was holden unimpeachable, and that the party might well have an action of debt to recover the amount. 1 Wils. 316. So that the law, in this respect, seems to have taken a new turn, and, perhaps, it would now be decided, that no action can, under any other circumstances but imprisonment of the person or seizure of the property, be maintained for suing in an improper court. Vide Carth. 189.

See, in general, Bac. Abr. Action on the case, H; Vin. Abr. Actions, H c; Com. Dig. Action upon the case upon desceit; 5 Amer. Law

Journ. 514; Yelv. 105, a note 2; Bull. N. P. 13; 3 Selw. N. P. 935; Notes on Co. Litt. 161, a; (Day's edit.) 1 Saund. 230, n. 4; 3 Bl. Com. 126, n. 21, (Chit. edit.) This Dict. tit. *Malicious Prosecution.*

VI ET ARMIS. With force and arms. When a man breaks into another's close *vi et armis*, he may be opposed force by force, for there is no time to request him to go away. 2 Salk. 641; 8 T. R. 78, 357. These words are universally inserted in a writ of trespass because they point out that the act has been done with force, and they are technical words to designate this offence. Ham. N. P. 4, 10, 12; 1 Chit. Pl. 122 to 125; and article *Force.*

VIA. A cart-way, which also includes a foot-way and a horse-way. Vide *Way.*

VIABLE, *vitæ habilis*, capable of living, is said of a child which is born alive in such an advanced state of formation as to be capable of living. Unless he is born viable he acquires no rights and cannot transmit them to his heirs, and is considered as if he had never been born. This term is used in the French law, Toull, Dr. Civ. Fr. tome 4, p. 101; it would be well to engraft it on our own. Vide Traill, Med. Jur. 46, and *Dead Born.*

VIABILITY, *med. jur.* Is an aptitude to live after birth; extra uterine life. 1 Briand, Méd. Lég. 1ere partie, c. 6, art. 2.

VICE CONSUL. An officer who performs the duties of a consul within a part of the district of a consul, or who acts in the place of a consul. Vide 1 Phil. Ev. 306.

VICE PRESIDENT OF THE UNITED STATES. The title of the second officer, in point of rank, in the government of the United States. To obtain a correct idea of the law relating to this officer, it is proper to consider, 1, his election; 2, the duration of his office; 3, his duties. 1. He is to be elected in the manner pointed out under the article President of the United States, (q. v.) and see also 3 Story on the Const. § 1447, et seq.—2. His office in point of duration is co-extensive with that of the president.—3. The fourth clause of the third section of the first article of the constitution of the United States, directs, that "the vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided." And by article 2, s. 1, clause 6, of the constitution, it is provided, that "in case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president."

VICECOMES. The sheriff.

VICENAGE, the neighbourhood; the venue, (q. v.)

VICINETUM. The neighbourhood; vicinage; the venue. Co. Litt. 158 b.

VICONTIEL, belonging to the sheriff.

VIDELICIT. A Latin adverb signifying to wit, that is to say, namely, *scilicit*, (q. v.) This word is usually abbreviated *viz.* The office of the videlicet is to mark, that the party does not undertake to prove the precise circumstances alleged, and in such case he is not required to prove them. Steph. Pl. 309; 7 Cowen, R. 42; 4 John. R. 450; 3 T. R. 67, 643; 8 Taunt. 107; Greenl. Ev. § 60. Vide Yelv. 94; 3 Saund. 291 a, note; New Rep. *465, note; Dane's Ab. Index, h. t.

VIEW. A prospect. Every one is entitled to a view from his premises, but he thereby acquires no right over the property of his neighbours. The erection of buildings which obstruct a man's view, therefore, is not unlawful, and such buildings cannot

be considered a nuisance. 9 Co. R. 58 b. Vide *Ancient Lights; Nuisance.*

VIEW, DEMAND OF, *in practice.* In most real and mixed actions, in order to ascertain the identity of land claimed with that in the tenant's possession, the tenant is allowed, after the demandant has counted, to *demand a view* of the land in question; or if the subject of claim be rent, or the like, a view of the land out of which it issues. Vin. Abr. View; Com. Dig. View; Booth, 37; 2 Saund. 45 b; 1 Reeves's Hist. 435. This, however, is confined to real or mixed actions; for in personal actions the view does not lie. In the action of dower unde nihil habet, it has been much questioned whether the view be demandable or not; 2 Saund. 44, n. 4; and there are other real and mixed actions in which it is not allowed. The view being granted, the course of proceeding is to issue a writ, commanding the sheriff to cause the defendant to have a view of the land. It being the interest of the demandant to expedite the proceedings, the duty of suing out the writ lies upon him, and not upon the tenant; and when, in obedience to its exigency, the sheriff causes view to be made, the demandant is to show to the tenant, in all ways possible, the thing in demand with its metes and bounds. On the return of the writ into court, the demandant must count de novo; that is declare again, Com. Dig. Pleader, 2 Y 3; Booth, 40; and the pleadings proceed to issue. This proceeding of demanding view, is, in the present rarity of real actions, unknown in practice.

VIEWERS, are persons appointed by the courts to see and examine certain matters and make a report of the facts together with their opinion to the court. In practice they are usually appointed to lay out roads and the like. Vide *Experts.*

VILLAIN. An epithet used to cast contempt and contumely on the person to whom it is applied. To call a man a villain in a letter written to a third persen, will entitle him to an action without proof of special damages. 1 Bos. & Pull. 331.

VILLEIN, *Engl. law*, was a species of slave during the feudal times. The feudal villein of the lowest order was unprotected as to property, and subjected to the most ignoble services; but his circumstances were very different from the slave of the southern states, for no person was, in the eye of the law, a villein, except as to his master; in relation to all other persons he was a freeman. Litt. Ten. s. 189, 190; Hallam's View of the Middle Ages, vol. i. 122, 124; vol. ii. 199.

VILLENOUS JUDGMENT, *punishments.* In the English law it was a judgment given by the common law in attaint, or in cases of conspiracy. Its effects were to make the object of it lose his *liberam legem*, and become infamous. He forfeited his goods and chattels, and his lands during life; and this barbarous judgment further required that his lands should be wasted, his houses razed, his trees rooted up, and that his body should be cast into prison. He could not be a juror or witness. Burr. 996, 1027. 4 Bl. Com. 136.

VINCULO MATRIMONII. A divorce à vinculo matrimonii is one from the bonds of matrimony. Such a divorce generally enables the parties to marry again.

VIOLENCE. The abuse of force. Théorie des Lois Criminelles, 32. In cases of robbery in order to convict the accused it is requisite to prove that the act was done with violence; but this violence is not confined to an actual assault of the person, by beating, knocking down, or forcibly wresting from; on the contrary, whatever goes to intimidate or over-

awe, by the apprehension of personal violence, or by fear of life, with a view to compel the delivery of property, equally falls within its limits. Alison, Pr. Cr. Law of Scotl. 228; 4 Binn. R. 379; 2 Russ. on Cr. 61; 1 Hale, P. C. 553. When an article is merely snatched, as by a sudden pull, even though a momentary force be exerted, it is not such violence as to constitute robbery. 2 East, P. C. 702; 2 Russ. Cr. 68.

VIOLENTLY, *pleading*. This word was formerly supposed to be necessary in an indictment, in order to charge a robbery from the person, but it has been holden unnecessary. 2 East's P. C. 784; 1 Chit. Cr. Law, *244. The words "feloniously and against the will," usually introduced in such indictments, seem to be sufficient. It is usual also to aver a *putting in fear*, though this does not seem to be requisite. Ib.

VIRGA. An obsolete word, which signifies a rod or staff, such as sheriffs, bailiffs, and constables carry, as a badge or ensign of their office.

VIRGINIA. The name of one of the original states of the United States of America. This colony, was chartered in 1606, by James the First, and this charter was afterwards altered in 1609 and 1612; and in 1624 the charter was declared to be forfeited under proceedings under a writ of *quo warranto*. After the fall of the charter, Virginia continued to be a royal province until the period of the American revolution. A constitution, or rather bill of rights, was adopted by a convention of the representatives of the good people of Virginia, on the 12th day of June, 1776. An amended constitution or form of government for Virginia was adopted January 14, 1830. The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of the county courts shall be eligible to either house of assembly. Art. 2.

§ 1. The legislature is composed of two branches, the house of delegates, and the senate, which together are called The General Assembly of Virginia.

1. The *house of delegates* will be considered with reference, 1, to the qualifications of the electors; 2, the qualifications of members; 3, the number of members; 4, time of their election. 1st. Every white male citizen of the commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the right of suffrage according to the former constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives in land, of the value of fifty dollars, and so assessed to be if any assessment thereof be required by law; (each and every such citizen, unless his title shall have come to him by descent, devise, marriage, or marriage settlement, having been so possessed or entitled for six months;) and every such citizen, who shall own and be

himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars, and every such citizen, who for twelve months next preceding has been a housekeeper and head of a family within the county, city, town, borough, or election district, where he may offer to vote, and shall have been assessed with a part of the revenue of the commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the general assembly, in the county, city, town, or borough, respectively, wherein such land shall lie, or such housekeeper and head of a family shall live. And in case of two or more tenants in common, joint tenants, or parceners, in possession, reversion, or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to; and the legislature shall by law provide the mode in which their vote or votes shall in such case be given: Provided, nevertheless, that the right of suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, seaman, or marine, in the service of the United States, or by any person convicted of any infamous offence. Art. 3, s. 14. In all elections in this commonwealth, to any office or place of trust, honour, or profit, the votes shall be given openly, or *viva voce*, and not by ballot. Art. 3, s. 15.—2. Any person may be elected a delegate who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the city, county, borough, or election district, qualified by virtue of his freehold, to vote for members of the general assembly: Provided, that all persons holding lucrative offices, and ministers of the gospel, and priests of every denomination, shall be incapable of being elected members of either house. Art. 3, s. 7.—3. The house of delegates is to consist of one hundred and thirty-four members. Art. 3, s. 2. But after the year 1841, it may be increased to one hundred and fifty. Art. 3, s. 5.

2. The *senate* will be considered in the same order that the house of delegates has been. 1st. The qualifications of electors are the same as for electors of delegates.—2. Any person may be elected a senator who has attained the age of thirty years, and shall be actually a resident and freeholder, within the district, qualified by virtue of his freehold to vote for members of the general assembly. Provided, that all persons holding lucrative offices, and ministers of the gospel, and priests of every denomination, shall be incapable of being elected. Art. 3, s. 7.—3d. The number of senators is thirty-two, but after the year 1841, it may be increased to thirty-six. Art. 3, s. 5.

§ 2. The *executive* power is vested in a governor and council. Their powers and duties are regulated by the fourth article of the constitution as follows:

1. The chief executive power of this commonwealth, shall be vested in a governor, to be elected by the joint vote of the two houses of the general assembly. He shall hold his office, during the term of three years, to commence on the first day of January next succeeding his election, or on such other day, as may from time to time be prescribed by law; and he shall be ineligible to that office, for three years next after

his term of service shall have expired.

2. No person shall be eligible to the office of governor, unless he shall have attained the age of thirty years, shall be a native citizen of the United States, or shall have been a citizen thereof at the adoption of the federal constitution, and shall have been a citizen of this commonwealth for five years next preceding his election.

3. The governor shall receive for his services a compensation to be fixed by law, which shall be neither increased nor diminished, during his continuance in office.

4. He shall take care that the laws be faithfully executed; shall communicate to the legislature, at every session, the condition of the commonwealth, and recommend to their consideration such measures as he may deem expedient. He shall be commander-in-chief of the land and naval forces of the state. He shall have power to embody the militia, when, in his opinion, the public safety shall require it; to convene the legislature, on application of a majority of the members of the house of delegates, or when, in his opinion, the interest of the commonwealth may require it; to grant reprieves and pardons, except where the prosecution shall have been carried on by the house of delegates, or the law shall otherwise particularly direct; to conduct, either in person, or in such manner as shall be prescribed by law, all intercourse with other and foreign states; and during the recess of the legislature, to fill, *pro tempore*, all vacancies in those offices, which it may be the duty of the legislature to fill permanently: Provided, that his appointment to such vacancies shall be by commissions to expire at the end of the next succeeding session of the general assembly.

5. There shall be a council of state, to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both houses of the general assembly, and remain in office three years. But of those first elected, one, to be designated by lot, shall remain in office one year only, and one other, to be designated in like manner, shall remain in office for two years only. Vacancies occurring by expiration of the term of service, or otherwise, shall be supplied by elections made in like manner. The governor shall, before be exercises any discretionary power conferred on him by the constitution and laws, require the advice of the council of state; which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the general assembly when called for by them. The council shall appoint their own clerk, who shall take an oath to keep secret such matters as he shall be ordered by the council to conceal. The senior counsellor shall be lieutenant-governor, and in case of the death, resignation, inability or absence of the governor from the seat of government, shall act as governor.

7. Commissions and grants shall run in the name of the commonwealth of Virginia, and bear teste by the governor, with the seal of the commonwealth annexed.

§ 3. The *judicial* powers are regulated by the fifth article of the constitution, as follows:

1. The judicial power shall be vested in a supreme court of appeals, in such superior courts as the legislature may from time to time ordain and establish, and the judges thereof, in the county courts, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in corporation

courts, and in the magistrates who may belong to the corporate body. The jurisdiction of these tribunals, and of the judges thereof, shall be regulated by law. The judges of the supreme court of appeals and of the superior courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof, by either of them, shall vacate his judicial office.

2. No law abolishing any court shall be construed to deprive a judge thereof of his office, unless two-thirds of the members of each house present concur in the passing thereof; but the legislature may assign other judicial duties to the judges of courts abolished by any law enacted by less than two-thirds of the members of each house present.

3. The present judges of the supreme court of appeals, of the general court, and of the supreme courts of chancery, shall remain in office until the termination of the session of the first legislature elected under this constitution, and no longer.

4. The judges of the supreme court of appeals and of the superior courts, shall be elected by the joint vote of both houses of the general assembly.

5. The judges of the supreme court of appeals and of the superior courts shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

6. Judges may be removed from office by a concurrent vote of both houses of the general assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the journals of each. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

7. On the creation of any new county, justices of the peace shall be appointed, in the first instance, in such manner as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase the number, appointments shall be made by the governor, on the recommendation of the respective county courts.

8. The attorney general shall be appointed by joint vote of the two houses of the general assembly, and commissioned by the governor, and shall hold his office during the pleasure of the general assembly. The clerks of the several courts, when vacancies shall occur, shall be appointed by their respective courts, and the tenure of office, as well of those now in office as of those who may be hereafter appointed, shall be prescribed by law. The sheriffs and coroners may be nominated by the respective county courts, and when approved by the governor, shall be commissioned by him. The judges shall appoint constables. And all fees of the aforesaid officers shall be regulated by law.

9. Writs shall run in the name of the commonwealth of Virginia, and bear teste by the clerks of the several courts. Indictments shall conclude, against the peace and dignity of the commonwealth.

VIRILIA, the privy members of a man. Bract. lib. 3, p. 144.

VIS, a Latin word which signifies force. In law it means any kind of force, violence or disturbance, relating to a man's person or his property.

VIS MAJOR, a superior force.

In law it signifies inevitable accident. This term is used in the civil law in nearly the same way that the words *act of God*, (q. v.), are used in the common law. Generally, no one is responsible for an accident which arises from the vis major; but a man may be so, where he has stipulated that he would; and when he has been guilty of a fraud or deceit. 2 Kent, Comm. 448; Poth. Prêt a Usage, n. 48, n. 60; Story, Bailm. § 25.

VISA, *civ. law.* The formula put upon an act, a register, a commercial book, in order to approve of it and authenticate it.

VISITATION, is the act of examining into the affairs of a corporation. The power of visitation is applicable only to ecclesiastical and eleemosynary corporations. 1 Bl. Com. 480; 2 Kyd on Corp. 174. The visitation of civil corporations is by the government itself, through the medim of the courts of justice. Vide 2 Kent, Com. 240.

VISITER, is an inspector of the government, of corporations or bodies politic. 1 Bl. Com. 482. Vide Dane's Ab. Index, h. t.; 7 Pick. 303; 12 Pick. 244.

VISNE. The neighbourhood; a neighbouring place; a place near at hand; the venue, (q. v.) Formerly the visne was confined to the immediate neighbourhood, where the cause of action arose, and many verdicts were disturbed because the visne was too large, which became a great gvievance; several statutes were passed to remedy the evil. The 21 James, 1, c. 13, gives aid after verdict, where the visne is partly wrong, that is, where it is awarded out of too many or too few places in the county named. The 16 and 17 Charles 2, c. 8, goes further and cures defects of the visne wholly, so that the cause is tried by a jury of the proper county. Vide *Venue*.

VIVA VOCA, living voice; verbally. It is said a witness delivers his evidence viva voce, when he does so in open court: the term is opposed to deposition. It is sometimes opposed to ballot; as, the people vote by ballot, but their representatives, in the legislature, vote viva voce.

VIVARY. A place where *living* things are kept; as a park, on land; or in the water, as a pond.

VIVUM VADIUM, *or living pledge, in contracts*, is when a man borrows a sum of money, (suppose two hundred dollars,) of another, and grants him an estate, as of twenty dollars per annum, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void, as soon as such sum is raised. And in this case the land or pledge is said to be living; it subsists, and survives the debt, and immediately on the discharge of that, results back to the borrower. 2 Bl. Com. 157. See *Antichresis; Mortgage.*

VOID, *contracts, practice.* That which has no force or effect. Contracts, bequests or legal proceedings may be void; these will be severally considered.

1. The invalidity of a contract may arise from many causes. 1. When the parties have *no capacity to contract;* as in the case of idiots, lunatics, and in some states, under their local regulations, habitual drunkards. Vide *Parties to contracts*, § 1; 1 Hen. & Munf. 69; 1 South. R. 361; 2 Hayw. R. 394; Newl. on Contr. 19; 1 Fonbl. Eq. 46; 3 Camp. 128; Long on Sales, 14; Highm. on Lunacy, 111, 112; Chit. on Contr. 29, 257.—2. When the contract has for its object the performance of an act *malum in se;* as a covenant to rob or kill a man, or to commit a breach of the peace. Shep. To. 163; Co. Litt. 206, b; 10 East,

R. 534.—3. When the *thing to be performed is impossible;* as if a man were to covenant to go from the United States to Europe in one day. Co. Litt. 206, b. But in these cases, the impossibility must exist at the time of making the contract; for although subsequent events may excuse the performance, the contract is not absolutely void; as, if John contract to marry Maria, and, before the time appointed, the covenantee marry her himself, the contract will not be enforced, but it was not void in its creation. It differs from a contract made by John, who, being a married man and known to the covenantee, enters into a contract to marry Maria during the continuance of his existing marriage, for in that case the contract is void.—4. Contracts against *public policy;* as an agreement not to marry *any one*, or not to follow *any business;* the one being considered in restraint of marriage, and the other in restraint of trade. 4 Burr. 2225; S. C. Wilm. 364; 2 Vern. 215; Al. 67; 8 Mass. R. 223; 9 Mass. R. 522; 1 Pick. R. 443; 3 Pick. R. 188.—5. When the contract is fraudulent, it is void, for fraud vitiates every thing. 1 Fonbl. Equity, 66, note; Newl. on Contr. 352; and article *Fraud*. As to cases when a condition consists of several parts, and some are lawful and others are not, see article *Condition*.

2. A devise or bequest is void: 1. When made by a person not lawfully authorised to make a will; as, a lunatic or idiot, a married woman, and an infant before arriving at the age of fourteen, if a male, and twelve if a female. Harg. Co. Litt. 896, b; Rob. on Wills, 28; Godolph. Orph. Leg. 21.—2. When there is a defect in the form of the will, or when the devise is forbidden by law; as, when a perpetuity is given, or when the devise is unintelligible.—3. When it has been obtained by fraud.—4. When the devisee is dead.—5. And when there has been an express or implied revocation of the will. Vide *Legacy; Will*.

3. A writ or process is void when there was not any authority for issuing it, as where the court had no jurisdiction. In such case the officers acting under it become trespassers, for they are required, notwithstanding it may sometimes be a difficult question of law, to decide whether the court has or has not jurisdiction. 2 Brownl. 124; 10 Co. 69; March's R. 118; 8 T. R. 424; 3 Cranch, R. 330; 4 Mass. R. 234. Vide articles *Irregularity; Regular and Irregular Process*.

Vide, generally, 8 Com. Dig. 644; Bac. Ab. Conditions, K; Bac. Ab. Infancy, &c. I; Bac. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Chit. Pr. 75; Yelv. 42, a, note (1); 1 Rawle, R. 163.

VOIDABLE, that which has some force or effect, but which, in consequence of some inherent quality, may be legally annulled or avoided. As a familiar example, may be mentioned the case of a contract made by an infant with an adult, which may be avoided or confirmed by the former on his coming of age. Vide *Parties, in contracts*. Such contracts are generally of binding force until avoided by the party having a right to annul them. Bac. Ab. Infancy, I 3; Com. Dig. Enfant; Fonbl. Eq. b. 1, c. 2, § 4, note (b); 3 Burr. 1794; Nels. Ch. R. 55; 1 Atk. 354; Stra. 937; Perk. § 12.

VOIRE. An old French word which signifies the same as the modern word *vrai*, true. *Voire dire*, to speak truly, to tell the truth. Before a witness is sworn in chief to testify his knowledge of the facts involved in the issue, he may be sworn on his *voire dire*, in order to ascertain from him whether he knows some collateral facts. The examination is gene-

rally made for the purpose of ascertaining whether the witness has any interest in the cause, or some other ground of challenge. Vide 12 Vin. Ab. 48; 22 Vin. Ab. 14; 1 Dall. R. 375; Dane's Abr. Index, h. t.

VOLUNTARY BANKRUPT, is one who of his own accord applies for the benefit of the bankrupt laws, and of course without any adverse proceedings. Act of Congress of 19 Aug. 1841. Vide *Bankrupt.*

VOLUNTARY CONVEYANCE, *contracts*, is the transfer of an estate made without any adequate consideration of value. Whenever a voluntary conveyance is made, a presumption of fraud properly arises upon the statute of 27th Eliz. cap. 4, which presumption may be repelled by showing that the transaction on which the conveyance was founded, virtually contained some conventional stipulations, some compromise of interests or reciprocity of benefits, that point out an object and motive beyond the indulgence of affection or claims of kindred, and not reconcilable with the supposition of intent to deceive a purchaser. But unless so repelled, such a conveyance coupled with a subsequent negociation for sale, is conclusive evidence of statutory fraud. 5 Day, 223, 341; 1 Johns. Cas. 161; 4 John. Ch. R. 450; 3 Conn. 450; 4 Conn. 1; 4 John. R. 536; 15 John. R. 14; 2 Munf. R. 363. By the statute of 3 Henry VII. c. 4, all deeds of gifts of goods and chattels in trust for the donor were declared void; and by the statute of 13 Eliz. ch. 5, gifts of goods and chattels, as well as of lands, by writing or otherwise, made with intent to delay, hinder and defraud creditors, were rendered void as against the person to whom such frauds would be prejudicial. The principles of these statutes, which indeed have been copied from the civil law, Dig. 42, 8, 5, 11; 2 Bell's Com. 182, though they may not have been substantially re-enacted, prevail through the United States. 3 Johns. Ch. R. 481; 1 Halst. R. 450; 5 Cowen, 87; 8 Wheat. R. 229; 11 Ib. 199; 12 Serg. & Rawle, 448; 9 Mass. R. 390; 11 Ib. 421; 4 Greenl. R. 52; 2 Pick. R. 411; 8 Com. Dig. App. h. t.; 22 Vin. Ab. 15; 1 Vern. 38, 101; Rob. on Fr. Conv. 65; 478; Dane's Ab. Index, h. t.; 4 Ves. 344. Vide *Contracts; Indebtedness; Settlement.*

VOLUNTARY JURISDICTION. In the ecclesiastical law, jurisdiction is either *contentious jurisdiction*, (q. v.) or *voluntary jurisdiction*. By the latter term is understood that kind of jurisdiction which requires no judicial proceedings, as, the granting letters of administration and receiving the probate of wills.

VOLUNTEERS, *contracts*, are persons who receive a voluntary conveyance. (q. v.) It is a general rule of the courts of equity that they will not assist a mere volunteer who has a defective conveyance. Fonbl. B. 1, c. 5, s. 2, and see the note there for some exceptions to this rule, Vide, generally, 1 Madd. Ch. 271; 1 Supp. to Ves. Jr. 320; 2 Ib. 321; Powell on Mortg. Index, h. t.

VOLUNTEERS, *army*. Persons who in time of war offer their services to their country, and march in its defence. Their rights and duties are prescribed by the municipal laws of the different states.

VOTE. Suffrage; the voice of an individual in making a choice by many. The total number of voices given at an election; as, the presidential vote. Votes are either given by ballot, (q. v.) or *viva voce*; they may be delivered personally by the voter himself, or, in some cases, by proxy, (q. v.) A majority (q. v.) of the votes given carries the question submitted, unless in particular cases when the constitution or laws require

there shall be a majority of all the voters, or when a greater number than a simple majority is expressly required, as, for example, in the power of the senate to make treaties by the president and senate, when two-thirds of the senators present must concur. Vide Angell on Corpor. Index, h. t. When the votes are equal in number, the proposed measure is lost.

VOTER. One entitled to a vote; an elector.

VOUCHER, *accounts*. An account book in which are entered the acquittances, or warrants for the accountant's discharge. It also signifies any acquittance or receipt, which is evidence of payment, or of the debtor's being discharged.

VOUCHER, *in recoveries*. The voucher in common recoveries, is the person on whom the tenant to the *præcipe* calls to defend the title to the land, because he is supposed to have warranted the title to him at the time of the original purchase. The person usually employed for this purpose is the cryer of the court, who is therefore called the common voucher. Vide Cruise, Dig. tit. 36, c. 3, s. 1; 22 Vin. Ab. 26; Dane, Index, h. t. and see *Recovery*.

VOUCHER TO WARRANTY. Vide *Warranty, voucher to*.

VOYAGE, *marine law*, is the passage of a ship upon the seas, from one port to another, or to several ports. Every voyage must have a *terminus à quo* and a *terminus ad quem*. When the insurance is for a limited time, the two extremes of that time are the *termini* of the voyage insured. When a ship is insured, both outward and homeward, for one entire *premium*, this with reference to the insurance, is considered but one voyage; and the *terminus à quo*, is also the *terminus ad quem*. Marsh. Ins. B. 1, c. 7, s. 1 to 5. As to the commencement and ending of the voyages, see "*Risk*."

The voyage, with reference to the legality of it, is sometimes confounded with the traffic in which the ship is engaged, and is frequently said to be illegal, only because the trade is so. But a voyage may be lawful, and yet the transport of certain goods on board the ship may be prohibited; or the voyage may be illegal, though the transport of the goods be lawful. Marsh. Ins. B. 1, c. 6, s. 1. See Lex Merc. Amer. c. 10, s. 14; Park. Ins. ch. 12; Weak. Ins. tit. Voyages; and *Deviation*.

In the French law the *voyage de conserve*, is given to designate an agreement made between two or more sea captains that they will not separate in their voyage, will lend aid to each other, and will defend themselves against a common enemy, or the enemy of one of them, in case of attack. This agreement is said to be a partnership. 3 Pardes. Dr. Com. n. 656; 4 Pardes. Dr. Com. n. 984; 20 Toull. n. 17.

W.

WADSET, a term used in Scotland, by which is meant a right, by which lands, or other heritable subjects, are impignorated by the proprietor to his creditor in security of his debt; and, like other heritable rights, is perfected by seisin. Wadsets, by the present practice, are commonly made out in the form of mutual contracts, in which one party sells the land, and the other grants the right of reversion. Ersk. Pr. L. Scot. B. 2, t. 8, s. 1, 2. Wadsets are proper or improper. Proper, where the use of the land shall go for the use of the money. Improper,

where the reverser agrees to make up the deficiency; and where it amounts to more the surplus profit of the land is applied to the extinction of the principal. Ib. B. 2, t. 8, s. 12, 13.

WADSETTER. In the law of Scotland, a creditor to whom a wadset is made, is called a wadsetter.

TO WAGE, *contracts.* To give a pledge or security for the performance of any thing; as to wage or gage deliverance; to wage law, &c. Co. Litt. 294. This word is but little used.

WAGER OF BATTEL. A superstitious mode of trial which till lately disgraced the English law. The last case of this kind was commenced in the year 1817, but not proceeded in to judgment; and at the next session of the British parliament an act was passed to abolish appeals of murder, treason, felony or other offences, and wager of battel, or joining issue or trial by battel in writs of right. 59 Geo. 3, c. 46. For the history of this species of trial the reader is referred to 4 Bl. Com. 347; 3 Bl. Com. 337; Encyclopédie, Gage de Bataille; Steph. Pl. 122, and App. note 35.

WAGER OF LAW, *Engl. law.* When an action of *debt* is brought against a man upon a simple contract, and the defendant pleads *nil debit*, and concludes his plea with this formula, "And this he is ready to defend against him the said A B and his suit, as the court of our lord the king here shall consider," &c., he is said to wage his law. He is then required to swear he owes the plaintiff nothing, and bring eleven compurgators who will swear they believe him. This mode of trial, is trial by wager of law. The wager of law could only be had in actions of debt on simple contract, and actions of detinue; in consequence of this right of the defendant, now actions of simple contracts are brought in assumpsit, and instead of bringing detinue, trover has been substituted. Vide Steph. on Plead. 124, 250, and notes, xxxix.; Co. Entr. 119; Mod. Entr. 179; Lilly's Entr. 467; 3 Chit. Pl. 497; 13 Vin. Ab. 58; Bac. Ab. h. t.; Dane's Ab. Index, h. t. For the origin of this form of trial, vide Steph. on Pl. notes xxxix.; Co. Litt. 294, 5; 3 Bl. Com. 341.

WAGER POLICY, *contracts,*— is one made when the insured has no insurable interest. It has nothing in common with insurance but the name and form. It is usually in such terms as to preclude the necessity of inquiring into the interest of of the insured; as, "interest or no interest," or, "without further proof of interest than the policy." Such contracts being against the policy of the law are void. 1 Marsh. Ins. 121; Park on Ins. Ind. h. t.; Wesk. Ins. h. t.

WAGERS. A wager is a bet; a contract by which two parties or more agree that a certain sum of money, or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event. The law does not prohibit all wagers. 1 Browne's Rep. 171; Poth. Du Jeu, n. 4. To restrain wagers within the bounds of justice the following conditions must be observed: 1. Each of the parties must have the right to dispose of the thing which is the object of the wager. 2. Each must give a perfect and full consent to the contract. 3. There must be equality between the parties. 4. There must be good faith between them. 5. The wager must not be forbidden by law. Poth. Du Jeu, n. 8. In general, it seems, that a wager is legal and may be enforced in a court of law, 3 T. R. 693, if it be not, 1st, contrary to public policy, or immoral; or if it do not in some other respect tend to the detriment

of the public; 2dly, if it do not affect the interest, feelings, or character of a third person.

1. Wagers on the event of an election laid before the poll is open, 1 T. R. 56; 4 Johns. 426; 4 Harr. & M'H. 284; or after it is closed, 8 Johns. 454, 147; 2 Browne's Rep. 182, are unlawful. And wagers are against public policy if they are in restraint of marriage, 10 East, R. 22; made as to the mode of playing an illegal game, 2 H. Bl. 43; 1 Nott & M'Cord, 180; 7 Taunt. 246; or on an abstract speculative question of law or judicial practice, not arising out of circumstances in which the parties have a real interest. 12 East, R. 247, and Day's notes, sed vide Cowp. 37.

2. Wagers as to the sex of an individual, Cowp. 729; or whether an unmarried woman had borne or would have a child, 4 Campb. 152, are illegal; as unnecessarily leading to painful and indecent considerations. The supreme court of Pennsylvania have laid it down as a rule, that every bet about the age, or height, or weight, or wealth, or circumstances, or situation of any person, is illegal; and this whether the subject of the bet, be man, woman, or child, married or single, native or foreigner, in this country or abroad. 1 Rawle, 42. And it seems that a wager between two coach proprietors, whether or not a particular person would go by one of their coaches is illegal, as exposing that person to inconvenience. 1 B. & A. 683.

In the case even of a legal wager, the authority of a stakeholder, like that of an arbitrator, may be rescinded, by either party before the event happens. And if after his authority has been countermanded, and the stake has been demanded, he refuse to deliver it, trover or assumpsit for money had and received is maintainable. 1 B. & A. 683. And where the wager is in its nature illegal, the stake may be recovered, even after the event, on demand made before it has been paid over. 4 Taunt. 474; 5 T. R. 405; sed vide 12 Johns. 1. See further on this subject, 7 Johns. 434; 11 Johns. 23; 10 Johns. 406, 468; 12 Johns. 376; 17 Johns. 192; 15 Johns. 5; 13 Johns. 88; Mann. Dig. Gaming; Harr. Dig. Gaming.

WAGES, *contract*, is a compensation given to a hired person for his or her services. As to servants' wages, see Chitty, Contr. 171; as to sailors' wages, Abbott on Shipp. 473; generally, see 22 Vin. Abr. 406; Bac. Abr. Master, &c. H; Marsh. Ins. 89; 2 Lill. Abr. 677; Peters's Dig. Admiralty, pl. 231 et seq.

WAIFS, are stolen goods waived or scattered by a thief in his flight in order to effect his escape. Such goods by the English common law belong to the king. 1 Bl. Com. 296; 5 Co. 109; Cro. Eliz. 694. This prerogative has never been adopted here against the true owner, and never put in practice against the finder, though against him there would be better reason for adopting it. 2 Kent, Com. 292. Vide Com. Dig. h. t; 1 Bro. Civ. Law, 239, n.

TO WAIVE. To abandon or forsake a right.

WAIVER, is the relinquishment or refusal to accept of a right. In practice it is required of every one to take advantage of his rights at a proper time, and, neglecting to do so, will be considered as a waiver. If, for example, a defendant who has been misnamed in the writ and declaration, pleads over, he cannot afterwards take advantage of the error by pleading in abatement, for his plea amounts to a waiver. In seeking for a remedy the party injured may, in some instances, waive a part of his right, and sue for another; for example, when the defendant has committed a trespass on the property of

the plaintiff, by taking it away, and afterwards he sells it, the injured party may waive the trespass, and bring an action of assumpsit for the recovery of the money thus received by the defendant. 1 Chit. Pl. 90. In contracts if after knowledge of a supposed fraud, surprise or mistake, a party performs the agreement in part, he will be considered as having waived the objection. 1 Bro. Parl. Cas. 289. It is a rule of the civil law, consonant with reason, that any one may renounce or waive that which has been established in his favour: ***Regula est juris antiqui omnes licentiam habere his quæ pro se introducta sunt, renunciare.*** Code 2, 3, 29. As to what will amount to a waiver of a forfeiture, see 1 Conn. R. 79; 7 Conn. R. 45; 1 John. Cas. 125; 8 Pick. 292; 2 N. H. Rep. 120, 163; 14 Wend. 419; 1 Ham. R. 21. Vide *Verdict.*

WAKENING, ***Scotch law.*** Is the revival of an action. An action is said to sleep, when it lies over, not insisted on for a year, in which case it is suspended. Ersk. Prin. B. 4, t. 1, n. 33. With us this is done by ***scire facias,*** (q. v.)

WALL. Vide ***Party Wall.***

WANTONNESS, ***crim. law,*** a licentious act by one man towards the person of another, without regard to his rights, as, for example, if a man should attempt to pull off another's hat against his will, in order to expose him to ridicule, the offence would be an assault, and if he touched him it would amount to a ***battery,*** (q. v.) In such case there would be no malice, but the wantonness of the act would render the offending party liable to punishment.

WAR, is defined to be a contention by force; or it is the art of paralysing the forces of an enemy. It is either public or private. It is not intended here to speak of the latter. Public war is either civil or national. Civil war is that which is waged between two parties, citizens or members of the same state or nation. National war is a contest between two or more independent nations, carried on by authority of their respective governments. War is not only an act, but a state or condition, for nations are said to be at war not only when their armies are engaged, so as to be in the very act of contention, but also when they have any matter of controversy or dispute subsisting between them which they are determined to decide by the use of force, and have declared publicly, or by their acts, their determination so to decide it. National wars are said to be offensive or defensive. War is offensive on the part of the government which commits the first act of violence; it is defensive on the part of that government which receives such act; but it is very difficult to say what is the first act of violence. If a nation sees itself menaced with an attack, its first act of violence to prevent such attack, will be considered as defensive. To legalize a war it must be declared by that branch of the government entrusted by the constitution with this power. Bro. tit. Denizen, pl. 20. And it seems it need not be declared by both the belligerent powers. Rob. Rep. 232. By the constitution of the United States, art. 1, s. 7, congress are invested with power "to declare war, grant letters of mark and reprisal, and make rules concerning captures on land and water; and they have also the power to raise and support armies, and to provide and maintain a navy. See 8 Cranch, R. 110, 154; 1 Mason, R. 79, 81; 4 Binn. R. 487. Vide, generally, Grot. B. 1, c. 1, s. 1; Rutherf. Inst. B. 1, c. 19; Bynkershock, Quest. Jur. Pub. lib. 1, c. 1; Lee on Capt. c. 1; Chit. Law of Nat. 28; Marten's Law of Nat. B. 8, c. 2; Phil. Ev. Index, h. t.;

Dane's Ab. Index, h. t.; Com. Dig. h. t.; Bac. Ab. Prerogative, D 4; Merl. Répert. mot Guerre; 1 Inst. 249; Vattel, liv. 3, c. 1, § 1; Mann. Comm. B. 3, c. 1.

WARD, *domestic relations*, is an infant placed by authority of law under the care of a guardian. While under the care of a guardian a ward can make no contract whatever binding upon him, except for necessaries. When the relation of guardian and ward ceases, the latter is entitled to have an account of the administration of his estate from the former. During the existence of this relation, the ward is under the subjection of his guardian, who stands in *loco parentis*.

WARD, *a district*. Most cities are divided for various purposes into districts, each of which is called a ward.

WARD, *police*. To watch in the day time, for the purpose of preventing violations of the law. It is the duty of all police officers and constables to keep ward in their respective districts.

WARDEN. A guardian; a keeper. This is the name given to various officers; as, the warden of the prison; the wardens of the port of Philadelphia; church-wardens.

WARDSHIP, *Engl. law*. Wardship was the right of the lord over the person and estate of the tenant, when the latter was under a certain age. When a tenant by knight's service died, and his heir was under age, the lord was entitled to the custody of the person and the lands of the heir, without any account, until the ward, if a male, should arrive at the age of twenty-one years, and, if a female, at eighteen. Wardship was also incident to a tenure in socage, but in this case, not the lord, but the nearest relation to whom the inheritance could not descend, was entitled to the custody of the person and estate of the heir till he attained the age of fourteen years; at which period the wardship ceased and the guardian was bound to account. Wardship in copyhold estates partook of that in chivalry and that in socage. Like the former the lord was the guardian; like the latter, he was required to account. 2 Bl. Com. 67, 87, 97; Glanv. lib. 7, c. 9; Grand Cout. c. 33; Reg. Maj, c. 42.

WAREHOUSE, a place adapted to the reception and storage of goods and merchandise. The act of congress of 25th February, 1799, 1 Story's Laws U. S. 565, authorises the purchase of suitable warehouses, where goods may be unladen and deposited from any vessel which shall be subject to quarantine or other restraint, pursuant to the health laws of any state, at such convenint place or places as the safety of the revenue and the observance of such health laws may require. And the act of 2d March, 1799, s. 62, 1 Story's Laws U. S. 627, authorises an importer of goods, instead of securing the duties to be paid to the United States, to deposit so much of such goods as the collector may in his judgment deem sufficient security for the duties and the charges of safe keeping, for which the importer shall give his own bond; which goods shall be kept by the collector with due care, at the expense and risk of the party on whose account they have been deposited, until the sum specified in such bond becomes due; when, if such sum shall not be paid, so much of such deposited goods shall be sold at public sale, and the proceeds, charges of safe keeping and sale being deducted, shall be applied to the payment of such sum, rendering the overplus, and the residue of the goods so deposited, if there be any, to the depositor or his representatives.

WAREHOUSEMAN. A ware-

houseman is a person who receives goods and merchandise to be stored in his warehouse for hire. He is bound to use ordinary care in preserving such goods and merchandise, and his neglect to do so will render him liable to the owner. Peake, R. 114; 1 Esp. R. 315; Story, Bailm. § 444; Jones's Bailm. 49, 96, 97; 7 Cowen's R. 497; 12 John. Rep. 232; 2 Wend. R. 593; 9 Wend. R. 268; 1 Stew. Rep. 284; the warehouseman's liability commences as soon as the goods arrive, and the crane of the warehouse is applied to raise them into the warehouse. 4 Esp. R. 262.

WARRANDICE, *Scotch law*, is a clause in a charter of heritable rights by which the grantor obliges himself, that the right conveyed shall be effectual to the receiver. It is either personal or real. A warranty. Ersk. Pr. B. 2, t. 3, n. 11.

WARRANT, *crim. law, practice*, is a writ issued by a justice of the peace or other authorised officer, directed to a constable or other proper person, requiring him to arrest a person therein named, charged with committing some offence, and to bring him before that or some other justice of the peace. It should regularly be made under the hand and seal of the justice and dated. No warrant ought to be issued except upon the oath or affirmation of a witness charging the defendant with the offence. 3 Binn. Rep. 88. The reprehensible practice of issuing blank warrants which once prevailed in England, was never adopted here. 2 Russ. on Cr. 512; Ld. Raym. 546; 1 Salk. 175; 1 H. Bl. R. 13; Doct. Pl. 529; Wood's Inst. 84; Com. Dig. Forcible Entry, (D 18, 19); Ib. Imprisonment, (H 6); Ib. Pleader, (3 K 26); Ib. Pleader, (3 M 23). Vide *Search-warrant*.

WARRANT, BENCH. Vide *Bench Warrant*.

WARRANT, SEARCH. Vide *Search Warrant*.

WARRANT OF ATTORNEY, *practice*, is an instrument in writing, addressed to one or more attorneys therein named, authorising them generally to appear in any court, or in some specified court, on behalf of the person giving it, and to confess judgment in favour of some particular person therein named, in an action of debt, and, usually containing a stipulation not to bring any writ of error, or file a bill in equity, so as to delay him. This general authority is usually qualified by reciting a bond which commonly accompanies it, together with the condition annexed to it, or by a written defeazance stating the terms upon which it was given, and restraining the creditor from making immediate use of it. In *form*, it is generally by deed; but, it seems, it need not necessarily be so. 5 Taunt. 264. This instrument is given to the creditor as a security. Possessing it, he may sign judgment and issue an execution, without its being necessary to wait the termination of an action. Vide 14 East, R. 576; 2 T. R. 100; 1 H. Bl. 75; 1 Str. 20; 2 Bl. Rep. 1133; 2 Wils. 3; 1 Chit. Rep. 707. A warrant of attorney given to confess a judgment is not revocable, and, notwithstanding a revocation, judgment may be entered upon it. 2 Ld. Raym. 766, 850; 1 Salk. 87; 7 Mod. 93; 2 Esp. Rep. 563. The death of the debtor is, generally speaking, a revocation. Co. Litt. 52 b; 1 Vent. 310. Vide Hall's Pr. 14, n. The virtue of a warrant of attorney is spent by the entry of one judgment, and a second judgment entered on the same warrant is irregular. 1 Penna. R. 245; 6 S. & R. 296; 14 S. & R. 170; Addis. R. 267; 2 Browne's R. 321; 3 Wash. C. C. R. 558. Vide, generally, 18 Eng. Com. Law Rep. 94,

96, 179, 209; 1 Salk. 402; 3 Vin. Ab. 291; 1 Sell. Pr. 374; Com. Dig. Abatement, E 1, 2; Ib. Attorney, B 7, 8; 2 Archbold's Pr. 12; Bingh. on Judgments, 38; Grah. Pr. 618; 1 Crompt. Pr. 316; 1 Troub. & Haly's Pr. 96. A warrant of attorney differs from a *cognovit actionem*, (q. v.) See Metc. & Perk. Dig. Bond, IV.

WARRANTEE. One to whom a warranty is made. Touchst. 181.

WARRANTIA CHARTÆ. An ancient and now obsolete writ which was issued when a man was enfeoffed of land with warranty, and then he was sued or impleaded in assize or other action, in which he could not touch or call to warranty. It was brought by the feoffer pending the first suit against him, and had this valuable incident, that when the warrantor was vouched, and judgment passed against the tenant, the latter obtained judgment simultaneously against the warrantor, to recover other lands of equal value. Termes de la Ley, h. t.; F. N. B. 134; Dane's Ab. Index, h. t.; 2 Rand. 141, 148, 156; 4 Leigh's R. 132; 11 S. & R. 115; Vin. Ab. h. t.; Co. Litt. 100; Hob. 22, 217.

WARRANTOR. One who makes a warranty. Touchst. 181.

WARRANTY, *contracts*. This word has several significations, as it is applied to the conveyance and sale of lands, to the sale of goods, and to the contract of insurance.

1. The ancient law relating to warranties of land was full of subtleties and intricacies; it occupied the attention of the most eminent writers on the English law, and it was declared by Lord Coke, that the learning of warranties was one of the most curious and cunning learnings of the law; but it is now of little use, even in England. The warranty was a covenant real, whereby the grantor of an estate of freehold, and his heirs, were bound to warrant the title; and either upon voucher, or judgment in a writ of *warrantia chartæ*, to yield other lands to the value of those from which there had been an eviction by paramount title; Co. Litt. 365; Touchst. 181; Bac. Ab. h. t.; the heir of the warrantor was bound only on condition that he had, as assets, other lands of equal value by descent. Warranties were lineal and collateral. Lineal, when the heir derived title to the land warranted, either from or through the ancestor who made the warranty. Collateral warranty was when the heir's title was not derived from the warranting ancestor, and yet it barred the heir from claiming the land by any collateral title, upon the presumption that he might thereafter have assets by descent from or through the ancestor; and it imposed upon him the obligation of giving the warrantee other lands, in case of eviction, provided he had assets. 2 Bl. Com. 301, 302. The statute of 4 Anne, c. 16, annulled these collateral warranties, which had become a great grievance. Warranty in its original form, it is presumed, has never been known in the United States. The more plain and pliable form of a covenant has been adopted in its place; and this covenant, like all other covenants, has always been held to sound in damages, which after judgment may be recovered out of the personal or real estate, as in other cases. Vide 4 Kent, Com. 457; 3 Rawle's R. 67, n.; 2 Wheat. R. 45; 9 Serg. & Rawle, 268; 11 Serg. & Rawle, 109; 4 Dall. Rep. 442; 2 Saund. 38, n. 5.

2. Warranties in relation to the sale of personal chattels are of two kinds, express or implied. An express warranty is one by which the warrantor covenants or undertakes to insure that the thing which is the subject of the contract, is or is not

as there mentioned; as, that a horse is sound; that he is not five years old. An implied warranty is one which, not being expressly made, the law implies by the fact of the sale; for example, the seller is understood to warrant the *title* of goods he sells, when they are in his possession at the time of the sale; Ld. Raym. 593; 1 Salk. 210; but if they are not then in his possession, the rule of *caveat emptor* applies, and the buyer purchases at his risk. Cro. Jac. 197. In general, there is no implied warranty of the *quality* of the goods sold. 2 Kent, Com. 374; Co. Litt. 102, a; 2 Black. Comm. 452; Bac. Abr. Action on the case, E; 2 Com. Contr. 263; Dougl. 20; 2 East, 314; Ib. 448, n.; Ross on Vend. c. 6; 1 Johns. R. 274; 4 Conn. R. 428; 1 Dall. Rep. 91; 10 Mass. R. 197; 20 Johns. Rep. 196; 3 Yeates, R. 262; 1 Pet. Rep. 317; 12 Serg. & Rawle, 181; 1 Hard. Kent. Rep. 531; 1 Murphy, Rep. 138; 2 Ibid. 245; 4 Haywood's Tenn. R. 227; 2 Caines's Rep. 48. The rule of the civil law was, that a fair price implied a warranty of title; Dig. 21, 2, 1; this rule has been adopted in Louisiana, Code, art. 2477, and in South Carolina, 1 Bay, R. 324; 2 Bay, R. 380; 1 Const. R. 182; 2 Const. R. 353. Vide Harr. Dig. Sale, II. 8; 12 East, R. 452.

3. In the contract of insurance, there are certain warranties which are inducements to the insurer to enter into it. A warranty of this kind is a stipulation or agreement on the part of the insured, in the nature of a condition precedent. It may be affirmative; as where the insured undertakes for the truth of some positive allegation: as, that the thing insured is neutral property; or, it may be promissory; as, that the ship shall sail on or before a given day. 6 N. S. 53. Warranties are also express or implied. An express warranty is a particular stipulation introduced into the written contract, by the agreement of the parties; an implied warranty is an agreement which necessarily results from the nature of the contract: as, that the ship shall be sea-worthy when she sails on the voyage insured. The warranty being in the nature of a condition precedent, it is to be performed by the insured, before he can demand the performance of the contract on the part of the insurer. Marsh. Ins. B. 1, c. 9.

WARRANTY, VOUCHER TO, *in practice.* A warranty is a contract real, annexed to lands and tenements, whereby a man is bound to defend such lands and tenements from another person; and in case of eviction by title paramount, to give him lands of equal value. Voucher to warranty is the calling of such warrantor into court by the party warranted, (when tenant in a real action brought for recovery of such lands,) to defend the suit for him; Co. Litt. 101, b; Com. Dig. Voucher, A 1; Booth, 43; 2 Saund. 32, n. 1; and the time of such voucher is after the demandant has counted. It lies in most real and mixed actions, but not in personal. Where the voucher has been made and allowed by the court, the vouchee either voluntarily appears, or there issues a judicial writ (called a summons ad warrantizandum,) commanding the sheriff to summon him. When he, either voluntarily or in obedience to this writ, appears and offers to warrant the land to the tenant, it is called entering into the warranty; after which he is considered as tenant in the action, in the place of the original tenant. The demandant then counts against him de novo, the vouchee pleads to the new count, and the cause proceeds to issue. 2 Inst. 241 a; 2 Saund. 32, n. 1; Booth, 46. Voucher of war-

ranty is, in the present rarity of real actions, unknown in practice. Steph. Plead. 85.

WASTE. Is a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments to the disherison of him that hath the remainder or reversion in fee simple or fee tail. 2 Bl. Comm. 281. The doctrine of waste is somewhat different in this country from what it is in England. It is adapted to our circumstances. 3 Yeates, R. 261; 4 Kent, Com. 76; Walk. Intr. 278; 7 John. Rep. 227; 2 Hayw. R. 339; 2 Hayw. R. 110; 6 Munf. R. 134; 1 Rand. Rep. 258; 6 Yerg. Rep. 334. Waste is either voluntary or permissive.

§ 1. *Voluntary waste.* A voluntary waste is an act of commission, as tearing down a house. This kind of waste is committed in houses, in timber, and in land. It is committed in houses by removing wainscots, floors, benches, furnaces, window-glass, windows, doors, shelves, and other things once fixed to the freehold, although they may have been erected by the lessee himself, unless they were erected for the purposes of trade. See *Fixtures;* Bac. Ab. Waste, C 6. And this kind of waste may take place not only in pulling down houses, or parts of them, but also in changing their forms, as, if the tenant pull down a house and erect a new one in the place, whether it be larger or smaller than the first, 2 Roll. Ab. 815, l. 33; or convert a parlour into a stable; or a grist-mill into a fulling-mill, 2 Roll. Abr. 814, 815; or turn two rooms into one, 2 Roll. Ab. 815, l. 37. The building of a house where there was none before is said to be a waste, Co. Litt. 53, a, and taking it down after it is built, is a waste. Com. Dig. Waste, D 2. It is a general rule that when a lessee has annexed any thing to the freehold during the term, and afterwards takes it away, it is waste. 3 East, 51. This principle is established in the French law. Lois. des Bât. part. 2, 3, art. 1; 18 Toull. n. 457. But at a very early period several exceptions were attempted to be made to this rule, which were at last effectually engrafted upon it, in favour of trade and of those vessels and utensils, which are immediately subservient to the purposes of trade. Ibid. This relaxation of the old rule has taken place between two descriptions of persons, that is, between the landlord and tenant, and between the tenant for life or tenant in tail, and the remainder-man or reversioner. As between the landlord and tenant it is now the law, that if the lessee annex any chattel to the house for the purpose of his trade, he may disunite it during the continuance of his interest. 1 H. B. 258. But this relation extends only to erections for the purposes of trade. It has been decided that a tenant for years may remove cider-mills, ornamental marble chimney pieces, wainscots fixed only by screws, and such like. 2 Bl. Comm. 281, note by Chitty. A tenant of a farm cannot remove buildings which he has erected for the purposes of husbandry, and the better enjoyment of the profits of the land, though he thereby leaves the premises the same as when he entered. 2 East, 88; 3 East, 51; 6 Johns. Rep. 5; 7 Mass. Rep. 433. Voluntary waste may be committed on timber, and in the country from which we have borrowed our laws, the law is very strict. In Pennsylvania, however, and many of the other states, the law has applied itself to our situation, and those acts which in England would amount to waste, are not so accounted here. Stark. Ev. part 4, p. 1667, n.; 3 Yeates, 251. Where wild and uncultivated land, wholly covered with wood and timber, is leased, the lessee may fell a part of

the wood and timber, so as to fit the land for cultivation, without being liable to waste, but he cannot cut down the whole so as permanently to injure the inheritance. And to what extent the wood and timber on such land may be cut down without waste, is a question of fact for the jury under the direction of the court. 7 Johns. R. 227. The tenant may cut down trees for the reparation of the houses, fences, hedges, stiles, gates, and the like, Co. Litt. 53, b; and for making and repairing all instruments of husbandry, as ploughs, carts, harrows, rakes, forks, &c. Wood's Inst. 344. The tenant may, when he is unrestrained by the terms of his lease, cut down timber, if there be not enough dead timber. Com. Dig. Waste, D 5; F. N. B. 59 M. Where the tenant, by the conditions of his lease, is entitled to cut down timber, he is restrained nevertheless from cutting down ornamental trees, or those planted for shelter, 6 Ves. 419, or to exclude objects from sight. 16 Ves. 375. Wind-falls are the property of the landlord, for whatever is severed by inevitable necessity, as by a tempest, or by a trespasser, and by wrong, belongs to him who has the inheritance. 3 P. Wms. 268; 11 Rep. 81; Bac. Abr. Waste, D 2. Waste is frequently committed on cultivated fields, orchards, gardens, meadows, and the like. It is proper here to remark that there is an implied covenant or agreement on the part of the lessee to use a farm in a husbandmanlike manner, and not to exhaust the soil by neglectful or improper tillage. 5 T. R. 373. See 6 Ves. 328. It is therefore waste to convert arable to wood land and the contrary, or meadow to arable; or meadow to orchard. Co. Litt. 53, b. Cutting down fruit trees, 2 Roll. Abr. 817, l. 30, although planted by the tenant himself, is waste; and it was held to be waste for an outgoing tenant of garden ground to plough up strawberry beds which he had bought of a former tenant when he entered. 1 Camp. 227. It is a general rule that, when lands are leased on which there are open mines of metal or coal; or pits of gravel, lime, clay, brick, earth, stone, and the like, the tenant may dig out of such mines or pits, Com. Dig. Waste, D 4. But he cannot *open* any new mines or pits without being guilty of waste, Co. Litt. 53 b; and carrying away the soil, is waste. Com. Dig. Waste, D 4.

§ 2. *Permissive waste.* Permissive waste in houses is punishable where the tenant is expressly bound to repair, or where he is so bound on an implied covenant. See 2 Esp. R. 590; 1 Esp. Rep. 277; Bac. Abr. Covenant, F. It is waste if the tenant suffer a house leased to him to remain uncovered so long that the rafters or other timbers of the house become rotten, unless the house was uncovered when the tenant took possession. Com. Dig. Waste, D 2.

§ 3. *Of remedies for waste.* The ancient writ of waste has been superseded. It is usual to bring case in the nature of waste instead of the action of waste, as well for permissive as voluntary waste. Some decisions have made it doubtful whether an action on the case for permissive waste can be maintained against any tenant for years. See 1 New Rep. 290; 4 Taunt. 764; 7 Taunt. 392; S. C. 1 Moore, 100; 1 Saund. 323, a, n. (i). Even where the lessee covenants not to do waste, the lessor has his election to bring either an action on the case, or of covenant, against the lessee for waste done by him during the term. 2 Bl. Rep. 1111; 2 Saund. 252, c. n. In an action on the case in the nature of waste, the plaintiff recovers only damages for the waste. The latter action has this advantage over an action of waste, that it may be brought by him in reversion or re-

mainder for life or years, as well as in fee or in tail; and the plaintiff is entitled to costs in this action, which he cannot have in an action of waste. 2 Saund. 252, n.

See, on the subject in general, Woodf. Landl. & T. 217, ch. 9, s. 1; Bac. Abr. Waste; Vin. Abr. Waste; Com. Dig. Waste; Supp. to Ves. jr. 50, 325, 441; 1 Vern. R. 23, n.; 2 Saund. 252, a, n. 7.—259, n. 11; Arch. Civ. Pl. 495; 2 Sell. Pr. 234; 3 Bl. Com. 180, note by Chitty; Amer. Dig. Waste; Whart. Dig. Waste.

As to remedies against waste by injunction. See 1 Vern. R. 23, n.; 5 P. Wms. 268, n. F.; 1 Eq. Cas. Ab. 400; 6 Ves. 787, 107, 419; 8 Ves. 70; 16 Ves. 375; 2 Swanst. 251; 3 Madd. 498; Jacob's R. 70; Drew. on Inj. part 2, c. 1, p. 134. As between tenants in common, 5 Taunt. 24; 19 Ves. 159; 16 Ves. 132; 3 Bro. C. C. 622; 2 Dick. 667; and the article *Injunction*.

As to remedy by writ of estrepment to prevent waste, see *Estrepment*; Woodf. Landl. & T. 447; 2 Yeates, 281; 4 Smith's Laws of Penn. 89; 3 Bl. Com. 226.

As to remedies in cases of fraud in committing waste, see Hov. Fr. ch. 7, p. 226 to 238.

WASTE BOOK, *com. law*, is a book used among merchants. All the dealings of the merchant are recorded in this book in chronological order as they occur.

WATCH, *police*. To watch is properly speaking to stand sentry and attend guard during the night time: certain officers called watchmen are appointed in most of the United States whose duty it is to arrest all persons who are violating the law, or breaking the peace, (q. v.) Vide 1 Bl. Com. 356; 1 Chit. Cr. Law, 14, 20.

WATCHMAN, an officer in many cities and towns whose duty it is to watch during the night and take care of the property of the inhabitants. He possesses generally the common law authority of a constable (q. v.) to make arrests, where there is reasonable ground to suspect a felony, though there is no proof of a felony having been committed. 1 Chit. Cr. L. 24; 2 Hale, 96; Hawk. B. 2, c. 13, s. 1, &c.; 1 East, P. C. 303; 2 Inst. 52; Com. Dig. Imprisonment, (H 4); Dane's Ab. Index, h. t.; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Moody's Cr. Cas. 334; 1 Esp. R. 294; and vide *Peace*.

WATER. That liquid substance of which the sea, the rivers, and creeks are composed. A pool of water, or a stream or water course is considered as part of the land, hence a pool of twenty acres, would pass by the grant of twenty acres of land, without mentioning the water. 2 Bl. Com. 18; 2 N. H. Rep. 255; 1 Wend. R. 255; 5 Paige, R. 141; 2 N. H. Rep. 371; 2 Brownl. 142; 5 Cowen, R. 216; 5 Conn. R. 497; 1 Wend. R. 237. A mere grant of water passes only a fishery. Co. Litt. 4 b. Vide 4 Mason, R. 397; *River*; *Water-course*.

WATER BAILIFF, *English law*, an officer appointed to search ships in ports.

WATER COURSE. This term is applied to the flow or movement of the water in rivers, creeks and other streams. In a legal sense property in a water course is comprehended under the general name of *land*; so that a grant of land conveys to the grantee not only fields, meadows, and the like, but also all the rivers and streams, which naturally pass over the surface of the land. 1 Co. Litt. 4; 2 Brownl. 142; 2 N. Hamp. Rep. 255; 5 Wend. Rep. 423.

Those who own land bounding upon a water course, are denominat-

ed by the civilians *riparian* proprietors, and this convenient term has been adopted by judges and writers on the common law, Ang. on Water Courses, 3; 3 Kent, Com. 354; 4 Mason's R. 397.

Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (currere solebat) without diminution or alteration. No proprietor has a right to use the water to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct as it passes along. *Aqua currit et debet currere*, is the language of the law. 3 Rawle, Rep. 84; 9 Co. 57, b. Though he may use the water while it runs over his lands, he cannot unreasonably detain it or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors he cannot divert or diminish the quantity of the water, which would otherwise descend to the proprietor below, nor throw the water back upon the proprietor above, without a grant, or an uninterrupted enjoyment of twenty years, which is evidence of it. 3 Kent, Com. 353; 1 Wils. R. 178; 6 East, 203; 1 Simon & Stuart, 190; 2 John. Ch. R. 162, 463; 4 Mass. R. 401; 17 John. R. 321; 5 Ohio, R. 322; 3 Fairf. R. 407; 8 Greenl. R. 268; 16 Pick. Rep. 247; 1 Coxe's Rep. 460; Dig. 39, 3, 4, and 10; Pothier, Traité du Contrat de Société, 2e app. n. 236, 237; Bell's Law of Scotland, 691; Ang. on Water Courses, 12; 2 Conn. R. 584.

When there are two opposite riparian proprietors, each owns that portion of the bed of the river which is adjoining his land *usque ad filum aquæ;* or in other words to the thread or central line of the stream. Hagr. Tracts, 5; Holt's Rep. 499; and if hydraulic works be erected on both banks, each is entitled to an equal share of the water. 1 Paige's Chanc. Rep. 448. The water can only be used by each as an entire stream, in its natural channel; for of the property in the water, there can be no severance. 13 John. R. 212. But it seems that when an island is on the side of a river, so as to give the riparian owner on that side one fourth of the water, the other is entitled to the whole of the three-fourths of the river. 10 Wend. Rep. 260. See also, 13 Mass. Rep. 507; 2 Caines's Cas. 87; and 9 Pick. R. 528; 3 Kent, Comm. 344, 345; 3 Rawle's R. 84; 2 Watts, R. 327; 8 Greenl. R. 138, 253; 9 Pick. Rep. 59; 10 Pick. R. 348; 10 Wend. R. 167; Com. Dig. Action for Nuisance, A; 4 D. & R. 583; S. C. 2 B. & C. 910; 1 Campb. R. 463; 6 East, R. 208; 1 Wils. Rep. 174; 1 B. & A. 258; 5 Taunt. R. 454; 2 Esp. R. 679; 2 Hill. Abr. c. 14, 16, 17; Ham. N. P. 199; 1 Vin. Ab. 557; 22 Vin. Abr. 525; 2 Chit. Bl. 403, n. 7; 3 Roll. 140, l. 40; Lois des Bât. part. 1, c. 3, sec. 1, art. 3. Vide *River*.

WATER ORDEAL. Vide *Ordeal*.

WAVESON. This name is given to such goods as after shipwreck appear upon the waves. Jacob, Law. Dict. h. t.

WAY, *estates*, a passage, street or road. A right of way is a privilege which an individual, or a particular description of persons such as the inhabitants of a particular place, or the owners or occupiers of such place may have, of going over another person's ground. It is an incorporeal hereditament of a real nature, a mere easement entirely

different from the public or private roads. A right of way may arise, 1, by prescription and immemorial usage; 2, by grant; 3, from necessity, when a man's ground is enclosed and completely blocked up, so that he cannot without passing over his neighbour's land reach the public road. For example, should A grant a piece of land to B, surrounded by land belonging to A; a right of way over A's land passes of necessity to B, otherwise he could not derive any benefit from the acquisition. Vide *Necessity*. The way is to be taken where it will be least injurious to the owner. 4 Kent, Com. 338. Lord Coke adopting the civil law says there are three kinds of ways. 1. A foot-way, called *iter;* 2. A foot-way and horse-way called *actus;* 3. A cart-way, which contains the other two called *via*. Co. Littlet. 56 a; Pothier, Pandectæ, lib. 8, t. 3, § 1; Dig. 8, 3; 1 Bro. Civ. Law, 177; vide Yelv. 142, n.; Ib. 164; Woodf. Landl. & Ten. 544; 4 Kent, Comm. 337; Ayl. Pand. 307; Cruise's Dig. tit. 24; 1 Taunt. R. 279; R. & M. 151; 1 Bail. R. 58; 2 Hill. Abr. c. 6; *Easement; Servitude*.

WAY BILL, *contracts*, is a writing in which is set down the names of passengers, who are carried in a public conveyance, or the description of goods sent with a common carrier by land; when the goods are carried by water, the instrument is called a *bill of lading*, (q. v.)

WEAR, a great dam made across a river, accommodated for the taking of fish, or to convey a stream to a mill. Jacob's Law Dict. h. t. Vide *Dam*.

WED. A covenant or agreement; whence a wedded husband.

WEEK. Seven days of time. The week commences immediately after twelve o'clock on the night between Saturday and Sunday, and ends at twelve o'clock, seven days of twenty-four hours each, thereafter. The first day of the week is called *Sunday*, (q. v.); the second, Monday; the third, Tuesday; the fourth, Wednesday; the fifth, Thursday; the sixth, Friday; and the seventh, Saturday. Vide 4 Pet. S. C. Rep. 361.

WEIGHAGE, *mer. law*. In the English law it is a duty or toll paid for weighing merchandize; it is called *tronage*, (q. v.) for weighing wool at the king's beam, or *pesage*, for weighing other avoirdupois goods. 2 Chit. Com. Law, 16.

WEIGHT, is a quality in natural bodies, by which they tend towards the centre of the earth. Under the article *Measure*, (q. v.) it is said that by the constitution congress possess the power "to fix the standard of weights and measures," and that this power has not been exercised. The weights now generally used in the United States are the same as those of England; they are of two kinds:

1. AVOIRDUPOIS WEIGHT.

1st. Used in almost all commercial transactions, and in the common dealings of life.

27 11/32 grains = 1 dram
16 drams = 1 ounce.
16 ounces = 1 pound, (lb.)
28 pounds = 1 quarter, (qr.)
4 quarters = 1 hundred wt. (cwt.)
20 hundred weight = 1 ton.

2d. Used for meat and fish.

8 pounds = 1 stone.

3d. Used in the wool trade.

	Cwt.	qr.	lb.
7 pounds = 1 clove.			
14 pounds = 1 stone =	0	0	14
2 stones = 1 tod =	0	1	0
6½ tods = 1 wey =	1	2	14
2 weys = 1 sack =	3	1	0
12 sacks = 1 last =	39	0	0

4th. Used for butter and cheese.
8 pounds = 1 clove.
56 pounds = 1 firkin.

2. TROY WEIGHT.

24 grains = 1 pennyweight.
20 pennyweights = 1 ounce.
12 ounces = 1 pound.

These are the denominations of troy weight when used for weighing gold, silver, and precious stones, except diamonds. Troy weight is also used by apothecaries in compounding medicines; and by them, the ounce is divided into eight drams, and the dram into three scruples, so that the latter is equal to twenty grains. For scientific purposes, the grain only is used, and sets of weights are constructed in decimal progression, from 10,000 grains downward to one-hundredth of a grain. The caret used for weighing diamonds, is three and one-sixth grains.

A short account of the French weights and measures is given under the article *Measure*.

WEIGHT OF EVIDENCE.—This phrase is used to signify that the proof on one side of a cause is greater than on the other. When a verdict has been rendered against the weight of the evidence, the court may, on this ground, grant a new trial, but the court will exercise this power not merely with a cautious but a strict and sure judgment, before they send the case to a second jury. The general rule, under such circumstances, is, that the verdict once found shall stand: the setting aside is the exception, and ought to be an exception of rare and almost singular occurrence. A new trial will be granted on this ground for either party; the evidence however, is not to be weighed in golden scales. 2 Hodg. R. 125; S. C. 3 Bingh. N. C. 109.

WELCH MORTGAGE, *English law, contracts*, is a species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as a security for the repayment, but differs from it, in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption. It is a species of *vivum vadium*. Strictly, however, there is this distinction between a Welch mortgage and a *vivum vadium*. In the latter the rents and profits of the estate are applied to the discharge of the principal, after paying the interest; while in the former the rents and profits are received in satisfaction of his interest only. 1 Pow. Mortg. 373, a.

WELL. A hole dug in the earth in order to obtain water. The owner of the estate has a right to dig in his own ground, at such a distance as is permitted by law, from his neighbour's land; he is not restricted as to the size or depth, and is not liable to any action for rendering the well of his neighbour useless by so doing. Lois des Bât. part. 1, c. 3, sect. 2, art. 2, § 2.

WERE. The name of a fine among the Saxons imposed upon a murderer. The life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or æstimatio capitis. The amount varied according to the dignity of the person murdered. The price of wounds was also varied according to the nature of the wound, or the member injured.

WERGILD or WEREGILD,—*old Engl. law*. The price which in a barbarous age, a person guilty of homicide or other enormous offence was required to pay, instead of receiving other punishment. 4 Bl. Com. 188.

WETHER. A castrated ram, at least one year old; in an indictment it may be called a sheep. 4 Car. & Payne, 216; 19 Engl. Com. Law Rep. 351.

WHALER, *mar. law*, a vessel employed in the whale fishery. It is usual for the owner of the vessel, the captain and crew to divide the profits in just proportions under an agreement similar to the contract Di Colonna, (q. v.)

WHARF, is a space of ground artificially prepared for the reception of merchandise from a ship or vessel, so as to promote the convenient loading and discharge of such vessel.

WHARFAGE, is the money paid for landing goods upon, or loading them from a wharf. Dane's Ab. Index, h. t.

WHARFINGER, one who owns or keeps a wharf, for the purpose of receiving and shipping merchandise to or from it, for hire. Like a warehouseman, (q. v.) a wharfinger is responsible for ordinary neglect, and is therefore required to take ordinary care of goods entrusted to him as such. The responsibility of a wharfinger begins when he acquires, and ends when he ceases to have the custody of the goods in that capacity. When he begins and ceases to have such custody depends generally upon the usages of trade and of the business. When goods are delivered at a wharf, and the wharfinger has agreed, expressly, or by implication, to take the custody of them, his responsibility commences; but a mere delivery at the wharf, without such assent, does not make him liable. 3 Campb. R. 414; 4 Campb. R. 72; 6 Cowen, R. 757. When goods are in the wharfinger's possession to be sent on board of a vessel for a voyage, as soon as he delivers the possession and the care of them to the proper officers of the vessel, although they are not actually removed, he is, by the usages of trade, deemed exonerated from any further responsibility. 5 Esp. R. 41; Story, Bailm. § 453; Abbott on Shipp. 226; Molloy, B. 2, c. 2, s. 2; Roccus, Not. 88; Dig. 9, 4, 3.

WHELPS. The young of certain animals of a base nature, or *feræ naturæ*. It is a rule that when no larceny can be committed of any creatures of a base nature, which are *feræ naturæ*, though tame and reclaimed, it cannot be committed of the young of such creatures in the nest, kennel, or den. 3 Inst. 109; 1 Russ. on Cr. 153. The owner of the land is, however, considered to have a qualified property in such animals, *ratione impotentia*. 2 Bl. Com. 394.

WHEN, at which time, *in wills*, standing by itself unqualified and unexplained, this is a word of condition denoting the time at which the gift is to commence. 6 Ves. 243; 2 Meriv. 286. The context of a will may show that the word *when* is to be applied to the possession only, not to the vesting of a legacy; but to justify this construction, there must be circumstances, or other expressions in the will showing such to have been the testator's intent. 7 Ves. 422; 9 Ves. 230; Coop. 145; 11 Ves. 489; 3 Bro. C. C. 471. For the effect of the word *when* in contracts and in wills in the French law, see 6 Toull. n. 520.

WHIPPING, *punishment*. The infliction of stripes. This mode of punishment, which is still practised in some of the states, is a relict of barbarism; it has yielded in most of the middle and northern states to the penitentiary system. The punishment of whipping, so far as the same was provided by the laws of the United States, was abolished by the act of congress of 28 February, 1839, s. 5. Vide 1 Chit. Cr. Law, 796; Dane's Ab. Index, h. t.

WHITE PERSONS. The acts of congress which authorise the naturalization of aliens, confine the description of such aliens to free *white persons*. This of course excludes the African race when pure, but it is not easy to say what shade of colour or mixture of blood will make a *white person*. The constitution of Pennsylvania, as amended, confines the right of citizenship to free white persons; and these words *white persons*, or similar words, are used in most of the constitutions of the southern states, in describing the electors.

WHITE RENT, *English law*, were rents paid in silver, and called *white rents* or *redditus albi*, to distinguish them from other rents which were not paid in money. 2 Inst. 19. Vide *Alba firma*.

WHOLE BLOOD. See *Blood*.

WIDOW, an unmarried woman whose husband is dead. In legal writings, widow is an addition given to a woman who is unmarried and whose husband is dead. The addition of spinster is given to a woman who never was married. Lovel. on Wills, 269. See *Addition*. As to the rights of a widow, see *Dower*.

WIDOW'S CHAMBER, *Engl. law*. In London, the apparel of a widow and the furniture of her chamber, left by her deceased husband, is so called, and the widow is entitled to it. 2 Bl. Com. 518.

WIFE, *domestic relations*, a woman who has a husband. A wife, as such, possesses rights and is liable to obligations. These will be considered. 1st. She may make contracts by the purchase of real estate for her own benefit, unless her husband expressly dissents. 6 Binn. R. 427. And she is entitled to a legacy directly given to her for her separate use. 6 Serg. & Rawle, R. 467. In some places, by statutory provision she may act as a *feme sole* trader, and as such acquire personal property. 2 Serg. & Rawle, R. 289.—2d. She may in Pennsylvania, and in most other states, convey her interest in her own or her husband's lands by deed acknowledged in a form prescribed by law.—3d. She is under obligation to love, honour and obey her husband, and is bound to follow him wherever he may desire to establish himself, (it is presumed not out of the boundaries of the United States,) unless the husband, by acts of injustice and such as are contrary to his marital duties, renders her life or happiness insecure.—4th. She is not liable for any obligations she enters into to pay money on any contract she makes, while she lives with her husband; she is presumed in such case to act as the agent of her husband. Chitty, Contr. 43.—5th. The incapacities of femes covert, apply to their civil rights, and are intended for their protection and interest. Their political rights stand upon different grounds, they can, therefore, acquire and lose a national character. These rights stand upon the general principles of the law of nations. Harp. Eq. R. 5; 3 Pet. R. 242.—6th. A wife like all other persons, when she acts with freedom, may be punished for her criminal acts. But the law presumes, when she commits in his presence a crime, not *malum in se*, as murder or treason, that she acts by the command and coercion of her husband, and, upon this ground, she is exempted from punishment. Rosc. on Cr. Ev. 785. But this is only a presumption of law, and if it appears, upon the evidence, that she did not in fact commit the act under compulsion, but was herself a principal actor and inciter in it, she may be punished. 1 Hale, P. C. 516; 1 Russ. on Cr. 16, 20. Vide *Contract; Divorce; Husband; Incapacity; Marriage; Necessaries;*

Parties to actions; Parties to contracts; Women.

WIFE'S EQUITY. By this phrase is understood the equitable right of a wife to have settled upon her and her children a suitable provision out of her personal estate in the hands of a trustee, as, for example, in those of an executor or administrator. 1 Meigs, R. 551; 5 John. Ch. R. 464; 1 Beav. R. 593; Shelf. on M. & Div. 605.

WILD ANIMALS. Vide *Animals, Feræ naturæ.*

WILFULLY, intentionally. In charging certain offences it is required that they should be stated to be wilfully done. Arch. Cr. Pl. 51, 58; Leach's Cr. L. 556. In Pennsylvania it has been decided that the word *maliciously* was an equivalent for the word *wilfully*, in an indictment for arson. 5 Whart. R. 427.

WILL, *criminal law*, the power of the mind which directs the actions of a man. In criminal law it is necessary that there should be an act of the will to commit a crime, for unless the act is wilful it is no offence. It is the consent of the will which renders human actions commendable or culpable, and where there is no will there can be no transgression. The defect or want of will may be classed as follows:— 1. Natural, as that of infancy; 2. Accidental, namely, 1st, dementia; 2d, casualty or chance; 3d, ignorance, (q. v.) 3. Civil, namely, 1st, civil subjection; 2d, compulsion; 3d, necessity; 4th, well grounded fear. Hale's P. C. c. 2; Hawk. P. C. book 1, c. 1.

WILL or TESTAMENT, is the legal declaration of a man's intentions of what he wills to be performed after his death. Co. Litt. 111; Swinb. Pt. 1, s. II. 1; Shep. Touch. 398; Bac. Abr. Wills, A.

The terms will and testament are synonymous, and they are used indifferently by common lawyers, or one for another. Swinb. Pt. 1, s. I. 5; Bac. Ab. Wills, A. Civilians use the term testament only. See *Testament*. There are five essential requisites to make a good will.

1. The testator must be legally capable of making a will. Generally all persons who may make valid contracts can dispose of their property by will. See *Parties to contracts*. This act requires a power of the mind freely to dispose of property. Infants, because of their tender age, and married women, on account of the supposed influence and control of their husbands, have no capacity to make a will, with these exceptions, that infants at common law may dispose of their personal estate, the males when over fourteen years of age, and the females, when over twelve; this rule in relation to infants is not uniform in the United States. Swinb. pt. 2, s. 2; Bac. Ab. Wills, B. Persons devoid of understanding, as idiots and lunatics, cannot make a will.

2. The testator at the time of making his will, must have *animum testandi*, or a serious intention to make such will. If a man therefore jestingly or boastingly and not seriously, writes or says that such a person shall have his goods or be his executor, this is no will. Bac. Ab. Wills, C; Com. Dig. Estates by Devise, D 1. See 4 Serg. & Rawle, 545; 3 Yeates, 324; 5 Binn. 490; 1 Des. R. 543.

3. The mind of the testator in making his will must be free, and not moved by fear, fraud or flattery. In such cases the will is void or at least voidable. Bac. Ab. Wills, C; see 3 Serg. & Rawle, 269. Vide *Influence*.

4. There must be a person to take, capable of taking; for to render a devise or bequest valid there must be a donee *in esse*, or in rerum

naturâ, and one that shall have capacity to take the thing given, when it is to vest, or the gift shall be void. Plowd. 345. See *Legatee.*

5. The will must be put in proper form. Wills are either written, or *nuncupative.* See below *Will, nuncupative.* A will in writing must be, 1, written on paper or parchment; it may be in any language, and in any character, provided it can be read or understood. 2. It must be signed by the testator or some person authorised by him; but a sealing has been held to be a sufficient signing. 2 Str. 764. But see 3 Lev. R. 1; 1 Const. R. 343; 18 Ves. R. 183; 2 Ball & B. 104; 5 Mood. R. 484, and article *To sign.* And it ought to be signed by the attesting witnesses. In some states three witnesses are required who should sign the will as such at the request and in the presence of the testator and of each other. This formality should generally be pursued as the testator may have lands in such states which would not pass without it. See as to the attestation of wills, Bac. Ab. Wills, D; Rob. on Wills, c. 1, part 15. 3. It must be published, that is the testator must do some act from which it can be concluded that he intended the instrument to operate as his will, 6 Cruise, 79; 4 Burn's Eccl. Law, 119. As to the republication of wills, see Bac. Abr. Wills, D 3; and article *Publication.* 4. To make a good will of goods and chattels there must be an executor named in it, otherwise it will be a codocil only, and the party is said to die intestate; in such a case administration must be granted. Bac. Abr. Wills, D 2.

It is a rule that the last will revokes all former wills. It follows then that a man cannot by any testamentary act impose upon himself the inability of making another inconsistent with and revoking the first will. Bac. Ab. Wills, E; Swinb. pt. 7, s. 14.

A will voluntarily and intentionally made by a competent testator, according to the form required by law, may be avoided, 1st, by revocation, see *Revocation;* Bac. Abr. Wills, G 1; Vin. Abr. Devise, P; 1 Rolle, Ab. 615; Com. Dig. Estates by Dev. F; and, 2dly, by fraud.

As to wills and testaments, see Swinburne on Wills; Roberts on Wills; Lovelass on Wills; Roper on Legacies; Lowndes on Legacies; Will. on Ex. pt. 1; Vin. Abr. Devise; Rolle's Abr. Devise; Bac. Abr. Wills and Testaments; Com. Dig. Estates by Devise; Nels. Abr. h. t.; Amer. Dig. Wills; Whart. Dig. Wills; Toll. on Executors; Off. Ex.; Orph. Legacy; Touchst. ch. 23; Civil Code of Louisiana, B. 3, tit. 2; and the articles *Devise; Legacy; Testament.*

WILL, MYSTIC. Vide *Testament, Mystic;* and Civil Code of Louisiana, from art. 1577 to 1580; 5 Toull. n. 461.

WILL, OLOGRAPHIC. Vide *Testament, Olographic;* and Civil Code of Louisiana, art. 1580; Code Civil, art. 970; 5 Toull. n. 357.

WILL, NUNCUPATIVE. A nuncupative will or testament, is a verbal declaration by a testator of his will before a competent number of legal witnesses. Before the statute of frauds they were very common, but by that statute, (29 C. II. c. 3,) which has been substantially adopted in a number of the states, these wills were laid under many restrictions. Vide Dane's Ab. chap. 127, a 2; 3 Harr. & John. 208; 6 Munf. R. 123; 1 Munf. R. 456; 4 Henn. & Munf. 91–100. In New York nuncupative wills have been abolished, except made by a soldier while in actual military service, or by a mariner while at sea. 2 New York Revised Statutes, 60, sec. 22.

As to nuncupative wills in Louisiana. See *Testament nuncupative;* and Civil Code of Louisiana, article 1574.

WINCHESTER MEASURE. The standard measure originally kept at Winchester, in England.

WINDOW. An opening made in the wall of a house to admit light and air, and to enable those who are in to look out. The owner has a right to make as many windows in his house when not built on the line of his property as he may deem proper, although by so doing he may destroy the privacy of his neighbours. Bac. Ab. Actions in general, B. In cities and towns it is evident that the owner of a house cannot open windows in the partition wall without the consent of the owner of the adjoining property, unless he possesses the right of having *ancient lights*, (q. v.)

WISTA. Among the Saxons, this was a measure of land; it contained a half hide, or sixty acres.

WITHDRAWING A JUROR, *practice*, is an agreement made between the parties in a suit to require one of the twelve jurors impanelled to try a cause to leave the jury box; the act of leaving the box by such a juror is also called the withdrawing a juror. This arrangement usually takes place at the recommendation of the judge, when it is obviously improper the case should proceed any further. The effect of withdrawing a juror puts an end to that particular trial, and each party must pay his own costs. 3 T. R. 657; 2 Dowl. R. 721; S. C. 1 Crom. M. & R. 64. But the plaintiff may bring a new suit for the same cause of action. R. & M. 402; S. C. 21 E. C. L. R. 472; 3 Barn. & Adolph. 349; S. C. 23 E. C. L. R. 91. See 3 Chit. Pr. 916.

WITHOUT RECOURSE. Vide *Sans Recours*, and *Indorsement;* Chit. on Bills, 179; 14 S. & R. 325; 3 Cranch, 193; 7 Cranch, 159; 1 Cowen, 538; 12 Mass. 172; 6 Shipl. R. 354.

WITH STRONG HAND, *pleading*. This is a technical phrase indispensable in describing a forcible entry in an indictment. No other word or circumlocution will answer the same purpose. 8 T. R. 357.

WITHERNAM, *practice*. The name of a writ which issues on the return to an alias or pluries writ of replevin, of *elongata*, by which the sheriff is commanded to take the defendant's own goods which may be found in his bailiwick, and keep them safely, not to deliver them to the plaintiff until such time as the defendant chooses to submit himself, and allow the distress, and the whole of it, to be replevied, and he is thereby further commanded that he do return to the court in what manner he shall have executed the writ. Hamm. N. P. 453; 2 Inst. 140; F. N. B. 68, 69; 19 Vin. Ab. 7; 7 Com. Dig. 674; Grotius, 3, 2, 4, n. 1.

WITHOUT, *pleading*. This word is adopted in formal traverses, and is a negative signifying "and not for; accordingly the language of the elder entries sometimes is, "*et nemy pur tiel cause*," &c. Hamm. N. P. 120.

WITHOUT RESERVE, *contracts*. These words are frequently used in conditions of sale at public auction, that the property offered, or to be offered for sale will be sold *without reserve*. When a property is advertised to be sold without reserve, if a puffer be employed to bid, and actually bid at the sale, the courts will not enforce a contract against a purchaser into which he may have been drawn by the vendor's want of faith. 5 Madd. R. 34. Vide *Puffer*.

WITHOUT THIS, THAT, *pleading;* these are technical words used in a traverse, (q. v.) for the

purpose of denying a material fact in the preceding pleadings, whether declaration, plea, replication, &c. In Latin it is called *absque hoc*, (q. v.) Lawes on Pl. in Civ. Act. 119; Com. Dig. Pleader, G 1; Summary of Pleading, 75; 1 Saund. 103, n.; Ld. Raym. 641; 1 Burr. 320; 1 Chit. Pl. 576, note (a).

WITNESS, one who, being sworn or affirmed, according to law, deposes as to his knowledge of facts in issue between the parties in a cause. The testimony of witnesses can never have the effect of a demonstration, because it is not impossible, indeed it frequently happens, that they are mistaken, or wish themselves to deceive. There can, therefore, result no other certainty from their testimony than what arises from analogy. When in the calm of the passions, we listen only to the voice of reason and the impulse of nature, we feel in ourselves a great repugnance to betray the truth, to the prejudice of another, and we have observed that honest, intelligent and disinterested persons never combine to deceive others by a falsehood. We conclude, then, by analogy, with a sort of moral certainty, that a fact attested by several witnesses, worthy of credit, is true. This proof derives its whole force from a double presumption. We presume, in the first place, on the good sense of the witnesses that they have not been mistaken; and, secondly, we presume on their probity that they wish not to deceive. To be certain that they have not been deceived, and that they do not wish to mislead, we must ascertain, as far as possible, the nature and the quality of the facts proved; the quality and the person of the witness; and, the testimony itself, by comparing it with the deposition of other witnesses, or with known facts. Vide *Circumstances*.

It is proper to consider, 1st, the character of the witness; 2dly, the quality of the witness; 3dly, the number of witnesses required by law.

I. When we are called upon to rely on the testimony of another in order to form a judgment as to certain facts, we must be certain, 1st, that he knows the facts in question, and that he is not mistaken; and, 2dly, that he is disposed to tell the truth, and has no desire to impose on those who are to form a judgment on his testimony. The confidence, therefore, which we give to the witness must be considered, in the first place, by his capacity or his organization, and, in the next, by the interest or motive which he has to tell or not to tell the truth. When the facts to which the witness testifies agree with the circumstances which are known to exist, he becomes much more credible than when there is a contradiction in this respect. It is true that until impeached one witness is as good as another; but when a witness is impeached although he remains competent, he is not as credible as before. Vide *Circumstances; Competency; Credibility*.

II. As to the quality of the witnesses, it is a general rule that all persons may be witnesses. To this there are various exceptions. A witness may be incompetent, 1, for want of understanding; 2, on account of interest; 3, because his admission is contrary to public policy; 4, for want of religious principles; and, 5, on account of infamy.

§ 1. Persons who want *understanding*, it is clear, cannot be witnesses, because they are to depose to facts which they know; and if they have no understanding, they cannot know the facts. There are two classes of persons of this kind.

1. *Infants*. A child of any age, capable of distinguishing between good and evil, may be examined as a witness; and, in all cases, the examination must be under oath or affirmation. 1 Phil. Ev. 19; 1 Const.

R. 354. This appears to be the rule in England; though formerly it was held by some judges, that it was a presumption of law that the child was incompetent, when he was under seven years of age. Gilb. Ev. 144; 1 East, R. 422; 1 East, P. C. 443; 1 Leach, 199. When the child is under fourteen, he is presumed incapable until capacity is shown; 2 Tenn. Rep. 80; 19 Mass. R. 225; and see 18 John. R. 105; when he is over fourteen, he may be sworn without a previous examination. 2 South. R. 589.

2. *Idiots and Lunatics.* An idiot cannot be examined as a witness; but a lunatic, (q. v.), during a lucid interval, (q. v.), may be examined. A person in a state of intoxication cannot be admitted as a witness. 15 Serg. & Rawle, 235. See Ray, Med. Jur. c. 22, § 300 to 311.

§ 2. *Interest* in the event of the suit excludes the witness from examination, unless under certain circumstances. See article *Interest*. The exceptions are, the cases of informers, (q. v.), when the statute makes them witnesses, although they may be entitled to a penalty; 1 Phil. Ev. 96; persons entitled to a reward, (q. v.), are sometimes competent; agents are also admitted in order to prove a contract made by them on the part of the principal. 1 Phil. Ev. 99; and see 1 John. Cas. 408; 2 John. Cas. 60; 2 John. R. 189; 13 Mass. R. 380; 11 Mass. R. 60; 2 Marsh. Inst. 706, b; 1 Dall. R. 7; 1 Caines's R. 167. A mere trustee may be examined by either party. 1 Clarke, R. 281. An interested witness's competency may be restored by a release. 1 Phil. Ev. 101. Vide, generally, 1 Day's R. 266, 269; 1 Caines's R. 276; 3 John. R. 518; 4 Mass. R. 488; 3 John. Cas. 82, 269; 1 Hayw. 2; 5 Halst. R. 297; 6 Binn. R. 319; 4 Binn. 83; 1 Dana's R. 181; 1 Taylor's R. 55; Bac. Ab. Evidence, B.

§ 3. There are some persons who cannot be examined as witnesses, because it is inconsistent with *public policy* that they should testify against certain persons; these are,

1. *Husband and wife.* The reason for excluding them from giving evidence, either for or against each other is founded partly on their identity of interest, partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other, because their interests are absolutely the same; they are not witnesses against each other, because it is against the policy of marriage. Co. Litt. 6, b; 2 T. R. 265, 269; 6 Binn. 488. This is the rule when either is a party to a civil suit or action. But where one of them not being a party, is interested in the result, there is a distinction between the giving evidence *for* and *against* the other. It is an invariable rule that neither of them is a witness for the other who is interested in the result, and that where the husband is disqualified by his interest, the wife is also incompetent. 1 Ld. Raym. 744; 2 Str. 1095; 1 P. Wms. 610. On the other hand, where the interest of the husband consisting in a civil liability, would not have protected him from examination, it seems that the wife must also answer, although the effect may be to subject her husband to an action. This case differs very materially from those where the husband himself could not have been examined, either because he was a party or because he would criminate himself. The party to whom the testimony of the wife is essential, has a legal interest in her evidence; and as he might insist on examining the husband, it would, it seems, be straining the rule of policy too far to deprive

him of the benefit of the wife's testimony. In an action for goods sold and delivered, it has been held that the wife of a third person is competent to prove that the credit was given to her husband. 1 Str. 504; B. N. P. 287. See 1 H. & M. 154; 11 Mass. 286; 1 Har. & J. 478; 1 Tayl. 9; 6 Binn. 488; 1 Yeates, 390, 534. When neither of them is either a party to the suit, nor interested in the general result, the husband or wife is, it seems, competent to prove any fact, provided the evidence does not directly criminate, or tend to criminate, the other. 2 T. R. 263. It has been held in Pennsylvania that the deposition of a wife on her death-bed, charging her husband with murdering her, was good evidence against him, on his trial for murder. Addis. 332. On an indictment for a conspiracy in inveigling a young girl from her mother's house, and she being intoxicated, procuring the marriage ceremony to be recited between her and one of the defendants, the girl is a competent witness to prove the facts. 2 Yeates, 114. See as to the competency of a wife de facto, but not de jure, Stark. Ev. pt. 4, p. 711. And on an indictment for forcible entry, the wife of the prosecutor was examined as a witness to prove the *force*, but only the force. 1 Dall. 68.

2. *Attorneys.* They cannot be examined as witnesses as to confidential communications which they have received from their clients, made while the relation of attorney and client subsisted. 3 Johns. Cas. 198. See 3 Yeates, 4. Communications thus protected must have been made to him as instructions necessary for conducting the cause, and not any extraneous or impertinent matter, 3 Johns. Cas. 198; they must have been made to him in the character of a counsel and not as a friend merely. 1 Caines's R. 157; they must have been made while the relation of counsel and client existed, and not after. 13 John. Rep. 492. An attorney may be examined as to the existence of a paper entrusted to him by his client, and as to the fact that it is in his possession, but he cannot be compelled to produce it, or disclose its date or contents. 17 Johns. R. 335. See 18 Johns. R. 330. He may also be called to prove a collateral fact, not entrusted to him by his client; as to prove his client's handwriting. 19 Johns. R. 134; 3 Yeates, 4. He is a competent witness for his client, although his judgment fee depends upon his success, 1 Dall. 241; or he expects to receive a larger fee from his client if the latter succeeds. 4 S. & R. 32. In Louisiana, the reverse has been decided. It is there held that an attorney cannot become a witness for his client in a cause in which he was employed, by renouncing his fee, and having his name struck off from the record, in that case. 3 N. S. 88. Vide *Confidential Communications.*

3. *Confessors.* In New York it has been held, that a confessor could not be compelled to disclose secrets which he had received in auricular confession. City Hall Rec. 80 n. Vide *Confessor; Confidential Communications.*

4. *Jurors.* A juror is not competent to prove his own or the conduct of his fellow jurors to impeach a verdict they have rendered. 5 Conn. R. 348. See Coxe, R. 166, and article *Grand Jury.*

5. *Slaves.* It is said that a slave could not be a witness at common law, because of the unbounded influence his master had over him. 4 Dall. R. 145, note (1); but see 1 St. Tr. 113; Macnally's Ev. 156. By statutory provisions in the slave states, a slave is generally held incompetent in actions between white persons. See 7 Monr. R. 91; 4 Ham. R. 353;

5 Litt. R. 171; 3 Harr. & John. 97; 1 McCord, R. 430; in New York a free black man is competent to prove facts happening while he was a slave. 1 John. R. 508; see 10 John. R. 132.

6. *A party to a negociable instrument*, is not allowed to give evidence to invalidate it. 1 T. R. 300. But the rule is confined to negociable instruments. 1 Bl. R. 365. This rule does not appear to be very firmly established in England. In the state courts of some of the United States it has been adopted, and may now be considered to be law. 2 Dall. R. 194; Id. 196; 2 Binn. R. 154; 2 Dall. R. 242; 1 Cain. R. 258, 267; 2 Johns. R. 165; Id. 258; 1 John. R. 572; 3 Mass. R. 559; Id. 565; Id. 27; Id. 31; 1 Day, R. 17. The witness may however testify to *subsequent* facts, not tending to show that the instrument was originally invalid. Peake's N. P. C. 6. See 2 Wash. 63; 1 Hen. & Munf. 165, 166, 175; 1 Cranch, R. 194.

§ 4. When the witness has no *religious principles* to bind his conscience; the law rejects his testimony; but there is not such defect of religious principles, when the witness believes in the existence of a God, who will reward or punish in this world or that which is to come. Willes's R. 550. Vide the article *Infidel*, where the subject is more fully examined; and *Atheist; Future state.*

§ 5. *Infamy*, (q. v.), is a disqualification while it remains.

III. As to the number of witnesses, it is a general rule that one witness is sufficient to establish a fact, but to this there are exceptions, both in civil and criminal cases.

1. In civil cases. The laws of perhaps all the states of the Union require two witnesses, and some require even more, to prove the execution of a last will and testament devising lands.

2. In criminal cases, there are several instances where two witnesses at least are required. The constitution of the United States, art. 3, s. 3, provides that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. In cases of perjury there must evidently be two witnesses, or one witness, and such circumstances as have the effect of one witness; for if there be but one witness, then there is oath against oath, and therefore uncertainty.

A witness may be compelled to attend court. In the first place a subpœna requiring his attendance must be served upon him personally, and on his neglect to attend an attachment for contempt will be issued.

WITNESS, AGED. See *Aged Witness.*

WITNESS, GOING. See *Going Witness.*

WITNESS, INSTRUMENTARY, in the Scotch law, is he who has attested a deed or other writing. When witnesses attest a deed without knowing the grantor, and seeing him subscribe, or hearing him own his subscription, and the deed happens to be forged, the witnesses are declared accessory to forgery, 1681, c. 5; Ersk. Pr. L. Scot, 4, 4, 37.

WOMEN, *persons.* In its most enlarged sense, this word signifies all the females of the human species; but in a more restricted sense, it means all such females who have arrived at the age of puberty. Women are either single or married. 1. Single or unmarried women have all the civil rights of men; they may therefore enter into contracts or engagements; sue and be sued; be trustees or guardians; they may be witnesses, and may for that purpose attest all papers; but they are, generally, not possessed of any political power; hence they cannot be elected

representatives of the people, nor be appointed to the offices of judge, attorney at law, sheriff, constable, or any other office, unless expressly authorised by law; instances occur of their being appointed post-mistresses; nor can they vote at any election. Wooddes. Lect. 31; 4 Inst. 5; but see Callis, Sew. 252; 2 Inst. 34; 4 Inst. 311, marg. 2. The existence of a married woman being merged, by a fiction of law, in the being of her husband, she is rendered incapable, during the coverture, of entering into any contract, or of suing or being sued, except she be joined with her husband; and she labours under all the incapacities above mentioned, to which single women are subject. Vide *Abortion; Contract; Divorce; Feminine; Fœtus; Gender; Incapacity; Man; Marriage; Masculine; Mother; Necessaries; Parties to Actions; Parties to Contracts; Pregnancy; Wife.*

WOODGELD, *old Eng. law*, is to be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as *Pudzeld*, (q. v.)

WOODS, a piece of land on which forest trees in great numbers naturally grow. According to Lord Coke, a grant to another of *omnes boscos suos*, all his woods, will pass not only all his woods, but the land on which the trees grow. Co. Litt. 4 b.

WORD, *construction*, one or more syllables which when united convey an idea; a single part of speech; words are to be understood in a proper or figurative sense, and they are used both ways in law. They are also used in a technical sense. It is a general rule that contracts, and wills shall be construed as the parties understood them; every person, however, is presumed to understand the force of the words he uses, and therefore technical words must be taken according to their legal import, even in wills, unless the testator manifests a clear intention to the contrary. 1 Bro. C. C. 33; 3 Bro. C. C. 234; 5 Ves. 401; 8 Ves. 306.

Every one is required to use words in the sense they are generally understood, for as speech has been given to man to be a sign of his thoughts, for the purpose of communicating them to others, he is bound in treating with them, to use such words or signs in the sense sanctioned by usage, that is, in the sense in which they themselves understand them, or else he deceives them. Heinnec. Prælect. in Puffendorff, lib. 1, cap. 17, § 2; Heinnec. de Jure Nat. lib. 1, § 197; Wolff, Inst., Jur. Nat. § 798.

Formerly indeed in cases of slander, the defamatory words received the mildest interpretation of which they were susceptible, and some ludicrous decisions were the consequence. It was gravely decided that to say of a merchant "he is a base broken rascal, has broken twice, and I will make him break a third time," that no action could be maintained, because it might be intended that he had a hernia: *ne poet dur porter action, car poet estre intend de burstness de belly.* Latch, 104. But now they are understood in their usual signification. Comb. 37; Ham. N. P. 282. Vide *Construction; Interpretation.*

WORK AND LABOUR. In actions of assumpsit, it is usual to put in a count, commonly called a common count for work and labour done and materials furnished by the plaintiff for the defendant; and when the work was not done under a special contract, the plaintiff will be entitled to recover on the common count for work, labour, and materials. 4 Tyr. R. 43; 2 C. & M. 214. Vide *Assumpsit; Quantum meruit.*

WORKHOUSE, a prison where prisoners are kept in employment; a penitentiary.

WORTHIEST OF BLOOD.—An expression to designate that, in descent, the sons are to be preferred to daughters, which is the law of England. See some singular reasons given for this, in Plowd. 305.

WORKING DAYS. In settling lay-days, (q. v.) or days of demurrage, (q. v.) sometimes the contract specifies "working days;" in the computation Sundays and custom-house holidays are excluded. 1 Bell's Com. 577, 5th ed.

WOUND, *med. jur.* This term in legal medicine comprehends all lesions of the body, and in this it differs from the meaning of the word when used in surgery. The latter only refers to a solution of continuity, while the former comprises not only these but also every other kind of accident, such as bruises, contusions, fractures, dislocations, and the like. Cooper's Surgical Dict. h. t.; Dunglisson's Med. Dict. h. t.; vide Dictionnaire des Sciences Médicales, mot, Blessures. Under the statute 9 Geo. 4, c. 31, sect. 12, it has been held in England that to make a wound, in criminal cases, there must be "an injury to the person by which the skin is broken." 6 C. & P. 684; S. C. 19 Engl. C. L. Rep. 526. Vide Beck's Med. Jur. c. 15; Ryan's Med. Jur. Index, h. t.; Roscoe's Cr. Ev. 652; 19 Engl. Com. L. Rep. 425, 430, 526, 529; Dane's Ab. Index, h. t.; 1 Moody's Cr. Cas. 278; 4 C. & P. 381; S. C. 19 E. C. L. R. 430; 4 C. & P. 446; S. C. 19 E. C. L. R. 466; 1 Moody's Cr. C. 318; 4 C. & P. 558; S. C. 19 E. C. L. R. 526; Carr. Cr. L. 239. Merl. Répert. mot, Blessure.

When a person is found dead from wounds, it is proper to inquire whether they are the result of suicide, accident, or homicide. In making the examination the greatest attention should be bestowed on all the circumstances. On this subject some general directions have been given under the article *Death*. The reader is referred to 2 Beck's Med. Jur. 68 to 93. As to wounds on the living body see Ib. 178.

WRECK, *mar. law.* A wreck (called in law-latin *wreccum maris*, and in law French *wrec de mer*) signifies such goods as after a shipwreck are cast upon land by the sea, and left there within some county, so as not to belong to the jurisdiction of the admiralty, but to the common law. 2 Inst. 167; Bract. l. 3, c. 3; Mirror, c. 1, s. 13, and c. 3. The term wreck of the sea includes, 1, goods found at low water between high and low water; and 2, goods between the same limits, partly resting on the ground, but still moved by the water. 3 Hagg. Adm. R. 257. When goods have touched the ground, and have again been floated by the tide, and are within low water mark; whether they are to be considered wreck will depend upon the circumstances whether they were seized by a person wading, or swimming or in a boat. 3 Hagg. Adm. R. 294. But if a human being, or even an animal, as a dog, cat, hawk, &c. escape alive from the ship, or if there be any marks upon the goods by which they may be known again, they are not at common law considered as wrecked. 5 Burr. 2738, 9; 2 Chit. Com. Law, c. 6, p. 102; 2 Kent, Com. 292; 22 Vin. Ab. 535; 1 Bro. Civ. Law, 238; Park, Ins. Index, h. t.; Molloy, Jur. Mar. Index, h. t. The act of congress of March 1, 1823, provides, § 21, That, before any goods, wares, or merchandise, which may be taken from any wreck, shall be admitted to an entry, the same shall be appraised, in the manner prescribed in the sixteenth section of this act; and the same proceedings

shall be ordered and executed in all cases where a reduction of duties shall be claimed on account of damage which any goods, wares, or merchandise, shall have sustained in the course of the voyage; and in all cases where the owner, importer, consignee, or agent, shall be dissatisfied with such appraisement, he shall be entitled to the privileges provided in the eighteenth section of this act. Vide *Naufrage*.

WRIT, *practice*, is a mandatory precept, issued by the authority, and in the name of the sovereign or the state, for the purpose of compelling the defendant to do something therein mentioned. It is issued by a court or other competent jurisdiction, and is returnable to the same. It is to be under seal and tested by the proper officer, and is directed to the sheriff, or other officer lawfully authorised to execute the same. Vide 3 Bl. Com. 273; 1 Tidd, Pr. 93; Gould on Pl. c. 2, s. 1. There are several kinds of writs, some of which are mentioned below.

WRIT DE EJECTIONE FIRMÆ. A writ of ejectment. Vide *Ejectment*, and 3 Bl. Com. 199.

WRIT DE HÆRETICO COMBURENDO, *Engl. law*. The name of a writ formerly issued by the secular courts, when a man was turned over to them by the ecclesiastical tribunals, after having been condemned for heresy. It was founded on the statute, 2 Hen. 4, c. 15; it was first used, A. D. 1401, and as late as the year 1611. By virtue of this writ the unhappy man against whom it was issued was burned to death. See 12 Co. R. 92.

WRIT DE HOMINE REPLEGIANDO, *practice*, is a writ which lies to replevy a man out of prison, or out of the custody of any private person, in the same manner which cattle taken in distress may be replevied, upon giving security to the sheriff that the man shall be forthcoming to answer to any charge against him. This writ is almost entirely superseded by the more effectual writ of *habeas corpus*. 3 Bl. Com. 129; Com. Dig. Imprisonment, (L 4); Lord Raym. 613; F. N. B. 66; 1 Atk. 633; 14 Vin. Ab. 305; Dane's Ab. h. t.; 7 Com. Dig. 271; 5 Binn. R. 304; 1 John. R. 23; 14 John. R. 263; 2 Cain. C. Err. 322.

WRIT DE ODIO ET ATIA,—*Engl. law*. This writ is probably obsolete, and superseded by the writ of *habeas corpus*. It was anciently directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause or suspicion, or merely *propter odium et atiam*, for hatred and ill-will; and, if upon the inquisition due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Bl. Com. 128; Com. Dig. Imprisonment, (L 3).

WRIT OF COVENANTS, *in practice*, is a writ which lies where a party claims damages for breach of covenant, *i. e.* of a promise under seal.

WRIT OF DEBT, *practice*, lies where the party claims the recovery of a debt, i. e. a liquidated or certain sum of money alleged to be due to him. This is debt *in the debet*, which is the principal and only common form. There is another species mentioned in the books, called debt *in the detinet*, which lies for the specific recovery of *goods*, under a contract to deliver them. 1 Chit. Pl. 101.

WRIT OF DETINUE, *practice*, is a writ which lies where a party claims the specific recovery of goods and chattels, or deeds and writings detained from him. This is seldom used: trover is the more frequent remedy, in cases where it may be brought.

WRIT OF DOWER, *practice*, is a writ which lies for a widow claiming the specific recovery of her dower, no part having been yet assigned to her. It is usually called a writ of dower *unde nihil habet*. 3 Chit. Pl. 393; Booth, 166. There is another species, called a *writ of right of dower*, which applies to the particular case where the widow has received a part of her dower from the tenant himself, and of land lying in the same town in which she claims the residue. Booth, 166; Glanv. lib. 6, c. 4, 5. This latter writ is seldom used in practice.

WRIT OF EJECTMENT, *in practice*. Vide *Ejectment*.

WRIT OF ENTRY, *practice*, is a writ requiring the sheriff to command the tenant of land that he render to the demandant the premises in question, or to appear in court on such a day to show cause why he hath not done so. Co. Litt. 238. This writ is out of use.

WRIT OF ERROR, *practice*, is a writ issued out of a court of competent jurisdiction, directed to the judges of a court of record in which final judgment has been given, and commanding them, in some cases, themselves to examine the record; in others to send it to another court of appellate jurisdiction, therein named, to be examined in order that some alleged error in the proceedings may be corrected. Steph. Pl. 138; 2 Saund. 100, n. 1; Bac. Ab. Error, *in pr*. The first is called a writ of error coram nobis or vobis. When an issue in fact has been decided, there is not in general any appeal except by motion for a new trial; and although a matter of fact should exist which was not brought into the issue, as for example, if the defendant neglected to plead a release, which he might have pleaded, this is no error in the proceedings, though a mistake of the defendant. Steph. Pl. 139. But there are some facts which affect the validity and regularity of the proceeding itself, and to remedy these errors the party in interest may sue out the writ of error coram vobis. The death of one of the parties at the commencement of the suit; the appearance of an infant in a personal action, by an attorney, and not by guardian; the coverture of either party, at the commencement of the suit, when her husband is not joined with her, are instances of this kind. 1 Saund. 101; 1 Arch. Pr. 112; 2 Tidd's Pr. 1033; Steph. Pl. 140; 1 Browne's Rep. 75.—The second species is called, generally, writ of error, and is the more common. Its object is to review and correct an error of law committed in the proceedings, which is not amendable, or cured at common law, or by some of the statutes of amendment or jeofails. Vide, generally, Tidd's Pr. ch. 43; Graham's Pr. B. 4, c. 1; Bac. Ab. Error; 1 Vern. 169; Yelv. 76; 1 Salk. 322; 2 Saund. 46, n. 6, and 101, n. 1; 3 Bl. Com. 405; Serg. Const. Law, ch. 5. In the French law the *demande en cassation* is somewhat similar to our proceeding in error; and according to some of the best writers on French law, it is considered as a new suit, and it is less an action between the original parties, than a question between the judgment and the law. It is not the action which is to be judged, but the judgment; "la demande en cassation est un nouveau procès, bien moins entre les parties qui figuraient dans le premier, qu'entre l'arrêt et la loi." Henrion de Pansey, de l'Autorité judiciaire dans les gouvernemens monarchiques, p. 270, edit. in 8vo. 6 Toull. n. 193. Ce n'est point le procès qu'il s'agit de juger, mais le jugement. Ib. A writ of error is in the nature of a suit or action when it is to restore the party

who obtains it to the possession of any thing which is withheld from him, not when its operation is entirely defensive. 3 Story, Const. § 1721.

WRIT OF EXECUTION, *practice*, is a writ to put in force the sentence that the law has given: it is addressed to the sheriff, (and in the courts of the United States, to the marshal,) commanding him, according to the nature of the case, either to give the plaintiff possession of lands; or to enforce the delivery of a chattel which was the subject of the action; or to levy for the plaintiff, the debt, or damages, and costs recovered; or to levy for the defendant his costs; and that either upon the body of the opposite party, his lands, or goods, or, in some cases, upon his body, land, and goods; the extent and manner of the execution directed, always depending upon the nature of the judgment. 3 Bl. Com. 413. Writs of execution are *supposed* to be actually awarded by the judges in court; but no such award is in general actually made. The attorney, after signing final judgment, sues out of the proper office a writ of execution, in the form to which he conceives he would be entitled upon such judgment as he has entered, if such entry has been actually made; and, if not made, then upon such as he thinks he is entitled to enter; and he does this, of course, upon peril that, if he takes a wrong execution, the proceeding will be illegal and void, and the opposite party entitled to redress. Steph. Pl. 137, 8. See *Ca. Sa.; Execution; Fi. Fa.; Habere fa. possessionem; Vend. Exp.*

WRIT OF EXIGI FACIAS.—See *Exigent;* or *Exigi Facias.*

WRIT OF FORMEDON, *practice.* This writ lies where a party claims the specific recovery of lands and tenements, as issue in tail; or as remainder-man or reversioner, upon the determination of an estate in tail. Co. Litt. 236 b; Booth, 139, 151, 154.

WRIT OF INQUIRY, *practice.* When an action *sounding in damages*, (q. v.) as covenant, trespass, and the like, and on such action is rendered an interlocutory judgment, which is that the plaintiff ought to recover his damages, without specifying the amount, for it is not yet ascertained, the court does not in general undertake the office of assessing the damages but issues a *writ of inquiry*, which is a writ directed to the sheriff of the county where the facts are alleged by the pleadings to have occurred, commanding him to inquire into the amount of damages sustained "by the oath or affirmation of twelve good or lawful men of his county;" and to return such inquisition, when made, to the court. The finding of the sheriff and jury under such a proceeding is called an inquisition, (q. v.) The court will, on application, order that a writ of inquiry shall be executed before a judge, where it appears that important questions of law will arise. 2 John. R. 107. When executed before the sheriff he acts ministerially, and not judicially, and, therefore, it may be executed before a deputy of the sheriff. 2 John. R. 63. Vide Steph. Pl. 126; Grah. Pr. 639; 2 Archb. Pr. 19; Tidd's Pr. 513; Yelv. 152, n.; 18 Eng. Com. Law Rep. 181, n., 189, n.; 1 Marsh. R. 129; 1 Sell. Pr. 346; Watson on Sher. 221; 2 Saund. 107, n. 2.

WRITS, JUDICIAL, *practice.* In England those writs which issue from the common law courts, during the progress of a suit, are described as *judicial* writs, by way of distinction from the *original* one obtained from chancery. 3 Bl. Com. 282.

WRIT OF MAINPRIZE, *English law*, is a writ directed to the sheriff, (either generally, when any

man is imprisoned for a bailable offence, and bail has been refused; or specially, when the offence or cause of commitment is not properly bailable below,) commanding him to take sureties for the prisoner's appearance, commonly called mainpernors, and to set him at large. 3 Bl. Com. 128. Vide *Mainprise*.

WRIT OF MESNE, *Breve de medio*. In the old English law, was a writ which was so called by reason of the words used in the writ, namely, *Unde* idem A *qui medius est inter C et præfactum, B;* that is, A, who is mesne between C, the lord paramount, and B, the tenant paravail. Co. Litt. 100.

WRIT, ORIGINAL, *practice*, in the English law. An original writ is a mandatory letter issuing out of the court of chancery, under the great seal, and, in the king's name, directed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him, in most cases, to command the defendant to satisfy the claim; and, on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance. Steph. Pl. 5.

WRIT OF PRÆCIPE. This writ is also called a writ of covenant, and is sued out by the party to whom lands are to be conveyed by fine; the foundation of which is a supposed agreement or covenant that the one shall convey the land to the other. 2 Bl. Com. 349, 350.

WRIT PRO RETORNO HABENDO, *remedies, practice*. The name of a writ which recites, that the defendant was summoned to appear to answer the plaintiff, in a plea whereof he took the cattle of the said plaintiff, specifying them, and that the said plaintiff afterwards made default, wherefore it was then considered that the said plaintiff and his pledging of prosecuting should be in mercy, and that the said defendant should go without day, and that he should have return of the cattle aforesaid. It then commands the sheriff, that he should cause to be returned the cattle aforesaid, to the said defendant without delay, &c. 2 Sell. Pr. 168. Vide *Judgment in Replevin*.

WRIT OF PROCESS, *Engl. law, in practice*. If the defendant, does not appear, in obedience to the original writ, there issue, when the time for appearance is past, other writs, returnable on some general return day in the term, called *writs of process*, enforcing the appearance of the defendant, either by attachment or distress of his property, or arrest of his person, according to the nature of the case. These differ from the original writ, in the following particulars; they issue not out of chancery, but out of the court of common law, into which the original writ is returnable; and accordingly are not under the great seal, but the private seal of the court; and they bear *teste* in the name of the chief justice of that court, and not in the name of the king himself. It may also be observed, that in common with all other writs issuing from the court of common law, during the progress of the suit, they are described as *judicial* writs, by way of distinction from the *original* one obtained from the chancery. 3 Bl. Com. 282. See further as to the nature of these writs, 1 Tidd's Pr. 106–193, 4th edit.; 1 Sellon's Pr. 64–102.

WRIT OF PROCLAMATION, *English practice*, is a writ which issues at the same time with the

exigi facias, by virtue of stat. 31 Eliz. c. 3, s. 1, by which the sheriff is commanded to make proclamations in the statute prescribed. When it is not directed to the same sheriff as the writ of *exigi facias* is, it is called a foreign writ of proclamation. Lee's Dict. of Pr.; 4 Reev. Hist. 261.

WRIT OF QUARE IMPEDIT, *English law*, is the remedy by which, where the right of a party to a benefice is obstructed, he recovers the presentation; and is the form of action now constantly adopted to try a disputed title to an advowson. Booth, 223; 1 Arch. Civ. Pl. 434.

WRIT OF RECAPTION, *practice*. This writ lies where, pending an action of replevin, the same distrainor takes, for the same supposed cause, the cattle or goods of the same distrainee. See F. N. B. 169. This writ is nearly obsolete, as trespass, which is found to be a preferable remedy, lies for the second taking; and, as the defendant cannot justify, the plaintiff must necessarily recover damages proportioned to the injury.

WRIT OF REPLEVIN, *practice*. Vide *Replevin*.

WRIT OF RIGHT, *practice*, is the remedy appropriate to the case where a party claims the specific recovery of corporeal hereditaments in fee simple; founding his title on the right of property, or mere right, arising either from his own seisin, or the seisin of his ancestor or predecessor. F. N. B. 1 B; 3 Bl. Com. 391. At common law, a writ of right lies only against the tenant of the freehold demanded. 8 Cranch, 239. This writ brings into controversy only the rights of the parties in the suit, and a defence that a third person has better title will not avail. Id.; 7 Wheat. 27; 3 Pet. 133. See 2 Wheat. 306; 4 Bing. N. S. 711; 3 Bing. N. S. 434; 4 Scott, R. 209; 6 Scott, R. 435; Id. 738; 1 Bing. N. S. 597; 5 Bing. N. S. 161; 6 Ad. & Ell. 103; 1 H. Bl. 1; 5 Taunt. R. 326; 1 Marsh. R. 68; 2 Bos. & P. 570; 1 N. R. 64; 4 Taunt. R. 572; 3 Bing. R. 167; 2 W. Bl. Rep. 1261; 1 B. & B. 17; 2 Car. & P. 187; Id. 271; Holt, R. 657.

WRIT OF TRESPASS, *practice*. This writ lies where a party claims damages for a trespass committed against his person, or tangible and corporeal property. See *Trespass*.

WRIT OF TRESPASS ON THE CASE, *practice*, is a writ which lies where a party sues for damages for any wrong or cause of complaint to which covenant or trespass will not apply. See 3 Woodd. 167; Steph. Pl. 15. This action originates in the power given by the statute of Westm. 2, to the clerks of chancery to frame new writs in *consimili casu* with writs already known. Under this power they constructed many writs for different injuries, which were considered as in consimili casu with, that is, to bear a certain analogy, to a trespass. The new writs invented for the cases supposed to bear such analogy, have received accordingly the appellation of writs of trespass on the case, as being founded on the particular circumstances of the case thus requiring a remedy, and, to distinguish them from the old writ of trespass, 3 Reeves, 89, 243, 391; and the injuries themselves which are the subjects of such writs, are not called trespasses, but have the general name of *torts*, *wrongs* or *grievances*. The writs of trespass on the case, though invented thus, pro re nata, in various forms, according to the nature of the different wrongs which respectively called them forth, began, nevertheless, to be viewed as constituting collectively a new indivi-

dual form of action; and this new genus took its place, by the name of *Trespass on the case*, among the more ancient actions of debt, covenant, trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There are two, however, of more frequent use than any other species of trespass on the case, or, perhaps, than any other form of action whatever. These are *assumpsit* and *trover*. Steph. Pl. 15, 16.

WRIT OF TOLT, *Eng. law.*—The name of a writ to remove proceedings on a writ of right patent from the court baron into the county court. 3 Bl. Commmentaries, App. No. 1, § 2.

WRONG. An injury, (q. v.); a tort, (q. v.); a violation of right. In its most usual sense, wrong signifies an injury committed to the person or property of another, or to his relative rights, unconnected with contract; and these wrongs are committed with or without force. But in a more extended signification, wrong includes the violation of a contract; a failure by a man to perform his undertaking or promise, is a wrong or injury to him to whom it was made. 3 Bl. Com. 158.

WRONG-DOER. One who commits an injury, a *tort-feasor*, (q. v.) Vide Dane's Abridgment, Index, h. t.

Y.

YARD, a measure of length, containing three feet, or thirty-six inches.

YARD, *estates*, is a piece of land enclosed for the use and accommodation of the inhabitants of a house. In England it is nearly synonymous with backside, (q. v.) 1 Chitty, Pr. 176; 1 T. R. 701.

YARDLAND, *old Engl. law*, a quantity of land containing twenty acres. Co. Litt. 69 a.

YEAR. The period in which the revolution of the earth round the sun, and the accompanying changes, in the order of nature, are completed. The civil year differs from the astronomical, the latter being composed of 365 days, 5 hours, 48 seconds and a fraction, while the former consists, sometimes of three hundred and sixty-five days, and at others, in leap years, of three hundred and sixty-six days. The year is divided into half-year, which consists, according to Co. Litt. 135 b, of 182 days; and quarter of a year, which consists of 91 days; Ibid. and 2 Roll. Ab. 521, l. 40. It is further divided into twelve months. The civil year commences immediately after twelve o'clock at night of the thirty-first day of December, that is the first moment of the first day of January, and ends at midnight of the thirty-first day of December, twelve months thereafter. Vide Com. Dig. Ann.; 2 Bl. Com. by Chitty, 140, n.; Chitt. Pr. Index, tit. Time.

In New York it is enacted that whenever the term "year" or "years" is or shall be used in any statute, deed, verbal or written contract, or any public or private instrument whatever, the year intended shall be taken to consist of three hundred and sixty-five days; half a year of a hundred and eighty-two days; and a quarter of a year of ninety-two days; and the day of a leap year, and the day immediately preceding, if they shall occur in any period so to be computed, shall be reckoned together as one day. Rev. Stat. part 1, c. 19, t. 1, § 3.

YEAR AND DAY. This period of time is particularly recognized in the law. For example, when a judgment is reversed, a party, notwithstanding the lapse of time mentioned in the statute of limitations pending that action, may commence a fresh action within a year and a day of such reversal, 3 Chitty, Pract. 107; again, after a year and a day have elapsed from the day of signing a judgment, no execution can be issued until the judgment shall have been revived by *scire facias*. Ib.; Bac. Ab. Execution, H; Tidd, Pr. 1103. In Scotland, it has been decided that in computing the term, the year and day is to be reckoned, not by the number of days which go to make up a year, but by the return of the day of the next year that bears the same denomination. 1 Bell's Comm. 721, 5th edit.; 2 Stair, 842. See Bac. Ab. Descent, I 3; Ersk. Princ. B. 1, t. 6, n. 22.

YEAR BOOKS. These were books of Reports of cases in a regular series from the reign of the English King Ed. II. inclusive, to the time of Henry VIII., which were taken by the prothonotaries or chief scribes of the courts, at the expense of the crown, and published annually, whence their name Year Books. They consist of eleven parts, namely: Part 1. Maynard's Reports temp. Edw. II.; also divers Memoranda of the Exchequer, temp. Edward I. Part 2. Reports in the first ten years of Edward III. Part 3. Reports from 17 to 39 Edward III. Part 4. Reports from 40 to 50 Edward III. Part 5. Liber Assisarum; or Pleas of the Crown, temp. Edw. III. Part 6. Reports temp. Hen. IV. and Hen. V. Parts 7 and 8. Annals; or Reports of Hen. VI. during his reign, in 2 vols. Part 9. Annals of Edward IV. Part 10. Long Quinto; or, Reports in 5 Edward IV. Part 11. Cases in the reigns of Edward V., Richard III., Henry VII., and Henry VIII.

YEARS, ESTATE FOR. Vide *Estate for Years.*

YEAS AND NAYS. The list of members of a legislative body voting in the affirmative and negative of a proposition is so called. The constitution of the United States, art. 1, s. 5, directs that "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." Vide 2 Story, Cons. 301. The power of calling the yeas and nays is given by all the constitutions of the several states, and it is not in general restricted to the request of one-fifth of the members present, but may be demanded by a less number; and, in some, one member alone has the right to require the call of the yeas and nays.

YEOMAN. In the United States this word does not appear to have any very exact meaning. It is usually put as an addition to the names of parties in declarations and indictments. In England it signifies a free man who has land of the value of forty shillings a year. 2 Inst. 668; 2 Dall. 92.

YIELDING AND PAYING, *contracts.* These words, when used in a lease, constitute a covenant on the part of the lessee to pay the rent. Platt on Coven. 50; 3 Penna. Rep. 464; 1 Sid. 447, pl. 9; 2 Lev. 206; 3 T. R. 402; 1 Barn. & Cres. 416; S. C. 2 Dow. & Ry. 670; but whether it is an express covenant or not, seems not to be settled. Sty. 387, 406, 451; Sid. 240, 266; 2 Lev. 206; S. C., T. Jones, 102; 3 T. R. 402. In Pennsylvania, it has been decided to be a covenant running with the land. 3 Penna. Reports, 464. Vide 1 Saund. 233, n. 1; 9 Verm. R. 191.

APPENDIX.

A.

THE ENGLISH CHANCERY REPORTS is a collection of reports of the English courts of chancery. Thirteen volumes have been published, the contents of which are as follows:

Vol. 1. Simons & Stuart, vols. 1 & 2.
2. Simons, " 1 & 2.
3. Russell, " 2, 3, 4.
4. Russell & Mylne, vol. 1.
Jacob, vol. 1.
5. Simons, vol. 3.
Tamlyn, vol. 1.
6. Simons, vols. 4 & 5.
Russell & Mylne, vol. 2.
Mylne & Keen, vol. 1.
7. Mylne & Keen, vols. 1 & 2;
Simons, vol. 5.
8. Mylne & Keen, vols. 2 & 3.
Cooper's Select Ca. vol. 1.
9. Mylne & Keen, vol. 3.
Simons, vols. 6, 7.
10. Simons, vol. 7.
Mylne & Keen, vol. 3.
Lloyd & Goold.
11. Turner and Russell, vol. 1.
Simons, vol. 8.
12. Molloy, vols. 1 and 2.
13. Russell and Mylne, vol. 2.
Mylne and Craig, vol. 1.

B.

THE ENGLISH COMMON LAW REPORTS is a collection of the reports of the English courts. Under the article *Abbreviations* it is said the series is composed of thirty-three volumes; the number now is upwards of forty volumes, and it is yearly increasing. They are,

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

Bingham's Reports, C. P. vol. 4, parts 1 and 2.
14. Barnewall & Cresswell, K. B. vol. 7.
Starkie, N. P. vol. 3, part 1.
Carrington & Payne, N. P. vol. 3.
15. Bingham, C. P. vol. 4, parts 3 and 4.
Barnewall & Cresswell, K. B. vol. 8.
Bingham, C. P. vol. 5.
16. Dowling & Ryland, K. B. & N. P. 8 vols.
Moore, C. P. & E. C. vols. 4 and 5.
17. Moore, C. P. & E. C. vols. 6 to 10.
Moore & Payne, C. P. & E. C. 2 vols.
Manning & Ryland, K. B. 2 vols.
Barnewall & Cresswell, K. B. vol. 9.
18. Chitty, K. B. 2 vols.
19. Bingham, C. P. vol. 6.
Carrington & Payne, N. P. vol. 4.
20. Bingham, C. P. vol. 7.
Barnewall & Adolphus, K. B. vol. 1.
21. Barnewall & Cresswell, K. B. vol. 10.
Bingham, C. P. vol. 8.
Ryan & Moody, N. P. vol. 1.
22. Barnewall & Adolphus, K. B. vol. 2.
Moody & Malkin, N. P. vol. 1.
Dowling & Ryland, K. B. vol. 9.
Moore, C. P. & E. C. vols. 11 and 12.
23. Barnewall & Adolphus, K. B. vol. 3.
Bingham, C. P. vol. 9.
24. Barnewall & Adolphus, K. B. vol. 4.
Carrington & Payne, N. P. vol. 5.
25. Bingham, C. P. vol. 10.
Carrington & Payne, N. P. vol. 6.
26. Douglas, by Roscoe, K. B. vols. 3 and 4.
27. Barnewall & Adolphus, K. B. vol. 5.
Bingham, New Cases, C. P. vol. 1.
28. Adolphus & Ellis, K. B. vol. 1.
Moore & Scott, C. P. vol. 1 and 2.
Neville & Manning, K. B. vol. 1—3.
29. Adolphus & Ellis, K. B. vol. 2.
Bingham's New Cases, C. P. vol. 2.
30. Adolphus & Ellis, K. B. vol. 3.
Moore & Scott, C. P. vol. 3 and 4.
Neville & Manning, K. B. vol. 4.
Scott's Reports, C. P. vol. 2.
31. Adolphus & Ellis, K. B. vol. 4 and 5.
32. Bingham's New Cases, C. P. vol. 3.
Carrington & Payne, N. P. vol. 7.
33. Adolphus & Ellis, K. B. vol. 6.
Bingham's New Cases, C. P. vol. 4.
34. Adolphus & Ellis, K. B. vol. 7.
Carrington & Payne, N. P. vol. 8.
35. Bingham's New Cases, C. P. vol. 5.
Adolphus & Ellis, K. B. vol. 8.
36. Adolphus & Ellis, Q. B. vol. 9.
Scott's Reports, C. P. vol. 3 and 4.
Neville & Manning, K. B. vols. 5 and 6.
Neville & Perry, K. B. vol. 1.
37. Adolphus & Ellis, Q. B. vol. 10.
Bingham's New Cases, C. P. vol. 6.
38. Carrington & Payne, N. P. vol. 9.
Deacon, Bankruptcy, vol. 1.
39. Adolphus & Ellis, Q. B. vol. 11.
Manning & Granger, C. P. vol. 1.
40. Adolphus & Ellis, Q. B. vol. 12.
Manning & Granger, C. P. vol. 2.
41. Adolphus & Ellis, New Series, Q. B. vol. 1.
Carrington & Marshman, N. P. vol. 1.

C.

THE ENGLISH ECCLESIASTICAL REPORTS are a collection of reports of the British Ecclesiastical courts, of great value. They are,

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2. Addam's Ecclesiastical Reports, 3 vols.
3. Haggard's Ecclesiastical Reports, vol. 1.
Furgusson's Scotch Consistorial Reports, 1 vol.
4. Haggard's Ecclesiastical Reports, vol. 2.
Haggard's Consistorial Reports, 2 vols.
5. Haggard's Ecclesiastical Reports, vol. 3.
Lee's Ecclesiastical Reports, vol. 1.
6. Lee's Ecclesiastical Reports, vol. 2.
Curteis's Ecclesiastical Reports, vol. 1.

D.

THE LAW LIBRARY is a collection of Treatises on the English law, written by some of the most learned lawyers in England.

There have been *three* distinct *Series* of this publication, an arrangement rendered necessary by the exhaustion of the earlier volumes. The *first* and *second* series are identical from the 3d volume of the *first* series; and the *third* series is identical with the two former from a subsequent period.

Contents of the First Series, 40 vols., to June, 1843.

Vol. 1. Theobald on Principal and Surety.
Blanchard and Wilkinson on Limitations.
Bradby on Distresses.

2. Shelford on Lunatics.

3. Platt on Covenants.
Cornish on Uses.
Hennell's Forms.
Sugden on Sales.

4. Woolrych on Ways.
Ellis on Insurance.
Perpigna on Patents.

5. Leigh and Dalzell on Conversion of Property.
Cary on Partnership.
Comyn on Usury.
Allnatt on Partition.

6. Comyn on Landlord and Tenant.
Babington on Set-off.
Wilkinson on Replevin.

7. Hayes on Estates Tail.
Watson on Office of Sheriff.

8. Ram on Assets, Debts and Incumbrances.
Ram on Wills.

9. Mathews on Executors.
Hurlstone on Bonds.
Ram on Legal Judgments.
Dwarris on Statutes.

10. Petersdorff on Bail.
Willis on Trusts.
Fletcher on Trustees.

11. Watson on Arbitration and Awards.
Park on Dower.
Wilson on Springing Uses.

12. Ross on Purchasers and Vendors.
Robertson on Succession.

13. Bingham on Judgments and Executions.
Wigram on Discovery.
Poynter on Marriage and Divorce.
Gibbon's Law of Fixtures.

14. Willcock on Corporations.
Warren's Law Studies.

15. Bagley's Practice.
Sugden on Powers. Vol. 1.

16. Sugden on Powers. Vol. 2.
Byles on Bills of Exchange.

Vol. 17. Calvert on Equity.
Smith's Mercantile Law.

18. Coote on Mortgages.
Ward on Legacies.

19. Smith's Leading Cases. Vol. 1.
Babington on Auctions.

20. Atkinson on Titles.
Watkins on Conveyancing.
Gilbert on Rents.

21. Powell on Devises. Vol. 1. Part 1. Vol. 2.

22. Powell on Devises. Part 2, Vol. 2.
Beames on Equity Costs.

23. Burton on Real Property.
Smith's Leading Cases. Vol. 2. Part 1.

24. Lewin on Trusts.
Schultes on Aquatic Rights.

25. Lovelass on Wills.
Stock on Non Compotes Mentis.

26. Mansell on Demurrer.
Coventry on Conveyancer's Evidence.

27. Atherly on Marriage Settlements.
Stephen's Criminal Law.

28. Paley on Principal and Agent.
Roscoe on Real Actions. Vol. 1.

29. Roscoe on Real Actions. Vol. 2.
Willcock on Constable.
Worthington on Juries.

30. Smith's Leading Cases. Part 2. Vol. 2.

31. Sheppard's Touchstone, by Hilliard and Preston.
Roper on Husband and Wife. Part 1. Vol. 1.

32. Roper on Husband and Wife. Part 2, Vol. 1; and Vol. 2.

33. Shelford on Marriage and Divorce.

34. Cross on Law of Lien, &c.
Eden on Bankrupt Law. Part 1.

35. Eden on Bankrupt Law. Part 2.
Willis's Pleadings in Equity,

36. Drewry on Injunctions.
Shelford on Mortmain. Part 1.

37. Shelford on Mortmain. Part 2.
Bennet's Chancery Practice.

38. Wooddesson's Lectures. Vols. 1, 2.

Vol. 39. Wooddesson's Lectures. Vol. 3.
Wordsworth on Joint Stock Companies. Part 1.
40. Wordsworth on Joint Stock Companies. Part 2.

Vol 40. Goldsmith's Equity.
Joy on Confessions and Challenges of Jurors.
Pitman on Principal and Surety.

The Second Series, 38 *vols., to June* 1843, is the same as the first, with the exception of the first two volumes, vol. 1 of the second series, being the same as volume 3d of the first, differently numbered.

Contents of the Third (Current) Series, 30 *vols., to June* 1843.

Vol. 1. Leigh & Dalzell on Conversion of Property.
Allnatt on Partition.
Cary on Partnership.
Comyn on Usury.
2. Comyn on Landlord and Tenant.
Babington on Set-off.
Wilkinson on Replevin.
3. Bingham on Judgments and Executions.
Wigram on Law of Discovery.
Poynter on Marriage and Divorce.
Gibbon's Law of Fixtures.
4. Willcock on Corporations.
Petersdorff on Bail.
5. Bagley's Common Law Practice.
Sugden on Powers. Vol. 1.
6. Sugden on Powers. Vol. 2.
Byles on Bills of Exchange, &c.
7. Smith's Mercantile Law.
Calvert on Equity.
8. Coote on Mortgages.
Ward on Legacies.
9. Smith's Leading Cases. Vol. 1.
Babington on Auctions.
10. Atkinson on Marketable and Doubtful Titles.
Watkins & Preston on Conveyancing.
Gilbert on Rents.
11. Powell on Devises. Vol. 1.
Powell on Devises. Part 1, vol. 2.
12. Powell on Devises. Vol. 2, part 2.
Beames on Equity Costs.
13. Burton on Real Property.
Smith's Leading Cases. Vol. 2, Part 1.
14. Lewin on Trusts and Trustees.
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Coventry on Conveyancer's Evidence.
17. Atherley on Marriage Settlements.
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18. Paley on Principal and Agent.
Roscoe on Real Actions. Vol. 1.
19. Roscoe on Real Actions. Vol. 2.
Willcock on Constable.
Worthington on Juries.
20. Smith's Leading Cases. Vol. 2, part 2.
Sheppard's Touchstone by Hilliard & Preston. Vol. 1.
21. Sheppard's Touchstone. Vol. 2.
Roper on Husband and Wife. Vol. 1, part 1.
22. Roper on Husband and wife. Vol. 1, part 2, and vol. 2.
23. Shelford on Marriage and Divorce.
24. Cross on Law of Lein and Stoppage in Transitu.
Eden on Bankrupt Law. Part 1.
25. Eden on Bankrupt Law. Part 2.
Willis's Chancery Pleadings.
26. Drewry on Injunctions.
Shelford on Mortmain. Part 1.
27. Shelford on Mortmain. Part 2.
Bennet's Chancery Practice.
28. Wooddesson's Lectures. Vols. 1, 2.
29. Wooddesson's Lectures. Vol. 3.
Wordsworth on Joint Stock Companies. Part 1.
30. Wordsworth on Joint Stock Companies. Part 2.
Joy on Confessions and Challenge of Jurors.
Goldsmith's Doctrine and Practice of Equity.
Pitman on Principal and Surety.

A

DICTIONARY

OF THE

NORMAN OR OLD FRENCH LANGUAGE.

By ROBERT KELHAM,

OF LINCOLNS-INN.

Multa ignoramus quæ non laterent, si veterum Lectio nobis esset familiaris.
Macrobius.

PREFACE.

So many Statutes, Acts of State, Records, Law Books, and MSS. are extant in the Norman and old French language, that a dictionary is become necessary to enable the reader to understand such difficult words as occur therein in that language; whether such difficulty arises from the words being merely idiomatical, or from the inorthography of them.

There is indeed a book called the Law French Dictionary; but it is so trifling a performance, and so incorrect, that it greatly misleads the reader, as will evidently appear to any one who will compare several of the words in that dictionary (1) with their originals in the authors from whence they are taken. Mr. Hughes (whose merit in translating so ancient an author, as the Mirror, was not inconsiderable) has yet frequently mistaken the sense of the text, as I presume will be manifest from the passages here cited (2).

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(1) *As Octaz*—Nov. Nar. 6. b.—until the Octaves—translated *they have wished.*
Deins—ibid.—11. b.—Teeth—*the Eyes.*
Un longayne—No. Nar. 16. a. b.—a House of Office, a Jakes—*a Sheep walk.*
Perfoys—Nov. Nar. 17. a. b.—by Turns—*the Agreement or Covenant.*
Desyra—Nov. Nar. 47. b.—tore—*took away, spoiled.*
Gesta—Ibid.—carried away—*put, cast in.*
Ent grand pren—2. In. 506—great profit therefrom—*in great Fear.*
Remte—Brit. 49. a.—fined—*rests, remains.*
Remis—ibid. 66. a.—replaced, fixed on again—*torn.*
Roys—ibid. 83. a.—Kings—*Faults.*
Entessaunt—ibid. 242. a.—Tacitly, by being silent—*in witnessing.*
Supplications—Preamble, Stat. Glou. 2 In. 277.—Helps, Amendments—*Petition.*

(2) *Inviorgoigne*—p. 4—to the Reproach—translated *in condemnation.*
Fissend les visnes—13—make their views—*make their Views.*
La Neece, le Ante le Heire, le Roy—22—the Niece being the Heir of the King—*the Nurse, the Aunt, Heir to the King.*
Tache de lour arte—23—infected with their Art—*taken with their Art.*
En volles Chautes et gargans de Oiseaux—23—in the Flight, singing and chattering of Birds—*In the Intrails and Bowels of Birds.*
Garnishant—33—warning—*defending.*
Moirent de disette—34—die for Want—*die in the Deserts.*
Per noyer—47—by being drowned—*by hurt.*
Apprester—49—to pray, to be prepared—*to take an Oath.*

If the word *defends* made use of in a defendant's plea had been considered as derived from the Norman French word *defender*, and to signify to *oppose* or *deny*, and not to justify; Mr. Booth in his accurate Treatise of Real Actions would not have acknowledged himself so much at a loss to explain the entry of the defendant's defence in a writ of right. Booth, xciv. 112.—3 Blackstone, 296.

Nor surely, if the idiom of this language had been understood, would this passage in Britton, "Si lesglise demoerge descounseille outre vi. moys, adonques solonc le Counceil "de Lions par l'descord d's parties, le fra levesque del lieu counseiller & dorra lesglise "a ascun clerke d'son office, sauve chescun droid," been rendered, by so elaborate and judicious an abridger as Mr. Viner, in the following manner:

"*If the Church remains discouncilled beyond six months, then, according to the council* "*of Lyons, by the discord of the parties, the bishop shall be in the place of a counsellor,* "*and shall give the church to any clerk, saving every one's right;*" instead of (as with great deference I think it ought to be translated), "If the Church remains unprovided beyond six months, then, according to the Council of Lyons, by reason of the disagreement of the parties, the Bishop of the Diocese shall provide for it, and shall, *ex officio*, collate some clerk to the church, saving every one's right." Britton, 225. a. 17. Viner, 377.

Nor if the Norman Law French had been properly understood by the professors of our Law, would a Frenchman, on a late remarkable trial, have been called in to read and explain some Norman French charters produced in a British court of Judicature.

Even the statutes themselves, as found in our books, are, I am afraid, in many places too liable to the same censure; a specimen from the short Statute of Fines (1), and from the Statute of Acton (2) Burnell, will shew this:

lieu la pees sur la pie	translated	*delivered* *the Peace* *by the County*	instead of	read the Concord on the Foot.	

The mention therefore of these passages, thus erroneously translated, may be of some use, I trust, to incite young students to attain to a more perfect knowledge of the ancient Norman Law French; for Justice Fortescue, in his learned preface prefixed to his Reports, and to the Treatise of Absolute and Limited Monarchy, wrote by Sir John Fortescue, Lord Chief Justice of England under Henry VI. says, that without being acquainted with this language, wherein so much of our laws yet in force is written, a man cannot pretend to the name of a lawyer; and as many of the Public Acts which are in Latin in Rymer's Fœdera are not, in the judgment of Rapin, to be understood without the assistance of Ducange or Spelman; I may venture to say, that great numbers of the same kind of instruments found there in the old French language are not less difficult

Oisel—50—Bird—*Cat.*
En pure Sacote—53—in his Coat only—*in pure Sackcloth.*
Gardassent—102—support—*defend.*
N'est attaintable—113—is not to be attainted—*is not attestable.*
Son peir—116—his equal—*his superior.*
A monester—117—to admonish—*to shew.*
Eins ceux que—p. 308.—before that—*after that.*
Quantum vene vife Naam—158—when one forbids the replevying a live Distress—*when a Man leads away a live distress.*
Garrantizables—176—are to be warranted, or to be proved—*are to appear.*
Ou containes—178—or far off—*or contain.*
Enemies discries—178—proclaimed, notorious Enemies—*Enemies discovered.*
Si Clerke ordeine—188—if a Clerk ordained—*if a Clerk be ordered.*
A cheuer—201—to perform, to attourn—*to come to.*
D'maine un gule—212—from Hand to Mouth—*of his own Hand.*
Est fief des tailles—212—is seised of the Tallies—*by Tallies.*
De quire—218—with Leather—*with Iron.*
Escu du cuyre—a Shield of Leather—*a Shield of Iron.*
Per le refoil de la mer—222—by the Ebbing of the Sea—*by the Waves of the Sea.*
Sons—223—payment—*a Release.*
Sil fernist sa ley—241—if he performs his Law—*if he wage his Law.*
Per vist enfaver—248—by burying alive—*by burning alive.*
Per urur de eux—261—by plucking out the Eyes—*by burning them over the Eyes.*
Que ne noirent—271—who do not send—*hurted not.*
Afforcement de la ley—282—a forcing, straining of the Law—*erring from the Law.*
Ou avoient ves—300—or had denied—*or had sent.*
Eins ceo que—308—before that—*inasmuch as.*

(1) 18 Edward I.

(2) *Pristes leur avers*, borrowed their *Cattle*, instead of *Money.*

for want of some Dictionary of that language. Even so late as the time of Queen Elizabeth, when one would have thought that almost all barbarisms had been abolished, we find treaties drawn up, and Secretaries of State, Ambassadors, and Kings in her reign, corresponding in a very uncouth style; for I believe there are very few readers, who, *tout d' un coup*, will understand such words as "*de repes—arrablez, plieur—panures—roven-*" *ereray—truerant—leuryauxi—unglos—synyuemant—auplieies—delleanses—l'adutent* "*—saintemant—avabler—oisuir—sans anviser—j'escrine—acharuez—au oult;*" with many others equally obsolete, and which are not explained in any dictionary. Yet this collection, extensive as I have endeavoured to make it, does not, I must confess, take in every difficult or obsolete Norman French word; several of this kind are purposely omitted, on account of the sense of them not readily occurring, and are left for some more able hand to investigate; others also will, without doubt, be met with in some books and manuscripts which have escaped my reading: though I persuade myself the number will not be very considerable; and that it may with truth be said, that very few of the antient Norman French words which occur in this work, are to be met with elsewhere.

This compilation, the reader will please to observe, is confined to such words of the old French language as occur chiefly in Rymer's Fœdera, our Statutes, Parliament Rolls Journals, Records, Law Books, and Historians; for as to those which are to be met with in ancient writers of the French nation, and in the Provençal Poets and Romances, they are foreign to our purpose; and may be found in the Dictionary lately compiled by the learned M. La Combe (1), in 2 volumes: nor have I traced the Norman French language up to its origin, this being also already done by the above author, and several others who have professedly written on that subject.

It would have likewise not have been unentertaining, and at the same time more satisfactory to some readers, to have given, as Menage and others have done, the passages and sentences at length, from those records, books, and manuscripts, from which most of the words in this collection are taken; this indeed would have helped to point out the different epochs when such and such words first assumed such a sense, as well as given the reader an opportunity of comparing the words themselves with the context; but this parade would have rendered the work much larger, and I am afraid too expensive. My only view in making this compilation, is to promote historical knowledge, and enable the studious to read with satisfaction, and understand, those many interesting and curious records dispersed in our Acts of State; and particularly in the Parliament Rolls (which under the sanction of the Legislature have been lately published), Law Books, and Historians, and which, for want of some assistance of this kind, lose much of their force: if this end is answered without making those numerous quotations which the observing the above order would have occasioned, I hope, the want of it will be readily excused,

(1) Dictionnaire du Vieux Langage Francois, par M. La Combe, a Paris, 1776.

A DICTIONARY

OF THE

NORMAN AND OLD FRENCH LANGUAGE.

☞ Owing to the difficulty of procuring types cast with a small dash – over them, which are usually employed to denote an abbreviation, *Roman* letters are used. In some cases the letter *p* is used in the edition from which the copy has been taken, with a small dash across the lower part of the letter. In this edition such letters have also been put in Roman.

A, at, and, with, from, for, by.
A causa de cy, for this reason.
A ee, for this purpose.
A cestuy, from him.
A la facon, in the fashion.
A la presence, in the presence.
A peu perd, with small loss.
A sont, and are.
A tort, by wrong.
Aage, age.
Aagiee etant, being of the age.
Aan, a year.
Abaiesse, an abbess.
Abaiez, afraid, intimidated.
Abaiez du peril, put in peril.
Abaiser, to appease.
Abaisse, deprived.
Abaissies (*si*), so impoverished.
Abaizance, *Abbaisunce*, in abeyance, in expectation.
Abatist, abated, beat down, pulled down, threw down, quashed, defeated, interposed.
s'Abaty, entered by abatement, interposed.
Abatu (*Bois*), wood cut or fallen.
Abaudissent (*sei*), embolden themselves, give themselves up to.
Abbassement, abatement.
Abbeissant, obedient.
Abbessed, cast down.
Abbessement, lessening, lowering.
Abbessent, abate, lower.
Abbrevoir, a watering place.
Abbs, an abbey.
Abbuver, to give water to.
Abeissant, obedient.
Abeisse, *abesse*, abated, lessened, abased.
Abeissement, lowering.
Abeissez, oppressed.
Aber, abetting.
Abesilie, abated.
Abetir, to render stupid.
Abette, abetment.
Abetuz, abating, allowing for.
Abeye, *abit*, habit.
Ablessement (*en*), to the scandal, injury.
Ablez, able, fit.
Abogen, bowed.
Aboilage, honey.
Aborder, to apply to, arrive at.
Aboutir, to draw to, to abut.
Aboutissants, *aboutissements*, limits, or boundaries.
Ab Owein, ap Owen.
Abreeu, April.
Abroceurs, brokers.
Abruver, to water.
Absoile, *absoller*, *absouldre*, *absodre*, to absolve, forgive, pardon.
Abstiegner, to abstain.
Abstinence, cessation.
Abusshementz, concealments.
Abutrements, ornaments.
Aca, *ca*, then.
Acat, buying.
Acate, (p *vois d'*), by way of bargain.
Acaterie (*Sergeaunt de l'*,) serjeant of the catery.
Accepeant (*en*), in accepting, objecting.
Accessement, addition.
Accesser, to assess.
Accion, *accyoun*, action.

Accoitant (*en*), in hording up.
Accoinct, very necessary or familiar.
Accointance, aid, favour, association.
Accoller, to embrace.
Accollee (*donner l'*), to dub a knight.
Accomptablez, *comptable pesson*, countable, small fish.
Accord (*d'*), the concord.
Accoritez, agreed to it.
Accort, ready, wary.
Accoster, to prop, or hold up.
Accoursement, the taking away.
Accouter, to hearken.
Accresser, *accrester*, to increase, to accrew, to happen.
Accressent, arise from.
Accresser (*qui droit ad a*) who has a right to the profits.
Accreve, increased.
Accreaunt, gathering, obtaining, accroaching.
Accrocher, accroach, usurp, attempt to exercise.
Acrois, increase, accession, improvement.
Accuserez, reproach, accuse.
Accusement, accusation.
Acensement, a letting to farm.
Acenseur, a farmer.
Aceres, maple-trees.
Acertener, ascertained, being well assured of.
Acertez, certified, get intelligence of, in good earnest.
Acessent, assess.
Achampart (*garder les*), to keep them separate, safe.
Acharuez, incensed, cruelly bent against.
Achat, buying.
Acheter, to buy.
Achatur, *acatour*, buyer.
Achatre, to ransom.
Achemine, directed.
Acheson, *achaysson*, reason, occasion, cause, hurt.
Achesonez de bel pleder, called in question for beaupleader.
Acheve (*ne se*), does not attorn.
Achever, *achiver*, to perform.
Acheu, attourned.
Achioer, to finish.
Achoisoner, *achessoner*, to accuse.
Aci, here.
Acier, steel.
Aco, that.
Acoigne, favour, association.
Acone fei, sometimes.
Acons, sore.
Aconvenu, covenanted, agreed upon.
Acort, agreement, accord, consent.
Acoudre, to join.
Acoulper, to accuse.
Acounte, *aconte*, to be reckoned, deemed, accounted.

Acoupes, accused, guilty.
Acouter, deemed, accounted.
Acovyegnent, agree, settle.
Acqueister, to pacify.
Acquisser, to receive, gather.
Acre, an acre, a measure of land.
q *ne fuist unques acree ne vergee*, which was never surveyed, measured, or laid out into acres, rods, &c.
Acres, increased.
Acresce, increase.
Acrestre, *acresser*, *acresere*, to multiply, to increase, advance, rise, accrew.
Acrestant a lui, taking upon himself.
Acrire, to write.
d'Acrocher, to assume, incroach, increase.
Acroire, to lend.
Acruist, accrewed.
Act, action.
Actines, *actons*, cloaks.
Actuel, ready, speedy.
Actualment, *actuelment*, presently.
Acunement, in any other manner.
Acunte, account.
Acunt (*deit*), owes any thing.
Acuse, excuses.
Adaerains, at last.
Adavaunt ale, so far gone.
Adayer, to provoke.
Adeiz, already.
Adenc, now.
Adeprimes, first, at first, for the first time.
Adept, obtained.
Aderere, behind, in arrear, strayed from.
Aderener, to appraise.
Ades, by and by.
Adesoure, underneath, below.
Adesouth lui, under him.
Adesseement, constantly.
Adetteres, sincerely.
Adevant, before.
Advenir, to become.
Adgares (*ne*), lately.
Adgisantz, adjacent.
Addculeir, to mitigate, to asswage.
Addone, given to.
Addoubers, see adoubers.
Addoubeur, a promoter or setter-up of causes.
Addresse, directed to, sent; also redress.
Addresseroient en haut lour maynes dextres, should hold up on high their right hands.
Adherdantz, adherents.
A dieu commandez, gone to God, departed this life.
Adjeuster, to adjust, contrive, dispose of.
Adjouster foy, to give faith.
Adire, by saying.
Adire, that is to say.
Adire, to abandon, forsake.
Aditerent, should summon to the eyre.
Adjure, abjured, abandoned.

Admenestres, admonished, brought.
Administres, the administrators.
Adnates, the first fruits.
Adnerer, to set a price.
Adoler, to lament.
Adonques, *adonges*, then.
Adouler, to repair.
Adoubers de viels draps, patchers, botchers, or menders of apparel.
Adoun, then.
Adrecans, *adroissans*, addressed, directed to.
Adreciez, *adrestees*, redressed.
Adrein, until.
Adreitament, with address, *also* directly, forthwith, readily.
Adres, readily, conveniently.
Adrescer, to redress.
Adrescer a nous, behave to us.
l'Adrescement, the management, improvement, reformation, reform, repairing.
Adresser ses resons, to make out, to prepare his defence.
Adresses, going, proceeding on, continuing along.
Qu'ils adressassent, that they should prepare themselves.
Nous nous adressesoms, we are getting ready.
Adressez, erect.
Adressez, ornamented, gilded.
Chaser adressez, drive them strait along.
Adrestement, directly, forthwith.
Adrier, in arrear.
Adtret, drawn.
Adveigne, happens, becomes.
En adventure si, in case.
Adveu (*soubz l'*), with the approbation.
Advitailles, victualled.
Advocassie, office of advocate.
Advoue, *advoes*, advocates, persons skilled in the law.
Advover, to avow.
Adueinent, arise.
Adunque, then.
l'Adutent, making use of.
Adyre, to say.
Aé, the age of a man.
Aele, grandmother.
Aem perlir, peril of our soul.
Aerdanz, *aordanz*, adherents.
Aerder, to accrew.
Aererer, to plough.
Aerin, brass.
Aernovel, August.
Aerres, earnest.
Aery, nest of hawks.
Aes, case.
Aeues, waters.
Aez, has.
Afeore, affeered.
Affaire, to make,
Affaires, *affaires*, to be made.
Affairont, affeer.
Affaitier, to render learned.
Affame, famished.
Affectate, wilful.
Affectes, bestowed on.
Affectuous, desirous.
Affecteusement, affectionately.
Afferre (*nus eqoms*), we have occasion for.
Afferaunt (*solonc son*), according to his share, proportion, or what belongs to him.
Afferont (*en lor*), in their proportion.
Afferme, contract.
Afferment, lodge, lay.
Affermer, to let to farm.
Affermes, *afermees*, granted, limited, confirmed.
Affer, *affri*, *affra*, cattle, or beasts.
Affers des carads, beasts of the plow.
Affere, to do.
Afferer, to tax, assess, moderate.
Afferrit, *afferoit*, belonged.
Affert, it behoveth.
Affiaunce, confidence.
Affiauntz, by the affirmance, oath.
Affie (*nul se*), let none presume.
Affiert, it belongs, is meet.
Affinage, refining of metal.
Affins, kindred by marriage, friends.
Pur affiner, to put an end to it.
Affiont, *affiantz*, *affie*, trusting, confiding in.
Affirmacons, confirmations.
Affirmassoms, had affirmed.
Suit affirme, suit affirmed.
Pur default d'affirmare, for want of confirming.
Affirez, affeered.
Affoire, to do.
Que mien y soit affoire, what is best to be done.
Afforcer, to strengthen.
Afforce, increased, strengthened.
s'Afforcent, aim at, attempt.
Si se afforce, if he should attempt.
Afforcement de femme, forcing a woman.
Afforcement de la lay, a forcing or straining of the law.
Afforcement, effectually.
Afforer, to estimate, to tax.
Affortement, strength, aid, assistance.
Afforterez, will enforce.
Affrai, *affrei*, terror.
En affrai de la pees, in breach of the peace.
Affraietz, terrified.
Affranchir, to set free.
Affretter (*d'*), to freight.
Affublez des manteax, habited with the mantle.
Affyereit, trust to.
Afolee, cripled.
Aforce, strengthened.
Aforcer, to endeavour, to compel, to enforce.
Aforcent, tend to, endeavour.

Aforesters, aforested.
A for prendre, to be forprized.
Afouement (*si*), as soon as, as fast as.
Afoula, damaged, wasted.
Ag, wait, keep, observe.
Agactz, assaults.
Agager nule ley, wage any law.
Agagez, pledged.
Agaitz, lie in wait.
Agaites (*les*), the watch.
Agardant, regarding.
Agardetz ; agard, awarded; keep, observe, attend.
En vos agardetz, in your judgment, determination.
En vos agard, in your own delay.
Agayte, *agait* (*en*), by await.
Agatere (*pur male*), of expecting mischief.
Age, water.
Agenux, on their knees.
Agglue, joined, congealed.
Aggreaunt (*en*), in aggravation.
Aggreggez, enumerated, specified.
Agilte, acted.
Agisant environ, lying near, adjacent.
Agiser, to be levant and couchant.
Agneler, to yean or bring forth lambs.
Agniser, to acknowledge.
Agrea (*ele s'*), she agreed.
Agreation, agreement.
Agrestical, clownish.
Aguet a pansé, malice, prepense.
Aguet, *aquet* (*par*), by ambuscade.
Aguey, near.
Aguir, to guide.[5]
Aguiser, to sharpen.
Agules pur sacca, pack needles.
Aguyen, Acquitain.
Aherdanntz, adhering.
Aheritez, heir, inheritor.
Ahontir, to abash, or make one ashamed.
Ajants, having.
Aice, thereto.
Aie, aid, relief.
Aient, are.
Aienz, having.
Aier, steel.
Aiet, he shall have.
Aile, a wing.
Ailess, a grandmother.
Ailors, elsewhere, besides, then.
Aimans, diamonds.
Aimant, a loadstone.
Aimer (*l'*), the love.
Ain, a hook.
Ainceis, but.
Ainneesche, eldership, birthright.
Ains, his.
Ains, opposed, obstructed.
Ains, *d'ams*, (*par quintal d'*), for a quintal of almonds.
Ainsi come (*per*), in the same manner as.
Aintz, but.
Ainz, *einz qe*, before that.
Ainznez, eldest.
Aion, *aiomz*, have.
Ajourner ceus, remove them.
Ajoustre (*sanz*), without adding.
Ajoyni, joined.
Airaine, brass.
Aire, nest of the hawk.
Aireau, a plough.
Airens en pourpos, intend.
Aires, eared, ploughed.
Airignante, adjoining.
Ais, a board.
l'Aise, the ease.
Aisement, easement.
Aisne filz, eldest son.
Aisnee fille, eldest daughter.
Aist, aided.
Aistre, existence, life.
Aitre, a house, an apartment, a room.
Aive, water.
Ajudar, to assist.
Ajuge, adjudged.
Ajustement, *ajoustances*, addition.
Aketon, *hoketon de plate*, coat of plate, metal.
Akune, some.
Al, to, from.
Al, went to.
Ala devie a trespass, departed this life.
Alaier, alledge.
Alant, *alantes*, going.
Al armes, with armes.
Alassent quere hors, they should go and take them out.
Alastes, gone.
Allaceaulx, collateral.
Allanez al roy, going to the king.
Alcome, alchymy.
Alcons, any one.
Alcunz e alcun, one or more.
Alee, allay.
Alees, passages abroad.
Alefoitz, sometimes.
Alegaunce, allowance, redress.
Aleger (*lui*), to relieve himself.
Alegge, eased, redressed, relieved.
Alegerez, will alleviate.
Alencontre, to the contrary, against.
Aler (*le*), the bringing.
Aler (*lour*), their departure.
Ales de gales (*en sees*), in his journey into France.
Alettes, little eagles.
Aletz adieu, go quit.
Aleur (*a grant*), in great haste.
Aleviance, ease.
Ali, to another.
Aliance, allegiance.
Aliaunces, *alience*, confederacies, allegations, suggestions.
Alias, heretofore.

Alienacan, kindred.
Aliennee, an alien.
Alienee, the buyer.
Alier, at large, to go at large.
Alier hors, to go out of.
Aliez (*lour*), their relations, friends.
Alisaundre, Alexander.
Alissir, *aleisser*, at going out.
Alkemine, alchemy.
Alleuge, *allegag*, alledged.
Allec, herring.
Alledgie, bought in, made satisfaction.
Allees (*si*), so far proceeded in.
Alleger, to lessen.
Allegier, to alleviate, remove.
Alleggeance (*en*), for redress, in ease of.
Allegeaunce (*sans*), without alledging.
Allegies, imprisoned.
Allegiance (*forsque*), only an alleviation, exemption.
Allegiez, alleviated, redressed.
Alleguez, cited.
Alleient uvant, may proceed.
Alleie, allay.
Alleques, alledged.
Alleront, went.
Alles, allies.
Alleu, *allieu*, *aleu*, *alieu*, a possession free from all subjection, allodial.
Alleve, levyed.
Alleyn, an alien.
Alliance, *aliance*, *alience*, *aleyngnanse*, confederacy, protestation, allegiance.
Alliance (*faux*), by false allegations.
Alliantz, aliens.
Allieger, alledge.
Alient (*sen*), may depart.
Allies, *alliez*, kindred, confederates.
Alliours lieux, other places.
Alloee, allowed.
Alloigne, *alligne*, put off or delayed, carried away, conveyed from.
Alloigner le terme, enlarge the time.
Allopee, eloped.
Des allopers de nunns, of those who elope with nuns.
Allowables, genuine.
Allower (*ne poet*), cannot let.
Allowent, hire.
Alloyanche, *alloyance*, alliance.
Alloynes, stolen, alienated, removed, carried off, drove away.
Alloynours, *alleynours*, those who conceal, steal, or carry a thing off privately.
Alluer, to allow.
Alluminor, a limner or gilder of letters in old manuscripts.
Alm, soul.
Lendemayn des almes, on the morrow of souls.
Al menne people, to inferior people.
Almoignes, alms, almonds.
Alns, a wood of elders.
Alnyours, aulnagers.
Aloigner, to enlarge.
Aloine, ousted.
Aloinent, eloign.
Alongerent (*se*), withdrew themselves.
Alors, there, at that time, in that place.
Alost, go.
Alote, allotted,
Aloues, worthy of praise.
Alquons, any one.
Altre-fiee, at another time, afore time.
Alt, high.
Alt el ewe, let him go to water Ordeal.
Alterquer, to wrangle.
Altres IIII (*les*,) the other 4.
Altres, (*per*), by others.
Altresi, in like manner.
Alye, fastened, fixed.
Alyenont le judgement, they defer the judgment.
Alvey, alderground.
Aluable, allowable.
Aluer (*li*), allow him.
Alun, allom.
Alz, *az*, they, them.
Am, I love,
Amans, diamonds.
Amaroit, should love.
Amat, beloved.
Amatistre, an amethist.
Ambassiatt, embassage.
Ambuxeurs, ambassadors.
Ambodeux, *amdeus*, *ambedoi*, *amb*, both.
Ambrey, a cupboard.
Ame, friend.
Ame cosyn, beloved cousin.
Am F, amen.
Amedeus les pties, both parties.
Amee, desired, coveted.
Ameis, *ametz*, *gentieux hommes*, beloved gentlemen.
Ameinise, diminishes.
Amene, seduced, forced.
Amenez, *amegnez*, produced, brought.
Amenuser, to abridge, abate, decrease, diminish, lessen, annihilate, to fall.
Amenusoit, brought.
Amenisse, amended.
Amendement, for the amendment, improvement.
En amendement, in amends.
Ament, let him make amends.
Amentineez, maintain.
Les amends de assyse enfreynte, the correction of the breach of assyse.
Amenrir, to diminish.
Amenistrez, administered.
Amer, bitter.
Amer (*ne de*), nor to love.
Ames, mercy.
Ames et foyables, beloved and faithful.

Ames (*es*), on the souls.
Amesner, to bring, convey.
Amesnauncez, carrying away.
Amesnaunce, *ameignaunce*, bringing in.
Amesure, moderated.
Amez, friends.
Amiable, friendly.
Amiablement, amicably.
Amice, beloved.
Amiraudes, emeralds.
Amisours (*ses*), those who are prejudiced against him.
Amistee, friendship.
Amistre, annuity.
Amnasse, threaten.
Amoindrir, to make thin or lean.
Amoinorissant, wasting, diminishing.
Amoler, to melt.
Amolir, *amollir*, to soften.
Amonestoms, admonish.
Amonestment, warning, notice.
Amont, a mount, upwards, against, above.
Amort, *amorti*, dead,
Amorte, allured, won.
Amortir, *amortizer*, *amorteyser*, to amortise, to purchase in mortmain.
Amountaunt, ascending.
d'Amour jour, day of grace; a day also given to compromise the suit.
Amous, very.
Amoyneric, almonry.
Ampiere, an empire.
Ampler, to increase, enlarge.
Amprendre, to undertake.
Ampres, after.
En ampres, hereafter.
d'Ams quintal, a quintal of almonds.
Amue, friends.
Amur, love.
Amuue, moves, grieves.
Amuzer ascun, to put one in a study.
Amyes concubines, beloved concubines.
Amyte, friendship.
l'An, the one.
Ana, without.
Analessent, going, went.
Anamalez, enamelled.
Anchisors, ancestors.
Ancelle, a maid servant.
Ancestre en court, summoned to appear in court.
Ancoys, but.
Ancuser, to accuse.
Ande, mother in law.
l'Andemain, the morrow.
Aneals, *aneus*, rings.
Anel, a ring.
A l'anell, on delivery of the nuptual ring, on solemnization of the marriage.
Anel, an angel.
l'Anel, the handle.
Anelyng de tewles, annealing of titles.
Anemis, enemies.
Anenent, happen, arise.
Angeine, the feast of the Holy Virgin.
Anginees, engine, devices.
Anguites, anguish.
Angusses, straights.
Angutez, straightened.
Anichilée, annihilated.
Anienter, *anientir*, to take away, to defeat, make void, to annul.
Anient, *anientie*, void, disannulled.
Tot anientie, entirely ruined.
En anientisement, to the destruction, waste, ruin, disannulling, lessening, impoverishment, wasting.
An il enust (*l'*), from whence there follows.
Anisancz, *aynisans*, annoyance.
Aniz, friend.
Ankes, geese.
Ankes, presently.
Ankes avant (*que*), that before.
Anne, year.
Annealing, a burning or hardening by fire.
Annel, *annuel*, a ring.
Anuels, *anuels livres*, the year books.
Annez, years.
l'Anoiture, the nurture.
Anoye, injured, damaged.
Anoya, hurt.
Anquare, yet, still, again.
Anques, but, very.
Anans, for a time.
Ansement ausement (*tout*), entirely in the same manner.
Ansois, but, although.
Ant (*le*), being.
Antandre, to inform.
Antene (*de*), of the last year.
Antic, old.
Antor le tour, round the tower.
Antyer tout, entirely.
Anuales chauntantz, singing annuals or masses every day.
Anuelx, rings.
Anui, to-day, this night.
Anulterie (*en*), in adultery.
Anures mals, evil works.
Anusance, *anuesantz*, annoyance.
Anute, annuity.
Anuyt, vexes.
Anviser (*sans*), without waiting.
Anyentissent, annul.
Anyntier, to annul.
Anz, years.
Anzoiz, *ansois*, but.
Aordaunce, confederacy.
Aore, now.
Aour, gold.
Aourer, to pray to, worship.
Aournemens, ornaments.
Aoust, August.
Apandy, belongs.

Apara, will appear.
Aparelle, *aparaile*, *appareillie*, ready.
Aparille (*de tot*), with all readiness.
Aparceyver, to perceive.
A par luy, on his part.
Aparmenes, *ore aparmenns*, at this present.
Aparte, open, full.
Apartement, plainly.
Apastiz, *patiz*, the agreement to a contribution.
Apauvry, impoverished.
Apeaus, appeals.
Apee, on foot.
Apens, thought.
Apent, belongs.
Aperchenoir, perceive.
Apercus de ceo, informed of it.
Aperluy, by itself.
Aperment, openly.
Apeschez, impeached.
Apeser, to appease.
Apetisez, *apeticher*, *appetichie*, *appetis*, diminished, lessened.
Apeu, a few.
Apeyne, scarce.
Apiergent, they appear.
Apieroit, it appears.
Apoi chescun, every one almost.
Apoincter, to appoint, direct.
Apoint, pointed, sharp at the end.
Apostiler, to write notes on.
Apostilles, additions, observations.
Apostle, *apostal*, *apostoile*, *apostoire*, the pope.
Apoy ylia demure (*qe*), that there scarce remains.
Appaiers, to be paid.
Appaiez, satisfied.
Appairallez, repaired.
Apparailements, fitting out.
Apparelez (*pur l'*), for repairing of.
L'endemain de l'apparition, the morrow of the Epiphany.
Apparoir, *apparoer*, *apparoier*, to appear, make known.
Appasser, to pass.
Appatisiez lieux, places which agreed to pay a sum of money to the enemy in compensation of their towns being spared from the ravages of war.
Appaye (*en un*), in one payment.
Appaye (*nent*,) not contented, dissatisfied.
Appeaux, appeals.
Appeirez, impaired.
Appele, called.
Appellations, appeals.
Appellantz (*Seignurs*), lords appellants, viz: the duke of Gloucester, Henry earl of Derby, Richard earl of Arundel, Thomas earl of Warwick, and Thomas earl of Nottingham, earl Marshal, who were so called in 2 Richard II., because they were the accusers in parliament of the then late ministers.
Appelliers, called.
Append, pending.
Appener, to portion out.
Appenser, to think or consider.
Appensementz, thoughts.
Appenses, hung, affixed.
Appente, *appient*, belongeth, belonging.
Apperceivance, preparations, discovery.
Apperient q, who import.
Apperil, *apparaillez*, ready, apparelled, prepared.
Appert, openly, in public.
Appeser, to agree.
Appesement, agreement.
Appiaux, appeals.
Appiert evidence, apparent evidence, jurisdiction.
Appisant, evident.
Applater, to make plain.
Appliantz, arriving, drove into.
Applicuer, to employ.
Applier, to submit.
Applois, employment.
Apport, tax, tallage, imposition, payment, tribute, charge, expenses.
Apportz (*come*), as it ought.
Apposer, *appose*, adjust, agree.
Apposee, questioned, adjusted, settled.
Apprailles, ready.
Appreciation, appraisement.
Appreignent, learn, be informed of.
Appreisours, appraisers.
Apprentise, a student of the law, a pleader, a serjeant at law.
Un apprentix de la court le roy et attourne, an apprentice of the court of the king and an attorney.
Apprester, should endeavour, ought to be prepared.
Appresta (*se*), should be ready.
Apprestes, payments, loans.
Appreste (*argent*), money borrowed on loan.
Apprestes (*per lui*), by him lent.
Apprimes, first.
Apprise, *appris*, learned.
Aprisez de ley, learned in the law.
l'Appriesment, the seising.
Approcher lour droit, to come at their right.
Appromptes (*per*), by borrowing.
Approper, to appropriate.
Approperment, properly.
Approperment (*per*), by appropriating.
Approve, vouched.
Approvez, appropriated.
Approvements, improvments.
Apprower, to improve.
Approwours, approvers.
Appruer, to approve.
Appruement, profit.

Appus, appear.
Apree, afterwards.
Apres, next, nearest to.
Apres les IIII joure, within 4 days.
Apres, learned, skilled in.
Aprestay, I lent.
Aprest (*d'argent d'*), ready money.
Aprest (*dettes d'*), debts which ought to be paid down.
Aprimes (*tont*), in the first instance, immediate.
Apris le jour, after the day.
Apris, understood, valued, appraised.
Apris de la leie, learned or versed in the laws.
Aprises (*des*), from informations.
Aprise, learning.
Aprivoises, improved, purchased.
Aprocha, petitioned.
Aprocher a notre, come at our own.
Aprouchier, proceed.
Aprove, improves.
Aprua son waet, approved his wast.
Apruchement, approach, arrival.
Apuril, April,
Aquar (*Serg.*), serjeant of the ewry.
Aquitantz, acquittance.
Aqules, to which.
Ara ete, shall have been.
Arace, to erase.
Araceez, tore out.
Aracher, to grub up.
Aracine, taken root.
Araer arair, to prepare, array, settle.
Arages, madmen.
Araies, array, apparel.
Araine, brass.
Arant, plowing, earing.
Arat, shall have.
Arbalastres, *arbalestes*, cross bows.
Juges arbitrers, *arbitrarys*, a private judge chosen by consent of the parties to determine the matter in difference.
Arc, a bow, an archer.
Arcamentz, secrets.
Arces, *arcts*, burnt.
Arcewesche, archbishop.
Arche, a chest.
Archer, to shoot.
Arct, compelled.
Arctable, forcible.
Arcter, to force, bind.
Arctors, the plaintiffs.
Assises, *arannez*, assises, arraigned.
Ardeit, *ardes*, burnt.
Arden, a wood.
Arduys negoces, arduous business.
Que pur l'arduite de lour charge, as well on account of the arduousness of their charge.
Are, *aret*, a ram.
Arecountre, according to.
Areigne, happen.
Areitez, arrented.
Aremenaunt, *arenaunt*, for ever after.
Arenes, *aresnes*, *aresenez*, put to answer, arraigned, called in question.
Arent, a certain sum assessed by way of fine for beaupleader.
Arentes, let, rented at.
Arere, back again.
Arere (*en*), aforetime.
Arere (*joint*), diminution, joined again.
Areristment, hindrance, delay, prejudice.
Aresme, *dareim*, of brass.
Arest, stay.
Arester, *areiter*, stop, resist, opposed.
Arestieu, seized, detained.
Arestus, *arestutz*, arrested.
Aret, an account.
Arete, *areste*, taken or charged with some crime.
Argouees, argued, debated.
Arieres en tempe (*en*), in times past.
Arire (*rendra*), shall pay back again.
Arierisee, injured, hindered.
Arivail, arrival.
Arkes, bows.
Arm (*de l'*) *de Tamyse*, an arm of the Thames.
Arme, weapon.
Armez, arms, coat armour.
Armor, the sea.
Armure, arms, armour, harness.
Armures, (*milles*), a thousand armed men.
Aront, shall have.
Arorez, fodder, soil, compost.
Arouere, to answer.
Arpen, an acre.
Arr, in arrear, arrained.
Arrablez, overpowered, oppressed.
Arracer, to root up.
Arrages (*gens*), madmen.
Arraisoner, put to answer.
Arramez, commenced.
Arramir, to assemble.
Arranez, *ou arranerz*, arraigned, or to be arraigned.
Arras (*en*), in earnest.
Arraynement, *aresnement*, the arraignment.
Arre (*demaunde*), demand back again.
Arrect, *arrette*, let him impute it.
Arren, *arreyn*, *arrent*, arraigned.
Arrer, to plow up.
Arrer et seymr, to plow and sow.
Arrere (*en*), lately.
Arrerie, perverted, delayed, frustrated.
Arreremeyn, backwards, gradually.
Arreriissement, *arerisment* (*en*), in delay, hindrance, annoyance.
Arrestre, to accrew.
Arrest, *accrest*, accrews.
Arrestent, take.
Arrient, happens.

Arrier, *arrer*, to give earnest.
Arriers, again.
Arrivails (*petitz*), small landing places.
Arroie (*que je*),) that I shall have.
Arroit, *arroet*, should have, would be.
Arroul, inrolled.
Arrure, plowing.
Ars, burnt.
Arsines, *arseuns*, *arsures*, burning.
Arte, narrowed.
Artic, *artique*, North.
Arte (*est*), is obliged.
Artex, compelled.
Articlarie, artillery.
Artus, Arthur.
As, to, into, amongst.
As, *siens*, and his.
As utaves, on the octaves.
Asalt, *asaut*, assault.
Asaumple, an example or precedent.
Asaudre, to absolve.
Ascaventer, to certify or make known.
Aschoisounez, called in question.
Ascavoir, to be understood.
Ascensement, agreement.
Ascent, assent, knowledge.
Ascerchez, searched.
Ascerte, certified.
Asceverer, to affirm.
Ascient (*qui a*), who knowingly.
Ascunement, in any wise; some of.
Ascurrons, we assure.
Asierent, belong.
Asoles, wounded.
Asols, satisfied.
Asoudre, to absolve.
Asout, absolved.
Asoyne, *asone*, essoyn.
Aperse, dispersed.
Aspertee, *asprete*, by rough measures, by force.
Asprement, roughly.
Aseet, *assiete*, assignment.
Aseir, to sit.
Aselees, sealed.
Ases, assessed.
Asquus, some.
Ass (*l'*), the assise.
Assa, Asaph.
Assach, a compurgation by 300 men.
Assaeroms, will attempt.
Assaiants, assisting.
Assaiant de harneis, trying or fitting on of armour.
Assaie (*en*), on trial.
Assait, *asseit*, assert.
Assaileront, assault, or set upon.
Assaver 3 mois, 3 months notice.
Assavoir, certify.
Assay, *assaye*, endeavoured.
Assees, a woodcock.
Assege, besieges.
Assemble, a collection.
Assembler, to meet.
Assemblee, an union.
Assembleement, meeting.
Assemle, together.
Assener, to assign.
Assenoms, assign, appoint.
Assenne, assignment, support, portion.
Assent, something to sit upon.
Assentement, consent.
Assentui en judgement, joined in issue, in judgments.
Asseours, *asseont*, assessors, assess.
Asseourez, made safe.
Assequerer, to assure, make certain.
Asser, *asseer*, *asseoir*, to settle, fix, ascertain, assess, keep.
Assert (*d'*), to certify.
Asserte, surety.
Asser (*d'*), with steel.
Asses, set up, put up.
Asses (*l'*), conjunction, concurrence.
Assesaunce (*a la*), at the assessing.
Assessors, abettors.
Asserera, will assure, make sure.
Assere, drained.
Asseyly, assaulted.
Assez, *aseez*, *assetz*, *assietz*, *assaz*, enough.
Aseez affer, enough to do.
Assiette, *assoir*, assessment, tax.
Assigniers, *assinez*, assigned.
Assis, situated.
Assise en ore, set in gold.
Assis (*jour*), day appointed or fixed.
Assises, *assisserent*, set, appointed.
Assiduelment, constantly.
Assieore, to prosecute.
Assiz, sit.
Assys, appointed, affeered, assessed.
Assoager, to comfort.
Assoigne, essoyn, excuse.
Assoil, absolve.
Assoil (*qe Dieu*), on whom God have mercy, pardon.
Assoilent, *se assoilent*, punish.
Assoir, to besiege.
Assolloms, we absolve.
Assommes, adjusted.
Assondre (*pour*), *de assouldre*, to absolve, to acquit.
Assoub, *assouth*, *assous*, acquitted, discharged, resolved.
Assurrer (*d'*), to essay.
Assure (*l'*), the certain.
Assurrera, and will assure, covenant.
Astallation (*l'*), the installation.
Astate, estate, condition.
Asterlabe d'or, an astrolabe of gold, an instrument to make astronomic observations.
Astonbz, tin.
Astraint, *astruetz*, *astrictz*, constrained, bound.

Astraignons, to bind.
Astre, a hall.
Astre, aistre, a hearth.
Astrer (*home*), *astrier*, a man resident, a villein born in a house of the lord's.
Astres (*trestoux le*), all the houses, fire hearths.
Astrus, hidden, difficult.
Astuche (*j'*), I conjecture.
At, hath.
At, and.
Atachiee, affixed, annexed.
Atanys, attainted, convicted.
Atat, estate, purchase.
Atauntz, atantz, so many.
Ateigne pas, does not come to.
Ateignent, which belong to.
Ateindre jekes a cens, get at them.
Ateint, amount,
Ateinz, attainted.
Ateivament, effectually.
Atendre (*e sit*,) and let it be understood.
Atent, attends.
Atentre, atendre, waiting.
Atient, extinct.
Atornez (*a co*), appointed for that purpose.
Atraite a notre obeissance, drawn to our obedience.
Atret, drawn aside.
Atreys, other.
Atreent (*ne*), do not draw.
Attacher, to attack, take place.
Attacher son appeal, to commence, to prosecute his appeal.
Attach (*se*), attached, come upon.
Attachent, buying.
Attaindre, understand.
Attaine, brought, commenced, seized on.
Attainables, to be commenced.
Attainables (*nient*), are not to be brought.
Attaine (*cause*), cause attached.
Attainer sa action, to commence his action.
Attainre (*sil ne puisse*) *de prover sa pleine*, if he cannot proceed to prove his plaint.
Attaintes pur serfs, found by verdict to be villains.
Attame, attamened, commenced, attached.
Attanners, untanned.
Attant (*pour*), *de temp*, for so long a time.
Attauntz de noetz, as many nights.
Attayner, treat of, show.
Atteindre, to attaint, convict, conviction.
Atteinsist (*il*), he had accused, impeached.
Atteint, attaint, convicted, found guilty, adjudged.
Atteintable (*n'est*), is not to be attainted.
Atteint, atteynts, proved.
Atteinz, attaints.
Atteindre (*eux*), to convict them.
Atteindre (*pur*), to attain, obtain.
Atteindre (*si*) *le tenant le voille*, if the tenant will abide thereby.

Atteinoit (*luy*) *a grant aleur*, met him with a great train.
Atteignalment, ateisament, atteynement, atteynaument, effectually, strenuously, remain for ever.
Atteignent (*se*), are committed.
Atteynours, persons who are to attaint the jurors.
Atteynt, atteinte, an attaint.
Atteynt de fause pleyne, convicted of having made a false plaint.
Attemprement, interpretation.
Attemptates (*pur*), for attempts.
Attendront a nos, they shall be subject to us.
Attentissent (*s'*), should be tried.
Attent (*come*), as they ought to have done.
Atterminement, respite, adjournment, attermination.
Atterminez, determinable, respited.
Atterminez (*dettes*), debts for the payment of which certain times were assigned; and those were called *debita atterminata*.
Atteignent, attient, belong.
Attier, appointed.
Attiles (*les*), the stores.
Attilmentz (*l'*), the fitting out.
Attirable, radicated, wasted.
Attirent (*les*,) turn them.
Attires (*si*), so treated.
Attitles, assigned.
Attyrer, to provide.
Attyres (*mal*), ill repaired.
Attorte, raised, contributed.
Attournances, attornments.
Attournera, shall assign.
Attournons, attorneys.
Attraie a lui, claims it to himself, pretends title thereto.
Attraire, to draw.
Attrapper, to catch.
Attrenche, respited, reversed.
Attrench (*tout*), entirely.
Attrer, draws.
Attret, treaty.
Attrextrent, draw, drew.
Attrot, consent.
Attroistre, to revoke, withdraw.
An, to, or, have, had.
Avabler, to deceive.
Ava fait, had made.
Avage le Seigneur, let the Lord go.
Avail, lower; as *tenant paravail* is the lowest tenant, or he who is supposed to make avail, or profit of the lord.
Availe, advantage, benefit, profit.
Aval, below.
Aval (*va*) *la rue*, goes down the street.
Avant (*que vint*), *avale del pount de Flete*, which runs down by Fleet-bridge.
Avalaunt, descending.
Avale, lowered, prostrated.
Avale (*price*), price lowered.

Avallée, abased, humbled.
Avaller leur trefs, to lower their flags.
Avanchant (*eux*), protecting themselves.
Avant (*de*), before.
Avant (*auxi*), as well.
Avant (*issint*), so on.
Avant (*en*), hence forwards.
Avant (*suist*), he sued forth.
Avans, having.
Avaunt (*quil soint*), that they are proceeding on the business.
Avant (*ne soit pluis*) *fait*, be no more done.
Avansoier, to advance.
Avanthier, the day before, or yesterday.
Avantures, happening, mischances.
Avanture (*d'*) *par aventera*, perchance, perhaps.
Avanture (*en*), for fear, lest there should be occasion for.
Avanture (*faire*,) cause to be seised.
Avantures (*pur faire*), to recover.
Avaunt, forthcoming.
Avaunt meyn, beforehand.
Avaunt (*plus*), more fully.
Avayner, avenor.
Auban (*St.*) St. Alban.
Aubelastiers, slingers.
Aubiene, an alien, a foreigner.
Aucon, some.
Auctor, *les auctours*, the plaintiffs.
Audant, imagining.
Audemoneant, putting in mind.
Audiens, to be heard.
Audions (*ne*) *mie*, did not imagine.
Audremantz, aldermen.
Ave, with.
Ave, a goose.
Avene nous, come to us.
Avecent, who have.
Aveer, to avow, acknowledge.
Avegler, to blindfold.
Aveir, *aver*, *averre*, *avere*, to have.
Aveir escut, rescued cattle.
Aveir (*mettre*,) set forth.
Aveir (*per*), through avarice; also, through fear.
Aveit (*il ni*) *pas*, there is not.
Aveigne, *avenent*, happens.
Aveigna pryvy (*come il*), how he becometh privy.
Aveigne (*suffisant*), sufficient, indemnity.
Aveignerie (*serjeant del*), serjeant of the avary, the officer who is to provide oats, &c. for the king's horses. Minshew. Or, according to some, Avary signifies a poulterer, from *Aviarius*. See Minsh. *Poulterer*.
Aveignaunt (*al*), to the value.
Avell, plucked from, torn off.
Avenable, reasonable, convenient.
Avenant, value, price.
Avenant, to come from.
Avenant (*plus*), more material.
Avenantement, *avanaument*, answerably, properly.
Avenaunte mesure (*de*), of a proportionable size.
Avenaunt soun (*a*), in his stead.
Avenage, pent oats.
Aveuc ce avenques che, moreover, besides this.
Avendrez, shall aver, shall be admitted.
Avene, the river Avon.
Avener, get possession of.
Avener (*devez*), ought to be admitted, allowed.
Aven (*a ceo ne poient ils*), they may not be admitted thereto.
Avenont, having.
Avenor, the king's officer to provide oats.
Avens, penthouses.
Avensit, *avenoit*, *avenge*, happened.
Aventera (*par*), by chance.
Aventurous, casual, contingent.
Aventerousement, by mischance.
Avenues (*facont lour*), make their entrance, advance, congees.
Avenux (*il est*,) he is come to, become intitled to, admitted to.
Avers, *aver*, *avier*, money, effects, goods.
Aver, *avor*, *ave*, cattle.
Avere, *averust*, (*en*), in doubt.
Averill, April.
Averioms, shall have, having.
Averroit, *avraiettre*, would have.
Averreier, (*veuille*,) will aver.
Avesqe, bishop.
Aveigne, *avrignes*, oats.
Avide, greedy.
Avient (*q il y*), that it came to him.
Avientisement, avoiding, annulling.
Avietz, you have.
Avilee, rendered vile.
Avint, it came to pass.
Axirances, protestations, adjurations; also ejurations.
Aviscera, shall add.
Aviscement, addition.
Aviser, to advise, determine.
Avisementz, determinations, discretion.
Avisement, (*en*), to advise about.
Avissi, *avisi*, also.
Avis (*vient*), laid open,
Avit, habit.
Avium, we had.
Avix, *advice*, the opinion.
Auference, taking away.
Auge, a trough.
Augunes genez, some people.
Augurim, foretelling.
Auke, any.
Aukeward, backward.
Aule, a hall.
Aulm, *aume*, soul.

Aulment, elsewhere.
Aultont (*d'*), moreover.
Aume some (*d'*) with some sum.
Aumentist, removed.
Aumeyne, *aumoinge*, at least.
Aumones, alms.
Auncesserie, auncestry.
Aune, inned.
Aunes, ounces.
Aunes, yards, ells.
Auner, (*dras*), to measure an ell of cloth.
Aunkrer, anchorage.
Aunoi, an alder.
Aunz, *auntz*, years.
Avoec, *auveqe*, *avoet*, *avoeckes*, with.
Avoer, to have.
Avoeson, *avoueson*, (*l'*), the patronage, advowson, foundation.
Avoerie (*de l'*), of the advowson.
Avoe (*d' lour*), of their patron, lords.
Avoir, *avoyer*, a sum of money, goods, effects, estate, substance, debt.
Avoir (*d'*), of the means, ability.
Avoir (*l'*) the wealth.
Avoir de pois, any bulky commodities.
Avoir (*de corps et d'*), with their bodies and goods.
Avoir (*pur d'*) out of greediness.
Avoir (*gentz de petit*), persons of small substance or property.
Avoirs, *avoint*, had.
Avoies (*lais*), lay patrons.
Avoiers (*des*), of the avowants.
Avolsont, pluck off.
Avompe, we have.
Avonus use, have used.
Avotours des playntes, hearers of petitions, complaints.
Avouchez, advocates.
Avovers, avowers.
Avouerie (*par*), by allowance of, by avowal of.
Avoueynt (*s'il*), whether they avowed.
Avoues (*les*), the founders.
Avour (*d'*), to have.
Avoutir, adulterer.
Avoutrie, adultery.
Avowa, owned.
Avowable, justifiable.
Avowe, *advowee*, a patron, founder.
Avoweson (*d'ature*), of another's foundation.
Avower, to challenge.
Avoye fet lui, had been done to him.
Avoyer, patronage.
Avoytaunt, adding to.
Avoytes, have put forth.
Auplieies, employed.
Auques, also, now.
Aurees (*d'*), other things, goods.
Aurel, *auril*, *avril*, *aurilleux*, April.
Aurenoef, the new year.
Aures, *auriels*, ears.
Auriens, have.
Aurun, will, have, observe.
Aus, to us.
Aus, *auts*, others.
Aus (*d'*), of them.
Ausint, *ausinc*, *aussin*, *ausuit*, *ausoys*, *ausieu*, also, in this manner.
Ausint come, as well as.
Ausoms (*ni*), we dare not.
Aust, autumn.
Auster, hearth, chimney.
Austh, August.
Austour, a goshawk.
Aut, let him go.
Aut come je puis, as much as I can.
Auter, an altar.
*Auter sur haut**), on the high altar.
Autel, the like.
Autour, the author, maker.
Autrecloth, the altar cloth.
Autrefez, at other times.
Autrem, *l'autrin biens*, the goods of others.
Autreouse, otherwise.
Autreyerem, grant.
Autresi bien, as well as, likewise.
Autresi come, as if.
Autresint, likewise,
Autretant, as much.
Auvablement, effectually.
Auvere, *auver*, to have.
Avultere (*l'*), the adulterer.
Avultu, for one year.
Avute, had.
Avyne, happen.
Avyce, advice, cause.
Avynein, Avignon.
Avys, have.
Auxienes, any.
Auxint, and, whereas, also.
Auxi toust, as soon as.
Awaite, ambushments.
Awant le quart degre, before the fourth degree is passed.
Awe, who had.
Awe, a goose.
Aweit, crimes committed by await.
Awen, the current year.
Awenours, owners.
Awer, *awoure*, suspense, doubt.
Awarestee, *aweroust*, doubt, ambiguity, uncertainty.
Awes, waters.
Awey, avowed, confessed.
Awoost, August.
Axies, also.
Ay, with.
Ay, over.
Aydonqes, then.

* Sir M. Hale's MS.—Not *l'aut*, as Rot. Parl. vol. ii. p. 205.

Aye (*a l' de Dieu*), with God's assistance.
Ayele, grandmother.
Ayer, heir.
Ayl, yes.
Ayle, grandfather.
Aylienont, they put off or defer.
Aylours, besides, elsewhere, otherwise.
Aymez, esteemed.
Ayn degre, own consent.
Ayne o samne, an ass with a load.
Ayr, choler, wrath, anger.
Ayre (*l'*), them.
Ayrer, to plow.
Ayront, shall build their nest, or breed.
Ayteles, to such.
Az (*l' de soye*), a silk lace.

Ba, *baa*, Bath.
Baailler, to gape or yawn.
Babé, Elizabeth.
Bacelée, *bacelete*, *bacelote*, a damsel.
Baceyes, pearls.
Bacha, a calf.
Bachelereux, hardy, adventurous.
Bachilier, *bachiler*, a batchelor, a young esquire, a knight.
Bacins, *bascins*, basons.
Badel, a beadle.
Badise, vanity, boldness.
Baes prise, low price.
Bage, a bag, a coffer.
Bagnes, baggage.
Bague, a reward, bribe.
Bahuz, chests, cloak, cloak bags.
Bailes, bailiwicks.
Baillolf, Baliol.
Bail de seisine, livery of seisin.
Bailement (*le*), the lending.
Baillast arrere, delivered back.
Bailler, to let forth, to lend, to deliver.
Bailleu, delivered.
Bailliff demeyne, his own delivery.
Baillons, we allow.
Baillye, a bailiwick.
Bailours, sureties.
Baisser, to humble.
Baisser le tete, to bow the head.
Balaunce, suspense.
Bale, *ball*, a pack, a bale.
Balene, *balen*, a whale.
Balesciz, *baillaiz petits*, small ruby balais.
Baley, a broom, besom.
Balhier, *balhiff*, bailiff.
Balhent, the bailiffs accompt.
Balinguee, advised, careful.
Ballots, little packs.
Ban, outlawry, banishment.
Bande, delivers.
Bander, to tye, to bind.
Banderount suis, shall deliver up.
Bandoner, to leave.
Bandon, left to oneself.
Bandour, boldness, courage, audaciousness.
Baneres, knight bannerets, banners.
Baner despleye, with banner displayed.
Banky, bench.
Bannier, a public cryer.
Banny, sent.
Bannys, those that are banished, outlaws.
Banoors, *baneours*, banner bearers.
Barat, deceit, subtilty, wrangling.
Barbandier, a brewer.
Barbicans, bulwarks, outworks.
Barbits, *barbyts*, sheep.
Barder leins, to beard wool.
Barein, barren.
Barel d'or, a little bar of gold.
Bares, at barrs, a game so called.
Baret, strife.
Bareys, eaves.
Barges (*les*),
Barils, barrels.
Barnage, baronage, the body of the nobility.
Baron, husband.
Barreaux, *barrez*, barrs or grates.
Barrouych, Berwick.
Bars, bargains.
Bartheu, Bartholomew.
Bas cur, an out yard.
Base meason, low room.
Basilique, a royal palace.
Baslard, buckler.
Basseur, lowliness, familiarity.
Bassinet, *basinet*, *bacinet*, helmet.
Bast, a pack saddle.
Bastant, *bestant*, *bestent*, dispute, process, contest, litigation.
Bastes, convenient.
Bastiment, *bassment*, a building.
Bastise, battered.
Baston de fleet, tipstaff of the fleet.
Bayens, *bascins*, basons.
Batant, *batement*, *batture*, beating.
Bater, *battre*, *batter*, to beat.
Bater bledz, to thresh corn.
Bateux, *batails*, *battels*, *bateeves*, *batelz*, boats, barges.
Batraunt, beating, assaulting.
Batuz, beaten, hammered to pieces.
Battaillers, combatants, warriors.
Baucant, yellow.
Bauceant, *baucent*, a pavillion.
Bauciant, *baucent*, a spy, an informer.
Baudement, fairly, merrily.
Baudour, to the encouragement.
Baudra, shall deliver up.
Baudra (*li*), shall take to himself.
Baudront, shall deliver, give.
Baudroyeur, a currier.
Baudure, courage, be emboldened.
Baut, lets.
Bayle de Lincoln, the bail of Lincoln.
Bayler, to deliver.

Beal, well, better, fair, handsome, lawful, good.
Beance, intention, desire, hope.
Beance, beiance (*en*), in expectation of.
Beat, blessed.
Beaudes, bold, emboldens.
Beau luy est, tis well for him.
Beaumers, the Bohemians.
Beawme (*roy*), king of Bohemia.
Beddes, beds, pieces of worsted.
Bedel, a calf.
Beeves, oxen.
Beins, goods.
Beistes, beasts, cattle.
Bejure, drink.
Bekenes, beacons.
Belance, balance.
Bele, handsome, in health.
Belement, fairly.
Belistrer, to beg.
Bem, well.
Beme, Bohemia.
Ben, welfare.
Ben pleider, for *beaupleader*, for amendment of a vicious plea.
Bene, well.
Bene, *ben* (*si*,) as well.
Bene en tour, well near, almost.
Benoit, benedict.
Bens, *benez*, *benes*, *bendes*, goods.
Beof, an ox,
Beogaunt, begging.
Beoms, instead.
Beovier, a neat herd.
Beoure, to drink.
Berbrees, *berbets*, sheep.
Berce, a cradle.
Bercher, a shepherd.
Bercherie, a barkary, or tanhouse.
Bercil, a sheepfold.
Bere, beer.
Bere, towards.
Berksuir, Berkshire.
Berluffer, a gash.
Bers, *biers*, barons.
Bers (*a nobles*), to the noble barons, lords, personages.
Bery, the chief seat of a manor.
Besche, inquest.
Bescher, to dig.
Besele, *besleez*, *besiletz*, embezzled.
Beser, to kiss.
Beson, *besom*, business, occasion, necessity, behoveth.
Besoigne, (*plus sage*), a wiser step.
Bestall, *bestiaries*, beasts, or cattle of any sort.
Bestes, *besties*, beasts.
Bestourne, turned out of its course.
Beti, *betie*, Elizabeth.
Beverer, a watering place.
Beau pleider, fair pleading.
Beuse, a widow.

Beutre, butter.
Beuverie, drunkenness.
Beyses, kissed.
Beyver, drinking.
Biaus fiuz, good son.
Biche, a hind.
Bien voulu, tenderly loved.
Bien de et de mal, whether innocent or guilty.
Bienke, very well.
Biens, *bie*, intend.
Biers nobles, noble persons.
Bigue, a she goat.
Bile, a bill.
Bille, a label, or note of the value of a thing.
Bioms, *biens*, intend.
Bions, effects.
Bis, bread or biscuit.
Bisse, a female snake.
Blake rode, the black cross.
Blamisement, infringement, prejudice.
Blanches paroles, fair speeches.
Blanc gaunt, a white glove.
Blanc (*5l.*) *i. e.* the king's fermor was to pay either *5l.* *5s.* or to submit his money to the test of the fire, and thereby make good the *5l.* in fine silver.
Blasme et diffame, blamed and defamed.
Blaunchevurs, blanchers, whiteners, tawers of skins.
Ble, corn.
Bleer, to sow, to put the seed into the ground.
Blein, full.
Blemish, *blesyms*, broken.
Blemishment (*en*), to the prejudice, infringement.
Blemissement (*sans nul*), without any infringement, diminution.
Blemure, a disfigurement.
Blesme, pale, bleak.
Blessies, damaged, injured.
Blester, to pare.
Bloy, *bloie*, blue.
Boces d'argent, bosses, studs of silver.
Bochers, butchers.
Boeitz, oxen.
Boidrai, I will give, deliver.
Boiens genz, good people.
Boillant eaw, scalding water.
Boilles ou brases, tempered.
Boillure, bullary for making salt.
Boisseau, a bushel.
Boiste, *boist*, a box.
Boivre, to drink.
Bojeaux, entrails.
Bok, Buckingham.
Bokuyler, buckler.
Bond, limited.
Bondages, bond tenants.
Bondes, *les bondes*, an inferior order of free men.

Bonement purra, well may.
Bonnes, bounds.
Bonnoizon, blessing.
Boon, good.
Boord, on board.
Borc, *bors*, *bos*, a village.
Borc, *both* (*li*), the boroughs.
Bordeaus, stews, brothel-houses.
Bordell d'femmes lovees, a brothel-house for prostitutes.
Bord, on board.
Bordes, lies, tales.
Bordez, boards.
Borisaldieres, borough-holders.
Bos, *bose*, a wood.
Bosel, a bushel.
Boscinera, it shall be necessary.
Boson, a buckler.
Bot, *bod*, the extremity, the end.
Bote, aid, help, amends, advantage.
Bote, put.
Bota (*se*), put himself.
Boteaux, boots.
Bote et espernonne, booted and spurred.
Boter, *bouter*, to set fire to.
Botez devant le Roy, laid before the king.
Botier, to put.
Botons, buttons, buds.
Boucher, to stop.
Boucher, to speak.
Bouch au cour, an allowance of diet at the king's or a great lord's table.
Bouchier, a butcher.
Boud (*au*), at the end.
Bouger, to budge.
Bougeons, *bouges*, arrows.
Bougre, futil.
Bouges, *bonges*, budgets.
Boune, boundary.
Bounifas, Boniface.
Bountee, *bountez*, goodness.
Bountenouse, bounteous, bountiful.
Bourchemester, burgomaster.
Bourdick, *boures*, the first Sunday in Lent.
Bourg, a bastard.
Bourgeesors, burglars.
Bouse, purse.
Bousquelier, a woodman.
Bousseaux, bushels.
Bout feu, an incendiary.
Bout de la table, end of the table.
Bouter avaunt, produce, put forth.
Bouter hors, to put out.
Boutent (*se*), put themselves.
Bouticari, an apothecary.
Bouverie de terre, an ox-gang of land.
Boviller, to boil.
Boyance, expectation.
Boyeste, *boyette*, a box.
Boyure, drink.
Brace, a lance.
Brace de la meer, an arm of the sea.
Brace et vendu, brewed and sold.
Brachel, breeches.
Brachile, a bracelet.
Braces, *brachies*, *braches*, *les bras*, arms.
Bracer, to brew.
Braceresses, *bracerasses*, brewers.
Braceurs des querells, bracers, or embracers of quarrels.
Braconer, a hunter.
Bracyne, a brewing.
Braez destr', right arm.
Bragard, *bragueur*, a flanting, bragging, swaggering person.
Brair, to cry, to brag.
Branchies, branches.
Brant, burned.
Bravement, fine.
Brau, a bull.
Braudesters, *brouderers*, embroiderers.
Braul, a brawl.
Brausle (*en*), in confusion.
Brayard, a cryer.
Brayes, *breiz*, *brees*, malt, bread, corn.
Bre, pitch.
Brecatages, breaches.
Breche, an arm.
Brede, embroidered.
Breer, brewing.
Bref jor, a short day.
Bref (*deinx*), shortly.
Brefle, shortness.
Breghenok, Brecknock.
Brek, *breche*, a breach or gap.
Bren, bran.
Bressine, a mill to grind malt.
Bretages, battlements.
Bretemeuil, Bartholomew.
Brevi, in brief.
Brider, to bridle.
Bries, *brieves*, writs.
Brieve (*deinz*), in a short time.
Brigain, contention.
Brige, quarrel, dispute, faction.
Briqueterie, brickwork.
Brisie, broken.
Bristuit, Bristol.
Brisure, a slight scar.
Britask, a fortress with battlements.
Bro, a district, a field.
Broche, a lance, a needle, a packing needle.
Broches, spits, gallons.
Brocha permy le corps, run through the body.
Brode, brood.
Broggours, *broggage*, brokers, brokage.
Brose, canceled.
Bru, a noise.
Brudez, edged, bordered.
Bruer, brewing.
Bruere, heath.
Brug, *bruge*, a bridge.
Bruse, a purse or pocket.

Bruse, broken into.
Brusey, heath ground.
Bruseq, green.
Brusure de pountz, breaking down of bridges.
Buant, a bull, bulling; also drinking.
Buche, underwood, brushwood.
Buche, utters, speaks.
Buche (*de*), by word of mouth.
Buer, to wash.
Bues, *buez*, *bouez*, oxen.
Buffe, a blow.
Bugge, badger.
Buissons, thickets, woody places.
Buizart, a kite, buzzard.
Bultel, a boulting sieve.
Bulter, a bolter or sieve.
Bundes, bounds, limits.
Bure, butter.
Burge, a purse.
Burgerie, burglary.
Burgessours, burglarers, housebreakers, burglars, also incendiaries.
Burghald, boroughold.
Burgous, shrubs.
Burlyng, burling of cloth.
Burre, a vessel.
Burt, borough.
Busle, a pope's bull.
Bussel, a bushel, a measure.
Busoignes, business.
Busoignables, necessary, convenient.
Busoignouses, the necessitous.
Busoin, *busun*, *besonche*, occasion, need.
Bussuns, bushes.
Buteront feuz, shall set fire to.
Butiner, to divide the plunder.
Buzac, a kite.
Byan, to dwell.
Bye, thinks, intends.
Byli, bill.
Bynd des anguilles, a bind of eels.
Byron (*courts de*), courts baron.
Byesse, *bissie*, a kind of silk.

Cae, cause, case, gist.
Ca et la, here and there, hither and thither.
Cher, to be searched.
Chres, charters.
Chun, every.
Conis, *counzance*, confession.
C teinte, the seisin.
Cu, as.
Cabeletz, *caables*, trees blown down, branches of trees rent down.
Cabestre, a headstall.
Cablicia, browse or brushwood.
Cabre, a goat.
Cachereau, a bailiff.
Cachereau, chartulary.
Cachet, a signet or seal.
Cadeloyne, Catalonia.
Cadene, a chain.
Cadiere, a chair.
Cadonqes, that, then.
Cagne, a dog.
Calabre (*de*), furr of Calaber, a little beast about the size of a squirrel.
Calamay, *Candolaire*, Candlemass day.
Calenge, an accusation.
Calenou, Christmas.
Caler, to hold one's tongue.
Calsay, a causey.
Camaen blank, a white camea.
Cambe, *cambage*, brew-house.
Camber, a brewer.
Cambre, a chamber.
Cambre, cieled, vaulted.
Capaine, bell.
Campaigne del roy, the queen consort.
Campestres, pastures.
Canal, a kennel, a channel.
Canape, hemp.
Candalle, Kendal.
Candeliere, Candlemass day.
Canes et forestes, woods and forests.
Canez, *canes*, *keynes*, oaks.
Cangier, to charge.
Canibe, hemp.
Canonizele escrite, canon law.
Cans, dogs.
Cap, the head.
Capage, a pole tax.
Capes, Capua.
Capiele, chapel.
Captal, a captain, a chief, a seigneur.
Caquet, prattling, scolding.
Carca, loaded.
Carcas, *carkoys*, a quiver.
Cardoit, Carlisle.
Cardonel, a cardinal.
Cardours, *cardoresses*, carders.
Carerl, carriages.
Cargie, loaded, charged.
Cargues, charges.
Carkerent, inquired of.
Carkes, compelled.
Carkoys, a mast, a carcass.
Carme ou garme, the verses and songs which the bards sung before an engagement, to animate the troops.
Carnels amis, bosom friends.
Corpos de l'alliance, the articles of the alliance.
Carruweez, carves.
Carse p, perhaps.
Caruer, plowman.
Carwe de terre, one plow land.
Cas d'argent, a case of silver.
Cas de frument, a heap or load of wheat.
Cas (*en lur*), in their persons.
Cascun, any one, each.
Case, a cottage, a house.
Case eins, (*per*), but, and in case.

Case (*en*), in some, in such cases.
Cassable, voidable.
Casse de blee, stack of corn.
Casses, cases.
Catal, moveables of any kind.
Cateau, a castle.
Catoour, one who belongs to the acatry.
Caver, a knight.
Caverre, plough.
Cauceage, toll paid towards repairing causeways.
Cauces, *causies*, causeys or causeways.
Caunt, when.
Causa (*a*), by reason of.
Causeours, causers, the occasion of.
Causer, to cause.
Cautels, warnings.
Cautelle, craft, guilt.
Caux, *ceux*, those.
Cauxion, caution, surety.
Cayer, affixed.
Cayers (*les saincts*), the sacred page, text.
Cayon, a grandfather.
Ce, *ceo*, *cetty*, *cecy*, *cel*, *celuy*, this, that, these, he, him, here.
Ceans, here, within.
Cea, it.
Cea (*jesques en*), to this time.
Cea enarere, for the time past, heretofore.
Ceals, *ceux*, *ceaux*, those.
Ceaux, heaven.
Cedules, seats or pews.
Ceel, a saddle.
Ceerte, certain.
Ceincture, *ceincte*, a girdle.
Ceindre, to girt, or gird.
Ceinz (*de*), of this court, here.
Ceissents, ceasing.
Ceint, *ceinture*, a bell, a girdle.
Ceinturers, girdlers.
Celastes, sealed.
Celuont, they divulge.
Celeement, secretly, in private, slowly, imperceptibly.
Celi, he.
Celure, *cele*, a coverlet.
Cementers, bricklayers, masons.
Cen, that.
Cendal, a sendal.
Cengle, a girt.
Cerns (*a*), to the hearts, intentions, souls.
Censables (*en choses*), in things to be taxed.
Cense, rent.
Censeze, deemed.
Censour, a farmer.
Centiesme partie, hundredth part.
Centurer, a centeyner.
Cenz, hundred.
Ceo (*a*), for this purpose, at this time.
Ceol, that.
Ceol, heaven.
Ceoles (*en y*), into the same.
Ceo (*in* q), in as much as.
Ceo que, where.
Ceoque (*que de*), that whereas.
Ceoset, seised.
Ceosq, for, during, until.
Ceox (*tout*), whatsoever.
Cep, stock.
Ceper (*al*), to the gaoler.
Ceppes (*en*), in the stocks.
Cepes des arbres, the stocks or roots of trees.
Cepurquant, notwithstanding.
Cerchiez, searched, should search.
Cere, a lock.
Cerifiers, cherry trees.
Cer ke, what.
Certefyeassent, certify.
Certes, verily, truly.
Certes (*mais*), nevertheless.
Cervi, paid.
Cervoise, ale.
Ces, those.
Ces freres, his brethren.
Cesourdhuy, this day.
Cessaunt, sixty.
Cesse (*le*), the forbearance.
Cession, session.
Cessou, sitting.
Ceste (*mise a*), ascertained.
Cestes, this.
Cestres de vin, quarts of wine.
Cestr, Chester.
Cessure (*un*), a receiver, a bailiff.
Ceu, that, this.
Ceu (*saunz le*), without the knowledge.
Ceue (*en la*), on the back, on the cover.
Ceuls, those.
Ceunrey (*del*), of the corrody.
Ceyns, here.
Ceyant, *ceyntus*, girded.
Ch^{r} *Seig.* dear Lord.
Chs en Dieu, dear in God, beloved in Christ.
Chace, *chase*, obliged, compelled, have recourse to.
Chacer descharowe, driver of a plow.
Chaceez, driven.
Chaches, *char*, *charet charettee*, a cart.
Chaier (*lesser*), let fall.
Chainant, exchanging.
Chair envenomee, venison.
Chal, a knight.
Chalejurs (*les*), the challengers.
Chalkyng (*pur*), for chalking.
Chalment, clearly.
Challenger, to claim.
Challis (*prince*), prince Charles.
Chalunge, claim.
Chambre depinct, anciently St. Edward's chamber, now the painted chamber.
Chamber bas, a jakes.
Champartors, those who are guilty of champarty.

Champart (*a*), separate.
Champestre (*en*), in country towns.
Champs (*quant des*), how much meadow ground.
Chancelez, canceled.
Chanceaunt, happening, falling out.
Chandelor, *chaundelure*, Candlemas.
Channte, (*une bone*), a piece of good fortune.
Chanoms, canon.
Chapel, *chappell*, crown, coronet, breast plate, helmet.
Chapellet, (*environ le*), round the circle.
Chapell de ferre de feutree, a breast plate of iron.
Chapouns (*ne a ouster*), not to take the hats off.
Chaperon, a hood, hat, kind of head dress.
Chuperon (*sans*,) bareheaded.
Chapon, the crown of the head.
Charchez, chartered.
Charer, to fall.
Charetter, waggoner, carter.
Charettes (*les*) *de feyn*, cars loads of hay.
Chargeez, loaden.
Charges, charters.
Chargeant, heavy, penal, expensive.
Chargeance (*en*) *manere*, very earnestly.
Chargaunte (*si*), so weighty, so forcible.
Charier, to draw or drive.
Charoigne, carcase.
Charonies, *charouneg*, bodies.
Charnels amys, bosom friends, allies by blood.
Chars (*joure de*), flesh days.
Chars, *charree*, *charets*, carts, waggons, ploughs.
Charrennes, *charewes*, *des terres*, carves of land.
Chartre, a prison.
Charners (*bestes*), beasts of the plough.
Chasables, obliged, compellable.
Chase, drift, chase.
Chaser (*et*) *adresses*, to drive strait along.
Chaser (*de*), from driving.
Chaste (*en toute*), with all expedition.
Chastel (*le*), the chattels, goods.
Chastelle (*Roy de*), king of Castile.
Castel neof, Newcastle.
Chastirians, should chastise.
Chastres chastris, gelt.
Chate, brought.
Chate (*la*,) buys it.
Chate, bought.
Chaton (*un*), a cat.
Chatters chattres, commodities.
Chauces, causeways.
Chaucez, driven.
Chau (*de*) *ke*, in as much as.
Chaud melle, a hot or sudden debate, corruptly called chance-medley.
Chauncelrie (*en la*), in chancery.
Chaunterent, declared, pronounced.
Chausseez, put upon his boots.
Chausez, *chausure*, breeches, stockings.
Chaufer, to warm.
Chavoynes, canons.
Chaulx (*de*), of them.
Chautes, (*en volles*) *et gargans de oiseaux*, in the flight, singing, and chattering of birds.
Chaux, those.
Chaxtel, castle.
Chaye, fallen down.
Cheaunce, an accident.
Checer in debat, to come in question or debate.
Cheet (*mout*) *en age*, is very much in years.
Cheez (*vus*), you fall.
Chefs (*a*), to his head.
Chefe (*a*) *del an*, by the end of the year.
Cheitifment (*vivont*), live hardly.
Chitivetee (*grant*), great hardship.
Cheivalerie du temple (*mestre de la*), master of the order of the knights templars.
Cheines, chains.
Cheir, *cheyr*, *checer*, *cheser*, to fall, to abate.
Cheie, *cheiez*, fell, happened.
Cheissont sur, are made upon, fall upon.
Cheivesauns, *chevissance*, an agreement between debtor and creditor, in relation to the loan of money.
Chekere, exchequer.
Cheke (*sauf*), save that.
Chele (*par la meisme*) *grace*, by this same grace.
Chelui (*pur*) for him.
Chemimynaunt, pursuing his journey on the highway.
Chentz wyt (*trois*), three hundred and eight.
Chen, *chens*, dog-days.
Cheneau, a young oak.
Cheny, finished.
Cheount cheent (*ne*), do not fall.
Chepier, a gaoler.
Cher, dear.
Cherementes, *cheremont*, dearly.
Cherisances, cherishing.
Cherte, charity.
Cheste ches (*lettres*), these letters.
Chereil, may happen.
Cheser (*a*), to fall or come to, fall out, happen.
Chest, *chet a savoir*, that is to say.
Chescuny, *checon* (*a*), to every one.
Cheson, carried on, defended, occasioned.
Chet, fell out, happened.
Chetifs, *cheytifs*, caitifs.
Chevage, poll-money paid by a villian to his lord.
Chevance, goods, money, riches, bargains.
Chevances (*a faire*), to borrow, to make bargains for.
Chevassent, may go over, may perform them.

Chevauche en hoste, heads the army on horseback.
Chevalines (*bestes*), beasts for the draught.
Cevalines traians, drawing-carriages.
Cheventeins, chieftains, captains.
Chevetaigne drttor, principal debtor.
Chevance (*sa*), his substance.
Chevestres, head-stalls.
Cheve, *cheveres*, *chewers*, goats.
Chevin (*donner*), prepare the way.
Chevin (*en*), on his journey.
Chevir de denier, to take up money on loan.
Cheviz, borrowed.
Cheviz, to come to an agreement touching property.
Cheuz, happened, fallen.
Cheryrent (*luy ne*), owed no service to him.
Cheye, fallen down.
Cheynes, chains.
Cheys, choice.
Chi apres, herein after.
Chiaus (*a touz*), to all those.
Chi (*entre*), between this.
Chief (*son*), his head.
Chief du lyt, bed's head.
Chiefs (*en foreignes*), in foreign places.
Chief de mois, at the end of the month.
Chief qun, every.
Chienquante, fifty.
Chier (*de*), by a fall.
Chier, *chire chiertees*, dear, dearness, reverence, love,
Chierions, will cherish.
Chiery, favoured, encouraged.
Chiest, failed.
Chiet (*son*), his client.
Chiet a tre, falls to the ground.
Chiex d'ostiez, the head of a family.
Chipoteis (*des*), in provisions, rents.
Chir, knight.
Chirk (*de*), of this.
Chistel, castle.
Chité, a city.
Chivauche (*facent la*), cause a perambulation to be made.,
Chivalx, horses.
Chivachez, perambulated, ridden.
Chivaunch, were riding.
Chivanche (*in la*), in the expedition, campaign.
Chivache encontre le roy, rides against the king.
Chivaucher, to ride.
Chivaus covertz (*a*), with horses covered.
Chivalchier le pais, overrun the country.
Chivers, goats.
Chivisaunce, an unlawful bargain.
Choa (*pour*) *qu*, because that.
Choces (*les*), things, goods.
Choeur, choire.
Choucee (*a bout de la*), at the end of the causeway.
Choient, fail.
Chole, choler.
Chote (*ne ent mande autre*), does not command to the contrary.
Chou, *chon*, *chu* (*a*), to this, that.
Chou (*et tout*) *que*, and all which.
Chou (*pour qu*), because that.
Chre, charter.
Chuient, fall off.
Chun, every.
Chun (*an*), each year.
Chun (*come ben*) *servant*, how much every servant.
Chuny (*a*), to every one.
Chyen (*entre*) *et lieu* : inter canem et lupum, twilight.
Chynes, oakes.
Cy pris, *cy mis*, as soon said as done.
Cicestr', Chichester.
Ciege, siege.
Cier, to mow.
Cierges, wax-tapers.
Cierve, a hind.
Cieus, here, hither, those, such.
Cigne (*liveree del*), livery of the swan; a swan was one of the badges of Henry the fourth, and was embroidered on the caparisons of his horse when duke of Hereford at the intended combat between him and the duke of Norfolk. Prince Henry his son bore his achievement, supported by two swans each holding in his beak an ostrich feather and a scroll.
Cignettez, cignets.
Cil, *cili*, he.
Cincaunt, fifty.
Cink, five.
Ciphe, a cup.
Cips, stocks.
Cis, *ces*, they, those.
Cisere, ale.
Cisme (*la*), the schism.
Cisne, a swan.
Cisours, cisars.
Cist, this.
Citost, as soon as.
Citues, placed in.
Cla, claims.
Clamant, claiming, maintaining, commanding.
Clamur (*al*), for proclaiming.
Clamous pleints, clamorous complaints.
Clarifie, cleared up, made appear.
Clarre, claret.
Clave, a horseshoe.
Claud, a ditch.
Claye, a hurdle.
Clamours de franchises (*les*,) those who claim franchises.
Claree (*vin de*), claret.
Clachent lains (*qui*), who clack wool.
Clamour, impeachment.

Clefs, hurdles.
Cleif, a key.
Cleifs, *cliefs*, keys.
Clerkus, *cleurex*, clergy, clerks.
Cler jour, clear day.
Clere memorie, of famous memory.
Cler, clerk.
Cleremeut, clearly.
Clergie, science, literature.
Clergeresse, a learned woman.
Cliefs, keys.
Clier droit, clear right.
Clime, kindred.
*Climacha**, potius *chivacha*†, rode with.
Cloistres, inclosed places.
Cloier, to prick.
Clore, to inclose.
Clos (*brefe*), a writ close.
Close (*pur*), for fencing, inclosing.
Closture de hayes, inclosing with hedges.
Clos (*le*), the close.
Cloustre (*fist*), caused to be inclosed.
Clough, a valley.
Clowes de Gilifer (3), three cloves.
Cloy, pricks.
Clurs, clerks.
Cluse de pasche (*la*), the close of Easter, i. e. the first Sunday after Easter. *Dominica octava paschæ*, *dominica post albas*, *dominica in albis ; le dimanche de la quasimodo*, from the service beginning with those words in the Roman missal.
Clyens, clyents.
Co (*estre*), moreover.
Co (*d'*), of this.
Coaction, *corartacion*, compulsion, coercion.
Coche (*fuit*) was laid down in bed.
Cochin (*d'*), from the kitchen.
Cochoures, couchers.
Coe ottroire, grant this.
Coe (*ou*) *est*, whether this is.
Coes les ; Coe (*la*), the commons.
Coe (*le*) *boist*, the common box.
Coelers, collars.
Coems, *coens de Nichole*, earl of Lincoln.
Coers, hearts.
Coer, commoner.
Coers, *coerts*, forced.
Coert (*qore*), which is now current.
Coes (*les povs*) *del roialme*, the poor commons of the realm.
Coeurs, course.
Cofin (*un*), a basket.
Cofre (*un*), a trunk or chest.
Cognizance, suggestion.
Coherter, to force.
Cohiber, to restrain.
Cohues, assemblies, courts of justice.
Cojantz, being compelled.
Coieres, *coirs*, *coers*, hearts.

*See Parl. Rolls, vol. II. p. 193. pet. 73.

Coictz, boiled.
Coievient, convenient.
Coignsu, known.
Coigne, coin, money.
Coigner, to coin.
Coiles, testicles.
Coil doust, as he ought.
Coillage, collection.
Coiller, to assemble, to collect, gather in.
Coillers d'argent, silver spoons.
Coillet, collected from.
Coillet, a lock of wool.
Coillet (*de*), for gathering.
Coilliant, gathering.
Coillours, collectors.
Coinistre, confess.
Coinonte, connected.
Coint, affable.
Coinnus, *coinus*, rabbits.
Coitiffe (*chastell de*), castle of Cardiff.
Coitucons, meetings.
Coket (*payn de*), coket bread.
Coler, collar.
Colere, colour.
Colerent, pretend.
Collet, taken away.
Coli, took.
Collation, comparison, simple, coler.
Collucion (*une bone*), a good oration.
Collision, collusion.
Colorers (*pluis*), the better to colour over.
Colourent (*se*), pretend.
Colp, cut off.
Colps, the neck.
Collusion, comparison.
Colz, a blow.
Com, as.
Coma droit, common right.
Comande, send.
Comant, farewell.
Comaundable, to be committed.
Commant, command, order, bearer, attorney.
Combatuesse, beat down.
Comb, a valley.
Combatour, one who is hired by another to fight for him.
Combur, burn.
Coment, how, how many.
Coment cy que, although that.
Come, when, as soon as.
Comen some, common summons.
Commensables et provables, commenced and carried on.
Comesatz, beginning.
Cometut, committed.
Cominasser, to have common.
Comissair du roy, the king's commissioner.
Comistre (*a*), to speak of.
Commauvaes, commotes.

†Hale's MSS.

Comme plance, common discourse.
Commettement, falsehood.
Comminer, to keep company, to converse with, to have.
Commineront, they assembled together.
Communalment, generally.
Comunalment, *communement*, *communelment*, in general, commonly, jointly.
Comuner, to meet in common.
Communal, common.
Commune de reaum, the commons of the cities and boroughs.
Communaunte, commonalty.
Commune (*a la*) with the commonalty.
Commune (*sanz*) *parlement*, without frequent parliaments.
Comorth, a subsidy.
Comognenues, fellow-monks.
Comp (*a un*), at one payment.
Compensation, payment.
Compasser, *compascer*, to compass, imagine, design, intend, endeavour, attack.
Compectant, competent.
Comperer, to suffer.
Compeigney, company, society.
Compernant, comprising, setting forth.
Compertment, appearing.
Compigne, contain, comprise.
Compier, a godfather.
Compiere, as appears.
Compoir (*par*), to appear.
Componnent les suppliantz, let the petitioners compound.
Complisement (*faire de justice*), to do complete justice.
Compliquer (*de*), to fold up.
Complissement, accomplishments.
Comprins, comprised.
Comune (*chescune*), each of us jointly.
Comunalte (*nule*), nothing that is common.
Comunalte (*ascunes de*), some which concern many persons; some community.
Comyn (*en*), in common.
Comyns de parlement, the commons in parliament.
Comyns, the common people.
Con, as.
Cona, *pasture*, common of pasture.
Conation, endeavouring.
*Concause** (potius *l'un cause*), one cause.
Conceyvere mon brief, bring, frame my writ.
Concey, framed, adapted.
Certeignment conceux, certain information.
Conceillier, consult, advise.
Concubeant, lying together.
Condemaundasse, demand.
Condouner, to grant.
Conductz, lodgers.
Condut (*lettres de*), letters of safe conduct.
Couduitz (*les*), the attendance.
Condition (*en grant*), in great hazard.
Coneife, leave.
Conefeye bien, knew very well.
Coneve, known, acknowledged.
Conexes, connections.
Conferromous (*si*), if we compare.
Confesse, examined.
Confession, an answer to interrogatories.
Confexion (*a la*), to the making.
Coufier, to trust.
Confourmeront, informed.
Confiquez, confiscated.
Confore, comforters, aiding.
Confrontations, borders.
Congye, *conge*, leave.
Congie de soy conseiller, leave to imparl, i. e. talk with the plaintiff.
Conier, a place where rabbits and hares were preserved.
Conigg, coney ground.
Conilles, *conings*, coneys.
Coninges, shillings.
Conisaunce, knowledge.
Conisent (*ne les*), do not acknowledge them.
Conisoit, he was obliged.
Conissoms (*nous*), we acknowledge.
Coujouyr (*luy*), to congratulate him.
Conjectement, conspiracy.
Connsealx (*par les*) *damperts issue se paisse fair*, by the advice of both parties it may be brought to an issue.
Connuis, known, open.
Connying, knowledge.
Conoisse, acknowledge.
Conoyssent, hold cognisance of.
Conpayne, companion.
Conquastere, to shake, to break to pieces.
Conquerra, shall gain, obtain.
Conquest (*de*), by acquisition, purchase.
Consallatez, counseled, advised.
Conseil (*tenuz*), kept secret.
Consent, acknowledged.
Consieux (*privez*), privy counsellors.
Consile et plaine, the church is full and provided for.
Consommez, consumed, spent.
Constitution, appointments.
Consul, *consealx* (*de*), one of the council.
Consute, *consu*, annexed, sewed together.
Cont, earl.
Containes, remote.
Contal, of a county.
Contamus, we declare, or count.
Contasse, countess.
Conte (*a*), at the county day, court.
Contee (*le*), the county-court.
Conte, *contes* (*la*), the accompt.
Conte (*sur la*), upon his account.
Contean, contained.
Conteckours, brawlers.

* See Parl. Rolls, 4 Henry IV. vol. III. p. 508, pet. 90.

Conteins (*soy*), refrain themselves.
Contek, a contest, dispute, disturbance, opposition.
Contemplation, affection, regard.
Contenance, purpose.
Contenance, *countenaunce*, contenement.
Contenement, countenance, or freehold land contiguous to his tenement.
Content (*a*), has accounted.
Contentation, satisfaction.
Contentz, *conteux*, contentions.
Contenu, continued.
Contenue, contained.
Contenunt,* run.
Contenz, contention.
Conter, against.
Conterent (*lui*), related to him.
Conterfait, resembling.
Contez (*des*), of the shires, counties.
Contessa, countess.
Contessoiz, contemplation.
Contetz, contained.
Continance, continuance, observance.
Continuament, directly, immediately.
Continuance,† his contenement, support, maintenance.
Continues, contained.
Contiraunt, notwithstanding.
Contraitz, *contraulz*, contracts.
Contrariast, had contradicted.
Contrariantz (*les*), the offenders.
Contraster, to contrast.
Contresteant (*nemye*), notwithstanding.
Contredis, refuses.
Contree (*fuit*), was engaged with, opposed.
Contrefaire, to imitate.
Contrelutent, oppose.
Contremant, countermand.
Contremount, ascending, uppermost.
Contremount (*en*), in the ascending.
Contremaunt (*degres*), ascending degrees.
Contreestier, *contrester*, *contrescer*, to prevent, oppose, grieve, oppress.
Contremettre, to lay against, to impose upon.
Centrepanel, a counterpan.
Centreovez, *contrevez*, counterfeited.
Contreval, downwards.
Contreveigner, *contravener*, to act contrary to, break, oppose.
Contreytour, arch traytor.
Contrier, to contradict.
Contrirerant (*nient*), notwithstanding.
Controue, controuled.
Controvee, contrived.
Controver, to contrive.
Controveurs des novelles, devisers, inventors of tales.
Contus, bruised.
Convainquus, convicted.
Conveer, to convey.
Conveiez, conveyed.
Convences, covenants.
Convensist (*il*), it becomes necessary.
Convent, *convenu*, covenanted, obliged.
Converer, to cover.
Converroit, converse with.
Conversantz, abiding, resident.
Convs, converse.
Conussent, acknowledges.
Conviront, shall convey, conduct.
Convis, a banquet.
Convoist (*que se*), which consisteth, shows, discovers itself.
Convyer, to convince.
Conyng, coney, rabbit.
Cool (*le coler du*), the collar from the neck.
Coonte, a count, earl.
Cooperture, a thicket.
Cop, *cope*, *coupe*, a blow.
Copable, guilty.
Copie du people, a great number of people.
Copier, to cope.
Coplice, an accomplice.
Coppe (*blees en*), corn in cocks.
Copped, laid in heaps.
Copper, to cut off.
Copperent, uncovered.
Copyl, a fox.
Cor, heart.
Corage, *corouce*, anger.
Corage, consent, will, mind, inclination.
Corage (*la*), encouragement.
Coraunt, passing, current, limited.
Cord, a load.
Cord (*de la*), the agreement, consent.
Cordeau de soy, a silk ribband.
Cordewaners (*de*), leather, &c.
Cordiner, a shoemaker.
Core, heart.
Coreours de chivalx, horse-coursers.
Corer, to have recourse to.
Coreute (*fust*), was in enmity with.
Coriage (*du*) *de harang*, of curage, or curing of herrings.
Cornefer, maker of horns.
Cornele de la test, the crown of the head, the brain.
Coronoaille, *Cornville* (*duc de*), duke of Cornwall.
Coronal, a *coronet*.
Coroneis (*vins livr' d'esterlins*), twenty pounds sterling.
Corones (*as*), to the coroner.
Coronse, enraged.
Corores laboreres, runagate laborers.
Corouce, a carousal, a great entertainment.
Corpores, *corporex*, corporate.
Corps presantz, corse present.

* Vid. Rot. Parl. vol. II. p. 190, pet. 64. Potius, *eourunt*, Hale's MS.
† Ib. p. 213. Pet. 25. Potius *continaunce*, Hale's MS.

Correes de battaill, arrayed for battle.
Correours, curriers.
Correpc,' corrupt, hasty.
Corrue, convicted.
Cors, *cort*, *court*, short.
Cors (*en le*), in the principal.
Cors (*sur peine de*) *e d'avoir*, on pain of body and goods.
Cors (*sur le*) *Dieu*, upon the body of God, *i. e.* the consecrated Host.
Cors, *corse*, *cords*, a body.
Corse present, a mortuary.
Corses, cloths, kerseys.
Corsues, course, corporeal.
Cort, *court*, limited.
Cortaise, civil, gentle.
Cortoise, courtesy.
Coruces, enraged.
Corue, course run, ferreted.
Cor'une, *cornus*, horned, tipped with horne.
Cornwayles (*terre*), Cornish land.
Cosces, husbandmen.
Coses, things.
Cost, this is.
Costages, cost.
Costal, *coste*, by, present, near.
Coster, a rich cloth or vestment, made use of on great festivals.
Coste, coat.
Coste (*en*) *coste*, *de coste*, collateral.
Costeins, neighbouring, near to, on the borders of.
Cot gare et vileine tuson, inferior kind of wool.
Costellers, cutlers.
Cotel, a knife.
Coteaux (*piene de*), a pair of scissars.
Cotidian, daily.
Cotiers, cottagers.
Cotte, *cote*, a coat.
Cotu, cut.
Cotures, little houses, cottages, coverings, inclosures.
Cotures (*quant des*), how much arable land.
Couche, double, laid double.
Coucher, a coach.
Couerer (*vous voudres*), will shelter yourself.
Coues as des chival, at the horse's tail.
Couldront, shall cost.
Couldront (*qu'ils*), which they shall think.
Couler, *couller*, colour.
Coulerou, anger, passion.
Coulpale, guilty.
Coun, *con*. Pudendum muliebre.
Councerela, will conceal.
Counfort, comfort, assistance, encouragement.
Counsaunt (*il seit*), and he is known.
Counseile, provided.
Counseiler al roy (*seuns*), without the king being consulted.
Counseyla (*il*), he advised.
Countables (*en*), in counts.
Count (*en*) *countant*, in counting.
Counte, county-court.
Counte (*de*) *en counte*, from county court to county court.
Counte, *county*, account, estimate, computation, esteem.
Countees, counties.
Counter, to count, declare, tell, plead, compute.
Counte palys, a count palatine.
Counter palais, a county palatine.
Counter pleadable, may reply.
Counterpayne, a counterpayne.
Counties, earls.
Countinuance (*lour*), their contentment.
Counter, a count.
Countors des menesonges, those who devise and relate lies.
Countradit (*sans*), without opposition.
Countre etre, to be against, oppose, resist.
Countre la pes, against the peace.
Countre lit, upon his bed.
Countre rauler, controller.
Countreval, descending.
Counturs le roy, the king's serjeants.
Coup de mere (*pur*), by force of the sea.
Coup, damage.
Coupable, guilty.
Coupe, in fault, to blame.
Couperie (*de*), of cutting.
Couper (*de*), of blows.
Couper le tayle, to cut off or dock the entail.
Coupix, coppices.
Courade, the intestines.
Courage, encouragement.
Courajeux, angry.
Courece, provoked.
Courer (*dette*), to recover the debt.
Courey de battel, arrayed for battle.
Courge, *course*, *coure*, to run.
Courge, *court*, runs.
Courour, currier.
Courre, to course.
Cours (*deux*), two courses.
Coursables, current.
Court, skreened, constrained, short.
Court (*se*), turns.
Court (*moy*) *a mort*, which is the cause of my death.
Court terme (*cy*), so short a time.
Courte (*per la*), by the course of.
Court drap, cloth, called streits.
Couseades, concealed.
Cousement (*d*), of the concealment.
Couson, cousin.
Coustenghes (*a nos*), at our own cost.
Couste (*en*), collaterally.
Courtoist responsit, courteous answer.
Courteux, a garden.
Coustouses, costly.

Coustumers (*et a ceo s'est*) and has often practised it.
Coutes (*de deux*), on both sides.
Coutellours, cutlers.
Couvrefeu (*l' heure deu*), the hour when the coverfeu or curfew-bell was rung, viz. seven in the winter at St. Martin's le Grand.
Coux, a cuckold.
Coux, *cous*, *coust*, cost.
Covegne, it behoved.
Coveigne (*gens de*), covetous, greedy people.
Coveitant, covetous, desiring.
Cosenable, proper, apt, sufficient, right.
Covenablete de tens, convenient time.
Covene, rightful.
Covent (*ai*), *covenenchiet*, have covenanted, agreed.
Covent (*nous*), behoves us.
Coventelis, conventual.
Covenist (*il*), belonged to, it was necessary.
Coverer (*se*), skreen, protect themselves.
Coverer (*pur*) *eglises*, to cover, or repair churches.
Covert chival, a horse arrayed, or harnessed.
Covetise, *coveitese*, *coveigne*, desire, greediness.
Coviegne (*de sa*), of his own head.
Covoitons, we are desirous.
Covynes, their sacred places of meeting.
Cowes (*la*), the tail, the end.
Coylir, to cock.
Coyly, gathered.
Coyne, coinage.
Coyre, leather, a skin.
Coyre, *coure*, copper, brass.
Craftus, (*toux les*) *du cites de Londres*, all the craftsmen, companies of the city of London.
Craire, to confide in, entrust with.
Crainer, to refuse.
Crampus de goute, laid up with the gout.
Crastine, the morrow of any festival.
Cray (*je*), I believe.
Cray, betrayed.
Creable, to be feared.
Creablement, *creable*, credibly, credible.
Creacurs, *creansours*, creditors.
Creance (*la*), the instructions, the articles.
Creances, *et a creanciers*, borrowed, and to be borrowed.
Creance (*a*), upon credit.
Creantceantz, borrowed.
Creaule, credible.
Crecefix, a crucifix.
Credibles, credible.
Crerez, created.
Creez fiablement, give faithful credit to.
Creises, crossed.
Cremal, a crimson or purple colour.
Creme, burnt.
Cremeur, fear, dread.
Crere, *creier*, to believe, give credit to.
Cresceaunce, *croissaunce*, growth.
Cressom (*ke nus*), that we give him credit.
Cressours (*par engendrure de*), by having lawful issue born alive.
Crest, rises up, accrues.
Cret, accrues.
Cretain de eau, *cretange del ewe*, rising of water.
Cretine, an inundation.
Creval oeil, thrust out the eye.
Creve, a wear.
Creve, shook, rattled, increased.
Creues (*novelles*), new raised.
Creum, we believe.
Crewe, grown, incurred.
Creye, *creyer*, believe.
Cribre, a sieve.
Cribre (*le payn*), bread of bran.
Crible, debated.
Crichet, agreement.
Criegnent (*ne*), are not afraid.
Crie, *cry general*, a general proclamation.
Crier, to summon.
Cries la peace, declare, draw the concord.
Criesme, a crime.
Crieuerie (*la*), the office of crier.
Crikes, creeks.
Criler, to argue, debate.
Crilz, *criz*, cries.
Crins, the hair of the head.
Crire (*set*), who knows how to write.
Crismatorie d'arg dorrez, a chrism of silver gilt; a vessel in which the ointment with which kings were anointed was kept.
Crisme, a crime.
Crist (*Jehu*), Jesus Christ.
Cristine, christian.
Crocq (*six harquebuzes de fer a*), six large arquebusses of iron.
Crochet (*dix harquebuzes a*) *de bronze*, ten arquebusses of brass.
Croiables gentz, credible persons.
Croice (*seinte*), holy cross.
Croire (*de*) *auxi fortement*, should also firmly believe.
Croise, *croisse*, *crous*, *cruix*, a cross.
Croise et homme, and there may be reason to believe.
Croisement, crusade.
Croix neitz (*sur la*), on the white cross.*
Croixiez, *croyses* (*des*), persons intending to go to the Holy Land.
Croke (*sanz*), without any iron spike or hook.
Crome, crime.

* Brady in his appendix 32, and in his history 92, translates this, *on the old cross*; but I apprehend the word *neitz* is from *nitidus*.

Croyserie, crusade.
Crudes (*draps*), raw cloths.
Crue (*char*), raw flesh.
Crue, a wear.
Cruice (*icestes*), this cross.
Crus, *cruez*, credited, believed.
Cry (*la*), the proclamation.
Cu, as.
Cu (*un*), a cook.
Cuchie en son lit, lying in his bed.
Cudietz (*cum vos*), as you think.
Cuel, the neck.
Cuelly, collected.
Cuens Leys (*li*), the earl of Lewis.
Cuens de Flanders, count or earl of Flanders.
Cueou, the buttocks.
Cuer (*a*), at heart.
Cuers, leather, skins.
Cuerent, meet.
Cueurier, master of the choir.
Cui, whom, to whom.
Cuide, *cuideroit*, thinks.
Cuille (*qui ad la*), which is not castrated.
Cuil, *cuile*, *cuel*, the neck.
Cuiller d'or, a gold spoon.
Cuiller, a collection.
Cuilliz, gathered, collected.
Cuir (*last de*), a last of leather.
Cuist, bakes.
Cule, dung, filth.
Cule nuict, the night season.
Culhir, to collect.
Culiours, collectors.
Culture (*un*), a piece of ground.
Cum, as.
Cumbre, Cumberland.
Cumpaignie, company, society.
Cun, one alone.
Cundez, coined.
Cunee, *cunage*, coined, coinage.
Cuneuse, known.
Cunge, *cungie*, leave.
Cunquestre, conquest.
Cunte, county, earl.
Cupre (*de*), of copper.
Cur (*lunge*), a long purse.
Cur le roy, court of the king.
Cureles, without cure of souls.
Curerons, will take care, will apply for.
Curge, short.
Curge, *currye*, runs, to run.
Curoms, will take care.
Curr, a hide.
Curreours de quirs, curriers of leather.
Curriez, would run, proceed.
Curiurs (*d'main*), of curriers.
Currons, will take care.
Curruz (*pur*), through anger.
Curs (*bref de*), a writ of course.
Curse (*la*), the course.
Curt, court.
Curteignes pilous, curtains made of hair.
Curtiner, to improve, cultivate, fence in.
Curtiver, to plough.
Curtoise, *curteise*, genteel, civil, courteous.
Curz, courts,
Cusine, dyet.
Cusins, kindred.
Custages (*as*,) *custees*, at the cost.
Custance, Constance.
Custefre, Christopher.
Custivent, cultivate.
Custumer laron, a common thief.
Custume (*a*), into a precedent.
Custumers du courte, suitors of the court.
Cusu, sewed to, annexed.
Cuttle, *cutle*, a knife, dagger.
Cuune, generation.
Cuyre (*escu de*), a shield of leather.
Cuysein, a cook.
Cuz, put.
Cy, yes, so.
Cy, if, so, then, also, as, here, hereupon.
Cy apres, hereafter.
Cy avant, as well before.
Cy bien, as well.
Cy court, so speedily.
Cy (*entre*), between this, between this time.
Cy long, as long.
Cy pres, as near as can be.
Cy que, so that.
Cy vivement, so lively.
Cye per attorney, here by attorney.
Cyeinz cyen, here, within.
Cyeit, let there be.
Cyel, heaven.
Cyens, his own.
Cyere, to-morrow.
Cymytere, a church-yard.
Cynk, five.
Cynsours de bourses, cut-purses.
Cyre (*verte*;) *la cer en cite*, green wax.
Cysors, cutters.
Cytoaen, a citizen.

Dams, damages.
D anz, five hundred years.
Dass, of assize.
Dd, demand, demandant.
Dne (*y*), demand.
Dee, to have been.
Def, *deft*, default, want.
Dr, right.
Drence, difference.
Destr, distress, distrained, obliged.
Da, *dea*, yes.
Da (*ouy*), yes verily.
Daareim, the last day of the month.
Dabondant, moreover, besides.
Dabte, date.
Dagge, a small gun.
Dagnell noire, black lamb.
Dagne, *dage*, dagger.

Daie, *dait*, ought.
Daies, within, concerning.
Daillours, others, elsewhere.
Daine, a doe.
Dalphin, the dauphin, the eldest son of the king of France.
Damager, to oppress, injure.
Damaisgiet, endamaged, injured.
Damasches bestes, tame beasts.
Dames, deer.
Dames de religion, lady abbesses, prioresses.
Damnable, to be condemned.
Damnablement, grievously.
Damoisells, *demicelles*, nobles, the sons of kings, princes, noblemen and knights, subordinate lords, ladies of quality.
Damoyseles, damsels, female infants.
Damp, master, sir.
Dampner, to be cancelled.
Danearch, Denmark.
Danis, Dennis.
Dard, a dart.
Dareigner, to make proof of it, to testify, to dereign it.
Darps, *draps*, clothing, covering.
Darrain, *darraigne*, *darren*, *darner*, last.
Darrein, proof.
Darreiner passse, last past.
Darreignement, last.
Darreirement, lately.
Darrener (*au*) *des terms*, on the last of the terms.
Darrees, money, goods, chattels, effects, merchandize.
Darres (2), two-pence.
Dasser, to assess.
Datif, a thing in gift.
Dau, *daou*, two.
Daugiers, *dangiers*, fishing-places.
Daungerous, dubious.
Dauqui en avant, from henceforth.
Daust, August.
Davant, before.
Davenon, Avignon.
Dè, dice.
Deanie, deanry.
Deauscens, two hundred.
Deaux, two.
Debas, under, below.
Debase, below.
Debase les ponts, beneath the bridge.
Debase lour estate, beneath their estate.
Debasea, downwards.
Debat, opposition, contention.
Debatre, to dispute.
Debe, ought, must.
Debelle, overpowered.
Deherbiz (*peaux*), sheep-skins.
Debies, debts.
Deboter, *debouter*, to put out, deforce, deny, hinder.
Debouche et cora, hue and cry.

Debrisant, resisting.
Debriser, to cancel.
Debrusure de prison, breaking of prison.
Debrusez, broke in pieces.
Debuseront, ought.
Debuient (*ne*), ought not.
Debuoir, *Debuoiar*, duty, devoir, obeisance.
Deburg, in commission of a burglary.
Decea, from thence.
Deceder, to die.
Decent, deceit.
Deceu, on this side.
Decevanche, *deceut*, deceit.
Deceux, *Decieux*, deceived.
Deceyvante (*en*), in deceivable manner.
Deceynt, ungirded.
Decha, on this side, in these parts.
Dechasser, to drive away.
Decheier, a robbery, to take to robbing.
Decheues, decayed.
Dechyre, rent, torn.
De ci en avant, from hence.
Deciens, since.
Deciller les yeulx, to open your eyes.
Decimeur, the owner of the tythes of a parish.
Declaiera, *declarez*, *delaiera* (*ne*), shall not delay, deny.
Decole, beheaded.
Decories, skinned, pulled off.
Deconfort, discomfort.
Decouper, to cut down.
Decres, decrease.
Decresceantz, arising, renewing, increasing.
Decret, *decrez*, *decreis*, (*doctour en*,) doctor in decretals, doctor of law.
Dectes, debts.
Dedeinz, *dedinz*, *dedenz*, *dedens*, *dedaynes*, *dedeynus*, within, in the mean time.
Dedentre, within, between.
Dedie (*lu*), consecrated place.
Dedints, *deduits*, duells, trials, amusement.
Dedisoient, deny, refuse.
Dedistz, denied.
Deditz en jugement, denied in judgment.
Dedount, brought, deduced.
Deduc, *deduces*, *dedust*, *deduist*, *deduct*, brought, alledged, determined.
Deduiz, *dedut*, *deduyt*, recreation, pastime.
Dedure (*a faire*,) to bring in question, to bring proof.
Deduyeant, drawing: also requiring.
Deduitz, game.
Dedux, during, depending.
Dee, to be.
Deen, dean.
Deenz, within.
De entre, between.
Deervie (*tot nel eussent il*), although they had not deserved it.
Defface, defeat.

Defacum des membres, loss of limbs, members.
Defaicts, defeated, conquered.
Defaille, deficiency.
Defames, infamous.
Defauce, dissolved.
Defaudroit, should wait.
Defauderunt, shall make default.
Defaurroit (*en cas qu'il*), in case of failure, in case of death.
Defausit, should die.
Defaut, deficiency, default, defect.
Defawcher, to mow, reap.
Defayllist, failed, died.
Defectz, destroyed, defeated, undone.
Defeet, defeated.
Defence, *defence* (*en*), in defiance of, in derogation of.
Defence (*en*), fenced off, in several.
Defencuse (*se*), may defend himself.
Defendaunt (*se*), in his own defence.
Defendeutz, badly repaired.
Defender, to oppose, deny.
Defend' le droit, opposes or denies the right.
Defendre, to prohibit.
Defens (*mises en*), put in defence, prohibited.
Defense, prohibition, commandment.
Defensed plait, maintain any plea.
Defenses, prohibited seasons and places.
Defent, defends.
Defere, set aside, undo, defeat, reverse.
Defesance des templers, the suppression of the order of the knights-templars.
Defesant, undoing, defeating.
Defez, done.
Deffesance (*en*), in prejudice.
Deffiaille, breach of faith.
Deffranchissant, disfranchizing.
Defie, mistrusted.
Defiete, lost, forfeited.
Definement du terme, end of the term.
Defistes, did, gave.
Defiis, tired.
Defola, *defoula*, *defula*, *defoules*, trodden down, trampled upon, spoiled, damaged, ill-treated, abused.
Defont, defeated.
Defore, oppose, obstruct.
Defover, *defower*, to dig or take up again, to uncover.
Defoulours, spoilers, robbers.
Defrene vers lui, recovers against him.
Defretz, will defeat.
Defrisher, *defrischer*, to work by tilling the ground.
Defua son baron, eloped from her husband.
Defues, widows.
Defuiaunt, running away, flying from.
Defula, *defola*, took out of the fold.
Defuont, run away.
Degage, give security.
Degages, replevied.
Degast, *degest*, *degata*, spoiled, wasted, trod down.
Degayne, untilled.
Degise manere, in an undue manner.
Degre, voluntarily.
Degre voyde, a void space.
Degret, degree.
Degu, nobody.
Deguerre, in war.
Deguerpys, abandoned.
De guisse, disguised.
Degun, any.
Degutz, due.
Deherte de sa feivre, ill of her fever.
Dehors, in.
Dehue, due.
Dehonnestation de fammes marriees, robbing married women of their chastity.
Dei, finger.
Deia, dyed.
Deignent, condescend.
Deigner, grant.
Deject, thrown down.
Deins, teeth.
Deins aver, in the hands.
Deinxseins, denizens.
Deinz (*de*) *et jours*, within ten days.
Deinz, *deinz qe*, *del deins*, within.
Dejoste, near.
Deisiens, we said.
Deissiers, desired.
Deissoins, say.
Deissons, should say.
Deit, owe, owing, owes, ought.
Deites, debts.
Deita, aforesaid.
Deiture, right.
Deive, ee, ought to be.
Deivent, owe.
Deiviers, rights, duties.
Deivoerent myses, there ought to be provided.
De kes en sea, to this time.
De kes ore, hitherto.
De key, wherefore, till this time.
Delair, release.
Delair, the month of December.
Delairont (*se*), shall divest themselves.
Delaissie (*neus avons*), we have given up.
Delaisser, to leave, forsake.
Delaissements, releases, acquittances.
Deleaute, perfidy, rebellion, infamy, light character.
Delermer, to bewail.
Delers, besides.
Deles, delay.
Deles, *delez*, *delees*, about, near.
Delessoms, we release.
Delie, dissolved.
Delinqetz, dismiss.
Delitable, delectable, dear to him.

Delitent, take a pleasure in.
Deliverant, the affirmant.
Deliverance (*vers la*), towards the sessions of the gaol-delivery.
Deliveraunt, dispatching, performing.
Deliveraunce (*a la*), for the discharge.
Deliverer (*le people*), the people delivered at a gaol-delivery.
Delleanses, allegations.
Delue, delayed.
Delyt, delight.
Demainer (*en son*), in his demesne.
Demainez, lords.
Demaint, now, presently.
Demariez, married.
Demaunder, to cry a thing, to send.
Demaygne (*en*), in demesne.
Deme, to be.
Demeanez, ordered.
Demeigne, *demenie*, *demeine*, own.
Demein, to-morrow.
Demeine (*en*), in the meantime, again.
Demeins, with less.
Demenez, agitated, stirred.
Demenge, Sunday.
Dementenant en avant, from this time forwards.
Dementers, while.
Dementers (*en*), *dementiers*, in the mean time.
Demesnez, ruled, demeaned themselves well.
Demesure (*a*), beyond all measure, immoderately.
Demette (*se*), parts with.
Demettent (*sei*), submit themselves, render themselves.
Demettre, *demitter*, to let go, to part with, put away.
Demeures, wait.
Demierkes, Wednesday.
Demittable, demiseable.
Demoer, *demourier*, *demoerger*, *demorier*, to remain, abide, dwell with.
Demoere (*la*), the protest, declaration.
Demoere (*la*) *le counte de Lanc.* the protestation of the earl of Lancaster.
Demonstrance, declaration, count, petition, remonstrance, suggestion.
Demorant testament, last will.
Demorez, retained.
Demorer ensemble, to cohabit together.
Demustrer, to shew.
Demy nost, midnight.
Demys (*a*), has parted with.
Demyst (*ne se*), did not put himself out.
Dempt, taken.
Den, dean.
Dene, *denne*, a valley.
Deneir, to give.
Denerie, deanry.
Dener, *denier*, *denire*, *deneres*, *denerez*, *denrees*, *danree*, a penny, money.
Deners countauntz, ready money.
Denier, *deniast*, denied, refused.
Denier parties, towards the parts.
Denioms, afraid.
Denoicer, wages.
Denomination (*de lour*), of their own naming.
Denqui, beyond.
Denree de pain, a pennyworth of bread.
Dent, give.
Denueroit en la mercie, should be amerced.
Denyer, dye.
Denygres, obliterated.
Denys (*vos*), give you, I lay before you.
Denz, within.
Denzeyn, *denzeisne*, denizen.
Denzieme, *desein*, decenry.
Deocisse, diocese, district, parish.
Deosse, boned.
Deotantes, deodands.
De par de la, beyond sea.
Departable, divisible.
Departier (*a*), separate.
Departies, disposed of.
Departirent, divided.
Departie (*la*), the separation.
Departeement, parting.
Departure, parting.
Depece, (*soit denier*) *des pesce*, let the money be broken to pieces.
Depeciez, cancel, tear.
Depdad, in the commission of a robbery.
Depensements, suggestions.
Deper, on the behalf.
Deperdes, losses.
Depere, lost, decayed.
Depererary, shall repair to.
Depertier, to depart with.
Depertire, depart from.
Depescer, to unfold, cut into pieces by retale.
Depescez prison ont, have broken the prison.
Depesne (*son baston est*), his staff is broken.
Depesseront le mur, shall break down the wall.
Depieca, lately.
Depiroient, taken away, destroyed.
Depiz, worse.
Deplain, in a summary manner.
Deplayer, to wound.
Deprave, reviled, depreciated.
Depredative (*disseisine*), a disseisin gained by violence, or clandestinely.
Deprovira, shall disprove.
Depoos, a deposit.
Deport, just, right, equitable.
Deport, respect.
De porte (*je me*), I rely upon it.
Deporter, to depart.
Deporter, *desporter*, diversion, recreation.
Depost d'armes, laying down of arms.
De qes en ca, to this time.
Deques, until.

D' qune, therefore.
Deraners, *dereein*, last.
Deraserent, broke to pieces, cut to pieces, destroyed.
Derchief, *derechief*, *derichefs*, moreover, again, repetition, from henceforth.
Dere, deer.
Derere eux, in their absence.
Derene, *dereinet*, derained, deraigned, determined.
Derener, *dereigner*, *dereyner*, *deraigner*, *dereiner*, *derainer*, to prove, to clear himself, to deraign.
Dereson, scorn, contempt.
D'reigne, *derene*, proof.
Derire, behind-hand.
Derise, mocked, laughed at.
Derognent, derogate from.
Deroguer, to abrogate.
Deromper, to break.
Derrai, damage.
Derreiner, to endeavour.
Derroin, *dereint*, last.
Derroit, should give.
Derruide, in a ruinous condition.
Des, from.
Des accordaunt, different, varying from.
Desacort, disagreement.
Desadunques, from that time.
Desaisez, injured, troubled, hindered.
Desapeile, unfurnished, unprovided.
Desarestent, discharge, release from the arrest.
Desassentera, shall refuse his assent.
Desassurez, disheartened, discomfited.
*Desasure**, unserved.
Desattames, unfinished.
Desautes, *defaute* (*la*), the want.
Desavaunce, unadvanced.
Desavowes, disclaims, disowns, refuses to stand to.
Desavowes, *disavowes*, disavowed.
Desavowes, unwarrantable, unjustifiable.
Desbalment, clearing from the accusation.
Desbaz, disputes.
Desblemies, unblemished, uninvaded.
Desboucher, to unstop, to dispark.
Desceitz, *descenict*, *desoynt*, *desceyntz*, ungirded.
Descendue, determined.
Descendent en enqueste, come to an inquest.
Descendi (*lui*), desired him.
Descernez, decreed.
Desceverance, to the severance.
Deschauces, barefoot.
Deschauncee des soulers, bare-legged.
Deschee, describe.
Descheiez, tumbled down, gone to ruin, gone to decay.
Deschete, abated, deducted.
Descheterie, escheator.
Deschevele, loose, dishevelled.
Descheu de sa plaint, loses the benefit of his plaint.
Deschevoir, deceive.
Desclaire, declares.
Desclaree, explained, declared.
Desclarissement, explanation.
Desclor, *desclar*, disclosed, set forth.
Desclos, not inclosed.
Descomersit a nubi, disclosed to any one.
Descortz, discords.
Descovenable, unfitting, unlawful, nonjuridicial.
Descovert (*tout a*), openly, fairly.
Descoulpe, excused, justified.
Descoute, uncovered.
Descoupant, exculpating.
Descounseile, *descounseille*, discounseled, not filled up, unprovided.
Descres, decrease.
Descrez, discreet.
Descrie, discovered, perceived.
Descriporai, I will describe.
Descroistre, to grow less,
Descrus, *descheue*, decayed.
Descuser, to excuse.
Descyners, *pledges descines*, pledges in the decenry.
Desdeigz, disdain, disdains.
Desduit, game.
Deseese, *deseesi*, *desease*, *deseux*, uneasiness, grief, trouble, vexation.
Deseises, disquieted.
Desemez, unsown.
Desempeatre, to get out of a snare.
Desencresces, decreased.
Desenhabitez, uninhabited.
Deseres (*lur*), *potius*, descres, their decrease.
Deserit, deserted, without remedy.
Deserite, disinherited.
Deservie, not supplied, unserved.
Deservy, intitled to, deserved.
Deses, decease.
Desesparer, to despair.
Desetereson, disinherison.
Desevere, parted, divided.
Deseverums, separate, severe, cut off from.
Desecurer, to divide, separate.
Deseukt eux, under them.
Desecuverte, uncovered, laid open.
Desfermez, unlocked.
Desgarnys, *desgarrys*, *desgarrie*, unwarned, unprovided, unfurnished.
Desgaynnes, untilled.
Desgarrie, unprovided.
Deshonte, without same.
Deshors, *deshorse*, from henceforth.

* See Rot. Parl. vol. II. p. 76. pet. 18. Potius *desasvire*, Hale's MS.

Desia mis en possession, already put us in possession.
Desimes, make known.
Desjoynames, parted, untied.
Desiron, desirous.
Deske, since.
Deskes a ore, so far.
Deslaez, displayed.
Desleaute, treachery.
Desliez, loosed from, discharged.
Deslors, from that time.
Desloyal, *desleal*, unlawful, fraudulent.
Desmaintenant, from henceforth, forthwith.
Desmarietz, unmarried.
Desme garb, the tenth sheaf.
Desmeneront, shall bring, shall send, remove.
Desmes, deer.
Desmeasurable, unbounded.
Desmolicons, demolition.
Desnaturel, *desnatureus*, unnatural.
Desnaturee (*lié de la*), bound by nature.
Desnigrer, to blacken, to defame.
Desnue de amies, void or destitute of friends.
Desoient, said.
Desoies, said; also unaccustomed.
Desolent, abuse, spoil, trample upon.
Desolerent (*malement*), evilly treated him.
Desooth, beyond, above.
Desordines accomptes, irregular accompts.
Desore, *deshors*, *desorenaunt*, *desorenavant*, *desore en avant*, *desorendroit*, *desormes*, *desoremes*, *desormais*, from henceforth, hereafter, from this time forward, for the future.
Desovere, unworked, unwrought.
Desous, *desox*, under, underneath, hereafter.
Desoux (*mis au*), ruined.
Desoynte sa cote, his coat ungirt.
Desoz, *Desouz*, hereafter, under.
Despaiee, unpaid.
Despare, unequal force.
Desparpler, to be distributed.
Despascerent, eat up, spoiled, wasted.
Despeca, on that behalf.
Despendent (*en*), in the expenditure of it.
Despendre (*a*), to lay out.
Despendues, dispersed.
Despenses, expences.
Desperager, to disparage.
Desperee, unforeseen.
Despire, despise.
Despiscea, speedily, before this time.
Despite (*en*), *despisaunt* (*en*), in contempt of, in despite of.
Despitousement, despitefully.
Despitz, contempts, hatred.
Desplede, without plea, unanswered.
Despleyt, displeased.
Desplie, displayed.
Desplounge, overflowed, flooded.
Despointer, dispute.
Desplores, spurs.
Despoit et aes, their recreation and ease.
Desportent (*il*), they forbear.
Desportere (*lui*), assist, comfort him.
Desportes, relieved, excused.
Desportes de payer, exempted from paying.
Desportera (*il*), he will dispense with.
Desport (*sans favour ou*); *sans deport faire a nuli*, without shewing favour to any one.
Desport (*tante*), so long lost, so long been deprived of.
Despost (*mis en*), deposited, laid up in ware-houses.
Despourter, spare.
Desprie, unseised, untaken.
Despuliez, despoiled.
Despurvue, unprovided.
Despyt (*en*) *de lour defaut*, by way of punishment for their default.
Desquarantre, to discharge.
Desque, *desquel*, *desqe al jor*, until the day.
Desreinserement, lately.
Desreine, proved.
Desrengeront, shall set out.
Desreson (*la*), the unreasonableness.
Desrobbez, robbed, despoiled, wasted.
Desroy, to be out of order.
Desrumputz, squeezed together, burst.
Dessassurance, unsafety, disappointment, discomfit.
Desseme, not sown.
Dessente, descent.
Dessevrer, to put asunder.
Dessiese, disseisin.
Dessoux, *desux*, under, underneath, hereafter.
Dessoubs (*ou*), or thereabouts, or within that number.
Dessuisy, seised.
Dessusditz, *desseuredis*, abovesaid.
Destachez, untacked.
Destail (*a*), by retail.
Desteinantz, will fail, prove bad.
Destembez, disturbed.
Destertre, desert, leave.
Destincter, to distinguish.
Destopper, to unstop.
Destorberoms, would prevent it.
Destountz, unknown.
Destour, gone back.
Destr, distress.
Destrayiens, distractions.
Destre, held fast.
Destre, a large horse, a horse of service for the great saddle in war.
Detre (*au*), on the right hand.
Destre mayne, the right hand.
Destr (*a*), over, against.

Destreint, straightened, restrained, difficult to come at, expensive.
Destreit, *destroitz*, *d'estroit*, district, distress.
Destrement, speedily.
Destresces, distresses.
Destresse, *destressce*, compulsion.
Destresse au roi, abridge the king.
Destreynt, proved a title to.
Destreir, to try.
Destrouses, destruction.
Destruer, to condemn.
Destrut, destroyed.
Destrutz, put out of, disinherited.
Desturbance, impediment, delay.
Desue, abused.
Desuer, to break through, set aside, undo.
Desverie, folly.
Desuese, injury, hindrance.
Desvesties, naked, unclothed.
Desuis, *desus*, *desuys*, above.
Desuis rendre, to surrender.
Desvoier, to wander out of the way.
Desurder, to raise.
Desunes, above.
Desurit, desires.
Desvorre, devoured.
Desvoye, deviate.
Desuis le mot, under the word.
Desyra, tore.
Det, said.
Detrahe, taken out of the hands of, taken from, withdrawn.
Detrees (*a*), to the decrease.
Detreie, withdrawn.
Detrenchet, cut.
Detrie, tried.
Detrement (*le*), the trial.
Deu, *Deus*, *Deux*, God.
Deu, of.
Deu, of the.
Deu, a debt.
Deu, *deuz*, due.
Deuantz, devotions.
Deubter, was afraid.
Deu, *cas*, two cases.
Deues, two.
Deura, *deurons*, ought.
Deurees, *dueres*, *deuries*, *deures*, *devers*, money, effects.
Deuroient, should shield.
Deuront, *deurent*, ought.
Deurra, will give, will present.
Deutz, *deubtz*, due.
Deuvre, to be indebted.
Deux, dies.
Deux (*en*), on God, in God.
Deux, *deus*, two, both.
Deuxieme, second.
Devaler, to go downwards, to bring down.
Devanciers, aforetime.
Devanciers, ancestors.
Devan luy, from him.
Devantement, devoutly.
Devates, disputes, debates.
Deveier, will deny.
Devenent, which fall, come into.
Devensit, had come.
Devensist enceinte, became ensient.
Devenux, arrived at, become.
Devent, before.
Devenk, *devent*, become.
Dever, to dye.
Dever, to owe, to be indebted.
Dever, duty.
Dever, *devers*, against.
Devere eaux, on their part.
Devers, dead.
Devers, the money.
Devers le fyn, towards the end.
Devers pere ou mere, of the father's or mother's side.
Devers la mere, on the mother's side.
Deversee, with, in the power of.
Devereire, devoir.
Devereit, ought to be.
Devereit dire, ought to say.
Deverait (*ne*), ought not to have.
Deverount (*a ceux qui les*), to the owners.
Deverie (*en*), in a delirium.
Devestus (*ne*), shall not be put by.
Devez, devised, surmised.
Devi, owes.
Deviast, dyed.
Devicoez, had fall, had come into.
Devient, dye; also, they owe.
Devin, divine.
Devinar, divination.
Devis, devise.
Devisable, divisible.
Devisee, devised, appointed.
Devises (*en*), in the division.
Deviseement, severally.
Devoer, ability.
Devoidable, may be divided.
Devoir, to have.
Devoir, *destitut*, destitute of wealth.
Devolupa, *devolute*, devolved.
Devomus rien, we owe nothing.
Devote (*ne*), ought not.
Devove, appointed.
Devouz, devoted.
Devoy, submit.
Devoyant (*en*), in right of.
Devoyer, endeavour.
Devy espousera, shall espouse.
Devsaunt, before.
Dewe, due.
Dewe, two.
Dex, God.
Dexcint, fifteen.
Dey, finger.
Dey apper, ought to appear.
Dey, *devy*, dieth, died.

Deycuns, we said.
Deyes, drivers of geese.
Deyne, his own.
Deyme, the tenth.
Deyms, *deynes*, does.
Deymus, sayd.
Deynt, alledge, say.
Deyve, *deyvent*, *deiva*, *deyne*, owe, ought.
Deze, *dez*, ten.
Dezeyners, deciners.
Di, half.
Dian, dean.
Diaules, devils.
Diaulz, two.
Dibendre, Friday.
Dibilie, disabled, reduced, infirm.
Dicel, of this same.
Dicelle (*a*), from henceforth.
Dici, of this.
Dict, a word.
Diemane, Sunday.
Dieme, the tenth.
Diemenches (*li rois des*), *rex dierum dominicorum*, Trinity-Sunday.
Dien, they say.
Dienee, deanry.
Dient, ought.
Dieu, due.
Dieux, two.
Diez, *Dies*, *Dieux*, God.
Difalmement, defamation.
Diffense, defence.
Diffet, defeated.
Diffinite, of affinity.
Diffie, (*soy*), puts himself out.
Diffauntez, fled.
Diffuantz le lei, in defiance of the law.
Dignier, a penny.
Dijau, *Dijou*, Thursday.
Di jeo, I say.
Dilai, delay.
Dilapidez, dilapidated, wasted, squandered away.
D'ilent, of the entire.
Dillation, delay.
Dilleoques, *dillouques*, afterwards.
Dilliours, of electors.
Dilueques, from thence.
Dimaigne, *dimeine*, *dimeins*, *dimeignt*, *dimenche*, *dimegne*, Sunday.
Dimar, Tuesday.
Dimecre, Wednesday.
Dimises, dismissed.
Diner, a penny.
Dinquios, as far as, hitherto.
Dins, in, within.
Diole, a dial.
Dion, may say.
Diotre, *dus*, daily.
Dious, *Dius*, God.
Direchef, again.
Dirept, took, accept.
Dirrain, last.
Dirs enkes, different inks.
Dirupt, broken down.
Diruite, thrown down.
Dis, ten.
Disassentz, dissent.
Disavaile, disadvantage.
Disavances, unadvanced, unprovided for.
Disavises, unwary.
Disavowable de droit, against law.
Discete, he descends.
Disch, dish.
Dischapper, to escape out of.
Discheisit (*ren*), any thing should be abated.
Disci, *dis sicum*, since, for as much as.
Discoiture, discolouring.
Discombrance, disturbance.
Discontinue, discontinuance.
Disconveniable persons, improper, unfit persons.
Discorage, discouragement.
Discourer, to cleanse.
Discoverirent, uncovered, discovered.
Discovert, a woman unmarried.
Discrepancie, a disagreement, difference.
Discries enemies, proclaimed, notorious enemies.
Discriver, *discever*, to discover.
Discurrer, to run up and down, through.
Discuter, to discuss.
Disdeinance, despising.
Disdict, a yielding or confession of guilt.
Dise, the tenth part.
Diseame, unsowed.
Disease, trouble, inconvenience, distress.
Diseasez, injured, troubled, hindred, disquieted.
Disenef, nineteen.
Dises, dice.
Diseset, seventeen.
Disette (*de*), for want.
Disfoith atuunt, ten times as much.
Disgrade, degraded.
Disheriteson, disinherison.
Disinfovie, unburied, taken up again.
Disliee, under no obligation.
Disliver, to displace.
Dismables, tytheable.
Dismarie, unmarried.
Disme quinquinall, a tenth of all goods for five years together.
Dismenges, on Sundays.
Disoitisme, the 18th part.
Dispaire (*en*), in danger.
Disparagation, disparagement; the matching an heir, &c. in marriage, under his or her degree or condition, or against the rules of decency.
Dispencer, to discharge.
Dispend, depend.
Dispendre, put off, hindred, avoided.
Dispendus, dispensed with.

Disper, despair, danger.
Dispergez, disipated, severed.
Disport, diversion, entertainment.
Dispit, *dispitz*, contempt.
Dispitouse, contemptuous.
Displet, displeases.
Dispos (*mis en*,) laid up.
Disporter (*eux*), ease them, excuse them.
Dispuceler, to deflower.
Disrobbe, robbed, spoiled.
Dissate, Saturday.
Disseites, dissensions.
Dissentez, deceits.
Dissi la qui, until that.
Dissiny, performed.
Dissisme, tenth.
Disvit, *diswiit*, eighteen.
Disu, deceived.
Dist commun, common report, fame.
Distaunce, difference, dispute.
Distincter, to distinguish.
Distintiaunt, distinguishing.
Disutime, eighteenth.
Distraction (*sans*), without damage.
Distz articles, aforesaid articles.
Distraire, to withdraw.
Distreasable, which may be distrained.
Districtuels, districts.
Distreindre (*sans rein*) *en dure man*, holding him by the hand without squeezing it too hard.
Distrent (*que*), who alledged.
Distrent (*ils*,) they said.
Distrover, to destroy.
Distrue, *distroue*, distroyed, disparaged.
Disturbance, hindrance, prevention.
Disturberent (*ne les*), did not prevent them.
Dit, decree.
Dit (*en*), in word.
Ditant, during the time.
Ditas parties, the said parties.
Ditez, called.
Dition (*en la*), in the power, jurisdiction.
Divers, differing, different.
Diversement, diversely, severally.
Dividende, schedule, list, indenture.
Divinal, of divination.
Divise, given.
Division, establishment.
Divont (*ne*), ought not.
Diz, God.
Diz, said, aforesaid.
Dm, *domina*, dame, lady.
Doayre, *doans*, dower.
Dobbours des draps, sellers of cloth.
Doctrinez (*en*,) instructed in.
Doel, grief.
Doen, gift.
Doen estat, due estate.
Does, given.
Doi cent (*li*) the 200.
Doiauntz, who ought.
Doibt, *doi*, *deux*, finger.
Doibuent, ought to be.
Doient (*que il*), what they owe, that they are in debt.
Doigne, granted.
Doigner, tenders, yields, grants, gives.
Doine, ought.
Doioers, dowers.
Doire, to hear.
Doirees, wares, goods, effects.
Doit, *doner*, ought to give, is to give.
Dol, sorrow, grief.
Dolaux, aggrieved.
Doleances, grievances.
Dolent, grieving, troubled.
Doles (*les*) *de forest*, the bounds of the forest.
Dolet, an ax.
Dolions, we complain of.
Doloir, to aggrieve.
Dolorousement, wofully, grievously.
Domage, dammage.
Dome final, final sentence.
Domesche, domestic.
Doms estre certeins, ought to be certain.
Domt, give.
Don, of the.
Donables, assignable.
Donance, giving.
Donaunt, procurement.
Donc, given.
Done, donissions, taken.
Donei, granted.
Donerunt, gave, granted.
Donewyz, Dunwich.
Don lui, of the place.
Donnant, reservation.
Donne, a lady.
Donor (*de*), by gift.
Donqes, then.
Donu, *donesein*, *doneison*, *donyson*, *donacioun*, gift, grant.
Doraunt, during.
Dorce, back.
Dore, a door.
Dorem, *Doream*, Durham.
Dorer (*a*), to be given.
Dorsenavant, from henceforth.
Dorra, shall give it, or dispose of it.
Dorront, agree, consent.
Dorrount, remain there.
Dortour novell, new dormitory.
Dos (*par le*) by the crest.
Dosce, twelve.
Doser dosel, a hanging or canopy of silk, silver, or gold-work, under which kings or great personages sit; also the back of a chair of state.
Dotaunces, disputes, doubts.
Dote, doubtful.
Dote (*nount pas*) *de trespasser*, are not at all afraid of offending.
Dotier (*il fait a*), there is reason to suspect.

Dotif, doubtful.
Dotoient, feared.
Dotous, doubtful, in doubt.
Douer, gift.
Doujours, of the day.
Doulce, gracious, gentle.
Douloit, complained of.
Dounfres, Dumfreis.
Dount, wherefore, from whence.
Dovrorre, Dover.
Dour, given.
Douree, Dover.
Dous, two.
Doust, ought, must.
Doustres, *dustres*, leaders, commanders.
Doutamce, *doubtantes*, doubts.
Doutantz (*meyns*), less fearing.
Doute, fear, fears.
Doute ceo, apprehends, supports it.
Doubte, *en doute*, doubtful.
Douterent, feared.
Doutez, feared.
Douvent, give.
Douz, two.
Douyme, the second.
Dowarie, dower.
Dowe, endowed.
Doy, finger.
Doy (*ne*), I ought not.
Doy bien avoir (*le*), it is right I should have it.
Doygna, condescended.
Doygner, *doigner*, to give.
Doynt, gives.
Doz (*au*), on our backs.
Doz peres, the twelve peers of France.
Dozze, *doze*, *doxime*, *dozine*, twelve; the 12th.
Dr, *drait*, right.
Dragges, *draggus*, little boats or vessels formerly used on the river Severn.
Dragguent oistres, drag oysters.
Drappeaux quarrez, banners.
Drechier, to redress.
Drect (*por*), by right.
Dreille, a ditch.
Dreine, produced.
Drekes, until.
Drence, difference.
Drene (*il est*), he is proved.
Drenere, last.
Drengage (*en*), the tenures by which the drenches or drengers held their lands.
Dres, *drez*, right.
Drescent (*la*), redress it.
Dresser, to compile.
Drei, *a dret*, overagainst, opposite.
Drettes, right, just.
Dretture, right.
Dreyn, *drein*, *present*, last presentation.
Dreyn (*au*), at last.
Dreyt (*tot*), directly.
Droit (*de*), of law.
Droit (*en*), concerning, in right of.
Droite mauveste (p), out of mere wickedness.
Droiturs et devots, just and devout.
Dromandes, dromandes; vessels called by that name.
Drouseda, Drogheda.
Drout, *diont*, say.
Druthin Dieu, the house of God.
Du, God.
D'uat, before.
Dublee, duplicate of, repeated.
Dublein (*treis*), threefold.
Dubles (*treis*), three times twelve.
Ducatz fetz, dutchy fees.
Duce, kind, tender.
Duce, leads.
Duce (*eawe*), fresh water.
Duchemen, Dutchmen.
Dudzime, twelve.
Due, of the.
Due, to dispose of.
Duerent avoir (*ne*), might not have.
Duer, lasts, endures,
Dues, two.
Dues, ought.
Duete (*de*), as a duty.
Duetees, duties.
Duez (*lui*), due to him.
Du faire, to do.
Dui, to-day.
Dui fil, two sons.
Duissoy (*que jeo*), that I am supposed.
Duist, let him give.
Duist aver ee *ouis*, supposed to have been killed.
Duit, *duiste*, *duissent*, *aver este*, ought to have been.
Duitez, *duytz*, duties, rights.
Dulce le roy (*tres*), most gracious king.
Dun, gift.
Dunes, downs.
Dunge, *dune*, give, given.
Dunk, *dunc*, *dunky*, then, therefore.
Duodes, twelve.
Duoirs, duties.
Duppur, duplicate.
Durement dormy, slept fast.
Durer, continue, remain.
Dures, hardened.
Duresse, *durette*, hardship, difficulty.
Durete (*tanz de*), so many hardships.
Durite, *durete*, *durte*, compulsion, duress.
Durmene, overcome.
Durra, will give.
Durums, live.
Dus, duke.
Duscenz, two hundred.
Dusesme, twelfth.
Duskes a chon qe, until that.
Dusse, two.
Dussent, *dusont* (*que*), who should, ought, are supposed.

Dustres, ring-leaders.
Duw (*en lu*), in due place.
Dux, due.
Dux, dus, dug, a leader.
Dusze, duze, twelve.
Duzim, twelfth.
Dy, due, just.
Dyent, say, are of opinion.
Dyent estre, they say moreover.
Dymain (*le*), the morrow.
Dymenges, Sundays.
Dymes, tythes.
Dymeyne, dymain, Sunday.
Dymis, tythes.
Dyners, dinners.
D'yntrusion, of intrusion.
Dys, dyz, ten.
Dyscot livres et neof, eighteen pounds nine shillings.
Dyspais (*touz*), ever since.
Dyvelyz, Dublin.
Dyvent (*point ne*), ought not.
Dyvintz, divines.

E, and.
Ea, and, also, further.
Eage, age.
Eage, life.
Eantz, having.
Eare, to plow.
Ease (*sera*), may ease himself.
Easez, moderate, easy.
Eaue, eave, eawe, water.
Eaux, ewes.
Eaux, they.
Eaux meismes, themselves.
Eauz, eaux, eaus, them.
Ebahir, to be surprised.
Eble, Eubolo.
Ebrieux, Hebrew.
Echeist, falls.
Echeraunt, shall fall out, shall fall, shall escheat.
Echever, to escape.
Ecil ensems la terre, (*fore k*), only those within that land.
Ecumieur, a pirate.
Ede, Eudo.
Edel, noble, illustrious.
Edovart, Edvalt, Edwars, Edward.
Ee (*aver*), to have been.
Een, be.
Een fait deins l'an (*ne yert*) has not been made within the year.
Eent, have.
Ees, bees.
Eese, pleasure.
Eest, est, East.
Eez, hear, had, have.
Efferant l', the proportion.
Effectull, effectual.
Efforablement (*tant*), in as strong a manner.
Efforcer, to aid, assist.
Efforcement, force.
Efforcez, strengthened, secured.
Efforcier peis, to break a treaty of peace.
Effouage, hearth money.
Effours, efforts, endeavours.
Effunder, to shed, spill.
Egarri, healed.
Egas, decision, judgment, award.
Egecestre, Exeter.
Egglise, church.
Egise, lyes.
Egistement, agistment.
Egle, eagle.
Egle (*de l'honur de l'*), of the honour of the eagle.
Eguiser, to happen.
Egun, any.
Eguunt glia este, they have been.
Ehonte, infamous.
Ei (*j'*), I have.
Eians, men.
Eiants, having.
Eide, aid.
Eiens, ever.
Eier veue (*l'*), have seen it.
Eies, forwards.
Ejets a cuer, have at heart.
Eil (*s'*), if they.
Eimient Dieu, love God.
Ein, ceo, rather.
Eincz ses hours, before these times.
Eindegre, own accord.
Eine, temps (*d'*), before, of a prior date.
Eines, in, that.
Einglise, church.
Ein quy, within whose.
Einsnes, eldest.
Eins ceo, when, unless, the same, rather, until.
Eins ceux q le actor, before the plaintiff.
Eins (*si*), before.
Eins tenus (*l'*), in the mean time.
Eisperker, impound.
Einz, but, in.
Einz ceo qil, before that he.
Einz qe, before that.
Eioms, have.
Eions (*de*), of having.
Eions (*de*), of his.
Eir (*l'*), the eyre.
Eir, eirs, heir, heirs.
Eirent, wander, stray.
Eires, ayries.
Eirie, to hatch.
Eirie de espernons, a young brood of hawks.
Eiskes, until.
Eissi, as.
Eissi ce est a saver, insomuch.
Eissi ne por quant que, provided, nevertheless, that.
Eissillies, exiled.

Eissir, to go out of.
Eissit, departure, exit.
Eisso, this.
Eist (*de l'*), on the eastern part.
Eit n', have not.
Eivers (*de*), of goods found, of cattle.
Eivos, behold.
El, in, nothing.
Elbit, eight.
Elef, *elefe*, flux and reflux.
Eles, eyes.
Elevi, chosen.
Eleyer (*poet*), may choose.
Elez, on a sudden.
Elin, a gentleman.
Eliser, to choose.
Ellus, chosen.
Elegger, to alledge.
Eloviaunce, allowance, connivance.
Elm, helmet.
Elves, chosen.
Elus, usuages.
Embandix, emboldened, encouraged.
Embas, below.
Embatent (*s'*), intermeddle.
Embeasiler, to filch.
Embellies, set forth, showed,
Embesche, impeached.
Emblea dismes, carries off his tythes.
Emblear (*l'*), the emblemments.
Embleent, carry out of, remove.
Embleer, a seedsman, to sow.
Emblemy, unimpeached, unhurt.
Embler, to steal.
Emblez, *embles*, *emblees* (*par*), by stratagem, by surprise.
Embloioure (*de*), of stealing.
Embosoigne, needeth, requireth.
Embosoignera (*sil*), if need be.
Embrace, undertaken, embraced, purchased.
Embracez (*ont*), have ingrossed.
Embreaser, to burn.
Embrevure, a register.
Embu, drunk up.
Embuchement, ambuscade.
Eme, with.
Eme, *emie*, estimation, price.
Emercient, amerced.
Emergentz, arising.
Emfle, puffed up.
Emfauntz, children.
Emi, *emmi*, in half, in the middle.
Emieez, issued, sent out.
Eminentz, impending.
Emmi, between.
Emmorti, become dead.
Emmurrer, to wall about.
Emoi, emotion.
Emoines, witnesses.
Emologation de la court de parlament, the confirmation of the court of parliament.
Emon, Edmond.
Emonit, admonished.
Empakkur (*l'*), the packing.
Emparke, *emparkez*, impounded.
Emparkement, a park, an emparkment.
Emparnours, undertakers of suits,
Empashment (*en son*), in his infirmity, impediment.
Empeche, impeached.
Empeirez, *empirez*, impaired.
Empell (q *l'*), which is called.
Empendent, pendant.
Empensions, pensions.
Emperement, in ornamenting, repairing.
Emperez (*se soient*), have possessed themselves of.
Emperler, to imparle.
Empernant, assuming, pretending to.
Expernent a champart, take for maintenance.
Empernour, the taker.
Empes chenienz (*por divers*), an account of divers impediments.
Empeschable, impeachable.
Empeschement, impeachment, impediment.
Empetrer, to require, to insist.
Empiel (*ley*), imperial or civil law.
Empiete, impiety.
Empire tant nequant, neither better nor worse than before.
Empla, stole.
Emplee (*terre*), land sown,
Emplere, to fill.
Empleroms, we will fulfil.
Emplevist (*se*), got possession again.
Emplir, to fulfil.
Emply, implyed.
Emportablez charges, intolerable, heavy charges.
Emportunement, importunately.
Empotntz, impotent, infirm.
Emprainct, impressed.
Empraine, in hand.
Emprant, borrowing.
Empreiant, praying.
Empreigne, *emprint*, taken upon themselves.
Emprent, borrow; also, taught.
Emprent, who undertakes.
Emprent, impression.
Empres, pledged.
Empresserent, engaged, hindered.
Emprez, *empres*, after, afterwards.
Empriantz, beseeching.
Emprimechief, first of all.
Empris, undertaken, taken up.
Emprisse, undertaking.
Empriums, beg, pray.
Empromptz, *empraunt*, *emprant*, borrowing.
Empuis (*d'*), afterwards.
Empuisse, may.
Empuissonment, imprisonment.
En, in, by, within.
Enaager, to declare one to be of age.

Enabyter, to inhabit.
En apres, hereafter.
Enarer, in time past.
Enarer cea, to this time, heretofore.
Enavant, for the time to come.
En oultre, furthermore.
Enbataillez, in battle array, engaged in battle.
Enbeverer, to water, also a watering place.
Enbeverer (*droit de*), right of watering, or taking in water for cattle.
Enblauncher, to blanch, to make white.
Enblee, enblaye de ble yvrenail, sown with winter corn.
Enbleir, to steal.
Enboisinera, will want.
Enbosid, embossed.
Enbosognez, engaged in business.
Enbouellecz, embowelled.
Enbrace, encroached.
Enbraudez, embroidered.
Enbrever, to minute down, to reduce into writing.
Enca, heretofore, some time past.
Encariez, carried away.
Encaver, to beware.
Encea enci, so, also, afterwards.
Encepper, to confine him.
Encere, yet.
Enceynte, quick with child.
Encha (*depuis huit jours*), within these eight days.
En chaln, appease.
Enchancer, to alter, to raise.
Enchappellè, crowned with a crown, or coronet.
Encharger, encharchees, to give in charge.
Enchase, drove away.
Enchaser, to compel.
Enchasconez, chased.
Enchason, encheson, enchesson, enchescun, enchison, cause, occasion, reason.
Enchaunterie, witchcraft.
Enchaz et rechaz, inchace and outchace; the right of driving cattle to and from a common.
Encheires, enhanced, made dear.
Encheiez, decayed.
Encherer, to enhance the price of.
Encherisse (*ne*), do not raise the price of.
Enchescune, encheisonez, enchesones, enchesson, punished, called in question, cross-examined.
Enchiez, at, to.
Enchi la, there.
Enchres, anchors.
Enci, so, also, afterwards.
Enclaimant, claiming.
Enclairsi, brought to light.
Enclarre, d'enclore, to inclose.
Encliner del oyl (*par*), by a wink of the eye.
En clos (*le jour*), the day included.
Enclose, to inclose.
Enclostrure, inclosure.
Enclouez, studded.
Enclowe, pricked by a nail.
Encoires, besides.
Encois, before.
Encolurerent, involved.
Encombremen, incroachment, incumbrance.
Encomiter, to be committed.
Encon, on high.
Encontre, meets, encountered, opposed.
Encontrer (*d'*), to meet.
Encontre mount, in the ascending.
Encontre val, downwards.
Encontrevenent, undo.
Enconvent, enconvenancies, covenanted.
Encoranement (*l'*), the coronation.
Encorovetz, encourage.
Encoru, accrewing.
Encorue, encoruz, barred.
Encoruz, encoure, encoru, incurs.
Encoste, collateral.
Encosteantes, on the banks, sides.
Encountables, to the counts.
Encoupe, indicted, charged, accused, guilty.
Encouterable, counter-pleadable.
Encoutment com (*aincois*), but as soon as ever.
Encrece, du mond (*de lour*), of their worldly income.
Encrecer, to accrew, to increase.
Encres, increase, accession.
Encrest, accrews, increases.
Encroe, fixed to a cross.
Encrustrent, increased.
Encurru, come, arrived.
Encuser, to accuse.
Encuserez (*n'*), will not accuse.
Encusement, indictment, accusation, impeachment.
Ency, therein.
Encz, but.
Endeges, superannuated.
Endeiront, will endeavour.
Endentier (*d'*), to indent, to be made party to an indenture.
Endette la maison (*il*), he had run the house in debt.
Endevera faire (*ceo quil*), what he ought to do therein.
Endeux, both.
Endeyvent estre quites (*quil*), that they ought to be discharged.
Endicion, indiction.
Endires, in like manner may be said.
Endirra, will declare.
Endeitment, interpretation.
Endivrons, will assist.
Endormer, to charm.
Endormy (*fuit*), was dormant.
Endosse, back, encourage.

Endosser, *endocer*, to indorse.
Endou, to be endowed.
Endreit (*a feit nous*), hath made us amends, satisfaction.
Endreyt, relating to.
Endroit (*l'*), without, outwards.
Endroit, *d'endrett*, in right of, with respect to.
Endront (*en quel*), in what place.
Enducent, occasion, bring on.
Enduceront, will persuade, induce.
Ducez (*a ce*,) brought to that.
Enduirons (*ne*), will not entice, persuade.
Endurze, hardened.
Eneez, have, received.
Enemiablement, in a hostile manner.
Enente, ruined.
Enewance de draps, watering of cloth.
Enfamant (*action en*), actions of scandal.
Enfamie, infamy, infamous.
Enfauncea, *enfaunt engendra*, brought forth, or was delivered of a child.
Enfergee, put in irons.
Enferment, confine.
Enfiace, mercy.
Enfile, twined, twisted.
Enfo, *enfovie*, buried.
Enfondre, broke.
Enforce, strengthens.
Enforfet, offending.
Enformer, to instruct, inform.
Enformesons, speeches.
Enfortune (*par*), by misfortune, accident.
Enfouncez, poured out.
Enfoundrees, sunk, overflowed, under water.
Enfourny, performed.
Enfraignance, infringement.
Enfraindrant, shall infringe.
Enfranchise (*nient*), not of record.
Enfraunchee (*a poi*), almost overrun with franchises.
Enfreindre (*l'*), the breach.
Enfrenge, *enfriemte*, broken.
Enfreems, we will do therein.
Enfuist, deserts.
Enfytuez (*melius ensi tuez*), so killed.*
Engage, mortgaged.
Engage, betrothed.
Engager le batail, to offer battle.
Engaigement, pledge.
Engaines, guarded.
Engarnies, withheld, surrounded, fenced-in.
Engaux, equal.
Engendre (*a*), to be begotten.
Engendrure, issue.
Engetter, *engeiter*, to eject.
Engin enghein enginement (*mal*), ill design, deceit, fraud.
Enginer (*pur*), to cheat, defraud, seduce, intice.
Engineusement, groaning, lamenting.
Englaterra (*roy d'*) king of England.
Englefeld, England.
Englesche, *Engles*, English.
Englescherie, proof that a person found killed was of English extraction, and not a foreigner.
Engluerount (*se*), will fix on themselves the guilt of the crime.
Engnes, Agnes.
Engracious, ungracious, untoward.
Engravance, grievance, molestation.
Engriever, to aggravate.
Engyn par, by deceit.
Enhabler, to enable.
Enhauce, *enhaunce*, raised, exalted.
Enheritants (*les*), the inhabitants.
Enheriteex (*est*), is intitled.
Enheritementez, hereditaments.
Enheritez, having an inheritance in.
Enhuiller, to administer extreme unction.
Enientez, rendered null, avoided.
Enjevin, of Anjou.
Enimiate, enmity.
Enjojales, furnished, provided with jewels.
Enjont, enjoining.
Enjoynte, joined.
Enke, ink.
Enki, thus, so.
Enlaylla, sent thither.
Enleist, delivers up.
Enli, instead of.
Enlost, in the army.
Enmediate, immediate.
Ennaugerunt, proceeded on their voyage.
Ennenti, defeated.
Enneur, honour.
Ennoliament, extreme unction.
Ennoy, annoy.
Ennoyastes, sent.
Ennoyer, to send him away, remove him.
Ennoyez, troubled, grieved.
Ennoys, necessities.
Ennoyter, *enoyter*, to annul.
Ennuerent, whom they sent.
Ennuict, to day.
Enombraser, to shade, to cover.
Enor (*l'*), the honour.
Enordeniant, in an irregular, undue manner.
Enordinant, inordinate.
Enorez, honoured.
Enoultre, moreover.
Enoundez, overflowed.
Enournez, adorned.
Enoyter, to annul.
Enpant, composed.
Enparkeler, to fence in.
Enpaynes, put to pain.
Enpechez, impeached.

* See Cowel's Dict. Assath.

Enpeirant, imparing.
Enpeirement, detriment.
Enpeirez, impaired.
Enpensione, a pension.
Enpensones (*ne*), don't intend.
Enperi, worse.
Enpire, embased.
Enpleynnaunt, by way of complaint.
Enploient mye (*n'*), do not lay out.
Enplyes, employed.
En poin, in hand.
Enpori, impoverished.
Enporri (*si*), so stale.
Enportera le realme, shall be king.
Enporter heritage, to run away with the inheritance.
Enportez, carried away.
Enpres, after.
Enpigne, took, received.
Enprisant, desiring.
Enpris unt, *enpnez*, have undertaken.
Enpriat le chymin, entered upon his journey.
Enpromptz, things borrowed.
Enpronerount, imprisoned.
Enprovour, proveditor.
Enprower (*d'*) to improve.
Enprueez, improved.
Enprumptu, borrowed.
Enpus, produce.
Enque (*par*), by the inquest.
Enqrg (*si*), let him inquire.
Eqrere, to get, take.
Enquerrez, inquiries.
Enquerelant (*nul*), no plaintiff, no suit.
Enquerelez, impleaded.
Enquester, find out.
Enquieter, disturb.
Enquore, yet, still.
Enracier, *enracer*, to pull up by the roots.
Enrollement des ses laine, at the rolling up of his wool.
Enrollez, folded up.
Enroyer (*m'*) to grant me.
Ens, in, within, between.
Ens ne seit (*si*), unless it be.
Ensanle, in blood.
Ensarchement, an examination, a research.
Ensausie, exalted.
Ensayer, *ensuer*, to pursue.
Ensealer, shut up, impound.
Enseares, *enseires*, locked up.
Ensecchi, dried up, withered.
Ensegie, besieged.
Enseigne (*loial*), lawful business.
Enseignementz, qualifications.
Enseigner, to show, appear.
Enseignurant sur l'estat le roy, lording it over the state of the king.
Enseintez, with child.
Enseiver, to serve.
Enselle, saddled.
Ensemble, it seems meet.
Ensement, likewise, in like manner, in the same manner.
Ensencers, censers.
Ensenie, instructed.
Ensenser, to inform.
Ensenses, incensed.
Enserres, will be.
Enservager, to enslave.
Enserver, to subject, charge.
Enserve, kept, reserved.
Enserve, servile.
Enservir (*ne poit l'en*), is not compellable.
Enseverit (*meux*), much better known.
Enseyner, to show, point out.
Ensi ensy, so, thus, also, in like manner.
Ensi pres, so near.
Ensi totes voies, provided always.
Ensier, to mow or reap.
Ensigne, blooded.
Ensignement, assignment.
Ensigner, to show.
Ensignere (*en*), in teaching, instructing.
Ensignes, occasioned.
Ensignition, ensignment.
Ensimys, being.
Ensivient (*qe s'*), which follow.
Ensiwames, we followed.
Ensiwyt il pas, it does not follow.
Ensorquetot, above all.
Enssievant (*en*), in pursuance of.
Enstres, entries.
Ensu, *ensuyt*, *s'ensient*, follows.
Ensuer, to follow.
Ensuit, hereafter.
Ensuivant, against.
Ensuivroit (*il s'*) it would follow.
Ensundis, in that case, also.
Ensure, obey.
Ensurmettaunt, suggesting.
Ensurrer, to rise.
Ensus, big with child.
Ent, in, in the mean time.
Ent, thereupon, of them, thereof.
Ent (*d'*), thereof.
Ent, intire, whole.
Entacher, to infect.
Entagle, importuned.
Entaineez, entered upon, debated.
Entamees, stirred, moved.
Entant come, signifies as much as.
Entartz, burned.
Entaunt, so much.
Entaunt graunt, he thereby as good as grants.
Entechele, tainted, infected.
Enteins, understood.
Entendable, to be understood.
Entendances, attendances.
Entendaunt, thinking, imagining, understood.
Entendment (*l'*), the form.

Entendementz, meaning, constructions.
Entendiblement, fully, plainly.
Entendre (*fist lui*), made him believe.
Entendre, to attend.
Entenk (*jeo*) *y-entanks*, I think.
Entent, understand them.
Entente, intention, claim, aim, plaint, count.
Ententivement, carefully.
Entenue, understood, heard.
Enterceur, the party challenging the goods, he who has placed them in the hands of a third person.
Enterimes, *enterinee*, *enterrine*, *enterin*, *enteriene*, entire, perfect.
Enteriner, to perfect.
Enter mains, *entre meins*, in our hands, in his hands.
Enternient, entirely.
Enteynont, hold, keep.
Enteysant, tacitly, by saying nothing.
Entexes, interwoven.
Entient, holds.
Entier (*al*), upon his entering.
Entiercir, to deposit a thing with a third person, till the property is proved.
Entiers (*et les*,) and entries.
Entiers, *entierent*, intirely.
Entierte, the whole.
Entitle, qualified.
Entraihantz, dragging, drawing.
Entorse, *entair*, *entour*, *en tour*, *entur*, about, round, concerning.
Entoucher, to give a poisonous quality to any thing.
Entover, to walk about.
Ent mettra (*ne se*), will not interpose, assist.
Entraiter (*deresonable*), unreasonable, unjust treatment.
Entralliez, confederated together, bind themselves together.
Entrassemes, entered.
Entre, above, beyond.
Entre (*a l'*), as far as the limits.
Entre, *encre* (*de*), ink.
Entreaidions lui uns l'autre, will mutually aid each other.
Entrebat, an interloper.
Entrebat, (*par*), by interlopement.
Entreconent point (*ne s'*), do not intercommon.
Entredit (*en temp d'*), in prohibited seasons.
Entreferrent, engage, fight.
Entreissets (*ne*,) should not enter into.
Entrelasser, to put between, interline.
Entrelessant, omitting, leaving out, relinquishing, laying aside.
Entrelesse (*ne*), would not proceed in.
Entreliere, to observe.
Entrelies (*se fussent*), bound themselves together.
Entrelignure, interlineation.
Entreluterent, engaged together, fought.
Entremeissent (*se*), should occupy, be put into, intermeddle with, took upon himself.
Entremelles (*accions*), mixed actions.
Entremellies, mixed, blended together.
Entre mellure, an intermixture.
Entremisted inquirer, authorised to inquire, caused inquiry to be made.
Entrendre (*fait*), to be understood.
Entreparler, to consult together.
Entrepennent, consult among themselves, enterprising.
Entreres, to be entered.
Entrerupt, interrupted.
Entreste (*malement*), evilly treated him.
Entretant, in the mean while, to fulfil.
Entretz, interred.
Entreval, interval.
Entreuls (*d'*), among them.
Entrevysent (*se*), have an interview.
Entricate, interwoven.
Entrignier, accomplish.
Entromys (*nous*), *in l'homage*, we did homage.
Entrovez, narrow passes.
Entrour, about.
Entrustee, increased.
Ent tant regard (*ni*), neither paying regard.
Entyvement, entirely.
Entz, *enz*, but.
Envaisemen, an invasion.
Envee, *envint*, sent.
Enveer avant, to proceed.
Enveer (*facez*), cause to be sent for.
Enveierons (*lui n'*) we will not condemn him.
Enveilles, grown old.
Envenant, ensuing.
Envenoms, have sent.
Enveogler, to inveigle, blind.
Enveoms, *enveons*, *enveuns*, we send.
Enverce, against, towards.
Enverrez, inquired into.
Envers (*l'*) within.
Enveyees, envoys.
Envoyer, *envoyer*, *envier*, to send.
Envie (*ne*), nor damage, injure.
Enviroune (*mal*), traduced.
Envis, with regret.
Envoderoms, we would have.
Envoeglez, blind.
Envoez, become.
Envore (*il*), he sends.
Envorrez, shall send.
Envoyable, shall be sent.
Envoyellera (*potiùs enjojulera*), will provide with jewels.
Envoyglement (*en*), in avoydance, in deceit of.

Envyurez, intoxicated.
Enuer, to enure.
Enwer (*en*), in arrear.
Enyage, the right of eldership.
Enz, in, within, but.
Eoque, because that.
Eofs, *eoues*, eggs.
Eofues, *potiùs jeofnes* (*genz*), young people.
Eoins (*que nous*), that we should have.
Eoms, have.
Eos (*al*), to the use.
Eou, he, him.
Eours de pite, works of piety.
Ephebe, one who is major.
Epouvantement, excuse.
Epposant, the petitioner.
Epprendre (*d'*), to take.
Epe, a bee.
Equiture, to ride.
Equus (*d'*) *le hile dex*, until he hears.
Erainent, leaving off, avoiding.
Eran, will be.
Erantz, *arantz*, ploughing.
Erberage, provision for cattle.
Erberger, to ledge or harbour.
Ercedekene, *hersedecome*, archdeacon, archdeaconry.
Ercevesques, archbishops.
Ercevec, the archbishop.
Erderont, shall aid, adhere to.
Ere, be.
Ere, shall be.
Ere, *erer*, to sowe.
Erer, *erier*, to wander up and down.
Eri, I was.
Erinez, wasted, ruined.
Erite (*l'*), the inheritance.
Erite, an heretic.
Ermyn, an ermine.
Eroer, *erver*, to journey, to travel.
Erra, shall go.
Erraunt traitour, an arrant traitor.
Erreront, went the eyre.
Errisement, hindrance.
Errvign, erroneous.
Errois, Irish.
Erront, shall hear.
Errount, go their heir.
Ers, heirs.
Ersoir, yesterday.
Ert, he was, it was.
Ert (*ne*), shall not be.
Es, *ez*, in, behold.
Esaple, sample.
Esbaiez, *esbaiz*, *esbahi*, abashed, surprised, terrified.
Esbaire nous (*pour*), to recreate ourselves.
Esbaudes, imboldened, encouraged.
Escales, scales.
Escar, estate, condition.
Escarcetes, scarcity.
Escarlate (*d'*), of scarlet.
Escaresement, scarcely.
Escarta de ble, scarcity of corn.
Escaud, damage, offence.
Esceppe, shipped.
Eschair, happen.
Eschaist, should entreat; also should escheat.
Eschant (*q'il ne le*) *de quaunt q'il fait*, that he did not regard or fear whatever he did.
Eschancier, to increase, promote.
Eschaude, smothered.
Escheent, happen.
Escheere en maladie, fall sick.
Escheere (*plus*), more dear.
Eschelement (*par*), by escalade.
Escheler, to scale.
Eschement, shunning, bending from.
Escheqir, *esquaquer*, exchequer.
Escher (*si*), if it happens.
Escheterie (*d'*) office of escheator.
Escheve, eschewed, shunned, bent or bowed from.
Eschever, to perform.
Eschever, *eschivez*, to shun, avoid, bend from.
Escheu (*plus*), more afraid.
Escheu, befallen, happened.
Eschier (*d'*), to fall down.
Eschier (*l'*), the falling.
Eschire, *eshire*, *eshuer*, *eshure*, *eschure*, *escheter*, *eschever*, to fall or happen unto, to escheat, to descend, to fall to.
Eschivement, negligence, want of care.
Eschiure, *eschiver*, *eschure*, *eschever*, *eschew*, to avoid.
Eschua, pulled down.
Eschuable, avoidable.
Eschuit, avoided, made default.
Escience (*leur*), their conscience, knowledge.
Escient (*a*), knowledge, affection, knowingly.
Esclairces, *esclarcf*, *esclarcie*, cleared up, expressed, settled.
Esclarisier, (*meus*) *le fet*, to explain the fact better.
Esclaunder, discredit, calumny, slander, prejudice.
Esclore, to shut out.
Escluse, a sluice.
Escluse de Pasques, *cluse de Pasche*, the first Sunday after Easter.
Esclux, packs, bundles.
Escocher (*d'*), to shoot.
Escomenge, *escumeng*, excommunication.
Esconduit, *escundit*, denied, rejected.
Esconse, a sconce, a dark lanthorn.
Escotchours, *eschorchesurs*, those who slay cattle for their skins.
Escoter, to pay.

Escoudirad (*s'en*), clear himself.
Escouli (*doner*), give him a hearing.
Escoundre, *escondire*, to deny, reject.
Escourcer, to run, be in force.
Escourcer (*lui*), excuse himself.
Escourcher (*pour*) *le parlement*, to shorten the duration of parliament.
Escoutement, clearly, intelligibly.
Escraier countre lui, oppose him.
Escreux, increased.
Escries, treated of, described.
Escriez (*felons*), notorious, proclaimed felons.
Escrin, a coffer.
Escrine (*j'*), I hope.
Escripre (*a fait*), has caused to be written.
Escriptura (*les*), shall write them.
Escrit, declared, proscribed.
Escrits, directed to.
Escruire, write, certify, describe.
Escrower, a scroll.
Escrowes, rolls of parchment, scrolls.
Escruire (*d'*), to write to.
Escryeurs, writers.
Escuminges (*cum*), by an excommunicato capiendo.
Escumers, pirates, corsairs.
Escune, each, every.
Escuquiteur, an executor.
Escurer, to scour out.
Escus d'or sol, a French gold coin, of the value of six shillings.
Escuser, prevent, excuse.
Escusement (*en*), in excuse.
Escutereit (*q'il*), that he would listen to.
Escuz, excuse.
Escyncilles de feu, sparks of fire.
Esee, easy, commodious.
Esement, commodiously, an easement.
Esez, eased.
Esgarde, awarded.
Esgart, *esguart* (*a l'*), judgement, discretion, award, with respect to.
Esgle, eagle.
Es joure de festes, on feast days.
Eskep, *eskip*, shipped.
Eskippeson, shipping, or passage by sea.
Eskirmye, fighting, defence.
Eskole, school.
Eskuyns, bailiffs.
Esle, *esleeuz*, chosen.
Eslevera (*tort*), shall do an injury.
Eslit, election.
Esloigne, disturbed, delayed.
Esloignement, excuse.
Esloignement (*pur*) *du payement*, for enlarging the time of payment.
Esloigner, remove from, alienate.
Esloignez, prorogued, adjourned.
Esmercient, thank.
Esmerveillux, we wonder, is wonderful.
Esmon, Edmond.

Esmovement, motion, commotion.
Esmux, *esmeutz*, moved, stirred up, disturbed.
Esne fix, eldest son.
Esourketot, moreover, further.
Espaigne (*monsr d'*), John of Gaunt, king of Castile and Leon, duke of Lancaster, &c.
Espale, especial.
Espanner le cust, to spare the cost.
Esparni, spared, exempted.
Esparpilent, branch out.
Espec, specialty.
Especefier, to specify, to contract.
Especeries, spices.
Espechement (*sans*), without disturbance, impediment.
Especiallete, affinity.
Especies, species, kinds.
Espee, thigh, leg, foot.
Espeie, *espeye*, *espye*, a sword.
Espeir (*sans*) *de partir*, without hope of separation.
Espeirer, to reserve, spare.
Espeires, impaired.
Espelotte, expeditated.
Espensies, specified.
Espenz, expence.
Esperitaux, *espeulx*, spiritual.
Espermrez (*n'*), will not spare.
Espernies, spared, exempted.
Esperons, spurs.
Esperuez (*au l'*), to the hopes.
Espve, spare.
Espeuteisoun (*pur*), pro expeditatione canum in foresta existentium.
Espeyere, a spear.
Espiantz, having in view.
Espiement, information.
Espier, to find out, to look out, observe.
Espier (*que*), who informs against, accuses
Espies, watched.
Espinaces (*deux*), two pinaces.
Espingles de beys, pins of wood.
Espises, espousals.
Espitaux, an hospital.
Esplee le huisses, bolt or lock the doors.
Esples espleits (*les*), the profits.
Espleit, needful.
Espleit (*final*), final issue.
Espleytez, *esploit*, *esplotee*, dispatched, answered, served.
Esploir, to request, to implore earnestly with tears.
Esploit (*au*), in dispatch of, in performance.
Esploit (*pur l'*) *de parlment*, for the dispatch of parliamentary business.
Esploit (*pur l'*), for carrying on, for the expences of.
Esploit (*ge Dieu l'*), whom God preserve, give success to.

Esploiterent, discoursed; performed such exploits.
Esploites (*etre*), to be expended.
Esploitez de la terre, delivered the esplees of the land.
Esploitier (*e*), and to display.
Esploitz (*les*), the services.
Espoirance, hope.
Esporouns, spurs.
Espose esposail, espousal, marriage.
Espose, married.
Espoveri, impoverished.
Espresement, expressly.
Esprovaunt (*al*), to the assertor.
Esproves, proved, marked, stamped.
Espuel, spiritual.
Espurger (*soy*), to purge, to clear himself.
Esquel d'argent, silver spoons.
Esquelles, which.
Esquers, *esquiers*, esquires.
Esquieles, ladles.
Esquunes, sheriffs, magistrates.
Essaucier, to cherish.
Esseketurs, executors.
Essent, extent.
Essentu, assented.
Essientex, very learned.
Essire (*potiùs eslire*), to choose.
Essoirent (*que ne*), that it belongeth not.
Essoirent (*come ils*), as if they were.
Essoyer, to endeavour.
Est, the east,
Estaa, stands.
Estable, a stable.
Estable (*de lour*,) under their department.
Establissement de dower, settlement, appointment, or assurance of dower, made by the husband or his friends to the wife, before or at marriage.
Establissements, acts of parliament.
Estably, settled, appointed.
Estache, a pier, pile, bridge, stake.
Estages, estates.
Estaignee, a pool.
Estalex, *estalee*, money to be paid by instalments.
Estalls, stalls.
Estalle, *estales*, tools, scales.
Estanche, a reservoir for fish.
Estantz, standing.
Estape, staple.
Estr, being.
Estat (*si a*), it is.
Estat, statute, condition, health.
Estat (*n'y*), was not there.
Estat (*en l'*), into the place.
Estature (*l'*) *estatere*, the beam.
Estatut, estate.
Estaul, firm, stablé.
Estaulx, the stalls in a choir.
Estauncher, to stop, to put an end to.
Estaunkes, stanks, dams, wears, pools.
Estauntex, being
Estclok (*son*), his clock.
Este estee (*en*), in summer.
Este (*la mi*), Midsummer.
Esteaunce, being.
Esteiant, standing.
Esteient, *estient*, *esteyent*, were.
Esteille, a star.
Esteimes (*n'*) *esteiouns*, *estiemes*, *pas*, we were not.
Esteindre, *esteyndre*, to extend to.
Esteint, becomes extinct.
Esteint de (*qu*), who were of, who sided with.
Esteint, *estent*, extinct.
Esteintz (*mort*), quite dead.
Estemaunt, *estemans*, esteeming, accounting.
Estemue, raised.
Estendreit, would be sufficient, might be extended on.
Estente, *estant*, *esteinte*, extent, value, estimation.
Estent, (*se*,) extends itself.
Estepne, *Esteve*, Stephen.
Estere ovesqu le roi en sustenance de sa corone, to stand by the king, in support of his crown.
Esterilitat, scarcity.
Esterlynge, a penny, a farthing.
Esterniers, (*en*), in sneezings.
Esterz vos, you are.
Estes, *estez*, condition, estate.
Estey, summer.
Esteyme, *estainte*, *estagne*, *estank estombz*, *esteigne*, tin.
Esteynaut (*en*), *estenysement*, in extinguishing.
Esteyndre, to extinguish.
Esteynent paye, stop payment.
Esthabelere, to establish.
Estiant, stood.
Estiemes (*ke present i*), who were present there.
Estienes, *estee*, *estei*, been.
Estiens (*nous*,) we are.
Estient, knowledge.
Estiez, stood, been.
Estile, style.
Estimures, robbers.
Estlues (*par les*), by the sluices.
Estuz, *estleu*, chosen.
Estoffer, to store, stock, furnish.
Estoier, *ester*, *estere*, *estr*, to stand to, abide.
Estoiera (*si luy*), *la chose perder*, if he should happen to lose the thing.
Estoilettes, gennets.
Estoirroit (*ne*), needed not.
Estoite, was.
Estole, a school.
Estoppe, close, confined, dark.

Estorement (*a*), in a large quantity, not by retale.
Estorer (*d*), to make amends.
Estores, stored.
Estorie (*l'*) the history.
Estors, stock, stores.
Estoua, shall be compelled.
Estouble, stubble.
Estovereit (*lui*), it would be incumbent on him.
Estourtre (*pour*), to stop.
Estoyer, happen, be.
Estoyent, were.
Estoys, stands.
Estr, being.
Estraites, derived, drawn.
Estrangent, strangle.
Estraungiez (*a luy*), hath restrained himself, hath forborn.
Estray (*j'*) *hors*, I will go out; will estrange myself from.
Estrayssaunties, straying.
Estre, been.
Estre (*l'*), the existence.
Estre ceo (*e*), and besides this.
Estre (*del bien*), of the form.
Estre (*voille*), will be, stand.
Estrectement, strictly.
Estrein, *estrain*, straw.
Estreintier, to contract, take in.
Estreiont, they stray.
Estreites (*par*), by estreats.
Estreitx, *estreats*, streets.
Estremes des molins, mill streams.
Estrepe, shipped, pulled.
Estret, stands.
Estrete (*haut*), high street.
Estreutez, extended.
Estreygnaul (*en*), in confining.
Estreynerye, tin works.
Estreyt, derived, descended.
Estreytes, limited, contracted, streightened, taken in.
Estrie (*laroun*), a notorious thief.
Estrier, writing.
Estrifs, strifes, disputes.
Estrippe, waste.
Estrithing, East Riding.
Estrivassent, strove.
Estrivens, stirrups.
Estroicter, to instruct.
Estropier, to spoil, waste.
Estudes, (*es*), in the museums, colleges.
Estues, *Estuves*, the stews, or brothel-houses.
Estuffees, *noefz*, ships manned.
Estuffement (*pur l'*) *de la terre d' Irland*, for the peopling of the kingdom of Ireland.
Estuffement, stocking, peopling.
Estuffeures, stores.
Estumers, pirates, rovers.
Esturens, shall chuse.
Estust, *estut*, *esteussent*, stood.
Esuient (*ki*), which follow.
Esuoies, hardships.
Esvos, behold.
Estroytement, narrowly, carefully.
Eswer, doubt.
Et, hath, had.
Et, into.
Etsi, although.
Eu, or, them.
Eu tens, in time.
Evanceant, promoting.
Evaunt dit (*l'*), the aforesaid.
Evangelies, gospels, sentences out of the scriptures.
Eve, *ove*, with.
Eve, *evez*, *eue*, had.
Eu (*nous e*), we have had.
Evenist, should happen.
Eventeer, burst.
Evenues, avenues, passes.
Eveoms, we have.
Evertuer (*s'*), to attend to, to employ himself, to prepare.
Everywyk, York.
Eves, deceived.
Evesche, diocese.
Eveschee, bishoprick.
Evesky, *evestres*, bishop.
Euez eues, had.
Euf, *eof*, an egg.
Evitier, to avoid.
Euix (*nous*) *desunes*, we havé above mentioned.
Eulx, *eus*, *eux*, *yeux*, eyes.
Eulx, *euls*, *eulz*, them, themselves.
Evoluer, to unfold, open, turn over.
Evount, have.
Evoytement, increase, advancement.
Eups, use.
Eure, *eur*, hour, time.
Euree, happy.
Eus, them, they.
Eus (*a l'*), to the use.
Euse, had.
Eusez, you had.
Eusoms (*nous*) *essouns*, we have.
Eutaule, octave, the space of eight days.
Eutres, *autres* (*d'*), of others, other things.
Euvres, works.
Euvent, have.
Euwes, had.
Euwez, *ewez*, watered.
Eux (*de*), of the eyes.
Euximes (*ent*), amongst them.
Euyx, *euys*, them.
Euz, but.
Ew, *ewe*, *ewes*, had.
Ewangel, evangelists.
Ewe, had.
Ewe, them.

Ewe (*entre*), betwcen them.
Ewe (*alt il*), he must undergo the water ordeal.
Ewe douce, fresh water, a stream.
Ewelles, gees.
Eweret (*molin*), a water-mill.
Ewerwick, York.
Ewes, *ewoz*, waters.
Ewez, watered.
Ewes (*en*), in ponds.
Ex (*d'*), from the river Ex.
Exaltez, raised.
Exaucement, advancement.
Excitation (*al*), at the intreaty, motion, instigation.
Exciterent le assise, encouraged the assise.
Excusation, excuse.
Excuserez (*ne*), will not reproach.
Excussion (*potiùs execussion*), execution, production, proof.
Exec, exception.
Exesuc, execution.
Executours (*les*), those who are to put in execution.
Execyte, excited.
Exeketour de besoignes, charged with the affairs.
Exenger, exercise.
Exersant, exercising.
Exerwick, York.
Exes, eyes.
Exi, any, also.
Eximons, exempt.
Exon, excuse.
Expause, *expousez*, suggested, represented.
Expecterait, should abide.
Expleiter (*facez*), cause to be dispatched, exercised, employed.
Expleiterent, discoursed, acted, performed.
Exploit, *esploit*, dispatch.
Exploiter, receive the profits.
Exprumez, expressed.
Extentz, extinguished.
Exter, to execute.
Extienter, to extinguish.
Extimation, an estimate.
Extinsement, *extientisement*, *exteynsement*, extinguishing.
Extorquer, to put out by force.
Extorter, to drive off, avoid.
Extrelins, people of the north.
Extremiser, to administer the extreme unction.
Ey, a watery place.
Eyaunce (*en*), in ease.
Eydance, evidence.
Eyde, help.
Eyde, aided.
Eye (p), by aid.
Eyens, but.
Eyer (*une*), an ewer.
Eyettee, ye have.
Eyme nous, loves us.
Eandegre de meyne (*de son*), of his own head.
Eyne date (*d'*) of earlier date.
Eynesce parcener, eldest partner.
Eyuest, eldest.
Eynt (*ne*) *damage*, shall receive no damage.
Eyntz, therein.
Eynzne feffment, ancient feoffment.
Eynz q, when, before that.
Eyr, the air.
Ezres, heirs.
Eyse, ease.
Eysement, easement.
Eyt, eight.
Eyt, shall be, will be.
Ez, in, within.
Ez chouses, in the things.
Ezi, his.
Explaye, spoiled.

Faat (*le*), a measure called a fat.
Fablesse, weakness.
Fabloir, to devise stories, to prevaricate.
Face (*premere*), prima facie.
Facentz leve, causing to be levied.
Faceo (*ceo*), has done it.
Fache de l'eglise (*en*), in the face of the church.
Fachon de home, human shape or form.
Facion, fashion.
Facion (*avaunt le*), before the making.
Fact, committed.
Faez, make, made.
Faicez faire, cause to be issued.
Faici, did, sent, dispatched.
Faict, did.
Faicte de memoire (*a*) through forgetfulness.
Faie, faith.
Faiere, to do.
Faict, *faistes*, made.
Faile, *faillie*, *faillies*, ended, expired.
Faillent (*y*), be omitted.
Failler, to disappoint.
Failler (*fist*), caused to be omitted.
Faille (*soit*), breach has been made.
Faillons, neglect.
Faily, omitted.
Fain, hay; also beach wood.
Faint, committed.
Fairaginous, maslin, or mixed corn.
Faire, to pay.
Faire en chose, to deal in matters.
Faire son ley, wage his law.
Faire le difference (*a*), to end the difference.
Fairie, *fairez*, to be made.
Fairs de Germ. the marts in Germany.
Fait en fait, done in deed.
Fait en, already.
Fait (*sur le*), ipso facto.
Fait gaine, doth gain.

Fait (*ne*) *my oublier*, it is not to be forgotten.
Fait soy (*se*), is done, may be done.
Fraiterie (*par*), through idleness, laziness.
Faitours, factors.
Faitours, slothful people.
Faiture, *faitours*, making, doing.
Faitures, evil-doers.
Faitz, *fait darmes*, feats of arms.
Faiz, *fais*, deeds, facts, business.
Faix, times.
Faix, a burthen, load.
Faix, false.
Faixime, deceit.
Falaize, a bank or hill by the sea-side.
Falast, *fally*, failed, done wrong.
Falent (*ki*), which ought to have been.
Fallent (*qui vos*), which concern you.
Falese, *falise*, sands, rocks, cliffs.
Faleste, a capital punishment inflicted on a malefactor on the sands or sea-shore; perhaps by laying him bound on the sands till the next full tide carried him away, or by throwing him from the cliffs.*
Fali, Philip.
Falx, false.
Fam, hunger.
Fame, wife.
Familier de la chauncery, a clerk belonging to the chancery.
Famuler, *familiar*, one of his household, a familiar, intimate friend, a servant.
Fanez esmailez, fanes enamelled.
Fanons (*deus*), two fannels or maniples.
Fany (*en*), in the manner.
Fany (*ove le*), with the manner.
Faonier, to fawn.
Far, *fare*, to go, to bid farewell.
Fardel de terre, a fourth part of an acre.
Fare, (*fut*), was done.
Farou, pigged, farrowed.
Farroms aver, we will cause to have.
Farce, a farce.
Fas (*vous*), do unto you.
Fasoms (*nous nous*), we will make ourselves.
Fast, was.
Fasun! (*ne*) *mes*, do not set.
Fat, fate, destiny.
Fat, does.
Fate, *fatz*, made.
Fate (*poi*), little done.
Fatou, a factotum.
Fau, a beach-tree.
Faucer choses, false things.
Fauches, mowed, loppod.
Faude, *faulds*, a pen or fold for sheep.
Faverer, February.
Favie (*a*), to do.
Favissent, favour.
Fauisses pleints, false plaints.
Faulra, will fail.
Fault (*a*), want of.
Fault enviran, comes to, amounts to about.
Faultant, making default.
Faultez, failed of, falsified.
Faulton, want.
Faultont, complaining.
Faunt (*en cy*), so born.
Fause, damaged, spoiled.
Fauser, *fauxere*, *faucher*, to falsify, counterfeit, forge.
Fausecours, *fauxiers*, counterfeiters, falsifiers.
Fausine, falsity, deceit.
Fausinerie, *fausserie*, the crime of falsifying or counterfeiting the coin, or great seal.
Fausissons, should make default.
Faust, fait, was made.
Faustrer, to deceive.
Faut, fails.
Faut (*la*), the end.
Faut a veir, we must, or it is needful to see.
Fautoures, slothful, idle people.
Fautours, abettors.
Fauxa mie, he condemned.
Feymes, we caused.
Fayn, hay.
Fayn, a weazle.
Faynent, pretend.
Fayre, four.
Faytours, vagabonds.
Faz, make.
Fe, fee.
Feablement, bona fide.
Feals, faithful.
Feare, to make.
Feasors de draps, cloth-workers.
Feat, done, deed.
Feat (*bien*), good deeds.
Feat (*e*), and it is to be.
Feaw, fire.
Feble (*si*), in so poor a condition.
Febles, weakness.
Fec, fire.
Fecest, made.
Fecions (*com nos*), as we would do.
Fedz, *feetz*, foes.
Fee (*a*) *seyser*, hath caused to be seised.
Fee (*d'ase*,) of any woman.
Feel et leel, faithful and loyal.
Feelement, faithfully.
Feer, fear.
Feer (*a reasonable*), at a reasonable price.
Fees (*taunt*), as often.
Feet, *feat*, made, done.
Feetes, deeds.
Feez, *featz*, pensions, fees.
Feez (*autre*), heretofore.
Feez (*plusurs*), several times.

* Britton 257. b. Mir. 248. Hengham 87. Cowel.

Feffre, enfeoff.
Fei, faith.
Feibles (*les plus*), the worst.
Feile, daughter.
Feimes, *feismes*, caused, made, took.
Feindront (*qe se*), who shall make excuses.
Feine, *fene*, hay.
Feint, pretended, feigned, slackened.
Feires, fairs.
Feirte, fealty.
Feisiens, we did.
Feisimes covenentes, entered into covenants.
Feisours, makers.
Feissent (*jurees se*), should be sworn.
Feissent (*s'ils ne*), if they should not make.
Feistis (*que vous*). which you did.
Feit (*unt*) *entendaunt au peuple*, have made the people believe.
Feivre, fever.
Feiz (*une*), once.
Felasie per fault (*potius fault*), by leaping from, by being cast from the rocks or cliffs.
Felesheppe, fellowship.
Felon neusement, feloniously.
Felypp, Philip.
Femes liverer, we caused them to be delivered.
Fenal, the season for cutting hay.
Fendue, struck.
Fene, hay.
Fentua, fled.
Feoblesce (*la*) *de lour poiars et sens*, the weakness of their abilities.
Feor, to make.
Feous, faithful.
Feoson, manner, degree.
Fer, but.
Fer (*a*), to make, repair.
Fer (*a*) *de guerre*, in a warlike manner.
Ferdekyngs, firkins.
Fere, *ferre* (*a*), to do.
Fere, to be mad, distracted.
Ferges (*en*), in irons, in fetters.
Feriage, a payment for crossing a ferry.
Feries, feasts, festivals.
Feries de Pasche, the festival of Easter.
Feriours, *ferrors*, assaulters.
Ferlinges (*de*), of a farthing.
Ferme, confirms.
Ferme pees, firm peace.
Fermail crois, vermillion crosses.
Fermaille, a buckle, clasp, button, also a chain, enriched with pearls, precious stones or enamel, with which ladies enriched their head-dress, to keep it fast.
Fermatx, shut up.
Fermetex, farms; also securities, strong holds.
Fermentat, *fermeme*, confirmation.
Fermex, fastenings.
Fermistier, wage.
Fermure, festening.
Fer nist sa ley, performed or made his law.
Feron, will act.
Ferrant (*seonc la*); *a la ferant*, according to the proportion.
Ferrement, ironwork.
Ferrent (*le*), did it.
Ferri, Frederic.
Ferriemes, we will cause.
Ferreur (*south*), under lock.
Ferreure, the shoeing of horses.
Ferthyng, a farthing.
Fertre, shrine.
Ferve, great heat.
Ferue, stroke.
Ferum, firm.
Fesables, to be made.
Fesauns, *fesantz*, pheasants.
Feses, done, performed.
Fesistres, you did.
Fesomes, *fessuns*, we make, do, perform.
Fest, *feste*, feast.
Fest (*poent aver*), might have made.
Feste, do.
Festivables (*tenent*), hold as festivals.
Fesure, make, making.
Fet, *fetes*, was, had, been, caused, done, made; the fact, deed, business.
Fet pas (*ne*), does not make.
Fet a demander, was to be demanded.
Fete d'archerie (*le*), the excise of archery.
Fetes, kept, watched.
Feth, covenant, faith.
Feth (*ly seynt*), be made to him.
Feth (*tote*), always.
Fetz, deeds, grants.
Feve, zeal, late.
Feverez, February.
Feves, pulse, beans.
Feville (*sus la*), upon the leaf.
Fevre (*en temps de*), in the time of the fair.
Feu, chimney hearth.
Feu, was.
Feuaile, *feucile*, fewel.
Feud, a fee or reward.
Feu (*argent*), pure silver.
Feur (*au*), after the rate, in the fashion of.
Feute, *feust*, should be made, was.
Feur (*seu*), had fled.
Feurent tombes (*que*), who frequent tombs.
Feurs, manners.
Feussiens, have been.
Feust, act.
Feust, fast.
Feust, wood.
Feust (*sur le*) *de la croys que touchons*, on the cross itself which we touch.
Feust nostre fitz, our late son.
Feut, son.
Feute, fealty, allegiance.
Feux, late.
Fewere, to dig.

Fey, faith.
Fey, *feyets*, deeds, actions.
Feym, *feyn*, famine, hunger.
Feymes (*qe nus*), as we did.
Feyn, a fine.
Feyn, a bay.
Feyne, feigned.
Feyne (*se*), pretend, scruple, delay.
Feynt feff, a collusive feoffment.
Feynt (*que ent se*), which has been made.
Feyres, fairs.
Fez, fees.
Fez, actions, done, made.
Fez (*sun*), his son.
Fez (*a la*), sometimes.
Feze (*treis*), three times.
Fezer (*a*), to make.
Fiables (*gentz*), persons of credit.
Fiancer (*per*), by pledging his faith. This was allowed a poor man, or a foreigner, who brought an action, because he could not find pledges to prosecute.
Fianchie, trusting, confiding in.
Fianssassent, should make sure, should pledge.
Fiasment tant, did as much as.
Ficher, to fix.
Fidz de chevalers, knights' fees.
Fie, fee, salary.
Fie (*de*), of the fee.
Fie (*en*), in fee.
Fie par fei, affirmed by his faith.
Fiebles, good, fair, honest.
Fiee, time.
Fief (*est*), is possessed.
Fielle, daughter.
Fiene, hay.
Fient, trust.
Fier (*ne poems*), we cannot trust to.
Fier (*armures de*), armed with helmets.
Fier de guerre (*a*), as in time of war, in a warlike manner.
Fiere en ley, brother-in-law.
Fierent (*le*), made, did it, caused the same.
Fierges, fetters, irons.
Fierment ancore, fast anchored.
Fieront (*que rein n'*), who did nothing thereupon.
Fiertre (*le*), *feretrum*, a case in which the body of some saint, or reliques, was laid up, a shrine, a bier.
Fiest (*tiel*), such business.
Fieu de chevalier, knight's fee.
Fieuz, *fiuz*, *filh*, son.
Fiew, fire.
Fiew tenants, free tenants.
Fiez, fees.
Fiez, time, times.
Fiblez, weak, feeble.
Filace (*en*), on the files.
Fil del ewe, middle of the water.
File, thread.
File (*haut*), high tide.
Fileresses, spinners.
Filg, son.
Filicer, filizer.
Filles, snares.
Fillie, *filie*, daughter.
Finable (*pees*), final peace.
Finablement, finally, totally.
Finance, fine, subsidy, ransom.
Finant, ending.
Finaunce (*pur*), for fines.
Fineez, ended.
Finenesse, fineness.
Finies, fine.
Fins, differences, determinaflons.
Finz, son.
Fiont, made.
Firger, to put in irons.
Firmaille, a link, a chain.
Firmalz, locks.
Firmre, *firmur*, a pound, a close place.
Firmite, a strong hold.
Firont (*lui*), *entendere*, make him understand.
Fis, caused.
Fis (*qua jeo*), which I did.
Fischez, fixed.
Fissechiens, physicians.
Fisend, should make.
Fist (*se*), was made, was in force.
Fit, paid.
Fit ascavoir, it is to be known.
Fites, sons.
Fitz (*les*), the fees.
Fiuz, *fiux*, *fiz*, son.
Fiuz, done.
Flair, *flaxe*, to blow, blown.
Flecher, a bowyer.
Flescher, *fleschier* (*sanz*), without swerving, without favouring.
Fleuret (*le*), the foil or foin.
Fleurons, flowers.
Fley, a river.
Flich, *floche*, an arrow.
Florein d'or, a florin of gold.
Florons, *flourons*, flowers.
Flos, *flot*, a flood, a river.
Flot & reflot, ebbing and flowing.
Flot (*un ebbe et un*), one ebb, and one flood.
Flote, fleet.
Flotter, to float or swim.
Flotus, little vessels.
Flour Delys (*les quatre*), the four princes of the blood, viz. Philip duke of Orleans; John Lewis duke of Anjou; John, earl of Poictiers, afterwards duke of Berry; and the duke of Bourbon: four of the hostages left in England, for the performance of the treaty of Bretigny, signed the 8th of May, 1360.
Foder, to feed, to dig.
Foe sul Deu, except God alone.

Foer, market-price.
Foer, to dig.
Foer (*al*), in like manner as.
Foercher par essoigne, to fourch by essoign.
Foes, *foez*, fees.
Foethe (*deus*), twice.
Foial (*home*), faithful man.
Foialle entent, true entent.
Foials, subjects.
Foialtee, fealty.
Foiance, digging.
Foier, to do, to enjoy.
Foies, digged.
Foiet (*toutz*), always.
Foieth, *foitz* (*a la*), sometimes.
Foil del coket, letter of cocket.
Foill, a counterpart of an instrument.
Foilles, *foil*, leaves, sheets.
Foinesun, *founestoun* (*en temp de*), the season when the hinds bring forth their young, fawning-time, fence-month.
Foins (*come ore*), as we now do.
Foir (*a la*) *accqras in*, in manner of, resemblance of.
Foite de la record (*ad le*), at the foot of the record.
Foites, deeds, writings.
Foith (*a tant de*), as often.
Foith (*un*), once.
Foison grant des vitailles, a great quantity or store of provision.
Foit (*bonie*), good faith.
Foit notoire, openly done.
Fole, *fol*, foolish, bad, foul.
Folement, foolishly, indiscreetly.
Folies, leaves.
Foly, foolishness, ignorance.
Fomol appel, a vexatious appeal.
Fomollement, vexatiously.
Fonde de lettres, in virtue of letters.
Fonde (*suffisant*), sufficient power, authority.
Fonge dent, fore-tooth.
For, *forse*, *force*, but.
For sulciaunt, excepting.
Forbanir, to banish.
Forbare, excludes.
Forboins (*es*), in the suburbs.
Forc (*un*), a box.
Forche, force.
Force, force, form, virtue of.
Force du realm, the strength of the realm.
Force (*en notre*), in our army.
Force (*a*), of necessity.
Force leo (*est un*), it is a hard law.
For ceaus, but those.
Forhe, force.
Forclorra, shall bar.
Forclorroit, should bar.
Forclos, forecloses, excludes, deprives, bars; estopped.
Fore (*en la*), in the market-place.
Forein, *foreigns*, forcigners.
Fores, forests.
Fores (*les*), the customs, privileges, forms.
Foreingent, adjudged.
Foreyn (*en*), out of the lord's jurisdiction.
Forf, forfeiture.
Forface, forfeit.
Forfist, forfeited.
Forfit, *forfait*, offence.
Forger (*poient*), may frame, contrive.
Forgerent, have contrived.
Forgoore de faire, set about making.
Foringes, ousted, forejudged.
Forejuge, forejudged.
Forjurer, to forswear, abjure, renounce.
Forjure (*a*), to be barred.
Forjuogeable, disabled.
Forke, but.
Forment, grain.
Forment, greatly, forcibly.
Formenteles, formal.
Fornage (*a*), for fournage, for the oven.
Fornissements, *fomeismes*, framing.
Fornissors, framers.
Forgist (*se*), is performed, executed.
Foront, shall cause.
Forrein circle, outward circle.
Fors (*al*), with force.
Fors de la forest, out of the forest.
Fors desquelles lettres (*par*), by force of which letters.
Forsablement, forcably.
Forsclore, to foreclose, to seize.
Fors (*faisons*), bind ourselves.
Forselet, *fortelet*, *forturesce*, a hold, fortress, fortlet.
Forsjuge (*pas* (*ne*), ought not to prejudice.
Forsprendre, exception.
Forsprent, excepts.
Forspris, except.
Forsuant, press, compel.
Forsuire (*qil*) *la courte*, that he be forejudged by the court.
Fort a un clyent, hard upon a client.
Fort (*il se ferroit assez*), he will enter into a sufficient obligation.
Forte chose, a hard thing, case.
Fortunement, perhaps.
Forveiast de rienz, mistake any matter.
Forveier hors de lyne (*sil vorroit*), that he should stray out of, deviate from the line; should degenerate from.
Forz, strong.
Fos, but.
Fosse, a ditch, pond.
Foster, a park-keeper.
Fotiels, foolish.
Fouage, chimney-money; a tax imposed by the black prince in Guienne.
Fovagle, *foveant*, digging.
Fouayne, a pit; digging.
Fouler, *fowler aux pees*, to tread down, to tread under.

Fouler, to dig, to cleanse.
Foulle, oppressed.
Foullons, *fullons*, fullers.
Foundemont, foundation.
Foundez, foundered.
Foundue, melted down.
Founs de baptesme (*de*), from the font.
Fount, belong, do, perform.
Fount (*au*), at the bottom.
Fount adrere, are in arrear.
Founz, fountain.
Fovoyle, *foueil*, fewel.
Four, a baking-oven.
Fourche, to delay, put off.
Fourches, stocks, pillory.
Fourme, baked.
Fourmee, informed against.
Fourmr, form.
Fourmes (*robes*), robes made up.
Fous nastres, fools born, idiots.
Fouts, it behoveth.
Fow (*quarer*), dug in his quarreys.
Fowalles, *fovoyle*, *a un astre*, fuel for one chimney.
Fower, to cut down, to dig.
Foy (*en bonne*), in bona fide.
Foyables, faithful.
Foyder, to dig.
Foyne, *foine*, a pole-cat, a wood-martin.
Foys (*per*), by turns.
Foys (*pur*), the agreement, or covenant.
Fra (*ne*), will not make.
Frache, freight.
Fraile, a basket.
Fraine, a bridle.
Fraint, should do.
Fraiz, *frais*, *fruez*, charges.
Fruct, frank tenement.
Frankises, franchises.
Frans, free, quit.
Frap de gents (*trop de*), too great a retinue of people.
Frarie, fraternity.
Fraude, foldage.
Frauldres, frauds.
Fraunche ley, *libera lex*, frank or free law; so called to distinguish men who enjoy it, and whose best and freest birthright it is, from them that by their offences have lost it, as men attainted in an attaint, in a conspiracy upon an indictment, or in a premunire, &c.
Fraunchese, franchise.
Fraunchement, *frauchment*, freely.
Fraunchise, freedom, liberty.
Fraunk, *sengler*, a free boar.
Fraunk tor, a free bull.
Fray, made.
Frayent (*quils*), that they would act.
Frea, will perform.
Frealte, frailty.
Freceis, a Frenchman.
Freatz (*ne*), will not make.
Frees, brethren.
Freez, *frees*, *fres*, expences.
Freetz, will do.
Freines, *fresnes*, young ash-trees.
Freintes, broke open.
Freit, freight.
Frenges, fringes.
Frere de bast, a bastard brother.
Freris, *frerez*, brethren, friory, brotherhood.
Fresche, fresh.
Freskement, *friquement*, *freshment*, directly, lately.
Fresque, sudden.
Frettez, *frette*, freighted.
Freyetes, broken.
Frie (*le*) *des salmons*, the fry of salmons.
Friens, should do.
Frier, *fryer*, brother.
Frische, fresh.
Froise, broken in pieces.
Froit, frost.
Froms, we will make.
Frospris, except.
Frounts, they make.
Fruez, fruits.
Fruise la pais, to break the peace.
Fu, I was.
Fu, fire.
Fuaunts, refusing.
Fuax, false.
Fuayl, *fouoyle*, *fowalles*, fuel.
Fue, fire.
Fueer, fled.
Fuelle, a daughter.
Fuer, to drive away, chase.
Fuer, flight, fled.
Fuer, to avoid.
Fuer (*au*) *du temps*, in proportion for the time.
Fueront, were.
Fueust, was.
Fugeree (*satain*), figured satin.
Fui, were.
Fuison, *foison*, plenty.
Fuison (*grant*), great quantity.
Fuist, strong wood.
Fuit (*ne soit*), be not made.
Fuitz (*que se port pur lei*), who pretends to be the son.
Fullours, *fullons*, *foullons*, fullers.
Funche, *fairie*, a free fair.
Funder, to ground, found.
Fundement, foundation.
Fundements, chief rules, grounds.
Funt, do.
Fur (*les*), the gallows.
Fur, *furoms*, were.
Furcheses, forks.
Furet, a ferret.
Furier, February.
Furit, was.

Furk, but.
Furmage, cheese.
Furment, wheat.
Furni, performed, executed, given, framed.
Furnisez, execute, dispatch.
Fuse, sang, blood-shed.
Fust, he fled.
Fust, fuz, wood.
Fust, fuz (*croys de*), a wooden cross.
Fust, should be.
Fust (*avoite*), had been made.
Fustage (*arbres*), old high trees of the forest.
Fusunt (*ne*), were not.
Futz, fustz (*gros*), great trees, timber.
Fut (*mettre a*), set fire to.
Futyf, a fugitive.
Fuums, were.
Fuyeur, a run-away.
Fuyt, fute, flight.
Fuiz, fuyz, son.
Fyere (*ne poems de tut*), we cannot at all confide in.
Fyes, fyez, times.
Fym, dung.
Fyn, end.
Fynable disheritance, to the utter disinherison.
Fyne (*del osse al*), from the bone to the fin.
Fynes, fineness.
Fynnen, a fountain.
Fyrene, made.
Fyrent, confided in.
Fyw (*mys a*), lighted up, set on fire.

Ge grce, grace, favour.
Gat, glove.
Gnt, gund, great.
Gree, grant, agreement.
Godount, that, then.
Gueres de value, of any value.
Gage (*en*), in mortgage.
Gager, to deposit, to engage or undertake, to wage.
Gagerie, gagiere, pledge.
Gagez, guges, sureties, fees, wages.
Gagez (*eient*), have any wages.
Gahin, gaing, gaaing, the autumn.
Gaigeries, gaigenes, impignorations.
Gaies, gaiges (*lour*) their salaries, wages.
Gaigier (*de*), of gain.
Gaigiers, hirelings.
Gaignage, gaignere, wainage.
Gaignarie, gainery, husbandry.
Gaigne (*nostre*), our own advantage.
Gaigner, to obtain by husbandry.
Gainers (*a*), to be gained.
Gaignes (*des*), the gains, profits.
Gaigneurs, the captors.
Gaille, a jail.
Gaine, gaignent (*que*), who plow or till.
Gainure, tillage.
Gairenner (*count de*), earl of Warren.
Gaistement, wast.
Gait, guaite, (*fist*), kept watch.
Galbelton, Galbetten.
Galee, galeis, gally, gallies.
Galeys, France.
Galeys, Calais.
Galeys (*Guill. de*) William de Waleys.
Galles, Galeys, Wales, Welch.
Galoges, galoches.
Galoie, galee, galley.
Galynes, galines, cocks, or capons.
Ganer, to gain.
Gantier, a glover.
Gants, gaunts, ganz, gloves.
Ganudir, to defend, maintain.
Gar, guards.
Garant, a warrant, commission.
Garauntage, warranty.
Garc de chre, warranty of charter.
Garbes, sheaves of corn.
Garbs, cloathing, vestures.
Garceons, servants, journeymen.
Garda la, the award.
Garde (*la*), the wardship, the judgement.
Garde (*la*) *Farndon*, the ward of Farringdon.
Gardein, constable.
Garden (*seigneur*), lord keeper, lord warden.
Garder (*les*), the judgement.
Garder, to watch, preserve, to take care of, to cultivate, to observe.
Gardes (*Cur de*), court of wards.
Gardes voustre challenges, look to your challenges.
Gardiouns, take care.
Gardior, guardian.
Gardure gardeiny (*en le*), in the keeping.
Garee, fallow.
Garee (*terre*), old fallow-ground.
Garesun, recovery.
Gareison, a reward, a support.
Garenner, to prohibit.
Gargaus, chattering.
Garignier, to till.
Garinthes, the furr of the legs of hares.
Garisoun, garneison, garnisons, garny, the providing for the castle, &c.
Garisun, garison, support, maintenance, revenue.
Gariz, garis, garri, restored to health.
Garnementz, garments.
Garner, garnisher, to warn, summons.
Garnesie, Guernsey.
Garnestor garnison (*le*), the officer who was to provide victuals, arms, &c. for the support and defence of a castle, &c.
Garnestour, garnesture (*en sa*), in his office of garnestor.
Garnesture de chatel (*en*), towards supplies for the castle.

Garnestare du chastel (*en la*), within the precincts of the castle.
Garnier (*sans*), without first acquainting him.
Garnis, paid.
Garnishement, *garnissement*, *garnishant garnysseint*, warning, summons, notice.
Garny, informed, to have notice of.
Garny de sa maladie, cured of his illness.
Garniz, provided.
Garsant, protect.
Garrant, *quarant*, forty.
Garrantie, a justice's warrant.
Garrantizables, are to be warranted, proved.
Garranty, *garrenty*, warranted, proved.
Garren, *garene*, *garreyn*, *garrayn*, a warren.
Garreteres, garters.
Garrison (*le*) *imprist*, took upon himself the cure.
Garsettes, girls.
Garsonnet, they draw.
Gart, keep, perform.
Gart (*vos*), preserve you.
Garth, a yard, garden, or backside.
Garzon a pee, a foot-boy.
Gascher, to row.
Gasconche, Gascony.
Gastel (*le*), wastel bread.
Gaster, to waste.
Gastine, waste ground.
Gastors, wasters.
Gasz, wastes.
Gat, a gate.
Gaul, garlick.
Gaule haut, gule of August.*
Gault, *gaut*, a forest.
Gauterent, *gaiterent*, intended, lay in wait.
Gauntz, gloves.
Gaway, Gallaway.
Gaweleynes (*le corps de*), the persons of the people of Gallaway.
Gayguasmes, gained.
Gaynage or wainage, all the plow tackle, or implements of husbandry, of the villain, countryman, or ploughman, which were to be privileged from distresses or seizures for fines or amerciaments; for if they were distrained or seized on such account, he would be disabled from carrying on his employment of agriculture, contrary to the fundamental liberty of subjects, who were so to be mulcted, fined or amerced, as should punish them, but not break or undo them.
Gayne (*hors de*), out of the sheath.
Gayner, to till.
Gaynerie, *gaynure*, tillage or tilling, or the profit raised by tillage.
Gaynours, the tillers.
Gayter la mort, to wait for the death.
Ge suy (*que*) *et ceray*, that I am and shall be.
Geans, people.
Geast, a guest.
Geaule, a jail.
Gehennet, to avoid.
Gehis (*eient*) *de eux mesmes*, have the government of themselves.
Gehis (*il est*), he is forced.
Geist, lies, resides.
Geist (*lour*), their accommodation.
Geitant, wasting.
Geldables, liable to be taxed.
Geleyns, *gelyns*, hens.
Gelosie, fondness.
Gelure (*duc de*), duke of Gueldres.
Geners, kinds, species.
Genices, heifers.
Gente, *genx* (*ma*), my people.
Gentez (*les*) *du people*, the parliament.
Gentieux hommes, gentlemen.
Gentifeme, a gentlewoman.
Gentilesse, the nobility.
Genulera, shall kneel.
Gentz de mestire, masters of trades.
Geole, a cave, a prison.
Geolier, a jailer.
Gerdin, a garden.
Gere, war.
Geresie, *Gereseey*, Jersey.
Geril, disorder.
Gernettes, garnets.
Gernisons, garrisons.
Gerpit, avoided, abandoned.
Gers (*qils ne doutent*), that they are not afraid to take.
Gersonent (*ne*), do not rack.
Geskerech, the month of August.
Gest, yest.
Gest, *gette* (*le*), the behaviour.
Gesta, carried away.
Geste, a guest.
Gestez, wasted.
Gestoient somons, who had been summoned.
Get (*a*), hath begotten.
Getteis, *gets*, jettys.
Getter ceo la en hochpot, to throw into hotchpotch.
Getter, *geter* (*le*), to secure, to indemnify him.
Gettere, to cast.
Gettez de feyn, cocks of hay.
Gettu, thrown, cast.

* Dr. Brady says he could not tell what was meant by *l'andemaigne Gaule haut;* but I apprehend it is the day of the date of the record published by him, and that that day was the 2d of August, being the morrow after the *gule of August*. Brady, vol. II. p. 199.

Geynes, sheaths.
Gharand, warrant.
Gide, guide.
Gie, governed.
Gienz, people.
Gieu, *Geu*, a Jew.
Gie, *gi*, I, I myself.
Gihall, Guildhall.
Giloux, jealous.
Gipserrynges, harness for girdles.
Girome, Jerome.
Girra, shall lye.
Gisarme, a military weapon like a lance, or long bayonet.
Giser (*pur*) *lui overt*, to lay him open.
Gist (*qi*), who is buried, who lies.
Gistance, casting up.
Gistes, cast up.
Glebe, a piece of earth or turf.
Gleyves, swords, bills.
Glises, churches.
Glosgu, Glascow.
Glyn, a valley.
Godetz d'or, goblets, mugs of gold.
Gombre, rejoice.
Gomme, gum.
Goor, a watery place.
Gopiele, *gopil*, *goupil*, *gupil*, a fox.
Gores de seney, days of recreation.
Gorre, a sow.
Gors, *gorse*, *gorts*, a stream or pool, a watery place, a wear, a fish-pond, a ditch, a dam, a gorce.
Got, a sluice, drain, or ditch.
Gouette, a drop.
Goule d'Aoust, the gule of August, or the first of August.
Goune, gown.
Gourt, a watery place.
Gous, a dog.
Goy, God.
Goy, lame.
Grace de founder, leave to found.
Graera, will agree to.
Graffer, a notary, a scrivener.
Gram (*en*), in grammar.
Gramaci, great mercy.
Grant, *graunt*, *graunts*, great.
Grant, when.
Grant seal, great seal.
Grant bank le roy (*les justices deu*,) the justices of the king's high bench.
Grante (*le teygne*), take it for granted.
Grants, *grauntez*, granted.
Grantterries, nobles of the realm.
Grantz, *graunts*, *grauntez*, *graints*, great men.
Grase, *grass*, grace, favour.
Gratentement, readily.
Gratiffie (*ont*), have approved, confirmed.
Grava, *grave*, a grove.
Graver, to grieve, aggrieve.
Graument, a great deal.
Graundour, extent, size.
Graunta (*il*), he promised, agreed.
Grauntez, grants.
Grauntiers, *grannterz*, to be granted.
Graynour, *granour*, great.
Gre, *gree*, favour, grace, concern.
Greable, voluntary.
Greantz, we grant.
Gredirnes, gridirons.
Gree, *grey*, consent, satisfaction, accord, agreement.
Gree, *gre* (*de*), voluntarily.
Gree (*par*), by agreement.
Greei, agreed to.
Grees (*des*), of the parties aggrieved.
Gref, grievance.
Grefs, grievous.
Greignour, *greynour*, *grendres*, *greindre*, more great, greater.
Greit, greeteth.
Greiver, to affect.
Greivure, *greverement*, more grievous, heavier.
Gremercy, great mercy.
Greo, *gres*, satisfaction.
Gres, great.
Gresle, filled.
Gresseame, fine.
Greve nent (*ne*), there is no damage.
Greve (*en*), in trouble, affliction.
Grevoir, to aggrieve.
Greyn (*boef peu de*), a corn fed ox.
Greyne, *greigne*, grain.
Grie, agreement, satisfaction.
Grief, grievance.
Griefs, *gries*, grievous.
Grieues, on the shores, banks.
Grieux, *Griew*, *Grigois*, Greek.
Grigner, greater.
Grith, peace.
Grithstole, a sanctuary.
Gro, *grosse*, fat, great.
Groinure teumain (*en*), in greater testimony.
Gromet (*un*), a sea-faring boy.
Groos (*en*), in gross.
Gros homes, men of quality.
Gros nature, general nature.
Gros point, principal point.
Grossement ensient, great, quick with child.
Grosseours, bickerings, affronts, ill-will.
Grossier, to grow big.
Grossement, generally.
Grossome, a fine at entrance.
Grotz, groats.
Grume, *grun*, all sorts of grain.
Guannys, husbandmen.
Guarison, the cure.
Guascon, a Gascon.
Guay, *guey* (*au*), to the key of the river.
Guect apent (*omicide de*), wilful murder.
Gueir, to take care, to see.

Guel ceux, (*au*), to the care of those.
Guelle, throat.
Guerdon, a bargain, a reward.
Guerdonnez, rewarded.
Guerniers, *garniers*, garners, storehouses.
Guerperent p *mort*, left him for dead.
Guerpi, *guerpyes*, *gueppe*, abandoned, left.
Guerra, shall plead.
Guerres, hinders.
Guerritt, (*sil en*), if he be cured of it.
Guerroier, *guerryer*, wage war, go to war with.
Guertent, think.
Guertoient, forsake.
Gueyement, government.
Gueyet, governed.
Guf, a pit.
Guiayne, *Guiaigne*, Acquitain.
Guideront, thought, intended.
Guier, *guyer*, to guide.
Guier, guided.
Guierent (*se*), conducted themselves.
Guildable, gildable, not within any franchise.
Guindors, governors.
Guisarme, a military weapon made like a lance.
Guise, *guyse*, method.
Guise (*a*) *de marchant*, as a merchant.
Guiters, holes, gutters.
Gule, the beginning or first day of a month.
Gurge, a pond or pool.
Gurneroit, warned.
Gus, a beggar.
Gustera, shall taste of.
Gurre, *guer*, war.
Guyement, guidance, government.
Guyen (*Moner. de*), John of Gaunt, duke of Acquitain.
Guyet, *guyer*, governed.
Guyse, fashion, manner.
Guytemens de voyes et de chemins, destruction of roads and highways.
Guyse (*la d'armes*), the custom; law of arms.
Gwer, war.
Gwyene, *Guienne*, Acquitain.
Gylour, one who deceives the court.
Gypwyx, Ipswich.
Gyrues, Jews.
Gyser, to lie down.

Ha, hath, have.
Haber, to have.
Habergiez, haubergers, a coarse sort of cloth.
Habido, Abingdon.
Hable, able.
Habler, to enable, to render a person capable of inheriting, to restore.
Hables, havens, ports.
Habundent, abound.
H'cer (*a*), to harrow.
Hacher, to plunder.
Haches, *hace*, hatches.
Hada, a haven, port.
Hagu, a house.
Haies, hedges.
Haies, heys.
Haineux, inimical.
Haiour, hatred.
Hairassera, will harrass.
Haiter, *haitier*, to rejoice.
Haits, *haitie*, *heitiez*, lively, active, hearty, in health.
Hakett, agate.
Halberge, an inn.
Halt saine, high birth.
Halx princes, high, noble princes.
Halz has, *fet*, has made.
Ham, a village.
Hamele, *hamelle*, a hamlet.
Hamelx, *hamelle*, hamlets.
Hames, haime.
Hanap, hamper, cup.
Hanap d'argent, a silver cup.
Hanapes (*bursels pur*), covers for cups.
Hane, hatred.
Hange, hatréd.
Hanguvelle, a new year's gift.
Hanse, a society.
Hanser, to accuse.
Hanser (*le*), the handle.
Hanshomes, the high men, the prelates and great barons.
Hantaft (*ne*) *Engleterre*, should not repair into England.
Hantin, an uncle.
Haour, hatred.
Happa, got, took, received.
Happa (*a*) *seisin*, hath gotten, seisin.
Happa (*que prines*), who first happens to have.
Happa (*ne*) *mie*, does not gain, obtain, get.
Happee, taken.
Harald, *harauld*, a herald.
Harang, *sore*, *soer*, herrings.
Haraus (*reys des*), heralds, kings at arms.
Haras de juments, a breed of mares.
Harchiers, archers.
Hard (*de la*), implements, goods, furniture.
Hardoyer, to attack, insult.
Hardy, daring, presumptuous.
Harenguiser, herring season.
Harer, *harier*, to stir up, provoke, importune.
Hareusement, seditiously.
Harfort, Hertford.
Harmoniqueur, a musician.
Harneys in, arrayed.
Harries molt, very sorry.
Haspe (*le*), the hasp, handle.
Haster (*pour droit*), for dispatch of justice.
Hastier, a minister; to dispatch.

Hastif, hastyfe, immature, inconsiderate.
Hastif (*qué soit*), which may require dispatch.
Hastiulement, in haste, too soon.
Hativete, diligence.
Hattes, hats.
Hauberiom, a coat of mail.
Hauberk, haubergons, a halbert.
Haugh, a valley.
Haulement, hauliement, highly.
Haulz, high, great.
Haume, helmet.
Hauncer, haulster, to raise, erect.
Hauncer (*un*), a weight called the auncel weight.
Haunge, contrivance.
Haunieck, one born in Flanders.
Haunt ne repeir, haunt nor repair.
Haur, haut, hatred.
Hauront, shall have.
Haus, house.
Haust eschetour, chief eschetour.
Hausters, towers of vessels.
Haute, hautece, highness, excellence.
Hautisme, most high.
Hautness, greatness, heinousness.
Haux, haus, haults homes, men of high degree, the great barons.
Havement, greedily.
Havene, havle, haven.
Havoir, to have.
Haye, hay, a hedge.
Hayer, to hate.
Hayes (*en*), in ranks or rows.
Haynge (*par*), through malice.
Hayson, the fencing or hedging-time.
Haw, a small piece of land near a house.
Hawberg (*fee de*), a tenure by which the tenant is obliged to defend the land by full arms, that is, by horse, haubert, target, sword, or helmet; a tenure by knight's service.
Hawyse, Avice.
Hear, her, heir.
Heaume, an helmet.
Hebbyngwerez, ebbing-wears.
Hede penyez, head pence.
Heint, hatred.
Heir, inheritance.
Heirs (*de avant ceux*), heretofore, in times past.
Heis, heies, hedges.
Helmot, sentence, judgement.
Hely, Ely.
Hen, had.
Herbage et herberge (*s'il*), if he lodges or harbours.
Herbergages (*des*), of the apartments.
Herberger, to lodge, to dwell in.
Herberges (*a*), at the castle.
Herberjours, lodgers.
Herbette, dull.
Herbirent (*queux,*) who were quartered.
Herces, hearses.
Here, heir.
Hereges, heretics.
Herit, an heretic.
Heritanz, inhabitants.
Hernois, herneys, harness.
Heroies, heroes.
Heroldes, heralds.
Herpe, a harp.
Herredecome, archdeaconry.
Herison, yesterday.
Hertescombe, the action in the civil law, called actio familiæ erciscundæ; in our law, coparcenery.
Het, heate, the heart.
Hettez, hearty.
Heu (*jai*), I have had.
Heudernesse, holderness.
Heuke, huke, a hood.
Heurs, heirs.
Heurusite, happiness.
Heust este, had been.
Heybe, haybote.
Heynoste (*le*), the heinousness.
Hi, there, thither.
Hide, fright, dread.
Hidel, a place of sanctuary.
Hidous, frightful, terrifying.
Hier, heir.
Hiytan jour, eighth day.
Hille (*le,*) the isle.
Hiluc, there.
Hireté, inheritance.
Hirland, Ireland.
Ho, stop, cease; the word made use of for the combatants to leave off fighting.
Hò, (*k*) *devereit entendre*, to make one believe.
Hobeissent, obey.
Hobelours, hoblers, lighthorsemen, halberters.
Hobyns, hobbies.
Hogetz, young weather-sheep.
Hoict, eight.
Hoirie, inheritance.
Hoirs, heirs.
Hokes, hooks.
Hoketons, aketon, acton, cloaks or cassocks.
Homa, man.
Home, homa, homage.
Homeaus, the Elms near Smithfield; the place of execution before Tyburn.
Honayllurs, at the same time, nevertheless.
Honeests, lawful.
Hones, honour.
Honiz, injured, ruined.
Honourment, ornament.
Honrage, a seigniory, a great fee.
Hons, a man.
Hont, have.
Hontage, affront, approach.

Honurement, honourably.
Hony, disgrace, evil.
Hooland, Holland.
Hopulandes, *houpelands*, *furres*, 2, two long coats or cloaks furred.
Hor est (*par le chambirlayne quy*,) by the present chamberlain.
Hore, hour.
Hōre (*a*), at present.
Hore (*que del*), since that, insomuch as.
Hore ditte, given, tendered.
Hores (*toutes les*,) whenever.
Hors d'or (*un rubi*,) a ruby not set in gold.
Hors de ceinz, out of this place.
Hors dun fine, upon a fine.
Hors de possession, out of possession.
Hors port, bringeth forth.
Hors qt houre, from the time that, as soon as.
Hors pris, omitted, excepted.
Horstreit hors, drawn out.
Horstrez, dragged out.
Hort, a garden.
Hosa, dared.
Hostagez, hostages.
Hoste, an host, a guest.
Hoste, put out.
Hoste (*luy*) *de l'eglise*, those who hold of the church.
Hostel, household, family.
Hostel, *host*, *houst*, an army.
Hostelage, entertainment at an inn; the hire of stalls in a market.
Hosteler, to put up at an inn.
Hostelier, *hostillers*, *hostillurs*, *hostler*, an innkeeper.
Hostell le roy, *hosteulx*, the king's household.
Hoster, to remove.
Hostery, *hostry*, an inn.
Hostes (*les*), the doors.
Hostes (*tut*), entirely removed.
Hostez, repulsed.
Hostiel, *hosteulz*, house, lodging, home, quarters.
Hostielx tenauntz, householders.
Hostier, to take out, diminish from.
Houces, housings.
Houches, chests.
Houghtez, taken out, erased.
Hountousement, shamefully.
Houpells, tufts, tassels.
Houre qes (*del*), since that, so long as.
Houre serra (*quant*), when the time comes.
Hous en hous (*de*), from door to door.
Houst, army.
Houst, war, a military expedition.
Houstel, house.
Houstiel, household.
Hovement, digging.
Howes, geese.
Hoz, *hoze*, an army.
Hu, hue and cry.
Huches (*en lour*), in their chests.
Huches de mariners, the mariners chests.
Huchet, a huntsman's horn, from whence comes the word, hue.
Huchier, to proclaim.
Hue, cry, clamour.
Huech, eight.
Hueil, an eye.
Hues, had.
Huem, *hucm*, a man.
Huers (*passet*), passed through, out.
Huevre, work.
Huguetto, Agatha.
Hui, *huy*, to-day.
Huimes, now, presently.
Huitienes (*les*), the octaves.
Pujus (*quatre*), four boundaries, hedges.
Huix, a gate, a door.
Hum, a man, any one.
Hum, have.
Humble (*al*), to the navel.
Humblesse, humility.
Humes, had.
Hunt, *hount*, shame.
Huntage, reproach, discredit.
Hure (*al*), at the same time.
Hurer, hat maker.
Hures, *hurez*, hats.
Hurs (*sa haie*), thrown down, pulled down his hedge.
Hus (*al*), at the door.
Husbote, housebote.
Huse (*de la*), of the house.
Huseons, *husens*, buscans.
Hussherie de l'eschekere, the office of usher of the court of exchequer.
Hust, has.
Hustin, *hutin*, noise, clamour.
Huwe, Hugh.
Huy, heard.
Huy, to-day.
Huy (*et ceo est*), and this is now.
Huy ces jour, at this day.
Huyctaves, *huykes*, octaves, eight.
Huyer, to cry out or proclaim.
Huys, door.
Huyse (*inner*), inner parlour.
Hydouses, hideous.
Hyet, a heriot.
Hyl, he, there.
Hyi (*lie*), here.
Hyne (*le maystre*), the head servant.
Hys, he, has.

J, they, there.
Ja (*en*), there is.
Ja, *iaz*, now, already, henceforth, yet, nevertheless, never, whereas.
Jademains, *jadumeis*, furthermore.
Ja le plus tart, nevertheless, at the last.
Ja soit ceo qe, so long as.
Ja soit que, although, that.

Ja si grant tort (*ne fust ceo*), was the mischief never so great.
Ja seit ce quil eent este, although they have been.
Ja seyt iace ke vos seez lye a nos, although you are bound to us.
Ja si able person (*soit il*), let him be never so fit a person.
Jace, lain.
Jackes, jackets, coats of mail; also a kind of military coat put over the coat of mail.
Jacoit, although, yet, still.
Jaczoit ce que, although that.
Jadumeins, notwithstanding, also, moreover.
Jademeyns, yet.
Jagan, a giant.
Jaiant, a giant.
Jaidit, lately.
Jaime, *Jaume*, James.
Jake, *Jak*, *Jaky*, James.
Jalemens, *jalemems*, *ja le meyns*, *jalemeyns*, always, also, nevertheless, still, yet, sometimes, as well as, moreover, further.
Jalun, *jalon*, a gallon.
Jamais (*a*), *et a jamais*, for ever and ever, perpetual.
Jamme, a gem, jewel.
Jammes devant, never before.
Jan, John.
Janevoir, *Janner*, January.
Jangleour, a minstrel.
Jannz, furze.
Janti fame, a noblewoman, a gentlewoman.
Janue, Genoa.
Japieca, within a little time.
Jarcer, to cleave.
Jarges, charged, oppressed.
Jasoit, although.
Jasoit ce que, inasmuch as.
Jatant, *jatardeis*, now of late, nevertheless.
Jatarde, lately.
Jaulne, yellow.
Jaulx, them.
Jaunz, heath, furze.
Jaur, a day.
Jausé, Joseph.
Jave, water.
Jaynuer, January.
Ic, there.
Iceeplaiz, these pleas.
Iceleui meimes, this same.
Icels, *iceans*, such.
Iceo, *icen*, this, that.
Icest (*d'*), of the same.
Icevoix, they, them.
Ichet, falls.
Ict, thrown.
Idles, isles, islands.
Idunk, then, there.
Jeane, Genoa.
Jeaundie, *Jeady*, Thursday.
Jecter, to throw, cast.
Jehan de Peschan, John de Peckham.
Jehana, John.
Jahane, Joan.
Jehu Christ, Jesus Christ.
Jekes (*qe*), that until.
Jekes a oens, up with them.
Jene, young.
Jenuer, *Jenevoir*, *Jeonever*, January.
Jent ne, have not.
Jeodi, Thursday.
Jeofnesse, *jeoffnees*, youth.
Jeovene (*le*), the younger.
Jer, first.
Jer, yesterday.
Jerint, they have gone.
Jerjour, first day.
Jerlm, Jerusalem.
Jern, Yarmouth.
Iert, shall be.
Jert, will be.
Jeskes, *jesquesencea*, till now, hitherto.
Jeslamer, on this side the seas.
Jesq a, contrary to.
Jesques en cea desoies, *de soie*, hitherto unheard of, unaccustomed.
Jestiesmes (*se psent*), if we were present.
Jette fors, excepted.
Jeu, a Jew.
Jeusday, Tuesday.
Jeusdye, *Jurisdie*, Tuesday.
Jewise (*a sa*), see Juise.
Jex, eyes.
Iffinite, affinity.
Igale, equal.
Iglife, church.
Ignier, *igny*, to burn, fired.
Jia (*il*), they are.
J'iere, *j'ere*, I was.
Ilez, they.
Illect, of the same place.
Illee, (*d'*), moreover.
Illes, islands.
Illickes, *illeques*, *illoc*, *ilokes*, *illec*, *alec*, there.
Illieyt (*taunt come*), as long as there are.
Illiont (*si*), if they have.
Illoeqes, there.
Illoesqes, *illuesqes*, *illusqes* (*de*), from thence, from that time.
Illoigner, cloined.
Iluccke, there.
Imbuent, they drank.
Immunite, freedom, immunity.
Impareil, not to be compared with.
Impayrera (*ne*), shall not vitiate.
Impediera, shall hinder.
Impere, empire, jurisdiction.
Impetraceion, request, suit, prosecutions.
Impierment, prejudicing.
Implier, to fill up, fulfil.
Importables, greater than can be borne, insupportable.

Importunes (*jeues*), vain, inconvenient, improper games and sports.
Impresseur, a printer.
Imprimpt en le jour, twilight.
Improwment, improving.
In apres, thenafter.
Inanere, to make void.
Incarnacum, incarnation.
Incedent, set forth, published.
Inchoatz, commenced.
Incleased, ensnared, entangled.
Inconnera, obstruct.
Incuter, to strike.
Indeu, indebted.
Indicte, pronounced.
Indire, to declare.
Indomit, untameable.
Inducast, induced, introduced.
Induement, unduly.
Indueront, persuade, bring into temper.
Induisant, persuading.
Indult, young, not of age.
Induyent, induct, put into.
Infamateurs, infamous.
Infamise (*nul*), no infamous person.
Infect, undone.
Infer, hell.
Inferme propos (*est il*), hath a firm purpose.
Informacions, instructions.
Ingen, wrong, deceit.
Ingens (*mal*), ill will.
Ingenynes (*les*), their wits.
Ingyst, thrown out.
Inhabilitations, disabilities.
Inhable, enabled.
Inhonutesse, shameless.
Inhumeynement, outrageously, cruelly.
Injecture le maines, laying hands on one.
Inique, wicked.
Inise. See *Juis*.
Injuratours (*lour*), those who injured them.
Inlagerie, inlawry.
Inneument, renewal.
Inning, June.
Inomée, without a name.
Inorer, to be ignorant.
Inquietaunce, disquiet.
Inquietours, persons who molested incumbents in their benefices, by virtue of provisions from the pope.
Inquise, found, inquired.
Inraser, to pull up by the roots.
Insciement, ignorantly.
Inseller, to occupy a stall in a church.
Insenses, informed.
Insient, pregnant.
Instructes, prepared.
Instrum, instrument.
Intant a dire, as much as to say.
Interes, *interesse*, injuries.
Intelesse, omitted, interlined,
Intermement, (*a l'*), to the determination.

Inthime, an enthymeme; intimation.
Inthimer la ellection (*luy*), to intimate to him the election.
Intime amie, my dear friend inwardly.
Intromittent, intermeddle.
Intrusours, intruders.
INV, Jesus.
Invaire, to invade.
Invasibles, any artillery made use of in an invasion.
Inveigner, to find.
Inwynde deins la tesone des lains, in winding within the fleeces of wool.

Jo, *joe*, I.
Joalx, *joiaus*, jewels.
Joefnes, *joefene*, young.
Joel, *joer*, day.
Joerge, swear.
Joesdie, *Joefdy*, *Joeudie*, *Joedy*, *Juesday*, Thursday.
Joial, a jewel.
Joiaus, jewels.
Joieront, shall enjoy.
Joiex, joyful, happy.
Joignet, *Joign*, *Joil*, July.
Joir, obtain, enjoy.
Joitement, wording.
Joix, enjoyed.
Jone home, young man.
Jones, John.
Jonglours, minstrels.
Jont, point.
Jor, to them.
Jor promis (*no unt teu*), have not kept their promise.
Jor, *joure* (*al*), at the day.
Jorci (*d'*), of York.
Jorgi, George.
Jorer, to swear.
Jornaunte (*a la*), at day-break.
Jorne, day service.
Jornee, place, day.
Jornee (*la*), the taking the assize.
Jorrours, *jorres*, jurors, juries.
Jorney, *jorneie* (*a la*), in court.
Jose, thing.
Jothed, cast out.
Jou, I myself.
Jou, a cock.
Jova, played.
Jouene chapon, a young capon.
Jouers, stage-players.
Jouette, youth.
Jougleur, a minstrel.
Jour en autre de journement, daily.
Jour (*desques au*) *de huy*, to this day.
Jour de huy en un moys (*dedenz du*), within this day month.
Jouree, sworn.
Journante, before sun-rise, day-break.
Journe, a yoke.

Journe, journee (*a une*), at one day.
Journe (*a la*), at the court.
Journee, day, time.
Journee (*a la*), at the meeting.
Jours (*apres les*), after the decease.
Joursmais (*a tous*), for ever.
Jous (*tombe*), fell down.
Joust, just.
Jouste, near.
Jouste, according to.
Joyer, to enjoy.
Joyant (*del droit*), of the right joining to it.
Joynture, junction.
Joyons, rejoice.
Joyssent a tenet, have a right to hold.
Joz (*a tous*), for ever.
Ire, to go, to journey; also angry.
Iretage, heritage, inheritance.
Irreis, Irrys, Irrois, Irish.
Irreit a terre, would fall to the ground.
Irreit pas (*ne*), should not proceed.
Irrer, to journey, to perform their iters.
Irrez avaunt, shall proceed.
Irrite, unjust, void, of no effect.
Irrours, indignation.
Irruer, to subvert, to rush in upon.
Is fors (*il*), they go out.
Iscint (*de qi*), from whom issued.
Isle (*ne*), shall not issue.
Isles (*bailiffs des*), bailiffs thereof; or bailiffs of the isles, viz. of Sark, Alderney, &c.
Isliersa, shall chuse.
Isoient, are there.
Isoit, should be.
Isp, so near.
Iss (*ke*), which they.
Issent, they issue.
Isser (*ne pusse*), cannot go out.
Isserene, went out.
Issint, thus, so.
Issir, going out.
Issist, he went out.
Issit, it issues.
Issue (*lour*), their brood, their young.
Issue, an end.
Issuit, in such manner.
Ist, he shall be.
Ist, lies, issues.
Istal, such.
Istra, ister, shall issue out.
Itel (*d'ascun*), of any such person.
Itel manere (*en*), in such manner.
Iter, a ram.
Juagus, jewels.
Jucques au nombre, to the number.
Iveer (*en*), in winter.
Juelyn, Yvelyn, Epelyn, Dublin.
Juen, June.
Juer (*cardes a*), playing cards.
Juerie (*justices de la*), justices of the Jews.
Juers, George.
Jues, punishment, judgement.
Jues, Jews.
Juesdy, Juosdy, Thursday.
Jues, juaux, jueles, jewels.
Juez, jues, games.
Jug (*le*), the judge.
Juge, a yoke.
Jugeable (*ne soit*), cannot form any judgement.
Jugeos (*seront*), shall be sworn.
Juggrietz, shall judge.
Jugied, adjudged.
Juig, Juignel, June.
Juise, juisse, juyse, judgement, sentence, vulgar purgation, fire-ordeal, water-ordeal, single combat.
Juise sans autre, without other, judgement being passed.*
Juise aut a la, let him clear himself, let him go to his ordeal.
Juise sicome il appent (*face feire*), that they may have such justice as they deserve.
Jument, an ox.
Jumentz, mares.
Jundre (*a*), to add to.
Jung, Jun, June.
Junz, innz, inner part.
Jupardee, jeopardy.
Jur, jura, day.
Jure, jurere, to swear.
Juree, a jury.
Juree, jures, an oath, oaths.
Juretz, jurats, sworn.
Juretz, (*entre*), took an oath to each other.
Jurez, one who is within the law.
Jurges, oaths.
Jurgent, swear.
Jurisdie, Tuesday.
Jurpris, adjourned.
Jurre, a liege-man.
Jurromy (*nous ne*), we do not swear.
Juste la costere, near the coast.
Justice, justicer, justicies, amenable to justice.
Justicement fort et dure, penance fort and dure.
Justicer a lui (*ne se voet*), refuses to submit to justice before him; to appear before him.
Justicer (*se*) p *ley*, to justify or acquit himself by law.
Justicerie (*de la*), of the justiciary, to the judges.
Justices, brought to justice, made to do justice.

* The trial by ordeal was abolished in our courts of justice in 3 Henry III. by an order of the king in council.

Justiciables, justisable, justisiable, justiciable, answerable to, amesnable, liable to be summoned.
Justifie per son ordinarie (ne voyle este), will not be justified by his ordinary, will not offer to obey and perform the sentence.
Justifiere (a), that justice may be executed.
Justifiers (a), to have judgment given.
Justifiez, regulated.
Justizements, justicements (les), judgements.
Juvent (de sa), from his youth.
Juvassen, rejoice.
Juvesnesse, youth.
Juy, judgment; that is, of God; the vulgar purgation by fire or water.
Juygnet, Juig, Juyn, Juyng, June.
Juyl, July.
Juzzer, swear.
Iz, prion, they pray.

Ka, who.
Kabal, a horse.
Kage, a cage, a place for confinement.
Kalendrel (moys), a calendar month.
Kallez, Charles.
Kan, kes je puis, as much as is in my power.
Kardoil, Carlisle.
Kare, for.
Karresme, Karisme, Lent.
Kas (en), in case.
Kaskun, every.
Kaste, chaste.
Kaunt, kanke, ke, whatsoever.
Ke se li, that if the.
Kee, ke, that.
Kelm et Newur (entre), between Kelham and Newark.
Kem alast, that we must go.
Kenes, oaks.
Kenteys (en), by the Kentish law.
Ker, a city.
Kere (a), to procure.
Keries, carried.
Kernes, idle persons, vagabonds.
Kerver, a carver.
Keu, ko, a tail.
Keus, those.
Keynes, keins, ash-trees.
Keynes (en couper de), in cutting down timber.
Keyns, kiens, keynz, oaks.
Kideux, kiddles.
Knol, kne, a hill.
Knowr, knoppe d'or, a knob of gold.
Knout (roy), king Canute.
Koke, a cook.
Koungres, coungres, congers.
Ky, which, whose.
Kydes, young kids.

Kynebanton (le manoir de), the manor of Kimbolton.

Lrer, to deliver.
Lres, lettered, learned.
La, lac, lat, milk.
La ou, la u, whereas.
La que (si), until that.
La (si), so long.
Lav, la hu, where.
Labeur, labour, work.
Labor merted, the other moiety.
Labourer (a), to work.
Lacaye, a lacquey.
Laccat (sur), when the bargain was made.
Laces, snares.
Laces (per), by door-falls.
Lacharad (il), he bought them.
Laches, laesche, (le plus), the most lazy, cowardly, base, or pitiful person.
Lachesse, idleness, negligence.
Lacs de seie, laces of silk.
Lacy, there.
Ladees, dishes.
Ladell d'argent, a silver ladle.
Laet drap, broad cloth.
Lafferent, they belong.
Laganes, lageons, lagons, gallons.
Lagette, a chest, box.
Lai, laie, law.
Lai, laie, laye, a plaint, complaint.
Laid, grievous.
Laie (en), for the relief, ease.
Laie (de) a asseeir, for assessing aids.
Laiel, lawful.
Laieur, laiture, leur, breadth.
Laillent, leave.
Laine (que de la), than of his own.
Lain waidez, woaded wool.
Laingaige, language.
Laisant, idle, slothful.
Laiseantz arriere, laying aside.
Laisnes, wool.
Laisser (de), to transfer.
Lassier, to prevent, omit, neglect.
Laissiees, neglected.
Laissresies, leave.
Lait, permit.
Laituer, science, erudition.
Laiz, Leez, a legate.
Lall, the high.
L'an apres l'ansiwit, after the year sued out.
Lannde, land, ground.
Landroit, again.
Laners, lavers, idle, sluggish.
Lanes (dez), of the laity.
Langagiers, abusive, scurrilous.
Lange d'Engleterre (la), the English nation.
Lange de la balance (la), the beam of the balance.

Langue de Norm (*en la*), within the allegiance of Normandy; in the Norman language.
Languyr, to delay.
Languy (*de*), to wait for.
Lanns mannus, the lord of the manor.
Lanques, *langes*, tongues.
Lanux, woollen.
Lanyers (*pointz*), leather points.
Laoeure, breath.
Laps de temps, loss of time.
Laq, lake.
Larder (*bone*), good booty.
Larder (*pur*), for ploughing.
Lardyner, the officer in the king's household who presided over the larder.
Lareim, larceny.
Large ouster, over measure.
Large (*mettre*), to let go at large.
Largement (*plus*), more easily.
Largesse, largeness.
Larouns, thieves.
Larroneux, thievish.
Lascheste, negligence.
Laser, a leprous person.
Lasier, to omit.
Lasser (*a*), to leave.
Lastels, hindrances, stops.
Lasux, left.
Laton, *laten*, brass.
Lature, breadth.
Lattix, lattice-work.
Lattre, the side.
Lavours, lavers.
Lavours de la moneie, washers of the coin.
Laues devauntditz (*des*), of the aforesaid places.
Laust, lawful.
Laute, praise.
Lay (*a*), to the law.
Lay (*en*), in allay.
Lay est (*q'a*), which belongs to him.
Lay foy (*en*), on the faith.
Layde, law, custom.
Layes (*les*), the laity, laymen.
Layes (*les*), the lackes.
Layette, in the box intitled.
Laynes, wool.
Laynz, *leans*, therein.
Lays, near.
Laz de soie, a lace of silk.
Le, *lee*, large, broad.
Lea ou, whereas.
Lea, pleased, willed.
Lea, *ley*, pasture ground.
Leans, with, in this place.
Lease, a leash.
Leaser (p), by falsifying, leasing.
Leaure, *leur*, breadth.
Leaus, *leaux*, lawful, liege people, also loyal.
Leaument, *lealment*, lawfully, justly, loyally.
Leaues (*bailiffs de*), water-bailiffs.
Leaute, authentickness.
Leaute (*de*), of his legality, of being *rectus in curia*.
Leawe, water.
Lebardz, leopards, lions.
Lebre, *lep*, a hare.
Leccon (*entendent la*), attend the election.
Lectee, milk.
Lede, grievous.
Lede ou bele, sick or healthy, handsome or ugly.
Ledenge, *ledenges*, damaged.
Ledera, shall hurt.
Ledez, hurt.
Lee, law.
Lee, large.
Lee dever (*serra*), shall be contented, glad to have.
Lee, *leeux*, lead.
Lees (*justices*,) the justices.
Lees (*pur*), by lease.
Lees, *leez*, a lease, release.
Lees, them.
Lees, *lieez*, *lee*, pleased.
Lees, advice, award.
Leesce, *leeche*, joy.
Leez (*molt*), very glad.
Leez, obliged.
Leger (*de*), shortly.
Leger (*ne le creriez mie de*), would not give him the least credit.
Legerement, slightly, easily, shortly.
Legerement subversion, speedy subversion.
Legerment (*rewle*), a standing rule.
Legerte de jaungle (*de*), from a levity of discourse.
Leges surs (*al*), to the liege lords.
Legier, brisk, light.
Legier (*de*), easily.
Leges, miles.
Legurement, slightly.
Lei, to him.
Leias, lawful.
Leicher, *licher*, to lick.
Leid, aid.
Leie (*la*), the law.
Leigne, line.
Leignes, wool.
Leinynes, linen.
Leins, *leing*, afar off.
Leinz (*de*), himself.
L'eir, the heir.
Leir (*sil soit*), if he can read.
Leis, them.
Leise, read, reads.
Leise de dras, list of cloth, breadth of cloth.
Leise, *leissie*, *leisible*, it shall be lawful.
Leisir, *leiser*, patience, leisure.
Leisse (*lei*), omitted it.
Leist, deliver.
Leisure, reading.
Leiuz, therein.

Leiz, near.
Leiz, Lewis.
Lem doit (*coment*), how one ought.
Lem soleit faire (*si come*), as used to be done.
Lendemain de la cluse de Pasque, the morrow after the close of Easter.
Lendemeyn, the morrow.
Lenge, linen.
Lenn, Lynn.
Lenne, Lincoln.
Lenor, the honor.
Lenquastre, Lancaster.
Lentz monet, the month of March.
Lenz, there.
Leome Dieux, we praise God.
Leoneys, *Loeneis* (*en*), in Lothian.
Leour, their.
Leopertz, leopards, lions.
L'quelle (*ou come*), as any other.
Lequelleque, whether.
Le quen, which.
Ler, their.
Lerbe, the grass.
Lerce-hound, a lurcher.
Lernuement, the commendation.
Leiont, they lie.
Lerra, may leave.
Lerra morir (*se*), shall die.
Lerre, *liare*, a thief, a robber.
Lerront (*ne*), will not fail doing.
Les, last.
Leschancement (*pur*), for the aggrandising.
Leschewes, trees fallen by chance, windfalls.
Lescuverad, he must, he ought.
Lese, leave.
Leser, to hurt.
Les gentz, lay people.
Lesion, hurting, wounding, damage, injury, detriment.
Lessa, *lesse*, *lessee*, omitted, left.
Lessacent (*qil les*), that they permit them.
Lesse au bailie, let to bail.
Lesseiz (*ne*), do not omit.
Lessent (*les*), lease, let them.
Lesser, to omit, leave.
Lessez, disappointed.
Lessez, *lesset*, let go, omit.
Lessisiems, would have left.
Lessoet (*ne luy*), will not permit him.
Lesteigne, tin.
Lesue, *lesuz*, hurt, injured.
Leswes, *lesues*, pastureground.
Let, milk.
Letanies, littanies.
Letergetsle, Luggershall.
Lettresure, *lettur* (*d'apprendre*), to learn to read.
Letra (*la*), to letter.
Lettre, bill.
Lettrure, literature.
Letture, letter.
Letuse, *letise*, a little beast resembling the ermine, of a whitish grey colour.
Levannt dit, the aforesaid.
Leve, leave, consent.
Leve, risen up, built, erected, cast up.
Levee (*la*), the rising, the insurrection.
Lever, to display, erect.
Lever to stir up, bring up again.
Lever (*a*), to be levied.
Lever (*apres lur*,) after their rising.
Lever countre li, rise to him.
Lever (*pur*), to relieve.
Levere, *leverers*, *leurierers*, *leveriers*, *levoiers*, greyhounds.
Leverer, a lurcher, a tumbler dog.
Leverer (*a un*), at a drinking place.
Leverez, liveries.
Levours, those who levy any tax.
Leu, *leus*, *leust*, lawful.
Leu (*le*), the place.
Leu, *lect*, *lict*, a bed.
L'eucres, the increase.
Leuement, lawfully.
Leus, *leuis*, ditches.
Leuez, placed.
Lenkes (*trois*), three leagues.
Leukes, *lewkes*, *lewes*, *lenks*, miles.
Leur, *leure*, breadth.
Leure (*a meismes*), at the same time.
Leures, hares.
Leus (*de*), of those.
Leus, *leulx* (*tox*), all places.
Leute, loyalty.
Leuthien, Lothian.
Leuve, *leuvad*, a forest.
Leux, their.
Leux, lawful.
Lew, place.
Lew (*vers la*), towards the east.
Lewe, read.
Lewe gentz, lawful men.
Lewes, *lewe*, *leux*, read.
Ley (*la*), the river Lee.
Ley court, lay court.
Ley (*faire la*), to wage law.
Ley, *lea*, pasture-ground.
Ley (*sux*), against him.
Leye (*la*), the law.
Leyed, *leyde*, hoinous, hurt, hurtful.
Leynes, wool.
Leyoins, *leyns*, therein, within.
Leyr de la terre, from the foundation, from the ground.
Leyres dez chivalers (*de la*), of the wages of the knights of the shire.
Leyse (*en*), in breadth.
Leysir, leisure.
Lez, laws.
Lez, the.
Lez, *lieux*, them, those.
Lez, nigh, near.

Lez, glad.
Leze majest, treason.
Lezs, in length.
Li, his, they, the, to him.
Li (*de*), from him.
Li ditz, the said.
Li du troie, pound of troy weight.
Li ussunt porveu, had provided him.
Lia, *lie*, *lieux*, read.
Liat, lawful.
Liaux, lawful men.
Liaz, *liacz*, bundles.
Lib, *libe*, life.
Lib de terre, liberata terræ.
Libard (*ovec le touche del teast de*), with the touch of the leopard's head.
Liberat, free.
Licette, lawful.
Liche, liege.
Licitement, lawfully.
Licker, to lick.
Licours, liquors.
Lict, *lect*, *liech*, a bed.
Lie, *liée*, *lieison*, bound.
Lie, pleased.
Lie (*de la*), of the lineage.
Lief, *leof*, rather.
Liefgent hu et cri, levy the hue and cry.
Lieflode, *liflode*, an estate for life.
Lieges, *lieux*, leagues, miles.
Lieges, leagues, truces.
Liens, *lientz*, therein, places.
Lieppars, leopards.
Lier, to alledge.
Lier, to read.
Liers, prisoners.
Leis (*queux ne sont*), who are not put into the derennary.
Lievent, levy.
Lieves (*per*), by miles.
Lieviee (*de leur*), of their heirs.
Lieu, a wolf.
Lieu (*pur*), by way of exception.
Lieu en ceo (*aver*), take hold of that.
Lieure, a pound weight.
Lieure, *leiure*, (*le*), the book.
Lieures (*avant ces*), before these times.
Lieux, them.
Lieux (*nulle de*), none of the deputies.
Lieux, bonds.
Lieux, room.
Liez, places.
Lige, *liguie*, bond.
Liges (*ses*), his liege subjects.
Ligesse, legiance.
Lighes, leagues.
Legialtie (*la*), the allegiance.
Ligne, sex.
Ligne de pierrereries (*un*), a circle of stones.
Lignie, *lin*, lineage, race.
Lignivies, tribes.
Liment, wash, filt.
Limiteers, limited.
Linage, blood.
Linaige de la mer (*sur le*), on the sea-coast.
Line, *biline*, the collateral or bye-line.
Line de Sendale, linen of Cendal*.
Linge, a line.
Linge teel, linen cloth.
Linquer, to leave.
Lingues, tongues.
Lins, wool.
Linure, lining.
Lintheux, *linthes*, sheets.
Lio hyl, there.
Liouns, lions.
Lire (*presentee en*), presented in writing.
Lirr, their.
Lirreit mye (*il ne*), it would not be lawful.
Lisre, to be read.
List, *lise*, *lisible*, lawful.
Litere, *littour*, (*de*), litter.
Lit morant, death bed.
Lith (*al*), to the bed.
Littime, lawful.
Live, livery, or delivery.
Livelode, livelihood.
Livre (*a la*), to the delivery, or livery.
Livere (*et vous*), and you deliver it.
Livers (*son*), his livery (for a servant.)
Liver e soun (*potius*, *liveresoun*), a prebend, a service.†
Liveree, pound.
Liverer suys, to deliver up, surrender.
Liverees, *liveresons*, liverys.
Liveres, liveries, assignments.
Liveres de terre, liberata terræ.
Liveriad, deliver, offer.
Liverour, the person who delivered.
Livers, hares.
Liverse, deliverance.
Livrees, livres.
Liu, book.
Liu, place.
Liu, bound.
Liu faire prendre (*de*), to cause him to be taken.
Liu est grante, is granted to him.
Liu (*pres de*), near him, about him.
Liure, pound.
Liuree (*de fourreex*), furred with hair furr.
Loar, their.
Loaumes, we allow.
Locil (*potiùs*, *loeil*) *sur* (*pour avoir*), we have an eye over.

* See Due Fresne, *Cendalum*.
† See Ryley Pl. Parl. 14 Edw. II. p. 415, and Parl. Rolls of that year.

Locoice, bribe.*
Loctenant, lieutenant.
Lodis, blith, jocund.
Leo (*jeo vous*), I recommend it to you.
Loement, judgement, opinion, decision.
Loer, to commend, praise.
Loer, leeward.
Loer ensoit (*melius, loez en soit*) *notre Seignur, nous sumes* (*come*), as praised be God, we are.
Loeys, Lewis.
Loftes, forster child.
Loia, thanked.
Loial, lawful, true.
Loial avyce, legal cause, advice.
Loians, hired.
Loiastes, permitted.
Loie, commend, approve.
Loiens, bonds.
Loient, (*qe*), who wash.
Loier, loyer, loiuer, fee, reward; farm.
Loiez soit Dieu, God be praised.
Lointagnes, remote.
Loisible, lawful.
Lomez (*les*), the looms.
Longament, lonc tens, a long time.
Longayne, a house of office.
Longein, long, a long time.
Longement (*tant*), as long as.
Longteyne, longetisme pays (*en*), in a foreign, distant country.
Longue (*plus*), father.
Longue (*a la*), at length.
Looms (*nous vous*), we commend you.
Looms, loaumes, we grant.
Loos, advice, reward, reputation.
Lor, them.
Lor, lower, hire, reward, bribe.
Lor (*envers les*), towards their men.
Lors, their, then.
Los, lois, loz, praise.
Lose chart (*en cor*), in a loose paper.
Losereynt (*ne*), dared not.
Loture de money (*le*), the washing of money.
Lotux, suckles.
Lou, place.
Lou, lieu, wolf.
Loueez, hired.
Louis, far.
Lour (*a meisme*), at the same time.
Lour (*e la*), and of their own.
Lour (*de*), of their goods.
Loure, them, themselves.
Lourgulury, lourderie, inhumanity, or any villainous act.
Lous (*doctour en*), doctor in laws.
Lous, the, them.
Lousement (*mney*), much to the surprise.†
Louy (*du*), of it.
Louz, estimated, valued.
Lovage, hiring, loan.
Love, rewarded.
Lovers, rewards.
Lowage, possession.
Lowance, lowange, a hiring.
Lowe (*pur*), to retain, to hire.
Lower (*pur*), for gain, for maintenance.
Lower, luer, lowir, a reward, fee, bribe, wages.
Lowere (*pur*), to work.
Lowis, Loys, Lewis.
Loy (*de*), of allay.
Loyer, to award, advise.
Loyer, reward, service.
Loys, lois, los, praise, glory.
Loyse, lawful.
Loysemus, let us rest.
Loynteins heires, remote, collateral heirs.
Loyntenus gentz, people who live afar of.
Loyntime degree, a remote collateral degree.
Loz, praise.
Lu, the.
Lu, theirs.
Lu, place.
Lu, lue, leu, light.
Lude, play.
Lue, he, them.
Luer, reward.
Luer raisonable, reasonable price.
Lues, miles.
Lues, lus, luwe, luez, read.
Lui Rois, the king.
Lui seaus, their seals.
Lui, luis (*seon*), his place.
Lui (*en qui*), in whatsoever place.
Luie, a league.
Luire, to shine.
Luist, lawful.
Luites de point in point, read article by article.
Lum, a man, any one.
Lumble, naval.
Lumere, light.
Lunc dei, long or middle finger.
Lundr' (*a*), at London.
Luner (*jour*), the lunar day.
Lung, the one.
Lungement, lungge, long.
Lure, lur, lurr, lu, them, their, theirs.
Luri, an otter.
Lus, places.
Lus, read.
Lus, lius, tenanz, lieutenants.
Luse, luce est, the use is.
Luse, playing cards.
Lute (*a la*), at a wrestling.
Luy (*le*), the place.
Luy, it.

* Vid. Rot. Parl. vol. I. p. 275. Pet. 13. Potius lowire. Hale's MS.
† Vid. Rot. Parl. vol. II. p. 77. Pet. 23. Potius mveyleusement. Hale's MS.

Luy, them.
Luz, places.
Ly, *li*, him.
Ly, law.
Lyance, allegiance.
Ly ann jour done (*en*), and have given him a day.
Lyaz, *files*, bundles.
Lye, read.
Lye, merry, chearful.
Lye estes, you are bound.
Lyege, liege subjects.
Lyens, therein.
Lyer, to bind.
Lyer (*de*), to alledge.
Lyer (*autrement*), in any other manner fix.
Lyereit bien, would sufficiently bind.
Lyeur, a brook.
Lym, lime.
Lymite, limits.
Lymitours, *limitours*, limits.
Lynge tayl, fringed linen.
Lyse bien, read well.
Lyse, *lyst*, lawful.
Lyt, bed; licence, bet.
Lyu, place.

M, same.
Mces, wares.
Y-me, house.
Metz, best.
Mesch', mischief.
Mks, marcs.
Mr, *mra*, shall shew.
Mre, shew.
Mre, master.
Ms, same.
Mac, son.
Macegrefs, fishmongers, who buy and sell stolen fish, knowing the same to be stolen.
Macel, a butcher.
Macheniaes, mathematicians, persons who pretend to discover secrets by the position and motion of the stars. Those who professed this art were commonly called *mathematici*, drawers of schemes and calculations; under which name they are condemned in both the codes,* and they were infamous, not only under the Christian administration, but also under the old Romans.
Macheronerie, masonry.
Maderez (*draps*), cloth maddered.
Madlard (*un*), a drake.
Madle (*heir*), heir male.
Maein le roy, hands of the king.
Mael, an halfpenny.
Maénéresse, a mediatrix; a judge.
Maere, mother.
Maester, master.
Maeur, a mayor.
Maffait (*null*), no mischief.
Magnies, *maisnies*, *mesnie*, family, household, retinue.
Magre, *maugre*, in despite of, against.
Mahemes, *mahaigne*, *mahayn*, maimed.
Mahereme, timber.
Mahi, *Mahie*, Matthew.
Mahom, Mahomet.
Maide (*si Dieu*), so help me God.
Maige (*judge*), a judge who presides over a subaltern jurisdiction.
Mageste, (*la*) the trinity.
Maign, great.
Maignee devant, brought before.
Maignent, live, dwell.
Majeure, major.
Mail, *maylle*, an half-penny.
Maimement, especially.
Main, in the morning.
Main-a-main, immediately.
Mainables, amenable, distrainable.
Mainburnie, guardianship or government.
Maincraftes, handicrafts.
Maindres, *mains*, small, less.
Maine en gule (*d'*), from hand to mouth.
Maine (*come sa*), as part of his household.
Maine (*a soy defedre* p *sa*), to wage battle.
Mainor (*le*), the tenancy, the occupation.
Mainorable, *meinorable*, manurable, tenable, demiseable, lying in tenure.
Main oeure, *meinoure*, *meynoure* (*a*), with the manor.
Mainour (*la*), the work, the repairing.
Mainoverer, to manure.
Mainpes, mainprised.
Mains (*per que*) *quecunque il vient*, howsoever it came to pass.
Mains (*a tot le*), with all the hands, viz: chaplains and singing-men.
Mains (*jureront en nox*), shall swear in our presence.
Mains vraie, untrue.
Maint, much, many.
Maintenant, presently.
Maintes fois, many times.
Maintion, mention.
Maintz, *maints*, less.
Mainuelx mestiers, manual occupations.
Mainy (*ma*), my family.
Mair, mayor.
Maire, mother.
Maire (*a*), to marry.
Mairiaux, material.
Maisne, younger.
Maisne (*lor*), their family.
Maisoner, to build, repair.
Maist Diex, please God.
Maiste, majesty.

* Cod. Theod. l. 9. tit. 16. Cod. Just. l. 9. tit. 18.

Maistrez, masters.
Maistrie, management, influence, power, dominion.
Maite, moiety.
Makement, contrivance.
Mal, *maletts*, *malies*, bags.
Mal (*a*) *tort tiendroit lieu*, with much less propriety would it lie.
Mal (*de*) *ou pyz*, worse and worse.
Mal paiez, dissatisfied.
Mal voillance, *malveillantz* (p), through ill will.
Maladif, *maledif*, sickly, sick, afflicted.
Muld, Matilda.
Maldispousee (*molt*), much disposed.
Male (*la*), the mail, the portmanteau.
Male toute, entirely bad, good for nothing.
Malese (*mult a*), very uneasy.
Malets, cloak-bags.
Malfez, wicked, evil.
Malmenez, *malmesne*, evilly kept.
Malney, *malvey*, guilty of a misdemeanor, contumacious.
Malrais, evil.
Maltalent, *maltalenz*, spite, indignation, rancour.
Malveilles, *malveisnes*, misdemeanours.
Malveist, *malves*, *malvois*, evil, an offence.
Malurez, *Coes*, evil, seditious commoners.
Malx, *mals* (*issue*), issue male.
Man, a Norman.
Manablement eissille (*per*), perpetual banishment.
Manantz, *manans*, resident.
Manas (*brefe de*), writ of mainprize.
Manasors, pledges, mainpernors.
Manassables, threatening, menacing.
Manauntz gens (*bon*), housekeepers of credit.
Manche (*que vous n'aurez*), that you will never fail.
Manconages, mansion-houses.
Mandassent (*qils*), that they send.
Mande, commanded.
Mande (*en tien*), in such manner.
Mandementz, writs of mandamus.
Mandez, sent.
Mandiens, beggars.
Mandient, curse.
Mandissiens, commanded.
Mandre (*a*), to amond.
Maneceantz, threatening.
Maner, *manoyre*, a manor.
Maneer (*vey le*) *potiùs*, *vey le maneer*, will bring.
Maneires, *maners*, *manies*, *maners*, manors.
Manere (*la*), the custom.
Maneys (*en la*), in the hands.
Manger (*sans repris de*), without giving any wages.
Mangerie (*tienge*), keeps a table for his retainers.
Manguay (*je ne*), I did not omit.
Manguement, fault, slip.
Mangeries (*a*), in the kitchen, at the table.
Maniere forsque (*en*), in manner but.
Maniple, handful.
Manique, a madman.
Manning, a day's work.
Manors, manors.
Manour (*ove*), with the mainour, with the goods in their hands.
Mans (*les*), the evils.
Manse, a farm.
Manses, hides of land.
Mante, he commands.
Mantinge, maintain.
Manuester, to filch, to thieve.
Manulx, manual.
Manure, occupy.
Manusser, *manessier*, threatened.
Manyee, handled, under consideration.
Manyemens, management, conduct, administration.
Mappe, a cloth, a table cloth.
Maras, *mares*, *marche*, *marreys*, *maries*, *marys*, marsh-ground.
Marastre, mother-in-law.
Marces (*se sount*), have settled themselves.
March (*de VIII*), at eight marks.
Marche, *marchie* (*le*), the market-price.
Marchande (*ville*), market-town.
Marchant, (*nul alleve*), *ne prive*, no merchant, stranger, or domestic.
Marche, territory, neighbourhood.
Marche (*a*), to market.
Marchees de terre (100), land valued at 100 marks a year.
Marchent, adjoin to, are bounded by.
Marches, (*par les*), in the market-towns.
Marches, marches, frontier cities or towns between England and Wales, England and Scotland.
Marches, marks.
Marchesche, the feast of the Annunciation, celebrated in March.
Marchis, marquis.
Marchissans (*sont*), are bordering.
Marcier, to pay.
Marcolfe (*en la chambre*), the triers of petitions in parliament for foreign parts used to sit in this chamber.
XXL. marcz, 20,000 marks,
Mare (*de toute*), of all manner.
Mareanz, *maronniers*, mariners.
Marenne, land bordering on the sea.
Mareschall, marshal.
Mareschaucie, Marshalsea.
Maresches, grain sown in March, spring-corn.

* Vid. Rot. Parl. vol. I. p. 10. pet. 45 Potius *veyle*. Hale's MS.

Mariages, marriage portion.
Mariage (*a son*), for her marriage portion.
Margeries, marquisetts.
Mariole, the image of the virgin Mary.
Marisne (*loy*), marine law.
Maritassent, married.
Maritismes, (*charbons*), sea-coals.
Marlers, marl-pits.
Marrie (*del*), of the husband.
Marriglier, *merriglier*, *maruglies*, *marguelier*, a church-warden, a sacristan, or sexton.
Marris, surprised, concerned.
Marroch (*streites de*), Straights of Morocco or Gibraltar.
Mars (*deux*), two marks.
Martens, hammers.
Marteror, the feast of all saints.
Marthied in rei (*al*), at the king's market.
Martirizer, martyred.
Martrons (*furres de*), furr of martern or marten.
Marveis, evil.
Mary et espeux (*a loial*), for her lawful husband and spouse.
Mas, but.
Mase (*sergent de*), serjeant at the mace.
Maser, *mazer* (*un*), a cup or goblet.
Masere, entries, passages, walks, grounds.
Masle (*le*), the male.
Massoner, to sing mass.
Mastre, a martyr.
Mastres, mistress.
Mat, a fool, a sot.
Mat le, the chagrin, concern.
Mate, Matilda.
Maten, morning.
Mater, matter, business.
Mater (*sont*), are the means, are contrived.
Materielles peches, temporal offences.
Matta, placed.
Mattire, *matirez*, matter.
Mavastiers, wicked doers.
Mauclerk, ignorant, unlearned.
Mauclum (*roy*), king Malcon.
Mauduit, ill conditioned.
Mauveiste, *mauveste*, *mauvaiste*, *mauveys*, *mavoite*, offence.
Manfeteur, offender.
Maufez, demons.
Mauls, mischief.
Maumenes, ill-treated.
Maumis, maimed.
Maunches reverses (*ses*), his sleeves turned back.
Maundast, send.
Maundable, to be directed.
Maunder, to command.
Maupae, ill-treated.
Maupiteux, inexorable.
Maures, a lyar.
Mauriot ja mestier (*il ne*), there would be no occasion for me.
Mausbaretz, evil contentions, ill-grounded suits.
Mausesheure (*pur*), for avoiding it.
Mavys, *mavos*, evil.
Mayaoust, the middle of August, the assumption.
Maydenestan, Maidston.
Mayen (*par*), by means.
Maylee de pain, a halfpenny worth of bread.
Maylee, halfpence.
Mayn de estre, right-hand.
Mayn (*de*) *en auter*, laying our hands on the altar.
Maynauntie, mansion-house.
Mayne (*la*), the master and mariners of a ship.
Mayneall, in company with.
Maynerent, maimed.
Maynes (*de*) *a mayns*, at least.
Mayneur, *mainour*, *maynoeure*, work.
Maynpast, *meynpast*, household, family dependance.
Mayns valeynt, of the least value.
Mays, matins.
Mayntz demonstrantz, many remonstrances.
Mayor, greater.
Maz, a mast.
Mazer (*hanap* de), a bowl made of mazer.
Meane, middle.
Meane (*en le*), in the manner.
Mear, sea.
Meas, but.
Meason, room.
Measons, nitches.
Meaur droit, meer right.
Meaux, mere, best.
Mecogneues, unknown.
Mecreance, suspicion.
Mectez en execution, put into execution.
Mectre, to expend.
Medfee, a reward, a bribe.
Mediate (*per le*), by the mediation.
Medisse manere (*par*), in the same manner.
Medle, mixed, compounded.
Menlefe, *medle*, an affray, disturbance.
Medlure de peche (*par*), by blending offences.
Medlure (*pur la*), on account of the mixing.
Medoine, the river Medway.
Medu tempe (*en le*), in the meantime.
Mee (*ne a*), has not.
Meel, honey.
Meement, *meesement*, namely, especially.
Meement, merrily.
Meen amy, a middle friend.
Meen (*come*), as a mediator.
Meener, to produce.
Meeneresse, mediatrix.

Meenner, an arbitrator, mediator.
Meer (*hors de*), beyond sea.
Mees, moved; mediators.
Mees, *meese*, mess.
Mees (*des*), of meat.
Meevement, disturbance, commotion.
Mefet, offence.
Meffet, misdone.
Meffere, to do mischief.
Megme (*la*), the same.
Megnes, brought.
Meheynee (*leva la*), raised the hue and cry.
Meiere, mother.
Meignal, *meynal*, menial.
Meignee, *meime*, *meiny*, family, household, company.
Meigte (*breve ili ad*), there is many a writ.
Meilles, best, greatest.
Meillour, mulier.
Meiltz, the better.
Mein, hand.
Mein, *mien*, *mines*, mine.
Meinalx, messengers.
Meindre age (*la*), infancy, the minority.
Meinere action (*de nul*), in any inferior action.
Meines, inferior persons.
Meines sages, indiscreet, illiterate persons.
Meines, nor.
Meinez, many.
Meingtenux, maintained, assisted.
Meinoure, *meynours*, with the manor.
Meire, mayor.
Meins, q, less than, under.
Meins, *meindre*, less.
Meins (*a tote le*), at the least.
Meins bone discretion, indiscretion.
Meins de bien meignent, bring fewer goods.
Meins (*al*), into the hands.
Meins, *meien* (*sauntz*), without mesne.
Meins mises sur seintz, laying our hands on the gospels.
Meinst (*le*), the least.
Meint, *meine*, dwells, resides.
Meintenant, then, presently.
Meintenems, maintain.
Meint manera, many ways.
Meintroms, will maintain.
Meinure (*la*), the work.
Meinx choses, things of small value.
Meircient, buy and sell.
Meis, more.
Meis, a month.
Meisan, house.
Meisent, put.
Meisme, same, the same, himself.
Meisement, in like manner.
Meisnes, *meine*, household, family.
Meissent en respit, should be respited.
Meissom, should bestow.
Meissoins avaunt, produce.
Meissoins (*que nous*), that we should put.
Meist, *meite*, put, contained in.
Meist, need.
Meister (*q'il a*), that it is necessary.
Meistr, *Meisters*, *mestre*, master.
Meistrie, mastership, magistracy.
Meistrie, necessary.
Meistymours de querell, maintainers of quarrels, disputes, suits.
Meiter, *meictre*, to put, place.
Meleour, better.
Meliealx, *melx*, best.
Melle, honey.
Melle, an affray.
Melle (*se*) *de la vente*, meddle with the sale.
Meller (*a*), to blend, mix, interfere in, to interpose.
Mellex (*se ne devient*), ought not to intermeddle in it.
Mellieu, middle.
Melx, *meltz*, better.
Membres (*per prendre*), by captain of goods.
Men, my.
Men temps, mean time.
Men (*en*), in a state of insanity.
Menable, amesnable, brought, induced.
Menageoers, farmers, husbandmen.
Menant, dwelling, residing.
Menassables (*ne*), not to be menaced.
Menassent, *menastez* (*lui*), lead him.
Menauntise, a settled concern, a place of residence.
Menbra, remember.
Mende (*la*), amends, satisfaction.
Mend' provereit, should make the best proof.
Mendinantz, *mendians*, beggars.
Mendre, least.
Mendres, less.
Mene gentz (*de les*), of the middling people.
Mene judgement (*sans*), without mesne judgement.
Mene prie, at a low price.
Menee a r, brought to answer.
Menee, *mene* (*la*), the hue and cry.
Menenges, household dependants, menial servants.
Mener, to manage, conduct.
Menes, *menees*, brought, treated.
Menestralcie (*par colour de*), under pretence of his being a minstrel.
Mengier (*de*), from eating.
Meni, *menux dymes*, small tythes.
Meniez, made.
Menir, to bring.
Menis (*et volons ja le*), and we will also.
Menistres, ministers, officers.
Menne, *mene*, *menes people*, inferior people.
Mennes, less, small.
Mennes peches, small offences.
Mennes keynes, small oaks.
Menour, manager.
Menour (*freree*), friars minors.
Menre, brought in, drove in.

Menront (*les*), will conduct them.
Mensoynes, lies.
Mensure, measure.
Ment, much.
Mente, mint.
Mentineez, maintenance.
Mentiner, mention.
Mentir, to lie, to say what is false.
Mentor, *menter*, a lyar.
Mentre (*foy*), breach of faith.
Menty, *mentu*, have lied, said what is false.
Mentz, *a mentz*, for the best.
Mentz (*lour*), their best.
Menues baillifes, inferior bailiffs.
Menure, remain.
Menuz choses, small things.
Meour droit, the better right.
Meosisme (*soi*) *de archer*, went a shooting.
Mer, *meer bank*, the sea-shore.
Mer (*de la*) *d'Escoce*, the marches of Scotland.
Merce, *meer*, mercy, grace.
Mercez, wares.
Merchal, marshall.
Merche de merche, marked with the mark or stamp.
Merchez, markets.
Merchie des vivres, the rate or market price of victuals.
Merchiez, signed.
Merci (*sur*), upon favour.
Mercia, *merchia*, thanked.
Mere, mature.
Mere, only, absolute.
Meri et misti (*jurisdictions*), jurisdictions mere and mixed.
Merisme, *maerisme*, *mermi*, timber.
Meritorie, meritorious.
Merk, *merches*, *lettres*, letters of marque.
Merkedy, *Merdie*, *Mercuredi*, Wednesday.
Merrour, a looking-glass.
Mers, marshes.
Mers, *mercz*, wares.
Mers (*la*), the mercy.
Merted, moiety.
Mertlage, martyrology.
Merture (*de ce*), of this matter.
Merust, causoth, occasion.
Merym, *merime*, *merin*, *merrien*, *merisme*, *maerisme*, *mermi*, timber.
Merz, amerciaments; merchandize.
Mes, mouth.
Mes, but, from thenceforth, afterwards, still, again, no longer, no more, also, us, we.
Mes (*a toutz jour*), for ever after.
Mes ja, but yet, nevertheless.
Mes que per, but only by.
Mes sicome est conteyne, than is contained.
Mes sil voit server, but whether it will serve.
Mes que (*que*), that as soon as.
Mes (*pur*), out of mischief.
Mes avegne, evil, misfortune happens, befalls.
Mesceient, *mescent*, intermix.
Mesch, mischief, misfortune.
Mesces ortieux, the middle toes.
Mescez, accuse.
Meschet (*si il*), if he miscarries.
Mesconnussant, ignorant.
Mescreablesgentz, persons not to be believed.
Mescreauntz, miscreants, infidels, unbelievers, heretics.
Mescrux, suspected, guilty.
Mescusse, excuse.
Meseaise, trouble, misfortune.
Mesel, *meseal*, *mesiau*, a leper.
Mes entendetz (*vous*), you misunderstand.
Meseaux deges, leprous persons.
Meseise de cuer (*a*), uneasy in our mind.
Mesfere, misdeed.
Mesfesours, criminals.
Mesiuil, *mesuil*, a messuage, a house.
Mesire, monsieur.
Meskerdy, Wednesday.
Mesmes, himself.
Mesn en repons, put to answer.
Mesnage, of the household.
Mesnam (*le*), took him, led him away.
Mesnaunce, bringing in.
Mesnauntes, bringing.
Mesne (*a la*), in the middle.
Mesne (*le court sera*), the court shall be adjourned.
Mesnee, *mesnie*, *meyne*, family.
Mesnee (*ee de sa*), to be within his jurisdiction.
Mesnees, managed.
Mesner seroit (*qant*), when it should come in question.
Mesnes (*par diverses*), by diverse means.
Mesnier, a public cryer.
Mesnours, leaders, conductors.
Mesnours des querelx, bearers of quarrels.
Mesoing, negligence.
Meson, a house.
Mesonage, house-room, warehouse-room.
Mesprendre, to misbehave, offend, mistake.
Mespressure, offence, misconduct.
Mespriorai, (*de ceo*), of this I will exculpate myself.
Mespris, offended, done amiss.
Mesprison, misprision.
Mess, mass.
Message, a messenger, one retained in the service of another, a dependant.
Messagerie (*par colour de*), under pretence of being a messenger.
Messages, an ambassador, a nuncio.
Messeist, evil intreat.
Messeles, middle; diseased.
Messeles (*dens*), the cheek teeth.
Messer messour, an officer in a manor, who had the overlooking and care of the fields in the time of harvest, and for which he was intitled to certain profits.

Messerie, seignory, dominion.
Messilerie, a lazaretto, an hospital for lepers.
Messire, my lord.
Messire vos garde, the Lord preserve you.
Messoins, had a mind.
Messoinges, lyes.
Messoit, but had he been.
Messures, measures, terms.
Mester (*haut*), grand master.
Mester de counter (*le*), the science of pleading.
Mester soit (*si*), if there be occasion.
Mestier (*le*), the business, trade, occupation.
Mestre, mystery.
Mestre, be committed.
Mestres, masters, clients.
Mestrier, to get the mastery, dominion.
Mesuenges (*lour*), their household, dependants.
Mesurable, reasonable, moderate, proportionate.
Mesurable manner (*en*), in a proportionable manner.
Mesurage (*pur le*), for the measure.
Mesure terre, land containing about forty ox gangs.
Mesure (*le*), the terms.
Mesure (*preigne*), be moderate.
Mesure rase, *rasen* (*par*), by a measure stricken.
Mesurer, to mow.
Met, to put.
Met, puts.
Met a conseil, asked the advice of.
Metable a mainprize, to be let to mainprize mainpernable.
Metere (*de*), to place, assign, to put.
Metir, offers.
Metre, to pledge.
Metre (*le*), master.
Mette peyne (*ne*), let them spare no pains.
Mettes, bounds.
Mettes (*faux*), false measures.
Mettid, charges.
Mettier, the moiety.
Mettive, harvest-time.
Mettre (*a*), to set, fix.
Mever (*e*), to move.
Meves, moved.
Meu, *meus*, commenced, moved, induced.
Meuchz, *meuth*, *meulx*, *meux*, *meuz*, *meutz*, *meultz*, better.
Meult (*semble pur le*), it seems best.
Meulz vaues, most substantial.
Meur, *meour droit*, better right.
Meures, mature, ripe, steady.
Meurra (*les*), shall muster them.
Meurisson, maturity.
Meurte, maturity, wisdom.
Meusengs, those of his family, his dependants.
Meusmes (*nous*), we moved.
Meussent, stirred up.
Meut, a kennel.
Meuth (*I vient*), it is better ; best.
Meuz, many.
Meymes (*de*), of the same.
Meyn (*par le*), by the hand.
Meyn (*la pleyne*), the handful.
Meyn (*a sa soule*), on his own single oath.
Meyn (*avaunt*), before hand.
Meyn (*du*), of my own.
Meyn en meyn (*de*), from hand to hand.
Meyn le temp (*en*), in the mean time, at the same time.
Meyn ove, work, labour ; used.
Meyn (*sans*), without mesne.
Meynal, menial.
Meynce damage (*au*), doing as little damage as possible.
Meyndre, less.
Meyne, *meyney*, a household, family.
Meyne (*lur volunte de*), their own will.
Meynpastes, household, family, dependance.
Meyn pris, let to mainprize.
Meyns avysement maunde, ill advisedly sent.
Meyn sachantz, the unwary, the illiterate.
Meyns remembrantz, not sufficiently mindful.
Meyns (*outre*), out of her hands.
Meyns (*entre*), in hand.
Meyns nues (*a*), their hands bare.
Meyns (*en*), under the protection.
Meyns soit prise (*au*), be less effectually inquired into.
Meyns, less.
Meyns (*au*), at least.
Meynt, *meint*, dwells.
Meynt aresteant, notwithstanding.
Meynte foitz, then, at the same time.
Meyntenant, immediately, presently.
Meyntent, maintains, harbours.
Meynt home, many a man.
Meyntz jour passe, long since.
Meyre, mayor.
Meys, month.
Meys (*ove sa dozyeme*), the party himself and eleven compurgators.
Meys, month.
Meysun, house.
Mez, middle.
Mi, me, myself, my.
Mi, half, middle ; mixed, put.
Mi este (*le*), Midsummer.
Mice, part, portion.
Micoulau, Nicholas.
Midivint, midnight.
Mie, not ; ill.
Mie 'a la), in the middle.
Miech-aoux, the middle of August.
Miedi, in the middle of the day.
Mielz, *mieltz*, *mielx*, *miens*, *miez*, *miex*, *mex*, best, better.
Miendre, less, the least.

Miendres peches, smaller offences.
Miere, *mier*, *mire*, mother; mere.
Miers, *mieeres*, (*les* IIII), the four seas.
Mies, messuage or house.
Miestre, occasion.
Miestre est (*que*), than is necessary.
Mieudre, better.
Mieux, less; rather,
Mieux (*face soun*), do his best.
Miey, middle.
Migne de feer, mines of iron.
Miere, *mier*, *mire*, *mere*, mother.
Mij qaresme, midlent.
Mikiel, Michael.
Mileime, thousandth.
Milie mars, a thousand marks.
Millier, a thousand.
Milliou, better.
Millort Henry, my lord Henry.
Milui, middle.
Milveyn frere, middle brother.
Millyme deusentyme, twelve hundred.
Min (*le*), mine.
Minee, *la menee*, those who ought to pursue felons on a hue and cry.
Minister (*a*), to put in.
Ministralx, minstrels.
Ministration, the management.
Minnict, a minute.
Minovery, trespass done by the hand.
Minours, miners, engineers.
Miou, mine.
Mioudre, better.
Miqueou, *Micquel*, Michael.
Mire, *miere*, *mier*, *mier*, mother.
Mire, sea.
Mire (*ne nous deit*), ought not to put us into a worse condition.
Mirmour, murmur.
Mirrour, pattern.
Mis, we, us.
Mis, *mys*, left.
Miscrew, *miscrue*, suspected, guilty.
Mise, issue, plea.
Mise, the joining issue in a writ of right.
Mise, (*sans sa*), without issue joined.
Mise demene (*de vestre*), of your own putting.
Mises, expences, costs, tasks, taxes.
Miseres (*feaux*), faithful gentlemen.
Miseymes, supposing.
Misire, monsieur.
Mislier, *mislyer*, to chuse the wrong, to mistake.
Misprisel, mistaking.
Missions, mises, expences.
Missives, *epistles*, letters.
Mist, left.
Mist (*soy*), appears.
Mister, need of, occasion for.
Mister, a secret.
Mistermyng, miscalling.
Mistioner, to mingle.
Mistrent (*se*), put themselves.
Mit (*ou il lui*), where he was his attorney.
Mitaundre, in the night-time.
Mitter, to appoint.
Mittomus, we admit, we put the case.
Mittomous, let us suppose.
Mittr, will send.
Mittre et tenus, put and kept it.
Mius, better.
Moblys, moveables.
Mocke, a bride, spouse.
Mod (*en la*), in the mud.
Modifier, to alter, regulate.
Moedz de vin, a hogshead of wine.
Moel, *meel*, honey.
Moeleen, millstone.
Moelt grantement, very greatly.
Moement, especially.
Moer, moves.
Moerge, dies.
Moeryer, to die.
Moes, better.
Moeves, moved.
Mogne, a monk.
Moi, may.
Moien temp, mean time.
Moien, mediation, a mediatrix.
Moienantz, *moiennans*, namely, especially, by means of.
Moienes, means.
Moienne, moderate.
Moienner, to mediate, negociate.
Moienneresses, mediatrixes.
Moient, administring.
Moigns pour le, at least.
Moillere, a malier.
Moillers (*dents*), the teeth called the grinders.
Moils draps, milled cloths.
Moine, money.
Moinere (*en la*), in the least.
Moirent, die.
Mold, model.
Moldes, many.
Moleins pur freins, bosses, bits for bridles.
Molener, a miller.
Molicons (*des*), demolition.
Molt poi, much worse.
Molours, mills.
Molt, much, very.
Molument (*le*), the emoluments.
Molyn ventreese, a windmill.
Moly sigles, mill sails.
Mond des molyns (*pur*), to grind at the mills.
Mondre (*de*), to cleanse out.
Moneage, an aid or present to the duke of Normandy once in three years, that he should suffer the current money of Normandy to be changed. See charter of Henry I.

Monemu, Monmouth.
Monester (*a*), to admonish.
Monition, *munition*, ammunition.
Monles (*deux*), two floods.
Monnoyer (*argent*) *ou a monnoyer*, silver coined or not coined.
Monnumentz (*nos menementz*), our deeds or muniments.
Monser Jehu Christ, my lord Jesus Christ.
Moust, *mout*, the world.
Monster, to shew.
Monster, *monstre*, *monstrer*, *mouster*, *mostier*, *mustre*, a monastery, a church.
Monstra, took it.
Monstrable, to be declared.
Monstraunce (*par mauveyse*), by unskilfully declaring.
Monstre, mustre of forces.
Monstreson, the shew.
Montance, the value.
Mont de fois, many times.
Montz, *monstiers*, mountains, high lands.
Mordreu, murdered.
Moreyns, *morivaile*, murrain, plague.
Moreult, *marst*, *mora*, *morent*, dyed, dye.
Moreys, starved, stinking.
Moriance, death.
Moriant (*en son lyc*), on his death bed.
Morine, *merine*, timber.
Morreus, *Morreve*, Murray.
Mors d'argent, a button, buckle, or clasp of silver.
Mort-Mahoum, by the death of Mahomet.
Mort (*a la*), sitting melancholy.
Morteus, deadly, mortal.
Morust de enfaunt, dyed in childbed.
Moryn, wall.
Morz (*q*), as well dead.
Mosnier, a miller.
Mossy, Moses.
Mostera, will shew.
Mostrance, remonstrance.
Mot et moet, word for word.
Mote motez, put, expressed.
Motenaux (*pels*), sheepskins.
Moties, *motee*, mentioned, worded.
Motons, *motonus*, weathers, sheep.
Motye, moiety.
Moudes, *maners*, many kinds.
Mouldre, *moudre*, to grind.
Moultlouse, very long.
Moultons, weathers.
Moult pres, (*eyde*), very much contribute.
Mound, the world.
Mounder, to cleanse.
Moundre, to fence, inclose.
Mouneyne (*seur*), middle sister.
Mount (*tout le*,) the whole world.
Mount (*vers*), towards, upwards.
Mountance, amount, value.
Mountaunt, amounting to the value of.
Monture, a riding horse.
Mourront (*ne*), shall not move.
Moue, many.
Mout, died.
Mout, much, greatly.
Mout de fois, many times.
Mouti, motive, design.
Mouth serroit (*qe*), which would be best.
Mouton d'or, an ancient French gold coin, on which was impressed a lamb, with this inscription, Agnus Dei, qui tollit peccata mundi, miserere nobis.
Mouys, *muys de ferment*, a certain measure of wheat.
Move (*se*,) begins.
Moveementz, commotions, disturbances.
Movement (*al*), on the motion.
Movas, *moyes*, months.
Moyen, mean, indifferent; temperate; middle.
Moyen (*sans*), without mesne.
Moyennant, paying, making such payments.
Moyennant (*vous*), you being the mediator.
Moyennant qu', provided that.
Moyenner, to intercede with.
Moyes, months.
Moymennans, by means of.
Moyr, mayor.
Mt, death.
Mu, incited, moved.
Muable (*home*), an inconstant man.
Muables, different, vary.
Muaunce, changing.
Mucettes, in secret.
Mucha, concealed.
Mue, *muele*, mute.
Muer, to change, alter.
Muerge, dyes.
Muete, sedition.
Mueth, better.
Muins, warned.
Muire, to dye.
Muit de chiens, kennel of hounds.
Mulnes soer, the second sister, or the middle between two.
Mulnes, *mulnesse*, fulness; the least.
Multe, the fine.
Mult puy, much worse.
Mulveyn, *mulnes frere*, middle brother.
Muner, to warn.
Muni, warned.
Muniment, evidence, proof.
Munseur, monsieur.
Munte (*qui*), which amounts.
Munture, a riding horse.
Muovee, moved.
Muovent (*se*), vary.
Murdre, kept secret.
Murdressours, murderers.
Murdrissent, keep secret.
Mure, *nuyre* (*pur nous*), to injure us.
Murement, maturely.
Murger, *murer*, to perish, to dye.

Myriaux, walls.
Murours, men employed in building walls and fortifications.
Murra, shall dye.
Murrerent, *murrurent*, dyed.
Murrust homage, the homage is respited.
Musce, *musee*, *musse*, *mucha*, concealed.
Museaux, leprous.
Musettes (*en*), secretly, privately.
Musseles, *muscettes* (*par*), by stealth.
Mustre fruisser (*de*), of breaking into a church, or monastery.
Mustrer, *mustrel*, to shew, set forth.
Mustrerunt, shewed.
Musurablement, according to the measure.
Musures, measures.
Mutere (*de*), to change.
Mutua, pledged, lent, changed.
Mutuve, mutual.
Mutz, moved.
Muye (*ny vint*), did not come.
Muygne (*un*), a monk.
My tout, all parts.
My (*entour la*), about the middle.
My lieu (*clause en*), middle clause.
My (*per*) *et per tout*, by the half or moiety and by all.
Myer, mother.
Myeus, rather.
Mykaresme, midlent.
Myle haut fil (*en*), in the main stream.
Mynate, midnight.
Myneurs, minors.
Myre, to prejudice.
Mys, *mise*, left.
Mys (*son*), his consent.
Mys par gage, put by gages.
Myse, assessment, punishment.
Myse (*par sa*), by his pleadings.
Myse (*pur*), for lodging, placing, appointing, depositing.
Mysne (*temps*), mean time.
Myssus, surmised.
Myst, *mye* (*ne*), did not use.
Mystes, prelates, bishops and archbishops.
Mystre, to place.

Na, *nade*, born.
Naal, *Nadal*, *Nadaou*, Christmas.
Naam, replevy, distress, withernam.
Naamer, to distrain.
Naams, *names*, distrained.
Nacion, birth,
Nadgeres puis, sometime since, lately.
Naefs, ships.
Naffrerent, wounded.
Nagement, swimming.
Nagueres, *n'agures*, lately.
Naidgayers, *naidgaris*, *nadgares*, lately, sometimes.
Naif, natural, lively.
Naifu clemence (*sa*), her natural clemency.
Nail, a nail in measure.
Nails jammes, nevertheless.
Nailours, not elsewhere.
Naistres (*faux*,) bastards.
Nammil, *nam*, distress.
Nanyl, nothing, not, no.
Napez, naped.
Naplus, Naples.
Nashist, should be born.
N'asquit, *nasqe*, was born.
Nastres (*fous*), idcots.
Nat, *net*, pure, clean.
Natables, notable, considerable.
Natair defaut, notorious defect.
Nattraie, draws to himself.
Naturesses, naturalness, natural affection, kindness, civil usage.
Navant, they had not.
Navie, navy, ships.
Navil, no, not.
Nau, a ship.
Naufre, *naures*, wounded, beaten, hurt.
Naye, drowned.
Nayement, *nagement*, swimming.
Nayer, to swim.
Naz, the nose.
Ne, nor.
Ne, born.
Ne pur quant-quint, notwithstanding.
Ne ad geres, *ne advers*, lately.
Neant, not, nothing.
Neatir, to annihilate.
Nee (*seint*), St. Neot's.
Nee, a native.
Neef, a ship.
Neen, *neez*, *nees*, born.
Neen (*al heure de*), till noon.
Neent, have not.
Neerment, nearly.
Nees, the nose.
Nees, endamaged, drowned.
Nees, *nee*, *neetz*, arisen.
Nees fols, natural fools.
Nef, *noef*, *nief*, new.
Nef, nine.
Nefe, a ship, a boat.
Nefe, *neif*, *niefe*, a bondwoman.
Nefieme, ninth.
Nefoketel sur Line, Newcastle under Line.
Nefs, ships.
Negit, negation, negative.
Neiantz, not having.
Neicence, birth.
Neiens, *neins*, nevertheless.
Neirent, drowned.
Neif (*le*), the ninth.
Neifture, *neifure*, nativity.
Neint, nothing.
Neir, black.
Neis, not yet.
Neis, ships.
Neis un (*a*), to any one of them.

Nekedent, nevertheless.
Nellui, nobody.
Nel ret, of any crime.
Nemy encontresteant, notwithstanding.
Nemy pur ces, notwithstanding this.
Nenf, ninth.
Nennil, by no means, not at all.
Nenparnent, shall not take upon themselves.
Nent, or, nor.
Nent, not.
Nent, (*ne soit*), is only.
Neof, nine.
Neoyt, night.
Nepurquant, nevertheless, moreover.
Neven, nephew.
Neqe dot, nevertheless.
Nes, ships.
Nesance, *nessaunce*, birth, origin.
Nes pot, cannot.
Nessens, ignorance.
Nessent, beget, arise.
Nessi, an ideot.
Nestre, not to be.
Nestre, to accrue to, to arise.
Nestre (*le*), *nestree* (*la*), the birth.
Nestre, *nester* (p), by the birth.
Nestrewir, notwithstanding.
Nestroit, not known.
Nestry (*pur my bre de*), by writ of naifty.
Nettement abatu, wholly pulled down.
Nettrez, educated.
Nettroit, would accrue, arise.
Neture, nature.
Nevant (*nemie*), not before.
Nevement, closely, nearly.
Nevisme, *nevyme*, the ninth.
Nevoutz, *nevor*, nephew.
Nevrer, to afflict.
Neu, not.
Neure, to hurt.
Neusseez vous ale (*qi*), why did you not go.
Neux, nine.
Neuz, nephew.
Newel, Christmas.
Neweu, *newe*, nephew.
Ney, not.
Neye, drowned.
Neyez, have not.
Neysture, birth.
Neytz, *netz* (*croiz*), the white cross, viz. of St. Andrew: one of the crosses on which they used to swear in Scotland.
Nez, a naive.
Neze, nose.
Ni (*un*), not, a denying.
Niant, not.
Niant, danger.
Nicement, especially.
Nichol, *Nicol*, Lincoln.
Niee, denyed.
Nieement, namely, particularly.
Niel, Nigellus.

Nielment plede, badly pleaded.
Nient mienz, moreover, besides.
Nient, not, have not.
Nient (*a*), for nothing.
Nient numbrables, innumerable.
Nient obstant, *nient aresteant*, notwithstanding.
Nient lemeins, nevertheless.
Nientesement, avoidance, destruction.
Niert *jammes*, shall never be.
Nies (*unques*), ever was known.
Nias, *niez*, a grandson, also a nephew.
Niet, brings, draws.
Niez, new.
Nifle, a thing of no value, a trifle.
Nil, no one, nothing.
Nisser, shall not issue.
Nitivitee, nativity.
Nit meins (*ne*), nevertheless.
Niye, drowned.
No, our.
No, nor, not.
No, note.
Noblee (*la*), the noble extraction.
Nobleise (*cy hauts*), so high and noble a calling.
Noef, nine.
Noefa, refused, would not, durst not.
Noefs, ships, vessels.
Noeifs (*ses*), his neifs.
Noel, *Noil*, Christmas.
Noement, especially.
Noemme, *noemine*, ninth.
Noer, to swim.
Noesantz, nuisances.
Noet, night.
Noetandrement, in the night-time.
Noevieme, *noefieme*, ninth.
Noez, our people.
Noera (*ne*), shall not deny.
Noies (*totes*), always.
Noif, *neis*, snow.
Noifte, neifety.
Noirent (*que ne*), who do not send.
Noisent, dare not.
Noisife, noxious.
Noismes (*pot*) *voisines*, neighbours.
Noix, *noitz*, night.
Nom, no.
Nomassoins, had named.
Nomed (*per serment*), by swearing in a set form of words.
Nomement, *noement*, *nomementez*, to wit, especially.
Nomerz, *nometz*, named.
Nomis, names.
Nom merveill, no wonder.
Nonaen, *nonain*, *nonne*, a nun.
Nonchosant, knowing nothing.
None, noon.
None, ninth.
Noneins, nuns, wives.

Nonmesnaunce (*la*), the not bringing in.
Nonn, name.
Nonn (*an*), in name of.
Nonsachaunce, ignorance.
Nonsauz, nonsuited.
Nonsemblablement (*le pluis*), the more unlikely.
Noore, noon.
N'oosa, durst not.
Nore, a daughter-in-law.
Norgales, North-Wales.
Nori, a foster-child.
Norices, nurses.
Norissement, encouragement.
Norist, breeds; amounts to.
Norrour (*le*), the gilder.
Nos, we, our.
Nosant, hurtful.
Noseast, durst not.
Nose, *nosi*, a nut.
Nosement, namely.
Nosest, knows not.
Nosmes, *nosmables*, surnames.
Note (*il a*), he has declared, given out.
Note, expressed, specified.
Note (*hors de le*), out of the note of the fine.
Notisons, make known.
Notoier, science, of experienced knowledge.
Notorement, notoriously.
Notorie, material, observable.
Novallitez, *novellerie*, *novellers*, innovations, new terms.
Noveal, new.
Novel (*ore de*), now of late.
Noveletes, injury.
Novels porcions, equal portions.
Novies foits, nine times.
Nou, *nouve*, nine.
Nouches, knots.
Nouestre, our, ours.
Noun, nine.
Noun (*de chescun*), for every number.
Nounne, noon.
Noun (p), by name.
Noun def, not, or undefended.
Noun due, undue, what is not lawful.
Nour, us.
Nowell, *novelle* (*a*), at Christmas.
Nowelles, new.
Noyer (*ne*), knew not.
Noyes, drowned.
Noys, nuts.
Noysaunce, a nuisance.
Noz, our, us.
Nu mencion, no notice.
Nuce, a nut.
Nude empeschement (p), by a bare impeachment, without any proof to support it.
Nuef, *nueve*, new
Nuire, *nuyre*, hurt, injure.
Nuisement, nuisance, annoyance.
Nul (*si*), if any.
Nulencis, never.
Nulh, any.
Null (*a*), to any one.
Nulla, no, none.
Nulluy, no one.
Nuly biens (*en*), in any one's goods, any one's property.
Num, *nun* (*en*), in name.
Nummez, named.
Nun (*ky Deu*), which God forbid.
Nuncie (*la*), declare it.
Nuncie (*que*,) who may declare.
Nuof, nine.
Nurrer, *nurer*, (*pur*), to nourish.
Nurrix le roy (*les*), the familiars of the king.
Nurture (*de sa*), of his own bringing up.
Nus, no.
Nus, we.
Nusant alia, to the nuisance of another.
Nusse, nobody.
Nust dust fere, ought to do to us.
Nut, has.
Nutauntre, in the night-time.
Nute (*mi*), midnight.
Nuyst (*ne*), does not hurt.
Nuyter (*a la*) *nuytandre*, in the night-time.
Nuytz, night.
Nux (*san*), without us.
Nyant, not.
Nycke (*nosme*), nickname.
Nye, a nest.
Nyef, *neif*, a woman villain.
Nyefe, *neif*, a ship.
Ny gist, does not lie.
Nyent avant, they have none before.
Nyuement (*sy*), so vigorously.
Nyurent, endeavoured, commanded.

O, or, and.
O, *ou*, with.
Obeissaument, obedience.
Obfaires, uttered.
Objicet, to object, lay to one's charge.
Obit, *obites*, dead, forgotten.
Oblicter, to sport, rejoice.
Oblier, to forget.
Obligation, tenure.
Oblige, liable.
Oblivion, forgetfulness.
Obmittes, omitted, left out.
Obscurity (*en*), in a dungeon.
Oc, yes, so.
Ocbeir, to obey.
Occluder, to shut.
Occupation, encroachment, seizures.
Ochoison, *ocquison*, *ocoison*, occasion, accident.
Ocious vie, an idle life.
Ocreis (*le*), the increase.
Octroye, granted.
Od, or, with.

Od sei (*speler*), call him.
Odible, odious.
Odonqe, then.
Oefs, bees.
Oegles, *ogles*, *oels*, eyes.
Oel, she.
Oel, equal.
Oels, them, the same, in like manner.
Oens (*s*), to them.
Oens (*les*), the doors.
Oept, eight.
Oeptaz, *&c.*, octave, &c.
Oeptisme, eighth.
Oer (*de*), to trust.
Oes, *oepe*, use, benefit.
Oesses del chambre (*les*), the doors of the chamber.
Oet, *oete*, eight.
Oeux, eggs.
Of, with.
Office (*de son*), of right, by virtue of his office.
Offre, a tender.
Offres (p) *et* p *demandes*, by question and answer.
Ofisses, *offix*, offices.
Oghsta, ousted.
Oi, I have.
Oi, *oie*, *oietz*, heard, hearing.
Oi (*cours de*), his body.
Oictouvre, October.
Oie, an ear.
Oiels, eyes.
Oient, had.
Oier (*d'*), to hear.
Oier del (*jurie al*), to the ear of the jury.
Oil, *oil*, yea, yea, ay, ay; the assent of the commons in 28 Edw. III.
Oille, oil.
Oingt, anointed.
Oioit, heard.
Oir, to hear.
Oir masle, heir male.
Oirs (*pur ses*), for his heirs.
Oires (*jusques*), to this time.
Oisel, *oiseal*, a bird.
Oisel St. Martin (*le*), a crow; so called from its generally being seen about Martinmas in France.
Oisines, inactive, idle.
Oismes, we have heard.
Oist, east.
Oisuir, leisure, opportunity.
Oitaves, octaves.
Oit d', eight-pence.
Oitement, advancement.
Oiz, heard.
Olifaunt, an elephant.
Oly (*d'*) olives.
Om, *omme*, a man, person.
Om meffesoit (*come se*), as if one had offended.
Omes (*prud*), magistrates, great men.
Omicidie (*d'*), of homicide, manslaughter.
Omosnes, alms.
On, in.
On (us), an ounce.
On assent (*sans*), without their assent.
Onche (*d'or*), an ounce of gold, a brooch, a necklace.
Oncl, uncle.
Oncore, moreover, again.
Onques n'eussent ete, had never been.
Ond, one.
One, with.
Oner (*l*), the honour.
Onerer (*se dust*), ought not to meddle.
Oneret (*sagement*), wisely to work.
Onestes, decency.
Onfrec de Bohun, Humphry de Bohun.
Onkore, yet.
Onnerount, will send.
Onneur (*cap d'*), cap of honour.
Onques, never, ever.
Onst eu, have had.
Onte, shame.
Onur, honour.
Oons (*nous*), we have.
Oont et terminent, hear and determine.
Oor la reigne (*le*) *aurum reginæ*, Queen gold. This is a royal debt, duty, and revenue of every queen consort of England, during her marriage to the king from every person, both in England and Ireland, for every gift, or oblation, or voluntary obligation or fine to the king, amounting to ten marks or more, for privileges, franchises, dispensations, licences, pardons or grants of royal grace, or favour conferred by the king, which is a tenth part, besides the fine to the king.
Oor de Cypre (*de drap d'*), cloth of gold of Cyprus.
Oosent (*n'*) dare not.
Oost, army.
Opposer, *apposer*, to appose, examine, question,
Ops, choice, will.
Opse, use.
Opteinent, obtain.
Oquison, occasion.
Or endroit (*qui*), who at present.
Orail, *oraille*, an ear.
Oraire, *orarium*, a stole to be worn at all times by the priest: it went about the neck of him that officiated, to signify he had taken upon him the Lord's yoke.
Orat (*ori*), heard the cry.
Oratours, complainants, petitioners.
Orce, *ors*, *orse*, a bear.
Orde (*del*), of commanding, ordering.
Ordenours, those prelates and barons who in 1310, 3 Edward II. were appointed, by virtue of the king's commission, to reform

and settle the state of the king's household, and of the kingdom.
Ordemments, ordinances or statutes.
Ordes parolles (*ove*), with foul words.
Ordeynement, determination.
Ordi, barley.
Ordinail, a book of rules and orders, to direct the right manner of saying and performing holy service: the most famous of this sort was that of Sarum, made by Osmond, bishop of Salisbury, 1077.
Ordinares, *ordeners*, ordinaries, bishops.
Ordine, order, rule.
Ordiner, to dispose of.
Ordir, to be filthy.
Ordrene, ordained.
Ore, any more.
Ore (*d'*), at present.
Ore (*et ja soit*), and suppose.
Ore (*pur son*), for her queen gold.
Oreler, a pillow.
Orendreyl lui, on his part.
Orendroit, now, at this time.
Organes portatifs du roy (*les*), the king's portable organs.
Oriel, an ear.
Orier, to rise up, the rising.
Orila ove le roy, had a private audience of the king.
Orir, to arise from.
Orlage, a clock.
Orphays, orphans.
Orphevur, goldsmith.
Orray, *orrount*, *arreyent*, *errent*, shall hear.
Orret, guilt.
Orribletee, horribleness.
Orrie (*l'*), the inheritance.
Ort, a garden.
Orteils, claws.
Ortieux, toes.
Osannes, *Ozanne*, Palm-Sunday.
Osi, also.
Osse, bone.
Ossi qe, so that.
Ost, he had.
Ost, host.
Ost, *ostel* (*a*), with an army.
Ostage, hostage.
Ostagiez, set at liberty.
Ostassent, should remove from, oust, put out.
Osteilx, houses.
Ostel, household, at home, an inn, lodging, entertainment, diet.
Ostension (*de faire*), to shew, to produce.
Oster, taken away.
Oster (*mal*), bad understanding.
Os teres, such lands.
Osterons, will put out.
Ostier, a door.
Ostoyt, stood, was.
Ostre, shewed.
Ostre ceo, moreover.
Osyum lesser (*nus de*), we have adjourned.
Ot, *il ot*, he had.
Ote ot, he hearkens.
Otel, as much, the like.
Oterie (*e*), and grant.
Otiosite, idleness, want of employment.
Otrée, granted, consented, appointed.
Otrei, the other.
Otrei, *otri*, leave, consent.
Otrei de ceo, further, moreover.
Otriemenz, concessions.
Otroiant, attending to, regarding, granting.
Otruoyeons, grants.
Ottie, granted.
Ottie, taken away, carried off.
Otto or Otho de Tillie, the name of some Norman, who built Doncaster cross.
Ottreer (*le*), the charter.
Ottreire, to grant.
Ottret, granted.
Ottrie de ceo a luy (*n'*), does not pretend himself to have any title thereto.
Ottroyent (*s'ilz luy*), if they grant it to him.
Ottroyer, to contract.
Ottruys, granted.
Ou, whereas, whereto, within, with, into, in.
Ou cas, in case.
Ou nun, in the name.
Ou que ils fuissent, although they were.
Ou q soit chargeant, wherewith he be charged.
Ou, to open.
Ouan, in a year.
Oucunque, wheresoever, whatsoever, whensoever.
Oue, *ouie*, a goose.
Ouen (*qi*), who have.
Oues, bones.
Ove, with.
Ove et de trove; *de eve et de treve*; i. e. free for many descents; from grandfather, and great grandfather's great grandfather; also certain seignioral rights exercised over villians.
Ovek co, moreover.
Ovekes, *oveuk*, with.
Ovel, new.
Ovelment, equally, justly, exactly.
Ouent, have.
Ovanus, arrived, come.
Over, have.
Over (*de*), to work, to labour.
Overaigne del Eglise (*al*), to the fabric of the church.
Overe, *ouere pur luy*, passed in her favour.
Overe pur vous (*qe*), which is in your favour.
Overe (*par*), by endeavouring.
Overe en avant (*de cel*), from that time forward.
Overecha, goes beyond.

Overee sey, wrought silk.
Overeigne (*al*), towards building.
Overeignes, works.
Overe mye (*ne*), there is no occasion for.
Overent, passed.
Overer, to proceed, to gain.
Overrer, to work.
Overesces de seie, silk-workers.
Overete (*en lieu*), in an open place.
Overez, built, erected.
Overre (*en*), inquiry.
Overte (*en temps*), in open tide.
Overtement, plainly, manifestly.
Overtes, open, so as the lord can distrain.
Oves et seues, done and prosecuted.
Oveseqe ceo qe, except that.
Ovesque, also.
Ovestoit, whilst he was, was heretofore; appointed.
Oughtee, ousted.
Ovient, often.
Ovir, to hear.
Ouk, ever.
Oukuns, any.
Oult (*au*), on the last day.
Oultrance, attrenche (*a tout*), to the utmost.
Oultroyse, granted.
Oumes, men.
Ountement, openly.
Ount mester, hold it necessary.
Ovoqes tut ce, besides all this.
Ouq, and that, where.
Oura, shall have.
Oure, hour.
Oure, to kill.
Oure, oures, works.
Oure (*al*), at the time.
Ourerome (*nous*), we will proceed.
Oures (*avant tout*), especially.
Ourir, to manage.
Our ke (*del*), as soon as.
Ours (*j*), I shall have.
Ous, bones.
Ous (*a*), to them.
Oust, August.
Oust, out, has, had.
Oustage, hostage.
Oustantz, ousting, turning from.
Oustel (*al*), to the door, at the door, at the beginning, at first.
Ouster auxi, over, also.
Oustrez, oustes, put out, removed, taken off.
Oustr, over.
Oustre, removed.
Oustre auter droit, except what belongs to others.
Oustre quel, beyond which, after which.
Out, above.
Outel (*sacrament del*), sacrament on the altar.
Outere, overte (*eschange,*) public, open exchange.
Outlagari, an outlawry.
Outrage, abuse, excess.
Outragieuse, excessive.
Outre, over, besides.
Outre (*d'*), of another.
Outre (*la*) *doutre la meer*, beyond sea.
Outreiz, granted.
Outrement (*tout*), *ouvertement*, intirely, utterly.
Outr quen culture, over, through which piece of ground.
Outre (*sa demande tout*), the whole she demanded.
Ouve, or.
Ouvertez, letters patent.
Ouwel-main (*en*), into an indifferent hand.
Ouye, ouy, ouyes, heard.
Ouyez, publishing, proclaiming.
Ouzervient (*ne*), durst not.
Ouzisme, eighth.
Ow, or.
Owaille (*un*), a sheep.
Owe, aue crasse, a fat goose.
Owe, hired.
Owel, ouelx, equal.
Owele main (*en*), into an indifferent hand.
Owele condicon (*de*), of equal condition.
Owelment, equally.
Oweles (*Dieux ad comys ses*), God has committed his sheep.
Owells, eyes.
Owels, goods.
Ower, oar.
Owester celle awereuste (*pur*), to remove this doubt.
Owyt, eight.
Oy, hear, heard, audited.
Oy (*demanda*), demanded oyer.
Oy dire (*par*), by hearsay.
Oye, an ear.
Oye, oyer.
Oye encor (*je n'*), I have not yet.
Oyels, eyes.
Oyer, eyes.
Oyer (*so*), his hearing.
Oyis, heard.
Oyl, yes, hear ye, an eye.
Oynt, eight.
Oyr no acuntes (*de*), to audit our accounts.
Oysels, birds.
Oyson, goose.
Oyst, heard.
Oyt, eight.
Oytaves, octaves.
Oytiesme, the eighth.
Oyzes (*kil*), that he hear.
Ozanne (*la fete d'*), Palm-Sunday.

P *amont escrit*, above written.
Pl, plaintiff.
P *my*, throughout.
P *noms*, have brought.

Pnt, takes.
Pont, can, may.
Poirez, procured.
Ppris, purprised, encroached upon.
Prou, profit.
Pr tee, for their land.
Ps, taken, more.
Ps dil ce qs, near unto, almost to.
Pse, taken.
Psel, taking.
Ptie, brought.
P use, by turns.
Paage, payment.
Paas, country.
Pace, *passe*, passes, exceeds.
Paces del Eschekir (*en voiez a les*), sent to the places; i. e. to the courts of the Exchequer, &c.
Pache, a convention.
Pace, peace.
Pae, *paemenz*, *paes*, payment.
Pae pas (*ne se*), is not satisfied.
Paee, payed.
Paer (*l' apostoill*), father the pope.
Paes, agreement, peace.
Paes, countries.
Paes (*nexcede*), do not exceed.
Paetz, paid.
Pagner (*per*), by payment.
Paiages et Rovages; pedagia et roagia, tributes and rotages. See *Roynages*.
Paie (*de*), of payment.
Paie (*mau*), displeased.
Paiere (p *la*), by the father.
Paies, *payez* (*les*), the payments.
Paigners, panniers.
Paile, omitted.
Pailement faire, to do the like.
Paillettes, bangings.
Painer, to torment.
Pain-grosse, brown bread.
Pains, loaves; the first Sunday in lent in the Romish church.
Paintz, paying.
Painz, (*VII*), seven loaves.
Paiour, fear.
Pair, to pay.
Paira, may.
Pais, *paise*, peace.
Paisement (*sur le*) in the appeasing.
Paisne, the youngest.
Paisvile, peaceable.
Paisumne (*en*), into a Paganish country.
Paix, agreement.
Pale, *pal*, *pel*, paling, wood.
Paler, to speak.
Palettes, a military habit.
Palle, *pallees*, spoken of, treated of.
Paller (*sanz ent*), without mentioning the same.
Panbretat, mandate.
Pandecouste, Penticost.
Pane, cloth, a robe.
Pane, bread.
Panes, skins.
Panes, loaves.
Panetre le roy (*serjante de estree*), by serjeantry, to be the king's pantler.
Pani, penalty.
Pans, he thinks.
Panse, the belly.
Pansee, hung, pendant, affixed.
Pansures, poor.
Paor, *paoir*, power.
Paour, fear.
Paours, payers.
Pspa, the pope.
Papate (*la*), the papacy.
Papirs, papers, books of accounts.
Papisicke (*eglise*), the Romish church.
Papistine, a papist.
Par, equal.
Par, paces.
Par (*de*), of Paris.
Parachue, *paracheve*, finished.
Parage, kindred.
Paraimer, to love affectionately.
Parains, *padrines*, these are persons who, in the time of combat, performed the same office which advocates and pleaders use in disputation of civil causes.
Paramount (*especefi*), above specified.
Paraval les pountz, below the bridges.
Paravant, before.
Paraventure, by, between.
Parautes (*estat de*), estate of peerage.
Parcas, perhaps.
Parcenier, parcenary.
Parchemin, *parchena*, parchment.
Par chi devant, heretofore.
Parchier (*les murs*), break through the walls.
Par chose qe, because.
Parchoes chartre, in the close of the charter.
Parconniers, parceners.
Parcoons, dilatory.
Parcst, delay.
Pard, loss.
Pardamt, losing.
Parde, *pardion*, pardon, forgive.
Pardehors, outwards.
Pardehors le roialme, out of the realm.
Pardela, beyond sea.
Pardr, shall lose.
Parduit, lost.
Pardurable, perpetual.
Pardurablement, for ever.
Pare, by.
Parecherount, *parishoiront*, shall be wrecked.
Pareil, *parile*, *parole*, peril, danger.
Pareissouses, idle.
Parches, parcels, pieces.
Parempler, to fill up.

Parency, parensi qe, whereby, so that.
Parent, parentz, kindred.
Parent que, whereby.
Parerpoint, perpoint, purpoint, doublet.
Pares, peers.
Paresce, idleness.
Parferons, will perform.
Parfin (a la), at last.
Parfond, deep.
Parfurnis, parfourny, performed, executed, completed.
Pargam, parchment.
Pargemin, a MSS. on parchment.
Pariage (de), on the part of the father.
Pariens a mont, appearing with much greater.
Parier, perjured.
Parites, parties.
Parlance, parly (la), treaty.
P *la ou*, where.
Parles, pearls.
Par li, for him, on his account.
Parlire, to read through.
P*lour (lour coe)*, their common speaker, one who will answer for the whole body, the speaker of the House of Commons.
Parlure, language.
Parme, parmi, at, by, with.
Parmi (et), and according to.
Par mi ce, therefore, on that account.
Parmi chou ke, provided that.
Parmi cy, by this.
Parmuer, to truck, to barter.
Parmy, upon.
Parner, to take.
P*och*, parish, diocese, territory.
Paroches, parts, sides.
Paroge, converse, have communication with.
Parvier, to appear.
Parol, paralee, perambulation.
Parole, plea.
Paroles pur les communes (qi avoit les), who was speaker for the commons.
Parolys (avons et), had some discourse.
P*ouls*, words.
Parout, wherefore.
Parpaie, fully paid.
Parplede, pleaded.
Parpoint, a doublet.
Parquai, whereby.
Parquaunt, when.
Parquer, to inclose, impound, impark.
Parqui, in as much as, because.
Parraies, walls.
Parrie, equality.
Parrie, a peer, peerage.
Parsiver, to perform.
Parson, person.
Parsone (apres coeverfu), after coverfu has rung.
Parsoneable, personable, enabled to maintain plea in court.
Partage et pannage, portion and appennage.
Partant, therefore, whereupon.
Partant que, inasmuch as.
Parte de testes (per), by beheading.
Parte et parte, party and party.
Parte des coiles (la), the loss of the testicles.
Partement, departure.
Partez, carried.
Partirent, departed.
Partisons, divisions.
Partment, in part.
Partot, in the whole.
Partront (ne), will not depart.
Party (pur la), by reason of the parity.
Parvoar (le), the procurer.
Parvoisiers (vallez), valets who were learned in their military exercises.
Pas, passes.
Pas, paes, peace.
Pascage, grazing.
Pascher, passer, to feed.
Pascher (puisse), might go.
Pask, Easter.
Pasques charnielx, Midlent-Sunday; Dominica Refectionis.
Pasque florie, Palm-Sunday.
Pasqueret, the season of Easter.
Pasquerages, pasture-grounds.
Passant, in their journey.
Passant, feed on.
Passaunte, exceeding.
Passement, death.
Passer (doit), ought to exceed.
Passes (sunt), are made up, comprehended.
Passionaire, a book which contains the history of the passion of our Saviour.
Pastour, shepherd.
Pasture (quitz de la), to be quit of poture. See *Poture*.
Pasuilement, peaceably.
Patere, Patrick.
Pateys, putoys (le), the ceremonies, prayers.
Pati, ou souffrance de guerre, abstinence, or cessation of war.
Patience Dieu (par la), by God's permission.
Patins, pattens.
Patins, dishes, plates, or chargers, made of gold or silver, used at the distribution of the host; and these were called patins or patens; a patendo.
Patron, pattern.
Paver, pavoire, fear.
Pavis, a large kind of shield.
Pau, a stake.
Pauantz, payant, paying.
Paulement, a little.
Paumaunt, paumes, touching, laying one's hands upon.
Paus (a), in pledge.
Pax (un), a box where the sacrament is put.
Paye, a paye, satisfied; payment.
Payeé, recompenced.

Payne, penalty.
Payntier le roy, serjeant of the pantry to the king.
Paynim, a Pagan.
Pays, payes, country.
Payseqes, Easter.
Pe, pray.
Pche, preach, declare.
Pe, pee, peas, foot.
Peace le roy (a la), to the law of the land.
Peae, peax, peax, peace.
Peae, feet.
Peages, to us.
Peaiges, tolls, customs.
Peaisez, countries.
Pealx lanux, woolfels.
Peaux deberbiz, sheepskins.
Peautre, peantre, pewter.
Pec (pris le), price, each.
Peccherousement, wickedly.
Pecchi (a), to sin.
Peccune, pecunie, money.
Pece (grand), a great while.
Pecee (absentent un), be absent a little while.
Pecheries, offences.
Pechereuse, cite d'Avenon (en la), in the wicked city of Avignon.
Pechir, pecher, to offend.
Peck (haute), High Peak.
Pecker (de), to break open.
Pect, the breast.
Pecunielle (peine), pecuniary punishment.
Pedereste, a sodomite.
Pee, foot.
Pee de la fyn, foot of the fine.
Pee, country.
Peele (entrez en la), entered in the pell.
Peer, a stone, fourteen pounds.
Peer (franche), free-stone.
Peeres (nous auncients), our ancestors.
Peeresins (pleignanze), pilgrims complainants.
Peert, appears.
Pees, peace.
Pees (un), a concord.
Pees (en), in the country.
Pees (mettent les), set their feet.
Peese, appeared.
Peese (ove la), peaceably.
Pege, pitch.
Peiblement, peaceably.
Peier (plus), worst.
Pejer, worse.
Peies en main, paid down in hand.
Peigneresses, combers.
Peinbles, diligent.
Peinblement (si), so diligently, carefully.
Peine, punishment.
Peine benire (pur), for holy bread.
Peipe (son), his father.
Peir, peer, equal.
Peir de justices, two justices.
Peire, father.
Peire (un), a pair.
Peir (il puit), he may pray.
Peirs, stones.
Peirt, appears.
Peis, weights.
Peis, peace.
Peis, peise, peas.
Peise (nus), pressed us, lay up on our hands.
Peise (e molt nous), and it gives us great concern.
Peiser, to weigh.
Peisible, peaceable.
Peisiblete, the peaceable state.
Peison, mast.
Peithe, fails.
Peitou, Poictou.
Peitreux, peitrelx, that part of the trappings of a horse, which goes across his breast.
Peix, feet.
Peles, issues arising from.
Pelle (le ditte), the said appeal.
Pelure, peleure, skin, furr, clothing.
Pelrine, pilgrim.
Pelter (citizein et), citizen and skinner.
Peltrie, all kinds of furr.
Pelwoll, peltwood.
Pembrugg, Pembroke.
Penacles, pinnacles.
Penauntz, penitents.
Pence, intends.
Pendable, to be hanged.
Pendaunt, in suspence.
Pendent (en), belonging.
Pender, to consider.
Pendra, let him pay.
Pendure (de), of hanging.
Pene, penalty.
Pene, punished.
Penere (a), to punish.
Penes, obliged.
Penia (tant lui), made him undergo such duress.
Peniblement, with great pains.
Penie (sans), without punishment.
Penne, a pen.
Penner, a pen-case.
Penra, ponra, shall take.
Penre (faitez), cause to be taken.
Pensant, being grieved at, lamenting.
Pensement (en), in thought.
Pensoier (potiès puisse oier), may hear.
Pent, depends, depending.
Penyble, painful.
Pepul, people.
Peraccompt, fully accompted.
Per ainsi, in the same manner.
Peramont, above.
Peranite, eternity.
Per a per, peer for peer.
Percer le denier (de), to break the money to pieces.

Perchemyn (*un poy denk et*), a little ink and parchment.
Perchez, *parchez*, breaking down.
Perclose, the conclusion.
Perdant, a sufferer, a prejudiced.
Perdecea (*nient plus*), no more in this case.
Per de eus, amongst them.
Perdervers lui, about them.
Perdesist, lose, lost.
Perdez, loss.
Pere, *peer* (*gettre de*), slinging; one of the sports prohibited by 12 Ric. II. c. 6.
Pere nues (*a*), bare-legged.
Peregales, equals.
Pereies, *peres*, stones.
Pent au, praying to have.
Perent, thereby.
Perer, to appear.
Peres, a peer.
Peres, stones, pearls.
Perfere, to execute, to perform.
Perfez, *perners*, by pernicious acts.
Perfit, perfect.
Perfond, deep.
Perforcera, shall endeavour.
Perfre le jer jour (*que fist*), who offers himself the first day.
Peri, lost life or limb.
Perie (*od*), set with stones.
Pil de miere (*en*), in parts beyond sea.
Perils de garranties, peril, hazard of warranty.
Perira riens al chief seigniour del fee (*ne*), the chief lord of the fee shall not suffer.
Pirent, were lost.
Peris, damaged, spoiled.
Peris a fure (p *ses*), affeered by his peers.
Perisse, be lost, depart from.
Perloygnent, prolongue.
Permitter son loyal trials, will not abide his lawful trial.
Perners, perverse.
Pernez a mal, take it amiss.
Perole (p), by words.
Peround, whereby.
Pount per unt, wherefore.
Per pays, fully satisfied.
Perpetre, made, passed.
Perplede, to finish, to decide.
Perpretes, committed.
Per qei oy, in as much as.
Per qi perque, wherefore.
Perquillye, fully collected or paid.
Pquisicons a mortmayn, purchases in mortmain.
Perre, precious stones.
Perres (p *ces*), by his peers.
Perrez, *Pirers*, *Pirres*, *Peres*, *Pere*, Peter.
Perry (*vine*), bad, adulterated wine.
Pers, peers.
Perseveyront, perceived.

Personaument, in person.
Pesuy, pursue.
Pert, part.
Pert, appears.
Pertant, whereby, thereby.
Pertant (*n'est my*), is not on this account.
Pertie, part.
Perveient, provide.
Peruch (*la compaignie de*), the Prussian company.
Perview, provided.
Pervis, *parvis*, the outer court of a palace or great house; a place where clients, when they wanted to be out of the noise and bustle of Westminster-hall, and to consult with their counsel, used to meet. Such was the place in Palace-yard near Westminster-hall, mentioned by Fortescue de Laud. Leg. Angl. c. 51. Dugdale also takes notice of the Pervyse of Pawles. "Formerly," says he, "each lawyer and serjeant, at his pillar in St. Paul's church, heard his client's cause, and took notes thereof upon his knee." Dugd. Orig. 195, b. See Gloss. X. Script *v. Triforium*. The lowest part of the church next to the north and south doors was also called the parvis; a parvis pueris ibi edoctis: and sometimes courts temporal were held there. Stavely's History of Churches, p. 157.
Pery, ruined.
Perz, loss.
Pes, *pex*, peace.
Pes, breast.
Pes, pasture.
Pes (*lour*), their feet.
Pesantie, *pesantee*, animosity, resentment.
Pesaunte, heavy, ponderous.
Pesch, depastures.
Pesche, is faulty.
Peschie, *peskerye*, fishery.
Peszer, to feed.
Peser debatz (*de*), to settle differences.
Peses (*trencher en*), to cut in pieces.
Pesh (*de*) of the pasture.
Pesiblement, peaceably.
Pesme, very wicked, worst of all.
Pesoit (*li*), proposed to him.
Pess (*de*), in the piece.
Pessant, feeding, depasturing.
Pesse d'etoille de lin (*par*), for a piece of linen stuff.
Pessons, *pesshens*, *peskons*, fish.
Pessoners, fishermen.
Pessounz (*jours de*), *pessons*, fish-days.
Pestent, *pestre*, feed.
Pestereseces, bakers.
Pestez, baked.
Pestour, *pesture*, *pescour*, a baker.
Pestrine, bakehouse.
Pestzon, *pesson*, mast, the fruit of a species

of trees, called glandiferous or mastbearing, as beech, oak, chesnut, &c.
Pet (*un*), a crack.
Petentes (*lettres*), letters patent.
Petie, *peti*, pity, mercy.
Petitement, little, easily.
Petitz gents, men of small value.
Pettavin, a Pictavian.
Peu peussauntz, able.
Pen de greyn, fed with grain.
Peult, *peust*, may.
Peulx, *peaux*, *lanutz*, woolfels.
Peure, *peuir*, fear.
Peure, take.
Pensons, might.
Peutre, pewter.
Pew, few.
Pex, pitch.
Pey de temps, a short time.
Peygne, *peynez*, pains, penalties.
Peynymes, Pagans.
Peys, weights.
Peyser, to weigh.
Peysuns, peasants.
Peyte, a piece.
Pez, feet.
Pheli, Philip.
Philas (*de*), from off the files.
Phylatteries ; phylatteria, vessels and boxes made of gold, silver, ivory, or crystal, to keep the relics of saints and martyrs.
Pi, *pie*, *piz*, *poux*, a well.
Pice, peas.
Pi cea, already.
Pices (*sur leur*), upon their pyxes.
Pie de seal, foot of the seal.
Piece (*a y demorer un*), to reside there some time.
Piece ad, *piez ca*, *piecea*, *ja pieca*, *ja bone piece*, lately, heretofore, hitherto, some time since.
Piece (*grand*), a great while.
Piece (*sunt alees ja une*), may be uniform.
Pieche de tans, space of time.
Piecza donez, lately granted.
Pied de mony, standard or sterling money.
Pied puldreaux, a pedlar, from whence the court of justice, called the piepoudre, is derived, or from the dispatch given in this court.
Pieg, deer.
Piere, *pier*, father.
Pier, worse.
Pier (*le pluis*), the worst.
Pier, a tyler.
Piere de leine, a stone of wool.
Piere de la tiere, a peer of the land.
Pieroit, should pay.
Piers, pears.
Piers, *peers*, equals.
Piers, pieces.
Piert, *pierge*, appears.
Piert enemy, open enemy.
Piete grand, great charity.
Pieur, worse.
Piez, feet.
Piez (*la quelle en est*), which is as bad.
Piges, pigs.
Pigne, a comb.
Pigne, *preigne*, take.
Pigne (*qe au*), who oppress, lay penalties on.
Pigneresse, a carder of wool.
Pignons, pen.
Pignotary, prothonotary.
Piler, *pilere*, a pillar.
Pilers, piles.
Piles, *pilets*, bolts.
Pilez, *pillie*, *pilke*, pillaged.
Pille, pile, that side of the coin which bears the head ; cross or pile, a game.
Pilons, made of hair.
Pilot d'argent, a silver dart.
Pinct (*chambre de*), the painted chamber, the room which was antiently St. Edward's chamber.
Pincteur, a painter.
Pinsons, pincers.
Pioez (*ne*), cannot.
Pipe (*qe court en*), which is in charge in the pipe roll.
Piques d'or, gilt spurs.
Pire, a stone.
Pis, *piste*, *pise*, the breast.
Pise de formage, weight of grain.
Pises, *pis*, peas.
Pissent, may.
Pister ou brasier (*a*), to bake or brew.
Pitaunce, allowance.
Pite, *piteus*, pity, piety.
Piteousement, pitiously.
Piteux, *regart*, compassionate regard.
Pitle (*un*), a small inclosed piece of land.
Pix, pitch.
Pix, worse.
Pl, plaintiff.
Pla, *qil*, *plast*, that he would talk.
Place de terre, piece of land.
Placquer (*fait*), caused to be placed, fixed.
Plage, beating, stripes, stroke, wound.
Plai (*en*), in full.
Plain, *plein* (*a*), intirely.
Plainement, fully.
Plainer poour (*ou*), with full power.
Plaisier (*por mietz*), for the better compromising.
Plait, *plaid*, plea, proceedings; also the assembly where they were determined.
Plait (*en*), empleaded.
Plaix, differences.
Plane (*de*), plainly.
Plane (*a*), fully.
Plante (*en grant*), in great number.
Plasse, a town, hold, or fortress.

Plat, metal, iron.
Plate (*de*), coat of metal.
Plate (*le*), gold or silver uncoined, bullion.
Plauces, plausible.
Plauntee, planted, placed.
Playe, a wound.
Playes Dieu (*v*), the five wounds of our Saviour.
Playn, *plein*, *plain*, not guilty.
Play, *plai* (*u*), in a plea.
Ple, speaks or expresses.
Ple, plea.
Pleast, *plerra*, shall please.
Pleseaunt, well liked.
Pledent, hold plea of.
Pledu, pleaded.
Plegg (*pur*), to take pledges or surety.
Pleggage, suretyship.
Plein des personce (*encountre tout*) against all manner of persons.
Pleint (*le*), the plaintiff.
Pleint (*le grant*), the greatest part.
Pleintie, complaint.
Plaintivouse (*si*), so numerous.
Pleisne, *pleyne*, complains.
Pleit, *plaint*, complaint.
Plenere, full.
Plente, plenty.
Pleasunce (*pur*), for the pleasure, to please.
Plesir, will, pleasure.
Plest, *ple*, *pleist*, please.
Plet, *pleit*, plea.
Pleu, *plieu*, pleased.
Pleve sa foi, pledged his faith.
Plevys (*lour*), those whose pledges they are.
Pleyn (*plus a*), more fully.
Pleynant, plaintiff.
Pleyndre (*ne se escrayent*), may not be afraid to complain, may not be tired out with complaining.
Pleytrye, poultry.
Pleytz, pleas, plaints, complaints.
Plez (*sale de*), hall of pleas.
Plia, placed, joined together.
Plien, *pline*, full.
Plieu, pleased.
Plieur, pleasure.
Plin (*de*), completely, fully.
Plist, plight.
Plite, *pluit*, plait.
Ploast, *ploet*, pleases.
Ploite des besognes (*pour les*), for the dispatch of business.
Plorantes, lamentable.
Plot, it rains.
Ploy (*sur le*), on the folding up, the label.
Pluis, more, moreover, further.
Pluicestre, furthermore.
Pluis puisne, much later.
Plum, lead.
Plumbes, leaden caldrons, leaden pipes.
Plume, feathers.
Plumer bruere, to cut heath.
Plunger, to intrude.
Plus, surplus.
Plus pres qu'il pourra etre fait (*de semble estat as*), of the same quality, or as near as may be.
Plusoms (*a*), to several.
Plustost (*de*), immediately.
Plux grant, much greater.
Pnetz, take.
Po, *pou*, *poi*, *pol*, a little.
Poaer, *power*, posse.
Poant, could.
Poart (*ne*), cannot.
Pochier (*le*), the thumb.
Poelmes (*nous*), we could, we might.
Poent, can.
Poer, *poeir*, *poair*, power, force, authority, strength; realm, territory, jurisdiction; fear, ability.
Poer (*a renable*), at a reasonable rent.
Poer mi (*ne*), could not.
Poes, can.
Poest, power.
Poet, behaviour.
Poet mye pyre (*no*), cannot be worse.
Poeur, fear.
Poey (*ne*), cannot.
Poeyt (*se*), should take effect.
Poi, little.
Poi, more.
Poi (*a*), at least; well.
Poi des ans (*en*), within a few years.
Poiart, may.
Poiement, payment.
Poier, *poiar*, power, fear, jurisdiction.
Poies (*per*), for fear.
Poietz tout (*vous*), you put the whole.
Poigne, *poine* (*en*), in his hand, in hand, paid down.
Poindre, to paint.
Poinons, pendants.
Poins, *pointe*, pains, penalties, punishment.
Point (*en*), in the condition.
Pointe (*mettront*), endeavour.
Pointes, *pointz*, fingers.
Pointes tretables, draw-bridges.*
Points, *poins*, *poinz*, points articles.
Points, *poinctz* (*potiùs*), *ponts*, bridges.
Poir (*quatre*), four pair.
Poires, peas.
Pois (*pur*), for the weight.
Poisa (*nous*), affects us.
Poisages (*les*), the weighing.
Poisant coer (*avoir*), to be offended at, to bear resentment.
Pois-apres, soon afterwards.
Poiscans, *puissant*, powerful, able.

* *Potiùs*, pountes, 2 Parl. Rolls, 218, pet. 51.

Poises, weights.
Poises couchantz, weights couch.ng.
Poises, poisee, weighed, considered.
Poisix (*sur le*), in the weighing.
Poissance, power.
Poissantz (*est*), is possessed of.
Poisse, could.
Poisures (*lour*), their weighing.
Poix (*le*), the fist.
Pol, Poul, Pou, Paul.
Polail, poultry.
Polentiers (*les*), malt-makers.
Poleyns, poleine, pulleyns, colts.
Police (p), by.
Polls (*a*), to the poll.
Polrieome faire, could do.
Polrons (*que nous*), that we can.
Poltaire, polter, polentier, poulterer; the officer in the king's kitchen who has the charge of the poultry.
Polx, the thumb.
Polx, skin.
Poix (*al*), the skull.
Pomadre, powder.
Pomelx despeies, pommels for swords.
Poms (*nous*), we can.
Ponce, hand.
Pondage, poundage.
Pondeur (*le*), the weight.
Pondre, pounder, a weight, the same as the auncel.
Pont (*ne*), cannot.
Pont freint, Pontefract.
Ponx, bridges.
Pooi, pooir, poor, por, power.
Pooires (*le*), the power.
Pooit, may.
Pooms, we may, might.
Poons (*ne*), we cannot.
Poosts, posts.
Poour, fear.
Populaires, common, inferior people.
Por, power, jurisdiction.
Por, on account of, for.
Por ce, therefore.
Por ce que je a paresui (*e*), and as soon as I perceived,
Por ceu kil, because that it.
Por le tot, for the whole.
Por quei, wherefore.
Porcary, a hogsty.
Porcestre, Porchester.
Porchers, swineherds.
Porcionar (*a*), to apportion.
Porcoi, why.
Porcerra, shall provide, determine.
Porgiser, progiser, purgiser, to lay with, violate, defile.
Perirait (*ne*), could not.
Porles, pearls.
Porom mie (*ne*), could not.
Porport, purport.
Porprises (*unt*), have made a purpresture upon.
Porreymes estre (*ne*), cannot be.
Porseor, possessor.
Porsise, possessed.
Port (*li*), the ports.
Porte (*avec*), with the loss.
Porte paix, the pax for the holy kiss. In the primitive times, in the eastern countries, a ceremony was used by the christians after divine service ended, to kiss one another, as a token of mutual amity and peace; to continue and perform which custom with more convenience and decency, in after-times, this invention was devised, viz. a piece of wood or metal, with the picture of Christ upon it, was solemnly tendered to all the people present to kiss; this was called osculatorium, or the pax, to signify the peace, unity, and amity, of all the faithful, who in that manner, by the medium of the pax, kissed one another. Mat. Paris tells us, that, during the great difference between Henry the Second, and his turbulent archbishop Thomas Becket, Rex osculum pacis dare archiepiscopo negavit. Mat. Paris, 117. And Holingshed says, that the king refused to kiss the pax with the archbishop at mass. Holingshed in anno 1170. Stavely, 191.
Portesmue, Portsmouth.
Portez, brought.
Porton, share.
Porverra, shall provide, determine.
Porvoiance, providence.
Pose, prevented, settled.
Poser, to put questions.
Poser, put, set at.
Posoms, suppose, or put the case.
Posses (*en*), in pulse.
Possez (*jours*), times passed.
Postoille (*a*), the pope.
Pot, can.
Poture, puture, a claim made by foresters of provisions from those who lived within the purlieus of the forest.
Poui (*si*), so little.
Povaire, povare, power.
Pouces, fingers.
Pouchon, puncheon.
Poudre de oiseaus et poissons, semye of birds and fishes.
Poue Descose (*la*), the poor people of Scotland.
Poverail del eynes (*la*), the poor people in the neighbourhood.
Pouers, povre, poverez, poor; poverty.
Pouerté, poverty,
Povira (*en quanque il*), in as much as shall be in his power.
Poulare, powder.

Poul, Paul.
Poulce, forefinger, hand.
Pouldreux, dusty.
Poules, wards.
Poults, *poulter*, poultry; a poulterer.
Pounage, paunage.
Pounsonez, powdered, spotted.
Pount, a bridge,
Pour de mort, fear of death.
Poure, *pour*, *pouver*, power, force.
Pourar homes, poor men,
Pour chivalier, poor knight.
Pour cheu ke, because.
Poures, poor people.
Pourfice, profited.
Pourkach, *pourkare*, *pourchack*, procurement.
Pourlesse, fearless.
Pourmener, to go, or walk about.
Pourpenser, to devise.
Pourpoins (*en leur*), in their coat-armour with their arms.
Pourquoy, on which account.
Pourzigre, to prosecute.
Pouryssement, impoverishment.
Pous, fingers.
Pous (*la*), the poor people.
Pous (*par le*), by the inch; by the thumb's breadth.
Pouserent leur sealx, put their seals.
Pouste, power, jurisdiction.
Pout, may.
Pout (*ne*), could not.
Poutyne, *poucins*, pullets.
Poutz, *pouses* (*deux*), two fingers, inches.
Power, poor.
Powers (*a*), to the poor.
Powere (*per nos*), by our father.
Poy, a little.
Poy (*tout a*), very nearly the same, almost the whole of, all but little.
Poy fait (*a*), little practised.
Poy et par poy (*par*), by little and little.
Poy denk (*un*), a little ink.
Poy a dire (*un*), to say a word or two.
Poy de ly (*mult*), very lightly of him.
Poy de tempe (*par moult*), a very short time.
Poy voet vivere par soy mesmes (*qa*), which can support itself.
Poye vaut, worth but little.
Poye (*a*), at least.
Poyer de countee, the posse comitatus.
Poyer de la mort, fear of death.
Poyn, *poygne*, a hand.
Poynes, penalties, pains.
Poynne, pains, trouble.
Poyntes, pins.
Poynt ne, cannot.
Poyount, pay.
Poys, weight.
Poys, peas.
Poys (*de*), of consequence.
Poyse, thinks.
Poyse (*lui*), affects him.
Poysent pluis, are of a deeper die.
Poze, placed.
Pra, may.
Praefaction, appointing, making.
Praigne, *prange*, take.
Praise des assises (*la*), the taking assises.
Praismes, took.
Pre (*plus*), nearer.
Prechourez, preachers.
Preer (*de*), to beseech.
Prees, meadows.
Preerent (*nos*), beseeched us.
Peesst (*al*), at the meadow.
Pref (*a*), to prove.
Prefaire, to perfect.
Prei, meadow.
Preints (*que l'en*), that there is inserted, put.
Preier (*a la*), at the prayer.
Preies, *preyes*, booty, plunder.
Preignans affaires, pressing affairs.
Preignaunce, pressing, taking.
Preis, price.
Preise, acquainted, informed.
Preiser, to appraise.
Preisse (*moy*), I plead, insist.
Preisee, prized, commended.
Preissoins, had taken.
Preist (*se*), may be taken.
Preistr (*les*), took them.
Premerem (*le*), the first.
Premesses, promises.
Premis, promised.
Premistrent, will promise.
Prendrans en bon gree (*un*), a taking in good part.
Prendre (*pur*), to undertake.
Prengnoessetz, take.
Prent (*luy*), takes himself.
Prente (*le*), the impression.
Prenye, *preigne*, *preegent*, apprehend, take.
Prererre, prayer.
Pres, presented.
Pres (*de*), near.
Pres (*plus*), as near.
Pres nulles (*bien*), scarce any.
Pres (*si*), as near, as well as.
Preschanntz, persuading.
Preschein, preceding.
Preschein, next.
Preseance, precedence.
Presentaines, presented.
Presente, presentee.
Presentez, *presantz*, present.
Presentment, presentation.
Presone, prison.
Press (*sur un*), on a presentment.
Press la def (*de*), to present the defect.
Pressieux, precious.
Prest, took.

Prest, made.
Prest, borrowed, ready, a loan.
Prest, (*de*), borrowed on.
Prest (*son*), what he lent.
Presta (*luy*), lent to him.
Prestaige, priesthood.
*Preste lur aver**, lent their money.
Prester (*me*), to accommodate me with.
Prestier (*a*), to borrow.
Prestment sute, proof ready at hand.
Presz, *prestez*, *peese*, ready.
Pretend, forethought.
Pretensez reignez, pretended reigns.
Preude home, *preuz*, great men; a valiant man.
Preue, *pren*, weal, profit, advantage.
Prevement, *pvementes*, privately.
Prever, to take a view of beforehand.
Previpse, private seal.
Prevusmes, intended.
Preyer, to pray.
Preyez, spoil.
Preymes, *preimes*, *preismes*, took.
Prez, prayers.
Pri (*vus*), I pray you.
Pri, *prient* (*si*), so prays.
Prie, takes.
Prie (*de*), worse.
Prier, to pray, intercede for.
Pries (*la*), the taking.
Prigner, to take.
Priggaute, parity.
Prime (*a heur de*), at one o'clock.
Primer apres (*tot a*), immediately after, soon after.
Primerement, in the first place, especially.
Primerime (*nonante*), ninety-one.
Primerme devise (*a la*), at the first court.
Primpt (*im*), in the twilight
Princee de Capes, principality of Capua.
Prinche, prince.
Principalement, especially.
Principallee de Cestre, principality of Chester.
Principaltee, principalship, head of a hall.
Prins, *prinsez*, taken from.
Print, he takes.
Prioritie, priory.
Prioure de mort, fear of death.
Pris sus, taken up, undertook.
Pris (*sur le*), upon the price.
Pris de guerre (*les*), the prisoners of war.
Pris (*plus*), the more readily.
Pris, may†.
Prise (*nous*), concerns us.
Prisel, a taking; also a condition, acceptance.
Priser, to value, appraise.
Priserunt (*qui*), who appraised.
Prises qu, *droit*, less value than they ought to be of.
Prisons, prisoners.
Prist, a loan.
Prist, borrowed.
Prist (*de*), by borrowing on loan.
Prist (*se*), was taken.
Pristerent a mayn (*ilz*), they undertook for.
Pristerent repone, received answers.
Pristerount ensemble (*sey*), assembled together.
Pristre (*se*), were performed.
Pristine (*sergeant*), serjeant of the bakehouse.
Prisun, prison.
Prix, *purru*, deflowered.
Prium, we pray.
Privables, liable to deprivation.
Privez, people of our own nation.
Privites (*les*), the secrets.
Probation (*pur le*), for the proving.
Procain, next.
Proces, porks.
Proch jour, next day.
Prochainement, *prechcinement*, speedily, last, next.
Prochement, immediately.
Procheynete, *prechenite*, proximity, nearness.
Procier (*cela*), that proceeded.
Procincte, precinct.
Procure, a proctor.
Prodance, prudence.
Prode, produced.
Proder, to go out of.
Prodes, *probes hommes*, honest men.
Prodes homes, the Magnates and Grands of the counties, the military tenants, the wise discreet men of the nation; also men well-affected.
Prodome, a man of some note.
Profites (*les*), the advantages, benefits.
Progaine, progeny.
Progiser, to ravish.
Proiere, prayer.
Prois, prayed.
Prois, proved.
Proismes, near.
Prolation (*la*), the pronouncing, giving.
Prologner, to prolong.
Promes, promise.
Promegons (*veus*), we promise you.
Pron, neighbour.
Prons, ready.
Pronunciation, sentence, decree.
Pronunciast le dit parlement, declared the cause of calling the said parliament.
Pronunciement (*en tempe de*), at the time of pronouncing.

* *Aver* in the Stat. of Acton Burnel, 11 edit. is translated, *goods*.
† Potius *puse*. Rot. Parl. vol. I. p. 276. Pet. 16. Hale's MS.

Propier, like to suffer.
Propitz, favourable.
Propos, purpose.
Proprement (*sa sals*), his own proper hall.
Prorogignement, prorogation, prolongation.
Prosme, a neighbour.
Prou, *proun*, much, enough, a great deal.
Proute, ready, quick.
Prouz, proved.
Provable errour, a manifest, a just or justifiable error.
Provablement, plainly.
Provablement attaint, provably attainted, i. e. upon manifest evidence.
Provables (*ceux pleas sunt*), these pleas are to be proceeded in.
Provan (*en*), in proving.
Prouaire, a priest.
Proudhomme, *proudomye*, *prudomme* (*sur la*), on the probity, prudence.
Prove (*de*), of the probate.
Provenant, arising.
Provenders, provisers, prebendaries.
Provendre, a prebend.
Prover, to improve.
Proversion, impoverishment.
Provers hommes, poor men.
Provisent, should prove.
Provost, the provost, the lord of the ville; the reeve or bayliff of the king, or of the lord of the manor.
Prowe, *prou*, *preve*, *pren*, *pru*, profit, advantage.
Proyt, may.
Prud omes, great men.
Prudum, an honest man.
Pruerount, shall approve.
Prumeirement, in the first place.
Pruschanament passee, last past.
Pruvence, proof, evidence, property.
Pruys, Prussia.
Pry, proper, adviseable.
Pry (*vous*), I pray, I beseech you.
Pryemes, took.
Pryne, taking.
Ps, *pris*, taken.
Pts, loss.
Pu, more.
Pucillage, virginity.
Pucyns, chickens.
Pue et pue (*al*), by little and little.
Puecnt (*il ne*), they may not.
Puecnt pas (*ne*), cannot.
Pueplier, to publish.
Puer, pure.
Pues, fed.
Pues, spoiled, trodden down.
Pues, afterwards.
Puet estre, it might be.
Puet (*ne*), cannot.
Puet ungore, is yet depending.
Pueuble, people.
Pust l'en dire, one might answer.
Pugny, punished.
Puir (*potius pair*), *paternosters*, a pair of paternosters, strings of beads for the priests, &c. to number their prayers by. In one of the canons made at a provincial synod in 816, where Wulfrud, Abp. of Canterbury presided, we meet with VII Beltidum Paternoster, which seems to imply that they had in that age a certain number of studs fastened into their belts, or girdles, which were then used, as strings of beads now are, for the numbering of their prayers, but with this difference, that the studs were all of one size; and that every one of them stood for a paternoster; whereas the modern fashion is, to have lesser beads, which stand for Ave Maries, to one larger, which stands for a paternoster. *Johnson's Canons*, 816.
Pulfre, a bruise, swelling, scar, wound.
Pulles, *esperners*, young hawks.
Pulleyns, colts.
Pulter, a poulterer.
Pulter et catour (*sergeant*), sergeant of the poultry and of the catery.
Pulteri, poultry.
Pune, youngest.
Punee (*une*), a younger daughter.
Punees, youngest sons.
Punier, to punish.
Puobles Cristiens, Christian people.
Puour, stench.
Pupplier, to publish.
Pue, by.
Purailla, *puraille*, *poral*, *purlieu*, perambulation.
Pur arestier, to arrest.
Pur ceo qe, from the time that.
Pur ceo que, for as much as.
Pur coi, whereby.
Pur que, for which.
Pur chou ke, because that.
Purche, therefore.
Purtant cum, as long as.
Purtant qe, to the intent that.
Purceynte, *purseynte*, precinct.
Purch, purchaser.
Purcharrent, proceeded.
Purchas de courts, perquisites of courts.
Purchas (*en le*), in the demand of the writ.
Purchas demeyn (*en son*), of his own demanding.
Purchas (*tout*), all his acquisitions.
Puree, ascertained.
Purfit, on the sides.
Purgacon, cleansing.
Purge, purgation.
Purgyeer, to deflower, to defile, to violate.
Purjace, purchased.
Purjoiner, to put off.
Purlheymeste, prothonotary.

Purparl, a conference, a treaty.
Purparlance (*sur*), upon a conference, condition.'
Purparler, *purparlance*, *purparles*, *purale*, a perambulation.
Purparler, to discourse of.
Purpense, *prepense*, forethought.
Purpernant, assuming.
Purportast, purported, dictated.
Purpose, set forth, alledged, declared, proposed.
Purpreignes, makes a purpresture on.
Purprestour, he that makes the purpresture.
Purpris, taken, purprised.
Purpull, purple.
Purres, adulterated.
Purris, rotten, damaged.
Purrois lieu (*en*), in a place full of putrefaction.
Purrust, deflowered.
Pursauve, prosecuted.
Pursourver, to survey.
Pursuant, prosecutor.
Pursuer (*de*), to prosecute.
Pursui, purchase, obtain.
Pursuit (*en la*), in the precinct.
Pursuount, have sued, applied for.
Purtenand, appertaining.
Purtrere (*la manere de*), the manner of drawing it out.
Pursus, provided.
Purveaunce de Dieu, providence of God.
Purveier, *purvoier*, *purver*, *purveer*, to provide.
Purvey, *purview*, *purvieus*, *purveu*, *purvo*, provided.
Purvele, ball of the eye.
Purvenauntz, arising.
Purveyance, purview.
Purvieu, *purveu*, provision, condition, ordinance, statute.
Pus, *puz*, *puis*, after.
Pus, afterwards, since.
Pusams (*quant nus les*), at her espousals.
Pusance, power.
Puseit, he may.
Pusel, a maid, a virgin, a damsel, a little girl.
Puselage, virginity.
Pus ke, since that.
Pus qui, after that.
Pussum, can, may.
Pust, *put*, *puist*, fed.
Pusture, homage.
Put, ugly, homely, dishonest.
Putage, adultery, whoredom.
Putaine, *putiene*, *louée*, a hired concubine, an harlot.
Putel, a well.
Puthois, *putois*, a Fulmart.
Puture, *pusture*, *poture*. See *Poture*.

Puy (*mult*), much worse, very lightly.
Puye (*homage*), pure homage.
Puyer, to bear up, to support.
Puyr, pure.
Puys, a well, a watery or cosy place.
Puys apres, soon afterwards.
Puys (*de*), since.
Puyt assettes byen, might very well.
Py, *pie*, *pys*, the breast.
Pye, worse.
Pye (*de*), on foot.
Pyghenoute, pendant.
Pyndes, *d'ivory*, ivory combs.

Q, who, when, that.
Qu, for.
Q^{a}, a farthing.
Quare lou, whereas.
Q. d. non, certainly not.
Qr, quarter.
Qant, when, as.
Qanpeyne, that scarce.
Quar-qare, *quair*, for.
Qarant soldz (*deinz*), within forty shillings.
Qe, who.
Qeconqes, whatsoever.
Qels meyson, what house.
Qene ensecuerent, consequence would be.
Qest, who is.
Qestes, who are.
Qeu, that.
Qi (*de*), whose.
Qi de ceo, what's to the purpose.
Qi si, suppose that.
Qi (*son*), his cries.
Q'illoms de sa coustome (*et*), and the collecting his customs.
Qiqe lieu, in whatsoever place.
Qiqe soit, whether it be.
Qoer(*vour esmeroient de*), heartily thank you.
Qoi, what with.
Qore est, who now is.
Qua (*si*), so that.
Quacorte, fourteen.
Quader, to relate.
Quanch il aveit, all that he had.
Quanque, whatsoever, all that.
Quant et quant, forthwith.
Quantieme, the whole quantity.
Quantqe (*en*), inasmuch as.
Quantrest, whatsoever is.
Quantz, how much.
Quaquil, all, whoever.
Quare, *quar*, for.
Quarell de arte, *ou de fletche*, a trial of skill at fencing or shooting.
Quaresme, *quereseme*, (*demy*, *mis*), midlent.
Quarkes, oaks.
Quarre de le main, the back of the hand.
Quarreaux, cushions, couches.
Quarreur, a square.
Quarrier, a quarry.

Quart, takes, carries.
Quartera (*par*), by turns.
Quartier (*pur un*), by turns, in rotation.
Quartrover (*decoller de*), beheaded and quartered.
Quassentz, quashed, annulled.
Quaterable, quarterable.
Quatreble (*du*), in four times.
Quatrusze, fourteen.
Quattezime joar, fourth day.
Quaunt, when, as much as, as to, how much.
Quaunt (*et ne* p), and yet, nevertheless.
Quaus deytas (*las*), which said.
Quay (*par*), by which means, wherefore.
Que, which, whether.
Que (*pour*), for which.
Que (*de*), of which.
Quer, *quey* (*de*), whereof.
Queilletzes, collected.
Queist, should seek.
Quelmt, cruelly.
Quelzx gentz, whatsoever people.
Quen, in what,
Quen breve, what writ.
Quen (*outre*), over which.
Quen-part, wheresoever.
Qnena, a woman.
Quene marchaundie, but one merchandise.
Quens de Flanders, count or earl of Flanders.
Quenz, earl.
Queor, *queur*, *quoer*, *quer*, *queer*, *quier*, heart, affection.
Queque, although.
Quer, leather, skin, hide.
Quer deners, forty pence.
Quer, *queor* (*en mye le*), in the middle of the choir.
Quer doner, rewarded, provided for.
Quere, which.
Quere (*a*), to go for, to get.
Quere hors, go out of.
Querele (*de la*), of the quarrel, contention, party.
Querele (*par*), by which means.
Quereler mieux (*e*), and provide for themselves better.
Querer, *queur*, *querez*, *querre*, *quer*, to get, obtain, to enquire, seek for, beg, fetch, bring over.
Queresteres, choristers.
Querfage, wharfage.
Querge (*le*), let him seek him.
Querle (*de*), to seek him.
Queresme, Lent.
Querrer, a quarry.
Querrour, a digger of stones.
Quer son viver, to get his living.
Quest (*la*), the inquest.
Quest (*le*), the which.
Queste, which is.
Quetment, quietly.

Quets, watch, guards.
Queue de vin, a vessel containing about a hogshead and half of wine.
Queve, *quevi* (*selles en double*), sealed by affixing the seal to a label.
Queul (*le*), which.
Queulloient, collect.
Queurt, he searches.
Queur (*de*), of whom.
Quex, which, who, what.
Quey, what.
Queys, keys, wharfs.
Quidaunce, believing, thinking.
Quiders, thoughts, opinion.
Quidra, shall think.
Quie, whereas.
Quier, the heart.
Quiçur (*les*), which.
Quiex (*a*), to whom.
Quil, he who.
Quilage, collection.
Quillers d'or, gilt spoons.
Quillours, *quissours*, collectors.
Quin, which, who.
Quincts et requinetz, the fifth part of the price of the feudal estate sold, and a fifth of that price.
Quinque al foit li (*par*), at any time.
Quinx, *quenx*, earl.
Quinxen (*un*), fifteen days.
Quinxieme, every fifteenth day.
Quirre, *quiver*, copper.
Quirs, *quivres*, skins, leather.
Quis, *quise*, *quix*, sought, searched for, drawn out, entered up.
Quisent (*que*), who expose to sale.
Quisses, *quious*, buttocks.
Quist, he searches.
Quit, baked.
Quiteclamaunce, a release.
Quitement, entirely.
Quitie, acquits.
Quittain (*la*) *quictance*, the acquittance.
Quive, end tail.
Quillie, collect.
Quo, who.
Quoer, heart.
Quoer (*ne serens mie a eese de*), shall not rest satisfied.
Quoi, who has.
Quont, when.
Quotes, quotas.
Quoue quo, the tail of an animal.
Quount, which have.
Quoy, look ye.
Quoy (p), how, by what.
Qux (*la*), which.
Quyke, quick, living.
Quynt, fifth.
Quyr (*le*), the leather.
Quyvre, *quirre*, *quyur*, copper.
Qwargh, *qwerf*, a wharf.

Qy, who.

R, reason; to answer.
Rv, received.
Rec, recovery, shall recover.
Rn, *rns* (*en*), in answering.
Ro, *ronn*, answer.
Rondre, *rendre*, *rourre*, to answer.
Ru, given.
Raancon, ransom, exemption.
Raap de Lewes, the rape of Lewes.
Rabbaiser, *rabbatre*, to beat down, pull down.
Racentz, roots.
Races, *rases*, pulled down.
Rachupz, reliefs.
Rachater, to redeem, buy out, repurchase.
Racinetter, to take roof.
Racions, articles.
Racourcir, to sink together.
Rad, firm, stable, alert, gay.
Raempler, to fulfil.
Raencons, *raancons*, ransoms.
Raenpli, filled.
Rajes de la meer, rage of the sea.
Raim, branches.
Raimbre, to restore.
Rain (*par*) *et par baston*, *per annulum et virgam*, by a ring and rod, wand, or staff.
Raindre hors de prison (*pur luy*), to ransom him out of prison.
Raine, queen.
Raisins, roots.
Raisnaable, reasonable.
Raison (*brief*), speedy justice.
Raith, *reth*, a term made use of in Wales, and signifies an oath taken by three hundred men.
Rakkyng de draps, racking of cloth.
Ralongement, prolongation.
Rama, full of boughs.
Ramage, wild, untamed.
Rumens, *ramans*, *ramures*, boughs, branches.
Ramentens, remembered, recommended to.
Ramettre, to replace.
Ramilles, small twigs.
Rampas, *Rampau*, Palm-Sunday.
Remys, replaced, fixed on again.
Rancumpanne, cloth not well fulled, dressed.
Rancunes, rancors.
Rangeous, rancorous.
Raof, *Raoul*, Ralph.
Raoson (*par*), by reason, by means of.
Rapelees, revived.
Rapt, snatched, forced.
Rase, shaven.
Rasez, striked.
Rasez (*dras*), russet cloths.
Rasoure, a rasure.
Rasse, erased.
Rasure de os, fracture of a bone.
Rate del tempe (*pur le*), for the proportion of time.
Raube, robbed.
Ravesti, invested.
Raviet, ravished, took away with force.
Rauncener, ransomed.
Ravoms, have recovered.
Ravoquement, revocation.
Ray, *le ray*, the array or panel of the jury.
Ray (*robe de*), robe of russet cloth.
Raytz, cots.
Re, king.
Read, *realt*, had given.
Real chemin (*en le*), in the king's highway.
Reale dignite, regal dignity.
Reason, reason, act, title.
Reatt, reattachment.
Reavera (*ne*), shall not have again.
Reau, reverend.
Reaume, *reaugme*, *reame*, realm.
Rebatables, may be objected to, refused.
Rebataunce (*la*), the lowering, the abating.
Rebauderoit, should redeliver.
Rebeaux, *rebealx*, *rebeus*, rebels, disobedient.
Rebellite, rebellion.
Rebete, *rebote*, rejected, put back, put out.
Rebeter, *rebutter*, *rebouter*, to put back, to bar, repel.
Rebour, a robber.
Rebuquiz, rebuked, discountenanced.
Rec, recovered.
Reccimes, received.
Reccourt, record.
Recebessatz, receive.
Recehantz, resiants.
Receit, receives.
Receiventerre, to receive.
Recellement, withdrawing himself.
Recensement, a mustering.
Recerassent, should receive.
Recepueurs des peticions, receivers of petitions.
Reces (*dernier*), the last recess; abstinence.
Reces (*lettre de*), letter of recess; an abstinence from war.
Recest, reception.
Recestes, received.
Receta, *recia*, received.
Recettement, receipt.
Recettours, receivers.
Rechaceables, remandable.
Rechat, buying.
Rechate, ransom.
Rechater, to ransom, save.
Rechept, receipt, admittance.
Rechepte, ransomed.
Recherrions, we should fall again.
Rechess, extended unto.
Rechevour, to receive.
Rechief, *rechesse* (*de*), again, moreover.
Rechoive, receive.

Rechurent, receheu, recia, received.
Reclamant, making claim.
Reclame, reclaimed, challenged.
Recoeury, recovers.
Recognoiseans, well knowing.
Recoiller, to assemble.
Recoillist, recohabited with.
Recoipuent (ne), do not receive.
Recollant, recollecting, remembering.
Recond, hid, buried.
Reconisaunce, recognition, verdict of the recognitors in an assize.
Reconisaunce (lour), their confession, acknowledgement.
Reconseile, recounseillez, reconciled to, employed by.
Reconusez, recognisees.
Recope, receive.
Record, rehearsed, recited, read over.
Recordes, recorders.
Recors (asseez bien), sufficiently apprised.
Recovere, shall restore.
Recoupe, cut off, taken back again.
Recousse, rebellion; imposition.
Recoust, recow, received.
Recreanncer, to renounce.
Recreant, cowardly.
Recreantisse, cowardice.
Recreaunt lo pees (en), on proclaiming or drawing the concord.
Recreces de sarve (deux), two ebbs of the water.
Recreu, tired.
Recorux (li soient), should be restored to him.
Rects a sa folly, imputes it to his own folly.
Rectu, imputed, accounted.
Recuillez, entertained.
Reculier, to gather, to collect.
Recusses, relieved.
Recuvere, return, be restored.
Redde, reddement, rediment, speedy, speedily, readily.
Reddeur del boucher, turning of the mouth.
Reddoux, reddure, rigor, strictness.
Reddour de droit, rendering of right.
Redour de ley uses, justices requires.
Redevanche, debt, duty.
Redoute seignour, dread lord.
Redoubtemout, is very much afraid of.
Redresser redrecher, to erect and keep up, amend, redress, cleanse, make satisfaction for.
Redubbours de brus, redubbers, patchers, botchers, or menders of apparel. Those who buy stolen cloaths, &c. and, that they may not be known, turn them into some other colour or fashion.
Reeit, shall have again.
Reen, any thing.
Reenvoions, we send back.
Rees, refs, nets.
Rees (de), with reeds.
Refection, repairing.
Refees, subfees.
Reffaire, refere, to rebuild, repair.
Reffoul, the emptying a canal or pond.
Refoil de la mere, ebbing of the sea.
Reformement, restoration; performance.
Refoul, great inundation.
Refouler (fouler et), to flow and reflow.
Refouler (le fouler et), to empty it and fill it again.
Refourme, reformed; drawn up.
Refreindre, to repress.
Refrenee, refrained.
Refresement (en), in refreshing, succouring.
Refresser, to refresh.
Refs, nets.
Refu, shelter, refuge.
Refurment, reformation.
Refust, may resort to.
Refuye, refuse.
Refuye, refuge.
Regalie, royal.
Regalie (la), the regalty, royality.
Regarcier, to thank.
Regard, relation.
Regard (poy de), little regard.
Regard corteisie, regard or service of courtesy.
Regardant, regardant, expectant.
Regarder, to allow.
Regardes, fees, perquisites, services, rewards, expences, share, allowances.
Regardez (les), the salaries, liveries, allowances of the judges, &c.
Regardez, regarde, awarded.
Regardes, rewarded.
Regermer, to sprout again.
Regetes, rejected.
Regnation, reign.
Regnauble, reasonable, equitable.
Regnez, reign.
Regnez (trop), too much emboldened.
Regracier Dieu, to thank God.
Regreind, regranted.
Regrettent, regard.
Rehereeuill, writal,
Rei, king.
Reiens (ne soit), knew nothing of it.
Reignable, reasonable.
Reik (le temps de), time of harvest, vintage.
Reimber, to kill.
Reimbre, to ransom.
Reimbre (a nostre), for redeeming us, for our ransom.
Rein, any thing.
Rein (par), by a stream.
Reinement (la), the arraignment.
Reint, ruined.
Reinterent, wounded; fined, ransomed.
Reintz, punished, fined, indicted, ransomed.

Reis graens, great nets.
Rejoier, enjoy.
Rejoise (*q'il le*), that he join it again to, unite it to.
Relais, release, relaxation, remission.
Relaxes, *relachiez*, released.
Relene, relinquished.
Reles, relief.
Relevassent, *contre nous* (*se*), rose against us, rebelled.
Relevation, relief.
Relever (*in point de*), danger of being ruined.
Relies, are applied.
Religion (*de mesme la*), of the same order.
Relinques, remains.
Relinquez, given up.
Relinquiz, abandoned.
Reliveez, reliefs.
Reliverer, to redeliver.
Rellatues, relative.
Relya, applied, related to.
Remaide, remedy.
Remainable, to be accounted.
Remanant (*le*), the rest.
Remainables forfeit (*sont*), are to remain forfeited.
Remanons, stay back, forbear going.
Remaunderunt, sent back.
Remediell, original.
Remeinte demounstraunce, frequent remonstrance.
Remembraunce, (*emetere en*), to be enrolled.
Remembre, set down.
Remenable, to be reduced.
Remenaunt (*a*), for ever, for ever after, from thenceforth.
Remener, to restore, to bring back, reduce.
Remeintiner, *rementener*, to remind.
Remerront, shall carry back.
Remes, remaining, the residue.
Remettre (*a*), to be restored.
Remeyndra, shall not prevent.
Reminant, remaining, inhabiting.
Remis & reconseile, remitted and reconciled.
Remise, *remys*, released, remised.
Remise, received back.
Remiet, continued.
Remistrent, remained.
Remitre, to ransom.
Remmeinant de siecle (*a*), for ever after.
Remonaera le roy, lay before the king, represent to the king.
Remoyer, to remove.
Remuale, removeable.
Remue, removed, entered into.
Remuement, *remoement*, removal.
Remument (*pur la*), for remedying, removing.
Remy (*seint*), St. Remigius.
Remys, *remiz*, left, remains.
Remys, *remise*, *remist*, *remistrent*, remained, continued, released.
Ren, *rens*, any thing, nothing.
Ren de terre, any land.
Ren (*a*), to any thing.
Ren (*en nule*), any ways.
Renable, *revable*, reasonable.
Rendage, delivering up.
Rendesist (*qil*), that he should deliver up.
Rendrent, wounded.
Rendus, surrendered.
Rene, kingdom.
Rene, *renues*, renowned.
Renees, *reneyee*, apostates, renegado.
Renent, *renoign*, refuse.
Renestre (*a*), to be restored.
Reng, rank,
Rengeons, resign, submit.
Renk et rebaylle sus, surrender and deliver up.
Renner (*nul*), no pyker.
Renniement, *potius remuemens*, *de la guerre*, commotions, disturbances of war.
Renomens, *renun*, renown, fame.
Renoncher, to renounce.
Renoyer, to adjure, renounce.
Renson, ransom.
Rent, *reint*, indicted, accused, fined.
Renuef, renewed.
Renuour (*de*), to send back.
Renure, fame, renown.
Repaire (*lour*), their post.
Repairons, *repeire*, *repeirast*, return.
Repansant, considering, calling to remembrance.
Reparlances, conferences.
Repeir de merchandises, (*le*), *a Caleys*, the repair, or carrying merchandise to Calais.
Repeirantz, repairing to, inhabiting in.
Repeirez uthalez, outlaws returned.
Repel, calling back.
Repeller, *repeler*, to recover, revoke, restore.
Rependre (*a*), to expend.
Rependre (*de*), to open.
Reperiller, *reperiller*, *reparelere*, *repeller*, to repair.
Repere, receptacle, habitation, house.
Repes (*de*), repose, rest.
Replener, to fill.
Replietz, reply.
Reploy, *reply* (*sur le*), on the fold.
Repoir (*sans*), without returning.
Repoir, resort.
Repoiser (*de*), to be fixed.
Reponables, answerable.
Reponces, repulsed.
Repoos (*en*), at ease.
Report, brought back.
Reportez, obliged.
Reposes, vests, lodges.

Reposer (*sens*), without resorting back.
Repost(*en*), in secret.
Repperes, repaired.
Repreciement, appraisement.
Reprehensailles, seizures, reprisals.
Repreigner, *reprendre*, *reprender*, to retake.
Repreismes les traitz, renew the treaty.
Represt, *repriat*, taken back, compelled, reprehended.
Reprenches (*les*), the accessories, appendages.
Repriont, *reprie*, reprieved deductions.
Repris, *reprises*, deductions and duties yearly paid out of a manor and lands.
Reproches, called in question.
Reprove autentikement (*de*), on authentic proof.
Reprouvez, reprobate.
Repue, fed.
Repugnables, reprovable.
Repus, concealed.
Rupus (*le Dimanche*), *Dominica de Passione*, in the Romish Missal, and so called from the crosses and the images of the saints being then covered.
Requerum, we request.
Requiller en grace, to take into favour.
Requiller (*de les faire*), to entertain them.
Requise, inquired into.
Re (*a de*), in arrear.
Rere, to rase, erase.
Rerecounte (*en*), in the rear county.
Rerefiez, sub fees.
Reremain, backwards.
Rerement, rarely.
Rerie, delayed.
Resaut, receives.
Resayla le ewe, the water run back.
Revivement, arrestment.
Rescoure, *rescore*, to relieve, assist.
Rescous, *rescu*, *rescusa*, rescued, retaken, relieved.
Rescous, *rescuse*, *recourant* (*soleil*, *solail*), sunset.
Rescrivre, to write to, to return an answer.
Rescure, to rescue.
Rescyt (*del*), of the receipt, *i. e.* of the crime of receiving felons or stolen goods.
Reseauntise, reriancy.
Resemble, seems.
Resemee, sown again.
Reservere, to receive.
Reson, truth, right, justice, title, reason, act, argument, charge, expression, method, case, article, point.
Reson (p *la*), in proportion to.
Reson (*per*), by resummons.
Reson (*funde sa*), grounds his title, counts.
Reson (*nox feare*), make us satisfaction.
Resone (*de*), in reason.
Resons (*deux*), two circumstances.
Resons (*ses*), his evidences, muniments, arguments.
Resort (*son*), a term used in a writ of Ayel or Cousinage, in the same sense as a descent in a writ of right.
Resorty, resorted, reverted.
Resoule, resolved.
Respecteres, *respiretz* (*ne*), will not delay, respite.
Respi, delay.
Respoignent, defend.
Responez, *respoynez vous* (*qi*), what answer do you make.
Responte, answer.
Respundre, to answer.
Resqueuse, rescue.
Resseant, *resiant deinez la manoir*, one that continually abides within the manor.
Ressent, received, acknowledged.
Ressu, received.
Ressumes, received.
Restor, *restors*, restoration, amends.
Restreinconuesans, take cognisance.
Restricte, made narrower.
Restut, restored.
Restz, judgment, decree, sentence.
Resu la mort (*a poi*), almost dead.
Resurdre, pay again.
Rewardent mie (*ne*), do not regard.
Ret, *reté*, *retz*, *rettent*, suspected, accused, indicted.
Retardation, delay.
Reteign vers luy, keep by him.
Retenantz, retainers.
Retenderount, shall retain.
Retenet, to return, revert.
Retenget (*nuls nel*), let no one retain.
Retenir, *reteiner*, to detain, keep back, retain.
Retenu, retained, admitted into.
Retenues, reservations.
Retenutz, reserved, retained.
Retenux, retinue.
Reteur, *retaur*, return.
Rethes, nets.
Retiner a soy (*de*), to take to himself.
Retoundre, to clip.
Retoun, *retoundu*, clipped.
Retournent (*que a ces les*), who comply with them.
Retourner (*devoit*), was to be reduced.
Retrachez, withdrawn.
Retraict, *retrait*, *retrayt*, *retreit*, *retret*, *retreit*, withdraw, forebore.
Retraicter, to withdraw.
Retreet, diminution, draw back, draught.
Retrehere la corage, to discourage.
Retret de la meer, reflux or ebb of the sea.
Retreter la reconisance, to withdraw the recognisance.
Rertreus, *retreux*, enlarged, a temporary, ransom of a prisoner.

Retriver, to take, withdraw.
Rette, crime, offence, guilt, suspicion.
Rettent, retain.
Rettee a lui meesme, impute it to himself.
Revable, reasonable.
Revanche, revenge.
Revenans, mustering.
Revenant, comes to, amounts to.
Revener (*al*), at there turn.
Revensist, come back.
Revenue, return.
Revenues, *reveues*, review, muster.
Revenuez, *revennaus*, *revencions*, revenues.
Revereur, to reverence.
Reverens, reverend.
Reverses (*ses mqunches*), his sheeves turned back.
Reversion (*a faire la*), to give up again, to restore.
Revertise le don, let the gift revert.
Revilant, affecting, making so vile.
Revinge, come back.
Revon (*a son*), *dusqes*, until his return.
Rewars, governors.
Rewle, rule, order.
Rewelez, regulated, ordained.
Rewme, realm.
Reyans, royal.
Reynez, ruined.
Reynt, fined.
Reys, kings.
Rhine, Queen.
Ri, omnipotent.
Ribaud, one of the rabble, a scoundrel, a rascal, ruffian.
Ribauds (*fortz*), sturdy beggars.
Rie (*le*), the heir.
Rielment (*pluis*), more seldom, not so frequent.
Riens, backs.
*Riesgler** (*a en*), to inveigle.
Rieu, a small brook.
Riez, nets.
Riflez, rifled.
Riflure, a scratch, a rifling.
Rigle, a rule.
Rimer, to examine, search into.
Riottis, riots.
Ripes del'ewe, by the water-side, banks of the river.
Ris, *rix*, rich.
Rizard, *Richart*, Richard.
Roaisons, Rogations.
Robbes, taken from, robbed.
Robiers, Robert.
Roboration, corroboration.
Robouchez, stopped, forced.
Roefs, oars.
Roge, red.
Roiales (*autres*), other the king's officers.
Roignez, clipped.
Roion, kingdom.
Rokeborough, Roxburgh.
Rol, a roll, a register.
Rolles, *colles*, necks.
Rolys, rolls.
Romerie, *rommerge*, buggary.
Romeyns (*rey de*), king of the Romans.
Rondles, rolls.
Rone fet (*lio hyl*), *potius unt*, they have made.
Ronne, answer.
Rope, rape.
Ropele (*Rob' de*), Robert de Roche.
Reres (*cent*), an hundred faggots.
Rosse, heath.
Rote (*le*), the wheel.
Roumainement (*a*), after the manner of the Romans.
Roupt, *rous*, broken.
Routez, routs.
Roveninkmede, Running-mead.
Rowenevereay, without return.
Rowes, oars.
Roy qoresst (*le*), the present King.
Royal chemin (*le*), the king's highway.
Roynage, *roage*, *rovage*, *rotage*, a kind of tribute or payment made for damage done to public ways by carriages.
Royne, the Queen.
Royner, to clip.
Ru, noise, murmuring.
Ruaul, *rujaul*, royal.
Rubaignes, ribbons.
Rubbouses, rubbish, filth.
Ruby baleis, *balseit*, an inferior kind of ruby, not so deep a red as the true ruby.
Ruche, a bee-hive made of rushes.
Ruge, *rouges*, red.
Rule, a roll, a register; also a determination.
Rumme, Rome.
Rumour, tumult.
Rumperie, breaking, failing.
Rumperours de trieues, truce-breakers.
Ruues, *rues*, streets.
Ruysdesse, severity.
Ryen, nothing, not.
Rymours, rimers.
Ryu, *ryz*, a brook.
Ryvaille, *de la meer*, the sea-shore.
Ryvires, rivers.

S, *Sr*, his.
Seen, known.
Ssm, seisin.
Snrs, lords, owners.
Sr espeulx, lords spiritual.
Svix, service.
Sa et la, here and there.

* Potius, *a enviesgler*. Rot. Parl. vol. II. p. 79. Pet. 98. Hale's MS.

Saals, seals.
Sa cote (*en pure*), in his coat only.
Sa volunte (*encontre*), against their wills.
Saalez du mun sel, sealed with my seal.
Sabbedi, Saturday.
S'ableront, shall rendezvous.
Sablinouse (*feble terre*), poor sandy land.
Saca hors de gaunt, shaked out of the glove.
Sacc, *instrumentum litis*, the pleadings in a cause.
Sachaant (*ent*), knowing thereof.
Sachache (*sa noun*), his ignorance.
Sachaument, *sachantement*, willingly, knowingly.
Sache, sages.
Sachet, withers.
Sachiez, *saches*, *sachez*, *sachen*, know.
Sacrabor (*par*), *sakeber*, *sakber*, *sacaburgh*, no freeman was to be seised or imprisoned, except by inquest or by sacraber, or unless he was taken with the mainour.
Sacraire, a chapel, an oratory.
Sacil, *saes*, a seal.
Saeller (*fet*), caused to be sealed.
Saenti, holy.
Saettes, *saettels*, arrows.
Saffers (*qatre*), four sapphires.
Sagane, a sorceress.
Sage, seat.
Sagement, cautiously.
Saget, seal.
Sagette, an arrow.
Sagitture, archery.
Sagrea, agreed.
Sagrement, oath.
Sai, I know.
Saichance, science, erudition.
Saiel, seal.
Saiellees, sealed.
Saient, *saies*, are, be.
Saiges homes, the sages or wise men of the law, the judges.
Saiguw, lord.
Sailleires, keepers of the seals.
Sain, sound, strong.
Sainctures, sanctuaries.
Saine, substantial.
Sainees, perfect, uncancelled.
Sainglement, entirely.
Saings manuelz, signs mannal.
Sains, saints.
Sains Esperis (*li*), the Holy Spirit.
Saintemant (*sy*), so cordially.
Saintime, most holy.
Sairement, oath.
Saisisement, seising.
Saize, six.
Sak saak, a bag.
Sake, throw.
Sakent, steal.
Sakekent a terre, sacked, demolished to the ground.
Sal, safe.
Salair, a reward.
Salairier, to reward.
Saleber, *Salebirs*, Salisbury.
Sa le meins (*promettant*), *potiùs*, *je le meine*, promising also.
Saler, a salt-seller.
Salfe pledges, safe pledges.
Salictarie, wholesome.
Salit, health.
Saller, a sadler.
Salmonceux, young salmon.
Salopebyre, *Salobirs*, Shrewsbury.
Salsez (*chars*), salt meat.
Salvage, wild, savage.
Salvaigne (p), by beaste, *feræ naturæ*.
Salvatione, pardon.
Salve, greets.
Salvoms (*nous vous*), we greet you.
Salvez, know.
Salutz, knewn, safe.
Salux d'or, salutes of gold, a gold coin, called so from the words, *Salus populi suprema lex esto*.
Salyne (*un*), a salt-pit.
Samaday, Saturday.
Sambre, visage, face.
Samble temps, the same thing.
Sambleront (*se*), shall assemble.
S' ame, his soul.
S' amie, his friend.
Sammelplatz, place of meeting, or rendezvous.
Sanc, blood.
Sancere, sincere.
Sánte, health.
Sanctz, *sanntz*, *sant*, without.
Sandewitz, Sandwich.
Sangles (*en toutz et*), in all and singular.
Sani, sound, healthful.
Sank fin, the end of the kindred.
Sanne cee, except that.
Sanneys, sauces.
Sans (*du bien*), the good sense, understanding.
Sant, are.
Sanz un qestoit, save one who was.
Sanz, reasonable, solid.
Saon, without.
Saprist, the author of the Psalms, David.
Sarcophes (*que feurent*), who frequent sepulchres, graves.
Sarcruel, a bier.
Sarcus, a sepulchre.
Sarke (*frank*), free stock.
Sarre, Sarah.
Sarve, saved.
Sarura, a look.
Satain, satin.
Sathenas, Satan.
Savagnie, beasts of the forest.
Savarne, the Severn.

Savant, saving, knowing, notwithstanding.
Savor, *savoer*, to know.
Saver (*fait a*), *fet assau'*, *fet assaver*, be it known, understood.
Suver (*cest a*), to-wit.
Saver moun, to know for certain.
Saver mon coment e le passa, just as it was taken.
Savement, with a saving.
Saverai (*jeo*), I shall know.
Savere (*pur*), to save.
Savi, wise.
Savit mie lire (*ne*), cannot read.
Savite, safety.
S'avoins (*nous ne*), we don't know.
Savoure, savours, partakes of.
Sau, salt.
Sauant, reserving.
Saubar (*per*), for saving.
Saubze, sixteen.
Saucerie del saucie (*serviens*), the serjeant of the salsarie, viz. that officer in the king's kitchen, who was to provide the necessaries for the king's sauces, or he who had the care of the provisions which were to be salted.
Sauces del mer, creeks of the sea.
Saucey, ground where willows grow.
Saudre (*baton de*), a stick of willow.
Saulx, *saulices*, *sauces*, sallows, willows.
Saulve, saved.
Saume, Psalm.
Sauncte, health.
Saune, saving.
Saunete, *sauite*, *sauvette* (*en*), in safety.
Saunk, *saunc*, *saune*, blood.
Saunk fine, the determination of a descent.
Sauntz, *saunz*, without.
Saura, shall know.
Saus, those.
Sausses, torn up.
Saussers, saucers.
Saut purpense (*a*), with an assault prepense.
Saut (*un*), a caper, a dance.
Saut (*a la*), at the siege.
Saute, *sautie*, *sauvte*, safety, health.
Sauvaigne, *sauvagine*, unreclaimed animals.
Sauvere, Saviour.
Sauyz (*bien*), let him be careful.
Sauuz deserte (*pas*), not without reason.
Sauz, saving.
Sauzims, sixteenth.
Sawes, sauce.
Say, I may.
Saybienke, I know very well.
Saye ley, his law.
Saye (*ceint de*), a girdle of silk.
Sayn (*au*), to the care, regard.
Saysze, six.
Scalpier de draps, rowing of cloth.
Scaves, known,
Scaves (*que*), that you may know.
Secivent, *scevent*, *sceynent*, know.
Scen, sense, knowledge, experience.
Scent, *scen*, known.
Sceppt, stock.
Scet, knows.
Sceu, *sceux*, known, knowledge.
Sceust, subject.
Sceuvent, they know.
Scey, a seal.
Scheftisbury, Shaftesbury.
Schopes, shops.
Sciat, *scieust*, *sciet*, knows.
Sciecle (*qant a*), as to secular affairs.
Scein, *sciences*, knowledge, science.
Scient marie (*li eir*), let the heir be married.
Scienz (*notoirmenet*), notoriously known.
Scier, *scyer*, *seyer*, to mow, to cut.
Sciet, it becomes.
Sciet, voluntarily.
Scieues, known.
Sciez, sawed.
Scire, sir.
Scisez, mown, cut.
Sclatz (*peres et*), stones and slates.
Scochon, escutcheon.
Scolers, scholars.
Scomers, scummers.
Scotter, to gall.
Scripture (*pur le*), for the writing.
Scriver, to write.
Scutelar (*serviens*), serjeant of the scullery.
Scutelaire, the officer in the king's household who was to take care of the dishes, &c.
Scuverad (*dunt li*), then it behoves him.
Scyer, to cut.
Se, if, whether, his, but, except.
Se leva, was levied.
Seal de notre secre, *secre seal*, our privy seal.
Seailles, harvest-time.
Seale (*del*), of the pound.
Seant, *seants*, *sejant*, *seiance*, sitting.
Seante, health.
Seante, fitting.
Sear, a lock.
Seas, seals.
Season (*la*), the seisin.
Seaut, understood, knew.
Sech (*harang*), red-herring.
Secle, world, age.
Sicle (*en le*), in the world.
Secole, sea-coal.
Secondes royes, secondaries, adjutants, assistants.
Sedation, appeasing.
See roial, royal throne, seat.
See, *seet* (*ne*), knows not.
Seeche, dried.
Seel, salt, oil.
Seen, knowledge.
Seen (*je*), I am.
Seen (*le*), his.

Seent (*ne*), be not.
Seept, *seet*, seven.
Seer, a governor.
Ser, *sereir*, to set.
Seere, to buy.
Seersus, over, across.
Seert, serves, is made use of.
Sees, set ye.
Sees, his.
Seessent (*ne*), may not sit, abide.
Seet, done.
Seetest, *seetz*, arrows.
Seez (*qe vous*), that you be.
Segerstain, *segretain*, a sacristan, a sexton.
Seges, *segez*, sieges.
Segne (*en*), in sign, testimony.
Segon, according.
Segrament, oath.
Segu, sure, certain.
Seguadours, sawyers.
Seguar, to saw.
Segroi, sacred.
Segurement, securely.
Seguyn, suit, to follow.
Sehur conduit, safe conduct.
Sei, *sein*, himself.
Sei (*heir de*), heir of his body.
Sei funt, make themselves; act as.
Sei (*entre*), between them.
Seicheries, the service by which a vassal or tenant was obliged to attend his lord to the army; profits belonging to a castle.
Seieant, sixty.
Seientement, knowingly, wittingly.
Seietz, placed.
Seietz a un (*que vous*), that you stick to one.
Seif, a hedge.
Seif, *serfs*, a villain, a servant.
Seign, sign, testimony, representation, symbol.
Seigniour, lord, owner.
Seignurages (*les*), the seigniorage.
Seignurie (*la*), the prerogative.
Seignurle (*la*), the prerogative.
Seignel, *seigle*, *segle*, rye.
Seijor, abode, dwelling-place.
Seil, a sail.
Seil, seals.
Seimes, made.
Sein, sound, in health.
Sein, known.
Sein, signal.
Seine, senses.
Seins, saints.
Seigns, *seignuus*, *seigne*, signed, marked.
Seinge manuel, signs manual.
Seins (*luis*), holy, privileges, places.
Seins meen, without mesne.
Seint, *seien*, be.
Seint, blessed.
Seint entendemént, sound, good understanding.

Seinta (*lui*), girded himself.
Seintisme pier, most holy father.
Seintisme temp, season for devotion, holy season.
Seintuaries, *seintewarie*, sanctuary.
Seinture, a girdle.
Seiomes (*que nous*), that we should be.
Seiront, shall fit.
Seisier, to seise.
Seisonables, in season.
Seissons, might be, caused to be.
Seisons del an (*tous*), all seasons of the year.
Seist (*si ceo ne*), unless it be.
Seit fet, be done.
Seit, seven.
Seit, let him, let him be; has, is.
Seit (*ke*), which was.
Seit fet (*nous*), have made us.
Seiverent, prosecuted, pursued.
Seiz, *seisitz*, seised.
Sek, dry.
Sekes a taunt q, until that.
Sel, *sely*, that.
Sel (*le*), the great seal.
Selar (*serviens*), serjeant of the cellar.
Seleables, to be sealed.
Selez e enfrenez (*viii chivalz*), eight horses saddled and bridled.
Seli, of this, this.
Selles, if they.
Selor, then.
Selparie, salt-petre.
Sels, alone.
Semadi, Saturday.
Semaille (*pur*), for seed.
Sembillantz, *au vostre commune*, it seeming to your commons.
Semblablez (*qi sont du suier*,) which are likely to ensue.
Semblant d'aucuns (*selonc*), in the opinion of some.
Semblaunt (*bon*), good example.
Semblaunt (*par*), at first sight, *primâ facie*.
Seme, sixth.
Sememes (*cink*), five weeks.
Semensee (*les*), what is sown.
Semente, cement, annex.
Semi, half.
Semitz, sown.
Semle (*se*), it seems.
Semoisons, seed-time.
Semond, summon.
Sen, *le sen*, his.
Sen, *sens*, understanding, judgement, discretion.
Sen, *sens* (*sans sen*), without his knowledge.
Sen vount, depart.
Senes (*les*), his own.
Sendes, shops, stalls.
Sense, wife.
Senglere, boors.
Senescaucie, the office of high steward.

Senestez, senefiez, signified.
Senestrement, sinistrously, left.
Senne de, his own.
Sennes (hors de lour), out of their mind, insane.
Senforcent, endeavour.
Sengles persones, every person.
Sengles, single, particular.
Senhor, senhur, lord.
Sensuit, senseut, follows.
Sensures (p *les*), by the censures.
Sent (al), with the assent.
Sent (qe furent al), who were assenting.
Sent (ne), doth not assent.
Sentainement, secret device.
Sentez sur, on the Holy Evangelists, on the sacred Reliques.
Sente (se), perceives himself.
Sente mort, put to death.
Sente, right, sound, good, wholesome.
Sente, a pathway.
Senteront, intended.
Sentiers (es), the entering into.
Sentre coment, intercommon.
Sentu, felt.
Sentu, thought, were of opinion.
Senz, without.
Seoffrance, truce, cessation of arms.
Seoins ouste (si nous), if we be ousted.
Seon (le), the seal.
Seons (ou que nous), wheresoever we are.
Seons (par les) le seon, by his own people.
Seont, know.
Seoptisme, seventh.
Seor, sister.
Seor, sure.
Seor (la), the elder.
Seose (ne), durst not.
Seoul (le), the soil.
Seourment, safely, securely.
Sep, sept, race, stock.
Sepmayn, sepmeme, a week.
Seps, cepe, cippe, a pair of stocks.
Septain (dix et), seventeenth.
Septan et noef, seventy-nine.
Septsaund secund, seventy-second.
Septembrale, September.
Septre, the sceptre.
Sepulture (seynt), holy sepulchre.
Sequer (doyt etre), ought to be followed.
Sequerent, following.
Sequestre, lock up.
Sequestres, locks.
Seqstres, attendants on officers of justice.
Sequestrour (le), the sequestrator.
Sequeur, secure.
Ser, shall be.
Ser, serves.
Ser (ke de mon li et), patits ke de meux li set, who knows it best.
Sera, will serve.
Sercherie (office de), office of searcher.
Serchier, serch, to search.
Sercle, a circle.
Sercler, to weed.
Sere, shall be.
Seredes (la), the screens.
Sereur, sister.
Serfe, a female slave.
Serfs, stags.
Serjant, serviens, one in degree next to a knight.
Seriche, search.
Sergeantie (p *defaute de*), for want of counsel.
Sergeaunte d'Engleterre (tout la), all the judges of the coif in England.
Seriete, serenity.
Serions, seriemes, should be.
Serjours, searchers.
Sermentez, sworn upon the saints.
Seroruge, a surgeon.
Serpentyne, a kind of alembeck.
Serra, shall sit.
Serrer, to block up.
Serrett (ne), may not be.
Serreynt (il), they would be.
Serruns tenuz, shall be obliged.
Sers Dieu, servant of God.
Serten, certain.
Servages, servisses, services.
Serve, a stroke.
Servens (pur le), for the payment.
Serveyse, servoise, service, ale.
Servi la court, tendered to the court the usual form of pleading.
Servie, obeyed, complied with.
Serviens empt, serjeant, purveyor.
Servietz, services.
Servir lestatut, answer to the statute.
Servirets, will serve.
Servits, servy, paid.
Servois, ponds.
Servy (sy il seyt), if it be applied.
Servy (qil soient), that they may be paid.
Ses, sesze, fix.
Ses, without.
Ses de la chaunceley (si), if they of the chancery.
Seserunt, shall cease.
Sessante neuyme, sixty-nine.
Sesine, seisin.
Sestez, these.
Seze, sixteen.
Set, seven.
Set, knows, known.
Set, that, this.
Se (qe), which resteth.
Sete l'apostoille, apostolical see.
Sete, set, fix upon.
Setes, seties, seetes, shafts.
Setors (ses), his sureties; his sisters.
Setors, sailors.
Sett, be.

Setta hors (*je*), I shoot out.
Setter, to shoot.
Settle, known.
Setus (*de*), of this.
Setyme (*dis*), seventeenth.
Seu, if.
Seu, *seucee*, knowledge, known.
Seu, salt.
Seu (*de plein*), fully, without reserve.
Seu (*jeo*), I am.
Seuant, following.
Seue, *seure*, *seuyr*, *seuure*, to sue, prosecute.
Seue, known.
Seuf, safe.
Seuil, I am wont, I am used.
Seulles, only, alone.
Seumes (*nous*), we are.
Seuns (*ou ke nous*), wheresoever we shall be.
Seur, sister.
Seur, sure, certain.
Seur, against.
Seur, upon.
Seur se, moreover.
Seur cee, thereupon.
Seures (*par la*), *potiùs*, *pur la seures*, for the safeguard.
Seurplus (*le*), the remainder.
Seurse, arisen.
Seus, alone.
Seus, seals.
Seus (*les*), her people.
Seus (*a*), to his.
Seus (*tuz*), all those.
Seus (*de*), of those.
Seussioms (*nos*), we know.
Seut, should be.
Seute, suit; payment.
Seute (*pur*), for fear.
Seust, *seuve*, *seuvy*, knew, known.
Seux (*a*), to them.
Seux, shillings.
Sevant, skilful, exact.
Seve, *seue*, her own.
Seve (*a la*), to his.
Seveles, buryed.
Sevent, they know.
Sevente (*qui ne*), who are not capable of.
Sever, sue.
Severa, will sue.
Severes, severed, separated.
Sevi, sued.
Sewes, known.
Sewet, suit.
Sextemen, the sixth time.
Sexter, a measure of corn.
Sey, silk.
Sey, himself.
Sey (*e*), by itself.
Sey (*endroit de*), in his place, station.
Sey (*que je ne*), that I may not be.
Se desovre, unwrought silk.
Seyant, sitting.
Seyast, hath seen.
Seye (*sil*), if he sit.
Seyent, *seynt*, be, may be.
Seyent, let them apply to, let them sue.
Seyent (*qui meiux*), which better suit.
Seyer, to cut, mow.
Seyer, to know.
Seyvent, they know.
Seyetes, arrows.
Seyetz, *en la merci*, be in mercy.
Seyne, healthful, wholesome, sound.
Seyng liege (*lur*), their liege lord.
Seyns, saints.
Seyns, furs.
Seynt, girt.
Seyntetee (*sa*), his holiness.
Seyremnux, oaths.
Sez, his.
Sezaine, *sezxime*, sixteen.
Sezile, Sicily.
Shaft, *scheft*, a weight, the same as the auncel.
Shelpe, shelves in the river.
Shout, a small boat or vessel.
Si, whether, here.
Si amy, his friend.
Sia (*et*), and there is.
Sibn, as well.
Sibor, as well of.
Siche, be it known.
Sicle, age, world.
Si come, as, as it were.
Sicome (*de*), since, seeing that.
Sidre, cyder.
Sié, be it so.
Si eins, another time, before.
Si est, is, belongs to.
Sie plain (*le*), when the sea is full.
Siege faire (*de*), to besiege, to beset, to lay in wait for.
Sieges qui, who sat in the see.
Siegle, age.
Siel, a saddle.
Sien, seat.
Sience propre chouse, his own proper things.
Siens (*de*), of his friends.
Sient pier, holy father.
Sier, to mow, to saw.
Sier blees (*en temps de*), in harvest-time.
Sieres, lord.
Sieremens, oaths.
Sierges, wax-tapers.
Sierl (*si*), does not serve, lie.
Siet, knows.
Sietans, sixty.
Siet rien (*ne*), knows nothing.
Sieure, observe, pursue.
Sieute, suit, request.
Sieux (*des*), of those, of such.
Siex, *siey*, six.
Siglaunte (*nefe*), a ship sailing.

Sigles (*moly*), mill-sails.
Signal, seal.
Signament, particularly.
Signe, badge.
Signes de palmes, signs in the palms of the hands.
Signes, swans.
Signioris, seignory, lord's service.
Silleurs, mowers.
Silloekes, there.
Sillours de burse, cut-purses.
Simayne, *simeine*, a week.
Sime, *syme*, sixth.
Simenel (*payn de*), simnel bread.
Simeniaus, simnels.
Simian, Simeon.
Simitorie, a church-yard.
Simonye (*sans*), without a reward, gratis.
Simplist (p *te*), on account of the smallness of it.
Sine, his own.
Sine, without.
Sines, swans.
Singulant, bloody.
Singuler, private.
Singulere, single.
Singulerement, in the singular number.
Singulerte, (*in lour*), into separate parts.
Sinkaunt, fifty.
Sinke, *sink*, five.
Siours (*iii*), three mowers.
Siqe, so that.
Si redde ley, any speedy law.
Sir li rois (*nedit*), *nostre sire le roi*, our said lord the king.
Sire, *sire gert*, God preserve.
Sire de Roos, lord of Roos.
Sirs, the lords.
Sirpe, a mat, rushes.
Sis, sitten, abode.
Sis, his.
Sis lieux, six miles.
Sisan, sixty.
Sisme, *sisime*, *sisime*, sixth.
Sissables, *arbres*, coppices, trees used to be cut.
Sist, it behoveth.
Siste, sixth.
Sistront, stopped, seized.
Sistrunt (*en*), shall issue from.
Site, sixteenth.
Siu, his.
Siut, train, followers.
Sive, his.
Siverne, the Severn.
Sivre, pursue, prosecute.
Siwant, following.
Siwe, pursue, be a transcript of.
Siwent (*qil*), that they follow.
Siwers, shall sue for, prosecute.
Siwit, sued out, sued to.
Siwte, suit.

Sleies des worstedes (*les*), the sleyes of worsted.
Slethe, *slede*, a bank of a river.
So, thus.
Soaffre, permit.
Sobrain, sovereign, supreme, prevalent.
Sobrine, cousin-german, kinswoman.
Soceures, succours.
Socures, succoured.
Sodeynement, suddenly.
Sodiacre, a sub-deacon.
Soe, her own.
Soef, sweet.
Seaffrance, toleration, delay.
Soeffre, *soeffier*, to suffer, permit; omit.
Soeffrir, forbearance, permission.
Soel, alone, only.
Soel, *soeil* (*le*), the sun.
Soel mayne (*en*), into an indifferent hand.
Soels several, several soil.
Soen, *syen*, own, one's own, his own, his.
Soen (*le*), his faithful.
Soen desire (*que j'eusse*), that I had reason to expect.
Soen destre (*en*), in his district, in the mean time to be.
Soen (*e li*), and theirs.
Soens, those.
Soens (*de*), of some of his, to them.
Soens, *soiens*, *sonz* (*nul de*), any that belong to him.
Soens (*les*), his agents.
Soer, *soor* (*harang*), red herrings.
Soer (*a*), in the evening.
Soera, sister.
Soer fest, upon a deed.
Soertree, safety, health.
Soerts, sorts.
Soeverrant, sovereignty.
Soffianz, sufficient.
Soffre, suffice.
Soffrunes, suspended, respited.
Soi, I have.
Soi, his.
Soiant, sitting.
Soias (*que vous*), that you may be.
Soiaule, seals.
Soie enfile, silk twined.
Soien, himself, be.
Soier, to saw, to cut down.
Soiet, be.
Soiets, arrows.
Soietz, *soiets*, subjects, men.
Soieur, sister.
Soief, turf.
Soigner, to excuse.
Soilent, they used.
Soillure, soil, filth, dung.
Soine, sounds.
Soingles, singular.
Soint, are.
Soivent, several.

Soixante onze, seventy-one.
Solacz, comfort.
Soldeours, soldiers.
Soldrad (*pur*), as he deserves.
Soldz, salaries.
Sole, *soil*, ground, soil, land.
Sole, *soul*, *soeil*, *soleyne*, sole, alone.
Soleient, *solerent*, *soleront*, *solent*, *solioms*, *soloia*, were wont.
Solein, solemn.
Solempniae, formality, solemnity.
Solempnite des esposailles, solemnization of marriage.
Soler, to pay.
Soler (*jour*), the solar day.
Solers, shoes.
Soloile recouch, sun-set.
Solom, according to.
Solonque cesque, accordingly.
Solonque un maner, after a manner.
Solt (*ne*), *nel sont*, *nel sout*, did not know.
Solyer, a shoemaker.
Solz, *soldz*, shillings.
Som, *somez*, summoned.
Sombresser (*Charles de*), Charles Somerset.
Somdant, arising.
Some, summons.
Somerement, in a summary way, briefly.
Somerier, in short.
Someyns, weeks.
Somis, subjects.
Sommage, burdens.
Sommeir les besoignes (*de*), to consummate the business.
Sommer, to summon.
Somnelentz, persons troubled with a lethargy.
Somous, are.
Son, are.
Sond, wages, pay.
Sone, *les sones*, his, his affairs.
Sone tens (*en le*), in the mean time.
Sonee, *soune*, *sonnent*, sounds.
Sonent, *sovent* (*tant*), so often.
Sonent, are.
Sones (*par les*), by his confederates.
Sonette d'argent (*un*), a little silver bell.
Son nour, his honour.
Sons, *sous*, shillings.
Sons, payment.
Sons, without.
Sont, know.
Sontent (*se*), think.
Sooton, Sutton.
Sor, *sore*, *sors*, upon, above.
Sor (*ceo*), therefore.
Sorceler, to bewitch.
Sore, *sord*, sister.
Sore (*harang*), red herring.
Sores, you may be.
Sort, be.
Sort, lot.
Sortz, sorts.
Sorvent (*vos*), you may remember.
Sos, a fool.
Sospent (*quy*), which are in suspence, which are depending.
Sospescon (*qui miens seient en*), who are no ways suspected.
Sostinges, support, uphold.
Sostynt, supported.
Sot, knew.
Sot (*laron nel*), did not know he was a thief.
Sotiletees, *sotinetes*, subtleties.
Sotise, *sotye*, ideocy.
Sot nastre, a fool natural, a fool from his birth, an ideot.
Soubdaine, sudden.
Soublever, to lift up.
Soubminister, to serve under another.
Soubresse, sobriety.
Soubs, under.
Soubscrire, to underwrite.
Soubzaage, under age, minority.
Soucheesz, shillings.
Souconduit, safe-conduct.
Soucy (*sans*), without suspicion.
Soudant, supporting, fortifying.
Soude, *soulde*, *soudees*, wages, pay.
Soudeesz de terre (*cent*), an hundred shillings of land.
Souder, *surder*, to arise.
Soudeyers, *soudiers*, *souders*, *soudjours*, *soudovers*, *soudiours*, soldiers.
Soudoyer, maintain, keep in pay.
Soudoyes, supplied.
Soudure, soder.
Souealx, safe.
Sovenere, frequent.
Souentifiez, frequently.
Souez, under.
Souffest, sufficient.
Souffraunce, *soffrance*, *sufferance*, cessation of arms, a truce.
Souffrire, to suffice.
Sougiux, *sougies*, subjects.
Soul, alone.
Soul jour, a single day.
Soul, *potiùs tout*, (*de*), *la terre*, of all the land.
Soule, safe.
Soulement, only, also.
Souleu, the sun.
Soulevation, revolt.
Soulez (*femes*), femes sole, single women.
Soulu, forgiven.
Soulze, *soux*, *souce*, *soubz*, *soulds*, a shilling.
Soumerement, arbitration.
Soun piere, his father.
Soun (*e*), and.
Soun (*ne*), goes not.
Soune, sounds.
Soune ne soit, shall not be published, shall not tend to.

Sour, upon, against.
Sour chou, thereupon.
Sour li, against him.
Sourdlers, shoes.
Soure (*main*), safe hand.
Sourmet, surmises, alledges.
Soursist, arise.
Sourvissant, attending to.
Sousprendre, usurp.
Soustretes, substracted.
Sout, suit, suit of court, petition.
Sout, *sot*, knows.
Sout, *soute*, (*jor de la*), day of payment.
Southaller, to undergo.
South boys, underwood.
Southes (*set*), seven shillings.
Southminer, to undermine.
Southsewantz, subsequent, following.
Soutre, *soultre*, underneath, below.
Soutz pur soutz, shilling for shilling.
Soutz eux, under them.
Souve, sounds.
Souvement, safely.
Souvenere pleint, frequent complaint.
Souveneres, heavy, frequent.
Sovent (*destresse*), continued distress, distress infinite.
Souventfoth, oftentimes.
Souveraignement (*desirant*), greatly, earnestly, above all things desiring.
Souveraunce, guide.
Souvereign, superior, next, immediate.
Sovereigne garnement, upper garment.
Sovereigne partie, greatest part.
Sovers, frequent.
Souz, *sous*, shillings.
Souzmeist, submitted.
Souzmis, *soulzims*, substitute, subjects.
Sovieront autres remedyes (*ne*), seeing, knowing of no other remedy.
Sowdan, sultan.
Sowan, sound.
Sowne (*ils*), they are.
Soy, his.
Soy, of themselves.
Soy, *soyer*, sister.
Soy (*si jeo*), if I be.
Soy (*coste de*), a coat of silk.
Soye, itself.
Soye, *soy mene*, *soimene*, himself.
Soy fit, was made.
Soyen, are.
Soyens (*ne nul des*), nor any of those.
Soyer, to cut.
Soyetz, subjects, men.
Soyiont, passed.
Soy myst, put himself.
Soyne, a synod.
Spanges, spangles.
Spargissent, ravish.
Spaule (*lez*), the shoulders.
Spergisser, to violate, ravish.
Sperniroms (*que nous ne*), that we will not spare.
Splatte, splatted, split.
Spoliation, *dissesisin*, deprivation.
Spours, spurs.
Sprete, spirit.
Squerrer, esquire.
Squiller (*sergt*), serjeant of the scullery; the officer in the king's kitchen, who had the care of the dishes, knives, &c.
Squillerye, the scullery.
Sra, shall be.
Stagne, a pool, a pond.
Stat, stand.
Stater, firm, binding.
Stathes, wharfs.
Station (*la*), the standing.
Statuit, statute.
Staunche, in good order, dry.
Stefne, Stephen.
Steppes (*le*), the way, the path.
Steres, stirred.
Sterver, death.
Sterveth (*ce*), it dieth.
Steym, tin.
Stoure, stocked.
Straict (*home*), a man out of his mind, distracted.
Streat, the street, the way.
Streitures des rivers, the straitness, the obstructions in rivers.
Strepe, the stirrip.
Streyte, strict.
Streytement, strictly, hastily.
Strome (*le*), the stream.
Stuffe (*de leur*), for their keeping.
Stuffez, stocked.
Stuffure, stuff, lining.
Stuffure (*pur la*), for the repairing.
Sturroit, put, forced.
Stewes (*lez*), the stews.
Style descrire (*le*), the manner of writing.
Su, I am.
Su (*le*), the south.
Sua, sued, impleaded.
Suaf guiage, safe conduct.
Suantz, *suaunte*, succeeding.
Subditz, aforesaid.
Subduitz, ruined.
Subit, forthwith.
Subornatz, suborned.
Submys, subjects.
Subridendre, to laugh behind another's back.
Subroguer, *surroguer*, to make a deputy or surregate.
Subroguez, substituted.
Subtus, under.
Suburg, suburbs.
Subz umbre, under pretence.
Sud (*ne*), was not.
Sue (*je*), I am.

Sue, his, his own.
Sue, known,
Sue, followed.
Sue cornes, shooing horns.
Sueffrent, suffer, permit.
Suelt, accustomed.
Suens (*nul des*), none of his.
Suer, sister.
Suer, serve, to follow, pursue, prosecute, ensue.
Suers, sisters.
Suertie, safeguard, safety.
Sues, ye ought.
Suete (*greynour*), more fresh air, a greater range.
Suette, suete, suit.
Suez vous tot, although you are.
Suffenne, unwholesome.
Sufferable cautele, a prudent, patience.
Sufferaunce (*la*), the truce, suspension of arms, pardon.
Suffert, allowed, permitted.
Sufficcantie de terre, sufficient land.
Sufficiat, sufficient.
Suffisablement, sufficiently.
Suffrable, reasonable, lawful.
Suffrable chose, a hardship.
Suffrables (*les*), things liable to make good a nuisance.
Suffrace (*en*), in suspence.
Suffrancie (*solent la*), according to the proportion.
Suffreint, to be born, endured.
Suffreit (*grant*), great want, scarcity.
Suffretz, hardships.
Suffrir, delay, put off.
Suffroit, would be sufficient.
Sugales, South Wales.
Suggets, sugges, suggetz, subjects.
Sui, followed.
Sui, ensued.
Suis (*a luy prendre*), to take him up.
Suis (*les deliverent*), deliver them up.
Suis (*en*), upwards, above.
Suischargiez, above charged.
Suist dist de, hereafter said.
Suis dits, abovesaid.
Suisargentent, silvered over.
Suisorre, embroidered, gilded over.
Suissoins, had sued out.
Suist, be.
Suit, aforesaid.
Suit, suyt, the retinue, chattels, offspring and appurtenances of a villian.
Suit, the witnesses or followers of the plaintiff; proof.
Suit, a path, or track.
Suit son several, has sued out his several, partition has been made.
Suix, upon.
Suix, suient, follow.
S'ul l'ad, if he has one.
Sulary, sallary.
Sullerye, a plow land.
Sullings, alder trees.
Sulue, sulun, sullonc, according.
Sum, his.
Sumeigne, week.
Sumes, we are.
Sumeter, the proveditor for the garrisons.
Summ (*a*), *a sum' damag'*, to specify his damage.
Summa en la teste, struck him on the head.
Summage (*ove*), with horses laden.
Summament, especially.
Summes sur chivalls (*les*) the summs, or package on horses.
Sun conduit, safe, sure conduct.
Sun fiuz, his son.
Sun le chef, the price of his head, his were.
Sune, suns, his, his own.
Sunt, they are.
Suours, shoemakers.
Supetencions, suspected.
Suppeditee, in subjection.
Supplecions, helps, amendments.
Supportation, support.
Supposaill, allegation.
Suppose (*enfaunt*), a suppositious child.
Suppour, sub-prior.
Suppriz, surprised.
Suppweillez, supponailless, supported, succoured.
Sup q, whereupon.
Sur, upon, against.
Surs, lords.
Sur se, therein, thereupon.
Surachater, to overbuy.
Surchetut, more especially.
Surcris, addition, surplus.
Surdier, to arise.
Surdit, suspicion.
Sure, to prosecute, to follow.
Surfet de hostes (*sanz*), without too many guests.
Surjetter, to cast over.
Surigiens, surgeons.
Suriplus, surplus.
Surmeissent, charged with.
Surment, oath.
Surmettent, take from.
Surmettent (*ils*), they surmise, suggest.
Surmitter, to surmise, accuse.
Surmys (*a luy*), alledged against him.
Surorrer, to gild.
Surpluis (*le*), the surplus.
Surpluser (*le*), the remainder, deficiency, what is behind, or wanting.
Surppriser, encroachments.
Surprendre, seize.
Surprit, undertaken, supported.
Surprision (*sanz*), without molestation.
Surquerge, molests.
Surquidance, arrogance, presumption, disdain.

Surrection, subjection.
Surrounder, to drown.
Sursane, rotten, putrid, unwholesome, surfeited.
Surser (*yl ne poit*), he cannot pay the penalty of sursise.
Surseera la sursise, shall neglect to pursue the hue and cry.
Surses (*de*), *surcesser*, to surcease.
Sursise, *sarfait*, neglect.
Sursise, a penalty or forfeiture laid on those who neglected paying the duty or rent of Castleward at Dover.
Sursise en ple (*de doner*) to give orders for a surceasing of the plea.
Sursises, neglects, sursysee.
Sursist, *sursys*, neglected, omitted, ceased.
Surte, surety.
Surveer, to overlook, survey.
Survenantz, sojourning.
Survenet, survey.
Survenue p *malady*, seised, overtaken with a sickness.
Survesquist, survives.
Surveux, superintended, examined, surveyed.
Survieu, survey.
Survint, came.
Survys, looked upon, deemed.
Surundes en la meer, lost in the sea.
Sus, upon.
Sus, arise, be.
Sus e jus, up and down.
Susanné, *suranné* (*terre*), land worn out with too long ploughing.
Susdit, *susditz*, aforesaid.
Susditz (*des*), abovementioned.
Susduitz, put back.
Susgrosses, engrosse.
Susmet, submit.
Sus mette (*il*), he alledges charges.
Sus mettre a nous, impute to us.
Suspetenus, suspected.
Suspiralo, *espirale*, conduit, pipe.
Suspris de maladie, seised with sickness.
Susquiet, harrassed, searched about for.
Susseemes (*chair*), unwholesome meat.
Sussent (*et sil*), and if they know.
Sust, be.
Sustenance de sa corone (*en*), in support of his crown.
Suctendroms (*ne*), will not support.
Sustretz, *sustretes*, *sustreits*, *sustrits*, *sustrain*, withdrawn, withheld.
Sute, suit, prosecution, proof, evidence, instance, request.
Suter, *seuter*, a shoemaker.
Suterez, suitors.
Sutes, suits, services.
Suth (*des parties del*), southern parts.
Suthdit, hereunder, hereafter said.
Suthmyz, subjects.
Suthtry, withdrawn.
Sutilte, *sotivite de sens*, by parity of reason.
Suwe, *su*, onions.
Suy, proceeded.
Suy, followed, pursued, prosecuted.
Suy hoyr, his heir.
Suynnant, following.
Suyrement, securely.
Suyst, sue out.
Suys prest, I am ready.
Suys (*liverer*), to deliver up, surrender.
Suyt, suit, right of prosecution, livery, security.
Suyt (*a la*,) at the request.
Sux (*pur*), for those.
Suz, under.
Suz (*ley*), against him.
Suzpris, seised.
Swayl (*pur*), for fuel.
Swefe (*q'il tensit*), that he hold it gently.
Sy, if, so.
Sy (*que*), that he might.
Sycome, since.
Syen, his.
Syffet, a puff with the cheeks, a whistle.
Symayne, *symeigne*, week.
Symblement, simply.
Symerement, purely, simply, sincerely.
Synkes fieles, five daughters.
Syre, Sr, father.
Sys, six.
Sys, set down.

T, *ten*, tenant.
Ten, to hold.
Ten, *tent*, held.
Ten, such.
Tenez, *ten*, *tenz*, tenements.
Tenz, tenants.
Tm, only.
Tns, *trns*, trespass.
Tps, time.
Tr pled, plea of land.
Tabard, a cloak.
Tabulet, a tabulet, a portable altar.
Tache, infected; tied, fixed unto, tacked together.
Tache d'or (*un*), a cup of gold.
Tacissir, to cough.
Taile de boys (*un*), a tally of wood.
Tailla (*que se*), which was pronounced given.
Taille, barred, taxed.
Taile, *taill*, tally.
Taille (*se*), are desirous.
Taille, *tayile le ditz A* (*a la*), at the dictation of the said *A*, when the said *A* pleased.
Taillee, pronounced, declared.
Tailler, to cut.
Tailler, to limit.
Taillera (*jugement se*), judgment would be given, pronounced.

Tailleroient (*se*), should endeavour.
Tailles, acquittances.
Tailletz (*covenantz*), covenants limited, expressed, made.
Taillez, *taillie*, entailed.
Taillez (*que vous vous*), that you will prepare yourself.
Taillez (*un bois*), a coppice, or wood used to be cut.
Taillont, they limit, they lay.
Taillours, taylors.
Taillur un villain (*de*), to recover a villain departed.
Taisiblement, tacitly.
Taillurs de amans, cutters of diamonds.
Talant, *talenz*, talent, love, desire, inclination.
Talemains, nevertheless.
Talent, encouragement, inclination.
Talent d'amer matrimoyne, a love for the state of marriage.
Talent (*mau*), ill will, resentment.
Talent (*vous dites*), you say right, truly.
Talent (p), by means of.
Talent preigne, take effect.
Tales, *talys* (*novelles*), new declarations, tales.
Tallion, *lex talionis*, like for like.
Talouns (*coupes de*), cut off close by the heels.
Tamps, time.
Tangne, thine, thy own.
Tan longament, so long a time.
Tank, extended.
Tannz, as well.
Tanqal, *tanne*, until.
Tanqe, think.
Tanqe ceo fuit, until it was.
Tanque il soit, until it be.
Tans, time.
Tant, as well.
Tant, (*per*), thereby.
Tant (*es*), in the tent.
Tantcome, in as much as, while, so long as.
Tantoft, by and by, almost, so much, presently.
Tantqeu Eyre, until the Eyre.
Taper, to lurk.
Tapets, blankets, coverlets.
Tapiers, tapers.
Tapissant, lying concealed, lurking about.
Tard (*a puis*), at latest.
Tardance, delay.
Tardist, *tardiver* (*plus*), later.
Targe, *targue*, a target.
Targe, the impression of the king's arms in the figure of a target, and sometimes called *pes sigilli*, the privy seal.
Targer, *targyr*, a delay.
Targera, shall wait.
Tariez noundement, unduly delayed.
Tart au tempre, later or sooner.
Tape de blee, stack of corn.
Taskes, taxes.
Tast (*par*), by handling.
Taste (*vient*), have found, experienced.
Taster, to touch, to endeavour, to find out.
Tastere, little cups.
Talpinier, a mole-catcher.
Taunt avaunt come, as fully as.
Taunt come, as soon as, for as much as.
Taunt (*cest*), thus much.
Taunt (*pe*), by so doing.
Taunt ne quant (*ne est empire*), will be neither better nor worse.
Taunt qe (*jusques a*), until that.
Taunt soient, as soon as.
Taust apres, soon after.
Taux, such.
Taux (*au*), at the assessment, taxation.
Taxe, yew-tree.
Taxer, to settle.
Taxes, appraised, assessed.
Taxus, taxes.
Taye, grandmother.
Tayl, tally.
Tayl (*per*), by payment.
Tayler haut et bas, to tax a villain at discretion.
Tayler (*lui*), prepare himself.
Tayllable, taxable.
Tayon, grandfather.
Te, behold.
Teaux, such.
Teaux (*qe*), that such are.
Tebaud, Theobald.
Teguler, a tyler.
Tei, *teie*, thine.
Teigles, title.
Teigner, to hold, to take place.
Teils, such.
Teinable (*le plus*), the most favourable.
Teintrere, to be dyed.
Teinz (*draz*), dyed cloth.
Teire, land.
Teirs, *teirce*, the third.
Teissum, a badger.
Teixeler de draps, a teazeller of cloth.
Teixels, teazles.
Tele, a web.
Temoniance, *temenie*, testimony, evidence.
Temporaute, temporalties.
Tempeures, the four Ember-weeks.
Tempre (*tart ou*), later or sooner.
Temprer (*a*), to mitigate.
Tempriers (*la*), temperament.
Temps (*par*), presently, shortly.
Temps descovenables, non juridicial seasons.
Temps (*quatour*), the Ember-days, at the four different seasons of the year.
Tempt (*les*), held them.
Tenable, to hold place, defensible.
Tenables pur attaintes, to be accounted or deemed as attainted.

Tenaud, Stephen.
Tenaunce, tenancy.
Tencon, a dispute, quarrel.
Tendi, intended.
Tendreche (*par*), by the infirmity.
Tend, *tent*, offers, is ready.
Tendiont, may hold.
Tendrez secrees, will keep secret.
Tendroit, taking away.
Tendroit (*il*), he thought.
Tendrons, will restore, deliver up.
Tendroynt (*ils*), they would think.
Tendumes de lage le roy veantz (*le*), seeing the tender age of the king.
Tendy (*il n'a*), he did not look upon.
Tendy, tendered, offered.
Tenell du roy (*le*), the palace where the king resides; the king's hall, bell house.
Tener, to gain.
Tenet, Thanet.
Tenez, bound.
Tenge (*vous*), kept, preserve you.
Tent, *ten*, held.
Tengent (*qe*), that they keep, observe.
Tenier, to hold.
Tenir, accept, take.
Tenirs (*a*), to be holden.
Tenk (*je*), I hold.
Tenoins nous, we think.
Tenoms, look upon, regard.
Tens (*ou*), at the time.
Tens (*en*), in time.
Tenser, to preserve.
Tensit covenant, performed the covenant.
Tensit ple (*quil ne*), that he should not hold plea.
Tent ausi come si, in as full manner, as if.
Tenure, tenure.
Tenure, *tenuer* (*le*), the tenor.
Tenure (*a*), to observe.
Tenz, kept, observed.
Terage, a duty for breaking up the ground.
Terce, *terse*, third.
Tere, land.
Tere de la Comun, Commons, Community, of the Land, *viz.* the Bishops, Earls, Barons, and great men of the realm; also military men, such as hold Knight's fees or parts of Knight's fees, and such as paid scutage.
Terme, time.
Termine, detained.
Termine, determination.
Terminer, to atterminate, or assign a time for payment of a debt.
Terminez, held, kept.
Terra, land.
Terre (*est a*), fails, is aground.
Terrene, *terrien*, earthly.
Tesir, to be silent.
Tessaunt (*en*), tacitly, by being silent.
Testez, heads.
Testure, a testern of a bed.
Tet, head.
Tets, *tez*, all.
Teu, kept.
Teule, *tewle*, title.
Teu lieu, such a place.
Teumoine (*en*), in witness.
Teu prisons, such prisons.
Teus deus, both.
Tex, *telx*, such.
Texes, wove.
Teyle (*de*), with mail.
Teynoyt, *teynt*, hold.
Teynte (*la*), the attaint.
Teysant (*en*), by being silent, tacitly.
Teyse (*si en*), if he is silent.
Tezeller de draps, a teazeller of cloth
Theflains, the Epiphany.
Therai (*en mon serus*), into my serious consideration.
Tholomeu, Bartholomew.
Tholun, *tholon*, toll.
Thrave des blees, a thrave of corn.
Thrommes, thrums of woollen yarn.
Ti, thy.
Tibaud, Theobald.
Tiel, *taill*, *teoil*, *tuaill* (*unepriere de*), one piece of cloth.
Tiel moy, such a one.
Tielle (*en la*), in tail.
Tien, thy.
Tien counsell, such counsel, advice.
Tienge, keep.
Tienk (*jeo le*), I hold it.
Tient (*luy*), acknowledged, owned him.
Tient myne in moi (*il ne*), it is not my fault.
Tient my lieu (*ne*), does not lie, take place.
Tiercz (*pur*), by thirds.
Tierz (*lui*), himself, and three others.
Tieux, *tieul*, *tiex*, *tious*, *tils*, such.
Til, such a one.
Tiltre, title.
Timer (*a*), to fear.
Timeur, fear.
Tin, the sound of a clock.
Tinctours, dyers.
Tinel, a place where justice is administered.
Tinel, *tynel*, *le roy*, the king's hall.
Tingue, *tinent*, held.
Tint, held, observed.
Tinters, tinkers.
Tiou, thine.
Terauntes, tirannies.
Tiphaynei, Epiphany.
Tissours de draps, weavers of cloth.
Tisserans, weavers, embroiderers.
Tistes, twisted, fixed.
Tistours, twisters.
Tixtereseces, weavers.
Title (*soit*), be entitled.
Tiwe, killed.

Toat ale, gone altogether.
Tockey (*je*), I mentioned, proposed.
Toddels de lane, tods of wool.
Toict, tect, the roof of a house.
Toient, hold, keep.
Toil (*le*), the plea, tolt, contest, dispute, the point.
Toiller, to deprive.
Toillier, a weaver.
Toldee, Theodore.
Tole, tote (*some*), sum total.
Toleress, the person by whom the entry is tolled.
Tolet, tollet, tolets, tollerent, deprived, taken away, barred.
Tolkeps, yards.
Tolloun, toll.
Tols, toluz, tolz, removed, taken away.
Tolyr eux (*a*), to take from them.
Tonde (*ne*), does not signify, cannot be found fault with.
Tondour de drap, one who shears the cloth.
Toudra (*ne*), will not take away, deprive.
Toneiles, hogshead, tun.
Tonel, a kind of prison for night-walkers, a round-house.
Toni, Anthony.
Tonnel, a vessel, a vat.
Tonneux voides, empty vessels.
Tonnu, toll.
Toor savage, a wild.
Torain, of Touraine.
Torale, a kiln.
Torbes, multitudes, routs
Torcenouse, wrongful.
Torcionnieres, unjust.
Tormente, punished.
Torne de chescun pleyntyf (*pur le entre de la*), for the entry of the attorney of every plaintiff.
Tornei, tournament.
Torre, land.
Tors, a tower.
Torsjors, always.
Torteuous, tortious, wrongful.
Tosale (*un*), a hogsty.
Toste (*se*), so soon.
Tot, tos, all.
Tot, although.
Tot fois, tote voies, totebetz, totedys, always.
Tot outre, entire.
Tot a primer, as soon, immediately.
Tot le meins (*a*), full at the least.
Tot en tot, wholly, entirely.
Tottee, totted.
Touaille, a towel.
Touchiez, handled.
Toulle, toll.
Toullissent, should take away from.
Tousmé, Thomas.
Toundeson (*seisone du*), seasons for sheep-sheering.
Toundure de herbis, sheep-sheerers.
Tounn, toll.
Tourbes, turfs.
Tourmentes, tournaments.
Tourteres, Tartars, Saracens.
Toust (*pluis*), as soon.
Toust que (*si*), as soon as.
Tout, yet, although.
Tout attrenche, entirely, from beginning to end.
Tout diz, tous dis, always.
Tout dys, always had done.
Tout de nette, entirely.
Tout net, altogether.
Tout outre, entire, the whole.
Toutper, throughout.
Tout soit, although.
Toute suoies, always.
Tout vois, however.
Tout jours (*a*), for ever.
Toutz jours mes, for ever, for ever after.
Touzours, always.
Toyson fleece.
Toz, all, the whole.
Tozail, tosail, a brick-kiln, or chimney.
Trabeation, Crucifiction. This was an æra from which charters were sometimes dated; *Anno Trabeationis Dominicæ* 1013. Dufresne.
Tracasser, to range up and down.
Tracement, seeking after.
Tradictions (*des*). Part of the service in the Roman Missal, and called so from the apostles upbraiding the Jews for following the false traditions of their ancestors, and neglecting the weightier matters of the law. Instruments are sometims dated from this day. *Feria IIII. post III. Dominic. Quadrag.* Lemoine.
Tracte, treated.
Trahes in juries, drawn in jurys.
Trahir, to draw in, to betray, to commit treason against.
Trahir (*poit*), may commit treason.
Trahy out, drawn beyond.
Traictemets (*que se sont*), that this is proper treatment.
Traiet, drag.
Traille, delivered.
Trailler, to search after.
Traillez, taxed.
Traine (*per*), by drawing.
Trait (*gens de*), cross-bowmen.
Tramettre, to transmit.
Tranchees, trenches.
Trans, over, across.
Transcrire, to write over, transcribe.
Transescrit, transcript.
Transiger, to transact.
Transon, a fragment.
Transportera, shall transfer, assign over.
Trare, shall extract.

Trat (*nient*), not drawn out of, taken out of.
Travailer en jures, to go far to be on juries.
Travaille, *travayli*, vexed.
Travaille, prosecute.
Travailler, to vex, harrass, disturb.
Travailler la court, to trouble the court.
Travers (*pur*), for sheaves.
Traversant, traversing, putting upon trial or issue, opposing.
Traverseles (*lines*), cross lines, collateral lines.
Traverser, to meet, intercept, to deny.
Traysun, treason.
Tre, earth.
Treacte le ple hors, draw the plea out.
Treassome (*ne*), may not draw.
Treatables, drawn, withdrawn.
Trebuchables, are to be cast down.
Trebuche, fell down.
Treer, to draw.
Trees, drawn,
Trees, handled, discussed.
Trefue, truce.
Treihes hors, drawn out.
Trehissent (*se*), should withdraw; should meet.
Treies, three.
Treisiem (*a*), *e vessel*, at the mill-hopper and vessel.
Treisissent cele part (*se*), should move towards those parts.
Treisent (*qils se*), that they would treat together.
Treissent (*qils se*), that they repair to.
Treit, *trait*, *trat*, arrow, dart.
Treit, treated, used.
Treit (*ne feust mye*), was not advanced.
Treit (*soit*), let him be withdrawn, discharged.
Treite, carriage, behaviour.
Treitres, traitors.
Treittenient, treat, entertain.
Tremetoms, transmit, send over.
Tremois, oats, barley, and such like grain; called so *a tribus mensibus*, because they are but about three months on the ground before they are got in.
Tremor, *tremur* (*pur*), for fear.
Trencha durement, cut with all his force.
Trenche (*il*), it enureth.
Trenche a tout, it strikes at all.
Trenche (*a*), *trenchement*, peremptorily.
Trenche, divided.
Trencheours, carvers.
Trencher, to carve.
Trencheront devant lor seignur (*ke*), who eat at their lord's table.
Trent lieu ici (*ne*), it shall not take place here.
Trentel, thirty masses.
Trentisme trerz, thirty-third.
Treos (*jeo*), I find.
Trepassent, passover.
Trepir, *trepier* (*un*), a tripod.
Trep legierment, too hastily.
Trerche fois (*la*), the third time.
Trere hors (*les*), dragged them out.
Treroms (*ne*), will not draw.
Tresamble, the like.
Tresceint, most holy.
Tresisme jour, third day.
Tresmarry, very much concerned, sorry.
Tresor (*on*), in the treasury.
Trespassa, left this world.
Trespassauntz, those who pass by, go backwards and forwards.
Trespasse (*darreinement*), lately deceased.
Trespasse, an offence.
Trespassement du dit nadgairs roy (*par le*), by the death of the said late king.
Trespassement, miscarriage.
Trespassement des terms, making default at the appointed time.
Trespassent, pass over.
Trespasser, to trespass, to offend, transgress.
Trespasset, death.
Tresque, as soon as, presently.
Tresredout, most dread.
Tresreguise (*jey*), now very requisite.
Tressauntz (*potiùs cressauntz*), growing.
Tresseint, most holy.
Trestast, treated, agreed with.
Trestime, thirtieth.
Trestournes, *tresturnes*, turned from their course.
Trest'out perde, let him lose all.
Trestoutz, *trestouz*, *trestore*, all.
Tresublie, quite forgot.
Treze, thirteen.
Tret, *trete*, agreement, conference.
Tret, here.
Tret saunk, drawn blood.
Trete, treaty, conference.
Tretez, drawn, induced to.
Tretable, tractable, kind.
Tretans, as much, as many.
Treteours, those who were appointed to manage the treaty of concord and peace between Edward the Second and the discontented barons.
Tretementz, *tretis*, treaties, treaty.
Treter, *treitiz*, to treat of, to entreat.
Trett, draught.
Treterez, will treat, use, entreat.
Tretuit, all.
Treveure, finding.
Treveure (*d'altre*), of any other thing found.
Trewe, truce.
Treygne (*per*,), by delays.
Treyne, to draw, draught, draws, drawn.
Treyne et pendu, drawn and hanged.
Treys, three.
Treyt (*payn de*), bread of Trete; wheaten

bread; one of the kinds of bread mentioned in the Stat. of 51 H. III.
Treytour, a traytor.
Treyturement, *treturement*, traiterously.
Tri, *tries*, three.
Triboill, troubles, disturbances.
Trie, tried, examined into, sifted into.
Triement, trial.
Trienalx, for three years.
Trier, to chuse, select.
Trier, *et arraier* (*les*), to chuse, pick out, and array them.
Trierz jour, third day.
Tries, proclaimed.
Tries excepcions, exceptions may be taken.
Trieux (*en temps des*), in time of truce.
Triours, triers.
Trioussent, find.
Triowes, *trives*, *trieues*, truces.
Tripe (*un*), a tripod.
Triplication, rejoinder.
Tris jurs, always.
Tristur, sorrow, grief.
Troboill, trouble.
Troc, bartered, exchanged.
Troches, *trousses* (*en*), in clusters, bunches.
Troes, found.
Troesse, *troeffent*, they find.
Troffe, idle.
Troitar, to treat.
Trones, beams.
Tronour des laines, weighers of wool.
Tronquez, mutilated.
Trop hant, too high.
Trop (*par*), too many.
Trope (*met*), put more.
Trope tost faict (*un*), an over hasty act.
Trop outrement, too much.
Tropoy, too little.
Troppe, a mole.
Trove (*de*), *et de ove*, see *Ove de et de trove*.
Trovenes de novelles, inventors of news.
Trove en un default (*serra*), shall be turned into a default.
Trouez, boxes with slits to receive charity.
Trouns (*nus*), we find.
Trousieme, the third.
Trowe, *troye*, a sow.
Trowe, found.
Troye, found.
Troyes, three.
Trube, trouble.
True, truce.
Truexant, touching, concerning.
Truffe, found.
Truffle, found.
Truir, to find.
Truisse, *trusse*, find.
Truite, takes in the fact, catches.
Trum, obscure, black, dark.
Trussez, packed up.
Truve, finds.
Trynks, *trymkes*, trunks, weirs.
Tuaill, *towaill*, cloth for towels.
Tuche, touch, touches, concerns.
Tuement, slaying.
Tuerie, slaughter.
Tuest (*soit*), should be cut out.
Tuest cheecun langue (*soit*), that every tongue should be silent.
Tuey, killed.
Tuicion, protection, reprieve.
Tuit, *tuite*, whole, all; although.
Tuit, hold.
Tuix seintz, all saints.
Tumbe hors, fell out.
Tundu, cui, clipped.
Tuors, slayers.
Tur, a Turk.
Tur, a town.
Turbefover, to dig turf.
Turbeurs, disturbers.
Turelle, a little tower, turret.
Turgent, remain.
Turmentyr, to torment.
Turnance, turning.
Turnereit, would turn.
Turnez, *turnes*, tourns.
Turnois noirs (*seissante mile livres de*) sixty thousand livres of black Turnois, *i. e.* fifteen thousand pounds sterling.
Tus jours, for ever.
Tut, although.
Tut ad e primes, first of all.
Tut le reaume, the whole kingdom.
Tution, defence.
Tuwant, kill.
Tux ceux, all those.
Tux seynz, all saints.
Tuzon (*la disme*), the tenth fleece.
Twaite, wood grubbed up, and land made arable.
Twesdie, Tuesday.
Tyelx, such.
Tyene, keep, detain.
Tyent, *tynt*, they hold.
Tynell, the ball.
Tynt, held.
Tyois, the ancient German, or Teutonic language.
Typhanie, the Epiphany.

V, *u*, or, whether.
U, one.
Vre (*a*), to your.
V-as fait, would have done.
Vs, towards.
Vacations, voidances.
Vacherie, *vacarie* (*un*), a cow-house.
Vacquer, to be at leisure.
Vadat, let him go.
Vadlet, *valet*. This word has various acceptations; sometimes it signifies the heir of some nobleman or knight, who is in ward;

at other times, a young gentleman retained in the king's, or some great man's family, and a candidate of honour; often a young gentleman who serves in the army; and such an one is frequently called, *scutiser*, *serviens*, *armiger*. Gloss. x. Script. v. *Valettus*. Also a yeoman.

Vadlettes del corone, yoeman of the crown.

Vadletz, servants, valets.

Vaer (*de*), to go.

Vagarant, wandering.

Vageront (*qui*), which shall be vacant.

Vahuz, *bahuz*, vessels.

Vaie, way.

Vail, under.

Vailance (*a la*), to the value.

Vailez, valets, yeomen.

Vaillament, valiently.

Vaille, sufficient.

Vaille, vigil, watch.

Vaille cruettz, old cruets.

Vaillentz de biens, persons of property.

Vaillet regarder (*qe vus*), that you will have regard.

Vailliv, bailiffs.

Vaine voicle, common fame.

Val (*encontre*), downwards.

Valable, of force.

Valait riens (*ne*), availed nothing.

Valallument, the force of it.

Valaunt (*en*), in the descending line.

Valer, *valoir*, avail.

Valeures (*des*), of the lips.

Valeyent il (*ne*), they would not.

Valez, farewell.

Valiaunts serjeaunts (*les meulx*), serjeants of the most substance or property.

Vallissant, to have been worth.

Valletz, the next condition to an esquire.

Valles, *vallez*, valets.

Valoir (*le bien*), the welfare.

Valoit avant, goes forwards.

Valoue, value.

Valu (*aient*), have prevailed.

Valuble (*estre plus*), to be of more force.

Values arguments, arguments of weight and force.

Vancre, to vanquish.

Vanez, *potiùs vaux du pais* (*mieutz*), most substantial or sufficient of the county.

Vanque, vanquished.

Vanra a age, shall arrive at the age.

Vansist melz, it would be better.

Vant (*le*), the aforesaid.

Vant parlour (*office de*), the office of Speaker of the House of Commons.

Vaollaunce, value.

Vaquans, vacant.

Vaquier, *vaquer* (*ne peussent*), cannot be at leisure.

Vareck, shipwreck.

Variaunse, change.

Varles, servants.

Varlet, a yoeman.

Varleton, a groom.

Varraie, true.

Varvick, Warwick.

Vassalle, *vaissels*, *vassaux*, vessels.

Vassaux, men of courage.

Vast, waste.

Vastant, wasting.

Vat, go, extend to.

Vau, a valley.

Vaudra, shall give up.

Vaues, *vauez*, *vauix*, *vauetz* (*des meulx*), of the most substantial, worthy.

Vavetz des countees (*des mieultz*), men of the best reputation in the county.

Vault, worth, avails, is of force.

Vault (*ne*), cannot be had, faileth.

Vaultenant (*un*), an unthrift, or one that is worth nothing.

Vaultre, a mungrel hound.

Vaulx, vallies.

Vaunt dit (*la*), the aforesaid.

Vausisent (*si il*), if they could.

Vaussiffee, vouchsafe.

Vaussissies eschevour (*ke vous*), that you would vouchsafe to receive.

Vaust (*il*), it goeth, endureth.

Vaxel, vessel.

Vay (*lune leue de*), one mile of the way.

Vaylaunce espernes (*ne*), sparing no pains.

Vaylantz, worthy, valiant.

Vaylotent (*qils*), as they thought fit.

Vayn, the autumn.

Ubblie, oblivion.

Ubliaunce, forgetfulness.

Ubois, where.

Udifs, *udyfs* (*gens*), idle people.

Udifte, misery, idleness.

Udiness, idleness.

Ve, saw.

Ve, worth.

Ve, *vée*, true.

Vea (*lay*), refused him.

Vea, *veia*, refused.

Veage, voyage.

Veair, to see.

Vealletz, you will.

Veance (*en*), in expectation of.

Veaude place, void, vacant place.

Veault, he is willing.

Vedentz, seeing.

Vee, refusal.

Vee de name (*plees de*), *pleas de-vetito namio*. Holding plea of distresses taken and forbid to be replevied. *Name*, *nam*, *naam*, *namps*, and *nams*, which signifies a distress, come from the Saxon verb *niman*, *capere*, to take.

Vee, sent.

Vee mye (*ne*), does not intend.

Veel, old.

Veelez viscountz, old sheriffs.
Veent, forbid, deny.
Veer, true.
Veer, to act, to view.
Veer (*nous voulons*), we will see.
Veer avant (*en*), to proceed.
Vees, think.
Veet le coroner, let the coroner go.
Vefue, widow.
Vegle, blind.
Vei jeo ne, jeo ne veign, I do not see.
Vei, veye, this day.
Veia, refused.
Veiance (*par*), by seeing.
Veici, behold.
Veie, ve, seen.
Veie (*tote*), quite laid open to the sight.
Veient, may see.
Veiers, true.
Veies, veez, la vie, distresses forbidden to be replevied, the refusing to let the owner have his cattle which were distrained.
Veif, vefve, vefues, a widow ; widows.
Veifuage, widowhood.
Veigle (*la*), *la veille*, the vigil, the eve, the watch.
Veigne, offend.
Veigner, to come.
Veille, will.
Veillement, seeing, watching.
Veiller, to watch.
Veilles, veils.
Veillez, veiles, old.
Veiltee, old age.
Vein (*en*), in vain.
Veine, comes.
Veinged (*si altre*), if any other shall come.
Veinquemes, we conquered.
Veint distinctement nomez, not expressly or particularly named.
Veiuins (*nous*), we saw.
Veir (*mis en*), produced, shewn, proved.
Veir (*sauns*), without denying.
Veirge, le, the verge or bounds limited to the king's court, *i. e.* twelve miles round the same.
Veiseetz a lier (*que vous*), which you saw doing.
Veissetz a lier hors, saw going out.
Veistes (*vous ne*), you never saw.
Veisson (*il*), they see.
Veit, sees.
Vel, I will.
Vele, may.
Veler (*en*), in view.
Velewet, velvet.
Velra, will.
Velte, veyl, velloit, velee, will.
Ven, viewed.
Ven la, coming thither.
Venaiant, coming.
Venancez, coming, hastening forwards.
Venanncez (*enaux*), in being revenged on them.
Vedees, sales.
Vendires (*a*), to be sold.
Vendra, shall come.
Vendra (*ne*), shall not challenge.
Vendre soit, sale may be made.
Vendroins (*a peyne*), we should scarce have come.
Vendront (*contre*), shall offend against.
Venelle du lict, the space between a bed and the wall.
Veneours, hunters
Venerdy, Venardy, Venredi, Friday.
Vengnent, they come.
Veniale (*sont*), are to be brought.
Venjaunce, revenge.
Venier (*pur le non*), for not coming.
Venismus, we come.
Venissent (*qi*), who offend.
Venku, overcame, conquered.
Venours, huntsmen.
Venra, sold.
Venre (*le*), the scull.
Vensist (*que il*), that he should come.
Vent, comes.
Vent (*sen*), comes.
Vent (p), by sale.
Vent (*se*), is sold.
Vent prestz, ready sale.
Ventee, dispersed by the wind.
Ventes, woods marked for sale.
Ventier, ventiler, to blow.
Ventisme jour, the 20th day.
Ventrez (*rumpes les*), broken-bellied, burst-en.
Venue, de venne (*mal de*), the essoign *de malo veniendi*.
Veoer, veoir, to see, to inspect.
Veoid, sees.
Veoir, true.
Veors, viewers, surveyors.
Veot (*unques ne*), never had seen.
Veouns nous, we see ; we will.
Ver, cattle.
Ver, true, appear.
Ver (*a*), to view.
Ver (*pur*), to see.
Ver, against.
Ver en cite, potiùs verte cire, green wax.
Verament, verreyment, truly.
Veray, very.
Verbatement, verbally.
Verdi-aoré, Good Friday.
Vereduist, verdict.
Verek, wreck.
Verement (*la*), the evrament.
Vereys, verreys, vere, verri, true.
Vergee (*ne acree q ne fuist unq'*) which was never surveyed, measured, or laid out into acres.

Verges, yards.
Vergis, young suckers.
Vergnauntz, coming.
Vergoignes, *viergoigne*, *vergoyne*, shame, reproach.
Vergonder, to abuse, ravish, violate.
Verisemblables, very likely.
Verite, truth.
Veritee (*puesse dire sa grosse*), may relate the whole truth of his case, may tell his own tale.
Verreyment, truly.
Verroie, true.
Verroient, have a mind.
Verront, *verretz*, shall see.
Vers eux (*de prendre*), to take with them.
Verser, to turn.
Versui, towards.
Vertie, truth.
Ves (*autre*), otherways.
Vescu (*si il ust*), if he had lived.
Vesnes, widows.
Vesque, *veske*, a bishop.
Vesquisk, *vesquirent*, *vesquissent*, lived.
Vesquist (*si il*), if he was alive.
Vesselmentz, things appertaining to vessels and shipping.
Vest, *vestus*, vested.
Vester, *vestu*, to vest, to enure, vested.
Vestes, waste.
Vestre, *veste*, cloathed, covered.
Vestue, *veste*, clothed, covered.
Vestue, *potiùs vescu*, (*en core*), still alive.
Vesture, crop, growth.
Vesture, robes, vestments.
Vet (*s'en*), go therefrom.
Vetere, old.
Veterlokkes, fetterlocks.
Vevant, living.
Veve, *veia* (*le*), the sight.
Veve, a widow.
Veveres, widowers.
Vetete (*en sa*), in her widowhood.
Veu, your.
Veue, a widow.
Veuez, will.
Veugle, blind.
Veuls, calves.
Veulliant, willing.
Veum (*nus*), we see.
Veure (*par*), by being willing.
Veus articles, old articles.
Veusissiens, we would.
Veut (*per*), by a way, method.
Veute (*de*), by sale.
Veuttez mye, claim nothing.
Veutz, *veuz*, *greigne*, old grain.
Vewe, view.
Vey (*haut*), highway.
Veye (*si*), if he perceives, if he will.
Veyer, to view, to behold.
Veyer est, is to be seen.
Veyes, was.
Veyet, sees.
Veyle (*le*), the elder.
Veylles, towns.
Veyn, vain, void.
Veyner, to come.
Veyr, *vier*, truth.
Veyre, true.
Veysin, a neighbour.
Vez, (*vous*), you will, you wish.
Viage, voyage, expedition.
Vicary, a vicarage.
Vice, a defect, fault, error.
Vice, crime, injustice.
Vichel (*un*), an heifer.
Vicie, corrupted.
Vicint, come.
Uictaine (*l'*), the octave.
Vidimée, a vidimus.
Vidront, will.
Viduele, widowhood.
Vie, the view.
Vieant, coming.
Viec stile, old stile.
Vief naam, live distress.
Viegls hommes, blind, old, impotent men.
Viegnes, vineyards.
Viel, senior, elder.
Vieles, *viez dettes*, old debts.
Viel, calf.
Viel best, live beast.
Viels, wills.
Viendront, shall come; act, offend.
Viener, came.
Vienes (*ffissent les*), should make the views.
Vienqe, comes.
Vient (*que vie*, *que*), who is desirous.
Vient, they see.
Vient (*le*), the 20th.
Vier, to deny.
Vier, *puit*, may see.
Vierge son marye, power, controul of her husband.
Viergier, a verger.
Viergoigne (*en*), to the reproach, shame of.
Vieront (*al*), they look to.
Viers, towards.
Vies (*par plusors*), by many ways.
Viestes (*ou*), where you see or find.
Vieu, sight.
Viaus, *views*, windows.
Viez, *viez*, old.
Viez (*toutz*), all ways.
Vigued, neighbourhood.
Viguereuse (*fame*), a virtuous woman.
Vikere, vicar.
Vikeris, vicarages.
Vilaine serment, blasphemy against God, the Virgins, and the Saints.
Vilaint (*li*), a villain, the occupier of land.
Vileins faitz, vile, base, villainous acts.
Vilenement dessier, basely used them.

Viles, old.
Vill, a village; a villain.
Villaine, *vilenie*, disgrace, disgraceful.
Ville citee de la (*communalte*), the community or commonalty of a town, burgh, or city. This always signified the mayor, aldermen, and common council, where they were to be found, or the steward or bailiff, and capital burgesses, or, in short, the governing part of cities and towns, by what persons soever they were governed, or names and titles they were known; and not the commoners or ordinary sort of burgesses or freemen only. Brady, 132.
Villeez, townships.
Villenie, villainous.
Villude (*que vous me*), that you will acquaint me with.
Vil pris, a low price.
Vilte, vileness.
Vilte tenu, baseness.
Vinch point (*joe ne*), I don't come.
Vincle (*St. Pere lad*), the festival of St. Peter in bonds; 1st of August.
Vine, *vins*, *vint*, twenty.
Vinez, *vivez*, stacked.
Vingent, come.
Vink, *vinsest*, came, got to.
Vins vermeilles, red wines inned, carried in.
Vinz, *aunes*, inned, carried in.
Vinz liverez e IIII. (*VII.*) seven score and four pounds. i. e. £144.
Vinteront, they tie, or bind.
Viollent (*ne*), they will not.
Viot, envy.
Vioure, to live.
Virent (*qui*), who saw.
Virge, a virgin.
Viroles, ferrilled, tipped, capped.
Viron, about.
Virtons, *veritons*, *verettons*, arrows.
Vis. visc. visconte, sheriff.
Vis, alive, also void.
Vis, *vise*, face, visage.
Vis, foreseen, perceived.
Vis, advice.
Vis a fair, thought fit to be done.
Vise ne distress (*p*), by secret distress.
Visens, *visness*, neighbours.
Vises, hinds.[a]
Viseur, the face.
Visitatour, visitor.
Visne, neighbourhood, venue.
Visnees viles, neighbouring towns.
Visse, the vizor of a helmet.
Vissent, had.
Visserie, the office of porter.
Vist, *virent*, saw.
Vist le coroner, let the coroner go.
Vist enfower (*per*), by burying alive.
Visteconsail, speedy council.
Vit, privities.
Vit, eight.
Vitel (*un*), a calf.
Viteretz (*en*), in truth.
Vivand (*en son*), in his life-time.
Vive vois, by word of mouth.
Viver (*en*), *et in vesture*, in victuals and clothes.
Viver (*pur le*), for the livelihood.
Vivers, fish-ponds, warrens, parks.
Vivers, livelihoods.
Vivi, alive.
Vivies, *viver*, victuals, diet.
Viuperons, shall alive.
Viz, seen.
Ul, any one.
Ulle, any.
Ulvestier, Ulster.
Um (*l'*), the man.
Umbraçles, secret places.
Umbre, shadow, colour.
Umbrez, coloured.
Un mesme, the self-same, one and the same.
Uncore, *unquore*, *unques*, still, yet.
Unement, *uniement*, in general; unanimously.
Ung count, an earl.
Ung ou deux, one or the other.
Unge, nail.
Ungt, one.
Uniement, unanimously.
Unificence, making one, uniting.
Uniment, equally, in union.
Unisone, *unz esme*, the eleventh.
Unite (*d'*), whatsoever.
Universaire, anniversary.
Unzieme, eleven.
Unkes (*ne*), never.
Uns, several.
Unsemely chose (*coe*), as an unbecoming thing.
Unszime, *unziesme*, *unsime*, *unzim*, *unisme*, eleventh.
Unt, have.
Unt, therefore.
Unze (*les*), any.
Vo, or.
Va, yours.
Voaie, voyage.
Voain, *vomheri*, autumn.
Voair, see, appear.
Voassissent a ceo somandre, might send to summon them.
Voce, voice.
Vocer, to call.
Voderunt, are willing.
Voe (*par nulle*), by any way.

[a] *Potiùs*, bises. See Rot. Parl. Vol. II. p. 94. Pet. 22. Hale's MS.

Voel (*ne*), would not.
Voeillant, willing.
Voels, vows, wishes.
Voer, to view.
Voeson, (*la*), the advowson.
Voest (*les*), let him vouch them.
Voet, requires.
Voet (*qu'il*), that he go.
Voet (*si il*), if he will.
Voeve, *voef*, widow.
Voguement, passing, returning.
Voguer, to call again, return.
Voi, I am going.
Voi droit, the law requires.
Voidera, will.
Voidez, departed.
Voidre (*a*), to quit.
Voie, true.
Voie desch, by way of escheat.
Voie de utre mer, voyage beyond sea.
Voier, *voiar*, *voir*, the truth.
Voier (*est a*), is to be seen.
Voier (*per*), *potiùs noier*, by drowning.
Voies (*nul*), no right to accuse.
Voiez, ye see.
Voil (*jeo*), I will.
Voilde Irishmen, wild Irishmen.
Voile (*ne*), cannot.
Voilaunces seigniories, potent lords.
Voilent, violent.
Voiler (*malvey*), ill will.
Voillantz, men of worth, substance.
Volleit, named.
Voiloir, *voillour*, will, testament.
Voir (*la*), *potiùs l'avoir*, the riches.
Voire, *voirement*, truly.
Voise encontre, act against.
Voisent (*ne*), go not.
Voist avaunt, proceeds in,
Volant, *vollentife*, *en volentie*, willing.
Volatil royal, a royal bird.
Volentrine, giddy, wilful.
Voler, to be willing, to wish.
Voler (*bien*), endeavoured.
Volez, would take away.
Volg, *volie*, *volye*, will.
Volles, *chautes*, *et gargaus de oeseaux* (*en*), in the flight, singing, and chattering of birds.
Voloir (*male*), ill will.
Volvement des toisons du lein, winding up of fleeces of wool.
Volund, a will or testament.
Volunt, meaning.
Voluntrivement, wilfully.
Voluptuosite, wantonness.
Von gre (*de lor*), of their own accord.
Voot, *voil*, *voit*, he will, would.
Vorra, *vorroient*, would.
Vorrount (*ou*), or shall hear.
Vors, you.
Vos, yours.
Vosdretz vous, would you.
Vouch bien (*si'il voet*), save if he would bid him welcome.
Voucher, to vouch, to call.
Voudroit notre bien, wishes our welfare.
Vove, a vow.
Vover, to vow.
Voulant (*bien*), good will.
Vount, they go.
Vounze, eleven.
Voussecierent, will.
Vous est, is true.*
Vousist, should have a mind.
Voustrent, would.
Vous vies (*y*), you would.
Vout, *voul*, visage, countenance.
Voutent bille, prefer, put in their bill.
Voy, *voye*, way; scape.
Voyce (*jeo ne*), I don't see.
Voyct, eight.
Voyer, true.
Voyerment, truly.
Voyertie, truth.
Voyez voluntaries (*jeo*), I would be willing.
Voyez, woods.†
Voy fist, let him go.
Voylerie (*il deyvont*), they ought to wish.
Voys, voice.
Voyse, is directed; issues.
Voysent, let him go.
Voysent jurer (*qui*), who are to swear.
Vowe de frank plegge (*aver*), have a view of frank pledge.
Vox (*par les*), by yours.
Vraes, true.
Vre, your.
Ure, ure, practice, use.
Ure(*mis en*), put in practice.
Ure (*al*), at the time.
Ure apprise, have understanding.
Ure, burned.
Ureisuns, prayer.
Urent avannt, were foretimes.
Urera, shall serve, shall be useful.
Urera (*ne*), shall not vest.
Urgerouse, urgent, eager.
Vrie (*per*), by way of.
Urur de eux (*per*), by pulling out the eyes.
Us, huts, house, doors.
Us, use, custom.
Us (*de*), of them.
Usee, usage.
Usees (*rien*), not at all made use of.
Usents, using.
Usez (*les*), the profits.
Usier, make use of, used.

* Potiùs *voir est*. See Rot. Parl. Vol. II. p. 181. Pet. 25. Hale's MS.
† Potiùs *boyez*. Ib. p. 190. Pet. 64.

Ussent trove (q), that they should find.
Ussers et portz, ushers and porters.
Usses (*fichiez es*), fixed on the doors.
Ussey (*si jeo*), if I had.
Ussoit estre, would be, had been.
Ussoyt, ussont, had.
Usum, hitherto, so far.
Ut, and.
Ut, eight.
Ute, the eighth.
Utes, utas, utaves, utus, octaves.
Utisme, utim, eighth.
Utime (*d'*), of the eighth.
Utre ceu terme, beyond that time.
Uttard, lately.
Utter (*que*), who gives out, or publishes.
Uttrees, utteres, uttered.
Vuech, eight.
Vueille, vuellies, will.
Vuidoit (*se il se*), if it was robbed, deprived.
Vuille, will.
Vunt, have; go.
Vus (*pur*), for you.
Vuse, used,
Vut, had.
Vut, sees.
Vy (*jeo*), I saw.
Vyant, seeing.
Vye, life.
Vye, refused, prohibited.
Vye de (*par*), by way of.
Vyel parol, old word.
Vyeu, seen.
Vyle, vylyls, vill, city.
Vyncles, bonds, fetters.
Vynee (*del*), of the neighbourhood.
Uys, door.
Vytime, the eighth.
Vz, your.
Uzuost, provost.
Uzzans, without.

Wacreours, vagabonds.
Wacrus viaundes, rotten meat, corrupted.
Wage, gages, sureties.
Wage (*seu*), his challenge.
Waifnez, waived.
Waillez sans pastour, left without a teacher.
Wainable, that may be ploughed or manured.
Wainent lour querelle qui, who gain their suits.
Wakerantz, vagrants, people who go begging, and strolling about the country.
Walais, Walaix, Wallois, Welsh.
Waleseh, the language of the Walons.
Wallez, Wales.
Wandit (*le*), the aforesaid.
Warandir, to guarantee.
Wardees mius, better kept, observed.
Warnesture, the necessaries for fortifying a a place.
Warretz, fallow, unploughed.
Wart l' um, let a man take care.
Wasemestre, Westminster.
Waskerantz, wandering abroad.
Wast et beal, handsomely, civilly.
Wastsynes (*lues*), waste places.
Wautham, Waltham.
Wayour, a wear, or were.
Wedues, widows.
Wefs, weifs, waifs.
Weigher, to weigh.
Welogh, willow.
Wener (*pur*), to conduct.
Werpir, to yield up, give up, forsake.
Werrons, shall see.
Werrust, awrust, doubt.
Westmuster, Westminster.
Westours, wassailers.
Weuce, a widow.
Weux, a beggar.
Weymoster, Westminster.
Weynez, weyna, weyne, deserted, relinquished, in a decline.
Weyve, waived.
Weyver, to waive.
Wherwes, wharfs.
Wiere, war.
Windemonet, the month of October or November.
Windowe, a blank place, or space.
Wis, wisdom, prudence.
Witembre, October.
Witime jor, the eighteenth day.
Witive, witave, wictieve, eight, eighth.
Wombes, bellies.
Worstetz (*lit de*), a bed of worsted.
Wou (*un*), a vow.
Woyle, will.
Wuidier, to evacuate.
Wyt myle unces d'our (*pour*), for eight thousand ounces of gold.
Wyt (*dixe*), eighteen.

Xenie, a new-year's gift.
Xentelle, a spark.
Xeurté, assurance, promise, surety.
Xeut, follows.
Xexantes, sixty.

Yalemaines, at the least, however.
Yaue, yave, yaiies chaude, hot water.
Yaues (*par*), by water.
Yaus (*pour*), for them.
Yauxi (*devant leurs*), before their eyes.
Ycel (*en*), in it.
Ycement, thus, in like manner.
Ycen, this, that.
Ycestes (*per*), by these presents.
Yceux, yceaux, ycile, those, them.
Yeit (*sil*), if there is.
Yeme, hyeme, winter.
Yemer (*a*), to winter.

Yeoven, *yeven*, given, dated.
Yerledom, earldom.
Yeulx, *yex*, *yes*, eyes.
Yeusse, *jeo este* (*e tut*), and although I had been.
Yeux ont (*nous*), we have seen it with our own eyes.
Ygaument, equally.
Ygise, lies.
Ygo, therefore.
Yl, he.
Yl semble, it seems.
Yl (*ke*), that they.
Yleke, from thence.
Ylemans, inhabitants of the isles of Jersey and Guernsey.
Ylles, *yles*, isles.
Yloques, threw.
Ymage, image.
Ymaginé, adorned, embroidered.
Ympnaire, a book of hymns, with books of conjurations, and church legends.
Yo, *yio*, an egg.
Yoe, *ive*, water.
Yra (*il*), he shall go.
Yraigne, a spider.
Yraut, an herald.
Yraudement, in a passion.
Yretge, an heretic.
Yris, ivory.
Yrios, an Irishman.
Yrra mys (*n'*), shall not go.
Ysoit, therein be.
Yslement, an islander.
Yssir, to come, to go out.
Yst, he is.
Ystrent (*ne*), will not go out.
Ytal, thus, so.
Ytel, such.
Yve, water.
Yvant, seeing,
Yver, *yvre*, *yverne*, winter.
Yvernayle (*ble*), winter corn.
Yver (*froidare*), a frosty winter.
Yveress (*per*), through drunkenness.
Yveroigner (*de*), in a drunken fit.
Yveroynes (*les*), drunkards.
Yvises, services.
Ywell (*per*), equally.

Zabulon, sand.
Zern, yarn.
Zork (*duc de*), duke of York.
Zusche (*Sire Aleyn la*), Sir Alan Zouche.

THE END.