M. When persons were convicted of manslaughter in England, they were formerly marked with this letter on the brawn of the thumb.

2. This letter is sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. 13 Peters, 176.

MACE−BEARER, Eng. law. An officer attending the court of session.

MACEDONIAN DECREE, civil law. A decree of the Roman senate, which derived its name from that of a certain usurer who was the cause of its being made, in consequence of his exactions. It was intended to protect sons who lived under the paternal jurisdiction, from the unconscionable contracts which they sometimes made on the expectations after their fathers' deaths; another, and perhaps, the principle 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.

MACHINATION. The act by which some plot or conspiracy is set on foot.

MACHINE. A contrivance which serves to apply or regulate moving power; or it is a tool more or less complicated, which is used to render useful natural instruments, Clef. des Lois Rom. h. t.

2. The act of congress gives to inventors the right to obtain a patent right for any new and useful improvement on any art, machine, manufacture, &c. Act of congress, July 4, 1836, s. 6. See Pet. C. C. 394; 3 Wash. C. C. 443; 1 Wash. C. C. 108; 1 Wash. C. C. 168; 1 Mason, 447; Paine, 300; 4 Wash. C. C. 538; 1 How. U. S., 202; S. C. 17 Pet. 228; 2 McLean, 176.

MADE KNOWN. These words are used as a return to a scire facias, when it has been served on the defendant.

MAGISTER. A master, a ruler, one whose learning and position makes him su− perior to others, thus: one who has attained to a high degree, or eminence, in science and literature, is called a master; as, master of arts.

MAGISTER AD FACULTATES, Eng. eccl. law. The title of an officer who grants dispensations; as, to marry, to eat flesh on days prohibited, and the like. Bac. Ab. Eccles. Courts, A 5.

MAGISTER NAVIS. The master of a ship; a sea captain.

MAGISTER SOCIETATIS, Civil law. The principal manager of the business of a society or partnership.

MAGISTRACY, mun. law. 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, mun. law. A public civil officer, invested with some part of the legislative, executive, or judicial power given by the constitution. In a narrower sense this term includes only inferior judicial officers, as justices of the peace.

2. The president of the United States is the chief magistrate of this nation; the governors are the chief magistrates of their respective states.

3. It is the duty of all magistrates to exercise the power, vested in them for the good of the people, according to law, and with zeal and fidelity. A neglect on the part of a magistrate to exercise the functions of his office, when required by law, is a misdemeanor. Vide 15 Vin. Ab. 144; Ayl. Pand. tit. 22; Dig. 30, 16, 57; Merl. Rep. h. t.; 13 Pick. R. 523.

MAGNA CHARTA. The great charter. The name of an instrument granted by King John, June 19, 1215, which secured to the English people many liberties which had before been invaded, and provided against many abuses which before rendered liberty a mere name.

2. It is divided into thirty−eight chapters,: 1. To the which relate as follows, namely: 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 distress for rent. 11. The court of common pleas, which is to be located. 12. The assise on disseisin of lands. 13. Assises of darein 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 the debtor dies insolvent. 19. To the purveyance of the king's house. 20. To the 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 praecipe 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. 88. Confirms every article of the charter. See a copy of Magna Charta in 1 Laws of South Carolina; edited by Judge Cooper, p. 78. In the Penny Magazine for the year 1833, page 229, there is a copy of the original seal of King John, affixed to this instrument, and a specimen of a facsimile of the writing of Magna Charta, 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.

MAIDEN. The name of an instrument formerly used in Scotland for beheading criminals.

MAIL. This word, derived from the French malle, a trunk, signifies the bag, valise, or other contrivance used in conveying through the post office, letters, packets, newspapers, pamphlets, and the like, from place to place, under the authority of the United States. The things thus carried are also called the mail.

2. The laws of the United States have provided for the punishment of robberies or 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 at− tempt 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 articles of value, or evidence of any debt, due, demand, right, or claim, or any release, receipt, acquittance, or discharge, or any other articles, 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 de−livered 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 mall, letter, or packet, such offender, upon conviction, shall pay, for every such offence, a sum not exceeding five hundred dollars, and be imprisoned not exceeding twelve months.

3. − _23. That, if any person shall rip, cut, tear, burn, or otherwise injure, any valise, portmanteau, or other bag used, or designed to be used, by any person acting under the authority of the postmaster general, or any person in whom his powers are vested in a conveyance of any mail, letter packet, or newspaper, or pamphlet, or shall draw or break any staple, or loosen any part of any lock, chain, or strap, attached to, or belonging to any such valise, portmanteau, or bag, with an intent to rob, or steal any mail, letter, packet, newspaper, or pamphlet, or to render either of the same insecure, every such offender, upon conviction, shall, for every such offence, pay a sum, not less than one hundred dollars, nor exceeding five hundred−dollars, or be imprisoned not leas than one year, nor

exceeding three years, at the discretion of the court before whom such conviction is had.

4. − _24. That every person who, from and after the passage of this act, shall procure, and advise, or assist, in the doing or perpetration of any of the acts or crimes by this act forbidden, shall be subject to the same pen−alties and punishments as the persons are subject to, who shall actually do or perpetrate any of the said acts or crimes, according, to the provision of this act.

5.− _25. That every person who shall be imprisoned by a judgment of court, under and by virtue of the twenty−first, twenty−second, twenty−third, or, twenty−fourth sections of this act, shall be kept at hard labor during the period of such imprisonment.

MAILE, ancient English law. A small piece of money; it also signified a rent, because the rent was paid with maile.

MAIM, pleadings. This is a technical word necessary to be introduced into all indictments for mayhem; the words "feloniously did maim," must of necessity be inserted, because no other word, or any circumlocution, will answer the same purpose. 4 Inst. 118; Hawk. B. 2, c. 23, s. 17, 18, 77; Hawk. B. 2, c. 25, s, 55; 1 Chit. Cr. Law, *244.

TO MAIM, crim. law. To deprive a person of such part of his body as to ren− der 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 State's of America. This state was admitted into the Union by the Act of Congress of March 3, 1820, 3 Story's L. U . S. 1761, from and after the fifteenth day of March, 1820, and is thereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

2. The constitution of this state was adopted October 29th, 1819. The powers of the government are vested in three distinct departments, the legislative, executive and judicial.

3. − 1. The legislative power is vested in two distinct branches, a house of representatives and senate, each to have a negative on the other, and both to be styled The legislature of Maine. 1. The house of representatives is to consist of not less than one hundred, nor more than two hundred members; to be apportioned among the counties according to law; to be elected by the quali−fied electors for one year from the next day preceding the annual meeting of the legislature. 2. The senate consists of not less than twenty, nor more than thirty−one members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts into which the state shall, from time to time, be divided. Art. 4, part 2, s. 1. The veto power is given to the governor, by art. 4, part 3, s. 2.

4. − 2. The supreme executive power of the state is vested in a governor, who is elected by the qualified electors, and holds his office one year from the first Wednesday of January in each year. On the first Wednesday of January annually, seven persons, citizens of the United States, and resident within the state, are to be elected by joint ballot of the senators and representatives in convention, who are called the council. This council is to advise the governor in the executive part of government, art. 5, part 2, s. 1 and 2.

5. − 3. The judicial power of the State is distributed by the 6th article of the constitution as follows:

6. − _1. The judicial power of this state shall be vested in a supreme judicial court, and such other courts as the legislature shall, from time to time, establish.

7. − _2. The justices of the supreme judicial court shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

8. − _3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the governor, council, senate, or house of representatives.

9. − _4. All judicial officers; except justices of the peace, shall hold their offices during good behaviour, but not beyond the age of seventy years.

10. − _5. Justices of the peace and notaries public shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be re−appointed, or others appointed, as the public interest may require.

11. − _6. The justices of the supreme judicial court shall bold no office under the United States, nor any state, nor any other office under this state, except that of justice of the peace.

For a history of the province of Maine, see 1 Story on the Const. _82.

MAINOUR, crim. law. The thing stolen found in the hands of the thief who has stolen it; hence when a man is found with property which he has stolen, he is said to be taken with the mainour, that is, it is found in his hands.

2. Formerly there was a distinction made between a larceny, when the thing stolen was found in the hands of the criminal, and when the proof depended upon other circumstances not quite so irrefragable; the former properly was termed 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. Those persons to whom a man, is delivered out of custody or prison, on their becoming bound for his appearance.

2. Mainpernors differ from bail: a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are merely sureties for his appearance at the day; bail are only sureties that the party be answerable for all the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3. Bl. Com. 128; vide Dane's Index, h. t.

MAINPRISE, Engl. law. The taking a man into friendly custody, who might otherwise be committed to prison, upon security given for his appearance at a time and place assigned. Wood's Inst. B. 4, c. 4.

2. Mainprise differs from bail in this, that a man's mainpernors are 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. 606; Bac. Ab. Bail in Civil Cases; 4 Inst. 180. Vide Mainpernors. Writ of Mainprise; and 15 Vin. Ab. 146; 3 Bl. Com. 128.

MAINTENANCE, crimes. 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 the action, without any authority of law. 1 Russ. Cr. 176.

2. But there are many acts in the nature of maintenance, which become justifiable from the circumstances under which they are done. They may be justi−fied, 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 assists 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 Mainte−nance: 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. 806; 14 John. R. 124; 3 Cowen, 647; 3 John. Ch. R. 508 7 D. & R. 846; 5 B. & C. 188.

MAINTENANCE, quasi contracts. 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 main−tain his father or mother when they cannot support themselves, and he has ability to maintain them. 1 Bouv. Inst. n. 284−6.

MAINTAINED, pleadings. This is a technical word, indispensable in an indict− ment 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 the term, borrowed from the French, signified formerly a hospital, an almshouse, a monastery. 39 Eliz. c. 5.

MAJESTY. Properly speaking, this term can be applied only to God, for it signifies that which surpasses all things in grandeur and superiority. But it is used to kings and emperors, as a title of honor. It sometimes means power, as when we say, the majesty of the people. See, Wolff, _998.

MAJOR, persons. One who has attained his full age, and has acquired all his civil rights; one who is no longer a minor; an adult.

MAJOR. Military language. The lowest of the staff officers; a degree higher than captain.

MAJOR GENERAL. A military officer, commanding a division or number of regi− ments; the next in rank below a lieutenant general.

MAJORES. The male ascendant beyond the sixth degree were so called among the Romaus, and the term is still

used in making genealogical tables.

MAJORITY, persons. The state or condition of a person who has arrived at full age. He is then said to be a major, in opposition to minor, which is his condition during infancy.

MAJORITY, government. The greater number of the voters; though in another sense, it means the greater number of votes given in which sense it is a mere plurality. (q. v.)

2. In every well regulated society, the majority has always claimed and exercised the right to govern the whole society, in the manner pointed out by the fundamental laws and the minority are bound, whether they have assented or not, for the obvious reason that opposite wills cannot prevail at the same time, in the same society, on the same subject. 1 Tuck. Bl. Com. App. 168, 172; 9 Dane's Ab. 37 to 43; 1 Story, Const. _330.

3. As to the rights of the majority of part owners of vessels, vide 3 Kent, Com. 114 et seq. As to the majority of a church, vide 16 Mass. 488.

4. In the absence of all stipulations, the general rule in partnerships is, that each partner has an equal voice, and a majority acting bonafide, have the right to manage the partnership concerns, and dispose of the partnership property, notwithstanding the dissent of the minority; but in every case when the minority have a right to give an opinion, they ought to be notified. 2 Bouv. Inst. n. 1954.

5. 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 per− form 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 neighbors. Old Nat. Br. 161. To make default, is to fail to appear in proper time. To make oath, is to swear according to the form prescribed by law.

MAKER. This term is applied to one who makes a promissory note and promises to pay it when due. He who makes a bill of exchange is called the drawer, and frequently in common parlance and in books of Reports we find the word drawer inaccurately applied to the maker of a promissory note. See Promissory note.

MAKING HIS LAW. A phrase used to denote the act of a person who wages his law. Bac. Ab. Wager of law, in pr.

MALA FIDES. Bad faith. It is opposed to bona fides, good faith.

MALA PRAXIS, crim. law. A Latin expression, to signify bad or unskilful practice in a physician or other professional person, as a midwife, whereby the health of the patient is injured.

2. This offence is a misdemeanor (whether it be occasioned by curiosity and experiment or neglect) because, it breaks the trust which the patient has put in the physician, and tends directly to his destruction. 1 Lord Raym. 213. 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.

3. There are three kinds of mal practice. 1. Wilful mal practice, which takes place when the physician purposely administers medicines or performs an operation which he knows and expects will result in danger or death to the individual under his care; as, in the case of criminal abortion.

4. − 2. Negligent mal practice, which comprehends those cases where there is no criminal or dishonest object, but gross negligence of that attention which the situation of the patient requires: as if a physician should administer medicines while in a state of intoxication, from which injury would arise to his patient.

5. − 3. Ignorant mal practice, which is the administration of medicines, calculated to do injury, which do harm, and which a well educated and scientific medical man would know were not proper in the case. Besides the public remedy for mal practice, in many cases the party injured may bring a civil action. 5 Day's R. 260; 9 Conn. 209. See M. & Rob. 107; 1 Saund. 312, n. 2; l Ld. Raym. 213; 1 Briand, Med. Leg. 50; 8 Watts, 355; 9 Conn. 209.

MALA PROHIBITA. Those things which are prohibited by law, and therefore unlawful.

2. A distinction was formerly made in respect of contracts, between mala prohibita and mala in se; but that distinction has been exploded, and, it is now established that when the provisions of an act of the legislature have for their object the protection of the public, it makes no difference with respect to contracts, whether the thing be prohibited alsolutely or under a penalty. 5 B. & A 5, 340; 10 B. & C. 98; 3 Stark. 61; 13 Pick. 518; 2 Bing. N. C. 636, 646.

MALE. Of the masculine sex; of the sex that begets young; the sex opposed to the female. Vide Gender; Man; Sex; Worthiest of blood.

MALEDICTION, Eccles. law. A curse which was anciently annexed to donations of lands made to churches and religious houses, against those who should violate their rights.

MALEFACTOR. He who bas 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. The unjust performance of some act which the party had no right, or which he had contracted not to do. It differs from mis− feasance, (q. v.) and nonfeasance. (q. v.) Vide 1 Chit. Pr. 9; 1 Chit. Pl. 134.

MALICE, crim. law. 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 notion against some one at the time of committing the crime; as, if A intended to poison B, conceals a quantity of poison in an apple and puts it in the way of B, and C, against whom he had no ill will, and who, on the contrary, was his friend, happened to eat it, and die, A will be guilty of murdering C with malice aforethought. Bac. Max. Reg. 15; 2 Chit. Cr. Law, 727; 3 Chit. Cr. Law,. 1104.

2. Malice is express or implied. It is express, when the party evinces an intention to commit the crime, as to kill a man; for example, modern duelling. 3 Bulstr. 171. It is implied, when an officer of justice is killed in the discharge of his duty, or when death occurs in the prosecution of some unlawful design.

3. It is a general rule that when a man commits an act, unaccompanied by any circumstance justifying its commission, the law presumes he has acted advisedly and with an intent to produce the consequences which have ensued. 3 M. & S. 15; Foster, 255; 1 Hale, P. C. 455; 1 East, P. C. 223 to 232, and 340; Russ. & Ry. 207; 1 Moody, C. C. 263; 4 Bl. Com. 198; 15 Vin. Ab. 506; Yelv. 105 a; Bac. Ab. Murder and Homicide, C 2. Malice aforethought is deliberate premedi−tation. Vide Aforethought.

MALICE, torts. The doing any act injurious to another without a just cause.

2. This term, as applied to torts, does not necessarily mean that which must proceed from a spiteful, malignant, or revengeful disposition, but a conduct injurious to another, though proceeding from an ill−regulated mind not sufficiently cautious before it occasions an injury to another. 11 S. & R. 39, 40.

3. Indeed in some cases it seems not to require any intention in order to make an act malicious. When a slander has been published, therefore, the pro−per question for the jury is, not whether the intention of the publication was to injure the plaintiff, but whether the tendency of the matter published, was so injurious. 10 B. & C. 472: S. C. 21 E. C. L. R. 117.

4. Again, take the common case of an offensive trade, the melting of tallow for instance; such trade is not itself unlawful, but if carried on to the annoyance of the neighboring dwellings, it becomes unlawful with respect to them, and their inhabitants may maintain an action, and may charge the act of the defendant to be malicious. 3 B. & C. 584; S. C. 10 E. C. L. R. 179.

MALICE AFORETHOUGHT, pleadings. In an indictment for murder, these words, which have a technical force, must be used in charging the offence; for without them, and the artificial phrase murder, the indictment will be taken to charge manslaughter only. Fost. 424; Yelv. 205; 1 Chit. Cr. Law, *242, and the authorities and cases there cited.

2. Whenever malice aforethought is necessary to constitute the offence, these words must be used in charging the crime in the indictment. 2 Chit. Cr. Law, *787; 1 East, Pl. Or. 402. 2 Mason, R. 91.

MALICIOUS. With bad, and unlawful motives; wicked.

MALICIOUS ABANDONMENT. The forsaking without a just cause a husband by the wife, or a wife by her husband. Vide Abandonment, Malicious.

MALICIOUS MISCHIEF. This expression is applied to the wanton or reckless de− struction of property, and the wilful perpetration of injury to the person. Alis. Prin. 448; 3 Dev. & Batt. 130; 8 Leigh, 719; 5 Ired. R. 364; 8 Port. 447; 2 Metc. 21; 3 Greenl. 177.

MALICIOUS PROSECUTION, or MALICIOUS ARREST, torts, or remedies. These terms import a wanton prosecution or arrest, made by a prosecutor in a criminal proceeding, or a plaintiff in a civil suit, without probable cause, by a regular process and proceeding, which the facts did not warrant, as appears by the result.

2. This definition will be analysed by considering, 1. The nature of the prosecution or arrest. 2. Who is liable under it. 3. What are malice and probable cause. 4. The proceedings. 5. The result of the prosecution and afterwards, 6. The remedy.

3. − _1. Where the defendant commenced a criminal prosecution wantonly and in other respects against law, he will be responsible. Addis. R. 270; 12 Conn. 219. The prosecution of a civil suit, when malicious, is a good cause of action, even when there has been no arrest. 1 P. C. C. 210; 11 Conn. 582; 1 Wend. 345. But no action lies for commencing a civil action, though without sufficient cause. 1 Penns. R. 235.

4. − _2. The action lies against the prosecutor and even against a mere informer, when the proceedings are malicious. 5 Stew. & Port. 367. But grand jurors are not liable to an action for a malicious prosecution, for information given by them to their fellow jurors, on which a prosecution is founded. Hardin, 556. Such action lies against a plaintiff in a civil action who ma− liciously sues out the writ and prosecutes it; 16 Pick. 453; but an action does not lie against an attorney at law for bringing the action, when regularly employed. 16 Pick. 478. See 6 Pick. 193.

5. − _3. There must be malice and want of probable cause. 1 Wend. 140, 345; 7 Cowen, 281; 2 P. A. Browne, Appx. xlii; Cooke, 90; Litt. Sel. Cas. 106; 4 Litt. 334; 3 Gil. & John. 377; 1 N. & M. 36; 12 Conn. 219; 3 Call. 446; 2 Hall, 315; 3 Mason, 112, 2 N. & M. 54,143. See Malice; Probable cause.

6. − _4. The Proceedings under which the original prosecution or action was held, must have been regular, in the ordinary course of justice, and before a tribunal having power to ascertain the truth or falsity of the charge, and to punish the supposed offender, the now plaintiff. 3 Pick. 379, 383. When the proceedings are irregular, the prosecutor is a trespasser. 3 Blackf. 210 . See Regular and irregular process.

7. − _5. The malicious prosecution or action must be ended, and the plain−tiff must show it was groundless, either by his acquittal or by obtaining a final judgment in his favor in a civil action. 1 Root, R. 553; 1 N. & M. 36; 2 N. & M. 54, 143; 7 Cowen, 715; 2 Dev. & Bat. 492.

8. − _6. The remedy for a malicious prosecution is an action on the case to recover damages for the injury sustained. 5 Stew. & Porter, 367; 2 Conn. 700; 11 Mass 500; 6 Greenl. 421; 3 Gill. & John. 377. See Case; Regular and irregular process.

See, generally, Bull. N. P. 11; 1 Saund. 228; 12 Mod. 208; 1 T. R. 493 to 551; Bac. Ab. Actions on the case, H; Bouv. Inst. Index, h. t.

MALUM IN SE. Evil in itself.

2. An offence malum in se is one which is naturally evil, as murder, theft, and the like; offences at common law are generally mala in sese.

3. An offence malum prohibitum, on the contrary, is not naturally an evil, but becomes so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden. Vide Bac. Ab. Assumpsit, A, note; 2 Rolle's Ab. 355.

MALVEILLES. Ill−will. In some ancient records this word signifies malicious practices, or crimes and misdemeaners.

MALVERSATION, French law. This word is applied to all punishable faults committed in the exercise of an office, such as corruptions, exactions, extortions and larceny. Merl. Repert. b. t.

MAN. 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, other's more immediately against the subject." Hawk. P. C. book 1, c. 2, s. 1. Offences against the life of man come under the general name of homicide, which in our law signifies the killing of a man by a man." Id. book 1, c. 8, s. 2.

2. In a more confined sense, man means a person of the male sex; and sometimes it signifies a male of the human species above the age of puberty. Vide Rape. It was considered in the civil or Roman law, that although man and person are synonymous in grammar, they had a different 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. A person, appointed or elected to manage the affairs of another, but the term is more usually applied to those officers of a corporation who are authorized to manage its affairs. 1 Bouv. Inst. n. 190.

2. In banking corporations these officers are commonly called directors, and the power to conduct the affairs of the company, is vested in a board of directors. In other private corporations, such as railroad companies, canal, coal companies, and the like, these officers are called managers. Being agents, when their authority is limited, they have no power to bind their principal beyond such authority. 17 Mass. R. 29; 1 Greenl. R. 81.

3. The persons appointed on the part of the house of representatives to prosecute impeachments before the senate, are called managers.

MANBOTE. In a barbarous age, when impunity could be purchased with money, the compensation which was

paid for homicide was called manbote.

MANCIPATIO, civil law. The act of transferring things called res mancipi. (q. v.) This is effected in the presence of not less than five witnesses, who must be Roman citizens and of the age of puberty, and also in the presence of another person of the same condition, who holds a pair of brazen scales, and hence is called Libripens. The purchaser (qui mancipio accipit) taking hold of the thing, says I affirm that this slave (homo) is mine, ex jure quiritium, and he is purchased by me with this piece of money (sas) and brazen scales. He then strikes the scales with the piece of money and gives it to the seller as a symbol of the price (quasi pretii loco.) The purchaser or person to whom the mancipatio was made did not acquire the possession of the mancipatio; for the acquisition of possession was a separate act. Gaius. 1, 119; Id. iv. 181.

Both mancipatio and in jure cessio existed before the twelve tables. Frag. Vat. 50. Mancipation no longer existed in the code of Justinian, who took away all distinction between res mancipi and nec mancipi. Smith's Dict. Gr. & Rom. Antiq. Verb. Mancipium; Coop. Jus. 442.

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

2. It is a command issuing in the name of the sovereign authority from a superior court having jurisdiction, and is directed to some person, corporation, or, inferior court, within the jurisdiction of such superior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the superior court has previously determined, or at least supposes to be consonant to right and justice. 20 Pick. 484; 21 Pick. 258; Dudley, 37; 4 Humph. 437.

3. Mandamus is not a writ of right, it is not consequently granted of course, but only at the discretion of the court to whom the application for it is made; and this discretion is not exercised in favor of the applicant, unless some just and useful purpose may be answered by the writ. 2 T. R. 385; 1 Cowen's R. 501; 11 Shepl. 151; 1 Pike, 11.

4. This writ was introduced io prevent disorders from a failure of justice; therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one. 3 Burr. R. 1267; 1 T. R. 148, 9.; 2 Pick. 414; 4 Pick. 68; 10 Pick. 235, 244; 7 Mass; 340; 3 Binn. 273; 5 Halst. 57; Cooke, 160; 1 Wend. 318; 5 Pet. 190; 1 Caines, R. 511; John. Cas. 181; 12 Wend. 183; 8 Pet. 291; 12 Pet. 524; 2 Penning. 1024; Hardin, 172; 7 Wheat. 534; 5 Watts. 152; 2 H. & M. 132; 3 H. & M. 1; 1 S. & R. 473; 5 Binn. 87; 3 Conn. 243; 2 Virg. Cas. 499; 5 Call. 548. Mandamus will not lie where the law has given another specific remedy. 1 Wend. 318; 10 John. 484; 1 Cow. 417; Coleman, 117; 1 Pet. 567; 2 Cowen, 444; 2 M'Cord, 170; Minor, 46; 2 Leigh, 165; Const. Rep. 165, 175, 703.

5. The 13th section of the act of congress of September, 24, 1789, gives the supreme court power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed or persons holding office, under the authority of the United States. The issuing of a mandamus to courts, is the exercise of an appellate jurisdiction, and, therefore constitutionally vested in the supreme court; but a mandamus directed to a public officer, belongs to original jurisdiction, and by the constitution, the exercise of original jurisdiction by the supreme court is restricted to certain specified cases, which do not comprehend a mandamus. The latter clause of the above section, authorizing this writ to be issued by the supreme court, to persons holding office under the authority of the United States, is, therefore, not warranted by the constitution, and void. 1 Cranch, R. 175.

6. The circuit courts of the United States may also issue writs of mandamus, but their power in this particular, is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. 7 Cranch, R. 504; 8 Wheat. R. 598; 1 Paine's R. 453. Vide, generally, 3 Bl. Com. 110; Com. Dig. h. t; Bac. Ab. h. t.; Vin. Ab. h. t.; Selw. N. P. h. t.; Chit. Pr. h. t.; Serg. Const. Index, h. t.; Ang. on Corp. Index, h. t.; 3 Chit. Bl. Com. 265 n. 7; 1 Kent. Com. 322; Dane's Ab. Index, h. t.; 6 Watts & Serg. 386, 397; Bouv. Inst. 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.

MANDATARIUS. One who is entrusted with and undertakes to perform a mandate. This word is used by the civilians in the same sense that we use mandatary. Poth. du Mandat, n. 1.

MANDATARY, contracts. One who undertakes to perform a mandate. Jones' Bailm. 53; Story on Bailm. 38. Dr. Halifax calls him mandatee. Halif. Anal. Civ. Law, 70, __16, 17.

2. It is the duty of a mere mandatory, it is said, to take ordinary care of the property entrusted to him. Vide Negligence. But it has been held that he is liable only for gross negligence. 14 S. & R. 275; 2 Hawks, R. 145; 2 Murph. R. 373; 3 Dana, R. 205; 3 Mason, R. 132; 11 Wend, R. 25; Wright, R. 598; 1 Bouv. 1st. n. 1073.

MANDATE, practice. A judicial command or precept issued by a court or magi− trate, directing the proper officer to enforce a judgment, sentence or decree. Jones'. Bailm. 52; Story on Bailm. _137.

MANDATE. Mandatum or commission, 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' 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; Halifaz's Anal. of the Civ. Law, 70,; Code of Louis. art. 2954; Code Civ. art. 1984; 1 Bouv. Inst. n. 1068.

2. From the very term of the definition, three things are necessary to create a mandate. First, that there should exist something which should be the matter of the contract; secondly, that it should be done gratuitously; and thirdly, that the parties. should voluntarily intend to enter into the contract. Poth. Pand. Lib. 17, tit. 1, p. 1, _1; Poth. Contr. de Mandat, c. 1, _2.

3. There is no particular form or manner of entering into the contract of mandate, prescribed either by the common law, or by the civil law, in order to give it validity. It may be verbal or in writing; it may be express or implied it may be in solemn form or in any other manner. Story on Bailm. _160. The contract may be varied at the pleasure of the parties. It may be absolute or conditional, general or special, temporary or permanent. Wood's Civ. Law, 242; 1 Domat, B. 1. tit. 15, _1, 6, 7, 8; Poth. Contr. de Mandat, c. 1, _3, n. 34, 35, 36.

4. As to the degree of diligence which the mandatory is bound to exercise, see Mandatory; Negligence; Pothier, Mandat, h. t; Louis. Code, tit. 15 Code Civ. t. 13, c. 2 Story on Bailm. _163 to 195; 1 Bouv. Inst. n. 1073.

5. 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; 1 Bouv. Inst. n. 1074.

6. 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.

7. − 2. It may be dissolved by the death of the mandatory; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But this principally applies to cases where the mandate remains wholly unexecuted; for if it be in part executed, there may in some cases, arise a personal obligation on the part of the representatives to complete it. Story on Bailm. _202.; 2 Kent's Com. 504, _4; Pothier, Mandat, c. 4, _1, n. 101.

8. Whenever the trust is of a nature which requires united, advice, confidence and skill of all, and is deemed a joint personal trust to all, the death of one joint 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.

9. The death of the mandator, in like manner, puts an end to the contract. See 2 Mason's R. 342; 8 Wheat. R. 174; 2 Kent's Com. 507; 1 Domat, B. 1, tit. 15, _4, n. 6, 7, 8; Pothier, Contract de Mandat, c. 4, _2, n. 103. But although an unexecuted mandate ceases with the death of the mandator, yet, if it be executed in part at that time, it is binding to that extent, and his representatives must indemnify the mandatory. Story on Bailm. __204, 205.

10. − 3. The contract of mandate may be dissolved by a change in the state of the parties; as if either party becomes insane, or, being a woman, marries before the execution of the mandate. Story on Bailm. _206; 2 Roper, Husb. and Wife, 69, 73; Salk. 117; Bac. Abr. Baron and Feme, E; 2 Kent's Com. 506,

11. − 4. It may be dissolved by a revocation of the authority, either by operation of law, or by the act of the mandator.

12. It ceases by operation of law when the power of the mandator ceases over the subject−matter; as, if he be a guardian, it ceases, as to his ward's property, by the termination of the guardianship. Pothier, Contract de Mandat, c. 4, _4, n. 112.

13. So, if the mandator sells the property, it ceases upon the sale, if it be made known to the mandatory. 7 Ves. jr. 276; Story on Bailm. _207.

14. By the civil law the contract of mandate ceases by the revocation of the authority. Story on Bailm. _208; Code Civ. art. 2003 to 2008; Louis, Code, art. 2997.

15. At common law, the party giving an authority is generally entitled to revoke it. See 5 T. R. 215; Wallace's R.

126; 5 Binn. 316. But, if it be given as a part of a security, as if a letter of attorney be given to collect a debt, as a security for money advanced, it is irrevocable by the party, although revoked by death. 2 Mason's R. 342; 8 Wheat. 174; 2 Esp. R. 365; 7 Ves. 28; 2 Ves. & Bea. 51; 1 Stark. R. 121; 4 Campb. 272.

MANDATE, civil law. Mandates were the instructions which the emperor addressed to public functionaries, which were to serve as rules for their conduct. 2. These mandates resembled those of the pro−consuls, the mandata jurisdictio, and were ordinarily binding on the legates or lieutenants of the emperor of the imperial provinces, and, there they had the authority of the principal edicts. Sav. Dr. Rom. ch. 3, _24, n. 4.

MANDATOR, contracts. The person employing another to perform a mandate. Story on Bailm. _138; 1 Brown, Civ. Law, 382; Halif. Anal. Civ. Law, 70.

MANDAVI BALLIVO, English law. The return made by a sheriff, when he has committed the execution of a writ to a bailiff of a liberty, who has the right to execute the writ.

MANHOOD. The ceremony of doing homage by the vassal to his lord was de− nominated homagium or manhood, by the feudists. The formula used was devenio vester homo, I become you Com. 54. See Homage.

MANIA, med. jur. This subject will be considered by examining it, first, in a medical point of view; and, secondly, as to its legal consequences.

2. − _1. Mania may be divided into intellectual and moral.

1. Intellectual mania is that state of mind which is characterised by certain hallucinations, in which the patient is impressed with the reality of facts or events which have never occurred, and acts in accordance with such belief; or, having some notion not altogether unfounded, carries it to an ex− travagant 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 be− ing confined to a particular idea, or train of ideas, when it is called partial.

3. These will be separately examined. 1st. General intellectual mania is a disease which presents the most chaotic confusion into which the human mind, can be involved, and is attended by greater disturbance of the functions of the body than any other. According to Pinel, Traite 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 fixed 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 facul−ties, but not unfrequently extends to the moral powers of the mind.

4. − 2d. Partial intellectual mania is generally known by the name of monomania. (q. v.) In its most usual and simplest form, the patient has conceived some single notion contrary to common sense and to common experience, generally dependent on errors of sensation; as, for example, when a person believes that he is made of glass, that animals or men have taken their abode in his stomach or bowels. In these cases the understanding is frequently found to be sound on all subjects, except those connected with the hallucination. Sometimes, instead of being limited to a single point, this disease takes a wider range, and there is a class of cases, where it involves a train of morbid ideas. The patient then imbibes some notions connected with the various relations of persons, events, time, space, &c., of the most absurd and unfounded nature, and endeavors, in some measure, to regulate his conduct accordingly; though, in most respects, it is grossly inconsistent with his delusion.

5. Moral mania or moral insanity, (q. v.) is divided into, first, general, where all the moral faculties are subject to a general disturbance and secondly, partial, where one or two only of the moral powers are perverted.

6. These will be briefly and separately examined. 1st. It is certain that many individuals are living at large who are affected, in a degree at least, by general moral mania. They are generally of singular habits, wayward temper, and eccentric character; and circumstances are frequently attending them which induce a belief that they are not altogether sane. Frequently there is a hereditary tendency to madness in the family; and, not seldom, the individual himself has at a previous period of life sustained an attack of a decided character: his temper has

undergone a change, he has become an altered man, probably from the time of the occurrence of something which deeply affected him, or which deeply affected his bodily constitution. Sometimes these alterations are imperceptible, at others, they are sudden and immediate. Individuals afflicted with this disease not unfrequently "perform most of the common duties of life with propriety, and some of them, indeed, with scrupulous exactness, who exhibit no strongly marked features of either temperament, no traits of superior or defective mental endowment, but yet take violent an− tipathies, 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 sensi− bility, 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 ac− tion, 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 exbibiting romantic courage and feats and 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 re− straint, 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 their 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, see cases of this Pract. Obs. on Insanity, kind of madness cited in Ray, Med. Jur. _112 to 119; Combe's Moral Philos. lect. 12.

7 .− 2d. 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 of the propensity to destroy. Ray, Med. Jur. ch. 7.

8. − _2. In general, persons laboring 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 Phiilim. Ecc. R. 69; 1 Hagg. Cons: R. 414; 4 Pick. R. 32; 3 Addams, R. 79; 1 Litt. R. 371.

MANIA A POTU. Insanity arising from the use of spirituous liquors. Vide Delirium Tremens.

MANIFEST, com. law. A written instrument containing a true account of the cargo of a ship or commercial vessel.

2. The Act of March 2, 1799, s. 23, requires that when goods, wares, or mer− chandise, shall be brought into the United States, from any foreign port or place, in any ship or vessel, belonging, in whole or in part to a citizen or inhabitant of the United States, the manifest shall be in writing, signed by the master of the vessel, and that it shall contain the names of the places where the goods in such manifest mentioned, shall have been respectively taken on board, and the places within the United States, for which they are respec tively 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, truss, 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; aud all spirits, wines aud 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 the vessel shall be specially described as provided by a form in the act. 1 Story's Laws, 593, 594.

3. The want of a manifest, where one is required, or when it is false, is severely punished.

MANIFEST, evidence. That which is clear and requires no proof; that which is noto− rious. See Notoriety.

MANIFESTO. A solemn declaration, by the constituted authorities of a nation, which contains the reasons for its public acts towards another.

2. On the declaration of war, a manifesto is usually issued in which the nation declaring the war, states the reasons for so doing. Vattel, liv. 3, c. 4, _64; Wolff, _1187. See Anti−Manifesto.

MANKIND. Persons of the male sex; but in a more general sense, it includes persons of both sexes; for example, the statute of 25 Hen. VIII., c. 6, makes it felony to commit, sodomy with mankind or beast. Females as well as males axe included under the term mankind. Fortesc. 91; Bac. Ab. Sodomy. See Gender.

MANNER AND FORM, pleading. After traversing any allegation in pleading, it is usual to say "in manner and form as he has in his declaration in that behalf alleged," which is as much as to include in the traverse, not only the mere fact opposed to it, but that in the manner and form in which it is stated by the other party. These words, however, only put in issue the substantial statement of the manner of tho fact traversed, and do not extend to the time, place, or other circumstances attending it, if they were not originally material and necessary to be proved as laid. 3 Bouv. Inst. p. 297. See Modo et forma.

MANNOPUS. An ancient word which signifies goods taken in the hands of an ap− prehended 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. Repert. mot Manoir. See Serg. Land Laws of Pennsyl. 195.

2. By the English law, a manor is a tract of land originally granted by the king to a person of rank, part of which was given by the grantee to his followers, and the rest lie retained under the name of his demesnes; that which remained uncultivated was called the lord's waste, and served for public roads and common of pasture for the lord and his tenants.

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. 2 Bouv. Inst. n. 1571, note.

MANSLAUGHTER, crim. law. 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, consists 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.

2. 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. Manslaugbter is voluntary, when it happens upon a sudden heat; or involuntary, when it takes place in the commission of some unlawful act.

3. The cases of manslaughter may be classed as follows those which take place in consequence of, 1. Provocation. 2. Mutual combat. 3. Resistance to public officers, &c. 4. Killing in the prosecution of an unlawful or wanton act. 5. Killing in the prosecution of a lawful act, improperly performed, or performed without lawful authority.

4. − 1. The provocation which reduces the killing from murder to manslaughter is an answer to the presumption of malice which the law raises in every case of homicide; it is therefore no answer when express malice is proved. 1 Russ. Cr, 440; Foster, 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.

5. − 2. In cases of mutual combat, it is generally manslaughter only when one of the parties is killed. When death

ensues from duelling the rule is different, and such killing is murder.

6. − 3. The killing of an officer by resistance to him while acting under lawful authority is murder; but if the officer be acting under a void or illegal authority, or out of his jurisdiction, the killing is manslaughter, or excusable homicide, according to the circumstances of the case. 1 Moody, C. C. 80, 132; 1 Hale, P. C. 458; 1 East, P. C. 314; 2 Stark. N. P. C. 205; S. C. 3 E. C. L. R. 315.

7. − 4. Killing a person while doing an act of mere wantonness, is manslaughter as, if a person throws down stones in a coal−pit, by which a man is killed, although the offender was only a trespasser. Lewin, C. C. 179.

8. − 5. When death ensues from the performance of a lawful act, it may, in consequence of the negligence of the offender, amount to manslaughter. For instance, if the death has been, occasioned by negligent driving. 1 East, P. C. 263; 1 C. & P. 320 S. C. 9 E. C. L. R. 408; 6 C. & P. 629; S. C. 25 E. C. L. R. 569. Again, when death ensues, from the gross negligence of a medical or surgical practitioner, it is manslaughter. 1 Hale, P. C. 429; 3 C. & P. 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 import. Dane's Ab. ch. 132, a. 6; ch. 203, a. 12.

MANU OPERA. This has the same meaning with mannopus. (q. v.)

MANUAL. That which 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; Day. Pat. Cas. 278; Webst. on Pat. 8; Phil. on Pat. 77; Perp. Manuel des Inv. c. 2, s. 1; Renouard, c. 5, s. 1; Westminster Review, No. 44, April 1835, p. 247; 1 Bell's Com., B. 1, part 2, c. 4, s. 1, p. 110, 6th ed.

MANUMISSION, contracts. The agreement by which the owner or master of a slave sets him free and at liberty; the written instrument which contains this agreement is also called a manumission.

2. In the civil law it was different from emancipation, which, properly speaking, was applied to the liberation of children from paternal power. Inst. liv. 1, t. 5 & 12; Co. Litt. 137, a; Dane's Ab. h. t.

MANURE, Dung. When collected in a heap, it is considered as personal property, but, when spread, it becomes a part of the land and acquires the character of real estate. Alleyn, 31; 2 Ired. R. 326.

MANUS. Anciently signified the person taking an oath as a compurgator. The use of this word probably came from the party laying his hand on the New Testament. Manus signifies, among the civilians, power, and is frequently used as synonymous with potestas. Lec. El. Dr. Rom. _94.

MANUSCRIPT. A writing; a writing which has never been printed.

2. The act of congress securing to authors a copyright passed February 3, 1831, sect. 9, protects authors in their manuscripts, and renders any person who shall unlawfully publish a manuscript liable to an action, and authorizes the courts to enjoin the publisher. See Copyright. The right of the author, to his manuscripts, at common law, cannot be contested. 4 Burr. 2396; 2 Eden, Ch. R. 329; 2 Story, R. 100; 2 Atk. 342; Ambl. 694; 2 B. & A. 290; 2 Story, Eq. Jur. _943; Eden, Inj. 322; 2 B. & A. 298; 2 Bro. P. C. (Toml ed.) 138; 4 Vin. Ab. 278; 2 Atk. 342; 2 Ves. & B. 23. These rights will be considered as abandoned if the author publishes his manuscripts, without securing the copyright under the acts of congress. See Bouv. Inst. Index, h. t.; Copyright.

MARAUDER. One who, while employed in the army as a soldier, commits a larceny or robbery in the neighborhood of the camp, or while wandering away from the army. Merl. Repert. h. t.

MARC−BANCO. The name of a coin. The marc−banco of Hamburg, as money of account, at the custom−house, is deemed and taken to be of the value of thirty−five cents. Act of March 3, 1843.

MARCHES, Eng. law. This word signifies the limits, or confines, or borders. Bac. Law Tracts, tit. Jurisdiction of the. Marches, p. 246. It was applied to the limits between England and Wales or Scotland. In Scotland the term

marches is applied to the boundaries between private properties.

MARETUM. Marshy ground overflowed by the sea or great rivers. Co. Litt. 5.

MARINARIUS. An ancient word which signified a mariner or seaman; in England marinarius capitaneus, was the admiral or warden of the ports.

MARINE. Whatever concerns the navigation of the sea, and forms the naval power of a nation is called its marine.

MARINE CONTRACT. 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, re−pairing, supplying and navigating ships; contracts and quasi contracts respec− ting averages, contributions and jettisons, and policies of insurance. 2 Gall. R. 398, where Judge Story gave a very learned opinion on the subject.

MARINE INSURANCE, contracts. A contract by which one party, for a stipulated premium, undertakes to indemnify the other, against all perils or sea risks, to which his ship; freight or cargo, or some of them, may be exposed, during a certain voyage or fixed period of time. 1 Bouv. Inst. n. 1175, et seq. See Insurance Marine.

MARINE INTEREST, contracts. 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 a. la Grosse, n. 19; 1 Stuart's (L. C.) R. 130.

MARINE LEAGUE. A measure equal to the twentieth part of a degree. Bouch. Inst. n. 1845, not. Vide Cannon Shot; Sea.

MARINER. One whose occupation is to navigate vessels on the sea. Vide Seamen Shipping articles.

2. By act of congress, 1 Story, Laws of U. S., ch. 56, s. 4, p. 109, it is provided, that no sum exceeding one dollar shall be recovered from any seaman or mariner (in the merchant service,) by any person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged, shall be ended.

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

2. During the existence of the feudal law, it was the right which the lord of the fee had, under certain tenures, to dispose of the daughters of his vassal in marriage. By this word was also understood marriage. Beames' Glanv. 138, n; Bract. 21 a; Spelm. Gl. ad voc.; 2 Bl. Com. 69; Co. Litt. 21 b, 76 a.

MARITAL. That which belongs to marriage; as marital rights, marital duties.

2. Contracts made by a feme sole with a view to deprive her intended husband of his marital rights, with respect to her property, are a fraud upon him, and may be set aside in equity. By the marriage, the husband assumes the duty of paying her debts, contracted previous to the coverture, and of supporting her during its existence; and he cannot, therefore, be fraudulently deprived, by the intended wife, of those rights which enable him to perform the duties which attach to him. 2 Cha. R. 42; Newl. Contr. 424; 1 Vern. 408; 2 Vern. 17; 2 P. Wms. 357, 674; 2 Bro. C. C. 345; 1 Ves. jr. 22; 2 Cox, R. 28; 2 Beav. 528; 2 Ch. R. 81; White's. L. C. in Eq. *277; 1 Hill, Ch. R. 1, 4; 13 Maine, R. 124; 1 McMull. Eq. R. 237 3 Iredell's Eq. R. 487; 4 Wash. C. C. R. 224.

MARITAL PORTION. In Louisiana, this name is given to that part of a deceased husband's estate, to which the widow is entitled. Civil Code, 334, art. 55; 3 Mart. N. S. 1.

MARITIME. That which belongs to or is connected with the sea.

MARITIME CAUSE. Maritime causes are those arising from maritime contracts, whether made at sea or on land, that is, such as relate to the commerce, business or navigation of the sea; as, charter parties, affreightments, marine loans, hypothecations, contracts for maritime service in building, repairing, supplying and navigating ships, contracts and quasi contracts respecting averages, contributions and jettisons; contracts relating to marine insurance, and those between owners of ships. 3 Bouv. Inst. n. 2621.

2. There are maritime causes also for torts and injuries committed at sea.

3. In general, the courts of admiralty have a concurrent jurisdiction with courts of law, of all maritime causes: and in some cases they have exclusive jurisdiction.

MARITIME CONTRACT. One which relates to the navigation of the sea.

2. The admiralty has jurisdiction in case of the breach of such contract, whether it has been entered into on land or at sea. 4 Wash. C. C. R. 453; see 2 Gallis. 465; 2 Sumn. 1; Gilp. 529.

MARITIME LAW. That system of law which relates to the affairs of the sea, such as seamen, ships, shipping, navigation, and the like.

MARITIME LOAN. 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 lean. 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; 7 Bing. 457; 2 Ves. 455; 1 V. & B. 362; 1 Ves., jr. 11. A mark is now held to be a good signature, though the party was able to write. 8 Ad. & El. 94; 3 Nev. & Per. 228; 3 Curt. 752; 5 John. 144. Vide Subscription.

2. − 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. 814. Vide Trade Marks.

3. − 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. − 4. Mark is also in England a money of accounts, and in some other countries a coin. The English marc is two−thirds of a pound sterling, or 13s. 4d., and the Scotch mark is of equal value in Scotch money of account. Encyc. Amer. h. t.

MARKET. A public place appointed by public authority, where all sorts of things necessary for the subsistence, or for the conveniences of life, are sold.

2. Markets are generally regulated by local laws.

3. By the term market is also understood the demand there is for any particular article; as, the cotton market in Europe is dull. Vide 15 Vin. Ab. 42; Com. Dig. h. t.

MARKET OVERT, Engl. law. Market overt is an open or public market; that is, a place appointed by law or custom for the sale of goods and chattels at stated times in public.

2. In London, every day except Sunday, is market day. In the country, particular days are fixed for market days. 2 Bl. Com. 449.

3. It is a general rule that sales of vendible articles made in market overt, are good not only between the parties, but are also binding on all those who have any property or right therein. Id. 2 Chitt. Com. Law, 148 to 154; Com. Dig. Market, E; Bac. Abr. Fairs and Market, E; 5 B. & A. 624; Dane's Abr. chap. 45, a 2.

4. There is no law recognizing the effect of a sale in market overt in Pennsylvania. 3 Yeates R. 347; 5 Serg. & Rawle, 130; in New York; 1 Johns, 480; in Massachusetts; 8 Mass. R. 521; 14 Mass. R. 500; in Ohio; 5 Ohio, R. 203; nor in Vermont. 1 Tyl. R. 341; nor indeed in any of the United States. 10 Pet. 161.

MARLEBRIDGE, STATUTE OF. The name of a statute passed the 52 Hen. III, A. D. 1267, so called because it was enacted at Marlebridge. Barr. on Stat. 58.

MARQUE AND REPRISAL. The name given to a commission granted by the supreme power of a state to a private person for the purpose of seizing the property of a foreign state or its subjects. Wheat. Law of Nations, 340. Vide Letters of Marque.

MARRIAGE. 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 io 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.

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

3. − 1. They must be willing to contract. Those persons, therefore, who have no legal capacity in point of intellect, to make a contract, cannot legally marry, as idiots, lunatics, and infant; males under the age of fourteen, and females under the age of twelve, and when minors over those ages marry, they must have the consent of their

parents or guardians.

4. There is no will when the person is mistaken in the party whom he intended to marry; as, if Peter intending 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 in the quality, as if he marry a woman whom he took to be chaste, and whom he finds of an opposite character, this 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.

5. When the marriage is obtained by force or fraud, it is clear that there is no consent; it is, therefore, void ab initio, and may be treated as null by every court in which its validity may incidentally be called in question. 2 Kent, Com. 66; Shelf. on Marr. and Div. 199; 2 Hagg. Cons. R. 246; 5 Paige, 43.

6. − 2. Generally, all persons who are of sound mind, and have arrived to years of maturity, are able to contract marriage. To this general rule, however, there are many exceptions, among which the following may be enumerated.

7. − 1. The previous marriage of the party to another person who is still living.

8. − 2. Consanguinity, or affinity between the parties within the prohibited degree. It seems that persons in the descending or ascending line, however remote from each other, cannot lawfully marry; such marriages are against nature; but when we come to consider collaterals, it is not so easy to fix the forbidden degrees, by clear and established principles. Vaugh. 206; S. C. 2 Vent. 9. In several of the United States, marriages within the limited degrees are made void by statute. 2 Kent, Com. 79; Vide Poynt. on Marr. and Div. ch. 7.

9. − 3. Impotency, (q. v.) which must have existed at the time of the marriage, and be incurable. 2 Phill. Rep. 10; 2 Hagg. Rep. 832.

10. − 4. Adultery. By statutory provision in Pennsylvania, when a person is convicted of adultery with another person, or is divorced from her husband, or his wife, he or she cannot afterwards marry the partner of his or her guilt. This provision is copied from the civil law. Poth. Contr. de Mariage, part 3, c. 3, art. 7. And the same provision exists in the French code civil, art. 298. See 1 Toull. n. 555.

11. − 3. The parties must not only be willing and able, but must have actually contracted in due form of law.

12. The common law requires no particular ceremony to the valid celebration of marriage. The consent of the parties is all that is necessary, and as marriage is said to be a contract jure gentium, that consent is all that is needful by natural or public law. If the contract be made per verba de presenti, or if made per verba de futuro, and followed by consummation, it amounts to a valid marriage, and which the parties cannot dissolve, if otherwise competent; it is not necessary that a clergyman should be present to give validity to the marriage; the consent of the parties may be declared before a magistrate, or simply before witnesses; or subsequently confessed or acknowledged, or the marriage may even be inferred from continual cohabitation, and reputation as husband and wife, except in cases of civil actions for adultery, or public prosecutions for bigamy. 1 Silk. 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 Penn. R. 452; 2 Watts, R. 9. But a promise to marry at a future time, cannot, by any process of law, be converted into a marriage, though the breach of such promise will be the foundation of an action for damages.

13. In some of the states, statutory regulations have been made on this subject. In Maine and Massachusetts, the marriage must be made in the presence, and with the assent of a magistrate, or a stated or ordained minister of the gospel. 7 Mass. Rep. 48; 2 Greenl. Rep. 102. The statute of Connecticut on this subject, requires the marriage to be celebrated by a clergyman or magistrate, and requires the previous publication of the intention of marriage, and the consent of parents; it inflicts a penalty on those who disobey its regulations. The marriage, however, would probably be considered valid, although the regulations of the statutes had not been observed. Reeve's Dom. Rel. 196, 200, 290. The rule in Pennsylvania is, that the marriage is valid, although the directions of the statute have not been observed. 2 Watts, Rep. 9; 1 How. S. C. R. 219. The same rule probably obtains in New Jersey; 2 Halsted, 138; New Hampshire; 2 N. H. Rep. 268; and Kentucky. 3 Marsh. R. 370. In Louisiana, a license must be obtained from the parish judge of the parish in which at least one of the parties is domiciliated, and the marriage must be celebrated before a priest or minister of a religious sect, or an authorized justice of the peace; it must be celebrated in the presence of three witnesses of full age, and an act must be made of the celebration, signed by the person who celebrated the marriage, by the parties and the witnesses. Code, art. 101 to 107. The 89th article of the Code declares, that such marriages only are recognized by law, as are contracted and solemnized according to the rules which it prescribes. But the Code does not declare null a marriage not preceded by a license, and not

evidenced by an act signed by a certain number of witnesses and the parties, nor does it make such an act exclusive evidence of the marriage. The laws relating to forms and ceremonies are directory to those who are authorized to celebrate marriage. 6 L. R. 470.

14. A marriage made in a foreign country, if good there, would, in general, be held good in this country, unless when it would work injustice, or be contra bonos mores, or be repugnant to the settled principles and policy of our laws. Story, Confl. of Laws, _87; Shelf. on M. & D. 140; 1 Bland. 188; 2 Bland. 485; 3 John. Ch. R. 190; 8 Ala. R. 48.

15. Marriage is a contract intended in its origin to endure till the death of one of the contracting parties. It is dissolved by death or divorce.

16. In some cases, as in prosecutions for bigamy, by the common law, an actual marriage must be proved in order to convict the accused. See 6 Conn. R. 446. This rule is much qualified. See Bigamy.

17. But for many purposes it may be proved by circumstances; for example, cohabitation; acknowledgment by the parties themselves that they were married; their reception as such by their friends and relations; their correspondence, on being casually separated, addressing each other as man and wife; 2 Bl. R. 899; declaring, deliberately, that the marriage took place in a foreign country; 2 Moo. & R. 503; describing their children, in parish registers of baptism, as their legitimate offspring; 2 Str. 1073; 8 Ves. 417; or when the parties pass for husband and wife by common reputation. 1 Bl. R. 639; S. C. 4 Burr. 2057; 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 R. & 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.

18. The civil effects of marriage are the following: 1. It confirms all matrimonial agreements between the parties.

19. − 2. It vests in the husband all the personal property of the wife, that which is in possession absolutely, and choses in action, upon the condition that he shall reduce them to possession; it also vests in the husband 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. In some states, the wife now retains her separate property by statute.

20. − 3. It creates the civil affinity which each contracts towards the relations of the other.

21. − 4. It gives the husband marital authority over the person of his wife.

22. − 5. The wife acquires thereby the name of her husband, as they are considered as but one, of which he is the head: erunt duo in carne un$f$.

23. − 6. In general, the wife follows the condition of her husband.

24. − 7. The wife, on her marriage, loses her domicil and gains that of her husband.

25. − 8. One of the effects of marriage is to give paternal power over the issue.

26. − 9. The children acquire the domicil of their father.

27. − 10. It gives to the children who are the fruits of the marriage, the rights of kindred not only with the father and mother, but all their kin.

28. − 11. It makes all the issue legitimate.

Vide, generally, 1 Bl. Com. 433; 15 Vin. Ab. 252; Bac. Ab. h. t.; Com. Dig. Baron and Feme, B; Id. Appx. b. 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. RŠpert. h. t.; Pothier, Trait, du Contrat 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.; Bouv. Inst. 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 service is also known by this name.

2. It is a doctrine of the courts of equity that all marriage brokage contracts are utterly void, as against public policy; and are, therefore, incapable of confirmation. 1 Fonb. Eq. B. 1, ch. 4, s. 10, note a; 1 Story, Eq. Jur. _263; Newl. on Contr. 469.

MARRIAGE PORTION. That property which is given to a woman on her marriage. Vide Dowry.

MARRIAGE, PROMISE OF. A promise of marriage is a contract entered into between a man and woman that

they will marry each other.

2. When the promise is made between persons competent to contract matrimony, an action lies for a breach of it. Vide Promise of Marriage.

MARRIAGE SETTLEMENT. An agreement made by the parties in contemplation of marriage by which the title to certain property is changed, and the property to some extent becomes tied up, and is rendered inalienable. Rice's Eq. R. 315. See 2 Hill, Ch. R. 3; Ril. Ch. Cas. 76; 8 Leigh, 29; 1 Dev. & Bat. Eq. 389; 2 Dev. & Bat. Eq. 103; 1 Bald. 344; 15 Mass. 106; 1 Yeates, 221; 7 Pet. 348; 4 Bouv. Inst. n. 3947. Vide Settlement, Contracts.

MARSHAL. An officer of the United States, whose duty it is to execute the process of the courts of the United States. His duties are very similar to those of a sheriff.

2. It is enacted by the act to establish the judicial courts of the United States, 1 Story's L. U. S. 53, as follows:

_27. That a marshal shall be appointed, in and for each district, for the term of four years, but shall be removable from office at pleasure whose duty it shall be to attend the district and circuit courts, when sitting therein, and also the supreme court in the district in which that court shall sit: and to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint, as there shall be occasion, one or more deputies, who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either. And before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies, before the judge of the district court, to the United States jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A B, do solemnly swear or affirm, that I will faithfully execute alI lawful precepts directed to the marshal of the district of_____under the authority of the United States, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____ during my continuance in said office, and take only my lawful fees. So help me God."

3. − _28. That in all causes wherein the marshal, or his deputy, shall be a party, the writs and precepts therein shall be directed to such disinterested person, as the court, or any justice or judge thereof may appoint, and the person so appointed is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies, shall continue in office unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults, or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed them; and the executor or administrator of the deceased marshal, shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life, and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal, or his deputy, when removed from office, or when the term for which the marshal is appointed shall expire, shall have power, notwithstanding, to execute all such precepts as may be in their hands, respectively, at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successors of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody, until his successor shall be appointed, and qualified as the law directs.

4. By the act making certain alterations in the act for establishing the judicial courts, &c. passed June 9, 1794, 1 Story's L. U. S. 865, it is enacted,

_7. That so much of the act to establish the judicial courts of the United States, as is, or may be, construed to require the attendance of the marshals of all the districts at the supreme court, shall be, and the same is hereby repealed: And that the said court shall be attended, during its session, by the marshal of the district only, in which the court shall sit, unless the attendance of the marshals of other districts shall be required by special order of the said court.

5. The act of February 28, 1795, 1 Story's L. U. S. 391, directs,

_9. That the marshals of the several districts, and their deputies, shall have the same powers, in executing the laws of the United States, as sheriffs and their deputies, in the several states, have by law in executing the laws of

the respective states.

6. There are various other legislative provisions in relation to the duties and rights of marshals, which are here briefly noticed with reference to the laws themselves.

7. − 1. The act of May 8, 1792, s. 4, provides for the payment of expenses incurred by the marshal in holding the courts of the United States, the payment of jurors, witnesses, &c.

8. − 2. The act of April 16, 1817, prescribes the duties of the marshal in relation to the proceeds of prizes captured by the public armed ships of the United States and sold by decree of court.

9. − 3. The resolution of congress of March 3, 1791; the act of February 25, 1799, s. 5; and the resolution of March 3, 1821; all relate to the duties of marshals in procuring prisons, and detaining and keeping prisoners.

10. − 4. The act of April 10, 1806, directs how and for what, marshals shall give bonds for the faithful execution of their office.

11. − 5. The act of September 18, 1850, s. 5, prescribes the duties of the marshal in relation to obeying and executing all warrants and precepts issued under the provisions of this act, and the penalties he shall incur for refusing to receive and execute the said warrants when rendered, and for permitting the fugitive to escape after arrest, 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; Minot, Stat. U. S. Index, h. t.

MARSHALLING SECURITIES, equity. When a party has two funds by which his debt is secured, and another creditor has a claim only on one of these funds, a court of equity will compel the creditor having a double security to resort to that fund which will leave the other creditor his security, this is called marshalling assets. 4 Bouv. Inst. n. 3788; 1 Story, Eq. Jur. _633 Amb. 91; 8 Ves. 389; 9 Ves. 209.

2. Marshalling of assets respects two different funds, and two different sets of parties, where one set can resort to either fund, the other only to one. It is grounded on obvious equity. It does no prejudice to anybody, and it effectuates the testator's intent. It takes place in favor of simple contract creditors, and of legatees, devisees and heirs, and in a few other cases, but not in favor of the next of kin. 4 Bro. C. C. 411; 1 P. Wms. 680.

3. The cases in which a court of equity marshals real and personal assets for the payment of simple contract debts and legacies, may be classed as follows: 1. Where there are specialty and simple contract debts and legacies and lands left to descend. In this case if the specialty creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors first, and then the legatees, shall stand in the place of the specialty creditors, for obtaining satisfaction out of the lands, to the amount of so much as was received by the specialty creditors out of the personal estate.

4. − 2. Where there are specialty and simple contract debts, and lands are specifically devised. In this case if the creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors shall stand in the place of the specialty creditors for obtaining a satisfaction out of the lands to the amount of so much as was received by the 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.

5. − 3. Where the debts are charged upon the lands. Here the legatees shall have the personal estate towards their satisfaction, and if the creditors take it in payment or towards the discharge of their debts, the legatees shall stand in their place pro tanto to have a discharge out of the lands.

6. − 4. When simple contract debts and legacies are both charged on the land. In this case the land shall be sold and all paid equally. 1 Madd. Ch. Pr. 617.

MARSHALSEA, English law. The name of a prison belonging to the court of the king's bench.

MARTIAL LAW. Vide Law Martial.

MARYLAND. One of the original states of the United States of America. The province of Maryland was included in the patent of the Southern or Virginia company; and upon the dissolution of that company, it reverted to the crown. Charles the First, on the 20th of June, 1632, granted it by patent to Lord Baltimore. Under this charter Maryland continued to be governed, with some short intervals of interruption, down to the period of the American Revolution, by the successors of the original proprietor. 1 Chalmer's Annals, 203.

2. Upon the revolution of 1688, the government of Maryland was seised into the hands of the crown, and was not again restored to the proprietary until 1716; from that period no alteration occurred until the American Revolution. Bacon's Laws of Maryland, 1692, 1716.

3. The original constitution of this state was adopted on the 14th day of August, 1776. The present constitution was adopted in 1851.

4. The powers of the government are distributed into the legislative, the executive, and the judicial.

5. − 1st. The legislature shall consist of two distinct branches, a senate and a house of delegates, which shall be styled "The general assembly of Maryland." Art. III. s. 1.

6. − 2. The general assembly shall meet on the first Wednesday of January, 1852, on the same day, in the year 1853, and on the same day, 1854, and on the same day in every second year thereafter, and at no other time, unless convened by the proclamation of the governor. Art. III. s. 7.

7. − 3. 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. Every free white male person of twenty−one years of age or upwards, who shall have been one year next preceding the election a resident of the state, and for six months a resident of the city of Baltimore, or of any county in which he may offer to vote, and being at the time of the election, a citizen of the United States, shall be entitled to vote in the ward or election district in which he re−sides, in all elections hereafter to be held; an& at all such elections the vote shall be taken by ballot. And in case any county or city shall be so divided as to form portions of different electoral districts for the election of congressmen, senator, delegate or other officer or officers, then to en−title a person to vote for such officer, he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for six months next preceding the election: but a person who shall have acquired a residence in such county or city, entitling him to vote at any such election, shall be entitled to vote in the election district from which he remoted, until he shall have acquired a residence in the part of the county or city to which he has removed. Art. I. s. 1. 2. No person shall be eligible as a senator who at the time of his election is not a citizen of the United States, and who bas not resided at least three years next preceding the day of his election, in this state, and the last year thereof in the county or city which he may be chosen to represent, if such county or city shall have been so long established, and if not, then in the county from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a senator unless he shall have attained the age of twenty−five years. No member of congress, or person bolding any civil or military office under the United States, shall be eligible as a senator; and if any person, after his election as a senator, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat. No minister or preacher of the gospel of any denomination, and no person holding any civil office of profit or trust under the state, except justices of the peace, shall be eligible as senator. Art. III. ss. 9, 10, 11. 3. Every county of the state, and the city of Baltimore, shall be entitled to elect one senator, who shall serve for four years from the day of their election. The first election shall take place on the first Wednesday of November, 1851, and an election for one−half the senators, as nearly as practicable, shall be held on the same day every second year thereafter. Art. III. 2, 3, 4, 5.

8. − 4. The house of delegates 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 delegate who shall not have attained the age of twenty−one years; the other qualifications are the same as those for a senator. 3. The whole number of delegates shall never exceed eighty, nor be less than sixty−five, and shall be apportioned among the several counties according to the population of each, the city of Baltimore to have four more delegates than the most populous county; no county to have less than two delegates, the apportionment to be made after the returns of the national census in 1860 are published, and in like manner after each subsequent census. They are to serve two years from the day of their election, which takes place on the same day as that for senators.

9. − 1. The executive power of the state shall be vested in a governor, whose term of office shall commence on the second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified.

10. − 2. The first election for governor under this constitution shall be held on the first Wednesday of November, in the year eighteen hundred and fifty−three, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the general assembly, and every person qualified to vote for delegates shall be qualified, and entitled to vote for governor; the election to be held in the same manner as the election of dele− gates, and the returns thereof, under seal, to be addressed to the speaker of the house of delegates, and enclosed and transmitted to the secretary of state, and delivered to the said speaker at the commencement of the session of

the legislature next ensuing said election.

11. − 3. The speaker of the house of delegates shall then open the said returns in the presence of both houses, and the person having the highest number of votes, and being constitutionally eligible, shall be the governor, and shall qualify in the manner herein prescribed, on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

12. − 4. If two or more persons shall have the highest and an equal number of votes, one of them shall be chosen governor by the senate and house of delegates; and all questions in relation to the eligibility of governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the house of delegates. And if the person or persons having the highest number of votes be ineligible, the governor shall be chosen by the senate and house of delegates. Every election of governor, by the legislature, shall be determined by a joint majority of the senate and house of delegates, and the vote shall be taken viva voce. But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the votes should again be equal, then the election of governor shall be determined by lot between those who shall have the highest and an equal number on the first vote.

13. − 5. The state shall be divided into three districts. St. Mary's, Charles, Calvert, Prince George's, Anne Arundle, Montgomery, and Howard counties, and the city of Baltimore to be the first; the eight counties of the Eastern shore to be the second; and Baltimore, Harford, Frederick, Washington, Allegany, and Carroll counties, to be the third. The governor, elected from the third district in October last, shall continue in office during the term for which he was elected. The governor shall be taken from the first district, at the first election of governor under this constitution; from the second district at the second election, and from the third district at the third election, and in like manner, afterwards, from each district, in regular succession.

14. − 6. A person to be eligible to the office of governor, must have attained the age of thirty years, and been for five years a citizen of the United States, and for five years next preceding his election a resident of the state, and for three years a resident of the district from which he was elected.

15. − 7. In case of the death or resignation of the governor, or of his removal from the state, the general assembly, if in session, or if not, at their next session, shall elect some other qualified resident of the same district, to be the governor for the residue of the term for which the said governor had been elected.

16. − 8. In case of any vacancy in the office of governor during the recess of the legislature, the president of the senate shall discharge the duties of said office till a governor is elected as herein provided for; and in case of the death or resignation of said president, or of his removal from the state, or of his refusal to serve, then the duties of said office shall, in like manner, and for the same interval, devolve upon the speaker of the house of dele−gates, and the legislature may provide by law for the case of impeachment or inability of the governor, and declare what person shall perform the executive duties during such impeachment or inability; and for any vacancy in said office, not herein provided for, provision may be made by law, and if such vacancy should occur without such provision being made, the legislature shall be convened by the secretary of state for the purpose of filling said vacancy.

17. − 9. The governor shall be commander−in−chief of the land and naval forces of the state, and may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws; but shall not take the command in person without the consent of the legislature.

18. − 10. He shall take care that the laws be faithfully executed.

19. − 11. He shall nominate, and by and with the advice and consent of the senate, appoint all civil and military officers of the state, whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office.

20. − 12. In case of any vacancy during the recess of the senate, in any office which the governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force till the end of the next session of the legislature, or till some other person is appointed to the same office, whichever shall first occur, and the nomination of the person thus a pointed during the recess, or of some other person in his place, shall be made to the senate within thirty days after the next meeting of the legislature.

21. − 13. No person, after being rejected by the senate, shall be again nominated for the same office at the same seision, unless at the request of the senate; or be appointed to the same office during the recess of the legislature.

22. − 14. All civil officers appointed be the governor and senate shall be nominated to the senate within fifty

days from the commencement of each regular session of the legislature; and their term of office shall commence on the first Monday of May next ensuing their appointment, and continue for two years (unless sooner removed from office) and until their successors, respectively, qualify according to law.

23. − 15. The governor may suspend or arrest any military officer of the state for disobedience of orders, or other military offence, and may remove him in pursuance of the sentence of a court−martial; and may remove for incompetency or misconduct, all civil officers, who receive appointments from the executive for a term not succeeding two years.

24. − 16. The governor may convene the legislature, or the senate alone, on extraordinary occasions; and whenever, from the presence of an enemy or from any other cause, the seat of government shall become an unsafe place for the meeting of the legislature, he may direct their sessions to be held at some other convenient place.

25. − 17. It shall be the duty of the governor semi−annually, and oftener if he deem it expedient, to examine the bankbook, account books, and official proceedings of the treasurer anA comptroller of the state.

26. − 18. He shall, from time to time, inform the legislature of the condition of the state, and recommend to their consideration such measures as he may judge necessary and expedient.

27. − 19. He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases in which he is prohibited by other articles of this constitution, and to remit fines and forfeitures for offences against the state; but shall not remit the principal or interest of any debt due to the state, except in cases of fines and forfeitures; and before granting a nolle prosequi, or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either branch of the legislature. Whenever required, the petitions, recommendations and reasons which influence his decision.

28. − 20. The governor shall reside at the seat of government, and shall receive for his services an annual salary of thirty−six hundred dollars.

29. − 21. When the public interest requires it, he shall have power to employ counsel, who shall be entitled to such compensation as the legislature may allow in each case after the services of such counsel shall have been performed.

29. − 22. A secretary of state shall be appointed by the governor, by and with the advice and consent of the senate, who shall continue in office, unless sooner removed by the governor, till the end of the official term of the governor from whom he received his appointment, and shall receive an annual salary of one thousand dollars.

30. − 23. He shall carefully keep and preserve a record of all official acts an proceedings (which may, at all times, be inspected by a committee of either branch of the legislature,) and shall perform such other duties as may be prescribed by law or as may properly belong to his office.

31. − 3d. The judicial power of this state shall be vested in a court of appeals, in circuit courts, in such courts for the city of Baltimore as may be hereinafter prescribed, and in justices of the peace.

32. − 2. The court of appeals shall have appellate jurisdiction only, which shall be co−extensive with the limits of the state. It shall consist of a chief justice and three associate justices, any three of whom shall form a quorum, whose judgment shall be final and conclusive in all cases of appeals; and who shall have the jurisdiction which the present court of appeals of this state now has, and such other appellate jurisdiction as hereafter may be provided for by law. And in every case decided, an opinion, in writing, shall be filed, and provision shall be made, by law, for publishing reports of cases argued and determined in the said court. The governor, for the time being, by and with the advice and consent of the senate, shall designate the chief justice, and the court of appeals shall hold its sessions at the city of Annapolis, on the first Monday of June, and the first Monday of December, in each and every year.

33. − 3. The state shall be divided into four judicial districts: Allegany, Washington, Frederick, Carroll, Baltimore, and Harford counties, shall compose the first; Montgomery, Howard, Anne Arundel, Calvert, St. Mary's, Charles and Prince George's, the second; Baltimore city, the third; and Cecil, Kent, Queen Anne's, Talbot, Caroline, Dorchester, Somerset, ana Worcester, shall compose the fourth district. And one person from among those learned in the law having been admitted to practice in this this state at least, five years, and above the age of thirty years at the time of his election, and a resident of the judicial district, shall be elected from each of said districts by the legal and qualified voters therein, as a judge of the said court of appeals, who shall hold his office for the term of ten years from the time of his election, or until he shall have attained the age of seventy years, whichever may first happen, and be reeligible thereto until he shall have attained the age of seventy years,

and not after, subject to removal for incompetency, wilful neglect of duty, or misbehaviour in office, on conviction in a court of law, or by the governor upon the address of the general assembly, two−thirds of the members of each house concurring in such address; and the salary of each of the judges of the court of appeals shall be two thousand five hundred dollars annually, and shall not be increased or diminished during their continuance in office; and no fees or perquisites of any kind, shall be allowed by law to any of the said judges.

34. − 4. No judge of the court of appeals shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or when he shall have been of counsel in said case; when the court of appeals, or any of its members shall be thus disqualified to bear and determine any case or cases in said court, so that by reason thereof no judgment can be rendered in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of said case or cases.

35. − 5. All judges of the court of appeals, of the circuit courts, and of the courts for the city of Baltimore, shall, by virtue of their offices, be conservator's of the peace throughout the state.

36. − 6. All public commissions and grants shall run thus: "The State of Maryland," &c., and shall be signed by the governor, with the seal of the state annexed; all writs and process shall run in the same style, and be tested, sealed and signed as usual; and all indictments shall conclude "against the peace, government and dignity of the state."

37. − 7. The state shall be divided into eight judicial circuits, in manner and form following, to wit; St. Mary's, Charles, and Prince George's counties shall be the first: Anne, Arundel, Howard, Calvert and Montgomery counties shall be the second; Frederick and Carroll counties shall be the third; Washington and Allegany counties shall be the fourth; Baltimore city shall be the fifth; Baltimore, Harford and Cecil counties shall be the sixth; Kent, Queen Anne's, Talbot and Caroline counties shall be the seventh; and Dorchester, Somerset and Worcester counties shall be the eighth; and there shall be elec−ted, as hereinafter directed, for each of the said judicial circuits, except the fifth, one person from among those learned in the law, having been admitted to practice in this state, and who shall have been a citizen of this state at least five years, and above the age of thirty years at the time of his election, and a resident of the judicial circuit, to be judge thereof; the said judges shall be styled circuit judges, and shall respectively hold a term of their courts at least twice in each year, or oftener if required by law, in each county composing their respective circuits; and the said courts shall be called circuit courts for the county in which they may be held, and shall have and exercise in the several counties of this state, all the power, authority and jurisdiction which the county courts of this state now have and exercise, or which may hereafter be prescribed by law, and the said judges in their re−spective circuits, shall have and exercise all the power, authority and jurisdiction of the present court of chancery of Maryland; provided, nevertheless, that Baltimore county court may hold its sittings within the limits of the city of Baltimore, until provision shall be made by law for the location of a county seat within the limits of the said county proper, and the erection of a court house and all other appropriate buildings, for the convenient administration of justice in said court.

38. − 8. The judges of the several judicial circuits shall be citizens of the United States, and shall have resided five years in this state, and two years in the judicial circuit for which they may be respectively elected, next before the time of their election, and shall reside therein while they continue to act as judges; they shall be taken from among those who, having the other qualifications herein prescribed, are most distinguished for integrity, wisdom and sound legal knowledge, and shall be elected by the qualified voters of the said circuits, and shall hold their offices for the term of ten years, removable for misbehaviour, on conviction in a court of law or by the governor, upon the address of the general assembly, provided that two−thirds of the members of each house shall concur in such address, and the said judges shall each receive a salary of two thousand dollars a year, and the same shall not be increased or diminished during the time of their continuance in office; and no judge of any court in this state, shall receive any perquisite, fee, commission or reward, in addition thereto, for the performance of any judicial duty.

39. − 9. There shall be established for the city of Baltimore one court of law, to be styled "the court of common pleas," which shall have civil jurisdiction in all suits where the debt or damage claimed shall be over one hundred dollars, and shall not exceed five hundred dollars; and shall, also, have jurisdiction in all cases of appeal from the judgment of justices of the peace in the said city, and shall have jurisdiction in all applications for the benefit of the insolvent laws of this state, and the supervision and control of the trustees thereof.

40. − 10. There shall also be established, for the city of Baltimore, another court of law, to be styled the superior

court of Baltimore city, which shall have jurisdiction over all suits where the debt or damage claimed shall exceed the sum of five hundred dollars, and in case any plaintiff or plain−tiffs shall recover less than the sum or value of five hundred dollars, he or they shall be allowed or adjudged to pay costs in the discretion of the court. The said court shall also have jurisdiction as a court of equity within the limits of the said city, and in all other civil cases which have not been heretofore assigned to the court of common pleas.

41. − 11. Each of the said two courts shall consist of one judge, who shall be elected by the legal and qualified voters of the said city, and shall bold his office for the term of ten years, subject to the provisions of this constitution, with regard to the election and qualification of judges and their removal from office, and the salary of each of the said judges shall be twenty−five hundred dollars a year; and the legislature shall, wherever it may think the same proper and expedient, provide, by law, another court for the city of Baltimore, to consist of one judge to be elected by the qualified voters of the said city, who shall be subject to the same constitutional provisions, hold his office for the same term of years, and receive the same compensation as the judge of the court of common pleas of the said city, and the said court shall have such jurisdiction and powers as may be prescribed by law.

42. − 12. There shall also be a criminal court for the city of Baltimore, to be styled the criminal court of Baltimore, which shall consist of one judge, who shall also be elected by the legal and qualified voters of the said city, and who shall have and exercise all the jurisdiction now exercised by Baltimore city court, and the said judge shall receive a salary of two thousand dollars a year, and shall be subject, to the provisions of this constitution with regard to the election and qualifications of judges, term of office, and removal therefrom.

43. − 13. The qualified voters of the city of Baltimore, and of the several counties of the state, shall, on the first, Wednesday of November, eighteen hundred and fifty−one, and on the same day of the same month in, every fourth year forever thereafter, elect three men to be judges of the orphans' court of said city and counties respectively, who shall be citizens of the state of Maryland, and citizens of the city or county for which they may be severally elected at the time of their eiection. They shall have all the powers now vested in the orphans' courts of this state, subject to such changes therein as the legislature may prescribe, and each of said judges shall be paid at a per diem rate, for the time they are in session, to be fixed by the legislature, and paid by the said counties and city respectively.

44. − 14. The legislature, at its first session after the adoption of this constitution, shall fix the number of justices of the peace and constables for each ward of the city of Baltimore, and for each election district in the several counties, who shall be elected by the legal and qualified voters thereof respectively, at the next general election for delegates thereafter, and shall hold their offices for two years from the time of their election, and until their successors in office are elected and qualified; and the legislature may, from time to time, increase or diminish the number of justices of the peace and constables to be elected in the several wards and election districts, as the wants and interests of the people may require. They shall be, by virtue of their offices, conservators of the peace in the said counties and city respectively, and shall have such duties and compensation as now exist, or may be provided for by law. In the event of a vacancy in the office of a justice of the peace, the governor shall appoint a person to serve as justice of the peace, until the next regular election of said officers, and in case of a vacancy in the office of constable, the county commissioners of the county, in which a vacancy may occur, or the mayor and city council of Baltimore, as the case may be, shall appoint a person to serve as constable until the next regular election thereafter for said officers. An appeal shall lie in all civil cases from the judgment of a justice of the peace to the circuit court, or, to the court of common pleas of Baltimore city, as the case way be, and on all such appeals, either party shall be entitled to a trial by jury, according to the laws now existing, or which way be hereafter enacted. And the mayor and city council may provide, by ordinance, from time to time, for the creation and government of such temporary additional police, as they may deem necessary to preserve the public peace.

45. − 15. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consan−guinity, within such degrees as may be prescribed by law, or where he shall have been of counsel in the case and whenever any of the judges of the circuit courts, or of the courts for Baltimore city, shall be thus disqualified, or whenever, by reason of sickness, or any other cause, the said judges, or any of them, may be unable to sit in any cause, the parties may, by consent, appoint a proper person to try the said cause, or the judges, or any of them, shall do so when directed by law.

46. − 16. The present chancellor and the register in chancery, and, in the event of any vacancy in their respective offices, their successors in office respectively, who are to be appointed as at present, by the governor and senate,

shall continue in office, with the powers and compensation as at present established, until the expiration of two years after the adoption of this constitution by the people, and until the, end of the session of the legislature next thereafter, after which the said offices of chancellor and register shall be abolished. The legislature shall, in the mean time, provide by law for the recording, safe−keeping, or other disposition, of the records, decrees and other proceedings of the court of chancery, and for the copying and attestation thereof, and for the custody and use of the great seal of the state, when required, after the expiration of the said two years, and for transmitting to the said counties, and to the city of Baltimore, all the cases and proceedings in said court then undisposed of and unfinished, in such manner, and under such regulations as may be deemed necessary and proper: Provided, that no new business shall originate in the said court, nor shall any cause be removed to the same from any other court, from and after the ratification of this constitution.

47. − 17. The first election of judges, clerks, registers of wills, and all other officers, whose election by the people is provided for in this article of the constitution, except justices of the peace and constables, shall take place throughout the state on the first Wednesday of November next after the ratification of this constitution by the people.

48. − 18. In case of the death, resignation, removal, or other disqualification of a judge of any of the courts of law, the governor, by and with the advice and consent of the senate, shall thereupon appoint a person, duly quali−fied, to fill said office until the next general election for delegates thereafter; at which time an election shall be held as hereinbefore prescribed, for a judge, who shall hold the said office for ten years, according to the provisions of this constitution.

49. − 19. In case of the death, resignation, removal, or other disqualification of the judge of an orphans' court, the vacancy shall be filled by the appointment of the governor, by and with the advice and consent of the senate.

50. − 20. Whenever lands lie partly in one county, and partly in another or partly in a county and partly in the city of Baltimore, or whenever persons proper to be made defendants to proceedings in chancery, reside some in one county and some in another, that court shall have jurisdiction in which proceedings shall have been first commenced, subject to such rules, regulations and alterations as may be prescribed by law.

51. − 21. In all suits or actions at law, issues from the orphans' court or from any court sitting in equity, in petitions for freedom, and in all pre−sentments and indictments now pending, or which may be pending at the time of the adoption of this constitution by the people, or which may hereafter be instituted in any of the courts of law of this state, having jurisdiction thereof, the judge or judges thereof, upon suggestion in writing, if made by the state's attorney, or the prosecutor for the state, or upon suggestion in writing, supported by affidavit, made by any of the parties thereto, or other proper evidence, that a fair and impartial trial cannot be had in the court where such suit or action at law, issues or petitions, or presentment and indictment is depending, shall order and direct the record of proceedings in such suit or action, issues or petitions, presentment or indictment, to be transmitted to the court of any adjoining county; provided, that the removal in all civil causes be confined to an adjoining county within the judicial circuit, except as to the city of Baltimore, where the removal may be to an adjoining county, for trial, which court shall hear and determine the same in like manner as if such suit or action, issues or petitions, presentment or indictment, had been originally instituted therein; and provided also, that such suggestion shall be made as aforesaid, before or during the term in which the issue or issues may be joined in said suit or action, issues or petition, presentment or indictment, and that such further remedy in the premises may be provided by law, as the legislature shall from time to time direct and enact.

52. − 22. All election of judges, and other officers provided for by this constitution, shall be certified, and the returns made by the clerks of the respective counties to the governor, who shall issue commissions to the different persons for the offices to which they shall have been respectively elected; and in all such elections, the person having the greatest number of votes, shall be declared to be elected.

53. − 23. If, in any case of election for judges, clerks of the courts of law and registers of wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the governor to order a new election; and in case of any contested election, the governor shall send the returns to the house of delegates, who shall judge of the election and qualification of the candidates at such election.

MASCULINE. That which belongs to the male sex.

2. The masculine sometimes includes the feminine, vide an example under the article Man, and see also the articles Gender, Worthiest of blood; Poth. Intr. au titre 16, des Testamens et Donations Testamentaires, n. 170; Ayl, Pand. 57; 4 C. & P. 216; S. C. 19 E. C. L. R. 551 3 Fred. Code, pr. 1, b. 1, t. 4, s. 3; 3 Brev. R. 9.

MASSACHUSETTS. One of the original states of the United States of America. The colony or province of Massachusetts was included in a charter granted by James the First, by which its territories were extended in breadth from the 40th to the 48th degree of north latitude, and in length by all the breadth aforesaid throughout the mainland from sea to sea. This charter continued until 1684. Holmes' Annals, 412; 1 Story, Const. _71. In 1691 William and Mary granted a new charter to the colony, and henceforth it became known as a province, and continued to act under this charter till after the Revolution. 1 Story, Const. _71.

2. The constitution of Massachusetts was adopted by a convention begun and held at Cambridge, on the first of September, 1779, and continued, by adjournment, to the second of March, 1780.

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

4. − 1st. The department of legislation is formed by two branches, a senate and house of representatives, each of which has a negative on the other, and both are styled The General Court of Massachusetts. Part 2, c. 1, s. 1.

5. − 1. The senate is elected by the qualified electors, and is composed of forty persons to be counsellors and senators for the year ensuing their election. Part 2, c. 1, s. 2, art. 1.

6. − 2. The House of representatives is composed of an indefinite number of persons elected by the towns in proportion to their population. Part 2, c. 1, s. 3, art. 2.

7. − 2d. The executive power is vested in a governor, lieutenant governor and council.

8. − 1. The supreme executive magistrate is styled The Governor of the Commonwealth of Massachusetts. He is elected yearly by the qualified electors. Part 2, c. 2, s. 1. He is invested with the veto power. Part 2, c. 1, s. 1, art. 2.

9. − 2. The electors are required to elect annually a lieutenant governer. When the office of governor happens to be vacant he acts as governor, and at other times he is a member of the council. Part 2, c. 2, s. 2, art. 2 and 3.

10. − 3. The council consists of nine persons chosen annually by the general court; they mast 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 and 2.

11. − 3d. The judicial power. The third chapter of part second of the constitution makes the following provisions in relation to the judiciary:

Art. 1. The tenure that all commissioned officers shall, by law, have in their office, shall be expressed in their respective commissions; all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behaviour; excepting such concerning whom there is different provision made in this constitution; Provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

12. − 2. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

13. − 3. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of jus−tices of the peace shall expire and become void in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well−being of the commonwealth.

14. − 4. The judges of probates of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people may require; and the legislature shall, from time to time hereafter, appoint such times and places: until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

15. − 5. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

MASTER. This word has several meanings. 1. Master is one who has control over a servant or apprentice. A master stands in relation to his apprentices, in loco parentis, and is bound to fulfil that relation, which the law generally enforces. He is also entitled to be obeyed by his apprentices, as if they were his children. Bouv. Inst. Index, h. t.

2. − 2. Master is one who is employed in teaching children, known generally as a schoolmaster; as to his powers,

see Correction.

3. − 3. Master is the name of an officer: as, the ship Benjamin Franklin, whereof A B is master; the master of the rolls; master in chancery, &c.

4. − 4. By master is also understood a principal who employs another to perform some act or do something for him. The law having adopted the maxim of the civil law, qui facit per alium facit per se; the agent is but an instrument, and the master is civilly responsible for the act of his agent, as if it were his own, when he either commands him to do an act, or puts him in a condition, of which such act is a result, or by the absence of due care and control, either previously in the choice of his agent, or immediately in the act itself, negligently suffers him to do an injury. Story, Ag. _454, note; Noy's Max. c. 44; Salk. 282; 1 East. R. 106; 1 Bos. & Pul. 404; 2 H. Bl. 267; 5 Barn. & Cr. 547; 2 Taunt. R. 314; 4 Taunt. R. 649; Mass. 364, 385; 17 Mass. 479, 509; 1 Pick. 47 5; 4 Watts, 222; 2 Harr. & Gill, 316; 6 Cowen, 189; 8 Pick. 23; 5 Munf. 483. Vide Agent; Agency; Driver; Servant.

MASTER AT COMMON LAW, Engl. law. An officer of the superior courts of law, who has authority for taking affidavits sworn in court, and administering a variety of oaths; and also empowered to compute principal and interest on bills of exchange and other engagements, on which suit has been brought; he has also the power of an examiner of witnesses going abroad, and the like.

MASTER IN CHANCERY. An officer of the court of chancery.

2. The origin of these officers is thus accounted for. The chancellor from the first found it necessary to have a number of clerks, were it for no other purpose, than 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 interlocu−tory 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. 8 1 Smith's Ch. Pr. 9, 19.

3. In England there are two kinds of masters in chancery, the ordinary, and the extraordinary..

4. − 1. The masters in ordinary execute the orders of the court, upon ref−erences made to them, and certify in writing in what manner they have executed such orders. 1 Sm. Ch. Pr. 9.

5. − 2. The masters extraordinary perform the duty of taking affidavits touching any matter in or relating to the court of chancery, taking the acknowledgment of deeds to be enrolled in the said court, and taking such recognizances, as may by the tenor of the order for entering them, be taken before a master extraordinary. 1 Sm. Ch. Pr. 19. Vide, generally, 1 Harg. Law Tr. 203, a Treatise of the Maister of the Chauncerie.

MASTER OF THE ROLLS. Eng. law. An officer who bears this title, and who acts as an assistant to the lord chancellor, in the court of chancery.

2. This officer was formerly one of the clerks in chancery whose duty was principally confined to keeping the rolls; and when the clerks in chancery became masters, then this officer became distinguished as master of the rolls. Vide Master in Chancery.

MASTER OF A SHIP, mar. law. The commander or first officer of a ship; a captain. (q. v.)

2. His rights and duties have been considered under the article Captain. Vide also, 2 Bro. Civ. Adm. Law, 133; 3 Kent, Com. 121; Wesk. Ins. 360; Park. on Ins. Index, h. t.; Com. Dig. Navigation, I 4.

MATE. The second officer on board of a merchant ship or vessel.

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

3. When, on the death of the master, the mate assumes the command, he succeeds to the rights and duties of the principal officer. 1 Sumn. 157; 3 Mason, 161; 4 Mason, 196; See 7 Conn. 239; 4 Mason, 641 4 Wash. C. C. 838.

MATER FAMILIAS, civil law. The mother of a family, and, by extension, the mistress of a family.

MATERIAL MEN. This name is given to persons who furnish materials for the purpose of constructing or erecting ships, houses, and other buildings.

2. By the common law material men have a lien on a foreign ship for supplies of materials furnished for such ship, which may be recovered in the admiralty. 9 Wheat. 409. But they have no lien for furnishing materials for repairs of domestic ships. Wheat. 438.

3. In several of the states, laws have been enacted giving material men a lien on houses and other buildings when they have furnished materials for constructing the same.

MATERIALITY. That which is important; that which is not merely of form but of substance.

2. When a bill for discovery has been filed, for example, the defendant must answer every material fact which is

charged in the bill, and the test in these cases seems to be that when, if the defendant should answer in the affirmative, his answer would be of use to the plaintiff, the answer would be mate−rial, and it must be made. 4 Price, R. 364; 13 Price, R. 291; 2 Y. & J. 385.

3. In order to convict a witness of a perjury, it is requisite to prove that the matter he swore to was material to the question then depending. Vide 3 Chit. Pr. 233; 3 Dowl. 104; 10 Bing. 340; Perjury.

MATERIALS. Everything of which anything is made.

2. When materials are furnished to a workman he is bound to use them according to his contract, as a tailor is bound to employ the cloth I furnish him with, to make me a coat that shall fit me, for if he so make it that I cannot wear it, it is not a proper employment of the materials. But if the undertaker use ordinary skill and care, he will not be responsible, although the mate−rials may be injured; as, if a gem be delivered to a jeweler, and it is broken without any unskilfulness, negligence or rashness of the artisan, he will not be liable. Poth. Louage, n. 428.

3. The workman is to use ordinary diligence in the care of the materials entrusted with him, or to exercise that caution which a prudent man takes of his own affairs, and he is also bound to preserve them from any unexpected danger to which they may be exposed. 1 Gow. R. 30; 1 Camp. 138.

4. When there is no special contract between the parties, and the materials perish while in the possession of the workman or undertaker, without his default, either by inevitable casualty, by internal defect, by superior force, by robbery or by any peril not guarded against by ordinary diligence, he is not responsible. This is the case only when the material belongs to the em−ployer and the workman only undertakes to put his work upon it. But a distinction must be observed in the case when the employer has engaged a workman to make him an article out of his own materials, for in that case the employer has no property in it, until the work be completed, and the article be deli−vered to him; if, in the mean time, the thing perishes, it is the loss of the workman, who is wholly its owner, according to the maxim res perit domino. In the former case the employer is the owner; in the latter the workman; in the first case it is a bailment, in the second a sale of the thing in futuro. Domat. B. 1, t. 4, _7, n. 3; Id. B. 1, t. 4, _8, n. 10.

5. Another distinction must be made in the case when the thing given by the employer was to become the property of the workman, and an article was to be made out of similar materials, and before its completion it perished. In this case the title to the thing having passed to the workman, the loss must be his. 1 Blackf. 353; 7 Cowen, 752, 756, note; 21 Wend. 85; 3 Mason, 478; Dig. 19, 2, 31; 1 Bouv. Inst. 1006−7.

6. 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. That which belongs to, or comes from the mother: as, maternal authority, maternal relation, maternal estate, maternal line. Vide Line.

MATERNAL PROPERTY. 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. The state or condition of a mother.

2. It is either legitimate or natural. The former is the condition of the mother who has given birth to legitimate children, while the latter is the condition of her who has given birth to illegitimate children. Maternity is always certain, while the paternity (q. v.) is only presumed.

MATERTERA. Maternal aunt; the sister of one’s mother. Inst. 3, 4, 3; Dig. 38, 10, 10, 14.

MATHEMATICAL EVIDENCE. That evidence which is established by a demonstration. It is used in contradistinction to moral evidence. (q. v.)

MATRICULA, civil law. A register in which are inscribed the names of persons who become members of an association or society. Dig. 50, 3, 1. In the ancient church there was matricula clericorum, which was a catalogue of the officiating clergy; and matricula pauperum, a list of the poor to be relieved; hence to be entered in the university is to be matriculated.

MATRIMONIAL CAUSES. In the English ecclesiastical courts there are five kinds of causes which are classed under this head. 1. Causes for a malicious jactitation. 2. Suits for nullity of marriage, on account of fraud, incest, or other bar to the marriage. 2 Hagg. Cons. Rep. 423. 3. Suits for restitution of conjugal rights. 4. Suits for divorces on account of cruelty or adultery, or causes which have arisen since the marriage. 5. Suits for alimony.

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

used.

2. Among the Romans this word was employed to signify marriage; and it was so called because this conjunction was made with the design that the wife should become a mother. Inst. 1, 9, 1.

MATRIMONY. See Marriage.

MATRINA. A godmother.

MATRON. A married woman, generally an elderly married woman.

2. By the laws of England, when a widow feigns herself with child, in order to exclude the next heir, and a supposititious birth is expected, then, upon the writ de ventre inspiciendo, a jury of women is to be, impanneled to try the question, whether with child or not. Cro, Eliz. 566. So when a woman was sentenced to death, and she declared herself to be quick with child, a jury of matrons is impanneled to try whether she be or be not with child. 4 Bl. Com. 395. See Pregnancy; Quick with child.

MATTER. Some substantial or essential thing, opposed to form; facts.

MATTER IN PAYS. Literally, matter in the country; matter of fact, as distinguished from matter of law, or matter of record. Steph. Pl. 197. Vide Country.

MATTER IN DEED. Matter in deed is such matter as may be proved or established by a deed or specialty. In another sense it signifies matter of fact, in contradistinction to matter of law. Co. Litt. 320; Steph. Pl. 197.

MATTER OF FACT, pleading. Matter which goes in denial of a declaration, and Dot in avoidance of it. Bac. Ab. Pleas, &c. G 3; Hob. 127.

MATTER OF LAW, pleading. That which goes in avoidance of a declaration or other pleading, on the ground that the law does not authorize them. It does not deny the matter or fact contained in such pleading, but admitting them avoids them. Bac. Ab. Pleas, &c. G 3. Matter of law, is that which is referred to the decision of the court; matter of fact that which is submitted to the jury.

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.

MATTER, IMPERTINENT, Equity pleading. That which is altogether irrelevant to the case, that does not appertain or belong to it; id est, qui ad rem non pertinet. 4 Bouv. Inst. n. 4163 . See Impertinent.

MATTER, SCANDALOUS, equity pleading. A false and malicious statement of facts, not relevant to the cause. But nothing which is positively relevant, however harsh or gross the charge may be, can be considered scandalous. 4 Bouv. Inst. n. 4163.

2. A bill cannot by the general practice, be referred for impertinence after the defendant has answered, or submitted to answer, but it may be referred for scandal at any time, and even upon the application of a stranger to the suit, for he has the right to prevent the records of the court from being made the vehicle of spreading slanders against himself. Id. n. 41f 64.

MATURITY. The time when a bill or note becomes due. In order to bind the endorsers such note or bill must be protested, when not paid, on the last day of grace. See Days of grace.

MAXIM. An established principle or proposition. A principle of law universally admitted, as being just and consonant With reason.

2. Maxims in law are somewhat like axioms in geometry. 1 Bl. Com. 68. They are principles and authorities, and part of the general customs or common law of the land; and are of the same strength as acts of parliament, when the judges have determined what is a maxim; which belongs to the judges and not the jury. Terms do Ley; Doct. & Stud. Dial. 1, c. 8. Maxims of the law are holden for law, and all other cases that may be applied to them shall be taken for granted. 1 Inst. 11. 67; 4 Rep. See 1 Com. c. 68; Plowd. 27, b.

3. 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 bow 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.

4. The alterations of any of the maxims of the common law are dangerous. 2 Inst. 210. The following are some of the more important maxims.

A communi observantia non est recedendum. There should be no departure from common observance or usage. Co. Litt. 186.

A l'impossible nul n'est tenu. No one is bound to do what is impossible. 1 Bouv. Inst. n. 601.

A verbis legis non est recedendum. From the words of the law there must be no departure. Broom's Max. 268; 5 Rep. 119; Wing. Max. 25.

Absentia ejus qui reipublicae causa abest, neque ei, neque alii damnosa esse debet. The absence of him who is employed in the service of the state, ought not to be burdensome to him nor to others. Dig. 50, 17, 140.

Absoluta sentetia expositore non indiget. An absolute unqualified sentence or proposition, needs no expositor. 2 Co. Inst. 533.

Abundaans cautela non nocet. Abundant caution does no harm. 11 Co. 6.

Accessorius sequit naturam sui principalis. An accessary follows the nature of his principal. 3 Co. Inst. 349.

Accessorium non ducit sed sequitur suum principale. The accessory does not lead, but follow its principal. Co. Ltt 152.

Accusare nemo debet se, nisi coram Deo. No one ought to accuse himself, unless before God. Hard. 139.

Actio exteriora indicant interiora secreta. External actions show internal secrets. 8 Co. R. 146.

Actio non datur non damnificato. An action is not given to him who has received no damages.

Actio personalis moritur cum persona. A personal action dies with the person. This must be understood of an action for a tort only.

Actor qui contra regulam quid adduxit, non est audiendus. He ought not to be heard who advances a proposition contrary to the rules of law.

Actor sequitur forum rei. The plaintiff must follow the forum of the thing in dispute.

Actore non probante reus absolvitur. When the plaintiff does not prove his case, the defendant is absolved.

Actus Dei nemini facit injuriam. The act of God does no injury; that is, no one is responsible for inevitable accidents. 2 Blacks. Com. 122. See Act of God.

Actus incaeptus cujus perfectio pendet, ex voluntate partium, revocari potest; si autem pendet ex voluntate tertia personae, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends upon the will of the parties, may be recalled; but if it depend on the consent of a third person, or of a contingency, it cannot be recalled. Bacon's Max. Reg. 20.

Actus me invito factus, non est meus actus. An act done by me against my will, is not my act.

Actus non reum facit, nisi mens sit rea. An act does not make a person guilty, unless the intention be also guilty. This maxim applies only to criminal cases; in civil matters it is otherwise. 2 Bouv. Inst. n. 2211.

Actus legitimi non recipiunt modum. Acts required by law to be done, admit of no qualification. Hob. 153.

Actus legis nemini facit injuriam, The act of the law does no one an injury. 5 Co. 116.

Ad proximum antecedens fiat relatio, nisi impediatur sententia. The antecedent bears relation to what follows next, unless it destroys the meaning of the sentence.

Ad quaestiones facti non respondent judices; ad quaestione legis non respondent juratores. The judges do not answer to questions of fact; the jury do not answer to questions of law. Cu. Litt. 295.

Aestimatio praeteriti delicti ex postremo facto nunquam crescit. The estimation of a crime committed never increased from a subsequent fact. Bac. Max. Reg. 8.

Ambiguitas verborum latens verificatione suppletur; nam quod exfacto oritur ambiguum verificatione facti tollitur. A hidden ambiguity of the words is supplied by the verification, for whatever ambiguity arises concerning the deed itself is removed by the verification of the deed. Bacon's Max. Reg. 23.

Aqua cedit solo. The water yields or accompanies the soil. The grant of the soil or land carries the water.

Aqua curit et debet currere. Water runs and ought to run. 3 Rawle, 84, 88.

Aequitas agit in personam. Equity acts upon the person. 4 Bouv. Inst. n. 3733.

Aequilas sequitier legem. Equity follows the law. 1 Story, Eq. Jur. _64.; 3 Wooddes. Lect. 479, 482.

Aequum et bonum, est lex legum. What is good and equal, is the law of laws. Hob. 224.

Affirmati, non neganti incumbit probatio. The proof lies upon him who affirms, not on him who denies.

Aliud est celare, aliud tacere. To conceal is one thing, to be silent another.

Alternatica petitio non est audienda. An alternate petition is not to be heard. 5 Co. 40.

Animus ad se omne jus ducit. It isto the intention that all law applies.

Animus moninis est anima scripti. The intention of the party is the soul of the instrument. 3 Bulstr. 67.

Apices juris non sunt jura. Points of law are not laws. Co. Litt. 304; 3 Scott, N. P. R. 773.

Arbitrium est judicium. An award is a judgment. Jenk Cent. 137.

Argumentum majori ad minus negative non valet; valet Š converso. An argument from the greater to the less is of no force negatively; conversely it is. Jenk. Cent. 281.

Argumentum divisione est fortissimum in jure. An argument arising from a division is most powerful in law. 6

Co. 60.

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience. Co. Litt. 258.

Argumentum ab impossibili plurmum valet in lege. An argument deduced from authority great avails in law. Co. Litt. 92.

Argumentum ab authoritate est fortissimum in lege. An argument drawn from authority is the strongest in law. Co. Litt. 254.

Argumentum simili valet in lege. An argument drawn from a similar case, or analogy, avails in law. Co. Litt. 191.

Augupia verforum sunt judice indigna. A twisting of language is unworthy of a judge. Hob. 343.

Bona fides non patitur, ut bis idem exigatur. Natural equity or good faith do no allow us to demand twice the payment of the same thing. Dig. 50, 17, 57.

Boni judicis est ampliare jurisdictionem. It is the part of a good judge to enlarge his jurisdiction; that, his remedial authority. Chan. Prec. 329; 1 Wils 284; 9 M. & Wels. 818.

Boni judicis est causas litium derimere. It is the duty of a good judge to remove the cause of litigation. 2 Co. Inst. 304.

Bonum defendentis ex integr caus , malum ex quolibet defectu. The good of a defendant arises from a perfect case, his harm from some defect. 11 Co. 68.

Bonum judex secundum aequum et bonum judicat, et aequitatem stricto juri praefert. A good judge decides according to justice and right, and prefers equity to strict law. Co. Litt. 24.

Bonum necessarium extra terminos necessitatis non est bonum. Necessary good is not good beyond the bounds of necessity. Hob. 144.

Casus fortuitus non est sperandus, et nemo tenetur devinare. A fortuitous event is not to be foreseen, and no person is held bound to divine it. 4 Co. 66.

Casus omissus et oblivione datus dispositioni communis juris relinquitur. A case omitted and given to oblivion is left to the disposal of the common law. 5 Co. 37.

Catalla justŠ possessa amitti non possunt. Chattels justly possessed cannot be lost. Jenk. Cent. 28.

Catalla repuntantur inter minima in lege. Chattels are considered in law among the minor things. Jenk Cent. 52.

Causa proxima, non remota spectatur. The immediate, and not the remote cause, is to be considered. Bac. Max. Reg. 1.

Caveat emptor. Let the purchaser beware.

Cavendum est … fragmentis. Beware of fragments. Bacon, Aph. 26.

Cessante causa, cessat effectus. The cause ceasing, the effect must cease.

C'est le crime qui fait la honte, et non pas l'echafaud. It is the crime which causes the hsame, and not the scaffold.

Charta de non ente non valet. A charter or deed of a thing not in being, is not valid. Co. Litt. 36.

Chirographum apud debitorem repertum praesumitur solutum. A deed or bond found with the debtor is presumed to be paid.

Circuitus est evitandus. Circuity is to be avoided. 5 Co. 31.

Clausula inconsuetae semper indicunt suspicionem. Unusual clauses always induce a suspicion. 3 Co. 81.

Clausula quae abrogationem excludit ab initio non valet. A clause in a law which precludes its abrogation, is invalid from the beginning. Bacon's Max. Reg. 19, p. 89.

Clausula vel dispositio inutilis per praesumptionem remotam vel causam, ex post facto non fulcitur. A useless clause or disposition is not supported by a remote presumption, or by a cause arising afterwards. Bacon's Max. Reg. 21.

Cogitationis poenam nemo patitur. No one is punished for merely thinking of a crime.

Commodum ex injuri$f$ su$f$ non habere debet. No man ought to derive any benefit of his own wrong. Jenk. Cent. 161.

Communis error facit jus. A common error makes law. What was af first ellegal, being repeated many times, is presumed to have acquired the force of usage, and then it would be wrong to depart from it. The converse of this maxim is communis error no facit just. A common error does not make law.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any

proof. Jenk. Cent. 102; 11 Co. 30.

Confirmare nemo potest priusquam just ei acciderit. No one can confirm beforethe right accrues to him. 10 Co. 48.

Confirmatio est nulla, ubi donum praecedens est invalidum. A confirmation is null where the preceding gift is invalid. Co. Litt. 295.

Conjunctio mariti et faeminae est de jure naturae. The union of a man and a woman is of the law of nature.

Consensus non concubitus facit nuptiam. Consent, not lying together, constitutes marriage.

Consensus facit legem. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.

Consensus tollit errorem. Consent removes or obviates a mistake. Co. Litt. 126.

Consentientes et agentes pari poenſ plectentur. Those consenting and those perpetrating are embraced in the same punishment. 5 Co. 80.

Consequentiae non est consequentia. A consequence ought not to be drawn from another consequence. Bacon, De Aug. Sci. Aph. 16.

Consilii, non fraudulenti, nulla est obligatio. Advice, unless fraudulent, does not create an obligation.

Constructio contra rationem introducta, potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called an usurpation than a custom. Co. Litt. 113.

Construction legis non facit injuriam. The construction of law works not an injury. Co. Litt. 183; Broom's Max. 259.

Consuetudo debet esse certa. A custom ought to be certain. Dav. 33.

Consuetudo est optimus interpres legum. Custome is the best expounder of the law. 2 Co. Inst. 18; Dig. 1, 3, 37; Jenk. Cent. 273.

Consuetudo est altera lex. Custom is another law. 4 Co. 21.

Consuetudo loci observanda est. The custom of the place is to be observed. 6 Co. 67.

Consuetudo praescripta et legitima vincit legem. A prescriptive and legitimate custom overcomes the law. Co. Litt. 113.

Consuetudo semel reprobata non potest amplius induci. Custom once disallowed cannot again be produced. Dav. 33.

Consuetudo voluntis ducit, lex nolentes trahit. Custom leads the willing, law, law compels or draws the unwilling. Jenk. Cent. 274.

Contestio litis eget terminos contradictaris. An issue requires terms of contradiction; that is, there can be no issue without an affirmative on one side and a negative on the other.

Contemporanea expositio est optima et fortissima in lege. A contemporaneous exposition is the best and most powerful in the law. 2 Co. Inst. 11.

Contr… negantem principia non est disputandum. There is no disputing against or denying principles. Co. Litt. 43.

Contr… non volentem agere nulla currit praescriptio. No prescription runs against a person unable to act. Broom's Max. 398.

Contr… veritatem lex numquam aliquid permittit. The law never suffers anything contrary to truth. 2 Co. Inst. 252. But sometimes it allows a conclusive presumption in opposition to truth. See 3 Bouv. Inst. n. 3061.

Contractus legem ex conventione accipiunt. The agreement of the parties makes the law of hte contract. Dig. 16, 3, 1, 6.

Contractus ex turpi causſ, vel contr… bonos mores nullus est. A contract founded on a base and unlawful consideration, or against good morals, is null. Hob. 167; Dig. 2, 14, 27, 4.

Conventio vincit legem. The agreement of the parties overcomes or prevails against the law. Story, Ag. _ See Dig. 16, 3, 1, 6.

Copulatio verborum indicat acceptionem in eodem sensu. Coupling words together shows that they ought to be understood in the same sense. Bacom's Max. in Reg. 3.

Corporalis injuria non recipit aestimationem de futuro. A personal injury does no receive satisfaction from a future course of proceding. Bacon's Max. in Reg. 6.

Cuilibet in arte sua herito credendum est. Every one should be believed skilful in how own art. Co. Litt. 125. Vide Experts; Opinion.

Cujus est commodum ejus debet esse incommodum. He who receives the benefit should also bear the disadvantage.

Cujus est dare ejus est disponere. He who has a right to give, has the right to dispose of the gift.

Cujus per errorem dati repetitio est, ejus consult_ dati donatio est. Whoever pays by mistake what he does not owe, may recover it back; but he who pays, knowing he owes nothing; is presumed to give.

Cujus est solum, ejus est usque ad caelum. He who owns the soil, owns up to the sky. Co. Litt. 4 a; Broom's Max. 172; Shep. To. 90; 2 Bouv. Inst. n. 15, 70.

Cujus est divisio alterius est electio. Which ever of two parties has the division, the other has the choice. Co. Litt. 166.

Cujusque rei potissima pars principium est. The principal part of everything is the beginning. Dig. 1, 2, 1; 10 Co. 49.

Culpa tenet suos auctores. A fault finds its own.

Culpa est immiscere se rei ad se non pertinenti. It is a fault to meddle with what does not belong to or does not concern you. Dig. 50, 17, 36.

Culpa paena par esto. Let the punishment be proportioned to the crime.

Culpa lata aequiparatur dolo. A concealed fault is equal to a deceit.

Cui pater est populus non habet ille patrem. He to whom the people is father, has not a father. Co. Litt. 123.

Cum confitente sponte mitius est agendum. One making a voluntary confession, is to be dealt with more mercifully. 4 Co. Inst. 66.

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est. When two things repugnant to each other are found in a will, the last is to be confirmed. Co. Litt. 112.

Cum legitimae nuptiae factae sunt, patrem liberi sequuntur. Children born under a legitimate marriage follow the condition of the father.

Cum adsunt testimonia rerum quid opus est verbis. When the proofs of facts are present, what need is there of words. 2 Buls. 53.

Curiosa et captiosa intepretatio in lege reprobatur. A curious and captious interpretation in the law is to be reproved. 1 Buls. 6.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who neglect their rights.

Cursus curiae est lex curiae. The practice of the court is the law of the court. 3 Buls. 53.

De fide et officio judicis non recipitur quaestio; sed de scientia, sive error sit juris sive facti. Of the credit and duty of a judge, no question can arise; but it is otherwise respecting his knowledge, whether he be mistaken as to the law or fact. Bacon's max. Reg. 17.

De jure judices, de facto juratores, respondent. The judges answer to the law, the jury to the facts.

De minimis non curat lex. The law does not notice or care for trifling matters. Broom's Max. 333; Hob. 88; 5 Hill, N.Y. Rep. 170.

De morte hominis nulla est cunctatio longa. When the death of a human being may be the consequence, no delay is long. Col Litt. 134. When the question is on the life or death of a man, no delay is too long to admit of inquiring into facts.

De non apparentibus et non existntibus eadem est ratio. The reason is the same respecting things which do not appear, and those which do not exist.

De similibus ad similia eadem ratione procedendum est. From similars to similars, we are to proceed by the same rule.

De similibus idem est judicium. Concerning similars the judgment is the same. 7 Co. 18.

Debet esse finis litium. There ought to be an end of law suits. Jenk. Cent. 61.

Debet qui juri subjacere ubi delinquit. Every one ought to be subject to the law of the place where he offends. 3 Co. Inst. 34.

Debile fundamentum, fallit opus. Where there is a weak foundation, the work falls. 2 Bouv. Inst. n. 2068.

Debita sequuntur personam debitoris. Debts follow the person of the. debtor. Story, Confl. of Laws, _362.

Debitor non praesumitur donare. A debtor is not presumed to make a gift. See 1 Kames' Eq. 212; Dig. 50, 16, 108.

Debitum et contractus non sunt nullius loci. Debt and contract are of no particular place.

Delegata potestas non potest delegari. A delegated authority cannot be again delegated. 2 Co. Inst. 597; 5 Bing. N. C. 310; 2 Bouv. Inst. n. 1300.

Delegatus non potest delegare. A delegate or deputy cannot appoint another. 2 Bouv. Inst. n. 1936; Story, Ag. _33.

Derativa potestas non potest esse major primitiva. The power which is derived cannot be greater than that from which it is derived.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. To derogate from a law is to enact something contrary to it; to abrogate a law, is to abolish it entirely. Dig. 50, 16, 102. See 1 Bouv. Inst. n. 91.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. The appointment or designation of one is the exclusion of another; and that expressed makes that which is implied cease. Co. Litt. 210.

Dies dominicus non est juridicus. Sunday is not a day in law. Co. Litt. 135 a; 21 Saund. 291. See Sunday.

Dies inceptus pro completo habetur. The day of undertaking or commencement of the business is held as complete.

Dies incertus pro conditione habetur. A day uncertain is held as a condition.

Dilationes in lege sunt odiosae. Delays in law are odious.

Disparata non debent jungi. Unequal things ought not to be joined. Jenk. Cent. 24. ,

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound which wounds a common right. Dav. 69.

Dissimilum dissimiles est ratio. Of disimilars the rule is dissimilar. Co. Litt. 191.

Divinatio non interpretatio est, quae omnino recedit a litera. It is a guess not interpretation which altogether departs from the letter. Bacon's Max. in Reg. 3, p. 47.

Dolosus versatur generalibus. A deceiver deals in generals. 2 Co. 34.

Dolus auctoris non nocet successori. The fraud of a possessor does not prejudice the successor.

Dolus circuitu non purgator. Fraud is not purged by circity. Bacon's Max. in Reg. 1.

Domus sua cuique est tutissimum refugium. Every man's house is his castle. 5 Rep. 92.

Domus tutissimum cuique refugium atque receptaculum. The habitation of each one is an inviolable asylum for him. Dig. 2, 4, 18.

Donatio perficitur possesione accipientis. A gift is rendered complete by the possession of the receiver. See 1 Bouv. Innt. n. 712; 2 John. 52; 2 Leigh, 337.

Donatio non praesumitur. A gift is not presumed.

Donatur nunquam desinit possidere antequam donatarius incipiat possidere. He that gives never ceases to possess until he that receives begins to possess. Dyer, 281.

Dormiunt aliquando leges, nunquam moriuntur. The laws sometimes sleep, but neyer die. 2 Co. Inst. 161.

Dos de dote peti non debet, Dower ought not to be sought from dower. 4 Co. 122.

Duas uxores eodem tempore habere non potest. It is not lawful to have two wives at one time. Inst. 1, 10, 6.

Duo non possunt in solido unam rem possidere. Two cannot possess one thing each in entirety. Co. Litt. 368.

Duplicationem possibilitatis lex non patitur. It is not allowed to double a possibility. 1 Roll. R. 321.

Ea est accipienda interpretation, qui vitio curet. That interpretation is to be received, which will not intend a wrong. Bacon's Max. Reg. 3, p. 47.

Ei incumbit probatio qui dicit, non qui negat. The burden of the proof lies upon him who affirms, not he who denies. Dig. 22, 3, 2; Tait on Ev. 1; 1 Phil. Ev. 194; 1 Greenl. Ev. _74; 3 Louis. R. 83; 2 Dan. Pr. 408; 4 Bouv Inst. n. 4411.

Ei nihil turpe, cui nihil satis. To whom nothing is base, nothing is sufficient. 4 Co. Inst. 53.

Ejus est non nolle, qui potest velle. He who may consent tacitly, may consent expressly. Dig. 50, 17, 8.

Ejus est periculum cujus est dominium aut commodum. He who has the risk has the dominion or advantage.

Elect… unf vif, non datur recursus ad alteram. When there is concurrence of means, he who has chosen one cannot have recourse to another. 10 Toull. n. 170.

Electio semel facta, et placitum testatum, non patitur regressum. Election once made, and plea witnessed, suffers not a recall. Co. Litt. 146.

Electiones fiant rite et libere sine interruptione aliqua. Elections should be made in due form andfreely, without any interruption. 2 Co. Inst. 169.

Enumeratio infirmat regulam in casibus non enumeratis. Enumeration affirms the rule in cases not enumerated.

Bac. Aph. 17.

Equality is equity. Francis' Max., Max. 3; 4 Bouv. Inst. n. 3725.

Equity suffers not a right without a remedy. 4 Bouv. Inst. n. 3726.

Equity looks upon that as done, which ought to be done. 4 Bouv. Inst. n. 3729; 1 Fonbl. Eq. b. 1, ch. 6, s. 9, note; 3 Wheat. 563.

Error fucatus nudƒ veritate in multis est probabilior; et saepenumero rationibus vincit veritatem error. Error artfully colored is in many things more probable than naked truth; and frequently error conquers truth and reasoning. 2 Co. 73.

Error juris nocet. Error of law is injurious. See 4 Bouv. Inst. n. 3828.

Error qui non resistitur, approbatur. An error not resisted is approved. Doct. & Stud. c. 70.

Error scribentis nocere non debet. An error made by a clerk ought not to injure; a clerical error may be corrected.

Errores ad sua principia referre, est refellere. To refer errors to their origin is to refute them. 3 Co. Inst. 15.

Est autem vis legem simulans. Violence may also put on the mask of law.

Est boni judicis ampliare jurisdictionem. It is the part of a good judge to extend the jurisdiction.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpration is made from antecedents and consequents. 2 Co. Inst. 317.

Ex diuturnitate temporis, amnia praesumuntur solemniter esse acta. From length of time, all things are presumed to have been done in due form. Co. Litt. 6; 1 Greenl. Ev. _20.

Ex dolo malo non oritur action. Out of fraud no action arises. Cowper, 343; Broom's Max. 349.

Ex facto jus oritur. Law arises out of fact; that is, its application must be to facts.

Ex malificio non oritur contractus. A contract cannot arise out of an act radically wrong and illegal. Broom's Max. 851.

Ex multitudine signorum, colligitur identitas vera. From the great number of signs true identity may be ascertained. Bacon's Max. in Reg. 25.

Ex nudo pacto non oritur action. No actions arises on a naked contract without a consideration. See Nudum Pactum.

Ex tota materia emergat resolutio. The construction or resolution should arise out of the whole subject matter.

Ex turpi causa non oritur action. No action arises out of an immoral consideration.

Ex turpi contractu non oritur actio. No action arises on an immoral contract.

Ex uno disces omnes. From one thing you can discern all.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. A wrong in capital cases is excused or palliated which would not be so in civil matters. Bacon's Max. Reg. 7.

Exceptio ejus rei cujus petitiur dissolutio nulla est. There can be no plea of that thing of which the dissolution is sought. Jenk. Cent. 37.

Exceptio falsi omnium ultima. A false plea is the basest of all things.

Exceptio firmat regulam in contrarium. The exception affirms the rule in contrary cases. Bac. Aph. 17.

Exceptio firmat regulam in casibus non exceptis. The exception affirms the rule in cases not excepted. Bac. Aph. 17.

Exceptio nulla est versus actionem quae exceptionem perimit. There can be no plea against an action which entirely destroys the plea. Jenk. Cent. 106.

Exceptio probat regulam de rebus non exceptio. An exception proves the rule concerning things not excepted. 11 Co. 41.

Exceptio quoque regulam declarat. The exception also declares the rule. Bac. Aph. 17.

Exceptio semper ultima ponenda est. An exception is always to be put last. 9 Co. 53.

Executio est finis et fructus legis. An execution is the end and the first fruit ofthe law. Co. Litt. 259.

Executio juris non habet injuriam. The execution of the law causes no injury. 2 Co. Inst. 482; Broom's Max. 57.

Exempla illustrant non restringunt legem. Examples illustrate and do not restrict the law. Co. Litt. 24.

Expedit reipublicae ut sit finis litium. It is for the public good that there be an end of litigation. Co. Litt. 303.

Expressa nocent, non expressa non nocent. Things expressed may be prejudicial; things not expressed are not. See Dig. 50, 17, 195.

Expressio eorum quae tacite insunt nihil operatur. The expression of those things which are tacitly implied operates nothing.

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another.

Expressum facit cessare tacitum. What is expressed renders what is implied silent.

Extra legem positus est civiliter mortuus. One out of the pale of the law, (an outlaw,) is civilly dead.

Extra territorium jus dicenti non paretur impune. One who exercises jurisdiction out of his territory is not obeyed with impunity.

Facta sunt potentiora verbis. Facts are more powerful than words.

Factum … judice quod ad ujus officium non spectat, non ratum est. An act of a judge which does not relate to his office, is of no force. 10 Co. 76.

Factum negantis nulla probatio. Negative facts are not proof.

Factum non dictur quod non perseverat. It cannot be called a deed which does not hold out or persevere. 5 Co. 96.

Factum unius alteri nocere non debet. The deed of one should not hurt the other. Co. Litt. 152.

Facultas probationum non est angustanda. The faculty or right of offering proof is not to be narrowed. 4 Co. Inst. 279.

Falsa demonstratio non nocet. A false or mistaken description does not vitiate. 6T. R. 676; see 2 Story's Rep. 291; 1 Greenl. Ev. _ 301.

Falsa ortho graphia, sive falsa grammatica, non vitiat concessionem. False spelling or false grammar do not vitiate a grant. 9 Co. 48; Sheph. To. 55.

Falsus in uno, falsus in omnibus. False in one thing, false in everything. 1 Sumn. 356.

Fiat justitia ruat caelum. Let justice be done, though the heavens hsould fall.

Felonia implicatur in quolibet proditione. Felony is included orimplied in every treason. 3 Co. Inst. 15.

Festinatio justitiae est noverca infortunii. The hurrying of justice is the stepmother of misfortune. Hob. 97.

Fiat prout, fieri consuerit, nil temere novandum. Let it be done as formerly, let nothing be done rashly. Jenk. Cent. 116.

Fictio est contra veritatem, sed pro veritate habetur. Fiction is aginst the truth, but it is to have truth.

Finis rei attendendus est. The end of a thing is to be attended to. 3 Co. Inst. 51.

Finis finem litibus imponit. The end puts an end to litigation. 3 Inst. 78.

Finis unius diei est principium alterius. The end of one day is the beginning of another. 2 Buls. 305.

Firmior et potentior est operatio legis quam dispositio hominis. The disposition of law is firmer and more powerful than the will of man. Co. Litt. 102.

Flumina et protus publica sunt, ideoque jus piscandi omnibus commune est. Rivers and ports are public, therefore the right of fishing there is common to all.

Faemina ab omnibus officiis civilibus vel publicis remotae sunt. Women are excluded from all civil and public charges or offices. Dig. 50, 17, 2.

Forma legalis forma essentialis. Legal form is essential form. 10 Co. 100.

Forma non observata, inferiur adnullatio actus. When form is not observed a nullity of the act is inferred. 12 Co. 7.

Forstellarius est pauperum depressor, et totius communitatis et patriae publicus inimicus. A forestaller is an oppressor of the poor, and a public enemy to the whole community and the country. 3 Co. Inst. 196.

Fortior est custodia legis quam hominis. The custody of the law is stronger than that of man. 2 Roll. R. 325.

Fortior et potentior est dispositio legis quam hominis. The disposition of the law is stronger and more powerful than that of man. Co Litt. 234.

Fraus est celare fraudem. It is a fraud to conceal a fraud. 1 Vern. 270.

Fraus est odiosa et non praesumenda. Fraud is odious and not to be presumed. Cro. Car. 550.

Fraus et dolus nemini patrocianari debent. Fraud and deceit should excuse no man. 3 Co. 78.

Fraus et jus numquam cohabitant. Fraud and justice never agree together. Wing. 680.

Fraus latet in generalibus. Fraud lies hid in general expressions.

Fraus meretur fraudem. Fraud deserves fraud. Plow. 100. This is very doubtful morality.

Fructus pendentes pars fundi videntur. Hanging fruits make part of the land. Dig. 6, 1, 44; 2 Bouv. Inst. n. 1578. See Larceny.

Fructus perceptos villae non esse constat. Gathered fruits do not make a part of the house. Dig. 19, 1, 17, 1; 2 Bouv. Inst. n. 1578.

Frustr… est potentia quae numcquam venit in actum. The power which never comes to be exercised is vain. 2 Co. 51.

Frustr… feruntur legis nisi subditis et obedientibus. Laws are made to no purpose unless for those who are subject and obedient. 7 Co. 13.

Frustr… legis auxilium quaerit qui in legem committit. Vainly does he who offends against the law, seek the help of the law.

Frustr… petis quoa statim alteri reddere cogeris. Vainly you ask that which you will immediately be compelled to restore to another. Jenk. Cent. 256.

Frustr… probatur quod probatum non relevat. It is vain to prove that which if proved would not aid the matter in question.

Furiosus absentis loco est. The insane is compared to the absent. Dig. 50, 17, 24, 1.

Furiosus solo furore punitur. A madman is punished by his madness alone. Co. Litt. 247.

Furtum non est ubi initium habet detentionis per dominum rei. It is not theft where the commencement of the detention arises through the owner of the thing. 3 Co. Inst. 107.

Generale tantum valet in generalibus, quanium singulare singulis. What is general prevails or is worth as much among things general, as what is particular among things particular. 11 Co. 59.

Generale dictum generaliter est interpretandum. A general expression is to be construed generally. 8 co. 116.

Generale nihil certum implicat. A general expression implies nothing certain. 2 Co. 34.

Generalia sunt praeponenda singularibus. General things are to be put before particular things.

Generalia verba sunt generaliter intelligenda. General words are understood in a general sense. 3 Co. Inst. 76.

Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa. A general clause does not extend to those things which are previously provided for specially. 8 Co. 154.

Haeredem Deus facit, non homo. God and not man, make the heir.

Haeredem est nomen collectivum. Heir is a collective name.

Haeris est nomen juris, filius est nomen naturae. Heir is a term of law, son one of nature.

Haeres est aut jure proprietatis aut jure representationis. An heir is either by right of property or right of representation. 3 Co. 40.

Haeres est alter ispe, et filius est pars patris. An heir is another self, and a son is a part of the father.

Haeres est eadem persona cum antecessore. The heir is the same person with the ancestor. Co. Litt. 22.

Haeres haeredis mei est meus haeres. The heir of my heir is my heir.

Haeres legitimus est quem nuptiae demonstrant. He is the lawful heir whom the marriage demonstrates.

He who has committed iniquity, shall not have equity. Francis' Max., Max. 2.

He who will have equity done to him, must do equity to the same person. 4 Bouv. Inst. n. 3723.

Hominum caus… jus constitutum est. Law is established for the benefit of man.

Id quod nostrum est, sine facto nostro ad alium transferi non potest. What belongs to us cannot be transferred to another without our consent. Dig. 50, 17, 11. But this must be understood with this qualification, that the government may take property for public use, paying the owner its value. The title to property may also be acquired, with the consent of the owner, by a judgment of a competent tribunal.

Id certum est quod certum reddi potest. That is certain which may be rendered certain. 1 Bouv. Inst. n. 929; 2 Bl. Com. 143; 4 Kernt com. 462; 4 Pick 179.

Idem agens et patiens esse non potest. One cannot be agent and patient, in the same matter. Jenk. Cent. 40.

Idem est facere, et nolle prohibere cum possis. It is the same thing to do a thing as not to prohibit it when in your power. 3 Co. Inst. 178.

Idem est non probari et non esse; non deficit jus, sed probatio. What does not appear and what is not is the same; it is not the defect of the law, but the want of proof.

Idem est nihil dicere et insufficienter dicere. It is the same thing to say nothing and not to say it sufficiently. 2 Co. Inst. 178.

Idem est scire aut scire debet aut potuisse. To be able to know is the same as to know. This maxim is applied to the duty of every one to know the law.

Idem non esse et non apparet. It is the same thing not to exist and not to appear. Jenk. Cent. 207.

Idem semper antecedenti proximo refertur. The same is always referred to its next antecedent. Co. Litt. 385.

Identitas vera colligitur ex multitudine signorum. True identity is collected from a number of signs.

Id perfectum est quod ex omnibus suis partibus constat. That is perfect which is complete in all its parts. 9 Co. 9.

Id possumus quod de jure possumus. We may do what is allowed by law. Lane, 116.

Ignorantia excusatur, non juris sed facti. Ignorance of fact may excuse, but not ignorance of law. See Ignorance.

Ignorantia legis neminem excusat. Ignorance of fact may excuse, but not ignorance of law. 4 Bouv. Inst. n. 3828.

Ignorantia facti excusat, ignorantia juris non excusat. Ignorance of facts excuses, ignorance of law does not excuse. 1 Co. 177; 4 Bouv. Inst. n 3828. See Ignorance.

Ignorantia judicis est calamitas innocentis. The ignorance of the judge is the misforture of the innocent. 2 Co. Inst. 591.

Ignorantia terminis ignoratur et ars. An ignorance of terms is to be ignorant of the art. Co. Litt. 2.

Illud quod alias licitum non est necessitas facit licitum, et necessitas inducit privilegium quod jure privatur. That which is not otherwise permitted, necessity allows, and necessity makes a privilege which supersedes the law. 10 Co. 61.

Imperitia culpae annumeratur. Ignorance, or want of skill, is considered a negligence, for which one who professes skill is responsible. Dig. 50, 17, 132; 1 Bouv. Inst. n. 1004.

Impersonalitas non concludit nec ligat. Impersonality neither concludes nor binds. Co. Litt. 352.

Impotentia excusat legem. Impossibility excuses the law. Co. Litt. 29.

Impunitas continuum affectum tribuit delinquenti. Impunity offers a continual bait to a delinquent. 4 Co. 45.

In alternativis electio est debitoris. In alternatives there is an election of the debtor.

In aedificiis lapis male positus non est removendus. A stone badly placed in a building is not to be removed. 11 Co. 69.

In aequali jure melior est conditio possidentis. When the parties have equal rights, the condition of the possessor is the better. Mitf. Eq. Pl. 215; Jer. Eq. Jur. 285; 1 Madd. Ch. Pr. 170; Dig. 50, 17, 128. Plowd. 296.

In commodo haec pactio, ne dolus praestetur, rata non est. If in a contract for a loan there is inserted a clause that the borrower shall not be answerable for fraud, such clause is void. Dig. 13, 6, 17.

In conjunctivis oportet utramque partem esse veram. In conjunctives each part ought to be true. Wing. 13.

In consimili casu consilile debet esse remedium. In similar cases the remedy should be similar. Hard. 65.

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. In contracts, the interpretation or construction should be liberal; in wills, more liberal; in restitutions, more liberal. Co. Litt. 112.

In conventibus contrahensium voluntatem potius quam verba spectari placuit. In the agreements of the contracting parties, the rule is to regard the intention rather than the words. Dig. 50, 16, 219.

In criminalibus, probationes bedent esse luce clariores. In criminal cases, the proofs ought to be clearer than the light. 3 Co. inst. 210.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus. In criminal cases a general intention is sufficient, when there is an act of equal or corresponding degree. Bacon's Max. Reg. 15.

In disjunctivis sufficit alteram partem esse veram. In disjunctives, it is sufficient if either part be true. Wing. 15.

In dubiis magis dignum est accipiendum. In doubtful cases the more worthy is to be taken. Branch's Prin. h.t.

In dubiis non praesumitur pro testamento. In doubtful cases there is no presumption in favor of the will. Cro. Car. 51.

In dubio haec legis constructio quam verba ostendunt. In a doubtful case, that is the construction of the law which the words indicate. Br. Pr. h. t.

In dubio pars melior est sequenda. In doubt, the gentler course is to be followed.

In dubio, sequendum quod tutius est. In doubt, the safer course is to be adopted.

In eo quod plus sit, semper inest et minus. The less is included in the greater. 50, 17, 110.

In facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit. In a deed which may be considered good or bad, the law looks more to the good than to the bad. Co. Litt. 78.

In favorabilibus magis attenditur quod prodest quam quod nocet. In things favored what does good is more regarded than what does harm. Bac. Max. in Reg. 12.

In fictione juris, semper subsistit aequitas. In a fiction of law, equity always subsists. 11 Co. 51.

In judiciis minori aetati sucuritur. In judicial proceedings, infancy is aided or favored.

In judicio non creditur nisi juratis. In law none is credited unless he is sworn. All the facts must when established, by witnesses, be under oath or affirmation. Cro. Car. 64.

In jure non remota causa, sed proxima spectatur. In law the proximate, and not the remote cause, is to be looked to. Bacon's Max. REg. 1.

In majore summƒ continetur minor. In the greater sum is contained the less. 5 Co. 115.

In maleficio ratihabitio mandato comparatur. He who ratifies a bad action is considered as having ordered it. Dig. 50, 17, 152, 2.

In mercibus illicitis non sit commercium. NO commerce should be in illicit goods. 3 Kent, Com. 262, n.

In maximƒ potentiƒ minima licentia. IN the greater power is included the smaller license. Hob. 159.

In obscuris, quod minimum est, sequitur. In obscure cases, the milder course ought to be pursued. Dig. 50, 17, 9.

In odium spoliatoris omnia praesumuntur. All things are presumed in odium of a despoiler. 1 Vern. 19.

In omni re nascitur res qua ipsam rem exterminat. In everything, the thing is born which destroys the thing itself. 2 Co. Inst. 15.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In every contract, whether nominate or innominate, there is implied a consideration.

In omnibus quidem, maximŠ tamen in jure, aequitas spectanda sit. In all affairs, and principally in those which concern the administration of justice, the rules of equity ought to be followed. Dig. 50, 17, 90.

In omnibus obligationibus, in quibus dies non ponitar, praesenti die debutur. In all obligations when no time is fixed for the payment, the thing is due immediately. Dig. 50, 17, 14.

In praesentia majoris potestatis, minor potestas cessat. In the presence of the superior power, the minor power ceases. Jenk. Cent. 214.

In pari causa possessor potior haberi debet. When two parties have equal rights, the advantage is always in favor of the possessor. Dig. 50, 17, 128.

In pari causa possessor potior est. In an equal case, better is the condition of the possessor. Dig. 50, 17, 128; Poth. Vente, n. 320; 1 Bouv. Inst. n. 952.

In pari delicto melior est conditio possidentis. When the parties are equally in the wrong, the condition of the possessor is better. 11 Wheat. 258; 3 Cranch 244; Cowp. 341; Broom's Max. 325; 4 Bouv. Inst. n. 3724.

In propriƒ cuusƒ nemo judex. No one can be judge in his own cuase.

In quo quis delinquit, in eo de jure est puniendus. In whatever thing on offends, in that he is rightfully to be punished. Co. Litt. 233.

In repropriƒ iniquum admodum est alicui licentiam tribuere sententiae. It is expremely unjust that any one should be judge in his own cause.

In re dubiƒ magis inficiato quam affirmatio intelligenda. In a doubtful matter, the negative is to be understood rather than the affirmative. Godb. 37.

In republicƒ maximŠ conservanda sunt jura belli. In the state the laws of ware are to be greatly preserved. 2 Co. Inst. 58.

In restitutionem, non in paenam haeres succedit. The heir succeeds to the restitution not the penalty. 2 Co. Inst. 198.

In restitutionibus benignissima interpretatio facienda est. The most favorable construction is made in restitutions. Co. Litt. 112.

In suo quisque negotio hebetior est quam in alieno. Every one is more dull in his own business than in that of another. Co. Litt. 377.

In toto et pars continetur. A part is included in the whole. Dig. 50, 17, 113.

In traditionibus scriptorum non quod dictum est, sed quod gestum est, inscpicitur. In the delivery of writing, not what is said, but what is done is to be considered. 9 co. 137.

Incerta pro nullius habentur. Things uncertain are held for nothing Dav. 33.

Incerta quantitas vitiat acium. An uncertain quantity vitiates the act. 1 Roll. R. 465.

In civile est nisi tota sententia inspectu, de aliqua parte judicare. It is improper to pass an opinion on any part of a sentence, without examining the whole. Hob. 171.

Inclusio unius est exclusio alterius. The inclusion of onoe is the exclusion of another. 11 Co. 58.

Incommodum non solvit argumentum. An inconvenience does not solve an argument.

Indefinitum aequipolet universali. The undefined is equivalent tothe whole. 1 Ventr. 368.

Indefinitum supplet locum universalis. The undefined supplies the place of the whole Br. Pr. h. t.

Independenter se habet assecuratio a viaggio vanis. The voyage insured is an independent or distinct thing from

the voyage of the ship. 3 Kent, Com. 318, n.

Index animi sermo. Speech is the index of the mind.

Inesse potest donationi, modus, conditio sive causa; ut modus est; si conditio; quia causa. In a gift there may be manner, condition and cause; as, (ut), introduces a manner; if, (si), a condition; because, (quia), a cause. Dy. 138.

Infinitum in jure reprobatur. That which is infinite or endless is reprehensible in law. 9 Co. 45.

Iniquum est alios permittere, alios inhibere mercaturam. It is inequitable to permit some to trade, and to prohibit others. 3 Co. Inst. 181.

Iniquum est aliquem rei sui esse judicem. It is against equity for any one to be judge in his own cause. 12 Co. 13.

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is against equity to deprive freeman of the free disposal of their own property. Co. Litt. 223. See 1 Bouv. Inst. n. 455, 460.

Injuria non praesumitur. A wrong is not presumed. Co. Litt. 232.

Injuria propria non cadet in beneficium facientis. One's own wrong shall not benefit the person doing it.

Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum. It is a slander of him who a reproachful thing is said, or concerning whom an infamous song is made. 9 Co. 60.

Intentio caeca, mala. A hidden intention is bad. 2 Buls. 179.

Intentio inservire debet legibus, non leges intentioni. Intentions ought to be subservient to the laws, not the laws to intentions. Co. Litt. 314.

Intentio mea imponit nomen operi meo. My intent gives a name to my act. Hob. 123.

Interest reipublicae ne maleficia remaneant impunita. It concerns the commonwealth that crimes do not remain unpunished. Jenk. Cent. 30, 31.

Interest reipublicae res judicatas non rescindi. It concerns the common wealth that things adjudged be not rescinded. Vide Res judicata.

Interest reipublicae quod homines conserventur. It concerns the commonwealth that we be preserved. 12 Co. 62.
Interest reipublicae ut qualibet re suſ bene utatur. it concerns the commonwealth that every one use his property properly. 6 Co. 37.

Interest reipublicae ut carceres sint in tuto. It concerns the commonwealth that prisons be secure. 2 Co. Inst. 589.

Interest reipublicae suprema hominum testamenta rata haberi. It concerns the commonwealth that men's last wills be sustained. Co. Litt. 236.
Interest reipublicae ut sit finis litium. In concerns the commonwealth that there be an end of law suits. Co. Litt. 303.

Interpretare et concordare leges legibus est optimus interpretandi modus. To interpret and reconcile laws so that they harmonize is the best mode of construction. 8 Co. 169.

Interpretatio fienda est ut res magis valeat quam pereat. That construction is to be made so that the subject may have an effect rather than none. Jenk. Cent. 198.

Interpretatio talis in ambiguis semper fienda, ut evitetur inconveniens et absurdum. In ambiguous things, such a construction is to be made, that what is inconvenient and absurd is to be avoided. 4 Co. Inst. 328.

Interruptio multiplex non tollit praescriptionem semel obtentam. Repeated interruptions do not defeat a prescription once obtained. 2 Co. Inst. 654.

Inutilis labor, et sine fructu, non est effectus legis. Useless labor and without fruit, is not the effect of law. Co. Lit. 127.

Invito beneficium non datur. No one is obligedto accept a benefit against his consent. Dig. 50, 17, 69. But if he does not siddent he will be considered as assenting. Vide Assent.

Ipsae legis cupiunt ut jure regantur. The laws themselves require that they should be governed by right. Co. Litt. 174.

Judex ante occulos aequitatem semper habere debet. A judge ought always to have equity before his eyes. Jenk. Cent. 58.

Judex aeuitatem semper spectare debet. A judge ough always to regard equity. Jenk. Cent. 45.

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticae voluntatis, sed juxta legis et jura pronunciet. A good judge should do nothing from his own judgment, or from the dictates of his private wishes; but he should pronounce according to law and justice. 7 co. 27.

Judex debet judicare secundum allegata et probata. The judge ought to decide according to the allegation and the proof.

Judex est lex loquens. The judge is the speaking law. 7 co. 4.

Judex non potest esse testis in propriſ causſ A judge cannot be awitness in his own cause. 4 Co. Inst. 279.

Judex non potest injuriam sibi datum punire. A judge cannot punish a wrong done to himself. 12 Co. 113.

Judex damnatur cum nocens absolvitur. The judge is condemned when the guilty are acquitted.

Judex non reddat plus quam quod petens ipse requireat. The judge does demand more than the plaintiff demands. 2 Inst. 286.

Judici officium suum excedenti non paretur. To a judge who exceeds his office or jurisdiction no obedience is due. Jenk. Cent. 139.

Judici satis paena est quod Deum habet ultorem. It is punishment enough for a judge that he is responsible to God. 1 Leon. 295.

Judicia in deliberationibus crebro naturescunt, in accelerato processu nunquam. Judgments frequently become matured by deliberation, never by hurried process. 3 Co. Inst. 210.

Judicia posteriora sunt in lege fortiora. The latter decisions are stronger in law. 8 Co. 97.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. Judgments are, as it were, the dicta or sayings of the law, and are received as truth. 2 Co. Inst. 573.

Judiciis posterioribus fides est adhibenda. Faith or credit is to be given to the last decisions. 13 Co. 14.

Judicis est in pronuntiando sequi regulam, exceptione non probatſ. The judge in his decision ought to follow the rule, when the exception is not made apparent.

Judicis est judicare secudnum allegata et probata. A judge ought to decide according to the allegations and proofs. Dyer. 12.

Judicium … non suo judice datum nullius est momenti. A judgment given by an improper judge is of no moment. 11 Co. 76.

Judicium non debet esse illusorium, suum effectum habere debet. A judgment ought not to be illusory, it ought to have its consequence. 2 Inst. 341.

Judicium redditur in invitum, in praesumptione legis. In presumption of law, a judgment is given against inclination. Co. Litt. 248.

Judicium semper pro veritate accipitur. A judgment is always taken for truth. 2 Co. Inst. 380.

Jura sanguinis nullo jure civili dirimi possunt. The right of blood and kindred cannot be destroyed by any civil law. Dig. 50, 17, 9; Bacon's Max. Reg. 11.

Jura naturae sunt immutabilia. The laws of nature are unchangeable.

Jura eodem modo distruuntur quo constituuntur. Laws are abrogated or repealed by the same means by which they are made.

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsam. An oath is indivisible, it cannot be in part true and in part false.

Jurato creditur in judicio. He who makes oath is to be believed in judgment.

Jurare est Deum in testum vocare, et est actus divini cultus. To swear is to call God to witness, and is an act of religion. 3 Co. Inst. 165. Vide 3 Bouv. Inst. n. 3180, note; 1 Benth. Rat. of Jud. Ev. 376, 371, note.

Juratores sunt judices facti. Juries are the judges of the facts. Jenk. Cent. 58.

Juris effectus in executione consistit. The effect of a law consists in the execution. Co. Litt. 289.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii. The right of survivorship does not exist among merchants for the benefit of commerce. Co. Litt. 182; 1 Bouv. Inst. n. 682.

Jus accrescendi praefertur oneribus. The right of survivorship is preferred to incumbrances. Co. Litt. 185.

Jus accrescendi praefertur ultimae voluntati. The right of survivorship is preferred to a last will. Co. Litt. 1856.

Jus descendit et non terra. A right descends, not the land. Co. Litt. 345.

Jus est ars boni et aequi. Law is the science of what is good and evil. Dig. 1, 1, 1, l.

Jus et fraudem numquam cohabitant. Right and fraud never go together.

Jus ex injuria non oritur. A right cannot arise from a wrong. 4 Bing. 639.

Jus publicum privatorum pactis mutari non potest. A public right cannot be changed by private agreement.

Jus respicit aequitatem. Law regards equity. Co. Litt. 24.

Jus superveniens auctori accressit successors. A right geowing to a possessor accrues to a successor.

Justicia est virtus excellens et Altissimo complacens. Justice is an excellent virtue and pleasing to the Most high. 4 inst. 58.

Justitia nemine neganda est. Justice is not to be denied. Jenk. Cent. 178.

Justitia non est neganda, non differenda. Justice is not to be denied nor delayed. Jenk. Cent. 93.

Justitia non novit patrem nec matrem, solum veritatem spectat justitia. Justice knows neither father nor mother, justice looks to truth alone. 1 Buls. 199.

La conscience est la plus changeante des regles. Conscience is the most changeable of rules.

Lata culpa dolo aequiparatur. Gross negligence is equal to fraud.

Le contrat fait la loi. The contract makes the law.

Legatos violare contra jus gentium est. It is contrary to the law of nations to violate the rights of ambassadors.

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sol*f*. A legacy is confirmed by the death of the testator, in the same manner as a gift from a living person is by delivery alone. Dyer, 143.

Leges posteriores priores contrarias abrogant. Subsequent laws repeal those before enacted to the contrary. 2 Rol. R. 410; 11 Co. 626, 630.

Leges humanae nascuntur, vivunt et moriuntur. Human laws are born, live and die. 7 co. 25.

Leges non verbis sed regus sunt impositae. Laws, not words, are imposed on things. 10 Co. 101.

Legibus sumptis disinentibus, lege naturae utendum est. When laws imposed by the state fail, we must act by the law of nature. 2 Roll. R. 298.

Legis constructio non facit injuriam. The construction of law does no wrong. Co. Litt. 183.

Legis figendi et refigendi consuetudo periculosissima est. The custom of fixing and refixing (making and annulling) laws is most dangerous. 4 Co. Ad. Lect.

Legis interpretatio legis vim obtinet. Teh construction of law obtains the force of law.

Legislatorum est viva vox, rebus et non verbis, legem imponere. The voice of legislators is a living voice, to impose laws on things and not on words. 10 Co. 101.

Legis minister non tenetur, in executione officii sui fugere aut retrocedere. The minister of the law is not bound, in the execution of his office, neither to fly nor retreat. 6 Co. 68.

Legitime imperanti parere necesse est. One who commands lawfully must be obeyed. Jenk. Cent. 120.

Les fictions naissent de la loi, et non la loi des fictions. Fictions arise from the law, and not law from fictions.

Lex aliquando sequitur aequitatem. The law sometimes follows equity. 3 Wils. 119.

Lex aequitate guadet; appetit perfectum; est norma recti. The law delights in equity; it covets perfection; it is a rule of right. Jenk. Cent. 36.

Lex beneficialis rei consimili remedium praestat. A beneficial law affords a remedy in a similar case. 2 Co. Inst. 689.

Lex citius tolerare vult privatum damnum quam publicum malum. The law would rather tolerate a private wrong than a public evil. Co. Litt. 152.

Lex de futuro, judex de praeterito. The law provides for the future, the judge for the past.

Lex deficere non potest in justiti*f* exhibenda*f*. The law ought not to fail in dispensing justice. Co. Litt. 197.

Lex dilationes semper exhorret. The law always abhors delay. 2 Co. Inst. 240.

Lex est ab aeterno. The law is from everlasting.

Lex est dictamen rationis. Law is the dictate of reason. Jenk. Cent. 117.

Lex est norma recti. Law is a rule of right.

Lex est ratio summa, quae jubet quae sunt utilia et necessaria, et contraria prohibet. Law is the perfection of reason, which commands what is useful and necessary and forbids the contrary. Co. Litt. 319.

Lex est sanctio sancta, jubens honesta, et prohibens contraria. Law is a scared sanction, commanding what is right and prohibiting the contrary. 2 Co. Inst. 587.

Lex favet doti. The law favors dower.

Lex fingit ubi subsistit aequitas. Law feigns where equity subsists. 11 Co. 90.

Lex intendit vicinum vicini facta scire. The law presumes that one neighbor knows the actions of another. Co. Litt. 78.

Lex judicat de rebus necessario faciendis quasire ipsa factis. The law judges of things which must necessarily be done, as if actually done.

Lex necessitatis est lex temporis, i.e. instantis. The law of necessity is the law of time, that is, time present. Hob. 159.

Lex neminem cogit ad vana seu inutilia peragenda. Teh forces no one to do vain or useless things.

Lex nemini facit injuriam. The law does wrong to no one.

lex nemini operatur iniquum, nemini facit injuriam. The law never works an injury, or does him a wrong. jenk. Cent. 22.

Lex nil facit frustra, nil jubet frustra. The law does nothing and commands nothing in vain. 3 Buls. 279; Jenk. Cent. 17.

Lex non cogit impossibilia. The law requires nothing impossible. Co. Litt. 231, b; 1 Bouv. Inst. n. 951.

Lex non curat de minimis. The law does not regard small matters. Hob. 88.

Lex non cogit ad impossibilia. The forces not to impossibilities. Hob. 96.

Lex non praecipit inutilia, quia inutilis labor stultus. The law commands not useles things, because useless labor is foolish. Co. Litt. 197.

Lex non deficit in justitia exibenda. The law does not fail in showing justice.

Lex non intendit aliquid impossibile. The law intends not anything impossible. 12 Co. 89.

Lex non requirit verificare quod apparet curiae. The law does not require that to be proved, which is apparent to the court. 9 Co. 54.

Lex plus laudatur quando ratione probatur. The law is the more praised when it is consonant to reason.

Lex prospicit, non respicit. The law looks forward, not backward.

Lex punit mendacium. The law punishes falsehood.

Lex rejicit superflua, pugnantia, incongrua. The law rejects superfluous, contradictory and incongruous things.

Lex reprobat moram. The law dislikes delay.

Lex semper dabit remedium. The law always gives a remedy. 3 Bouv. Inst. n. 2411.

Lexspectat naturae ordinem. The law regards the order of nature. Co. Litt. 197.

Lex succurit ignoranti. The laws succor the ignorant.

Lex semper intendit quod convenit ratione. The law always intends what is agreeable to reason. Co. Litt. 78.

Lex uno ore omnes alloquitur. The law speaks to all with one mouth. 2 Inst. 184.

Libertas inaestimabilis res est. Liberty is an inestimable good. Dig. 50, 17, 106.

Liberum corpus aestimationem non recipit. The body of a freeman does not admit of valuation.

Licet dispositio de interesse furture sit inutilis, tamen potest fieri declaratio praecedens quae fortiatur effectum interveniente novo actu. Although the grant of a future interest be inoperative, yet a declaration precedent may be made, which may take effect, provided a new act intervene. Bacon's Max. Reg. 14.

Licita bene miscentur, formula nisi juris obstet. Things permitted should be well contrived, lest the form of the law oppose. Bacon's Max. Reg. 24.

Linea recta semper praefertur transversali. The right line is always preferred to the collateral. Co. Litt. 10.

Locus contractus regit actum. The place of the contract governs the act.

Longa possessio est pacis jus. Long possession is the law of peace. Co. Litt. 6.

Longa possessio parit jus possidendi, et tollit actionem vero domino. Long possession produces the right of possession, and takes away from the true owner his action. Co. Litt. 110.

Longum tempus, et longus usus qui excedit memoria hominum, sufficit pro jure. Long time and long use, beyond the memory of man, suffices for right. Co. Litt. 115.

Loquendum ut vulgus, sentiendum ut docti. We speak as the common people, we must think as the learned. 7 Co. 11.

Magister rerum usus; magistra rerum experientia. Use is the master of things; experience is the mistriss of things. Co. Litt. 69, 229.

Manga negligentia culpa est, magna culpa dolus est. Gross negligence is a fault, gross fault is a fraud. Dig 50, 16, 226.

Magna culpa dolus est. Great neglect is equivalent to fraud. Dig. 50, 16, 226; 2 Spears, R. 256; 1 Bouv. Inst. n. 646.

Maihemium est inter crimina majora minimum et inter minora maximum. Mayhem is the least of great crimes, and the greatest of small. Co. Litt. 127.

Mahemium est homicidium inchoatum. Mayhem is incipient homicide. 3 Inst. 118.

Major haeriditas venit unicuique nostrum … jure et legibus quam … parentibus. A greater inheritance comes to every one of us from right and the laws than from parents. 2 Co. Inst. 56.

Major numerus in se continet minorem. The greater number contains in itself the less.

Majore paenƒ affectus quam legibus statuta est, non est infamis. One affected with a greater punishment than is provided by law, is not infamous. 4 Co. Inst. 66.

Majori continet in se minus. The greater includes the less. 19 Vin. Abr. 379.

Majus dignum trahit in se minus dignum. The more worthy or the greater draws to it the less worthy or the lesser. 5 Vin. Abr. 584, 586.

Majus est delictum seipsum occidare quam alium. it is a greater crime to kill one's self than another.

Mala grammatica non vitiat chartam; sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. Bad grammar does not vitiate a deed; but in the construction of instruments, bad grammar, as far as it can be done, is to be avoided. 6 Co. 39.

Maledicta est expositio quae corrumpit textum. It is a bad construction which corrupts the text. 4 Co. 35.

Maleficia non debent remanere impunita, et impunitas continuum affectum tribuit delinquenti. Evil deeds ought not to remain unpunished, for impunity affords continual excitement to the delinquent. 4 Co. 45.

Malificia propositus distinguuntur. Evil deeds are distinguished from evil purposes. Jenk. Cent. 290.

Malitia est acida, est mali animi affectus. Malice is sour, it is the quality of a bad mind. 2 Buls. 49.

Malitia supplet aetatem. Malice supplies age. Dyer, 104. See Malice.

Malum hominun est obviandum. The malice of men is to be avoided. 4 Co. 15.

Malum non praesumitur. Evil is not presumed. 4 Co. 72.

Malum quo communius eo pejus. The more common the evil, the worse.

Malus usus est abolendus. An evil custom is to be abolished. Co. Litt. 141.

Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam. lawful commands receive a strict interpretation, but unlawful, a wode or broad construction. Bacon's Max. Reg. 16.

Mandatarius terminos sobi positos transgredi non potest. A mandatory cannot exceed the bounds of his authority. Jenk. Cent. 53.

Mandatum nisi gratuitum nullum est. Unless a mandate is gratuitous it is not a mandate. Dig. 17, 1, 4; Inst. 3, 27; 1 Bouv. Inst. n. 1070.

Manifesta probatione non indigent. Manifest things require no proof. 7 Co. 40.

Maris et faeminae conjunctio est de jure naturae. The union of husband and wife is founded on the law of nature. 7 Co. 13.

Matrimonia debent esse libera. Marriages ought to be free.

Matrimonium subsequens tollit peccatum praecedens. A subsequent marriage cures preceding criminality.

Maxime ita dicta quia maxima ejus dignitas et certissima auctoritas, atque quod maximŠ omnibus probetur. A maxim is so called because its dignity is chiefest, and its authority most certain, and because universally approved by all. Co. Litt. 11.

MaximŠ paci sunt contraria, vis et injuria. The greatest enemies to peace are force and wrong. Co. Litt. 161.

Melior est justitia vere praeveniens quam severe pumens. That justice which justly prevents a crime, is better than that which severely punishes it.

Melior est conditio possidentis et rei quam actoris. Better is the condition of the possessor and that of the defendant than that of the plaintiff. 4 Co. Inst. 180.

Melior est causa possidentis. The cause of the possessor is preferable. Dig. 50, 17, 126, 2,.

Melior est conditio possidentis, ubi neuter jus habet. Better is the condition of the possessor, where neither of the two has a right. Jenk. Cent. 118.

Meliorem conditionem suum facere potest minor, deteriorem nequaquam. A minor can improve or make his condition better, but never worse. Co. Litt. 337.

Melius est omnia mala pati quam malo concentire. It is better to suffer every wrong or ill, than to consent to it. 3 Co. Inst. 23.

Melius est recurrere quam malo currere. It is better to recede than to proceed in evil. 4 Inst. 176.

Melius est in tempore occurrere, quam post causam vulneratum remedium quaerere. It is better to restrain or meet a thing in time, than to see a remedy after a wrong has been inflicted. 2 Inst. 299.

Mens testatoris in testamentis spectanda est. In wills, the intention of the testator is to be regarded. Jenk. Cent. 277.

Mentiri est contra mentem ire. To lie is to go against the mind. 3 Buls. 260.

Merx est quidquid vendi potest. Merchandise is whatever can be sold. 3 Metc. 365. Vide Merchandise.

Mercis appellatio ad res mobiles tantum pertinet. The term merchandise belongs to movable things only. Dig. 50, 16, 66.

Minima paena corporalis est major qualibet pecuniarif. The smallest bodily punishment is greater than any pecuniary one. 2 Inst. 220.

MinimŠ mutanda sunt quae certam habuerent interpretationem. Things which have had a certain interpretation are to be altered as little as possible. Co. Litt. 365.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire. A minor before majority cannot act in a case of property, nor even agree. 2 Inst. 291.

Minor minorem custodire non debet, alios enim praesumitur male regere qui seipsum regere nuscit. A minor ought not to be fuardian of a minor, for he is unfit to govern others who does not know how to govern himself. Co. Litt. 88.

Misera est servitus, ubi jus est vagum aut incertum. It is a miserable slavery where the law is vague or uncertain. 4 Co. Inst. 246.

Mitius imperanti melius paretur. The more mildly one commands the better is he obeyed. 3 Co. Inst. 24.

Mibilia personam sequuntur, immobilia situm. Movable things follow the person, immovable their locality.

Modica circumstantia facti jus mutat. The smallest circumstance may change the law.

Modus et conventio vincunt legem. Manner and agreement overrule the law. 2 Co. 73.

Modus legel dat donationi. The manner gives law to a gift. Co. Litt. 19 a.

Moneta est justum medium et mensura rerum commutabilium, nam per meduim monetae fit omnium rerum conveniens, et justa aestimatio. Money is the just medium and measure of all commutable things, for, by the medium of money, a convenient and just estimation of all things is made. Dav. 18. See 1 Bouv. Inst. n. 922.

Mora reprobatur in lege. Delay is disapproved of in law.

Mors dicitur ultimum supplicium. Death is denominated the extreme penalty. 3 Inst. 212.

Mortuus exitus non est exitus. To be dead born is not to be born. Co. Litt. 29. See 2 Paige, 35; Domat, liv. pr,l. t. 2, s. 1, n. 4, 6; 2 Bouv. Inst. n. 1721 and 1935.

Multa conceduntur per obliquum quae non conceduntur de directo. Many things are conceded indirectly which are not allowed directly. 6 co. 47. Multa in jure communi contra rationem disputandi pro communi ultilitate introducta sunt. Many things have been introduced into the common law, with a view to the public good, whic are inconsistent with sound reason. Co. Litt. 70; Broom's Max. 67; 2 Co. R. 75. See 3 T. R. 146; 7 T. R. 252.

Multa multo exercitatione facilius quam regulis percipies. You will perceive many things more easily by practice than by rules. 4 Co. Inst. 50.

Multa non vetat lex. quae tamen tacitŠ damnavit. The law forbids many things, which yet it has silently condemned.

Multa transeunt cum universitate quae non per se transeunt. Many things pass as a whole which would not pass separately.

Multi multa, non omnia novit. Many men know many things, no one knows everything. 4 Co. Inst. 348.

Multiplex et indistinctum parit confusionem; et questiones quo simpliciores, eo lucidiores. Multiplicity and indistinctness produce confusion; the more simple questions are the more lucid. Hob. 335.

Multiplicatf transgressione crescat paenae inflictio. The increase of punishment shouldbe in proportion to the increase of crime. 2 Co. Inst. 479.

Multitudo errantium non parit errori patrocinium. The multitude of those who err is no excuse for error. 11 Co. 75.

Multitudo imperitorum perdit curiam. A multitude of ignorant practitioners destroys a court. 2 Co. Inst. 219.

Natura appetit perfectum, ita et lex. Nature aspires to perfection, and so does the law. Hob. 144.

Natura non facit saltum, ita nec lex. nature makes no leap, nor does the law. Co. Litt. 238.

Natura no facit vacuum, nec lex supervacuum. Nature makes no vacuum, the law no supervacuum. Co. Litt. 79.

Naturae vis maxima, natura bis maxima. The force of nature is greatest; nature is doubly great. 2 Co. Inst. 564.

Necessarium est quod non potest aliter se habere. That is necessity which cannot be dispensed with.

Necessitas est lex temporis et loci. Necessity is the law of a particular time and place. 8 Co. 69; H. H. P. C. 54.

Necessitaas excusat aut extenuat delicium in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extentuates delinquency in capital cases, but not in civil. Vide Necessity.

Necessitas facit licitum quod alias non est licitum. Necessity makes that lawful which otherwise is unlawful. 10

Co. 61.

Necessitas inducit privililegium quoad jura privata. Necessity gives a preference with regard to private rights. Bacon's Max. REg. 5.

Necessitas non habet legem. Necessity has no law. Plowd. 18. See Necessity, and 15 Vin. Ab. 534; 22 Vin. Ab. 540.

Necessitas publica major est quam private. Public necessity is greater than private. Bacon's Max. in REg. 5.

Necessitas quod cogit, defendit. Necessity defends what it compels. H. H. P. C. 54.

Necessitas vincit legem. Necessity overcomes the law. Hob. 144.

Negatio conclusionis est error in lege. The negative of a conclusion is error in law. Wing. 268.

Negatio destruit negationem, et ambae faciunt affirmativum. A negative destroys a negative, and both make an affirmative. Co. Litt. 146.

Negatio duplex est affirmatio. A double negative is an affirmative.

Negligentia semper habet infortuniam comitem. Negligence has misfortune for a companion. Co. Litt. 246.

Neminem oportet esse sapientiorem legibus. No man ought to be wiser than the law. Co. Litt. 97.

Nemo admittendus est inhabilitare seipsum. No one is allowed to incapacitate himself. Jenk. Cent. 40. Sed vide "To stultify," and 5 Whart. 371.

Nemo agit in seipsum. No man acts against himself; Jenk. Cent. 40; therefore no man can be a judge in his own cause.

Nemo allegans suam turpitudinem, audiendus est. No one alleging his own turpitude is to be heard as a witness. 4 Inst. 279.

Nemo bis punitur por eodem delicto. No one can be punished twice for the same crime or misdemeanor. See Non bis in idem.

Nemo cogitur rem suam vendere, etiam justo pretio. No one is bound to sell his property, even for a just price. Sed vide Eminent Domain.

Nemo contra factum suum venire potest. No man ca contradict his own deed. 2 Inst. 66.

Nemo damnum facit, nisi qui id fecit quod facere jus non habet. No one is considered as committing damages, unless he is doing what he has no right to do. dig. 50, 17, 151.

Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.

Nemo de domo sua extrahi debet. A citizen cannot be taken by force from his house to be conducted before a judge or to prison. Dig. 50, 17. This maxim in favor of Roman liberty is much the same as that "every man's house is his castle."

Nemo debet esse judex in propri$f$ caus$f$. No one should be judge in his own cause. 12 Co. 113.

Nemo debet ex alien$f$ jactur$f$ lucrari. No one ought to gain by another's loss.

Nemo debet immiscere se rei alienae ad se nihil pertinenti. No one should interfere in what no way concerns him.

Nemo debet rem suam sine facto aut defectu suo amittere. No one should lose his property without his act or negligence. Co. Litt. 263.

Nemo est haeres viventes. No one is an heir to the living. 2 Bl. Com. 107; 1 Vin. Ab. 104, tit. Abeyance; Merl. RŠp. verbo Abeyance; Co. Litt. 342; 2 Bouv. Inst. n. 1694, 1832.

Nemo ex suo delicto melioroem suam conditionem facere potest. No one can improve his condition by a crime. Dig. 50, 17, 137.

Nemo ex alterius facto praegravari debet. No man ought to be burdened in consequence of another's act.

Nemo ex consilio obligatur. No man is bound for the advice he gives.

Nemo in propria causa testis ese debet. No one can be a witness in his own cause. But to this rule there are many exceptions.

Nemo inauditus condemnari debet, si non sit contumax. No man ought to be condemned unheard, unless he be contumacious.

Nemo nascitur artifex. No one is born an artist. Co. LItt. 97.

Nemo patriam in qua natus est exuere, nec ligeantiae debitum ejurare possit. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. Co. LItt. 129. Sed vide Allegiance; Expatriation; Naturalization.

Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he

has not. Dig. 50, 17, 54; 10 Pet. 161, 175.

Nemo praesens nisi intelligat. One is not present unless he understands. See Presence.

Nemo potest contra recordum verificare per patriam. No one can verify by the country against a record. The issue upon a record cannot be tried by a jury.

Nemo potest esse tenes et dominus. No man can be at the same time tenant nad landlord of the same tenement.

Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.

Nemo potest sibi devere. No one can owe to himself. See Confusion of Rights.

Nemo praesumitur alienam posteritatem suae praetulisse. NO one is presumed to have preferred another's posterity to his own.

Nemo praesumitur donare. No one is presumed to give.

Nemo praesumitur esse immemor suae aeternae salutis, et maximŠ in articulo mortis. No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death. 6 Co. 76.

Nemo praesumitur malus. No one is presumed to be bad.

Nemo praesumitru ludere in extremis. No one is presumed to trifle at the point of death.

Nemo prohibetur plures negotiationes sive artes exercere. No one is restrained from exercising several kinds of business or arts. 11 Co. 54.

Nemo prohibetur pluribus defensionibus uti. No one is restrained from using several defences. Co. Litt. 304.

Nemo prudens punit ut praeterita revocentur, sed ut futura praeveniantur. No wise one punishes that things done may be revoked, but that future wrongs may be prevented. 3 Buls. 173.

Nemo punitur pro alieno delicto. No one is to be punished for the crime or wrong of another.

Nemo punitur sine injuri*f*, facto, seu defalto. No one is punished unless for some wrong, act or default. 2 Co. Inst. 287.

Nemo, qui condemnare potest, absolvere non potest. He who may condemn may acquit. Dig. 50, 17, 37.

Nemo tenetur seipsum accusare. No one is bound to accuse himself.

Nemo tenetur ad impossibile. No one is bound to an impossibility.

Nemo tenetur armare adversarum contra se. No one is bound to arm his adversary.

Nemo tenetur divinare. No one is bound to foretell. 4 Co. 28.

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. No one is bound to inform about a thing he knows not, but he who gives information is bound to know what he says. Lane, 110.

Nemo tenetur jurare in suam turpitudinem. No one is bound to testify to his own baseness.

Nemo tenetur seipsam infortunis et periculis exponere. No one is bound to expose himself to misfortune and dangers. Co. Litt. 253.

Nemo tenetur seipsum accusare. No man is bound to accuse himself.

Nemo videtur fraudare eos qui sciunt, et consentiunt. One cannot complain of having been deceived when he knew the fact and gave his consent. Dig. 50, 17, 145.

Nihil dat qui non habet. He gives nothing who has nothing.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Nothing accrues to him, who, when the right accrues, has nothing in the subject matter. Co. Litt. 188.

Nihil facit error nominis cum de corpore constat. An error in the name is nothing when there is certainty as to the person. 11 Co. 21.

Nihil habet forum ex scen*f*. The court has nothing to do with what is not before it.

Nihil infra regnum subditos magis conservat in tranquilitate et concordi*f* quam debita legum administratio. Nothing preserves in tranquility and concord those who are subjected to the same government better than a due administration of the laws. 2 Co. Inst. 158.

Nihil in lege intolerabilius est, eandem rem diverso jure censeri. Nothing in law is more intolerable than to apply the law differently to the same cases. 4 Co. 93.

Nihil magis justum est quam quod necessarium est. Nothing is more just that what is necessary. Dav. 12.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect while something remains to be done. 2 co. 9.

Nihil possumus contra veritatem. We can do nothing against truth. Doct. & Stu. Dial. 2, c. 6.

Nihil quod est contra rationem est licitum. Nothing against reason is lawful. Co. Litt. 97.

Nihil quod inconveniens est licitum est. Nothing inconvenient is lawful.

Nihil simul inventum est et perfectum. Nothing is invented and perfected at the same moment. Co. Litt. 230.

Nihil tam naturale est, quſm eo genere quidque dissolvere, quo colligatum est. It is very natural that an obligation should not be dissolved but by the same principles which were observed in contracting it. Dig. 50, 17, 35. See 1 Co. 100; 2 Co. Inst. 359.

Nihil tam conveniens est naturali aequitati, quſm voluntatem domini voluntis rem suam in alium transferre, ratam haberi. Nothing is more conformable to natural equity, than to confirm the will of an owner who desires to transfer his property to another. Inst. 2, 1, 40; 1 Co. 100.

Nil tamere novandum. Nothing should be rashly changed. Jenk. Cent. 163.

Nil facit error nominis, si de corpore constat. An error in the name is immaterial, if the body is certain.

Nimia subtilitas in jure reporbatur. Too much subtlety is reprobated in law.

Nimium altercando veritas amiltitur. By too much altercation truth is lost. Hob. 344.

No man is presumed to do anything against nature. 22 Vin. Ab. 154.

No man shall take by deed but parties, unless in remainder.

No man can hold the same land immediately of two several landlords. Co. Litt. 152.

No man shall set up his infamy as a defence. 2 W. Bl. 364.

Necessity creates equity.

No one may be judge in his own cause.

Nobiliores et beniginores presumptiones in dubiis sunt praeferendae. When doubts arise the most generous and benign presumptions are to be preferred.

Nomen est quasi rei notamen. A name is, as it were, the note of a thing. 11 Co. 20.

Nomen non sufficit si res non sit de jure aut de facto. A name does not siffice if there be not a thing by law or by fact. 4 Co. 107.

nomina si nescis perit cognitio rerum. If you know not the names of things, the knowledge of things themselves perishes. Co. Litt. 86.

Nomina sunt notae rerum. Names are the notes of things. 11 Co. 20.

Nomina sunt mutabilia, res autem immobiles. Names are mutable, but things immutable. 6 Co. 66.

Nomina sunt symbola rerum. Names are the symbols of things.

Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram. Words ought not to be accepted to import a false demonstration which have effect by way of true limitation. Bacons' Max. REg. 13.

Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio. A person may not be punished differntly than according to what the sentence enjoins. 3 Co. Inst. 217.

Non concedantur citationes priusquam exprimatur super qua ne fieri debet citatio. Summonses or citations should not be granted before it is expressed under the circumstances whether the summons ought to be made. 12 Co. 47.

Non auditor perire volens. One who wishes to perish ought not to be heard. Best on Evidence, _385.

Non consentit qui errat. He who errs does not conosent. 1 Bouv. Inst. n. 581.

Non debet, cui plus licet, quod minus est, non licere. He who is permitted to do the greater, may with greater reason do the less. Dig. 50, 17, 21.

Non decipitur qui scit se decipi. He is not deceived who know himself to be deceived. 5 co. 60.

Non definitur in jure quid sit conatus. What an attempt is, is not defined in law. 6 Co. 42.

Non differunt quae concordant re, tametsi non in verbis iisdem. Those things which agree in substance though not in the same words, do not differ. Jenk. Cent. 70.

Non effecit affectus nisi sequatur effectus. The intention amounts to nothing unless some effect follows. 1 Roll. R. 226.

Non est arctius vinculum inter homines quam jusjurandum. There is no stronger link among men than an oath. Jenk. Cent. 126.

Non est disputandum contra principia negantem. There is no disputing against a man denying principles. Co. Litt. 343.

Non est recedendum … communi abservantiſ. There is no departing from a common observance. 2 Co. 74.

Non est regula quin fallat. There is no rule but what may fail. Off. Ex. 212.

Non est certandum de regulis juris. There is no disputing about rules of law.

Non faciat malum, ut inde veniat bonum. You are not to do evil that good may come of it. 11 Co. 74.

Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur a quibus constitutuntur. A

derogatory clause does not prevent things or acts from being dissolved by the same power, by which they were originally made. Bacon's Max. Reg. 19.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in being read, but in being understood. 8 co. 167.

Non Licet quod dispendio licet. That which is permitted only at a loss, is not permitted to be done. Co. Litt. 127.

Non nasci, et natum mori, pari sunt. Not to be born, and to be dead born, is the same.

Non obligat lex nisi promulgata. A law is not obligatory unless it be promulgated.

Non observata forma, infertur adnullatio actus. When the form is not observed, it is inferred that the act is annulled. 12 Co. 7.

Non omne quod licet honestum est. Everything which is permitted is not becoming. Dig. 50, 17, 144.

Non omne damnum inducit injuriam. Not every loos produces an injury. See 3 Bl. Com. 219; 1 Smith's Lead. Cas. 131; Broom's Max. 93; 2 Bouv. Inst. n. 2211.

Non omnium quae a majoribus nostris constituta sunt ratio reddit potest. A reason cannot always be given for the institutions of our ancestors. 4 Co. 78.

Non potest adduci exception ejusdem rei cujus petitur dissolutio. A plea of the same matter, the dissolution of which is sought by the action, cannot be brought forward. Bacon's Max. Reg. 2. When an action is brought to annul a proceeding, the defendant cannot plead such proceeding in bar.

Non praestat impedimentum quod de jure non sortitur effectum. A thing which has no effect in law, is not an impediment. Jenk. Cent. 162.

Non quod dictum est, sed quod factum est, inspicitur. Not what is said, but what is done, is to be regarded. Co. Litt. 36.

Non refert an quis assensum suum praefert verbis, an rebus ipsis et factis. It is immaterial whether a man gives his assent by words or by acts and deeds. 10 Co. 52.

Non refert quid ex aequipolentibus fiat. What may be gathered from words of tantamount meaning, is of no consequence when omitted. 5 Co. 122.

Non refert quid notum sit judice si notum non sit in forma judici. It matters not what is known to the judge, if it is not known to him judicially. 3 Buls. 115.

Non refert verbis an factis fit revocatio. It matters not whether a revocation be by words or by acts. Cro. Car. 49.

Non solum quid licet, sed quidest conveniens considerandum, quia nihil quod inconveniens est licitum. Not only what is permitted, but what is proper, isto be considered, because what is improper is illegal. Co. Litt. 66.

Non sunt longa ubi nihil est quod demere possis. There is no prolixity where nothing can be omitted. Vaugh. 138.

Non temere credere, est nervus sapientae. Not to believe rashly is the nerve of wisdom. 5 Co. 114.

Non videtur quisquam id capere, quod ei necesse est alii restituere. One is not considered as acquiring property in a thing which he is bound to restore. Dig. 50, 17, 51.

Non videntur qui errant consentire. He who errs is not considered as consenting. Dig. 50, 17, 116.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit. He does not appear to have retained his consent, if he have changed anything through the means of a party threatening. Bacon's Max. Reg. 33.

Novatio non praesumitur. A novation is not presumed. See Novation.

Novitas non tam utilitate prodest quam novitate perturbat. Novelty benefits not so much by its utility, as it disturbs by its novelty. Jenk. Cent. 167.

Novum judicium non dat novum jus, sed declarat antiquum. A new judgment does not make a new law, but declares the old. 10 Co. 42.

Nul ne doit s'enrichir aux depens des autres. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong.

Nulla impossibilia aut inhonesta sunt praesumenda. Impossibilities and dishonesty are not to be presumed. Co. Litt. 78.

Nulle regle sans faute. There is no rule without a fault.

Nulli enim res sua servit jure servitutis. No one can have a servitude over his own property. Dig. 8, 2, 26; 17 Mass. 443; 2 Bouv. Inst. n. 1600.

Nullum exemplum est idem omnibus. No example is the same for all purposes.

Nullum iniquum praesumendum in jure. Nothing unjust is presumed in law. 4 Co. 72.

Nullum simile est idem. No simile is the same. Co. Litt. 3.

Nullus commodum capere potest de injuriſ suſ propriſ. No one shall take advantage of his own wrong. Co. Litt. 148.

Nullus recedat e curiſ concellariſ sine remedio. No one ought to depart out of the court of chancery without a remedy.

Nunquam fictio sine lege. There is no fiction without law.

Nuptias non concubitas, sed consensus facit. Cohabitation does not make the marriage, it is the consent of the parties. Dig 50, 17, 30; 1 Bouv. Inst. n. 239; Co. Litt. 33.

Obedientia est legis essentia. Obedience is the essence of the law. 11 Co. 100.

Obtemperandum est consuetudini rationabili tanquam legi. A reasonable custom is to be obeyed like law. 4 Co. 38.

Officers may not examine the judicial acts of the court.

Officia magistratus non debent esse venalia. The offices of magistrates ought not to be sold. Co. Litt. 234.

Officia judicialia non concedantur antequam vacent. Judicial offices ought not to be granted before they are vacant. 11 Co. 4.

Officit conatus si effectus sequatur. The attempt becomes of consequence, if the effect follows.

Officium nemini debet esse damnosum. An office ought to be injurious to no one.

Omissio eorum quae tacite insunt nihil operatur. The omission of those things which are silently expressed is of no consequence.

Omne actum ab intentione agentis est judicandum. Every act is to be estimated by the intention of the doer.

Omne crimen ebrietas et incendit et detegit. Drunkenness inflames and produces every crime. Co. Litt. 247.

Omne magis dignum trahit ad se minus dignum sit antiquius. Every worthier thing draws to it the less worthy, though the latter be more ancient. Co. Litt. 355.

Omne magnum exemplum habet aliquid ex iniquio, quod publica utilitate compensatur. Every great example has some portion of evil, which is compensated by its public utility. Hob. 279.

Omne majus continet in se minus. The greater contains in itself the less. Co. Litt. 43.

Omne majus minus in se complecitur. Always the greater is embraced in the minor. Jenk. Cent. 208.

Omne testamentum morte consummatum est. Every will is consummated by death. 3 Co. 29.

Omne sacramentum debet esse de certa scientiſ. Every oath ought to be founded on certain knowledge. 4 Co. Inst. 279.

Omnia delicta in aperto leviora sunt. All crimes committed openly are considered lighter. 8 co. 127.

Omnia praesumuntur contra spoliatorem. All things are presumed against a wrong doer.

Omnia praesumuntur legitime facta donec probetur in contrarium. All things are presumed to be done legitimately, until the contrary is proved. Co. Litt. 232.

Omnia praesumuntur rite esse acta. All things are presumed to be done in due form.

Omnia praesumuntur solemniter esse acta. All things are presumed to be done solemnly. Co. Litt. 6.

Omnia quae sunt uxoris sunt ipsius viri. All things which are of the wife, belong to the husband. Co. Litt. 112.

Omnis actio est loquela. Every action is a complaint. Co. Litt. 292.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris praemissis et dictis juratorem. Every conclusion of a good and true judgment arises from good and true premises, and the sayings of jurors. Co. Litt. 226.

Omnis consensus t ollit errorem. Every consent removes error. 2 Inst. 123.

Omnis definitio in jure periculosa est; parum est enim ut non subverti posset. Every devinition in law is perilous, and but a little may reverse it. Dig. 50, 17, 202.

Omnis exceptio est ipsa quoque regula. An exception is, in itself, a rule.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation disturbs more by its novelty than it benefits by its utility.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. The interpretation of insturments is to be made, if they will admit of it, so that all contradictions may be removed. Jenk. Cent. 96.

Omnis interpretatio vel declarat, vel extendit, vel restringit. Every interpretation either declares, extends or restrains.

Omnis regula suas patitur exceptiones. All rules of law are liable to exceptions.

Omnis privatio praesupponit habitum. Every privation presupposes former enjoyment. Co. Litt. 339.

Omnis ratihabitio retro trahitur et mandato aequiparatur. Every consent given to what has already been done, has a retrospective effect and equals a command. Co. Litt. 207.

Once a fraud, always a fraud. 13 Vin. Ab. 539.

Once a mortgage always a mortgage.

Once a recompense always a recompense. 19 Vin. Ab. 277.

One should be just before he is generous.

One may not do an act to himself.

Oportet quod certa res deducatur in judicium. A thing, to be brought to judgment, must be certain or definite. Jenk. Cent. 84.

Oportet quod certa sit res venditur. A thing, to be sold, must be certain or definite.

Optima est lex, quae minimum relinquit arbitrio judicis. That is the best system of law which confides as little as possible to the discretion of the judge. Bac. De Aug. Sci. Aph. 46.

Optimam esse legem, quae minimum relinquit arbitrio judicis; id quod certitudo ejus praestat. That law is the best which leaves the least discretion to the judge; and this is an advantage which results from certainty. Bacon, De Aug. Sc. Aph. 8.

Optimus judex, qui minimum sibi. He is the best judge who relies as little as possible on his own discretion. Bac. De Aug. Sci. Aph. 46.

Optimus interpretandi modus est sic legis interpretare ut leges legibus accordant. The best mode of interpreting laws isto make them accord. 8 Co. 169.

Optimus interpres rerum usus. Usage is the best interpretor of things. 2 Inst. 282.

Optimus legum interpres consuetudo. Custom is the best interpretor of laws. 4 Inst. 75.

Ordine placitandi servato, servatur et jus. The order of pleading being preserved, the law is preserved. Co. Litt. 363.

Origo rei inspici debet. The origin of a thing ought to be inquired into. 1 Co. 99.

Paci sunt maxime contraria, vis et injuria. Force and wrong are greatly contrary to peace. Co. Litt. 161.

Pacta privata juri publico derogare non possunt. Private contracts cannot derogate from the public law. 7 Co. 23.

Pacto aliquod licitum est, quid sine pacto non admittitur. By a contract something is permitted, which, without it, could not be admitted. Co. Litt. 166.

Par in parem imperium non habet. An equal has no power over an equal. Jenk. Cent. 174. Example: One of two judges of the same court cannot commit the other for contempt.

Paria copulantur paribus. Things unite with similar things.

paribus sententiis reus absolvitur. When opinions are equal, a defendant is acquitted. 4 Inst. 64.

Parte quacumque integranta sublata, tollitur totum. An integral part being taken away, the whole is taken away. 3 Co. 41.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suam. The offspring of a legitimate bed knows not his mother more certainly than his father. Fortes. c. 42.

Partus sequitur ventrem. The offspring follow the condition ofhte mother. This is the law in the case of slaves and animals; 1 Bouv. Inst. n. 167, 502; but with regard to freemen, children follow the condition of the father.

Parum differunt quae re concordant. Thing differ but littel which agree in substance. 2 Buls. 86.

Parum est latam esse sententiam, nisi mandetur executioni. It is not enough that sentence should be given unless it is put in execution. Co. Litt. 289.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum. It avails little to know what ought to be done, if you do not know how it is to be done. 2 Co. Inst. 503.

Patria potestas in pietate debet, non in atrocitate consistere. Paternal power should consist in affection, not in atrocity.

Pater is est quem nuptiae demonstrant. The father is he whom the marriage points out. 1 Bl. Com. 446; 7 mart. N. S. 548, 553; Dig. 2, 4, 5; 1 Bouv. Inst. n. 273, 304, 322.

Peccata contra naturam sunt gravissima. Offences against nature are the heaviest. 3 Co. Inst. 20.

Peccatum peccato addit qui culpae quam facit patrocinium defensionis adjungit. He adds one offence to another, who, when he commits a crime, joins to it the protection of a defence. 5 Co. 49.

Per rerum naturam, factum negantis nulla probatio est. It is in the nature of things that he who denies a fact is not bound to prove it.

Per varius actus, legem experientia facit. By various acts experience framed the law. 4 Co. Inst. 50.

Perfectum est cui nihil deest secundum suae perfectionis vel naturae modum. That is perfect which wants nothing in addition to the measure of its perfection or nature. Hob. 151.

Periculosum est res novas et inusitatas inducere. It is dangerous to introduce new and dangerous things. Co. Litt. 379.

Periculum rei venditae, nondum traditae, est emptoris. The purchaser runs the risk of the loss of a thing sold, though not delivered. 1 Bouv. Inst. n. 939; 4 B. & C. 941; 4 B. & C. 481.

Perpetua lex est, nullam legem humanum ac positivam perpetuam esse; et clausula quae abrogationem excludit initio non valet. It is a perpetual law that no human or positive law can be perpetual; and a clause in a law which precludes the power of abrogation is void ab initio. Bacon's Max. in Reg. 19.

Perpetuities are odious in law and equity.

Persona conjuncta aequiparatur interesse proprio. A person united equal one's own interest. Bacon's Max. Reg. 18. This means that a personal connexion, as nearness of blood or kindred, may in some cases, raise a use.

Perspicua vera non sunt probanda. Plain truths need not be proved. Co. Litt. 16.

Pirata est hostis humani generis. A pirate is an enemy of the human race. 3 Co. Inst. 113.

Pluralis numerus est duobus contentus. The plural number is contained in two. 1 Roll. R. 476.

Pluralities are odious in law.

Plures cohaeredes sunt quasi unum corpus, propter unitatem juris quod habent. Several co−heirs are as one body, by reason of the unity of right which they possess. Co. Litt. 163.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Several partners are as one body, by reason of the unity of their rights. Co. Litt. 164.

Plus exempla quam peccata nocent. Examples hurt more than offences.

Plus peccat auctor quam actor. The instigator of a crime is worse than he who perpetrates it. 5 Co. 99.

Plus valet unus oculatus testis, quam auriti de cem. One eye witness is better than ten ear ones. 4 Inst. 279.

Paenƒ ad paucos, metus ad omnes perveniat. A punishment inflicted on a few, causes a dread to all. 22 Vin. Ab. 550.

Paenƒ non potest, culpa perennis erit. Punishment may have an end, crime is perpetual. 21 Vin. Ab. 271.

Paenƒ ad paucos, metus ad omnes. Punishment to few, dread or fear to all.

Paenae potius molliendae quam exasperendae sunt. Punishments should rather be softened than aggravated. 3 Co. Inst. 220.

Posito uno oppositorum negatur alterum. One of two opposite positions being affirmed, the other is denied. 3 Ro..l R. 422.

Possessio est quasi pedis positio. Possession is, as it were, the position of the foot. 3 Co. 42.

Possession of the termer, possession of the reversioner.

Possession is a good title, where no better title appears. 20 Vin. Ab. 278.

Possessor has right against all men but him who has the very right.

Possibility cannot be on a possibility.

Posteriora derogant prioribus. Posterior laws derogate former ones. 1 Bouv. Inst. n. 90.

Potentia non est nisi ad bonum. Power is not conferred, but for the public good.

Potentia debet sequi justiciam, non antecedere. Power ought to follow, not to precede justice. 3 Buls. 199.

Potentia inutilis frustra est. Useless power is vain.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est. A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.

Potestas strictŠ interpretatur. Power should be strictly interpreted.

Postestas suprema seipsum dissolvare potest, ligare non potest. Supreme power can dissolve, but cannot bind itself.

Potior est conditio defendentis. Better is the condition of the defendant, than that of the plaintiff.

Potior est conditio possidentis. Better is the condition of the possessor.

Praepropera consilia, raro sunt prospera. Hasty counsels are seldom prosperous. 4 Inst. 57.

Praestat cautela quam medela. Prevention is better than cure. Co. Litt. 304.

Praesumptio violenta, plena probatio. Strong presumption is full proof.

Praesumptio violenta valet in lege. Strong presumption avails in law.

Praetextu liciti non debet admitti illicitum. Under pretext of legality, what is illegal ought not to be admitted. 10 Co. 88.

Praxis judicim est interpres legum. The practice of the judges is the interpreter of the laws. Hob. 96.

Precedents that pass sub silentio are of little or no authority. 16 Vin. 499.

Precedents has as much law as justice.

Praesentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis. The presence of the body cures the error in the name; the truth of the name cures an error in the description. Bacon's Max. Reg. 25.

Pretium succedit in locum rei. The price stands in the place of the thing sold. 1 Bouv. Inst. n. 939.

Prima pars aequitatis aequalitas. The radical element of justice is equality.

Principia data sequuntur concomitantia. Given principles follow their concomitants.

Principia probant, non probantur. Principles prove, they are not proved. 3 Co. 40. See Principles.

Principiorum non est ratio. There is no reasoning of principles. 2 Buls. 239. See Principles.

Principium est potissima pars cujusque rei. The principle of a thing is its most powerful part. 10 Co. 49.

Prior tempore, potior jure. He who is before in time, is preferred in right.

Privatorum conventio juri publico non derogat. Private agreements cannot derogate from public law. Dig. 50, 17, 45, 1.

Privatum incommodum publico bono peusatur. Private inconvenience is made up for by public benefit.

Privilegium est beneficium personale et extinguitur cum person*f*. A privilege is a personal benefit and dies with the person. 3 Buls. 8.

Privilegium est quasi privata lex. A privilege is, as it were, a private law. 2 Buls. 8.

Probandi necessitas incumbit illi ui agit. The necessity of proving lies with him who makes the charge.

Probationes debent esse evidentes, id est, perspicuae et faciles intelligi. Proofs ought to be made evident, that is, clear and easy to be understood. Co. Litt. 283.

Probatis extremis, praesumitur media. The extremes being proved, the intermediate proceedings are presumed. 1 Greenl. Ev. _20.

Processus legis est gravis vexatio, executio legis coronat opus. The process of the law is a grievous vexation; the execution of the law crowns the work. Co. Litt. 289.

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is prohibited to do on one's own property that which may injure another's. 9 co. 59.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is more remote. co. Litt. 10.

Proprietas verborum est salus proprietatum. The propriety of words is the safety of property.

Protectio trahit subjectionem, subjectio projectionem. Protection draws to it subjection, subjection, protection. Co. Litt. 65.

Proviso est providere praesentia et futura, non praeterita. A proviso is to provide for the present and the future, not the past. 2 Co. 72.

Proximus est cui nemo antecedit; supremus est quem nemo sequitur. He is next whom no one precedes; he is last whom no one follows.

Prudentur agit qui praecepto legis obtemperat. He acts prudently who obeys the commands of the law. 5 Co. 49.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum. Children are of the blood of their parents, but the father and mother are not the blood of their children. 3 Co. 40.

Purchaser without notice not obliged to discover to his own hurt. See 4 Bouv. Inst. n. 4336.

Quae ab hostibus capiuntur, statim capientium fiunt. Things taken from public enemies immediately become the property of the captors. See Infra praesidia.

Quae ad unum finem loquuta sunt; non debent ad alium detorqueri. Words spoken to one end, ought not to be perverted to another. 4 Co. 14.

Quae cohaerent personae *f* person*f* separari nequeunt. Things which belong to the person ought not to be separated from the person. Jenk. Cent. 28.

Quae communi legi derogant stricte interpretantur. Laws which derogate from the common law ought to be strictly construed. Jenk. Cent. 231.

Quae contra rationem juris introducta sunt, non debent trahi in consequentiam. Things introduced contrary to the reason of the law, ought not to be drawn into precedents. 12 Co. 75.

Quae dubitationis causf tollendae inseruntur communem legem non laedunt. Whatever is inserted for the purpose of removing doubt, does not hurt or affect the common law. Co. Litt. 205.

Quae incontinenti vel certo fiunt inesse videntur. Whatever is done directly and certainly, appears already in existence. Co. Litt. 236.

Quae in aurif acta sunt rite agi praesummuntur. Whatever is done in court is presumed to be rightly done. 3 Buls. 43.

Quae in partes dividi nequeunt solida, a singulis praestantur. Things which cannot be divided into parts are rendered entire severally. 6 Co. 1.

Quae inter alios acta sunt nemini nocere debent, sed prodesse possunt. Transactions between strangers may benefit, but cannot injure, persons who are parties to them. 6 Co. 1.

Quae malasunt inchoata in principio vex bono peragantur exitu. Things bad in the commence ment seldom end well. 4 Co. 2.

Quae non valeant singula, juncta juvant. Things which do not avail singly, when united have an effect. 3 Buls. 132.

Quae praeter consuetudinem et morem majorum fiunt, neque placent, necque recta videntur. What is done contrary to the custom of our ancestors, neither pleases nor appears right. 4 Co. 78.

Quae rerum naturf prohibentur, nullf lege confirmata sunt. Whatis prohibited inthe nature of things, cannot be confirmed by law. Finch's Law, 74.

Quaecumque intra rationem legis inveniuntur, intra legem ipsam esse judicantur. Whatever appears within the reason of the law, ought to be considered within the law itself. 2 Co. Inst. 689.

Quaelibet concessio fortissime contra donatorem interpretanda est. Every grant is to be taken most strongly against the grantor. Co. Litt. 183.

Quaelibet jurisdictio cancellos suos habet. Every jurisdiction has its bounds.

Qualibet paena corporalis, quam vis minima, major est quflibet paenf pecuniarif. Every corporal punishment, although the very least, is greater than pecuniary punishment. 3 Inst. 220.

Quaeras de dubiis, legem bene discere si vis. Inquire into them, is the way to know what things are really true. Litt. _443.

Qualitas quae inesse debet, facile praesumitur. A quality which ought to form a part, is easily presumed.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum. What is reasonable time, the law does not define; it is left to the discretion of the judges. Co. Litt. 56. See 11 Co. 44.

Quamvis aliquid per se non sit malum, tamen si sit mali exemple, non est faciendum. Although, in itself, a thing may not be had, yet, if it holds out a bad example, it is not to be done. 2 Co. Inst. 564.

Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cessat. Although the law speaks generally, it is to be restrained when the reason on which it is founded fails. 4 Co. Inst. 330.

Quando abest provisio partis, adest provisio legis. A defect in the provision of the party is supplied by a provision of the law. 6 Vin. Ab. 49.

Quando aliquid prohibetur ex directo, prohibetur et per obliquum. When anything is prohibited directly, it is prohibited indirectly. Co. Litt. 223.

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quae clausulae generali sunt constnanea interpretanda est charta secundum verba specialia. When a deed contains a general clause, and afterwards descends to special words, consistent with the general clause, the deed is to be construed according to the special words. 8 Co. 154.

Quando do una et eadem re, duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur. When two persons are liable on a joint obligation, if one makes default the other must bear the whole. 2 Co. Inst. 277.

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitiatur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio. When a disposition may be made to refer to two things, so that according to one reference, it would be vitiated, and by the other it would be made effectual, such a reference must be made to the disposition which is to have effect. 6 co. 76.

Quando diversi considerantur actus ad aliquem statum perficiendum, plus respicit lex acium originalem. When two different acts are required to the formation of an estate, the law chiefly regards the original act. 10 Co. 49.

Quando duo juro concurrunt in und person$f$, aequum est ac si essent in diversis. When two rights concur in one person, it is the same as if they were in two separate persons. 4 Co. 118.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. When the law gives anything, it gives the means of obtaining it. 5 Co. 47.

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. When the law gives anything, it gives tacitly what is incident to it. 2 Co. Inst. 326; Hob. 234.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When the law is special, but its reason is general, the law is to be understood generally. 2 co. Inst. 83; 10 Co. 101.

Quando licet id quod majus, videtur licere id quod minus. When the greate is allowed, the less seems to be allowed also.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est. When more is done than ought to be donoe, that shall be considered as performed, which should have been performed; as, if a man having a power to make a lease for ten years, make one for twenty years, it shall be void for the surplus. Broom's Max. 76; 8 Co. 85.

Quando verba et mens congruunt, non est interpretationi locus. When the words and the mind agree, there is no place for interpretation.

Quem admodum ad quaestionem facti non respondent judices, ita ad quaestionem juris non respondent juratores. In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law. Co. Litt. 295.

Qui accusat integrae famae sit et non criminosus. Let him who accuses be of a clear fame, and not criminal. 3 Co. Inst. 26.

Qui adimit medium, dirimit finem. He who takes away the means, destroys the end. Co. Litt. 161.

Qui aliquid staruerit parte inaudita altera, aequum licet dixerit, haud aequum facerit. He who decides anything, a party being unheard, though he should decide right, does wrong. 6 Co. 52.

Qui bene interrogat, bene docet. He who questions well, learns well. 3 Buls. 227.

Qui bene distinguit, bene docet. He who distinguishes well, learns well. 2 Co. Inst. 470.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. He who grants anything, is considered as granting that, without which his grant would be idle, without which the thing itself could not exist. 11 Co. 52.

Qui confirmat nihil dat. He who confirms does not give. 2 Bouv. Inst. n. 2069.

Qui contemnit praeceptum, contemnit praecipientem. He who contemns the precept, contemns the party giving it. 12 Co. 96.

Qui cum alio contrahit, vel est, vel debet esse non ignarus conditio ejus. He who contracts, knows, or ought to know, the quality of the person with whom he contracts, otherwise he is not excusable. Dig. 50, 17, 19; 2 Hagg. Consist. Rep. 61.

Qui destruit medium, destruit finem. He who destroys the means, destroys the end. 11 Co. 51; Shep. To. 342.

Qui doit inheritoer al pŠre, doit inheriter al fitz. He who ought to inherit from the father, ought to inherit from the son.

Qui ex damnato coitu nascuntur, inter liberos non computantur. He who is born of an illicit union, is not counted among the children. Co. Litt. 8. See 1 Bouv. Inst. n. 289.

Qui evertit causam, evertit causatum futurum. He who overthrows the cause, overthrows its future effects. 10 Co. 51.

Qui facit per alium facit per se. He who acts by or through another, acts for himself. 1 Bl. Com. 429; Story, Ag. _440; 2 Bouv. Inst. n. 1273, 1335, 1336; 7 Man. & Gr. 32, 33.

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. He who has jurisdiction to loosen, has jurisdiction to bind. 12 Co. 59.

Qui haeret in litera, haeret in cortice. He who adheres to the letter, adheres to the bark. Co. Litt. 289.

Qui ignorat quant–m solvere debeat, non potest improbus videre. He who does not know what he ought to pay, does not want probity in not paying. Dig. 50, 17, 99.

Qui in utero est, pro jam nato habetur quoties de ejus commodo quaeritur. He who is in the womb, is considered

as born, whenever it is for his benefit.

Qui jure suo utitur, nemini facit injuriam. He who uses his legal rights, harms no one.

Qui jussu judicis aliquod fuerit non videtur dolo malo fecisse, quia parere necesse est. He who does anything by command of a judge, will not be supposed to have acted from an improper motive, because it was necessary to obey. 10 Co. 76.

Qui male agit, odit lucem. He who acts badly, hates the light. 7 Co. 66.

Qui melius probat, melius habet. He who proves most, recovers most. 9 Vin. Ab. 235.

Qui molitur insidias in patriam, id facit quod insanusnauta perforans navem in qua vehitur. He who betrays his country, is like the insane sailor who bores a hole in the ship which carries him. 3 Co. Inst. 36.

Qui nascitur sine legitimo matrimonio, matrem sequitur. He who is born out of lawful matrimonu, follows the condition of the mother.

Qui non cadunt in constantem virem, vani timores sunt astinandi. Those are vain fears which do not affect a man of a firm mind. 7 Co. 27.

Qui non libere veritatem pronunciat, proditor est verilatis. He who does not willingly speak the truth, is a betrayer of the truth.

Qui non obstat quod obstare potest facere videtur. He who does not prevent what he can, seems to commit the thing. 2 Co. Inst. 146.

Qui non prohibit quod prohibere potest assentire videtur. He who does not forbid what he can forbid, seems to assent. 2 Inst. 305.

Qui non propulsat injuriam quando potest, infert. He who does not repel a wrong when he can, induces it. Jenk. Cent. 271.

Que obstruit aditum, destruit commodum. He who obstructs an entrance, destroys a convenience. Co. Litt. 161.

Qui omne dicit, nihil excludit. He who says all, excludes nothing. 4 Inst. 81.

Qui parcit nocentibus, innocentibus punit. He who spares the guilty, punishes the innocent.

Qui peccat ebuius, luat sobrius. He who offends drunk, must be punished when sober. Car. R. 133.

Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.

Qui per fraudem agit, frustra agit. He who acts fraudrlently acts in vain. 2 Roll. R. 17.

Qui potest et debet vetare, jubet. He who can and ought to forbid, and does not, commands.

Qui primum peccat ille facit rixam. He who first offends, causes the strife.

Qui prior est tempore, potior est jure. He who is first or before in time, is stronger in right. Co. Litt. 14 a; 1 Story, Eq. Jur. _64 d; Story Bailm. _312; 1 Bouv. Inst. n. 952; 4 Bouv. Inst. n. 3728.

Qui providet sibi, providet haredibus. He who provides for himself, provides for his heirs.

Qui rationem in omnibus quarunt, rationem subvertunt. He who seeks a reason for everything, subverts reason. 2 Co. 75.

Qui semel actionem renunciaverit, amplius repetere non potest. He who renounces his action once, cannot any more repeat it. 8 Co. 59. See Retraxit.

Qui semel malus, semper prasumitur esse malus in eodem genere. He who is once bad, is presumed to be always soin the same degree. Cro. Car. 317.

Que sentit commodum, sentire debet et onus. He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433.

Qui tacet consentire videtur. He who is silent appears to consent. Jenk. Cent. 32.

Qui tardius solvit, minus solvit. He who pays tardily, pays less than he ought. Jenk.Cent. 38.

Qui timent, cavent et vitant. They who fear, take care and avoid. Off. Ex. 162.

Qui vult decipi, decipiatur. Set him who wishes to be deceived, be deceived.

Quicpuid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil belongs to it. Went. Off. Ex. 145.

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil or the realty, thereby becomes a parcel. See Amb: 113; 3 East, 51; and article Fixtures.

Qnicquid est contra normam recti est injuria. Whatever is against the rule of right, is a wrong. 3 Buls. 313.

Quicquid in excessu actum est, lege prohibitur. Whatever is done in excess is prohibited by law. 2 Co. Inst. 107.

Quicquid judicis auctoritati subjictur, novitati nonsubjiclur. Whatever is subject to the authority of a judge, is not subject to novelty. 4 Co. Inst 66.

Quicquid solvitur, solvitur secundum modum solventis. Whatever is paid, is paid according to the manner of the payor. 2 Vern. 606. See Appropriation.

Quilibet potest renunciare juri pro se inducto. Any one may renounce a law introduced for his own benefit. To this rule there are some exceptions. See 1 Bouv. Inst. n. 83.

Qusquis est qui velit juris consultus haberi, continuet studium, velit a quocunque doceri. Whoever wishes to be a lowyer, let him continually study, and desire to be taught everything.

Quod ab initio non valet, in tractu temporis non convalescere. What is not good in the beginning cannot be rendered good by time. Merl. Rep. verbo Regle de Droit. This, though true in general, is not universally so.

Quod ad jus naturale attinet, omnes homenes aequales sunt. All men are equal before the natural law. Dig. 50, 17, 32.

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur. What is otherwise good and just, if sought by force or fraud, becomes bad and unjust. 3 Co. 78.

Quod constat clare, non debet verificari. What is clearly apparent need not be proved.

Quod constat curiae opere testium non indiget. What appears to the court needs not the help of witnesses. 2 Inst. 662.

Quod contra legem fit, pro infecto habetur. What is done contrary to the law, is considered as not done. 4 Co. 31. No one can derive any advantage from such an act.

Quod contra juris rationem receptum est, non est producendum ad consequentias. What has been admitted against the spirit of the law, ought not to be heard. Dig. 50, 17, 141.

Quod demonstrandi caus*f* additur rei satis demonstratae, frusta fit. What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain. 10 Co. 113.

Quod dubitas, ne feceris. When you doubt, do not act.

Quod est ex necessitate nunquam introducitor, nisi quando necessarium. What is introduced of necessity, is never introduced except when necessary. 2 Roll. R. 512.

Quod est inconveniens, aut contra rationem non permissum est in lege. What is inconvenient or contrary to reason, is not allowed in law. Co. Litt. 178.

Quod est necessarium est licitum. What is necessary is lawful.

Quod factum est, cum in obscuro sit, ex affectione cujusque capit interpretationem. Doubtful and ambigious clauses ought to be construed according to the intentions of the parties. Dig. 50, 17, 168, 1.

Quod fieri non debet, factum valet. What ought not to be done, when done, is v alid. 5 Co. 38.

Quod inconsulto fecimus, consultius revocemus. What is done without consideration or reflection, upon better consideration we should revoke or undo.

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori. What avails in the less, will avail in the greater; and what will not avail in the greater, will not avail in the less. Co. Litt. 260.

Quod in uno similium valet, valebit in altere. What avails in one of two similar things, will avail in the other. co. Litt. 191.

Quod initio vitiosum est, non potest tractu temporis convalescere. Time cannot render valid an act void in its origin. Dig. 50, 17, 29.

Quod meum est sine me auferri non potest. What is mine cannot be taken away without my consent. Jenk. Cent. 251. Sed vide Eminent Domain.

Quod necessarie intelligitur id non deest. What is necessarily understood is not wanting. 1 Buls. 71.

Quod necessitas cogit, defendit. What necessity forces, it justifies. Hal. Pl. Cr. 54.

Quod non apparet non est, et non apparet judicialiter ante judicium. What appears not does not exist, and nothing appears judicially before judgment. 2 Co. Inst. 479.

Quod non habet principium non habet finum. What has no beginning has no end. Co. Litt. 345.

Quod non legitur, non creditor. What is not read, is not believed. 4 Co. 304.

Quod non valet in principalia, in accessoria seu consequentia non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. What is not good in its principle, will not be good as to accessories or consequences; and what is not of force as regards things near, will not be of force as to things remote. 8 co. 78.

Quod nullius est id ratione naturali occupanti conceditur. What belongs to no one, naturally belong to the first

occupant. Inst. 2, 1, 12; 1 Bouv. Inst. n. 491.

Quod nullius esse potest, id ut alicujus fieret nulla obligatio valet efficere. Those things which cannot be acquired as property, cannot be the object of an agreement. Dig. 50, 17, 182.

Quod pendet, non est pro eo, quasi sit. What is in suspense is considered as not existing. Dig. 50, 17, 169, 1.

Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy. 4 Co. 24.

Quod per recordum probatum, non debet esse negatum. What is proved by the record, ought not to be denied.

Quod populus postremum jussit, id just ratum esto. What the people have last enacted, let that be the established law.

Quod prius est verius est; et quod prius est tempore potius est jure. What is first istruest; and what comes first in time, is best in law. Co. Litt. 347.

Quod pro minore licitum est, et pro majore licitum est. What is lawful in the less, is lawful in the greater. 8 Co. 43.

Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire. He who suffers a damage by his own fault, has no right to complain. Dig. 50, 17, 203.

Quod quisquis norat in hoc se exerceat. Let every one employ himself in what he knows. 11 Co. 10.

Quod remedio destituitur ipsa re valet si culpa absit. What is without a remedy is valid by the thing itself. Bacon's Max. Reg. 9.

Quod semel meum est amplius meum esse non potest. Co. Litt. 49; Shep To. 212.

Quod sub certa forma concessum vel reservatum est, non trahitur advalorem vel compensationem. That which is granted or reserved under a certain form, is not to be drawn into a valuation. Bacon's Max. Reg. 4.

Quod solo inaedificatur solo cedit. Whatever is built on the soil is an accessory of the soil. Inst. 2, 1, 29; 16 Mass. 449; 2 Bouv. Inst. n. 1571.

Quod taciti intelligitur deessee non videtur. What is tacitly understood does not appear to be wanting. 4 Co. 22.

Quod vanum et inutile est, lex non requirit. The law does not require what is vain and useless. Co. Litt. 319.

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit. Whenever there is a doubt between liberty and slavery, the decision must be in favor of liberty. Dig. 50, 17, 20.

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba fienda est. When there is no ambiguity in the words, then no exposition contrary to the words is to be made. Co. Litt. 147.

Ratihabitiio mandato aequiparatur. Ratification is equal to a command. Dig. 46, 3, 12, 4.

Ratio est formalis causa consueetudinis. Reason is the formal cause of custom.

Ratio est legis anima, mutata legis ratione mutatur et lex. Reason is the soul of the law; the reason of the law being changed, the law is also changed.

Ratio est radius divini luminis. Reason is a ray of divine light. Co. Litt. 232.

Ratio et auctoritas duo clarisima mundi limina. Reason and authority are the two brightest lights in the world. 4 Co. Inst. 320.

Ratio in jure aequitas integra. Reason in law is perfect equity.

Ratio legis est anima legis. The reason of the law is the soul of the law.

Ratio non clauditur loco. Reason is not confined to any place.

Ratio potest allegari deficiente lege, sed vera et legalis et non apparens. Reason may be alleged when the law is defective, but it must be true and legal reason, and not merely apparent. 6 Co. Litt. 191.

Re, verbis, scripto, consensu, traditione, junctura vestes, sumere pacta solent. Compacts are accustomed to be clothed by thing itself, by words, by writing, by consent, by delivery. Plow. 161.

Receditur a placitis juris, potius quam injuriae et delicta maneant impunita. Positive rules of law will be receded from, rather than crimes and wrongs should remain unpunished. Bacon's Max. Reg. 12. This applies only to such maxims as are called placita juris; these will be dispensed with rather than crimes should go unpunished, quia salus populi suprema lex, because the public safety is the supreme law.

Recorda sunt vestigia vetustatis et veritatis. Records are vestiges of antiquity andtruth. 2 Roll. R. 296.

Recurrendum est ad extraordinarium quando non valet ordinarium. We must have recourse to what is extraordinary, when what is ordinary fails.

Regula pro lege, si deficit lex. In default of the law, the maxim rules.

REgulariter non valet pactum dare mea non alienanda. Regularly a contract not to alienate my property is not binding. Co. Litt. 223.

Rei turpis nullum mandatum est. A mandate of an illegal thing is void. Dig. 17, 1, 6, 3.

Reipublicae interest voluntates defunctorum effectum sortiri. It concerns the state that the wills of the dead should have their effect.

Relatio est fictio juris et intenta ad unum. Reference is a fiction of law, and intent to one thing. 3 Co. 28.

Relatio semper fiat ut valeat dispositio. Reference should always be had in sucha manner that a disposition in a will should avail. 6 Co. 76.

Relation never defeats collateral acts. 18 Vin. Ab. 292.

Relation shall never make good a void grant or devise of the party. 18 Vin. Ab. 292.

Relatiorum cognito uno, cognoscitur et alterum. Of things relating to each other, one being known, the other is known. Cro. Jac. 539.

Remainder can depend upon no estate but what beginneth at the same time the remainder doth.

Remainder must vest at the same instant that hte particular estate determines.

Remainder to aperson not of a capacity to take at the time of appointing it, is void. Plowd. 27.

Remedies ought to be reciprocal.

Remedies for rights are ever favorably extended. 18 Vin. Ab. 521.

Remisus imperanti melius paretur. A man commanding not too strictly is best obeyed. 3 Co. Inst. 233.

Remoto impedimento, emergit actio. The impediment begin removed the action arises. 5 Co. 76.

Rent must be reserved to him from whom the state of the land moveth. Co. Litt. 143.

Repellitur a sacramento infamis. An infamous person is repelled or prevented from taking an oath. Co. Litt. 158.

Reprobata pecunia liberat solventum. Money refused liberates the debtor. 9 Co. 79. But this must be understood with a qualification. See Tender.

Reputatio est vulgaris opinio ubi non est veritas. Reputation is a vulgar opinion where there is no truth. 4 Co. 107. But see, Character.

Rerum ordo confunditur, si unicuique jurisdictio non servetur. The order of things is confounded if every one preserves not his jurisdiction. 4 Co. Inst. Proem.

Rerum progressus ostendunt multa, quae in initio praecaveri seu praevideri non possunt. The progress of time shows many things, which at the beginning could not be guarded against, or foreseen. 6 Co. 40.

Rerum suarum quilibet est moderator et arbiter. Every one is the manager and disposer of his own. Co. Litt. 233.

Res denominator a principaliori parte. A thing is named from its principal part. 5 Co. 47.

Res est misera ubi jus est vagam et invertum. It is a miserable state of tings where the law is vague and uncertain. 2 Salk. 512.

Res, generalem habet significationem, quia tam corporea, quam incorporea, cujuscunque sunt generis, naturae sive speciei, comprehendit. The word things has a general significaiton, which comprehends corporeal and incorporeal objects, of whatever nature, sort or specie. 3 Co. Inst. 482; 1 Bouv. Inst. n. 415.

Res inter alios acta alteri nocere non debet. Things done between strangers ought not to injure those who are not parties to them. Co. Litt. 152.

Res judicata pro veritate accipitur. A thing adjudged must be taken for truth. Co. Litt. 103; Dig. 50, 17, 207. See Res judicata.

Res judicata facit ex albo nigrum, ex nigro album, ex curvo rectum, ex recto curvum. A thing adjudged makes what was white, black; what was black, white; what was crooked straight; what was straight, crooked. 1 Bouv. Inst. n. 840.

Res per pecuniam aestimatur, et non pecunia per res. The value of a thing is estimated by its worth in money, and the value of money is not estimated by reference to one thing. 9 Co. 76; 1 Bouv. Inst. n. 922.

Res perit domino suo. The destruction of the thing is the loss of its owner. 2 Bouv. Inst. n. 1456, 1466.

Reservatio non debet esse de proficuis ipsis quia ea conceduntur, sed de redditu nova extra proficua. A reservation ought not to be ofthe profits themselves, because they are granted, but from the new rent out of the profits. Co. Litt. 142.

Resignatio est juris porprii spontanea refutatio. Resignation is the spontaneous relinquishment of one's own right. Godb. 284.

Respondeat superior. Let the principal answer. 4 Co. Inst. 114; 2 Bouv. Inst. n. 1337; 4 Bouv. Inst. n. 3586.

Responsio unius non omnino auditur. The answer of one witness shall not be heard at all. 1 Greenl. Ev. _260. This is a maxim of the civil law, where everything must be proved by two witnesses.

Rights never die.

Reus laesae majestatis punitur, ut pereat unus ne pereant omnes. A traitor is punished, that by the death of one, all may not perish. 4 Co. 124.

Sacramentum habet in se tres comites, varitatem, justitiam et judicium; veritas habenda est in jurato; justitia et justicium in judice. An oath has in it three component parts − truth, justice and judgment; truth in the party swearing; justice and judgment in the judge administering the oath. 3 Co. Inst. 160.

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. A foolish oath, though false, makes not perjury. 2 Co. Inst. 167.

Saepe viatorim nova non vetus orbita fallit. Often ti is the new road, not the old one, which deceives the traveller. 4 Co. Inst. 34.

Saepenumero uvb proprietas verboem attenditur, sensus veritatis amittitur. Frequently where the propriety of words is attended to, the meaning of truth is lost. 7 Co. 27.

Salus populi est suprema lex. The safety of the people is the supreme law. Bacon's Max. in Reg. 12; Broom's Max. 1.

Salus ube multi consiliarii. In many counsellors there is safety. 4 Co. Inst. 1.

Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione. A wise man begins with the last, and what is first in intention is last in execution. 10 Co. 25.

Sapiens omnia agit cum consilio. A wise man does everything advisedly. 4 Co. Inst. 4.

Sapientia legis nummario pretio non est aestemanda. The wisdom of law cannot be valued by money.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum. A wise man should consdier as much what he premises as what he commits and believes. 4 Co. Inst. 193.

Satisfaction should be made to thatfund which has sustained the loss. 4 Bouv. Inst. n. 3731.

Satius est petere fontes quam sectari rivulos. It is better to search the fountain than to cut rivulets. 10 Co. 118. It is better to drink at the fountain than to sip in the streams.

Scientia sciolorum est mixta ignorantia. The knowledge of smatterers is mixed ignorance. 8 Co. 159.

Scientia et volunti non fit injuria. A wrong is not done to one who knows and wills it.

Scientia utrimque per pares contrahentes facit. Equal knowledge on both sides makes the contracting parties equal.

Scire leges, non hoc est verba eorum tenere, sed vim et potestatem. To know the laws, is not to observe their mere words, but their force and power. Dig. 1, 3, 17.

Scire proprie est, rem ratione et per causam cognoscere. To know properly is to know the reason and cause of a thing. Co. Litt. 183.

Scire debes cum quo contrahis. You ought to know with whom you deal.

Scribere est agere. To write is to act. 2 Roll. R. 89.

Scriptae obligationes scriptis tolluntur, et nude consensus obligatio, contrario consensu dissolvitur. Written obligations are dissolved by writing, and obligations of naked assent by similar naked assent.

Secundum naturam est, commoda cujusque rei eum sequi, quem sequentur incommoda. It is natural that he who bears the charge of a thing, should receive the profits. Dig. 50, 17, 10.

Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus. Business entrusted to several sppeds best, and several eyes see more than one eye. 4 Co. 46.

Semel malus semper praesumitur esse malus in eodem genere. Whatever is once bad, is presumed to be so always in the same degree. Cro. Car. 317.

Semper ita fiat relatio ut valeat dispositio. Let the reference always be so made that the disposition may avail. 6 Co. 76.

Semper necessitas probandi incumbit qui agit. The claimant is always bound to prove: the burden of proof lies on him.

Semper praesumitur pro legitimatione puerorem, et filiatio non potest probari. Children are alwasy presumed to be legitimate, for filiation cannot be proved. Co. Litt. 126. See 1 Bouv. Inst. n. 303.

Semper praesumitur pro sententi$f$. Presumption is always in favor of the sentence. 3 Buls. 43.

Semper specialia generalibus insunt. Special clauses are always comprised in general ones. Dig. 50, 17, 147.

Sensus verborum est anima legis. The meaning of words is the spirit of the law. 5 Co. 2.

Sensus verborum ex causa dicendi accipiendus est, et sermones semper accipiendi sunt secundum subjectam

materiam. The sense of words is to be taken from the occasion of speakign them, and discourses are always to be interpreted according to the subject−mater. 4 Co. 14.

Sententia facit jus, et legis interpretatio legis vim obtinet. The sentence gives the right, and the interpretation has the force of law.

Sententia interlocutoria revocari potest, difinitiva non potest. An interlocutory sentence or order may be revoked, but not a final.

Sententia non fertur de rebus non liquidis. Sentence is not given upon a thing which is not clear.

Sequi debet potentia justitiam, non praecedere. Power should follow justice, not preced it. 2 Co. Inst. 454.

Sermo index animi. Speech is an index of the mind. 5 Co. 118.

Sermo relatus ad personam, intelligi debet de conditione personae. A speech relating to the person is to be understood as relating to hiscondition. 4 Co. 16.

Si a jure discedas vagus eris, et erunt omnia omnibus incerta. If you depart from the law, you will wander without a guide, and everything will be in a state of uncertainty to every one. Co. Litt. 227.

Si assuetis mederi possis nova non sunt tentanda. If you can be relieved by accustomed remedies, new ones should not be tried. 10 Co. 142.

Si judicas, cognasce. If you judge, understand.

Si meliores sunt quos ducit amor, plures sunt quos corrigit timer. If many are better led by love, more are corrected by fear. Co. Litt. 392.

Si nulla sit conjectura quae ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu. if there be no conjecture which leads to a different result, words are to be understood, according to the proper meaning, not in a grammatical, but in a popular and ordinary sense. 2 Kent, Com. 555.

Si quis custos fraudem pupillo fecerit, a tutela removendus est. If a guardian behave fraudently to his ward, he shall be removed from the guardianship. Jenk. Cent. 39.

Si quis praegnantum uxorem reliquit, non videtur sine liberis decessisse. If a man dies, leaving his wife pregnant, he shall not be considered as having died childless.

Si suggestio non sit vera, literae patentes vacuae sunt. If the suggestion of a patent is false, the patent itself is void. 10 Co. 113.

Si quid universitate debetur singulis non debetur, nec quod debet, universitas singuli debent. If anything is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes. Dig. 3, 4, 7.

Sic interpretandum est ut verba accipiantur cum effectu. Such an interpretation is to be made, that the words may have an effect.

Sic utere tuo ut alienum non laedas. So use your own as not to injure another's property. 1 Bl. Com. 306; Broom's max. 160; 4 McCord, 472; 2 Bouv. Inst. n. 2379.

Sicut natura nil facit per saltum, ita nec lex. AS nature does nothing by a bound or leap, so neither does the law. Co. Litt. 238.

Silent leges inter arma. laws are silent amidst arms. 4 Co. Inst. 70.

Simplicitas est legibus amica. Simplicity is favorable to the law. 4 Co. 8.

Sine possessione usucapio procedere non potest. There can be no prescription without possession.

Solemnitas juris sunt observandae. The solemnities of law are to be observed. Jenk. Cent. 13.

Solo cedit quod solo implantatur. What is planted in the soil belongs to the soil. inst. 2, 1, 29. See 1 Mackeld. civ. Law, _268; 2 Bouv. Inst. n. 1571.

Solo cedit quodquod solo implantatur. What is planted in the soil belongs o the soil. Inst. 2, 1, 32; 2 Bouv. Inst. n. 1572.

Solus Deus haeredem facit. God alone makes the heir.

Solutio pretii, emptiones loco habetur. The payment of the price stands in the place of a sale.

Spes est vigilantis somnium. Hope is the dream of the vigilant. 4 Co. Inst. 203.

Spes impunitatis continuum affectum tribuit delinquendi. The hope of impunity holds out a continual temptation to crime. 3 Co. Inst. 236.

Spoliatus debet ante omnia restitui. Spoil ought to be restored before anything else. 2 Co. Inst. 714.

Spondet peritiam artis. He promises to use th skill of his art. Poth. Louage, n. 425; Jones, Bailm. 22, 53, 62, 97, 120; Domat, liv. 1, t. 4, s. 8, n. 1; 1 Story Bailm. _431; 1 Bell's Com. 459, 5th ed.; 1 Bouv. Inst. n. 1004.

Stabit praesumptio donec probetur in contrarium. A presumption will stand good until the contrary is proved. Hob. 297.

Statuta pro publico commodo late interpretantur. Statutes made for the public good ought to be liberally construed. Jenk. Cent. 21.

Statutum affirmativum non derogat communi legi. An affirmative stature does not take from the common law. Jenk. Cent. 24.

Statutum generaliter est intelligendum quaudo verva statuti sunt specialia, ratio autem generalis. When the words of a statute are special, but the reason of it general, it is to be understood generally. 10 Co. 101.

Statutum speciale statuto speciali non derogat. One special statute does not take away from another special statute. Jenk. Cent. 199.

Sublata causa tollitur effectus. Remove the cause and the effect will cease. 2 Bl. Com. 203.

Sublata veneratione magistraiuum, respublica ruit. The commonwealth perishes, if respect for magistrates be taken away.

Sublato fundamento cadit opus. Remove the foundation, the structure or work fall.

Sublato principali tollitur adjunctum. If the principal be taken away, the adjunct is also taken away. Co. Litt. 389.

Summum jus, summa injuria. The rigor or height of law, is the height of wrong. Hob. 125; 1 Chan. Rep. 4.

Superflua non nocent. Superfluities do no injury.

Surplusagium non nocet. Surplusage does noharm. 3Bouv. Inst. n. 2949.

Tacita quaedam habentur pro expressis. Things silent are sometimes considered as expressed. 8 Co. 40.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium. Interpretation is always to be made in such a manner, that what is absurd and inconvenient is to be avoided, so that the judgment be not nugatory. 1 Co. 52.

Talis non est eadem, nam nullum simile est idem. What is like is not the same, for nothing similar is the same. 4 Co. 18.

Tantum bona valent, quantum vendi possunt. Things are worth what they will sell for. 3 Co. Inst. 305.

Terminus annorum certus debet esse et determinatus. A term of years ought to be certain and determinate. Co. Litt. 45.

Terra transit cum onere. Land passses with the incumbrances. Co. Litt. 45.

Testamenta latissimam interpretationem habere debent. Wills ough to have the broadest interpretation.

Testamentum omne morte consumatum. Every will is completed by death. Co. Litt. 232.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his real intention. Co. Litt. 232.

Testibus deponentibus in pari numero dignioribus est credendum. When the number of witnesses is equal on both sides, the more worthy are to be believed. 4 Co. Inst. 279.

Testis de visu praeponderat aliis. An eye witness outweighs others. 4 Co. Inst. 470.

Testis nemo in su$f$ caus$f$ esse potest. No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem. One eye witness is worth ten ear witnesses. See 3 Bouv. Inst. n. 3154.

Timores vani sunt aestimandi qui non cadunt in constantem virum. Fears, which have no fixed persons for their object, are vain. 7 Co. 17.

That which I may defeat by my entry, I make good by my confirmation. Co. Litt. 300.

The fund which has received the benefit should make the satisfaction. 4 Bouv. Inst. n. 3730.

Things shall not be void which may possibly be good.

Trusts survive.

Totum prefertur uni cuique parte. The whole is preferable to any single part. 3 Co. 41.

Tout ce que la loi ne defend pas est permis. Everything is permitted, which is not forbidden by law.

Tonte exception non surveill,e tend … prendre la place du principe. Every exception not watched tends to assume the place of the principle.

Tractent fabrilia fabri. Let smiths perform the work of smiths. 3 Co. Epist.

Traditio loqui facit chartam. Delivery makes the deed speak. 5 Co. 1.

Transgressione multiplicata, crescat paena inflictio. When transgression is multiplied, let the infliction of

punishment be increased. 2 Co. Inst. 479.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. Trial ought always to be had where the jury have the best knowledge. 7 Co. 1.

Trupis est pars quae non convenit cum suo toto. That part is bad which accords not with the whole. Plow. 161.

Tuta est custodia quae sibimet creditur. That guardianship is secure which trusts to itself alone.

Tutius erratur ex parte mittioro. It is safer to err on the side of mercy. 3 inst. 220.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. When anything is impeded by one single cause, if that be removed the impediment is removed. 7 Co. 77.

Ubi cessat remedium ordinarium ibi decurritur ad extraordinarium. When a common remedy ceases to be of service, recoruse must be had to an extraordinary one. 4 Co. 93.

Ubi culpa est ibi paena subesse debet. Where there is culpability, there punishment ought to be.

Ubi eadem ratio, ibi idem lex. Where there is the same reason, there is the same law. 7 co. 18.

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the losing party should pay the costs of the victor. 2 Inst. 289.

Ubi factum nullum ibi sortia nulla. Where there is no deed committed, there can be no consequence. 4 Co. 43.

Ubi jus, ibi remedium. Where there is a right, there is a remedy. 1 T. R. 512; Co. Litt. 197, b; 3 Bouv. Inst. n. 2411; 4 Bouv. Inst. n. 3726.

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et letitima. Where the law compels a man to show cause, the cause ought to be just and legal. 2 Co. Inst. 269.

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est. Where the law is special and the reason of it is general, it ought to be taken as being general. 2 Co. Inst. 43.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, we ought not to distinguish. 7 Co. 5.

Ubi major pars est, ibi totum. Where is the greater part, there is the whole. Moor, 578.

Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt. When the law fails to serve as a rule, almost everything ought to be suspected. Bacon, De Aug. Sci. Aph. 25.

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority to enforce, there is no authority to obey. Dav. 69.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Where there is no direct law, the opinion of the judges ought to be taken, or reference made to similar cases.

Ubi non est lex, non est transgressio quoad mundum. Where there is no law there is no transgression, as it regards the world.

ubi non est principalis non potest esse accessorius. Where there is no principal there is no accessory. 4 co. 43.

ubi nullum matrimonium ibi nullum dos. Where there is no marriage there is no dower. Co. Litt. 32.

Ubi periculum, ibi et lucrum collocatur. He at whose risk a thing is, should receive the profits arising from it.

Ubi quid generaliter conceditur, in est haec exceptio, si non aliquid sit contra jus fasque. Where a thing is concealed generally, this exception arises, that there shall be nothing contrary to law and right. 10 Co. 78.

ubi quis delinquit ibi punietur. Let a man be punished when he commits the offence. 6 Co. 47.

Ubicunque est injuria, ibi damnum sequitur. Whereever there is a wrong, there damages follow. 10 Co. 116.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention. Co. Litt. 322.

Ultra posse non est esse, et vice versa. What is beyond possibility cannot exist, and the reverse, what cannot exist is not possible.

Una persona vix potest supplere vices duorum. One person can scarcely supply the place of two. 4 co. 118.

Universalia sunt notoria singularibus. Things universal are better known than things particular. 2 Roll. R. 294.

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiamsi major pars id faciat. An university or corporation is not said to do anything unless it be deliberated upon collegiately, although the majority should do it. Dav. 48.

Uno absurdo dato, infinita sequuntur. One absurdity begin allowed, an infinity follow. 1 co. 102.

Unumquodque eodem modo quo colligatum est dissolvitur. In the same manner in which a thing is bound, it is loosened. 2 Roll. Rep. 39.

Unumquodque est id quod est principalius in ipso. That which is the principal part of a thing is the thing itself. Hob. 123.

Unumquodque dissolvatur eo modo quo colligatur. Everything is dissolved by the same mode in which it is bound together.

Usury is odious in law.

Ut paena ad paucos, metus ad omnes perveniat. That by the punishment of a few, the fear of it may affect all. 4 Inst. 63.

Ut res magis valeat quam pereat. That the thing may rather have effect than be destroyed.

Utile per inutile non vitiatur. What is useful is not vitiated by the useless. 3 Bouv. Inst. n. 2949, 3293; 2 Wheat. 221; 2 S. & R. 298; 17 S. & R. 297; 6 Mass. 303.

Valeat quantum valere potest. It shall have effect as far as it can have effect.

Vana est illa potentia quae numquam venit in actum. Vain is that power which is never brought into action. 2 Co. 51.

Vani timores sunt aestimandi, qui non cadunt in constantem virum. Vain are those fears which affect not a valiant man. 7 Co. 27.

Vendens eandem rem doubus falsarius est. It is fraudulent to sell the same thing twice. Jenk. Cent. 107. See Stalionat.

Veniae facilitas incentivum est delinquendi. Facility of pardon is an incentive to crime. 3 inst. 236.

Vreba aliquid operari debent, verba cum effectu sunt accipienda. Words are to be taken so as to have effect. Bacon's Max. Reg. 3, p. 47. See 1 Duer. on ins. 210, 211, 216.

Verba aequivoca ac in dubio sensu posita, intelliguntur dignori et potentiori sensu. Equivocal words and those in a doubtful sense are to be taken in their best and most effective sense. 6 Co. 20.

Verba currentis monetae, tempus solutionis designat. The words current money, refer to the time of payment. Dav. 20.

Verba dicta de persona, intelligi debent de conditione personae. Words spoken of the person are to be understood of the condition of the person. 2 Roll. R. 72.

Verba fortius accipientur contra proferentum. Words are to be taken most strongly against him who uses them. Bacon's Max. REg. 3; 1 Bouv. Inst. n. 661.

Verba generalia generaliter sunt intelligenda. General words are to be generally understood. 3 Co. Inst. 76.

Verba ganeralia restringuntur ad habilitatem rei vel personae. General words must be confined or restrained to the nature of the subject or the aptitude of the person. Bacon's max. Reg. 10.

Verba intentioni, non e contra, debent inservire. Words ought to be made subservient to the intent, not contrary to it. 8 Co. 94.

Verba ita sunt intelligenda, ut res magis valeat quam pereat. Wrods are to be so understood that the subject−matter may be preserved rather than destroyed. Bacon's Max. in Reg. 3.

Verba nihil operandi melius est quam absurde. It is better that words should have no operation, than to operate absurdly.

Verba posteriora propter certitudinem addita, ad priora quae certitudine indigent, sunt referenda. Words added for the purpose of certainty are to be referred to preceding words, in which certainty is wanting.

Verga relata hac maximi operantur per referentiam ut in eis in esse videntur. Words referred to other words operate chiefly by the reference which appears to be impled towards them. Co. Litt. 359.

Veredictum, quasi dictum veritas; ut judicium quasi juris dictum. A verdict is, as it were, the saying of the truth, in the same manner that a judgment is the saying of the law. Co. Litt. 226.

Veritas demonstrationis tollit errorem nominis. The truth of the demonstration removes the error of the name. Ld. Raym. 303. See Legatee.

Veritas nihil veretur nisi abscondi. Truth fears nothing but concealment. 9 co. 20.

Veritas nimium altercando amittitur. By too much altercation truth is lost. Hob. 344.

Veritatem qui non libere pronunciat, proditor est veritatis. He who does not speak the truth, is a traitor to the truth.

Vicarius non habet vicaruim. A deputy cannot appoint a deputy. Branch's max. 38; Broom's max. 384; 2 Bouv. Inst. n. 1300.

Vigilantibus et non dormientibus serviunt leges. The laws serve the vigilant, not those who sleep upon their

rights. 2 Bouv. Inst. n. 2327. See Laches.

Viperina est expositio quae corrodit viscera textus. That is a viperous exposition which gnaws or eats out the bowels of the text. 11 Co. 34.

Vir et uxor consentur in lege una persona. Husband and wife are considered one person in law. Co. Litt. 112.

Vis legibus est inimica. Force is inimical to the laws. 3 Co. inst. 176.

Vitium clerici nocere non debet. Clerical errors ought not to hurt.

Voluit sed non dixit. he willed but did not say.

Voluntas testatoris ambulatoria est usque ad mortem. The will of a testator is ambulatory until his death; that is, he may change it at any time. See 1 Bouv. inst. n. 83.

Voluntas in delictis non exitus spectatur. In offences, the will and not the consequences are to be looked to. 2 Co. inst. 27.

Voluntas reputabatur pro facto. The will is to be taken for the deed. 3 Co. Inst. 69.

Volunti non fit injuria. He who consents cannot receive an injury. 2 Bouv. Inst. n. 2279, 2327; 4 T. R. 657; Shelf. on mar. & Div. 449.

What a man cannot transfer, he cannot bind by articles.

When the common law and statute law concur, the common law is to be preferred. 4 Co. 71.

When many join in one act, the law says it is the act of him who could best do it; and things should be done by him who has the best skill. Noy's Max. h.t.

When the law presumes the affirmative, the negative is to be proved. 1 Roll. R. 83; 3 Bouv. Inst. n. 3063, 3090.

When no time is limited, the law appoints the most convenient.

When the law gives anything, it gives a remedy for the same.

When the foundation fails, all fails.

Where two r ights concur, the more ancient shall be preferred.

Where there is equal equity, the law must prevail. 4 Bouv. Inst. n. 3727.

Vide, generally, Dig. 50, 17; 1 Ayl. Pand. b. 1, t. 6; Merl. R,pert. Regles de Droit; Pow. Mint. Index, h. t.; Dane's Ab. Index, h. t.; Wooddes. Lect. lxxi. note; and collections of Bacon, Noy, Francis, Branch and Heath; Duval, Le Droit dans ses Maximes.

MAY To be permited; to be at liberty; to have the power.

2. Whenever a statute directs the doing of a thing for the sake of justice or the public good, the word may is the same as shall. For example, the 23 H. VI. says, the sheriff may take bail, that is construed he shall, for he is compellable to do so. Carth. 293 Salk. 609; Skin. 370.

3. The words shall and may in general acts of the legislature or in private constitutions, are to be construed imperatively; 3. Atk. 166; but the construction of those words in a deed depends on circumstances. 3 Atk. 282. See 1 Vern. 152, case. 142 9 Porter, R. 390.

MAYHEM, crimes. The act of unlawfully and 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 his courage, are held to be mayhems. But cutting off the ear or nose or the like, are not held to be mayhems at common law. 4 Bl. Com. 205.

2. These and other severe personal injuries are punished by the Coventry act, (q. v.) which has been re−enacted in several of the states; Ryan's Med. Jurispr. 191, Philad. ed. 1832; and by congress. Vide act of April 30, 1790, s. 13, 1 Story's Laws U. S. 85; act of March 3, 1825, s. 22, 3 Story's L. U. S. 2006.

MAYHEMAVIT. Maimed. This is a term of art which cannot be supplied in pleadings by any other word; as, mutilavit, truncavit, &c. 3 Tho. Co. Litt. 548.

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

2. It is generally his duty to cause the laws of the city to be enforeed, 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. The name of a court usually established in cities, composed of a mayor, recorder and aldermen, generally having jurisdiction of offences committed within the city, and of other matters specially given

them by the statute.

MEASURE. That which is used as a rule to determine a quantity. A certain quantity of something, taken for a unit, and which expresses a relation with other quantities of the same thing.

2. The constitution of the United States gives power to congress to " fix the standard of weights and measures." Art. 1, B. 8. Hitherto this has remained as a dormant power, though frequently brought before the attention of congress.

3. The states, it seems, possess the power to legislate on this subject, or, at least, the existing standards at the adoption of the constitution remain in full force. 3 Sto. Const. 21; Rawle on the Const. 102.

4. By a resolution of congress, of the 14th of June, 1836, the secretary of the treasury is directed to cause a complete set of all weights and measures adopted as standards, and now either made or in the progress of manufacture, for the use of the several custom−houses and for other purposes, to be delivered to the governor of each state in the Union, or to such person as he may appoint, for the use of the states respectively, to the end that an uniform standard of weights and measures may be established throughout the United States.

5. Measures are either, 1. Of length. 2. Of surface. 3. Of solidity or capacity. 4. Of force or gravity, or what is commonly called weight. (q. v.) 5. Of angles. 6. Of time. The measures now used in the United States, are the same as those of England, and are as follows

1. MEASURES OF LENGTH.

12 inches = l foot
3 feet = l yard
51/2 yards = l rod or pole
40 poles = 1 furlong
8 furlongs = l mile
69 1/15 miles = l 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 = 2 1/4 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 92/100 inches
1 chain = 100 links.

6.−2. MEASURES OF SURFACE.

144 square inches = l square foot

9 square feet = l square yard
30 1/4 square yards = l perch or rod
40 perches = l rood
4 roods or 160 perches = l acre
640 acres−−l square mile.

7. − 3. MEASURES OF SOLTDITY AND CAPACITY.

1st. Measures of solidity.

1728 cubic inches = l cubic foot
27 cubic feet = l 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 = l pint = 34 2/3 cubic inches nearly.
2 pints = l quart = 691/2 " "
4 quarts = 1 gallon = 277 1/4 " "
2 gallons = l peck = 554 1/2 " "
8 gallons= 1 bushel = 2218 1/2 " "
8 bushels = l quarter = 10 1/4 cubic feet "
5 quarters = l load = 51 1/2 " "

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 express any definite number of gallons. It is the practice to gauge all such vessels, and to charge them according to their actual contents.

3d. Measures 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=28151/2 " "
3 bushels = 1 sack = 41 cubic feet "
12 sacks=l chaldron = 58 2/3 " "

8.−4. MEASURES OF WEIGHTS. See art. Weights.

9.−5., ANGULAR MEASURE; or, DIVISION OF THE CIRCLE.
60 seconds = l minute
60 minutes = l degree
30 degrees = 1 sign
90 degrees = 1 quadrant
360 degrees, or 12 signs = 1 circumference.

Formerly the subdivisions were carried on by sities; thus, the second was divided into 60 thirds, the third into sixty fourths, &c. At present, the second is more generally divided decimally into tens, hundreds, &c. The degree is frequently so divided.

or 10. − 6. MEASURE OF TIME.

60 seconds = 1 minute

60 minutes = 1 hour
24 hours = l 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 day = l leap year.

The second of time is subdivided like that of angular measure.

FRENCH MEASURES.

11. As the French system of weights and measures is the most scientific plan known, and as the commercial connexions of the United States with France are daily increasing, it has been thought proper here to give a short account of that system.

12. The fundamental, invariable, and standard measure, by which all weights and measures are formed, is called the metre, a word derived from the Greek , which signifies measure. It is a lineal measure, and is equal to 3 feet, 0 inches, 44/1000, Paris measure, or 3 feet, 3 inches, 370/1000 English. This unit is divided into ten parts; each tenth, into ten hundreths; each hundreth, into ten thousandths, &c. These divisions, as well as those of all other mea− sures, 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 metre 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 metre. All the other measures are formed from the metre, as follows:

2. MEASURE OF CAPACITY.

13. The litre. This is the decimetre; or one−tenth part of the cubic metre; that is, if a vase is made of a cubic form, of a decimetre every way, it would be of the capacity of a litre. This is divided by tenths, as the metre. The measures which amount. to more than a single, litre, are counted by tens hundreds, thousands, &c., of litres.

3. MEASURES OF WEIGHTS.

14. The gramme. This is the weight of a cubic centimetre 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 metre every way, and it be filled with distilled water, the weight of that water will be that of the gramme.

4. MEASURES OF SURFACES.

15. The arc, used in surveying. This is a square, the sides of which are of the length of ten metres, or what is equal to one hundred square metres. Its divisions are the same as in the preceding measures.

5. MEASURES OF SOLIDITY.

16. The stere, used in measuring firewood. It is a cubic metre. 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 metre, or cubic metre is used, or the tenth, hundredth, &c., of such a cube.

6. MONEY.

17. The franc. It weighs five grammes. it is made of nine−tenths of silver, and one−tenth of copper. Its tenth part is called a decime, and its hundredth part a centime.

18. One measure being thus made the standard of all the rest, they must be all equally invariable; but, in order to make this certainty perfectly sure, the following precautions have been adopted. As the temperature was found to have an influence on bodies, the term zero, or melting ice, has been selected in making the models or standard of the metre. Distilled water has been chosen to make the standard of the gramme, as being purer, and less encumbered with foreign matter than common water. The temperature having also an influence on a determinate volume of water, that with which the experiments were made, was of the temperature of zero, or melting ice. The

air, more or less charged with humidity, causes the weight of bodies to vary, the models which represent the weight of the gramme, have, therefore, been taken in a vacuum.

19. It has already been stated, that the divisions of these measures are all uniform, namely by tens, or decimal fractions, they may therefore be written as such. Instead of writing,

1 metre and 1 tenth of a metre, we may write, 1 m. 1.
2 metre and 8 tenths, 2 m. 8.
10 metre and 4 hundredths, 10 m. 04.
7 litres, 1 tenth, and 2 hundredths, 7 lit. 12, &c.

20. Names have been given to, each of these divisions of the principal unit but these names always indicate the value of the fraction, and the unit from which it is derived. To the name of the unit have been prefixed the particles deci, for tenth, centi, for hundredth, and milli, for thousandth. They are thus expressed, a decimetre, a decilitre, a decigramme, a decistere, a deciare, a centimetre, a centilitre, a centigramme, &c. The facility with which the divisions of the unit are reduced to the same expression, is very apparent; this cannot be done with any other kind of measures.

21. As it may sometimes be necessary to express great quantities of units, collections have been made of them in tens, hundreds, thousands, tens of thousands, &c., to which names, derived from the Greek, have been given; namely, deca, for tens hecto, for hundreds; kilo, for thousands and myria, for tens of thousands; they are thus expressed; a decametre, a decalitre, &c.; a hectometre, a hectogramme, &c.; a kilometre, a kilogramme, &c.

22. The following table will facilitate the reduction of these weights and measures into our own.
The Metre, is 3.28 feet, or 39.871 in.
Are, is 1076.441 square feet.
Litre, is 61.028 cubic inch
Stere, is 35.317 cubic feet.
Gramme, is 15.4441 grains troy, or 5.6481 drams, averdupois.

MEASURE OF DAMAGES, prac. Those principles or rules of law which control a jury in adjusting or proportioning the damages, in certain cases. 1 Bouv. Inst. n. 636.

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

MEASON−DUE. A corruption of Maison de Dieu. (q. v.)

MEDIATE, POWERS. Those incident to primary powers, given by a principal to Iiis 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 Camp. R. 43, note 4 Camp. R. 163; 6 S. & R. 149.

MEDIATION. 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, eh. 18, _328.

MEDIATOR. One who interposes between two contending parties, with their consent, for the purpose of assisting them in settling their differences. Sometimes this term is applied to an officer who is appointed by a sovereign nation to promote the settlement of disputes between two other nations. Vide Minister; Mediator.

MEDICAL JURISPRUDENCE. That science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in courts of justice. By some authors, it is used in a more extensive sense and also comprehends Medical Police, or those medical precepts which may prove useful to the legislature or the magistracy. Some authors, instead of using the phrase medical jurisprudence, employ, to convey the same idea, those of legal medicine, forensic medicine, or, as the Germans have it, state medicine.

2. The best American writers on this subject are Doctors T. R. Beck and J. B. Beck, Elements of Medical Jurisprudence; Doctor Thomas Cooper; Doctor James S. Stringham, who was the first individual to deliver a course of lectures on medical jurisprudence, in this country; Doctor Charles Caldwell. Among the British writers may be enumerated Doctor John Gordon Smith; Doctor Male; Doctor Paris and Mr. Fonblanque, who published a joint work; Mr. Chitty, and Dr. Ryan. The French writers are numerous; Briand, Biessy, Esquirol, Georget, Falret,

Trebuchet, Mare, and others, have written treatises or published papers on this subject; the learned Fodere published a work entitled "Les Lois eclairees par les sciences physiques ou Trait, de M,d,cine L,gale et d'hygi,ne publique;" the "Annale d'hygi,ne et de M,d,cine 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. A box containing an assortment of medicines.

2. The act of congress for the government and regulation of seamen in the merchant service, sect. 8, 1 Story's L. U. S. 106, directs that every ship or vessel, belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary, once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

3. And by the act to amend the above mentioned act, approved March 2, 1805, 2 Story's Laws U. S. 971, it is provided that all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the, government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burthen and upwards, shall be extended to all merchant vessels of the burthen of seventy−five tons or upwards, navigated with six persons, or more, in the whole, and bound from the United States to any port or ports in the West Indies.

MEDIETAS LINGUAE. 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 linguae 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 par− tial 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.,

MELIORATIONS, Scotch law. Improvements of an estate, other than mere repairs; betterments. (q. v.) 1 Bell's Com. 73.

MELIUS INQUIRENDUM VEL INQUIRENDO. English practice. 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 another inquest in order that the value, &c., of lands, &c., may be better or more cor− rectly ascertained. Its use is rare.

MEMBER. This word has various significations: 1. The limits of the body use− ful in self−defence. Membrum est pars corporis habens destinatum operationem in corpore. Co. Litt. 126 a. See Limbs.

2. − 2. An individual who belongs to a firm, partnership, company or corporation. Vide Corporation; Partnership.

3. − 3. One who belongs to a legislative body, or other branch of the government; as, a member of the house of representatives; a member of the court.

MEMBER OF CONGRESS. A member of the senate or house of representatives of the United States.

2. During the session of congress they are privileged from arrest, except for treason, felony, or breach of the peace; they receive a compensation of eight dollars per day while in session, besides mileage. (q. v.)

3. They are authorized to frank letters and receive them free of postage for sixty days before, during, and for sixty days after the session.

4. They are prohibited from entering into any contracts with the United States, directly or indirectly, in whole or in part for themselves and others, under the penalty of three thousand dollars. Act of April 21, 1808, 2 Story's L. U. S. 1091. Vide Congress; Frank.

MEMBERS, English law. 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. Literally, to be remembered. It is an informal instrument recording some fact or agreement, so called from its beginning, when it was made in Latin. It is sometimes commenced with this word, though written in English; as "Memorandum, that it is agreed," or it is headed with the words, "Be it remembered that," &c. The term memorandum is also applied to the clause of an instrument.

MEMORANDUM, insurance. 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 percent; and all other goods, also the ship and freight, are warranted free from average, under three percent unless general, or the ship be stranded." Marsh. Ins.223; 5 N. S. 293; Id. 540; 4 N. S. 640; 2 L. R. 433; Id. 435.

MEMORANDUM OR NOTE. These words are use in the 4th section of the statute 29 Charles II., c. 3, commonly called the statute of frauds and perjuries, which enact, 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 he brought, or some memorandum or note thereof, Shall be in writing," &c.

2. Many cases have arisen out of the words of this part of the statute; the general rule seems to be that the contract must be stated with reasonable certainty in the memorandum or note so that it can be understood from the writing itself, without having recourse to parol proof. 3 John., R. 399; 2 Kent, Com. 402; Cruise, Dig. t. 32, c. 3, s. 18. See 1 N. R. 252; 3 Taunt. 169; 15 East, 103; 2 M. & R. 222; 8 M. & W. 834 6 M. & W. 109.

MEMORANDUM CHECK. It is not unusual among merchants, when one makes a tem− porary loan from another, to give the lender a check on a bank, with the express or implied agreement that it shall be redeemed by the maker himself, and that it shall not be presented at the bank for payment. If passed to a third person, it will be valid in his hands, like any other check. 11 Paige, R. 612.

MEMORIAL. A petition or representation made by one or more individuals to a legislative or other body. When such instrument is addressed to a court, it is called a petition.

MEMORY. Understanding; a capacity to make contracts, a will, or to commit a crime, so far as intention is necessary.

2. Memory is sometimes employed to express the capacity of the understanding, and sometimes its power; when we speak of a retentive memory, we use it in the former sense; when of a ready memory, in the latter. Shelf. on Lun. Intr. 29, 30.

3. Memory, in another sense, is the reputation, good or bad, which a man leaves at his death. This memory, when good, is highly prized by the relations of the deceased, and it is therefore libelous 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. IV., c. 71, the time of memory commenced from the reign of Richard the First, A. D. 1189. 2 Bl. Com. 31.

2. But proof of a regular usage for twenty years, not explained or contradicted, is evidence upon which many public and private rights are held, and sufficient for a jury in finding the existence of an immemorial custom or prescription. 2 Saund. 175, a, d; Peake’s Ev. 336; 2 Price’s R. 450; 4 Price’s R. 198.

MENACE. A threat; a declaration of an intention to cause evil to happen to another.

2. When menaces to do an injury to another have been made, the party making them may, in general, be held to bail to keep the peace; and, when followed by any inconvenience or loss, the injured party has a civil action against the wrong doer. Com. Dig. Battery, D; Vin. Ab. h. t.; Bac. Ab. Assault; Co. Litt. 161 a, 162 b, 253 b; 2 Lutw. 1428. Vide Threat.

MENIAL. This term is applied to servants who live under their master’s roof Vide stat. 2 H. IV., c. 21.

MENSA. This comprehends all goods and necessaries for livelihood. Obsolete.

MENSA ET THORO. The phrase a 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. 8 Pet. 277; 2 Story, R. 16, 53, 54; 6 Wend. 335.

MERCHANT. One whose business it is to buy and sell merchandise; this applies to all persons who habitually trade in merchandise. 1 Watts & S. 469; 2 Salk. 445.

2. In another sense, it signifies a person who owns ships, and trades, by means of them, with foreign nations, or with the different States of the United States; these are known by the name of shipping merchants. Com. Dig. Merchant, A; Dyer, R. 279 b; Bac. Ab. h. t.

3. According to an old authority, there are four species of merchants, namely, merchant adventurers, merchant dormant, merchant travellers, and merchant residents. 2 Brownl. 99. Vide, generally, 9 Salk. R. 445; Bac. Ab. h. t.; Com. Dig. h. t.; 1 Bl. Com. 75, 260; 1 Pard. Dr. Com. n. 78

MERCHANTMAN. A ship or vessel employed in a merchant's service. This term is used in opposition to a ship of war.

MERCHANTS' ACCOUNTS. In the statute of limitations, 21 Jac. 1. c. 16, there is an exception which has been copied in the acts of the legislatures of a number of the States, that its provisions shall not apply to such accounts as concern trade and merchandise between merchant and merchant, their factors or servants.

2. This exception, it has been holden, applies to actions of assumpsit as well 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. 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.

MERE. This is the French word for mother. It is frequently used as, in ventre sa mere, which signifies; a child unborn, or in the womb.

MERGER. 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. When a greater estate and less coincide and meet in one and the same person, without any intermediate estate, the less is immediately merged, that is, sunk or drowned in the latter; example, if there be a tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is merged in the inheritance, and no longer exists; but they must be to one and the same person, at one and the same time, in one and the same right. 2 BL Com. 177; 3 Mass. Rep. 172; Latch, 153; Poph. 166; 1 John. Ch. R. 417; 3 John. Ch. R. 53; 6 Madd. Ch. R. 119.

2. The estate in which the merger takes place, is not enlarged by the accession of the preceding estate; and the greater, or only subsisting estate, continues, after the merger, precisely of the same quantity and extent of ownership, as it was before the accession of the estate which is merged, and the lesser estate is extinguished. Prest. on Conv. 7. As a general rule, equal estates will not drown in each other.

3. The merger is produced, either from the meeting of an estate of higher degree, with an estate of inferior degree; or from the meeting of the particular estate and the immediate reversion, in the same person. 4 Kent, Com. 98. Vide 3 Prest. on Conv. which is devoted to this subject. Vide, generally, Bac. Ab. Leases, &c. R; 15 Vin. Ab. 361; Dane's Ab. Index, h. t.; 10 Verm. R. 293;; 8 Watts, R. 146; Co. Litt. 338 b, note 4; Hill. Ab. Index, h. t.; Bouv. Inst; 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.

2. Murder, when committed by blows, necessarily includes an assault and battery; a battery, an assault; a burglary, when accompanied with a felonious taking of personal property, a larceny in all these, and similar cases, the lesser crime is merged in the greater.

3. But when one offence is of the same character with the other, there is no merger; as in the case of a conspiracy to commit a misdemeanor, and the misdemeanor is afterwards committed in pursuance of the conspiracy. The two crimes being of equal degree, there can be no legal merger. 4 Wend. R. 265. Vide Civil Remedy.

MERGER, rights. Rights are said to be merged when the same person who is bound to pay is also entitled to

receive. This is more properly called a confusion of rights, or extinguishment.

2. When there is a confusion of rights, and the debtor and creditor become the same person, there can be no right to put in execution; 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. Where a person in committing a felony also commits a tort against a private person; in this case, the wrong is sunk in the felony, at least, until after the felon's conviction.

2. The old maxim that a trespass is merged in a felony, has sometimes been supposed to mean that there is no redress by civil action for an injury which amounts to a felony. But it is now established that the defendant is liable to the party injured either after his conviction; Latch, 144; Noy, 82; W. Jones, 147; Sty. 346; 1 Mod. 282; 1 Hale, P. C. 546; or acquittal. 12 East, R. 409; 1 Tayl. R. 58; 2 Hayw. 108. If the civil action be commenced before, the plaintiff will be nonsuited. Yelv. 90, a, n. See Hamm. N. P. 63; Kely. 48; Cas. Tempt. 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; Id. 336. Vide Civil Remedy; Injury.

3. The Revised Statutes of New York, part 3, c. 4, t. 1, s. 2, direct that the right of action of any person injured by any felony, shall not, in any case, be merged in such felony, or be in any manner affected thereby. In Kentucky, Pr. Dec. 203, and New Hampshire, 6 N. H. Rep. 454, the owner of stolen goods, may immediately. pursue his civil remedy. See, generally, Minor, 8; 1 Stew. R. 70; 15 Mass. 336; Coxe, 115; 4 Ham. 376; 4 N. Hanp. Rep. 239; 1 Miles, R. 212; 6 Rand. 223; 1 Const. R. 231; 2 Root, 90.

MERITS. This word is used principally in matters of defence.

2. A defence upon the merits, is one that rests upon the justice of the cause, and not upon technical grounds only; there is, therefore, a difference between a good defence, which may be technical or not, and a defence on the merits. 5 B. & Ald. 703 1 Ashm. R. 4; 5 John. R. 536; Id. 360; 3 John. R. 245 Id. 449; 6 John. R. 131; 4 John. R. 486; 2 Cowen, R. 281; 7 Cowen, R. 514; 6 Wend. R. 511; 6 Cowen, R. 895.

MERTON, STATUTTE OF. A statute so called, because the parliament or rather council, which enacted it, sat at Merton, in Surrey. It was made the 20 Hen. III. A. D. 1236. See Barr. an the Stat. 41.

MESCROYANT. Used in our ancient books. An unbeliever. 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.

2. Hence the profits wbich 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 process, is called mesne process. (q . v.)

3. In England, the word mesne also applies to a dignity: those persons who hold lordships or manors of some superior wbo is called lord paramount, and grant the same to inferior persons, are called mesne lords.

MESNE PROCESS. Any process issued between original and final process; that is, between the original writ and the execution. See Process, mesne.

MESNE PROFITS, torts, remedies. 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.

2. As a general rule, the plaintiff is entitled to recover for such time as be 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' R, 13; B. N. P. 88.

3. The value of improvements made by the defendant, may be set off against a claim for mesne profits, but profits before the demise laid, should be first deducted from the value of the improvement's. 2 W. C. C. R. 165. Vide, generally, Bac. Ab. Ejectment, H; Woodf. L. & T. ch. 14, s. 3; 2 Sell. Pr. 140; Fonbl. Eq. Index, h. t.; Com. L & T. Index, h. t.; 2 Phil. Ev. 208; Adams on Ej. ch. 13; Dane's Ab. Index, h. t.; Pow. Mortg. Index, h. t.; Bouv. Inst. Index, h. t.

MESNE, WRIT of. The name of an ancient writ, which lies when: the lord para− mount distrains on the tenant paravail; the latter shall have a writ of mesne against the lord who is mesne. F. N. B. 316.

MESSENGER. A person appointed to perform certain duties, generally of a ministerial character.

2. In England, a messenger appointed under the bankrupt laws, is an officer who is authorized to execute the lawful commands of commissioners of bankrupts.

MESSUAGE, property. This word is synonymous with dwelling−house; and a grant of a messuage with the 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. R. 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; 4 M. & W. 567; 2 Bing. N. C. 617; 1 Saund. 6.

METHOD. The mode of operating or the means of attaining an object.

2. It has been questioned whether the method of making a thing can be patented. But it has been considered that a method or mode may be the subject of a patent, because, when the object of two patents or effects 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.

2. This is the standard of French measure.

3. The fundamental base of the metre is the quarter of the terrestrial meridian, or the distance from the pole to equator, which has been divided into ten millions of equal parts, one of which is of the length of the metre. The metre is equal to 3.28 feet, or 39.371 inches. Vide Measure.

MEUBLES MEUBLANS. A French term used in Louisiana, which signifies simply household furniture. 4 N. S. 664; 3 Harr. Cond. R. 431.

MICEL GEMOT, Eng. law. In Saxon times, the great council of the nation bore this name, sometimes also called the witena gemot, or assembly of wise men; in aftertimes, this assembly assumed the name of parliament. Vide 1 Bl. Comm. 147.

MICHAELMAS TERM. Eng. law. One of the four terms of the courts; it begins on the 2d day of November, and ends on the 25th of November. It was formerly a movable term. St. 11 G. IV. and 1 W. IV. 70.

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 Amaerica, and admitted into the Union on an equal footing with the original states, in all respects whatever."

2. The first constitution of this state was adopted by a convention of the people, begun and held at the capital in the city of Detroit, on Monday, the eleventh day of May, 1835. This was superseded by the present constitution, which was adopted 1850. It provides, article 3, _l; The powers of the government shall be divided into three distinct departments; the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this constitution.

3. − 1. Art. 4, relates to the Legislative department, and provides that

_1. The legislative power shall be vested in a senate and house of representatives.

4. − _6. No person holding any office under the United States [or this state] or any county office, except notaries public, officers of the militia and officers elected by townships, shall be eligible to, or have a seat in either house of the legislature, and all votes given for any such person shall be void.

5. − _7. 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 terrainations of each session. They shall not be questioned in any other place for any speech in either house.

6. − _8. 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.

7. − _9. Each house shall choose its own officers, 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; no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election. The reason for such expulsion shall be entered upon the

journal, with the names of the members voting on the question.

8. − _10. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy; the yeas and nays of the members of either house, on any question, shall be entered on the journal at the request of one−fifth of the members present. Any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

9. −_11. In all elections by either house, or in joint convention, the votes shall be given viva voce. All votes on nominations to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

10. − _12. The doors of each house shall be open, unless the public welfare require secrecy; neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may then be in session.

11. − 1st. In considering the house of representatives, it will be proper to take a view of the qualifications of members; the qualification of the electors; the number of members; the time for wbich they are elected.

12. − 1. The representatives must be citizens of the United States, and qualified electors in the respective counties which they represent. Art. 4, S. 5. 2. In all elections, every white male citizen, every white male inhabitant residing in the state on the twenty−fourth day of June, one thousand eight hundred and thirty−five; every white male inhabitant residing in the first day of January, one thousand eight hundred and fifty, who has declared his in− tention to become a citizen of the United States pursuant to the laws thereof six months preceding an election, or who has resided in this state two years and six months and declared his intention as aforesaid and every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector or entitled to vote at any election, unless he shall be above the age of twenty−one years, and has resided in this state three months and in the township or ward in which he offers to vote ten days next preceding such election. Art. 7, _1. 3. The house of representatives shall consist of not less than sixty−five nor more than one hundred members. Art. 4, s. 3. 4. The election of representatives, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, in the year one thousand eight hundred and fifty−two, and on the Tuesday succeeding the first Monday of November of every second year thereafter. Art. 4, s. 34. Representatives shall be chosen for two years. Art. 4, s. 3.

13. − 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. 5. 2. They are elected by the electors of representatives. Art. 7, s. 1. 3. The senate shall consist of thirty−two members. Art. 4, s. 2. 4. The senators shall be elected for two years, at the same time and in the same manner as the representatives are required to be chosen. Art. 4, section 2, 34.

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

_1. The executive power is vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen for the same term.

l5. − _2 No person shall be eligible to the office of governor or lieutenant governor, who has not been five years a citizen of the United States, and a resident of this state two years next preceding the election; nor shall any person be eligible to either office who has not attained the age of thirty years.

16. − _3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The Person having the highest number of votes for governor and lieutenant governor shall be elected; in case two or more persons have an equal and the highest number of votes for governor or lieutenant governor, the legislature shall by joint vote choose one of such persons.

17. − _4. The governor shall be commander−in−chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrections and to repel invasions.

18. − _5. He shall transact all necessary; business with the officers of government; and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

19. − _6. He shall take care that the laws be faithfully executed.

20. − _7. He may convene the legislature on extraordinary occasions.

21. − _8. He shall give to the legislature, and at the close of his official term to the next legislature, information by message of the condition of the state, and recommend such measures to them as he shall deem expedient.

22. − _9. He may convene the legislature at some other place, when the seat of government becomes dangerous from disease or a common enemy.

23. − _0. He shall issue writs of election to fill such vacancies as occur in the senate or house of representatives.

24. − _1. He may grant reprieves, commutations and pardons after convictions, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to regulations provided by law, relative to the manner of ap− plying for pardons. Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted, and the reasons therefor.

25. − _12. In case of the impeachment of the governor, his removal from office, death, inability, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability ceases. When the governor shall be out of the state in time of war, at the head of a military force thereof, he shall continue commander−in−chief of all the military force of the state.

26. − _13. During a vacancy in the office of governor, if the lieutenant governor die, resign, be impeached, displaced, be incapable of performing the duties of his office, or absent from the state, the president pro tempore of the senate shall act as governor until the vacancy be filled, or the disability cease.

27. − _14. The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote.

28. − _15. No member of congress, nor any person holding office under the United States, or this state, shall execute the office of governor.

29. −_16. No person elected governor or lieutenant governor shall be eligible to any office or appointment from the legislature, or either house thereof, during the time for which he was elected. All votes for either of them, for any such office, shall be void.

30.− _17. The lieutenant governor and president of the senate pro tempore, when performing the duties of governor, shall receive the same compensation as the governor.

31. − _18. All official acts of the governor, his approval of the laws excepted, shall be authenticated by the great seal of the state, which shall be kept by the secretary of state.

32. − _19. All commissions issued to persons holding office under the provisions of this constitution, shall be in the name and by the authority of the people of the state of Michigan, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

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

33. − _1. The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.

34. − _2. For the term of six years, and thereafter, until the legislature otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, four of whom shall constitute a quorum. A concurrence of three shall be necessary to a final decision. After six years the legislature may provide by law for the organization of a supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and three associate justices, to be chosen by the electors of the state. Such supreme court, when so organized, shall not be changed or discontinued by the legislature for eight years thereafter. The judges thereof shall be so classified that but one of them shall go out of office at the same time. Their term of office, shall be eight years.

35. − _3. The supreme court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, habeas corpus, mandamus, quo warrants, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

36. − _4. Four terms of the supreme court shall be held annually, at such times and places, as may be designated by law.

37. − _5. The supreme court shall, by general rules, establish, modify and amend the practice in such court and in the circuit courts, and, simplify the same. The legislature shall, as far as practicable, abolish distinctions between law and equity proceedings. The office of master in chancery is prohibited.

38. − _6. The state shall be divided, into eight judicial circuits; in each of which the electors thereof shall elect one circuit judge, who shall hold his office for the term of six years, and until his successor is elected and

qualified.

39. − _7. The legislature may alter the limits of circuits, or increase the number of the same. No alteration or increase shall have the effect to remove a judge from office. In every additional circuit established the judge shall be elected by the electors of such circuit, and his term of office shall continue as provided in this constitution for judges of the circuit court.

40. − _8. The circuit courts shall have original jurisdiction in all matters civil and criminal, not excepted in this constitution, and not probibited by law; and, appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments and decrees, and give there a general control over inferior courts and tribunals within their respective jurisdictions.

41. − _9. Each of the judges of the circuit courts shall receive a salary payable quarterly. They shall be ineligible to any other than a judicial office during the term for which they are elected, and for one year thereafter. All votes for any person elected such judge for any office other than judicial, given either by the legislature or the people, shall be void.

42. − _10. The supreme court may appoint a reporter of its decisions. The decisions of the supreme court shall be in writing, and signed by the judges concurring therein. Any judge dissenting there from, shall give the reasons of such dissent in writing, under his signature. All such opinions shall be filed in the office of the clerk of the supreme court. The judges of the circuit court, within their respective jurisdictions, may fill vacancies in the office of county clerk and of prosecuting, attorney; but no judge of the supreme court, or, circuit court, shall exercise any other power of appointment to public office.

43. − _11. A circuit court shall be held at least twice in each year, in every county organized for judicial purposes, and four times in each year in counties containing ten thousand inhabitants. Judges of the circuit court may hold courts for each other, and shall do so when required by law.

44. − 12. The clerk of each county organized for judicial purposes shall be the clerk of the circuit court of such county, and of the supreme court when held within the same.

45. − _13. In each of the counties organized for judicial purposes, there shall be a court of probate. The judge of such court shall be elected by the electors of the county in which he resides, and shall hold his office for four years, and until his successor is elected and qualified. The jurisdiction, powers, and duties of such court, shall be prescribed by law.

46. − _14. When a vacancy occurs in the office of judge of the supreme, circuit or probate court, it shall be filled by appointment of the governor, which shall continue until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term.

47. − _15. The supreme court, the circuit and probate court of each county, shall be courts of record, and shall each have a common seal.

48. − _16. The legislature may provide by law for the election of one or more persons in each organized county, who may be vested with judicial powers, not exceeding those of a judge of the circuit court at chambers.

49. − _17. There shall be not exceeding four justices of the peace in each organized township. They shall be elected by the electors of the townships, and shall hold their offices for four years, and until their successors are elected and qualified. At the first election in any township, they shall be classified as shall be prescribed by law. A justice elected to fill a vacancy shall hold his office for the residue of the unexpired term. The legislature may increase the number of justices in cities.

50. − _18. In civil cases justices of the peace shall have exclusive jurisdiction to the amount of one hundred dollars, and concurrent jurisdiction to the amount of three hundred dollars, which may be increased to five hundred dollars, with such exceptions and restrictions as may be provided by law. They shall also have such criminal jurisdiction and perform such duties as shall be prescribed by the legislature.

51. − _19. Judges of the supreme court, circuit judges, and justices of the peace, shall be conservators of the peace within their respective jurisdictions.

52. − _20. The first election of judges of the circuit courts shall be held on the first Monday in April, one thousand eight hundred and fifty−one, and every sixth year thereafter. Whenever an additional circuit is created, provision. shall be made to hold the subsequent election of such additional judges at the regular elections herein provided.

53. − _1. The first election of judges of the probate courts shall be held on the Tuesday succeeding the first

Monday of November, one thousand eight hundred and fifty−two, and every fourth year thereafter.

54. − _22. Whenever a judge shall remove beyond the limits of the jurisdiction for which he was elected or a justice of the peace from the township in which he was elected, or by a change in the boundaries of such township shall be placed without the same, they shall be deemed to have vacated their respective offices.

55. − _23. The legislature may establish courts of conciliation, with such powers and duties as shall be prescribed by law.

56. − _24. Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person, or by an attorney or agent, of his choice.

57. − _5. In all prosecutions 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 libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury shall have the right to determine the law and the fact.

58. − _26. The person, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizure. No warrant to search any place, or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

59. − _27. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties, in such manner as shall be prescribed by law.

60. − _8. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve, men in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defence.

61. − _29. No person, after acquittal upon the merits, shall be tried for the same offence; all persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason, when the proof is evident or the presumption great.

62. − _30. Treason against the state shall consist only in levying war against, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act, or on confession in open court.

63. − _31. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted, nor, shall witnesses be unreasonably detained.

64. − _32. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

65. − _33. No person shall be imprisoned for debt arising out of, or founded on a contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers, or in any professional employment. No person shall be imprisoned for a militia fine in time of peace.

66. − _34. No person shall be rendered incompetent to be a witness, on account of his opinions on matters of religious belief.

67. − _35. The style of all process shall be, "In the name of the people of the State of Michigan."

MIDDLEMAN contracts. A person who is employed both by the seller and purchaser of goods, or by the purcbaser alone, to receive them into 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 considerpd as a middleman.

2. The goods in both, these cases will be considered in transitu, provided the purchaser has not used the wharfinger’s or the packer’s warehouse as his own, an have an ulterior place of delivery in view. 3 B. & P. l27, 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.

3. By middleman is also understood one who has been employed as an agent by a principal, and who has employed a subagent under him by authority of the principal, either express or implied. He is not in general Iiable for the wrongful acts of the sub−agent, the principal being alone responsible. 3 Campb. N. P. Cas. 4; 6 T. R. 411; 14 East, 65.

MIDWIFE, med. jur. A woman who practices midwifery; a woman who pursues the business of an account.

2. A midwife is required to perform the business she undertakes with proper skill, and if she be guilty of any mala praxis, (q. v.) she is liable to an action or an indictment for the misdemeanor. Vide Vin. Ab. Physician; Com. Dig. Physician; 8 East, R. 348; 2 Wils. R. 359; 4 C. & P. 398; S. C. 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. A compensation allowed by law to officers, for their trouble and expenses in travelling on public business.

2. The mileage allowed to members of congress, is eight dollars for every twenty miles of estimated distance, by the most usual roads, from his place of residence to the seat of congress, at tbe commencement and end of every session. Act of Jan. 22, 1818; 3 Story, Laws U. S. 1657.

3. In computing mileage the distance by the road usually travelled is that which must be allowed, whether in fact the officer travels a more or less distant way to suit his own convenience. 5 Shepl. R. 431.

MILITARY. That which belongs or relates to the army.

MILITIA. The military force of the nation, consisting of citizens called forth to execute the laws of the Union, suppress insurrection and repel invasion.

2. The Constitution of the United States provides on this subject as follows: Art. 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.

3. − 15. to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

4. Under the 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 ot 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 disobedience.

5. − 2. The militia belong to the states respectively, and are subject, both in their civil and military capacities, to the jurisdiction and laws of the state, except so far as these laws are controlled by acts of congress, constitutionally made.

6. − 3. It is presumable the framers of the constitution contemplated a full exercise of all the powers of organizing, arming, and disciplining the militia; nevertheless, if congress had declined to exercise them, it was competent to the state governments respectively to do it. But congress has ex− ecuted these powers as fully as was thought right, and covered the whole ground of their legislation by different laws, notwithstanding important provisions may have been omitted, or those enacted might be beneficially altered or enlarged.

7. − 4. After this, the states cannot enact or enforce laws on the same subject. For although their laws may not be directly repugnant to those of congress, yet congress, having exercised their will upon the subject, the states cannot legislate upon it. If the law of the latter be the same, it is inoperative: if they differ, they must, in the nature of things, oppose each other, so far as they differ.

8. − 5. Thus if an act of congress imposes a fine, and a state law fine and imprisonment for the same offence, though the latter is not repugnant, inasmuch as it agrees with the act of the 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 subsist harmoniously together.

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

10. − 7. Therefore, where the state governments have, by the constitution, a concurrent power with the national government, the former cannot legislate on any subject on which congress has acted, although the two laws are not in terms contradictory and repugnant to each other.

11. − 8. Where congress prescribed the punishment to be inflicted on a militia man, detached and called forth, but refusing to march, and also provided that courts martial for the trial of such delinquent’s, 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 proceeding might take place according to the act of congress, and providing for their trial by state courts martial,

such state courts martial have jurisdiction. Congress might have vested exclusive jurisdiction in courts martial to be held according to their laws, but not having done so expressly, their jurisdiction is not exclusive.

12. − 9. Although congress have exercised the whole power of calling out the militia, yet they are not national militia, till employed in actual service; and they are not employed in actual service, till they arrive at the place of rendezvous. 5 Wheat. 1; Vide 1 Kent's Com. 262; 3 Story, Const. _1194 to 1210.

13. The acts of the national 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, 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 to the freehold or not. Those which are a part of the freehold, are either watermills, wind−mills, steam−mills, &c.; those which are not so fixed, are hand−mills, and are merely personal property. Those which are fixed, and make a part of the freehold, are buildings with machinery calculated to obtain the object proposed in their erection.

2. It has been held that the grant of a mill; and its appurtenances, even without the land, carries the whole right of water enjoyed by the grantor, as necessary to its use, and as a necessary incident. Cro. Jac. 121, And a devise of a mill carries the land used with it, and the right to use the water. 1 Serg. & Rawle, 169; and see 5 Serg. & Rawle, 107; 2 Caine's Ca. 87; 10 Serg. & Rawle, 63; 1 Penna. R. 402; 3 N. H. Rep. 190; 6 Greenl. R. 436; Id. 154; 7 Mass. Rep. 6; 5 Shepl. 281.

3. A mill means not merely the building, in which the business is carried on, but includes the site, the dam, and other things annexed to the freehold, necessary for its beneficial enjoyment. 3 Mass R. 280. See Vide 6 Greenl. R. 436.

4. Whether manufacturing machinery will pass under the grant of a mill must depend mainly on the circumstances of each case. 5 Eng. C. L. R. 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 Romily 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.

5. 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. 116; 6 Greenl. 157; 20 Wend. 636; 1 H. Bl. 259, note; 17 S. & R. 415; 10 Amer. Jur. 58; 1 Misso. R. 620; 3 Mason, 464; 2 Watts & S. 390. Vide 15 Vin. Ab. 398; Dane's Ab. Index, h. t. 6 Cowen, 677.

MILL, money. 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.

MIL−REIS. The name of a coin. The mil−reis of Portugal is taken as money of account, at the custom−house, to be of the value of one hundred and twelve cents. Act of March 13, 1843.

2. The mil−reis of Azores, is deemed of the value of eighty−three and one−third cents. Act of Match 3, 1843.

3. The mil−reis of Maderia, is deemed of the value of one hundred cents. Id.

MIND AND MEMORY. It is usual in considering the state of a testator at the time of making his will, to ascertain whether he was of sound mind and memory; that is, whether he had capacity to make a will. These words then import capacity, ability.

MINE. An excavation made for obtaining minerals from the bowels of the earth, and the minerals themselves are known by the name of mine.

2. Mines are therefore considered as open and not open. An open mine is one at which work has been done, and a part of the materials taken out. When land is let on which there is an open mine, the tenant may, unless restricted by his lease, work the mine; 1 Cru. Dig. 132; 5 Co. R. 12; 1 Chit. Pr. 184, 5; and he may open new pit's 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 authorized, nor even by a tenant for life, without being guilty of waste. 5 Co. 12.

3. Unless expressly excepted, mines would be included in the conveyance of land, without being expressly named, and so vice versa, by a grant of a mine, the land itself, the surface above the mine, if livery be made, will pass. Co. Litt. 6; 1 Tho. Co. Litt. 218; Shep. To. 26. Vide, generally, 15 Vin. Ab. 401; 2 Supp. to Ves. jr. 257, and the cases there cited, and 448; Com. Dig. Grant, G 7; Id. Waifs, H. 1; Crabb, R. P. __98−101; 10 East, 273; 1 M. & S. 84; 2 B. & A. 554; 4 Watts, 223−246.

4. In New York the following provisions have been made in relation to the mines in that state, by the revised statutos, 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 oned 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.

6. − _2. All mines, and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state, are, and shall be the property of the people, subject to the provisions hereinafter made to encourage the discovery thereof.

6. − _3. All mines of whatever description, other than mines of gold and silver, discovered or hereafter to be discovered, upon any lauds owned by a citizen of the United states, the ore of which, upon an average, shall contain two equal third parts or more, in value, of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

7. − _4. Every person who shall make a discovery of any mine of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be exempted from paying to the people of this state, any part of the ore, profit or produce of such mine, for the term of twenty−one years, to be computed from the time of giving notice of such discovery, in the manner hereinafter directed.

8. − _5. No person discovering a mine of gold or silver within this state, shall work the same, until he give notice thereof, by information in writing, to the secretary of this state, describing particularly therin the nature and situation of the mine. Such notice shall be registered in a book, to be kept the secretary for that purpose.

9. − _6. After the expiration of the term above specified, the discoverer of the mine, or his representatives, shall be preferred in any contract for the working of such mine, made with the legislature or under its authority.

10. − _7. Nothing in this title contained shall affect any grants heretofore made by the legislature, to persons having discovered mines; nor be construed to give to any person a right to enter on, or to break up the lands of any other person, or of the people of this state, or to work any mines in such lands, unless the consent, in writing, of the owner thereof, or of the commissioners of the land office, when the lands belong to the people of this state, shall be previously obtained.

MINISTER, government. An officer who is placed near the sovereign, and is invested with the administration of some one of the principal branches of the government.

2. Ministers are responsible to the king or other supreme magistrate who has appointed them. 4 Conn. 134.

MINISTER, international law. This is the general name given to public functionaries who represent their country abroad, such as ambassadors, (q.v.) envoys, (q.v.) and residents. (q.v.) A custom of recent origin has introduced a new kind of ministers, without any particular determination of character; these are simply called ministers, to indicate that they are invested with the general character of a sovereign's mandatories, without any particular assignment of rank or character.

2. The minister represents his government in a vague and indeterminate manner, which cannot be equal to the first degree; and be possesses all the rights essential to a public minister.

3. There are also ministers plenipotentiary, who, as they possess full powers, are of much greater distinction than simple ministers. These also, are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary. Vattel, liv. 4, c. 6, _74; Kent, Com. 38; Merl. R,pert. h. t. sect. 1, n. 4.

4. Formerly no distinction was made in the different classes of public ministers, but the modern usage of Europe

introduced some distinctions in this respect, which, on account of a want of precision, became the source of controversy. To obviate these, the congress of Vienna, and that of Aix la Chapelle, put an end to these disputes by classing ministers as follows: 1. Ambassadors, and papal legates or nuncios. 2. Envoys, ministers, or others accredited to sovereigns, (aupres des souverains). 3. Ministers resident, accredited to sovereigns. 4. Charg,s d'Affaires, accredited to the minister of foreign affairs. R,cez du CongrŠs de Vienne, du 19 Mars, 1815; Protocol du CongrŠs d' Aix la Chapelle, du 21 Novembre, 1818; Wheat, Intern. Law, pt. 3, c. _6.

5. The act of May 1, 1810, 2 Story's L. U. S. 1171, fixes a compensation for public, ministers, as follows

_1. Be it enacted, &c. That the president of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of nine thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any chargŠ des affaires, a greater sum than at the rate of four thousand five bundred 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 chargŠ 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 chargŠ des affaires; but no consul shall be allowed an outfit in any case whatever, any usage or custom' to the contrary notwithstanding.

6. − _2. That to entitle any chargŠ des affaires, or secretary of any legation or embassy to any foreign country, or secretary of any minister pleni−potentiary, to the compensation hereinbefore provided, they shall, respectively, be appointed by the president of the United Staies, by and with the advice and consent of the senate; but in the recess of the senate, the president is hereby authorized to make such appointments, which shall be submitted to the senate at the next session thereafter, for their advice and consent; and no compensation shall be allowed to any chargŠ des affaires, or any of the secretaries hereinbefore described, who shall not be appointed as aforesaid: Provided, That nothing herein contained shall be construed to authorize any appointment, of a secretary to a chargŠ des affaires, or to any consul residing on the Barbary coast; or to sanction any claim against the United States for expenses incident to the same, any usage or custom to the contrary notwithstanding.

7. The Act of August 6, 1842, sect. 9, directs, that the president of the United States shall not allow to any minister, resident a greater sum than at the rate of six thousand dollars per annum, as a compensation for all his personal services and expenses: Provided, that it shall be lawful for the president to allow to such minister resident, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year's full salary of such minister resident.

MINISTER, eccles. law. One ordained by some church to preach the gospel.

2. Ministers are authorized in the United States, generally, to marry, and are liable to fines and penalties for marrying minors contrary to the local regulations. As to the right of ministers or parsons, see Am. Jur. No. 30, p. 268; Anth. Shep. Touch. 564; 2 Mass. R. 500; 10 Mass. R. 97; 14 Mass. R. 333; 3 Fairf. R. 487.

MINISTER, mediator. An officer appointed by the government of one nation, with the consent of two other nations, who have a matter in dispute, with a view by his interference and good office to have such matter settled.,

MINISTERIAL. That which is done under the authority of a superior; opposed to judidial; as, the sheriff is a ministerial officer bound to obey the judicial commands of the court.

2. When an officer acts in both a judicial and ministerial capacity, he may be compelled to perform ministerial acts in a particular way; but when he acts in a judicial capacity, he can only be required to proceed; the manner of doing so is left entirely to his judgment. See 2 Fairf. 377; Bac. Ab. Justices of the Peace, E; 1 Conn. 295; 3 Conn. 107; 9 Conn. 275; 12 Conn. 464; also Judicial; Mandamus; Sheriff.

MINISTERIAL TRUSTS. These which are also called instrumental trusts, demand no further exercise of reason or understanding, than every intelligent agent must necessarily employ as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding. 2 Bouv. Inst. A. 1896.

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. See 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. The place designated by law, where money is coined by authority of the government of the United States.

2. The mint was established by the Act of April 2, 1792, 1 Story's L. U. S. 227, and located at Philadelphia, where, by virtue of sundry acts of congress, it still remains. Act of April 24, 1800, 1 Story, 770; Act of March 3, 1801, 1 Story, 816; Act of May 19, 1828, 4 Sharsw. cont. of Story's L. U. S. 2120.

3. Below will be found a reference to the acts of congress now in force in relation to the mint. Act of January 18, 1837, 4 Sharsw. cont. of Story, L. U. S. 2120; Act of May 19, 1828, 4 Id. 2120; Act of May 3, 1835; Act of February 13, 1837; Act of March 3, 1849; Act of March 3, 1851, s. 11. Vide Coin; Foreign Coin; Money.

MINUTE, measures. In divisions of the circle or angular measures, a minute is equal to sixty seconds, or one sixtieth part of a degree.

2. In the computation of time, a minute is equal to sixty seconds, or the sixtieth part of an hour. Vide Measure.

MINUTE, practice. A memorandum of what takes place in court; made by authority of the court. From these minutes the record is afterwards made up.

2. Toullier says, they are so called because the writing in which they were originally, was small, that the word is derived, from the Latin minuta, (scriptura) in opposition to copies which were delivered to the parties, and which were always written in a larger hand. 8 Toull. n. 413.

3. Minutes are not considered as any part of the record. 1 Ohio R. 268. See 23 Pick. R. 184.

MINUTE BOOK. A book kept by the clerk or prothonotary of a court, in which minutes of its proceedings are entered. It has been decided that minutes are no part of the record. 1 Ohio R. 268.

MIRROR DES JUSTICES. The Mirror of Justices, a treatise written during the reign of Edward II. Andrew Horne is its reputed author. It was first published in 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. As to the history of this celebrated book see St. Armand's Hist. Essays on the Legislative power of England, 68, 59.

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

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

2. When applied to homicide, misadventure is the act of a man who, in the performance of a lawful act, without any intention to do harm, and after using proper precaution to prevent danger, unfortunately kills another person. The act upon which the death ensues, must be neither malum in se, nor malum prohibitum. The usual examples uuder this head are, 1. When the death ensues from innocent recreations. 2. From moderate and lawful correction (q. v.) in foro domestico. 3. From acts lawful and indifferent in themselves, done with proper and ordinary caution. 4 Bl. Com. 182; 1 East, P C. 221.

MISBEHAVIOUR. Improper or unlawful conduct. See 2 Mart. N. S. 683.

2. A party guilty of misbehaviour; as, for example, to threaten to do injury to another, may be bound to his good behaviour and thus restrained. See Good Behaviour.

3. Verdicts are not unfrequently set aside on the ground of misbehaviour of jurors; as, when the jury take out with them papers which were not given in evidence, to the prejudice of one of the parties. Ld. Raym. 148. When they separate before they have agreed upon their verdict. 3 Day, 237, 310., When they cast lots for a verdict; 2 Lev. 205; or, give their verdict because they have agreed to give it for the amount ascertained by each juror putting down a sum, adding the whole together, and then dividing by twelve the number of jurors, and giving their verdict for the quotient. 15 John. 87. See Bac. Ab. Verdict, H.

4. A verdict will be set aside if the successful party has been guilty of any misbehaviour towards the jury; as, if he say to a juror, "I hope you will find a verdict for me;" or " the matter is clearly of my side." 1 Vent. 125; 2 Roll. Ab. 716, pl. 17. See Code, 166, 401; Bac. Ab. Verdict, I.

MISCARRIAGE, med. jurisp. By this word is technically understood the expul− sion 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 labor. But the criminal act of destroying the foetus at any time before birth, is termed in law, procuring miscarriage. Chit. Med. Jur. 410; 2 Dunglison's Human Physiology, 364. Vide Abortion;

Foetus.

MISCARRTAGE, contracts, torts. By the English statute of frauds, 29, C. II., c. 3, s. 4, it is enacted that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," &c. "shall be in writing," &c. The word miscarriage, in this statute comprehends that species of wrongful act, for the consequences of which the law would make the party civilly responsible. The wrongful riding the horse of another, without his leave or license, and thereby causing his death, is clearly an act for which the party is reasonsible in damages, and therefore, falls within the meaning of the word miscarriage. 2 Barn. & Ald. 516; Burge on Sur. 21.

MISCASTING. By this term is not understood any pretended miscasting or mis− valuing, but simply an error in auditing and numbering. 4 Bouv. Inst. n. 4128.

MISCOGNlSANT. This word, which is but little used, signifies ignorant or not knowing. Stat. 32 H. VIII. c. 9.

MISCONDUCT. Unlawful behaviour by a person entrusted in any degree: with the administration of justice, by which the rights of the parties and the justice of the, case may have been affected.

2. A verdict will be set aside when any of the jury have been guilty of such misconduct, and a court will set aside an award, if it has been obtained by the misconduct of an arbitrator. 2 Atk. 501, 504; 2 Chit. R. 44; 1 Salk. 71; 3 P. Wms. 362; 1 Dick. 66.

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 infe− rior 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.

2. Misdemeanors have sometimes been called misprisions. (q. v.) Burn’s Just. tit. Misdemeanor; 4 Bl. Com. 5, n. 2; 2 Bar. & Adolph. 75: 1 Russell, 43; 1 Chitty, Pr. 14; 3 Verm. 347; 2 Hill, S. C. 674; Addis. 21; 3 Pick. 26; 1 Greenl. 226; 2 P. A. Browne, 249; 9 Pick. 1; 1 S. & R. 342; 6 Call. 245; 4 Wend. 229; 2 Stew. & Port. 379. And see 4 Wend. 229, 265; 12 Pick. 496; 3 Mass. 254; 5 Mass. 106. See Offence.

MISDIRECTION, practice. An error made by a judge in charging the jury in a special case.

2. Such misdirection is either in relation to matters of law or matters of fact.

3. − 1. When the judge at the trial misdirects the jury, on matters of law, material to the issue, whatever may be the nature of the case, the verdict will be set aside, and a new trial granted; 6 Mod. 242; 2 Salk. 649; 2 Wils. 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.

4. − 2. Misdirection as to matters 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 direc− tion. 12 John. R. 513. But the judge is in general allowed to very liberal discretion in charging a jury on matters of fact. 1 McCl. & Y. 286.

5. As to its effects, misdirection must be calculated to do injustice; for if justice has been done, and a new trial would produce the same result, a new trial will not be granted on that account, 2 Salk. 644, 646; 2 T. R. 4; 1 B. & P. 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, English law. In a writ of right which is intended to be tried by the grand assize, the general issue is called the mise. Lawes, Civ. Pl. 111; 7 Cowen, 51. This word also signifies expenses, and it is so commonly used in the entries of judgments in personal actions; as when the plaintiff recovers, the judgment is quod recuperet damna sua for such value, and pro mises et custagiis for costs and charges for so much, &c.

MISERABILE DEPOSITUM, civ. law. The name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity. Poth. Proced. Civ. 5eme part., ch. 1, _1 Louis. Code, 2935.

MISERICORDIA, mercy. An arbitrary or discretionary amercement.

2. To be in mercy, is to be liable to such punishment as the judge may in his discretion inflict. According to

Spelman, misericordia is so called, because the party is in mercy, and to distinguish this fine from redemptions, or heavy fines. Spelm. GI. ad voc.; see Co. Litt. 126 b, and Madox's Excheq. c. 14. See Judgment of Misericordia.

MISFEASANCE, torts, contracts. 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.

2. It seems to be settled that there is a distinction between misfeasance and nonfeasance in the case of mandates. In cases of nonfeasance, the mandatary 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; Bouv. Inst. Index h. t.

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. 6n PI. c. 4, _98; Archb. Civ. PI. 61, 78 176; Serg. and Rawle, 358; Dane's Ab. Index, h. t.

2. 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. IV., 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. 145; or move in arrest of judgment; or bring a writ of error.

3. When in actions ex contractu against several, there is a misjoinder of the defendants, as if there be too many persons made defendants, and the objection appears on the pleadings, either of the defendants may demur, move in arrest of judgment, or support a writ of error; and, if the objection do not appear on the pleadings, the plaintiff may be nonsuited upon the trial, if he fail in proving a joint contract. 5 Johns. R. 280; 2 Johns. R. 213; 11 Johns. R. 101; 5 Mass. R. 270.

4. In actions ex delicto, the misjoinder cannot in general be objected to, because in actions for torts, one defendant may be found guilty and the others acquitted. Archb. Civ. Pl. 79. As to the cases in which a misjoinder may be aided by a nolle prosequi, see 2 Archb. Pr. 218−220.

MISNOMER. The act of using a wrong name.

2. Misnomers, may be considered with regard to contracts, to devises and bequests, and to suits or actions.

3. − 1. In general, when the party can be ascertained, a mistake in the name will not avoid the contract. 11 Co. 20, 21; Lord Raym. 304; Hob. 125. Nihil facit error nominis, cum de corpori constat, is the rule of the civil law.

4. − 2. Misnomers of legatees will not in general avoid the legacy, when tho person intended can be ascertained from the context. Example: Thomas Stockdale bequeathed "to his nephew Thomas Stockdale, second son of his brother John Stockdale," 1000œ, John had no son named Thomas, his second son was named William, and he claimed the legacy. It was determined, in his favor, 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.

5. − 3. Misnomers in suits or actions, when the mistake is in the name of one of the parties, 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.

6. The names of third persons must, be correctly laid, for the error will not be helped by pleading the general issue; but, if a sufficient description be given, it has been held, in a civil case, that the misnomer was immaterial. Example: in an action for medicines alleged to have been furnished to defendant's wife, Mary, and his wife was named Elizabeth, the misnomer was held to be immaterial, the word wife being the material word. 2 Marsh. R. 159. In indictments, the names of third persons must be correctly given. Rose. Cr. Ev. R. 78. Vide, generally, 18 E. C. L. R. 149; 10 East, R. 83, n; Bac. Ab. h. t.; Dane's Ab. h. t.; 1 Vin. Ab. 7; 15 Vin. Ab. 466; 2 Phil, Ev. 2, note b; Bac. Ab. Abatement, D; Archb. Civ. Pl. 305; 1 Metc. & Perk. Dig. Abatement, V; and this Dictionary, Abatement; Contracts; Parties to Contracts; Parties to Actions.

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defence of an action, is so called.

2. Pleading not guilty to an action of debt, is an example of the first; and when the plaintiff sets out a title not simply in a defective manner, but sets out a defective title, is an example of the second. See 3 Salk. 365.

MISPRISION, crim. law. 1. In its larger sense, this word is used to signify every considerable misdemeanor, which has not a certain name given to it in the law; and it is said that a misprision is contained in every treason or felony whatever. 2. In its narrower sense it is the concealment of a crime.

2. Misprision of treason, is the concealment of treason, by being merely passive; Act of Congress of April 30, 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 is no accessories in treason.

3. Misprison of felony, is the like concealment of felony, without giving any degree of maintenance to the felon; Act of Congress of April 30, 1790, s. 6, 1 Story's L. U. S. 84; for if any aid be given him, the party becomes an accessory after the fact.

4. It is the duty of every good citizen, knowing of a treason or felony having been committed; to inform a magistrate. Silently to observe the commission of a felony, without using any endeavors to apprehend the offender, is a misprision. 1 Russ. on Cr. 43; Hawk. P. C. c. 59, s. 6; Id. Book 1, c. s. 1; 4 Bl. Com. 119.

5. 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, contracts. When a deed is read falsely to an illiterate or blind man, who is 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. 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. The statement made by a party to a contract, that a thing relating to it is in fact in a particular way, when he knows it is not so.

2. The misrepresentation must be both false and fraudulent, in order to make the party making it, responsible to the other for damages. 3 Com. R. 413; 10 Mass. R. 197; 1 Rep. Const. Court, 328, 475, Yelv. 21 a, note l; Peake's Cas. 115; 3 Campb. 154; Marsh. Ins. B. 1, c. 10, s. 1. And see Representation. It is not every misrepresentation which will make a party liable; when a mere misstatement of a fact has been erroneously made, without fraud, in a casual, 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 is bound to inquire himself, and had the means of ascertaining the truth, there would be no responsibility; 5 Maule & Selw. 380; 1 Chit. Pr. 836; 1 Sim. R. 13, 63; and when the informant was under no legal pledge or obligation as to the precise accuracy and correctness of his statement, the other party can maintain no action for the consequences of that statement, upon which it was his indiscretion to place reliance. 12 East, 638; see also, 2 Cox, R. 134; 13 Ves. 133; 3 Bos. & Pull. 370; 2 East, 103; 3 T. R, 56, 61; 3 Bulstr. 93; 6 Ves. 183; 3 Ves. & Bea. 110; 4 Dall. R. 250. Vide Concealment; Representation; Suggestio falsi; Suppressio veri.

MISSING SHIP, mar. law. When a ship or other vessel has been at sea for a much longer time than she ought to have been, she is presumed to have perished there with all on board, and such a vessel is called a missing ship.

2. There is no precise time fixed as to when the presumption is to arise, and this must depend upon the circumstances of each case. 2 Str. R. 1199; Park. Ins. 63; Marsh. Ins. 488; 2 Johns. R. 150; 1 Caines' R. 525; Holt's N. P. Rep. 242.

MISSISSIPPI. The name of one of the new states of the United States of America. This state was admitted into the Union, by a resolution of congress, passed the 10th day of December, 1817; 3 Story's L. U. S. 1716; by which it is "Resolved, that the state of Mississippi, shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with these original states, in all respects whatever."

2. The constitution of this state was adopted at the town of Washington, the 15th day of August, 1817. It was revised by a convention, and adopted on the 26th day of October, 1832, when it went into operation.

3. By the second article of the constitution, a provision is made for the distribution of powers as follows, namely;

_1. The powers of the government of the state of Mississippi, shall be divided into three distinct departments, and each of them confided to a separate body of magistracy; to wit; those which are, legislative to one, those

which are judicial to another, and those which are executive to another.

4. − 2. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

5. − 1st. The legislative power of this state is vested in two distinct branches the one styled "the senate" the other, "the house of representatives;" and both together, "the legislature of the state of Mississippi.

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

7. − _16. Each house may determine the rules of its own proceedings punish members for disorderly behaviour, and, with the consent of two−thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

8. − _17. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

9. − _ 18. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

10. − _19. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

11. − _20. Each house may punish, by imprisonment, during the session, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings: Provided, such imprisonment shall not, at any one time, exceed forty−eight hours.

12. − _21. The doors of each house shall be open, except on such occasions of great emergency, as, in the opinion of the house, may require secrecy.

13. − _22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

14. − _23. Bills may originate in either house, and be amended, altered or rejected by the other, but no bill shall have the force of a law, until on three several days, it be read in each house, and free discussion be allowed thereon, unless four−fifths of the house in which the bill shall be pending, may deem it expedient to dispense with this rule; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

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

16. − _25. Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law, but no increase of compensation shall take effect during the session at which such increase shall have been made.

17. −_26. No senator or representative shall, during the term for which be shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled, by elections by the people; and no member of either house of the legislature shall, after the commencement of the first session of the legislature after his election and during the remainder of the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part by either branch of the legislature.

18. − _27. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff or collector, or any, person bolding a lucrative office under the United States or this state, shall be eligible to the legislature: Provided, That offices in the militia, to which there is attached no annual salary, and the office of justice of the peace, shall not be deemed lucrative.

19. − _28. No person who hath 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.

20.− _29. The first election for senators and representatives shall be general throughout the state, and shall be held on the first Monday and day following in November 1833; and thereafter, there shall be biennial elections for senators to fill the places of those whose term of service may have expired.

21. − _30. The first and all future sessions of the legislature shall be held in the town of Jackson, in the county of Hinds, until the year 1850. During the first session thereafter, the legislature shall have power to designate by law the permanent seat of government: Provided, however, That unless such designation be then made by law, the seat of government shall continue permanently at the town of Jackson. The first session shall commence on the third Monday in November, in the year 1833. And in every two years thereafter, at such time as may be prescribed by law.

22. − 1. The senate. Under this lead will be considered the qualification of senators; their number; by whom they are elected; the time for which they are elected.

1. No person shall be a senator unless he be a citizen of the United States; and shall have been an inhabitant of this state for four years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years. Art. 3, s. 14.

2. The number of senators shall never be less than one−fourth, nor more than one−third, of the whole number of representatives. Art. 3, s. 10. 3. The qualifications of electors is as follows: every free white male person of the age of twenty−one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last four months within the county, city, or town in which he offers to vote, shall be deemed a qualified elector. Art. 3, s. 1. 4. The senators shall be chosen for four years, and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into two classes, as nearly equal as can be. And the seats of the senators of the first class shall be vacated at the expiration of the second year.

23. − 2. The house of representatives, will be considered in the same order that has been observed in relation, to the senate. 1. No person shall, be a representative unless he be a citizen of the United States, and shall have been an inhabitant of this state two years next prceeding his election, and the last year thereof a resident of the county, city or town for which be shall be chosen; and shall have attained the age of twenty−one years. Art. 3, s. 7. 2. The number of representatives shall not be less than thirty−six, nor more than one hundred. Art. 3, s. 9. 3. They are elected by the same electors who elect senators. Art. 3, s. 1. 4. The representatives are chosen every two years on the first Monday and day following in November. They serve two years from the day of the commencement of the general election and no longer. Art. 3, s. 5, and 6.

24. − 2d. The judicial power. By the fourth article of the constitution, the judicial power is distributed as follows, namely:

_1. The judicial power of this state shall be vested in one high court of errors and appeals, and such other courts of law and equity as are hereafter provided for in this constitution.

25. − _2. The high court of errors and appeals shall consist of three judges, any two of whom shall form a quorum. The legislature shall divide the state into three districts, and the qualified electors of each district shall elect one of said judges for the term of six years.

26. − _3. The office of one of said judges shall be vacated in two years, and of one in four years, and of one in six years, so that at the expiration of every two years, one of said judges shall be elected as aforesaid.

27. − _4. The high court of errors and appeals shall have no jurisdiction, but such as properly belongs to a court of errors and appeals.

28. − _5. All vacancies that may occur in said court, from death, resignation or removal, shall be filled by election as aforesaid. Provided, however, that if the unexpired term do not exceed one year, the vacancy sbalI be filled by executive appointment.

29. − _6. No person shall be eligible to the office of judge of the high court of errors and appeals, who shall not have attained, at the time of his election, the age of thirty yers.

30. − _7. The high court of errors and appeals shall be held twice in each year, at such place as the legislature shall direct, until the year eighteen hundred and thirty−six, and afterwards at the seat of government of the state.

31. − _8. Tbe secretary of state, on receiving all the official returns of the first election, shall proceed, forthwith, in the presence and with the assistance of two justices of the peace, to determine by lot among the three candidates having the highest number of votes, which of said judges elect shall serve for the term of two years, which shall serve for the term of four years, and which shall serve for the term of six years, and having so determined the same, it shall be the duty of the governor to issue commissions accordingly.

32. − _9. No judge shall sit on the trial of any cause when the parties or either of them shall be connected with him by affinity or consanguinity, or when he may be interested in the same, except by consent of the judge and of

the parties; and whenever a quorum of said court are situated as aforesaid, the governor of the state shall in such case specially commission two or more men of law knowledge for the determination thereof.

33. − _10. The judges of said court shall, receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

34. − _11. The judges of the circuit court shall be elected by the qualified electors of each judicial district, and hold their offices for the term of four years, and reside in their respective districts.

35. − _12. No person shall be eligible to the office of judge of the circuit court, who shall not, at the time of his election, have attained the age of twenty−six years.

36. − _13. The state shall be divided into convenient districts, and each district shall contain not less than three nor more than twelve counties.

37. − _14. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state; but in civil cases only when the principal of the sum in controversy exceeds fifty dollars.

38.− _15. A circuit court shall be held in each county of this state, at least twice in each year; and the judges of said courts shall interchange circuits with each other, in such manner as may be prescribed by law, and shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

39. − _16. A separate superior court of chancery, shall be establisbed, with full jurisdiction in all matters of equity; Provided, however, the legislature may give to the circuit courts of each county equity jurisdiction in all cases where the value of the thing, or amount in controversy, does not exceed five hundred dollars; also, in all cases of divorce, and for the foreclosure of mortgages. The chancellor shall be elected by the qualified electors of the whole state, for the term of six years, and shall be at least thirty years old at the time of his election.

40. − _17. The style of all process, shall be "The state of Mississippi," and all prosecutions shall be carried on in the name and by the authority of "The state of Mississippi," and shall conclude "against the peace and dignity of the same."

41. − _18. A court of probates shall be established in each county of this state, with jurisdiction in all matters testamentary and of administration in orpbans' 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.

42. − _19. The clerk of the high court, of errors and appeals shall be appointed by said court, for the term of four years, and the clerks of the circuit, probate, and other inferior courts, shall be elected by the qualified electors of the respective counties, and shall hold their offices for the term of two years.

43. − _20. The qualified electors of each county shall elect five persons for the term of two years, who shall constitute a board of police for each county, a majority of whom may transact business; which body shall have full jurisdiction over roads, highways, ferries, and bridges, and all other matters of county police, and shall order all county elections to fill vacancies that may occur in the offices of their respective counties: the clerk of the court of probate shall be the clerk of the board of county police.

44. − _21. No person shall be eligible as a member of said board, who shall not have resided one year in the county: but this qualification shall not extend to such new counties as may hereafter be established until one year after tbeir orgainization; and all vacancies that may occur in said board shall be supplied by election as aforesaid to fill the unexpired term.

45. − _22. The judges of all the courts of the state, and also the members of the board of county police, shall in virtue of their offices be conservators of tbe peace, and shall be by law vested with ample powers in this respect.

46. − _23. A competent number of justices of the peace and constables shall be chosen in each county by the qualified electors thereof, by districts, who shall hold their offices for the term of two years. The jurisdiction of justices of the peace shall be limited to causes in which the principal of the amount in controversy shall not exceed fifty dollars. In all causes tried by a justice of the peace, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law.

47. − _24. The legislature may from time to time establish, such other inferior courts as may be deemed necessary, and abolish the same whenever they shall deem it expedient.

48. − _25. There shall be an attorney general elected by the qualified electors of the state: and a competent number of district attorneys shall be elected by qualified voters of their respective districts, whose compensation and term of service, shall be prescribed by law.

49. _26. The legislature shall, provide by law for determining contested elections of judges of the high court of errors and appeals, of the circuit and probate courts, and other officers.

50. − _27. The judges of the several courts of this state, for wilful neglect of duty or other reasonable cause, shall be removed by the governor on the address of two−thirds of both houses of the legislature; the address to be by joint vote of both houses. The cause or causes for which such removal shall be required, shall be stated at length in such address, and on the journals of each house. The judge so intended to be removed, shall be notified and admitted to a hearing in his own defence before any vote for such address shall pass; the vote on such address shall be taken by yeas and nays, and entered on the journals of each house.

51. − _28. Judges of probate, clerks, sheriffs, and other county officers, for wilful neglect of duty, or misdemeanor in office, shall be liable to presentment or indictment by a grand jury, and trial by a petit jury, and upon conviction shall be removed from office.

52. − 3d. The chief executive power of this state shall be vested in a governor. It will be proper to consider his qualifications; by whom he is elected; the time for which he is elected; his rights, duties and powers; and how, vacancies are supplied when the office of governor becomes vacant.

53. − 1. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this state at least five years next preceding the day of his election, and shall not be capable of holding the office more than four in any term of six years. Art. 5, s. 3.

54. − 2. The governor shall be elected by the qualified elector's of the state. Art. 5, s. 2.

55. − 3. He shall hold his office for two years from the time of his installation. Art 5, s. 1.

56. − 4. He shall, at stated times, receive for his services a compensation which shall not be increased or diminished during the term for which he shall be elected. Art. 5 s. 4.

57. − 5. He shall be commander−in−chief of the army and navy in this state, and of the militia, except when they shall be called into the service of the United States. Art. 5, s. 5.

58. − 6. He may require information in writing, from the officers in the executive department, on any subject relating to the duties of their respective offices. Art. 5, s. 6.

59. − 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the legislature. Art. 5, s. 7.

60. − 8. He shall from time to time give to the legislature information of the state of the government, and recommend to their consideration, such measures as he may deem necessary and expedient. Art. 5, s. 8.

61. − 9. He shall take care that the laws be faithfully executed. Art. 5, s. 9.

62. − 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines; and in cases of forfeiture to stay the collection until the end of the next session of the legislature, and to remit forfeitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature. Art. 5, s. 10.

63. − 11. All commissions shall be in the name and by the authority of the state of Mississippi; be sealed with the great seal, and signed by the governor, and be attested by the secretary of state. The governor is also invested with the veto power. Art. 5, s. 15 and 16.

64. Whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified; and in case of the death, resignation, removal from office, or other disqualifications of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a 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.

2. The convention which formed the constitution of this state assembled at St. Louis, on Monday the 12th of June, 1820, and continued by adjournment, till the 19th day of July, 1820, when the constitution was adopted, establishing "an independent republic by the name of the ‘state of Missouri.’"

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

4. − 1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives. 1. The senate is to consist of not less than fourteen nor more than thirty−three members. The senators are chosen by tho electors for the term of four years; one−half of the senators are chosen every second year. 2. The house of representatives is never to consist of more than one hundred members. The members are chosen by the qualified electors every second year.

5. − 2d. The executive power is vested in a governor and lieutenant−governor. 1. The supreme executive power is vested in a chief magistrate, styled "the governor of the state of Missouri." Art. 4, s. 1, He is elected by the people, and holds his office for four years, and until a successor be duly appointed and qualified. Art. 4, s. 3. He is invested with the veto power. Art. 4, s. 10. The lieutenant−governor is elected at the same time, in the same manner, for the same term, and is required to possess the same qualifications as the governor. Art. 4, s. 14. He is by virtue of his office president of the senate, and when the office of governor becomes vacant by death, resignation, absence from the state, removal from office, refusal to qualify, or otherwise, the lieutenant−governor possesses all the powers and discharges all the duties of governor until such vacancy be filled, or the governor, so absent or impeached, shall return or be acquitted. And in such case there shall be a new election after three months previous notice.

6. − 3d. The judicial powers are vested by the 5th article of the constitution as follows:

_1. The judicial powers, as to matters of law and equity, shall be vested in a "supreme court," in a "chancellor," in "Circuit courts," and in such inferior tribunals as the general assembly may, from time to time, ordain and establish.

7. − 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under the restrictions and limitations in this constitution provided.

8. − 3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs; and to hear and determine the same.

9. − 4. The supreme court shall consist of three judges, any two of whom shall be a quorum, and the said judges shall be conservators of the peace throughout the state.

10. − 5. The state shall be divided into convenient districts, not to exceed four; in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only: provided, however, that the general assembly may, at any time hereafter, direct by law, that the said court shall be held at one place only.

11. − 6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

12. − 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his appointment, shall reside, and be a conservator of the peace, within the circuit for which he shall be appointed.

13. − 8. The circuit courts shall exercise a superintending control over all such inferior tribunals as the general assembly may establish; and over justices of the peace in each county in their respective circuits.

14. − 9. The jurisdiction of the court of chancery shall be co−extensive with the state and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.

15. − 10. The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians, and minors, subject to appeal, in all cases, to the supreme court, under such limitations as the general assembly may by law provide.

16. − 11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and

under such restrictions, as shall be prescribed by law.

17. − 12. Inferior tribunals shall be established in each county, for the transaction of all county business; for appointing guardians; for granting letters testamentary, and of administration; and for settling the accounts of executors, administrators, and guardians.

18. − 13. The governor shall nominate, and, by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behaviour, and shall receive for his services a compensation, which shall not be diminished during his continuance in office, and which shall not be less than two thousand dollars annually.

19. − 14. No person shall be appointed a judge in the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty−five years.

20. − 15. The courts respectively shall appoint their clerks, who shall hold their offices during good behaviour. For any misdemeanor in office, they shall be liable to be tried aud removed by the Supreme court, in such manner as the general assembly shall by law provide.

21. − 16. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two−thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof; and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

22. − 17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

23. − 18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law.

24.− 19. All writs and process shall run, and all prosecutions shall be conducted in the name of the "state of Missouri;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "against the peace and dignity of the state."

MISTAKE, contracts. An error committed in relation to some matter of fact affecting the rights of one of the parties to a contract.

2. Mistakes in making a contract are distinguished ordinarily into, first, mistakes as to the motive; secondly, mistakes as to the person, with whom the contract is made; thirdly, as to the subject matter of the contract; and, lastly, mistakes of fact and of law. See Story, Eq. Jur. _110; Bouv. Inst. Index, h. t.; Ignorance; Motive.

3. In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 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.

4. As to mistakes in the names of legatees, see 1 Rop. Leg. 131; Domat, l. 4, t. 2, s. 1, n. 22. As to mistakes made in practice, and as to the propriety or impropriety of taking advantage of them, see Chitt. Pr. Index, h. t. As to mistakes of law in relation to contracts, see 23 Am. Jur. 146 to 166.

MISTRIAL. 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.

MISUSE OF PROPERTY. The unlawful use of property.

2. The misuse of personal property delivered lawfully to the defendant, is a conversion which will enable the owner immediately to maintain trover. 6 Shepl. 382; 8 Leigh, 565; 3 Bouv. Inst. n. 3525.

MISUSER. An unlawful use of a right.

2. In cases of public officers and corporations, a misuser is sufficient to cause the right to be forfeited. 2 Bl. Com. 153; 5 Pick. R. 163.

MITIGATION. To make less rigorous or penal.

2. Crimes are frequently committed under circumstances which are not justifiable nor excusable, yet they show that the offender has been greatly tempted; as, for example, when a starving man steals bread to satisfy his hunger, this circumstance is taken into consideration in mitigation of his sentence.

3. In actions for damages, or for torts, matters are frequently proved in mitigation of damages. In an action for criminal conversation with the plaintiff's wife, for example, evidence may be given of the wife's general bad character for want of chastity; or of particular acts of adultery committed by her, before she became acquainted with the defendant; 12 Mod. R. 232; Bull. N. P. 27, 296; Selw. N. P. 25; 1 Johns. Cas, 16: or that the plaintiff has carried on a criminal conversation with other women; Bull. N. P. 27; or that the plaintiff's wife has made the first advances to the defendant, 2 Esp. N. P. C. 562; Selw. N. P. 25. See 3 Am. Jur. 287, 313; Bouv. Inst. Index, h. t.

4. In actions for libel, although the defendant cannot under the general issue prove the crime, which is imputed to the plaintiff, yet he is in many cases allowed to give evidence of the plaintiff's general character in mitigation of damages. 2 Campb. R. 251; 1 M. & S. 284.

MITIOR SENSUS, construction. The more lenient sense. It was formerly held in actions for libel and slander, that when two or more constructions could be put upon the words, one of which would not be actionable the words were to be so construed, for verba accipienda sunt in mitiore sensu. 4 Co. 13, 20. It is now, however, well established, that they are not to be taken in the more lenient, or more severe sense, but in the sense which fairly belongs to them, and which they were intended to convey. 2 Campb. 403; 2 T. R. 206.

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, English practice. 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. To join; to mingle. A compound made of several simples is said to be something mixed.

MIXED ACTIONS, practice. An action partaking of a real and personal action by which real property is demanded, and damages for a wrong sustained: an ejectment is of this nature. 4 Bouv. Inst. n. 3650.

MIXED OR COMPOUND LARCENY, crim. law. A larceny which has all the properties of simple larceny, and is accompanied with one or both the aggravations of violence to the person or taking from the house.

MIXED GOVERNMENT. A government composed of some of the powers of a monarchical, aristocratical, and democratical government. See Government.

MIXED PROPERTY. 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. 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. 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 into the same barrel, the grain of several persons into the same bag, and the like. 2. The intermixture may be occasioned by the wilful act of the party, or owner of one of the articles; by the wilful act of a stranger; by the neglilence of the owner or a stranger; of by accident. See, as to the rights of the parties under each of these circumstances, the article Confusion of goods. Vide Aso & Man. Inst. B. 2, t.

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 neighborhood 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. C. 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.

2. The Act of Congress of July 4, 1836, section 6, requires an inventor who is desirous to take out a patent for his invention, to furnish a model of his invention, in all cases which admit of represent ation 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. 676; 2 Bos. & Pull. 224. Vide Correction, and 15 Mass. R. 347; 2 Phil. Ev. 147; Bac. Ab. Assault, &c. C.

2. This plea ought to disclose, in general terms, the cause which rendered the correction expedient. 3 Salk. 47.

MODERATOR. A person appointed to preside at a popular meeting; sometimes he is called a chairman.

MODIFICATION. A change; as the modification of a contract. This may take place at the time of making the contract by a condition, which shall have that effect; for example, if I sell you one thousand bushels of corn, upon condition that any crop shall produce that much, aud it produces only eight hundred bushels, the contract is modified, it is for eight hundred bushels, and no more.

12. It may be modified by the consent of both parties, after it has been made. See 1 Bouv. Inst. n. 733.

MODO ET FORMA, pleading. In manner and form. These words are used in tendering an issue in a civil case.

2. Their legal effect is to put in issue all material circumstances and no other, they may therefore be always used with safety.

3. These words are sometimes of the substance of the issue and sometimes merely words of form. When they are of the substance of the issue, they put in issue the circumstances alleged as concomitants of the principal matter denied by the pleader, such as time, place, manner, &c. When not of the substance of the issue they do not put in issue such circumstances. Bac. Ab. Plea, G 1; Lawes' 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. See Bac. Ab. Verdict, P; Vin. Ab. Modo et Forma.

MODUS, civil law. Manlier; 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 labor, or when any means are adopted by which the general law of tithing is altered, and a new method of taking them is introduced, it is called a modus decimandi, or special manner of taking tithes. 2 Bl. Com. 29.

MOHATRA, French law. The name of a fraudulent contract, made to cover a usurious loan of money.

2. It takes place when an individual buys merchandise from another oil 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 a much less price for cash. 16 Toull. n. 44; 1 Bouv. Inst. n. 1118.

MOIETY. The half of anything; as, if a testator bequeath one moiety of his estate to A, and the other to B, each shall take an equal part. Joint tenants are said to hold by moieties. Lit. 125; 3 M. G. & S. 274, 283

MOLESTATION, Scotch law, The name of an action competent to the proprietor of a landed estate, against those who disturb his possession, It is chiefly used in questions of commonty, or, of controverted marches. Ersk. Prin. B. 4, t. 1, n. 48.

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.

2. This plea may be used whenever the defendant laid hold of the plaintiff to prevent his committing a breach of the peace.

3. When supported by evidence, it is a complete defence. Ham. N. P. 149; 2 Chit. Pl. 574, 576; 12 Vin. Ab. 182; Bac. Abr. Assault and Battery, C 8.

MOLITURA. Toll paid for grinding at a mill; multure. Not used.

MONARCHY, government. That form of government in which the sovereign power is entrusted to the hands of a single magistrate. Toull. tit. pr,l. n. 30. The country governed by a monarch is also called a monarchy.

MONEY. Gold, silver, and some other less precious metals, in the progress of civilization and commerce, have become the common standards of value; in order to avoid the delay and inconvenience of regulating their weight and quality whenever passed, the governments of the civilized world have caused them to be manufactured in

certain portions, and marked with a Stamp which attests their value; this is called money. 1 Inst. 207; 1 Hale's Hist. 188; 1 Pardess. n. 22; Dom. Lois civ. liv. prel. t. 3, s. 2, n. 6.

2. For many purposes, bank notes; (q. v.) 1 Y. & J, 380; 3 Mass. 405; 14 Mass. 122; 2 N. H. Rep. 333; 17 Mass. 560; 7 Cowen, 662; 4 Pick. 74; Bravt. 24; a check; 4 Bing. 179; S. C. 13 E. C. L. R. 295; and negotiable notes; 3 Mass. 405; will be so considered. To support a count for money had and received, the receipt by the defendant of bank notes, promissory notes: 3 Mass. 405; 3 Shepl. 285; 9 Pick. 93; John. 132; credit in account, in the books of a third person; 3 Campb. 199; or any chattel, is sufficient; 4 Pick. 71; 17 Mass. 560; and will be treated as money. See 7 Wend. 311; 8 Wend. 641; 7 S. & R. 246; 8 T. R. 687; 3 B. & P. 559; 1 Y. & J. 380.

3. The constitution of the United States has vested in congress the power "to coin money, and regulate the value thereof." Art. 1, s. 8.

4. By virtue of this constitutional authority, the following provisions have been enacted by congress.

1. Act of April 2, 1792, 1 Story's L. U. S. 229.

1. _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 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 of 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 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−hundredth part of a dollar, and to contain eleven pennyweights of copper. Half cents; each to be of the value of half a cent, and to contain five pennyweights and, a half a pennyweight of copper.

5. − _10. That upon the said coins, respectively, there shall be the following devises and legends, namely: Upon one side of each of the said coins there shall be an impression emblematic of liberty, with an inscription of the word liberty, and the year of the coinage; and, upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with this inscription, "United States of America:" and, upon the reverse of each of the copper coins there shall be an inscription which shall express the denomination of the piece, namely, cent or half cent, as the case may require.

6. − _11. That the proportional value of gold to silver in all coins which shall, by law, be current as money within the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold; and so in proportion, as to any greater or less quantities of the respective metals.

7. − _12. That the standard for all gold coins of the United States, shall be eleven parts fine to one part alloy: and accordingly, that eleven parts in twelve, of the entire weight of each of the said coins, shall consist of pure gold, and the remaining one−twelfth part of alloy; and the said alloy shall be composed of silver and copper in such proportions, not exceeding one−half silver, as shall be found convenient; to be regulated by the director of the mint for the time being, With the approbation of the president of the United States, until further provision shall be made by law. And to the end that the necessary information may be had in order to the making of such further provision, it shall be the duty of the director of the mint, at the expiration of a year after commencing the operations of the said mint, to report to congress the practice thereof during the said year, touching the composition of the alloy of the said gold coins, the reasons for such practice, and the experiments and observations which shall have been made concerning the effects of different proportions of silver and copper in the said alloy.

8.− _13. That the standard for all silver coins of the United States, shall be one thousand four hundred and eighty−five parts fine to one hundred and seventy−nine parts alloy; and, accordingly, that one thousand four hundred and eighty−five parts in one thousand six hundred and sixty−four parts, of the entire weight of each of the said coins, shall consist of pure silver, and the remaining one hundred and seventy nine parts of alloy, which alloy shall be wholly of copper.

9. − 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.

10. − _2. That all standard gold or silver deposited for coinage after the thirty−first of July next, shall be paid for in coin under the direction of the secretary of the treasury, within five days from the making of such deposit, 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.

11. − _3. That all gold coins of the United States, minted anterior to the thirty−first day of July next, shall be receivable in all payments at the rate of ninety−four and eight−tenths of a cent per pennyweight.

12. − 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.

13. − _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 grain;. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars and the quarter eagle for two and a half dollars.

14.− _11. That the silver coins 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.

15. − _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.

16. − _13. That upon the coins struck at the mint, there shall be the following devices and legends; upon one side of each of said coins, there shall be an impression emblematic of liberty, with an inscription of the word LIBERTY, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin; but on the reverse of the dime and half dime, cent and half cent, the figure of the eagle shall be omitted.

17. − _38. That all acts or parts of acts 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.

18. − 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 labor, not exceeding ten years, according to the, aggravation of the offence.

19. − _21. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any coin, in the resemblance or similitude of any copper coin, which has been, or hereafter may be, coined at the mint of the United States; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish or sell, or bring into the United States, from any foreign place, with intent to pass, utter, publish, or sell as true, any such false, forged, or counterfeited coin, with intent to defraud any body politic, or corporate, or any other person or persons whatsoever; every person so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exeeeding one thousand dollars, and by imprisonment, and confinement, to hard labor, not exceeding three years. See generally, 1 J. J. Marsh. 202; 1 Bibb, 330; 2 Wash. 282; 3 Call, 557; 5 S. & R. 48; 1 Dall. 124; 2 Dana, 298; 3 Conn. 534; 4 Harr. & McHen. 199.

20. − 5. Act of March 3, 1849, Minot's Statutes at Large of U. S. 397.

21. − _1. That there shall be, from time to time, struck and coined at the mint of the United States, and the branches thereof, conformably in all respects to law, (except that on the reverse of the gold dollar the figure of the eagle shall be omitted), and conformably in all respects to the standard for gold coins now established by law, coins of gold of the following denominations and values, viz.: double eagles, each to be of the value of twenty dollars, or units, and gold dollars, each to be of the value of one dollar, or unit.

22. − _2. That, for all sums whatever, the double eagle shall be a legal tender for twenty dollars, and the gold dollar shall be a legal tender for one dollar.

23. − _3. That all laws now in force in relation to the coins of the United States, and the striking and coining the same, shall, so far as applicable, have full force and effect in relation to the coins herein authorized, whether, the said laws are penal or otherwise; and whether they are for preventing counterfeiting or debasement, for protecting the currency, for regulating and guarding the process of striking and coining, and the preparations therefor, or for the security of the coin, or for any other purpose.

24. − _4. That, in adjusting the weights of gold coins henceforward, the following deviations from the standard weight shall not be exceeded in any of the single pieces; namely, in the double eagle, the eagle, and the half eagle, one half of a grain, and in the quarter eagle, and gold dollar, one quarter of a grain; and that, in weighing a large number of pieces together, when delivered from the chief coiner to the treasurer, and from the treasurer to the depositors, the deviation from the standard weight shall not exceed three pennyweights in one thousand double eagles; two pennyweights in one thousand, eagles; one and one half pennyweights in one thousand half eagle;; one pennyweight in one thousand quarter eagles; and one half of a pennyweight in one thousand gold dollars.

25. − 6. Act of March 3, 1851. Minot's Statutes at Large, U. S. 591.

26. − _11. That from and after the passage of this act, it shall be lawful to coin at the mint of the United States and its branches, a piece of the denomination and legal value of three cents, or three hundredths of a dollar, to be composed of three−fourths silver and one−fourth copper and to weigh twelve grains and three eighths of a grain; that the said coin shall bear such devices as shall be conspicuously different from those of the other silver coins, and of the gold dollar, but having the inscription United States of America, and its denomination and date; and that it shall be a legal tender in payment of debts for all sums of thirty cents and under. And that no ingots shall be used for the coinage of the three cent pieces herein authorized, of which the quality differs more than five thousandths from the legal standard; and that in adjusting the weight of the said coin, the following deviations from the standard weight shall not be exceeded, namely, one half of a grain in the single piece, and one pennyweight in a thousand pieces.

MONEY BILLS, legislation. Pills or projects of laws providing for raising revenue, and for making grants or appropriations of the public treasure.

2. The first clause of the seventh section of the constitution of the United States declares, "all bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills." Vide Story on the Const. _871 to 877.

3. What bills are properly "bills for raising revenue," in the sense of the constitution, has been matter of some

discussion. Tucker's Black. App. 261 and note; Story, _877. In practice, the power has been confined to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. Story, Ibid.; 2 Elliott's Debates, 283, 284.

MONEY COUNTS, pleadings. The common counts in an action of assumpsit are so called, because they are founded on express or implied promises to pay money in consideration of a precedent debt; they are of four descriptions: 1. The indebitatus assumpsit. (q. v.) 2. The quantum meruit. (q. v.) 3. The quantum valebant. (q. v.) and, 4. The account stated. (q. v.) 2. Although the plaintiff cannot resort to an implied promise when there is a general contract, yet he may, in many cases, recover on the common counts, notwithstanding there was a special agreement, provided it has been executed. 1 Camp. 471; 12 East, 1; 7 Cranch, Rep. 299; 10 Mass. Rep. 287; 7 Johns. Rep. 132; 10 John. Rep. 136; 5 Mass. Rep. 391. It is therefore advisable to insert the money counts in an action of assumpsit, when suing on a special contract. 1 Chit. Pl. 333, 4.

MONEY HAD AND RECEIVED. An action of assumpsit will lie to recover money to which the plaintiff is entitled, and which in justice and equity, when no rule of policy or strict law prevents it, the defendant ought to refund to the plaintiff, and which he cannot with a good conscience retain, on a count for money had and received. 6 S. & R. 369; 10 S. & R. 219: 1 Dall. 148; 2 Dall. 154; 3 J. J. Marsh. 175; 1 Harr. 447; 1 Harr. & Gill. 258; 7 Mass. 288; 6 Wend. 290; 13 Wend. 488; Addis. on Contr. 230.

2. When the money has been received by the defendant in consequence of some tortious act to the plaintiff's property, as when he cut down the plaintiff's timber and sold it, the plaintiff may waive the tort and sue in assumpsit for money had and received. 1 Dall. 122; 1 Blackf. 181; 5 Pick. 285; 1 J. J. Marsh. 543: 4 Pick. 452; 12 Pick. 120; 4 Binn. 374; 3 Watts, 277; 4 Call, 451.

3. In general the action for money had and received lies only where money has been received by the defendant. 14 S. & R. 179; 1 Pick. 204; 7 S. & R. 246; 1 J. J. Marsh. 544; 3 J. J. Marsh. 6; 7 J. J. Marsh. 100; 3 Bibb, 378; 11 John. 464. But bank notes or any other property received as money, will be considered for this purpose as money. 17 Mass. 560; 3 Mass. 405; 14 Mass. 122; Brayt. 24; 7 Cowen, 622; 4 Pick. 74. See 9 S. & R. 11.

4. No privity of contract between the parties is required in order to support this action, except that which results from the fact of one man's having the money of another, which he cannot conscientiously retain. 17 Mass. 563, 579. See 2 Dall. 54; Mart. & Yerg. 221; 5 Conn. 71.

MONEY LENT. In actions of assumpsit a count is frequently introduced in the declaration charging that the defendant promised to pay the plaintiff for money lent. To recover, the plaintiff must prove that the defendant received his money, but it is not indispensable that it should be originally lent. If, for example, money has been advanced upon a special contract, which has been abandoned and rescinded, and which cannot be enforced, the law raises an implied promise from the person who holds the money to pay it back as money lent. 5 M. & P. 26; 7 Bing. 266; 9 M. & W. 729; 3 M. & W. 434. See 1 Chip. 214; 3 J. J. Marsh. 37.

MONEY PAID. When one advances money for tbe benefit of another with his consent, or at his express request, although he be not benefited by the transaction, the creditor may recover the money in an action of assumpsit declaring for money paid for the defendant. 5 S. & R. 9. But one cannot by a voluntary payment of another's debt make himself creditor of that other. 1 Const. R. 472; 1 Gill. & John. 497; 5 Cowen, 603; 10 John. 361; 14 John. 87; 2 Root, 84; 2 Stow. 500; 4 N. H. Rep. 138; 3 John. 434; 8 John. 436; 1 South. 150.

2. Assumpsit for money paid will not lie where property, not money, has been paid or received. 7 S. & R. 246; 8 Bibb, 378; 14 S. & R. 179; 10 S. & R. 75; 7 J. J. Marsh. 18. But see 7 Cowen, 662.

3. But where money has been paid to the defendant either for a just, legal or equitable claim, although it could not have been enforced at law, it cannot be recovered as money paid. See Money had and received.

4. The form of declaring is for "money paid by the plaintiff, for the use of the defendant and at his request." 1 M. & W. 511.

MONITION, practice. In those courts which use the civil law process, (as the court of admiralty, whose proceedings are, under the provisions of the acts of congress, to be according to the course of the civil law,) it is a process in the nature of a summons; it is either, general, special, or mixed.

2. − 1. The general monition is a citation or summons to all persons interested, or, as is commonly said, to the whole world, to appear and show cause why the libel filed in the case should not be sustained, and the prayer of relief granted. This is adopted in prize cases, admiralty suits for forfeitures, and other suits in rem, when no particular individuals are summoned to answer. In such cases the taking possession of the property libeled, 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 notification to be posted in public places, that a libel has been filed in a certain admiralty cause pending, and of the time and place appointed for the trial. A brief statement of the allegations in the libel is usually contained in the monition. The monition is served in the manner directed in the warrant.

3. − 2. A special monition is a similar warrant, directed to the marshal or his deputy, requiring him to give special notice to certain persons, named in the warrant, of the pendency of the suit, the grounds of it, and the time and place of trial. It is served by delivery of a copy of the warrant, attested by the officer, to each one of the adverse parties, or by leaving the same at his usual place of residence; but the service should be personal if possible. Clerke's Prax. tit. 21; Dunlap's Adm. Pr. 135.

4. − 3. A mixed monition is one which contains directions for a general monition to all persons interested, aud 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, eccl. law. 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. R,pert. h. t.

MONOCRACY. A government by one person only.

MONOCRAT. A monarch who governs alone; an absolute governor.

MONOGAMY. A marriage contracted between one man and one woman, in exclusion of all the rest of mankind; it is used in opposition to bigamy and polygamy. (q. v.) Wolff, Dr. de la Nat. _857. The state of having only one husband or one wife at one time.

MONOGRAM. A character or cipher composed of one or more letters interwoven, being an abbreviation of a name.

2. A signature made by a monogram would perhaps be binding, provided it could be proved to have been made and intended as a signature. 1 Denio, R. 471. And there seems to be no reason why such a signature should not be as binding as one which is altogether illegible. See Initial; Mark; Signature.

MONOMANIA. med. jur. Insanity only upon a particular subject; and with a single delusion of the mind.

2. The most simple form of this disorder is that in which the patient has imbibed some single notion, contrary to common sense and to his own experience, and which seems, and no doubt really is, dependent on errors of sensation. It is supposed the mind in other respects retains its intellectual powers. In order to avoid any civil act done, or criminal responsibility incurred, it must manifestly appear that the act in question was the effect of monomania. Cyclop. Pract. Medicine, title Soundness and Unsoundness of Mind; Dr. Ray on Insanity, _203; 13 Ves. 89; 3 Bro. C. C. 444; 1 Addams' R. 283; Hagg. R. 18; 2 Addams' R. 102; 2 Addams' R. 79, 94, 209; 5 Car. & P. 168; Dr. Burrows on Insanity, 484, 485. Vide Delusion; Mania; and Trebuchet, Jur. de la M,d. 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 of a particular kind of merchandise, to the detriment of the public.

2. − 2. All combinations among merchants to raise the price of merchandise to the injury of the public, is also said to be a monopoly.

3. − 3. A monopoly is also an institution or allowance by a grant from the sovereign power of a state, by commission, letters patent, or otherwise, to any person, or corporation, by which the exclusive right of buying, selling, making, working, or using anything, is given. Bac. Abr. h. t.; 3 Inst. 181.

4. The constitutions of Maryland, North Carolina, and Tennessee, declare that "monopolies are contrary to the genius of a free government, and ought not to be allowed." Vide art. Copyyright; Patent.

MONSTER, physiology, persons. An animal which has a conformation contrary to the order of nature. Dunglison's Human Physiol. vol. 2, p. 422.

2. A monster, although born of a woman in lawful wedlock, cannot inherit. Those who have however the essential parts of the human form and have merely some defect of coformation, are capable of inheriting, if

otherwise qualified. 2 Bl. Com. 246; 1 Beck's Med. Jurisp. 366; Co. Litt. 7, 8; Dig. lib. 1, t. 5, l. 14; 1 Swift's Syst. 331 Fred. Code, Pt. 1, b. 1, t. 4, s. 4.

3. No living human birth, however much it may differ from human shape, can be lawfully destroyed. Traill. Med. Jur. 47, see Briand, M,d. L,g. 1ere part. c. 6, art. 2, _3; 1 Foder,, M,d. L,g. _402−405.

MONSTRANS DE DROIT. Literally showing of right, in the English law, is a process by which a subject claim from the crown a restitution of a right. Bac. Ab. Prerogative, E; 3 Bl. 256; 1 And. 181; 5 Leigh's R. 512.

MONSTRANS DE FAIT. Literally, showing of a deed; a profert. Bac. Ab. Pleas, &c. I 12, n. 1.

MONSTRAVERUNT, WRIT OF, Eng. law. A writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor. F. N. B. 31.

MONTES PIETATIS, or Monts de Pi,t,. The name of institutions established by public authority for lending money upon pledge of goods. In those establishments a fund is provided, with suitable warehouses, and all necessary accommodations. Directors, manage these concerns. When the money for which the goods pledged is not returned in proper time, the goods are sold to reimburse the institutions.

2. These establishments are found principally on the continent of Europe. With us private persons, called pawnbrokers, perform this office, sometimes with doubtful fidelity. See Bell's Com. B. 5, c. 2, s. 2.

MONTH. A space of time variously computed, as it is applied to astronomical, civil or solar, or lunar months.

2. The astronomical month contains one−twelfth part of the time employed by the sun in going through the zodiac. In law, when a month simply is mentioned, it is never understood to mean an astronomical month.

3. The civil or solar month is that which agrees with the Gregorian calendar, and these months are known by the names of January, February, March, &c. They are composed of unequal portions of time. There are seven of thirty−one days each, four of thirty, and one which is sometimes composed of twenty−eight days, and in leap years, of twenty−nine.

4. The lunar mouth is composed of twenty−eight days only. When a law is passed or contract made, and the month is expressly stated to be solar or civil, which is expressed by the term calendar month, or when it is expressed to be a lunar month, no difficulty can arise; but when time is given for the performance of an act, and the word month simply is used, so that the intention of the parties cannot be ascertained then the question arises, how shall the month be computed? By the law of England a month means ordinarily, in common contracts, as, in leases, a lunar month; a contract, therefore, made for a lease of land for twelve months, would mean a lease for forty−eight weeks only. 2 Bl. Com. 141; 6 Co. R. 62; 6 T. R. 224. A distinction has been made between "twelve months," and "a twelve−month;" the latter has been held to mean a year. 6 Co. R. 61.

5. Among the Greeks and Romans the months were Iunar, and probably the mode of computation adopted in the English law has been adopted from the codes of these countries. Clef des Lois Rom. mot Mois.

6. But in mercantile contracts, a month simply signifies a calendar month; a promissory note to pay money in twelve months, would therefore mean a promise to pay in one year, or twelve calendar months. Chit. on Bills, 406; 1 John. Cas. 99; 3 B. & B. 187; 1 M. & S. 111; Story on Bills, _143; Story, P. N. _213; Bayl. on Bills, c. 7; 4 Kent, Comm. Sect. 56; 2 Mass. 170; 4 Mass. 460; 6 Watts. & Serg. 179.

7. In general, when a statute Speaks of a month, without adding "calendar," or other words showing a clear intention, it shall be intended a lunar month. Com. Dig. Ann. B; 4 Wend. 512; 15 John. R. 358. See 2 Cowen, R. 518; Id. 605. In all legal proceedings, as in commitments, pleadings, &c. a month means four weeks. 3 Burr. R. 1455; 1 Bl. Rep. 450; Dougl. R. 446 463.

8. In Pennsylvania and Massachusetts, and perhaps some other states, 1 Hill. Ab. 118, n., a month mentioned generally in a statute, has been construed to mean a calendar month. 2 Dall. R. 302; 4 Dall. Rep. 143; 4 Mass. R. 461; 4 Bibb. R. 105. In England, in the ecclesiastical law, months are computed by the calendar. 3 Burr. R. 1455; 1 M. & S. 111.

9. In New York, it is enacted that whenever the term "month," or "months," is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar, and not a lunar month; unless otherwise expressed. Rev. Stat. part 1, c. 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 at empty tomb. Dig. 11, 7, 2, 6; Id. 11, 7, 2, 42.

MONUMENTS. Permanent landmarks established for the purpose of ascertaining boundaries.

2. Monuments may be either natural or artificial objects, as rivers, known streams, springs, or marked trees. 7 Wheat. R. 10; 6 Wheat. R. 582; 9 Cranch, 173; 6 Pet. 498; Pet. C. C. R. 64; 3 Ham. 284; 5 Ham. 534; 5 N. H. Rep. 524; 3 Dev. 75. Even posts set up at the corners, 5 Ham. 534, and a clearing, 7 Cowen, 723, are considered as monuments. Sed vide 3 Dev. 75.

3. When monuments are established, they must govern, although neither courses, nor distances, nor 'computed' contents correspond; 5 Cowen, 346; 1 Cowen, 605; 6 Cowen, 706; 7 Cowen, 723; 6 Mass. 131; 2 Mass. 380; 3 Pick. 401; 5 Pick. 135; 3 Gill & John. 142,; 5 Har. & John. 163, 255; 2 Id. 260; Wright, 176; 5 Ham. 534; 1 H. & McH. 355; 2 H. & McH. 416; Cooke, 146; 1 Call, 429; 3 Call, 239; 3 Fairf. 325; 4 H. & M. 125; 1 Hayw. 22; 5 J. J. Marsh. 578; 3 Hawks, 91; 3 Murph. 88; 4 Monr. 32; 5 Monr. 175; 2 Overt. 200; 2 Bibb, 493; S. C. 6 Wheat. 582; 4 W. C. C. Rep. 15. Vide Boundary.

MOORING, mar. law. The act of arriving of a ship or vessel at a particular port, and there being anchored or otherwise fastened to the shore.

2. Policies of insurance frequently contain a provision that the ship is insured from one place to another, "and till there moored twenty−four hours in good safety." As to what shall be a sufficient mooring, see 1 Marsh. Ins. 262; Park. on Ins. 35; 2 Str. 1251; 3. T. R. 362.

MOOT, English law. A term used in the inns of court, signifying the exercise of arguing imaginary cases, which young barristers and students used to perform at certain times, the better to be enabled by this practice to defend their clients cases. A moot question is one which has not been decided.

MORA, In civil law. This term, in mor*f*, is used to denote that a party to a contract, who is obliged to do anything, has neglected to perform it, and is in default. Story on Bailm. _123, 259; Jones on Bailm. 70; Poth. Pr,t a Usage, c. 2, _2, art. 2, n. 60; Encyclop,die, mot Demeure; Broderode, mot Mor*f*.

MORA, estates. A moor, barren or unprofitable ground; marsh; a heath. 1 Inst. 5; Fleta, lib. 2, c. 71.

MORAL EVIDENCE. That evidence which is not obtained either from intuition or demonstration. It consists of those convictions of the mind, which are produced by the use of the senses, the testimony of men, and analogy or induction. It is used in contradistinction to mathematical, evidence. (q. v.) 3 Bouv. Inst. n. 3050.

MORAL INSANITY, med. jur. A term used by medical men, which has not yet acquired much reputation in the courts. Moral insanity is said to consist in a morbid perversion of the moral feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination. Prichard, art. Insanity, in Cyclopaedia of Practical Medicine

2. It is contended that some human beings exist, who, in consequence of a deficiency in the moral organs, are as blind to the dictates of justice, as others are deaf to melody. Combe, Moral Philosophy, Lect. 12.

3. In some, this species of malady is said to display itself in an irresistible propensity to commit murder; in others, to commit theft, or arson. Though most persons afflicted with this malady commit such crimes, there are others whose disease is manifest in nothing but irascibility. Annals D'HygiŠne 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 it their full assent. 1 Chit. Med. Jur. 352; 1 Beck, Med. Jur. 553 Ray, Med. Jur. Prel. Views, _23, p. 49.

MORAL OBLIGATION. A duty which one owes, and which he ought to perform, but which he is not legally bound to fulfil.

2. These obligations are of two kinds 1st. Those founded on a natural right; as, the obligation to be charitable, which can never be enforced by law. 2d. Those which are supported by a good or valuable antecedent consideration; as, where a man owes a debt barred by the act of limitations, this cannot be recovered by law, though it subsists in morality and conscience; but if the debtor promise to pay it, the moral obligation is a sufficient consideration for the promise, and the creditor may maintain an action of assumpsit, to recover the money. 1 Bouv. Inst. n. 623.

MORATUR, IN LEGE. He demurs in law. He rests on the pleadings of the case, and abides the judgment of the court.

MORGANTIC MARRIAGE. During the middle ages, there was an intermediate estate between matrimony and

concubinage, known by this name. It is defined to be a lawful and inseparable conjunction of a single man, of noble and illustrious birth, with a single woman of an inferior or plebeian station, upon this condition, that neither the wife nor children should partake of the title, arms, or dignity of the husband, nor succeed to his inheritance, but should have a certain allowance assigned to them by the morgantic contract. The marriage ceremony was regularly performed; the union: was for life and indissoluble; and the children were considered legitimate, though they could not inherit. Fred. Code, book 2, art. 3; Potb. Du Marriage, 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 assize 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 the concern the kind of property, mortgaged, they are mortgages of lands, tenements, and, hereditaments, or of goods and chattels; as they affect the title of the thing mortgaged, they are legal and equitable.

2. In equity all kinds of property; real or personal, which are capable of an absolute sale, may be the subject of a mortgage; rights in remainder and reversion, franchises, and choses in action, may, therefore, be mortgaged; But a mere possibility or expectancy, as that of an heir, cannot. 2 Story, Eq. Jur. _1021; 4 Kent, Com. 144; 1 Powell, Mortg. 17, 23; 3 Meri. 667.

3. A legal mortgage of lands may be described to be a conveyance of lands, by a debtor to his creditor, as a pledge and security for the repayment of a sum of money borrowed, or performance of a covenant; 1 Watts, R. 140; with a proviso, that such conveyance shall be void on payment of the money and interest on a certain day, or the performance of such covenant by the time appointed, by which the conveyance of the land becomes absolute at law, yet the, mortgagor has an equity of redemption, that is, a right in equity on the performance of the agreement within a reasonable time, to call for a re−conveyance of the land. Cruise, Dig. t. 15, c. 1, s. 11; 1 Pow. on Mortg. 4 a, n.; 2 Chip. 100; 1 Pet. R. 386; 2 Mason, 531; 13 Wend. 485; 5 Verm. 532; 1 Yeates, 579; 2 Pick. 211.

4. It is an universal rule in equity that once a mortgage, always a mortgage; 2 Cowen, R. 324; 1 Yeates, R. 584; every attempt, therefore, to defeat the equity of redemption, must fail. See Equity of Redemption.

5. As to the form, such a mortgage must be in writing, when it is intended to convey the legal title. 1 Penna. R. 240. It is either in one single deed which contains the whole contract − and which is the usual form − or, it is two separate instruments, the one containing an absolute conveyance, and the other a defeasance. 2 Johns. Ch. Rep. 189; 15 Johns. R. 555; 2 Greenl. R. 152; 12 Mass. 456; 7 Pick. 157; 3 Wend, 208; Addis. 357; 6 Watts, 405; 3 Watts, 188; 3 Fairf. 346; 7 Wend. 248. But it may be observed in general, that whatever clauses or covenants there are in a conveyance, though they seem to import an absolute disposition or conditional purchase, yet if, upon the whole, it appears to have been the intention of the parties that such conveyance should be a mortgage only, or pass an estate redeemable, a court of equity will always so construe it. Vern. 183, 268, 394; Prec Ch. 95; 1 Wash. R 126; 2 Mass. R. 493; 4 John. R. 186; 2 Cain. Er. 124.

6. As the money borrowed on mortgage is seldom paid on the day appointed, mortgages have now become entirely subject to the court of chancery, where it is an established rule that the mortgagee holds the estate merely as a pledge or security for the repayment of his money; therefore a mortgage is considered in equity as personal estate.

7. The mortgagor is held to be the real owner of the land, the debt being considered the principal, and the land the accessory; whenever the debt is discharged, the interest of the mortgagee in the lands determines of course, and he is looked on in equity as a trustee for the mortgagor.

8. An equitable mortgage of lands is one where the mortgagor does not convey regularly the land, but does some act by which he manifests his determination to bind the same for the security of a debt he owes. An agreement in writing to transfer an estate as a security for the repayment of a sum of money borrowed, or even a deposit of title deeds, and a verbal agreement, will have the same effect of creating an equitable mortgage. 1 Rawle, Rep. 328; 5 Wheat. R. 284; 1 Cox's Rep. 211. But in Pennsylvania there is no such a thing as an equitable mortgage. 3 P. S. R. 233. Such an agreement will be carried into execution in equity against the mortgagor, or any one claiming under him with notice, either actual or constructive, of such deposit having been made. 1 Bro. C. C. 269; 2 Dick. 759; 2 Anstr. 427; 2 East, R. 486; 9 Ves. jr. 115; 11 Ves. jr. 398, 403; 12 Ves. jr. 6, 192; 1 John. Cas. 116; 2 John. Ch. R. 608; 2 Story, Eq. Jur. _1020. Miller, Eq. Mortg. passim.

9. A mortgage of goods is distinguishable from a mere pawn. 5 Verm. 532; 9 Wend. 80; 8 John. 96. By a grant or conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee, and if not redeemed at the time stipulated, the title becomes absolute at law, though equity will interfere to compel a redemption. But, in a pledge, a special property only passes to the pledgee, the general property remaining in the pledger. There have been some cases of mortgages of chattels, which have been held valid without any actual possession in the mortgagee; but they stand upon very peculiar grounds and may be deemed exceptions to the general rule. 2 Pick. R. 607; 5 Pick. R. 59; 5 Johns. R. 261; Sed vide 12 Mass. R. 300; 4 Mass. R. 352; 6 Mass. R. 422; 15 Mass. R. 477; 5 S. & R. 275; 12 Wend. 277: 15 Wend. 212, 244; 1 Penn. 57. Vide, generally,, Powell on Mortgages; Cruise, Dig. tit. 15; Viner, Ab. h. t.; Bac. Ab. 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; Bouv. Inst. Index, h. t.

10. It is proper to, observe that a conditional sale with the right to repurchase very nearly resembles a mortgage; but they are distinguishable. It is said that if the debt remains, the transaction is a mortgage, but if the debt is extinguished by mutual agreement, or the money advanced is not loaned, but the grantor has a right to refund it in a given time, and have a reconveyance, this is a conditional sale. 2 Edw. R. 138; 2 Call, R. 354; 5 Gill & John. 82; 2 Yerg. R. 6; 6 Yerg. R. 96; 2 Sumner, R. 487; 1 Paige, R. 56; 2 Ball & Beat. 274. In cases of doubt, however, courts of equity will always lean in favor of a mortgage. 7 Cranch, R. 237; 2 Desaus. 564.

11. According to the laws of Louisiana a mortgage is a right granted to the creditor over the property of his debtor, for the security of his debt, and gives him the power of having the property seized and sold in default of payment. Civ. Code of Lo. art. 3245.

12. Mortgage is conventional, legal or judicial. 1st. The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of the possession. Civ. Code, art. 3257.

13. − 2d. Legal mortgage is that which is created by operation of law: this is also called tacit mortgage, because it is established by the law, without the aid of any agreement. Art. 3279. A few examples will show the nature of this mortgage. Minors, persons interdicted, and 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.

14. − 3d. The judicial mortgage is that resulting from judgments, whether these be rendered on contested cases or by default, whether they be final or provisional, in favor of the person obtaining them. Art. 3289.

15. Mortgage, with respect to the manner in which it binds the property, is divided into general mortgage, or special mortgage. General mortage is that which binds all the property, present or future, of the debtor. Special mortgage is that which binds only certain specified property. Art. 3255.

16. The following objects are alone susceptible of mortgage: 1. Immovables, subject to alienation, and their accessories considered likewise as immovable. 2. The usufruct of the same description of property with its accessories during the time of its duration. 3. Slave's. 4. Ships and other vessels. Art. 3256.

MORTGAGEE, estates, contracts. He to whom a mortgage is made.

2. He is entitled to the payment of the money secured to him by the mortgage; he has the legal estate in the land mortgaged, and may recover it in ejectment, on the other hand he cannot commit waste; 4 Watts, R. 460; he cannot make leases to the injury of the mortgagor; and he must account for the profits he receives out of the thing mortgaged when in possession. Cruise, Dig. tit. 15, c. 2.

MORTGAGOR, estate's, contracts. He who makes a mortgage.

2. He has rights, and is liable to certain duties as such. 1. He is quasi tenant, at will; he is entitled to an equity of redemption after forfeiture. 2. He cannot commit waste, nor make a lease injurious to the mortgagee. As between the mortgagor and third persons, the mortgagor is owner of the land. Dougl. 632; 4 M'Cord, R. 310; 3 Fairf. R. 243; but see 3 Pick. R. 204; 1 N. H. Rep. 171; 2 N. H. Rep. 16; 10 Conn. R. 243; 1 Vern. 3; 2 Vern. 621; 1 Atk. 605. He can, however, do nothing which will defeat the rights of the mortgagee, as, to make a lease to bind him. Dougl. 21. Vide Mortgagee; 2 Jack. & Walk. 194.

MORTIFICATION, Scotch law. This term is nearly synonymous with mortmain.

MORTMAIN. An unlawful alienation of lands, or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of mortmain to be applied to such alienations. 2 Bl. Com. 268; Co. Litt. 2 b; Ersk. Inst. B. 2, t. 4, s. 10; Barr. on the Stat. 27, 97.

2. Mortmain is also employed to designate all prohibitory laws, which limit, restrain, or annul gifts, grants, or devises of lands and other corporeal hereditaments to charitable uses. 2 Story, Eq. Jur. _1137, note 1. See Shelf. on Mortm. 2, 3.

MORTUARIES, Eng. law. These are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister, in many parishes, on the death of the parishioner. 2 Bl. Com. 425.

MORTUUM VADIUM. A mortgage; a dead pledge

MORTUUS EST. A return made by the sheriff, when the defendant is dead, as an excuse for not executing the writ. 4 Watts, 270, 276.

MOTHER, domestic relations. A woman who has borne a child.

2. It is generally the duty of a mother to support her child, when she is left a widow, until he becomes of age, or is able to maintain himself; 8 Watts, R. 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 Miss. R. 97.

3. When the father dies without leaving a testamentary guardian, at common law, the mother is entitled to be the guardian of the person and estate of the infant, until he arrives at fourteen years, when he is able to choose a guardian. Litt. sect. 123; 3 Co. 38; Co. Litt. 84 b; 2 Atk. 14; Com Dig. B, D, E; 7 Ves. 348. See 10 Mass. 135, 140; 15 Mass. 272; 4 Binn. 487; 4 Stew. & Part. 123; 2 Mass. 415; Harper, R. 9; 1 Root, R. 487.

4. In Pennsylvania, the orphans' court will, in such case, appoint a guardian until the infant shall attain his fourteenth year. During the joint lives of the parents, (q. v.) the father (q. v.) is alone responsible for the support of the children; and has the only control over them, except when in special cases the mother is allowed to have possession of them. 1 P. A. Browne's Rep. 143; 5 Binn. R. 520; 2 Serg. & Rawle 174. Vide 4 Binn. R. 492, 494.

5. The mother of a bastard child, as natural guardian, has a right to the custody and control of such child, and is bound to maintain it. 2 Mass. 109; 12 Mass. 387, 433; 2 John. 375; 15 John. 208; 6 S. & R. 255; 1 Ashmead, 55.

MOTHER−IN−LAW. In Latin socrus. The mother of one's wife, or of one's husband.

MOTION, practice. An application to a court by one of the parties in a cause, or his counsel, in order to obtain some rule or order of court, which he thinks becomes necessary in the progress of the cause, or to get relieved in a summary manner, from some matter which would work injustice.

2. When the motion. is made on some matter of fact, it must be supported by an affidavit that such facts are true; and for this purpose, the party's affidavit will be received, though, it cannot be read on the hearing. 1 Binn. R. 145; S. P. 2 Yeates' 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. The inducement, cause or reason why a thing is done.

2. When there is such a mistake in the motive, that had the truth been known, the contract would pot 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. jr. 221; 4 Price, 135; 1 Ves. jr. 210; Atkinson on Titl. 144. Vide Cause; Consideration.

3. The motive of prosecutions is frequently an object of inquiry, particularly when the prosecutor is a witness, and in his case, as that of any other witness, when the motion is ascertained to be bad, as a desire of revenge for a real or supposed injury, the credibility of the witness will be much weakened, though this will not alone render him incompetent. See Evidence; Witness.

MOURNING. This word has several significations. 1. It is the apparel worn at funerals, and for a time afterwards, in order to manifest grief for the death of some one, and to honor his memory. 2. The expenses paid for such apparel.

2. It has been held in England, that a demand for mourning furnished to the widow and family of the testator, is not a funeral expense. 2 Carr. & P. 207. Vide 14 Ves. 346; 1 Ves. & Bea. 364. See 2 Bell's Comm. 156.

MOVABLES, estates. Such subjects of property as attend a man's person wherever he goes, in contradistinction to things immovable. (q. v.)

2. Things movable by their nature are such as may be carried from one place to another, whether they move themselves, as cattle, or cannot be removed without an extraneous power, as inanimate things. 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. Com. 884; Civ. Code of Lo. art. 464 to 472; 1 Bouv. Inst. n. 462.

MULATTO. A person born of one white and one black parent. 7 Mass. R. 88; 2 Bailey, 558.

MULCT, punishment. A fine imposed on the 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.

2. A son or a daughter, born of a lawful wife, is called filius mulieratus or filia mulierata, a son mulier, or a daughter mulier. The term is used always in contradistinction to a bastard; mulier being always legitimate. Co. Litt. 243.

3. When a man has a bastard son, and afterwards marries the mother, and has by her another son, the latter is called the mulier puisne. 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; 4 Bouv. Inst. n. 4165.

2. 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 . PI. _271 to 286. It is extremely difficult to say what constitutes multifariousness as an abstract proposition. Story, Eq. Pl. _530, 539; 4 Blackf. 249; 2 How. S. C. Rep. 619, 642; 4 Bouv. Inst. n. 4243.

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. The quantity of grain or meal payable to the proprietor of the mill, or to the multurer, his tacksman, for manufacturing the corns. Ersk. Prin. Laws of Scotl. B. 2 t. 9, n. 19.

MUNERA. The name given to grants made in the early feudal ages, which were mere tenancies at will, or during the pleasure of the grantor. Dalr. Feud. 198, 199; Wright on Ten. 19.

MUNICIPAL. Strictly, this word applies only to what belongs to a city. Among the Romans, cities were called municipia; these cities voluntarily joined the Roman republic in relation to their sovereignty only, retaining, their laws, their liberties, and their magistrates, who were 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. Municipal is used in contradistinction to international; thus we say an offence against the law of nations is an international offence, but one committed against a particular state or separate community, is a municipal offence.

MUNICIPALITY. The body of officers, taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

MUNIMENTS. 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.

MURAGE. A toll formerly levied in England for repairing or building public walls.

MURAL MONUMENTS. Monuments made in walls.

2. Owing to the difficulty or impossibility of removing them, secondary evidence may be given of inscriptions on walls, fixed tables, gravestones, and the like. 2 Stark. Rep. 274.

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 aforethought, whether the person slain shall be an Englishman or a foreigner. B. 1, c. 13, s. 3. Russell says, murder is the killing of any person under the king's peace, with malice prepense or aforethought, either express or implied by law. 1 Rus. Cr. 421. And Sir Edward Coke, 3 Inst. 47, defines or rather describes this offence to be, " when a person of sound mind and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought either express or implied."

2. This defnition, 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 afterthought? Livingst. Syst. of Pen. Law; 186.

3. According to Coke's definition there must be, lst. 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 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. To constitute a birth, so as to make the killing of a child murder, the whole body must be detached from that of the mother; but if it has come wholly forth, but is still connected by the umbilical chord, such killing will be murder. 2 Bouv. Inst. n. 1722, note. Foeticide (q. v.) would not be such a killing; he must have been in rerum natura. 4. Malice, either express or implied. It is this circumstance which distiuguishes murder from every description of homicide. Vide art. Malice. 4. In some of the states, by legislative enactments, murder has been divided into degrees. In Pennsylvania, the act of April 22, 1794, 3 Smith's Laws, 186, makes "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find the person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Many decisions have been made under this act to which the reader is referred: see Whart. Dig. Criminal Law, h. t.

5. The legislature of Tennessee has adopted the same distinction in the very words of the act of Pennsylvania just cited. Act of 1829, 1 Term. Laws, Dig. 244. Vide 3 Yerg. R. 283; 5 Yerg. R. 340.

6. Virginia has adopted the same distinction. 6 Rand. R. 721. Vide, generally, Bac. Ab. h. t.; 15 Vin. Ab. 500; Com. Dig. Justices, M 1, 2; Dane's Ab. Index, h. t.; Hawk. Index, h. t.; 1 Russ. Cr. b. 3, c. 1; 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 into the charge, the indictment will be taken to charge manslaughter only. Foster, 424; Yelv. 205; 1 Chit. Cr. Law, *243, and the authorities and cases there cited.

MURDRUM, old Engl. law. During the times of the Danes, and afterwards till the reign of Edward III, murdrum was the killing of a man in a secret manner, and in that it differed from simple homicide.

2. When a man was thus killed, and he was unknown, by the laws of Canute he was presumed to be a Dane, and the vill was compelled to pay forty marks for his death. After tlie conquest, a similar law was made in favor of Frenchmen, which was abolished by 3 Edw. III.

3. By murdrum was also understood the fine formerly imposed in England upon a person who had committed homicide perinfortunium or se defendendo. Prin. Pen. 219, note r.

MUSICAL COMPOSITION. The act of congress of February 3, 1831, authorizes the granting of a copyright for a musical composition. A question was formerly agitated whether a composition published on a single sheet of paper, was to be considered a book, and it was decided in the affirmative. 2 Campb. 28, n.; 11 East, 244. See Copyright.

TO MUSTER, mar. law. 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; A written document containing the name's, ages, quality, place of residence, and, above all, place of birth, of every person of the ship's company. It is of great use in ascertaining the ship's; neutrality. Marsh. Ins. B. 1, c. 9, s. 6, p. 407; Jacobs. Sea Laws, 161; 2 Wash. C. C. R. 201.

MUSTIRO. This name is given to the issue of an Indian and a negro. Dudl. S. Car. R. 174.

MUTATION, French law. This term is synonymous with change, and is particularly applied to designate the change which takes place in the property of a thing in its transmission from one person to another; permutation therefore happens when, the owner of the thing sells, exchanges or gives it. It is nearly synonymous with transfer. (q. v.) Merl. R,pert. h. t.

MUTATION OF LIBEL, practice. 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 asking one thing 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. 26l.

MUTATIS MUTANDIS. The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like.

MUTE, persons. One who is dumb. Vide Deaf and Dumb.

MUTE, STANDING MUTE, practice, crim. law. When a prisoner upon his arraignment totally refuses to answer, insists upon mere frivolous pretences, or refuses to put himself upon the country, after pleading not guilty, he is said to stand mute. 2. In the case of the United States v. Hare, et al., Circuit Court, Maryland Dist. May sess. 1818, the prisoner standing mute was considered as if he had pleaded not guilty.

3. The act of congress of March 3, 1825, 3 Story's L . U. S. 2002, has since provided as follows; _14, That if any person, upon his or her arraignment upon any indictment before any court of the United States for any offence, not capital, shall stand mute, or will not answer or plead to such indictment, the court shall, notwithstanding, proceed to the trial of the person, so standing mute, or refusing to answer or pleas, as if he or she had pleaded not guilty; and upon a verdict being returned by the jury, may proceed to render judgment accordingly. A similar provision is to be found in the laws of Pennsylvania.

4. The barbarous punishment of peine forte et dure which till lately disgraced the criminal code of England, was never known in the United States. Vide Dumb; 15 Vin. Ab. 527.

5. When a prisoner stands mute, the laws of England arrive at the forced conclusion that he is guilty, and punish him accordingly. 1 Chit. Cr. Law, 428.

6. By the old French law, when a person accused was mute, or stood mute, it was the duty of the judge to appoint him a curator, whose duty it was to defend him, in the best manner he could; and for this purpose, he was allowed to communicate with him privately. Poth. Proced. Crim. s. 4, art. 2, _1.

MUTILATION, crim. law. 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. The unlawful resistance of a superior officer, or the raising of commotions and disturbances on board of a ship against the authority of its commander, or in the army in opposition to the authority of the officers; a sedition; (q. v.) a revolt. (q. v.)

2. By the act for establishing rules and articles for the government of the armies of the United States, it is enacted as follows: Article 7. Any officer or soldier, who shall begin, excite, or cause, or join in, any mutiny or sedition in any troop or company in the service of the United States, or in 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 endeavors to suppress the same, or coming to the knowledge of any intended mutiny, does not without delay give information thereof to his commanding officer, shall be punished by the sentence of a court martial, with death, or otherwise, according to the nature of his offence.

3. And by the act for the better government of the navy of the United States, it is enacted as follows,: Article 13. If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by, a court martial, suffer death; and if any person as aforesaid, shall utter any seditious or mutinous words, or shall conceal or 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.

2. In contracts there must always be a consideration in order to make them valid. This is sometimes mutual, as when one man promises to pay a sum of money to another in consideration that he shall deliver him a horse, and the latter promises to deliver him the horse in consideration of being paid the price agreed upon. When a man and a woman promise to marry each other, the promise is mutual. It is one of the qualities of an award, that it be mutual; but this doctrine is not as strict now as formerly. 3 Rand. 94; see 3 Caines 254; 4 Day, 422; 1 Dall. 364, 365; 6 Greenl. 247; 8 Greenl. 315; 6 Pick. 148.

3. To entitle a contracting party to a specific performance of an agreement, it must be mutual, for otherwise it will not be compelled. 1 Sch. & Lef. 18; Bunb. 111; Newl. Contr. 152. See Rose. Civ. Ev. 261.

4. 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 in a sum payable at a future day, and the bankrupt owed him a smaller sum which was then due; this, though in strictness, not a mutual debt, was holden to be a mutual credit. 1 Atk. 228, 230; 7 T. R. 378; Burge on Sur. 455, 457.

MUTUARY, contracts. A person who borrows personal chattels to be 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, contracts. 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.; 1 Bouv. Inst. logo.

2. 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. Pr^t. de Consomption, n. 1; 1 Bouv. Inst. n. 1091−6.

MYSTERY or MISTERY. This word is said to be derived from the French mestier now written m^tier, a trade. In law it signifies a trade, art, or occupation. 2 Inst. 668.

2. 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.

MYSTIC. In a secret manner; concealed; as mystic testament, for a secret testament. Vide 2 Bouv. Inst. n. 3138; Testament Mystic.