S.

SABBATH. The same as Sunday. (q. v.)

SABINIANS. A sect of lawyers, whose first chief was Atteius Capito, and the second, Caelius Sabiaus, from whom they derived their name. Clef des Lois Rom. h. t.

SACRAMENTUM. An oath; as, qui dicunt supra sacramentum suum.

SACQUIER, maritime law. The same of an ancient officer, whose business "was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandise otherwise." Laws of Oleron, art. 11, published in an English translation in an Appendix to 1 Pet. Adm. R. XXV. See Arrameur; Stevedore.

SACRILEGE. The act of stealing from the temples or churches dedicated to the worship of God, articles consecrated to divine uses. Pen. Code of China, B. 1, s. 2, _6; Ayl. Par. 476.

SAEVETIA. Cruelty. (q. v.) It is required in order to constitute saevetia that there should exist such a degree of cruelty as to endanger the party's suffering bodily hurt. 1 Hagg. Cons. R. 85; 2 Mass. 150; 3 Mass. 821; 4 Mass. 587.

SAFE−CONDUCT, comm. law, war. A passport or permission from a neutral state to persons who are thus authorized to go and return in safety, and, sometimes, to carry away certain things, in safety. According to common usage, the term passport is employed on ordinary occasions, for the permission given to persons when there is no reason why they should not go where they please: and safe−conduct is the name given to the instrument which authorizes certain persons, as enemies, to go into places where they could not go without danger, unless thus authorized by the government.

2. A safe−conduct is also the name of an instrument given to the captain or master of a ship to proceed on a particular voyage: it usually contains his name and residence, the name, description and destination of the ship, with such other matters as the practice of the place requires. This document is indispensably necessary for the safety of every neutral ship.

3. The act of congress of April 30th, 1790, s. 27, punishes the violation of any safe−conduct or passport granted under the authority of the United States, on conviction, with imprisonment, not exceeding three years, and a fine at the discretion of the court. Vide Conduct; Passport; and 18 Vin. Ab. 272.

SAFE PLEDGE, salvus−plegius. A surety given that a man shall appear upon a certain day. Bract. lib. 4, c. 1.

SAID. Before mentioned.

2. In contracts and pleadings it is usual and proper when it is desired to speak of a person or thing before mentioned, to designate them by the term said or aforesaid, or by some similar term, otherwise the latter description will be ill for want of certainty. 2 Lev. 207: Com. Dig. Pleader, C IS; Gould on Pl: c. 3, _63.

SAILING INSTRUCTIONS, mar. law. Written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet, in case of dispersion by storm, by an enemy, or by any other accident.

2. Without sailing instructions no vessel can have the full protection and benefit of convoy. Marsh. Ins. 368.

SAILORS. Seamen, mariners. Vide Mariners; Seamen; Shipping Articles.

SAISIE−EXECUTION, French law. This term is used in Louisiana. It is a writ of execution by which the creditor places under the custody of the law, the movables, which are liable to seizure, of his debtor, in order that out of them he may obtain payment of the debt due by him Code of Practice, art. 641 , Dall. Diet. h. t.. It is a writ very similar to the fieri facias.

SAISIE−FORAINE. A term used in Louisiana and in the French law; this is a permission given by the proper judicial officer, to authorize a creditor to seize the property of his debtor in the district which he inhabits. Dall. Dict. h. t. It has the effect of an attachment of property, which is applied to the payment of the debt due.

SAISIE−GAGERIE, French law. A conservatory act of execution, by which the owner, or principal lessor of a house or farm, causes the furniture of the house or farm leased, and on which he has a lien, to be seized, in order to obtain the rent due to him. It is similar to the distress of the common law. Dall. Dict. h. t.

SAISIE−IMMOBILIERE. A writ by which the creditor puts in the custody of the law the immovables of his debtor, that out of the proceeds of their sale, he may be paid his demand. The term is French, and is used in Louisiana.

SALARY. A reward or recompense for services performed.

2. It is usually applied to the reward paid to a public officer for the performance of his official duties.

3. The salary of the president of the United States is twenty−five thousand dollars per annum; Act of l8th Feb. 1793; and the constitution, art. 2, s. 1, provides that the compensation of the president shall not be increased or diminished, during the time for which he shall have been elected.

4. Salary is also applied to the reward paid for the performance of other services; but if it be not fixed for each year, it is called honorarium. Poth. Pand. h. t. According to M. Duvergier, the distinction between honorarium and salary is this. By the former is understood the reward given to the most ele−vated professions for services performed; and by the latter the price of hir−ing of domestic servants and workmen. 19 Toull. n. 268, p. 292, note.

5. There is this difference between salary and price; the former is the re−ward paid for services, or for the hire of things; the latter is the consideration paid for a thing sold. Lec. Elem. _907, 908.

SALE, contracts. An agreement by which one of the contracting parties, called the seller, gives a thing and passes the title to it, in exchange for a certain price in current money, to the other party, who is called the buyer or purchaser, who, on his part, agrees to pay such price. Pard. Dr. Com. n. 6; Noy's Max. ch. 42; Shep. Touch. 244; 2 Kent, Com. 363; Poth. Vente, n. 1; 1 Duverg. Dr. Civ. Fr. n. 7.

2. This contract differs from a barter or exchange in this, that in the latter the price or consideration, instead of being paid in money, is paid in goods or merchandise, susceptible of a valuation. It differs from accord and satisfaction, because in that contract, the thing is given for the purpose of quieting a claim, and not for a price. An onerous gift, when the burden it imposes is the payment of a sum of money, is, when accepted, in the nature of a sale. When partition is made between two or more joint owners of a chattel, it would seem, the contract is in the nature of a barter. See 11 Pick. 311.

3. To constitute a valid sale there must be, 1. Proper parties. 2. A thing which is the object of the contract. 3. A price agreed upon; and, 4. The consent of the contracting parties, and the performance of certain acts required to complete the contract. These will be separately considered.

4. − _1. As a general rule all persons sui juris may be either buyers or sellers. But to this rule there are several exceptions. 1. There is a class of persons who are incapable of purchasing except sub modo, as infants, and married women; and, 2. Another class, who, in consequence of their peculiar relation with regard to the owner of the thing sold, are totally incapable of becoming purchasers, while that relation exists; these are trustees, guardians, assignees of insolvents, and generally all persons who, by their connexion with the owner, or by being employed concerning his affairs, have acquired, a knowledge of his property, as attorneys, conveyancers, and the like. See Purchaser.

5. − _2. There must be a thing which is the object of the sale, for if the thing sold at the time of the sale had ceased to exist it is clear there can be no sale; if, for example, Paul sell his horse to Peter, and, at the time of the sale the horse be dead, though the fact was unknown to both parties: or, if you and I being in Philadelphia, I sell you my house in Cincinnati, and, at the time of the sale it be burned down, it is manifest there was no sale, as there was not a thing to be sold. It is evident, too, that no sale can be made of things not in commerce, as the air, the water of the sea, and the like. When there has been a mistake made as to the article sold, there is no sale; as, for example, where a broker, who is the agent of both parties, sells an article and delivers to the seller a sold note describing the article sold as "St. Petershurg clean hemp," and bought note to, the buyer, as "Riga Rhine hemp," there is no sale. 5 Taunt. 786, 788; 5 B. & C. 437; 7 East, 569 2 Camp. 337; 4 Ad. & Ell. N. S. 747 9 M. &, W. 805. Holt. N. P. Cas. 173; 1 M. & P. 778.

6. There must be an agreement as to the specific goods which form the basis of the contract of sale; in other words, to make a perfect sale, the parties must have agreed the one to part with the title to a specific article, and the other to acquire such title; an agreement to sell one hundred bushels of wheat, to be measured out of a heap, does not change the property, until the wheat has been measured. 3 John. 179; Blackb. on Sales, 122 , 5 Taunt. 176; 7 Ham. (part 2d) 127; 3 N. Ramp. R.282; 6 Pick. 280; 15 John. 349; 6 Cowen, 250 7 Cowen, 85; 6 Watts, 29.

7. − _3. To constitute a sale there must be a price agreed upon; but upon the maxim id certum est quod reddi certum potest, a sale may be valid although it is agreed that the rice for the thing sold shall be determined by a third person. 4 Pick. 179. The price must have the three following qualities, to wit: 1. It must be an actual or serious price. 2. It must be certain or capable of being rendered certain. 3. It must consist of a sum of money.

8. − 1. The price must be an actual or serious price, with an intention on the part of the seller, to require its payment; if, therefore, one should sell a thing to another, and, by the same agreement, he should release the buyer from the payment, this would not be a sale but a gift, because in that case the buyer never agreed to pay any price,

the same agreement by which the title to the thing is passed to him discharging him from all obligations to pay for it. As to the quantum of the price that is altogether immaterial, unless there has been fraud in the transaction. 2. The price must be certain or determined, but it is sufficiently certain, if, as before observed, it be left to the deterimination of a third person. 4 Pick. 179; Poth. Vente, n. 24. And an agreement to pay for goods what they are worth, is sufficiently certain. Coxe, 261; Poth. Vente, n. 26. 3. The price must consist in a sum of money which the buyer agrees to pay to the seller, for if paid for in any other way, the contract would be an exchange or barter, and not a sale, as before observed.

9. − _4. The consent of the contracting parties, which is of the essence of a sale, consists in the agreement of the will of the seller to sell a certain thing to the buyer, for a certain price, and in the will of the buyer, to purchase the same thing for the same, price. Care must be taken to distinguish between an agreement to enter into a future contract, and a present actual agreement to make a sale. This consent may be shown, 1. By an express agreement. 2. By all implied agreement.

10. − 1. The consent is certain when the parties expressly declare it. This, in some cases, it is requisite should be in writing. By the 17tth section of the English statute, 29 Car. II. c. 3, commonly called the Statute of Frauds, it is enacted, "that no contract for the sale of any goods, wares, or merchan−dise, for the price of œ10 or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorized." This statute has been renacted in most of the states of the Union, with amendments and alterations,

11. It not unfrequently happens that the consent of the parties to a contract of sale is given in the course of a correspondence. To make such contract valid, both parties must concur in it at the same time. See Letter, com. law, crim. law, _2; 4 Wheat. 225; 6 Wend. 103; 1 Pick. 278 10 Pick. 326.

12. An express consent to a sale may be given verbally, when it is not required by the statute of frauds to be in writing.

13. − 2. When a party, by his acts, approves of what has been done, as if he knowingly uses goods which have been left at his house by another who intended to sell them, he will, by that act, confirm the sale.

14. The consent must relate, 1. To the thing which is the object of the contract; 2. To the price; and, 3. To the sale itself. 1st. Both parties must agree upon the same object of the sale; if therefore one give consent to buy one thing, and the other to sell another, there is no sale; nor is there a sale if one sells me a bag full of oats, which I understand is full of wheat; because there is no consent as to the thing which is the object of the sale. But the sale would be valid, although I might be mistaken as to the quality of the tiling sold. 20 John. 196 3 Rawle, 23, 168. 2d. Both parties must agree as to the same price, for if the seller intends to sell for a greater sum than the buyer intends to give, there is no mutual consent; but if the case were reversed, and the seller intended to sell for a less price than the buyer intended to give, the sale would be good for the lesser sum. Poth. Vente, n. 36. 3d. The consent must be on the sale itself, that is, one intends to sell, and the other to buy. If, therefore, Peter intended to lease his house for three hundred dollars a year for ten years, and Paul intended to buy it for three thousand dollars, there would not be a contract of sale nor a lease. Poth. Vente, n. 37.

15. In order to pass the property by a sale, there must be an express or implied agreement that the title shall pass. An agreement for the sale of goods is prima facie a bargain and sale of those goods; but this arises merely from the presumed intention of the parties, and if it appear that the parties have agreed, not that there shall be a mutual credit by which the property is to pass from the seller to the buyer, and the buyer is bound to pay the price to the seller, but that the exchange of the money for the goods shall be made on the. spot, no property is transferred, for it is not the intention of the parties to transfer any. 4 Wash. C. C. R. 79. But, on the contrary, when the making of part payment, or naming a day for payment, clearly shows an intention in the parties that they should have some time to complete the sale by payment and delivery, and that they should in the meantime be trustees for each other, the one of the property in the chattel, and the other in the price. As a general rule, when a bargain is made for the purchase of goods, and nothing is said about payment and. delivery, the property passes immediately, so as to cast upon the purchaser all future risk, if nothing remains to be done to the goods, although he cannot take them away without paying the price. 5 B. & C. 862.

16. Sales are absolute or conditional. An absolute sale is one made and completed without any condition whatever. A conditional sale is one which depends for its validity upon the fulfilment of some condition. See 4 Wash. C. C. R. 588; 4 Mass. 405; 17 Mass. 606; 10 Pick. 522; 13 John. 219; 18 John. 141; 8 Verm. 154; 2 Hall

561; 2 Rawle, 326; Coxe, 292; 1 Bailey 563; 2 A.K. Marsh. 430.

17. Sales are also voluntary or forced, public or private.

18. − 1. A voluntary sale is one made without constraint freely by the owner of the thing sold; to such the usual rules relating to sales apply. 2. A forced sale is one made without the consent of the owner of the property by some officer appointed by law, as by a marshal or a sheriff in obedience to the mandate of a competent tribunal. This sale has the effect to transfer all the rights the owner had in the property, but it does not, like a voluntary sale of personal property, guaranty a title to the thing sold it merely transfers the rights of the person as whose property it has been seized. This kind of a sale is sometimes called a judicial sale. 3. A public sale is one made at auction to the highest bidder. Auction sales sometimes are voluntary, as when the owner chooses to sell his goods in this way, and then as between the seller and the buyer the usual rules relating to sales apply; or they are involuntary or foreed when the same rules do not apply. 4. Private sales are those made voluntarily and not at auction.

19. The above rules apply to sales of personal property. The sale of real estate is governed by other rules. When a contract has been entered into for the sale of lands, the legal estate in such lands still remains vested in the vendor, and it does not become vested in the vendee until he shall have re−ceived a lawful deed of conveyance from the vendor to him; and the only remedy of the purchaser at Iaw, is to bring an action on the contract, and recover pecuniary damages for a breach of the contract. In equity, however, after a contract for the sale, the lands are considered as belonging to the purchaser, and the court will enforce his rights by a decree for a specific performance; and the seller will be entitled to the purchase money. Will. on Real Prop. 127. See Specific performance.

20. In general, the seller of real estate does not guaranty the title; and if it be desired that he should, this must be done by inserting a warranty to that effect. See, generally, Brown on Sales; Blackb. on Sales; Long on Sales; Story on Sales, Sugd. on Vendors; Pothier, Vente; Duvergier, Vente; Civil Code of Louisiana, tit. 7; Bouv. Inst. Index, h. t.; and Contracts; Delivery; Purchaser; Seller; Stoppage in transitu.

SALE NOTE. A memorandum given by a broker to a seller or buyer of goods, stating the fact that certain goods have been sold by him on account of a person called the seller to another person called the buyer. Sale notes are also called bought notes, (q. v.) and sold notes. (q. v.)

SALE AND RETURN. When goods are sent from a manufacturer or wholesale dealer to a retail trader, in the hope that he may purchase them, with the understanding that what he may choose to take he shall have as on a contract of sale, and what he does not take he will retain as a consignee for the owner, the goods are said to have been sent on sale and return.

2. The goods taken by the receiver as on a sale, will be considered as sold, and the title to them is vested in the receiver of them; the goods he does not buy are considered as a deposit in the hands of the receiver of them, and the title is in the person who sent them. 1 Bell’s Com., 268, 5th ed.

SALIQUE LAW. The name of a code of laws so called from the Salians, a people of Germany, who settled in Gaul under their king Phararaond.

2. The most remarkable law of this code is that which regards succession. De terra vero salica nulla portio haereditatis transit in mulierem, sed hoc vir−iles sextus acquirit, hoc est filii in ipsa haereditate succedunt; no part of the salique land passes to females, but the males alone are capable of taking, that is, the sons succeed to the inheritance. This rule has ever excluded females from the throne of France.

SALVAGE, maritime law. This term originally meant the thing or goods saved from shipwreck or other loss; and in that sense it is generally to be understood in our old books. But it is at present more frequently understood to mean the compensation made to those by whose means the ship or goods have been saved from the effects of shipwreck, fire, pirates, enemies, or any other loss or misfortune. 1 Cranch, 1.

2. This compensation, which is now usually made in money, was, before the use of money became general, made by a delivery of part of the effects saved. Marsh. Ins. B. 1, c. 12, s. 8; Pet. Adm. Dec. 425; 2 Taunt. 302; 3 B. & P. 612; 4 M. & S. 159; 1 Cranch, 1; 2 Cranch, 240; Cranch, 221; 3 Dall. 188; 4 Wheat. 98 9 Cranch, 244; 3 Wheat. 91; 1 Day, 193 1 Johns. R. 165; 4 Cranch, 347; Com. Dig. Salvage; 3 Kent, Com. 196. Vide Salvors.

SALVAGE CHARGES. The expenses incurred to remunerate services rendered to a ship and cargo, which have prevented its being a total loss. Stev. on Av. c. 2, s. 1.

SALVAGE LOSS. By salvage loss is understood the difference between the amount of salvage, after deducting the charges, and the original value of the property. Stev. on Av. c. 2, s. 1.

SALVORS, mar. law. When a ship and cargo, or any part thereof, are saved at sea by the exertions of any person

from impending perils, or are recovered after an actual abandonment or loss, such persons are denominated salvors; they are entitled to a compensation for their services, which is called salvage. (q. v.)

2. As soon as they take possession of property for the purpose of preserving it, as if they find a ship derelict at sea, or if they recapture it, or if they go on board a ship in distress, and take possession with the assent of the master or other person in possession, they are deemed boua fide possessors, and their possession cannot be lawfully displaced. 1 Dodson's Rep. 414. They have a lien on the property for their salvage, which the, laws of all maritime countries will respect and enforce. Salvors are responsible not only for good faith, but for reasonable diligence in their custody of the salvage property. Story, Bail. _623.

SAMPLE, contracts. A small quantity of any commodity or merchandise, exhibited as a specimen of a larger quantity called the bulk. (q. v.)

2. When a sale is made by sample, and it afterwards turns out that the bulk does not correspond with it, the purchaser is not, in general, bound to take the property on a compensation being made to him for the difference. 1 Campb. R. 113; vide 2 East, 314; 4, Campb. R. 22; 12 Wend. 566 9 Wend. 20; 6 Cowen, 354; 12 Wend. 413. See 5 John. R. 395.

SANCTION. That part of a law which inflicts a penalty for its violation, or bestows a reward for its observance. Sanctions are of two kinds, those which redress civil injuries, called civil sanctions; and those which punish crimes, called penal sanctions. 1 Hoffm. Leg. Outl. 279; Just. Ins. lib. 2, t. 1, _10; Ruthf. Inst. b. 2, c. 6, s. 6; Toull. tit. prel. 86; Ferguss. Inst. of Mor. Phil. p. 4, c. 3, s. 13, and p. 6, c. 1, et seq; 1 Bl. Com. 56.

SANCTUARY. A place of refuge, where the process of the law cannot be executed.

2. Sanctuaries may be divided into religious and civil. The former were very common in Europe; religious houses affording protection from arrest to all persons, whether accused of crime, or pursued for debt. This kind was never known in the United States.

3. Civil sanctuary, or that protection which is afforded to a man by his own house, was always respected in this country. The house protects the owner from the service of all civil process in the first instance but not if he is once lawfully arrested and takes refuge in his own house. Vide Door; House.

4. No place affords protection from arrest in criminal cases; a man may, therefore, be arrested in his own bouse in such cases, and the doors may be broken for the purpose of making the arrest. Vide Arrest in criminal cases.

SANE MEMORY. By this is meant that understanding which enables a man to make contracts and his will, and to perform such other acts as are authorized by law; Vide Lunacy; Memory; Non compos mentis.

SANG or SANC. Blood. These words are nearly obsolete.

SANITY, med. jur. The state of a person who has a sound understanding; the reverse of insanity.

2. The sanity of an individual is always presumed. 5 John. R. 144; 1 Pet. R. 163; 1 Hen. & M. 476; 4. Cowen, R. 207; 4 W. C. C. R. 262. See 9 Conn. 102; 9 Mass. 225; 3 Mass. 336 1 Mass. 71; 8 Mass. 371; 8 Greenl. 42; 15 John. 503; 4 Pick. 32.

SANS CEO QUE. The same as Absque hoc. (q. v.)

SANS NOMBRE. This is a French phrase, which signifies without number.

2. In England it is used in relation to the right of putting animals on a common. The term common sans nombre does not mean that the beasts are to be innumerable, but only indefinite, not certain; Willes, 227; but they are limited to the commoner's own commonable cattle, levant et couchant, upon his lands, or as many cattle as the land of the commoner can keep and maintain in winter. 2 Brownl. 101; Vent. 54; 5 T. R. 48; 1 Saund. 28, n. 4.

SANS RECOURS. Without recourse.

2. These words are sometimes put on a bill before the payee endorses it; they have the effect of transferring the bill without responsibility to the endorser. Chit. on Bills, 179; 7 Taunt. 160; 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 S. & R. 325.

SATISDACTION, civil law. This word is derived from the same root as satisfaction; for, in the same manner that to fulfil the demand which is made upon us, is called satisfaction, so satisdaction takes place when he who demands something has agreed to receive sureties instead of the thing itself. Dig. 2, 8, 1

SATISFACTION, practice. An entry made on the record, by which a party in whose favor a judgment was rendered, declares that he has been satisfied and paid.

2. In Alabama, Delaware, Illinois, Indiana, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, South Carolina, and, Vermont, provision is made by statute, requiring the mortgagee to discharge a mortgage upon the record, by entering satisfaction in the margin. The refusal or neglect to enter satisfaction after payment and

demand, renders the mortgagee liable to an action, after the time given him by the respective statutes for doing the same has elapsed, and subjects him to the payment of damages, and, in some cases, treble costs. In Indiana and New York, the register or recorder of deeds may himself discharge the mortgage upon the record on the exhibition of a certificate of payment and satisfaction signed by the mortgagee or his representatives, and attached to the mortgage, which shall be recorded. Ind. St. 1836, 64; 1 N. Y. Rev. St. 761.

SATISFACTION, construction by courts of equity. Satisfaction is defined to be the donation of a thing, with the intention, express or implied, that such donation is to be an extinguishment of some existing right or claim in the donee.

2. Where a person indebted bequeaths to his creditor a legacy, equal to, or exceeding the amount of the debt, which is not noticed in the will, courts of equity, in the absence of any intimation of a contrary intention, have adopted the rule that the testator shall be presumed to have meant the legacy as a satisfaction. of the debt.

3. When a testator, being indebted, bequeaths to his creditor a legacy, simpliciter, and of the same nature as the debt, and not coming within the exceptions stated in the next paragraph, it has been held a satisfaction of the debt, when the legacy is equal to, or exceeds the amount of the debt. Pre. Ch. 240; 3 P. Wms. 353.

4. The following are exceptions to the rule: 1. Where the legacy is of, less amount than the debt, it shall not be deemed a part payment or satisfaction. 1 Ves. pen. 263.

5. − 2. Where, though the debt and legacy are of equal amount, there is a difference in the times of payment, so that the legacy may not be equally beneficial to the legatee as the debt. Prec. Ch. 236; 2 Atk. 300; 2 Ves. sen. 63 5; 3 Atk. 96; 1 Bro. C. C. 129; 1 Bro. C. C. 195; 1 M'Clel. & Y. Rep. Exch. 41; 1 Swans. R. 219.

6. − 3. When the legacy and the debt are of a different nature, either with reference, to the subjects themselves, or with respect to the interests given. 2 P. Wms. 614; 1 Ves. jr. 298; 2 Ves. jr. 463.

7. − 4. When the provision by the will is expressed to be given for a particular purpose, such purpose will prevent the testamentary gift being construed a satisfaction of the debt, because it is given diverse intuitu. 2 Ves. sen. 635.

8. − 5. When the debt of the testator is contracted subsequently to the, making of the will; for, in that case, the legacy will not be deemed a satisfaction. 2 Salk. 508.

9. − 6. When the legacy is uncertain or contingent. 2 Atk. 300; 2 P. Wms. 343.

10. − 7. Where the debt itself is contingent, as where it arises from a running account between the testator and legatee; 1 P. Wms. 296; or it is a negotiable bill of exchange. 3 Ves. jr. 561.

11. − 8. Where there is an express direction in the will for the payment of debts end legacies, the court will infer from the circumstance, that the testator intended that both the debt owing from him to the legatee and the legacy, should, be paid. 1 P. Wms. 408; 2 Roper, Leg. 54.

See, generally, Tr. of Eq. 333; Yelv. 11, n.; 1 Swans. R. 221; 18 Eng. Com. Law Rep. 201; 4 Ves. jr. 301; 7 Ves. jr. 507; 1 Suppl. to Ves. jr. 204, 308, 311, 342, 348, 329; 8 Com. Dig. Appen. tit. Satisfaction, p. 917; Rob. on Frauds, 46, n. 15; 2 Suppl. to Ves. jr. 22, 46, 205; 1 Vern. 346; Roper, Leg. c. 17; 1 Roper on Hush. and Wife, 501 to 511; 2 Id. 53 to 63; Math. on Pres. c. 6, p. 107; 1 Desaus. R. 814; 2 Munf. Rep. 413; Stallm. on El. and Sat.

SATISFACTION PIECE, Eng. practice. An instrument of writing in which it is declared that, satisfaction is acknowledged between the plaintiff and defendant. It is signed by the attorney, and on its production and the warrant of attorney to the clerk of the judgments, satisfactio is entered on payment, of certain fees. Lee's Dict. of Pr. tit. Satisfaction.

SATISFACTORY EVIDENCE. That which is sufficient to induce a belief that the thing is true; in other words, it is credible evidence. 3 Bouv. Inst. n. 3049.

SCANDAL. A scandalous verbal report or rumor respecting some person.

2. The remedy is an action on the case.

3. In chancery practice, when a bill or other pleading contains scandal, it will be referred to a master to be expunged, and till this has been done, the opposite party need not answer. 3 Bl. Com. 342. Nothing is considered scandalous which is positively relevant to the cause, however harsh and gross the charge may be. The degree of relevancy is not deemed material. Coop. Eq. Pl. 19; 2 Ves. 24; 6 Ves. 514, 11 Ves. 626; 15 Ves. 477; Story Eq. Plo. _269 Vide Impertinent.

SCANDALUM MAGNATUM. Great scandal or slander. In England it. is the slander of the great men, the nobility of the realm.

SCHEDULE, practice. When an indictment is returned, from au inferior court in obedience to a writ of

certiorari, the, statement of the previous proceedings sent with it, is termed the schedule. 1 Saund. 309, a, n. 2.

2. Schedules are also frequently annexed to answers in a court of equity, and to depositions and other documents, in order to show more in detail the matter they contain, than could otherwise be conveniently shown.

3. The term is frequently used instead of inventory.

SCHOOLMASTER. One employed in teaching a school.

2. A schoolmaster stands in loco parentis in relation to the pupils committed to his charge, while they are under his care, so far as to enforce obedience to his, commands, lawfully given in his capacity of school−master, and he may therefore enforce them by moderate correction. Com. Dig. Pleader, 3 M 19; Hawk. c. 60, sect. 23. Vide Correction.

3. The schoolmaster is justly entitled to be paid for his important and arduous services by those who em ploy him. See 1 Bing. R. 357 8 Moore's Rep. 368. His duties are to teach his pupils what he has undertaken, and to have a special care over their morals. See 1 Stark. R. 421.

SCIENDUM, Eng. law. The name given to a clause inserted in the record by which it is made " known that the justice here in court, in this same term, delivered a writ thereupon to the deputy sheriff of the county aforesaid, to be executed in due form of law." Lee's Dict. art. Record.

SCIENTER, knowingly.

2. A man may do many acts which are justifiable or not, as he is ignorant or not ignorant of certain facts. He may pass a counterfeit coin, when he is ignorant of its being counterfeit, and is guilty of no offence; but if he knew the coin to be counterfeit, which is called the scienter, he is guilty of passing counterfeit money. A man who keeps an animal which injures some person, or his property, is answerable for damages, or in some cases he may be indicted if he had a knowledge of such animal's propensity to do injury. 3 Blackst. Comm. 154; 2 Stark. Ev. 178; 4 Campb. 198; 2 Str. 1264; 2 Esp. 482; Bull. N. P. 77; Burr. 2092; 2 Lev. 172; Lord Raym. 110; 2 B. & A. 620; 2 C. M. & R. 496; 5 C. & P. 1; S. C. 24 E. C. L. R. 187; 1 Leigh, N. P. 552, 553; 7 C. & P. 755.

4. In this respect the civil law agrees with our own. Domat, Lois Civ. liv. 2, t. 8, s. 2. As to what evidence maybe given to prove guilty knowledge, see Archb. Cr. Pl. 109. Vide Animal; Dog.

SCILICET. A Latin adverb, signifying that is to say; to wit; namely.

2. It is a clause to usher in the sentence of another, to particularize that which was too general before, distribute what was too gross, or to explain what was doubtful and obscure. It neither increases nor diminish the premises or habendum, for it gives nothing of itself; it may make a restriction when the preceding words may be restrained. Hob. 171 P. Wms. 18; Co. Litt. 180 b, note 1.

3. When the scilicet is repugnant to the precedent matter, it is void; for example, when a declaration in trover states that the plaintiff on the third day of May was possessed of certain goods which on the fourth day of May came to the defendant's hands, who afterwards, to wit, on the first day of May converted them, the scilicet was rejected as surplusage. Cro. Jac. 428; and vide 6 Binn. 15; 3 Saund. 291, note 1, and the cases there cited. This word is sometimes abbreviated, ss. or sst.

SCINTILLA JURIS, estates; A spark of right. A legal fiction, resorted to for the purpose of enabling feoffees to uses to support contingent uses when they come into existence, thereby to enable the statutes of uses, 27 Henry VIII., to execute them. 4 Kent's Com. 238, et seq., and the authorities there cited, for the learning upon this subject.

SCIRE FACIAS, remedies, practice. The name of a judicial writ, founded upon some record, and requiring the defendant to show cause why the plaintiff should not have the "advantage of such record; or, when it is issued to repeal letters−patent, why the record should not be annulled and vacated. 3 Sell. Pr. 187; Grah. Pr. 649; 2 Tidd's Pr. 982; 2 Arch. Pr. 76; Bac. Abr. h. t.

2. It is, however, considered as an action, and in the nature of a new original. Skin. 682; Com. 455.

3. The scire facias against a bail, against pledges in replevin, to repeal letters−patent, or the like, is an original proceeding; but when brought to revive a judgment after a year and a day, or upon the death or marriage of the parties, when in the latter case one of them is a woman; or when brought on a judgment quando, &c., against an executor, it is but a continuation of the original action. Vide 1 T. R. 388. Vide generally, 11 Vin. Ab. 1; 19 Vin. Ab. 280 Bac. Ab. Execution, H; Bac. Ab. h. t. 2 Saund. 72 e, note, 3; Doct. Pl. 436 Bouv. Inst. Index, h. t.

SCIRE FACIAS AD AUDIENDUM ERRORES. The name of a writ which is sued out after the plaintiff in error has assigned his errors. F. N. B. 20; Bac. Ab. Error F.

SCIRE FACIAS AD DISPROBANDUM DEBTTUM. The name of a writ in use in Pennsylvania, which lies by a

defendant in foreign attachment against the plaintiff, in order to enable him, within a year and a day next ensuing the time of payment to the plaintiff in the attachment, to disprove or avoid the debt recovered against him. Act relating to the commencement of actions, s. 61, passed June 13th, 1836.

SCIRE FECI, practice. The return of the sheriff, or other proper officer, to the writ of scire facias, when it has been served; scire feci, "I have made known."

SCIRE FIERI INQUIRY, Eng. law. The name of a writ, the history of the origin of which is as follows: when on an execution de bonis testatoris against an executor the sheriff returned nulla bona and also a devastavit, a fieri fac−ias, de bonis propriis, might formerly have been issued against the executor, without a previous inquisition finding a devastavit and a scire facias. But the most usual practice upon the sheriff's return of nulla bona a to a fieri facias de bonis testatoris, was to sue out a special writ of fieri facias de bonis testatoris, with a clause in it, "et si tibi constare, poterit," that the executor had wasted the goods, then to levy de bonis propriis. This was the practice in the king's bench till the time of Charles I.

2. In the common pleas a practice had prevailed in early times upon a suggestion in the special writ of fieri facias of a devastavit by the executor, to direct the sheriff to inquire by a jury, whether the executor had wasted the goods, and if the jury found he had, then a scire facias was issued out against him, and unless he made a good defence thereto, an execution de bonis propriis was awarded against him.

3. The practice of the two courts being different, several cases were brought into the king's bench on error, and at last it became the practice of both courts, for the sake of expedition, to incorporate the fieri facias inquiry, and scire facias, into one writ, thence called a scire fieri inquiry, a name compounded of the first words of the two writs of scire facias and fieri facias, and that of inquiry, of which it consists.

4. This writ recites the fieri facias de bonis testatoris sued out on the judgment against the executor, the return of nulla bona by the sheriff, and then suggesting that the executor bad sold and converted the goods of the testator to the value of the debt and damages recovered, commands the sheriff to levy the said debt and damages of the goods of the testator in the hands of the executor, if they could be but if it should appear to him by the inquisition of a jury that the executor had wasted the goods of the testator, then the sheriff is to warn the executor to appear, &c. If the judgment had been either by or against the testator or intestate, or both, the writ of fieri facias recites that fact, and also that the court had adjudged, upon a scire facias to revive the judgment, that the executor or administrator should have execution for the debt, &c. Clift's Entr. 659; Lilly's Entr. 664; 3 Rich. Pr. K. B. 523.

5. Although this practice is sometimes adopted, yet the most usual proceeding is by action of debt on the judgment, suggesting a devastavit, because in the proceeding by scire fieri inquiry the plaintiff is not entitled to costs, unless the executor appears and pleads to the scire facias. 1 Saund. 219, n. 8. See 2 Archb. Pr. 934.

SCITE. The setting or standing of may place. The seat or situation of a capital messuage, or the ground on which it Stood. Jacob, L. D. h. t.

SCOLD. A woman who by her habit of scolding becomes a nuisance to the neighborhood, is called a common scold. Vide Common Scold.

SCOT AND LOT, Eng. law. The name of a customary contribution, laid upon all the subjects according to their ability.

SCOUNDREL. An opprobrious title given to a person of bad character. General damages will not lie for calling a man a scoundrel, but special damages may be recovered when there has been an actual loss. 2 Bouv: Inst. n. 2250; 1 Chit. Pr. 44.

SCRIPT, conv. The original or principal instrument, where there are part and counterpart. Vide Chirograph; Part, Rescript.

SCRIVENER. A person whose, business it is to write deeds and other instruments for others; a conveyancer.

2. Money scriveners are those who are engaged in procuring money to be lent on mortgages and other securities, and lending such money accordingly. They act also as agents for the purchase and sale of real estates.

3. To be considered a money scrivener, a person must be concerned in carrying on the trade or profession as a means of making a livelihood. He must in the course of his occupation receive other men's moneys into his trust and custody, to lay out for them as occasion offers. 3 Camp. R. 538; 2 Esp. Cas. 555.

SCROLL. A mark which is to supply the place of a seal, made with a pen or other instrument on a writing.

2. In some of the states this has all the efficacy of a seal. 1, S. & R. 72; 1 Wash. 42; 2 McCord, 380; 4 McCord 267; 3 Blackf. 161; 3 Gill & John. 234; 2 Halst. 272. Vide Seal; 2 Serg. & Rawle, 504; 2 Rep. 5. a; Perk. _129. In others, a scroll has no such effect; and when a suit is brought on an instrument sealed with a scroll, the act of

limitations may be pleaded to it, as to a simple contract. 2 Rand. 446; 6 Halst. 174; 5 John. 239; 1 Blackf. 241; Griff. Law Reg., answers to question No 110.

SCUTAGE, old Eng. law. The name of a tax or contribution raised for the use of the king's armies by those who held lands by knight's service.

SCYREGEMOTE. The name of a court among the Saxons. It was the court of the shire, in Latin called curia comitatus, and the principal court among the Saxons. It was holden twice a year for determining all causes both ecclesias−tical and secular.

SE DEFENDENDO, criminal law. Defending himself.

2. Homicide, se defendendo, is that which takes place upon a sudden rencounter, where two persons upon a sudden quarrel, without premeditation or malice, fight upon equal terms, and one, before a mortal stroke has been given, declines any further combat, and retreats as far as he can with safety, and kills his adversary, through necessity, to avoid immediate death. 2 Swift's Dig. 289 pamphl. Rep. of Selfridge's, Trial in, 1805 Hawk. bk. 1, c. 11, s. 13; 2 Russ. on Cr. 543; Bac. Ab. Murder, &c F 2.

SEA. The ocean; the great mass of waters which surrounds the land, and which probably extends from pole to pole, covering nearly three quarters of the globe. Waters within the ebb and flow of the tide, are to be considered the sea. Gilp. R. 526.

2. The sea is public and common to all people, and every person has an equal right to navigate it, or to fish there; Ang. on Tide Wat. 44 to 49; Dane's Abr. c. 68, a. 3, 4; Inst. 2, 1, 1; and to land upon the sea, shore. (q. v.)

3. Every nation has jurisdiction to the distance of a cannon shot, (q, v.) or marine league, over the water adjacent to its shore. 2 Cranch, 187, 234; 1 Circuit Rep. 62; Bynk. Qu. Pub. Juris. 61; 1 Azuni Mar. Law, 204; Id. 185; Vattel, 207:

SEA LETTER OR SEA BRIEF, maritime law. A document which should be found on board of every neutral ship; it specifies the nature and quantity of the cargo, the place from whence it comes, and its destination. Chit. Law of Nat. 197; 1 John. 192.

SEA SHORE, property. That space of land, on the border of the sea, which is alternately covered and left dry, by the rising and falling of the tide or, in other words, that space of land between high and low water mark. Hargr, Tr. 12; 6 Mass. 435, 439; 1 Pick. 180, 182; 5 Day, 22.

2. Generally, the sea shore belongs to the public. Angell on Tide Wat. 34, 5; 3 Kent's Com. 347.

3. By the Roman law, the shore included the land as far as the greatest wave extended in winter; est autem littus, maris, quatenus hibernus, fluctus maximus excurrit. Inst. lib. 2, t. 1, s. 3. Littus publicum est eatenus qua maxime fluctus exaestuat. Dig., lib, 50, t. 16, s. 112.

4. The Civil Code of Louisiana seems to have followed the law of the Insti−tutes and the Digest, for it enacts, art. 442, that the "sea shore is that space, of land over which the waters of the sea are spread in the highest water, during the winter season." Vide. 5 Rob. Adm. R. 182; Dougl. 425; 1 Halst. R. 1; 2 Roll. Ab. 170; Dyer, 326; 5 Co. 107; Bac. Ab., Courts of Admiralty,, A; 1 Am. Law Mag. 76; 16 Pet. R. 234, 367 Ang. on Tide Waters, Index, tit. Shore; 2 Bligh's N, S. 146; 5 M. & W. 327 Merl. Quest. de Droit, mots Rivage de la Mer; Inst. 2, 1, 2; 22 Maine, R. 350. For the law of Mass. vide Dane's Ab. c. 68, a 3, 4.

SEA WEED. A species of grass which grows in the sea.

2. When cast upon land, it belongs to the owner of the land adjoining the sea shore; upon the grounds, that it increases gradually, that it is useful as manure and a protection to the ground, and that it is some compensation for the encroachments of the sea upon the land. 2 John. R. 313, 323. Vide 5 Verm. R. 223.

3. The French differs from our law in this respect, as sea weeds there, when cast on the beach, belong to the first occupant. Dall. Dict. Propriete, art. 3, _2, n. 128.

SEA WORTHINESS, mer. law. The ability of a ship or other vessel to make a sea voyage with probable safety: there is, in every insurance, whether on ship or goods, an implied warranty that the ship shall be worthy when she sails on the voyage insured; that is, that she shall be "tight, staunch, and strong, properly manned, provided with all necessary stores, and in all respects fit for the intended voyage." Marsh. Ins. 153 2 Phil. Ev. 60 10 Johns. R. 58.

2. The following rules have been established in regard, to the warranty of sea−worthiness.

3. − 1. That it is of no consequence whether the insured was aware of the condition of the ship, or not. His innocence or ignorance is no answer to the fact that the ship was not sea−worthy.

4. − 2. − The opinion of carpenters who have repaired the vessel, however they may strengthen the presumption that the ship is sea−worthy, when it is favorable, is not conclusive of the fact of sea−worthiness. 4 Dow's Rep.

269.

5. − 3. The presumption, prima facie, is for sea−worthiness. 1 Dow's R. 336; And it is presumed that a vessel continues sea−worthy, if she was so at the inception of the risk. 20 Pick. 389. See 1 Brev. 252.

6. − 4. Any sort of disrepair left in the ship, by which she, or the cargo may suffer, is a breach of the warranty of sea−worthiness.

7. − 5. A deficiency of force in the crew, or of skill in the master, mate, &c., is a want of sea−worthiness. 1 Campb. 1; 14 East, R. 481. But if there was once a sufficient crew, their temporary absence will not be considered a breach of the warranty. 2 Barn. & Ald. 73; 1 John. Cas. 184; 1 Pet. 183.

8. − 6. A vessel may be rendered not sea−worthy by being overloaded. 2 Barn. & Ald . 320.

9. − 7. When the sea−worthiness arises from justifiable ignorance of the cause of the defect, and is discovered and remedied before any injury occurs, it is not to be considered as a defect. Ib. See, generally, 2 John. 124, 129; 3 John. Cas. 76; 1 John. 241; 1 Caines, 217 3 S. & R. 25 1 Whart. 399.

10. By an act of congress, approved July 20, 1840, as amended, by the act of July 29, 1850, it is provided, that if the first officer, (or a second and third officer,) and a majority of the crew of any vessel, shall make complaint in writing that she is in an unsuitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been, during the voyage, sufficient and wholesome, thereupon, in any of these or like cases, the consul or commercial agent who may discharge any duties of a consul shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall, in their report, state what defects and deficiencies, if any they find to be well founded, as well as what, in their judgment ought to be done, to put the vessel in order for the continuance of her voyage.

SEAL, conveyancing, contracts. A seal is an impression upon wax, wafer, or some other tenacious substance capable of being impressed. 5 Johns. R. 239. Lord Coke defines a seal to be wax, with an impression. 3 Inst. 169. " Sigillum," says he, "est cera impressa, quia cera sine impressione non est sigillum." This is the common law definition of a seal. Perk. 129, 134; Bro. tit. Faits, 17, 30; 2 Leon 21; 5 John. 239; 2 Caines, R. 362; 21 Pick. R. 417.

2. But in Pennsylvania, New Jersey, and the southern and western states generally, the impression upon wax has been disused, and a circular, oval, or square mark, opposite the name of the signer, has the same effect as a seal the shape of it however is indifferent; and it is usually written with a pen. 2 Serg. & Rawle, 503; 1 Dall. 63; 1 Serg. & Rawle, 72; 1 Watts, R. 322; 2 Halst. R. 272.

3. A notary must use his official seal, to authenticate his official acts, and a scroll will not answer. 4 Blackf. R. 185. As to the effects of a seal, vide Phil. Ev. Index, h. t. Vide, generally, 13 Vin. Ab. 19; 4 Kent, Com. 444; 7 Caines' Cas. 1; Com. Dig. Fait, A 2.

4. Merlin defines a real to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual or other device, with which an impression may be made on wax or other substance on paper or parchment, in order to authenticate them: the impression thus made is also called a seal. Repert. mot Sceau; 3 McCord's R. 583; 5 Whart. R. 563.

5. When a seal is affixed to an instrument, it makes it a specialty, (q. v.) and whether the seal be affixed by a corporation or an individual the effect is the same. 15 Wend. 256.

6. Where an instrument concludes with the words, "witness our hands and seals," and is signed by two persons, with only one seal, the jury may infer, from the face of the paper, that the person who signed last, adopted the seal of the first. 6 Penn. St. Rep. 302. Vide 9 Am Jur. 290−297; 1 Ohio Rep. 368; 3 John. 470. 12 ohu. 76; as to the origin and use of seals, Addis. on Cont. 6; Scroll.

7. The public seal of a foreign state, proves itself; and public acts, decrees and judgments, exemplified under this seal, are received as true and genuine. 2 Cranch, 187, 238; 4 Dall. 416; 7 Wheat. 273, 335; 1 Denio, 376; 2 Conn. 85, 90; 6 Wend. 475; 9 Mod. 66. But to entitle its seal to such authority, the foreign state must have been acknowledged by the government, within whose jurisdiction the forum is located. 3 Wheat. 610; 9 Ves. 347.

SEAL−OFFICE, English practice. The office at which certain judicial writs are sealed with the prerogative seal, and without which they are of no author−ity. The officer whose duty it is to seal such writs is called "sealer of writs;"

SEAL OF THE UNITED STATES, government. The seal used by the United States in congress assembled, shall be the seal of the United States, viz.: ARMS, pale−ways of thirteen pieces argent and gules; a chief azure; the

escutcheon on the breast of the American eagle displayer proper, holding in his dexter talon, an olive branch, and in his sinister, a bundle of thirteen arrows, all proper, and in his beak a scroll, inscribed with this motto, "E pluribus unum." For the CREST: over the head of the eagle which appears above the escutcheon, a glory, or breaking through a cloud, proper, and surrounding thirteen stars, forming a constellation argent on an azure field. REVERSE, a pyramid unfin−ished. In the zenith an eye in a triangle, surrounded with a glory proper: over the eye, these words, "Annuit caeptis." On the base of the pyramid, the numerical letters, MDCCLXXVI; and underneath, the following motto, "Novus ordo sectorum." Resolution of Congress, June 20, 1782; Gordon's Dig. art. 207.

SEALING OF A VERDICT, practice. The putting a verdict in writing, and placing it in an envelop, which is sealed. To relieve jurors after they have agreed, it is not unusual for the counsel to agree that the jury shall seal their verdict, and then separate. When the court is again in session, the jury come in and give their verdict, in all respects as if it had not been sealed, and a juror may dissent from it, if since the sealing, he has honestly changed his mind. 8 Ham. 405; Gilm. 333; 3 Bouv. Inst. n. 3257.

SEALS, matters of succession. On the death of a person, according to the laws of Louisiana, if the heir wishes to obtain the benefit of inventory, and the delays for deliberating, he is bound as soon as he knows of the death of the deceased to whose succession he is called, and before committing any act of heirship, to cause the seals to be affixed on the effects of the succession, by any judge or justice of the peace. Civ. Code, of Lo. art. 1027.

2. In ten days after this affixing of the seals, the, heir is bound to present a petition to the judge of the place in which the succession, is opened, praying for the removal of the seals, and that a true and faithful inventory of the effects of the succession be made. Id. art. 1028.

3. In case of vacant estates, and estates of which the heirs are absent and not represented, the seals, after the decease, must be affixed by a judge or justice of the peace within the limits of his jurisdiction, and may be fixed by him, either ex officio, or at the request of the parties. Civ. Code of Lo. art. 1070. The seals are affixed at the request of the parties, when a widow, a testamentary executor, or any other person who pretends to have an interest in a succession or community of property, requires it. Id. art. 1071.; They are affixed ex officio, when the presumptive heirs of the deceased do not all reside in the place where be died, or if any of them happen to be absent. Id. art 1072.

4. The object of placing the seals on the effects of a succession, is for the purpose of preserving them, and for the interest of third persons. Id. art. 1068.

5. The seals must be placed on the bureaus, coffers, armoires, and other things, which contain the effects and papers of the deceased, and on the doors of the apartments which contain these things, so that they cannot be opened without tearing off, breaking, or altering the seals. Id. art. 1069.

6. The judge or justice of the peace, who affixes the seals, is bound to appoint guardian, at the expense of the succession, to take care of the seals and of the effects, of which an account is taken at the end of the proces−verbal of the affixing of the seals; the guardian must be domiciliated in the plaze where the inventory is taken. Id. art. 1079. And the judge; when he retires, must take with him the keys of all things and apartments upon which the seals have been affixed. lb.

7. The raising of the seals is done by the judge of the place, or justice of the peace appointed by him to that effect, in the presence of the witnesses of the vicinage, in the same manner as for the affixing of the seals. Id. art. 1084. See, generally; Benefit of Inventory, Succession; Code de Pro. Civ. 2e part. lib. 1, t. 1, 2, 3; Dict. de Jurisp. Scelle.

SEAMAN. A sailor; a mariner; one whose business is navigation. 2 Boulay Paty, Dr. Com. 232; Code de Commerce art. 262; Laws of Oleron, art. 7; Laws of Wishuy, art. 19. The term seamen, in it most enlarged sense, includes the captain a well as other persons of the crew; in a more confined signification, it extends only to the common sailors; 3 Pardes. n. 667; the mate; 1 Pet. Adm. Dee. 246; the cook and steward; 2 Id. 268; are considered, as to their rights to sue in the admiralty, as common seamen; and persons employed on board of steamboats and lighters, engaged in trade or commerce, on tide water, are within the admiralty jurisdiction, while those employed in ferry boats are not. Gilp. R. 203, 532. Persons who do not contribute their aid in navigating the vessel or to its preservation in the course of their occupation, as musicians, are not to be considered as seamen with a right to sue in the admiralty for their wages. Gilp. R. 516, See 1 Bell's Com. 509, 5th ed.; 2 Rob. Adm. R. 232; Dunl. Adm. Pr. h . t.

2. Seamen are employed either in merchant vessels for private service, or in public vessels for the service of the

United States.

3. − 1. Seamen in the merchant vessels are required to enter into a contract in writing commonly called shipping articles. (q. v.) This contract being entered into, they are bound under. severe penalties, to render themselves on board the vessel according to the agreement: they are not at liberty to leave the ship without the consent of the captain or commanding officer, and for such absence, when less than forty−eight hours, they forfeit three day's wages for every day of absence; and when the absence is more than forty−eight hours, at one time, they forfeit all the wages due to them, and all their goods and chattels which were on board the vessel, or in any store where they may have been lodged at the time of their desertion, to the use of the owners of the vessel, and they are liable for damages for hiring other hands. They may be imprisoned for desertion until the ship is ready to bail.

4. On board, a seaman is bound to do his duty to the utmost of his ability; and when his services are required for extraordinary exertions, either in consequence of the death of other seamen, Or on account of unforeseen perils, he is not entitled to an increase of wages, although it may have been promised to him. 2 Campb. 317; Peake's N. P. Rep. 72; 1 T. R. 73. For disobedience of orders he may be imprisoned or punished with stripes, but the correction (q. v.) must be reasonable; 4 Mason, 508; Bee, 161; 2 Day, 294; 1 Wash. C. C. R. 316; and, for just cause, may be put ashore in a foreign country. 1 Pet. Adm. R. 186; 2 Ibid. 268; 2 East, Rep. 145. By act of Congress, September 28, 1850, Minot's Stat. at Large, U. S. p. 515, it is provided, that flogging in the navy and on board vessels of commerce, be, and the same is hereby abolished from and after the passage of this act.

5. Seamen are entitled to their wages, of which one−third is due at every port at which the vessel shall unlade and deliver her cargo, before the voyage be ended; and at the end of the voyage an easy and speedy remedy is given them to recover all unpaid wages. When taken sick a seaman is entitled to medical advice and aid at the expense of the ship: such expense being considered in, the nature of additional wages, and as constituting a just remuneration for his labor and services. Gilp. 435, 447; 2 Mason, 541; 2 Mass. R. 541.

6. The right of seamen to wages is founded not in the shipping articles, but in the services performed; Bee, 395; and to recover such wages the seaman has a triple remedy, against the vessel, the owner, and the master. Gilp. 592; Bee, 254.

7. When destitute in foreign ports, American consuls and commercial agents are required to provide for them, and for their passages to some port of the United States, in a reasonable manner, at the expense of the United States; and American vessels are bound to take such seamen on board at the request of the consul, but not exceeding two men for every hundred tons of the ship, and transport them to the United States, on such terms, not exceeding ten dollars for each person, as may be agreed on. Vide, generally, Story's Laws U. S. Index, h. t.; 3 Kent, Com, 136 to 156; Marsh. Ins. 90; Poth. Mar. Contr. translated by Cushing, Index, h. t.; 2 Bro. Civ. and Adm. Law, 155.

8. − 2. Seamen in the public service are governed by particular laws.

SEAMEN'S FUND. By the act of July 16, 1798, a provision is made for raising a fund for the relief of disabled and sick seamen: the master of every vessel arriving from a foreign port into the United States is required to pay to the collector of customs at the rate of twenty cents per month for every seaman employed on board of his vessel, which sum he may, retain out of the wages of such seaman: vessels engaged in the coasting trade, and boats, rafts or flats navigating the Mississippi, with intention to proceed to New Orleans, are also laid under similar obligations. The fund thus raised is to be employed by the president of the United States as circumstances shall require, for the benefit and convenience of sick and disabled American seamen. Act of March 3, 1802, s. 1.

2. By the act of congress, passed February 28, 1803, c. 62, 2 Story's L. U. S. 884, it is provided, that when a seaman is discharged in a foreign country with his own consent, or when the ship is sold there, he shall, in addition to his usual wages, be paid three months' wages into the hands of the American consul, two−thirds of which are to be paid to such seaman, on his engagement on board any vessel to return home, and the remaining one−third is retained in aid of a fund for the relief of distressed American seamen in foreign ports. See 11 John. R. 66; 12 John. Rep. 143; 1 Mason, R. 45; 4 Mason, R. 541; Edw. Adm. R. 239.

SEARCH, crim. law. An examination of a man's house, premises or person, for the purpose of discovering proof of his guilt in relation to some crime or misdemeanor of which be is accused.

2. The constitution of the United. States, amendments, art. 4, protects the people from unreasonable searches and seizures. 3 Story, Const. _1895; Rawle, Const. ch. 10, p. 127; 10 John. R. 263; 11 John. R. 500; 3 Cranch, 447.

3. By the act of March 2, 1799, s. 68, 1 Story's L. U. S. 632, it is enacted, that every collector, naval officer, and surveyor, or other person specially appointed, by either of them, for that purpose, shall have fall power and

authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise, subject to duty, are concealed, and therein to search for, seize, and secure any such goods, wares, or merchandise; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place they or either of them shall; upon proper application, on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place, (in the day time only, and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares, and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

SEARCH, practice. An examination made in the proper lien office for mortgages, liens, judgments, or other encumbrances, against real estate. The certificate given by the officer as to the result of such examination is also called a search.

2. Conveyancers and others who cause searches to be made ought to be very careful that they should be correct, with regard, 1. To the time during which the person against whom the search has been made owned the premises. 2. To the property searched against, which ought to be properly described. 3. To the form of the certificate of search.

SEARCH, RIGHT OF, mar. law. The right existing in a belligerent to examine and inspect the papers of a neutral vessel at sea. On the continent of Europe, this is called the right of visit. Dalloz, Dict. mots Prises Maritimes, n. 104−111.

2. The right does not extend to examine the cargo; nor does it extend to a ship of war, it being strictly confined to the searching of merchant vessels. The exercise of the right is to prevent the commerce of contraband goods. Although frequently resisted by powerful neutral nations, yet this right appears now to be fixed beyond contravention. The penalty for violently resisting this right is the confiscation of the property so withheld from visitation. Unless in extreme cases of gross abuse of his right by a belligerent, the neutral has no right to resist a search. 1 Kent, Com. 154; 2 Bro. Civ. and Adm. Law, 319; Mann. Comm. B. 3, c. 11.

SEARCH WARRANT, crim. law, practice. A warrant (q. v.) requiring the officer to whom it is addressed, to search a house or other place therein specified, for property therein alleged to have been stolen; and if the same shall be found upon such search, to bring the goods so found, together with the body of the person occupying the same, who is named, before the justice or other officer granting the warrant, or some other justice of the peace, or other lawfully authorized officer. It should be given under the hand and seal of the justice, and dated.

2. The constitution of the United States, amendments, art. 4, declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

3. Lord Hale, 2 P. C. 149, 150, recommends great caution in granting such warrants. 1. That they be, not granted without oath made before a justice of a felony committed, and that the complainant has probable cause to suspect they are in such a house or place, and his reasons for such suspicion. 2. That such warrants express that the search shall be made in day time. 3. That they ought to be directed to a constable or other proper officer, and not to a private person. 4. A search warrant ought to command the officer to bring the stolen goods and the person in whose custody they are, before some justice of the peace. Vide 1 Chit. Cr. Law, 57, 64; 4 Inst. 176; Hawk. B. 2, c. 13, s. 17, n. 6; 11 St. Tr; 321; 2 Wils. 149, 291; Burn’s Just. h. t.; Williams’ Just. h. t.

SEARCHER, Eng. law. An officer of the customs, whose duty it is to examine and search all ships outward bound, to ascertain whether they have any prohibited or uncustomed goods on board.

SECK. This word has two significations. 1. It means a warrant of remedy by distress. Litt. s. 218; and vide Rent. 2. It imports want of present fruit or profit, as in the case of the reversion without rent or other service, except fealty. Co. Litt. 151 b, note 5.

SECOND. A measure equal to one sixtieth part of a minute. Vide Measure.

SECOND DELIVERANCE, practice. The name of a writ given by statute of Westminster the second, 13 Edw. 1. c. 2, founded on the record of a former action of replevin. 2 Inst. 341. It commands the sheriff, if the plaintiff make him secure of prosecuting his claim, and returning the chattels which were adjudged to the defendant by reason of the plaintiff’s default, to make deliver−ance. On being nonsuited, the plaintiff in replevin might, at common law, have brought another replevin, and so in infinitum, to the intolerable vexation of the defendant. The statute of Westminster restrains the plaintiff When nonsuited from so doing, but allows him this writ, issuing out of the original record, in order to have the same distress delivered again to him, on his giving the like security as

before. 3 Bl. Com. 150,; Hamm. N. P. 495; F. N. B. 68; 19 Vin. Ab. 1.

SECOND SURCHARGE, WRIT OF. The name of a writ issued in England against a commoner who has a second time surcharged the common. 3 Bl. Com. 239.

SECONDARY, construction. That which comes after the first, which is primary: as, the primary law of, nations the secondary law of nations.

SECONDARY, English law. An officer who is second or next to the chief officer; as secondaries to the prothonotaries of the courts of king's bench, or common pleas; secondary of the remembrancer in the exchequer, &c. Jacob, L. D. h. t.

SECONDARY EVIDENCE. That species of proof which is admissible on the loss of primary evidence, and which becomes, by that event, the best evidence. 3 Bouv. Inst. n. 3055.

SECONDS, crim. law. Those persons who assist, direct and support others engaged in fighting a duel.

2. As they are often much to blame in inciting the duellists to their rash act, and as they are always assisting in the commission of the crime, the laws generally punish them with severity but, in consequence of the false ideas too generally entertained on the subject of honor, the are too seldom enforced.

SECRET. That which is not to be revealed.

2. Attorneys and counsellors, who have been trusted professionally with the secrets of their clients, are not allowed to reveal them in a court of justice. The right of secrecy belongs to the client, and not to the attorney and counsellor.

3. As to the matter communicated, it extends to all cases where the client applies for professional advice or assistance; and it does not appear that the protection is qualified by any reference to proceedings pending or in contem−plation. Story, Eq. Pl. _600; 1 Milne & K. 104; 3 Sim. R. 467.

3. Documents confided professionally to the counsel cannot be demanded, unless indeed the party would himself be bound to produce them. Hare on Discov. 171. Grand jurors are sworn the commonwealth's secrets, their fellows and their own to keep. Vide Confidential comunications; Witness.

SECRET, rights. A knowledge of something which is unknown to orthers, out of which a profit may be made; for example, an invention of a machine, or the discovery of the effect of the combination of certain matters.

2. Instances have occurred of secrets of that kind being kept for many years, but they are liable to constant detection. As such secrets are not pro−perty, the possessors of them in general prefer making them public, and securing the exclusive right for years, under the patent laws, to keeping them in an insecure manner, without them. See Phil. on Pat. ch. 15; Gods. on Pat. 171; Dav. Pat. Cas. 429; 8 Ves. 215; 2 Ves. & B. 218; 2 Mer. 446; 3 Mer. 157; 1 Jac. & W. 394; 1 Pick. 443; 4 Mason, 15; 3 B. & P. 630.

SECRETARY. An officer who, by order of his superior, writes letters and other instruments. He is so called because he is possessed of the secrets of his employer. This term wag used in France in 1343, and in England the term secretary was first applied to the clerks of the king, who being always near his person were called clerks of the secret, and in the reign of Henry VIII. the term secretary of state came into it.

SECRETARY OF EMBASSY or OF LEGATION. An officer appointed by the sovereign power, to accompany a minister of first or secoud rank, and sometimes, though not often, of an inferior rank. He is, in fact, a species of public minister; for independently of his protection as attached to an ambassador's suite, be enjoys, in his own rights, the same protection of the law of nations, and the same immunities as an ambassador. But private secretaries of a minister must Dot be confounded with secretaries of embassy or of legation. Such private secretaries are entitled to protection only as belonging to the suite of the ambassador.

2. The functions of a secretary of legation consist in his employment by his minister for objects of ceremony; in making verbal reports to the secretary of state, or other foreign ministers; in taking care of the archives of the mission; in ciphering and deciphering despatches; in sometimes making rough draughts of the notes or letters whicb the minister writes to his colleagues or to the local authorities; in drawup proces verbaux; in presenting passports to the minister for his signature, and delivering them to the persons for whom they are intended; and, finally, in assisting the minister, under whom be is placed, in everything concerning the affairs of the mission. In the absence of the minister he is admitted to conferences and to present notes signed by the minister. Vide Ambassador; Minister; Suite.

SECRETARY OF LEGATION. An officer employed to attend a foreign mission, and to perform certain duties as clerk.

2. His salary is fixed by the act of congress of May 1, 1810, s. 1, at such a sum as the president of the United

States may allow, not exceeding two thousand dollars.

3. The salary of a secretary of embassy, or the secretary of a minister plenipotentiary, is the same as that of a secretary of legation.

SECRETARY OF THE NAVY, government. This officer is appointed by the president. His duties are to execute all such orders as he shall receive from the president, relative to the procurement of naval stores and materials, and the construction, armament, equipment and employment of vessels of war; as well as all other matters connected with the naval establishment of the United States; act of 30th April, 1798, s. 1, 1 Story's Laws, 498; he appoints his own clerks and subordinate officers. Various other duties are imposed upon him by sundry acts of congress. Vide Gordon's Dig. art. 370 to 375.

2. His salary is six thousand dollars. Act of 20th Feb. 1819, 3 Story's Laws, 1720.

SECRETARY OF STATE OF THE UNITED STATES, government. The principal officer in the Department of State. (q. v.) He shall perform such duties as shall be enjoined on or entrusted to him by the president, agreeably to the constitution, refative to the correspondences, commissions or instructions to or with public ministers or consuls from the United States, or to negotiations with foreign states or princes, or to memorials or other applications from foreign public ministers or foreigners, or to such other matters respecting foreign affairs as the president of the United States shall assign to such department. The secretary shall conduct the business of his department in such manner as the president shall, from time to time, order or instruct. Act of 27th July, 1789 act of 15th Sept: 1789, s. 1. Besides these general laws, there are various, others which impose upon him inferior and less important duties.

2. His salary is six thousand dollars per annum. Act of 20th Feb. 1819.

SECRETARY OF THE TREASURY OF THE UNITEE STATES, government. An officer appointed by the president. His principal duties are, 1. To superintend the collection of the revenue. 2. To digest, prepare, and lay before congress at the commencement of every session, a report on the subject of finance. 3. To annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former acts. 4. To give information to either house of congress, respecting all matters connected with his office. Besides these, there are other minor duties imposed upon him by various acts of congress.

2. His salary is six thousand dollars. Gord. Dig. art. 249 to 262.

SECRETARY FOR THE DEPARTMENT OF WAR, government. This officer is appointed by the president. He is required to perform and execute such duties as shall, from time to time, be enjoined on or entrusted to him by the president, agreeably to the constitution, relative to military commissions or to the land forces, or warlike stores of the United States, or to such other matters respecting military affairs as the president shall assign to the department of war, (q. v.) or relative to granting of lands to persons entitled thereto for military services rendered to the United States, or relative to Indian affairs. Act of 27th Aug., 1789, 1 Story's Laws, 31.

2. His salary is six thousand dollars per annum. Act of 20th Feb. 1819, 3 Story's Laws, 1720.

3. Various other duties are imposed upon the secretary by sundry acts of congress. Vide Laws, Index, Departments, &c.; Gordon's Dig. art. 368 to 382.

SECTA pleading. In ancient times the plaintiff was required to establish the truth of his declaration in the first instance, and before it was called in question, upon the pleading, by the simultaneous production of his secta, that is, a number of persons prepared to confirm his allegations. Bract. 214, a.

2. The practice of thus producing a secta, gave rise to the very. ancient formula almost invariably used at the conclusion of a declaration, as entered on the record, et inde producit sectam; and, though the actual production has, for many centuries, fallen into disuse, the formula still remains. Accordingly, except the count on a writ of right, and in dower, all declarations constantly conclude thus, "And therefore he brings his suit, &c. The count on a writ of right did not, in ancient times, conclude with the ordinary production of suit, but with the following formula peculiar to itself, "Et quod tale sit jus suum offert disrationare per corpus, talis liberi hominis, &c., and it concludes, at the present day, with an abbreviated. translation of the same phrase: "And, that such is his right, he offers," &c. The count in dower is an exception to the rule in question, and concludes without any production of suit, a peculiarity which appears always to have belonged to that action. Steph. Pl. 427, 8; 3 Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399.

SECTION OF LAND. The lands of the United States are surveyed into parcels of six hundred and forty acres; each such parcel is called a section. 1 Story's L. U. S. 422.

2. These sections are divided into half sections, each of which contains three hundred and twenty acres, and into quarter sections of one hundred and sixty acres each.

SECTORES. Among the Romans the bidders at an auction were so called. Bab. on Auct. 2.

TO SECURE. To protect, insure, or save a right.

2. The constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science and the useful arts by securing, for Iimited times, to authors and inventors the exclusive right to their respective writings and discoveries." The inventor of a machine has the right to it exclusively at common law, and the author a right to his manuscript. But they may abandon the, right by publishing the book without having secured a copy−right, (q. v.) or by using publicly the machine, and suffering others to use it, without having obtained a patent. (q. v.) Vide Secret.

SECURITY. That which renders a matter sure; an instrument which renders certain the performance of a contract. The term is also sometimes applied to designate a person who becomes the surety for another, or who engages himself for the performance of another's contract. See 3 Blackf. R. 431.

SECURITY FOR COSTS, practice. In some courts there is a rule that when the plaintiff resides abroad he shall give security for costs, and until that has been done, when demanded, he cannot proceed in his action.

2. This is a right which the defendant must claim in proper time, for if he once waives it, he cannot afterwards claim it; the waiver is seldom, or perhaps never expressly made, but is generally implied from the acts of the de−fendant. When the defendant had undertaken to accept short notice of trial; 2 Hen. Bl. 573; 3 Taunt. 272 or after issue joined, and when he knew of plain−tiff's residence abroad; or, with such knowledge, when the defendant takes any step in the cause these several acts will amount to a waiver. 5 Bar & Ald. 702; S. C. 1 Dow. & Ryl. 348; 1 M. & P. 30; S. C. 17 E. C. L. R. 164. Vide 3 John. Ch. R. 520; 1 John. Ch. Rep. 202; 1 Ves. jun. 396.

3. The fact that the defendant is out of the jurisdiction of the court, will not, alone, authorize the requisition of security for costs; he must have his domicil abroad. 1 Ves. jr. 396. When, the defendant resides abroad, he will be required to give such security, although he is a foreign prince. 33 E. C. L. Rep. 214. Vide 11 S. & Rawle, 121 1 Miles, R. 321; 2 Miles, 402.

SECUS. Otherwise.

SEDITION, crimes. The raising commotions or disturbances in the state; it is a revolt against legitimate authority, Ersk. Princ. Laws, Scotl. b. 4, t. 4, s. 14; Dig. Lib. 49, t. 16, 1. 3, _19.

2. The distinction between sedition and treason consists in this, that though its ultimate object is a violation of the public peace, or at least such a course of measures as evidently engenders it, yet it does not aim at direct and open violence against the laws, or the subversion of the constitution. Alis. Crim. Law of Scotl. 580.

3. The. obnoxious and obsolete act of July 14, 1798, 1 Story's Laws U. S. 543, was called the sedition law, because its professed object was to prevent disturbances.

4. In the Scotch law, sedition is either verbal or real. Verbal is inferred from the uttering of words tending to create discord between the king and his people; real sedition is generally committed by convocating together any considerable number of people, without lawful authority, under the pretence of redressing some public grievance, to the disturbing of the public peace. 1 Ersk. ut supra.

SEDUCTION. The offence of a man who abuses the simplicity and confidence of a woman to obtain by false promises what she ought not to grant.

2. The woman being particeps criminis, has no remedy for the mere seduction, nor is there, to the discredit of the law, a direct remedy in her parents. The seducer may be sued, though not. directly or ostensibly for the seduction; but for the consequent inability to perform those services for which she was accountable to her master, or to her parent, who, for this purpose, is obliged to assume that less endearing relation; and if it cannot be proved that she filled that office, the action cannot be sustained. 7 Mann. & Gr. 1033. It follows, therefore, that when the daughter is of full age, and the father is not entitled to her services, and actually, she is not in his service, the father can maintain no action for the seduction. 5 Harr. & J. 27; 1 Wend. 447; 3 Pennsyl. 49; 10 John. 115. Vide 2 Watts 474; 9 John. 387; 2 Wend. 459; 5 Cowen 106; 2 Penn. 583; 6 Munf. 587; 2 A. K. Marsh. 128; 2 Overt. 93; 9 John. R. 387; 2 New Reports, 476; 6 East, 887; Peake's Rep. 253; 11 East, 24; 5 East, 45; 2 T. R. 4; 2 Selw. N. P. 1001; 2 Phil. Ev. 156; 3 Chitt. Bl. Com. 140, n.; 7 Com. Dig. 318; 6 M. & W. 55.

SEEDS. The substance which nature prepares for the reproduction of plants or animals.

2. Seeds which have been sown in the earth immediately become a part of the land in which they have been sown; quae sata solo cedere intelliguntur. Inst. 2, 1, 32.

SEIGNIOR or SEIGNEUR. Among the feudists, this name signified lord of the fee. F. N. B. 23. The most extended signification of this word includes not only a lord or peer of parliament, but is applied to the owner or proprietor of a thing; hence, the owner of a hawk, and the master of a fishing vessel, is called a seigneur. 37 Edw. Ill. c. 19; Barr. on the Stat. 258.

SEIGNIORY, Eng. law. The rights of a lord as such, in lands. Swinb. 174.

SEISIN, estates. The possession of an estate of freebold. 8 N. H. Rep. 57; 3 Hamm. 220; 8 Litt. 134; 4 Mass. 408. Seisin was used in contradistinction to that precarious kind of possession by which tenants in villenage held their lands, which was considered to be the possession of their lords in, whom the freehold continued.

2. Seisin is either in fact or in law.

3. Where a freehold estate is conveyed to a person by feoffment, with livery of seisin, or by any of those conveyances which derive their effect from the statute of uses, he acquires a seisin in deed or in fact, and a freehold in deed: but where the freehold comes to a person by act of law, as by descent, he only acquires a seisin in law, that is, a right of possession, and his−estate is called a freehold In law.

4. The seisin in law, which the heir acquires on the death of his ancestor, May be defeated by the entry of a stranger, claiming a right to the land, which is called an abatement. (q. v.)

5. The actual seisin of an estate may be lost by the forcible entry of a stranger who thereby ousts or dispossesses the owner this act is called a disseisin. (q. v.)

6. According to Lord Mansfield, the various alterations which have been made in the law for the last three centuries, "have left us but the name of feoffment, seisin, tenure, and, freeholder, without any precise knowledge of the thing originally signified by these sounds."

7. In the United States, a conveyance by deed executed and acknowledged, and properly recorded according to law, and the descent cast upon the heir are, in general, considered as a seisin in deed without entry; and a grant by letters− patent from the commonwealth has the same effect. 4 Mass. R. 546; 7 Mass. R. 494; 15. Mass. R. 214 1 Munf. R. 17O. The recording of a deed is equivalent to livery of seisin. 4 Mass. 546.

8. In Pennsylvania, Connecticut, Massachusetts and Ohio, seisin means merely, ownership, and the distinction between seisin in deed and in law is not known in practice. Walk. Intr. 324, 330; 1 Hill. Abr. 24 4 Day, R. 305; 4 Mass.; R. 489 14 Pick. R. 224. A patent by the commonwealth, in Kentucky, gives a, right entry, but not actual seisin. 3 Bibb, Rep. 57. Vide 1 Inst. 31; 19 Vin. Ab. 306; Dane's Abr. c. 104, a. 3; 4 Kent, Com. 2, 381; Cruise's Dig. t. 1, _23; Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 1, n. 80; Poth. Traite des Fiefs, part 1, c. 2; 3 Sumn. R. 170. Vide Livery of Seisin.

SEIZURE, practice. The act of taking possession of the property of a person condemned by the judgment of a competent tribunal, to pay a certain sum of money, by a sheriff, constable, or other officer, lawfully authorized thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment. By seizure is also meant the taking possession of goods for a violation of a public law; as the taking possession of a ship for attempting an illicit trade. 2 Cranch, 18 7; 6 Cowen, 404; 4 Wheat. 100; 1 Gallis. 75; 2 Wash. C. C. 127, 567.

2. The seizure is complete as soon as the goods are within the power of the officer. 3 Rawle's Rep. 401; 16 Johns. Rep. 287; 2 Nott & McCord, 392; 2 Rawle's Rep. 142; Wats. on Sher. 172; Com. Dig. Execution, C 5.

3. The taking of part of the goods in a house, however, by virtue of a fieri facias in the name of the whole, is a good seizure of all. 8 East, R. 474. As the seizure must be made by virtue of an execution, it is evident that it cannot be made after the return day. 2 Caine's Rep. 243; 4 John. R. 450. Vide Door; House; Search Warrant.

SELECTI JUDICES. Judges among the Romans who were selected very much like our juries. They were returned by the praetor, drawn by lot, subject to be challenged and sworn. 3 Bl. Com. 366.

SELF−DEFENCE, crim. law. The right to protect one's person and property from injury.

2. It will be proper to consider, 1. The extent of the right of self−defence. 2. By whom it may be exercised. 3. Against whom. 4. For what causes.

3. − 1. As to the extent of the right, it may be laid down, first, that when threatened violence exists, it is the duty of the person threatened to use all, prudent and precautionary measures to prevent the attack; for example, if by closing a door which was usually left open, one could prevent an attack, it would be prudent, and perhaps the law might require, that it should be closed, in order to preserve the peace, and the aggressor might in such case be held to bail for his good behaviour; secondly, if, after having taken such proper precautions, a party should be assailed, he may undoubtedly repel force by force, but in most instances cannot, under the pretext that he has been

attacked, use force enough to kill the assailant or hurt him after he has secured himself from danger; as, if a person unarmed enters a house to commit a larceny, while there he does not threaten any one, nor does any act which manifests an intention to hurt any one, and there are a number of persons present, who may easily secure him, no one will be justifiable to do him any injury, much less to kill him; he ought to be secured and delivered to the public authorities. But when an attack is made by a thief under such circumstances, and it is impossible to ascertain to what extent he may push it, the law does not requite the party assailed to weigh with great nicety the probable extent of the attack, and he may use the most violent means against his assailant, even to the taking of his life. For homicide may be excused, se defendendo, where a man has no other probable means of preserving his life from one who attacks him, while in the commission of a felony, or even on a sudden quarrel, he beats him, so that he is reduced to this inevitable necessity. Hawk. bk. 2, c. 11, s. 13. And the reason is that when so reduced, he cannot call to his aid the power of society or of the commonwealth, and, being unprotected by law, he reassumes his natural rights, which the law sanctions, of killing his adversary to protect himself. Toull. Dr. Civ. Fr. ]iv. 1, tit. 1, n. 210. See Pamph. Rep. of Selfridge's Trial in 1806 2 Swift's Ev. 283.

4. − 2. The party attacked may undoubtedly defend himself, and the law further sanctions the mutual and reciprocal defence of such as stand in the near relations of hushand and wife, patent and child, and master and servant. In these cases, if the party himself, or any of these his relations, be forcibly attacked in their person or property, it is lawful for him to repel force by force, for the law in these cases respects the passions of the human mind, and makes, it lawful in him, when external violence is offered to himself, or to those to whom he bears so near a connexion, to do that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain. 2 Roll. Ab. 546; 1 Chit. Pr. 592.

5. − 3. The party making the attack may be resisted, and if several persons join in such attack they may all be resisted, and one may be killed although he may not himself have given the immediate cause for such killing, if by his presence and his acts, he has aided the assailant. See Conspiracy.

6. − 4. The cases for which a man may defend himself are of two kinds; first, when a felony is attempted, and, secondly, when, no felony is attempted or apprehended.

7. − 1st. A man may defend himself, and even commit a homicide for the prevention of any forcible and atrocious crime, which if completed would amount to a felony; and of course under the like circumstances, mayhem, wounding and battery would be excusable at common law. 1 East, P. C. 271; 4 Bl. Com. 180. A man may repel force by force in defence of his person, property or habitation, against any one who manifests, intends, attempts, or endeavors, by violence or surprise, to commit a forcible felony, such as murder, rape, robbery, arson, burglary and the like. In these cases he is not required to retreat, but he may resist, and even pursue his adversary, until he has secured himself from all danger.

8. − 2d. A man may defend himself when no felony has been threatened or attempted; 1. When the assailant attempts to beat another and there is no mutual combat; as, where one meets another and attempts to commit or does commit an assault and battery on him, the person attacked may defend himself; and an offer or, attempt to strike another, when sufficiently near, so that that there is danger, the person assailed may strike first, and is not required to wait until he has been struk. Bull. N. P. 18; 2 Roll. Ab. 547. 2. When there is a mutual combat upon a sudden quarrel. In these cases both parties are the aggressors; and if in the fight one is killed it will be manslaughter at least, unless the survivor can prove two things: 1st. That before the mortal stroke was given be had refused any further combat, and had retreated as far as he could with safety; and 2d. That he killed his adversary from necessity, to avoid his own destruction.

9. A man may defend himself against animals, and he may during the attack kill them, but not afterwards. 1 Car. & P. 106; 13 John. 312; 10 John. 365.

10. As a general rule no man is allowed to defend himself with force if he can apply to the law for redress, and the law gives him a complete remedy, See Assault; Battery; Necessity; Trespass.

SELECTMEN. The name of certain officers in several of the United States, who are invested by the statutes of the several states with various powers.

SELLER, contracts. One who disposes of a thing in consideration of money; a vendor.

2. This term is more usually applied in the sale of chattels, that of vendor in the sale of estates.

3. The duties of the seller are, 1. To deal with fairness. 2. To deliver the thing sold at the time and place appointed, and to take care of it until deli−very; but when everything the seller has to do with the goods is

complete, the property and the risk of accident to the goods, rests in the buyer, even before delivery, or payment. Noy's Max. ch. 24; 7 East, 571; 2 Bl. Com. 448. 3. To warrant the title of personal property when he sells it as his own, when it is in his possession. 2 Kent, Com. 374; 1 Lord Raym. 593; 1 Salk. 210.

4. The rights of the seller are, 1. To be paid the price agreed upon. 2. To be indemnified for any expenses he may have incurred to preserve the thing sold for the buyer, after the title to it has passed to the latter. 3. To stop the thing in transitu when the buyer has failed and the price has not been paid . See Stoppage, in transitu. Vide Purchaser, and the authorities there cited; Bouv. Inst. Index, h. t.

SEMBLE. A French word which signifies, it seems. It is commonly used before the statement of a point of law which has not been directly settled; but about which the court have expressed an opinion, and intimated what it is.

SEMI−PROOF, civ. law. Presumptions of fact are so called. This degree of proof is thus deaned: "Non est ignorandum, probationem semiplenam eam esse, per quam rei gestae fides aliqua fit judici; non tamen tanta ut jure debeat in pronuncianda sententia eam sequi." Mascardus, De Prob. vol. 1, Quaest. 11, n. 1, 4.

SEMINAUFRAGIUM. A term used by Italian lawyers, which literally signifies half−shipwreck, and by which they understand the jetsam, or casting merchan−dise into the sea to prevent shipwreck. Locre, Esp. du Code de Com. art. 409. It also signifies the state of a vessel which has been so much injured by tem−pest or accident, that to repair the damages, after being brought into port, and prepare her for sea, would cost more than her worth. 4 Law Rep. 120.

SEMPER PARATUS. The name of a plea by which the defendant alleges that he has always been ready to perform what is demanded of him. 3 Bl. Com. 303. The same as Tout temps prist. (q. v.)

SEN. This is said to be an ancient word which signified justice. Co. Litt. 61 a.

SENATE, government. The less numerous branch of the legislature.

2. The constitution of the United States, article 1, s. 3, cl. 1, directs that "the senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote." The vice president of the United States," to use the language of the constitution, art. 1, s. 3, cl. 4, "shall be president of the senate, but shall have no vote unless they be equally divided." In the senate each state in its political capacity, is represented, upon a footing of perfect equality, like a congress of sovereigns or ambassadors, or like an assembly of peers. It is unlike the house of representatives. where the people are represented. Story, Const. ch. 10.

3. The senate of the United States is invested with legislative, executive and judicial powers.

4. − 1. It is a legislative body whose concurrence is requisite to the passage of every law. It may originate any bill, except those for raising rev−enue, which shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. Const. art. 1, s. 7, el. I.

5. − 2. The senate is invested with executive authority in concluding treaties and making appointments. Vide President of the United States of America.

6. − 3. It is invested with judicial power when it is formed into a court for the trial of impeachments. See Courts of the United States.

7. In most of the states the less numerous branch of the legislature bears the title of senate. In such a body the people are represented as well as in the other house. Vide article Congress; and, for the senates of the several states, the name of each state. See, also, articles Courts of the United States, I; House of Representatives; Vice−President of the United States.

SENATOR, government. One who is a member of a senate.

2. No person shall be a senator [of the national senate] who shall not have attained the age of thirty years, and been nine years a citizen of the United States and who shall not when elected, be an inhabitant of that state for which he shall be chosen. Const. U. S. art. 1, s. 3, cl. 5. Vide 1 Kent, Com. 224 Story on the Const. 726 to 730.

SENATUS CONSULTUM, civ. law. A decree or decision of the Roman senate, which had the force of law.

2. When the Roman people had so increased that there was no place where they could meet, it was found necessary to consult the senate instead of the people, both on public affairs and those which related to individuals. The opinion which was rendered on such an occasion was called senatus consultum. Inst. 1, 2, 5; Clef des Lois Rom. h. t.; Merl. Repert. h. t. These decrees frequently derived their titles from the names of the consuls or magistrates who proposed them; as, senatus−consultum Claudianum, Libonianum, Velleianum, &c. from Claudius, Libonius, Valleius. Ail. Pand. 30.

SENESCHALLUS. A steward. Co. Litt. 61 a.

SENILITY. The state of being old.

2. Sometimes in this state it is exceedingly difficult to know whether the individual is or is not so deprived of the powers of his mind as to be unable to manage his affairs. In general, senility of energy in some of the intellectual operations, while the affections remain natural and unperverted; such a state may, however, be followed by actual dementia or idiocy.

3. When on account of senility the party is unable to manage his affairs, a committee will be appointed as in case of lunacy. 1 Coll. on Lunacy, 66; 2 John. Ch. R. 232; 12 Ves. 446; 4 Call's R. 423; 5 John. Ch. R. 158; 8 Mass. 129; 2 Ves. sen. 407; 19 Ves. 285; 2 Cyclop. of Pract. Med. 872. See Aged Witness.

SENIOR. The elder. This addition is sometimes made to a man's name, when two persons bear the same, in order to distinguish them. In practice when nothing is mentioned, the senior is intended. 3 Miss. R. 59. See Junior.

SENTENCE. A judgment, or judicial declaration made by a judge in a cause. The term judgment is more usually applied to civil, and sentence to criminal proceedings.

2. Sentences are final, when they put, an end to the case; or interlocutory, when they settle only some incidental matter which has arisen in the course of its progress. Vide Aso & Man. Inst. B. 3, t. 8, c. 1.

SEPARALITER. Separately.

2. This word is sometimes used in indictments to show that the defendants are charged separately with offences, which, without the addition of this word, would seem, from the form of the indictment, to be charged jointly; as, for example, when two persons are indicted together for perjury, and the indictment states that A and B came before a commissioner, &c., this is alleging that they were both guilty of the same crime, when by law their crimes are distinct, and the indictment is vicious; but if the word separaliter is used, then the affirmation is that each was guilty of a separate offence. 2 Hale, P. C. 174.

SEPARATE ESTATE. That which belongs to one only of several persons; as, the separate estate of a partner, which does not belong to the partnership. 2 Bouv. Inst. n. 1519.

2. The separate estate of a married woman, is that which belongs to her, and over which her hushand has no right in equity. It may consist of lands or chattels. 4 Barb. S. C. Rep. 407; 1 Const. R. 452; 4 Bouv. Inst. n. 3996.

SEPARATE MAINTENANCE, contracts. An allowance made by a hushand to his wife for her separate support and maintenance.

2. When this allowance is regularly paid, and notice of it has been given, no person who has received such notice will be entitled to recover against the hushand for necessaries furnished to the wife, because the liability of the hushand, depends on a presumption of authority delegated by him to the wife, which is negatived by the facts of the case. 2 Stark. Ev. 699.

SEPARATE TRIAL, practice. The trial of one person by himself, when he is jointly indicted with others for an alleged offence.

2. On a joint indictment against two or more defendants for a crime of misdemeanor, it is in the discretion of the court whether to allow a separate trial for each prisoner, or to order the whole of them to be tried together. 1 Baldw. Rep. 81; 12 Wheat. 480; 5 Serg. & Rawle, 60; but see 1 Pet., C. C. Rep. 118.

SEPARATION, contracts. When the hushand and wife agree to live apart they are said to have made a separation.

2. Contracts of this kind are generally made by the hushand for himself and by the wife with trustees. 4 Paige's R. 516; 3 Paige's R. 483; 5 Bligh, N. S. 339; 1 Dow & Clark, 519. This contract does not affect the marriage, and the parties may, at any time agree to live together as hushand and wife. The hushand who has agreed to a total separation cannot bring an action for criminal conversation with the wife. Roper, Hush. and Wife, passim; 4 Vin. Ab. 173; 2 Stark. Ev. 698; Shelf. on Mar. & Div. ch. 6, p. 608.

3. Reconciliation after separation supersedes special articles of separation in courts of law and equity. 1 Dowl. P. C. 245; 2 Cox, R. 105; 3 Bro. C. C. 619, n.; 11 Ves. 532. Public policy forbids that parties should be permitted to make agreements for themselves to hold good whenever they choose to live separate. 5 Bligh, N. S. 367, 375; and see 1 Carr. & P. 36. See 5 Bligh, N. S. 339; 2 Dowl. P. C. 332; 2 C. & M. 388; 3 John. Ch. R. 521; 2 Sim. & Stu. 372; 1 Edw. R. 380; Desaus. R. 45, 198; 1 Y. & C. 28; 11 Ves. 526; 2 East, R. 283; 8 N. H. Rep. 350; 1 Hoff. R. 1.

SEPULCHRE. The place where a corpse is buried. The violation of sepulchres is a misdemeanor at common law. Vide Dead bodies.

TO SEQUESTER, civil and eccles. law. To renounce. Example, when a widow comes into court and disclaims

having anything to do, or to intermeddle with her deceased hushand's estate, she is said to sequester. Jacob, L. D. h. t.

SEQUESTRATION, chancery practice. The process of sequestration is a writ of commission, sometimes directed to the sheriff, but most usually, to four or more commissioners of the complainant's own nomination, authorizing them to enter upon the real or personal estate of the defendant, and to take the rents, issues and profits into their own hands, and keep possession of, or pay the same as the court shall order and direct, until the party who is in contempt shall do that which he is enjoined to do, and which is specially mentioned in the writ. 1 Harr. Ch. 191; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

2. Upon the return of non est inventus to a commission of rebellion, a ser−geant−at−arms may be moved for; and if he certifies that the defendant cannot be taken, a motion may be made upon his certificate, for an order for a sequestration. 2 Madd. Chan. 203; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

3. Under a sequestration upon mesne process, as in respect of a contempt for want of appearance or answer, the sequestrators may take possession of the party's personal property and keep him out of possession; but no sale can take place, unless perhaps to pay expenses; for this process is only to form the foundation of taking the bill pro confesso. After a decree it may be sold. See 3 Bro. C. C. 72; 2 Cox, 224; 1 Ves. jr. 86; 3 Bro. C. C. 372; 2 Madd. Ch. Pr. 206. See, generally, as to this species of sequestration, 19 Vin. Abr. 325; Bac. Ab. h. t.; Com.; Chancery, D 7, Y 4; 1 Hov. Supp. to Ves. jr. 25 to 29; 1 Vern. by Raith. 58, note 1; Id. 421, note 1.

SEQUESTRATION, contracts. A species of deposit, which two or more persons, engaged in litigation about anything, make of the thing in contest to an indifferent person, who binds himself to restore it when the issue is decided, to the party to whom it is adjudged to belong. Louis. Code, art. 2942; Story on Bailm: _45. Vide 19 Vin. Ab. 325; 1 Supp. to Yes. jr. 29; 1 Vern. 58, 420; 2 Ves. jr. 23; Bac. Ab. h. t. 2. This is called a conventional sequestration, to distinguish it from a judicial sequestration, which is considered in the preceding article. Sec Dalloz, Dict. mot Sequestre.

SEQUESTRATION, Louisiana practice. The Code of Practice in civil cases in Louisiana, defines and makes the following provisions on the subject of sequestration. Art. 269. Sequestration is a mandate of the court, ordering the sheriff, in certain cases, to take in his possession, and to keep a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that thing. This is what is properly called a judicial sequestratian. Vide 1 Mart. R. 79; 1 L. R. 439; Civil Code of Lo. 2941; 2948.

2. − Art. 270. In this acceptation, the word sequestration does not mean a judicial deposit, because sequestration may exist together with the right of administration, while mere deposit does not admit it.

3. − Art. 271. All species of property, real or personal, as well as the revenue proceeding from the same, may be sequestered.

4. − Art. 272. Obligations and titles may also be sequestered, when their ownership is in dispute.

5. − Art. 273. Judicial sequestration is generally ordered only at the request of one of the parties to a suit; there are cases, nevertheless, where it is decreed by the court without such request, or is the consequence of the execution of judgments.

6. − Art. 274. The court may order, ex officio, the sequestration of real property in suits, where the ownership of such property is in dispute and when one of the contending parties does not seem to have a more apparent right to the possession than the other. In such cases, sequestration may be ordered to continue, until the question of ownership shall have been decided.

7. − Art. 275. Sequestration may be ordered at the request of one of the parties in a suit in the following cases: 1. When one who had possessed for more than one year, has been evicted through violence, and sues to be restored to his possession. 2. When one sues for the possession of movable property, or of a slave, and fears that the party having possession, may ill treat the slave or send either that slave, or the property in dispute, out of the jurisdiction of the court, during the pendency of the suit. 3. When one claims the ownership, or the possession of real property, and has good ground to appre−hend, that the defendant may make use of his possession to dilapidate or to waste the fruits or revenues produced by such property, or convert them to his own use. 4. When a woman sues for a separation from bed and board, or only for a separation of property from her hushand, and has reason to apprehend that he will ruin her dotal property, or waste the fruits or revenues produced by the same during the pendency of the action. 5. When one has petitioned for a stay of proceedings, and a meeting of his creditors, and such creditors fear that he may avail himself of such stay of proceedings, to place the whole, or a part of his property, out of their

reach. 6. A creditor by special mortgage shall have the power of sequestering the mortgaged property, when he appre−hends that it will be removed out of the state before he can have the benefit of his mortgage, and will make oath of the facts which induced his apprehension.

8. − Art. 276. A plaintiff wishing to obtain an order of sequestration in any one of the cases above provided, must annex to the petition in which he prays for such an order, an affidavit, setting forth the cause for which he claims such order, he must besides, execute his obligation in favor of the defendant, for such sum as the court shall determine, with the surety of one good and solvent person, residing within the jurisdiction of the court, to be responsible for such damages as the defendant may sustain, in case such sequestration should have been wrongfully obtained.

9. − Art. 277. When security is given in order to obtain the sequestration of real property which brings a revenue, the judge must require that it be given for an amount sufficient to compensate the defendant, not only for all damage which he may sustain, but also for the privation of such revenue, during the pendency of the action.

10. − Art. 278. The plaintiff when he prays for a sequestration of the property of one who has failed, is not required to give such security, though that property bring in a revenue.

11. − Art. 279. A defendant against whom a mandate of sequestration has been obtained, except in cases of failure, may have the same set aside, by executing his obligation in favor of the sheriff, with one good and solvent surety, for whatever amount the judge may determine, as being equal to the value of the property to be left in his possession.

12. − Art. 280. The security thus given by the defendant, when the property sequestrated consists in movables or in slaves, shall be responsible that he shall not send away the same out of the jurisdiction of the court; that he shall not make an improper use of them; and that he will faithfully present them, after definitive judgment, in case he should be decreed to restore the same to the plaintiff.

13. − Art. 281. As regards landed property, this security is given to prevent the defendant, while in possession, from wasting the property, and for the faithful restitution of the fruits that he may have received since the demand, or of their value in the event of his being cast in the suit.

14. − Art. 282. When the sheriff has sequestered property pursuant to an order of the court, he shall, after serving the petition and the copy of the order of sequestration on the defendant, send him return in writing to the clerk of the court which gave the order, stating in the same in what manner the order was executed, and annex to such return a true and minute inventory of the property sequestered, drawn by him, in the presence of two witnesses.

15. − Art. 283. The sheriff, while he retains possession of sequestered property, is bound to take proper care of the same and to administer the same, if it be of such nature as to admit of it, as a prudent father of a family administers his own affairs. He may confide them to the care of guardians or overseers, for whose acts he remains responsible, and he will be entitled to receive a just compensation for his administration, to be determined by the court, to be paid to him out of the proceeds of the property sequestered, if judgment be given in favor of the plaintiff.

SEQUESTRATOR. One to whom a sequestration is made.

2. A depositary of this kind cannot exonerate himself from the care of the thing sequestered in his hands, unless for some cause rendering it indispens−able that he should resign his trust. Louis. Code, art. 2947. See Stakeholder. Sequestrators are also officers appointed by a court of chancery, and named in a writ of sequestration. As to their powers and duties, see 2 Madd. Ch. Pr. 205, 6; Blake's Ch. Pr. 103; Newl. Ch. Pr. 18, 19; 1 Harr. Ch. 191.

SERF. During the feudal times certain persons who were bound to perform very onerous duties towards others, were so called. Poth. Des Personnes, p. 1, t. 1, a. 6, s. 4. There is this essential difference between a serf and a slave; the serf was bound simply to labor on the soil where he was born, without any right to go elsewhere without the consent of his lord; but he was free to act as he pleased in his daily action: the slave on the contrary is the property of his master, who may require him to act as he pleases in every respect, and who may sell him as a chattel. Lepage, Science du Droit, c. 3, art. 2, _2.

SERGEANT or SERJEANT, Engl. law. An officer in the courts of the highest grade among the practitioners of the law.

SERGEANT or SERJEANT, in the army. An inferior officer of a company of foot, or troop of dragoons appointed to see discipline observed, to teach the soldiers the exercise of their arms, and to order, straighten and form ranks, files, &c.

SERGEANT AT ARMS, An officer appointed by a legislative body, whose duties are to enforce the orders given

by such bodies, generally under the warrant of its presiding officer.

SERIATIM. In a series, severally; as, the judges delivered their opinions seriatim.

SERJEANTY, Eng. law. A species of service which cannot be due or performed from a tenant to any lord but the king; and is either grand or petit serjeanty.

SERVANTS, (negro or mulatto,) Pennsylvania. By the fourth section of the act for the gradual abolition of slavery, passed the first day of March, 1780, 1 Smith's Laws of Penn. 492, it is "provided that every negro or mulatto child, born within this state after the passing of this act, (who would in case this act had not been made, have been a servant for years, or life, or a slave) shall be by virtue of this act the servant of such person, or his assigns who would in such case have been entitled to the service of such child, until such child attain unto the age of twenty−eight years, in the manner and on the conditions, whereon servants bound by indenture for four years are or may be retained or holden; and shall be liable to like correction and punishment, and entitled to like relief, in case he be evilly treated by his master, and to like freedom dues and privileges, as servants bound by indenture for four years are entitled, unless the person to whom such services belong shall abandon his claim to the same; in which case the overseers of the poor where such child shall be abandoned shall by indenture bind out every such child so abandoned as an apprentice for a time not exceeding the age hereinbefore limited for the service of such children." And by the thirteenth section it is enac−ted, "that no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer time than seven years, unless such servant or apprentice were at the commencement of such servitude or apprenticeship, under the age of twenty−one years, in which case such negro or mulatto may be holden as a servant or apprentice, respectively, according to the covenant, as the case shall be, until he shall attain the age of twenty−eight years, but no longer." See 6 Binn. 204; 1 Browne's R. 369, n.

2. The act requires that a register of such children as would have been slaves shall be kept by a public officer therein designated. The want of registry entitles such child to freedom.

SERVANTS. In Louisiana they are divided into free servants and slaves. See Slaves; Slavery.

2. Free servants are, in general, all free persons who let, hire, or engage their services to another in the state, to be employed therein at any work, commerce, or occupation whatever, for the benefit of him who has contracted with them, for a certain sum or retribution, or upon certain conditions.

3. There are three kinds of free servants in the state, to wit:

4. − 1. Those who only hire out their services by the day, week, month, or year, in consideration of certain wages.

5. − 2. Those who engage to serve for a fixed time for a certain consideration, and who are therefore considered not as having hired out, but as having sold their services.

6. − 3. Apprentices that is, those who engage to serve any one, in order to learn some art, trade, or profession. Civ. Code of Lo. art. 155, 156, 157.

SERVANTS, menial. Domestics those who receive wages, and who are lodged and fed in the house of another, and who are employed in his services. Such servants are not particularly recognized by law. They are called menial servants, or domestics, from living infra moenia, within the walls of the house. 1 Bl. Com. 324; Wood's Inst. 53; 1 Sw. Syst. 218. The right of the master to their services in every respect is grounded on the contract between them. 2. Labor−ers, or persons hired by the day's work, or any longer time, are not considered servants. 1 Sw. Syst. 218; 5 Binn. 167; 3 Serg. & Rawle, 351. Vide 12 Ves. 114; 2 Vern. 546; 16 Ves. 486; 1 Rop. on Leg. 121; 3 Deac. & Chit. 332; 1 Mont. & Bligh. 413; 2 Mart. N. S. 652; Poth. Proc. Civ. sect. 2, art. 5, _5; Poth. Ob. n. 710, 828, French ed.; 9 Toull. n. 314; Domestic; Operative.

SERVI. This name was given by the Romans to their slaves; they were so called from servare, to preserve, from the ancient practice of the generals of the army, who were accustomed to sell their captives, and preserved them rather than kill them: servi autem ex eo appellati sunt, quod imperatores captivos vendere, ac per hoc servare, nec occidere solent. Inst. 1 3, 3.

SERVICE, contracts. The being employed to serve another.

2. In cases of seduction, the gist of the action is not injury which the seducer has inflicted on the parent by destroying his peace of mind, and the reputation of his child, but for the consequent inability to perform those services for which she was accountable to her master or her parent who assumes this character for the purpose Vide Seduction, and 2 Mees. & W. 539; 7 Car. & P. 528.

SERVICE, feudal law. That duty which the tenant owes to his lord, by reason of his fee or estate.

2. The services, in respect of their quality, were either free or base, and in respect of their quantity and the time of exacting them, were either certain or uncertain. 2 Bl. Com. 62.

3. In the civil law by service is sometimes understood servitude. (q. v.)

SERVICE, practice. To execute a writ or process; as, to serve a writ of capias signifies to arrest a defendant under the process; Kirby, 48; 2 Aik. R. 338; 11 Mass. 181; to serve a summons, is to deliver a copy of it at the house of the party, or to deliver it to him personally, or to read it to him; notices and other papers are served by delivering the same at the house of the party, or to him in person.

2. When the service of a writ is prevented by the act of the party on whom it is to be served, it will, in general, be sufficient if the officer do everything in his power to serve it. 39 Eng. C. L. R. 431 1 M. & G. 238.

SERVIENT, civil law. A term applied to an estate or tenement by which a servitude is due to another estate or tenement. See Dominant; Servitude.

SERVITUDE, civil law. A term which indicates the subjection of one person to another person, or of a person to a thing, or of a thing to a person, or of a thing to a thing.

2. Hence servitudes are divided into real, personal, and mixed. Lois des Bat. P. 1, c. 1.

3. A real or predial servitude is a charge laid on an estate for the use and utility of another estate belonging to another proprietor. Louis. Code, art. 643. When used without any adjunct, the word servitude means a real or predial servitude. Lois des Bat. P. 1, c. 1.

4. The subjection of one person to another is a purely personal servitude; if it exists in the right of property which a person exercises over another, it is slavery. When the subjection of one person to another is not slavery, it consists simply in the right of requiring of another what he is bound to do, or not to do; this right arises from all kinds of contracts or quasi con tracts. Lois des Bat. P. 1, c. 1, art. 1.

5. The subjection of persons to things or of things to persons, are mixed servitudes. Lois des Bat. P. 1, c. 1, art. 2.

6. Real servitudes are divided into rural and urban. Rural servitudes are those which are due by an estate to another estate, such as the right of passage over the serving estate, or that which owes the servitude, or to draw water from it, or to water cattle there, or to take coal, lime and wood from it, and the like. Urban servitudes are those which are established over a building fur the convenience of another, such as the right of resting the joists in the wall of the serving building, of opening windows which overlook the serving estate, and the like. Dict. de Jurisp. tit. Servitudes. See, generally, Lois des Bat. Part 1 Louis. Code, tit. 4; Code Civil, B. 2, tit. 4; This Dict. tit. Ancient Lights; Easements; Ways; Lalaure, Des Servitudes, passim.

SERVITUDES, NATURAL, civil law. Those servitudes which arise in consequence of the nature of the soil.

2. By law the inferior heritages, are submitted in relation to the natural flow of waters, and the like, to the superior. An inferior field is, therefore, subject to the injury or prejudice which the situation of the ground, in its natural state, way cause it.

SERVITUDES, personal. Those by which the property of a subject, in Scotland, is burdened in favor, not of a tenement, but of a person. Ersk. Pr. L. Scot. B. 2, t. 9, s. 23. Life rent is the only personal servitude there.

SERVITUS, civil law. A service or servitude; a burden imposed by law, or the agreement of parties upon certain persons, for the benefit of others; or upon one estate for the advantage of another, or for the benefit of another person than the owner.

SERVITUS. Servitude; slavery; a state of bondage. "Servitus autem, est constitutio," say the Institutes of Justinian, 1, 3, 2, "qua quis dominio alieno contra naturam subjicitur." Servitude is a disposition of the law of nations, by which, against common right, one man has been subjected to the dominion of another. See Bract. 4 b; Co. Litt. 116.

SERVITUS LUMINUM, civil law. The name of a servitude by which an obligation is imposed on the owner of a house to allow windows or lights to be put in his wall by the owner of the adjoining house. Dig. 4, 14, 40.

SERVITUS STILLICIDII, civil law. The name of a servitude which obliges the owner of an estate to receive, or his right to turn aside, the droppings or stream from his neighbor's house. Dig. 8, 2, 20 and 21, 41; Voet, h. t. n. 13. Vide Stillicidium.

SERVITUS TIGNI IMMITTENDI, civil law. The name of a servitude which consists in requiring him who owes it, to permit his neighbor to place his joists on his wall. It differs from the servitude Oneris ferendi. (q. v.) in this, that in the former the owner of the servient building is bound to repair and rebuild the wall; whereas, in the latter he is not. Dig. lib. 8, _2.

SESSION. The time during which a legislative body, a court or other assembly sits for the transaction of

business; as, a session of congress, which commences on the day appointed by the constitution, and ends when congress finally adjourns before the commencement of the next session; the session of a court, which commences at the day appointed by law, and ends when the court finally rises a term.

SESSION COURT, or COURT OF SESSION. The highest civil court in the kingdom of Scotland. The judges, called lords of the session, are fifteen in number.

2. It has extensive original jurisdiction, and its powers of review as a court of appeal have no limits. In 1808, it was divided into two chambers, called the first and second division; the lord president and seven judges constituting the former, and the lord justice clerk, who is head of the court of justiciary, with six judges, the latter. These divisions have independent but coordinate jurisdiction.

3. The high court of justiciary, or supreme criminal jurisdiction for Scotland consists of six judges, who are lords of the session, the lord justice clerk presiding. In this court the number of the jury is fifteen, and a majority decides. The court of session is divided into the inner house and outer house, with appeal from the latter to the former, and from the former to the house of lords of the United Kingdom. Encycl. Amer.

SET, contracts. Foreign bills of exchange are generally drawn in parts; as, "pay this my first bill of exchange, second and third of the same tenor and date not paid;" the whole of these parts, which make but one bill, are called a set. Chit. Bills, 175, 6, (edition of 1836); 2 Pardess. n. 342.

TO SET ASIDE. To annul; to make void; as to set aside an award.

2. When proceedings are irregular they may be set aside on, motion of the party whom they injuriously affect.

SET−OFF, contracts, practice. Defalcation; (q. v.) a demand which a defen−dant makes against the plaintiff in the suit for the purpose of liquidating the whole or a part of his claim.

2. A set−off was unknown to the common law, according to which mutual debts were distinct and inextinguishable except by actual payment or release. 1 Rawle's R. 293; Babb. on Set−off, 1.

3. The statute 2 Geo. II., c. 22, which has been generally adopted in the United States with some modifications however, allowed, in cases of mutual debts, the defendant to set his debt against the other, either by pleading it in bar, or giving it in evidence, when proper notice had been given of such intention, under the general issue. The statute being made for the benefit of the defendant, is not compulsory; 8 Watts, R. 39; the defendant may Waive his right, and bring a cross action against the plaintiff. 2 Campb. 594; 5 Taunt. 148; 9 Watts, R. 179

4. It seems, however, that in some cases of intestate estates, and of insolvent estates, perhaps owing to the peculiar wording of the law, the statute has been held to operate on the rights of the parties before action brought, or an act done by either of them. 2 Rawle's R. 293; 3 Binn. Rep. 135; Bac. Ab. Bankrupt K.

5. Set−off takes place only in actions on contracts for the payment of money, as assumpsit, debt and covenant. A set−off is not allowed in actions arising ex delicto, as, upon the case, trespass, replevin or detinue. Bull. N. P. 181.

6. The matters which may be set off, may be mutual liquidated debts or damages, but unliquidated damages cannot be set off. 1 Black. R. 394; 2 John. 150; 8 Conn. 325; 1 M'Cord, 7; 3 Wend. 400; 1 Stew. & Port. 19; 2 Yeates, 208; 1 Sumn. 471; 2 Blackf. 31; 1 A. K. Marsh. 41; 6 Halst. 397; 5 Wash. C. C. 232 3 Bibb, 49; 2 Caines, 33. The statutes refer only to mutual unconnected debts; for at common law, when the nature of the employment, transaction or dealings necessarily constitute an account consisting of receipts and payments, debts and credits, the balance only is considered to be the debt, and therefore in an action, it is not necessary in such cases either to plead or give notice of set−off. 4 Burr. 2221.

7. In general, when the government is plaintiff, no set−off will be allowed. 9 Pet. 319; 4 Dall. 303. See 9 Cranch, 313; Paine, 156. But when an act of congress authorizes such set−off, it may be made. 9 Cranch, 213.

8. Judgments in the same rights may be set off against each other at the discretion of the court. 3 Bibb 233; 3 Watts 78; 3 Halst. 172; 4 Hamm. 90; 1 Stew. & Port. 24; 7 Mass. 140, 144; 8 Cowen 126. Vide Compensation; also Mon−tagu on Set−off; Babington on Set−off; 3 Stark. Ev. h. t.; Amer. Dig. h. t.; Whart. Dig. h. t.; 3 Chit. Bl. Com. 304, n.; 1 Chit. Pl. Index, h. t.; 8 Vin. Ab. 556; Bac. Ab. h. t. 1 Sell. Pr. 321; 5 Com. Dig. 595; 6 Id. 335; 7 Id. 336; 8 Id. 927; Chit. Pr. Index, h. t.; Bouv. Inst. Index, h. t. Vide Factor.

TO SETTLE. To adjust or ascertain to pay.

2. Two contracting parties are said to settle an account when they ascertain what is justly due by one to the other; when one pays the balance or debt due by him, he is said to settle such debt or balance. 11 Alab. R. 419

SETTLEMENT, domicil. The right which a person has of being considered as resident of a particular place.

2. It is obtained in various ways, to wit: 1. By birth. 2. By the legal settlement of the father, in the case of minor children. 3. By marriage. 4. By continued residence. 5. By the payment of requisite taxes. 6. By the lawful

exercise of a public office. 7. By hiring and service for a year. 8. By serving an apprenticeship; and perhaps some others which depend upon the local statutes of the different states. Vide 1 Bl. Com. 363; 1 Dougl. 9; 2 Watts' Rep. 44, 342; 2 Penna. R. 432; 5 Serg. & Rawle, 417; 2 Yeates' R. 51; 5 Binn. R. 81; 3 Binn. R.. 22; 6 Serg. & Rawle, 103, 565; 10 Serg. & Rawle, 179. Vide Domicil.

SETTLEMENT, contracts. The conveyance of an estate, for the benefit of some person or persons.

2. It is usually made on the prospect of marriage for the benefit of the married pair, or one of them, or for the benefit of some other persons, as their children. Such settlements vest the property in trustees upon specified terms, usually for the benefit of the hushand and wife during their joint lives, and then for the benefit of the survivor for life, and afterwards for the benefit of children. Ante−nuptial agreements of this kind will be enforced in equity by a specific performance of them, provided they are fair and valid, and the intention of the parties is consistent with the principles and policy of law. Settlements after marriage, if made in pursuance of an agreement in writing entered into prior to the marriage, are valid, both against creditors and purchasers.

4. When made without consideration, after marriage, and the property of the hushand is settled upon his wife and children, the settlement will be valid against subsequent creditors, if, at the time of the settlement being made, he was not indebted; but, if he was then indebted, it will be void as to the creditors existing at the time of the settlement; 3 John. Ch. R. 481; 8 Wheat. R. 229; unless in cases where the hushand received a fair consideration in value of the thing settled, so as to repel the presumption of fraud. 2 Ves. 16 10 Ves. 139. Vide 1 Madd. Ch. 459; 1 Chit. Pr. 57; 2 Kent, Com. 145; 2 Supp. to Ves. jr. 80, 375; Rob. Fr. Conv. 188. See Atherl. on Mar. passim.

5. The term settlement is also applied to an agreement by which two or more persons, who have dealings together, so far arrange their accounts, as to ascertain the balance due from one to the other; and settlement sometimes signifies a payment in full.

TO SEVER, practice. When defendants who are sued jointly have separate de−fences, they may in general sever, that is, each one rely on his own separate defence; each may plead severally and insist on his own separate plea. See Severance.

SEVERAL. A state of separation or partition. A several agreement or cove−nant, is one entered into by two or more persons separately, each binding himself for the whole; a several action is one in which two or more persons are separately charged; a several inheritance, is one conveyed so as to descend, or come to two persons separately by moieties. Several is usually opposed to joint. Vide 3 Rawle, 306. See Contract; Joint Contract, Parties to action.

SEVERALTY, title to an estate. An estate in severalty is one which is held by the tenant in his own right only, without any other being joined or connected with him in point of interest, during the continuance of his estate. 2 Bl. Com. 179. Cruise, Dig. 479, 480.

SEVERANCE, pleading. When an action is brought in the name of several plain−tiffs, in which the plaintiffs must of necessity join, aud one or more of the persons so named do not appear, or make default after appearance, the other may have judgment of severance, or, as it is technically called, judgment ad sequendum solum.

2. But in personal actions, with the exception of those by executors, and of detinue for charters, there can be no summons and severance. Co. Lit. 139.

3. After severance, the party severed can never be mentioned in the suit, nor derive any advantage from it.

4. When there are several defendants, each of them may use such plea as, he may think proper for his own defence; and they may join in the same plea, or sever at their discretion; Co. Litt. 303, a except perhaps, in the case of di−latory pleas. Hob. 245, 250. But when the defendants have once united in the plea, they cannot afterwards sever at the rejoinder, or other later stage of the pleading. Vide, generally, Bro. Summ. and Sev.; 2 Rolle, 488; Archb. Civ. Pl. 59.

SEVERANCE, estates. The act by which any one of the unities of a joint tenancy is effected, is so called; because the estate is no longer a joint tenancy, but is severed.

2. A severance may be effected in various ways, namely: 1. By partition, which is either voluntary or compulsory. 2. By alienation of one of the joint tenants, which turns the estate into a tenancy in common. 3. By the purchase or descent of all the shares of the joint tenants, so that the whole estate becomes vested in one only. Com. Dig. Estates by Grant, K 5; 1 Binn. R. 175.

3. In another and a less technical sense, severance is the separation of a part of a thing from another; for example, the separation of malchinery from a mill, is a severance, and, in that case, the machinery which while

annexed to the mill was real estate, becomes by the severance; personalty, unless such severance be merely temporary. 8 Wend. R. 587.

SEWER. Properly a trench artificially made for the purpose of carrying water into the sea, river, or some other place of reception. Public sewers are, in general, made at the public expense. Crabb, R. P. _113.

SEX. The physical difference between male and female in animals.

2. In the human species the male is called man, (q. v.) and the female, woman. (q. v.) Some human beings whose sexual organs are somewhat imperfect, have acquired the name of hermaphrodite. (q. v.)

3. In the civil state the sex creates a difference among individuals. Women cannot generally be elected or appointed to offices or service in public capa−cities. In this our law agrees with that of other nations. The civil law excluded women from all offices civil or public: Faemintae ab omnibus officiis civilibus vel publicis remotae sunt. Dig. 50, 17, 2. The principal reason of this exclusion is to encourage that modesty which is natural to the female sex, and which renders them unqualified to mix and contend with men; the pre−tended weakness of the sex is not probably the true reason. Poth. Des Personnes, tit. 5; Wood's Inst. 12; Civ. Code of Louis. art. 24; 1 Beck's Med. Juris. 94. Vide Gender; Male; Man; Women; Worthiest of blood.

SHAM PLEA. One entered for the mere purpose of delay; it must be of a matter which the pleader knows to be false; as judgment recovered, that is, that judgment has already been recovered by the plaintiff for the same cause of action.

2. These sham pleas are generally discouraged, and in some cases are treated as a nullity. Barn. & Ald. 197, 199; 5 Id. 750; 1 Barn. & Cr. 286; Archb. Civ. Pl. 249; 1 Chit. Pl. 401.

SHARE. A portion of anything. Sometimes shares are equal, at other times they are unequal.

2. In companies and corporations the whole of the capital stock is usually divided into equal proportions called shares. Shares in public companies have sometimes been held to be real estate, but most usually they are considered as personal property. Wordsw. Jo. Sto. Co. ch. 1 P, p. 288. 3. The proportion which descends to one of several children from his ancestor, is called a share. The term share and share alike, signifies in equal proportions. See Pwrpart.

SHEEP. A wether more than a year old. 4 Car. & Payne, 216; 19 Engl. Com. Law Rep. 331, S. C.

SHELLEY'S CASE. This case, reported in 1 Rep. 93, contains a rule usually known as the rule in Shelley's case, which has caused more commentaries perhaps than any other case. It has been expressed with great precision, though not with much elegance, to be "in any instrument, if a freehold be limited to the ancestor for life, and the inheritance to his heirs, either mediately or immediately, the first taker takes the whole estate; if it be limited to the heirs of his body, he takes a fee tail; if to his heirs a fee simple." Co. Litt. 376, b and Mr. Butler's note, 1; 3 Binn. R. 139 1 Day, Rep. 299; 1 Prest. on Estates, ch. 3; 4 Kent, Com. 206; Cruise, Dig. tit. 32, c. 22; 2 Yeates, R. 410; 1 Hargr. Law Tracts, article "Observations concerning the rule in Shelley's case, chiefly with a view to the application of that rule in Last Wills;" 5 Ohio R. 465.

SHERIFF. The name of the chief officer of the county. In Latin he is called vice comes, because in England he represented the comes or earl. His name is said to be derived from the Saxon seyre, shire or county, and reve, keeper, bailiff, or guardian.

2. The general duties of the sheriff are, 1st. To keep the peace within the county; he may apprehend, and commit to prison all persons who break the peace or attempt to break it, and bind any one in a recognizance to keep the peace. He is required ex officio, to pursue and take all traitors, murderers, felons and rioters. He has the keeping of the county gaol and he is bound to defend it against all attacks. He may command the posse comitatus. (q. v.)

3. − 2d. In his ministerial capacity, the sheriff is bound to execute within his county or bailiwick, all process issuing from the courts of the commonwealth.

4. − 3d. The sheriff also possesses a judicial capacity, but this is very much circumscribed to what it was at common law in England. It is now generally confined to ascertain damages on writs of inquiry and the like.

5. Generally speaking the sheriff has no authority out of his county. 2 Rolle's Rep. 163; Plowd, 37 a. He may, however, do mere ministerial acts out of his county, as making a return. Dalt. Sh. 22. Vide, generally, the various Digests and Abridgments, h. t.; Dalt. Sher.; Wats. Off. and Duty of Sheriff; Wood's Inst. 75; 18 Engl. Com. Law Rep. 177; 2 Phil. Ev. 213; Chit. Pr. Index, h. t.; Chit. Pr. Law, Index, h. t.

SHERIFFALTY. The office of sheriff, the time during which a sheriff is to remain in office.

SHIFTING USE, estates. One which takes effect in derogation of some other estate, and is either limited by the deed creating it, or authorized to be created by some person named in it. This is sometimes called a secondary use.

2. The following is an example: If an estate be limited to A and his heirs, with a proviso that if B pay to A one hundred dollars by a time named, the use to A shall ease, and the estate go to B in fee; the estate is vested in A subject to the shifting or secondary use in fee in B. Again, if the proviso be that C may revoke the use to A, and limit it to B, then A is seised in fee, with a power in C of revocation and limitation of a new use. These shifting uses must be confined within proper limits, so as not to create a perpetuity. 4 Kent, Com. 291; Cornish on Uses, 91; Bac. Ab. Uses and Trusts, K; Co. Litt. 327, a, note Worth on Wills, 419; 2 Bouv. Inst. n. 1890. Vide Use.

SHILLING, Eng. law. The name of an English coin, of the value of one twen−tieth part of a pound. In the United States, while they were colonies, there were coins of this denomination, but they greatly varied in their value.

SHIP. This word, in its most enlarged sense, signifies a vessel employed in navigation; for example, the terms the ship's papers, the ship's hushand, shipwreck, and the like, are employed whether the vessel referred to be a brig, a sloop, or a three−masted vessel.

2. In a more confined sense, it means such a vessel with three masts 4 Wash. C. C. Rep. 530; Wesk. Inst. h. t. p. 514 the boats and rigging; 2 Marsh. Ins. 727 together with the anchors, masts, cables, pullies, and such like objects, are considered as part of the ship. Pard. n. 599; Dig. 22, 2, 44.

3. The capacity of a ship is ascertained by its tonnage, or the space which may be occupied by its cargo. Vide Story's Laws U. S. Index, h. t.; Gordon's Dig. h. t.; Abbott on Ship. Index, h. t.; Park. Ins. Index, h. t.; Phil. Ev. Index, h. t. Bac. Ab. Merchant, N; 3 Kent, Com. 93 Molloy, Jure Mar. Index, h. t.; l Chit. Pr. 91; Whart. Dig. h. t.; 1 Bell's Com. 496, 624; and see General Ships; Names of Ships.

SHIP BROKER. One who transacts business between the owners of vessels and merchants who send cargoes.

SHIP DAMAGES. In the charter parties with the English East India Company, these words occur; their meaning is damage from negligence, insufficiency or bad stowage in the ship. Dougl. 272; Abbott, on Ship. 204.

SHIP'S HUSBAND, mar. law. An agent appointed by the owner of a ship, and invested with authority to make the requisite repairs, and attend to the management, equipment, and other concerns of the ship he is usually authorized to act as the general agent of the owners, in relation to the ship in her home port.

2. By virtue of his agency, he is authorized to direct all proper repairs, equipments and outfits of the ship; to hire the officers and crew; to enter into contraets for the freight or charter of the ship, if that is her usual employment; and to do all other acts necessary and proper to prepare and despatch her for and on ber intended voyage. 1 Liverm. on Ag. 72, 73; Story on Ag. _35.

3. By some authors, it is said the ship's hushand must be a part owner. Hall on Mar. Loans, 142, n.; Abbott on Ship. part 1, c. 3, s. 2. 4. Mr. Bell, Comm. 410, _428, 5t ed. p. 503, points out the duties of the ship's hushand, as follows, namely: 1. To see to the proper outfit of the vessel, in the repairs adequate to the voyage, and in the tackle and furniture necessary for a sea−worthy ship.

5. − 2. To have a proper master, mate, and crew, for the ship, so that, in this respect, it shall be sea−worthy.

6. − 3. To see the due furnishing of provisions and stores, according to the necessities of the voyage.

7. − 4. To see to the regularity of the clearance's from the custom−house, and the regularity of the registry.

8. − 5. To settle the contracts, and provide for the payment of the furnishings which are requisite to the performance of those duties.

9. − 6. To enter into proper charter parties, or engage the vessel for general freight, under the usual conditions; and to settle for freight, and adjust averages with the merchant; and,

10. − 7. To preserve the proper certificates, surveys and documents, in case of future disputes with insurers and freighters and to keep regular books of the ship.

11. These are his general powers, but of course, they may be limited or enlarged by the owners; and it may be observed, that without special authority, he cannot, in general, exercise the following enumerated acts:

1. He cannot borrow money generally for the use of the ship; though, as above observed, he may settle the accounts for furnishings, or grant bills for them, which form debts against the concern, whether or not he has funds in his hands with which he might have paid them. 1 Bell, Com. 411, 499.

12. − 2. Although he may in general, levy the freight which is, by the bill of lading, payable on the delivery of the goods, it would seem that he would not have power to take bills for the freight, and give up the possession of the lien over the cargo, unless it has been so settled by the charter party. Id.

13. − 3. He cannot insure, or bind the owners for premiums. Id.; 5 Burr. 2627; Paley on Ag. by Lloyd, 23, note 8; Abb. on Ship. part 1, c. 3, s. 2; Marsh. Ins. b. 1, c. 8, s. 2; Liv. on Ag. 72, 73.

14. As the power of the master to enter into contracts of affreightments, is superseded in the port of the owners,

so it is by the presence of the ship's hushand, or the knowledge of the contracting parties that a ship's hushand has been appointed. Bell's Com. ut supra.

SHIP'S PAPERS. Those documents which are required on board of neutral ships, as evidence of their neutrality, These are the passports, sea−letter, muster−roll, charter party, bill of lading, invoices, log book, bill of health, register, and papers containing proofs of property. 1 Chit. Com. Law 487.

2. The want of these papers, or either of them, renders the character of a vessel suspicious. Vide Clearance, and 2 Boulay Paty, Dr. Com. 14.

SHIPPER. One who ships or puts goods on board of a vessel, to be carried to another place during her voyage. In general, the shipper is bound to pay for the hire of the vessel, or the freight of the goods. 1 Bouv. Inst. n. 1030.

SHIPPING ARTICLES, contr. mar. law. The act of congress of July 20, 1790, s. 1, directs that a master of any vessel bound from a port in the United States to any foreign port, or of any vessel of fifty tons or upwards, bound from a port in one state to a port in any other than at adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print, with every seaman or mariner on board such vessel, (except such as shall be apprenticed or servant to himself or owners) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped.

2. And by sect. 2, it is required that at the foot of every such coutract, there shall be a memorandum in writing, of the day and the hour on which such seaman or mariner who shall so ship and subscribe, shall render himself on board to begin the voyage agreed upon.

3. This instrument is called the shipping articles. For want of which, the seaman is entitled to the highest wages which have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage within three months next before the time of such shipping, on his performing the service, or during the time he shall continue to do duty on board such vessel, without being bound by the regulations, nor subject to the penalties and forfeitures contained in the said act of congress; and the master is further liable to a penalty of twenty dollars.

4. The shipping articles ought not to contain any clause which derogates from the general rights and privileges of seamen, and if they do, such clause will be declared void. 2 Sumner, 443; 2 Mason, 541.

5. A seaman who signs shipping articles, is bound to perform the voyage, and he has no right to elect to pay damages for non−performance of the contract. 2 Virg. Cas. 276.

Vide, generally, Gilp. 147, 219, 452; 1 Pet. Ad. Dec. 212; Bee, 48; 1 Mason, 443; 5 Mason, 272; 14 John. 260.

SHIPWRECK. The loss of a vessel at sea, either. by being swallowed up by the waves, by running against another vessel or thing at sea, or on the coast. Vide Naufrage; Wreck.

SHIRE, Eng. law. A district or division of country. Co. Lit. 50 a.

SHOP BOOK. This name is given to a book in which a merchant, mechanic, or other person, makes original entries of goods sold or work done.

2. In general, such a book is prima facie evidence of the sale of the goods and of the work done, but not of their value. Vide Original entry.

SHORE. Land on the side of the sea, a lake, or a river, is called the shore. Strictly speaking, however, when the water does not ebb and flow, in a river, there is no shore. See 4 Hill, N. Y. Rep. 375; 6 Cowen, 547; and Seashore.

SHORT ENTRY. A term used among bankers, which takes, place when a note has been sent to a bank for collection, and an entry of it is made in the cus−tomer's bank book, stating the amount in an inner column, and carrying it out into the accounts between the parties when it has been paid.

2. A bill of this kind remains the property of the depositor. 1 Bell's Com. 27l; 9 East, 12; 1 Rose, 153; 2 Rose, 163; 2 B. & Cr. 422; Pull. Mer. Acc. 56.

SI FACERIT TE SECUREM. If he make you secure. These words occur in the form of writs, which originally requited, or still require, that the plaintiff should give security to the sheriff that he will prosecute his claim, before the sheriff can be required to execute such writ.

SICKNESS. By sickness is understood any affection of the body which deprives it temporarily of the power to fulfil iis usual functions.

2. Sickness is either such as affects the body generally, or only some parts of it. Of the former class, a fever is an example; of the latter, blindness. When a process has been issued against an individual for his arrest, the she−riff or other officer is authorized, after he has arrested him, if he be so dangerously sick, that to remove him would endanger his life or health, to let him remain where he found him, and to return the facts at large, or simply

languidus. (q. v.)

SIDE BAR RULES, Eng practice. Rules which were formerly moved for by attorneys on the side bar of the court; but now may be had of the clerk of the rules, upon a praecipe. These rules are, that the sheriff return his writ; that he bring in the body; for special imparlance; to be present at the taxing of costs, and the like.

SIENS. An obsolete word, formerly used for scion, which figuratively signified a person who descended from another. "The sien," says Lord Coke, "takes all his nourishment from the stocke, and yet it produceth his own fruit." Co. Lit. 123 a. Vide Branch.

SIGILLUM. A seal. (q. v.) Vide Scroll.

SIGHT, contracts. Bills of exchange are frequently made payable at sight, that is, on presentment, which might be taken naturally to mean that the bill should then be paid without further delay; but although the point be not clearly settled, it seems the drawee is entitled to the days of grace. Beaw. Lex Mer. pl. 256; Kyd on Bills, 10; Chit. on Bills, 343−4; Bayley on Bills, 42, 109, 110; Selw. N. P. 339.

2. − The holder of a bill payable at sight, is required to use due diligence to put it into circulation, or have it presented for acceptance within a reasonable time. 20 John. 146; 7 Cowen, 705; 12 Pick. 399 13 Mass. 137; 4 Mason, 336; 5 Mason's 118; 1 McCord, 322; 1 Hawks, 195.

3. When the bill is payable any number of days after sight, the time begins to run from the period of presentment and acceptance, and not from the time of mere presentment. 1 Mason, 176; 20 John. 176.

SIGN, contracts, evidence. A token of anything; a note or token given without words.

2. Contracts are express or implied. The express are manifested viva voce, or by writing; the implied are shown by silence, by acts, or by signs.

3. Among all nations find and at all times, certain signs have been considered as proof of assent or dissent; for example, the nodding of the head, and the shaking of hands; 2 Bl. Com. 448; 6 Toull. D. 33; Heinnec., Antiq. lib. 3, t. 23, n. 19; silence and inaction, facts and signs are sometimes very strong evidence of cool reflection, when following a question. I ask you to lend me one hundred dollars, without saying a word you put your hand in your pocket, and deliver me the money. I go into a hotel and I ask the landlord if he can accommodate me and take care of my trunk; without speaking he takes it out of my hands and sends it into his chamber. By this act he doubtless becomes responsible to me as a bailee. At the expiration of a lease, the tenant remains in possession, without any objection from the landlord; this may be fairly interpreted as a sign of a consent that the lease shall be renewed. 13 Serg. & Rawle, 60.

4, The learned author of the Decline and Fall of the Roman Empire, in his 44th chapter, remarks, "Among savage nations, the want of letters is imperfectly supplied by the use of visible signs, which awaken attention, and perpetuate the remembrance of any public or private transaction. The jurisprudence of the first Romans exhibited the scenes of a pantomime; the words were adapted to the gestures, and the slightest error or neglect in the forms of proceeding was sufficient to annul the substance of the fairest claim. The communion of the marriage−life was denoted by the necessary elements of fire and water: and the divorced wife resigned, the bunch of keys, by the delivery of which she had been invested with the government of the family. The manumission of a son, or a slave, was performed by turning him round with a gentle blow on the cheek: a work was prohibited by the casting of a stone; prescription was interrupted by the breaking of a branch; the clenched fist was the symbol of a pledge or deposits; the right hand was the gift of faith and confidence. The indenture of covenants was a broken straw; weights and, scales were introduced into every payment, and the heir who accepted a testament, was sometimes obliged to snap his fingers, to cast away his garments, and to leap and dance with real or affected transport. If a citizen pursued any stolen goods into a neighbor's house, he concealed his nakedness with a linen towel, and hid his. face with a mask or basin, lest he should encounter the eyes of a virgin or a matron. In a civil action, the plaintiff touched the ear of his witness seized his reluctant adversary by the neck and implored, in solemn lamentation, the aid of his fellow−citizens. The two competitors grasped each other's hand, as if they stood prepared for combat before the tribunal of the praetor: he commanded them to produce the object of the dispute; they went, they returned with measured steps, and a clod of earth was cast at his feet to represent the field for which they contended. This occult science of the words and actions of law, was the inheritance of the pontiffs and patricians. Like the Chaldean astrologers, they announced to their clients the days of business and repose; these important trifles wore interwoven with the religion of Numa; and, after the publication of the Twelve Tables, the Roman people were still enslaved by the ignorance of judicial proceedings. The treachery of some plebeian officers at length revealed the profitable mystery: in a more enlightened age, the legal actions were derided and

observed; and the same antiquity which sanctified the practice, obliterated the use and meaning, of this primitive language."

SIGN, measures. In angular measures, a sign is equal to thirty degrees. Vide Measure.

SIGN, mer. law. A board, tin or other substance, on which is painted the name and business of a merchant or tradesman.

2. Every man has a right to adopt such a sign as he may please to select, but he has no right to use another's name, without his consent. See Dall. Dict. mot Propriete Industrielle, and the article Trade marks.

To SIGN. To write one's name to an instrument of writing in order to give the effect intended; the name thus written is called a signature.

2. The signature is usually made at the bottom of the instrument but in wills it has been held that when a testator commenced his will With these words;, "I, A B, make this my will," it was a sufficient signing. 3 Lev. 1; and vide Rob. on Wills, 122 1 Will. on Wills, 49, 50; Chit. Cont. 212 Newl. Contr. 173; Sugd. Vend. 71; 2 Stark. Ev. 605, 613; Rob. on Fr. 121; but this decision is said to be absurd. 1 Bro. Civ. Law, 278, n. 16. Vide Merl. Repert. mot Signature, for a history of the origin, of signatures; and also 4 Cruise, Dig. h. t. 32, c. 2, s. 73, et seq.; see, generally, 8 Toull. n. 94−96; 1 Dall. 64; 5 Whart. R. 386; 2 B. & P 238; 2 M. & S. 286.

3. To sign a judgment, is to enter a judgment for want of something which was required to be done; as, for example, in the English practice, if he who is bound to give oyer does not give it within the time required, in such cases, the adverse party may sign judgment against him. 2 T. R. 40; Com. Dig. Pleader, P 1; Barnes, 245.

SIGNA, civil law. Those species of indicia (q. v.) which come more immediately under the cognizance of the senses, such as stains of blood on the person of one accused of murder, indications of terror at being charged with the offence, and the like.

2. Signa, although not to be rejected as instruments of evidence, cannot always be relied upon as conclusive evidence, for they are frequently explained away; in the instance mentioned the blood may have been that of a beast, and expressions of terror have been frequently manifested by innocent persons who did not possess much firmness. See Best on Pres. 13, n. f.; Denisart, h. v.

SIGNATURE, eccl. law. The name of a sort of rescript, without seal, containing the supplication, the signature of the pope or his delegate, and the grant of a pardon Dict. Dr. Can. h. v.

SIGNATURE, pract. contr. By signature is understood the act of putting down a man's name, at the end of an instrument, to attest its validity. The name thus written is also called a signature.

2. It is not necessary that a party should write his name himself, to constitute a signature; his mark is now beld sufficient though he was able to write. 8 Ad. & El. 94; 3 N. & Per. 228; 3 Curt. 752; 5 John. 144, A signature made by a party, another person guiding his band with his consent, is sufficient. 4 Wash. C. C. 262, 269. Vide to Sign.

SIGNIFICATION, French law. The notice given of a decree, sentence or other judicial act.

SIGNIFICAVIT, eccl. law. When this word is used alone, it means the bishop's certificate to the court of chancery, in order to obtain the writ of excommunication; but where the words writ of significavit are used, the meaning is the same as writ de excommunicato capiendo. 2 Burn's Eccl. L. 248; Shelf. on Mar. & Div. 502.

SILENCE. The state of a person who does not speak, or of one who refrains from speaking.

2. Pure and simple silence cannot be considered as a consent to a contract, except in cases when the silent person is bound in good faith to explain himself, in which case, silence gives consent. 6 Toull. liv. 3, t. 3, n. 32, note; 14 Serg. & Rawle, 393; 2 Supp. to Ves. jr. 442; 1 Dane's Ab. c. 1, art. 4, _3; 8 T. R. 483; 6 Penn. St. R. 336; 1 Greenl. Ev. 201; 2 Bouv. Inst. n. 1313. But no assent will be inferred from a man's silence, unless, 1st. He knows his rights and knows what he is doing and, 2d. His silence is voluntary.

3. When any person is accused of a crime, or charged with any fact, and he does not deny it, in general, the presumption is very strong that the charge is correct. 7 C. & P. 832 5 C. & P. 332; Joy on Conf. s. 10, p. 77.

4. The rule does not extend to the silence of a prisoner, when on his exanination before a magistrate he is charged by another prisoner with having joined him in the commission of an offence: 3 Stark. C. 33.

5. When an oath is administered to a witness, instead of expressly promising to keep it, he gives his assent by his silence, and kissing the book.

6. The person to be affected by the silence must be one not disqualified to act as non compos, an infant, or the like, for even the express promise of such a person would not bind him to the performance of any contract.

7. The rule of the civil law is that silence is not an acknowledgment or denial in every case, qui tacet, non utique

fatetur: sed tamen verum est, eum non negaro. Dig. 50, 17, 142.

SILVA CAEDUA. By these words in England is understood every sort of wood, except gross wood of the age of twenty years. Bac. Ab. Tythes, C.

SIMILITER, pleading. When the defendant's plea contains a direct contradiction of the declaration, and concludes with referring the matter to be tried by a jury of the country, the plaintiff must do so too; that is, he must also submit the matter to be tried by a jury, without offering any new answer to it, and must stand or fall by his declaration. Co. Litt. 126 a. In such case, he merely replies that as the defendant has put himself upon the country, that is, has submitted his cause to be tried by a jury of the country, he, the plaintiff, does so likewise, or the like. Hence this sort of replication is called a similiter, that having been the effective word when the proceedings were in Latin. 1 Chit. Pl. 549; Arch. Civ. Pl. 250. See Steph. Pl. 255; 2 Saund. 319, b; Cowp. 407; 1 Str. Rep. 551; 11 S. & R. 32.

SIMONY, eccl. law. The selling and buying of holy orders, or an ecclesiastical benefice. Bac. Ab. h. t.; 1 Harr. Dig. 556. By simony is also understood an unlawful agreement to receive a temporal reward for something holy or spiritual. Code, 1, 3, 31 Ayl. Parerg. 496.

SIMPLE. Not compounded, alone; as, simple interest, which is interest on the principal sum lent only and not interest on the interest; simple contract, &c.

SIMPLE CONTRACT. One, the evidence of which is merely oral, or in writing, not under seal, nor of record. 1 Chit. Contr. 1 1 Chit. Pl. 88; and vide 11 Mass. R. 30 ll East, R. 312; 4 Barn. & Ald. 588; Stark. Ev. 995; 2 Bl. Com. 472.

2. As contracts of this nature are frequently entered into without thought or proper deliberation, the law requires that there be some good cause, consideration or motive, before they can be enforced in the courts. The party making the promise must have obtained some advantage, or the party to whom it is made must have sustained some injury or inconvenience in consequence of such promise; this rule has been established for the purpose of protecting weak and thoughtless persons from the consequences of rash, improvident, and inconsiderate engageinents. See Nudum pactum. But it must be recollected this rule does not apply to promissory notes, bills of exchange or commercial papers. 3 M. & S. 352.

SlMPLE LARCENY. The felonious taking and carrying away the personal goods of another, unattended by acts of violence; it is distinguished from compound larceny, which is the stealing from the person or with violence.

SIMPLE OBLIGATION. An unconditional obligation, one which is to be performed without depending upon any event provided by the parties to it.

SIMPLE TRUST. A simple trust corresponds with the ancient use, and is where property is simply vested in one person for the use of another, and the nature of the trust, not being qualified by the settler, is left to the construction of law. It differs from a special trust. (q. v.) 2 Bouv. Inst. n. 1896.

SIMPLEX. Simple or single; as, charta simplex, is a deed−poll, of single deed. Jacob's L. Dict. h. t.

SIMPLICITER. Simply, without ceremony; in a summary manner.

SIMUL CUM, pleading. Together with. These words are used in indictments and declarations of trespass against several persons, when some of them are known and others are unknown.

2. In cases of riots it is usual to charge that A B, together with others unknown, did the act complained of. 2 Chit. Cr. Law, 488; 2 Salk. R. 593.

3. When a party sued with another pleads separately, the plea is generally entitled in the name of the person pleading, adding "sued with___," naming the other party. When this occurred, it was, in the old phraseology, called pleading with a simul cum.

SIMULATION, French law. This word is derived from the Latin simul, together. It indicates, agreeably to its etymology, the concert or agreement of two or more persons to give to one thing the appearance of another, for the purpose of fraud. Merl. Repert. h. t.

2. With us such act might be punished by indictment for a conspiracy; by avoiding the pretended contract; or by action to recover back the money or property which may have been thus fraudulently obtained.

SINE DIE. Without day. A judgment for a defendant in many cases is quod eat sine die, that he may go without day. While the cause is pending and undeter−mined, it may be continued from term to term by dies datus. (q. v.) See Huxley's Judgments & Rastal's Entries, passim; Co. Litt. 362b & 363a. When the court or other body rise at the end of a session or term they adjourn sine die.

SINECURE. In the ecclesiastical law, this term is used to signify that an ecclesiastical officer is without a charge

or cure.

2. In common parlance it means the receipt of a salary for an office when there are no duties to be performed.

SINGLE. By itself, unconnected.

2. A single bill is one without any condition, and does not depend upon any future event to give it validity. Single is also applied to an unmarried person; as, A B, single woman. Vide Simplex.

SINGLE ENTRY. A term used among merchants signifying that the entry is made to charge or to credit an individual or thing, without, at the same time, pre−senting any other part of the operation; it is used in contradistinction to double entry. (q. v.) For example, a single entry is made, A B debtor, or A B creditor, without designating what are the connexions between the entry and the objects which composed the fortune of the merchant.

SINGULAR, construction. In grammar the singular is used to express only one, not plural. Johnson.

2. In law, the singular frequently includes the plural. A bequest to "my nearest relation," for example, will be considered as a bequest to all the relations in the same degree, who are nearest to the testator. 1 Ves. sen. 337; 1 Bro. C. C. 293. A bequest made to "my heir," by a person who had three heirs, will be construed in the plural. 4 Russ. C. C. 384.

3. The same rule obtains in the civil law: In usu juris frequenter uti nos singulari appellationie, am plura significari vellemus. Dig. 50, l6, 158.

SINKING FUND. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. See Funding System.

SIRE. A title of honor given to kings or emperors in speaking or writing to them.

SISTER. A woman who has the same father and mother with another, or has one of them only. In the first case she is called sister, simply; in the second, half sister. Vide Brother; Children; Descent; Father; Mother.

SITUS. Situation;, location. 5 Pet. R. 524.

2. Real estate has always a fixed situs, while personal estate has no such fixed situs; the law rei site regulates real but not the personal estate. Story, Confl. of Laws, _379.

SKELETON BILL, com. law. A blank paper, properly stamped, in those countries where stamps are required, with the name of a person signed at the bottom.

2. In such case the person signing the paper will be held as the drawer or acceptor, as it may be, of any bill which shall afterwards be written above his name to the sum of which the stamp is applicable. 1 Bell’s Com. 390, 5th ed.

SKILL, contracts. The art of doing a thing as it ought to be done.

2. Every person who purports to have skill in la business, and undertakes for hire to perform it, is bound to do it with ordinary skill, and is res−ponsible civilly in damages for the want of it; 11 M. & W. 483; and sometimes he is responsible criminally. Vide Mala Praxis; 2 Russ. on Cr. 288,

3. The degree of skill and diligence required, rises in proportion to the value of the article, and the delicacy of the operation: more skill is required, for example, to repair a very delicate mathematical instrument, than upon a common instrument. Jones’ Bailm. 91; 2 Kent, Com. 458, 463; 1 Bell’s Com. 459; 2 Ld. Raym. 909, 918; Domat, liv. 1, t. 4, _8, n. 1; Poth. Louage, n. 425; Pardess. n. 528; Ayl. Pand. B. 4, t. 7, p. 466; Ersk. Inst. B. 3, t. 3, _16; 1 Rolle, Ab. 10; Story’s Bailm. _431, et seq.; 2 Greenl. Ev. _144.

SLANDER, torts. The defaming a man in his reputation by speaking or writing words which affect his life, office, or trade, or which tend to his loss of preferment in marriage or service, or in his inheritance, or which occasion any other particular damage. Law of Nisi Prius, 3. In England, if slander be spoken of a peer, or other great man, it is called Scandalum Magnatum. Falsity and malice are ingredients of slander. Bac. Abr. Slander. Written or printed slanders are libels; see that word.

2. Here it is proposed to treat of verbal slander only, which may be considered with reference to, 1st. The nature of the accusation. 2d. The falsity of the charge. 3d. The mode of publication. 4th. The occasion; and 5th. The malice or motive of the slander.

3. − _1. Actionable words are of two descriptions; first, those actionable in themselves, without proof of special damages and, secondly, those actionable only in respect of some actual consequential damages.

4. − 1. Words of the first description must impute: 1st. The guilt of some offence for which the party, if guilty, might be indicted and punished by the criminal courts; as to call a person a "traitor," "thief," "highwayman;" or to say that he is guilty of "perjury," "forgery," "murder," and the like. And although the imputation of guilt be

general, without stating the particulars of the pretended crime, it is actionable. Cro. Jac. 114, 142; 6 T. R. 674; 3 Wils. 186; 2 Vent. 266; 2 New Rep. 335. See 3 Serg. & Rawle, 255 7 Serg. & Rawle, 451; 1 Binn. 452; 5 Binn. 218; 3 Serg. & Rawle, 261; 2 Binn. 34; 4 Yeates, 423; 10 Serg. & Rawle, 44; Stark. on Slander, 13 to 42; 8 Mass. 248; 13 Johns. 124; Id. 275.

5. − 2d. That the party has a disease or distemper which renders him unfit for society. Bac. Abr. Slander, B 2. An action can therefore be sustained for calling a man a leper. Cro. Jac. 144 Stark. on Slander, 97. But charging another with having had a contagious disease is not actionable, as he will not, on that account, be excluded from society. 2 T. R. 473, 4; 2 Str. 1189; Bac. Abr. tit. Slander, B 2. A charge which renders a man ridiculous, and impairs the enjoyment of general society, and injures those imperfect rights of friendly intercourse and mutual benevolence which man has with respect to man, is also actionable. Holt on Libels, 221.

6. − 3d. Unfitness in an officer, who holds an office to which profit or emolument is attached, either in respect of morals or inability to discharge the duties of the office in such a case an action lies. 1 Salk. 695, 698; Rolle, Ab. 65; 2 Esp. R. 500; 5 Co. 125; 4 Co. 16 a; 1 Str. 617; 2 Ld. Raym. 1369; Bull. N. P. 4; Holt on Libels, 207; Stark. on Slander, 100.

7. − 4th. The want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business, in which the party is engaged, is actionable, 1 Mal. Entr. 244 as to accuse an attorney or artist of inability, inattention, or want of integrity; 3 Wils. 187; 2 Bl. Rep. 750; or a clergyman of being a drunkard; 1 Binn. 178; is actionable. See Holt on Libels, 210; Id. 217.

8. − 2. Of the second class are words which are actionable only in respect of special damages sustained by the party slandered. Though the law will not permit in these cases the inference of damage, yet when the damage has actually been sustained, the party aggrieved may support an action for the publication of an untruth; 1 Lev. 53; 1 Sid. 79, 80; 3 Wood. 210; 2 Leon. 111; unless the assertion be made for the assertion of a supposed claim; Com. Dig. tit. Action upon the case for Defamation, D 30; Bac. Ab. Slander, B; but it lies if maliciously spoken. See 1 Rolle, Ab. 36 1 Saund. 243 Bac. Abr. Slander, C; 8 T. R. 130 8 East, R. 1; Stark. on Slander, 157.

9. − _2. The charge must be false; 5 Co. 125, 6; Hob. 253; the falsity of the accusation is to be implied till the contrary is shown. 2 East, R. 436; 1 Saund. 242. The instance of a master making an unfavorable representation of his servant, upon an application for his character, seems to be an exception, in that case there being a presumption from the occasion of the speaking, that the words were true. 1 T. R. 111; 3 B. & P. 587; Stark. on Slander, 44, 175, 223.

10. − _3. The slander must, of course, be published, that is, communicated to a third person; and if verbal, then in a language which he understands, otherwise the plaintiff's reputation is not impaired. 1 Rolle, Ab. 74; Cro. Eliz. 857; 1 Saund. 2425 n. 3; Bac. Abr. Slander, D 3. A letter addressed to the party, containing libelous matter, is not sufficient to maintain a civil action, though it may subject the libeler to an indictment, as tending to a breach of the peace; 2 Bl. R. 1038; 1 T. R. 110; 1 Saund. l32, n. 2; 4 Esp. N. P. R. 117; 2 Esp. N. P. R. 623; 2 East, R. 361; the slander must be published respecting the plaintiff; a mother cannot maintain an action for calling her daughter a bastard. 11 Serg. & Rawle, 343. As to the case of a man who repeats the slander invented by another, see Stark. on Slander, 213; 2 P. A. Bro. R. 89; 3 Yeates, 508; 3 Binn. 546.

11. − _4. To render words actionable, they must be uttered without legal occasion. On some occasions it is justifiable to utter slander of another, in others it is excusable, provided it be uttered without express malice. Bac. Ab. Slander, D 4; Rolle, Ab. 87; 1 Vin. Ab. 540. It is justifiable for au attorney to use scandalizing expressions in support of his client's cause and pertinent thereto. 1 M. & S. 280; 1 Holt's R. 531; 1 B. & A. 232; see 2 Serg. & Rawle, 469; 1 Binn. 178; 4 Yeates, 322; 1 P. A. Browne's R. 40; 11 Verm. R. 536; Stark. on Slander, 182. Members of congress and other legislative assemblies cannot be called to account for anything said in debate.

12. − _5. Malice is essential to the support of an action for slanderous words. But malice is in general to be presumed until the contrary be proved; 4 B. & C. 247; 1 Saund. 242, n. 2; 1 T. R. 1 11, 544; 1 East, R. 563; 2 East, R. 436; 2 New Rep. 335; Bull. N. P. 8; except in those cases where the occasion prima facie excuses the publication. 4 B. & C. 247. See 14 Serg. & Rawle, 359; Stark. on Slander, 201. See, generally, Com. Dig. tit. Action upon the case for Defamation; Bac. Abr. Slander; 1 Vin. Abr. 187; 1 Phill. Ev. ch. 8; Yelv. 28, n.; Doctr. Plac. 53 Holt's Law of Libels; Starkie on Slander, Ham. N. P. ch. 2, s. 3.

SLANDERER. A calumniator, who maliciously and without reason imputes a crime or fault to another, of which he is innocent.

2. For this offence, when the slander is merely verbal, the remedy is an action on the case for damages; when it

is reduced to writing or printing, it is a libel. (q. v.)

SLAVE. A man who is by law deprived of his liberty for life, and becomes the property of another.

2. A slave has no political rights, and generally has no civil rights. He can enter into no contract unless specially authorized by law; what he acquires generally, belongs to his master. The children of female slaves follow the condition of their mothers, and are themselves slaves.

3. In Maryland, Missouri and Virginia slaves are declared by statute to be personal estate, or treated as such. Anth. Shep. To. 428, 494; Misso. Laws, 558. In Kentucky, the rule is different, and they are considered real estate. 1 Kty. Rev. Laws, 566 1 Dana's R. 94.

4. In general a slave is considered a thing and not a person; but sometimes he is considered as a person; as when he commits a crime; for example, two white persons and a slave can commit a riot. 1 McCord, 534. See Person.

5. A slave may acquire his freedom in various ways: 1. By manumission, by deed or writing, which must be made according to the laws of the state where the master then acts. 1 Penn. 10; 1 Rand. 15. The deed may be absolute which gives immediate freedom to the slave, or conditional giving him immediate freedom, and reserving a right of service for a time to come; 6 Rand. 652; or giving him his freedom as soon as a certain condition shall have been fulfilled. 2 Root, 364; Coxe, 4. 2. By manumission by will. When there is an express emancipation by will, the slave will be free, and the testator's real estate shall be charged with the payment of his debts, if there be not enough personal property without the sale of the slaves. 9 Pet. 461. See Harper, R. 20. The manumission by will may be implied, as, where the master devises property real or personal to his slave. 2 Pet; 670; 5 Har. & J. 190. 3. By the removal of the slave with the consent of the master, animo morandi, into one of the United States where slavery is forbidden by law; 2 Mart. Lo. Rep. N. J. 401; or when he sojourns there longer than is allowed by the law of the state. 7 S. & R. 378; 1 Wash. C. C. Rep. 499. Vide Stroud on Slavery; Bouv. Inst. Index, h. t.; and as to the rights of one who, being free, is held as a slave, 2 Gilman, 1; 3 Yeates, 240.

SLAVE TRADE, criminal law. The infamous traffic in human flesh, which though not prohibited by the law of nations, is now forbidden by the laws and treaties of most civilized states.

2. By the constitution of the United States, art. 1, s. 9, it is provided, that the "migration or importation of such persons as any of the states now existing (in 1789,) shall think proper to admit, shall not be probibited by the congress, prior to the year one thousand eight hundred and eight." Previously to that date several laws were enacted, which it is not within the plan of this work to cite at large or to analyze; they are here referred to, namely; act of 1794, c. 11, 1 Story's laws U. S. 319; act of 1800, c. 51, 1 Story's Laws U. S. 780 act of 1803, c. 63, 2 Story's Laws U. S 886; act of 1807, c. 77, 2 Story's Laws U. S. 1050; these several acts forbid citizens of the United States, under certain circumstances, to equip or build vessels for the purpose of carrying on the slave trade, and the last mentioned act makes it highly penal to import slaves into the United States after the first day of January, 1808. The act of 1818, c. 86, 3 Story's Laws U. S. 1698 the act of 1819, c. 224, 3 Story's Laws U. S. 1752; and the act of 1820, c. 113, 3 Story's Laws U. S. 1798, contain further prohibition of the slave trade , and punish tho violation of their several provisions with the highest penalties of the law. Vide, generally, 10 Wheat. R. 66; 2 Mason, R. 409; 1 Acton, 240; 1 Dodson, 81, 91, 95; 2 Dodson, 238; 6 Mass. R. 358; 2 Cranch, 336; 3 Dall. R. 297; 1 Wash. C. C. Rep. 522; 4 Id. 91; 3 Mason, R. 175; 9 Wheat. R. 391; 6 Cranch, 330; 5 Wheat. R. 338; 8 Id. 380; 10 Id. 312; 1 Kent, Com. 191.

SLAVERY. The state or condition of a slave.

2. Slavery exists in most of the southern states. In Pennsylvania, by the act of March, 1780, for the gradual abolition of slavery, it has been almost entirely removed in Massachusetts it was held, soon after the Revolution, that slavery had been abolished by their constitution; 4 Mass. 128; in Connecticut, slavery has been totally extinguished by legislative provisions; Reeve's Dom. Bel. 340; the states north of Delaware, Maryland and the river Ohio, may be considered as free States, where slavery is not tolerated. Vide Stroud on Slavery; 2 Kent, Com. 201; Rutherf. Inst. 238.

SMUGGLING. The fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited. Bac. Ab. h. t.

SO HELP YOU GOD. The formula at the end of a common oath, as administered to a witness wlio testifies in chief.

SOCAGE, Eng. law. A tenure of lands by certain inferior services in husbandry, and not knight's service, in lieu of all other services. Litt. sect. 117.

SOCER. The father of one's wife; a father−in−law.

SOCIDA, civ. law. This is the name of a contract by which one man delivers to another, either for a small recompense, or for a part of the profits, certain animals, on condition that if any of them perish they shall be replaced by the bailer, or he shall pay their value.

2. This is a contract of hiring, with this condition, that the bailee takes upon him the risk of the loss of the thing hired. Wolff, _638.

SOCIETAS LEONINA. Among the Roman lawyers this term signified that kind of society or partnership by which the entire profits should belong to some of the partners in exclusion of the rest.

2. It was so called in allusion to the fable of the lion and other animals, who having entered into partnership for the purpose of hunting, the lion appropriated all the prey to himself. Dig. 17, 2, 29, 2; Poth. Traite de Societe, n. 12. See 2 McCord's R. 421; 6 Pick. 372.

SOCIETE EN COMMENDITE. This term is borrowed from the laws of France, and is used in Louisiana; the societe en commendite, or partnership in commendam, is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Civ. Code of Lo. art. 2810; Code de Comm. 26, 33; 4 Pard. Dr. Com. n. 1027; Dall. Dict. mots Societe Commerciale, n. 166. Vide Commendam; Partnership.

SOCIETY. A society is a number of persons united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose.

2. Societies are either incorporated and known to the law, or unincorporated, of which the law does not generally take notice.

3. By civil society is usually understood a state, (q. v.) a nation, (q. v.) or a body politic. (q. v.) Rutherf. Inst. c. 1 and 2.

4. In the civil law, by society is meant a partnership. Inst. 3, 26; Dig. 17, 2 Code, 4, 37.

SODOMITE. One who his been guilty of sodomy. Formerly such offender was punished with great severity, and was deprived of the power of making a will.

SODOMY, crim. law. The crime against nature, committed either with man or beast.

2. It is a crime not it to be named; peccatum illud horrible, inter christianos non nominandum. 4 Bl. Com. 215; 1 East, P. C. 480, 487; Bac. Ab. h. t.; Hawk. b. 1, c. 4; 1 Hale, 669; Com. Dig. Justices, S 4; Russ. & Ry. 331.

3. This crime was punished with great severity by the civil law. Nov. 141; Nov. 77; Inst. 4, 18, 4. See 1 Russ. on Cr. 568; R. & R. C. C. 331, 412; 1 East, P. C. 437.

SOIL. The superficies of the earth on which buildings are erected, or may be erected.

2. The soil is the principal, and the building, when erected, is the accessory. Vide Dig. 6, 1, 49.

SOIT DROIT FAIT AL PARTIE, Eng. law. Let right be done to the party. This phrase is written on a petition of right, and subscribed by the king. See Petition of right.

SOKEMANS, Eng. law. Those who hold their land in socage. 2 Bl. Com. 100.

SOLARES, Spanish law. Lots of ground. This term is frequently found in grants from the Spanish government of lands in America. 2 White's Coll. 474.

SOLD NOTE, contracts. The name of an instrument in writing, given by a broker to a buyer of merchandise, in which it is stated that the goods therein mentioned have been sold to him. 1 Bell's Com. 5th ed. 435 Story on Ag. _28. Some confusion may be found in the books as to the name of these notes; they are sometimes called bought notes. (q. v.)

SOLDIER. A military man; a private in the army.

2. The constitution of the United States, amendm. art. 3, directs that no soldier shall, in time of peace, be quartered in any house, without the 'consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SOLE. Alone, single; used in contradistinction to joint or married. A sole tenant, therefore, is one who holds lands in his own right, without being joined with any other. A feme sole is a single woman; a sole corporation is one composed of only one natural person.

SOLEMNITY. The formality established by law to render a contract, agreement, or other act valid.

2. A marriage, for example, would not be valid if made in jest, and without solemnity. Vide Marriage, and Dig.

4, 1, 7; Id. 45, 1, 30.

SOLICITATION OF CHASTITY. The asking a person to commit adultery or fornication.

2. This of itself, is not an indictable offence. Salk. 382; 2 Chit. Pr. 478. The contrary doctrine, bowever, has been held in Connecticut. 7 Conn. Rep. 267.

3. In England, the bare solicitation of chastity is punished in the ecclesiastical courts. 2 Chit. Pr. 478. Vide Str. 1100; 10 Mod. 384; Sayer, 33; 1 Hawk. ch. 74; 2 Ld. Raym. 809.

4. The civil law punished arbitrarily the person who solicited the chastity of another. Dig. 47, 11, 1. Vide To persuade; 3 Phill. R. 508.

SOLICITOR. A person whose business is to be employed in the care and management of suits depending in courts of chancery.

2. A solicitor, like an attorney, (q. v.) will be required to act with perfect good faith towards his clients. He must conform to the authority given him. It is said that to institute a suit he must have a special authority, although a general authority will be sufficient to defend one. The want of a written authority, may subject him to the expenses incurred in a suit. 3 Mer. R. 12; Hov, Fr. ch. 2, p. 28 to 61. Vide 1 Phil. Ev. 102; 19 Vin. Ab. 482; 7 Com. ]big. 357; 8 Com. Dig. 985; 2 Chit. Pr. 2. See Attorney at law; Counsellor at law; Proctor.

SOLICITOR OP THE TREASURY. The title of one of the officers of the United States, created by the act of May 29, 1830, 4 Sharsw. cont. of Story, L. U. S. 2206, which prescribes his duties aud his rights.

2. − 1. His powers and duties are, 1. Those which were by law vested and required from the agent of the treasury of the United States. 2. Those which theretofore belonged to the commissioner, or acting commissioner of the revenue, as relate to the superintendence of the collection of outstanding direct and internal duties. 3. To take charge of all lands which shall be conveyed to the United States, or set off to them in payment of debts, or which are vested in them by mortgage or other security; and to release such lands which had, at the passage of the act, become vested in the United States, on payment of the debt for which they were received. 4. Generally to superintend the collection of debts due to the United States, and receive statements from different officers in relation to suits or actions commenced for the recovery of the same. 5. To instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings appertaining to suits in which the United States are a party or interested, and to cause them to report to him any information he may require in relation to the same. 6. To report to the proper officer from whom the evidence of debt was received, the fact of its having been paid to him, and also all credits which have by due course of law been allowed on the same. 7. To make rules for the government of collectors, district attorneys and marshals, as may be requisite. 8. To obtain from the district attorneys full accounts of all suits in their hands, and submit abstracts of the same to congress.

3. − 2. His rights are, 1. To call upon the attorney−general of the United States for advice and direction as to the manner of conducting the suits, proceedings and prosecutions aforesaid. 2. To receive a salary of three thousand five hundred dollars per annum. 3. To employ, with the approbation of the secretary of the treasury, a clerk, with a salary of one thousand five hundred dollars; and a messenger, with a salary of five hundred dollars. To receive and send all letters, relating to the business of his office, free of postage.

SOLIDO, IN, civil law. In solido, is a term used to designate those contracts in which the obligors are bound, jointly and severally, or in which several obligees are each entitled to demand the whole of what is due.

2. − 1. There is an obligation in solido on the part of debtors, when they are all obliged to the same thing, so that each may be compelled to pay the whole, and when the payment which is made by one of them, exonerates the others towards the creditor.

3. − 2. The obligation is in solido, or joint and several between several creditors, when the title expressly gives to each of them the right of demanding payment of the total of what is due, and when the payment to any one of them discharges the debtor. Civ. Code of La. 2083,2086; Merl. Repert. h. t.; Domat, Index, h. t. See In solido.

SOLITARY IMPRISONMENT. The punishment of separate confinement. This has been adopted in Pennsylvania, with complete success. Vide Penitentiary.

SOLUTION, civil law. Payment.

2. By this term, is understood, every species of discharge or liberation, which is called satisfaction, and with which the creditor is satisfied. Dig. 46, 3, 54; Code 8, 43, 17; Inst. 3, 30. This term has rather a reference to the substance of the obligation, than to the numeration or counting of the money. Dig. 50, 16, 176. Vide Discharge of a contract.

SOLVENCY. The state of a person who is able to pay all his debts; the opposite of insolvency. (q. v.)

SOLVENT. One who has sufficient to pay his debts, and all obligations. Dig. 50, 16, 114.

SOLVERE. To unbind; to untie; to release; to pay; solvere dicimus eum qui fecit quod facere promisit. 1 Bouv. Inst. n. 807.

SOLVIT AD DIEM, pleading. The name of a plea to an action on a bond, or other obligation to pay money, by which the defendant pleads that he paid the money on the day it was due. Vide 1 Stra. 652; Rep. Temp. Hardw. 133; Com. Dig. Pleader, 2 W 29.

2. This plea ought to conclude with an averment, and not to the country. 1 Sid. 215; 12 John. R. 253; vide 2 Phil. Ev. 92; Coxe, R. 467.

SOLVITPOSTDIEM, pleading. The name of a special plea in bar to an action of debt on a bond, by which the defendant asserts that he paid the money after the day it became due. 1 Chit. Pl. 480, 555; 2 Phil. Ev. 93.

SOMNAMBULISM, med. juris. Sleep walking.

2. This is sometimes an inferior species of insanity, the patient being unconscious of what he is doing. A case is mentioned of a monk who was remarkable for simplicity, candor and probity, while awake, but who during his sleep in the night, would steal, rob, and even plunder the dead. Another case is related of a pious clergyman, who during his sleep, would plunder even his own church. And a case occurred in Maine, where the somnambulist attempted to hang himself, but fortunately tied the rope to his feet, instead of his neck. Ray. Med. Jur. _294.

3. It is evident, that if an act should be done by a sleep walker, while totally unconscious of his act, he would not be liable to punishment, because the intention (q. v.) and will (q. v.) would be wanting. Take, for example, the following singular case: A monk late one evening, in the presence of the prior of the convent, while in a state of somnambulism, entered the room of the prior, his eyes open but fixed, his features contracted into a frown, and with a knife in his hand. He walked straight up to the bed, as if to ascertain if the prior were there, and then gave three stabs, which penetrated the bed clothes, and a mat which served for the purpose of a mattress; he returned. with an air of satisfaction, and his features relaxed. On being questioned the next day by the prior as to what he had dreamed the preceding night, the monk confessed he had dreamed that his mother had been murdered by the prior, and that her spirit had appeared to him and cried for vengeance, that he was transported with fury at the sight, and ran directly to stab the assassin; that shortly after be awoke covered with perspiration, and rejoiced to find it was only a dream. Georget, Des Maladies Mentales, 127.

4. A similar case occurred in England, in the last century. Two persons, who had been hunting in the day, slept together at night; one of them was renewing the chase in his dream, and, imagining himself present at the death of the stag, cried out aloud, "I'll kill him! I'll kill him!" The other, awakened by the noise, got out of bed, and, by the light of the moon, saw the sleeper give several deadly stabs, with a knife, on the part of the bed his companion had just quitted. Harvey's Meditations on the Night, note 35; Guy, Med. Jur. 265.

SON, kindred. An immediate male descendant. In its technical meaning in devises, this is a word of purchase, but the testator may make it a word of descent. Sometimes it is extended to more remote descendants.

SON ASSAULT DEMESNE, pleading. His own first assault. A form of a plea to justify an assault and battery, by whicb the defendant asserts that the plaintiff committed an assault upon him, and the defendant merely defended himself.

2. When the plea is supported by evidence, it is a sufficient justification, unless the retaliation by the defendant were excessive, and bore no proportion to the necessity, or to the provocation received. 1 East, P. C. 406; 1 Chit. Pr. 595.

SON−IN−LAW, in Latin called gener. The hushand of one's daughter.

SOUND MIND. That state of a man's mind which is adequate to reason and comes to a judgment upon ordinary subjects, like other rational men.

2. The law presumes that every person who has acquired his full age is of sound mind, and consequently competent to make contracts and perform all his civil duties; and he who asserts to the contrary must prove the affirmation of his position by explicit evidence, and not by conjectural proof. 2 Hagg Eccl. R. 434; 3 Addams' R. 86; 8 Watts, R. 66; Ray, Med. Jur. _92; 3 Curt. Eccl. R. 671. Vide Unsound mind.

SOUNDING IN DAMAGES. When an action is brought, not for the recovery of lands, goods, or sums of money, (as is the case in real or mixed actions, or the personal action of debt or detinue,) but for damages only, as in covenant, trespass, &c., the action is said to be sounding in damages. Steph. Pl. 126, 127.

SOUNDNESS. In usual health; without any permanent disease. 1 Carr. & Marsh. 291. To create unsoundness, it

is requisite that the animal should not be useful for the purpose for which he is bought, and that inability to be so useful should arise from disease or accident. 2 M. & Rob. 137; 9 M. & W. 670. 2 M. & Rob. 113.

2. In the sale of slaves and animals they are sometimes warranted by the seller to be sound, and it becomes important to ascertain what is soundness. Roaring; (q. v.) a temporary lameness, which renders a horse less fit for service; 4 Campb. 271; sed vide 2 Esp. Cas. 573; a cough, unless proved to be of a temporary nature; 2 Chit. R. 245, 416; and a nerved horse, have been held to be unsound. But crib−biting is not a breach of a general warranty of soundness. Holt, Cas. 630.

3. An action on the case is the proper remedy for a verbal warrant of soundness. 1 H. Bl. R. 17; 3 Esp. 82; 9 B. & Cr. 259; 2 Dow. & Ry. 10; 1 Bing. 344; 5 Dow. & R. 164; 1 Taunt. 566; 7 East, 274; Bac. Ab. Action on the Case, E.

SOURCES OF THE LAW. By this expression is understood the authority from which the laws derive their force.

2. The power of making all laws is in the people or − their representatives, and none can have any force whatever, which is derived from any other source. But it is not required that the legislator shall expressly pass upon all laws, and give the sanction of his seal, before they can have life or existence. The laws are therefore such as have received ala express sanction, and such as de−rive their force and effect from implication. The first, or express, are the constitution of the United States, and the treaties and acts of the legislature which have been made by virtue of the authority vested by the constitution. To these must be added the constitution of the state and the laws made by the state legislature, or by other subordinate legislative bodies, by virtue of the authority conveyed by such constitution. The latter, or tacit, received their effect by the general use of them by the people, when they assume the name of customs by the adoption of rules by the courts from systems of foreign laws.

3. The express laws, are first, the constitution of the United States; secondly, the treaties made with foreign powers; thirdly, the acts of congress; fourthly, the constitutions of the respective states; fifthly, the laws made by the several state legislatures; sixthly, laws made by inferior legislative bodies, such as the councils of municipal corporations, and general rules made by the courts.

4. − 1. The constitution is an act of the people themselves, made by their representatives elected for that purpose. It is the supreme law of the land, and is binding on all future legislative bodies, until it shall be altered by tho authority of the people, in the manner, provided for in the instrument itself, and if an act be passed contrary to the provisions of the constitution, it is, ipso facto, void. 2 Pet. 522; 12 Wheat. 270; 2 Dall. 309; 3 Dall. 386; 4 Dall. 18; 6 Cranch, 128.

5. − 2. Treaties made under the authority of the constitution are declared to be the supreme law of the land, and therefore obligatory on courts. 1 Cranch, 103. See Treaty.

6. − 3. The acts and resolutions of congress enacted constitutionally, are of course binding as laws and require no other explanation.

7. − 4. The constitutions of the respective states, if not opposed to the provisions of the constitution of the United States, are of binding force in the states respectively, and no act of the state legislature has any force which is made in contravention of the state constitution.

8. − 5. The laws of the several states, constitutionally made by the state legislatures, have full and complete authority in the respective states.

9. − 6. Laws are frequently made by inferior legislative bodies which are authorized by the legislature; such are the municipal councils of cities or boroughs. Their laws are generally known by the name of ordinances, and, when lawfully ordained, they are binding on the people. The courts, perhaps by a necessary usurpation, have been in the practice of making general rules and orders, which sometime affect suitors and parties as much as the most regular laws enacted by congress. These apply to all future cases. There are also rules made in particular cases as they arise, but these are rather decrees or judgments than laws.

10. The tacit laws, which derive their authority from the consent of the people, without any legislative enactment, may be subdivided into 1st. The common law, which is derived from two sources, the common law of England, and the practice and decisions of our own courts. It is very difficult, in many cases, to ascertain what is this common law, and it is always embarrassing to the courts. Kirl. Rep. Pref. In some states, it has been enacted that the common law of England shall be the law, except where the same is inconsistent with our constitutions and laws. See Law.

2d. Customs which have been generally adopted by the people, have the force of law.

3d. The principles of the Roman law, being generally founded in superior wisdom, have insinuated themselves

into every part of the law. Many of the refined rules which now adorn the common law appear there without any acknowledgment of their paternity, and it is at this source that some judges dipt to get the wisdom which adorns their judgments. The proceedings of the courts of equity and many of the admirable distinctions which manifest their wisdom are derived from this source. To this fountain of wisdom the courts of admiralty owe most of the law which governs in admiralty cases.

4th. The canon law, which was adopted by the ecclesiastical courts, figures in our laws respecting marriage, divorces, wills and testaments, executors and administrators and many other subjects.

5th. The jurisprudence, or decisions of the various courts, have contributed their full share of what makes the law. These decisions are made by following precedents, by borrowing from the sources already mentioned, and, sometimes by the less excusable disposition of the judges to legislate on the bench.

11. The monuments where the common law is to be found, are the records, reports of cases adjudicated by the courts, and the treatises of learned men. The books of reports are the best proof of what is the common law, but owing to the difficulty of finding out any systematic arrangement, recourse is had to treatises upon the various branches of the law. The records, owing to their being kept in one particular place, and therefore not generally accessible, are seldom used.

SOUS SEING PRIVE. An act sous seingprive, in Louisiana and by the French law, is an act or contract evidenced by writing under the private signature of the parties to it. The term is used in opposition to the authentic act, which is an agreement entered into in the presence of a notary or other public officer.

2. The form of the instrument does not give it its character so much as the fact that it appears or does not appear to have been executed before the officer. 7 N. S. 548 5 N. S. 196.

3. The effect of a sous seing prive is not the same as that of the authentic act. The former cannot be given in evidence until proved, and, unless accompanied by possession, it does not, in general, affect third persons; 6 N. S. 429, 432; the latter, or authentic acts, are full evidence against the parties and those who claim under them. 8 N. S. 132. See Act; Authentic act.

SOUTH CAROLINA. The name of one of the original states of the United States of America. For an account of its colonial history, see article North Carolina.

2. The constitution of this state was adopted the third day of June, 1790, to which two amendments have been made, one, ratified December 17, 1808, and the other, December 19, 1816. The powers of the government are distributed into three branches, the legislative, the executive, and the judicial.

3. − 1st. The legislative authority is vested in a general assembly, which consists of a senate and house of representatives.

4. − 1. The senate will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the duration of their office, and the time of their election. 1. Every free white man, of the age of twenty−one years, being a citizen of this state, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been legally seised and possessed, at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district, in which he offers to give his vote, six mouths before the said election, and hath paid a tax the preceeding year of three shillings sterling towards the support of this government, shall have a right to vote for a member or members, to serve in either branch of the legislature, for the election district in which he holds such property, or is so resident. 2. No person shall be eligible to a seat in the senate, unless he is a free white man, of the age of thirty years and hath been a citizen and resident in this state five years previous to his election. If a resident in the election district, he shall not be eligible unless he be legally seised and possessed in his own right, of a settled freehold estate of the value of three hundred pounds sterling, clear of debt. If a non−resident in the election district, he shall not be eligible unless he be legally seised and possessed in his own right, of a settled freehold estate in the said district, of the value of one thousand pounds sterling, clear of debt. 3. The senate is composed of one member from each district as now established for the election of the house of representatives, except the district formed by the districts of the parishes of St. Philip and St. Michael, to which shall be allowed two senators as heretofore. Amend. of Dec. 17, 1808. 4. They are elected for four years. Ibid. 5. The election takes place on the second Monday in October. Art. 1, s. 10.

5. − 2. The house of representatives will be considered in the same order which has been observed in considering the senate. 1. The qualification of electors are the same as those of electors of senators. 2. No person shall be eligible to a seat in the house of representatives, unless he is a free white man, of the age of twenty−one years, and

hath been a citizen and resident in this state three years previous to his election. If a resident in the election district, he shall not be eligible to a seat in the house of representatives, unless he be legally seised and possessed in his own right, of a settled free−hold estate of five hundred acres of land, and ten negroes; or of a real es−tate, of the value of one hundred and fifty pounds sterling, clear of debt. If a non−resident, he shall be legally seised and possessed of a settled freehold estate therein, of the value of five hundred pounds sterling, clear of debt. 3. The house consists of one hundred and twenty−four members. Amend. of Dee. 17, 1808. 4. The members are elected for two years. Art. l, s. 2 . 5. The election is at the same time that the election of senators is held.

6. − 2. The executive authority is vested in a governor, and in certain cases, a lieutenant−governor.

7. − 1. Of the governor. It will be proper to consider his qualifications; by whom he is to be elected; when to be elected; duration of office; and his powers and duties. 1. No person shall be eligible to the office of governor, unless he bath attained the age of thirty years, and hath resided within this state, and been a citizen thereof, ten years, and unless he be seised and possessed of a settled estate within the same, in his own right, of the value of fifteen hundred pounds sterling, clear of debt. Art. 2, s. 2. 2. He is elected by the senate and house of representatives jointly, in the house of representatives. Art. 2, sect. 1. 3. He is to be elected whenever a majority of both houses shall be present. lb. 4. He is elected for two years, and until a new election shall be made. Ibid. 5. The governor is commander−in−chief of the army and navy of the state, and of the militia, except when they shall be called into the actual Service of the United States. He may grant reprieves and pardons, after conviction, except in cases of impeachment, and remit fines and forfeitures, unless otherwise directed by law shall cause the laws to be faithfully executed in mercy − may prohibit the exportation of provisions, for any time not exceeding thirty days−may require information from the executive departments − shall recommend such measures as he may deem necessary, and give the assembly information as to the condition of the state−may on extraordinary occasions convene the assembly, and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the fourth Monday in the mouth of November then next ensuing.

8. − 2. A lieutenant−governor is to be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the governor. Art. 2, sect. 3. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant−governor shall succeed to his office. And in case of the impeachment of the lieutenant−governor, or his removal from office, death, resignation, or absence from the state, the president of the senate shall succeed to his office, till a nomination to those offices respectively shall be made by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was elected. Art. 2, s. 5.

9. − 3. The judicial power shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish. The judges of each shall hold their commissions during good behaviour; and judges of the superior courts shall, at stated times, receive a compensation for their services, which shall neither be increased nor diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor, hold any other office of profit or trust, under this state, the United States, or any other power. Art. 3, sect. 1. The judges are required to meet at such times, and places, as shall be prescribed by the act of the legislature, and sit for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them. Amend. of Dec. 19, 1816.

SOVEREIGN. A chief ruler with supreme power; one possessing sovereignty. (q. v.) It is also applied to a king or other magistrate with limited powers.

2. In the United States the sovereignty resides in the body of the people. Vide Rutherf. Inst. 282.

SOVEREIGN, Eng. law. The name of a gold coin of Great Britain of the value of one pound sterling.

SOVEREIGN STATE. One which governs itself independently of any foreign power.

SOVEREIGNTY. The union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do everything in a state without accountability; to make laws, to execute and to apply them: to impose and collect taxes, and, levy, contributions; to make war or peace; to form treaties of alliance or of commerce with foreign nations, and the like. Story on the Const. _207.

2. Abstractedly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation.

3. When analysed, sovereignty is naturally divided into three great powers; namely, the legislative, the

executive, and the judiciary; the first is the power to make new laws, and to correct and repeal the old; the second is the power to execute the laws both at home and abroad; and the last is the power to apply the laws to particular facts; to judge the disputes which arise among the citizens, and to punish crimes.

4. Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation; (q. v.) and the residuary sovereignty of each state, not granted to any of its public func− tionaries, is in the people of the state. (q. v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. _208; 1 Toull. n. 20 Merl. Reper. h. t.

SPADONES, civil law. Those who, on account of their temperament, or some accident they have suffered, are unable to procreate. Inst. 1, 11, 9; Dig. 1, 7, 2, 1; and vide Impotence.

SPARSIM. This Latin adverb signifies scatteredly, here and there, in a scattered manner, sparsedly, dispersedly. It is sometimes used in law; for example, the plaintiff may recover the place wasted, not only where the injury has been total, but where trees, growing sparsim in a close, are cut. Bac. Ab. Waste, M; Brownl. 240; Co. Litt. 54, a; 4 Bouv. Inst. n. 3690.

TO SPEAK. This term is used in the English law, to signify the permission given by a court to the prosecutor and defendant in some cases of misdemeanor, to agree together, after which the prosecutor comes into court and declares himself to be satisfied; when the court pass a nominal sentence. 1 Chit. Pr. 17.

SPEAKER. The presiding officer of the house of representatives of the United States is so called. The presiding officer of either branch of the state legislatures generally bears this name.

SPEAKING DEMURRER, equity pleading. One which contains an argument in the body of it; as, for instance, when a demurrer says, "in or about the year 1770," which is upwards of twenty years before the bill filed. 2 Ves. jr. 83; S. C. 4 Bro. C. C. 254.

SPECIAL. That which relates to a particular species or kind, opposed to general; as special verdict and general verdict; special imparlance and general imparlance; special jury, or one selected for a particular case, and general jury; special issue and general issue, &c.

SPECIAL AGENT. A special agent is one whose authority is confined to a particular, or an individual instance. It is a general rule, that he who is invested with a special authority, must act within the bounds of his authority, and he cannot bind his principal beyond what he is authorized to do. 2 Bouv. Inst. n. 1299; 2 John. 48; 1 Wash. C. C. lT4; 5 John. 48; 15 John. 44; 8 Wend. 494.

SPECIAL ASSUMPSIT, practice. Where an action of assumpsit (q. v.) has been brought on a special contract, and the plaintiff declares upon it, setting out its particular language, or its legal effect. It is distinguished from a general assumpsit, where the plaintiff, instead of setting out the particular language, or effect of the original contract, declares as for a debt, arising out of the execution of the contract, where that constitutes the debt. 3 Bouv. Inst. n. 3426.

SPECIAL BAIL. A person who becomes specially bound to answer for the appearance of another; the recoguizance or act by which such person thus becomes bound, is also called special bail. Vide Bail.

SPECIAL CONSTABLE. One who has been appointed a constable for a particular occasion, as in the case of an actual tumult or a riot, or for the purpose of serving a particular process.

SPECIAL DAMAGES. Such as actually have been suffered, and are not implied by law. Vide Damages, Special; and 1 Chit. Pl. 385; Com. Dig. Action on the case for Defamation, D 30, G 11.

SPECIAL DEMURRER, pleading. One which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection, and the particular ground of the exception. 3 Bouv. Inst. n. 3022. See Demurrer.

SPECIAL DEPOSIT. A deposit made of a particular thing with the depositary: it is distinguished from an irregular deposit.

2. When a thing has been specially deposited with a depositary, the title to it remains with the depositor, and if it should be lost, the loss will fall upon him. When, on the contrary, the deposit is irregular, as where money is deposited in a bank, the title to which is transferred to the bank, if it be, lost, the loss will be borne by the bank. This will result from the same principle; the loss will fall, in both instances, on the owner of the thing, according to the rule res perit domino. See 1 Bouv. Inst. n. 1 054.

SPECIAL ERRORS. Special pleas in error are those which assign for error matters in confession and avoidance, as a release of errors, the act of limitations, and the like, to which the plaintiff in error may reply or demur.

SPECIAL IMPARLANCE, pleading. One which contains the clause, "saving to himself all advantages and

exceptions, as well to the writ, as to the declaration aforesaid." 2 Chit. Pl. 407, 8.

2. This imparlance admits the jurisdiction of the court, but the defendant may plead in abatement or to the action; that is, to the writ or the count. Gould. on Pl. c. 2, _18; Lawes on Pl. 84. See imparlance.

SPECIAL INJUNCTION. One obtained only on motion and petition, with notice to the other party, and is applied for, sometimes on affidavit before answer, but more frequently upon merits disclosed in the defendant's answer. 4 Bouv. lust. n. 3756. See Injunction.

SPECIAL ISSUE, pleading. A plea to the action which denies some particular material allegation, which is in effect a denial of the entire right of action. It differs from the general issue whicli traverses or denies the whole declaration or indictment. Gould. on Pl. c. 2, _38. See General Issue; Issue.

SPECIAL JURY. One selected in a particular way by the parties. A pannel is made out, and each party is entitled to strike from it the names of a certain number of jurors, as provided for by the local statutes, and from those who remain, the jury in that case must be selected. This is also called a struck jury.

SPECIAL NON EST FACTUM. The name of a plea by which the defendant says that the deed which he has executed is not his own or binding upon him, because of some circumstance which shows that it was not intended to be his deed, or because it was not binding upon him for some lawful reason; as, when the defendant delivered the deed to a third person as an escrow to be delivered upon a condition, and it has been delivered without the performance of the condition, he may plead non est factum, state the fact, of the conditional delivery, the non−performance of the condition, and add, "and so it is not his deed;" or if the defendant be a feme covert, she may plead non est factum, that she was a feme covert at the time the deed was made, "and so it is not her deed." Bac. Ab. Pleas, &c. H 3, 1 2; Gould. on Pl. c. 6, part 1, _64. See Issint.

SPECIAL OCCUPANT, estates. When an estate is granted to a man and his heirs during the life, of cestui que vie, and the grantee die without alienation, and while the life for which he held continues, the heir will succeed, and is called a special occupant. 2 Bl. Com. 259. In the United States the statute provisions of the different states vary considerably upon this subject. In New York and New Jersey, special occupancy is abolished. Virginia, and probably Maryland, follow the English statutes; in Massachusetts and other states, where the real and personal estates of intestates are distributed in the same way and manner, the question does not seem to be material. 4 Kent, Com. 27.

SPECIAL PARTNERSHIP. Special or limited partnerships are of two kinds; 1. Those at common law. 2. Limited partnerships, or those in commendam.

2. Special partnerships at common law, are those formed for a particular or special branch of business, as contradistinguished from the general business of the parties, or of one of them.

3. A limited or special partnership, under special acts of assembly, may be found in several states. In such partnerships some of the partners are liable as general partners, while others are responsible only to the extent of the capital they have furnished. See 2 Bouv. Inst. n. 1472, 1473, and In Commendam; Partnership.

SPECIAL PLEA IN BAR. One which advances new matter. It differs from the general in this, that the latter denies some material allegation, but never advances new matter. Gould on Pl. c. 2, _38.

SPECIAL PLEADER, Engl. practice. A special pleader is a lawyer whose professional occupation is to give verbal or written opinions upon statements submitted to him, either in writing or verbally, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the general course. 2 Chit. Pr. 42.

SPECIAL PLEADING. The allegartion of special or new matter, as distinguished from a direct denial of matter previously alleged on the opposite side. Gould on Pl. c. 1, s. 18; Co. Litt. 282; 3 Wheat. R. 246 Com. Dig. Pleader, E 15.

SPECIAL PROPERTY. This term is used as synonymous with qualified or limited property. It is that property which is not perfect in the hands of the possessor, but his right is qualified or limited; as, where a person is possessed of an animal ferae naturae, he has a property in such animal, but this is not a general right, for if the animal should escape, and be taken by another person, the latter only would have a special property in it.

2. Again, a person may have a special property in a chattel in consequence of the peculiar circumstances of the owner; a bailee, for example, has a special property in the thing bailed. 1 Bouv. Inst. n. 475 to 477.

SPECIAL REQUEST. One actually made, at a particular time and place; this term is used in contradistinction to a general request, which need not state. the time when, nor place where made. 3 Bouv. Inst. n. 2843.

SPECIAL RULE. A rule or order of court made in a particular case, for a particular purpose; it is distinguished from a general rule, which applies to a class of cases. It differs also from a common rule, or rule of course.

SPECIAL TRAVERSE, pleading. A technical special traverse begins in most cases, with the words absque hoc, (without this,) which words in pleading form a technical form of negation. Lawes' Pl. 116 to 120.

2. A traverse commencing with these words is special, because, when it thus commences, the inducement and the negation are regularly both special; the former consisting of new matter, and the latter pursuing, in general, the words of the allegation traversed, or at least those of them which are material. For example, if the defendant pleads title to land in himself, by alleging that Peter devised the land to him, and then died seised in fee; and the plaintiff replies that Peter died seised in fee intestate, and alleges title in himself, as heir of Peter without this, that Peter devised the land to the defendant; the traverse is special. Here the allegation of Peter's intestacy, &c., forms the special inducement; and the absque hoc, with what follows it, is a special denial of the alleged devise, i. e. a denial of it in the words of the allegation. Lawes on Pl. 119, 120; Gould, Pl. ch. 7, _6, 7; Steph. Pl. 188. Vide Traverse; General Traverse.

SPECIAL TRUST. A special trust, is one where a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in the case of a simple trust, a mere passive depositary of the estate, but is required to exert himself actively in the execution of the settler's intention; as, where a conveyance is made to trustees upon trust to reconvey, or to sell for the payment of debts. 2 Bouv. Inst. n. 1896. See Trust.

SPECIAL VERDICT, practice. A special verdict is one by which the facts of the case are put on the record, and the law is submitted to the judges. Vide Verdict; Bac. Ab. Verdict, D.

SPECIALTY, contracts. A writing sealed aud delivered, containing some agreement. 2 Serg. & Rawle, 503; 1 Binn. Rep. 261; Willes, 189; 1 P. Wms. 130. In a more confined meaning, it signifies a writing sealed and delivered, which is given as a security for the payment of a debt, in which such debt is particularly specified. Bac. Ab. Obligation, A.

2. Although in the body of the writing it is not said, that the parties have set their hands and seals, yet if the instrument be really sealed it is a specialty, and if it be not sealed, it is not a specialty, although the parties in the body of the writing make mention of a seal. 2 Serg. & Rawle, 504; 2 Rep. 5 a; Perk. _129. Vide Bond; Debt; Obligation.

SPECIE. Metallic money issued by public authority.

2. This term is used in contradistinction to paper money, which in some countries is emitted by the government, and is a mere engagement which repre−sents specie. Bank paper in the United States is also called paper money. Specie is the only constitutional money in this country. See 4 Monr. 483.

SPECIFIC LEGACY. A bequest of a particular thing.

2. It follows that a specific legacy may be of animals or inanimate things, provided they are specified and separated from all other things; a specific legacy may therefore be of money in a bag, or of money marked and so described; as, I give two eagles to A B, on which are engraved the initials of my name. A specific legacy may also be given out of a general fund. Touch. 433 Amb. 310; 4 Ves. 565; 3 Ves. & Bea. 5. If the specific article given be, not found among the assets of the testator, the legatee loses his legacy; but on the other hand, if there be a deficiency of assets, the specific legacy will not be liable to abate with the general legacies. 1 Vern. 31; 1 P. Wms. 422; 3 P. Wms. 365; 3 Bro. C. C. 160; vide 1 Roper on Leg. 150; 1 Supp. to Ves. jr. 209 . Id. 231; 2 Id. 112; and articles Legacy; Legatee.

SPECIFIC PERFORMANCE, remedies. The actual accomplishment of a contract by the party bound to fulfil it.

2. Many contracts are entered into by parties to fulfil certain things, and then the contracting parties neglect or refuse to fulfil their engagements. In such cases the party grieved has generally a remedy at law, and he may recover damages for the breach of the contract; but, in many cases, the recovery of damages is an incompetent remedy, and the party seeks to recover a specific performance of the agreement.

3. It is a general rule, that courts of equity will entertain jurisdiction for a specific performance of agreements, whenever courts of law can give but an inadequate remedy; and it is immaterial whether the subject relate to real or personal estate. 1 Madd. Ch. Pr. 295; 2 Story on Eq. _717; 1 Sim, & Stu. 607; 1 P. Wms. 570; 1 Sch. & Lef. 553; 1 Vern. 159.

4. But the rule is confined to cases where courts of law cannot give an adequate remedy. 2 Story on Eq. _718; Eden on Inj. ch. 3, p. 27. Vide, generally, 2 Story on Eq. ch. 18, _712 to 792; 1 Supp. to Ves. jr. 96, 148, 184, 211, 495; 2 Supp. to Ves. jr. 65, 164; Fonb. Eq. b. 1, c. 1, s. 5; Sugd. Vend. 145.

SPECIFICATION, civil law. A term used in the civil law, by which is meant a person's making a new species or subject from materials belonging to another. Bouv. Inst. Theolo. ps. 1, c. 1, art. 1, _4, Is. 4, p. 74.

2. When the new species can be again reduced to the matter of which it was made, the law considers the former mass as still existing, and, therefore, the new species as an accessory to the former subject; but where the thing made cannot be so reduced, as in the case of wine, which cannot be again turned into grapes, there is no place for the fictio juris; and, there, the workmanship draws after it the property of the material. Inst. 2, 1, 25 Dig. 41, 1, 7, 7. See Accession; Confusion; Mixtion; and Aso & Man. Inst. B. 2, t. 2, c. 8.

SPECIFICATION, practice, contracts. A particular and detailed account of a thing: example, in order to obtain a patent for an invention, it is necessary to file a specification or an instrument of writing, which must lay open and disclose to the public every part of the process by which the invention can be made useful if the specification does not contain the whole truth relative to the discovery, or contains more than is requisite to produce the desired effect, and the concealment or addition was made for the purpose of deception, the patent would be void; for if the specification were insufficient on account of its want of clearness, exactitude or good faith, it would be a fraud on society that the patentee should obtain a monopoly without giving up his invention. 2 Kent, Com. 300; 1 Bell's Com. part 2, c. 3, s. 1, p. 112; Perpigna on Pat. 67; Renouard, Des Brevets d'Inv. 252.

2. In charges against persons accused of military offences, they must be particularly described and clearly expressed; this is called the specification. Tytl. on Courts Mart. 109.

SPECIMEN. A sample; a part of something by which the other may be known.

2. The act of congress of July 4, 1836, section 6, requires the inventor or discoverer of an invention or discovery to accompany his petition and specification for a patent with specimens of ingredients, an of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of the composition of matter.

SPECULATION, contracts. The hope or desire of making a profit by the purchase and resale of a thing. Pard. Dr. Com. n. 12. The profit so made; as, be made a good speculation.

SPEECH. A formal discourse in public.

2. The liberty of speech is guarantied to members of the legislature, to counsel in court in debate.

3. The reduction of a speech to writing and its publication is a libel, if the matter contained in it is libelous; and the repetition of it upon occasions not warranted by law, when the matter is slanderous, wili be slander and. tho character of the speaker will be no protection to him from an action. 1 M. & S. 273; 1 Esp. C. 226 Bouv. Inst. Index, h. t. See Debate; Liberty of speech.

SPELLING, The art of putting the proper letters in words.

2. It is a rule that when it appears with certainty what is meant, bad spelling will not avoid a contract; for example, where a man agreed to pay thirty pounds, he was held bound to pay thirty pounds; and seutene was holden to be seventeen. Cro. Jac. 607; 10 Coke, 133, a; 2 Roll. Ab. 147.

3. Even in an indictment undertood has been holden as understood. 1 Chit. Cr. Law.

4. A misspelling of a name in a declaration, will not be sufficient to defeat the plaintiff, on the ground of variance between the writing produced, and the declaration, if such name be idem sonans; as Kay for Key. 16 East, 110; 2 Stark. 29; Segrave for Seagrave. 2 Str. 889. See Idem Sonans.

SPENDTHRIFT. By the Rev. Stat. of Vermont, tit. 16, c. 65, s. 9, spendthrift is defined to be a person who by excessive drinking) gaming, idleness or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense, for support of himself or family.

SPERATE. That of which there is hope.

2. In the accounts of an executor and the inventory of the personal assets, he should distinguish between those assets which are sperate, and those which are desperate; he will be prima facie responsible for the former, and discharged for the latter. 1 Chit. Pr. 520; 2 Williams Ex. 644; Toll. Ex. 248. See Desperate.

SPES RECUPERANDI. The hope of recovery. This term is applied to cases of capture of an enemy's property as a booty or prize. As between the belligerent parties, the title to the property taken as a prize passes the moment there is no longer any hope of recovery. 2 Burr. Rep. 683. Vide Infra praesidea; Jus Postliminy; Bopty; Piize.

SPINSTER. An addition given, in legal writings, to a woman who never was married. Lovel. on Wills, 269.

SPLITTING A CAUSE OF ACTION. The bringing an action for only a part of the cause of action. This is not permitted either at law nor in equity. 4 Bouv. Inst. n. 4167.

SPOLIATION, Eng. eccl. law. The name of a suit sued out in the spiritual court to recover for the fruits of the church, or for the church itself. F. N. B. 85.

2. It is also a waste of church property by an ecclesiastical person. 3 Bl. Com. 90.

SPOLIATION, torts. Destruction of a thing by the act of a stranger; as, the erasure or alteration of a writing by the act of a stranger, is called spoliation. This has not the effect to destroy its character or legal effect. 1 Greenl. Ev. _566. 2. By spoliation is also understood the total destruction of a thing; as, the spoliation of papers, by the captured party, is generally regarded as proof of. guilt, but in America it is open to explanation, except in certain cases where there is a vehement presumption of bad faith. 2 Wheat. 227, 241; 1 Dods. Adm. 480, 486. See Alteration.

SPONSALIA, or STIPULATIO SPONSALITIA. A promise lawfully made between persons capable of marrying each other, that at some future time they will marry. See Espousals; Ersk. Inst. B. 1, t. 6, n. 3.

SPONSIONS, international law. Agreements or engagements made by certain public officers, as generals or admirals, in time of war, either without author−ity, or by exceeding the limits of authority under which they purport to be made.

2. Before these conventions can have any binding authority on the state, they must be confirmed by express or tacit ratification. The former is given in positive terms and in the usual forms; the latter is justly implied from the fact of acting under the agreement as if bound by it, and from any other circumstance from which an assent may be fairly presumed. Wheat. Intern. Law, pt. 3, c. 2, _3; Grotius, de Jur. Bel. ac Pac. 1. 2, c. 15, _16; Id. 1. 3, c. 22, 1−3: Vattel, Law of Nat, B. 2, c. 14, 209 −212; Wolff, 1156.

SPONSOR, civil law. He who intervenes for another voluntarily and without being requested. The engagement which he enters into is only accessory to the principal. Vide Dig. 17, 1, 18; Nov. 4, ch. 1 Code de Com. art. 158, 159; Code Nap. 1236 Wolff, Inst. _1556.

SPRING. A fountain.

2. The owner of the soil has the exclusive right to use a spring arising on his grounds. When another has an easement, or right to draw water from such a spring, acquired by grant or prescription, if the spring fails the easement ceases, but if it returns, the right revives.

3. The waters which flow from the spring give rise to a variety of diffi−culties, the principal of which are, 1st. The owner of the inheritance in which the spring arises turns their course. The owner of the inferior estate, whose, meadow they fertilized, and who is deprived of them, claiming the right to them. 2d. The owner of the spring does not prevent the water from flowing on the inferior estate, but gives them a new direction injurious to it. 3d. The owner of the superior inheritance disposes of the water in such a way as to deprive the owner of the estate below him. The rights of these different owners will be separately considered.

4. − l. The owner of land on which there is a natural spring, has a right to use it for domestic and culinary purposes and for watering his cattle, and he may make an aqueduct to another part of his land, and use all the water required to keep the aqueduct in order, or to keep the water pure. 15 Conn. 366. He may also use it for irrigation, provided the volume be not materially decreased. Ang. W. C. 34. Vide Irrigation; and 1 Root, 535; 2 Watts. 327; 2 Hill, S. C. 634; Coxe, 460; 2 Dev. & Bat. 50; 9 Conn. 291; 3 Pick. 269; 13 Mass. 420; 8 Mass. 136; 8 Greenl. 253.

5. − 2. The owner of the spring cannot lawfully turn the current or give it a new direction. He is bound to let it enter the inferior estate on the same level it has been accustomed to, and at the same place; for every man is entitled to a stream of water flowing through his land, without diminution or alteration. 6 East, 206; 2 Conn. 584. Vide 3 Rawle, 84 12 Wend. 330; 10 Conn. 213; 14 Verm. 239.

6. − 3. The owner of the superior inheritance, or of the land on which there is a spring, has no right to deprive the owner of the estate below him; 1 Yeates, 574; 5 Pick. 175; 3 Har. & John. 231; 12 Verm. 178; 13 Conn. 303; 3 Scam. 492; nor can be detain the water unreasonably. 17 John. 306; 2 B. C. 910. Vide Ham. N. P. 199; 1 Dall. 211; 3 Rawle's R. 256; Jus Aquaeductus; Pool; Stagnum; Back Water; lrrigation, Mill; Rain Water; Water Course.

SPRINGING USE, estates. One to arise on a future event, when no preceding estate is limited, and does not take effect in derogation of any preceding interest. Example: a grant is made to A in fee, to the use of B in fee, after the fourth of July; no use arises till the limited period. The use in the mean time results to the grantor, who has a determinable fee. A springing use differs from a resulting use, (q. v.) or a shifting use. (q. v.) 4 Kent, Com. 292; Com. Dig. Uses, K 7 Wils. on Springing Uses; Corn. on Uses, 91; 2 Bouv. Inst. n. 1889.

SPY. One who goes into a place for the purpose of ascertaining the best way of doing an injury there.

2. The term is mostly applied to an enemy who comes into the camp for the purpose of ascertaining its situation in order to make an attack upon it. The punishment for, this crime is death. See Articles of War, 1 Story's Laws U.

S. 992; Vattel, Droit des Gens. liv. 3, _179.

SQUATTER. One who settles on the lands of others without any legal author−ity; this term is applied particularly to persons who settle on the public land. 3 Mart. N. S. 293.

TO STAB. To make a wound with a pointed instrument; a stab differs from a cut, (q. v.) or a wound. (q. v.) Russ. & Ry. 356; Russ. on Cr. 597; Bac. Ab. Maihem, B.

STAGNUM, estates. A pool. It is said to consist of land and water, and therefore by the name of stagnum, the water and the land may be passed. Co. Litt. 5.

STAKEHOLDER, contracts. A third person, chosen by two or more persons, to keep in deposit property, the right or possession of which is contested between them and to be delivered to the one who shall establish his right to it. Thus each of them is considered as depositing the whole thing. This distin−guishes this contract from that which takes place when two or more tenants in common deposit a thing with a bailee. Domat, Lois Civ. liv. 1, t. 7, s. 4; 1 Vern. R. 44, n. 1.

2. A person having in his hands money or other property claimed by several others, is considered in equity as a stakeholder. 1 Vern. R. 144.

3. The duties of a stakeholder are to deliver the thing holden by him to the person entitled to it on demand. It is frequently questionable who is entitled to it. In case of an unlawful wager, although be may be justified for delivering the thing to the winner, by the express or implied consent of the loser; 8, John. 147; yet if before the event has happened he has been required by either party to give up the thing deposited with him by such party, he is bound so to deliver it; 3 Taunt. 377; 4 Taunt. 492; or if, after the event has happened, the losing party give notice to the stakeholder not to pay the winner, a payment made to him afterwards will be made in his own wrong, and the party who deposited the money or thing may recover it from the stakeholder. 16 S. & R. 147; 7 T. R. 536; 8 T. R. 575; 4 Taunt. 474; 2 Marsh. 542. See 3 Penns. R. 468; 4 John. 426; 5 Wend. 250; 2 P. A. Browne, 182; 1 Bailey, 486, 503. See Wagers.

STALE DEMAND. A stale demand is a claim which has been for a long time undemanded; as, for example, where there his been a delay of twelve years, unexplained. 3 Mason, 161.

STAMP, revenue. An impression made on paper, by order of the government, which must be used in reducing certain contracts to writing, for The purpose of raising a revenue. Vide Stark. Ev. h. t.; 1 Phil. Ev. 444.

2. Maryland is the only state in the United States that has enacted a stamp.

TO STAND. To abide by a thing; to submit to a decision; to comply with an agreement; to have validity, as the judgment must stand.

STAND SEISED TO USES. This phrase is frequently used in relation to conveyances under the statute of uses. A covenant to stand seised to uses is a species of conveyance which derives its effect from the statute of uses, by which a man, seised of lands, covenants, in consideration of blood or marriage, that he will stand seised of the same, to the use of his child, wife, or kinsman, for life, in tail or in fee. 2 Bouv. Inst. n. 2080.

STANDARD, in war. An ensign or flag used in war.

STANDARD, measure. A weight or measure of certain dimensions, to which all other weights and measures must correspond; as, a standard bushel. Also the quality of certain metals, to which all others of the same kind ought to be made to conform; as, standard gold, standard silver. Vide Dollar; Eagle; Money.

STAPLE, intern. law. The right of staple as exercised by a people upon foreign merchants, is defined to be, that they may not allow them to set their merchandises and wares to sale but in a certain place.

2. This practice is not in use in the United States. 1 Chit. Com. Law, 103; 4 Inst. 238; Malone, Lex Mere. 237; Bac. Ab. Execution, B 1. Vide Statute Staple.

STAR CHAMBER, Eng. law. A court which formerly had great jurisdiction and power, but which was abolished by stat. 16, C. I., c. 10, on account of its usurpations and great unpopularity. It consisted of several of the lords spir−itual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of a jury. Their legal jurisdiction extended over riots, perjuries, mishehaviour of public officers, and other great misdemeanors. The judges afterwards assumed powers, and stretched those they possessed to the utmost bounds of legality. 4 Bl. Com. 264.

STARE DECISIS. To abide or adhere to decided cases.

2. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such

overruled cases may be found in the American and English books of reports. Mr. Greenleaf has made a collection of such cases, to which the reader is referred. Vide 1 Kent, Com. 477; Livingst. Syst. of Pen. Law, 104, 5.

STARE IN JUDICIO. The act of appearing before a tribunal, either as plain−tiff or defendant. Vide Ester en jugement.

STATE, government. This word is used in various senses. In its most enlarged sense, it signifies a self−sufficient body of persons united together in one community for the defence of their rights, and to do right and justice to foreigners. In this sense, the state means the whole people united into one body politic; (q. v.) and the state, and the people of the state, are equivalent expressions. 1 Pet. Cond. Rep. 37 to 39; 3 Dall. 93; 2 Dall. 425; 2 Wilson's Lect. 120; Dane's Appx. _50, p. 63 1 Story, Const. _361. In a more limited sense, the word 'state' expresses merely the positive or actual organization of the legislative, or judicial powers; thus the actual government of the state is designated by the name of the state; hence the expression, the state has passed such a law, or prohibited such an act. State also means the section of territory occupied by a state, as the state of Pennsylvania.

2. By the word state is also meant, more particularly, one of the commonwealths which form the United States of America. The constitution of the United States makes the following provisions in relation to the states.

3. Art. 1, s. 9, _5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or re−venue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

4. − _6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

5. − _7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from, any king, prince, or foreign state.

6. − Art. 1, s. 10, _1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payments of debts; pass any bill of attainder, ex−post−facto, or law impairing the obligation of contracts; or grant any title of nobility.

7. − _2. No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of congress. No state, shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

8. The district of Columbia and the territorial districts of the United States, are not states within the meaning of the constitution and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat. 91.

9. The several states composing the United States are sovereign and independent, in all things not surrendered to the national government by the constitution, and are considered, on general principles, by each other as foreign states, yet their mutual relations are rather those of domestic independence, than of foreign alienation. 7 Cranch, 481; 3 Wheat. 324; 1 Greenl. Ev. _489, 504. Vide, generally, Mr. Madison's report in the legislature of Virginia, January, 1800; 1 Story's Com. on Const. _208; 1 Kent, Com. 189, note b; Grotius, B. 1, c. 1, s. 14; Id. B. 3, c. 3, s. 2; Burlamaqui, vol. 2, pt. 1, c. 4, s. 9; Vattel, B. 1, c. 1; 1 Toull. n. 202, note 1 Nation; Cicer. de Repub. 1. 1, s. 25.

STATE, condition of persons. This word has various acceptations. If we inquire into its origin, it will be found to come from the Latin status, which is derived from the verb stare, sto, whence has been made statio, which signifies the place where a person is located, stat, to fulfil the obligations which are imposed upon him.

2. State is that quality which belongs to a person in society, and which secures to, and imposes upon him different rights and duties in consequence of the difference of that quality.

3. Although all men come from the hands of nature upon an equality, yet there are among them marked differences. It is from nature that come the distinctions of the sexes, fathers and children, of age and youth, &c.

4. The civil or municipal laws of each people, have added to these natural qualities, distinctions which are purely civil and arbitrary, founded on the manners of the people, or in the will of the legislature. Such are the differences,

which these laws have established between citizens and aliens, between magistrates and subjects, and between freemen and slaves; and those which exist in some countries between nobles and plebeians, which differences are either unknown or contrary to natural law.

5. Although these latter distinctions are more particularly subject to the civil or municipal law, because to it they owe their origin, it nevertheless extends its authority over the natural qualities, not to destroy or to weaken them, but to confirm them and to render them more inviolable by positive rules and by certain maxims. This union of the civil or municipal and natural law, form among men a third species of differences which may be called mixed, because they participate of both, and derive their principles from nature and the perfection of the law; for example, infancy or the privileges which belong to it, have their foundation in natural law; but the age and the term of these prerogatives are determined by the civil or municipal law.

6. Three sorts of different qualities which form the state or condition of men may then be distinguished: those which are purely natural, those purely civil, and those which are composed of the natural and civil or municipal law. Vide 3 Bl. Com. 396; 1 Toull. n. 170, 171; Civil State.

TO STATE. To make known specifically; to explain particularly; as, to state an account, or to show the different items of an account; to state the cause of action in a declaration.

STATEMENT, pleading and in practice. In the courts of Pennsylvania, by the act to regulate arbitrations and proceedings in courts of justice, passed March 21, 1806, 4 Smith's Laws of Penn. 828, it is enacted, "that in all cases where a suit may be brought in any court of record for the recovery of any debt founded on a verbal promise, book account, note, bond, penal or single bill, or all or any of them, and which from the amount thereof may not be cognizable before a justice of the peace, it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the pro−thonotary a statement of his, her or their demand, on or before the third day of the term to which the process issued is returnable, particularly specifying the date of the promise, book account, note, bond, penal or single bill or all or any of them, on which the demand is founded, and the whole amount which he, she, or they believe is justly due to him, her or them from the defendant."

2. This statement stands in the place of a declaration, and is not restric−ted to any particular form; 3 Serg. & Rawle, 406; it is an immethodical declaration, stating in substance the time of the contract, the sum, and on what founded, with (what is an important principle in a statement, 6 Serg. & Rawle, 21,) a certificate of the belief of the plaintiff or his agent, of what is really due. Serg. & Rawle, 28. See 6 Serg. & Rawle, 53; 8 Serg. & Rawle, 567; 2 Serg. & Rawle, 537; 2 Browne's R. 40; 8 Serg. & R. 316.

STATES. By this name are understood in some countries, the assembly of the different orders of the people to regulate the affairs of the commonwealth, as, the states general.

STATION, civil law. A place where ships may ride in safety. Dig. 49, 12, 1, 13; id. 50, 15, 59.

STATING−PART OF A BILL, chancery practice. That part of a bill which contains a narrative of the facts and circumstances of the plaintiff's case, and the wrong or grievance of which he complains, and the names of the persons by whom done, and against whom he seeks redress, is called the stating part of the bill. Bart. Suit in Eq. 27; Coop. Eq. Pl. 9; Story, Eq. Pl. _27.

STATU LIBERI, in Louisiana. Slaves for a time, who have acquired the right of being free at a time to come, or on a condition which is not fulfilled, or in a certain event which has not happened, but who, in the mean time, remain in a state of slavery. Code, art. 37. See 8 M. R. 219; 3 L. R. 176; 6 L. R. 571; 4 N. S. 102; 7 N. S. 351. This is substantially the definition of the civil law. Hist. de la Jur. 1. 40; Dig. 40, 7, 1; Code, 7, 2, 13.

STATUS. The condition of persons. It also means estate, because it signifies the condition or circumstances in which the owner stands with regard to his property. 2 Bouv. Inst. n. 1689.

STATUTE. The written will of the legislature, solemnly expressed according to the forms prescribed in the constitution; an act of the legislature.

2. This word is used in contradistinction to the common law. Statutes acquire their force from the time of their passage unless otherwise provided. 7 Wheat. R. 104: 1 Gall . R. 62.

3. It is a general rule that when the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law; Co. Litt. 235; 2 Inst. 222; Bac. Ab. h. t. B; and when a power is given by statute, everything necessary for making it effectual is given by implication: quando le aliquid concedit, concedere videtur et id pe quod devenitur ad aliud. 12 Co. 130, 131 2 Inst. 306.

4. Statutes are of several kinds; namely, Public or private. 1. Public statutes are those of which the judges will take notice without pleading; as, those which concern all officers in general; acts concerning trade in general or

any specific trade; acts concerning all persons generally. 2. Private acts, are those of which the judges wiil not take notice without pleading; such as concern only a particular species, or person; as, acts relating to any particular place, or to several particular places, or to one or several particular counties. Private statutes may be rendered public by being so declared by the legislature. Bac. Ab. h. t. F; 1 Bl. Com. 85. Declaratory or remedial. 1. A declaratory statute is one which is passed in order to put an end to a doubt as to what the common law is, and which declares what it is, and has ever been. 2. Remedial statutes are those which are made to supply such defects, and abridge such superfluities in the common law as may have been discovered. 1 Bl. Com. 86. These remedial statutes are themselves divided into enlarging statutes, by which the common law is made more comprehensive and extended than it was before; and into restraining statutes, by which it is narrowed down to that which is just and proper. The term remedial statute is also applied to those acts which give the party injured a remedy, and in some respects those statutes are penal. Esp. Pen. Act. 1.

6. Temporary or perpetual. 1. A temporary statute is one which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. 2. A perpetual statute is one for the continuance of which there is no limited time, although it be not expressly declared to be so. If, however, a statute which did not itself contain any limitation, is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter. Bac. Ab. h. t. D.

7. Affirmative or negative. 1. An affirmative statute is one which is enacted in affirmative terms; such a statute does not take away the common law. If, for example, a statute without negative words, declares that when certain requisites shall have been complied with, deeds shall, have in evidence a certain effect, this does not prevent their being used in evidence, though the requisites have not been complied with, in the same manner as they might have been before the statute was passed. 2 Cain. R. 169. 2. A negative statute is one expressed in negative terms, and so controls the common law, that it has no force in opposition to the statute. Bro. Parl. pl. 72; Bac. Ab. h. t. G.

8. Penal statutes are those which order or prohibit a thing under a certain penalty. Esp. Pen. Actions, 5 Bac. Ab. h. t. I, 9. Vide, generally, Bac. Ab. h. t.; Com. Dig. Parliament; Vin. Ab. h. t.; Dane's Ab. Index, h. t.; Chit. Pr. Index, h. t.; 1 Kent, Com. 447−459; Barrington on the Statutes, Boscaw. on Pen. Stat.; Esp. on Penal Actions and Statutes.

9. Among the civilians, the term statute is generally applied to all sorts of laws and regulations; every provision of law which ordains, permits, or prohibits anything is a statute without considering from what source it arises. Sometimes the word is used in contradistinction to the imperial Roman law, which, by way of eminence, civilians call the common law. They divide statutes into three classes, personal, real and mixed.

10. Personal statutes are those which have principally for their object the person, and treat of property only incidentally; such are those which regard birth, legitimacy, freedom, the fight of instituting suits, majority as to age, incapacity to contract, to make a will, to plead in person, and the like. A personal statute is universal in its operation, and in force everywhere.

11. Real statutes are those which have principally for their object, property, and which do not speak of persons, except in relation to property; such are those which concern the disposition, which one may make of his property either alive or by testament. A real statute, unlike a personal one, is confined in its operation to the country of its origin.

12. Mixed statutes are those which concern at once both persons and property. But in this sense almost all statutes are mixed, there being scarcely any law relative to persons, which does not at the same time relate to things. Vide Merl. Repert. mot Statut; Poth. Cout. d'Orleans, ch. 1; 17 Martin's Rep. 569−589; Story's Confl. of Laws, _12, et seq.; Bouv. Inst. Index, h. t.

STATUTE MERCHANT, English law. A security entered before the mayor of London, or some chief warden of a city, in pursuance of 13 Ed. 1. stat. 3, c. 1, whereby the lands of the debtor are conveyed to the creditor, till out of the rents and profits of them, his debt may be satisfied. Cruise, Dig. t. 14, s. 7; 2 Bl. Com. 160.

STATUTES STAPLE, English law. The statute of the staple, 27 Ed. HI. stat. 2, confined the sale of all commodities to be exported to certain towns in England, called estaple or staple, where foreigners might resort. It authorized a security for money, commonly called statute staple, to be taken by traders for the benefit of commerce; the mayor of the place is entitled to take a recognizance of a debt, in proper form, which has the effect to convey the lands of the debtor to the creditor, till out of the rents and profits of them he may be satisfied. 2 Bl. Com. 160; Cruise, Dig. tit. 14, s. 10; 2 Rolle's Ab. 446; Bac. Ab. Execution, B. 1 4 Inst. 238.

STATUTI, Rom. civ. law. From Constantine to Justinian, advocates, were arranged in two classes: viz. those

called Statuti, and the supernumeraries. (q. v.) The Statute were those advocates whose names were inscribed in the registers of matriculation, and formed a part of the college of advocates. The number of advocates of this class was limited. See Calvini Lex ad vocem.

STAY OF EXECUTION, practice. A term during which no execution can issue on a judgment.

2. It is either conventional, when the parties agree that no execution shall issue for a certain period; or it is granted by law, usually on condition of entering bail or security for the money.

3. An execution issued before the expiration of the stay is irregular and will be set aside; and the plaintiff in such case may be liable to an action for damages. What is said above refers to civil cases.

4. In criminal cases when a woman is capitally convicted, and she is proved to be enceinte, (q. v.) there shall be a stay of execution till after her delivery. Vide Pregnancy.

STAYING PROCEEDINGS. The suspension of an action.

2. Proceedings are stayed absolutely or conditionally.

3. − 1. They are peremptorily stayed when the plaintiff is wholly incapaci−tated from suing; as, for example, when the plaintiff is not the holder, nor beneficially interested in a bill on which he has brought his action; 2 Cr, & M. 416; 2 Dowl. 336; Chitty on Bills, 335; 3 Chitty, Pr. 628; or when the plaintiff admits in writing, that he has no cause of action; 3 Chit. Prac. 370, 630; or when an action is brought contrary to good faith. Tidd's Prac. 515, 529, 1134; 3 Chit. Pr. 633.

4. − 2. Proceedings are sometimes stayed until some order of the court shall have been complied with; as, when the plaintiff resides in a foreign country, or in another estate, or is insolvent, and he has been ruled to give security for costs, the proceedings are stayed until such security shall be given; see Security for Costs; 3 Chit. Pr, 633, 635; or until the payment of costs in a, former action. 1 Chit. R. 195; 18 E. C. L. R. 64.

STEALING. This term imports, ex vi termini, nearly the same as larceny; but in common parlance, it does not always import a felony; as, for example, you stole an acre of my land.

2. In slander cases, it seems that the term stealing takes its complexion from the subject−matter to which it is applied, and will be considered as intended of a felonious stealing, if a felony could have been committed of such subject−matter. Stark. on Slan. 80; 12 Johns. Rep. 239; 3 Binn. R. 546; Whart. Dig. tit. Slander.

STELLIONATE, civil law. A name given generally, to all species of frauds committed in making contracts.

2. This word is said to be derived from the Latin stellio, a kind of lizard remarkable for its cunning and the change of its color, because those guilty of frauds used every art and cunning to conceal them. But more particularly it was the crime of a person who fraudulently assigned, sold, or engaged the thing which he had before assigned sold, or engaged to another, unknown to the person with whom be was dealing. Dig. 47, 20, 3; Code, 9, 34, 1; Merl. Repert. h. t.; Code Civil, art. 2069; 1 Bro. Civ. Law, 426.

3. In South Carolina and Georgia, a mortgagor who makes a second mortgage without disclosing in writing, to the second mortgagee, the existence of the first mortgage, is not allowed to redeem and, in the foraier state, when a person suffers a judgment, or enters into a statute or recognizance binding his land, afterwards mortgages it, without giving notice, in writing, of the prior incumbrance, he shall not be allowed to redeem, unless, within six months from a written demand, he discharges such incumbrauce. Prin. Dig. 161; 1 Brev. Dig. 166−8.

4. In Ohio a fraudulent conveyance is punished as a crime; Walk. Intr. 350; and, in Indians, any party to a fraudulent conveyance is subjected to a flue and to double damages. Ind. Rev. Laws, 189. See 12 Pet. 773.

STEP−DAUGHTER. In Latin privigna, is the daughter of one's wife, or of one's hushand.

STEP−FATHER. In Latin vitricus, is the hushand of one's mother who is not the father of the person spoken of.

STEP−MOTHER. In Latin noverca, is the wife of one's father, who is not the mother of the person spoken of.

STEP−SON. In Latin privignus, is the son of one's wife, or of one's hushand.

STERE. A French measure of solidity used in measuring wood. It is a cubic metre. Vide Measure.

STERILITY. Barrenness; incapacity to produce a child. It is curable and incurable; when of the latter kind, at the time of the marriage, and arising from impotency, it is a good cause for dissolving a marriage. 1 Fodere, Med. Leg. _254. See Impotency.

STERLING. Current money of Great Britain, but anciently a small coin, worth about one penny; and so called, as some suppose, because it was stamped with the figure of a small star, or, as others suppose, because it was first stamped in England in the reign of King John, by merchants from Germany called Esterlings. Pounds sterling, originally signified so many pounds in weight of these coins. Thus we find in Matthew Paris, A.D. 1242, the expression "Accepit a rege pro stipendio tredecim libras esterlingorum." The secondary or derived sense is a

certain value in current money, whether in coins or other currency. Lowndes, 14. Watts' Gloss. Ad verbum.

STET PROCESSUS, practice. An order made, upon proper cause shown, that the process remain stationary. As where a defendant having become insolvent would, by moving judgment in the case of nonsuit, compel a plaintiff to proceed, the court will, on an affidavit, of the fact of insolvency, award a stet proces−sus. See 7 Taunt. Rep. 180, 1 Chit. Rep. 738; 10 Wentw. Pl. 43.

STEVEDORE. A person employed in loading and unloading vessels. Dunl. Adm. Pr. 98. Vide Arrameurs; Sac

STEWARD OF ALL ENGLAND. Seneschallus totius Angliae. An officer among the English who was invested with various powers, and, among others, it was his duty to preside on the trial of peers.

STEWS, Eng. law., Places formerly permitted in England to women of professed lewdness, and who, for hire, would prostitute their bodies to all comers.

2. These places were so called because the dissolute persons who visited them prepared themselves by bathing; the word stews being derived from the old French estuves, stove, or hot bath. 3 Inst. 205.

STILLICIDIUM, civ. law. The rain water that falls from the roof or eaves of a house by scattered drops. When it is gathered into a spout it is called flumen.

2. Without the constitution of one or other of these servitudes, no proprietor can build so as to throw the rain that falls from his house directly on his neighbor's grounds; for it is a restriction upon all property, nemo pro−test immitere in alienum; and he who in building breaks through that res−traint, truly builds on another man's property; because to whomsoever the area belong's, to him also belongs whatever is above it: cujus est solum, ejas est usque ad caelum. 3 Burge on the Conf. of Laws, 405. Vide Servitus Stillicidii. Inst. 3, 2, 1; Dig. 8, 2, 2.

STINT, Eng. law. The proportionable part of a man's cattle, which he may keep upon the common.

2. To use a thing without stint, is to use it without limit.

STIPULATED DAMAGES, contracts. The sum agreed by the parties to be paid, on a breach of a contract, by the party violating his engagement to the other.

2. It is difficult to distinguish, in some cases, between stipulated damages and a penalty; (q. v.) 3 Chitty's Commer. Law, 627; 2 Bos. & Pull. 346. The effect of inserting stipulated damages, either at law or equity, a pears to be, that both parties must abide by the stipulation, and the prescribed sum must be given. Holt, C. N. P. 46 Newl. Contr. 313; see 5 Taunt. Rep. 247. Vide Damages, Liquidated.

STIPULATION, contracts. In the Roman law, the contract of stipulation was made in the following manner, namely; the person to whom the promise was to be made, proposed a question to him from whom it was to proceed, fully expressing tho nature and extent of the engagement and, the question so proposed being answered in the affirmative, the obligation was complete.

2. It was essentially necessary that both parties should speak, (so that a dumb man could not enter into a stipulation) that the person making the promise should answer conformably to the specific question, proposed, without any material interval of time, and with the intention of contracting an obligation.

3. From the general use of this mode of contracting, the term stipulation has been introduced into common parlance, and, in modern language, frequently refer's to any thing which forms a material article of an agreement; though it is applied more correctly and more conformably to its original meaning to denote the insisting upon and requiring any particular engagement. 2 Evans' Poth. on Oblig. 19.

4. In this contract the Roman law dispensed with an actual consideration. See, generally, Pothier, Oblig. P. 1, c. 1, s. 1, art. 5.

5. In the admiralty courts, the first process is freq uently to arrest the defendant, and then they take the recognizances or stipulation of certain fide jussors in the nature of bail. 3 Bl. Comm. 108; vide Dunlap's Adm. Practice, Index, h. t.

6. These stipulations are of three sorts, namely: l. Judicatum solvi, by which the party is absolutely bound to pay such sum as may be adjudged by the court. 2 De judico sisti, by which he is bound to appear from time to time, during the pendency of the suit, and to abide the sentence. 3. De ratio, or De rato, by which he engages to ratify the acts of his proctor: this stipulation is not usual in the admiralty courts of the United States.

7. The securities are taken in the following manner, namely: 1. Cautio fide jussoria, by sureties. 2. Pignoratitia; by deposit. 3. Juratoria, by oath: this security is given when the party is too poor to find sureties, at the discretion of the court. 4. Aude promissoria, by bare promise: this security is unknown in the admiralty courts of the United States. Hall's Adm. Pr. 12; Dunl. Adm. Pr. 150, 151. See 17 Am. Jur. 51.

STIRPES, descents. The root, stem, or stock of a tree. Figuratively, it signifies, in law, that person from whom a

family is descended, and also the kindred or family.

2. It is chiefly used in estimating the several interests of the different kindred, in the distribution of an intestate's estate. 2 Bl. Com. 517 and vide Descent; Line.

STOCK, mer. law. The capital of a merchant tradesman, or other person including his merchandise, money and credits. In a narrower sense it signifies only the goods and wares he has for sale and traffic. The capital of corporations is also called stock; this is usually divided into shares of a definite value, as one hundred dollars, fifty dollars per share.

2. The stock held by individuals in corporations is generally considered as personal property. 4 Dane's Ab. 670; Sull. on Land. Titl. 71; Walk. Introd. 211; 1 Hill, Ab. 1 8.

STOCK, descents. This is a metaphorical expression which designates, in the genealogy of a family, the person from whom others are descended: those persons who have so descended are called branches. Vide 1 Roper on Leg. 103; 2 Suppl. to Ves. 307 and Branch; Descent Line; Stirpes.

STOCKS, crim. law. A machine commonly made of wood, with boles in it, in which to confine persons accused of or guilty of a crime.

2. It was used either to confine unruly offenders by way of security, or convicted criminals for punishment.

3. This barbarous punishment has been generally abandoned in the United States.

STOPPAGE IN TRANSITU, contracts. This is the name of that act of a vendor of goods, upon a credit, who, on learning that the buyer has failed, resumes the possession of the goods, while they are in the hands of a carrier or middle−man, in their transit to the buyer, and before they get, into his actual possession.

2. The subject will be considered with reference to, 1. The person who has a right to stop goods in transitu. 2. The property whicli may be stopped. 3. The time when to be stopped. 4. The, manner of stopping. 5. The failure of the buyer. 6. The effect of stopping.

3. − 1. The right of stopping property in transitu is confined to cases in which the consignor is substantially the seller; and does not extend to a mere surety for the price, nor to any person who does not rest his claim on a proprietor's right. 6 East, R. 371; 4 Burr. 2047; 3 T. R. 119, 783; 1 Bell's Com. 224.

4. − 2. The property stopped must be personal property actually sold or bartered, on a credit. 2 Dall. 180; 1 Yeates, 177.

5. − 3. It must be stopped during the transit, and while something remains to be done to complete the delivery; for the actual or symbolical, delivery of the goods to the buyer puts an end to the right of the seller to stop the goods in transitu; 3 T. R. 464; 8 T. R. 199; but it has been decided that if, before delivery, the seller annex a condition that security, shall be given before taking possession; or that the price shall be paid in ready money; or that a bill shall be delivered; the property will not pass by the mere act of the buyer's attaining the possession. 3 Esp. Rep. 58., When the seller has given the buyer documents sufficient to transfer the property, and the buyer, upon the strength of such documents, has sold the goods to a bona fide purchaser without notice, the seller is divested of his rights 2 W. C. C. R. 283; but a resale by the buyer does not, of itself, and without other circumstances, destroy the vendor's right of stoppage in transitu. 6 Taunt. R. 433 Vide Delivery; and 1 Rawle's R. 9; 1 Ashm. R. 103; Harr. Dig. Sale, III. 4; 7 Taunt. R. 59; 2 Marsh. R. 366; Holt's R. 248; 1 Moore's R. 526; 3 B. & P. 320; Id. 119; 5 East, R. 175.

6. − 4 The manner of stopping the goods is usually by taking corporal possession of them; but this is not the only way it may be done; the seller may put in his claim or demand of his right to the goods either verbally or in writing. 2 B. & P. 257, 462; 2 Esp. R. 613; Co. Bankr. Law, 494; Holt's Cases, N. B. 338. Vide Corporal Touch.

7. − 5. The buyer must have actually failed, or be in actual and immediate danger of insolvency.

8. − 6. The stopping of goods in transitu does not of itself rescind the contract. 1 Atk. 245; Co. B. L. 394; 6 East, R. 27, n. The seller may, therefore, upon offering to deliver them, recover the price. 1 Campb. 109; 6 Taunt. 162. But inasmuch as the seller is permitted in equity to annul the transfer he has made, by stopping the goods on their transit, and by that means to deprive the general creditors of the buyer of property, which, in strict law, has passed to their debtor, it has been considered as equitable, on the other hand, that this act should be accompanied by a rescinding of the whole contract, and a renunciation of any further claim; since it would be a great bardship to give a preference to the seller over, the other creditors; and subject the divisible funds, which have derived no benefit from the contract, to a further claim of indemnification. 1 Bell's Com. B. 2, pt. 3, c. 2, s. 2, _5.

Vide, generally, 2 Kent, Com. 427; Bac. Abr. Merchant, L; Ross on Vend., Index, h. t. Selw. N. P. 1206; Whitaker on Stoppage in Transitu; Abbott on Ship. 351; 3 Chit. Com. Law, 340; Chit. on Contr. 124−126; 2 Com.

Dig. 268; 8 Com. Dig. 952; 2 Supp. to Ves. jr. 231, 481; 2 Leigh's N. P. 1472; 1 Bouv. Inst. n. 959−65.

STORES. the victuals and provisions collected together for the subsistence of a ship's company, of a camp, and the like.

STOUTHRIEFF, Scotch law. Formerly this word included in its signification every species of theft, accompanied with violence to the person; but of late years it has become the vox signata for forcible and masterful depredation within or near the dwelling house; while robbery has been more particularly applied to violent depredation on the highway, or accompanied by house−breaking. Alison, Princ. Cr. Law of Scot]. 227.

STOWAGE, mar. law. The proper arrangement in a ship, of the different articles of which a cargo consists, so that they may not injure each other by friction, or be damaged by the leakage of the ship.

2. The master of the ship is bound to attend to the stowage, unless, by custom or agreement, this business is to be performed by persons employed by the mercbant. Abbott on Shipp. 228; Pardes. Dr. Com. n. 721.

STRANDING, maritime law. The running of a ship or other vessel on shore; it is either accidental or voluntary.

2. It is accidental where the ship is driven on, shore by the winds and waves; it is voluntary where she is run on shore, either to preserve her from a worse fate, or for some fraudulent purpose. Marsh. Ins. B. 1, c. 12, s. 1.

3. It is of great consequence to define accurately what shall be deemed a stranding, but this is no easy matter. In one case a ship having run on some wooden piles, four feet under water, erected in Wisheach river, about nine yards from shore, which were placed there to keep up the banks of the river, and having remained on these piles until they were cut away, was considered by Lord Kenyon to have been stranded. Marsh. Ins. B. 7, s. 3 . In another case, a ship arrived in the river Thames, and, upon coming up to the Pool, which was full of vessels, one brig ran foul of her bow, and another of her stern, in consequence of which she was driven aground, and continued in that situation an hour, during which period several other vessels ran foul of her; this, Lord Kenyon told the jury, that unskilled as he was in nautical affairs, he thought he could safely pronounce to be no stranding. lb.; 1 Camp. 131; 3 Camp. 431; 4 M. & S. 503; 7 B. & C. 224; 5 B. & A. 225; 4 B. & C. 736. See Perils of the Sea.

STRANGER, persons, contracts. This word has several significations. 1. A person born out of the United States; but in this sense the term alien is more properly applied, until he becomes naturalized. 2. A person who is not privy to an act or contract; example, he who is a stranger to the issue, shall not take advantage of the verdict. Bro. Ab. Record, pl. 3; Vin. Ab. h. t. pl. 1 and vide Com. Dig. Abatement, H 54.

2. When a man undertakes to do a thing, and a stranger interrupts him, this is no excuse. Com. Dig. Condition, L 14. When a party undertakes that a stranger shall do a certain thing, he becomes liable as soon as the stranger refuses to perform it. Bac. Ab. Conditions, Q 4.

STRATAGEM. A deception either by words or actions, in times of war, in order to obtain an advantage over an enenly.

2. Such stratagems, though contrary to morality, have been justified, unless they have been accompanied by perfidy, injurious to the rights of humanity, as in the example given by Vattel of an English frigate, which during a war between France and England, appeared off Calais and made signals of distress in order to allure some vessel to come to its relief, and seized a shallop and its crew, who had generously gone out to render it assistance. Vattel, Droit des Gens, liv. 3, c. 9, _178.

3. Sometimes stratagems are employed in making, contracts, this is unlawful and fraudulent, and avoids the contract. See Fraud.

STRATOCRACY. A military government; government by military chiefs of an army.

STREAM. A current of water. The right to a water course is not a right in the fluid itself so much as a right in the current of the stream. 2 Bouv. Inst. n. 1612. See River; Water Course.

STREET. A road in a village or city. In common parlance the word street is equivalent to highway. 4 Serg. & Rawle, 108.

2. A permission to the public for the space of eight, or even of six years, to use a street without bar or impediment, is evidence from which a dedication to the public maybe inferred. 11 East, R. 376; See 2 N. Hamp. 513; 4 B. & A. 447; 3 East, R. 294; 1 Law lntell. 134; 2 Smith's Lead. Cas. 94, n.; 2 Pick. R. 162; 2 Verm. R. 480; 5 Taunt. R. 125; S. C. 1 E. C. L. R. 34; 4 Camp. R. 169; 1 Camp. R. 260: 7 B. & C. 257; S. C. 14 E. C. L. R. 39; 5 B & Ald. 454; S. C. 7 E. C. L. R. 159; 1 Blackf. 44; 2 Wend. 472; 8 Wend. 85; 11 Wend. 486; 6 Pet. 431; 1 Paige, 510; and the article Dedication.

STRICT SETTLEMENT. When lands are settled to the parent for life, and after his death to his first and other sons in tail, and trustees are interposed to preserve the contingent remainders, this is called a strict settlement.

STRICTISSIMI JURIS. The most strict right or law. In general, when a person receives an advantage, as the grant of a license, he is bound to conform strictly to the exercise of the rights given him by it, and in case of a dispute, it will be strictly construed. See 3 Story, Rep. 159.

STRICTUM JUS. This phrase is used to denote mere law, in contradistinction to equity.

STRUCK, pleadings. In an indictment for murder, when the death arises from any woundng, beating or bruising, it is said, that the word "struck" is essential. 1 Bulstr. 184; 5 Co. 122; 3 Mod. 202; Cro. Jac. 655; Palm. 282; 2 Hale, 184, 6, 7: Hawk. B. 2, c. 23, s. 82; 1 Chit. Cr. Law, *243 6 Binn. R. 179.

STRUCK JURY. A special jury selected by striking from the pannel of jurors, a certain number by each party, so as to leave a number required by law to try the cause. In general, a list of forty−eight jurors is made out for each case; the plaintiff strikes off twelve, aud the defendant the same number from those who remain twelve are to be selected to try the cause, unless they are challenged for cause. See Challenge.

STRUCK OFF. A case is said to be struck off, where the court has no jurisdiction, aud can give no judgment, and order that the case be taken off the record, which is done by an entry to that effect.

STRUMPET. A harlot, or courtezan: this word was formerly used as an addition. Jacob’s Law Dict. h. t.

TO STULTIFY. To make or declare insane. It is a general rule in the English law, that a man shall not be permitted to stultify himself; that is, he shall not be allowed to plead his insanity to avoid a contract. 2 Bl. Com. 291; Fonbl. Eq. b. 1, c. 2, 1; Pow. on Contr. 19.

2. In the United States, this rule seems to have been exploded, and the party may himself avoid his acts except those of record, and contracts for necessaries and services rendered, by allegation and proof of insanity. 5 Whart. R. 371, 379; 2 Kent, Com. 451; 3 Day, R. 90; 3 Conn. R. 203: 5 Pick. R. 431; 5 John R. 503.; 1 Bland. R. 376. Vide Fonbl. Eq b. 1, c. 2, _1, note 1; 2 Str. R. 1104; 3 Camp. R. 125; 7 Dowl. & Ryl. 614; 3 C. & P. 30; 1 Hagg. C. R. 414.

STUPIDITY, med. jur. That state of the mind which cannot perceive and embrace the data presented to it by the senses; and therefore the stupid person can, in general, form no correct judgment. It is a want of the perceptive powers. Ray, Med. Jur. c. 3, _40. Vide Imbecility.

STUPRUM, civ. law. The criminal sexual intercourse which took place between a man and a single woman, maid or widow, who before lived honestly. Inst. 4, 18, 4; Dig. 48, 5, 6; Id. 50, 16, 101; 1 Bouv. Inst. Theolo. ps. 3, quaest. 2, art. 2, p. 252.

SUB−AGENT. A person appointed by an agent to perform some duty, or the whole of the business relating to his agency.

2. Sub−agents may be considered in two points of view. 1. With regard to their rights and duties or obligations, towards their immediate employers. 2. As to their rights and obligations towards their superior or real principals.

3. − 1. A sub−agent is generally invested with the same rights, and incurs the same liabilities in regard to his immediate employers, as if he were the sole and real principal. To this general rule there are some exceptions for example, where by the general usage of trade or the agreement of the parties, sub−agents are ordinarily or necessarily employed, to accomplish the ends of the agency, there, if the agency is avowed, and the credit is exelusively given to the principal, the intermediate agent may be entirely exempted from all liability to the sub−agent. The agent, however, will be liable to the sub−agent, unless such exclusive credit has been given, although the real principal or superior may also be liable. Story on Ag. _386; Paley on Ag. by Lloyd, 49. When the agent employs a sub−agent to do the whole, or any part of the business of the agency, without the knowledge or consent of his principal, either express or implied, the latter will only be entitled to recover from his immediate employer, and his sole responsibility is also to him. In this case the superior or real principal is not responsible to the sub−agent, because there is no privity between them. Story on Ag. _13, 14, 15, 217, 387.

4. − 2. Where by an express or implied agreement of the parties, or by the usages of trade, a sub−agent is to be employed, a privity exists between the principal and the sub−agent, and the latter may justly maintain his claim for compensation, both against the principal and his immediate employer, unless exclusive credit is given to one of them; and, in that case, his remedy is limited to that party. 1 Liv. on Ag. 64; 6 Taunt. R. 147.

SUBALTERN. A kind of officer who exercises his authority under the superintendence and control of a superior.

TO SUBDIVIDE. To divide a part of a thing which has already been divided. For example, when a person dies leaving children, and grandchildren, the children of one of his own who is dead, his property is divided into as many shares as he had children, including the deceased, and the share of the deceased is subdivided into as many shares as he had children.

SUBINFEUDATION, estates, English law. The act of an inferior lord by which he carved out a part of an estate which he held of a superior, and granted it to an inferior tenant to be held of himself.

2. It was an indirect mode of transferring the fief, and resorted to as an artifice to elude the feudal restraint upon alienation: this was forbidden by the statute of Quia Emptores, 18 Ed. I; 2 Bl. Com. 91; 3 Kent, Com. 406.

SUBJECT, contracts. The thing which is the object of an agreement. This term is used in the laws of Scotland.

SUBJECT, persons, government. An individual member of a nation, who is subject to the laws; this term is used in contradistiction to citizen, which is applied to the same individual when considering his political rights.

2. In monarchical governments, by subject is meant one who owes permanent allegiance to the monarch. Vide Body politic; Greenl. Ev. _286; Phil. & Am. on Ev. 732, n. 1.

SUBJECT−MATTER. The cause, the object, the thing in dispute.

2. It is a fatal objection to the jurisdiction of the court when it has not cognizance of the subject−matter of the action; as, if a cause exclusively of admiralty jurisdiction were brought in a court of common law, or a criminal proceeding in a court having jurisdiction of civil cases only. 10 Co. 68, 76 1 Ventr. 133; 8 Mass. 87; 12 Mass. 367. In such case, neither a plea to the jurisdiction, nor any other plea would be required to oust the court of jurisdiction. The cause might be dismissed upon motion, by the court, ex officio.

SUBJECTION. The obligation of one or more persons to act at the discretion, or according to the judgment and will of others.

2. Subjection is either private or public. By the former is meant the subjection to the authority of private persons; as, of children to their parents, of apprentices to their masters, and the like. By the latter is understood the subjection to the authority of public persons. Rutherf. Inst. B. 2, c. 8.

SUBLEASE. A lease by a tenant to another tenant of a part of the premises held by him; an underlease.

SUBMISSION. A yielding to authority. A citizen is bound to submit to the laws; a child to his parents; a servant to his master. A victor may enforce, the submission of his enemy.

2. When a captor has taken a prize, and the vanquished have submitted to his authority, the property, as between the belligerents, has been transferred. When there is complete possession on one side, and submission upon the other, the capture is complete. 1 Gallis. R. 532.

SUBMISSION, contracts. An agreement by which persons who have a law−suit or difference with one another, name arbitrators to decide the matter, and bind themselves reciprocally to perform what shall be arbitrated.

2. The submission may be by the act of the parties simply, or through the medium of a court of law or equity. When it is made by the parties alone it may be in writing or not in writing. Kyd on Aw. 11; Caldw. on Arb. 16; 6 Watts' R. 357. When it is made through the medium of a court, it is made a matter of record by rule of court. The extent of the submission may be various, according to the pleasure of the parties; it may be of only one, or of all civil matters in dispute, but no criminal matter can be referred. It is usual to put in a time within which the arbitrators shall pronounce their award. Caldw. on Arb. ch. 3; Kyd on Awards, ch. 1; Civ. Code of Lo. tit. 19 3 Vin. Ab. 131; 1 Supp. to Ves. jr. 174; 6 Toull. n. 827; 8 Toull. n. 332; Merl. Repert. mot Compromis; 1 S. & R. 24; 5 S. & R. 51; 8 S. & R. 9; 1 Dall. 164; 6 Watts, R. 134; 7 Watts, R. 362; 6 Binn. 333, 422; 2 Miles, R, 169; 3 Bouv. Inst. n. 2483, et seq.

SUB MODO. Under a qualification; a legacy may be given sub modo, that is, subject to a condition or qualification.

SUBNOTATIONS, civ. law. The answers of the prince to questions which had been put to him respecting some obscure or doubtful point of law. Vide Rescripts.

SUBORNATION OF PERJURY, crim. law. The procuring another to commit legal perjury, who in consequence of the persuasion takes the oath to which be has been incited. Hawk. B. 1, c. 69, s. 10.

2. To complete the offence, the false oath must be actually taken, and no abortive attempt (q. v.) to solicit will complete the crime. Vide To Dissuade; To persuade.

3. But the criminal solicitation to commit perjury, though unsuccessful, is a misdemeanor at common law. 2 East, Rep. 17; 6 East, R. 464; 2 Chit. Crim. Law, 317; 20 Vin. Ab. 20. For a form of an indictment for an attempt to suborn a person to commit perjury, vide 2 Chit. Cr. Law, 480; Vin. Ab. h. t.

4. The act of congress of March 3, 1825, _13, provides, that if any person shall knowingly or wilfully procure any such perjury, mentioned in the act, to be committed, every such person so offending, shall be guilty of subornation of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labor, not exceeding five years, according to the aggravation of the

offence.

SUBPOENA, practice, evidence. A process to cause a witness to appear and give testimony, commanding him to lay aside all pretences and excuses, and appear before a court or magistrate therein named, at a time therein mentioned, to testify for the party named, under a penalty therein mentioned. This is usually called a subpoena ad testificandum.

2. On proof of service of a subpoena upon the witness, and that he, is material, an attachment way be issued against him for a contempt, if he neglect to attend as commanded.

SUBPOENA, chancery practice. A mandatory writ or process, directed to and requiring one or more persons to appear at a time to come, and answer the matters charged against him or them; the writ of subpoena was originally a process in the courts of common law, to enforce the attendance of a witness to give evidence; but this writ was used in the court of chancery for the game purpose as a citation in the courts of civil and canon law, to compel the appearance of a defendant, and to oblige him to answer upon oath the allegations of the plaintiff.

2. This writ was invented by John Waltham, bishop of Salishury, and chancellor to Rich. II. under the authority of the statutes of Westminster 2, and 13 Edw. I. c. 34, which enabled him to devise new writs. 1 Harr. Prac. 154; Cruise, Dig. t. 11, c. 1, sect. 12−17. Vide Vin. Ab. h. t.; 1 Swanst. Rep. 209.

SUBPOENA DUCES TECUM, practice. A writ or process of the same kind as the subpoena ad testificandum, including a clause requiring the witness to bring with him and produce to the court, books, papers, &c., in his hands, tending to elucidate the matter in issue. 3 Bl. Com. 382.

SUB PEDE SIGILLI. Under the foot of the seal; under seal. This expression is used when it is required that a record should be certified under the seal of the court.

SUB POTESTATE. Under or subject to the power of another; as, a wife is under the power of her hushand; a child subject to that of his father; a slave to that of his master.

SUBREPTION, French law. By this word is understood the fraud committed to obtain a pardon, title, or grant, by alleging facts contrary to truth.

SUBROGATION, civil law, contracts. The act of putting by a transfer, a person in the place of another, or a thing in the place of another thing. It is the substitution (q. v.) of a new for an old creditor, and the succession to his rights, which is called subrogation; transfusio unius creditoris in alium. It is precisely the reverse of delegation. (q. v.)

2. There are three kinds of subrogation: 1. That made by the owner of a thing of his own free will; example, when be voluntarily assigns it. 2. That which arises in consequence of the law, even without the consent of the owner; example, when a man pays a debt which could not be properly called his own, but which nevertheless it was his interest to pay, or which he might have been compelled to pay for another, the law subrogates him to all the rights of the creditor. Vide 2 Binn. Rep. 382; White's L. C. in Eq.* 60−72. 3. That which arises by the act of law joined to the act of the debtor; as, when the debtor borrows money expressly to pay off his debt, and with the intention of substituting the lender in the place of the old creditor. 7 Toull. liv. 3, t. 3, c. 5, sect. 1, _2. Vide Civ. Code of Louisiana, art. 2155 to 2158; Merl. Repert. h. t.; Dig. lib. 20; Code, lib. 8, t. 18 et 19 9 Watts. R. 451; 6 Watts & Serg. 190; 2 Bouv. Inst. n. 1413.

SUBSCRIBING WITNESS. One who subscribes his name to a writing in order to be able at a future time to prove its due execution; an attesting witness.

2. In order to make a good subscribing witness, it is requisite he Should sign his name to the instrument himself, at the time of its execution, and at the request or with the assent of the party. 6 Hill, N. Y. R. 303; 11 M. & W. 168; 1 Greenl. Ev. _569 a, 4th ed. See Witness instrumentary; 5 Watts, 399.

SUBSCRIPTION, contracts. The placing a signature at the bottom of a written or printed engagement; or it is the attestation of a witness by so writing his name; but it has been holden that the attestation of an illiterate witness, by making his mark, is a sufficient subscription. 7 Bing. 457; 2 Ves. 454; Atk. 177; 1 Yes. jr. 11; 3 P. Wms. 253; 1 V. & B. 362. Vide To sign.

2. By subscription is also understood the act by which a person contracts, in writing, to furnish a sum of money for a particular purpose; as, a subscription to a charitable institution, a subscription for a book, for a newspaper, and the like.

SUBSCRIPTION LIST. The names of persons who have agreed to take a newspaper, magazine or other publication, placed upon paper, is a subscription list.

2. This is, an incident to a newspaper, and passes with the sale of the printing materials. 2 Watts, 111.

SUBSIDY, Engl. law. An aid, tax or tribute granted by parliament to the king for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods. Jacob's Law. Dict. h. t.

2. The assistance given in money by one nation to another to enable it the better to carry on a war, when such nation does not join directly in the war, is called a subsidy. Vattel, liv. 3, _82. See Neutrality.

SUB SILENTIO. Under silence, without any notice being taken. Sometimes passing a thing sub silentio is evidence of consent. See Silence.

SUBSTANCE, evidence. That which is essential; it is used in opposition to form.

2. It is a general rule, that on any issue it is sufficient to prove the substance of the issue. For example, in a case where the defendant pleaded payment of the principal sum and all interest due, and it appeared in evidence that a gross sum was paid, not amounting to the full interest, but accepted by the plaintiff as full payment, the proof was held to be sufficient. 2 Str. 690; 1 Phil. Ev. 161.

SUBSTITUTE, contracts. One placed under another to transact business for him; in letters of attorney, power is generally given to the attorney to nominate and appoint a substitute.

2. Without such power, the authority given to one person cannot in general be delegated to another, because it is a personal trust and confidence, and is not therefore transmissible. The authority is given to him to exercise his judgment and discretion, and it cannot be said that the trust and confidence reposed in him shall be exercised at the discretion of another. 2 Atk. 88; 2 Ves. 645. But an authority may be delegated to another, when the attorney has express power to do so. Bunb. 166; T. Jones, 110. See Story, Ag. __13, 14. When a man is drawn in the militia, he may in some cases hire a substitute.

SUBSTITUTES, Scotch law. Where an estate is settled on a long series of heirs, substituted one after another, in tailzie, the person first called in the tailzies, is the institute; the rest, the beirs of tailzie; or the substitutes. Ersk. Princ. L. Scotl. 3, 8, 8. See Tailzie; Institute.

SUBSTITUTION, civil law. In the law of devises, it is the putting of one person in the place of another, so that he may, in default of ability in the former, or after him, have the benefit of a devise or legacy.

2. It is a species of subrogation made in two different ways; the first is direct substitution, and the latter a trust or fidei commissary substitution. The first or direct substitution, is merely the institution of a second legatee, in case the first should be either incapable or unwilling to accept the legacy; for example, if a testator should give to Peter his estate, but in case he cannot legally receive it, or he wilfully refuses it, then I give it to Paul; this is a direct substitution. Fidei commissary substitution is that which takes place when the person substituted is not to receive the legacy until after the first legatee, and consequently must receive the thing bequeathed from the hands of the latter for example, I institute Peter my heir, and I request that at his death he shall deliver my succession to Paul. Merl. Repert. h. t.; 5 Toull. 14.

SUBSTITUTION, chancery practice. This takes place in a case where a creditor has a lien on two different parcels of land, and another creditor has a subsequent lien on one only of the parcels, and the prior creditor elects to have his whole demand out of the parcel of land on which the subsequent creditor takes his lien; the latter is entitled, by way of substitution, to have the prior lien assigned to him for his benefit. 1 Johns. Ch. R. 409; 2 Hawk's Rep. 623; 2 Mason, R. 342. And in a case where a bond creditor exacts the whole of the debt from one of the sureties, that surety is entitled to be substituted in his place, and to a cession of his rights and securities, as if be were a purchaser, either against the principal or his co−sureties. Id. 413; 1 Paige's R. 185; 7 John. Ch. Rep. 211; 10 Watts, R. 148.

2. A surety on paying the debt is entitled to stand in the place of the cre−ditor and to be subrogated to all his rights against the principal. 2 Johns. Ch. R. 454. 4 Johns. Ch. R. 123; 1 Edw. R. 164; 7 John. R. 584; 3 Paige's R. 117; 2 Call, R. 125; 2 Yerg. R. 346; 1 Gill & John. 346; 6 Rand. R. 98,; 8 Watts, R. 384. In Pennsylvania it is provided by act of assembly, that in all cases where a constable shall be entrusted with the execution of any process for the collection of money, and by neglect of duty shall fail to collect the same, by means whereof the bail or security of such constable shall be compelled to pay the amount of any judgment shall vest in the person paying, as aforesaid, the equitable interest in such judgment, and the amount due upon any such judgment may be collected in the name of the plaintiff for the use of such person. Pamphlet Laws, 1828−29, p. 370. Vide 2 Binn. R. 382, and Subrogation.

SUBSTRACTION, French law. The act of taking something fraudulently; it is generally applied to the taking of the goods of the estate of a deceased person fraudulently. Vide Expilation.

SUB−TENANT. The same as under−tenant. See Under−leaser; Under−tenant, and 1 Bell's Com. 76.

SUBTRACTION. The act of withhold ing or detaining anything unlawfully.

SUBTRACTION OP CONJUGAL RIGHTS. The act of a hushand or wife by living separately from the other without a lawful cause. 3 Bl. Com. 94.

SUCCESSION, in Louisiana. The right and transmission of the rights an obligations of the deceased to his heirs. Succession signifies also the estate, rights and charges which a person leaves after his death, whether the property exceed the charges, or the charges exceed the property, or whether he has left only charges without property. The succession not only includes the rights and obligations of the deceased, as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also of the new charges to which it becomes subject. Finally, succession signifies also that right by which the beir can take possession of the estate of the de−ceased, such as it may be.

2. There are three sorts of successions, to wit: testamentary succession; legal succession; and, irregular succession. 1. Testamentary succession is that which results from the constitution of the heir, contained in a testament executed in the form prescribed by law. 2. Legal succession is that which is established in favor of the nearest relations of the deceased. 3. Irregular succession is that which is established by law in favor of certain persons or of the state in default of heirs either legal or instituted by testament. Civ. Code, art. 867−874.

3. The lines of a regular succession are divided into three, which rank among themselves in the following order: 1. Descendants. 2. Ascendants. 3. Collaterals. See Descent. Vide Poth. Traite des Successions lbid. Coutumes d'Orleans, tit. 17 Ayl. Pand. 348; Toull. liv. 3, tit. 1; Domat, h. t.; Merl. Repert. h. t.

SUCCESSION, com. law. The mode by which one set of persons, members of a corporation aggregate, acquire the rights of another set which preceded them. This term in strictness is to be applied only to such corporations. 2 Bl. Com. 430.

SUCCESSOR. One who follows or comes into the place of another.

2. This term is applied more particularly to a sole co6−oration, or to any corporation. The word beir is more correctly applicable to a common person who takes an estate by descent. 12 Pick. R. 322; Co. Litt. 8 b.

3. It is also used to designate a person who has been appointed or elected to some office, after another person.

TO SUE. To prosecute or commence legal proceedings for the purpose of recovering a right.

SUFFRAGE, government. Vote; the act of voting.

2. The right of suffrage is given by the constitution of the United States, art. 1, s. 2, to the electors in each state, as shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Vide 2 Story on the Const. _578, et seq.; Amer. Citiz. 201; 1 Bl. Com. 171; 2 Wils. Lect. 130; Montesq. Esp. des Lois, Ii v. 11, c. 6; 1 Tucker's Bl. Com. App. 52, 3. See Division of opinion.

SUFFRANCE. The permitting a tenant who came in by a lawful title, to remain after his right has expired. Vide Estates at suffrance.

SUGGESTIO FALSI. A statement of a falsehood. This amounts to a fraud when−ever the party making it was bound to disclose the truth.

2. The following is an example of a case where chancery will interfere and. set aside a contract as fraudulent, on account of the suggestio falsi: a purchaser applied to the seller to purchase a lot of wild land, and represented to him it was worth nothing, except for a sheep pasture, when he knew there was a valuable mine on the lot, of which the seller was ignorant. The sale was set aside. 2 Paige, 390; 4 Bouv. Inst. n. 3837, et seq. Vide Concealment; Misrepresentation; Representation; Suppressio veri.

SUGGESTION. In its literal sense this word signifies to inform, to insin−uate, to instruct, to cause to be remembered, to counsel. In practice it is used to convey the idea of information; as, the defendant suggests the death of one of the plaintiffs. 2 Sell. Pr. 191.

2. In wills, when suggestions are made to a testator for the purpose of procuring a devise of his property in a particular way, and when such suggestions are false, they generally amount to a fraud. Bac. Ab. Wills, G 3; 5 Toull. n. 706.

SUGGESTIVE INTERROGATION. This phrase has been used by some writers to signify the same thing as leading question. (q. v.) 2 Benth. on Ev. b. 3, c. 3. It is used in the French law. Vide Question.

SUI JURIS. One who has all the rights to which a freemen is entitled; one who is not under the power of another, as a slave, a minor, and the like.

2. To make a valid contract, a person must, in general, be sui juris. Every one of full age is presumed to be sui

juris. Story on Ag. p. 10.

SUICIDE, crimes, med. jur. The act of malicious self−murder; felo de se. (q. v.) 3 Man. Gran. & Scott, 437, 457, 458; 1 Hale, P. C.. 441. But it has been decided in England that where a man's life was insured, and the policy contained a proviso that "every policy effected by a person on his or her own life should be void, if such person should commit suicide, or die by duelling or the hands of justice," the terms of the condition included all acts of voluntary self−destruction, whether the insured at the time such act was committed, was or was not a moral responsible agent. 3 Man. Gr. & Scott, 437. In New York it has been held, that an insane person cannot commit suicide, because. such person has no will. 4 Hill' 3 R. 75.

2. It is not punishable it is believed in any of the United States, as the unfortunate object of this offence is beyond the reach of human tribunals, and to deprive his family of the property he leaves would be unjust.

3. In cases of sudden death, it is of great consequence to ascertain, on finding the body, whether the deceased has been murdered, died suddenly of a natural death, or whether he has committed suicide. By a careful examination of the position of the body, and of the circumstances attending it, it can be generally ascertained whether the deceased committed suicide, was murdered, or died a natural death. But there are sometimes cases of suicide which can scarcely be distinguished from those of murder. A case of suicide is mentioned by Doctor Devergie, (Annales d'Hygiene, transcribed by Trebuchet, Jurisprudence de la Medecine, p. 40,) which bears a striking analogy to a murder. The individuul went to the cemetery of Pere la Chaise, near Paris, and with a razor inflicted a wound on himself immediately below the os hyoide; the first blow penetrated eleven lines in depth; a second, in the wound made by the first, pushed the instrument to the depth of twenty−one lines; a third extended as far as the posterior of the pharynx, cutting the muscles which attached the tongue to the oshyoide, and made a wound of two inches in depth. Imagine an enormous wound, immediately under the chin, two inches in depth, and three inches and three lines in width, and a foot in circumference; and then judge whether such wound could not be easily mistaken as having been made by a stranger, and not by the deceased. Vide Death, and 1 Briand, Med. Leg. 2e partie, c. 1, art. 6.

SUIT. An action. The word suit in the 25th section of the judiciary act of 1789, applies to any proceeding in a court of justice, in which the plaintiff pursues, in such court, the remedy which the law affords him. An application for a prohibition is therefore a suit. 2 Pet. 449. According to the code of practice of Louisiana, art. 96, a suit is a real, personal or mixed demand, made before a competent judge, by which the parties pray to obtain their rights, and a decision of their disputes. In that acceptation, the words suit, process and cause, are in that state almost synonymous. Vide Secta, and Steph. Pl. 427; 3 Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399; Wood's Civ. Law, b. 4, c. p. 315; 4 Mass. 263; 18 John. 14; 4 Watts, R. 154; 3 Story, Const. _1719. In its most extended sense, the word suit, includes not only a civil action, but also a criminal prosecution, as indictment, information, and a conviction by a magistrate. Ham. N. P. 270.

SUITE. Those persons, who by his authority, follow or attend an ambassador or other public minister.

2. In general the suite of a minister are protected from arrest, and the inviolability of his person is communicated to those who form his suite. Vattel, lib. 4, c. 9, _120. See 1 Dall. 177; Baldw. 240; and Ambassador.

SUITOR. One who is a party to a suit or action in court. One who is a party to an action. In its ancient sense, suitor meant one Who was bound to attend the county court, also, one who formed part of the secta. (q. v.)

SULTAN. The title of the Turkish sovereign and other Mabometan princes.

SUMMARY PROCEEDINGS. When cases are−to be adjudged promptly, without any unnecessary form, the proceedings are said to be summary.

2. In no case can the party be tried summarily unless when such proceedings are authorized by legislative autliority, except perhaps in the cases of contempts, for the common law is a stranger to such a mode of trial. 4 Bl. Com. 280; 20 Vin. Ab. 42; Boscawen on Conv.; Paley on Convict.; vide Convictions.

SUMMING UP, practice. The act of making a speech before a court and jury, after all the evidence has been heard, in favor of one of the parties in the cause, is called summing up. When the judge delivers his charge to the jury, he is also said to sum up the evidence in the case. 6 Harg. St. Tr. 832; 1 Chit. Cr. Law, 632.

2. In summing up, the judge should, with much precision and clearness, state the issues joined between the parties, and what the jury are required to find, either in the affirmative or negative. He should then state the substance of the plaintiff's claim and of the defendant's ground of defence, and so much of the evidence as is adduced for each party, pointing out as he proceeds, to which particular question or issue it respectively applies, taking care to abstain as much as possible from giving an opinion as to the facts. It is his duty clearly to state the

law arising in the case in such terms as to leave no doubt as to his meaning, both for the purpose of directing the jury, and with a view of correcting, on a review of the case on a motion for a new trial, or on a writ of error, any error he may, in the hurry of the trial, have committed. Vide 8 S. & R. 150; 1 S. & R. 515; 4 Rawle, R. 100, 195, 356; 2 Penna. R. 27; 2 S. & R. 464. Vide Charge; Opinion, (Judgment.)

TO SUMMON, practice. The act by which a defendant is notified by a compepetent officer, that an action has been instituted against him, and that he is required to answer to it at a time and place named. This is done either by giving the defendant a copy of the summons, or leaving it at his house; or by reading the summons to him.

SUMMONERS. Petty officers who cite men to appear in any court.

SUMMONS, practice. The name of a writ commanding the sheriff, or other authorized officer, to notify a party to appear in court to answer a complaint made against him and in the said writ specified, on a day therein mentioned. 21 Vin. Ab. 42 2 Sell. Pr. 356; 3 Bl. Com. 279.

SUMMONS AND SEVERANCE. Vide Severance; and 20 Vin. Ab. 51; Bac. Ab. h. t.; Archb. Civil Plead. 59.

SUMMUM JUS. Extreme right, strict right. It is seldom that extreme right can be administered without the danger of doing injustice, for extreme right may produce extreme wrong. Summum jus, summa injuria.

SUMPTUARY LAWS. Those relating to expenses, and made to restrain excess in apparel.

2. In the United States the expenses of every man are left to his own good judgment, and not regulated by Arbitrary laws.

SUNDAY. The first day of the week.

2. In some of the New England states it begins at sun setting on Saturday, and ends at the same time the next day. But in other parts of the United States, it generally commences at twelve o'clock on the night between Saturday and Sunday, and ends in twenty−four hours thereafter. 6, Gill. & John. 268; and vide Bac. Ab. Heresy, &c. D; Id. Sheriff, N 4; 1 Salk. 78; 1 Sell. Pr. 12; Hamm. N. P. 140. The Sabbath, the Lord's Day, and Sunday, all mean the same thing. 6 Gill. & John. 268; see 6 Watts, 231; 3 Watts, 56, 59.

2. In some states, owing to statutory provisions, contracts made on Sunday are void; 6 Watts, R. 231; Leigh, N. P. 14; 1 P. A. Browne, 171; 5 B. & C. 406; 4 Bing. 84; but in general they are binding, although made on that day, if good in other respects. 1 Crompt. & Jervis, 130; 3 Law Intell. 210; Chit. on Bills, 59; Wright's R. 764;,10 Mass. 312 1 Cowen, R. 76, n.; Cowp. 640; 1 Bl. Rep. 499; 1 Str. 702; see 8 Cowen, R. 27; 6 Penn. St. R. 417, 420.

4. Sundays are computed in the time allowed for the performance of an act, but if the last day happen to be a Sunday, it is to be excluded, and the act must in general be performed on Saturday; 3 Penna. R. 201; 3 Chit. Pr. 110; promissory notes and bills of exchange, when they fall due on Sunday, are gen−erally paid on Saturday. See, as to the origin of keeping−Sunday as a holiday, Neale's F. & F. Index, Lord's day; Story on Pr. Notes, _220; Story on Bills, _233; 2 Hill's N. Y. Rep. 587; 2 Applet. R. 264.

SUPER ALTUM MARE. Upon the high sea. Vide High Seas.

SUPER VISUM CORPORE. Upon view of the body. When an inquest is held over a body found dead, it must be super visum corpore. Vide Coroner; Inquest.

SUPERCARGO, mar. law. A person specially employed by the owner of a cargo to take charge of the merchandise which has been shipped, to sell it to the best advantage, and to purchase returning cargoes and to receive freight, as he may be authorized.

2. Supercargoes have complete control over the cargo, and everything which immediately concerns it, unless their authority is either expressly or impliedly restrained. 12 East, R. 381. Under certain circumstances, they are responsible for the cargo; 4 Mass. 115; see 1 Gill & John. 1; but the supercargo has no power to interfere with the government of the ship. 3 Pardes. n. 646; 1 Boulay−Paty, Dr. Com. 421.

SUPERFOETATION, med. jur. The conception of a second embryo, during the gestation of the first, or the conception of a child by a woman already pregnant with another, during the time of such pregnancy.

2. This doctrine, though doubted, seems to be established by numerous cases. Beck's Med. Jur. 193; Cassan on Superfoetation; New York Medical Repository; 1 Briand, Med. Leg. prem. partie, c. 3, art. 4; 1 Fodere, Med. Leg. _299; Buffon, Hist. Nat. de l'Homme, Puberte.

SUPERFICIARIUS, civ. law. He who has built upon the soil of another, which he has hired for a number of years or forever, yielding a yearly rent. This is not very different from the owner of a lot on ground rent in Pennsylvania. Dig. 43, 18, 1 and 2.

SUPERFICIES. A Latin word used among civilians. It signifies in the edict of the praetor whatever has been erected on the soil, quidquid solo inoedificdtum est. Vide Dig. 43, tit. 18, 1. 1 and 2.

SUPERIOR. One who has a right to command; one who holds a superior rank; as, a soldier is bound to obey his superior. 2. In estates, some are superior to others; an estate entitled to a servitude or easement over another estate, is called the superior or dominant, and the other the inferior or servient estate. 1 Bouv. Inst. n. 1612.

3. Of courts, some are supreme or superior, possessing in −general appellate jurisdiction, either by writ of error or by appeal; 3 Bouv. Inst. n. 2527; the others are called inferior courts.

SUPERNUMERARII, Rom. civil law. From the reign of Constantine to Justinian, advocates were divided into two classes: viz. advocates in title, who were called statute, and supernumeraries. The statutis were inscribed in the mat−riculation books, and formed a part of the college of advocates in each jurisdiction. The supernumeraries were not attached to any bar in particular, and could reside where, they pleased; they took the place of advocates by title, as vacancies occurred in that body. Code Justin., de adv. div. jud. c. 3, 11, 13; Calvini Lex, ad voc.; also Statuti.

SUPERSEDEAS, practice, actions. The name of a writ containing a command to stay the proceedings at law.

2. It is granted on good cause shown that the party ought not to proceed. F. N. B. 236. There are some writs which though they do not bear this name have the effect to supersede the proceedings, namely, a writ of error, when bail is entered, operates as a supersedeas, and a writ of certiorari to remove the proceedings of an inferior into a superior court has, in general, the same effect. 8 Mod. 373; 1 Barnes, 260; 6 Binn. R. 461. But, under special circumstances, the certiorari has not the effect to stay the proceedings, particularly where summary proceedings, as to obtain possession under the landlord and tenant law, are given by statute. 6 Binn. R. 460; 1 Yeates, R. 49; 4 Dall. R. 214; 1 Ashm. R. 230; Vide Vin. Ab. h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; Yelv. R. 6, note.

SUPERSTITIOUS USE, English law. When lands, tenements, rents, goods or chattels are given, secured or appointed for and toward the maintenance of a priest or chaplain to say mass; for the maintenance of a priest, or other man, to pray for the soul of any dead man, in such a church or elsewhere; to have and maintain perpetual obits, lamps, torches, &c., to be used at certain times to help to save the souls of men out of purgatory; in such cases the king by force of several statutes, is authorized to direct and appoint all such uses to such purposes as are truly charitable. Bac. Ab. Charitable Uses and Mortmain, D; Duke on Char. Uses, 105; 6 Ves. 567; 4 Co. 104.

2. In the United States, where all religious opinions are free, and the right to exercise them is secured to the people, a bequest to support a catholic priest, aud perhaps certain other uses in England, would not in this country be considered as superstitious uses. 1 Pa. R. 49; 8 Penn. St. R. 327; 17 S. & R. 388; 1 Wash. 224. It is not easy to see how there can be a supersti−tious use in this country, at least in the acceptation of the British courts. 1 Watts, 224; 4 Bouv. Inst. n. 3985.

SUPERVISOR. An overseer; a surveyor.

2. There are officers who bear this name whose duty it is to take care of the highways.

SUPPLEMENTAL. That which is added to a thing to complete it as a supplemental affidavit, which is an additional affidavit to make out a case; a supplemental bill. (q. v.)

SUPPLEMENTAL BILL, equity plead. A bill already filed to supply some defect in the original bill. See Bill supplemental.

SUPPLICAVIT, Eng. law. The name of a writ issuing out of the king's bench or chancery, for taking sureties of the peace; it is commonly directed to the justices of the peace, when they are averse to acting in the affair in their judicial capacity. 4 Bl. Com. 233; vide Vin. Ab. h, t.; Com. Dig. Chancery, 4 R.; Id. Forcible Entry, D 16, 17.

SUPPLICIUM, civil law. A corporal punishment ordained by law; the punishment of death, so called because it was customary to accompany the guilty man to the place of execution and there offer supplications for him.

SUPPLIES, Eng. Law. Extraordinary grants to the king by parliament, to supply the exigencies of the state. Jacob's Law Dict. h. t.

SUPPORT. The right of support is an easement which one man, either by contract or prescription, enjoys, to rest the joists or timbers of his house upon the wall of an adjoining building, owned by another person. 3 Kent, Com. 435. Vide Lois des Bat. part. 1, c. 3, s. a. 1, _T; Party wall.

SUPPRESSIO VERI. Cocealment of truth.

2. In general a suppression of the truth, when a party is bound to disclose it, vitiates a contract. In the contract of insurance a knowledge of the facts is required to enable the underwriter to calculate the chances and form a due estimate of the risk; and, in this contract perhaps more than any other, the parties are required to represent every thing with fairness. 1 Bla. Rep. 594; 3 Burr. 1809.

3. Suppressio veri as well as suggestio falsi is a ground to rescind an agreement, or at least not to carry it into execution. 3 Atk. 383; Prec. Ch. 138; 1 Fonb. Eq. c. 2, s. 8; 1 Ball & Beatty, 241; 3 Munf. 232 1 Pet. 383; 2 Paige, 390 4 Bouv. Inst. n. 3841. Vide Concealment; Mis−representation; Representationl: Suggestio falsi.

SUPRA PROTEST. Under protest. Vide Acceptance supra protest; dcceptor supra protest; Bills of Exchange.

SUPREMACY. Sovereign dominion, authority, and preeminence; the highest state. In the United States, the supremacy resides in the people, and is exercises by their constitutional representatives, the president and congress. Vide Sovereignty.

SUPREME. That which is superior to all other things; as the supreme power of the state, which is an authority over all others. The supreme court, which is superior to all other courts.

SUPREME COURT. The court of the highest jurisdiction in the United States, having appellate jurisdiction over all the other courts of the United. States, is so called. Its powers are examined under the article Courts of the United States.

2. The following list of the judges who have had seats on the bench of this court is given for the purpose of reference.

Chief Justices. John Jay, appointed September 26, 1789, resigned in 1795.
John Rutledge, appointed July 1, 1795, resigned in 1796.
Oliver Ellsworth, appointed March 4, 1796, resigned in 1801.
John Marshall, appointed January 31, 1801, died July 6, 1835.
Roger B. Taney, appointed March 15, 1836. Associate Justices.
William Cushing, appointed September 27, 1789, died in 1811.
James Wilson, appoiuted September 29, 1789, died in 1798.
John Blair, appointed September 30, 1789, died in 1796.
James Iredell, appointed February 10, 1790, died in 1799.
Thomas Johnson, appointed November 7, 1791, resigned in 1793.
William Patterson, appointed March 4, 1793, in the place of Judge Johnson, died in 1806.
Samuel Chase, appointed January 7, 1796, in the place of Judge Blair, died in 1811.
Bushrod Washington, appointed December 20,1798, in the place of Judge Wilson, died November 26, 1829.
Alfred Moore, appointed December 10, 1799 in the place of Judge Iredell, resigned in 1864.
William Johnson, appointed March 6, 1804, in the place of Judge Moore, died in 1835.
Brockholst Livingston, appointed November 10, 1806, in the place of Judge Patterson, died in 1823.
Thomas Todd, appointed March 3, 1807, under the act of congress of February, 1807, providing for an additional justice, died in 1826.
Gabriel Duval, appointed November 18, 1811, in the place of Judge Chase, resigned in January, 1835.
Joseph Story, appointed November 18, 1811, in the place of Judge Cushing. Smith Thompson, appointed December 9, 1823, in the place of, Judge Livingston, deceased.
Robert Trimble, appointed May 9, 1826, in the place of Judge Todd, died in 1829.
John McLean, appointed March 1829, in the place of Judge Trimble, deceased.
Henry Baldwin, appointed January 1830, in the place of Judge Washington, deceased.
James M. Wayne, appointed January 9, 1835, in the place of Judge Johnson, deceased.
Philip P. Barbour, appointed March 15, 1836, died February 25,1841.
John Catron, appointed March 8, 1837, under the act of congress providing for two additional judges.
John McKinley, appointed September 25, 1837, under the last mentioned act.
Peter V. Daniel, appointed March 3, 1841, in the place of Judge Barbour, deceased.
Samuel Nelson, appointed February 14, 1845, in the place of Judge Thompson, deceased.
Levi Woodbury, appointed September 20, 1845, in the recess of senate, in the place of Judge Story, deceased: his nomination confirmed January 3, 1846.
Robert C. Grier, appointed August 4, 1846, in the place of Judge Baldwin, deceased.
Benj. Robbins Curtis, appointed 1851, in the recess of the senate, in the place of Judge Woodbury, deceased: his nomination confirmed
The present judges of the supreme court are,
Chief Justice. Roger B. Taney. Associate Justices. John McLean, James M. Wayne, John Catron, John McKinley,

Peter V. Daniel, Samuel Nelson, Robert C. Grier, and B. Robbins Curtis.

3. In the several states there are also supreme courts; their powers aud jurisdiction will be found under the names of the several states.

SUR. A French word which signifies upon, on. It is very frequently used in connexion with other words as, sur rule to take deposition, sur trover and conversion, and the like.

SUR CUI ANTE DIVORTIUM. The name of a writ issued in favor of the heir of the wife, where the hushand alienated the wife's lands, during the coverture, and afterwards they were divorced and she died, to recover the lands from the alienee. Vide Cui ante divortium.

SURCHARGE, chancery practice. When a bill is filed to open an account, stated, liberty is sometimes given to the plaintiff to surcharge and falsify such account. That is, to examine not only errors of fact, but errors of law. 2 Atk. 112; 11 Wheat. 237; 2 Ves. 565.

2. "These terms, 'surcharge,' and 'falsify,'" says Mr. Justice Story, 1 Eq. Jur. _525, "have a distinct sense in the vocabulary of courts of equity, a little removed from that, which they bear in the ordinary language of common life. In the language of common life, we understand 'surcharge' to import an overcharge in quantity, or price, or degree, beyond what is just and reasonable. In this sense, it is nearly equivalent to 'falsify;' for every item, which is not truly charged, as it should be, is false; and by establishing such overcharge it is falsified. But, in the sense of courts of equity, these words are used in contradistinction to each other. A surcharge is appropriately applied to the balance of the whole account; and supposes credits to be omitted, which ought to be allowed. A falsification applies to some item in the debets; and supposes, that the item is wholly false, or in some part erroneous. This distinction is taken notice of by Lord Hardwicke; and the words used by him are so clear, that they supersede all necessity for farther commentary. 'Upon a liberty to the plaintiff to surcharge, and falsify,' says he, 'the onus probandi is always on the party having that liberty; for the court takes it as a stated account, and establishes it. But, if any of the parties can show an omission, for which credit ought to be, that is, a surcharge, or if anything is inserted, that is a wrong charge, he is at liberty to show it, aud that is a falsification. But that must be by proof on his side. And that makes a great difference between the general cases of an open account, and were only [leave] to surcharge and falsify; for such must be made out."

SURETY, contracts. A person who binds himself for the payment of a sum of money or for the performance of something else, for another, who is already bound for the same. A surety differs from a guarantor, and the latter cannot be sued until after a suit against the principal. 10 Watts, 258.

2. The surety differs from bail in this, that the latter actually has, or is by law presumed to have, the custody of his principal, while the former has no control over him. The bail may surrender his principal in discharge of his obligation; the surety cannot be discharged by such surrender.

3. In Pennsylvania it has been decided that the creditor is bound to sue the principal when requested by the surety, and the debt is due; and that when proper notice is given by the surety that unless the principal be sued, be will consider himself discharged, he will be so considered, unless the principal be sued. 8 Serg. & Rawle, 116; 15 Serg. & Rawle, 29, 30; S. P. in Alabama, 9 Porter, R. 409. But in general a creditor may resort to the surety for the payment of his debt in the first place, without applying to the principal. 1 Watts, 28O; 7 Ham. part 1, 223. Vide Bouv. Inst. Index, h. t.; Contribution; Contracts; Suretyship.

SURETY OF THE PEACE, crim. law. A security entered into before. Some competent court or officer, by a party accused, together with some other person, in the form of recognizance to the commonwealth in a certain sum of money, with, a condition that the accused shall keep the peace towards all the citizens of the commonwealth. A security for good behaviour is a similar recognizance with a condition that the accused shall be of good behaviour.

2. This security may be demanded by a court or officer having jurisdiction from all persons who threatened to kill or to, injure others, or who by their acts give reason to believe they will commit a breach of the peace. And even after an acquittal a prisoner may be required to give scourity of the peace or good behaviour, when the circumstances of the case justify a court in believing the public good requires it. 2 Yeates, R. 437 Bac. Ab. h. t.; 1 Binn. R. 98, note; Com. Dig. h. t.; Yin. Ab. h. t.; Bl. Com. B. 4, c. 18, p. 251.

3. To obtain surety to keep the peace, the party requiring it must swear or affirm be fears a present or future danger, and not merely swear or affirm to a breach of the peace which is past; it is usual, however, to state such injuries, and when the circumstances warrant it, a threat of their repetition, as a legitimate ground for fearing future injury, which fear must always be stated. 1 Chit. Pr. 677.

4. A recognizance to keep the peace is forfeited only by an actual attack or threat of bodily harm, or burning a house, and the like, but not by bare words Of h an choler. Hawk. h. 1, c. 60, s. 2. Vide Good Behaviour.

SURETYSHIP, contracts. An accessory agreement by which a person binds himself for another already bound, either in whole or in part, as for his debt, default or miscarriage.

2. The person undertaken for must be liable as well as the person giving the promise, for otherwise the promise would be a principal and not a collateral agreement, and the promissor would be liable in the first instanee; for example, a married woman would. Not be liable upon her contract, and the person who should become surety for her that she would perform it would be responsi−ble as a principal and not as a surety. Pitm. on P. & S. 13; Burge on Sur. 6; Poth. Ob. n. 306. If a Person undertakes as a surety when he knows the obligation, of the principal is void, he becomes a principal: 2 Id. Raym. 1066; 1 Burr. 373.

3. As the contract of suretyship must relate to the same subject as the principal obligation, it follows that it must not be of greater extent or more onerous' either in its amount, or in the time or manner, or place of performance, than such principal obligation; and if it so exceed, ii will be void, as to such excess. But the obligation of the surety may be less onerous, both in its amount, and in the time, place and manner of its performance, that of the principal debtor; it may be for a less amount, or the time may be more protracted. Burge, on Sur. 4, 5.

4. The contract of suretyship may be entered into by all persons who are sui juris, and capable of entering into other contracts. See Parties to contracts.

5. It must be made upon a sufficient consideration. See Consideration.

6. The contract of suretyship or guaranty, requires a present agreement between the contracting parties; and care must be taken to observe the distinction between an actual guaranty, and an offer to guaranty at a future time; when an offer is made, it must be accepted before it becomes binding. 1 M. & S. 557; 2 Stark. 371; Cr. M. & Ros. 692.

7. Where the statute of frauds, 29 Car. II., c. 3, is in force, or its principles have been adopted, the contract of suretyship "to answer for the debt, default or miscarriage of another person," must be in writing, &c.

8. The contract of suretyship is discharged and becomes extinct, 1st. Either by the terms of the contract itself. 2d. By the acts to which both the credi−tor and principal alone are parties. 3d. By the acts of the creditor and sure−ties. 4th. By fraud. 5th. By operation of law.

9. − _1. When by his contract the surety limits the period of time for which he is willing to be responsible, it is clear he cannot be beld liable for a longer period; as when he engages that an officer who is elected annually shall faithfully perform his duty during his continuance in office; his obligation does not extend for the performance of his duty by the same officer who may be elected for a second year. Burge on Sur. 63, 113; 1 McCord, 41; 2 Campb. 39; 3 Ad. & Ell. N. S. 276; 2 Saund. 411 a; 6 East, 512; 2 M. & S. 370; New R. (5 B. & P.) 180; 2 M. & S. 363; 9 Moore, 102.

10. − _2. The contract of suretyship becomes extinct or discharged by the acts of the principal and of the creditor without any act of the surety. This may be done, 1. By payment, by the principal. 2. By release of the principal. 3. By tender made by principal to the creditor. 4. By compromise. 5. By accord and satisfaction. 6. By novation. 7. By delegation. 8. By set−off. 9. By alteration of the contract.

11. − 1. When the principal makes payment, the sureties are immediately dis− charged, because the obligation no longer exists. But as payment is the act of two parties, the party tendering the debt and the party receiving it, the money or thing due must be accepted. 7 Pick 88; 4 Pick. 83; 8 Pick. 122. See Payment.

12. − 2. As the release of the principal discharges the obligation, the surety is also discharged by it.

13. − 3. A lawful tender made by the principal or his authorized agent, to the creditor or his authorized agent, will discharge the surety. See. 2 Blackf. 87; 1 Rawle, 408; 2 Fairf. 475; 13 Pet. 136.

14. − 4. When the creditor and principal make a compromise by which the principal is discharged, the surety is also discharged. 11 Ves. 420; 3 Bro. C. C. 1; Addis. on Contr. 443.

15. − 5. Accord and satisfaction between the principal and the creditor will discharge the surety, as by that the whole obligation becomes extinct. See Accord and satisfaction.

16. − 6. It is evident that a simple novation, or the making a new contract and annulling the old, must, by the destruction of the obligation, discharge the surety.

17. − 7. An absolute delegation, where the principal procures another person to assume the payment upon condition that he shall be discharged, will have the effect to discharge the surety. See Delegation.

18. − 8. When the principal has a just set−off to the whole claim of the creditor, the surety is discharged.

19. − 9. If the principal and creditor change the nature of the contract, so that it is no longer the same, the surety will be discharged; and even extending the time of payment, without the consent of the surety, when the agreement to give time is founded upon a valuable consideration, is such an alteration of the contract as discharges the surety. See Giving Time.

20. − _3. The contract is discharged by the acts of the creditor and surety, 1. By payment made by the surety. 2. By release of the surety by the creditor. 3. By compromise between them. 4. By accord and satisfaction. 5. By set off.

21. − _4. Fraud by the creditor in relation to the obligation of the surety, or by the debtor with the knowledge or assent of the creditor, will discharge the liability of the surety. 3 B. & C. 605; S. C. 6 Dowl. & Ry. 505; 6 Bing. N. C. 142.

22. − _5. The contract of suretyship is discharged by operation of law, 1. By confusion. − 2. prescription, or the act of limitations. 3. By bankruptcy.

23. − 1. The contract of suretyship is discharged by confusion or merger of rights; as, where the obligee marries the obligor. Burge on Sur. 256; 2 Ves. p. 264; 1 Salk. 306; Cro. Car. 551.

24. − 2. The act of limitations or prescription is a perfect bar to a recovery against a surety, after a sufficient lapse of time, when the creditor was sui juris and of a capacity to sue.

25. − 3. The discharge of the surety under the bankrupt laws, will put an end to his liability, unless otherwise provided for in the law.

26. The surety has the right to pay and discharge the obligation the moment the principal is in default, and have immediate recourse to his principal. He need not wait for the commencement of an action, or the issue of legal process, but he cannot accelerate the liability of the principal, and if he pays money voluntarily before the time of payment arrives, he will have no cause of action until such time, or if he pays after the principal obligation has been discharged, when he was under no obligation to pay, he has no ground of action,.

27. Co−sureties are in general bound in solido to pay the debt, when the principal fails, and if one be compelled to pay the whole, he may demand contribution from the rest, and recover from them their several proportions of their common liability in an action for money paid by him to their use. 6 Ves. 807; 12 M. & W. 421 8 M. & W. 589; 4 Scott, N. S. 429. See, generally, 15 East, R. 617; Yelv. 47 n.; 20 Vin. Ab. 101; 1 Supp. to Ves. jr. 220, 498, 9; Ayliffe's Pand. 559; Poth. Obl. part 2, c. 6; 1 Bell's Com. 350, 5th ed.; Git−ing time; Principal; Surety.

SURGERY, med. jur. That part of the healing art which relates to external diseases; their treatment; and, specially, to the manual operations adopted for their cure.

2. Every lawyer should have some acquaintance with surgery; his knowledge on this subject will be found useful in cases of homicide and wounds.

SURNAME. A name which is added to the christian name, and which, in modern times, have become family names.

2. They are called surnames, because originally they were written over the name in judicial writings and contracts. They were and are still used for the purpose of distinguishing persons of the same name. They were taken from something attached to the persons assuming them, as John Carpenter, Joseph Black, Samuel Little, &c. See Name.

SURPLUS. That which is left from a fund which has been appropriated for a particular purpose; the remainder of a thing; the overplus the residue. (q. v.) See 18 Ves. 466.

2. The following is an example of a surplus; if a thing be put in pledge as a security to pay one hundred dollars, and it be afterwards sold for one hundred and fifty dollars, the fifty dollars will be the surplus. Wolff, Inst. _697. See Overplus; Residue.

SURPLUSAGE, pleading. A superfluous and useless statement of matter wholly foreign and impertinent to the cause.

2. In general surplusagium non nocet, according to the maxim utile per inutile non vitiatur; therefore if a man in his declaration, plea, &c., make mention of a thing which need, not be stated, but the matter set forth is grammatically right, and perfectly sensible, no advantage can be taken on demurrer. Com. Dig. Pleader, C 28, E 2; 1 Salk. 325; 4 East, 400; Gilb. C. P. 131; Bac. Ab. Pleas, 1, 4; Co. Litt. 303, b; 2 Saund. 306, n. 14; 5 East 444; 1 Chit. Pl. 282; Lawes on Pl. 63; 7 John. 462; 3 Day, 472; 2 Mass. R. 283; 13 John. 80.

3. When, by an unnecessary allegation the plaintiff shows he has no cause of action, the defendant may demur. Com. Dig. Pleader, c. 29; Bac. Ab. Pleas, 1, 4; see 2 East, 451; 4 East, 400; Dougl. 667; 2 Bl. Rep. 842; 3 Cranch,

193; 2 Dall. 300; 1 Wash. R. 257.

4. When the surplusage is not grammatically set right, or it is unintelligible and, no sense at all can be given it, or it be contradictory or repugnant to what is before alleged, the adversary may take advantage of it on special demurrer. Gilb. C. P. 132; Lewes on Pl. 64.

5. When a party alleges a material matter with an unnecessary detail of circumstances, and the essential and non−essential parts of a statement are, in their nature, so connected as to be incapable of separation, the opposite party may include under his traverse the whole matter alleged. And as it is an established rule that the evidence must correspond with the allegations, it follows that the party who has thus pleaded such unnecessarly matter will be required to prove it, and thus he is required to sustain an increased burden of proof, and incurs greater danger of failure at the trial. For example, if in justifying the taking of cattle damage feasant, in which case it is sufficient to allege that they were doing damage to his freehold, he should state a seisin in fee, which is traversed, be must prove a seisin in fee. Dyer, 365; 2 Saund. 206, a, note 22 Steph. on Pl. 261, 262; 1 Smith's Lead. Cas. 328, note; 1 Greenl. Ev. _51 1 Chit. Pl. 524, 525; U. S. Dig. Pleading, VII. c.

SURPLUSAGE, accounts. A greater dishursement than the charges of the accountant amount to.

SURPRISE. This term is frequently used in courts of equity and by writers on equity jurisprudence. It signifies the act by which a party who is entering into a contract is taken unawares, by which sudden confusion or perplexity is created, which renders it proper that a court of equity should relieve the party so surprised. 2 Bro. Ch. R. 150; 1 Story, Eq. Jur. _120, note. Mr. Jeremy, Eq. Jur. 366, seems to think that the word surprise is a technical expression, and nearly synonymous. with fraud. Page 383, note. It is sometimes, used in this sense when it is deemed presumptive of, or approaching to fraud. 1 Fonbl. Eq. 123 3 Chan. Cas. 56, 74, 103, 114. Vide 6 Ves. R. 327, 338; 2 Bro. Ch. R. 826; 16 Ves. R. 81, 86, 87; 1 Cox, R. 340; 2 Harr. Dig. 92.

2. In practice, by surprise is understood that situation in which a party is placed, without any default of his own, which will be, injurious to his interest. 8 N. AS. 407. The courts always do everything in their power to relieve a party from the effects of a surprise, when he has been diligent in endeavouring to avoid it. 1 Clarke's R. 162; 3 Bouv. Inst. n. 3285.

SURREBUTTER, pleading. The plaintiff's answer to the defendant's rebutter is governed by the same rules as the replication. (q. v.) Vide 6 Com. Dig. 185; 7 Com. Dig. 389

SUBREJOINDER, pleading. The plaintiff's answer to the defendant's rejoinder. It is governed in every respect by the same rules as the replication. (q. v.) Steph. Pl. 77; Arch., Civ. Pl. 284; 7 Com. Dig. 389.

SURRENDER, estates, conveyancing. A yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, by which the lesser estate is merged in the greater by mutual agreement, Co. Litt. 337, b.

2. A surrender is of a nature directly opposite to a release; for, as the latter operates by the greater estate descending upon the less, the former is the falling of a less estate into a greater, by deed. A surrender immediately divests the estate of the surrenderer, aud vests it in the surrenderee, even without the assent (q. v.) of the latter. Touchs. 300, 301.

3. The technical and proper words of this conveyance are, surrender and yield up; but any form of words; by which the intention. of the parties is sufficiently manifested, will operate as a surrender, Perk. _607; 1 Term Rep. 441; Com. Dig. Surrender, A.

4. The surrender may be express or implied. The latter is when an estate, incompatible with the existing estate, is accepted or the lessee takes a new lease of the same lands. 16 Johns. Rep. 28; 2 Wils. 26; 1 Barn. & A. 50; 2 Barn. & A. 119; 5 Taunt. 518, and see 6 East, R. 86; 9 Barn. & Cr. 288 7 Watts, R. 128. Vide, generally, Cruise, Dig. tit. 32, c. 7; Com. Dig. h. t.; Vin. Ab. h. t.; 4 Kent, Com. 102; Nels. Ab. h. t.; Rolle's Ab. h. t. 11 East, R. 317, n.

5. The deed or instrument by which a surrender is made, is also called a surrender. For the law of presumption of surrenders, see Math. on Pres. ch. 13, p. 236; Addis. on Contr. 658−661.

SURRENDER OF CRIMINALS. The act by which the public authorities deliver a person accused of a crime, and who is found in their, jurisdiction, to the authorities within whose jurisdiction it is alleged the crime has been committed. Vide Extradition; Fugitives from justice.

SURRENDEREE. One to whom a surrender has been made.

SURRENDEROR. One who makes a surren der; as when the tenant gives up the estate and cancels his lease before the expiration of the term; one who yields up a freehold estate for the purpose of conveying it.

SURREPTITIOUS. That which is done in a fraudulent stealthy manner.

SURROGATE. In some of the states, as in New Jersey, this is the name of an officer who has jurisdiction in granting letters testamentary and letters of administration.

2. In some states, as in Pennsylvania, this officer is called register of wills and for granting letters, of administration in others, as in Massachusetts, he is called judge of probates.

SURVEY, The act by which the quantity of a piece of land is ascertained; the paper containing a statement of the courses, distances, and quantity of land, is also called a survey.

2. A survey made by authority of law and duly returned into the land office, is a matter of record, and of equal dignity with the patent. 3 Marsh. 226; 2 J. J. Marsh, 160. See 3 Greenleaf, 126; 5 Greenleaf, 24; 14 Mass. 149 1 Harr. & John. 20 1 1 Overt. 199; 1 Dev. & Bat. 76.

3. By survey is also understood an examination; as, a survey has been made of your house, and now the insurance company will insure it.

SURVIVOR. The longest liver of two or more persons.

2. In crises of partnership, the surviving partner is entitled to have all the effects of the partnership, and, is bound to pay all the debts owing by the firm. Gow on Partn. 157; Watson on Partn. 364. He is, however, bound to account for the surplus to the representatives of his deceased partners, agreeably to their respective rights.

3. A surviving trustee is generally vested with all the powers of all the trustees, and the surviving administrator is authorized to act for the estate as if he had been sole administrator. As to the presumption of survivorship, when two or more persons have perished by the same event, see Civ. Code of Lo. art. 930 to 933 and vide Death; Cro. Eliz. 503; 1 Bl. Rep. 610 2 Phill. Rep. 261; S. C. 1 Eccles. Reports, 250; Fearne on Rem. iv.; Poth. on Obli. by Evans, vol. 2, p. 346; 8 Ves. 10; 14 Ves. 578 17 Ves. 482; 6 Taunt. 213; Cowp. 257; 5 Ves. 485. Vide, generally, 2 Fonbl. Eq. 102; 8 Vin. Ab. 323; 20 Vin. Ab. 146; 8 Com. Dig. 475, 594; 1 Suppl. to Ves. jun. 115, 186, 407, 8, 2 Suppl. to Ves. jun. 47, 296, 340, 391,477; 1 Fodere, Med. Leg. _424−483.

4. The right of survivorship among joint−tenants has been abolished, except as to estates beld in trust, in Pennsylvania, New York, Kentucky, Virginia, Indiana, Missouri, Tennessee, Alabama, Georgia, North and South Carolina. Vide Estates in Joint−tenancy. In Connecticut it never existed. 1 Swift's Dig. 102 see 1 Hill. Ab. 440. As to survivorship among legatees, see 1 Turn. & R. 413; 1 Br. C. C. 574; 3 Russ. 217. See Death; Estates in Joint−tenancy; Joint−tenants; Partnership.

SUS' PER COLL', EngI. law. In the English practice, a calendar is made out of attainted criminals, and the judge signs the calendar with their separate judgments in the margin. In the case of a capital felony. it is written opposite the prisoner's name, "let him be hanged by the neck," which, when the proceedings were in Latin, was, "suspendatur per collum," or, in the abbreviated form, "sus' per coll'." 4 Bl. Comm. 403.

SUSPENDER, Scotch law. He in whose favor a suspension is made.

2. In general a suspender is required to give caution to pay the debt in the event it shall be found due. Where the suspender cannot, from his low or sus−pected circumstances, procure unquestionable security, the lords admit jura−tory caution; but the reasons of suspension are in that case, to be considered with particular accuracy at passing the bill. Act. S. 8 Nov. 1682; Ersk. Prin. L. Scot. 4, 3, 6.

SUSPENSE. When a rent, profit a prendre, and the like, are, in consequence of the unity of possession of the rent, &c., of the land out of which they issue, not in esse for a time, they are said to be in suspense, tunc dormiunt, but they may be revived or awakened. Co, Litt. 313 a.

SUSPENSION. A temporary stop of a right, of a law, and the like.

2. In times of war the habeas corpus act maybe suspended by lawful authority.

3. There may be a suspension of an officer's duties or powers, when he is charged with crimes. Wood's Inst. 510.

4. Suspension of a right in an estate is a partial extinguishment, or an extinguishment for a time. It differs from an extinguishment in this. A suspended right may be revived; one extinguished is absolutely dead. Bac. Ab. Extinguishment, A.

5. The suspension of a statute for a limited time operates so as to prevent its operation for the time, but it hits not the effect of a repeal. 3 Dall. 365.

SUSPENSION, Scotch law. That form of law by which the effect of a sentence−condemnatory, that has not yet received execution, is stayed or postponed, till the cause be again considered. Ersk. Prin. L. Scotl. 4, 3, 5. Suspension is competent also, even where there is no decree, for putting a stop to any illegal act whatsoever. Id. 4, 3, 7.

2. Letters of suspension bear the form of a summons, which contains a warrant to cite the charger, Ib.

SUSPENSION, eccl. law. An ecclesiastical censure, by which a spiritual person is either interdicted tho exercise of his ecclesiastical function, or hin−dered from receiving the profits of his benefice. It may be partial or total; for a limited time, or forever, when it is called deprivation or amotion. Ayl. Parerg. 501.

SUSPENSION OF ARMS. An agreement between belligerents, made for a short time or for a particular place, to cease hostilities between them. See Armistice. Truce.

SUSPENSION OF A RIGHT. The act by which a party is deprived of the exercise of his right, for a time.

2. When a right is suspended by operation of law, the right is revived the moment the bar is removed; but when the right is suspended by the act of the party, it is gone forever. See 1 Roll. Ab. tit. Extinguishment, L, M.

SUBPENSIVE CONDITION. One which prevents a contract from going into operation until it has been fulfilled; as if I promise to pay you one thousand dollars on condition that the ship Thomas Jefferson shall arrive from Havre, the contract is suspended until the arrival of the ship. 1 Bouv. Inst. n. 731.

SUSPICION. A belief to the disadvantage of another, accompanied by a doubt.

2. Without proof, suspicion, of itself, is evidence of nothing. When a crime has been committed, an arrest may be made when, 1st. There are such circumstances as induce a strong presumption of guilt; as being found in possession of goods recently stolen, without giving a probable account of having obtained the possession honestly. 2d. The absconding of the party accused. 3d. Being found in company of known offenders. 4th. Living an idle disorderly life, without any apparent means of support. In such cases the arrest must be made as in other cases. Vide 20 Vin. Ab. 150; 4 Bl. Com. 290.

SUTLER. A man whose employment is to sell provisions aud liquor to a camp.

2. By the articles of war, art. 29, no sutler is permitted to sell any kind of liquor or victuals, or to keep his house or shop open for the entertainment of soldiers, after nine at night, or before the beating of the reveillee, or upon Sundays during divine service or sermon, on penalty of being dismissed all future sutling. And by art. 60, all sutlers are to be subject to orders according to the rules and discipline of war.

SWAINMOTE COURT, Engl. law. The court within the forest to which all the freeholders owe suit and service. Bac. Ab. Courts of the Forest, 2.

TO SWEAR. To take an oath, judicially administered. Vide Affirmation; Oath.

2. To swear also signifies to use such profane language as is forbidden by law. This is generally punished by statutory provisions in the several states.

SWINDLER, criminal law. A cheat; one guilty of defrauding divers persons. 1 Term Rep. 748; 2 H. Blackst. 531; Stark. on Sland. 135.

2. Swindling is usually applied to a transaction, where the guilty party procures the delivery to him, under a pretended contract, of the personal property of another, with the felonious design of appropriating it to his own use. 2 Russel on Crimes, 130; Alison, Prine. Cr. Law of Scotland, 250; Mass. 406.

SYMBOL. A sign; a token; a representation of one thing by another.

2. A symbolical delivery is equivalent, in many cases, in its legal effects, to actual delivery; as, for example, the delivery of the keys of a warehouse in which goods are deposited, is a delivery sufficient to transfer the property. 1 Atk. 171; 5 John. 335; 2 T. R. 462; 7 T. R. 71; 2 Campb. 243; 1 East, R. 194; 3 Caines, 182; 1 Esp. 598; 3 B. & C. 423.

SYNALLAGMATIC CONTRACT, civil law. A synallagmatic or bilateral contract is one by which each of the contracting parties binds himself to the other; such are the contracts of sale, hiring, &c. Poth. Ob. n. 9. Vide Contract.

SYNDIC. A term used in the French law, which answers in one sense to our word assignee, when applied to the management of bankrupts' estates; it has also a more extensive meaning; in companies and communities, syndics are they who are chosen to conduct the affairs and attend to the concerns of the body corporate or community; and in that sense the word corresponds to director or manager. Rodman's Notes to Code. de Com. p. 351; Civ. Code of Louis. art. 429; Dict. de Jurisp. art. Syndic.

SYNGRAPH. A deed, bond, or other instrument of writing, under the band and seal of all the parties. It was so called because the parties wrote together.

2. Formerly such writings were attested by the subscription and crosses of the witnesses; afterwards, to prevent frauds and concealmenta, they made deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies they wrote the word syngraphus in large letters, which being cut through the parchment, and one being delivered to each party, on being afterwards put together, proved their authenticity.

3. Deeds thus made were denominates syngraphs by the canonists, and by the common lawyers chirographs. (q. v.) 2 Blackstone's Commentaries, 296.

SYNOD. An ecclesiastical assembly.

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