C.

CABALLERIA, Spanish law. A measure of land, which is different in different provinces. Diccionario por la Real Academia. In those parts of the United States, which formerly belonged to Spain, the caballeria is a lot of one hundred feet front and two hundred feet deep, and equal, in all respects, to five peonias. (q. v.) 2 White's Coll. 49; 12 Pet. 444. note. See Fanegas.

CABINET. Certain officers who taken collectively make a board; as, the president's, cabinet, which is usually composed of the secretary of state, secretary of the treasury, the attorney general, and some others.

2. These officers are the advisers of the president.

CADASTRE. A term derived from the French, which has been adopted in Louisiana, and which signifies the official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 3 Am. St. Pap. 679; 12 Pet. 428, n.

CADET. A younger brother, one trained up for the army or navy.

CADI. The name of a civil magistrate among the Turks.

CALENDER. An almanac. Julius Caesar ordained that the Roman year should consist of 365 days, except every fourth year, which should contain 366, the additional day to be reckoned by counting the twenty−fourth day of February (which was the 6th of the calends of March) twice. See Bissextile is period of time exceeds the solar year by eleven minutes or there abouts, which amounts to the error of a day in about 131 years. In 1582, the error amounted to eleven days or more, which was corrected by Pope Gregory. Out of this correction grew the distinction between Old and New Style. The Gregorian or New Style was introduced into England in 1752, the 2d day of September (0. S.) of that year being reckoned as the 14th day of September, (N. S.) glee Almanac.

CALENDER, crim. law. A list of prisoners, containing their names, the time when they were committed, and by whom, and the cause of their commitments.

CALIFORNIA. The name of one of the states of the United States. It was admitted into the Union, by−an Act of Congress, passed the 9th September, 1850, entitled "An act for the admission of the state of California into the Union."

_1. This section enacts and declares that the state of California shall be one of the United States, and admitted into the Union on an equal footing with the original states, in all respects whatever.

_2. Enacts that the state of California shall be entitled to two representatives, until the representatives in Congress shall be apportioned according to the actual enumeration of the inhabitants, of the United States.

_3. By this section a condition is expressly imposed on the said state that the people thereof shall never interfere with the primary disposal of the public lands within its limits, nor pass any law, nor do any act, whereby the title of the United States to, and right to dispose of the same, shall be impaired or questioned. It also provides that they shall never lay any tax, or assessment of any description whatever, upon the public domain of the United States; and that in no case shall non−resident proprietors, who are citizens of the United States, be taxed higher than residents; that all navigable waters within the said state shall be common highways, forever free, as well to the inhabitants of said state, as to citizens of the United States, without any tax, impost or duty therefor; with this proviso, viz., that nothing contained in the act shall be construed as recognizing or rejecting the propositions tendered by the people of California, as articles of compact in the ordinance adopted by the convention whicb formed the constitution of that state.

2. The principal features of the constitution, of California, are similar to those of most, of the recently formed state constitutions. It establishes an elective judiciary, and: confers on the executive a qualified veto. It prohibits the creation of a state debt exceeding $300,000. It provides for the protection of the homestead from execution, and secures the property of married females separate from that of their husbands. It makes a liberal provision for the support of schools, prohibits the legislature from granting divorces, autborizing lotteries, and creating corporations, except by general laws, and from establishing any bank's of issue or circulation. It provides also that every stockholder of a corporation or joint−stock association, shall be individually and personally liable for his proportion of all its, debts or liabilities. There is also a clause prohibiting slavery, which, it is said, was inserted by the unanimous vote of the delegates.

CALLING THE PLAINTIFF, practice. When a plaintiff perceives that he has not given evidence to maintain his issue, and intends to become nonsuited, he withdraws himself, when the cryer is ordered to call the plaintiff, and on his failing to appear, he becomes nonsuited. 3 Bl. Com. 376.

CALUMNIATORS, civil law. Persons who accuse others, whom they know to be innocent, of having committed

crimes. Code 9, 46, 9.

CAMBIST. A person skilled in exchange; one who deals or trades in promissory notes or bills of exchange.

CAMERA STELLATA, Eng. law. The court of the Star Chamber, now abolished.

CAMPARTUM. A part or portion of a larger field or ground, which would otherwise be in gross or common. Vide Champerty.

CANAL. A trench dug for leading water in a particular direction, and confining it.

2. Public canals are generally protected by the law which authorizes their being made. Various points have arisen under numerous laws authorizing the construction of canals, which have been decided in cases reported in 1 Yeates, 430; 1 Binn. 70; 1 Pennsyl. 462; 2 Pennsyl. 517; 7 Mass. 169; 1 Sumu. 46; 20 Johns. 103, 735; 2 Johns. 283; 7 John. Ch. 315; 1 Wend. 474; 5 Wend. 166; 8 Wend. 469; 4 Wend. 667; 6 Cowen, 698; 7 Cowen, 526 4 Hamm. 253; 5 Hamm. 141, 391; 6 Hamm. 126; 1 N. H. Rep. 339; See River.

CANCELLARIA CURIA. The name formerly given to the court of chancery.

CANCELLATION. Its general acceptation, is the act of crossing a writing; it is used sometimes to signify the manual operation of tearing or destroying the instrument itself. Hyde v. Hyde, 1 Eq. Cas. Abr. 409; Rob. on Wills, 367, n.

2. Cancelling a will, animo revocandi, is a revocation of it, and it is unnecessary to show a complete destruction or obliteration. 2 B. & B. 650; 3 B. & A. 489; 2 Bl. R. 1043; 2 Nott & M'Cord, 272; Whart. Dig. Wills, c.; 4 Mass. 462. When a duplicate has been cancelled, animo revocandi, it is the cancellation of both parts. 2 Lee, Ecc. R. 532.

3. But the mere act of cancelling a will is nothing, unless it be done animo revocandi, and evidence is admissible to show, quo animo, the testator cancelled it., 7 Johns. 394 2 Dall. 266; S. C. 2 Yeates, 170; 4 Serg. & Rawle, 297; cited 2 Dall. 267, n.; 3 Hen. & Munf. 502; Rob. on Wills, 365; Lovel, 178; Toll. on Ex'rs, Index, h. t.; 3 Stark. Ev. 1714; 1 Adams' Rep. 529 Mass. 307; 5 Conn. 262; 4 Wend. 474; 4 Wend. 585; 1 Harr. & M'H. 162; 4 Conn. 550; 8 Verm. 373; 1 N. H. Rep. 1; 4 N. H. Rep. 191; 2 Eccl. Rep. 23.

4. As to the effect of cancelling a deed, which has not been recorded, see 1 Adams' Rep. 1; Palm. 403; Latch. 226; Gilb. Law, Ev. 109, 110; 2 H . Bl. 263: 2 Johns. 87 1 Greenl. R. 78; 10 Mass. 403; 9 Pick. 105; 4 N. H. Rep. 191; Greenl. Ev. _265; 5 Conn. 262; 4 Conn. 450; 5 Conn. 86; 2 John. R. 84; 4 Yerg. 375; 6 Mass. 24; 11 Mass. 337; 2 Curt. Ecc. R. 458.

5. As to when a court of equity will order an agreement or other instrument to be cancelled and delivered up, see 4 Bouv. Inst. n. 3917−22.

CANDIDATE. One who offers himself or is offered by others for an office.

CANON, eccl. law. This word is taken from the Greek, and signifies a rule or law. In ecclesiastical law, it is also used to designate an order of religious persons. Francis Duaren says, the reason why the ecclesiastics called the rules they established canons or rules, (canones id est regulas) and not laws, was modesty. They did not dare to call them (leges) laws, lest they should seem to arrogate to themselves the authority of princes and magistrates. De Sacris Ecclesiae Ministeriis, p. 2, in pref. See Law, Canon.

CANONIST. One well versed in canon or ecclesiastical law.

CANNON SHOT, war. The distance which a cannon will throw a ball. 2. The whole space of the sea, within cannon shot of the coast, is considered as making a part of the territory; and for that reason, a vessel taken under the cannon of a neutral fortress, is not a lawful prize. Vatt. b. 1, c. 23, s. 289, in finem Chitt. Law of Nat. 113; Mart. Law of Nat. b. 8, c. 6, s. 6; 3 Rob. Adm. Rep. 102, 336; 5 Id. 373; 3 Hagg. Adm. R. 257. This part of the sea being considered as part of the adjacent territory, (q. v.) it follows that magistrates can cause the orders of their governments to be executed there. Three miles is considered as the greatest distance that the force of gunpowder can carry a bomb or a ball. Azun. far. Law, part 2, c. 2, art. 2, _15; Bouch. Inst. n. 1848. The anonymous author of the poem, Della Natura, lib. 5, expresses this idea in the following lines: Tanto slavanza in mar questo dominio, Quant esser puo d'antemurale e guardia, Fin dove puo da terra in mar vibrandosi Correr di cavo bronzo acceso fulinine. Far as the sovereign can defend his sway, Extends his empire o'er the watery way; The shot sent thundering to the liquid plain, Assigns the limits of his just domain. Vide League.

CAPACITY. This word, in the law sense, denotes some ability, power, qualification, or competency of persons, natural, or artificial, for the performance of civil acts, depending on their state or condition, as defined or fixed by law; as, the capacity to devise, to bequeath, to grant or convey lands; to take;

or to take. and hold lands to make a contract, and the like. 2 Com. Dig. 294; Dane's Abr. h. t.

2. The constitution requires that the president, senators, and representatives should have attained certain ages; and in the case of the senators and representatives, that out these they have no capacity to serve in these offices.

3. All laws which regulate the capacity of persons to contract, are considered personal laws; such are the laws which relate to minority and majority; to the powers of guardians or parents, or the disabilities of coverture. The law of the domicil generally governs in cases of this kind. Burge. on Sureties, 89.

CAPAX DOLI. Capable of committing crime. This is said of one who has sufficient mind and understanding to be made responsible for his actions. See, Discretion.

CAPE, English law. A judicial writ touching a plea of lands and tenements. The writs which bear this name are of two kinds, namely, cape magnum, or grand, cape, and cape parvum, or petit cape. The petit cape, is so called, not so much on account of the smallness of the writ, as of the letter. Fleta , lib. 6, c. 55, _40. For the difference between the form and the use of these writs, see 2 Wms. Saund. Rep. 45, c, d; and Fleta, ubi sup.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers (q. v.) only in size, being smaller. Bea. Lex. Mer. 230.

CAPIAS, practice. This word, the signification of which is " that you take," is applicable to many heads of practice. Several writs and processes, commanding the sheriff to take the person of the defendant, are known by the name of capias. For example: there are writs of capias ad respondendum, writs of capias ad computandum, writs of capias ad satisfaciendum, &c., each especially adapted to the purposes indicated by the words used for its designation. See 3 Bl. Com. 281; 3 Bouv. Inst. n. 2794.

CAPIAS AD AUDIENDUM JUDICIUM, practice. A writ issued in a case of misdemeanor, after the defendant has appeared and found guilty, and is not present when called. This writ is to bring him to judgment. 4 BI. Com. 368.

CAPIAS AD COMPUTANDUM, practice. A writ issued in the action of account render, upon the judgment quod computet, when the defendant refuses to appear, in his proper person, before the auditors, and enter into his account. According to the ancient practice, the defendant, after arrest upon this process, might be delivered on main−prize, or in default of finding mainpernors, he was committed to the Fleet prison, where the auditors attended upon him to hear and receive his account. As the object of this process is to compel the defendant to render an account, it does not appear to be within the scope of acts abolishing imprisonment for debt. For precedents, see Thesaurus Brevium, 38, 39, 40; 3 Leon. 149; 1 Lutw. 47, 51 Co. Ent. 46, 47; Rast. Ent. 14, b, 15.

CAPIAS AD RESPONDENDUM, practice. A writ commanding the sheriff, or other proper officer, to "take the body of the defendant and to keep the same to answer, ad respondendum, the plaintiff in a plea," &c. The amount of bail demanded ought to, be indorsed on the writ.

2. A defendant arrested upon this writ must be committed to prison, unless he give a bail bond (q. v.) to the sheriff. In some states, (as, until lately, in Pennsylvania,) it is the practice, when the defendant is liable to this process, to indorse on the writ, No bail required in which case he need only give the sheriff, in writing, an authority to the prothonotary to enter his appearance to the action, to be discharged from the arrest. If the writ has been served, and the defendant have not given bail, but remains in custody, it is returned C. C., cepi corpus; if he have given bail, it is returned C. C. B. B., cepi corpus, bail bond; if the defendant's appearance have been accepted, the return is, " C. C. and defendant's appearance accepted." According to the course of the practice at common law, the writ bears teste, in the name of the chief justice, or presiding judge of the court, on some day in term time, when the judge is supposed to be present, not being Sunday, and is made returnable on a regular return day. 1 Penna. Pr. 36; 1 Arch. Pr. 67.

CAPIAS AD SATISFACIENDUM, practice. A writ of execution issued upon a judgment in a personal action, for the recovery of money, directed to the sheriff or coroner, commanding him to take the defendant, and him safely keep, so that he may have his body in court on the return day, to satisfy, ad satisfaciendum, the plaintiff. This writ is tested on a general teste day, and returnable on a regular return day.

2. It lies after judgment in most instances in which the defendant was subject to a capias ad respondendum before, and plaintiffs are subject to it, when judgment has been given against them for costs. Members of congress and of the legislature, (eundo, morando, et redezzndo,) going to, remaining at, and returning from the places of sitting of congress, or of the legislature, are not liable to this process, on account of their public capacity; nor are ambassadors, (q. v.) and other public ministers, and their ,servants. Act of Congress of April 30, 1790, s. 25 and 26, Story's Laws United States, 88; 1 Dunl. Pr. 95, 96; Com. Dig. Ambassador, B; 4 Dall. 321. In Pennsylvania,

women are not subject to this writ except in actions founded upon tort, or claims arising otherwise than ex contractu. 7 Reed's Laws of Pa. 150. In several of the United States, the use of this writ, as well as of the capias ad respondendum, has been prohibited in all actions instituted for the recovery of money due upon any contract, express or implied, or upon any judgment or decree, founded on any contract, or for the recovery of damages for the breach of any contract, with a few exceptions. See Arrest.

3. It is executed by arresting the body of the defendant, and keeping him in custody. Discharging him upon his giving security for the payment of the debt, or upon his promise to return into custody again before the return day, is an escape, although he do return; 13 Johns. R. 366 8 Johns. R. 98; and the sheriff is liable for the debt. In England, a payment to the sheriff or other officer having the ca. sa., is no payment to the plaintiff. Freem. 842 Lutw. 587; 2 Lev. 203; 1 Arch. Pr. 278. The law is different in Pennsylvania. 3 Serg. & Rawle, 467. The return made by the officer is either C. C. & C., cepi corpus et comittitur, if the defendant have been arrested and held in custody; or N. E. I., non est inventus, if the officer has not been able to find him. This writ is, in common language, called a ca. sa.

CAPIAS PRO FINE, practice, crim. law. The name of a writ which issues against a defendant who has been fined, and who does not discharge it according to the judgment. This writ commands the sheriff to arrest the defendant and commit him to prison, there to remain till he pay the fine, or be otherwise discharged according to law.

CAPIAS UTLAGATUM English practice. A capias utlagatum is general or special;
the former against the person only, the latter against the person, lands and goods.

2. This writ issues upon the judgment of outlawry being returned by the sheriff upon the exigent, and it takes its name from the words of the mandatory part of the writ, which states the defendant being outlawed utlagatum, which word comes from the Saxon utlagh, Latinized utlagatus, and signifies bannitus, extra legem. Cowel.

3. The general writ of capias utlagatum commands the sheriff to take the defendant, so that he have him before the king on a general return day, wheresoever, &c., to do and receive what the court shall consider of him.

4. The special capias utlagatum, like the general writ, commands the sheriff to take the defendant. The defendant is discharged upon an attorney's undertaking, or upon giving bond to the sheriff, in the same manner as when the writ is general. But the special writ also commands the sheriff to inquire by a jury, of the defendant's goods and lands, to extend and appraise the same, and to take them in the king's hands and safely keep them, so that he may answer to the king for the value and issue's of the same. 2 Arch. Pr. 161. See Outlawry.

CAPIAS IN WITHERNAM, practice. A writ issued after a return of elongata or eloigned has been made to a writ of retorno habendo, commanding the sheriff to take so many of the distrainer's goods by way of reprisal, as will equal the goods mentioned in the retorno habendo. 2 Inst. 140; F. N. B. 68; and see form in 2 Sell. Pr. 169.

CAPIATUR, pro fine. The name of a writ which was issued to levy a fine due to the king. Bac. Ab. Fines and Amercements, in prin. See Judgment of Capiatur.

CAPITA, or PER CAPITA. By heads. An expression of frequent occurrence in laws regulating the distribution of the estates of persons dying intestate. When all the persons entitled to shares in the distribution are of the same degree of kindred to the deceased person, (e.g. when all are grandchildren,) and claim directly from him in their own right and not through an intermediate relation, they take per capita, that is, equal shares, or share and share alike. But when they are of different degrees of kindred, (e. g. some tho children, others the grandchildren or the great grandchildren of the, deceased,) those more remote take er stirpem or per stirpes, that is, they take respectively the shares their parents (or other relation standing in the same degree with them of the surviving kindred entitled) who are in the nearest degree of kindred to the intestate,) would have taken had they respectively survived the intestate. Reeves' Law of Descent, Introd. xxvii.; also 1 Rop. on Leg. 126, 130. See Per Capita; Per Stirpes; Stirpes;

CAPITAL, political economy, commerce. In political economy, it is that portion of the produce of a country, which may be made directly available either to support the human species or to the facilitating of production.

2. In commerce, as applied to individuals, it is those objects, whether consisting of money or other property, which a merchant, trader, or other person adventures in an undertaking, or which he contributes to the common stock of a partnership. 2 Bouv. Inst. n. 1458.

3. It signifies money put out at interest.

4. The fund of a trading company or corporation is also called capital, but in this sense the word stock is generally added to it; thus we say the capital stock of the Bank of North America.

CAPITAL CRIME. One for the punishment of which death is inflicted, which punishment is called capital punishment. Dane's Ab. Index, h. t.

2. The subject of capital punishment has occupied the attention of enlightened men for a long time, particularly since the middle of the last century; and none deserves to be more carefully investigated. The right of punishing its members by society cannot be denied; but how far this right extends, by the laws of nature or of God, has been much disputed by theoretical writers, although it cannot be denied, that most nations, ancient and modern, have deemed capital punishment to be within the scope of the legitimate powers of government. Beccaria contends with zeal that the punishment of death ought not to be inflicted in times of peace, nor at other times, except in cases where the laws can be maintained in no other way. Bee. Chap. 28.

3. It is not within the plan of this work to examine the question, whether the punishment is allowed by the natural law. The principal arguments for and against it are here given.

4.− 1. The arguments used in favor of the abolition of capital punishment, are;

5. − 1st. That existence is a right which men hold from God, and which society in body can, no more than a member of that society, deprive them of, because society is governed by the immutable laws of humanity.

6. − 2d. That, even should the right be admitted, this is a restraint badly selected, which does not attain its end, death being less dreaded than either solitary confinement for life, or the performance of hard labor and disgrace for life.

7. − 3d. That the infliction of the punishment does not prevent crimes, any more thau, other less severe but longer punishments.

8. − 4th. That as a public example, this punishment is only a barbarous show, better calculated to accustom mankind to the contemplation of bloodshed, than to restrain them.

9. − 5th. That the law by taking life, when it is unnecessary for the safety of society, must act by some other motive this can be no other than revenge. To the extent the law punishes an individual beyond what is requisite for the preservation of society, and the restoration of the offender, is cruel and barbarous. The law) to prevent a barbarous act, commits one of the same kind,; it kills one of the members of society, to convince the others that killing is
unlawful.

10. − 6th. That by depriving a man of life, society is deprived of the benefits which he is able to confer upon it; for, according to the vulgar phrase, a man hanged is good for nothing.

11. − 7th. That experience has proved that offences which were formerly punished with death, have not increased since the punishment has been changed to a milder one.

12. − 2. The arguments which have been urged on the other side, are,

13. − 1st. That all that humanity commands to legislators is, that they should inflict only necessary and useful punisliments; and that if they keep within these bounds, the law may permit an extreme remedy, even the punishment of death, when it is requisite for the safety of society.

14. − 2d. That, whatever be said to the contrary, this punishment is more repulsive than any other, as life is esteemed above all things, and death is considered as the greatest of evils, particularly when it is accompanied by infamy.

15. − 3d. That restrained, as this punishment ought to be, to the greatest crimes, it can never lose its efficacy as an example, nor harden the multitude by the frequency of executions.

16. − 4th. That unless this punishment be placed at the top of the scale of punishment, criminals will always kill, when they can, while committing an inferior crime, as the punishment will be increased only by a more protracted imprisonment, where they still will hope for a pardon or an escape.

17th. − 5th. The essays which have been made by two countries at least; Russia, under the reign of Elizabeth, and Tuscany, under the reign of Leopold, where the punishment of death was abolished, have proved unsuccessful, as that punishment has been restored in both.

18. Arguments on theological grounds have also been advanced on both sides. See Candlish's Contributions towards the Exposition of the Book of Genesis, pp. 203−7. Vide Beccaria on Crimes and Punishments; Voltaire, h. t.; Livingston's Report on a Plan of a Penal Code; Liv. Syst. Pen. Law, 22; Bentham on Legislation, part 3, c. 9; Report to the N. Y. Legislature; 18 Am. Jur. 334.

CAPITATION. A poll tax; an imposition which is yearly laid on each person according to his estate and ability.

2. The Constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in

proportion to the census, or enumeration, therein before directed to be taken." Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317.

CAPITE, descents. By the head. Distribution or succession per capita, is said to take place when every one of the kindred in equal degree, and not jure representationis, receive an equal part of an estate.

CAPITULARIES.The Capitularia or Capitularies, was a code of laws promulgated by Childebert, Clotaire, Carloman, Pepin, Charlemague, and other kings. It was so called from the small chapters or heads into which they were divided. The edition by Baluze, published in 1677, is said to be the best.

CAPITULATION, war. The treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieges it.

2. On surrender by capitulation, all the property of the inhabitants protected by the articles, is considered by the law of nations as neutral, and not subject to capture on the high seas, by the belligerent or its ally. 2 Dall.

CAPITULATION, civ.law. An agreement by which the prince and the people, or those who have the right of. the people, regulate the manner in which the government is to be administered. Wolff, _989.

CAPTAIN or SEA CAPTAIN, mar. law. The name given to the master or commander of a vessel. He is known in this country very generally by the name of master. (q. v.) He is also frequently denominated patron in foreign laws and books.

2. The captains in the navy of the United States, are officers appointed by government. Those who are employed in the mercantile service, have not strictly an official character. They are appointed or employed by the owners on the vessels they command.

3. It is proposed to consider the duty of the latter. Towards the owner of the vessel he is bound by his personal attention and care, to take all the necessary precautions for her safety; to, proceed on the voyage in which such vessel may be engaged, and to obey faithfully his instructions; and by all means in his power to promote the interest of his owner. But he is not required to violate good faith, nor employ fraud even with an enemy. 3 Cranch, 242.

4. Towards others, it is the policy of the law to hold him responsible for all losses or damages that may happen to the goods committed to his charge; whether they arise from negligence, ignorance, or wilful misconduct of himself or his mariners, or any other person on board the ship. As soon, therefore, as goods are put on board, they are in the master's charge, and he is bound to deliver them again in the same state in which they were shipped, and he is answerable for all losses or damages they may sustain, unless it proceed from au inherent defect in the article, or from some accident or misfortune which could not be prevented.

5. It may be laid down as a general rule, that the captain is responsible when any loss occurs in consequence of his doing what he ought not to do, unless he was forced by the act of God,. the enemies of the United States, or the perils of the sea.1 Marsh. Ins. 241; Pard. n. 658.

6. The rights of the captain are, to choose his crew as he is responsible for their acts, this seems but just, but a reasonable deference to the rights of the owner require that he should be consulted, as he, as well as the captain, is responsible for the acts of the crew. On board, the captain is invested with almost arbitrary power overthe crew, being responsible for the abuse of his authority. Ab. on Sbipp. 162. He may repair the ship, and, if he is not in funds to pay the expenses of such repairs, he may borrow money, when abroad, on the credit of his owners or of the ship. Abb. on Sh. 127−8. In such cases, although contracting within the ordinary scope of his owers and duties, he is generally responsible as well as the owner. This is the established rule of the maritime law, introduced in favor of commerce it has been recognized and adopted by the commercial nations of, Europe, and is derived from the civil or Roman law. Abbott, Ship. 90; Story, Ag. _11 6 to 123, _294; Paley, Ag. by Lloyd, 244; 1 Liverm. Ag. 70; Poth. Ob. n. 82; Ersk. Inst. 3, 3, 43; Dig. 4, 9, 1; Poth. Pand. lib. 14, tit. 1; 3 Summ. R. 228. See Bell's Com. 505, 6th ed; Bouv. Inst. Index, h. t.

CAPTATION, French law. The act of one who succeeds in controlling the will of another, so as to become master of it. It is generally taken in a bad sense.

2. Captation takes place by those demonstrations of attachment and friendship, by those assiduous attentions, by those services and officious little presents which are usual among friends, and by all those means which ordinarily render us agreeable to others. When those attentions are unattended by deceit or fraud, they are perfectly fair, and the captation is lawful; but if, under the mask of friendship, fraud is the object, and means are used to deceive the person with whom you are connected, then the captation is fraudulent, and the acts procured by the captator are void. See Influence.

CAPTATOR, French law. The name which is sometimes given, to him who by flattery and artifice endeavors to surprise testators, and induce them to. give legacies or devices, or to make him some other gift. Diet. de Jur.

CAPTION, practice. That part of a legal instrument, as a 'Commission, indictment, &c., which shows where, when, and by what authority it was taken, found or executed. As to the forms and requisites of captions, see 1 Murph. 281; 8 Yerg. 514; 4 Iredell, 113; 6 Miss,. 469; 1 Scam. 456; 5 How. Mis. 20; 6 Blackf. 299; 1 Hawks, 354; 1 Brev. 169.

2. In the English practice, when an in ferior court in obedience to the writ of certiorari, returns an indictment into the K. B. , it is annexed to the caption, then called a schedule, and the caption concludes with stating, that " it is presented in manner and form as appears in a certain indictment thereto annexed, " and the caption and indictment are returned on separate parch ments. 1 Saund. 309, n. 2. Vide Dane's Ab. Index, h. t.

3. Caption is another name for arrest. CAPTIVE. By this term is understood one who has been taken; it is usually applied to prisoners of war. (q.v.) Although he bas lost his liberty, a captive does not by his captivity lose his civil rights.

CAPTOR, war. One who has talken property from an enemy; this term is also employed to designate one who has taken an enemy.

2. Formerly, goods taken in war were adjudged to belong to the captor; they are now considered to vest primarily, in the state or sovereign, and belong to the individual captors only to the extent that the municipal laws provide.

3. Captors are responsible to the owners of the property for all losses and damages, when the capture is tortious and without reasonable cause in the exercise of belligerent rights. But if the capture is originally justifiable, the captors will not be responsible, unless by subsequent misconduct they become trespassers ab initio. i Rob. R. 93, 96. See 2 Gall. 374; 1 Gall. 274; 1 Pet. Adm. Dee. 116; 1 Mason, R. 14.

CAPTURE, war. The taking of property by one belligerent from another.

2. To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals, or by a pirate, and with intent to deprive the owner of it.

3. Capture may be with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods which are on board: The former is the capture of the ship in the proper sense of the word; the latter is only an arrest and detention, witbout any design to deprive the owner of it. Capture is deemed lawful, when made by a declared enemy, lawfully commissioned and according to the laws of war; and unlawful, when it is against the rules established by the law of nations. Marsh. Ins. B. 1, c. 12, s. 4.See, generally, Lee on Captures, passim; 1 Chitty's Com. Law, 377 to 512; 2 Woddes. 435 to 457; 2 Caines' C. Err 158; 7 Johns. R. 449; 3 Caines' R. 155; 11 Johns. R. 241; 13 Johns. R.161; 14 Johns. R. 227; 3 Wheat. 183; 4 Cranch, 436 Mass. 197; Bouv. Inst. Index, h. t.

CAPUT LUPINUM, Eng. law. Having the head of a wolf. An outlawed felon was said to have the head of a wolf, and might have been killed by any one legally. Now, such killing would be murder. 1. Hale, Pl. C. 497. The rules of the common law on this subject are rauch more severe in their consequences, than the doctrine of the civil law relating to civil death. See 1 Toull. Droit Civil, n. 280, and pp. 254−5, note 3.

CARAT, weights. A carat is a weight equal to three and one−sixth grains, in diamonds, and the like. Jac. L. Dict. See Weight.

CARCAN, French law. A French word, which is applied to an instrument of punishment somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret Vocab.

CARDINAL, eccl. law. The title given to one of tho highest dignitaries of the court of Rome. Cardinals are next to the pope in dignity; he is elected by them and out of their body. There are cardinal bishops, cardinal priests, and cardinal deacons. See Fleury, Hist. Eccles. liv. xxxv. n. 17, Ii. n. 19 Thomassin, part ii. liv. i. oh. 53, part iv. liv. i. c. 79, 80 Loiseau, Traite des Ordres, c. 3, n. 31; Andre, Droit Canon, au mot.

CARDS, crim. law. Small square pasteboards, generally of a fine quality, on which are painted figures of various colors, and used for playing different games. The playing of cards for amusement is not forbidden, but gaming for money is unlawful. Vide Faro bank, and Gaming.

CARGO, mar. law. The entire load of a ship or other vessel. Abb. on Sh. Index, h. t.; 1 Dall. 197; Merl. Rep. h. t.; 2 Gill & John. 136. This term is usually applied to goods only, and does not include human beings. 1 Phill. Ins. 185; 4 Pick. 429. But in a more extensive and less technical sense, it includes persons; thus we say a cargo of emigrants. See 7 Mann. Gr. 729, 744.

CARNAL KNOWLEDGE, crim. law. This phrase is used to signify a sexual connexion; as, rape is the carnal knowledge of a woman, &c. See Rape.

CARNALLY KNEW, pleadings. This is a technical phrase, essential in an indictment to charge the defendant with the crime of rape; no other word or circumlocution will answer the same purpose as these word's. Vide Ravished, and Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Hale, 632; 3 Inst. 60; Co. Litt. 137; ) 1 Chit. Cr. Law, *243. It has been doubted whether these words were indispensible. 1 East, P. C. 448. But it would be unsafe to omit them.

CARRIERS, contracts. There are two kinds of carriers, namely, common carriers, (q. v.) who have been considered under another head; and private carriers. These latter are persons who, although they do not undertake to transport the goods of such as choose to employ them, yet agree to carry the goods of some particular person for hire, from one place to another.

2. In such case the carrier incurs no responsibility beyond that of any other ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. 2 Bos. & Pull. 417; 4 Taunt. 787; Selw. N. P. 382 n.; 1 Wend. R. 272; 1 Hayw. R. 14; 2 Dana, R. 430; 6 Taunt. 577; Jones, Bailm. 121; Story on Bailm, _495. But in Gordon v. Hutchinson, 1 Watts & Serg. 285, it was holden that a Wagoner Who carries goods for hire, contracts,the responsibility of a common carrier, whether transportation be his principal and direct business, or only an occasional and incidental employment.

3. To bring a person within the description of a common carrier, he must exercise his business as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to engage in the transportation of goods for hire, as a business; not as a casual occupation pro hac vice. 1 Salk. 249; 1 Bell's Com. 467; 1 Hayw. R. 14; 1 Wend. 272; 2, Dana, R. 430. See Bouv. Inst. Index, b. t.

CARRYING AWAY, crim. law. To complete the crime of larceny, the thief must not only feloniously tale the thing stolen, but carry it away. The slightest carrying away will be sufficient; thus to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair. 1 Leach, 320. To remove sheets from a bed and carry them into an adjoining room. 1 Leach, 222 n. To take plate from a trunk, and lay it on the floor with intent to carry it away. Ib. And to remove a package from one part of a wagon to another, with a view to steal it; 1 Leach, 286; have respectively been holden to be felonies. 2 Chit. Cr. Law, 919. Vide 3 Inst. 108, 109 1 Hale, 507; Kel. 31 Ry. & Moody, 14 Bac. Ab. Felony, D 4 Bl. Com. 231 Hawk. c.32, s. 25. Where, however, there has not been a complete severance of the possession, it is not a complete carrying away. 2 East, P. C. 556; 1 Hale, 508; 2 Russ. on Cr. 96. Vide Invito Domino; Larceny; Robbery; Taking.

CART BOTE. An allowance to the tenant of wood, sufficient for carts and other instruments of husbandry.

CARTE BLANCHE. The signature of an individual or more, on a while. paper, with a sufficient space left above it to write a note or other writing.

2. In the course of business, it not unfrequently occurs that for the sake of convenience, signatures in blank are given with authority to fill them up.. These are binding upon the parties. But the blank must be filled up by the very person authorized. 6 Mart. L. R. 707. Vide Ch. on Bills, 702 Penna. R. 200. Vide Blank.

CARTEL,war. An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

2. Cartel ship, is a ship commissioned in time of war, to exchange prisoners, or to carry any proposals between hostile powers; she must carry no cargo, ammunitions, or implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The service on which they are sent is so highly important to the interests of humanity, that it is peculiarly incumbent on all parties to take care that it should be conducted in such a manner as not to become a subject of jealousy and distrust between the two nations. 4 Rob. R. 357. Vide Merl. Rep. b. t.; Dane's Ab. c. 40, a. 6, 7; Pet. C. C. R. 106; 3 C. Rob. 141 C. Rob. 336; 1 Dods. R. 60.

CARTMEN. Persons who carry goods and merchandise in carts, either for great or short distances, for hire.

2. Cartmen who undertake to carry goods for hire as a common employment, are common carriers. Story on Bailm. _496; and see 2 Wend. 327 2 N. & M. 88; 1 Murph. 41 7; 2 Bailey, 421 2 Verm. 92; 1 M'Cord, 444; Bac. Ab. Carriers, A.

CASE practice. A contested question before a court of justicea suit or action a cause. 9 Wheat. 738.

CASE, remedies. This is the name of an action in very general use, which lies where a party sues for damages for any wrong or cause of complaint towhich covenant or trespass will not lie. Steph. Pl. 153 Wodd. 167 Ham. N. P.

1. Vide Writ of trespass on the case. In its most comprehensive signification, case includes assumpsit as well as an action in form ex delicto; but when simply mentioned, it is usually understood to mean an action in form ex delicto. 7 T. R. 36. It is a liberal action; Burr, 906, 1011 1 Bl. Rep. 199; bailable at common law. 2 Barr 927−8; founded on the justice and conscience of the Tiff's case, and is in the nature of a bill in equity 3 Burr, 1353, 1357 and the substance of a count in case is the damage assigned. 1 Bl. Rep. 200.

2. An action on the case lies to recover damages for torts not committed with force actual or implied, or having been occasioned by force, where the matter affected was not tangible, or where the injury was not immediate but consequential; 11 Mass. 59, 137 1 Yeates, 586; 6 S. & R. 348; 12 S. & R. 210; 18 John. 257 19 John. 381; 6 Call, 44; 2 Dana, 378 1 Marsh. 194; 2 H. & M. 423; Harper, 113; Coxe, 339; or where the interest in the property was only in reversion. 8 Pick. 235; 7 Conn. 3282 Green, 8 1 John. 511; 3 Hawks, 2462 Murph. 61; 2 N. H. Rep. 430. In these several cases trespass cannot be sustained. 4 T. 11. 489 7 T. R. 9. Case is also the proper remedy for a wrongful act done under legal process regularly issuing from a court of competent jurisdiction. 2 Conn. 700 11 Mass. 500 6 Greenl. 421; 1 Bailey, 441, 457; 9 Conn. 141; 2 Litt. 234; 3 Conn. 5373 Gill & John. 377. Vide Regular and irregular process.

3. It will be proper to consider, 1. in what cases the action of trespass on the case lies; 2. the pleadings 3. the evidence; 4. the judgment.

4. _1. This action lies for injuries, 1. to the absolute rights of persons 2. to the relative rights of persons; 3. to personal property; 4. to real property.

5. − 1. When the injury has been done to the absolute rights of persons by an act not immediate but consequential, as in the case of special damages Irising from a public nuisance Willes, 71 to 74 or where an incumbrance had been placed in a public street, and the plaintiff passing there received an injury; or for a malicious prosecution. See malicious prosecution.

6. − 2. For injuries to the relative rights, as for enticing away an infant child, per quod servitium amisit, 4 Litt. 25; for criminal conversation, seducing or harboring wives; debauching daughters, but in this case the daughter must live with her father as his servant, see Seduction; or enticing away or harboring apprentices or servants. 1 Chit. Pl. 137 2 Chit. Plead. 313, 319. When the seduction takes place in the husband's or father's house, he may, at his election, have trespass or case; 6 Munf. 587; Gilmer, 33but when the injury is done in the house of another, case is the proper remedy. 5 Greenl. 546.

7. − 3. When the injury to personal property is without force and. not immediate, but consequential, or when the plaintiff Is right to it is in reversion, as, where property is injured by a third person while in the hands of a hirer; 3 Camp. 187; 2 Murph. 62; 3 Hawks, 246, case is the proper remedy. 8 East, 693; Ld. Raym. 1399; Str. 634; 1 Chit. Pl. 138.

8. − 4. When the real property which has been injured is corporeal, and the injury is not immediate but consequential, as for example, putting a spout so near the plaintiff's land that the water runs upon it; 1 Chit. Pl. 126, 141; Str. 634; or where the plaintiff's property is only in reversion. When the injury has been done to, incorporeal rights, as for obstructing a private way, or disturbing a party in the use of a pew, or for injury to a franchise, as a ferry, and the like, case is the proper remedy. l Chit. Pl. 143.

9. − _2. The declaration in case, technically so called, differs from a declaration in trespass, chiefly in this, that in case, it must not, in general, state the injury to have been committed vi et armis; 3 Conn. 64; see 2 Ham. 169; 11 Mass. 57; Coxe, 339; yet after verdict, the words " with force and arms" will, be rejected as surplusage; Harp. 122; and it ought not to conclude contra pacem. Com. Dig. Action on the Case, C 3. The plea is usually the general issue, not guilty.

l0. − 3. Any matter may, in general, be given in evidence, under the plea of not guilty, except the statute of limitations. In cases of slander and a few other instances, however, this cannot be done. 1 Saund. 130, n. 1; Wilies, 20. When the plaintiff declares in case, with averments appropriate to that form of action and the evidence shows that the injury was trespass; or when he declares in trespass, and the evidence proves an injury for which case will lie, and not trespass, the defendant should be acquitted by the jury, or the plaintiff should be nonsuited. 5 Mass. 560; 16 Mass. 451; Coxe, 339; 3 John. 468.

11. − _4. The judgment is, that the plaintiff recover a sum of money, ascertained by a jury, for his damages sustained by the committing of the grievances complained of in the declaration, and costs.

12. In the civil law, an action was given in all cases of nominate contracts, which was always of the same name. But in innominate contracts, which had always the same consideration, but not the same name, there could be no

action of the same denomination, but an action which arose from the fact, in factum, or an action with a form which arose from the particular circumstance, praescriptis verbis actio. Lec. Elem. _779. Vide, generally, Bouv. Inst. Index, h. t.

CASE, STATED, practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as there agreed upon and mentioned, 3 Whart. 143.

2. The facts being thus ascertained, it is left for the court to decide for which party is the law. As no writ of error lies on a judgment rendered on a case stated, Dane's Ab. c. 137, art. 4, n. _7, it is usual in the agreement to insert a clause that the case stated shall be considered in the nature
of special verdict.

3. In that case, a writ of error lies on the judgment which may be rendered upon it. And a writ of error will also lie on a judgment on a case stated, when the parties have agreed to it. 8 Serg. & Rawle, 529.

4. In another sense, by a case stated is understood a statement of all the facts of a case, together with the names of the witnesses, and, a detail of the documents which are to support them. In other words, it is a brief. (q. v.)

CASH, commerce. Money on hand, which a merchant, trader or other person has to do business with.

2. Cash price, in contracts, is the price of articles paid for in cash, in contradistinction to the credit price. Pard. n. 85; Chipm. Contr. 110. In common parlance, bank notes are considered as cash; but bills receivable are not.

CASH−BOOK, Commerce, accounts. One in which a merchant or trader enters an account of all the money, or paper moneys he receives or pays. An entry of the same thing ought to be made under the proper dates, in the journal. The object of the cash−book is to afford a constant facility to ascertain the true state of a man's cash. Pard. n. 87.

CASHIER. An officer of a moneyed institution, who is entitled by virtue of his office to take care of the cash or money of such institution.

2. The cashier of a bank is usually entrusted with all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He usually receives directly, or tbrough subordinate officers, all moneys and notes of the bankdelivers up all discounted notes and other securities, when they have been paid draws checks to withdraw the funds of the bank where they have been deposited; and, as the executive officer of the bank, transacts much of the business of the institution. In general, the bank is bound by the acts of the cashier within the scope of his authority, expressed or implied. 1 Pet. R. 46, 70Wheat. R. 300, 361 5 Wheat. R. 326; 3 Mason's R. 505; 1 Breese, R. 45; 1 Monr. Rep. 179. But the bank is not bound by a declaration of the cashier, not within the scope of his authority; as when a note is about to be discountedby the bank, he tells a person that he will incur no risk nor responsibility by becoming an indorser upon such note. 6 Pet. R. 51; 8 Pet. R. 12.Vide 17 Mass. R. 1 Story on Ag. _114, 115; 3 Halst. R. 1; 12 Wheat. R. 183; 1 Watts & Serg. 161.

To CASHIER, punishment. To break; to deprive a military man of his office. Example: every officer who shall be convicted, before a general court martial, of leaving signed a false certificate relating to the absence of either officer or private soldier, or relative to his daily pay, shall be, cashiered. Articles of war, art. 14.

CASSATION, French law. A decision which emanates from the sovereign authority, and by which a sentence or judgment in the last resort is annulled., Merl. Rep. h. t. This jurisdiction is now given to the Cour de Cassation.

2. This court is composed of fifty−two judges, including four presidents, an attorney−general, and six substitutes, bearing the title of advocates general; a chief clerk, four subordinate clerks, and eight huissiers. Its jurisdiction extends to the examination and superintendence of the judgments and decrees of the inferior court, both in civil and criminal cases. It is divided into three sections, namely, the section des requetes, the section civile, and the section criminelle. Merl. Rep. mots Cour de Cassation.

CASSETUR BREVE, practice. That the writ be quashed. This is the name of a judgment sometime sentered against a plaintiff when he cannot prosecute his writ with effect, in consequence of some allegation on the defendant's part. The plaintiff, in order to put an end to any further proceeding in the action,enters on the roll cassetur breve, the effect of which is to quash his own writ,which exonerates him from the liability to any future costs, and allows him to sue out new process. A cassetur bill a may be entered with like effect. 3 Bl. Com. 340; and vide 5 T. R. 634; Gould's Plead. c. 5, _139; 3 Bouv. Inst. n. 2913−14. Vide To quash.

CASTIGATORY, punishments. An engine used to punishwomen who have been convicted of being common scolds it is sometimes called the trebucket, tumbrel, ducking stool, or cucking stool. This barbarous punishment has perhaps never been inflicted in the United States. 12 S. & It. 225. Vide Common Scold.

CASTING VOTE, legislation. The vote given by the president or speaker of a deliberate assembly; when the votes of the other members are equal on both sides, the casting vote then decides the question. Dane's Ab. h. t.

CASTRATION, crim. law. The act of gelding. When this act is maliciously performed upon a man, it is a mayhem, and punishable as such, although the sufferer consented to it.

2. By the ancient law of England this crime was punished by retaliation, membrum pro membro. 3 Inst. 118. It is punished in the United States generally by fine and imprisonment. The civil law punished it with death. Dig. 48, 8, 4, 2. For the French law, vide Code Penal, art. 316. 3. The consequences ofcastration, when complete, are impotence and sterility. 1 Beck's Med. Jur. 72.

CASUPROVISO, practice. A writ of entry given by the statute of Gloucester, c. 7, when a tenant in dower aliens in fee or for life. It might have been brought by the reversioner against the alienee. This, is perhaps an obsolete remedy, having yielded to the writ of ejectment. F. N. B. 205 Dane's Ab. Index, h. t.

CASUAL. What happens fortuitously what is accidental as, the casual revenue's of the government, are those which are contingeut or uncertain.

CASUAL EJECTOR, pratice, ejectment. A person, supposed to come upon−land casually, (although usually by previous agreement,) who turns out the lessee of the person claiming the possession against the actual tenant or occupier of the land. 3 Bl. Com. 201, 202.

2. Originally, in order to try the right by ejectment, Several things were necessary to be made out before the court first, a title to the land, in question, upon which the owner was to make a formal entry; and being so in possession he executed a lease to some third person or lessee, leaving him in possession then the prior tenant or some other person, called the casual ejector, either by accident or by agreement beforehand, came upon the land and turned him out, and for this ouster or turning out, the action was brought. But these formalities are now dispensed with, and the trial relates merely to the title, the defendant being bound to acknowledge the lease, entry, and ouster. 3 Bl. Com. 202;.Dane's Ab. Index, h. t.

CASUS FOEDORIS. When two nations have formed a treaty of alliance, in anticipation of a war or other difficulty with another, and it is required to determine the case in which the parties must act in consequence of the alliance, this is called the casus foederis, or case of alliance. Vattel, liv. 3, c. 6, _88.

CASUS FORTUITUS. A fortuitous case; an uncontrollable accident an act of God. See Act of God; Cas fortuit; Fortuitous event.

CASUS OMISSUS. An omitted case.

2. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a casus omissus.For example, when a statute provides for the descent of intestates estates, and omits a case, the estate descends as it did before the statute, whenever that, case occurs, although it appear to be within the general scope and intent of the statute. 2 Binn. R. 279.

3. When there has been a casus omissus in a statute, the subject is ruled by the common law: casus omissuset oblivioni datus dispositioni juris communis relinquitur. 5 Co. 38. Vide Dig. 38, 1, 44 and 55 Id. 38, 2, 10; Code, 6, 52, 21 and 30.

CATCHING BARGAIN, contracts, fraud. An agreement made with an heir expectant, for the purchase of his expectancy, at an inadequate price.

2. In such case, the heir is, in general, entitled to relief in equity, and way have the contract rescinded upon terms of redemption. 1 Vern. 167; 2 Cox, 80; 2 Cli. Ca. 136; 2 Vern., 121; 2 Freem. 111; 2 Vent. 329; 2 Rep. in Ch. 396; 1 P.Wms. 312; 3 PWms. 290, 293, n.; 1Cro. C. C. 7; 2 Atk. 133; 2 Swanst. 147, and the cases cited in the note; 1 Fonb.140 1 Supp. to Ves. Jr. 66 Id. 361 1 Vern. 320, n. It has been said that all persons dealing for a reversionary interest are subject to this rule, but it may be doubted whether the course of decisions authorizes so extensive a conclusion and whether, in order to constitute a title to relief, the reversioner must not combine the character of heir. 2 Swanst. 148, n. Vide 1 Ch. Pr. 112, 113, n., 458, 826, 838, 839. A mere hard bargain is not sufficient ground for relief.

3. The French law is in unison with these principles. An agreement, which has for its object the succession of aman yet alive, is generally void.Merl. Rep. mots Succession Future. Vide also Dig. 14,6, and Lesion.

CATCHPOLE, officer. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew ad verb.

CAUSA MATRIMONII PRAELOCUTI, Engl. law. An obsolete writ, which lies when a woman gives land to a man in fee simple, or for a less estate, to the intent that he should marry her and he refuses upon request. New. Nat. Bre. 455.

CAUSE, civ. law. This word has two meanings. 1. It signifies the delivery of the thing, or the accomplishment of the act which is the object of a convention. Datio vel factum, quibus ab una parte conventio, impleri caepta est. 6 Toull. n. 13, 166. 2. it is the consideration or motive formakinga contract. An obligation without a cause, or with a false or unlawful cause, has no effect; but an engagement is not the less valid, though the cause be not expressed. The cause is illicit, when it is forbidden by law, when it is contra bones mores, or public order. Dig. 2, 14, 7, 4; Civ. Code of Lo. a. 1887−1894 Code Civil, liv. 3, c. 2, s. 4, art. 1131−1133; Toull. liv. 3, tit. 3, c. 2, s. 4.

CAUSE, contra torts, crim. That which produces an effect.

2. In considering a contract, an injury, or a crime, the law for many purposes looks to the immediate, and not to any remote cause. Bac. Max. Reg. 1; Bac. Ab. Damages, E; Sid. 433; 2 Taunt. 314. If the cause be lawful, the party will be justified; if unlawful, he will be condemned. The following is an example in criminal law of an immediate and remote cause. If Peter, of malice prepense, should discharge a pistol at Paul, and miss him, and then cast away the pistol and fly and, being pursued by Paul, he turn round, and kill him with a dagger, the law considers the first as the impulsive cause, and Peter would be guilty of murder. But if Peter, with his dagger drawn, had fallen down, and Paul in his haste had fallen upon it and killed himself, the cause of Paul's death would have been too remote to charge Peter as the murderer. Id.

3. In cases of insurance, the general rule is that the immediate and not the remote cause of the loss is to be considered; causa proximo non remota spedatur. This rule may, in some cases, apply to carriers. Story, Bailm. _515.

4. For the reach of contracts, the contractor is liable for the immediate effects of such breach, but not for any remote cause, as the failure of a party who was to receive money, and did not receive it, in consequence of which he was compelled to stop payment. 1 Brock. Cir. C. Rep. 103. See Remote; and also Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 6 Bing. R. 716; 6 Ves. 496; Pal. Ag. by Lloyd, 10; Story, Ag. _200; 3 Sumn. R. 38.

CAUSE, pleading.The reason; the motive.

2. In a replication de injuria, for example, the plaintiff alleges that the defendant of his own wrong, and without the cause by him in his plea alleged, did, &c. The word cause here means without the matter of excuse alleged, and though in the singular number, it puts in issue all the facts in the plea, which constitute but one cause. 8 Co. 67; 11 East, 451; 1 Chit. Pl. 585.

CAUSE, practice. A Contested question before a court of justice; it is a Suit or action. Causes are civil or criminal. Wood's Civ. Law, 302; Code, 2, 416.

ÿ20CAUSE OF ACTION. By this phrase is understood the right to bring an action, which implies, that there is some person in existence who can assert, and also a person who can lawfully be sued; for example, where the payee of a bill was dead at the time when it fell due, it was held the cause of action did not accrue, and consequently the statute of limitations did not begin to run until letters of administration had been obtained by some one. 4 Bing. 686.

2. There is no cause of action till the claimant can legally sue, therefore the statute of limitations does not run from the making of a promise, if it were to perform something at a future time, but only from the expiration of that time, though, when the obligor promises to pay on demand, or generally, without specifying day, he may be sued immediately, and then the cause of action has accrued. 5 Bar. & Cr. 860; 8 Dowl. & R. 346.When a wrong has been committed, or a breach of duty has occurred, the cause of action has accrued, though the claimant may be ignorant of it. 3 Barn. & Ald. 288, 626 5 B. & C. 259; 4 C. & P. 127.

CAUTIO PRO EXPENSIS. Security for costs or expenses.

2. This term is used among the civilians, Nov. 112, c. 2, and generally on the continent of Europe. In nearly all the countries of Europe, a foreign plaintiff, whether resident there or not, is required to give caution pro expenses; that is, security for costs. In some states this requisition is modified, and, when such plaintiff has real estate, or a commercial or manufacturing establishent within the state, he is not required to give such caution. Faelix, Droit. Intern. Prive, n. 106.

CAUTION. A term of the Roman civil law, which is used in various senses. It signifies, sometimes, security, or security promised. Generally every writing is called cautio, a caution by which any object is provided for. Vicat, ad verb. In the common law a distinction is made between a contract and the security. The contract may be good

and the security void. The contract may be divisible, and the security entire and indivisible. 2 Burr, 1082. The securities or cautions judicially required of the defendant, are, judicio sisti, to attend and appear during the pendency of the suit; de rato, to confirm the acts of his attorney or proctor; judicium solvi, to pay the sum adjudged against him. Coop. Just. 647; Hall's Admiralty Practice, 12; 2 Brown, Civ. Law, 356.

CAUTION, TURATORY, Scotch law. Juratory caution is that which a suspender swears is the best he can offer in order to obtain a suspension. Where the suspender cannot, from his low or suspected circumstances, procure unquestionable security, juratory caution is admitted. Ersk. Pr. L. Scot. 4, 3, 6.

CAUTIONER, Scotch law, contracts. One who becomes bound as caution or surety for another, for the performance of any obligation or contract contained in a deed.

CAVEAT, practice. That hebeware. Caveat is the name of a notice given by a party having an interest, to some officer, not to do an act, till the party giving the notice shall have been heard; as, a caveat to the register of wills, or judge of probate, not to permit a will to be proved, or not to grant letters of administration, until the party shall have been heard. A caveat is also frequently made to prevent a patent for inventions being issued. 1 Bouv. Inst. 71, 534; 1 Burn's Ecc. Law, 19, 263; Bac. Abr. Executors and Administrators, E 8; 3 Bl. Com. 246; Proctor's Pract. 68; 3 Bin. Rep. 314; 1 Siderf. 371 Poph. 133; Godolph. Orph. Leg. 258; 2 Brownl. 119; 2 Fonbl. Eq. book 4, pt. 2, c. 1, _3; Ayl. Parer. 145 Nelson's Ab. h. t.; Dane's Ab. c. 223, a. 15, _2, and a. 8, _22. See 2 Chit. Pr. 502, note b, for a form.

CAVEAT EMPTOR. Let the purchaser take heed; that is, let him see to it, that the title he is buying is good. This is a rule of the common law, applicable to the sale and purchase of lands and other real estate. If the purchaser pay the consideration money, he cannot, as a general rule, recover it back after the deed has been executed; except in cases of fraud, or by force of some covenant in the deed which has been broken. The purchaser,if he fears a defect of title, has it in his power to protect himself by proper covenants, and if he fails to do so, the law provides for him no remedy. Cro. Jac. 197; 1 Salk.
211 Doug. 630, 654; 1 Serg. & R. 52, 53 , 445. This rule is discussed with ability in Rawle on Covenants for Title, p. 458, et seq. c. 13, and the leading authorities collected. See also 2 Kent, Com. Lect. 39, p. 478; 2 Bl. Com. 451; 1 Stor , Eq. _212 6 Ves. 678; 10 Ves. 505; 3 Cranch, 270; 2 Day, R. 128; Sugd. Vend. 221 1 Bouv. Inst. n. 954−5.

2. This rule has been severely assailed, as being the instrument of falsehood and fraud; but it is too well established to be disregarded. Coop., Just. 611, n. See 8 Watts, 308, 309.

CAVIL. Sophism, subtlety. Cavilis a captious argument, by which a conclusion evidently false, is drawn from a principle evidently true: Ea est natura cavillationis ut ab evidenter veris, per brevissimas mutationes disputatio, ad ea quce evidentur falsa sunt perducatur. Dig. 60, 16, 177 et 233; Id. 17, 65; Id. 33, 2, 88 .

CAESARIAN OPERATION, med. juris. An incision made through the parietes of the abdomen and uterus to extract the foetus. It is said that Julius Caesar was born in this manner. When the child is cut out after the death of the mother, his coming into being in this way confers on other persons none of the rights to which they would have been entitled if he had been born, in the usual course of nature, during her life. For example, his father would not be tenant by the curtesy; for to create that title, it ought to begin by the birth of issue arive, and be consummated by the death of the wife. 8 Co. Rep. 35; 2 Bl. Com. 128 Co. Litt. 29 b.; 1 Beck's Med. Jur. 264 Coop. Med. Jur. 7; 1 Fodere, Med. Leg. _334. The rule of the civil law on this subject will be found in Dig. lib. 50, t. 16, 1. 132 et 141; lib. 5, t. 2, 1. 6; lib. 28, t. 2, 1. 12.

C2ETERORUM. The name of a kind of administration, which, after an administration has been granted for a limited purpose, is granted for the rest of the estate. 1 Will. on Ex. 357; 2 Hagg. 62; 4 Hagg. Eccl. R. 382, 386; 4 Mann. & Gr. 398. For example, where a wife had a right to devise or bequeath certain stock, and she made a will of the same, but there were accumulations that did not pass, the husband might take out letters of administration caeterorum. 4 Mann. & Grang.398;1 Curteis, 286.

TO CEDE, civil law. To assign; to transfer; as, France ceded Louisiana to the United States.

CEDENT, civil law, Scotch law. An assignor. The term is usually applied to

the assignor of a chose in action. Kames on Eq. 43.

CELEBRATION, contracts. This word is usually applied, in law, to the celebration of marriage, which is the solemn act by which a man and woman take each other for husband and wife, conformably to the rules prescribed by law. Diet. de Juris. h. t.

CELL. A small room in a prison. See Dungeon.

CENOTAPH. An empty tomb. Dig. 11, 7, 42.

CENSUS. An enumeration of the inhabitants of a country.

2. For the purpose of keeping the reeresentation of the several states in congress equal, the constitution provides, that " representatives and direct taxes shall be apportioned among the several states, which may be included in this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Idians not taxed, three−fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct." Art. 1, s. 2; vide 1 Story, L. U. S., 73, 722, 751; 2 Id. 1134, 1139, 1169, 1194; 3 Id. 1776; 4 Sharsw. continuation, 2179.

CENT, money. A copper coin of the United States of the value of ten mills; ten of them are equal to a dime, and one hundred, to one dollar. Each cent is required to contain one hundred and sixty−eight grains. Act of January 18th, 1837, 4 Sharsw. cont. of Story',s L. U. S. 2524.

CENTIME. The name of a French money; the one hundredth part of a franc.

CENTRAL. Relating to the centre, or placed in the centre; as, the central courts of the United States, are those located in the city of Washington, whose jurisdiction extends over the whole country. These are, first, the Senate of the United States, when organized to try impeachments; secondly, the Supreme Court of the United States.

2. The government of the United States is the central government.

CENTUMVIRI, civil law. the citizens of Rome were distributed into thirty−five tribes, and three persons out of each tribe were elected judges, who were called centumviri, although they were one hundred and five in number. They were distributed into four different tribunals, but in certain causes called centumvirales causas, the judgments of the four tribunals were necessary. Vicat,.ad verb.; 3 Bl. Com. 315.

CENTURY, civil law. One hundred. The Roman people were dividedinto centu ries. In England they were divided into hundreds. Vide Hundred. Century also
means one hundred years.

CEPI. A Latin word signifying I have taken. Cepicorpus, I have taken the body; cepiand B. B., I have taken the body and discharged him on bail bond; cepi corpus et est in custodia, I have taken the body and it is in custody; cepi corpus, et est languidus, I have taken the body of, &c. and he is sick. These are some of the various returns made by the sheriff to a writ of capias.

CEPI CORPUS, practice. The return which the sheriff, or otherproper officer, makes when he has arrested a defendant by virtue of a capias. 3 Bouv. Inst. n. 2804. See Capias. F. N. B. 26.

CEPIT. Took. This is a technical word, which cannot be supplied by any other in an indictment for larceny. The charge against the defendant must be that he took the thing stolen with a felonious design. Bac. Ab. Indictment, G 1.

CEPIT ET ABDUXIT. He took and led away. These words are applied to cases of trespass or larceny, where the defendant took a living chattel, and led it away. It is used in contradistinction to took and carried away, cepit et asportavit. (q. v.)

CEPIT ET ASPORTAVIT. Took and carried away. (q. v.)

CEPIT IN ALIO LOCO, pleadings. He took in another place. This is a plea in replevin, by which the defendant alleges, that he took the thing replevied in another place than that mentioned in the plaintiff's declaration. 1 Chit. Pl. 490, 4 Bouv. Inst. n. 3569 2 Chit. Pl. 558; Rast. 554, 555; Clift. 636 Willes, R. 475; Tidd's App. 686.

CERTAINTY, UNCERTAINTY, contracts. In matters of obligation, a thing is certain, when its essence, quality, and quantity, are described, distinctly set forth, Dig. 12, 1, 6. It is uncertain, when the description is not that of one individual object, but designates only the kind. Louis. Code, art. 3522, No. 8 5 Co. 121. Certainty is the mother of repose, and therefore the law aims at certainty. 1 Dick. 245. Act of the 27th of July, 1789, ii. 2, 1 Story's Laws, 6. His compensation for his servicer, shall not exceed two thousand dollars per annum. Gordon's Dig. art. 211.

2. If a contract be so vague in its terms, that its meaning cannot be certainly collected, and the statute of frauds preclude the admissibility of parol evidence to clear up the difficulty; 5 Barn. & Cr. 588; S. C. 12 Eng. Com. L. R. 827; or parol evidence cannot supply the defect, then neither at law, nor in equity, can effect be given to it. 1 Russ. & M. 116; 1 Ch. Pr. 123.

3. It is a maxim of law, that, that is certain which may be made certain; certum est quod certum reddi potest Co. Litt. 43; for example, when a man sells the oil he has in his store at so much a gallon, although there is uncertainty as to the quantity of oil, yet inasmuch as it can be ascertained, the maxim applies, and the sale is good. Vide generaly, Story, Eq. El. _240 to 256; Mitf. Pl. by Jeremy, 41; Coop. Eq. Pl. 5; Wigr. on Disc. 77.

CERTAINTY, pleading. By certainty is understood a clear and distinct statement of the facts which constitute the cause of action, or ground of defence, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give the judgment. Cowp. 682; Co. Litt. 308; 2 Bos. & Pull. 267; 13 East, R. 107; Com. Dig. Pleader, C 17; Hob. 295. Certainty has been stated by Lord Coke, Co. Litt. 303, a, to be of three sorts namely, 1. certainty to a common intent 2. to a certain intent in general; and, 3. to a certain intent in every particular. In the case of Dovaston.v. Paine Buller, J. said he remembered to have heard Mr. Justice Ashton treat these distinctions as a jargon of words without meaning; 2 H. Bl. 530. They have, however, long been made, and ought not altogether to be departed from.

2. − 1. Certainty to a common intent is simply a rule of construction. It occurs when words are used which will bear a natural sense, and also an artificial one, or one to be made out by argument or inference. Upon the ground of this rule the natural sense of words is adopted, without addition. 2 H. Bl. 530.

3. − 2. Certainty to, a certain intent in general, is a greater degree of certainty than the last, and means what upon a fair and reasonable construction may be called certain, without recurring to possible facts which do not appear; 9 Johns. R. 317; and is what is required in declarations, replications, and indictments, in the charge or accusation, and in returns to writs of mandamus. See 1 Saund. 49, n. 1; 1 Dougl. 159; 2 Johns. Cas. 339; Cowp. 682; 2 Mass. R. 363 by some of which authorities, it would seem, certainty to a common intent is sufficient in a declaration.

4. − 3. The third degree of certainty, is that which precludes all argument, inference, or presumption against the party, pleading, and is that technical accuracy which is not liable to the most subtle and scrupulous objections, so that it is not merely a rule of construction, but of addition; for where this certainty is necessary, the party must not only state the facts of his case in the most precise way, but add to them such as show that they are not to be controverted, and, as it were, anticipate the case of his adversary. Lawes on Pl. 54, 55. See 1 Chitty on Pl. 235 to 241.

CERTIFICATE, practice. A writing made in any court, and properly authenticated, to give notice to another court of anything done therein; or it is a writing by which an officer or other person bears testimony that a fact has or has not taken place.

2. There are two kinds of certificates; those required by the law, and those which are merely voluntary. Of the first kind are certificates given to an insolvent of his discharge, and those given to aliens, that they have been naturalized. Voluntary certificates are those which are not required by law, but which are given of the mere motion of the party. The former are evidence of the facts therein mentioned, while the latter are not entitled to any credit, because the facts certified, may be proved in the usual way under the solemnity of an oath or affirmation. 2 Com. Dig. 306; Ayl. Parerg. 157; Greenl. Ev. _498.

CERTIFICATE, JUDGE'S, English practice. The judge who tries the cause is authorized by several statutes in certain cases to certify, so as to decide when the party or parties shall or shall not be entitled to costs. It is of great importance in many cases, that these certificates should be obtained at the time of trial. See 3 Camp. R. 316; 5 B. & A. 796; Tidd's Pr. 879; 3 Ch. Pr.
458, 486.

2. The Lord Chancellor often requires the opinion of the judges upon a question of law; to obtain this, a case is trained, containing the admissions on both sides, and upon these the legal question is stated; the case is then submitted to the judges, who, after hearing counsel, transmit to the chancellor their opinion. This opinion, signed by the judges of the court, is called their certificate. See 3 Bl. Com. 453.

CERTIFICATE, ATTORNEY'S, Practice, English law. By statute 37 Geo. III., c. 90, s. 26, 28, attorneys are required to deliver to the commissioners of stamp duties, a paper or note−in writing, containing the name and usual place of residence of such person, and thereupon, on paying certain duties, such person is entitled to a certificate attesting the payment of such duties, which must be renewed yearly. And by the 30th section, an

attorney is liable to the penalty of fifty pounds for practising without.

CERTIFICATION or CERTIFICATE OF ASSISE. A term used in the old English law, applicable to a writ granted for the reexamination or re−trial of a matter passed by assise before justices. F. N. B. 181 3 Bl. Com. 389. The summary motion for a new trial has entirely superseded the use of this writ, which was one of the means devised by the judges to prevent a resort to the remedy by attaint for a wrong verdict.

CERTIORARI, practice. To be certified of; to be informed of. This is the name of a writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former, the record in the particular case. Bac. Ab. h. t.; 4 Vin. Ab. 330; Nels. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Penna. R. 24. A certiorari differs from a writ of error. There is a distinction also between a hab. corp. and a certiorari. The certiorari removes the cause; the hab. corp. only supersedes the proceedings in below. 2 Lord Ray. 1102.

2. By the common law, a supreme court has power to review the proceedings of all inferior tribunals, and to pass upon their jurisdiction and decisions on questions of law. But in general, the determination of such inferior courts on questions of fact are conclusive, and cannot be reversed on certiorari, unless some statute confers the power on such supreme court. 6 Wend. 564; 10 Pick. 358; 4 Halst. 209. When any error has occurred in the proceedings of the court below, different from the course of the common law, in any stage of the cause, either civil or criminal cases, the writ of certiorari is the only remedy to correct such error, unless some other statutory remedy has been given. 5 Binn. 27; 1 Gill & John. 196; 2 Mass. R. 245; 11 Mass. R. 466; 2 Virg. Cas. 270; 3 Halst. 123; 3 Pick. 194 4 Hayw. 100; 2 Greenl. 165; 8 Greenl. 293. A certiorari, for example, is the correct process to remove the proceedings of a court of sessions, or of county commissioners in laying out highways. 2 Binn. 250 2 Mass. 249; 7 Mass. 158; 8 Pick. 440 13 Pick. 195; 1 Overt. 131; 2
Overt. 109; 2 Pen. 1038; 8 Verm. 271 3 Ham. 383; 2 Caines, 179.

3. Sometimes the writ of certiorari is used as auxiliary process, in order to obtain a full return to some other process. When, for example, the record of an inferior court is brought before a superior court by appeal, writ of error, or other lawful mode, and there is a manifest defect, or a suggestion of diminution, a certiorari is awarded requiring a perfect transcript and all papers. 3 Dall. R. 413; 3 John. R. 23; 7 Cranch, R. 288; 2 South. R. 270, 551; 1 Blackf. R. 32; 9 Wheat. R. 526; 7 Halst. R. 85; 3 Dev. R. 117; 1 Dev. & Bat. 382; 11 Mass. 414; 2 Munf. R. 229; 2 Cowen, R. 38. Vide Bouv. Inst. Index, h. t.

CESSET EXECUTIO. The staying of an execution.

2. When a judgment has been entered, there is sometimes, by the agreement of the parties, a cesset executio for a period of time fixed upon and when the defendant enters security for the amount of the judgment, there is a cesset executio until the time allowed by law has expired.

CESSET PROCESSUS, practice. An entry made on the record that there be a stay of the procas or proceedings.

2. This is made in cases where the plaintiff has become insolvent after action brought. 2 Dougl. 627.

CESSAVIT, Eng. law. An obsolete writ, which could formerly have been sued out when the defendant had for two years ceased or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or cbattels to be distrained. F. N. B. 208.

CESSIO BONORUM, civil law. The relinquishment which a debtor made of his property for the benefit of his creditors.

2. This exempted the debtor from imprisonment, not, however, without leaving an ignominious stain on his reputation. Dig. 2, 4, 25; Id. 48, 19, 1; Nov. 4, c. 3, and Nov. 135. By the latter Novel, an honest unfortunate debtor might be discharged, by simply affirming that he was insolvent, without having recourse to the benefit of cession. By the cession the creditors acquired title to all the property of the insolvent debtor.

3. The cession discharged the debtor only to the extent of the property ceded, and he remained responsible for the difference. Dom. Lois Civ. liv. 4, tit. 5., s. 1, n. 2. Vide, for the law of Louisiana, Code, art. 2166, et seq. 2 M. R. 112; 2 L. R. 354; 11 L. R. 531; 5 N. S. 299; 2 L. R. 39; 2 N. S. 108; 3 M. R. 232; 4 Wheat. 122; and Abandonment.

CESSION, contracts. Yielding up; release.

2. France ceded Louisiana to the United States, by the treaty of Paris, of April 30, 1803 Spain made a cession of East and West Florida, by the treaty of February 22, 1819. Cessions have been severally made of a part of their territory, by New York, Virginia, Massachusetts, Connecticut) South Carolina, North Carolina, and Georgia. Vide Gord. Dig. art. 2236 to 2250.

CESSION, civil law. The, act by which a party assigns or transfers property to a other; an assignment.

CESSION, eccl. law. When an ecclesiastic is created bishop, or when a parson takes another benefice, without dispensation, the first benefice becomes void by a legal cession, or surrender. Cowel, h. t.

CESTUI. He. This word is frequently used in composition as, cestui que trust, cestui que vie, &c.

CESTUI QUE TRUST, A barbarous phrase, to signify the beneficiary of an estate held in trust. He for whose benefit another person is enfeoffed or seised of land or tenements, or is possessed of personal property. The cestui que trust is entitled to receive the rents and profits of the land; he may direct such conveyances, consistent with the trust, deed or will, as he shall choose, and the trustee (q. v.) is bound to execute them: he may defend his title in the name of the trustee. 1 Cruise, Dig. tit. 12, c. 4, s. 4; vide Vin. Ab. Trust, U, W, X, and Y 1 Vern. 14; Dane's Ab. Index, h. t.: 1 Story, Eq. Jur. _321, note 1; Bouv. Inst. Index, h. t.

CESTUI QUE VIE. He for whose life land is holden by another person; the latter is called tenant per auter vie, or tenant for another's life. Vide Dane's Ab. Index, h. t.

CESTUI QUE USE. He to whose use land is granted to another person the latter is called the terre−tenant, having in himself the legal property and possession; yet not to his own use, but to dispose of it according to the directions of the cestui que use, and to suffer him to take the profits. Vide Bac. Read. on Stat. of Uses, 303, 309, 310. 335, 349; 7 Com. Dig. 593.

CHAFEWAX, Eng, law. An officer in chancery who fits the wax for sealing, to the writs, commissions and other. instruments then made to be issued out. He is probably so called because he warms (chaufe) the wax.

CHAFFERS. Anciently signified wares and merchandise; hence the word chaffering, which is yet used for buying and selling, or beating down the price of an article. The word is used in stat. 3 Ed. III. c. 4.

CHAIRMAN. The presiding officer of a committee; as, chairman of the committee of ways and means. The person selected to preside over a popular meeting, is also called a chairman or moderator.

CHALDRON. A measure of capacity, equal to fifty−eight and two−third cubic feet nearly. Vide Measure.

CHALLENGE. This word has several significations. 1. It is an exception or objection to a juror. 2. A call by one person upon another to a single combat, which is said to be a challenge to fight.

CHALLENGE, criminal law. A request by one person to another, to fight a duel.

2. It is a high offence at common law, and indictable, as tending to a breach of the peace. It may be in writing or verbally. Vide Hawk. P. C. b. 1, c. 63, s. 3; 6 East, R. 464; 8 East, R. 581; 1 Dana, R. 524; 1 South.. R. 40; 3 Wheel. Cr. C. 245 3 Rogers' Rec. 133; 2 M'Cord, R. 334 1 Hawks. R. 487; 1 Const. R. 107. He who carries a challenge is also punishable by indictment. In most of the states, this barbarous practice is punishable by special laws.

3. In most of the civilized nations challenging another to fight. is a crime, as calculated to destroy the public peace; and those who partake in the offence are generally liable to punishment. In Spain it is punished by loss of offices, rents, and horrors received from the king, and the delinquent is incapable to hold them in future. Aso & Man. Inst. B. 2, t. 19, c. 2, _6. See, generally, 6 J. J. @larsh. 120; 1 Munf. 468; 1 Russ. on Cr. 275; 6 J. J. Marsh. 1 19; Coust. Rep. 10 7; Joy on Chal. passim.

CHALLENGE, practice. An exception made to jurors who are to pass on a trial;
to a judge; or to a sheriff.

2. It will be proper here to consider, 1. the several kinds of challenges; 2. by whom they are to be made; 3. the time and manner of making them.

3. − _1. The several kinds of challenges may be divided into those which are peremptory, and those which are for cause. 1. Peremptory challenges are those
'which are made without assigning any reason, and which the court must allow. The number of these which the prisoner was allowed at common law, in all cases of felony, was thirty−five, or one under three full juries. This is regulated by the local statutes of the different states, and the number except in capital cases, has been probably reduced.

4. − 2. Challenges for cause are to the array or to the polls. 1. A challenge to the array is made on account of some defect in making the return to the venire, and is at once an objection to all the jurors in the panel. It is either a principal challenge, that is, one founded on some manifest partiality, or error committed in selecting, depositing, drawing or summoning the jurors, by not pursuing the directions of the acts of the legislature; or a challenge for favor.

5. − 2. A challenge to the polls is objection made separately to each juror as he is about to be sworn. Challenges to the polls, like those to the array, are either principal or to the favor.

6. First, principal challenges may be made on various grounds: 1st. propter defectum, on account of some personal objection, as alienage, infancy, old age, or the want of those qualifications required by legislative enactment. 2d. Propter affectum, because of some presumed or actual partiality in the juryman who is made the subject of the objection; on this ground a juror may be objected to, if he is related to either within the ninth degree, or is so connected by affinity; this is supposed to bias the juror's mind, and is only a presumption of partiality. Coxe, 446; 6 Greenl. 307; 3 Day, 491. A juror who has conscientious scruples in finding a verdict in a capital case, may be challenged. 1 Bald. 78. Much stronger is the reason for this challenge, where the juryman has expressed his wishes as to the result of the trial, or his opinion of the guilt or innocence of the defendant. 4 Harg. St. Tr. 748; Hawk. b. 2, c. 43, s. 28; Bac. Ab. Juries, E 5. And the smallest degree of interest in the matter to be tried is a decisive objection against a juror. 1 Bay, 229; 8 S. & R. 444; 2 Tyler, 401. But see 5 Mass. 90. 3d. The third ground of principal challenge to the polls, is propter delictum, or the legal incompetency of the juror on the ground of infamy. The court, when satisfied from their own examination, decide as to the principal challenges to the polls, without any further investigation and there is no occasion for the appointment of triers. Co. Litt. 157, b; Bac. Ab. Juries, E 12; 8 Watts. R. 304.

7. − Secondly. Challenges to the poll for favor may be made, when, although the juror is not so evidently partial that his supposed bias will be sufficient to authorize. a principal challenge, yet there are reasonable grounds to suspect that he will act under some undue influence or prejudice. The causes for such cballenge are manifestly very numerous, and depend, on a variety of circumstances. The fact to be ascertained is, whether the juryman is altogether indifferent as he stands unsworn, because, even unconsciously to himself, be may be swayed to one side. The line whicb separates the causes for principal challenges, and for challenge to the favor, is not very distinctly marked. That the juror has acted as godfather to the child of the prosecutor or defendant, is cause for a principal cballenge; Co. Litt. 157, a; while the fact that the party and the juryman are fellow servants, and that the latter has been entertained at the house of the former, is only cause for challenge to the favor. Co. Litt. 147; Bac. Ab. Juries, E 5. Challenges to the favor are not decided upon by the court, but are settled by triers. (q. v.)

8. − _2. The challenges may be made by the government, or those who represent it, or by the defendant, in criminal cases; or they may be made by either party in civil cases.

9. − _3. As to the time of making the challenge, it is to be observed that it is a general rule, that no challenge can be made either to the array or to the polls, until a full jury have made their appearance, because if that should be the case, the issue will remain pro defectu juratorum; and on this account, the party who intends to challenge the array, may, under such a contingency, pray a tales to complete the number, and then object to the panel. The proper time, of challenging, is between the appearance and the swearing of the jurors. The order of making challenges is to the array first, and should not that be supported, then to the polls; challenging any one juror, waives the right of challenging the array. Co. Litt. 158, a; Bac. Ab. Juries, E 11. The proper manner of making the challenge, is to state all the objections against the jurors at one time; and the party will not be allowed to make a second objection to the same juror, when the first has been over−ruled. But when a juror has been challenged on one side, and found indifferent, he may still be challenged on the other. When the juror has been cliallenged for cause, and been pronounced impartial, he may still be challenged peremptorily. 6 T. R. 531; 4 Bl. Com. 356; Hawk. b. 2, c. 46, s. 10.

10. As to the mode of making the challenge, the rule is, that a challenge to the array must be in writing; but when it is only to a single individual, the words " I challenge him " are sufficient in a civil case, or on the part of the defendant, in a criminal case when the challenge is made for the prosecution, the attorney−general says, We challenge him." 4 Harg. St. Tr. 740 Tr. per Pais, 172; and see Cro. C. 105; 2 Lil. Entr. 472; 10 Wentw. 474; 1 Chit. Cr. Law, 533 to 551.

11. Interest forms the only ground at common law for challenging a judge. It is no ground of challenge that he has given an opinion in the case before. 4 Bin. 349; 2 Bin. 454. By statute, there are in some states several other grounds of challenge. See Courts of the U. S., 633 64.

12. The sheriff may be challenged for favor as well as affinity. Co. Litt. 158, a; 10 Serg. &. R. 336−7. And the challenge need not be made to the court, but only to the prothonotary. Yet the Sheriff cannot be passed by in the direction of process without cause, as he is the proper officer to execute writs, except in case of partiality. Yet if process be directed to the coroner without cause, it is not void. He cannot dispute the authority of the court, but must execute it at his peril, and the misdirection is aided by thc statutes of amendment. 11 Serg. & R. 303.

CHAMBER. A room in a house.

2. It was formerly hold that no freehold estate could be had in a chamber, but it was afterwards ruled otherwise. When a chamber belongs to one person, and the rest of the house with the land is owned by another the two estates are considered as two separate but adjoining dwelling house's. Co. Litt. 48, b; Bro. Ab. Demand, 20; 4 Mass. 575; 6 N. H. Rep. 555; 9 Pick. R. 297; vide 3 Leon. 210; 3 Watts. R. 243.

3 . By chamber is also understood the place where an assembly is held; and, by the use of a figure, the assembly itself is called a chamber.

CHAMBER OF C0MMERCE. A society of the principal merchants and traders of a city, who meet to promote the general trade and commerce of the place. Some of these are incorporated, as in Philadelphia.

CHAMBERS, practice. When a judge decides some interlocutory matter, which has arisen in the course of the cause, out of court, he is said to make such decision at his chambers. The most usual applications at chambers take place in relation to taking bail, and staying proceedings on process.

CHAMPART, French law. By this name was formerly understood the grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. IS Toull. n. 182.

CHAMPERTOR, crim. law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain.

CHAMPERTY, crimes. A bargain with a plaintiff or defendant, campum partire, to divide the land or other matter sued for between them, if they prevail at law, the champertor undertaking to carry on the suit at his own expense. 1 Pick. 416; 1 Ham. 132; 5 Monr. 416; 4 Litt. 117; 5 John. Ch. R. 44; 7 Port. R. 488.

2. This offence differs from maintenance, in this, that in the latter the person assisting the suitor receives no benefit, while in the former he receives one half, or other portion, of the thing sued for. See Punishment; Fine; Imprisonment; 4 Bl. Com. 135.

3. This was an offence in the civil law. Poth. Pand. lib. 3, t. 1; App. n. 1, tom. 3, p. 104; 15 Ves. 139; 7 Bligh's R. 369; S. C. 20 E. C. L. R. 165; 5 Moore & P. 193; 6 Carr. & P. 749; S. C. 25 E. C. L. R. 631; 1 −Russ. Cr. 179 Hawk. P. C. b. 1 c. 84, s. 5.

4. To maintan a defendant may be champerty. Hawk. P. C. b. 1, c. 84, s. 8 3 Ham. 541; 6 Monr. 392; 8 Yerg. 484; 8 John. 479; 1 John. Ch. R. 444;, 7 Wend. 152; 3 Cowen, 624; 6 Co@ven, 90.

CHAMPION. He who fights for another, or takes his place in a quarrel; it also includes him who fights his own battles. Bract. lib. 4, t. 2, c. 12.

CHANCE, accident. As the law punishes a crime only when there is an intention to commit it, it follows that when those acts are done in a lawful business or pursuit by mere chance or accident, which would have been criminal if there had been an intention, express or implied, to commit them, there is no crime. For example, if workmen were employed in blasting rocks in a retired field, and a person not knowing of the circumstance should enter the field, and be killed by a piece of the rock, there would be no guilt in the workmen. 1 East, P. C. 262 Poster, 262; 1 Hale's P. C. 472; 4 Bl. Com. 192. Vide Accident.

CHANCE−MEDLEY, criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens se defendendo. (q. v.) 4 Bl. Com. 184.

CHANCELLOR. An officer appointed to preside over a court of chancery, invested with various powers in the several states.

2. The office of chancellor is of Roman origin. He appears, at first, to have been a chief scribe or secretary, but he was afterwards invested with judicial power, and had superintendence over the other officers of the empire. From the Romans, the title and office passed to the church, and therefore every bishop of the catholic church has, to this day, his chancellor, the principal judge of his consistory. When the modern kingdoms of Europe were established upon the ruins of the empire, almost every state preserved its chancellor, with different jurisdictions and dignities, according to their different constitutions. In all he seems to have had a supervision of all charters, letters, and such other public instruments of the crown, as were authenticated in the most solemn manner; and when seals came into use, he had the custody of the public seal.

3. An officer bearing this title is to be found in most countries of Europe, and is generally invested with extensive authority. The title and office of chancellor came to us from England. Many of our state constitutions provide for the appointment of this officer, who is by them, and by the law of the several states, invested with power as they provide. Vide Encyclopedie, b. t.; Encycl.. Amer. h. t.; Dict. de Jur. h. t.; Merl. Rep. h. t.; 4 Vin. Ab. 374; Blake's Ch. Index, h. t.; Woodes. Lect. 95.

CHANCERY. The name of a court exercising jurisdiction at law, but mainly in equity.

2. It is not easy to determine how courts of equity originally obtained the jurisdiction they now exercise. Their authority, and the extent of it, have been subjects of much question, but time has firmly established them; and the limits of their jurisdiction seem to be in a great degree fixed and ascertained. 1 Story on Eq. ch. 2; Mitf. Pl. Introd.; Coop. Eq. Pl. Introd. See also Butler's Reminiscences, 38, 40; 3 Bl. Com. 435; 2 Bin. 135; 4 Bin. 50; 6 Bin. 162; 2 Serg. & R. 356; 9 Serg. & R. 315; for the necessity, origin and use of courts of chancery.

3. The judge of the court of chancery, often called a court of equity, bears the title of chancellor. The equity jurisdiction, in England, is vested, principally, in the high court of chancery. This court is distinct from courts of law. " American courts of equity are, in some instances, distinct from those of law, in others, the same tribunals exercise the jurisdiction both of courts of law and equity, though their forms of proceeding are different in their two capacities. The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act either as court's of law or equity, according to the form of the process and the subject of adjudication. In some of the states, as New York, Virginia, and South Carolina, the equity court is a distinct tribunal, having its appropriate judge, or chancellor, and officers. In most of the states, the two jurisdictions centre in the same judicial officers, as in the courts of the United States; and the extent of equity jurisdiction and proceedings is very various in the different states, being very ample in Connecticut, New York, New Jersey, Maryland, Virginia, and South Carolina, and more restricted in Maine, Massachusetts, Rhode Island, and Pennsylvania. But the salutary influence of these powers on the judicial administration generally, by the adaptation of cbancery forms and modes of proceeding to many cases in which a court of law affords but an imperfect remedy, or no remedy at all, is producing a gradual extension of them in those states where they have been, heretofore, very limited."

4. The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. The rights secured by the former are called legal; those secured by the latter are called equitable. The former are said to be rights and remedies at common law, because recognized and enforced in courts of common law. The latter are said to be rights and remedies in equity, because they are administered in courts of equity or chancery, or by proceedings in other courts analogous to those in courts of equity or chancery. Now, in England and America, courts of common law proceed by certain prescribed forms, and give a general judgment for or against the defendant. They entertain jurisdiction only in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not. do entire justice, ex aequo et bono, to either party. Some modification of the rights of both parties is required; some restraints on one side or the other; and some peculiar adjustments, either present or future, temporary or perpetual. Now, in all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their forms of actions and judgment are not adapted to them. The proper remedy cannot be found, or cannot be administered to the full extent of the relative rights of all parties. Such prescribed forms of actions are not confined to our law. They were known in the civil law; and the party could apply them only to their original purposes. In other cases, he had a special remedy. In such cases, where the courts of common law cannot grant the proper remedy or relief, the law of England and of the United States (in those states where equity is administered) authorizes an application to the courts of equity or chancery, which are not confined or limited in their modes of relief by such narrow regulations, but which grant relief to all parties, in cases where they have rights, ex aequo et bono, and modify and fashion that relief according to circumstances. The most general description of a court of equity is, that it has jurisdiction in cases where a plain, adequate and complete remedy cannot be had at law that is, in common law courts. The remedy must be plain; for, if it be doubtful and obscure at law, equity will assert a jurisdiction. So it must be adequate at law; for, if it fall short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete; that is, it must attain its full end at law it must reach the whole mischief and secure the whole right of the party, now and for the future otherwise equity will interpose, and give relief. The jurisdiction of a court of equity is sometimes concurrent with that of courts of, law and sometimes it is exclusive. It exercises concurrent jurisdiction in cases where the rights are purely of a legal nature, but where other and more efficient aid is required than a court of law can afford, to meet the difficulties of the case, and ensure full redress. In some of these cases courts of law formerly refused all redress but now will grant it. But the

jurisdiction having been once justly acquired at a time when there was no such redress at law, it is not now relinquished. The most common exercise of concurrent jurisdiction is in cases of account, accident, dower, fraud, mistake, partnership, and partition. The remedy is here often more complete and effectual than it can be at law. In many cases falling under these heads, and especially in some cases of fraud, mistake and accident, courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity also is assistant to the jurisdiction of courts of law, in many cases, where the latter have no like authority. It will remove legal impediments to the fair decisiou of a question depending at law. It will prevent a party from improperly setting up, at a trial, some title or claim, which would be inequitable. It will compel him to discover, on his own oath, facts which he knows are material to the rights of the other party, but which a court of law cannot compel the party to discover. It will perpetuate the testmony of witnesses to rights and titles, which are in danger of being lost, before the, matter can be tried. It will provide for the safety of property in dispute pending litigation. It will counteract and control, or set aside, fraudulent judgments. It will exercise, in many cases, an exclusive jurisdiction. This it does in all cases of morely equitable rights, that is, such rights as are not recognized in courts of law. Most cases of trust and confidence fall under this head. Its exclusive jurisdiction is also extensively exercised in granting special relief beyond the reach of the common law. It will grant injunctions to prevent waste, or irreparable injury, or to secure a settled right, or to prevent vexatious litigations, or to compel the restitution of title deeds; it will appoint receivers of property, where it is in danger of misapplication it will compel the surrender of securities improperly obtained; it will prohibit a party from leaving the country in order to avoid a suit it will restrain any undue exercise of a legal right, against conscience and equity; it will decree a specific performance of contracts respecting real estates; it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real intention of the parties; it will grant relief in cases of lost deeds or securities; and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it, unless he could bring into court the money honestly due without usury. This is a very general and imperfect outline of the jurisdiction of a court of equity; in respect to which it has been justly remarked, that, in matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is impossible to define the boundaries of that jurisdiction, or to enumerate, with precision, its various principles." Ency. Am. art. Equity. Vide Fonb. Eq.; Story on Eq.; Madd. Ch. Pr.; 10 Amer. Jur. 227; Coop. Eq. Pl.; Redesd. Pl.; Newl. Cb. Practice; Beame's Pl. Eq.; Jeremy on Eq.; Encycl. Amer. article Equity, Court.

CHANGE. The exchange of money for money. The giving, for example, dollars for eagles, dimes for dollars, cents for dimes. This is a contract which always takes place in the same place. By change is also understood small money. Poth. Contr. de Change, n. 1.

CHANGE TICKET. The name given in Arkansas to a species of promissory notes issued for the purpose of making change in small transactions. Ark. Rev. Stat. cb. 24.

CHAPLAIN. A clergyman appointed to say prayers and perform divine service. Each house of congress usually appoints it own cbaplain.

CHAPMAN. One whose business is to buy and sell goods or other things. 2 Bl.
Com. 476.

CHAPTER, eccl. law. A congregation of clergymen. Such an assembly is termed capitulum, which signifies a little head it being a kind of head, not only to govern the diocese in the vacation of the bishopric, but also for other purposes. Co. Litt. 103.

CHARACTER, evidence. The opinion generally entertained of a person derived from the common re 'port of the people who are acquainted with him. 3 Serg. & R. 336; 3 Mass. 192; 3 Esp. C. 236.

2. There are three classes of cases on which the moral character and conduct of a person in society may be used in proof before a jury, each resting upon particular and distinct grounds. Such evidence is admissible, 1st. To afford a presumption that a particular party has not been guilty of a criminal act. 2d. To affect the damages in particular cases, where their amount depends on the character and conduct of any individual; and, 3d. To impeach or confirm the veracity of a witness.

3. − 1. Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in the question, a presumption of innocence arises from his former conduct in society, as evidenced by his general character, since it is not probable that a person of known probity and humanity, would commit a dislionest or outrageous act in the particular instance. Such presumptions, however, are so remote from fact, and it is frequently

so difficult to estimate a person's real character, that theyÿ20are entitled to little−weight, except in doubtful cases. Since the law considers a presumption of this nature to be admissible, it is in principle admissible 'Whenever a reasonable presumption arises from it, as to the fact in question; in practice it is admitted whenever the character of the party is involved in the issue. See 2 St. Tr. 1038 1 Coxes Rep. 424; 5 Serg. & R. 352 3 Bibb, R. 195; 2 Bibb, R. 286; 5 Day, R. 260; 5 Esp. C. 13; 3 Camp. C. 519; 1 Camp. C. 460; Str. R. 925. Tha. Cr. Cas. 230; 5 Port. 382.

4. − 2. In some instances evidence in disparagement of character is admissible, not in order to prove or disprove the commission of a particular fact, but with a view to damages. In actions for criminal conversation with the plaintiff's wife, evidence may be given of the wife's general bad character, for want of chastity, and even of particular acts of adultery committed by her, previous to her intercourse with the defendant. B. N. P. 27, 296; 12 Mod. 232; 3 Esp. C. 236. See 5 Munf. 10. In actions for slander and libel, when the defendant has not justified, evidence of the plaintiff's bad character has also been admitted. 3 Camp. C. 251; 1 M. & S. 284; 2 Esp. C. 720; 2 Nott & M'Cord, 511; 1 Nott & M'Cord, 268; and see 11 Johns. R. 38; 1 Root, R. 449; 1 Johns. R. 46; 6 Penna. St. Rep. 170. The ground of admitting such evidence is, that a person of disparaged fame is not entitled to the same measure of damages with one whose character is uublemished. When, however, the defendant justifies the slander, it seems to be doubtful whether the evidence of reports as to the conduct and character of the plaintiff can be received. See 1 M. & S. 286, n (a) 3 Mass. R. 553 1 Pick. R. 19. When evidence is admitted touching the general character of a party, it is manifest that it is to be confined to matters in reference to the nature of the, charge against him. 2 Wend. 352.

5. − 3. The party against whom a witness is called, may disprove the fact& stated by him, or may examine other witnesses as to his general character; but they will not be allowed to speak of particular facts or parts of his conduct. B. N. P. 296. For example, evidence of the general character of a prosecutrix for a rape, may be given, as that she was a street walker; but evidence of specific acts of criminality cannot be admitted. 3 Carr. & P. 589. The regular
mode is to inquire whether the witness under examination has the means of knowing the former witness general character, and whether from such knowledge he would believe, him on his oath. 4 St. Tr. 693; 4 Esp. C. 102. In answer to such evidence against character, the other party may cross−examine the witness as to his means of knowledge, and the grounds of his opinion; or he may attack such witness general character, and by fresh evidence support the character of his own. 2 Stark. C. 151; Id. 241; St. Ev. pt. 4, 1753 to 1758; 1 Phil. Ev. 229. A party cannot give evidence to confirm the good character of a witness, unless his general character has been impugned by his antagonist. 9 Watts, R. 124. See, in general, as to character, Phil. Ev. Index, tit. Character; Stark. Ev. pl. 4, 364 Swift's Ev. 140 to 144 5 Ohio R. 227; Greenl. Ev. _54; 3 Hill, R. 178 Bouv. Inst. Index, h. t.

CHARGE, practice. The opinion expressed by the court to the jury, on the law
arising out of a case before them.

2. It should contain a clear and explicit exposition of the law, when the points of the law in dispute arise out of the facts proved on the trial of the cause; 10 Pet. 657; but the court ought at no time to undertake to decide the facts, for these are to be decided by the jury. 4 Rawle's R. 195; 2 Penna. R. 27; 4 Rawle's R. 356 Id. 100; 2 Serg. & Rawle, 464; 1 Serg. & Rawle, 515; 8 Serg. & Rawle, 150. See 3 Cranch, 298; 6 Pet. 622 1 Gall. R. 53; 5 Cranch, 187; 2 Pet. 625; 9 Pet. 541.

CHARGE, contracts. An obligation entered into by the owner of an estate which makes the estate responsible for its performance. Vide 2 Ball & Beatty, 223; 8 Com. Dig. 306, Appendix, h. t. Any obligation binding upon him who enters into it, which may be removed or taken away by a discharge. T. de la Ley, h. t.

2. That particular kind of commission which one undertakes to perform for another, in keeping the custody of his goods, is called a charge.

CHARGE. wills, devises. An obligation which a testator imposes on his devisee; as, if the testator give Peter, Blackacre, and direct that he shall pay to John during his life an annuity of one hundred dollars, which shall be a charge" on said land; or if a legacy be and directed to be paid out of the real property. 1 Rop. Leg. 446. Vide 4 Vin. Ab. 449; 1 Supp. to Ves. jr. 309; 2 Id. 31; 1 Vern. 45, 411; 1 Swanst. 28; 4 East, R. 501; 4 Ves. jr. 815; Domat, Loix Civ. liv. 3, t. 1, s. 8, n.

CHARGE' DES AFFAIRES or CHARGE' D'AFFAIRES, internationat law. These phrases, the first of which is used in the acts of congress, are synonymous.

2. The officer who bear; this title is a diplomatic representative or minister of an inferior grade, to whose care are

confided the affairs of his nation. He has not the title of minister, and is generally introduced and admitted through a verbal presentation of the minister, at his departure, or through letters of credence addressed to the minister of state of the court to which they are sent. He has the essential rights of a minister. Mart. Law of Nat. 206; 1 Kent, Com. 39, n.; 4 Dall. 321.

3. The president is authorized to allow to any, charge des affaires a sum not greater than at the rate of four thousand five hundred dollars per annum, as a compensation for his personal services and expenses. Act of May 1, 1810, 2 Story's Laws U. S. 1171.

CHARGER, Scotch law. He in whose favor a decree suspended is pronounced; vet a decree may be suspended before a charge is given on it. Ersk. Pr. L. Scot.
4, 3, 7.

CHARGES. The term charges signifies the expenses which have been incurred in relation either to a transaction or to a suit; as the charges incurred for his benefit must be paid by a hirer; the defendant must pay the charges of a suit. The term charges, in relation to actions, includes something more than the costs, technically called.

CHARITY. In its widest sense it denotes all the good affections which men ought to bear towards each other; 1 Epistle to Cor. c. xiii.; in its most restricted and usual sense, it signifies relief to the poor. This species of charity is a mere moral duty, which cannot be enforced by the law. Kames on Eq. 17. But it is not employed in either of these senses in law; its signification is derived chiefly from the statute of 43 Eliz. c. 4. Those purposes are considered charitable which are enumerated in that act, or which by analogy are deemed within its spirit and intendment. 9 Ves. 405; 10 Ves, 541; 2 Vern. 387; Shelf. Mortm. 59. Lord Chancellor Camden describes a charity to be a gift to a general public use, which extends to the rich as well as to the poor. Ambl. 651; Boyle on Charities, 51; 2 Ves. sen. 52; Ambl. 713; 2 Ves. jr. 272; 6 Ves. 404; 3 Rawle, 170; 1 Penna. R. 49 2 Dana, 170; 2 Pet. 584; 3 Pet. 99, 498 9 Cow. 481; 1 Hawks, 96; 12 Mass. 537; 17 S. & R. 88; 7 Verm. 241; 5 Harr. & John. 392; 6 Harr. & John. 1; 9 Pet. 566; 6 Pet. 435; 9 C−ranch, 331; 4 Wheat. 1; 9 Wend. 394; 2 N. H. Rep. 21, 510; 9 Cow. 437; 7 John. Cb. R. 292; 3 Leigh. 450; 1 Dev. Eq. Rep. 276; 4 Bouv. Inst. n. 3976, et seq.

CHARRE OF LEAD, Eng. law, commerce. A quantity of lead consisting of thirty pigs, each pig containing six stones wanting two pounds, and every stone being
twelve pounds. Jacob.

CHARTA. An ancient word which signified not only a charter or deed in writing, but any signal or token by which an estate was held.

CHARTA CHYROGRAPIHATA VEL COMMUNIS. Signifies an indenture. Shep. Touch. 50; Beames, Glanv. 197−8; Fleta, lib. 3, c. 14, _3. It was so called, because each
party had a part.

CHARTA DE UNA PARTE. A deed of one part; a deed poll.

2. Formerly, this phrase was used to distinguish, a deed poll, which is an agreement made by one party only, that is, only one of the parties does any act which is binding upon him, from a deed inter partes. Co. Litt. 229. Vide Deed poll; Indenture; Inter partes.

CHARTER. A grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights. Of the former kind is the late charter of France, which extended to the whole country; the charters which were granted to the different American colonies by the British government were charters of the latter species. 1 Story, Const. L. _161; 1 Bl. Com. 108 Encycl. Amer. Charte Constitutionelle.

2. A charter differs from a CONSTITUTION in this, that the former is granted by the sovereign, while the latter is established by the people themselves : both are the fundamental law of the land.

3. This term is susceptible of another signification. During the middle ages almost every document was called carta, charta, or chartula. In this sense the term is nearly synonymous with deed. Co. Litt. 6; 1 Co. 1; Moor. Cas. 687.

4. The act of the legislature creating a corporation, is called its charter. Vide 3 Bro. Civ. and Adm. Law, 188; Dane's Ab. h. t.

CHARTER, mar. contr. An agreement by which a vessel is hired by the owner to
another; as A B chartered the ship Benjamin Franklin to C D.

CHARTER−LAND, Eng. law. Land formerly held by deed under certain rents and free services, and it differed in nothing from free socage land. It was also called bookland. 2 Bl. Com. 90.

CHARTER−PARTY, contracts. A contract of affreightment in writing, by which the owner of a ship or other

vessel lets the whole, or a part of her, to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. This term is derived from the fact, that the contract which bears this name, was formerly written on a card, and afterwards the card was cut into two parts from top to bottom, and one part was delivered to each of the parties, which was produced when required, and by this means counterfeits were prevented.

2. This instrument ought to contain, 1. the name and tonnage of the vessel; 2. the name of the captain; 3. the names of the letter to freight and the freighter; 4. the place and time agreed upon for the loading and discharge; 5. the price of the freight; 6. the demurrage or indemnity in case of delay; 7. such other conditions as the parties may agree upon. Abbott on Ship. pt. 3, c. 1, s. 1 to 6; Poth. h. t. n. 4; Pardessus, Dr. Coin. pt. 4, t. 4, c. 1, n. 708.

3. When a ship is chartered, this instrument serves to authenticate many of the facts on which the proof of her neutrality must rest, and should therefore be always found on board chartered ships. 1 Marsh. Ins. 407 . When the goods of several merchants unconnected with each other, are laden on board without may particular contract of affreightment with any individual for the entire ship; the vessel is called a general ship, (q. v.) because open to all merchauts. but where one Or more merchants contract for the ship exclusively, it is said to be a chartered ship. 3 Kent, Com. 158. Abbott, Ship. pt. 2, c. 2, S. 1 Harr. Dig. Ship and Shipping, iv.

CHARTERED SHIP. When a ship is hired or freighted by one or more merchants for a particular voyage or on time, it is called a chartered ship. It is freighted by a special contract of affreightment, executed between the owners, ship's husband, or master on the one hand, and the merchants on the other. It differs, from a general ship. (q. v.)

CHARTIS REDDENDIS, Eng. law. An ancient writ, now obsolete, which lays against one who had charters of feoffment entrusted to his keeping, and who refused to deliver them. Reg. Orig. 159.

CHASE, Eng. law. The liberty of keeping beasts of chase, or royal gaine, on another man's ground as well as on one's own ground, protected even from the owner of the land, with a power of hunting them thereon. It differs from a park, because it may be on another's ground, and because it is not enclosed. 2 Bl. Com. 38.

CHASE, property. The act of acquiring possession of animals ferae naturae by force, cunning or address. The hunter acquires a right to such animals by occupancy, and they become his property. 4 Toull. n. 7. No man has a right to enter on the lands of another for the purpose of hunting, without his consent. Vide 14 East, R. 249 Poth. Tr. du Dr. de Propriete, part 1, c. 2, art. 2.

CHASTITY. That virtue which prevents the unlawful commerce of the sexes.

2. A woman may defend her chastity by killing her assailant. See Self−defence. And even the solicitation of her chastity is indictable in some of the states; 7 Conn. 267; though in England, and perhaps elsewhere, such act is not indictable. 2 Chit. Pr. 478. Words charging a woman with a violation of chastity are actionable in themselves. 2 Conn. 707.

CHATTELS, property. A term which includes all hinds of property, except the freehold or things which are parcel of it. It is a more extensive term than goods or effects. Debtors taken in execution, captives, apprentices, are accounted chattels. Godol. Orph. Leg. part 3, chap. 6, _1.

2. Chattels are personal or real. Personal, are such as belong immediately to the person of a man; chattels real, are such as either appertain not immediately to the person, but to something by way of dependency, as a box with the title deeds of lands; or such as are issuing out of some real estate, as a lease of lands, or term of years, which pass like personally to the executor of the owner. Co. Litt. 118; 1 Chit. Pr. 90; 8 Vin. Ab. 296; 11 Vin. Ab. 166; 14 Vin. Ab. 109; Bac. Ab. Baron, &c. C 2; 2 Kent, Com. 278; Dane's Ab. Index, h. t.; Com. Dig. Biens, A; Bouv. Inst. Index, h. t.

CHEAT, criminal law, torts. A cheat is a deceitful practice, of a public nature, in defrauding another of a known right, by some artful device, contrary to the plain rules of common honesty. 1 Hawk. 343.

2. To constitute a cheat, the offence must be, lst. of a public nature for every species of fraud and dishonesty in transactions between individuals is not the subject−matter of a criminal charge at common law; it must be such as is calculated to defraud numbers, and to deceive the people in general. 2 East, P. C. 816; 7 John. R. 201; 14 John. R. 371; 1 Greenl. R. 387; 6 .Mass. R. 72; 9 Cowen, R. 588; 9 Wend. R. 187; 1 Yerg. R. 76; 1 Mass. 137. 2. The cheating must be done by false weights, false measures, false tokens, or the like, calculated to deceive numbers. 2 Burr, 1125; 1 W. Bl. R. 273; Holt, R. 354.

3. That the object of the defendant in defrauding the prosecutor was successful. If unsuccessful, it is a mere attempt. (q. v.) 2 Mass. 139. When two or more enter into an agreement to cheat, the offence is a conspiracy. (q.

v.) To call a man a cheat is slanderous. Hetl. 167; 1 Roll's Ab. 53; 2 Lev. 62. Vide Illiterate; Token.

CHECK, contracts. A written order or request, addressed to a bank or persons carrying on the banking business, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named or to bearer, a named sum of money.

2. It is said that checks are uniformly payable to bearer Chit. on Bills, 411; but that is not so in practice in the United States. they are generally payable to bearer, but sometimes they are payable to order.

3. Cheeks are negotiable instruments, as bills of exchange; though, strictly speaking, they are due before payment has been demanded, i$n which respect they differ from promissory notes and bills of exchange payable on a particular day. 7 T. R. 430.

4. The differences between a common check and a bill of exchange, are, First, that a check may be taken after it is overdue, and still the holder is not subject to the equities wbich may exist between the drawer and the party 'from whom he receives it; in the case of bills of exchange, the holder is subject to such equity. 3 John. Cas. 5, 9; 9 B. & Cr. 388. Secondly, the drawer of a bill of exchange is liable only on the condition that it be presented in due time, and, if it be dishonored, that he has had notice; but such is not the case with a check, no delay will excuse the drawer of it, unless he has suffered some loss or injury on that account, and then only pro tanto. 3 Kent, Com. 104 n. 5th ed.; 8 John. Cas. 2; Story, Prom. Notes, _492.

5. There is a kind of check known by the name of memorandum cheeks; these are given in general with an understanding that they are not to be presented at the bank on which they are drawn for payment; and, as between the parties, they have no other effect than an IOU, or common due bill; but third persons who become the holders of them, for a valuable consideration, without notice, have all the rights which the holders of ordinary cheeks can lawfully claim. Story, Prom. Notes, _499.

6. Giving a creditor a cheek on a bank does not constitute payment of a debt. 1 Hall, 56, 78; 7 S. & R. 116; 2 Pick. 204; 4 John. 296. See 3 Rand. 481. But a tender was held good when made by a check contained in a letter, requesting a receipt in return, which the plaintiff sent back, demanding a larger sum, without objecting to the nature of the tender. 3 Bouv. Inst. n. 2436.

7. A cheek delivered by a testator in his lifetime to a person as a gift, and not presented till after his death, was considered as a part of his will, and allowed to be proved as such. 3 Curt. Ecc. R. 650. Vide, generally,4 John. R. 304; 7 John. R. 26; 2 Ves. jr. 111; Yelv. 4, b, note; 7 Serg. & Rawle, 116; 3 John. Cas. 5, 259; 6 Wend. R. 445; 2 N. & M. 251; 1 Blackf. R. 104; 1 Litt. R. 194; 2 Litt. R. 299; 6 Cowen, R. 484; 4 Har. & J. 276; 13 Wend. R. 133; 10 Wend. R. 304; 7 Har. & J. 381; 1 Hall, R. 78; 15 Mass. R. 74; 4 Yerg. R. 210; 9 S. & R. 125; 2 Story, R. 502; 4 Whart. R. 252.

CHECK BOOK, commerce. One kept by persons who have accounts in bank, in which are printed blank forms of cheeks, or orders upon the bank to pay money.

CHEMISTRY med. jur. The science which teaches the nature and property of all bodies by their analysis and combination. In considering cases of poison, the lawyer will find a knowledge of chemistry, even very limited in de ree, to be greatly useful. 2 Cbit. Pr. 42, n.

CHEVISANCE, contracts, torts. This is a French word, which signifies in that language, accord, agreement, compact. In the English statutes it is used to denote a bargain or contract in general. In a legal sense it is taken for an unlawful bargain or contract.

CHIEF, principal. One who is put above the rest; as, chief magistrate chief justice : it also signifies the best of a number of things. It is frequently used in composition.

CHIEF CLERK OF THE DEPARTMENT OF STATE. This officer is appointed by the secretary of state; his duties are to attend to the business of the ofFice under the superintendence of the secretary; and when the secretary shall be removed from office, by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books and papers appertaining to such department,

CHIEF JUSTICE, officer. The president of a supreme court; as the chief justice of the United States, the chief justice of Pennsylvania, and the −like. Vide 15 Vin. Ab. 3.

CHIEF JUSTICIARY. An officer among the English, established soon after the conquest.

2. He had judicial power, and sat as a judge in the Curia Regis. (q. v.) In the absence of the king, he governed the kingdom. In the course of time, the power and distinction of this officer gradually diminished, until the reign of Henry III, when the office was abolished.

CHILD, CHILDREN, domestic relations. A child is the son or daughter in relation to the father or mother.

2. We will here consider the law, in general terms, as it relates to the condition, duties, and rights of children; and, afterwards, the extent which has been given to the word child or children by dispositions in wills and testaments.

3. − 1. Children born in lawful wedlock, or within a competent time afterwards, are presumed to be the issue of the father, and follow his condition; those born out of lawful wedlock, follow the condition of the mother. The father is bound to maintain his children and to educate them, and to protect them from injuries. Childrenare, on their part, bound to maintain their fathers and mothers, when in need, and they are of ability so to do. Poth. Du Marriage, n. 384, 389. The father in general is entitled to the custody of minor children, but, under certain circumstances, the mother will be entitled to them, when the father and mother have separated. 5 Binn. 520. Children are liable to the reasonable correction of their parents. Vide Correction

4. − 2 The term children does not ordinarily and properly speaking comprehend grandchildren, or issue generally; yet sometimes that meaning is, affixed to it, in cases of necessity; 6 Co. 16; and it has been held to signify the same as issue, in cases where the testator, by using the terms children and issue indiscriminately, showed his intention to use the former term in the sense of issue, so as to entitle grandchildren, & c., to take under it. 1 Ves. sen. 196; Ambl. 555; 3 Ves. 258; Ambl. 661; 3 Ves. & Bea. 69. When legally construed, the term children is confined to legitimate children. 7 Ves. 458. The civil code of Louisiana, art. 2522, n. 14, enacts, that "under the, name of children are comprehended, not only children of the first degree, but the grandchildren, great−grand−children, and all other descendants in the direct line."

5. Children are divided into legitimate children, or those born in lawful wedlock; and natural or illegitimate children, who are born bastards. (q. v.) Vide Natural Children. Illegitimate children are incestuous bastards, or those which are not incestuous.

6. Posthumous children are those who are born after the death of their fathers. Domat, Lois Civ. liv. prel. t. 2, s. 1, _7 L. 3, _1, ff de inj. rupt.

7. In Pennsylvania, the will of their fathers, in, which no provision is made for them, is revoked, as far as regards them, by operation of law. 3 Binn. R. 498. See, as to the law of Virginia on this subject, 3 Munf. 20, and article In ventre sa mere. Vide, generally, 8 Vin. Ab. 318; 8 Com. Dig. 470; Bouv. Inst. Index, h. t.; 2 Kent, Com. 172; 4 Kent, Com. 408, 9; 1 Rop. on Leg. 45 to 76; 1 Supp. to Ves. jr. 442 Id. 158; Natural children.

CHILDISHNESS. Weakness of intellect, such as that of a child.

2. When the childishness is so great that a man has lost his memory, or is incapable to plan a proper disposition of his property, he is unable to make a will. Swinb. part. 11, _1; 6 Co. 23. See 9 Conn. 102; 9 Phil. R. 57.

CHIMIN. This is a corruption of the French word chemin, a highway. It is used by old writers. Com. Dig. Chimin.

CHINESE INTEREST. Interest for money charged in China. In a case where a note was given in China, payable eighteen mouths after date, without, any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per month, from the expiration of the eighteen months. 2 Watts & Serg. 227, 264.

CHIROGRAPH, conveyancing. Signifies a deed or public instrument in writing. Chirographs were anciently attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealments, deeds of mutual covenant were made in a script and rescript, or in a part and counterpart; and in the middle, between the two copies, they drew the capital letters of the alphabet, and then tallied, or cut asunder in an indented manner, the sheet or skin of parchment, oneof which parts being delivered to each of the parties, were proved authentic by matching with and answering to one another. Deeds thus made were denominated syngrapha, by the canonists, because that word, instead of the letters of the alphabet, or the word chirographum, was used. 2 Bl. Com. 296. This method of preventing counterfeiting, or of detecting counterfeits, is now used by having some ornament or some word engraved or printed at one end of certificates of stocks, checks, and a variety of other instruments, which are bound up in a book, and after they are executed, are cut asunder through such ornament or word.

2. Chirograph is also the last part of, a fine of land, commonly called the foot of the fine. It is an instrument of writing beginning with these. words: " This is the final agreement," &c. It includes the whole matter, reciting the parties, day, year and place, and before Whom the fine was acknowledged and levied. Cruise, Dig. tit. 35, c. 2, s. 52. Vide Chambers' Diet. h. t.; Encyclopaedia Americana, Charter; Encyclopedie de D'Alembert, h. t.; Pothier, Pand. tom. xxii. p. 73.

CHIROGRAPHER. A word derived from the Greek, which signifies "a writing with a man's hand." A chirographer is an officer of the English court of C. P.who engrosses the fines, and delivers the indentures of them

to the parties, &c.

CHIVALRY, ancient Eng. law. This word is derived from the French chevelier, a horseman. It is. the name of a tenure of land by knight's service. Chivalry was of two kinds: the first; which was regal, or held only of the king; or common, which was held of a common person. Co. Litt. h. t.

CHOICE. Preference either of a person or thing, to one of several other persons or things. Election. (q. v.)

CHOSE, property. This is a French word, signifying thing. In law, it is applied to personal property; as choses in possession, are such personal things of which one has possession; choses in action, are such as the owner has not the possession, but merely a right of action for their possession. 2 Bl. Com. 889, 397; 1 Chit. Pract. 99; 1 Supp. to Ves. Jr. 26, 59. Chitty defines choses in actions to be rights to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed choses, or things in action. Com. Dig. Biens; Harr. Dig. Chose in ActionChitty's Eq. Dig. b. t. Vide 1 Ch. Pr. 140.

2. It is one of the qualities of a chose in action, that, at common law, it is not assignable. 2 John. 1; 15 Mass. 388; 1 Crancb, 367. But bills of exchange and promissory notes, though choses in action, may be assigned by indorsement, when payable to order, or by delivery when payable to bearer. See Bills of Exchange.

3. Bonds are assignable in Pennsylvania, and perhaps some other states, by virtue of statutory provisions.Inequity, however, all choses in action are assignable and the assignee has an equitable right to enforce the fulfilment of the obligation in the name of the assignor. 4 Mass. 511; 3 Day. 364; 1 Wheat. 236; 6 Pick. 316 9 ow. 34; 10 Mass. 316; 11 Mass. 157, n. 9 S. & R. 2441; 3 Yeates, 327; 1 Binn. 429; 5 Stew. & Port. 60; 4 Rand. 266; 7 Conn. 399; 2 Green, 510; Harp. 17; Vide, generally, Bouv. Inst. Index, h. t.

4. Rights arising ex delicto are not assignable either at law or in equity.

CHRISTIANITY. The religion established by Jesus Christ.

2. Christianity has been judicially declared to be a part of the common law of Pennsylvania; 11 Serg. & Rawle, 394; 5 Binn. R.555; of New York, 8 Johns. R. 291; of Connecticut, 2 Swift's System, 321; of Massachusetts, Dane's Ab. vol. 7, c. 219, a. 2, 19. To write or speak contemptuously and maliciously against it, is an indictable offence. Vide Cooper on the Law of Libel, 59 and 114, et seq.; and generally, 1 Russ. on Cr. 217; 1 Hawk, c. 5; 1 Vent. 293; 3 Keb. 607; 1 Barn. & Cress. 26. S. C. 8 Eng. Com. Law R. 14; Barnard. 162; Fitzgib. 66; Roscoe, Cr. Ev. 524; 2 Str. 834; 3 Barn. & Ald. 161; S. C. 5 Eng. Com. Law R. 249 Jeff. Rep. Appx. See 1 Cro. Jac. 421 Vent. 293; 3 Keb. 607; Cooke on Def. 74; 2 How. S. C. 11−ep. 127, 197 to 201.

CHURCH. In a moral or spiritual sense this word signifies a society of persons who profess the Christian religion; and in a physical or material sense, the place where such. persons assemble. The term church is nomen collectivum; it comprehends the chancel, aisles, and body of the churcb. Ham. N. P. 204.

2. By the English law, the terms church or chapel, and church−yard, are expressly recognized as in themselves correct and technical descriptions of the building and place, even in criminal proceedings. 8 B. & C. *25; 1 Salk. 256; 11 Co. 25 b; 2 Esp. 5, 28.

3. It is not within the plan of this work to give an account of the different local regulations in the United States respecting churches. References are here given to enable the inquirer to ascertain what they are, where such regulations are known to exist. 2 Mass. 500; 3 Mass. 166; 8 Mass. 96; 9 Mass. 277; Id. 254; 10 Mass. 323; 15 Mass. 296 16 Mass. 488; 6 Mass. 401; 10 Pick. 172 4 Day, C. 361; 1 Root _3, 440; Kirby, 45; 2 Caines' Cas. 336; 10 John. 217; 6 John. 85; 7 John. 112; 8 John. 464; 9 John. 147; 4 Desaus. 578; 5 Serg. & Rawle, 510; 11 Serg. & Rawle, 35; Metc. & Perk. Dig. h. t.; 4 Whart. 531.

CHURCH−WARDEN. An officer whose duties are, as the name implies, to take care of, or guard the church.

2. These officers are created in some ecclesiastical corporations by the charter, and their rights and duties are definitely explained.In England, it is said, their principal duties are to take care of, 1. the church or building; 2. the utensils and furniture; 3. the church−yard; 4. − matters of good order concerning the church and church−yard; 5. the endowments of the church. Bac. Ab. h. t. By the common law, the capacity of church−wardens to hold property for the church, is limited to personal property. 9 Cranch, 43.

CINQUE PORTS, Eng. law. Literally, five ports. The name by which tho five ports of Hastings, Ramenhale, Hetha or Hethe, Dover, and Sandwich, are known. 2. These ports have peculiar charges and services imposed upon them, and were entitled to certain privileges and liberties. See Harg. L. Tr. 106−113.

CIPHER. An arithmetical character, used for numerical notation. Vide Figures, and 13 Vin. Ab. 210; 18 Eng. C. L. R. 95; 1 Ch. Cr. Law, 176.

2. By cipher is also understood a mode of secret writing. Public ministers and other public agents frequently use ciphers in their correspondence, and it is sometimes very useful so to correspond in times of war. A key is given to each minister before his departure, namely, the cipher for writing ciphers, (chiffre chiffrant,) and the cipher for deciphering (chiffre dechiffrant.) Besides these, it is usual to give him a common cipher, (chiffre banal,) −which is known to all the ministers of the same power, who occasionally use it in their correspondence with each other.

3. When it is suspected that, a cipher becomes known to the cabinet where the minister is residing, recourse is had to a preconcerted sign in order to annul, entirely or in part, what has been written in cipher, or rather to indicate that the contents are to be understood in an inverted or contrary sense. A cipher of reserve is also employed in extraordinary cases.

CIRCUIT COURT. The name of a court of the United States, which has both civil and criminal jurisdiction. In several of the states there are courts which bear this name. Vide Courts of the United States.

CIRCUITY OFACTION, practice, remedies. It is where a party, by bringing an action, gives an action to the defendant against him.

2. As, supposing the obligee of a bond covenanted that he would not sue on it; if he were to sue he would give an. action against himself to the defendant for a breach of his covenant. The courts prevent such circuitous actions, for it is a maxim of law, so to judge of contracts as to prevent a multiplicity of actions; and in the case just put, they would hold that the covenant not to sue operated as a release. 1 T. R. 441. It is a favorite object of courts of equity to prevent a multiplicity of actions. 4 Cowen, 682.

CIRCUITS. Certain divisions of the country, appointed for particular judges to visit for the trial of causes, or for the administration of justice. See 3 Bl. Com. 58; 3 Bouv. Inst. n. 2532.

CIRCULATING MEDIUM. By this term is understood whatever is used in making payments, as money, bank notes, or paper which passes from hand to hand in payment of goods, or debts.

CIRCUMDUCTION, Scotch law. A term applied to the time allowed for bringing proof of allegiance, which being elapsed, if either party sue for circumduction of the time of proving, it has the effect that no proof can afterwards be brought; and the cause must be determined as it stood when circumduction was obtained. Tech. Dict.

CIRCUMSTANCES, evidence. The particulars which accompany a fact.

2. The facts proved are either possible or impossible, ordinary and probable, or extraordinary and improbable, recent or ancient; they may have happened near us, or afar off; they are public or private, permanent or transitory, clear and simple, or complicated; they are always accompanied by circumstances which more or less influence the mind in forming a judgment. And in some instances these circumstances assume the character of irresistible evidence; where, for example, a woman was found dead in a room, with every mark of having met with a violent death, the presence of another person at thescene of action was made manifest by the bloody mark of a left hand visible on her left arm. 14 How. St. Tr. 1324. These points ought to be carefully examined, in order to form a correct opinion. The first question ought to be, is the fact possible ? If so, are there any circumstances which render it impossible ? If the facts are impossible, the witness ought not to be credited. If, for example, a man should swear that he saw the deceased shoot himself with his own pistol, and upon an examination of the ball which killed him, it should be found too large to enter into the pistol, the witness ought not to be credited. 1 Stark. Ev. 505; or if one should swear that another had been guilty of an impossible crime.

3. Toullier mentions a case, which, were it not for the ingenuity of the counsel, would require an apology for its introducion here, on account of its length. The case was this: La Veuve Veron brought an action against M. de Morangies on some notes, which the defendant alleged were fraudulently obtained, for the purpose of recovering 300,000 francs, and the question was, whether the defendant had received the money. Dujonquai, the grandson of the plaintiff, pretended he had himself, alone and on foot, carried this sum in gold to the defendant, at his hotel at the upper end of the rue Saint Jacques, in thirteen trips, between half−past seven and about one o'clock, that is, in about five hours and a half, or, at most, six hours. The fact was improbable; Linquet, the counsel of the defendant, proved it was impossible; and this is his argument:

4. Dujonquai said that he had divided the sum in thirteen bags, each containing six hundred louis d'ors, and in twenty−three other bags, each containing two hundred. There remained twenty−five louis to complete the whole sum, which, Dujonquai said, he received from the defendant as a gratuity. At each of 'these trips, he says, he put a bag, containing two hundred louis, that is, about three pounds four ounces, in each of his coat pockets, which, being made in the fashion of those times, hung about the thighs, and in walking must have incommoded him and

obstructed his speed; he took, besides, a bag containing six hundred louis in his arms; by this means his movements were impeded by a weight of near ten pounds.

5. The measured distance between the house where Dujonquai took the bags to the foot of the stairs of the defendant, "as five hundred and sixteen toises, which, multiplied by twenty−six, the thirteen trips going and returning, make thirteen thousand four hundred and sixteen toises, that is, more than five leagues and a half (near seventeen miles), of two thousand four hundred toises, which latter distance is considered sufficient for an hour's walk, of a good walker. Thus, if Dujonquai had been unimpeded by any obstacle, he would barely have had time to perform the task in five or six hours, even without taking any rest orrefreshment. However strikingly improbable this may have been, it was not physically impossible. But

6.− 1. Dujonquai, in going to the defendant's, had to descend sixty−three steps from his grandmother's, the plaintiff's chamber, and to ascend twenty−seven to that of the defendant, in the whole, ninety steps. In returning, the ascent and descent were changed, but the steps were the same; so that by multiplying, by twenty−six, the number of trips going and returning, it would be seen tbere were two thousand three hundred and forty steps. Experience had proved that in ascending to the top of the tower of Notre Dame (a church in Paris), where there are three hundred and eighty−nine steps, it occupied from eight to nine minutes of time. It must then have taken an hour out of the five or six which had been employed in making the thirteen trips.

7.−2. Dujonquai had to go up the rue Saint Jacques, which is very steep; its ascent would necessarily decrease the speed of a man, burdened and encumberedwith the bags which he carried in his pockets and in his arms.

8.−3. This street, which is very public, is usually, particularly in the morning, encumbered by a multitude of persons going in every direction, so that a person going along must make an infinite number of deviations from a direct line; each by itself, is almost imperceptible, but at the end of five or six hours, they make a considerable sum, which may be estimated at a tenth part of the whole course in a straight line; this would make about half a league, to be added to the five and a half leagues, which is the distance in a direct line.

9. − 4. On the morning that Dujonquai made these trips, the daily and usual incumbrances of this street were increased by sixty or eighty workmen, who were employed in removing by hand and with machine, an enormous stone, intended for the church of Saint Genevieve, now the pantheon, and by the immense crowd which this attracted; this was a remarkable eircumstance, which, supposing that Dujonquai had not yielded to the temptation of stopping a few moments to see what was doing, must necessarily have impeded his way, and made him lose seven or eight minutes each trip, which, multiplied by twenty−six would make about two hours and a half.

10. − 5. The, witness was obliged to open and shut the doors at the defendant's house; it required time to take up the bags and place them in his pockets, to take them out and put them on the defendant's table, who, by an improbable supposition, counted the money in the intervals between the trips, and not in the presence of the witness. Dujonquai, too, must have taken receipts or acknowledgments at each trip, he must read them, and on arriving at home, deposited them in some place of safety all these distractions would necessarily occasion the loss of a few minutes. By adding these with scrupulous nicety, and by further adding the time employed in taking and depositing the bags, the opening and shutting of the doors, the reception of the receipts, the time occupied in reading and putting them away, the time consumed in several conversations, which he admitted he had with persons in the street; all these joined to the obstacles above mentioned, made it evident that it was physically impossible that Dujonquai should have carried the 300,000 francs to the house of the defendant, as he affirmed he had done. Toull. tom. 9, n. 241, p. 384. Vide, gencrally, 1 Stark. Ev. 502; 1 Phil. Ev. 116. See some curious cases of circumstantial evidence in Alis. Pr. Cr. Law, 313, 314; and 2 Theorie des Lois Criminelles, 147, n.; 3 Benth. Jud. Ev. 94, 223; Harvey's Meditations on the Night, note 35; 1 Taylor's Med. Jur. 372; 14 How. St. Tr. 1324; Theory of Presumptive Proof, passim; Best on Pres. SSSS 187, 188, 197. See Death; Presumption; Sonnambulism.

CIRCUMSTANDIBUS, persons, practice. Bystanders from whom jurors are to be selected when the panel has been exhausted. Vide Tales de circumstandibus.

CIRCUMVENTION, torts, Scotch law. Any act of fraud whereby a person is reduced to a deed by decreet. Tech. Dict. It has the same sense in the civil law. Dig. 50, 17, 49 et 155; Id. 12, 6, 6, 2; Id. 41, 2, 34. Vide Parphrasis.

CITATIO AD REASSUMENDAM CAUSAM, civil law. The name of a citation, which issued when a party died pending a suit, against the heir of the defendant, or when the plaintiff died, for the heir of the plaintiff. Our bill of revivor is probably borrowed from this proceeding.

CITATION, practice. A writ issued out of a court of competent, jurisdiction, commanding a person therein named to appear and do something therein mentioned, or to show cause why he should not, on a day named.

Proct. Pr. h. t. In the ecclesiastical law, the citation is the beginning and foundation of the whole cause; it is said to have six requisites, namely.: the insertion of the name of the judge; of the promovert; of the impugnant; of the cause of suit; of the place; and of the time of appearance; to which may be added the affixing the seal of the court, and the name of the register or his deputy. 1 Bro. Civ. Law, 453−4; Ayl. Parer. xliii. 175; Hall's Adm. Pr. 5; Merl. Rep. h. t. By, citation is also understood the act by which a person is summoned, or cited.

CITATION OF AUTHORITIES. The production or reference to the text of acts of legislatures and of treatises, and decided cases, in order to support what is advanced.

2. Works are sometimes surcharged with useless and misplaced citations; when they are judiciously made, they assist the reader in his researches. Citations ought not to be made to prove what is not doubted; but when a controverted point is mooted, it is highly proper to cite the laws and cases, or other authorities in support of the controverted proposition.

3. The mode of citing statutes varies in the United States; the laws of the United States are generally cited by their date, as the act of Sept. 24, 1789, s. 35; or act of 1819, eh. 170, 3 Story's U. S. Laws, 1722. In Pennsylvania, acts of assembly are cited as follows: act of 14th of April, 1834; in Massachusetts, stat. of 1808, c. 92. Treatises and books of reports, are generally cited by the volume and page, as, 2 Powell on Morts. 600; 3 Binn. R. 60. Judge Story and some others, following the examples of the civilians, have written their works and numbered the paragraphs; these are cited as follows: Story's Bailm. _494; Gould on Pl. c. 5, _30. For other citaions the reader is referred to the article Abbreviations.

4. It is usual among the civilians on the continent of Europe, in imitation of those in the darker ages, in their references to the Institutes, the Code and the Pandects or Digest, to mention the number, not of the book, but of the law, and the first word of the title to which it belongs; and as there are more than a thousand of these, it is no easy task for one not thoroughly acquainted with those collections, to find the place to which reference is made. The American writers generally follow the natural mode of reference, by putting down the name of the collection, and then the number of the book, title, law, and section. For example, Inst. 4, 15, 2, signifies Institutes, book four, title fifteen, and section two; Dig. 41, 9, 1, 3, means Digest, book 41, title 9, law 1, section 3; Dig. pro dote, or ff pro dote, that is, section 3, law 1, of the book and title of the Digest or Pandects, entitled pro dote. It is proper to remark, that Dig. and ff are equivalent; the former signifies Digest, and the latter, which is a careless mode of writing the Greek letter it, the first letter of the word pavdectai, Pandects, and the Digest and Pandects are different names for one and the same thing. The Code is cited in the same way. The Novels are cited by their number, with tbat of the chapter and paragraph; for example, Nov. 185, 2, 4; for Novella Justiniani 185, capite 2, paragrapho 4. Novels are also quoted by the Collation, the title, chapter, and paragraph as follows: in Authentics, Collatione 1 titulo 1, cap. 281. The Authentics are quoted by their first words, after which is set down the title of the Code under which they are placed for example, Authentica cum testator, Codice ad legem fascidiam Sele Mackel. Man. Intro. _66. Modus Legendi Abbreviaturas passim in jure tam civili quam pontificii occurrentes, 1577.

CITIZEN, persons. One who, under the constitution and laws of the United States, has a right to vote for representatives in congress, and other public officers, and who is qualified to fill offices in the gift of the people. In a more extended sense, under the word citizen, are included all white persons born in the United States, and naturalized persons born out of the same, who have not lost their right as such. This includes men, women, and children.

2. Citizens are either native born or naturalized. Native citizens may fill any office; naturalized citizens may be elected or appointed to any office under the constitution of the United States, except the office of president and vice−president. The constitution provides, that " the citizens of each state shall be entitled to all the privileges and immunities of citizens in the
several states." Art. 4, s. 2.

3. All natives are not citizens of the United States; the descendants of the aborigines, and those of African origin, are not entitled to the rights of citizens. Anterior to the adoption of the constitution of the United States, each state had the right to make citizens of such persons as it pleased. That constitution does not authorize any but white persons to become citizens of the United States; and it must therefore be presumed that no one is a citizen who is not white. 1 Litt. R. 334; 10 Conn. R. 340; 1 Meigs, R. 331.

4. A citizen of the United States, residing in any state of the Union, is a citizen of that state. 6 Pet. 761 Paine, 594;1 Brock. 391; 1 Paige, 183 Metc. & Perk. Dig. h. t.; vide 3 Story's Const. _1687 Bouv. Inst. Index, b. t.; 2

Kent, Com. 258; 4 Johns. Ch. R. 430; Vatt. B. 1, c. Id, _212; Poth. Des Personnes, tit. 2, s. 1. Vide Body Politic; Inhabitant.

CITY, government. A town incorporated by that name. Originally, this word did not signify a town, but a portion of mankind who lived under the same government: what the Romans called civitas, and, the Greeks polis; whence the word politeia, civitas seu reipublicae status et administratio. Toull. Dr. Civ. Fr. 1. 1, t. 1, n. 202; Henrion de Pansey, Pouvoir Municipal, pp. 36, 37.

CIVIL. This word has various significations. 1. It is used in contradistinction to barbarous or savage, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government, and civil liberty

2. It is sometimes used in contradistinction to criminal, to indicate the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government; thus we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction.

3. It is also used in contradistinction to military or ecclesiastical, to natural or foreign; thus we speak of a civil station, as opposed to a military or ecclesiastical stationa civil death as opposed to a natural death; a civil warasopposed to a foreign war. Story on the Const. _789; 1 Bl. Coin. 6, 125, 251; Montesq. Sp. of Laws, B 1, c. 3; Ruth. Inst. B. 2, c. 2; Id. ch. 3Id. ch. 8, p. 359; Hein. Elem. Jurisp. Nat. B. 2, ch. 6.

CIVIL ACTION. In New York, actions are divided only into two kinds, namely, criminal and civil. A criminal action is prosecuted by the state, as a party, against a person charged with a public offence, for the punishment thereof. Every other action is a civil action. Code of Procedure, s. 4, 5, 6; 3 Bouv. Inst. n. 2638. In common parlance, however, writs of mandamus, certiorari, habeas corpus, &c., are not comprised by the expression, civil actions. 6 Bin. Rep. 9.

CIVIL COMMOTION. Lord Mansfield defines a civil commotion to be "an insurrection of the people for general purposes, though it may not amount to rebellion where there is an usurped power." 2 Marsh. lnsur. 793. In the printed proposals which are considered as making a part of the contract of insurance against fire, it is declared that the insurance company will not make good any loss happening by any civil commotion.

CIVIL DEATH, persons. The change of the state (q. v.) of a person who is declared civilly dead by judgment of a competent tribunal. In such case, the person against whom such sentence is pronounced is considered dead. 2 John. R. 218. See Gilb. Uses, 150; 2 Bulst. 188; Co. tit. 132; Jenk. Cent. 250; 1 Keble, 398; Prest. on Convey. 140. Vide Death, civil.

CIVIL LAW. The municipal code of the Romans is so called. It is a rule of action, adopted by mankind in a state of society. It denotes also the municipal law of the land. 1 Bouv. Inst. n. 11. See Law, civil.

CIVIL LIST. The sum which is yearly paid by the state to its monarch, and the domains of which he is suffered to have the enjoyment.

CIVIL OBLIGATION, Civil law. One which binds in law, vinculum juris, and which may be enforeed in a court of justice. Poth. Obl. 173, and 191. See Obligation.

CIVIL OFFICER. The constitution of the United States, art. 2, s. 4, provides, that the president, vice−president, and civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors. By this term areincluded all officers of the United States who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or the lowest departments; of the government, with the exception of officers of the army and navy. Rawle on the Const. 213; 2 Story, Const. _790; a senator of the United States, it was decided, was not a civil officer, within the meaning of this clause in the constitution. Senate Journals, 10th January, 1799; 4 Tuck. Bl. Com. Appx. 57, 58; Rawle, Const. 213; Serg. on Const. Law, 376; Story, Const. _791.

CIVIL REMEDY, practice. This term is used in opposition to the remedy given by indictment in a criminal case, and signifies the remedy which the law gives to the party against the offender.

2. In cases of treason and felony, the law,, for wise purposes, suspends this remedy in order to promote the public interest, until the wrongdoer shall have been prosecuted for the public wrong. 1 Miles, Rep. 316−17; 12 East, 409; R. T. H. 359; 1 Hale's P. C. 546; 2 T. R. 751, 756; 17 Ves. 329; 4 Bl. Com. 363; Bac. Ab. Trepass, E 2; and Trover, D. This principle has been adopted in New Hampshire N. H. R. 239; but changed in New York by statutory provision; 2 Rev. Stat. 292, _2 and by decisions in Massachusetts, except perhaps in felonies punishable with death; 15 Mass. R. 333; in Ohio; 4 Ohio R. 377; in North Carolina; 1 Tayl. R. 58. By the common law, in cases of homicide, the civil remedy is merged in the felony. 1 Chit. Pr. 10. Vide art. Injuries; Merger.

CIVIL STATE. The union of individual men in civil society under a system of laws and a magistracy, or magistracies, charged with the administration of the laws. It is a fundamental law of the civil state, that no member of it shall undertake to redress or avenge any violation of his rights, by another person, but appeal to the constituted authorities for that purpose, in all cases in which is is possible for him to do so. Hence the citizens are justly considered as being under the safeguard of the law. 1 Toull. n. 201. Vide Self−defence.

CIVILIAN. A doctor, professor, or student of the civil law.

CIVILITER. Civilly; opposed to criminaliter or criminally.

2. When a person does an unlawful act injurious to another, whether with or without an intention to commit a tort, he is responsible civiliter. In order to make him liable criminaliter, he must have intended to do the wrong; for it is a maxim, actus non facit reum nisi mens sit rea. 2 East, 104.

CIVILITER MORTUUS. Civilly dead; one who is considered as if he were naturally dead, go far as his rights are concerned.

CLAIM. A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another. Plowd. 359; Wee i Dall.444; 12 S. & R. 179.

2. In Pennsylvania, the entry on of the demand of a mechanic or materialman for work done or material furnished in the erection of a building, in those counties to which the lien laws extend, is called a claim.

3. A continual c1aim is a claim made in a particular way, to preserve the' rights of a feoffee. See Continual claim.

4. Claim of conusance is defined to be an intervention by a third person, demanding jurisdiction of a cause against a plaintiff, who has chosen to commence his action out of the claimant's court. 2 Wils. 409; 1 Cit. Pb. 403; Vin. Ab. Conusance; Com. Dig. Courts, P; Bac. Ab. Courts, D 3; 3 Bl. Com. 298.

CLAIMANT. In the courts of admiralty, when the suit is in rem, the cause is entitled in the Dame of the libellant against the thing libelled, as A B v. Ten cases of calico and it preserves that title through the whole progress of the suit.When a person is authorized and admitted to defend the libel, he is called the claimant. The United States v. 1960 bags of coffee; 8 Cranch, R. 398; United States v. The Mars; 8 Cranch, R. 417; 30 hhds. of sugar, (Brentzon, claimant, v. Boyle. 9 Cranch, R. 191.

CLANDESTINE. That which is done in secret and contrary to law.

2.Generally a clandestine act in case of the limitation of actions will prevent the act from running. A clandestine marriage is one which has been contracted without the form which the law has prescribed for this important contract. Alis. Princ. 543

CLARENDON. The constitutions of Clarendon were certain statutes made in the reign of Henry H., of England, in a parliament holden at Clarendon, by which the king cheeked the power of the pope and his clergy. 4 Bl. Com. 415.

CLASS. The order according to which are arranged or distributed, or are supposed to be arranged or distributed, divers persons or things; thus we say, a class of legatees.

2. When a legacy is given to a class of individuals, all who answer the description at the time the will takes effect, are entitled; and though the expression be in the plural, yet if there be but one, he shall take the whole. 3 M'Cord, Ch. R. 440.

3. When a bond is given to a class of persons, it is good, and all composing that class are entitled to sue upon it; but if the obligor be a member of such class, the bond is void, because a man cannot be obligor and obligee at the same−time; as, if a bond be given to the justices of the county court, and at the time the obligor is himself one of said justices. 3 Dev. 284, 287,289; 4 Dev. 882.

4. When a charge is made against a class of society, a profession, an order or body of men, and cannot possibly import a personal application to private injury, no action lies; but if any one of the class have sustained special damages inconsequence of such charge, he may maintain an action. 17 Wend. 52, 23, 186. See 12 John. 475. When the charge is against one of a class, without designating which, no action lies; as, where three persons had been examined as witnesses, and the defendant said in addressing himself to them, " one of you three is perjured." 1 Roll. Ab. 81; Cro. Jac. 107; 16 Pick. 132.

CLAUSE, contracts. A particular disposition which makes part of a treaty; of an act of the legislature; of a deed, written agreement, or other written contract or will. When a clause is obscurely written, it ought to be construed in such a way as to agree with what precedes and what follows, if possible. Vide Dig. 50, 17, 77; Construction; Interpretation.

CLAUSUM FREGIT, torts, remedies. He broke the close. These words are used in a writ for an action of trespass to real estate, the defendant being summonedto answer quare clausum fregit, that is, why he broke the close of the plaintiff. 3 Bl. Com. 209.

2. Trespass quare clausum fregit lies for every unlawful intrusion into land, whether enclosed or not, though only grass may be trodden. 1 Dev. & Bat. 371. And to maintain this action there must be a possession in the plaintiff, and a right to that possession.9 Cowen 39; 4 Yeates, 418; 11 Conn. 60, 10 Conn. 225; 1 John. 511; 12 John. 1834 Watts, 377; 4 Bibb, 218; 15 Pick. 32; 6 Rand. 556; 2 Yeates, 210; 1 Har. & John. 295; 8 Mass. 411.

CLEARANCE, com. law. The name of a certificate given by the collector of a port, in which is stated the master or commander (naming him) of a ship or vessel named and described, bound for a port, named, and having on board goods described, has entered and cleared his ship or vessel according to law.

2. The Act of Congress of 2d March, 1790, section 93, directs, that the master of any vessel bound to a foreign place, shall deliver to the collector of the dis ot from which such vessel shall be about to depart, a manifest of all the cargo on board, and the value thereof, by him subscribed, and shall swear or affirm to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo; but without specifying the particulars thereof in such clearance, unless required by the master so to do. And if any vessel bound to any foreign place shall depart on her voyage to such foreign place, without delivering such a manifest and obtaining a clearance, the master shall forfeit and pay the sum of five hundred dollars for every such offence. Provided, anything to the contrary notwithstanding, the collectors and other officers of the customs shall pay due regard to the inspection laws of the states in which they respectively act, in such manner, that no vessel having on board goods liable to inspection, shall be cleared out, until the master or other person shall have produced such certificate, that all such goods have been duly inspected, as the laws of the respective states do or may require, to be produced to the collector or other officer of the customs. And provided, that receipts for the payment of all legal fees which shall have accrued on any vessel, shall, before any clearance is granted, be produced to the collector or other officer aforesaid .

3. According to Boulay−Paty, Dr. Com. tome 2, p. 19, the clearance is imperiously demanded for the safety of the vessel; for if a vessel should be found without it at sea, it may be legally taken and brought into some port for adjudication, on a charge of priacy. Vide Ship's papers.

CLEARING HOUSE, com. law. Among the English bankers, the clearing house is a place in Lombard street, in London, where the bankers of that city daily settle with each other the balances which they owe, or to which they are entitled. Desks are placed around the room, one of which is appropriated to each bankiug house, and they are: occupied in alphabetical order. Each clerk has a box or drawer along side of him, and the name of the house he represents is inscribed over his head. A clerk of each house comes in about half−past three o'clock in the afternoon, and brings the drafts or cheeks on the other bankers, which have been paid by his house that day, and deposits thein in their proper drawers. The clerk at the desk credits their accounts separately which they have against him, as found in the drawer. Balances are thus struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled, that each clerk has only to settle with two or three others, and the balances are immediately paid. When drafts are paid at so late an hour that they cannot be cleared that day, they are sent to the houses on which they are drawn, to be marked, that is, a memorandum is made on them, and they are to be cleared the next day. See Gilbert's Practical Treatise on Banking, pp. 16−20, Babbage on the Economy of Machines, n. 173, 174; Kelly's Cambist; Byles, on Bills, 106, 110; Pulling's Laws and Customs of London, 437.

CLEMENCY. The disposition to treat with leniency. See Mercy; Pardon.

CLEMENTINES, eccl. law. The name usually given to the collection of decretals or constitutious of Pope Clement V., which was made by order of John XXII. his successor, who published it in 1317. The death of Clement V., which happened in 1314, prevented him from publishing this collection, which is properly a compilation, as well of the epistles and constitutions of this pope, as of the decrees of the council of Vienna, over which he presided. The Clementines are divided in five books, in which the matter is distributed nearly upon the same plan as the Decretals of Gregory IX. VideLa Bibliotheque des auteurs ecclesiastiques, par Dupin.

CLERGY. All who are attached to the ecclesiastical ministry are called the clergy; a clergyman is therefore an ecclesiastical minister.

2. Clergymen were exempted by the emperor Constantine from all civil burdens. Baronius ad ann. 319, _30. Lord Coke says, 2 Inst. 3, ecclesiastical persons have more and greater liberties than other of the king's subjects,

wherein to set down all, would take up a whole volume of itself.

3. In the United States the clergy is not established by law, but each congregation or church may choose its own clergyman.

CLERICAL ERROR. An error made by a clerk in transcribing or otherwise. This is always readily corrected by the court. 2. An error, for example, in the teste of a fi. fa.; 4 Yeates, 185, 205; or in the teste and return of a vend. exp.; 1 Dall. 197 or in writing Dowell forMcDowell. 1 Serg. & R. 120; 8 Rep. 162 a; 9 Serg. & R. 284, 5. An error is amendable where there is something to amend by, and this even in a criminal case. 2 Bin. 5−16; 5 Burr. 2667; 1 Bin. 367−9; Dougl. 377; Cowp. 408. For the party ought not to be harmed by the omission of the clerk; 3 Bin. 102; even of his signature, if he affixes the seal. 1 Serg. & R. 97.

CLERK, commerce, contract. A person in the employ of a merchant, who attends only to a part of his business, while the merchant himself superintends the whole. He differs from a factor in this, that the latter wholly supplies the place of his principal in respect to the property consigned to him. Pard. Dr. Com. n. 38, 1 Chit. Pract. 80; 2 Bouv. Inst. n. 1287.

CLERK, officer. A person employed in an office, public or private, for keeping records or accounts. His business is to write or register, in proper form, the transactions of the tribunal or body to which he belongs. Some clerks, however, have little or no writing to do in their offices, as, the clerk of the market, whose duties are confined chiefly to superintending the markets. In the English law, clerk also signifies a clergyman.

CLERK, eccl. law. Every individual, who is attached to the ecclesiastical state, and who has submitted to the ceremony of the tonsure, is a clerk.

CLIENT, practice. One who employs and retains an attorney or counsellor to manage or defend a suit or action in which he is a party, or to advise him about some legal matters.

2. The duties of the client towards his counsel are, 1st. to give him a written authority, 1 Ch. Pr. l9; 2. to disclose his case with perfect candor3. to offer spontaneously, advances of money to his attorney; 2 Ch. Pr. 27; 4. he should, at the end of the suit, promptly pay his attorney his fees. Ib. His rights are, 1. to be diligently served in the management of his business 2. to be informed of its progress and, 3. that his counsel shall not disclose what has been professionally confided to him. See Attorney at law; Confidential communication.

CLOSE. Signifies the interest in the soil, and not merely a close or enclosure in the common acceptation of the term. Doct. & Stud. 307 East, 207 2 Stra. 1004; 6 East, 1541 Burr. 133 1 Ch. R. 160.

2. In every case where one man has a right to exclude another from his land, the law encircles it, if not already enclosed, with an imaginary fence; and entitles him to a compensation in damages for the injury he sustains by the act of another passing through his boundary, denominating the injurious act a breach of the enclosure. Hamm. N. P. 151; Doct. & Stud. dial. 1, c. 8, p. 30; 2 Whart. 430.

3. An ejectment will not lie for a close. 11 Rep. 55; 1 Rolle's R. 55 Salk. 254 Cro. Eliz. 235; Adams on Eject. 24.

CLOSE ROLLS, or close writs, Eng. law. Writs containing, grants from the crown, to particular persons, and for particular purposes, and, not being intended for public inspection, are closed up and sealed on the outside, and for that reason called close writs ,in contradistinction. to grants relating to the public in general, which are left open and not sealed up, and are called letters patent. (q. v.) 2 Bl. Com. 346.

CLOSED DOORS. Signifies that something is done privately. The senate sits with closed doors on executive business.

2. In general the legislative business of the country is transacted openly. And the constitution and laws require that courts of justice shall be open to the public.

CLUB. An association of persons.It differs from a partnersbip in this, that the members of a club have no authority to bind each other further than they are authorized, either expressly or by implication, as each other's agents in the particular transaction; whereas in trading associations, or common partnerships, one partner may bind his co−partners, as each has a right of property in the whole. 2 Mees. & Welsb. 172; Colly, Partn. 31; Story, Partn. 144; Wordsworth on Joint Stock Companies, 154, et seq.; 6 W. & S. 67; 3, W. & S. 118.

CO. A prefix or particle in the nature of an inseparable proposition, signifying with or in conjunction. Con and the Latin cum are equivalent, as, co−executors, co−obligor. It is also used as an abbreviation for company as, John Smith & Co.

COADJUTOR, eccl. law. A fellow helper or assistant; particularly applied to the assistant of a bishop.

COAL NOTE, Eng. law. A species of promissory note authorized by the st. 3 Geo. H., c. 26, SSSS 7 and 8, which, having these words expressed therein, namely, " value received in coals," are to be protected and noted as inland bills of exchange.

COALITION, French law. By this word is understood an unlawful agreement among several persons, not to do a thing except on some conditions agreed upon.

2. The most usual coalitions are, 1st. those which take place among master workmen, to reduce, diminish or fix at a low rate the wages of journeymen and other workmen; 2d. those among workmen or journeymen, not to work except at a certain price. These offences are punished by fine and imprisonment. Dict. de Police, h. t. In our law this offence is known by the name of conspiracy. (q. v.)

CO−ADMINISTRATOR. One of several administrators. In general, they have, like executors, the power to act singly to the personal estate of the intestate. Vide Administrator.

CO−ASSIGNEE. One who is assignee with another.

2. In general, the rights and duties of co−assignees are equal.

CO−EXECUTOR. One who is executor of a will in company with another. In general each co−executor has the full power over the personal estate of the testator, that all the executors have jointly. Vide Joint Executors. But one cannot bring suit without joining with the others.

COAST. The margin of a country bounded by the sea. This term includes the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shoals perpetually covered with water are not, however, comprehended under the name of coast. The small islands, situate at the mouth of the Mississippi, composed of earth and trees drifted down by the river, which are not of consistency enough to support the purposes of life, and are uninhabited, though resorted to for shooting birds, were held to form a part of the coast. 5 Rob. Adm. R. 385. (c).

COCKET, commerce. In England the office at the custom house, where the goods to be exported are entered, is so called, also the custom house seal, or the parchment sealed and delivered by the officers of customs to merchants, as a warrant that their goods are customed. Crabbe's Tech. Dict.

COCKETTUM, commerce. In the English law this word signifies, 1. the custom− house seal; 2. the office at the custom where cockers are to be procured. Crabbe's Tech. Dict.

CODE, legislation. Signifies in general a collection of laws. It is a name given by way of eminence to a collection of such laws made by the legislature. Among the most noted may be mentioned the following:

CODES, Les Cing Codes; French law. The five codes.

2. These codes are, 1st. Code Civil, which is divided into three books; book 1, treats of persons, and of the enjoyment and privation of civil rights; book 2, of property and its different modifications; book 3, of the different ways of acquiring property. One of the most perspicuous and able, commentators on this code is Toullier, frequently cited in this work.

3. − 2d. Code de procedure civille, which is divided into two parts. Part 1, is divided into five books; 1. of justices of the. peace; 2. of inferior tribunals; 3. of royal courts; 4. of extraordinary means of proceeding; 5. of execution and judgment. Part 2, is divided into three books; 1. of tender and consignation; 2. of process in relation to the opening of a succession; 3. of arbitration.

4. − 3d. Code de Commerce, in four books; 1. of commerce in general; 2. of maritime comraerce; 3. of failures and bankruptcy; 4. of commercial jurisdiction. Pardessus is one of the ablest commentators on this code.

5. − 4th. Code d'Instructions Criminelle, in two books; 1. of judiciary police, and its officers; 2. of the administration of justice.

6.−5th. Code Penal, in four books; 1. of punishment in criminal and correctional cases, and their effects; 2. of the persons punishable, excusable or responsible, for their crimes or misdemeanors; 3. of crimes, misdemeanors, (delits,) and their punishment; 4. of contraventions of police, and their punishment. For the history of these codes, vide Merl. Rep. h. t.; Motifs, Rapports, Opinions et Discours sur les Codes; Encyclop. Amer. h. t.

7. Henrion de Pansey, late a president of the Court of Cassation, remarks in reference to these codes: "In the midst of the innovations of these later times, a system of uniformity has suddenly engrossed all minds, and we have had imposed upon us the same weights, the same measures, the same laws, civil, criminal, rural and commercial. These new codes, like everything which comes from the hand of man, have imperfections and obscurities. The administration of them is committed to nearly thirty sovereign courts and a multitude of petty tribunals, composed of only three judges, and yet are invested with the right of determining in the last resort,

under many circumstances. Each tribunal, the natural interpreter of these laws, applies them according to its own view, and the new codes were scarcely in operation before this beautiful system of uniformity became nothing more than a vain theory. Authorite Judiciaire, c. 31, s. 10.

CODE HENRI. A digest of the laws of Hayti, enacted by Henri, king of Hayti. It is based upon the Code Napoleon, but not servilely copied. It is said to be judiciously adapted to the situation of Hayti. A collection of laws made by order of Henry III of France, is also known by the name of Code Henri.

CODE, JUSTINIAN, civil law. A collection of the constitutions of the emperors, from Adrian to Justinian; the greater part of those from Adrian to Constantine are mere rescripts; those from Constantine to Justinian are edicts or laws, properly speaking.

2. The code is divided into twelve books, which are subdivided into titles, in which the constitutions are collected under proper heads. They are placed in chronological order, but often disjointed. At the head of each constitution is placed the name of the emperor who is the author, and that of the person to whom it is addressed. The date is at the end. Several of these constitutions, which were formerly in the code were lost, it is supposed by the neglect of "copyists. Some of them have been restored by modern authors, among whom may be mentioned Charondas, Cugas, and Contius, who translated them from Greek, versions.

CODE, OF LOUISIANA. In 1822, Peter Derbigny, Edward Livingston, and Moreau Lislet, were selected by the legislature to revise and amend the civil code, and to add to it sucb laws still in force as were not included therein. They were authorized to add a system of commercial law, and a code of practice. The code the prepared having been adopted, was promulgated in 1824, under the title of the " Civil Code of the State of Louisiana."

2. The code is based on the Code Napoleon, with proper and judicious modifications, suitable for the state of Louisiana. It is composed of three books: 1. the first treats of persons; 2. the second of tbings, and of the different modifications of property; 3. and the third of the different modes of acquiring the property of tbings. It contains 3522 articles, numbered from the beginning, for the convenience of reference.

3. This code, it is said, contains many inaccurate definitions. The legislature modified and changed many of the provisions relating to the positive legislation, but adopted the definitions and abstract doctrines of the code without material alterations. From this circumstance, as well as from the inherent difficulty of the subject, the positive provisions of the code are often at variance with the theoretical part, which was intended to elucidate them. 13 L. R. 237.

4. This code went into operation on the 20th day of May,. 1825. 11 L. R. 60. It is in both the French and English languages; and in construing it, it is a rule that when the expressions used in the French text of the code are more comprehensive than those used in English, or vice versa, the more enlarged sense will be taken, as thus full effect will be given to both clauses. 2 N. S. 582.

CODE, NAPOLEON. The Code Civil of France, enacted into law during the reign of Napoleon, bore his name until the restoration of the Bourbons when it was deprived of that name, and it is now cited Code Civil.

CODE PAPIRIAN. The name of a collection of the Roman laws, promulgated by Romulus, Numa, and other kings who governed. Rome till the time of Tarquin, the Proud. It was so called in honor if Sextus Parrius, the compiler. Dig. 1, 2, 2.

CODE PRUSSIAN. Allgemeines Landrecht. This code is also known by the name of Codex Fredericianus, or Frederician code. It was compiled by order of Frederic H., by the minister of justice, Samuel V. Cocceji, who completed, a part of it before his death, in 1755. In 1780, the work was renewed under the superintendence of the minister Von Carmer, and prosecuted with unceasing activity and was published from 1784 to 1788, in six parts. The opinions of those who understood the subject were requested, and prizes offered on the best commentaries on it; and the whole was completed in June, 1791, under the title " General Prussian Code."

CODE THEODOSIAN. This code, which originated in the eastern empire, was adopted in the Western empire towards its decline. It is a collection of the legislation of the Christian emperors, from and including Constantine to Theodosius, the Younger; it is composed of sixteen books, the edicts, acts, rescripts, and ordinances of the two empires, that of the east and that of the west.

CO−DEFENDANT. One who is made defendant in an action with another person.

CODEX. Literally, a volume or roll. It is particularly applied to the volume of the civil law, collected by the emperor Justinian, from all pleas and answers of the ancient lawyers, which were in loose scrolls or sheets of parchment. These he compiled into a book which goes by the name of Codex.

CODICIL, devises. An addition or supplement to a will; it must be executed with the same solemnities. A codicil

is a part of the will, the two instruments making but one will. 4 Bro. C. C. 55; 2 Ves. sen. 242 4 Ves. 610; 2 Ridgw. Irish P. C. 11, 43.

2. There may be several codicils to one will, and the whole will be taken as one: the codicil does not, consequently, revoke the will further than it is in opposition to some of its particular dispositions, unless there be express words of revocation. 8 Cowen, Rep. 56.,

3. Formerly, the difference between a will and a codicil consisted in this, that in the former an executor was named, while in the latter none was appointed. Swinb. part 1, s. 5, pl. 2; Godolph. Leg. part 1, c. 6, s. 2. This is the distinction of the civil law, and adopted by the canon law. Vide Williams on Wills, ch. 2; Rob. on Wills, 154, n. 388, 476; Lovelass on Wills, 185, 289 4 Kent, Com. 516; 1 Ves. jr. 407, 497; 3 Ves. jr. 110; 4 Ves. jr. 610; 1 Supp. to Ves. jr. 116, 140.

4. Codicils were chiefly intended to mitigate the strictness of the ancient Roman law, which required that a will should be attested by seven Roman citizens, omni exceptione majores. A legacy could be bequeathed, but the heir could not be appointed by codicil, though he might be made heir indirectly by way of fidei commissum.

5. Codicils owe their origin to the following circumstances. Lucius Lentulus, dying in Africa, left. codicils, confirmed by anticipation in a will of former date, and in those codicils requested the emperor Augustus, by way of fidei commissum, or trust, to do something therein expressed. The emperor carried this will into effect, and the daughter of Lentulus paid legacies which she would not otherwise have been legally bound to pay. Other persons made similar fidei−commissa, and then the emperor, by the advice of learned men whom he consulted, sanctioned the making of codicils, and thus they became clothed with legal authority. Just. 2, 25; Bowy. Com. 155, 156.

6. The form of devising by codicil is abolished in Louisiana; Code, 1563; and whether the disposition of the property be made by testament, under this title, or under that of institution of heir, of legacy, codicil, donation mortis causa, or under any other name indicating the last will, provided it be clothed with the forms required for the validity of a testament, it is, as far as form is concerned, to be considered a testament. Ib. Vide 1 Brown's Civil Law, 292; Domat, Lois Civ. liv. 4, t. 1, s. 1; Lecons Element, du Dr. Civ. Rom. tit. 25.

COERCION, criminal law, contracts. Constraint; compulsion; force.

2. It is positive or presumed. 1. Positive or direct coercion takes place when a man is by physical force compelled to do an act contrary to his will; for example, when a man falls into the hands of the enemies of his country, and they compel him, by a just fear of death, to fight against it.

3. − 2. It is presumed where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contrary to his win. A married woman, for example, is legally under the subjection of her husband, and if in his company she commit a crime or offence, not malum in se, (except the offence of keeping a bawdy−house, In which case she is considered by the policy of the law as a principal, she is presumed to act under this coercion.

4. As will (q. v.) is necessary to the commission of a crime, or the making of a contract, a person coerced into either, has no will on the, subject, and is not responsible. Vide Roscoe's Cr. Ev. 7 85, and the cases there cited; 2 Stark. Ev. 705, as to what will, amount to coercion in criminal cases.

CO−EXECUTOR. One who is executor with another.

2. In general, the rights and duties of co−executors are equal.

COGNATION, civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

2. Cognation is of −three kinds: natural, civil, or mixed. Natural cognation is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connexion, either in relation to their ascendants or collaterals.

3. Civil cognation is that which proceeds alone from the ties of families as the kindred between the adopted father and the adopted child.

4. Mixed cognation is that which unites at the same time the ties of blood and family, as that which exists between brothers, the issue of the same lawful marriage. 6; Dig. 38, 10.

COGNATI, cognates. This term occurs frequently in the Roman civil law, and denotes collateral heirs through females. It is not used in the civil law as it now prevails in France. In the common law it has no technical sense, but as a word of discourse in English it signifies, generally, allied by blood, related in origin, of the same family. See Vicat, ad verb.; also, Biret's Vocabulaire.

COGNISANCE, pleading. Where the defendant in an action of replevin (not being entitled to the distress or

goods which are the subject of the replevin) acknowledges the taking of the distress, and insists that such taking was legal, not because he himself had a right to distrain on his own account, but because he made the distress by the command of another, who had a right to distrain on the goods which are the subject of the suit. Lawes on Pl. 35, 36; 4 Bouv. Inst. n. 3571.

COGNISANCE, practice. Sometimes signifies jurisdiction and juudicial power, an sometimes the hearing of a matter judicially. It is a term used in the acknowledgment of a fine. See Vaughan's Rep. 207.

COGNISANCE OF PLEAS, Eng. law. A privilege granted by the king to a city or town, to hold pleas within the same; and when any one is impleaded in the courts at Westminster, the owner of the franchise may demand cognisance of the plea. T. de la Ley.

COGNISEE. He to whom a fine of lands, &c. is acknowledged. See Cognisor.

COGNISOR, English law. One who passes or acknowledges,a fine of lands or tenements to another, in distinction from the cogzisee, to whom the fine of the lands, &c. is acknowledged.

COGNITIONIBUS ADMITTENDIS, English law, practice. A writ to a justice ,or other person, who has power to take a fine, and having taken the acknowledgment of a fine, delays to certify it in the court of common pleas, requiring him to do it. Crabbe's Tech. Dict.

COGNOMEN. A Latin word, which signifies a family name. The praenomen among the Romans distinguished the person, the nomen, the gens, or all the kindred descended from a remote common stock through males, while the cognomen denoted the particular family. The agnomen was added on account of some particular event, as a further distinction. Thus, in the designation Publius Cornelius Scipio Africanus, Publius is the proenomen, Cornelius is the nomen, Scipio the cognomen, and Africanus the agnomen. Vicat. These several terms occur frequently in the Roman laws. See Cas. temp. Hardw. 286; 1 Tayl. 148. See Name; Surname.

COGNOVIT, contr. leading. A written confession of an action by a defendant, subscribed but not sealed, and authorizing the plaintiff to sign judgment and issue execution, usually for a sum named.

2. It is given after the action is brought to save expense.

3. It differs from a warrant of attorney, which is given before the commencement of any action, and is under seal. A cognovit actionem is an acknowledgment and confession of the plaintiff's cause of action against the defendant to be just and true. Vide 3 Ch. Pr. 664; 3 Bouv. Inst. n. 8299.

COHABITATION. Living together.

2. The law presumes that husband and wife cohabit, even after a voluntary separation has taken place between them; but where there has been a divorce a mensa et thoro, or a sentence of separation, the presumption then arises that they have obeyed the sentence or decree, and do not live together.

3. A criminal cohabitation will not be presumed by the proof of a single act of criminal intercourse between a man and woman not married. 10 Mass. R. 153.

4. When a woman is proved to cohabit with a man and to assume his name with his consent, he will generally be responsible for her debts as if she had been his wife; 2 Esp. R. 637; 1 Campb. R. 245; this being presumptive evidence of marriage; B. N. P. 114; but this liability will continue only while they live together, unless she is actually his were. 4 Campb. R. 215.

5. In civil actions for criminal conversation with the plaintiff's wife, after the husband and wife have separated, the plaintiff will not in general be entitled to recover. 1 Esp. R. 16; S. C. 5 T. R. 357; Peake's Cas. 7, 39; sed vide 6 East, 248; 4 Esp. 39.

CO−HEIR. One of several men among whom an inheritance is to be divided.

CO−HEIRESS. A woman who inherits an estate in common with other women. A joint heiress.

COIF. A head−dress. In England there are certain serjeants at law, who are called serjeants of the coif, from the lawn coif they wear on their heads under their thin caps when they are admitted to that order.

COIN, commerce, contracts. A piece of gold, silver or other metal stamped by authority of the government, in order to determine its value, commonly called money. Co. Litt. 207; Rutherf. Inst. 123. For the different kinds of coins of the United States, see article Money. As to the value of foreign coins, see article Foreign Coins.

COLLATERAL, collateralis. From latus, a side; that which is sideways, and not direct.

COLLATERAL ASSURANCE, contracts. That which is made over and above the deed itself.

COLLATERAL FACTS evidence. Facts unconnected with the issue or matter in dispute.

2. As no fair and reasonable inference can be drawn from such facts, they are inadmissible in evidence, for at

best they are useless, and may be mischievous, because they tend to distract the attention of the jury, and to mislead them. Stark. Ev. h. t.; 2 Bl. Rep. 1169; 1 Stark Ev. 40; 3 Bouv. Inst. n. 3087.

3. It is frequently difficult to ascertain a priori, whether a particular fact offered in evidence, will, or will not clearly appear to be material in the progress of the cause, and in such cases it is usual in practice for the court to give credit to the assertion of the counsel who tenders such evidence, that the facts will turn out to be material; but this is always within the sound discretion of the court. It is the duty of the counsel, however, to offer evidence, if possible, in such order that each part of it will appear to be pertinent and proper at the time it is offered; and it is expedient to do so, as this method tends to the success of a good cause.

4. When a witness is cross−examined as to collateral facts, the party cross−examining will be bound by the answer, and he cannot, in general, contradict him by another witness. Rosc. Ev. l39.

COLLATERAL ISSUE, practice, pleading. Where a criminal convict pleads any matter, allowed by law, in bar of execution; as pregnancy, a pardon, and the like.

COLLATERAL KINSMEN, descent, distribution. Those who descend from one and the same common ancestor, but not from one another; thus brothers and sisters are collateral to each other; the uncle and the nephew are collateral kinmen, and cousins are the same. The term collateral is used in opposition to the phrase lineal kinsmen. (q. v.)

COLLATERAL SECURITY, contracts. A separate obligation attached to another contract, to guaranty its performance. By this term is also meant the transfer of property or of other contracts to insure the performance of a principal engagement. The property or securities thus conveyed are also called collateral securities. 1 Pow. Mortg. 393; 2 Id. 666, n. 871; 3 Id. 944, 1001.

COLLATERAL WARRANTY, contracts, descent. Where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor; and yet barred the heir from ever claiming the land, and also imposed upon him the same obligation of giving the warrantee other lands, in case of eviction, as if the warranty were lineal, provided the heir had assets. 4 Cruise, Real Prop. 436.

2. The doctrine of collateral warranty, is, according to Justice Story, one of the most unjust, oppressive and indefensible, in the whole range of the common law. 1 Sumn. R. 262.

3. By the statute of 4 & 5 Anne, c. 16, _21, all collateral warranties of any land to be made after a certain day, by any ancestor who has no estate of inheritance in possession in the same, were made void against the heir. This Statute has been reenacted in New. York; 4 Kent, Com. 460, 3d ed.; and in New Jersey. 3 Halst. R. 106. It has been adopted and is in force in Rhode Island; 1 Sumn. R. 235; and in Delaware. Harring. R. 50. In Kentucky and Virginia, it seems that collateral warranty binds the heir to the extent of assets descended. 1 Dana, R. 59. In Pennsylvania, collateral warranty of the ancestor, with sufficient real assets descending to the heirs, bars them from recovering the lands warranted. 4 Dall. R. 168; 2 Yeates, R. 509; 9 S. & R. 275. See 1 Sumn. 262; 3 Halst. 106; Harring. 50; 3 Rand. 549; 9 S. & R. 275; 4 Dall. 168; 2 Yeates, 509; 1 Dana, 50.

COLLATIO BONORUM, descent, distribution. Where a portion or money advanced to a son or daughter, is brought into botchpot, in order to have an equal distributive share of the ancestor's personal estate. The same rule obtains in the civil law. Civil Code of Louis. 1305; Diet. de Jur. mot Collation; Merlin Rep. mot Collation.

COLLATION, descents. A term used in the laws of Louisiana. Collation −of goods is the supposed or real return to the mass of the succession, which an heir makes of the property he received in advance of his share or otherwise, in order that such property may be divided, together with the other effects of the succession. Civil Code of Lo. art. 1305.

2. As the object of collation is to equalize the heirs, it follows that those things are excluded from collation, which the heir acquired by an onerous title from the ancestor, that is, where he gave a valuable consideration for them. And upon the same principle, if a co−heir claims no share of the estate, he is not bound to collate. Qui non vult hereditatem, non cogitur ad collationem. See Id. art. 1305 to 1367; And Hotchpot.

COLLATION, eccl. law. The act by which the bishop, who has the bestowing of a benefice, gives it to an incumbent. T. L.

COLLATION, practice. The comparison of a copy with its original, in order to ascertain its correctness and conformity; the report of the officer who made the comparison, is also called a collation.

COLLATION OF SEALS. Where, on the same label, one seal was set on the back or reverse of the other, this was said to be a collation of seals. Jacob. L. D. h. t.

COLLECTOR, officer. One appointed to receive taxes or other impositions; as collector of taxes; collector of

militia fines, &c. A collector is also a person appointed by a private person to collect the credits due him. Metc. & Perk. Dig. h. t.

COLLECTORS OF THE CUSTUMS. Officers of the United States, appointed for the term of four years, but removable at the pleasure of the president. Act of May 15, 1820, sect. 1, 3 Story's U. S. Laws, 1790.

2. The duties of a collector of customs are described in general terms, as follows: " He shall receive all reports, manifests and documents, to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act shall record in books, to be kept for the purpose, all manifests; shall receive the entries of all ships or vessels, and of the goods, wares and merchandise imported in them; shall, together with the naval officer, where there is one, or alone, where there is none, estimate the amount of duties payable thereupon, endorsing the said amounts upon the respective entries; shall receive all moneys paid for duties, and shall take bonds for securing the payment thereof; shall grant all permits for the unlading and delivery of goods; shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, gaugers, measurers and inspectors, at the several ports within his district; and also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights and measures, as may be necessary." Act of March 2,1799) s. 21, 1 Story, U. S. Laws, 590. Vide, for other duties of collectors, 1 Story, U. S. Laws, 592, 612, 620, 632, 659, and vol. 3, 1650, 1697, 1759, 1761, 1791, 1811, 1848, 1854; 10 Wheat. 246.

COLLEGE. A civil corporation, society or company, authorized by law, having in general a literary object. In some countries by college is understood the union of certain voters in *one body; such bodies are called electoral colleges; as, the college of electors or their deputies to the diet of Ratisbon; the college of cardinals. The term is used in the United States; as, the college of electors of president and vice−president, of the United States. Act of Congress of January 23, 1845.

COLLISION, maritime law. It takes place when two ships or other vessels run foul of each other, or when one runs foul of the other. In such cases there is almost. always a damage incurred.

2. There are four possibilities under which an accident of this sort may occur. 1. It may happen without blame being imputable to either party, as when the loss is occasioned by a storm, or any other vis major; in that case the loss must be borne by the party on whom it happens to light, the other not being responsible to him in, any degree.

3. − 2. Both parties may be to blame, as when there has been a want of due diligence or of skill on both sides; in such cases, the loss must be apportioned between them, as having been occasioned by the fault of both of them. 6 Whart. R. 311..

4. − 3. The suffering party may have been the cause of the injury, then he must bear the loss.

5. − 4. It may have been the fault of the ship which ran down the other; in this case the injured party would be entitled to an entire corapensation from the other. 2 Dodson's Rep. 83, 85; 3 Hagg. Adm. R. 320; 1 .How. S. C. R. 89. The same rule is applied to steamers.. Id. 414.

6. − 5. Another case has been put, namely, when there has been some fault or neglect, but on which side the blame lies, is uncertain. In this case, it does not appear to be settled whether the loss shall be apportioned or borne by the suffering party opinions on this subject are divided.

7. A collision between two ships on the high seas, whether it be the result of accident or negligence, is, in all cases, to be deemed a peril of the seas within the meaning of a policy of insurance. 2 Story, R. 176; 3 Sumn. R. 889. Vide, generally, Story, Bailm. _607 to 612; Marsh.. Ins. B. 1, c. 12, s. 2; Wesk. Ins. art. Running Foul; Jacobsen's Sea Laws, B. 4, c. 1; 4 Taunt. 126; 2 Chit. Pr. 513, 535; Code de Com. art. 407; Boulay−Paty, Cours de Dr. Commercial, tit. 12, s. 6; Pard. n. 652 to 654; Pothier, Avaries, n. 155; 1 Emerig. Assur. ch. 12, _14.

COLLISTRIGIUM. The pillory.

COLLOCATION, French law. The act by which the creditors of an estate are arranged in the order in which they are to be paid according to law. The order in which the creditors−are placed, is also called collocation. Merl. Rep. h. t. Vide Marshalling Assets.

COLLOQUIM, pleading. A discourse a conversation or conference.

2. In actions of slander, it is generally true that an action does not lie for words, on account of, their being merely disgraceful to a person in his office, profession or trade; unless it be averred, that at the time of publishing the words, there was a colloquium concerning the office, profession or trade of the plaintiff.

3. In its technical sense, the term colloquium signifies an averment in a declaration that there was a conversation or discourse on the part of the defendant, which connects the slander with the office, profession or trade of the plaintiff; and this colloquium must extend to the whole of the prefatory matter to render the words actionable. 3

Bulst. 83. Vide Bac. Ab. Slander, S, n. 3; Dane's Ab. Index, h. t.; Com. Dig. Action upon the case for Defamation, G 7, 8, &c.; Stark. on Sland. 290, et seq.

COLLUSION, fraud. An agreement between two or more persons, to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law; as, for example, where the husband and wife collude to obtain a divorce for a cause not authorized by law. It is nearly synonymous with covin. (q. v.)

2. Collusion and fraud of every kind vitiate all acts which are infected with them, and render them void. Vide Shelf. on Mar. .& Div. 416, 450; 3 Hagg. Eccl. R. 130, 133; 2 Greenl. Ev. _51; Bousq. Dict. de Dr. mot Abordage.

COLONEL. An officer in the army, next below a brigadier general, bears this title.

COLONY. A union of citizens or subjects who have left their country to people another, and remain subject to the mother country. 3 W. C. C. R. 287. The country occupied by the colonists is also called a colony. A colony differs from a possession, or a dependency. (q. v.) For a history of the American colonies, the reader is referred to Story on the Constitution, book I.; 1 Kent, Com. 77 to 80; 1 Dane's Ab. Index, b. t.

COLOR, pleading. It is of two kinds, namely, express color, and implied color. 2. Express color. This is defined to be a feigned matter, pleaded by the defendant, in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has in truth only an appearance or color of cause. The practice of giving express color in pleas, obtained in the mixed actions of assize, the writ of entry in the nature of assize, as well as in the personal action of trespass. Steph. on Plead. 230; Bac. Ab. Trespass, 14.

3. It is a general rule in pleading that no man shall be allowed to plead specially such plea as amounts to the general issue, or a total denial of the charges contained in the declaration, and must in such cases plead the general issue in terms, by which the whole question is referred to the jury; yet, if the defendant in an action of trespass, be desirous to refer the validity of his title to the court, rather than to the jury; he may in his plea stated his title specially, by expressly giving color of title to the plaintiff, or supposing him to have an appearance of title, had indeed in point of law, but of which the jury are not competent judges. 3 Bl. Com. 309. Suppose, for example, that the plaintiff wag in wrongful possession of the close, without any further appearance of title than the possession itself, at the time of the trespass alleged, and that the defendants, entered upon him in assertion of their title: but being unable to set forth this title in the pleading, in consequence of the objection that would arise for want of color, are driven to plead the general issue of not guilty. By this plea an issue is produced whether the defendants are−guilty or not of the trespass; but upon the trial of the issue, it will be found that the question turns entirely upon a construction of law. The defendants say they are not guilty of the trespasses, because they are not guilty of breaking the close of the plaintiff, as alleged in the declaration; and that they are not guilty of breaking the close of the plaintiff, because they themselves had the property in that close; and their title is. this, that the father of one of the defendants being seised of the close in fee, gave it in tail to his eldest son, remainder in tail to one of the defendants; the eldest son was disseised, but made continual claim till the death of the disseisor; after whose death, the descent being cast upon the heir, the disseisee entered upon the heir, and afterwards died, when the remainder took effect in the said defendant who demised to the other defendant . Now, this title involves a legal question; namely, whether continual claim will no preserve the right of entry in the disseisee, notwithstanding a descent cast on the heir of the disseisor. (See as to this point, Continual Claim.) The issue however is merely not guilty, and this is triable by jury; and the effect, therefore, would be, that a jury would have to decide this question of law, subject to the direction upon it, which they would receive from the court. But, let it be supposed that the defendants, in a view to the more satisfactory decision of the question, wish to bring it under the consideration of the court in bank, rather than have it referred to a jury. If they have any means of setting forth their title specially in the plea, the object will be attained; for then the plaintiff, if disposed to question the sufficiently of the title, may demur to the plea, and thus refer the question to the decision of the judges. But such plea if pleaded simply, according to the state of the fact, would be informal for want of color; and hence arises a difficulty.

4. The pleaders of former days, contrived to overcome this difficulty in the following singular manner. In such case as that supposed, the plea wanting implied color, they gave in lieu of it an express one, by inserting a fictitious allegation of some colorable title in the plaintiff, which they, at the same time avoided by the preferable title of the defendant. S Step . Pl. 225 Brown's Entr. 343, for a form of the plea. Plowd. Rep. 22 b.

5. Formerly various suggestions of apparent right, might be adopted according to the fancy of the pleader; and though the same latitude is, perhaps, still available, yet, in practice, it is unusual to resort to any except certain

known fictions, which long usage has applied to the particular case for example, in trespass to land, the color universally given is that of a defective charter of the demise. See, in general, 2 Saund. 410; 10 Co. 88; Cro. Eliz. 76; 1 East, 215; Doct. Pl. 17; Doct. & Stud. lib. 2, c. 53; Bac. Abr. Pleas, I 8; Trespass, I 4; 1 Chit. Pl. 500 Steph. on Pl. 220.

6. Implied color. That in pleading which admits by implication, an apparent right in the opposite party, and avoids it by pleading some new matter by which that apparent right is defeated. Steph. Pl. 225.

7. It is a rule that every pleading by way of confession and avoidance, must give color; that is, it must admit an apparent right in the opposite party, and rely, therefore, on some new matter by which that apparent right is defeated. For example, where the defendant pleads a release to an action for breach of covenant, the tendency of the plea is to admit an apparent right in the plaintiff, namely, that the defendant did, as alleged in the declaration, execute the deed and break the covenant therein contained, and would therefore, prima facie, be liable on that ground; but shows new matter not before disclosed, by which that apparent right is done away, namely, that the plaintiff executed to him a release. Again, if the plaintiff reply that Such release was obtained by duress, in his, replication, he impliedly admits that the defendant has, prima facie, a good defence, namely, that such release was executed as alleged in the plea; and that the defefadant therefore would be discharged; but relies on new matter by which the plea is avoided, namely, that the release was obtained by duress. The plea, in this case, therefore, gives color to the declaration, and the replication, to the plea. But let it be supposed that the plaintiff has replied, that the release was executed by him, but to another person, and not to the defendant; this would be an informal replication wanting color; because, if the release were not to the defendant there would not exist even an apparent defence, requiring the allegation of new matter to avoid it, and the plea might be sufficiently answered by a traverse, denying that the deed stated in the plea is the deed of the plaintiff. See Steph. Pl. 220; 1 Chit. Pl. 498; Lawes, Civ. Pl. 126; Arch. Pl. 211; Doct. Pl. 17; 4 Vin. Abr. 552; Bac. Abr. Pleas, &e. I 8; Com. Dig. Pleader, 3 M 40, 3−M 41. See an example of giving color in pleading in the Roman law, Inst. lib. 4, tit 14, De replicantionibus.

COLOR OR OFFICE, criminal law. A wrong committed by an officer under the pretended authority of his office; in some cases the act amounts to a misdemeanor, and the party may then be indicted. In other cases, the remedy to redress the wrong is by an action.

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & Ry. 416.

COMBAT, Eng. law. The form of a forcible encounter between two or more persons or bodies of men; an engagement or battle. A duel.

COMBINATION. A union of different things. A patent may be taken out for a new combination of existing machinery, or machines. See 2 Mason, 112; and Composition of matter.

2. By combination is understood, in a bad sense, a union of men for the purpose of violating the law.

COMBUSTIO DOMORUM. Burning of houses; arson. Vide 4 Bl. Com. 372.

COMES, pleading. In a plea, the defendant says, " And the said C D, by E F, his attorney, comes, and defends, &c. The word comes, venit, expresses the appearance of the defendant , in court. It is taken from the style of the entry of the proceedings on the record, and formed no part of the viva voce pleading. It is, accordingly, not considered as, in strictness, constituting a part of the Plea. 1 Chit. Pl. 411; Steph. Pl. 432.

COMES, offices. A Count. An officer during the middle ages, who possessed civil and military authority. Sav. Dr. Rom. Moy. age, n. 80.

2. Vice−comes, the Latin name for sheriff, was originally the lieutenant of the comes.

COMITATUS. A county. Most of the states are divided into counties; some, as Louisiana, are divided into parishes.

COMITES. Persons who are attached to a public minister, are so called. As to their privileges, see 1 Dall. 117; Baldw. 240; and Ambassador.

COMITY. Courtesy; a disposition to accomodate.

2. Courts of justice in one state will, out of comity, enforce the laws of another state, when by such enforcement they will not violate their laws or inflict. an injury on some one of their own citizens; as, for example, the discharge of a debtor under the insolvent laws of one state, will be respected in another state, where there is a reciprocity in this respect.

3. It is a general rule that the municipal laws of a country do not extend beyond its limits, and cannot be enforced in another, except on the principle of comity. But when those laws clash and interfere with the rights of citizens,

or the laws of the countries where the parties to the contract seek to enforce it, as one or the other must give way, those prevailing where the relief is sought must have the preference. 2 Mart. Lo. Rep. N. S. 93; S. C. 2 Harr. Cond. Lo. Rep. 606, 609; 2 B. & C. 448, 471; 6 Binn. 353; 5 Crancb, 299; 2 Mass. 84; 6 Mass. 358; 7 Mart. Lo. R. 318. See Conflict of Laws; Lex loci contractus.

COMMAND. This word has several meanings. 1. It signifies an order; an apprentice is bound to obey the lawful command of his master; a constable may command rioters to keep the peace. 2. He who commands another to do an unlawful act, is accessary to it. 3 Inst. 51, 57; 2 Inst. 182; 1 Hayw.

3. Command is also equivalent to deputation or voluntary substitution; as, when a master employs one to do a thing, he is said to have Commanded him to do it; and he is responsible accordingly. Story Ag. _454, note.

COMMENCEMENT OF A SUIT OR ACTION. The suit is considered as commenced from the issuing of the writ; 3 Bl. Com. 273, 285; 7 T. R. 4; 1 Wils. 147; 18 John. 14; Dunl. Pr. 120; 2 Phil. Ev. 95; 7 Verm. R. 426; 6 Monr. R. 560; Peck's R. 276; 1 Pick. R. 202; Id. 227; 2 N. H. Rep. 36; 4 Cowen, R. 158; 8 Cowen, 203; 3 John. Cas. 133; 2 John. R. 342; 3 John. R. 42; 15 John. R. 42; 17 John. R. 65; 11 John. R. 473; and if the teste or date of the writ be fictitious, the true time of its issuing may be a and proved, whenever the purposes of justice require it; as in cases of a plea of tender or of the statute of limitations. Bac. Ab. Tender D; 1 Stra. 638; Peake's Ev. 259; 2 Saund. 1, n. 1. In Connecticut, the service of, the writ is the commencement of the action. 1 Root, R. 487; 4 Conn. 149; 6 Conn. R. 30; 9 Conn. R. 530; 7 Conn. R. 558; 21 Pick. R. 241; 2 C. & M. 408, 492 1 Sim. R. 393. Vide Lis Pendens.

COMENDAM, eccles. law. When a benefice or church living is void or vacant, it is commended to the. care of some sufficient clerk to be supplied, until it can be supplied with a pastor. He to whom the church is thus commended is said to hold in commendam, and he is entitled to the profits of the living. Rob. 144; Latch, 236.

2. In Louisiana, there is a species of limited partnership called a partnership in commendam. It 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. 2810. A similar partnership exists in France. Code de Comm. 26, 33; Sirey, tom. 12, part 2, p. 25. He who makes this contract is called in respect to those to whom he makes the advance of capital, a partner in commendam. Civ. Code of Lo. art. 2811.

COMMENDATARY. A person who holds a church living or presentment in commendam.

COMMENDATION. The act of recommending, praising. A merchant who merely commends goods he offers for sale, does not by that act warrant them, unless there is some fraud: simplex commendatio non obligat.

COMMENDATORS, eccl. law. Secular persons upon whom ecclesiastical benefices are bestowed, because they were commended and instructed to their oversight: they are merely trustees.

COMMERCE, trade, contracts. The exchange of commodities for commodities; considered in a legal point of view, it consists in the various agreements which have for their object to facilitate the exchange of the products of the earth or industry of man, with an intent to realize a profit. Pard. Dr. Coin. n. 1. In a narrower sense, commerce signifies any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration; if the consideration be money, it is called a sale; if any other thing than money, it is called exchange or barter. Domat, Dr. Pub. liv. 1, tit. 7, s. 1, n. 2. Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent. 431; Story on Corst. _1052, et seq. The sense in which the word commerce is used in the constitution seems not only to include traffic, but intercourse and navigation. Story, _1057; 9 Wheat. 190, 191, 215, 229; 1 Tuck. Bl. App. 249 to 252. Vide 17 John. R. 488; 4 John. Ch. R. 150; 6 John. Ch. R. 300; 1 Halst. R. 285; Id. 236; 3 Cowen R. 713; 12 Wheat. R. 419; 1 Brock. R. 423; 11 Pet. R. 102; 6 Cowen, R. 169; 3 Dana, R. 274; 6 Pet. R. 515; 13 S. & R. 205.

COMMISSARIATE. The whole body of officers who act in the department of the commissary, are called the, commissariate.

COMMISSARY. An officer whose principal duties are to supply the army witli provisions.

2. The Act of April 14, 1818, s. 6, requires that the president, by and with the consent of the senate, shall appoint a commissary general with the rank, pay, and emoluments of colonel of ordnance, and as many assistants, to be

taken from the sub−alterns of the line, as the service may require. The commissary general and his assistants shall perform such duties, in the purchasing and issuing of rations to the armies of the United States, as the president may direct. The duties of these officers are further detailed in the subsequent sections of this act,, and in the Act of March 2, 1821.

COMMISSION, contracts, civ. law. When one undertakes, without reward, to do something for another in respect to a thing bailed. This term is frequently used synonymously with mandate. (q. v.) Ruth. Inst. 105; Halifax, Analysis of the Civil Law, 70. If the service the party undertakes to perform for another is the custody of his goods, this particular sort of, commission is called a charge.

2. In a commission, the obligation on his part who undertakes it, is to transact the business without wages, or any other reward, and to use the same care and diligence in it, as if it were his own.

3. By commission is also understood an act performed, opposed to omission, which is the want of performance of such an act; is, when a nuisance is created by an act of commission, it may be abated without notice; but when it arises from omission, notice to remove it must be given before it is abated. 1 Chit. Pr. 711. Vide dbatement of Nuisances; Branches; Trees.

COMMISSION, office. Persons authorized to act in a certain matter; as, such a matter was submitted, to the commission; there were several meetings before the commission. 4 B. & Cr. 850; 10 E. C. L. R. 459.

COMMISSION, crim. law. The act of perpetrating an offence. There are crimes of commission and crimes of omission.

C0MMISSION, government. Letters−patent granted by the government, under the public seal, to a person appointed to an office, giving him authority to perform the duties of his office. The commission is not the appointment, but only evidence of it; and as soon as it is signed and sealed, vests the office in the appointee. 1 Cranch, 137; 2 N. & M. 357; 1 M'Cord, 233, 238. See Pet. C. C. R. 194; 2 Summ. 299; 8 Conn. 109; 1 Penn. 297; 2 Const. Rep. 696; 2 Tyler, 235.

COMMISSION, practice. An instrument issued by a court of, justice, or other competent tribunal, to authorize a person to take depositions, or do any other act by authority of such court, or tribunal, is called a commission. For a form of a commission to take. depositions, see Gresley, Eq. Ev. 72.

COMMISSION OF LUNACY, A writ issued out of chancery, or such court as may have jurisdiction of the case directed to a proper officer, to inquire whether a person named therein is a lunatic or not. 1 Bouv. Inst. n. 382, et seq.

COMMISSION MERCHANT. One employed to sell goods for another on commission; a factor. He is sometimes called. a consignee, (q. v.) and the goods he receives are a consignment. 1 Bouv. Inst. n. 1013.

COMMISSION OF REB ELLION, chan. prac. The name of a writ issuing out of chancery, generally directed to four special commissioners, named by the plaintiff, commanding them to attach the defendant wheresoever he may be found within the state, as a rebel and contemner of the law, so as to have him in chancery on a certain day therein named. This writ may be issued after an attachment with proclamation, and a return of non est inventus. Blake's Ch. Pr. 102; Newl. Ch. Pr. 14.

COMMISSIONER, officer. One who has a lawful commission to execute a public office. In a more restricted sense it is one who is authorized to execute. a particular duty, as, commissioner of the revenue, canal commissioner. The term when used in this latter sense is not applied, for example, to a judge. There are commissioners, too, who have no regular commissions and derive their author from the elections held by the people. County commissioners, in Pennsylvania, are officers of the latter kind.

COMMISSIONER OF PATENTS. The name of an officer of the United States whose duties are detailed in the act to promote the useful arts, &c., which will be found under the article Patent.

COMMISSIONERS OF BAIL, practice. Officers appointed by some courts to take recognizances of bail in civil cases.

COMMISSIONERS OF SEWERS, Eng. law. Officers whose duty it is to repair sea banks aud walls, survey rivers, public streams, ditches, &c.

C0MMISSlONS, contracts, practice. An allowance of compensation to an agent, factor, executor, trustee or other person who manages the affairs of others, for his services in performing the same.

2. The right of agents, factors or other contractors to commissions, may either be the subjeot of a special contract, or rest upon the quantum meruit. 9 C. & P. 559; 38 E. C. L. R. 227; 3 Smith's R. 440; 7 C. & P. 584; 32 E. C. L. R. 641; Sugd. Vend. Index, tit. Auctioneer

3. This compensation is usually the allowance of a certain, per centage upon the actual amount or value of the business done. When there is a usage of trade at the particular place, or in the particular business in which the agent is engaged, the amount of commissions allowed to auctioneers, brokers and factors, is regulated by such usage. 3 Chit. Com. Law, 221; Smith on Mere. Law, 54; Story, Ag. _326; 3 Camp. R. 412; 4 Camp. R. 96; 2 Stark. 225, 294.

4. The commission of an agent is either ordinary or del credere. (q. v.) The latter is an increase of the ordinary commission, in consideration of the responsibility which the agent undertakes, by making himself answerable for the solvency of those with whom he contracts. Liverm. Agency, 3, et seq.; Paley, Agency, 88, et seq.

5. In Pennsylvania, the amount missions allowed to executors and trustees is generally fixed at five per centum on the sum received and paid out, but this is varied according to circumstances. 1 9 S. & R. 209, 223; 4 Whart. 98; 1 Serg. & Rawle, 241. In England, no commissions are allowed to executors or trustees. 1 Vern. R. 316, n. and the cases there: cited. 4 Ves. 72, n.

TO COMMIT. To send a person to prison by virtue of a warrant or other lawful writ, for the commission of a crime, offence or misdemeanor, or for a contempt, or non−payment of a debt.

COMMITMENT, criminal law, practice. The warrant. or order by which a court or magistrate directs a ministerial officer to take a person to prison. The commitment is either for further hearing, (q. v.) or it is final.

2. The formal requisites of the commitment are, 1st. that it be in writing, under hand, and seal, and show the authority of the magistrate, and the time and place of making it. 3 Har. & McHen. 113; Charl. 280; 3 Crancb, R. 448; see Harp. R. 313. In this case it is said a seal is not indispensable.

3. − 2d. It must be made in the name of the United States, or of the commonwealth, or people, as required by the constitution of the United States or, of the several states.

4. − 3d. It should be directed to the keeper of the prison, and not generally to carry the party to prison. 2 Str. 934; 1 Ld. Raym. 424.

5. − 4th. The prisoner should be described by his name and surname, or the name he gives as his.

6. − 5th. The commitment ought to state that the party has been charged on oath. 3 Cranch, R.448. But see 2 Virg. Cas. 504; 2 Bail. R. 290.

7. − 6th. The particular crime charged against the prisoner should be mentioned with convenient certainty. 3 Cranch, R. 449; 11 St. Tr. 304. 318; Hawk. B. 2, c. 16, s. 16 Chit. Cr. Law, 110.

8. − 7th. The commitment should point out the place of imprisonment, and not merely direct that the party be taken to prison. 2 Str. 934; 1 Ld. Ray. 424.

9. − 8th. In a final commitment, the command to the keeper of the prison should be to keep the prisoner "until he shall be discharged by due course of law," when the offence is not bailable; when it is bailable the gaoler should be, directed to keep the prisoner in his " said custody for want of sureties, or until he shall be discharged by due course of law." When the commitment is not final, it is usual to commit the prisoner " for further hearing." The commitment is also called a mittimus. (q. v.)

10. The act of sending a person to prison charged with the commission of a crime by virtue of such a warrant is also called a commitment. Vide, generally, 4 Vin. Ab. 576; Bac. Ab. h. t.; 4 Cranch, R. 129; 4 Dall. R. 412; 1 Ashm. R. 248; 1 Cowen, R. 144; 3 Conn. R. 502; Wright, R. 691; 2 Virg. Cas. 276; Hardin, R. 249; 4 Mass. R. 497; 14 John. R. 371 2 Virg. Cas. 594; 1 Tyler, R. 444; U. S. Dig. h. t.

COMMITTEE, practice. When a person has been found non compos, the law requires that a guardian should be appointed to take care of his person and estate; this guardian is called the committee.

2. It is usual to select the committee from the next of kin; Shelf. on Lun. 137; and in case of the lunacy of the husband or wife, the one who is of sound mind is entitled, unless under very special circumstances, to be the committee of the other. Id. 140. This is the committee of the person. For committee of the estate, the heir at law is most favored. Relations are referred to strangers, but the latter may be appointed. Id. 144.

3. It is the duty of the committee of the person, to take care of the lunatic; and the committee of the estate is bound to administer the estate faithfully, and to account for his administration. He cannot in general, make contracts in relation to the estate of the lunatic, or bind it, without a Special order of the court or authority that appointed him. Id. 179; 1 Bouv. Inst. n. 389−91.

COMMITTEE, legislation. One or more members of a legislative body to whom is specially referred some matter before that body, in order that they may investigate and examine into it and report to those who delegated this authority to them.

COMMITTITUR PIECE, Eng. law. An instrument in writing, on paper or parchment, which charges a person already in prison, in execution at the suit of, the person who arrested him.

COMMlXTION, civil law. This term is used to signify the act by which goods are mixed together.

2. The matters which are mixed are dry or liquid. In the commixtion of the former, the matter retains its substance and individuality; in the latter, the substances no longer remain distinct. The commixtion of liquids is called confusion, (q. v.) and that of solids, a mixture. Lec. Elem. du Dr. Rom. _370, 371; Story, Bailm. _40; 1 Bouv. Inst. n. 506.

COMMODATE, contracts. A term used in the Scotch law, which is synonymous to the Latin commodatum, or loan for use. Ersk. Inst. B. 3, t. 1, _20; 1 Bell's Com. 225; Ersk. Pr. Laws of Scotl. B. 3, t. 1, _9.

2. Judge Story regrets this term has not been adopted and naturalized, as mandate has been from mandatum. Story, Com. _221. Ayliffe, in his Pandects, has gone further, and terms the bailor the commodant, and the bailee the commodatory, thus avoiding those circumlocutions, which, in the common phraseology of our law, have become almost indispensable. Ayl. Pand. B. 4, t. 16, p. 517. Browne, in his Civil Law, vol. 1, 352, calls the property loaned "commodated property." See Borrower; Loan for use; Lender.

COMMODATUM. A contract, by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him, to be used by him, without reward; loan −for use. Vide Loan for use.

COMMON. or right of common, English law. An encorporeal hereditament, which consists in a profit which a man has in the lands of another. 12 S. & R. 32; 10 Wend. R. 647; 11 John. R. 498; 2 Bouv. Inst. 1640, et seq.

2. Common is of four sorts; of pasture, piscary, turbary and estovers. Finch's Law, 157; Co. Litt. 122; 2 Inst. 86; 2 Bl. Com. 32.

3. − 1. Common of pasture is a right of feeding one's beasts on another's land, and is either appendant, appurtenant, or in gross.

4. Common appendant is of common right, and it may be claimed in pleading as appendant, without laying a prescription. Hargr. note to 2 Inst. 122, a note.

5. Rights of common appurtenant to the claimant's land are altogether independent of the tenure, and do not arise from any absolute necessity; but may be annexed to lands in other lordships, or extended to other beasts besides. such as are generally commonable.

6. Common in gross, or at large, is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. All these species of pasturable common, may be and usually are limited to number and time; but there are also commons without stint, which last all the year. 2 Bl. Com. 34.

7. − 2. Common of piscary is the liberty of fishing in another man's water. lb. See Fishery.

8. − 3. Common of turbary is the liberty of digging turf in another man's ground. Ib.

9.−4. Common of estovers is the liberty of taking necessary wood−for the use or furniture of a house or farm from another man's estate. Ib.; 10 Wend. R. 639. See Estovers.

10. The right of common is little known in the United States, yet there are some regulations to be found in relation to this subject. The constitution of Illinois provides for the continuance of certain commons in that state. Const. art. 8, s. 8.

11. All unappropriated lands on the Chesapeake Bay, on the Shore of the sea, or of any river or creek, and the bed of any river or creek, in the eastern parts of the commonwealth, ungranted and used as common, it is declared by statute in Virginia, shall remain so, and not be subject to grant. 1 Virg. Rev. C. 142.

12. In most of the cities and towns in the United States, there are considerable tracts of land appropriated to public use. These commons were generally laid out with the cities or towns where they are found, either by the original proprietors or by the early inhabitants. Vide 2 Pick. Rep. 475; 12 S. & R. 32; 2 Dane's. Ab. 610; 14 Mass. R. 440; 6 Verm. 355. See, in general, Vin. Abr. Common; Bac. Abr. Common; Com. Dig. Common; Stark. Ev. part 4, p. 383; Cruise on Real Property, h. t.; Metc. & Perk. Dig. Common, and Common lands and General fields.

C0MMON APPENDANT, Eng. law. A right attached to arable land, and is an incident of tenure, and supposed to have originated by grant of the lord or owner of a manor or waste, in consideration of certain rents or services, or other value, to a freeholder or copyholder of plough land, and at the same time either expressly or by implication, and as of common right and necessity common appendant over his other wastes and commons. Co. Litt. 122 a; Willis, 222.

C0MMON APPURTENANT, Eng. law. A right granted by deed, by the owner of waste or other land, to another

person, owner of other land, to have his cattle, or a particular description of cattle; levant and couchant upon the land, at certain seasons of the year, or at all times of the year. An uninterrupted usage for twenty years, is evidence of a grant. 15 East, 116.

COMMON ASSURANCES. Title by deeds are so called, because, it is said, every man ' s estate is assured to him; these deed's or instruments operate either as conveyances or as charges.

2.− 1. Deeds of conveyance are, first, at common law, and include feoffments, gifts, grants, leases, exchanges, partition's, releases, confirmations, surrenders, assignments, and defeasances; secondly, deeds of conveyance under the statute of uses, as covenants to stand seised to uses, bargains and sale, lease and release, deeds to lead or declare uses, and deeds of appointment
and revocation.

3. − 2. Deeds which do not convoy, but only charge or discharge lands, are obligations, recognizances, and defeasances. Vide Assurance; Deed.

COMMON BAIL. The formal entry of fictitious sureties in the proper office of the court, which is called filing common bail to the action. See Bail.

COMMON BAR, pleading. A plea to compel the plaintiff to assign the particular place where the trespass has been Committed. Steph. Pl. 256. It i's sometime's called a blank bar. (q. v.)

COMMON BENCH, bancus communis. The court of common pleas was anciently called common bench, because the pleas and controversies there determined were between common persons. See Bench.

COMMON CARRIER, contracts. One who undertakes for hire or reward to transport the goods of any who may choose to employ him, from place to place. 1 Pick. 50, 53; 1 Salk. 249, 250; Story, Bailm. _495 1 Bouv. Inst. n. 1020.

2. Common carriers are generally of two descriptions, namely, carriers by land and carriers by water. Of the former description are the proprietors of stage coaches, stage wagons or expresses, which ply between different places, and' carry goods for hire; and truckmen, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one part of a town or city to another, are also considered as common carriers. Carriers by water are the masters and owners of ships and steamboats engaged in the transportation of goods for persons generally, for hire and lightermen, hoymen, barge−owners, ferrymen, canal boatmen, and others employed in like manner, are so considered.

3. By the common law, a common carrier is generally liable for all losses which may occur to property entrusted to his charge in the course of business, unless he can prove the loss happened in consequence of the act of God, or of the enemies of the United States, or by the act of the owner of the property. 8 S. & R. 533; 6 John. R. 160; 11 John. R. 107; 4 N. H. Rep. 304; Harp. R. 469; Peck. R. 270; 7 Yerg. R. 340; 3 Munf. R. 239; 1 Conn. R. 487; 1 Dev. & Bat. 273; 2 Bail. Rep. 157.

4. It was attempted to relax the rigor of the common law in relation to carriers by water, in 6 Cowen, 266; but that case seems to be at variance with other decisions. 2 Kent,. Com. 471, 472; 10 Johns. 1; 11 Johns. 107.

5. In respect to carriers by land, the rule of the common law seems every where admitted in its full rigor in the states governed by the jurisprudence of the common law. Louisiana follows the doctrine of the civil law in her code. Proprietors of stage coaches or wagons, whose employment is solely% to carry passengers, as hackney coachmen, are not deemed common carriers; but if the proprietors of such vehicles for passengers, also carry goods for hire, they are, in respect of such goods, to be deemed common carriers. Bac. Ab. Carriers, A; 2 Show. Rep. 128 1 Salk. 282 Com. Rep. 25; 1 Pick. 50 5 Rawle, 1 79. The like reasoning applies to packet ships and steam−boats, which ply between different ports, and are accustomed to carry merchandise as well as passengers. 2 Watts. R. 443; 5 Day's Rep. 415; 1 Conn. R. 54; 4 Greenl. R. 411; 5 Yerg. R. 427; 4 Har. & J. 291; 2 Verm. R. 92; 2 Binn. Rep. 74; 1 Bay, Rep. 99; 10 John. R. 1; 11 Pick. R. 41; 8 Stew. and Port. 135; 4 Stew. & Port. 382; 3 Misso. R. 264; 2 Nott. & M. 88. But see 6 Cowen, R. 266. The rule which makes a common carrier responsible for the loss of goods, does not extend to the carriage of persons; a carrier of slaves is, therefore, answerable only for want of care and skill. 2 Pet. S. C. R. 150. 4 M'Cord, R. 223; 4 Port. R. 238.

6. A common carrier of goods is in all cases entitled to demand the price of carriage before he receives the goods, and, if not paid, he may refuse to take charge of them; if, however, he take charge of them without the hire being paid, he may afterwards recover it. The compensation which becomes due for the carriage of goods by sea, is commonly called freight (q.v.); and see also, Abb. on Sh. part 3, c. 7. The carrier is also entitled to a lien on the goods for his hire, which, however, he may waive; but if once waived, the right cannot be resumed. 2 Kent, Com.

497. The consignor or shipper is commonly bound to the carrier for the hire or freight of goods. 1 T. R. 659. But whenever the consignee engages to pay it, he also becomes responsible. It is usual in bills of lading to state, that the goods are to be delivered to the consignee or to his assigns, he or they paying freight, in which case the consignee and his assigns, by accepting the goods, impliedly become bound to pay the freight, and the fact that the consignor is also liable to pay it, will not, in such case, make any difference. Abbott on Sh. part 3, o. 7, _4.

7. What is said above, relates to common carriers of goods. The duties, liabilities, and rights of carriers of passengers, are now to be considered. These are divided into carriers of passengers on land, and carriers of passengers on water.

8. First, of carriers of passengers on land. The duties of such carriers are, 1st. those which arise on the commencement of the journey. 1. To carry passengers whenever they offer themselves and are ready to pay for their transportation. They have no more right to refuse a passenger, if they have sufficient room and accommodation, than an innkeeper has to refuse a guest. 3 Brod. & Bing. 54; 9 Price's R. 408; 6 Moore, R. 141; 2 Chit. R. 1; 4 Esp. R. 460; 1 Bell's Com. 462; Story, Bailm. _591.

9. − 2. To provide coaches reasonably strong and sufficient for the journey, with suitable horses, trappings and equipments.

10. − 3. To provide careful drivers of reasonable skill and. good habits for the journey; and to employ horses which are steady and not vicious, or likely to endanger the safety of the passengers.

11. − 4. Not to overload the coach either with passengers or luggage.

12. − 5. To receive and take care of the usual luggage allowed to every passenger on the journey. 6 Hill, N. Y. Rep. 586.

13. − 2d. Their duties on the progress of the journey. 1. To stop at the usual places, and allow the..Usual intervals for the refreshment of the passengers. 5 Petersd. Ab. Carriers, p. 48, note.

14. − 2. To use all the ordinary precautions for the safety of passengers on the road.

15. − 3d. Their duties on the termination of the journey. 1. To carry the passengers to the end of the journey.

16. − 2. To put them down at the usual place of stopping, unless there has been a special contract to the contrary, and then to put them down at the place agreed upon. 1 Esp. R. 27. ,

17. The liabilities of such carriers. They are bound to use extraordinary care and diligence to carry safely those whom they take in their coaches. 2 Esp. R. 533; 2 Camp. R. 79; Peake's R. 80. But, not being insurers, they are not responsible for accidents, when all reasonable skill and diligence have been used.

18. The rights of such carriers. 1. To demand and receive their fare at the time the passenger takes his seat. 2. They have a lien on the baggage of the passenger for his fare or passage money, but not on the person of the passenger nor the clothes he has on. Abb. on Sh. part 3, c. 3, _11; 2 Campb. R. 631.

19. Second, carriers of passengers by water. By the act of Congress of 2d March, 1819, 3 Story's Laws U. S. 1722, it is enacted, 1. that no master of a vessel bound to or from the United States shall take more than two passengers for every five tons of the ship's custom−house measurement. 2. That the quantity of water and provisions, which shall be taken on board and secured under deck, by every Ship bound from the United States to any port on the continent of Europe, shall be sixty gallons of water, one hundred pounds of salted provisions, one gallon of vinegar, and one hundred pounds of wholesome ship bread for each passenger, besides the stores of the crew. The tonnage here mentioned, is the measurement of the custom−house; and in estimating the number of passengers in a vessel, no deduction is to be made for children or persons not paying, but the crew is not to be included. Gilp. R. 334.

20. The act of Congress of February 22, 1847, section 1, provides: " That if the master of any vessel, owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger for every twenty such clear superficial feet of deck, and on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or, place with the same, and bring the same, or any number thereof, within the jurisdiction of the United States aforesaid, or if any such master of a vessel shall take on board of his vessel at any port or place within the jurisdiction of the United States aforesaid,

any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel."

21. Children under one year of age not to be computed in counting the passengers, and those over one year and under eight, are to be counted as two cbildren for one passenger, Sect. 4. But this section is repealed so far as authorizes shippers to estimate two children of eight years of age and under as one passenger by the act of March 2, 1847, s. 2.

22. In New York, statutory regulations have been made in relation to their canal navigation. Vide 6 Cowen's R. 698. As to the conduct of carrier vessels on the ocean, Vide Story, Bailm. _607 et seq; Marsh. Ins. B. 1, c. 12, s. 2. And see, generally, 1 Vin. Ab. 219; Bac. Ab. h. t.; 1 Com. Dig. 423; Petersd. Ab. h. t.; Dane's Ab. Index, h. t.; 2 Kent, Com. 464; 16 East, 247, note; Bouv. Inst. Index, h. t.

23. In Louisiana carriers and watermen are subject, with respect to the safe−keeping and preservation of the tbings entrusted to them, to the same obligations and duties, as are imposed on tavern keepers; Civ. Code, art. 2722; that is, they are responsible for the effects which are brought, though they were not delivered into their personal care; provided, however, they were delivered to a servant or person in their employment; art. 2937. They are responsible if any of the effects be stolen or damaged, either by their servants or agents, or even by strangers; art. 2938; but they are not responsible for what is stolen b force of arms or with exterior breaking open of doors, or by any other extraordinary violence; art. 2939. For the authorities on the subject of Common carriers in the civil law, the reader is referred to Dig. 4, 9, 1 to 7; Poth. Pand. lib. 4, t. 9; Domat liv. 1, t. 16, S. 1 and 2; Pard. art. 537 to 555; Code Civil, art. 1782, 1786, 1952; Moreau & Carlton, Partidas 5, t. 8, 1. 26; Ersk. Inst. B. 2, t. 1, _28; 1 Bell's Com. 465; Abb. on Sh. part 3, c. 3, _3, note (1); 1 Voet, ad Pand. lib. 4, t. 9; Merl. Rep. mots Voiture, Voiturier; Dict. de Police, Voiture.

COMMON COUNCIL. In many cities the charter provides for their government, in imitation of the national and state governments. There are two branches of the legislative assembly; the less numerous, called the select, the other, the common council.

2. In English law, the common council of the whole realm means the parliament. Fleta, lib. 2, cap. 13.

COMMON COUNTS. Certain general counts, not founded on any special contract, which are introduced in a declaration, for the purpose of preventing a defeat of a just right by the accidental variance of the evidence. These are in an action of assumpsit; counts founded on express or implied promises to pay money in consideration of a precedent debt, and are of four descriptions: 1. The indebitatus assumpsit; 2. The quantum meruit; 3 . The quantum valebant; and, 4. The account stated.

COMMON FISHERY. A fishery to which all persons have a right, such as the cod fisheries off Newfoundland. A common fishery is different from a common of fishery, which is the right to fish in another's pond, pool, or river. See Fishery.

COMMON HIGHWAY. By this term is meant a road to be used by the community at large for any purpose of transit or traffic. Hamm. N. P. 239. See Highway.

C0MMON INFORMER. One who, without being specially required by law, or by virtue of his office, gives information of crimes, offences or misdemeanors, which have been committed, in order to prosecute the offenders; a prosecutor. Vide Informer; Prosecutor.

COMMON INTENT, construction. The natural sense given to words.

2. It is a rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail; it. is simply a rule of construction and not of addition common intent cannot add to a sentence words which have been omitted. 2 H. Black. 530. In pleading, certainty is required, but certainty to a common intent is sufficient; that is, what upon a reasonable construction may be called certain, without recurring to possible facts. Co. Litt. 203, a; Dougl. 163. See Certainty.

COMMON LAW. That which derives its force and authority from the universal consent and immemorial practice of the people. See Law, common.

COMMON NUISANCE. One which affects the public in general, and not merely some particular person. 1 Hawk. P. C. 197. See Nuisance.

COMMON PLEAS. The name of a court having jurisdiction generally of civil actions. For a historical account of the origin of this court in England, see Boote's Suit at Law, 1 to 10. Vide Common Bench and Bench.

2. By common pleas, is also understood, such pleas or actions as are brought by private persons against private persons; or by the government, when the cause of action is of a civil nature. In England, whence we derived this phrase, common pleas are so called to distinguish them from pleas of the crown. (q. v.)

COMMON RECOVERY. A judgment recovered in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in the suit., A common recovery is a kind of conveyance. 2 Bouv. Inst. n. 2088, 2092−3. Vide Recovery.

C0MMON SCOLD, Crim. law, communes rixatrix. A woman, who, in consequence of her boisterous, disorderly and quarrelsome tongue, is a public nuisance to the neighborhood.

2. Such a woman may be indicted, and on conviction, punished. At common law, the punishment was by being placed in a certain engine of correction called the trebucket or cocking stool.

3. This punisbment has been abolished in Pennsylvania, where the offence may be punished by fine and imprisonment. 12 Serg. & Rawle, 220; vide 1 Russ. on Cr. 802 Hawk. B. 2, c. 25, s. 59 1 T. R. 756 4 Rogers' Rec. 90; Roscoe on Cr. Ev. 665.

COMMON SEAL, A seal used by a corporation. See Corporation.

C0MMON SENSE , med. jur. When a person possesses those perceptions, associations and judgments, in relation to persons and things, which agree with those of the generality of mankind, he is said to possess common sense. On the contrary, when a particular individual differs from the generality of persons in these respects, he is said not to have common sense, or not to be in his senses. 1 Chit. Med. Jur. 334.

COMMON, TENANTS IN. Tenants in common are such as hold an estate, real or personal, by several distinct titles, but by a unity of possession. Vide Tenant in common; Estate in common.

COMMON TRAVERSE. This kind of traverse differs from those called technical traverses principally in this, that it is preceded by no inducement general or special; it is taken without an absque hoc, or any similar words, and is simply a direct denial of the adverse allegations, in common language, and always concludes to the country. It can be used properly only when an inducement is not requisite; that is, when the party traversing has no need to allege any new matter. 1 Saund. 103 b. ii. 1.

2. This traverse derives its name, it is presumed, from the fact that common language is used, and that it is more informal than other traverses.

COMMON VOUCHEE. In common recoveries, the person who vouched to warranty. In this fictitious proceeding, the crier of the court usually performs the office of a common vouchee. 2 Bl. Com. 358; 2 Bouv. Inst. n. 2093.

COMMONALTY, Eng. law. This word signifies, 1st. the common people of England, as contradistinguished from the king and the nobles; 2d. the body of a society as the masters, wardens, and commonalty of such a society.

COMMONER. One who is entitled with others to the use of a common.

COMMONS, Eng. law. Those subjects of the English nation who are not noblemen. They are represented in parliament in the house of commons.

COMMONWEALTH, government. A commonwealth is properly a free state, or republic, having a popular or representative government. The term has been, applied to the government of Great Britain. It is not applicable to absolute governments. The states composing the United States are, properly, so many commonwealths.

2. It is a settled principle, that no sovereign power is amenable to answer suits, either in its own courts or in those of a foreign country, unless by its own consent. 4 Yeates, 494.

COMMORANCY, persons. An abiding dwelling, or continuing as an inhabitant in any place. It consists, properly, in sleeping usually in one place.,

COMMORANT. One residing or inhabiting a particular place. Barnes, 162.

COMMORIENTES. This Latin word signifies those wbo die at the same time, as, for example, by shipwreck.

2. When several persons die by the same accident, and there is no evidence as to who survived, the presumption of law is, they all died at the same time. 2 Phillim. R. 261 Fearne on Rem. iv.; 5 B. & Adol. 91; Cro. Eliz. 503; Bac. Ab. Execution, D; 1 Mer. R. 308. See Death; Survivor.

COMMUNICATION, contracts. Information; consultation; conference.

2. In order to make a contract, it is essential there should be an agreement; a bare communication or conference

will not, therefore, amount to a contract; nor can evidence of such communication be received in order to take from, contradict, or alter a written agreement. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609. Vide Pour−parler; Wbarton's Dig. Evid. R.

COMMUNINGS, Scotch law. This term is used to express the negotiations which have taken place before making a contract, in relation thereto. See Pourparler.

2. It is a general rule, that such communings or conversations, and the propositions then made, are no part of the contract for no parol evidence will be allowed to be given to contradict, alter, or vary a written instrument. 1 Serg. & R. 464 Id. 27; Add. R. 361; 2 Dall. R. 172 1 Binn. 616; 1 Yeates, R. 140; 12 John. R. 77; 20 John. R. 49; 3 Conn. R. 9; 11 Mass. R. 30; 13 Mass. R. 443; 1 Bibb's R. 271; 4 Bibb's R. 473; 3 Marsh. (Kty.) R. 333; Bunb. 175; 1 M. & S. 21; 1 Esp. C. 58; 3 Campb. R. 57.

COMMUNIO BONORUM, civil law. Common goods.

2. When a person has the management of common property, owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi−contract which is created by his act, called communio bonorum. Vicat; 1 Bouv. Inst. n. 907, note.

COMMUNITY. This word has several meanings; when used in common parlance it signifies the body of the people.

2. In the civil law, by community is understood corporations, or bodies politic. Dig. 3, 4.

3. In the French law, which has been adopted in this respect in Louisiana, Civ. Code, art. 2371, community is a species of partnership, which a man and woman contract when they are lawfully married to each other. It consists of the profits of all, the effects of which the husband has the administration and enjoyment, either of right or in fact; of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them, or by purchase, or in any other similar way, even although the purchase he made in the name of one of the two, and not of both; because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. 10 L. R. 146; Id. 172, 181; 1 N. S. 325; 4 N. S. 212. The debts contracted during the marriage enter into the community, and must be acquitted out of the common fund; but not the debts contracted before the marriage.

4. The community is either, first, conventional, or that which is formed by an express agreement in the contract of marriage itself; by this contract the legal community may be modified, as to the proportions which each shall take, or as to the things which shall compose it; Civ. Code of L. art. 2393; second, legal, which takes place when the parties make no agreement on this subject in the contract of marriage; when it is regulated by the law of the domicil they had at the time of marriage.

5. The effects which compose the community of gains, are divided *into two equal portions between the heirs, at the dissolution of the marriage. Civ. Code of L. art. 2375. See Poth. h. t.; Toull. h. t.; Civ. Code of Lo. tit. 6, c. 2, s. 4.

6. In another sense, community is the right which all men have, according to the laws of nature, to use all things. Wolff, Inst. _186.

COMMUTATION, punishments. The change of a punishment to which a person has been condemned into a less severe one. This can be granted only by the executive authority in which the pardoning power resides.

COMMUTATIVE CONTRACT, civil law. One in which each of the contracting parties gives and, receives an equivalent. The contract of sale is of this kind. The seller gives the thing sold, and receives the price, which is the equivalent. The buyer gives the price and receives the thing sold, which is the equivalent.

2. These contracts are usually distributed into four classes, namely; Do ut des; Facio ut facias; Facio ut des; Do ut facias. Poth. Obl. n. 13. See' Civ. Code of Lo. art. 1761.

COMMUTATIVE JUSTICE. That virtue whose object is, to render to every one what belongs to him, as nearly as may be, or that which governs contracts.

2. The word commutative is derived from commutare, which signifies to exchange. Lepage, El. du Dr. ch. 1, art. 3, _3. See Justice.

TO COMMUTE. To substitute one punishment in the place of another. For example, if a man be sentenced to be hung, the executive may, in some states, commute his punishment to that of imprisonment.

COMPACT, contracts. In its more general sense, it signifies an agreement. In its strict sense, it imports a contract between parties, which creates obligations and rights capable of being enforeed, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2,

c. 6, _1. 2. The constitution of the United States declares that " no state shall, without the consent of congress, enter into agreement or compact with another state, or with a foreign power." See 11 Pet: 1; 8 Wheat. 1 Bald. R. 60; 11 Pet. 185.

COMPANION, dom. rel. By 5 Edw. III., st. 5, c. 2, _1, it is declared to be high treason in any one who " doth compass or imagine the death of our lord the king, or our lady his companion," &c. See 2 Inst. 8, 9; 1 H. H. P. C. 124.

COMPANIONS, French law. This is a general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Contr. n. 163.

COMPANY. An association of a number of individuals for the purpose of carrying on some legitimate business.

2. This term is not synonymous with partnership, though every such unincorporated compass is a partnership.

3. Usage has reserved this term to associations whose members are in greater number, their capital more considerable, and their enterprizes greater, either on account of their risk or importance.

4. When these companies are authorized by the government, they are known by the name of corporations. (q. v.)

5. Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm; as, A.B & Company. Vide, 12 Toull. n, 97; Mortimer on Commerce, 128. Vide Club; Corporation; Firm; Parties to actions; Partnership.

COMPARISON OF HANDWRITING, evidence. It is a general rule that comparison of hands is not admissible; but to this there are some exceptions. In some instances, when the antiquity of the writing makes it impossible for any living witness to swear that he ever saw the party write, comparison of handwriting, with documents known to be in his handwriting, has been admitted. For the general principle, see Skin. 579, 639; 6 Mod. 167; 1 Lord Ray. 39, 40; Holt. 291; 4 T. R. 497; 1 Esp. N. P. C. 14, 351; Peake's Evid. 69; 7 East, R. 282; B. N. P. 236; Anthon's N. P. 98, n.; 8 Price, 653; 11 Mass. R. 309 2 Greenl. R. 33 2 Johns. Cas. 211 1 Esp. 351; 1 Root, 307; Swift's Ev. 29; 1 Whart. Dig 245; 5 Binn. R. 349; Addison's R. 33; 2 M'Cord, 518; 1 Tyler, R. 4 6 Whart. R. 284; 3 Bouv. Inst. n. 3129−30. Vide Diploma.

TO COMPASS. To imagine; to contrive.

2. In England, to compass the death of the king is high treason. Bract. 1. 3, c. 2 Britt. c. 8; Mirror, c. 1, s. 4.

COMPATIBILITY. In speaking of public offices it is meant by this term to convey the idea that two of them may be held by the same person at the same time. It is the opposite of incompatibility. (q. v.)

COMPENSATIO CRIMINIS. The compensation or set−off of one crime against another; for example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offence, and having himself violated the contract, he cannot complain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. 1 Ought. Ord. per tit. 214; 1 Hagg. Consist. R. 144; 1 Hagg. Eccl. R. 714; 2 Paige, 108; 2 Dev. & Batt. 64. See Condonation.

COMPENSATION, chancery practice. The performance of tbat which a court of chancery orders to be done on relieving a party who has broken a condition, which is to place the opposite party in no worse situation than if the condition had not been broken.

2. Courts of equity will not relieve from the consequences of a broken condition, unless compensation can be made to the opposite party. Fonb. c. 6; s. 51 n. (k) Newl. Contr: 251, et. seq.

3. When a simple mistake, not a fraud, affects a contract, but does not change its essence, a court of equity will enforce it, upon making compensation for the error, The principle upon wbich courts of equity act," says Lord Chancellor Eldon, "is by all the authorities brought to the true standard, that though the party had not a title at law, because he had not strictly complied with the terms so as to entitle him to an action, (as to time for instance,) yet if the time, though introduced, as some time must be fixed, where something is to be done on one side, as a consideration for something to be done on the other, is not the essence of the contract; a material object, to which they looked in the first conception of it, even though the lapse of time has not arisen from accident, a court of equity will compel the execution of the contract upon this ground, that one party is ready to perform, and that the other ma, have performance in substance if he will permit it." 13 Ves. 287. See 10 Ves. 505; 13 Ves. 73, 81, 426; 6 Ves. 675; 1 Cox, 59.

C0MPENSATION, contracts. A reward for services rendered.

COMPENSATION, contracts, civil law. When two persons are equally indebted to each other, there takes place a compensation between them, which extinguishes both debts. Compensation is, therefore, a reciprocal liberation

between two persons who are creditors and debtors to each other, which liberation takes place instead of payment, and prevents a circuity. Or it may be more briefly defined as follows; compensatio est debiti et crediti intter se contributio.

2. Compeasation takes places, of course, by the more operation of law, even unknown to the debtors the two debts are reciprocally extinguished, as soon as they exist simultaneously, to the, amount of their respective sums. Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. Compensation takes place, whatever be the cause of either of the debts, except in case, 1st. of a demand of restitution of a tbing of which the owner has been unjustly deprived; 2d. of a demand of restitution of a deposit and a loan for use; 3d. of a debt which has for its cause, aliments declared not liable to seizure. Civil Code of. Louis. 2203 to 2208. Compensation is of three kinds: 1. legal or by operation of law; 2. compensation by way of exception; and, 3. by reconvention. 8 L. R. 158; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t' 6, s. 30; Poth. Obl. partie. 3eme, ch. 4eme, n. 623; Burge on Sur., Book 2, c. 6, p. 181.

3. Compensation very nearly resembles the set−off (q. v.) of the common law. The principal difference is this, that a set−off, to have any effect, must be pleaded; whereas compensation is effectual without any such plea, only the balance is a debt. .2 Bouv. Inst. n. 1407.

COMPENSATION, crim. law; Compeusatio crimiuura, or recrimination (q. v.)

2. In cases of suits for divorce on the ground of adultery, a compensation of the crime hinders its being granted; that is, if the defendant proves that the party has also committed adultery, the defendant is absolved as to the matters charged in the libel of the plaintiff. Ought. tit. 214, Pl. 1; Clarke's Prax. tit. 115; Shelf. on Mar. & Div. 439; 1 Hagg. Cons. R. 148. See Condonation; Divorce.

C0MPENSATION, remedies. The damages recovered for an injury, or the violation of a contract.. See Damages.

COMPERUIT AD DIEM, pleading. He appeared at the day. This is the name of a plea in bar to an action of debt on a bail−bond. The usual replication to this plea is nul tiel record: that there is not any such record of appearance of the said. For forms of this plea, vide 5 Wentw. 470; Lil. Entr. 114; 2 Chit. Pl. 527.

2. When the issue is joined on this plea, the trial is by the record. Vide 1 Taunt. 23; Tidd, 239. And see, generally, Com. Dig. Pleader, 2 W. 31; 7 B. & C. 478.

COMPETENCY, evidence. The legal fitness or ability of a witness to be heard on the trial of a cause. This term is also applied to written or other evidence which may be legally given on such trial, as, depositions, letters, account−books, and the like.

2. Prima facie every person offered is a competent witness, and must be received, unless Lis incompetency (q. v.) appears. 9 State Tr. 652.

3. There is a difference between competency and credibility. A witness may be competent, and, on examination, his story may be so contradictory and improbable that he may not be believed; on the contrary he may be incompetent, and yet be perfectly credible if he were examined.

4. The court are the sole judges of the competency of a witness, and may, for the purpose of deciding whether the witness is or is not competent, ascertain all the facts necessary to form a judgment. Vide 8 Watts, R. 227; and articles Credibility; Incompetency; Interest; Witness.

5. In the French law, by competency is understood the right in a court to exercise jurisdiction in a particular case; as, where the, law gives jurisdiction to the court when a thousand francs shall be in dispute, the court is competent if, the sum demanded is a thousand francs or upwards, although the plaintiff may ultimately recover less.

COMPETENT WITNESS. One who is legally qualified to be heard to testify in a cause. In Kentucky, Michigan, and Missouri, a will must be attested, for the purpose of passing lands, by competent witnesses; but if wbolly written by the testator, in Kentucky, it need not be so attested. See Attesting witness; Credible witness; Disinterested witness; Respectable witness; and Witness.

COMPETITORS, French law. Persons who compete or aspire to the same office, rank or employment. As an English word in common use, it has a much wider application. Ferriere, Dict. de Dr. h. t.

COMPILATION. A literary production, composed of the works of others, and arranged in some methodical manner.

2. When a compilation requires in its execution taste, learning, discrimination and intellectual labor, it 'is an object of copyright; as, for example, Bacon's Abridgment. Curt. on Copyr. 186.

COMPLAINANT. One who makes a complaint. A plaintiff in a suit in chancery is so called.

COMPLAINT, crim. law. The allegation made to a proper officer, that some person, whether known or unknown, has been guilty of a designated offence, with an offer to prove the fact, and a request that the offender may be punished.

2. To have a legal effect, the complaint must be supported by such evidence as shows that an offence has been committed, and renders it certain or probable that it was committed by the person named or described in the complaint.

COMPOS MENTIS. Of sound mind. See non compos mentis.

COMPOSITION, contracts. An agreement, made upon a sufficient consideration, between a debtor and creditor, by which the creditor accepts part of the debt due to him in satisfaction of the whole. Montagu on Compos. 1; 3 Co. 118; Co. Litt. 212, b; 4 Mod. 88; 1 Str. 426; 2 T. R. 24, 26; 2 Chit. R. 541, 564; 5 D. & R. 56 3 B. & C. 242; 1 R. & M. 188; 1 B. & A. 103, 440; 3 Moore's R. 11; 6 T. R. 263; 1 D. & R. 493; 2 Campb. R. 283; 2 M. & S. 120; 1 N. R. 124; Harr. Dig. Deed VIII.

2. In England, compositions were formerly allowed for crimes and misdemeanors, even for murder. But these compositions are no longer allowed, and even a qui tam action cannot be lawfully compounded. Bac. Ab. Actions qui tam, See 2 John. 405; 9 John. 251; 10 John. 118; 11 John. 474; 6 N. H.−Rep. 200.

COMPOSITION OF MATTER. In describing the subjects of patents, the Act of Congress of July 4, 1836, sect. 6, uses the words "composition of matter;" these words are usually applied to mixtures and chemical compositions, and in these cases it is enough that the compound is new. Both the composition and the mode of compounding may be considered as included in the invention, when the compound is new.

COMPOUND INTEREST. Interest allowed upon interest; for example, when a sum of money due for interest, is added to the principal, and then bears interest. This is not, in general, allowed. See Interest for money.

COMPOUNDER, in Louisiana. He who makes a composition. An amicable compounder is one who has undertaken by the agreement of the parties to compound or settle differences. between them. Code of Pract. of Lo. art. 444.

COMPOUNDING A FELONY, The act of a party immediately aggrieved, who agrees with a thief or other felon that he will not prosecute him, on condition that he return to him the goods stolen, or who takes a reward not to prosecute. This is an offence punishable by fine and imprisonment. The mere retaking by the owner of stolen goods is no offence, unless the offender is not to be prosecuted. Hale, P. C. 546 1 Chit. Cr. Law, 4.

COMPROMISE, contracts. An agreement between two or more persons, who, to avoid a lawsuit, amicably settle their differences, on such terms as they can agree upon. Vide Com. Dig. App. tit. Compromise.

2. It will be proper to consider, 1. by whom the compromise must be made; 2. its form; 3. the subject of the compromise; 4. its effects.

3. It must be made by a person having a right and capacity to enter into the contract, and carry out his part of it, or by one having lawful authority from such person.

4. The compromise may be by parol or in writing, and the writing may be under seal or not: though as a general rule a partner cannot bind his copartner by deed, unless expressly authorized, yet it would seem that a compromise with the principal is an act which a partner may do in behalf of his copartners, and that, though under seal, it would conclude the firm. 2 Swanst. 539.

5. The compromise may relate to a civil claim, either as a matter of contract, or for a tort, but it must be of something uncertain; for if the debt be certain and undisputed, a payment of a part will not, of itself, discharge the whole. A claim connected with a criminal charge cannot be compromised. 1 Chit. Pr. 17. See Nev. & Man. 275.

6. The compromise puts an end to the suit, if it be proceeding, and bars any Suit which may afterwards be instituted. It has the effect of res judicata. 1 Bouv. Inst. n. 798−9.

7. In the civil law, a compromise is an agreement between two or more persons, who, wishing to settle their disputes, refer the matter, in controversy to arbitrators, who are so called because those who choose them give them full powers to arbitrate and decide what shall appear just and reasonable, to put an end −to the differences of which they are made the judges. 1 Domat, Lois Civ. lib. h. t. 14. Vide Submission; Ch. Pr. Index, h. t.

COMPROMISSARIUS, civil law. A name sometimes given to an arbitrator; because the parties to the submission usually agree to fulfil his award as a compromise.

COMPTROLLERS. There are officers who bear this name, in the treasury depart ment of the United States.

2. There are two comptrollers. It is the duty of the first to examine all accounts settled by the first and fifth auditors, and certify the balances arising thereon to the register; to countersign all warrants drawn by the

secretary.of the treasury, other than those drawn on the requisitions of the sec retaries of the war and navy departments, which shall be warranted by law; to report to the secretary the official forms to be issued in the different offices for collecting the public revenues, and the manner and form of stating the accounts of the several persons employed therein; and to superintend the preservation of the public accounts, subject to his revision; and to provide for the payment of all moneys which may be collected. Act of March 3, 1817, sect. 8; Act of Sept. 2, 1789, s. 2 Act of March 7, 1822 .

3. To superintend the recovery of all debts due to the United States; to direct suits and legal proceedings, and to take such measures as may be authorized by the laws, to enforce prompt payment of all such debt; Act of March 3, 1817, sect. 10; Act of Sept. 2, 1789, s. 2; to lay before congress annually, during the first week of their session, a list of such officers as shall have failed in that year to make the settlement required by law; and a statement of the accounts in the treasury, war, and navy departments, which may have remained more than three years unsettled, or on which balauces appear to have been due more than three years prior to the thirteenth day of September, then last past; together with a statement of the causes which have prevented a settlement of the accounts, or the recovery of the balances due to the United States. Act of March 3, 1809, sect. 2.

4. Besides these, this officer is required to perform minor duties, which the plan of this work forbids to be enumerated here.

5. His salary is three thousand five hundred dollars per annum. Act of Feb. 20, 1804, s. 1.

6. The duties of the second comptroller are to examine all accounts settled by the second, third and fourth auditors, and certify the balances arising −thereon to the secretary of the department in which the expenditure has been incurred; to counter−sign all the warrants drawn by the secretary of the treasury upon the requisition of the secretaries of the war and navy departments, which shall be warranted by law; to report to the said secretaries the official forms to be issued in the different offices for disbursing public money in those departments, and the manner and form of keeping and stating the accounts of the persons employed therein, and to superintend the preservation of public accounts subject to his revision. His salary is three thousand dollars per annum. Act of March 3, 1817, s. 9 and 15; Act of May 7, 1822.

7. A similar officer exists in several of the states, whose official title is comptroller of the public accounts, auditor general, or other title descriptive of the duties of the office.

COMPULSION. The forcible inducement to au act.

2. Compulsion may be lawful or unlawful. 1. When a man is compelled by lawful authority to do that which be ought to do, that compulsion does not affect the validity of theact; as for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. 2. But if the court compelled a party to do an act forbidden by law, or not having jurisdiction over the parties or the subject−matter, the act done by such compulsion would be void. Bowy. Mod. C. L. 305.

3. Compulsion is never presumed. Coercion. (q. v.)

COMPURGATOR. Formerly, when a person was accused of a crime, or sued in a civil action, he might purge himself upon oath of the accusation made against him, whenever the proof was not the most clear and positive; and if upon his oath he declared himself innocent, he was absolved.

2. This usage, so eminently calculated to encourage perjury by impunity, was soon found to be dangerous to the public safety. To remove this evil the laws were changed, by requiring that the oath should be administered with the greatest solemnity; but the form was soon disregarded, for the mind became. easily familiarized to those ceremonies which at first imposed on the imagination, and those who cared not to violate the truth did not hesitate to treat the form with contempt. In order to give a greater weight to the oath of the accused, the law was again altered so as to require that the accused should appear before the judge with a certain number of his neighbors, relations or friends, who should swear that they believed the accused had sworn truly. This new species of witnesses were called compurgators.

3. The number of compurgators varied according to the nature of the charge and other circumstances. Encyclopedie, h. t.. Vide Du Cange, Gloss. voc. Juramentum; Spelman’s Gloss. voc. Assarth; Merl. Rep. mot Conjurateurs.

4. By the English law, when a party was sued in debt or simple contract, detinue, and perhaps some other forms of action, the defendant might wage his law, by producing eleven compurgators who would swear they believed him on his oath, by which he discharged himself from the action in certain cases. Vide 3 Bl. Com. 341−848; Barr.

on the Stat. 344; 2 Inst. 25; Terms de la Ley; Mansel on Demurrer, 130, 131 Wager of Law.

COMPUTATION counting, calculation. It is a reckoning or ascertaining the number of any thing.

2. It is sometimes used in the common law for the true reckoning or account of time. Time is computed in two ways; first, naturally, counting years, days and hours; and secondly, civilly, that is, that when the last part of the time has once commenced, it is considered as accomplished. Savig. Dr. Rom. _182. See Infant; Fraction. For the computation of a year, see Com. Dig. Ann; of a mouth, Com. Dig. Temps. A; 1 John. Cas. 100 15 John. R. 120; 2 Mass. 170, n.; 4 Mass. 460; 4 Dall. 144; 3 S. & R. 169; of a day, vide Day.; and 3, Burr 1434; 11 Mass. 204; 2 Browne, 18; Dig. 3, 4, 5; Salk. 625; 3 Wils. 274.

3. It is a general rule that when an act is to be done within a certain time, one day is to be taken inclusively, and one exclusively. Vide Lofft, 276; Dougl. 463; 2 Chit. Pr. 69; 3 Id. 108, 9; 3 T. R. 623; 2 Campb. R. 294; 4 Man. and Ryl. 300, n. (b) 5 Bingh. R. 339; S. C. 15, E. C. L. R. 462; 3 East, R. 407; Hob. 139; 4 Moore, R. 465; Har. Dig. Time, computation of; 3 T. R. 623; 5 T. R. 283; 2 Marsh. R. 41; 22 E. C. L. R. 270; 13 , E, C. L. R. 238; 24 E. C. L. R. 53; 4 Wasb. C. C. R. 232; 1 Ma−son, 176; 1 Pet. 60; 4 Pet. 349; 9 Cranch, 104; 9 Wheat. 581. Vide Day; Hour; Month; Year.

CONCEALMENT, contracts. The unlawful suppression of any fact or circumstance, by one of the partis to a contract, from the other, which in justice ought to be made known. 1 Bro. Ch. R. 420; 1 Fonbl. Eq. B. 1, c. 3, _4, note (n); 1 Story, Eq. Jur. _207.

2. Fraud occurs when one person substantially misrepresents or conceals a material fact peculiarly within his own knowledge, in consequence of which a delusion exists; or uses a device naturally calculated to lull the suspicions of a careful man, and induce him to forego inquiry into a matter upon which the other party has information, although such information be not exclusively within his reach. 2 Bl. Com. 451; 3 Id. 166; Sugd. Vend. 1 to 10; 1 Com. Contr. 38; 3 B. & C. 623; 5 D. & R. 490; 2 Wheat. 183; 11 Id. 59; 1 Pet. Sup. C. R. 15, 16. The party is not bound, however, to disclose patent defects. Sugd. Vend. 2.

3. A distinction has been made between the concealment of latent defects in real and personal property. For example, the concealment by an agent that a nuisance existed in connexion with a house the owner had to hire, did not render the lease void. 6 IV. & M. 358. 1 Smith, 400. The rule with regard to personalty is different. 3 Camp. 508; 3 T. R. 759.

4. In insurances, where fairness is so essential to, the contract, a concealment which is only the effect of accident, negligence, inadvertence, or mistake, if material, is equally fatal to the contract as if it were intentional and fraudulent. 1 Bl. R. 594; 3 Burr. 1909. The insured is required to disclose all the circumstances within his own knowledge only, which increase the risk. He is not, however, bound to disclose general circumstances which apply to all policies of a particular description, notwithstanding they may greatly increase the risk. Under this rule, it has been decided that a policy is void, which was obtaineed by the concealment by the assured of the fact that he had heard that a vessel like his was taken. 2 P. Wms. 170. And in a case where the assured had information of "a violent storm" about eleven hours after his vessel had sailed, and had stated only that "there had been blowing weather and severe storms on the coast after the vessel had sailed" but without any reference to the particular storm it was decided that this was a concealment, which vitiated the policy. 2 Caines R. 57. Vide 1 Marsh. Ins: 468; Park, Ins. 276; 14 East, R. 494; 1 John. R. 522; 2 Cowen, 56; 1 Caines, 276; 3 Wash. C. C. Rep. 138; 2 Gallis. 353; 12 John. 128.

5. Fraudulent concealment avoids the contract. See, generally, Verpl. on Contr. passim; Bouv. Inst. Index, h. t.; Marsh. Ins. B. 1, c. 9; 1 Bell's Com. B. 2, pt. 3, c. 15 s. 3, _1; 1 M. & S. 517; 2 Marsh. R. 336.

CONCESSI, conveyancing. This is a Latin word, signifying, I have granted. It was frequently used when deeds and other conveyances were written in Latin.. It is a word of general extent, and is said to amount to a grant, feoffment, lease, release, and the like. 2 Saund. 96; Co. Lift. 301, 302; Dane's Ab. Index, h. t.; 5 Whart. R. 278.

2 It has been held that this word in a feoffment or fine implies no −warranty. Co. Lit. 384 Noke's Case, 4 Rep. 80; Vaughan's Argument in Hayes v. Bickoxsteth, Vaughan, 126; Butler"s Note, Co. Lit. 3 84. But see 1 Freem. 339, 414.

CONCESSION. A grant. This word is frequently used in this sense when applied to grants made by the French and Spanish governments in Louisiana.

CONCESSIMUS. A Latin word, which signifies, we have granted. This word creates a covenant in law, for the breach of which the grantors may be jointly sued. It imports no warranty of a freehold, but as in case of a lease for years. Spencer's Case, 5 Co. Rep. 16 Brown v. Heywood, 3 Keble, Rep. 617 Bac. Ab. Covenant, B. See Bac. Ab.

officers, &c. E.

CONCESSOR. A grantor; one who makes a concession to another.

CONCILIUM. A day allowed to a defendant to make his defence; an imparlance, 4 Bl. Com. 356, n.; 3 T. R. 530.

CONCILIUM REGIS. The name of a tribunal which existed in England during the times of Edward I. and Edward H., composed of the judges and sages of the law. To them were referred cases of great difficulty. Co. Litt. 804.

CONCLAVE. An assembly of cardinals for the purpose of electing a pope; the place where the assembly is held is also called a conclave. It derives this name from the fact that all the windows and doors are looked, with the exception of a single panel, which admits a gloomy light.

CONCLUSION, practice. Making the last argument or address to the court or jury. The party on whom the onus probandi is cast, in general has the conclusion.

CONCLUSION, remedies. An estoppel; a bar; the act of a man by which he has confessed a matter or thing which he can no longer deny; as, for example, the sheriff is concluded by his return to a writ, and therefore, if upon a capias he return cepi corpus, he cannot afterwards show that he did not arrest the defendant, but is concluded by his return. Vide Plowd. 276, b; 3 Tho. Co. Litt. 600.

CONCLUSION TO THE COUNTRY, pleading. The tender of. an issue to be tried by a jury is called the conclusion to the country.

2. This conclusion is in the following words, when the issue is tendered by the defendant: " And of this the said C D puts himself upon the country." When it is tendered by the plaintiff, the formula is as follows: " And this the said A B prays may be inquired of by the country." It held, however, that there is no material difference between these two modes of expression, and that, if ponit se, be substituted for petit quod inquiratur, or vice versa, the mistake is unimportant. 10 Mod. 166.

3. When there is an affirmative on one side, and a negative on the other, or vice versa, the conclusion should be to the country. T. Raym. 98; Carth. 87; 2 Saund. 189; 2 Burr. 1022. So it is, though the affirmative and negative be not in express words, but only tantamount thereto. Co. Litt. 126, a; Yelv. 137; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. Pleader, E 32.

CONCLUSIVE. What puts an end to a thing. A conclusive presumption of law, is one which cannot be contradicted even by direct and positive proof. Take, for example, the presumption that an infant is incapable of judging whether it is or is not against his interest; When infancy is pleaded and proved, the plaintiff cannot show that the defendant was within one day of being of age when the contract was made, and perfectly competent to make a contract. 3 Bouv. Inst. n. 3061.

CONCLUSIVE EVIDENCE. That which cannot be contradicted by any other evidence,; for example, a record, unless impeached for fraud, is conclusive evidence between the parties. 3 Bouv. Inst. n. 3061−62.

CONCLUSUM, intern. law. The form of an acceptance or conclusion of a treaty; as, the treaty was ratified purely and simply by a conclusum. It is the name of a decree of the Germanic diet, or of the aulic council.

CONCORD, estates, conveyances, practice. An agreement or supposed agreement between the parties in levying a fine of lands, in which the deforciant (or he who keeps the other out of possession,) acknowledges that the lands in question, are the right of the complainant;. and from the acknowledgment or recognition of right thus made, the party who levies the fine is called the cognisor, and the person to whom it is levied, the cognisee. 2 Bl. Com. 350; Cruise, Dig. tit. 35, c. 2, s. 33; Com. Dig. Fine, E 9.

CONCORDATE. A convention; a pact; an agreement. The term is generally confined to the agreements made between independent government’s; and, most usually applied to those between the pope and some prince.

CONCUBINAGE. This term has two different significations; sometimes it means a species of marriage which took place among the ancients, and which is yet in use in some countries. In this country it means the act or practice of cobabiting as man and woman, in sexual commerce, without the authority of law, or a legal marriage. Vide 1 Bro. Civ. Law, 80; Merl. Rep. b. t.; Dig. 32, 49, 4; Id. 7, 1, 1; Code, 5, 27, 12.

CONCUBINE. A woman who cohabits with a man as his wife, without being married.

TO CONCUR. In Louisiana, to concur, signifies, to claim a part, of the estate of an insolvent along with other claimants; 6 N. S. 460; as " the wife concurs with her husband’s creditors, and claims a privilege over them."

CONCURRENCE, French law. The equality of rights, or privilege which several persons−have over the same thing; as, for example, the right which two judgment creditors, Whose judgments were rendered at the same time,

have to be paid out of the proceeds of real estate bound by them. Dict. de Jur. h. t.

CONCURRENT. Running together; having the same authority; thus we say a concurrent consideration occurs in the case of mutual promises; such and such a court have concurrent jurisdiction; that is, each has the same jurisdiction.

CONCUSSION, civ. law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery in this, that in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Hein. Lec. El, _1071

CONDEDIT, eccl. law. The name of a plea, entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Eccl. Rep. 438; 6 Eng. Eccl. Rep. 431.

CONDELEGATES. Advocates who have been appointed judges of the bigh court of delegates are so called. Shelf. on Lun. 310.

CONDEMNATION, mar. law. The sentence or judgment of a court of competent jurisdiction that a ship or vessel taken as a prize on the high seas, was liable to capture, and was properly and legally captured.

2. By the general practice of the law of nations, a sentence of condemnation is, at present, generally deemed necessary in order to divest the title of a vessel taken as a prize. Until this has been done the original owner may regain his property, although the ship may have been in possession of the enemy twenty−four hours, or carried infra praesidia. 1 Rob. Rep. 134; 3 Rob. Rep. 97, n.; Carth. 423; Chit. Law of Nat. 99, 100; 10 Mod. 79; Abb. on Sh. 14; Wesk. on Ins. h. t.; Marsh. on Ins. 402. A sentence of condemnation is generally binding everywhere. Marsh. on Ins. 402.

3. The term condemnation is also applied to the sentence which declares a ship to be unfit for service; this sentence and the grounds of it may, however, be re−examined and litigated by parties interested in disputing it. 5 Esp. N. P. C. 65; Abb. on Shipp. 4.

CONDEMNATION, civil law. A sentence of judgment which condemns some one to do, to give, or to pay something; or which declares that his claim or pretensions are unfounded. This word is also used by common lawyers, though it is more usual to say conviction, both in civil and criminal cases. It is a maxim that no man ought to be condemned unheard, and without the opportunity of being heard.

CONDICTIO INDEBITI, civil law. When the plaintiff has paid to the defendant by mistake what he was not bound to pay either in fact or in law, he may recover it back by an action called condictio indebiti. This action does not lie, 1. if the sum was due ex cequitate, or by a natural obligation; 2. if he who made the payment knew that nothing was due, for qui consulto dat quod non debetat, prcesumitur donare. Vide Quasi contract.

CONDICTION, Lat. condictio. This term is used in the civil law in the same sense as action. Condictio certi, is an action for the recovery of a certain thing, as our action of replevin, condictio incerti, is an action given for the recovery of an uncertain thing. Dig. 12 , 1.

CONDITION, contracts, wills. In its most extended signification, a condition is a clause in a contract or agreement which has for its object to suspend, to rescind, or to modify the principal obligation; or in case of a will, to suspend, revoke, or modify the devise or bequest. 1 Bouv. Inst. n. 730. It ii in fact by itself, in many cases, an agreement; and a sufficient foundation as an agreement in writing, for a bill in equity, praying for a specific performance. 2 Burr. 826. In pleading, according to the course of the common Iaw, the bond and its condition are to some intents and purposes, regarded as distinct things. 1 Saund. Rep. by Wms. 9 b. Domat has given a definition of a condition, quoted by Hargrave, in these words: "A condition is any portion or agreement which regulates what the parties have a mind should be done, if a case they foresee should come to pass." Co. Litt. 201 a.

2. Conditions sometimes suspend the obligation; as, when it is to have no effect until they are fulfilled; as, if I bind myself to pay you one thousand dollars ou condition that the ship Thomas Jefferson shall arrive in the United States from Havre; the contract is suspended until the arrival of the ship.

3. The condition sometimes rescinds the contract; as, when I sell you my horse, on condition that he shall be alive on the first day of January, and he dies before that time.

4. A condition may modify the contract; as, if I sell you two thousand bushels of corn, upon condition that my crop shall produce that much, and it produces only fifteen hundred bushels.

5. In a less extended acceptation, but in a true sense, a condition is a future and uncertain event, on the existence or non−existence of which is made to depend, eitther the accomplishment, the modification, or the rescission of an obligation or testamentary disposition.

6. There is a marked difference between a condition and a limitation. When a in is given generally, but the gift may defeated upon the happening of an uncertain event, the latter is called a condition but when it is given to be enjoyed until the event arrives, it is a limitation. See Limitation; Estates. It is not easy to say when a condition will be considered a covenant and when not, or when it will be holden to be both. Platt on Cov. 71.

7. Events foreseen by conditions are of three kinds. Some depend on the acts of the persons who deal together, as, if the agreement should provide that a partner should not join another partnership. Others are independent of the will of the parties, as, if I sell you one thousand bushels of corn,. on condition that my crop shall not be destroyed by a fortuitous event, or act of God. Some depend in part on the contracting parties and partly on the act of God, as, if it be provided that such merchandise shall arrive by a certain day.

8. A condition may be created by inserting the very word condition, or on condition, in the deed or agreement; there are, however, other words that will do so as effectually, as proviso, if, &c. Bac. Ab. Conditions, A.

9. Conditions are of various kinds; 1. as to their form, they are express or implied. This division is of feudal origin. 2 Woodes. Lect. 138. 2. As to their object, they are lawful or unlawful; 3. as to the time when they are to take effect, they are precedent or subsequent; 4. as to their nature, they are possible or impossible 5. as to their operation, they are positive or negative; 6. is to their divisibility, they are copulative or disjunctive; 7. as to their agreement with the contract, they are consistent or repugnant; 8. as to their effect, they are resolutory or suspensive. These will be severally considered.

10. An express condition is one created by express words; as for instance, a condition in a lease that if the tenant shall not pay the rent at the day, the lessor may reenter. Litt. 328. Vide Reentry.

11. An implied condition is one created by law, and not by express words; for example, at common law, the tenant for life holds upon the implied condition not to commit waste. Co. Litt. 233, b.

12 . A lawful or legal condition is one made in consonance with the law. This must be understood of the law as existing at the time of making the condition, for no change of the law can change the force of the condition. For example, a conveyance was made to the grantee, on condition that he should not aliens until be reached the age of twenty−five years. Before he acquired this age be aliened, and made a second conveyance after he obtained it; the first deed was declared void, and the last valid. When the condition was imposed, twenty−five was the age of majority in the state; it was afterwards changed to twenty−one. Under these circumstances the condition was held to be binding. 3 Miss., R. 40.

13. An unlawful or illegal condition is one forbidden by law. Unlawful conditions have for their object, lst. to do something malum in se, or malum prohibitum; 2d. to omit the performance of some duty required by law 3d. to encourage such act or omission. 1 P. Wms. 189. When the law prohibits, in express terms, the transaction in respect to which the condition is made, and declares it void, such condition is then void; 3 Binn. R. 533; but when it is prohibited, without being declared void, although unlawful, it is not void. 12 S. @ R. 237. Conditions in restraint of marriage are odious, and are therefore held to the utmost rigor and strictness. They are contrary to sound policy, and by the Roman law were all void. 4 Burr. Rep. 2055; 10 Barr. 75, 350; 3 Whart. 575.

14. A condition precedent is one which must be performed before the estate will vest, or before the obligation is to be performed. 2 Dall. R. 317. Whether a condition shall be considered as precedent or subsequent, depends not on the form or arrangement of the words, but on the manifest intention of the parties, on the fair construction of the contract. 2 Fairf. R. 318; 5 Wend. R. 496; 3 Pet, R. 374; 2 John. R. 148; 2 Cain es, R. 352; 12 Mod. 464; 6 Cowen, R. 627 9 Wheat. R. 350; 2 Virg. Cas. 138 14 Mass. R. 453; 1 J. J. Marsh. R. 591 6 J. J. Marsh. R. 161; 2 Bibb, R. 547 6 Litt. R. 151; 4 Rand. R. 352; 2 Burr. 900

15. A subsequent condition is one which enlarges or defeats an estate or right, already created. A conveyance in fee, reserving a life estate in a part of the land, and made upon condition that the grantee shall pay certain sums of money at divers times to several persons, passes the fee upon condition subsequent. 6 Greenl. R. 106. See 1 Burr. 39, 43; 4 Burr. 1940. Sometimes it becomes of great importance to ascertain whether the condition is precedent or subsequent. When a precedent condition becomes impossible by the act of God, no estate or right vests; but if the condition is subsequent, the estate or right becomes absolute. Co. Litt. 206, 208; 1 Salk. 170.

16. A possible condition is one which may be performed, and there is nothing in the laws of nature to prevent its performance.

17. An impossible condition is one which cannot be accomplished according to the laws of nature; as, to go from the United States to Europe in one day.; such a condition is void. 1 Swift's Dig. 93; 5 Toull. n. 242−247. When a condition becomes impossible by the act of God, it either vests the estate, or does not, as it is precedent or

subsequent: when it is the former, no estate vests when the latter, it becomes absolute. Co. Litt. 206, a, 218, a; 3 Pet. R. 374; 1 Hill. Ab. 249. When the performance of the condition becomes impossible by the act of the party who imposed it, the estate is rendered absolute. 5 Rep. 22; 3 Bro. Parl. Cas. 359. Vide 1 Paine's R. 652; Bac. Ab. Conditions, M; Roll. Ab. 420; Co. Litt. 206; 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; Inst. 2, 4, 10; Dig. 28, 7, 1; Id. 44, 7, 31; Code 6, 25, 1; 6 Toull. n. 486, 686 and the article Impossibility.

18. A positive condition requires that the event contemplated shall happen; as, If I marry. Poth. Ob. part 2, c. 3, art. 1, _1. 19. A negative condition requires that the event contemplated shall not happen as If I do not marry. Potb. Ob. n. 200.

20. A copulative condition, is one of several distinct−matters, the whole of which are made precedent to the vesting of an estate or right. In this case the entire condition must be performed, or the estate or right can never arise or take place. 2 Freem. 186. Such a condition differs from a disjunctive condition, which gives to the party the right to perform the one or the other; for, in this case, if one becomes impossible by the act of God, the whole will, in general, be excused. This rule, however, is not without exception. 1 B. & P. 242; Cro. Eliz. 780; 5 Co. 21; 1 Lord Raym. 279. Vide Conjunctive; Disjunctive.

21. A disjunctive condition is one which gives the party to be affected by it, the right to perform one or the other of two alternatives.

22. A consistent condition is one which agrees with other parts of the contract.

23. A repugnant condition is one which is contrary to the contract; as, if I grant to you a house and lot in fee, upon condition that you shall not aliene, the condition is repugnant and void, as being inconsistent with the estate granted. Bac. Ab. Conditions L; 9 Wheat. 325; 2 Ves. jr. 824.

24. A resolutory condition in the civil law is one which has for its object, when accomplished the revocation of the principal obligation. This condition does not suspend either the existence or the execution of the obligation, it merely obliges the creditor to return what he has received.

25. A suspensive condition is one which susends the fulfilment of the obligation until it has been performed; as, if a man bind himself to pay one −hundred dollars, upon condition that the ship Thomas Jefferson shall arrive from Europe. The obligation, in this case, is suspended until the arrival of the ship, when the condition having been performed, the obligation becomes absolute , and it is no longer conditional. A suspensive condition is in fact a condition precedent.

26. Pothier further divides conditions into potestative, casual and mixed.

27. A potestative condition is that which is in the power of the person in whose favor it is contracted; as, if I engage to give my neighbor a sum of money, in case he outs down a tree which obstructs my. prospect. Poth. Obl. Pt. 2, c. 3, art. 1, _1.

28. A casual condition is one which depends altogether upon chance, and not in the power of the creditor, as the following: if I have children; if I have no children; if such a vessel arrives in the United States, &c. Poth. Ob. n. 201.

29. A mixed condition is one which depends on the will of the creditor and of a third person; as, if you marry my cousin. Poth. Ob. n. 201. Vide, generally, Bouv. Inst. Index, h. t.

CONDITION, persons. The situation in civil society which creates certain relations between the individual, to whom it is applied, and one or more others, from which mutual rights and obligations arise. Thus the situation arising from marriage gives rise to the conditions of husband and wife that of paternity to the conditions of father and child. Domat, tom. 2, liv. 1, tit. 9, s. 1, n. 8.

2. In contracts every one is presume to know the condition of the person with whom he deals. A man making a contract with an infant cannot recover against him for a breach of the contract, on the ground that he was not aware of his condition.

CONDITIONAL OBLIGATION. One which is superseded by a condition under which it was created and which is not yet accomplished. Poth. Obl. n. 176, 198.

CONDITIONS OF SALE, contracts. The terms upon which the vendor of property by auction pro poses to sell it; the instrument containing these terms, when reduced to writing or printing, is also called the conditions of sale.

2. It is always prudent and advisable that the conditions of sale should be printed and exposed in the auction room; when so done, they are binding ou both parties, and nothing that is said at the time of sale, to add to or vary such printed conditions, will be of any avail. 1 H. Bl. 289 12 East, 66 Ves. 330; 15 Ves. 521; 2 Munf. Rep. 119; 1 Desauss. Ch. Rep. 573; 2 Desauss. Ch. R. 320; 11 John. Rep. 555; 3 Camp. 285. Vide forms of conditions of sale

in Babington on Auctions, 233 to 243; Sugd. Vend. Appx. No. 4. Vide duction; ductioneer; Puffer.

CONDONATION. A term used in the canon law. It is a forgiveness by the husband of his wife, or by a wife of her husband, of adultery committed, with an implied condition that the injury shall not be repeated, and that the other party shall be treated with conjugal kindness. 1 Hagg. R. 773; 3 Eccl. Rep. 310. See 5 Mass. 320 5 Mass. 69; 1 Johns. Ch. R. 488.

2. It may be express or implied, as, if a husband, knowing of his wife's infidelity, cohabit with her. 1 Hagg. Rep. 789; 3 Eccl. R. 338.

3. Condonation is not, for many rea sons, held so strictly against a wife as against a husband. 3 Eccl. R. 830 Id. 341, n.; 2 Edw. R. 207. As all condonations, by operation of law, are expressly or impliedly conditional, it follows that the effect is taken off by the repetition of misconduct; 3 Eccl. R. 329 3 Phillim. Rep. 6; 1 Eccl. R. 35; and cruelty revives condoned adultery. Worsley v. Worsley, cited in Durant v. Durant, 1 Hagg. Rep. 733; 3 Eccl. Rep. 311.

4. In New York, an act of cruelty alone, on the part of the husband, does not revive condoned adultery, to entitle the wife to a divorce. 4 Paige's R. 460. See 3 Edw. R. 207.

5. Where the parties have separate beds, there must, in order to found condonation, be something of matrimonial intercourse presumed; it does not rest merely on the wife's not. withdrawing herself. 3 Eccl. R. 341, n.; 2 Paige, R. 108.

6. Condonation is a bar to a sentence of divorce. 1 Eccl. Rep. 284; 2 Paige, R. 108. In Pennsylvania, by the Act of the 13th of March, 1815, _7, 6 Reed's Laws of Penna. 288, it is enacted that " in any suit or action for divorce for cause of adultery, if the defendant shall allege and prove that the plaintiff has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the plaintiff (if the husband) allowed of his wife's prostitutions, or received hire, for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence, and perpetual bar against the same." The same rule may be found, perhaps, in the codes of most civilized countries. Villanova Y Manes, Materia Criminal Forense, Obs. 11, c. 20, n. 4. Vide, generally, 2 Edw. 207; Dev. Eq. R. 352 4 Paige, 432; 1 Edw. R. 14; Shelf. on M. & D. 445; 1 John. Ch. R. 488 4 N. Hamp. R. 462; 5 Mass. 320.

CONDUCT, law of nations. This term is used in the phrase safe conduct, to signify the security given, by authority of the government, under the great seal, to a stranger, for his quietly coming into and passing out of the territories over which it has jurisdiction. A safe conduct differs from a passport; the former is given to enemies, the latter to friends or citizens.

CONDUCT MONEY. The money advanced to a witness who has been subpoenaed to enable him to attend a trial, i's so called.

CONDUCTOR OPERARUM, civil law. One who undertakes, for a reward, to perform a job or piece of work for another. See Locator Operis.

CONFEDERACY, intern. law. An agreement between two or more states or nations, by which they unite for their mutual protection and good. This term is applied to such agreement between two independent nations, but it is used to signify the union of different states of the same nation, as the confederacy of the states.

2. The original thirteen states, in 1781, adopted for their federal government the " Articles of confederation and perpetual union between the States," which continued in force until the present constitution of the United States went into full operation, on the 30th day of April, 1789, when president Washington was sworn into office. Vide 1 Story on the Const. B. 2, c. 3 and 4.

CONFEDERACY, crim. law. An agreement between two or more persons to do an unlawful act, or an act, which though not unlawful in itself, becomes so by the confederacy. The technical term usually employed to signify this offence, is conspiracy. (q. v.)

CONFEDERACY, equity pleading. The fourth part of a bill in chancery usually charges a confederacy; this is either general or special.

2. The first is by alleging a general charge of confederacy between the defendants and other persons to injure or defraud the plaintiff. The common form of the charge is, that the defendants, combining and confederating together, to and with divers other persons as yet to the plaintiff unknown, but whose names, when discovered, he prays may be inserted in the bill, and they be made parties thereto, with proper and apt words to charge them with the premises, in order to injure and oppress the plaintiff in ti e premises, do absolutely refuse, &c. Mitf. Eq. Pl. by Jeremy, 40; Coop. Eq. Pl. 9 Story, Eq. Pl. _29; 1 Mont. Eq. Pl. 77; Barton, Suit in Eq. 33; Van Heyth. Eq. Drafts,

4.

3. When it is intended to rely on a confederacy or combination as a ground of equitable jurisdiction, the confederacy must be specially charged to justify an assumption of jurisdiction. Mitf. Eq. Pl. by Jeremy, 41; Story, Eq. Pl. _30.

4. A general allegation of confederacy is now considered as mere form. Story, Eq. Pl. _29; 4 Bouv. Inst. n. 4169.

CONFEDERATION, government. The name given to that form of government which the American colonies, on shaking off the British yoke, devised for their mutual safety and government.

2. The articles of confederation, (q. v.) were finally adopted on the 15th of November, 1777, and with the exception of Maryland, which, however, afterwards also agreed to them, were speedily adopted by the United States, and by which they were formed into a federal bod y, and went into force on the first day of March, 1781; 1 Story Const. _225; and so remained until the adoption of the present constitution, which acquired the force of the supreme law of the land on the first Wednesday of March, 1789. 5 Wheat. R. 420. Vide Articles of Confederation.

CONFERENCE, practice, legislation. In practice, it is the meeting of the parties or their attorneys in a cause, for the purpose of endeavoring to settle the same.

2. In legislation, when the senate and house of representatives cannot agree on a bill or resolution which it is desirable should be passed, committees are appointed by the two bodies respectively, who are called committees of confrence, and whose duty it is, if possible, to −reconcile the differences between them.

3. In the French law, this term is used to signify the similarity and comparison between two laws, or two systems of law; as the Roman and the common law. Encyclopedie, h. t.

4. In diplomacy, conferences are verbal explanations between ministers of two nations at least, for the purpose of accelerating various difficulties and delays, necessarily attending written communications.

CONFESSION, crim. law, evidence. The voluntary declaration made by a person who has committed a crime or misdemeanor, to another, of the agency or participation which he had in the same.

2. When made without bias or improper influence, confessions are admissible in evidence, as the highest and most satisfactory proof: because it is fairly presumed that no man would make such a confession against himself, if the facts confessed were not true but they are excluded, if liable to the of having been unfairly obtained.

3. Confessions should be received with great caution, as they are liable to many objections. There is danger of error from the misapprehension of witnesses, the misuse of words, the failure of a party to express his own meaning, the prisoner being oppressed by his unfortunate situation, and influenced by hope, fear, and sometimes a worse motive, to male an untrue confession. See the case of the two Boorns in Greenl. Ev . _214, note 1; North American Review, vol. 10, p. 418; 6 Carr. & P. 451; Joy on Confess. s. 14, p. 100; and see 1 Chit. Cr. Law, 85.

4. A confession must be made voluntarily, by the party himself, to another person. 1. It must be voluntary. A confession, forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is to be considered as evidence of guilt, that Lo credit ought to be given to it. 1 Leach, 263. This is the principle, but what amounts to a promise or a threat, is not so easily defined. Vide 2 East, P. C. 659; 2 Russ. on Cr. 644 4 Carr. & Payne, 387; S. C. 19 Eng. Com. L. Rep. 434; 1 Southard, R. 231 1 Wend. R. 625; 6 Wend. R. 268 5 Halst. R. 163 Mina's Trial, 10; 5 Rogers' Rec. 177 2 Overton, R. 86 1 Hayw. (N. C.) R, 482; 1 Carr. & Marsh. 584. But it must be observed that a confession will be considered as voluntarily made, although it was made after a promise of favor or threat of punishment, by a person not in authority, over the prisoner. If, however, a person having such authority over him be present at the time, and he express no dissent, evidence of such confession cannot be given. 8 Car. & Payne, 733.

5. − 2. The confession must be made by the party to be affected by it. It is evidence only against him. In case of a conspiracy, the acts of one conspirator are the acts of all, while active in the progress of the conspiracy, but after it is over, the confession of one as to the part he and others took in the crime, is not evidence against any but himself. Phil. Ev. 76, 77; 2 Russ. on Cr. 653.

6. − 3. The confession must be to another person. It may be made to a private individual, or under examination before a magistrate. The whole of the confession must be taken, together with whatever conversation took place at the time of the confession. Roscoe's Ev. N. P. 36; 1 Dall. R. 240 Id. 392; 3 Halst. 27 5 .2 Penna. R. 27; 1 Rogers' Rec. 66; 3 Wheeler's C. C. 533; 2 Bailey's R. 569; 5 Rand. R. 701.

7. Confession, in another sense, is where a prisoner being arraigned for an offence, confesses or admits the crmie with which he is charged, whereupon the plea of guilty is entered. Com Dig. Indictment, K; Id. Justices, W 3; Arch. Cr. Pl. 1 2 1; Harr. Dig. b. t.; 20 Am. Jur. 68; Joy on Confession.

8. Confessions are classed into judicial and extra judicial. Judicial confessions are those made before a magistrate, or in court, in the due course of legal proceedings; when made freely by the party, and with a full and perfect knowledge of their nature and consequences, they are sufficient to found a conviction. These confessions are such as are authorized by a statute, as to take a preliminary examination in writing; or they are by putting in the plea of guilty to an indictment. Extra judicial confessions are those wbich are made by the part elsewhere than before a magistrate or in open court. 1 Greenl. Ev. _216. See, generally, 3 Bouv. Inst. n. 3081−2.

CONFESSIONS AND AVOIDANCE, pleadings. Pleas in confession and avoidance are those which admit the averments in the plaintiff Is declaration to be true, and allege new facts which obviate and repel their legal effects.

2. These pleas are to be considered, first, with respect to their division. Of pleas in confession and avoidance, some are distinguished (in reference to their subjectmatter) as pleas in justification or excuse, others as pleas in discharge. Com. Dig. Pleader, 3 M 12. The pleas of the former class, show some justification or excuse of the matter charged in the declaration; of the latter, some discharge or release of that matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; the effect of the latter, to show that though he had once a right of action, it is discharged or released by some matter subsequent. Of those in justification or excuse, the plea of son assault demesne is an example; of those in discharge, a release. This division applies to pleas only; for replications and other subsequent pleadings in confession and avoidance, are not subject to such Classification;

3. Secondly, they are to be considered in respect to their form. As to their form, the reader is referred to Stephens on Pleading, 72, 79, where forms are given. In common with all pleadings whatever, which do not tender issue, they always conclude with a verification and prayer of judgment.

4. Thirdly, with respect to the quality of these pleadings, it is a rule that every pleading by way of confession and avoidance must give color. (q. v.) And see, generally, 1 Chit. Pl. 599; 2 Chit. Pl, 644; Co. Litt. 282, b; Arch. Civ. Pl. 215; Dane's Ab. Index, ii. t.; 3 Bouv. Inst. n. 2921, 293 1.

CONFESSOR, evid. A priest of some Christian sect, who receives an account of the sins of his people, and undertakes to give them absolution of their sins.

2. The general rule on the subject of giving evidence of confidential communications is, that the privilege is confined to counsel, solicitors, and attorneys, and the interpreter between the counsel and the client. Vide Confidential Communications. Contrary to this general rule, it has been decided in New York, that a priest of the Roman Catholic denomination could not be compelled to divulge secrets which he had received in auricular confession. 2 City Hall Rec. 80, n.; Joy on Conf. _4, p. 49. See Bouv. Inst. n. 3174 and note.

CONFIDENTIAL COMMUNICATIONS, evidence. Whatever is communicated professedly by a client to his counsel, solicitor, or attorney, is considered as a confidential communication.

2. This the latter is not permitted to divulge, for this is the privilege of the client and not of the attorney.

3. The. rule is, in general, strictly confined to counsel, solicitors or attorneys, except, indeed, the case of an interpreter between the counsel and client, when the privilege rests upon the same grounds of necessity. 3 Wend. R. 339. In New York, contrary to this general rule, tinder the statute of that state, it has been decided that information disclosed to a physician while attending upon the defendant in his professional character, which information was necessary to enable the witness to prescribe for his patient, was a confidential communication which the witness need not have testified. about; and in a case where such evidence had been received by the master, it was rejected. 4 Paige, R. 460.

4. As to the matter communicated, it extends to all cases where the party applies for professional assistance. 6 Mad. R. 47; 14 Pick., R. 416. But the privilege does not extend to extraneous or impertinent communications; 3 John. Cas. 198; nor to information imparted to a counsellor in the character of a friend, and not as counsel. 1 Caines' R. 157.

5. The cases in which communications to counsel have been holden not to be privileged may be classed under the following heads: 1. When the communication was made before the attorney was employed as such; 1 Vent. 197; 2 Atk. 524; 2. after the attorney's employment has ceased 4 T. R. 431; 3. when the attorney was consulted because he was an attorney, yet he refused to act as such, and was therefore only applied to as a friend; 4 T. R. 753; 4. where a fact merely took place in the presence of the attorney, Cowp. 846; 2 Ves. 189; 2 Curt. Eccl. R. 866; but see Str. 1122; 5. when the matter communicated was not in its nature private, and could in no sense be termed the subject of a confidential communication; 7 East,, R. 357; 2 B. & B. 176; 3 John' Cas. 198; 6. when the things disclosed had no reference to professional employment, though disclosed while the relation of attorney and

client subsisted; Peake's R. 77; 7. when the attorney made himself a subscribing witness; 10 Mod. 40 2 Curt. Eccl. R. 866; 3 Burr. 1687

8. when he was directed to plead the facts to wbich he is called to testify. 7 N. S. 179. See a well written article! on this subject in the American Jurist, vol. xvii. p. 304. Vide, generally, Stark. Ev. h. t.; 1 Greenl. Ev. __236−247; 1 Peters' R. 356; 1 Root, 383; Whart. Dig. 275; Caryls' R. 88, 126, 143; Toth. R. 177; Peake's Cas. 77 2 Stark. Cas. 274; 4 Wash. C. C. R. 718; 11 Wheat. 280; 3 Yeates, R. 4; 4 Munf. R. 273 1 Porter, R. 433; Wright, R. 136; 13 John. R. 492. As to a confession made to a catholic priest, see 2 N. Y. City Hall Rec. 77. Vide 2 Ch. Pr. 18−21; Confessor.

CONFIRMATIO CHARTORUM. The name given to a statute passed during reign of the English king Edward I. 25 Ed. I., c. 6. See Bac. Ab. Smuggling, B.

CONFIRMATION, contracts, conveyancing. 1 . A contract by which that which was voidable, is made firm and unavoidable.

2. A species of conveyance.

2. − 1. When a contract has been entered into by a stranger without authority, he in whose name it has been made may, by his own act, confirm it; or if the contract be made by the party himself in an informal and voidable manner, he may in a more formal manner confirm and render it valid; and in that event it will take effect, as between the parties, from the original making. To make a valid confirmation, the party must be apprised of, his rights, and where there has been a fraud in the transaction, he must be award of it, and intend to confirm his contract. Vide 1 Ball & Beatty, 353; 2 Scho. & Lef. 486; 12 Ves. 373; 1 Ves. Jr. 215; Newl. Contr. 496; 1 Atk. 301; 8 Watts. R. 280.

3. − 2. Lord Coke defines a confirmation of an estate, to be "a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable; or where a particular estate is increased."

4. The first part of this definition may be illustrated by the following case, put by Littleton, _516; where a person lets land to another for the term of his life, who lets the same to another for forty years, by force of which he is in possession; if the Iessor for life confirms the estate of the tenant for years by deed, and afterwards the tenant for life dies, during the term; this deed will operate as a confirmation of the term for years.. As to the latter branch of the definition; whenever a confirmation operates by way of increasing the estate, it is similar in every respect to a release that operates by way of enlargement, for there must be privity of estate, and proper words of limitation. The proper technical words of a confirmation are, ratify and confirm; although it is usual and prudent to insert also the words given and granted. Watk. Prin. Convey. cbap. vii.

5. A confirmation does not strengthen a void estate. Confirmatio est nulla, ubi donum precedens est invalidum, et ubi donatio nulla est nec valebit confirmatio. For confirmation may make a voidable or defeasible estate good, but cannot operate on an estate void in law. Co. Litt. 295. The canon law agrees with this rule, and hence the maxim , qui confirmat nihil dat. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, n. 476. Vide Vin. Ab. h. t.; Com. Dig. 11. t.; Ayliffe's Pand. *386; 1 Chit. Pr. 315; 3 Gill & John. 290; 3 Yerg. R. 405; Co. Litt. 295; Gilbert on Ten. 75; 1 Breese's R. 236; 9 Co. 142, a; 2 Bouv. Inst. n. 2067−9.

6. An infant is said to confirm his acts performed during infancy, when, after coming to full age, be expressly approves of them, or does acts from which such confirmation way be implied. Sec Ratification.

CONFIRMEE. He to whom a confirmation is made.

CONFIRMOR. He who makes a confirmation to another.

CONIFISCATION. The act by which the estate, goods or chattels of a person who has been guilty of some crime, or who is a public enemy, is declared to be forfeited for the benefit of the public treasury. Domat, Droit Public, liv. 1, tit. 6, s. 2, n. 1. When property is forfeited as a punishment for the commission of crime, it is usually called a forfeiture. 1 Bl. Com. 299.

2. It is a general rule that the property of the subjects of an enemy found in the country may be appropriated by the government, without notice, unless there be a treaty to the contrary. 1 Gallis. R. 563; 8 Dall. R. 199; N. Car. Cas. 79. It has been frequently provided by treaty that foreign subjects should be permitted to remain and continue their business, notwithstanding a rupture between the governments, so long as they conducted themselves innocently and when there was no such treaty, such a liberal permission has been announced in the very declaration of war. Vattel, liv. 3, c. 4, _63. Sir Michael Poster, (Discourses on High Treason, p. 185, 6, mentions several instances of such declarations by the king of Great Britain; and he says that aliens were thereby enabled to acquire personal chattels and to maintain actions for the recovery of their personal rights, in as full a manner as

alien friends. 1 Kent, Coin. 57.

3. In the United States, the broad principle has been assumed "that war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found. The mitigations of this rigid rule, which the policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself." 8 Cranch, 122−3. Commercial nations have always considerable property in the possession of their neighbors: and when war breaks out the question, what shall be done with enemies property found in the country, is one rather of policy than of law, and is properly addressed to the consideration of the legislature, and not to courts of law. The strict right of confiscation exists in congress; and without a legislative act authorizing the confiscation of enemies' property, it cannot be condemned. 8 Cranch, 128, 129. See Chit. Law of Nations, c. 3; Marten's Law of Nat. lib. 8, c. 3, s. 9; Burlamaqui, Princ. of Pol. Law, part 4, c. 7; Vattel, liv. 3, c. 4, _63.

4. The claim of a right to confiscate debts, contracted by individuals in time of peace, and which remain due to subjects of the enemy in time of war, rests very much upon the same principles as that concerning the enemy's tangible property, found in the country at the commencement of the war. But it is the universal practice to forbear to seize and confiscate debts and credits. 1 Kent, Com. 64, 5; vide 4 Cranch, R. 415 Charlt. 140; 2 Harr. & John. 101, 112, 471 6 Cranch, R. 286; 7 Conn. R. 428: 2 Tayl. R. 115; 1 Day, R. 4; Kirby, R. 228, 291 C. & N. 77, 492.

CONFLICT. The opposition or difference between two judicial jurisdictions, when they both claim the right to decide a cause, or where they both declare their incompetency. The first is called a positive conflict, and the, latter a negative conflict.

CONFLICT OF JURISDICTION. The contest between two officers, who each claim to have cognizance of a particular case.

CONFLICT OF LAWS. This phrase is used to signify that the laws of different countries, on the subject−matter to be decided, are in opposition to each other; or that certain laws of the same country are contradictory.

2. When this happens to be the case, it becomes necessary to decide which law is to be obeyed. This subject has occupied the attention and talents of some of the most learned jurists, and their labors are comprised in many volumes. A few general rules have been adopted on this subject, which will here be noticed.

3. − 1. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The laws of every state, therefore, affect and bind directly all property, whether real or personal, within its territory; and all persons who are resident within it, whether citizens or aliens, natives or foreigners; and also all contracts made, and acts done within it. Vide Lex Loci contractus; Henry, For. Law, part 1, c. 1, 1; Cowp. It. 208; 2 Hag. C. R. 383. It is proper, however, to observe, that ambassadors and other public ministers, while in the territory of the state to, which they are delegates, are exempt from the local jurisdiction. Vide Ambassador. And the persons composing a foreign army, or fleet, marching through, or stationed in the territory of another state, with whom the foreign nation is in amity, are also exempt from the civil and criminal jurisdiction of the place. Wheat. Intern. Law, part 2, c. 2, _10; Casaregis, Disc. 136−174 vide 7 Cranch, R. 116.

4. Possessing exclusive authority, with the above qualification, a state may regulate the manner and circumstances, under which property, whether real or personal, in possession or in action, within it shall be held, transmitted or transferred, by sale, barter, or bequest, or recovered or enforced; the condition, capacity, and state of all persons within it the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts; and the remedies and modes of administering justice in all cases. Story, Confl. of Laws, _18; Vattel, B. 2, c. 7, _84, 85; Wheat. Intern. Law, part 1, c. 2, _5.

5. − 2. A state or nation cannot, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, whether they are natural born or naturalized citizens or subjects, or others. This result flows from the principle that each sovereignty is perfectly independent. 13 Mass. R. 4. To this general rule there appears to be an exception, which is this, that a nation has a right to bind its own citizens or subjects by its own laws in every place; but this exception is not to be adopted without some qualification. Story, Confl. of Laws, _21; Wheat. Intern. Law, part 2, c. 2, _7.

6. − 3. Whatever force and obligation the laws of one, country have in another, depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent. Huberus, lib. 1, t. 3, _2. When a statute, or the unwritten or common law of the country forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Whether the one or the other shall be the rule of decision must necessarily depend on a variety of circumstances, which cannot be reduced to any certain rule. No

nation will suffer the laws of another to interfere with her own, to the injury of her own citizens; and whether they do or not, must depend on the condition of the country in which the law is sought to be enforced, the particular state of her legislation, her policy, and the character of her institutions. 2 Mart. Lo. Rep. N. S. 606. In the conflict of laws, it must often be a matter of doubt which should prevail; and, whenever a doubt does exist, the court which decides, will prefer the law of its own country to that of the stranger. 17 Mart. Lo. R. 569, 595, 596. Vide, generally, Story, Confl. of Laws; Burge, Confl. of Laws; Liverm. on Contr. of Laws; Foelix, Droit Intern.; Huberus, De Conflictu Leguin; Hertius, de Collisions Legum; Boullenois, Traits de Ia personnalite' et de la realite de lois, coutumes et statuts, par forme d'observations; Boullenois, Dissertations sur des questions qui naissent de la contrariete des lois, et des coutumes.

CONFRONTATION, crim. law, practice. The act by which a witness is brought in the presence of the accused, so that the latter may object to him, if he can, and the former may know and identify the accused, and maintain the truth in his presence. No man can be a witness unless confronted with the accused, except by consent.

CONFUSION. The concurrence of two qualities in the same subject, which mutually destroy each other. Potli. Ob. P. 3, c. 5 3 Bl. Com. 405; Story Bailm. _40.

CONFUSION OF GOODS. This takes place where the goods of two or more persons become mixed together so that they cannot be separated. There is a difference between confusion and commixtion; in the former it is impossible, while in the latter it is possible, to make a separation. Bowy. Comm. 88.

2. When the confusion takes place by the mutual consent of the owners, they have an interest in the mixture in proportion to their respective shares. 2 Bl. Com. 405; 6 Hill, N. Y. Rep. 425. But if one willfully mixes his money, corn or hay, with that of another man, without his approbattion or knowledge, the law, to guard against fraud, gives the entire property without any account, to him whose original dominion is invaded land endeavored to be rendered uncertain, without his cosent. Ib.; and see 2 Johns. Ch. It. 62 2 Kent's Comm. 297.

3. There may be a case neither of consent nor of wilfulness, in the confusion of goods; as where a bailee by negligence or unskilfuluess, or inadvertence, mixes up his own goods of the same sort with those bailed; and there may be a confusion arising from accident and unavoidable casualty. Now, in the latter case of accidental intermixture, the rule, following the civil law, which deemed the property to be held in common, might be adopted; and it would make no difference whether the mixture produced a thing of the same sort or not; as, if the wine of two persons were mixed by accident. See Dane's Abr. ch. 76, art. 5, _19.

4. But in cases of mixture by unskilfulness, negligence, or inadvertence, the true principle seems to be, that if a man having undertaken to keep the property of another distinct from, mixes it with his own, the whole must, both at law and in equity, be taken to be the property of the other, until the former puts the subject under such circumstances, that it may be distinguished as satisfactorily as it might have been before the unauthorized mixture on his part. 15 Ves. 432, 436, 439, 440; 2 John. Ch. R. 62; Story on Bailm. c. l, _40. And see 7 Mass. 11. 123; Dane's Abr. c. 76, art. 3, _15; Com. Dig. Pleader, 3 M 28; Bac. Ab. Trespass, E 2; 2 Campb. 576; 2 Roll. 566, 1, 15 2 Bul. 323. 2 Cro. 366 , 2 Roll. 393; 5 East, 7; 21 Pick. R. 298.

CONFUSION OF RIGHTS, contracts. When the qualities of debtor and creditor are united in the same person, there arises a confusion of rights, which extinguishes the two credits; for instance, when a woman obliges marries the obligor, the debt is extinguished. 1 Salk. 306; Cro. Car. 551; 1 Ld. Raym. 515; Ca. Ch. 21, 117. There is, however, an excepted case in relation to a bond given by the husband to the wife; when it is given to the intended wife for a provision to take effect after his death. 1 Ld. Raym. 515; 5 T. R. 381; Hut. 17 Hob. 216; Cro. Car. 376; 1 Salk. 326 Palm. 99; Carth. 512; Com. Dig. Baron & Feme, D. A further exception is the case of a divorce. If one be bound in an obligation to a feme sole and then marry her, and afterwards they are divorced, she may sue her former husband on the obligation, notwithstanding, her action was in suspense during the marriage. 26 H. VIII. 1.

2. Where a person possessed of an estate, becomes in a different right entitled to a charge upon the estate; the charge is in general merged in the estate, and does not revive in favor of the personal representative against the heir; there are particular exceptions, as where the person in whom the interests unite is a minor, and can therefore dispose of the personalty, but not of the estate; but in the case of a lunatic the merger and confusion was ruled to have taken place. 2 Ves. jun. 261. See Louis. Code, art. 801 to 808; 2 Ld. R. 527; 3 L. R. 552 4 L. R. 399, 488. Burge on Sur. Book 2, c. 11, p. 253.

CONGE'. A French word which signifies permission, and is understood in that sense in law. Cunn. Diet. h. t. In the French maritime law, it is a species of passport or permission to navigate, delivered by public authority. It is also in the nature of a clearance. (q. v.) Bouch. Inst. n. 812; Repert. de la Jurisp. du Notoriat, by Rolland de

Villargues. Conge'.

CONGEABLE, Eng. law. This word is nearly obsolete. It is derived from the French conge', permission, leave; it signifies that a thing is lawful or lawfully done, or done with permission; as entry congeable, and the like. Litt. s. 279.

CONGREGATION. A society of a number of persons who compose an ecclesiastical body. In the ecclesiastical law this term is used to designate certain bureaux at Rome, where ecclesiastical matters are attended to. In the United States, by congregation is meant the members of a particular church, who meet in one place worsbip. See 2 Russ. 120.

CONGRESS. This word has several significations. 1. An assembly of the deputies convened from different governments, to treat of peace or of other political affairs, is called a congress.

2. − 2. Congress is the name of the legislative body of the United States, composed of the senate and house of representatives. Const. U. S. art. 1, s. 1.

3. Congress is composed of two independent houses. 1. The senate and, 2. The house of representatives.

4.− 1. The senate is composed of two senators from each state, chosen by the legislature thereof for six years, and each senator has one vote. They represent the states rather than the people, as each state has its equal voice and equal weight in the senate, witliout any regard to the disparity of population, wealth or dimensions. The senate have been, from the first formation of the government, divided into three classes; and the rotation of the classes was originally determined by lots, and the seats of one class are vacated at the end of the second year, and one−third of the senate is chosen every second year. Const. U. S. art 1, s. 3. This provision was borrowed from a similar one in some of the state constitutions, of which Virginia gave the first example.

5. The qualifications which the constitution requires of a senator, are, that he should be thirty years of age, have been nine years a citizen of the United States, and, when elected, be an inhabitant of that state for which he shall be chosen. Art. 1, s. 3.

6.−2. The house of representatives is composed of members chosen every second year by the people of the several states, who are qualified electors of the most numerous branch of the legislature of the state to which they belong.

7. No person can be a representative until he has attained the age of twenty−five years, and has been seven years a citizen of the United States, and is, at the time of his election, an inhabitant of the state in which he is chosen. Const. U. S. art. 1, _2.

8. The constitution requires that the representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three−fifths of all other persons. Art. 1, s. 1.

9. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative. Ib.

10. Having shown how congress is constituted, it is proposed here to consider the privileges and powers of the two houses, both aggregately and separately.

11. Each house is made the judge of the election, returns, and qualifications of its own members. Art. 1, s. 5. As each house acts in these cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to, for the sake of uniformity and certainty. A majority of each house shall constitute a quorum to do business but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as, each may provide. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two−thirds, expel a member. Each house is bound to keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and to enter the yeas and nays on the journal, on any question, at the desire of one−fifth of the members present. Art. 1, s. 5.

12. The members of both houses are in all cases, except treason, felony, and breach of the peace, privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same. Art. 1, s. 6.

13. These privileges of the two houses are obviously necessary for their preservation and character; And, what is still more important to the freedom of deliberation, no member can be questioned in any other place for any

speech or debate in either house. lb.

14. There is no express power given to either house to punish for contempts, except when committed by their own members, but they have such an implied power. 6 Wheat. R. 204. This power, however, extends no further than imprisonment, and that will continue no farther than the duration of the power that imprisons. The imprisonment will therefore terminate with the adjournment or dissolution of congress.

15. The house of representatives has the exclusive right of originating bills for raising revenue, and this is the only privilege that house enjoys in its legislative character, which is not shared equally with the other; and even those bills are amendable by the senate in its discretion. Art. 1, s. 7.

16. The two houses are an entire and perfect check upon each other, in all business appertaining to legislatiou and one of them cannot even adjourn, during the session of congress, for more than three days, without the consent of the either nor to any other place than that in which the two houses shall be sitting. Art. 1, s. 5.

17. The powers of congress extend generally to all subjects of a national nature. Congress are authorized to provide for the common defence and general welfare; and for that purpose, among other express grants, they have the power to lay and collect taxes, duties, imposts and excises; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several states, and with the Indians; 1 McLean R. 257; to establish all uniform rule of naturalization, and uniform laws of bankruptcy throughout the United States; to establish post offices and post roads; to promote the progress of science and the useful arts, by securing for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries; to constitute tribunals inferior to the supreme court; to define and punish piracies on the high seas, and offences against the laws of nations; to declare war; to raise and support armies; to provide and maintain a navy; to provide for the calling forth of the militia; to exercise exclusive legislation over the District of Columbia; and to give full efficacy to the powers contained in the constitution.

18. The rules of proceeding in each house are substantially the same; the house of representatives choose their own speaker; the vice−president of the United States is, ex officio, president of the senate, and gives the casting vote when the members are equally divided. The proceedings and discussions in the two houses are generally in public.

19. The ordinary mode of passing laws is briefly this; one day’s notice of a motion for leave to bring in a bill, in cases of a general nature, is required; every bill must have three readings before it is passed, and these readings must be on different days; and no bill can be committed and amended until it has been twice read. In the house of representatives, bills, after being twice read, are committed to a committee of the whole house, when a chairman is appointed by the speaker to preside over the committee, when the speaker leaves the chair, and takes a part in the debate as an ordinary member.

20. When a bill has passed one house, it is transmitted, to tho other, and goes through a similar form, though in the senate there is less formality, and bills are often committed to a select committee, chosen by ballot. If a bill be altered or amended in the house to which it is transmitted, it is then returned to the house in which it orignated, and if the two houses cannot agree, they appoint a committee to confer on the subject See Conference.

21. When a bill is engrossed, and has received the sanction of both houses, it is sent to the president for his approbation. If he approves of the bill, he signs it. If he does not, it is returned, with his objections, to the house in which it originated, and that house enters the objections at large on their journal, and proceeds to re−consider it. If, after such re−consideration, two−thirds of the house agree to pass the bill, it is sent, together with the objections, to the other house, by which it is likewise re−considered, and if approved by two−thirds of that house, it becomes a law. But in all such cases, the votes of both houses are determined by yeas and nays; and the names of the persons voting for and against the bill, are to be entered on the journal of each house respectively.

22. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law. Art. 1, s. 7. See House of Representatives; President; Senate; Veto; Kent, Com. Lecture xi.; Rawle on the Const. ch. ix.

CONGRESS, med. juris. This name was anciently given in France, England, and other countries, to the−indecent intercourse between married persons, in the presence of witnesses appointed by the courts, in cases when the husband or wife was charged by the other with impotence. Trebuchet, Jurisp. de Med. 101 Dictionnaire des Sciences Medicales, art. Congres, by Marc.

CONJECTURE. Conjectures are ideas or notions founded on probabilities without any demonstration of their

truth. Mascardus has defined conjecture: "rationable vestigium latentis veritatis, unde nascitur opinio sapientis;" or a slight degree of credence arising from evidence too weak or too remote to produce belief. De Prob. vol. i. quoest. 14, n. 14. See Dict. de Trevoux, h. v.; Denisart, h. v.

CONJOINTS. Persons married to each other. Story, Confl. of L. _71; Wolff. Dr. de la Nat. _858.

CONJUGAL. Matrimonial; belonging, to marriage as, conjugal rights, or the rights which belong to the husband or wife as such.

CONJUNCTIVE, contracts, wills, instruments. A term in grammar used to designate particles which connect one word to another, or one proposition to another proposition.

2. There are many cases in law, where the conjunctive and is used for the disjunctive or, and vice versa.

3. An obligation is conjunctive when it contains several things united by a conjunction to indicate that they are all equally the object of the matter or contract for example, if I promise for a lawful consideration, to deliver to you my copy of the Life of Washington, my Encyclopaedia, and my copy of the History of the United States, I am then bound to deliver all of them and cannot be discharged by delivering one only. There are, according to Toullier, tom. vi. n. 686, as many separate obligations Is there are things to be delivered, and the obligor may discharge himself pro tanto by delivering either of them, or in case of refusal the tender will be valid. It is presumed, however, that only one action could be maintained for the whole. But if the articles in the agreement had not been enumerated; I could not, according to Toullier, deliver one in discharge of my contract, without the consent of the creditor; as if, instead of enumerating the, books above mentioned, I had bound myself to deliver all my books, the very books in question. Vide Disjunctive, Item, and the case, there cited; and also, Bac. Ab. Conditious, P; 1 Bos. & Pull. 242; 4 Bing. N. C. 463 S. C. 33 E. C. L. R. 413; 1 Bouv. Inst. n. 687−8.

CONJURATION. A swearing together. It signifies a plot, bargain, or compact made by a number of persons under oath, to do some public harm. In times of ignorance, this word was used to signify the personal conference which some persons were supposed to have had with the devil, or some evil spirit, to know any secret, or effect any purpose.

CONNECTICUT. The name of one of the original states of the United States of America. It was not until the year 1665 that the territory now known as the state of Connecticut was united under one government. The charter was granted by Charles II. in April, 1662, but as it included the whole colony of New Haven, it was not till 1665 that the latter ceased its resistance, when both the colony of Connecticut and that of New Haven agreed, and then they were indissolubly united, and have so remained. This charter, with the exception of a temporary suspension, continued in force till the American revolution, and afterwards continued as a fundamental law of the state till the year 1818, when the present constitution was adopted. 1 Story on the Const. _86−88.

2. The constitution was adopted on the fifteenth day of September, 1818. The powers of the government are divided into three distinct departments, and each of them confided to a separate magistracy, to wit: those which are legislative, to one; those which are executive to another; and those which are judicial to a third. Art. 2.

3. − 1st. The legislative power is vested in two distinct houses or branches, the one styled the senate, and the other the house of representatives, and both together the general assembly. 1. The senate consists of twelve members, chosen annually by the electors. 2. The house of representatives consists of electorr residing in towns from which they are elected. The number of representatives is to be the same as at present practised and allowed; towns which may be hereafter incorporated are to be entitled to one representative only.

4. − 2d. The executive power is vested in a governor and lieutenant−governor. 1. The supreme executive power of the state is vested in a governor, chosen by the electors of the state; he is to hold his office for one year from the first Wednesday of May, next succeeding his election, and until his successor be duly qualified. Art. 4, s. 1. The governor possesses the veto power, art. 4, s. 12. 2. The lieutenant−governor is elected immediately after the election of governor, in the same manner as is provided for the election of governor, who continues in office the same time, and is to possess the same qualifications as the governor. Art. 4, s. 3. The lieutenant−governor, by virtue of his office, is president of the senate; and in case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment or absence from the state, the lieutenant−governor exercises all the powers and authority appertaining to the office of governor, until another be chosen, at the next periodical election for governor, and be duly qualified; or until the governor, impeached or absent, shall be acquitted or return. Art. 4, s. 14.

5. − 3d. The judicial, power of the state is vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly may, from time to time, ordain and establish; the powers of which courts shall be

defined. A sufficient number of justices of the peace, with such jurisdiction, civil and criminal, as the general assembly may prescribe, are to be appointed in each county. Art. 5.

CONNIVANCE. An agreement or consent, indirectly given, that something unlawful shall be done by another.

2. The connivance of the husband to his wife's prostitution deprives him of the right of obtaining a divorce; or of recovering damages from the seducer. 4 T. R. 657. It may be satisfactorily proved by implication.

3. Connivance differs from condonation, (q. v.) though either may have the same legal consequences. Connivance necessarily involves criminality on the part of the individual who connives, condonation may take place without implying the slightest blame to the party who forgives the injury.

4. Connivance must be the act of the mind before the offence has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Eccl. R. 350.

5. Connivance differs, also, from collusion (q. Y.); the former is generally collusion. for a particular purpose, while the latter may exist without connivance. 3 Hagg, Eccl. R. 130. Vide Shelf. on Mar. & Div. 449; 3 Hagg. R. 82; 2 Hagg. R. 376; Id. 278; 3 Hagg. R. 58, 107, 119, 131, 312; 3 Pick. R. 299; 2 Caines, 219; Anth. N.P. 196.

CONQUEST, feudal law. This term was used by the feudists to signify purchase.

CONQUEST, international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire.

2. It is a general rule, that where conquered countries have laws of their own, these laws remain in force after the conquest, until they are abrogated, unless they are contrary to our religion, or enact any malum in se. In all such cases the laws of the conquering country prevail; for it is not to be presumed that laws opposed to religion or sound morals could be sanctioned. 1 Story, Const. _150, and the cases there cited.

3. The conquest and military occupation of a part of the territory of the United States by a public enemy, renders such conquered territory, during such occupation, a foreign country with respect to the revenue laws of the United States. 4 Wheat. R. 246; 2 Gallis. R. 486. The people of a conquered territory change theirallegiance, but, by the modern practice, their relations to each other, and their rights of property, remain the same. 7 Pet. R. 86.

4. Conquest does not, per se, give the conqueror plenum dominium et utile, but a temporary right of possession and government. 2 Gallis. R. 486; 3 Wash. C. C. R. 101. See 8 Wheat. R. 591; 2 Bay, R. 229; 2 Dall. R. 1; 12 Pet. 410.

5. The right which the English government claimed over the territory now composing the United States, was not founded on conquest, but discovery. Id. _152, et seq.

CONQUETS, French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, enures to the extent of one−half for the benefit of the other. Merl. Rep. mot Conquet; Merl. Quest. mot Conquet. In Louisiana, these gains are called aquets. (q. v.) Civ. Code of Lo. art. 2369.

CONSANGUINITY. The relation subsisting among all the different persons descendiug from the same stock, or common ancestor. Vaughan, 322, 329; 2 Bl. Com. 202 Toull. Dr. Civ.. Fr. liv. 3, t. 1, ch. n 115 2 Bouv. Inst. n. 1955, et seq.

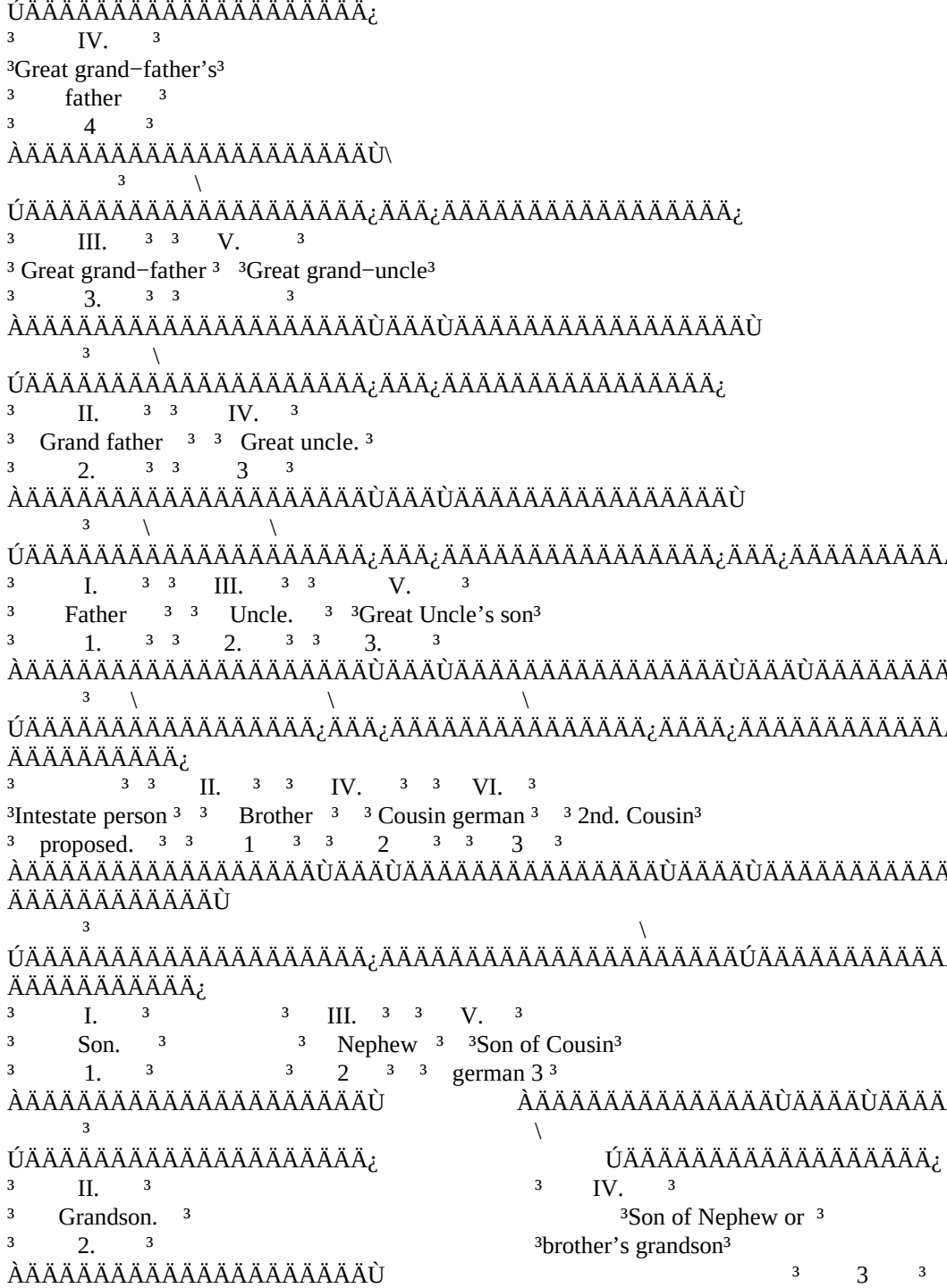
2. Some portion of the blood of the common ancestor flows through the veins of all his descendants, and though mixed with the blood flowing from many other families, yet it constitutes the kindred or alliance by blood between any two of the individuals. This relation by blood is of two kinds, lineal and collateral.

3. Lineal consanguinity is that relation which exists among persons, where one is descended from the other, as between the son and the father, or the grandfather, and so upwards in a direct ascending line; and between the father and the son, or the grandson, and so downwards in a direct descending line. Every generation in this direct course males a degree, computing either in the ascending or descending line. This being the natural mode of computing the degrees of lineal, consanguinity, it has been adopted by the civil, the canon, and the common law.

4. Collateral consanguinity is the relation subsisting among persons who descend from the same commnon ancestor, but not from each other. It is essential to constitute this relation, that they spring from the same common root or stock, but in different branches. The mode of computing the degrees is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree, because from the father to each of them is one degree. An uncle and a nephew are related to each other in tho second degree, because the nephew is two degrees distant from the common ancestor, and the rule of computation is extended to the remotest degrees of collateral relationship. This is the mode of computation

by the common and canon law. The method of computing by the civil law, is to begin at either of the persons in questian and count up to the common ancestor, and then downwards to the, other person, calling it a degree for each person, both ascending and descending, and the degrees they stand from each other is the degree in which they stand related. Thus, from a nephew to his father, is one degree; to the grandfather, two degrees and then to the uncle, three; which points out the relationship.

5. The following table, in which the Roman numeral letters express the degrees by the civil law, and those in Arabic figures at the bottom, those by the common law, will fully illustrate the subject.



³ ÀÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÙ
ÚÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ¿
³ III. ³
³ Great grandson. ³
³ 3. ³
ÀÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÙ

6. The mode of the civil law is preferable, for it points out the actual degree of kindred in all cases; by the mode adopted by the common law, different relations may stand in the same degree. The uncle and nephew stand related in the second degree by the common law, and so are two first cousins, or two sons of two brothers; but by the civil law the uncle and nephew are in the third degree, and the cousins are in the fourth. The mode of computation, however, is immaterial, for both will establish the same person to be the heir. 2 Bl. Com. 202; 1 Swift's Dig. 113; Toull. Civ. Fr. liv. 8, t. 1, o. 3, n. 115. Vide Branch; Degree; Line.

CONSCIENCE. The moral sense, or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong.

2. The constitution of the United States wisely provides that "no religious test shall ever be required." No man, then, or body of men, have a right to control a man's belief or opinion in religious matters, or to forbid the most perfect freedom of inquiry in relation to them, by force or threats, or by any other motives than arguments or persuasion. Vide Story, Const. _1841−1843.

CONSENSUAL, civil law. This word is applied to designate one species of contract known in the civil laws; these contracts derive their name from the consent of the parties which is required in their formation, as they cannot exist without such consent.

2. The contract of sale, among the civilians, is an example of a consensual contract, because the moment there is an agreement between the seller and the buyer as to the thing and the price, the vendor and the purchaser have reciprocal actions On the contrary, on a loan, there is no action by the lender or borrower, although there may have been consent, until the thing is delivered or the money counted. This is a real contract in the sense of the civil law. Lec. El. Dr: Rom. _895; Poth. Ob. pt. 1, c. 1, s. 1, art. 2; 1 Bell's Com. (5th ed.) 435. Vide Contract.

CONSENT. An agreement to something proposed, and differs from assent. (q. v.) Wolff, Ins. Nat. part 1, SSSS 27−30; Pard. Dr. Com. part 2, tit. 1, n. 1, 38 to 178. Consent supposes, 1. a physical power to act; 2. a moral power of acting; 3. a serious, determined, and free use of these powers. Fonb. Eq. B; 1, c. 2, s. 1; Grot. de Jure Belli et Pacis, lib. 2, c. 11, s. 6.

2. Consent is either express or implied. Express, when it is given viva voce, or in writing; implied, when it is manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given.

3. − 1. When a legacy is given with a condition annexed to the bequest, requiring the consent of executors to the marriage of the legatee, and under such consent being given, a mutual attachment has been suffered to grow up, it would be rather late to state terms and conditions on which a marriage between the parties should take place;. 2 Ves. & Beames, 234; Ambl. 264; 2 Freem. 201; unless such consent was obtained by deceit or fraud. 1 Eden, 6; 1 Phillim. 200; 12 Ves. 19.

4. − 2. Such a condition does not apply to a second marriage. 3 Bro. C. C. 145; 3 Ves. 239.

5. − 3. If the consent has been substantially given, though not modo et forma, the legatee will be held duly entitled to the legacy. 1 Sim. & Stu. 172; 1 Meriv. 187; 2 Atk. 265.

6. − 4. When trustees under a marriage settlement are empowered to sell "with the consent of the husband and, wife," a sale made by the trustees without the distinct consent of the wife, cannot be a due execution of their power. 10 Ves. 378.

7. − 5. Where a power of sale requires that the sale should be with the consent of certain specified individuals, the fact of such consent having been given, ought to be evinced in the manner pointed out by the creator of the power, or such power will not be considered as properly executed. 10 Ves. 308. Vide, generally, 2 Supp. to Ves. jr. 161, 165, 169; Ayliffe's Pand. 117; 1 Rob. Leg.. 345, 539.

8. − 6. Courts of equity have established the rule, that when the true owner of property stands by, and knowingly suffers a stranger to sell the same as his own, without objection, this will be such implied consent as to render the sale valid against the true owner. Story on Ag. _91 Story on Eq. Jur. _385 to 390. And courts of law, unless

restrained by technical formalities, act upon the principles of justice; as, for example, when a man permitted, without objection, the sale of his goods under an execution against another person. 6 Adolph. & El 11. 469 9 Barn. & Cr. 586; 3 Barn. & Adolph. 318, note.

9. The consent which is implied in every agreement is excluded, 1. By error in the essentials of the contract; ,is, if Paul, in the city of Philadelphia, buy the horse of Peter, which is in Boston, and promise to pay one hundred dollars for him, the horse at the time of the sale, unknown to either party, being dead. This decision is founded on the rule that he who consents through error does not consent at all; non consentiunt qui errant. Dig. 2, 1, 15; Dig. lib. 1, tit. ult. 1. 116, _2. 2. Consent is excluded by duress of the party making the agreement.

3. Consent is never given so as to bind the parties, when it is obtained by fraud. 4. It cannot be given by a person who has no understanding, as an idiot, nor by one who, though possessed of understanding, is not in law capable of making a contract, as a feme covert. See Bouv. Inst. Index, h. t.

CONSENT RULE. In the English practice, still adhered to in some of the states of the American Union, the defendant in ejectment is required to enter on record that he confesses the lease, entry, and ouster of the plaintiff; this is called the consent rule.

2. The consent rule contains the following particulars, namely: 1. The person appearing consents to be made defendant instead of the casual ejector; 2. To appear at the suit of the plaintiff; and, if the proceedings are by bill, to file common bail; 3. To receive a declaration in ejectment, and plead not guilty; 4. At the trial of the case to confess lease, entry, and ouster, and insist upon his title only; 5. That if at the trial, the party appearing shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able to prosecute his suit, such party shall pay to the plaintiff the costs of the nonpros, and suffer judgment to be entered against the casual ejector; 6. That if a verdict shall be given for the defendant, or the plaintiff shall not prosecute his suit for any other cause than the non−confession of lease, entry, and ouster, the lessor of the plaintiff shall pay costs to the defendant; 7. When the landlord appears alone, that the plaintiff shall be at liberty to sign judgment immediately against the casual ejector, but that execution shall be stayed until the court shall further order. Adams, Ej. 233, 234 and for a form see Ad. Ej. Appx. No. 25. Vide 2 Cowen, 442; 4 John. R. 311; Caines' Cas. 102; 12 Wend. 105, 3 Cowen, 356; 6 Cowen, 587; 1 Cowen, 166; and Casual Ejector; Ejectment.

CONSEQUENTIAL DAMAGES, torts. Those damages or those losses which arise not from the immediate act of the party, but in consequence of such act; as if a man throw a log into the public streets, and another fall upon it and become injured by the fall or if a man should erect a dam over his own ground, and by that means overflow his neighbor's, to his injury.

2. The form of action to be instituted for consequential damages caused without force, is by action on the case. 3 East, 602; 1 Stran. 636; 5 T. R. 649; 5 Vin. Ab. 403; 1 Chit. Pl. 127 Kames on Eq. 71; 3 Bouv. Inst. n. 3484, et seq. Vide Immediate.

CONSERVATOR. A preserver, a protector.

2. Before the institution of the office of justices of the peace in England, the public order was maintained by officers who bore the name of conservators of the peace. All judges, justices, sheriffs and constables, are conservators of the peace, and are bound, ex officio, to be aiding and assisting in preserving older.

3. In Connecticut, this term is applied to designate a guardian who has the care of the estate of an idiot. 5 Conn. R. 280.

CONSIDERATIO CURLAE, practice. The judgment of the court. In pleadings where matters are determined by the court, it is said, therefore it is considered and adjudged by the court ideo consideratum est per curiam.

CONSIDERATION, contracts. A compensation which is paid, or all inconvenience suffered by the, party from whom it proceeds. Or it is the reason which moves the contracting party to enter into the contract. 2 Bl. Com. 443. Viner defines it to be a cause or occasion meritorious, requiring a mutual recompense in deed or in law. Abr. tit. Consideration, A. A consideration of some sort or other, is so absolutely necessary to the forming a good contract, that a nudum pactum, or an agreement to do or to pay any thing on one side, without any compensation to the other, is totally void in law, and a man cannot be compelled to perform it. Dr. & Stud. d. 2, c. 24 3 Call, R. 439 7 Conn. 57; 1 Stew. R. 51 5 Mass. 301 4 John. R. 235; C. Yerg. 418; Cooke, R. 467; 6 Halst. R. 174; 4 Munf. R. 95. But contracts under seal are valid without a consideration; or, perbaps, more properly speaking, every bond imports in itself a sufficient consideration, though none be mentioned. 11 Serg. & R. 107. Negotiable instruments, as bills of exchange and promissory notes, carry with them prima facie evidence of consideration. 2 Bl. Com. 445.

3. The consideration must be some benefit to the party by whom the promise is made, or to a third person at his

instance; or some detriment sustained at the instance of the party promising, by the party in whose favor the promise is made. 4 East, 455; .1 Taunt. 523 Chitty on Contr. 7 Dr. & Stu. 179; 1 Selw. N. P. 39 , 40; 2 pet. 182 1 Litt. 123; 3 John. 100; 6 Mass. 58 2 Bibb. 30; 2 J. J. Marsh. 222; 5 Cranch, 142, 150 2 N. H. Rep. 97 Wright, It. 660; 14 John. R. 466 13 S. & R. 29 3 M. Gr. & Sc. 321.

4. Considerations are good, as when they are for natural love and affection; or valuable, when some benefit arises to the party to whom they are made, or inconvenience to the party making them. Vin. Abr. Consideration, B; 5 How. U. S. 278; 4 Barr, 364; 3 McLean, 330; 17 Conn. 511; 1 Branch, 301; 8 Ala. 949.

5. They are legal, which are sufficient to support the contract or illegal, which render it void. As to illegal considerations, see 1 Hov. Supp. to Ves. jr. 295; 2 Hov. Supp. to Ves. jr. 448; 2 Burr. 924 1 Bl. Rep. 204. If the, performance be utterly impossible, in fact or in law, the consideration is void. 2 Lev. 161; Yelv. 197, and note; 3 Bos. & Pull. 296, n. 14 Johns. R. 381.

6. A mere moral obligation to pay a debt or perform a duty, is a sufficient consideration for an express promise, although no legal liability existed at the time of making such promise. Cowp. 290 Bl. Com. 445 3 Bos. & Pull. 249, note; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; 13 Johns. R. 259; Yelv. 41, b, note; 3 Pick. 207. But it is to be observed, that in such cases there must have been a good or valuable consideration; for example, every one is under a moral obligation to relieve a person in distress, a promise to do so, however, is not binding in law. One is bound to pay a debt which he owes, although he has been released; a promise to pay such a debt is obligatory in law on the debtor, and can therefore be enforeed by action. 12 S. & R. 177; 19 John. R. 147; 4 W. C. C. R. 86, 148; 7 John. R. 26; 14 John. R. 178; 1 Cowen, R. 249; 8 Mass. R. 127. See 7 Conn. R. 57; 1 Verm. R. 420; 5 Verm. R. 173; 5. Ham. R. 58; 3 Penna. R. 172; 5 Binn. R. 33.

7. In respect of time, a consideration is either, 1st. Executed, or Something done before the making of the obligor's promise. Yelv. 41, a. n. In general, an executed consideration is insufficient to support a contract; 7 John. R. 87; 2 Conn. R. 404; 7 Cowen, R. 358; but an executed consideration on request; 7 John. R. 87 1 Caines R. 584; or by some previous duty, or if the debt be continuing at the time, or it is barred by some rule of law, or some provision of a statute, as the act of limitation, it is sufficient to maintain an action. 4 W. C. C. R. 148 14 John. R. 378 17 S. & R. 126. 2d. Executory, or something to be done after such promise. 3d. Concurrent, as in the case of mutual promises; and, 4th. A continuing consideration. Chitty on Contr. 16.

8. As to cases where the contract has been set aside on the ground of a total failure of the consideration, see 11 Johns. R. 50; 7 Mass. 14; 8 Johns. R. 458; 8 Mass. 46 6 Cranch, 53; 2 Caines' Rep. 246 and 1 Camp. 40, n. When the consideration turns out to be false and fails, there is no contract; as, for example, if my father by his will gives me all his estate, charged with the payment of a thousand dollars, and I promise to give you my house instead of the legacy to you, and you agree to buy it with the legacy, and before the contract is completed, and I make you a deed for the house, I discover that my father made a codicil to his will and by it be revoked the gift to you' I am not bound to complete the contract by making you a deed for my house. Poth. on Oblig. part 1, c. 1, art. 3, _6. See, in general, Obligation,, New Promise; Bouv. Inst. Index. b. t,; Evans' Poth. vol. ii. p. 19; 1 Fonb. Eq. 335; Newl. Contr. 65; 1 Com. Contr. 26; Fell on Guarrant. 337; 3 Chit. Com. Law, 63 to 99; 3 Bos. & Pull. 249, n; 1 Fonb. Eq. 122, note z; Id. 370, note g; 5 East, 20, n.; 2 Saund. 211, note 2; Lawes Pl. Ass. 49; 1 Com. Dig. Action upon the case upon Assumpsit, B Vin. Abr. Actions of Assumpsit, Q; Id. tit. Consideration.

CONSIDERATUM EST per curiam. It is considered by the court. This formula is used in giving judgments. A judgment is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein, for the redress of an injury. The language of the judgment is not, therefore, that " it is decreed," or " resolved," by the court; but that " it is considered by the court," consideratum est per curiam, that the plaintiff recover his debt, &c. 3 Bouv. Inst. n. 3298.

CONSIGNATION, contracts. In the civil law, it is a deposit which a debtor makes of the thing that he owes, into the hands of a third person, and under the authority of a court of justice. Poth. Oblig. P. 3, c. 1, art. 8.

2. Generally the consignation is made with a public officer it is very similar to our practice of paying money into court.

3. The term to consign, or consignation, is derived from the Latin consignare, which signifies to seal, for it was formerly the practice to seal up the money thus received in a bag or box. Aso & Man. Inst. B. 2, t. 11, c. 1, _5. See Burge on Sur. 138.

CONSIGNEE, contracts. One to whom a consignment is made.

2. When the goods consigned to him are his own, and they have been ordered to be sent, they are at his risk the

moment the consignment is made according to his direction; and the persons employed in the transmission of the goods are his agents. 1 Liverm. on Ag, 9. When the goods are not his own, if he accept the consignment, he is bound to pursue the instructions of the consignor; as if the goods be consigned upon condition that the consignee will accept the consignor's bills, he is bound to accept them; Id. 139; or if he is directed to insure, he must do so. Id. 325.

3. It is usual in bills of lading to state that the goods are to be delivered to the consignee or his assigns, he or they paying freight; in such case the consignee or his assigns, by accepting the goods, by implication, become bound to pay the freight, Abbott on Sh. p. 3, c. 7, _4; 3 Bing. R, 383.

4. When a person acts, publicly as a consignee, there is an implied engagement on his part that he will be vigilant in receiving goods consigned to his care, so as to make him responsible for any loss which the owner may sustain in consequence of his neglect. 9 Watts & Serg. 62.

CONSIGINMENT. The goods or property sent by a common carrier from one or more persons called the consignors, from one place, to one or more persons, called the consignees, who are in another. By this term ig also understood the goods sent by one person to another, to be sold or disposed of by the latter for and on account of the former.

CONSIGNOR, contracts. One who makes a consignment to another.

2. When goods are consigned to be sold on commission, and the property remains in the consignor; or when goods have been consigned upon a credit, and the consignee has become a bankrupt or failed, the consignor has a right to stop them in transitu. (q. v.) Abbot on Sh. p. 3, c.

3. The consignor is generally liable for the freight or the hire for the carriage of goods. 1 T. R. 6 5 9.

CONSILIUM, or dies consilii, practice. A time allowed for the accused to make his defence, and now more commonly used for a day appointed to argue a demurrer. In civil cases, it is a special day appointed for the purpose of hearing an argument. Jer. Eq. Jur. 296; 4 Bouv. Inst. n. 3753.

CONSIMILI CASU. These words occur in the Stat. West. 21 C. 24, 13 Ed. 1. wbich gave authority to the clerks in chancery to form new writs in consimili casu simili remedio indigente sicut prius fit breve. In execution of the powers granted by this statute, many new writs were formed by the clerk's in chancery, especially in real actions, as writs of quod permittat prosternere, against the alienee of land after the erection of a nuisance thereon, according to the analogy of the assize of nuisance, writs of juris utrum, c. &c. In respect to personal actions, it has, long been the practice to issue writs in consimili casu, in the most general form, e. g. in trespass on the case upon promises, leaving it to the plaintiff to state fully, and at large, his case in the declaration the sufficiency of which in point of law is always a question for the court to consider upon the pleadings and evidence. See Willes, Rep. 580; 2 Lord Ray. 957; 2 Durnf. & East, 51; 2 Wils. 146 17 Serg. & R.. 195; 3 Bl. Com. 51 7 Co. 4; F. N. B. 206; 3 Bouv. Inst. n. 3482.

CONSISTENT. That which agrees with something else; as a consistent condition, which is one which agrees with all other parts of a contract, or which can be reconciled with every other part. 1 Bouv. Just. n. 752,

CONSISTORY, ecclesiastical law. An assembly of cardinals convoked by the pope. The consistory is public or secret. It is vublic, when the pope receives princes or gives audience to ambassadors; secret, when he fills vacant sees, proceeds to the canonization of saints, or judges and settles certain contestations submitted to him.

2. A court which was formerly held among protestants, in which the bishop presided, assisted by some of his clergy, also bears this name. It is now held in England, by the bishop's chancellor or commissary, and some other ecclesiastical officers, either in the cathedral, church, or other place in his diocese, for the determination of ecclesiastical cases arising in that diocese. Merl. Rep. h. t.; Burns' Dict. h. t.

CONSOLATO DEL MARE, (IL). The name of a code of sea laws compiled by order of the ancient kings of Aragon. Its date is not very certain, but it was adopted on the continent of Europe, as the code of maritime law, in the course of the eleventh, twelfth, and thirteenth centuries. It comprised the ancient ordinances of the Greek and Roman emperors, and of the kings of France and Spain; and the laws of the Mediterranean islands, and of Venice and Genoa. It was originally written in the dialect of Catalonia, as its title plainly indicates, and it has been translated into every language of Europe. This code has been reprinted in the second volume of the " Collection de Lois Maritimes Anterieures au XVIII. Siecle, par J. M. Pardessus, (Paris, 1831)." A collection of sea laws, which is very complete.

CONSOLIDATION, civil law. The union of the usufruct with the estate out of which it issues, in the same person which happens when the usufructuary acquires the estate, or vice versa. In either case the usufruct is

extinct. In the common law this is called a merger. Ley. El. Dr. Rom. 424. U. S. Dig. tit. Actions, V.

2. Consolidation may take place in two ways: first, by the usufructuary surrendering his right to the proprietor, which in the common law is called a surrender; secondly, by the release of the. proprietor of his rights to the usufructuary, which in our law is called a release.

CONSOLIDATION RULE, practice, com. law. When a number of actions are brought on the same policy, it is the constant practice, for the purpose of saving costs, to consolidate them. by a rule of court or judge's order, which restrains the plaintiff from proceeding to trial in more than one, and binds the defendants in all the others to abide the event of that one; but this is done upon condition that the defendant shall not file any bill inequity, or bring any writ of error for delay. 2 Marsh. Ins. 701. For the history of this rule, vide Parke on Ins. xlix.; Marsh. Ins. B. 1, c. 1 6, s. 4. And see 1 John. Cas. 29; 19 Wend. 23; 13 Wend. 644 5 Cowen, 282,; 4 Cowen, 78; Id. 85; 1 John. 29; 9 John. 262.

2. The term consolidation seems to be rather misapplied in those cases, for in point of fact there is a mere stay of proceedings in all those cases but one. 3 Chit. Pr. 644. The rule is now extended to other cases: when several actions are brought on the same bond against several obligors, an order for a stay of proceedings in all but one will be made. 3 Chit. Pr. 645 3 Carr. & P. 58. See 4 Yeates, R. 128 3 S. & R. 262; Coleman, 62; 3 Rand. 481; 1 N. & M. 417, n.; 1 Cow n 89; 3 Wend. 441; 9 Wend. 451; M. 438, 440, n.; 5 Cowen, 282; 4 Halst. 335; 1 Dall. 145; 1 Browne, Appx. lxvii.; 1 Ala. R. 77; 4 Hill, R. 46; 19 Wend. 23 5 Yerg. 297; 7 Miss. 477; 2 Tayl. 200.,

3. The plaintiff may elect to join in the same suit several causes of action, in many cases, consistently with the rules of pleading, but having done so, his election is determined. He cannot ask the court to consolidate them; 3 Serg. & R. 266; but the court will sometimes, at the instance of the defendant, order it against the plaintiff. 1 Dall. Rep. 147, 355; 1 Yeates, 5; 4 Yeates, 128; 2 Arch. Pr. 180; 3 Serg. & R. 264.

CONSOLS, Eng. law. This is an abbreviation for consolidated annuities. Formerly when a loan was made, authorized by government, a particular part of the revenue was appropriated for the payment of the interest and of the principal. This was called the fund, and every loan had its fund. In this manner the Aggregate fund originated in 1715; the South Sea fund, in 1717; the General fund, 1617 and the Sinking fund, into which the surplus of these three funds flowed, which, although destined for the diminution of the national debt, was applied to the necessities of the government. These four funds were consolidated into one in the year 1787, under the name of consolidated fund.

2. The income arises from the receipts on account of excise, customs, stamps, and other, perpetual taxes. The charges on it are the interest on and the redemption of the public debt; the civil list; the salaries of the judges and officers of state, and the like.

3. The annual grants on account of the army and navy, and every part of the revenue which is considered temporary, are excluded from this fund.

4. Those persons who lent the money to the government, or their assigns, are entitled to an annuity of three per cent on the amount lent, which, however, is not to be returned, except at the option of the government so that the holders of consols are simply annuitants.

CONSORT. A man or woman married. The man is the consort of his wife, the woman is the consort of her husband.

CONSPIRACY, crim. law, torts. An agreement between two or more persons to do an unlawful act, or an act which may become by the combination injurious to others. Formerly this offence was much more circumscribed in its meaning than it is now. Lord Coke describes it as "a consultation or agreement between two or more to appeal or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed and afterwards the party is acquitted by the verdict of twelve men."

2. The crime of conspiracy, according to its modern interpretation, may be of two kinds, Damely, conspiracies against the public, or such as endanger the public health, violate public morals, insult public justice, destroy the public peace, or affect public trade or business. See 3 Burr. 1321.

3. To remedy these evils the guilty persons may be indicted in the name of the commonwealth. Conspiracies against individuals are such as have a tendency to injure them in their persons, reputation, or property. The remedy in these cases is either by indictment or by a civil action.

4. In order to reader the offence complete, there is no occasion that any act should be done in pursuance of the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it. The conspiracy is the gist of the crane. 2 Mass. R. 337; Id. 538 6 Mass. R. 74; 3 S. & R. 220 4 Wend. R. 259;

Halst. R. 293 2 Stew. Rep. 360; 5 Harr. & John. 317 8 S. & R. 420. But see 10 Verm. 353.

5. By the laws of the United State's, St. 1825, c. 76, _23, 3 Story's L. U. S., 2006, a wilful and corrupt conspiracy to cast away, burn or otherwise destroy any ship or vessel. with intent to injure any underwriter thereon, or the goods on board thereof, or any lender of money on such vessel, on bottomry or respondentia, is, by the laws of the United States, made felony, and the offender punishable by fine not exceeding ten thousand dollars, and by imprisonment and confinement at hard labor, not exceeding ten years.

6. By the Revised Statutes of New York, vol. 2, p. 691, 692, it is enacted, that if any two or more persons shall conspire, either, 1. To commit any offence; or, 2. Falsely and maliciously to indict another for any offence; or, 3. Falsely to move or maintain any suit; or, 4. To cheat and defraud any person of any property, by any means which are in themselves criminal; or, 5. To cheat and defraud any person of any property, by means which, if executed, would amount to a cheat, or to obtaining property by false pretences; or, 6. To commit any act injurious to the public health, to public morals, or to trade and commerce, or for the perversion or obstruction of justice, or the due administration of the laws; they shall be deemed guilty of a misdemeanor. No other conspiracies are there punishable criminally. And no agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

7. When a felony has been committed in pursuance of a conspiracy, the latter, which is only a misdemeanor, is merged in the former; but when a misdemeanor only has been committed in pursuance of such conspiracy, the two crimes being of equal degree, there can be no legal technical merger. 4 Wend. R. 265. Vide 1 Hawk. 444 to 454; 3 Chit. Cr. Law, 1138 to 1193 3 Inst. 143 Com. Dig. Justices of the Peace, B 107; Burn's Justice, Conspiracy; Williams' Justice, Conspiracy; 4 Chit. Blacks. 92; Dick. Justice Conspiracy, Bac. Ab. Actions on the Case, G 2 Russ. on Cr. 553 to 574 2 Mass. 329 Id. 536 5 Mass. 106 2 D R. 205; Whart. Dig. Conspiracy; 3 Serg. & Rawle, 220; 7 Serg. & Rawle, 469 4 Halst. R. 293; 5 Harr. & Johns. 317 4 Wend. 229; 2 Stew. R. 360;1 Saund. 230, u. 4. For the French law, see Merl. Rep. mot Conspiration Code Penal, art. 89.

CONSPIRATORS. Persons guilty of a conspiracy. See 3 Bl. Com. 126−71 Wils. Rep. 210−11. See Conspiracy.

CONSTABLE. An officer, who is generally elected by the people.

2. He possess power, virture officii, as a conservator of the peace at common law, and by virtue of various legislative enactments; he. way therefore apprehend a supposed offender without a warrant, as treason, felony, breach of the peace, and for some misdemeanors Iess than felony, when committed in his view. 1 Hale, 587; 1 East, P. C. 303 8 Serg. & Rawle, 47. He may also arrest a supposed offender upon the informatiou of others but he does so at his peril, unless he can show that a felony has been committed by some person, as well as the reasonableness of the suspicion that the party arrested is guilty. 1 Chit. Cr. L. 27; 6 Binn. R. 316; 2 Hale, 91, 92 1 East, P. C. 301. He has power to call others to his assistance; or he may appoint a deputy to do ministerial acts. 3 B urr. Rep. 1262.

3. A constable is also a ministerial officer, bound to obey the warrants and precepts of justices, coroners, and sheriffs. Constables are also in some states bound to execute the warrants and process of justices of the peace in civil cases.

4. In England, they have many officers, with more or less power, who bear the name of constables; as, lord high constable of England, high constable 3 Burr. 1262 head constables, petty constables, constables of castles, constables of the tower, constables of the fees, constable of the exchequer, constable of the staple, &c.

5. In some of the cities of the United States there are officers who are called high constables, who are the principal police officers where they reside. Vide the various Digests of American Law, h. t.; 1 Chit. Cr. L. 20; 5 Vin. Ab. 427; 2 Phil. Ev. 253 2 Sell. Pr. 70; Bac. Ab. h. t.; Com. Dig. Justices of the Peace, B 79; Id. D 7; Id, Officer, E 2; Wille. Off. Const.

CONSTABLEWICK. In England, by this word is meant the territorial jurisdiction of a constable. 5 Nev. & M. 261.

CONSTAT, English law. The name of a certificate, which the clerk of the pipe and auditors of the exchequer make at the request of any person who intends to plead or move in the court for the discharge of anything; and the effect of it is, the certifying what constat (appears) upon record touching the matter in question.

2. A constat is held to be superior to an ordinary certificate, because it contains nothing but what is on record. An exemplification under the great seal, of the enrolment of any letters−patent, is called a constat. Co. Litt. 225. Vide Exemplification; Inspeximus.

3. Whenever an officer gives a certificate that such a thing appears of record, it is called a constat; because the officer does not say that the fact is so, but it appears to be as he certifies. A certificate that it appears to the officer that a judgment has been entered, &c., is insufficient. 1 Hayw. 410.

CONSTITUENT. He who gives authority to another to act for him. 1 Bouv. Inst. n. 893.

2. The constituent is bound with whatever his attorney does by virtue of his authority. The electors of a member of the legislature are his constituents, to whom he is responsible for his legislative acts.

CONSTITUIMUS. A Latin word which signifies we constitute. Whenever the king of England is vested with the right of creating a new office, he must use proper words to do so, for example, erigimus, constituimus, c . Bac. Ab. Offices, &c. E.

TO CONSTITUTE, contr. To empower, to authorize. In the common form of letters of attorney, these words occur, I nominate, constitute and appoint."

CONSTITUTED AUTHORITIES. Those powers which the constitution of each people has established to govern them, to cause their rights to be respected, and to maintain tliose of eacli of its members.

2. They arc called constituted, to distinguish them from the constituting authority which has created or organized them, or has delegated to an authority, which it has itself created, the right of establishing or regulating their movements. The officers appointed under the constitution are also collectively called the constituted authorities. Dall. Dict. mots Contrainte par corps, n. 526.

CONSTITUTION, government. The fundamental law of the state, containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what persons each of these powers is to be confided, and the, manner it is to be exercised as, the Constitution of the United States. See Story on the Constitution; Rawle on the Const.

2. The words constitution and government (q. v.) are sometimes employed to express the same idea, the manner in which sovereignty is exercised in each state. Constitution is also the name of the instrument containing the fundamental laws of the state.

3. By constitution, the civilians, and, from them, the common law writers, mean some particular law; as the constitutions of the emperors contained in the Code.

CONSTITUTION, contracts. The constitution of a contract, is the making of the contract as, the written constitution of a debt. 1 Bell’s Com. 332, 5th ed.

CONSTITUTION OF THE UNITED STATES OF AMERICA. The fundamental law of the United States.

2. It was framed by a convention of the representatives of the people, who met at Philadelphia, and finally adopted it on the 17th day of September, 1787. It became the law of the land on the first Wednesday in March, 1789. 5 Wheat. 420.

3. A short analysis of this instrument, so replete with salutary provisions for insuring liberty and private riglits, and public peace and prosperity, will here be given.

4. The preamble declares that the people of the United States, in order to form a more perfect union, establish justice, insure public tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish this constitution for the United States of America.

5. − 1. The first article is divided into ten sections. By the first the legislative power is vested in congress. The second regulates the formation of the house of representatives, and declares who shall be electors. The third provides for the organization of the senate, and bestows on it the power to try impeachments. The fourth directs the times and places of holding elections and the time of meeting of congress. The fifth determines the power of the respective houses. The sixth provides for a compensation to members of congress, and for their safety from arrests and disqualifies them from holding certain offices. The seventh directs the manner of passing bills. The eighth defines the powers vested in congress. The ninth contains the following provisions: 1st. That the migration or importation of persons shall not be prohibited prior to the year 1808. 2d. That the writ of habeas corpus shall not be suspended, except in particular cases. 3d. That no bill of attainder, or ex post facto law, shall be passed. 4th. The manner of laying taxes. 5th. The manner of drawing money out of the treasury. 6th. That no title of nobility shall be granted. 7th. That no officer shall receive a present from a foreign government. The tenth forbids the respective states to exercise certain powers there enumerated.

6. − 2. The second article is divided into four sections. The first vests the executive power in the president of the United States of America, and provides for his election, and that of the vice−president. The second section confers

various powers on the president. The third defines his duties. The fourth provides for the impeachment of the president, vice−president, and all civil officers of the United States.

7. − 3. The third article contains three sections. The first vests the judicial power in sundry courts, provides for the tenure of office by the judges, and for their compensation. The second provides for the extent of the judicial power, vests in the supreme court original jurisdiction in certain cases, and directs the manner of trying crimes. The third defines treason, and vests in congress the power to declare its punishment.

8. − 4. The fourth article is composed of four sections. The first relates to the faith which state records, &c., shall have in other states. The second secures the rights of citizens in the several states for the delivery of fugitives from justice or from labor. The third for the admission of new states, and the government of the territories. The fourth guaranties to every state in the Union the republican form of government, and protection from invasion or domestic violence.

9. − 5. The Fifth Article provides for amendments to the constitution.

10. − 6. The sixth article declares that the debts due under the confederation shall be valid against the United States; that the constitution and treaties made under its powers shall be the supreme law of the land that public officers shall be required by oath or affirmation to support the Constitution of the United States that no religious test shall be required as a qualification for office.

11. − 7. The seventh article directs what shall be a sufficient ratification of this constitution by the states.

12. In pursuance of the fifth article of the constitution, articles in addition to, and amendment of, the constitution, were proposed by congress, and ratified by the legislatures of the several states. These additional articles are to the following import:

13. − 1. Relates to religious freedom; the liberty of the press; the right of the people to assemble and petition.

14. − 2. Secures to the people the right to bear arms.

15. − 3. Provides for the quartering of soldiers.

16. − 4. Regulates the right of search, and of arrest on criminal charges.

17. − 5. Directs the manner of being held to answer for crimes, and provides for the security of the life, liberty and property of the citizens.

18. − 6. Secures to the accused the right to a fair trial by jury.

19. − 7. Provides for a trial by jury in civil cases.

20. − 8. Directs that excessive bail shall not be required; nor excessive fines imposed nor cruel and unusual punishments inflicted.

21. − 9. Secures to the people the rights retained by them.

22.− 10. Secures the rights to the states, or to the people the rights they have not granted.

23. − 11. Limits the powers of the courts as to suits against one of the United States.

24. − 12. Points out the manner of electing the president and vice−president.

CONSTITUTIONAL. That which is consonant to, and agrees with the constitu−
tion.

2. When laws are made in violation of the constitution, they are null and void: but the courts will not declare such a law void unless there appears to be a clear and unequivocal breach of the constitution. 4 Dall. R. 14; 3 Dall. R. 399; 1 Cranch, R. 137; 1 Binn. R. 415 6 Cranch, R. 87, 136; 2 Hall’s Law Journ. 96, 255, 262; 3 Hall’s Law Journ. 267; Wheat. Dig. tit. Constitutional Law; 2 Pet. R. 522; 2 Dall. 309; 12 Wheat. R. 270; Charlt. R. 175, .235; 1 Breese, R. 70, 209; 1 Blackf. R. 206 2 Porter, R. 303; 5 Binn. 355; 3 S. & R. 169; 2 Penn. R. 184; 19 John. R. 58; 1 Cowen, R. 550; 1 Marsb. R. 290 Pr. Dec. 64, 89 2 Litt. R. 90; 4 Monr R. 43; 1 South. R. 192; 7 Pick. R. 466; 13 Pick. R. 60 11 Mass. R. 396; 9 Greenl. R. 60; 5 Hayw. R. 271; 1 Harr. & J. 236; 1 Gill & J. 473; 7 Gill & J. 7; 9 Yerg. 490; 1 Rep. Const. Ct. 267; 3 Desaus. R. 476; 6 Rand. 245; 1 Chip. R. 237, 257; 1 Aik. R. 314; 3 N. H. Rep. 473; 4 N. H. Rep. 16; 7 N. H. Rep. 65; 1 Murph. R. 58. See 8 Law Intell. 65, for a list of decisions made by the supreme court of the United States, declaring laws to be unconstitutional.

CONSTITUTOR, civil law. He who promised by a simple pact to pay the debt of another; and this is always a principal obligation. Inst. 4, 6, 9.

CONSTRAINT. In the civil and Scottish law, by this term is understood what, in the common law, is known by the name of duress.

2. It is a general rule, that when one is compelled into a contract, there is no effectual consent, thougb, ostensibly, there is the form of it. In such case the contract will be declared void.

3. The constraint requisite thus to annul a contract, must be a vis aut me us qui cadet in constantem virum, such as would shake a man of firmness and resolution. 3 Ersk. 1, _16; and 4, 1, _26; 1 Bell's Conn. B. 3, part 1, o. 1, s. 1, art. 1, page 295.

CONSTRUCTION, practice. It is defined by Mr. Powell to be "the drawing in inference by the act of reason, as to the intent of an instrument, from given circumstances, upon principles deduced from men's general motives, conduct and action." This definition may, perbaps, not be sufficiently complete, inasmuch as the term instrument generally implies something reduced into writing, whereas construction, is equally necessary to ascertain the meaning of engagements merely verbal. In other respects it appears to be perfectly accurate. The Treatise of Equity, defines interpretation to be the collection of the meaning out of signs the most probable. 1 Powell on Con . 370.

2. There are two kinds of constructions; the first, is literal or strict; this is uniformly the construction given to penal statutes. 1 Bl. Com. 88; 6 Watt's & Serg. 276; 3 Taunt. 377. 2d. The other is liberal, and applied, usually, to remedial laws, in order to enforce them according to their spirit.

3. In the supreme court of the United States, the rule which has been uniformly observed " in construing statutes, is to adopt the construction made by the courts of the country by whose legislature the statute was enacted. This rule may be susceptible of some modification when applied to British statutes which are adopted in any of these states. By adopting them, they become our own, as entirely as if they had been enacted by the legislature of the state.

4. The received construction, in England, at the time they are admitted to operate in this couutry − indeed, to the time of our separation from the British empire − may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But, however we may respect the subsequent decisions (and certainly they are entitled to great respect,) we do not admit their absolute authority. If the English courts vary their construction of a statute, which is common to the two countries, we do not hold ourselves bound to fluctuate with them. 5 Pet. R. 280.

5. The great object which the law has in all cases, in contemplation, as furnishing the leading principle of the rules to be observed in the construction of contracts, is, that justice is to be done between the parties, by enforcing the performance of their agreement, according to the sense in which it was mutually understood and relied upon at the time of making it.

6. When the contract is in writing, the difficulty lies only in the construction of the words; when it is to be made out by parol testimony, that difficulty is augmented by the possible mistakes of the witnesses as to the words used by the parties; but still, when the evidence is received, it must be assumed as correct, when a construction is to be put upon it. The following are the principal rules to be observed in the construction of contracts. When. the words used are of precise and unambiguous meaning, leading to no absurdity, that meaning is to be taken as conveying the intention of the parties. But should there be manifest absurdity in the application of such meaning, to the particular occasion, this will let in construction to discover the true intention of the parties: for example; 1st. When words are manifestly inconsistent with the declared purpose and object of the contract, they will be rejected; as if, in a contract of sale, the price of the thing sold should be acknowledged as received, while the obligation of the seller was not to deliver the commodity. 2 Atk. R. 32. 2d. When words are omitted so as to defeat the effect of the contract, they will be supplied by the obvious sense and inference from the context; as, if the contract stated that the seller, for the consideration of one hundred dollars, sold a horse, and the buyer promised to pay him for the said horse one hundred, the word dollars would be supplied. 1 3d. When the words, taken in one sense, go to defeat the contract, while they are susceptible of another construction which will give effect to the design of the parties, and not destroy it, the latter will be preferred. Cowp. 714.

8. − 2. The plain, ordinary, and popular sense of the words, is to be preferred to the more unusual, etymological, and recondite meaning or even to the literal, and strictly grammatical construction of the words, where these last would lead to any inefficacy or inconsistency.

9. − 3. When a peculiar meaning has been stamped upon the words by the usage of a particular trade or place in which the contract occurs, such technical or peculiar meaning will prevail. 4 East, R. 135. It is as if the parties in framing their contract had made use of a foreign language, which the court is not bound to understand, but which on evidence of its import, must be applied. 7 Taunt. R. 272; 1 Stark. R. 504. But the expression so made technical and appropriate, and the usage by which it has become so, must be so clear that the court cannot entertain a doubt upon the subject. 2 Bos. & P. 164; 3 Stark. Ev. 1036: 6 T. R. 320. Technical words are to be taken according to

their approved and known use in the trade in which the contract is entered into, or to wbich it relates, unless they have manifestly been understood in another sense by the parties. Vide 16 Serg. & R. 126.

10. − 4. The place where a contract has been made, is a most material consideration in its construction. Generally its validity is to be decided by the law of the place where it is made; if valid there, it is considered valid every where. 2 Mass. R. 88; 1 Pet. R. 317 Story, Confl. of Laws, 2; 4 Cowen's R. 410, note; 2 Kent, p. 39, 457, in the notes 3 Conn. R. 253 , 472; 4 Conn. R. 517. Its construction is to be according to the laws of the place where it is made for example, where a note was given in China, payable eighteen months after date, without any stipulation as to the amount of interest, the court allowed the Chinese interest of one per centum per month from the expiration of the eighteen mouths. 1 Wash. C. C. R. 253 see 12. Mass. R. 4, and the article Interest for noney.

11. − 5. Previous conversations, and all that passes in the course of correspondence or negotiation leading to the contract, are entirely superseded by the written agreement. The parties having agreed to reduce the terms of their contract to writing, the document is constituted as the only true and final exposition of their admissions and intentions; and nothing which does not appear in the written agreement will be considered as a part of the contract. 5 Co. R. 26; 2 B. & C. 634; 4 Taunt. R. 779. But this rule admits of some exceptions; as, where a declaration is made before a deed is executed, showing the design with which it was to be executed, in cases of frauds; 1 S. & R. 464; 10 S. & R. 292; and trusts, though no trust was declared in the writing. 1 Dall. R. 426; 7 S. & R. 114.

12. − 6. All contracts made in general terms, in the ordinary course of trade, are presumed to incorporate the usage and custom of the trade to which they relate. The parties are presumed to know such usages, and not to intend to exclude them. But when there is a special stipulation in opposition to, or inconsistent with the custom, that will of course prevail. Holt's R. 95.

13. − 7 . When there is an ambiguity which impedes the execution of the contract, it is first, if possible, to be resolved, on a view of the whole contract or instrument, aided by the admitted views of the parties, and, if indispensable, parol evidence may be admitted to clear it, consistently with the words. 1 Dall. R. 426; 4 Dall. R. 34 0; 8 S. & R. 609.

14. − 8. When the words cannot be reconciled with any practicable or consistent interpretation, they are to be considered as not made use of " perinde sunt ac si scripts non essent."

15. It is the duty of the court to give a construction to all written instruments; 3 Binn. R. 337; 7 S. & R. 372; 15 S. & R. 100 4 S. & R. 279 8 S. & R. 381; 1 Watts. R. 425; 10 Mass. R. 384; 3 Cranch, R. 180 3 Rand. R. 586 to written evidence 2 Watts, R. 347 and to foreign laws, 1 Penna. R. 388. For general rules respecting the construction of contracts, see 2 Bl. Com. 379; 1 Bouv. Inst. n. 658, 669; 2 Com. on Cont. 23 to 28 3 Chit. Com. Law, 106 to 118 Poth. Oblig. P. 1, c. 1, art. 7; 2 Evans' Poth. Ob. 35; Long on Sales, 106; 1 Fonb. Eq. 145, n. b Id. 440, n. 1; Whart. Dig. Contract, F; 1 Powell on Contr. 370 Shepp. Touchst. c. 5 Louis. Code, art. 1940 to 1957; Corn. Dig. Merchant, (E 2,) n. j.; 8 Com. Dig. tit. Contract, iv.; Lilly's Reg. 794; 18 Vin. Abr. 272, tit. Reference to Words; 16 Vin. Abr. 199, tit. Parols; Hall's Dig. 33, 339; 1 Ves. Jun. 210, n.; Vattel, B. 2, c. 17; Chit. Contr. 19 to 22; 4 Kent. Com. 419; Story's Const. _397−456; Ayl. Pa d. B. 1, t. 4; Rutherf. Inst. B. 2, c. 7, _4−11; 20 Pick. 150; 1 Bell's Com. 5th ed. 431; and the articles, Communings; Evidence; Interpretation; Parol; Pourparler. As to the construction of wills, see 1 Supp. to Ves. Jr. 21, 39, 56, 63, 228, 260, 273, 275, 364, 399; 1 United States Law Journ. 583; 2 Fonb. Eq. 309; Com. Dig. Estates by Devise. N 1; 6 Cruise's Dig. 171 Whart. Dig. Wills, D. As to the construction, of Laws, see Louis. Code, art. 13 to 21; Bac. Ab. Statutes, J; 1 Bouv. Inst. n. 86−90; 3 Bin. 858; 4 Bin . 169, 172; 2 S. & R. 195; 2 Bin. 347 Rob. Digest, Brit. Stat. 370; 7 Term. Rep. 8 2 Inst. 11, 136; 3 Bin. 284−5; 3 S. & R. 129; 1 Peere Wms. 207; 3 Burr. Rep. 1755−6; 3 Yeates, 108; 11 Co. 56, b; 1 Jones 26; 3 Yeates, 113 117, 118, 120; Dwarris on Statutes.

16. The following words and phrases have received judicial construction in the cases referred to. The references may be useful to the student and convenient to the practitioner.

A and his associates. 2 Nott.& M'Cord, 400.
A B, agent. 1 Breese's R. 172.
A B, (seal) agent for C D. 1 Blackf. R. 242.
A case. 9 Wheat. 738.
A piece of land. Moor. 702; S. C. Owen, 18.
A place called the vestry. 3 Lev. R. 96; 2 Ld. Raym. 1471.

A slave set at liberty. 3 Conn. R. 467.
A true bill. I Meigs, 109.
A two penny bleeder. 3 Whart. R. 138.
Abbreviations. 4 C. & P. 51; S. C. 19 Engl. C. L. R. 268.
Abide. 6 N. H. Rep. 162.
About. 2 Barn. & Adol. 106; 22 E. C. L. R. 36; 5 Greenl. R. 482. See 4 Greenl. 286. About _____ dollars. 5 Serg. & Rawles, 402. About $150. 9 Shep. 121.
Absolute disposal. 2 Eden, 87; 1 Bro. P. C. 476; 2 Johns. R. 391; 12 Johns. R. 389.
Absolutely. 2 Pa. St. R. 133.
Accept. 4 Gill & Johns. 5, 129
Acceptance. There is your bill, it is all right. 1 Esp. 17. If you will send it to the counting−house again, I will give directions for its being accepted. 3 Camp. 179. What, not accepted ? We have had the money, and they ought to have been paid; but I do not interfere; you should see my partner. 3 Bing. R. 625; S. C. 13 Eng. C. L. R. 78. The bill shall be duly honored, and placed to the drawer's credit. 1 Atk. 611. Vide Leigh's N. P. 420.
Accepted. 2 Hill, R. 582.
According to the bill delivered by the plaintiff to the defendant. 3 T. R. 575.
According to their discretion. 5 Co. 100; 8 How,. St. Tr. 55 n.
Account. 5 Cowen, 587, 593. Account closed. 8 Pick. 191. Account stated. 8 Pick. 193. Account dealings. 5 Mann. & Gr. 392, 398.
Account and risk. 4 East, R. 211; Holt on Sh. 376.
Accounts. 2 Conn. R. 433.
Across. 1 Fairf. 391.
Across a country. 3 Mann. & Gr. 759.
Act of God. 1 Cranch, 345; 22 E. C. L. R. 36; 12 Johns. R. 44; 4 Add. Eccl. R. 490.
Acts. Platt on Cov. 334.
Actual cost. 2 Mason, R. 48, 393, 2 Story's C. C. R. 422.
Actual damagei. 1 Gall. R. 429.
Adhere. 4 Mod. 153.
Adjacent. Cooke, 129.
Adjoining. 1 Turn. R. 21.
Administer. 1 Litt. R. 93, 100.
Ad tunc et indem. I Ld. Raym. 576.
Advantage, priority or preference. 4 W. C. C. R. 447.
Adverse possession. 3 Watts, 70, 77, 205, 345; 3 Penna. R. 134; 2 Rawle's R. 305; 17 Serg. & Rawle, 104; 2 Penna. R. 183; 3 Wend. 337, 357; 4 Wend. 507; 7 Wend. 62; 8 Wend. 440; 9 Wend. 523; 15 Wend. 597; 4 Paige, 178; 2 Gill & John. 173; 6 Pet. R. 61, 291 11 Pet. R. 41; 4 Verm. 155; 14 Pick. 461.
Advice. As per advice. Chit. Bills, 185.
Affecting. 9 Wheat. 855.
Aforesaid. Ld. Baym. 256; Id. 405.
After paying debts. 1 Ves. jr. 440; 3 Ves. 738; 2 Johns. Ch. R. 614; 1 Bro. C. C. 34; 2 Sch. & Lef. 188.
Afterwards to wit. 1 Chit. Cr. Laws, 174.
Against all risks. 1 John. Cas. 337.
Aged, impotent, and poor people. Preamble to Stat. 43 Eliz. c. 4; 17 Ves. @)73, in notes; Amb. 595; 7 Ves. 423; Scho. & Lef. 111; 1 P. Wims. 674; S. C. Eq. Cas. Ab. 192, pl. 9; 4 Vin. Ab. 485; 7 Ves. 98, note; 16 Ves. 206: Duke's Ch. Uses, by Bridgman, 361; 17 Ves. 371; Boyle on Charities, 31.
Agreed. 1 Roll's Ab. 519,
Agreement. 7 E. C. L. R. 331; 3 B. & B. 14; Fell on Guar. 262. Of a good quality and mode rate price. 1 Mo. & Malk. 483; S. C. 22 E. C. L. R. 363.
Aiding and abetting. Act of Congress of 1818, c. 86, _3; 12 Wheat. 460.
Aliments. Dig. 34, 1, 1.
All. 1 Vern. 3; 3 P. Wms. 56; 1 Vern. 341; Dane's Ab. Index, h. t. All debts due to me.; 1 Meriv. 541, n.; 3 Meriv. 434. All I am worth. 1 Bro. C. C. 487; 8 Ves. 604. All I am possessed of. 5 Ves. 816. All my clothes and linen

whatsoever. 3 Bro. C. C. 311. All my household goods and furniture, except my plate and watch. 2 Munf. 234. All my estate. Cows, 299; 9 Ves. 604. All my real property. 18 Ves. 193. All my freehold lands. 6 Ves. 642. All and every other my lands, tenements, and hereditaments. 8 Ves. 256; 2 Mass. 56; 2 Caines' R. 345; 4 Johns. R. 398. All the inhabitants. 2 Conn. R. 20. All sorts of. 1 Holt's N. P. R. 69. All business. 8 Wendell. 498; 23 E. C. L. R. 398; 1 Taunt. R. 349; 7 B. & Cr. 278, 283, 284. All claims and demands whatsoever. 1 Edw. Ch. R. 34. All baggage is at the owner's risk. 13 Wend. R. 611; 5 Rawle's R. 179; 1 Pick. R. 53; 3 Fairf R. 422; 4 Har. & John. 317. All civil suits. 4 S. & R. 76. All demands. 2 Caines' R. 320, 327; 15 John R. 197; 1 Ld. Raym. 114. All lots I own in the town of F. 4 Bibb, R, 288. All the buildings thereon. 4 Mass. R. 110; 7 John. R. 217. All my rents. Cro. Jac. 104. All I am worth. 1 Bro. C. C. 437. All and every other my lands, tenements, and hereditaments. 8 Ves. 246; 2 Mass. 56; 2 Caines' R. 345; 4 John. Ch. 388.
All other articles perishable in their own nature. 7 Cowen, 202.
All and every. Ward on Leg. 105; Cox, R. 213.
All minerals, or magnesia of any kind. 5 Watts, 34.
All my notes. 2 Dev. Eq. R. 489.
All that I possess, in doors and out of doors. 3 Hawks, R. 74.
All timber trees and other trees, but not the annual fruit thereof. 8 D. & R. 657; S. ic. 5 B. & C, R. 942.
All two lots. 7 Gill & Johns. 227.
All action. 5 Binn. 457.
Also. 4 Rawle, R. 69; 2 Bayw. 161
Amongst. 9 Ves. 445; 9 Wheat. R. 164; 6 Munf. 352.
And, construed or. 3 Ves. 450; 7 Ves. 454; 1 Supp. to Ves. jr. 435; 2 Supp. to Ves. jr. 9, 43, 114; 1 Yeates, 41, 319; 1 Serg. & Rawle, 141. Vide Disjunction, Or.
And all the buildings thereon. 4 Mass. R. 110; 7 John R. 217.
And also. 1 Hayw. 161.
And so on, from year to year, until the tenancy hereby created shall be determined as hereinafter mentioned. 1 P. & D. 454; and see 2 Campb. R. 573; 3 Campb. 510; 1 T. R. 378.
And the plaintiff doth the like. 1 Breese's R. 125.
Annual interest. 16 Verm. 44.
Annually, or in any way he may wish. 2 M'Cord's Ch. R. 281.
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Any court of record. 6 Co. 19.
Any goods. 3 Campb. 321.
Any creditor. 5 B. & A. 869.
Any other fund. 1 Colly. R. 693.
Any other matter or thing from the beginning of the world. 4 Mason, 227.
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Approved paper. 4 Serg. & Rawle, 1; 20 Wend. R. 431; 2 Campb. 532.
Appurtenances. 1 Serg. & Rawle, 169; 8 Johns. R. 47, 2d edit.; Com. Dig. Grant, E 9; 5 Serg. & Rawle, 110; Holt on Shipp. 404; 9 Pick. 293; 7 Mass. 6; 12 Pick. 436.
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As appears by the master's allocator. 2 T. R. 55.
As executors are bound in law to do. 2 Ohio R. 346.

As follows. 1 Chit. Cr. Law 233.
As this deponent believes. 2 M. & S. 563.
Ass. 2 Moody, C. C. 3.
Asses−Cattle. 1 R. & M. C. C. 3; 2 Russ. Cr. & M. 498.
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Bank notes. 5 Mason's R. 549; 6 Wend. 346, 354.
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Bargain and sell. 4 Monr. R. 463.
Barley. 4 C. & P. 548.
Barrels. 7 Cowen, R. 681.
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To such child or children, if more than one, as may happen to be enceinte by me. 17 Ves. 528.
To the children which I may have by A, living at my decease. 1 Ves. & Bea. 422.
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Covenants. Provided always, and it is agreed that the lessor shall find great timber, Bac. Ab Covenant, A. I oblige myself to pay so much money. Hard. 178. I am content to give A ten pounds at Michaelmas, and ten pounds at Ladyday. 3 Leon. 119. With usual covenants. 15 Ves. 528; 3 Anstr. 700.
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Well and truly to administer. 9 Mass. 114, 119, 370; 13 John. 441; 1 Bay, 328.

Well and truly to administer according to law. 1 Litt. R. 93, 100.
What I may die possessed of. 8 Ves. 604; 3 Call, 225.
What remains. 11 Ves. 330.
Wharf. 6 Mass. 332.
Wheat. An unthrashed parcel of wheat. 1 Leach, 494; 2 East, P. C. 1018; 2 T. R. 255.
Wheezing. Oliph. on Law of Horses, 61.
When. 6 Ves. 239; 11 Ves. 489; 3 Bro. C. C. 471.
When able. 3 Esp. 159; 3 E. C. L. R. 264, note; 4 Esp. 36.
When received. 13 Ves. 325.
When the same shall be recovered. lb.
When or if. 1 Hare, R. 10.
When paid. 15 S. & R. 114.
Wherefore he prays judgment, &c. 2 John. Cas. 312.
Whereupon. 6 T. R. 573.
Whilst. 7 Fast, 116.
Wholesale factory prices. 2 Conn. R. 69.
Widows and Orphans. 2 Sim. & Stu. 93.
Wife. 3 Ves. 570.
Wilful. 1 Benth. Ev. 351.
Wilful and corrupt. 1 Benth. Rat. Jud. Ev. 351.
Wilfully. 8 Law Rep. 78.
Will. He will change. 2 B. & B. 223.
With. 2 Vern. 466; Prec. Ch. 200; 1 Atk. 469; 2 Sch. & Lef. 189; 3 Mer. 437; 2 B. & Ald. 710; 2 B. & P. 443.
With all faults. 5 B. & A. 240; 7 E. C. L. R. 82; 3 E. C. L. R. 475.
With surety. 6 Binn. 53; 12 Serg. & Rawle, 112.
With the prothonotary. 5 Binn. 461.
With all usual and reasonable covenauts. 12 Ves. 179, 186; 3 Bro. C. C. 632; 15 Ves. 528; 3 Anstr. 700.
With sureties. 2 Bos. & Pull. 443.
With effect. 2 Watts & Serg. 33.
With liberty. 8 Gill & John. 190.
Within four days. 15 Serg. & Rawle, 43.
Within ___ days after. 3 Serg. & Rawle, 395.
Without fraud, deceit or oppression. 6 Wend. 454.
Without prejudice. 2 Chit. Pr. 24, note (x); 3 Mann. & Gr. 903.
Without recourse. 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 Serg. & Rawle, 325; 8 W. & S. 353; 2 Penn. St. R. 200. Vide article Sans Recours, in the body of this work.
Without reserve. 5 Mass. R. 34.
Wm. William. 1 Scam. R. 451.
Wood. Cro. Jac. 166.
Wood−land. 1 Serg. & Rawle, 169.
Woods. 4 Mass. 268.
Working days. 1 Bell's Com. 577, 5th ed
Worldly labor. 4 Bing. 84; S. C. 13 R. 351.
Worth and value. 3 B. & C. 516.
Writing. 14 John. 484; 8 Ves. 504; 2 M. & S. 286; 17 Ves. 459.
Writing in pencil. 1 Eng. Eccl. Rep. 406.

Yard lane. Touchs. 93; Co. Litt. 5.
Yearly meeting of Quakers. 6 Conn. 393.
Yearly meeting. 6 Conn. 292.
You. 2 Dowl. R. 145; S. C. 6 Leg. Obs. 138.

CONSTRUCTIVE. That which is interpreted.

2. Constructive presence. The commission of crimes, is, when a party is not actually present, an eye−witness to its commission but, acting with others, watching while another commits the crime. 1 Russ. Cr. 22.

3. Constructive larceny. One where the taking was not apparently felonious, but by construction of the prisoner's acts it is just to presume he intended at the time of taking to appropriate the property feloniously to his own use; 2 East, P. C. 685; 1 Leach, 212; as when he obtained the delivery of the goods animo furandi. 2 N. & M. 90. See 15 S. & R. 93; 4 Mass. 580; I Bay, 242.

4. Constructive breaking into a house. In order to commit a burglary, there must be a breaking of the house; this may be actual or constructive. A constructive breaking is when the burglar gains an entry into the house by fraud, conspiracy, or threat. See Burglary, A familiar instance of constructive breaking is the case of a burglar who coming to the house under pretence of business, gains adiuittance, and after being admitted, commits such acts as, if there had been an actual brooking, would have amounted to a burglary Bac. Ab. Burglary, A. See 1 Moody Cr. Cas. 87, 250.

5. Constructive notice. Such a notice, that although it be not actual, is sufficient in law; an example of this is the recording of a deed, which is notice to all the world, and so is the pendancy of a suit a general notice of an equity. 4 Bouv. Inst. n. 3874. See Lis pendens.

6. Constructive annexation. The annexation to the inheritance by the law, of certain things which are not actually attached to it; for example, the keys of a house; and heir looms are constructively annexed. Shep. Touch. 90; Poth− Traits des Choses, _1.

7. Constructive fraud. A contract or act, which, not originating in evil design and contrivance to perpetuate a positive fraud or injury upon other persons, yet, by its necessary tendency to deceive or mislead them, or to violate a public or private confidence, or to impair or injure public interest, is deemed equally reprehensible with positive fraud, and therefore is prohibited by law, as within the same reason and mischief as contracts and acts done malo animo. 1 Story, Eq. _258 to 440.

CONSUETUDINES FEUDORUM. The name of an institute of the feudal system and usages, compiled about the year 1170, by authority of the emperor Frederic, surnamed Barbarossa. Ersk. Inst. B. 2, t. 3, n. 5.

CONSUL, government, commerce. Consuls are commercial agent's appointed by a government to reside in the seaports of a foreign country, and commissioned to watch over the commercial rights an@ privileges of the nation deputing them. A vice−consul is one acting in the place of a consul.

2. Consuls have been greatly multiplied. Their duties and privileges are now generally limited, defined and secured by commercial treaties, or by the laws of the countries they represent. As a general rule, it may be laid down that they represent the subjects or citizens of their own nation, not otherwise represented. Bee, R. 209 3 Wheat. R. 435; 6. Wheat. R., 152; 10 Wheat. 66; 1 Mason's R. 14.

3. This subject will be considered by a view, first, of the appointment, duties, powers, rights, and liabilities of American consuls; and secondly, of the recognition, duties, rights, and liabilities of foreign consuls.

4. − 1. Of American consuls. First. The president authorized by the Constitution of the United States, art. 2, s. 2, el. 3, to nominate, and, by and with the advice and consent of the senate, appoint consuls.

5. − Secondly. Each consul and vice−consul is required, before he enters on the execution of his office, to give bond, with such sureties as shall be approved by the secretary of state, in a sum not less than two thousand nor more than ten thousand dollars, conditioned for the true and faithful discharge of the duties of his office, and also for truly accounting for all moneys, goods and effects which may come into his possession by virtue of the act of 14th April, 1792, which bond is to be lodged in the office of the secretary of State. Act of April 14, 1792, sect. 6.

6. − Thirdly. They have the power and are required to perform many duties in relation to the commerce of the United States and towards masters of ships, mariners, and other citizens of the United States; among these are the authority to receive protests or declarations which captains, masters, crews, passengers, merchants, and others make relating to American commerce; they are required to administer on the estate of American citizens, dying within their consulate, and leaving no legal representatives, when the laws of the country permit it; [see 2 Curt. Ecc. R. 241] to take charge and secure the effects of stranded American vessels in the absence of the master, owner or consignee; to settle disputes between masters of vessels and the mariners; to provide for destitute seamen within their consulate, and send them to the United States, at the public expense. See Act of 14th April, 1792; Act of 28th February, 1803, ch. 62; Act of 20th July, 1840, Ch. 23. The consuls are also authorized to make certificates of certain facts in certain cases, which receive faith and credit in the courts of the United States. But

those consular certificates are not to be received in evidence, unless they are given in the performance of a consular function; 2 Cranch, R. 187; Paine, R. 594; 2 Wash. C. C. R. 478; 1 Litt. R. 71; nor are they evidence, between persons not parties or privies to the transaction, of any fact, unless, either expressly or impliedly, made so by statute. 2 Sumn. R. 355.

7. − Fourthly. Their rights are to be protected agreeably to the laws of nations, and of the treaties made between the nation to which they are sent, and the United States. They are entitled, by the act of 14th April, 1792, s. 4, to receive certain fees, which are there enumerated. And the consuls in certain places, as London, Paris, and the Barbary states, receive, besides, a salary.

8. − Fifthly. A consul is liable for negligence or omission to perform, seasonably, the duties imposed upon him, or for any malversation or abuse of power, to any injured person, for all damages occasioned thereby; and for all malversation and corrupt conduct in office, a consul is liable to indictment, and, on conviction by any court of competent jurisdiction, shall be fined not less than one, nor more than ten thousand dollars; and be imprisoned not less than one nor more than five years. Act of July 20, 1840, ch. 23, cl. 18. The act of February 28, 1803, ss. 7 and 8, imposes heavy penalties for falsely and knowingly certifying that property belonging to foreigners is the property of citizens of the United States; or for granting a passport, or other paper, certifying that any alien, knowing him or her to be such, is a citizen of the United States.

9. The duties of consuls residing on the Barbary coast are prescribed by a particular statute. Act of May 1, 1810, S. 4.

10. − 2. Of foreign consuls. First. Before a consul can perform any duties in the United States, he must be recognized by the president of the United States, and have received his exequatur. (q. v.)

11. − Secondly. A consul is clothed only with authority for commercial purposes, and he has a right to interpose claims for the restitution of property belonging to the citizens or subjects of the country he represents; 10 Wheat. R. 66; 1 Mason R. 14; See, R. 209; 6 Wheat. R. 152; but he is not to be considered as a minister or diplomatic Agent, entrusted by virtue of his office to represent his sovereign in negotiations with foreign states. 3 Wheat, R. 435.

12. − Thirdly. Consuls are generally invested with special privileges by local laws and usages, or by international compact; but by the laws of nations they are not entitled to the peculiar immunities of ambassadors. In civil and criminal cases, they are subject to the local laws in the same manner with other foreign residents owing a temporary allegiance to the state. Wicquefort, De l'Ambassadeur, liv. 1, _5; Bynk. cap. 10 Martens, Droit des Gens, liv. 4, c. 3, _148. In the United States, the act of September 24th, 1789, s. 13 gives to the supreme court original, but not exclusive jurisdiction of all suits in which a consul or vice−consul shall be a party. The act last cited, section 9, gives to the district courts of the United States, jurisdiction exclusively of the courts of the several states, of all suits against consuls or vice−consuls, except for offences where whipping exceeding thirty stripes, a fine exceeding one hundred dollars, or a term of imprisonment exceeding six months, is inflicted. For offences punishable beyond these penalties, the circuit has jurisdiction in the case of consuls. 5 S. & R. 545. See 1 Binn. 143; 2 Dall. 299; 2 N. & M. 217; 3 Pick. R. 80; 1 Green, R. 107; 17 Johns. 10; 6 Pet. R. 41; 7 Pet. R. 276; 6 Wend. 327.

13. − Fourthly. His functions may be suspended at any time by the government to which he is sent, and his exequatur revoked. In general, a consul is not liable, personally, on a contract made in his official capacity on account of his government. 3 Dall. 384.

14. During the middle ages, the term consul was sometimes applied to ordinary judges; and, in the Levant, maritime judges are yet called consuls. 1 Boul. Paty, Dr. Mar. Tit. Prel. s. 2, p. 57.

15. Among the Romans, consuls were chief magistrates who were annually elected by the people, and were invested with powers and functions similar to those of kings. See, generally, Abbott on Ship. 210; 2 Bro. Civ. Law, 503; Merl. Repert. h. t.; Ayl. Pand. 160; Warden on Consuls; Marten on Consuls; Borel, de l'Origine, et des Fonctions des Consuls; Rawle on the Const. 222, 223; Story on the Const. _1654 Serg. Const. Law, 225; Azuni, Mar. Law, part 1, c. 4, art. 8, _7.

CONSULTATION, practice. A conference between the counsel or attorneys engaged on the same side of a cause, for the purpose of examining their case, arranging their proofs, and removing any difficulties there may be in their way.

2. This should be had sufficiently early to enable the counsel to obtain an amendment of the pleadings, or further evidence. At these consultations the exact course to be taken by the plaintiff in exhibiting his proofs should be

adopted, in consultation, by the plaintiff's counsel. In a consultation on a defendant's case, it is important to ascertain the statement of the defence, and the evidence which may be depended upon to support it; to arrange the exact course of defence, and to determine on the cross−examination of the plaintiff's witnesses; and, above all, whether or not evidence shall be given on the part of the defendant, or withheld, so as to avoid a reply on the part of the plaintiff. The wishes of the client should, in all cases, be consulted. 3 Chit. Pr. 864.

CONSULTATION, Eng. law. The name of a writ whereby a cause, being formerly removed by prohibition out of an inferior court into some of the king's courts in Westminster, is returned thither again for if the judges of the superior court, comparing the proceedings with the suggestion of the party, find the suggestion false or not proved, and that therefore the cause was wrongfully called from the inferior court, then, upon consultation and deliberation, they decree it to be returned, where upon this writ issues. T. de la Ley.

CONSULTATION, French law. The opinion of counsel, on a point of law submitted to them. Dict. de Jur. h. t.

CONSUMATE. What is completed. A right is said to be initiate, when it is not complete; and when it is perfected, it is consummated.

CONSUMMATION. The completion of a thing; as the consummation of marriage; (q. v.) the consummation of a contract, and the like.

2. A contract is said to be consummated, when everything to be done in relation to it, has been accomplished. It is frequently of great importance to know when a contract has been consummated, in order to ascertain the rights of the parties, particularly in the contract of sale. Vide Delivery, where the subject is more fully examined. It is also sometimes of consequence to ascertain where the consummation of the contract took place, in order to decide by what law it is to be governed.

3. It has been established as a rule, that when a contract is made by persons absent from each other, it is considered as consummated in, and is governed by the law of, the country where the final assent is given. If, therefore, Paul in New Orleans, order goods from Peter in London, the contract is governed by the laws of the latter place. 8 M. R. 135; Plowd. 843. Vide Conflict of Laws;, Inception; Lex Loci Contractus; Lex Fori; Offer.

CONSUMMATION OF MARRIAGE. The first time that the husband and wife cobabit together, after the ceremony of marriage has been performed, is thus called.

2. The marriage, when otherwise legal, is complete without this; for it is a maxim of law, borrowed from the civil, law, that consensus, non concubitus, facit nuptias. Co. Litt. 33; Dig. 50, 17, 30; 1 Black. Com. 434.

CONTAGIOUS DISORDERS, police, crim. law. Diseases which are capable of being transmitted by mediate or immediate contact.

2. Unlawfully and injuriously to expose persons infected with the smallpox or other contagious disease in the public streets where persons are passing, or near the habitations of others, to their great danger, is indictable at common law. 1 Russ. Cr. 114. Lord Hale seems to doubt whether if a person infected with the plague, should go abroad with intent to infect another, and another should be infected and die, it would not be murder; and he thinks it clear that though there should be no such intent, yet if another should be infected, it would be a great misdemeanor. 1 Pl. Cor. 422. Vide 4 M. & S. 73, 272; Dane's Ab. h. t.

CONTEMPORANEOUS EXPOSITION. The construction of a law, made shortly after its enactment, when the reasons for its passage were then fresh in the minds of the judges, is considered as of great weight: contemporanea expositio est optima et fortissima in lege. 1 Cranch, 299.

CONTEMPT, crim. law. A wilful disregard or disobedience of a public authoritoy.

2. By the Constitution of the United States, each house of congress may determine the rules of its proceeding's, punish its members for disorderly behaviour, and, with the concurrence of two−thirds, expel a member. The same provision is substantially contained in the constitutions of the several states.

3. The power to make rules carries that of enforcing them, and to attach persons who violate them, and punish them for contempts. This power of punishing for contempts, is confined to punishment during the session of the legislature, and cannot extend beyond it; 6 Wheat. R. 204, 230, 231 and, it seems this power cannot be exerted beyond imprisonment.

4. Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings. Bac. Ab. Courts and their jurisdiction in general, E; Rolle's Ab. 219; 8 Co. 38 11 Co. 43 b.; 8 Shepl. 550; 5 Ired. R. 199.

5. In some states, as in Pennsylvania, the power to punish for contempts is restricted to offences committed by the officers of the court, or in its presence, or in disobedience of its mandates, orders, or rules; but no one is guilty

of a contempt for any publication made or act done out of court, which is not in violation of such lawful rules or orders, or disobedience of its process. Similar provisions, limiting the power of the courts of the United States to punish for contempts, are incorporated in the Act March 2, 1831. 4 Sharsw. cont. of Stor. L. U. S. 2256. See Oswald's Case, 4 Lloyd's Debates, 141,. et seq.

6. When a person is in prison for a contempt, it has been decided in New York that he cannot be discharged by another judge, when brought before him on a habeas corpus; and, according to Chancellor Kent, 3 Com. 27, it belongs exclusively to the court offended to judge of contempts, and what amounts to them; and no other court or judge can, or ought to undertake, in a collateral way, to question or review an adjudication of a contempt made by another competent jurisdiction.

This way be considered as the establisbed doctrine equally in England as in this country. 3 Wils. 188 14 East, R. 12 Bay, R. 182 6 Wheat. R. 204 7 Wheat. R. 38; 1 Breese, R. 266 1 J. J. Marsh. 575; Charlt. R. 136; 1 Blackf. 1669 Johns. 395 6 John. 337.

CONTENTIOUS JURISDICTION, eccl. law. In those cases where there is an action or judicial process, and it consists in hearing and determining the matter between party and party, it is said there is contentious jurisdiction, in contradistinction to voluntary jurisdiction, which is exercised in matters that require no judicial proceeding, as in taking probate of wills, granting letters of administration, and the like. 3 Bl. Com. 66.

CONTESTATIO LITIS, civil law. The joinder of issue in a cause. Code of Pr. of Lo. art. 357.

CONTESTATION. The act by which two parties to an action claim the same right, or when one claims a right to a thing which the other denies; a controversy. Wolff, Dr. de la Nat. 762.

CONTEXT. The general series or composition of a law, contract, covenant, or agreement.

2. When, there is any obscurity in the words of an agreement or law, the context must be considered in its construction, for it must be performed according to the intention of its framers. 2 Cowen, 781,; 3 Miss. 447 1 Harringt. 154; 6 John. 43; 5 Gill & John. 239; 3 B. & P. 565; 8 East, 80 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609 See Construction; Interpretation.

CONTINGENT. What may or may not happen;. what depends upon a doubtful event; as, a contingent debt, which is a debt depending upon some uncertain event. 9 Ves. It. 110; Co. Bankr. Laws, 245; 7 Ves. It. 301; 1 Ves. & Bea. 176; 8 Ves. R. 334; 1 Rose, R. 523; 3 T. R. 539; 4 T. R. 570. A contingent legacy is one which is not vested. Will. on Executors, h. t. See Contingent Remainder; Contingent Use.

CONTINGENT DAMAGES. Those given where the issues upon counts to which no demurrer has been filed, are tried, before demurrer to one or more counts in the same declaration has been decided. 1 Str. 431.

CONTINGENT ESTATE. A contingent estate depends for its effect upon an event which may or may not happen: as an estate limited to a person not in esse or not yet born. Crabb on Real Property, b. 3, c. 1, sect. 2. _946.

CONTINGENT REMAINDER, estates. An estate in remainder which is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event, by, which no present or particular interest passes to the remainder−man, so that the particular estate may chance to be determined and the remainder never take effect. 2, Bouv. Inst. n. 1832. Vide Remainder.

CONTINGENT USE, estates. A use limited in a deed or conveyance of land which may or may not happen to vest, according to the contingency expressed in the limitation of such use. A contingent use is such as by possibility may happen in possession, reversion or remainder. 1 Rep. 121 Com. Dig. Uses, K. 6.

CONTINUAL CLAIM, English law. When the feoffee of land is prevented from taking possession by fear of menaces or bodily harm, he may make a claim −to the land in the presence of the vares, and if this claim is regularly made once every year and a day, which is then called a continual claim, it preserves to the feoffee his rights, and is equal to a legal entry. 3 Bl. Com. 175; 2 Bl. Com. 320; 1 Chit. Pr. 278 (a) in note; Crabbe's Inst. E. L. 403.

CONTINUANCE, practice. The adjournment of a cause from one day to another is called a continuance, an entry of which is made upon the record.

2. If these continuances are omitted, the cause is thereby discontinued, and the defendant is discharged sine die, (q. v.) without a day, for this term. By his appearance he has obeyed the command of the writ, and, unless he be adjourned over to a certain day, he is no longer bound to attend upon that summons. 3 Bl. Com. 316.

3. Continuances may, however, be entered at any time, and if not entered, the want of them is aided or cured by the appearance of the parties; and Is a discontinuance can never be objected to pendente placito, so after the

judgment it is cured by the statute of jeofails. Tidd's Pr. 628, 835.

4. Before the declaration the continuance is by dies datus prece partium; after the declaration and before issue joined, by imparlance; after issue joined and before verdict, by vicecomes non misit breve; and after verdict or demurrer by curia advisare vult. 1 Chit. Pl. 421, n. (p); see Vin. Abr. 454; Bac. Abr. Pleas, &c. P; Bac. Abr. Trial, H.; Com. Dig. Pleader, V. See, as to the origin of continuances, Steph. Pl. 31; 1 Ch. Pr. 778, 779.

CONTINUANDO, plead. The Dame of an averment sometimes contained in a declaration in trespass, that the injury or trespass has been continued. For example, if Paul turns up the ground of Peter and tramples upon his grass, for three days together, and Peter desires to recover damages, as well for the subsequent acts of treading down the grass and subverting the soil, as for the first, he must complain of such subsequent trespasses in his actions brought to compensate the former. This he may do by averring that Paul, on such a day, trampled upon the herbage and turned up the ground, " continuing the said trespasses for three days following." This averment seems to impart a continuation of the same identical act of trespass; it has, however, received, by continued usage, another interpretation, and is taken, also, to denote a repetition of the same kind of injury. When the trespass is not of the same kind, it cannot be averred in a continuando; for example, when the injury consists in killing and carrying away an animal, there remains nothing to which a similar injury may again be offered. 1 Wms. Saund. 24, n. 1.

2. There is a difference between he continuando and the averment diversis diebus et temporibus, on divers days and times. In the former, the injuries complained of have been committed upon one and the same occasion; in the latter, the acts complained of, though of the same kind, are distinct and unconnected, See Gould, Pl. ch. 3, _86, et seq.; Ham. N. P. 90, 91 Bac. A. Trespass, I 2, n. 2.

CONTINUING CONSIDERATION. A continuing consideration is one which in point of time remains good and binding, although it may have served before to Support a contract. 1 Bouv. Inst. n. 628; 1 Saund. 320 e, note (5.)

CONTINUING DAMAGES. Those which are continued at different times, or which endure from one time to another. If a person goes upon successive day's and tramples the grass of the plaintiff, he commits continuing damages; or if one commit a trespass to the possession, and it is in fact injurious to him who has the reversion or remainder, this will be continuing damages. In this last case the person in possession may have an action of trespass against the wrong doer to his possession, and the reversioner has an action against him for an injury to the reversion. 1 Chit. Pr. 266, 268, 385; 4 Burr. 2141 , 3 Car. & P. 817.

CONTRA. Over; against; opposite to anything: as, such a case lays down a certain principle; such other case, contra.

CONTRA BONOS MORES. Against good morals.

2. All contracts contra bonos mores, are illegal. These are reducible to Several classes, namely, those which are, 1. lncentive to crime. A claim cannot be sustained, therefore, on. a bond for compounding a crime; as, for example, a prosecution for perjury; 2 Wils. R. 341, 447; or for procuring a pardon. A distinction has been made between a contract made as a reparation for an injury to the honor of a female, and one which is to be the reward of future illicit cohabitation; the former is good and valid, and the latter is illegal. 3 Burr. 1568; 1 Bligh's R. 269.

3. − 2. Indecent or mischievous consideration. An obligation or engagement prejudicial to the feelings of a third party; or offensive to decency or morality; or which has a tendency to mischievous or pernicious consequences, is void. Cowp. 729; 4 Campb. R. 152; Rawle's R. 42; 1 B. & A. 683; 4 Esp. Cas. 97; 16 East R. 150; Vide Wagers.

4. − 3. Gaming. The statutes against gaming render all contracts made for the purpose of gaming, void. Vide Gaming; Unlawful; Void.

CONTRA FORMAM STATUTI. Contrary to the form of the statute.

2.− 1. When one statute prohibits a thing and another gives the penalty, in an action for the penalty, the declaration should conclude contra fornam statutorum. Plowd. 206; 2 East, R. 333; Esp. on Pen. Act. 111; 1 Gallis. R. 268. The same rule applies to informations and indictments. 2 Hale, P. C. 172; 2 Hawk. c. 25, _117 Owen, 135.

3. − 2. But where a statute refers to a former one, and adopts and, continues the provisions of it, the declaration or indictment should conclude contraformam statuti. Hale, P. C, 172; 1 Lutw. 212.

4. − 3. Where a thing is prohibited by several statutes, if one only gives the action, and the others are explanatory and restrictive, the conclusion should be contra formam statuti. Yelv. 116; Cro. Jac. 187 Noy, 125, S. C.; Rep. temp. Hard. 409 Andr. 115, S. C.; 2 Saund. 377.

5. − 4. When the act prohibited was not an offence or ground of action at common law, it is necessary both in

criminal and civil cases to conclude against the form of the statute or statutes. 1 Saund, 135, c.; 2 East, 333; 1 Chit. Pl. 358; 1 Saund. 249; 7 East, 516; 2 Mass. 116; 7 Mass. 9; 11 Mass. 280; 10 Mass. 36; 1 M'Cord, 121; 1 Gallis. 30.

6. − 5. But if the act prohibited by the statute is an offence or ground of action at common law, the indictment or action may be in the common law form, and the statute need not be noticed, even though it prescribe a form of prosecution or of action−the statute remedy being merely cumulative. 2 Inst. 200; 2 Burr.−803; 4 Burr. 2351; 3 Burr. 1418; 2 Wils. 146; 3 Mass. 515.

7. − 6. When a statute only inflicts a punishment on that which was an offence at common law, the offence prescribed may be inflicted, though the statute is not noticed in the indictment. 2 Binn. 332.

8. − 7. If an indictment for an offence at common law only, conclude "against the form of the statute in such case made and provided;" or " the form of the statute" generally, the conclusion will be rejected as surplusage, and the indictment maintained as at common. law. 1 Saund. 135, 3.

9. − 8. But it will be otherwise if it conclude against the form of "the statute aforesaid," when a statute has been previously recited. 1 Chit. Cr. Law, 266, 289. See further, Com. Dig. Pleader C 76; 5 Vin. Abr. 552, 556 1 Gallis. 26, 257; 9 Pick. 162 5 Pick. 128 2 Yerg. 390; 1 Hawks. 192; 3 Conn. 1 11 Mass. 280; 5 Greenl. 79.

CONTRA PACEM, pleadings. Against the peace.

2. In actions of trespass, the words contra pacem should uniformly accompany the allegation of the injury; in some cases they are material to the foundation of the action. Trespass to lands in a foreign country cannot be sustained. 4 T. R. 503 2 Bl. Rep.. 1O58.

3. The conclusion of the declaration, in trespass or ejectment, should be contra pacem , though these are now mere words of form, and not traversable, and the omission of that allegation will be aided, if not specially demurred to. 1 Chit. Pl. 375, 6 vide Arch. Civ. Pl. 169; 5 Vin. Ab. 557 Com. Dig. Action upon the case, C 4 Pleader, 3, M 8; Prohibition, F 7.

CONTRABAND, mar. law. Its most extensive sense, means all commerce which is carried on contrary to the laws of the state. This term is also used to designate all kinds of merchandise which are used, or transported, against the interdictions published by a ban or solemn cry.

2. The term is usually applied to that unlawful commerce which is so carried on in time of war. Merlin, Repert. h. t. Commodities particularly useful in war are contraband as arms, ammunition, horses, timber for ship building, and every kind of naval stores. When articles come into use as implements of war, which were before innocent, they may be declared to be contraband. The greatest difficulty to decide what is contraband seems to have occurred in the instance of provisions, which have not been held to be universally contraband, though Vattel admits that they become so on certain occasions, when there is an expectation of reducing an enemy by famine.

3. In modern times one of the principal criteria adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether tbose provisions be in a rude or manufactured state; for all articles, in such examinations, are treated with greater indulgence in their natural condition than when wrought tip for the convenience of the enemy's immediate use. Iron, unwrought, is therefore treated with indulgence, though anchors, and other instruments fabricated out of it, are directly contraband. 1 Rob. Rep. 1 89. See Vattel, b. 3, c. 7 Chitty's L. of Nat. 120; Marsh. Ins. 78; 2 Bro. Civ., Law, 311; 1 Kent. Com. 135; 3 Id. 215.

4. Contraband of war, is the act by which, in times of war, a neutral vessel introduces, or attempts to introduce into the territory of, one of the belligerent parties, arms, ammunition, or other effects intended for, or which may serve, hostile operations. Merlin, Repert. h. t. 1 Kent, Com. 135; Mann. Comm. B. 3, c. 7; 6 Mass. 102; 1 Wheat. 382; 1 Cowen, 56 John. Cas. 77, 120.

CONTRACT. This term, in its more extensive sense, includes every description of agreement, or obligation, whereby one party becomes bound to another to pay a sum of money, or to do or omit to do a certain act; or, a contract is an act which contains a perfect obligation. In its more confined sense, it is an agreement between two or more persons, concerning something to be, done, whereby both parties are hound to each other, *or one is bound to the other. 1 Pow. Contr. 6; Civ. Code of Lo. art. 1754; Code Civ. 1101; Poth. Oblig. pt. i. c. 1, S. 1, _1; Blackstone, (2 Comm. 442,) defines it to be an agreement, upon a sufficient consideration, to do or not to do a particular thing. A contract has also been defined to be a compact between two or more persons. 6 Cranch, R. 136.

2. Contracts are divided into express or implied. An express contract is one where the terms of the agreement are openly uttered and avowed at the time of making, as to pay a stated price for certain goods. 2 BI . Com. 443.

3. Express contracts are of three sorts 1. BI parol, or in writing, as contradistinguished from specialties. 2. By specialty or under seal. 3. Of record.

4. − l. A parol contract is defined to be a bargain or voluntary agreement made, either orally or in writing not under, seal, upon a good consideration, between two or more persons capable of contracting, to, do a lawful act, or to omit to do something, the performance whereof is not enjoined by law. 1 Com. Contr. 2 Chit. Contr. 2.

5. From this definition it appears, that to constitute a sufficient parol agreement, there must be, 1st. The reciprocal or mutual assent of two or more persons competent to contract. Every agreement ought to be so certain and complete, that each party may have an action upon it; and the agreement would be incomplete if either party withheld his assent to any of its terms. Peake's R. 227; 3 T. R. 653; 1 B. & A. 681 1 Pick. R. 278. The agreement must, in general, be obligatory on both parties, or it binds neither. To this rule there are, however, some exceptions, as in the case of an infant's contract. He may always sue, though he cannot be sued, on his contract. Stra. 937. See other instances; 6 East, 307; 3 Taunt. 169; 5 Taunt. 788; 3 B. & C. 232.

6. − 2d. There must be a good and valid consideration, motive or inducement to make the promise, upon which a party is charged, for this is of the very essence of a contract under seal, and must exist, although the contract be reduced to writing. 7 T. R. 350, note (a); 2 Bl. Coin. 444. See this Dict. Consideration; Fonb. Tr. Eq. 335, n. (a) Chit. Bills. 68.

7. − 3d. There must be a thing to be done, wbicb is not forbidden; or a thing to be omitted, the performance of which is not enjoined by law. A fraudulent or immoral contract, or one contrary to public policy is void Chit. Contr. 215, 217, 222: and it is also void if contrary to a statute. Id. 228 to 250; 1 Binn. 118; 4 Dall. 298 4 Yeates, 24, 84; 6 Binn. 321; 4 Serg & Rawle, 159; 4 Dall. 269; 1 Binn. 110 2 Browne's R. 48. As to contracts which are void for want of a compliance with the statutes of frauds, see Frauds, Statute of.

8. − 2. The second kind of express contracts are specialties, or those which are made under seal, as deeds, bonds, and the like; they are not merely written, but delivered over by the party bound. The solemnity and deliberation with whicb, on account of the ceremonies to be observed, a deed or bond is presumed to be entered into, attach to it an importance and character which do not belong to a simple contract. In the case of a specially, no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 477; 4 B. & A. 652; 3 T. R. 438; 3 Bingh. 111, 112; 1 Fonb. Eq, 342, note When, a contract by specialty has been changed by a parol agreement, the whole of it becomes a parol contract. 2 Watts, 451; 9 Pick. 298; see 13 Wend. 71.

9. − 3. The highest kind of express contracts are those of record, such as judgments, recognizances of bail, and in England, statutes merchant and staple, and other securities of the same nature, cutered into with the intervention of some public authority. 2 Bl. Com. 465 . See Authentic Facts.

10. Implied contracts are such as reason and justice dictates, and which, therefore, the law presumes every man undertakes to perform; as if a man employs another to do any business for him, or perform any work, the law implies that the former contracted or undertook to pay the latter as much as his labor is worth; see Quantum merwit; or if one takes up goods from a tradesman, without any agreement of price, the law concludes that he contracts to pay their value. 2 Bl. Com. 443. See Quantum valebant; Assumpsit. Com. Dig. Action upon the case upon assumpsit, A 1; Id. Agreement.

11. By the laws of Louisiana, when considered as to the obligation of the parties, contracts are either unilateral or reciprocal. When the party to whom the engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758. A loan for use, and a loan of money, are of this kind. Poth. Ob. P. 1, c. 1, s. 1, art. 2. A reciprocal contract is where the parties expressly enter into mutual engagements such as sale, hire, and the like. Id.

12. Contracts, considered in relation to their substance, are either commutative or independent, principal or accessory.

13. Commutative contracts, are those in which what is done, given or promised by one party, is considered as equivalent to, or in consideration of what is done, given or promised by the other. Civ. Code of Lo. art. 17GI.

14. Independent contracts are those in which the mutual acts or proniises have no relation to each other, either as ecluivalents or as considerations. Id. art. 1762.

15. A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume.

16. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Id. art. 1764. Poth. Obl. p. 1, c. 1, s. 1, art. 2, n. 14.

17. Contracts, considered inrelation to the motive for. making them, are either gratuitous or onerous. To be gratuitous, the object of a contract must be to benefit the person with whom it is made, without any profit or advantage, received or promised, as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefits be of a pecuniary nature. Id. art. 1766. Any thing given or promised, as a consideration for the engagement or gift; any service, interest, or condition, imposed on what is given or promised, although unequal to it in value, makes a contract onerous in its nature. Id. art. 1767.

18. Considered in relation to their effects, contracts are either certain or hazardous. A contract is certain, when the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. It is hazardous, when the performance.of that which is one of its objects, depends on an uncertain event. Id. art. 1769.

19. Pothier, in his excellent treatise on Obligations, p. 1, c. 1, s. 1, art. 2, divides contracts under the five following heads:

20.− 1. Into reciprocal and unilateral.

21. − 2. Into consensual, or those which are formed by the mere consent of the parties, such as sale, hiring and mandate; and those in which it is necessary there should be something more than mere consent, such as loan of money, deposite or pledge, which from their nature require a delivery of the thing, (rei); whence they are called real contracts. See Real Contracts.

22.−3. Into−first, contracts of mutual interest, which are such as are entered into for the reciprocal interest and utility of each of the parties, as sales exchange, partnership, and the like.

23.−2d. Contracts of beneficence, which are those by which only one of the contracting parties is benefited, as loans, deposit and mandate. 3d. Mixed contracts, which are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge,

24. − 4. Into principal and accessory.

25. − 5. Into those which are subjected by the civil law to certain rules and forms, and those which ate regulated by mere natural justice. See, generally, as to contracts, Bouv. Inst. Index, h. t.; Chitty on Contracts; Comyn on Contracts; Newland on Contracts; Com. Dig. titles Abatement, E 12, F 8; Admiralty, E 10, 11; Action upon the Case upon Assumpsit; Agreement; Bargain and Sale; Baron and Feme, Q; Condition; Dett, A 8, 9; Enfant, B 5; Idiot, D 1 Merchant, E 1; Pleader, 2 W, 11, 43; Trade D 3; War, B 2; Bac. Abr. tit. Agreement; Id. Assumpsit; Condition; Obligation; Vin. Abr. Condition; Contracts and Agreements; Covenants; Vendor, Vendee; Supp. to Ves. jr. vol. 2, p. 260, 295, 376, 441; Yelv. 47; 4 Ves. jr., 497, 671; Archb. Civ. Pl. 22; Code Civ. L. 3, tit. 3 to 18; Pothier's Tr. of Obligations Sugden on Vendors and Purchasers; Story's excellent treatise on Bailments; Jones on Bailments; Toullier, Droit Civil Francais, tomes 6 et 7; Ham. Parties to Actions, Ch. 1; Chit. Pr. Index, h. t.; and the articles Agreement; Apportionment; Appropriation; Assent; Assignment; Assumpsit; Attestation; Bailment; Bargain and sale; Bidder; Bilateral contract; Bill of Exchange; Buyer; Commodate; Condition; Consensual contract; Conjunctive; Consummation; Construction; Contracto of benevolence; Covenant; Cumulative contracts; Debt; Deed; Delegation. Delivery; Discharge Of a contract; Disjunctive; Equity of a redemption; Exchange; Guaranty; Impairing the obligation of contracts; Insurance; Interested contracts; Item; Misrepresentation; Mortgage; Mixed contract; Negociorum gestor; Novation; Obligation; Pactum constitutae, pecuniae; Partners; Partnership; Pledge; Promise; Purchaser; Quasi contract; Representatian; Sale; Seller; Settlement; Simple contract; Synallagmatic contract; Subrogation; Title; Unilateral contract.

CONTRACT or BENEVOLENCE, Civil law. One which is made for the benefit of only one of the contracting parties; such as loan for use, deposit, and mandate. Poth. Obl. n. 12. See Contracts.

CONTRACTION. An abbreviation; a mode of writing or printing by which some of the letters of a word are omitted. See Abbreviations.

CONTRACTOR. One who enters into a contract this term is usually applied to persons who undertake to do public work, or the work for a company or corporation on a large scale, at a certain fixed price, or to furnish goods to another at a fixed or ascertained price. 2 Pardess. n. 300. Vide 5 Whart. 366.

CONTRADICTION. The incompatibility, contrariety, and evident opposition of two ideas, which are the subject of one and the same proposition.

2. In general, when a party accused of a crime contradicts himself, it is presumed he does so because he is guilty for truth does not contradict itself, and is always consistent, whereas falsehood is in general inconsistent and the

truth of some known facts will contradict the falsehood of those which are falsely alleged to be true. But there must still be much caution used by the judge, as there may be sometimes apparent contradictions which arise either from the timidity, the ignorance, or the inability of the party to explain himself, when in fact he tells the truth.

3. When a witness contradicts himself as to something which is important in the case, his testimony will be much weakened, or it may be entirely discredited and when he relates a story of facts which he alleges passed only in his presence, and he is contradicted as to other facts which are known to others, his credit will be much impaired.

4. When two witnesses, or other persons, state things directly opposed to each other, it is the duty of the judge or jury to reconcile these apparent contradictions; but when this cannot be done, the more improbable statement must be rejected; or, if both are entitled to the same credit, then the matter is as if no proof had been given. See Circumstances.

CONTRAFACTION, crim. law. Counterfeiting, imitating. In the French law contrafaction (contrefacon) is the illegal reprinting of a took for which the author or his assignee has a copyriglit, to the prejudice of the latter. Merl' Repert. mot Contrefacon.

CONTRAVENTION, French law. An act which violates the law, a treaty or an agreement which the party has made. The Penal Code, art. 1, denominates a contravention, that infraction of the law punished by a fine, which does not exceed fifteen francs, and an imprisonment not exceeding three days.

CONTRECTATION. The ability to be removed. In order to commit a larceny, the property must have been removed. When, from its nature, it is incapable of contrectation, as real estate, there can be no larceny. Bowy. Mod. Civ. Law, 268. See Larceny Furtum est contrectatio rei fraudulosa. Dig. 47, 2. See Taking.

CONTREFACON, French law. Counterfeit. This is a bookseller's term, which signifies the offence of those who print or cause to be printed, without lawful authority, a book of which the author or his assigns have a copyright. Merl. Rep. h. t.

CONTRIBUTION, civil law. A partition by which the creditors of an insolvent debtor divide, among themselves the proceeds of his property, proportionably to the amount of their respective credits. Civ. Code of Lo. art. 2522, n. 10. It is a division pro rata. Merl. Rep. h. t.

CONTRIBUTION, contracts. When two or more persons jointly owe a debt, and one is compelled to pay the whole of it, the others are bound to indemnify him for the payment of their shares; this indemnity is called a contribution. 1 Bibb. R. 562; 4 John. Ch. R. 545; 4 Bouv. Inst. n. 3935−6.

2. The subject will be considered by taking a view, 1. Of right of the creditors where there are several debtors. 2. Of the right of the debtor who pays the whole debt. 3. Of the liabilities of the debtors who are liable to contribution. 4. Of the liability of land owned by several owners, when it is subject to a charge. 5. Of the liability of owners of goods in a vessel, when part is thrown overboard to save the rest.

3. − 1. The creditor of several debtors, jointly bound to him, has a right to compel the payment by any he may choose; but hecannot sue them severally, unless they are severally bound.

4. − 2. When one of several debtors pays a debt, the creditor is bound in conscience, if not by contract, to give to the party paying the debt all his remedies against the other debtors. 1 Cox, R. 318 S. C. 2 B. & P. 270 2 Swanst. R. 189, 192; 3 Bligh, 59 14 Ves. 160; 1 Ves. 31 12 Wheat. 596 1 Hill, Ch. R. 844, 351 1 Term. St. It. 512, 517; 1 Ala. R. 23, 28; 11 Ohio It. 444, 449 8 Misso. It. 169, 175.

5.− 3. A debtor liable to contribution is not responsible upon a contract, but is so in equity. But courts of common law, in modern times, have assumed a jurisdiction to compel contribution among sureties, in the absence of any positive contract, on the ground of an implied assumpsit, and each of the sureties may be sued for his respective quota or proportion. White's L. C. in Eq. 66. The remedy in equity is, however, much more effective. For example, a surety who pays an entire debt, can, in equity, compel the solvent sureties to contribute towards the payment of the entire debt. 1 Chan. R. 34 1 Chan. Cas. 246; Finch, R. 15, 203. But at law he can recover no more than an aliquot part of the whole, regard being had to the number of co−sureties. 2 B. & P. 268; 6 B. & C. 697.

6. − 4. When land is charged with the payment of a legacy, or an estate with the portion of a posthumous child, every part is bound to make contribution. 3 Munf. R. 29; 1 John. Ch. R. 425 2 Bouv. Inst. n. 1301.

7. − 5. Contribution takes place in another case; namely, when in order to save a ship or cargo, a part of the goods are cast overboard, the ship and cargo are liable to contribution in order to indemnify the owner of the goods lost, except his just proportion. No contribution can be claimed between joint wrong doers. Bac. Ab.

Assumpsit A; Vide 3 Com. Dig. 143; 8 Com. Dig. 373; 5 Vin. Ab. 561; 2 Supp. to Ves. jr. 159, 343; 3 Ves. jr. 64; Wesk. Ins. 130; 10 S. & R. 75; 5 B. & Ad. 936; S. C. 3 N. & M. 258; Rast. Entr. 161; 2 Ventr. 348; 2 Vern. 592; 2 B. & P. 268; 3 B. & P 235; 5 East, 225; 1 J. P. Smith 411 5 Esp. 194; 3 Campb. 480; Gow, N. P. C. 13; 2 A. & E. 57; 4 N. & M. 64; 6 N. & M. 494.

CONTRIBUTIONS, public law. Taxes or money contributed to the support of the government.

2. Contributions are of three kinds, namely: first, those which arise from persons on account of their property, real or personal, or which are imposed upon their industry − those which are laid on and paid by real estate without regard to its owner; and − those to which personal property is subject, in its transmission from hand to hand, without regard to the owner. See Domat, Dr. Publ. l. 1, t. 5, s. 2, n. 2.

3. this is a generic term which includes all kinds of impositions for the public benefit. See Duties; Imports; Taxes.

4. By contributions is also meant forced levy of money or property by a belligerent in a hostile country which he occupies, by which means the country is made to contribute to the support of the army of occupation. These contributions are usually taken instead of pillage. Vatt. Dr. des Gens, liv. 3, 9, _165; Id. liv. 4, c. 3, _29.

CONTROLLERS. Officers who are appointed, to examine the accounts of other officers. More usually written comptrollers. (q. v.)

CONTROVER, obsolete. One who invents false news. 2 Inst. 227.

CONTROVERSY. A dispute arising between two or more persons. It differs from case, which includes all suits criminal as well as civil; whereas controversy is a civil and not a criminal proceeding. 2 Dall. R. 419, 431, 432; 1 Tuck. Bl. Com. App. 420, 421; Story, Const. _1668.

2. By the constitution of the United States the judicial power shall extend to controversies to which the United States shall be a party. Art. 2, 1. The meaning to be attached to the word controversy in the constitution , is that above given.

CONTUBERNIUM, civ. law. As among the Romans, slaves had no civil state, their marriages, although valid according to natural law, when contr acted with the consent of their masters, and when there was no legal bar to them, yet were without civil effects; they having none except what arose from natural law; a marriage of this kind was called contubernium. It was so called whether both or only one of the parties was a slave. Poth. Contr. de Mariage, part 1, c. 2, _4. Vicat, ad verb.

CONTUMACY, civil law. The refusal or neglect of a party accused to appear and answer to a charge preferred against him in a court of justice. This word is derived from the Latin contumacia, disobedience. 1 Bro. Civ. Law, 455; Ayl. Parer. 196; Dig. 50, 17, 52; Code Nap. art. 22.

2. Contumacy is of two kinds, actual and presumed: actual contumacy is when the party before the court refuses to obey some order of the court; presumed contumacy is the act of refusing or declining to appear upon being cited. 3 Curt. Ecc. R. 1.

CONTUMAX, civ. law. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION, med. jurisp. An injury or lesion, arising from the shock of a body with a large surface, which presents no loss of substance, and no apparent wound. If the skin be divided, the injury takes the name of a contused wound. Vide 1 Ch. Pr, 38; 4 Carr. & P. 381, 487, 558, 565; 6 Carr. & P. 684; 2 Beck's Med. Jur. 178.

CONUSANCE, CLAIM OF, English law. This is defined to be an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wilson's R. 409.

2. It is a question of jurisdiction between the two courts Fortesc. R. 157; 5 Vin. Abr. 588; and not between the plaintiff and defendant, as in the case of plea to the jurisdiction, and therefore it must be demanded by the party entitled to conusance, or by his representative, and not by the defendant or his attorney. Id. ibid. A plea to the jurisdiction must be pleaded in person, but a claim of conusance may be made by attorney. 1 Chit. Pl. 403.

3. There are three sorts of conusance. 1. Tentere placita, which does not oust another court of its jurisdiction, but only creates a concurrent one. 2. Cognitio placitorum, when the plea is commenced in one court, of which conusance belongs to another. 3. A conusance of exclusive jurisdiction; as that no other court shall hold pica, &c. Hard. 509 Bac. Ab. Courts, D.

CONUSANT. One who knows as if a party knowing of an agreement in which he has an interest, makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSOR. The same as cognizor; one who passes or acknowledges a fine of lands or tenements to another. See Consignor.

CONVENE, civil law. This is a technical term, signifying to bring an action.

CONVENTIO, canon law. The act of convening or calling together the parties, by summoning the defendant. Vide Reconvention. When the defendant was brought to answer, he was said to be convened, which the canonists called conventio, because the plaintiff and defendant met to contest. Sto. Eq. Pl. _402; 4 Bouv. Inst. n. 4117.

CONVENTION, contracts, civil law. A general term which comprehends all kinds of contracts, treaties, pacts, or agreements. It is defined to be the consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed. Domat, Lois Civ. 1. 1, t. 1, s. 1 Dig. lib. 2, t. 14, 1. 1 Lib. 1, t. 1, 1. 1, 4 and 5; 1 Bouv. Inst. n. 100.

CONVENTION, legislation. This term is applied to a selecting of the delegates elected by the people for other purposes than usual legislation. It is mostly used to denote all assembly to make or amend the constitution of, a state, but it sometimes indicates an assembly of the delegates of the people to nominate officers to be supported at an election.

CONVERSANT. One who is in the habit of being in a particular place, is said to be conversant there. Barnes, 162.

CONVERSION. torts. the uulawful turning or applying the personal goods of another to the use of the taker, or of some other person than the, owner; or the unlawful destroying or altering their nature. Bull. N. P. 44; 6 Mass. 20; 14 Pick. 356; 3 Brod. & Bing. 2; Cro. Eliz. 219 12 Mod. 519; 5 Mass. 104; 6 Shepl. 382; Story, Bailm. _188, 269, 306; 6 Mass. 422; 2 B. & P. 488; 3 B. & Ald. 702; 11 M. & W. 363; 8 Taunt. 237; 4 Taunt. 24.

2. When a party takes away or wrongfully assumes the right to goods which belong to another, it will in general be sufficient evidence of a conversion but when the original taking was, lawful, as when the party found the goods, and the detention only is illegal, it is absolutely necessary to male a demand of the goods, and there must be a refusal to deliver them before the conversion will, be complete. 1 Ch. Pr. 566; 2 Saund. 47 e, note 1 Ch. Pl. 179; Bac. Ab. Trover, B 1 Com. Dig. 439; 3 Com. Dig. 142; 1 Vin. Ab. 236; Yelv. 174, n.; 2 East, R. 405; 6 East, R. 540; 4 Taunt. 799 5 Barn. & Cr. 146; S. C. 11 Eng. C. L. Rep. 185; 3 Bl. Com. 152; 3 Bouv. Inst. n. 3522, et seq. The refusal by a servant to deliver the goods entrusted to him by his master, is not evidence of a conversion by his master. 5 Hill, 455.

3. The tortious taking of property is, of itself, a conversion 15 John. R. 431 and any intermeddling with it, or any exercise of dominion over it, subversive of the dominion of the owner, or the nature of the bailment, if it be bailed, is, evidence of a conversion. 1 Nott & McCord, R. 592; 2 Mass. R. 398; 1 Har. & John. 519; 7 John. R. 254; 10 John. R. 172 14 John. R. 128; Cro. Eliz. 219; 2 John. Cas. 411. Vide Trover.

CONVERSION, in equity, The considering of one thing as changed into another; for example, land will be considered as converted into money, and treated as such by a court of equity, when the owner has contracted to sell his estate in which case, if he die before the conveyance, his executors and not his heirs will be entitled to the money. 2 Vern. 52; S., C. 3 Chan. R. 217; 1 B1. Rep. 129. On the other hand, money is converted into land in a variety of ways as for example, when a man agrees to buy land, and dies before he has received the conveyance, the money he was to pay for it will be considered as converted into lands, and descend to the heir. 1 P. Wms. 176 2 Vern. 227 10 Pet. 563; Bouv. Inst. Index, h. t.

CONVEYANCE, contracts. The transfer of the title to land by one or more persons to another or others. By the term persons is here understood not only natural persons but corporations. The instrument which conveys the property is also called a conveyance. For the several kinds of conveyances see Deed. Vide, generally, Roberts on Fraud. Conv. passim; 16 Vin. Ab. 138; Com. Dig. Chancery, 2 T 1; 3 M 2; 4 S 2; Id. Discontinuance, C 3, 4, 5; Id. Guaranty, D; Id. Pleader, C 37; Id. Poiar, C 5; Bouv. Inst. Index, h. t. The whole of a conveyance, when it consists of different parts or instruments, must be taken together, and the several parts of it relate back to the principal part; 4 Burr. Rep. 1962; as a fine; 2 Burr. R. 704; or a recovery; 2 Burr. Rep. 135. 2. When there is no express agreement to the contrary, the expense of the conveyance falls upon the purchaser; 2 Ves. Jr. 155, note; who must prepare and tender the conveyance but see contra, 2 Rand. 20. The expense of the execution of the conveyance is, on the contrary, always borne by the vendor. Sugd. Vend. 296; contra, 2 Rand. 20; 2 McLean, 495. Vide 5 Mass. R. 472; 3 Mass. 487; Eunom. Dial. 2, 12; Voluntary Conveyance.

CONVEYANCE OF VESSELS. The act of congress, approved the 29th July, 1850, entitled an act to provide for recording the conveyances of vessels and for other purposes, enacts that no bill of sale, moortgage, hypothecation

or conveyance of any vessel, or part of any vessel of the United States, shall be valid against any person, other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such, bill of sale, mortgage, hypothecation or conveyance be recorded in the office of the collector of the customs, where such vessel is registered or enrolled. Provided, that the lien by bottomry on any vessel, created during her voyage, by a loan of money or materials necessary to repair or enable such vessel to prosecute a voyage, shall not lose its priority or be in any way affected by the provisions of the act. See. 2 enacts, that the collectors of the customs shall record all such bills of sale, mortgages, hypothecations or conveyances, and also all certificates for discharging and cancelling any such conveyances, in a book or books to be kept for that purpose, in the order of their reception; noting in said book or books, and also on the bill of sale, mortgage, hypothecation or conveyance, the time when the same was received; and shall certify on the bill of sale, mortgage, hypothecation or conveyance, or certificate of discharge or cancellation, the number of the book and page where recorded and shall receive, for so recording such instrument of conveyance or certificate of discharge, fifty cents. Sec. 3 enacts, that the collectors of the customs shall keep an index of such records, inserting alphabetically the names of the vendor or mortgagor, and of the vendee or mortgagee, and shall permit said index and books of 'records to be inspected during office hours, under such reasonable regulations as they may establish and shall, when required, furnish to any person a certificate setting forth the names of the owners of any vessel registered or enrolled, the parts or proportions owned by each, if inserted in the register or enrollment, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance upon such vessel, recorded since the issuing of the last register or enrollment; viz. the date, amount of such incumbrance, and from and to whom or in whose favor made. The collector shall receive for each such certificate one dollar. Sec. 4. By this section it is enacted, that the collectors of the customs shall furnish certified copies of such records, on the receipt of fifty cents for each bill of sale, mortgage, or other conveyance. Sect. 5. This section provides that the owner or agent of the owner of any vessel of the United States, applying to a collector of the customs for a register or enrollment of a vessel, shall, in addition to the oath now prescribed by law, set forth, in the oath of ownership, the part or proportion of such vessel belonging to each owner, and the same shall be inserted in the register of enrollment; and that all bills of sale of vessels registered or enrolled shall set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing.

CONVEYANCER. One who makes it his business to draw deeds of conveyance of lands for others., 3 Bouv. Inst. n. 2422.

2. It is usual also for conveyancers to act as brokers for the seller. In these cases the conveyancer should examine with scrupulous exactness into the title of the lands which are conveyed by his agency, and, if this be good, to be very cautious that the estate be, not encumbered. In cases of doubt he should invariably propose to his employer to take the advice of his counsel.

3. Conveyancers also act as brokers for the loan of money on real estate, Secured by mortgage. The same care should be observed in these cases.

CONVICIUM, civil law. The name of a species of slander, or, in the meaning of the civil law, injury, uttered in pubic, and which charged some one with some act contra bonos mores. Vicat, ad verb; Bac. Ab. Slander.

CONVICT. One who has been condemned by a competent court. This term is wore commonly applied to one who has been convicted of a crime or misdemeanor. There are various local acts which punish the importation of convicts.

CONVICTION, practice. A condemnation. In its most extensive sense this word signifies the giving judgment against a defendant, whether criminal or civil. In a more limited sense, it means, the judgment given against the criminal. And in its most restricted sense it is a record of the summary proceedings upon any penal statute before one or more justices of the peace, or other persons duly authorized, in a case where the offender has been convicted and sentenced: this last is usually termed a summary conviction.

2. As summary. convictions have been introduced in derogation of the common law, and operate to the exclusion of trial by jury, the courts have required that the strict letter of the statute should be observed 1 Burr. Rep. 613 and that the magistrates should have been guided by rules similar to those adopted by the common law, in criminal prosecution, and founded in natural justice; unless when the statute dispenses with the form of stating them.

3. The general rules in relation to convictions are, first, it must be under the hand and seal of the magistrate before whom it is taken; secondly, it must be in the present tense, but this, perhaps, ought to extend only to the judgment; thirdly, it must be certain; fourthly, although it is well to lay the offence to be contra pacem, this is not

indispensable; fifthly, a conviction cannot be good in part and bad in part.

4. A conviction usually consists of six parts; first, the information; which should contain, 1. The day when it was taken. 2. The place where it was taken. 3. The name of the informer. 4. The name and style of the justice or justices to whom it was given. 5. The name of the offender. 6. The time of committing the offence. 7. The place where the offence was committed. 8. An exact decription of the offence.

5. Secondly, the summons.

6. Thirdly, the appearance or non−appearance of the defendant.

7. Fourthly, his defence or confessions.

8. Fifthly, the evidence. Dougl. 469; 2 Burr. 1163; 4 Burr. 2064.

9. Sixthly, the judgment or adjudication, which should state, 1. That the defendant is convicted. 2. The forfeiture or penalty. Vide Bosc. on Conviction; Espinasse on Penal Actions; 4 Dall. 266; 3 Yeates, 475; 1 Yeates, 471. As to the effect of a conviction as evidence in a civil case, see 1 Phil. Ev. 259; 8 Bouv. Inst. 3183.

CONVOCATION, eccles. law. This word literally signifies called together. The assembly of the representatives of the clergy. As to the powers of convocations, see Shelf. on M. & D. 23., See Court of Convocation.

CONVOY, mar. law. A naval force under the command of an officer appointed by government, for the protection of merchant ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. B. 1, c. 9, s. 5 Park. Ins. 388.

2. Warranties are sometimes inserted in policies of insurance that the ship shall sail with convoy. To comply with this warranty, five things are essential; first, the ship must sail with the regular convoy appointed by the government; secondly, she must sail from the place of rendezvous appointed by government; thirdly, the convoy must be for the Voyage; fourthly, the ship insured must have sailing instructions; fifthly, she must depart and continue with the convoy till the end of the voyage, unless separated by necessity. Marsh. Ins. B. 1, c. 9, s. 5.

CO−OBLIGOR, contracts. One who is bound together with one or more others to fulfil an obligation. As to what will constitute a joint obligation, see 5 Bin. 199; Windham's Case, 5 Co. 7; 2 Ev. Poth. 63; Ham. Parties, 29, 20, 24; 1 Saund. 155; Saunders, Arguendo and note 2; 5 Co. 18 b, 19 a, Slingsly's Case. He may be jointly, or severally bound.

2. When obligors are jointly and not severally bound to pay a joint debt, they must be sued jointly during their joint lives, and after the death of some of them, the survivors alone can be sued; each is bound to pay the whole debt, having recourse to the others for contribution. See 1 Saund. 291, n. 4; Hardress, 198; 2 Ev. Poth. 63, 64, 66. Yet an infant co−obligor need not be joined, for his infancy may be replied to a plea of non−joinder in abatement. 3 Esp. 76; 5 Esp. 47; also, see 5 Bac. Abr. 163−4; 2 Vern. 99; 2 Moss. Rep. 577; 1 Saund. 291 b, n. 2; 6 Serg. & R. 265, 266; 1 Caines' Cases in Err. 122.

3. When co−obligors are severally bound, each may be sued separately; and in case of the death of any one of them, his executors or administrators may be sued.

4. On payment of the obligation by any one of them, when it was for a joint debt, the payer is entitled to contribution from the other co−obligors.

COOL BLOOD. A phrase sometimes used to signify tranquillity, or calmness; that is, the condition of one who has the calm and undisturbed use of his reason. In cases of homicide, it frequently becomes necessary to. ascertain whether the act of the person killing was done in cool blood or not, in order to ascertain the degree of his guilt. Bac. Ab. Murder, B; Kiel 56 Sid. 177 Lev. 180. Vide Intention; Murder; Manslaughter; Will.

CO−OPTATION. A concurring choice. Sometimes applied to the act of the members of a corporation, in choosing a person to supply a vacancy. in their body.

COPARCENERS, estates. Persons on whom lands of inheritance descend from their ancestor. According to the English law, there must be no males; that is no the rule in this country. Vide Estates in Coparcenary, and 4 Kent, Com. 262; 2 Bouv. Inst. n. 187 L−2.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. This word is frequently used in the sense of partnership. (q. v.)

CO−PLAINTIFF. One who is plaintiff in an action with another.

COPULATIVE TERM. One which is placed between two or more others to join them together: the word and is frequently used for this purpose. For example, a man promises to pay another a certain sum of money, and to give his note for another sum: in this case he must perform both.

2. But the copulative may sometimes be construed into a disjunctive, (q. v.) as, when things are copulated which

cannot possibly be so; for example, " to die testate and intestate." For examples of construction of disjunctive terms, see the cases cited at the word Disjunctive, and Ayl. Pand. 55; 5 Com. Dig. 338; Bac. Ab. Conditions, P 5; Owen, 52; Leon. 74; Golds. 71; Roll. Ab. 444; Cro. Jac. 594.

COPY. A copy is a true transcript of an original writing.

2. Copies cannot be given in evidence, unless proof is made that the originals, from which they are taken, are lost, or in the power of the opposite party; and in the latter case, that notice has been given him to produce the original. See 12 Vin. Abr. 97; Phil. Ev. Index, h. t.; Poth. Obl. Pt. 4, c. 1, art. 33 Bouv. Inst. n. 3055. 3. To prove a copy of a record, the witness must be able to swear that he has examined it, line for line, with the original, or has examined the copy, while another person read the original. 1 Campb. R. 469. It is not requisite that the persons examining should exchange, papers, and read them alternately. 2 Taunt. R. 470. Vide, generally, 3 Bouv. Inst. n. 3106−10; 1 Stark. R. 183; 2 E. C. L. Rep. 183; 4 Campb. 372; 2 Burr.1179; B.N.P.129; 1 Carr. & P. 578. An examined copy of the books of unincorporated banks are not, per se, evidence. 12 S. & R. 256. See 13 S. & R. 135, 334; 2 N. & McC. 299.

COPYRIGHT. The property which has been secured to the author of a book, map, chart, or musical composition, print, cut or engraving, for a limited time, by the constitution and laws of the United States. Lord Mansfield defines copy, or as it is now termed copyright, as follows: I use the word copy in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing and publishing of something intellectual, communicated by letters. 4 Burr. 3296; Merl. Repert. mot Contrefacon.

2. This subject will be considered by taking a view of, 1. The legislation of the United States. 2. Of the persons entitled to a copyright. 3. For what it is granted. 4. Nature of the right. 5. Its duration. 6. Proceedings to obtain Such right. 7. Requisites after the grant. 8. Remedies. 9. Former grants.

3. − _1. The legislation of the United States. The Constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science, and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. In pursuance of this constitutional autbority, congress passed the act of May 31, 1790; 1 Story's L. U. S. 94, and the act of April 29, 1802, 2 Story's L. U. S. 866, but now repealed by the act of February 3, 1831, 4 Shars. Cont. of Story, 2221, saving, always such rights as may have been obtained in conformity to their provision. By this last mentioned act, entitled " An act to amend the several acts respecting copyrights," the subject is now regulated.

4.− _2. Of the persons entitled to a copyright. Any person or persons, being a citizen or citizens of the United States, or resident therein, who is the author or authors of any book or books, map, chart, or musical composition, or who has designed, etched, engraved, worked, or caused to be engraved, etched or worked from his own design, any print or engraving, and the executors, administrators, or legal representatives of such person or persons. Sect. 1, and sect. 8.

5. − _3. For what work the copyright is granted. The copyright is granted for any book or books, map, chart, or musical composition, which may be now, (February 3, 1831, the date of the act,) made or composed, and not printed or published, or shall hereafter be made or composed, or any print or engraving, which the author has invented, designed, etched, engraved or worked, or caused to be engraved, etched or worked from his own design. Sect. 1.

6.− _4. Nature of the right. The person or persons to whom a copyrigbt has been lawfully granted, have the sole right and liberty of printing, reprinting, publishing and vending such book or books, map, chart, musical composition, print, out or engraving, in whole or in part. Sect. 1.

7.− _5. Duration of the copyright. The right extends for the term of twenty−eight Years from the time of recording the title of the book, &c., in the office of the clerk of the court, as directed by law. Sect. 1.

8. But this time may be extended by the following provisions of the act.

9. Sect. 2. If, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by wore than one person, be still living, and a citizen or citizens of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or if dead, then to such widow and child, or children, for the further term of fourteen years: Provided, that the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copyrights, be complied with in respect to such renewed copyright, and that within six months before the expiration of the first term.

10. Sect. 3. In all cases of renewal of copyright under this act, such author or proprietor shall, within two months from the date of, said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

11. − Sect. 16. Whenever a copyright has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same; if such author or authors, or either of them such inventor, desiginer, or engraver, be living at the passage of this act, then, such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have tbe same exclusive right to his book, chart, map, print, cut or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the tune which shall have elapsed from the first entry of such copyright, make up the term of twenty−eight years, with the same right to his widow, child, or children, to renew the copyright, at the expiration thereof, as is provided in relation to copyrights originally secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then, his or their heirs, executors and administrators, shall be entitled to the like exclusive enjoyment of said copyright, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty−eight years from the first entry of said copyright with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copyrights originally secured under this act.

12. − _6. Proceedings to obtain a copyright. No person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, out, or engraving, in the clerk’s office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby directed and required to record the same therein forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title under the seal of the court, to the said author or proprietor, whenever he shall require the same:) " District of_____to wit: Be it remembered, that on the _____ day of _____ Anno Domini, A. B. of the said district, hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be,) the title of which is in the words following, to wit; (here insert the title;) the right whereof he claims as author (or proprietor, as the case may be in conformity with an act of congress, entitled ’An act to amend the several acts respecting copyrights.’ C. D. clerk of the district." For which record, the clerk shall be entitled to receive from the person claiming such right as aforesaid, fifty cents; and the like sum for every copy, under seal, actually given to such person or his assigns. The act to establish the Smithsonian Institution, for the increase and diffusion of knowledge among men, enacts, section 10, that the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for, which a copyright shall be secured under the existing acts of congress, or those ’which shall hereafter be enacted respecting copyrights, shall, within three months from the publication of said book, etc., deliver or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy to the librarian, of Congress Library, for the use of the said libraries.

13.− _7. Requisites after the grant. No person shall be entitled to the benefit of this act, unless he shall give information of copyright being secured, by−causing to be inserted, in the several copies of each and every edition published during the term secured, on the title page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or frontispice thereof, the following words, viz: " Entered according to act of congress, in the year by A. B., in the clerk’s office of the district court of _____" (as the case may be.)

14. The author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, deliver or cause to be delivered a copy. of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copyright, including the titles so recorded, and the date of record, and also all the several copies of books or other works deposited in his office, according to this act, to the secretary of state, to be preserved in his office.

15.− _8. The remedies may be considered with regard, 1. To the penalties wbich may be incurred. 2. The issue in actions under this act. 3. The costs. 4. The Iimitation.

16. − 1. The penalties imposed by this act relate, first, to the violation of the copyright of books secondly, the violation of the copyright of prints, outs or engravings, maps, charts, or musical compositions thirdly, the printing

or publishing of any manuscripts without the consent of the author or legal proprietor; fourthly, for inserting in any book, &c., that the copyright has been secured contrary to truth.

17. − First. If any other person or persons, from and after recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published, or imported, any copy of such book or books, without the consent of the person legally entitled to the copyright thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book, without such consent in writing, then such offender Shall forfeit every copy of such book to the person legally, at the time, entitled to the copyright thereof and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed or printing, published, imported, or exposed to sale, contrary tor the intent of this act; the one moiety thereof to such legal owner of the copyright as aforesaid, and the other to the use of the United States; to be recovered by action of debt in any court having competent jurisdiction thereof.

18. − Secondly. If any person or persons, after the recording the title of any print, cut or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or Copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying, adding to, or diminisbing the main design, with intent to evade the law, or shall print or import for sale, or cause to be printed or imported for sale, any such map, cbart, musical composition, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained in writing, signed in the presense of two credible witnesses; or, knowing the same to be so printed or imported, without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as foresaid; then such offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed, as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

19. Nothing in this act shall be construed to extend to prohibit the importation or vending, printing or publishing, of any map, chart, book, musical composition, print, or engraving, written, composed, or made by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

20. Thirdly. Any person or persons, who shall print or publish any manuscript whatever, without the consent of the author or legal proprietor first obtained as aforesaid, (if such author or proprietor be a citizen of the United States, or resident therein,) shall be liable to suffer and pay to the author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript, as aforesaid.

21.−Fourthly. If any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copyright thereof, and shall insert or impress that the same hath been entered according to act of congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be re−covered by action of debt, in any court of record leaving cognizance thereof.

22. − 2. The issue. If any person or persons shall be sued or prosecuted, for any matter, act or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.

23. − 3. The costs. In all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, anything in any former act to the contrary notwithstanding.

24. − 4. The limitation of actions is regulated as follows. No action or prosecution shall be maintained in any case of forfeiture or penalty under this act, unless the same shall have been commenced within two years after the cause of action shall have arisen.

25. − _9. Former grants. All and several the provisions of this act, intended for the protection and security of.

copyrights, and providing remedies, penalties, and forfeitures in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or proprietors of each and every copyright heretofore obtained, according to law, during the term thereof, in the same manner as if such copyright had been entered and secured according to the directions of this act. And by the 16th section it is provided that this act shall not extend to any copyright heretofore secured, the term of which has already expired.

26. Copyrights are secured in most countries of Europe. In Great Britain, an author has a copyright in his work absolutely for twenty−eight years, and if he be living at the end of that period, for the residue of his life. In France, the copyright of an author extends to twenty years after his death. In most, if not in all the German states, it is perpetual; it extends only over the state in which it is granted. In Russia, the right of an author or translator continues during his life, and his heirs enjoy the privilege twenty−five years afterwards. No manuscript or printed work of an author can be sold for his debts. 2 Am. Jur. 253, 4. Vide, generally, 2 Am. Jur. 248; 10 Am. Jur. 62; 1 Law Intell. 66; and the articles Literary property; Manuscript.

COPYHOLD, estate in the English law. A copyhold estate is a parcel of a manor, held at the will of the lord, according to the custom of the manor, by a grant from the lord, and admittance of the tenant, entered on the rolls of the manor court. Cruise, Dig. t. 10, c. 1, s. 3. Vide Ch. Pr. Index, h. t.

CORAM. In the presence of; before. Coram nobis, before us; coram vobis, before you; coram non judice, is said of those acts of a court which has no jurisdiction, either over the person, the, cause, or the process. 1 Con. 40. Such acts have no validity. Where a thing is required to be done before a particular person, it would not be considered as done before him, if he were asleep or non compos. Vide Dig. 4, 8, 27, 5; Dane's Ab. Index, h. t.; 5 Harr. & John. 42; 8 Cranch, 9; Paine's R. 55; Bouv. Inst. Index, h. t.

CORD, measures. A cord of wood must, when the wood is piled close, measure eight feet by four, and the wood must be four feet long. There are various local regulations in our principal cities as to the manner in which wood shall be measured and sold.

CORN. In its most comprehensive sense, this term signifies every sort of grain, as well as peas and beans, this is its meaning in the memorandum usually contained in policies of insurance. But it does not include rice. 1 Park. Ins. 112; Marsh. Ins. 223, note; Stev. on Av. part 4, art. 2; Ben. on Av. eh. 10; 1 Marsh. Ins. 223; Park on Ins. 112; Wesk. Ins. 145. Vide Com. Dig. Biens, G 1.

CORNAGE. The name of a species of tenure in England. The tenant by cornage was bound to blow a horn for the sake of alarming the country on the approach of an enemy. Bac. Ab. Tenure, N.

CORNET. A commissioned officer in a regiment of cavalry.

CORODY, incorporeal hereditaments. An allowance of meat, drink, money, clothing, lodging, and such like necessaries for sustenance. 1 Bl. Com. 282; 1 Ch. Pr. 225.

CORONER. An officer whose principal duty it is to hold an inquisition, with the assistance of a jury, over the body of any person who may have come to a violent death, or who has died in prison. It is his duty also, in case of the death of the sheriff, or when a vacancy happens in that office, to serve all the writs and process which the sheriff is usually bound to serve. The chief justice of the King's Bench is the sovereign or chief coroner of all England, although it is not to be understood that he performs the active duties of that office in any one count. 4 Rep. 57, b. Vide Bac. Ab. h. t.; 6 Vin. Ab.242; 3 Com. Dig. 242; 5 Com. Dig. 212; and the articles Death; Inquisition.

2. The duties of the coroner are of the greatest consequence to society, both for the purpose of bringing to punishment murderers and other offenders against the lives of the citizens, and of protecting innocent persons from criminal accusations. His office, it is to be regretted, is regarded with too much indifference. This officer should be properly acquainted with the medical and legal knowledge so absolutely indispensable in the faithful discharge of his office. It not unfrequently happens that the public mind is deeply impressed with the guilt of the accused, and when probably he is guilty, and yet the imperfections of the early examinations leave no alternative to the jury but to acquit. It is proper in most cases to procure the examination to be made by a physician, and in some cases, it is his duty. 4 Car. & P. 571.

CORPORAL. An epithet for anything belonging to the body, as, corporal punishment, for punishment inflictedon the person of the criminal; corporal oath, which is an oath by the party who takes it being obliged to lay his hand on the Bible.

CORPORAL, in the army. A non−commissioned officer in a battalion of infantry.

CORPORAL TOUCH. It was once decided that before a seller of personal property could be said to have

stopped it in transitu, so as to regain the possession of it, it was necessary that it should come to his corporal touch. 3 T. R. 466 5 East, 184. But the contrary is now settled. These words were used merely as a figurative expression. 3 T. R. 464 5 East, 184.

CORPORATION. An aggregate corporation is an ideal body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the changes of the individuals who compose it, and which for certain purposes is considered as a natural person. Browne's Civ. Law, 99; Civ. Code of Lo. art. 418; 2 Kent's Com. 215. Mr. Kyd, (Corpor. vol. 1, p. 13,) defines a corporation as follows: " A corporation, or body politic, or body incorporate, is a collection of many; individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence." In the case of Dartmouth College against Woodward, 4 Wheat. Rep. 626, Chief Justice Marshall describes a corporation to be "an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law," continues the judge, "it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality properties by which a perpetual succession of many persons are considered, as the same, and may act as the single individual, They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyance for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use." See 2 Bl. Corn. 37.

2. The words corporation and incorporation are frequently confounded, particularly in the old books. The distinction between them is, however, obvious; the one is the institution itself, the other the act by which the institution is created.

3. Corporations are divided into public and private.

4. Public corporations, which are also called political, and sometimes municipal corporations, are those which have for their object the government of 'a portion of the state; Civil Code of Lo. art. 420 and although in such case it involves some private interests, yet, as it is endowed with a portion of political power, the term public has been deemed appropriate.

5. Another class of public corporations are those which are founded for public, though not for political or municipal purposes, and the, whole interest in which belongs to the government. The Bank of Philadelphia, for example, if the whole stock belonged exclusively to the government, would be a public corporation; but inasmuch as there are other owners of the stock, it is a private corporation. Domat's Civil Law,− 452 4 Wheat. R. 668; 9 Wheat. R. 907 8 M'Cord's R. 377 1 Hawk's R. 36; 2 Kent's Corn. 222.

6. Nations or states, are denominated by publicists, bodies politic, and are said to have their affairs and interests, and to deliberate and resolve, in common. They thus become as moral persons, having an understanding and will peculiar to themselves, and are susceptible of obligations and laws. Vattel, 49. In this extensive sense the United States may be termed a corporation; and so may each state singly. Per Iredell, J. 3 Dall. 447.

7. Private corporations. In the popular meaning of the term, nearly every corporation is public, inasmuch as they are created for the public benefit; but if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, the corporation is private. A bank, for instance, may be created by the government for its own uses; but if the stock is owned by private persons, it is a private corporation, although it is created by the government, and its operations partake of a private nature. 9 Wheat. R. 907. The rule is the same in the case of canal, bridge, turnpike, insurance companies, and the like. Charitable or literary corporations, founded by private benefaction, are in point of law private corporations, though dedicated to public charity, or for the general promotion of learning. Ang. & Ames on Corp. 22.

8. Private corporations are divided into ecclesiastical and lay.

9. Ecclesiastical corporations, in the United States, are commonly called religious corporations they are created to enable religious societies to manage with more facility and advantage, the temporalities belonging to the church

or congregation.

10. Lay corporations are divided into civil and eleemosynary. Civil corporations are created for an infinite variety of temporal purposes, such as affording facilities for obtaining loans of money; the making of canals, turnpike roads, and the like. And also such as are established for the advancement of learning. 1 Bl. Com. 471.

11. Eleemosynary corporations are such as are instituted upon a principle of charity, their object being the perpetual distribution of the bounty of the founder of them, to such persons as he has directed. Of this kind are hospitals for the relief of the impotent, indigent and sick, or deaf and dumb. 1 Kyd on Corp. 26; 4 Conn. R. 272; Angell & A. on Corp. 26.

12. Corporations, considered in another point of view, are either sole or agregate.

13. A sole corporation, as its name implies, consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons. 1 Black Com. 469. Those corporations are not common in the United States. In those states, however, where the religious establishment of the church of England was adopted, when they were colonies, together with the common law on that subject, the minister of the parish was seised of the freehold, as persona ecclesiae, in the same manner as in England; and the right of his successors to the freehold being thus established was not destroyed by the abolition of the regal government, nor can it be divested even by an act of the state legislature. 9 Cranch, 828.

14. A sole corporation cannot take personal property in succession; its corporate capacity of taking property is confined altogether to real estate. 9 Crancb, 43.

15. An aggregate corporation cousists of several persons, who are' united in one society, which is continued by a succession of members. Of this kind are the mayor or commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. 1 Kyd on Corp. 76; 2 Kent's Com. 221 Ang. & A. on Corp. 20. See, generally, Bouv. Inst. Index, h. t.

CORPORATOR. One who is a member of a corporation.

2. In general, a corporator is entitled to enjoy all the benefits and rights which belong to any other member of the corporation as such. But in some corporations, where the rights are of a pecuniary nature, each corporator is entitles to those rights in proportion to his interest; he will therefore be entitled to vote only in proportion to the amount of his stock, and be entitled to dividends in the same proportion.

3. A corporator is not in general liable personally for any act of the corporation, unless he has been made so by the charter creating the corporation.

CORPOREAL PROPERTY, civil law. That which consists of such subjects as are palpable. In the common law, the term to signify the same thing is properly in possession. It differs from incorporeal property, (q. v.) which consists of choses in action and easements, as a right of way, and the like.

CORPSE. The dead body (q. v.) of a human being. Russ. & Ry. 366, n.; 2 T. R. 733; 1 Leach, 497; 16 Eng. Com. L. Rep. 413; 8 Pick. 370; Dig. 47, 12, 3, 7 Id. 11, 7, 38; Code, 3, 441.

2. As a corpse is considered as nullius bonis, or the property of no one, it follows that stealing it, is not, at common law, a larceny. 3 Inst. 203.

CORPUS. A Latin word, which signifies body; as, corpus delicti, the body of the offence, the essence of the crime; corpus juris canonis, the body of the canon law; corpus juris civilis, the body of the Civil law.

CORPUS COMITATUS. The body of the county; the inhabitants or citizens of a whole county, used in contradistinction to a part of a county, or a part of its citizens. See 5 Mason, R. 290.

CORPUS JURIS CIVILIS. The body of the civil law. This, is the name given to a collection of the civil law, consisting of Justinian's Institutes, the Pandects or Digest, the Code, and the Novels.

CORPUS CUM CAUSA, practice. The writ of habeas corpus cum causa (q. v.) is a writ commanding −the person to whom it is directed, to have the body, together with the cause for which he is committed, before the court or judge issuing the same.

CORPUS DELICTI. The body of the offence; the essence of the crime

2. It is a general rule not to convict unless the corpus delicti can be established, that is, until the dead body has been found. Best on Pres. _201; 1 Stark. Ev. 575, See 6 C. & P. 176; 2 Hale, P. C. 290. Instances have occurred of a person being convicted of having killed another, who, after the supposed criminal has been put to death for the supposed offence, has made his appearance − alive. The wisdom of the rule is apparent; but it has been questioned whether, in extreme cases, it may not be competent to prove the basis of the corpus delicti by presumptive evidence. 3 Benth. Jud. Ev. 234; Wills on Circum. Ev. 105; Best on Pres. _204. See Death.

CORPUS JURIS CANONICI. The body of the canon law. A compilation of the canon law bears this name. See Law, canon.

CORRECTION,punishment. Chastisement by one having authority of a person who has committed some offence, for the purpose of bringing him to legal subjection.

2. It is chiefly exercised in a parental manner, by parents, or those who are placed in loco parentis. A parent may therefore justify the correction of the child either corporally or by confinement; and a schoolmaster, under whose care and instruction a parent has placed his child, may equally justify similar correction; but the correction in both, cases must be moderate, and in proper manner. Com. Dig. Pleader, 3 M. 19; Hawk. c. 60, s. 23, and c. 62, s. 2 c. 29, s. 5.

3. The master of an apprentice, for disobedience, may correct him moderately 1 Barn. & Cres. 469 Cro. Car. 179 2 Show. 289; 10 Mart. Lo. It. 38; but he cannot delegate the authority to another. 9 Co. 96.

4. A master has no riglit to correct his servants who are not apprentices.

5. Soldiers are liable to moderate correction from their superiors. For the sake of maintaining their discipline on board of the navy, the captain of a vessel, either belonging to the United States, or to private individuals, may inflict moderate correction on a sailor for disobedience or disorderly conduct. Abbott on Shipp. 160; 1 Ch . Pr. 73; 14 John. R. 119; 15 )lass. 365; 1 Bay, 3; Bee, 161; 1 Pet. Adm. Dec. 168; Molloy, 209; 1 Ware's R. 83. Such has been the general rule. But by a proviso to an act of congress, approved the 28th of September, l850, flogging in the navy and on board vessels of commerce was abolished.

6. Any excess of correction by the parent, master, officer, or captain, may render the party guilty of an assault and battery, and liable to all its consequences. In some prisons, the keepers have the right to correct the prisoners.

CORREGIDOR, Spanish law. A magistrate who took cognizance of 'various misdemeanors, and of civil matters. 2 White's Coll. 53.

CORRELATIVE. This term is used to designate those things, one of which cannot exist without another; for example, father and child; mountain and valley, &c. Law, obligation, right, and duty, are therefore correlative to each other.

CORRESPONDENCE. The letters written by one to another, and the answers thereto, make wbat is called the correspondence of the partie's.

2. In general, the correspondence of the parties contains the best evidence of the facts to which it relates. See Letter, contracts; Proposal.

3. When an offer to contract is made by letter, it must be accepted unconditionally for if the precise terms are changed, even in the slightest degree, there is no contract. 1 Bouv. Inst. n. 904. See, as to the power of revoking an offer made by letter, 1 Bouv. Inst. n. 933.

CORRUPTION. An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another. Merl. Rep. h. t.

2. By corruption, sometimes, is understood something against law; as, a contract by which the borrower agreed to pay the lender usurious interest. It is said, in such case, that it was corruptly agreed, &c.

CORRUPTION OF BLOOD,, English crim. law. The incapacity to inherit, or pass an inheritance, in consequence of an attainder to which the party has been subject

2. When this consequence flows from an attainder, the party is stripped of all honors and dignities he possessed, and becomes ignoble.

3. The Constitution of the United States, Amendm. art. 5, provides, that no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval, forces, or in the militia, when in actual service in time of war or public danger" and by art. 3, s. 3, n. 2, it is declared tbat " no attainder of treason shall work. corruption of blood, or forfeiture, except during the life of the person attainted."

4. The Constitution of Pennsylvania, art. 9, s. 19, directs that " no attainder shall work corruption of blood." 3 Cruise, 240, 378 to 381, 473 1 Cruise, 52 1 Chit. Cr. Law, 740; 4 Bl. Com. 388.

CORSNED, ancient Eng. law. This was a piece of accursed bread, which a person accused of a crime swallowed to test his innocence. It was supposed that, if he was guilty, it would choke him.

CORTES. The name of the legislative assemblies of Spain and Portugal.

COSENAGE, torts. Deceit, fraud: that kind of circumvention and wrong, which has no other specific name. Vide

Ayl. Pand. 103 Dane’s Ab. Index, h. t.

COSMOPOLITE. A citizen of the world; one who has no fixed. residence.

Vide Citizen.

COSTS, practice. The expenses of a suit or action which may be recovered by law from the losing party.

2. At common law, neither the plaintiff nor the defendant could recover costs eonomine; but in all actions in which damages were recoverable, the plaintiff, in effect, recovered his costs when he obtained a verdict, for the jury always computed them in the damages. When the defendant obtained a verdict, or the plaintiff became non−suit, the former was wholly without remedy for any expenses he had incurred. It is true, the plaintiff was amerced pro falso clamore suo, but the amercement was given to the king. Hull on Costs, 2 2 Arch. Pr. 281.

3. This defect was afterwards corrected by the statute of Gloucester, 6 Ed. I, c. 1, by which it is enacted that "the demandant in assise of novel disseisin, in writs of mort d’ancestor, cosinage, aiel and be sail, shall have damages. And the demandant shall have the costs of the writ purchased, together with damages, and this act shall hold place in all cases where the parly recovers damages, and every person shall render damages where land is recovered against him upon his own intrusion, or his own act." About forty−six years after the passing of this statute, costs were for the first time allowed in France, by an ordinance of Charles le Bel, (January, 1324.) See Hardw. Cas. 356; 2 Inst. 283, 288 2 Loisel, Coutumes, 328−9.

4. The statute of Gloucester has been adopted, substantially, in all the United States. Though it speaks of the costs of the writ only, it bas, by construction, been extended to the costs of the suit generally. The costs which are recovered under it are such as shall be allowed by the master or prothonotary upon taxation, and not those expenses which the. plaintiff may have. incurred for himself, or the extraordinary fees he may have paid counsel, or for the loss of his time. 2 Sell. Pr. 429.

5. Costs are single, when the party receives the same amount he has expended, to be ascertained by taxation; double, vide Double costs. and treble, vide Treble costs. Vide, generally, Bouv. Inst. Index, h. t.; Hullock on Costs; Sayer’s Law of Costs; Tidd’s Pr. c. 40; 2 Sell. Pr. c. 19; Archb. Pr. Index, h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; 6 Vin. Ab. 321; Grah. Pr. c. 23 Chit. Pr. h. t. 1 Salk. 207 1 Supp. to Ves. jr. 109; Amer. Dig. h. t.; Dane’s Ab. h. t.; Harr. Dig. h. t. As to the liability of executors and administrators for costs, see 1, Chit. R. 628, note; 18 E. C. L. R. 185; 2 Bay’s R. 166, 399; 1 Wash. R. 138; 2 Hen. & Munf. 361, 369; 4 John. R. 190; 8 John. R. 389; 2 John. Ca. 209. As to costs in actions qui tam, see Esp. on Pen. Act. 154 to 165.

COTTAGE, estates. A small dwelling house. See 1 Tho. Co. Litt. 216; Sheph. Touchst. 94; 2 Bouv. Inst. n. 1571, note.

2. The grant of a cottage, it is said, passes a small dwelling−house, which has no land belonging to it. Shep. To. 94.

COUCHANT. Lying down. Animals are said to have been levant and couchant, when they have been upon another person’s land, damage feasant, one night at least. 3 Bl. Com. 9.

COUNCIL, legislation. This word signifies an assembly.

2. It was used among the Romans to express the meeting of only a part of the people, and that the most respectable, in opposition to the assemblies of the whole people.

3. It is now usually applied to the legislative bodies of cities and boroughs.

4. In some states, as in Massacbusetts, a body of men called the council, are elected, whose duties are to advise the governor in the executive part of the government. Const. of Mass. part 2, c. 2, s. 3, art. 1 and 2. See 14 Mass. 470; 3 Pick. 517; 4 Pick. 25 19 John. R. 58. In England, the king’s council are the king’s judges of his courts of justice. 3 Inst. 125; 1 Bl. Com. 229.

COUNSEL. Advice given to another as to what he ought to do or not to do.

2. To counsel another to do an unlawful act, is to become accessory to it, if it be a felony, or principal, if it be treason, or a misdemeanor. By the term counsel is also understood counsellor at law. Vide To open; Opening.

COUNSEL, an officer of court. One who undertakes to conduct suits and actions in court. The same as counsellor.

COUNSEL, practice, crim. law. In the oath of the grand jurors, there is a provision requiring them to keep secret " the commonwealth’s counsel, their fellows, and their own." In this sense this word is synonymous with knowledge; therefore, all the knowledge acquired by grand jurors, in consequence of their office, either from the officers of the commonwealth, from their fellow−jurors, or which they have obtained in any manner, in relation to cases which come officially before them, must be kept secret. See Grand Jury.

COUNSELLOR, government. A counsellor is a member of a council. In some of the states the executive power is vested in a governor, or a governor and lieutenant governor, and council. The members of such council are called counsellors. See the names of the several states.

COUNSELLOR AT LAW, offices. An officer in the supreme court of the United States, and in some other courts, who is employed by a party in a cause, to conduct the same on its trial on his behalf. He differs from an attorney at law. (q. v.)

2. In the supreme court of the United States, the two degrees of attorney and counsel are kept separate, and no person is permitted to practise both. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Com. 307.

3. Generally in the other courts of the United States, as well as in the courts of Pennsylvania, the same person perform's the duty of counsellor and attorney at law.

4. In giving their advice to their clients, counsel and others, professional men have duties to perform to their clients, to the public, and to themselves. In such cases they have thrown upon them something which they owe to the fair administration of justice, as well as to the private interests of their employers. The interests propounded for them ought, in their own apprehension, to be just, or at least fairly disputable; and when such interests are propounded, they ought not to be pursued per fas et nefas . Hag. R. 22.

5. A counsellor is not a hired person, but a mandatory; he does not render his services for a price, but an honorarium, which may in some degree recompense his care, is his reward. Doubtless, he is not indifferent to this remuneration, but nobler motives influence his conduct. Follow him in his study when he examines his cause, and in court on the trial; see him identify himself with the idea of his client, and observe the excitement he feels on his account; proud when he is, conqueror, discouraged, sorrowful, if vanquished; see his whole soul devoted to the cause he has undertaken, and which he believes to be just, then you perceive the elevated man, ennobled by the spirit of his profession, full of sympathy for his cause and his client. He may receive a reward for his services, but such things cannot be paid for with money. No treasures can purcbase the sympathy and devotedness of a noble mind to benefit humanity; these things are given, not sold. See Honorarium. 6. Ridley says, that the law has appointed no stipend to philosophers and lawyers not because they are not reverend services and worthy of reward or stipend, but because either of them are most honorable professions, whose worthiness is not to be valued or dishonored by money. Yet, in these cases many things are honestly taken, which are not bonestly asked, and the judge may, according to the quality of the cause, and the still of the advocate, and the custom of the court, and, the worth of the matter that is in hand, appoint them a fee answerable to their place. View of the Civil and Eccles. Law, 38, 39.

COUNT, pleading. This word, derived from the French conte, a narrative, is in our old law books used synonymously with declaration but practice has introduced the following distinction: when the plaintiff's complaint embraces only a single cause of action, and he makes only one statement of it, that statement is called, indifferently, a declaration or count; though the former is the more usual term.

2. But when the suit embraces two or more causes of action, (each of which of course requires a different statement;) or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration.

3. In all cases, however, in which there are two or more counts, whether there is actually but one cause of action or several, each count purports, upon the face of it, to disclose a distinct right of action, unconnected with that stated in any of the other counts.

4. One object proposed, in inserting two or more counts in one declaration, when there is in fact but one cause of action, is, in some cases, to guard against the danger of an insufficient statement of the cause, where a doubt exists as to the legal sufficiency of one or another of two different modes of declaring; but the more usual end proposed in inserting more than one count in such case, is to accommodate the statement to the cause, as far as may be, to the possible state of the proof to be exhibited on trial; or to guard, if possible, against the hazard of the proofs varying materially from the statement of the cause of action; so that if one or more or several counts be not adapted to the evidence, some other of them may be so. Gould on Pl. c. 4, s. 2, 3, 4; Steph. Pl. 279; Doct. Pl. 1 78; 8 Com. Dig. 291; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t. In real actions, the declaration is most usually called a count. Steph. Pl. 36, See Common count; Money count.

COUNTER, Eng. law. The name of an ancient prison in the city of London, which has now been demolished.

COUNTER AFFIDAVIT. An affidavit made in opposition to one already made; this is allowed in the preliminary examination of some cases.

COUNTER SECURITY. Security given to one who has become security for another, the condition of which is, that if the one who first became surety shall be damnified, the one who gives the counter security will indemnity him.

TO COUNTERFEIT, criminal law. To make something false, in the semblance of that which is true; it always implies a fraudulent intent. Vide Vin. Ab. h. t. Forgery.

COUNTERMAND. This word signifies a. change or recall of orders previously given.

2. It may be express or implied. Express, when contrary orders are given and a revocation. of the former order is made. Implied, when a new order is given which is inconsistent with the former order: as, if a man should order a merchant to ship him in a particular vessel −certain goods which belonged to him, and then, before the goods were shipped, he directed him to ship them in another vessel; this would be a countermand of the first order.

3. While the first command is unrecalled, the person who gave it would be liable to all the consequences in case he should be obeyed; but if, for example, a man should command another to commit a crime and, before its perpetration, he should repent and countermand it, he would not be liable for the consequences if the crime should afterwards be committed.

4. When a command or order has been given, and property delivered, by which a right vests in a third person, the party giving the order cannot countermand it; for example, if a debtor should deliver to A a sum of money to be paid to B, his creditor, B has a vested right in the money, and unless he abandon that right, and refuse to take the money, the debtor cannot recover it from A. 1 Roll. Ab. 32, pl. 13; Yelv. 164 Sty. 296. See 3 Co. 26 b.; 2 Vent. 298 10 Mod. 432; Vin. Ab. Countermand, A 1; Vin. Ab. Bailment, D; 9 East, 49; Roll. Ab. 606; Bac. Ab. Bailment, D; Com. Dig. Attorney, B 9, c. 8; Dane's Ab. h. t.; and Command.

COUNTERPART, contracts. Formerly each party to an indenture executed a separate deed; that part which was executed by the grantor was called the original, and the rest the counterparts. It is now usual for all the parties to execute every part, and this makes them all originals. 2 Bl. Com. 296.

2. In granting lots subject to a ground rent reserved to the grantor, both parties execute the deeds, of which there are two copies; although both are original, one of them is sometimes called the counterpart. Vide 12 Vin. Ab. 104; Dane's Ab. Index, h. t.; 7 Com. Dig. 443; Merl. Repert. mots Double Ecrit.

COUNTERPLEA, pleading. When a tenant in any real action, tenant by the curtesy, or tenant in dower, in his answer and plea, vouches any one to warrant his title, or prays in aid another who has a larger estate, as of the remainder−man or reversioner or when a stranger to the action comes and prays to be received to save his estate; then that which the defendant alleges against it, why it should not be admitted, is called a counterplea. T. de la Ley; Doct. Placit. 300 Com. Dig. h. t.; Dane's Ab. Index, h. t.

COUNTERS, English law. − Formerly there were in London two prisons belonging to the sheriffs courts, which bore this name. They are now demolished. 4 Inst. 248.

COUNTERSIGN. To countersign is to sign on the opposite side of an instrument already signed by some other person or officer, in order to secure its character of a genuine paper; as a bank note is signed by the president and countersigned by the cashier.

COUNTRY. By country is meant the state of which one is a member.

2. Every man's country is in general the state in which he happens to have been born, though there are some exceptions. See Domicil; Inhabitant. But a man has the natural right to expatriate himself, i. e. to abandon his country, or his right of citizenship acquired by means of naturalization in any country in which he may have taken up his residence. See Allegiance; Citizen; Expatriation. in another sense, country is the same as pais. (q. v.)

COUNTY. A district into which a state is divided.

2. The United States are generally divided into counties; counties are divided into townships or towns.

3. In Pennsylvania the division of the province into three Counties, viz. Philadelphia, Bucks and Chester, was one of the earliest acts of William Penn, the original proprietary. There is no printed record of this division, or of the original boundaries of these counties. Proud says it was made about the year 1682. Proud's Hist. vol. 1) p. 234 vol. 2, p. 258.

4. In some states, as Illinois; 1 Breese, R. 115; a county is considered as a corporation, in others it is only a quasi corporation. 16 Mass. R. 87; 2 Mass. R. 644 7 Mass. R. 461; 1 Greenl. R. 125; 3 Greenl. R. 131; 9 Greenl. R. 88;

8 John. R. 385; 3 Munf. R. 102. Frequent difficulties arise on the division of a county. On this subject, see 16 Mass. R. 86 6 J. J. Marsh. 147; 4 Halst. R. 357; 5 Watts, R. 87 1 Cowen, R. 550; 6 Cowen, R. 642; Cowen, R. 640; 4 Yeates, R. 399 10 Mass. Rep. 290; 11 Mass. Rep. 339.

5. In the English law this word signifies the same as shire, county being derived from the French and shire from the Saxon. Both these words signify a circuit or portion of the realm, into which the whole land is divided, for the better government thereof, and the more easy administration of justice. There is no part of England that is not within some county, and the shire−reve, (sheriff) originally a yearly officer, was the governor of the county. Four of the counties of England, viz. Lancaster, Chester, Durham and Ely, were called counties Palatine, which were jurisdictions of a peculiar nature, and held by, especial charter from the king. See stat. 27 H. VIII. c. 25.

COUNTY COMMISSIONERS. Certain officers generally entrusted with the superintendence of the collection of the county taxes, and the disbursements made. for the county. They are administrative officers, invested by the local laws with various powers.

2. In Pennsylvania the office of county commissioner originated in the act of 1717, which was modified by the act of 1721, and afterwards enlarged by the act of 1724. Before the office of county commissioner was established, assessors were elected who performed−similar duties. See Act of 1700, 4 Votes of Assembly, 205, 209.

COUPONS. Those parts of a commercial instrument which are. to be cut, and which are evidence of something connected with the contract mentioned in−the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payor.

COURIER. One who is sent on some public occasion as an express, to bear despatches, letters, and other papers.

2. Couriers sent. by an ambassador or other public minister, are protected from arrest or molestation. Vattel, liv. 4, c. 9, _123.

COURSE. The direction in which a line runs in surveying.

2. When there are no monuments, (q. v.) the land must be bounded by the courses and distances mentioned in the patent or deed. 4 Wheat. 444; 3 Pet. 96; 3 Murph. 82; 2 Har. & John. 267; 5 Har. & John. 254. When the lines are actually marked, they must be adhered to, though they vary from the course mentioned in the deeds. 2 Overt. 304; 7 Wheat. 7. 1 See 3 Call, 239 7 Mont. 333. Vide Boundary; Line.

COURSE OF TRADE. What is usually done in the management of trade or business.

2. Men are presumed to act for their own interest, and to pursue the way usually adopted by men generally; hence it is presumed in law, that men in their actions will pursue the usual course of trade. For this reason it is presumed that a bank note was signed before it was issued, though the signature be torn off. 2 Rob. Lo. R. 112. That one having possession of a bill of exchange upon him, has paid it; that one who pays an order or draft upon him, pays out of the funds of the drawer in his hands. But the case is different where the order is for the delivery of goods, they being presumed to have been sold by the drawee to the drawer. 9 Wend. 323; 1 Greenl. Ev. _38.

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. on Ins. 185.

COURT, practice. A court is an incorporeal political being, which requires for its existence, the presence of the judges, or a competent number of them, and a clerk or prothonotary, at the time during which, and at the place where it is by law authorized to be held; and the performance of some public act, indicative of a design to perform the functions of a court.

2. In another sense, the judges, clerk, or prothonotary, counsellors and ministerial officers, are said to constitute the court.

3. According to Lord, Coke, a court is a place where justice is judicially administered. Co. Litt. 58, a.

4. The judges, when duly convened, are also called the court. Vide 6 Vin. Ab. 484; Wheat . Dig. 127; Merl. Rep. h. t.; 3 Com. Dig. 300; 8 Id. 386; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t.

5. It sometimes happens that the judges composing a court are equally divided on questions discussed before them. It has been decided, that when such is the case on an appeal or writ of error, the judgment or decree is affirmed. 10 Wheat. 66; 11 Id. 59. If it occurs on a motion in arrest of judgment, a judgment is to be entered on the verdict. 2 Dall. Rep. 388. If on a motion for a new trial, the motion is rejected. 6 Wheat. 542. If on a motion to enter judgment on a verdict, the judgment is entered. 6 Binn. 100. In England, if the house of lords be equally divided on a writ of error, the judgment of the court below is affirmed. 1 Arch. Pr. 235. So in Cam. Scacc. 1 Arch.

Pr. 240. But in error coram nobis, no judgment can be given if the judges are equally divided, except by consent. 1 Arch. Pr. 246. When the judges are equally divided on the admission of testimony, it cannot be received. But see 3 Yeates, 171. Also, 2 Bin. 173; 3 Bin. 113 4 Bin. 157; 1 Johns. Rep. 118 4 Wash. C. C. Rep. 332, 3. See Division of Opinion.

6. Courts are of various kinds. When considered as to their powers, they are of record and not of record; Bac. Ab. Courts, D; when compared. to each other, they are supreme, superior, and inferior, Id.; when examined as to their original jurisdiction, they are civil or criminal; when viewed as to their territorial jurisdiction, they are central or local; when divided as to their object, they are courts of law, courts of equity, courts martial, admiralty courts, and ecclesiastical courts. They are also courts of original jurisdiction, courts of error, and courts of appeal. Vide Open Court.

7. Courts of record cannot be deprived of their jurisdiction except by express negative words. 9 Serg. & R. 298; 3 Yeates, 479 2 Burr. 1042 1 Wm. Bl. Rep. 285. And such a court is the court of common pleas in Pennsylvania. 6 Serg. & R. 246.

8. Courts of equity are not, in general, courts of record. Their decrees touch the person, not lands. or goods. 3 Caines, 36. Yet, as to personalty, their decrees are equal to a judgment; 2. Madd. Chan. 355; 2 Salk., 507; 1 Ver. 214; 3 Caines, 35; and have preference according to priority. 3 P. Wms. 401 n.; Cas. Temp. Talb. 217; 4 Bro. P. C. 287; 4 Johns. Chan. Cas. 638. They are also conclusive between the parties. 6 Wheat. 109. Assumpsit will lie on a decree of a foreign court of chancery for a sum certain; 1 Campb. Rep. 253, per Lord Kenyon; but not for a sum not ascertained. 3 Caines, 37, (n.) In Pennsylvania, an action at law will lie on a decree of a court of chancery, but the pleas nil debet and nultiel record cannot be pleaded in such an action. 9 Serg. & R. 258.

COURT CHRISTIAN. An ecclesiastical judicature, known in England, so called from its handling matters of an ecclesiastical or religious nature. 2 Inst. 488. Formerly the jurisdiction of these courts was not thus Iimited. The emperor Theodosius promulgated a law that all suits (lites) and forensic controversies should be remitted to the judgment of the church, if either of the litigating parties should require it. Fr. Duaren De Sac. Minist. Eccl. lib. 1, c. 2. This law was renewed and confirmed by Charlemagne.

COURT OF ARCHES , eccl. law. The most ancient consistory court belonging to the archbishop of Canterbury for the trial of spiritual causes. It is so called, because it was anciently held in the church of Saint Mary le bow; which church had that appellation from its steeple, which was raised at the top with stone pillars, in the manner of an arch or bow. Termes de la Ley.

COURT OF ADMIRALTY. A court having jurisdiction of all maritime causes. Vide Admiralty; Courts of the United States; Instance Courts; Prize Court; 2 Chit. Pr. 508 to 538.

COURT OF AUDIENCE, Eng. eccl. law. The name of a court kept by the archbishop in his palace, in which are transacted matters of form only; as confirmation of bishops, elections, consecrations, and the like.

COURT OF COMMON PLEAS. The name of an English court which was established on the breaking up of the aula regis, for the determination of pleas merely civil. It was at first ambulatory, but was afterwards located. This jurisdiction is founded on original write issuing out of chancery, in the cases of common persons. But when an attorney or person belonging to the court, is plaintiff, he sues by writs, of privilege, and is sued by bill, which is in the nature of a petition; both which originate in the common pleas. See Bench; Banc.

2. There are courts in most of the states of the United States which bear the name of common pleas; they have various powers and jurisdictions.

COURT OF CONSCIENCE, Eng. law. The name of a court in London. It has equity jurisdiction in certain cases. The reader is referred to Bac. Ab. Courts in London, 2.

COURT OF CONVOCATION, eccles. law. The name of an English ecclesiastical court. It is composed of every bishop, dean, and archdeacon, a proctor for the chapter, and two proctors for the clergy of each diocese in the province of Canterbury, for the province of York, there are two proctors for each archdeaconry.

2. This assembly meets at the time appointed in the king's writ, and constitute an ecclesiastical parliament. The archbishop and his suffragans, as his peers, are sitting together, and composing one house, called the upper house of convocation the deans, archdeacons, and a proctor for the chapter, and two proctors for the clergy, the lower house. In this house a prolocutor, performing the duty of a president, is elected.

8. The jurisdiction of this tribunal extends to matters of heresy, schisms, and other mere spiritual or ecclesiastical causes. Bac. Ab. Ecclesiastical Courts, A 1.

COURT OF EXCHEQUER, Eng. law. A court of record anciently established for the trial of all matters relating

to the revenue of the crown. Bac. Ab. h. t.

COURT OF FACULTIES, Eng. eccl. law. The name of a court which belongs to the archbishop, in which his officer, called magister ad facultates, grants dispensations to marry, to eat flesh on days prohibited, or to ordain a deacon under age, and the like. 4 Inst. 337.

COURT, INSTANCE. One of the branches of the English admiralty is called an instance court. Vide Instance Court.

COURT OF INQUIRY. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier; the said court shall consist. of one or more officers, not exceeding three, and a judge advocate,
or other suitable person, as a recorder, to reduce the proceedings and evidencee to writing, all of whom shall be sworn to the performance of their duty. Art. 91. Gord. Dig. Laws U. S., art. 3558 to 3560.

COURT OF KING'S BENCH. The name of the supreme court of law in England. Vide King's Bench.

COURT MARTIAL. A court authorized by the articles of war, for the trial of all offenders in the army or navy, for military offences. Article 64, directs that general courts martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen, where the number can be convened, without manifest injury to the service.

2. The decision of the commanding officer who appoints the court, as to the number that can be convened without injury to the service, is conclusive. 12 Wheat. R. 19. Such a court has not jurisdiction over a citizen of the United States not employed in military service 12 John. R. 257. It has merely a limited jurisdiction, and to render its jurisdiction valid, it must appear to have acted within such jurisdiction. 3 S. & R. 590 11 Pick. R. 442; 19 John. R. 7; 1 Rawle, R. 143.

3. A court martial must have jurisdiction over the subject matter of inquiry, and over the person for a want of these will render its judgment null, and the members of the court and the officers who execute its sentence, trespassers. 3 Cranch, 331. See 5 Wheat. 1; 12 Wheat. 19; 1 Brock. 324. Vide Gord. Dig. Laws U. S., art. 3331 to 3357; 2 Story,. L. U. S. 1000; and also the Treatises of Adye, Delafon, Hough, J. Kennedy, M. V. Kennedy, McArthur, McNaghten, Simmons and Tyler on Courts Martial; and 19 John. R, 7; 12 John. R. 257; 20 John. R. 343; 5 Wheat. R. 1; 1 U. S. Dig. tit. Courts, V.

COURT OF PECULIARS, Eng. eccl. law. The name of a court, which is a branch of, and annexed to, the. court of arches.

2. It has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses. In the other peculiars, the jurisdiction is exercised by commissaries. 1 Phill. R. 202, n.

3. There are three sorts of peculiars 1. Royal peculiars. 3 Phill. R. 245. 2. The second sort are those in which the bishop has no concurrent jurisdiction, and are exempt from his visitation. 3. The third are subject to the bishop's visitation, and liable to his superintendence and jurisdiction. 3 Phill. R. 245; Skinn. R. 589.

COURT PREROGATIVE. Vide Prerogative Court.

COURT, PRIZE. One of the branches of the English admiralty, is called a prize court. Vide Prize Court.

COURT OF RECORD. At common law, any jurisdiction which has the power to fine and imprison, is a court of record. Salk. 200; Bac. Ab. Fines and Amercements, A. And courts which do not possess this power are not courts of record. See Court.

2. The act of congress, to establish an uniform rule of naturalization, &c., approved April 14, 1802, enacts, that for the purpose of admitting aliens to become citizens, that every court of record in any individual state, having common law jurisdiction and a seal, and a clerk or prothonotary, shall be considered as a district court within. the meaning of this act.

COURT, SUPREME. Supreme court is the name of a court having jurisdiction over all other courts Vide Courts of the United States.

COURTS OF THE UNITED STATES. The judiciary of the United States is established by virtue of the following provisions, contained in the third article of the constitution, namely:

2. − "_1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

3.− "_2. (I.) The judicial power shall extend to all cases in law and equity arising under this constitution, the

laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party to controversies between two or more states, between a state and a citizen of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

4. − " (2.) In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as congress shall make.

5. − " (3.) The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed."

6. By the amendments to the constitution, the following alteration has been made: "Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commence or prosecuted against one of the United States by citizens of another state, or citizens or subjects of any foreign state."

7. This subject will be considered by taking a view of, 1. The central courts; an 2. The local courts.

Art. 1 The Central Courts of the United States.

8. The central courts of the United States are, the senate, for the trial of impeachments, and the supreme court. The territorial jurisdiction of these courts extends over the whole country.

1. Of the Senate of the United States.

9.− 1. The constitution of the United States, art. 1, _3, provides that the senate shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside and no person shall be convicted without the concurrence of two−thirds of the members present.

10. lt will be proper here to consider, 1. The organization of this extraordinary court; and, 2. Its jurisdiction.

11. − _1. Its organization differs according as it has or, has not the president of the United States to try. For the trial of all impeachment of the president, the preseuce of the chief justice is required. There must also be a sufficient number of senators present to form a quorum. For the trial of all other impeachments, it is sufficient if a quorum be present.

12. − _2. The jurisdiction of the senate, as a court for the trial of impeachments, extends to the following officers, namely; the president, vice−president, and all civil officers of the United States, art. 2, _4, when they shall have been guilty of treason, bribery, and other high crimes and misdemeanors. Id. The constitution defines treason, art.

3, − _3, but recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by " other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice. and the common law, in order to ascertain what they are. Story, Const. _795.

2. Of the Supreme Court.

13. The constitution of the United States directs that the judicial power of the United States shall be vested in one supreme court; and in such inferior courts as congress may, from time to time, ordain and establish. It will be proper to consider, 1st. Its organization; 2dly. Its Jurisdiction.

14. − _1. Of the organization of the supreme court. Under this head will be considered, l. The appointment of the judges. 2. The number necessary to form a quorum. 3. The time and place of holding the court.

15. − 1. The judges of the supreme court are appointed by the president, by and with the consent of the senate, Const. art. 2, _2. They hold their office during good behaviour, and receive for their services a compensation, which shall not be diminished during their continuance in office. Const. art" 3, _1. They consist of a chief justice and eight associate justices. Act of March 3, 1837, _1.

16. − 2. Five judges are required to make a quorum, Act of March 3, 1837, _1; but by the act of the 21st of January, 1829, the judges attending on the day appointed for holding a session of the court, although fewer than a quorum, at that time, four have authority to adjourn the court from day to day, for twenty days, after the time appointed for the commencement, of said session, unless a quorum shall sooner attend; and the business shall not be continued over till the next session of the court, until the expiration of the said twenty days. By the same act, if,

after the judges shall have assembled, on any day less than a quorum shall assemble, the judge or judges. so assembling shall have authority to adjourn the said court, from day to day, until a quorum shall attend, and, when expedient and proper, may adjourn the same without day.

17 − 3. The supreme court is holden at the city of Washington. Act of April 29, 1 802. The session commences on the second Monday of January, in each and every year. Act of May, 4, 1826. The first Monday of August in each year is appointed as a return day. Act of April 29, 1802. In case of a contagious sickness, the chief justice or his senior associate may direct in what other place the court shall be held, and the court shall accordingly be ad to such place. Act of February 25, 1799, _7. The officers of the court are a clerk, who is appointed by the court, a marshal, appointed by the president, by and with the advice and the consent of the senate, crier, and other inferior officers.

18. − _2. Of the jurisdiction of the supreme. court. The jurisdiction of the supreme court is either civil or criminal.

19. − 1. The civil jurisdiction is either original or appellate.

20. − (1.) The provisions of the constitution that relate to the original jurisdiction of the supreme court, are contained in the articles of the constitution already cited.

21. By the act of September 24th, 1789, _13, the supreme court shall have exclusive jurisdiction of all controversies of civil nature where a state is a party, except "between a state and it’s citizens; and except also, between a state and citizens of other states or aliens, in which latter case it shall have original, but not exclusive jurisdiction. And shall have, exclusively, all such jurisdiction of suits, or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently with the law of nations. And original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice−consul shall be a party. And the trial of issues in fact, in the supreme court, in all actions at law, against citizens of the United States, shall be by jury.

22. In consequence of the decision of the case of Chisholm v. Georgia, where it was held that assumpsit might be maintained against a state by a citizen of a different state, the llth article of the amendments of the constitution above quoted, was adopted.

23. In those cases in which original jurisdiction is given to the supreme court, the judicial power of the United States cannot be exercised in its appellate form. With the exception of those cases in which original jurisdiction is given to this court, there is none to which the judicial power extends, from which the original jurisdiction of the inferior courts is excluded by the constitution.

24. The constitution establishes the supreme court and defines its jurisdiction. It enumerates the cases in which its jurisdiction is original and exclusive, and defines that which is appellate. See ll Wheat. 467.

25. Congress cannot vest in the supreme court original jurisdiction in a case in which the constitution has clearly not given that court original jurisdiction; and affirmative words in the constitution, declaring in what cases the supreme court shall have original jurisdiction, must be construed negatively as to all other cases, or else the clause would be inoperative and useless. 1 Cranch, 137. See 5 Pet. 15 Pet. 284; 12 Pet. 657; 9 Wheat. 738 6 Wheat. 264.

26. − 2. The supreme court exercises appellate jurisdiction in the following different modes:

(1.) By writ of error from the final judgments of the circuit courts; of the district courts, exercising the powers of circuit courts; and of the superior, courts of the territories, exercising the powers of circuit, courts, in certain cases. A writ of error does not lie to the supreme court to reverse the judgment of a circuit court, in a civil action by writ of error carried from the district court to the circuit court. The United States v. Goodwin, 7 Cranch, 108. But now, by the act of July 4, 1840, c. 20, _3, it is enacted that writs of error shall lie to the supreme court from all judgments of a circuit court, in cases brought there by writs of error from the district court, in like manner and under the same regulations, as are provided by law for writs of error for judgments rendered upon suits originally brought in the circuit court.

27. − (2.) The supreme court has jurisdiction by appeals from the final decrees of the circuit courts; of the district courts exercising the powers of circuit courts; and of the superior courts of territories, exercising the powers of circuit courts in certain cases. See 8 Cranch, 251 6 Wheat. 448.

28. − (3.) The supreme court has also jurisdiction by writ of error from the, final judgments and decrees of the highest courts of law or equity in a state, in the cases provided for by the twenty−fifth section of the act of September 24th, 1789, which enacts that a final judgment or decree, in any suit in the highest court of law, or equity of a, state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty,

or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re−examined, and reversed or affirmed in the supreme court of the United States, upon a writ of error, the citation being signed by the chief−justice or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the supreme court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity, or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. See 5 How. S. C. R. 20, 55

29. The appellate jurisdiction of the supreme court extends to all cases pending in the state courts and the twenty−fifth section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. 1 Wheat. 304.

30. When the construction or validity of a treaty of the United States is drawn in question in the state courts, and the decision is against its validity, or the title specially set up by either party under the treaty, the supreme court has jurisdiction to ascertain that title, and to determine its legal meaning. 1 Wheat. 358; 5 Cranch, 344; 9 Wheat. 738; 1 Pet. 94; 9 Pet. 224; 10 Pet. 368; 6 Pet. 515.

31. The supreme court has jurisdiction although one of the parties is a state, and the other a citizen of that state. 6 Wheat. 264.

32. Under the twenty−fifth section of the judiciary act, when any clause of the constitution or any statute of the United States is drawn in question, the decision must be against the title or right set up by the party under such clause or statute; otherwise the supreme court has no appellate jurisdiction of the case. 12 Wheat. 117, 129 6 Wheat. 598 3 Cranch, 268 4 Wheat. 311; 7 Wheat. 164; 2 Peters, 449; 2 Pet. 241; 11 Pet. 167; 1 Pet. 655; 6 Pet. 41; 5 Pet. 248.

33. When the judgment of the highest court of law of a state, decides in favor of the validity of a statute of a state drawn in question, on the ground of its being repugnant to the constitution of the United States, it is not a final judgment within the twenty−fifth section of the judiciary act if the suit has been remanded to the inferior court, where it originated, for further proceedings, not inconsistent with the judgment of the highest court. 12 Wheat. 135.

34. The words " matters in dispute" in the act of congress, which is to regulate the jurisdiction of the supreme court, seem appropriated to civil causes. 3 Cranch, 159. As to the manner of ascertaining the matter in dispute, see 4 Cranch, 216; 4 Dall. 22; 3 Pet. 33; 3 Dall. 365; 2 Pet. 243; 7 Pet. 634; 5 Cranch, 13; 4 Cranch, 316.

35. − (4.) The supreme court has juris− diction by certificate from the circuit court, that the opinions of the judges are opposed on points stated, as provided for by the sixth section of the act of April 29th, 1802. The provisions of the act extend to criminal as well as to civil cases. See 2 Cranch, 33; 10 Wheat. 20 2 Dall. 385; 4 Hall’s Law Journ. 462; 5 Wheat. 434; 6 Wheat.
542; 12 Wheat. 212; 7 Cranch, 279.

36. − (5.) It has also jurisdiction by mandamus, prohibition, habeas corpus, certiorari, and procedendo.

37. − 2. The criminal jurisdiction of the supreme court is derived from the constitution and the act of September 24th, 1789, s. 13, which gives the supreme court exclusively, all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, as a court of law can have or exercise consistently with the law of nations. But it must be remembered that the act of April 30tb, 1790, sections 25 and 26, declares void any writ or process whereby the person of any ambassador, or other public minister, their domestics or domestic servants, may be arrested or imprisoned. Art. 2. The local courts.

38. The local courts of the United States are, circuit courts, district courts, and territorial courts., 1. The circuit

courts.

39. In treating of circuit courts, it will be convenient to consider, 1st. Their organization; and, 2d. Their jurisdiction.

40. − _1. Of the organization of the circuit courts. The circuit courts are the principal inferior courts established by congress. There are nine circuit courts, composed of the districts which follow, to wit:

41. − 1. The first circuit consists of the districts of New Hampshire, Massachusetts, Rhode Island, and Maine. It consists of a judge of the supreme court and the district judge of the district where such court is holden. See Acts April 29, 1802 March 26, 1812 and March 30, 1820.

42. − 2 The second circuit is composed of the districts of Vermont, Connecticut and New York. Act of March 3, 183 7.

43. − 3. The third circuit consists of the districts of New Jersey, and eastern and western Pennsylvania;. Act of March 3, 1837.

44. − 4. The fourth circuit is composed of Maryland, Delaware, and Virginia. Act of Aug. 16, 1842.

45. − 5. The fifth circuit is composed of Alabama and Louisiana. Act of August 16, 1842.

46.− 6. The sixth circuit consist of the districts of North Carolina, South Carolina, and Georgia. Act of Aug. 16, 1842.

47. − 7. The seventh circuit is composed of Ohio, Indiana, Illinois, and Michigan. Act of March 3, 1837, _1.

48.−8. The eighth circuit includes Kentucky, East and West Tennessee, and Missouri. Act of March 3, 1837, _1. By the Act of April 14, 1842, ch. 20, _1, it is enacted that the district court of the United States at Jackson, in the district of West Tennessee, shall in future be attached to, and form a part of the eighth judicial district of the United States, with all the power and jurisdiction of the circuit court held at Nashville, in the middle district of Tennessee.

49. − 9. The ninth circuit is composed of the districts of Alabama, the eastern district of Louisiana, the district of Mississippi, and the district of Arkansas. Act of March 3, 1837, _1.

50. In several districts of the United States, owing to their remoteness from any justice of the supreme court, there are no circuit courts held. But in these, the district court there is authorized to act as a circuit court, except so far as relates to writs of error or appeals from judgments or decrees in such district court.

51. The Act of March 3, 1837, provides, " That so much of any act or acts of congress as vests in the district courts of the United States for the districts of Indiana, Illinois, Missouri, Arkansas, the eastern district of Louisiana, the district of Mississippi, the northern district of New York, the western district of Virginia, and the western district of Pennsylvania, and the district of Alabama, or either of them, the power and jurisdiction of circuit courts, be, and the same is hereby, repealed; and there shall hereafter be circuit courts held for said districts by the chief or associate justices of the supreme court, assigned or allotted to the circuit to which such districts may respectively belong, and the district judges of such districts, severally and respectively, either of whom shall constitute a quorum; which circuit courts, and the judges thereof, shall have like powers, and exercise like jurisdiction as other circuit courts and the judges thereof; and the said district courts, and the judges thereof, shall have like powers, and exercise like jurisdiction, as the district courts, and the judges thereof in the other circuits. From all judgments and decrees, rendered in the district courts of the United States for the western district of Louisiana, writs of error and appeals shall lie to the circuit court in the other district in said state, in the same manner as from decrees and judgments rendered in. the districts within which a circuit court is provided by this act."

52. In all cases where the day of meeting of the circuit court is fixed for a particular day of the mouth, if that day happen on Sunday, then, by the Act of 29th April, 1802, and other acts, the court shall be held the next day.

53. The Act of April 29, 1802, _5, further provides, that on every appointment which shall be hereafter made, of a chief justice, or associate justice, the chief justice and associate justices shall allot among themselves the aforesaid circuits, as they shall think fit, and shall enter such allotment on record.

54. The Act of March 3, 1837, _4, directs that the allotment of the chief justice and the associate justices of the said supreme court to the several circuits shall be made as heretofore.

55. And by the Act of August 16, 1842, the justices of the supreme court of the United States, or a majority of the are required to allot the several districts among the justices of the said court.

56. And in case no such allotment shall be made by them, at their sessions next succeeding such appointment, and also, after the appointment of any judge as aforesaid, and before any other allotment shall have been made, it

shall and may be lawful for the president of the United States, to make such allotment as he shall deem proper which allotment, in either case, shall be binding until another allotment shall be made. And the circuit courts constituted by this act shall have all the power, authority and jurisdiction, within the several districts of their respective circuits, that before the 13th February, 1801, belonged to the circuit courts of the United States.

57. The justices of the supreme court of the United States, and the district judge of the district where the circuit is holden, compose the judges of the circuit court. The district judge may alone hold a circuit court, though no judge of the supreme court may be allotted to that circuit. Pollard v. Dwight, 4 Cranch, 421.

58. The Act of September 24th, 1789, _6, provides, that a circuit court may be adjourned from day to day, by one of its judges, or if none are present, by the marshal of the district, until a quorum be convened. By the Act of May 19, 1794, a circuit court in any district, when it shall happen that no judge of the supreme court attends within four days after the time appointed by law, for the commencement of the sessions, may be adjourned to the next stated term, by the judge of the district, or, in case of his absence also, by the marshal of the district. But by the 4th section of the Act of April 29, 1802, where only one of the judges thereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending.

59. By the Act of March 2, 1809, certain duties are imposed oil the justices of the supreme court, in case of the disability of a district judge within their respective circuits to hold a district court. Sect. 2, enacts, that in case of the disability of the district judge of either of the district courts of the United States, to hold a district court, and to perform the duties of his office, and satisfactory evidence thereof being shown to the justice of the supreme court allotted to that circuit, in which such district court ought, by law to be holden, and on application of the district attorney, or marshal of such district, in writing, the said justice of the supreme court shall, thereupon, issue his order in the nature of a certiorari) directed to the clerk of such district court, requiring him forthwith to certify unto the next circuit court, to be holden, in said district, all actions, suits, pauses, pleas, or processes, civil or criminal, of what nature or land soever, that may be depending in such district court, and undetermined, with all the proceedings thereon, and all files, and papers relating, thereto, which said order shall be immediately published in one or more newspapers, printed in said district, and at least thirty days before the session of such circuit court, and shall be deemed a sufficient notification to all coucerned. And the said circuit court shall, thereupon, have the same cognizance of all such actions, suits, causes, pleas, or processes, civil or criminal, of what nature or kind soever, and in the like manner, as the district court of said district by law might have, or the circuit court, had the same been originally commenced therein, and shall proceed to hear and deterime the same accordingly; and the said justice of the supreme court, during the continuance of such disability, shall, moreover, be invested with, and exercise all and singular the, powers and authority, vested by law in the judge of the district court in said district. And all bonds and recognizances taken for, or returnable to, such district court, shall be construed and taken to be the circuit court to be holden thereafter, in pursuance of this act, and shall have the same force and effect in such court as they would have had in the district court to which they were taken. Provided, that nothing in this act contained shall be so construed, as to require of the judge of the supreme court, within whose circuit such district may lie, to hold any special court, or court of admiralty, at any other time than the legal time for holding the circuit court of the United States in and for such district.

60. Sect. 2, provides, that the clerk of such district shall, during the continuance of the disability of the district judge, continue to certify, as aforesaid, all suits or actions, of what nature or kind soever, which may thereafter be brought to such district court, and the same transmit to the circuit court next thereafter to be holden in the same district. And the said circuit court shall have cognizance of the same, in like manner as is hereinbefore provided in this act, and shall proceed to bear and determine the same. Provided, nevertheless, that when the disability of the district judge shall cease, or be removed, all suits or actions then pending and undetermined in the circuit court, in which, by law, the district courts have an exclusive original cognizance, shall be remanded, and the clerk of the said circuit court shall transmit the same, pursuant to the order of the said court, with all matters and things relating thereto, to the district Court next thereafter to be holden in said district, and the same proceedings shall be had therein, as would have been, had the same originated, or been continued, in the said district court.

61. Sect. 3, enacts, that in case of the district judge in any district being unable to discharge his duties as aforesaid, the district clerk of such district shall be authorized and empowered, by leave or order of the circuit judge of the circuit in which such district is included, to take, during such disability of the district judge, all examinations, and depositions of witnesses, and to make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction. See 1 Gall. 337 1 Cranch, 309 note to Hayburn’s

case, 3 Dall. 410.

62. If the disability of the district judge terminate in his death, the circuit court must remand the certified causes to the district court. Ex parte United States, 1 Gall. 337.

63. By the first section of the Act of March 3, 1821, in all suits and actions in any district court of the United States, in which it shall appear that the judge of such court is any ways concerned in interest, or has been of counsel for either party, or is so related to, or connected with, either party, as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court, and also an order that an authenticated copy the thereof, with all the proceedings in such suit or action, shall be forthwith certified to the next circuit court of the district, and if there be no circuit court in such district, to the next circuit court in the state, and if there be no circuit court in such state, to the most convenient circuit court in an adjacent state; which circuit court shall, upon such record being filed with the clerk thereof, take cognizance thereof, in like manner as if such suit or action had been originally commenced in that court, and shall proceed to bear and determine the same accordingly, and the jurisdiction of such circuit court shall extend to all such cases to be removed, as were cognizable in the district court from which the same was removed.

64. And the Act of February 28, 1839, _8, enacts, "That in all suits and actions, in any circuit court of the United States, in which it shall appear that both the judges thereof, or the judge thereof, who is solely competent by law to try the same, shall be any ways concerned in interest therein, or shall have been of counsel for either party, or is, or are so related to, or connected with, either party as to render it improper for him or them, in his or their opinion, to sit in the trial of such suit or action, it shall be the duty of such judge, or judges, on application of either party, to cause the fact to be entered on the records of the court; and, also, to make an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be certified to the most couvenient circuit court in the next adjacent state, or in the next adjacent circuit; which circuit court shall, upon such record and order being filed with the clerk thereof, take cognizance thereof in the same manner as if such suit or action had been rightfully and originally commenced therein, and shall proceed to hear and determine the same accordingly; and the proper process for the due execution of the judgment or decree rendered therein, shall run into, and may be executed in, the district where such judgment or decree was rendered; and, also, into the district from which such suit or action was removed."

65. The judges of the supreme court are not appointed as circuit court judges, or, in other words, have no distinct commission for that purpose: but practice and acquiescence under it, for many years, were held to afford an irresistible argument against this objection to their authority to act, when made in the year, 1803, and to have fixed the construction of the judicial system. The court deemed the contemporary exposition to be of the most forcible nature, and considered the question at rest, and not to be disturbed then. Stuart v. Laird, 1 Cranch, 308. If a vacancy exist by the death of the justice of the supreme court to whom the district was allotted, the district judge may, under the act of congress, discharge the official duties, (Pollard v. Dwight, 4 Cranch, 428. See the fifth section of the Act of April 29, 1802,) except that he cannot sit upon a writ of error from a decision in the district court. United States v. Lancaster, 5 Wheat. 434.

66. It is enacted, by the Act of Februrary 28, 1839, _2, that all the circuit courts of the United States shall have the appointment of their own clerks; and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court.

67. The marshal of the district is an officer of the court, and the clerk of the district court is also clerk of the circuit court in such district. Act of September 24, 1789, _7.

68. In the District of Columbia, there is a circuit court established by particular acts of congress, composed of a chief justice and two associates. See Act. of February 27, 1801; 12 Pet. 524; 7 Pet. 203; 7 Wheat. R. 534; 3 Cranch, 159; 8 Cranch, 251; 6 Cranch 233. _2. Of the Jurisdiction of the Circuit Courts.

69. The jurisdiction of the circuit courts is either civil or criminal. (1.) Civil Jurisdiction. The civil jurisdiction is either at law or in equity. Their civil jurisdiction at law is, 1st. Original. 2d. By removal of actions from the state courts. 3d. By writ of mandamus. 4tb. By appeal.

70. − 1st. The original jurisdiction of the circuit courts at law, may be considered, first, as to the matter in controversy second, with regard to the parties litigant. (1.) The Matter in Dispute.

71. By the Act of September 24, 1789, _11, to give jurisdiction to the circuit court, the matter in dispute must exceed $500. In actions to recover damages for torts, the sum laid in the declaration is the criterion as to the

matter in dispute. 3 Dall. 358. In an action of covenant on an instrument under seal, containing a penalty less than $500, the court has jurisdiction if the declaration demand more than $500. 1 Wash. C. C. R. 1. In ejectment, the value of the land should appear in the declaration; 4 Wash. C. C. R. 624; 8 Cranch, 220; 1 Pet. 73; but though the jury do not find the value of the land in dispute, yet if evidence be given on the trial, that the value exceeds $500, it is sufficient to fix the jurisdiction; or the court may ascertain its value by affidavits. Pet. C. C. R. 73.

72. If the matter in dispute arise out of a local injury, for which a local action must be brought, in order to give the circuit court jurisdiction, it must be brought in the district where the lands lie. 4 Hall's Law Journal, 78.

73. By various acts of congress, jurisdiction is given to the circuit courts in cases where actions are brought to recover damages for the violation of patent and Copyrights, without fixing any amount as the limit. See Acts of April 17, 1800, _4; Feb. 15, 1819; 7 Johns. 144; 9 Johns. 507.

74. The circuit courts have jurisdiction in cases arising under the patent laws. By the Act of July 4, 1836, _17, it is enacted, " That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court; which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor, as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable. Provided, however, That from all judgments and decrees, from any such court rendered in. the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the game."

75. In general, the circuit court has no original jurisdiction of suits for penalties and forfeitures arising under the laws of the United States, nor in admiralty cases. 2 Dall. 365 4 Dall. 342; Bee, 19. (2.) The character of the parties.

76. Under this head will be considered 1. The United States. 2. Citizens of difrerent states. 3. Suits where an alien is a party. 4. When an assignee is plaintiff. 5. Defendant must be an inhabitant of the circuit. (i.) The United States.

77. The United States may sue on all contracts in the circuit courts where the sum in controversy exceeds, besides costs, the sum of $500 but, in cases of penalties, the action must be commenced in the district court, unless the law gives express jurisdiction to the circuit courts. 4 Dall. 342. Under the Act of March 3, 1815, _4, the circuit court has jurisdiction concurrently with the district court of all suits at common law where any officer of the United States sues under the authority of an act of congress; as where the post−master general sues under an act of congress for debts or balances due to the general post−office. 12 Wheat. 136. See 2 Pet. 447; 1 Pet. 318.

78. The circuit court has jurisdiction on a bill in equity filed b the United States against the debtor of their debtor, they claiming priority under the statute of March 2, 1798, c. 28, _65, though the law of the state where the suit is brought permits a creditor to proceed against the debtor of his debtor by a peculiar process at law. 4 Wheat. 108. (ii.) Suits between citizens of different states.

79. The Act of September 24, 1789, _11, gives jurisdiction to the circuit court in suits of civil nature when the matter in dispute is of a certain amount, between a citizen of the state where the suit is brought, and a citizen of another state; one of the parties must therefore be a citizen of the state where the such is brought. See 4 Wash. C. C. R. 84; Pet. C. C. R. 431; 1 Sumn. 581; 1 Mason, 520; 5 Cranch, 288; 3 Mason, 185; 8 Wheat.'699; 2 Mason, 472; 5 Cranch, 57; Id. 51; 6 Wheat. 450; 1 Pet. 238; 4 Wash. C. C. R. 482, Id. 595.

80. Under this section the division of a state into two or more districts does not affect the jurisdiction of the circuit court, on account of citizenship. The residence of a party in a different district of a state from that in which the suit is brought, does not exempt him from the jurisdiction of the court; if he is found in the district where he is sued he is not within the prohibition of this section. 11 Pet. 25. A territory is not a state for the purpose of giving jurisdiction, and, therefore, a citizen of a territory cannot sue the citizen of a State in the circuit court. 1 Wheat. 91. (iii.) Suits where on alien is a party.

81. The Act of September 24, 1780, _11, gives the circuit court cognizance of all suits of a civil nature where an alien is a party; but these general words; must be restricted by the provision in the constitution which gives jurisdiction in controversies between a state, or the citizens of a state, and foreign states, citizens or subjects; and

the statute cannot extend the jurisdiction beyond the limits of the constitution. 4 Dall. 11; 5 Cranch, 308. When both parties are aliens, the circuit court has no jurisdiction. 4 Cranch, 46; 4 Dall. 11. An alien who holds lands under a special law of the state in which he is resident, may maintain an action in relation to those lands, in the circuit court. 1 Baldw. 216. (iv.) When an assignee is the plaintiff.

82. The court has no jurisdiction unless a suit might have been prosecuted in such court to recover on the contract assigned, if no assignment had been made, except in cases of bills of exchange. Act of September 24, 1789, _11; see 2 Pet. 319; 1 Mason, 243; 6 Wheat. 146; 11 Pet. 83; 9 Wheat. 537; 6 Cranch, 332; 4 Wash. C. C. R. 349; 4 Mason, 435; 12 Pet. 164; 2 Mason, 252. It is said that this section of the act of congress has no application to the conveyance of lands from a citizen of one state to a citizen of another. The grantee in such, case may maintain his action in the circuit court, when otherwise properly qualified, to try the title to such lands. 2 Sumn. 252. (V.) The defendant must be an inhabitant of, or found in the circuit.

83. The circuit court has no jurisdiction of an action against a defendant unless he be an inhabitant of the district in which such court is located, or found therein, at the time of serving the writ. 3 Wash. C. C. R. 456. A citizen of one state may be sued in another, it the process be served upon him in the latter; but in such cases) the plaintiff must be a citizen of the latter state, or an alien. 1 Pet. C. C. R. 431. 2d. Removal of actions from the state court's.

84. The, Act of September 24, 1789, gives, in certain cases, the right of removing a suit instituted in a state court to the circuit court of the district. It is enacted by that law, that if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought, against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court, and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial, into the next circuit court, to be held in the district where the suit is pending, and offer good and sufficient security for his entering in such court, on the first day of its session, copies of the said process against bim, and also for his then appearing and entering special bail in the cause, if special bail was originally required therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause. And any bail that may have been originally taken shall be discharged. And the said copies being entered as aforesaid in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. And any attachment of the goods or estate of the defendant, by the original process, shall hold the goods or estate so attached, to answer the final judgment, in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the circuit court in which the suit commenced. Vide Act of September 24, 1789, _12; 4 Dall. 11; 5 Cranch, 303; 4 Johns. R. 493; 1 Pet. R. 220; 2 Yeates, R. 275; 4 W. C. C. R. 286, 344.

85. By the Constitution, art. 3, _2, 1, the judicial power shall extend to controversies between citizens of the same state, claiming lands under grants of different states.

86. By a clause of the 12th section of the Act of September 24th, 1789, it is enacted, that, if in any action conmmenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court, and make affidavit, if it require it, that he claims, and shall rely upon a right or title to the land, under grant from a state, other than that in which the suit is pending, and produce the original grant, or an exemplification of it, except where the loss of records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right of title to the land under a grant from the state in which the suit is pending; the said adverse party shall give such information, otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he informs that he does claim under any such grant, the party claiming under the grant first mentioned, may then, on motion, remove the cause for trial, to the next circuit court to be holden in such district. But if he is the defendant, he shall do it under the same regulations, as in the before mentioned case of the removal of a cause into such court by an alien. And neither party removing the cause shall be allowed to plead, or give evidence of, any other title than that by him stated as aforesaid, as the ground of his claim. See 9 Cranch, 292 2 Wheat. R. 378.

87. Application for removal must be made during the term at which the defendant enters his appearance. 1 J. J. Marsh. 232. If a state court agree to consider a petition to remove the cause as filed of the preceding term, yet if the circuit court see by the record, that it was not filed till a subsequent term, they will not permit the cause to be docketed. Pet. C.. C. R. 44 Paine, 410 but see 2 Penning. 625.

88. In chancery, when the defendant wishes to remove the suit, he must file his petition when he enters his appearance; 4 Johns. Ch. 94; and in an action in a court of law, at the time of putting in special bail. 12 Johns. 153. And if an alien file his petition when he filed special bail, he is in time, though the bail be excepted to. 1 Caines, 248; Coleman, 58. A defendant in ejectment may file his petition. when he is let in to defend. 4 Johns. 493. See Pet. C. C. R. 220; 2 Wash. C. C. R. 463; 2 Yeates, 275, 352; 3 Dall. 467; 4 Wash. C. C. R. 286; 2 Root 444; 5 John. Ch. R. 300 3 Harn. 48; 4 Wash. C. C. R. 84. 3d. Remedy by Mandamus.

89. The power of the circuit Court to issue a mandamus, is confined, exclusively, to cases in which it may be necessary for the exercise of a jurisdiction already existing; as, for instance, if the court below refuse to proceed to judgment, then a mandamus in the nature of a procedendo may issue. 7 Cranch, 504; 6 Wheat. R. 598. After the state court had refused to permit the removal of a cause on petition, the circuit court issued a mandamus to transfer the cause.

4th. Appellate Jurisdiction.

90. The appellate jurisdiction is exercised by means of, 1. Writs of error. 2 Appeals from the district courts in admiralty and maritime jurisdiction. 3. Certiorari. 4. Procedendo.

91. − [l.] This court has jurisdiction to issue writs of error to the district court, on judgments of that court in civil cases at common law.

92. The 11th section of the Act of September 24, 1789, provides, that the circuit courts shall also have appellate jurisdiction from the district courts, under the regulations and restrictions thereinafter provided.

93. By the 22d section, final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the, sum or value of fifty dollars, exclusive of costs, may be reexamined, and reversed or affirmed in a circuit court holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the supreme court, the adverse party having at least twenty days notice. But there shall be no reversal on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of; or, in case the person entitled to such writ of error be an infant, non compos mentis, or imprisoned, then within five years, as aforesaid, exclusive of the time of such disability. And every justice or judge signing a citation or any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good.

94. The district judge cannot sit in the circuit court on a writ of error to the district court. 5 Wheat. R. 434.

95. It is observed above, that writs of error may be issued to the district court in civil cases at common law, but a writ of error does not lie from a circuit to a district court in an admiralty or maritime cause. 1 Gall. R. 5..

96. − [2.] Appeals from the district to the circuit court take place generally in civil causes of admiralty or maritime jurisdiction.

97. By the Act of March 3, 1803, _2, it is enacted, that from all final judgments or decrees in any of the district courts of the United States, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the district court next to be holden in the district where such final judgment or judgments, decree or decrees shall be rendered: and the circuit courts are thereby authorized and required, to hear and determine such appeals.

98. − [3.] Although no act of congress authorizes the circuit court to, issue a certiorari to the district court for the removal of a cause, yet if the cause be so removed, and instead of taking advantage of the irregularity in proper time and in a proper manner, the defendant makes the defence and pleads to issue, he thereby waives the objection, and the suit will be considered as an original one in the circuit court, made so by consent of parties. 2 Wheat. R. 221.

99.−[4.1 The circuit court may issue a writ of procedendo to the district court.

Equity Jurisdiction of the Circuit Courts.

100. Circuit courts are vested with equity jurisdiction in certain cases. The Act of September, 1789, _11, gives original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or. the suit is between a citizen of the state where the suit is brought and a citizen of another state.

101. The Act of April 15, 1819, _1, provides, " That the circuit court of the United States shall. have original cognizance, as well in equity as at law, of all actions, suits, controversies, and cases arising under may law of the United States, granting or confirming to authors or inventors, the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity filed by any party aggrieved, in such cases, shall have authority to grant injunctions according to the course and principles of courts of equity, to prevent the viola−tion of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable:.provided, however, that from all judgments and decrees of any circuit courts rendered in the premises, a writ of error or appeal as the case may. require, shall lie to the supreme court of the United States, in the same Maniaer and under the same circumstances, as is now provided by law, in other judgments and decrees of such circuit court."

102. By the Act of August 23, 1842, it is enacted, _5, " That the district courts, as courts of admiralty, and the circuit courts, as courts of equity, shall be deemed always open for the purpose of filing libels, bills, petitions, answers, pleas, and other plead− ings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings whatever, preparatory to the hearing of all causes pending therein upon their merits. And it shall be competent for any. judge of the court, upon reasonable notice to the parties, in the clerk's office or at chambers, and in vacation as well as in term, to make and direct, and award all such process, commissions, and interlocutory orders, rules, and other proceedings, whenever the same are not grantable of course according to the rules and practice of the court."

(2.) Criminal Jurisdiction of the Circuit Courts.

103. The often cited llth section of the Act of the 24th of September, 1789, gives the circuit courts exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where that act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable. therein. The jurisdiction of the circuit courts in criminal cases is confined to offences committed within the district for which those courts respectively sit when they are committed on land. Serg. Const. Law, 129; 1 Gallis. 488.

2. Of the District Courts.

104. In treating of district courts, the same division which was made, in considering circuit courts, will here be adopted, by taking a view, 1. Of their organization and, 2. Of their jurisdiction. _1. Of the Organization of the District Courts.

105. The United States are divided into districts, in each of which is a court called a district court, which is to consist of one judge, who is to reside in the district for wbich he is appointed, and to hold annually four sessions. Act of September 24, 1789. By subsequent acts of congress, the number of annual sessions in particular districts, is sometimes more and sometimes less; and they are to be held at various places in the district. There is also a district court in the District of Columbia, held by the chief justice of the circuit court of that district. _2. Jurisdiction of the District Courts.

106. Their jurisdiction is either civil or criminal.

107. − (1.) Their civil jurisdiction extends, 1. To admiralty and maritime causes: the admiralty and maritime jurisdiction, is either the ordinary jurisdiction, which comprehends prize suits; cases of salvage actions for torts; and actions on contracts, such. as seamen's wages, pilotage, bottomry, ransom, materials, and the like; or the extraordinary or expressly vested jurisdiction, which includes cases of seizures under the revenue laws, &c.; and captures within the jurisdiction of the United States.

108.−2. To cases of seizure on land under the laws of the United States, and in suits for penalties and forfeitures, incurred under the laws of the United States.

109.−3. To cases in which an alien sues for a tort, in violation of the laws of nations, or a treaty of the United States.

110. − 4. To suits instituted by the United States.

111. − 5. To actions by and against consuls.

112. − 6. To certain cases in equity.

113. − 1. The admiralty and maritime jurisdiction of the district court is ordinary or extraordinary.

114. − 1st. The ordinary jurisdiction is granted by the Act of September 24th, 1789, It is there enacted, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. This jurisdiction is exclusive. Bee, 19; 3 Dall. 16; Paine, 111; 4 Mason, 139.

115. This ordinary jurisdiction is exercised in,

116. − 1. Prize suits. The Act of September 24, 1789, _9, vests in the district courts as full jurisdiction of all prize causes as the admiralty of England; and this jurisdiction is an ordinary inherent branch of the powers of the court of admiralty, whether considered as prize courts or instance courts, 3 Dall. 16; Paine, 111.

117. The act of congress marks out not only the general jurisdiction of the district courts, but also that of the several courts in relation to each other, in cases of seizure on the waters of the United States, navigable, &c. When the seizure is made within the waters of one district, the court of that district has exclusive, jurisdiction, though the offence may have been committed out of the district. When the seizure is made on the high seas, the jurisdiction is in the court of the district where the property may be brought. 9 Wheat. 402; 6 Cranch; 281; 1 Mason, 360; Paine, 40.

118. When the seizure has been made within the waters of a foreign nation, the district court has jurisdiction, when the property has been brought into the district, and a prosecution has been instituted there. 9 Wheat. 402; 9 Cranch. 102.

119. The district court has jurisdiction of seizures, and of the question of who is entitled to their proceeds, as informers or otherwise; and the principal jurisdiction is exclusive; the question, as to who is the informer, is also exclusive. 4 Mason, 139.

120. − (2.) Cases of salvage. Under the constitution and laws of the United States, this court has exclusive original cognizance in cases of salvage; and, as a consequence, it has the power to determine to whom the residue of the property belongs, after deducting the salvage. 3 Dall. 183.

121. − (3.) Actions arising out of tort's and injuries. The district court has jurisdiction over all torts and injuries committed on the high seas, and in ports or harbors within the ebb and flow of the tide. Vide 1 Wheat. R. 304; 2 Gall. R. 389; 1 Mason, 96; 3 Mason., 242; 4 Mason, 380; 18 Johns. R. 257.

122. A court of admiralty has jurisdiction to redress personal wrongs committed on a passenger, on the high seas, by the master of a vessel, whether those wrongs be by direct force or consequential injuries. 3 Mason, 242.

123. The admiralty may decree damages for an unlawful capture of an American vessel by a French privateer, and may proceed by attachment in ?−em. Bee, 60.

124. It has jurisdiction in cases of maritime torts, in personam as well as in rem. 10 Wheat. 473,

125. This court has also jurisdiction of petitory suits to reinstate owners of vessels who have been displaced from their possession. 5 Mason, 465. It exercises jurisdiction of all torts and injuries committed on the high seas, and in ports or barbors within the flow or ebb of the tide. 2 Gallis. 398; Bee, 51.

126. A father, whose minor son has been tortiously abducted and seduced on a voyage on the high seas, may sue, in the admiralty, in the nature of an action per quod, &c., also for wages earned by such son in maritime service. 4 Mason, 380.

127. − (4.) Suits on contracts. As a court of admiralty, the district court has a jurisdiction, concurrent with the courts of common law, over all maritime contracts, wheresoever the same may be made or executed, or whatsoever be the form of the contract. 2 Gallis. 398. It may enforce the performance of charter−parties for foreign voyages, and by proceeding in rem, a lien for freight under them. 1 Sumn. 551; 2 Sumn. 589. It has jurisdiction over contracts for the hire of seamen, when the service is substantially performed on the sea, or on waters within the flow and reflow of the tide 10 Wheat. 428; 7 Pet. 324; Bee, 199; Gilp. 529. But unless the services are essentially maritime, the jurisdiction does not attach. 10 Wheat. 428; Gilp. 529.

128. The master of a vessel may sue in the admiralty, for his wages; and the mate, who on his death succeeds him, has the same right. 1 Sumn. 157; 9 Mason, 161; 4 Mason, 196. But when the services for which he sues have not been performed by him as master, they cannot be sued for in admiralty. 3 Mason, 161.

129. The jurisdiction of the admiralty attaches when the services are performed on a ship in port where the tide ebbs and flows. 7 Pet. 324; Gilp. 529.

130. Seamen, employed on board of steamboats and lighters engaged in trade or commerce on tide−water, are within the admiralty jurisdiction. But those in ferryboats are not so. Gilp. 532 Gilp. 203.

131. Wages may be recovered in the admiralty by the pilot, deck−hands, engineer, and firemen, on board of a steamboat. Gilp. 505.

132. But unless the service of those employed contribute in navigating the vessel, or to its preservation, they cannot sue for their wages in the admiralty; musicians on board of a vessel, who are hired and employed as such, cannot therefore enforce a payment of their wages by a suit in rem in the admiralty. Gilp. 516.

133. − 2d. The extraordinay jurisdiction of the district court, as a court of admiralty, or that which is vested by various acts of congress, consists of −

(1.) Seizures under the laws of imposts, navigation, or trade of the United States. It is enacted, by the Act of September 24, 1789, _9, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it.

134. Causes of this kind are to be tried by the district court, and not by a jury. 4 Cranch, 438; 5 Cranch, 281; 1 Wheat. 9, 20: 7 Cranch, 112; 3 Dall. 297.

135. It is the place of seizure, and not the committing of the offence, that, under the Act of September 24, 1789, gives jurisdiction to the court; 4 Cranch, 443 5 Cranch, 304; for until there has been a seizure, the forum cannot be ascertained. 9 Cranch, 289.

136. When the seizure has been voluntarily abandoned, it loses its validity, and no jurisdiction attaches to any court, uuless there be a new seizure. 10 Wheat. 325 1 Mason, 361.

137. − (2.) The. admiralty jurisdiction, expressly vested in the district court, embraces, also, captures made within the jurisdictional limits of the United States. By the Act of April. 20, 1818, _7, the district court shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts and shores thereof.

138. − 2. The civil jurisdiction of the district court extends to cases of seizure on land, under the laws of the United States, and in suits for penalties and forfeitures incurred under the laws of the United States.

139. The Act of September 24, 1789, _9, gives to the district court exclusive original cognizance of all seizures made on land, and other waters than as aforesaid, (that is, those which are navigable by vessels of ton or more tons burden, within their respective districts, or on the high seas,) and of all suits for penalties and forfeitures incurred under the laws of the United States.

140. In all cases of seizure on land, the district court sits as a court of common law, and its jurisdiction is entirely distinct from that exercised in case of seizure on waters navigable by vessels of ten tons burden and upwards. 8 Wheat. 395.

141. Seizures of this kind are triable by jury; they are not cases of admiralty and maritime jurisdiction. 4 Crauch, 443.

142. − 3. The civil jurisdiction of the district court extends also to cases in which an alien sues for a tort, in violation of the law of nations, or a treaty of tho United States.

143. The Act of September 24, 1789, _9, directs that the district court shall have cognizance, concurrent with the courts of the several states, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only, in violation of the law of nations, or of a treaty of the United States.

144. − 4. The civil jurisdiction of this court extends further to suits instituted by the United States. By the 9th section of the Act of September 24, 1789, the district court shall also have cognizance, concurrent as last mentioned, of all suits at common law, where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And by the Act of March 3; 1815, _4, it has cognizance, concurrent with the courts and magistrates of the several states, and the circuit courts of the United States, of all suits at common law where the United States, or any officer thereof, under the authority of any act of congress sue, although the debt, claim, or other matter in dispute, shall not amount to one hundred dollars.

145. These last words do not confine the jurisdiction given by this act to one hundred dollars, but prevent it from stopping at that sum: and consequently, suits for sums over one hundred dollars are cognizable in the district, circuit, and state courts, and before magistrates, in the cases here mentioned. By virtue of this act, these tribunals have jurisdiction over suits brought by the postmaster−general, for debts and balances due the general post office. 12 Wheat. 147; 2 Pet. 447; 1 Pet. 318.

146.−5. This court has jurisdiction of actions by and against consuls or vice−consuls, exclusively of the courts of the several states, except for offences where other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is inflicted.

147. For offences above this description formerly the circuit court only had jurisdiction in cases of consuls. 5 S. & R. 545; 2 Dall. 299. But by the Act of August 23, 1842, the district courts shall have concurrent jurisdiction

with the circiut courts of all crimes and offences against the United States, the punishment of which is not capital. And by the, Act of February 28, 1839, _5, the punishment of whipping is abolished. See also the Act of 28th Sept. 1850, making appropriations for the naval service, &c.

148. − 6. The jurisdiction of the district court under the bankrupt laws will be found under the title Bankrupt.

149. − 7. The district courts have equitable jurisdiction in certain cases. 150. By the first section of the Act of February 13, 1807, the judges of the district courts of the United States shall have as full power to grant writs of injunctions, to operate within their respective districts, as is now exercised by any of the judges of the supreme court of the United States. under the same rules, regulations, and restrictions, as are prescribed by the several acts of congress establishing the judiciary of the United States, any law to the contrary notwithstanding. Provided, that the same shall not, unless so ordered by the circuit court, continue longer than to the circuit then next ensuing; nor shall an injunction be issued by a district judge in any case, where the party has had a reasonable time to apply to the circuit court for the writ.

151. An injunction may be issued by the district judge under the Act of March 3, 1820, SSSS 4, 5, where proceedings have taken place by warrant and distress against a debtor to the United States or his sureties, subject by _6, to appeal to the circuit court from the decision of such district judge in refusing or dissolving the injunction, if such appeal be allowed by a justice of the supreme court. On which, with an exception as to the necessity of an answer on the part of the United States, the proceedings are to be as in other cases.

152. The Act of September 24, 1789, _14, vests in the judges of the district courts, power to grant writs of habeas corpus, for the purpose of an inquiry into the cause of commitment.

153. Other acts give them power to issue writs, make rules, take depositions, &c. The acts of congress already treated of relating to the privilege of not being sued out of the district of which the defendant is an inhabitant, or in which he is found, restricting suits by assignees, and various others, apply to the district court as well as to the circuit court.

154. Bythe 9th section of the Act of September 24, 1789, the trial of issues in fact in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury. Serg. Const. Law, 226, 227.

(2.) The criminal jurisdiction of the district court.

155. By the Act of August 23, 1842, _3, it is enacted that the district courts of the United States shall have concurrent jurisdiction with the circuit courts, of all crimes and offences against the United States, the punishment of which is not capital.

156. There is a class of district courts of a peculiar description. These exercise the power of a circuit court, under the same regulations as they were formerly exercised by the district court of Kentucky, which was the first of the kind.

157. The Act of September 24, 1789, _10, gives the district court of the Kentucky district, besides the usual jurisdiction of a district court, the jurisdiction of all causes, except of appeals and writs of error, thereinafter made cognizable in a circuit court, and writs of error and appeals were to lie from decisions therein to the supreme court, and under the, same regulations. By the 12th section, authority was given to remove cases from a state court to such court, in the same manner as to a circuit court.

3. The territorial courts.

158. The act to establish the territorial government of Oregon, approved August 14, 1848, establishes the judicial power of the said territory as follows: _9. The judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the just of the supreme court, at such times and places as may be prescribed by law; and the said judges shall after their appointments, respectively, reside in the districts which shall be assigned them The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in anywise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery, as well as common law, jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the

place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of the said supreme court shall be allowed, and way be taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars; and in all cases where the constitution of the United States, or acts of congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said territory, as is vested in the circuit and district courts of the United States writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. Writs of error and, appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States, and also of all cases arising under the laws of the said territory, and otherwise. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of the late Wisconsin Territory received for similar services.

159. − _10. There shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as were provided by law for the attorney of the United States for the late territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as were provided by law for the marshal of the district court of the United States, for the present [late] territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

160. The act to establish a territorial government for Utah, approved September 9, 1850, contains the following provisions relative to this subject. They are the same in most respects with the preceding. Section 9 of this act provides, " That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which be shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation

of either party, or other competent witness, shall exceed two thousand dollars, except only that, in all, cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom: and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal, in all such cases, shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory now receive for similar services.

161. "There shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States: he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees as the marshall of the district court of the United States for the present territory of Oregon; and shall, in addition, be paid two hundred dollars annually as a compensation for extra sci−vices."

COURTESY, OR CURTESY, Scotch law. A right which vests in the hushand, and is in the nature of a life−rent. It is a counterpart of the terce. Courtesy requires, 1st. That there shall have been a living child born of the marriage, who is heir of the wife, or who, if surviving, would have been entitled to succeed. 2d. That the wife shall have succeeded to the subjects in question as heir either of line, or of talzie, or of provision. 1 Bell’s Com. 61; 2 Ersk. 9, 53. See Curtesy.

COURTESY OF ENGLAND. See Estates by the Courtesy.

COUSIN, domest. rel. Cousins are kindred who are the issue of two brothers or two sisters, or of a brother and a sister. Those who descend from the brother or sister of the father of the person spoken of are called patternal cousins; maternal cousins are those who are descended from the brothers or sisters of the mother. Vide 2 Bro. C. C. 125; 1 Sim. & Stu. 301; 3 Russ. C. C. 140; 9 Sim. R. 386, 457.

COVENANT, remedies. The name of an action instituted for the recovery of damages for the breach of a covenant or promise under seal. 2 Ld. Raym. 1536

F; N. B. 145 Com. Dig. Pleader, 2 V 2 Id. Covenant, A 1; Bouv. lnst. Index, h. t.

2. The subject will be considered with reference, 1. To the kind of claim or obligation on which this action may be maintained. 2. The form of the declaration. 3. The plea. 4. The judgment.

3.− 1. To support this action, there must be a breach of a promise under seal. 6 Port. R. 201; 5 Pike, 263; 4 Dana, 381; 6 Miss. R. 29. Such promise may be contained in a deed−poll, or indenture, or be express or implied by. law from the terms of the deed; or for the performance of something in futuro, or that something has been done; or in some cases, though it relate to something in presenti, as that the covenantor has, a good title. 2 Saund. 181, b. Though, in general, it is said that covenant will not lie on a contract inpresenti, as on a covenant to stand seized, or that a certain horse shall henceforth be the property of another. Plowd. 308; Com. Dig. Covenant, A 1; 1 Chit. PI.. 110. The action of covenant is the peculiar remedy for the non−performance of a promise under seal, where the damages are unliquidated, and depend in amount on the opinion of a jury, in which case neithor debt nor assumpsit can be supported but covenant as well as the action of debt, may be maintained upon a single bill for a sum certain. When the breach of the covenant amounts to misfeasance, the covenantee has an election to proceed by action of covenant, or by action on the case for a tort, as against a lessee, either during his term or afterwards, for waste; 2 Bl. R. 1111; 2 Bl. R. 848; but this has been questioned. When the contract under seal has been enlarged by parol, the substituted agreement will be considered, together with the original agreement, as a simple contract. 2 Watt’s R. 451 1 Chit. Pl. 96; 3 T. R. 590.

4. − 2. The declaration must state that the contract was under seal and it should make profert of it, or show some

excuse for the omission. 3 T. 11. 151. It is not, in general, requisite to state tho consideration of the defendant's promise, because a contract under seal usually imports a consideration; but when the performance of the consideration constitutes a condition precedent, such performance must be averred. So much only of the deed and covenant should be set forth as is essential to the cause of action: although it is usual to declare in the words of the deed, each covenant may be stated as to its legal effect. The breach may be in the negative of the covenant generally 4 Dall. R. 436; or, according to the legal effect, and sometimes in the alternative and several breaches may be assigned at common law. Damages being the object of the suit, should be laid sufficient to cover the real amount. Vide 3 Serg. & Rawle, 364; 4 Dall. R. 436 2 Yeates' R. 470 3 Serg. & Rawle, 564, 567; 9 Serg. & Rawle, 45.

5. − 3. It is said that strictly there is no general issue in this action, though the plea of non est factum has been said by an intelligent writer to be the general issue. Steph. Pl. 174. But this plea only puts in issue the fact of scaling the deed. 1 Chit. Pl. 116. Non infregit conventionem, and nil debet, have both been held to be insufficient. Com. Dig. Pleader, 2 V 4. In Pennsylvania, by a practice peculiar to that state, the defendant may plead covenants and under this. plea, upon notice of the special matter, in writing, to the plaintiff, without form, he may give anything in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 Serg. & Rawle, 105. And this evidence, it seems, may be given in the circuit courts of the United States in that state without notice, unless called for. 2 W. C. C. R. 4 5 6.

6. − 4. The judgmeut is that the plaintiff recover a named sum for his damages, which he has sustained by reason of the breach or breaches of covenant, together with costs.

COVENANT, contracts. A covenant, conventio, in its most general signification, means any kind of promise or contract, whether it be made in writing or by parol. Hawk. P. C. b. 1, c. 27, _7, s. 4. In a more technical sense, and the one in which it is here considered, a covenant is an agreement between two or more persons, entered into in writing and under seal, whereby either party stipulates for the truth of certain facts, or promises to perform or give something to the other, or to abstain from the performance of certain things. 2 Bl. Com. 303−4; Bac. Ab. Covenant, in pr.; 4 Cruise, 446; Sheppard, Touchs. 160; 1 Harring. 151, 233 1 Bibb, 379; 2 Bibb, 614; 3 John. 44; 20 John. 85; 4 Day, 321.

2. It differs from an express assumpsit in this, that the former may be verbal, or in writing not under seal, while the latter must always be by deed. In an assumpsit, a consideration must be shown; in a covenant no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 447; 4 Barn. & Ald. 652; 3 Bingh. 111.

3. It is proposed to consider first, the general requisites of a covenant; and secondly, the several kinds of covenants.

4. − _1. The general requisites are, 1st. Proper parties. 2d. Words of agreement. 3d A legal purpose. 4th. A proper form.

5. − 1st. The parties must be such as by law can enter into a contract. If either for want of understanding, as in the case of an idiot or lunatic; or in the case of an infant, where the contract is not for his benefit; or where there is understanding, but owing to certain causes, as coverture, in the case of a married woman, or duress, in every case, the parties are not competent, they cannot bind themselves. See Parties to Actions.

6. − 2d. There must be an agreement. The assent or consent must be mutual for the agreement would be incomplete if either party withheld his assent to any of its terms. The assent of the parties to a contract necessarily supposes a free, fair, serious exercise of the reasoning faculty. Now, if from any cause, this free assent be not given, the contract is not binding. See Consent.

7. − 3d. A covenant against any positive law, or public policy, is, generally speaking, void. See Nullity; Shep. Touchs. 163. As an example of the first, is a covenant by one man that he will rob another; and of the last, a covenant by a merchant or tradesman that he will not follow his occupation or calling. This, if it be unlimited, is absolutely void but, if the covenant be that he shall not pursue his business in a particular place, as, that he will not trade in the city of Philadelphia, the covenant is no longer against public policy. See Shep. Touchs. 164. A covenant to do an impossible thing is also void. Ib.

8. − 4th. To make a covenant, it must, according to the definition above given, be by deed, or under seal. No particular form of words is necessary to make a covenant, but any words which manifest the intention of the parties, in respect to the subject matter of the contract, are sufficient. Sec numerous examples in Bac. Abr. Covenant, A Selw. N. P. 469; Com. Dig. Covenant, A 2; 3 Johns. R. 44; 5 Munf. 483.

9. In Pennsylvania, Delaware, and Missouri, it is declared by statute that the words grant, bargain, and sell, shall amount to a covenant that the grantor was seised of an estate in fee, free from all incumbrances done or suffered by him, and for quiet enjoyment against his acts. But it has been adjudged that those words in the Pennsylvania statute of 1715, (and the decision will equally apply to the statutory language in the other two states,) did not amount to a general warranty, but merely to a covenant that the grantor had not done any act, nor created any incumbrance whereby the estate might be defeated. 2 Bin. 95; 11 S. & R. 111, 112; 4 Kent, Com. 460.

10. − _2. The several kinds of covenants. They are, 1. Express or implied. 1. An express, covenant, or a covenant in fact, is one expressly agreed between the parties and inserted in the deed. The law does not require any particular form to create an express covenant. The formal word "covenant" is therefore not indispensably requisite. 2. Mod. 268; 3 Keb. 848; 1 Leon, 324; 1 Bing. 433; 8 J. B. Moore, 546; 1 Ch. Cas. 294; 16 East, 352; 12 East, 182 n.; 1 Bibb, 379; 2 Bibb 614; 3 John. 44; 5 Cowen, 170; 4 Day, 321 4 Conn. 508; 1 Harring. 233. The words "I oblige;" "agree," 1 Ves. 516; 2 Mod. 266; or, "I bind myself to pay so much such a day, and so much such another day;" Hardr. 178; 3 Leon. 119, Pl. 199; are held to be covenants; and so are the word's of a bond. 1 Ch. Cas. 194. But words importing merely an order or direction that other persons should pay a sum of money, are not a coveiaant. 6 J. B. Moore, 202, n. (a.)

11. − 1. An implied covenant is one which the law intends and implies, though it be not expressed in words. 1 Common Bench Rep. 402; co. Lit. 139, b; Vaugnan's Rep. 118; Rawle on Covenants, 364. There are some words which of themselves do not import an express covenant, yet being made use of in certain contracts, have a similar operation and are called covenants in law. They are as effectually binding on the parties as if expressed in the most unequivocal terms. Bac. Ab. Covenant, B. A few examples will fully explain this. If a lessor demise and grant to his lessee a house or lands for a certain term, the law will imply a covenant on the part of the lessor, that the lessee shall during the term quietly enjoy the same against all incumbrances. Co. Litt. 384. When in a lease the words "grant," 1 Mod. 113 Freem. 367; Cro. Eliz. 214; 4 Taunt. 609; "grant and demise, " 4 Wend. 502; "demise," 10 Mod. 162; 4 Co. 80; Hob. 12; or " demiserunt," I Show. 79 1 Salk. 137, are used, they are so many instances of implied covenants. And the words "yielding and paying" in a lease, imply a covenant on the part of lessee, that he will pay the rent. 9 Verm. 151; 3 Penn. 461, 464.

12. − 2. Real and personal. 1st. A real covenant is one which has for its object something annexed to, or inherent in, or connected with land or other property. Co Litt. 334; enk 241; Cruise, Dig. tit. 32, c. 25, s. 22; Platt. on Cov. 60, 61; 2 Bl. Com. 304. A covenant real, which necessarily runs with the land, as to pay rent, not to cut timber, and the like, is said to be an inherent covenant. Shep. To. 161. A covenant real runs with the land and descends to the heir; it is also transferred to a purchaser. Such covenants are said to run with the land, so that he who has the one is subject to the other. Bac. Ab. Covenants, E 2. See 2 Penn. 507; 10 Wend 180; 12 Mass. 306; 17 Mass. 586; 5 Cowen, 137; 5 Ham. 156; 5 Conn. 497; 1 Wash. C. C. 375; 8 Cowen 206; 1 Dall. 210; 11 Shep. 283; 6 Met. 139; 3 Mete. 81; 3 Harring. 338; 17 Wend. 136.

13. − 2. As commonly reckoned, there are five covenants for title, viz: 1. Covenant for seisin. 2. That the grantor has perfect right to convey. 3. That the grantee shall quietly possess and enjoy the premises without interuption, called a covenant for quiet enjoyment. 4. The covenant against incumbrances. 5. The covenant for futher assurance. 6. Besides these covenants, there is another frequently resorted to in the United Staes, which is relied on more, perhaps, than any other, called the covenant of warranty. See Rawle on Covenants for Title, where the import and effect of these covenants are elaborately and luminously discussed.

14. − 3. A personal covenant relates only to matters personal, as distinguished from real, and is binding on the covenantur during life, and on his personal representatives after his decease, in respect of his assets. According to Sir William Blackstone, a personal convenant may be transformed into a real, by the mere circumstance of the heirs being named therein, and having assets by descent from the covenantor. 2 Bl. Com 304. A covenant is personal in another sense, where the covenantor is bound to fulfil the covenant himself; as, to teach an apprentice. F.N.B. 340, A.

15. Personal covenants are also said to be transitive and intransitive; the former, when the duty of performing them passes to the covenantor's representatives; the latter, when it is limited to himself; as, in the case of teaching an apprentice. Bac. Ab. h.t.

16. As they affect each other in the same deed, covenants may be divided into three classes. 1st. Dependent covenants are those in which the performance, of one depends on the performance of the other; there may be conditions which must be performed before the other party is liable to an action on his covenant. 8 S. & R. 268; 4

Conn. 3; 1 Blackf. 175; John. 209; 2 Stew. & Port. 60; 6 Cowen 296; 3 Ala. R. 330; 3 Pike 581; 2 W. & S. 227; 5 Shep. 232; 11 Verm. 549; 4 W. C. C. 714; Platt on Cov. 71; 2 Dougl. 689; Lofft, 191; 2 Selw. N. P. 443, 444. To ascertain whether covenants are dependent or not, the intention of the parties is to be sought for and regarded rather than the order or time in which the acts are to be done, or the structure of the instrument, or the arrangements of the covenant. 4 Wash. C. C. 714; 1 Root, 170; 4 Rand. 352; 4 Rawle, 26; 5 Wend. 496; 2 John. 145; 13 Mass. 410; 2 W. & S. 227; 4 W. & S. 527; Willis, 157; 7 T. R. 130; 8 T.R. 366; 5 B. & P. 223; 1 Saund. 320 n.

17. − 2d. Some covenants are mutual conditions to be performed at the same time; these are concurrent covenants. When, in these cases, one party is redy and offers to perform his part, and the other refuses or neglects to perform his, he who is ready and offers, has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. 4 Wash. C. C. 714; Dougl. 698; 2 Selw. N. P. 443; Platt. on Cov. 71.

18.− − 3d. Covenants are independent or mutual, when either party may recover damages from the other for the injury he may have received by a breach of the covenants in his favor, and when it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. 2 Wash. C. C. R. 456; 5 Shepl. 372; 4 Leigh, 21; 3 Watts & S. 300; 13 Mass. 410; 2 Pick. 300; 2 John. 145; 10 John. 203; Minor 21; 2 Bibb, 15; 3 Stew. 361; 1 Fairf. 49; 6 Binn. 166; 2 Marsh. 429; 7 John. 249; 5 Wend. 496; 3 Miss. 329; 2 Har. & J. 467; 4 Har. & J. 285; 2 Marsh. 429; 4 Conn. 3.

19. Covenants are affirmative and negative. 1st. An affirmative covenant is one by whicb the covenantor binds himself that something has already been done or shall be performed hereafter. Such L convenant will not deprive a man of a right lawfully enjoyed by him independently of the covenant; 5 as, if the lessor agreed with the lessee that he shall have thorns for hedges growing upon the land, by assignment of the lessor's bailiff; here no restraint is imposed upon the exercise of that liberty which the law allows to the lessee, and therefore he may take hedge− bote without assignment. Dy. 19 b, pl. 115; 1 Leon, 251.

20. − 2d. A negative covenant is one where the party binds himself that he has not performed and will not perform a certain act; as, that he will not encumber. Such a covenant cannot be said to be performed until it becomes impossible to break it. On this ground the courts are unwilling to construe a covenant of this kind to be a condition precedent. Therefore, where a tailor assigned his trade to the defendant, and covenanted thenceforth to desist from carrying on the said business with any of the customers, and the defendant in consideration of the performance thereof, covenanted to pay him a life annuity of 190, it was held that if the words "in consideration of the performance thereof," should be deemed to amount to a condition precedent, the plaintiff would never obtain his annuity; because as at anytime during his life he might exercise his former trade, until his death it could never be ascertained whether he had performed the covenant or not. 2 Saund. 156; 1 Sid. 464; 1 Mod. 64; 2 Keb. 674. The defendant, however, on a breach by plaintiff, might have his remedy by a crossaction of covenant. There is also a difference between a negative covenant, which is only in affirmance of an affirmative covenant precedent, and a negative covenant which is additional to the affirmative covenant. 1 Sid. 87; 1 Keb. 334, 372. To a covenant of the former class a plea of performance generally is good, but not to the latter; the defendant in that case must plead specially. Id.

21. Covenants, considered with regard to the parties who are to perform them, are joint or several.

1st. A joint covenant is one by which several parties agree to perform or do a thing together. In this case although there are several covenantors there is but one contract, and if the covenant be broken, all the covenantors living, must be sued; as there is not a separate obligation of each, they cannot be sued separately.

22. − 2d. A several covenant is one entered into by one person only. It frequently happens that a number of persons enter into the same contract, and that each binds himself to perform the whole of it; in such case, when the Contract is under seal, the covenantors are severally bound for the performance of it. The terms usually employed to make a several covenant are " severally," or " each of us." In practice, it is common for the parties to bind themselves jointly and severally, and then the covenant is both joint and several. Vide Hamm. on Parties 19; Cruise, Dig. tit. 32, c. 25, s. 18; Bac. Ab. Covenant D.

23. Covenants are executed or executory.

1st. An executed covenant is one which relates to an act already performed. Shep. To. 161.

24. − 2d. An executory covenant is one to be performed at a future time. Shep. To. 161.

25. Covenants are obligatory or declaratory.

1st. An obligatory covenant is one which is binding on the party himself, and shall never be construed to raise a use. 1 Sid. 27; 1 Keb. 334.

26. − 2d. A declaratory covenant is one which serves to limit and direct uses. 1 Sid. 27; 1 Heb. 334.

27. Covenants are principal and auxiliary.

1st. A principal covenant is one which relates directly to the principal matter of the contract entered into between the parties; as, if A covenants to serve B for one year.

28. − 2d. An auxiliary covenant is one, which, not relating directly to the principal matter of the contract between the parties, yet relates to something connected with it; as, if A covenants with B, that C will perform his covenant to serve him for one year. In this case, if the principal covenant is void, the auxiliary is discharged. Anstr. 256.

29. Covenants are legal or illegal. 1st. A legal covenant is one not forbidden by law. Covenants of this kind are always binding on the parties.

30. − 2d. An illegal covenant is one forbidden by law, either expressly or by implication. A covenant entered into, in violation of, the express provision of a statute is absolutely void. 5 Har. & J. 193; 5 N. H. Rep. 96; 6 N. H. Rep. 225; 4 Dall. 298; 6 Binn. 321; 4 S.& R. 159; 1 Binn. 118; 4 Halst. 252. A covenant is also void, if it be of immoral nature; as, a covenant for future illicit intercourse and cohabitation; 3 Monr. 35; 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. 13; 1 B. P. 340; or against public policy; 5 Mass. 385; 7 Greenl. 113; 4 Mass. 370; 5 Halst. 87; 4 Wash. C. C. 297; 11 Wheat. 258; 3 Day, 145; 2 McLean, 464; 7 Watts, 152; 5 Watts & S. 315; 5 How. Miss. 769; Geo. Decis. part 1, 39 in restraint of trade, when the restraiut is general; 21 Wend. 166; 19 Pick. 51; 6 Pick. 206; 7 Cowen, 307; or fraudulent between the parties; 5 Mass. 16; 4 S. & R. 488; 4 Dall. 250; 7 W. & S. 111; or third persons; 3 Day, 450; 14 S. & R. 214; 3 Caines, 213; 15 Pick. 49; 2 John. 286 12 John. 306.

31. Covenants, in the disjunctive or alternative, are those which give the covenantor the choice of doing, or the covenontee the choice of having, performed one of two or more things at his election; as, a covenant to make a lease to Titus, or pay him one hundred dollars on the fourth day of July, as the covenantor, or the covenantee, as the case may be, shall prefer. Platt on Cov. 21.

32. Collateral covenants are such as concern some collateral thing, which does not at all, or not so immediately relate to the thing granted; as, to pay a sum of money in gross, that the lessor shall distrain for rent, on some other land than that which is demised, or the like. Touchs. 161; 4 Burr. 2446; 2 Wils. R. 27; 1 Ves. R. 56. These covenants are also termed covenants in gross. Vide 5 Barn. & Ald. 7, 8; Platt on Cov. 69, 70.

COVENANT NOT TO SUE. This is a covenant entered into by a party who had a cause of action at the time of making it, and by which he agrees not to sue the party liable to such action.

2. Covenants of this nature, are either covenants perpetual not to sue, or covenants not to sue for a limited time; for example, seven years.

3. − _1. Covenants perpetual not to sue. These will be considered with regard to their effect as relates, 1. To the covnantee; 2. To his partners or co−debtors.

4. − 1. A covenant not to sue the covenantee at all, has the effect of a release to him, and may be pleaded as such to avoid a circuity of action. Cro. EIiz. 623; 1 T. R. 446; 8 T. R. 486; 1 Ld. Raym 688; S. C. Holt, 178; 2 Salk. 575; 3 Salk. 298; 12 Mod. 415, 548; 7 Mass. 153, 265; 16 Mass. 24; 17 Mass. 623. And see 11 Serg. & Rawle, 149.

5. − 2. Where the covenantee is jointly and severally bound with another to the covenantor, a covenant not to sue him will be no protection to the other wbo may be sued on his several obligations and such a covenant does not mount to a release to him. 2 Salk. 575; S. C. 12 Mod. 551; 8 T. R. 168; 6 Munf. 6; 1 Com. 139; 4 Greenl. 421; 2 Dana, 107; 17 Mass. 623, 628; 16 Mass. 24; 8 Mass. 480. A covenant not to sue, entered into by only one of several partners, cannot be set up as a release in an action by all the partners. 3 P. & D. 149.

6. − _2. Covenant not to sue for − a limited time. Such a covenant does not operate as a release, nor can it be pleaded as such, but is a covenant only for a breach of which the obliger may bring his action. Carth. 63; 1 Show. 46; Comb 123, 4; 2 Salk. 573; 6 Wend. 471.

COVENANT FOR QUIET ENJOYMENT. A covenant usually contained in a lease, by which the lessor covenants or agrees that the tenant shall quietly enjoy the premises leased. 11 East, 641.

2. Such a covenant is express or implied; express, when it is so mentioned in the deed it is implied, either from the words used, or from the conduct of the lessor. The words "grant" or "demise" are held to amount to an implied covenant for quiet enjoyment, unless afterwards restrained by a qualified express covenant. 1 Chit. Pr. 344.

COVENANT TO STAND SEISED TO USES. A species of conveyance which derives its effect from the statute of uses, and operates without transmutation of possession.

2. By this conveyance, a person seised of lands, covenant's that he will stand seised of them to the use of another. On executing the covenant, the other party becomes seised of the use of the land, according to the terms of the use; and the statute immediately annexes the possession to the use. This conveyance has the same force and effect as a common deed of bargain and sale; the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 2 Bl. Com. 338; 2 Bouv. Inst. n. 2080; 4 Kent Com 480; Lilly's Reg.h. t.; 1 Vern. by Raithby, 40, n.; Cruise, Dig. tit. 32, c. 10; 11 John. R. 337; 1 John. Cas. 91; 7 Pick. R. 111; 1 Hayw.,R. 251, 259, 271, note; 1 Conn. R. 354; 20 John. R. 85; 4 Mass. R. 135; 4 Hayw. R. 229; 1 Cowen, R. 622; 3 N. H. Rep. 234; 16 John. R. 515; 9 Wend. R. 641; 7 Mass. R. 384.

COVENANT FOR TITLE. An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 642. See 4 Dall. Rep. 439.

COVENANTEE. One in whose favor a covenant is made.

COVENANTOR. One who becomes bound to perform a covenant.

2. To become a covenantor a person must be sui juris, and intend, at the time of becoming bound, to covenant to perform some act mentioned in the covenant. He can be discharged from his covenant by performance, or, by the act of the covenantee, as the non−performance of a condition precedent, a release, or a rescission of the contract.

COVENANTS PERFORMED, pleading. In Pennsylvania, the defendant may plead covenants performed to an action of covenant, and upon this plea, upon informal notice to the plaintiff, he may give anything in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 S. & R. 105. And this evidence, it seems, may be given in the circuit court without notice unless called for. 2 Wash. C. C. R. 456.

COVENTRY ACT, criminal law. The common name for the statute 22 and 23 Car. II. c. 1; it having been enacted in consequence of an assault on Sir John Coventry in the street, and slitting his nose, in revenge, as was supposed, for some obnoxious words uttered by him in parliament.

2. By this statute it is enacted, that if any person shall, of malice aforethought, and by laying in wait, unlawfully cut or disable the tongue, put out an eye, slit the nose, cut off the nose or lip, or cut off or disable any limb, or member of any other person, with intent to maim or disfigure him, such person, his counsellors, aiders and abettors, shall be guilty of felony, without benefit of clergy. 4 Bl. Com. 207. This statute is copied by the act of the legislature of Pennsylvania, of April 22, 1794, s. 6, 3 Smith's Laws of Pa. 188; and the offence is punished by fine and imprisonment. For the act of Connecticut, see 2 Swift's Dig. 293.

COVERT, BARON. A wife; so called, from her being under the cover or protection of her hushand, baron or lord.

COVERTURE. The state or condition of a married woman.

2. During coverture, the being of the wife is civilly merged, for many purposes, into that of her hushand; she can, therefore, in general, make no contracts without his consent, express or implied. Com. Dig. Baron and Feme, W; Pleader, 2 A 1; 1 Ch. Pl. 19, 45; Litt. s. 28; Chit. Contr. 39; 1 Bouv. Inst. n. 276.

3. To this rule there are some exceptions: she may contract, when it is for her benefit, as to save her from starvation. Chit. Contr. 40.

4. In some cases, when coercion has been used by the hushand to induce her to commit crime, she is exempted from punishment. 1 Ha1e, P. C. 516; 1 Russ. Cr. 16.

COVIN, fraud. A secret contrivance betwen two or more persons to defraud and prejudice another of his rights. Co. Litt 357, b; Com. Dig. Covin, A; 1 Vin. Abr. 473. Vide Collusion; Fraud.

COW. In a penal statute which mentions both cows and beefer's, it was held that by the term cow, must be understood one that had a calf. 2 East, P. C. 616; 1 Leach, 105.

COWARDICE. Pusillanimity; fear.

2. By the act for the better government of the navy of the United States, passed April 21, 1800, 1 Story, L. U. S. 761; it is enacted, art. 5, "every officer or private who shall not properly observe the orders of his commanding officer, or shall not use his utmost exertions to carry them into execution, when ordered to prepare for, join in, or when actually engaged in battle; or shall, at such time, basely desert his duty or station, either then, or while in sight of an enemy, or shall induce others to do so, every person so ofending, shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge.

3. − Art. 6. "Every officer or private who shall, through cowardice, negligence, or disaffection, in the time of action, withdraw from, or keep out of battle, or shall not do his utmost to take or destroy every vessel which it is his duty to encounter, or shall not do his utmost ondeavor to afford relief to ships belonging to the United States, every such offender shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge."

4. By the act for establishing rules and articles for the government of the armies of the United States, passed April 10, 1806, it is enacted, art. 52, " any officer or soldier, who shall mishehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard, which he or they may be commanded to defend, or speak, words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or colors to plunder and pillage, every such offender, being duly convicted thereof, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court martial."

CRANAGE. A toll paid for drawing merchandise out of vessels to the wharf, so called, because the instrument used for the purpose is called a crane. 8 Co. 46.

TO CRAVE. To ask; to demand.

2. This word is frequently used in pleading; as,−to crave oyer of a bond on which the suit is brought; and in the settlement of accounts, the accountant general craves a credit or an allowance. 1 Chit. Pr. 520. See Oyer.

CRAVEN. A word of obloquy, which in trials by battel, was pronounced by the vanquished; upon which judgment was rendered against him.

CREANCE. This is a French word, which, in its extensive sense, signifies claim; in a narrower sense it means a debt. 1 Bouv. Inst. n. 1040, note.

CREDENTIALS, international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, mandatum manifestum. Vattel, liv. 4, c. 6, _76.

CREDIBILITY. Worthiness of belief. To entitle a witness to credibility, he must be competent. Vide Competency.

2. Human testimony can seldom acquire the certainty of demonstration. Witnesses not unfrequently are mistaken or wish to deceive; the most that can be expected is that moral certainty which arises from analogy. The credibility which is attached to such testimony, arises. from the double presumption that the witnesses have good sense and intelligence, and that they are not mistaken nor deceived; they are further presumed to have probity, and that they do not wish to deceive.

3. To gain credibility, we must be assured, first, that the witness has not been mistaken nor deceived. To be assured as far as possible on this subject, it is proper to consider the nature and quality of the facts proved; the quality and person of the witness; the testimony in itself; and to compare it with the depositions of other witnesses on the subject, and with known facts. Secondly, we must be satisfied that he does not wish to deceive: there are strong assurances of this, when the witness is under oath, is a man of integrity, and disinterested. Vide Arch. Civ. Pl. 444; 5 Com. Dig. 449; 8 Watts, R. 227; Competency.

CREDIBLE WITNESS. A credible witness is one who is competent to give evidence, and is worthy of belief. 5 Mass. 219 17 Pick. 134; 2 Curt. Ecc. R. 336. In deciding upon the credibility of a witness, it is always pertinent to consider whether he is capable of knowing the thing thoroughly about which he testifies. 2. Whether he was actually present at the transaction. 3. Whether he paid, sufficient attention to qualify himself to be a reporter of it; and 4. Whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive, or suppress or add to the truth.

2. In some of the states, as Delaware, Illinois, Maine, Maryland, Rhode Island, Vermont, and Virginia, wills must be attested by credible witnesses. See Attesting Witness; Competent Witness; Disinterested Witness; Respectable Witness; and Witness.

CREDIT, common law, contracts. The ability to borrow, on the opinion conceived by the lender that he will be repaid. This definition includes the effect and the immediate cause of credit. The debt due in consequence of such a contract is also called a credit; as, administrator of an the goods, chattels, effects and credits, &c.

2. The time extended for the payment of goods sold, is also called a credit; as, the goods were sold at six months credit.

3. In commercial law, credit is understood as opposed to debit; credit is what is due to a merchant, debit, what is

due by him

4. According to M. Duvergier, credit also signifies that influence acquired by intrigue connected with certain social positions. 20 Toull. n. 19. This last species of credit is not, of such value as to be the object of commerce. Vide generally, 5 Taunt. R. 338.

CREDITOR, persons, contracts. A creditor is he who has a right to require the fulfilment of an obligation. or contract.

2. Creditors may; be divided into personal and real.

3. The former are so called, because their claims are mainly against the person, who can reach the property of their debtors only by; virtue of the general rule by which he who has become personally obligated, is bound to fulfil his engagements, with all his property acquired and to be acquired, Which is a common guaranty for all his creditors.

4. The latter are called real, because they have mortgages or other securities binding on the real estates of their debtors.

5. It is proper to state that personal creditors may be divided into two classes first, those who have a right on all the property of their debtors, without considering the origin, or the nature of their claims; secondly, those who, in consequence of some provision of law, are entitled to some special prerogative, either in the manner of recovery, or in the rank they are to hold among creditors; these are entitled to preference. As an example, may be mentioned the case of the United State; when they are creditors, they have always a preforenee in case of insolvent estates.

6. A creditor sometimes becomes so, unknown to his debtor, as is the case when the former receives an assignment of commercial; paper, the title to recover which may be conveyed either by endorsement, or, in some cases, by mere delivery. But in general it is essential there should be a privity of contract between the parties. Vide, generally, 7 Vin. Ab. 42; 3 Com. Dig. 343; 8 Com. Dig. 388; 1 Supp. to Ves. Jr. 302 2 Sup. to Ves. Jr. 305 Code, 7, 72, 6; Id. 8, 18; Dig 42, 6, 17; Nov. 97 ch. t3 Bouv. Inst. Index, h. t.

CREEK, mar. law. Creeks are of two kinds, viz. creeks of the sea and creeks of ports. The former sorts are such little inlets of the sea whether within the precinct or extent of a, port or without, which are narrow rittl6 passages@ and−have shore on either side of them. The latter, Viz. breeks of ports, are by a kind of civil denomination such. They are such, that though possibly for their extent and. situation they might be ports, yet they are either members of or dependent upon other ports. In England it began thus: the king, could not conveniently have a customer and comptroller in every port or haven. But these custom officers were fixed at some eminent port; and the smaller adjacent ports became by that means creeks, or appendants. of that where these custom officers were placed. 1 Chit. Com. Law, 726; Hale's Tract. de Portibus Maris, part 2, c. 1, vol. 1, p. 46; Com. Dig. Navigation, C; Callis, 34.

2. In a more popular sense, creek signifies a small stream, less than a river. 12 Pick. R. 184,

CRETION, civil law.. The acceptance of a succession. Cretion was an act made before a magistrate, by which an instituted heir, who was required to accept of the succession within a certain time, declares within that time that he accepted the suecession. Clef cles Lois Rom. h. t.

2. Cretion is also used to signify the term during which the heir is allowed to make his election to take or not to take the inheritance. It is so called, because the heir is allowed to see, cernere, examine, and decide. Gaii, lust. lib. 2, _164.

CREW. Those persons who are employed in the navigation of a vessel.

2. A vessel to be seaworthy must have a sufficient crew. 1 Caines, R. 32; 1 John. R. 184.

3. In general, the master or captain (q.v.) has the selection of the crew. Vide Muster roll; Seaman; Ship; Shipping articles.

CRIB−BITING. A defect in horses, which consists in biting the crib while in the stable. This is not, considered as a breach of general warranty of soundness. Holt's Cas. 630.

CRIER. An inferior officer of a court, whose duty it is to open and adjourn the court, when ordered by the judges; to make proclamations and obey the directions of the court in anything which concerns the administration of juustice.

CRIME. A crime is an offence against a public law. This word, in its most general signification, comprehends all offences but, in its limited sense, it is confined to felony. 1 Chitty, Gen. Pr. 14.

2. The term misdemeanor includes every offence inferior to felony, but punishable by indictment or by−particular prescribed proceedings.

3. The term offence, also, may be considered as, having the same meaning, but is usually, by itself, understood to be a crime not indictable but punishable, summarily, or by the forfeiture of, a penalty. Burn's Just. Misdemeanor.

4. Crimes are defined and punished by statutes and by the common law. Most common law offences are as well known, and as precisely ascertained, as those which are defined by statutes; yet, from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted, that all immoral acts which tend to the prejudice of the community are punishable by courts of justice. 2 Swift's Dig.

5. Crimes are mala in se, or bad in themselves; and these include. all offences against the moral law; or they are mala prohibita, bad because prohibited, as being against sound policy; which, unless prohibited, would be innocent or indifferent. Crimes may be classed into such as affect:

6.− 1. Religion and public worship: viz. blasphemy, disturbing public worship.

7. − 2. The sovereign power: treason, misprision of treason.

8. − 3. The current coin: as counterfeiting or impairing it.

9. − 4. Public justice: 1. Bribery of judges or jurors, or receiving the bribe. 2. Perjury. 3. Prison breaking. 4. Rescue. 5. Barratry. 6. Maintenance. 7. Champerty. 8. Compounding felonies. 9. Misprision of felonies. 10. 6ppression. 11. Extortion. 12. Suppressing evidence. 13. Negligence or misconduct in inferior officers. 14. Obstructing legal process. 15. Embracery.

10. − 5. Public peace. 1. Challenges to fight a duel. 2. Riots, routs and unlawful assemblies. 3. Affrays. 4. Libels.

11. − 6. Public trade. 1. Cheats. 2. Forestalling. S. Regrating. 4. Engross−
ing. 5. Monopolies.

12. − 7. Chastity. 1. Sodomy. 2. Adultery. 3. Incest. 4. Bigamy. 5. Fornication.

13. − 8. Decency and morality. 1. Public indecency. 2. Drunkenness. 3. Violatiug the grave.

14. − 9. Public police and economy. 1. Common nuisances. 2. Keeping disorderly houses and bawdy houses. 3. Idleness, vagrancy, and beggary.

15. − 10. Public. policy. 1. Gambling. 2. Illegal lotteries.

16. − 11. Individuals. 1. Homicide, which is justifiable, excusable or felonious.

2. Mayhem. 3. Rape. 4. Poisoning, with intent to murder. 5. Administering drugs to a woman quick with child to cause, miscarriage. 6. Concealing death of bastard child.

7. Assault and battery, which is either simple or with intent to commit some other crime. 8. kidnapping. 9. False imprisonment. 10. Abduction.

17. − 12. Private property. 1. Burglary. 2. Arson. 3. Robbery. 4., Forgery.
Counterfeiting. 6. Larceny. 7. Receiving stolen goods, knowing them to have been stolen, or theft−bote. 8. Malicious mischief.

18. − 13. The public, individuals, or their property, according to the intent of the criminal. 1. Conspiracy.

CRIME AGAINST NATURE. Sodomy. It is a crime not fit to be named; peccatum horribile, inter christianos non nominandum. 4 Bl. Com. 214. See Sodomy.

CRIMEN FALSI, civil law, crime. It is a fraudulent alteration, or forgery, to conceal or alter the truth, to the prejudice of another. This crime may, be committed in three ways, namely: 1. By forgery. 2. By false declarations or false oath, perjury. 3. By acts; as, by dealing with false weights and measures, by altering the current coin, by making false keys, and the like. Vide Dig. 48, 10, 22; Dig. 34, 8 2; Code, lib. 9, t. 22, 1. 2, 5, 9. 11, 16, 17, 23, and 24; Merl. Rep. h. t.; 1 Bro. Civ. Law, 426; 1 Phil. Ev. 26; 2 Stark. Ev. 715.

2. What is understood by this, term in the common law, is not very clearly defined. Peake's Ev. 133; 1 Phil. Ev. 24; 2 Stark. Ev. 715. It extends to forgery, perjury, subornation of perjury, suppression of testimony by bribery, and conspiracy to convict of perjury. See 12 Mod. 209; 2 S. & R. 552; 1 Greenl. Ev. _373; and article Faux.

CRIMINAL. Relating to, or having the character of crime; as, criminal law, criminal conversation, &c. It also signifies a person convicted of a crime.

CRIMINAL CONVERSATION, crim. law. This phrase is usually employed to denote the crime of adultery. It is abbreviated crim. con. Bac. Ab. Marriage, E 2; 4
Blackf. R. 157.

2. The remedy for criminal conversation is, by an action on the case for damages. That the plaintiff connived, or assented to, his wife's infidelity, or that he prostituted her for gain, is a complete answer to the action. See

Connivance. But the facts that the wife's character for chastity was bad before the plaintiff married her; that he lived with her after he knew of the criminal intimacy with the defendant; that he had connived at her intimacy with other men;, or that the plaintiff had been false to his wife, only go in mitigation of damages. 4 N. Hamp. R. 501.

3. The wife cannot maintain an action for criminal conversation with her hushand; and for this, among other reasons, because her hushand, who is particeps criminis, must be joined with her as plaintiff.

CRIMINAL LETTERS. An instrument in Scotland, which contains the charges against a person accused of a crime. Criminal letters differ from an indictment, in that the former are not, like an indictment, the mere statement of the prosecutor, but sanctioned by a judge. Burt. Man. Pub. L. 301, 302.

CRIMINALITER. Criminally; opposed to civiliter, civilly.

2. When a person commits a wrong to the injury of another, he is answerable for it civiliter, whatever may have been his intent; but, unless his intent has been unlawful the is not answerable criminaliter. 1 East, 104.

TO CRIMINATE. To accuse of a crime; to admit having committed a crime or misdemeanor.

2. It is a rule, that a witness cannot be compelled to answer any question which has a tendency to expose him to a penalty, or to any kind of punishment, or to a criminal charge. 3 Bouv. Inst. n. 3209−12; 4 St. Tr. 6; 10 How. St. Tr.@ 1096; 6 St. Tr. 649; 16 How. St. Tr. 1149; 2 DougI. R. 593; 2 Ld. Raym. 1088; 24 How. St. Tr. 720; 16 Ves. jr. 242; 2 Swanst. Ch. R. 216; 1 Cranch. R. 144; 2 Yerg. R. 110 5 Day, Rep. 260; I Carr., & Payne, 11 2 Nott & M'C. 13; 6 Cowen, Rep. 254; 2 Peak. N. P. C. 106; 1 John. R. 498; 12 S. & R. 284; 8 Wend. 598.

3. An accomplice, admitted to give evidence against his associates in guilt, is bound to make a full and fair confession of the whole truth respecting the subject−matter of the prosecution; but he is not bound to answer with respect to his share in other offences, in which he was not concerned with the prisoner. 9 Cowen, R. 721, note (a); 2 Carr. & Payne, 411. Vide Disgrace,; Witness;

CRIMINATOIN. The act by which a party accused, is proved to be guilty.

2. It is a rule, founded in common sense, that no one is bound to criminate himself. A witness may refuse to answer a question, when the answer would criminate him, and subject him to punishment. And a party in equity is not bound to answer a bill, when the answer would form a step in the prosecution. Coop. Eq. Pl. 204; Mitf. Eq. Pl. by Jeremy, 194; Story, Eq,. Pl. _591; 14 Ves. 59.

CRITICISM. The art of judging skilfully of the merits or beauties, defects or faults of a literary or scientific performance, or of a production of art; when the criticism is reduced to writing, the writing itself is called a criticism.

2. Liberty of criticism must be allowed, or there would be neither purity of taste nor of morals. Fair discussion, is essentially necessary to, the truth of history and advancement of scienc. That publication therefore, is not a libel, which has for its object, not to injure the reputation of an individual, but to correct misrepresentations of facts, to refute sophistical reasoning, to expose a vicious taste for literature, or to censure what is hostile to morality. Campb. R. 351−2. As every man who publishes a book commits himself to the judgment of the public, any one may comment on his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. And the critic does a good service to the public who writes down any vapid or useless publication such as ought never to have appeared; and, although the author may suffer a loss from it, the law does nto conisder such loss an injury; because it is a loss which the party ought to sustain. It is the loss of fame and profit, to which he was never entitled. 1 Campb. R. 358, n. See 1 Esp. N. P. Cas. 28; 2 Stark. Cas. 73; 4 Bing. N. S. 92; S. C. 3 Scott, 340;. 1 M. & M. 44; 1 M. & M. 187; Cooke on Def. 52.

CROFT, obsolete. A little close adjioning to a dwelling−house, and enclosed for pasture or arable, or any particular use. Jacob's Law Dict.

CROP. This word is nearly synonymous with emblements. (q. v.),

2. As between the landlord and tenant, the former has a lien; in some of −the states, upon the crop for the rent, for a limited time, and, if sold on an execution against the tenant, the purchaser succeds to the liability of the tenant, for rent and good hushandry, and the crop is still liable to be distrained. Tenn. St. 1825, c. 21; Misso. St. 377; Del. St. 1829, 366; 1 N. J. R. C. 187; Atk. Dig. 357; 1 N. Y. R. S. 746; 1 Ky. R. L. 639; 5 Watts, R. 134; 41 Griff. Reg. 671, 404; 1 Hill. Ab. 148, 9; 5 Penn. St. R. 211.

3. A crop is not considered is a part of the real estate, so as to make a sale of it void, when the contract has not been reduced to writing, within the statute of frauds. 11 East, 362; 2 M. & S. 205; 5 B. & C. 829; 10 Ad. & El.

753; 9 B. & C. 561; but see 9 M. & W. 501.

4. If a hushand sow land and die, and the land which was sown is assigned to the wife for her dower, she shall have the corn, and not the executors of the hushand. Inst. 81.

CROPPER, contracts. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. 2 Rawle, R. 12.

CROSS. contracts. A mark made by persons who are unable to write, instead of their names.

2. When properly attested, and proved to have been made by the party whose name is written with the mark, it is generally admitted as evidence of the party's signature.

CROSS ACTION. An action by a defendant in an action, against the plaiutiff in the same action, upon the same contract, or for the same tort; as, if Peter bring an action of trespass against Paul, and Paul bring another action of trespass against Peter, the subject of the dispute being an assault and battery, it is evident that Paul could not set off the assault committed upon him by Peter, in the action which Peter, had brought against him; therefore the cross action became necessary.

CROSS BILLS, practice. When an individual prosecutes a bill of indictment against another, and hte defendant procures another bill to be found against the first prosecutor, the bills so found by the grand jury are called corss bills. The most usually occur in cases of assault and battery.

2. In chancery practice it is not unusual for parties to file cross bills. Vide Bill, cross.

CROSS−EXAMINATION, practice. The examination of a witness, by the party who did not call him, upon matters to which he has been examined in chief.

2. Every party has a right to cross−examine a witness produced by his antagonist, in order to test whether the witness has the knowledge of the things he testifies and if, upon examination, it is found that the witness had the means and ability to ascertain the facts about which he testifies, then his memory, his motives, everything may be scrutinized by the cross− examination.

3. In cross−examinations a great latitude is allowed in the mode of putting questions, and the counsel may put leading questions. (q. v.) Vide further on this subject, and for some rules which limit the abuse of this right, 1 Stark. Ev,. 96; 1 Phil. Ev. 210; 6 Watts & Serg. 75.

4. The object of a cross−examination is to sift the evidence, and try the credibility of a witness who has been called and given evidence in chief. It is one of the principal tests which the law has devised for the ascertainment of truth, and it is certainly one of the most efficacious. By this means the situation of the witness, with respect to the parties and the subject of litigation, his interest, his motives, his inclinations and his prejudices, his means of obtaining a correct and certain knowledge of the facts to which he testifies the manner in which he has used those means, his powers of discerning the facts in the first instance, and of his capacity in retaining and describing them, are fully investigated and ascertained. The witness, however artful he may be, will seldom be able to elude the keen perception of an intelligent court or jury, unless indeed his story be founded on truth. When false, he will be liable to detection at every step. 1 Stark. Ev. 96; 1 Phil. Ev. 227; Fortese. Rep. Pref. 2 to 4; Vaugh. R. 143.

5. In order to entitle a party to a cross−examination, the witness must have been sworn and examined; for, even if the witness be asked a question in chief, yet if he mahe no answer, the opponent has no right to cross−examine. 1 Cr. M. & Ros. 95; 1 16 S. & R. 77; Rosc. Cr. Ev. 128; 3 Car. & P. 16; S. C. 14 E. C. L. Rep. 189; 3 Bouv. Inst. n. 3217. Formerly, however, the rule seems to have been different. 1 Phil. Ev. 211.

6. A cross−examination of a witness is not always necessary or advisable. A witness tells the truth wholly or partially, or he tells a falsebood. If he tells the whole truth, a cross−examination may have the effect of rendering his testimony more circumstantial, and impressing the jury with a stronger opinion of its truth. If he tells only a part of the truth, and the part omitted is favorable to the client of the counsel cross−exaimining, he should direct the attention of the witness to the matters omitted. If the testimony of the witness be false, the whole force of the cross−examination should be directed to his credibility. This is done by questioning him as to his means of knowledge, his disinterestedness, and other matters calculated to show a want of integrity or veracity, if there is reason to believe the witness prejudiced, partial, or wilfully dishonest. Arch. Crim. Pl. 111. See Credible Witness.

CROWN. A covering for the head, commonly used by kings; figuratively, it signifies royal authority. By pleas of the crown, are understood criminal actions.

CRUELTY. This word has different meanings, as it is applicd to different things. Cruelty may be, 1. From hushand towards the wife, or vice versa. 2. From superior towards inferior, 3. From master towards slave. 4. To animals. These will be separately considered.

2. − 1. Between hushand and wife, those acts which affect the life, the health, or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt, are called cruelty. What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; 17 Conn. 189; a fortiori, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. 1 Hagg. R. 35; S. C. 4 Eccles. R. 311, 312; 2 Hagg. Suppl. 1; S. C. 4 Eccles. R. 238; 1 McCord's Ch. R. 205; 2 J. J. Marsh. R. 324; 2 Chit. Pr. 461, 489; Poynt. on Mar. & Div. c. 15, p. 208; Shelf. on Mar. & Div. 425; 1 Hagg. Cons. R. 37, 458; 2 Ragg. Cons. Rep. 154; 1 Phillim. 111, 132; 8 N H. Rep. 307; 3 Mass. 321; 4 Mass. 487. It is to be remarked that exhibitions of passion and gusts of anger, which would be sufficient to create irreconcilable hatred between persons educated and trained to respect each other's feelings, would, with persons of coarse manners and habits, have but a momentary effect. An act which towards the latter would cause but a momentary difference, would with the former, be excessive cruelty. 1 Briand Med. Leg. 1 ere part. c. 2, art. 3.

3. − 2. Cruelty towards weak and helpless persons takes place where a party bound to provide for and protect them, either abuses them by whipping them unnecessarily, or by neglecting to provide for them those necessaries which their helpless condition requires. To expose a person of tender years, under a party's care, to the inclemency of the weather; 2 Campb. 650; or to keep such a child, unable to provide for himself, without adequate food; 1 Leach, 137; Russ. & Ry. 20 or an overseer neglecting to provide food and medical care to a pauper having urgent and immediate occasion for them; Russ. & Ry. 46, 47, 48; are examples of this species of cruelty.

4. − 3. By the civil code of Louisiana, art. 192, it is enacted, that when the master shall be convicted of cruel treatment of his slave, the judge may pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.

5. − 4. Cruelty to animals is an indictable offence. A defendant was convicted of a misdemeanor for tying the tongue of a calf so near the root as to prevent its sucking, in order to sell the cow at a greater price, by giving to her udder the appearance of being full of milk, while affording the calf all he needed. 6 Rogers, City Hall Rec. 62. A man may be indicted for cruelly beating his horse. 3 Rogers, City Rec. 191.

CRUISE, mar. law. A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail through any particular track of the sea, at a certain season of the year the region in which these cruises are performed is usually termed the rendezvous or cruising latitude.

2. When the ships employed for this purpose, which are accordingly called cruisers, have arrived at the destined station, they traverse the sea, backwards and forwards, under an easy sail, and within a limited space, conjectured to be in the track of their expected adversaries. Wesk. Ins. h. t.; Lex Merc. Rediv. 271, 284; Dougl. 11. 509; Park. Ins. 58; Marsh. Ins. 196, 199, 520; 2 Gallis. 268.

CRY DE PAYS, OR CRI DE PAIS. Literally, cry of the country. In England, when a felony has been committed, hue and cry (q. v.) may be raised by the country, in the absence of the constable. It is then cry de pays. 2 Hale, P. C. 100.

CRYER, practice. An officer in a court whose duty it is to make various proclamations ordered by the court.

CUEILLETTE. A term in French maritime law. Affreightment of a vessel a cueillette, is a contract by which the captain obligates himself to receive a partial cargo, only upon condition that he shall succeed in completing his cargo by other partial lading; that is, by gathering it (en recueillant) wherever he may be able to find it. If he fails to collect a cargo, such partial charterin is void. Code de Com. par M. Fournel, art. 286, n.

CUI ANTE DIVORTIUM. The name of an ancient writ, which was issued in favor of a woman divorced from her hushand, to recover the lands and tenements which she had in fee simple, or in tail, or for life, from him to whom her hushand alienated them during the marriage, when she could not gainsay it. F. N. B. 240. Vide Sur cui ante divortium.

CUI IN VITA. The name of a writ of entry for a widow against a person to whom the hushand had, in his lifetime, aliened the lands of the wife. F. N. B. 193. This writ was founded sometimes on the stat. 13 Ed. 1. c. 3, and sometimes on the common law. The object of this statute, was to enable the wife to avoid a judgment to recover her land which had been rendered on the default or confession of her hushand. It is now of no use in England, because the stat. 32 H. VIII. c. 28, _6, provides that no act of the hushand, whether fine, feoffment, or

other act of the hushand during coverture, shall prejudice the wife. Both these statutes are reported as in force in Pennsylvania. 3 Bin. Appx. See Booth on Real Actions, 186; 6 Rep. 8, 9, Forrers' Case. Still, that part of the stat. 13 Ed. I. c. 8, which relates to the pleadings and evidence iu such cases is important if it can be enforced in the modern action of ejectment, viz: that which requires the tenant of the lands to show his right according to the form of the writ he sued out against the hushand. See Report of the Commissioners to revise the Civil Code of Pennsylvania, Jan. 16, 1835, pp. 90, 91.

CUL DE SAC. This is a French phrase, which signifies, literally, the bottom of a bag, and, figuratively, a street not open at both ends. It seems not to be settled whether a cul de sac is to be considered a highway. See 1 Campb. R. 260; 11 East, R. 376, note; 5 Taunt. R. 137; 5 B. & Ald. 456; Hawk. P. C. b. 1, c. 76, s. 1 Dig. lib. 50, tit. 16, l. 43; Dig. lib. 43, t. 12, l. _13; Dig. lib. 47, tit. 10, 1. 15, _7.

CULPA. A fault committed without fraud, and this distinguishes it from dolus, which is a trick to deceive. See Dolus.

CULPRIT, crim. law. When a prisoner is arraigned, and he pleads not guilty, in the English practice, the clerk, who arraigns him on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove the accusation; this is done by two monosyllables, cul. prit. Vide Abbreviations; 4 Bl. Com. 339; 1 Chit. Cr. Law, 416.

CUM PERTINENTIS. With the appurtenances. See Appurtenances.

CUM ONERE. This term is usually employed to show that something is taken,
subject to a charge or burden.

CUM TESTAMENTO ANNEXO. With the testament or will annexed. It often happens that the deceased, although he makes a will, appoints no executor, or else the appointment fails; in either of which events he is said to die quasi intestatus. 2 Inst. 397. The appointment of an executor fails, 1st. When the person appointed refuses to act. 2d. When the person appointed dies before the testator, or before he has proved the will, or when, from any other legal cause, he is incapable of acting. 3d. When the executor dies intestate, (and in some places, as in Pennsylvania, whether he die testate or intestate,) after having proved the will, but before he has administered all the personal estate of the deceased. In all these cases, as well as when no executor has been appointed, administration, with the will annexed, must be granted by the proper officer. In the case where the goods are, not all administered before the death of the executor, the administration is also called an administration de bonis non.

2. The office of such an an administrator differs little from that of an executor. Vide Com. Dig. Administration; Will. Ex. p. 1, b. 5, c. 3, s. 1; 2 Bl. Com. 504−5; 11 Vin. Ab. 78; Toll. 92 Gord. Law of Deced. 98.

CUMULATIVE. Forming a heap; additional; as, cumulative evidence, or that which goes to prove the same point which has been established by other evidence. Cumulative legacy, or accumulative legacy, is a second bequest, given by the same testator to the same legatee. 2 Rop. Log. 19,. See 1 Saund. 134, n. 4; Remedy.

CUMULATIVE LEGACY. Vide Legacy accumulative; and 8 Vin. Ab. 308 1 Supp. to Ves. jr. 133, 282, 332.

CURATE, eccl. Iaw. One who represents the incumbent of a church, person, orÿ20 vicar, and tades care of the church, and performs divine service in his stead.

CURATOR, persons, contracts. One who has been legally appointed to take care of the interests of one who, on account of his youth, or defect of his understanding, or for some other cause, is unable to attend to them himself.

2. There are curators ad bona, of property, who administer the estate of a minor, take care of his person, and intervene in all his contracts; curators ad litem, of suits, who assist the minor in courts of justice, and act as curator ad bona in cases where the interests of the curator are opposed to the interests of the minor. Civ. Code of Louis. art. 357 to 366. There are also curators of insane persons Id. art. 31; and of vacant successions and absent heirs. Id. art. 1105 to 1125.

3. The term curator is usually employed in the civil law, for that of guardian.

CURATORSHIP, offices, contracts, in the civil law. The power given by authority of law, to one or more persons, to administer the property of an individual who is unable to take care of his owu estate and affairs, either on account of his absence without an authorized agent, or in consequence of his prodigality, or want of mind. Poth. Tr. des Personnes, t. 6, s. 5. As to the laws of Louisiana, which authorize a curatorship, vide Civ. Code, art. 31, 50, et seq. 357, et seq.; 382, 1105, et seq.

2. Curatorship differs from tutorship, (q. v.) in this, that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and, secondly, the property. 1 Lecons Elem. du Droit Civ. Rom. 241.

CURATRIX. A woman who has been appointed to the office of curator.

CURE. A restoration to health.

2. A person who had quitted the habit of drunkenness for the space of nine months, in consequece of medicines he had taken, and who had lost his appetite for ardent spirits, was held to have been cured. 7 Yerg. R. 146.

3. In a figurative sense, to cure is to remedy any defect; as, an informal statement of the plaintiff's cause of action in his declaration is cured by verdict, provided it be substantially stated.

CURFEW. The name of a law, established during the reign of the English king, William, the conquerer, by which the people were commanded to dispense with fire and candle at eight o'clock at night.

It was abolished in the reign of Henry I., but afterwards it signified the time at which the curfew formerly took place. The word curfew is derived, probably, from couvre few, or cover fire. 4 Bl. Com. 419, 420.

CURIA. A court of justice.

CURIA CLAUDENDA, WRIT DE, Eng. law. The name of a writ, used to compel a party to enclose his land. F. N. B. 297.

CURIA ADVISARE VULT, practice. The court will consider the matter. This entry is made on the record when the court wish to take time to consider of a case before they give a final judgment, which is made by an abbreviation, cur. ad vult, for the purpose of marking the continuance. In the technical sense, it is a continuance of the cause to another term.

CURIA REGIS. An English court, which assumed this name, during the reign of Henry II. It was Curia or Aula Regis, because it was held in the g reat hall of the king's palace; and where the king, for some time, administered justice in person. But afterwards, the judicial power was more properly entrusted to the king's judges. The judges who sat in this court were distinguished by the name of justices, or justiciaries. Besides these, the chief justiciary, the stewart of all England, the chancellor, the chamberlain, and the treasurer, also took part in the judicial proceedings of this court.

CURIALITY, Scotch law. The same as courtesy. (q. v.) 1 Bell's Com. 61.

CURRENCY. The money which passes, at a fixed value, from hand to hand; money which is authorized by law.

2. By art. 1, s. 8, the Constitution of the United States authorizes congress "to coin money, and to regulate the value thereof." Changes in the currency ought not to be made but for the most urgent reason, as they unsettle commerce, both at home and abroad. Suppose Peter contracts to pay Paul one thousand dollars in six months − the dollar of a certain fineness of silver, weighing one hundred and twelve and a half grains − and afterwards, before the money becomes due, the value of the dollar is changed, and it weighs now but fifty−six and a quarter grains; will one thousand of the new dollars pay the old debt? Different opinion may be entertained, but it seems that such payment would be complete; because, 1. The creditor is bound to receive the public currency; and, 2. He is bound to receive it at its legal value. 6 Duverg. n. 174.

CURRENT, merc. law. A term used to express present time; the current month; i.e. the present month. Price current, is the ordinary price at the time spoken of. A printed paper, containing such prices, is also called a price current.

2. Current, in another sense, signifies that which is readily received; as, current money.

CURSITOR BARON, Eng. law. An officer of the court of the exchequer, who is appointed by patent under the great seal, to be one of the barons of the exchequer.

CURTESY, or COURTESY, Scotch law. A life−rent given by law to the surviving hushand, of all his wife's heritage of which she died infeft, if there was a child of the marriage born alive. The child born of the marriage must be the mother's heir. If she had a child by a former marriage, who is to succeed to her estate, the hushand has no right to the curtesy while such child is alive; so that the curtesy is due to the hushand rather as father to the heir, than as hushand to an heiress, conformable to the Roman law, which gives to the father the usufruct of what the child succeeds to by the mother. Ersk. Pr. L. Scot. B. 2, t. 9, s. 30. Vide Estate by the curtesy.

CURTILAGE, estates. The open space situated within a common enclosure belonging to a dwelling−house. Vide 2 Roll, Ab. 1, l. 30; Com. dig. Grant, E 7, E 9; Russ. & Ry. 360; Id. 334, 357; Ry & Mood. 13; 2 Leach, 913; 2 Bos. & Pull. 508; 2 East, P. C. 494; Russ. & Ry. 170, 289, 322; 22 Eng. Com. Law R. 330; 1 Ch. Pr. 175; Shep. Touchs. 94.

CUSTODY. The detainer of a person by virtue of a lawful authority. To be in custody, is to be lawfully detained under arrest. Vide 14 Vin. Ab. 359; 3 Chit. Pr. 355. In another sense, custody signifies having the care and

possession of a thing; as, the chancellor is entitled to the custody as the keeper of the seal.

CUSTOM. A usage which had acquired the force of law. It is, in fact, a lex loci, which regulates all local or real property within its limits. A repugnancy which destroys it, must be such as to show it never did exist. 5 T. R. 414. In Pennsylvania no customs have the force of law but those which prevail throughout the state. 6 Binn. 419, 20.

2. A custom derives its force from the tacit consent of the legislature and the people, and supposes an original, actual deed or agreement. 2 Bl. Com. 30, 31; 1 Chit. Pr. 283. Therefore, custom is the best interpreter of laws: optima est legum interpres consuetudo. Dig. 1, 8, 37; 2 Inst. 18. It follows, therefore, there; can be no custom in relation to a matter regulated by law. 8 M. R. 309. Law cannot be established or abrogated except by the sovereign will, but this will may be express or implied and presumed and whether it manifests itself by word or by a series of facts, is of little importance. When a custom is public, peaceable, uniform, general, continued, reasonable and certain, and has lasted "time whereof the memory of man runneth not to the contrary," it acquires the force of law. And when any doubts arise as to the meaning of a statute, the custom which has prevailed on the subject ought to have weight in its construction, for the manner in which a law has always been executed is one of its modes of interpretation. 4 Penn. St. Rep. 13.

3. Customs are general or, particular customs. 1. By general customs is meant the common law itself, by which proceedings and determinations in courts are guided.

2. Particular customs, are those which affect the inhabitants of some particular districts only. 1 Bl. Com. 68, 74. Vide 1 Bouv. Inst. n. 121 Bac. Ab. h. t.; 1 Bl. Com. 76; 2 Bl. Com. 31; 1 Lill. Reg. 516; 7 Vin. Ab. 164; Com. Dig. h. t.; Nelson’s Ab. h. t. the various Amer. Digs. h. t. Ayl. Pand. 15, 16; Ayl. Pareg. 194; Doct. Pl. 201; 3 W. C. C. R. 150; 1 Gilp. 486; Pet. C. C. R. 220; I Edw. Ch. R. 146; 1 Gall. R. 443; 3 Watts, R. 178; 1 Rep. Const. Ct. 303, 308; 1 Caines, R. 45; 15 Mass. R. 433; 1 Hill, R. 270; Wright, R. 573; 1 N. & M. 176; 5 Binn. R. 287; 5 Ham. R. 436; 3 Conn. R. 9; 2 Pet. R. 148; 6 Pet. R. 715; 6 Porter R. 123; 2 N. H. Rep. 93; 1 Hall, R. 612; 1 Harr. & Gill, 239; 1 N. S. 192; 4 L. R. 160; 7 L. R. 529; Id. 215.

CUSTOM OF MERCHANTS, lex mercatoria. A system of customs acknowledged and taken notice of by all nations, and are, therefore, a part of the general law of the land. See Law merchant, and 1 Chit. Bl. 76, note 9.

CUSTOM−HOUSE. A place appointed by law, in ports of entry, where importers of goods, wares and merchandise are bound to enter the same, in order to pay or secure the duties or customs due to the government.

CUSTOMARY RIGHTS. Rights which are acquired by custom. They differ from prescriptive rights in this, that the former are local usages, belonging to all the inhabitants of a particular place or district − the latter are rights of individuals, independent of the place of their residence. Best on Pres. _79; Cruise, Dig. t. 31, c. 1, _7; 2 Greenl. Evi _542.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. _949; Bac. Ab. Smuggling.

CUSTOS ROTULORUM, Eng. law. The principal justice of the peace of a county, who is the keeper of the records of the county. 1 Bl. Com. 349.

TO CUT, crim. law. To wound with an instrument having a sharp edge. 1 Russ. on Cr. 577. Vide To Stab; Wound.

CY PRES, construction. These are old French words, which signify "as near as."

2. In cases where a perpetuity is attempted in a will, the courts do not, if they can avoid it, construe the devise to be utterly void, but expound the will in such a manner as to carry the testator’s intentions into effect, as far as the rules respecting perpetuities will allow; this is called construction cy pres. When the perpetuity is attempted in a deed, all the Iimitations are totally void. Cruise, Dig. t. 38, c. 9, s. 34; and vide 1 Vern. 250; 2 Ves. Jr. 380, 336, 357, 364; 3 Ves. Jr. 141, 220; 4 Ves. 13; Com. Dig. Condition, L. 1; 1 Rop. Leg. 514; Swinb. pt. 4, s. 7, a. 4; Dane’s Ab. Index, h. t.; Toull. Dr. Civ. Fr. liv. 3, t. 3, n. 586, 595, 611; Domat, Loix Civ. liv. 6. t. 2, s. 1; 1 Supp. to Ves. Jr. 134, 259, 317; 2 Id. 316,473; Boyle on Charities, Index, h. t.; Shelford on Mortmain, Index, h. t.; 3 Bro. C. C. 166; 2 Bro. C. C. 492; 4 Wheat. R. 1; S. C. 3 Peters, R. App. 481; 3 Peters, R. 99; 15 Ves., 232; 2 Sto. Eq. Jur. _1169.

CZAR. A title of honor which is assumed by the emperor of all the Russias. See Autocracy.

CZARINA. The title of the empress of Russia.

CZAROWITZ.. The title of the eldest son of the czar and czarina of Russia.