F.

F, punishment, English law. Formerly felons were branded and marked with a hot iron, with this letter, on being admitted to the benefit of clergy.

FACIO UT DES. A species of contract in the civil law, which occurs when a man agrees to perform anything for a price, either specifically mentioned or left to the determination of the law to set a value on it. As when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl. Com. 445.

FACIO UT FACIAS. A species of contract in the civil law, which occurs when I agree with a man to do his work for him if he will do mine for me. Or if two persons agree to marry together, or to do any other positive acts on both sides. Or it may be to forbear on one side in consideration of something done on the other. 2 Bl. Com. 444.

FACT. An action; a thing done. It is either simple or compound.

2. A fact is simple when it expresses a purely material act unconnected with any moral qualification; for example, to say Peter went into his house, is to express a simple fact. A compound fact contains the materiality of the act, and the qualification which that act has in its connexion with morals and, the law. To say, then, that Peter has stolen a horse, is to express a compound fact; for the fact of stealing, expresses at the same time, the material fact of taking the horse, and of taking him with the guilty intention of depriving the owner of his property and appropriating it to his own use; which is a violation of the law of property.

3. Fact. is also put in opposition to law; in every case which has to be tried there are facts to be established, and the law which bears on those facts.

4. Facts are also to be considered as material or immaterial. Material facts are those which are essential to the right of action or defence, and therefore of the substance of the one or the other − these must always be proved; or immaterial, which are those not essential to the cause of action − these need not be proved. 3 Bouv. Inst. n. 3150−53.

5. Facts are generally determined by a jury,; but there are many facts, which, not being the principal matters in issue, may be decided by the court; such, for example, whether a subpoena has or has not been served; whether a party has or has not been summoned, &c. As to pleading material facts, see Gould. Pl. c. 3, s. 28. As to quality of facts proved, see 3 Bouv. Inst. n. 3150. Vide Eng. Ece. R. 401−2, and the article Circumstances.

FACTO. In fact, in contradistinction to the lawfulness of the thing; it is applied to anything actually done. Vide Expostfacto.

FACTOR, contracts. An agent employed to sell goods or merchandise consigned or delivered to him by, or for his principal, for a compensation commonly called factorage or commission. Paley on Ag. 13; 1 Liverin. on Ag. 68; Story on Ag. _33; Com. Dig. Merchant, B; Mal. Lex Merc. 81; Beawes, Lex Merc. 44; 3 Chit. Com. Law, 193; 2 Kent, Com. 622, note d, 3d. ed.; 1 Bell's Com. 385, _408, 409 2 B. & Ald. 143. He is also called a commission merchaut, or consignee.

2. When he resides in the same state or country with his principal, he is called a home factor; and a foreign factor when he resides in a different state or country. 3 Chit. Com. Law, 193; 1 T. R. 112; 4 M. & S. 576; 1 Bell's Com. 289, _313.

3. When the agent accompanies the ship, taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor; he is, however, usually known by the name of a supercargo. Beawes, Lex More. 44, 47; Liverm. on Ag. 69, 70; 1 Domat, b. 1, t. 16, _3, art. 2.

4. A factor differs. from a broker, in some important particulars, namely; he may buy and sell for his principal in his own name, as well as in the name of his principal; on the contrary, a broker acting as such should buy and sell in the name of his principal. 3 Chit. Com. Law, 193, 2101 541; 2 B. & Ald. 143, 148; 8 Kent, Com. 622, note d, 3d. ed. Again, a factor is entrusted with the possession, management, disposal, and control of the goods to be bought and sold, and has a special property and a lien on them; the broker, on the contrary, has usually no such possession, management, control, or disposal of the goods, nor any such special property nor lien. Paley on Ag. 13, Lloyd's ed; 1 Bell's Com. 385.

5. Before proceeding further it will be proper to consider the difference which exists in the liability of a home or domestic factor and a foreign factor.

6 . By the usages of trade, or intendment of law, when domestic factors are employed in the ordinary business of buying and selling goods, it is presumed that a reciprocal credit between, the principal and the agent and third persons has been given. When a purchase has been made by such a factor, he, as well as his principal, is deemed liable for the debt; and in case of a sale, the buyer is responsible both to the factor and principal for the purchase

money; but this presumption may be rebutted by proof of exclusive credit. Story, Ag. __267, 291, 293; Paley, Ag. 243, 371; 9 B. & C. 78; 15 East, R. 62.

7. Foreign factors, or those acting for principals residing in a foreign country, are held personally liable upon all contracts made by them for their employers, whether they describe themselves in the contract as agents or not. In such cases, the presumption is, that the credit is given exclusively to the factor. But this presumption may be rebutted by a proof of a contrary agreement. Story, Ag. _268; Paley, Ag. 248, 373; Bull. N. P. 130; Smith, Merc. Law, 66; 2 Liverm. Ag. 249; 1 B. & P. 398; 15 East, R. 62; 9 B. & C. 78.

8. A factor is liable to duties, which will be first considered; and, afterwards, a statement of his rights will be made.

9. − 1. His duties. He is required to use reasonable skill and ordinary diligence in his vocation; in general, he has a right to sell the goods, but he cannot pawn them. The latter, branch of this rule, however, is altered by statute in some of the states. See Act of Penna. April 14, 1834, _3, 4, 6, postea, 20. He is bound to obey his instructions, but when he has none, he may and ought to act according to the general usages of trade sell for cash, when that is usual, or give credit on sales, when that is customary. He is bound to render a just account to his principal, and to pay him the moneys he may receive for him.

10. − 2. His rights. He has the right to sell the goods in his own name; and, when untrammeled by instructions, he may sell them at such times and for such prices, as, in the exercise of a just discretion, he may think best for his employer. 3 Man. Gran. & Scott, 380. He is, for many purposes, between himself and third persons, to be considered as the owner of the goods. He may, therefore, recover the price of goods sold by him, in his own name, and, consequently, he may receive payment and give receipts, and discharge the debtgor, unless, indeed, notice has been given by the principal to the debtor not to pay. He has a lien on the goods for advances made by him, and for his commissions.

11. Mr. Bell, in his Commentaries, vol. 1, page 265, 5th ed., lays down the following rules with regard to the rights of the principal, in those cases in which the goods in the factor's hands have been changed in the course of his transactions.

12. − 1. When the factor has sold the goods of his principal, and failed before the price of the goods has been paid, the principal is the creditor, and. entitled to a preference over the creditors of the factor. Cook's B. L. 4th ed. p. 400.

13. − 2. When bills have been taken for the price, and are still it the factor's hands, undiscounted at his failure; or where goods have been taken in return for those sold; the principal is entitled to them, as forming no part of the divisible fund. Willes, R. 400.

14. − 3. When the price has been paid in money, coin, bank notes, &c., it remains the property of the principal, if kept distinct as his. 5 T. la. 277; 2 Burr. 1369 5 Ves. Jr. 169; 2 Mont. B. L. 233, notes.

15. − 4. When a bill received for goods, or placed with the factor, has been discounted, or when money coming into his hands has been paid away, the endorsee of the bill, or the person receiving the money, will be free from all claim at the instance of the principal. Vide 1 B. & P. 539, 648.

16. − 5. When the factor sinks the name of the principal entirely; as, where he is employed to sell goods, and receives a del credere commission, for which he engages to guarantee the payment to the principal, it is not the practice to communicate the names of the purchasers to the principal, except where the factor fails. Under these circumstances, the following points have the principal is the creditor of the buyer, and has a direct action against him for the price. Cook's B. L. 400; and vide Bull. N. P. 42 2 Stra. 1 1 82. But persons contracting with the factor in his own name, and bona fide, are entitled to set off the factor's debt to them. 7 T. R. 360. 2. Where the factor is entrusted with the money or property of his principal to buy stock, bills, and the like, and misapplies it, the produce will be the principal's, if clearly distinguishable. 8 M. & S. 562.

17. − 6. When the factor purchases goods for the behalf of his principal, but on his own general, current account, without mention of the principal, the goods vest in the factor, and the principal has only an obligation against the factor's estate. But when the factor, after purchasing the goods, writes to his principal that he has bought such a quantity of goods in consequence of his order, and that they are lying in his warehouse, or elsewhere, the property would seem to be vested in the principal.

18. It may therefore be laid down as a general rule, that when the property remitted by the principal, or acquired for him by his order, is found distinguishable in the hands of the factor, capable of being traced by a clear and connected chain of identity, in no one link of it degenerating from a specific trust into a general debt, the creditors

of the factor, who has become bankrupt, have no right to the specific property. Much discrimination is requisite in the application of this doctrine, as may be seen by the case of Ex parte Sayers, 5 Ves. Jr. 169.

19. A factor has no right to barter the goods of his principal, nor to pledge them for the purpose of raising money for himself, or to secure a debt he may owe. See ante, 9−1. But he may pledge them for advances made to his principal, or for the purpose of raising money for him, or in order to reimburse himself to the amount of his own lien. 2 Kent, Com. 3d. ed:, 625 to 628; 4 John. R., 103; Story on Bailm. _325, 326, 327. Another exception to the general rule that a factor cannot pledge the goods of his principal, is, that he may raise money b pledging the goods, for the payment of ’duties, or any other charge or purpose allowed or justified by the usages of trade. 2 Gall. 13; 6 Serg. & Rawle, 386; Paley on Ag. 217; 3 Esp. R. 182.

20. The legislature of Pennsylvania, by an act entitled " An act for the amendment of the law relating to factors passed April 14, 1834, have made the following provisions. This act was prepared by the persons appointed to revise the civil code of that state, and was adopted without alteration by the legislature. It is here inserted, with a belief that it will be found useful to the commercial lawyer of the other states.

21. − _1. Whenever any person entrusted with merchandise, and having authority to sell or consign the same, shall ship, or otherwise transmit tile same to any other person, such other person shall have a lien thereon.

22. − I. For any money advanced, or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such merchandise was shipped or transmitted.

23. − II. For any money or negotiable security, received for the use of such consignee, by the person, in whose name such merchandise was shipped or transmitted.

24.− _2. But such lien shall not exist for any of the purposes aforesaid, if such consignee shall have notice by the bill of lading, or otherwise, before the time of such advance or receipt, that the person in whose name such merchandise was shipped or transmitted, is not the actual owner thereof.

25. − _3. Whenever any consignee or factor, having possession of merchandise, with authority to sell the same, or having possession of any bill of lading, permit, certificate, receipt, or order, for the delivery of merchandise, with the like authority, shall deposit or pledge such merchandise, or any part thereof, with any other person, as a security for any money advanced, or negotiable instrument given by him on the faith thereof; such other person shall acquire, by virtue of such contract, the same interest in, and authority over, the said merchandise, as, he would have acquired thereby if such consignee or factor had been the actual owner thereof. Provided, That such person shall not have notice by such document or otherwise, before the time of such advance or receipt, that the holder of such merchandise or document is not the actual owner of such merchandise.

26. − _4. If any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge for any debt or demand previously due by, or existing against, such consignee or factor, and without notice as aforesaid, and if any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge, without notice or knowledge that the person making such deposit or pledge, is a consignee or factor only, in every such case the person accepting or taking such. merchandise or document in deposit or pledge, shall acquire the same right and interest in such merchandise as was possessed, or could have been enforced, by such consignee or factor against his principal at the time of making such deposit or pledge, and further or other right or interest.

27. − _5. Nothing in this act contained shall be construed or taken:

I. To affect any lien which a. consignee or factor may possess at law, for the expenses and charges attending the shipment, or transmission and care of merchandise consigned, or otherwise intrusted to him.

28. − II. Nor to prevent the actual owner of merchandise from recovering the same from such consignee or factor, before the same shall have been deposited or pledged as aforesaid, or from the assignees or trustees of such consignee or factor, in the event of his insolvency.

29. − III. Nor to prevent such owner from recovering any merchandise, so as aforesaid deposited or pledged, upon tender of the money, or of restoration of any negotiable instrument so advanced, or given to such consignee or factor, and upon tender of such further sum of money, or of restoration of such other negotiable instrument, if any, as may have been advanced or given by such consignee or factor to such owner, or on tender of a sum of money equal to the amount of such instrument.

30. − IV. Nor to prevent such owner from recovering, from the person accepting or taking such merchandise in deposit or pledge, any balance or sum. of money remaining in his hands as the produce of the sale of such merchandise, after deducting the amount of money or the negotiable instrument so advanced or given upon the

security thereof as aforesaid.

31. − _6. If any consignee or factor shall deposite or pledge any merchandise or document as aforesaid, consigned or intrusted to him as a security for any money borrowed, or negotiable instrument received by such consignee or factor, and shall apply and dispose of the same to his own use, in violation of good faith, and with intent to defraud the owner of such merchandise, and if any consignee or factor shall, with the like fraudulent intent, apply or dispose of, to his own use, any money or negotiable instrument, raised or acquired by the sale or other disposition of such merchandise, such consignee or factor shall, in every such case, be deemed guilty of a misdemeanor, and shall be punished by a fine, not exceeding two thousand dollars, and by imprisonment, for a term not exceeding five years.

FACTORAGE. The wages or allowances paid to a factor for his services; it is more usual to call this commissions. 1 Bouv. Inst. n. 1013; 2 Id. n. 1288.

FACTORY, Scotch law. A contract which partakes of a mandate and locatio ad operandum, and which is in the English and American law books discussed under the title of Principal and Agent. 1 Bell's Com. 259.

FACTUM. A deed. a man's own act and deed.

2. When a man denies by his plea that he made a deed on which he is sued, be pleads non estfactum. (q. v.) Vide Deed; Fait.

FACTUM, French law. A memoir which contains summarily the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. Vide Brief.

FACULTY, canon law. A license; an authority. For example, the ordinary having the disposal of all seats in the nave of a church, may grant this power, which, when it is delegated, is called a faculty, to another.

2. Faculties are of two kinds; first, when the grant is to a man and his heirs in gross; second, when it is to a person and his heirs, as appurtenant to a house which he holds in the parish. 1 T. R. 429, 432; 12 Co. R. 106.

FACULTY, Scotch law. Equivalent to ability or pow−er. The term faculty is more properly applied to a power founded on the consent of the party from whom it springs, and not founded on property. Kames on Eq. 504.

FAILURE. A total defect; an omission; a non−performance. Failure also signifies a stoppage of payment; as, there has been a failure to−day, some one has stopped payment.

2. According to the French code of commerce, art. 437, every merchant or trader who suspends payment is in a state of failure. Vide Bankruptcy; Insolvency.

FAILURE, OF ISSUE. When there is a want of issue to take an estate limited over by an executory devise.

2. Failure of issue is definite or indefinite. When the precise time for the failure of issue is fixed by the will, as is the case of a devise to Peter, but if he dies without issue living at the time of his death, then to another, this is a failure of issue definite. An indefinite failure of issue is the very converse or opposite of this, and it signifies a general failure of issue, whenever it may happen, without fixing any time, or a certain or definite period, within which it must happen. 2 Bouv. Inst. n. 1849.

FAILURE OF RECORD. The neglect to produce the record after having pleaded it. When a defendant pleads a matter, and offers to prove it by the record, and then pleads nul tiel record, a day is given to the defendant to bring in the record if he fails. to do so, he is said to fail, and there being a failure of record, the plaintiff is entitled to judgment. Termes de lay Ley. See the form of entering it; 1 Saund. 92, n. 3.

FAINT PLEADER. A false, fraudulent, or collusory manner of pleading, to the deception of a third person. 3 E. I., c. 19.

FAIR. A privileged market.

2. In England, fairs are granted by the king's patent.

3. In the United States, fairs are almost unknown. They are recognized in Alabama; Aik. Dig. 409, note; and in North Carolina, where they are regulated by statute. 1 N. C. Rev. St. 282. See Domat, Dr. Public, liv. 1, t. 7, s. 3, n. 1.

FAIR−PLAY MEN. About the year 1769, there was a tract of country in Pennsylvania, situate between Lycoming creek and Pine creek, in which the proprietaries prohibited the making of surveys, as it was doubtful whether it had or had not been ceded by the Indians. Although settlements were forbidden, yet adventurers settled themselves there; being without the pale of ordinary authorities, the inhabitants annually elected a tribunal, in rotation, of three of their number, whom they denominated fair−play men, who had authority to decide all disputes as to boundaries. Their decisions were final, and enforeed by the whole community en masse. Their decisions are said to have been just and equitable. 2 Smith's Laws of Pennsylvania 195; Serg. Land Laws, 77. "

FAlR PLEADER. This is the name of a writ given, by the statute of Marlebridge, 52 H. III., c. ii. Vide Beau Pleader.

FAIT, conveyancing. A deed lawfully executed. Com. Dig . h. t.; Cunn. Dictl. h. t.

FAITH. Probity; good faith is the very soul of contracts. Faith also signifies confidence, belief; as, full faith and credit ought to be given to the acts of a magistrate while acting within his jurisdiction. Vide Bona fide.

FALCIDIAN LAW, civil law, plebiscitum. A statute or law enacted by the people, made during the reign of Augustus, on the proposition of Falcidius, who was a tribune in the year of Rome 714.

2. Its principal provision gave power to fathers of families to bequeath three−fourths of their property, but deprived them of the power to give away the other fourth, which was to descend to the heir.

3. The same rule, somewhat modified, has been adopted in Louisiana; "donations inter vivos or mortis causal" says the Civil Code, art. 1480, "cannot exceed two−thirds of the property of, the disposer, if he leaves at his decease a legitimate child; one−half, if he leaves two children; and one−third, if he leaves three, or a greater number."

4. By the common law, the power of the father to give his property is unlimited. He may bequeath it to his children equally, to, one in preference to another, or to a stranger, in exclusion of the whole of them. Over his real estate, his wife has a right of dower, or a similar right given to her by act of assembly, in, perhaps, all the states.

FALSE Not true; as, false pretences; unjust, unlawful, as, false imprisonment. This his word, is frequently used in composition.

FALSE IMPRISONMENT. torts. Any intentional detention of the person of another not authorized by law, is false imprisonment. 1 Bald. 571; 9 N. H. Rep. 491; 2 Brev. R. 157. It is any illegal imprisonment, without any process whatever, or under color of process wholly illegal, without regard to the question whether any crime has been committed, or a debt due. 1 Chit. Pr. 48; 5 Verm. 588; 3 Blackf. 46; 3 Wend. 350 5 Wend. 298; 9 John. 117; 1 A. K. Marsh. 845; Kirby, 65; Hardin 249.

2. The remedy is, in order to be restored to liberty, by writ of habeas corpus, and to recover damages for the injury, by action of trespass vi et armis. To punish the wrong done to the public, by the false imprisonment of an individual, the offender may be indicted. 4 Bl. Com. 218, 219; 2 Burr. 993. Vide Bac. Ab. Trespass, D 3 Dane’s Ab. Index, h. t. Vide 9 N. H. Rep. 491; 2 Brev. R. 157; Malicious Prosecution; Regular and Irregular Process.

FALSE JUDGMENT, Eng. law. The name of a writ which lies when a false judgment has been given in the county court, court baron, or other courts not of record. F. N. B. 17, 18 3 Bouv. Inst. n. 3364.

FALSE PRETENCES, criminal law. False representations and statements, made with a fraudulent design, to obtain " money, goods, wares, and merchandise−" with intent to cheat. 2 Bouv. Inst. n. 2308.

2. This subject may be considered under the following heads:. 1. The nature. of the false pretence. 2. What must be obtained. 3. The intent.

3. − 1. When the false pretence is such as to impose upon a person of ordinary caution, it will doubtless be sufficient. 11 Wend. R. 557. But although it may be difficult to restrain false pretences to such as an ordinarily prudent man may avoid, yet it is not every absurd or irrational pretence which will be sufficient. 2 East, P. C. 828. It is not necessary that all the pretences should be false, if one of them, per se, is sufficient to constitute the offence. 14 Wend. 547. And although other circumstances may have induced the credit, or the delivery of the property, yet it will be sufficient if the false pretences had such an influence that, without them, the credit would not have been given, or the property delivered. 11 Wend. R. 557; 14 Wend. R. 547; 13 Wend. Rep. 87. The false pretences must have been used before the contract was completed. 14 Wend. Rep. 546; 13 Wend. Rep. 311. In North Carolina, the cheat must be effected by means of some token or contrivance adapted to impose on an ordinary mind. 3 Hawks, R. 620; 4 Pick. R. 178.

4. − 2. The wording of the statutes of the several states on this subject is not the same, as to the acts which are indictable. In Pennsylvania, the words of the act are, "every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any false pretence whatever, obtain from any person any money, personal property or other valuable, things," &c. In Massachusetts, the intent must be to obtain "money, goods, wares, merchandise, or other things." Stat. of 1815, c. 136. In New York, the words are "money, goods, or chattels, or other effects." Under this statute it has been holden that obtaining a signature to a note; 13 Wend. R. 87; or an endorsement on a promissory note; 9 Wend. Rep. 190; fell within the spirit of the statute; and that where credit was obtained by false pretence, it was also within the statute. 12 John. R. 292.

5. − 3. There must be an intent to cheat or defraud same person. Russ. & Ry. 317; 1 Stark. Rep. 396. This may

be inferred from a false representation. 13 Wend. R. 87. The intent is all that is requisite; it is not necessary that the party defrauded should sustain any loss. 11 Wend. R. 18; 1 Carr. & Marsh. 516, 537.

FALSE RETURN. A return made by the sheriff, or other ministerial officer, to a writ in which is stated a fact contrary to the truth, and injurious to one of the parties or some one having an interest in it.

2. In this case the officer is liable for damages to the party injured. .2 Esp. Cas. 475. See Falso retorno brevium.

FALSE TOKEN. A false document or sign of the existence of a fact, in general used for the purpose of fraud. Vide Token, and 2 Stark. Ev. 563.

FALSEHOOD. A wilful act or declaration contrary to truth. It is committed either by the wilful act of the party, or by dissimulation, or by words. It is wilful, for example, when the owner of a thing sells it twice, by different contracts to different individuals, unknown to them; for in this the seller must wilfully declare the thing is his own, when he knows that it is not so. It is committed by dissimulation when a creditor, having an understanding with his former debtor, sells the land of the latter, although he has been paid the debt which was due to him.

2. Falsehood by word is committed when a witness swears to what he knows not to be true. Falsehood is usually attendant on crime. Roscoe, Cr. Ev. 362.

3. A slander must be false to entitle the plaintiff to recover damages. But whether a libel be true or false the writer or publisher may be indicted for it. Bul N. P. 9; Selw. N. P. 1047 , note 6; 5 Co. 125; Hawk. B. 1, c. 73, s. 6. Vide Dig. 48, 10, 31; Id. 22, 6, 2; Code, 9, 22, 20.

4. It is a general rule, that if a witness testifies falsely as to any one material fact, the whole of his testimony must be rejected but still the jury may consider whether the wrong statement be of such character, as to entitle the witness to be believed in other respects. 5 Shepl. R. 267. See Lie.

TO FALSIFY, crim. law. To prove a thing to be false; as, " to falsify a record." Tech. Dict.; Co. Litt. 104 b. To alter or make false a record. This is punishable at common law. Vide Forgery.

2. By the Act of Congress of April 30, 1790, s. 15, 1 Story's L. U. S. 86, it is enacted, that if any person shall feloniously steal, take away, alter, falsify, or otherwise avoid, any record, writ, process, or other proceedings in any of the courts of the United States, by means whereof any judgment shall be reversed, made void, or not take effect; or if any person shall acknowledge, or procure to be acknowledged, in any of the courts. aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person, or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and be whipped not exceeding thirty−nine stripes'. Provided nevertheless, that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be had or given.

TO FALSIFY, chancery practice. When a bill to open an account has been filed, the plaintiff is sometimes allowed to surcharge and falsify such account; and if any thing has been inserted that is a wrong charge, he is at liberty to show it, and that is a falsification. 2 Ves. 565; 11 Wheat. 237. See Account stated; Surcharge.

FALSO RETORNO BREVIUM, old English law. The name of a writ which might have been sued out against a sheriff, for falsely returning writs. Cunn. Dict.

FAMILY, domestic relations. In a limited sense it signifies the father, mother, and children. In a more extensive sense it comprehends all the individuals who live under the authority of another, and includes the servants of the family. It is also employed to signify all the relations who descend from a common ancestor, or who spring from a common root. Louis. Code, art. 3522, No. 16; 9 Ves. 323.

2. In the construction of wills, the word family, when applied to personal property is synonymous with kindred, or relations. It may, nevertheless, be confined to particular relations by the context of the will, or may be enlarged by it, so that the expression may in some cases mean children, or next of kin, and in others, may even include relations by marriage. 1 Rop. on Leg. 115 1 Hov. Supp. 365, notes, 6 and 7; Brown v. Higgs; 4 Ves. 708; 2 Ves. jr. 110; 3 East, Rep. 172 5 Ves. 156 1,7 Ves. 255 S. 126. Vide article Legatee. See Dig. lib. 50, t. 16, 1. 195, s. 2.

FAMILY ARRANGEMENTS. This term has been used to signify an agreement made between a father and his son, or children; or between brothers, to dispose of property in a different manner to that, which would otherwise take place.

2. In these cases frequently the mere relation, of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67 1 Turn. & Russ. 13.

FAMILY BIBLE. A Bible containing an account of the births, marriages, and deaths of the members of a family.

2 An entry, by the father, made in a Bible, stating that Peter, his eldest son, was born in. lawful wedlock of Maria, his wife, at a time specified, is evidence to prove the legitimacy of Peter. 4 Campb. 401. But the entry, in order to be evidence, must be an original entry, and, when it is not so, the loss of the original must be proved before the copy can be received. 6 Serg.
Rawle, 135. See 10 Watts, R. 82.

FAMILY EXPENSES. The sum which it costs a man to maintain a family.

2. Merchants and traders who desire to exhibit the true state of their affairs in their books, keep an exact account of family expenses, which, in case of failure, is very important, and at all times proper.

FAMILY MEETINGS. Family councils, or family meetings in Louisiana, are meetings of at least five relations, or in default of relations of minors or other persons on whose interest they are called upon to deliberate, then of the friends of such minors or other persons.

2. The appointment of the members of the family meeting is made by, the judge. The relations or friends must be selected from among those domiciliated in the parish in which the meeting is held; the relations are selected according to their proximity, beginning with the nearest. The relation is preferred to the connexion in the same degree, and among relations of the same degree, the eldest is preferred. The under tutor must also be present. 6 N. S. 455.

3. The family meeting is held before a justice of the peace, or notary public, appointed by the judge for the purpose. It is called for a fixed day and hour, by citations delivered at least three days before the day appointed for the purpose.'

4. The members of the family meeting, before commencing their deliberations, take an oath before the officer before whom the meeting is held,, to give their advice according to the best of their knowledge, touching the interests of the person on whom they are called upon to deliberate. The officer before whom the family meeting is held, must make a particular process−verbal of the deliberations, cause the members of the family meeting to sign it, if they know how to sign, he must sign it himself, and deliver a copy to the parties that they may have it homologated. Civil Code of Louis. B. 1, tit. 8, c. 1, s. 6, art. 305 to 311; Code Civ. B. 1, tit. 10, c. 2, A. 4.

FAMOSUS LIBELLUS. Among the civilians these words signified that species of injuria which corresponds nearly to libel or slander.

FANEGA, Spanish law. A measure of land, which is not the same in every province. Diccionario de la Acad.; 2 White's Coll. 49. In Spanish America, the fanega consisted of six thousand and four hundred square varas or yards. 2 White's Coll. 138.

FARE. It signifies a voyage or passage; in its modern application, it is the money paid for a passage. 1 Bouv. Inst. n. 1036.

FARM, estates. A portion or tract of land, some of which is cultivated. 2 Binn. 238. In parlance, and for the purpose of description in a deed, a farm means: a messuage with out−buildings, gardens, orchard, yard, and land usually occupied with the same for agricultural purposes; Plowd. 195 Touch. 93; 1 Tho. Co. Litt. 208, 209, n. N; but in the English law, and particularly in a description in a declaration in ejectment, it denotes a leasehold interest for years in any real property, and means anything which is held by a person who stands in the relation of tenant to a landlord. 6 T. R. 532; 2 Chit. Pl. 879, n. e.

2. By the conveyance of a farm, will pass a messuage, arable land, meadow, pasture, wood, &c., belonging to or used with it. 1 Inst. 5, a; Touch. 93; 4 Cruise, 321; Bro. Grants, 155; Plowd. 167.

3. In a will, the word farm may pass a freehold, if it appear that such was the intention of the testator. 6 T. R. 345; 9 East, 448. See 6 East, 604, n; 8 East, 339.

To FARM LET. These words in a lease have the effect of creating a lease for years. Co. Litt. 45 b; 2 Mod. 250.

FARMER. One who is lessee of a farm. it is said that every lessee for life or years, although it be but of a small house and land, is called farmer. This word implies no mystery except it be that of hushandman. Cunn. Dict. h. t. In common parlance, a farmer is one who cultivates a farm, whether he be the owner of it or not.

FARO, crim. law. There is a species of game called faro−table, or faro−bank, which is forbidden by law in many states; and the persons who keep it for the purpose of playing for money or other valuable thing, may generally be indicted at common law for a nuisance. 1 Roger's Rec. 66. It is played with cards in this manner: a pack of cards is displayed on the table so that the face of each card may be seen by the spectators. The man who keeps the bank, as it is termed, and who is called the banker, sits by the table with another pack of cards, and a bag containing money, some of which is displayed, or sometimes instead of money, chips, or small pieces of ivory or other

substance are used. The parties who play with the banker, are called punters or pointeurs. Suppose the banker and A, a punter, wish to play for five dollars, the banker shuffles the pack which he holds in his hand, while A lays his money intended to be bet, say five dollars, on any card he may choose as aforesaid. The banker then runs the cards alternately into two piles, one on the right the other on the left, until he reaches, in the pack, the card corresponding to that on which A has laid his money. If, in this alternative, the card chosen comes on the right hand, the banker takes up the money. If on the other, A is entitled to five dollars from the banker. Several persons are usually engaged at the same table with the banker. 1 Rog. Rec. 66, note; Encycl. Amer. h. t.

FARRIER. One who takes upon himself the public employment of shoeing horses.

2. Like an innkeeper, a common carrier, and other persons who assume a public employment, a farrier is bound to serve the public as far as his employment goes, and an action lies against him for refusing, when a horse is brought to him at a reasonable time for such purpose, if he refuse; Oliph. on Horses, 131 and he is liable for the unskilfulness of himself or servant in performing such work 1 Bl. Com. 431; but not for the malicious act of the servant in purposely driving a nail into the foot of the horse, with the intention of laming him. 2 Salk. 440.

FATHER, domestic relations. He by whom a child is begotten.

2. A father is the natural guardian of his children, and his duty by the natural law consists in maintaining them and educating them during their infancy, and making a necessary provision for their happiness in life. This latter, however, is a duty which the law does not enforce.

3. By law, the father is bound to support his children, if of sufficient ability, even though they have property of their own. 1 Bro. C. C. 387; 4 Mass. R. 97; 2 Mass. R. 415 5 Rawle, 323. But he is not bound, without some agreement, to pay another for maintaining them; 9 C. & P. 497; nor is he bound to pay their debts, unless he has authorized them to be contracted. 38 E. C. L. R. 195, n. See 8 Watts, R. 366 1 Craig. & Phil. 317; Bind; Nother; Parent. This obligation ceases as soon as the child becomes of age, unless he becomes chargeable to the public. 1 Ld. Ray. 699.

4. The rights of the father are authority over his children, to enforce all his lawful commands, and to correct with moderation his children for disobedience. A father may delegate his power over the person of his child to a tutor or instructor, the better to accomplish the purposes of his education. This power ceases on the arrival of the child at the age of twenty−one years. Generally, the father is entitled to the services of his children during their minority. 4 S. & R. 207; Bouv. Inst. Index, h. t.

FATHER−IN−LAW. In latin, socer, is the father of one’s wife, or of one’s hushand.

FATHER. PUTATIVE. A reputed father. Vide Putative father.

FATHOM. A measure of length, equal to six feet. The word is probably derived from the Teutonic word fad, which signifies the thread or yarn drawn out in spinning to the length of the arm, before it is run upon the spindle. Webster; Minsheu. See Ell. Vide Measure.

FATUOUS PERSON. One entirely destitute of reason; is qui omnino desipit. Ersk. Inst. B. 1, tit. 7, s. 48.

FAUBOURG. A district or part of a town adjoinng the principal city; as, a faubourg of New Orleans. 18 Lo. R. 286.

FAULT, contracts, civil law. An improper act or omission, which arises from ignorance, carelessness, or negligence. The act or omission must not have been meditated, and must have caused some injury to another. Lec. Elcm. _783. See Dolus, Negligence. 1 Miles’ Rep. 40.

2. − 1. Faults or negligence are usually divided into, gross, ordinary, and slight: 1. Gross fault or neglect, consists in not observing that care towards others, which a man the least attentive, usually takes of his own affairs. Such fault may, in some cases, afford a presumption of fraud, and in very gross cases it approaches so near, as to be almost undistinguishable from it, especially when the facts seem hardly consistent with an honest intention. But there may be a gross fault without fraud. 2 Str. 1099; Story, Bailm. _18−22; Toullier, 1. 3, t. 3, _231. 2. Ordinary faults consist in the omission of that care which mankind generally pay to their own concerns; that is, the want of ordinary diligence. 3. A slight fault consists in the want of that care which very attentive persons take of their own affairs. This fault assimilates itself, and, in some cases, is scarcely distinguishable, from mere accident, or want of foresight. This division has been adopted by common lawyers from the civil law. Although the civilians generally agree in this division, yet they are not without a difference of opinion. See Pothier, Observation generale, sur le precedent Traite, et sur les suivants; printed at the end of his Traite des Obligations, where he cites Accurse, Alciat, Cujas, Duaren, D’Avezan, Vinnius, and Heineccius, in support of this division. On the other side the reader is referred to Thomasius, tom. 2, Dissertationem, pago 1006; Le Brun, cited by Jones, Bailm. 27; and Toullier,

Droit Civil Francais, liv. 3, tit. 3, _231.

3. − 2. These principles established, different rules have been made as to the responsibilities of parties for their faults in relation to their contracts. They are reduced by Pothier to three.

4.− I. In those contracts where the party derives no benefit from his undertaking, he is answerable only for his gross faults.

5.−2. In those contracts where the parties have a reciprocal interest, as in the contract of sale, they are responsible for ordinary neglect.

6. − 3. In those contracts where the party receives the only advantage, as in the case of loan for use, he is answerable for his slight fault. Poth. Observ. Generale; Traite des Oblig. _142; Jones, Bailm. 119 Story, Bailm. 12. See also Ayliffe, Pand. 108. Civ. C. Lou. 3522; 1 Com. Dig. 41 3; 5 Id. 184; Wesk. on Ins. 370.

FAUX, French law. A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. Biret, Vocabulaire des Six Codes.

2. The crimen falsi of the civil law. Toullier says, "Le faux s'entend de trois manieres: dans le sons le plus etendre, c'est l'alteration de la verite, avec ou sans mauvaises intentions; il est a peu pres synonyme de mensonge; dans un sens moins etendu, c'est l'alteration de la verite, accompagnee de dol, mutatio veritatis cum dolo facta; enfin, dans le sens etroit, ou plutot legal du mot, quand il s'agit de savoir si le faux est un crime, le faux est I'alteration frauduleuse de la verite, dans les determines et punis par la loi." Tom. 9, n. 188. "Faux may be understood in three ways: in its most extended sense, it is the alteration of truth, with or without intention; it is nearly synonymous with lying; in a less extended sense, it is the alteration of truth, accompanied with fraud, mutatio veritatis cum dolo facta; and lastly, in a narrow, or rather the legal sense of the word, when it is a question to know if the faux be a crime, it is the fraudulent alteration of the truth, in those cases ascertained and punished by the law." See Crimen Falsi.

FAVOR. Bias partiality; lenity; prejudice.

2. The grand jury are sworn to inquire into all offences which have been committed, and of all violations of law, without fear, favor, or affection. Vide Grand Jury. When a juror is influenced by bias or prejudice, so that there is not sufficient ground for a principal challenge, he may nevertheless be challenged for favor. Vide Challenge, and Bac. Ab. Juries, E; Dig. 50, 17, 156, 4; 7 Pet. R. 160.

FEAL. Faithful. This word is not used.

FEALTY. Fidelity, allegiance.

2. Under the feudal system, every owner of lands held them of some superior lord, from whom or from whose ancestors, the tenant had received them. By this connexion the lord became bound to protect the tenant in the enjoyment of the land granted to him; and, on the other hand, the tenant was bound to be faithful to his lord,, and defend him against all his enemies. This obligation was called fidelitas, or fealty. 1 Bl. Com. 366; 2 Bl. Com. 86; Co. Litt. 67, b; 2 Bouv. Inst. n. 1566.

FEAR, crim. law. Dread, consciousness of approaching danger.

2. Fear in the person robbed is one of the ingredients required. to constitute a robbery from the person, and without this the felonious taking of the property is a larceny. It is not necessary that the owner of the property should be in fear of his own person, but fear of violence to the person of his child; 2 East, P. C. 718; or of his property; Id. 731 2 Russ. 72; is sufficient. 2 Russ. 71 to 90. Vide Putting in fear, and Ayl. Pand. tit. 12, p. 106.; Dig. 4, 2, 3 an d 6.

FEASTS. Certain established periods in the Christian church. Formerly, the days of the feasts of saints were used to indicate the dates of instruments, and memorable events. 18 Toull. n. 81. These are yet used in England; there they have Easter term, Hilary term, &c.

FEDERAL, government. This term is commonly used to express a league or compact between two or more states.

2. In the United States the central government of the Union is federal. The constitution was adopted "to form a more perfect union" among the states, for the purpose of self−protection and for the promotion of their mutual happiness.

FEE, FEODUM or FEUDUM, estates. From the French, fief. A fee is an estate which may continue forever. The word fee is explained to signify that the land, or other subject of property, belongs to its owner, and is transmissible, in the case of an individual, to those whom the law appoints to succeed him, under the appellation of heirs; and in the case of corporate bodies, to those who are to take on themselves the corporate function; and

from the manner in which the body is to be continued, are denominated successors. 1 Co. Litt. 1, 271, b; Wright's Ten. 147, 150; 2 Bl. Com. 104. 106; Bouv. Inst. Index h. t.

2. Estates in fee are of several sorts, and have different denominations, according to their several natures and respective qualities. They 'may with propriety be divided into, 1. Fees simple. 2 . Fees determinable. 3. Fees qualified. 4. Fees conditional and 5. Fees tail.

3. − 1. A fee simple is an estate inlands or tenements which, in reference to the ownership of individuals, is not restrained to any heirs in particular, nor subject to any condition or collateral determination except the laws of escheat and the canons of descent, by which it may, be qualified, abridged or defeated. In other words, an estate in fee simple absolute, is an estate limited to a person and his heirs general or indefinite. Watk. Prin. Con. 76. And the omission of the word 'his' will not vitiate the estate, nor are the words "and assigns forever" necessary to create it, although usually added. Co. Litt. 7, b 9, b; 237, b Plowd. 28, b; 29, a; Bro. Abr. Estates, 4. 1 Co. Litt. 1, b; Plowd. 557 2 Bl. Com. 104, 106 Hale's Analysis, 74. The word fee simple is sometimes used by the best writers on the law as contrasted with estates tail. 1 Co. Litt. 19. In this sense, the term comprehends all other fees as well as the estate, properly, and in strict propriety of technical language, peculiarly' distinguished by this appellation.

4. − 2. A determinable fee is an estate which may continue forever. Plowd. 557; Shep. Touch. 97. It is a quality of this estate while it falls under this denomination, that it is liable to be determined by some act or event, expressed on its limitation, to circumscribe its continuance, or inferred by the law as bounding its extent. 2 Bl. Com. 109. Limitations to a man. and his heirs, till the marriage of such. a person shall take place; Cro. Jac. 593; 10 Vin. Abr. 133; till debts shall be paid; Fearne, 187 until a minor shall attain the age of twenty−one years 3 Atk. 74 Ambler, 204; 9 Mod. 28 10 Vin. Abr. 203. Feariae, 342; are instances of such a determinable fee.

5. − 3. Qualified fee, is an interest given on its, first limitation, to a man and to certain of his heirs, and not to extend to all of them generally, nor confined to the issue of his body. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. 254 1 Inst. 27, a 220; 1 Prest. on Estates, 449.

6. − . A conditional fee, in the more general acceptation of the term, is when, to the limitation of an estate a condition is annexed, which renders the estate liable to be defeated. 10 Rep. 95, b. In this application of the term, either a determinable or a qualified fee may at the same time be a conditional fee. An estate limited to a man and his heirs, to commence on the performance of a condition, is also frequently described by this appellation. Prest. on East. 476; Fearne, 9.

7. − 5. As to fee−tail, see Tail.

FEE FARM, Eng. law. A perpetual farm or rent. 1 Tho. Co. Litt. 446, n. 5.

FEE FARM RENT, contracts, Eng. law. When the lord, upon the creation of a tenancy, reserves to himself and his heirs, either the rent for which it was before let to farm, or at least one−fourth part of that farm rent, it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. 2 Inst. 44.

FEES, compensation. Certain perquisites allowed by law to officers concerned in the administration of justice, or in the performance of duties required by law, as a recompense for their labor and trouble. Bac. Ab. h. t.; Latch, 18.

2. The term fees differs from costs in this, that the former are, as above mentioned, a recompense to the officer for his services, and the latter, an indemnification to the, party for money laid out and expended in his suit. 11 S. & R. 248; 9 Wheat. 262; See 4 Binn. 267. Vide Costs; Color of office; Exaction; Extortion.

FEIGNED ACTION, practice. An action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true; it differs from false action, in which case the words of the writ are false. Co. Litt. 361, sect. 689. Vide Fictitious action.

FEIGNED issue, pract. An issue brought by consent of the parties, or the direction of a court of equity, or such courts as possess equitable powers, to determine before a jury some disputed matter of fact, which the court has not the power or is unwilling to decide. 3 Bl. Com. 452; Bouv. Inst. Index, h. t

FELO DE SE, criminal law. A felon of himself; a self−murderer.

2. To be guilty of this offence, the deceased must have had the will and intention of committing it, or else be committed no crime. As he is beyond the reach of human laws, he cannot be punished; the English law, indeed, attempts to inflict a punishment by a barbarous burial of his body, and by forfeiting to the king the property which he owned, and which would belong to his relations. Hawk. P. C. c. 9; 4 Bl. Com. 189. The charter of privileges granted by William Penn to the inhabitants of Pennsylvania, contains the following clause: "If any person, through temptation or melancholy, shall destroy himself, his estate, real and personal, shall, notwithstanding, (descend to his wife and children, or relations, as if he had died a natural death."

FELON, crimes. One convicted and sentenced for a felony.

2. A felon is infamous, and cannot fill any office, or become a witness in any case, unless pardoned, except in cases of absolute necessity, for his own preservation, and defence; as, for example, an affidavit in relation to the irregularity of a judgment in a cause in which he is a party. 2 Salk. R. 461; 2 Str. 1148;. Martin's R. 25; Stark. Ev. part 2, tit. Infamy. As to the effect of a conviction in one state, where the witness is offered in another, see 17 Mass. R. 515 2 Harr. & McHen. R. 120, 378; 1 Harr. & Johns. R. 572. As to the effect upon a copartnership by one of the partners becoming a felon, see 2 Bouv. Inst. n. 1493.

FELONIOUSLY, pleadings. This is a technical word which must be introduced into every indictment for a felony, charging the offence to have been committed feloniously; no other word, nor any circumlocution, will supply its place. Com. Dig. Indictment, G 6; Bac. Ab. Indictment, G 1; 2 Hale, 172, 184; Hawk. B. 2. c. 25, s. 55 Cro. C. C. 37; Burn's Just. Indict. ix.; Williams' Just. Indict. iv.−, Cro. Eliz. 193; 5 Co. 121; 1 Chit. Cr. Law, 242.

FELONY, crimes. An offence which occasions a total forfeiture of. either lands or goods, or both, at common law, to which capital or other punishment may be super−added, according to the degree of guilt. 4 Bl. Com, 94, 5; 1 Russ. Cr. *42; 1 Chit. Pract. 14; Co. Litt . 391; 1 Hawk. P. C. c. 37; 5 Wheat. R. 153, 159.

FEMALE. This term denotes the sex which bears young.

2. It is a general rule, that the young of female animals which belong to us, are ours, nam fetus ventrem sequitur. Inst. 2, 1, 19; Dig. 6, 1, 5, 2. The rule is, in general, the same with regard to slaves; but when a female slave comes into. a free state, even without the consent of her master, and is there delivered of a child, the latter is free. Vide Feminine; Gender; Masculine.

FEME, or, more properly,

FEMME. Woman.

2. This word is frequently used in law. Baron and feme, hushand and wife; feme covert, a. married woman; feme sole, a single woman.

3. A feme covert, is a married woman. A feme covert may sue and be sued at law, and will be treated as a feme sole, when the hushand is civiliter mortuus. Bac. Ab. Baron and Feme, M; see article, Parties to Actions, part 1, section l, _7, n. 3; or where, as it has been decided in England, he is an alien and has left the country, or has never been in it. 2 Esp. R. 554; 1 B. & P. 357. And courts of equity will treat a married woman as a, feme sole, so as to enable her to sue or be sued, whenever her hushand has abjured the realm, been transported for felony, or is civilly dead. And when she has a separate property, she may sue her hushand in respect of such property, with the assist ance of a next friend of her own selection. Story, Eq. Pl. _61; Story, Eq . Jur. _1368; and see article, Parties to a suit in equity, 1, n. 2; Bouv. Inst. Index, h. t.

4. Coverture subjects a woman to some duties and disabilities, and gives her some rights and immunities, to which she would not be entitled as a feme sole. These are considered under the articles, Marriage, (q. v.) and Wife. (q. v.)

5. A feme sole trader, is a married woman who trades and deals on her own account, independently of her hushand. By the custom of London, a feme covert, being a sole trader, may sue and be sued in the city courts, as a feme sole, with reference to her transactions in London. Bac. Ab. Baron and Feme, M. 6. In Pennsylvania, where any mariners or others go abroad, leaving their wives at shop−keeping, or to work for their livelihood at any other trade, all such wives are declared to be feme sole traders, with ability to sue and be sued, without naming the hushands. Act of February 22, 1718. See Poth. De la Puissance du Mari, n. 20.

7. By a more recent act, April 11, 1848, of the same state, it is provided, that in all cases where debts may be contracted for necessaries for the support and maintenance of the family of any married woman, it shall be lawful for the creditor, in such case, to institute suit against the hushand and wife for the price of such necessaries, and after obtaining a judgment, have an execution against the hushand alone and if no property of the said hushand be found, the officer executing the said writ shall so return, and thereupon an alias execution may be issued, which may be levied upon and satisfied out of the separate property of the wife, secured to her under the provisions of the first section of this act. Provided, That judgment shall not be rendered against the wife, in such joint action, unless it shall have be proved that the debt sued for in such action, was contracted by the wife, or incurred for articles necessary for the support of the family of the said hushand and wife.

FEMININE. What belongs to the female sex.

2. When the feminine is used, it is generally confined to females; as, if a man bequeathed all his mares to his son, his horses would not pass. Vide: 3 Brev. R. 9 Gender; Man; Masculine.

FENCE. A building or erection between two contiguous estates, so as to divide them; or on the same estate, so as to divide one part from another.

2. Fences are regulated by the local laws. In general, fences on boundaries are to be built on the line, and the expense, when made no more expensively than is required by the law, is borne equally between the parties. See the following cases on the subject. 2 Miles, 337, 395; 2 Greenl. 72; 11 Mass. 294; 3 Wend. 142; 2 Metc. 180; 15 Conn. 526 2 Miles, 447; Bouv. Inst. Index, h. t.

3. A partition fence is presumed to be the common property of both owners of the land. 8 B. & C. 257, 259, note a. When built upon the land of one of them, it is his; but if it were built equally upon the land of both, at their joint expense, each would be the owner in severalty of the part standing on his own land. 5 Taunt. 20; 2 Greenl. Ev. 617.

FEOD. The same as fief. Vide Fief or Feud.

FEOFFMENT, conveyancing. A gift of any corporeal hereditaments to another. It operates by transmutation of possession, and it is essential to its completion that the seisin be passed. Watk. Prin. Conv. 183. This term also signifies the instrument or deed by which such hereditament is conveyed.

2. This instrument was used as one of the earliest modes of conveyance of the common law. It signified, originally, the grant of a feud or fee; but it came, in time, to signify the grant of a free inheritance in fee, respect being had to the perpetuity of the estate granted, rather than to the feudal tenure. The feoffment was, likewise, accompanied by livery of seisin. The conveyance, by feoffment, with livery of seisin, has become infrequent, if not obsolete, in England; and in this country it has not been used in practice. Cruise, Dig. t. 32, c. 4. s. 3; Touchs. c. 9; 2 Bl. Corn. 20; Co. Litt. 9; 4 Kent, Com. 467; Perk.. c. 3; Com. Dig. h. t.; 12 Vin. Ab. 167; Bac. Ab. h. t. in pr.; Doct. Plac. 271; Dane's Ab. c. 104, a. 3, s. 4. He who gives or enfeoffs is called the feoffor; and the person enfeoffed is denominated the feoffee. 2 Bl. Com. 20. See 2 Bouv. Inst. n. 2045, note.

FERAE. Wild, savage, not tame.

FERAE BESTIAE. Wild beasts. See Animals; Ferae naturce.

FERAE NATURAE. Of a wild nature.

2. This term is used to designate animals which are not usually tamed. Such animals belong to the person who has captured them only while they are in his power for if they regain their liberty his property in them instantly ceases, unless they have animum revertendi, which is to be known only by their habit of returning. 2 Bl. Com. 386; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, F; 7 Co. 17, b; 1 Chit. Pr. 87; Inst. 2, 1, 15; 13 Vin. Ab. 207.

3. Property in animals ferae naturae is not acquired by hunting them and pursuing them; if, therefore, another person kill such animal in the sight of the pursuer, he has a right to appropriate it to his own use. 3 Caines, 175. But if the pursuer brings the animal within his own control, as by entrapping it, or wounding it mortally, so as to render escape impossible, it then belongs to him. Id. Though if he abandons it, another person may afterwards acquire property in the animal. 20 John. 75. The owner of land has a qualified property in animals ferae naturae, when, in consequence of their inability and youth, they cannot go away. See Y. B. 12 H. VIII., 9 B, 10 A 2 Bl. Com. 394; Bac. Ab. Game. Vide Whelp.

FERM or FEARM. By this ancient word is meant land, fundus; (q. v.) and, it is said, houses and tenements may pass by it. Co. Litt. 5 a.

FERRY. A place where persons and things are taken across a river or other stream in boats or other vessels, for hire. 4 N. S. 426; S. C. 3 Harr. Lo. R. 341.

2. In England a ferry is considered a franchise which cannot be set up without the king's license. In most, perhaps all of the United States, ferries are regulated by statute.

3. The termini of a ferry are at the water's edge. 15 Pick. R. 254 and see 8 Greenl. R. 367; 4 John. Ch. R., 161; 2 Porter, R. 296; 7 Pick. R. 448; 2 Car. Law Repos. 69; 2 Dev. R. 403; 1 Murph. 279 1 Hayw. R. 457; Vin. Ab. h. t.; Com. Dig. Piscary B: 6 B. & Cr. 703; 12 East, R. 333; 1 Bail. R. 469; 3 Watts, R. 219 1 Yeates, R. 167; 9 S. & R. 26.

FERRYMAN. One employed in taking persons across a river or other stream, in boats or other contrivances at a ferry. The owner of a ferry is not considered a ferryman, when it is rented and in the possession of a tenant. Minor, R. 366.

2. Ferrymen are considered as common carriers, and are therefore the legal judges to decide when it is proper to pass over or not. 1 M'Cord, R. 444 Id. 157 1 N. & M. 19; 2 N. & M. 17. They are to regulate how the property to

be taken across shall be put in their boats or flats; 1 M'Cord 157; and as soon as the carriage is fairly on the drop or slip of a fat, although driven by the owner's servant, it is in possession of the ferryman, and he is answerable. 1 M'Cord's R. 439.

FESTINUM REMEDIUM. A speedy remedy.

2. This is said of those cases where the remedy for the redress of an injury is given without any unnecessary delay. Bac. Ab. Assise, A. The action of Dower is festinum remedium, and so is Assise.

FETTERS. A sort of iron put on the legs of malefactors, or persons accused of crimes.

2. When a prisoner is brought into court to plead he shall not be put in fetters. 2 Inst. 315; 3 Inst. 34; 2 Hale, 119; Hawk. b. 21 c. 28, s. 1 Kel. 10; 1 Chitty's Cr. Law, 417. An officer having arrested a defendant on a civil suit, or a person accused of a crime, has no right to handcuff him unless it is necessary, or he has attempted to make his escape. 4 B. & C. 596; 10 Engl. C. L. Rep. 412, S. C.

FEUD. This word, in Scotland, signifies a combination of kindred to revenge injuries or affronts done to any of their blood. Vide Fief.

FEUDA. In the early feudal times grants were made, in the first place, only during the pleasure of the grantor, and called muncra; (q. v.) afterwards for life, called beneficia; (q. v.) and, finally, they were extended to the vassal and his sons, and then they acquired the name offeudal. Dalr. Feud. Pr. 199.

FEUDAL. A term applied to whatever concerned a feud; as feudal law: feudal rights.

FEUDAL LAW. By this phrase is understood a political system which placed men and estates under hierarchical and multiplied distinctions of lords and vassals. The principal features of this system were the following.

2. The right to all lands was vested in the sovereign. These were, parcelled out among the great men of the nation by its chief, to be held of him, so that the king had the Dominum directum, and the grantee or vassal, had what was called Dominum utile. It was a maxim nulle terre sans seigneur. These tenants were bound to perform services to the king, generally of a military character. These great lords again granted parts of the lands. they thus acquired, to other inferior vassals, who held under them, and were bound to perform services to the lord.

3. The principles of the feudal law will be found in Littleton's Tenures Wright's Tenures; 2 Blackstone's Com. c. 5 Dalrymple's History of Feudal Property; Sullivan's Lectures; Book of Fiefs; Spellman, Treatise of Feuds and Tenures; Le Grand Coutumier; the Salic Laws; The Capitularies; Les Establissements de St. touis; Assizes de Jerusalem; Poth. Des Fiefs. Merl. Rep. Feodalite; Dalloz, Dict. Feodalit 6; Guizot, Essais sur I'Histoire de France, Essai 5eme.

4. In the United States the feudal law never was in its full vigor, though some of its principles are still retained. "Those principles are so interwoven with every part of our jurisprudence," says Ch. J. Tilghman, 3 S. & R. 447, " that to attempt to eradicate them would be to destroy the whole. They are massy stones worked into the foundation of our legal edifice. Most of the inconveniences attending them, have been removed, and the few that remain can be easily removed, by acts of the legislature." See 3 Kent, Com. 509, 4th ed.

FIAR, Scotch law. He whose property is burdened with a life rent. Ersk. Pr. of L. Scot. B. 2, t. 9, s. 23.

FIAT, practice. An order of a judge, or of an officer, whose authority, to be signified by his signature, is necessary to authenticate the particular acts.

FICTION OF LAW. The assumption that a certain thing is true, and which gives to a person or thing, a quality which is not natural to it, and establishes, consequently, a certain disposition, which, without the fiction, would be repugnant to reason and to truth. It is an order of things which does not exist, but which the law prescribe; or authorizes it differs from presumption, because it establishes as true, something which is false; whereas presumption supplies the proof of something true. Dalloz, Dict. h. t. See 1 Toull. 171, n. 203; 2 Toull. 217, n. 203; 11 Toull. 11, n. 10, note 2; Ferguson, Moral Philosophy, part 5, c. 10, s. 3 Burgess on Insolvency, 139, 140; Report of the Revisers of the Civil Code of Pennsylvania, March 1, 1832, p. 8.

2. The law never feigns what is impossible fictum est id quod factum non est sed fieri potuit. Fiction is like art; it imitates nature, but never disfigures it it aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is not, exists; but it will never feign that what was impossible, actually is. D'Aguesseau, Oeuvres, tome iv. page 427, 47e Plaidoyer.

3. Fictions were invented by the Roman praetors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the

legislative usurpations of the bench. 4 Benth. Ev. 300.

4. It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177. To prevent, their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; Hawk. 320; Best on Pres. _20.

5. The law abounds in fictions. That an estate is in abeyance; the doctrine of remitter, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done today, is considered as done, at a preceding time by the doctrine of relation; that, because one thing is proved, another shall be presumed to be true, which is the case in all presumptions; that the heir, executor, and administrator stand by representation, in the place of the deceased are all fictions of law. "Our various introduction of John Doe and Richard Roe," says Mr. Evans, (Poth. on Ob. by Evans, vol. n. p. 43,) "our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary, wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enewy's settlement in the antipodes our charge of picking a pocket, or forging a bill with force and arms; of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity are circumstances, which, looked at by themselves, would convey an impression of no very favorable nature, with respect to the wisdom of our jurisprudence." Vide 13 Vin. Ab. 209; Merl. Rep. h. t.; Dane's Ab. Index, h. t.; and Rey, des Inst. de I'Angl. tome 2, p. 219, where he severely cesures these fictions as absurd and useless.

FICTITIOUS Pretended; supposed; as, fictitious actions; fictitious payee.

FICTITIOUS ACTIONS, Practice. Suits brought. on pretended rights.

2. They are sometimes brought, usually on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted for the purpose of deciding really existing questions of right between parties, and they are not bound to answer impertinent questions which persons think proper to ask them in the form of an action on a wager. 12 East, 248. Such an attempt has been held to be a contempt of court; and Lord Hardwicke in such a case committed the parties and their attorneys. Rep. temp. Hardw. 237. See also Comb. 425; 1. Co. 83; 6 Cranch, 147−8. Vide Feigned actions.

3. The court of the king's bench fined an attorney forty pounds for stating a special case for the opinion of the court, the greater part of which statement was fictitious. 3 Barn. & Cr. 597; S. C. 10 E. C. L. R. 193.

FICTITIOUS PAYEE, contract. A supposed person; a payee, who has no existence.

2. When the name of a fictitious payee has been used, in making a bill of exchange, and it has been endorsed in such name, it is considered as having the effect of a bill payble to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties who were privy, to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 3 Bro. C. C. 238. Vide Bills of Exchange, _1.

FIDEI−COMMISSARY, civil law. One who has a beneficial interest in an estate, which, for a time, is committed to the faith or trust of another. This term has nearly, the same meaning as cestui que trust has in our law. 2 Bouv. Inst. n. 1895, note.

FIDEI−COMMISSUM, civil law. A gift which a man makes to another, through the agency of a third person, who is requested to perform the desire of the giver. For example, when a testator writes, "I institute for my heir, Lucius Titius," he may add, "I pray my heir, Lucius Titius, to deliver, as soon as he shall be able, my succession to Caius Seius: cum igitur aliquis scripserit Lucius Tilius heres esto; potest ajicere, rogo te Luci Titi, ut cum poteris hereditatem meam adire, eam Caio Sceio reddas, restituas. Inst. 2, 23, 2; vide Code 6, 42.

2. Fidei−commissa were abolished in Louisiana by the code. 5 N. S. 302.

3. The uses of the common law, it is said, were borrowed from the Roman fidei−commissum. 1 Cru. Dig. 388; Bac. Read. 19; 1 Madd. Ch. 446−7.

4. The fidei−coimmissa of the civil law, have been supposed to resemble entails, though some writers have declared that the Roman law was a stranger to entails. 2 Bouv. Inst. n. 1708.

FIDE−JUSSIO, civil law. The contract of suretyship.

FIDE−JUSSOR, civil law. One who becomes security for the debt of another, promising to pay it in case the principal does not do so.

2. He differs from co−obligor in this, that the latter is equally bound to a debtor with his principal, while the former is not liable till the principal has failed to fulfil his engagement. Dig. 12, 4, 4; Id. 16, 1, 13; Id. 24, 3, 64;

Id. 38, 1, 37; Id. 50, 17, 110, and 14, 6, 20; Hall's Pr. 33; Dunl. Ad. Pr. 300; Clerke's Prax. tit. 63, 4, 5.

3. The obligation of the fide−jussor was an accessory contract, for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. Lec. Elem. _872; Code Nap. 2012.

FIDUCIA, civil law. A contract by which we sell a thing to some one, that is, transmit to him the property of the thing, with the solemn forms of emancipation, on condition that he will sell it back to us. This species of contract took place in the emancipation of children, in testaments, and in pledges. Poth. Pand. h. t.

FIDUCIARY. This term is borrowed from the civil law. The Roman laws called a fiduciary heir, the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament. Merl. Repert. h. t. But Pothier, Pand. vol. 22, h. t., says that fiduciarius heres properly signifies the person to whom a testator has sold his inheritance, under the condition that he should sell it to another. Fiduciary may be defined to be, in trust, in confidence.

2. A fiduciary contract is defined to be, an agreement by which a person delivers a thing to another, on the condition that he will restore it to him. The following formula was employed:' Ut inter bonos agere opportet, ne propter te fidemque tuam frauder. Cicer. de Offc. lib. 3, cap. 13; Lec. du Dr. Civ. Rom. _237, 238. See 2 How. S. C. Rep. 202, 208; 6 Watts & Serg. 18; 7 Watts, 415.

FIEF, or FEUD. In its origin, a fief was a district of country allotted to one of the chiefs who invaded the Roman empire, as a stipend or reward; with a condition annexed that the possessor should do service faithfully both at home and in the wars, to him by whom it was given. The law of fiefs supposed that originally all lands belonged to lords, who had had the generosity to abandon them to others, from whom the actual possessors derive their rights upon the sole reservation of certain services more or less onerous as a sign of superiority. To this superiority was added that which gives the right of dispensing justice, a right which was originally attached to all fiefs, and conferred upon those who possessed it, the most eminent part of public power. Henrion de Pansey, Pouvoir, Municipal; 2 Bl. Com. 45 Encyclop6die, h. t.; Merl. Rep. h. t.

FIELD. A part of a farra separately enclosed; a close. 1 Chit. Pr. 160. The Digest defines a field to be a piece of land without a house; ager est locus, que sine villa est. Dig. 50, 16, 27.

FIERI FACIAS, practice. The name of a writ of execution. It is so called because, when writs were in Latin, the words directed to the sheriff were, quod fieri facias de bonis et catallis, &c., that you cause to be made of the goods and chattels, &c. Co. Litt. 290 b.

2. The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceedings in error.

3. This subject will be considered with regard to, 1. The form of the writ. 2. Its effects. 3. The manner of executing it.

4.−1. The writ is issued in the name of the commonwealth or of the government, as required by the constitution, and directed to the sheriff, commanding him that of the goods and chattels, and (where lands are liable for the payment of debts, as in Pennsylvania,) of the lands and tenements of the defendant, therein named, in his bailiwick, he cause to be levied as well a certain debt of − dollars, which the plaintiff, (naming him) in the court of − (naming,it,) recovered against him, as − dollars like money which to the said plaintiff was adjudged for his daimages, which he had by the detention of that debt, and that he, (the sheriff,) have that money before the judges of the said court, on a day certain, (being the return day therein mentioned,) to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict. It must be tested in the name of the officer, as directed by the constitution or laws; as, "Witness the honorable John B. Gibson, our chief justice, at Philadelphia, the tenth day of October, in the year of our Lord one thousand eight hundred and forty−eight. It must be signed by the prothonotory, or clerk of the court, and sealed with its seal. The signature of the prothonotary, it has been decided, in Pennsylvania, is not indispensable. The amount of the debt, interest, and costs, must also be endorsed on the writ. This form varies as it is issued on a judgment in debt, and one obtained for damages merely. The execution being founded on the judgment, must, of course, follow and be warranted by it. 2 Saund. 72 h. k; Bing. on Ex. 186. Hence, where there is more than one one plaintiff or defendant, it must be in the name of all the plaintiffs, against all the defendants. 6 T. R. 525. It is either for the plaintiff or the defendant. When it is against an executor or administrator, for a liability of the testator or intestate, it is conformable to the judgment, and must beÿ20only against the goods of the deceased, unless the defendant has made himself personally liable by his false pleading, in which case the judgment is de bonis testatoris si, et si non, de bonis propriis, and the fieri facias

must conform to it.

5. − 2. At common law, the writ bound the goods of the defendant or party against whom it was issued, from the test day; by which must be understood that the writ bound the property against the party himself, and all claiming by assingment from, or by, representatives under him; 4 East, B. 538; so that a sale by the defendant, of his goods to a bona fide purchaser, did no protect them from a fieri facias tested before, although not issued or delivered to the sheriff till after the sale. Cro. Eliz. 174; Cro. Jac. 451; 1 Sid. 271. To remedy this manifest injustice, the statute of frauds, 29 Car. II. c. 3, s. 16, was passed. The principles of this statute have been adopted in most of the states. Griff. Law Reg. Answers to No. 38, under No. III. The statue enacts "that no writ of fieri facias, or other writ of execution, shall bind the property of the goods of the party, against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under−sheriff, or coroners, to be executed; and for the better manifestation of the said time, the sheriffs, &c., their deputies or agents, shall, upon the receipt of any such writ, (without fee for doing the sam,) endorse upon the back thereof, the day of the month and year whereon he or they received the same." Vide 2 Binn. R. 174; 2 Serg. & Rawle, 157; 2 Yeates, 177; 8 Johns. R. 446; 12 Johns. R. 320; 1 Hopk. R. 368; 3 Penna. R. 247; 3 Rawle, 401 1 Whart R. 377.

6. − 3. The execution of the writ is made by levying upon the goods and chattels of the defendant, or party against whom it is issued; and, in general, seizing a part of the goods in the name of the whole on the premises, is a good seizure of the whole. Ld. Raym. 725; 2 Serg. & Rawle, 142; 4 Wash. C. C. R. 29; but see 1 Whart. Rep. 377. The sheriff cannot break the outer door of a house for the purpose of executing a fieri facias; 5 do. 92; nor can a window be broken for this purpose. W. Jones, 429. See articles Door; House. He may, however, enter the house, if it be open, and, being once lawfully entered, he may break open an inner door or chest to seize the goods of the defendant, even without any request to open them. 4 Taunt. 619; 3 B. & P. 223; Cowp. 1. Although the sheriff is authorized to enter the house of the party to search for goods, he cannot enter that of a stranger, for that purpose, without being guilty of a trespass, unless the defendant's goods are actually in the house. Com. Dig. Execution, C 5: 1 Marsh. R. 565. The sheriff may break the outer door of a barn 1 Sid. 186; S. C. 1 Keb. 689; or of a store disconnected with the dwelling−house, and forming no part of the curtilage. 16 Johns. R. 287. The fi. fa. may be executed at any time before, and on the return day, but not on Sunday, where it is forbidden by statute. Wats. on Sheriffs, 173 5 Co. 92; Com. Dig. Execution, c. 5. Vide 3 Bouv. Inst. n. 3383, et. seq; Wats. on Sher. ch. 10; Bing. Ex. c. 1, s. 4; Gilb. on Exec. Index, h. t.; Grab. Pr. 321: Troub. & Hal. Pr. Index, h. t.; Com. Dig. Execution, C 4; Process, F 5, 7; Caines' Pr. Index, h. t.; Tidd's Pr. Index, h. t.; Sell. Pr. Index, h. t.

FIERI FECI, practice. The return which the sheriff, or other proper officer, makes to certain writs, signifying, "I have caused to be made."

2. When the officer has made this return, a rule may be obtained upon him, after the return day, to pay the money into court, and if he withholds payment, an action of debt may be had on the return, or assumpsit for money had and received may be sustained against him. 3 Johns. R. 183.

FIFTEENTH, Eng. law. The name of a tax levied by authority of parliament for the use of the king, which consisted of one−fifteenth part of the goods of those who are subject to it. T. L

FIGURES, Numerals. They are either Roman, made with letters of the Alphabet, for example, MIDCCLXXVI; or they are Arabic, as follows, 1776.

2. Roman figures may be used in contracts and law proceedings, and they will be held valid; but Arabic figures, probably owing to the case with which they may be counterfeited, or. altered, have been holden not to be sufficient to express the sum due on a contract; but, it seems, that if the amount payable and due on a promissory note be expressed in figures or ciphers, it will be valid. Story on Bills, _42, note; Story, Prom. Notes, _21. Indictments have been set aside because the day or year was expressed in figures. 13 Vin Ab. 210; 1 Ch. Rep. 319; S. C. 18 Eng. Com. Law Rep. 95.

3. Bills of exchange, promissory notes, cheeks and agreements of every description, are usually dated with Arabic figures; it is, however, better to date deeds and other formal instruments, by writing the words at length. Vide l Ch. Cr. L. 176; 1 Verm. R. 336; 5 Toull. n. 336; 4 Yeates, R. 278; 2 John. R. 233; 1 How. Mis. 256; 6 Blackf., 533.

FIGURES OF SPEECH. By figures of speech is meant that manner of speaking or writing, which has for its object to give to our sentiments and, thoughts a greater force, more vivacity and agreeableness.

2. This subject belongs more particularly to grammar and rhetoric, but the law has its figures also. Sometimes fictions come in aid of language, when found insufficient by the law; language, in its turn, by means of tropes and

figures, sometimes lends to fictions a veil behind which they are hidden; sometimes the same denominations are preserved to things which have ceased to be the same, and which have been changed; at other times they lend to things denominations which supposed them to have been modified.

3. In this immense subject, it will not be expected that examples should be here given of every kind of figures; the principal only will be noticed. The law is loaded with abstract ideas; abstract in itself, it has often recourse to metaphors, which, as it were, touch our senses. The inventory is faithful, a defect is covered, an account is liquidated, a right is open or closed, an obligation is extinguished, &c. But the law has metaphors which are properly its own; as civil fruits, &c. The state or condition of a man who has been deprived by the law of almost all his social prerogatives or rights, has received the metaphorical name of civil death. Churches being called the houses of God, formerly were considered an asylum, because to seize a person in the house of another was considered a wrong. Mother country, is applied to the country from which people emigrate to a colony; though this pretended analogy is very different in many points, yet this external ornament of the idea soon became an integral part of the idea; and on the faith of this metaphor, this pretended filiation became the source whence flowed the duties which bound the colonies to the metropolis or mother country.

4. In public speaking, the use of figures, when natural and properly selected, is of great force; such Ornaments impress upon the mind of the bearers the ideas which the speaker desires to convey, fix their attention and disposes them to consider favorably the subject of inquiry. See 3 Bouv. Inst. n. 3243.

FILACER, FILAZIER, or FILZER, English law. An officer of the court of common pleas, so called because he files those writs on which he makes out process. FILE, practice. A thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed. for the more safe keeping and ready turning to the same. The papers put together in order, and tied in bundles, are also called a file.

2. A paper is said to be filed, when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Ab. 211.

FILIATION, civil law. The descent of son or daughter, with regard to his or her father, mother, and their ancestors.

2. Nature always points out the mother by evident signs, and whether married or not, she is always certain: mater semper certa est, etiamsi vulgo conceperit. There is not the same certainty with regard to the father, and the relation may not know or feign ignorance as to the paternity the law has therefore established a legal presumption to serve as a foundation for paternity and filiation.

3. When the mother is or has been married, her hushand is presumed to be the father of the children born during the coverture, or within a competent time afterwards; whether they were conceived during the coverture or not: pater is est quem nuptice demonstrant.

4. This rule is founded on two presumptions; one on the cohabitation before the birth of the child; and the other that the mother has faithfully observed the vow she made to her hushand.

5. This presumption may, however, be rebutted by showing either that there has been no cohabitation, or some physical or other impossibility that the hushand could be the father. See Access; Bastard; Gestation; Natural children; Paternity; Putative father. 1 Bouv. Inst. n. 302, et seq.

FILIUS. The son, the immediate male descendant. This term is used in making genealogical tables.

FILIUS MULIERATUS. The eldest legitimate son of parents, who, before their marriage, had illegitimate children. Vide Mulier.

FILIUS POPULI. The son of the people; a bastard.

FILLEY. A mare not more than one year old. Russ. & Ry. 416 Id. 494.

FILUM. The middle; the thread of anything; as filum aqua; filum viae.

FILUM AQUAE. The thread or middle of a water course. (q. v.)

2. It is a general rule, that in grants of lands bounded on rivers and streams above tide water, unless otherwise expressed, the grant extends usque ad filum aquae, and that not only the banks, but the bed of the river, and the islands therein, together with exclusive right of fishing, pass to the grantee. 5 Wend. 423.

FILUM VIAE. The thread or middle of the road.

2. Where a law requires travellers meeting each other on, a road to drive their carriages to the right of the middle of the road, the parties are bound to keep ou their side of the worked part of the road, although the whole of the smooth or most travelled path may be upon one side of the filum viae. 7 Wend. 185; 5 Conn. 305.

FIN DE NON RECEVOIR, French law. An exception or plea founded on law, which, without entering into the

merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called prescription, or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. Poth. Proc. Civ. partie 1, c. 2, s. 2, art. 2; Story, Confl. of Laws, _580.

FINAL. That which puts an end to anything.

2. It is used in opposition to interlocutory; as, a final judgment,. is a judgment which ends the coutroversy between the parties litigant. 1 Wheat. 355; 2 Pet. 449. See 12 Wheat. 135; 4 Dall. 22; 9 Pet. 1; 6 Wheat. 448; 3 Cranch, 179; 6 Cranch, 51; Bouv. Inst. Index, h. t.

FINANCIER. A person employed in the economical management and application of public money or finances; one who is employed in the management of money.

FINANCES. By this word is understood the revenue, or public resources or money of the state.

FINDER. One who lawfully comes to the possessiou of another's personal property, which was then lost.

2. The finder is entitled to certain rights and liable to duties which he is obliged to perform. This is a species of deposit, which, as it does not arise ex contractu, may be called a quasi deposit, and it is governed by the same general rules as common deposits. The, finder is required to take the same reasonable care of the property found, as any voluntary depositary ex contractu. Doct. & St. Dial. 2, c. 38; 2 Bulst. 306, 312 S. C. 1 Rolle's R. 125.

3. The finder is not bound to take the goods he finds; yet, when he does undertake the custody, he is required. to exercise reasonable diligence in preserving the property and he will be responsible for gross negligence. Some of the old authorities laid down that "if a man find butler, and by his negligent keeping, it putrify; or, if a man find garments, and by his negligent keeping, they be moth eaten, no action lies." So it is if a man find goods and lose them again; Bac. Ab. Bailment, D; and in support of this position; Leon. 123, 223 Owen, 141; and 2 Bulstr. 21, are cited. But these cases, if carefully examined, will not, perhaps, be found to decide the point as broadly as it is stated in Bacon. A finder would doubtless he held responsible for gross negligence.

4. On the other hand, the finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found; as, it a man were to find an animal, he would be entitled to be reimbursed for his keeping, for advertising in a reasonable manner that he had found it, and to any reward which may have been offered by the owner for the recovery of such lost thing. Domat, 1. 2, t. 9, s. 2, n. 2. Vide Story, Bailm. _35.

6. And when the ownerÿ20does not reclaim the goods lost, they belong to the finder. 1 Bl. Com. 296; 2 Kent's Com. 290. The acquisition of treasure by the finder, is evidently founded on the rule that what belongs to none naturally, becomes the property of the first occupant: res nullius naturaliter fit p7imi occupantis. How far the finder is responsible criminally, see 1 Hill, N. Y. Rep. 94; 2 Russ. on Cr. 102 Rosc. Cr. Ev. 474. See Taking.

FINDING, practice. That which has been ascertained; as, the ruding of the jury is conclusive as to matters of fact when confirmed: by a judgment of the court. 1 Day, 238; 2 Day, 12.

FINDING A VERDICT. The act of the jury in agreement upon a verdict.

FINE. This word has various significations. It is employed, 1. To mean a sum of money, which, by judgment of a competent jurisdiction, is required to be paid for the punishment of an offence. 2. To designate the amount paid by the tenant, on his entrance, to the lord. 3. To signify a special kind of conveyance.

FINE, conveyance, Practice. An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be the right of one of the parties. Co. Litt. 120; 2 Bl. Com. 349; Bac. Abr. Fines and Recoveries. A fine is so called, because it puts an end, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. Such concords, says Doddridge, (Eng. Lawyer, 84, 85,) have been in use in the civil law, and are called transactions (q. v.) whereof they say thus: Transactiones sunt de eis quae in controversia sunt, a, lite futura aut pendente ad certam compositionem reducuntur, dando aliquid vel accipiendo. Or shorter, thus: Transactio est de re dubia et lite ancipite ne dum ad finem ducta, non gratuita pactio. It is commonly defined an assurance by matter of record, and is founded upon a supposed previously existing right, and upon a writ requiring the party to perform his covenant; although a fine may be levied upon any writ by which lands may be demanded, charged, or bound. It has also been defined an acknowledgment on record of a previous gift or feoffment, and prima facie carries a fee, although it may be limited to an estate for life or in fee tail. Prest. on Convey. 200, 202, 268, 269 2 Bl. Com. 348−9.

2. The stat. 18 E. I., called modus levandi fines, declares and regulates the manner in which they should be levied and carried on and that is as follows: 1. The party to whom the land is conveyed or assured, commences an action at law against the other, generally an action of covenant, by suing out of a writ of praecipe, called a writ of

covenant, that the one shall convey the lands to the other, on the breach of which agreement the action is brought. The suit being thus commenced, then follows,

2. The licentia concordandi, or leave to compromise the suit. 3. The concord or agreement itself, after leave obtained by the court; this is usually an acknowledgment from the deforciants, that the lands in question are the lands of the complainants. 4. The note of the fine, which is only an abstract of the writ of covenant, and the concord naming the parties, the parcels of land, and the agreement. 5. The foot of the fine or the conclusion of it, which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

3. Fines thus levied, are of four kinds. 1. What in law French is called a fine sur cognizance de droit, come ceo que il ad de son done; or a fine upon the acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. This fine is called a feoffment of record. 2. A fine sur cognizance de droit tantum, or acknowledgment of the right merely. 3. A fine sur concessit, is where the cognizor, in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the consignee an estate de novo, usually for life or years, by way of a supposed composition. 4. A fine sur done grant et render, which is a double fine, comprehending the fine sur cognizance de droit come ceo, &c., and the fine sur concessit; and may be used to convey particular limitations of estate, and to persons who are strangers, or not named in the writ of the covenant, whereas the fine sur cognizance de droit come ceo &c., conveys nothing but an absolute estate either of inheritance, or at least of freehold. Salk. 340. In this last species of fines, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger some other estate in the premises. 2 Bl. Com. 348 to 358. See Cruise on Fines; Vin. Abr. Fine; Sheph. Touch. c. 2; Bac. Ab. Fines and Recoveries; Com. Dig. Fine.

FINE, criminal law. Pecuniary punishment imposed by a lawful tribunal, upon a person convicted of crime or misdemeanor. See Shep. Touchs. 2; Bac. Abr. Fines and Amercements.

2. The amount of the fine is frequently left to the discretion of the court, who ought to proportion the fine to the offence. To prevent the abuse of excessive fines, the Constitution of the United States directs that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Amendm. to the Constitution, art. 8. See Division of opinion.

FINE FOR ALIENATION. During the vigor of the feudal law, a fine for alienation was a sum of money which a tenant by knight's service paid to his lord for permission to alienate his right in the estate he held, to another, and by that means to substitute a new tenant for himself. 2 Bl. Com. 71, But when the tenant held land of the king, in capite, by socage tenure, he was bound to pay such a fine, as well as in the case of knight service. 2 Bl. Com. 89. These fines are now abolished. In France, a similar demand from the tenant, made by the lord when the former alienated his estate, was called lods et vente. This imposition was abolished, with nearly every feudal right, by the French revolution.

FIRE ACCIDENTAL. One which arises in consequence of some human agency, without any intention, or which happens by some natural cause, without human agency.

2. Whether a fire arises purely by accident, or from any other cause when it becomes uncontrollable and dangerous to the public, a man may, in general, justify the destruction of a house on fire for the protection of the neighborhood, for the maxim salus populi est suprema lex, applies in such case. 11 Co. 13; Jac. Inter. 122, max. 115. Vide Accident; Act of God, and 3 Saund. 422 a, note 2; 3 Co. Litt. 57 a, n. 1; Ham. N. P. 171; 1 Cruise's Dig. 151, 2; 1 Vin. Ab. 215; 1 Rolle's Ab. 1; Bac. Ab. Action on the case, F; 2 Lois des Batim. 124; Newl. on Contr. 323; 1 T. R. 310, 708; Amb. 619; 6 T. R. 489.

3. When real estate is let, and the tenant covenants to pay the rent during the term, unless there are proper exceptions to such covenants, and the premises are afterwards destroyed by fire, during the term, the rent must be paid, although there be no enjoyment; for the common rule prevails, res perit domino. The tenant, by the accident, loses his term, the landlord, the residence. Story, Eq. Jur. _102.

FIREBOTE. Fuel for necessary use; a privilege allowed to tenants to take necessary wood for fuel.

FIRKIN. A measure of capacity equal to nine gallons. The word firkin is also used to designate a weight, used for butter and cheese, of fifty−six pounds avoirdupois.

FIRM. The persons composing a partnership, taken collectively, are called the firm. Sometimes this word is used synonymously with partnership.

2. The name of a firm should be distinct from the names of all other firms. When there is a confusion in this

respect, the partners composing one firm May, in some cases, be made responsible for the debts of another. For example, where three persons carried on a trade under the firm of King and Company, and two of those persons, with another, under the same firm, carried on another partnership; a bill under the firm, and which was drawn on account of the one partnership, was made the ground of an action of assumpsit against the other. Lord Kenyon was of opinion that this company was liable; that the partner not connected with the company that drew the bill, having traded along with the other partner under that firm, persons taking bills under it, thougb without his knowledge, had a right to look to him for payment. Peake's N. P. Cas. 80; and see 7 East, R. 210; 2 Bell's Com. 670, 6th ed.; 3 Mart. N. S. 39. But it would seem, 1st. That any act distinctly indicating credit to be given to one of the partnerships, will fix the election of the creditor to that company; and 2d. That making a claim on either of the firms, or, when they are insolvent, on either of the estates, will have the same effect.

3. When the style of the firm has been agreed upon, for example, John Doe and Company, the partners who sign the name of the firm are required to use such name in the style adopted, and a departure from it may have the double effect of rendering the individual partner who signs it, personally liable not only to third persons, but to his co−partners; Story, Partn. _102, 202 and it will be a breach of the agreement, if the partner sign his own name, and add, "for himself and partners." Colly. Partn. B. 2, c. 2, _2; 2 Jac. & Walk. 266.

4. As a general rule a firm will be bound by the acts of one of the partners in the course of their trade and business, and will be discharged by transactions with a single partner. For example, the payment or satisfaction of a debt by a partner, is a satisfaction and payment by them all; and a release to one partner, is in release to them all. Go. Litt. 232 n; 6 T. R. 525. Vide Partner; Partnership.

5. It not unfrequently happens that the name of the firm is the name of only one of the partners, and that such partner does business in his own name on his private or separate account. In such case, if the contract be entered into for the firm, and there is express or implied proof of that fact, the partnership will be bound by it; but when there is no such proof, the presumption will be that the debt was contracted by the partner on his own separate account, and the firm will not be responsible. Story on Part. _139; Colly. on Partn. Book 3, c. 1, _2; 17 Serg. & Rawle, 165; 5 Mason, 176; 5 Peters, 529; 9 Pick. 274; 2 Bouv. Inst. n. 1442, et seq.

FIRMAN. A passport g ranted by the Great Mogul, to captains of foreign vessels, to trade within the territories over which he has jurisdiction; a permit.

FIRST PURCHASER. In the English law of descent, the first purchaser was he who first acquired an estate in a family, which still owns it. A purchase of this kind signifies any mode of acquiring an estate, except, by descent. 2 BI; Com. 220.

FISC, civil law. The treasury of a prince. The public treasury. Hence to confiscate a thing, is to appropriate it to the fisc. Paillet, Droit Public, 21, n, says that fiscus, in the Roman law, signified the treasure of the prince, and aerarium, the treasure of the state. But this distinction was not observed in France. See Law 10, ff. De jure Fisci.

FISCAL. Belonging to the fisc, or public treasury.

FISH An animal which inhabits the water, breathes by the means of gills, and swims by the aid of fins, and is oviparous.

2. Fishes in rivers and in the sea, are considered as animals ferae naturae, and consequently no one has any property in them until they have been captured; and, like other wild animals, if having been taken, they escape and. regain their liberty, the captor loses his property in them. Vide Ferae Naturae. The owner of a fishery in the lower part of a stream cannot construct any contrivance by which to obstruct the passage of fish up the stream. 5 Pick. R. 199.

FISHERY, estates. A place prepared for catching fish with nets or hooks. This term is commonly applied to the place of drawing a seine, or net. 1 Whart. R. 131, 2.

2. The right of fishery is to be considered as to tide or navigable waters, and to rivers not navigable. A river where the tide ebbs and flows is considered an arm of the sea. By the common law of England every navigable river within the realm as far as the sea ebbs and flows is deemed a royal river, and the fisheries therein as belonging to the crown by prerogative, yet capable of being granted to a subject to be held or disposed of as private property. The profit of such fisheries, however, when retained by the crown, is not commonly taken and appropriated by the king, unless of extraordinary value, but left free to all the people. Dav. Rep. 155; 7 Co. 16, a: Plowd, 154, a. Within the tide waters of navigable rivers in some of the United States, private or several fisheries were established, during the colonial state, and are still held and enjoyed as such, as in the Delaware. 1 Whart. 145, 5; 1 Baldw. Rep. 76. On the high seas the right of fishing jure gentium is common to all persons, as a general

rule. In. rivers, not navigable, that is, where there is no flux or reflux of the tide, the right of fishing is incident to the owner of the soil, over which the water passes, and to the riparian proprietors, when a stream is owned by two or more. 6 Cowen's R. 369; 5 Mason's R. 191; 4 Pick. R. 145; 5 Pick. R. 199. The rule, that the right of fishery, within his territorial limits, belongs exclusively to the riparian owner, extends alike to great and small streams. The owners of farms adjoining the Connecticut river, above the flowing of the tide, have the exclusive right of fishing opposite their farms, to the middle of the river although the public have an easement in the river as a public highway, for passing and repassing with every kind of water craft. 2 Conn. R. 481. The right of fishery may exist, not only in the owner of the soil or the riparian proprietor, but also in another who has acquired it by grant or otherwise. Co. Litt. l22 a, n. 7; Schul. Aq. R. 40 41; Ang. W. C. 184; sed vide 2 Salk. 637.

3. Fisheries have been divided into: 1. Several fisheries. A several fishery is one to which the party claiming it has the right of fishing, independently of all others, as that no person can have a coextensive right with him in the object claimed, but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814. A several fishery, as its name imports, is an exclusive property; this, however, is not to be understood as depriving the territorial owner of his right to a several fishery, when he grants to another person permission to fish; for he would continue to be the several proprietor, although he should suffer a stranger to hold a coextensive right with himself. Woolr. on Wat. 96.

4. − 2. Free fisheries. A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Com. 329. Mr. Woolrych says, that sometimes a free fishery is confounded with a several, sometimes it is said to be synonymous with common, and again treated as distinct from either. Law of Waters, &c. 97.

5. − 3. Common of Fishery. A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Com. 329. A distinction has been made between a common fishery, (commune piscarium,) which may mean for all mankind, as in the sea, and a common of fishery, (communium piscariae,) which is a right, in common with certain other persons, in a particular stream. 8 Taunt. R. 183. Mr. Angell seems to think that common of fishery and free fishery, are convertible terms, Law of Water Courses, c. 6., s. 3, 4.

6. These distinctions in relation to several, free, and common of, fishery, are not strongly marked, and the lines are sometimes scarcely perceptible. "Instead of going into the black letter books, to learn what was a fishery, and a free fishery, and a several fishery," says Huston, J., "I am disposed to regard our own acts, even though differing, from old feudal times." 1 Whart. R. 132. See 14 Mus. R. 488; 2 Bl. Com. 39, 40; 7 Pick. R. 79. Vide, generally, Ang. Wat. Co.; Index, h. t; Woolr. on Wat. Index, h. t; Schul. Aq. R. Index, h. t; 2 Rill. Ab. ch. 18, p. 1,63; Dane's Ab. h. t; Bac. Ab. Prerogative, B 3; 12 John. R. 425; 14 John. R. 255 14 Wend. R. 42; 10 Mass., R. 212; 13 Mass. R. 477; 20 John. R. 98; 2 John. It. 170; 6 Cowen, R. 369; 1 Wend. R. 237; 3 Greenl. R. 269; 3 N. H. Rep. 321; 1 Pick. R. 180; 2 Conn. R. 481; 1 Halst. 1; 5 Harr. and Johns. 195; 4 Mass. R. 527; and the articles Arm of the sea; Creek; Navigable River; Tide.

TO FIX. To render liable.

2. This term is applied to the condition of special bail; when the plaintiff has issued a ca. sa. which has been returned by the sheriff, non est, the bail are said to be fixed, unless the defendant be surrendered within the time allowed ex gratia, by the practice of the court. 5 Binn. R. 332; Coxe, R. 110; 12 Wheat. R. 604; 4 John. R. 407; 1 Caines, R. 588. The defendant's death after the return is no excuse for not surrendering him during the time allowed ex gratia. See Act of God; Death. In New Hampshire, 1 N. H. Rep. 472, and Massachusetts, 2 Mass. R. 485, the bail are not fixed until judgment is obtained against them on a scire facias, or unless the defendant die after, the return of non est or) the execution against him. In North Carolina, the bail are not fixed till judgment against them. 3 Dev. R. 155. When the bail are fixed, they are absolutely responsible.

FIXTURES, property. Personal chattels annexed to land, and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of the owner of the freehold.

2. Questions frequently arise as to whether fixtures are to be considered real estate, or a part of the freehold; or whether they are to be treated as personal property. To decide these, it is proper to consider the mode of annexation, the object and customary use of the thing, and the character of the contending parties.

3. − 1. The annexation may be actual or constructive; 1st. By actual connexation or annexation is understood every mode by which a chattel can be joined or united to the freehold. The article must not however be laid upon the ground; it must be fastened, fixed or set into the land, or into some such erection as is unquestionably a part of

the realty. Bull. N. P. 34; 8 East, R. 38; 9 East, R. 215; 1 Tauut. 21; Pothier, Traite des Choses, _1. Looks, iron stoves set in brick−work, posts, and window blinds, afford examples of actual annexation. See 5 Rayw. 109; 20 John. 29; 1 Harr. and John. 289; a M'chrd, 553; 9 Conn. 63; 1 Miss. 508, 620; 7 Mass. 432; 15 159; 3 Stew. 314.

2d. Some things have been held to be parcel of the realty, which are not in a real sense annexed, fixed, or fastened to the freehold; for example, deeds or chattels which relate to the title of the, inheritance, go to the heir; Shep. Touch. 469; but loose, movable machinery, not attached nor affixed, which is used in prosecuting any business to which the freehold is adapted, is not considered as part of the real estate, nor as an appurtenance to it. 12 New H. Rep. 205. See, however, 2 Watts,& S. 116, 390. It is also laid down that deer in a park, fish in a pond, and doves in a dove−house, go to the heir and not to the executor, being with keys and heir−looms, constructively annexed to the inheritance. Shepb. Touchs. 90; Pothier, Traite des Choses, _1.

4. − 2. The general rule is, that fixtures once annexed to the freehold, become a part of the realty. But to this rule there are exceptions. These are, 1st. Where there is a manifest intention to use the fixtures in some employment distinct from that of the occupier of the real estate. 2d. Where it has been annexed for the purpose. of carrying on a trade; 3 East, 88; 4 Watts, 330; but the distinction between fixtures for trade and those for agriculture does not in the United States, seem to have been generally admitted to prevail. 8 Mass. R. 411; 16 Mass. R. 449; 4 Pick. R. 311; and set, 2 Peter's Rep. 137. The fact that it was put up for the purposes of trade indicates an intention that the thing should not become a part of the freehold. See 1 H. B]. 260. But if there be a clear intention that the thing should be annexed to the realty, its being used for the purposes of trade would not perhaps bring the case within one of the exceptions. 1 H. BI, 260.

5. − 3. There is a difference as to what fixtures may or may not be removed, as the parties claiming them stand in one relation or another. These classes of persons will be separately considered.

6. − lst. When the question as to fixtures arises between the executor and the heir. The rule, as between these persons has retained much of its original strictness, that the fixtures belong to the real estate, or the heir i but if the ancestor manifested an intention, which is to be inferred from circumstances, that the things affixed should be considered as personally, they must be so considered, and will belong to the executor. See Bac. Abr. Executors and Administrators; 2 Str. 1141; 1 P. Wms. 94 Bull. N. P. 34.

7. 2d. As between vendor and vendee. The rule is as strict between these persons as between the executor and the heir; and fixtures erected by the vendor for the purpose of trade and manufactures, as pot−ash kettles for manufacturing ashes, pass to the vendee of the land. 6 Cowen, R. 663; 20 Johns. R. 29. Between mortgagor and mortgagee, the rule seems to be the same as that between vendor and vendee. Amos & F. on Fixt. 188; 1 5 Mass. R. 1 5 9; 1 Atk. 477 16 Verm. 124; 12 N. H. Rep. 205.

8. − 3d. Between devisee and executor. On a devise of real estate, things permanently annexed to the realty at the time of the testator's death, will pass to the devisee. His right to fixtures will be similar, to that of the vendee. 2 Barn. & Cresw. 80.

9. − 4th. Between landlord and tenant for years. The ancient rule is relaxed, and the right of removal of fixtures by the tenant is said to be very extensive. 3 East, 38. But his right of removal is held to depend rather upon the question whether the estate will be left in the condition in which he took it. 4 Pick. R. 311.

10. − 5th. In cases between tenants for life or their executors and the remainder−men or reversioners, the right to sever fixtures seems to be the same as that of the tenant for years. It has been held that the steam engines erected in a colliery, by a tenant for life, should belong to the executor and not go to the remainder−man. 3 Atk. R. 1 3.

11. − 6th. In a case between the landlord and a tenant at will, there seems to be no reason why the same privilege of removing fixtures should not be allowed. 4 Pick. R. 511; 5 Pick. R. 487.

12. The time for exercising the right of removal of fixtures is a matter of importance a tenant for years may remove them at any time before he gives up the possession of the premises, although it should be after his term has expired, and he is holding over. 1 Barn. & Cres. 79, 2 East, 88. Tenants for life or at will, having uncertain, interests in the land, may, after the determination of their estates, not occasioned by their own faults, have a reasonable time within which to remove their fixtures. Hence their right to bring an action for them. 3 Atk. 13. In case of their death the right passes to their representatives.

See, generally, Vin. Abr. Landlord and Tenant, A; Bac. Abr. Executors, &c. H 3; Com. Dig. Biens, B and C; 2 Chitty's Bl. 281, n. 23 Pothier, Traite des Choses; 4 Co. 63, 64 Co. Litt. 53, a, and note 5, by Hargr.; Moore, 177; Hob. 234; 3 Salk. 368; 1 P. Wins. 94; 1 Atk. 553; 2 Vern. 508; 3 Atk. 13; 1 H. Bl. 259, n Ambl. 113; 2 Str. 1141; 3 Esp. 11; 2 East, 88; 3 East, 38; 9 East, 215; 3 Johns. R. 468; 7 Mass. 432; 6 Cowen, 665; 2 Kent, Com. 280;

Ham., Part. 182; Jurist, No. 19, p. 53; Arch. L. & T. 359; Bouv. Inst. Index, h. t.

FLAG OF THE UNITED STATES. By the act entitled, "An act to establish the flag of the United States," passed April 4, 1818, 3 Story's L. U. S., 1667, it is enacted−

2. − _1. That from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white: that the union be twenty stars, white in a blue field.

3. − _2. That, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission.

FLAGRANS CRIMEN. This, among the Romans, signified. that a crime was then or had just been committed for example, when a crime has just been committed and the corpus delictum is publicly exposed; or if a mob take place; or if a house be feloniously burned, these are severally flagrans crimen.

2. The term used in France is flagrant delit. The code of criminal instruction gives the following concise definition of it, art. "Le delit qui se commet actuellement ou qui vient de se coramettre, est un flagrant delit."

FLAGRANTE DELICTO. The act of committing a crime; when a person is arrested flagrante delicto, the only evidence required to convict him, is to prove that fact.

FLEET, punishment, Eng. law, Saxon fleot. A place of running water, where the tide or float comes up. A prison in London, so called from a river or ditch which was formerly there, on the side of which it stood.

FLETA. The title of an ancient law book, supposed to have been written by a judge who was confined in the Fleet prison. It is written in Latin, and is divided into six books. The author lived in the reigns of Ed. II. and Ed. III. See lib. 2, cap. 66, _ Item quod nullus; lib. 1, cap. 20, _ qui coeperunt, pref. to 10th Rep. Edward II. was crowned, A. D. 1306. Edward III. was crowned 1326, and reigned till A. D. 1377. During this period the English law was greatly improved, and the lawyers and judges were very learned. Hale's Hist. C. L. 173. Blackstone 4 Com. 427, says, of this work, "that it was for the most part law, until the alteration of tenures took place." The same remark he applies to Britton and Hingham.

FLIGHT, crim. law. The evading the course of justice, by a man's voluntarily withdrawing himself. 4 Bl. Com. 387. Vide Fugitive from justice.

FLORIDA. The name of one of the new states of the United States of America. It was admitted into the Union by virtue of the act of congress, entitled An Act for the admission of the states of Iowa and Florida into the Union, approved March 3, 1845.

2. The constitution was adopted on the eleventh day of January, eighteen hundred and thirty−nine. The powers of the government are divided into three distinct branches, namely, the legislative, the executive, and the judicial,

3. − _1. Of the legislative power. 1. The legislative power of this state shall be vested in two distinct branches, the one to be styled the senate, the other the house of representatives, and both together, "The General Assembly of the State of Florida," and the style of the laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened."

4. 2. A majority of each house shall constitute a quorum to do business, but smaller number may adjourn from day to day, and may compel the attendance of absent members in such. manner, and under such penalties, as each house may prescribe.

5. − 3. Each house may determine the rules of its own proceedings, punish its members for disorderly behaviour, and, with the consent of two−thirds, expel a member; but not a second time for the same cause.

6. − 4. Each house, during the session, may punish by imprisonment, any person not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings, provided such imprisonment shall not extend beyond the end of the session.

7. − 5. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, and the yeas and nays of, the members of each house shall be taken, and entered upon the journals, upon the final passage of every bill, and may, by any two members, be required upon any other question, and any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public, or an individual, and have the reasons of his dissent entered on the journal.

8. − 6. Senators and representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; and for any speech or debate, in either house, they shall not be questioned in any other place.

9. − 7. The general assembly shall make provision, by law, for filling vacancies that may occur in either house,

by the death, resignation, (or otherwise,) of any of its members.

10. − 8. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may imperiously require secrecy.

11. − 9. Neither house shall, without the consent of the other, adjourn for more than three days, nor, to any other place than that in which they may be sitting.

12. − 10. Bills may originate in either house of the general assembly, and all bills passed by one house may be discussed, amended or rejected by the other; but no bill shall have the force of law until, on three several days, it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, four−fifths of the house in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses.

13. − 11. Each member of the general assembly shall receive from the public treasury such compensation for his services,as may be fixed by law, but no increase of compensation shall take effect during the term for which the representatives were elected when such law passed.

14. − 12. The sessions of the general assembly shall be annual, and commence on the fourth Monday in November in each year, or at such other time as may be prescribed by law.

15. The senators will be considered with regard, 1. To the qualification of the electors. 2. The qualification of the members. 3. The number of members. 4. The time of their election. 5. The length of service.

16. − 1st. The senators shall be elected by the qualified voters. Const. art. 4, s. 5.

17. − 2d. No man shall be a senator unless be be a white man, a citizen of the United States, and shall have been an inhabitant of Florida two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen, and shall have attained the age of twenty−five years. Const. art. 4, s. 5. And to this there are the following exceptions:

All banking officers of any bank in the state are ineligible until after twelve−months after they shall go out of such office. Art. 6, 3.

All persons who shall fight, or send, or accept a duel, the probable issue of which may be death, whether committed in or out of the state. Art. 6, s. 5.

All collectors or holders of public money. Art. 6, s. 6.

All ministers of the Gospel. Art. 6, s. 1 0.

All persons who shall have procured their elections by bribery.

All members of congress, or persons holding or exercising any, office of profit under the United States, or under a foreign power. Art. 6, s. 18.

18. − 3d. The number of senators may be varied by the general assembly, but it shall never be less. than one−fourth, nor more than one−half of the whole number of the house of representatives. Art. 9, s. 2.

19. − 4th. The time and place of their election is the same as those for the house of representatives. Art. 4, s. 5.

20. − 5th. They are elected for the term of two years. Art. 4, s. 5.

21. The house of representatives will be considered under the same beads.

22. − 1st. Members of the house of representatives shall be chosen by the qualified voters.

23. − 2d. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of the state two years next preceding his election, and the last year thereof a resident of the county for which he shall be chosen, and have attained the age of twenty−one years. Art. 4, s. 4. And the same persons are disqualified, who are disqualified as senators.

24. − 3d. The number of members shall never exceed sixty. Art. 4, s. 18.

25. − 4th. The. time of holding the election is the first Monday of October annually.

26. − 5th. Members of the house of representatives are elected for one year from the day of the commencement of the general election, and no longer. Art. 4, s. 2.

27. − _2. Of the executive. The supreme executive power is vested in a chief magistrate, who is styled the governor of Florida. Art. 3.

28. No person shall be eligible to the office of governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States ten years, or an inhabitant of Florida at the time of the adoption of the constitution, (being a citizen of the United States,) and shall have resided in Florida at least five years preceding the day of election.

29. The governor shall be elected for four years, by the qualified electors, at the time and place where they shall

vote for representatives; and shall remain in office until a successor shall be chosen and qualified, and shall not be eligible to reelection until the expiration of four years thereafter. 30. His general powers are as follows: 1. He is commander−in−chief of the army, navy, and militia of the state. 2. He shall take care that the laws be faithfully executed. 3 . He may require information from the officers of −the executive department. 4. He may convene the general assembly by proclamation upon particular occasions. 5. He shall, from time to time, give information to the general assembly. 6. He may grant pardons, after conviction, in all cases except treason and impeachment, and in these cases, with the consent of the senate; and he may respite the sentence in these cases until the end of the next session of the senate. 7. He, may approve or veto bills.

31. In case of vacancy in the office of governor, the president of the senate shall act in his place, and in case of his default, the speaker of the house of representatives shall fill the office of governor. Art. 3, s. 21.

32. − _3. Of the judicial department. 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, courts of chancery, circuit courts, and justices of the peace: Provided, the, general assembly may also vest such criminal jurisdiction as may be deemed necessary in corporation courts; but such jurisdiction shall not extend to capital offences. Art. 5, s. 1.

33. − 2. Justices of the supreme court, chancellors, and judges of the circuit courts, shall be elected by, the concurrent vote of a majority of both houses of the general assembly. Art. 5, s. 11.

34. − 3. The judges of the circuit courts shall, at the first session. of the general assembly to be holden under the constitution, be elected for the term of five years and shall hold their office, for that term, unless sooner removed, under the provisions in the constitution; and at the expiration of five years, the justices of the supreme courts, and the judges of the circuit courts, shall be elected for the term of, and during their good behaviour.

35. Of the supreme court. 1. The powers of the supreme court are vested in, and its duties performed by, the judges of the several circuit courts, and they, or a majority of them, shall hold such session of the supreme court, and at such time and place as may be directed by law. Art. 5, s. 3. But no justice of the supreme court shall sit as judge, or take any part in the appellate court, on the trial or hearing of any case which shall have been decided by him in the court below. Art. 5, s. 18.

36. − 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only. Provided, that the said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs, as may be necessary to give it a general superintendance and control of all other courts. Art. 5, s. 2 .

37. − 3. The supreme court shall exercise appellate jurisdiction in all cases brought by appeal or writ of error from the several circuit courts, when the matter in controversy exceeds in amount or value fifty dollars.

38. Of the circuit courts. 1. The state is to be divided into circuits, and the circuit courts, held within such circuits, shall have original jurisdiction in all matters, civil and criminal, within the state, not otherwise excepted in this constitution. Art. 5, s. 6.

FLORIN. The name of a foreign coin. In all computations of customs, the florin of the southern states of Germany, shall be estimated at forty cents; the florin of the Austrian empire, and of the city of Augshurg, at forty−eight and one−half cents. Act March 22, 1846. The florin of the United Netherlands is computed at the rate of forty cents. Act of March 2, 1799, _61. Vide Foreign Coins.

FLOTSAM, or FLOTSAN. A name for the goods which float upon the sea when a ship is sunk, in distinction from Jetsam, (q. v.) and Legan. (q. v.) Bract. lib. 2, c. 5; 5 Co. 106; Com. Dig. Wreck, A Bac. Ab. Court of Admiralty, B.

FLUMEN, civ. law. The name of a servitude which consists in the right of turning the rain water, gathered in a spout, on another’s land., Ersk. Inst. B. 2, t. 9, n. 9. Vicat, ad vocem. See Stillicidium.

FOEDUS. A league; a compact.

FOENUS NAUTICUS . The name given to marine interest. (q. V.)

2. The amount of such interest is not limited by law, because the lender runs the risk of losing, his principal. Ersk. Inst. B. 4, t. 4, n. 76. See Marine Interest.

FOETICIDE, med. jur. Recently, this term has been applied to designate the act by which criminal abortion is produced. 1 Beck’s Med. Jur. 288; Guy, Med. Jur. 133. See Infanticide; Prolicide.

FOETURA, civil law. The produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property, by virtue of his right. Bowy. Mod. C. L. c. 14, p. 81.

FOETUS, med. jur. The unborn child. The name of embryo is sometimes given to it; but, although the terms are

occasionally used indiscriminately, the latter is more frequently employed to designate the state of an unborn child during the first three months after conception, and by some until quickening. A foetus is sometimes described by the uncouth phrase of infant in ventre sa mere.

2. It is sometimes of great importance, particularly in criminal law, to ascertain the age of the foetus, or how far it has progressed towards maturity. There are certain signs which furnish evidence on this subject, the principal of which are, the size and weight, and the formation of certain parts as the cartilages, bones, &c. These are not always the same, much of course must depend upon the constitution and health of the mother, and other circumstances which have an influence on the foetus. The average length and weight of the foetus at different periods of gestation, as deduced by Doctor Beck, from various observers, as found by Maygrier, is here given.

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³ ³ Beck. ³ Maygrier. ³ Beck. ³ Maygrier. ³
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³ ³ Length. ³ Weight. ³
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³30 days. ³3 to 5 lines. ³10 to 12 lines.³ ³9 to 10 grains.³
³ 2 Months ³2 inches. ³4 inches. ³2 ounces. ³5 drachms. ³
³ 3 do. ³3« inches. ³6 inches. ³2 to 3 ounces. ³2« ounces. ³
³ 4 do. ³5 to 6 inches. ³8 inches. ³4 to 6 ounces. ³7 to 8 ounces. ³
³ 5 do. ³7 to 9 inches. ³10 inches. ³9 to 10 ounces.³16 ounces. ³
³ 6 do. ³9 to 12 inches. ³12 inches. ³1 to 2 pounds. ³2 pounds. ³
³ 7 do. ³12 to 14 inches.³14 inches. ³2 to 3 pounds. ³3 pounds. ³
³ 8 do. ³16 inches. ³16 inches. ³3 to 4 pounds. ³4 pounds. ³
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3. The discordance apparent between them proves that the observations which have been made, are only an approximation to truth.

4. It is proper to remark that the Paris pound poids de marc, which was the weight used by Maygrier, differs from avoirdupois weight used by Dr. Beck. The pouud poids de marc, of sixteen ounces, contains 9216 Paris grains, whilst the avoirdupois contains only 8532.5 Paris grains. The Paris inch is 1.065977 English inch. Vide, generally, 1 Beck's Med. Jur. 239; 2 Dunglison's Human Physiology, 391; Ryauls Med. Jur. 137; 1 Chit. Med. Jur. 403; I Briand, Med. Leg. prem. partie, c. 4, art. 2; and the articles Birth; Dead Born; Foeticide; In ventre sa mere; infanticide; Life; and Quick with child.

FOLCMOTE. The name of a court among the Saxons. It was literally an assembly of the people or inhabitants of the tithing or town, its jurisdiction extended over disputes between neighbors, as to matters of trespass in meadows, corn, and the like.

FOLD−COURSE, Eng. law. By this phrase is understood land used as a sheepwalk; it also signifies land to which the sole right of folding the cattle of others is appurtenant; sometimes it means merely such right of folding. It is also used to denote the right of folding on another's land, which is called common foldage. Co. Litt. 6 a, note 1; W. Jo. 375 Cro. Cal. 432; 2 Vent. 139.

FOLK−LAND, Eng. law. Land formerly held at the pleasure of the lord, and resumed at his discretion. It was held in villenage. 2 Bl. Com. 90.

FOOT. A measure of length, containing one−third of a yard, or twelve inches. See Ell. Figuratively, it signifies the conclusion, the end; as, the foot of the fine, the foot of the account.

FOOT OF THE FINE, estates, conveyancing. The fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2

Bl. Com. 351.

FOR THAT, pleading. It is a maxim in law, regulating alike every form of action, that the plaintiff shall state his complaint in positive and direct terms, and not by way of recital. "For that," is a positive allegation; "For that whereas," in Latin "quod cum," (q. v.) is a recital. Hamm. N. P. 9.

FORBEARANCE, contracts. The act by which a creditor waits for the payment of the debt due him by the debtor, after it has become due.

2. When the creditor agrees to forbear with his debtor, this is a sufficient consideration to support an assumpsit made by the debtor. 4 John. R. 237; 2. Nott & McCord, 133; 2 Binn. R. 510; Com. Dig. Action upon the case upon assumpsit, B 1; Dane's Ab. Index, h. t.; 1 Leigh's N. P. 31; 1 Penna. R. 385; 4 Wash. C. C. R. 148; 5 Rawle's R. 69.

3. The forbearance must be of some right which can be enforces with effect against the party forborne; if it cannot be so enforced by the party forbearing, he has sustained no detriment, and the party forborne has derived no benefit. 4 East, 455 5 B. & Ald. 123. See 1 B. & A. 605 Burge on Sur. 12, 13. Vide Giving time. FORCE. A power put in motion. It is:

1. Actual; or 2. Implied.

2. − _1. If a person with force break a door or gate for an illegal purpose, it is lawful to oppose force to force; and if one enter the close of another, vi et armis, he may be expelled immediately, without a previous request; for there is no time to make a request. 2 Salk. 641; 8 T. R. 78, 357. And see tit. Battery, _2. When it is necessary to rely upon actual force in pleading, as in the case of a forcible entry, the words "manu forti," or with a strong hand should be adopted. 8 T. R. 357 358. But in other cases, the words "vi et armis," or " with force and arms," is sufficient. Id.

3. − _2. The entry into the ground of another, without his consent, is breaking his close, for force is implied in every trespass quare clausum fregit. 1 Salk. 641; Co. Litt. 257, b; 161, b; 162, a; 1 Saund: 81, 140, n. 4 8 T: R. 78, 358; Bac. Ab. Trespass; this Dict. tit. Close. In the case of false imprisonment, force is implied. 1 N. R. 255. And the same rule prevails where a wife, a daughter or servant, have been enticed away or debauched, though in fact they consented, the law considering them incapable of consenting. See 3 Wils. 18; Fitz. N. B. 89, 0; 5 T. R. 361; 6 East, 387; 2 N. R. 365, 454.

4. In general, a mere nonfeasance cannot be considered as forcible; for where there has been no act, there cannot be force, as in the case of the mere detention of goods without an unlawful taking. 2 Saund. 47, k 1. In general, by force is understood unlawful violence. Co. Litt. 161, b.; Bouv. Inst. Index, h. t. Vide Arms.

FORCE AND ARMS. The same as vi et armis. (q. v.)

FORCED HEIRS. In Louisiana they are those persons whom the testator or donor cannot deprive of the porttion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civ. Code of Lo. art. 1482. As to the portion of the estate they are entitled to, see the article Legitime. As to the causes for which forced heirs may be deprived of this right, see Disinherison.

FORCIBLE ENTRY or DETAINER, crim. law. An offence committed by unlawfully and violently taking or keeping possession of lands and tenements, with menaces, force and, arms, and without the authority of law. Com. Dig. h. t.

2. The proceedings in case of forcible entry or detainer, are regulated by statute in the several states. (q. v.) The offence is generally punished by indictment. 4 Bl. Com. 148 Russ. on Cr. 283. A forcible entry and a forcible detainer, are distinct offences. 1 Serg. & Rawle, 124; 8 Cowen, 226.

3. In the civil and French law, a similar remedy is given for thing offence. The party injured has two actions, a criminal or a civil. The action is called actio interdictum undevie. In French, l'action reintegrande. Poth. Proc. Civ. Partie 2, c. 3, art. 3; 11 Toull. Nos. 123, 134, 135, 137, pp. 179, 180, 182, and, generally, from p. 163. Vide, generally, 3 Pick. 31; 3 Halst. R. 48; 2 Tyler's R. 64; 2 Root's R. 411; Id . 472; 4 Johns. R. 150; 8 Johns. R. 44; 10 Johns. R. 304; 1 Caines' R. 125; 2 Caines' R. 98; 9 Johns. R. 147; 2 Johns. Cas. 400; 6 Johns. R. 334; 2 Johns. R. 27; 3 Caines' R. 104; 11 John. R. 504; 12 John. R. 31; 13 Johns. R. 158; Id. 340; 16 Johns. R. 141; 8 Cowen, 226; 1 Coxe's R. 258; Id. 260; 1 South. R. 125; 1 Halst. R. 396; 3 Id. 48; 4 Id. 37; 6 Id. 84; 1 Yeates, 501; Addis. R. 14, 17, 43, 316, 355; 3 Serg. & Rawle, 418; 3 Yeates, 49; 4 Dall. 212; 4 Yeates, 326; 3 Harr. & McHen. 428; 2 Bay, R. 355; 2 Nott & McCord, 121; 1 Const. R. 325; Cam. & Norw. 337, 340; Com. Dig. h. t.; Vin. &b. h. t.; Bac. Ab. h. t.; 2 Chit. Pr. 281 to 241.

4. The civil law punished even the owner of an estate, in proportion to the violence used, when he forcibly took

possession of it, a fortiori, a stranger. Domat, Supp. au Dr. Pub. 1. 3, t. 4, s. 3.

FORECLOSURE, practice. A proceeding in chancery, by which the mortgagor's right of redemption of the mortgaged premises is barred or foreclosed forever.

2. This takes place when the mortgagor has forfeited his estate by non−payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption; in such case the mortgagee may file a bill, calling on the mortgagor, in a court of equity, to redeem his estate presently, or in default thereof, to be forever closed or barred from any right of redemption.

3. In some cases, however, the mortgagee obtains a decree for a sale of the land, under the direction of an officer of the court, in which case the proceeds are applied to the discharge of encumbrances, according to their priority. This practice has been adopted in Indiana, Kentucky, Maryland, South Carolina, Tennessee, and Virginia. 4 Kent, Com., 180. When it is the practice to foreclose without a sale, its severity is mitigated by enlarging the time of redemption from six months to six months, or for shorter periods, according to the equity arising from the circumstances. Id. Vide 2 John. Ch. R, 100; 6 Pick. R. 418; 1 Sumn. R. 401; 7 Conn. R. 152; 5 N; H. Rep. 30; 1 Hayw. R. 482; 5 Han. R. 554; 5 Yerg. 240; 2 Pick. R. 40; 4 Pick. R. 6; 2 Gallis. 154; 9 Cow n's R. 346; 4 Greenl. R. 495; Bouv. Inst. Index, h. t.

FOREHAND RENT, Eng. law. A species of rent which is a premium given by the tenant at the time of taking the lease, as on the renewal of leases by ecclesiastical corporations, which is considered in the nature of an improved rent. 1 T. R. 486; 3 T. R. 461; 3 Atk. 473; Crabb. on R. P. _155.

FOREIGN. That which belongs to another country; that which is strange. 1 Peters, R. 343.

2. Every nation is foreign to all the rest, and the several states of the American Union are foreign to each other, with respect to their municipal laws. 2 Wash. R. 282; 4 Conn. 517; 6 Conn. 480; 2 Wend. 411 1 Dall. 458, 463 6 Binn. 321; 12 S. & R. 203; 2 Hill R. 319 1 D. Chipm. 303 7 Monroe, 585 5 Leigh, 471; 3 Pick. 293.

3. But the reciprocal relations between the national government and the several states composing the United States are not considered as foreign, but domestic. 9 Pet. 607; 5 Pet. 398; 6 Pet. 317; 4 Cranch, 384; 4 Gill & John. 1, 63. Vide Attachment, for foreign attachment; Bill of exchange, for foreign bills of exchange; Foreign Coins; Foreign Judgment; Foreign Laws; Foreigners.

FOREIGN ATTACHMENT. The name of a writ. By virtue of a foreign attachment, the property of an absent debtor is seised for the purpose of compelling an appearance, and, in default of that, to pay the claim of the plaintiff. Vide Attachment.

FOREIGN COINS, com. law. The money of foreign nations.

2. Congress have, from time to time, regulated the rates at which certain foreign coins should pass. The acts now in force are the following.

3. The act of June 25, 1834, 4 Shaisw. Cont. of Story's L. U. S. 2373, enacts, sec. 1. That from and after the passage of this act, the following silver coins shall be of the legal value and shall pass current as money within the United States, by tale, for the payment of all debts and demands, at the rate of one hundred cents the dollar, that is to say, the dollars of Mexico, Peru, Chili,.and Central America, of not less weight than four hundred and fifteen grains each, and those re−stamped in Brazil of the like weight, of not less fineness than ten ounces, fifteen pennyweights of pure silver, in the troy pound of twelve ounces of standard silver; and five franc pieces of France, when of not less fineness than ten ounces and sixteen pennyweights in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty−four grains each, at the rate of ninety−three cents each.

4. The act of June 28, 1834, 4 Sharsw. Cont. of Story's L. U. S, 2377, enacts) sect. 1. That from and after the thirtyfirst day of July next, the following gold coins shall pass current as money within the United States, and be receivable in all payments, by weight, for the payment of all debts and demands, at the rates following, that is to say: the gold coins of Great Britain and Portugal and Brazil, of not less than twenty−two, carats fine, at the rate of ninety−four cents and eight−tenths of a cent per pennyweight; the gold coins of France nine−tenths fine, at the rate of ninety−three cents and one−tenth of a cent per pennyweight; and the gold coins of Spain, Mexico, and Colombia, of the fineness of twenty carats three. grains and seven−sixteenths, of a grain, at the rates of eighty−nine events and nine−tenths of a cent per pennyweight.

5. By the act of. March 3, 1823, 3 Story's L. U. S. 1923, it is enacted, sect. 1. That from and after the passage of this act, the following gold coins shall be received in all payments on account of public lands, at the several and respective rates following, and not otherwise, viz.: the gold coins of Great Britain and Portugal, and of their

present standard, at the rate of one hundred cents for every twenty−seven grains, or eighty−eight cents and eight−ninths per pennyweight; the gold coins of France of their present standard, at the rate of one hundred cents for every twenty−seven and a half grains, or eighty−seven and a quarter cents per pennyweight; and the gold coins of Spain of their present standard, at the rate of one hundred cents for every twenty−eight and a half grains or, eighty−four cents per pennyweight.

6. The act of March 2, 1 799, 1 Story's L. U. S. 573, to regulate the collection of duties on imports and tonnage, sect. 61, p. 626, enacts, That the ad valorem rates of duty upon goods, wares, and merchandise, at the place of importation, shall be estimated by adding twenty per cent to the actual costs thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place or country, including all charges; commissions, outside packages, and insurance, only excepted. That all foreign coins and currencies shall be estimated at the following rates; each pound sterling of Great Britain, at four dollars and forty−four cents; each livre tournois of France, at eighteen and a half cents; each florin, or guilder of the United Netherlands, at forty cents; each marc−banco of Hamburg, at thirty−three and one−third cents; each rix dollar of Denmark, at one hundred cents: each rial of plate, and each rial o vellon, of Spain, the former at ten cents, the latter at five cents, each; each milree of Portugal, at one dollar and twenty−four cents; each pound sterling of Ireland, at four dollars and ten cents; each tale o China, at one dollar and forty−eight cents; each pagoda of India, at one dollar and ninety four cents; each rupee, of Bengal, at fifty−five cents and one half; and all other denominations of money, in value as nearly as may be to the said rates, or the intrinsic value thereof, compared with money of the United States: Provided, that it shall be lawful for the president of the United States to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchandise, imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

7. By the act of July 14 1832, s 16, 4 Sharsw. Cont. of Story's L. U. S. 2326, the law is changed as to the value of the pound sterling, in calculating the rates of dutics. It is thereby enacted, that from and after the said third day of March, one thousand eight hundred and thirty−three, in calculating the rate of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents.

8 . The act of March 3, 1843, provides, That in all computations of the value of foreign moneys of account at the custom houses of the United States, the thaler of Prussia shall be deemed and taken to be of the value of sixty−eight and one−half cents; the mii−reis of Portugal shall be deemed and taken to be of the value of one hundred and twelve cents; the rix dollar of Bremen shall be deemed and taken to be of the value of seventy−eight and three quarter cents; the thaler of Bremen, of seventy−two grotes, shall be deemed and taken to be of the value of seventy−one cents; that the mil−reis of Madeira shall be deemed and taken to be of the value of one hundred cents; the mil−reis of the Azores shall be deemed and taken to be of the value of eighty−three and one−third cents; the marc−banco of Hamburg shall be deemed and taken to be of the value, of thirty−five cents; the rouble of Russia shall be deemed and taken to be of the value of seventy−five cents; the rupee of British India shall be deemed and taken to be of the value of forty−four and one half cents; and all former laws inconsistent herewith are hereby repealed.

9. And the act of May 22, 1846, further directs, That in all computations at the custom−house, the foreign coins and money of account herein specified shall be estimated as follows, to wit: The specie dollar of Sweden and Norway, at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. The thaler of Prussia and of the Northern States of Germany, at sixty−nine cents. The florin of the Southern States of Germany, at forty cents. The florin of the Austrian empire, and of the city of Augshurg, at forty−eight and one half cents. The lira of the Lombardo−Venetian Kingdom, and the lira of Tuscany, at sixteen cents. The franc of France, and of Belgium, and the lira of Sardinia, at eighteen cents six mills. The ducat of Naples, at eighteen cents. The ounce of Sicily, at two dollars and forty cents. The pound of the British provinces of Nova Scotia, New Brunswick, Newfoundland, and Canada, at four dollars. And all laws inconsistent with this act are hereby repealed.

FOREIGN JUDGMENT, evidence, remedies. A judgment rendered in a foreign state.

2. In Louisiana it has been decided that a judgment rendered by a Spanish tribunal, under the former governmeut of the country, is not a foreign judgment. 4 M. R. 301 Id. 310.

3. The subject will be considered with regard, 1st. To the manner of proving such judgment; and 2d. Its efficacy.

4. − 1. Foreign judgments are authenticated in various ways; 1. By an exemplification, certified under the great seal of the state or country where it was rendered. 2. By a copy proved to be a true copy. 3. By the certificate of an

officer authorized by law, which certificate must, itself, be properly authenticated. 2 Cranch, 238; 2 Caines' R. 155; 5 Cranch, 335; 7 Johns. R. 514 Mass. R. 273 2 Munf. R. 43 4 Camp. R. 28 2 Russ. on Cr. 723. There is a difference between the judgments of courts of common law jurisdiction and courts of admiralty, as to the mode of proof of judgments rendered by them. Courts of admiralty are under the law of nations; certificates of such judgments with their seals affixed, will therefore be admitted in evidence without further proof. 5 Cranch, 335; 3 Conn. R. 171.

5. − 2. A judgment rendered in a foreign country by a court de jure, or even a court defacto, 4 Binn. 371, in a matter within its jurisdiction, when the parties litigant had been notified and have had an opportunity of being heard, either establishing a demand, against the defendant or discharging him from it, is of binding force. 1 Dall. R. 191; 9 Serg. & Rawle, 260; 10 Serg. & Rawle, 240; 1 Pet. C. C. R. 155; 1 Spears, Eq. Cas. 229; 7 Branch, 481. As to the plea of the act of limitation to a suit on a foreign judgment, see Bac. Ab. h. t.; 2 Vern. 540; 5 John. R. 132; 13 Serg. & Rawle, 395; 1 Speer's, Eq. Cas. 219, 229.

6. For the manner of proving a judgment obtained in a sister state, see the article Authentication. For the French law in relation to the force of foreign judgments, see Dalloz, Dict. mot Etranger, art. 6.

FOREIGN LAWS, evidence. The laws of a foreign country. They will be considered with regard to, 1. The manner in which they are to be proved. 2. Their effect when proved.

2. − l. The courts do not judicially take notice of foreign laws, and they must therefore be proved as facts. Cowp. 144; 3 Esp. C. 163 3 Campb. R. 166; 2 Dow & Clark's R. 171; 1 Cranch, 38; 2 Cranch, 187, 236, 237; 6 Cranch, 274; 2 Harr. & John. R. 193; 3 Gill & John. R. 234; 4 Conn. R. 517; 4 Cowen, R. 515, 516, note; Pet. C. C. R. 229; 8 Mass. R. 99; 1 Paige's R. 220 10 Watts, R. 158. The manner of proof varies according to circumstances. As a general rule the best testimony or proof is required, for no proof will be received which pre−supposes better testimony attainable by the party iybo offers it. When the best testimony cannot be obtained, secondary evidence will be received. 2 Cranch, 237.

3. Authenticated copies of written laws and other public documents must be produced when they can be procured but should they be refused by the competent authorities, then inferior proof may be admissible. Id.

4. When our own government has promulgated a foreign law or ordinance of a public nature as authentic, that is held sufficient evidence of its existence. 1 Cranch, 38 1 Dall. 462; 6 Binn. 321 12 Serg. & Rawle, 203.

5. When foreign laws cannot be proved by some mode which the law respects as being of equal authority to an oath, they must be verified by the sanction of an oath.

6. The usual modes of authenticating them are by an exemplification under the great seal of a state; or by a copy proved by oath to be a true copy − or by a certificate of an officer authorized by law, which must, itself, be duly authenticated. 2 Cranch, 238; 2 Wend. 411; 6 Wend. 475; 5 Serg. &. Rawle, 523; 15 Serg. & Rawle, 84: 2 Wash. C. C. R. 175.

7. Foreign unwritten laws, customs and usages, may be proved, and are ordinarily proved by parol evidence; and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show that fact. 15 Serg. & R. 87; 2 L. R. 154. Proof of such unwritten law is usually made by the testimony of witnesses learned in the law, and competent to state it correctly under oath. 2 Cranch, 237; 1 Pet. C. C. R. 225; 2 Wash. C. C. R. 175; 15 Serg. & R. 84; 4 John. Ch. R. 520; Cowp. 174; 2 Hagg. R. App. 15 to 144.

8. In England certificates of persons in high authority have been allowed as evidence in such cases. 3 Hagg. Eccl. R. 767, 769.

9. The public seal of a foreign sovereign or state affixed to a writing purporting to be a written edict, or law, or judgment, is, of itself, the highest evidence, and no further proof is required of such public seal. 2 Cranch, 238; 2 Conn. R. 85; 1 Wash. C. C. R. 363; 4 Dall. 413, 416; 6 Wend. 475; 9 Mod. 66.

10. But the seal of a foreign court is not, in general, evidence, without further proof, and it must therefore be established by competent testimony. 3 John. R. 310; 2 Harr. & John. 193; 4 Cowen, 526, n.; 3 East, 221.

11. As courts of admiralty are courts under the laws of nations, their seals will be admitted as evidence without further proofs. 5 Cranch, 335; 3 Conn. 171. This is an exception to the general rule.

12. The mode of authenticating the laws and records of the several states of the American Union, is peculiar, and will be found under the article Authentication. It may hereby be observed that the rules prescribed by acts of congress do not exclude every other mode of authentication, and that the courts may admit, proof of the acts of the legislatures of the several, states, although not authenticated under the acts of congress. Accordingly a printed volume, purporting on its face to contain the laws of a sister, state, is admissible, as prima facie evidence; to prove

the statute law of that state. 4 Cranch, 384; 12 S. & R. 203; 6 Binn, 321; 5 Leigh, 571.

13. − 2. The effect of such foreign laws, when proved, is properly referable to the court; the object of the proof of foreign laws, is to enable the ourt to instruct the jury what is, in point of law, the result from foreign laws, to be applied to the matters in controversy before them. The court are therefore to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the court are to judge of their applicability to the matter in issue. Story, Cont. of L. _638 2 Harr. & John. 193. 219; 4 Conn. R. 517; 3 Harr. & John. 234, 242; Cowp. 174. Vide Opinion.

FOREIGN NATION or STATE. A nation totally independent of the United States of America

2. The constitution authorizes congress to regulate commerce with "foreign nations." This phrase does not include an Indian tribe, situated within the boundaries of a state, and exercising the powers of government and sovereignty. 5 Pet. R. 1. Vide Nation.

FOREIGN PLEA. One which, if true, carries the cause out of the court where it is brought, by showing that the matter alleged is not within its jurisdiction. 2 Lill. Pr. Reg. 374; Carth. 402; Lill. Ent. 475. It must be on oath and before imparlance. Bac. Ab. Abatement, R.

FOREIGNERS. Aliens; persons born in another country than the United States, who have not been naturalized. 1 Pet. R. 349. Vide 8 Com. Dig. 615, and the articles Alien; Citizens.

FOREJUDGED THE COURT. An officer of the court who is expelled the same, is, in the English law, said to be forejudged the court. Cunn. Dict. h. t.

FOREMAN. The title of the presiding member of a grand jury.

FOREST. By the English law, a forest is a circuit of ground properly under the king’s protection, for the peaceable living and abiding of beasts of hunting and the chase, and distinguished not only by having bounds and privileges, but also by having courts and offices. 12 do. 22. The signification of forest in the United States is the popular one of an extensive piece of woodland. Vide Purlieu.

FORTSTALLING, crim. law. Every practice or device, by act, conspiracy, words, or news, to enhance the price of victuals or other provisions. 3 Inst. 196; Bac. Ab. h. t.; 1 Russ. Cr. 169; 4 Bl. Com. 158.

2. All endeavors whatever to enhance the common price of any merchandise, and all kinds of practices which have that tendency, whether by spreading false rumors, or buying things in a market before the accustomed hour, are offences at common law, and come under the notion of forestalling, which includes all kind of offences of this nature. Hawk. P. C. b. 1 c. 8 0, s. 1. Vide 13 Vin. Ab. 430; Dane’s Ab. Index, h. t.; 4 Com. Dig. 391 1 East, Rep. 132.

FORFEITURE, punishment, torts. Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they become vested in the party injured, as a recompense for the wrong which he alone, or the Public together with himself, hath sustained. 2 Bl. Com. 267.

2. Lands, tenements and hereditaments, may be forfeited by various means: 1. By the commission of crimes and misdemeanors. 2. By alienation contrary to law. 3. By the non−performance of conditions. 4. By waste.

3. − 1. Forfeiture for crimes. By the Constitution of the United States, art. 3, s. 3, it is declared that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. And by the Act of April 30, 1790, s. 24, 1 Story’s Laws U. S. 88, it is enacted, that no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate. As the offences punished by this act are of the blackest dye, including cases of treason, the punishment of forfeiture may be considered as being abolished. The forfeiture of the estate for crime is very much reduced in practice in this country, and when it occurs, the stater takes the title the party had, and no more. 4 Mason’s R. 174; Dalrymple on Feudal Property, c. 4, p. 145−154; Fost. C. L. 95.

4. − 2. Forfeiture by alienation. By the English law, estates less than a fee may be forfeited to the party entitled to the residuary interest by a breach of duty in the owner of the particular estate. When a tenant for life or years, therefore, by feoffment, fine, or recovery, conveys a greater estate than he is by law entitled to do, he forfeits his estate to the person next entitled in remainder or reversion. 2 Bl. Com. 274. In this country, such forfeitures are almost unknown, and the more just principle prevails, that the conveyance by the tenant operates only on the interest which he possessed, and does not affect the remainder−man or reversioner. 4 Kent, Com. 81, 82, 424; 1 Hill. Ab. c. 4, s. 25 to 34; 3 Dall. Rep. 486; 5 Ohio, R. 30.

5. − 3. Forfieture by non−performance of conditions. An estate may be forfeited by a breach, or non−

performance of a condition annexed to the estate, either expressed in the deed at its original creation, or impliedly by law, from a principle of natural reason. 2 Bl. Com. 281; and see Ad Eject. 140 to 173. Vide article Reentry; 12 Serg. & Rawle, 190.

6. − 4. Forfeiture by waste. Waste is also a cause of forfeiture. 2 Bl. Com. 283. Vide article Waste.

7. By forfeiture is also understood the neglect of an obligor to fulfil his obligation in proper time: as, when one has entered into a bond for a penal sum, upon condition to pay a smaller at a particular day, and he fails to do it, there is then said to be a forfeiture. Again, when a party becomes bound in a certain sum by a recognizance to pay a certain sum, with a condition that he will appear at court to answer or prosecute a crime, and he fails to do it, there is a forfeiture of the recognizance. Courts of equity, and now courts, of law, will relieve from the forfeiture of a bond; and upon a proper case shown, criminal courts will in general relieve from the forfeiture of a recognizance to appear. See 3 Yeates, 93; 2 Wash. C. C. 442 Blackf. 104, 200; Breeze, 257. Vide, generally, 2 Bl. Com. ch. 18; Bouv. Inst. Index, h. t.; 2 Kent's Com; 318; 4 Id. 422; 10 Vin. Ab. 371, 394 13 Vin. Ab. 436; Bac. Ab. Forfeiture Com. Dig. h. t.; Dane's Ab. h. t.; 1 Bro Civ. L. 252 4 Bl. Com. 382; and Considerations on the Law of Forfeiture for High Treason, London ed. l746.

FORFEITURE OF MARRIAGE, Old law. The name of a penalty formerly incurred by a ward in chivalry, when he or she married contrary to the wishes of his or her guardian in chivalry. The latter, who was the ward's lord, had an interest in controlling the marriage of his female wards, and he could exact a price for his consent and, at length, it became customary to sell the marriage of wards of both sexes. 2 Bl. Com . 70.

2. When a male ward refused an equal match provided by his guardian, he was obliged, on coming of age, to pay him the value of the marrriage; that is, as much as he had been bona fide offered for it; or, if the guardian chose, as much as a jury would assess, taking into consideration all the real and personal property of the ward; and the guardian could claim this value, although he might have made no tender of the marriage. Co. Litt. 82 a; 2 Inst. 92 5 Co: 126 b; 6 Co. 70 b.

3. When a male ward between his age of fourteen and twenty−one years, refused to accept an offer of an equal match, and during that period formed an alliance elsewhere, without his permission, he incurred forfeiture of marriage; that is, he became liable to pay double the value of, the, marriage. Co. Litt. 78 b, 82 b.

FORGERY, crim. law. Forgery at common law has been held to be "the fraudulent making and alteration of a writing to the prejudice of another man's right." 4 Bl. Com. 247. By a more modern writer, it is defined, as " a false making; a making malo animo, of any written instrument, for the purpose of fraud and deceit." 2 East, P. C. 852.

2. This offence at common law is of the degree of a misdemeanor. 2 Russel, 1437. There are many kinds of forgery, especially subjected to punishment by statutes enacted by the national and state legislatures.

3. The subject will be considered, with reference, .1. To the making or alteration requisite to constitute forgery. 2. The written instruments in respect of which forgery may be committed. 3. The fraud and deceit to the prejudice of another man's right. 4. The statory provisions under the laws of the United States, on the subject of forgery.

4. − 1. The making of a whole written instrument in the name of another with a fraudulent intent is undoubtedly a sufficient making but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery; and this, although it be afterwards executed by a person ignorant of the deceit. 2 East, P. C. 855.

5. The fraudulent application of a true signature to a false instrument for which it was not intended, or vice ve7− sa, will also be a forgery. For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procuring the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted. Noy, 101; Moor, 759, 760; 3 Inst. 170; 1 Hawk. c. 70, s. 2; 2 Russ. on Cr. 318; Bac. Ab. h. t. A.

6. It has even been intimated by Lord Ellenborough, that a party who makes a copy of a receipt, and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery. 5 Esp. R. 100.

7. It is a sufficient making where, in the writing, the party assumes the name and character of a person in existence. 2 Russ. 327. But the adoption of a false description and addition, where a false name is not assumed, and there is no person answering the description, is not a forgery. Russ. & Ry. 405.

8. Making an instrument in a fictitious name, or the name of a non−existing person, is equally a forgery, as making it in the name of au existing person; 2 East, P. C. 957; 2 Russ. on Cr. 328; and although a man may make

the instrument in his own name, if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be a forgery in the name of a non−existing person.; 2 Leach, 775; 2 East, P. C. 963; but the correctness of this decision has been doubted. Rosc. Cr. Ev. 384.

9. Though, in general, a party cannot be guilty of forgery by a mere non−feasance, yet, if in drawing a will, he should fraudulently omit a legacy, which he had been directed to insert, and by the omission of such bequest, it would cause a material alteration in the limitation of a bequest to another; as, where the omission of a devise of an estate for life to one, causes a devise of the same lands to another to pass a present estate which would otherwise have passed a remainder only, it would be a forgery. Moor, 760; Noy, 101; 1 Hawk. c. 70, s. 6; 2 East, P. C. 856; 2 Russ. on Cr. 320.

10. It may be observed, that the offence of forgery may be complete without a publication of the forged instrument. 2 East, P. C. 855; 3 Chit. Cr. L. 1038.

11. − 2. With regard to the thing forged, it may be observed, that it has been holden to be forgery at common law fraudulently to falsify, or falsely make records and other matters of a public nature; 1 Rolle's Ab. 65, 68; a parish register; 1 Hawk. c. 70; a letter in the name of a magistrate, the governor of a gaol, directing the discharge of prisoner. 6 Car. & P. 129; S. C. 25 Eng. C. L. R. 3 1 5.

12. With regard to private writings, it is forgery fraudulently to falsify or falsely to make a deed or will; 1 Hawk. b. 1, c. 70, s. 10 or any private document, whereby another person may be prejudiced. Greenl. Rep. 365; Addis. R. 33; 2 Binn. R. 322; 2 Russ. on Or. b. 4, c. 32, s. 2; 2 East, P. C. 861; 3 Chit. Cr. Law, 1022 to 1038.

13. − 3. The intent must be to defraud another, but it is not requisite that any one should have been injured it is sufficient that the instrument forged might have proved prejudicial. 3 Gill & John. 220; 4 W. C. C. R. 726. It has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument, if it were genuine, although from the manner of executing the forgery, or from the person's ordinary caution, it would not be likely to impose upon him; and although the object was general to defraud whoever might take the instrument, and the intention of the defrauding in par ticular, the person who would have to pay the instrument, if genuine, did not enter into the contemplation of the prisoner. Russ. & Ry. 291; vide Russ.. on Cr. b. 4, c. 32, s. 3; 2 East, P. C. 853; 1 Leach, 367; 2 Leach, 775; Rosc. Cr. Ev. 400.

14.− 4. Most, and perhaps all the states in the Union, have passed laws making certain acts to be forgery, and the national legislature has also enacted several on this subject, which are here referred to. Act of March 2, 1803, 2 Story's L. U. S. 888; Act of March 3, 1813, 2 Story's L. U. S. 1304 Act of March 1, 1823, 3 Story's L. U. S. 1889; Act of March 3, 1825, 3 Story's L. U. S. 2003; Act of October 12, 1837, 9 Laws U. S. 696.

15. The term forgery, is also applied to the making of false or counterfeit coin. 2 Virg. Cas. 356. See 10 Pet. 613; 4 Wash. C. C. 733. For the law respecting the forgery of coin, see article Money. And for the act of congress punishing forgery in the District of Columbia, see 4 Sharsw. Cont, of Story's Laws U. S. 2234. Vide, generally, Hawk. b. 1, c. 51 and 70; 3 Chit. Cr. Law, 1022 to 1048; 4 Bl. Com. 247 to 250; 2 East, P. C. 840 to 1003; 2 Russ. on Cr. b. 4, c. 32; 13 Vin. Ab. 459; Com. Dig. h. t.; Dane's Ab. h. t. Williams' Just. h. t. Burn's Just. h. t.; Rose. Cr. Ev. h. t.; Stark. Ev. h. t. Vide article Frank.

FORISFAMILIATION, law of Scotl. By this is understood the act by which a father gives to a child his share of his legitime, and the latter renounces all further claim. From this time, the child who has so received his share, is no longer accounted 4 child in the division of the estate. Ersk. Inst. 655, n. 23; Burt. Man. P. R. part 1, c. 2, s. 3, page 35.

FORM, practice. The model of an instrument or legal−proceeding, containing the substance and the principal terms, to be used in accordance with the laws; or, it is the act of pursuing, in legal proceedings, and in the construction of legal instruments, the order required by law. Form is usually put in contradistinction to substance. For example, by the operation of the statute of 27 Eliz. c. 5, s. 1, all merely formal defects in pleading, except in dilatory pleas, are aided on general demurrer.

2. The difference between matter of form, and matter of substance, in general, under this statute, as laid down by Lord Hobart, is, that " that without which the right doth sufficiently appear to the court, is form;" but that any defect " by reason whereof the right appears not," is a defect in substance. Hob. 233.

3. A distinction somewhat more definite, is, that if the matter pleaded be in itself insufficient, without reference to the manner of pleading it, the defect is substantial; but that if the fault is in the manner of alleging it, the defect is formal. Dougl. 683. For example, the omission of a consideration in a declaration in assumpsit; or of the performance of a condition precedent, when such condition exists; of a conversion of property of the plaintiff, in

trover; of knowledge in the defendant, in an action for mischief done by his dog of malice, in action for malicious prosecution, and the like, are all defects in substance. On the other hand, duplicity; a negative pregnant; argumentative pleading; a special plea, amounting to the general issue; omission of a day, when time is immaterial; of a place, in transitory actions, and the like, are only faults in form. Bac. Ab. Pleas, &c. N 5, 6; Com. Dig. Pleader, Q 7; 10 Co. 95 a; 2 Str. 694 Gould; Pl. c. 9, _17, 18; 1 Bl. Com. 142.

4. At the same time that fastidious objections against trifling errors of form, arising from mere clerical mistakes, are not encouraged or sanctioned by the courts, it has been justly observed, that "infinite mischief has been produced by the facility of the courts in overlooking matters of form; it encourages carelessness, and places ignorance too much upon a footing with knowledge amongst those who practice the drawing of pleadings." 1 B. & P. 59; 2 Binn. Rep. 434. See, generally, Bouv. Inst. Index, h. t.

FORMA PAUPERIS, English law. When a person is so poor that he cannot bear the charges of suing at law or in equity, upon making oath that he is not worth five pounds, and bringing a certificate from a counselor at law, that he believes him to have a just cause, he is permitted to sue informa pauperis, in the manner of a pauper; that is, he is allowed to have original writs and subpoenas gratis, and counsel assigned him without fee. 3 Bl. Com. 400. See 3 John. Ch. R. 65; 1 Paige, R. 588; 3 Paige, R. 273; 5 Paige, R. 58; 2 Moll. R. 475; 1 Beat. R. 54.

FORMALITY. The conditions which must be observed in making contracts, and the words which the law gives to be used in order to render them valid; it also signifies the conditions which the law requires to make regular proceedings.

FORMEDON, old English law. The writ of formedon is nearly obsolete, it having been superseded by the writ of ejectment. Upon an alienation of the tenant in tail, by which the estate in tail is discontinued, and the remainder or reversion is by the failure, of the particular estate, displaced and turned into a mere right, the remedy is by action of formedon, (secundum formam doni,) because the writ comprehends the form of the gift. This writ is in the nature of a writ of right, and the action of formedon is the highest a tenant in tail can have. This writ is distinguished into three species; a formedon in the descender, in the remainder, and in the reverter. 8 Bl. Com. 191 Bac. Ab. h. t.; 4 Mass. 64.

FORMER RECOVERY. A recovery in a former action.

2. It is a general rule, that in a real or personal action, a judgment unreversed, whether it be by confession, verdict or demurrer, is a perpetual bar, and may be pleaded to any new action of the same or a like nature, for the same cause. Bac. Ab. Pleas, I 12, n. 2; 6 Co. 7; Hob. 4, 5 Ventr. 170.

3. There are two exceptions to this general rule. 1. The case of mutual dealings between the parties, when the defendant omits to set off his counter demand in that case he may recover in a cross action. 2. When the defendant in ejectment neglects to bring forward his title, he may avail himself of a new suit. 1 John Cas. 492, 502, 510. It is evident that in these cases the cause of the second action is not the same as that of, the first, and, therefore, a former recovery cannot be pleaded. In real actions, one is not a bar to an, action of a. higher nature. 6 Co. 7. Vide 12 Mass. 337; Res Judicata; Thing Adjudged.

FORMULARY. A book of forms or precedents for matters of law; the form.

FORNICATION, crim. law. The unlawful carnal knowledge of an unmarried person with another, whether the latter be married or unmarried. When the party is married, the offence, as to him or her, is known by the name of adultery. (q. v.) Fornication is, however, included in every case of adultery, as a larceny is included in robbery. 2 Hale’s P. C. 302.

FORPRISE. Taken before hand. This word is sometimes, though but seldom, used in leases and conveyances, implying an exception or reservation. Forprise, in another sense, is taken for any exaction. Cunn. Dict. h. t.

TO FORSWEAR, crim. law, torts. To swear to a falsehood.

2. This word has not the same meaning as perjury. It does not, ex vi termini, signify a false swearing before an officer or court having authority to administer an path, on an issue. A man may be forsworn by making a false oath before an incompetent tribunal, as well as before a lawful court. Hence, to say that a man is forsworn, will or will not be slander, as the circumstances show that the oath was or was not taken before a lawful authority. Cro. Car. 378; Lut. 1292; 1 Rolle, Ab. 39, pl. 7 Bac. Ab. Slander, B 3; Cro. Eliz. 609 13 Johns. R. 80 Id. 48 12 Mass. 496 1 Johns. R. 505 2 Johns. R. 10; 1 Hayw. R, 116.

FORTHWITH. When a thing is to be done forthwith, it seems that it must be performed as soon as by reasonable exertion, confined to that object, it may be done. This is the import of the term; it varies, of course, with every particular case. 4 Tyr. 837; Styles’ Register, 452, 3.

FORTIORI or A FORTIORI. An epithet for any conclusion or inference, which is much stronger than another. "If it be so, in a feoffment passing a new right, a fortiori, much more is it for the restitution of an ancient right." Co. Litt. 253, 260.

FORTUITOUS EVENT. A term in the civil law to denote that which happens by a cause which cannot be resisted. Louis. Code, art. 2522, No. 7. Or it is that which neither of the parties has occasioned, or could prevent. Lois des Bat. Pt. 2, c. 2, _1. It is also defined to be an unforeseen event which cannot be prevented. Dict. de Jurisp. Cas fortuit.

2. There is a difference between a fortuitous event or inevitable accident, and irresistible force. By the former, commonly called the act of God, is meant any accident produced by physical causes, which are irresistable; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by−the inroads of a hostile army, or by public enemies. Story on Bailm. _25; Lois des Bat. Pt. 2, c. 2, _1.

3. Fortuitous events are fortunate or unfortunate. The accident of finding a treasure is a fortuitous event of the first class. Lois des Bat. Pt. 2, c. 2, _2.

4. Involuntary obligations may arise in consequence of fortuitous events. For example, when, to save a vessel from shipwreck, it is necessary to throw goods overboard, the loss must be borne in common; there arises, in this case, between the owners of the vessel and of the goods remaining on board, an obligation to bear proportionably the loss which has been sustained. Lois des Bit. Pt. 2, c. 2, _2. See, in general, Dig. 50, 17, 23; Id. 16, 3, 1; Id. 19, 2, 11; Id. 44, 7, 1; Id. 18, 6, 10 Id. 13, 6, 18; Id. 26, 7, 50; Act of God; Accident; Perils of the Sea.

FORUM. This term signifies jurisdiction, a court of justice, a tribunal.

2. The French divide it into for exterieur, which is the authority which human justice exercises on persons and property, to a greater or lesser extent, according to the quality of those to whom it is entrusted; and for interieur, which is the moral sense of justice which a correct conscience dictates. Merlin, Repert. mot For.

3. By forum res sitae is meant the tribunal which has authority to decide respecting something in dispute, located within its jurisdiction; therefore, if the matter in controversy is land, or other immovable property, the judgment pronounced in the forum res sitae is held to be of universal obligation, as to all matters of right and title on which it professes to decide, in relation to such property. And the same principle applies to all other cases of proceedings in rem, where the subject is movable property, within the jurisdiction of the court pronouncing the judgment. Story, Const. Laws, __532, 545, 551, 591, 592; Kaims on Eq. B. 3, c. 8, s. 4 1 Greenl. Ev. _541.

FORWARDING MERCHANT, contracts. A person who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons by which they are transported, and no interest in the freight. Such an one is Dot deemed a common carrier, but a mere warehouseman or agent. 12 Johns. 232; 7 Cowen's R. 497. He is required to use only ordinary diligence in sending the property by responsible persons. 2 Cowen's R. 593.

FOSSA, Eng. law. A ditch full of water, where formerly women who had committed a felony were drowned; the grave. Cowel, Int.

FOUNDATION. This word, in the English law, is taken in two senses, fundatio incipiens, and fundatio perficiens. As to its political capacity, an act of incorporation is metaphorically called its foundation but as to its dotation, the first gift of revenues is called the foundation. 10 Co. 23, a.

FOUNDLING. A new−born child, abandoned by, its parents, who are unknown. The settlement of, such a child is in the place where found.

FOURCHER, English law. A French word, which means to fork. Formerly, when an action was brought against two, who, being jointly concerned, mere not bound to answer till both appeared, and they agreed not to appear both in one day; the appearance of one, excused the other's default, who had a day given him to appear with the other: the defaulter, on the day appointed, appeared; but the first then made default; in this wanner they forked each other, and practiced this for delay. Vide 2 Inst. 250; Booth, R. A. 16.

FRACTION. A part of any thing broken. A combination of numbers, in arithmetic and algebra, representing one or more parts of a unit or integer. Thus, four−fifths is a fraction, formed by dividing a unit into−five equal parts, and taking one part four times. In law, the term fraction is usually applied to the division of a day.

2. In general, there are no fractions in days. Co. Litt. 225 2 Salk. 625; 2 P. A. Browne, 18; II Mass. 204. But in some cases a fraction will be taken into the account, in order to secure a party his rights; 3 Chit. Pr. 111; 8 Ves. 80

4 Campb. R. 197; 2 B. & Ald. 586; Savig. Dr. Rom. _182; Rob. Dig. of Engl. Statutes in force in Pennsylvania, 431−2 and when it is required by a special law. Vide article Date.

FRANC, com. law. The name of a French coin. Five franc pieces, when not of less fineness than ten ounces and sixteen pennyweights in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty−four grains each, are made a legal tender, at the rate of ninety−three cents each. Act of June 25, 1834, s. 1, 4 Sharsw. Cont. of Story's L. U. S. 2373.

2. In all computations at the custom house, the franc of France and of Belgium shall be estimated at eighteen cents six. mills. Act of May 22, 1846. See Foreign coins.

FRANCHISE. This word has several significations: 1. It is a right reserved to the people by the constitution; hence we say, the elective franchise, to designate the right of the people to elect their officers. 2. It is a certain privilege, conferred by grant from the government, and Vested in individuals.

2. Corporations, or bodies politic, are the most usual franchises known to our law. They have been classed among incorporeal hereditaments, perhaps improperly, as they have no inheritable quality.

3. In England, franchises are very numerous; they, are said to be royal privileges in the hands of a subject. Vide 3 Kent, Com. 366; 2 Bouv. Inst. n. 1686; Cruise,' Dig. tit. 27; 2 Bl. Com. 37; 15 Serg. & Rawle, 130; Finch, 164.

FRANCIGENA. Formerly, in England, every alien was known by this name, as Franks is the generic name of foreigners in the Turkish dominions.

FRANK. The privilege of sending and receiving letters, through the mails, free of postage.

2. This privilege is granted to various officers, not for their own special benefit, but with a view to promote the public good.

3. The Act of the 3d of March, 1845, s. 1, enacts, That members of congress, and delegates from the territories, may receive letters, not exceeding two ounces in weight, free of postage, during the recess of congress; and the same privilege is extended to the vice−president of the United States.

4. It is enacted, by 3d section, That all printed or lithographed circulars and handbills, or advertisements, printed or lithographed, on quarto post or single cap paper, or paper not larger than single cap, folded, directed, and unsealed, shall be charged with postage, at the rate of two cents for each sheet, and no more, whatever be the distance the same may be sent; and all pamphlets, magazines, periodicals, and every other kind and description of printed or other matter, (except newspapers,) which shall be unconnected with any manuscript communication whatever, and which it is or may be lawful to transmit by the mail of the United States, shall be charged with postage, at the rate of two and a balf cents for each copy sent, of no greater weight than one ounce, and one cent additional shall be charged for each additional ounce of the weight of every such pamphlet, magazine, matter, or thing, which may be transmitted through the mail, whatever be the distance the tame may be transported and any fractional excess, of not less than one−half of an ounce, in the weight of any such matter or thing, above one or more ounces, shall be charged for as if said excess amounted to a full ounce.

5. And, by the 8th section, That each member of the senate, each member of the house of representatives, and each delegate from a territory of the United States, the secretary of the senate, and the clerk of the house, of representatives, may, during each session of congress, and for a period of thirty days before the commencement, and thirty days after the end of each and every session of congress, Bend and receive through the mail, free of postage, any letter, newspaper, or packet, not exceeding two ounces in weight; and all postage charged upon any letters, packages, petitions memorials, or other matters or things, received during any session of congress, by any senator, member, or delegate of the house of representatives, touching his official or legislative duties, by reason of any excess of weight, above two ounces, on the matter or thing so received, shall be paid out of the contingent fund of the house of which the person receiving the same may be a member. And they shall have the right to frank written letters from themselves during the whole year, as now authorized by law.

6. The 5th section repeals all acts, and parts of acts, granting or conferring upon any person whatsoever the franking privilege.

7. The 23d section enacts, That nothing in this act contained shall be construed to repeal the laws granting the franking privilege to the president of the United States when in office, and to all ex−presidents, and the widows of the former presidents, Madison and Harrison.

8. The Act of March 1, 1847, enacts as follows

_3. That all members of Congress, delegates from territories, the vice−president of the United States, the secretary of the senate, and the clerk of the house of representatives, shall have the power to send and receive

public documents free of postage during their term of office; and that the said members and delegates shall have the power to send and receive public documents, free of Postage, up to the first Monday of December following the expiration of their term of office.

_4. That the secretary of the senate and clerk of the house of representatives shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage, during their term of office.

_5. That members of congress shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage, up to the first Monday in December following the expiration of their term of office.

FRANK, FREE. This word is used in composition, as frank−almoign, frank−marriage, frank−tenement, &c.

FRANK−ALMOIGN, old English law. This is a French law word, signifying free−alms.

2. Formerly religious corporations, aggregate or sole, held lands of the donor, to them and their successors forever, in frank almoign. The service which they, were bound to render for these lands was not certainly defined; they were, in general, to pray for the souls of the donor; his ancestors, and successors. 2 Bl. Com. 101.

FRANK−MARRIAGE, English law. It takes place, according to Blackstone, when lands are given by one man to another, together with a wife who is daughter or kinswoman of the donor, to hold in frank−marriage. By this gift, though nothing but, the word frank−marriage is expressed, the donees shall have the tenements to them and the heirs of their two bodies begotten that is, they are tenants in special tail. It is called frank or free marriage, because the donees are liable to no service but fealty. This is now obsolete, even in England. 2 Bl. Com. 115.

FRANK−TENEMENT, estates. Same as freehold, (q. v.) or liberum tenementum.

FRATER. A brother. Vide Brother.

FRATRICIDE, criminal law. He who kills his brother or sister. The crime of such a person is also called fratricide.

FRAUD, TO DEFRAUD, torts. Unlawfully, designedly, and knowingly, to appropriate the property of another, without a criminal intent.

2. Illustrations. 1. Every appropriation of the right of property of another is not fraud. It must be unlawful; that is to say, such an appropriation as is not permitted by law. Property loaned may, during the time of the loan, be appropriated to the use of the borrower. This is not fraud, because it is permitted by law. 2. The appropriation must be not only unlawful, but it must be made with a knowledge that the property belongs to another, and with a design to deprive him of the same. It is unlawful to take the property of another; but if it be done with a design of preserving it for the owners, or if it be taken by mistake, it is not done designedly or knowingly, and, therefore, does not come within the definition of fraud. 3. Every species of unlawful appropriation, not made with a criminal intent, enters into this definition, when designedly made, with a knowledge that the property is another's; therefore, such an appropriation, intended either for the use of another, or for the benefit of the offender himself, is comprehended by the term. 4. Fraud, however immoral or illegal, is not in itself a crime or offence, for want of a criminal intent. It only becomes such in the cases provided by law. Liv. System of Penal Law, 789.

FRAUD, contracts, torts. Any trick or artifice employed by one person to induce another to fall into an error, or to detain him in it, so that he may make an agreement contrary to his interest. The fraud may consist either, first, in the misrepresentation, or, secondly, in the concealment of a material fact. Fraud, force and vexation, are odious in law. Booth, Real Actions, 250. Fraud gives no action, however, without damage; 3 T. R. 56; and in matters of contract it is merely a defence; it cannot in any case constitute a new contract. 7 Vez. 211; 2 Miles' Rep. 229. It is essentially ad hominem. 4 T. R. 337−8.

2. Fraud avoids a contract, ab initio, both at law and in equity, whether the object be to deceive the public, or third persons, or one party endeavor thereby to cheat the other. 1 Fonb. Tr. Equity, 3d ed. 66, note; 6th ed. 122, and notes; Newl. Cont. 352; 1 Bl. R. 465; Dougl. Rep. 450; 3 Burr. Rep. 1909; 3 V. & B. Rep. 42; 3 Chit. Com. Law, 155, 806, 698; 1 Sch. & Lef. 209; Verpl. Contracts, passim; Domat, Lois Civ. p. 1, 1. 4, t. 6, s. 8, n. 2.

3. The following enumeration of frauds, for which equity will grant relief, is given by Lord Hardwicke, 2 Ves. 155. 1. Fraud, dolus malus, may be actual, arising from facts and circumstances of imposition, which is the plainest case. 2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses, and not under delusion, would make on the one hand, and such as no honest and fair man would accept on the other, which are inequitable and unconscientious bargains. 1 Lev. R. 111. 3. Fraud, which may be presumed from the circumstances and condition of the parties contracting. 4. Fraud, which may be collected and

inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties to the fraudulent agreement. 5. Fraud, in what are called catching bargains, (q. v.) with heirs, reversioners) or expectants on the life of the parents. This last seems to fall, naturally, under one or more of the preceding divisions.

4. Frauds may be also divided into actual or positive and constructive frauds.

5. An actual or positive fraud is the intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another. 1 Story, Eq. Jur. _186; Dig. 4, 3, 1, 2; Id. 2, 14, 7, 9.

6. By constructive fraud is meant such a contract or act, which, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, yet, by its tendency to deceive or mislead. them, or to violate private or public confidence, or to impair or injure the public interests, 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. Constructive frauds are such as are either against public policy, in violation of some special confidence or trust, or operate substantially as a fraud upon private right's, interests, duties, or intentions of third persons; or unconscientiously compromit, or injuriously affect, the private interests, rights or duties of the parties themselves. 1 Story, Eq. ch. 7, _258 to 440.

7. The civilians divide frauds into positive, which consists in doing one's self, or causing another to do, such things as induce a belief of the truth of what does not exist or negative, which consists in doing or dis−simulating certain things, in order to induce the opposite party. into error, or to retain him there. The intention to deceive, which is the characteristic of fraud, is here present. Fraud is also divided into that which has induced the contract, dolus dans causum contractui, and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, that without which the party defrauded would not have contracted, when the artifices practised by one of the parties have been such that it is evident, without them, the other would not have contracted. Incidental or accidental fraud is that by which a person, otherwise determined to contract, is deceived on some accessories or incidents of the contract; for example, as to the quality of the object of the contract, or its price, so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. It is otherwise where the fraud has been the determining cause of the contract, qui causam dedit contractui; in that case. the contract is void. Toull. Dr. Civ. Fr. Liv. 3, t. 3, c. 2, n. _5, n. 86, et seq. See also 1 Malleville, Analyse de la, Discusssion de Code Civil, pp. 15, 16; Bouv. Inst. Index, h. t. Vide Catching bargain; Lesion; Voluntary Conveyance.

FRAUDS, STATUTE OF. The name commonly given to the statate 29 Car. II., c. 3, entitled " An act for prevention of frauds and perjuries." This statute has been re−enacted in most. of the states of the Union, generally with omissions, amendments, or alterations. When the words of the statute have been used, the construction put upon them has also been adopted. Most of the acts of the different states will be found in Anthon's Appendix to Shep. Touchst. See also the Appendix to the second edition of Roberts on Frauds.

FRAUDULENT CONVEYANCE. A conveyance of property without any consideration of value, for the purpose of delaying or bindering creditors. These are declared void by the statutes 13 Eliz. c. 6, and 27 Eliz. c. 4, the principles of which have been adopted in perhaps all the states of the American Union. See Voluntary Conveyance.

2. But although such conveyance is void as regards purchasers and creditors, it is valid as between the parties. 6 Watts, 429, 453; 5 Binn. 109; 1 Yeates, 291; 3 W. & S. 255; 4 Iredell, 102; 9 Pick. 93; 20 Pick. 247; 3 Mass. 573, 580; 4 Mass. 354; 1 Hamm. 469; 2 South. 738; 2 Hill, S. C. Rep. 488; 7 John. 161; 1 Bl. 262.

FREE. Not bound to servitude; at liberty to act as one pleases. This word is put in opposition to slave.

2. 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. Const. U. S. art. 1, s. 2. 3. It is also put in contradistinction to being bound as an apprentice; as, an apprentice becomes free on attaining the age of twenty−one years.

4. The Declaration of Independence asserts that all men are born free, and in at sense, the term includes all mankind.

FREE COURSE, Mar. law. Having the wind from a favorable quarter.

2. To prevent collision of vessels, it is the duty of the vessel having a free course to give way to a vessel beating up. to windward and tacking. 3 Hagg. Adm. R. 215, 326. And at sea, it is the duty of such vessel, in meeting

another, to go to leeward. 3 Car. & P. 528. See 9 Car. & P. W. Rob. 225; 2 Dodson, 87.

FREE ships. By this is understood neutral vessels. Free ships are sometimes considered as making free goods.

FREE WARREN, Eng. law. A franchise erected for the preservation and custody of beasts and fowls of warren. 2 Bl. Com. 39; Co. Litt. 233.

FREEDMEN. The name formerly given by the Romans to those persons who had been released from a State of servitude. Vide Liberti libertini.

FREEDOM, Liberty; the right to do what is not forbidden by law. Freedom does not preclude the idea of subjection to law; indeed, it presupposes the existence of some legislative provision, the observance of which insures freedom to us, by securing the like observance from others. 2 Har. Cond. L. R. 208.

FREEHOLD, estates. An estate of freehold is an estate in lands or other real property, held by a free tenure, for the life of the tenant or that of some other person; or for some uneertain period. It is called liberum tenementum, frank tenement or freehold; it was formerly described to be such an estate as could only be created by livery of seisin, a ceremony similar to the investiture of the feudal law. But since the introduction of certain modern conveyances, by which an estate of freehold may be created without livery of seisin, this description is not sufficient.

2. There are two qualities essentially requisite to the existence of a freehold estate. 1. Iramobility; that is, the subject−matter must either be land, or some interest issuing out of or annexed to land. 2. A sufficient legal indeterminate duration; for if the utmost period of time to which an estate can last, is fixed and determined, it is not an estate of freehold. For example, if lands are conveyed to a man and his heirs, or for his life, or for the life of another, or until he shall be married, or go to Europe, he has an estate of freehold; but if such lands are limited to a man for one hundred or five hundred years, if he shall so long live, he has not an estate of freehold. Cruise on Real Property t. 1, s. 13, 14 and 15 Litt. 59; 1 Inst. 42,

a; 5 Mass. R. 419; 4 Kent, Com. 23; 2 Bouv. Inst. 1690, et seq. Freehold estates are of inheritance or not of inheritance. Cruise, t. 1, s. 42.

FREEHOLDER. A person who is the owner of a freehold estate.

FREEMAN. One who is in the enjoyment of the right to do whatever he pleases, not forbidden by law. One in the possession of the civil rights enjoyed by, the people generally. 1 Bouv. Inst. n. 164. See 6 Watts, 556:

FREIGHT, mar. law, contracts. The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another; l3 East, 300, note; but in, its more extensive sense it is applied to all rewards or compensation paid for the use of ships. 1 Pet. Adm. R. 206; 2 Boulay−Paty, t. 8, s. 1; 2 B. & P. 321; 4 Dall. R. 459; 3 Johns. R. 335; 2 Johns. R. 346; 3 Pardess, n. 705.

2. It will be proper to consider 1. How the amount of freight is to be fixed. 2. What acts must be done in order to be entitled to freight. 3. Of the lien of the master or owner.

3. − l. The amount of freight is usually fixed by the agreement of the parties, and if there be no agreement, the amount is to be ascertained by the usage of the trade, and the circumstances and reason of the case. 3. Kent, Com. 173. Pothier is of opinion that when the parties agree as to the conveyance of the goods, without fixing a price, the master is entitled to freight at the price usually paid for merchandise of a like quality at the time and place of shipment, and if the prices vary he is to pay the mean price. Charte−part, n. 8. But there is a case which authorizes the master to require the highest price, namelly, when goods are put on board without his knowledge. Id. n. 9. When the merchant hires the whole ship for the entire voyage, he must pay the freight though he does not fully lade the ship; he is of course only bound to pay in proportion to the goods he puts on board, when he does not agree to provide a full cargo. If the merchant agrees to furnish a return cargo, and he furnishes none, and lets the ship return in ballast, he must make compensation to the amount of the freight; this is called dead freight, (q. v.) in contradistinction to freight due for the actual carriage of goods. Roccus, note 72−75; 1 Pet. Adm. R. 207; 10 East, 530; 2 Vern. R. 210.

4. − 2. The general rule is, that the delivery of the goods at the place of destination, in fulfilment of the agreement of the charter party, is required, to entitle the master or owner of the vessel to freight. But to this rule there are several exceptions .

5.− 1. When a cargo consists of live stock, and some of the animals die in the course of the voyage, without any fault or negligence of the master or crew, and there is no express agreement respecting the payment of freight, it is in general to be paid for all that were put on board; but when the contract is to pay for the, transportation of them, then no freight is due for those which die on the voyage. Molloy, b. 2, c. 4, s. 8 Dig. 14, 2, 10; Abb. Ship. 272.

6.−2. An interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture. 3 Rob. Adm. R. 101.

7. − 3. When the ship is foreed into a port short of her destination, and cannot finish the voyage, if the owner of the goods will not allow the master a reasonable time to repair, or to proceed in another ship, the master will be entitled to the whole freight; and, if after giving his consent the master refuse to go on, he is not entitled to freight.

8. − 4. When the merchant accepts of the goods at an intermediate port, it is the general rule of marine law, that freight is to be paid according to the proportion of the voyage performed, and the law will imply such contract. The acceptance must be voluntary, and not, one forced upon the owner by any illegal or violent proceedings, as, from it, the law implies a contract that freight pro rata parte itineris shall be accepted and paid. 2 Burr. 883; 7 T. R. 381; Abb. Shipp. part 3, c. 7, s. 13; 3 Binn. 445; 5 Binn. 525; 2 Serg. & Rawle, 229; 1 W. C. C. R. 530; 2 Johns. R. 323; 7 Cranch, R. 358; 6 Cowen, R. 504; Marsh. Ins. 281, 691; 3 Kent, Com. 182; Com. Dig. Merchant, E 3 a note, pl. 43, and the cases there cited.

9. − 5. When the ship has performed the whole voyage, and has brought only a part−of her cargo to the place of destination; in this case there is a difference between a general ship, and a ship chartered for a specific sum for the whole voyage. In the former case, the freight is to be paid for the goods which may be, delivered at their place of destination; in the latter it has been questioned whether the freight could be apportioned, and it seems, that in such case a partial performance is not sufficient, and that a special payment cannot be claimed except in special cases. 1 Johns. R. 24; 1 Bulstr. 167; 7 T. R. 381; 2 Campb. N. P. R. 466. These are some of the excep tions to the general rule, called for by principles of equity, that a partial performance is not sufficient, and that a partial payment or rateable freight cannot be claimed.

10. − 6. In general, the master has a lien on the goods, and need not part with them until the freight is paid; and when the regulations of the revenue require them to be landed in a public warehouse, the master may enter them in his own name and preserve the lien. His right to retain the goods may, however, be waived either by an express agreement at the time of making the original contract, or by his subsequent agreement or consent. Vide 18 Johns. R. 157; 4 Cowen, R. 470; 1 Paine's R. 358; 5 Binn. R. 392. Vide, generally, 13 Vin. Ab. 501 Com. Dig. Merchant, E 3, a; Bac. Ab. Merchant, D; Marsh. Ins. 91; 10 East, 394 13 East, 300, n.; 3 Kent, Com. 173; 2 Bro. Civ. & Adm. L. 190; Merl. Rep. h. t. Poth. Charte−Partie, h. t.; Boulay−Paty, h. t.; Pardess. Index, Affretement.

FREIGHTER, contracts. He to whom a ship or vessel has been hired. 3 Kent, Com. 173; 3 Pardess. n. 704.

2. The freighter is entitled to the enjoyment of the vessel according to contract, and the vessel hired is the only one that he is bound to take there can, therefore, be no substitution without his consent. When the vessel has been chartered only in part, the freighter is only entitled to the space he has contracted for; and in case of his occupying more room or putting on board a greater weight, he must pay freight on the principles mentioned under the article of freight.

3. The freighter is required to use the vessel agreeably to the provisions of the charter party, or, in the absence of any such provisions, according to the usages of trade he cannot load the vessel with merchandise which would render it liable to condemnation for violating the laws of a foreign state. 3 John. R. 105. The freighter is also required to return the vessel as soon as the time for which he chartered her has expired, and to pay the freight.

FRESH PURSUIT. The act of pursuing cattle which have escaped, or are being driven away from land, when they were liable to be distrained, into other places. 3 Bouv. Inst. n. 2470.

FRESH SUIT, Eng. law. An earnest pursuit of the offender when a robbery has been committed, Without ceasing, until he has been arrested or discovered. Towl. Law Dict. h. t.

FRIBUSCULUM, civil law. A slight dissension between hushand and wife, which produced a momentary separation, without any intention to dissolve the marriage, in which it differed from a divorce. Poth. Pand. lib. 50, s. 106. Vicat, Vocab. This amounted to a separation, (q. v.) in our law.

FRIENDLESS MAN. This name was sometimes anciently given to an outlaw.

FRIGIDITY, med juris. The same as impotence. (q. v.)

FRUCTUS INDUSTRIALES. The fruits or produce of the earth which are obtained by the industry of man, as growing corn.

FRUIT, property. The produce of tree or plant containing the seed or used for food. Fruit is considered real estate, before it is separated from the plant or tree on which it grows; after its separation it acquires the character of personally, and may be the subject of larceny; it then has all the qualities of personal property,

2. The term fruit, among the civilians, signifies not only the production of trees and other plants, but all sorts of revenue of whatever kind they may be. Fruits may be distinguished into two kinds; the first called natural fruits, are those which the earth produces without culture, as bay, the production of trees, minerals, and the like or with culture, as grain and the like. Secondly, the other kind of fruits, known by the name of civil fruits, are the revenue which is not produced by the earth, but by the industry of man, or from animals, from some estate, or by virtue of some rule of law. Thus, the rent of a house, a right of fishing, the freight of a ship, the toll of a mill, are called, by a metaphorical expression, fruits. Domat, Lois Civ. liv. 3, tit. 5, s. 3, n. 3. See Poth. De la Communaute, n. 45.

FUERO JURGO. A Spanish code of laws, said to, be the most ancient in Europe. Barr. on the Stat. 8, note.

FUGAM FECIT, Eng. law. He fled. This phrase, in an inquisition, signifies that a person fled for treason or felony. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

FUGITIVE. A runaway, one who is at liberty, and endeavors, by, going away, to escape.

FUGITIVE SLAVE. One who has escaped from the service of his master.

2. The Constitution of the United States, art. 4, s. 2, 3, directs that "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any laws or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be clue." In practice summary ministerial proceedings are adopted, and not the ordinary course of judicial investigations, to ascertain whether the claim of ownership be established beyond all legal controversy. Vide, generally, 3 Story, Com. on Const. _1804−1806; Serg. on Const. ch. 31, p. 387; 9 John. R. 62; 5 Serg. & Rawle, 62; 2 Pick. R. 11; 2 Serg. & Rawle, 306; 3 Id. 4; 1 Wash. C. C. R. 500; 14 Wend. R. 507, 539; 18 Wend. R. 678; 22 Amer. Jur. 344.

FUGITIVE, FROM JUSTICE, crim. law. One who, having committed a crime within a jurisdiction, goes into another in order to evade the law, and avoid its punishment.

2. By the Constitution of the United States, art. 4, s. 2, it is provided, that "a person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the same state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." The act of thus delivering up a prisoner, is, by the law of nations, called extradition. (q. v.)

3. Different opinions are entertained in relation to the duty of a nation, by the law of nations, independently of any treaty stipulations, to surrender fugitives from justice when' properly demanded. Vide 1 Kent, Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125; 3 Story, Com. Const. United States, _1801; 9 Wend. R. 218; 2 John. R. 479; 6 Binn. R. 617; 4 Johns. Ch. R. 113; 22 Am. Jur. 351: 24 Am. Jur. 226; 14 Pet. R. 540; 2 Caines, R. 213.

4. Before the executive of the state can be called upon to deliver an individual, it must appear, first, that a proper and formal requisition of another governor has been made; secondly, that the requisition was founded upon an affidavit that the crime was committed by the person charged, or such other evidence of that fact as may be sufficient; thirdly, that the person against whom it is directed, is a fugitive from justice. 6 Law Report, 57.

FULL AGE. A. person is said to have full age at twenty−one years, whether the person be a man or woman. See Age.

FULL COURT. When all the judges are present and properly organized, it −is said there is a full court; a court in banc.

FULL DEFENCE, pleading. A denial of all wrong or injury. It is expressed in the following formula: And the said C D, (the defendant,) by E F, his attorney, comes, and defends the wrong or injury, (or force and injury,) when and where it shall behoove him, and the damages and whatsoever else he ought to defend." Bac. Ab. Pleas, &c. D; Co. Litt. 127 b; Lawes on Pl. 89; 2 Chit. Pl. 409; 2 Saund. 209 c; Gould on Pl. c. 2, _6. See Defence; Et Cetera; Half Defence.

FUNCTION, office. Properly, the occupation of an office; by the performance of its duties, the officer is said to fill his function. Dig. lib. 32, 1. 65, _1.

FUNCTIONARY. One who is in office or in some public employment.

FUNCTUS OFFICIO. This term is applied to something which once had life and power, but which now has no virtue whatsoever; as, for example, a warrant of attorney on which a judgment has been entered, is, functus officio, and a second judgment, cannot be entered by virtue of its authority. When arbitrators cannot agree and

choose an umpire, they are said to be functi officio. Watts. on Arb. 94. If a bill of exchange be sent to the drawee, and he passes it to the credit of the holder, it is functus officio, and cannot be further negotiated. 5 Pick., 85. When an agent has completed the business with which he was entrusted,.his agency is functus officio. 2 Bouv. Inst. n. 1382.

FUNDAMENTAL. This word is applied to those laws which are the foundation of society. Those laws by which the exercise of power is restrained and regulated, are fundamental. The Constitution of the United States is the fundamental law of the land. See Wolff, Inst. Nat. _984.

FUNDED DEBT. That part of the national debt for which certain funds are appropriated towards the payment of the interest.

FUNDING SYSTEM, Eng. law. The name given to a plan which provides that on the creation of a public loan, funds shall immediately be formed, and secured by law, for the payment of the interest, until the state shall redeem the whole, and also for the gradual redemption of the capital itself. This gradual redemption of the capital is called the sinking of the debt, and the fund so appropriated is called the sinking fund.

FUNDS. Cash on hands; as, A B is in funds to pay my bill on him; stocks, as, A B has $1000 in the funds. By public funds is understood, the taxes, customs, &c . appropriated by the, government for the discharge of its obligations.

FUNDUS, civil raw. Any portion of land whatever, without considering the use or employ to which it is applied.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse.

2. The person who orders the funeral is responsible personally for the expenses, and if the estate of the deceased should be insolvent, he must lose the amount. But if there are assets sufficient to pay these expenses, the executor or administrator is bound, upon an implied assumpsit, to pay them. 1 Campb. N. P. R. 298; Holt, 309 Com. on Contr. 529; 1 Hawke's R. 394; 13 Vin. Ab. 563.

3. Frequent questions arise as to the amount which is to be allowed to the executor or administrator for such expenses. It is exceedingly difficult to gather from the numerous cases which have been, decided upon this subject, any certain rule. Courts of equity have taken into consideration the circumstances of each case, and when the executors have acted with common prudence and in obedience to the will, their expenses have been allowed. In a case where the testator directed that his remains should be buried at a church thirty miles distant from the place of his death, the sum of sixty pounds sterling was allowed. 3 Atk. 119. In another case, under peculiar circumstances, six hundred pounds were allowed. Preced. in Ch. 29. In a case in Pennsylvania, where the intestate left a considerable estate, and no children, the sum of two hundred and fifty−eight dollars and seventy−five cents was allowed, the greater part of which had been expended in erecting a tombstone over a vault in which the body was interred. 14 Serg. & Rawle, 64.

4. It seems doubtful whether the hushand can call upon the separate personal estate of his wife, to pay her funeral expenses. 6 Madd. R. 90. Vide 2 Bl. Com. 508; Godolph. p. 2 3 Atk. 249 Off. Ex. 174; Bac. Ab. Executors, &c., L 4; Vin. Ab. h. t.

FUNGIBLE. A term used in the civil, French, and Scotch law, it signifies anything whatever, which consists in quantity, and is regulated by number, weight, or measure; such as corn, wine, or money.. Hein. Elem. Pand. Lib. 12, t. 1, _2;.1 Bell's Com. 225, n. 2; Ersk. Pr. Scot. Law, B. 3, t. 1, _7; Poth. Pret de Consomption, No. 25; Dict. de Jurisprudence, mot Fongible Story, Bailm, _284; 1 Bouv. Inst. n. 987, 1098.

FURCA. The gallows. 3 Inst. 58.

FURIOSUS. An insane man; a madman; a lunatic.

2. In general, such a man can make no contract, because he has no capacity or will: Furiosus nullum negotium genere potest, quia non intelligit quod agit. Inst. 3, 20, 8. Indeed, he is considered so incapable of exercising a will, that the law treats him as if he were absent: Furiosi nulla voluntas est. Furiosus absentia loco est. Dig. lib. 1, tit. ult. 1. 40, 1. 124, _1. See Insane; Non compos mentis.

FURLINGUS. A furlong, or a furrow oneeighth part of a mile long. Co. Litt. 5. b.

FURLONG. A measure of length, being forty poles, or one−eighth of a mile. Vide Measures.

FURLOUGH. A permission given in the army and−navy to an officer or private to absent himself for a limited time.

FURNITURE. Personal chattels in the use of a family. By the term household furniture in a will, all personal chattels will pass which may contribute to the use or convenience of the householder, or the ornament of the house; as, plate, linen, china, both useful and ornamental, and pictures. Amb. 610; 1 John. Ch. R. 329, 388; 1 Sim.

& Stu. 189; S. C. 3 Russ. Ch. Cas. 301; 2 Williams on Ex. 752; 1 Rop. on Leg. 203−4; 3 Ves. 312, 313.

FURTHER ASSURANCE. This phrase is frequently used in covenants, when a covenantor has granted an estate, and it is supposed some further conveyance may be required. He then enters into a covenant for further assurance, that is, to make any other conveyance which may be lawfully required.

FURTHER HEARING, crim. law, practice. Hearing at another time.

2. Prisoners are frequently committed for further hearing, either when there is not sufficient evidence for a final commitment, or because the magistrate has not time, at the moment, to hear the whole of the evidence. The magistrate is required by law, and by every principle of humanity, to hear the prisoner as soon as possible after a commitment for further hearing; and if he neglect to do so within a reasonable time, he becomes a trespasser. 10 Barn. & Cresw. 28; S. C. 5 Man. & Ry. 53. Fifteen days were held an unreasonable time, unless under special circumstances. 4 Carr. & P. 134; 4 Day, 98; 6 S. & R. 427.

3. In Massachusetts, magistrates may by statute, adjourn the case for ten days. Rev. Laws, 1 3 5, s. 9.

4. It is the practice in England to commit for three days, and then from three days to three days. 1 Chitty's Criminal Law, 74.

FUTURE DEBT. In Scotland this term is applied to a debt which though created is not due, but is to become so at a future day. 1 Bell's Com. 315, 5th ed.

FUTURE STATE, evidence. A state of existence after this life.

2. A witness who does not believe in any future state of existence was formerly inadmissible as a witness. The true test of a witnesses competency, on the ground of his religious principles, is, whether he believes in the existence of a God, who will punish him if he swears falsely; and within this rule are comprehended those who believe future punishments will not be eternal. 2 Watts' & Serg. 263. See the authorities cited under the article Infidel. But it seems now to be settled, that when the witness believes in a God who will reward or punish him, even in this world, he is competent. Willes, 550. Vide Atheist.

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