T.

TABELLIO. An officer among the Romans who reduced to writing and into proper form, agreements, contracts, wills, and other instruments, and witnessed their execution. The term tabellio is derived from the Latin tabula, seu tabella, which in this sense, signified those tables or plates covered with wax which were then used instead of paper. 8 Toull. n. 5; Delauriere, sur Ragneau, mot Notaire.

2. Tabelliones differed from notaries in many respects: they had judicia jurisdiction in some cases, and from their judgments there were no appeals. Notaries were then the clerks or aiders of the tabelliones, they received the agreements of the parties, which they reduced to short notes; and these contracts were not binding until they were written in extenso, which was done by the tabelliones. Encyclopedie de, M. D'Alembert, mot Tabellion; Jac. Law. Dict. Tabellion; Merlin, Repertoire, mot Notaire, _1; 3 Giannone's Istoria di Napoli, p. 86.

TABLEAU OF DISTRIBUTION. In Louisiana this is a list of creditors of an insolvent estate, stating what each is entitled to. 4 N. S. 535.

TABLES. A synopsis in which many particulars are brought together in a general view; as genealogical tables, which are composed of the names of persons belonging to a family. 2 Bouv. Inst. n. 1963−4. Vide Law of the Twelve Tables.

TABULA IN NAUFRAGIO, Engl. law. Literally a plank in a wreck. This figure has been used to denote the condition of a third mortgagee, who obtained his mortgage without any knowledge of a second mortgage, and then, being puisne, takes the first encumbrance; in this case he shall squeeze out and have satisfaction before the second. 2 Ves. 573; 2 Fonbl. Eq. B. 3, c. 2, _2; 2 Ventr. 337; 1 Ch. Cas. 162; 1 Story, Eq. __414, 415; and Tacking.

TACIT. That which, although not expressed, is understood from the nature of the thing, or from the provision of the law; implied.

TACIT LAW. A law which derives its authority from the common consent of the people, without any legislative enactment. 1 Bouv. Inst. n. 120.

TACK, Scotch law. A contract of location by which the use of land, or any other immovable subject, is, set to the lessee or tacksman for a certain yearly rent, either in money, the fruits of tho ground, or services. Ersk. Prin. Laws of Scot. B. 2, t. 6, n. 8; 1 Tho. Co. Litt. 209. This word is nearly synonymous with lease.

TACKING, Engl. law. The union of securities given at different times, so as to prevent any intermediate purchasers claiming title to redeem, or otherwise discharge one lien, which is prior, without redeeming or discharging other liens also, which are subsequent to his own title. Jer. Eq. Jur. B. 1, c. 2, _1, p. 188 to 191; 1 Story, Eq. Jur. _412.

2. It is an established doctrine in the English chancery that a bona fide purchaser and without any notice of a defect in his title at the time of the purchase, may lawfully buy any statute, mortgage, or encumbrance, and if he can defend by those at law, his adversary shall have no help in equity to set those encumbrances aside, for equity will not disarm such a purchaser. And as mortgagees are considered in equity as purchasers pro tanto, the same doctrine has extended to them, and a mortgagee who has advanced his money without notice of any prior encumbrance, may, by getting an assignment of a statute, judgment, or recognizance, protect himself from any encumbrance subsequent to such statute, judgment or recognizance, though prior to his mortgage; that is, he will be allowed to tack or unite his mortgage to such old security, and will by that means be entitled to recover all moneys for which such security was given, together with the money due on his mortgage, before the prior. mortgagees are entitled to recover anything. 2 Fonbl. Eq. 306; 2 Cruise, t. 15, c. 5, s. 27; Powell on Morg. Index, h. t.; 1 Vern. 188; 8 Com. Dig. 953; Madd. Ch. Index, h. t.

3. This doctrine is inconsistent with the laws of the several states, which require the recording of mortgages. Caines' Cas. Er. 112; 1 Hop. C. R. 231; 3 Pick. 50; 2 Pick. 517.

4. The doctrine of tacking seems to have been acknowledged in the civil law, Code, 8, 27, 1; but see Dig. 13, 7, 8; and see 7 Toull. 110. But this tacking could not take place to the injury of intermediate encumbrancers. Story on Eq. _1010, and the authorities cited in the note.

TAIL. An estate tail is an estate of inheritance, to a man or a woman and his or her heirs of his or her body, or heirs of his body of a particular description, or to several persons and the heirs of their bodies, or the heirs generally or specially of the body or bodies of one person, or several bodies. Prest. on Estates, 355; Cruise, tit. 2, c. 1, s. 12.

2. Estates tail, as qualified "in their limitation and extent, are of sev−eral sorts. They have different

denominations, according to the circumstances under which, or the persons to whom they are limited. They are usually divided into estates tail general or special.

3. But they may be more advantageously arranged under the following classes.

4. − 1. As to the extent of the degree to which the estates may descend, they are, 1st, general; 2d, qualified.

5. − 2. As to the sex of the person who may succeed, they are, 1st. General, as extending to males or females of the body, without exception. 2d. Special, as admitting only one sex to the succession, and excluding the other sex.

6. − 3. As to the person by whom or by whose body those heirs are to be begotten, they are either, 1st. General, as to all the heirs of the body of a man or woman. 2d. Special, as to the heirs of the body of a man or woman begotten by a particular person, or to the heirs of the two bodies of a man and woman. On the several species of estates tail noticed under this division, it may be observed, that the samer estate may at the same time, be general in one respect; as, for example, to all the heirs of the body in whatever degree they are related; and may be, special in another respect, as that these heirs shall be males, &c. Prest. on Estates, 383, 4.

7. The law relating to entails is diversified in the several states. In Indiana and Louisiana they never existed they are unknown in Illinois and Vermont. In Ohio, Virginia, Tennessee, Kentucky, and New York, estates tail are converted into estates in fee simple by statute; and they may be barred by a simple conveyance in Pennsylvania. In Alabama, Missouri, Mississippi, New Jersey, Connecticut and North Carolina, they have been modified, and in Georgia, they have been abolished without reservation. Griff. Reg. h. t. Vide, generally, 8 Vin. Ab. 227 to 272; 10 Id. 257 to 269; 20 Id. 163; Bac. Ab. Estate in tail; 4 Com. Dig. 17; 4 Kent, Com. 12; Bouv. Inst. Index, h. t.; and. 1 Bro. Civ. Law, 188, where an attempt is made to prove that an estate resembling an estate tail was not unknown to the Romans.

TAKE. This is a technical expression which signifies to be entitled to; as, a devisee will take under the will. To take also signifies to seize, as to take and carry away.

TAKING, crim. torts. The act of laying hold upon an article, with or without removing the same; a felonious taking is not sufficient without a carrying away, to constitute the crime of larceny. (q. v.) And when the taking has been legal, no subsequent act will make it a crime. 1 Moody, Cr. Cas. 160.

2. The taking is either actual or constructive. The former is when the thief takes, without any pretence of a contract, the property in question.

3. A constructive felonious taking occurs when, under pretence of a contract, the thief obtains the felonious possession of goods; as, when under the pretence of hiring, he had a felonious intention at the time of the pretended contract, to convert the property to his own use. The court of criminal sessions for the city and county of Philadelphia have decided that in the case of a man who found a quantity of lumber, commonly called a raft, floating on the river Delaware and fastened to the shore, and sold it, to another person, at so low a price. as to enable the purchaser to remove it, and did no other act himself, but afterwards the purchaser removed it, that thls was a taking by the thief, and he was actually convicted and sentenced to two years imprisonment in the penitentiary. Hill’s case, Aug. Sessions, 1838. It cannot be doubted, says Pothier, Contr. de Vente, n. 271, that by selling and delivering a thing which he knows does not belong to him, the party is guilty of theft.

4. When property is left through inadvertence with a person and he conceals it animo furandi, he is guilty of a felonious taking and may be convicted of larceny. 17 Wend. 460.

5. But when the owner parts with the property willingly, under an agreement that he is never to receive the style indentical property, the taking is not felonious; as, when a person delivered to the defendant a sovereign to get it changed, and the defendant never returned either with the sovereign or the change, this was not larceny. 9 C. & P. 741. See 1 Moody, C. C. 179; Id. 185; 1 Hill. R. 94; 2 Bos. & P. 508; 2 East, P. C. 554; 1 Hawk. c. 33, s. 8; 1 Hale, P. C. 507; 3 Inst. 408; and Carrying away; Finder; Invito Domino; Larceny; Robbery.

6. The wrongful taking of the personal property of another, when in his actual possession, or such taking of the goods of another who, has the right of immediate possession, subject the tort feasor to an action. For example, such wrongful taking will be evidence of a conversion, and an action of trover may be maintained. 2 Saund. 47, h. t.; 3 Willes, 55. Trespass is a concurrent remedy in such a case. 3 Wils. 336. Replevin may be supported by the unlawful taking of a personal chattel. 1 Chit. Pl. 158. Vide Bouv. Inst. Index, h. t.

TALE, comm. law. A denomination of money in China. In the computation of the ad valorem duty on goods, &c. it is computed at one dollar and forty−eight cents. Act of March 2, 1799, s. 61, 1 Sto. L. U. S. 626. Vide Foreign Coins.

TALE, Eng. law. The declaration or count was anciently so called in law pleadings. 3 Bl. Com. 293.

TALES, Eng. law. The name of a book kept in the king's bench office, of such jurymen as were of the tales. See Tales de circumstantibus.

TALES DE CIRCUMSTANTIBUS, practice. Such persons as are standing round. When ever the panel of the jury is exhausted the court order that the jurors wanted shall be selected from among the bystanders which order bears the name of tales d circumstantibus. Bac. Ab. Juries, C.

2. The judiciary act of Sept. 24, 1789, 1 Story, L. U. S. 64, provides, _29, that When from challenges, or otherwise, there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return jurymen de talibus circumstantibus sufficient to complete the panel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested persons as the court shall appoint. See 2 Hill, So. Car. R. 381; 2 Penna. R. 412; 4 Yeates, 236; Coxe, 283; 1 Blackf. 63; 2 Harr. & J. 426; 1 Pick. 43, n.

TALLAGE. This word is derived from the French tailler, and signifies liter−ally to cut. In England it is used to signify subsidies, taxes, customs, and indeed any imposition whatever by the government for the purpose of raising a revenue. Bac. Ab. Smuggling, &c. B; Fortesc. De Laud. 26; Madd. Exch. ch. 17; 2 Inst. 531, 532 Spelm. Gl. h. v.

TALLIES, evidence. The parts of a piece of wood out in two, which persons use to denote the quantity of goods supplied by one to the other. Poth. Obl. pt. 4, c. 1, art. 2, _7.

TALZIE, HEIR IN. Scotch law. Heirs of talzie or tailzie, are heirs of estates entailed. 1 Bell's Com. 47.

TANGIBLE PROPERTY. That which may be felt or touched; it must necessarily be corporeal, but it may be real or personal. A house and a horse are, each, tangible property. The terni is used in contradistinction to property not tangible. By the latter expression, is; meant that kind of property which, though in possession as respects the right, and, consequently, not strictly choses in action, yet differ; from goods, because they are neither tangible nor visible, though the thing produced from the right be perfectly so. In this class may be mentioned copyrights and patent−rights. 1 Bouv. Inst. n. 467, 478.

TARDE VENIT, Practice. The name of a return made by the sheriff to a writ, when it came into his hands too late to be executed before the return day.

2. The sheriff is required to show that he has yielded obedience to the writ, or give a good excuse for his omission; and he may say, quod breve adeo tarde venit quod exequi non possunt. It is usual to return the writ with an indorsement of tarde venit. Com. Dig. Return, D 1.

TARE, weights. An allowance in the purchase and sale of merchandise, for the weight of the box, bag, or cask, or other thing, in which the goods are packed. It is also an allowance made for tiny defect, waste, or diminution in the weight, quality or quantity of goods. It differs from tret. (q. v.)

TARIFF. Customs, duties, toll. or tribute payable upon merchandise to the general government is called tariff; the rate of customs, &c. also bears this name and the list of articles liable to duties is also called the tariff.

2. For the tariff of duties imposed on the importation of foreign merchan−dise into the United States.

TAVERN. A place of entertainment; a house kept up for the accommodation of strangers.

2. These are regulated by various local laws. For the liabilities of tavern keepers, Vide Story on Bailm. art. 7; 2 Kent, Com. 458; 12 Mod. 487; Jones' Bailm. 94; 1 Bl. Com. 430; 1 Roll. Ab. 3, F; Bac. Ab. Inn, &c.; 1 Bouv. Inst. 1015, et seq.; and the articles Inn; Inn−keeper.

TAXES. This term in its most extended sense includes all contributions imposed by the government upon individuals for the service of the state, by whatever name they are called or known, whether by the name of tribute, tithe, talliage, impost, duty, gabel, custom, subsidy, aid, supply, excise, or other name.

2. The 8th section of art. 1, Const. U. S. provides, that "congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay," &c. "But all duties, imposts and excises shall be uniform throughout the United States."

3. In the sense above mentioned, taxes are usually divided into two great classes, those which are direct, and those which are indirect. Under the former denomination are included taxes on land or real property, and under the latter taxes on articles of consumption. 5 Wheat. R. 317.

4. Congress have plenary power over every species of taxable property, except exports. But there are two rules prescribed for their government, the rule of uniformity and the rule of apportionment. Three kinds of taxes, namely, duties, imposts and excises are to be laid by the first rule; and capitation and other direct taxes, by the second rule. Should there be any other species of taxes, not direct, and not included within the words duties,

imposts or customs, they might be laid by the rule of uniformity or not, as congress should think proper and reasonable. Id.

5. The word taxes is, in a more confined sense, sometimes applied in contradistinction to duties, imposts and excises. Vide, generally, Story on the Const. c. 14; 1 Kent, Com. 254; 8 Dall. 171; 1 Tuck. Black. App. 232; 1 Black. Com. 308; The Federalist, No. 21, 36; Woodf. Landl. and Ten. 197, 254.

TAXING COSTS, practice. The act by which it is ascertained to what costs a party is entitled.

2. It is a rule that the jury must assess the damages and costs separately, so that it may appear to the court that the costs were not considered, in the damages; and when the jury give costs in an amount insufficient to answer the costs of the suit, the plaintiff may pray that the officer may tax the costs, and such taxation is inserted in the judgment: this is said to be done ex assensu of the plaintiff, because at his prayer. Bac. Ab. Costs, K. The costs are taxed in the first instance, by the prothonotary or clerk of the court. See 2 Wend. R. 244; 1 Cowen, R. 591; 7 Cowen, R. 412; 2 Yerg. R. 245, 310; 6. Yerg. R. 412; Harp. R. 326; 1 Pick. R. 211; 10 Mass. R. 26; 16 Mass. R. 370. A bill of costs having been once submitted to such an officer for taxation, cannot be withdrawn from him and referred to another. 2 Wend. R. 252.

TEAMSTER. One who drives horses in a wagon for the purpose of carrying goods for hire he is liable as a common carrier. Story, Bailm. _496.

TECHNICAL. That which properly belongs to an art.

2. In the construction of contracts, it is a general rule that technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to which it relates, unless they have manifestly been understood in another sense by the parties. 2 B. & P. 164; 6 T. R. 320; 3 Stark. Ev. 1036, and the article Construction.

3. Words which do not of themselves denote that they are, used in a technical sense, are to have their plain, popular, obvious and natural meaning. 6 Watts & Serg. 114.

4. The law, like other professions, has a technical language. "When a mechanic speaks to me of the instruments aud operations of his trade,", says Mr. Wynne, Eunom. Dial. 2, s. 5, "I shall be as unlikely to comprehend him, as he would me in the language of my profession, though we both of us spoke English all the while. Is it wonderful then, if in systems of law, and especially among the hasty recruits of commentators, you meet (to use Lord Coke's expression) with a whole army of words that cannot defend themselves in a grammatical war? Technical language, in all cases, is formed from the most intimate knowledge of any art. One words stands for a great many, as it is. always to be resolved into many ideas by definitions. It is, therefore, unintelligible, because it is concise, and it is useful for the same reason." Vide Language.

TEINDS, Scotch Law. That liquid proportion of the rents or goods of the people, which is due to churchmen for performing divine service, or exercising the other spiritual functions proper to their several offices. Ersk. Pr. L. Scot. B. 2, t. 10, s. 2. See Tithes.

TELLER. An officer in a bank or other institution. He is said to take that name from tallier, or one who kept a tally, because it is his duty to keep the accounts between the bank or other institution and its customers, or to make their accounts tally. In another sense teller signifies a person appointed to receive votes. In England the name of teller is given to certain officers in the exchequer.

TEMPORARY. That which is to last for a limited time; as, a temporary sta−tute, or one which is limited in its operation for a particular period of time after its enactment the opposite of perpetual.

TENANCY or TENANTCY. The state or condition of a tenant; the estate held by a tenant, as a tenant at will, a tenancy for years.

TENANT, estates. One who holds or possesses lands or tenements by any kind of title, either in fee, for life, for years, or at will. See 5 Mann. & Gr. 54; S. C. 44 Eng. C. L. Rep. 39; 5 Mann. & Gr. 112; Bouv. Inst. Index, h . t.

2. Tenants may be considered with regard to the estate to which they are en−titled. There are tenants in fee; tenants by the curtesy; tenants in dower; tenants in tail after. possibility of issue extinct; tenants for life tenants for years; tenants from year to year; tenants at Will; and tenants at suffrance. When considered with regard to their number, tenants are in severalty; tenants in common; and joint tenants. There is also a kind of tenant, called tenant to the praecipe. These will be separately examined.

3. Tenant in fee is he who has an estate of inheritance in the land. See Fee.

4. Tenant by the curtesy, is where a man marries a woman seised of an estate of inheritance, that is, of lands and tenements in fee simple or fee tail; and has by her issue born alive, which was capable of inheriting her estate. In

this case he shall, on the death of his wife, hold the lands for life, as tenant by the curtesy. Co. Litt. 29, a; 2 Lilly's Reg. 656; 2 Bl. Com. 126. See Curtesy.

5. Tenant in dower is where the hushand of a woman is seised of an estate of inheritance, and dies; in this case, the wife shall have the third part of the lands and tenements of which he was seised at any time during the coverture, to hold to herself during the term of her natural life. 2 Bl. Com. 129; Com. Dig. Dower, A 1. See Dower.

6. Tenant in tail after possibility of issue extinct, is where one is tenant in special tail, and a person from whose body the issue was to spring, dies without issue; or having issue, becomes extinct; in these cases the survivor becomes tenant in tail after possibility of issue extinct. 2 Bl. Com. 124; and vide Estate tail after possibility of issue extinct.

7. Tenant for life, is he to whom lands or tenements are granted, or to which he derives by operation of law a title for the term of his own life, or for that of any other person, or for more lives than one.

8. He is called tenant for life, except when he bolds the estate by the life of another, when he is called tenant er autre vie. 2 Bl. Com. 84; Com. Dig. Estates, E 1; Bac. Ab. Estates, See Estate for life; 2 Lilly's Reg. 557.

9. Tenant for years, is he to whom another has let lands, tenements and hereditaments for a term of certain years, or for a lesser definite period of time, and the lessee enters thereon. 2, Bl. Com. 140; Com. Dig Estates by grant, G.

10. A tenant for years has incident to, and unseparable from his estate, unless by special agreement, the same estovers to which a tenant for life is entitled. See Estate for life. With regard to the crops or emblements, the tenant for years is not, in general, entitled to them after the expiration of his term. 2 Bl. Com. 144. But in Pennsylvania, the tenant is entitled to the way going crop. 2 Binn. 487; 5 Binn. 285, 289 2 S. & R. 14. See 5 B. & A. 768; this Diet. Distress; Estate for years; Lease; Lessee; Notice to quit.; Underlease.

11. Tenant from year to year, is he to whom another has let lands or tenements, without any certain or determinate estate; especially if an annual rent be reserved Com. Dig. Estates, R 1. And when a person is let into possession as a tenant, without any agreement as to time, the inference now is, that he is a tenant from year to year, until the contrary be proved; but, of course, such presumption may be rebutted. 3 Burr. 1609; 1 T. R. 163; 3 T. R. 16; 5 T. R. 471; 8 T. R. 3; 3 East 451. The difference between a tenant from year to year, and a tenant for years, is rather a distinction in words than in substance. Woodf., L. & J. 163.

12. Tenant at will, is when lands or tenements are let by one man to another, to have and th bold to him at the will of the lessor, by force of which the lessee is in possession. In this case the lessee is called tenant at will.

13. Every lease at will must be at the will of both parties. Co. Lit. 55; 2 Lilly's Reg. 555; 2 Bl. Com. 145., See Com. Dig. Estates, H 1; 12 Mass. 325; 1 Johns. Cas. 33; 2 Caines' C. Err. 314; 2 Caines' R. 169; 17 Mass. R. 282; 9 Johns. R. 331; 13 Johns. R. 235. Such a tenant may be ejected by the landlord at any time. 1 Watt's & Serg. 90.

14. Tenant at suffrance, is he who comes into possession by a lawful demise, and after his term is ended, continues the possession wrongfully, and holds over. Co. Lit. 57, b; 2 Leo. 46; 3 Leo. 153. See 1 Johns. Cas. 123; 5 Johns. R. 128; 4 Johns. R. 150; Id. 312.

15. Tenant in severalty, is he who holds land and tenements in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. 2 Bl. Com. 179.

16. Tenants in common, are such as hold by several and distinct titles, but by unity of possession. 2 Bl. Com. 161. See Estate in common; 7 Cruise, Dig. Ind. tit. Tenancy in Common; Bac. Abr. Joint−Tenants and Tenants in Common; Com. Dig. Abatement, E 10, F 6; Chancery, 3 V 4 Devise, N 8; Estates, K 8, K 2 Supp. to Ves. jr. vol. 1, 272, 315; 1 Vern. It. 353; Arch. Civ. Pl. 53, 73.

17. Tenants in common may have title as such to real or personal property; they may be tenants of a house, land, a horse, a ship, and the like.

18. Tenants in common are bound to account to each other; but they are bound to account only for the value of the property as it was when they entered, and not for any improvement or labor they put upon it, at their separate expense. 1 McMull. R. 298. Vide Estates in common; and 4 Kent, Com. 363. Joint tenants, are such as hold lands or tenements by joint tenancy. See Estate in joint tenany; 7 Cruise, Dig. Ind. tit. Joint Tenancy; Bac. Abr. Joint Tenants and Tenants in Common; Com. Dig. Estates, K 1; Chancery, 3 V 1; Devise, N 7, N 8; 2 Saund. Ind. Joint Tenants; Preston on Estates, 2 Bl. Com. 179.

20. Tenants to the praecipe, is be against whom the writ of praecipe is brought, in suing out a common recovery, and must be the tenant or seised of the freehold. 2 Bl. Com. 362.

TENANT OF THE DEMESNE, Eng. law. One who is tenant of a mesne lord; as where A is tenant of B, and C of A; B is the lord, A the mesne lord and C tenant of the demesne. Ham. N. P. 392, 393.

TENANT BY THE MANNER. One who has a less estate than a fee in land, which remains in the reversioner. He is so called because in avowries and other pleadings, it is specially shown in what manner, he is tenant of the land, in contradistinction to the veray tenant, who is called simply, tenant. Hamm. N. P. 393. See Veray.

TENANT PARAVAIL, English law. The tenant of a tenant; and is so called because he has the avails or profits of the land. Ham. N. P. 892, 393.

TENANT RIGHT, Eng. law. In leases from the crown, corporations or the church, it is usual to grant a further term to the old tenants in preference to strangers, and, as this expectation is seldom disappointed, such tenants are considered as baying an ulterior interest beyond their subsisting term; and this interest is called the tenant right. Bac. Ab. Leases and Terms for years, U.

TENDER, contracts, pleadings. A tender is an offer to do or perform an act which the party offering, is bound to perform to the party to whom the offer is made.

2. A tender may be of money or of specific articles; these will be separately considered. _1. Of the lender of money. To make la valid tender the following requisites are necessary: 1. It must be made by a person capable of paying: for if it be made by a stranger without the consent of the debtor, it will be insufficient. Cro. Eliz. 48, 132; 2 M. & S. 86; Co. Lit. 206.

3. − 2. It must be made to the creditor having capacity to receive it, or to his authorized agent. 1 Camp. 477; Dougl. 632; 5 Taunt. 307; S. C. 1 Marsh. 55; 6 Esp. 95; 3 T. R. 683; 14 Serg. & Rawle, 307; 1 Nev. & M. 398; S. C. 28 E. C. L. R. 324; 4 B. & C. 29 S. C. 10 E. C. L. R. 272; 3 C. & P. 453 S. C. 14 E. C. L. R. 386; 1 M. & W. 310; M. & M. 238; 1 Esp. R. 349 1 C. & P. 365

4. − 3. The whole sum due must be offered, in the lawful coin of the United States, or foreign coin made current by law; 2 N. & M. 519; and the offer must be unqualified by any circumstance whatever. 2 T. R. 305; 1 Campb. 131; 3 Campb. 70; 6 Taunt. 336; 3 Esp. C. 91; Stark. Ev. pt. 4, page 1392, n. g; 4 Campb. 156; 2 Campb. 21; 1 M. & W. 310. But a tender in bank notes, if not objected to on that account, will be good. 3 T. R. 554; 2 B. & P. 526; 1 Leigh's N. P. c. 1, S. 20; 9 Pick. 539; see 2 Caines, 116; 13 Mass. 235; 4 N. H. Rep. 296; 10 Wheat 333. But in such case, the amount tendered must be what is due exactly, for a tender of a five dollar note, demanding change, would not be a good tender of four dollars. 3 Campb. R. 70; 6 Taunt. R. 336; 2 Esp. R. 710; 2 D. & R. 305; S. C. 16 E. C. L. R. 87. And a tender was held good when made by a check contained in a letter, requesting a receipt in return which the plaintiff sent back demanding a larger sum, without objecting to the nature of the tender. 8 D. P. C. 442. When stock is to be tendered, everything must be done by the debtor to enable him to transfer it, but it is not absolutely requisite that it should be transferred. Str. 504, 533, 579 .

5. − 4. If a term had been stipulated in favor of a creditor, it must be expired; the offer should be made at the time agreed upon for the performance of the contract if made afterwards, it only goes in mitigation of damages, provided it be made before suit brought. 7 Taunt. 487; 8 East, R. 168; 5 Taunt. 240; 1 Saund. 33 a, note 2. The tender ought to be made before day−light is entirely gone. 7 Greenl. 31.

6. − 5. The condition on which the debt was contracted must be fulfilled.

7. − 6. The tender must be made at the place agreed upon for the payment, or, if there be no place appointed for that purpose, then to the creditor or his authorized agent. 8 John. 474; Lit. Sel. Cas. 132; Bac. Ab. h. t. c.

8. When a tender has been properly made, it is a complete defence to the action but the benefit of a tender is lost, if the creditor afterwards demand the thing due from the debtor, and the latter refuse to pay it. Kirby, 293.

9. − _2. Of the tender of specific articles. It is a rule that specific articles maybe tendered at some particular place, and not, like money, to the person of the creditor wherever found. When no place is expressly mentioned in the contract, the place of delivery is to be ascertained by the intent of the parties, to be collected from the nature of the case and its circumstances. If, for example, the contract is for delivery of goods from the seller to the buyer on demand, the former being the manufacturer of the goods or a dealer in them, no place being particularly named, the manufactory or store of the seller will be considered as the place intended, and a tender there will be sufficient. When the specific articles are at another place at the time of sale, that will be the place of delivery. 2 Greenl. Ev. _609 4 Wend. 377; 2 Applet. 325.

10. When the goods are cumbrous, and the place of delivery is not designated, nor to be inferred from the circumstances, it is presumed that it was intended that they should be delivered at any place which the creditor might reasonably appoint; if the creditor refuses, or names an unreasonable place, the debtor may select a proper

place, and having given notice to the creditor, deliver the goods there. 2 Kent, Comm. 507; 1 Greenl. 120; Chip. on Contr. 51 13 Wend. 95; 2 Greenl. Ev. _610. Vide, generally, 20 Vin., Ab. 177; Bac. Ab. h. t.; 1 Sell. 314; Com. Dig. Action upon the case upon Assumpsit, H 8−Condition, L 4 Pleader, 2 G 2−2 W, 28,49−3 K 23−3 M 36; Chipm, on Contr. 31, 74; Ayl. Pand. B. 4, t. 29; 7 Greenl. 31 Bouv. Inst. Index, h. t.

TENEMENT, estates. In its most extensive signification tenement comprehends every thing which may be holden, provided it be of a permanent nature; and not only lands and inheritances which are holden, but also rents and profits a prendre of which a man has any frank tenement, and of which he may be seised ut de libero tenemento, are included under this term. Co. Litt. 6 a; 1 Tho. Co. Litt. 219; Pork. s. 114; 2 Bl. Com. 17. But the word tenements simply, without other circumstances, has never been construed to pass a fee. 10 Wheat. 204. In its more confined and vulgar acceptation, it means a house or building. Ibid. an 1 Prest. on Est. 8. Vide 4 Bing. 293; S C. l1 Eng. C. L. Rep. 207; 1 T. R. 358; 3 T. R. 772; 3 East, R. 113; 5 East, R. 239; Burn's Just. Poor, 525 to 541; 1 B. & Adolph. 161; S. C. 20 Engl. C. L. Rep. 36 8; Com. Dig. Grant, E 2; Trespass, A 2; Wood's Inst. 120; Babington on Auctions, 211, 212.

TENENDAS, Scotch law. The name of a clause in charters of heritable rights which derives its name from its first words tenendus praedictas terras, and expresses the particular tenure by which the lands are to be holden. Ersk. Prin. B. 2, t. 3, n. 10.

TENENDUM, conveyancing. This is a Latin word, which signifies to hold.

2. It was formerly that part of a deed which was used to express the tenure by which the estate granted was holden; but since all freehold tenures were converted into socage, the tenendum is of no further use even in England, and is therefore joined to the habendum in this manner, "to have and to hold." The words "to hold" have now no meaning in our deeds. 2 Bl. Com. 298. Vide Habendum.

TENERI, contracts. That part of a bond where the obligor declares himself to be held and firmly bound to the obligee, his heirs, executors, administrators and assigns, is called the teneri. 3 Call, 350.

TENNESSEE. The name of one of the new states of the United States of America. This state was admitted into the Union by virtue of the "act for the admission of the state of Tennessee into the Union," approved June 1, 1796, 1 Story's L. IT. S. 450, which recites and enacts as follows:

2. Whereas, by the acceptance of the deed of cession of the state of North Carolina, congress are bound to lay out, into one or more states, the territory thereby ceded to the United States:

3. − _1. Be it enacted, &c., That the whole of the territory ceded to the United States by the state of North Carolina, shall be one state, and the same is hereby declared to be one of the United States of America, on an equal footing with the original states in all respects whatever, by the name and title of the state of Tennessee. That, until the next general census, the said state of Tennessee shall be entitled to one representative in the house of representatives of the United States; and, in all other respects, as far as they may be applicable, the laws of the United States shall extend to, and have force in, the state of Tennessee, in the same manner as if that state had originally been one of the United States.

4. The constitution was adopted on the sixth day of February, 1796; and amended by a convention which sat at Nashville, on the 30th day of August, 1834. The powers of the government are divided into three distinct departments; the legislative, executive, and judicial. Art. 2, 1.

5. − 1st. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives, both dependent on the people.

6. − 1. The senate will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the length of time for which they are elected; and, the time of their election. 1. Every free white man of the age of twenty−one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote six months next preceding the day of his election, shall be entitled to vote for members of the general assembly, and other civil officers, for the county and district in which he resides; provided, that no person shall be disqualified from voting on account of color, who is now, by the laws of this state, a competent witness in a court of justice against a white man. Art. 4, sect. 1. 2. No person shall be a senator, unless he be a citizen of the United States, of the age of thirty years, and shall have resided three years in this state, and one year in, the county or district, immediately preceding the election. Art. 2, s. 10. 3. The number of senators shall not exceed one−third of the number of representatives. Art. 2, s. 6. 4. Senators shall hold their office for the term of two years. Art. 2, s. 7. 5. Their election takes place on the first Thursday of August, 1835, and every second year thereafter. Art. 2 , s. 7.

7. − 2. The house of representatives will be considered in the same order which has been observed in considering the senate. 1. The qualifications of the electors of representatives are the same as those of senators. 2. To be elected a representative, the candidate must be a citizen of the United States, of the age of twenty−one years, and must have been a citizen of the state for three years, and a resident of the county he represents one year immediately preceding the election. Art. 2, s. 9. 3. The number of representatives shall not exceed seventy−five, until the population of the state shall exceed one million and a half; and shall never thereafter exceed ninety−nine. Art. 2, s. 5. 4. They are elected for two years. Art. 2, s. 7. 5. The election is to be at the same time as that of senators. Art. 2, s. 7.

8. − 2d. The supreme executive power of this state is vested in a governor. Art. 3, s. 2. 1. He is chosen by the electors of the members of the general assembly. Art. 3, s. 2. 2. He shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a citizen of this state seven years next before his election. Id. sect. 3. He shall hold his office for two years, and until his successor shall be elected and qualified. He shall not be eligible more than six years in any term of right. Id. sect. 4. 3. He shall be elected by the electors of the members of the general assembly, at the times and places where they respectively vote for the members thereof. Id. s. 2. 4. He shall be commander−in−chief of the army and navy of the state, and of the militia, except when they are called into the service of the United States; shall have the power to grant reprieves and pardons, except in cases of impeachment; may convene the legislature on extraordinary occasions, by proclamation; take care that the laws be faithfully executed; from time to time give to the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient may requite information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices. Id. s. 5 to 11. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased nor diminished during the period for which he shall have been elected. Id. s. 7. 6. In case of the removal of the governor from office, or of his death, or resignation, the duties of the office shall devolve on the speaker of the senate; and in case of a vacancy in the office of the latter, on the speaker of the house of representatives. Id. s, 12.

9. − 3d. The judicial power of the state is vested, by the sixth article of the constitution, in one supreme court; in such inferior courts as the legislature shall, from time to time, ordain and establish, and the judges thereof; and in justices of the peace. The legislature may also vest such jurisdiction as may be deemed necessary in corporation courts.

10. − 1. The supreme court shall be composed of three judges; one of whom shall reside in each of the grand divisions of the state. The judges shall be thirty−five years of, age, and shall be elected for the term of twelve years. The jurisdiction of the supreme court shall be appellate only, under such restrictions and regulations as may, from time to time, be prescribed by law: but it may possess such other jurisdiction as is now conferred by law on the present supreme court. The concurrence of two of the judges shall be necessary to a decision. Said courts shall be held at one place, and at one place only, in each of the three grand divisions of the state.

11. − 2. The judges of such inferior courts as the legislature may establish, shall be thirty−five years of age, and shall be elected for eight years. The jurisdiction of such inferior courts shall be regulated by law. The judges shall not charge juries with regard to matters of fact, but may state the testimony and declare the law. They shall have power in all civil cases to issue writs of certiorari to remove any cause or transcript thereof, from any inferior jurisdiction, into said court, on sufficient cause, supported by oath or affirmation.

12. − 3. Judges of the courts of law, and equity are appointed by a joint vote of both houses of the general assembly; but courts may be established to be holden by justices of the peace.

13. − 4. The judges of the supreme court and inferior courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased nor diminished, during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor bold any other office of trust or profit under this state or the United States.

TENET. Which he holds. There are two ways of stating the tenure in an action of waste. The averment is either in the tenet and the tenuit; it has a refer−ence to the time of the waste done, and not to the time of bringing the action.

2. When the averment is in the tenet the plaintiff on obtaining a verdict, will recover the place wasted, namely, that part of the premises in which the waste was exclusively done, if it were done in a par only, together with treble damages. But when the averment is in the tenuit, the tenancy being at an end, he will have judgment for his

damages only. 2 Greenl. Ev. 652.

TENOR, pleading. This word, applied to an instrument in pleading, signifies an exact copy; it differs from purport. (q. v.) 2 Phil. Ev. 99; 2 Russ. on Cr. 365; 1, Chit. Cr. Law, 235; 1 Mass. 203; 1 East, R. 180, and the cases cited in the notes. In chancery practice, by tenor is understood a certified copy of records of other courts removed into chancery by certiorari. Gresl. Ev. 309.

TENUIT. Which he held. When the tenancy is ended and the tenant is sued in an action of waste, the averment of tenure is in the tenuit. For a distinction between the averment in the tenet and tenuit, see 2 Greenl. Ev. _652, and Tenet.

TENURE, estates. The manner in which lands or tenements are holden.

2. According to the English law, all lands are held mediately or immediately from the king, as lord paramount and supreme proprietor of all the lands in the kingdom. Co. Litt. 1 b, 65 a; 2 Bl. Com. 105.

3. The idea of tenure; pervades, to a considerable degree, the law of real property in the several states; the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language, his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 289, 290. In the states formed out of the North Western Territory, it seems that the doctrine of tenures is not in force, and that real estate is owned by an absolute and allodial title. This is owing to the wise provisions on this subject contained in the celebrated ordinance of 1787. Am. Jur. No. 21, p. 94, 5. In New York, 1 Rev. St. 718; Pennsylvania, 5 Rawle, R. 112; Connecticut, 1 Rev. L. 348 and Michigan, Mich. L. 393, feudal tenures have been abolished, and lands are held by allodial titles. South Carolina has adopted the statute, 12 C. II., c. 24, which established in England the tenure of free and common socage. 1 Brev. Dig. 136. Vide Wright on Tenures; Bro. h. t.; Treatises of Feuds and Tenures by Knight's service; 20 Vin Ab. 201; Com. Dig. h. t.; Bac. Ab. h. Thom. Co. Litt. Index, h. t.; Sulliv. Lect. Index, h. t.

TENSE. A term used in, grammar to denote the distinction of time.

2. The acts of a court of justice ought to be in the present tense; as, "praeceptum est," not "preaceptum fuit;" but the acts of, the party may be in the preterperfect tense, as "venit, et protulit hic in curia quandum querelam suam;" and the continuances are in the preterperfect tense; as, "venerunt," not "veniunt." 1 Mod. 81.

3. The contract of marriage should be made in language in the present tense. 6 Binn. Rep. 405. Vide 1 Saund. 393, n. 1.

TERCE, law of Scotland. A life−rent competent by law to widows who have not accepted of special provisions in the third part of the heritable subjects in which the hushand died infeft.

2. The terce takes place only where the marriage has subsisted for a year and day, or where a child has been born alive of it. No terce is due out of lands in which the hushand was not infeft, unless in case of a fraudulent omission. Cr. 423, _28; St. 2, 6, 16. The terce is not limited to lands, but extends to teinds, and to servitudes and other burdens affecting lands. Ersk. Pr. L. Scot. B. 2, t. 9, s. 26, 27; Burge on the Confl. of Laws, 429 to 435.

TERM, construction. Word; expression speech.

2. Terms or words are characters by which we announce our sentiments, and make known to others things with which we are acquainted. These must be properly construed or interpreted in order to understand the parties using them. Vide Construction; Interpretation; Word.

TERM, contracts. This word is used in the civil, law to denote the space of time granted to the debtor for discharging his obligation; there are express terms resulting from the positive stipulations of the agreement; as, where one undertakes to pay a certain sum on a certain day and also terms which tacitly result from the nature of the things which are the object of the engagement, or from the place where the act is agreed to be done. For instance, if a builder engage to construct a house for me, I must allow a reasonable time for fulfilling his engagement.

2. A term is either of right or of grace; when it makes part of the agreement and is expressly or tacitly included in it, it is of right when it is not part of the agreement, it is of grace; as if it is not afterwards granted by the judge at the requisition of the debtor. Poth. on Oblig. P. 2, c. 3, art. 3; 1 Bouv. Inst. n. 719 et seq.

TERM, estates. The limitation of an estate, as a term for years, for life, and the like. The word term does not merely signify the time specified in the lease, but the estate also and interest that passes by that lease; and therefore the term may expire during the continuance of the time, as by surrender, forfeiture and the like. 2 Bl. Com. 145; 8 Pick. R. 339.

TERM, practice. The space of time during which a court holds a session; sometimes the term is a monthly, at

others it is a quarterly period, according to the constitution of the court.

2. The whole term is considered as but one day so that the judges may at any time during the term, revise their judgments. In the computation of the term all adjournments are to be included. 9 Watts, R. 200. Courts are presumed to know judicially when their terms are required to be held by public law. 4 Dev. R. 427. See, 1 generally, Peck, R. 82; 6 Yerg. R. 395; 7 Yerg. R. 365; 6 Rand. R. 704; 2 Cowen, R. 445; 1 Cowen, R. 58; 5 Binn. R. 389; 4 S. & R. 507 5 Mass. R. 195, 435.

TERM ATTENDANT ON THE INHERITANCE. This phrase is used in the English courts of equity, to signify that when a term has been created for a particular purpose, which is satisfied, and the instrument by which it is created does not provide for a cesser of the term, on the happening of the event, the benefit in it becomes subject to the rules of equity, and must be moulded and disposed of according to the equitable interests of all persons having claims upon the inheritance; and, when the purposes of the trust fire satisfied, the ownership of the term belongs in equity, to the owner of the inheritance, whether de−clared by the original conveyance to attend it or not.

2. Terms attendant on the inherit ance are but little known in the United States. 1 Hill. Ab. 243.

TERM PROBATORY. A probatory term is the time during which evidence may be taken in a cause. Vide Probatory term.

TERM FOR YEARS. An estate for years, (q. v.) and the time during which such estate is to be beld, are each called a term; hence the term may expire before the time, as by a surrender. Co. Litt. 45. If, for example, a conveyance be made to Peter for three years, and after the expiration of the said term to Paul for six, and Peter surrenders or forfeits his term after one year, Paul's estate takes effect immediately; if, on the contrary, the language had been after the expiration of the said time, or of the said three years, the result would have been different, and Paul's estate would not have taken effect till the end of such time, notwithstanding the forfeiture or surrender.

2. Whatever be its duration, a term for years is less than an estate for life. If, therefore, the same person have a term for years and an estate for life immediately succeeding it, the term is merged; but if the order of the estates be reversed, that is, if the greater precede the less, there is no merger. Co. Litt. 54 b; Vin. Ab. Merger, F 4 and G 13; Godb. 51; Biss. on Est. c. 8, s. 1, n. 3, p. 186. Vide Estate for years; Leases.

TERMINUM. In the civil law, says Spelman, this word signifies a day set to the defendant, and, in that sense, Bracton, Glanville and some others sometimes use it. Reliquiae Spelmanianae, p. 71; Beames' Gl. 27 n.

TERMINUS A QUO. The starting point of a private way is so called. Hamm. N. P. 196.

TERMINUS AD QUEM. The point of termination of a private way is so called.

TERMOR. One who holds lands and tenements for a term of years or, life. Litt. sect. 100; 4 Tyr. 561.

TERRE−TENANT, or improperly terre−tenant. One who has the actual possession of land; but in a more technical sense, he who is seised of the land; and, in the latter sense the owner of the land, or the person seised, is the terre−tenant, and not the lessee. 4 W. & S. 256; Bac. Ab. Uses and Trusts, in pr. It has been holden that mere occupiers of the land are not terre−tenants. Bee 16 S. & R, 432; 3 Penna. 229; 2 Saund. 7, n. 4; 2 Bl. Com. 91, 328.

TERRIER, Engl. Iaw. A roll, catalogue or survey of lands, belonging either to a single person or a town, in which are stated the quantity of, acres, the names of the tenants, and the like.

2. By the ecclesiastical law an inquiry is directed to be made from time to time, of the temporal rights of the clergyman of every parish, and to be returned into the registry of the bishop: this return is denominated a terrier. 1 Phil. & Am. Ev. 602, 603.

TERRITORIAL COURTS. The courts established in the territories of the United States. Vide Courts of the United States.

TERRITORY. Apart of a country, separated from the rest, and subject to a particular jurisdiction. The word is derived from terreo, and is so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. Dictum cat ab eo quod magistratus intra fines ejus terrendi jus habet. Henrion de Pansy, Auth. Judiciare, 98. In speaking of the ecclesiastical jurisdictions, Francis Duaren observes, that the ecclesiastics are said not to have territory, nor the power of arrest or removal, and are not unlike the Roman magistrates of whom Gellius says vocationem habebant non prehen−sionem. De Sacris Eccles. Minist. lib. 1, cap. 4. In the sense it is used in the constitution of the United States, it signifies a portion of the country subject to and belonging to the United States, which is not within the boundary of any of them.

2. The constitution of the United States, art. 4, s. 3, provides, that "the congress shall have power to dispose of, and make all needful rules and regu−lations respecting the territory or other property of the United States; and nothing in this constitution shall be construed, so as to preclude the claims of the United States or of any state."

3. Congress possesses the power to erect territorial governments within the territory of the United States; the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory, as far as it may be affected by stipulations in the cessions, or by the ordinance of 1787, 3 Story's L. U. S. 2073, under which any part of it has been settled. Story on the Const. _1322; Rawle on the Const: 237; 1 Kent's Com. 243, 359; 1 Pet. S. C. Rep. 511, 542, 517.

4. The only organized territories of the United States are Oregon, Minnesota, New Mexico and Utah. Vide Courts of the United States.

TERROR. That state of the mind which arises from the event or phenomenon that may serve as a prognostic of some catastrophe affright from apparent danger.

2. One of the constituents of the offence of riot is that the acts of the persons engaged in it should be to the terror of the people, as a show of arms, threatening speeches, or turbulent gestures; but it is not requisite, in order to constitute this crime, that personal violence should be committed. 3 Camp. R. 369; 1 Hawk. P. C. c. 65, s. 5; 4 C. & P. 373. S. C. 19 E. C. L. R. 425 4 C. & P. 538; S. C. 19 E. C. L. R. 616. Vide Rolle's R. 109; Dalt. Just. c. 186; 19 Vin. Ab. Riots, A 8.

3. To constitute a forcible entry, 1 Russ. Cr. 287, the act must be accom−panied with circumstances of violence or terror; and in order to make the crime of robbery, there must be violence or putting in fear, but both these circumstances need not concur. 4 Binn. R. 379. Vide Riot; Robbery; Putting in fear.

TERTIUS INTERVENIENS, civil law. One, who claiming an interest in the subject or thing in dispute in action between other parties, asserts his right to act with the plaintiff, to be joined with him, and to recover the matter in dispute because he has an interest in it or to join the defendant, and with him, oppose the interest of the plaintiff, which it is his interest to defeat. He differs from the intervener or he who interpleads in equity. 4 Bouv. Inst. n. 3819, note.

TEST. Something by which to ascertain the truth respecting another thing. 7 Penn. St. Rep. 428; 6 Whart. 284. Vide Religious Test.

TESTACY. The state or condition of dying after making a will, which was valid at the time of testator's death.

TESTAMENT, civil law. The appointment of an executor or testamentary heir, according to the formalities prescribed by law. Domat, Liv. 1, tit. 1, s. 1.

2. At first there were only two sorts of testaments among the Romans that called calatis comitiis, and another called in procinctu. (See below.) In the course of time these two sorts of testament having become obsolete, a third form was introduced, called per aes et libram, which was a fictitious sale of the inheritance to the heir apparent. The inconveniences which were experienced from these fictitious sales again changed the form of testaments; and the praetor introduced another which required the seal of seven witnesses. The emperors having increased the solemnity of those testaments, they were called written or solemn testaments, to distinguish them from nuncupative testaments which could be made without writing. Afterwards military testaments were introduced, in favor of soldiers actually engaged in military service.

3. Among the civilians there are various kinds of testaments, the principal of which are mentioned below.

4. A civil testament is one made according to all the forms prescribed by law, in contradistinction to a military testament, in making which some of the forms may be dispensed with. Civil testaments are more ancient than military ones; the former were in use during the time of Romulus, the latter were introduced during the time of Coriolanus. See Hist. de la Jurisp. Rom. de M. Terrason, p. 119.

5. A common testament is one which is made jointly by several persons. Such testaments are forbidden in Louisiana, Civ. Code of Lo. art. 1565, and by the laws of France, Code Civ. 968, in the same words, namely, "A testament cannot be made by the same act, by two or more persons, either for the benefit of a third person, or under the title of a reciprocal or mutual disposition."

6. A testament calatis comitiis, or made in the comitia, that is, the assembly of the Roman people, was an ancient manner of making wills used in times of peace amonn the Romans. The comitia met twice a year for this purpose. Those who wished to make such testaments caused to be convoked the assembly of the people by these words, calatis comitiis. None could make such will's that were not entitled to be at the assemblies of the people. This form of testament was repealed by the law of the Twelve Tables.

7. Testament ab irato, a term used in the civil law. A testament ab irato, is one made in a gust of passion or hatred against the presumptive heir rather than from a desire to benefit the devisee. When the facts of unreasonable anger are proved, the will is annulled as unjust, and as not having been freely made. Vide Ab irato.

8. A mystic testament is also called a solemn testament, because it requires more formality than a nuncupative testament; it is a form of making a will, which consists principally in enclosing it in an envelope and sealing it in the presence of witnesses.

9. This kind of testament is used in Louisiana. The following are the provisions of the civil code of that state on the subject, namely: the mystic or secret testament, otherwise called the close testament, is made in the following manner: the testator must, sign his dispositions, whether he has written. them himself, or has caused them to be written by another person. The paper containing, those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and to witnesses, or he shall cause it to be and sealed in their presence; then he shall declare to the notary, in the presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Art. 1577, 5 M. R. 1 82. All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the testament, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof; without its being necessary, in that case, to increase the number of witnesses. Art. 1578. Those who know not how, or are not able to write, and those who know not how, or are not able to sign their names, cannot make dispositions in the form of the mystic will. Art. 1579. If any one of the witnesses to the act of superscription knows not how to sign, express mention shall be made thereof. In all cases the act must be signed by at least two witnesses. Art. 1580.

10. Nuncupative, testament, a term used in the civil law. A numcupative testament was one made verbally, in the presence of seven witnesses; it was not necessary that it should have been, in writing; the proof of it was by parol evidence.

11. In Louisiana, testaments, whether nuncupative or mystic, must be drawn up in writing, either by the testator himself, or by some other person under his dictation. Civil Code of Lo. art. 1568. The custom of making verbal statements, that is to say, resulting from the mere deposition of witnesses, who were pregent when the testator made known to them his will, without his having committed it, or caused it to be committed to writing, is abrogated. Id. art. 1569. Nuncupative testaments may be made by public act, or by act under private signature. Id. art. 1570. See Will, nuncupative.

12. Olographic testament, a term used in the civil law. The olographic tes−tament is that which is written wholly by the testator himself. In order to be valid, it must be entirely written, dated, and signed by the hand of the tes−tator. It is subject to no other form. See Civil Code of Lo. art.

TESTAMENTARY. Belonging to a testament; as a testamentary gift; a testamen−tary guardian, or one appointed by will or testament; letters testamentary, or a writing under seal given by an officer lawfully authorized, granting power to one named as executor to execute a last will or testament.

TESTATE. One who dies having made a testament; a testator. This word is used in this sense, in the act of the legislature of Pennsylvania, entitled "An act relative to dower and for other purposes." Sect. 2, 5 Sm. Laws, 257.

TESTATOR. One who has made a testament or will.

2. In general, all persons may be testators. But to this rule there are various exceptions. First, persons who are deprived of understanding cannot make wills; idiots, lunatics and infants, are among this class. Secondly, persons who have understanding, but being under the power of others, cannot freely exercise their will; and this the law presumes to be the case with a married woman, and, therefore, she cannot make a will without the express consent of her hushand to the particular will. When a woman makes a will under some general agreement on the part of the hushand that she shall make a will, the instrument is not properly a will, but a writing in the nature of a will or testament. Thirdly, persons who are deprived of their free will cannot make a testament; as, a person in duress. 2 Bl. Com. 497; 2 Bouv. Inst. n. 2102, et seq. See Devisor; Duress; Feme covert;, Idiot; Influence; Parties to Contracts; Testament; Wife; Will.

TESTATRIX. A woman who makes a will or testament, is so called.

TESTATUM, practice. The name of a writ which is issued by the court of one county, to the sheriff of another county, in the same state, when the defen−dant cannot be found in the county where the court is located; for

example, after a judgment has been obtained, and a ca. sa. has been issued, which has been returned non est inventus, a testatum ca. sa. may be issued to the sheriff of the county where the defendant is. Vide 20 Vin. Ab. 259; 7 Com. Dig. 424.

TESTATUM, conveyancing. That part of a deed which commences with the words "this indenture witnesseth."

TESTE, practice. The teste of a writ is the concluding clause, commencing with the word witness, &c.

2. The act of congress of May 8, 1792, 1 Story's Laws U. S. 257, directs that all writs and process issuing from the supreme or a circuit court, shall bear teste of the chief justice of the supreme court, or if that office be vacant, of the associate justice next in precedence; and that all writs or process issuing from a district court, shall hear teste of the judge of such court, or, if the said office be vacant, of the clerk thereof. Vide Serg. Const. Law, Index, h. t.; 20 Vin. Ab. 262; Steph. Plead. 25.

TESTES. Witnesses.

TO TESTIFY. To give evidence according to law; the examination of a witness who declares his knowledge of facts.

TESTIMONIAL PROOF, civ. law. This word is used in the same sense as we use parol evidence, and, in contradistinction to literal proof, which is written evidence.

TESTIMONY, evidence. The statement made by a witness under oath or affirmation. Vide Bill to perpetuate testimony.

TESTMOIGNE. This is an old and barbarous French word, signifying in the old books, evidence. Com. Dig. h. t.

TEXAS. The name of one of the new states of the United, States of America. Texas was an independent republic. By the joint resolution of congress of March 1, 1845, congress gave consent that the republic of Texas might be erected into a new state, to be called the state of Texas, with a republican form of government to be adopted by the people. And by the joint resolution of congress of the 29th day of December, 1845, the state of Texas was admitted into the union on an equal footing with the original states in all respects whatever.

2. The constitution of the state was adopted in convention by the deputies of the people of Texas, at the city of Austin the 27th day of August, 1845.

3. By the second article, it is provided that the powers of the government of the state of Texas shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another; and no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

4. − _1. In considering the legislative power, it will be proper to consider, 1. The qualification of voters. 2. The rights of members of the legislature. 3. The senate. 4. The house of representatives.

5. − 1. By sections. 1st and 2d, it is declared that every free male person who shall have attained the age of twenty−one years, and who shall be a citizen of the United States, or who is, at the time of the adoption of this constitution by the congress of the United States, a citizen of the republic of Texas, and shall have resided in this state one year next preceding an election, and the last six months within the district, county, city, or town in which he offers to vote, (Indians not taxed, Africans, and the descendants of Africans, excepted,) shall be deemed a qualified elector and should such qualified elector happen to be in any other county situated in the district in which he resides at the time of an election, he shall be permitted to vote for any district officer: Provided, That the qualified electors shall be permitted to vote anywhere in the state for state officers: And provided further, That no soldier, seaman, or marine, in the army or navy of the United States, shall be entitled to vote at any election created by this constitution.

Sect. 2. All free male persons over the age of twenty−one years, (Indians not taxed, Africans, and descendants of Africans, excepted,) who shall have resided six months in Texas, immediately preceding the acceptance of this constitution by the congress, of the United States, shall be deemed qualified electors.

6. − 2. The powers of the two houses are defined by the following sections of the third article, namely,

Sec. 12. The house of representatives, when assembled, shall elect a speaker and its other officers; and the senate shall choose a president for the time being, and its other officers. Each house shall judge of the qualifications and elections of its own members; but contested elections shall be determined in such manner as shall be directed by law. Two−thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such pen alties as each house may provide.

Sec. 13. Each house may determine the rules of its own proceedings; punish members for disorderly conduct; and with the consent of two−thirds, expel a member, but not a second time for the same offence.

Sec. 14. Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journals.

Sec. 16. Senators and representatives shall, in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature; and, in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

Sec. 17. Each house may punish, by imprisonment during the session, any person, not a member, for disrespectful or disorderly conduct in its presence, or for obstructing,any of its proceedings, provided such imprisonment shall not, at any one time, exceed forty−eight hours.

Sec. 18. The doors of each house shall be kept open.

7. − 3. The senate will be considered by taking a view, 1. Of the qualifications of senators. 2. Of the time of their election. 3. Of the length of their service. 4. By whom chosen.

8. − 1st. The 11th section of the 3d article of the constitution directs that no person shall be a senator unless he be a citizen of the United States, or at the time of the acceptance of this constitution by the congress of the United States a citizen of the republic of Texas, and shall have been an inhabitant of this state three years next preceding the election; and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years.

9. − 2d. Elections are to be held at such times and places as are now or may hereafter be designated by law. Art. 3, s. 7.

10. − 3d. Senator; are duly elected for four years.

11. − 4th. Senators are chosen by the qualified electors.

12. − 1. The house of representatives will be considered in the same order which has been observed in speaking of the senate.

13. − 1st. By the 6th section of the 3d article of the constitution, it is declared that no person shall be a reprsentative unless he be a citizen of the United States, or at the time of the adoption of this constitution a citizen of the republic of Texas, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a citizen of the county, city, or town for which he shall be chosen, and shall have attained the age of twenty−one years at the time of his election.

14. − 2d. Elections are to be held at such times and places as ’are now or may hereafter be designated by law. Art. 3, s. 7.

15. − 3d. The members of the house of representatives hold their office for two, years from the day of the general election; and the sessions of the legislature shall be biennial, at such times as shall be prescribed by law. Art. 3, s. 6.

16. − 4th. The members of the house of representatives shall be chosen by the qualified electors. Art. 3, s. 5.

17. − _2. The judicial power is vested in one supreme court, in district courts, and in such inferior courts as the legislature may from time to time ordain and establish; and such jurisdiction may be vested in corporation courts. as may be deemed necessary, and be directed by law. Art. 4, s. 1. Each of these will be separately considered.

18. − 1. The supreme court will be considered by, 1. Taking a view of the appointment of the judges, and the time during which they hold their office. 2. The organization of the court. 3. Its jurisdiction.

19. − 1st. The governor shall nominate, and, by and with the advice and consent of two−thirds of the senate, shall appoint the judges of the supreme and district courts, and they shall hold their offices for six years. Art. 4, s. 5.

20. − 2d. The supreme court shall consist of a chief justice and two associates, any two of whom shall form a quorum. 4, s. 2. It appoints its own clerk.

21. − 3d. The 3d section of the 4th article of the constitution declares that the supreme court shall have appellate jurisdiction only, which shall be co−extensive with the limits of the state; but in criminal cases, and in appeals from interlocutory judgments, with such exceptions and under such regu−lations as the legislature shall make; And the supreme court and judges thereof shall have power to issue the writ of habeas corpus, and, under such regu−lations as may be prescribed by law, may issue Writs of mandamus, and such other writs as, shall be necessary to enforce its own jurisdiction; and also compel a judge of the district court to proceed to trial and

judgment in a cause; and the supreme court shall hold its sessions once every year, between the months of October and June inclusive, at not more than three places in the state.

22. − 2. The circuit courts will be considered in the same order observed with regard to the supreme court.

23. − 1st. Circuit court judges are appointed in the same way as judges of the supreme court, and hold their office for the same time.

24. − 2d. By the 6th section of the 4th article of the constitution, if is directed that the state shall be divided into convenient judicial districts. For each district there shall be appointed a Judge, who shall reside in the same, and hold the courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law. The clerk is elected by the qualified voters of members of the legislature. Art. 4, s. 11.

24. − 3d. By the tenth section of the fourth article, jurisdiction is given to the district courts in these words: The district court shall have original jurisdiction of all criminal cases, of all suits in bebalf of the state to recover penalties, forfeitures and escheats, and of all cases of divorce, and of all suits, complaints, and pleas whatever, without regard to −any distinction between law and equity, when the matter in controversy shall be valued at or amount to one hundred dollars, exclusive of interest; and the said courts, or the judges thereof, shall have power to issue all writs necessary to enforce their own jurisdiction, and give them a general superintendence and control over inferior jurisdictions; and in the trial of all criminal cases, the jury trying the same shall find and assess the amount of punishment to be inflicted, or fine imposed; except in capital cases, and where the. punishment or fine imposed shall be specifically imposed by law.

25. − _3. The supreme executive power is vested in a governor. We will consider, 1. His qualifications. 2. By whom elected. 3. Duration of his office. 4. His power and duty.

26. − 1st. He must be at least thirty years of age, be a citizen of the United States, or a citizen of Texas, at the time of the adoption of the constitution, and shall have resided in the same three years next immediately preceding his election. Art. 5, s. 4.

27. − 2d. The governor shall be elected by the qualified electors of the state, at the time and places of elections for members of the legislature. Art. 5, s. 2.

28. − 3d. He holds his office for two years from the regular time of installation, and until his successor shall have been duly qualified, but shall not be eligible for more than four years in any term of six years. Art. 5, s. 4.

29. − 4th. He is commander−in−chief of the army and navy of the state − may require information from officers of the executive department − may convene the legislature, or adjourn the same, when the houses cannot agree − may recommend measures to the legislature − shall cause the laws to be executed. Art. 5.

30. There shall be a lieutenant governor, who shall be chosen at every election for governor, by the same persons and in the same manner, continue in office for the same time, and, possess the same qualifications. In voting for governor and lieutenant−governor, the electors shall distinguish for whom they vote as governor, and for whom as lieutenant−governor. The lieutenant governor shall, by virtue of his office, be president of the senate, and have, when in committee of the whole, a right to debate and vote on all questions, and when the senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the governor to serve or of his impeachment or absence from the state, the lieutenant governor shall exercise the power and authority appertaining to the office of governor until another be chosen at the periodical election and be duly qualified or until the governor impeached, absent, or disabled, shall be acquitted, return, or his disability be removed. Art. 5, s. 12.

THAINLAND, old Eng. law. The land which was granted by the Saxon kings to their thains or thanes was so called. Crabb's C. L. 10.

THALER. The name of a coin. The thaler of Prussia and of the northern states of Germany is deemed as money of account, at the custom−house, to be of the value of sixty−nine cents. Act of May 22, 1846.

2. The thaler of Bremen, of seventy−two grotes, is deemed of the value of seventy−one cents. Act of March 3, 1843.

THEFT, crimes. This word is sometimes used as synonymous with larceny, (q. v.) but it is not so technical. Ayliffe's Pand. 581 2 Swift's Dig. 309.

2. In the Scotch law, this is a proper and technical word, and signifies the secret and felonious abstraction of the property of another for sake of lucre, without his consent. Alison, Princ. Cr. Law of Scotl. 250.

THEFT−BOTE. The act of receiving a man's goods from the thief, after they had been stolen by him, with the intent that he shall escape punishment.

2. This is an offence punishable at common law by fine and imprisonment. Hale's P. C. 130. Vide Compounding a felony.

THEOCRACY. A species of government which claims to be immediately directed by God.

2. La religion qui, dans l'antiquite, s'associa souvent au despotisms, pour regner. par son bras ou a son ombrage, a quelquefois tents de regner seule. Clest ce qu'elle appelait le regne de Dieu, la thiocratie. Matter, De l'influence des Moeurs sur les lois, et de l'influence dos Lois sur les moeurs, 189. Religion, which in former tinies, frequently associated itself with despotism, to reign, by its power, or under its shadow, has sometimes attempted to reign alone, and this she has called the reign of God, theocracy.

THIEF, crimes. One who has been guilty of larceny or theft.

THING ADJUDGED. That which has been decided by a final judgment, by a tribu−nal of competent jurisdiction, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for the appealing has elapsed, or because it has been confirmed on the appeal. Vide res judicata.

2. The Roman law agrees with ours, for it requires a final judgment or sentence before the decision acquires the force of the thing adjudged. Dig. 42, 1; Code, 7, 52; Extravag. 2, 27.

THINGS. By this word is understood every object, except man, which may become an active subject of right. Code du Canton de Berne, art. 332. In this sense it is opposed, in the language of the law, to the word persons. (q. v.)

2. Things, by the common raw, are divided into, 1. Things real, which are such as are permanent, fixed and immovable, and which cannot be carried from place to place; they are are usually said to consist in lands, tenements and hereditaments. 2 Bl. Com. 16; Co. Litt. 4 a to 6 b. 2. Things personal, include all sorts of things movable which attend a man's person wherever he goes. Things personal include not only things movable, but also something more, the whole of which is generally comprehended under the name of chattels. Chattels are distinguished into two kinds, namely, chattels real and chattels personal. See Chattel.

3. It is proper to remark that sometimes it depends upon the destination of certain objects, whether they are to be considered personal or real property. See Dalloz, Dict. choses, art 1, _2. Destination; Fixtures; Mill.

4. Formerly, in England, a very low and contemptuous opinion was entertained of personal property, which was regarded as only a transient commodity. But of late years different ideas have been entertained of it; and the courts, both in that country, and in this, now regard a man's personal property in a light, nearly, if not quite equal to his realty; and have adopted a more enlarged and still Iess technical mode of considering the one than the other, frequently drawn from the rules which they found already established by the Roman law, wherever those rules appear to be well−grounded and apposite to the case in question, but principally from reason and convenience, adapted to the circumstances of the times. 2 Bl. Com. 385.

5. By the Roman or civil law, things are either inpatrimonio, capable of being possessed by single persons exclusive of others; or extra patrimoiium, incapable of being so possessed.

9. Things in patrimonio are divided into corporeal and incorporeal, and the corporeal again into movable and immovable.

7. Corporeal things are those which are visible and tangible, as lands, houses, horses, jewels, and the like; incorporeal are not the object of sensation, but are the creatures of the mind, being rights issuing out of a thing corporeal, or concerning or exercisable within the same; as, an obligation, a hypothecation, a servitude, and, in general, that which consists only in a certain right. Domat, Lois Civ. Liv. Prel. t. 31 s. 2, _3; Poth. Traite dos Choses, in princ.

8. Corporeal things are either movable or immovable. The movable are those which have been separated from the earth, as felled trees, or gathered fruits, or stones dug out from quarries or those which are naturally separated, as an−imals. Immovable things are those parts of the surface of the earth, in what−ever manner thev way be distinguished, either as building;, woods, meadows, fields,or otherwise, and to whomsoever they may belong. Under the name of immovables is included everything which adheres to the surface of the earth, either by its nature, as trees; or which has been erected by the hands of man, as houses and other buildings, although, by being separated, such things way become movables. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, _5 and 6. See Movables; Immovables.

9. Things extra patrimonium are, 1. Common. 2. Public. 3. Res universitatis. 4. Res nullius.

10. − 1. Things common are, the heavens, light, air, and the sea, which cannot be appropriated by any man or set of men, so as to deprive others from the. use of them. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, _1; _1 lnst. de rer.

div.; L. 2, _1, ff. de rer. div.; Ayliffe, Pand. B. 2, t. 1, in med.

11. − 2. Things public, res publicae, the property of which was in the state, and their use common to all the members of it, as navigable rivers, ways, bridges, harbors, banks, and the right of fishing.

12. − 3. Res universitatis, or things belonging to cities or bodies politic. Such things belong to the corporation or body politic in respect of the property of them; but as to their use, they appertain to those persons that are of the corporation or body politic: such may be theatres, market houses, and the like. They differ from things public, inasmuch as the latter belong to a nation. The lands or other revenue belonging to a corporation, do not fall under this class, but, are juris privati.

13. − 4. Res nullius, or things which are not the property of any man or number of men, are principally those of divine right; they are of three sorts: things sacred, things religious, and things sanct. Things sacred were those which were duly and publicly consecrated by the priests, as churches, their ornaments, &c. Things religious were those places which became so by burying in them a dead body, even though no consecration of these spots by a priest had taken place. Things sanct were those which by certain reverential awe arising from their nature, something augmented by religious ceremonies, were guarded and defended from the injuries of men; such were the gates and walls of a city, offences against which were capitally punished. 1 Bro. Civ. Law, B. 2, c. 1, p. 172.

See, in general, Domat, Lois Civ. Liv. Prel. tit. 3; 1 Bro. Civ. Law, B. 2, c. 1 Poth. Traite des Choses; Ersk. Pr. Law Scot. B. 2, tit. 1; Toullier, Droit Francais, Liv. 2, tit. 1 Ayliffe, Pand. B. 3, t. 1; Inst. 2, 1, 2 Dig. 1, 8 Bouv. Inst. Index, h. t.

THIRD PARTIES. This term includes all persons who are not parties to the contract, agrement or instrument of writing, by which their interest in the thing conveyed is sought to be affected. 1 N. S. 384. See also 2 L. R. 425 6 M. R. 528.

2. But it is difficult to give a very definite idea of third persons, for sometimes those who are not parties to the contract, but who represent the rights of the original parties, as executors, are not to be considered third person. See Duverg. tome 16, n. 34, 35, 36, et idem, tome 17, n. 190; 2 Bouv. Inst. n. 1335, et seq.

THIRLAGE, Scotch law. The name of servitude by which lands are astricted or thirled to a particular mill, and the possessors bound to grind their grain there, for the payment of certain multures and sequels as the agreed price of grinding. Ersk. Prin. B. 2, t. 9, n. 18.

THOROUGHFARE. A street or way so open that one can go through and get out of it without returning. It differs from a cul de sac, (q. v.) which is open only at one end.

2. Whether a street which is not a thoroughfare is a highway, seems not fully settled. See 1 Campb. 260; 5 Taunt. 137; 11 East, 376, n.; Hawk. P. C. B. 1, c. 76, s. 1; 5 Barn. & Ald. 456. See Dedication.

THOUGHT. The operation of the mind. No one can be punished for his mere thoughts however wicked they may be. Human laws cannot reach them, first, because they are unknown; and, secondly, unless made manifest by some action, they are not injurious to any one; but when they manifest themselves, then the act, which is the consequence, may be punished. Dig. 50 16, 225.

THREAD. A figurative expression used to signify the central line of a stream or water course. Harg. Tracts, 5; 4 Mason’s Rep. 397; Holt’s R. 490. Vide Filum aguae; Island; Water course; River.

THREAT, crim. law. A menace of destruction or injury to the lives or property of those against whom it is made.

2. Sending threatening letters to persons for the purpose of extorting money, is said to, be a misdemeanor at common law. Hawk. B. 1, c. 53, s. 1; 2 Russ. on Cr. 575; 2 Chit. Cr. L. 841; 4 Bl. Com. l26. To be indictable, the threat must be of a nature calculated to overcome a firm and prudent man. The party who makes a threat may be held to bail for his good behaviour. Vide Com. Dig. Battery, D; 13 Vin. Ab. 357.

THREAT, evidence. Menace.

2. When a confession is obtained from a person accused of crime, in consequence of a threat, evidence of such confession cannot be received, because, being obtained by the torture of fear, it comes in so questionable a shape, that no credit ought to be given to it; 1 Leach, 263; this is the general principle, but what amounts to a threat is not so easily defined. It is proper to observe, however, that the threat must be made by a person having authority over the prisoner, or by another in the presence of such authorized person, and not dissented from by the latter. 8 C. & P. 733. Vide Confession, and the cases there cited.

THROAT, med. jur. The anterior part of the neck. Dungl. plea. Diet. h. t.; Coop. Dict. h. t.; 2 Good’s Study of Med. 302; 1 Chit. Med. Jur. 97, n.

2. The word throat, in an indictment which charged the defendant with murder, by "cutting the throat of the

deceased," does not mean, and is not to be confined to that part of the neck which is scientifically called the throat, but signifies that which is commonly called the throat. 6 Carr. & Payne, 401; S. C. 25 Engl. Com. Law Rep. 458.

TICK, contracts. Credit; as, if a servant usually buy for the master upon tick, and the servant buy something without the master's order, yet, if the master were trusted by the trader, he is liable. 1 Show. 95; 3 Keb. 625; 10 Mod. 111; 3 Esp. R. 214; 4 Esp. R. 174.

TIDE. The ebb and flow of the sea.

2. Arms of the sea, bays, creeks, coves, or rivers, where the tide ebbs and flows, are public, and all persons may use the same for the purposes of navi−gation and for fishing, unless restrained by law. To give these rights at common law, the tide must ebb and flow: the flowing of the waters of a lake into a river, and their reflowing, being not the flux and reflux of the tides, but mere occasional and rare instances of a swell in the lake, and a setting up of the waters into the river, and the subsiding of such swells, is not to be considered an ebb and flow of the tide, so as to constitute a river technically navigable. 20 John. R. 98. See 17 John. R. 195; 2 Conn. R. 481.

3. In Pennsylvania, the common law principle, that the flux and reflux of the tide ascertain the character of the river, has been rejected. 2 Binn. R. 475. Vide Arm of the sea; Navigable river; Sea shore.

TIE. When two persons receive an equal number of votes at an election, there is said to be a tie.

2. In that case neither is elected. When the votes are given on any question to be decided by a deliberative assembly, and there is a tie, the question is lost. Vide Majority.

TIEL. An old manner of spelling tel. Such as nul tiel record, no such record.

TIEMPO INHABIL. A Spanish phrase used in Louisiana, to express a time when a man is not able to pay his debts.

2. A man cannot dispose of his property, at such a time, to the prejudice of his creditors. 4 N. S. 292; 3 Mart. Lo. R. 270; 10 Mart. Lo. R. 704.

TIERCE, measures. A liquid measure containing the third part of a pipe, or forty−two gallons.

TIGNI IMMITTENDI, civil law. The name of a servitude; it is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight. Dig. 8, 2, 36; Id. 8, 5, 14.

TIMBER TREES. According to Blackstone, oak, ash, elm, and such other trees as are commonly used for building, are considered timber. 2 Comm. 28. But it has been contended, arguendo, that to make it timber, the trees must be felled and severed from the stock. 6 Mod. 23 Stark on Slander, 79. Vide 12 Johns. R. 239; 2 Suppl. to Ves. jr.

TIME, contracts, evidence, practice. The measure of duration., It is divided into years, months. days, (q. v.) hours, minutes, and seconds. It is also divided into day and night. (q. v.)

2. Time is frequently of the essence of contracts and crimes, and sometimes it is altogether immaterial.

3. Lapse of time alone is often presumptive evidence of facts which are otherwise unknown; an uninterrupted enjoyment of certain rights for twenty or twenty−one years, is evidence that the party enjoying them is legally entitled to them; after such a length of time, the law presumes payment of a bond or other specialty. 10 S. & R. 63, 383; 3 S. & R. 493; 6 Munf. R. 532; 2 Cranch, R. 180; 7 Wheat. R. 535; 2 W. C. C R. 323; 4 John. R. 202; 7 John' R. 556; 5 Conn. 1; 3 Day 289; 1 McCord 145; 1 Bay, 482; 7 Wend. 94; 5 Verm. 236.

4. In the computation of time, it is laid down generally, that where the computation is to be made from an act done, the day when such act was done is included. Dougl. 463. But it will be excluded whenever such exclusion, will prevent a forfeiture. 4 Greenl. 298. Sed vide 15 Ves. 248; 1 Ball & B. 196. In general, one day is taken inclusively and the other exclusively. 2 Browne; Rep. 18. Vide Chitt. Bl. 140 n. 2; 2 Evans , Poth. 50; 13 Vin. Abr. 52, 499; 15 Vin. Ab. 554; 20 Vin. Ab. 266; Com. Dig. Temps; 1 Rop. Legacy, 518; 2 Suppl. to Ves. jr. 229; Graham's Pract. 185; 1 Fonbl. Equity, 430; Wright, R. 580; 7 John. R. 476; 1 Bailey, R. 89; Coxe, Rep. 363; 1 Marsh. Keny. Rep. 321; 3 Marsh. Keny. Rep. 448; 3 Bibb, R. 330; 6 Munf. R. 394; vide Computation.

TIME, pleading. The avertment of time is generally necessary in pleading; the rules are different, in different actions.

2. − 1. Impersonal actions, the pleadings must allege the time; that is, the day, month and year when each traversable fact occurred; and when there is occasion to mention a continuous act, the period of its duration ought to be shown. The necessity of laying a time extends to traversable facts only; time is generally considered immaterial, ana any time may be assigned to a given fact. This option, however, is subject to certain restrictions.

1st. Time should be laid under a videlicit, or the party pleading it will be required to, prove it strictly. 2d. The time laid should not be intrinsically impossible, or inconsistent with the fact to which it relates. 3d. There are some instances in which time forms a material point in the merits of the case; and, in these instances, if a traverse be taken, the time laid is of the substance of the issue, and must be strictly proved. With respect to all facts of this description; they must be truly stated, at the peril of a failure for variance; Cowp. 671: and here a videlicit will give no help. Id. 6 T. R 463; 5 Taunt. 2; 4 Serg. & Rawle, 576; 7 Serg. & Rawle, 405. Where the time needs not to be truly stated, (as is generally the case,) it is subject to a rule of the same nature with one that applies to venues in transitory matters, namely, that the plea and subsequent pleadings should follow the day alleged in the writ or declaration; and if in these cases no time at all be laid, the omission is aided after verdict or judgment by confession or default, by operation of the statute of jeofails. But where, in the plea or subsequent pleadings, the time happens to be material, it must be alleged, and there the pleader may be allowed to depart from the day in the writ and declaration.

3. − 2. In real or mixed actions, there is no necessity for alleging any particular day in the declaration. 3 Bl. Com. App. No. 1, _6; Lawes' Pl. App. 212; 3 Chit. Pl. 620−635; Cro. Jac. 311; Yelv. 182 a, note; 2 Chitt. Pl. 396, n. r; Gould, Pl. c. 3, _99, 100; Steph. Pl. 314; Com. Dig. Pleader, C 19.

4. − 3. In criminal pleadings, it is requisite, generally, to show both the day and the year on which the offence was committed; but the indictment will be good, if the day and year can be collected from the whole statement, though they be not expressly averred. Com. Dig. Indictm. G 2; 5 Serg. & Rawle, 315. Although it be necessary that a day certain should be laid in the indictment, the prosecutor may give evidence, of an offence committed, on any other day, previous to the finding of the indictment. 5 Serg. & Rawle, 316; Arch. Cr. Pl. 95; 1 Phil Evid. 203; 9 East, Rep. 157. This rule, however, does not authorize the laying of a day subsequent to the trial. Addis. R. 36. See generally Bouv. Inst. Index, h. t.

TIPPLING HOUSE. A place where spirituous liquors are sold and drunk in vio−lation of law. Sometimes the mere selling is considered as evidence of keeping a tippling house.

TIPSTAFF. An officer appointed by the marshal of the court of king's bench, to attend upon the judges with a kind of a rod or staff tipped with silver.

2. In the United States, the courts sometimes appoint an officer who is known by this name, whose duty it is to wait on the court and serve its process.

TITHES, Eng. law. A right to the tenth part of the produce of, lands, the stocks upon lands, and the personal industry of the inhabitants. These tithes are raised for the support of the clergy.

2. Fortunately, in the United States, the clergy can be supported by the zeal of the people for religion, and there are, no tithes. Vide Cruise, Dig. tit. 22; Ayliffe's Parerg. 504.

TITHING, Eng. law. Formerly a district containing ten men with their fam−ilies. In each tithing there was a tithing man whose duty it was to keep the peace, as a constable now is bound to do. St. Armand, in his Historical Essay on the Legislative Power of England, p. 70, expresses, an opinion that the tithing was composed not of ten common families, but of ten families of lords of a manor.

TITLE estates. A title is defined by Lord Coke to be the means whereby the owner of lands hath the just possession of his property. Co. Lit. 345; 2 Bl. Com. 195. Vide 1 Ohio Rep. 349. This is the definition of title to lands only.

2. There are several stages or degrees requisite to form a complete title to lands and tenements. 1st. The lowest and most imperfect degree of title is the mere possession, or actual occupation of the estate, without any apparent right to hold or continue such possession; this happens when one man disseises another. 2 Bl. Com. 195. 2dly. The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is not in himself, but in another. This right of possession is of two sorts; an apparent right of possession, which may be defeated by proving a better; and an actual right of possession, which will stand the test against all opponents. Idem. 196. 3dly. The mere right of property, the jus proprietatis without either possession or the right of possession. Id. 197.

3. A title is either good, marketable, doubtful, or bad.

4. A good title is that which entitles a man by right to a property or estate, and to the lawful possession of the same.

5. A marketable title is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser. The ordinary acceptation of the term marketable title, would convey but a very imperfect notion of its

legal and technical import.

6. To common apprehension, unfettered by the technical and conventional distinction of lawyers, all titles being either good or bad, the former would be considered marketable, the latter non−marketable. But this is not the way they are regarded in courts of equity, the distinction taken there being not between a title which is absolutely good or absolutely bad, but between a title, which the court considers to be so clear that it will enforce its acceptance by a purchaser, and one which the court will not go so far as to declare a bad title, but only that it is subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568. In short, whatever may be the private opinion of the court, as to the goodness of the title yet if there be a reasonable doubt either as to a matter of law or fact involved in it, a purchaser will not be compelled to complete his purchase; and such a title, though it may be perfectly secure and unimpeachable as a holding title is said, in the current language of the day, to be unmarketable. Atkins on Tit.2.

7. The doctrine of marketable titles is purely equitable and of modern ori−gin. Id. 26. At law every title not bad is marketable. 6 Taunt. R. 263; 5 Taunt. R. 625; S. C. 1 Marsh., R. 258. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

8. A doubtful title is one which the court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568; 9 Cowen, R. 344; vide Title, Marketable.

9. At common law, doubtful, titles are unknown; there every title must be either good or bad. Atkins on Tit. 17. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

10. A bad title is one which conveys no property to a purchaser of an estate.

11. Title to real estate is acquired by two methods, namely, by descent and by purchase. (See these words.)

12. Title to personal property may accrue in three different ways. By original acquisition. 2. By transfer, by act of law. 3. By transfer, by, act of the parties.

13. − _1. Title by original acquisition is acquired, 1st. By occupancy. This mode of acquiring title has become almost extinct in civilized governments, and it is permitted to exist only in those few special cases, in which it may be consistent with the public good. First. Goods taken by capture in war were, by the common law, adjudged to belong to the captor, but now goods taken from enemies in time of war, vest primarily in the sovereign, and they belong to the individual captors only to the extent and under such regulations, as positive laws may prescribe. Finch's Law, 28, 178 Bro. tit. Property, pl. 18, 38; 1 Wilson, 211; 2 Kent, Com. 290, 95. Secondly. Another instance of acquisition by occupancy, which still exists under certain limitations, is that of goods casually lost by the owner, and unreclaimed, or designedly abandoned by him; and in both these cases they belong to the fortunate finder. 1 Bl. Com. 296. See Derilict.

14. − 2d. Title by original acquisition is acquired by accession. See Accession.

15. − 3d. It is acquired by intellectual labor. It consists of literary pro−perty as the construction of maps and charts, the writing of books and papers. The benefits arising from such labor are secured to the owner. 1. By patent rights for inventions. See Patents. 2. By copyrights. See Copyrights.

16. − _2. The title to personal property is acquired and lost by transfer, by act of law, in various ways. 1. By forfeiture. 2. By succession. 3. By marriage. 4. By judgment. 5. By insolvency. 6. By intestacy.

17. − _3. Title is also acquired and lost by transfer by the act of the party. 1. By gift. 2. By contract or sale.

18. In general, possession constitutes the criterion of title of personal property, because no other means exist by which a knowledge of the fact to whom it belongs can be attained. A seller of a chattel is not, therefore, required to show the origin of his title, nor, in general, is a purchaser, with−out notice of the claim of the owner, compellable to make restitution; but, it seems, that a purchaser from a tenant for life of personal chattels, will not be secure against the claims of those entitled in remainder. Cowp. 432; 1 Bro. C. C. 274; 2 T. R. 376; 3 Atk. 44; 3 V. & B. 16.

19. To the rule that possession is the criterion of title of property may be mentioned the case of ships, the title of which can be ascertained by the register. 15 Ves. 60; 17 Ves. 251; 8 Price, R. 256, 277.

20. To convey a title the seller must himself have a title to the property which is the subject of the transfer. But to this general rule there are exceptions. 1. The lawful coin of the United States will pass the property along with the possession. 2. A negotiable instrument endorsed in blank is transferable by any person holding it, so as by its delivery to give a good title "to any person honestly acquiring it." 3 B. & C. 47; 3 Burr. 1516; 5 T. R. 683; 7 Bing. 284; 7 Taunt. 265, 278; 13 East, 509; Bouv. Inst. Index, h. t.

TITLE, legislation That part of an act of the legislature by which it is known, and distinguished from other acts the name of the act.

2. A practice has prevailed of late years to crowd into the same act a mass of heterogeneous matter, so that it is almost impossible to describe, or even to allude to it in the title of the act. This practice has rendered the title of little importance, yet, in some cases, it is material in the construction of an act. 7 East, R. 132, 134; 2 Cranch, 386. See Lord Raym. 77; Hard. 324; Barr. on the Stat. 499, n.

TITLE, persons. Titles are distinctions by which a person is known.

3. The constitution of the United States forbids the tyrant by the United States, or any state of any title of nobility. (q. v.) Titles are bestowed by courtesy on certain officers; the president of the United States sometimes re−ceives the title of excellency; judges and members of congress that of honor−able; and members of the bar and justices of the peace are called esquires. Cooper's, Justinian, 416'; Brackenridge's Law Miscell. Index, h. t.

3. Titles are assumed by foreign princes, and, among their subjects they may exact these marks of honor, but in their intercourse with foreign nations they are not entitled to them as a matter of right. Wheat. Intern. Law, pt. 2, c. 3, _6.

TITLE, Iiterature. The particular division of a subject, as a law, a book, and the like; for example, Digest, book 1, title 2; for the law relating to bills of exchange, see Bacon's Abridgment, title Merchant.

TITLE, rights. The name of a newwpaper a book, and the like.

3. The owner of a newspaper, having particular title, has a right to such title, an an injunction will lie to prevent its use un lawfully by another. 8 Paige, 75. See Pardess. n. 170.

TITLE, pleading, rights. The right of action which the plaintiff has; the declaration must show the plaintiff's title, and if such title be not shown in that instrument, the defect cannot be cured by any of the future pleadings. Bac. Ab. Pleas, &c. B 1.

TITLE DEEDS. Those deeds which are evidences of the title of the owner of an estate.

2. The person who is entitled to the inheritance has a right to the possession of the title deeds. 1 arr. & Marsh. 653.

TITLE OF A DECLARATION, pleading. At the top of every declaration the name of the court is usually stated, with the term of which the declaration is filed, and in the margin the venue, namely, the city or county where the cause is intended to be tried is set down. The first two of these compose what is called the title of the declaration. 1 Tidd's Pr. 866.

TO WIT. That is to say; namely; scilicet; (q. v.) videlicet. (q. v.)

TOFT. A place or piece of ground on which, a house formerly stood, which has been destroyed by accident or decay; it also signifies a messuage.

TOGATI. Rom. civ, law. Under the empire, when the toga had ceased to be the usual costume of the Romans, advocates were nevertheless obliged to wear it whenever they pleaded a cause. Hence they were called togati. This denomination received an official or legal sense in the imperial constitutions of the fifth and sixth centuries, and the words togati, consortium (corpus, ordo, collegium,) togatorum, frequently occur in those acts.

TOKEN, contracts, crimes. A document or sign of the existence of a fact.

2. Tokens are either public or general, or privy tokens. They are true or false. When a token is false and indicates a general intent to defraud, and it is used for that purpose, it will render the offender guilty of the crime of cheating; 12 John. 292; but if it is a mere privy token, as counterfeiting a letter in another man's name, in order to cheat but. one individual, it would not be indictable. 9 Wend. Rep. 182; 1 Dall. R. 47; 2 Rep. Const. Cr. 139; 2 Virg. Cas. 65; 4 Hawks, R. 348; 6 Mass. IR. 72; 1 Virg. Cas. 150; 12 John. 293; 2 Dev. 199; 1 Rich. R. 244.

TOKEN, commercial law. In England, this name is given to pieces of metal, made in the shape of money, passing among private persons by consent at a certain value. 2 Adolpb. P. S. 175; 2 Chit. Com. Law, 182.

TOLERAT10N. In some. countries, where religion is established by 1aw, cer−tain sects who do not agree with the established religion are nevertheless permitted to exist, and this permission is called toleration. Those are per−mitted and allowed to remain rather as a matter of favor than a matter of right.

2. In the United States, there is no such a thing as toleration, all men have an equal right to worship God according to the dictates of their own consciences. See Christianity; Conscience; Religious test.

TOLL, contracts. A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature. Toll is also the compensation paid to a miller for grinding another person's grain.

2. The rate of taking toll for grinding is regulated by statute in most of the states. See 2 Hill. Ab. oh. 17; 6 Ad. & Ell. N. S. 31,; 6 Q. B. 3 1.

TO TOLL, estates, rights. To bar, defeat, or take away; as to toll an entry into lands, is to deny. or take away the right of entry.

TOLLS. In a general sense, tolls signify any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any wares or merchandise, to be taken of the buyer. 2 Inst. 58.

TON. Twenty hundred weight, each hundred weight being one hundred and twelve pounds avoirdupois. See act of congress of Aug. 30, 1842, c. 270, s. 20.

TONNAGE, mar. law. The capacity of a ship or vessel.

2. The act of congress of March 2, 1799, s. 64, 1 Story's L. U. S. 630, directs that to ascertain the tonnage of any ship or vessel, the surveyor, &c. shall, if the said ship or vessel be double decked, take the length thereof from the forepart of the main stem, to the afterpart of the stern post, above the upper deck, the breadth thereof, at the broadest part above the mainwales, half of which breadth shall be accounted the depth of such vessel, and then deduct from the length three−fifths of the breadth, multiply the remainder by the breadth and the product of the depth, and shall divide this last product by ninety−five, the quotients whereof shall be deemed the true contents or tonnage of such ship or vessel. And if such ship or vessel shall be single decked, the said, surveyor shall take the length and breadth as above directed, in respect to a double deck ship or vessel, and shall deduct from the length three−fifths of the breadth, and taking the depth from the under−side of the deck plank to the ceiling of the hold, shall multiply and divide as aforesaid, and the quotient shall be deemed the tonnage of such ship or vessel.

3. The duties paid on the tonnage of a ship or vessel are also called tonnage.

4. These duties are altogether abolished in relation. to American vessels by the act of May 31, 1830, s. 1, 4 Story's Laws U. S. 2216. And by the second section of the same act, all tonnage duties on foreign vessels are abolished, provided the president of the, United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage. of the United States, have been abolished.

5. The constitution of the United States provides, art. 1, s. 10, n. 2, that no state shall, without the consent of congress, lay any duty on tonnage.

TONTINE, French law. The name of a partnership composed of creditors or, re−cipients of perpetual or life−rents or annuities, formed on the condition that the rents of those who may die, shall accrue to the survivors, either in whole or in part.

2. This kind of partnership took its name from Tonti, an Italian, who first conceived the idea and put it in practice. Merl. Repert. h. t. Dall. Dict. h. t.; 5 Watts, 851.

TOOK AND CARRIED AWAY, pleadings. In an indictment for simple larceny, the words "feloniously took and carried away" the goods stolen, are indispensable. Bac. Abr. Indictment, GI; Com. Dig. Indictment, G 6; Cro. C. C. 37; 1 Chit. Cr. Law, 0244. Vide Taking.

TOOLS. The Massachusetts act of assembly of 1805, c. 100, which provided that "the tools of any debtor necessary for his trade and occupation, should be exempted from execution," was held to designate those implements which are commonly used by the hand of one man, in some manual labor necessary for his subsistence. The apparatus of a printing office, such as types, presses, &c. are not therefore included under the term tools. 13 Mass. Rep. 82; 10 Pick. 423; 3 Verm. 133; and see 2 Pick. 80; 5 Mass. 313.

2. By the forty−sixth section of the act of March 2, 1789, 1 Story's Laws U. S. 612, the tools or implements of a mechanical trade of persons who arrive in the United States, are free and exempted from duty.

TORT. An injury; a wrong; (q. v.) hence the expression an executor de son tort, of his own wrong. Co. Lit. 158.

2. Torts may be committed with force, as trespasses, which may be an injury to the person, such as assault, battery, imprisonment; to the property in possession; or they may be committed without force. Torts of this nature are to the absolute or relative rights of persons, or to personal property in possession or reversion, or to real property, corporeal or encorporeal, in possession or reversion: these injuries may be either by nonfeasance, malfeasance, or misfeasance. 1 Chit. Pl. 133−4. Vide 1 Fonb. Eq. 4; Bouv. Inst. Index, h. t.; and the article Injury.

TORTFEASOR. A wrong−doer, one who does wrong; one who commits a trespass or is guilty of a tort.

TORTURE, punishments. A punishment inflicted in some countries on supposed criminals to induce them to confess their crimes, and to reveal their associates.

2. This absurd and tyrannical practice never was in use in the United States; for no man is bound to accuse himself. An attempt to torture a person accused of crime, in order to extort a confession, is an indictable offence. 2

Tyler, 380. Vide Question.

TOTAL. Complete; containing the whole; as the total amount of an account is all the items of such account added together; total incapacity, is an absolute and complete incapacity to do a thing. A married woman is totally incapable to make a contract, because, although having intelligence, she has not legal capacity and an idiot is totally incapable to enter into a contract, because he has no will.

TOTAL LOSS. A technical expression, importing an utter loss of the property for the voyage, and no more. 1 T. R. 187. Vide Loss, and 2 Phil. Ev. 54, n.; 16 East, R. 214 Park's Ins. Index, h. t.; Marsh. Ins. 486.

TOTALITY. The whole sum or quantity.

2. In making a tender, it is requisite that the totality of the sum due should be offered, together with the interest and costs. Vide Tender.

TOTIDEM VERBIS. In so many words.

TOTIES QUOTIES. As often as the thing shall happen.

TOUCH AND STAY. These words are frequently introduced in policies of insurance, giving the party insured the right to stop and stay at certain designated points in the course of the voyage. A vessel which has the power to touch and stay at a place in the course of the voyage, must confine herself strictly to the terms of the liberty so given; for any attempt to trade at such a port during such a stay, as by shipping or landing goods, will amount to a species of deviation which will discharge the underwriters, unless the ship have also liberty to trade, as well as to touch and stay at such a place. 1 Marsh. Ins. 275; 1 Esp. R. 610; 5 Esp. R. 96.

TOUJOURS ET UNCORE PRIST. Always, and still ready. This is the name of a plea of tender, as where a man is indebted to another, and he tenders the amount due, and after wards the creditor brings a suit, the defendant may plead the tender, and add that he has always been and is still ready to pay what he owes, which may be done by the formula toujours et uncore prist. He must then pay the money into court, and if the issue be found for him, the defendant will be exonerated from costs, and the plaintiff made justly liable for them. 3 Bouv. Inst. n. 2923 Vide Tout temps prist.

TOUR D'ECHELLE, French law. Tour d'echelle is a right which the owner of an estate has of placing ladders on his neighbor's property to facilitate the reparation of a party wall, or of buildings which are supported by that wall. It is a species of servitude. Lois des Bat. part 1, c. 3, sect. 2, art. 9, _1.

2. In another sense by this term, or echellage, is understood the space of ground left unoccupied around a building for the purpose of enabling the owner to repair it with convenience; this is not a servitude, but an actual corporeal property. Td. part 1, c. 3, sect. 2, art. 9, _2.

TOUT TEMPS PRIST, pleading. These old French words signify always ready. The name of a plea to an action where the defendant alleges that he has always been ready to perform what is demanded of him; and he adds that he is still ready, uncore prist. (q. v.) 3 Bl. Com. 303; 20 Vin. Ab. 306; Com. Dig. Pleader, 2 Y 5.

TOWAGE, contracts. That which is given for towing ships in rivers. Guidon de la Mer, ch. 16; Poth. Des Avaries, n. 147; 2 Chit. Com. Law, 16.

TOWN. This word is used differently in different parts of the United States. In Pennsylvania and some other of the middle states, it signifies a village or a city. In some of the northeastern states it denotes a subdivision of a county, called in other places a township.

TRADE. In its most extensive signification this word includes all sorts of dealings by way of Bale or exchange. In a more limited sense it signifies the dealings in a particular business, as the India trade; by trade is also understood the business of a particular mechanic, hence boys are said to be put apprentices to learn a trade, as the trade of a carpenter, shoemaker, and the like. Bac. Ab. Master and Servant, D 1. Trade differs from art. (q. v.)

2. It is the policy of the law to encourage trade, and therefore all contracts which restrain the exercise of a man's talents in trade are detrimental to the commonwealth, and therefore void; though he may bind himself not to exercise a trade in a particular place, for, in this last case, as he may pursue it in another place, the commonwealth has the benefit of it. 8 Mass. 223; 9 Mass. 522. Vide Ware R. 257, 260 Com. Dig. h. t.; Vin. Ab. h. t.

TRADE MARKS. Signs, writings or tickets put upon manufactured goods, to distinguish them from others.

2. It seems at one time to have been thought that no man acquired a right in a particular mark or stamp. 2 Atk. 484. But it was afterwards considered that for one man to use as his own another's name or mark, would be a fraud for which an action would lie. 3 Dougl. 293; 3 B. & C. 541; 4 B. & Ad. 410. 1 court of equity will restrain a party from, using the marks of another. Eden, Inj. 314l; 2 Keene, 213; 3 Mylne & C. 339.

3. The Monthly Law Magazine for December 1840, in an article copied into the American Jurist, vol. 25, p. 279,

says, "The principle to be extracted, after an examination of these cases, appear to be the following: First, that the first producer or vendor of any article gains no right of property in that article so as to prevent others from manufacturing, producing or vending it.

4. Secondly, that although any other person may manufacture, produce, and sell any such article, yet he must not, in manner, either by using the same or similar marks, wrappers, labels, or devices, or colorable imitations thereof, or otherwise, hold out to the public that he is manufacturing, producing, or selling the identical article, prepared, manufactured, produced, or sold by the other; that is to say, he may not make use of the name or reputation of the other in order to sell his own preparation.

5. Thirdly, the right to use or restrain others from using any mark or name of a firm, is in the nature of goodwill, and therefore goes to the surviving or continuing partner in such firm, and the personal representative of a deceased partner has an interest in it.

6. Fourthly, that courts of equity in these cases only act as auxiliary to the legal right, and to prevent injury, and give a relief by account, when damages at law would be inadequate to the injury received; and they will not interfere by injunction in the first instance, unless a good legal title is shown, and even then they never preclude the parties from trying the right at law, if desired.

7. Fifthly, if the legal title be so doubtful as not to induce the court to grant the injunction, yet it will put the parties in a position to try the legal right at law, notwithstanding the suit.

8. Sixthly, that before the party is entitled to relief in equity, he must truly represent his title, and the mode in which he became possessed of the article for the vending of which he claims protection; it being a clear rule of courts of equity not to extend their protection to persons whose case is not founded on truth."

9. In France the law regulates the rights of merchants and manu facturers as to their trade marks with great minuteness. Dall. Dict. mot Propriete Industrielle. See, generally, 4 Mann. & Gr. 357; B. & C. 541; 5 D. & R. 292; 2 Keen, 213; and Deceit.

TRADER. One who makes it his business to buy merchandise or goods and chattels, and to sell the same for the purpose of making a profit. The quantum of dealing is immaterial, when an intention to deal generally exists. 3 Stark. 56; 2 C. & P. 135; 1 T. R. 572.

2. Questions as to who is a trader most frequently arise under the bankrupt laws, and the most difficult among them are those cases where the party follows a business which is not that of buying and selling principally, but in which he is occasionally engaged in purchases and sales.

3. To show who is a trader will be best illustrated by a few examples: A farmer who in addition to his usual business, occasionally buys a horse not calculated for his usual occupation, and sells him again to make a profit, and who in the course of two years had so bought and sold five or six horses, two of which had been sold after be bad bought them for the sake of a guinea profit, was held to be a trader. 1 T. R. 537, n.; 1 Price, 20. Another firmer who bought a large quantity of potatoes, not to be used on his farm, but merely to sell again for a profit, was also declared to be a trader. 1 Str. 513. See 7 Taunt. 409; 2 N. R. 78; 11 East, 274. A butcher who kills only such cattle as

be has reared himself is not a trader, but if he buy them and kill and sell them with a view to profit, he is a trader. 4 Burr. 21, 47. See 2 Rose, 38; 3 Camp. 233 Cooke, B. L. 48, 73; 2 Wils. 169; 1 Atk. 128; Cowp.745. A brickmaker who follows the business, for the purpose of enjoying the profits of his real estate merely, is not a trader; but when he buys the earth by the load or otherwise, and manufactures it into bricks, and sells them with a view to profit, he is a trader. Cook, B. L. 52, 63; 7 East, 442; 3 C. & P. 500; Mood. & M. 263 2 Rose, 422; 2 Glyn & J. 183; 1 Bro. C. C. 173. For further examples, the reader is referred to 4 M. & R. 486; 9 B. & C. 577; 1 T. R. 34; 1 Rose, 316; 2 Taunt. 178; 2 Marsh. 236; 3 M. & Scott. 761; 10 Bing. 292 Peake, 76; 1 Vent. 270; 3 Brod. & B. 2 6 Moore, 56.

TRADITIO BREVIS MANUS. This term is used in the civil law to designate the delivery of a thing, by the mere consent of the parties; as, when Peter holds the property of Paul as bailee, and, afterwards, he buys it, it is not necessary that Paul should deliver the property to Peter, and he should re−deliver it to Paul, the mere consent of the parties transfers the title to Paul. 1 Duverg. n. 252; 6 Shipl. R. 231; Poth. Pand. lib. 50, CDLXXIV.; 1 Bouv. Inst. n. 944.

TRADITION, contracts, civil law. The act by which a thing is delivered by one or more persons to one or more others.

2. In sales it is the delivery of possession by the proprietor with an intention to transfer the property to the

receiver. Two things are therefore requisite in order to transmit property in this way: 1. The intention or consent of the former owner to transfer it; and, 2. The actual delivery in pursuance of that intention.

3. Tradition is either real or symbolical. The first is where the ipsa corpora of movables are put into the hands of the receiver. Symbolical tradition is used where the thing is incapable of real delivery, as, in immovable subjects, such as lands and houses; or such as consist in jure (things incorporeal) as things of fishing and the like. The property of certain movables, though they are capable of real delivery, may be transferred by symbol. Thus, if the subject be under look and key, the delivery of the key is considered as a legal tradition of all that is contained in the repository. Cujas, Observations, liv. 11, ch. 10; Inst. lib. 2, t. 1, _40; Dig. lib. 41, t. 1, 1. 9; Ersk. Princ. Laws of Scotl. bk. 2, t. 1, s. 10, 11; Civil Code Lo. art. 2452, et seq.

4. In the common law the term used in the place of tradition is delivery. (q. v.)

TRAFFIC. Commerce, trade, sale or exchange of merchandise, bills, money and the like.

TRAITOR, crimes. One guilty of treason.

2. The punishment of a traitor is death.

TRAITOROUSLY, pleadings. This is a technical word, which is essential in an indictment for treason in order to charge the crime, and which cannot be supplied by any other word, or any kind of circumlocution. Having been well laid in the statement of the treason itself, it is not necessary to state every overt act to have been traitorously committed. Vide Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G. 6; Hawk. B. 2, c. 25, s. 55; 1 East's P. C. 115; 2 Hale, 172, 184; 4 Bl. Com. 307; 8 Inst. 15; Cro. C. C. 87; Carth. 319; 2 Salk. 683; 4 Harg. St. Tr. 701; 2 Ld. Raym. 870; Comb. 259; 2 Chit. Cr. Law, 104, note (b).

TRANSACTION, contracts, civil law. An agreement between two or more persons, who for the purpose of preventing or putting an end to a law−suit, adjust their differences by mutual consent, in the manner which they agree on; in Louisiana this contract must be reduced to writing. Civil Code of Louis, 3038.

2. Transactions regulate only the differences which appear to be clearly comprehended in them by the intentions of the parties, whether they be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties, never intended to include in them. Id. 3040.

3. To transact, a man must have the capacity to dispose of the things included in the transaction. Id. 3039; 1 Domat, Lois Civiles, liv. 1, t. 13, s. 1; Dig. lib. 2, t. 15, l. 1; Code lib. 2, t. 4, 1. 41. In the common law this is called a compromise. (q. v.)

TRANSCRIPT. A copy of an original writing or deed.

2. In Pennsylvania, the act of assembly of March 20th, 1810, s. 10, calls a copy of the proceedings before a justice of the peace in any case, a transcript: the proper term would be an exemplification.

TRANSFER, cont. The act by which the owner of a thing delivers it to another person, with the intent of passing the rights which he has in it to the latter.

2. It is a rule founded on the plainest dictates of common sense, adopted in all systems of law, that no one can transfer a right to another which he has not himself: nemo plus juris ad alienum transfers potest quam ipse habet. Dig. 50, 17, 54 10 Pet. 161, 175; Co. Litt. 305.

3. To transfer means to change; for example, one may transfer a legacy, either, 1st. By the change of the person of the legatee, as, I bequeath to Primus a horse wliich I before bequeathed to Secundus. 2d. By the change of the thing bequeathed, as, I bequeath to Tertius my History of the United States instead of my copy of the Life of Washington. 3d. By the change of the person who was bound to pay the legacy, as, I direct that the sun) of one bundred dollars, which I directed should be charged upon my house which I gave to Quartus, shall be paid by my executors.

TRANSFEREE. He to whom a transfer is made.

TRANSFERENCE, Scotch law. The name of an action by which a suit, which was pending at the time the parties died, is transferred from the deceased to his representatives, in the same condition in which it stood formerly. If it be the pursuer who is dead, the action is called a transference active; if the defender, it is a transference passive. Ersk. Prin. B. 4, t. 1, n. 32.

TRANSFEROR. One who makes a transfer.

TRANSGRESSION. The violation of a law.

TRANSHIPMENT, mar. law. The act of taking the cargo out of one ship and loading it in another.

2. When this is done from necessity, it does not affect the liability of an insurer on the goods. 1 Marsh. Ins. 166;

Abbott on Shipp. 240. But when the master tranships goods without necessity, he is answerable for the loss of them by capture by public enemies. 1 Gallis. R. 443.

TRANSIRE, Eng. law. A warrant for the custom−house to let goods pass: a permit. (q. v.) See, for a form of a transire, Harg. L. Tr. 104.

TRANSITORY. That which lasts but a short time, as transitory facts that which may be laid in different places, as a transitory action.

TRANSITORY ACTION, pract., plead. Actions are transitory when the venue may lawfully be laid in any county, though the cause of action arose out of the jurisdiction of the court. Vide Actions, and 1 Chit. Pl. 273; Com. Dig. Actions, N 12; Cowp. 161; 9 Johns. R. 67; 14 Johns. R. 134; 3 Bl. Com. 294; 3 Bouv. Inst. n. 2645. Vide Bac. Ab. Actions local and transitory.

TRANSITUS. The act of going, or of removing goods, from one place to another. The transitus of goods from a seller commences the moment he has delivered them to an agent for the purpose of being carried to another place, and ends when the delivery is complete, which delivery may be by putting the purchaser into actual possession of the goods, or by making him a symbolical delivery. 2 Hill, S. C. 587; 5 John. 335; 2 Pick. 599; 11 Pick.. 352; 2 Aik. 79; 5 Ham. 88; 6 Rand. 473. See Stoppage in transitu.

TRANSLATION. The copy made in one language of what has been written, or spoken in another.

2. In pleading, when a libel or an agreement, written in a foreign language, must be averred, it is necessary that a translation of it should also be given.

3. In evidence, when a witness is unable to speak the English language so as to convey his ideas, a translation of his testimony must be made. In that case, an interpreter should be sworn to translate to him, on oath, the questions propounded to him, and to translate to the court and jury his answers. 4 Mass. 81; 5 Mass. 219; 2 Caines' Rep. 155; Louis. Code of Pr. 784, 5.

4. It has been determined that a copyright may exist in a translation, as a literary work. 3 Ves. & Bea. 77; 2 Meriv. 441, n.

5. In the ecclesiastical law, translation denotes the removal from one place to another.; as, the bishop was translated from the diocese of A, to that of B. In the civil law, translation signifies the transfer of property. Clef des Lois Rom. h. t.

6. Swinburne applies the term translation to the bestowing of a legacy which had been given to one, on another; this is a species of ademption, (q. v.) but it differs from it in this, that there may be an ademption without a translation, but there can be no translation without an ademption. Bac. Ab. Legacies, C.

7. By translation is also meant the transfer of property, but in this sense it is seldom used. 2 Bl. Com. 294. Vide Interpreter.

TRANSMISSION, civ. law. The right which heirs or legatees may have of passing to their successors, the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights. Domat, liv. 3, t. 1, s. 10; 4 Toull. n. 186; Dig. 50, 17, 54; Code, 6, 51.

TRANSPORTATION, punishment. In the English law, this punishment is inflicted by virtue of sundry statutes; it was unknown to the common law. 2 H. Bl. 223. It is a part of the judgment or sentence of the court, that the party shall be transported or sent into exile. 1 Ch. Cr. Law, 789 to 796: Princ. of Pen. Law, c. 4 _2.

TRAVAIL. The act of child−bearing.

2. A woman is said to be in her travail from the time the pains of child−bearing commence until her delivery. 5 Pick. 63; 6 Greenl. R. 460.

3. In some states, to render the mother of a bastard child a competent witness in the prosecution of the alleged father, she must have accused him of being the father during the time of her travail. 2 Root, R. 490; 1 Root, R. 107; 2 Mass. R. 443; 5 Mass. R. 518; 8 Greenl. R. 163; 3 N. H. Rep. 135; 6 Greenl. R. 460. But in Connecticut, when the state prosecutes, the mother is competent, although she did not accuse the father during her travail. 1 Day, R. 278.

TRAVERSE, crim. law practice. This is a technical term, which means to turnover: it is applied to an issue taken upon an indictment for a misdemeanor, and means nothing more than turning over or putting off the trial to a following sessions or assize; it has, perhaps with more propriety, been applied to the denying or taking issue upon an indictment, without reference to the delay of trial. Dick. Sess. 151; Burn's Just. h. t.; 4 Bl. Com. 351.

TRAVERSE, pleading. This term, from the French traverser, signifies to deny or controvert anything which is alleged in the declaration, plea, replication or other pleadings; Lawes' Civ. Plead. 116, 117 there is no real

distinction between traverses and denials, they are the same in substance. Willes. R. 224. however, a traverse, in the strict technical meaning, and more ordinary acceptation of the term, signifies a direct denial in formal words, "without this that," &c. Summary of Pleadings, 75; 1 Chit. Pl. 576, n. a.

2. All issues are traverses, although all traverses cannot be said to be issues, and the difference is this; issues are where one or more facts are affirmed on one side, and directly and merely denied on the other; but special traverses are where the matter asserted by one party is not directly and merely denied or put in issue. by the other, but he alleges some new matter or distinction inconsistent with what is previously stated, and then distinctly excludes the previous statement of his adversary. The new matter so alleged is called the inducement to the traverse, and the exclusion of the previous statement, the traverse itself. Lawes' Civ. Pl. 117. See, in general, 20 Vin. Abr. 339; Com. Dig. Pleader, G; Bac. Abr. Pleas, H; Yelv. R. 147, 8; 1 Saund. 22, n. 2; Gould. on Pl. ell. 7 Bouv. Inst. Index, n. t.

3. A traverse upon a traverse is one growing out of the same point, or subject matter, as is embraced in a preceding traverse on the other side. Gould on Pl. ch. 7, _42, n. It is a general rule, that a traverse, well tendered on one side, must be accepted on the other. And hence it follows, as a general rule, that there cannot be a traverse upon a traverse, if the, first traverse is material. The meaning of the rule is, that when one party has tendered a material traverse, the other cannot leave it and tender another of his own to the same point upon the inducement of the first traverse, but must join in that first tendered; otherwise the parties might alternately tender traverses to each other, in unlimited succession, without coming to an issue. Gould on Pl. ch. 7, _42.

4. In cases where the first traverse is immaterial, there may be a traverse upon a traverse. Id. ch. 7, _43. And where the plaintiff might be ousted of some right or liberty the law allows him, there may be a traverse upon a traverse, although the first traverse include what is material. Poph. 101; Mo. 350; Com. Dig. Pleader, G 18; Bac. Abr. Pleas, H 4; Hob. 104, marg.; Cro. Eliz. 99, 418; Gould on Pl. ch. 7, 44.

5. Traverses may be divided into general traverses, (q. v.) and special traverses. (q. v.) There is a third kind called a common traverse. (q. v.)

TREASON, crim. law. This word imports a betraying, treachery, or breach of allegiance. 4 Bl. Com. 75.

2. The constitution of the United States, art. 3, s. 3, defines treason against the United States to consist only in levying war (q. v.) against them, or in adhering to their enemies, giving them aid or comfort. This offence is punished with death. Act of April 30th, 1790, 1 Story's Laws U. S. 83. By the same article of the constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Vide, generally, 3 Story on the Const. ch. 39, p. 667; Serg. on the Const. ch. 30; United States v. Fries, Pamph.; 1 Tucker's Blackst. Comm. Appen. 275, 276; 3 Wils. Law Lect. 96 to 99; Foster, Disc. I; Burr's Trial; 4 Cranch, R. 126, 469 to 508; 2 Dall. R. 246; 355; 1 Dall. Rep. 35; 3 Wash. C. C. Rep. 234; 1 John. Rep. 553 11 Johns. R. 549; Com. Dig. Justices, K; 1 East, P. C. 37 to 158; 2 Chit. Crim. Law, 60 to 102; Arch. Cr. Pl. 378 to 387.

TREASURE TROVE. Found treasure.

2. This name is given to such money or coin, gold, silver, plate, or bullion, which having been hidden or concealed in the earth or other private place, so long that its owner is unknown, has been discovered by accident. Should the owner be found it must be restored to him; and in case of not finding him, the property, according to the English law, belongs to the king. In the latter case, by the civil law, when the treasure was found by the owner of the soil, he was considered as entitled to it by the double title of owner and finder; when found on another's property, one−half belonged to the owner of the estate, and the other to the finder; when found on public property, it belonged one−half to the public treasury, and the other to the finder. Lecons du Dr. Rom. _350−352. This includes not only gold and silver, but whatever may constitute riches, as vases, urns, statues, &c.

3. The Roman definition includes the same things under the word pecunia; but the thing found must have a commercial value for ancient tombs would not be considered a treasure. The thing must have been hidden or concealed in the earth; and no one must be able to establish his right to it. It must be found, by a pure accident, and not in consequence of search. Dall. Dict. Propriete, art. 3, s. 3.

4. According to the French law, le tresor est toute chose cachee ou enfouie,
sur laquelle personne ne peut justifier sa propriete, et qui est decouverte par lo pur effet du hasard. Code Civ. 716. Vide 4 Toull. n. 34. Vide, generally, 20 Vin. Abr. 414; 7 Com. Dig. 649; 1 Bro. Civ. Law, 237; 1 Blackstone's Comm. 295; Poth. Traite du Dr. de Propreite, art. 4.

TREASURER. An officer entrusted with the treasures or money either of a private individual, a corporation, a

company, or a state.

2. It is his duty to use ordinary diligence in the performance of his office, and to account with those whose money he has.

TREASURER. OF THE MINT. An officer created by the act of January 18, 1837, whose duties are prescribed as follows: The treasurer shall receive and safely keep all moneys which shall be for the use and support of the mint; shall keep all the current accounts of the mint, and pay all moneys due by the mint, on warrants from the director. He shall receive all bullion brought to the mint for coinage; shall be the keeper of all bullion and coin in the mint, except while the same is legally placed in the hands of other officers, and shall, on warrants from the director, deliver all coins struck at the mint to the persons to whom they shall be legally payable. And he shall keep regular and faithful accounts of all the transactions of the mint, in bullion and coins, both with the officers of the mint and the depositors; and shall present, quarter−yearly, to the treasury department of the United States, according to such forms as shall be prescribed by that department, an account of the receipts and dishursements of the mint, for the purpose of being adjusted and settled.

2. This officer is required to give bond to the United States with one or more sureties to the satisfaction of the secretary of the treasury, in the sum of ten thousand dollars. His salary is two thousand dollars.

TREASURER OF THE UNITED STATES, government. Before entering on the duties of his office, the treasurer is required to give bond with sufficient sureties, approved by the secretary of the treasury and the first comptroller, in the sum of one hundred and fifty thousand dollars, payable to the United States, with condition for the faithful performance of the duties of his office, and the fidelity of the. persons by him employed. Act of 2d September, 1789, s. 4.

2. His principal duties are, 1. To receive and keep the moneys of the United States, and dishurse the same by warrants drawn by the secretary of the treasury, countersigned by the proper officer, and recorded according to law. Id. s. 4. 2. To take receipts for all moneys paid by him.

3. To render his account to the comptroller quarterly, or oftener if required, and transmit a copy thereof, when settled, to the secretary of the treasury. 4. To lay before each house, on the third day of each session of congress, fair and accurate copies of all accounts by him, from time to time, rendered to and settled with the comptroller, and a true and perfect account of the state of the treasury. 5. To submit at all times, to the secretary of the treasury and the comptroller, or either of them, the inspection of the moneys in his bands. Id. s. 4. 3. His compensation is three thousand dollars −per annum. Act of 20th February, 1804, s. 1.

TREASURY. The place where treasure is kept the office of a treasurer. The term is more usually applied to the public than to a private treasury. Vide Department of the Treasury o the United States.

TREATY, international law. A treaty is a compact made between two or more independent nations with a view to the public welfare treaties are for a perpetuity, or for a considerable time. Those matters which are accomplished by a single act, and are at once perfected in their execution, are called agreements, conventions and pactions.

2. On the part of the United States, treaties are made by the president, by and with the consent of the senate, provided two−thirds of the senators present concur. Const. article 2, s. 2, n. 2.

3. No state shall enter into any treaty, alliance or confederation; Const. art. 1, s. 10, n. 1; nor shall any state, without the consent of congress, enter into any agreement or compact with another state, or with a foreign power. Id. art. 1, see. 10, n. 2; 3 Story on the Const. _1395.

4. A treaty is declared to be the supreme law of the land, and is therefore obligatory on courts; 1 Cranch, R. 103; 1 Wash. C. C. R. 322 1 Paine, 55; whenever it operates of itself without the aid of a legislative provision; but when the terms of the stipulation import a contract, and either of the parties engages to perform a particular act, the treaty addresses itself to the polit−ical, not the judicial department, and the legislature must execute the contract before it can become a rule of the court. 2 Pet. S. C. Rep. 814. Vide Story on the Constitut. Index, h. t.; Serg. Constit. Law, Index, h. t.; 4 Hall's Law Journal, 461; 6 Wheat. 161: 3 Dall. 199; 1 Kent, Comm. 165, 284.

5. Treaties are divided into personal and real. The personal relate exclusively to the persons of the contracting parties, such as family alliances, and treaties guarantying the throne to a particular sovereign and his family. As they relate to the persons they expire of course on the death of the sov−ereign or the extinction of his family. Real treaties relate solely to the subject−matters of the convention, independently of the persons of the contracting parties, and continue to bind the state, although there may be changes in its constitution, or in the persons of its rulers. Vattel, Law of Nat. b. 2, c. 12, 183−197.

TREATY OF PEACE. A treaty of peace is an agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace, and regulate the manner in which it is to be restored and supported Vatt. lib. 4, c. 2, _9.

TREBLE COSTS, remedies. By treble costs, in the English law, is understood, 1st. The usual taxed costs. 2d. Half thereof. 3d. Half the latter; so that in effect the treble costs amount only to the taxed costs, and three−fourths thereof. 1 Chitty, R. 137; 1 Chitt. Pract. 27.

2. Treble costs are sometimes given by statutes, and this is the construction put upon them.

3. In Pennsylvania the rule is different; when an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception, that the fees of the officers are not to be trebled, when they are not regularly or usually payable by the defendant. 2 Rawle, R. 201.

4. And in New York the directions of the statute are to be strictly pursued, and the costs are to be trebled. 2 Dunl. Pr. 731.

TREBLE DAMAGES, remedies. In actions arising ex contractu some statutes give treble damages; and these statutes have been liberally construed to mean actually treble damages; for example, if the jury give twenty dollars damages for a forcible entry the court will award forty dollars more, so as to make the total amount of damages sixty dollars. 4 B. & C. 154; M'Clell. Rep. 567.

2. The construction on the words treble damages, is different from that which has been put on the words treble costs. (q. v.) Vide 6 S. & R. 288; 1 Browne, R. 9; 1 Cowen, R. 160, 175,176, 584; 8 Cowen, 115.

TREBUCKET. The name of an engine of punishment, said to be synonymous with tumbrel. (q. v.)

TREE. A woody plant, which in respect of thickness and height grows greater than any other plant.

2. Trees are part of the real estate while growing, and before they are severed from the freehold; but as soon as they are cut down, they are personal property.

3. Some trees are timber trees, while others do not bear that denomination. Vide Timber, and 2 Bl. Com. 281.

4. Trees belong to the owner of the land where they grow, but if the roots go out of one man's land into that of another, or the branches spread over the adjoining estates, such roots or branches may be cut off by the owner of the land into which they thus grow. Rolle's R. 394; 3 Bulstr. 198; Vin. Ab. Trees, E; and tit. Nuisance, W 2, pl. 3; 8 Com. Dig. 983; 2 Com. Dig. 274; 10 Vin. Ab. 142; 20 Viii. Ab. 415; 22 Vin. Ab. 583; 1 Supp. to Ves. jr. 138; 2 Supp. to Ves. jr. 162, 448; 6 Ves. 109.

5. When the roots grow into the adjoining land, the owner of such land may lawfully claim a right to hold the tree in common with the owner of the land where it was planted; but if the branches only overshadow the adjoining land, and the root does not enter it, the tree wholly belongs owner of the estate where the roots grow. 1 Swift's Dig. 104; 1 Hill. Ab. 6; 1 Ld. Raym. 737. Vide 13 Pick. R. 44; 1 Pick., R. 224; 4 Mass. R. 266; 6 N. H. Rep. 430; 3 Day, 476; 11 Co. 50; Rob. 316; 2 Rolle, It. 141 Moo. & Mal. 112; 11 Conn. R. 177; 7 Conn. 125; 8 East, R. 394; 5 B. & Ald. 600; 1 Chit. Gen. Pr. 625; 2 Phil. Ev. 138; Gale & Wheat. on Easem. 210; Code Civ. art. 671; Pardes. Tr. des Servitudes, 297; Bro. Ab. Demand, 20; Dall. Dict. mot Servitudes, art. 3 _8; 2 P. Wms. 606; Moor, 812; Hob. 219; Plowd. 470; 5 B. & C. 897; S. C. 8 D. & R. 651. When the tree grows directly on the boundary line, so that the Iine passes through it, it is the property of both owners, whether it be marked as a boun dary or not. 12 N. H. Rep. 454.

TRESAILE or TRESAYLE, domestic relations. The grandfather's grandfather. 1 Bl. Com. 186.

TRESPASS torts. An unlawful act committed with violence, ti et armis, to the person, property or relative rights of another. Every felony includes a tres−pass, in common parlance, such acts are not in general considered as tres−passes, yet they subject the offender to an action of trespass after his conviction or acquittal. See civil remedy.

2. There is another kind of trespass, which is committed without force, and is known by the name of trespass on the case. This is not generally known by the name of trespass. See Case.

3. The following rules characterize the injuries which are denominated tres−passes, namely: 1. To determine whether an injury is a trespass, due regard must be had to the nature of the right affected. A wrong with force can only be offered to the absolute rights of personal liberty and security, and to those of property corporeal; those of health, reputation and in property incorporeal, together with the relative rights of persons, are, strictly speaking, incapable of being injured with violence, because the subject−matter to which they relate, exists in either case only in idea, and is not to be seen or handled. An exception to this rule, however, often obtains in the very instance of injuries to the relative rights of persons; and wrongs offered to these last are frequently denominated

trespasses, that is, injuries with force.

4. − 2. Those wrongs alone are characterized as trespasses the immediate consequences of which are injurious to the plaintiff; if the damage sustained is a remote consequence of the act, the injury falls under the denomination of trespass on the case.

5. − 3. No act is injurious but that which is unlawful; and therefore, where the force applied to the plaintiff's property or person is the act of the law itself, it constitutes no cause of complaint. Hamm. N. P. 34; 2 Pbil. Ev. 131; Bac. Abr. h. t.; 15 East R. 614; Bouv. Inst. Index, h. t. As to what will justify a trespass, see Battery.

TRESPASS, remedies. The name of an action, instituted for the recovery of damages, for a wrong committed against the plaintiff, with immediate force; as an assault and battery against the person; an unlawful entry into his, land, and an unlawful injury with direct force to his personal property. It does not lie for a mere non−feasance, nor when the matter affected was not tangible.

2. The subject will be considered with regard, 1. To the injuries for which trespass may be sustained. 2. The declaration. 3. The plea. 4. The judgment.

3. − _1. This part of the subject will be considered with reference to injuries, 1. The person. 2. To personal property. 3. To real property. 4. When trespass can or cannot be justified by legal proceedings.

4. − 1. Trespass is the proper remedy for an assault and battery, wounding, imprisonment, and the like, and it also lies for an injury to the relative rights when occasioned by force; as, for beating, wounding, and imprisoning a wife or servant, by which the plaintiff has sustained a loss. 9 Co. 113; 10 Co. 130. Vide Parties to actions; Per guod, and 1 Chit. Pr. 37.

5. − 2. The action of trespass is the proper remedy for injuries to personal property, which may be committed by the several acts of unlawfully striking, chasing, if alive, and carrying away to the damage of the plaintiff, a personal chattel, 1 Saund. 84, n. 2, 3; F. N. B. 86; Bro. Trespass, pl. 407; Toll. Executors, 112; Cro. Jac. 362, of which another is the owner and in possession; but a naked possession or right to immediate possession, is a sufficient title to support this action. 1 T. R. 480; and gee 8. John. R. 432; 7 John. R. 535; 11 John. R. 377; Cro. Jac. 46; 1 Chit. Pl. 165.

6. − 3. Trespass is the proper remedy for the several acts of breaking through an enclosure, and coming into contact with any corporeal hereditament, of which another is the owner and in possession, and by which a damage has ensued. There is an ideal fence, reaching in extent upwards, a superficie terrae usque ad caelum, which encircles every man's possessions, when he is owner of the surface, and downwards as far as his property descends; the entry, therefore, is breaking through this enclosure, and this generally constitutes, by itself, a right of action. The plaintiff must be the owner, and in possession. 5 East, R. 485; 9 John. R. 61; 12 John. R. 183; 11 John. R. 385; Id. 140; 3 Hill, R. 26. There must have been some injury, however, to entitle the plaintiff to recover, for a man in a balloon may legally be said to break the close of the plaintiff, when passing over it, as he is wafted by the wind, yet as the owner's possession is not by that act incommoded, trespass could not probably be maintained; yet, if any part of the machinery were to fall upon the land, the aeronaut could not justify an entry into it to remove it, which proves that the act is not justifiable. 19 John. 381 But the slightest injury, as treading down the grass, is sufficient. Vide 1 Chit. Pl. 173; 2 John, R. 357: 9 John. R. 113, 377; 2 Mass. R. 127; 4 Mass. R. 266; 4 John. R . 150.

7. − 4. It is a general rule that when the defendant has acted under regular process of a court of competent jurisdiction, or of a single magistrate having jurisdiction of the subject−matter, it is a sufficient justification to him; but when the court has no jurisdiction and the process is wholly void, the defendant cannot justify under it.

8. But there are some cases, where an officer will not be justified by the warrant or authority of a court, having jurisdiction. These exceptions are generally founded on some matter of public policy or convenience; for example, when a warrant was issued against a mail carrier, though the officer was justified in serving the warrant, he was liable to an indictment for detaining such mail carrier under the warrant, for by thus detaining him, he was guilty of "wilfully obstructing or retarding the passage of the mail, or of the driver or carrier," contrary to the provisions of the act of congress of 1825, ch. 275, s. 9. 8 Law Rep. 77. See Ambassador; Justification.

9. − _2. The declaration should contain a concise statement of the injury complained of, whether to the person, personal or real property, and it must allege that the injury was conimitted vi et armis and contra pacem; in which particulars it differs from a declaration in case. See Case, remedies.

10. − _3. The general issue is not guilty. But as but few matters can be given in evidence under this plea, it is proper to plead special matters of defence.

11. − _4. The judgment is generally for the damages assessed by the jury, and for costs. When the judgment is for the defendant, it is that be recover his costs. Vide Irregularity; Regular and Irregular process. Vide, generally, Bro. Ab. h. t.; Nelson's Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Com. Dig. h. t.; Vin. Ab. h. t.; the various American and English Digests, h. t.; 2 Phil. Ev. 131; Ham. N. P. 33 to 265; Chit. Pr. Index, h. t.; Rose. Civ. Ev. h. t.; Stark. Ev. h. t.; Bouv. Inst. Index, h. t.

TRESPASS DE BONIS ASPORTATIS, practice. The action brought by the owner of goods for unlawfully taking and carrying them away, is so called. This action will lie for taking away another's goods, even though he should return them, because by such taking he has deprived the owner of his right to enjoy them. 1 Bouv. Inst. n. 3611.

TRESPASS ON THE CASE, practice. The technical name of an action, instituted for the recovery of damages caused by an injury unaccompanied with force, or where the damages sustained are only consequential. See Case, and 3 Bouv. Inst. n. 3482 to 3509.

TRESPASS QUARE CLAUSUM FREGIT, practice. This is the name of a remedy which lies to recover damages when the defendant has unlawfully and wrongfully trespassed upon the real estate of the plaintiff.

2. This action must be brought by the tenant in possession, for the injury is done to his possession. A remainder−man or reversioner cannot sustain it. 3. As the injury must be committed to the possession, one who has a mere incorporeal right cannot maintain this action. 4 Bouv. Inst. n. 3600.

TRESPASS VI ET ARMIS, practice. This is the remedy brought by the plaintiff for an immediate injury committed with force. It is distinguished from an action of trespass on the case, in this, that in the latter the injury is consequential, and not committed with direct force. 3 Bouv. Inst. n. 2871, 3482; 4 Bouv. Inst. n. 8583.

TRESPASSER. One who couimits a trespass.

2. A man is a trespasser by his own direct actohen he acts without any excuse; or he may be a trespasser in the execution of a legal process in an illegal manner; 1 Chit. Pl. 183: 2 John. Cas. 27; or when the court has no juris4iction over the subject−matter when the court has jurisdiction but the proceeding is defective and void; when the process has been misapplied, as, when the defendant has taken A's goods on an execution against B; when the process has been abused 1 Chit. Pl. 183−187 in all these cases a man is a trespasser ab initio. And a person capable of giving his assent may become a trespasser, by an act subsequent to the tort. If, for example, a an take possession of land for the use of another, the latter may afterwards recognize and adopt the act; by so doing, he places himself in the situation of one who had previously commanded it, and consequently is himself a trespasser, if the other had no right to enter, nor he to command the entry. 4 Inst. 317; Ham. N. P. 215. Vide 1 Rawle's R. 121.

TRET, weights and measures. An allowance made for the water or dust that may be mixed with any commodity. It differs from tare. (q. v.)

TRIAL, practice., The examination before a competent tribunal, according to the laws, of the land, of the facts put in issue in a cause, for the purpose of determining such issue. 4 Mason, 232.

2. There are various kinds of trial, the most common of which is trial by jury. To insure fairdess this mode of trial lust be in public; it is conducted by selecting a jury in the manner prescribed by the local statutes, who must be sworn to try the Hiatter in dispute according to law, and the evidence. Evidence is then given by the party on whom rests the onus probandi or burden of the proof, as the witnesses are called by a party they are questioned by him, and after they have been examined, which is called an examination in chief, they are subject to a cross−examination by the other party as to every part of their testimony. Having examined all his witnesses, the party who supports the affirmative of the issue closes; and the other party then calls his witnesses to explain his case or support his part of the issue these are in the same manner liable to a cross−examination. In case the parties should differ as to what is to be given in evidence, the judge, must decide the matter, and his decision is conclusive upon the parties so far as regards the trial; but, in civil cases, a bill of exceptions (q. v.) way be taken, so that the matter may be examined before another tribunal. When the evidence has been closed, the counsel for the party who supports the affirmative of the issue, then addressess the jury, by recapitulating the evidence and applying the law to the facts, and showing on what particular points he rests his case. The opposite counsel then addresses the jury, enforcing in like manner the facts and the law as applicable to his side of the case; to which the other counsel has a right to reply. It is then the duty of the judge to sum up the evidence and explain to the jury the law applicable to the case this is called his charge. (q. v.) The jurors then retire to deliberate upon their verdict, and, after having agreed upon it, they come into court and deliver it in public. In case they cannot agree they may, in cases of

necessity, be discharged: but, it is said, in capital cases they cannot be. Very just and merited encomiums have been bestowed on this mode of trial, particularly in criminal cases. Livingston's Rep. on the Plan of a Penal Code, 13 3 Story, Const. 1773. The learned Duponceau has given beautiful sketch of this tribunal; "twelve invisible judges," said he, "whom the eye of the corrupter cannot see, and the influence of the powerful cannot reach, for they are nowhere to be found, until the moment when the balance of justice being placed in their bands, they hear, weigh, determine, pronounce, and immediately disappear, and are lost in the crowd of their fellow citizens." Address at the opening of the Law Academy at Philadelphia. Vide, generally, 4 Com. Dig. 783; 7 Id. 522; 21 Vin. Ab. 1 Bac. Ab. h. t.; 1 Sell. Pr. 405 4 Bl. Com. ch. 27; Chit. Pr. Index, h. t. 3 Bl. Com. ch. 22; 15 Serg. & R. 61; 22 Vin. Ab. h. t. See Discharge of jury; Jury.

3. Trial by certificate. By the English law, this is a mode of trial allowed in such cases where the evidence of the person certifying is the only proper criterion of the point in dispute. For, when the fact in question lies out of the cognizance of the court, the judges must rely on the solemn averments or information of persons in such station, as affords them the most clear and complete knowledge of the truth.

4. As therefore such evidence, if given to a jury, must have been conclu−sive, the law, to save trouble and circuity, permits the fact to be determined upon such certificate merely. 3 Bl. Com. 333; Steph. Pl. 122.

5. Trial by the grand assise. This kind of trial is very similar to the common trial by jury. There is only one case in which it appears ever to have been applied, and there it is still in force.

6. In a writ of right, if the defendant by a particular form of plea appropriate to the purpose, (see the plea, 3 Chitty, 652,) denied the right of the demandant, as claimed, he had the option, till the recent abolition of the extravagant and barbarous method of wager by battel, of either offering battel or putting himself on the grand assise, to try whether he or the demandant "had the greater right." The latter course he may still take; and, if he does, the court award a writ for summoning four knights to make the election of twenty other recognitors. The four knights and twelve of the recognitors so elected, together making a jury of sixteen, constitute what is called the grand assise; and when assembled, they proceed to try the issue, or (as it is called in this case) the mise, upon the question of right. The trial, as in the case of a common jury, may be either at the bar or nisi prius; and if at nisi prius, a nisi prius record is made up; and the proceedings are in either case, in general, the same as where there is a common jury. See Wils. R. 419, 541; 1 Holt's N. P. Rep. 657; 3 Chitty's Pl. 635; 2 Saund. 45 e; 1 Arch. 402. Upon the issue or mise of right, the wager of battel or the grand assise was, till the abolition of the former, and the latter still is, the only legitimate method of trial; and the question cannot be tried by a jury in the common form. 1 B. & P. 192. See 3 Bl. Com. 351.

7. Trial by inspection or examination. This trial takes place when for the greater expedition of a cause, in some point or issue being either the principal question or arising collaterally out of it, being evidently the object of sense, the judges of the court, upon the testimony of their own senses, shall decide the point in dispute. For where the affirmative or negative of a question is matter of such obvious determination, it is not thought necessary to summon a jury to decide it; who are properly called in to inform the conscience of the court in respect of dubious facts, and, therefore, when the fact, from its nature, must be evident to the court either from ocular demon−stration or other irrefragable proof, there the law departs from its usual resort, the verdict of twelve men, and relies ou the judgment alone. For example, if a defendant pleads in abatement of the suit that the plaintiff is dead, and one appears and calls himself the plaintiff, which the defendant denies; in this case the judges shall determine by inspection and examination whether be be the plaintiff or not. 9 Co. 30; 3 Bl. Com. 331; Steph. Pl. 123.

8. Judges of courts of equity frequently decide facts upon mere inspection. The most familiar examples are those of cases where the plaintiff prays an injun ction on an allegation of piracy or infringement of a patent or copyright. 5 Ves. 709; 12 Ves. 270, and the cases there cited. And see 2 Atk. 141; 2 B. & C. 80; 4 Ves. 681; 2 Russ. R. 385; 1 V. & B. 67; Cro. Jac. 230; 1 Dall. 166.

9. Trial by the record. This trial applies to cases where an issue of nul tiel record is joined in any action. If, on one side, a record be asserted to exist, and the opposite party deny its existence, under the form of traverse, that there is no such record remaining in court, as alleged, and issue be joined thereon, this is called an issue of nul tiel record; and the court awards, in such case, a trial by inspection and examination of the record: Upon this the party, affirming its existence, is bound to produce it in court, on a day given for the purpose, and if he fail to do so, judgment is given for his adversary.

10. The trial by record is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country. Steph. Pl. 122;

2 Bl. Com. 330.

11. Trial by wager of battel. In the old English law, this was a barbarous mode of trying facts, among a rude people, founded on the supposition that heaven would always interpose, and give the victory to the champions of truth and innocence. This mode of trial was abolished in England as late as the stat. 59 Geo. III., c. 46, A. D. 1818. It never was in force in the United States. See 8 Bl. Com. 337; 1 Hale's Hist. 188; see a modern case, 1 B. & A. 405.

12. Trial by wager of law. This mode of trial has fallen into complete disuse; but in point of law, it seems, in England, to be still competent in most cases to which is anciently applied. The most important and best established of these cases, is, the issue of nil debet, arising in action of debt of simple contract, or the issue of non detinet, in an action of detinue. In the declaration in these actions, as in almost all others, the plaintiff concludes by offering his suit (of which the ancient meaning was followers or witnesses, though the words are now refained as mere form,) to prove the truth of his claim. On the other hand, if the defendant, by a plea of nil debet or non detinet, deny the debt or detention, be may conclude by offering to establish the truth of such plea, "against the plaintiff and his suit, in such manner as the court shall direct." Upon this the court awards the wager of law; Co. Ent. 119 a; Lill. Ent. 467; 3 Chit. Pl. 479; and the form of this proceeding, when so awarded, is that the defendant brings into court with him eleven of his neighbors, and for himself, makes oath that he does not owe the debt or detain the property alleged and then the eleven also swear that they believe him to speak the truth; and the defendant is then entitled to judgment. 3 Bl. Com. 343; Steph. Pl. 124. Blackstone compares this mode of trial to the canonical purgation of the catholic clergy, and to the decisory oath of the civil, law. See Oath, decisory.

13. Trial by witnesses. This species of trial by witnesses, or per testes, is without the intervention of a jury

14. This is the only method of trial known to the civil law, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but it is very rarely used in the common law, which prefers the trial by jury in almost every instance.

15. In England, when a widow brings a writ of dower, and the tenant pleads that the tenant is not dead, this being looked upon as a dilatory plea, is, in favor of the widow, and for greater expedition, allowed to be tried by witnesses examined before the judges; and so, says Finch, shall no other case in our law. Finch's Law, 423. But Sir Edward Coke mentions others: as to try whether the tenant in a real action was duly summoned; or the validity of a challenge to a juror; so that Finch's observation must be confined to the trial of direct and not collateral issues. And in every case, Sir Edward Coke lays it down, that the affirmative must be proved by two witnesses at least. 3 Bl. Com. 336.

TRIAL LIST. A list of cases marked down for trial for any one term.

TRIBUNAL. The seat of a judge; the place where he administers justice; but by this term is more usually understood the whole body of judges who compose a jurisdiction sometimes it is taken for the jurisdiction which they exercise.

2. This term is Latin, and derives its origin from the elevated seat where the tribunes administered justice.

TRIBUTE. A contribution which is sometimes raised by the sovereign from his subject, to sustain the expenses of the state. It is also a sum of money paid by one nation to another under some pretended right. Wolff, _1145.

TRINEPOS. This term was used among the Romans to denote the male descendant in the sixth degree in a direct line. It is still employed in making genealogical tables.

TRINITY TERM, Eng. law. One of the four terms of the courts; it begins on the 22d day of May, and ends on the 12th of June. St. 11 G. IV., and 1 W. IV., c. 70. It was formerly a movable term.

TRIORS, practice. Persons appointed according to law to try whether a person challenged to the favor is or is not qualified to serve on the jury. They do not exceed two in number without the consent of the prosecutor and defendant, or some special case is alleged by one of them, or when only one juror has been sworn and two triors are appointed with him. Co. Litt. 158 a; Bac. Ab. Juries, E 12.

2. Where the challenge is made to the first juror, the court will appoint two indifferent persons to be triors if they find him indifferent he shall be sworn, and join the triors in determining the next challenge. But when two jurors have been found impartial and have been sworn, then the office of the triors will cease, and every subsequent challenge will be decided upon by the jurymen. If more than two, jurymen have been sworn, the court may assign any two of them to determine the challenges. To the triors thus chosen no challenges can be admitted.

3. The following oath or affirmation is administered to them: "You shall well and truly try whether A B, the juror challenged, stands indifferent between the parties to this issue, so help you God" or to this you affirm. The trial

then proceeds by witnesses before them; and they may examine, the juryman challenged on his voire dire, but he cannot be interrogated as to circumstances which may tend to his own disgrace, discredit, or the injury of his character. The finding of the triors is final. Being officers of the court, the triors may be punished for any mishehaviour in their office. Vide 2 Hale, 275; 4 Bl. Com. by Chitty, 353, n. 8; Tr. per Pais, 200; 1 Chit. Cr. Law, 549, 450; 4 Harg. St. Tr. 740, 750; 15 Serg. & Rawle, 156; 21 Wend. 509; 2 Green, 195.

TRIPARTITE. Consisting of three parts, as a deed tripartite, between A of the first part, B of the second part, and C of the third part.

TRIPLICATION, pleading. This was formerly used in pleading instead of rebutter. 1 Bro. Civ. Law, 469, n.

TRITAVUS. The male ascendant in the sixth degree was so called among the Romans. For the female ascendant in the same degree, the term is tritavia. In forming genealogical tables this convenient term is still used.

TRIUMVIRI CAPITALES or TREVIRI or TRESVIRI, Rom, civ. law. Officers who had charge of the prison, through whose intervention punishments were inflicted. Sallust in Catalin. They had eight lictors to execute their orders. Vicat, ad voc.

TRIVIAL. Of small importance. It is a rule in equity that a demurrer will lie to a bill on the ground of the triviality of the matter in dispute, as being below the dignity of the court. 4 Bouv. Inst. n. 4237. See Hopk. R. 112; 4 John. Ch. 183; 4 Paige, 364.

TRONAGE, Engl. law. A customary duty or toll for weighing wool, so called because it was weighed by a common trona, or beam. Fleta, lib. 2, c. 12.

TROVER, remedies. Trover signifies finding. The remedy is called an action of trover; it is brought to recover the value of personal chattels, wrongfully converted by another to his own use; the form supposed that the defendant might have acquired the possession of the property lawfully, namely, by finding, but if he did not, by bringing the action the plaintiff waives the trespass; no damages can therefore be recovered for the taking, all must be for the conversion. 17 Pick. 1; Anthon, 156; 21 Pick. 559; 7 Monr. 209; 1 Metc. 172.

2. It will be proper to consider the subject with reference, 1. To the thing converted. 2. The plaintiff's right. 3. The nature of the injury. 4. The pleadings. 5. The verdict and judgment.

3. − 1. The property affected must be some personal chattel; 3, Serg. & Rawle, 513; and it has been decided that trover lies for title deeds; 2 Yeates, R. 537; and for a copy of a record. Hardr. 111. Vide 2 T. R. 788; 2 Salk. 654; 2 New Rep. 170; 3 Campb. 417; 3 Johns. R. 432; 10 Johns. R. 172; 12 Johns. R. 484; 6 Mass. R. 394; 17 Serg. & Rawle, 285; 2 Rawle, R. 241. Trover will be sustained for animals ferae naturae, reclaimed. Hugh. Ab. Action upon the case of Trover and Conversion, pl. 3. But trover will not lie for personal property in the custody of the law, nor when the title to the property can be settled only by a peculiar jurisdiction; as, for example, property taken on the high seas, and claimed as lawful prize, because in such case, the courts of admiralty have exclusive jurisdiction. Cam. & N. 115, 143; but see 14 John. 273. Nor will it lie where the property bailed has been lost by the bailee, or stolen from him, or been destroyed by accident or from negligence case is the proper remedy. 2 Iredell, 98.

4.−2. The plaintiff must at the time of the conversion have had a property in the chattel either general or special; 1 Yeates, R. 19; 3 S. & R. 509; 15 John. R. 205, 349; 16 John. R. 159; 1 Humph. R. 199; he must also have had actual possession or right to immediate possession. The person who has the absolute or general property in a personal chattel may support this action, although he has never had possession, for it is a rule that the general property of personal chattels creates a constructive possession. 2 Saund. 47 a, note 1; Bac. Ab. Trover, C; 4 Rawle, R. 185. One who has a special property, which consists in the lawful custody of goods with a right of detention against the general owner, may maintain trover. Story, Bailm. 93 n.

5. − 3. There must have been a conversion, which may have been effected, 1st. By the wrongful taking of a personal chattel. 2d. By some other illegal assumption of ownership, or by illegally using or misusing it; or, 3d. By a wrongful detention., Vide Conversion.

6. − 4. The declaration should state that the plaintiff Was possessed of the goods (describing them) as of his own property, and that they came to the defendant's possession by finding; and the conversion should be properly averred, as that is the gist of the action. It is not indispensable to state the price or value of the thing converted. 2 Wash. 192. See 2 Cowen, 592 13 S. & R. 99; 3 Watts, 333; 1 Blackf. 51; 1 South 211; 2 South. 509. Vide form, 2 Chitty's Pl. 370, 371. The usual plea is not guilty, which is the general issue. Bull. N. P. 48.

7. − 5. The verdict should be for the damages sustained, and the measure of such damages is the value of the property at the time of the conversion, with interest. 17 Pick. 1; 7 Monr. 209; 1 Mete. 172; 8 Port. R. 191; 2 Hill,

132; 8 Dana, 192. The judgment, when for the plaintiff, is that he recover his damages and costs; 1 Chit. Pl. 157; when for the defendant, the judgment is that he recover his costs. Vide, generally, 1 Chit. Pl. 147 to 157 Chit. Pr. Index, h. t.; Bac. Ab. h. t.; Dane's Ab. h. t. Vin. Ab. h. t.; Com. Dig. Action upon the case upon trover; Id. Pleader, 2 I; Doct. Pl. 494; Amer. Digests, h. t.; Bouv. Inst. Index, h. t. As to the evidence to be given in actions of trover, see Rose. Civ. Ev. 395 to 412.

TROY WEIGHT. A weight less ponderous than the avoirdupois weight, in the proportion of seven thousand, for the latter, to five thousand seven hundred and sixty, to the former. Dane's Ab. Index, h. t. Vide Weights.

TRUCE, intern. law. An agreement between belligerent parties, by which they mutually engage to forbear all acts of hostility against each other for some time, the war still continuing. Burlamaqui's N. & P. Law, part 4, c. 11, _1.

2. Truces are of several kinds: general, extending to all the territories and dominions of both parties; and particular, restrained to particular places; as, for example, by sea, and not by land, &c. Id. part 4, c. 11, _5. They are also absolute, indeterminate and general; or limited and determined to certain things, for example, to bury the dead. Ib. idem. Vide 1 Kent, Com. 159; Com. Dig. Admiralty, E 8; Bac. Ab.;Prerogative, D 4; League; Peace; War.

TRUE BILL, practice. These words are endorsed on a bill of indictment, when a grand jury, after having heard the witnesses for the government, are of opinion that there is sufficient cause to put the defendant on his trial. Formerly, the endorsement was Billa vera, when legal proceedings were in Latin; it is still the practice to write on the back of the bill Ignoramus, when the jury do not find it to be a true bill. Vide Grand Jury.

TRUST, contracts, devises. An equitable right, title or interest in property, real or personal, distinct from its legal ownership; or it is a personal obligation for paying, delivering or performing anything, where the person trusting has no real. right or security, for by, that act he confides altogether to the faithfulness of those intrusted. This is its most general meaning, and includes deposits, bailments, and the like. In its more technical sense, it may be defined to be an obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. Willis on Trustees, 1; 4 Kent, Com. 295; 2 Fonb. Eq. 1; 1 Saund. Uses and Tr. 6; Coop. Eq. Pl. Introd. 27; 3 Bl. Com. 431. 2. Trusts were probably derived from the civil law. The fidei commissum, (q. v.) is not dissimilar to a trust. 8. Trusts are either express or implied. 1st. Express trusts are those which are created in express terms in the deed, writing or will. The terms to create an express trust will be sufficient, if it can be fairly collected upon the face of the instrument that a trust was intended. Express trusts are usually found in preliminary sealed agreements, such as marriage articles, or articles for the purchase of land; in formal conveyances, such as marriage settlements, terms for years, mortgages, assignments for the payment of debts, raising portions or other purposes; and in wills and testaments, when the bequests involve fiduciary interests for private benefit or public charity,, they may be created even by parol. 6 Watts & Serg. 97.

4. − 2d. Implied trusts are those which without being expressed, are deducible from the nature of the transaction, as matters of intent; or which are superinduced upon the transaction by operation of law, as matters of equity, independently of the particular intention of the parties.

5. The most common form of an implied trust is where property or money is delivered by one person to another, to be by the latter delivered to a third person. These implied trusts greatly extend over the business and pursuits of men: a few examples will be given.

6. When land is purchased by one man in the name of another, and the former pays the consideration money, the land will in general be held by the grantee in Trust for the person who so paid the consideration money. Com. Dig. Chancery, 3 W 3; 2 Fonbl. Eq. book 2, c. 5, _1, note a. Story, Eq. Jur. _1201.

7. When real property is purchased out of partnership funds, and the title is taken in the name of one of the partners, he will hold it in trust for all the partners. 7 Ves. jr. 453; Montague on Partn. 97, n.; Colly. Partn. 68.

8. When a contract is made for the sale of land, in equity the vendor is immediately deemed a trustee for the vendee of the estate; and the vendee, a trustee for the vendor of the purchase money; and by this means there is an equitable conversion of the property. 1 Fonbl. Eq. book 1, ch. 6, _9, note t; Story, Eq. Jur. SSSS 789, 790, 1212. See Conversion. For the origin of trusts in the civil law, see 5 Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 18; 1 Brown's Civ. Law, 190. Vide Resulting Trusts. See, generally, Bouv. Inst. Index, h. t.

TRUSTEE, estates. A trustee is one to whom an estate has been conveyed in trust.

2. The trust estate is not subject to the specialty or judgment debts of the trustee, to the dower of his wife, or the curtesy of the hushand of a female trustee.

3. With respect to the duties of trustees, it is held, in conformity to the old law of uses, that pernancy of the profits, execution of estates, and defence of the land, are the three great properties of a trust, so that the courts of chancery will compel trustees, 1. To permit the cestui que trust to receive the rents and profits of the land. 2. To execute such conveyances, in accordance with the provisions of the trust, as the cestui que trust shall direct. 3. To defend the title of the land in any court of law or equity. Cruise, Dig. tit. 12, c. 4, s. 4.

4. It has been judiciously remarked by Mr. Justice Story, 2 Eq. Jur. _1267, that in a great variety of cases, it is not easy to say what the duty of a trustee is; and that therefore, it often becomes indispensable for him, before he acts, to seek, the aid and direction of a court of equity. Fonbl. Eq. book 2, c. 7, _2, and note c. Vide Vin. Ab. tit. Trusts, O, P, Q, R, S, T; Bouv. Inst. Index, h. t.

TRUSTEE PROCESS, practice. In Massacchusetts, this is a process given by statute, in imitation of the foreign attachment of the English law.

2. By this process, a creditor may attach any property or credits of his debtor in the hands of a third person. This third person is, in the English law, called the garnishee; in Massachusetts, he is the trustee. White's Dig. tit. 148. Vide Attachment.

TRUSTER. He who creates a trust. A convenient term used in the laws of Scotland. 1 Bell's Com. 321, 6th ed.

TRUTH. The actual state of things.

2. In contracts, the parties are bound to toll the truth in their dealings, and a deviation from it will generally avoid the contract; Newl. on Contr. 352−3; 2 Burr. 1011; 3 Campb. 285; and even concealment, or suppressio veri, will be considered fraudulent in the contract of insurance. 1 Marsh. on Ins. 464; Peake's N. P. C. 115; 3 Campb. 154, 506.

3. In giving his testimony, a witness is required to tell the truth, the whole truth, and nothing but the truth; for the object in the examination of matters of fact, is to ascertain truth.

4. When a defendant is sued civilly for slander or a libel, he may justify by giving the truth in evidence; but when a criminal prosecution is instituted by the commonwealth for a libel, he cannot generally justify by giving the truth in evidence.

5. The constitutions of several of the United States have made special provisions in favor of giving the truth in evidence in prosecutions for libels, under particular circumstances. In the constitutions of Pennsylvania, Delaware, Tennessee, Kentucky, Ohio, Indiana and Illinois, it is declared, that in publications for libels on men in respect to their public official conduct, the truth may be given in evidence, when the matter published was proper for public information. The constitution of New York declares, that in all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous, is true, and was published with good motives and for justifiable ends, the party shall be acquitted. By constitutional provision in Mississippi and Missouri, and by legislative enactment in New Jersey, Arkansas, Tennessee, Act of 1805, c. 6: and Vermont, Rev. Stat. tit. 11, c. 25, s. 68; the right to give the truth in evidence has been more extended; it applies to all prosecutions or indictments for libels, without any qualifications annexed in restraint of the privilege. Cooke on Def. 61.

TUB, measures. In mercantile law, a tub is a measure containing sixty pounds weight of tea; and from fifty−six to eighty−six pounds of camphor. Jacob's Law Dict. h. t.

TUB−MAN, Eng. law. A barrister who has a pre−audience in the Exchequer, and also one who has a particular place in court, is so called.

TUMBREL, punishment. A species of cart; according to Lord Coke, a dung−cart.

2. This instrument, like the pillory, was used as a means of exposure; and according to some authorities, it seems to have been synonymous with the trebucket or ducking stool. 1 Chit. Cr. Law, 797; 3 Inst. 219; 12 Serg. & Rawle, 220. Vide Com. Dig. h. t.; Burn's Just. Pillory and Tumbrel.

TUN, measure. A vessel of wine or oil, containing four hogsheads.

TURBARY, Eng. law. A right to dig turf; an easement.

TURNKEY. A person under the superintendence of a jailor, whose employment is to open and fasten the prison doors and to prevent the prisoners from escaping.

2. It is his duty to use due diligence, and he may be punished for gross neglect or wilful misconduct in permitting prisoners to escape.

TURNPIKE. A public road paved with stones or other hard substance.

2. Turnpike roads are usually made by corporations to which a power to make them has been granted. The grant

of such power passes not only an easement for the road itself, but also so much land as is connected with it; as, for instance, for a toll house and a cellar under it, and a well for the use of the family. 9 Pick. R. 109. A turnpike is a public highway, and a building erected before the turnpike was made, though upon a part out of the travelled path, if continued there is a nuisance. 16 Pick. R. 175. Vide Road; Street; Way.

TURPIS CAUSA, contracts. A base or vile consideration, forbidden by law, which makes the contract void; as a contract, the consideration of which is the future illegal cohabitation of the obligee with the obligor.

TURPITUDE. Everything done contrary to justice, honesty, modesty or good morals, is said to be done with turpitude.

TUTELAGE. State of guardianship; the condition of one who is subject to the control of a guardian.

TUTOR, civil law. A person who has been lawfully appointed to the care of the person and property of a minor.

2. By the laws of Louisiana minors under the age of fourteen years, if males, and under the age of twelve years, if females, are both, as to their persons and their estates, placed under the authority of a tutor. Civ. Code, art. 263. Above that age, and until their, majority or emancipation, they are placed under the authority of a curator. Ibid.

TUTOR ALIENUS, Eng. law. The name given to a stranger who enters into the lands of an infant within the age of fourteen), and takes the profits.

2. He may be called to an account by the infant, and be charged as guardian in socage. Litt. s. 124; Co. Litt. 89 b, 90 a Hargr. n. 1.

TUTOR PROPRTUS. The name given to one who is rightly a guardian in socage in contradistinction, to a tutor alienus. (q. v.)

TUTORSHIP. The power which an individual, sui juris, has to take care of the person of one who is unable to take care of himself. Tutorship differs from curatorship, (q. v.) Vide Pro−curator; Pro−tutor; Undertutor.

TUTRIX. A woman who is appointed to the office of a tutor.

TWELVE TABLES. The name given to a code of Roman laws, commonly called the Law of the Twelve Tables. (q. v.)

TWENTY YEARS. The lapse of twenty years raises a presumption of certain facts, and after such a time, the party against whom the presumption has been raised, will be required to prove a negative to establish his rights.

2. After twenty years from the time it became due, a bond will be presumed to have been paid. 2 Cranch, 180; 3 Day, 289; 1 McCord, 145; 2 N. & McC. 160; 1 Bay. 482; 9 Watts, 441; 2 Speers, 357. And the same presumption arises that a judgment has been paid, if no steps have been taken by the plaintiff for twenty years after its rendition. 3 Brev. 476; 5 Conn. 1.

3. But the presumption of such payment is easily rebutted, by showing that interest has been regularly paid. 1 Bailey, 148; that the obliger has admitted it has not been paid 2 Harring, 124; 9 N. H. Rep. 398; or other circumstances calculated to rebut the presumption. The proof of facts which show that the obligor was poor and not likely to be able to pay the debt, is not sufficient. 5 Verm. 236.

4. When a debt is payable in instalments and secured by a penal bond, the presumption of payment arising from lapse of time applies to each instalment as it falls due. 3 Harring. 421.

5. By the English act of limitation, 21 Jac. 1, c. 16, the period during which a possessory action for land can be sustained is fixed at twenty years, so that an adverse possession of twenty years is a bar to an action of ejectment, and such lapse of time gives a possessory title to the land. This period has been adopted in many of the states of the Union, but there has been some variation in others. See Limitation of actions.

6. But this statute did not affect incorporeal hereditaments, which remained as before. In analogy to the act of limitation the courts presumed a grant after twenty years adverse possession. Ana new grants are presumed upon proof of an adverse, exclusive, and uninterrupted enjoyment of an incorporeal hereditament at the end of twenty years. And the burden of proving that the possession was adverse, that is, under a claim of title, with the knowledge or acquiescence of the owner of the land; and also that it was uninterrupted, rests on the party claiming such incorporeal hereditaments. 3 Kent, 441; 1 Cheves, R. 2; 4 Mason, 402; 2 Roll. Ab. 269; 2 Greenl. Ev. 444.

7. The time of enjoyment of a former owner who is in privity with the claimant, can, in general, be joined to his own in order to make up the period of twentv years, as in the case of the heir and ancestor, of grantor and grantee. 9 Pick. 251. But the enjoyment of a former owner whose title has escheated to the state by forfeiture, cannot be added to the time of the enjoyment of the grantee of the state. 2 Greenl. Ev. 543.

TYBURN TICKET, Eng. late. A certificate given to the prosecutor of a felon to conviction, is so called.

2. By the 10 & 11. W. III., c. 23, the original proprietor or first assignee of such certificate is exempted from all

and all manner of parish and ward offices within the parish or ward where the felony shall have been committed. Bac. Ab. Constable, C.

TYRANNY, government. The violation of those laws which regulate the division and the exercises of the sovereign power of the state. It is a violation of −its constitution.

TYRANT, government. The chief magistrate of the state, whether legitimate or otherwise, who violates the constitution to act arbitrarily contrary to justice. Toull. tit. prel. n. 32.

2. The term tyrant and usurper, are sometimes used as synonymous, because usurpers are almost always tyrants; usurpation is itself a tyrannical act, but properly speaking, the words usurper and tyrant convey different ideas. A king may become a tyrant, although legitimate, when he acts despotically; while a usurper may cease to be a tyrant by governing according to the dictates of justice.

3. This term is sometimes applied to persons in authority who violate the laws and act arbitrarily towards others. Vide Despotism.

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