H.

HABEAS CORPORA, English practice. A writ issued out of the C. P. commending the sheriff to compel the appearance of a jury in the cause between the parties. It answers the same purpose in that court as the Distringas juratores answers in the K. B. For a form, see Bootes Suit at Law, 151.

HABEAS CORPUS, remedies A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of the court of he is a judge, issued in the name of the sovereign power where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody or under his restraint, commanding him to produce, such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.

2. This writ was it common law considered as a remedy to remove the illegal restraint on a freeman. But anterior to the 31 Charles II. its benefit was, in a great degree, eluded by time−serving judges, who awarded it only in term time, and who assumed a discretionary power of awarding or refusing it. 3 Bulstr. 23. Three or four years before that statute was passed there had been two very great cases much agitated in Westminster Hall, upon writs of habeas corpus for private custody, viz: the cases of Lord Lei−ah: 2 Lev; 128; and Sir Robert Viner, Lord Mayor.of London. 3 Keble, 434, 447, 470, 504; 2 Lev. 128; Freem. 389. But the court has wisely drew the line of distinction between civil constitutional liberty, as opposed to the power of the crown, and liberty as opposed to the violence and power of private persons. Wilmot's Opinions, 85, 86.

3. To secure the full benefit of it to the subject the statute 81 Car. II. c. 2, commonly calfed the habeas corpus act, was passed. This gave to the. writ the vigor, life, and efficacy requisite for the due protection of the liberty of the subject. In England this. is considered as a high prerogative writ, issuing out of the court of king's bench, in term time or vacation, and running into every part of the king's dominions. It is also grantable as a matter of right, ex debito justitae, upon the application of any person.

4. The interdict De homine libero exhibendo of the Roman law, was a remedy very similar to the writ of habeas corpus. When a freeman was restrained by another, contrary to good faith, the praetor ordered that such person should be brought before him that he might be liberated. Dig. 43, 29, 1.

5. The habeas corpus act has been substantially incorporated into the jurisprudance of every state in the Union, and the right to the writ has been secured by most of the constitutions of the states, and of the United States. The statute of 31 Car. II. c. 2, provides that the person imprisoned, if he be not a prisoner convict, or in execution of legal process, or committed for treason or felony, plainly expressed in the warrant, or has not neglected wilfully, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, may apply by any one in his behalf, in vacation time, to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And, in term time, any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.

6. By the habeas corpus law of Pennsylvania, (the Act of February 18, 1785,) the benefit of the writ of habeas corpus is given in "all cases where any person, not being committed or detained for any criminal, or supposed criminal matter," Who "shall be confined or restrained of his or her liberty, under any color or pretence whatsoever." A similar provision is contained in the habeas corpus act of New York. Act of April 21, 1818, sect. 41, ch. 277.

7. The Constitution of the United State art. 1, s. 9, n. 2, provides, that " the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ, a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal.

8. It is proper to consider, 1. When it is to be granted. 2. How it is to be served. 3. What return is to be made to it. 4. The bearing. 5. The effect of the judgment upon it.

9. − 1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, as in Pennsylvania and New York, in all cases where he is confined or restrained of his liberty, under any color or pretence whatsoever. But persons discharged on bail will not be considered as restrained of their liberty so as to be entitled to, a writ of habeas corpus, directed to their bail. 3 Yeates, R. 263; 1 Serg & Rawle, 356.

10. − 2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at

the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers. In Louisiana, it is provided, that if the person to whom it is addressed shall refuse to receive the writ, he who is charged to serve it, shall inform him of its contents; if he to whom the writ is addressed conceal himself, or refuse admittance to the person charged to serve it on him, the latlat shall affix the order on the exterior of the place where the person resides, or in which the petitioner is so confined. Lo. Code of Pract. art. 803. The service is proved by the oath of the party making it.

11. − 3. The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed; he either complies, or he does not. If, he complies, he must positively answer, 1. Whether he has or has not in his power or custody the person to be set at liberty, or whether that person is confined by him; if he return that he has not and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty, and other punishment, for making such a, false return. If he return that he has such person in his custody, then he must show by his return, further, by what authority, and for what cause, he arrested or detained him. If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.

12. − 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody. In the case of wives, children, and wards, all the court does, is to see that they ire under no illegal restraint. 1 Strange, 445; 2. Strange, 982; Wilmot's Opinions, 120.

13. For those offences which are bailable, when the prisoner offers sufficient bail, he is to be bailed.

14. He is to be remanded in the following cases: 1. When it appears he, is detained upon legal process, out of some court having jurisdiction of criminal matters, 2. When he is detained by warrant, under the hand and seal of a magistrate, for some offence for which, by law, the prisoner is not bailable. 3. When he is a convict in execution, or detained in execution by legal civil process. 4. When he is detained for a contempt, specially and plainly charged in the commitment, by some existing court, having authority to commit for contempt. 5. When he refuses or neglects to give the requisite bail in a case bailable of right. The judge is not confined to the return, but he is to examine into the causes of the imprisonment, and then he is to discharge, bail, or remand, as justice shall require. 2 Kent, Com. 26; Lo. Code of Prac. art. 819.

15. − 5. It is provided by the habeas corpus act, that a person set at liberty by the writ, shall not again be imprisoned for the same offence, by any person whomsoever, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear, or other court having jurisdiction of the cause. 4 Johns. R. 318; 1 Binn. 374; 5 John. R. 282.

16. The habeas corpus can be suspended only by authority of the legislature. The constitution of the United States provides, that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion and rebellion, the public safety may require it. Whether this writ ought to be suspended depends on political considerations, of which the legislature, is to decide. 4 Cranch, 101. The proclamation of a military chief, declaring martial law, cannot, therefore, suspend the operation of the law. 1 Harr. Cond. Rep. Lo. 157, 159 3 Mart. Lo. R. 531.

17. There are various kinds of this writ; the principal of which are explained below.

18. Habeas corpus ad deliberandum et recipiendum, is a writ which lies to remove a prisoner to take his trial in the county where the offence was committed. Bac. Ab. Habeas Corpus, A.

19. Habeas corpus ad faciendum et recipiendum, is a writ which issues out of a court of competent jurisdiction, when a person is sued in an inferior court, commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, (whence this writ is frequently denominated habeas corpus cum causa) to do and receive whatever the court or the judge issuing the writ shall consider in that behalf. This writ may also be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to surrender him in his own discharge; upon. the return of this writ, the court will cause an exoneretur to be entered on the bail piece, and remand the prisoner to his former custody. Tidd's Pr. 405; 1 Chit. Cr. Law, 182.

20. Habeas corpus ad prosequendum, is a writ which issues for the purpose of removing a prisoner in order to prosecute. 3 Bl. Com. 130.

21. Habeas corpus ad respondendum, is a writ which issues at the instance of a creditor, or one who has a cause of action against a person who is confined by the process of some inferior court, in order to remove the prisoner and charge him with this new action in the court above. 2 Mod. 198; 3 Bl. Com. 107.

22. Habeas corpus ad satisfaciendum, is a writ issued at the instance of a plaintiff for the purpose of bringing up a prisoner, against whom a judgment has been rendered, in a superior court to charge him with the process of execution. 2 Lill. Pr. Reg. 4; 3 Bl. Com. 129, 130.

23. Habeas corpus ad subjiciendum, by way of eminence called the writ of habeas corpus, (q. v.) is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. 3 Bl. Com. 131; 3 Story, Const. _1333.

24. Habeas corpus ad testificandum, a writ issued for the purpose of bringing a prisoner, in order that he may testify, before the court. 3 Bl. Com. 130.

25. Habeas corpus cum causa, is a writ which may be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to render him in their own discharge. Tidd's Pr. 405. Upon the return of this writ the court will cause an exoneretur to be entered on the bail piece, and remand the defendant to his former custody. Id. ibid.; 1 Chit. Cr. Law 132. Vide, generally, Bac. Ab. h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; the various American Digests, h. t.; Lo. Code of Prac. art. 791 to 827; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t.

HABENDUM, conveyancing. This is a Latin word, which signifies to have.

2. In conveyancing, it is that part of a deed which usually declares what estate or interest is granted by it, its certainty, duration, and to what use. It sometimes qualifies the estate, so that the general implication of the estate, which, by construction of law, passes in the premises, may by the habendum be controlled; in which case the habendum may enlarge the estate, but not totally contradict, or be repugnant to it. It may abridge the premises. Perk. _170 , 176; Br. Estate, 36 Cont. Co. Litt. 299. It may explain the premises. More, 43; 2 Jones, 4. It may enlarge the premises Co. Litt. 299; 2 Jones, 4. It may be frustrated by the premises, when they are general; Skin. 544 but it cannot frustrate the premises, though it may restrain them. Skin. 543. Its proper office is not to give anything, but to limit or define the certainty of the estate to the feoffee or grantee, who should be previously named in the premises of the deed, or it is void. Cro. Eliz. 903. In deeds and devises it is sometimes construed distributively, reddendo singula singulis. 1 Saund. 183−4, notes 3 and 4; Yelv. 183, and note 1.

3. The habendum commences in our common deeds, with the words "to have and to hold." 2 Bl. Com. 298.; 14 Vin. Ab. 143; Com. Dig. Fait, E 9; 2 Co. 55 a; 8 Mass. R. 175; 1 Litt. R. 220; Cruise, Dig. tit. 32, c. 20, s. 69 to 93; 5 Serg. & Rawle, 375; 2 Rolle, Ab. 65; Plowd. 153; Co. Litt. 183; Martin's N. C. Rep. 28; 4 Kent, Com. 456; 3 Prest. on Abstr. 206 to 210; 5 Barnw. & Cres. 709; 7 Greenl. R. 455; 6 Conn. R. 289; 6 Har. & J. l32; 3 Wend. 99.

HABERDASHER. A dealer in miscellaneous goods and merchandise.

HABERE. To have. This word is used in composition.

HABERE FACIAS POSSESSIONEM, Practice, remedies. The name of a writ of execution in the action of ejectment.

2. The sheriff, is commanded by this writ that, without delay, he cause the plaintiff to have possession of the land in dispute which is therein described; a fi. fa. or ca. sa. for costs may be included in the writ. The duty of the sheriff in the execution and return of that part of the writ, is the same as on a common fi. fa. or ca. sa. The sheriff is to execute this writ by delivering a full and, actual possession of the premises to the plaintiff. For this purpose he may break an outer or inner door of the house, and, should he be violently opposed, he may raise the posse comitatus. Wats. on Sher. 60, 215; 5 Co. 91 b.; 1 Leon. 145; 3 Bouv. Inst. n. 3375.

3. The name of this writ is abbreviated hab. fa. poss. Vide 10 Vin. Ab. 14; Tidd's Pr. 1081, 8th Engl. edit.; 2 Arch. Pr. 58; 3 Bl. Com. 412; Bing. on Execut. 115, 252; Bac. Ab. h. t.

HABERE FACIAS SEISINAM, practice, remedies. The name of a writ of execution, used in most real actions, by which the sheriff is directed that he cause the demandant to have seisin of the lands which he has recovered. 3 Bouv. Inst. n. 3374.

2. This writ may be taken out at any time within a year and day after judgment. It is to be executed nearly in the

same manner as the writ of habere facias possessionem, and, for this purpose, the officer may break open the outer door of a house to deliver seisin to the demandant. 5 Co. 91 b; Com. Dig. Execution, E; Wats. Off. of Sheriff, 238. The name of this writ is abbreviated hab. fac. seis. Vide Bingh. on Exec. 115, 252; Bac. Ab. h. t.

HABERE FACIAS VISUM, practice. The name of a writ which lies when a view is to be taken of lands and tenements., F. N. B. Index, verbo View.

HABIT. A disposition or condition of the body or mind acquired by custom or a frequent repetition of the same act. See 2 Mart. Lo. Rep. N. S. 622.

2. The habit of dealing has always an important bearing upon the construction of commercial contracts. A ratification will be inferred from the mere habit of dealing between the parties; as, if a broker has been accustomed to settle losses on policies in a particular manner, without any objection being made, or with the silent approbation of his principal, and he should afterward settle other policies in the same manner, to which no objection should be made within a reasonable time, a just presumption would arise of an implied ratification; for if the principal did not agree to such settlement he should have declared his dissent. 2 Bouv. Inst. 1313−14.

HABITATION, civil law. It was the right of a person to live in the house of another without prejudice to the property.

2. It differed from a usufruct in this, that the usufructuary might have applied the house to any purpose, as, a store or manufactory; whereas the party having the right of habitation. could only use it for the residence of himself and family. 1 Bro. Civ. Law, 184 Domat. l. 1, t. 11, s. 2, n. 7.

HABITATION, estates. A dwelling−house, a home−stall. 2 Bl. Com. 4; 4 Bl. Com. 220. Vide House.

HABITUAL DRUNKARD. A person given to ebriety or the excessive use of intoxicating drink, who has lost the power or the will, by frequent indulgence, to control his appetite for it.

2. By the laws of Pennsylvania an habitual drunkard is put nearly upon the same footing with a lunatic; he is deprived of his property, and a committee is appointed by the court to take care of his person and estate. Act of June 13, 1836, Pamph. p. 589. Vide 6 Watts' Rep. 139; 1 Ashm. R. 71.

3. Habitual drunkenness, by statutory provisions in some of the states, is a sufficient cause for divorce. 1 Bouv. Inst. n. 296.

HABITUALLY. Customarily, by habit. or frequent use or practice, or so frequently, as to show a design of repeating the same act. 2 N. S. 622: 1 Mart. Lo. R. 149.

2. In order to found proceedings in lunacy, it is requisite that the insanity should be habitual, yet it is not necessary that it should be continued. 1 Bouv. Inst. n. 379.

HAD BOTE, Engl. law. A recompense or amends made for violence offered to a person in holy olders.

HAEREDES PROXIMI. The children or descendants of the deceased. Dalr. Feud. Pr. 110; Spellm. Remains.

HAEREDES REMOTIORES. The kinsmen other than children or descendants; Dalr. Feud. Pr. 110; Spellm. Remains.

HAEREDITAS. An inheritance, or an estate which descends to one by succession. At common law an inheritance never ascends, haereditas nunquam ascendit. But in many of the states of the Union provision is made by statute in favor of ascendants.

HAEREDITAS JACENS. This is said of an inheritance which is not taken by the heirs, but remains in abeyance.

HAERES civil law. An heir, one who succeeds to the whole inheritance.

2. These are of various kinds. 1. Haeres natus, an heir born; the heir at law: he is distinguished from, 2. Haeres factus, or an heir created by will, a testamentary heir, to whom the whole estate of the testator is given. 3. Haeres fiduciarius, an heir to whom the estate is given in trust for another. Just. 2, 23, 1, 2. Haeres−legitimus, a lawful heir; this is one who is manifested by the marriage of his parents; haeres legitimus est quem nuptiae demonstrant; haeres suus, one's own heir, a proper heir; descendants. Just. 3, 1, 4, 5.

HALF. One equal part of a thing divided into two parts, either in fact or in contemplation. A moiety. This word is used in composition; as, half cent, half dime, &c.

HALF−BLOOD, parentage, kindred. When persons have only one parent in common, they are of the half−blood. For example, if John marry Sarah and has a son by that marriage, and after Sarah's death he marry Maria, and has by her another son, these children are of the half−blood; whereas two of the children of John and Sarah would be of the whole blood.

2. By the English common law, one related to an intestate of the half−blood only, could never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by the 3

and 4 Wm. IV. c. 106.

3. In this country the common law principle on this subject may be considered as not in force, though in some states some distinction is still preserved between the whole and the half−blood. 4 Kent, Com. 403, n.; 2 Yerg. 115; 1 M'Cord, 456; Dane's Ab. Index, h. t.; Reeves on Descents, passim. Vide Descents.

HALF−BROTHER AND HALF−SISTER. Persons who have the same father but different mothers; or the same mother but different fathers.

HALF CENT, money. A copper coin of the United States, of the value of one two−hundredth part of a dollar, or five mills. It weighs eighty−four grains. Act of January 18, 1837, s. 12, 4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF DEFENCE, pleading. It is the peculiar form of a defence, which is as follows, "venit et defendit vim et injuriam, et dicit," &c. It differs from full defence. Vide Defence; Et cetera;

HALF DIME, money. A silver coin of the United States, of the value of one− twentieth part of a dollar, or five cents. It weighs twenty grains and five−eighths of a grain. Of one thousand parts, nine hundred are of pure silver, and one hundred are of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF DOLLAR, money. A silver coin of the United States of the value of fifty cents. It weighs two hundred and six and one−fourth grains. Of one thousand parts, nine hundred are of pure silver, and one hundred of alloy. Act of January 18, 1837, S. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF EAGLE, money. A gold coin of the United States, of the value of five dollars. It weighs one hundred and twenty−nine grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of alloy. Act of January 18, 1837, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF PROOF, semiplena probatio, civil law. Full proof is that which is sufficient to end the controversy, while half proof is that which is insufficient, as the foundation of a sentence or decree, although in itself entitled to some credit. Vicat, voc. Probatio.

HALF SEAL. A seal used in the English chancery for the sealing of commissions to delegates appointed upon any appeal, either in ecclesiastioal or marine causes.

HALF YEAR, In the computation of time, a half year consists of one hundred and eighty−two days. Co. Litt. 135 b; Rev. Stat., of N. Y. part 1, c. 19, t. 1. _3.

HALL. A public building used either for the meetings of corporations, courts, or employed to some public uses; as the city hall, the town hall. Formerly this word denoted the chief mansion or habitation.

HALLUCINATION, med. jur. It is a species of mania, by which "an idea reproduced by the memory is associated and embodied by the imagination." This state of mind is sometimes called delusion or waking dreams.

2. An attempt has been made to distinguish hallucinations from illusions; the former are said to be dependent on the state of the intellectual organs and, the latter, on that of those of sense. Ray, Med. Jur. _99; 1 Beck, med. Jur. 538, note. An instance is given of a temporary hallucination in the celebrated Ben Johnson, the poet. He told a friend of his that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartars, Romans and Carthagenians, fight, in his imagination. 1 Coll. on Lun. 34. If, instead of being temporary, this affection of his mind had been permanent, he would doubtless have been considered insane. See, on the subject of spectral illusions, Hibbert, Alderson and Farrar's Essays; Scott on Demonology, &c.; Bostock's Physiology, vol. 3, p. 91, 161; 1 Esquirol, Maladies Mentales, 159.

HALMOTE. The name of a court among the Saxons. It had civil and criminal jurisdiction.

HAMESUCKEN, Scotch law. The crime of hamesucken consists in "the felonious seeking and invasion of a person in his dwelling house." 1 Hume, 312; Burnett, 86; Alison's Princ. of the Cr. Law of Scotl. 199.

2. The mere breaking into a house, without personal violence, does not constitute the offence, nor does the violence without an entry with intent to, commit an assault. It is the combination of both which completes the crime. 1. It is necessary that the invasion of the house should have proceeded from forethought malice; but it is sufficient, if, from any illegal motive, the violence has been meditated, although it may not have proceeded from the desire of wreaking personal revenge, properly so called. 2. The place where the assault was committed must have been the proper dwelling house of the party injured, and not a place of business, visit, or occasional residence. 3. the offence maybe committed equally in the day as in the night, and not only by effraction of the building by actual force but by an entry obtained by fraud, with the intention of inflicting personal violence, followed by its perpetration. 4. But unless the injury to the person be of a grievous and material, character, it is

not hamesucken, though the other requisites to the crime have occurred. When this is the case, it is immaterial whether the violence be done lucri caus, or from personal spite. 5. The punishment of hamesucken in aggravated cases of injury, is death in cases of inferior atrocity, an arbitrary punishment. Alison's Pr. of Cr. Law of Scotl. ch. 6; Ersk. Pr. L. Scotl. 4, 9, 23. This term wag formerly used in England instead of the now modern term burglary. 4 Bl. Com. 223.

HAMLET, Eng. law. A small village; a part or member of a vill.

HANAPER OFFICE, Eng.law. This is the name of one of the offices belonging to the English court of chancery. 3 Bl. Com. 49.

HAND. That part of the human body at the end of the arm.

2. Formerly the hand was considered as the symbol of good faith, and some contracts derive their names from the fact that the hand was used in making them; as handsale, (q. v.) mandatum, (q. v.) which comes from manu dat. The hand is still used for various legal or forensic purposes. When a person is accused of a crime and he is arraigned, and he is asked to hold up his right hand; and when one is sworn as a witness, he is required to lay his right hand on the Bible, or to hold it up.

3. Hand is also the name of a measure of length used in ascertaining the height of horses. It is four inches long. See Measure: Ell.

4. In a figurative sense, by hand is understood a particular form of writing; as if B writes a good hand. Various kinds of hand have been used, as, the secretary hand, the Roman hand, the court hand, &c. Wills and contracts may be written in any of these, or any other which is intelligible.

HANDBILL. A printed or written notice put up on walls, &c., in order to inform those concerned of something to be done.

HANDSALE, contracts. Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain; a custom still retained in verbal contracts; a sale thus made was called handsale, venditio per mutuam manum complexionem. In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. In some parts of the country it is usual to speak of hand money as the part of the consideration paid or to be paid at the execution of a contract of sale. 2 Bl. Com. 448. Heineccius, de Antique Jure Germanico, lib. 2, _335; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 2, n. 33.

HANDWRITING, evidence. Almost every person's handwriting has something whereby it may be distinguished from the writing of others, and this difference is sometimes intended by the term.

2. It is sometimes necessary to prove that a certain instrument or name is in the handwriting of a particular person; that is done either by the testimony of a witness, who saw the paper or signature actually written, or by one who has by sufficient means, acquired such a knowledge of the general character of the handwriting of the party, as will enable him to swear to his belief, that the handwriting of the person is the handwriting in question. 1 Phil. Ev. 422; Stark. Ev. h. t.; 2 John. Cas. 211; 5 John. R. 144; 1 Dall. 14; 2 Greenl. R. 33; 6 Serg. & Rawle, 668; 1 Nott & M'Cord, 554; 19 Johns. R. 134; Anthon's N. P. 77; 1 Ruffin's R. 6; 2 Nott & M'Cord, 400; 7 Com. Dig. 447; Bac. Ab. Evidence, M; Dane's Ab. Index, h. t.

HANGING, punishment. Death by the halter, or the suspending of a criminal, condemned to suffer death, by the neck, until life is extinct. A mode of capital punishment.

HANGMAN. The name usually given to a man employed by the sheriff to put a man to death, according to law, in pursuance of a judgment of a competent court, and lawful warrant. The same as executioner. (q. v.)

HAP. An old word which signifies to catch; as, "to hap the rent," to hap the deed poll." Techn. Dict. h. t.

HARBOR. A place where ships may ride with safety; any navigable water protected by the surrounding country; a haven. (q. v.) It is public property. 1. Bouv. Inst. n. 435.

To HARBOR, torts. To receive clandestinely or without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person, shall be deprived of the same; for example, the harboring of a wife or an apprentice, in order to deprive the hushand or the master of them; or in a less technical sense, it is the reception of persons improperly. 10 N. H. Rep. 247; 4 Scam. 498.

2. The harboring of such persons will subject the barborer to an, action for the injury; but in order to put him completely in the wrong, a demand should be made for their restoration, for in cases where the harborer has not committed any other wrong than merely receiving the plaintiff's wife, child, or apprentice, he may be under no obligation to return them without a demand. 1 Chit. Pr. 564; Dane's Ab. Index, h. t.; 2 N. Car. Law Repos. 249; 5 How. U. S. Rep. 215, 227.

HARD LABOR, punishment. In those states where the penitentiary system has been adopted, convicts who are to be imprisoned, as part of their punishment, are sentenced to perform hard labor. This labor is not greater than many freemen perform voluntarily, and the quantity required to be performed is not at all unreasonable. In the penitentiaries of Pennsylvania it consists in being employed in weaving, shoemaking, and such like employments.

HART. A stag or male deer of the forest five years old complete.

HAT MONEY, mar. law. The name of a small duty paid to the captain and mariners of a ship, usually called primage. (q. v.)

TO HAVE. These words are used in deeds for the conveyance of land, in that clause which usually declared for what estate the land is granted. The same as Habendum. (q. v.) Vide Habendum; Tenendum.

HAVEN. A place calculated for the reception of ships, and so situated, in regard to the surrounding land, that the vessel may ride at anchor in it in safety. Hale, de Port. Mar. c. 2; 2 Chit. Com. Law, 2; 15 East, R. 304, 5. Vide Creek; Port; Road.

HAWKERS. Persons going from place to place with goods and merchandise for sale. To prevent impositions they are generally required to take out licenses, under regulations established by the local laws of the states.

HAZARDOUS CONTRACT, civil law. When the performance of that which is one of its objects, depends on an uncertain event, the contract is said to be hazardous. Civ. Co. of Lo. art. 1769 1 Bouv. Inst. n. 707.

2. When a contract is hazardous, and the lender may lose all or some part of his principal, it is lawful for him to charge more than lawful interest for the use of his money. Bac. Ab. Usury D; 1 J. J. Marsh, 596; 3 J. J. Marsh, 84.

HEAD BOROUGH, English law. Formerly he was a chief officer of a borough, but now he is an officer subordinate to constable. St. Armand, Hist. Essay on the Legisl. Power of Eng. 88.

HEALTH. Freedom from pain or sickness; the most perfect state of animal life. It may be defined, the natural agreement and concordant dispositions of the parts of the living body.

2. Public health is an object of the utmost importance and has attracted the attention of the national and state legislatures.

3. By the act of Congress of the 25th of February, 1799, 1 Story's L. U. S. 564, it is enacted: 1. That the quarantines and other restraints, which shall be established by the laws of any state, respecting any vessels arriving in or bound to any port or district thereof, whether coming from a foreign port or some other part of the United States, shall be observed and enforced by all officers of the United States, in such place. Sect. 1. 2. In times of contagion the collectors of the revenue may remove, under the provisions of the act, into another district. Sect. 4. 3. The judge of any district court may, when a contagious disorder prevails in his district, cause the removal of persons confined in prison under the laws of the United States, into another district. Sect. 5. 4. In case of the prevalence of a contagious disease at the seat of government, the president of the United States may direct the removal of any or all public offices to a place of safety. Sect. 6. 5. In case of such contagious disease, at the seat of government, the chief justice, or in case of his death or inability, the senior associate justice of the supreme court of the United States, may issue his warrant to the marshal of the district court within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same or adjoining district as he may deem convenient. And the district judges may, under the same circumstances, have the same power to adjourn to some other part of their several districts. Sect. 7.

3. Offences against the provisions of the health laws are generally punished by fine and imprisonment. These are offences against public health, punishable by the common law by fine and imprisonment, such for example, as selling unwholesome provisions. 4 Bl. Com. 162; 2 East's P. C. 822; 6 East, R.133 to 141; 3 M. & S. 10; 4 Campb. R. 10.

4. Private injuries affecting a man's health arise upon a breach of contract, express or implied; or in consequence of some tortions act unconnected with a contract.

5. − 1. Those injuries to health which arise upon contract are, 1st. The misconduct of medical men, when, through neglect, ignorance, or wanton experiments, they injure their patients. 1 Saund. 312, n. 2. 2d. By the sale of unwholesome food; though the law does not consider a sale to be a warranty as to the goodness or quality of a personal chattel, it is otherwise with regard to food and liquors. 1 Rolle's Ab. 90, pl. 1, 2.

6.−2. Those injuries which affect a man's health, and which arise from tortious acts unconnected with contracts, are, 1st. Private nuisances. 2d. Public nuisances. 3d. Breaking quarantine. 4th. By sudden alarms, and frightening; as by raising a pretended ghost. 4 Bl. Com. 197, 201, note 25; 1 Hale, 429; Smith's Forens. Med. 37 to 39; 1 Paris & Fonbl. 351, 352. For private injuries affecting his health a man may generally have an action on the case.

HEALTH OFFICER. The name of an officer invested with power to enforce the health laws. The powers and duties of health officers are regulated by local laws.

HEARING, chwncery practice. The term, hearing is given to the trial of a chancery suit.

2. The hearing is conducted as follows. When the cause is called on in court, the pleadings on each side are opened in a brief manner to the court by the junior counsel for the plaintiff; after which the plaintiff's leading counsel states the plaintiff's case, and the points in issue, and submits to the court his arguments upon them. Then the depositions (if any) of the plaintiff's witnesses, and such parts of the defendant's answer as support the plaintiff's case are read by the plaintiff's solicitor; after which the rest of the plaintiff's counsel address the court; then the same course of proceedings is observed on the other side, excepting that no part of the defendant's answer can be read in his favor, if it be replied to; the leading counsel for the plaintiff is then heard in reply; after which the court pronounces the decree, Newl. Pr. 153, 4; 14 Vin. Ab. 233; Com. Dig. Chancery, T. 1, 2, 3.

HEARING, crim. law. The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accuser.

2. The magistrate should examine with care all the witnesses for the prosecution, or so many of them as will satisfy his mind that there is sufficient ground to believe the prisoner guilty, and that the case ought to be examined in court and the prisoner ought to be tried. If, after the hearing of all such witnesses, the offence charged is not made out, or, if made out, the matter charged is not criminal, the magistrate is bound to discharge the prisoner.

3. When the magistrate cannot for want of time, or on account of the absence of a witness, close the hearing at one sitting, he may adjourn the case to −another day, and, in bailable offences, either take bail from the prisoner for his appearance on that day, or commit him for a further hearing. See Further hearing.

4. After a final hearing, unless the magistrate discharge the prisoner, it is his duty to take bail in bailable offences, and he is the sole judge of the amount of bail to be demanded this, however, must not be excessive. He is the sole judge, also, whether the offence be bailable or not. When the defendant can give the bail required, he must be discharged; when not, he must be committed to the county prison, to take his trial, or to be otherwise disposed of according, to law. See 1 Chit. Cr. Law, 72, ch. 2.

HEARSAY EVIDENCE. The evidence of those who relate, not what they know themselves, but what they have heard from others.

2. As a general rule, hearsay evidence of a fact is not admissible. If any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn or affirmed to speak the truth.

3. There are, however, exceptions to the rule. 1. Hearsay is admissible when it is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, when it is a part of the res gestae. 1 Phil. Ev. 218; 4 Wash. C. C. R. 729; 14 Serg. & Rawle, 275; 21 How. St. Tr. 535; 6 East, 193.

4. − 2. What a witness swore on a former trial, between the same parties, and where the same point was in issue as in the second action, and he is since dead, what he swore to is in general, evidence. 2 Show. 47; 11 John. R. 446; 2 Hen. & Munf. 193; 17 John. R. 176; But see 14 Mass. 234; 2 Russ. on Cr. 683, and the notes.

5. − 3. The dying declarations of a person who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence under certain circumstances. Vide Declarations, and 15 John. R. 286; 1 Phil. Ev. 215; 2 Russ. on Cr. 683.

6. − 4. In questions concerning public rights, common reputation is admitted to be evidence.

7. − 5. The declarations of deceased persons in cases where they appear to have been made against their interest, have been admitted.

8. − 6. Declarations in cases of birth and pedigree are also to be received in evidence.

9. − 7. Boundaries may be proved by hearsay evidence, but, it seems, it must amount to common tradition or repute. 6 Litt. 7; 6 Pet. 341; Cooke, R 142; 4 Dev. 342; 1 Hawks 45; 4 Hawks, 116; 4 Day, 265. See 3 Ham. 283; 3 Bouv. Inst. n. 3065, et seq. 10. There are perhaps a few more exceptions which will be found in the books referred to below. 2 Russ. on Cr. B. 6, c. 3; Phil. Ev. ch. 7, s. 7; 1 Stark. Ev. 40; Rosc. Cr. Ev. 20; Rosc. Civ. Ev. 19 to 24; Bac. Ab. Evidence, K; Dane's Ab. Index, h. t. Vide also, Dig. 39, 3, 2, 8; Id. 22, 3, 28. see Gresl. Eq. Ev. pt. 2, c. 3, s. 3, p. 218, for the rules in courts of equity, as to receiving hearsay evidence 20 Am. Jur. 68.

HEDGE−BOTE. Wood used for repairing hedges or fences. 2 Bl. Com. 35; 16 John. 15.

HEIFER. A young cow, which has not had a calf. A beast of this kind two years and a half old, was held to be

improperly described in the indictment as a cow. 2 East, P. C. 616; 1 Leach, 105.

HEIR. One born in lawful matrimony, who succeeds by descent, and right of blood, to lands, tenements or hereditaments, being an estate of inheritance. It is an established rule of law, that God alone can make an heir. Beame's Glanville, 143; 1 Thomas, Co. Lit. 931; and Butler's note, p. 938. Under the word heirs are comprehended the heirs of heirs in infinitum. 1 Co. Litt. 7 b, 9 a, 237 b; Wood's Inst. 69. According to many authorities, heir may be nomen collectivuum, as well in a deed as in a will, and operate in both in the same mannar, as heirs in the plural number. 1 Roll. Abr. 253; Ambl. 453; Godb. 155; T. Jones, 111; Cro, Eliz. 313; 1 Burr. 38; 10 Vin. Abr. 233, pl. 1; 8 Vin. Abr. 233; sed vide 2 Prest. on, Est. 9, 10. In wills, in order to effectuate the intention of the testator, the word heirs is sometimes construed to mean next of kin; 1 Jac. & Walk. 388; and children, Ambl. 273. See further, as to the force and import of this word, 2 Vent. 311; 1 P. Wms. 229; 3 Bro. P. C. 60, 454; 2 P. Wms. 1, 369; 2 Black. R. 1010; 4 Ves. 26, 766, 794; 2 Atk. 89, 580; 5 East Rep. 533; 5 Burr. 2615; 11 Mod. 189; 8 Vin. Abr. 317; 1 T. R. 630; Bac. Abr. Estates in fee simple, B.

2. There are several kinds of heirs specified below.

3. By the civil law, heirs are divided into testamentary or instituted heirs legal heirs, or heirs of the blood; to which the Civil Code of Louisiana has added irregular heirs. They are also divided into unconditional and beneficiary heirs.

4. It is proper here to notice a difference in the meaning of the word heir, as it is understood by the common and by, the civil law. By the civil law, the term heirs was applied to all persons who were called to the succession, whether by the act of the party or by operation of law. The person who was created universal successor by a will, was called the testamentary heir; and the next of kin by blood was, in cases of intestaby, called the heir at law, or heir by intestacy. The executor of the common law is, in many respects, not unlike the testamentary heir of the civil law. Again, the administrator ln many respects corresponds with the heir by intestacy. By the common law, executors unless expressly authorized by the will and administrators, have no right, except to the personal estate of the deceased; whereas, the heir by the civil law was authorized to administer both the personal and real estate. 1 Brown's Civ. Law, 344; Story, Confl. of Laws, _508.

5. All free persons, even minors, lunatics, persons of insane mind or the like, may transmit their estates as intestate ab intestato, and inherit from others. Civ. Code of Lo., 945; Accord, Co. Lit. 8 a.

6. The child in its mother's womb, is considered as born for all purposes of its own interest; it takes all successions opened in its favor, after its conception, provided it be capable of succeeding at the moment of its birth. Civ. Code of Lo. 948. Nevertheless, if the child conceived is reputed born, it is only in the hope of its birth; it is necessary then that the child be born alive, for it cannot be said that those who are born dead ever inherited. Id. 949. See In ventre sa mere.

HEIR. APPARENT. One who has an indefeasible right to the inheritance, provided he outlive the ancestor. 2 Bl. Com. 208.

HEIR, BENEFICIARY. A term used in the civil law. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. Civ. Code of Lo. art. 879. If the heir apprehend that the succession−will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession. See inventory, benefit of.

HEIR, COLLATERAL. A collateral heir is one who is not of the direct line of the deceased, but comes from a collateral line; as, a brother, sister, an uncle and aunt, a nephew, niece, or cousin of the deceased.

HEIR, CONVENTIONAL, civil law. A conventional heir is one who takes a succession by virtue of a contract; for example, a marriage contract, which entitles the heir to the succession.

HEIR, FORCED. Forced heirs are those who cannot be disinherited. This term is used among the civilians. Vide Forced heirs

HEIR, GENERAL. Heir at common in the English law. The heir at common law is he who, after his father or ancestor's death has a right to, and is introduced into all his lands, tenements and hereditaments. He must be of the whole blood, not a bastard, alien, &c. Bac. Abr. Heir, B 2; Coparceners; Descent.

HEIR, IRREGULAR. In Louisiana, irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See Civ. Code of Lo. art. 874. When the deceased has left neither lawful descendants nor ascendants, nor collateral relations, the law calls to his inheritance either the surviving hushand or wife, or his or her natural children, or the state. Id. art., 911. This is called an irregular succession.

HEIR AT LAW. He who, after his ancestor's death intestate, has a right to all lands, tenements, and hereditaments, which belonged to him, or of which he was seised. The same as heir general. (q. v.)

HEIR, LEGAL, civil law. A legal heir is one who is of the same blood of the deceased, and who takes the succession by force of law; this is different from a testamentary or conventional heir, who takes the succession in virtue of the disposition of man. See Civil, Code of Louis. art. 873, 875; Dict. de Jurisp., Heritier legitime. There are three classes of legal heirs, to wit; the children and other lawful descendants; the fathers and mothers and other lawful ascendants; and the collateral kindred. Civ. Code of Lo. art. 883.

HEIR LOOM, estates. This word seems to be compounded of heir and loom, that is, a frame, viz. to weave in. Some derive the word loom from the Saxon loma, or geloma, which signifies utensils or vessels generally. However this may be, the word loom, by time, is drawn to a more general signification, than it, at the first, did bear, comprehending all implements of household; as, tables, presses, cupboards, bedsteads, wainscots, and which, by the custom of some countries, having belonged to a house, are never inventoried after the decease of the owner, as chattels, but accrue to the heir, with the house itself minsheu. The term heir looms is applied to those chattels which are considered as annexed and necessary to the enjoyment of an inheritance.

2. They are chattels which, contrary to the nature of chattels, descend to the heir, along with the inheritance, and do not pass to the executor of the last proprietor. Charters, deeds, and other evidences of the title of the land, together with the box or chest in which they are contained; the keys of a house, and fish in a fish pond, are all heir looms. 1 Inst. 3 a; Id. 185 b; 7 Rep. 17 b; Cro. Eliz. 372; Bro. Ab. Charters, pl. 13; 2 Bl. Com. 28; 14 Vin. Ab. 291.

HEIR PRESUMPTIVE. A presumptive heir is one who, in the present circumstances, would be entitled to the inheritance, but whose rights may be defeated by the contingency of some nearer heir being born. 2 B1 Com. 208. In Louisiana, the presumptive heir is he who is the nearest relation of the deceased, capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it. Civ. Code of Lo. art. 876.

HEIR, TESTAMENTARY, civil law. A testamentary heir is one who is constituted heir by testament executed in the form prescribed by law. He is so called to distinguish him from the legal heirs, who are called to the succession by the law; and from conventional heirs, who are so constituted by a contract inter vivos. See Haeres factus; Devisee.

HEIR, UNCONDITIONAL. A term used in the civil law, adopted by the Civil Code of Louisiana. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Civ. Code of Lo. art. 878.

HEIRESS. A female heir to a person having an estate of inheritance. When there is more than one, they are called co−heiresses, or co−heirs.

HEPTARCHY, Eng. law. The name of the kingdom or government established by the Saxons, on their establishment in Britain so called because it was composed of seven kingdoms, namely, Kent, Essex, Sussex, Wessex, East Anglia, Mercia, and Northumberland.

HERALDRY, civil and canon law. The art or office of a herald. It is the art, practice, or science of recording genealogies, and blazoning arms or ensigns armorial. It also teaches whatever relates to the marshaling of cavalcades, processions, and other public ceremonies. Encyc.; Ridley's View of the Civil and Canon Law, pt. 2, c. 1, _6.

HERBAGE, English Law, A species of easement, which consists in the right to feed one's cattle on another man's ground.

HEREDITAMENTS, estates. Anything capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed and including not only lands and everything thereon, but also heir looms, and certain furniture which, by custom, may descend to the heir, together with the land. Co. Litt. 5 b; 1 Tho. Co. Litt. 219; 2 Bl. Com. 17. By this term such things are denoted, as may be the subject−matter of inheritance, but not the inheritance itself; it cannot therefore, by its own intrinsic force, enlarge an estate, prima facie a life estate, into a fee. 2 B. & P. 251; 8 T. R. 503; 1 Tho. Co. Litt. 219, note T.

2. Hereditaments are divided into corporeal and incorporeal. Corporeal hereditaments are confined to lands. (q. v.) Vide Incorporeal hereditaments, and Shep. To. 91; Cruise's Dig. tit. 1, s. 1; Wood's Inst. 221; 3 Kent, Com. 321; Dane's Ab. Index, h.t.; 1 Chit. Pr. 203−229; 2 Bouv. Inst. n. 1595, et seq.

HEREDITARY. That which is inherited.

HERESY, Eng. law. The adoption of any erroneous religious tenet, not warranted by the established church.

2. This is punished by the deprivation of certain civil rights, and by fine and imprisonment. 1 East, P. C. 4.

3. In other countries than England, by heresy is meant the profession, by Christians, of religious opinions contrary to the dogmas approved by the established church of the respective countries. For an account of the origin and progress of the laws against heresy, see Giannoni's Istoria di Napoli, vol. 3, pp, 250, 251, &c.

4. in the United State, happily, we have no established religion; there can, therefore, be no legal heresy. Vide Apostacy; Christianity.

HERISCHILD. A species of English military service, or knight's fee.

HERIOTS, Eng. law. A render of the best beast or other goods, as the custom may be, to the lord, on the death of the tenant. 2 Bl. Com. 97.

2. They are usually divided into two sorts, heriot service, and heriot custom; the former are such as are due upon a special reservation in the grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatsoever, but depend merely upon immemorial usage and custom. These are defined to be a customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 Bl. Com. 422. Vide Com. Dig. Copyhold, K 18; Bac. Ab. h. t.; 2 Saund. lndex, h. t.; 1 Vern. 441.

HERITAGE. By this word is understood, among the civilians, every species of immovable which can be the subject of property, such as lands, houses, orchards, woods, marshes, ponds, &c., in whatever mode they may have been acquired, either by descent or purchase. 3 Toull. 472. It is something that can be inherited. Co. Litt. s. 731.

HERMAPHRODITES. Persons who have in the sexual organs the appearance of both sexes. They are adjudged to belong to that which prevails in them. Co. Litt. 2, 7; Domat, Lois Civ. liv. 1, t. 2, s. 1, n.. 9.

2. The sexual characteristics in the human species are widely separated, and the two sexes are never, perhaps, united in the same individual. 2 Dunglison's Hum. Physiol. 304; 1 Beck's Med. Jur. 94 to 110.

3. Dr. William Harris, in a lecture delivered to the Philadelphia Medical Institute, gives an interesting account of a supposed hermaphrodite who came under his own observation in Chester county, Pennsylvania. The individual was called Elizabeth, and till the age of eighteen, wore the female dress, when she threw it off, and assumed the name of Rees, with the dress and habits of a man; at twenty−five, she married a woman, but had no children. Her clitoris was five or six inches long, and in coition, which she greatly enjoyed, she used this instead of the male organ. She lived till she was sixty years of age, and died in possession of a large estate, which she had acquired by her industry and enterprise. Medical Examiner, vol. ii. p, 314. Vide 1 Briand, M,d. L,g. c. 2, art. 2 , _2, n. 2; Dict. des Sciences M,d. art. Hypospadias, et art. Impuissance; Guy, Med. Jur. 42, 47.

HIDE, measures. In England, a hide of land, according to some ancient−manuscripts, contained one hundred and twenty acres. Co. Litt. 5; Plowd. 167; Touchst. 93.

HIERARCHY, eccl. law. A hierarchy signified, originally, power of the priest; for in the beginning of societies, the priests were entrusted with all the power but, among the priests themselves, there were different degrees of power and authority, at the summit of which was the sovereign pontiff, and this was called the hierarchy. Now it signifies, not so much the power of the priests as the border of power.

HIGH. This word has various signifcations: 1. Principal or chief, as high constable, high sheriff. 2. Prominent, in a bad sense, as high treason. 3. Open, not confined, as high seas.

HIGH CONSTABLE. An officer appointed in some cities bears this name. His powers are generally Iimited to matters of police, and are not more extensive in these respects than those of constables. (q. v.)

HIGH COURT OF DELEGATES, English law. The name of a court esthlished by stat. 25 Hen. VIII. c. 19, s. 4. No permanent judges are appointed, but in every case of appeal to this court, there issues a special commission, under the great seal of Great Britain, directed to such persons as the lord chancellor, lord keeper, or lords commissioners of the great seal, for the time being, shall think fit to appoint to bear and determine the same. The persons usually appointed, are three puisne judges, one from each court of common law, and three or more civilians; but in special cases, a fuller commission is sometimes issued, consisting of spiritual and temporal peers, judges of the common law, and civilians, three of each description. In case of the court being equally divided, or no common law judge forming part of the majority, a commission of adjuncts issues, appointing additional judges of the same description. 1 Hagg. Eccl. R. 384; 2 Hagg. Eccl. R. 84; 3 Hagg. Ecel. R. 471; 4 Burr. 2251.

HIGH SEAS. This term, which is frequently used in the laws of the United States signifies the unenclosed waters of the ocean, and also those waters on the sea coast which are without the boundaries of low water mark. 1 Gall.

R. 624; 5 Mason's R. 290; 1 Bl. Com. 110; 2 Haze. Adm. R. 398; Dunl. Adm. Pr. 32, 33.

2. The Act of Congress of April 30 1790, s. 8, 1 Story'S L. U. S. 84, enacts, that if any person shall commit upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular state, murder, &c., which, if committed within the body of a county, would, by the laws of the United States, be punishable with death, every such offender, being thereof convicted, shall suffer death and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought. See 4 Dall. R. 426; 3 Wheat. R. 336; 5 Wheat 184, 412; 3 W. C. C. R. 515; Serg. Const. Law, 334; 13 Am. Jur. 279 1 Mason, 147, 152; 1 Gallis. 624.

HIGH TREASON, English law. Treason against the king, in contradistinction with petit treason, which is the treason of a servant towards his master; a wife towards her hushand; a secular or religious man against his prelate. See Petit treason; Treason.

HIGH WATER MARK. That part of the shore of the sea to which the waves ordinarily reach when he tide is at its highest. 6 Mass. R. 435; 1 Pick. R. 180; 1 Halst. R. 1; 1 Russ. on Cr. 107; 2 East, P. C. 803. Vide Sea shore; Tide.

HIGHEST BIDDER, contracts. He who, at an auction, offers the greatest price for the property sold.

2. The highest bidder is entitled to have the article sold at his bid, provided there has been no unfairness on his part. A distinction has been made between the highest and the best bidder. In judicial sales, where the highest bidder is unable to pay, it is said the sheriff may offer the property to the next highest, who will pay, and he is considered the highest best bidder. 1 Dall. R. 419.

HIGHWAY. A passage or road through the country, or some parts of it, for the use of the people. 1 Bouv. Inst. n. 442. The term highway is said to be a generic name for all kinds of public ways. 6 Mod R, 255.

2. Highways are universally laid out by public authority and repaired at the public expense, by direction of law. 4 Burr. Rep. 2511.

3. The public have an easement over a highway, of which the owner of the land cannot deprive them; but the soil and freehold still remain in the owner, and he may use the land above and below consistently with the easement. He may, therefore, work a mine, sink a drain or water course, under the highway, if the easement remains unimpaired. Vide Road; Street; Way; and 4 Vin. Ab. 502; Bac. Ab. h. t.; Com. Dig. Chemin; Dane's Ab. Index, h. t.; Egremont on Highways; Wellbeloved on Highways; Woolrych on Ways; 1 N. H. Rep. 16; 1 Conn. R. 103; 1 Pick. R. 122; 1 M'Cord's R. 67; 2 Mass. R. 127; 1 Pick. R. 122; 3 Rawle, R. 495; 15 John. R. 483; 16 Mass. R. 33; 1 Shepl. R. 250; 4 Day, R. 330; 2 Bail. R. 271; 1 Yeates, Rep. 167.

4. The owners of lots on opposite sides of a highway, are prima facie owners, each of one half of the highway,, 9 Serg. & Rawle, 33; Ham. Parties, 275; Bro. Abr. Nuisance, pl. 18 and the owner may recover the possession in ejectment, and have it delivered to him, subject to the public easement. Adams on Eject. 19, 18; 2 Johns. Rep. 357; 15 Johns. Rep. 447; 6 Mass. 454; 2 Mass. 125.

5. If the highway is impassable, the public have the right to pass over the adjacent soil; but this rule does not extend to private ways, without an express grant. Morg. Vad. Mec. 456−7; 1 Tho. Co. Lit. 275; note 1 Barton, Elem. Conv. 271; Yelv. 142, note 1.

HIGHWAYMAN. A robber on the highway.

HILARY TERM, Eng. law. One of the four terms of the courts, beginning the 11th and ending the 31st day of January in each year.

HIGLER, Eng. law. A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIRE, contracts. A bailment, where a compensation is to be given for the use of a thing, or for labor or services about it. 2 Kent's Com. 456; 1 Bell's Com. 451; Story on Bailim. _369; see 1 Bouv. Inst. n. 980, et seq; Pothier, Contrat de Louage, ch. 1, n. 1; Domat, B. 1, tit. 4 _1, n. 1 Code Civ. art.. 1709, 1710; Civ. Code of Lo., art. 2644, 2645. See this Dict. Hirer; Letter.

2. The contract of letting and hiring is usually divided into two kinds; first, Locatio, or Locatio conductio rei, the bailment of a thing to be used by the hirer, for a compensation to be paid by him.

3. Secondly, Locatio operis, or the hire of the labor and services of the hirer, for a compensation to be paid by the letter.

4. And this last kind is again subdivided into two classes: 1. Locatio operis faciendi, or the hire of labor and work to be done, or care and attention to be bestowed on the goods let by the hirer, for a compensation; or,

5. − 2. Locatio operis mercium vehendarum, or the hire and carriage of goods from one place to another, for a compensation. Jones' Bailm. 85, 86, 90, 103, 118; 2 Kent's Com. 456; Code Civ. art. 1709, 1710, 1711.

6. This contract arises from the principles of natural law; it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale, the principal difference between them being, that in cases of sale, the owner, parts with the whole proprietary interest in the thing; and in cases of hire, the owner parts with it only for a temporary use and purpose. In a sale, the thing itself is the object of the contract; in hiring, the use of the thing is its object. Vinnius, lib. 3, tit. 25, in pr.; Pothier, Louage, n. 2, 3, 4; Jones Bdilm. 86; Story on Bailm. _371.

7. Three things are of the essence of the contract: 1. That there should be a thing to be let. 2. A price for the hire. 3. A contract possessing a legal obligation. Pothier, Louage, n. 6; Civ. Code of Lo. art. 2640.

8. There is a species of contract in which, though no price in money be paid, and which, strictly speaking, is not the contract of hiring, yet partakes of its nature. According to Pothier, it is an agreement which must be classed with contracts do ut des. (q. v.) It frequently takes place among poor people in the country. He gives the following example: two poor neighbors, each owning a horse, and desirous to plough their respective fields, to do which two horses are required, one agrees that he will let the other have his horse for a particular time, on condition that the latter will let the former have his horse for the same length of time. Du Louage n. 458. This contract is not a hiring, strictly speaking, for want of a price; nor is it a loan for use, because there is to be a recompense. It has been supposed to be a partnership; but it is different from that contract, because there is no community of profits. This contract is, in general, ruled by, the same principles which govern the contract of hiring. 19 Toull. n. 247.

9. Hire also, means the price given for the use of the thing hired; as, the hirer is bound to pay the hire or recompense. Vide Domat. liv. 1, tit. 4; Poth. Contrat de Louage; Toull. tomes 18, 19, 20; Merl. R,pert. mot Louage; Dalloz, Dict. mot Louage; Argou, Inst. liv. 3, c. 27.

HIRER, contracts. Called, in the civil law, conductor, and, in the French law conducteur, procureur, locataire, is he who takes a thing from another, to use it, and pays a compensation therefor. Wood's Inst. B. 3, c. 5, p. 236; Pothier, Louage, n. 1; Domat, B. 1, tit. 4, _1, n. 2; Jones' Bailm. 70; see this Dict. Letter.

2. There is, on the part of the hirer, an implied obligation, not only to use the thing with due care and moderation but not to apply it to any other use than that for which it is hired; for example, if a horse is hired as a saddle, horse; the hirer has no right to use the horse in a cart, or to carry loads, or as a beast of burden. Pothier Louage, n. 189; Domat, B. 1, tit. 4, _2, art. 2, 3; Jones' Bailm. 68, 88; 2 Saund. 47 g, and note; 1 Bell's Com. 454; 1 Cowen's R. 322; 1 Meigs, R. 459. If a carriage and horses are hired to go from Philadelphia to New York, the hirer has no right to go with them on a journey to Boston. Jones' Bailm. 68; 2 Ld. Raym. 915. So, if they are hired for a week, he has no right to use them for a month, Jones' Bailm. 68; 2 Ld. Raym. 915; 5 Mass. 104. And if the thing be used for a different purpose from that which was intended by the parties, or in a different manner, or for a longer period, the hirer is not only responsible for all damages, but if a loss occur, although by inevitable casualty, he will be responsible therefor. 1 Rep. Const. C. So. Car. 121; Jones' Bailm. 68, 121; 2 Ld. Raym. 909, 917. In short, such a misuser is deemed a conversion of the property, for which the hirer is deemed responsible. Bac. Abr. Bailment, C; Id. Trover, C, D, E; 2 Saund. 47 g; 2 Bulst. 306, 309.

3. The above rules apply to cases where the hirer has the possession as well as the use of the thing hired when the owner or his agents retain the possession, the hirer is not in general responsible for an injury done to it. For example, when the letter of a carriage and a pair of horses sent his driver with them and an injury occurred, the hirer was held not to be responsible. 9 Watts, R. 556, 562; 5 Esp. R. 263; Poth. Louage n. 196; Jones, Bailm. 88; Story., Bailm. _403. But see 1 Bos. & P. 404, 409; 5 Esp. N. P. c 35; 10 Am. Jur. 256.

4. Another implied obligation of the hirer is to restore the thing hired, when the bailment, is determined. 4 T. R. 260; 3 Camp. 5, n.; 13 Johns. R. 211.

5. The time, the place, and the mode of restitution of the thing hired, are governed by the circumstances of each case depend and depend upon rules of presumption of the intention of the parties, like those in other cases of bailment. Story on Bailm. _415

6. There is also an implied obligation on the part of the hirer, to pay the hire or recompense. Pothier, Louage, n. 134; Domat, B. 2, tit. 2, _2, n. 11 Code Civ; art. 1728.

See, generally, Bouv. Inst. Index, h. t.; Employer; Letter.

HIS EXCELLENCY. A title given by the constitution of Massaebusetts to the governor of that commonwealth. Const. part 2, c. 2, s. 1, art. 1. This title is customarily given to the governors of the other states, whether it be the

official designation in their constitutions and laws or not.

HIS HONOR. A title given by the constitution of Massachusetts to the lieu− tenant governor of that commonwealth. Const. part 2, c. 2, s. 2, art. 1. It, is also customarily given to some inferior magistrates, as the mayor of a city.

HISTORY, evidence. The recital of facts written and given out for true.

2. Facts stated in histories may be read in evidence, on the ground of their notoriety. Skin. R. 14; 1 Ventr. R. 149. But these facts must be of a public nature, and the general usages and customs of the country. Bull. P. 248; 7 Pet. R. 554; 1 Phil. & Am. Ev. 606; 30 Howell's St. Tr. 492. Histories are not admissible in relation to matters not of a public nature, such as the custom of a particular town, a descent, the boundaries of a county, and the like. 1 Salk. 281; S. C. Skin. 623; T. Jones, 164; 6 C. & P. 586, note. See 9 Ves. 347; 10 Ves. 354; 3 John. 385; 1 Binn. 399; and Notoriety.

HODGE−PODGE ACT. A name given to a legislative act which embraces many subjects. Such acts, besides being evident proofs of the ignorance of the makers of them, or of their want of good faith, are calculated to create a confusion which is highly prejudicial to the interests of justice. Instances of this wretched legislation are everywhere to be found. See Barring on the Stat. 449. Vide Title; Legislation.

HOERES FACTUS, civil law. An heir instituted by testament; one made an heir by the testator. Vide Heir.

HOERES NATUS, civil law. An heir by intestacy; he on whom an estate descends by operation of law. Vide Heir.

HOGSHEAD. A measure of wine, oil, and the like, containing half a pipe; the fourth part of a tun, or sixty−three gallons.

TO HOLD. These words are now used in a deed to express by what tenure the grantee is to have the land. The clause which commences with these words is called the tenendum. Vide Habendum; Tenendum.

2. To hold, also means to decide, to adjudge, to decree; as, the court in that case held that the hushand was not liable for the contract of the wife, made without his express or implied authority.

3. It also signifies to bind under a contract, as the obligor is held and firmly bound. In the constitution of the United States, it is provided, that no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due. Art. 4, sec. 3, _3; 2 Serg. & R. 306; 3 Id. 4; 5 Id. 52; 1 Wash. C. C. R. 500; 2 Pick. 11; 16 Pet. 539, 674.

HOLDER. The holder of a bill of exchange is the person who is legally in the possession of it, either by endorsement or delivery, or both, and entitled to receive payment either from the drawee or acceptor, and is considered as an assignee. 4 Dall. 53. And one who endorses a promissory note for collection, as an agent, will be considered the holder for the purpose of transmitting notices. 2 Hall, R. 112; 6 How. U. S. 248; 20 John. 372. Vide Bill of Exchange.

HOLDING OVER. The act of keeping possession by the tenant, without the consent of the landlord of premises which the latter, or those under whom he claims, had leased to the former, after the term has expired.

2. When a proper notice has been given, this injury is remedied by, ejectment, or, under local regulations, by summary proceedings. Vide 2 Yeates' R. 523; 2 Serg. & Rawle, 486; 5 Binn. 228; 8 Serg. & Rawle, 459; 1 Binn. 334, a.; 5 Serg. & Rawle 174; 2 Serg. & Rawle, *50; 44 Rawle, 123.

HOLOGRAPH. What is written by one's own hand. The same as Ograph. Vide Ograph.

HOMAGE, Eng. law. An acknowledgment made by the vassal in the presence of his lord, that he is his man, that is, his subject or vassal. The form in law French was, Jeo deveigne vostre home.

2. Homage was liege and feudal. The former was paid to the king, the latter to the lord. Liege, was borrowed from the French, as Thaumas informs us, and seems to have meant a service that was personal and inevitable. Houard, Cout. Anglo Norman, tom. 1, p. 511; Beames; Glanville, 215, 216, 218, notes.

HOME PORT. The port where the owner of a ship resides; this is a relative term.

HOMESTALL. The mansion−house.

HOMESTEAD. The place of the house or home place. Homestead farm does not necessarily include all the parcels of land owned by the grantor, though lying and occupied together. This depends upon the intention of the parties when the term is mentioned in a deed, and is to be gathered from the context. 7 N. H. Rep. 241; 15 John. R. 471. See Manor; Mansion.

HOMICIDE, crim. law. According to Blackstone, it is the killing of any human creature. 4 Com. 177. This is the

most extensive sense of this word, in which the intention is not considered. But in a more limited sense, it is always understood that the killing is by human agency, and Hawkins defines it to be the killing of a man by a man. 1 Hawk. c. 8, s. 2. See Dalloz, Dict. h. t. Homicide may perhaps be described to be the destruction of the life of one human being, either by himself, or by the act, procurement, or culpable omission of another. When the death has been intentionally caused by the deceased himself, the offender is called felo de se; when it is caused by another, it is justifiable, excusable, or felonious.

2. The person killed must have been born; the killing before birth is balled foeticide. (q. v.)

3. The destruction of human life at any period after birth, is homicide, however near it may be to extinction, from any other cause.

4. − 1. Justifiable homicide is such as arises, 1st. From unavoidable necessity, without any will, intention or desire, and without any inadvertence in the party killing, and therefore without blame; as, for instance, the execution, according to law, of a criminal who has been lawully sentenced to be hanged; or, 2d. It is committed for the advancement of public justice; as if an officer, in the lawful execution of his office, either in a civil or criminal case, should kill a person who assaults and resists him. 4 Bl. Com. 178−1 80. See Justifiable Homicide.

5. − 2. Excusable homicide is of two kinds 1st. Homicide per infortunium. (q. v.) or, 2d. Se defendendo, or self defence. (q. v.) 4 Bl. Com. 182, 3.

6. − 3. Felonious homicide, which includes, 1. Self−murder, or suicide; 2. Man−slaughter, (q. v.); and , 3. Murder. (q. v.) Vide, generally, 3 Inst. 47 to 57; 1 Hale P. C. 411 to 602; 1 Hawk. c. 8; Fost. 255 to 837; 1 East, P. C. 214 to 391; Com. Dig. Justices, L. M.; Bac. Ab. Murder and Homicide; Burn's Just. h. t.; Williams' Just. h. t.; 2 Chit. Cr. Law, ch. 9; Cro. C. C. 285 to 300; 4 Bl. Com. to 204; 1 Russ. Cr. 421 to 553; 2 Swift's Dig. 267 to 292.

HOMINE CAPTO IN WITHERNAM, Engl. law.. The name of a writ directed to the sheriff, and commanding him to take one who has taken any bondsman, and conveyed him out of the country, so that he cannot be replevied. Vide Withernam; Thesaurus, Brev. 63.

HOMINE ELIGENDO, English law. The name of a writ directed to a corporation, requiring the members to make choice of a new man, to keep the one part of a seal appointed for statutes merchant. Techn. Dict. h. t.

HOMINE REPLEGIANDO. When a man is unlawfully in custody, he may be restored to his liberty by writ de homine replegiando, upon giving bail; or by a writ of habeas, corpus, which is the more usual remedy. Vide Writ de homine replegiando.

HOMO. This Latin word, in its most enlarged sense, includes both man and woman. 2 Inst. 45. Vide Man.

HOMOLOGATION, civil law. Approbation, confirmation by a court of justice, a judgment which orders the execution of some act; as, the approbation of an award, and ordering execution on the same. Merl. Rep,rt. h. t.; Civil Code of Louis. Index, h. t.; Dig. 4, 8; 7 Toull. n. 224. To homologate, is to say the like, similiter dicere. 9 Mart. L. R. 324.

HONESTY. That principle which requires us to give every one his due. Nul ne doit slenrichir aux de ens du droit d'autrui.

2. The very object of social order is to promote honesty, and to restrain dishonesty; to do justice and to prevent injustice. It is no less a maxim of law than of religion, do unto others as you wish to be done by.

HONOR. High estimation. A testimony of high estimation. Dignity. Reputation. Dignified respect of character springing from probity, principle, or moral rectitude. A duel is not justified by any insult to our honor. Honor is also employed to signify integrity in a judge, courage in a soldier, and chastity in a woman. To deprive a woman of her honor is, in some cases, punished as a public wrong, and by an action for the recovery of damages done to the relative rights of a hushand or a father. Vide Criminal conversation.

2. In England, when a peer of parliament is sitting judicially in that body, his pledge of honor is received instead of an oath; and in courts of equity, peers, peeresses, and lords of parliament, answer on their honor only. But the courts of common law know no such distinction. It is needless to add, that as we are not encumbered by a nobility, there is no such distinction in the United States, all persons being equal in the eye of the law.

HONOR, Eng. law. The seigniory of a lord paramount. 2 Bl. Com. 9f.

TO HONOR, contr. To accept a bill of exchange; to pay a bill accepted, or a promissory note, on the day it becomes due. 7 Taunt. 164; 1 T. R. 172. Vide To Dishonor.

HONORARIUM. A recompense for services rendered. It is usually applied only to the recompense given to persons whose business is connected with science; as the fee paid to counsel.

2. It is said this honorarium is purely voluntary, and differs from a fee, which may be recovered by action. 5 Serg. & Rawle, 412; 3 Bl. Com. 28; 1 Chit. Rep. 38; 2 Atk. 332; but see 2 Penna. R. 75; 4 Watts' R. 334. Vide Dalloz, Dict. h. t., and Salary. See Counsellor at law.

HORS DE SON FEE, pleading in the ancient English law. These words signify out of his fee. A plea which was pleaded, when a person who pretended to be the lord, brought an action for rent services, as issuing out of his land: because if the defendant could prove the land was out of his fee, the action failed. Vide 9 Rep. 30; 2 Mod. 104; 1 Danvers' Ab. 655; Vin. Ab. h. t.

HORSE. Until a horse has attained the age of four years, he is called a colt. (q. v.) Russ. & Ry. 416. This word is sometimes used as a generic name for all animals of the horse kind. 3 Brev. 9. Vide Colt; Gender; and Yelv. 67, a.

HOSTAGE. A person delivered into the possession of a public enemy in the time of war, as a security for the performance of a contract entered into between the belligerents.

2. Hostages are frequently given as a security for the payment of a ransom bill, and if they should die, their death would not discharge the contract. 3 Burr. 1734; 1 Kent, Com. 106; Dane's Ab. Index, h. t.

HOSTELLAGIUM, Engl. law. A right reserved to the lords to be lodged and entertained in the houses of their tenants.

HOSTILITY. A state of open enmity; open war. Wolff, Dr. de la Rat. _1191. Hostility, as it regards individuals, may be permanent or temporary; it is permanent when the individual is a citizen or subject of the government at war, and temporary when he happens to be domiciliated or resident in the country of one of the belligerents; in this latter case the individual may throw off the national character he has thus acquired by residence, when he puts himself in motion, bona fide, to quit the country sine animo revertendi. 3 Rob. Adm. Rep. 12; 3 Wheat. R. 14.

2. There may be a hostile character merely as to commercial purposes, and hostility may attach only to the person as a temporary enemy, or it may attach only to the property of a particular description. This hostile character in a commercial view, or one limited to certain intents and purposes only, will attach in, consequence of having possessions in the territory of the enemy, or by maintaining a commercial establishment there, or by a personal residence, or, by particular modes of traffic, as by sailing under the enemy's flag of passport. 9 Cranch, 191 5 Rob. Adm. Rep. 21, 161; 1 Kent Com. 73; Wesk. on Ins. h. t.; Chit. Law of Nat. Index, h. t.

HOTCHPOT, estates. This homely term is used figuratively to signify the blending and mixing property belonging to different persons, in order to divide it equally among those entitled to it. For example, if a man seised of thirty acres of land, and having two children, should, on the marriage of one of them, give him ten acres of it, and then die intestate seised of the remaining twenty; now, in order to obtain his portion of the latter, the married child, must bring back the ten acres he received, and add it to his father's estate, when an equal division of the whole will take place, and each be entitled to fifteen acres. 2 Bl. Com. 190. The term hotchpot is also applied to bringing together all the personal estate of the deceased, with the advancements he has made to his children, in order that the same may be divided agreeably to the provisions of the statute for the distribution of intestate's estates. In bringing an advancement into hotchpot, the donee is not required to account for the profits of the thing given; for example, he is not required to bring into hotchpot the produce of negroes, nor the interest of money. The property must be accounted for at its value when given. 1 Wash. R. 224; 17 Mass. 358; 2 Desaus. 127.; 3 Rand. R. 117; 3 Pick. R. 450; 3 Rand. 559; Coop. Justin. 575.

2. In Louisiana the term collation is used instead of hotchpot. The collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property maybe divided, together with the other effects of the succession. Civ. Code of Lo. art. 1305; and vide from that article to article 1367. Vide, generally, Bac. Ab. Coparceners, E; Bac. Ab. Executors, &c., K; Com. Dig. Guardian, G 2, Parcener, C 4; 8 Com. Dig. App. tit. Distribution, Statute of, III. For the French law, see Merl. Rep,rt. mots Rapport a succession.

HOUR measure of time. The space of sixty minutes, or the twenty−fourth part of a natural day. Vide Date; Fraction; and Co. Litt. 135; 3 Chit. Pr. 110.

HOUSE, estates. A place for the habitation and dwelling of man. This word has several significations, as it is applied to different things. In a grant or demise of a house, the curtilage and garden will pass, even without the words "with the appurtenances," being added. Cro. Eliz. 89; S. C.; 3 Leon. 214; 1 Plowd. 171; 2 Saund. 401 note 2; 4 Penn. St. R; 93.

2. In a grant or demise of a house with the appurtenaces, no more, will pass, although other lands have been occupied with the house. 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 d.; Id. 36 a. b.; 2 Saund. 401, note 2.

3. If a house, originally entire, be divided into several apartments, with an outer door to each apartment and no communication with each other subsists, in such case the several apartments are considered as distinct houses. 6 Mod. 214; Woodf. Land. & Ten. 178.

4. In cases of burglary, the mansion or dwelling−house in which the burglary might be committed, at common law includes the outhouses, though not under the same roof or adjoining to the dwelling−house provided they were within the curtilage, or common fence, as the dwelling or mansion house. 3 Inst. 64; 1 Hale, 558; 4 Bl. Com. 225; 2 East, P. C. 493; 1 Hayw. N. C. Rep. 102, 142; 2 Russ. on Cr. 14.

5. The term house, in case of arson, includes not only the dwelling but all the outhouses, as in the case of burglary. It is a maxim in law that every man's house is his castle, and there he is entitled to perfect security; this asylum cannot therefore be legally invaded, unless by an officer duly authorized by legal process; and this process must be of a criminal nature to authorize the breaking of an outer door; and even with it, this cannot be done, until after demand of admittance and refusal. 5 Co. 93; 4 Leon. 41; T. Jones, 234. The house may be also broken for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N 3.

6. The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested and he takes refuge in his own house; in that case, the officer may pursue him and break open any door for the purpose. Foster, 320; 1 Rolle, R. 138; Cro. Jac. 555; Bac. Ab. ubi sup. In the civil law the rule was nemo de domo sua extrahi debet. Dig. 50, 17, 103. Vide, generally, 14 Vin. Ab. 315; Yelv. 29 a, n. 1; 4 Rawle, R. 342; Arch. Cr. Pl. 251; and Burglary.

7. House is used figuratively to signify a collection of persons, as the house of representatives; or an institution, as the house of refuge; or a commercial firm, as the house of A B & Co. of New Orleans; or a family, as, the house of Lancaster, the house of York.

HOUSE OF COMMONS, Eng. law. The representatives of the people, in contradistinction to the nobles, taken collectively are called the house of commons.

2. This house must give its consent to all bills before they acquire the authority of law, and all laws for raising revenue must originate there.

HOUSE OF CORRECTIONS. A prison where offenders of a particular class are confined. The term is more common in England than in the United States.

HOUSE OF LORDS. Eng. law. The English lords, temporal and spiritual, when taken collectively and forming a branch of the parliament, are called the House of Lords.

2. Its assent is required to all laws. As a court of justice, it tries all impeachments.

HOUSE OF REFUGE, punishment. The name given to a prison for juvenile delinquents. These houses are regulated in the United Statees on the most humane principles, by special local laws.

HOUSE OF REPRESENTATIVES, government. The popular branch of the legislature.

2. The Constitution of the United States, art. 1, s. 2, 1, provides, that "the house of representatives shall be composed of members chosen every second year by the people of, the several states; and the electors of each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

3. The general qualifications of electors of the assembly, or most numerous branch of the legislature, in the several state governments, are, that they be of the age of twenty−one years and upwards, and free resident citizens of the state in which they vote, and have paid taxes: several of the state constitutions have prescribed the same or higher qualifications, as to property, in the elected, than in the electors.

4. The constitution of the United States, however, requires no evidence of property in the representatives, nor any declarations as to his religious belief. He must be free from undue bias or dependence, by not holding any office under the United States. Art. 1, s. 6, 2.

5. By the constitutions of the several states, the most numerous branch of the legislature generally bears the name of the house of representatives. Vide Story on Constitution of the United States, chap. 9 1 Kent's Com. 228.

6. By the Act of June 22, 1842, c. 47, it is provided,

_1. That from and after the third day of March, one thousand eight hundred and forty−three, the house of representatives shall be composed of members elected agreeably to a ratio of one representative for every seventy thousand six hundred and eighty persons in each state, and of one additional representative for each state having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the constitution of the United States; that is to say: within the state of Maine, seven; within the state of New Hampshire, four; within the state of Massachusetts, ten; within the state of Rhode Island, two within the state of Connecticut, four; within

the state of Vermont, four; within the state of New York, thirty−four; within the state of New Jersey, five; within the state of Pennsylvania, twenty−four; within the state of Delaware, one; within the state of Maryland, six; within the state of Virginia, fifteen; within the state of North Carolina, nine; within the state of South Carolina, seven; within the state of Georgia, eight; within the state of Alabama, seven; within state of Louisiana, four; within the state of Mississippi, four; within the state of Tennessee, eleven; within the state of Kentucky, ten; within the state of Ohio, twenty−one; within the state of Indiana, ten; within the state of Illinois, seven; within the state of Missouri, five; within the state of Arkansas, one; within the State of Michigan, three.

7.− _2. That in every case where a state is entitled to more than one representative, the number to which each state shall be entitled under this apportionment shall be elected by districts. composed of contiguous territory, equal in number to the number of representatives to which said state may be entitled, no one district electing more than one representative.

8. For the constitutions of the houses of representatives in the several states, the reader is referred to the names of the states in this work. Vide Congress.

HOUSE−BOTE. An allowance of necessary timber out of the landlord's woods, for the repairing and support of a house or tenement. This belongs of common−right to any lessee for years or for life. House−bote is said to be of two kinds, estoveriam aedificandi et ardendi. Co. Litt. 41.

HOUSEKEEPER. One who occupies a house.

2. A person who occupies every room in the house, under a lease, except one, which is reserved for his landlord, who pays all the taxes, is not a housekeeper. 1 Chit. Rep. 502. Nor is a person a housekeeper, who takes a house, which be afterwards underlets to another, whom the landlord refuses to accept as his tenant; in this case, the under−tenant aid the, taxes and let to the tenant the, first floor of the house, and the rent was paid for the whole house to the tenant, who paid it to the landlord. Id. note.

3. In order to make the party a house−keeper, he must be in actual possession of the house; 1 Chit. Rep. 288 and must occupy a whole house. 1 Chit. Rep. 316. See 1 Barn. & Cresw. 178; 2 T. R. 406; 1 Bott, 5; 3 Petersd, Ab. 103, note; 2 Mart. Lo. R. 313.

HOVEL. A place used by hushandmen to set their ploughs, carts, and other farming utensils, out of the rain and sun. Law Latin Dict. A shed; a cottage; a mean house.

HOYMAN. The master or captain of a hoy.

2. Hoymen are liable as common carriers. Story, Bailm. _496.

HUE AND CRY, Eng. law. A mode of pursuing felons, or such as have dangerously wounded any person, or assaulted any one with intent to rob him, by the constable, for the purpose of arresting the offender. 2 Hale, P. C. 100.

HUEBRA, Spanish law. An acre of land or as much as can be ploughed in a day by two oxen. Sp. Dict.; 2 White's Coll. 49.

HUISSIER. An usher of a court. In France, an officer of this name performs many of the duties which in this country devolve on the sheriff or constable. Dalloz, Dict. h. t. See 3 Wend. 173.

HUNDRED, Eng. law. A district of country originally comprehending one hundred families. In many cases, when an offence is committed within the −hundred, the inhabitants tire civilly responsible to the party injured.

2. This rule was probably borrowed from the nations of German origin, where it was known. Montesq. Esp. des Lois,]iv. 30, c. 17. It was established by Clotaire, among the Franks. 11 Toull. n. 237.

3. To make the innocent pay for the guilty, seems to be contrary to the first principles of justice, and can be justified only by necessity. In some of the United States laws have been passed making cities or counties responsible for, the destruction of property by a mob. This can be justified only on the ground that it is the interest of every one that property should be protected, and that it is for the general good such laws should exist.

HUNDRED GEMOTE. The name of a court among the Saxons. It was holden every month, for the benefit of the inhabitants of the hundred.

HUNDREDORS. In England they are inhabitants of a local division of a county, who, by several statutes, are held to be liable in the cases therein specified, to make good the loss sustained by persons within the hundred, by robbery or other violence, therein also specified. The principal of these statutes are, 13 Edw. I. st. 2, c. 1, s. 4; 28 Edw. III. c. 11; 27 Eliz. c. 13; 29 Car. II. c. 7; 8 Geo. II. c. 16; 22 Geo. II. c. 24.

HUNGER. The desire for taking food. Hunger is no excuse for larceny. 1 Hale, P. C. 54; 4 Bl. Com. 31. But it is a matter which applies itself strongly to the consciences of the judges in mitigation of the punishment.

2. When a person has died, and it is suspected he has been starved to death, an examination of his body ought to be made, to ascertain whether or not he died of hunger. The signs which usually attend death from hunger are the following: The body is much emaciated, and a foetid, acrid odor exhales from it, although death may have been very recent. The eyes are red and open, which is not usual in other causes of death. The tongue and throat are dry, even to aridity, and the stomach and intestines are contracted and empty. The gall bladder is pressed with bile, and this fluid is found scattered over the stomach and intestines, so as to tinge them very extensively. The lungs are withered, but all the other organs are generally in a healthy state. The blood vessels are usually empty. Foder,, tom. ii. p. 276, tom. iii. p. 231; 2 Beck's Med. Jur. 52; see Eunom. Dial. 2, _47, p. 142, and the note at p. 384.

HUNTING. The act of pursuing and taking wild animals; the chase.

2. The chase gives a kind of title by occupancy, by which the hunter acquires a right or property in the game which he captures. In the United States, the right of hunting is universal, and limited only so far as to exclude hunters from committing injuries to private property or to the public; as, by shooting on public roads. Vide Feroe naturae; Occupancy.

HURDLE, Eng. law. A species of sledge, used to draw traitors to execution.

HUshAND, domestic relations. A man who has a wife.

2. The hushand, as such, is liable to certain obligations, and entitled to certain rights, which will be here briefly considered.

3. First, of his obligations. He is bound to receive his wife at his home, and should furnish her with all the necessaries and conveniences which his fortune enables him to do, and which her situation requires; but this does not include such luxuries as, according to her fancy, she deems necessaries; vide article Cruelty, where this matter is considered. He is bound to love his wife, and to bear with her faults, and, if possible, by mild means to correct them and he is required to fulfil towards her his marital promise of fidelity, and can, therefore, have no carnal connexion with any other woman, without a violation of his obligations. As he is bound to govern his house properly, he is liable for its misgovernment, and he may be punished for keeping a disorderly house, even where his wife had the principal agency, and he is liable for her torts, as for her slander or trespass. He is also liable for the wife's debts, incurred before coverture, provided they are recovered from him during their joint lives; and generally for such as are contracted by her after coverture, for necessaries, or by his authority, express or implied. See 5 Whart. 395; 5 Binn. 235; 1 Mod. 138; 5 Taunt. 356; 7 T. R. 166; 3 Camp. 27; 3 B. & Cr. 631; 5 W. & S. 164.

4. Secondly, of his rights. Being the head of the family, the hushand has a right to establish himself wherever he may please, and in this he cannot be controlled by his wife; he may manage his affairs his own way; buy and sell all kinds of personal property, without any control, and he may buy any real estate he may deem proper, but, as the wife acquires a right in the latter, he cannot sell it, discharged of her dower, except by her consent, expressed in the manner prescribed by the laws of the state where such lands lie. At common law, all her personal property, in possession, is vested in him, and he may dispose of it as if he had acquired it by his own contract this arises from the principle that they are considered one person in law; 2 Bl. Com. 433 and he is entitled to all her property in action, provided he reduces it to possession during her life. Id. 484. He is also entitled to her chattels real, but these vest in him not absolutely, but sub modo; as, in the case of a lease for years, the hushand is entitled to receive the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it during the coverture, and it is liable to be taken in execution for his debts and, if he survives her, it is, to all intents and purposes, his own. In case his wife survives him, it is considered as if it had never been transferred from her, and it belongs to her alone. In his wife's freehold estate, he has a life estate, during the joint lives of himself and wife; and, at common law, when he has a child by her who could inherit, he has an estate by the curtesy. But the rights of a hushand over the wife's property, are very much abridged in some of the United States, by statutes. See Act of Pennsylvania, passed April 11, 1848.

5. The laws of Louisiana differ essentially from those of the other states, as to the rights and duties of hushand and wife, particularly as it regards their property. Those readers, desirous of knowing, the legislative regulations on this subject, in that state, are referred to the Civil Code of Louis. B. 1, tit. 4; B. 3, tit. 6.

Vide, generally, articles Divorce; Marrriage; Wife; and Bac. Ab. Baron and Feme; Rop. H. & W.; Prater ou H. & W.; Clancy on the Rights, Duties and Liabilities of Hushand and Wife Canning on the Interest of Hushand and Wife, &c.; 1 Phil. Ev. 63; Woodf. L. & T. 75; 2 Kent, Com. 109; 1 Salk. 113 to 119Ø; Yelv. 106a, 156a, 166a; Vern. by Raithby, 7, 17, 48, 261; Chit. Pr. Index, h. t. Poth. du Contr. de Mar. n. 379; Bouv. Inst. Index, h. t.

HUshAND, mar. law. The name of an agent who is authorized to make the necessary repairs to a ship, and to act in relation to the ship, generally, for the owner. He is usually called ship's hushand. Vide Ship's Hushand.

HUshRECE, old Eng. law. The, ancient name of the offence now called burglary.

HUSTINGS, Engl. law. The name of a court held before the lord mayor and aldermen of London; it is the principal and supreme court of the city., See 2 Inst. 327; St. Armand, Hist. Essay on the Legisl. Power of England, 75.

HYDROMETER. An instrument for measuring the density of fluids; being immersed in fluids, as in water, brine, beer, brandy, &c., it determines the proportion of their densities, or their specific gravities, and thence their qualities.

2. By, the Act of Congress of January 12, 1825, 3 Story's' Laws U. S. 1976, the secretary of the treasury is authorized, under the direction of the president of the United States, to adopt and substitute such hydrometer as he may deem best calculated to promote the public interest, in lieu of that now prescribed by law, for the purpose of ascertaining the proof of liquors; and that after such adoption and substitution, the duties imposed by law upon distilled spirits shall be levied, collected and paid, according to the proof ascertained by any hydrometer so substituted and adopted.

HYPOBOLUM, civ. law. The name of the bequest or legacy given by the hushand to his wife, at his death, above her dowry. Techn. Dict. h. t.

HYPOTHECATION, civil law. This term is used principally in the civil law; it is defined to be a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold, in order to be paid his claim out of the proceeds.

2. There are two species of hypothecation, one called pledge, pignus, and, the other properly denominated hypothecation. Pledge is that species , of hypothecation which is contracted by the delivery of the debtor to the creditor, of the thing hypothecated. Hypothecation, properly so called, is that which is contracted without delivery of the thing hypothecated. 2 Bell's Com. 25, 5th ed.

3. Hypothecation is further divided into general and special when the debtor hypothecates to his creditor all his estate and property, which he has, or may have, the hypothecation is general; when the hypothecation is confined to a particular estate, it is special.

4. Hypothecations are also distinguished into conventional, legal, and tacit. 1. Conventional hypothecations are those which arise by the agreement of the parties. Dig. 20, 1, 5.

5. − 2. Legal hypothecation is that which has not been agreed upon by any contract, express or implied; such as arises from the effect of judgments and executions.

6. − 3. A tacit, which is also a legal hypothecation, is that which the law gives in certain cases, without the consent of the parties, to secure the creditor; such as, 1st. The lien which the public treasury has over the property of public debtors. Code, 8, 15, 1. 2d. The landlord has a lien on the goods in the house leased, for the payment of his rent. Dig. 20, 2, 2; Code, 8, 15, 7, 3d. The builder has a lien, for his bill, on the house he has built. Dig. 20, 1. 4th, The pupil has a lien on the property of the guardian for the balance of his account. Dig. 46, 6, 22; Code, 6, 37, 20. 5th. There is hypothecation of the goods of a testator for the security of a legacy he has given. Code, 6, 43, 1.

7. In the common law, cases of hypothecation, in the strict sense of the civil law, that is, of a pledge of a chattel, without possession by the pledgee, are scarcely to be found; cases of bottomry bonds and claims for seamen's wages, against ships are the nearest approach to it; but these are liens and privileges rather than hypothecations. Story, Bailm. _288. It seems that chattels not in existence, though they cannot be pledged, can be hypothecated, so that the lien will attach, as soon as the chattel has been prodced. 14 Pick. R. 497.

Vide, generally, Poth. de l'Hypoth,que; Poth. Mar. Contr. translated by Cushing, note. 26, p. 145; Commercial Code of France, translated by Rodman, note 52, p. 351; Merl. R,pertoire, mot Hypoth,que, where the subject is fully considered; 2 Bro. Civ. Law, 195; Ayl. Pand. 524; 1 Law Tracts, 224; Dane's Ab. h. t.; Abbott on Ship. Index, h. t.; 13 Ves. 599; Bac. Ab. Merchant, &c. G; Civil Code of Louis. tit. 22, where this sort of security bears the name of mortgage. (q. v.)

HYPOTHEQUE, French law. Properly, the right acquired by the creditor over the immovable property which has been assigned to him by his debtor, as security for his debt, although he be not placed in possession of it. The hypotheque might arise in two was. 1. By the express agreement of the debtor, which was the conventional hypotheque. 2. By disposition of law, which was the implied or Iegal hypotheque. This was nothing but a lien or privilege which the creditor enjoyed of being first paid out of the land subjected to this incumbrance. For

example, the landlord had hypotheque on the goods of his tenant or others, while on the premises let. A mason had the same on the house he built. A pupil or a minor on the land of his tutor or curator, who had received his money. Domat, Loix Civiles, 1. 3, & 1; 2 Bouv. Inst. 1817.

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